

Witness Name: Martin John Smith

Statement No: WITN09680200

Dated: 19 March 2024

POST OFFICE HORIZON IT INQUIRY

SECOND WITNESS STATEMENT OF MARTIN JOHN SMITH

I, Martin John Smith, will say as follows:

Introduction

1. This witness statement is made to assist the Post Office Horizon IT Inquiry (the Inquiry) with matters set out in the Rule 9 Request (the Request) dated 1st March 2024. I have previously made a statement to the Inquiry – my first witness statement was dated 21st November 2023 (WITN09680100).
2. This statement has been prepared having regard to the documents provided with the Request, documents previously provided by the Inquiry and from memory. I have attempted to recollect events and the content of this statement represents the best of my recollection as at the date of this statement.

The Second Sight Interim Report

3. I believe that prior to the publication of the Second Sight Interim Report (POL00099063) I had a number of telephone conversations with lawyers from the Legal Department of Post Office Ltd. From the papers which have been provided with the Request, I understand that these took place on 27th June 2013. I am not certain with whom I first spoke due to the length of time which has since elapsed and for that reason, it is also difficult to recall the precise conversation. I was asked, however, whether I knew about the bugs in Horizon Online affecting numerous branches. I inferred from the way in which the question had been phrased, that the Legal Department had been unaware of the bugs. I too could not recall being informed of any bugs and when I spoke to Jarnail Singh, he told me that he was also unaware of the bugs.
4. Whilst I am unsure as to the exact chronology of events due to the passage of time, I am able to recall that I accompanied Mr. Clarke to a meeting at the premises of Post Office Ltd with a number of members of the Legal Department. I took notes during the meeting but do not have access to them. I can recall, however, that Simon Clarke advised that a review of cases should be undertaken to determine whether post-conviction disclosure should be provided. I believe it was also during that meeting that Simon explained the disclosure obligations which applied in criminal law and advised that a weekly call be arranged so that Horizon-related information could be collated in a central record. I also made reference at the meeting to the case of Mr. Ishaq expressing my concern that disclosure which should have been made had not been made and that he had been sentenced to a term of imprisonment.

5. I provided Mr. Clarke with copies of several statements of Gareth Jenkins which had been served and I also expressed my surprise that Mr. Jenkins had not referred to the existence of the bugs during Mr. Ishaq's case. I also noted that Mr. Jenkins had confirmed at Court that Mr. Ishaq's branch had not been affected by a bug and that Mr. Ishaq had pleaded guilty. Mr. Clarke advised that the existence of the two bugs should nevertheless have been disclosed to Mr. Ishaq. He explained that it would have been open to Mr. Ishaq to argue that there were, perhaps, bugs affecting his branch which had yet to be detected. I can recall feeling deeply unhappy about the situation and asked Mr. Clarke to review Mr. Ishaq's case.
6. Mr. Clarke and I also discussed a case listed for trial before the Crown Court at Birmingham in which he was Counsel for the Prosecution. I think it was due to commence the following week and he was concerned that he could not properly deal with disclosure. It was in those circumstances that Mr. Clarke and I called Mr. Jenkins. During the course of the telephone call he confirmed that Fujitsu had declared the existence of two bugs to Second Sight. He also indicated that Fujitsu was confident that the audit trail being used for the purposes of prosecution had not been compromised by the bugs.
7. Simon Clarke advised that a team of solicitors should be assembled to conduct a file review process from the Derby Office of Cartwright King. I can recall that a meeting took place at which the questions to be asked were formulated and following that meeting a template document was designed for use during the review process. I was one of the solicitors who reviewed the case files. Given that the review process included cases prosecuted by Post Office Ltd prior to

the date upon it became a separate entity, it was also necessary to liaise with the Royal Mail Group.

8. I do not recall the date when I first saw a draft copy of the Second Sight Interim Report. I believe, however, that it was made available to Cartwright King prior to its publication. I cannot recall whether the report of Helen Rose of 12th June 2013 (FUJ00086811) was provided at the same time or subsequently.
9. Due to the passage of time, I am unable to recall my initial thoughts when I first saw these reports. I do not recall considering the extent to which either the Report of Helen Rose or Second Sight's Interim Report might support an argument that there was a lack of integrity in the Horizon IT system.
10. Similarly, I do not recall considering whether either document might support an argument that there had been a failure to provide adequate disclosure in respect of convictions based on data generated by the Horizon IT System.
11. I did not consider whether there were, or might be, other underlying documents relevant to (a) the issues specifically identified or alluded to by Second Sight or Helen Rose, or (b) other issues with the Horizon System's integrity. I do not believe that I provided any advice to Post Office Ltd to search for any such documents.
12. I have been asked to consider an email of Rodric Williams of 5th July to myself and Simon Clarke (POL00062162) to which Spot Reviews and Responses had been attached. I do not recall giving any consideration to whether the Spot Reviews should be disclosed to convicted Subpostmasters. I cannot recall whether I discussed this with Simon Clarke.
13. I have been provided with a copy of the Advice of Simon Clarke of 8th July 2013 (POL00006365). I am unable to recall the extent to which I was involved in the

preparation of this advice or discussing the issues referred to therein with Mr. Clarke. It was not uncommon for Mr. Clarke to prepare a document and to ask either myself or another member of staff to take a look at it before it was dispatched. In such instances he would often explain the reasoning behind his advice.

14. Mr Clarke referred to two bugs – B63 and B14. I had not appreciated at the time that I might have already been provided with some information about the latter. Following the submission of my first witness statement to the Inquiry I was provided with a number of documents to consider. Although my recollection is limited due to the passage of time, I believe that I may previously have had sight of an earlier version of the Peak Incident Management System Report (FUJ00084852) or something very similar. I also believe that I concluded that the error referred to therein would not have affected the integrity of the Horizon data i.e. the record of transactions securely locked away, on the basis of the description of the operation of the system provided by Gareth Jenkins in his witness statements. I did not, at the time, fully appreciate the disclosure obligations which arose. I was unaware of the post-conviction duty of disclosure under common law.

15. Mr. Clarke also advised that considerations as to the selection of the start-date “included proportionality, resourcing, transparency and POL reputation.” He went on to note that he had “come to the view that all of these considerations militate in favour of a date close the initial HOL migration date of 2010, perhaps using the 1st January of that year.”

16. I did not disagree with Mr. Clarke. I also have a recollection that following the commencement of the review process, the parameters were changed slightly so that they covered any case with a hearing after 1st January 2010.
17. I have been provided with a copy of the Advice of Simon Clarke of 15th July 2013 (POL00006357). I have been asked to describe the extent to which I was involved in preparing the advice or discussing the issues discussed therein with Mr. Clarke. As I have noted previously, I provided Mr. Clarke with a number of Mr Jenkins' reports. I believe that I also discussed with him the conversations which had taken place with lawyers from Post Office Ltd during the afternoon of 27th June 2013.
18. I am asked about the extent to which I agreed with Mr. Clarke's advice. Due to Mr. Clarke's seniority and substantial experience his advice was generally taken as being correct and I did not disagree with it. Mr. Clarke's advice frequently contributed to my professional development.
19. In paragraph 5 of his advice, Mr. Clarke explained that were a defendant to assert, rightly or wrongly, that the Horizon system was at fault, it would be for the prosecution to demonstrate the integrity to the system and the evidential audit trail derived from Horizon. He went onto set out the detail which an expert would usually give in such circumstances and noted that the expert should state, in clear terms, that (a) where a defence has raised merely a general and unspecified criticism of Horizon, it is not only generally free from error but that it is protected by such systems and security as to prevent error and (b) where the defence has raised specific criticisms, he has considered those matters and has concluded that there is no proper foundation for them.

20. Mr. Clarke went on to outline the duties of an expert witness and further to the provisions of Part 33 of the Criminal Procedure Rules 2012, the duty of an expert witness instructed by the prosecution. He explained in paragraph 7 of his advice that an expert witness possessed of material which cast doubt upon his opinion was under a duty to disclose it to the solicitor instructing him who in turn had a duty to disclose that material to the defence. Mr. Clarke also explained that the duty existed irrespective of any requests for disclosure by the defence and that an expert should not omit material facts which detracted from his opinion.
21. It follows that Mr. Jenkins should have been given detailed written instructions in relation to each individual case which enclosed a full set of papers, asked specific questions, and set out the duties of an expert instructed by the prosecution. Mr. Jenkins had not been so instructed.
22. Furthermore, it was also evident from Mr. Clarke's advice that he appeared to be of the view that a report should have been sought in any case in which there was an express or implied criticism of the Horizon system. I believe the approach taken by Cartwright King had been to request a report if a defendant entered a not guilty plea to the offence charged.
23. The general form of statement which Mr Jenkins produced was initially prepared following advice provided to Jarnail Singh by Mr. Harry Bowyer, a senior in-house barrister at Cartwright King. Furthermore, the director of the Derby Office with significant prosecution experience, Mr Andy Cash, had confirmed his agreement with the advice of Mr. Bowyer. It was in those circumstances that Jarnail Singh had sought a report from Mr. Jenkins.
24. In his email of 1st October 2012 to Gareth Jenkins (FUJ00226331) Mr. Singh informed Mr. Jenkins that, "Post Office Limited have appointed one of their

investigators, Helen Rose, as disclosure officer dealing with Horizon challenges. She has prepared a document/spreadsheet detailing all such cases, past and present, approximately 20 in total, although none thus far successfully argued in court...Post Office maintain the system is robust.”

25. I do not recall realising at the time that there were, in fact, two documents attached to Mr. Singh’s email and given Mr. Singh’s comments with regards to the robustness of the system, I did not consider it necessary to review the information provided by Helen Rose.

26. Simon Clarke advised that a different expert be sought. He also noted that there were a number of convicted defendants to whom the existence of bugs should have been disclosed and that a review was underway. It was also noted that there were a number of current cases where the existence of bugs should be disclosed where the test for disclosure was met.

27. I do not recall any conversations with Mr Clarke about the extent to which Post Office Limited was obliged to inform convicted Subpostmasters in cases which had relied in whole or in part on Horizon data that Mr. Jenkins’ credibility had been ‘fatally undermined’.

28. I have been asked to set out my recollection of the telephone call with Mr. Jenkins on 28th June 2013 and to describe any other oral or written communications I had with him. I believe that the transcript (POL00142322) is accurate and relates to the call of 28th June 2013. I am unable to recall whether I had any other conversations or written communications with Mr. Jenkins at or around this time.

The Horizon Weekly Call

29. As I have previously explained, Simon Clarke advised during a conference at Post Office's Head Office in London there should be a central hub to record all Horizon-related issues. It was proposed that lawyers from Messrs. Bond Dickinson and Cartwright King should attend. It was generally myself who attended on behalf of Cartwright King. If I was unavailable, a colleague would generally attend. I would generally make notes of any issues arising in counsel's notebooks. On occasions I would request further information.

30. I have previously referred to the first conference call which took place on 19th July 2013 in my first statement to the Inquiry. I have been asked to comment on the extent to which the Note at POL00083932 is accurate. It is not accurate.

31. Although I do not have access to the notes which I made at the time of the call, there is no reference to the explanation provided by Mr. Parsons at the outset of the call after Rob King had spoken. Mr. Parsons expressed concern with regards to the difficulties which could arise following the circulation of minutes. He was particularly concerned that they could be further disseminated and attract opinion which might well be incorrect and also result in information being stored elsewhere without it being relayed back to the call. He explained that he had previous experience of such issues. It was evident that he was concerned about pre-action discovery in civil cases.

32. My view from a criminal law perspective was that the information was to be reported to a single central hub in accordance with Mr. Clarke's advice – that was the very purpose of the call. I could also understand Mr. Parson's concerns that incorrect information could possibly be generated or that information might not be relayed back to the central hub.

33. I believe that I spoke towards the end of the call and not shortly after the commencement of the call as this note suggests. I advised from a criminal-law perspective that anything produced should be accurate and be available for disclosure. I can recall that immediately after I had explained the position and whilst I was putting myself back on mute due to background noise in the office, Mr. Parsons made a further comment with regard to disclosure. Having little knowledge of the rules relating to the disclosure of documents in civil cases, I was careful not to pass comment. I took the view that Post Office Ltd had already been advised from a criminal-law perspective and the advice had been accepted – the Wednesday call had been set up and a central record was to be kept of Horizon-related information.

34. The second Wednesday Horizon call took place on 24th July 2013. I have been asked to consider to what extent the Note at POL00139731 is accurate. In order to answer this question, I have considered Mr. Bowyer's advice entitled "Response to the Interim Review of Cartwright King's Current Process by Brian Altman QC" (POL00066807). In this document Mr. Bowyer listed at point vi. examples of issues which had been reported to the Wednesday conference calls. I would have provided Mr. Bowyer with this information taking it from the notes which I had made at the times of those calls.

35. Mr. Bowyer referred to "Concerns that Post Office Card Account transactions have been "lost in flight". (Meeting of 24/7/13 – Prestbury's)." The note records that Gayle Peacock mentioned "Prestbury – Current agent settle debt for £700 for Santander transaction, now blaming Horizon".

36. Mr. Bowyer made reference to the "Mention of undefined bugs at Horden (sic) – Not sure if they are being investigated." The note records that Gayle Peacock

mentioned “Howden – concerned over alleged bugs in Horizon System but does not know specifically what the issue is, asked for extra training which is being arranged.”

37. Mr. Bowyer noted a “Possible case of Horizon receipt printing incorrectly – 4 instead of a 1 (Meeting 24/7/13).” Mr Rod Ismay is noted to have “Reported an issue relating to a Business Banking customer – this is a dispute between the amount processed on the Horizon System against what the customer says he banked. Customer has provided a receipt to support his claim however there are concerns over the validity of this receipt. The customer will not provide the original copy. Entered on Horizon £180 – Says he banked £480.”

38. I was not unduly worried that minutes would not be circulated given the concerns voiced by Mr. Parsons from a civil litigation perspective during the first call. I had been taking notes and I assumed that the Security Team within Post Office Ltd would also be starting to put a database together of the issues being raised on the calls. I can recall that a concern was raised at some point that care should be taken if making any notes on public transport or in public places – I am not able to recall, however, whether it was during this particular call that the concern was raised.

39. The third call took place on 31st July 2013 and I have been asked to say to what extent the note of the call (POL00139732) is accurate. As I have previously indicated, I do not have access to my notes which I took during these calls. In order to answer this question, I have again considered Mr. Bowyer’s advice entitled “Response to the Interim Review of Cartwright King’s Current Process by Brian Altman QC”.

40. I note that Mr. Bowyer referred to an “Issue where if the cashier presses buyback when selling Euros the loss won’t be found. Will not generate transaction correction. It will be a hard loss that the SPMR will not be able to explain when audited. (Meeting of 31/7/13)”.
41. Mr Bowyer also referred to “Errors in the Bureau de Change when remmed in as a quantity not a value. (Meeting of 31/7/13).”
42. The only reference to Bureau de Change in the note appears to be by Gayle Peacock who “Highlighted Bureau buy back problems. Discussion with Rodric Williams offline, though appears non Horizon related in so far as the ‘buy’ icon was pressed instead of the ‘sell’ icon.”
43. I do not recall there being any reference to the report of Helen Rose. I do believe, however, that it was during this call that there was a suggestion by Rodric Williams of a change of approach. I cannot recall what Mr. Williams said but I can recall informing him that a central record had to be kept. That was the very purpose of the call and there is no reference to this in the note.
44. I have been provided with a copy of a time entry which I made whilst I was in my office on 1st August 2013 (POL00139745). The note records “TC JS at 6 p.m. 31/7/13: Discussing disclosure issues: JScott has instructed that typed minutes be scrapped.”
45. This note relates to a telephone conversation which had taken place the previous evening with Jarnail Singh. According to my note, I had been engaged on the call for approximately 24 minutes. I am unable to recall the entirety of the conversation. My recollection at the present time is that Mr. Singh alleged that John Scott had indicated an intention to ‘shred’ the minutes and to explain, if asked, that they had been destroyed on the advice of Cartwright King.

46. I am also able to recall that I complained to Mr. Singh that Bond Dickinson appeared to be exercising too much control over Post Office Ltd. I commented that the civil disclosure regime was clearly different to that in criminal law and I complained about the way in which the approach being taken by Post Office Ltd to the Wednesday morning calls appeared to be changing – it was essential that a central record be created and maintained. I explained that I would ask Mr. Clarke to prepare a written advice for Post Office Ltd so that the position was clear.
47. Towards the end of the call I used another telephone held in close proximity to try to record some of the conversation as I was concerned about the comments which had been made with regard to the destruction of the minutes.
48. I have been shown a copy of an email which Jarnail Singh sent to myself and Rodric Williams during the morning of 1st August 2013 (POL00325474). This was received following my conversation with Mr. Singh the previous evening during which I had expressed a number of concerns. As Mr. Singh had copied Rodric Williams into the email I believe that I concluded at the time that he was seeking to appear in control given his position within Post Office Ltd.
49. I believe that I would have informed Andy Cash in the Derby Office of Cartwright King of the concerns raised by Jarnail Singh during the telephone conversation of 31st July 2013 and of my concerns too. I do not recall having any conversations about the telephone call with Steve Gelsthorpe or Rupert Hawke.
50. I believe that I subsequently had a conversation with Simon Clarke in Cartwright King's Nottingham Office. I relayed the conversation which had taken place with Mr. Singh and played the recording of part of the telephone call which, from memory, was not that easy to hear. I believe that I also explained the concerns

which Mr. Singh had expressed and my concerns arising out of that conversation and with regard to the Wednesday morning conference calls. I believe that I travelled back to my office in Derby and Mr. Clarke prepared an Advice on the Duty to Record and Retain Material (POL00006799).

51. I have been asked to consider an email from Steven Gelsthorpe, one of the Senior Directors of Cartwright King at the time, to Simon Clarke, Rupert Hawke, Andy Cash and myself of 2nd August 2013. (POL00139747). Mr. Gelsthorpe was considering how to impart the advice to Post Office Ltd that, "if there are factions within it who are running around trying to lay off blame for their own shortcomings by lying about the advice they have received then they lose privilege."

52. Whilst I do not recall having had any conversations in relation to this email, it was my belief at the time, based on information provided by Jarnail Singh, that Mr. John Scott, who was Head of Security at Post Office Ltd, had apparently indicated an intention to 'shred' the central record of Horizon-related issues reported on the Wednesday morning calls and to explain, if asked, that he had followed Cartwright King's advice.

53. Mr. Clarke stated in his Advice at paragraph three that "POL accepted that advice and according (sic) a weekly conference-call meeting was established so as to meet the requirements of the central hub. Participants were informed that they should bring all Horizon-related issues they had encountered to the meeting; minutes were to be taken, centrally retained and disseminated to those who required the information, this list to include POL's Horizon expert witness."

54. I am asked to state to what extent I believed the assertion in the second sentence. It was my understanding at the time that Jarnail Singh had spoken to

the proposed participants from the various departments within Post Office Ltd individually prior to the first Wednesday morning call to explain the importance and purpose of the call.

55. I have been asked to consider paragraph 5 of Mr. Clarke's Advice and to set out the extent to which I agreed with the factual assertions therein. I am unable to recall fully my conversation with Mr. Singh of 31st July 2013 but recall that I relayed the conversation which had taken place to Mr. Clarke, outlining Mr. Singh's concerns and those which I had too.

56. I have been asked to describe the attendance which caused me to make my note of 14th August 2013 (POL00139748). This note relates to a telephone call which I received from Jarnail Singh on that date. Mr. Singh indicated that John Scott would be on that morning's Wednesday conference call and I took the view that his attendance would not be appropriate given the allegations which had been made. I believe that I also expressed my concern to Simon Clarke who was in my office at the time.

57. I have been provided with a copy of a Note of the Regular Call of 14th August 2013 (POL00083930). I do not have any recollection of the conversations which took place during the call and do not have access to the notes which I took. I do recall being somewhat surprised that John Scott was actually in attendance. I had expected that Jarnail Singh would have escalated my concern within the Legal Department of Post Office Ltd prior to the call. I did not feel that it would have been appropriate to make any reference to my concerns during the call. After the conference call had concluded, Mr. Clarke asked me whether Mr. Scott had been in attendance and I confirmed that he had been present. I believe that

it was around this time that Simon Clarke advised that John Scott should not be permitted to attend any conference calls held between lawyers.

58. Due to the length of time which has since elapsed I am unable to recall the communication process in respect of prosecutions discontinued or withdrawn. It is my belief, however, that Post Office asked to be informed when Simon Clarke proposed to attend Court to terminate a prosecution.

59. I have been provided with a copy of the letter of Susan Crichton of 16th August 2013 addressed to Andy Cash (POL00006797). I note that the letter acknowledged receipt of Mr. Cash's letter of 2nd August which had enclosed Simon Clarke's Advice on "Disclosure – the Duty to Record and Retain Material." It also referred to an email of 14th August. Due to the length of time which has since elapsed I am unable to recall that email. I am also unable to set out any conversations with representatives of Post Office Ltd or Cartwright King concerning Simon Clarke's advice or the issues discussed therein prior to the receipt of this letter. I can recall, however, that surprise was being expressed within Cartwright King that there had not been a prompt response.

60. I am unable to recall whether I read Susan Crichton's letter of 16th August 2013 at the time when it was received. I note, however, that Ms. Crichton indicated that she was deeply concerned at the suggestion in Mr. Clarke's note that there 'may have been an attempt to destroy...minutes of the calls.' Mr. Clarke had, however, recorded in his Advice that it had been relayed to him that, "An instruction was then given that those emails and minutes should be, and have been, destroyed: the word "shredded" was conveyed to me."

61. I also note that Ms Crichton letter also suggested that Post Office Ltd was committed to conducting its business in an open, transparent and lawful manner.

It was evident, however, that civil lawyers within Post Office Ltd and acting for Post Office Ltd sought to use legal professional privilege which, it could be suggested, is contrary to the suggestion that Post Office Ltd was committed to openness and transparency.

The Review of Convictions

62. I have been asked to summarise the nature and extent of the review of past convictions undertaken by Cartwright King and my involvement with that process. It is difficult to recall the precise process due to the length of time which has since elapsed. I believe that the process was set out in a Protocol. Cases were to be 'sifted' and designated as either 'Type A' or 'Type B' by answering a series of questions. I am unable to recall the questions but the outcome of the 'sift' review would dictate whether or not the case was put forward to a full review by counsel.

63. I was one of a number of members of staff at Cartwright King who undertook the sift reviews. The review process took place at the office of Cartwright King in Derby and members of staff from other offices were temporarily seconded to the Derby Office to assist with the sift reviews.

64. I have a vague recollection that some of those members of staff may not have been available for one reason or another throughout the entire 'sifting' process resulting in changes of personnel. Furthermore, if more members of staff had been available, the process could have been completed in a shorter period. With hindsight, this would have been beneficial given the frequent requests for progress reports.

65. The review of cases dating back to 1st January 2010 included prosecutions commenced by Post Office Ltd prior to its separation from the Royal Mail Group

in addition to those conducted by Cartwright King on behalf of Post Office Ltd. I believe that there were in some cases missing documents and I can recall that there may also have been some missing files too. The same sift criteria were applied to all cases and in the circumstances I do not think that it would have been apparent to any fee-earner involved in the process that they were assessing the quality of work carried out by Cartwright King.

66. I am asked to consider to what extent, if at all, a Subpostmaster raising integrity issues with Horizon at trial was a necessary or sufficient factor in whether to disclose the Helen Rose report. I regret that I am unable to recall the Protocol, the briefing or the questions to be asked by those who conducted sift reviews.

67. I have been provided with copies of my email to Susan Crichton of 16th July 2013 (POL00039998) which enclosed two documents prepared by Simon Clarke. The first of these documents set out a brief discussion of the CCRC's criteria (POL00039993) and the second was a draft response (POL00039995) which Mr. Clarke thought might assist Post Office Ltd. Due to the length of time which has since elapsed, I am unable to provide any details with regards to the nature or extent of any involvement which I may have had in connection with the response of Post Office to the CCRC or with any advice provided to Post Office in this respect. I do not think that I considered whether a convicted Subpostmaster who did not raise the integrity of the Horizon system as an issue at trial could fall into the first of the criteria set out by Mr. Clarke. I have no recollection of considering whether the CCRC should be informed of the concerns which had been discussed regarding Gareth Jenkins.

68. I have considered the advice provided by Simon Clarke in the cases of R v. Lynette Hutchings dated 19th July 2013 (POL00060715), R v. Samra dated 22nd

July 2013 (POL00040022), R v. Wylie dated 23rd July 2013 (POL00133633), R v. Grech dated 23rd July 2013 (POL00108042) and R v. Cleife dated 19th November 2013 (POL00112905).

69. I am able to recall discussing the case of R v. Samra with Mr. Clarke. I believe that I also attended the Crown Court at Birmingham with him whilst he made an application to a Judge in chambers there. I believe that Mr. Clarke informed the Court of the existence of a draft report. I am unable to state whether we were, at the time, simply aware of its existence or whether we had been provided with a copy of the draft Second Sight Interim Report. In any event, I believe that it had yet to be published and Mr. Clarke explained that Post Office Ltd could not fully comply with its duties of disclosure at that point in time.

70. Due to the length of time which has since elapsed, I am unable to set out the nature and extent of any involvement which I may have had in advising or assisting Mr. Clarke to advise in connection with these cases or, with the exception of the case of R v. Samra, the nature and extent of any discussions which I had with Mr. Clarke. As I have previously indicated, Mr. Clarke was highly experienced and his advice was generally accepted as being correct.

71. I have been provided with copies of a note prepared by Messrs. Bond Dickinson entitled 'Civil Claims by SPMR's' (POL00040095) and of Mr. Clarke's Note of 12th September 2013 (POL00114253). I believe that Post Office Ltd expressed concern about the possibility that civil claims may be commenced by Subpostmasters and asked for advice in connection with the Note prepared by Messrs. Bond Dickinson. I passed the request onto Simon Clarke. Due to the length of time which has since elapsed I am unable to say to what extent, if any, I may have contributed to or assisted with its preparation.

72. In his Note of 12th September 2013, Mr. Clarke commented that, “whilst a number of criminal prosecutions against SPMR’s and clerks have been terminated since the publication of the Second Sight Interim report, none was stopped because of errors found in the Horizon system.” Mr. Clarke also commented that, “In all cases the prosecution was stopped because it was considered that the continued prosecution of a particular SPMR/clerk no longer remained in the Public Interest.” I do not recall either agreeing or disagreeing with these assertions. I do not believe that I attended any hearings with Mr. Clarke at which proceedings were terminated.

73. I am asked to consider to what extent, if at all, there was a difference in the frequency of terminations following the publication of the Second Sight Interim report or in the reasons for termination in comparison to periods prior to its release. There was an increase in the frequency of terminations – the Second Sight Interim Report had become available and Post Office Ltd had yet to obtain a statement from a new independent expert witness.

Brian Altman KC’s Review of the Cartwright King Process

74. I have been asked to consider Brian Altman KC’s Interim Review of Cartwright King’s Current Process (POL00006583) and Harry Bowyer’s advice - Response to the Interim Review of Cartwright King’s Current Process by Brian Altman QC (POL00066807).

75. In paragraph 6 of his Interim Review Mr. Altman KC spoke of the important elements of independence and objectivity indicating a preference that any solicitor involved in a case should not be involved with the sift review. I do not believe that I had been concerned that some of the cases had initially been sifted by the solicitor responsible for the prosecution of the case given that, if the case

had been put forward for a full review, it would have been reviewed by in-house counsel. I note that Mr. Bowyer had suggested that the cases could be re-sifted if Mr. Altman KC thought it appropriate.

76. In paragraph 12 of his Interim Review Mr. Altman KC questioned whether the sole issue of non-disclosure was too restrictive an approach to take considering the list of issues reported to Second Sight. He commented that one such concern was “POL investigation and audit teams that have asset-recovery or prosecution bias and fail to seek the root cause of reported problems.”

77. Mr. Bowyer noted in his response that the issues of training and support were already included in the scope of the review and agreed that the sift criteria might be too narrow given the information derived from the “Wednesday Hub Conferences”. Mr. Bowyer indicated that it would be highly desirable for a conference to be held with Mr. Altman KC in order that the review process could be as watertight as possible. I am unable to recall Mr. Altman KC’s concern that Post Office Ltd failed to seek the root cause of reported problems being considered during the review process.

78. In paragraph 14 of Mr. Altman’s Interim Review he stated that he was “interested to discover also what material, in addition to Second Sight’s report and any Helen Rose report CK was sending to potential applicants.” I do not recall that any further consideration was given to disclosing any other documents at the time.

79. In paragraph 15 of the Interim Review Mr. Altman KC asked whether the three-year temporal limit for the review was sufficient. He asked whether the reason for the cut-off date was supportable. Mr. Bowyer in paragraph 15 of his response explained the reason for taking the starting point as 1st January 2010. I am

unable to recall whether the start date was reconsidered prior to the conference which took place with Mr. Altman KC on 9th September 2013.

80. I have been asked what if anything was done to identify suitable cases for review where a defendant had pleaded guilty and there would, in those circumstances, not be the type or breadth of information available as in the case of a contested trial. Mr. Bowyer responded to this concern in paragraph 19 of his response – he explained that the same sift criteria applied to guilty pleas as to any other cases. I am unable to recall any change in the approach taken by Cartwright King.

81. In paragraph 24d of his Interim Review Mr. Altman KC observed that the sift sheet was attempting standardisation by focussing the sifter's attention on a series of questions. He was concerned that the process might potentially be too narrow. Mr Bowyer agreed given the information being derived from the Wednesday morning calls. I anticipate that it was expected that this would be further considered during the conference.

82. I can recall asking within Carwright King whether the material being generated by the Wednesday calls required disclosure. I was informed at that the Second Sight Interim Report and the Helen Rose Report put people on notice that there had been issues with the system.

83. I have been asked to consider a Note of Conference with Brian Altman KC on 9th September 2013 (POL00006485) and Notes of a Meeting of 9th September 2013 (POL00139866). The latter document was typed by myself, following the conference, based on handwritten notes which I took during the conference with Brian Altman KC and from memory. It is not a transcript of the conference. I did not write down any comments which I made and there were also times when I

was looking at documentation rather than making notes. On occasions the speed of conversation was also too fast to properly note and I believe that people spoke over each other too.

84. Due to the length of time which has elapsed, I am unable to set out the background to this meeting – I believe it had been arranged following the receipt of Mr. Bowyer's 'Response to the Interim Review of Cartwright King's Current Process'. I am able to recall a suggestion being made that the role of Brian Altman KC would be one of 'critical oversight'.

85. Whilst I cannot recall the entirety of the meeting, I am reminded by reading my typed note that Susan Crichton explained that there had been 'rumblings' to the effect the Horizon system did not work and that during the conference, Rodric Williams suggested that he believed the phrase used by Helen Rose to the effect that she knew Mr. Jenkins was 'aware of all of the Horizon integrity issues' was unfortunate. I regarded Mr. Williams comment as a suggestion that there were not, in fact, numerous integrity issues.

86. I do not believe that Cartwright King were provided with a copy of the Instructions which had been sent to Brian Altman KC and so in those circumstances, would not have been aware of the issues referred to therein by Post Office Ltd or Bond Dickinson. I do not recall the allegations relating to the failure to record minutes or the shredding of minutes being discussed.

87. In the note of the conference prepared by Bond Dickinson, it was recorded that Simon Clarke had said that there had been some cultural issues at the start which had now been overcome – he thought it was necessary to put duties on individuals.

88. My note stated "We discussed last Friday: main problem is cultural. People in different departments. Needs to be a proper coming together."

89. Mr. Clarke's reference to the word 'cultural' could have been a reference to the view held within Cartwright King that some departments within Post Office Ltd may have become aware of information which had not been shared more widely. I anticipate it could also have been Mr Clarke alluding, in a polite way, to the report I had received from Jarnail Singh relating to the typed minutes of the Wednesday morning calls. I believe that there was also a discussion about the possibility that staff at Post Office Ltd may attend some of the Wednesday morning calls and then ask others to attend on their behalf. It is possible that this is what Susan Crichton may have been referring to when she said, 'People then dump...'. I do not have access to my notes but suspect that I did not note the entirety of her comment.

90. There are references in both documents to the phrase 'bandwagon'. I did not regard this as derogatory, but recognition that more subpostmasters may come forward following the publicity generated by the Second Sight Draft Report.

91. I note that in the record of the conference prepared by Bond Dickinson, it was recorded that I made a comment to the effect that I thought that 'there was a lot of Horizon information which had not been getting to Gareth Jenkins.' I believe that I may have been concerned that Mr. Jenkins had not referred to the bugs during the case of R v. Ishaq and was therefore considering when he might have become aware of them. It would appear from my note that Mr. Clarke commented that either Mr. Jenkins was not aware of the information or Fujitsu were in an 'ivory tower'.

92. In Messrs. Bond Dickinson's Note there is reference to a cut-off date of 1st January 2010. The Note also stated that prior to the HOL rollout there was a cash audit done so that all POL branches balanced. Brian Altman KC advised that there was no positive duty to seek out individuals pre 1 January 2010 but if POL was approached it would need to make case-specific decisions on disclosure.
93. My typed note reads as follows: "Susan: That's when the system rolled out – knowing that branches balanced – so thought justifiable date."
94. I believe that there would have been some discussion as to why Cartwright King had proposed a start date of 1st January 2010 although I am unable to recall it due to the length of time which has since elapsed. The auditing procedures prior to branches migrating to Horizon Online would, however, have had no relevance to Subpostmasters convicted of offences prior to the start date of 1st January 2010. I am unable to recall any discussion with regard to the Callendar Square Bug.
95. From Bond Dickinson's Note of the conference, it can be seen that Mr. Altman KC advised considerable caution in relation to mediation cases involving previously convicted individuals. "The concern is that lawyers acting for those individuals may be using the scheme to obtain information which they would not normally be entitled to in order to pursue an appeal." I can recall it being suggested within Cartwright King that reports which referred to methods of investigation and opinions about witnesses or the merits of a case should not be disclosed.
96. I am asked to say whether I agreed with Mr. Altman's advice – I would not have thought to disagree. I can recall that Mr. Altman KC advised that the disclosure

duties of a prosecutor arose at the point of charge which was not something I had appreciated. I also note that no disagreement was voiced, for example, in connection with Mr. Altman KC's view that there should be post-conviction disclosure in the case of R v. Hutchings.

97. A conference took place on 4th October 2013 with Brian Altman KC in which representatives from Post Office Ltd, Bond Dickinson and Cartwright King participated. Due to the passage of time, I am unable to recall the discussions which took place during that conference.

98. Paragraph 129 of the General Review of Brian Altman KC dated 15th October 2013 (POL00006581) explains that the main topic of discussion was 'the extent to which Cartwright King should be involved in exercising a supervisor function over the criminal cases going into mediation. There is understandable concern that offenders might use the mediation scheme to gain information as a platform from which to launch a fresh or new appeal, and so CK wish to exercise a measure of control over the dissemination of information and material during the process.'

99. In Mr. Altman KC's 'Review of Post Office Ltd Prosecution Role' dated 19th December 2013 (POL00112937), reference is again made to the telephone conference on 4th October 2013 – in this document it refers to 'issues surrounding the scope of CK's review.'

100. I have been asked to consider the Advice of Mr. Altman KC entitled 'General Review' dated 15th October 2013. I am unable to recall when I first read it and if so, whether I read it in its entirety. I am unable to recall whether I had any views in relation to it and whether it had any effect on the approach taken by Cartwright King to the review of cases. Upon reading it now, I note that Mr.

Altman KC advised in paragraph 145 that it was not for the prosecutor to make qualitative judgements about the utility...of information to be disclosed. With the benefit of hindsight, I considered the issue of utility with regard to information provided by Mr. Jenkins in the case of R v. Ishaq and whether the issue relating to freezing screens during the pilot scheme might reasonably assist with his defence.

101. In paragraph 64 Mr. Altman KC reported that, "When I queried the rationale behind the cut-off date, I was told, and entirely accept, that, prior to each branch rollout, a cash audit was done so that each branch balanced." I understand that prior to each branch being migrated to Horizon online, someone would attend on behalf of Post Office Ltd to check the requisite amount of cash was physically on the premises. Whilst I am unable to recall the conversation at this particular conference, I note that there is also a reference to 'balancing' in my typed note of the meeting on 9th September 2013.

102. Mr. Altman KC referred to 'the Falkirk event raised in the Misra case'. I believe that I referred Mr. Clarke to another statement provided by Mr. Jenkins at about the time the draft Second Sight Report became available. I am, however, unable to recall any other discussions regarding this bug prior to this advice or set out my understanding of it. Similarly, I am not able to say whether I agreed it was "an isolated instance". I am also unable to recall formulating a view on whether Post Office Ltd should examine cases pre-dating the 2006 fix.

103. In paragraph 129 Brian Altman KC noted that, "There is understandable concern that offenders might use the mediation scheme to gain information as a platform from which to launch a fresh or new appeal, and so CK wish to exercise a measure of control over the dissemination of information and material

during the process.” It is my belief that Post Office Ltd had initially raised this as a concern prior to the commencement of the mediation scheme and that internally with Cartwright King, concern was being expressed that reports which contained opinions about the merits of a case i.e. the strengths or weaknesses of it, should not be disclosed. I am unable to describe any steps which may have been taken by Cartwright King, myself or Post Office Ltd in response to this advice.

104. Cartwright King responded to this advice with a note entitled “Observations and Analysis of the Cartwright King Prosecution Review Process” (POL00040194) dated 5th December 2013. I believe that I assisted with the preparation of this advice by providing statistics and information such as details of missing files and documents.

105. In the response it was noted that, “Until the publication of the Second Sight Interim Review the Prosecutors for Post Office had adopted a firm approach to requests for disclosure in relation to the Horizon system which was treated as being robust and reliable.” I am asked to state how the “firm approach” differed from the approach taken following the publication of the Second Sight Interim Report. A general moratorium had been imposed by Post Office Ltd on the commencement of any new prosecutions following the publication of the Second Sight Interim Report, and so the response dealt with the position up to the publication of the Second Sight Interim Report. I believe that there were, from memory, only two new prosecutions following the publication of the interim report and the Horizon system was not relevant to either.

106. I have been asked to consider paragraph 17. This paragraph refers to ‘Second Sight and other material.’ It is my recollection that the test to be applied

related to the Second Sight Interim Report and the Helen Rose Report. Due to the length of time which has since elapsed, I am unable to recall precisely what Counsel was required to consider during a Full Review.

107. I have been shown a copy of Mr. Clarke's Advice in relation to the case of R v. Hosi dated 1st May 2014 (POL00133638). Due to the length of time which has elapsed I am unable to set out the nature and extent of any discussions which I may have had with Mr. Clarke or the nature and extent of any involvement I may have had in advising or assisting to advise in connection with this case. It is unlikely that I would have disagreed with Mr. Clarke's advice and am unable to say whether Post Office followed his advice.

Fujitsu Prosecution Support and Finding New Expert.

108. Cartwright King was asked by Post Office Ltd to identify suitable potential experts to provide an opinion with regard to the Horizon system. I believe that Cartwright King prepared a shortlist of a number of potential experts. I am able to recall that Simon Clarke and I attended Imperial College London (ICL) to speak to two potential experts, Professor Jeffrey Kramer and Dr. Naranker Dulay.

109. Cartwright King were also asked to advise with regard to the contractual position with Fujitsu in terms of ensuring that data would remain available following transfer to new servers.

110. I have been asked to consider an email from Richard Boyce to Hugh Flemington of 11th July 2013 (POL00145361) into which Simon Clarke, myself and others were copied. Due to the length of time which has elapsed, I am unable to set out the nature and extent of any involvement which I may have had in advising in connection with the Transitional Support Service Change

Control Note. I believe that Post Office Ltd were concerned that data might become lost.

111. I can recall attending a meeting at Fujitsu's offices in Baker Street in London on 29th November 2013. From memory, I think that the invitation had been extended to only Simon Clarke at Cartwright King. Mr. Clarke had, however, asked that I attend with him in order to take notes. I can recall that diagrams were drawn on a white-board by members of staff from Fujitsu whilst they provided an explanation as to how the Horizon system securely locked and stored transactional data in a digital vault. I cannot recall the precise words used or the full explanation given due to the passage of time and I do not have access to my notes. I was, however, left with the impression that Fujitsu had confidence in the integrity of the Horizon IT system and that the transactional data from branches was securely locked away. I unable to recall any conversation about complaints by Subpostmasters.

112. I have been asked to consider Simon Clarke's Note of 2nd July 2014 entitled "Securing Data for Future Prosecutions" (POL00113135) and the Proposed Memorandum of Understanding (POL00113136). Due to the length of time which has elapsed I am unable to set out the nature and extent, if any, of the involvement I had in advising or assisting to advise in connection with these documents or discussing them with Simon Clarke.

113. As with any documents which Mr. Clarke prepared, it is quite possible that I may have been asked to look at them prior to finalisation or forwarding to Post Office Ltd. As noted previously, I would generally accept Mr. Clarke's advice as being correct.

114. Due to the passage of time I am unable to recall the view of Fujitsu's commercial and legal team referred to in Paragraph 4 and similarly I am unable to say whether the contract referred to by Mr. Clarke was HNG-X v9.0 (FUJ00000069)

115. I have been asked to consider to what extent, if at all, I understood POL to have a contractual right to obtain documents held by Fujitsu that held information on bugs, errors or defects within the Horizon IT system such as Known Error Logs (KEL's), PinICL's, PEAK's etc. I do not recall when I first may have heard of some these terms and whether I understood the contractual position in relation to such records.

116. I have been provided with copies of an email from Jarnail Singh to Chris Aujard, General Counsel, dated 23rd July 2014 (POL00148748) and the attachment, namely a document prepared by Simon Clarke of 23rd July 2014 entitled "Advice – Expert Report – Imperial College, London" (POL00148749). The email chain contains an email from Andy Holt to Chris Aujard of 18th July in which Mr. Holt appears to have identified the need to "agree how we steer this or define the requirement correctly so the scope doesn't get out of control and we allow Imperial College to produce independent report."

117. I was concerned that Post Office Ltd were seeking to 'steer' the process so that ICL did not produce an independent report. I believe that I forwarded the email to Simon Clarke so that he could prepare a written advice. Due to the length of time which has since elapsed I am unable to set out precisely how Post Office Ltd responded to Mr. Clarke's Advice.

118. It is evident, however, from the documents which accompanied the Request that Simon Clarke prepared a 'Draft Scope for computer experts' on

- 17th September 2013 (POL00040040). The Draft Scope required the experts to consider the Horizon Online computer system and prepare a definitive report.
119. I note from my email to Jarnail Singh of 1st October 2013 (POL00146545), which I copied to Rodric Williams and Andrew Parsons, that I had attached an email from Professor Kramer which contained his CV. I suspect that Professor Dulay's CV had already been provided given that Jarnail Singh appears to have forwarded my email and both CV's to Hugh Flemington later that afternoon.
120. I have been provided with a copy of an Agreement to Appoint an Expert (POL00210444). The agreement was between Post Office Ltd and IC Consultants Ltd and was made on 28th April 2014.
121. Professor Jeff Kramer and Dr. Naranker Dulay prepared an Initial Review: Proposal for investigation into the integrity of the Post Office Horizon Online accounting system on 26th June 2014 (POL00125569). This document set out a proposal for work described as 'Phase 2' and sought clarification from Post Office Ltd as to which version(s) of the Horizon system should form the basis of the report. I was provided with a quotation for the cost of the Phase 2 work on 8th July 2014 (POL00325919). The quotation was in the sum of £116,250 plus VAT plus expenses and described the work in Phase 2 as "Report preliminary results and recommendations on Horizon and, if necessary, define work for final phase."
122. It would appear to be the case that Jarnail Singh forwarded a copy of the Initial Review to Andrew Parsons and a number of people at Post Office Ltd on 4th July 2014 (POL00148714). I was copied into that email.

123. On 9th July 2014 Andrew Parsons of Messrs Bond Dickinson sent an email to Jarnail Singh and numerous other people (POL00148714). He questioned whether ICL should 'look at old Horizon as well as Horizon Online. He observed that it was unlikely that Post Office Ltd would be looking to prosecute 'any old Horizon cases'. He also made the suggestion that Cartwright King or Post Office Ltd might 'wish to vet any material before sending it to ICL'.

124. I responded to Mr. Parsons later that morning pointing out that Cartwright King would not wish to vet any information prior to it being sent to ICL. I also said that, "I would not advise that the experts be instructed to look at the old Horizon system. If the experts were to consider the old system, depending on their findings, disclosure issues could well arise in historic cases. In any event cases now being investigated and considered for prosecution will involve Horizon on Line (sic), which was rolled out during 2010."

125. At the time when I sent the email to Mr. Parsons I believe that I had been informed that the previous version of the Horizon system was not available for examination and that important documentation relating to its design was also no longer available. In those circumstances I suspect that I would have been concerned that it would not have been possible for the experts to properly assess the previous system and that it would have been problematical if they sought to caveat their findings due to the absence of documentation. I was also aware that Simon Clarke had advised that the experts consider Horizon Online and that Brian Altman KC had advised that there was no requirement for Post Office Ltd to seek out cases prior to 2010.

126. It would appear from the documentation which I have had sight of that Cartwright King provided draft instructions for ICL and that Andrew Pheasant of

Messrs. Bond Dickinson advised Jarnail Singh by email on 16th September 2014 (POL00325918) that further Non-Disclosure Agreements should be entered into by Professor Kramer, Dr. Dulay and any others who might work with the data provided. On 1st October 2014 Andrew Pheasant advised with regards to the amendment of the draft instructions.

127. It is evident from the documentation provided with the Request, that ICL did not receive the material which they had expected to receive from Post Office and/or Fujitsu in a timely fashion. In my email to Paul Cray at ICL of 29th January 2015 (POL00325994), I indicated that I hoped to hold a conference call with Post Office Ltd the following week. I am unable to recall whether that call took place.

128. I also note that in my email of 2nd February 2015 within the same chain, I referred to a face-to-face meeting with Post Office Ltd on 10th February 2015. Due to the passage of time, I am unable to recall whether the meeting took place.

129. I have been provided with a copy of an email which I sent to Rodric Williams on 8th July 2015 (POL00318211) and into which I copied Simon Clarke and Harry Bowyer. In the email I commented that I had been attempting to set up a meeting with the experts for some time and I referred to a meeting which had been arranged for 29th July 2015. I can recall attending Post Office Ltd for a meeting and anticipate that it may have been on this occasion, but I cannot recall the conversation. I believe that I would have taken notes but have not been provided with a copy of them.

130. I am unable to recall whether either Professor Kramer or Dr. Dulay provided any opinion orally or in writing on either a provisional or final basis. I

do not think that Post Office Ltd proceeded with the Phase 2 instruction – I have a recollection of being informed at some point that Post Office Ltd was considering the procurement of a different IT system.

Dealing with the Procurator Fiscal

131. Following the publication of the draft Second Sight Interim Report, Simon Clarke and I attended the Offices of the Procurator Fiscal on two occasions on behalf of Post Office Ltd. According to the Meeting Report prepared by Simon Clarke (POL00139879), the first meeting took place on 5th September 2013, the day after Simon Clarke and I met with lawyers from BTO – the agents instructed by Post Office Ltd in Scotland. During the meeting with BTO there was a discussion about Scottish criminal law and procedures. The file review process was also discussed.
132. Whilst I do not recall having received any written instructions prior to this meeting from Post Office Ltd, it was my understanding that Post Office Ltd had expressed concern that the Procurator Fiscal was intending to terminate cases on the basis that the Horizon system was allegedly unreliable. It was in those circumstances that Simon Clarke and I had been asked to travel to Scotland to meet with the Procurator Fiscal.
133. I took notes during the meeting on 5th September 2013 but do not have copies of them. Jarnail Singh was also present at the meeting. It is evident from the Meeting Report that Mr. Clarke provided ‘a broad overview of the HOL difficulties (absent any direct or indirect reference to the role of GJ or Fujitsu)’. During the meeting it was explained that Post Office Ltd proposed to obtain expert evidence and I believe that Mr. Clarke also explained that Cartwright King had been reviewing the case files relating to a number of prosecutions.

134. I have been asked to consider my email of 24th September 2015 to Laura Irvine (POL00104198) which refers to a meeting with the Procurator Fiscal which was to take place on 6th October 2015. I can recall that Simon Clarke and I were in attendance at the meeting. Rodric Williams attended too. Unfortunately, I cannot at the present time recall the meeting itself. I do not have access to my notes of the meeting.

The Mediation Scheme

135. I have been asked to set out the nature and extent of my involvement with the Mediation Scheme and/or Working Group. The Mediation Scheme had been set up by Post Office Ltd. During the conference which took place with Brian Altman KC on 9th September 2013 concern was expressed with regards to permitting convicted applicants into the scheme. I believe that Mr. Altman KC advised that Cartwright King would need to be made aware of the material being sent to Second Sight – it would need to be shared, audited and properly recorded.

136. From memory, it was subsequently determined that there should be a single point of contact at Cartwright King and at Bond Dickinson and I was the main point of contact at Cartwright King. It is difficult to recall the process in detail due to the length of time which has since elapsed. I believe that I would, however, receive Post Office Investigation Reports (POIR's), underlying material and proposed responses. In relation to convicted applicants to the Mediation Scheme, it is my recollection that I would generally forward such requests for consideration to either Simon Clarke or Harry Bowyer.

137. I have been asked to consider my email to Andrew Parsons of 8th May 2014 (POL00168949). I noted that Cartwright King had advised that, as a matter

of principle, investigation and offender-type reports should not be disclosed. I believe it was the view within Cartwright King that such reports should not be disclosed if they contained details of investigative methods or weaknesses identified in Post Office Ltd's processes (which might be exploited should that information become more widely known) or opinions of investigating officers with regards to the evidence or the merits of the case. On the basis that such reports would not ordinarily be disclosed during the course of a prosecution, it was suggested that if they were to be disclosed, they should be redacted accordingly.

138. It is evident that Harry Bowyer had previously looked at material provided in relation to the case of Mr. Hughie Thomas and I suspect that I referred to his earlier work in order to make suggestions with regard to redaction. I have been asked to comment on the suggested redactions, although I am unable to recall this case due to the passage of time.

139. I anticipate that the suggested redaction of the sentence "If Mr. Thomas has paid out funds in respect of the above transactions and a loss occurred, then this is down to incompetence and not the failings of the Horizon IT system" may have been on the basis that it was the investigating officer's opinion.

140. The paragraph starting with the words, "Mr. Thomas was adamant when questioned...." Contained details of investigative methods. Similarly, the "In conclusion" section contains opinion and details of investigative methods.

141. I have been asked to consider my suggested redaction of the sentence "I am currently awaiting the results of the tests by Fujisu (sic) on the Horizon system." This sentence relates to a method of investigation. In my email to Andrew Parsons of 8th May 2014 I indicated my concern that if the test results could not be found, that sentence could lead to a request for disclosure or result

in a suggestion that the investigation which had been carried out almost 10 years previously had been inadequate or incomplete (irrespective of whether that had actually been the case).

142. I have been provided with a copy of the Advice of Simon Clarke of 15th July 2014 (POL00148720). This document considered the appropriateness of mediating claims made by persons who stood convicted of criminal offences committed against Post Office Ltd and an alternative approach to such applications. Due to the length of time which has since elapsed I am unable to say to what extent, if any, I may have discussed or contributed to this Advice.

143. I have been asked what my view was of the decision of Post Office Ltd to mediate the cases of people who had not been convicted of a criminal offence. I am unable to recall my view of Post Office Ltd's decision to launch a mediation scheme. I can recall thinking, however, that Post Office Ltd could potentially run into difficulties as a result of the non-availability of information due to data-retention policies.

144. I have also been asked to what extent, if at all, I believed that the fact that someone who had been convicted of a criminal offence relating to a discrepancy in branch accounts was a reason not to investigate and/or mediate their case because it may doubt the safety of the conviction. I was aware that Mr. Altman KC had advised that convicted applicants should not be permitted to enter the mediation scheme and as was usually the case, it is unlikely that I would have disagreed with Mr. Clarke's advice. With hindsight, I can understand the argument that the potential to identify grounds to doubt the safety of a conviction may well be a proper reason to allow applicants into the Mediation Scheme.

145. I have been asked to consider Simon Clarke's Advice of 19th December 2014 (POL00150390). Due to the length of time which has since elapsed I am unable to say to what extent I contributed to this advice or discussed the issues therein with Simon Clarke.

146. With the benefit of hindsight I now understand the argument that in a prosecution for false accounting, evidence which might suggest a lack of integrity in the Horizon system could be relevant to the issue of whether a Subpostmaster acted 'dishonestly, with a view to gain for himself or another or with intent to cause a loss to another' in circumstances where the Subpostmaster stated they believed the discrepancy was not a real loss but unexplained.

147. I have been provided with a copy of Simon Clarke's Advice of 16th February 2015 (POL00023832). Due to the length of time which has since elapsed, I am unable to say to what extent I may have contributed to this advice or discussed it with Simon Clarke.

148. Mr. Clarke advised that the offences of theft and false accounting were "both equal in law: both are offences of dishonesty and both carry the same maximum sentence." I do not believe that I would have disagreed with Mr. Clarke's advice. It would have been open to a Court on sentencing on a charge of false accounting to reach the conclusion that a defendant had been covering his or her own tracks.

Deloitte's Project Zebra and Remote Access

149. I am asked to describe the extent of my knowledge on Fujitsu's ability remotely to write, edit or delete entries in branch accounts and to set out any material changes to my knowledge during the relevant period.

150. It is important that I first make reference to a document disclosed to me along with the Rule 9 request for my first statement. I was provided with a copy of an email of 27th November 2012 from Gareth Jenkins to Rachael Panter (POL00141471) in which he proposed an amendment to his statement in the case of R v. Wylie.

151. It is evident from this email that in relation to the issue of remote access, Mr. Jenkins had suggested adding "...It is true that such access is possible; however in an analysis of data audited by the system, it is possible to identify any data that has not been input directly by staff in the Branch. Any such change to data is very rare and would be authorised by Post Office Ltd. As I have not had an opportunity to examine data related to this Branch, I cannot categorically say that this has not happened in this case but would suggest it is highly unlikely."

152. Mr. Jenkins had set out his proposed amendment in a small font and I do not believe that I fully read the email. Miss Panter had responded to Mr. Jenkins on Mr Bowyer's behalf and referred to remote access in her emails, I had neither recognised nor understood the potential importance or significance of the phrase in terms of its relevance to other cases. I was not able to recall this email exchange when Mr. Clarke prepared his Advice of 27th March 2015 entitled "Deloitte Report – questions for POL" (POL00021774).

153. I have been asked to consider the Deloitte Horizon Desktop Review of Assurance Sources and Key Control Features, Draft for Discussion (POL00028062) dated 23rd May 2014 and Mr. Clarke's Advice of 27th March 2015 "Deloitte Report – Questions for POL" (POL00021774).

154. I regret that I am unable to recall the telephone conversation with Rodric Williams and Andrew Parsons referred to in paragraph 6 of Mr. Clarke's Advice of 27th March 2015. In that paragraph Mr. Clarke noted that it was possible to 'inject' a transaction unilaterally into the accounting records of a branch without the consent, approval or indeed the knowledge of the Subpostmaster and that an 'injected' transaction could be a negative-value transaction.

155. Mr. Clarke went on to note that it was not clear as to whether the 'injected' transaction would be visible to the Subpostmaster or a defence expert witness. There was one recorded occasion upon which Fujitsu had used the procedure and there was no facility or capability to 'edit' any existing transaction.

156. In Paragraph 4 of his Note, Mr. Clarke explained that the material was potentially disclosable in cases where a convicted defendant had raised as part of his defence, either expressly or by implication, the suggestion that:

- Post Office Ltd or some other third-party had manipulated, interfered with or otherwise compromised Horizon;
- Horizon had created or was the victim of a system generated but inexplicable loss/entry/transaction; or
- The defendant simply had no idea as to how the loss had arisen.

157. It was Mr. Clarke's advice that it could not be determined whether the material was to be disclosed without further information. In Paragraph 8 he listed numerous questions in respect of which he sought answers in order to properly advise. I had not previously considered the potential relevance of remote access to convicted Subpostmasters and given Mr. Clarke's seniority and experience did not disagree with his approach.

158. I have been asked to consider an email of 5th May 2015 from Andrew Parsons to Simon Clarke and myself (POL00021781) to which a number of documents were attached. I am unable to recall reading this email and so it follows that I am unable to set out what my views were of the responses provided by Mr. Parsons. Similarly, I am unable to recall discussing this email with Mr. Clarke. I am therefore unable to say whether I felt that this impacted on the review of criminal cases which had been undertaken, whether it required disclosure or whether it was considered that more information was required.

159. I have also been shown a further email from Mr. Parsons of 11th May 2015 (POL00151917) which was addressed to Simon Clarke and myself. It was entitled 'Meeting with Cartwright King.' The body of the email reads "Meeting to discuss Balancing Transactions/Remote Access."

160. I regret that I do not have any recollection of this proposed meeting. I am unable to recall having any further involvement in understanding the nature and scope of remote access or with Project Zebra.

Ongoing Involvement

161. I have been asked to consider an email sent by Rodric Williams to myself on 30th June 2015 (POL00065434) which is part of a chain. One of the emails in the chain was sent by Rodric Williams to myself and Patrick Bourke on 26th May 2015. This particular email makes reference to Mr. Williams' understanding that 'Simon' would be pulling together a list of cases in which disclosure would be required. This would have been a reference to Simon Clarke. Due to the length of time which has elapsed, am unable to describe any work which was carried out in relation to this email. It would appear from the chain that I was

awaiting a Disclosure Note from Simon Clarke. I am unable to recall the conference with Brian Altman KC referred to.

162. I have been provided with a copy of an email from Mr. Parsons of 15th July 2015 to myself and Simon Clarke (POL00029867). A document entitled 'Old Horizon' (POL00029868) appears to have been attached. I am unable to recall this email or the attachment. It follows that I am unable to describe any views which I had of the document, explain whether I gave any consideration to the disclosure of the document to convicted Subpostmasters or set out any advice provided by either myself or Simon Clarke.

163. I have been asked to consider my email to Harry Bowyer of 21st August 2015 (POL00092640). I note that Simon Clarke was also copied into this email. I indicated in my email that I would be unavailable for the weekly Horizon call scheduled to take place on 26th August 2015 and attached the notes of the previous call.

164. I am unable to recall writing this email but note that I suggested that there were numerous issues raised on the previous call which were of concern. It would appear that I informed Mr. Bowyer that Andy Winn was still receiving requests to authorise FJ to correct problems - I used the initials 'FJ' to refer to Fujitsu. I also explained that I did not know whether Post Office Ltd had full visibility of the actions of Fujitsu and the ways in which they could correct branch data. I am unable to recall the internal view within Cartwright King of remote access at this point in time.

165. I note that I sent an email to Andrew Winn on 30th March 2016 (POL00140004) and referred to the 'bi-weekly conference call' on 23rd March 2016. Upon reading this email I was reminded that at some point the Wednesday

weekly conference call became a fortnightly call. In my email, into which I copied Rodric Williams, Simon Clarke and Harry Bowyer, I made reference to the suggestion which had been made that a Transaction Correction which had been issued had been "undone" and the risk that Transaction Corrections may have similarly been issued to other branches which may have caused losses, possibly going back as far as 2005. I asked Mr. Winn to provide further information. Due to the length of time which has since elapsed I am unable to recall this email or whether I received a response. I am unable to recall whether I had any further involvement with the issue of potentially erroneous transaction corrections.

166. I have been provided with a copy of an email of 25th April 2016 from Rodric Williams to Gavin Matthews and Andrew Parsons of 25th April 2016 (POL00241079). I am unable to recall seeing this email. Similarly, I am unable to recall seeing the "Receipts/Payments Mismatch issue notes" (POL00241080) or the document "Correcting Accounts for "lost" Discrepancies" (POL00241081) which had been attached to it. I note that another document attached by Rodric Williams to his email was a note of Simon Clarke of 7th December 2015 relating to the case of disclosure in the case of Seema Misra (POL00241084). I can recall being informed that 'disclosure was now a matter for the CCRC'.

167. I have been asked to consider the email sent by Rodric Williams to Simon Clarke and myself on 7th September 2018 (POL00042015). I have also been asked to set out my recollection of the conference with Tony Robinson, Simon Henderson, Rodric Williams and Andrew Parsons. I can recall being in attendance at the conference with Simon Clarke but do not have access to any notes which I may have taken. I can recall that Simon Clarke explained his concerns about Mr. Jenkins' failure to refer to bugs in prosecution cases. I regret

that I cannot recall any more detail about the conference itself. I do not recall reviewing the attachments to the email or reviewing any other documents in the GLO proceedings.

168. I have been provided with copies of a number of documents and have been asked to say whether I have previously seen and/or read them:

- Report by Detica dated 1st October 2013 “Fraud and Non-conformance in the Post Office; Challenges and Recommendations” (POL00029677). I do not recognise this report.
- Report by Deloitte “Project Zebra – Phase 1 Report” marked as ‘Draft – for validation in advance of Board discussion on Wednesday 30th April’ (POL00105635). I do not recognise this report.
- Report by Deloitte “HNG-X: Review of Assurance Sources – Discussion Areas re: Phase 2 – Draft for discussion only.” (POL00031384). I do not recognise this document.
- Report by Deloitte “HNG-X: Review of Assurance Sources – Phase 1 – Board Update 13/5/14 – Subject to completion and delivery of our final report on 16th May 2014” (POL00031391). I do not recognise this document.
- Report by Deloitte “HNG-X: Review of Assurance Sources – Board Update as at 16/5/14” (POL00029726). I do not recognise this document.
- Deloitte Board Briefing Document 4th June 2014 (POL00028069). I do not recognise this document.
- Second Sight Briefing Report – Part One dated 25th July 2014 (POL00004439). I do not recognise this document.
- Second Sight Briefing Document – Part Two dated 9th April 2015 (POL00021791). I do not recognise this document.

- “A Review on behalf of the Chairman of Post Office Limited Concerning the Steps Taken in Response to Various Complaints Made by Sub-Postmasters” dated 8th February 2016 (POL00006355). I do not recognise this document.
- Sparrow - Interim Report – Draft for Discussion (POL00029984). I do not recognise this document.
- Bramble – Interim Report – Draft for Discussion – 27th July 2016 (POL00030009). I do not recognise this document.
- Bramble – Draft Report – Draft for Discussion – 31st October 2016 (POL00031502). I do not recognise this document.
- Bramble – Draft Report – Draft for Discussion – 1st September 2017 (POL00041491). I do not recognise this document.
- Bramble – Draft Report – Draft for Discussion – 3rd October 2017 (POL00028070). I do not recognise this document.
- Bramble – Draft Report – Draft for Discussion – 15th December 2017 (POL00029097). I do not recognise this document.
- Bramble – Draft Report – Draft for Discussion – 19th January 2018 (POL00028928). I do not recognise this document.

169. I have been asked with hindsight whether there is anything that I would have done differently in respect of the matters raised in my statement. Prior to advising Post Office Ltd in connection with cases being considered for prosecution, I had little relevant experience of prosecution work. I had not appreciated at the time that I had insufficient knowledge or experience to properly discharge my role. With hindsight I should have requested training, particularly with regard to disclosure. Similarly, with hindsight, I should have

realised that my work was not being adequately supervised – I am unable to recall any file reviews being undertaken in respect of this work.

170. One of the questions attached to the Request asked whether I thought that the file review process was adequately resourced. With hindsight, I do not consider that Cartwright King adequately resourced the work undertaken prior to the publication of the Second Sight Interim Report either. I believe that some files were transferred to Cartwright King's office in Nottingham in anticipation that the case would be prepared there, in a timely fashion under the supervision of in-house counsel, but external counsel were then instructed. I also take the view, again with the benefit of hindsight, that having multiple people working on a case file from different locations was unhelpful and made it more difficult, if not impossible, to maintain a proper overview. It would have been better for Cartwright King to have 'ring-fenced' a dedicated team working from one location with supervision by a sufficiently experienced and competent director. This would undoubtedly have resulted in more appropriate requests being made for expert witness statements, the better identification of issues and the sharing of information.

Statement of Truth

I believe the contents of this statement to be true.

Signed:

GRO

Dated:

19th March 2024.

Index to Second Witness Statement of Martin John Smith

<u>No.</u>	<u>URN</u>	<u>Document Description</u>	<u>Control Number</u>
1	WITN09680100	Witness statement of Martin Smith of 21 st November 2023	WITN09680100
2	POL00099063	The Second Sight Interim Report	POL-0098646
3	FUJ00086811	Report of Helen Rose of 12 th June 2013	POINQ0092982F
4	POL00062162	Email of 5 th July from Rodric Williams to myself and Simon Clarke	POL-0058641
5	POL00006365	Advice of Simon Clarke of 8 th July 2013	POL-0017633
6	FUJ00084852	Peak Incident Management System Report	POINQ0091023F
7	POL00006357	Advice of Simon Clarke of 15 th July 2013	POL-0017625
8	FUJ00226331	Email of 1 st October 2012 from Jarnail Singh to Gareth Jenkins	POINQ0232448F
9	POL00142322	Transcript of telephone call with Gareth Jenkins on 28 th June 2013	POL-0143576
10	POL00083932	Note of Wednesday Horizon Call of 19 th July 2013	POL-0080863

11	POL00139731	Note of Wednesday Horizon Call of 24 th July 2013	POL-0141432
12	POL00066807	Advice of Harry Bowyer "Response to the Interim Review of Cartwright King's Current Process by Brian Altman QC"	POL-0063286
13	POL00139732	Note of Wednesday Horizon Call of 31 st July 2013	POL-0141433
14	POL00139745	Time Recording Note of 1 st August 2013	POL-0141446
15	POL00325474	Email of 1 st August 2013 from Jarnail Singh sent to myself and Rodric Williams	POL-0172680
16	POL00006799	Advice of Simon Clarke of 2 nd August 2013 on the Duty to Record and Retain Material	POL-0017591
17	POL00139747	Email of Steven Gelsthorpe of 2 nd August 2013	POL-0141448
18	POL00139748	Attendance Note of 14 th August 2013	POL-0141449
19	POL00083930	Note of Regular Call of 14 th August 2013.	POL-0080861

20	POL00006797	Letter of Susan Crichton of 16 th August 2013 addressed to Andy Cash	POL-0017615
21	POL00039998	Email to Susan Crichton of 16 th July 2013	POL-0036480
22	POL00039993	Brief discussion of the CCRC's criteria	POL-0036475
23	POL00039995	Draft response to CCRC	POL-0036477
24	POL00060715	Advice of Simon Clarke in the case of R v. Lynette Hutchings dated 19 th July 2013	POL-0057194
25	POL00040022	Advice of Simon Clarke in the case of R v. Samra dated 22 nd July 2013	POL-0036504
26	POL00133633	Advice of Simon Clarke in the case of R v. Wylie dated 23 rd July 2013	POL-0138086
27	POL00108042	Advice of Simon Clarke in the case of R v. Grech dated 23 rd July 2013	POL-0106209
28	POL00112905	Advice of Simon Clarke in the case of R v. Cleife dated 19 th November 2013	POL-0110310
29	POL00040095	Note prepared by Messrs. Bond Dickinson 'Civil Claims by SPMR's'	POL-0036577
30	POL00114253	Note of Advice of Mr. Clark of 12 th September 2013	POL-0113180

31	POL00006583	Brian Altman KC's Interim Review of Cartwright King's Current Process	POL-0017668
32	POL00066807	Response to the Interim Review of Cartwright King's Current Process by Brian Altman QC by Harry Bowyer	POL-0063286
33	POL00006485	Note of a conference with Brian Altman KC on 9 th September 2013	POL-0017790
34	POL00139866	Note of a meeting on 9 th September 2013	POL-0141042
35	POL00006581	General Review of Brian Altman KC dated 15 th October 2013	POL-0017666
36	POL00112937	Brian Altman KC's 'Review of Post Office Ltd Prosecution Role' dated 19 th December 2013	POL0110333
37	POL00040194	Carwright King Note "Observations and Analysis of the Cartwright King Prosecution Review Process" dated 5 th December 2013	POL-0036676
38	POL00133638	Advice of Simon Clarke in the case of R v. Hosi dated 1 st May 2014	POL-0138091
39	POL00145361	Email from Richard Boyce to Hugh Flemington of 11 th July 2013	POL-BSFF-0004488

40	POL00113135	Advice Note of Simon Clarke dated 2 nd July 2014 "Securing Data for Future Prosecutions"	POL-0110519
41	POL00113136	Proposed Memorandum of Understanding	POL-0110520
42	FUJ00000069	Contract HNG-X v9.0	POINQ0006240F
43	POL00148748	Email from Jarnail Singh to Chris Aujard, General Counsel, dated 23 rd July 2014	POL-BSFF-0007869
44	POL00148749	Advice of Simon Clarke – "Expert Report – Imperial College, London"	POL-BSFF-0007870
45	POL00040040	Draft Scope for computer experts dated 17 th September 2013	POL-0036522
46	POL00146545	Email to Jarnail Singh of 1 st October 2013	POL-BSFF-0005672
47	POL00210444	Agreement to Appoint an Expert	POL-BSFF-0048507
48	POL00125569	Initial Review: Proposal for investigation into the integrity of the Post Office Horizon Online accounting system on 26 th June 2014	POL-0130687
49	POL00325919	Quotation for the cost of the Phase 2 work of 8 th July 2014	POL-0173054

50	POL00148714	Email of Jarnail Singh to Andrew Parsons and others of 4 th July 2014	POL-BSFF-0007835
51	POL00325918	Email on 16 th September 2014 from Andrew Pheasant to Jarnail Singh	POL-0173053
52	POL00325994	Email to Paul Cray at ICL of 29 th January 2015	POL-0173105
53	POL00318211	Email to Rodric Williams of 8 th July 2015	POL-BSFF-0156261
54	POL00139879	Meeting Report prepared by Simon Clarke	POL-0141055
55	POL00104198	Email of 24 th September 2015 to Laura Irvine	POL-0103781
56	POL00168949	email to Andrew Parsons of 8 th May 2014	POL-BSFF-0132540
57	POL00148720	Advice of Simon Clarke of 15 th July 2014	POL-BSFF-0007841
58	POL00150390	Advice of Simon Clarke of 19 th December 2014	POL-BSFF-0009502
59	POL00023832	Advice of Simon Clarke of 16 th February 2015	POL-0020311
60	POL00141471	Email from Gareth Jenkins to Rachael Panter of 27 th November 2012	POL-0142856

61	POL00021774	Advice of Simon Clarke of 27 th March 2015 entitled "Deloitte Report – questions for POL"	POL-0018253
62	POL00028062	Deloitte Horizon Desktop Review of Assurance Sources and Key Control Features, Draft for Discussion dated 23 rd May 2014	POL-0023065
63	POL00021781	Email of Andrew Parsons to Simon Clarke of 5 th May 2015	POL-0018260
64	POL00151917	Email of Andrew Parsons to Simon Clarke of 11 th May 2015	POL-BSFF- 0011029
65	POL00065434	Email of Rodric Willimas of 30 th June 2015	POL-0061913
66	POL00029867	Email of Andrew Parsons to Simon Clarke of 15 th July 2015	POL-0026349
67	POL00029868	Document - 'Old Horizon'	POL-0026350
68	POL00092640	Email to Harry Bowyer of 21 st August 2015	POL-0092218
69	POL00140004	Email to Andrew Winn of 30 th March 2016	POL-0141180
70	POL00241079	Email of Rodric Williams to Gavin Matthews and Andrew Parsons of 25 th April 2016	POL-BSFF- 0079142
71	POL00241080	Document – "Receipts/Payments Mismatch issue notes"	POL-BSFF- 0079143

72	POL00241081	Document - "Correcting Accounts for "lost" Discrepancies"	POL-BSFF-0079144
73	POL00241084	Note of Simon Clarke of 7 th December 2015 relating to the case of disclosure in the case of Seema Misra	POL-BSFF-0079147
74	POL00042015	Email of Rodric Williams to Simon Clarke and myself of 7 th September 2018	POL-0038497
75	POL00029677	Report by Detica dated 1 st October 2013 "Fraud and Non-conformance in the Post Office; Challenges and Recommendations"	POL-0026159
76	POL00105635	Report by Deloitte "Project Zebra – Phase 1 Report" marked as 'Draft – for validation in advance of Board discussion on Wednesday 30 th April'	POL-0104595
77	POL00031384	Report by Deloitte "HNG-X: Review of Assurance Sources – Discussion Areas re: Phase 2 – Draft for discussion only."	POL-0028286
78	POL00031391	Report by Deloitte "HNG-X: Review of Assurance Sources – Phase 1 – Board Update 13/5/14 –	POL-0028293

		Subject to completion and delivery of our final report on 16 th May 2014”	
79	POL00029726	Report by Deloitte “HNG-X: Review of Assurance Sources – Board Update as at 16/5/14”	POL-0026208
80	POL00028069	Deloitte Board Briefing Document 4 th June 2014	POL-0023072
81	POL00004439	Second Sight Briefing Report – Part One dated 25 th July 2014	VIS00005507
82	POL00021791	Second Sight Briefing Document – Part Two dated 9 th April 2015	POL-0018270
83	POL00006355	“A Review on behalf of the Chairman of Post Office Limited Concerning the Steps Taken in Response to Various Complaints Made by Sub-Postmasters” dated 8 th February 2016	POL-0017623
84	POL00029984	Sparrow - Interim Report – Draft for Discussion	POL-0026466
85	POL00030009	Bramble – Interim Report – Draft for Discussion – 27 th July 2016	POL-0026491
86	POL00031502	Bramble – Draft Report – Draft for Discussion – 31 st October 2016	POL-0028404

87	POL00041491	Bramble – Draft Report – Draft for Discussion – 1 st September 2017	POL-0037973
88	POL00028070	Bramble – Draft Report – Draft for Discussion – 3 rd October 2017	POL0023073
89	POL00029097	Bramble – Draft Report – Draft for Discussion – 15 th December 2017	POL-0025579
90	POL00028928	Bramble – Draft Report – Draft for Discussion – 19 th January 2018	POL-0025410