

Wednesday, 1 May 2024

1
2 (9.45 am)
3 **MS PRICE:** Good morning, sir. Are the picture and sound
4 working as they should?
5 **SIR WYN WILLIAMS:** Yes.
6 **MS PRICE:** Sir, just a reminder that we have a fire alarm at
7 10.00. If you're content, then we'll just stay silent
8 for that alarm.
9 **SIR WYN WILLIAMS:** Of course, yes.
10 **MS PRICE:** Thank you, sir. May we please continue with
11 Mr Bowyer's evidence?
12 **SIR WYN WILLIAMS:** Yes.
13 **HARRY BOWYER (continued)**
14 **Questioned by MS PRICE**
15 **MS PRICE:** Good morning, Mr Bowyer. When we adjourned
16 yesterday I was coming to the Cartwright King review.
17 **A.** Excellent. I haven't got my statement in front of me.
18 **Q.** Let's see if we can get that sorted.
19 **A.** That's perfect. Thank you very much.
20 **Q.** Could we have on screen, please, paragraph 68 of
21 Mr Bowyer's statement. That's page 16. You describe
22 the review process here in this way. You say:
23 "In broad terms the process operated by the relevant
24 files being selected to a first sift. This was carried
25 out by various solicitors at Cartwright King (including
1

1 just to look, as we scroll down that discussion section,
2 and then over the page to the conclusion.
3 Can you see that the Second Sight Interim Report is
4 addressed and the advice is to disclose it but there is
5 no reference here to the Helen Rose Report. Can you
6 help with why, in some cases, only the Second Sight
7 Interim Report was being disclosed and not the Helen
8 Rose Report?
9 **A.** I'm afraid I can't recall on a case-by-case basis.
10 **Q.** Would there be any type of case where one but not the
11 other would be disclosable?
12 **A.** I think there were, I think in some of Simon Clarke's
13 Advices I think he specifically disclosed one and not
14 the other.
15 **Q.** Could you have on screen please POL00198128. This is
16 your advice in the case of Kathleen Crane and you
17 address this at paragraph 79 of your statement, if you
18 want to see that. This was a Horizon Legacy case.
19 Going to page 3, please, paragraph 9. You say this:
20 "This is a pre-Horizon Online case. The Second
21 Sight Interim Report deals largely with Horizon Online.
22 We have nothing to disclose that directly relates to the
23 pre-Horizon Online cases. If this was a case where the
24 allegation was one of theft or the defendant was
25 sentenced on the basis that she had appropriated the
3

1 Martin Smith and Andrew Bolc) and those cases that
2 passed the first sift criteria was subjected to a second
3 sift that was conducted by council. Initially the only
4 counsel involved were Simon Clarke and myself but later
5 counsel from the independent Bar were instructed. The
6 operation was conducted from the [Cartwright King] Derby
7 offices to give easy access to the files. If disclosure
8 was required we were advising [Post Office Limited] to
9 disclose the Second Sight Interim Report and the Helen
10 Rose Report."

11 Just picking up on the last sentence there, that
12 where disclosure was required, you were advising the
13 Post Office to disclose both Second Sight's Interim
14 Report and the Helen Rose Report, you may have seen from
15 the papers that there are a number of cases on which you
16 advised where your advice covered the Interim Second
17 Sight Report and advised that should be disclosed but
18 did not mention the Helen Rose Report or advise its
19 disclosure.

20 So just taking an example, the case of Allison
21 Henderson, that's the case you address at paragraph 82
22 of your statement and the advice, if we can have it on
23 screen, please, is POL00294503. You see that's the case
24 of Allison Henderson. Going, please, to page 3, under
25 "Discussion" -- if we can just give Mr Bowyer a moment,
2

1 money the position might well have been different."
2 To what extent, if at all, did you consider that
3 Legacy Horizon cases might attract disclosure of the
4 Second Sight Report.
5 **A.** Well, I think we did disclose some of the Legacy cases.
6 **Q.** Well, we can come to that. I think you've quite
7 recently seen a copy of your advice in the case of Peter
8 Huxham; is that right, do you recall?
9 **A.** Oh, yes, I would have done.
10 **Q.** If we can have that on screen, please, it's POL00294518.
11 We can see from the title here that this was also
12 a pre-Horizon Online case, your advice is 4 September
13 2014. Going to the discussion on page 3, paragraph 10,
14 please, you say:
15 "This is an unexplained loss case where the
16 defendant states that he was covering up losses that had
17 occurred for reasons outwith his knowledge. There is no
18 danger of the defendant's conviction being found to be
19 unsafe as he has admitted his guilt from the very first
20 but he has been adamant that he did not take the money
21 to the point of fighting and losing a 'Newton hearing'.
22 His explanations as to the possible loss relate to
23 possible thefts either by a member of staff or,
24 seemingly, at the 'Newton' hearing, his wife may well
25 have been modified into an attack on the Horizon system
4

1 had he but had the material to mount it."

2 Then over the page, please, at 11:

3 "I doubt that an appeal against sentence will be
4 mounted after any disclosure that we might make in this
5 case as the sentence has been long served. The reality
6 is that the Second Sight Interim Review deals in the
7 main with Horizon Online, the system that superseded
8 Mr Huxham's system but it did deal with the pre-Horizon
9 Online issues and in my view had we had the material
10 contained in the Second Sight Interim Report at the time
11 of the Newton Hearing we would have served it on the
12 defence."

13 Then the "Conclusion":

14 "Those instructed by Mr Huxham should be written to
15 in order to make disclosure of the material contained in
16 the Second Sight Interim Report."

17 In this case, you advised the Interim Second Sight
18 Report was disclosable.

19 **A.** Yes.

20 **Q.** Can you help with why there was a different approach in
21 this case to the pre-Horizon Online case and whether
22 there was any particular principle that was being
23 applied at the time?

24 **A.** I can't help as to my thought processes at the time;
25 it's 10 years ago.

5

1 that what we were doing was right and we were confirmed
2 in that because our advices were being reviewed.

3 **Q.** Thank you. That document can come down now. Thinking
4 about another pre-Horizon Online case, we looked at some
5 correspondence yesterday about the draft Gareth Jenkins
6 statement and, particularly, the amendment that you made
7 deleting the case-specific references that were in that
8 statement, which included his involvement in the *Seema*
9 *Misra* case; do you remember that?

10 **A.** I remember that, yes.

11 **Q.** It was your view at the time that Mr Jenkins' evidence
12 could not be relied upon once the Interim Second Sight
13 Report came out and following that.

14 **A.** Yes.

15 **Q.** Did you give any consideration to whether Seema Misra
16 should be told, in clear terms, that the expert witness
17 in her trial was, in your view, discredited?

18 **A.** Well, I didn't review Seema Misra's case but I think my
19 view would have been it should have been disclosed.

20 **Q.** When you were reviewing the cases that you were, did you
21 notice any patterns of subpostmasters raising
22 unexplained losses and challenges to Horizon?

23 **A.** No. I think I said in my statement, one of the problems
24 was that the allegations against subpostmasters were
25 often very different. We had allegations of people

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1 **Q.** Was there a common position among those at Cartwright
2 King, initially you and Simon Clarke, reviewing cases on
3 whether the Second Sight Report and the Helen Rose
4 Report should be disclosed in Horizon Legacy cases?

5 **A.** I don't think there was a position. We were disclosing
6 it in some Legacy cases.

7 **Q.** Do you think there should have been a principled
8 approach to that?

9 **A.** Well, looking back, I think we should have had a common
10 view. You have to remember that the review process was
11 looked at twice by Brian Altman and found to be robust,
12 both in his interim review and his other review, and he
13 looked at some 31 of these advices. So, at the time, we
14 thought we were doing it right. I can see that an awful
15 lot of these documents, with what happened
16 subsequently -- because at this particular time, this
17 was after the Second Sight review came in and said that
18 the system was robust -- sorry, that they'd found no
19 evidence of systemic failure in it.

20 It was only when the civil case came up in 2019,
21 when Mr Justice Fraser found considerably more than we
22 were aware of at the time, that the -- that the totality
23 of what Horizon was doing was actually made available to
24 us.

25 So, at this particular time, you know, we thought

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1 taking money directly from the Post Office till and
2 there was one case where they were allegedly, according
3 to one of the other witnesses, paying their staff
4 directly from subpostmasters' till. Other cases we had
5 people who pleaded guilty and admitted that they were
6 paying off the retail side of their business from Post
7 Office funds, in the hope that they would repay it.

8 We had other cases where people, actually, when
9 people wanted to withdraw money, they were typing in
10 their PIN numbers and it would fail, first of all, and
11 then they would type it in again and get the funds, and
12 the allegation was that the first one would be pocketed
13 by the subpostmaster.

14 So we were dealing with a whole different type of
15 offending and, so, yes, there were cases where people
16 were alleged to be short on their funds but there were
17 other types of offending as well, and so what we were
18 looking at didn't fit a single Horizon bug. Now,
19 obviously, now we know that there are several types of
20 Horizon bug but that simply wasn't our state of
21 knowledge at the time when we were reviewing it, and,
22 you know, the Second Sight Report came in and said there
23 was nothing systemic.

24 **Q.** Is it right that you would occasionally attend the
25 weekly hub meetings, later biweekly meetings, on behalf

8

1 of Cartwright King?
 2 **A.** Very occasionally. I would do it when either Andrew
 3 Bolc or Martin Smith weren't available.
 4 **Q.** Roughly, how many times did you attend; can you recall?
 5 **A.** I imagine you could count it on one hand.
 6 **Q.** Did you ever hear of any issues raised at those meetings
 7 that you thought required post-conviction disclosure or
 8 further disclosure review?
 9 **A.** I don't think so, no.
 10 **Q.** Could we have on screen, please, paragraph 108 of
 11 Mr Bowyer's statement, please, that's page 31.
 12 Apologies, have I given the wrong page reference
 13 there?

14 **SIR WYN WILLIAMS:** Paragraph 108 is page 23.

15 **MS PRICE:** Yes. Thank you, sir. My apologies, bear with me
 16 for just a moment. Page 31, paragraph 155, please. You
 17 say here:

18 "The reality is that there may be grounds to
 19 criticise the way that [Cartwright King] conducted the
 20 [Post Office Limited] prosecutions however they did
 21 fulfil their role as external lawyers in calling a halt
 22 to the prosecutions ..."

23 *(Pause for fire alarm test)*

24 **MS PRICE:** Just rereading that sentence and that first
 25 sentence:

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1 the fastest way of getting the job done.
 2 **Q.** That statement can come down now. Thank you. I'd like
 3 to ask you next, please, about what happened in relation
 4 to cases in Scotland and Northern Ireland, after the
 5 publication of the Second Sight Interim Report. Can you
 6 help with what was done by the Post Office or by
 7 Cartwright King, if anything, to inform the Crown Office
 8 and Procurator Fiscal Service in Scotland and the Public
 9 Prosecution Service in Northern Ireland that Second
 10 Sight had been instructed to conduct their review in
 11 2012?
 12 **A.** I can't, no.
 13 **Q.** There are documents that the Inquiry has to suggest that
 14 Martin Smith from Cartwright King was involved in
 15 discussions with the Crown Office and Procurator Fiscal
 16 Service and BTO Solicitors, to whom you referred
 17 yesterday, about the Interim Second Sight Report towards
 18 the end of July 2013.
 19 **A.** Yes.
 20 **Q.** There are also documents to suggest that Simon Clarke
 21 and Martin Smith attended meetings with BTO Solicitors
 22 and the Crown Office and Procurator Fiscal Service about
 23 Horizon in September 2013. Did you have any involvement
 24 in those discussions --
 25 **A.** No, I had no involvement in those discussions. They did

11

1 "The reality is that there may be grounds to
 2 criticise the way that [Cartwright King] conducted the
 3 [Post Office Limited] prosecutions ..."
 4 Did you recognise, at the time the Cartwright King
 5 review was set up, that there may be grounds to
 6 criticise the way that Cartwright King conducted Post
 7 Office prosecutions?
 8 **A.** Yes, I think when I was reviewing cases and when I was
 9 actually speaking to the people more involved, it became
 10 apparent as to how it was being done and, yes, I had
 11 concerns.
 12 **Q.** At what point into the process did you have concerns?
 13 **A.** Really during the review, the sift process, when we were
 14 reviewing cases. You have to remember we were reviewing
 15 a lot of cases that weren't Cartwright King but they
 16 went back quite a long time.
 17 **Q.** At the time, did you recognise the risks inherent in
 18 Cartwright King -- and this phrase has been used
 19 a number of times -- "marking its own homework"?
 20 **A.** Well, yes, because that was addressed at a very early
 21 point, especially we had a conference with Brian Altman
 22 in his chambers in September, I think, 2013, and that
 23 point was addressed there and then. But I think it was
 24 felt that (a) the Cartwright King barristers actually
 25 hadn't prosecuted the cases themselves and (b) this was

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1 certainly at least one trip, possibly more, to Scotland
 2 and BTO. I did speak to BTO on couple of things.
 3 I think there's some email correspondence between me and
 4 one of their solicitors but I didn't actually have any
 5 direct influence on the Scottish prosecutions.
 6 **Q.** Was there any consideration given to the impact of the
 7 Interim Second Sight Report on disclosure duties on
 8 prosecutors in Scotland and Northern Ireland by
 9 Cartwright King?
 10 **A.** I don't know.
 11 **Q.** As part of the Cartwright King review, and that specific
 12 review and process, were Scottish and Northern Irish
 13 cases reviewed by Cartwright King?
 14 **A.** I don't think we touched the Scottish and Northern Irish
 15 cases.
 16 **Q.** Were you aware of a similar review exercise taking place
 17 in Scotland or Northern Ireland?
 18 **A.** I wasn't.
 19 **Q.** Does it follow from your answers that a can't help with
 20 whether Cartwright King notified the Crown Office and
 21 Procurator Fiscal Service or the Public Prosecution
 22 Service in Northern Ireland of its review exercise?
 23 **A.** I don't know.
 24 **Q.** In 2014, you appear to have been asked by Jarnail Singh
 25 to look at a Scottish case, the case of Elaine Doran.

12

1 Could we have on screen please the email which refers to
 2 that, it is POL00333520. This is an email chain which
 3 you are not part of but we see your involvement in the
 4 case is referred to in this top email from Jarnail
 5 Singh, dated 8 October 2014. Before we look at that,
 6 just to put this in context, and look at some of the --
 7 one of the earlier emails, if we can look at page 2,
 8 please, about two-thirds of the way down the page, there
 9 is an email, dated 19 September 2014 from David Oliver
 10 to Chris Aujard, copied to Jarnail Singh, among others
 11 and it says this, "Subject: Doran case":

12 "Chris

13 "I wanted to bring one non-scheme case to your
 14 attention and check you are content with the suggested
 15 approach. The case in question relates to Mrs Doran
 16 (deceased).

17 "The case was one of the original cases raised by
 18 MPs but did not apply for the scheme.

19 "It is an old case (2004) and relates to
 20 a (unsuccessful) prosecution brought by the police in
 21 Scotland.

22 "Mr Doran has written to Paula raising his case (and
 23 criticising Post Office's handling of it) and his MP has
 24 with James Arbuthnot sought a meeting with Paula to
 25 discuss the case -- which James is chasing a response

13

1 were able to provide in this case. It would appear this
 2 was limited and most probably not all the information
 3 that was provided to the Procurator Fiscal.

4 "This was not a POL investigation. However if it is
 5 now to be investigated under BAU. It is my view and
 6 advice that any findings and further evidence discovered
 7 should be supplied to Harry Bowyer in order that he may
 8 review it. This would ensure POL has the protection of
 9 being able to say the findings have been independently
 10 considered by external senior barrister."

11 Was this common, Jarnail Singh asking you to take
 12 a look at individual cases, after his --

13 **A.** There would be occasions he'd ask me to look at cases.
 14 There would be occasions he would ask me for advice on
 15 little issues, yes.

16 **Q.** This appears to be on a sort of *ad hoc* basis, rather
 17 than --

18 **A.** Very much so.

19 **Q.** -- as part of the review process; is that right?

20 **A.** Yes, I mean, we got contacted of their questions outside
 21 of the review question process.

22 **Q.** Was it common for you to be asked to look at Scottish
 23 cases?

24 **A.** Well, not terribly because, of course, Scottish law is
 25 different and I'm not qualified.

15

1 on.

2 "The case has been looked into by the Crown Office
 3 in Scotland and Post Office has been in contact with
 4 them via BTO -- Jarnail has previously dealt with this
 5 (last correspondence I have been able to find internally
 6 14 April ...)."

7 Then there is proposed next steps and we can see
 8 over the page:

9 "Jarnail to contact BTO for any further and more
 10 recent correspondence.

11 "Subject to that contact Crown Office to understand
 12 their views on the case and what has been provided to
 13 Mr Doran.

14 "I will draft a holding reply to go to James."

15 So that sets out some of the background to the case.
 16 Does this help refresh your memory at all as to how
 17 cases in Scotland were being looked at or reviewed, the
 18 references in that email --

19 **A.** No, I'm afraid it doesn't. I had very little contact
 20 with Scotland.

21 **Q.** Going, then, to page 1. Jarnail Singh's email of
 22 8 October 2014. He says:

23 "Belinda and Angela

24 "As you know counsel Harry Bowyer of [Cartwright
 25 King] reviewed the information which Scottish police

14

1 **Q.** Did you feel able to advise on this Scottish case?

2 **A.** I don't recall this Scottish case but the email suggests
 3 that the information was limited.

4 **Q.** Were you aware that Jarnail Singh saw the purpose of
 5 asking you to look at cases in this way as being that
 6 the Post Office would have the protection of being able
 7 to say it had been reviewed by an external senior
 8 barrister?

9 **A.** I wasn't aware but I would have been able to guess at
 10 it, yes.

11 **Q.** That can come down now. Thank you.

12 At paragraph 106 of your statement you refer to
 13 Cartwright King's involvement in drafting a new
 14 prosecution policy for the Post Office. Recognising
 15 that you say you had little to do with that side of
 16 things, what was your understanding of the policy in
 17 terms of its geographical remit, particularly thinking
 18 about Scotland and Northern Ireland?

19 **A.** I would have assumed that Simon would have been drafting
 20 it for England and Wales.

21 **Q.** Can you help at all with whether the procedure in
 22 Scotland and Northern Ireland was viewed in the context
 23 of possible reform of Post Office Limited's prosecution
 24 policy? Was it considered at all?

25 **A.** Well, I don't think I had any role in that particular

16

1 review process.

2 **Q.** Could we have on screen, please, POL00333527. The top
3 two emails here are from April 2015 and are between you
4 and Laura Irvine who was a solicitor with BTO Solicitors
5 in Scotland, the external firm who advised on Post
6 Office cases. Just scrolling down a little, please,
7 your email there, "Laura" at the top, "Harry Bowyer" at
8 the bottom. It appears from this that you were looking
9 after Martin Smith's emails whilst he was on holiday and
10 that's why you were in email correspondence with her; is
11 that right?

12 **A.** That would be right, yes.

13 **Q.** Starting with Ms Irvine's email of 26 March 2015,
14 please, at the bottom of the page, her email to Martin
15 Smith, she discusses a Scottish case and appears to be
16 trying to establish what the progress was on a Horizon
17 expert report. Is this a reference to the attempts
18 which were being made to find another expert at the
19 time?

20 **A.** Yes, I think so.

21 **Q.** Then, at the penultimate paragraph of her email, she
22 says:

23 "I have been provided with various pieces of
24 information about the progress with the Horizon expert
25 report (mostly by you) but the last I heard from John

17

1 **Q.** Second, you appear to be suggesting that any expert
2 report would be giving Horizon a clean bill of health.
3 Was that your view at the time?

4 **A.** Well, that's what we thought was going to happen, yes.

5 **Q.** Why were you so sure of that?

6 **A.** Well, again, it was the Second Sight Report with no
7 systemic problems and so, as far as their report was
8 concerned, we thought we would get an expert report that
9 would show that it was fundamentally sound and the
10 evidence could be relied on. If the expert report had
11 come back and said it couldn't be relied on then that
12 would have been the end of prosecuting.

13 **Q.** That can come down now. Thank you.

14 In an email chain we looked at yesterday from August
15 2012, you referred to cases raising Horizon issues being
16 likely to become more numerous as the "bandwagon picks
17 up speed". Why did you use that expression "bandwagon"?

18 **A.** I think the Inquiry is attaching pejorative terms to it.
19 There are popular themes in criminal law and popular
20 defences that arise. There have been bandwagons that
21 I've joined. When I've seen that a defence seems to be
22 working, I will leap upon it. But no, as far as this
23 was concerned, when Horizon became an object that looked
24 as though it was being challenged, more and more people
25 would actually take a look at it when they got a Post

19

1 Scott was that there was a report from Deloitte that
2 may negate the need for an expert report. However I got
3 the impression from you yesterday that it didn't tick
4 all the boxes!"

5 It would appear from this that BTO Solicitors had
6 not been provided with the 2014 Deloitte report, would
7 you agree, on a reading of that?

8 **A.** Well, it looks like it, yes.

9 **Q.** Your reply is above and you say:

10 "Laura, Martin has me looking after [the] emails ...
11 "The Deloitte report does not tick all the boxes and
12 we would prefer to be given a clean bill by the experts
13 here in the process of being instructed. They will be
14 in no position to report in the timescale of this case."
15 Two points arising from this, please. First, you
16 don't mention here your reaction of shock to the
17 revelations in the Deloitte report about remote access,
18 do you?

19 **A.** No.

20 **Q.** Can you help with whether the issue, that issue of
21 remote access, was raised with BTO Solicitors following
22 Cartwright King's receipt of the Deloitte report?

23 **A.** I don't know because the main contact between BTO was
24 Martin and, you can see from this email, I was only
25 stepping in while he was on holiday.

18

1 Office case in; it's common sense. But I don't see that
2 the phrase "bandwagon" is in itself pejorative.

3 **Q.** We needn't go to the documents unless you wish to but
4 "bandwagon" was an expression which was used by you in
5 two advices relating to Post Office prosecutions --

6 **A.** Yes.

7 **Q.** -- given after the publication of the Interim Second
8 Sight Report. You referred yesterday to the Interim
9 Second Sight Report being a "shock moment"?

10 **A.** Yes.

11 **Q.** Did it not therefore make you more wary about making the
12 kind of assumptions which underpin the use of the
13 language "Horizon bandwagon"?

14 **A.** I don't think so, no, because you can join a bandwagon
15 that is perfectly proper. There are occasions when the
16 reason people are all heading in the same direction is
17 that they've got a valid cause. As I said, I don't find
18 the term "bandwagon" pejorative.

19 **Q.** There is one further document from yesterday I'd like to
20 go back to briefly, please, for a point of
21 clarification. The reference is POL00293276. This is
22 the 13 January 2020 letter about continuing the
23 relationship between Cartwright King and Post Office
24 Limited. Going to page 2, please, and what we looked at
25 yesterday was that point 3, with reflections on past

20

1 set-up and relationship but, just looking down a little
2 to the proposal, here, the proposal being made in
3 January 2020 was that Cartwright King would provide Post
4 Office Limited with -- there's a number of things listed
5 there -- but at point (iv):

6 "The designated on-call lawyer shall be Simon
7 Clarke, Martin Smith or Harry Bowyer, but most likely
8 Simon Clarke."

9 Can you help with why, after you left Cartwright
10 King, some four years afterwards, you were being put
11 forward as a potential on-call lawyer?

12 **A.** I wasn't sure as to what was going on here. What
13 happened after we left was, effectively, we took the
14 Post Office Department, myself, Martin and Simon, and so
15 Andy Cash used to continue to call us up to see what was
16 going on, and Post Office wanted this facility. By this
17 stage, we weren't terribly keen on doing it because, of
18 course, we'd had the civil case and seen Mr Justice
19 Fraser's judgments in the two -- in the two issues that
20 he decided.

21 **Q.** Did this proposal come to fruition?

22 **A.** No.

23 **Q.** That can come down now. Thank you. Just one final
24 point from me. You've said in your statement at
25 paragraph 65 that the Post Office was an enormous

21

1 a generic pro-prosecution template for him?

2 **A.** No, that's not true.

3 **Q.** Well, you were trying, you said, to be fair to the
4 defence and, just coming to an expression that you used
5 yesterday, that this statement would give the defence
6 a windmill to tilt at. Tilting at windmills, in
7 contemporary parlance, Mr Bowyer is typically understood
8 as attacking imaginary enemies or evils. Is that what
9 you thought that the defence were doing, that Horizon
10 was impregnable and that their complaints were
11 imaginary.

12 **A.** Well, at the time, we thought and our instructions were
13 that Horizon was robust.

14 **Q.** So is the answer to my question yes?

15 **A.** No, the answer to your question is, as far as the
16 statement was concerned, it was meant to give something
17 that the defence could (a) take a look at, the previous
18 cases where the challenges were put in, so that they
19 actually had somewhere to go, so that they didn't have
20 to start from scratch. Your question is unfair.

21 **Q.** No, it's not unfair. It's entirely fair because you
22 used the expression "tilting at windmills" and I suggest
23 that it reflects your overconfident -- if I can put it
24 neutrally -- your overconfident approach to the issue --

25 **A.** Well, we disagree.

23

1 client, even for a firm the size of Cartwright King. As
2 you sit here today, do you think that the importance of
3 Post Office as a client to Cartwright King influenced,
4 whether consciously or subconsciously, the way you
5 approached your advice and your ability to advise
6 impartially and independently?

7 **A.** Yes, I think it must have. When we actually pulled the
8 plug on the prosecutions after the Clarke Advice, it was
9 worrying as to how our bosses at Cartwright King would
10 take it and it was a big moment, telling Post Office
11 that they could not rely on their expert and they should
12 stop prosecuting.

13 **MS PRICE:** Sir, those are all the questions I have. There
14 are some questions from Core Participants. Those I know
15 about are Mr Henry, Mr Moloney and Ms Oliver. There may
16 be -- and Mr Jacobs as well. I think that's it. In
17 terms of order, if we can start with Mr Henry, please,
18 sir, then Mr Jacobs, then Mr Moloney and then Ms Oliver.

19 **SIR WYN WILLIAMS:** Certainly.

20 **MS PRICE:** Is that acceptable to you?

21 **SIR WYN WILLIAMS:** Yes, of course.

22 **MS PRICE:** Thank you, sir.

23 **Questioned by MR HENRY**

24 **MR HENRY:** Mr Bowyer, in a nutshell, you weren't happy with
25 Mr Jenkins' independence so you decided to draft

22

1 **Q.** -- that the defence were on some sort of quixotic,
2 unrealistic and ineffectual exercise of challenging, how
3 dare they, the Horizon system?

4 **A.** Well, as I said, what I -- the idea was to actually give
5 them an opportunity to make something of it. At the
6 time, we had nothing to suggest that the Horizon system
7 had any faults to it. Now, I can understand where
8 you're coming from, because you're looking at it from
9 2024.

10 **Q.** Don't presume to understand anything from my point of
11 view, Mr Bowyer. Let's go on to a document, which is
12 POL00096997 -- no need to get it up, you'll remember it;
13 it was put to you yesterday -- but you referred to
14 defence enquiries as a fishing expedition. Did that
15 reflect your view about defence requests for disclosure
16 in relation to Horizon?

17 **A.** Some of them, certainly.

18 **Q.** Your prediction, 2 October 2012:

19 "My view is that most challenges to the Horizon
20 system should now vanish away before the trial."

21 Were you taking, Mr Bowyer, effectively a blinkered
22 approach?

23 **A.** Well, I can see that that particular comment hasn't aged
24 well but, no, I don't think so.

25 **Q.** Right. Can we turn, please, to POL00066807, please.

24

1 This is your response to Mr Altman's review. Could we
2 go to page 3 of this document and let's concentrate on
3 (vii):

4 "Whilst this system is still in its infancy there
5 are issues that should be dealt with as soon as
6 possible.

7 "(a) An expert to replace Gareth Jenkins must be
8 identified and instructed without delay. As almost all
9 of our cases depend on the integrity of Horizon -- even
10 if only to the quantum of thefts -- we need to have
11 an expert to say that the system is sound and, whilst
12 there are and have been glitches, the system and its
13 product are sound."

14 Does that not show that the intention was not for
15 the expert to be objective but rather to reach the
16 conclusion instructed by Cartwright King?

17 **A.** Well, no, I don't think so.

18 **Q.** "... we need to have an expert to say that the system is
19 sound and, whilst there are and have been glitches, the
20 system and its product are sound. Time of the essence
21 as there are cases in the system that will be
22 compromised without such evidence. This is old ground
23 so I will not go over it again."

24 This was essentially, was it not, the idea that the
25 expert, inevitably, would say that the system was

25

1 disclosable?

2 **A.** Well, again, this particular paragraph shows that I'm
3 looking at the disclosability.

4 **Q.** You said that you think it ought to have been slightly
5 more emphatic or would that not have been unpalatable to
6 the client: if there are genuine flaws, they must be
7 disclosed?

8 **A.** Yes, you would be right there.

9 **Q.** Right, so were you trying to sugar the pill?

10 **A.** No. I'm afraid, if you point at clumsy English, it
11 doesn't mean that my intent was actually to make things
12 palatable to the lay client.

13 **Q.** Ms Price has taken you today to a Scottish case where
14 you were trusted by Jarnail Singh to review it. The
15 case was called Doran. She faced embezzlement charges
16 of over £7,000 and was acquitted, and she said all she'd
17 done was to follow instructions on the screen, in other
18 words she was not dishonest, she was only following the
19 instructions that Horizon had given her. Do you
20 remember the case now?

21 **A.** I don't remember it, no.

22 **Q.** Well, I don't want to ambush you, but it seems you
23 advised on non-disclosure?

24 **A.** You may well be right, I'll take it from you.

25 **Q.** Let me just ask you now to just -- in the Mediation

27

1 robust, a dangerous assumption on your part, Mr Bowyer?

2 **A.** Well, if the expert said the system wasn't robust, it
3 would have created problems for us and we would have
4 ceased to prosecute. But, at the time, our instructions
5 were that it was robust and Second Sight had found
6 nothing systemic.

7 **Q.** But they had found disturbing issues concerning two bugs
8 and also other deficiencies in the way in which the
9 postmasters' complaints had been dealt with. Could we
10 go to subparagraph (b):

11 "The product of the hub meetings should be collated
12 and assessed. Much of it is raw rumour but it needs to
13 be investigated so that we can dismiss it as that."

14 Again, "raw rumour ... investigated so that we can
15 dismiss it", does this not reveal institutional bias on
16 your part, too close in alignment with your professional
17 and lay client?

18 **A.** Well, I don't think it does, no.

19 **Q.** "Other material may well point to genuine flaws in
20 either the Horizon system or the use of it by Post
21 Office staff and needs to be addressed both to fix the
22 flaws and be assessed as to its potential
23 disclosability."

24 How could flaws in the Horizon system, genuine
25 flaws, be only regarded by you as potentially

26

1 Scheme and disclosure issues, do you accept that quite
2 a lot -- and the document I'm going to take you to
3 doesn't actually refer to this -- but a number of the
4 issues in the Mediation Scheme, a substantial minority
5 of these applications, contain complaints about the
6 behaviour of Post Office Investigators?

7 **A.** Yes.

8 **Q.** You were against the reports that those Investigators
9 had compiled being disclosed, weren't you?

10 **A.** I was against some of the working documents being
11 disclosed, yes.

12 **Q.** Right. Well, let's go to POL00301427.

13 **SIR WYN WILLIAMS:** While that's being brought up, just so
14 that I can clear my mind, the actual criminal Doran case
15 was long before your involvement, as I understand it,
16 and you became involved because of the potential review
17 of that case in the Mediation Scheme; is that correct?

18 **A.** I think so. It was a Scottish case. I've got no
19 recollection of it.

20 **SIR WYN WILLIAMS:** No, I appreciate that but, given that you
21 your involvement was, I think, 2014 and the actual case
22 was about 10 years before, it seems to be the only
23 logical explanation.

24 **A.** Well, I'm not sure whether it's for the Mediation Scheme
25 or whether for some sort of Scottish review, I don't

28

1 know what it's --

2 **SIR WYN WILLIAMS:** I see. All right, so it's either the

3 mediation or some review occurring in Scotland.

4 **A.** Yes.

5 **SIR WYN WILLIAMS:** All right. Fine.

6 **MR HENRY:** Thank you, sir. While that's being brought up on

7 the screen -- POL00301427 -- the fact that somebody was

8 being tried on Horizon data, the case was brought on

9 Horizon data, the charge was dishonesty and they had

10 been acquitted, did that not strike you as disclosable

11 in other cases?

12 **A.** I don't think I considered it. I don't know.

13 **Q.** Right. So can we go to your email in this email chain,

14 please, and we start off with the "I agree with Harry's

15 advice". Can we scroll down, please. Can we scroll

16 further down, please, and then we have that. Yes, (ii),

17 please. This is your advice:

18 "The views of the prosecuting lawyers, at an early

19 stage of the proceedings, on the strengths/weaknesses of

20 our case being exposed to the defendants and their

21 defence teams."

22 These were your concerns and that was the concern

23 that I've just read out:

24 "This could create problems should we recommence

25 prosecutions. In extreme instances we could become

29

1 the sift?

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

3 **Q.** Well, my conclusion is two matters. The first is -- and

4 you've been -- they're both concerning clients

5 represented by Messrs Hodge Jones & Allen, who instruct

6 me. One is Mrs Kathleen Crane. You reviewed her case

7 in November 2013 and you stated:

8 "In my opinion, we need take no further action upon

9 this file."

10 So, therefore, the safety of her conviction was not

11 reviewed as a result of that advice and she was only

12 cleared in the Court of Appeal in January this year,

13 having suffered years of anxiety, having, of course,

14 lost her occupation and having to go into a caring

15 profession where she was having to disclose her

16 conviction, of course, to the Disclosure and Barring

17 Service with every employment application.

18 Have you read the judgment in her case?

19 **A.** I'm not sure that I have.

20 **Q.** The Court of Appeal stated at paragraph 22 that they

21 were satisfied that the Post Office was correct in

22 conceding the matter, and they continued to state:

23 "This is indeed a Horizon case in which the

24 reliability of Horizon data was essential to the

25 prosecution and there was no independent evidence of the

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1 witnesses in our own cases (an obvious example is the

2 case of Choudry (Waseem Abbass) in which neither the

3 Post Office Investigators nor the POL systems cover

4 themselves in glory -- I am sure that our mutual client,

5 POL, does not want a document in the public domain that

6 provides a route map to how to attack us where we are

7 most sensitive)."

8 Mr Bowyer, isn't that precisely the purpose of

9 disclosure under the CPIA, that the material might be

10 capable of undermining the prosecution case or assisting

11 the defence?

12 **A.** Absolutely.

13 **Q.** Right. So why did you say, "I'm sure that our mutual

14 client does not want a document in the public domain

15 that provides a route map to how to attack us where we

16 are most sensitive"?

17 **A.** Because, as far as that's concerned, it should be

18 considered in the context of each case.

19 **Q.** Can I just ask you to consider this, the Horizon

20 bandwagon, and you say that that wasn't pejorative, and

21 so be it, but those two advices that Ms Price referred

22 you to were dated 2 September 2013 and 5 September 2013,

23 here we are involved in the Mediation Scheme. Do these

24 views not reveal a somewhat jaundiced approach, which

25 might have affected the way in which you were performing

30

1 alleged or any actual loss."

2 Then they continue:

3 "The applicant in interview explained why she had

4 acted as she did and asked for the reliability of

5 Horizon to be investigated."

6 "She and her husband paid the full sum said to be

7 missing. She was nonetheless prosecuted, no relevant

8 investigation was carried out and no disclosure was made

9 about the known concerns about Horizon."

10 Mr Bowyer, how on earth did document to the

11 conclusion that no disclosure was merited in her case?

12 **A.** I'm afraid, I don't know.

13 **Q.** Mrs Misra's case, which you were aware of but of course

14 was dealt with, I think, by your colleague Simon Clarke?

15 **A.** It was, yeah.

16 **Q.** She needed to be told in the clearest terms, you would

17 agree, that the expert witness in her trial was

18 discredited. You would agree with that?

19 **A.** I would agree with that.

20 **Q.** Yet that didn't happen and she wasn't even given what

21 I suggest would have been the inadequate disclosure of

22 merely the Second Sight Report or the Helen Rose Report.

23 Now, I realise it wasn't your case, Mr Bowyer, but you

24 were part of the team and --

25 **SIR WYN WILLIAMS:** Mr Henry, I think he has said it should

32

1 have been disclosed. That's good enough for me.

2 **MR HENRY:** Thank you, sir. Those are my questions.

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

4 I think we have Mr Jacobs next, is it?

5 **MR JACOBS:** Thank you, sir, yes.

6 **Questioned by MR JACOBS**

7 **MR JACOBS:** Mr Bowyer, I want to ask you some questions
8 about the Mediation Scheme and you've set out, in your
9 witness statement at paragraphs 109 through to 140 your
10 involvement in the Cartwright King reviews --

11 **A.** Yes.

12 **Q.** -- of the mediation responses. Perhaps we don't need to
13 go to this but one of your responses in the case of
14 Walters, who was one of our clients, at paragraph 117 of
15 your statement, the response is:

16 "Dangers to Post Office Limited. This case did not
17 result in a prosecution or a conviction. It is unlikely
18 to affect any criminal cases conducted by POL, past,
19 present or future, unless some concession is made about
20 the integrity of Horizon, which from the robust POL
21 response seems unlikely."

22 Do you accept that it was Cartwright King's position
23 to ensure that nothing came out of the mediations that
24 could result in damage to Post Office's position that
25 the Horizon system was a robust system or could lead

33

1 **Q.** So what you were saying is: don't do anything that could
2 result in a concession being made that Horizon is not
3 robust?

4 **A.** I can see how you're formulating the question but the
5 intent was I didn't want any unwarranted concessions
6 made that the system wasn't robust.

7 **Q.** What's an unwarranted concession?

8 **A.** A concession merely to make the mediation go more
9 smoothly.

10 **Q.** Are you aware -- and I'll give an example of a case of
11 one of our clients, Mr Peter Holloway. He attended
12 a mediation in November 2015, presented his case to the
13 Post Office representatives with a mediator present. He
14 says the mediator told him there was a good chance that
15 the Post Office would agree to settle his case and that
16 there might be a reasonably significant sum. The Post
17 Office representatives thought about it, the mediator
18 returned to Mr Holloway at 3.00 in the afternoon and
19 said, "I don't know what to say, they are refusing to
20 even make you an offer". The mediator told Mr Holloway
21 that the Post Office representatives had told him they
22 had been sent to the mediation with instructions not to
23 settle at all.

24 Were you aware that Post Office representatives were
25 attending mediations with instructions to maintain in

35

1 subpostmasters to have any evidence upon which they

2 could cast doubt on the integrity of the Horizon system?

3 **A.** Well, as far as we were concerned, obviously you've seen
4 from the papers that my position is that we didn't want
5 criminal defendants in there.

6 **Q.** Yes.

7 **A.** But, yes, I mean, as far as we didn't want unwarranted
8 concessions to be made, that the Horizon system may have
9 been -- may have not been robust because that was not
10 what the evidence actually said at the time. I concede
11 totally from our point of view, looking at it from 2024,
12 that has not aged well.

13 **Q.** Well, exactly. In July 2012, you wrote to your advice
14 in the case of *Wylie* --

15 **A.** Yes.

16 **Q.** -- where, effectively, you said that Post Office was in
17 a firefighting situation --

18 **A.** Yes.

19 **Q.** -- Fujitsu should consider themselves also to be in that
20 position --

21 **A.** Yes.

22 **Q.** -- and that, to summarise, there would be severe
23 recriminations for the business if Second Sight
24 uncovered any systemic problems; is that right?

25 **A.** Yes.

34

1 the mediation that Horizon was robust and that there
2 should be no settlement or, if any settlement was made,
3 it was simply to be a token?

4 **A.** I wasn't aware, no.

5 **Q.** Were you aware that anybody in Cartwright King advised
6 that what you had advised in relation to the *Wylie* case
7 should feed through into the conduct of the mediations?

8 **A.** Again, my main role was to advise on various documents
9 that were going forward to the mediation. How the
10 mediations were carried out, we had no role in.

11 **Q.** You understand, of course, that the function of
12 mediation is that there should be some concession on --

13 **A.** I do. I totally understand that and, to an extent,
14 that's part of the danger.

15 **Q.** Can I then move on to another topic. I want to ask you
16 about Brian Altman KC and his terms of reference and we
17 will need to put a document on the screen for that.
18 It's POL00021981. I'll just wait for it to come up. So
19 here we have Mr Altman's observations on his terms of
20 reference for making a presentation in relation to the
21 Post Office Board. Can we scroll down, please, and can
22 we scroll down to (b) so scroll down further. Right:

23 "I understand that I am to meet and report to the
24 Board."

25 Then, if we to move scroll down further, so point 2:

36

1 "On the [efficacy] of past prosecutions including
2 the preparation and conduct of past prosecutions ..."
3 Then, if we move down to footnote 4 at the bottom of
4 page 3, please, and if we could maybe highlight -- ah,
5 we've lost it. Footnote 4, bottom of page 3. Thank
6 you. So Mr Altman says:

7 "It is for POL and those instructing me to determine
8 whether or not it is only the efficacy
9 (ie effectiveness) of past prosecutions etc that I am
10 being asked to consider with the Board, or in fact the
11 potential safety of past convictions following POL
12 prosecutions (ie whether, in my judgment, the Court of
13 Appeal is likely to 'think that the conviction is
14 unsafe' ..."

15 Now, this follows on quite shortly from Simon
16 Clarke's Advice where he said that Gareth Jenkins, the
17 architect, or one of the architects, of the Horizon
18 system, his evidence was tainted and unreliable. Did
19 you think at this point that senior counsel ought to be
20 advising on the safety of the convictions in light of
21 the apocalyptic revelations concerning Mr Jenkins?

22 **A.** Well, the -- as far as the convictions were concerned,
23 most of the convictions were guilty pleas and --

24 **Q.** Sorry, I didn't hear you?

25 **A.** Most were based on guilty pleas and most were -- had

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1 **SIR WYN WILLIAMS:** I'm sorry to intervene but this started
2 as a question about Mr Altman's terms of reference.
3 With respect, Mr Jacobs, I don't think Mr Bowyer is the
4 person to ask about that. Mr Altman was instructed,
5 I believe, by Womble Bond Dickinson, or whoever, and
6 very much having an input from senior Post Office
7 lawyers. I don't think Mr Bowyer was involved. If he
8 was, I'll apologise but I don't think --

9 **MR JACOBS:** I'll move on to the next document, which is
10 POL00021980. This in relation to the efficacy point and
11 I just want your comment on this. I know that this
12 isn't an email that you saw at the time but this is
13 Womble Bond Dickinson responding to Mr Altman's
14 footnote, and what is said here is:

15 "Please find attached two separate terms of
16 reference for Brian Altman QC as amended in response to
17 his observations document, which I also attach for ease
18 of reference.

19 "Please note that POL needs to decide on the issue
20 [which he is asked to] report to the Board on the
21 efficacy or safety of past prosecutions -- see
22 footnote 4 on page 3 [that I've just gone to] of Brian's
23 observations.

24 "Simon's and my view is that he shouldn't report on
25 the safety of past convictions for two reasons:

39

1 admissions in interview to some sort of false
2 accounting, or whatever, and the position at the time
3 was, as I said, Second Sight came back and they said
4 that there were no systemic faults in Horizon; they'd
5 produced the two bugs that they'd produced. And so when
6 we stopped the prosecutions, it wasn't on the basis that
7 Horizon was unsafe because we didn't know that it was
8 unsafe. We felt that nothing systemic had been found on
9 it.

10 We stopped it because we felt that the witness,
11 Gareth Jenkins, was unreliable and so the catastrophic
12 findings later that Horizon had multiple bugs in it,
13 only really came to light in 2019 in the civil case in
14 front of Mr Justice Fraser. And, certainly, at this
15 particular stage, as you know, a guilty plea is a very
16 difficult thing to appeal in the Court of Appeal. This
17 case, of course it happened, because these cases were --
18 and I don't dispute it at all -- these cases were
19 an affront to justice because people had false accounted
20 because they were met with massive figures.

21 **Q.** What about, if it can be inferred, as surely it must be
22 inferred from the Gareth Jenkins position, that there
23 had been multiple failures of disclosure in numerous
24 prosecutions over the years?

25 **A.** Well, there had been failures of disclosure --

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1 "this is likely to involve a more significant
2 analysis of lots of cases, thereby delaying his report
3 "and potentially blurs the boundary between BA and
4 CK's respective roles."

5 Now, you've said in your evidence that you thought
6 that Bond Dickinson's knowledge of the criminal law was
7 somewhat sketchy; is that right?

8 **A.** That was my opinion at the time.

9 **Q.** What do you have to say about the advice that Bond
10 Dickinson were giving Post Office in relation to Brian
11 Altman's query about whether he should be advising on
12 safety?

13 **A.** Sorry, what was my opinion then on that?

14 **Q.** Yes.

15 **A.** I wasn't aware that he was being instructed at the time
16 or they were considering him looking at the safety of
17 the reviews. Our instructions in the sift review was
18 not to look at the possible -- look at the potential of
19 appeals at the time; it was just as to whether the stuff
20 would be disclosable or not.

21 **Q.** Do you think, following the Simon Clarke advice, that
22 Post Office, in light of the potential for miscarriages
23 of justice, ought to have sought advice on the safety of
24 convictions as a matter of urgency?

25 **SIR WYN WILLIAMS:** I'm sorry, I just don't think this is

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1 appropriate for this witness. These questions can be
2 asked of the people who instructed Mr Altman.

3 **MR JACOBS:** Thank you, sir. I'll move on.
4 I don't have any further --

5 **THE WITNESS:** I'm obliged, sir.

6 **Questioned by MR MOLONEY**

7 **MR MOLONEY:** Mr Bowyer, I'm going to ask you about Gillian
8 Howard and she's one of the 78 Core Participants
9 I represent, all of whom were prosecuted and convicted
10 and all of whom had their convictions quashed. I'm
11 going to ask you about disclosure in her case and why
12 you didn't advise disclosure on review but I'll take you
13 to your advice in doing so, so that you can see why you
14 didn't disclose, which will hopefully help when you're
15 answering questions, okay.

16 **A.** Yeah.

17 **Q.** Now, she falls into the category of most cases that
18 you'd just described to Mr Jacobs, that is to say
19 a guilty plea and an admission to false accounting?

20 **A.** Yes.

21 **Q.** She was interviewed under caution on 8 June 2010,
22 following an audit that revealed a shortfall of some
23 just shy of £46,000. So that's 8 June 2010 for the
24 interview and then, by letter to Post Office on 7 April
25 2011 -- and that date is important -- Mrs Howard offered

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1 **A.** No, I accept that.

2 **Q.** Indeed. So could I ask that we look at your advice now,
3 which is POL00021207. I'm grateful. If we could go
4 straight to the end, to paragraph 27, where you say, in
5 conclusion, in relation to this case, Mr Bowyer:

6 "This is an extremely worrying case. It is only
7 through good fortune, sensible prosecution counsel and
8 a sympathetic judge that we are not going to have to
9 disclose material which would cause [Post Office
10 Limited] a great deal of embarrassment."

11 Could we please go back up the page now, to look at
12 the specific circumstances of this case and I think back
13 to paragraph 15. Yes, above that, please. If you could
14 go back to the previous page, I'm sorry. Just slightly
15 further please, going up.

16 Paragraph 10, thank you. So paragraph 10 relates to
17 how Mrs Howard, following the audit, said she'd like to
18 arrange a PACE interview:

19 "She was told of her rights. She produced a typed
20 statement and an article from The Grocer magazine
21 relating to 'glitches' in the Horizon system."

22 Her prepared statement and note also complained of
23 lack of from Post Office and says that a series of
24 errors were made, the inference being that she wasn't
25 properly trained.

43

1 a guilty plea on a proposed agreed basis. Does this jog
2 your memory?

3 **A.** I remember the case. I discussed it at paragraph 75 --

4 **Q.** Thank you, I'll shortly take you to your advice but,
5 just to finish the background details, as it were, to
6 start with, she pleaded guilty on 26 April 2011, having
7 indicated or offered the agreed basis of plea on 7 April
8 2011, and, on 26 May, she was sentenced to a six-month
9 community sentence?

10 **A.** Yes.

11 **Q.** Just for completeness, at the Court of Appeal, Post
12 Office accepted it was an unexplained shortfall case,
13 evidence from Horizon was essential to Mrs Howard's
14 case, no ARQ data was obtained --

15 **A.** No.

16 **Q.** -- at the time of the criminal proceedings, no evidence
17 to corroborate the Horizon evidence, no investigation
18 into the matters raised by Mrs Howard in interview and
19 no examination of the numerous calls that she'd made to
20 the helpline, in fact she'd made 22 calls to the
21 helpline, saying that she was having real trouble
22 balancing with Horizon, and none of the other staff at
23 the branch was interviewed, and there was no proof of
24 an actual loss; so a paradigm Horizon case in many
25 respects?

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1 But the contents of her interview are in the next
2 paragraph. She's interviewed on 8 June, read out
3 a prepared statement, said she'd not taken any money.
4 She used to help her husband with the cashing up. She'd
5 experienced problems from 2008, after her husband was
6 taken ill. She employed two staff. When her husband
7 was ill she struggled to balance the accounts from the
8 outset. She was never sure that she was completing the
9 monthly balance correctly and simply put in the figures
10 that Horizon displayed to balance. She was aware that
11 the figures she was entering were inflated and that the
12 losses were increasing and, to hide the mounting
13 shortages she began to suppress business deposits from
14 a local bus company.

15 Carrying on down, she felt that an employee might be
16 responsible for the losses. I won't name the employee,
17 for obvious reasons.

18 **A.** Of course.

19 **Q.** She was concerned about her employee's sons visiting the
20 shops to borrow money and she had less than a week's
21 notice about the transfer to Horizon Online.

22 Finally, she was aware that what she was doing was
23 dishonest and had not financially benefited from any of
24 the missing money.

25 She expressed concerns about Horizon as the Court of

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1 Appeal noted.

2 If we could then go down to paragraph 13, which is

3 just further down. You find other considerations.

4 "It became apparent ..."

5 This is an email from Helen Dickinson, dated

6 10 February 2011, and that date is important because

7 it's some two months before she enters her plea in April

8 2011:

9 "... after Mr and Mrs Howard were suspended that

10 those who ran New Mill Post Office continued to employ

11 [the employee] and also took on one of her sons. The

12 Post Office continued to suffer small unexplained losses

13 including cash being taken from a charity box in the

14 secure area. It transpired that [the employee] had

15 a key to the secure area that the new management were

16 unaware of and [the employee's] son has admitted theft

17 from the charity box."

18 Essentially what happened to that information, that

19 it was kept under review, it wasn't disclosed and

20 there's a green Post-it note attached to an email of

21 5 April 2011 talking about scrapping the sensitive

22 unused items.

23 If we could go down further to paragraph 18, please,

24 the culmination of all of this is:

25 "At item 17 on the non-sensitive unused schedule,

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1 agreed basis of plea was offered and the schedule

2 reference in April -- just, in fact, after the agreed

3 basis of plea was offered -- was quite cryptic.

4 So, after that which Mrs Howard had said interview,

5 should the material about the employee's son not have

6 been disclosed straightaway, as soon as it came to

7 light, two months before any offer of plea?

8 **A.** Yes, I think it should have.

9 **Q.** The disclosure reasonably assisted Mrs Howard's case in

10 interview and supported her veracity?

11 **A.** As I say in my statement, I think I got this particular

12 advice badly wrong.

13 **Q.** Thank you, Mr Bowyer. Indeed, you do say that in your

14 statement, don't you, at paragraph 75 --

15 **A.** Yes.

16 **Q.** -- and I was going to go on to that. But, just before

17 we get to that, she was entitled to know that

18 information when she was considering her plea and when

19 she was being advised by her lawyers as to her plea,

20 wasn't she?

21 **A.** You're absolutely right.

22 **Q.** Yes, and it should have been disclosed on consideration

23 of the appeal, as well, shouldn't it --

24 **A.** It should have been, yes.

25 **Q.** -- because it would have provided a basis for arguing

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1 dated 4 April 2011, served on the defence by letter on

2 11 April 2011 ..."

3 So that's four days after the indication of the

4 offer of an agreed basis of plea when, in fact, this

5 information was available some two months before the

6 agreed basis of plea:

7 "... there is an entry that reads, 'Email from

8 Newrose Personnel regarding incident at New Mill.'"

9 Now, that's the email that refers to the thefts by

10 the employee's son but it's really quite a cryptic

11 reference, isn't it --

12 **A.** Yes.

13 **Q.** -- for anybody looking at an unused schedule in those

14 circumstances?

15 So Mrs Howard had pleaded guilty but she said in

16 interview that she always felt she wasn't completing the

17 monthly balance correctly, she'd inflate the figures to

18 make them balance, she brought an extract from The

19 Grocer, which made her wonder if she was wholly

20 responsible for the shortfall problems, and money was

21 going missing from the tills which could have been

22 another employee or her giving credit, which should not

23 have given, was, in fact, what she said.

24 We know that, in fact, that information about the

25 employee's son was available two months before the

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1 that there was serious material non-disclosure?

2 **A.** Well, over and above the Horizon system, yes.

3 **Q.** Absolutely.

4 **A.** Yes.

5 **Q.** But you took the view that "It is my view that there

6 could not possibly be an appeal against conviction based

7 on the disclosure of the subsequent losses in the Post

8 Office, bearing in mind the admissions in interview and

9 the basis of plea"?

10 **A.** Yes.

11 **Q.** But that was for her to decide, rather than you, really,

12 wasn't it?

13 **A.** As I said, I think I got this advice wrong.

14 **Q.** Thank you, Mr Bowyer.

15 Also, can I just ask you about the information about

16 continuing unexplained small losses.

17 **A.** Yes.

18 **Q.** Because they didn't stop at what the employee's son was

19 doing, did they? They were unexplained small losses,

20 which were not, as it were, only the theft by the

21 employee's son.

22 **A.** I can't recall the details of the case that far but I'm

23 sure you're right, if you say so.

24 **Q.** Just if we can assume, for these purposes, that, in

25 fact, they were unexplained small losses, then they also

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1 would have assisted her case in interview, wouldn't
 2 they, as to --
 3 **A.** Again, I would have thought so.
 4 **Q.** Yes, and, really, that should have been disclosed, if
 5 they were unexplained small losses?
 6 **A.** Yes.
 7 **Q.** Indeed, the Second Sight Report might well have been
 8 disclosed in those circumstances, given that it had, as
 9 it were --
 10 **A.** Yes.
 11 **Q.** -- highlighted the difficulties --
 12 **A.** As I've told you and as I've said in my statement,
 13 I didn't get this one right.
 14 **Q.** Can I ask you this, and it's important that I do ask
 15 you: was this material not disclosed because, in fact,
 16 yes, it really would cause Post Office a great deal of
 17 embarrassment at a time when Post Office was already
 18 suffering a great deal of embarrassment?
 19 **A.** I don't think so, no.
 20 **Q.** When you say you don't think so, was this -- was it
 21 a fact -- you know, either -- I don't know if
 22 a subconscious factor can --
 23 **A.** It may have been subconscious but I like to think I'm
 24 a straight edge as a prosecutor and, you know, as
 25 I said, what overbore my mind in this particular one is

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1 circumstances?
 2 **A.** Oh, I would have thought so.
 3 **MR MOLONEY:** Thank you very much, Mr Bowyer.
 4 **SIR WYN WILLIAMS:** Mr Bowyer, can you remember whether,
 5 notwithstanding someone had pleaded guilty to false
 6 accounting, you nonetheless decided that the Second
 7 Sight Report should be disclosed?
 8 **A.** In this particular case, sir, I didn't. Some cases --
 9 **SIR WYN WILLIAMS:** I appreciate that --
 10 **A.** Some cases --
 11 **SIR WYN WILLIAMS:** Go on, sorry.
 12 **A.** Some cases where they pleaded guilty -- and one was
 13 always aware that, in these cases, there was a certain
 14 amount of coercion on a defendant when they entered
 15 their guilty pleas and so some of these cases, where
 16 they raised Horizon as an issue in their interviews, we
 17 did disclose to Second Sight and the Helen Rose Report.
 18 So it wasn't -- I think in some of my cases I was too
 19 quick to actually not disclose when there were guilty
 20 pleas and full admissions in interview.
 21 But, you know, in the main, as I said, we thought we
 22 were doing right at the time and when our cases were
 23 reviewed, they were found to be sound.
 24 **SIR WYN WILLIAMS:** All right. Fine. Thank you.
 25 Ms Oliver can you give me a prediction about how

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1 that she was sentenced on her own basis that there
 2 was -- she wasn't responsible for the loss and, so,
 3 therefore, she was sentenced on her pleas -- her
 4 admissions in interview and her guilty pleas.
 5 **Q.** Yes, but this material as you rightly concede now,
 6 should have been disclosed at the time --
 7 **A.** I certainly concede, yes.
 8 **Q.** Finally, just to expand slightly on a point Ms Price
 9 asked at the end of her questions for you, you were
 10 asked about the importance of the Post Office account to
 11 Cartwright King.
 12 **A.** Yes.
 13 **Q.** Yes. You said yesterday that you were pleasantly
 14 surprised when Cartwright King management did not push
 15 back on your attempts to rectify the position following
 16 the revelations about Gareth Jenkins --
 17 **A.** Yes.
 18 **Q.** -- because, you said, even for a firm of the size of
 19 Cartwright King, Post Office was an important account?
 20 **A.** It was an important account, yes.
 21 **Q.** One of the central aspects of that importance, would it
 22 have been the amount of income the amount generated for
 23 Cartwright King?
 24 **A.** It generated quite an income, yes.
 25 **Q.** That's an important consideration in these

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1 long you are likely to be, because I'm conscious that
 2 the transcriber has been going for about 1 hour and
 3 20 minutes now.
 4 **MS OLIVER:** Yes, sir, I think probably about five to ten
 5 minutes.
 6 **SIR WYN WILLIAMS:** Can I ask the transcriber if she would
 7 prefer five to ten-minute more and then a proper break,
 8 by which I mean at least 15 minutes, or whether she
 9 wants a 10 minute break now?
 10 **MS PRICE:** I understand the transcriber is content to carry
 11 on and then have that break.
 12 **SIR WYN WILLIAMS:** Thank you.
 13 Well, you're usually very accurate with your
 14 estimates, Ms Oliver, so I'm confident that you will be
 15 on this occasion.
 16 **MS OLIVER:** Thank you sir, I'll try and stick to it.
 17 **Questioned by MS OLIVER**
 18 **MS OLIVER:** Good morning, Mr Bowyer. I ask questions on
 19 behalf of Gareth Jenkins.
 20 **A.** Hello.
 21 **Q.** I want to ask you a little bit about the Simon Clarke
 22 advice in the aftermath. In that advice, as I'm sure
 23 you're well aware, at paragraph 37, Mr Clarke advised
 24 that Mr Jenkins had not complied with his duties to the
 25 court, the prosecution or the defence but, at

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1 paragraph 38, he stated that the reasons as to why
 2 Mr Jenkins failed to comply with this duty are beyond
 3 the scope of this review. Do you remember that?
 4 **A.** I remember that, yes.
 5 **Q.** At paragraph 63 of your witness statement to this
 6 Inquiry -- I don't think we need to go to it -- you
 7 indicate that that discovery and the implications of the
 8 Simon Clarke advice were plainly enormous, is your
 9 words?
 10 **A.** Yes.
 11 **Q.** Do you remember that?
 12 **A.** Yes, I remember that.
 13 **Q.** When you considered that the potential implications were
 14 so enormous, did you and your colleagues not consider it
 15 imperative to ascertain the circumstances in which
 16 Mr Jenkins had come to give evidence in the prosecutions
 17 in which he was involved?
 18 **A.** Well, as you know, I wasn't taking the lead in this but,
 19 as far as the bugs were concerned, my understanding was
 20 that the bugs actually came either from Fujitsu or
 21 Mr Jenkins himself, and then they're not mentioned in
 22 any of the previous reports.
 23 **Q.** Do I take it from that that that enquiry, as to the
 24 circumstances in which he came to give evidence, was not
 25 something that was undertaken by Cartwright King or at

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1 any of the Horizon issues that he had been told about by
 2 Mr Jenkins in the course of the *Seema Misra* prosecution?
 3 **A.** No.
 4 **Q.** Did he ever mention, for example, that he had been told
 5 there was a locking issue in Horizon --
 6 **A.** No.
 7 **Q.** -- which caused transactions to be lost --
 8 **A.** No.
 9 **Q.** That there were some 200,000 system faults --
 10 **A.** No.
 11 **Q.** -- recorded in the Horizon system? That Fujitsu
 12 maintained a Known Error Log?
 13 **A.** No.
 14 **Q.** A similar question, did you ever ask the question of any
 15 of the Cartwright King lawyers who dealt with Mr Jenkins
 16 whether he had been instructed in respect of his expert
 17 duties of disclosure?
 18 **A.** No.
 19 **Q.** Thank you.
 20 Did you ever become aware that, in many of the cases
 21 that were prosecuted by Cartwright King, for example the
 22 case of Grant Allen, Mr Jenkins had not been provided
 23 with the audit data in order to examine what might have
 24 happened at the relevant branch.
 25 **A.** No, I wasn't aware.

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1 least not to your knowledge?
 2 **A.** Well, as I said, I wasn't the lead on this, so not to my
 3 knowledge would be probably the best thing but there are
 4 witnesses to come who will be answer that for you.
 5 **Q.** I'm going to ask you a few questions as to what you did
 6 and if the answer is "No, I didn't undertake that
 7 activity", then please do just say.
 8 **A.** Yes, of course.
 9 **Q.** Did you ask to see any of the written instructions that
 10 POL or Cartwright King had given to Mr Jenkins?
 11 **A.** No, I didn't.
 12 **Q.** Did you seek to understand what Rachael Panter, who you
 13 described yesterday as a "comparative baby", we've heard
 14 described as a paralegal, was doing in her conduct of
 15 these prosecutions for Cartwright King?
 16 **A.** No, she was based in Leicester and I assumed she was
 17 under the supervision of Andrew Bolc, who was there.
 18 **Q.** Did you ask any questions of Mr Singh at Post Office as
 19 to whether Mr Jenkins had ever been instructed as to the
 20 expert duties of disclosure?
 21 **A.** I'm not sure. I think. I was aware that he was in
 22 *Misra* around about this time.
 23 **Q.** Did you speak to him about his dealings with Mr Jenkins?
 24 **A.** No, I didn't.
 25 **Q.** Just on the topic of Mr Singh, did he ever reveal to you

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1 **Q.** Were you ever aware of indications that Mr Jenkins gave
 2 to Cartwright King that the analysis of that audit data
 3 would have allowed him to ascertain what the issue might
 4 have been in a given case?
 5 **A.** No, I wasn't involved in the prosecution of any
 6 substantial case. I tended to come in when people asked
 7 me for a bit of advice generically.
 8 **Q.** No subsequent investigation revealed those matters to
 9 you?
 10 **A.** No, I wasn't made aware by subsequent investigations.
 11 **Q.** Thank you. Finally, did you ever speak to Mr Jenkins
 12 about the state of his knowledge and understanding of
 13 his role?
 14 **A.** I never spoke to Mr Jenkins at all.
 15 **Q.** All right, thank you. Can we look at one document,
 16 please, it's POL00155555. Have you seen this document
 17 before?
 18 **A.** I don't know.
 19 **Q.** All right. It's dated 2 September 2013. We've heard
 20 evidence that it was authored by a lawyer at Post Office
 21 called Rodric Williams --
 22 **A.** Yes.
 23 **Q.** -- but it appears to record conversations with your
 24 colleague Martin Smith of Cartwright King.
 25 **A.** Yes.

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1 **Q.** If we can scroll down to the bottom, please. On the
 2 right-hand side in the box the handwritten box, we see
 3 the second point down, the question "What were we doing
 4 to instruct GJ", which we take to be a reference to
 5 Gareth Jenkins. In the left-hand corner, we see
 6 "M Smith" and then a series of arrows, and the first one
 7 is "Don't think he's ever been advised of his duties".
 8 Do you see that?
 9 **A.** Yes.
 10 **Q.** Were those matters that Martin Smith ever discussed with
 11 you?
 12 **A.** I don't think so, no.
 13 **Q.** Was there any recognition, to your knowledge, within
 14 Cartwright King, at the time of September 2013 when this
 15 note was authored, that there had been a failure to
 16 instruct Mr Jenkins as an expert witness or, at the very
 17 least, that there was a serious question as to whether
 18 he had been instructed as to his expert duties?
 19 **A.** Again, I -- not to my knowledge.
 20 **Q.** Thank you. It may follow that you were not party to any
 21 discussions of those issues within POL either?
 22 **A.** I don't think so, no.
 23 **MS OLIVER:** All right.
 24 Thank you, Mr Bowyer.
 25 **A.** Obligated.

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1 **MR BLAKE:** Absolutely, in fact we've been speaking to the
 2 stenographer and she has confirmed that she'll make
 3 a signal if we are going on for too long but, otherwise,
 4 we propose to carry on until lunchtime.
 5 **SIR WYN WILLIAMS:** Yes. Okay.
 6 **MARTIN JOHN SMITH (sworn)**
 7 **Questioned by MR BLAKE**
 8 **MR BLAKE:** Thank you can you give your full name, please?
 9 **A.** Yes, I'm Martin John Smith.
 10 **Q.** Mr Smith, you should have in a bundle in front of you
 11 two witness statements?
 12 **A.** Yes.
 13 **Q.** The first witness statement was taken in advance of
 14 Phase 4 of this Inquiry, it should be dated 21 November
 15 2023; is that correct?
 16 **A.** Yes.
 17 **Q.** If I could ask you to turn to page 34, the final
 18 substantive page --
 19 **A.** Yes.
 20 **Q.** -- can you confirm that that is your signature?
 21 **A.** I can.
 22 **Q.** Thank you very much. In respect of this witness
 23 statement, can you confirm that it is true to the best
 24 to your knowledge and belief?
 25 **A.** It is true to the best of my knowledge and belief but

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1 **MS PRICE:** Sir, I think those are all the Core Participants
 2 questions and now would be the time for the morning
 3 break, sir.
 4 **SIR WYN WILLIAMS:** Thank you. Well, thank you, Mr Bowyer,
 5 for your witness statement, for coming on two
 6 consecutive days to the Inquiry, and I'm grateful for
 7 your participation.
 8 **THE WITNESS:** I'm obliged.
 9 **SIR WYN WILLIAMS:** So we'll now break off until 11.30, is
 10 that --
 11 **MS PRICE:** Yes, sir.
 12 **SIR WYN WILLIAMS:** -- a generous 15 minutes, yes.
 13 **MS PRICE:** Thank you.
 14 **SIR WYN WILLIAMS:** Fine.
 15 (11.12 am)
 16 (A short break)
 17 (11.30 am)
 18 **MR BLAKE:** Sir, can you see and hear me?
 19 **SIR WYN WILLIAMS:** Yes, I can, thank you.
 20 **MR BLAKE:** We're now going to see and hear Mr Smith.
 21 **SIR WYN WILLIAMS:** Can I suggest, Mr Blake, in terms of
 22 breaks, that we don't try and fit in a short break
 23 between now and 1.00 but rather we finish for lunch
 24 a little bit earlier and time the day thereafter, so to
 25 speak?

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1 there is a slight amendment I do need to make to this
 2 witness statement.
 3 **Q.** Can you assist us with what that is, please?
 4 **A.** In paragraph 104, on page 27, I refer to an email which
 5 I have sent to Steve Bradshaw and Mark Ford.
 6 The second sentence in that paragraph, could we
 7 change "Mr Ford had confirmed" to "Counsel had
 8 confirmed". It was Mr Ford I was writing to, and
 9 I think it was a different counsel who had been in
 10 court, not Mr Ford.
 11 **Q.** Thank you very much. That witness statement has the URN
 12 WITN09680100.
 13 The second witness statement is dated 19 March this
 14 year; do you have that in front of you?
 15 **A.** Yes, I do.
 16 **Q.** Can I ask you to turn to the final substantive page,
 17 that's page 47?
 18 **A.** Yes.
 19 **Q.** Can you confirm that is your signature?
 20 **A.** It is, yes.
 21 **Q.** Can you confirm that that statement is true to the best
 22 of your knowledge and belief?
 23 **A.** It is, yes.
 24 **Q.** Thank you very much, Mr Smith. Both of those witness
 25 statements will be published on the Inquiry's website

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1 shortly. Thank you.
 2 You are a solicitor and have been since 1996; is
 3 that correct?
 4 **A.** That's correct, yes.
 5 **Q.** You acted, initially, as a criminal defence solicitor?
 6 **A.** Yes.
 7 **Q.** I think you were a duty solicitor, is that correct --
 8 **A.** That's right, yes.
 9 **Q.** -- before joining Cartwright King in 2006?
 10 **A.** Yes.
 11 **Q.** You were at Cartwright King until 2016?
 12 **A.** Yes.
 13 **Q.** I think we've already heard that you then subsequently
 14 founded a firm with Mr Clarke and Mr Bowyer?
 15 **A.** That's correct, yes.
 16 **Q.** Then you joined a new firm in 2020; is that correct?
 17 **A.** Yes.
 18 **Q.** Whilst you were at Cartwright King, you were promoted to
 19 the role of senior associate; is that right?
 20 **A.** That's correct.
 21 **Q.** Did you start as a junior associate or an associate or
 22 something else?
 23 **A.** I think I was just a solicitor. I don't think there was
 24 a label attached.
 25 **Q.** Cartwright King acted in cases relating to the Post

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1 yes.
 2 **Q.** What is the difference between the two?
 3 **A.** Well, acting as an agent, you attend court, you present
 4 the case in accordance with your instructions and you
 5 report back. Once we were asked to advise on cases,
 6 that is an entirely different situation. That is
 7 requiring a lot more knowledge in terms of the role of
 8 a prosecutor than just simply attending court to present
 9 a case at a hearing.
 10 **Q.** To what extent do you consider that you had authority to
 11 make decisions in a case, once you had taken on that new
 12 role?
 13 **A.** I think the situation was very nebulous, to start with.
 14 In that, certainly, the two advices that I've seen
 15 recently, I wasn't clear who was ultimately making
 16 decisions, and I assumed that it would be going back to
 17 the head of the Legal Department to make decisions. We
 18 didn't, for example, know what Post Office prosecution
 19 policy was at that point. There were things that we
 20 didn't know, what yardsticks we were to apply in making
 21 the decisions? Yes, we could advise in the general but,
 22 ultimately, those decisions needed to be made by someone
 23 within the organisation.
 24 **Q.** When you first took over, I think you've said in your
 25 statement that the old Royal Mail cases were just

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1 Office prior to its separation from the Royal Mail in
 2 April 2012. Do you recall how much earlier? We've
 3 seen, for example, documents from January 2012. Was it
 4 around then or before then?
 5 **A.** I'm afraid I really can't recall. I think the partner
 6 in charge of the Derby office would attend court
 7 generally on an agency basis for the Royal Mail
 8 Group/Post Office Limited. Much of the work was carried
 9 out, I believe, along those lines, just attending court
 10 to present cases but there came a point when case files
 11 started to be sent in to Cartwright King for advice, and
 12 I really cannot recall, I'm afraid, how much earlier
 13 than April 2012 that happened.
 14 **Q.** Does that go for your own involvement as well, that you
 15 can't be sure how much earlier than April you were
 16 personally involved?
 17 **A.** I would certainly have appeared on occasions in court on
 18 an agency basis to present a case but I don't recall
 19 when I first started preparing advices and doing
 20 something more than appearing on an agent. I know the
 21 two case studies that I was involved in, the advices
 22 were prepared prior to the split.
 23 **Q.** So you separate acting as an agent and having full
 24 conduct of a case?
 25 **A.** Yes, there's a difference between the two, in my view,

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1 provided to you without any handover or explanation?
 2 **A.** I don't recall any handovers. I think they just
 3 arrived. Mr Cash, who was the partner in charge of the
 4 Derby office, would simply allocate them accordingly,
 5 distribute them to whoever he wanted to deal with the
 6 case.
 7 **Q.** You've said you didn't see the various policies in
 8 place. Did that position change over time?
 9 **A.** Ultimately, Cartwright King was asked to advise with
 10 regard to amendments to a draft prosecution policy. So
 11 yes, we ultimately did see a policy and I think Simon
 12 Clarke, one of my colleagues, made suggestions with
 13 regards to the proposed amendment of that policy and
 14 I think that was at the request of Susan Crichton, who
 15 was the then General Counsel.
 16 **Q.** Is that later in, say, 2013 onwards or would that have
 17 been in 2012?
 18 **A.** I believe that would have been after the publication of
 19 the Interim Second Sight Report, so in 2013, I believe.
 20 **Q.** Up until that point, you were working without any
 21 policies?
 22 **A.** Yes. I think there came a point when Mr Singh decided
 23 how he would like the advices set out and we followed
 24 the instructions that he provided, in relation to that.
 25 **Q.** We've seen your name in quite a lot of the documents and

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1 the same names crop up again and again. Were you one of
 2 the main solicitors in the firm dealing with Post Office
 3 cases?
 4 **A.** There were very few solicitors in the firm dealing with
 5 Post Office cases, there was myself, based in Derby;
 6 Andrew Bolc, a solicitor based in Leicester; there may
 7 have been others from time to time involved; and, in
 8 terms of counsel, there was Simon Clarke, Harry Bowyer.
 9 There may have been couple of others from time to time.
 10 **Q.** If we take the 2012/2013 period together, is it likely
 11 that you were the solicitor who had the greatest conduct
 12 of individual cases?
 13 **A.** I don't know, I'm afraid. I think the cases were
 14 generally apportioned between myself and Andrew Bolc in
 15 Leicester.
 16 **Q.** Thank you. We're going to come and see issues relating
 17 to decisions to prosecute, basis of pleas, et cetera,
 18 were you able to make those decisions autonomously
 19 without reverting to the Post Office?
 20 **A.** In terms of decisions to charge, the advice would be
 21 given to Post Office and Post Office would make the
 22 decision. In terms of basis of plea, I believe that it
 23 would have been the common practice to revert to the
 24 Investigating Officer to run it past the Investigating
 25 Officer if possible.

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1 **A.** I'm afraid I just -- there could have been changes
 2 during this period of time because we've gone from
 3 having the Post Office as part of the Royal Mail Group,
 4 and, I believe, files coming from Mr Wilson, to the Post
 5 Office splitting off from the Royal Mail Group and files
 6 being returned. They would have had formal advices on
 7 them and I cannot recall the changes to the processes
 8 and the personnel in terms of who would have been
 9 looking at those documents.
 10 **Q.** We're going to today look at 2012/2013 period, who would
 11 you have considered responsible for making the ultimate
 12 decision as to whether to charge somebody?
 13 **A.** Well, prior to the split, Mr Wilson at the Royal Mail
 14 Group and, post-the split, Jarnail Singh at the Post
 15 Office.
 16 **Q.** Thank you. I want to look at decisions relating to the
 17 public interest. Can we first, please, look at
 18 POL00141478, please. This is an email of 10 December
 19 2012 and it's from Jarnail Singh to you and he says as
 20 follows:

"Martin

"John Scott's the decision maker [I think it is
 meant to read 'concur'] with Counsel Will Martin's
 advice that it is not in the business or public interest
 to proceed with the prosecution of Mr Nemesh Patel.

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1 **Q.** Who do you understand, from the Post Office, to have
 2 been providing instructions in the cases that you were
 3 acting in?
 4 **A.** Prior to the separation, it would have been the Post
 5 Office Legal Department and I suppose, post-separation,
 6 it would have been the Post Office Legal Department but
 7 the case file may possibly have come from
 8 an Investigating Officer directly or it may have been
 9 that information was provided by an Investigating
 10 Officer.
 11 **Q.** If you needed to consider whether to, for example,
 12 accept a plea or to make a charging decision, who did
 13 you consider would have been the relevant person to
 14 approach in that respect?
 15 **A.** Well, a charging decision would have been put in writing
 16 and the file would have been returned back to Post
 17 Office in accordance with the instructions at the time.
 18 I can't remember the precise mechanism for the return of
 19 the file. I don't know who it went to, I'm afraid.
 20 **Q.** When you say the charging decision would have been made,
 21 though, who would it have been made by?
 22 **A.** Within the Post Office? I'm not sure. I can't
 23 remember.
 24 **Q.** Is it that you can't remember or you weren't certain at
 25 the time?

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1 "Martin could you write to the defence and court of
 2 the business decision and have the case listed for
 3 a short hearing where prosecution counsel should be
 4 instructed and that this agreed action must say to the
 5 defence and court is not connected with the Horizon
 6 system integrity and rather simply reflect the
 7 defendants health and associated issues."

8 Now, I think you've said in your witness statement
 9 that you don't recall this particular case; is that
 10 right?

11 **A.** I don't recall this one, no.
 12 **Q.** But we see there reference from Mr Singh to the
 13 "business or public interest to proceed". What did you
 14 understand by "the business interest"?
 15 **A.** Well, this was a private prosecution and so a business
 16 conducting a private prosecution is always going to have
 17 an interest in whether or not the case should proceed
 18 and, certainly, there's also a public interest argument
 19 in terms of whether or not the case should proceed.
 20 **Q.** Did you consider those to be separate interests or one
 21 and the same?
 22 **A.** They can be entirely separate interests.
 23 **Q.** Can we please look at POL00411347. This is a much later
 24 case, the case of Zen Elvins, and this a charging advice
 25 that is written by you. If we could scroll down,

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1 please, we can see at paragraph 6, over the page,
2 a summary of what Mr Elvins said about his case in
3 interview. It said:

4 "Mr Elvins made a full and frank admission,
5 explaining that he had discovered that it was possible
6 to sell a postal order, reverse the transaction and cash
7 the postal order before the cut-off point every day at
8 around 7.00 pm."

9 So it seems as though this is not a Horizon case.

10 **A.** Mm.

11 **Q.** This is a case of someone finding a way to manipulate
12 the Horizon system?

13 **A.** Yes.

14 **Q.** If we can scroll down, please, there is then a section
15 entitled "Discussion". I'm going to read to you
16 paragraphs 8 and 9, it says as follows:

17 "Whilst this case does not appear to contain
18 a 'Horizon issue', I am concerned about the possible
19 effect of commencing proceedings against Mr Elvins
20 thereby putting a case into the public domain in which
21 a suspect said '... to be honest there's so many little
22 loopholes in the system that you kind of just find them
23 ...'"

24 Sorry, if we could scroll up slightly. Thank you.

25 Paragraph 9 says as follows, it says:

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1 interests would be aligned but there were also times
2 when they were clearly different and, in this case, it
3 would be embarrassing for the Post Office to have to
4 make public the fact that there were not Horizon issues,
5 if you like, but failures within the system to prevent
6 issues such as this, and it was also a weakness which
7 could be exploited, and so it would not be in the public
8 interest for issues which could be exploited to be
9 widely disseminated.

10 **Q.** So let's leave that second consideration aside but
11 you've very clearly said, in paragraph 9, that
12 a consideration is essentially preventing publicity of
13 flaws in the Horizon system because that could be
14 embarrassing to the business.

15 **A.** Yes.

16 **Q.** Do you think that is properly a public interest?

17 **A.** No, I think that's a business interest.

18 **Q.** Therefore, we can see here that you have said the public
19 interest test is met but you don't regard a prosecution
20 as being in the public interest. Might it be there that
21 you have, in fact, confused both the public interest
22 with the business interest?

23 **A.** Looking at this now and the way that paragraph 11 is
24 phrased, I do wonder whether I should have said "whilst
25 the evidential test is met".

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1 "My understanding is that Mr Elvins was able to
2 exploit a known weakness in the Horizon system. Whilst
3 this is not an 'Horizon issue' to the extent that the
4 system permitted the sequences of transactions in
5 accordance with its programming, it does not of course
6 make the decision any less embarrassing for Post Office
7 Limited. There is in my opinion a substantial risk that
8 any reports generated by a prosecution in this case may
9 be utilised by those who seek to argue that Horizon is
10 defective or otherwise inadequate. There is, of course,
11 also the risk that the dissemination of information
12 concerning this particular flaw may also encourage
13 others minded to commit acts of dishonesty against Post
14 Office ..."

15 Can we please scroll down to paragraph 11. You say
16 at the end there, in respect of the charging decision:

17 "Whilst the public interest test in this case is
18 clearly met, for the reasons set out above I do not
19 regard a prosecution as being in the public interest."

20 Now, looking at that advice and the charging
21 decision that's made there, do you think that,
22 throughout your time acting for the Post Office, you
23 confused what was in the Post Office's private interests
24 with the public interest more broadly?

25 **A.** I think there were times when it was apparent that those

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1 **Q.** How about the second part, "I don't regard" --

2 **A.** "For the reasons set out above I do not regard
3 a prosecution as being either in the public interest or
4 in the interests of the business", yes.

5 **Q.** So that was a separate consideration that was wrapped up
6 as the public interest in this advice?

7 **A.** I believe I have just wrapped that up very briefly
8 there, perhaps without going into too much detail.

9 **Q.** Do you think that this is an isolated advice or do you
10 think, actually, looking back, that was something that
11 was often confused in Post Office prosecutions?

12 **A.** I'm afraid I can't remember all the advices, I'm afraid.

13 **Q.** I'm not asking about the specific written document but,
14 looking back at your career in prosecuting Post Office
15 cases, do you think that the public interest and the
16 private interests of the business were often confused?

17 **A.** It's possible that they could have been.

18 **Q.** You were involved in them, so do you think they were or
19 they weren't?

20 **A.** I can't recall.

21 **Q.** Is it something that you need to recall, a specific
22 instance, or can you just reflect on your career and say
23 whether or not it's likely that you confused the public
24 interest with the private interest of the company?

25 **A.** I think it's certainly possible that the two could have

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1 been confused because, at times, they would have been
2 aligned and so there was the potential for confusion.
3 **Q.** I want to move on to knowledge of bugs, errors and
4 defects during the 2012 period, and the first document
5 I'm going to look at is POL00057362. This is an advice
6 that you wrote in January 2012 so this is where I dated
7 the involvement from at least January 2012 in advising
8 on specific cases for the Post Office. This is the case
9 of Hutchings. If we look at the final page, we can see
10 your name, 4 January. It's page 3, sorry. Thank you
11 very much.

12 If we could go back to page 1, please, I'm just
13 going to read a few passages from that advice. So the
14 "Prosecution Case":

15 "On 30 March 2011 an audit was carried out at the
16 Rowlands Castle sub post office branch which revealed
17 a deficit in the accounts of £9,743.76. The audit had
18 been arranged after the branch failed to return £30,000
19 as requested ..."

20 The next paragraph says:

21 "There is very strong evidence to support the
22 allegation that Mrs Hutchings had inflated the amount of
23 cash held within the branch, usually by inflating the
24 figure for cash held in £50 notes, on the days on which
25 branch trading period statements were completed."

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1 at POL00141408.

2 It is a case of Jamie Dixon and it's an email from
3 you to Jarnail Singh. It reads as follows:

4 "Please find attached a copy of the Defence Case
5 Statement in the case of Jamie Dixon. As you will see
6 he has said that, 'he does not have confidence in the
7 Horizon accounting system, or that transactions were
8 accurately recorded. He puts the prosecution to prove
9 that the money is missing'."

10 You then continue as follows, you say:

11 "This is therefore another case in which there will
12 be a challenge to Horizon. I propose to talk to the
13 barrister whom we have instructed and explain that
14 a robust stance should be taken at the [Plea and Case
15 Management Hearing] on 3 August 2012 ie the Horizon
16 system works perfectly and that if the Defence wish to
17 challenge the integrity of it, their specific
18 allegations should be particularised so that those
19 particular issues may be further considered."

20 We can actually look at the Defence Statement in
21 that case, that's at FUJ00153918. This is the Defence
22 Statement. If we turn over the page, please, to
23 page 2., it says as follows, it says:

24 "The defendant was disorganised but not dishonest.
25 Although he thought he knew how to operate the computer

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1 So there's an inflation of the amount on the day
2 that the accounts were due to be balanced.

3 **A.** Yes.

4 **Q.** If we scroll down, thank you very much, the bottom
5 paragraph there, it says:

6 "In her prepared statement she admitted to altering
7 the cash declarations and suggested that she had done so
8 only since the migration to Horizon Online, which she
9 thought was around the months of May or June 2010 (the
10 migration date was in fact 5 July 2010). Furthermore
11 she stated that at the time of the migration, all
12 accounts balanced which was clearly untrue. She also
13 gave examples of problems which she alleged she had
14 experienced with the Horizon system, which do not appear
15 to be of any relevance. Whilst Mrs Hutchings has denied
16 stealing any money, she has not put forwards any
17 explanation as to how the deficit has arisen."

18 If we scroll down to the bottom of that page, in
19 terms of charging, it says:

20 "Mrs Hutchings should be charged with a single
21 offence of fraud ..."

22 This was in January 2012, very much a case alleging
23 problems with the Horizon system?

24 **A.** It was, yes.

25 **Q.** I'm going to move to the summer of 2012 now, can we look

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1 accounting system he now realises he did not understand
2 it fully and puts this down to a lack of training and
3 lack of experience in serving customers."

4 Paragraph 4 says:

5 "The defendant understand that in addition cash in
6 excess of £5,000 is also said to be missing. He does
7 not have confidence in the Horizon accounting system, or
8 that transactions were accurately recorded. He puts the
9 prosecution to prove that the money is missing. The
10 defendant denies that he has taken [the] money."

11 I'm going to move on. I'm going to show you a few
12 documents before I'm asking you about the position in
13 2012. Can we please look at POL00046242, this is
14 an email in the case of Ishaq, which we're going to look
15 at in a bit more depth. You're sending Sarah Porter
16 there -- is Sarah Porter counsel in the case?

17 **A.** She was in-house counsel in Cartwright King, I think
18 based at the Nottingham office.

19 **Q.** Thank you. You're sending her the defence statement and
20 it says:

21 "Good morning Sarah,

22 "Please find attached copies of a letter from the
23 [defendant's] solicitors and the Defence Case Statement.
24 The defence are clearly aware of the current Horizon
25 issues and are on a fishing expedition. This in my view

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1 this a red herring. The stamp sales which had been
2 reversed thereby increasing the stock and lowering the
3 amount of money needed to achieve a balance were clearly
4 not there at the time of the audit."

5 One final document that I will take you to, it's
6 FUJ00226331. So we're now in October 2012. If we
7 scroll down to the bottom email, please. We have there
8 an email from Jarnail Singh to Gareth Jenkins, copying
9 you in. It's in relation to a case but I'll read you
10 the second paragraph. That says:

11 "On [advice], Post Office Limited have appointed one
12 of their Investigators, Helen Rose as Disclosure Officer
13 dealing with Horizon challenges. She has prepared
14 a document/spreadsheet detailing all such cases, past
15 and present, approximately 20 in total, although none
16 thus far successfully argued in court. Post Office
17 Limited have been advised to obtain, an expert's report
18 from Fujitsu UK, the Horizon system developers,
19 confirming the system is robust. Post Office Limited
20 maintain the system is robust, but in light of adverse
21 publicity, from legal viewpoint is that [the] defence
22 should be given an opportunity to test the system,
23 should they wish to do so, on consideration of our
24 report."

25 So taking all of those emails together, am I right

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1 Cartwright King were receiving was that the system was
2 robust. And, certainly, in a number of cases that
3 I dealt with, the requests for disclosure were either
4 not relevant in some circumstances, or too wide, or for
5 information which, generally, you would not consider
6 would be likely to meet the tests for disclosure.

7 **Q.** I'd like to test that and we'll look at the case of
8 Ishaq and we'll look at developments over the period of
9 your involvement in that case and we'll look at it
10 broadly chronologically.

11 We're going to start on 29 August 2012. Can we
12 begin with POL00046244, please. We see there a letter
13 from Mr Ishaq's solicitors, Musa Patels Solicitors. We
14 see there under your ref, "MS2", and then it has
15 a number. Is that your personal reference, MS2?

16 **A.** MS2 was my fee earner reference and the 26476 would be
17 the Cartwright King file number.

18 **Q.** Thank you. So you were the solicitor with conduct of
19 this case?

20 **A.** I don't know if I had conduct of it throughout. There
21 was a -- I think it -- this case was one which was
22 transferred to Nottingham, with a view to in-house
23 counsel preparing it with Rachael Panter but, of course,
24 Musa Patels would not necessarily have known of any
25 change of personnel.

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1 to say that, in the beginning of 2012 and throughout
2 that 2012 period, there was a growing picture of
3 challenges relating to Horizon integrity?

4 **A.** That's correct.

5 **Q.** Yes. You had conduct of ongoing cases that raised
6 issues of Horizon integrity whilst that picture was
7 building up?

8 **A.** Yes.

9 **Q.** We've seen in those emails references to a "robust
10 stance" and to a "fishing expedition". Is it fair to
11 say that, irrespective of how you feel now, the picture
12 we see is one of pushing back against disclosure
13 requests relating to the integrity of the Horizon
14 system?

15 **A.** The picture at the time was that Post Office was saying
16 that the system was robust. They were clear that the
17 system was robust and, in those circumstances, we took
18 the view, or certainly I took the view, that only such
19 information as met the tests for disclosure should be
20 disclosed to a defendant.

21 **Q.** Who in the Post Office was assuring you that it was
22 robust?

23 **A.** Jarnail Singh, Head of Criminal Law, was telling us the
24 system was robust. Stephen Bradshaw, an Investigator,
25 was saying that the system was robust. The message that

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1 **Q.** So as at 29 August 2012, when the Defence Statement was
2 received, were you the solicitor with conduct of the
3 case?

4 **A.** I don't know if anyone else had been given conduct of
5 it.

6 **Q.** Would it be surprising that your initials are at the top
7 with the reference?

8 **A.** No, because that would probably have been lifted from
9 earlier communications. I think there was a suggestion
10 within Cartwright King that, once the case had gone to
11 the Crown Court, the file would be transferred to the
12 Nottingham office. It would be then allocated to
13 Rachael Panter and in-house counsel and they would work
14 on it together. And I think this was one of those such
15 cases that was being transferred to the Nottingham
16 office and was actually transferred to the Nottingham
17 office.

18 **Q.** We know that Rachael Panter was a paralegal and has been
19 described as particularly junior?

20 **A.** I believe she was a junior paralegal but her role was to
21 work on cases under the guidance of in-house counsel, to
22 liaise with external counsel and liaise with Mr Jenkins.
23 I believe that this was one of the cases that she was
24 intending to work on with in-house counsel and I think,
25 ultimately, on reflection, this case became a bit of

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1 a mess because I don't think much happened for a while
 2 and then it was worked on by her in Nottingham and
 3 myself in Derby.
 4 **Q.** We're going to see quite a lot of emails throughout 2012
 5 and into 2013 with your name, you're sending them?
 6 **A.** Yes.
 7 **Q.** If not on paper the solicitor with conduct of the case,
 8 did you consider, at least, that you were significantly
 9 involved in that case --
 10 **A.** Yes.
 11 **Q.** -- and had a degree of responsibility in that case?
 12 **A.** Yes.
 13 **Q.** This covering letter says:
 14 "We enclose herewith Defence Statement prepared for
 15 our above named client."
 16 We will have a look at that defence statement. It
 17 can be found at POL00058244. The Defence Statement is
 18 dated 29 August 2012. I'm just going to read a few
 19 passages from it. If we could scroll down, please, over
 20 to the next page. The defendant sets out the General
 21 nature of the defence. Are you able to assist us with
 22 whose handwriting this is?
 23 **A.** I don't, I'm afraid. I don't recognise that.
 24 **Q.** It's not yours?
 25 **A.** It's not my handwriting, no.
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1 Post Office staff and/or contractors who have been the
 2 subject of investigation by the Post Office or any other
 3 investigative body in relation to allegations of
 4 dishonesty related to the use of Post Office Horizon
 5 hardware/software."
 6 Number (iv) they are requesting:
 7 "The full results (whether provisional or final) of
 8 all internal and/or external investigations and/or
 9 enquiries and/or reviews (whether instigated by the Post
 10 Office or any other body) into the correct functioning
 11 of the Post Office Horizon hardware/software system ..."
 12 Number (v) says that they are requesting:
 13 "Any internal memoranda and/or guidance notes and/or
 14 other material dealing with the correct or incorrect
 15 functioning of the Post Office Horizon hardware/software
 16 system ..."
 17 I'm going to take you back to an email we looked at
 18 very early on in your evidence, it's POL00046242, and
 19 that's your email to Sarah Porter of 3 September, where
 20 you say:
 21 "The defence are clearly aware of the current
 22 Horizon issues and are on a fishing expedition."
 23 Can we now, please, turn to POL00046243. Do you
 24 recall sending that email about the fishing expedition?
 25 **A.** I don't recall sending it.
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1 **Q.** It says as follows, in 7(i):
 2 "There was no appropriation of monies. The Post
 3 Office 'Horizon' software/hardware system had in the
 4 past on numerous occasions malfunctioned causing
 5 difficulties in reconciling sales, receipt and stock
 6 figures. The defendant had reported the same to the
 7 Post Office helpline seeking assistance but little or no
 8 successful assistance was afforded to him despite the
 9 said requests."
 10 Point (ii):
 11 "The defendant had of necessity to make certain
 12 adjustments by way of reversals on the Horizon system so
 13 as to ensure the sales, receipt and stock figures
 14 reconciled. This was done on the basis of clear
 15 malfunctioning of the system (and in accordance with the
 16 limited training given to the defendant by the Post
 17 Office in the past with very limited support thereafter)
 18 and not in order to appropriate any sums of money."
 19 So he's putting the reliability of the Horizon
 20 system front and Cash Centres of his defence?
 21 **A.** Yes.
 22 **Q.** Yes? If we scroll over the page, please, paragraph 11,
 23 there is a request for various disclosure. By way of
 24 example we have 11(iii), a request for:
 25 "The outcome of all enquiries in relation to other
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1 **Q.** You don't recall sending it?
 2 **A.** No. I do accept that I sent it but I don't recall it.
 3 **Q.** Thank you very much. We're now turning to an email, if
 4 we could look at the bottom of the page. On 4 September
 5 2012, there is a plea and case management hearing and we
 6 have here an attendance note of Sarah Porter. Can we
 7 scroll down the page, please. She notes there that
 8 Mr Ishaq has ended a not guilty plea. If we scroll
 9 down, please, the defence are instructing a forensic
 10 accountant the, trial has been fixed and she says as
 11 follows:
 12 "I have made it clear that our stance is that
 13 Horizon works and is irrelevant in this case because he
 14 now accepts making the reversals and we say in doing
 15 this he was acting dishonestly to cover his tracks. Any
 16 particular problems with the system must be fully
 17 particularised before any further disclosure made.
 18 Judge has indicated the ball is in the defendant's
 19 court."
 20 Now, where she says, "I've made it clear that our
 21 stance is that Horizon works", who would have been
 22 providing that instruction?
 23 **A.** That would undoubtedly have been following
 24 a conversation with myself.
 25 **Q.** She then details, she says:
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1 "Re: specific requests
 2 "(i) only such material as undermines are case or
 3 assists the defendant in light of the [Defence
 4 Statement] should be served."
 5 Then she refers to (ii), (iii), (iv) and (v), are
 6 these paragraphs referring back to paragraph 11 in the
 7 Defence Statement that we just saw? You'll recall
 8 I took you to some of those paragraphs.
 9 **A.** Yes.
 10 **Q.** She says:
 11 "... I understand that the Post Office are compiling
 12 some sort of database in relation to this, can the
 13 progress of this be checked -- but until [Defence
 14 Statement] further particularised does not require
 15 disclosure."
 16 It says see:
 17 "HB's [is that Harry Bowyer's] advice in the *Wylie*
 18 [case]."
 19 **A.** It would be, yes.
 20 **Q.** What did you understand by the database that was being
 21 compiled?
 22 **A.** I'm sorry, I missed that question.
 23 **Q.** The reference there to a database, is that a reference
 24 to Mr Bowyer's advice to keep a central list?
 25 **A.** Yes, I think Mr Bowyer had advised that a database be
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1 malfunction are particularised. However she has asked
 2 that progress be checked in relation to the compilation
 3 of the database."
 4 So am I right to understand that the response to
 5 Mr Ishaq's request was to try to get him to further
 6 particularise his complaint?
 7 **A.** I thought that was sensible because, if someone could
 8 give an example of the sort of issues that they'd
 9 encountered, that would enable an expert to look into
 10 that.
 11 **Q.** Was it sensible or was it a tactic?
 12 **A.** No, I thought it was sensible. Just in the same way
 13 that if you were staying in a hotel and you think you'd
 14 left your car keys somewhere in the hotel, the hotel
 15 might say, "Well, which room were you staying in, where
 16 were you?" I thought it would be quite useful to have
 17 that information so that we could properly investigate,
 18 so we could look into particular allegations that were
 19 being made.
 20 **Q.** Did the defence statement not make those allegations?
 21 We looked at some paragraphs in the defence statement
 22 where he says:
 23 "... in the past on numerous occasions had caused
 24 malfunctions causing difficulties in recording sales,
 25 receipt and stock figures."
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1 set up of the unsuccessful challenges to the Horizon
 2 system. I think that was following a consultation which
 3 he'd had with Jarnail Singh.
 4 **Q.** So Mr Bowyer's advice was 11 July 2012. By the stage of
 5 this hearing, had you read that advice?
 6 **A.** I have read it but I don't know when I read it.
 7 **Q.** If we scroll up, please -- her reference to a database,
 8 for example, would that have taken you by surprise or
 9 was that something that you would --
 10 **A.** No, I knew a database was being compiled because the
 11 instructions which Cartwright King had received was that
 12 the system was robust and Mr Bowyer, I understood, had
 13 advised that a database should be put together of the
 14 challenges, and I know at some point I was copied into
 15 an email that Jarnail Singh sent to Gareth Jenkins.
 16 I can't just remember the chronology of it, whether
 17 that's before or after this.
 18 **Q.** I'll take you to that document. But, first, can we
 19 please look at the top email, page 1 of this. You are
 20 emailing Steve Bradshaw, the Investigator, copied in to
 21 Jarnail Singh, and you inform them of the results of the
 22 Plea and Case Management Hearing, and you say as
 23 follows:
 24 "Sarah took a robust stance in relation to Horizon.
 25 It will remain to be seen whether allegations of
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1 He also referred to having reported the same to the
 2 Post Office. Do you not think that the Post Office was
 3 quite well placed to make those kinds of enquiries?
 4 **A.** Well, certainly Mr Bradshaw was able to make enquiries
 5 internally within the Post Office but, certainly, I was
 6 of the view that, if you could ask someone "What are you
 7 saying has happened specifically?", that would assist.
 8 **Q.** Is it your evidence that that was not a specific tactic
 9 that was adopted in this litigation?
 10 **A.** It wasn't a specific tactic, no.
 11 **Q.** At no point throughout the Ishaq case was that a tactic?
 12 **A.** No, I don't believe so, no. I think I wrote at a much
 13 later stage, I believe, to Mr Ishaq's solicitors asking
 14 them whether they were going to particularise or asking
 15 them for particulars because I didn't want to get almost
 16 to the point of trial and then find that we had, then,
 17 particulars which it would then be difficult to
 18 investigate at the 11th hour.
 19 **Q.** Well, we will get to that shortly. Let's just have
 20 a quick look at Mr Bowyer's advice. That's at
 21 POL0026567. Thank you very much.
 22 If we could scroll down, please, I've said that this
 23 11 July. At paragraph 2 he refers there to the
 24 instruction by the Post Office of independent forensic
 25 accountants Second Sight Limited, to conduct
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1 an independent expert of ten cases based on the Horizon
2 system. Are we to understand that you were aware in
3 July 2012 that Second Sight were carrying out
4 an independent review?

5 **A.** Yes, we'd been informed that the Post Office were
6 instructing Second Sight to carry out a review.

7 **Q.** If we scroll down, please, over the page to --

8 **A.** Sorry, may I just add to that. I'm not sure whether at
9 that stage we necessarily appreciated that it was Post
10 Office that had instructed Second Sight. I think there
11 was a suggestion at some point that it might have been
12 a -- some sort of Parliamentary function that had
13 instructed Second Sight but, in any event, we knew that
14 Second Sight had been instructed.

15 **Q.** And that presumably the Post Office would have to liaise
16 with Second Sight --

17 **A.** Yes.

18 **Q.** -- to assist them in their investigation?

19 **A.** Yes.

20 **Q.** The bottom of page 2, is where we see the advice from
21 Mr Bowyer:

22 "We should identify the contested cases, civil and
23 criminal, in which the Horizon system has been
24 challenged. We should identify the areas of challenge
25 and how we neutralised them", et cetera.

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1 whether it was before, whether you were providing
2 specific instructions?

3 **A.** I'm afraid I can't recall that. I can see that I was
4 engaged on that call for 12 minutes because of the "0.2"
5 that's in the right-hand column, 0.2 of an hour.
6 I don't know whether she telephoned me from court with
7 a view to clarifying her instructions or whether I spoke
8 to her by calling her. I don't recall. But she would,
9 no doubt, have been given the brief by the Nottingham
10 team because it was going to be dealt with in-house by
11 the Nottingham team and she may very well have phoned me
12 to discuss it.

13 **Q.** I think you've already said that, looking at the
14 attendance note and the information, the position that
15 she took in relation to Horizon followed a conversation
16 with yourself?

17 **A.** Yes.

18 **Q.** The email that I think you were talking about that
19 attached various things is at FUJ00226331, and it's the
20 bottom email there. I think that's an email that I took
21 you to earlier from Mr Singh, referring to Helen Rose
22 acting as a Disclosure Officer and preparing a document,
23 and she attached there the spreadsheet of 20 cases. Is
24 that the email that you were referring to?

25 **A.** Yes, and I didn't, at that time, look at the spreadsheet

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1 So this is database that is referred to?

2 **A.** Yes. Yes, it will be.

3 **Q.** Thank you. Moving to September 2012, could we please
4 look at POL00060738. This is page 3. This is
5 a document we're going to come to a few times. It seems
6 to be minuting of work that is being done. Is this
7 a document you recognise?

8 **A.** It is. I believe it's what we call within Cartwright
9 King as a billing guide. It would generally list the
10 chargeable work and some of the narrative attached to
11 a time entry but not all of the narrative attached to
12 a time entry.

13 **Q.** If we look at page 3, you're returning to 4 September,
14 which was the date of the Plea and Case Management
15 Hearing in Mr Ishaq's case. Can you see there, about
16 halfway down, just over halfway down this page, it says:

17 "Discussing with SP by phone and stance to be taken
18 re Horizon etc."

19 It has your name there.

20 **A.** Yes.

21 **Q.** Are we to understand that you spoke to counsel on the
22 day of the Plea and Case Management Hearing regarding
23 the stance to be taken in relation to Horizon?

24 **A.** Yes.

25 **Q.** Do you recall if that was while she was at court,

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1 and I don't even think I realised there was two
2 documents attached.

3 **Q.** Let's look at the two documents that were attached. The
4 first one is FUJ00156648. This is a note prepared by
5 Helen Rose. It's not what we know as the Helen Rose
6 Report, it's a note entitled "Horizon Integrity --
7 summary report"; do you recall receiving this document?
8 **A.** I didn't see that at the time. It may very well be that
9 I received it because it would have been attached to
10 an email but I rather took the view at the time that the
11 spreadsheet -- well, I was under the impression that the
12 spreadsheet had been considered by a number of my
13 colleagues, Harry Bowyer, Andy Cash and Andrew Bolc, and
14 I didn't look at the enclosures because I simply looked
15 at the email which said that Post Office's stance is
16 that the system is robust.

17 **Q.** Let's look at this report. I'll read to you a few
18 passages. "Overview" says:

19 "Over the years some post offices under
20 investigation for losses have claimed that the Horizon
21 system was at fault. As the Post Office is dependent on
22 the reliability of our system to be able to prosecute
23 offenders; we have been able to defend our system in the
24 courts."

25 Then it goes on to summarise various challenges.

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1 For example, in relation to the Yetminster branch, it
2 says:

3 "During the interview, Ms Merritt produced a large
4 document regarding an ongoing enquiry by Shoosmiths
5 solicitors in respect of the Justice for Postmasters
6 Alliance, stating that she believed that the Post Office
7 Horizon equipment was the actual cause of this loss.

8 "At the start of interview, Ms Merritt blamed the
9 Horizon system and stated she had problems with
10 transferring cash", et cetera.

11 If we scroll down, there's another branch, Barkham.
12 It's over the page. "Summary":

13 "Mike Wilcox stated: Along with Graham Brander I met
14 Mrs Stubbs on 17 January and she was convinced that
15 Horizon was at fault. She has retained daily
16 transaction logs for December to January in which time
17 she lost £9,000 and is not prepared to release until she
18 can compare it to Fujitsu data."

19 If we scroll down, we go on to the Rinkfield branch.
20 Under the "Summary" there, it says as follows, it says:

21 "During the interview, Mrs McQue stated that she did
22 not feel 100% comfortable with the Horizon system, but
23 did not appear to directly blame the system for the
24 losses."

25 If we scroll down, under "Outcome", it says:

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1 It's the "Conclusion" that I'd like to look at. It
2 says:

3 "Although there have been attempts to discredit the
4 Horizon system via the courts, to date the Post Office
5 have been able to defend the integrity of the Horizon
6 system at all levels.

7 "When questioning the integrity of the Horizon
8 system the defence solicitors are making similar
9 disclosure requests, indicating that disclosure requests
10 in future challenges will be similar to those made in
11 past Horizon integrity challenges.

12 "Depending on where the loss was identified this can
13 sway the disclosure requests slightly into requiring
14 further details and operating procedures around specific
15 transactions including background processes, ie the
16 processing of cheques once they have left the office and
17 electronic funds transfer records."

18 Just pausing there on that paragraph there, is there
19 forming an attempt to try to put pressure on defendants
20 to give greater specificity as to the allegations that
21 they're making about the Horizon system?

22 A. Not that I was aware of. Like I've said, I didn't read
23 this document at the time. I don't even think that
24 I realised there was more than a spreadsheet attached to
25 Helen Rose's email. I saw this document for the first

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1 "An indication that a plea to Count 2 fraud might be
2 acceptable so long as the defendant stipulated in her
3 Basis of Plea that there was nothing wrong with Horizon
4 and that she was responsible for loss and recognised the
5 confiscation would be sought should the loss not be
6 repaid.

7 So a number of different cases where Horizon has
8 been raised, not even at trial, but also even at
9 interview?

10 A. Yes.

11 Q. If we scroll down, please, there's reference to the
12 Newsome branch. If we can go over the page:

13 "The defence challenged the integrity of the Horizon
14 system and employed a forensic accountant."

15 We then get on to West Byfleet. If we scroll down
16 the end of that summary, it says:

17 "An expert witness was put forward by the defence to
18 challenge the integrity of the Horizon system."

19 This is the *Seema Misra* case. We can see, over the
20 page, please, this is a reference to an email that we've
21 seen a lot of in this Inquiry. It's the bullet point
22 there it says:

23 "It is to be hoped that the case will set a marker
24 to dissuade other defendants from jumping on the Horizon
25 bashing bandwagon."

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1 time when it was disclosed to me in these proceedings.

2 Q. Let's look at the second attachment, then. That's
3 FUJ00153807 and this is the list itself, the database.
4 We see there a number of cases that we're well familiar
5 with: the *Hamilton* case, if we look in H; if we scroll
6 down, *Seema Misra*; if we keep on scrolling down towards
7 the bottom, if we go to the very bottom, we see there
8 Sefton and Nield, for example. That was a case that is
9 described there as "ongoing".

10 Were you aware that there were not only this list of
11 historic cases but also, at that stage, ongoing cases
12 that related to the Horizon system?

13 A. Well, I knew that this spreadsheet was designed to be
14 a work in progress. So, looking back in time, but also
15 then being kept up to date from that point in time. But
16 I didn't open it at the time because I didn't see the
17 need to. I knew that it had been sent to a number of
18 colleagues who had seen it. No issues had been raised
19 internally about it and Mr Singh's covering email to
20 Gareth Jenkins was to the effect that it was Post
21 Office's case that the system was robust.

22 I was copied in to that and did not think it
23 necessary to go through all of that information. Given
24 that it had emanated from Mr Singh, Head of Criminal Law
25 at Post Office.

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1 Q. Just to recap as to where we are, within a month of the
2 Plea and Case Management Hearing in Ishaq's case, you'd
3 been told, we see there, in Mr Bowyer's advice, about
4 the Second Sight investigation --

5 A. Yes.

6 Q. -- that was taking place; you had received, although,
7 you say, not opened, the database; you had also received
8 that Helen Rose note about various cases. Weren't those
9 precisely the kinds of things that Mr Ishaq's team were
10 after?

11 A. Well, I was -- the short answer is yes. When I opened
12 the spreadsheet, when I was preparing for this public
13 Inquiry, I was actually quite horrified with what I read
14 on it because, whereas I had understood that it was
15 a list of unsuccessful challenges, I think the title,
16 actually, would have been more appropriate to be list of
17 unsuccessful challenges in cases which the Post Office
18 dare not prosecute. I was quite horrified to see, for
19 example, on -- and it's not on the screen in front of me
20 now but on the spreadsheet -- there is a case where
21 a subpostmaster or mistress was able to demonstrate
22 losses and, therefore, no further action was taken.

23 So it wasn't exactly as I had understood it to be,
24 literally a list of unsuccessful challenges. That is
25 what I understood was being prepared but it actually

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1 unsuccessful challenges on unsubstantiated allegations.

2 Q. But the request there is in relation to those who have
3 been subject to investigation by the Post Office or any
4 other investigative body in relation to allegations of
5 dishonesty related to the use of Post Office Horizon
6 hardware/software. So it wasn't simply asking for that
7 very specific matter that you're identifying; it was
8 a request for broader information, wasn't it?

9 A. Yes, it was -- I took the view that it was a very wide
10 request and, indeed, I took the view that it was perhaps
11 too wide in its approach.

12 Q. But having received that list of cases from Helen Rose
13 that had been produced by somebody who was called the
14 Disclosure Officer, did you not think to yourself, "Ooh,
15 maybe I should open this attachment because it contains
16 a list and that's the kind of thing that Mr Ishaq has
17 been after"?

18 A. No, I didn't because I thought it -- they were unfounded
19 allegations.

20 Q. So you didn't look at them because you thought they were
21 unfounded?

22 A. Well, I was under the impression that these were
23 unsubstantiated challenges and I did not regard
24 unsubstantiated challenges, unsuccessful challenges as
25 being disclosable, a bit like -- I mean -- I think my

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1 went on to contain more than that. I didn't appreciate
2 there was a separate document by Helen Rose, because
3 when the Helen Rose Report -- which we use that phrase
4 in a different way, which was ultimately the subject of
5 disclosure, I certainly wasn't sat there with Brian
6 Altman, QC at the time, KC now, I certainly wasn't sat
7 there with Brian Altman thinking, "Oh yes, well, there's
8 another document by Helen Rose". I simply did not
9 realise that that existed.

10 Q. If we look back at the defence statement in Mr Ishaq's
11 case can we look at POL00058244. It's page 3. It's
12 that list and it refers there at 11(iii):

13 "The outcome of all enquiries in relation to other
14 Post Office staff and/or contractors."

15 I mean, that's precisely that list, isn't it?

16 A. Well --

17 Q. It's perhaps broader than that list but --

18 A. I think it's broader than that list.

19 Q. But it would include that list --

20 A. Um --

21 Q. -- or the equivalent information?

22 A. Well, it would -- the request is broader than that list,
23 but also I took the view at the time that unfounded
24 allegations and unsubstantiated allegations were not
25 disclosable and I understood that list to be

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1 thought process was this: if you were to ask the Crown
2 Prosecution Service for information about the
3 disciplinary record of a police officer, you don't, in
4 my experience, get to know of all and every single
5 allegation made against that police officer. You'd only
6 get to know of any findings that -- of misconduct.

7 Q. You would, however, expect the solicitor with conduct of
8 the case to actually look at the underlying material to
9 determine for themselves whether they met that test,
10 wouldn't you?

11 A. Well, I'm afraid I didn't open those documents.

12 Q. Yes, and is that a failing on your part?

13 A. Well, with hindsight, I wished I had.

14 Q. Do you think that it would have been reasonable at the
15 time, having received a list, irrespective of how
16 detailed the list is, irrespective of whether they were
17 successful or unsuccessful, to at least have opened them
18 to see whether they fit within 11(iii)?

19 A. Well, I didn't think to do that at the time because, as
20 I have already said, a number of my colleagues had
21 already seen those documents, to my knowledge, nothing
22 had been flagged up, and we were awaiting an expert
23 report and so I did not think it necessary to actually
24 look at those documents.

25 Q. So your colleagues from other cases, who weren't charged

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1 with Mr Ishaq's case, hadn't flagged something that
 2 might relate to Mr Ishaq's case?
 3 **A.** Well, no one had said, "Oh, my goodness, look at this
 4 spreadsheet, look at what it contains".
 5 **Q.** Is "Oh, my goodness", the test for disclosure?
 6 **A.** No, it's not. But it would be the -- it was the view
 7 I took when I opened them when I was preparing for this.
 8 **Q.** Number (iv):
 9 "The full results (whether provisional or final) of
 10 all internal and/or external investigations and/or
 11 enquiries and/or reviews ..."
 12 We've seen in Mr Bowyer's advice, reference to the
 13 Second Sight investigation. Do you think that that
 14 might have fallen within 11(iv)?
 15 **A.** Well, there were not -- I don't believe there were full
 16 results at that point.
 17 **Q.** Whether provisional or final?
 18 **A.** Yeah, I don't know if there were provisional or final --
 19 well --
 20 **Q.** Did you makes enquiries about that?
 21 **A.** Well, there weren't because Second Sight didn't report
 22 until, I believe, July 2013, and this was way before
 23 then. So I think it says, "See Insight 2" in someone's
 24 handwriting on that, I think that's probably a reference
 25 to Second Sight, I don't know. But certainly Second
 101

1 **Q.** If we scroll down, please, it says:
 2 "... I was expecting the information requested at
 3 paragraph 11(vi) of our defence statement ..."
 4 I think that's the Horizon data.
 5 "... to have been served by 5 October as per the
 6 judge's order at the [Plea and Case Management
 7 Hearing]."
 8 It then says:
 9 "I would be was obliged if you could revert back to
 10 us to advise not only on the progress of the
 11 aforementioned matter but also all other matters
 12 referred to at paragraph 11(i) to (viii) of our defence
 13 case statement and, of course, all relevant material
 14 under paragraph 10."
 15 So there is a chaser there in relation to those
 16 paragraphs that we have just been looking at, and we are
 17 in October 2012.
 18 I'm going to take you back to your billing notes,
 19 and that's POL00060738, please. Thank you very much.
 20 It's page 4 now. We're in October, we're going to look
 21 at between 9 and 11 October. We may need your
 22 assistance in deciphering whose name comes alongside
 23 what and it may be difficult to tell because of the way
 24 this has been presented but let's try. If we look at
 25 the entry that says 9 October 2012:
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1 Sight had been instructed at that point but I don't
 2 believe there were any results from that, and I did go
 3 through this list with Steve Bradshaw.
 4 **Q.** If we scroll down, please:
 5 "Any internal memoranda and/or guidance notes and/or
 6 other material dealing with the correct or incorrect
 7 functioning of the Post Office Horizon hardware/software
 8 system ..."
 9 I mean, might, in respect of these requests,
 10 confirmation that there was this independent firm
 11 looking into Horizon have been something that was worth
 12 disclosing?
 13 **A.** I believe that was disclosed in a witness statement by
 14 Stephen Bradshaw.
 15 **Q.** At what point was that?
 16 **A.** That was, I believe, the following year in 2013.
 17 **Q.** Yes. We're here in 2012 dealing with disclosure
 18 requests. Can we please look at POL00058377., 8 October
 19 2012. It's a chaser from Musa Patels Solicitors. It's
 20 addressed to you. Do you think that might be
 21 an indication that you were solicitor with conduct of
 22 that case?
 23 **A.** Well, they would believe that I was still dealing with
 24 it, whether it was in Derby or whether the file at that
 25 point had been transferred to Nottingham.
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1 "Email for case 24676. Review of file, upon receipt
 2 of Musa Patels letter. We still await the Horizon data
 3 disk from Steve Bradshaw."
 4 Then it says:
 5 "Although SP that taken a robust view of the
 6 [Defence Case Statement], disclosure is an ongoing
 7 process and the development in the Patel case may well
 8 have a bearing on d ..."
 9 That might be "may well have a bearing on the
 10 defendant"? Do you remember the Patel case? That may
 11 well be a case called Nemesh Patel, that was occurring
 12 at the time?
 13 **A.** Can I, first of all, say that I believe the way that
 14 billing works here is that it will take part of the
 15 attendance note but not the entirety of the attendance
 16 note, so it gives a flavour of the narrative in that
 17 second column. But then it will then pick up the same
 18 for Rachael Panter, for example, below. So "bearing on
 19 d", I would then regard the "discussing progress of case
 20 with MJS", as the start of Rachael Panter's attendance
 21 and I'm afraid it's just how it would space it out in
 22 different columns.
 23 **Q.** Absolutely. So we see the first entry is your entry --
 24 **A.** Yeah.
 25 **Q.** -- which --
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1 A. And I think --

2 Q. -- refers to a case of Patel?

3 A. Yes, and I think that it will have simply just cut off

4 for the number of available characters when it says

5 "case may have a bearing on d". The rest of the

6 attendance note will not have -- if there was any --

7 would not have been produced -- reproduced into the

8 billing guide here.

9 "Review of the file", I'm afraid that doesn't tell

10 me whether the file was in Derby or Nottingham because

11 we had electronic files as well as paper files and that

12 became more of an issue when files were in different

13 locations because one wouldn't necessarily match the

14 other.

15 Q. Do you recall the case of Nemesh Patel?

16 A. I don't know whether it could be Jishaan Patel.

17 Q. Was there another case with the surname Patel that

18 related to challenge to the Horizon integrity in that

19 period?

20 A. I believe there was a case of Jishaan Patel and

21 I believe that I sought a report from Gareth Jenkins in

22 relation to that and he mentioned a single previous bug

23 in that report with an earlier addition of the Horizon

24 system. And so I don't know -- I don't know, I'm

25 afraid, with regard to the timeline, whether I had made

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1 where there were very similar issues being raised?

2 A. Yes. Yes. It's clear that what I am saying there is

3 that we have to keep an eye on disclosure, although

4 Sarah Porter had taken the robust stance, it's

5 an ongoing process, we have to be aware of things that

6 might appear in other cases, and I was thinking that

7 something might potentially come out of another case

8 which we might have to disclose to Mr Ishaq.

9 Q. Thank you. Can we --

10 A. That's why I think it was the Jishaan Patel case because

11 I think I was waiting to see what Mr Jenkins put in that

12 report because if he put in that report information --

13 well, in relation to the current edition of the Horizon

14 system, then, obviously, that would have made me sit up

15 and take notice.

16 Q. So only if Gareth Jenkins was addressing Horizon Online

17 would it have made a difference to your disclosure

18 obligations in the Ishaq case; is that right?

19 A. Well, I mean, I think -- I mean, I think we're going

20 somewhat forward in the chronology now but I think in

21 the Jishaan Patel case I received a report from Gareth

22 Jenkins, which made reference to a single bug in the

23 pre -- in a former of a version of the Horizon system --

24 shall we just call it Horizon rather than Horizon

25 Online? It was the previous version.

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1 that request at that point. I know I did make a request

2 in the case of Jishaan Patel for a report.

3 Q. I'm not sure that that was actually the question that

4 I was asking. The question I was asking was about the

5 Patel case. Were you aware of a case with the surname

6 Patel challenging the integrity of Horizon in October

7 2012?

8 A. Then yes, I was. But the one I'm thinking of is Jishaan

9 Patel.

10 Q. Thank you. Then we get to Rachael Panter's entry, which

11 says as follows:

12 "Discussing progress of case with MJS ..."

13 Is that you?

14 A. That's me.

15 Q. "... deciding whether I should pick the case up from him

16 as it is very similar to Patel's case ..."

17 Then she refers to the disk. She says:

18 "... in terms of disk then we concluded that

19 I should pick it up. Review of file upon receipt of

20 Musa Patels' letter. We still await the Horizon data

21 disk from Steve Bradshaw. Although SP", and then it's

22 a repetition of, I think, the attendance note we see

23 above.

24 So it is clear that in October 2012, you were aware

25 of another case of running alongside the Ishaq case

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1 Q. We know it as Legacy Horizon?

2 A. Okay, we can use that phrase. So I think I was made

3 aware of a single bug in the Legacy case, I believe that

4 was the Falkirk/Callendar Square bug, which was

5 subsequently discussed, and I did not feel that might

6 reasonably assist the defendant or undermine the

7 prosecution's case on the basis that was several years

8 previously and a different version of the system.

9 Q. Did it not make you question the robust line that had

10 been taken since you started taking on those Post Office

11 cases?

12 A. No, it was a single issue affecting, I believe, one

13 branch several years previously.

14 Q. Can we please look at POL00059296. We're now in

15 November 2012, 1 November, a letter from Musa Patels

16 Solicitors. If we scroll down, please, the trial is due

17 to take place in February and it says as follows:

18 "I write further to the aforementioned matter and

19 confirm that we have received a disk containing core

20 data for the duration of the indictment period. As you

21 are no doubt aware this should have been served by

22 5 October and if it is to be the subject of a forensic

23 report then that had to be served by the Defence on

24 30 November 2012.

25 "We respectfully write to inform you that it will be

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1 impossible for the Defence to comply with the judge's
2 order and at this present moment consideration is being
3 given to listing the matter for an intervention hearing,
4 hopefully we will be able to address the lack of
5 disclosure in respect of matters contained within
6 paragraph 11 of our Defence Case Statement and were the
7 subject to our letter of 8 October 2012."

8 So that's, again, a reference back to those requests
9 that were made in October, in paragraph 11 of the
10 defence statement. Sorry, that were chased in October
11 that were contained within the defence statement.

12 **A.** Yes.

13 **Q.** I'm going to go back, now, to the billing record, it's
14 POL00060738, and can we look at page 6. Thank you. If
15 we could scroll down, please, we have there on
16 20 November, an entry that -- sorry, if I could scroll
17 up slightly. Thank you. There's an entry, 20 November,
18 and it says as follows:

19 "Consider proposed letter drafted by RP [that,
20 I think, is Rachael Panter]. Suggest amend para one by
21 deleting suggestion may be more evidence and repeating
22 fact J [I think that means judge] said ball firmly in
23 their court when given opportunity to provide revised
24 [defence case statement] particularising [Horizon]
25 issues."

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1 **Q.** We can see, if I read to you on the right-hand side it
2 says:

3 "Thank you for your letter dated 1 November 2012.
4 We have been liaising with the Investigator in this case
5 and hope to serve any further evidence within two weeks'
6 time. However, we look forward to receiving having
7 a revised defence case statement which particularises
8 the issue, if any, you may have with the Horizon system
9 as indicated by Judge Rose at the Plea and Case
10 Management Hearing."

11 Then the version after receiving your feedback, if
12 we look at that first paragraph:

13 "We look forward to receiving a revised Defence Case
14 Statement which particularises the issues, if any, you
15 may have with the Horizon system. We will then gladly
16 review our disclosure obligations accordingly."

17 So reference to further evidence potentially coming
18 has been deleted and what has been added is effectively
19 a confirmation that disclosure obligations will only be
20 looked at again if there is a revised Defence Statement;
21 is that fair?

22 **A.** Well, the first point I would make here is that I would
23 generally advise people not to set themselves
24 self-imposed deadlines. So I would have advised her to
25 remove the reference to "hoping to serve evidence within

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1 Is that your note?

2 **A.** It will have been lifted from my attendance note.

3 **Q.** It appears that you are suggesting amending a letter
4 that's been drafted by Rachael Panter. Before we break
5 for lunch, I just want to bring onto screen her draft
6 and your draft. If we could first look at POL00059407.
7 This is the covering email from Rachael Panter and she
8 says:

9 "Please could you just look at the attached before
10 I send it. I imagine the defence will not be too
11 pleased but that is our position, I had to concede that
12 the disks were served late. They may respond to say
13 that they are unable to particularise any issues with
14 the system until they receive the report. They
15 shouldn't as that was the wish of the judge at the last
16 hearing, but without the expert report yet to send to
17 them, that is the best I can do for now."

18 I'm going to take you now to the letters. Could we
19 bring up on to screen POL00059416 and, if it's possible,
20 to also bring alongside it POL00059409. Thank you. So
21 this one currently on screen is Rachael Panter's first
22 draft and, on the left-hand side, is the version that
23 appears that you fed back on, according to that billing
24 not.

25 **A.** Yes.

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1 two weeks' time" because there had already been delays
2 in receiving information from Mr Bradshaw, so that's the
3 reason why I advised that be taken out.

4 I was still hopeful that they would serve a revised
5 Defence Statement which might particularise issues and,
6 yes, we would then obviously review our disclosure
7 obligations.

8 **Q.** So is your evidence, once again, that this wasn't
9 a tactic to put the onus on Mr Ishaq to specify
10 something?

11 **A.** I don't believe it was a deliberate tactic, no. I can
12 see how it looks but I don't believe it was a deliberate
13 tactic. We were asking Mr Ishaq's solicitors to
14 particularise the issues, which is the approach that had
15 been discussed in court at the PCMH hearing -- the Plea
16 and Case Management Hearing -- and it's apparent that
17 His Honour Judge Rose at the Plea and Case Management
18 Hearing on 4 September had made the comment to the
19 defence advocate that "The ball is in your court". So
20 I was encouraging them, in my mind, to provide
21 information that could be looked into.

22 **Q.** I mean, any reference of further evidence coming their
23 way or further information coming their way has been
24 removed, hasn't it?

25 **A.** Well, I didn't think it was sensible to say we hoped to

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1 serve further evidence within two weeks because, if
 2 I received that letter as a defence solicitor, I'd be
 3 diarising it for two weeks and then jumping up and down.
 4 I was very much aware that there had already been delays
 5 in this case, and I don't know why there had been
 6 delays, I can't remember why there had been delays in
 7 this case, but clearly information had not been
 8 forthcoming very quickly from Mr Bradshaw and I was
 9 trying to avoid any issues arising out of setting
 10 a self-imposed deadline.

11 **Q.** That's quite a generous reading of that left-hand
 12 letter, isn't it? There's no reference whatsoever in
 13 that left-hand letter to any further evidence coming at
 14 all at any time?

15 **A.** Well, without knowing what information Mr Bradshaw is
 16 going to provide, we don't know whether or not it will
 17 meet the test for disclosure. So to say we will be
 18 serving further evidence on you, when we don't have it,
 19 we don't know what it is, I think would be, quite
 20 frankly, a little daft.

21 **MR BLAKE:** Sir, might that be an appropriate moment to break
 22 for lunch?

23 **SIR WYN WILLIAMS:** Yes, by all means.

24 **MR BLAKE:** Thank you very much.

25 **SIR WYN WILLIAMS:** So 1.55?

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1 **A.** I'm not aware of any order having been made. The
 2 documentation we looked at this morning suggested that
 3 the judge had said that the ball was in the defendant's
 4 court, which is not quite the same as an order being
 5 made, is it?

6 **Q.** It's not the same as an order being made, you say?

7 **A.** No.

8 **Q.** No. They then say:

9 "Our Defence Case Statement not only details our
 10 defence and the issues we take with the Horizon software
 11 but we feel it explains why we make the disclosure
 12 requests.

13 "In the interests of progressing the matter we ask
 14 that you review your disclosure obligations if you have
 15 not already done so and revert back to us with your
 16 final position and if you still feel that you are not
 17 obliged or willing to provide the information then we
 18 may give thought to a Section 8 application."

19 So they are chasing disclosure once again in this
 20 letter, aren't they?

21 **A.** It would appear so, yes.

22 **Q.** POL00107855, we're now in January 2013, so another month
 23 has passed:

24 "I write further to my letter of 4 December, in the
 25 absence of a response and with the trial date imminent

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1 **MR BLAKE:** Thank you very much, sir.

2 (12.56 pm)

3 (The Short Adjournment)

4 (1.55 pm)

5 **MR BLAKE:** Good afternoon, sir, can you see and hear me?

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

7 **MR BLAKE:** Thank you very much.

8 Mr Smith, before lunch we were looking at those two
 9 letters and the final one that, essentially, put the
 10 burden onto the defendant to provide a revised Defence
 11 Statement. Can we now look at POL00059425, and this is
 12 the response from the defendant's solicitors on
 13 4 December 2012. They say:

14 "We write further to your letter of 20 November and
 15 thank you for [the enclosures].

16 "With regard to the other matters of disclosure
 17 contained within our Defence Case Statement we make
 18 reference to an order made by His Honour Judge Rose at
 19 the Plea and Case Management Hearing. We are not aware
 20 of any such order that a revised Defence Case Statement
 21 should be served with a view to disclosure being
 22 reviewed on your part."

23 Just pausing there, it is right that there was no
 24 specific order for a revised Defence Statement, isn't
 25 it?

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1 I think it prudent to deal with the following matters
 2 and would be obliged for a response as soon as
 3 practicably possible."

4 If we scroll down and over the page, please, they
 5 say:

6 "Finally at this stage I raise once again the
 7 disclosure requests made at paragraph 11 of the Defence
 8 Case Statement, as you will recall I asked for your
 9 final position in my letter of 4 December 2012, I made
 10 it clear that if such material is not served then
 11 a Section 8 application would be sought. However
 12 perhaps before reverting back to me it may be prudent
 13 for counsel to liaise with each other as soon as
 14 practically possible for the sake of convenience [he
 15 gives counsel's details]."

16 Then it says:

17 "Suffice to say in light of our defence the material
 18 requested at paragraph 11 is clearly disclosable under
 19 your statutory duty."

20 If we please could turn to POL00059557, we have
 21 an email from yourself to Rachael Panter and it says:

22 "I have received a letter from the defendant's
 23 solicitors."

24 It mentions Gareth Jenkins' statement and then it
 25 says as follows, it says:

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1 "There is a chance it could go off, however, as the
2 defendant's solicitors are grumbling about disclosure
3 and the lack of information on the disk prepared for
4 them by [Stephen Bradshaw]. They have asked the court
5 to list the case for an 'intervention hearing' and the
6 provisional date for that is 5 February."

7 Do you think "grumbling" is a fair description of
8 their repeated requests for disclosure?

9 **A.** No, I don't.

10 **Q.** Because, of course, it had been the Post Office that was
11 taking a decision to effectively delay disclosure until
12 they had provided more particulars?

13 **A.** Yes, I can't recall precisely the sequence of events but
14 I am under the impression that Cartwright King, either
15 through myself or Rachael Panter, liaised with Stephen
16 Bradshaw on a number of occasions. I just can't
17 remember, I'm afraid, without looking at the file, all
18 of those occasions but, certainly, yes, they were quite
19 frankly right to complain, weren't they?

20 **Q.** Yes, and not just in respect of any delays on
21 Mr Bradshaw's part but we know that, by this time, you
22 had received the database, although your evidence is you
23 didn't open it.

24 **A.** I hadn't looked at that, no.

25 **Q.** You had received a note by Helen Rose. Again, your

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1 **A.** No, I was very aware that they were making repeated
2 requests and they'd raised this a number of times.

3 **Q.** Can we please look at POL00114660 and, at the bottom of
4 the first page, we have an email chain, still relating
5 to the case of Ishaq, from you to Mr Bradshaw and Mark
6 Ford. If we scroll down, it says "Dear Steve and Mark",
7 and then we have to go over the page:

8 "Please find attached a letter which we have
9 received from Messrs Musa Patels today enclosing
10 an addendum Defence Case Statement.

11 "I note that the addendum [Defence Case Statement]
12 sets out the numbers of numerous reports which the
13 defendant apparently made. It is the last working day
14 before the trial and I am somewhat suspicious that the
15 information was not disclosed at an earlier stage.
16 Steve, could you please go through the addendum DCS and
17 make such enquiries as you are able to today."

18 Just pausing there, do you think it was right to be
19 suspicious, given that it had been you who had been
20 pushing them to serve particulars?

21 **A.** I felt that we had been ambushed. I had certainly asked
22 for particulars, for assistance, if you like, but for
23 particulars of what they were saying at earlier stages
24 and this information, which could have been provided at
25 an earlier stage was provided right at the last minute

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1 evidence is you hadn't opened it or looked at it.

2 **A.** I hadn't looked at that, no.

3 **Q.** You were aware of a similar case going on at the time
4 where you say that involved information about a bug.
5 You are also aware of Second Sight investigating at this
6 time. Was there a lack of curiosity on your part in
7 respect of the various requests that they had been
8 making?

9 **A.** I don't think there was a lack of curiosity. I think
10 I took the view that the requests were for -- or some of
11 the requests were either too wide or information that
12 wasn't relevant or not going to meet the test for
13 disclosure.

14 **Q.** So why are you saying that "grumbling" isn't a fair
15 description of what they were saying?

16 **A.** Well, I think it's -- looking back, I think it would
17 have been better to have rephrased that, repeating their
18 requests for disclosure. I also think that, as a firm,
19 we were liaising with counsel, as well, in relation to
20 disclosure and so "grumbling", I think, perhaps is
21 an inappropriate term.

22 **Q.** Doesn't it suggest a degree of ambivalence on your part?

23 **A.** No, it is just an inappropriate word, with hindsight.

24 **Q.** But was a word that was used because you were ambivalent
25 in respect of their disclosure requests?

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1 and, as you'll recall from my evidence this morning,
2 I said that I had written to the defence, specifically
3 asking them if they could particularise any examples
4 because I did not want to be in this position where, at
5 the very last minute, information was being received
6 just shortly prior to the commencement of the trial and,
7 obviously, there was very little time then to look into
8 it.

9 **Q.** But couldn't you have made things quite a lot easier by
10 disclosing concerns that had been raised with you about
11 the Horizon system quite a long time before this email?

12 **A.** Well, when you say concerns, which concerns do you mean?

13 **Q.** Well, you were prosecuting somebody for a criminal
14 offence.

15 **A.** Yes.

16 **Q.** You were aware of a number of other cases raising issues
17 with Horizon. You were aware that an independent
18 investigator was looking into it. You were aware of
19 another case with very similar facts. Did you not think
20 that maybe we should provide a little more disclosure of
21 those kinds of issues to the defence?

22 **A.** So, by the time of this email, I think the statement of
23 Stephen Bradshaw, which dealt with the appointment of
24 Second Sight by Post Office Limited, had already been
25 served and, so far as other allegations that were being

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1 made in other cases were concerned, I did not consider
 2 that they met the test for disclosure.
 3 **Q.** You say precisely that in the next paragraph. You say:
 4 "I have no intention of providing details of
 5 previous cases in which there has been 'an unsuccessful
 6 challenge' to Horizon. That information does not
 7 undermine the Crown's case or assist the defence."
 8 Now, your evidence before lunch was that you didn't
 9 even look at the table relating to unsuccessful
 10 challenges to Horizon --
 11 **A.** I didn't, no.
 12 **Q.** -- so how could you have reached the decision that it
 13 doesn't undermine the Crown's case or assist the defence
 14 if you hadn't actually read the document that had been
 15 sent to you?
 16 **A.** Well, by virtue of the fact that they were unsuccessful
 17 challenges, I didn't feel that they would be
 18 disclosable.
 19 **Q.** Did you not think that it was incumbent upon yourself to
 20 at least carry out a very basic level of research into
 21 those matters?
 22 **A.** I didn't at that stage, no. I was under the impression
 23 that it was a table of unsuccessful challenges,
 24 unfounded allegations and, in those circumstances, I did
 25 not consider it further.

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1 always that easy to understand with the way he phrased
 2 things or discussed things but that's certainly one way
 3 of looking at that.
 4 **Q.** What is another way of looking at it?
 5 **A.** Just asking for general advice: why POL cannot simply
 6 stay or should POL simply stay, yes or no; can we stay
 7 some or is it all or nothing? It seems to be asking for
 8 a general advice. A general view, doesn't it?
 9 **Q.** So your interpretation is he may have been neutral on
 10 the matter and was asking for your advice?
 11 **A.** Well, it's not straightforward, is it? Why POL cannot
 12 simply stay, that would be suggestive of the view that
 13 that was perhaps his opinion but then his further
 14 question is: can we stay some or is it all or nothing?
 15 So that is perhaps more open. As I say, Mr Singh wasn't
 16 always the easiest to decipher.
 17 **Q.** Why do you think that was?
 18 **A.** I think some of his conversations or emails were less
 19 than clear.
 20 **Q.** Why do you think that was?
 21 **A.** Just on looking at them. I mean, looking at these two
 22 lines here --
 23 **Q.** Is it your suggestion that he had some sort of nefarious
 24 purpose or some other reason, or is it simply the
 25 language used?

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1 **Q.** Now, we've seen the defence statement; I don't need to
 2 take you to the addendum. In terms of the timeline,
 3 Mr Ishaq pleaded guilty to theft on the 7 March 2013 and
 4 on 22 April 2013 he was sentenced to 54 weeks'
 5 imprisonment.

6 I would like to take you to an email from March
 7 2013. Can we please look at POL00105209. This is an
 8 email of 26 March, so in between Mr Ishaq pleading
 9 guilty to theft and his sentencing hearing, and it
 10 relates to Second Sight Report or the Second Sight
 11 investigation.

12 You are advising Jarnail Singh and the subject is
 13 "RE: Horizon issues URGENT". In fact, perhaps we can
 14 look at Mr Singh's request, that's page 2, at the bottom
 15 of page 2. Mr Singh emails Andy Cash and you and he
 16 says:

17 "Andy
 18 "May I have your view on [this] why [the Post
 19 Office] cannot simply stay and hold fire in prosecutions
 20 where there has been [an alleged Horizon issue], yes or
 21 no. Can we stay some or is it all or nothing?"

22 So Mr Singh seems to be asking for your expertise as
 23 to whether or not all prosecutions can, at that point,
 24 be stayed. Is that your understanding of that email?

25 **A.** Well, it's one potential reading of it. Mr Singh wasn't

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1 **A.** I thought at the time it was the language used but,
 2 obviously, as this has rolled on, I think that he
 3 perhaps knew a lot more than he was letting on.
 4 **Q.** Let's see your response on page 1.
 5 **A.** Because, if I can just say, because up to that -- if you
 6 think about his earlier communications, he has been very
 7 much arguing that the Horizon system is robust, and
 8 that's very much the phrase that I placed reliance on.
 9 Then, of course, with an email like that, it makes you
 10 wonder, with hindsight, exactly what was going through
 11 his mind.
 12 **Q.** What do you think was going through his mind?
 13 **A.** I'm wondering if he knew that there were more things
 14 that we didn't know and, obviously, he hadn't imparted
 15 that to us.
 16 **Q.** Your response is as follows:
 17 "If applications were made to adjourn all existing
 18 cases until after the report becomes available, this
 19 would result in a 'nightmare' situation. The fact that
 20 applications had been made would send out the wrong
 21 message and it would be assumed by many that POL had
 22 found and was trying to resolve a problem with the
 23 Horizon system. Whilst it could be made known that no
 24 problems had been found by [the Post Office], it is
 25 unlikely that defendants would believe such a statement.

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1 I would expect there to be numerous applications for
2 disclosure and extra hearings (and extra costs)."
3 So you're advising against staying cases because it
4 would lead to more applications for disclosure?
5 **A.** I think this was generally the view of Cartwright King.
6 I don't think this was my specific view. I think this
7 had been discussed internally and this was the firm's
8 view.
9 **Q.** Well, we see at paragraph 3, for example, it says:
10 "The best approach in my view is to treat each case
11 individually."
12 So were you communicating your own views there?
13 **A.** Well, I believe that would have been my view after I'd
14 discussed it internally.
15 **Q.** "The prosecution can commence in the usual way and upon
16 receipt of the Defence Case Statement, any challenge to
17 the integrity of the Horizon system can be considered.
18 Of course the first time we may get to know of
19 a 'challenge' may be in the [Defence Statement]. If
20 a 'real' issue is raised, the case could be adjourned
21 until after the report becomes available. The defence
22 could apply for the adjournment and we would not object.
23 If, however, the challenge raised in the [Defence
24 Statement] is flawed, has no basis or foundation, or
25 relevance and is clearly just an attempt to frustrate
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1 Rose Report?
2 **A.** I don't believe it was -- it could have either been at
3 the end of June or the beginning of July. I do recall
4 that we were informed that the Second Sight Interim
5 Report was going to make reference to bugs. I don't
6 think at that point we knew anything more than the fact
7 that there were going to be references to bugs and then
8 I think that either at about the same time or very
9 shortly after a meeting with Post Office's Legal Team on
10 Old Street in London, the Helen Rose Report exercise
11 fast. I don't think it was before that meeting.
12 I think it was possibly other at that meeting or shortly
13 afterwards.
14 **Q.** So I think in your statement, paragraph 3 of your second
15 statement, you say that on 27th June you had discussions
16 regarding the Second Sight Interim Report.
17 **A.** Yes.
18 **Q.** Is it at that point that you're told about the Helen
19 Rose Report or ...
20 **A.** No, I think 27 June was the date upon which I received
21 a telephone call from someone in the Post Office Legal
22 team asking me about bugs in Horizon, and it was phrased
23 in such a way which implied that they did not know of
24 the bugs in Horizon. And I spoke to Mr Singh and asked
25 him what he knew of the bugs in Horizon, and he also
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1 the prosecution, the case can continue in the usual
2 way."
3 It's the same approach, isn't it, putting the burden
4 on the defendant to raise the issue of Horizon, to raise
5 a specific issue that satisfied some sort of test that
6 would prompt action on the part of the Post Office,
7 rather than being open and honest with defendants when
8 they raise the Horizon system as a problem.
9 **A.** I don't see it that way. I see this as taking
10 a case-by-case approach. There were some defendants who
11 had made full and frank admissions in interview and
12 there were other defendants who -- that the Horizon
13 system wasn't of relevance to their case.
14 **Q.** How are you to know if it's a real issue that's being
15 raised? What was the criteria that would be applied for
16 that?
17 **A.** I don't think we set out any criteria.
18 **Q.** How would you test if it was a real issue or not? What
19 would the threshold be that somebody had to raise in
20 order for the Post Office to agree to stay their case?
21 **A.** I don't think I considered that point.
22 **Q.** I want to look at what happens after this and I'm going
23 to move to 12 June and the receipt of what is the Helen
24 Rose Report, that's FUJ00086811. So the date there is
25 12 June 2013. Can you recall when you saw the Helen
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1 told me that he did not know of the bugs in the Horizon
2 system.
3 So that was the start, if you like, of the Second
4 Sight Interim Report chapter but I don't know how soon
5 after that that we received a copy of the draft Interim
6 Report. I know it wasn't published until possibly
7 around the end of the first week in July. I suspect
8 that we may have received snippets or parts of that
9 information beforehand.
10 **Q.** It was early July. I'll take you to the various emails.
11 **A.** Oh.
12 **Q.** Let's stick with the Helen Rose Report. You said that
13 somebody phoned you up from the Post Office.
14 **A.** Yes.
15 **Q.** Do you recall who that was?
16 **A.** I'm afraid I don't. I don't recall who it was. I could
17 guess but don't want to guess and get it wrong.
18 **Q.** When Mr Singh told you that he didn't know about bugs,
19 did you question that with him?
20 **A.** No, because it had rather taken me by surprise, as well.
21 So I -- it was apparent to me, from the way the question
22 had been phrased, that Post Office Legal team didn't
23 know about the bugs. I was taken by surprise by
24 reference to the bugs and I asked Mr Singh and he didn't
25 know about them either. So I just assumed that Post
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1 Office Legal Team did not know about the bugs.
 2 **Q.** I'm going to very briefly take you to a couple of parts
 3 of this report. If we look at page 3, please, we'll
 4 come to look at an advice that relates to this report
 5 but she says, for example, in relation to correspondence
 6 with Gareth Jenkins:
 7 "I know you are aware of all the Horizon integrity
 8 issues and I want to ensure that the ARQ logs are used
 9 and understood fully by our operational team."
 10 "Recommendations", if we scroll down, she says, for
 11 example:
 12 "However, my concerns are that we cannot clearly see
 13 what has happened on the data available to us and this
 14 in itself may be misinterpreted when giving evidence and
 15 using the same data for prosecution."
 16 So we'll come to look at the analysis of the Helen
 17 Rose Report. Before we do that, can we please look at
 18 POL00142322. This is a transcript of a conversation
 19 with Gareth Jenkins, and it's Simon Clarke and also you
 20 are on this call. Are you aware of how this came into
 21 being?
 22 **A.** Yes. Mr Clarke had a case called *Samra* that was about
 23 to start, I think before the Crown Court at Birmingham
 24 and he was concerned that, as a firm, we now knew of the
 25 existence of a report, which we perhaps didn't have at
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1 to ask.
 2 **Q.** Presumably Gareth Jenkins wasn't told that it would be
 3 recorded or noted?
 4 **A.** No, he wasn't. He wasn't.
 5 **Q.** It begins:
 6 "Hi is that Gareth Jenkins?
 7 "It is indeed."
 8 We go on, there's an introduction from Simon Clarke.
 9 If we could go over the page, please, I'll just read to
 10 you a few sections. So Simon says:
 11 "The problem I have got is that we are not allowed
 12 to see the report but we are told that there are up to
 13 30 offices where bugs have been identified, yeah, and we
 14 know that Hurst Lane is not one of the branches where
 15 there's been an identified bug. Still with us?"
 16 Gareth says:
 17 "Erm right as I say certainly I am aware of 2 bugs.
 18 Is it. Firstly is this something that has been done on
 19 Horizon on the new Horizon system or the old system."
 20 Simon says:
 21 "It's Horizon Online."
 22 Mr Jenkins says:
 23 "Okay right. So there is 2 bugs that we have
 24 declared to Second Sight in that sort of area, erm, and,
 25 erm, we know exactly which branches are affected and
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1 that point but we knew some of the content of, in that
 2 it was going to refer to bugs, and Mr Clarke was clearly
 3 concerned about whether or not that would be disclosable
 4 in the proceedings in Birmingham. And it was in those
 5 circumstances we telephoned Mr Jenkins to try to find
 6 out some more information.
 7 **Q.** I think this is 28 June?
 8 **A.** So that was probably the day after we'd been informed of
 9 the bugs.
 10 **Q.** So is that the day after the telephone call from
 11 somebody in the Post Office and your discussion with
 12 Jarnail Singh?
 13 **A.** Yes.
 14 **Q.** Were you aware that the conversation was being recorded
 15 or was it typed at the same time or how did this come
 16 about?
 17 **A.** I'm not sure whether I recorded it or whether I typed
 18 it.
 19 **Q.** Did you have a conversation with Simon Clarke before
 20 about the kinds of questions that you were going to be
 21 asking? We'll see that there are some very specific
 22 questions with A and B, for example. Was it something
 23 that was planned?
 24 **A.** I don't recall discussing it with him. I'm sure he had
 25 something set out in his own mind as to what he wanted
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1 they wouldn't have any impact whatsoever on that part of
 2 err what's going on erm and I think we've, we are
 3 confident that the audit trail that you are using for
 4 prosecution has not been compromised by those bugs."
 5 Then, if we go over the page, please. About halfway
 6 down, you're introduced. So Simon says:
 7 "Where are we going from here. What's the questions
 8 I posed earlier. Sorry I've got Martin Smith with me
 9 here as well, he's the solicitor in the case."
 10 So were you the solicitor in the *Samra* case or is
 11 that a different case?
 12 **A.** I don't recall, I'm afraid. I remember what the *Samra*
 13 case was about but I don't know whether I was
 14 a solicitor in it or not. It was a lady who was alleged
 15 to have been making multiple transactions using the
 16 debit cards of pensioners, suggesting the first
 17 transaction hadn't gone through and asking the pensioner
 18 to re-input their PIN number so I do remember that but
 19 I don't know if I was the solicitor or not.
 20 **Q.** Okay, and then he says:
 21 "I know Martin.
 22 "Hi Gareth.
 23 "Hi.
 24 "Hi, it's the Horizon system is functioning
 25 perfectly ..."
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1 Can you assist us with what you mean there? Is that
2 the matter that you're questioning, whether it was
3 functioning perfectly?

4 **A.** I really don't know what that is supposed to mean.

5 **Q.** Simon then says:

6 "This is the other point. Bugs have been identified
7 in Horizon which call into question some of the aspects
8 of the way in which it operates. That's a fair
9 assessment, isn't it?"

10 Gareth says:

11 "Erm yes."

12 Simon says:

13 "Okay, how can we be sure that (a) we have
14 identified all of the bugs that there are and (b) that
15 although Horizon has been demonstrated that to be
16 fallible that insofar as the case we are conducting is
17 concerned we can eliminate the possibility of error."

18 Then the response from Gareth is:

19 "Right, I mean clearly we can't you can never say
20 there are no more bugs in the system but we've got to be
21 careful about trying to say anything like that but what
22 we can show is that nothing has been found to show that
23 there is a problem in the integrity of the audit trail
24 which is what has been used for the erm, erm your
25 evidence."

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1 **A.** I expressed concern to Mr Clarke that Mr Jenkins had not
2 raised those bugs during the currency of the case
3 against Mr Ishaq. In fact, I do recall that, when
4 Mr Ishaq had suggested in his -- one of his defence
5 statements -- that the losses were attributable to
6 a freezing screen. I thought -- my personal view was
7 that he was suffering rather large losses attributable
8 to a freezing screen. I thought, if anything, there was
9 more to that and I specifically asked Mr Jenkins at
10 court whether or not there had been a bug affecting
11 Mr Ishaq's branch, and he had said not.

12 And so by the time we get to this point, yes, you
13 are quite correct, I was concerned about Mr Ishaq's case
14 because Mr Jenkins had said that there had not been
15 a bug in his branch and here we are now being told of
16 two bugs by Mr Jenkins and I can recall discussing that
17 with Mr Clarke and I explained to him that Mr Jenkins
18 had said that there were no bugs operative in the
19 branch, and that Mr Ishaq had pleaded guilty.

20 Mr Clarke's view was, well, that wasn't really to
21 the point. Those bugs should have been disclosed to
22 him.

23 **Q.** At the time of recording that conversation, had you put
24 two and two together at that point that it wasn't just
25 there were these bugs but also that we have a problem

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1 Simon says:

2 "So your view is that erm that if the defence were
3 to suggest erm that there is a problem with Horizon and
4 therefore we can't rule out that there might be other
5 problems with Horizon what you say is as far as you're
6 concerned the integrity of the system is in tact."

7 He says: "Yes".

8 Did you have concerns, real concerns, at this time,
9 June 2013, about the reliability of the expert evidence
10 that had been provided in court?

11 **A.** Mr Clarke certainly had some concerns at that point.

12 Because, as part of our conversations within Cartwright
13 King, I provided him with a number of reports that
14 Mr Jenkins had prepared at Cartwright King's request
15 and, obviously, there had been a discussion about that.
16 So yes, there was a concern at that point within
17 Cartwright King about the evidence given by Mr Jenkins.

18 **Q.** You've seen there, I mean, you're having a conversation
19 with the man whose given evidence in some of your cases.
20 In the Ishaq case, Mr Jenkins gave two statements.

21 **A.** Yes.

22 **Q.** There's reference there to two particular bugs, there's
23 reference there to you can never say that there are no
24 more bugs. Did you personally not have a real concern
25 about those cases that you were involved in?

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1 with the expert who is giving evidence in our cases?

2 **A.** Yes, that was discussed.

3 **Q.** Was that information disclosed in ongoing criminal
4 cases?

5 **A.** So far as the ongoing criminal cases were concerned,
6 this all happened in a very, very short window.
7 I believe that Susan Crichton and Simon Clarke discussed
8 the position and decided that it was appropriate,
9 clearly in the circumstances, to impose a moratorium on
10 all new prosecutions so that there'd be nothing new
11 entering the prosecution pipeline and that, in existing
12 cases, they would be reviewed by Mr Clarke and,
13 depending on the nature of the case, it may be
14 appropriate to terminate it in the absence of a new
15 expert.

16 **Q.** Was there not a real sense of urgency at that point,
17 having found out that information?

18 **A.** Well, I think all this happened within a couple of days.

19 **Q.** Mr Clarke's Advice was only on 15 July, so a couple of
20 weeks later. You had been involved in the Ishaq case,
21 a man had gone to prison; did you not think then and
22 there, "I've got to do something urgent about the cases
23 that I was personally involved in"?

24 **A.** I do recall expressing my absolute -- I was actually
25 quite upset about the position, that there had been bugs

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1 which hadn't been disclosed in Mr Ishaq's case, and
2 I remember actually feeling quite angry about that
3 because a man had gone to prison and, quite frankly,
4 those bugs should have been disclosed.

5 I asked Simon to review the case, as a matter of
6 urgency, and I believe that he did, within the next day
7 or so. I certainly have it in mind that it was reviewed
8 very quickly.

9 **Q.** Why did you need Simon Clarke to review the case? Why
10 couldn't you, who had conduct of the case then and
11 there, do something about your anger?

12 **A.** Well, I just thought it was appropriate to have a senior
13 barrister dealing with it.

14 **Q.** Can we please look at POL00060572. We're now on
15 30 June. Jarnail Singh is passing on information to
16 various colleagues at the Post Office and, if we scroll
17 down, he refers there to the case of Ishaq at the top.
18 He then refers to the Dixon case. He says:

19 "It follows that in some cases the integrity of the
20 Horizon system has been challenged by the defendant. In
21 other cases the integrity of the Horizon system may
22 become an issue notwithstanding that there has been no
23 specific challenge."

24 He then says:

25 "The *Samra* case above in Birmingham involves
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1 Just pausing there, do you think that is a fair
2 reflection to of the conversation that you had with
3 Gareth Jenkins on 28 June?

4 **A.** Well, no, it isn't, is it?

5 **Q.** One thing it doesn't suggest is, for example, the
6 unreliability of Gareth Jenkins and the evidence that he
7 has given.

8 **A.** No.

9 **Q.** It also doesn't refer to that paragraph we saw about
10 never saying that there aren't more bugs in the system.

11 **A.** No, and it's also confusing in that -- well, I don't
12 really think I necessarily follow this, "If I may
13 speculate a little here, Gareth Jenkins only told Second
14 Sight of two bugs, the Post Office only knew of two
15 bugs". That's contradictory to the information he told
16 me, and it says:

17 "It seems, therefore, unlikely they would find any
18 other bugs ..."

19 Well, I don't know where he's got that from because
20 that certainly wasn't discussed with Gareth Jenkins on
21 27 June -- 28 June.

22 **Q.** So the question that arises from that is: did you
23 provide Jarnail Singh with the level of detail relating
24 to the problems that Gareth Jenkins had told you about
25 or not?

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1 Horizon."

2 So that's the case you were talking about --

3 **A.** Yes.

4 **Q.** -- with Gareth Jenkins:

5 "Samra is accused of performing unauthorised
6 transactions on the Post Office's current account of
7 a number of vulnerable people. She has consistently
8 denied any wrongdoing and the primary evidence against
9 her is taken from the Horizon system."

10 It's this paragraph next I want to ask you about.

11 It says:

12 "Simon Clarke, prosecution counsel, and Martin Smith
13 spoke to Gareth Jenkins on Friday, 28 June. He told
14 them that he had only volunteered information about two
15 bugs present in the system, to Second Sight. He also
16 told them that those bugs would not have affected the
17 integrity of the data being used in the *Samra*
18 prosecution. If I may speculate a little here, Gareth
19 Jenkins only told Second Sight of two bugs, the Post
20 Office only knew of two bugs. It seems, therefore,
21 unlikely that they would find any other bugs without
22 Gareth Jenkins knowing about it due to the mechanics to
23 of the system reporting and the checks and balances
24 already built into the system. It looks likely that
25 Second Sight's report will focus on these two bugs."

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1 **A.** We would certainly have communicated with Mr Singh and
2 kept him informed of developments. I mean, after all,
3 he was Head of Criminal Law.

4 **Q.** Your real concerns about the reliability of Gareth
5 Jenkins, had you by then, 30 June, passed those on?
6 Because there is no mention in that paragraph --
7 summarises the conversation but doesn't mention issues
8 about the reliability of evidence. Do you think that
9 you did or didn't pass that on to Mr Singh?

10 **A.** I cannot recall what I said to Mr Singh.

11 **Q.** It then continues:

12 "It is not possible to ignore the fact that Second
13 Sight may report in the immediate future. Similarly,
14 it's not possible to ignore the fact that there may be
15 high profile debates relating to the integrity of the
16 Horizon system this coming week. Prosecution counsel
17 proposes to mention the position in private to the judge
18 in the *Samra* case in his chambers on Monday morning.
19 The Post Office, as a public body, has to be open and
20 honest for the judge to ensure fairness to elderly
21 witnesses, prosecution and defendants whose liberty is
22 at stake."

23 Why mention it to the judge in private?

24 **A.** I was being guided entirely by Mr Clarke in relation to
25 this, and he was prosecuting counsel in that particular

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1 case, and he advised as to the best way forwards in
2 relation to this particular issue that had arisen.
3 Putting it --

4 **SIR WYN WILLIAMS:** When the expression "in private" is used,
5 do I take it that that simply means without the public
6 being present? It doesn't mean without the defendant's
7 representatives being present?

8 **A.** I believe, sir, that it was without the public being
9 present and without the defendant's representatives
10 being present.

11 **SIR WYN WILLIAMS:** I see, so this really was just
12 prosecuting counsel and judge; that was what was being
13 suggested?

14 **A.** I accompanied Mr Clarke, sir, to Birmingham. We went
15 into chambers. I believe the Mention hearing was
16 recorded and Mr Clarke explained to the judge, from
17 memory, that there was a report which he was not yet in
18 a position to disclose but which would be disclosable,
19 and, given the imminence of Mrs Samra's trial, he was in
20 some difficulties.

21 **SIR WYN WILLIAMS:** All right. Sorry, Mr Blake, for jumping
22 in.

23 **MR BLAKE:** Not at all.

24 Why not mention that in open court?

25 **A.** That's a question I'm afraid you'll have to ask

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1 prosecution and defence work, so he was the one who took
2 the lead.

3 **Q.** A reading of this is that it would suit the Post Office
4 because it wouldn't be publicised. Did you understand
5 that to be the position?

6 **A.** Well, no, I didn't and, in fact, when we had the
7 conference with Brian Altman KC, he was very clear that
8 he would not have dropped the *Samra* case. He said that
9 he wouldn't have dropped that and I understood
10 Mr Clarke's position to be, not one of unwilling to make
11 the disclosure, because, quite frankly, the Second Sight
12 Report -- well, it's the Interim Report we're talking
13 about. The Interim Report was always going to end up in
14 the public domain. It was always going to be published,
15 it was always going to be made public and it was going
16 to be disclosed in other cases.

17 The fact here is not a case of trying to prevent
18 that report from being provided; it was going to be
19 provided through other routes. As I understood it,
20 Mr Clarke's concern was that he could not comply with
21 his duties of disclosure at that point in time.

22 **Q.** Or even mention it in a public hearing?

23 **A.** I think there was a concern that it had been arranged by
24 Parliament or organised by Parliament and Parliamentary
25 privilege attached to it. I remember a conversation

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1 Mr Clarke. I was guided by his advice. I mean, if
2 I could put this in a different way, basically, my whole
3 career I'd spent dealing with defence work. I had then
4 started dealing with prosecution cases on an agency
5 basis, appearing in court for particular hearings and
6 then reporting back. I then -- this was effectively
7 a new chapter of work, actually, dealing with
8 prosecution cases and advising in relation to them and,
9 quite frankly, I was grateful for any guidance that
10 I could get internally within Cartwright King, and this
11 was Mr Clarke's advice. So that's what he did and
12 I went with him to the hearing.

13 **Q.** You had worked for Cartwright King for six years by this
14 stage?

15 **A.** Yes.

16 **Q.** Was the training so inadequate that you had to rely on
17 Mr Clarke in this respect?

18 **A.** Well, I was quite -- well, there had been no training in
19 terms of prosecution work at all. No training at all
20 that, for example, a CPS lawyer might get internally at
21 the Crown Prosecution Service. We'd been on no courses
22 and I think also the perception of the firm was that it
23 would be more appropriate, so far as Post Office were
24 concerned, to see a senior experienced barrister
25 advising, one who had had much experience of both

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1 along those lines and he was quite clearly unwilling to
2 say very much about it.

3 **Q.** Is that a conversation with Simon Clarke?

4 **A.** I believe it was.

5 **Q.** So your understanding is that he had a concern about
6 Parliamentary privilege?

7 **A.** Well, we thought that the report had been commissioned
8 by Parliament or there was some connection with
9 Parliament because, as we understood it, the Second
10 Sight Interim Report was to be released to MPs probably
11 the day prior to publication, and so Mr Clarke did not
12 feel it appropriate to start releasing any information
13 from it, or -- I don't know whether we had the report at
14 the point of the application, or just a part of it, or
15 just information in about what it contained. But
16 Mr Clarke's view, as far as I remember, was that it
17 would not be appropriate to start putting into the
18 public domain information which we either didn't
19 properly have or couldn't provide when it was yet to go
20 to MPs the day before publication.

21 **Q.** Do you think that there was emailed correspondence on
22 that issue?

23 **A.** Well, certainly not between myself and Mr Clarke, no.
24 As I see it, this was a case of Mr Clarke saying, "We
25 cannot comply with our disclosure obligations at the

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1 present time in relation to this imminent case", this
 2 was a case which involved, as it says here, fraud, if
 3 you like, involving numerous elderly people who that had
 4 their cash cards used twice, to their knowledge -- well,
 5 without their knowledge. Once with their knowledge and
 6 once without. One possibility was to seek
 7 an adjournment. That adjournment would be likely to be
 8 quite some time and, of course, one would have to
 9 consider the effect of an adjournment on a decreasing
 10 number of victims because of their vulnerability and
 11 age.

12 So this was never a case, in my view, of not wanting
 13 to disclose the Second Sight Interim Report. As I say,
 14 that was always going to end up in the public domain via
 15 one route or another. This was a case of Mr Clarke
 16 saying, "I cannot deal with my disclosure duties here
 17 and now at this particular point in time."

18 **Q.** It's also "I can't tell anybody that it even exists."

19 **A.** Well, we told the -- I say "we" -- Mr Clarke --

20 **Q.** Apart --

21 **A.** Explained the position in chambers to the judge and I
 22 understand, if I remember correctly, that that
 23 application was recorded.

24 **Q.** Can we please have a look at POL00190843. Actually,
 25 sorry, if we could start with POL00190842. This is

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1 "Our advice overall with regard to disclosure has
 2 not changed. The disclosure of a partial report would
 3 not meet our duties or help the current situation.
 4 I think the disclosure of a partial report would provide
 5 partial information and give rise to adverse publicity
 6 and speculation. It would be far better to advise once
 7 we have seen the entire report. Having said that the
 8 Second Sight Report would not need to be disclosed in
 9 every case -- that decision would need to be taken on
 10 a case-by-case basis. In many cases it will not be
 11 disclosable."

12 I just want to break that down into two. The first
 13 is "give rise to adverse publicity and speculation".
 14 I mean, isn't that exactly the concern I was raising in
 15 relation to the private hearing before the judge? That
 16 is on your part and on Cartwright King's part, a concern
 17 about adverse publicity?

18 **A.** No, the hearing before the judge was nothing to do with
 19 adverse publicity because, as I said earlier, the Second
 20 Sight Interim Report or the draft version of it was
 21 always going to end up in the public domain. That
 22 application was made because Mr Clarke was concerned
 23 that he could not properly discharge his disclosure
 24 duties. Clearly, this is an email that both myself and
 25 Mr Clarke have put together because, as you'll see next

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1 an email from Hugh Flemington to you and he says:

2 "Please find attached a first rough draft from
 3 [Second Sight] of one half of the Interim Report. This
 4 will be supplemented tomorrow by a section on spot
 5 reviews. Please would you let us have your material and
 6 significant concerns on this first thing tomorrow
 7 morning please. If this timing is not possible please
 8 shout as soon as possible."

9 We see there the attachment is the "Interim Report
 10 version 18a". If we look at POL00190843, this is 4 July
 11 and this is the version 18A that was attached to that
 12 email. If we could look, please, at page 6. Page 6,
 13 6.4, 6.5, 6.6, these are the receipts and payments
 14 mismatch and local suspense account bugs that we'll see
 15 in the final version of the Second Sight Interim Report.

16 If we scroll down, we can see various other concerns
 17 that are raised relating to the Horizon system. Over
 18 the page, please, under "Thematic or Systemic Issues",
 19 the various issues that had been reported by
 20 subpostmasters.

21 That was the 4th that you received that draft. Then
 22 can we please look at POL00190859. This is the next
 23 day, first thing in the morning, 8.59 in the morning,
 24 an email from you, thanking Hugh Flemington for the
 25 report, and you say:

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1 to the yellow square that's on the left-hand side, it's
 2 our advice overall: this is very much the stance of
 3 Cartwright King, myself and Simon Clarke having
 4 discussed the position.

5 **Q.** Yes. The concern that I mentioned in relation to the
 6 hearing before the judge is a concern to have it in
 7 private. Not about what would be said but the concern
 8 about adverse publicity. Did you not recognise that
 9 that might be a concern?

10 **A.** Not in relation to that hearing, no. I just assumed
 11 that was the correct way to go about things because that
 12 was what Mr Clarke advised.

13 **Q.** Sticking with this email, is your advice relating to
 14 adverse publicity and speculation, is that similar to
 15 where we started today: a confusion between the Post
 16 Office's private interests and legal requirements?

17 **A.** No, I don't think it is. I think the danger with
 18 disclosing a partial report is that you're only
 19 disclosing part of the picture. Isn't it best to see
 20 the entire report and then make decisions?

21 **Q.** But why should publicity be a concern of somebody who is
 22 advising in criminal prosecutions?

23 **A.** I think this -- sorry, can you just scroll up? What's
 24 the date of this email?

25 **Q.** 5 July.

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1 A. This would follow a meeting which had taken place at the
2 headquarters of Post Office Limited which, at that
3 point, were in Old Street in London and I think at that
4 point the Post Office was expressing concern that there
5 could be adverse publicity, and keen to avoid
6 speculation.

7 Q. So it was the Post Office, rather than --

8 A. So I think this is going back to the concerns which
9 would have been raised at that meeting. So I think our
10 approach to this would have been that it would be better
11 to await the full report and then make decisions, rather
12 than start to disclose bits of a report and have adverse
13 publicity and speculation in relation to the gaps.

14 Q. Then:

15 "Having said that, the Second Sight Report would not
16 need to be disclosed in every case -- that decision
17 would be taken on a case-by-case basis. In many cases
18 it will not be disclosable."

19 Is that right?

20 A. I think where we were at the time, that was our
21 thinking.

22 Q. You had had that conversation with Gareth Jenkins where
23 he said there might be more bugs that caused you real
24 concerns about the evidence that he had given in
25 criminal prosecutions and his reliability. Do you think

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1 "Dear Hugh,

2 "Please find attached a copy of the letter which we
3 propose, subject to your agreement, to send to Ishaq's
4 solicitors."

5 So this is 10 July. I think your evidence before
6 was that, quite promptly, you did write to Ishaq's
7 solicitors and this is that correspondence.

8 A. Yes, I couldn't remember how promptly but it certainly
9 pre-dated the file review process.

10 Q. Yes.

11 A. I think I was so concerned about Mr Ishaq's case that
12 I actually circumvented the sifting process. I didn't
13 see the point in putting it through a sift. I knew it
14 needed to be reviewed and I brought it to Mr Clarke's
15 attention for it to be reviewed. So this was something
16 that was dealt with, if you like, outside of that -- the
17 main file review process.

18 Q. Can we please look at the draft letter. It's
19 POL00323836. So in April 2013, he had been sent to
20 prison. This is a letter in July now. I'm going to
21 read to you that letter. It says:

22 "We write to your firm as being the solicitors on
23 the file representing this defendant in the proceedings
24 which resulted in him receiving a term of 54 weeks'
25 imprisonment for an offence of theft ...

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1 such a strong line could really be taken?

2 A. Well, if you look at the file review process that was
3 subsequently undertaken, I think, out of the total
4 number of cases which were reviewed, the Second Sight
5 Interim Report was disclosed in a proportion of them.
6 So I think the view that we took within Cartwright King
7 at the time is that it certainly wouldn't need to be
8 disclosed in every case but, depending on what it
9 contained, a decision would have to be taken on
10 a case-by-case basis.

11 Q. That is absolutely an issue that we're going to be
12 coming to in due course.

13 Can we please look at POL00297237, please. Just to
14 assist us with the timeline, in fact it was the very
15 same day, an hour later, that you received the full
16 report -- full draft report still --

17 A. Right.

18 Q. -- so that would have been the second half relating to
19 spot reviews. We can see there Ian Henderson, at the
20 bottom, is sending the latest version, version 24, of
21 the draft report. If we see at the top, Rodric Williams
22 has sent it on to you.

23 Can we please now look at POL00006545 and page 4.,
24 at the bottom of page 3 onto page 4, please. We have
25 an email from you to Hugh Flemington, and you say:

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1 "On 8 July a report into the operations of the
2 Horizon system was published by an independent
3 organisation which had been commissioned by our clients,
4 Post Office Limited. The report is known as the Second
5 Sight Interim Report. We have also received and
6 considered a second report, concerning an investigation
7 into an incident at another post office the, Helen Rose
8 Report.

9 "We have thoroughly reviewed both the prosecution
10 case and that of your client, and in particular his
11 Defence Statement and Addendum Defence Statement, in the
12 light of material contained within the Second Sight
13 Interim Report and the Helen Rose Report. We have also
14 reconsidered our disclosure duties under the [Criminal
15 Procedure and Investigations Act 1996] and the Code of
16 Practice enacted thereunder and the [Attorney General's]
17 Guidelines on Disclosure.

18 "We have formed the firm view that, had the
19 prosecution been possessed of the material contained
20 within the two reports during the currency of the
21 prosecution of your client, we should and would have
22 disclosed that material to you in compliance with our
23 disclosure duties.

24 "Accordingly we now disclose those reports to you so
25 that you are able to consider whether your client may

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1 have grounds for an appeal against his conviction.

2 "We would also remind you of your duty not to
3 disclose this material to any third party other than
4 your client; in particular the Helen Rose Report is not
5 in the public domain."

6 So the proposal is to now disclose to Mr Ishaq's
7 solicitors the Second Sight Interim Report and the Helen
8 Rose Report; is that right?

9 **A.** Yes.

10 **Q.** No apology in this letter, correct?

11 **A.** There is no apology in that letter, no.

12 **Q.** No reflection of any wrongdoing or concerns about
13 material not being brought to Mr Ishaq's attention that
14 really should have, no apology for that?

15 **A.** No, the letter is as you've read it.

16 **Q.** It ends with "No sharing allowed in relation to the
17 Helen Rose Report". Is that, again, a concern about the
18 publicity that that might raise?

19 **A.** I have -- I didn't consider that point. This is the
20 letter as Mr Clarke prepared it.

21 **Q.** If we could zoom out, please, just to look at the
22 entirety of the text. Is there any reference in that
23 letter to concerns about the reliability of Gareth
24 Jenkins?

25 **A.** No, there isn't.

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1 **Q.** Can we please return to the email chain we saw just
2 a moment ago, POL00006545. We looked at the final entry
3 in this chain, which was you sending this draft to the
4 Post Office. Can we please start on page 3 this time?

5 Roderic Williams sends you a response thanking you
6 and says:

7 "First point -- we presume that Helen Rose's Report
8 is being disclosed because [the Post Office's] evidence
9 in the prosecution included an ARQ report. Is that
10 right?

11 "Second point -- Helen Rose's Report is marked
12 'Confidential and legally privileged'.

13 "I understand that she did this because she prepared
14 the report to give to Post Office Legal for legal advice
15 on the implications of her investigation.

16 "Please therefore consider what information from the
17 report needs to be disclosed to Ishaq's solicitors, and
18 in what format, ie whether parts of the report should be
19 removed or redacted or the non-privileged material
20 repackaged for disclosure to the defence."

21 "If you advise that Helen's Report does not attract
22 any privilege, please ensure the reference to privilege
23 is removed ..."

24 We will look at the other email in the chain but,
25 just pausing there, what was your impression of how open

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1 **Q.** Do we find also attached the list of cases relating to
2 Horizon concerns that had been prepared by Helen Rose
3 back in October 2012?

4 **A.** No.

5 **Q.** Why were the Second Sight Report and the Helen Rose
6 Report considered to be sufficient?

7 **A.** At this point in time, I was unaware of the content of
8 the spreadsheet and the first Helen Rose document and
9 these were the documents that we had been provided with.

10 **Q.** "We are also concerned about a witness in your case who
11 was referred to as an expert witness, who we believe
12 gave unreliable evidence"; is that set out there?

13 **A.** No, it isn't.

14 **Q.** Do you know why not?

15 **A.** I'm sorry, I can't answer that question, I don't know.

16 **Q.** As somebody who was involved and a firm that was
17 involved in the original prosecution, do you think
18 Cartwright King were the right people to determine how
19 much additional disclosure should now be provided to
20 Mr Ishaq?

21 **A.** At the time, yes, I did think it was appropriate.

22 I remember Mr Clarke explaining, around the 3 July
23 meeting in London, that it was not inappropriate for
24 a prosecutor involved with a case to review the case to
25 determine whether further disclosure ought to be made.

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1 the Post Office were to providing disclosure to Mr Ishaq
2 at this time?

3 **A.** It's difficult to recall but my impression was that they
4 were content to follow Mr Clarke's advice.

5 **Q.** If we turn to page 1, please. It's an email from you to
6 Rodric Williams and others. Now, it looks there,
7 I think it's an American format of the date. It should
8 be 11 July. For those who are interested, we have
9 another version of this, it's at POL00323841. It
10 doesn't need to be brought up on screen but that shows
11 it as 11 July, which makes sense in terms of the
12 sequencing.

13 **A.** Yes.

14 **Q.** You're emailing Rodric Williams about privilege and you
15 then have a section, "Why is Helen Rose's Report
16 disclosable", and you highlight features such as those
17 that rather suggest that there may be Horizon issues
18 plus training and support deficits, and you highlight
19 the reference there to Horizon integrity issues, and
20 say:

21 "This is an alarming statement for it is suggestive
22 of the existence of Horizon issues and that they were
23 known to [Gareth Jenkins]. This has obvious
24 implications for [Gareth Jenkins'] court reports and
25 appearances and his silence therein."

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1 Note that that, as I say, was not referred to in
2 your draft, and I think you accept that.

3 If we scroll down, we see there, paragraph 3, you
4 refer to:

5 "[Helen Rose's] ultimate conclusion is that this is
6 not an issue which suggests a failing in Horizon itself;
7 rather it is an issue of data presentation ..."

8 "Whilst to a degree that is correct, given what
9 I have said in 1 and 2 above that view may not be
10 entirely sustainable. It may be suggested that the
11 report is at the very least suggestive of Horizon
12 issues."

13 Then you go on to say:

14 "The report in general terms reinforces the
15 impression that [Gareth Jenkins] is not being entirely
16 forthcoming about Horizon issues. An example of this
17 approach may be found in his response to [Helen Rose's]
18 first question, where she asks '... also could you
19 explain what happens when the system fails?' [Gareth
20 Jenkins] does not begin to answer this question; he
21 simply responds '... the system is behaving as it
22 should'.

23 "If the system is behaving as it should then the
24 answers I reproduce in my Point 1 above are
25 inexplicable.

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1 **A.** What it means, it means that I am clearly taking advice
2 from a senior in-house barrister about the position.

3 **Q.** It then says:

4 "In view of these matters I am in no doubt ..."

5 In fact, it says "I" there rather than "we", but we
6 can --

7 **A.** It does.

8 **Q.** -- put that to one side:

9 "... that this document is disclosable. On the LPP
10 point I rather fear that, if the matter were to come
11 before a criminal court the judge would without
12 hesitation order disclosure in the appropriate case.

13 "Accordingly, you may take the view that I should
14 attempt to redact, or summarise the report into
15 a disclosable document and in a form which serves the
16 dual purpose of both disclosing that which should be
17 disclosed whilst protecting the non-disclosable
18 sensitive material."

19 Well, first of all, by this date, it seems as though
20 you are getting quite concerned about how candid the
21 Post Office have been; is that a fair summary of the
22 contents of that?

23 **A.** Well, this Helen Rose Report has clearly now arrived,
24 and it's in addition to the two bugs referred to in the
25 Second Sight Interim Report. So there is another report

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1 "5. Some may conclude from this that
2 [Gareth Jenkins] aim is to protect Horizon from
3 criticism rather than to provide [Post Office Limited]
4 and the court with impartial and honest evidence.

5 "In view of these matters I think that the
6 information contained in the Helen Rose Report meets the
7 test for disclosure. It should not be forgotten however
8 that information would only meet the test in a limited
9 number of cases, ie where the defendant had conducted
10 reversals and was blaming Horizon."

11 Just pausing there: is that right? I mean, again,
12 we're seeing an email from you that is narrowing the
13 number of cases in which this needs to be disclosed?

14 **A.** Well, you say it's from myself. It's from myself and
15 Simon, as you'll see how it's signed off.

16 **Q.** Yes.

17 **A.** This is a joint effort and I'm clearly taking advice
18 from Mr Clarke.

19 **Q.** It was sent by you?

20 **A.** It was sent by me but, if you have a look at the screen
21 at the moment, under "Kind regards" it says, "Martin and
22 Simon".

23 **Q.** Yes?

24 **A.** So this is clearly a joint piece of work.

25 **Q.** Does that make it any less troubling?

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1 to deal with. I don't think I gave it much more
2 thought. I can recall that it was Mr Clarke who then
3 went on to redact the Helen Rose Report before it was
4 sent out and it was Mr Clarke who then drafted the
5 letter to be sent out to the intended recipients.

6 **Q.** At paragraph 14 on page 5 of your second statement, you
7 very candidly say that you are unaware of the
8 post-conviction duty of disclosure; is that correct?

9 **A.** Yes, I wasn't aware of that.

10 **Q.** I mean, wasn't that precisely what you were being asked
11 to do by Rodric Williams, to consider such duties?

12 **A.** Oh, I became aware of the post-conviction duty of
13 disclosure upon discussing Mr Ishaq's case with
14 Mr Clarke because I pointed out that Mr Jenkins had said
15 that there had been no bugs in the branch and
16 Mr Clarke's view was that, well, this is still
17 disclosable because it would give Mr Ishaq the
18 opportunity to argue that there were perhaps bugs as yet
19 unknown to Post Office and, therefore, this should be
20 disclosed.

21 I had not been in this situation before, needing to
22 consider post-conviction disclosure. I was simply
23 unaware of that.

24 **Q.** Is that of concern, given that you had been involved in
25 quite a few criminal prosecutions for a number of years

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1 by that stage?
 2 **A.** Well, everything was going to be reviewed, wasn't it?
 3 That was the point. We were then going to review
 4 things.
 5 **Q.** But was it of concern that you, a person who had conduct
 6 of cases, a solicitor who had conduct of cases, wasn't
 7 aware of the test for disclosure once people had been
 8 convicted?
 9 **A.** I didn't see it as a concern. I regard it as
 10 professional development.
 11 **Q.** Do you see it as a concern now that you weren't aware of
 12 that test?
 13 **A.** I do, yes.
 14 **MR BLAKE:** Thank you, sir. That might be an appropriate
 15 moment to take our mid-afternoon break. If we could
 16 come back at 3.25, please.
 17 **SIR WYN WILLIAMS:** Yes, certainly.
 18 Just before we go, though -- and stop me, Mr Blake,
 19 if you're going to continue to pursue this -- but I'm
 20 still baffled about how it can be, Mr Smith, that you
 21 quite rightly take the view that the Helen Rose Report
 22 and the Second Sight Report should be disclosed but
 23 there doesn't appear to be any consideration at all
 24 about the disclosure of your discoveries relating to
 25 Mr Jenkins, if I can put it in that way, because, in

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1 **SIR WYN WILLIAMS:** Yes, by all means. Think about it.
 2 **THE WITNESS:** I can answer it now but I'm aware that we're
 3 about to have a break.
 4 **SIR WYN WILLIAMS:** Yeah, go on, we'll extend the break until
 5 3.30. You answer it.
 6 **THE WITNESS:** Okay, thank you. So there was literally no
 7 discussion, as I recall, about disclosing information
 8 about Mr Jenkins, and when we subsequently went to see
 9 Brian Altman KC to discuss the file review process and
 10 the letters that were being sent to others with regard
 11 to post-conviction disclosure, I don't recall it being
 12 mentioned then, I don't recall it being suggested that
 13 a paragraph should be inserted to deal with Mr Jenkins.
 14 **SIR WYN WILLIAMS:** Well, no doubt that is an issue that will
 15 be taken up sequentially with the lawyers who come after
 16 you, Mr Smith. Thank you.

17 **MR BLAKE:** Thank you, sir. 3.30.
 18 (3.12 pm)

(A short break)

20 (3.30 pm)

21 **MR BLAKE:** Thank you, sir.
 22 Moving on to the Criminal Cases Review Commission,
 23 can we please look at POL00039994. They send a letter
 24 on 12 July 2013, so the same time period as the
 25 documents we've just been looking at, around the same

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1 particular, in relation to the Helen Rose Report, but
 2 really in relation to both, all of those matters are
 3 inextricably linked, are they not?
 4 **A.** I cannot recall, sir, any discussion within the office
 5 about disclosing information with regard to the position
 6 with regard to Mr Jenkins. I don't recall that being
 7 discussed at that point or indeed --
 8 **SIR WYN WILLIAMS:** No, but that in itself is, let's just
 9 say, surprising, is it not, because you have your
 10 conversation with Mr Jenkins on 28 June. That
 11 immediately raises alarm bells, one would imagine, and
 12 I think that's the purport of your evidence. We then
 13 get, sequentially, Second Sight and Helen Rose in quick
 14 succession, literally within a short number of weeks
 15 from the discussion with Mr Jenkins and, on 15 July,
 16 Mr Clarke actually puts in writing, in unequivocal
 17 terms, his very many misgivings about Mr Jenkins.
 18 So it does seem very odd that this isn't a topic of
 19 discussion, in particular in relation to what you're
 20 going to do about Mr Ishaq, who may or may not still
 21 have been in prison at that point. Anyway there we are.
 22 3.25, sorry.
 23 **MR BLAKE:** Sir, I think Mr Smith may just like to answer.
 24 **THE WITNESS:** Sir, would you like me to revisit that after
 25 the break?

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1 time as that letter was being drafted to Mr Ishaq. If
 2 we scroll down, please, it's sent to Paula Vennells and
 3 it says:
 4 "For obvious reasons, we have read the recent media
 5 coverage concerning the Post Office Horizon computer
 6 system with interest. Clearly, it would be very useful
 7 for us to have more information directly from the Post
 8 Office, especially accurate information as to the number
 9 of criminal convictions that might be impacted by the
 10 issue and what action is proposed, or being taken, in
 11 that respect."
 12 So this is following the publicity relating to the
 13 Second Sight Interim Report.
 14 **A.** Yes.
 15 **Q.** Could we please turn to POL00039998. Do you recall as
 16 a firm being tasked to draft a response to the letter?
 17 **A.** I think we were. Well, it would appear that we were but
 18 I don't recall it.
 19 **Q.** We have here an email from you --
 20 **A.** Yes.
 21 **Q.** -- to Susan Crichton:
 22 "Susan,
 23 "Please find attached documents prepared by Simon in
 24 response to the letter from the CCRC."
 25 If we scroll down we can see Simon Clarke:

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1 "Herewith my response to the CCRC letter. The pdf
2 is simply a brief discussion of the CCRC's criteria; the
3 Word.doc is a draft response for POL if they think it
4 may assist."

5 Do you recall if this was something simply
6 volunteered by yourself and Mr Clarke or whether it was
7 something specifically requested by Susan Crichton, or
8 something else?

9 **A.** I'm afraid I can't remember.

10 **Q.** Could we look at the first document that was attached,
11 and that's POL00039993. Do you recall seeing this
12 document? This was attached to that email that you sent
13 to Susan Crichton.

14 **A.** I don't know whether I considered it in any depth.

15 **Q.** Do you recall why this was prepared?

16 **A.** I would imagine that Mr Clarke was simply providing
17 information at the request of Post Office Limited and
18 the Legal Department but I don't -- I can't recall
19 having anything, really, to do with this, apart from
20 sending it on.

21 **Q.** Can we look at the other attachment and that's the draft
22 response, that's POL00039995. These are the draft
23 paragraphs for insertion into the reply. I'll just read
24 to you a few sections from this. The second paragraph,
25 halfway through, it says:

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1 plead guilty then a report would then be sought, which
2 of course is something very different.

3 **Q.** It then says:

4 "This is usually accomplished by the serving of
5 expert evidence. For many years both [Royal Mail Group]
6 and latterly [the Post Office] has relied upon a single
7 expert witness provided by Fujitsu Services Limited, the
8 Horizon manufacturer, maintenance and support
9 contractor. That witness has provided expert evidence
10 in many cases where the defendant has asserted
11 irregularities with Horizon to be the cause of
12 unexplained shortfalls, as to the operation and
13 integrity of the Horizon system. He has done so both to
14 [the Post Office] and in expert witness statements and
15 oral evidence, to the court. In particular he has:
16 attested to the presence of defect detection and
17 rectification systems; the robustness of the prosecution
18 audit trail; and stated that, in his expert opinion,
19 Horizon accurately records and processes all information
20 submitted into the system. The Second Sight Interim
21 Report demonstrates that this was not the case."

22 What isn't mentioned there is your real concerns
23 about the reliability of Mr Jenkins' evidence. Is
24 that --

25 **A.** No, there doesn't appear to be anything there about

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1 "The detection and successful prosecution of such
2 offences is almost always dependent upon a proper
3 analysis and presentation of Horizon data, and
4 accordingly it's imperative that the integrity and
5 operation of the Horizon system is demonstrably robust.
6 In many prosecutions the defence will fall into one or
7 more of the following categories."

8 Then the number of categories are identified. Then
9 it says as follows. It says:

10 "Where a defendant asserts, rightly or wrongly, that
11 Horizon is at all fault, it is for the prosecution to
12 demonstrate the integrity of the system and the
13 evidential audit trail derived from Horizon."

14 Pausing there, is that the approach you think that
15 the Post Office took over the years, that it's for the
16 prosecution to demonstrate the integrity of Horizon or
17 do you think, from what we've seen already today, that
18 there was a fair bit of a burden put on the defendants
19 themselves to particularise their complaints?

20 **A.** No, as I've said in my statement, my second statement,
21 the approach taken by Cartwright King was not to obtain
22 a report in every case where there was a suggestion that
23 the Horizon system might be at fault or some unexplained
24 loss. The approach taken by the firm was a sort of
25 'Wait and see' approach and if the defendant didn't

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1 that.

2 **Q.** No. If we continue, I mean, Simon Clarke's advice on
3 the reliability of Mr Jenkins was 15 July, so the day
4 before this draft was produced. Do you think it is
5 surprising that this letter to the Criminal Cases Review
6 Commission was not phrased with similar concerns about
7 Mr Jenkins' reliability?

8 **A.** At the time, I don't think I gave it any thought but,
9 looking back, I take the view it should have contained
10 information relating to Mr Jenkins.

11 **Q.** Actions taken by the Post Office:

12 "[The Post Office] accepts that a number of criminal
13 convictions may be impacted by the matters highlighted
14 in the Second Sight Interim Report and has taken early
15 and determined steps to identify those cases there such
16 an impact may fall."

17 So there's mention of Second Sight here but there
18 isn't mention of the Helen Rose Report either, is there?

19 **A.** No, there doesn't appear to be.

20 **Q.** Then the next paragraph:

21 "To that end [the Post Office] has instructed
22 an independent firm of criminal specialist solicitors to
23 identify every criminal case prosecuted by [the Post
24 Office] and [Royal Mail Group] prior to their separation
25 and, in any event, in the last three years so as to

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1 determine, in each case the answer to that question."
 2 "Instructed an independent firm of criminal
 3 specialists"; is that correct?
 4 **A.** That would be Cartwright King.
 5 **Q.** Having prosecuted a number of those cases, do you think
 6 it's fair to describe Cartwright King to the CCRC as
 7 an independent firm of criminal specialists solicitors?
 8 **A.** Well, I guess the answer to that is we were independent
 9 of Post Office, so we weren't within Post Office's Legal
 10 Team and we were external to Post Office but, of course,
 11 we weren't independent of the actual prosecutions
 12 because we had conducted a number of them.
 13 **Q.** If we could go over the page to page 3, please. If we
 14 scroll down, "Number of impacted cases", it says:
 15 "Where counsel has advised the possibility of
 16 grounds to appeal, letters have been written to
 17 solicitors who defended, informing them of the issues
 18 and providing copies of the Second Sight Interim Report
 19 and such other material as they ought to have received
 20 during the currency of the prosecution, had we then been
 21 possessed of that material. It would then be for the
 22 defendant and his lawyers to determine whether or not
 23 they wished to launch an application for leave to appeal
 24 out of time; we would certainly support grounds to allow
 25 the application out of time."

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1 narrow approach that seems to be taken to disclosure of
 2 matters that are well known by this stage to the Post
 3 Office?
 4 **A.** Well, at this point in time, there were very few matters
 5 known. There was simply the two bugs and the Helen Rose
 6 issue -- the Helen Rose Report, in my mind. So ...
 7 **Q.** You had sent this draft -- it seems to be authored by
 8 Mr Clarke but you had sent it to the Post Office?
 9 **A.** Yes.
 10 **Q.** Presumably you read it before you sent it?
 11 **A.** I don't know whether I did or not.
 12 **Q.** Would it be typical of you just to forward things to the
 13 Post Office or would you consider matters such as
 14 a response to the Criminal Cases Review Commission
 15 relating to cases that you had prosecuted?
 16 **A.** No, if Mr Clarke had drafted something, I would have
 17 trusted him and forwarded it.
 18 **Q.** You are sending a letter to the Post Office, which makes
 19 absolutely no mention of the kinds of concerns that the
 20 Post Office had at that stage about Mr Jenkins, within
 21 days of Mr Clarke's actual advice on the impact of
 22 Gareth Jenkins' evidence, and it isn't mentioned. Do
 23 you think that is of some concern about how open and
 24 transparent your firm intended to be with the Criminal
 25 Cases Review Commission?

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1 Again, reference there to the Second Sight Interim
 2 Report but no mention of the Helen Rose Report or any
 3 other specific information set out there in that draft
 4 letter; is that correct?
 5 **A.** Yes, I don't -- I also think, looking at that paragraph,
 6 it's saying letters have been written to solicitors who
 7 defended. I'm not sure the letters went out that
 8 promptly.
 9 **Q.** It concludes:
 10 "Thus far the review has identified no cases where
 11 the defendant has sought the leave of the Court of
 12 Appeal to appeal against this conviction. One case has
 13 been identified where the defendant sought, and was
 14 refused, leave to appeal against his sentence."
 15 If we go over the page, please, we then have
 16 Magistrates' Courts convictions, a section on that, and
 17 it's the final passages of this draft that I want to now
 18 ask you about. It says:
 19 "We take the view that it is incumbent upon the [the
 20 Post Office] as a major public institution to take every
 21 reasonable step to ensure that only the genuinely guilty
 22 are convicted and that those who are, or may have been,
 23 convicted without good reason, have every opportunity of
 24 correcting such a miscarriage of justice."

25 Do you think that that fairly reflects the very

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1 **A.** I don't believe I gave that any thought at the time. It
 2 seems to me that I've simply forwarded documents.
 3 **Q.** Can we please look at POL00139730. So you were simply
 4 forwarding documents on 16 July, relating to the
 5 Criminal Cases Review Commission. We're now a few days
 6 on, 19 July. You're attending what is called a regular
 7 call regarding Horizon issues. Is this the first of
 8 those meetings?
 9 **A.** I believe it was, yes.
 10 **Q.** It then became a regular call relating to Horizon
 11 issues?
 12 **A.** Yes, they were weekly to start with and then, at some
 13 point in the future, they became fortnightly.
 14 **Q.** If we scroll down, please. Rob King, who's a member of
 15 the Security Team, says as follows, or the note is as
 16 follows:
 17 "No minutes circulated, but we will be taking
 18 notes."
 19 So it seems as though there is some sort of
 20 direction that no minutes from these meetings will be
 21 circulated; is that something you recall?
 22 **A.** Well, I've dealt with this in my witness statement.
 23 I recall that one of the civil lawyers from Bond
 24 Dickinson explained virtually straightaway after Mr King
 25 had spoken, the reason for this and he was clearly

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1 talking from a disclosure position in civil cases. He
2 said that he'd had previous experience of this and that
3 he was concerned that, if minutes are circulated by
4 email, they then can be forwarded on to other people,
5 potentially well intentioned, with a view to getting
6 opinions, that might generate incorrect information. It
7 might generate opinions that are incorrect, and it can
8 result in information being stored elsewhere, away from
9 the call.

10 So whilst he was concerned about that, I considered
11 that from a criminal perspective. In London, at the
12 meetings, Simon Clarke had been very careful to advise
13 the Legal departments of Post Office what their
14 obligation were and what their duties were from
15 a criminal disclosure point of view and that a central
16 hub who'd be set up to collate information.

17 And I could see, from what Mr Parsons was saying,
18 from Andrew Parsons' concerns, that there was a real
19 chance. If he was concerned about that, then I was
20 equally concerned that we could be faced with
21 a situation where there could be several mini hubs of
22 information containing various amounts of information
23 which might or might not be correct and, going forward,
24 that would make a disclosure exercise very, very
25 difficult and also difficult to instruct a new expert,

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1 "Commented on the need to limit public debate on the
2 Horizon issue as this may have a detrimental impact on
3 future litigation."

4 If we scroll down over the page to page 3, near the
5 bottom of page 3, the third entry from the bottom, we
6 see another entry summarising something that he has said
7 to have said, which is:

8 "Spoke about emails, written communication, etc ...
9 if it's produced then it's available for disclosure, if
10 it's not then technically it isn't."

11 What did you understand by that?

12 **A.** Well, I understood him to be talking about pre-action
13 disclosure in civil cases, nothing to do with criminal
14 litigation and criminal law. Post Office had already
15 been advised from a criminal perspective quite
16 thoroughly by Simon Clarke. They'd accepted that
17 advice. They'd set up this call and he was a civil
18 lawyer on the call, clearly not offering criminal law
19 advice because he's not a criminal lawyer but clearly
20 looking at the position from a civil law perspective.
21 He spoke at the outset of the call about his experience
22 in previous cases, where he'd had nasty surprises when
23 he'd done trawls of emails and found information that
24 I think was incorrect or something like that.

25 So, clearly, what he's saying there is basically

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1 if there are different hubs of information.

2 So I understood the rationale for that.

3 **Q.** Let's see where you're mentioned, if we scroll down, it
4 has your name in the next box, and it says:

5 "Confirmed it was good Horizon wasn't discussed at
6 the length during interviews under caution and also the
7 use of template statement. Would like to be appraised
8 of developments [regarding] interviewing and to have
9 sight of statements and scripts."

10 Then it says this, it says:

11 "Clarification on disclosure and email
12 correspondence. Emphasised need to ensure that any
13 document produced would be potentially disclosable."

14 So is that you there emphasising that any such
15 document that was produced would be potentially
16 disclosable?

17 **A.** Well, I don't think this is correct. I believe I spoke
18 towards the end of the call, not at the beginning. It
19 was Mr Parsons who spoke after Rob King. He was
20 concerned about inaccurate information being generated,
21 and when I spoke, I explained that any information
22 generated obviously needed to be accurate and kept
23 because it may well be disclosable.

24 **Q.** We see there two entries from Mr Parsons. The first one
25 says as follows:

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1 a warning because, if people aren't committing things
2 recklessly to paper, or if they're not recklessly
3 writing emails, then it obviously makes the -- his job
4 easier.

5 **Q.** What about the first one, page 2, in the middle:

6 "Commented on need to limit public debate on the
7 Horizon issue as this may have a detrimental impact on
8 future litigation."

9 I mean, was the advice that was being given, if not
10 by you, then by Mr Parsons at this meeting, one of
11 limiting what is said about Horizon issues?

12 **A.** I don't recall the meeting and I generally made copious
13 notes, which I left at Cartwright King. My
14 understanding was that he was concerned about incorrect
15 information being discovered on email trawls then going
16 into the public domain through pre-action disclosure
17 and, of course, if people have been guessing or
18 speculating or coming up with incorrect points, well,
19 I guess his point was that's equally disclosable in
20 a civil case and could cause damage to Post Office.

21 **Q.** What's noted here, though, is much wider than that,
22 isn't it?

23 **A.** It is, "need to limit public debate". I don't recall
24 that.

25 **Q.** If we scroll up, Rob King:

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1 "No minutes [to be] circulated ..."
 2 That must have been of concern, mustn't it?
 3 **A.** Well, it would have been that Mr Parsons then not
 4 explained his rationale for that.
 5 **Q.** Let's just look back at everything that we've discussed
 6 so far today. You were involved in the criminal
 7 prosecution on behalf of the Post Office in a number of
 8 cases correct?
 9 **A.** Yes.
 10 **Q.** You prosecute people resulting in some cases going to
 11 prison, certainly Mr Ishaq's, correct?
 12 **A.** Yes.
 13 **Q.** Irrespective of your knowledge at the time you were
 14 prosecuting, you have by now found out that there was
 15 a lot more information about bugs, errors and defects in
 16 the Horizon system than you knew at the time; is that
 17 right?
 18 **A.** Well, at this point in time, we have knowledge of the
 19 Helen Rose Report and the Second Sight draft Interim
 20 Report.
 21 **Q.** Yes, and you've also learnt about concerns that
 22 an expert witness who had been giving evidence in your
 23 prosecutions knew a lot more than had come out in
 24 evidence about bugs, errors and defects?
 25 **A.** Yes.

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1 keep everything away from being distributed?
 2 **A.** Well, no, that's -- the purpose of the central store was
 3 to ensure that everything was collated in one place.
 4 That would be then interrogated for disclosure purposes
 5 and it would also mean that instructing any new expert,
 6 there is only one single central store be sent to that
 7 expert. And as I understood this, if there were
 8 applications for pre-action disclosure -- and I don't
 9 know that much about civil litigation but, again,
 10 there's a single central store for that.
 11 I think the point that we had in mind was that it
 12 would actually serve both camps if there is one single
 13 central store. The minute that you start having emails
 14 being circulated with people then being able to add to
 15 those email chains in a way that wasn't visible to the
 16 central store, the minute you start to not that have
 17 full visibility of the issues which perhaps ought to be
 18 recorded in the central store.
 19 So, at that point in time, I was not actually
 20 concerned about that.
 21 **Q.** Can we then look at document retention and destruction
 22 post-19 July and look at POL000139745, please. This is
 23 a discussion that took place on 1 August 2013. Is this
 24 your note?
 25 **A.** Yes. My details are in the top right-hand corner. Yes.

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1 **Q.** You read the Helen Rose Report by this stage, correct?
 2 **A.** I believe so, yes.
 3 **Q.** You've been sent a draft response to the Criminal Cases
 4 Review Commission, which makes no mention of a number of
 5 those matters; is that right?
 6 **A.** Yes.
 7 **Q.** Now there seems to be a discussion about limiting the
 8 amount of information in the public domain. Does that
 9 not cause you real concern at this stage?
 10 **A.** Well, no, it didn't, because Mr Clarke had advised that
 11 there be a central record and, as I understood it,
 12 a central record was going to be created. That was the
 13 purpose of this call and, quite frankly, I was content
 14 for there to be a single central record, not several
 15 central records. I --
 16 **Q.** But why no minutes circulated?
 17 **A.** Well, as I say, that had already been explained, because
 18 people can then forward them on and that could then
 19 attract other opinion and then get forwarded on to
 20 others, and I think it was described as a sort of spider
 21 effect where it can crawl and you don't know where the
 22 emails end up and you don't know what's been added to
 23 them.
 24 **Q.** So was the purpose of the central store not to make sure
 25 that everybody had access to central material but to

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1 **Q.** It seems as though you had a telephone call with John
 2 Scott on 31 July 2013; is that correct?
 3 **A.** No, that's not correct.
 4 **Q.** When did you have a discussion with John Scott?
 5 **A.** It wasn't a telephone call with John Scott. "JS" here
 6 would be Jarnail Singh. So this was a note that I made
 7 on electronic file 37142, on 1 August 2013, relating to
 8 a telephone call that had taken place at approximately
 9 6.00 pm the night before 31 July and, as you'll see
 10 here, the summary cuts off but there's no more in the
 11 lower section:
 12 "J Scott has instructed that the type minutes be
 13 scrapped."
 14 There was obviously a lot more to that call because,
 15 as you can see from the time recording at the bottom,
 16 I was engaged on that call for some 24 minutes.
 17 **Q.** It's a summary that's there. It's very important for
 18 this Inquiry to know what you recall about that
 19 discussion, and the words used. Can you assist us?
 20 **A.** I think I've put this in my second -- well, both witness
 21 statements because I could see in my first witness
 22 statement this was something that was going to be of
 23 relevance. I was actually driving at the time when
 24 I took the call from Mr Singh and I can recall
 25 complaining to him about the influence being exerted

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1 over Post Office, in my view, by the civil lawyers, the
2 external civil lawyers and I can also recall him telling
3 me that an instruction had been sent out and that, if
4 anyone -- that the typed minutes should be scrapped and
5 that, if anyone asks, then Cartwright King would be
6 blamed for providing that advice, or words to that
7 effect.

8 I can recall being absolutely horrified and shocked
9 by what I'd heard and, when I had the opportunity to
10 pull over, I was able to use another mobile phone to
11 record at a distance the latter part of the
12 conversation, because I was just so shocked by what I'd
13 heard. I can recall relaying that to Mr Clarke. I'm
14 afraid I can't really recall much more about precisely
15 what was said but I remember that I relayed to Mr Clarke
16 the concerns that Mr Singh had, that I had, and the
17 comments made.

18 And from memory, this was just after the third
19 Wednesday morning call. So there'd been a space of
20 about a fortnight since the first call. No minutes were
21 being circulated and I can remember saying to Mr Singh
22 I can appreciate the reasons for that and, quite
23 frankly, that actually wasn't necessarily a bad thing,
24 from a criminal law perspective, if it meant that there
25 was a single central store which was accurate. It made

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1 were acting in good faith to do that and, therefore,
2 formed the view, rightly or wrongly, that it must have
3 been then at the function of the civil lawyers, the
4 effect of the civil lawyers, who were then trying to
5 pull away from having that central hub and I considered
6 that, by the time we got to the third Wednesday morning
7 call, to start having a position where we're not going
8 to have anything in writing, that did worry me, that
9 I was concerned about that, and then this followed on,
10 this conversation followed on very soon after that.

11 **Q.** So let's break down that telephone call at 6.00 pm on
12 the 31st. First of all, did Jarnail Singh tell you that
13 this was on legal advice or did you not have that
14 conversation? You've said a number of times that it was
15 on the advice of the civil lawyers, is that
16 an assumption or something you were told --

17 **A.** Sorry, no. I assumed, when I was talking to Jarnail
18 Singh that it was the advice of the civil lawyers to
19 move away from having everything -- anything in writing.
20 Because we'd gone from having -- sorry, we'd gone from
21 having a situation where minutes weren't going to be
22 circulated but a central record was going to be kept,
23 notes were going to be kept. I was expecting some form
24 of like minutes or a spreadsheet or something that would
25 be documenting the issues arising in accordance with

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1 our life much easier to just go to one place rather than
2 having to wonder if there was information in several
3 places.

4 The same approach was adopted on the second call but
5 I can recall, by the third call, there was some form of
6 change proposed. I don't remember, I'm afraid, exactly
7 what the change was, but I do remember saying on the
8 call "No hold on, you still have to keep a central
9 record", and making the decision that I would ask
10 Mr Clarke to prepare a formal advice to Post Office, so
11 that it put absolutely in black and white their
12 obligations and confirming, effectively, what he had
13 told them at the very first meeting. The advice that
14 they'd had accepted and acted upon to set up that
15 Wednesday morning call.

16 I was actually concerned that Post Office had
17 accepted that advice and acted upon it, but in my mind,
18 it was the actions of the civil lawyers that were now
19 trying to water that down and move away from that
20 situation and I'm afraid I took the view that that
21 was -- must have been the actions of the civil lawyers
22 having an influence there because Post Office had
23 accepted the advice that Mr Clarke had given to set up
24 that call, to have a central hub.

25 I took the view that they'd accepted that advice and

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1 Simon Clarke's advice, which had been accepted.

2 So the second meeting took place. Again, there was
3 the same sort of discussion at the beginning but, by the
4 time of the third call, it was a case of there being
5 some suggestion that we're not going to do things in
6 this particular way any more. I can't remember what it
7 was, and --

8 **Q.** The words used here are "scrapped". Now, from your
9 understanding of that telephone call, was it that notes
10 or typed minutes were to be stop or were they to be
11 destroyed?

12 **A.** To be destroyed.

13 **Q.** Was that your clear understanding from that
14 conversation?

15 **A.** Yes.

16 **Q.** We know from Mr Clarke's Advice he uses the word
17 "shredded."

18 **A.** Yes.

19 **Q.** Do you know where that came from?

20 **A.** I can only assume it's arising out of the conversation
21 that I had with Mr Singh.

22 **Q.** Is that something you recall from your discussion with
23 Mr Singh?

24 **A.** Not at this point in time, no.

25 **Q.** So you don't recall the specific word "shredded" but you

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1 do recall that typed minutes were to be destroyed rather
2 than there was going to be some sort of stopping taking
3 future minutes?

4 **A.** No, that was very much my understanding, that Mr Singh
5 told me that -- the understanding that I had was that
6 Mr Singh told me that the minutes were to be destroyed.
7 I can't remember the exact phraseology, I'm afraid, it
8 was 10 years ago.

9 **Q.** Were to be or had been, there's a big difference between
10 the two?

11 **A.** I was under the impression that the instruction had gone
12 out and that they had been.

13 **Q.** Instruction from whom to whom?

14 **A.** The information that I was given that it was Mr Scott,
15 John Scott, Head of Security, who had sent that
16 instruction out. To whom -- I believe it was -- I'm
17 hesitant here because there are a number of -- there
18 were a number of people named David and I'm thinking it
19 was either David Pardoe or David Posnett but I'm afraid
20 I can't. It was a long time ago.

21 **Q.** Did you understand that Mr Scott had received advice in
22 respect of that matter or that he was acting on his own
23 instigation?

24 **A.** I had no idea. I had no idea. I was concerned by that
25 third Wednesday morning call that somehow there was

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1 "I know Simon is advising on disclosure."
2 So it seems as though during your conversation there
3 was a discussion that Simon would be advising.

4 **A.** Yes, I've told him that clearly this -- the disclosure
5 situation in criminal law is very different to that in
6 civil litigation, you know, a central record needs to be
7 written -- needs to be kept and, you know, that's the
8 position.

9 **Q.** It says:

10 "As discussed, can he look into the common myth that
11 emails, written communications, etc, meetings. If it is
12 produced it's then available for disclosure. If it's
13 not then technically it isn't? Possible true of civil
14 cases NOT CRIMINAL CASES?"

15 I mean, those words there seem to reflect the
16 minutes that we saw from Mr Parsons --

17 **A.** Yes.

18 **Q.** -- the words from him. What did you understand
19 Mr Singh's position to be or what was he asking for
20 here?

21 **A.** Well, I was a little puzzled when I received this
22 because I'd already told him the previous night that,
23 you know, we weren't getting involved in the civil
24 litigation side of things and, whilst the civil lawyers
25 may not want things in writing, you know, it's the

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1 a plan to change things. I didn't like that, and
2 then --

3 **Q.** What was it that happened at that Wednesday meeting call
4 that was of significance?

5 **A.** There was -- I was left with a distinct impression that
6 Post Office were no longer wanting to keep a record of
7 the calls, and I can recall saying, "No, you must still
8 keep a central record". I don't know if you have my --

9 **Q.** You say Post Office, who at the Post Office?

10 **A.** I think that was information that came from Rodric
11 Williams. I think it was Rodric Williams who said that
12 because I think I said, "Rodric, you still need to keep
13 a central record", and I remember not being very happy
14 about it and thinking that this is one for Simon Clarke.

15 **Q.** Civil lawyers were present at that meeting. Did they
16 have any input, as far as you were aware?

17 **A.** I don't recall, I'm afraid and I don't have my notes
18 from those meetings.

19 **Q.** I might just take you to one more document before we
20 finish for the day. Can we please look at POL00139746.
21 This is an email from Jarnail Singh to you on 1 August,
22 so the morning after.

23 **A.** Yes.

24 **Q.** He says:

25 "Martin

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1 information that matters, and you have to have a central
2 record.

3 **Q.** "Common myth" --

4 **A.** Yeah, well --

5 **Q.** -- was that amongst the Legal Team, or something else?

6 **A.** I have no idea where he got that from, absolutely no
7 idea. What I do know is that Mr Parsons had been
8 talking from a civil perspective and I don't know
9 whether Mr Singh had been on that same page and assumed
10 that was the position in criminal law too, but
11 I remember pointing out to him on that phone call the
12 previous night that I was actually getting quite
13 concerned because Simon Clarke's advice had been
14 accepted. It had been watered down slightly but in
15 a way that I could live with and then, of course, there
16 was now going to be a further change, which I was
17 actually quite concerned about and, therefore, I was
18 asking Simon to further advise.

19 **MR BLAKE:** Thank you. Sir, that could be an appropriate
20 time to stop. We've been going for a long time today.

21 **SIR WYN WILLIAMS:** Yes, indeed.

22 So what's the programme tomorrow? We've got
23 Mr Aujard returning, yes?

24 **MR BLAKE:** We do. That should be for no more than an hour,
25 I believe.

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1 **SIR WYN WILLIAMS:** Is that happening first thing?
2 **MR BLAKE:** Yes --
3 **SIR WYN WILLIAMS:** That's happening first thing.
4 **MR BLAKE:** -- at 9.45 and then Mr Smith will come
5 straight --
6 **SIR WYN WILLIAMS:** Then continue?
7 **MR BLAKE:** Yes.
8 **SIR WYN WILLIAMS:** All right, fine.
9 I'm sure Mr Smith you know that you shouldn't
10 discuss your evidence overnight, so please don't do
11 that.
12 I'll see you in the morning, probably at around
13 10.45.
14 **THE WITNESS:** Thank you, sir.
15 **SIR WYN WILLIAMS:** I'll see everyone else at 9.45. Thank
16 you.
17 **MR BLAKE:** Thank you, sir.
18 **(4.09 pm)**
19 **(The hearing adjourned until 9.45 the following day)**
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24
25

I N D E X

HARRY BOWYER (continued)	1
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