

Thursday, 2 May 2024

1
2 (9.44 am)
3 **CHRISTOPHER CHARLES AUJARD (continued)**
4 **MR STEVENS:** Good morning, sir, can you see and hear me?
5 **SIR WYN WILLIAMS:** Yes, I can, thank you very much.
6 **MR STEVENS:** Thank you, sir. First, we will be hearing from
7 Mr Aujard. We had him in last week and there are Core
8 Participant questions remaining. Sir, you'll be hearing
9 from four sets of Core Participants: first, Ms Page, who
10 estimates will be up to 20 minutes; then Mr Moloney, who
11 estimates 15 minutes; then Mr Stein, who estimates 15
12 minutes; and then Ms Oliver who is between 10 and 12
13 minutes.
14 **SIR WYN WILLIAMS:** Right.
15 **MR STEVENS:** Then, after that, we'll hear back from
16 Mr Smith. We have Mr Aujard today attending by video
17 remotely. Can I just check, Mr Aujard, can you see and
18 hear us?
19 **THE WITNESS:** Yes, I can, indeed.
20 **MR STEVENS:** Thank you, sir. I think that's --
21 **SIR WYN WILLIAMS:** Thank you, Mr Stevens.
22 Can I just remind you, Mr Aujard, that you're still
23 on oath, even though there's been a break between you
24 starting your evidence and now completing it this
25 morning. So over to Ms Page first.

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1 Board had clear advice on what they ought to be doing
2 according to the law, yes?
3 **A.** Yeah, one of my tasks, yes.
4 **Q.** You ought to have been the back stop, the brake, on
5 a natural inclination to cover up problems, hide them
6 away, move on?
7 **A.** Part of my role is to be transparent and clear with the
8 Board and inform them as to information that crosses my
9 desk that they ought to know.
10 **Q.** At paragraph 393 of your statement -- no need to bring
11 it up -- you say this:
12 "The overall misunderstanding of the size of the
13 issue led to the approach taken by Post Office when
14 challenged, which was that 'There is no problem here',
15 a comment that was, in retrospect, made by way of
16 assertion and possibly in reliance on the presumption
17 that a computer operates correctly unless shown
18 otherwise, rather than by reference to more exhaustive
19 investigations. This inevitably led to a situation that
20 was more adversarial and less cooperative than it
21 perhaps needed to have been, as well as one that did not
22 identify the problem quickly enough."
23 Let's get real here, Mr Aujard. There was no
24 misunderstanding of the size of the issue, was there?
25 The Board had notified the insurers of a litigation

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1 **MR STEVENS:** Thank you, sir.
2 **Questioned by MS PAGE**
3 **MS PAGE:** Thank you, sir.
4 When you joined Post Office in autumn 2013, it was
5 in the midst of a legal crisis, wasn't it?
6 **A.** As it was explained to me at the time, it was to take on
7 a mediation -- help with the Mediation Scheme. I don't
8 think that the words "crisis" were used either in the
9 interviewing process or as and when I joined.
10 **Q.** Did you identify it as a crisis when you joined?
11 **A.** That said, it became apparent, as my time at POL
12 continued, that there was a lot of scrutiny around the
13 Mediation Scheme, in particular, and that that was --
14 although that was occupying some of my time, it was by
15 no means the vast majority of my time. But the
16 direction that I was given by Paula and Alice Perkins
17 upon joining was that I was there as a Corporate General
18 Counsel and this -- I don't believe the words "crisis"
19 was used at any time, certainly not in the first sort of
20 six months or so.
21 **Q.** Whether or not anybody else used the word "crisis", you
22 must have recognised, as a lawyer, that there were
23 considerable legal challenges facing Post Office --
24 **A.** Yes, indeed. Yes, indeed.
25 **Q.** -- and your task as General Counsel was to make sure the

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1 risk, and they were asking for advice on their personal
2 liability. So it's not about a misunderstanding of the
3 size of the issue; it's what you say next that's key,
4 isn't it: it was a deadly presumption at work. The
5 Board desperately wanted to believe that the system was
6 working, didn't they?
7 **A.** If I could answer that question as follows: in terms of
8 the size of the problem, that, I believe, is a reference
9 to a comment I make earlier in the witness statement
10 about the Mediation Scheme and the size -- of the number
11 of applicants that applied to that, which, although more
12 than the Board expected, was somewhat less than one
13 would have anticipated, if there was a widespread
14 systemic error. That's at least I think how the Board
15 saw it.
16 In terms of the presumption, I believe -- and I'm
17 not sure on what basis this belief is held -- but
18 I believe, it's either from Linklaters or from Bond
19 Dickinson or possibly Cartwright King, that there was
20 a belief within POL that there was a -- that the system
21 worked as it should in all circumstances until proved
22 otherwise. So absolutely correct, there was
23 a presumption at all levels within POL; that is correct.
24 **Q.** As you accept, this led to needless adversarialism?
25 **A.** As I said in my statement, that led to assertion, rather

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1 than detailed -- perhaps a detailed review.

2 **Q.** Lord Arbuthnot has said that he believed relations with
3 Post Office became "less open and more combative" after
4 you became General Counsel; what do you say to that?

5 **A.** So my involvement with Lord Arbuthnot was very limited.
6 I believe I had maybe two meetings with him, possibly
7 three but I believe it was two, and I can understand
8 why, from an external perspective, he might draw those
9 conclusions.

10 They were, however, I think, as a result of the
11 actions taken in relation to the Mediation Scheme and
12 those actions were very much directed by both the
13 Sparrow subcommittee and the Board, as was seen in my
14 evidence last week.

15 **Q.** Is the reality that your arrival, timed with the Board's
16 reaction to and adjustment to the Clarke advice and the
17 very serious implications of that? The POL Board was
18 going into cover-up mode and that was the mood and the
19 tenor of the leadership team that you were joining?

20 **A.** If it was that, I certainly didn't recognise it at the
21 time, and I certainly would struggle to put my finger on
22 specific instances of someone engaging in cover-up
23 behaviour at the Board level, as a Board.

24 **Q.** Well, let's look at a few documents and I'll start,
25 please, with an email. It's about a report into John

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1 overwhelmingly focused on obtaining an admission of
2 false accounting from the interviewed SPMR (or
3 employee).

4 "POL Investigators often appear to have paid scant
5 attention to the interviewee's assertions of innocence
6 or his/her reference to specific transaction anomalies.
7 They seem to have shown little or no willingness to
8 establish the underlying root cause of any given
9 shortfall.

10 "This disinterest seems to be driven by the desire
11 to 'get the money back' from the SPMR, knowing that
12 a false accounting conviction will provide a relatively
13 inexpensive (to POL) pathway to that goal. In the event
14 that an SPMR has not committed any criminal offence,
15 then clause 12 of the standard contract provides
16 an equivalent pathway to asset recovery using civil
17 law."

18 Then if we just go down a little bit to paragraph 3:
19 "In none of the cases examined so far did any
20 Investigator record anything that indicated that there
21 might be any widespread systemic problem worthy of
22 investigation, despite similar allegations being made by
23 different, unconnected, SPMRs."

24 Then if we just go down to 5, as well, please:
25 "The overwhelming impression gained from reviewing

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1 Scott's department. Now, John Scott is somebody who
2 reported to you, isn't he?

3 **A.** Yes, indeed. I took over his reporting line when
4 I joined POL.

5 **Q.** Your statement says that you had no concerns about him?

6 **A.** In his capacity at -- in the role he was fulfilling at
7 the time, which was principally in relation to physical
8 security.

9 **Q.** Yes. Well, that's perhaps an important caveat, isn't
10 it, because, if we have a look at a document, it was --
11 I don't know if you accept this, whether I need to show
12 you the email, but it was shown to you in January 2014
13 by Mr Ron Warmington, and it's a document that makes
14 summary severe criticisms of Mr Scott's department. Do
15 you accept that Mr Warmington gave that to you in
16 January 2014?

17 **A.** Yes, I believe it's a document I asked Ron for and it
18 was a draft report prepared for Susan Crichton and, from
19 recollection, it was heavily caveated. The most caveat
20 of which saying that he hadn't discussed any of this or
21 interviewed anybody in that Security team.

22 **Q.** Well, nevertheless, let's have a look at it, shall we?
23 POL00344051. If we just have a look at paragraph 1, it
24 starts:
25 "POL Investigators and investigations are

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1 the transcripts of investigative interviews is that the
2 SPMR was viewed as an enemy of the business. The
3 culture within the Investigation Team appears to be one
4 of 'a presumption of guilt' when conducting
5 an investigation, rather than an aim of 'seeking the
6 truth' (see comments on the consequences of 'Tunnel
7 Vision' at the foot of this report)."

8 Then, lastly, if we scoot down a little bit to the
9 paragraph beginning "By failing to investigate" --
10 sorry, I should have said what page that's on. I think
11 we may have gone past it. If we could go back up to
12 paragraph 5, please.

13 Well, rather than scrolling up and down, if I may,
14 I'll read it out to you and, if I'm wrong, I'm sure I'll
15 be corrected:

16 "By failing to investigate those SPMRs' assertions
17 (or even to pay proper heed to them during interviews),
18 the Investigators have alienated all of them. It is
19 that group (the SPMRs who evidently still believe
20 themselves not only to be innocent but also to have been
21 cheated by POL) who really have become enemies of the
22 business."

23 That's the needless adversarialism right there,
24 isn't it?

25 **A.** I think the adversarialism I was referring to in the --

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1 my earlier comments, which was part of the reflections
 2 in my witness statement, was around the attitude taken
 3 by POL generally. This, I think, is a specific case of
 4 a specific team allegedly behaving in a certain way, as
 5 set out in this draft report. And I do agree, this
 6 reads as though that team is adopting an adversarial
 7 approach to their investigations.

8 **Q.** And a failure to investigate, as you also identified in
 9 your paragraph 394. That was their job, to investigate,
 10 and yet they were failing to investigate. What's more,
 11 this document was identifying the fact that although the
 12 same complaints were coming up time and again, nobody
 13 was looking at this as a systemic problem.

14 Now, whilst they were no longer carrying out
 15 investigations, this was telling you, was it not, that
 16 there were serious concerns over past prosecutions,
 17 wasn't it?

18 **A.** I have no specific recollection of what I thought of the
 19 document at the time. However, my belief is that
 20 I would have looked at this and asked a number of
 21 questions, such as why did Susan Crichton commission it?
 22 Was it an attempt by her to remove certain individuals
 23 from that team? I suppose the third thing I would have
 24 thought at the time is: it is a draft report that is
 25 heavily caveatted and would, at some point in the

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1 **SIR WYN WILLIAMS:** All right. Thank you.

2 **MS PAGE:** There was another section of your statement
 3 I wanted to consider. You and, indeed, the POL Board
 4 refer to an "expectation gap" in the mediation process.
 5 In clear terms, that meant the Board wanted payouts to
 6 be minor, whereas applicants wanted compensation for
 7 their very substantial losses, yes?

8 **A.** Correct.

9 **Q.** When that was discussed in an off-the-record meeting
 10 with Sir Anthony Hooper -- and we can bring that up,
 11 it's POL00100335 -- he brought that matter to something
 12 of a head, didn't he? In paragraph 2, Ms Vennells opens
 13 the meeting and she says that she's expecting, as we see
 14 at the end of that paragraph, there to be outcomes in
 15 many cases which might be by "an apology and/or a small
 16 gratuitous payment"?

17 If we go down to paragraph 7, we see your note of
 18 Sir Anthony Hooper's view, which was rather different:
 19 "The quantum of the payments was discussed.
 20 [Sir Anthony Hooper] noted that the applicants' CQRs
 21 often painted a very distressing picture, where there
 22 had been a loss of livelihood, and other losses. His
 23 view was that, should the evidence show that POL had not
 24 acted properly, then the amount of compensation payable
 25 could be quite material ..."

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1 future, had I been a permanent GC and stayed on in the
 2 role, require, you know, further investigation to
 3 understand what was going on or what had gone on
 4 historically in that team.

5 **Q.** Well, exactly. This is a document that required and
 6 demanded immediate action to make sure that it was
 7 properly understood, wasn't it?

8 **A.** So the document was provided to me by way of a historic
 9 piece of background. Here is something that Susan had
 10 commissioned --

11 **Q.** Did it require immediate attention or not, Mr Aujard?

12 **A.** My view at the time was, given it was marked as a draft
 13 document and heavily caveatted, it was something that
 14 would have required investigation in due course, had --

15 **Q.** In due course, I see.

16 **A.** -- had I (*unclear*) for longer.

17 **SIR WYN WILLIAMS:** What, in fact, happened to the document,
 18 so far as you were concerned, Mr Aujard?

19 **A.** Sir, I believe this was handed to me by way of just more
 20 background information. My recollection is that I would
 21 have read it at the time and put it to one side and that
 22 would have informed by thinking more fully about the
 23 organisation that I'd just joined. Beyond that, I can't
 24 say that I took any further action or I can't recollect
 25 taking any further action in relation to this document.

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1 Now, he was telling POL two things: (1) that he
 2 might find that POL had not acted properly; and (2)
 3 that, if so, POL might owe a lot of money in
 4 compensation. Now, in effect, Mr Aujard, that was the
 5 death knell for the Mediation Scheme, wasn't it?

6 **A.** I'm terribly sorry, could you -- could I possibly have
 7 a look at the date on that note?

8 **Q.** Yes, it's at the top and I believe it's 24 February
 9 2014. There we have it.

10 **A.** Thank you. So my recollection is that the expression
 11 "expectations gap" was in circulation within POL as
 12 early as November 2013 and that arose really as
 13 a consequence of advice that POL had received prior to
 14 my arrival, that it's -- the compensation paid should be
 15 paid in accordance with contractual principles, and
 16 I believe the expression -- the guidance of three months
 17 maximum.

18 **Q.** The question I asked, Mr Aujard: this was the death
 19 knell for the Mediation Scheme, wasn't it?

20 **A.** The "expectation gap", which I think you're referring to
 21 as the death knell here, had its roots --

22 **Q.** No, I'm not referring to the expectation gap as the
 23 death knell. I'm referring to Sir Anthony Hooper's
 24 clear view that (a) POL might not have acted properly
 25 and (b), if so, they would owe a lot of money; that was

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1 the death knell, wasn't it?
 2 **A.** I don't believe -- I wouldn't characterise this as
 3 a death knell. No, I'm afraid I wouldn't. The scheme
 4 structure was such that the Working Group, which
 5 Sir Anthony Hooper chaired, was there for the purpose of
 6 ensuring that cases were either mediated or not
 7 mediated. The amounts of money or compensation paid
 8 really were something that was arranged in the mediation
 9 itself.
 10 **Q.** Well, you accept, don't you, that, following this
 11 advice, it was this that sent the POL Board off to
 12 Linklaters and the brief for Linklaters was to find
 13 a way to sack Second Sight and end the mediation
 14 process, wasn't it?
 15 **A.** I believe the first brief for Linklaters was to examine
 16 the subpostmasters' contract and opine on that.
 17 **Q.** Quite.
 18 **A.** That was (*unclear*) advice.
 19 **Q.** You seek to make a distinction in your statement
 20 between, on the one hand, the litigation risk and, on
 21 the other hand, the risk that Horizon was, in fact
 22 flawed, don't you?
 23 **A.** At various points I comment on both, yes.
 24 **Q.** That's really the sort of distinction that gives lawyers
 25 a bad name, don't you think?

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1 agreed that it had failed in some way, perhaps in
 2 a training sense or through another matter, and that
 3 would lead to a successful outcome of the mediation.
 4 Indeed, there were a number of cases that went through
 5 the Mediation Scheme that did have successful outcomes.
 6 **MS PAGE:** Sir, if I'm allowed, I would like to take the
 7 witness to one last document but I'm conscious of the
 8 time.
 9 **SIR WYN WILLIAMS:** If you assure me that this will take no
 10 more than couple of minutes, you can do it, Ms Page.
 11 **MS PAGE:** I'm very grateful.
 12 It's POL00124350. This is a letter that you sent to
 13 the CCRC on 5 June 2014 and it purported to be a summary
 14 of the Altman review. I think you've seen it quite
 15 recently?
 16 **A.** Yes, indeed. Last night, thank you.
 17 **Q.** This appears to have been originally drafted by Susan
 18 Crichton before she left; is that right?
 19 **A.** I believe it was originally drafted by Bond Dickinson
 20 from the bundle I've been provided with.
 21 **Q.** Well, you picked up on it following a chaser, if you
 22 like, from the CCRC; is that right?
 23 **A.** Yes, the chaser is unclear to me whether it was an email
 24 to Susan's email account that somebody picked up but
 25 it's clear from the context that they were unaware that

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1 **A.** In advising the Board, I thought they needed to be
 2 advised on all the risks that they were presented with.
 3 **Q.** It's not a useful distinction, is it? The risk that
 4 a claim will be successful is inextricably linked to the
 5 question of whether what the allegations are saying is
 6 true?
 7 **A.** That's absolutely correct. Yes.
 8 **Q.** Let's put the notional risk into the real world. When
 9 faced with the risk that Sir Anthony Hooper might find
 10 against POL, the Board decided to spend a lot of money
 11 on Linklaters and then Deloitte, rather than continuing
 12 to spend money on Second Sight, didn't they?
 13 **A.** I don't recognise that as a decision the Board made.
 14 **Q.** Well, that's, in effect, what happened, isn't it?
 15 **A.** So the Board, in addition to retaining Second Sight and
 16 paying for their work to support the Working Group, also
 17 commissioned the work from Linklaters and Deloitte; that
 18 is correct, yes.
 19 **Q.** The trouble with accepting the inextricably bound nature
 20 of the two risks is that POL would have had to accept
 21 the possibility of admitting fault, wouldn't they?
 22 **A.** In connection with a mediation matter, is that?
 23 **Q.** Yes.
 24 **A.** Yes. Not necessarily, no. I think the mediation was
 25 structured so that there could be examples where POL

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1 Susan Crichton had left, so that's quite possible.
 2 **Q.** Now, this purports to be a summary. It's devoid of any
 3 mention of the issues which the CCRC really needed to
 4 know about, isn't it? It's devoid of any mention of the
 5 Clarke Advice, correct?
 6 **A.** That is correct. It doesn't mention the Clarke advice.
 7 **Q.** It's devoid of the concern that Mr Jenkins had given
 8 misleading evidence, isn't it?
 9 **A.** That's correct.
 10 **Q.** That was indeed mentioned by Mr Altman repeatedly.
 11 And it's devoid of any mention of the case of Seema
 12 Misra, isn't it, mentioned some 15 times in the Altman
 13 review?
 14 **A.** That's correct.
 15 **Q.** You accepted from Mr Stevens that the content of the
 16 Clarke Advice was startling. There's nothing of that
 17 startling nature here, is there? This a bland
 18 reassuring letter, aimed at making sure it would all
 19 just go away; do you accept that?
 20 **A.** So the letter was in response to a specific request
 21 aimed at Susan, which I picked up, and it asked about
 22 progress with the review matters --
 23 **Q.** The progress that you set out here is all peachy, isn't
 24 it; everything is fine?
 25 **A.** So this is the advice I had at the time from Brian

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1 Altman and Cartwright King. The advice that you're
 2 referring to earlier, the Cartwright King advice,
 3 I believe, of 16 July, was not something that was made
 4 visible to me for -- during my time at POL and it wasn't
 5 raised with, I suppose, Bond Dickinson, who drafted this
 6 letter, or others. So this letter was attempting to
 7 respond to a specific request on a matter that they'd
 8 been dealing with Susan with.

9 **SIR WYN WILLIAMS:** Can I be clear, Mr Aujard, the advice by
 10 Mr Clarke which gives rise to the criticisms of
 11 Mr Jenkins, that's dated, I think, 15 July. I just want
 12 to be clear; are you saying that during the whole time
 13 that you were working at the Post Office, you did not
 14 see that advice?

15 **A.** No, sir. What I'm saying is that, in my time at the
 16 Post Office, I was reliant on Cartwright King to advise
 17 me as to actions I should be taking in respect of the
 18 events that had occurred during --

19 **SIR WYN WILLIAMS:** So you were aware of the advice?
 20 **A.** I believe, sir, I saw the advice. It was appended to
 21 a briefing document that was provided to me on the
 22 second day I arrived at the Post Office.

23 **SIR WYN WILLIAMS:** Right. Well, that's what I thought. So
 24 that's why I couldn't quite understand the answer to
 25 Ms Page's question. But the plain fact is: is your

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1 alter Horizon data, without the knowledge of the
 2 postmaster, was very important to Post Office, wasn't
 3 it?

4 **A.** Yes, indeed. Yes.

5 **Q.** In fact, it went to the heart of the integrity of
 6 Horizon as an accounting system, didn't it?

7 **A.** I think two issues went to the -- essentially, yes.
 8 Yes, sorry. Correct.

9 **Q.** Second Sight was pushing hard for clarification of the
 10 position as to whether or not remote access was possible
 11 in general terms?

12 **A.** Yes.

13 **Q.** You emphasised the importance of the issue at the Board
 14 meeting of 30 April 2014, when Deloitte had been
 15 commissioned to review Horizon?

16 **A.** That's right, yes, yes.

17 **Q.** Following that, you were also instrumental in ensuring
 18 the change order for Deloitte, which asked them to
 19 investigate the Second Sight July 2013 concern that,
 20 effectively, branch ledgers could be amended remotely
 21 without visibility of the postmaster?

22 **A.** Yes, I asked them to investigate that in the revised set
 23 of instructions.

24 **Q.** Because that was requested by Deloitte on 6 May 2014 and
 25 you actioned it on 15 May 2014?

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1 evidence that this is a document to which you put your
 2 name but which was drafted by others; is that it?

3 **A.** So this document was -- from looking at the bundle, sir,
 4 looked as though it had been prepared by Bond Dickinson
 5 with blanks in there for the number of cases going
 6 through the system. When the follow-up email arrived
 7 from the CCRC, those blanks were completed and this
 8 document was dispatched.

9 **SIR WYN WILLIAMS:** This is my question, as opposed to
 10 Ms Page's, but you did not think about the context of
 11 this letter independently, you just signed it, or did
 12 you consciously understand what it was saying and that
 13 was, you thought, an appropriate response to the CCRC?

14 **A.** So I think it reflected the totality of my understanding
 15 of the issues at the time, and those -- that
 16 understanding would have been informed by discussions
 17 with, principally, Bond Dickinson, but also, to some
 18 extent, Cartwright King.

19 **SIR WYN WILLIAMS:** All right. Is that it Ms Page?

20 **MS PAGE:** Thank you, sir.

21 **SIR WYN WILLIAMS:** Mr Moloney.

22 **Questioned by MR MOLONEY**

23 **MR MOLONEY:** Thank you, sir. Mr Aujard, I'd like to ask you
 24 about remote access, if I may.
 25 In 2014, the issue of whether Fujitsu was able to

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1 **A.** Correct, yes, with the Board's approval, yes.

2 **Q.** That was, of course, in keeping with what you'd
 3 specifically raised during the Board meeting of
 4 30 April?

5 **A.** Indeed, yes.

6 **Q.** Yes. Post Office had been trying to get to the bottom
 7 of the issue with Fujitsu, so that it could answer the
 8 questions raised by Second Sight independently of
 9 Deloitte, hadn't it?

10 **A.** Yes, that may have predated me. I have no recollection
 11 of there being an ongoing dialogue with Fujitsu during
 12 my time at POL, at that point, anyway.

13 **Q.** Can I just ask you to have a look at one document. It's
 14 an email, it's dated 9 May 2014 and involves Mr Andrew
 15 Parsons from Bond Dickinson, Mr Rodric Williams and
 16 Angela van den Bogerd. The reference is POL00304478.
 17 That's POL00304478. If you could just focus in on the
 18 top of that, please, Mr Aujard.

19 This is Andrew Parsons to Angela van den Bogerd:
 20 "I [have] spoken to Rodric. The interim answer to
 21 SS question is ..."

22 It says:

23 "As requested at the [Working Group] meeting Post
 24 Office are asked to produce a formal certification that
 25 it is not possible for anyone to access Horizon/Horizon

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1 Online and amend transaction data without the knowledge
2 of the subpostmaster or their staff."

3 The answer that was being given was:

4 "It is not clear what is meant by 'formal
5 certification' but enquiries have been made of senior
6 personnel at Fujitsu and in Post Office's IT Team.
7 There is no functionality in the Horizon system (through
8 either a front-end terminal or back-end server) to edit
9 or delete transaction data once it has been transmitted
10 from a branch to the central branch data centre. The
11 transmission of this is that encrypted, transferred to
12 the branch data centre and then stored in a separate
13 audit server where they are sealed using industry
14 standard secure protocols to ensure the data's
15 integrity. Although it is possible to input additional
16 transactions into a branch's accounts (eg by way of say
17 a transaction correction), a [subpostmaster] will always
18 have visibility of these extra transactions as they are
19 shown separately in the branch's accounts. A more
20 detailed note will follow on this subject but this won't
21 be ready before the fact file needs to be submitted."

22 So this 9 May 2014, and the position being adopted
23 by Post Office and, essentially, no deletion could occur
24 without it being apparent to the postmaster.

25 On 23 May you receive the draft Deloitte report,
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1 representation of the Counter transactions and ordered
2 events, and the data will be kept with integrity for
3 seven years'. In their detailed comments, however, they
4 do go on to say that 'We have not identified any
5 documented controls designed to ... prevent a person
6 with authorised privileged access from deleting
7 a digital sealed group of data and replacing it with
8 a "fake" group within the audit store ...' They do,
9 however, make the point that the audit store physically
10 runs on separate specialist IT hardware which protects
11 the data once it's written ... In addition, they comment
12 that the so-called Horizon 'feature' in question has
13 been assured under [Ernst & Young's] ISAE [report]
14 testing since 2012 ..."

15 So that's the potential complication, so far as the
16 Deloitte report is concerned. Then, at the next
17 paragraph, paragraph 255, you say, as is referenced in
18 paragraph 217, you worked closely with Lesley Sewell,
19 the then CIO and:

20 "In relation to technical matters such as these,
21 I [and the other lawyers] would almost certainly have
22 relied on her and her team to decide whether a lack of
23 documentation ... was a significant issue, or
24 immaterial. I have not been provided with any papers
25 that assist my memory in this regard but my general
23

1 yes?

2 **A.** Correct.

3 **Q.** A report with 72 pages long, you may remember, including
4 the appendices, so not a particularly long report. Can
5 I just take you, please, to your recollection of the
6 contents of that report, as set out at paragraph 254 of
7 your statement. I don't know if we're able to bring
8 that up for Mr Aujard so that all can see it.
9 Paragraph 254, that's great. I'm very grateful to the
10 document manager for the hard work I've caused her
11 there.

12 This reads, just going down, just reading down:

13 "In the final draft version of the board briefing
14 dated 4 June provided to me there is reference to the
15 issue mentioned at paragraph 243 above, although it
16 appears to be dated in different and much more formal
17 terms. In the section 4.2 headed 'Specific Comments --
18 Other Key Controls (Summary)', Deloitte pass comment on
19 what they refer to as 'Matter 3', namely the test
20 proposition that 'Baskets of transactions recorded by
21 the audit store are complete and "digitally sealed" to
22 protect their integrity and make it evident if they had
23 been tampered with'. The headline comment in this
24 regard is as follows: 'It appears that Horizon is
25 designed so that its Audit Store is a complete
22

1 recollection is that following receipt of this report it
2 was still understood within POL that changes made to the
3 audit store left an indelible audit trail."

4 Then you don't know the basis of that, is the final
5 line of that paragraph.

6 After Post Office received the Deloitte report,
7 there was a Project Zebra Action Summary; do you
8 remember that?

9 **A.** I believe that's the document that I've been sent
10 prepared by a Julie George.

11 **Q.** That's it and that was sent -- I believe you had it
12 before but it was sent to you last night along with
13 an email. The Zebra Action Summary, essentially, was
14 "We have this report, what do we have to do as
15 an organisation to meet it's concerns?" That was it,
16 wasn't it?

17 **A.** Correct, it was a forwarding looking piece of work.

18 **Q.** Yes, entirely. So can we just look at that, please.
19 It's POL00031409. If we could just focus in on the
20 header. We can see that the authors are James Rees and
21 Emma McGinn, and this is reviewed and signed by Julie
22 George, it's version 3 and it's 12 June 2014. So it's
23 just over two weeks since you received the Deloitte
24 report. It's about a month since the position was
25 agreed between Rodric Williams, Angela van den Bogerd
24

1 and Andrew Parsons.

2 This is draft 3, and you've looked at this document,
3 I can perhaps summarise it. It identifies all the
4 concerns that were raised by the Deloitte report and
5 then says what actions should be taken in order to meet
6 those concerns.

7 **A.** Yeah, broadly speaking, that's correct, yes.

8 **Q.** Could we go, please, to page 6 of this report,
9 paragraph 4.2.2. 4.2 is "Technical", so 4.2.1 is "Data
10 Retention", what's needed to be done about that, but
11 4.2.2 is "Data Logging", and it reads:

12 "One point raised in this report was that it was
13 possible for someone with privileged access to delete
14 data from specific areas of Horizon. This is always
15 a risk with individuals using admin or power user
16 accounts and is a persistent risk, one that needs to be
17 catered for in almost any organisation.

18 "Due to the sensitive nature of the information
19 contained in the databases, monitoring of those
20 databases should be put in place using technology to
21 detect and record deletions and administrative changes
22 to the databases. If possible, alerts should be
23 generated for mass deletions and high level risk changes
24 to database schemas.

25 "Recommended remediation:
26

1 immediately apparent to the Post Office, let alone
2 postmasters?

3 **A.** Correct. That's what this implies.

4 **Q.** Of course, we've heard other evidence from Mr Williams
5 that Post Office really only appreciated this after the
6 Swift Review but this is something different. Did you
7 see this document in 2014, Mr Aujard?

8 **A.** I have no recollection of seeing that document. That's
9 not to say that it either wasn't described to me or sent
10 to me but I had nothing to make me -- jog my
11 recollection in that regard. I would say that, from
12 recollection, either Julie George was part of the team
13 that was tasked with looking at what should happen
14 following receipt of the Deloitte report, again, from
15 recollection.

16 **Q.** Yes, and were you part of that team, Mr Aujard?

17 **A.** No, I was the Chairman, at that stage, of the Risk and
18 Compliance Committee to receive reports on the --

19 **Q.** If you had seen this, would it have been incumbent on
20 you to correct what appeared to be the public position
21 of Post Office, in respect of the concerns of Second
22 Sight?

23 **A.** If I'd seen this, I think it would have been incumbent
24 on me to talk to both the Julie George and her boss,
25 Lesley Sewell, and ask what this meant in practice. For

27

1 "The solution currently in place may be able to
2 undertake the level of logging required within the
3 Horizon solution. It is recommended that the current
4 logging and logs are reviewed on a daily basis.

5 "This needs to be investigated further and the
6 options on how to handle this defined through the risk
7 management process and based on the solutions already in
8 place or ones that could be procured to handle this."

9 That's signed off by Julie George as version 3 and,
10 effectively, what this says is: there are no controls
11 and we're going to have to do daily checks to make sure
12 that we know about deletions. This is not about
13 inserting transactions, is it, Mr Aujard, and this is
14 not about balancing transactions; it's about deleting
15 transactions?

16 **A.** It's about creating, as I understand Deloitte to put it,
17 fake digital signatures over fake information.

18 **Q.** Right, it's also about deleting material, isn't it? If
19 you want to go back to the start. I mean, I asked you,
20 it's about deletions, isn't it --

21 **A.** Yes, in your list of --

22 **Q.** -- and then creating fake material afterwards?

23 **A.** Mm-hm.

24 **Q.** It's plain that these people in Post Office understood
25 that data could be deleted and that would not be

26

1 example, one of the things I think she comments on is
2 people with requisite access rights. An obvious
3 question, I think, to ask is: are there such people with
4 requisite access rights or are such access rights
5 separated? That was before I was principle. So
6 I don't -- I have no recollection either of taking that
7 action. I may have done or may not. I may have seen
8 this or I may not. I'm sorry that I can't help on that.

9 **Q.** So, perhaps to summarise it, you'd have drilled down,
10 you'd have made sure as to whether or not people did
11 have this access. If people did have this access, you
12 would have made it very clear publicly that people did
13 have this access because this went right to the heart of
14 the integrity of Horizon as we established right at the
15 start of my questioning of you?

16 **A.** Would have asked the technical people what this really
17 meant in the real world. Is this is an issue or is this
18 not an issue? That would be my -- that -- from what
19 I know of my past behaviour, that's what I would have
20 done, that conversation or more with Julie George -- not
21 Julie George -- with Lesley Sewell.

22 **Q.** Lesley Sewell?

23 **A.** Yeah, Lesley Sewell.

24 **Q.** Okay well let's have a look at an email --

25 **A.** I --

28

1 Q. Sorry, go on?
 2 A. I was going to say: and if I did do that and I missed
 3 something that is a matter of deep regret for me,
 4 because --
 5 Q. Absolutely.
 6 A. -- the public position as set out in the Bond
 7 Dickinson-Rodric Williams statement is not consistent,
 8 in my view, with the statements here, in circumstances
 9 where there is an individual who has the requisite
 10 access rights.
 11 Q. Thank you very much, Mr Aujard. If I could just move on
 12 now, and can we look, please, at POL00346958. I'm very
 13 grateful for the focusing in. It's from Julie George,
 14 it's 17 June 2014, so just a couple of days after the
 15 Zebra Action Summary was completed. We can see that
 16 this subject line is "Zebra Action Summary version 3",
 17 the version we've looked at, and the attachment is
 18 "Zebra Action Summary version 3". It's sent to Rod
 19 Ismay, David Mason, Malcolm Zack and Gina Gould and it
 20 reads as follows:
 21 "I have tried to call you, Rod -- attached a Draft
 22 Summary of actions arising from Deloitte's recent piece
 23 of work on the Horizon systems."
 24 "Clearly there is no blame attached anywhere, and
 25 this morning's meeting with Chris Day, Chris Aujard,
 29

1 Malcolm and myself?
 2 "Thanks."
 3 It would appear from that, Mr Aujard, that you were
 4 in a meeting that morning with the reviewer, as well as
 5 Lesley -- that'll be Lesley Sewell -- and you were
 6 focusing on what you'd need to put in place as
 7 an organisation to address the overall assurance on all
 8 critical systems, starting from 1 April of the following
 9 year, presumably, and dealing with the points raised by
 10 the Zebra Action Summary.
 11 A. Yes, there was clearly a meeting in that morning and
 12 it's --
 13 Q. You plainly will have seen the Zebra Action Summary that
 14 morning and you plainly will have fed in to the need for
 15 things to be addressed here, for ExCo to become involved
 16 and for Risk and Compliance Committee to sign everything
 17 off on 21 July.
 18 Were these recommendations followed and were actions
 19 taken to ensure overall assurance on all critical
 20 systems starting with Horizon from 1 April?
 21 A. So my recollection is that the -- this ended up being
 22 a matter to be discussed at the Risk and Compliance
 23 Committee meeting, and tracking was given to the
 24 internal Audit Team. The team was tasked with looking
 25 at changes that needed to be put in place, in order to
 31

1 Lesley and Malcolm -- focused on what we would need to
 2 put in place as an organisation to address overall
 3 assurance on all critical systems, starting with Horizon
 4 from 1 April."
 5 It continues:
 6 "Detailing the appropriate industry standards and
 7 controls our business should be following against a risk
 8 based priority mechanism."
 9 It continues:
 10 "Rod we would be happy to come to Chesterfield,
 11 however, it would be better (more cost effective) if we
 12 could have a morning or afternoon in the next week or so
 13 at Old Street.
 14 "We 4 will need to be comfortable that we have a
 15 plan going forward including indicative costs of
 16 undertaking for Risk and Compliance Committee on
 17 21 July, [which of course you chaired, Mr Aujard, as you
 18 said].
 19 "We will need to engage with ExCo members ..."
 20 Is that the Executive Committee members?
 21 A. Absolutely correct, yes.
 22 Q. We've seen their names:
 23 "... attached to verify and agree to support prior
 24 to the committee meeting.
 25 "Gina, can you arrange a meeting between Rod, Dave,
 30

1 ensure appropriate assurance over, I'm imagining, its
 2 critical IT systems in the organisation.
 3 But I have no further documentation to show what
 4 other actions -- what those actions were, other than
 5 a record of the fact that there was an agreed course of
 6 action in relation to these matters.
 7 Q. Did you not think to tell Second Sight, who had just
 8 been told a month earlier, that, with that
 9 certification, as it were, actually, we may have got it
 10 wrong. It may be that they can delete and postmasters
 11 wouldn't be able to see all the deletions?
 12 A. I think that the -- again, from recollection of what
 13 I've said in the witness statement -- the sense from
 14 those that were reviewing the Deloitte report was not
 15 that this was a critical or a significant matter and
 16 I do not know why that is the case. Clearly, the matter
 17 was considered and discussed by numerous people
 18 internally.
 19 It could be -- and I don't want to speculate but it
 20 could be that there were no persons with the requisite
 21 access rights, and that was the reason, or there could
 22 be other reasons for it.
 23 MR MOLONEY: Thank you very much, Mr Aujard. That's all
 24 I ask.
 25 THE WITNESS: Okay, thank you.
 32

1 **SIR WYN WILLIAMS:** Thank you, Mr Moloney.
 2 Is it Mr Stein next?
 3 **Questioned by MR STEIN**
 4 **MR STEIN:** Mr Aujard, I have a few questions to ask you.
 5 Can I start with, please, a little bit about your
 6 background. You'd worked in corporate law, mainly in
 7 mergers and acquisitions; is that fair?
 8 **A.** Correct. My -- the reason I was in Post Office was for
 9 that purpose, because I was in corporate financial
 10 services and that was the role that was described to me
 11 predominantly, given the Post Office is a distributor of
 12 financial services.
 13 **Q.** You'd also worked for individual companies, such as the
 14 National Australia Bank, Royal London, Singer &
 15 Friedlander, and one stint as General Counsel for a gold
 16 mining company; is that correct?
 17 **A.** Yes, that's correct.
 18 **Q.** Okay. Now, your experience of working for those sorts
 19 of companies were that the boards of those companies
 20 were curious, interested, engaged, possibly quite
 21 annoying because they're trying to get hold of you late
 22 at night and ask detailed questions before board
 23 meetings; is that correct?
 24 **A.** Correct, yes.
 25 **Q.** In fact, you set out what I've just summarised at

33

1 **Q.** Yes. General Counsel work is involved in diminishing
 2 risk to the business and making sure there's a high
 3 standard of legal compliance across the business; do you
 4 agree?
 5 **A.** Compliance within the legal risk appetite, which is set
 6 by the Board typically, yes.
 7 **Q.** Yes, all right. Can we have a look, please, at how you
 8 dealt with one particular matter. Do you remember that
 9 the Working Group was concerned about what was happening
 10 or what had happened to subpostmasters' monies when they
 11 paid money into a suspense account and whether that
 12 money had been taken into income or profit as part of
 13 the Post Office business; do you remember those
 14 concerns?
 15 **A.** Yes, those concerns, I think, started in mid-to late
 16 2014.
 17 **Q.** Sir Anthony Hooper was particularly driven by those
 18 concerns and was basically trying to find out where on
 19 earth the money had gone; is that correct?
 20 **A.** I don't know whether his concern was to find out where
 21 the money had gone; he was concerned to find out how the
 22 money was accounted for.
 23 **Q.** Well, perhaps that's a fancy way of saying "Where's the
 24 money gone?" Let's have a look at a document that deals
 25 with the that way you dealt with that particular matter.

35

1 paragraphs 26 and 27 of your statement at page 12 --
 2 I don't ask you to go to it. What you say about some
 3 aspects of matters in relation to the Post Office is
 4 that the decision-making process tended to be more data
 5 driven in your past employers, rather than based on
 6 political concerns, such as how a minister or an MP
 7 might react to a given decision within the Post Office;
 8 is that fair?
 9 **A.** Correct, yes.
 10 **Q.** So do we take it from that that the Post Office was oft
 11 concerned about how it looked, its image and brand,
 12 rather than, more often, the detailed concerns that
 13 you'd found in corporate companies that employed you in
 14 the past?
 15 **A.** In a company which deals with consumers, of course,
 16 there is always a brand concern but, in terms of the
 17 political angle, that struck me as different, not
 18 something that I'd experienced before in other
 19 companies.
 20 **Q.** Now, the work of General Counsel, and as you're aware,
 21 is to effectively be the senior lawyer bringing together
 22 all of the different aspects of legal advice that are
 23 required and providing advice based upon that to the
 24 Board; is that correct?
 25 **A.** That's part of the role, yes.

34

1 Can we go, please, to POL00040805.
 2 If we can go, please, to page 3 or 4 of that
 3 document and scroll down a little bit further, you'll
 4 see there, at the middle of page 3, that there's
 5 an email from you to Alisdair Cameron, "Subject:
 6 suspense accounts"; do you see that Mr Aujard?
 7 **A.** I do, indeed.
 8 **Q.** Okay. So the first part we don't need to deal with.
 9 You then go on to say:
 10 "As you will see, I really need someone from your
 11 team who is technically switched on re suspense
 12 accounts, and can handle themselves in front of
 13 an adversarial audience."
 14 Okay? You wrote that. Then you go on to say this:
 15 "As you can imagine, I am concerned that we give
 16 Second Sight no more information than is necessary to
 17 address the narrow proposition that money that is
 18 'missing' from an SPMR account is somehow taken into our
 19 suspense account and then appropriated to our [profit
 20 and loss]."
 21 Now, you don't appear there to be suggesting that
 22 POL should take an open and enquiring attitude towards
 23 these issues; you appear to be, on the other hand,
 24 trying to take a less is much better attitude towards
 25 these particular issues; do you agree?

36

1 **A.** I think, I believe, I'm taking the approach that POL
2 should answer their question but not engage in matters
3 which are extraneous to their investigation.

4 **Q.** In other words, can we translate that as your advice as
5 General Counsel to POL was: make sure that POL doesn't
6 take any risks?

7 **A.** My advice, I think, here is to not -- I wouldn't
8 characterise this advice. This is in the context of
9 a newly arrived CFO, who has limited background on the
10 Mediation Scheme, and the series of questions that have
11 been asked about suspense accounts going back and forth.
12 So I do acknowledge that it is abridged and abbreviated,
13 and it looks -- it may be interpreted the wrong way,
14 indeed, it may have been read the wrong way by Alisdair
15 Cameron.

16 That wasn't the intention at the time. The
17 intention was to make the clear that this -- there was
18 more to this matter than simply a factual request for
19 factual information. I think, as it turns out, my
20 concerns were misplaced about this. But, I think I must
21 have provided the information that Second Sight needed
22 and ensured that the right technical expert was made
23 available.

24 **Q.** All right, in the middle of that long answer, do we take
25 it that you accept that, as the newly-arrived individual

37

1 "Is it the same for this Helen Rose Report?
2 "Yes, indeed, yes", was what you said to Mr Stevens,
3 Counsel to the Inquiry.

4 Now, help us understand a little bit more about what
5 you mean by this. Are you saying that you can think
6 back, now some 10 years, and you can think back to
7 yourself, sitting at a desk somewhere within the Post
8 Office organisation, and you can think back to you
9 assuming that the Simon Clarke Advice on the Helen Rose
10 Report had gone to the Board? Is that what you're
11 trying to tell us: you can remember assuming something?

12 **A.** No, I think I was answering the question what was my --
13 the question I think I was being asked, at that stage,
14 was did think it -- did it occur to me to make the Simon
15 Clarke Advice available to the Board? And I think
16 the -- in the circumstances at the time, day two of
17 a new role, with this being an appendix to a large
18 document, I would have thought that that would have been
19 flagged up to me very clearly. So if it hadn't -- if it
20 required further action, absent that being flagged up to
21 me, I would have assumed that there was no further
22 action required to be taken.

23 **Q.** Do you know what on earth you did in relation to this
24 matter at all? Are you just making an assumption, that
25 you've assumed something?

39

1 dealing with these matters, you were risk averse?

2 **A.** I was -- I am a relatively risk averse individual, yes.

3 **Q.** Let's move on, then, to one remaining matter, I think,
4 which is the -- an answer you gave to questions being
5 asked of you by Counsel to the Inquiry, when you were
6 last here. You gave evidence in relation to matters
7 previously on 24 April, and you were asked this -- this
8 is about the Simon Clarke Advice of 15 July and the
9 Helen Rose Report, okay?

10 So to Ms Page you said these words:
11 "In advising the Board, I felt they needed to be
12 advised on all the risks they were presented with."
13 Those were what you said to Ms Page when you
14 answered her questions earlier. What you said to
15 Counsel to the Inquiry about the Simon Clarke Advice --
16 and I will read it from the [draft] transcript -- it
17 says this:
18 "Following a meeting with Paula Vennells, did you
19 inform anyone on the Board about the Simon Clarke Advice
20 of 15 July 2013?"
21 Your answer to counsel of the Inquiry was this.
22 "No, I'm afraid that I'd assumed that this advice
23 had been, or at least the contents of it, had been
24 communicated to the Board prior to my arrival."
25 Then you're asked this question:

38

1 **A.** I was guided very much by the individuals I was dealing
2 with at Cartwright King as to what the next steps were.
3 So no, I wasn't just assuming things. I was listening
4 and engaging.

5 **Q.** Well, you're listening and engaging in a way that seems
6 to completely ignore a red-hot topic of the Simon Clarke
7 Advice, in relation to Mr Jenkins, and you're listening
8 and concerned attitude in relation to that is not to
9 urgently take it to the Board; do you agree?

10 **A.** As said to the Inquiry when I gave evidence last week,
11 in the normal course of events, I would have expected
12 something which is -- that is red hot and urgent to be
13 flagged as such by the individuals briefing me. That
14 is, indeed, the way General Counsels operate. People
15 brief and inform them of -- I'm terribly sorry, the
16 lights have gone out here -- the -- there's -- that is
17 the way the role works.

18 **Q.** But you also have personal responsibility, don't you?
19 You have responsibility to do your job. You are guided
20 by the regulatory objectives in relation to your work as
21 a lawyer, and to basically say, for you, that you need
22 to take independent decisions on your legal advice; do
23 you agree?

24 **A.** Yes, indeed.

25 **Q.** Right. So where is this that we can see that, in

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1 dealing with a red-hot topic, such as the Clarke Advice
2 and the Helen Rose Report, which must surely, you must
3 think, go to the Board. Where do we see your role in
4 that, as being, what, a complete incompetent? Someone
5 that failed to do it? Someone that was so risk averse
6 that you preferred to keep it away from the Board?
7 Which of those is it?

8 **A.** I don't believe it's any of those. I believe, as I said
9 to the Inquiry last week, I was -- when a matter, as you
10 put it, is red hot, it would have been flagged to me as
11 such on arrival.

12 My briefing, if you like, on arrival was that the
13 actions that needed to be taken were in relation to the
14 sift reviews and that was the totality of action that
15 needed to be taken. Had there been an indication that
16 further action needed to be taken, I would have expected
17 that to be brought to my attention in very, very firm
18 terms.

19 **Q.** Mr Aujard, you rapidly came to the conclusion, as you
20 and I discussed at the beginning of my questions, that
21 this was an incurious Board, a Board that didn't operate
22 the way that previous corporate boards that you'd been
23 involved with had worked in the past; they didn't ask
24 the questions late at night, in calling you irritatingly
25 to get your advice; they didn't ask for short

41

1 **MR STEIN:** Yes, sir, that was, in fact, the end of my
2 questions but anyway.

3 **SIR WYN WILLIAMS:** Perfect. Ms Oliver.

4 **Questioned by MS OLIVER**

5 **MS OLIVER:** Thank you, sir.

6 Good morning, Mr Aujard, I ask questions on behalf
7 of Gareth Jenkins.

8 You gave evidence last week that you had been
9 briefed by Cartwright King as to issues that had been
10 raised in relation to Mr Jenkins; is that right?

11 **A.** Yes, yes.

12 **Q.** You were aware that he'd been used as an expert witness
13 past criminal prosecutions brought by the Post Office;
14 is that correct?

15 **A.** Correct, correct.

16 **Q.** You told us that you were aware that an expert in
17 a criminal trial owed a positive duty of disclosure,
18 including a duty to inform the prosecutor of any
19 material that cast doubt on his or her opinion or that
20 could arguably assist the defence?

21 **A.** Correct.

22 **Q.** Were you equally aware of the duties that rested with
23 the prosecutor who was calling expert evidence?

24 **A.** I don't know whether I'd be expressly aware but, by
25 implication, that must be the case.

43

1 presentations before Board meetings. So you were aware
2 rapidly, on assuming this role, that this was a Board
3 that barely, it seems, from your evidence, be paying any
4 interest in matters, and yet you didn't make sure that
5 they were aware of these high risks. Is that what we
6 should find from your evidence, Mr Aujard?

7 **A.** No, I think what you should find from my evidence is
8 that I retained a dialogue with Cartwright King and
9 they, indeed, were also involved in ongoing collation of
10 data that could or should be disclosed to persons that
11 had been convicted of a criminal offence. And I would
12 very much have expected that this matter, if it was
13 significant, is something that they would have mentioned
14 to me, on not just one occasion but more than one
15 occasion, and that's not, to the best of my
16 recollection, what happened.

17 **Q.** Mr Aujard, can we say a summary that the position
18 appears to be that the Executive Team within the Post
19 Office was, essentially, the main body for decision
20 making, rather than the Board of the Post Office? Is
21 that what we can take from your evidence, that it was
22 executives making decisions rather than the Board?

23 **A.** No, I believe that would be incorrect.

24 **SIR WYN WILLIAMS:** All right, thank you. I think that we've
25 explored that enough now, Mr Stein.

42

1 **Q.** Can I, perhaps, outline a few of those for you and you
2 can tell us whether you were aware of them.

3 Firstly, to satisfy themselves that an expert had
4 been appropriately instructed by the provision of
5 a written, relevant and detailed letter of instruction
6 or terms of reference, setting out the issues and
7 questions the expert was expected to answer. Were you
8 aware of that?

9 **A.** I don't know if I was aware of it in those terms but
10 I would be something that would follow from the nature
11 of an expert witness.

12 **Q.** Thank you. Secondly, to provide explicit guidance as to
13 what the expert was being asked to do and what material
14 they were being asked to consider. Was that something
15 you were aware of?

16 **A.** Not in those terms but, again, it would follow from the
17 nature of the expert witness, in my view.

18 **Q.** Thirdly, to inform the expert as to their relevant
19 duties and to satisfy themselves that these had been
20 both understood and complied with. Was that something
21 you were aware of?

22 **A.** Again, not in those terms, but it must follow from the
23 nature of the overall duty to the court.

24 **Q.** Thank you. You were taken to the briefing note which
25 reflected the Clarke Advice, which was annexed to it,

44

1 which I think you were provided with in October 2013.
 2 I'm going to try and avoid going to it but do you
 3 remember that that set out that it considered
 4 Mr Jenkins' failure to mention the Second Sight bugs, or
 5 the bugs that were mentioned in the Interim Report, in
 6 expert witness statements breached his duty of expert
 7 disclosure; do you remember that conclusion?
 8 **A.** I've no independent recollection prior to reading the
 9 document but upon re-reading it, correct.
 10 **Q.** Thank you. Your evidence last week was that, to your
 11 mind, this was a historic issue and you work given
 12 assurances by Cartwright King that the issue had been or
 13 was being addressed; have I summarised that correctly?
 14 **A.** No, I don't think you have summarised that correctly.
 15 I think, when I arrived in the Post Office on
 16 14 October, I was given a large range of briefing
 17 material, very, very large range, the role of the
 18 General Counsel is very extensive and covered many
 19 areas. This was just a component part of that. This
 20 particular briefing I received on 16, I believe,
 21 October, and my understanding from that was that this
 22 was background briefing, it wasn't -- there were no
 23 further -- there was no further action to be taken, and
 24 that the action that did need to be taken was in
 25 relation to the so-called Sift Reviews and that was put

45

1 **Q.** We can go to it. It's POL00006581, please paragraph 148
 2 of that advice on page 47. Thank you. Does reading
 3 that paragraph jog your memory in that regard?
 4 **A.** Sorry, paragraph 148 or 149?
 5 **Q.** It's the beginning of 148.
 6 **A.** Yes, I can see that paragraph now.
 7 **Q.** Is that something you would have read in October 2013?
 8 **A.** I can't say for sure that I read the entirety of the
 9 advice but I'm sure that I would have had looked at the
 10 advice and tried to pick out salient points that were --
 11 that required further action. Reading this now,
 12 I cannot see that there was -- that it would have leapt
 13 off the page to me that there was an action buried in
 14 that paragraph.
 15 **Q.** To the extent that that paragraph makes clear that
 16 Mr Jenkins, or at least to Mr Altman's knowledge,
 17 Mr Jenkins may not have been challenged or been able to
 18 give an explanation as to the alleged non-disclosure,
 19 did reading that advice prompt any concern on your part
 20 that Post Office needed to ascertain the circumstances
 21 in which Mr Jenkins had been instructed, including
 22 obtaining an explanation for him as to the alleged
 23 non-disclosure?
 24 **A.** Mm, I don't believe that that paragraph alone would have
 25 prompted that conclusion. As I said, it was -- upon

47

1 at the very centre of my attention, upon receiving that
 2 briefing. So it wasn't that I received a briefing that
 3 nothing should be done.

4 The opposite was true: I received, to the best of my
 5 recollection, no briefing at all in relation to any
 6 ongoing duty that the Post Office had in that regard.
 7 **Q.** So your view that it was a historic issue was your
 8 assumption on reading that briefing, rather than being
 9 given express assurances?
 10 **A.** Assumption would be putting it the wrong way round. It
 11 was a meeting -- I think the briefings were designed to
 12 identify courses of action that I should take as the
 13 incoming interim General Counsel. This wasn't
 14 identified as an ongoing action.
 15 **Q.** In your witness statement, you indicate that, in
 16 addition to the briefing pack, you were provided with
 17 Brian Altman KC's written advice, dated 15 October 2013;
 18 do you remember that?
 19 **A.** Yes, I do, yes.
 20 **Q.** Do you recall that, in the course of that advice, he
 21 comments:
 22 "I am not clear whether Mr Jenkins was challenged
 23 about the non-disclosure to Post Office and, if so, what
 24 the explanation was for it."
 25 **A.** I'm not sure I recall that paragraph.

46

1 joining, I was -- received an enormous volume of
 2 background material. In that context -- as the role
 3 itself is extremely wide and covers many, many matters,
 4 other than the matters that concern the Inquiry today.
 5 I think that, in that context, I believe I would have
 6 read that trying to understand -- I would have imagined
 7 at the time I read this, my understanding of what had
 8 happened previously was relatively limited and that
 9 I had a very imprecise understanding of all the events
 10 that had occurred prior to my arrival.

11 So the answer to your question is: I don't think
 12 that would have prompted a trigger to take any action.
 13 **Q.** Does it follow from your answer that, whether from this
 14 advice or from an independent conclusion you were able
 15 to draw from all the material that had been brought to
 16 your attention, you did not feel prompted to ask any
 17 questions of Cartwright King or the lawyers at Post
 18 Office as to how Mr Jenkins had been instructed and,
 19 specifically, whether he had been instructed as to the
 20 expert duty of disclosure?
 21 **A.** No, I don't believe that this paragraph or other matters
 22 would have prompted me to ask that question. However,
 23 I did ask, I believe, the question: on what basis was he
 24 tainted? And I recall my general understanding
 25 throughout my entire time at the Post Office was that he

48

1 was tainted because he knew of two bugs in the system
 2 which he had failed to disclose. So I did -- I clearly
 3 asked a question about why is it that he is tainted?
 4 **Q.** Can we please go to POL00155555, please. This is a note
 5 dated 2 September 2013. We now know that it was
 6 authored by Rodric Williams. If we can just go down to
 7 the bottom of that note, please. On the right-hand
 8 side, we see noted there the question:
 9 "What were we doing to instruct GJ?"
 10 We take it from that that that means Gareth Jenkins.
 11 On the left-hand side, a list under the words "M Smith":
 12 "Don't think he's ever been advised of his duties."
 13 When you joined Post Office shortly after this note
 14 was written in September, did anyone share with you
 15 a knowledge or concern that Post Office had failed to
 16 instruct Mr Jenkins properly or that there was, at the
 17 very least, a serious question as to whether they had?
 18 **A.** I have no recollection of that being shared at the time,
 19 or shortly after joining.
 20 **Q.** Would you have expected that to be information that
 21 Mr Williams ought to have shared with you, the concerns
 22 in this note?
 23 **A.** Yes, indeed. I think the general structure of in-house
 24 Legal Teams' General Counsel's role is that it relies
 25 very much on a sort of a full and candid description of

1 been asked about remote access and knowledge within the
 2 Post Office in 2014 as to Fujitsu's ability to insert
 3 transactions remotely and, crucially, in a manner which
 4 did not require the approval or consent of SPMs. If we
 5 can quickly, please, go to POL00108538 and the top of
 6 page 4, please. Thank you. This is an exchange between
 7 Mr Williams and James Davidson of Fujitsu on 14 April
 8 2014:
 9 "James,
 10 "Could Fujitsu please answer the questions below so
 11 that we can respond to a specific challenge put to us by
 12 Second Sight in connection with a Mediation Scheme
 13 complaint, namely that:
 14 ""The Andy Winn/Alan Lusher email in the case of
 15 Ward ...""
 16 Were you aware that that was a 2008 email that had
 17 been identified by Second Sight?
 18 **A.** No, I don't believe I was.
 19 **Q.** But that email:
 20 "... explicitly states that Fujitsu can remotely
 21 change the figures in the branches without the SPMs'
 22 knowledge or authority", and there follow a series of
 23 questions for Fujitsu.
 24 If we can then, please, go to the top of page 2. At
 25 question 2, Mr Davidson is asked:

1 matters being disclosed to you by all members of the
 2 team, in a sense, without prompting. So I have no
 3 recollection of it, I'm not saying I don't believe that
 4 it was mentioned to me at all in those first few weeks
 5 at POL or thereafter.
 6 **Q.** Do you agree that, following that mission statement of
 7 full candour, the potential failures acknowledged in
 8 this note, both in relation to their relevance to
 9 individual cases but also because they may give rise to
 10 serious questions about the basic competency with which
 11 Post Office prosecutions were brought, was so serious
 12 that they ought to have been shared with Post Office's
 13 board, with Second Sight, with the Mediation Scheme,
 14 with Mr Altman and with the CCRC?
 15 **A.** Yes, indeed. I do agree with that. If this had been
 16 made as clear as has been made in the course of last few
 17 minutes in this questioning, to anyone, I believe, in
 18 the Legal team, that the next issue would be who knows
 19 how should -- what are the implications of this?
 20 **Q.** I am grateful.
 21 If I may be permitted just to ask on one final
 22 topic, sir, I hope I can do it in about two minutes.
 23 Thank you.
 24 **SIR WYN WILLIAMS:** Thank you.
 25 **MS OLIVER:** It's just to follow up on some questions you've

1 "Can Fujitsu change branch transaction data without
 2 a subpostmaster being aware of the change?"
 3 The answer comes:
 4 "Once created, branch transaction data cannot be
 5 changed, only additional data can be inserted. If this
 6 is required, the additional transactions would be
 7 visible on the trading statements but would not require
 8 acknowledgement/approval by a subpostmaster, the
 9 approval is given by Post Office via the change
 10 process."
 11 Were you aware of this information being obtained
 12 from Fujitsu in April 2014?
 13 **A.** I don't believe that I was copied in on that email chain
 14 but I could be wrong. If I was, there was a subsequent
 15 change I was copied in on, which concludes with
 16 a question and the answer -- and I comment on that in my
 17 witness statement. So I don't know if that is the same
 18 chain as this or not.
 19 **Q.** Certainly, in this version of the chain, you're not
 20 copied in, although I think you are referred to.
 21 Can we please go to something you were aware of,
 22 which was the draft Project Zebra Deloitte report, dated
 23 23 May 2013. That you'll recall led to the asking of
 24 four questions to Deloitte the answers to which formed
 25 part of the Board briefing, dated 4 June 2014. If we

1 can perhaps go to that, please. It's POL00028069. If
2 we can go to page 8 of the document, although it's
3 internal page 7, and the bottom of the page. Thank you.
4 Under number 3, this document is dealing with the
5 balancing transaction process and it says:

6 "This is an emergency process accessible only to
7 restricted individuals in Fujitsu which can create
8 transactions directly in branch ledgers. This process
9 creates an identifiable transaction in the ledger
10 verbally asserted by POL staff to be visible to
11 subpostmasters in their branch reporting tool but does
12 not require positive acceptance or approval by the
13 subpostmaster."

14 Do you agree that both of these documents from April
15 and May 2014 -- sorry, June 2014 -- clearly show by then
16 that it was explained to Post Office that a balancing
17 transaction could be done by Fujitsu without requiring
18 the approval or consent of a subpostmaster?

19 **A.** Yes, I agree that this is -- references the possibility
20 in circumstances where there are individuals with the
21 appropriate access right, yes.

22 **Q.** You were taken by my learned friend, Mr Moloney, to
23 a holding response that was sent to Second Sight in
24 light of those James Davidson answers that were given in
25 April 2014, and I think you'd agree that holding

53

1 should have been, yes, indeed.

2 **SIR WYN WILLIAMS:** I don't think you need hindsight, do you,
3 Mr Aujard, to be able to say that when Second Sight
4 asked the Post Office a specific question which requires
5 a clear and specific answer, they should be given it?

6 **A.** Yes, sir, that's correct. Sorry, I was referring more
7 generally to the rest of the world.

8 **SIR WYN WILLIAMS:** All right. I think that concludes the
9 questioning for you, does it not, Ms Oliver?

10 **MS OLIVER:** It does and I'm sorry to have gone over time,
11 sir.

12 **SIR WYN WILLIAMS:** That's all right.

13 So thank you for your very long witness statement,
14 and thank you for attending twice to give evidence to
15 the Inquiry. I'm grateful to you. So, Mr Stevens,
16 shall we break off for our morning, and I think we'd
17 better make it a 15-minute break now, given the events
18 which have occurred.

19 **MR STEVENS:** Yes, sir, and then we'll hear from Mr Smith.

20 **SIR WYN WILLIAMS:** Yes. Fine. So does that make us -- what
21 time shall we start, 11.25?

22 **MR STEVENS:** Yes, 11.25, sir, thank you.

23 **SIR WYN WILLIAMS:** Fine.

24 (11.07 am)

(A short break)

55

1 response made no mention of the fact that balancing
2 transactions don't require approval or consent; do you
3 agree with that?

4 **A.** Yes.

5 **Q.** In light of the limitations in that holding response,
6 was that knowledge about balancing transactions and the
7 lack of approval or consent by subpostmasters shared by
8 Post Office with Second Sight and the Mediation Scheme
9 Working Group?

10 **A.** I don't believe it was and I believe the reason for that
11 is that it was, as I said earlier, perceived within Post
12 Office that this was a very positive document. Indeed,
13 there was -- there were proposals to publish it and make
14 it widely available, which were unhappily not proceeded
15 with due to restrictions imposed by, I believe,
16 Deloitte. So to answer that question precisely, it was
17 known but it was -- the understanding of the
18 implications to this are quite -- were quite different
19 then to what they are today, and the reasons for that,
20 I'm afraid, I just do not know.

21 **Q.** Okay, do you think it should have been shared at the
22 time?

23 **A.** I believe, knowing what we now know about Horizon and
24 the matters that have come to light and with the benefit
25 of hindsight, this document or this particular finding

54

1 (11.24 am)

2 **MR BLAKE:** Good morning, sir, can you see and hear me?

3 **SIR WYN WILLIAMS:** Yes, thank you.

4 **MR BLAKE:** Thank you. Mr Smith has returned and will be
5 with us for the rest of the day today.

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

7 **MARTIN JOHN SMITH (continued)**

8 **Questioned by MR BLAKE (continued)**

9 **MR BLAKE:** Mr Smith, we left off yesterday after discussing
10 the conversation you had with Jarnail Singh that you
11 said you were in a car, pulled over to the side of the
12 road.

13 **A.** Yes, I parked up at a suitable opportunity and then
14 attempted to record the latter part of the conversation,
15 given what Mr Singh was telling me.

16 **Q.** You said "record". Was that on your phone or ...

17 **A.** It was using one mobile phone, my personal mobile phone,
18 to record the conversation that was taking place on my
19 work mobile phone.

20 **Q.** Did you retain that recording?

21 **A.** I didn't retain it, no. It was removed from my personal
22 mobile phone before I went abroad. I asked Cartwright
23 King to remove it for me.

24 **Q.** When you say removed it, you moved it onto a different
25 device?

56

1 A. I left the IT Department working out how to download it.
 2 Q. Are you aware of whether it was or wasn't downloaded?
 3 A. I believe it was.
 4 Q. If it still held, will it be held by Cartwright King?
 5 A. I have no idea whether it's still held, I'm afraid.
 6 I left Cartwright King some time ago.
 7 Q. Thank you. The Inquiry will make enquiries about that
 8 recording.
 9 Can we, please, look at POL00139747. I'm now moving
 10 on to Mr Clarke's Advice that followed that phone call.
 11 If we could start by looking at the second page, please,
 12 we can see there Simon Clarke is circulating a draft of
 13 his advice. If we scroll up, we can see that you're one
 14 of the recipients. I don't need to take you to it, you
 15 did respond to this with some typographical changes.
 16 Are you aware of having made any other --
 17 A. I did respond to it.
 18 Q. You did, yes. I mean, I can take you to it if you'd
 19 like to see it but it was just typographical?
 20 A. I don't recall making changes but I don't dispute that,
 21 if you say that I did respond to it, then I did.
 22 Q. For the record, it is POL00327054 but we don't need to
 23 go to it. There's a response from Steve Gelsthorpe, who
 24 was he?
 25 A. He was one of the directors, one of the senior

57

1 Cartwright King had given?
 2 A. I don't think it was a throwaway comment, I think it was
 3 a comment made that if an enquiry was made about why
 4 minutes had been destroyed, that is what would be said.
 5 That is why I was so concerned about what I had heard.
 6 Q. Said in a threatening manner or in --
 7 A. Well, it was relayed to me by Mr Singh. So I only had
 8 what Mr Singh had said.
 9 Q. But did Mr Singh say that he would tell somebody or that
 10 Mr Scott would tell somebody that Cartwright King had --
 11 A. No, it was Mr Singh who had reported to me what Mr David
 12 Posnett had said.
 13 Q. Thank you. Let's have a look at the advice itself.
 14 It's POL00006799. If we scroll down and over to page 2,
 15 please, we can have a summary of information that
 16 Mr Clarke says had been relayed to him. He says as
 17 follows:
 18 "At some point following the conclusion of the third
 19 conference call, which I understand to have taken place
 20 on the morning of Wednesday, 31 July, it became unclear
 21 as to whether and to what extent material was either
 22 being retained centrally or disseminated. The following
 23 information has been relayed to me:
 24 "i. The minutes of a previous conference call had
 25 been typed and emailed to a number of persons and

59

1 directors, at Cartwright King.
 2 Q. I'm going to read to you the second paragraph there. He
 3 says:
 4 "I have seen [Simon Clarke's] note. The comment
 5 I have is how are we going to impart the advice to the
 6 [Post Office] that if there are factions within it who
 7 are running around trying to lay off blame for their own
 8 shortcomings by lying about the advice they have
 9 received then they lose privilege. I thought Simon
 10 Clarke's Advice would cover this. On reflection, it may
 11 be something for Andy to raise with Hugh and to note or
 12 to confirm in a letter to him."
 13 Can you assist us with what your understanding was
 14 at the time of "factions within the Post Office"?
 15 A. I didn't fully understand that comment made by Steve
 16 Gelsthorpe. What I assumed he was referring to was the
 17 suggestion being made to Jarnail Singh that, if anyone
 18 asked about the destruction of the minutes, ie the
 19 central record, they would say that was the advice of
 20 Cartwright King. And, of course, that wasn't the advice
 21 of Cartwright King; it was Cartwright King who advised
 22 that they should have a central record.
 23 Q. Was your understanding at the time of that conversation
 24 that Cartwright King were being intentionally blamed or
 25 that somebody had misunderstood the advice that

58

1 instruction was then given that those emails and minutes
 2 should be, and have been, destroyed: the word 'shredded'
 3 was conveyed to me."
 4 Where he says, "the following has been relayed to
 5 me" and he says there "conveyed to me", is that by you
 6 or somebody else?
 7 A. It would have been by me because this is very soon after
 8 the conversation with Mr Singh.
 9 Q. I think you said yesterday you couldn't recall the exact
 10 words used?
 11 A. I cannot recall the exact phraseology that Mr Singh
 12 used. I cannot recall how he phrased it. I do recall
 13 being quite horrified and, as I say, recording the last
 14 part of the -- the very last part of the conversation
 15 and, as a result of that, I recall travelling to
 16 Nottingham, playing it to Mr Clarke and relaying my
 17 recollection of the conversation and the concerns which
 18 Mr Singh had and which I had.
 19 Q. Presumably, it's quite unusual for you to have recorded
 20 a client?
 21 A. Very unusual. I was so concerned about what I was being
 22 told here I -- that that is why I used my other
 23 telephone to try and record this.
 24 Q. Were you concerned about the potential impact on
 25 Cartwright King and their reputation?

60

1 A. I was concerned that -- it wasn't a concern about
 2 Cartwright King. Well, I suppose I would have been
 3 concerned if people were going to make allegations
 4 against Cartwright King but I was concerned that the
 5 Head of Security at Post Office Limited was allegedly
 6 suggesting that the central record be destroyed.
 7 Q. The second point there is:
 8 "Handwritten minutes were not to be typed and should
 9 be forwarded to [the Post Office] Head of Security."
 10 Again, is that something you would have relayed to
 11 Mr Clarke?
 12 A. Yes, he wouldn't have known otherwise.
 13 Q. The third:
 14 "Advice had been given to [Post Office] which
 15 I report as relayed to me verbatim ..."
 16 We see there the words used. Again, when he says
 17 "relayed to me verbatim", is that by you?
 18 A. I would expect so, yes.
 19 Q. That is, in fact, very similar to the minute that we saw
 20 yesterday, isn't it, from Mr Parsons?
 21 A. It is, yes.
 22 Q. Was that your intention, to convey the words that had
 23 been used by Mr Parsons in that meeting?
 24 A. I think this was a general conversation because I was
 25 unimpressed with how the approach to the Wednesday

61

1 with Mr Singh, I think, was either later -- potentially
 2 later the same day. I think it could have been that
 3 evening.
 4 Q. Thank you. Let's have a look at the response from the
 5 Post Office to this advice. Can we please look at
 6 POL00006797. I don't know if you saw the evidence of
 7 Mr Williams or of Mrs Crichton, where we discussed this
 8 document?
 9 A. I haven't had time to watch this all the time.
 10 Q. So this is the response that is in Susan Crichton's
 11 name, I think Rodric Williams may have given evidence
 12 that he drafted it. I'm just going to read to you a few
 13 small passages. In the first paragraph, it refers to
 14 Mr Clarke's Advice, and it says as follows:
 15 "That advice was prepared as a consequence of
 16 statements purportedly made in connection with the
 17 weekly conference calls we established to share across
 18 Post Office Limited issues identified with the Horizon
 19 system."
 20 If we scroll down, we can see a paragraph there that
 21 says:
 22 "Post Office Limited is committed to conducting its
 23 business in an open, transparent and lawful manner. Any
 24 suggestion to the contrary would not reflect Post Office
 25 Limited policy and would not be authorised or endorsed

63

1 morning call was changing and I was also concerned about
 2 the conversation I'd had with Mr Singh. So this would
 3 have been a general conversation with Mr Clarke.
 4 Q. So the information you're providing Mr Clarke with is
 5 not just from that conversation you had with Mr Singh
 6 but also, for example, the information that you obtained
 7 on the 19 July weekly meeting?
 8 A. Well, what I discussed with Mr Singh was my perception
 9 of how things were changing, so it wasn't just
 10 discussing the report that he had received from
 11 Mr Posnett; I was discussing also with him how the
 12 landscape appeared to be changing and I wasn't impressed
 13 by that.
 14 Q. That's number iv:
 15 "Some at [the Post Office] do not wish to minute the
 16 weekly conference calls."
 17 Who did you have in mind there?
 18 A. I don't know if we had ascribed any names to that.
 19 Q. Thinking back to the time, who might that have involved?
 20 A. Well, I do recall on the third call saying to Rodric
 21 Williams that it was necessary to maintain a central
 22 record. So I don't know whether I had him in mind at
 23 that particular point, or other people, but I was quite
 24 clear, on a third call, that it was necessary to keep
 25 a central record and then, of course, my subsequent call

62

1 by Post Office Limited. Accordingly, the purported
 2 statements referred to in Simon's note do not reflect or
 3 represent Post Office Limited's position."
 4 Now, they are referred to there as "purported". Was
 5 it your view that the information that had been conveyed
 6 in Mr Clarke's Advice was simply purported or something
 7 that actually occurred?
 8 A. I was under the impression that it was -- it had
 9 actually occurred. Now, if an instruction is sent out
 10 and emails have been sent out to numerous people, then,
 11 obviously, not necessarily everyone is going to react to
 12 them at the same time in the same way but, nevertheless,
 13 I was concerned that an instruction had been given and
 14 information had been destroyed.
 15 Q. The commitment there to "openness, transparency",
 16 et cetera, does that reflect your understanding of the
 17 Post Office's approach at that point in time?
 18 A. I think my view changed over time. There was certainly
 19 attempts to use legal privilege to cut down the amount
 20 of information which might otherwise enter the public
 21 arena but, at this very early stage, I was certainly of
 22 the view that there was going to be a single central hub
 23 of information which was going to be accurate and
 24 I could understand the position that Post Office would
 25 wish to avoid, from a -- well, from a publicity

64

1 perspective and also a civil litigation perspective, of
2 potentially having incorrect information, through
3 supposition or guesswork, entering into the public
4 domain. So --

5 **Q.** From your dealings with Mr Singh at that time,
6 Mr Williams at that time, Mr Scott at that time, do you
7 think that the statement that's made there from the Post
8 Office was an accurate one?

9 **A.** Not in relation to Mr Scott, no, because why else ask
10 for the -- or instruct that the minutes be destroyed?

11 **Q.** Can we please move on to POL00325492. If we could
12 please move on to the bottom of the second page, there's
13 an email from Jarnail Singh to Mr Scott and Mr Parsons.
14 It relates to the weekly call and it says:

15 "John/Andrew

16 "I understand the remit of the above meeting was to
17 establish a weekly conference call to act as a central
18 hub for all Horizon related issues. Attendees to bring
19 all Horizon related issues that they had encountered --
20 minutes were to be taken, centrally retained and
21 disseminated to those who required the information.
22 Most certainly the [Post Office's] Horizon expert and QC
23 would require this information."

24 Then there's a list of various issues that had been
25 raised at telephone conferences. If we scroll down,

65

1 call with you?

2 **A.** It is certainly possible that this email was sent by
3 Mr Singh following a conversation with me because
4 I think I would have been concerned to ensure that the
5 minutes -- the central record was being kept.

6 **Q.** It's sent to John Scott but also to Andrew Parsons and
7 starts with saying, "John/Andrew". Is there, by this
8 stage, a kind of turf warfare going on between
9 Cartwright King and Bond Dickinson?

10 **A.** I don't regard it as turf warfare. I felt that Bond
11 Dickinson were perhaps having too much control over Post
12 Office and that's what I said to Mr Singh when I was in
13 the car that particular evening, when we discussed the
14 instruction to destroy the minutes that had apparently
15 been given, because my view was that we had, as a firm,
16 advised very clearly that a central record had to be
17 kept. That advice had been accepted by the Legal Team
18 at Post Office. That advice was given by Simon Clarke
19 with myself present at a meeting in Old Street, very
20 soon after the Second Sight Interim Report had been --
21 I don't know if it had been published at that time but
22 we'd become aware of it, certainly, but that information
23 was imparted to Post Office. Post Office had accepted
24 that and then set up the Wednesday morning call.

25 And within a couple of those Wednesday morning

67

1 there are a series of questions that are posed in
2 Mr Singh's email to Mr Scott and Mr Parsons, and he
3 asks:

4 "Who is retaining this information?"

5 "Who is hunting down the issues?"

6 "What has been the precise problem in each case?"

7 "How was each case resolved?"

8 "The contact details of each attendee need to be
9 circulated among the group."

10 First of all, does this sound to you like an email
11 that was drafted by Jarnail Singh?

12 **A.** No.

13 **Q.** Can you assist us with who might have drafted it? If we
14 scroll up, we can see the recipients.

15 Let me pose the question slightly differently, then:
16 did Cartwright King draft emails that were sent by
17 Jarnail Singh in his own name?

18 **A.** There were certainly cases where emails that had been
19 sent to Jarnail Singh could have been or would have been
20 cut and pasted by Mr Singh, but I also had almost daily
21 telephone calls with Mr Singh and would explain my views
22 on things or pose questions, and it was not uncommon for
23 those, then, to appear in an email.

24 **Q.** So is it possible that this email followed either
25 a communication from you by writing or by a telephone

66

1 calls, it's almost as though that requirement to keep
2 a central record was being watered down. It was
3 being -- I took the view it was being overridden, if you
4 like, by civil litigation objectives because, at the
5 very first Wednesday morning conference call, Mr Parsons
6 had been discussing the -- and, of course I don't -- as
7 I've said yesterday, I don't agree with those minutes
8 and it's not a transcript either -- but Mr Parsons had
9 explained from previous experience how it can generate
10 nasty surprises when you have to do a trawl of emails
11 across an organisation, and you can find out things that
12 you don't know and find out things that are incorrect,
13 as well, and I didn't think, from a criminal litigation
14 point of view, that that would be helpful either.

15 So I could see that he was advising from a civil
16 litigation point of view but, by the time we'd got to
17 the third conference call and there was a suggestion
18 that, actually, we're going to change the way we're
19 doing this -- and I can't remember that call -- but
20 there most definitely a suggestion of a change in the
21 way that it was going to be approached, I felt that that
22 was effectively the influence of the civil lawyers.

23 **Q.** If we scroll up, we can see the response from
24 Mr Parsons. In relation to the question "Who is
25 retaining this information", he says:

68

1 "Minutes have been taken of each meeting, along with
2 action points. These have now been collated into the
3 attached weekly report ..."

4 If we scroll down to (c), "What has been the precise
5 problem in each case", he says as follows:

6 "To the extent that details about a problem are
7 known these have been captured in the minutes. However,
8 this will always be challenging because the discussions
9 at the meetings can be quite fluid."

10 Do you think that that was a full and accurate
11 picture that's being painted there of recording
12 problems? Do you think the fluidity of the meetings
13 hampered the minuting of those problems?

14 **A.** I don't think the meetings were actually that fluid.
15 I think the meetings were actually quite structured. At
16 times, there were issues hearing people because of dogs
17 barking in the background or other noise but, certainly,
18 that didn't jump off the page at me at the time as
19 anything to be concerned about.

20 **Q.** But looking at this now, does it look to you to be
21 a fair and accurate picture that's being painted there
22 of --

23 **A.** Well, looking back at this now, I don't think the
24 minutes were that accurate. I don't think I realised
25 that at the time -- well, I didn't realise that at the

69

1 nervous about having Fujitsu's lawyers on the Friday
2 conference call. At the present time only [the Post
3 Office] lawyers and lawyers instructed by [the Post
4 Office] are on the call. If Fujitsu lawyers are on the
5 call they will have a duty to report the entire contents
6 of the call pack to their client.

7 "Whilst there may be merit in us meeting with
8 Fujitsu lawyers if, for example, they are able to assist
9 with disclosure etc, I think that such meetings should
10 be on an *ad hoc* basis and with very clear and limited
11 agendas. With a conference call there is in my opinion
12 a greater risk that the Fujitsu lawyers may try to raise
13 issues which we/you would prefer not to be discussed in
14 front of them."

15 In reality, was this a concern on your part that, in
16 fact, Fujitsu lawyers would raise things at those
17 meetings that you were concerned about being raised at
18 those meetings?

19 **A.** No. I was actually concerned that Fujitsu's lawyers
20 might try and, first of all, push the conversation in
21 directions which were fitting their agenda, rather than
22 Post Office's, and, quite frankly, I didn't trust them.

23 **Q.** Were you not concerned that they might bring up issues,
24 such as the reliability of Gareth Jenkins, within those
25 meetings?

71

1 time because, generally, when minutes were circulated,
2 I simply filed them with a view to -- taking the view
3 that that's the central record and we'll be instructing
4 an expert in due course who can have access to those
5 minutes.

6 **Q.** Not accurate in the sense that there were typographical
7 issues or not accurate in the sense that they
8 underplayed certain issues?

9 **A.** Not accurate in the fact that they underplayed certain
10 issues and I came to that conclusion when I was drafting
11 my second witness statement because, although I don't
12 have the notes from those individual meetings which
13 I was taking myself and, as I said, I took quite
14 detailed notes, I was able to compare the information
15 that Mr -- I think it was Mr Bowyer had repeated in
16 certain documents and compare that against the minutes
17 that had been provided, and I had more information than
18 the minutes in certain circumstances.

19 **Q.** Can we please look at POL00323676. This is an email
20 from yourself to Susan Crichton on 19 September 2013.
21 It also relates to the weekly calls. You say as
22 follows:

23 "Susan,

24 "Many thanks for your email. I have been
25 considering the position today and I remain extremely

70

1 **A.** I have no doubt that that would have been probably
2 brought up by Post Office Limited but I didn't think
3 that it was appropriate for Post Office Limited to
4 discuss that with Fujitsu's lawyers at that stage. One
5 of the concerns that I had was that I have -- I think
6 I have an impression that, in the case of Jishaan Patel,
7 which is a case that we touched on yesterday, that I was
8 told that that witness statement was coming to
9 Cartwright King via the internal lawyers, via Fujitsu's
10 lawyers and, of course, we know that that witness
11 statement -- or I seem to remember that witness
12 statement only made reference to a single bug at
13 Callendar Square in Falkirk.

14 Now, of course, that is only one very small piece of
15 the jigsaw puzzle and, of course, a lot more has come
16 out since but I was concerned about the involvement of
17 Fujitsu lawyers at that stage.

18 **Q.** Thank you. Mr Smith, are we to understand from your
19 evidence yesterday and your evidence this morning that
20 you were in favour of things being recorded, that you
21 were in favour of transparency and that you, in your
22 work for the Post Office, were not concerned about
23 keeping things off the record?

24 **A.** I think, generally, the approach changed over time
25 because Post Office were concerned about things

72

1 unnecessarily going into the public domain and so,
 2 whilst we set out with the idea of making sure that
 3 everything was properly recorded, and I thought it was
 4 being properly recorded, in terms of transparency, I do
 5 realise that as the -- as time went on, Post Office had,
 6 if you like, a preference to avoid things going into the
 7 public domain unnecessarily, and that was pretty much
 8 driven by, I believe, the civil lawyers and Rodric
 9 Williams, who would say, well, this is a mediation case
 10 or this is a group litigation case, let's not make any
 11 unnecessary correspondence about this.

12 I took the view that, well, they're the experts in
 13 civil litigation, I wasn't going to get involved with
 14 that. My concern was that there was a central record.

15 **Q.** Do you think that, over time, you ultimately played
 16 a part in that lack of recording of issues to do with
 17 Horizon?

18 **A.** I can't think of playing a part of a lack of recording
 19 of issues.

20 **Q.** Let's look at some document from 2016. Can we please
 21 turn to POL00139681. This is a meeting from 23 March
 22 2016. We see regular meetings in 2016. Are these now
 23 litigation meetings, rather than the original weekly
 24 meetings?

25 **A.** No, they are the -- well, if 23 March 2016 was

73

1 This theme may date back to 2005. AW [Andy Winn] to ask
 2 Wendy Mahoney to progress in his absence."

3 Then it says this:

4 "MS [that's, I think, you] asked for assurance that
 5 there would have been no prosecution based on this type
 6 of incident."

7 So there's an incident relating to a discrepancy in
 8 a Wimbledon branch and you're asking for assurance that
 9 there wouldn't have been a prosecution based on that
 10 type of incident.

11 **A.** Yes.

12 **Q.** Yes? Could we turn to POL00140004, 30 March. This is
 13 the same issue, the Wimbledon transaction correction
 14 issue, and it's an email from you to Andrew Winn.
 15 Andrew Winn was one of our Phase 3 witnesses, he was in
 16 the Product and Branch Accounting Team; is that correct?

17 **A.** I couldn't tell you, I'm afraid. This a long time ago.

18 **Q.** Do you recall why you were contacting him, specifically?

19 **A.** Well, I think that the issue having been raised on that
 20 call, I wanted to know more information because,
 21 ultimately, what I'm still trying to do here is make
 22 sure that we have visibility of what's happening and
 23 a central record.

24 **Q.** You say as follows:

25 "During the biweekly conference call on the 23 March

75

1 a Wednesday, that would have been one of the Wednesday
 2 conference calls. They were initially on a weekly
 3 basis, then they became biweekly at some point. But,
 4 inevitably, there were references on some of these calls
 5 to the civil litigation that Post Office was being
 6 involved in and I can recall Post Office wanting to be
 7 careful about, again, generating email traffic. And
 8 I think, at the time, I --

9 **Q.** You're anticipating the questions that I'm going to be
 10 asking.

11 **A.** Yeah.

12 **Q.** So this was the weekly meeting?

13 **A.** Yes. Whether it was weekly or biweekly at that time,
 14 I don't know, I'm afraid, but it was the Wednesday --

15 **Q.** Sorry, what was originally called the weekly meeting?

16 **A.** Yes.

17 **Q.** If we could have a look page 2, please, we have
 18 an entry, if we scroll down, from Andrew Winn, and it
 19 refers to an issue in Wimbledon -- Wimbledon 119001,
 20 I think is that a branch number, possibly.

21 It says:

22 "... unpaid cheques (stock line on Horizon) --
 23 branch challenged why a value showing £2,500 loss when
 24 removed. Fault to be created on NBSC kit. To be
 25 corrected in the same way to see what effect this has --

74

1 2016 you made reference to a branch at Wimbledon and
 2 explained that transaction corrections had been issued
 3 which should not have been so issued and that they had
 4 accordingly been 'undone'. You went on to explain that
 5 there was a risk that transaction corrections may have
 6 similarly been issued to other branches which may have
 7 caused losses, possibly going back as far as 2005."

8 Then you set him a number of different questions:
 9 an explanation on the precise reason that the
 10 transaction corrections had been issued; the value; the
 11 effect, et cetera. 7 and 8, you ask whether this is
 12 an isolated incident or this is an issue which has or
 13 may have affected other branches:

14 "8. If this issue has affected other branches, the
 15 period of time over which transaction corrections may
 16 have been wrongly issued and the names of branches
 17 affected."

18 So it's an issue that may go back to 2005, we're now
 19 in 2016. Can we please look at an initial response,
 20 which is at POL00153939, 5 April 2016. It's a response
 21 from Wendy Mahoney, Case Review Team Leader. She says
 22 as follows, she says:

23 "I'm covering for Andy ... at the moment. Please
 24 find responses to the first six questions. Questions
 25 seven and eight will take slightly longer as I will have

76

1 to obtain further information from different departments
2 within [the Post Office]."

3 If we scroll over the page, please, to page 2, we
4 can see her initial responses. If we scroll down,
5 question number 3, where you requested the affect of
6 those transaction corrections on branch accounting, the
7 response was:

8 "It doubled up the discrepancy from £2,400 to
9 £4,800."

10 So quite significant information there about a bug
11 that is doubling the discrepancy in the Wimbledon
12 branch.

13 **A.** Yes.

14 **Q.** We see there 7 and 8, at that point, had not been
15 answered.

16 We then go to the further response from Wendy
17 Mahoney, that's at POL00241095, 26 April 2016. She
18 says:

19 "Hi Martin

20 "FSC have now provided an update on questions 7 and
21 8. Please see narrative and table below. If you
22 require any further information, please let me know."

23 Now, it may be that you're not able to assist us
24 with exactly what this all means because it does look
25 quite complicated, but the first paragraph says:

77

1 **A.** No, and I think this fell during a period just after
2 I had left Cartwright King. If we can go back up to the
3 top of the page, you'll see that the email that --
4 sorry --

5 **Q.** 26 April --

6 **A.** The one I sent initially was at the end of March and
7 I believe that I left Cartwright King at the end of
8 March, which is, I think, one of the reasons why
9 I copied in Simon Clarke and Harry Bowyer, who were
10 remaining at Cartwright King for a period of time and
11 then, at some later point, we commenced -- or we
12 certainly commenced working for Cartwright King on
13 an agency basis. So I think this perhaps left in a gap
14 just after I left --

15 **Q.** So when you say you left, you set up a company with
16 Mr Bowyer and Mr Clarke?

17 **A.** We did and I remember that I left Cartwright King
18 a month before they did or I believe that I left
19 Cartwright King a month before they did. I think I left
20 Cartwright King at the end of March.

21 **Q.** Okay, well, we'll have a look and see what capacity you
22 may have been in in attending various meetings. But are
23 you saying that you don't recall receiving this
24 information?

25 **A.** I don't recall this information. I'm not saying that

79

1 "I have looked into the unpaid cheque GL for all
2 items that have been posted since 2010, this resulted in
3 15,000+ items."

4 She says they were looked at but then she goes on to
5 say:

6 "... however system archiving at 13 months meant
7 that a large number were unavailable to investigate."

8 So there seems to have been some kind of time
9 limitation on that investigation. Do you recall that at
10 all?

11 **A.** I'm afraid I don't recall this, no.

12 **Q.** She then says:

13 "I then moved on to the actual [transaction
14 corrections] that had been issued ... and read
15 individually the text detailing the cause of the
16 [transaction correction]. From this I managed to pull
17 out the details for the archived items.

18 "Results as below for all [transaction corrections]
19 issues 2010 to current date."

20 Then there's a table underneath and it says:

21 "Transaction corrections issued not compensated that
22 feature the same issue as Wimbledon listed below."

23 There is a list of various branches that had been
24 affected by this issue.

25 Do you remember being concerned about this?

78

1 I haven't seen it at some point but I don't recall that
2 information and it may be that that may be down to the
3 fact that I left.

4 **Q.** Let's look at the various meetings that you are present
5 at throughout May and we can try and work out in what
6 capacity. Can we please look at POL00120311. This is
7 a meeting of 4 May and it has you down there as Martin
8 Smith of Cartwright King.

9 **A.** Yes.

10 **Q.** Were you still at Cartwright King on 4 May?

11 **A.** So I wasn't an employee of Cartwright King on 4 May but
12 we were working on an agency basis for Cartwright King.

13 **Q.** Were you still acting for the Post Office?

14 **A.** Cartwright King was still acting for the Post Office,
15 yes.

16 **Q.** Were you still acting for the Post Office?

17 **A.** Well, I was certainly attending these meetings. I don't
18 know whether I had access to my emails at this point in
19 time.

20 **Q.** Were you still acting for the Post Office?

21 **A.** Well, yes.

22 **Q.** Rodric Williams is down under Legal as well. We see
23 somebody called Shirley Hailstones under Support
24 Services, if we have a look down. Thank you very much.

25 Can we look on page 2, please, under "Wimbledon":

80

1 "SH [Shirley Hailstones] ..."
 2 Do you recall Shirley Hailstones at all?
 3 **A.** I recognise the name.
 4 **Q.** "... seeking clarification of the figures. MS [which is
 5 you] saying that there was limited information available
 6 as data only presents for the last year and a half."
 7 You see, that seems to be a recognition of some of
 8 the information in that previous email that referred to
 9 data any being held for 13 months.
 10 **A.** Yes.
 11 **Q.** Do you recall being in possession of information about
 12 limited data being available?
 13 **A.** Well, I must have seen some information but how it came
 14 to me I don't know.
 15 **Q.** "The recent data suggests false balance issues and
 16 therefore it will be useful to look into older data
 17 well.
 18 "SH asking about who should be making the decision
 19 about older data. MS [that's you] saying that RW
 20 [I think that's Rodric Williams] should give the go
 21 ahead. [You] will liaise directly with [Mr Williams]
 22 outside of the meeting."
 23 It then says:
 24 "[Mr Williams] is happy with this but also
 25 emphasising that this matter is subject to the group

81

1 **A.** The issue had been flagged up and there was information
 2 there.
 3 **Q.** Can we look at POL00043435, meeting of 18 May. You're
 4 still present there, still referred to as Cartwright
 5 King, although, as you say, you may have been acting in
 6 your firm with the other two previous Cartwright King
 7 lawyers. If we scroll down, please, to the bottom of
 8 page 2, "New issues identified":
 9 "MS [your initials]. Cartwright King.
 10 "Issues/Observations/Comments
 11 "Wimbledon can be taken off this agenda: Martin &
 12 Rodric catching up offline."
 13 It looks very much as though you followed Rodric's
 14 request not to correspond on that issue; is that right?
 15 **A.** It may be that -- it does look like that, yes. But,
 16 again, as far as I was concerned, this issue had been
 17 flagged up and it was now in the central record. If
 18 Rodric Williams did not want additional material
 19 preparing from a civil litigation perspective, that was
 20 his call, not mine.
 21 **Q.** Mr Smith, after all that you've been through, after all
 22 that we discussed yesterday, finding out about
 23 unreliability of Gareth Jenkins, finding out about bugs,
 24 errors and defects that hadn't been disclosed in
 25 criminal proceedings, proceedings that you were involved

83

1 action and data could be disclosable. [Rodric Williams]
 2 asking for no email traffic on this matter."
 3 **A.** Mm.
 4 **Q.** Do you recall Mr Williams saying "no email traffic" on
 5 this matter?
 6 **A.** No, I don't.
 7 **Q.** Do you think that that was a proper request to make?
 8 **A.** If his concern was to avoid emailing various different
 9 people and then incorrect speculation, then I could
 10 understand why he would want that in but I was
 11 concerned that there was a central record, as far as
 12 I was concerned, this was now on the radar and it would
 13 be open to an expert instructed to look into this.
 14 **Q.** The concern there is that data could be disclosable,
 15 therefore no email traffic. Do you think that is
 16 proper?
 17 **A.** Again, that's civil litigation and I took the view that
 18 that was Rodric Williams's domain and nothing for me to
 19 comment on.
 20 **Q.** Why were you at the meeting?
 21 **A.** Well, this was a Wednesday meeting. So it was
 22 collecting information relating to the Horizon system.
 23 **Q.** Did you not have any views on whether or not there
 24 should be email traffic on a bug in the Wimbledon branch
 25 that's affected a number of different branches?

82

1 in, proceedings that led to the imprisonment of
 2 a subpostmaster, finding out about a request from
 3 Mr Scott to shred documents or destroy documents, surely
 4 you couldn't have thought, at this point in time, that
 5 catching up offline, in relation to an issue about
 6 a bug, was an appropriate action to take?
 7 **A.** When it says "offline", it's not offline completely;
 8 it's just not simply within this call.
 9 **Q.** Is that really your evidence?
 10 **A.** Well --
 11 **Q.** There was a meeting, a previous meeting, where
 12 Mr Williams asked for no email traffic.
 13 **A.** Yes. Well, at the end of the day, he is the client. He
 14 is saying, "I do not want any email traffic". This has
 15 been flagged up, it is now in our database. It is now
 16 in the central record.
 17 **Q.** You're having private meetings that no electronic record
 18 is being kept of?
 19 **A.** I -- well, it wouldn't be in an email but I would have
 20 had notes in my notebook.
 21 **Q.** So you were keeping a fully disclosable note of this
 22 issue for the purposes of disclosure?
 23 **A.** I was keeping notes.
 24 **Q.** Were you providing that to the central hub?
 25 **A.** No, they were my personal notes. I left -- the notes

84

1 that I made at Cartwright King were -- remained at
 2 Cartwright King. Now, this is after I left Cartwright
 3 King but I was still keeping notes.

4 **Q.** So what's the purpose of the central hub if you're
 5 keeping notes that are kept in your office that aren't
 6 kept in your central hub and that you're corresponding
 7 offline?

8 **A.** Well, the central hub is to be able to provide
 9 information to anyone who needs it. My notes were
 10 an *aide memoire*, so I could quickly look at things.

11 **Q.** You were discussing bug in Horizon that was affecting
 12 branches and causing discrepancies?

13 **A.** But it's been flagged up in the hub.

14 **Q.** It's been flagged up but the discussion about it,
 15 a discussion about how longer it's been going on for,
 16 whether it affects prosecutions, none of that's in the
 17 hub, is it?

18 **A.** Not on the basis of this record, no.

19 **Q.** The answer to the questions you were asking earlier,
 20 does it affect prosecutions is being dealt with offline?

21 **A.** I don't believe that I thought of it in that way at the
 22 time because the file review process had been completed,
 23 disclosure had been made to those who senior counsel had
 24 advised it be made to and we had been informed that we
 25 did not need to go looking for cases prior to 1 October

85

1 advised that:

2 "Whilst this is not a 'Horizon issue' to the extent
 3 that the system permitted the sequences of transactions
 4 in accordance with its programming, it does not of
 5 course make the position any less embarrassing for [Post
 6 Office Limited]. There is in my opinion a substantial
 7 risk that any reports generated by a prosecution in this
 8 case may be utilised by those who seek to argue that
 9 Horizon is defective or otherwise inadequate."

10 By this stage, so 2015, going into 2016 and those
 11 meetings that we've been looking at, were you concerned
 12 about embarrassment being caused to your client, the
 13 Post Office?

14 **A.** I felt that it was our duty, as instructed lawyers by
 15 then, to flag it up.

16 **Q.** Did you think, perhaps, that by 2016, when you were
 17 setting up a new firm, that it was important to keep the
 18 Post Office on side and to follow orders not to discuss
 19 things online?

20 **A.** I took the view that the civil lawyers would be making
 21 decisions in relation to civil litigation and I didn't
 22 question their decisions.

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

24 I'm going to move on to a few miscellaneous topics
 25 before handing over to Core Participants. The first is

87

1 2010. So this was something that had been flagged up.
 2 It was something that an expert could opine on in due
 3 course.

4 **Q.** Can we look at POL00120321. This is a meeting of 1 June
 5 2016. If we scroll over the page to page 2, now it
 6 says:

7 "MC and RW agreeing this matter can be closed."
 8 On the minutes, "MC" seems to be Melanie Corfield,
 9 who is in the Communications Team. Do you think that
 10 might be a typo and it might be your name or do you
 11 think that she, in fact, agreed with Mr Williams that
 12 the matter could be closed?

13 **A.** I really don't know whether that's a typo or not.

14 **Q.** Would it be odd if somebody from the Communications Team
 15 agreed that an issue relating to a bug could be closed?

16 **A.** I don't know if Mr Williams had involved that lady in
 17 that discussion.

18 **Q.** Can we please now turn back to a document we saw at the
 19 very beginning of yesterday, and that's POL00411347 and
 20 that's the advice you gave in the ongoing criminal
 21 matter of Zen Elvins. Could we please turn to page 3.
 22 This isn't 2016, this is 2015, but it's similarly late
 23 in the picture --

24 **A.** Yes.

25 **Q.** -- and this is paragraph 9, so if we scroll up where you

86

1 remote access. I think we can take this relatively
 2 quickly because a number of witnesses have recently been
 3 looking at the same documents that we will be looking at
 4 but can we start with POL00141471. We're going back in
 5 time now to November 2012. Could we start on page 4,
 6 please.

7 At the bottom of page 4, we have an email from
 8 Rachael Panter to Gareth Jenkins and she is seeking his
 9 report, Mr Jenkins' report, in the case of Kim Wylie and
 10 it's urgent because the case has been listed.

11 If we scroll up, there's a response from Mr Jenkins,
 12 paragraph 3. He says:

13 "Reading through the Defence Statement I see it does
 14 make some specific points which my statement doesn't
 15 currently address. Specifically, the challenges
 16 regarding robustness and remote access to the system.
 17 Do you want me to try and address those specifics?"

18 If we can go to page 3, Ms Panter responds, copying
 19 you in, and she says:

20 "If you feel that you are able to deal the issues of
 21 robustness and remote access fairly swiftly then I would
 22 like you address these points that have been raised so,
 23 that we can deal with every area that they have
 24 criticised."

25 Can you assist us with why you're copied in? Were

88

1 you supervising Rachael Panter or working with her on
 2 the case of *Wylie*?

3 **A.** I don't believe I was working with her on the case of
 4 *Wylie*. I think that was one that Mr Bowyer was dealing
 5 with. Mr Cash, of course, was the -- at that point, the
 6 partner in charge of the Derby office and the -- really
 7 the partner in charge of the Post Office department.

8 **Q.** If we scroll up to page 2, please, Mr Jenkins responds
 9 and he says:
 10 "Rachael,
 11 "What I propose adding is the following ...
 12 "I have been asked to provide a statement in the
 13 case of Kim Wylie. I understand that the integrity of
 14 the system has been questioned and this report provides
 15 some general information regarding the integrity of
 16 Horizon."
 17 There's then a paragraph that addresses the
 18 integrity and I want to look at the paragraph that
 19 addresses remote access. It says:
 20 "I ... note a comment made about it being possible
 21 to remotely access the system. It is true that such
 22 access is possible; however in an analysis of data
 23 audited by the system, it is possible to identify any
 24 data that has not been input directly by staff [at]
 25 branch. Any such change in data is very rare and will
 89

1 requirement for these transactions to be accepted by
 2 subpostmasters ..."

3 There are various concerns raised there about the
 4 controls that are in place to monitor that.

5 We then have an advice written by Mr Clarke. That's
 6 POL00021774. This is advice that has Mr Clarke's name
 7 at the end, 27 March 2015. If we scroll down, we can
 8 see there, at paragraph 2, the reference there to parts
 9 of the Deloitte report. You've said that you don't
 10 recall this advice but were you in any way assisting
 11 with the drafting of this advice?

12 **A.** It wasn't uncommon for Mr Clarke to run an advice past
 13 either myself or one of my colleagues to talk through
 14 it, to explain his methodology, his thought process.
 15 I may have seen it, I don't recall.

16 **Q.** Often in his advice he writes "We have seen" or "We have
 17 done" this or that. Is that because he has discussed it
 18 internally?

19 **A.** I've never really given that any thought. It may just
 20 be his house style.

21 **Q.** If we turn to page 2, there's a reference to a telephone
 22 call with Rodric Williams and Andrew Parsons:
 23 "... we were informed that the Deloitte report was
 24 correct where it identifies a method of posting of
 25 'balancing transactions!'"
 91

1 be authorised by the Post Office. As I have not had
 2 an opportunity to examine data related to this branch,
 3 I cannot categorically say that this has not happened in
 4 this case but would suggest it highly unlikely."

5 I think you said in your witness statement that it's
 6 in a small font and you don't believe you read the --

7 **A.** I didn't read that in full at the time, no, and, first
 8 of all, it wasn't a case that I was dealing with and,
 9 secondly, it was in a very small font and I think it was
 10 also dealt with by Mr Bowyer very quickly.

11 **Q.** When you say it was dealt with very quickly, I mean,
 12 that ultimately ended up in the witness statement?

13 **A.** It did, it did, but I think the response to Mr Jenkins
 14 was very timely.

15 **Q.** Let's move on to the Deloitte report, that's
 16 POL00028062, 24 May 2014. Page 31, please. I don't
 17 know if you were watching Mr Aujard this morning but
 18 this is a section, I think, that he was taken to in --

19 **A.** I saw part of it from the waiting room.

20 **Q.** So it's the bottom of page 31 and there's various
 21 references there to the ability to insert what's called
 22 balancing transactions:
 23 "A method for posting 'balancing transactions' was
 24 observed from technical documentation which allows for
 25 posting of additional transactions centrally without the
 90

1 Were you part of that telephone conference?

2 **A.** I have no recollection of that. I couldn't say.

3 **Q.** If we move on, please, to POL00029867, 15 July 2015.
 4 There's an email from Andrew Parsons. Now, it's to you
 5 and Simon Clarke and it relates to balancing
 6 transactions, so that is the ability to inject
 7 transaction data by support staff and it says:
 8 "Martin, Simon
 9 "Before Rodric went on holiday, he asked me to push
 10 forward the disclosure piece around balancing
 11 transactions.
 12 "I understand that during the [conference] with
 13 Brian Altman there was a discussion about doing some
 14 further investigations into when [Post Office] had used
 15 BTs [balancing transactions] on old Horizon [what we
 16 know as Legacy Horizon]. As part of these
 17 investigations, we asked [Fujitsu] to explain how
 18 [balancing transactions] would work on Old Horizon ...
 19 [Essentially] It was possible to do [the] equivalent
 20 on [Legacy Horizon]."
 21 He then says:
 22 "It has subsequently been confirmed by [Fujitsu]
 23 that searching for [balancing transactions] would in
 24 fact be an enormous task, taking several months of
 25 work."
 92

1 He ends that paragraph by saying:
 2 "On this basis, [the Post Office] is not prepared to
 3 commission this exercise unless it is considered
 4 absolutely vital and there is no credible alternative."
 5 Now, given that you can't recall whether you were
 6 part of that earlier conference, that you can't recall
 7 the email from Gareth Jenkins that relates to his
 8 evidence on balancing transactions, why do you think it
 9 is that Andrew Parsons names you as the primary
 10 recipient, the first-named individual on this email in
 11 relation to the issue of balancing transactions?
 12 **A.** Well, I may very well have been involved in the call.
 13 I just cannot remember it.
 14 **Q.** Might you have thought, at the time, that the ability to
 15 inject data by support staff was something quite
 16 significant?
 17 **A.** I was under the impression that Mr Clarke was reviewing
 18 this and advising Post Office in relation to it and
 19 I was letting him take the lead.
 20 **Q.** What do you think Mr Parsons is saying there "Martin,
 21 Simon"? Why would he have the impression that you were
 22 at least jointly involved, if not the principal person
 23 to contact?
 24 **A.** I was often the point of contact at Cartwright King,
 25 whether I dealt with something or not, and it wasn't
 93

1 happening?
 2 **Q.** I'm going to move on to the issue of Gareth Jenkins and
 3 expert evidence. You've addressed it in your
 4 statements.
 5 **A.** Yes.
 6 **Q.** Were you aware, throughout the period that we have
 7 discussed, of the various requirements that are legally
 8 in place with regard to the instruction of expert
 9 witnesses?
 10 **A.** I have to accept that I wasn't. Like I said yesterday,
 11 we had essentially been a defence firm of solicitors.
 12 We had presented cases in court on an agency basis and,
 13 as I pointed out yesterday, there is a world of
 14 difference between doing that and actually progressing
 15 prosecution files. Quite why Cartwright King thought it
 16 was appropriate to take on this prosecution work,
 17 I really, with hindsight, have no idea because we
 18 certainly didn't have the training for it, and I was
 19 unaware of the duties on a prosecutor in relation to the
 20 instruction of an expert witness.
 21 **Q.** By 2012, you had been qualified for 16 years?
 22 **A.** Yes.
 23 **Q.** Do you think it was unusual that you weren't aware of
 24 those kinds of duties?
 25 **A.** I was simply just not aware of the duties on
 95

1 uncommon for me to receive something and then pass it
 2 through to either Simon Clarke or Harry Bowyer for their
 3 attention. And it may be that I was involved, I cannot
 4 recall.
 5 **Q.** By 2015, you were very experienced. It's not like you
 6 had to follow Mr Clarke in what he did?
 7 **A.** By 2015, this had been going on for quite some time. It
 8 was virtually impossible to remember everything that had
 9 happened beforehand because this was a whirlwind.
 10 I certainly couldn't recall the issue with Mr Jenkins
 11 talking about remote access arising at that earlier
 12 stage. That wasn't something that was springing to the
 13 front of my mind. It just simply wasn't on my radar.
 14 **Q.** Is there anything you recall about the Post Office's
 15 approach to remote access during this period?
 16 **A.** I recall Mr Clarke advising that, in order to determine
 17 whether or not it was going to be disclosable, further
 18 questions ought to be asked.
 19 **Q.** Did it cause you any concerns about all those cases that
 20 you had been prosecuting over the years?
 21 **A.** Well, I don't think it did, when I first became aware of
 22 the issue, because I didn't think that anything sinister
 23 would be happening. I mean, after all, you know, this
 24 is the Post Office, this is Fujitsu; why on earth would
 25 you think that things that were sinister would be
 94

1 a prosecutor to actually make sure that an expert
 2 witness was fully informed of their duties, et cetera.
 3 It was clear from when Mr Clarke wrote his advice that
 4 we had been seeking reports from Mr Jenkins in a way
 5 which perhaps was not -- well, undoubtedly was not
 6 compliant.
 7 **Q.** Did you ever see formal written instructions to
 8 Mr Jenkins?
 9 **A.** By "formal", in terms of a letter setting out all of
 10 that, no. Our approach had been that Mr Jenkins had
 11 clearly been used as an expert witness in the past by
 12 the Post Office. Mr Bowyer advised about the content of
 13 a generic expert report, if you like, that should be
 14 used as a baseline and we then went from that point
 15 onwards and, no, no formal letters of instruction were
 16 provided.
 17 **Q.** Did you consider whether his witness statements complied
 18 with various legal requirements?
 19 **A.** No, I don't believe I did. I took the view that we'd
 20 been advised to obtain a Section 9 statement and that's
 21 what we prepared and we sought to update it in cases in
 22 which there was a Not Guilty plea. I don't believe
 23 I gave it any more thought than that.
 24 **Q.** At one point, you became involved in discussions
 25 relating to the instruction of a new expert or
 96

1 experts --

2 **A.** Yes.

3 **Q.** -- Professor Kramer and Dr Dulay.

4 **A.** Yes.

5 **Q.** Can we please look at a few documents in relation to

6 that matter. They can be found at POL00148714. If we

7 could start on page 3. How did you become involved in

8 seeking out a new expert?

9 **A.** I think that probably came out of one of the very early

10 conferences at Old Street, with Susan Crichton and

11 others from the Legal Department. After we'd become

12 aware of the Second Sight Interim Report making

13 reference to bugs, I don't think at that stage we

14 necessarily knew about all of the information relating

15 to those bugs. But Mr Clarke's view was that, as they

16 had not been mentioned by Mr Jenkins, it could no longer

17 be -- Post Office could no longer rely on his evidence

18 and a new expert would be required.

19 And I think -- from memory, I think it was Susan

20 Crichton asked us to see if we could find a new expert,

21 and I think one of my colleagues actually prepared

22 a shortlist of potential experts, looking at various

23 organisations around the country but then ICL, I think,

24 became the favourite.

25 **Q.** Can we please scroll down to the bottom of this page,

97

1 the experts should only consider Horizon Online and

2 I believe that Mr Altman, King's Counsel, gave an advice

3 similarly.

4 **Q.** Mr Smith, surely that second sentence relates to

5 potential issues for cases that had been prosecuted if

6 the experts were to find problems with old Horizon?

7 Surely, that's the only interpretation you can have of

8 that second sentence?

9 **A.** I can see how it looks but, no, I was concerned that the

10 experts would not be able to look at the system properly

11 and I could see that there could become all sorts of

12 issues arising if they've provided a report that

13 basically said that they could not, for reasons beyond

14 their control, provide any certainty with regard to the

15 old Horizon system.

16 **Q.** Disclosure issues?

17 **A.** So if there was a report that was provided by Imperial

18 College London, which said that "We cannot confirm that

19 old system was" -- and I'll use the phrase "robust" --

20 then that potentially would have implications in

21 relation to every single prosecution --

22 **Q.** Because they didn't have enough information to say

23 whether or not the system was robust, because they

24 didn't have access to the information because it was

25 historic, you think that that could lead to problems

99

1 it's an email from yourself to Andrew Parsons, 9 July

2 2014. You say as follows:

3 "I would not advise that the experts be instructed

4 to look at the old Horizon system. If the experts were

5 to consider the old system, depending on their findings,

6 disclosure issues could arise in historic cases. In any

7 event cases now being investigated and considered for

8 prosecution will involve Horizon Online, which was

9 result out during 2010."

10 Can you please assist us with the first part of that

11 response, with regards to disclosure issues. What did

12 you mean there?

13 **A.** Well, I think at that time we were being informed that

14 the old -- Legacy Horizon was no longer available in any

15 way, shape or form, to be tested and important

16 information relating to its design and functionality was

17 no longer available. I couldn't see how any expert

18 could actually then say, "Well, we've looked at the

19 system and the system was fine". Any report that they

20 would produce would have to be caveatted incredibly and

21 then, if there is a report that tells Post Office "I'm

22 sorry we cannot say anything about the Legacy Horizon

23 system", what sort of position does that put Post Office

24 in?

25 I was also aware that Simon Clarke had advised that

98

1 with historic cases?

2 **A.** Well, yes.

3 **Q.** Were you not more worried about the fact that they could

4 investigate the old Horizon system and find a lot more

5 bugs, errors and defects?

6 **A.** Well, I didn't think they could investigate the old

7 Horizon system because it wasn't there to be

8 investigated. It didn't exist any longer and the

9 information which related to it, I understand a lot of

10 that key architecture information had gone, and I also

11 understood that a lot of information related to historic

12 prosecutions had gone through data retention policies.

13 **SIR WYN WILLIAMS:** If you thought that they couldn't

14 investigate the system because the material wasn't

15 available, it's a very odd way to start, by saying, "If

16 the experts were to consider the old system", isn't it?

17 **A.** Well, I think I would have read that as if the experts

18 were asked to consider the old system.

19 **SIR WYN WILLIAMS:** Well, come on, now. You're a lawyer

20 writing to a number of other lawyers and I think I can

21 reasonably infer that you would write reasonably

22 precisely in these circumstances. So why are you

23 beginning this sentence on the premise that there could

24 be a consideration of the old system?

25 **A.** Well, there could be a consideration to some limited

100

1 degree but it would be very limited because --
 2 **SIR WYN WILLIAMS:** You're adding words, Mr Smith. Those
 3 words don't appear at all in this email.
 4 **A.** Sorry?
 5 **SIR WYN WILLIAMS:** Why should I assume or decide that you
 6 wrote an email which had, more or less, a completely
 7 different meaning from the one which is obvious, reading
 8 this?
 9 **A.** Well, I don't think it is different. I mean, there
 10 would be disclosure issues which could arise but, in any
 11 event, we were now looking at the new system, and
 12 counsel had advised that we did not need to go looking
 13 for cases prior to 2010.
 14 **SIR WYN WILLIAMS:** All right.
 15 **A.** That was Mr Altman KC's clear advice that Post Office
 16 did not need to go looking for cases prior to 1 January
 17 2010 and, in those circumstances, I could not see any
 18 merit in asking an expert, at considerable expense,
 19 contrary to the advice of Simon Clarke, which was to
 20 focus simply on Horizon Online, why we would ask the
 21 experts to look at a partial amount of documentation
 22 relating to its design, and no ability to actually test
 23 the system. I could not see that that sort of report
 24 would be helpful at all and could see that that would be
 25 a nightmare situation.

101

1 **A.** I cannot recall, I may have been. During this time,
 2 there were numerous telephone calls on different days.
 3 **Q.** There seems to have been a concern from Cartwright King
 4 as to cases that they had been prosecuting and potential
 5 disclosure to those who had been prosecuted. Do you
 6 recall conversations of that nature?
 7 **A.** I don't. I don't agree with the way that that's
 8 phrased, if I may say. I can recall that, when the
 9 Mediation Scheme was started, it was not ourselves that
 10 were raising concern. It was Post Office that was
 11 initially raising concern that concessions could be made
 12 or throwaway comments could be made, which might provide
 13 a Mediation Scheme applicant with some form of
 14 ammunition to argue, for example, that the case being
 15 presented by Post Office, at that stage, was different
 16 to the basis upon which they had been prosecuted,
 17 whether that had been by Cartwright King or, indeed, by
 18 the Royal Mail Group some time previously.
 19 So I think it was initially Post Office that were
 20 concerned about the convicted applicants in the
 21 Mediation Scheme and the information provided to them.
 22 I think that's where the --
 23 **Q.** So you think that that is wrong there, if it is to be
 24 read as suggesting that Cartwright King were concerned
 25 about people that they had prosecuted launching a fresh

103

1 **MR BLAKE:** I'll move on to the issue of disclosure
 2 post-conviction. We've heard a lot of evidence from you
 3 about and spent a lot of time on the disclosure during,
 4 for example, Mr Ishaq's trial and during the trial
 5 process but I want to move on to disclosure
 6 post-conviction.

7 Can we please look at POL00006581 and the issue is
 8 disclosure during the Mediation Scheme and to Second
 9 Sight. This document that I'm taking you to is the
 10 Altman General Review. It's 15 October 2013. Can we
 11 have look, please, at page 42. Mr Altman records as
 12 follows in his advice, he says:

13 "During the telephone conference of 4 October 2013,
 14 the main topic of discussion was the extent to which
 15 [Cartwright King] should be involved in exercising
 16 a supervisory function over the criminal cases going to
 17 mediation, such as Mrs Misra's case. There is
 18 understandable concern that offenders might use the
 19 Mediation Scheme to gain information as a platform from
 20 which to launch a fresh or new appeal, and so
 21 [Cartwright King] wish to exercise a measure of control
 22 over the dissemination of information and material
 23 during the process."

24 Were you part of that telephone conference on
 25 4 October 2013?

102

1 or new appeal?
 2 **A.** I don't think it's a case of Cartwright King being
 3 concerned about the people that they had prosecuted. As
 4 I say, the concern was initially by Post Office in
 5 relation to blanket convicted applicants to the
 6 Mediation Scheme, irrespective of whom they'd been
 7 prosecuted by, and I understood that Mr Bowyer and
 8 Mr Clarke were able to understand that concern and, in
 9 fact, I think Mr Clarke advised in relation to it.
 10 **Q.** Why Mr Bowyer and Mr Clarke? I mean, were you not
 11 a three?
 12 **A.** We were a three but the general way that we dealt with
 13 this was to have advice being provided by senior
 14 counsel. Post Office was --
 15 **Q.** You have, throughout your evidence, been referring to
 16 Mr Clarke as being senior or more experienced than you.
 17 All of the emails that we've seen, there isn't a single
 18 one there that seems to distinguish in your seniority or
 19 abilities?
 20 **A.** No, that we were -- I was generally the main point of
 21 contact but I have seen in the papers that have been
 22 provided, and I'm sure you will have seen them, there
 23 are -- there is evidence of me forwarding things to
 24 Mr Bowyer to look at. There's evidence of me forwarding
 25 things to Mr Clarke to look at. I was the point of

104

1 contact and, indeed, in relation to the Mediation
 2 Scheme, I think it was agreed that there should be one
 3 point of contact at Cartwright King for all of the
 4 traffic to go through, and one point of contact at,
 5 I don't know if it was Bond Dickinson or Womble Bond
 6 Dickinson at that time, but one point of contact there,
 7 so that way it would keep lines of communication clear,
 8 rather than different emails being sent to different
 9 people.

10 **Q.** That one point of contact was yourself?

11 **A.** That one point of contact was myself at Cartwright King
 12 for virtually everything, irrespective of what it was.

13 **Q.** So, in that case, it's highly likely that the telephone
 14 conference that took place on 4 October involved you?

15 **A.** It may well have done, I can't remember it.

16 **Q.** Can we please turn to POL00168949, and can we start
 17 page 2, please. This the case of Noel Thomas that's
 18 being looked at. We have heard from Mr Thomas, he was
 19 sentenced to nine months' imprisonment. His case is
 20 being looked at in May 2014. You were sent Post Office
 21 Investigation Reports, which, in turn, would be sent to
 22 Second Sight, and there's an email here from yourself to
 23 Andrew Parsons, and you say as follows:
 24 "Whilst we have advised that as a matter of
 25 principle investigation and offender type reports should
 105

1 I did, and I was content to follow their lead.

2 **Q.** If we turn over to page 1, please. Mr Parsons says, at
 3 the bottom of page 1:
 4 "Thanks -- if you could mark on the docs any bits
 5 that you refer to be redacted that would be great."
 6 You respond in the top email, you say as follows:
 7 "Andy.
 8 "Please find attached the Investigation Reports on
 9 which I have highlighted in black the parts how much
 10 would advise be redacted. Consequently I have also
 11 further amended the draft Report in light of the
 12 redactions."
 13 I am just noting here, it's several "I"s, there's no
 14 "we"?

15 **A.** It's not "we" it's "I", yes.

16 **Q.** "I would prefer not to let the applicant see the
 17 sentence in Diane Matthews' report of 25 October 2005
 18 which noted that she was '... currently awaiting the
 19 results of the tests by Fujitsu on the Horizon system'
 20 if those test results cannot be found. Such a sentence
 21 may well invite a request for disclosure of the test
 22 results. There may also be risk that the applicant will
 23 suggest that the investigation Watts inadequate or
 24 incomplete. Similar issues could arise out of the
 25 comment on page 7 of the draft report; 'However it
 107

1 not be disclosed, I understand that there will be
 2 [circumstances] in which it is felt that there is no
 3 alternative other than to disclose these. In such
 4 circumstances they should be appropriately redacted. If
 5 you would like me to deal with that, please let me
 6 know."

7 So was it your view, as at May 2014, that the
 8 investigation or offender reports into those who had
 9 been convicted, like Mr Thomas, shouldn't be disclosed
 10 as a matter of principle?

11 **A.** That was the advice that I received within Cartwright
 12 King, yes.

13 **Q.** When you say that was the advice you received within
 14 Cartwright King, Mr Smith, you are a lawyer from
 15 Cartwright King.

16 **A.** Yes.

17 **Q.** You are communicating with the client, Andrew Parsons:
 18 that is surely your advice?

19 **A.** It is also my advice but that was the strong views of
 20 Mr Bowyer and Mr Clarke and I accepted that and we
 21 presented --

22 **Q.** Mr Smith, you weren't on work experience with Mr Clarke
 23 and Mr Bowyer.

24 **A.** No, I wasn't but I was aware that they had a substantial
 25 amount of experience of prosecution cases, far more than
 106

1 appears that the kit was taken by Fujitsu to allow the
 2 equipment testing to be undertaken. No documentation is
 3 available in relation to this'."

4 On what possible basis could those redactions be
 5 justified?

6 **A.** I really don't. Looking at this with hindsight, I don't
 7 know.

8 **Q.** I don't think you need hindsight to reflect on this.
 9 Perhaps, on reflection --

10 **A.** On reflection, I was of the view that information which
 11 might put into the public arena the sorts of
 12 investigation work carried out by Post Office or
 13 sensitive methods or opinions should not be disclosed.

14 **Q.** What's sensitive here? What you're saying here is that
 15 they shouldn't -- they should be redacted because they
 16 may lead to disclosure requests. What's wrong with
 17 disclosure requests being made by those who were
 18 convicted of criminal offences, some of whom were sent
 19 to prison?

20 **A.** Yes. I clearly got that wrong.

21 **Q.** It's --

22 **A.** I mean, I was -- as a firm, we took the view that
 23 anything which contained the opinion of, for example,
 24 an Investigating Officer about a witness or something
 25 about a method of investigation or something sensitive,
 108

1 should be redacted but I cannot see here, on reflection,
2 anything which sensibly should have been redacted.

3 **Q.** Wasn't it part of a culture of withholding information
4 from applicants?

5 **A.** Not intentionally, no.

6 **Q.** Can we please look at POL00325867. It's the bottom
7 email from Mr Parsons to Chris Aujard, Rodric Williams,
8 a team at the Post Office, copied to Simon Clarke and
9 you. He says as follows:

10 "I've just spoken with [Cartwright King] about a new
11 [that's a questionnaire] from Howe+Co that references
12 the Helen Rose Report."

13 So these are questionnaires that are filled out by
14 applicants to the Mediation Scheme.

15 **A.** Right.

16 **Q.** "You'll return that the Helen Rose Report was
17 retrospectively disclosed in a number of prosecution
18 cases as it drew into question some of the statements
19 made by [the Post Office's] expert witness, Gareth
20 Jenkins. A copy of the [Helen Rose] Report has made its
21 way to Howe who are now referencing it generally in
22 their [questionnaires]. For example, the
23 [questionnaire] in M060 refers to the [Helen Rose]
24 Report however the [Helen Rose] Report was not sent to
25 this applicant.

109

1 I suggest that they (or the lawyer here at [Bond
2 Dickinson]) addresses these directly with [Cartwright
3 King] on a case-by-case basis.

4 "Please let me know if you are happy with this
5 proposed approach? Martin, Simon and I are available if
6 you have any questions."

7 Do you consider that to be an appropriate approach
8 to the mediation?

9 **A.** The lawyers at Bond Dickinson were advising Post Office
10 in relation to the mediation. How they wished to deal
11 with individual mediation applicants was a matter for
12 them.

13 **Q.** Why is your name on this email?

14 **A.** It's been sent through to us.

15 **Q.** Why does it say, "Martin, Simon and I are available"?

16 **A.** People --

17 **Q.** Is Mr Parsons entirely wrong, this is a Bond Dickinson
18 affair, not involving you?

19 **A.** No, we looked at proposed responses to mediation
20 applicants. That was Cartwright King's role and, as it
21 points out here, the Helen Rose Report started to become
22 mentioned by other applicants. Post Office clearly
23 didn't wish to explore that with a number of applicants
24 but that was their decision. We were not advising Post
25 Office how to conduct the mediation process and that

111

1 "The point of concern is that the M060

2 [questionnaire] is starting to make the link between (1)
3 the fact that the [Helen Rose] Report makes clear that
4 [Gareth Jenkins] knew of issues with Horizon and (2) the
5 fact that [Gareth Jenkins] never mentioned these issues
6 in his prosecution evidence (see para 53 in the
7 attached). This line of inquiry draws into question the
8 credibility of [Gareth Jenkins'] evidence."

9 That's precisely the line of concern that was raised
10 in Mr Clarke's Advice the year before that, isn't it?

11 **A.** It is.

12 **Q.** It then says:

13 "The sharing of the [Helen Rose] Report between
14 applicants is potentially a breach of solicitors
15 ethics/contempt of court. However, [Cartwright King]
16 and I don't believe attacking the solicitors on this
17 point would be of benefit -- if anything it may draw
18 more attention to the [Helen Rose] Report.

19 "Instead, our preferred approach is to try to
20 downplay the importance of the [Helen Rose] Report in
21 any [Post Office] Investigation Reports. We recommend
22 minimising or ignoring entirely the [Helen Rose] Report
23 when responding to [questionnaires].

24 "If the Investigation Team need guidance on how to
25 address any [Helen Rose] Report related questions,

110

1 was -- in my understanding, was a matter for Bond
2 Dickinson.

3 **Q.** Mr Smith you had been advising the Post Office for
4 years. We saw yesterday the proposed response to the
5 CCRC, who were interested in matters after the Second
6 Sight Report. We've seen in various places that crucial
7 link between the Helen Rose Report, Gareth Jenkins'
8 evidence, the fact that Gareth Jenkins didn't mention
9 certain things in his prosecution evidence, that crucial
10 link has not been mentioned by the Post Office, and here
11 there is discussion involving you, as a key contact,
12 seeking to downplay the importance of the Helen Rose
13 Report, recommending minimising or ignoring entirely the
14 Helen Rose Report when responding to questionnaires. Do
15 you think that that was appropriate?

16 **A.** I'm not aware that Cartwright King were involved in
17 downplaying that.

18 **Q.** Did you respond to this email saying, "That is grossly
19 inappropriate, we want nothing to do with it"?

20 **A.** I don't believe I did. I don't recall this email.

21 **Q.** Did you respond to this email, noting that your name had
22 been mentioned in that final paragraph as a key contact,
23 and saying, "I'm nothing to do with this"?

24 **A.** No.

25 **Q.** You don't remember receiving this email; do you remember

112

1 the issue being discussed?

2 **A.** Not this specific issue, no.

3 **Q.** I mean, if we scroll up, you're one of the copy

4 recipients. He says:

5 "I've just spoken to [Cartwright King] ..."

6 Not you?

7 **A.** I don't recall this. I'm sorry, it's a long time ago.

8 I just simply do not recall this.

9 **MR BLAKE:** Sir, I think that might be an appropriate time to

10 break. I'm glad to report that I only have about

11 15 minutes left after lunch and then we can move on to

12 the Core Participants who have all been given allocated

13 times.

14 **SIR WYN WILLIAMS:** Jolly good. Then what time shall we

15 start?

16 **MR BLAKE:** Can we start at 1.55, please.

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

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

19 (12.56 pm)

20 (The Short Adjournment)

21 (1.54 pm)

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

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

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

25 Mr Smith, I am now going to take you to advice

113

1 considered view", and we see throughout references to

2 "we"; did you have any involvement in this advice?

3 **A.** I'm afraid my answer has to be the same as the earlier

4 ones: I may have seen it. I may have commented on it.

5 I may have been asked to proofread it. I cannot state

6 specifically that had positive input into it.

7 **Q.** Paragraph 2 says:

8 "It is our considered view that no applicant guilty

9 of a criminal offence committed against [the Post

10 Office] should be allowed into the scheme, for to

11 mediate such applications will be to leave [the Post

12 Office] open to a number of alarming consequences.

13 Those consequences include, but are not limited to, the

14 following:

15 "The fact of entry into the scheme of itself

16 indicates that the Post Office is at least prepared to

17 concede that they may have erred in prosecuting the

18 applicant.

19 "Similarly, the fact that one such applicant has

20 been allowed to enter into the scheme sets

21 an unfortunate precedent ..."

22 It then goes on, subparagraph iii, about the threat

23 of an appeal. The same with paragraph iv, setting

24 a precedent:

25 "Any competent lawyer would advise ... a substantial

115

1 written by Simon Clarke --

2 Actually, sorry, before I get to that, you mentioned

3 before lunch your move from Cartwright King to your own

4 firm.

5 **A.** Yes.

6 **Q.** We have email correspondence from you in 2019 from

7 a Cartwright King address.

8 **A.** Yes.

9 **Q.** We are right in understanding that you continued to be

10 able to use Cartwright King email address?

11 **A.** That's correct. I believe that I left -- again, I can't

12 be specific but I believe that I left Cartwright King at

13 the end of March 2016. I believe Simon Clarke and Harry

14 Bowyer remained on for a little while and, at some point

15 after -- I believe after they left, we then had access

16 to the case management system used by Cartwright King in

17 order that we could continue to work on an agency basis

18 for them, and so we had email accounts, Cartwright King

19 email accounts, that we could use.

20 **Q.** Thank you. Can we look at POL00148720, and this is

21 an advice on "Criminal Applicants to the Mediation

22 Scheme", 15 July 2014. Again, it is another one of

23 those advices that has Simon Clarke's name at the end,

24 15 July, but, throughout the advice, if we scroll down

25 to paragraph 2, for example, it says, "It is our

114

1 concession by the Post Office ..."

2 Then paragraph 3 goes on to address other risks. It

3 says, for example:

4 "Whilst the issue is strictly outside of our

5 criminal purview, we feel bound to point out that the

6 potential for adverse publicity generated by the

7 mediating of criminal applications and particularly

8 where some concession, agreement or payment is made by

9 [the Post Office], is inestimable."

10 It refers to the knock-on effect:

11 "There is every likelihood that we would be required

12 to disclose the fact and detail to others in a similar

13 position ...

14 "Similarly, a successful appeal would give rise to

15 a considerable assessment and disclosure exercise, all

16 conducted in the full view of the media."

17 Over the page, please, paragraph 5:

18 "We can identify no proper reason for the inclusion

19 of criminal applicants into the scheme."

20 Were those all views that you shared at the time?

21 **A.** I think I accepted that as being a sensible approach.

22 **Q.** Can we please turn to POL00112928, page 78. That advice

23 we've just seen was July, we're now in November 2014.

24 It's an email from yourself to Mr Parsons. You say:

25 "Andy,

116

1 "From a criminal perspective, we would advise as
2 a general rule against the disclosure of any documents
3 from a criminal file which have not previously been
4 disclosed to the defendant during the course of the
5 original proceedings. To do otherwise may well enable
6 the defendant or Second Sight to attempt to criticise
7 the way in which the prosecution was conducted or how
8 the prosecution policy was applied. Clearly such
9 arguments in a public arena would be uncomfortable for
10 [the Post Office].

11 "We remain concerned that Second Sight are pushing
12 for the disclosure of files and advise that a robust
13 stance be taken by [the Post Office] in relation to all
14 such requests."

15 So you were concerned there about defendants being
16 given documents that weren't relied upon in their
17 criminal prosecution.

18 **A.** We were advising as a general rule against the
19 disclosure of documents which have not previously been
20 disclosed.

21 **Q.** Is that because you were concerned about your own
22 decisions coming under scrutiny?

23 **A.** No. No.

24 **Q.** If you had made the right decisions regarding disclosure
25 in the original trial, why would you be concerned about

117

1 discussing -- and I won't repeat the various, various
2 stages, Gareth Jenkins, new information, et cetera --
3 why do you think then you were still calling for
4 a robust stance to be taken in respect of disclosure to
5 those who had been prosecuted?

6 **A.** Of course, this is in the Mediation Scheme and the view
7 that the firm was taking was that only material which
8 would have been disclosed during the initial proceedings
9 should be disclosed. I didn't disagree with that
10 approach.

11 **Q.** Yes, but that's really repeating the same point that
12 you've already been making?

13 **A.** That's my point, though, that's the point I can make:
14 I didn't see it any other way.

15 **Q.** It isn't your evidence that you're concerned that, in
16 some way, that would help somebody appeal?

17 **A.** No, I didn't think of that.

18 **Q.** Can we please look at POL00150342. The bottom of the
19 first page, Rodric Williams confirms there that
20 Mr Altman:

21 "Brian's advice is that we shouldn't engage with
22 either of Tony's [that's Sir Anthony Hooper] proposals,
23 given the inherent risks in having a free discussion
24 about the facts which give rise to a conviction ..."

25 Do you recall Sir Anthony Hooper being in favour of

119

1 access to those files and disclosure from those files?

2 **A.** I don't think that it occurred to us that any incorrect
3 disclosure decisions had been made at the time.

4 **Q.** So why would you be concerned about disclosing documents
5 from the criminal file, if you had made the right
6 decisions?

7 **A.** So the approach that Cartwright King was taking here was
8 that, if something was on a sensitive material schedule,
9 then it ought not to be disclosed, unless it was
10 something that had been disclosed during the original
11 proceedings.

12 **Q.** Yes, and is that because you were concerned about the
13 disclosure decisions that had been made in those
14 original proceedings?

15 **A.** No, no.

16 **Q.** We looked at the case of Ishaq yesterday and I think
17 I suggested that you were perhaps taking too robust
18 a stance on disclosure to Mr Ishaq. We see here another
19 reference to a "robust stance" to be taken in respect of
20 disclosure decisions. Were you now repeating the same
21 errors that occurred during the criminal trials, that
22 you were taking too robust a stance on disclosure to
23 those who had been affected?

24 **A.** I didn't see it that way at the time.

25 **Q.** Why do you think it was, that after all that we've been

118

1 including those who'd been convicted and Cartwright King
2 and Mr Altman forming the view that they shouldn't be?

3 **A.** I can recall Mr Hooper taking the view that it should
4 include everyone and Brian Altman having a strong view
5 about that, yes.

6 **Q.** If we scroll up to the middle email, there's an email
7 from Rodric Williams to yourself. He says:

8 "Martin -- can you please give Chris Aujard a call
9 as soon as possible."

10 "He wants to discuss how to approach Tony Hooper
11 about mediating criminal cases, specifically those
12 involving false accounting. Tony is not currently
13 sympathetic to our position, so we need to work out how
14 else we can land the points."

15 There is a response above from Chris Aujard, who
16 says:

17 "Thanks Rod -- we have now spoken, and the work that
18 we discussed has been commissioned. Cheers, Chris."

19 If we could please return to POL00150390. There is
20 the advice which contains a draft letter to Sir Anthony
21 Hooper. Is that the work that had been commissioned or
22 was the work that had been commissioned something else?

23 **A.** I don't recall but I can see that the advice starts
24 here, that we are asked to suggest the text of a letter
25 to Sir Anthony Hooper, so it may very well be that that

120

1 advice is in response to the request that has been
 2 received from the then General Counsel.
 3 **Q.** Do you recall having a conversation with Chris Aujard
 4 about this issue?
 5 **A.** I'm afraid I don't.
 6 **Q.** Were you involved in the drafting of this advice?
 7 **A.** It's possible that I may have seen it, been asked to
 8 look at it, might have discussed it; I don't recall.
 9 **Q.** What do you think made the team at Cartwright King,
 10 including yourself, think that you knew better than
 11 Sir Anthony Hooper on matters relating to those who were
 12 convicted of criminal offences?
 13 **A.** I don't recall thinking about whether or not we knew
 14 better than Sir Anthony Hooper at all. That wasn't my
 15 thought process.
 16 **Q.** I think you've said that your thought process didn't
 17 involve any consideration to the effect that you wanted
 18 to prevent people from appealing to the Court of Appeal?
 19 **A.** No, the way that I had seen this was how it had
 20 initially been put by Post Office, that they were
 21 concerned, for example, that a throwaway comment or
 22 something like that, or some attempt to reach
 23 settlement, might somehow give a convicted applicant
 24 a ticket to the Court of Appeal, just inadvertently
 25 through making some form of minor concession or

121

1 watered down. [You] would not advise that. Problem
 2 will arise if need to make disclosure and did not set
 3 the record straight when had the opportunity to. Also
 4 there is the [Criminal Cases Review Commission] in the
 5 background."
 6 Were you and Mr Parsons, in May 2015, concerned
 7 about disclosure to Seema Misra because it may give her
 8 a ticket to the Court of Appeal?
 9 **A.** No. The -- I can't quite remember the timeline but,
 10 when we started the file review process, Mrs Misra's
 11 case was one of those which we reviewed but we were only
 12 able to review it from a very limited amount of
 13 information. I don't think the Legal Department could
 14 find the file at that point. At some point, the file
 15 did become available.
 16 Now, I don't know how that fits into this timescale
 17 but, at this point, Bond Dickinson were wanting to push
 18 ahead with responses in the Mediation Scheme. I assume
 19 there was some sort of time frame within which they were
 20 trying to work, some sort of agreed time frame. They
 21 were wanting to draft responses, and I took the view
 22 that it's unhelpful to draft those responses without
 23 having regard to any potential disclosure issues
 24 because, if those responses are inappropriate, either
 25 because something needed to be disclosed which wasn't

123

1 presenting something in a different way.
 2 So I didn't see this as trying to prevent people
 3 from appealing. I saw this as, effectively, trying to
 4 help Post Office protect their position.
 5 **Q.** Mr Smith, you've used the words "ticket to the Court of
 6 Appeal", is that because you have in mind the next
 7 document that I'm going to take you to, which is
 8 POL00066872. Thus is a file note from your file, May
 9 2015, relating to Seema Misra's case.
 10 **A.** Yes, "ticket to the Court of Appeal" was a phrase which
 11 we used internally on a number of occasions.
 12 **Q.** Can you assist us with this note? There's a summary:
 13 "... Andy Parsons; MJS [you] explaining position.
 14 Issues re disclosure.
 15 "Detail:
 16 "[Telephone call] Andy Parsons; MJS explaining
 17 position. Issues re disclosure; clearly unhelpful if
 18 [the Post Office] proceeds with draft CRR responses ..."
 19 Those are, I think, Case Review Report responses?
 20 **A.** Yes.
 21 **Q.** "... without regard to disclosure issues; may damage
 22 [the Post Office's] integrity -- disclosure may give
 23 Misra ticket to [the Court of Appeal]. Need meeting.
 24 Possibility of Thursday?
 25 "Any chance can keep moving with [the reports being]

122

1 or, alternatively, some sort of comment was made which
 2 was by way of concession but an inappropriate
 3 concession, either way, that could be damaging to Post
 4 Office Limited's integrity. I was very aware that
 5 whatever was said in the CRR response could give any
 6 applicant an opportunity to approach the Court of
 7 Appeal.

8 You'll see from the second paragraph here that the
 9 question I am being asked by Mr Parsons is: is there any
 10 chance we can keep moving on these CRRs with them
 11 watered down? In other words, rather than perhaps wait
 12 for Simon Clarke or perhaps Harry Bowyer to finish
 13 a review of the case or some information, can they just
 14 proceed with that response watered down?

15 I was against that because I took the view that, if
 16 they did so, and disclosure was appropriate and it
 17 hadn't been included, then that would be damaging. You
 18 know, if disclosure should have been provided and
 19 wasn't, there would be adverse consequences for that, if
 20 the record was not set straight when had the opportunity
 21 to do so, and I was also telling them "Look, the CCRC
 22 are watching you, they are in the background watching
 23 what you do here".

24 So I was very aware that the response to the CRR was
 25 something which had to be got right and I wasn't

124

1 prepared to allow Bond Dickinson to water this down.
 2 I was very aware that if disclosure needed to be
 3 provided then it should be provided when there was the
 4 opportunity to do so, otherwise I could see there being
 5 all manner of repercussions for Post Office Limited.
 6 **Q.** It might be suggested that the reference in that first
 7 paragraph to disclosure giving Seema Misra a ticket to
 8 the Court of Appeal is that you were concerned, together
 9 with Mr Parsons, about Mrs Misra being able to
 10 successfully appeal in the Court of Appeal?
 11 **A.** If someone could appeal, then so be it.
 12 **Q.** Was there a concern at Cartwright King and the concern
 13 held by you and others, that there may be successful
 14 appeals to the Court of Appeal, in cases that you
 15 prosecuted?
 16 **A.** No. I wasn't concerned that there would be successful
 17 appeals at all to the Court of Appeal. That wasn't
 18 something that concerned me. My concern was that Post
 19 Office, in embarking upon this Mediation Scheme, should
 20 not be making small concessions which appear trivial but
 21 could actually be presented in a very different way,
 22 which could actually then give someone the opportunity
 23 to pursue an appeal.
 24 What we were seeing, during some of these
 25 mediations, was some convicted applicants were actually

125

1 that.
 2 **Q.** Issues with the Gareth Jenkins?
 3 **A.** There was no reference to that in the letters which were
 4 sent out.
 5 **Q.** Various additional bugs, errors and defects?
 6 **A.** Again, there was no consideration of disclosing that.
 7 The Second Sight Interim Report made reference to two
 8 bugs and we had the Helen Rose Report. We were then
 9 really looking forwards and gathering information ready
 10 for the instruction of an expert.
 11 **MR BLAKE:** Thank you.
 12 Sir, those are all of my questions for Mr Smith. We
 13 have a number of questions from Core Participants. The
 14 first on the list is Ms Watt on behalf of the NFSP, who
 15 will be principally asking questions relating to the
 16 Scottish cases.
 17 **SIR WYN WILLIAMS:** As I understand it, Ms Watt has
 18 a 15-minute allocation; is that correct?
 19 **MR BLAKE:** Yes, that's correct.
 20 **SIR WYN WILLIAMS:** Fine. Thank you.
 21 Over to you, Ms Watt.
 22 **Questioned by MS WATT**
 23 **MS WATT:** Thank you, sir.
 24 Good afternoon, Mr Smith. I'm just behind Mr Stein.
 25 **A.** I can just about see you, yes.

127

1 putting forwards very different facts to the actual
 2 information that they'd relied on, for example, by way
 3 of mitigation, following a guilty plea. So we were
 4 alive to some of these points but, in relation to
 5 Mrs Misra's case, as it says in my second paragraph
 6 here, I would not advise proceeding with the CRR watered
 7 down, a problem would arise if disclosure needs to made
 8 and we had not set the record straight when we had the
 9 opportunity to do so. It was important that it was
 10 correct.
 11 **Q.** Given everything that you had learnt over all of those
 12 years that we had been discussing in your evidence, all
 13 of those various developments year, after year, after
 14 year, by 2015, didn't you think that you should do
 15 everything you possibly could for somebody like Seema
 16 Misra, in relation to a potential appeal to the Court of
 17 Appeal?
 18 **A.** At this point in time, her file -- I believe at this
 19 point in time her file had been reviewed. I think the
 20 initial review was on the basis of, I think, just the
 21 judge's summing-up to the jury but the file subsequently
 22 became available and that was reviewed, I believe, by
 23 Mr Clarke and I'm unable to recall, actually, whether
 24 disclosure was sent to her of the Second Sight Report
 25 and Helen Rose Report. I'm afraid I can't remember

126

1 **Q.** Thank you. I want to ask you some questions about the
 2 period in 2013 when you're dealing with what's happening
 3 in the Scottish prosecutions. I'm not going to take you
 4 to your witness statement but at paragraphs 132 to 134
 5 of your witness statement you refer to two meetings in
 6 Scotland in September and October 2013, which you attend
 7 with Simon Clarke and Jarnail Singh, together with the
 8 Post Office's Scottish solicitors, where you say you met
 9 the Procurator Fiscal.
 10 You say those meetings arose because there was
 11 a concern that there was to be a termination of Scottish
 12 criminal cases on the basis that Horizon was allegedly
 13 unreliable.
 14 **A.** Yes.
 15 **Q.** Okay? Now, by this time in 2013, it's correct to say,
 16 isn't it, that you knew Gareth Jenkins had been
 17 discredited as an expert witness --
 18 **A.** Yes.
 19 **Q.** -- not least because your colleague Simon Clarke had
 20 written advice for the Post Office about the issues with
 21 and the use of Mr Jenkins as an expert witness; isn't
 22 that right?
 23 **A.** That's right.
 24 **Q.** At that time, you also knew of at least two bugs in the
 25 Horizon system, didn't you, from the Simon Clarke Advice

128

1 and the Second Sight Interim Report?

2 **A.** Yes.

3 **Q.** While your interpretation of the Second Sight Interim
4 Report is "Not much to see here", you would agree that,
5 in fact, it did raise questions about Horizon and a lack
6 of disclosure to subpostmasters in their defence of
7 criminal prosecutions?

8 **A.** Yes.

9 **Q.** You also knew what was in the Helen Rose Report, didn't
10 you?

11 **A.** Yes, I believe that's right, at that time.

12 **Q.** You knew, by the time of the meeting in September 2013
13 with the Procurator Fiscal, that prosecutions in England
14 had been paused by Susan Crichton because of all these
15 concerns, didn't you?

16 **A.** I knew prosecutions had been stopped and existing
17 prosecutions were being looked at on a case-by-case
18 basis by Mr Clarke, I believe.

19 **Q.** But, nonetheless, you went to Scotland with your
20 colleague Simon Clarke and Jarnail Singh from the Post
21 Office to try to prevent the Crown Office and Procurator
22 Fiscal Service from terminating criminal prosecutions on
23 the basis that the Crown Office was questioning the
24 reliability of Horizon evidence for Scottish
25 prosecutions, didn't you?

129

1 prosecutions on behalf of the Post Office south of the
2 border, that you had been told the Horizon system was
3 foolproof but a report has been prepared by a body
4 called Second Sight which has revealed some bugs in the
5 system. It's the second report which they, the Post
6 Office, are calling the Helen Rose Report. It's
7 an internal report and it's critical of the system.
8 There are times when the system does not differentiate
9 between computer generated entries and manual entries.

10 If we go on to the paragraph:

11 "Martin explained that Second Sight was basically
12 a committee set up in response to complaints by some
13 subpostmasters. The Post Office contracted with Second
14 Sight to produce this report following complaints made
15 by subpostmasters to various MPs."

16 Would you accept calling it a "committee set up in
17 response to complaints by some subpostmasters" is,
18 actually, a minimisation of what Second Sight was and
19 what you already knew it was uncovering?

20 **A.** I don't recall using those words.

21 **Q.** Well, it is a minimisation, isn't it?

22 **A.** Well, Second Sight is not a committee. Second Sight was
23 a limited company and it wasn't a committee set up in
24 response to complaints. Second Sight was engaged to
25 look into issues that had arisen, so I think that's --

131

1 **A.** Well, we were asked to go, I believe, by Susan Crichton
2 and there was a suggestion that the Procurator Fiscal
3 was considering terminating all of the prosecutions.
4 The suggestion that, I believe, Mr Clarke made was that
5 they be adjourned pending a new expert, and the
6 Procurator Fiscal's office was actually content to
7 adjourn the case, adjourn those cases, to await a new
8 expert. It was actually quite surprising because, in
9 England and Wales, it's unlikely a court would have
10 entertained an adjournment of several months to get
11 a new expert. So the position in Scotland,
12 I understand, was quite different.

13 **Q.** I think it was explained to you why that was. I'm going
14 to take you to some documents that might help with that.
15 First of all, can we go to POL00139902, that's
16 a telephone note from 12 July 2013 and you're on a call
17 with a representative of the Crown Office.

18 **A.** Yes.

19 **Q.** This is you -- sorry, I'll just go to the correct one
20 for me, 29 July 2013. This is you on a conference call
21 with a representative of the Crown Office and along with
22 one other from Cartwright King; would that be Simon
23 Clarke?

24 **A.** It could be.

25 **Q.** You explained that your law firm carried out

130

1 that part of the notes of the conversation is incorrect.

2 **Q.** You go on, the paragraph that starts "A number of
3 defendants have had inexplicable losses", that
4 paragraph:

5 "Martin explained that in some cases the Post Office
6 they had lodged evidence which says that there was
7 nothing wrong with the Horizon system. This expert was
8 a man named Gareth Jenkins, who is one of the architects
9 of the system from Fujitsu. It is clear from the report
10 that Gareth Jenkins, employed by Fujitsu, was aware of
11 bugs in the system. One in particular has created false
12 information but this was not mentioned in his ...
13 reports."

14 Would you agree that, taking account of the Simon
15 Clarke Advice and all that was known at the time in
16 relation to Mr Jenkins, that that is a minimisation to
17 the Crown Office of the position?

18 **A.** No, I don't. I think that sets out the position.
19 Mr Gareth Jenkins, one of the architects of the system,
20 he'd said that, effectively, there was nothing wrong
21 with the system. I think that explains the position
22 with Mr Jenkins.

23 **Q.** Can we now go to POL00139906, that's a telephone note of
24 14 August with you and the Scottish solicitors. If we
25 scroll down five paragraphs down:

132

1 "Martin mentioned Susan Crichton, who is Head of Law
2 at the Post Office. She has now agreed to stop issuing
3 summonses in relation to Post Office cases because of
4 the mess that they are in."

5 You go on to say in the paragraph:

6 "Martin explained that the lines of communication
7 have not been very effective ... even Legal were not
8 aware of the Helen Rose Report initially. They were
9 only aware of the Second Sight Report", and there's then
10 discussion of the central hub that you've been
11 discussing with Mr Blake?"

12 A. Yes.

13 Q. If we can scroll down to the second page, you're going
14 on to discuss Brian Altman -- then QC, now KC -- dealing
15 with the review cases, which include pending cases. You
16 go on to say:

17 "Martin explained they were hoping to meet with
18 [Brian Altman] during the week 27 August and that the
19 likely outcome would be that Post Office would agree to
20 obtain an expert report."

21 You didn't know at that point if the Post Office
22 would, in fact, obtain an expert report. This was just
23 your thinking, wasn't it?

24 A. In the second paragraph there, the likely outcome would
25 be that the Post Office would agree to obtain an expert

133

1 A. Yes, it was and I can recall that in London, when myself
2 and Simon discussed it, the Legal Department were quite
3 concerned that there could be some form of announcement
4 with regard to the integrity of the Horizon system which
5 could have implications for Post Office.

6 Q. If we just scroll down to page 4:

7 "Whilst under the English system [this is the Crown
8 Office's representative] disclosure is to a large extent
9 guided by the defence response to allegations and likely
10 plea ... in the Scottish system disclosure rules dictate
11 that, even where the accused has made unequivocal
12 admissions to auditors or in interview, disclosure
13 relating to a corroborating fact occurs *ab initio* [from
14 the start]. This situation arises because in many cases
15 the PF does not know what the defence is to be ... "

16 It continues on, the question is:

17 "... if one piece may be unreliable [that's the
18 evidence] then it does not qualify as independent,
19 reliable corroboration ..."

20 Because that's what you were being told.

21 If we scroll down to paragraph 13, Simon Clarke then
22 outlined the proposed instruction of independent expert
23 witnesses, and at paragraph 14:

24 "... a new understanding on the part of [those who
25 were there from the Crown Office]. This amounted to

135

1 report. So it was expected that the Post Office would.
2 This is also mid-August, when I think, in the July
3 meetings, Mr Clarke had advised that Post Office would
4 need to obtain a new expert, and I understand that it
5 was around this time or probably just before this time
6 that enquiries were being made with regard to potential
7 experts, so that was very much the intention.

8 Q. Okay. A final document to go to, for just now, can we
9 go to POL00139879. This is the meeting note where you
10 go to meet the officials at the Crown Office and
11 Procurator Fiscal Service, first meeting your solicitors
12 on 4 September, and then the Crown Office the following
13 day, you, Simon Clarke and Jarnail Singh. So quite
14 a bit of effort being put in there, wouldn't you agree,
15 to go, all of you, to Scotland to do this?

16 A. Well, I think Mr Singh flew up from London and myself
17 and Mr Clarke went on the train from Derby.

18 Q. If we go to that document that I think I gave the
19 number -- yes, there we are. If we go to the second
20 page -- we're at the third page, I think it is, sorry.
21 We're there, paragraph 9:

22 "It was very plain from the PF's current position on
23 POL ... that all such cases should be terminated."

24 So that was the main concern for Post Office, wasn't
25 it, that they were going to terminate the cases?

134

1 a departure from his starting point that all POL
2 prosecutions were to be terminated. Indeed matters went
3 much further, for discussion then focused on how the
4 present prosecutions were to be advanced ... This
5 recommendation amounts to a complete reversal of the
6 PF's original position."

7 I just want to ask you some questions about that.
8 Did you understand, if we take all that's been discussed
9 about what you knew regarding Simon Clarke's Advice, the
10 Second Sight Interim Report, the Helen Rose Report,
11 decisions regarding English prosecutions which aren't
12 mentioned anywhere there, that what you were told being
13 about the disclosure and evidential requirements were
14 actually a higher bar in Scotland, compared to what you
15 were used to doing in the courts in England in your
16 private prosecutions?

17 A. I don't think I thought of it in terms of a higher bar.
18 I just considered that it was a different legal system,
19 and that it would be helpful for an expert report to be
20 obtained to assist because, at this point in time,
21 whilst you mentioned Helen Rose, the Second Sight
22 Report, the number of issues at that point in time were
23 actually, on the face of it, relatively small. I mean,
24 clearly a lot more has come out since but, at that point
25 in time, the issues appeared to be relatively narrow.

136

1 So the approach that we had in mind was to get an expert
2 report.

3 **Q.** So you're very pleased to note, at the end of that
4 meeting, you've achieved your objective?

5 **A.** That is what the note says, yes.

6 **Q.** Taking all of that together, I'm suggesting to you that
7 you were at the very least disingenuous in the way you
8 sought to persuade a Crown Officer, a representative of
9 Scotland's most senior law officer, the Lord Advocate,
10 not to terminate all such prosecutions --

11 **A.** No, I don't agree, I'm sorry.

12 **Q.** -- and that what you were doing was to seek to get the
13 entirety of Scotland's criminal justice system onto the
14 side of the Post Office and not terminate the
15 prosecutions of subpostmasters in Scotland?

16 **A.** No, well, I don't think, at this point in time, we
17 actually knew what the pipeline of cases was there.
18 This isn't a case of just close every prosecution down.
19 Some of the cases being investigated were not
20 actually -- may not actually have been of subpostmasters
21 or postmistresses, they could have been of counter staff
22 and the victims may have been the subpostmasters or
23 subpostmistresses. So the approach that we were taking
24 was that it would be appropriate to get an expert report
25 to actually deal with completely deal with the issue of

137

1 of those cases?

2 **A.** My reflections on the quashing of those cases are
3 exactly the same as the reflections that I have on the
4 quashing of any other cases. This has turned out to be
5 an absolutely horrendous situation for all those victims
6 and I'm pleased that they have been quashed.

7 **SIR WYN WILLIAMS:** There we are, Ms Watt.

8 **MS WATT:** Yes, that's me. Thank you.

9 **SIR WYN WILLIAMS:** I'm just making sure I've got these dates
10 right. These meetings in Scotland took place in
11 September 2015; that's right, yeah?

12 **MS WATT:** 2013.

13 **MR BLAKE:** 2013.

14 **SIR WYN WILLIAMS:** '13. Right. Then that's why I'm
15 confused. That's fine. 2013.

16 **MR BLAKE:** Sir, we're going to be hearing from Mr Moloney
17 next but perhaps can I just spend five more minutes on
18 that particular document? We do have time. I went
19 under time.

20 **SIR WYN WILLIAMS:** Everybody is very persuasive today about
21 getting more time out of me. Five minutes, Mr Blake.

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

23 **Further questioned by MR BLAKE**

24 **MR BLAKE:** Can we just bring that document back on to
25 screen. It seems as if there was a pre-meeting on

139

1 the integrity of the Horizon system, so that these
2 issues could be considered.

3 **MS WATT:** Sir, I see I've gone just over my time. I've got
4 another couple of questions, just to finish off, if
5 I could be allowed. It'll only be maybe another one to
6 two minutes.

7 **SIR WYN WILLIAMS:** Well, one to two minutes and then I'll
8 use my gavel, so to speak.

9 **MS WATT:** Okay.

10 This really, this meeting, is equivalent to going
11 to, for instance, a meeting with the Director of Public
12 Prosecutions trying to persuade the DPP to continue with
13 prosecutions when you knew Horizon and the expert
14 witness were unreliable; do you understand how serious
15 it is to have done that?

16 **A.** I'm sorry, I don't agree. We went to meet with the
17 Procurator Fiscal's office at the request of Post
18 Office, with the Scottish lawyers there, to explain what
19 Post Office was proposing to do.

20 **Q.** Are you aware of the fact that six POL criminal cases in
21 Scotland have this week been quashed by the High Court
22 of Justiciary in Edinburgh and at least two of these
23 cases are ones where pleas and cases took place in the
24 courts in 2012 and 2013, before your meeting but not far
25 your meeting; what are your reflections on the quashing

138

1 4 September, amongst yourselves and lawyers from BTO.

2 **A.** Yes, that is correct.

3 **Q.** If we turn to page 3, there is the meeting with
4 representatives from the Procurator Fiscal's Office on
5 5 September.

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

7 **Q.** And amongst those representing the Procurator Fiscal are
8 somebody called Paul Miele, who is the PF deputy,
9 correct?

10 **A.** The depute, yes.

11 **Q.** The depute. It begins there at paragraph 8 that he:
12 "... informed the meeting that his role was to form
13 a policy recommendation and to [put it] forward ... to
14 the Procurator Fiscal ..."

15 Then we see at paragraph 9:
16 "It was very plain from the outset that the
17 [Procurator Fiscal's] current position on [Post Office]
18 prosecutions was that all such cases should be
19 terminated."

20 So you went into that meeting aware that the
21 Procurator Fiscal wanted to terminate Post Office
22 prosecutions?

23 **A.** Yes.

24 **Q.** If we turn over the page to paragraph 12, it says -- and
25 this is the first meeting with the representatives from

140

1 the Procurator Fiscal's office, the previous meetings
 2 we've seen are only with solicitors from BTO.
 3 Paragraph 12 says:
 4 "This brief overview of the Scottish system provided
 5 the foundation for the discussion which followed. SC
 6 [Simon Clarke] provided the meeting with a broad
 7 overview of the [I think that's Horizon Online]
 8 difficulties (absent any direct or indirect reference to
 9 the role of [Gareth Jenkins] or Fujitsu)."
 10 Just pausing there, why did Simon Clarke provide the
 11 meeting with an overview, first of all, of Horizon
 12 Online, rather than generally Horizon issues and,
 13 secondly, why was it absent any direct or indirect
 14 reference to the role of Gareth Jenkins and Fujitsu?
 15 **A.** I don't know.
 16 **Q.** Is it therefore, following that conversation, a brief
 17 overview which gave a broad overview and excluded quite
 18 relevant matters relating to Gareth Jenkins and Fujitsu
 19 that the Procurator Fiscal's decision was a reversal of
 20 their original position? That's paragraph 14:
 21 "As a result of this new understanding on the part
 22 of [Mr Miele] and [his colleague], [Mr Miele] agreed
 23 that his recommendation would be that each case be
 24 reviewed separately and a decision taken on the facts of
 25 individual cases."

141

1 **SIR WYN WILLIAMS:** Right. Mr Moloney. It is, by my
 2 reckoning, 14.38. So you can have 22 minutes and then
 3 we'll have a break at 3.00.
 4 **MR MOLONEY:** Thank you, sir, I'll try and be less than
 5 22 minutes but I agree it is 14.38.
 6 **Questioned by MR MOLONEY**
 7 **MR MOLONEY:** So, Mr Smith, you described going to see the
 8 judge in private in Birmingham Crown Court in the case
 9 of *Samra* on 1 July 2013?
 10 **A.** I can't confirm that's the date but I do recall going
 11 and seeing the judge in private with Mr Clarke.
 12 **Q.** It was listed for trial that day, wasn't it?
 13 **A.** Erm --
 14 **Q.** It doesn't matter if you can't remember.
 15 **A.** I don't think it was listed for trial that day. Well --
 16 **Q.** Right well we can establish that later with Mr Clarke
 17 anyway but, essentially, you went to see the judge
 18 because you wished to apply to withhold from the defence
 19 what you'd heard from Gareth Jenkins about the likely
 20 content of the Second Sight Interim Report, after what
 21 he had told them?
 22 **A.** I think that's not quite right. It wasn't what we'd
 23 heard from Mr Jenkins. I think it was what we had heard
 24 from Post Office Limited about there being a report that
 25 made reference to bugs, and we -- I don't believe at

143

1 The final sentence there:
 2 "This recommendation amounts to a complete reversal
 3 of [their] original position."
 4 **A.** Yes.
 5 **Q.** So it seems as though that reversal took place after --
 6 it's described in paragraph 12 as, essentially, a very
 7 limited reference to the issues with Horizon. Is that
 8 your recollection of what happened at that particular
 9 meeting, the second meeting, the 5 September meeting,
 10 that involved representatives from the Procurator
 11 Fiscal?
 12 **A.** I struggle to recall the entirety of the meeting. I was
 13 there taking notes and, if Mr Clarke has put there that
 14 he didn't mention Mr Jenkins, then that will have been
 15 correct.
 16 **Q.** Paragraph 12, was this note drafted by Mr Clarke, do you
 17 believe?
 18 **A.** I believe he was typing it on the train on the way back
 19 from Scotland but he would have had access to my
 20 handwritten notes whilst he was preparing it.
 21 **Q.** Are you able to assist us with why the words in brackets
 22 may be in a smaller font or appear to be in a smaller
 23 font? Might they have been typed later?
 24 **A.** I don't know. I don't know, I'm afraid.
 25 **MR BLAKE:** Thank you very much, sir.

142

1 that point we had a copy of that. We only knew what we
 2 had been told and Mr Clarke and I, as you know, had
 3 spoken to Mr Jenkins by telephone, who gave
 4 an explanation that there had been two bugs. So the --
 5 Mr Clarke decided that he, at that stage, was not in
 6 a position to properly comply with his duties of
 7 disclosure because, whilst we knew some information,
 8 there was clearly more information that we'd want to
 9 know.
 10 There was clearly a report here that we did not have
 11 a copy of, which he thought ought to be considered for
 12 disclosure, and he was not prepared, as I understand it,
 13 to go through a trial or to commence a trial without
 14 disclosure having been properly dealt with, and it was
 15 in those circumstances that the application was made.
 16 I don't know whether it was actually on the day of
 17 trial or a day or two before the day of trial.
 18 **Q.** Doesn't matter but, essentially, you wanted to withhold
 19 from the defence at this stage what you'd been told
 20 about what the Second Sight Interim Report was likely to
 21 say about things?
 22 **A.** I didn't see it that way. I saw it as Mr Clarke saying
 23 that he could not comply with his duties of disclosure.
 24 He was prosecuting counsel in that case and that was his
 25 view. So --

144

1 Q. Okay. Well, let's --
 2 A. -- I'll put it that way.
 3 Q. Let's just try and develop that, please, Mr Smith. You
 4 went to see the judge in private to make an application.
 5 A. I went along with Mr Clarke who was making the
 6 application.
 7 Q. It's an *ex parte* application, it means the other party
 8 is not there, doesn't it?
 9 A. That's correct, yes.
 10 Q. Your application was a public interest immunity
 11 application, wasn't it? Did you understand that?
 12 A. I don't think I did at the time. I just knew that
 13 Mr Clarke was making an application and I was making
 14 notes of it.
 15 Q. Right. So when you say you didn't understand that at
 16 the time, do you understand that that's what it was, do
 17 you understand now that that's what it was?
 18 A. I believe that that's what it was. I don't recall it
 19 well enough, except to say that Mr Clarke was explaining
 20 to the judge that he could not disclose the correct
 21 material at that particular point in time, not that it
 22 would not be disclosed; it was just that he wasn't in
 23 a position to discharge his disclosure duties at that
 24 time.
 25 **SIR WYN WILLIAMS:** I'm sorry to interrupt but that's telling
 145

1 A. Yes.
 2 Q. You know, and you've said that, of course, you practised
 3 in defence for a number of years, but you were
 4 relatively new to prosecutions, so you took Mr Clarke's
 5 advice and were guided by him as to the making of this
 6 application?
 7 A. Well, it wasn't the case that I was guided by him in the
 8 making of the application. He made the application and
 9 if you see there taking notes.
 10 Q. But you were the instructing solicitor, to all intents
 11 and purposes, Mr Smith, weren't you? A very experienced
 12 solicitor. You were there with counsel who you worked
 13 with, hand in glove, it seems, from all the
 14 correspondence that we've seen. You were a three and,
 15 on this occasion, you were a two. You worked together.
 16 A. I was working with him on that day, yes.
 17 Q. Entirely. So did he not tell you what he was doing?
 18 A. I cannot recall enough about the day, I'm afraid.
 19 Q. Right. Okay. Well, again, I'll try and assist.
 20 A public interest application, as a defence solicitor of
 21 some experience, is an important procedure, isn't it?
 22 Essentially, withholding material from the defence which
 23 would be helpful to the defence and would ordinarily
 24 need to be disclosed. That's what it's about, isn't it?
 25 A. That is a PII application, yes.
 147

1 the judge what he can't do. What exactly was he asking
 2 the judge to do?
 3 A. I'm afraid, sir, I can't recall.
 4 **SIR WYN WILLIAMS:** Well, I mean, was he saying, "Look I've
 5 got this problem but we should proceed with the trial
 6 anyway?" Was he asking for the trial to be adjourned?
 7 What was he doing?
 8 A. No, I don't believe that he was going to proceed with
 9 the trial.
 10 **SIR WYN WILLIAMS:** So he was asking the judge, what, to
 11 adjourn the trial or to enter a Not Guilty plea against
 12 the defendant? What? The judge must have been asked to
 13 do something specific.
 14 A. Sir, I'm afraid I can't remember. I really can't
 15 remember, I --
 16 **MR MOLONEY:** I'll try and help you with your recollection --
 17 A. I remember turning up and taking notes.
 18 **MR MOLONEY:** I'm sorry to the stenographer for us talking
 19 over each other there.
 20 I'll try and assist you with your recollection,
 21 okay, because what actually did happen was that a public
 22 interest application was made on behalf of the
 23 prosecution, Post Office Limited, okay?
 24 A. Okay.
 25 Q. You know that now anyway, don't you?
 146

1 Q. You were aware, were you, of the important House of
 2 Lords case of *H&C* and the conditions it laid down for
 3 when a public interest immunity application should be
 4 made?
 5 A. I can't say that I could recall that.
 6 Q. Right. Okay. But, as a solicitor, would you know that,
 7 really, it should only be made where a prosecutor has
 8 identified material that should be disclosed but
 9 disclosure of it would create a real risk of serious
 10 prejudice to an important public interest, and the
 11 prosecutor believes that the public interest in
 12 withholding the material outweighs the public interest
 13 in disclosing it to the defence? Would that accord with
 14 your general appreciation of the rules in relation to
 15 public interest immunity applications.
 16 A. I can't say that I'd previously come across a PII
 17 application, so that's new to me.
 18 Q. Right, okay. But you not remembering much about this,
 19 did Mr Clarke give you any reason as to why he was
 20 making the application to withhold the Second Sight
 21 Report? You'd previously mentioned yesterday something
 22 about Parliamentary privilege, Mr Smith.
 23 A. I can recall a conversation that I had with Mr Clarke.
 24 I'm afraid it's all a little hazy because it's such
 25 a long time ago but we were very much aware that the
 148

1 Second Sight Report was going to be released to Members
2 of Parliament before it was going to be published
3 generally and, I think, at this particular point in
4 time, we did not have the report, and we only knew
5 snippets of what it was likely to contain.

6 **Q.** Right. Did Mr Clarke say to you that one aspect of the
7 public interest that he was asserting to the judge in
8 his application would be the prevention of a widespread
9 loss of confidence in Post Office?

10 **A.** I don't recall that being said.

11 **Q.** Did he say that another aspect would be the loss of
12 trust in a system operated by Post Office?

13 **A.** I'm sorry, I just don't recall the conversation.

14 **Q.** Finally, I just ask you, just for the sake of it, did he
15 say that another aspect would be the prevention of
16 journalistic speculation as to the efficacy of systems
17 almost universally relied on by the public?

18 **A.** I don't recall that either, I'm afraid.

19 **Q.** Then, finally, did he say to you that, essentially:

20 "Post Office Limited were rightly, in my opinion,
21 very concerned at the potential adverse publicity which
22 would inevitably have been generated by the revelation
23 of the existence of a draft Second Sight Report into
24 Horizon. To permit this information to enter the public
25 domain at such an early stage would have been to

149

1 Mr Clarke but I'm afraid it doesn't ring any bells with
2 me at all.

3 **Q.** Right. Were the defence, Mrs Samra's lawyers, put on
4 notice that you were going to make a PII application?

5 **A.** I have no idea. I have no idea.

6 **Q.** This was your very first PII application, Mr Smith,
7 either defence or prosecution, was it --

8 **A.** Um --

9 **Q.** -- in all your years of experience.

10 **A.** I have -- well, I'm afraid I have absolutely no idea
11 about this. I know that Mr Clarke was prosecuting
12 counsel, and I don't know --

13 **Q.** Did you have any role in notifying Mrs Samra's solicitor
14 that there was going to be a PII application made on
15 1 July 2013?

16 **A.** I'm not aware that I did.

17 **Q.** You can't help whether or not any notice was given?

18 **A.** I'm afraid I've got absolutely no idea.

19 **Q.** Were you aware that, if the prosecutor makes
20 an application to the court without notice to the
21 defence -- because the only circumstances in which it
22 can be done is because it would have the effect of
23 disclosing that which the prosecutor contends should
24 not, in the public interest be disclosed, and that that
25 is a highly exceptional situation?

151

1 encourage extremely unhealthy and likely virulent
2 speculation as to the content of any report, most
3 probably in the national press. Such speculation would
4 have seriously damaged the reputation of Post Office
5 Limited and would have greatly undermined public
6 confidence in both Post Office Limited and Post Office
7 Limited's systems. Our objective was to avoid such
8 consequences. That objective we achieved with the
9 public interest immunity application."

10 **A.** I don't recall that, I'm afraid, either.

11 **Q.** If Mr Clarke had set all of those things out, that I've
12 just asked you if you remember him saying, in a note of
13 the day's hearing, would you have seen it, a note sent
14 to POL, an attendance note?

15 **A.** I don't recall seeing an attendance note, no.

16 **Q.** Would you ordinarily have seen such an attendance note,
17 Mr Smith?

18 **A.** Sometimes I was asked to look at things, proofread them
19 and sometimes Mr Clarke would go through things and,
20 other times, I wouldn't. I'm afraid it doesn't ring any
21 bells with me.

22 **Q.** No. Obviously, you know, you can probably see that I am
23 actually saying that Mr Clarke did set that out in --

24 **A.** I'm gathering from the way you're asking the questions
25 that you're reading from an attendance note written by

150

1 **A.** I'm sorry, what was the question?

2 **Q.** Were you aware that when a prosecutor makes
3 an application to the court, and this is under the
4 Criminal Procedure Rules, without notice to the defence,
5 because to do so would have the effect of disclosing
6 what the prosecutor contends should not in the public
7 interest be disclosed, they have -- that's the only
8 circumstances in which that application could be made
9 without notice to the defence --

10 **A.** No.

11 **Q.** -- are you aware of that?

12 **A.** I wasn't aware of that, no.

13 **Q.** But an application was made by Mr Clarke with you in
14 attendance making notes as a solicitor of some
15 post-qualification experience, and you went into the
16 judge's chambers with Mr Clarke, and the judge himself
17 was Judge Chambers, wasn't he? Do you remember that?

18 **A.** I'm afraid I don't know.

19 **Q.** What happened was a PII certificate was granted, were
20 you aware of that?

21 **A.** I don't recall.

22 **Q.** Right. You were to inform the defence that a report had
23 been commissioned but you could withhold the existence
24 of the Interim Report and it was to be presented to MPs
25 that day and then the matter was adjourned for eight

152

1 weeks; were you aware of that?

2 **A.** I don't recall that, I'm afraid.

3 **Q.** Right.

4 **MR MOLONEY:** Thank you very much, Mr Smith.

5 Sir, that's only 18 minutes, I think.

6 **SIR WYN WILLIAMS:** Very good, Mr Moloney.

7 Mr Stein, can I press you, in the sense that I think

8 you are next and you wanted 15 minutes and, if that is

9 accurate, then we could probably slip that in before our

10 break.

11 **MR STEIN:** Sir, I think it is accurate I'll be 15 minutes,

12 but I'd hope to be slightly less.

13 **SIR WYN WILLIAMS:** Right well, even more reason for you to

14 carry on, if you will, please.

15 **MR STEIN:** I'm grateful.

16 **Questioned by MR STEIN**

17 **MR STEIN:** In that case, please, Mr Smith, let's proceed

18 with the question is have for you.

19 At the time whereby you, working for Cartwright

20 King, were engaged on the prosecution of matters for the

21 Post Office, do you agree you were following the Code of

22 Practice for prosecution advocates that was issued by

23 the CPS?

24 **A.** I wouldn't agree that, no.

25 **Q.** You wouldn't. What Code of Practice in relation to your

153

1 your own field of competence?

2 **A.** Yes.

3 **Q.** You also accept that?

4 **A.** Yes.

5 **Q.** So when you started to take on prosecution work on

6 behalf of the Post Office, did you consider the question

7 of what ethical standards should apply to your work as

8 a prosecutor?

9 **A.** I didn't consider that I -- it was not that it didn't

10 occur to me, that I did not have the requisite skills

11 and expertise for this role.

12 **Q.** Did you look them up?

13 **A.** No, I didn't.

14 **Q.** Now, in old-fashioned terms, the way that the standards

15 applied to prosecutors used to be called a "minister of

16 justice". Did you consider, even in the loosest

17 possible way, that you as a prosecutor needed to act as

18 a minister of justice?

19 **A.** I considered that I needed to do things properly, in

20 accordance with the law, and that is what I attempted to

21 do.

22 **Q.** Have you heard the term "minister of justice" being

23 applied to prosecutors?

24 **A.** I have, yes.

25 **Q.** Right. Let me ask the question again: did you consider

155

1 prosecution work do you think you were following?

2 **A.** I'm not confident that we had the necessary skills and

3 expertise to be able to follow codes. I'm afraid, as

4 I said earlier, we are essentially a defence firm of

5 solicitors and it's beyond me as to why the firm decided

6 to take on prosecution work, knowing that we hadn't been

7 specifically trained in prosecution work, and so, whilst

8 there may invariably be Codes of Practice, it's -- and

9 other requirements, I think its difficult to follow them

10 if you're not aware of them.

11 **Q.** Understood, Mr Smith, but it's you taking on the work.

12 You are an advocate, by this point an advocate of some

13 experience. You had qualified as a higher rights

14 advocate well before 2010; do you agree?

15 **A.** That is correct.

16 **Q.** It is you that is subject to the regulatory

17 responsibilities issued by the Bar Standards Board; do

18 you agree? Do you agree?

19 **A.** I'm sorry could you just repeat that?

20 **Q.** Sorry, you are a solicitor, aren't you?

21 **A.** Yes.

22 **Q.** So you are subject to the regulatory responsibilities

23 issued by the SRA, the Solicitors Regulation Authority?

24 **A.** Yes.

25 **Q.** Do you agree with that? You agree you should work on

154

1 that that should be the way that you should act when

2 prosecuting?

3 **A.** That is certainly what we tried to do, yes.

4 **Q.** Did you consider, did you think about it, Mr Smith,

5 that, "I must, when prosecuting these cases, act in

6 a way that is bringing the highest ethical standards to

7 apply to prosecution cases"? Did that cross your mind

8 or not?

9 **A.** I don't think I gave it a huge amount of thought.

10 **Q.** So the answer is "No, I didn't"?

11 **A.** No.

12 **Q.** All right. Let's turn to, then, the call that you had

13 with Mr Jenkins, and that was prior to then the issue of

14 what we all call the Clarke-Jenkins Advice --

15 **A.** Yes.

16 **Q.** -- right, that call. Now, that call was recorded, yes?

17 **A.** Yes.

18 **Q.** By the time the call with Mr Jenkins was recorded, do

19 you agree you and Mr Clarke were, at the very least,

20 suspicious that there was a problem with Mr Jenkins?

21 **A.** Suspicious, yes.

22 **Q.** Otherwise, why record the call?

23 **A.** Yes, yes.

24 **Q.** So this wasn't an example of Mr Jenkins being told, "By

25 the way we're going to record this call because we think

156

1 there are a few things that are of real concern". You
 2 didn't warn him that you were about to call him?
 3 **A.** We didn't warn him, no, and we were obviously concerned
 4 that reports that had been provided did not make
 5 reference to the bugs.
 6 **Q.** Why was it recorded?
 7 **A.** So we could have a transcript of it for our own files.
 8 **Q.** Right. So the transcript was there and the call was
 9 there so that you would have evidence in relation to
 10 what was going on with Mr Jenkins; is that right?
 11 **A.** Yes.
 12 **Q.** Okay. So you and Mr Clarke were conducting,
 13 essentially, a mini investigation at that stage into
 14 Mr Jenkins; is that correct?
 15 **A.** I suppose putting it like that, yes.
 16 **Q.** Yes. Okay, so it then led to the Clarke's advice that
 17 deals with Mr Jenkins. I'm going to ask for that to go
 18 up on the screen, please, and that is POL00006357, and
 19 can we have paragraph 38, page 13, the bottom half.
 20 Okay. Now, this says at paragraph 38:
 21 "The reasons as to why Dr Jenkins failed to comply
 22 with this duty are beyond the scope of this review. The
 23 effects of that failure however must be considered.
 24 I advise the following to be the position:
 25 "Dr Jenkins failed to disclose material known to him
 157

1 **A.** I don't know.
 2 **Q.** Nowhere in the Clarke Advice, dealing with Mr Jenkins,
 3 does anybody suggest that "Maybe we should just call the
 4 police and bring them in to conduct an independent
 5 investigation"; do you accept that it's not in that
 6 advice?
 7 **A.** I accept that it's not in that advice.
 8 **Q.** Do you accept that it's not in any other advice that
 9 relates to Mr Jenkins that it might be a good idea to
 10 call an independent investigation, ie the police?
 11 **A.** No, I just don't think that is anything we thought of.
 12 **Q.** Right, at the time, after having conducted the
 13 investigation involving Mr Jenkins, including the taped
 14 call, did you not consider yourselves then to be
 15 witnesses in relation what had happened regarding
 16 Mr Jenkins?
 17 **A.** I didn't think of that, no.
 18 **Q.** No. Do you accept that you are witnesses in relation to
 19 Mr Jenkins and those calls and that investigation?
 20 **A.** I do, yes.
 21 **Q.** Yes.
 22 **A.** Putting it that way, I do, yes.
 23 **Q.** Putting that way is all fairly obvious, Mr Smith, when,
 24 considering your position as a witness, do you think it
 25 was appropriate to continue acting on behalf of the Post
 159

1 but which undermines his expert opinion."
 2 So that is basically saying that Mr Jenkins --
 3 Dr Jenkins, as it says here -- deliberately failed to
 4 close material that he was aware of; do you agree?
 5 **A.** Yes.
 6 **Q.** Right:
 7 "This failure is a plain breach of his duty as an
 8 expert witness."
 9 Then it goes on to say:
 10 "Accordingly, Dr Jenkins' credibility as an expert
 11 witness is fatally undermined ..."
 12 That's what it says, do you agree?
 13 **A.** Yes.
 14 **Q.** Right, okay. At this stage, therefore, you're
 15 considering the question of someone who has knowingly
 16 misled the court; do you agree?
 17 **A.** Yes.
 18 **Q.** Right. What criminal offences have been committed if
 19 those facts are correct?
 20 **A.** Well, perjury, potentially.
 21 **Q.** Right, anything else?
 22 **A.** Perverting the course of justice.
 23 **Q.** Right, let's go with perjury and perverting the course
 24 of justice. Let's ask the basic question: why didn't
 25 you call the police?
 158

1 Office, in relation to these matters?
 2 **A.** I didn't think of it in that way at the time.
 3 **Q.** What do you think about it now?
 4 **A.** I can very much understand your point.
 5 **Q.** Do you agree with it?
 6 **A.** I'm not sure I do.
 7 **Q.** Okay. Why not?
 8 **A.** Because the fact that we've become aware of this
 9 information, we've mentioned it to our client and we are
 10 then assisting our client to move on in terms of looking
 11 at cases, reviewing files and looking for a new expert.
 12 **Q.** But not calling the police. What did you tell Fujitsu?
 13 **A.** I don't believe we said anything to Fujitsu about this.
 14 **Q.** Mr Jenkins is employed by who?
 15 **A.** Fujitsu.
 16 **Q.** Yes. You've come to the conclusion that Mr Jenkins has
 17 misled the courts, dishonestly. Did you not consider it
 18 might not be a bad idea to tell Fujitsu about their
 19 employee?
 20 **A.** I didn't give that any thought. Perhaps I thought that
 21 Post Office might do that, given that they are the ones
 22 with the contractual relationship with Fujitsu.
 23 **Q.** It didn't cross your mind or Mr Clarke's mind, as far as
 24 you're aware, to perhaps tell the Post Office that it
 25 ought to tell Fujitsu that, on your view, their expert
 160

1 has been dishonest with the courts?
 2 **A.** No, I don't -- no, myself and Mr Clarke did not discuss
 3 that. We didn't discuss the fact that we were potential
 4 witnesses. We did not discuss the possibility of
 5 informing the police or Fujitsu.
 6 **Q.** Right. Now, let's deal with the shredding advice, also
 7 penned by Mr Clarke. Now, the "shredding" advice come
 8 about because what had happened was that you'd learnt
 9 from Jarnail Singh, in a conversation that, again, you'd
 10 recorded, that Mr Scott, Head of Security at Post Office
 11 was suggesting that minutes should not be kept,
 12 otherwise they might be disclosed; do you agree?
 13 **A.** I don't agree fully with what you've said. It wasn't
 14 the entirety of the phone call that was recorded, it was
 15 just the latter part that was recorded.
 16 **Q.** But that was the thread of what was in the shredding
 17 advice?
 18 **A.** It was -- the shredding -- if we're going to call it --
 19 the shredding advice contained information relating to
 20 that call and also, as a byproduct of some of the
 21 Wednesday morning calls.
 22 **Q.** Yes, the shredding advice does not record that there was
 23 also a comment made to Mr Singh and reported to you that
 24 what was going to happen was that Cartwright King were
 25 going to be blamed for destroying documents. I read

161

1 **A.** I don't think anyone was particularly delighted about
 2 that suggestion.
 3 **Q.** By this point in July 2013, do you agree you and the
 4 firm of Cartwright King were hopelessly conflicted in
 5 relation to your dealings with Post Office?
 6 **A.** I don't think that crossed our minds.
 7 **Q.** Did you take any advice on that?
 8 **A.** I just simply reported what had happened to Mr Clarke
 9 and that was it, really.
 10 **Q.** Were these advices privileged, Mr Smith?
 11 **A.** What do you mean by that?
 12 **Q.** You understand what privilege is? It's the duty of
 13 confidentiality --
 14 **A.** Yes.
 15 **Q.** -- that exists between lawyers and clients?
 16 **A.** Yes.
 17 **Q.** It allows for a lawyer to advise, in private, a client.
 18 Were the contents of these advices -- in other words you
 19 discovering via a mini investigation with Mr Jenkins,
 20 that he apparently, on what you know, has misled courts,
 21 is that privileged material, Mr Smith?
 22 **A.** I'm really not quite sure.
 23 **Q.** What about the shredding side of things? The fact that
 24 John Scott, Head of Security at POL, was both
 25 threatening Cartwright King and suggesting that

163

1 from your statement, paragraph 45, page 12:
 2 "My recollection at the present time is that
 3 Mr Singh alleged that John Scott had indicated
 4 an intention to shred the minutes and to explain, if
 5 asked, that they had been destroyed on the advice of
 6 Cartwright King."
 7 You repeat that in relation to the same conversation
 8 at paragraph 52, page 14. Now, the shredding advice
 9 does not record the fact that, essentially, Mr Scott was
 10 apparently willing to blame Cartwright King for
 11 shredding of evidential material.
 12 **A.** Mm.
 13 **Q.** Why does it not record that?
 14 **A.** I don't know.
 15 **Q.** Is it not a serious accusation --
 16 **A.** It is, yes.
 17 **Q.** -- and a serious suggestion to be made in relation to
 18 a firm of solicitors?
 19 **A.** Yes.
 20 **Q.** Did you tell the partners of the firm of Cartwright
 21 King?
 22 **A.** I would have reported it to Mr Cash, undoubtedly, who
 23 was the partner in charge of the Derby office. I can't
 24 recall precisely whether I spoke to the other partners.
 25 **Q.** Well, what was Mr Cash's reaction? Was he delighted?

162

1 evidential minutes should be destroyed; is that
 2 privileged, Mr Smith?
 3 **A.** No, that's not.
 4 **MR STEIN:** No.
 5 No further questions.
 6 **SIR WYN WILLIAMS:** Thank you, Mr Stein, we'll now have our
 7 break.
 8 Mr Blake, can you ask the transcriber whether she
 9 requires 15 minutes or whether 10 minutes is enough.
 10 I'm comfortable with either.
 11 **MR BLAKE:** She would like 15 minutes, sir.
 12 **SIR WYN WILLIAMS:** Fine so we'll start again at 3.20.
 13 **MR BLAKE:** Yes, thank you very much.
 14 **SIR WYN WILLIAMS:** Fine. Thank you.
 15 **(3.05 pm)**
 16 **(A short break)**
 17 **(3.20 pm)**
 18 **MR BLAKE:** Thank you sir, we're now going to turn to
 19 Mr Henry.
 20 **Questioned by MR HENRY**
 21 **SIR WYN WILLIAMS:** Mr Henry, I think you've asked for five
 22 extra minutes. So 3.40.
 23 **MR HENRY:** Thank you very much, sir.
 24 **Q.** Could we go to POL00139866. These are notes that you
 25 took of a meeting with Mr Brian Altman, correct?

164

1 A. They are a typed version of the notes that I took.
 2 I wasn't typing during the meeting --
 3 Q. Fair enough but you accept they are your notes?
 4 A. Yes, I typed these.
 5 Q. Thank you. You'll remember, of course, that this was
 6 the conference where Mr Altman advised that there was no
 7 positive duty to seek out individuals pre-1 January
 8 2010, correct?
 9 A. Yes, that's correct.
 10 Q. Could we go to page 3 of these notes, please. Do you
 11 see the word "Susan", that stands for Susan Crichton?
 12 A. Yes.
 13 Q. "Better to keep [Fujitsu] on o/s [outside] given not
 14 resolved GJ [Gareth Jenkins] situation."
 15 A. Yes.
 16 Q. Then the QC says:
 17 "Tactical point of view keep them as third party
 18 ..."
 19 A. Yes.
 20 Q. So, in other words, keep them at a distance, correct?
 21 A. Yes, I'm not quite sure in what context that is but,
 22 yes, that's the reading of it.
 23 Q. Well, I mean you must surely have reflected upon this.
 24 When did you realise you were going to become a witness
 25 in this Inquiry?

165

1 A. Yes.
 2 Q. So she's got to come forward. No one is going to tell
 3 her. That was the gist, wasn't it? "How are we going
 4 to deal if she comes forwards and says similar", it's
 5 obvious she has got to come forward, the impetus is on
 6 her, no one is going to tell her.
 7 A. Well, it leads into the next sentence, doesn't it?
 8 Q. Precisely.
 9 A. "Susan: Either review all pre-2010 cases -- or we do
 10 nothing and wait for them to come forwards."
 11 Q. Exactly, and that's precisely what occurred.
 12 A. Yes, I think what occurred was that there was a decision
 13 to review cases which commenced after 1 January 2010,
 14 that being the earliest date upon which Horizon Online
 15 could have been in place but I think we changed that to
 16 any case with a hearing after 1 January 2010, which of
 17 course then included Mrs Misra's case.
 18 Q. Well, we'll come to how you deal with it but I note your
 19 apparent justification for the decisions taken at that
 20 is conference and subsequently. But it seems, at this
 21 stage, no one wanted to provide Mrs Misra with
 22 a "ticket", to use your expression, to the Court of
 23 Appeal: do nothing, adopt a passive approach. Correct?
 24 A. I would certainly agree that the Post Office did not
 25 want, at that stage, to be actively encouraging people

167

1 A. No, what I mean by that is I'm not sure whether that is
 2 in relation to the provision of information from
 3 Fujitsu.
 4 Q. It was better to keep Fujitsu on the outside, "given not
 5 resolved [the Gareth Jenkins] situation". (Pause)
 6 I'm not going to waste my 20 minutes by waiting for
 7 an answer. Shall we move on to page 6, please. Do you
 8 see, just at the bottom of the screen:
 9 "QC: Misra concerned: pre-[Horizon] Online case --
 10 issues were as detailed as I've seen. She went to
 11 prison. Jenkins gave evidence -- Training and [Horizon]
 12 issues: [Professor McLachlan] -- much of it
 13 hypothesis -- that is a case slipping through the net."
 14 A. Yes.
 15 Q. You realise, of course, that I am sitting next to
 16 Mrs Seema Misra today?
 17 A. I didn't realise that.
 18 Q. You would agree that she is owed the truth?
 19 A. Yes, absolutely.
 20 Q. Right. So I'm going to can you some questions.
 21 Ms Crichton comments that she has applied for mediation
 22 and then the QC says:
 23 "How are we going to deal if she comes forward and
 24 says similar ..."
 25 You see that?

166

1 to go to the Court of Appeal.
 2 Q. No, and you know why that was, don't you?
 3 A. I take it you're going to enlighten me.
 4 Q. Oh, come on. Must we play games, Mr Smith? I'm sitting
 5 next to a lady who was the foundation stone for the
 6 prosecution policy. Her case was a test case which was
 7 used to deter civil claims and criminal defences. The
 8 conviction obtained against her was absolutely seminal
 9 in the whole prosecution policy; you must have realised
 10 that?
 11 A. I was aware that Mrs Misra had been prosecuted.
 12 I think, at the point -- at the time of this conference,
 13 I don't think we had seen her file. I think we were
 14 being told that her file was not available, it couldn't
 15 be found. And I think that the first time her case was
 16 reviewed was, I think, by Mr Clarke having to read the
 17 judge's summing-up to the jury, and I think that was
 18 also provided to Mr Altman, King's Counsel, and I think
 19 he commented that a particular page was missing. It
 20 wasn't until quite some time later that the case file
 21 relating to Mrs Misra was discovered and provided.
 22 Q. Right. Can I just ask you, please, to keep your answers
 23 short because they're eating into my time and I've got
 24 quite a lot of things to put to you.
 25 A. I do apologise.

168

1 Q. Right. I'm going to go and ask you this question. In
2 view of the answers you have given to Mr Stein, King's
3 Counsel, and in view of what you already knew by this
4 time, namely the 28 June recorded conversation, the
5 15 July advice, why wasn't Mrs Misra immediately being
6 told?

7 A. I don't know.

8 Q. Well, I suggest the reason is obvious and it is going to
9 be clear from the evidence that you've already given to
10 Mr Blake. It is because of the fact that, if disclosure
11 had been made to her promptly, it would have, as it
12 were, set off the domino effect, wouldn't it?

13 A. I don't think that I gave any thought to that
14 whatsoever.

15 Q. You have spoken, haven't you, about how you were
16 concerned. How the civil lawyers, Rodric Williams,
17 Mr Parsons, et cetera, et cetera, the civil lawyers,
18 appeared to be exerting pressure. Talk of suppressing
19 disclosure, talk of not putting things in writing,
20 et cetera, et cetera, et cetera?

21 A. In civil litigation.

22 Q. But, of course, if Mrs Misra's appeal was promptly
23 notified to her, an irresistible appeal -- you surely
24 don't dissent from that judgment?

25 A. No, I think the plan of action was that cases, all

169

1 does "Misra unique" mean, so far as you're concerned,
2 Mr Smith? You see just a couple of lines down from the
3 point Mr Henry took you?

4 A. I'm afraid I have no idea, sir. I've got no idea.

5 MR HENRY: Let me jog your memory. It's because it's the
6 only case in which Mr Jenkins gave oral evidence against
7 a defendant, although he had given written evidence.
8 That's why she was unique.

9 A. That may be the case.

10 Q. Right. Go to page 7, if we may, and Mr Matthews says:

11 "Misra: apologise?"

12 The QC is reported to have said:

13 "I wouldn't."

14 You wouldn't have written that down if that wasn't
15 accurate, would you, Mr Smith?

16 A. No, I wouldn't.

17 Q. Because, of course, an apology would let the cat out of
18 the bag, it would let the Jenkins cat out of the bag.
19 So, therefore, there was an approach of do nothing,
20 masterly inactivity, correct?

21 A. I don't believe that Mr Jenkins was discussed in
22 relation to this.

23 Q. Well, what would you be apologising for? What would the
24 apology for Mrs Misra be for, if it weren't to be in
25 connection with the fact, "Oh, I'm sorry, we secured

171

1 cases, should be reviewed and they should go through the
2 sift process, then senior counsel would conduct a full
3 review to determine whether disclosure should be
4 provided, and that is precisely what happened in
5 relation to Mrs Misra's case. I'm afraid I don't recall
6 having any particular involvement with Mrs Misra's case
7 but --

8 Q. Well, we'll come to that. It seems, you agree, at that
9 stage, that you didn't want to provide Mrs Misra with
10 a ticket to the Court of Appeal. Then these words that
11 "there may be Misras", other Misras we can't avoid, this
12 is the QC:

13 "Provisional view: sensible date to adopt [in other
14 words 1 July 2010]. But can't avoid possibility that
15 Misras may crawl out of the woodwork: deal with on
16 case-by-case basis unless someone states cut off
17 unreasonable."

18 In other words, do nothing pre-2010 but some
19 applicants may yet emerge, deal with them *ad hoc*, unless
20 someone challenges the 2010 cut-off as being
21 unreasonable. You agree with that?

22 A. That was Mr Altman King's Counsel's advice, yes.

23 Q. Let's go to Mr Matthews, page 7, please.

24 SIR WYN WILLIAMS: Before you go there, Mr Henry -- and I'll
25 give you an extra minute because I'm interfering -- what

170

1 your conviction on the basis of an expert who did not
2 know his duties to the court and who may, on the
3 information that we have on tape, suppressed vital
4 information about bugs, errors and defects"? You know
5 even Mr Matthews thought that maybe that deserved
6 an apology, didn't he?

7 A. I think this may have been discussing the way in which
8 her mediation application may have been dealt with,
9 and --

10 Q. Well, I can deal with that in very short order because
11 Mr Altman said, "Don't mediate with her", didn't he?

12 A. Well, he was against mediating with anyone who had
13 a conviction. He was very clear in his advice in
14 relation to that.

15 Q. Yes. As we can see on page 7:

16 "See mediation for anyone who is outside scope of
17 criminal scheme. I think storing up problems."

18 "Storing up problems" is a phrase I underline:

19 "Is she considering out of time appeal?"

20 That must be a reference to Ms Misra.

21 A. It --

22 Q. You agree?

23 A. I do agree, yes.

24 Q. Page 8 of 11:

25 "No problem with mediation. However do have

172

1 a problem with someone going convicted to scheme. My
2 view is storing up problems with Misra."

3 So his clear and unambiguous advice was: don't
4 mediate with her.

5 **A.** Yes, that's correct.

6 **Q.** At the foot of page 8, please. Do you see, at the foot
7 of page 8, five lines up from the bottom:

8 "At the moment on the right lines just control it."

9 That's, again, Mr Altman speaking, isn't it?

10 **A.** I believe so yes.

11 **Q.** Of course, that echoes. It echoes the Altman general
12 review at paragraph 129, that Mr Blake took you to this
13 morning, where Mr Altman writes:

14 "Cartwright King wish to exercise a measure of
15 control over the dissemination of information and
16 material during the process."

17 So this is where, I suppose, Mr Altman is basically
18 saying "Yes, keep a vice like grip on disclosure",
19 correct?

20 **A.** He was advising to be very careful what was disclosed,
21 yes.

22 **Q.** "Keep a vice-like grip on disclosure", keep it tight.

23 **A.** I don't recall the words "vice-like grip" being

24 mentioned.

25 **Q.** Well, he didn't want anything to be loose, did he?

173

1 **A.** Yes.

2 **Q.** Can you not tell Sir Wyn, the Chairman of this Inquiry,
3 to the best of your recollection, who wrote that
4 paragraph?

5 **A.** If there is -- if it just simply says, "Cartwright King"
6 at the bottom of the document then I would guess that
7 that is written by Mr Bowyer because Simon Clarke would
8 generally sign off his paragraphs -- sign off his
9 documents, "Simon Clarke".

10 **Q.** I see. So I now ask you this question: why was
11 Mr Bowyer taken off this matter because, on 22 January
12 2014, Mr Clarke sent you an email which had the full
13 review of the *Seema Misra* case, draft document, and he
14 said one word in that email to you when he sent it to
15 you, it was "Phew!!!"

16 Who took Harry Bowyer off the case and put Simon
17 Clarke on it?

18 **A.** I'm not aware that anyone took Harry Bowyer off the
19 case.

20 **Q.** Well, why didn't Mr Bowyer, if he wrote paragraph 33,
21 have continuing control of the matter? Why was it that
22 on 22 January 2014, Mr Clarke sends you an email with
23 word "Phew", attaching a document which says that
24 Mrs Misra shouldn't have any disclosure?

25 **A.** I don't recall that.

175

1 **A.** I think his view -- well, as I understand his view, he
2 was very much of the view that a casual comment or
3 a throwaway comment or even an apology could actually
4 have a substantial ramifications for Post Office.

5 **Q.** Right. Now, I want to understand now, in the remaining
6 minutes that I have, how a decision was taken on the
7 5 December 2013, when the firm said -- and it was the
8 firm -- that Mrs Misra should have disclosure, because
9 on 5 December 2013, POL00198595 -- and it's a matter of
10 record, it's paragraph 33 of that document:

11 "It is our view that this case clearly passes the
12 disclosure threshold and we will be disclosing the
13 Second Sight Interim Report and the Helen Rose Report to
14 Misra's lawyers. It should be said, however, that the
15 defence were aware of the Falkirk defect in this case
16 and it was discussed in the trial. This is the only
17 pre-Horizon Online bug of which we are aware."

18 So two questions arising out of that paragraph: who
19 wrote that paragraph?

20 **A.** What's the name at the bottom of the document?

21 **Q.** Cartwright King.

22 **A.** Cartwright King. Well, it certainly wasn't me who wrote
23 that paragraph.

24 **Q.** You were involved in the preparation of this document,
25 you say so in your statement.

174

1 **Q.** You responded to it:

2 "As one complex matter ends, another starts."

3 You were in on this, weren't you? Tell us the
4 truth. Why did the firm do a complete backflip,
5 somersault, on whether Mrs Misra's team should get
6 disclosure?

7 **A.** I didn't -- I don't recall appreciating that there was
8 a complete somersault.

9 **Q.** Are you being serious, Mr Smith?

10 **A.** I am being serious with you. Yes, I'm being deadly
11 serious with you. I remember that the initial review of
12 Mrs Misra's case was a partial review based on the
13 judge's summing up, and then Mr Clarke looked at that
14 and it would appear from what you're saying that he then
15 reached that decision. I am afraid I can't add anything
16 more to that.

17 **Q.** Can we go back to first principles. 28 June, 15 July,
18 expert witness credibility fatally undermined, if
19 Mr Jenkins had given evidence either orally or in
20 writing against any defendant, the material that you had
21 from 28 June and 15 July was material that would cast
22 doubt upon the safety of any conviction associated with
23 his evidence, wouldn't it?

24 **A.** I agree with that now, yes.

25 **Q.** You should have agreed with it then and you did agree

176

1 with it then because of the 5 December 2013 document
 2 that went out in your name, saying that she ought to
 3 have been given disclosure. What happened between
 4 5 December 2013 and 24 January 2014? Tell the truth.
 5 **A.** I have got no idea. As far as I was aware, Mrs Misra's
 6 case was being looked at in accordance with the
 7 protocol -- I'm speculating but it may be, by the time
 8 Mr Clarke had looked at it again, we perhaps had more
 9 information. Perhaps the full file.
 10 **Q.** You were in daily contact, you told Mr Blake, with
 11 Jarnail Singh.
 12 **A.** Almost daily.
 13 **Q.** Again, I put it to you that, if Mrs Misra's lawyers had
 14 been given prompt disclosure, the whole prosecutorial
 15 facade of Horizon's reliability and infallibility would
 16 have collapsed, wouldn't it?
 17 **A.** Her case was assessed by Mr Clarke, who, as you've said,
 18 concluded that no disclosure was necessary. Disclosure
 19 was made to other people.
 20 **Q.** We know that but the reason why he said that, I suggest,
 21 is because somebody obviously but pressure on him
 22 because of the ramifications Mrs Misra's inevitable
 23 appeal would have had for both civil and criminal
 24 litigation.
 25 **A.** Well, that's -- with respect, that's nonsense and it

177

1 **SIR WYN WILLIAMS:** Thank you, Mr Henry.
 2 Right. I think the final series of questions comes
 3 from Mrs Oliver.

4 **Questioned by MS OLIVER**

5 **MS OLIVER:** Thank you, sir.
 6 Mr Smith, I ask questions on behalf of Gareth
 7 Jenkins. I hope you can just about see me.
 8 **SIR WYN WILLIAMS:** For the avoidance of doubt, your time
 9 limit is 4.05, Ms Oliver.
 10 **MS OLIVER:** I'm grateful. Thank you, sir.
 11 I have three topics that I want to cover with you
 12 this afternoon: firstly, the question of expert duties;
 13 secondly, the call that you conducted with Mr Jenkins in
 14 relation to the case of *Samra*; and, thirdly, a discrete
 15 element of your treatment of Mr Jenkins in the case of
 16 Ishaq. All right?
 17 So to turn to the first of those, then. You have
 18 very candidly accepted that, at the time you were
 19 prosecuting these cases, you were not aware of your
 20 duties in instructing and deploying expert evidence; is
 21 that correct?
 22 **A.** That's correct, yes.
 23 **Q.** Following what you said, that it is difficult to follow
 24 something of which you are not aware --
 25 **A.** Yes.

179

1 certainly wasn't me.
 2 **Q.** Well, why is it nonsense?
 3 **A.** Well, I've not put any pressure on Mr Clarke. None at
 4 all.
 5 **Q.** You can offer no explanation at all for Mr Bowyer not
 6 continuing with carriage of the matter and that
 7 fundamental shift between 5 December 2013 and 24 January
 8 2014 -- or forgive me, 22 January 2014. You can offer
 9 no explanation?
 10 **A.** No. All I can think of is, by that time, it may be that
 11 we had more information because, to start with, as I've
 12 already said, there was very little information
 13 available and then I think the file was then discovered,
 14 and sent thorough. Now, how that fits into the
 15 timescale I'm not sure. But --
 16 **Q.** I'm afraid that your assumptions here are incorrect, as
 17 would be clear if you had read the 22 January advice.
 18 I ask you for the final time -- and my time is up --
 19 what is the truth about the firm's shift between
 20 Mrs Misra should get disclosure in December 2013 to
 21 Mrs Misra ought not to get disclosure under any
 22 circumstances on 22 January 2014?
 23 **A.** I cannot give you any information in relation to that.
 24 All I can suggest is that you ask Mr Clarke as to how he
 25 came to his conclusion.

178

1 **Q.** -- you also candidly acknowledged that Cartwright King
 2 never instructed Mr Jenkins in a compliant manner and
 3 never told him about the expert duties to which he was
 4 subject?
 5 **A.** That's also correct, yes.
 6 **Q.** Thank you. The way you deal with that in your second
 7 witness statement -- I don't think we need to go to it,
 8 it's paragraph 21 of that statement -- is that you
 9 state:

10 "Mr Jenkins should have been given detailed written
 11 instructions in relation to each individual case which
 12 enclosed a full set of papers, asked specific questions
 13 and set out the duties of an expert instructed by the
 14 prosecution. Mr Jenkins had not been so instructed."
 15 Is that correct?

16 **A.** Yes, that's right.
 17 **Q.** In that paragraph 21, you don't specify between
 18 Cartwright King and Post Office in terms of their
 19 instructions. Did you come to the same conclusions as
 20 to the non-compliant instruction of Mr Jenkins in
 21 relation to Post Office's use of him in the prosecutions
 22 they conducted before Cartwright King became involved?
 23 **A.** I'm sorry, I'm struggling to see you.
 24 **Q.** I'm going to come this way, hopefully that will be
 25 easier?

180

1 A. No, I'll go back that way.
 2 Q. That's very kind of you, thank you.
 3 A. I took the view that it became apparent to me, following
 4 the provision of Mr Clarke's Advice, that we had not
 5 been compliant in terms of instructing Mr Jenkins.
 6 Mr Singh, who had followed Mr Bowyer's advice, had not
 7 been compliant in instructing Mr Jenkins and, of course,
 8 Mr Singh was Head of Criminal Law at Post Office and, in
 9 the circumstances, I was quickly coming to the view
 10 that, actually, when the Post Office was part of the
 11 Royal Mail Group, it was highly unlikely that he had
 12 ever been advised of his duties then either. Otherwise,
 13 even though there was a requirement to advise him on
 14 each occasion, which I was unaware of, it occurred to me
 15 that he probably had never been advised at all.
 16 Q. Thank you. So the answer to my question, then, is that
 17 it did relate both to Cartwright King's instruction and
 18 to Post Office's?
 19 A. Yes.
 20 Q. Thank you. Do you agree that was a serious failing on
 21 the part of Cartwright King and Post Office, in the
 22 manner in which they conducted these past prosecutions?
 23 A. It was a serious failing in terms of how they obtained
 24 expert advice.
 25 Q. Thank you. Do you agree it's particularly important,
 181

1 page, we can see it seems to be the words "Tell to MS";
 2 do you say that?
 3 A. Yes.
 4 Q. If we scroll down a little bit further, please, we see
 5 on the left "Martin Smith", then the word "inference",
 6 and then a few lines down "M Smith". Do you recall
 7 having a conversation around this time with Mr Williams?
 8 A. No, I'm sorry. I don't.
 9 Q. Right. If we go to some of the things he records, that
 10 might jog your memory. On the right-hand side of the
 11 page we have in front of us at the moment, in the box,
 12 it says, "What were we doing to instruct GJ", and then,
 13 on the left of the page, under the words "M Smith" are
 14 a number of arrow bullet points, the first of which is:
 15 "Don't think he's ever been advised of his duties."
 16 Do you think that this note might be recording
 17 a conversation that you had with Mr Williams?
 18 A. It's quite possible, yes.
 19 Q. Do you recall whether, during a conversation you had
 20 with Mr Williams, you informed him of your view that
 21 you've informed us of this afternoon, that you don't
 22 think Mr Jenkins had ever been advised of his duties?
 23 A. I can't recall a conversation, I'm afraid. It's such
 24 a long time ago.
 25 Q. Right. Do you recall being party to any other
 183

1 because it goes to the very failing that Mr Clarke
 2 identified in his advice of 15 July 2013, by which
 3 I mean the failure to disclose material in accordance
 4 with those expert duties?
 5 A. It does go to that, yes.
 6 Q. Thank you. I think you said in answer to my learned
 7 friend for Counsel to the Inquiry that you knew of that
 8 failure, certainly in relation to Cartwright King, at
 9 the time that Mr Clarke was producing the advice of
 10 15 July; is that right?
 11 A. It was that advice which really drew my attention to it.
 12 Q. Is it something that you discussed with Mr Clarke at the
 13 time he was writing that advice?
 14 A. I don't recall discussing it with him.
 15 Q. Are you aware of whether he was aware of that lack of
 16 expert instruction at the time he was writing his
 17 advice?
 18 A. I don't know.
 19 Q. Thank you. Can we please go to a document, it's
 20 POL00155555. Thank you. This is a handwritten note.
 21 You can see the date in the top right-hand corner. It's
 22 2 September 2013. We've heard evidence that this was
 23 a note authored by Rodric Williams of Post Office. It
 24 appears to refer to you at a number of points. I'm just
 25 going to identify those for you. About halfway down the
 182

1 discussion with anyone within Post Office as to the
 2 conclusion you'd reached that Mr Jenkins had never been
 3 properly instructed as an expert?
 4 A. No, I don't.
 5 Q. If, as this note appears to indicate, you were having
 6 that sort of conversation with Mr Williams, does that
 7 make it more likely that that's a conversation you would
 8 have had with Mr Clarke as well?
 9 A. I may that have had that conversation with Mr Clarke but
 10 I can't say it makes it more likely. I just don't know.
 11 Q. All right, thank you. Can we please turn to
 12 POL00139866. This is your typed note of the notes that
 13 you took during a conference with Brian Altman QC on
 14 9 September 2013. If we could go to page 4, please,
 15 about halfway down, it's the entry that starts "Simon",
 16 and then it says:
 17 "Goes become to GJ. Either he not aware of info or
 18 FJ ivory tower -- not being taken seriously."
 19 Do you recall what that comment from presumably
 20 Simon Clarke referred to?
 21 A. Yes, I can recall that there was a discussion about
 22 Mr Jenkins and I actually -- I think I actually wondered
 23 whether he had actually become aware in a timely fashion
 24 of the various bugs himself and, according to this note,
 25 Mr Clarke's view was either he wasn't aware of the
 184

1 information or, alternatively, that FJ, meaning Fujitsu,
 2 was in an ivory tower and not taking their obligations
 3 seriously.

4 **Q.** As part of the discussion about Mr Jenkins that appears
 5 to have featured in this conference, did you at any
 6 point tell Brian Altman QC of your conclusion that
 7 Mr Jenkins had never been instructed in a compliant
 8 manner and had never been told about his expert duties?

9 **A.** No, I don't think that occurred to me.

10 **Q.** All right. Can we please turn to the Simon Clarke
 11 Advice, it's POL00006357. Can we go, please, to
 12 paragraphs 37 and 38, which I think are on page 13.
 13 Thank you. So there we see at paragraph 37 the
 14 conclusion that I've already referred to, that
 15 "Dr Jennings", meaning Jenkins, "has not complied with
 16 his duties to the court, the prosecution or the
 17 defence", and it sets out the expert duty of disclosure
 18 there.

19 Then at paragraph 38:
 20 "The reasons as to why Dr Jenkins failed to comply
 21 with this duty are beyond the scope of this review."
 22 Do you know why those reasons were considered beyond
 23 the scope of this review?

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

25 **Q.** Is it because the reason it appeared you knew at that
 185

1 relevant factor, hugely relevant material to anyone who
 2 was looking at the conduct of past prosecutions, whether
 3 that be Post Office or Cartwright King?

4 **A.** I can see that now but I didn't think about that at the
 5 time.

6 **Q.** Do you agree that that conclusion that you had reached
 7 as to the lack of Mr Jenkins' instruction ought to have
 8 been communicated to Mr Altman, to Post Office, to the
 9 CCRC?

10 **A.** I'm afraid I didn't think of it in that level of depth.

11 **Q.** Is the reason why there was a lack of openness about
 12 that conclusion that you had reached because it would
 13 have been professionally damaging to Cartwright King to
 14 make that concession?

15 **A.** No, I just didn't think of it in that way. I mean,
 16 I was looking at it, in fact, you know, this is where we
 17 are now. We have these reports. They didn't mention
 18 bugs. What are we going to do about it?

19 **Q.** Had it become known, Mr Smith, that there had been that
 20 acknowledged failure on the part of Post Office and
 21 Cartwright King, that would have led to an obvious
 22 conflict for your firm continuing their involvement in
 23 reviewing those past prosecutions, wouldn't it?

24 **A.** I didn't give that any thought, I'm afraid.

25 **Q.** Right.
 187

1 point, at the very least may have been -- and by "the
 2 reason", I mean the reason for Mr Jenkins' failure to
 3 comply with that disclosure obligation -- may have been
 4 that he was never told about the very duty he was
 5 accused in this advice of breaching?

6 **A.** I think Mr Clarke was concentrating on the effects of
 7 the failure, not the method of instruction, because we
 8 knew at that stage that Mr Jenkins had been instructed,
 9 obviously for quite some number of years, whereas
 10 Cartwright King had been involved at that stage for
 11 approximately one year.

12 **Q.** Well, all of the statements that Mr Clarke refers to in
 13 this advice concern statements obtained by Cartwright
 14 King.

15 **A.** Yes.

16 **Q.** All right? So that's certainly the focus of his
 17 discussion.

18 **A.** I believe I handed them to him.

19 **Q.** All right. But did you not think it relevant, the
 20 manner in which Mr Jenkins had been instructed, of the
 21 expert duty that he was accused in this advice of
 22 breaching?

23 **A.** No. I didn't give that thought, I'm afraid.

24 **Q.** On any view, do you agree that what you discovered about
 25 the lack of instruction of Mr Jenkins was a hugely
 186

1 **A.** I just simply thought, as a matter of fact: well, I'm
 2 not -- you know, we certainly haven't provided that
 3 level of instruction which Mr Clarke has referred to and
 4 I don't think Post Office did either, or the Royal Mail
 5 Group for that matter. That was simply my thought
 6 process.

7 **Q.** Is the relevance of that failure to the conclusions of
 8 Mr Clarke simply something you didn't recognise at the
 9 time?

10 **A.** Well, I just didn't think of it.

11 **Q.** All right, let's turn to my second topic then, please.
 12 I'm wary of the time. If we can just look at the
 13 transcript of the call in relation to *Samra*. It's
 14 POL00142322. It's right, I think, that on 23 June 2013
 15 you and Mr Clarke made a telephone call to Mr Jenkins;
 16 is that right?

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

18 **Q.** How was that recorded?

19 **A.** I don't recall precisely how it was recorded.

20 **Q.** Do you recall how this note was produced from that
 21 recording?

22 **A.** No.

23 **Q.** Do you recall who prepared it?

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

25 **Q.** Do you recall when it was prepared?
 188

1 A. No.

2 Q. Do you agree Mr Jenkins was given no warning about this
3 call?

4 A. I do, yes.

5 Q. Do you agree he had no prior knowledge of the case of
6 *Samra*?

7 A. I don't believe that he would have known about the case
8 of *Samra* because I don't believe any form of expert
9 report had been sought in relation to that case, so he
10 wouldn't have had any instructions, whether defective or
11 otherwise.

12 Q. You acknowledged to my learned friend, Mr Stein, that
13 you were at this stage suspicious in relation to
14 Mr Jenkins. Is it right that this call was to test
15 Mr Jenkins' credibility, as you and Mr Clarke saw it, by
16 seeing if he would agree that he had provided
17 information to Second Sight about the receipts and
18 payments mismatch bug and the suspense account bug?

19 A. I'm not sure if the call was to test his credibility,
20 I think Mr Clarke just wanted to speak to him, to try to
21 get some information to determine how to proceed with
22 the case against Mrs Samra.

23 Q. What information was he hoping to obtain?

24 A. I don't recall.

25 Q. If the call was being recorded, Mr Jenkins was not told
189

1 "I have been asked to comment on the Defence Case
2 Statement in the case of *R v Khayyam Ishaq*."
3 Then he states:
4 "I'm not sure that the responses are of much use and
5 I don't think there is anything much that can really be
6 added to my statement as a result. However if you feel
7 any of this could be usefully added I'm happy to be
8 convinced.
9 "Much of it relates to requiring further data for
10 analysis, and past experience indicates that help may be
11 required in understanding it."
12 So he is referring there to the fact that there is
13 data that might be obtained that would assist in the
14 preparation of the case; do you agree?

15 A. Yes, he's talking about data that can be analysed and
16 also talking about the fact that the defence may not
17 necessarily understand it. So he's saying that he could
18 assist the defence.

19 Q. Thank you. Then if we can please go to page 2., under
20 number 7, part of the nature of the defence is set out
21 in relation to Post Office Horizon software/hardware
22 system malfunctioning. He says:
23 "If the defence can specify some examples of this,
24 I am happy to investigate them. However I would contend
25 that the system doesn't malfunction without leaving some
191

1 that?

2 A. He wasn't told that, no.

3 Q. He was given no chance to check the note for accuracy or
4 understanding as to what he had said?

5 A. No.

6 Q. All right. Turning, then, to the third and final topic
7 that I want to address. You, to a degree, had conduct
8 of the case of Ishaq; is that right?

9 A. To a degree, yes, yes. I think it got passed around
10 quite a bit and, towards the end, it was very difficult
11 to follow with the number of people who had involvement.

12 Q. Do you recall that, at a certain stage in that case,
13 Mr Jenkins was invited to comment on the first defence
14 statement that Mr Ishaq had produced?

15 A. I do, yes.

16 Q. If we can please go to POL00119447. We see here
17 an email from you on 4 February 2013, forwarding Gareth
18 Jenkins' comments on Ishaq's DCS to Mark Ford and Steve
19 Bradshaw. Do you recall reviewing those comments that
20 Mr Jenkins had made on the defence statement?

21 A. I don't recall reviewing them, I'm afraid, but I guess
22 I must have done.

23 Q. Thank you. If we can go to the comments that he made,
24 please, which is POL00059602. Thank you very much.
25 Here, under section 1 "Introduction", Mr Jenkins says:
190

1 trail to indicate what has happened. Without examining
2 the logs it is difficult to be any more specific."
3 Do you interpret that as another reference to the
4 ARQ data that could be obtained in this case?

5 A. I think it -- I'm not sure if I understood it to be the
6 ARQ data but I thought that data had been obtained in
7 this case.

8 Q. Well, data had been obtained in this case, you may
9 remember, and provided to the defence but was never
10 provided to Mr Jenkins; do you remember that?

11 A. No, I don't recall that and I think we were potentially
12 of the view that, with Mr Jenkins being at Fujitsu, he
13 could quite easily look at the data that Fujitsu held.

14 Q. Did you not understand that he was reliant on Post
15 Office in order to obtain the ARQ data?

16 A. No, I don't think I was.

17 Q. All right. If we can go to page 4, please, and
18 subsection vi. This is the defence request for all
19 Horizon system data for a particular period of time.
20 Mr Jenkins states:
21 "I assume that this is the data returned in the ARQs
22 by Fujitsu to Post Office Limited. I have not seen
23 this, but would be happy to examine it if required."
24 When you saw these comments from Mr Jenkins and the
25 repeated offer to look at the ARQ data, why was it that
192

1 you did not ensure he was provided with that underlying
 2 data?
 3 **A.** I was under the impression that he had the data.
 4 **Q.** Well, we know that, in fact, he is never provided with
 5 the data and he tries to obtain it for himself on the
 6 eve of trial; do you recall that?
 7 **A.** No, I'm afraid I don't.
 8 **Q.** Do you agree that, in these comments, Mr Jenkins is
 9 indicating that system malfunctions are possible and
 10 could be looked for in the logs?
 11 **A.** Yes, and he's also inviting the defence to supply some
 12 examples, which is, indeed, what I was trying to do, as
 13 well.
 14 **Q.** And that he's saying that he cannot be more specific
 15 unless he has examined those logs?
 16 **A.** Yes.
 17 **MS OLIVER:** Thank you. Those are my questions.
 18 **SIR WYN WILLIAMS:** Thank you, Ms Oliver.
 19 Thanks to all the legal representatives of Core
 20 Participants for their discipline in keeping to time
 21 limits.
 22 That's it, is it, Mr Blake? There are no further
 23 questions?
 24 **MR BLAKE:** That's correct, sir.
 25 **SIR WYN WILLIAMS:** So thank you, Mr Smith, for providing two
 193

1 detailed witness statements to the Inquiry and for
 2 answering questions over yesterday and today. I'm
 3 grateful to you.
 4 **THE WITNESS:** Very well. Thank you.
 5 **SIR WYN WILLIAMS:** We'll resume at 9.45 tomorrow morning?
 6 **MR BLAKE:** Yes, sir, with Mr Singh.
 7 **SIR WYN WILLIAMS:** Yes.
 8 **MR BLAKE:** Thank you.
 9 **(4.07 pm)**
 10 **(The hearing adjourned until 9.45 am the following day)**
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 12
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 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 194

INDEX

CHRISTOPHER CHARLES AUJARD (continued) .. 1
 Questioned by MS PAGE 2
 Questioned by MR MOLONEY 18
 Questioned by MR STEIN 33
 Questioned by MS OLIVER 43
 MARTIN JOHN SMITH (continued) 56
 Questioned by MR BLAKE (continued) 56
 Questioned by MS WATT 127
 Further questioned by MR BLAKE 139
 Questioned by MR MOLONEY 143
 Questioned by MR STEIN 153
 Questioned by MR HENRY 164
 Questioned by MS OLIVER 179

<p>MR BLAKE: [22] 56/2 56/4 56/9 102/1 113/9 113/16 113/18 113/22 113/24 127/11 127/19 139/13 139/16 139/22 139/24 142/25 164/11 164/13 164/18 193/24 194/6 194/8</p> <p>MR HENRY: [2] 164/23 171/5</p> <p>MR MOLONEY: [7] 18/23 32/23 143/4 143/7 146/16 146/18 153/4</p> <p>MR STEIN: [6] 33/4 43/1 153/11 153/15 153/17 164/4</p> <p>MR STEVENS: [7] 1/4 1/6 1/15 1/20 2/1 55/19 55/22</p> <p>MS OLIVER: [6] 43/5 50/25 55/10 179/5 179/10 193/17</p> <p>MS PAGE: [5] 2/3 11/2 15/6 15/11 18/20</p> <p>MS WATT: [5] 127/23 138/3 138/9 139/8 139/12</p> <p>SIR WYN WILLIAMS: [55] 1/5 1/14 1/21 10/17 11/1 15/9 17/9 17/19 17/23 18/9 18/19 18/21 33/1 42/24 43/3 50/24 55/2 55/8 55/12 55/20 55/23 56/3 56/6 100/13 100/19 101/2 101/5 101/14 113/14 113/17 113/23 127/17 127/20 138/7 139/7 139/9 139/14 139/20 143/1 145/25 146/4 146/10 153/6 153/13 164/6 164/12 164/14 164/21 170/24 179/1 179/8 193/18 193/25 194/5 194/7</p> <p>THE WITNESS: [3] 1/19 32/25 194/4</p> <hr/> <p>'13 [1] 139/14 'a [1] 8/4 'a presumption [1] 8/4 'balancing [2] 90/23 91/25 'Baskets [1] 22/20 'feature [1] 23/12 'formal [1] 21/4 'get [1] 7/11 'Horizon [1] 87/2</p>	<p>'However [1] 107/25 'It [1] 22/24 'Matter [1] 22/19 'missing [1] 36/18 'seeking [1] 8/5 'shredded [1] 60/2 'Specific [1] 22/17 'The [1] 51/14 'There [1] 3/14 'Tunnel [1] 8/6 'undone [1] 76/4 'We [1] 23/4</p> <hr/> <p>...</p> <p>1</p> <p>1 April [2] 30/4 31/8 1 January [3] 101/16 167/13 167/16 1 July [3] 143/9 151/15 170/14 1 June [1] 86/4 1 October [1] 85/25 1.54 [1] 113/21 1.55 [1] 113/16 10 [2] 1/12 164/9 10 years [1] 39/6 11 [1] 172/24 11.07 [1] 55/24 11.24 [1] 56/1 11.25 [2] 55/21 55/22 119001 [1] 74/19 12 [9] 1/12 7/15 34/1 130/16 140/24 141/3 142/6 142/16 162/1 12 June [1] 24/22 12.56 [1] 113/19 129 [1] 173/12 13 [5] 78/6 81/9 135/21 157/19 185/12 132 [1] 128/4 134 [1] 128/4 14 [3] 135/23 141/20 162/8 14 April [1] 51/7 14 August [1] 132/24 14 October [1] 45/16 14.38 [2] 143/2 143/5 148 [3] 47/1 47/4 47/5 149 [1] 47/4 15 [5] 1/11 1/11 16/12 153/11 164/9 15 July [11] 17/11 38/8 38/20 92/3 114/22 114/24 169/5 176/17 176/21 182/2 182/10 15 May [1] 19/25 15 minutes [3] 113/11 153/8 164/11 15 October [2] 46/17 102/10</p>	<p>15,000 [1] 78/3 16 [1] 45/20 16 July [1] 17/3 16 years [1] 95/21 17 June [1] 29/14 18 May [1] 83/3 18 minutes [1] 153/5 19 July [1] 62/7 19 September [1] 70/20</p> <hr/> <p>2</p> <p>2 September [2] 49/5 182/22 2,400 [1] 77/8 2,500 [1] 74/23 20 [2] 1/10 166/6 2005 [4] 75/1 76/7 76/18 107/17 2008 [1] 51/16 2010 [14] 78/2 78/19 86/1 98/9 101/13 101/17 154/14 165/8 167/9 167/13 167/16 170/14 170/18 170/20 2012 [4] 23/14 88/5 95/21 138/24 2013 [37] 2/4 12/12 19/19 38/20 45/1 46/17 47/7 49/5 52/23 70/20 102/10 102/13 102/25 128/2 128/6 128/15 129/12 130/16 130/20 138/24 139/12 139/13 139/15 143/9 151/15 163/3 174/7 174/9 177/1 177/4 178/7 178/20 182/2 182/22 184/14 188/14 190/17 2014 [33] 6/12 6/16 12/9 15/13 18/25 19/14 19/24 19/25 20/14 21/22 24/22 27/7 29/14 35/16 51/2 51/8 52/12 52/25 53/15 53/15 53/25 90/16 98/2 105/20 106/7 114/22 116/23 175/12 175/22 177/4 178/8 178/8 178/22 2015 [10] 86/22 87/10 91/7 92/3 94/5 94/7 122/9 123/6 126/14 139/11 2016 [13] 73/20 73/22 73/22 73/25 76/1 76/19 76/20 77/17 86/5 86/22 87/10 87/16 114/13 2019 [1] 114/6 2024 [1] 1/1 21 [2] 180/8 180/17 21 July [2] 30/17</p>	<p>31/17 217 [1] 23/18 22 January [5] 175/11 175/22 178/8 178/17 178/22 22 minutes [2] 143/2 143/5 23 June [1] 188/14 23 March [3] 73/21 73/25 75/25 23 May [2] 21/25 52/23 24 April [1] 38/7 24 February [1] 12/8 24 January [2] 177/4 178/7 24 May [1] 90/16 243 [1] 22/15 25 October [1] 107/17 254 [2] 22/6 22/9 255 [1] 23/17 26 [1] 34/1 26 April [1] 79/5 26 April 2016 [1] 77/17 27 [1] 34/1 27 August [1] 133/18 27 March [1] 91/7 28 June [3] 169/4 176/17 176/21 29 July [1] 130/20</p> <hr/> <p>3</p> <p>3' [1] 22/19 3.00 [1] 143/3 3.05 [1] 164/15 3.20 [2] 164/12 164/17 3.40 [1] 164/22 30 April [2] 19/14 20/4 30 March [1] 75/12 31 [2] 90/16 90/20 31 July [1] 59/20 33 [2] 174/10 175/20 37 [2] 185/12 185/13 38 [4] 157/19 157/20 185/12 185/19 393 [1] 3/10 394 [1] 9/9</p> <hr/> <p>4</p> <p>4 February [1] 190/17 4 June [2] 22/14 52/25 4 May [3] 80/7 80/10 80/11 4 October [3] 102/13 102/25 105/14 4 September [2] 134/12 140/1 4,800 [1] 77/9</p>	<p>4.05 [1] 179/9 4.07 [1] 194/9 4.2 [2] 22/17 25/9 4.2.1 [1] 25/9 4.2.2 [2] 25/9 25/11 42 [1] 102/11 45 [1] 162/1 47 [1] 47/2</p> <hr/> <p>5</p> <p>5 April [1] 76/20 5 December [5] 174/7 174/9 177/1 177/4 178/7 5 June [1] 15/13 5 September [2] 140/5 142/9 52 [1] 162/8 53 [1] 110/6</p> <hr/> <p>6</p> <p>6 May [1] 19/24</p> <hr/> <p>7</p> <p>72 pages [1] 22/3 78 [1] 116/22</p> <hr/> <p>9</p> <p>9 July [1] 98/1 9 May [2] 20/14 21/22 9 September [1] 184/14 9.44 [1] 1/2 9.45 [2] 194/5 194/10</p> <hr/> <p>A</p> <p>ab [1] 135/13 abbreviated [1] 37/12 abilities [1] 104/19 ability [5] 51/2 90/21 92/6 93/14 101/22 able [19] 18/25 22/7 26/1 32/11 47/17 48/14 55/3 70/14 71/8 77/23 85/8 88/20 99/10 104/8 114/10 123/12 125/9 142/21 154/3 about [141] 4/2 4/10 5/25 6/5 10/22 16/4 16/21 18/10 18/24 24/24 25/10 26/12 26/12 26/14 26/14 26/16 26/18 26/20 33/5 34/2 34/11 35/9 37/11 37/20 38/8 38/15 38/19 39/4 46/23 49/3 50/10 50/22 51/1 54/6 54/23 57/7 58/8 58/18 59/3 59/5 60/21 60/24 61/1 62/1 69/6 69/19 71/1</p>
---	---	--	--	--

A	94/15 99/24 114/15 118/1 142/19 accessible [1] 53/6 accord [1] 148/13 accordance [5] 12/15 87/4 155/20 177/6 182/3 according [2] 3/2 184/24 accordingly [3] 64/1 76/4 158/10 account [6] 15/24 35/11 36/18 36/19 132/14 189/18 accounted [1] 35/22 accounting [6] 7/2 7/12 19/6 75/16 77/6 120/12 accounts [8] 21/16 21/19 25/16 36/6 36/12 37/11 114/18 114/19 accuracy [1] 190/3 accurate [11] 64/23 65/8 69/10 69/21 69/24 70/6 70/7 70/9 153/9 153/11 171/15 accusation [1] 162/15 accused [3] 135/11 186/5 186/21 achieved [2] 137/4 150/8 acknowledge [1] 37/12 acknowledged [4] 50/7 180/1 187/20 189/12 acknowledgement [1] 52/8 acknowledgement/a pproval [1] 52/8 acquisitions [1] 33/7 across [4] 35/3 63/17 68/11 148/16 act [4] 65/17 155/17 156/1 156/5 acted [3] 11/24 12/2 12/24 acting [6] 80/13 80/14 80/16 80/20 83/5 159/25 action [27] 10/6 10/24 10/25 24/7 24/13 28/7 29/15 29/16 29/18 31/10 31/13 32/6 39/20 39/22 41/14 41/16 45/23 45/24 46/12 46/14 47/11 47/13 48/12 69/2 82/1 84/6 169/25 actioned [1] 19/25 actions [9] 5/11 5/12	17/17 25/5 29/22 31/18 32/4 32/4 41/13 actively [1] 167/25 actual [2] 78/13 126/1 actually [34] 32/9 64/7 64/9 68/18 69/14 69/15 71/19 95/14 96/1 97/21 98/18 101/22 114/2 125/21 125/22 125/25 126/23 130/6 130/8 131/18 136/14 136/23 137/17 137/20 137/20 137/25 144/16 146/21 150/23 174/3 181/10 184/22 184/22 184/23 ad [2] 71/10 170/19 ad hoc [1] 170/19 add [1] 176/15 added [2] 191/6 191/7 adding [2] 89/11 101/2 addition [3] 14/15 23/11 46/16 additional [6] 21/15 52/5 52/6 83/18 90/25 127/5 address [11] 30/2 31/7 36/17 88/15 88/17 88/22 110/25 114/7 114/10 116/2 190/7 addressed [3] 31/15 45/13 95/3 addresses [3] 89/17 89/19 111/2 adjourn [3] 130/7 130/7 146/11 adjourned [4] 130/5 146/6 152/25 194/10 adjournment [2] 113/20 130/10 adjustment [1] 5/16 admin [1] 25/15 administrative [1] 25/21 admission [1] 7/1 admissions [1] 135/12 admitting [1] 14/21 adopt [2] 167/23 170/13 adopted [1] 21/22 adopting [1] 9/6 advanced [1] 136/4 adversarial [3] 3/20 9/6 36/13 adversarialism [3] 4/24 8/23 8/25 adverse [3] 116/6 124/19 149/21 advice [119] 3/1 4/1	5/16 12/13 13/11 13/18 16/5 16/6 16/16 16/25 17/1 17/2 17/9 17/14 17/19 17/20 34/22 34/23 37/4 37/7 37/8 38/8 38/15 38/19 38/22 39/9 39/15 40/7 40/22 41/1 41/25 44/25 46/17 46/20 47/2 47/9 47/10 47/19 48/14 57/10 57/13 58/5 58/8 58/10 58/19 58/20 58/25 59/13 61/14 63/5 63/14 63/15 64/6 67/17 67/18 86/20 91/5 91/6 91/10 91/11 91/12 91/16 96/3 99/2 101/15 101/19 102/12 104/13 106/11 106/13 106/18 106/19 110/10 113/25 114/21 114/24 115/2 116/22 119/21 120/20 120/23 121/1 121/6 128/20 128/25 132/15 136/9 147/5 156/14 157/16 159/2 159/6 159/7 159/8 161/6 161/7 161/17 161/19 161/22 162/5 162/8 163/7 169/5 170/22 172/13 173/3 178/17 181/4 181/6 181/24 182/2 182/9 182/11 182/13 182/17 185/11 186/5 186/13 186/21 advices [3] 114/23 163/10 163/18 advise [11] 17/16 98/3 107/10 115/25 117/1 117/12 123/1 126/6 157/24 163/17 181/13 advised [19] 14/2 38/12 49/12 58/21 67/16 85/24 87/1 96/12 96/20 98/25 101/12 104/9 105/24 134/3 165/6 181/12 181/15 183/15 183/22 advising [10] 14/1 38/11 68/15 93/18 94/16 111/9 111/24 112/3 117/18 173/20 advocate [4] 137/9 154/12 154/12 154/14 advocates [1] 153/22 affair [1] 111/18 affect [2] 77/5 85/20 affected [6] 76/13 76/14 76/17 78/24 82/25 118/23 affecting [1] 85/11	affects [1] 85/16 afraid [34] 13/3 38/22 54/20 57/5 74/14 75/17 78/11 115/3 121/5 126/25 142/24 146/3 146/14 147/18 148/24 149/18 150/10 150/20 151/1 151/10 151/18 152/18 153/2 154/3 170/5 171/4 176/15 178/16 183/23 186/23 187/10 187/24 190/21 193/7 after [29] 1/15 5/3 24/6 27/5 29/14 49/13 49/19 56/9 60/7 67/20 79/1 79/14 83/21 83/21 85/2 94/23 97/11 112/5 113/11 114/15 114/15 118/25 126/13 126/13 142/5 143/20 159/12 167/13 167/16 afternoon [5] 30/12 113/22 127/24 179/12 183/21 afterwards [1] 26/22 again [20] 9/12 27/14 32/12 44/16 44/22 61/10 61/16 74/7 82/17 83/16 114/11 114/22 127/6 147/19 155/25 161/9 164/12 173/9 177/8 177/13 against [14] 14/10 30/7 61/4 70/16 115/9 117/2 117/18 124/15 146/11 168/8 171/6 172/12 176/20 189/22 agency [4] 79/13 80/12 95/12 114/17 agenda [2] 71/21 83/11 agendas [1] 71/11 ago [5] 57/6 75/17 113/7 148/25 183/24 agree [54] 9/5 30/23 35/4 36/25 40/9 40/23 50/6 50/15 53/14 53/19 53/25 54/3 68/7 103/7 129/4 132/14 133/19 133/25 134/14 137/11 138/16 143/5 153/21 153/24 154/14 154/18 154/18 154/25 154/25 156/19 158/4 158/12 158/16 160/5 161/12 161/13 163/3 166/18 167/24 170/8 170/21 172/22 172/23 176/24 176/25 181/20 181/25 186/24 187/6 189/2 189/5 189/16 191/14 193/8
----------	---	---	---	---

<p>A</p> <p>agreed [10] 15/1 24/25 32/5 86/11 86/15 105/2 123/20 133/2 141/22 176/25</p> <p>agreeing [1] 86/7</p> <p>agreement [1] 116/8</p> <p>ahead [2] 81/21 123/18</p> <p>aide [1] 85/10</p> <p>aim [1] 8/5</p> <p>aimed [2] 16/18 16/21</p> <p>Alan [1] 51/14</p> <p>alarming [1] 115/12</p> <p>alerts [1] 25/22</p> <p>Alice [1] 2/16</p> <p>alienated [1] 8/18</p> <p>Alisdair [2] 36/5 37/14</p> <p>alive [1] 126/4</p> <p>all [103] 4/21 4/23 8/18 11/1 14/2 16/18 16/23 18/19 22/8 25/3 30/3 31/7 31/19 32/11 32/23 34/22 35/7 37/24 38/12 39/24 42/24 46/5 48/9 48/15 50/1 50/4 55/8 55/12 63/9 65/18 65/19 66/10 71/20 77/24 78/1 78/10 78/18 81/2 83/21 83/21 90/8 94/19 94/23 96/9 97/14 99/11 101/3 101/14 101/24 104/17 105/3 113/12 113/17 116/15 116/20 117/13 118/25 121/14 125/5 125/17 126/11 126/12 127/12 129/14 130/3 130/15 132/15 134/15 134/23 136/1 136/8 137/6 137/10 139/5 140/18 141/11 147/10 147/13 148/24 150/11 151/2 151/9 156/12 156/14 159/23 167/9 169/25 178/4 178/5 178/10 178/24 179/16 181/15 184/11 185/10 186/12 186/16 186/19 188/11 190/6 192/17 192/18 193/19</p> <p>allegations [4] 7/22 14/5 61/3 135/9</p> <p>alleged [3] 47/18 47/22 162/3</p> <p>allegedly [3] 9/4 61/5 128/12</p> <p>allocated [1] 113/12</p> <p>allocation [1] 127/18</p> <p>allow [2] 108/1 125/1</p>	<p>allowed [4] 15/6 115/10 115/20 138/5</p> <p>allows [2] 90/24 163/17</p> <p>almost [6] 23/21 25/17 66/20 68/1 149/17 177/12</p> <p>alone [2] 27/1 47/24</p> <p>along [4] 24/12 69/1 130/21 145/5</p> <p>already [7] 26/7 119/12 131/19 169/3 169/9 178/12 185/14</p> <p>also [38] 8/20 9/8 14/16 18/17 19/17 26/18 33/13 40/18 42/9 50/9 62/1 62/6 62/11 65/1 66/20 67/6 70/21 81/24 90/10 98/25 100/10 106/19 107/10 107/22 123/3 124/21 128/24 129/9 134/2 155/3 161/6 161/20 161/23 168/18 180/1 180/5 191/16 193/11</p> <p>alter [1] 19/1</p> <p>alternative [2] 93/4 106/3</p> <p>alternatively [2] 124/1 185/1</p> <p>although [10] 2/14 4/11 9/11 21/15 22/15 52/20 53/2 70/11 83/5 171/7</p> <p>Altman [28] 15/14 16/10 16/12 17/1 46/17 50/14 92/13 99/2 101/15 102/10 102/11 119/20 120/2 120/4 133/14 133/18 164/25 165/6 168/18 170/22 172/11 173/9 173/11 173/13 173/17 184/13 185/6 187/8</p> <p>Altman's [1] 47/16</p> <p>always [4] 21/17 25/14 34/16 69/8</p> <p>am [16] 1/2 36/15 38/2 46/22 50/20 55/24 56/1 107/13 113/25 124/9 150/22 166/15 176/10 176/15 191/24 194/10</p> <p>amend [1] 21/1</p> <p>amended [2] 19/20 107/11</p> <p>ammunition [1] 103/14</p> <p>among [1] 66/9</p> <p>amongst [2] 140/1 140/7</p> <p>amount [6] 11/24 64/19 101/21 106/25</p>	<p>123/12 156/9</p> <p>amounted [1] 135/25</p> <p>amounts [3] 13/7 136/5 142/2</p> <p>analysed [1] 191/15</p> <p>analysis [2] 89/22 191/10</p> <p>Andrew [15] 20/14 20/19 25/1 65/15 67/6 67/7 74/18 75/14 75/15 91/22 92/4 93/9 98/1 105/23 106/17</p> <p>Andy [8] 51/14 58/11 75/1 76/23 107/7 116/25 122/13 122/16</p> <p>Angela [3] 20/16 20/19 24/25</p> <p>angle [1] 34/17</p> <p>annexed [1] 44/25</p> <p>announcement [1] 135/3</p> <p>annoying [1] 33/21</p> <p>anomalies [1] 7/6</p> <p>another [10] 11/2 15/2 114/22 118/18 138/4 138/5 149/11 149/15 176/2 192/3</p> <p>answer [23] 4/7 17/24 20/7 20/20 21/3 37/2 37/24 38/4 38/21 44/7 48/11 48/13 51/10 52/3 52/16 54/16 55/5 85/19 115/3 156/10 166/7 181/16 182/6</p> <p>answered [2] 38/14 77/15</p> <p>answering [2] 39/12 194/2</p> <p>answers [4] 52/24 53/24 168/22 169/2</p> <p>Anthony [13] 11/10 11/18 11/20 12/23 13/5 14/9 35/17 119/22 119/25 120/20 120/25 121/11 121/14</p> <p>anticipated [1] 4/13</p> <p>anticipating [1] 74/9</p> <p>any [89] 2/19 6/20 7/8 7/14 7/19 7/21 10/24 10/25 16/2 16/4 16/11 23/4 23/24 25/17 37/6 41/8 42/3 43/18 46/5 47/19 48/12 48/16 57/16 62/18 63/23 73/10 77/22 81/9 82/23 84/14 87/5 87/7 89/23 89/25 91/10 91/19 94/19 96/23 98/6 98/14 98/17 98/19 99/14 100/8 101/10 101/17 107/4 110/21 110/25 111/6 115/2</p>	<p>115/25 117/2 118/2 119/14 121/17 122/25 123/23 124/5 124/9 139/4 141/8 141/13 148/19 150/2 150/20 151/1 151/13 151/17 159/8 160/20 163/7 167/16 169/13 170/6 175/24 176/20 176/22 178/3 178/21 178/23 183/25 185/5 186/24 187/24 189/8 189/10 191/7 192/2</p> <p>anybody [3] 2/21 6/21 159/3</p> <p>anyone [12] 20/25 38/19 49/14 50/17 58/17 85/9 163/1 172/12 172/16 175/18 184/1 187/1</p> <p>anything [14] 7/20 69/19 94/14 94/22 98/22 108/23 109/2 110/17 158/21 159/11 160/13 173/25 176/15 191/5</p> <p>anyway [5] 20/12 43/2 143/17 146/6 146/25</p> <p>anywhere [2] 29/24 136/12</p> <p>apologise [2] 168/25 171/11</p> <p>apologising [1] 171/23</p> <p>apology [5] 11/15 171/17 171/24 172/6 174/3</p> <p>apparent [5] 2/11 21/24 27/1 167/19 181/3</p> <p>apparently [3] 67/14 162/10 163/20</p> <p>appeal [28] 102/20 104/1 115/23 116/14 119/16 121/18 121/24 122/6 122/10 122/23 123/8 124/7 125/8 125/10 125/10 125/11 125/14 125/17 125/23 126/16 126/17 167/23 168/1 169/22 169/23 170/10 172/19 177/23</p> <p>appealing [2] 121/18 122/3</p> <p>appeals [2] 125/14 125/17</p> <p>appear [9] 7/4 31/3 36/21 36/23 66/23 101/3 125/20 142/22 176/14</p> <p>appeared [5] 27/20 62/12 136/25 169/18 185/25</p>	<p>appears [9] 8/3 15/17 22/16 22/24 42/18 108/1 182/24 184/5 185/4</p> <p>appended [1] 17/20</p> <p>appendices [1] 22/4</p> <p>appendix [1] 39/17</p> <p>appetite [1] 35/5</p> <p>applicant [9] 103/13 107/16 107/22 109/25 115/8 115/18 115/19 121/23 124/6</p> <p>applicants [15] 4/11 11/6 103/20 104/5 109/4 109/14 110/14 111/11 111/20 111/22 111/23 114/21 116/19 125/25 170/19</p> <p>applicants' [1] 11/20</p> <p>application [26] 144/15 145/4 145/6 145/7 145/10 145/11 145/13 146/22 147/6 147/8 147/8 147/20 147/25 148/3 148/17 148/20 149/8 150/9 151/4 151/6 151/14 151/20 152/3 152/8 152/13 172/8</p> <p>applications [3] 115/11 116/7 148/15</p> <p>applied [5] 4/11 117/8 155/15 155/23 166/21</p> <p>apply [3] 143/18 155/7 156/7</p> <p>appreciated [1] 27/5</p> <p>appreciating [1] 176/7</p> <p>appreciation [1] 148/14</p> <p>approach [20] 3/13 9/7 37/1 61/25 64/17 72/24 94/15 96/10 110/19 111/5 111/7 116/21 118/7 119/10 120/10 124/6 137/1 137/23 167/23 171/19</p> <p>approached [1] 68/21</p> <p>appropriate [13] 18/13 30/6 32/1 53/21 72/3 84/6 95/16 111/7 112/15 113/9 124/16 137/24 159/25</p> <p>appropriated [1] 36/19</p> <p>appropriately [2] 44/4 106/4</p> <p>approval [8] 20/1 51/4 52/8 52/9 53/12 53/18 54/2 54/7</p> <p>approximately [1] 186/11</p>
---	--	---	--	--

A	128/10	43/20 58/13 66/13 71/8 77/23 88/25 98/10 122/12 136/20 142/21 146/20 147/19 191/13 191/18 assisting [2] 91/10 160/10	10/11 10/18 12/4 12/18 17/9 18/23 20/18 22/8 26/13 27/7 27/16 29/11 29/25 30/17 31/3 32/23 33/4 36/6 41/19 42/6 42/17 43/6 55/3 90/17 109/7 120/8 120/15 121/3 195/2	181/1 back' [1] 7/11 back-end [1] 21/8 backflip [1] 176/4 background [9] 10/9 10/20 33/6 37/9 45/22 48/2 69/17 123/5 124/22 bad [2] 13/25 160/18 bag [2] 171/18 171/18 balance [1] 81/15 balancing [13] 26/14 53/5 53/16 54/1 54/6 90/22 92/5 92/10 92/15 92/18 92/23 93/8 93/11 Bank [1] 33/14 bar [3] 136/14 136/17 154/17 barely [1] 42/3 barking [1] 69/17 based [7] 26/7 30/8 34/5 34/23 75/5 75/9 176/12 baseline [1] 96/14 basic [2] 50/10 158/24 basically [6] 35/18 40/21 99/13 131/11 158/2 173/17 basis [21] 4/17 24/4 26/4 48/23 71/10 74/3 79/13 80/12 85/18 93/2 95/12 103/16 108/4 111/3 114/17 126/20 128/12 129/18 129/23 170/16 172/1 be [316] became [11] 2/11 5/3 5/4 59/20 74/3 94/21 96/24 97/24 126/22 180/22 181/3 because [78] 6/10 19/24 28/13 29/4 33/9 33/21 49/1 50/9 60/7 61/24 65/9 67/3 67/15 68/4 69/8 69/16 70/1 70/11 72/25 75/20 77/24 85/22 88/2 88/10 91/17 94/9 94/22 95/17 99/22 99/23 99/24 100/7 100/14 101/1 108/15 117/21 118/12 122/6 123/7 123/24 123/25 124/15 128/10 128/19 129/14 130/8 133/3 135/14 135/20 136/20 143/18 144/7 146/21 148/24 151/21 151/22 152/5 156/25 160/8 161/8 168/23 169/10 170/25 171/5 171/17
April [13] 19/14 20/4 30/4 31/8 31/20 38/7 51/7 52/12 53/14 53/25 76/20 77/17 79/5 Arbuthnot [2] 5/2 5/5 architects [2] 132/8 132/19 architecture [1] 100/10 archived [1] 78/17 archiving [1] 78/6 are [109] 1/7 6/25 14/5 17/12 20/24 21/13 21/18 22/21 24/20 26/4 26/10 28/3 28/4 34/22 37/3 39/5 39/24 40/19 50/19 52/20 53/20 54/18 54/19 57/2 57/16 58/5 58/6 58/7 64/4 66/1 66/1 68/12 69/6 71/4 71/4 71/8 72/18 73/22 73/25 79/22 80/4 85/5 88/20 91/3 91/4 95/7 100/22 104/23 106/14 106/17 109/13 109/13 109/21 111/4 111/5 111/15 114/9 115/13 117/11 120/24 122/19 123/24 124/22 124/22 127/12 131/6 131/8 133/4 134/19 138/20 138/23 138/25 139/2 139/7 140/7 141/2 142/21 152/11 153/8 154/4 154/12 154/20 154/22 157/1 157/1 157/22 158/19 159/18 160/9 160/21 164/24 165/1 165/3 166/23 167/3 174/17 176/9 178/16 179/24 182/15 183/13 185/12 185/21 187/17 187/18 191/4 193/9 193/17 193/22 area [1] 88/23 areas [2] 25/14 45/19 aren't [3] 85/5 136/11 154/20 arena [3] 64/21 108/11 117/9 arguably [1] 43/20 argue [2] 87/8 103/14 arguments [1] 117/9 arise [5] 98/6 101/10 107/24 123/2 126/7 arisen [1] 131/25 arises [1] 135/14 arising [4] 29/22 94/11 99/12 174/18 arose [2] 12/12	around [8] 2/12 9/2 58/7 92/10 97/23 134/5 183/7 190/9 ARQ [4] 192/4 192/6 192/15 192/25 ARQs [1] 192/21 arrange [1] 30/25 arranged [1] 13/8 arrival [6] 5/15 12/14 38/24 41/11 41/12 48/10 arrived [5] 17/22 18/6 37/9 37/25 45/15 arrow [1] 183/14 as [238] ascertain [1] 47/20 ascribed [1] 62/18 ask [32] 18/23 20/13 27/25 28/3 32/24 33/4 33/22 34/2 41/23 41/25 43/6 48/16 48/22 48/23 50/21 65/9 75/1 76/11 101/20 128/1 136/7 149/14 155/25 157/17 158/24 164/8 168/22 169/1 175/10 178/18 178/24 179/6 asked [42] 6/17 9/20 12/18 16/21 19/18 19/22 20/24 26/19 28/16 37/11 38/5 38/7 38/25 39/13 44/13 44/14 49/3 51/1 51/25 55/4 56/22 58/18 75/4 84/12 89/12 92/9 92/17 94/18 97/20 100/18 115/5 120/24 121/7 124/9 130/1 146/12 150/12 150/18 162/5 164/21 180/12 191/1 asking [13] 4/1 52/23 74/10 75/8 81/18 82/2 85/19 101/18 127/15 146/1 146/6 146/10 150/24 asks [1] 66/3 aspect [3] 149/6 149/11 149/15 aspects [2] 34/3 34/22 asserted [1] 53/10 asserting [1] 149/7 assertion [2] 3/16 4/25 assertions [2] 7/5 8/16 assessed [1] 177/17 assessment [1] 116/15 asset [1] 7/16 assist [15] 23/25	associated [1] 176/22 assume [3] 101/5 123/18 192/21 assumed [4] 38/22 39/21 39/25 58/16 assuming [4] 39/9 39/11 40/3 42/2 assumption [3] 39/24 46/8 46/10 assumptions [1] 178/16 assurance [6] 30/3 31/7 31/19 32/1 75/4 75/8 assurances [2] 45/12 46/9 assure [1] 15/9 assured [1] 23/13 at [320] at page 42 [1] 102/11 attached [6] 29/21 29/24 30/23 69/3 107/8 110/7 attaching [1] 175/23 attachment [1] 29/17 attacking [1] 110/16 attempt [3] 9/22 117/6 121/22 attempted [2] 56/14 155/20 attempting [1] 17/6 attempts [1] 64/19 attend [1] 128/6 attendance [5] 150/14 150/15 150/16 150/25 152/14 attendee [1] 66/8 Attendees [1] 65/18 attending [4] 1/16 55/14 79/22 80/17 attention [8] 7/5 10/11 41/17 46/1 48/16 94/3 110/18 182/11 attitude [4] 9/2 36/22 36/24 40/8 audience [1] 36/13 audit [8] 21/13 22/21 22/25 23/8 23/9 24/3 24/3 31/24 audited [1] 89/23 auditors [1] 135/12 August [3] 132/24 133/18 134/2 AUJARD [35] 1/3 1/7 1/16 1/17 1/22 3/23	away [3] 3/6 16/19 41/6 B back [21] 1/15 3/4 8/11 21/8 26/19 37/11 39/6 39/6 39/8 62/19 69/23 75/1 76/7 76/18 79/2 86/18 88/4 139/24 142/18 176/17	

B	believe [69] 2/18 4/5 4/8 4/16 4/18 5/6 5/7 6/17 8/19 10/19 12/8 12/16 13/2 13/15 15/19 17/3 17/20 24/9 24/11 37/1 41/8 41/8 42/23 45/20 47/24 48/5 48/21 48/23 50/3 50/17 51/18 52/13 54/10 54/10 54/15 54/23 57/3 73/8 79/7 79/18 85/21 89/3 90/6 96/19 96/22 99/2 110/16 112/20 114/11 114/12 114/13 114/15 126/18 126/22 129/11 129/18 130/1 130/4 142/17 142/18 143/25 145/18 146/8 160/13 171/21 173/10 186/18 189/7 189/8	board [40] 3/1 3/8 3/25 4/5 4/12 4/14 5/13 5/17 5/23 5/23 11/3 11/5 13/11 14/1 14/10 14/13 14/15 19/13 20/3 22/13 33/22 34/24 35/6 38/11 38/19 38/24 39/10 39/15 40/9 41/3 41/6 41/21 41/21 42/1 42/2 42/20 42/22 50/13 52/25 154/17	breach [2] 110/14 158/7	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23
because... [13] 172/10 174/8 175/7 175/11 177/1 177/21 177/22 178/11 182/1 185/25 186/7 187/12 189/8	board [40] 3/1 3/8 3/25 4/5 4/12 4/14 5/13 5/17 5/23 5/23 11/3 11/5 13/11 14/1 14/10 14/13 14/15 19/13 20/3 22/13 33/22 34/24 35/6 38/11 38/19 38/24 39/10 39/15 40/9 41/3 41/6 41/21 41/21 42/1 42/2 42/20 42/22 50/13 52/25 154/17	breached [1] 45/6 breaching [2] 186/5 186/22	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
become [13] 8/21 31/15 67/22 97/7 97/11 99/11 111/21 123/15 160/8 165/24 184/17 184/23 187/19	board [40] 3/1 3/8 3/25 4/5 4/12 4/14 5/13 5/17 5/23 5/23 11/3 11/5 13/11 14/1 14/10 14/13 14/15 19/13 20/3 22/13 33/22 34/24 35/6 38/11 38/19 38/24 39/10 39/15 40/9 41/3 41/6 41/21 41/21 42/1 42/2 42/20 42/22 50/13 52/25 154/17	break [9] 1/23 55/16 55/17 55/25 113/10 143/3 153/10 164/7 164/16	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
been [231]	Board's [2] 5/15 20/1	Brian [9] 16/25 46/17 92/13 120/4 133/14 133/18 164/25 184/13 185/6	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
before [23] 15/18 21/21 24/12 28/5 33/22 34/18 42/1 56/22 79/18 79/19 87/25 92/9 110/10 114/2 114/3 134/5 138/24 144/17 149/2 153/9 154/14 170/24 180/22	boards [2] 33/19 41/22	Brian's [1] 119/21	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
beginning [5] 8/9 41/20 47/5 86/19 100/23	body [2] 42/19 131/3	brief [5] 13/12 13/15 40/15 141/4 141/16	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
behind [1] 127/24	Bogerd [3] 20/16 20/19 24/25	briefed [1] 43/9	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
being [83] 7/22 20/11 21/3 21/22 21/24 31/21 38/4 39/13 39/17 39/20 41/4 44/13 44/14 45/13 46/8 49/18 50/1 52/2 52/11 58/17 58/24 59/22 60/13 60/21 67/5 68/2 68/3 68/3 69/11 69/21 71/17 72/20 73/4 74/5 78/25 81/9 81/11 81/12 84/18 85/20 87/12 89/20 98/7 98/13 103/14 104/2 104/13 104/16 105/8 105/18 105/20 108/17 113/1 116/21 117/15 119/25 122/25 124/9 125/4 125/9 129/17 134/6 134/14 135/20 136/12 137/19 143/24 149/10 155/22 156/24 167/14 168/14 169/5 170/20 173/23 176/9 176/10 176/10 177/6 183/25 184/18 189/25 192/12	Bond [17] 4/18 15/19 17/5 18/4 18/17 20/15 29/6 67/9 67/10 105/5 105/5 111/1 111/9 111/17 112/1 123/17 125/1	briefings [1] 46/11	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
beforehand [1] 94/9	Bond [17] 4/18 15/19 17/5 18/4 18/17 20/15 29/6 67/9 67/10 105/5 105/5 111/1 111/9 111/17 112/1 123/17 125/1	bring [7] 3/10 11/10 22/7 65/18 71/23 139/24 159/4	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
beginning [5] 8/9 41/20 47/5 86/19 100/23	border [1] 131/2	bringings [1] 46/11	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
begins [1] 140/11	boss [1] 27/24	bring [7] 3/10 11/10 22/7 65/18 71/23 139/24 159/4	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17 142/19 143/5 143/10 143/17 144/18 145/25 146/5 147/3 147/10 148/6 148/8 148/18 148/25 151/1 152/13 152/23 153/12 154/11 158/1 160/12 161/16 165/3 165/21 167/15 167/18 167/20 169/22 170/7 170/14 170/18 177/7 177/20 177/21 178/15 184/9 186/19 187/4 190/21 192/6 192/9 192/23	
behalf [7] 43/6 127/14 131/1 146/22 155/6 159/25 179/6	both [10] 5/12 13/23 27/24 44/20 50/8 53/14 150/6 163/24 177/23 181/17	bringings [1] 46/11	53/11 54/17 57/19 57/20 57/22 59/9 61/4 62/6 62/23 64/12 64/21 66/20 67/6 67/21 67/22 68/8 68/16 68/19 69/17 69/20 72/2 72/16 74/3 74/14 77/25 78/4 79/22 80/1 80/11 81/13 81/24 82/10 83/15 84/19 85/3 85/13 85/14 86/22 88/4 90/4 90/13 90/17 91/10 97/15 97/23 99/9 101/1 101/10 102/5 104/12 104/21 105/6 106/19 106/24 109/1 111/24 114/12 114/24 115/13 119/11 120/23 123/9 123/11 123/17 124/2 125/20 126/4 126/21 128/4 129/19 131/3 132/12 136/24 138/24 139/17	

<p>C</p> <p>calling [6] 41/24 43/23 119/3 131/6 131/16 160/12</p> <p>calls [10] 62/16 63/17 66/21 68/1 70/21 74/2 74/4 103/2 159/19 161/21</p> <p>came [5] 41/19 70/10 81/13 97/9 178/25</p> <p>Cameron [2] 36/5 37/15</p> <p>can [163] 1/4 1/5 1/17 1/17 1/19 1/22 5/7 11/10 15/10 17/9 20/13 22/4 22/8 24/18 24/20 25/3 29/12 29/15 30/25 32/10 33/5 35/7 36/1 36/2 36/12 36/15 37/4 39/5 39/6 39/8 39/11 40/25 42/17 42/21 44/1 44/2 47/1 47/6 49/4 49/6 50/22 51/5 51/11 51/20 51/24 52/1 52/5 52/21 53/1 53/2 53/7 56/2 57/9 57/12 57/13 57/18 58/13 59/15 63/5 63/20 65/11 66/13 66/14 68/9 68/11 68/23 69/9 70/4 70/19 73/20 74/6 76/19 77/4 79/2 80/5 80/6 80/25 83/3 83/11 86/4 86/7 86/18 87/23 88/1 88/4 88/18 88/23 88/25 91/7 97/5 97/6 97/25 98/10 99/7 99/9 100/20 102/7 102/10 103/8 105/16 105/16 109/6 113/11 113/16 113/22 113/23 114/20 116/18 116/22 119/13 119/18 120/3 120/8 120/14 120/23 122/12 122/25 124/10 124/13 127/25 130/15 132/23 133/13 134/8 135/1 139/17 139/24 143/2 143/16 148/23 150/22 151/22 153/7 157/19 160/4 164/8 166/20 168/22 172/10 172/15 175/2 176/17 178/5 178/8 178/10 178/24 179/7 182/19 182/21 183/1 184/11 184/21 185/10 185/11 187/4 188/12 190/16 190/23 191/5 191/15 191/19 191/23 192/17</p> <p>can't [27] 10/23 10/24 28/8 47/8 68/19</p>	<p>73/18 93/5 93/6 105/15 114/11 123/9 126/25 143/10 143/14 146/1 146/3 146/14 146/14 148/5 148/16 151/17 162/23 170/11 170/14 176/15 183/23 184/10</p> <p>candid [1] 49/25</p> <p>candidly [2] 179/18 180/1</p> <p>candour [1] 50/7</p> <p>cannot [16] 47/12 52/4 60/11 60/12 90/3 93/13 94/3 98/22 99/18 103/1 107/20 109/1 115/5 147/18 178/23 193/14</p> <p>capacity [3] 6/6 79/21 80/6</p> <p>captured [1] 69/7</p> <p>car [2] 56/11 67/13</p> <p>careful [2] 74/7 173/20</p> <p>carriage [1] 178/6</p> <p>carried [2] 108/12 130/25</p> <p>carry [1] 153/14</p> <p>carrying [1] 9/14</p> <p>Cartwright [96] 4/19 17/1 17/2 17/16 18/18 40/2 42/8 43/9 45/12 48/17 56/22 57/4 57/6 58/1 58/20 58/21 58/21 58/24 59/1 59/10 60/25 61/2 61/4 66/16 67/9 72/9 79/2 79/7 79/10 79/12 79/17 79/19 79/20 80/8 80/10 80/11 80/12 80/14 83/4 83/6 83/9 85/1 85/2 85/2 93/24 95/15 102/15 102/21 103/3 103/17 103/24 104/2 105/3 105/11 106/11 106/14 106/15 109/10 110/15 111/2 111/20 112/16 113/5 114/3 114/7 114/10 114/12 114/16 114/18 118/7 120/1 121/9 125/12 130/22 153/19 161/24 162/6 162/10 162/20 163/4 163/25 173/14 174/21 174/22 175/5 180/1 180/18 180/22 181/17 181/21 182/8 186/10 186/13 187/3 187/13 187/21</p> <p>case [83] 9/3 16/11 32/16 43/25 51/14 66/6 66/7 69/5 72/6 72/7 73/9 73/10 76/21</p>	<p>87/8 88/9 88/10 89/2 89/3 89/13 90/4 90/8 102/17 103/14 104/2 105/13 105/17 105/19 111/3 111/3 114/16 118/16 122/9 122/19 123/11 124/13 126/5 129/17 129/17 130/7 137/18 141/23 143/8 144/24 147/7 148/2 153/17 166/9 166/13 167/16 167/17 168/6 168/6 168/15 168/20 170/5 170/6 170/16 170/16 171/6 171/9 174/11 174/15 175/13 175/16 175/19 176/12 177/6 177/17 179/14 179/15 180/11 189/5 189/7 189/9 189/22 190/8 190/12 191/1 191/2 191/14 192/4 192/7 192/8</p> <p>cases [52] 7/19 11/15 13/6 15/4 18/5 50/9 66/18 85/25 94/19 95/12 96/21 98/6 98/7 99/5 100/1 101/13 101/16 102/16 103/4 106/25 109/18 120/11 123/4 125/14 127/16 128/12 130/7 132/5 133/3 133/15 133/15 134/23 134/25 135/14 137/17 137/19 138/20 138/23 138/23 139/1 139/2 139/4 140/18 141/25 156/5 156/7 160/11 167/9 167/13 169/25 170/1 179/19</p> <p>Cash [2] 89/5 162/22</p> <p>Cash's [1] 162/25</p> <p>cast [2] 43/19 176/21</p> <p>casual [1] 174/2</p> <p>cat [2] 171/17 171/18</p> <p>catching [2] 83/12 84/5</p> <p>categorically [1] 90/3</p> <p>catered [1] 25/17</p> <p>cause [3] 7/8 78/15 94/19</p> <p>caused [3] 22/10 76/7 87/12</p> <p>causing [1] 85/12</p> <p>caveat [2] 6/9 6/19</p> <p>caveatted [4] 6/19 9/25 10/13 98/20</p> <p>CCRC [9] 15/13 15/22 16/3 18/7 18/13 50/14 112/5 124/21 187/9</p> <p>central [22] 21/10 58/19 58/22 61/6</p>	<p>62/21 62/25 64/22 65/17 67/5 67/16 68/2 70/3 73/14 75/23 82/11 83/17 84/16 84/24 85/4 85/6 85/8 133/10</p> <p>centrally [3] 59/22 65/20 90/25</p> <p>centre [3] 21/10 21/12 46/1</p> <p>certain [8] 9/4 9/22 70/8 70/9 70/16 70/18 112/9 190/12</p> <p>certainly [23] 2/19 5/20 5/21 23/21 52/19 64/18 64/21 65/22 66/18 67/2 67/22 69/17 79/12 80/17 94/10 95/18 156/3 167/24 174/22 178/1 182/8 186/16 188/2</p> <p>certainty [1] 99/14</p> <p>certificate [1] 152/19</p> <p>certification [2] 20/24 32/9</p> <p>certification' [1] 21/5</p> <p>cetera [9] 64/16 76/11 96/2 119/2 169/17 169/17 169/20 169/20 169/20</p> <p>CFO [1] 37/9</p> <p>chain [3] 52/13 52/18 52/19</p> <p>chaired [2] 13/5 30/17</p> <p>Chairman [2] 27/17 175/2</p> <p>challenge [1] 51/11</p> <p>challenged [4] 3/14 46/22 47/17 74/23</p> <p>challenges [3] 2/23 88/15 170/20</p> <p>challenging [1] 69/8</p> <p>chambers [2] 152/16 152/17</p> <p>chance [3] 122/25 124/10 190/3</p> <p>change [9] 19/18 51/21 52/1 52/2 52/9 52/15 68/18 68/20 89/25</p> <p>changed [4] 52/5 64/18 72/24 167/15</p> <p>changes [6] 24/2 25/21 25/23 31/25 57/15 57/20</p> <p>changing [3] 62/1 62/9 62/12</p> <p>characterise [2] 13/2 37/8</p> <p>charge [3] 89/6 89/7 162/23</p> <p>CHARLES [2] 1/3 195/2</p>	<p>chaser [2] 15/21 15/23</p> <p>cheated [1] 8/21</p> <p>check [2] 1/17 190/3</p> <p>checks [1] 26/11</p> <p>Cheers [1] 120/18</p> <p>cheque [1] 78/1</p> <p>cheques [1] 74/22</p> <p>Chesterfield [1] 30/10</p> <p>Chris [7] 29/25 29/25 109/7 120/8 120/15 120/18 121/3</p> <p>CHRISTOPHER [2] 1/3 195/2</p> <p>CIO [1] 23/19</p> <p>circulated [2] 66/9 70/1</p> <p>circulating [1] 57/12</p> <p>circulation [1] 12/11</p> <p>circumstances [15] 4/21 29/8 39/16 47/20 53/20 70/18 100/22 101/17 106/2 106/4 144/15 151/21 152/8 178/22 181/9</p> <p>civil [17] 7/16 65/1 68/4 68/15 68/22 73/8 73/13 74/5 82/17 83/19 87/20 87/21 168/7 169/16 169/17 169/21 177/23</p> <p>claim [1] 14/4</p> <p>claims [1] 168/7</p> <p>clarification [2] 19/9 81/4</p> <p>Clarke [110] 5/16 16/5 16/6 16/16 17/10 38/8 38/15 38/19 39/9 39/15 40/6 41/1 44/25 57/12 59/16 60/16 61/11 62/3 62/4 67/18 79/9 79/16 91/5 91/12 92/5 93/17 94/2 94/6 94/16 96/3 98/25 101/19 104/8 104/9 104/10 104/16 104/25 106/20 106/22 109/8 114/1 114/13 124/12 126/23 128/7 128/19 128/25 129/18 129/20 130/4 130/23 132/15 134/3 134/13 134/17 135/21 141/6 141/10 142/13 142/16 143/11 143/16 144/2 144/5 144/22 145/5 145/13 145/19 148/19 148/23 149/6 150/11 150/19 150/23 151/1 151/11 152/13 152/16 156/14 156/19 157/12 159/2 161/2 161/7 163/8 168/16 175/7 175/9</p>
---	---	---	--	---

C	168/4 170/8 180/19 180/24	155/1	149/21 157/3 166/9 169/16 171/1	12/13 63/15
Clarke... [22] 175/12 175/17 175/22 176/13 177/8 177/17 178/3 178/24 182/1 182/9 182/12 184/8 184/9 184/20 185/10 186/6 186/12 188/3 188/8 188/15 189/15 189/20	comes [4] 52/3 166/23 167/4 179/2	competency [1] 50/10	concerns [18] 6/5 9/16 24/15 25/4 25/6 27/21 34/6 34/12 35/14 35/15 35/18 37/20 49/21 60/17 72/5 91/3 94/19 129/15	consequences [5] 8/6 115/12 115/13 124/19 150/8
Clarke's [15] 57/10 58/4 58/10 63/14 64/6 91/6 97/15 110/10 114/23 136/9 147/4 157/16 160/23 181/4 184/25	comfortable [2] 30/14 164/10	competent [1] 115/25	concession [6] 116/1 116/8 121/25 124/2 124/3 187/14	Consequently [1] 107/10
Clarke-Jenkins [1] 156/14	coming [4] 9/12 72/8 117/22 181/9	complaint [1] 51/13	concessions [2] 103/11 125/20	consider [15] 11/3 44/14 96/17 98/5 99/1 100/16 100/18 111/7 155/6 155/9 155/16 155/25 156/4 159/14 160/17
clause [1] 7/15	commence [1] 144/13	complaints [5] 9/12 131/12 131/14 131/17 131/24	concluded [1] 177/18	considerable [3] 2/23 101/18 116/15
clause 12 [1] 7/15	commenced [3] 79/11 79/12 167/13	complete [7] 22/21 22/25 41/4 136/5 142/2 176/4 176/8	concludes [2] 52/15 55/8	consideration [4] 100/24 100/25 121/17 127/6
clear [25] 3/1 3/7 11/5 12/24 15/25 17/9 17/12 21/4 28/12 37/17 46/22 47/15 50/16 55/5 62/24 71/10 96/3 101/15 105/7 110/3 132/9 169/9 172/13 173/3 178/17	comment [22] 3/15 4/9 13/23 22/18 22/23 23/11 52/16 58/4 58/15 59/2 59/3 82/19 89/20 107/25 121/21 124/1 161/23 174/2 174/3 184/19 190/13 191/1	completed [3] 18/7 29/15 85/22	conclusion [13] 41/19 45/7 47/25 48/14 59/18 70/10 160/16 178/25 184/2 185/6 185/14 187/6 187/12	considered [12] 32/17 45/3 93/3 98/7 115/1 115/8 136/18 138/2 144/11 155/19 157/23 185/22
clearly [16] 29/24 31/11 32/16 39/19 49/2 53/15 67/16 96/11 108/20 111/22 117/8 122/17 136/24 144/8 144/10 174/11	commented [2] 115/4 168/19	completing [1] 1/24	conclusions [3] 5/9 180/19 188/7	considering [5] 70/25 130/3 158/15 159/24 172/19
client [8] 60/20 71/6 84/13 87/12 106/17 160/9 160/10 163/17	comments [14] 8/6 9/1 22/17 23/3 28/1 46/21 83/10 103/12 166/21 190/18 190/19 190/23 192/24 193/8	complex [1] 176/2	conditions [1] 148/2	consistent [1] 29/7
clients [1] 163/15	commission [3] 9/21 93/3 123/4	compliance [6] 27/18 30/16 31/16 31/22 35/3 35/5	conduct [5] 111/25 159/4 170/2 187/2 190/7	consumers [1] 34/15
close [2] 137/18 158/4	commissioned [7] 10/10 14/17 19/15 120/18 120/21 120/22 152/23	compliant [6] 96/6 180/2 180/20 181/5 181/7 185/7	conducted [6] 116/16 117/7 159/12 179/13 180/22 181/22	contact [13] 66/8 93/23 93/24 104/21 105/1 105/3 105/4 105/6 105/10 105/11 112/11 112/22 177/10
closed [3] 86/7 86/12 86/15	commitment [1] 64/15	complicated [1] 77/25	conducting [3] 8/4 63/22 157/12	contacting [1] 75/18
closely [1] 23/18	committed [4] 7/14 63/22 115/9 158/18	complication [1] 23/15	conference [23] 59/19 59/24 62/16 63/17 65/17 68/5 68/17 71/2 71/11 74/2 75/25 92/1 92/12 93/6 102/13 102/24 105/14 130/20 165/6 167/20 168/12 184/13 185/5	contain [1] 149/5
Co [1] 109/11	committee [10] 27/18 30/16 30/20 30/24 31/16 31/23 131/12 131/16 131/22 131/23	complied [3] 44/20 96/17 185/15	confereces [2] 65/25 97/10	contained [3] 25/19 108/23 161/19
Code [2] 153/21 153/25	commitment [1] 64/15	component [1] 45/19	confidence [2] 149/9 150/6	contains [1] 120/20
codes [2] 154/3 154/8	committed [4] 7/14 63/22 115/9 158/18	computer [2] 3/17 131/9	confident [1] 154/2	contempt [1] 110/15
collapsed [1] 177/16	committee [10] 27/18 30/16 30/20 30/24 31/16 31/23 131/12 131/16 131/22 131/23	concede [1] 115/17	confidentiality [1] 163/13	contend [1] 191/24
collated [1] 69/2	communicated [2] 38/24 187/8	concentrating [1] 186/6	confirm [3] 58/12 99/18 143/10	contends [2] 151/23 152/6
collation [1] 42/9	communicating [1] 106/17	concern [27] 16/7 19/19 34/16 35/20 47/19 48/4 49/15 61/1 71/15 73/14 82/8 82/14 102/18 103/3 103/10 103/11 104/4 104/8 110/1 110/9 125/12 125/12 125/18 128/11 134/24 157/1 186/13	confidence [2] 149/9 150/6	content [6] 16/15 96/12 107/1 130/6 143/20 150/2
colleague [3] 128/19 129/20 141/22	communication [3] 66/25 105/7 133/6	concerned [50] 10/18 23/16 34/11 35/9 35/21 36/15 40/8 59/5 60/21 60/24 61/1 61/3 61/4 62/1 64/13 67/4 69/19 71/17 71/19 71/23 72/16 72/22 72/25 78/25 82/11 82/12 83/16 87/11 99/9 103/20 103/24 104/3 117/11 117/15 117/21 117/25 118/4 118/12 119/15 121/21 123/6 125/8 125/16 125/18 135/3	confident [1] 154/2	contents [4] 22/6 38/23 71/5 163/18
colleagues [2] 91/13 97/21	Communications [2] 86/9 86/14	concentrating [1] 186/6	confidentiality [1] 163/13	context [6] 15/25 18/10 37/8 48/2 48/5 165/21
collecting [1] 82/22	companies [5] 33/13 33/19 33/19 34/13 34/19	concern [27] 16/7 19/19 34/16 35/20 47/19 48/4 49/15 61/1 71/15 73/14 82/8 82/14 102/18 103/3 103/10 103/11 104/4 104/8 110/1 110/9 125/12 125/12 125/18 128/11 134/24 157/1 186/13	confirm [3] 58/12 99/18 143/10	continue [3] 114/17 138/12 159/25
College [1] 99/18	company [4] 33/16 34/15 79/15 131/23	concerned [50] 10/18 23/16 34/11 35/9 35/21 36/15 40/8 59/5 60/21 60/24 61/1 61/3 61/4 62/1 64/13 67/4 69/19 71/17 71/19 71/23 72/16 72/22 72/25 78/25 82/11 82/12 83/16 87/11 99/9 103/20 103/24 104/3 117/11 117/15 117/21 117/25 118/4 118/12 119/15 121/21 123/6 125/8 125/16 125/18 135/3	confirmed [1] 92/22	continued [8] 1/3 2/12 56/7 56/8 114/9 195/2 195/7 195/8
combative [1] 5/3	compare [2] 70/14 70/16	concentrating [1] 186/6	confirms [1] 119/19	continues [3] 30/5 30/9 135/16
come [17] 30/10 54/24 72/15 87/23 100/19 136/24 148/16 160/16 161/7 167/2 167/5 167/10 167/18	compared [1] 136/14	concerned [50] 10/18 23/16 34/11 35/9 35/21 36/15 40/8 59/5 60/21 60/24 61/1 61/3 61/4 62/1 64/13 67/4 69/19 71/17 71/19 71/23 72/16 72/22 72/25 78/25 82/11 82/12 83/16 87/11 99/9 103/20 103/24 104/3 117/11 117/15 117/21 117/25 118/4 118/12 119/15 121/21 123/6 125/8 125/16 125/18 135/3	conflicted [1] 163/4	continuing [4] 14/11 175/21 178/6 187/22
	compensated [1] 78/21	concerned [50] 10/18 23/16 34/11 35/9 35/21 36/15 40/8 59/5 60/21 60/24 61/1 61/3 61/4 62/1 64/13 67/4 69/19 71/17 71/19 71/23 72/16 72/22 72/25 78/25 82/11 82/12 83/16 87/11 99/9 103/20 103/24 104/3 117/11 117/15 117/21 117/25 118/4 118/12 119/15 121/21 123/6 125/8 125/16 125/18 135/3	confused [1] 139/15	contract [2] 7/15 13/16
	compensation [5] 11/6 11/24 12/4 12/14 13/7	concerned [50] 10/18 23/16 34/11 35/9 35/21 36/15 40/8 59/5 60/21 60/24 61/1 61/3 61/4 62/1 64/13 67/4 69/19 71/17 71/19 71/23 72/16 72/22 72/25 78/25 82/11 82/12 83/16 87/11 99/9 103/20 103/24 104/3 117/11 117/15 117/21 117/25 118/4 118/12 119/15 121/21 123/6 125/8 125/16 125/18 135/3	conscious [1] 15/7	contracted [1] 131/13
	competence [1]	concerned [50] 10/18 23/16 34/11 35/9 35/21 36/15 40/8 59/5 60/21 60/24 61/1 61/3 61/4 62/1 64/13 67/4 69/19 71/17 71/19 71/23 72/16 72/22 72/25 78/25 82/11 82/12 83/16 87/11 99/9 103/20 103/24 104/3 117/11 117/15 117/21 117/25 118/4 118/12 119/15 121/21 123/6 125/8 125/16 125/18 135/3	consciously [1] 18/12	contractual [2] 12/15 160/22

<p>C</p> <p>contrary [2] 63/24 101/19</p> <p>control [6] 67/11 99/14 102/21 173/8 173/15 175/21</p> <p>controls [5] 22/18 23/5 26/10 30/7 91/4</p> <p>conversation [29] 28/20 56/10 56/14 56/18 58/23 60/8 60/14 60/17 61/24 62/2 62/3 62/5 67/3 71/20 121/3 132/1 141/16 148/23 149/13 161/9 162/7 169/4 183/7 183/17 183/19 183/23 184/6 184/7 184/9</p> <p>conversations [1] 103/6</p> <p>convey [1] 61/22</p> <p>conveyed [3] 60/3 60/5 64/5</p> <p>convicted [10] 42/11 103/20 104/5 106/9 108/18 120/1 121/12 121/23 125/25 173/1</p> <p>conviction [8] 7/12 102/2 102/6 119/24 168/8 172/1 172/13 176/22</p> <p>convinced [1] 191/8</p> <p>cooperative [1] 3/20</p> <p>copied [6] 52/13 52/15 52/20 79/9 88/25 109/8</p> <p>copy [4] 109/20 113/3 144/1 144/11</p> <p>copying [1] 88/18</p> <p>Core [6] 1/7 1/9 87/25 113/12 127/13 193/19</p> <p>Corfield [1] 86/8</p> <p>corner [1] 182/21</p> <p>corporate [5] 2/17 33/6 33/9 34/13 41/22</p> <p>correct [61] 4/22 4/23 11/8 14/7 14/18 16/5 16/6 16/9 16/14 19/8 20/1 22/2 24/17 25/7 27/3 27/20 30/21 33/8 33/16 33/17 33/23 33/24 34/9 34/24 35/19 43/14 43/15 43/15 43/21 45/9 55/6 75/16 91/24 114/11 126/10 127/18 127/19 128/15 130/19 140/2 140/6 140/9 142/15 145/9 145/20 154/15 157/14 158/19 164/25 165/8 165/9</p> <p>165/20 167/23 171/20 173/5 173/19 179/21 179/22 180/5 180/15 193/24</p> <p>corrected [2] 8/15 74/25</p> <p>correction [3] 21/17 75/13 78/16</p> <p>corrections [8] 76/2 76/5 76/10 76/15 77/6 78/14 78/18 78/21</p> <p>correctly [3] 3/17 45/13 45/14</p> <p>correspond [1] 83/14</p> <p>correspondence [3] 73/11 114/6 147/14</p> <p>corresponding [1] 85/6</p> <p>corroborating [1] 135/13</p> <p>corroboration [1] 135/19</p> <p>cost [1] 30/11</p> <p>costs [1] 30/15</p> <p>could [99] 4/7 8/11 11/25 12/6 12/6 14/25 19/20 20/7 20/17 21/23 24/19 25/8 26/8 26/25 29/11 30/12 32/19 32/20 32/21 42/10 43/20 51/10 52/14 53/17 57/11 63/2 64/24 65/11 66/19 68/15 74/17 75/12 82/1 82/9 82/14 85/10 86/2 86/12 86/15 86/21 88/5 97/7 97/16 97/17 97/20 98/6 98/18 99/11 99/11 99/13 99/25 100/3 100/6 100/23 100/25 101/10 101/17 101/23 101/24 103/11 103/12 107/4 107/24 108/4 114/17 114/19 120/19 123/13 124/3 124/5 125/4 125/11 125/21 125/22 126/15 130/24 135/3 135/5 137/21 138/2 138/5 144/23 145/20 148/5 152/8 152/23 153/9 154/19 157/7 164/24 165/10 167/15 174/3 184/14 191/7 191/17 192/4 192/13 193/10</p> <p>couldn't [9] 17/24 60/9 75/17 84/4 92/2 94/10 98/17 100/13 168/14</p> <p>counsel [25] 2/18 2/25 5/4 33/15 34/20 35/1 37/5 38/5 38/15 38/21 39/3 45/18</p> <p>46/13 85/23 99/2 101/12 104/14 121/2 144/24 147/12 151/12 168/18 169/3 170/2 182/7</p> <p>Counsel's [2] 49/24 170/22</p> <p>Counsels [1] 40/14</p> <p>counter [2] 23/1 137/21</p> <p>country [1] 97/23</p> <p>couple [5] 15/10 29/14 67/25 138/4 171/2</p> <p>course [33] 10/14 10/15 20/2 27/4 30/17 32/5 34/15 40/11 46/20 50/16 56/6 58/20 62/25 68/6 70/4 72/10 72/14 72/15 86/3 87/5 89/5 117/4 119/6 147/2 158/22 158/23 165/5 166/15 167/17 169/22 171/17 173/11 181/7</p> <p>courses [1] 46/12</p> <p>court [26] 44/23 95/12 110/15 121/18 121/24 122/5 122/10 122/23 123/8 124/6 125/8 125/10 125/14 125/17 126/16 130/9 138/21 143/8 151/20 152/3 158/16 167/22 168/1 170/10 172/2 185/16</p> <p>courts [5] 136/15 138/24 160/17 161/1 163/20</p> <p>cover [5] 3/5 5/18 5/22 58/10 179/11</p> <p>cover-up [2] 5/18 5/22</p> <p>covered [1] 45/18</p> <p>covering [1] 76/23</p> <p>covers [1] 48/3</p> <p>CPS [1] 153/23</p> <p>CQRs [1] 11/20</p> <p>crawl [1] 170/15</p> <p>create [2] 53/7 148/9</p> <p>created [3] 52/4 74/24 132/11</p> <p>creates [1] 53/9</p> <p>creating [2] 26/16 26/22</p> <p>credibility [5] 110/8 158/10 176/18 189/15 189/19</p> <p>credible [1] 93/4</p> <p>Crichton [13] 6/18 9/21 15/18 16/1 63/7 70/20 97/10 97/20 129/14 130/1 133/1 165/11 166/21</p> <p>Crichton's [1] 63/10</p> <p>criminal [33] 7/14 42/11 43/13 43/17 68/13 83/25 86/20 102/16 108/18 114/21 115/9 116/5 116/7 116/19 117/1 117/3 117/17 118/5 118/21 120/11 121/12 123/4 128/12 129/7 129/22 137/13 138/20 152/4 158/18 168/7 172/17 177/23 181/8</p> <p>crisis [5] 2/5 2/8 2/10 2/18 2/21</p> <p>critical [6] 30/3 31/8 31/19 32/2 32/15 131/7</p> <p>criticise [1] 117/6</p> <p>criticised [1] 88/24</p> <p>criticisms [2] 6/14 17/10</p> <p>cross [2] 156/7 160/23</p> <p>crossed [1] 163/6</p> <p>crosses [1] 3/8</p> <p>Crown [11] 129/21 129/23 130/17 130/21 132/17 134/10 134/12 135/7 135/25 137/8 143/8</p> <p>CRR [4] 122/18 124/5 124/24 126/6</p> <p>CRRs [1] 124/10</p> <p>crucial [2] 112/6 112/9</p> <p>crucially [1] 51/3</p> <p>culture [2] 8/3 109/3</p> <p>curious [1] 33/20</p> <p>current [4] 26/3 78/19 134/22 140/17</p> <p>currently [4] 26/1 88/15 107/18 120/12</p> <p>cut [4] 64/19 66/20 170/16 170/20</p> <p>cut-off [1] 170/20</p>	<p>191/15 192/4 192/6 192/6 192/8 192/13 192/15 192/19 192/21 192/25 193/2 193/3 193/5</p> <p>data's [1] 21/14</p> <p>database [2] 25/24 84/15</p> <p>databases [3] 25/19 25/20 25/22</p> <p>date [7] 12/7 75/1 78/19 143/10 167/14 170/13 182/21</p> <p>dated [8] 17/11 20/14 22/14 22/16 46/17 49/5 52/22 52/25</p> <p>dates [1] 139/9</p> <p>Dave [1] 30/25</p> <p>David [2] 29/19 59/11</p> <p>Davidson [3] 51/7 51/25 53/24</p> <p>day [16] 17/22 29/25 39/16 56/5 63/2 84/13 134/13 143/12 143/15 144/16 144/17 144/17 147/16 147/18 152/25 194/10</p> <p>day's [1] 150/13</p> <p>days [2] 29/14 103/2</p> <p>DCS [1] 190/18</p> <p>deadly [2] 4/4 176/10</p> <p>deal [15] 36/8 88/20 88/23 106/5 111/10 137/25 137/25 161/6 166/23 167/4 167/18 170/15 170/19 172/10 180/6</p> <p>dealing [11] 17/8 31/9 38/1 40/1 41/1 53/4 89/4 90/8 128/2 133/14 159/2</p> <p>dealings [2] 65/5 163/5</p> <p>deals [3] 34/15 35/24 157/17</p> <p>dealt [9] 35/8 35/25 85/20 90/10 90/11 93/25 104/12 144/14 172/8</p> <p>death [6] 12/5 12/18 12/21 12/23 13/1 13/3</p> <p>December [6] 174/7 174/9 177/1 177/4 178/7 178/20</p> <p>December 2013 [1] 178/20</p> <p>decide [2] 23/22 101/5</p> <p>decided [3] 14/10 144/5 154/5</p> <p>decision [11] 14/13 34/4 34/7 42/19 81/18 111/24 141/19 141/24 167/12 174/6 176/15</p>	<p>191/15 192/4 192/6 192/6 192/8 192/13 192/15 192/19 192/21 192/25 193/2 193/3 193/5</p> <p>data's [1] 21/14</p> <p>database [2] 25/24 84/15</p> <p>databases [3] 25/19 25/20 25/22</p> <p>date [7] 12/7 75/1 78/19 143/10 167/14 170/13 182/21</p> <p>dated [8] 17/11 20/14 22/14 22/16 46/17 49/5 52/22 52/25</p> <p>dates [1] 139/9</p> <p>Dave [1] 30/25</p> <p>David [2] 29/19 59/11</p> <p>Davidson [3] 51/7 51/25 53/24</p> <p>day [16] 17/22 29/25 39/16 56/5 63/2 84/13 134/13 143/12 143/15 144/16 144/17 144/17 147/16 147/18 152/25 194/10</p> <p>day's [1] 150/13</p> <p>days [2] 29/14 103/2</p> <p>DCS [1] 190/18</p> <p>deadly [2] 4/4 176/10</p> <p>deal [15] 36/8 88/20 88/23 106/5 111/10 137/25 137/25 161/6 166/23 167/4 167/18 170/15 170/19 172/10 180/6</p> <p>dealing [11] 17/8 31/9 38/1 40/1 41/1 53/4 89/4 90/8 128/2 133/14 159/2</p> <p>dealings [2] 65/5 163/5</p> <p>deals [3] 34/15 35/24 157/17</p> <p>dealt [9] 35/8 35/25 85/20 90/10 90/11 93/25 104/12 144/14 172/8</p> <p>death [6] 12/5 12/18 12/21 12/23 13/1 13/3</p> <p>December [6] 174/7 174/9 177/1 177/4 178/7 178/20</p> <p>December 2013 [1] 178/20</p> <p>decide [2] 23/22 101/5</p> <p>decided [3] 14/10 144/5 154/5</p> <p>decision [11] 14/13 34/4 34/7 42/19 81/18 111/24 141/19 141/24 167/12 174/6 176/15</p>	<p>D</p> <p>daily [5] 26/4 26/11 66/20 177/10 177/12</p> <p>damage [1] 122/21</p> <p>damaged [1] 150/4</p> <p>damaging [3] 124/3 124/17 187/13</p> <p>data [47] 19/1 21/1 21/9 21/10 21/12 23/2 23/7 23/11 25/9 25/11 25/14 26/25 34/4 42/10 52/1 52/4 52/5 81/6 81/9 81/12 81/15 81/16 81/19 82/1 82/14 89/22 89/24 89/25 90/2 92/7 93/15 100/12 191/9 191/13</p>	<p>191/15 192/4 192/6 192/6 192/8 192/13 192/15 192/19 192/21 192/25 193/2 193/3 193/5</p> <p>data's [1] 21/14</p> <p>database [2] 25/24 84/15</p> <p>databases [3] 25/19 25/20 25/22</p> <p>date [7] 12/7 75/1 78/19 143/10 167/14 170/13 182/21</p> <p>dated [8] 17/11 20/14 22/14 22/16 46/17 49/5 52/22 52/25</p> <p>dates [1] 139/9</p> <p>Dave [1] 30/25</p> <p>David [2] 29/19 59/11</p> <p>Davidson [3] 51/7 51/25 53/24</p> <p>day [16] 17/22 29/25 39/16 56/5 63/2 84/13 134/13 143/12 143/15 144/16 144/17 144/17 147/16 147/18 152/25 194/10</p> <p>day's [1] 150/13</p> <p>days [2] 29/14 103/2</p> <p>DCS [1] 190/18</p> <p>deadly [2] 4/4 176/10</p> <p>deal [15] 36/8 88/20 88/23 106/5 111/10 137/25 137/25 161/6 166/23 167/4 167/18 170/15 170/19 172/10 180/6</p> <p>dealing [11] 17/8 31/9 38/1 40/1 41/1 53/4 89/4 90/8 128/2 133/14 159/2</p> <p>dealings [2] 65/5 163/5</p> <p>deals [3] 34/15 35/24 157/17</p> <p>dealt [9] 35/8 35/25 85/20 90/10 90/11 93/25 104/12 144/14 172/8</p> <p>death [6] 12/5 12/18 12/21 12/23 13/1 13/3</p> <p>December [6] 174/7 174/9 177/1 177/4 178/7 178/20</p> <p>December 2013 [1] 178/20</p> <p>decide [2] 23/22 101/5</p> <p>decided [3] 14/10 144/5 154/5</p> <p>decision [11] 14/13 34/4 34/7 42/19 81/18 111/24 141/19 141/24 167/12 174/6 176/15</p>
---	--	--	--	--

<p>D</p> <p>decision-making [1] 34/4</p> <p>decisions [12] 40/22 42/22 87/21 87/22 117/22 117/24 118/3 118/6 118/13 118/20 136/11 167/19</p> <p>deep [1] 29/3</p> <p>defect [1] 174/15</p> <p>defective [2] 87/9 189/10</p> <p>defects [4] 83/24 100/5 127/5 172/4</p> <p>defence [32] 43/20 88/13 95/11 129/6 135/9 135/15 143/18 144/19 147/3 147/20 147/22 147/23 148/13 151/3 151/7 151/21 152/4 152/9 152/22 154/4 174/15 185/17 190/13 190/20 191/1 191/16 191/18 191/20 191/23 192/9 192/18 193/11</p> <p>defences [1] 168/7</p> <p>defendant [5] 117/4 117/6 146/12 171/7 176/20</p> <p>defendants [2] 117/15 132/3</p> <p>defined [1] 26/6</p> <p>definitely [1] 68/20</p> <p>degree [3] 101/1 190/7 190/9</p> <p>delete [3] 21/9 25/13 32/10</p> <p>deleted [1] 26/25</p> <p>deleting [3] 23/6 26/14 26/18</p> <p>deletion [1] 21/23</p> <p>deletions [5] 25/21 25/23 26/12 26/20 32/11</p> <p>deliberately [1] 158/3</p> <p>delighted [2] 162/25 163/1</p> <p>Deloitte [21] 14/11 14/17 19/14 19/18 19/24 20/9 21/25 22/18 23/16 24/6 24/23 25/4 26/16 27/14 32/14 52/22 52/24 54/16 90/15 91/9 91/23</p> <p>Deloittes [1] 29/22</p> <p>demand [1] 10/6</p> <p>den [3] 20/16 20/19 24/25</p> <p>department [7] 6/1 6/14 57/1 89/7 97/11 123/13 135/2</p>	<p>departments [1] 77/1</p> <p>departure [1] 136/1</p> <p>depending [1] 98/5</p> <p>deploying [1] 179/20</p> <p>depth [1] 187/10</p> <p>depute [2] 140/10 140/11</p> <p>deputy [1] 140/8</p> <p>Derby [3] 89/6 134/17 162/23</p> <p>described [4] 27/9 33/10 142/6 143/7</p> <p>description [1] 49/25</p> <p>deserved [1] 172/5</p> <p>design [2] 98/16 101/22</p> <p>designed [3] 22/25 23/5 46/11</p> <p>desire [1] 7/10</p> <p>desk [2] 3/9 39/7</p> <p>desperately [1] 4/5</p> <p>despite [1] 7/22</p> <p>destroy [2] 67/14 84/3</p> <p>destroyed [7] 59/4 60/2 61/6 64/14 65/10 162/5 164/1</p> <p>destroying [1] 161/25</p> <p>destruction [1] 58/18</p> <p>detail [2] 116/12 122/15</p> <p>detailed [11] 5/1 5/1 21/20 23/3 33/22 34/12 44/5 70/14 166/10 180/10 194/1</p> <p>detailing [2] 30/6 78/15</p> <p>details [3] 66/8 69/6 78/17</p> <p>deter [1] 25/21</p> <p>deter [1] 168/7</p> <p>determine [3] 94/16 170/3 189/21</p> <p>develop [1] 145/3</p> <p>developments [1] 126/13</p> <p>device [1] 56/25</p> <p>devoid [4] 16/2 16/4 16/7 16/11</p> <p>dialogue [2] 20/11 42/8</p> <p>Diane [1] 107/17</p> <p>Dickinson [17] 4/19 15/19 17/5 18/4 18/17 20/15 29/7 67/9 67/11 105/5 105/6 111/2 111/9 111/17 112/2 123/17 125/1</p> <p>Dickinson-Rodric [1] 29/7</p> <p>dictate [1] 135/10</p> <p>did [108] 2/10 3/21 7/19 9/21 10/11 15/5</p>	<p>17/13 18/10 18/11 27/6 28/10 28/11 28/12 29/2 32/7 38/18 39/14 39/14 39/23 45/24 47/19 48/16 48/23 49/2 49/14 51/4 56/20 57/15 57/17 57/18 57/21 57/21 59/9 62/17 66/16 79/17 79/18 79/19 82/23 83/18 85/25 87/16 90/13 90/13 94/6 94/19 94/21 96/7 96/17 96/19 97/7 98/11 101/12 101/16 107/1 112/18 112/20 112/21 115/2 123/2 123/15 124/16 129/5 136/8 141/10 144/10 145/11 145/12 146/21 147/17 148/19 149/4 149/6 149/11 149/14 149/19 150/23 151/13 151/16 155/6 155/10 155/12 155/16 155/25 156/4 156/4 156/7 157/4 159/14 160/12 160/17 161/2 161/4 162/20 163/7 165/24 167/24 172/1 173/25 176/4 176/25 180/19 181/17 185/5 186/19 188/4 192/14 193/1</p> <p>didn't [68] 4/6 5/20 11/12 14/12 19/6 41/21 41/23 41/25 42/4 56/21 58/15 68/13 69/18 69/25 71/22 72/2 87/21 90/7 94/22 95/18 99/22 99/24 100/6 100/8 111/23 112/8 118/24 119/9 119/14 119/17 121/16 122/2 126/14 128/25 129/9 129/15 129/25 133/21 142/14 144/22 145/15 155/9 155/9 155/13 156/10 157/2 157/3 158/24 159/17 160/2 160/20 160/23 161/3 166/17 170/9 172/6 172/11 173/25 175/20 176/7 186/23 187/4 187/10 187/15 187/17 187/24 188/8 188/10</p> <p>difference [1] 95/14</p> <p>different [23] 7/23 11/18 22/16 27/6 34/17 34/22 54/18 56/24 76/8 77/1 82/8 82/25 101/7 101/9 103/2 103/15 105/8 105/8 122/1 125/21</p>	<p>126/1 130/12 136/18</p> <p>differentiate [1] 131/8</p> <p>differently [1] 66/15</p> <p>difficult [4] 154/9 179/23 190/10 192/2</p> <p>difficulties [1] 141/8</p> <p>digital [2] 23/7 26/17</p> <p>digitally [1] 22/21</p> <p>diminishing [1] 35/1</p> <p>direct [2] 141/8 141/13</p> <p>directed [1] 5/12</p> <p>direction [1] 2/16</p> <p>directions [1] 71/21</p> <p>directly [4] 53/8 81/21 89/24 111/2</p> <p>Director [1] 138/11</p> <p>directors [2] 57/25 58/1</p> <p>disagree [1] 119/9</p> <p>discharge [1] 145/23</p> <p>discipline [1] 193/20</p> <p>disclosable [4] 82/1 82/14 84/21 94/17</p> <p>disclose [6] 49/2 106/3 116/12 145/20 157/25 182/3</p> <p>disclosed [21] 42/10 50/1 83/24 106/1 106/9 108/13 109/17 117/4 117/20 118/9 118/10 119/8 119/9 123/25 145/22 147/24 148/8 151/24 152/7 161/12 173/20</p> <p>disclosing [6] 118/4 127/6 148/13 151/23 152/5 174/12</p> <p>disclosure [75] 43/17 45/7 46/23 47/18 47/23 48/20 71/9 84/22 85/23 92/10 98/6 98/11 99/16 101/10 102/1 102/3 102/5 102/8 103/5 107/21 108/16 108/17 116/15 117/2 117/12 117/19 117/24 118/1 118/3 118/13 118/18 118/20 118/22 119/4 122/14 122/17 122/21 122/22 123/2 123/7 123/23 124/16 124/18 125/2 125/7 126/7 126/24 129/6 135/8 135/10 135/12 136/13 144/7 144/12 144/14 144/23 145/23 148/9 169/10 169/19 170/3 173/18 173/22 174/8 174/12 175/24 176/6 177/3 177/14 177/18 177/18 178/20</p>	<p>178/21 185/17 186/3</p> <p>discovered [3] 168/21 178/13 186/24</p> <p>discovering [1] 163/19</p> <p>discredited [1] 128/17</p> <p>discrepancies [1] 85/12</p> <p>discrepancy [3] 75/7 77/8 77/11</p> <p>discrete [1] 179/14</p> <p>discuss [7] 72/4 87/18 120/10 133/14 161/2 161/3 161/4</p> <p>discussed [21] 6/20 11/9 11/19 31/22 32/17 41/20 62/8 63/7 67/13 71/13 83/22 91/17 95/7 113/1 120/18 121/8 135/2 136/8 171/21 174/16 182/12</p> <p>discussing [10] 56/9 62/10 62/11 68/6 85/11 119/1 126/12 133/11 172/7 182/14</p> <p>discussion [14] 85/14 85/15 86/17 92/13 102/14 112/11 119/23 133/10 136/3 141/5 184/1 184/21 185/4 186/17</p> <p>discussions [3] 18/16 69/8 96/24</p> <p>dishonest [1] 161/1</p> <p>dishonestly [1] 160/17</p> <p>disingenuous [1] 137/7</p> <p>disinterest [1] 7/10</p> <p>dispatched [1] 18/8</p> <p>dispute [1] 57/20</p> <p>disseminated [2] 59/22 65/21</p> <p>dissemination [2] 102/22 173/15</p> <p>dissent [1] 169/24</p> <p>distance [1] 165/20</p> <p>distinction [3] 13/19 13/24 14/3</p> <p>distinguish [1] 104/18</p> <p>distressing [1] 11/21</p> <p>distributor [1] 33/11</p> <p>do [165] 5/4 6/14 9/5 15/10 16/19 23/4 23/8 24/7 24/14 24/14 26/11 29/2 32/16 34/10 35/3 35/8 35/13 36/6 36/7 36/25 37/12 37/24 39/23 40/9 40/19 40/22 41/3 41/5 44/13 45/2 45/7 46/18</p>
---	--	--	--	---

D	documented [1] 23/5	160/13 161/2 161/13	66/11 66/13 142/16	133/7
do... [133] 46/19	documents [14] 5/24	162/14 163/1 163/6	drafting [3] 70/10	effectively [6] 19/20
46/20 50/6 50/15	53/14 70/16 84/3 84/3	168/2 168/13 169/7	91/11 121/6	26/10 34/21 68/22
50/22 53/14 54/2	88/3 97/5 117/2	169/13 169/24 170/5	draw [3] 5/8 48/15	122/3 132/20
54/20 54/21 55/2	117/16 117/19 118/4	171/21 172/11 173/3	110/17	effects [2] 157/23
60/12 62/15 62/20	130/14 161/25 175/9	173/23 175/25 176/7	draws [1] 110/7	186/6
64/2 65/6 68/10 69/10	does [26] 47/2 48/13	180/7 180/17 182/14	drew [2] 109/18	efficacy [1] 149/16
69/12 73/4 73/15	53/11 55/9 55/10	182/18 183/8 183/15	182/11	effort [1] 134/14
73/16 75/18 75/21	55/20 64/16 66/10	183/21 184/4 184/10	drilled [1] 28/9	eg [1] 21/16
78/9 78/25 81/2 81/11	69/20 77/24 83/15	185/9 185/24 188/4	driven [4] 7/10 34/5	eg by [1] 21/16
82/4 82/7 82/15 84/14	85/20 87/4 88/13	188/19 188/24 189/7	35/17 73/8	eight [2] 76/25
86/9 86/10 88/17	98/23 111/15 131/8	189/8 189/24 190/21	due [6] 10/14 10/15	152/25
92/19 93/8 93/20	135/15 135/18 159/3	191/5 192/11 192/16	25/18 54/15 70/4 86/2	either [27] 2/8 4/18
95/23 103/5 111/7	161/22 162/9 162/13	193/7	Dulay [1] 97/3	13/6 21/8 27/9 27/12
112/14 112/19 112/23	171/1 182/5 184/6	done [10] 25/10 28/7	during [27] 8/17 17/4	28/6 59/21 63/1 66/24
112/25 113/8 117/5	doesn't [10] 16/6	28/20 46/3 53/17	17/12 17/18 20/3	68/8 68/14 91/13 94/2
118/25 119/3 119/25	37/5 88/14 143/14	91/17 105/15 138/15	20/11 75/25 79/1	119/22 123/24 124/3
121/3 121/9 124/21	144/18 145/8 150/20	151/22 190/22	92/12 94/15 98/9	149/18 150/10 151/7
124/23 125/4 126/9	151/1 167/7 191/25	doubled [1] 77/8	102/3 102/4 102/8	164/10 167/9 176/19
126/14 134/15 138/14	dogs [1] 69/16	doubling [1] 77/11	102/13 102/23 103/1	181/12 184/17 184/25
138/19 139/18 142/16	doing [10] 3/1 49/9	doubt [4] 43/19 72/1	117/4 118/10 118/21	188/4
143/10 145/16 145/16	68/19 92/13 95/14	176/22 179/8	119/8 125/24 133/18	electronic [1] 84/17
146/1 146/2 146/13	136/15 137/12 146/7	down [46] 7/18 7/24	165/2 173/16 183/19	element [1] 179/15
152/5 152/17 153/21	147/17 183/12	8/8 8/13 11/17 22/12	184/13	else [6] 2/21 60/6
154/1 154/14 154/17	domain [5] 65/4 73/1	22/12 28/9 36/3 49/6	duties [21] 43/22	65/9 120/14 120/22
154/18 154/25 155/19	73/7 82/18 149/25	59/14 63/20 64/19	44/19 49/12 95/19	158/21
155/21 156/3 156/18	domino [1] 169/12	65/25 66/5 68/2 69/4	95/24 95/25 96/2	Elvins [1] 86/21
158/4 158/12 158/16	don't [158] 2/7 2/18	74/18 77/4 80/2 80/7	144/6 144/23 145/23	email [58] 5/25 6/12
159/5 159/8 159/18	6/11 13/2 13/10 13/22	80/22 80/24 83/7	172/2 179/12 179/20	15/23 15/24 18/6
159/20 159/22 159/24	13/25 14/13 22/7 24/4	87/23 91/7 97/25	180/3 180/13 181/12	20/14 24/13 28/24
160/3 160/5 160/6	28/6 32/19 34/2 35/20	114/24 123/1 124/11	182/4 183/15 183/22	36/5 51/14 51/16
160/21 161/12 163/3	36/8 36/21 40/18 41/8	124/14 125/1 126/7	185/8 185/16	51/19 52/13 65/13
163/11 165/10 166/7	43/24 44/9 45/14	132/25 132/25 133/13	duty [16] 43/17 43/18	66/2 66/10 66/23
167/9 167/23 168/25	47/24 48/11 48/21	135/6 135/21 137/18	44/23 45/6 46/6 48/20	66/24 67/2 70/19
170/18 171/19 172/23	49/12 50/3 51/18	148/2 171/2 171/14	71/5 87/14 157/22	70/24 74/7 75/14 79/3
172/25 173/6 176/4	52/13 52/17 54/2	182/25 183/4 183/6	158/7 163/12 165/7	81/8 82/2 82/4 82/15
181/20 181/25 183/2	54/10 55/2 57/14	184/15	185/17 185/21 186/4	82/24 84/12 84/14
183/6 183/16 183/19	57/20 57/20 57/22	download [1] 57/1	186/21	84/19 88/7 92/4 93/7
183/25 184/19 185/22	59/2 62/18 62/22 63/6	downloaded [1] 57/2		93/10 98/1 101/3
186/24 187/6 187/18	67/10 67/21 68/6 68/7	downplay [2] 110/20		101/6 105/22 107/6
188/20 188/23 188/25	68/12 69/14 69/23	112/12	E	109/7 111/13 112/18
189/2 189/4 189/5	69/24 70/11 74/14	downplaying [1]	each [9] 66/6 66/7	112/20 112/21 112/25
190/12 190/15 190/19	78/11 79/23 79/25	112/17	66/8 69/1 69/5 141/23	114/6 114/10 114/18
191/14 192/3 192/10	80/1 80/17 81/14 82/6	DPP [1] 138/12	146/19 180/11 181/14	114/19 116/24 120/6
193/6 193/8 193/12	85/21 86/13 86/16	Dr [7] 97/3 157/21	earlier [11] 4/9 9/1	120/6 175/12 175/14
docs [1] 107/4	89/3 90/6 90/16 91/9	157/25 158/3 158/10	17/2 32/8 38/14 54/11	175/22 190/17
document [46] 6/10	91/15 94/21 96/19	185/15 185/20	85/19 93/6 94/11	emailed [1] 59/25
6/13 6/17 9/11 9/19	96/22 97/13 101/3	Dr Dulay [1] 97/3	115/3 154/4	emailing [1] 82/8
10/5 10/8 10/13 10/17	101/9 103/7 103/7	Dr Jenkins [4]	earliest [1] 167/14	emails [8] 60/1 64/10
10/25 15/7 17/21 18/1	104/2 105/5 108/6	157/21 157/25 158/3	early [4] 12/12 64/21	66/16 66/18 68/10
18/3 18/8 20/13 22/10	108/6 108/8 110/16	185/20	97/9 149/25	80/18 104/17 105/8
24/9 25/2 27/7 27/8	112/20 112/20 112/25	Dr Jenkins' [1]	earth [3] 35/19 39/23	embarking [1]
35/24 36/3 39/18 45/9	113/7 118/2 120/23	158/10	94/24	125/19
53/2 53/4 54/12 54/25	121/5 121/8 121/13	Dr Jennings [1]	easier [1] 180/25	embarrassing [1]
63/8 73/20 86/18	123/13 123/16 131/20	185/15	easily [1] 192/13	87/5
102/9 122/7 134/8	132/18 136/17 137/11	draft [20] 6/18 9/5	eating [1] 168/23	embarrassment [1]
134/18 139/18 139/24	137/16 138/16 141/15	9/24 10/12 21/25	echoes [2] 173/11	87/12
174/10 174/20 174/24	142/24 142/24 143/15	22/13 25/2 29/21	173/11	emerge [1] 170/19
175/6 175/13 175/23	143/25 144/16 145/12	38/16 52/22 57/12	Edinburgh [1] 138/22	emergency [1] 53/6
177/1 182/19	145/18 146/8 146/25	66/16 107/11 107/25	edit [1] 21/8	Emma [1] 24/21
documentation [5]	149/10 149/13 149/18	120/20 122/18 123/21	effect [9] 12/4 14/14	emphasised [1]
23/23 32/3 90/24	150/10 150/15 151/12	123/22 149/23 175/13	74/25 76/11 116/10	19/13
101/21 108/2	152/18 152/21 153/2	drafted [8] 15/17	121/17 151/22 152/5	emphasising [1]
	156/9 159/1 159/11	15/19 17/5 18/2 63/12	169/12	81/25
			effective [2] 30/11	

E	entry [3] 74/18 115/15 184/15	42/6 42/7 42/21 43/8 43/23 45/10 55/14 63/6 63/11 72/19 72/19 84/9 93/8 95/3 97/17 102/2 104/15 104/23 104/24 110/6 110/8 112/8 112/9 119/15 126/12 129/24 132/6 135/18 157/9 166/11 169/9 171/6 171/7 176/19 176/23 179/20 182/22	68/9 106/22 106/25 147/21 151/9 152/15 154/13 191/10	extremely [3] 48/3 70/25 150/1
employed [3] 34/13 132/10 160/14	equally [1] 43/22	experienced [4] 34/18 94/5 104/16 147/11	F	
employee [3] 7/3 80/11 160/19	equipment [1] 108/2	expert [65] 37/22 43/12 43/16 43/23 44/3 44/7 44/11 44/13 44/17 44/18 45/6 45/6 48/20 65/22 70/4 82/13 86/2 95/3 95/8 95/20 96/1 96/11 96/13 96/25 97/8 97/18 97/20 98/17 101/18 109/19 127/10 128/17 128/21 130/5 130/8 130/11 132/7 133/20 133/22 133/25 134/4 135/22 136/19 137/1 137/24 138/13 158/1 158/8 158/10 160/11 160/25 172/1 176/18 179/12 179/20 180/3 180/13 181/24 182/4 182/16 184/3 185/8 185/17 186/21 189/8	facade [1] 177/15 face [1] 136/23 faced [1] 14/9 facing [1] 2/23 fact [39] 9/11 10/17 13/21 17/25 19/5 21/21 32/5 33/25 43/1 54/1 61/19 70/9 71/16 80/3 86/11 92/24 100/3 104/9 110/3 110/5 112/8 115/15 115/19 116/12 129/5 133/22 135/13 138/20 160/8 161/3 162/9 163/23 169/10 171/25 187/16 188/1 191/12 191/16 193/4	
employers [1] 34/5	Erin [1] 143/13	examined [2] 7/19 193/15	failed [8] 15/1 41/5 49/2 49/15 157/21 157/25 158/3 185/20	
enable [1] 117/5	Ernst [1] 23/13	examining [1] 192/1	failing [6] 8/9 8/16 9/10 181/20 181/23 182/1	
enclosed [1] 180/12	erred [1] 115/17	example [12] 28/1 62/6 71/8 102/4 103/14 108/23 109/22 114/25 116/3 121/21 126/2 156/24	failure [10] 9/8 45/4 157/23 158/7 182/3 182/8 186/2 186/7 187/20 188/7	
encountered [1] 65/19	error [1] 4/14	examples [3] 14/25 191/23 193/12	failures [1] 50/7	
encourage [1] 150/1	errors [5] 83/24 100/5 118/21 127/5 172/4	except [1] 145/19	fair [4] 33/7 34/8 69/21 165/3	
encouraging [1] 167/25	essentially [14] 19/7 21/23 24/13 42/19 92/19 95/11 142/6 143/17 144/18 147/22 149/19 154/4 157/13 162/9	exceptional [1] 151/25	fairly [2] 88/21 159/23	
encrypted [1] 21/11	establish [3] 7/8 65/17 143/16	exchange [1] 51/6	fake [4] 23/8 26/17 26/17 26/22	
end [14] 11/14 13/13 21/8 21/8 43/1 79/6 79/7 79/20 84/13 91/7 114/13 114/23 137/3 190/10	established [2] 28/14 63/17	excluded [1] 141/17	Falkirk [2] 72/13 174/15	
ended [2] 31/21 90/12	estimates [3] 1/10 1/11 1/11	ExCo [2] 30/19 31/15	false [5] 7/2 7/12 81/15 120/12 132/11	
endorsed [1] 63/25	et [9] 64/16 76/11 96/2 119/2 169/17 169/17 169/20 169/20 169/20	Executive [2] 30/20 42/18	fancy [1] 35/23	
ends [2] 93/1 176/2	et cetera [9] 64/16 76/11 96/2 119/2 169/17 169/17 169/20 169/20 169/20	executives [1] 42/22	far [11] 7/19 10/18 23/15 76/7 82/11 83/16 106/25 138/24 160/23 171/1 177/5	
enemies [1] 8/21	etc [1] 71/9	exercise [4] 93/3 102/21 116/15 173/14	fashion [1] 184/23	
enemy [1] 8/2	ethical [2] 155/7 156/6	exercising [1] 102/15	fashioned [1] 155/14	
engage [3] 30/19 37/2 119/21	ethics [1] 110/15	exerting [1] 169/18	fatally [2] 158/11 176/18	
engaged [3] 33/20 131/24 153/20	ethics/contempt [1] 110/15	exhaustive [1] 3/18	fault [2] 14/21 74/24	
engaging [3] 5/22 40/4 40/5	eve [1] 193/6	exist [1] 100/8	favour [3] 72/20 72/21 119/25	
England [3] 129/13 130/9 136/15	even [9] 1/23 8/17 133/7 135/11 153/13 155/16 172/5 174/3 181/13	existence [2] 149/23 152/23	favourite [1] 97/24	
English [2] 135/7 136/11	evening [2] 63/3 67/13	existing [1] 129/16	feature [1] 78/22	
enlighten [1] 168/3	event [3] 7/13 98/7 101/11	exists [1] 163/15	featured [1] 185/5	
enormous [2] 48/1 92/24	events [5] 17/18 23/2 40/11 48/9 55/17	expect [1] 61/18		
enough [7] 3/22 42/25 99/22 145/19 147/18 164/9 165/3	ever [5] 49/12 96/7 181/12 183/15 183/22	expectation [3] 11/4 12/20 12/22		
enquiries [3] 21/5 57/7 134/6	every [4] 88/23 99/21 116/11 137/18	expectations [1] 12/11		
enquiring [1] 36/22	Everybody [1] 139/20	expected [7] 4/12 40/11 41/16 42/12 44/7 49/20 134/1		
enquiry [1] 59/3	everyone [2] 64/11 120/4	expecting [1] 11/13		
ensure [5] 21/14 31/19 32/1 67/4 193/1	everything [7] 16/24 31/16 73/3 94/8 105/12 126/11 126/15	expense [1] 101/18		
ensured [1] 37/22	evidence [46] 1/24 5/14 11/23 16/8 18/1 27/4 38/6 40/10 42/3	experience [9] 33/18		
ensuring [2] 13/6 19/17				
enter [4] 64/20 115/20 146/11 149/24				
entering [1] 65/3				
entertained [1] 130/10				
entire [2] 48/25 71/5				
entirely [5] 24/18 110/22 111/17 112/13 147/17				
entirety [4] 47/8 137/13 142/12 161/14				
entries [2] 131/9 131/9				

F	87/25 90/7 93/10 94/21 98/10 119/19 125/6 127/14 130/15 134/11 140/25 141/11 151/6 168/15 176/17 179/17 183/14 190/13 first-named [1] 93/10 firstly [2] 44/3 179/12 Fiscal [9] 128/9 129/13 129/22 130/2 134/11 140/7 140/14 140/21 142/11 Fiscal's [6] 130/6 138/17 140/4 140/17 141/1 141/19 fits [2] 123/16 178/14 fitting [1] 71/21 five [5] 132/25 139/17 139/21 164/21 173/7 five paragraphs [1] 132/25 FJ [2] 184/18 185/1 flag [1] 87/15 flagged [10] 39/19 39/20 40/13 41/10 83/1 83/17 84/15 85/13 85/14 86/1 flawed [1] 13/22 flew [1] 134/16 fluid [2] 69/9 69/14 fluidity [1] 69/12 focus [4] 20/17 24/19 101/20 186/16 focused [3] 7/1 30/1 136/3 focusing [2] 29/13 31/6 follow [15] 18/6 21/20 44/10 44/16 44/22 48/13 50/25 51/22 87/18 94/6 107/1 154/3 154/9 179/23 190/11 follow-up [1] 18/6 followed [6] 31/18 57/10 66/24 83/13 141/5 181/6 following [25] 13/10 15/21 19/17 24/1 27/14 30/7 31/8 38/18 50/6 59/18 59/22 60/4 67/3 89/11 115/14 126/3 131/14 134/12 141/16 153/21 154/1 157/24 179/23 181/3 194/10 follows [14] 4/7 22/24 29/20 59/17 63/14 69/5 70/22 75/24 76/22 98/2 102/12 105/23 107/6 109/9 font [4] 90/6 90/9	142/22 142/23 foolproof [1] 131/3 foot [3] 8/7 173/6 173/6 Ford [1] 190/18 forgive [1] 178/8 form [6] 98/15 103/13 121/25 135/3 140/12 189/8 formal [5] 20/24 22/16 96/7 96/9 96/15 formed [1] 52/24 forming [1] 120/2 forth [1] 37/11 forward [6] 30/15 92/10 140/13 166/23 167/2 167/5 forwarded [1] 61/9 forwarding [4] 24/17 104/23 104/24 190/17 forwards [4] 126/1 127/9 167/4 167/10 found [4] 34/13 97/6 107/20 168/15 foundation [2] 141/5 168/5 four [2] 1/9 52/24 frame [2] 123/19 123/20 frankly [1] 71/22 free [1] 119/23 fresh [2] 102/20 103/25 Friday [1] 71/1 Friedlander [1] 33/15 friend [3] 53/22 182/7 189/12 front [5] 21/8 36/12 71/14 94/13 183/11 FSC [1] 77/20 Fujitsu [41] 18/25 20/7 20/11 21/6 51/7 51/10 51/20 51/23 52/1 52/12 53/7 53/17 71/4 71/8 71/12 71/16 72/17 92/17 92/22 94/24 107/19 108/1 132/9 132/10 141/9 141/14 141/18 160/12 160/13 160/15 160/18 160/22 160/25 161/5 165/13 166/3 166/4 185/1 192/12 192/13 192/22 Fujitsu's [5] 51/2 71/1 71/19 72/4 72/9 fulfilling [1] 6/6 full [9] 49/25 50/7 69/10 90/7 116/16 170/2 175/12 177/9 180/12 fully [5] 10/22 58/15 84/21 96/2 161/13 function [1] 102/16	functionality [2] 21/7 98/16 fundamental [1] 178/7 further [25] 10/2 10/24 10/25 26/5 32/3 36/3 39/20 39/21 41/16 45/23 45/23 47/11 77/1 77/16 77/22 92/14 94/17 107/11 136/3 139/23 164/5 183/4 191/9 193/22 195/10 future [1] 10/1	G gain [1] 102/19 gained [1] 7/25 games [1] 168/4 gap [5] 11/4 12/11 12/20 12/22 79/13 Gareth [27] 43/7 49/10 71/24 83/23 88/8 93/7 95/2 109/19 110/4 110/5 110/8 112/7 112/8 119/2 127/2 128/16 132/8 132/10 132/19 141/9 141/14 141/18 143/19 165/14 166/5 179/6 190/17 gathering [2] 127/9 150/24 gave [15] 6/15 38/4 38/6 40/10 43/8 86/20 96/23 99/2 134/18 141/17 144/3 156/9 166/11 169/13 171/6 gavel [1] 138/8 GC [1] 10/1 Gelsthorpe [2] 57/23 58/16 general [25] 2/17 2/25 5/4 19/11 23/25 33/15 34/20 35/1 37/5 40/14 45/18 46/13 48/24 49/23 49/24 61/24 62/3 89/15 102/10 104/12 117/2 117/18 121/2 148/14 173/11 generally [9] 9/3 55/7 70/1 72/24 104/20 109/21 141/12 149/3 175/8 generate [1] 68/9 generated [5] 25/23 87/7 116/6 131/9 149/22 generating [1] 74/7 generic [1] 96/13 George [8] 24/10 24/22 26/9 27/12 27/24 28/20 28/21	29/13 get [14] 3/23 20/6 33/21 41/25 73/13 114/2 130/10 137/1 137/12 137/24 176/5 178/20 178/21 189/21 getting [1] 139/21 Gina [2] 29/19 30/25 gist [1] 167/3 give [19] 36/15 47/18 50/9 55/14 81/20 116/14 119/24 120/8 121/23 122/22 123/7 124/5 125/22 148/19 160/20 170/25 178/23 186/23 187/24 given [42] 2/16 7/8 10/12 16/7 21/3 31/23 33/11 34/7 45/11 45/16 46/9 52/9 53/24 55/5 55/17 56/15 59/1 60/1 61/14 63/11 64/13 67/15 67/18 91/19 93/5 113/12 117/16 119/23 126/11 151/17 160/21 165/13 166/4 169/2 169/9 171/7 176/19 177/3 177/14 180/10 189/2 190/3 gives [2] 13/24 17/10 giving [1] 125/7 GJ [4] 49/9 165/14 183/12 184/17 GL [1] 78/1 glad [1] 113/10 glove [1] 147/13 go [71] 7/18 7/24 8/11 11/17 16/19 23/4 25/8 26/19 29/1 34/2 36/1 36/2 36/9 36/14 41/3 47/1 49/4 49/6 51/5 51/24 52/21 53/1 53/2 57/23 76/18 77/16 79/2 81/20 85/25 88/18 101/12 101/16 105/4 130/1 130/15 130/19 131/10 132/2 132/23 133/5 133/16 134/8 134/9 134/10 134/15 134/18 134/19 144/13 150/19 157/17 158/23 164/24 165/10 168/1 169/1 170/1 170/23 170/24 171/10 176/17 180/7 181/1 182/5 182/19 183/9 184/14 185/11 190/16 190/23 191/19 192/17 goal [1] 7/13 goes [6] 78/4 115/22 116/2 158/9 182/1 184/17
----------	---	---	---	--	---

G	126/3 146/11	65/2 67/11 71/1 75/19 84/17 119/23 120/4 121/3 123/23 144/14 159/12 168/16 170/6 183/7 184/5	143/23 143/23 155/22 182/22	47/22 58/12 59/16 62/11 62/22 75/18 76/8 93/19 147/5 147/7 147/16 150/12 157/2 157/2 157/3 157/25 177/21 180/3 180/21 181/13 182/14 183/20 186/18 189/20	
going [69] 5/18 10/3 18/5 22/12 26/11 29/2 30/15 37/11 45/2 45/2 58/2 58/5 61/3 63/12 64/11 64/22 64/23 67/8 68/18 68/21 73/1 73/6 73/13 74/9 76/7 85/15 87/10 87/24 88/4 94/7 94/17 95/2 102/16 113/25 122/7 128/3 130/13 133/13 134/25 138/10 139/16 143/7 143/10 146/8 149/1 149/2 151/4 151/14 156/25 157/10 157/17 161/18 161/24 161/25 164/18 165/24 166/6 166/20 166/23 167/2 167/3 167/6 168/3 169/1 169/8 173/1 180/24 182/25 187/18	H had [248] hadn't [6] 6/20 20/9 39/19 83/24 124/17 154/6 Hailstones [3] 80/23 81/1 81/2 half [2] 81/6 157/19 halfway [2] 182/25 184/15 hampered [1] 69/13 hand [8] 13/20 13/21 36/23 49/7 49/11 147/13 182/21 183/10 handed [2] 10/19 186/18 handing [1] 87/25 handle [3] 26/6 26/8 36/12 handwritten [3] 61/8 142/20 182/20 happen [3] 27/13 146/21 161/24 happened [15] 10/17 14/14 35/10 42/16 48/8 90/3 94/9 142/8 152/19 159/15 161/8 163/8 170/4 177/3 192/1 happening [5] 35/9 75/22 94/23 95/1 128/2 happy [6] 30/10 81/24 111/4 191/7 191/24 192/23 hard [2] 19/9 22/10 hardware [2] 23/10 191/21 Harry [6] 79/9 94/2 114/13 124/12 175/16 175/18 has [52] 5/2 7/14 21/9 23/12 29/9 37/9 50/16 56/4 59/23 60/4 66/6 69/4 72/15 74/25 76/12 76/14 80/7 84/14 88/10 89/14 89/24 90/3 91/6 91/17 92/22 109/20 112/10 114/23 115/3 115/19 120/18 121/1 127/17 131/3 131/4 132/11 133/2 135/11 136/24 139/4 142/13 148/7 158/15 160/16 161/1 163/20 166/21 167/5 185/15 188/3 192/1 193/15 have [302] haven't [4] 63/9 80/1 169/15 188/2 having [16] 57/16	hazy [1] 148/24 he [137] 5/2 5/8 6/2 6/6 6/20 11/11 11/12 12/1 12/1 35/21 46/20 48/19 48/23 48/25 49/1 49/2 49/3 57/24 57/25 58/2 58/16 59/9 59/16 60/4 60/5 60/12 61/12 61/16 62/10 63/12 66/2 68/15 68/25 69/5 75/15 82/10 84/13 84/13 88/12 89/9 90/18 91/16 91/17 92/9 92/21 93/1 93/21 94/6 102/12 105/18 109/9 113/4 120/7 120/10 140/11 142/14 142/18 142/19 142/20 143/21 144/5 144/11 144/12 144/23 144/24 145/20 145/22 146/1 146/1 146/4 146/6 146/7 146/8 146/10 147/8 147/17 147/17 148/19 149/7 149/11 149/14 149/19 152/17 158/4 162/25 163/20 168/19 171/7 172/6 172/11 172/12 172/13 173/20 173/25 173/25 174/1 175/13 175/14 175/20 176/14 177/20 178/24 180/3 181/11 181/15 182/13 182/15 182/16 183/9 184/17 184/23 184/25 186/4 186/4 186/21 189/5 189/7 189/9 189/16 189/16 189/23 190/2 190/3 190/4 190/23 191/3 191/12 191/17 191/22 192/12 192/14 193/1 193/3 193/4 193/5 193/14 193/15 he'd [2] 43/12 132/20 he's [6] 49/12 183/15 191/15 191/17 193/11 193/14 head [7] 11/12 61/5 61/9 133/1 161/10 163/24 181/8 headed [1] 22/17 header [1] 24/20 headline [1] 22/23 hear [6] 1/4 1/15 1/18 55/19 56/2 113/22 heard [9] 27/4 59/5 102/2 105/18 143/19	hearing [7] 1/6 1/8 69/16 139/16 150/13 167/16 194/10 heart [2] 19/5 28/13 heavily [3] 6/19 9/25 10/13 heed [1] 8/17 held [7] 4/17 57/4 57/4 57/5 81/9 125/13 192/13 Helen [27] 38/9 39/1 39/9 41/2 109/12 109/16 109/20 109/23 109/24 110/3 110/13 110/18 110/20 110/22 110/25 111/21 112/7 112/12 112/14 126/25 127/8 129/9 131/6 133/8 136/10 136/21 174/13 help [9] 2/7 28/8 39/4 119/16 122/4 130/14 146/16 151/17 191/10 helpful [4] 68/14 101/24 136/19 147/23 Henry [7] 164/19 164/20 164/21 170/24 171/3 179/1 195/13 her [29] 7/6 9/22 22/10 23/22 23/22 27/24 38/14 43/19 77/4 89/1 89/3 123/7 126/18 126/19 126/24 167/3 167/6 167/6 168/6 168/8 168/13 168/14 168/15 169/11 169/23 172/8 172/11 173/4 177/17 here [32] 3/23 10/9 12/21 16/17 16/23 29/8 31/15 37/7 38/6 40/16 60/22 75/21 105/22 107/13 108/14 108/14 109/1 111/1 111/21 112/10 118/7 118/18 120/24 124/8 124/23 126/6 129/4 144/10 158/3 178/16 190/16 190/25 here' [1] 3/14 Hi [1] 77/19 hide [1] 3/5 high [3] 25/23 35/2 138/21 higher [3] 136/14 136/17 154/13 highest [1] 156/6 highlighted [1] 107/9 highly [4] 90/4 105/13 151/25 181/11 highs [1] 42/5 him [27] 1/7 5/6 6/5	182/22 hearing [7] 1/6 1/8 69/16 139/16 150/13 167/16 194/10 heart [2] 19/5 28/13 heavily [3] 6/19 9/25 10/13 heed [1] 8/17 held [7] 4/17 57/4 57/4 57/5 81/9 125/13 192/13 Helen [27] 38/9 39/1 39/9 41/2 109/12 109/16 109/20 109/23 109/24 110/3 110/13 110/18 110/20 110/22 110/25 111/21 112/7 112/12 112/14 126/25 127/8 129/9 131/6 133/8 136/10 136/21 174/13 help [9] 2/7 28/8 39/4 119/16 122/4 130/14 146/16 151/17 191/10 helpful [4] 68/14 101/24 136/19 147/23 Henry [7] 164/19 164/20 164/21 170/24 171/3 179/1 195/13 her [29] 7/6 9/22 22/10 23/22 23/22 27/24 38/14 43/19 77/4 89/1 89/3 123/7 126/18 126/19 126/24 167/3 167/6 167/6 168/6 168/8 168/13 168/14 168/15 169/11 169/23 172/8 172/11 173/4 177/17 here [32] 3/23 10/9 12/21 16/17 16/23 29/8 31/15 37/7 38/6 40/16 60/22 75/21 105/22 107/13 108/14 108/14 109/1 111/1 111/21 112/10 118/7 118/18 120/24 124/8 124/23 126/6 129/4 144/10 158/3 178/16 190/16 190/25 here' [1] 3/14 Hi [1] 77/19 hide [1] 3/5 high [3] 25/23 35/2 138/21 higher [3] 136/14 136/17 154/13 highest [1] 156/6 highlighted [1] 107/9 highly [4] 90/4 105/13 151/25 181/11 highs [1] 42/5 him [27] 1/7 5/6 6/5	58/12 59/16 62/11 62/22 75/18 76/8 93/19 147/5 147/7 147/16 150/12 157/2 157/2 157/3 157/25 177/21 180/3 180/21 181/13 182/14 183/20 186/18 189/20 himself [3] 152/16 184/24 193/5 hindsight [5] 54/25 55/2 95/17 108/6 108/8 his [56] 6/3 6/6 7/6 11/22 35/20 43/19 45/6 49/12 57/13 66/17 75/2 82/8 83/20 88/8 91/14 91/14 91/16 91/20 93/7 96/3 96/17 97/17 102/12 105/19 110/6 112/9 132/12 136/1 140/12 141/22 141/23 144/6 144/23 144/24 145/23 149/8 158/1 158/7 172/2 172/13 173/3 174/1 174/1 175/8 175/8 176/23 178/25 181/12 182/2 182/16 183/15 183/22 185/8 185/16 186/16 189/19 his/her [1] 7/6 historic [7] 10/8 45/11 46/7 98/6 99/25 100/1 100/11 historically [1] 10/4 hm [1] 26/23 hoc [2] 71/10 170/19 hold [1] 33/21 holding [3] 53/23 53/25 54/5 holiday [1] 92/9 Hooper [13] 11/10 11/20 13/5 14/9 35/17 119/22 119/25 120/3 120/10 120/21 120/25 121/11 121/14 Hooper's [2] 11/18 12/23 hope [3] 50/22 153/12 179/7 hopefully [1] 180/24 hopelessly [1] 163/4 hoping [2] 133/17 189/23 Horizon [62] 13/21 19/1 19/6 19/15 20/25 20/25 21/7 22/24 23/12 25/14 26/3 28/14 29/23 30/3 31/20 54/23 63/18 65/18 65/19 65/22 73/17 74/22 82/22 85/11 87/9 89/16

H	I agree [3] 53/19 143/5 176/24	52/14 64/24 68/15 82/9 85/10 99/11 101/17 101/23 125/4 138/5 148/5	169/7 169/13 170/5 171/21 173/23 175/25 176/7 180/7 182/14 182/18 183/8 184/4 185/9 185/24 188/4 188/19 188/24 189/7 189/8 189/24 190/21 191/5 192/11 192/16 193/7	165/23 166/1 182/3 186/2 187/15 I missed [1] 29/2 I must [3] 37/20 81/13 190/22 I need [1] 6/11 I needed [1] 155/19 I note [1] 167/18 I now [1] 175/10 I only [2] 59/7 113/10 I parked [1] 56/13 I picked [1] 16/21 I pointed [1] 95/13 I possibly [1] 12/6 I press [1] 153/7 I propose [1] 89/11 I put [1] 177/13 I read [3] 47/8 48/7 161/25 I realised [1] 69/24 I really [4] 36/10 86/13 95/17 108/6 I recall [4] 46/25 48/24 60/15 94/16 I received [4] 45/20 46/2 46/4 106/11 I recognise [1] 81/3 I remain [1] 70/25 I remember [3] 79/17 146/17 176/11 I report [1] 61/15 I retained [1] 42/8 I said [8] 4/25 41/8 47/25 54/11 67/12 70/13 95/10 154/4 I saw [4] 17/20 90/19 122/3 144/22 I say [2] 60/13 104/4 I see [4] 10/15 88/13 138/3 175/10 I seem [1] 72/11 I sent [1] 79/6 I should [3] 8/10 17/17 46/12 I simply [1] 70/2 I spoke [1] 162/24 I start [1] 33/5 I struggle [1] 142/12 I suggest [3] 111/1 169/8 177/20 I suggested [1] 118/17 I summarised [1] 45/13 I suppose [5] 9/23 17/5 61/2 157/15 173/17 I take [1] 168/3 I then [1] 78/13 I think [123] 1/20 4/14 5/10 8/10 8/25 9/3 12/20 14/24 15/14 17/11 18/14 19/7 27/23 28/1 28/3 32/12
Horizon... [36] 92/15 92/16 92/18 92/20 98/4 98/8 98/14 98/22 99/1 99/6 99/15 100/4 100/7 101/20 107/19 110/4 128/12 128/25 129/5 129/24 131/2 132/7 135/4 138/1 138/13 141/7 141/11 141/12 142/7 149/24 166/9 166/11 167/14 174/17 191/21 192/19	I am [11] 36/15 38/2 46/22 50/20 107/13 113/25 124/9 150/22 176/10 176/15 191/24	I couldn't [4] 17/24 75/17 92/2 98/17 I dealt [1] 93/25 I did [12] 29/2 48/23 49/2 57/17 57/21 57/21 96/19 107/1 112/20 145/12 151/16 155/10 I didn't [28] 56/21 58/15 68/13 69/25 71/22 72/2 87/21 90/7 94/22 100/6 118/24 119/9 119/14 119/17 122/2 144/22 155/9 155/13 156/10 159/17 160/2 160/20 166/17 176/7 186/23 187/4 187/10 187/24 I discussed [2] 41/20 62/8 I do [18] 9/5 32/16 36/7 37/12 46/19 50/15 60/12 62/20 73/4 84/14 143/10 159/20 159/22 160/6 168/25 172/23 189/4 190/15 I don't [127] 2/7 2/18 6/11 14/13 22/7 28/6 32/19 34/2 35/20 41/8 43/24 44/9 45/14 47/24 48/11 48/21 50/3 51/18 52/13 52/17 54/10 55/2 57/14 57/20 57/20 59/2 62/18 62/22 63/6 67/10 67/21 68/6 68/7 69/14 69/23 69/24 70/11 74/14 78/11 79/25 80/1 80/17 81/14 82/6 85/21 86/16 89/3 90/16 91/15 94/21 96/19 96/22 97/13 101/9 103/7 103/7 104/2 105/5 108/6 108/8 110/16 112/20 112/20 113/7 118/2 120/23 121/5 121/8 121/13 123/13 123/16 131/20 132/18 136/17 137/11 137/16 138/16 141/15 142/24 142/24 143/15 143/25 144/16 145/18 146/8 149/10 149/18 150/10 150/15 151/12 152/18 152/21 153/2 156/9 159/1 160/13 161/2 161/13 162/14 163/1 163/6 168/13	I felt [4] 38/11 67/10 68/21 87/14 I first [1] 94/21 I gave [4] 40/10 96/23 134/18 156/9 I get [1] 114/2 I guess [1] 190/21 I had [13] 5/6 16/25 27/10 48/9 59/5 60/18 62/22 70/17 72/5 79/2 80/18 121/19 148/23 I handed [1] 186/18 I have [37] 9/18 20/10 23/24 27/8 28/6 29/21 32/3 33/4 49/18 50/2 57/5 58/4 58/5 70/24 72/1 72/5 72/6 78/1 89/12 90/1 92/2 95/10 104/21 107/9 107/10 139/3 151/5 151/5 151/10 151/10 155/24 171/4 174/6 177/5 179/11 191/1 192/22 I haven't [2] 63/9 80/1 I hope [2] 50/22 179/7 I joined [2] 2/9 6/4 I just [20] 1/17 1/22 17/11 20/13 22/5 54/20 93/13 113/8 136/7 136/18 139/17 145/12 149/13 149/14 159/11 163/8 184/10 187/15 188/1 188/10 I knew [1] 129/16 I know [2] 28/19 151/11 I left [11] 57/1 57/6 79/7 79/14 79/17 79/19 80/3 84/25 85/2 114/11 114/12 I made [1] 85/1 I make [1] 4/9 I managed [1] 78/16 I may [15] 8/13 18/24 28/7 28/7 28/8 50/21 91/15 93/12 103/1 103/8 115/4 115/4 115/5 121/7 184/9 I mean [15] 26/19 57/18 90/11 94/23 101/9 104/10 108/22 113/3 136/23 146/4	I are [2] 111/5 111/15 I arrived [2] 17/22 45/15 I ask [4] 32/24 43/6 178/18 179/6 I asked [5] 6/17 12/18 19/22 26/19 56/22 I assume [3] 101/5 123/18 192/21 I assumed [1] 58/16 I attempted [1] 155/20 I been [1] 10/1 I believe [40] 4/8 4/16 4/18 5/6 5/7 6/17 10/19 12/8 12/16 13/15 15/19 17/3 17/20 24/9 24/11 37/1 42/23 45/20 48/5 50/17 54/10 54/15 54/23 57/3 79/7 79/18 99/2 114/11 114/12 114/13 114/15 126/18 126/22 129/11 129/18 130/4 142/18 145/18 173/10 186/18 I came [1] 70/10 I can [24] 1/5 1/19 5/7 25/3 47/6 50/22 57/18 74/6 99/9 100/20 103/8 113/23 119/13 120/3 120/23 127/25 135/1 148/23 160/4 172/10 178/10 178/24 184/21 187/4 I can't [17] 10/23 10/24 28/8 47/8 73/18 105/15 114/11 123/9 126/25 143/10 146/3 148/5 148/16 162/23 176/15 183/23 184/10 I cannot [10] 47/12 60/11 60/12 90/3 94/3 103/1 109/1 115/5 147/18 178/23 I certainly [3] 5/20 5/21 94/10 I clearly [2] 49/2 108/20 I comment [2] 13/23 52/16 I considered [1] 155/19 I copied [1] 79/9 I could [13] 4/7 29/11
Horizon's [1] 177/15 Horizon/Horizon [1] 20/25 horrendous [1] 139/5 horrified [1] 60/13 hot [4] 40/6 40/12 41/1 41/10 house [3] 49/23 91/20 148/1 how [46] 4/14 26/6 34/6 34/11 35/7 35/21 48/18 50/19 57/1 58/5 60/12 61/25 62/9 62/11 66/7 68/9 81/13 85/15 92/17 97/7 98/17 99/9 107/9 110/24 111/10 111/25 117/7 120/10 120/13 121/19 123/16 136/3 138/14 166/23 167/3 167/18 169/15 169/16 174/6 178/14 178/24 181/23 188/18 188/19 188/20 189/21 Howe [2] 109/11 109/21 however [16] 5/10 9/19 23/3 23/9 30/11 48/22 69/7 78/6 89/22 109/24 110/15 157/23 172/25 174/14 191/6 191/24 hub [9] 64/22 65/18 84/24 85/4 85/6 85/8 85/13 85/17 133/10 huge [1] 156/9 hugely [2] 186/25 187/1 Hugh [1] 58/11 hunting [1] 66/5 hypothesis [1] 166/13	I	I accept [1] 159/7 I accepted [2] 106/20 116/21 I actually [2] 184/22 184/22 I advise [1] 157/24		

<p>I</p> <p>I think... [107] 35/15 37/1 37/7 37/19 37/20 38/3 39/12 39/13 39/15 42/7 42/24 45/1 45/15 46/11 48/5 49/23 52/20 53/25 55/8 55/16 59/2 60/9 61/24 63/1 63/2 63/11 64/18 67/4 69/15 70/15 71/9 72/5 72/24 74/8 74/20 75/4 75/19 79/1 79/8 79/13 79/19 81/20 88/1 89/4 90/5 90/9 90/13 90/18 97/9 97/19 97/19 97/21 97/23 98/13 100/17 100/20 103/19 103/22 104/9 105/2 113/9 116/21 118/16 121/16 122/19 126/19 126/20 130/13 131/25 132/18 132/21 134/2 134/16 134/18 134/20 141/7 143/22 143/23 149/3 153/5 153/7 153/11 154/9 164/21 167/12 167/15 168/12 168/13 168/15 168/16 168/17 168/18 169/25 172/7 172/17 174/1 178/13 179/2 182/6 184/22 185/12 186/6 188/14 189/20 190/9 192/5 192/11</p> <p>I thought [9] 9/18 14/1 17/23 58/9 73/3 85/21 136/17 160/20 192/6</p> <p>I took [12] 6/3 10/24 68/3 70/13 73/12 82/17 87/20 96/19 123/21 124/15 165/1 181/3</p> <p>I typed [1] 165/4</p> <p>I underline [1] 172/18</p> <p>I understand [9] 59/19 65/16 89/13 92/12 100/9 106/1 130/12 134/4 174/1</p> <p>I understood [2] 104/7 192/5</p> <p>I used [1] 60/22</p> <p>I want [6] 89/18 102/5 128/1 174/5 179/11 190/7</p> <p>I wanted [2] 11/3 75/20</p> <p>I was [81] 2/16 2/17 8/25 17/16 28/5 29/2 33/8 33/9 38/2 39/12 39/13 40/1 40/1 40/3</p>	<p>41/9 44/9 45/16 48/1 51/18 52/13 52/14 52/15 55/6 59/5 60/21 60/21 61/1 61/4 61/24 62/1 62/11 62/23 64/8 64/13 64/21 67/12 70/10 70/13 70/14 71/19 72/7 72/16 80/17 82/10 82/12 83/16 84/23 85/3 89/3 90/8 93/17 93/19 93/24 94/3 95/18 95/25 98/25 104/20 104/25 106/24 107/1 108/10 108/22 124/4 124/15 124/21 124/24 125/2 142/12 145/13 147/7 147/16 150/18 168/11 177/5 181/9 181/14 187/16 192/16 193/3 193/12</p> <p>I wasn't [10] 40/3 62/12 73/13 80/11 95/10 106/24 124/25 125/16 152/12 165/2</p> <p>I went [3] 56/22 139/18 145/5</p> <p>I will [2] 38/16 76/25</p> <p>I won't [1] 119/1</p> <p>I would [27] 9/20 9/23 10/20 15/6 27/11 28/19 39/18 39/21 40/11 42/11 44/10 47/9 48/5 48/6 61/2 61/18 67/4 84/19 88/21 98/3 100/17 107/16 126/6 162/22 167/24 175/6 191/24</p> <p>I wouldn't [7] 13/2 13/3 37/7 150/20 153/24 171/13 171/16</p> <p>I'd [9] 10/23 18/23 27/23 34/18 38/22 43/24 62/2 148/16 153/12</p> <p>I'll [15] 5/24 8/14 8/14 99/19 102/1 130/19 138/7 143/4 145/2 146/16 146/20 147/19 153/11 170/24 181/1</p> <p>I'm [120] 4/16 8/14 8/14 12/6 12/22 12/23 13/3 15/6 15/7 15/11 17/15 22/9 28/8 29/12 32/1 37/1 38/22 40/15 45/2 46/25 47/9 50/3 54/20 55/10 55/15 57/5 57/9 58/2 63/12 74/9 74/14 75/17 75/21 76/23 78/11 79/25 87/24 95/2 98/21 102/9 104/22 112/16 112/23 113/7 113/10 115/3 121/5</p>	<p>122/7 126/23 126/25 127/24 128/3 130/13 137/6 137/11 138/16 139/6 139/9 139/14 142/24 145/25 146/3 146/14 146/18 147/18 148/24 149/13 149/18 150/10 150/20 150/24 151/1 151/10 151/16 151/18 152/1 152/18 153/2 153/15 154/2 154/3 154/19 157/17 160/6 163/22 164/10 165/21 166/1 166/6 166/20 168/4 169/1 170/5 170/25 171/4 171/25 175/18 176/10 177/7 178/15 178/16 179/10 180/23 180/23 180/24 182/24 183/8 183/23 186/23 187/10 187/24 188/1 188/12 189/19 190/21 191/4 191/7 192/5 193/7 194/2</p> <p>I've [22] 15/20 22/10 24/9 32/13 33/25 45/8 68/7 91/19 109/10 113/5 138/3 138/3 139/9 146/4 150/11 151/18 166/10 168/23 171/4 178/3 178/11 185/14</p> <p>ICL [1] 97/23</p> <p>idea [12] 57/5 73/2 95/17 151/5 151/5 151/10 151/18 159/9 160/18 171/4 171/4 177/5</p> <p>identifiable [1] 53/9</p> <p>identified [8] 9/8 23/4 46/14 51/17 63/18 83/8 148/8 182/2</p> <p>identifies [2] 25/3 91/24</p> <p>identify [6] 2/10 3/22 46/12 89/23 116/18 182/25</p> <p>identifying [1] 9/11</p> <p>ie [2] 58/18 159/10</p> <p>ie the [1] 58/18</p> <p>if [191] 4/7 4/13 5/20 6/10 6/11 6/23 7/18 7/24 8/8 8/11 8/13 8/14 11/17 12/3 12/25 15/6 15/9 15/21 18/24 20/17 22/7 22/22 24/19 25/22 26/18 27/19 27/23 28/11 29/2 29/11 30/11 36/2 39/19 39/19 41/12 42/12 44/9 46/23 49/6 50/15 50/21 51/4 51/24 52/5 52/14</p>	<p>52/17 52/25 53/1 57/4 57/11 57/13 57/18 57/21 58/6 58/17 59/3 59/14 61/3 62/18 63/6 63/20 64/9 65/11 65/25 66/13 67/21 68/3 68/23 69/4 71/4 71/8 73/6 73/25 74/17 74/18 76/14 77/3 77/4 77/21 79/2 80/24 82/8 83/7 83/17 85/4 86/5 86/14 86/16 86/25 88/11 88/18 88/20 89/8 90/17 91/7 91/21 92/3 93/22 96/13 97/6 97/20 98/4 98/21 99/5 99/12 99/17 100/13 100/15 100/17 103/8 103/23 105/5 106/4 107/2 107/4 107/20 110/17 110/24 111/4 111/5 113/3 114/24 117/24 118/5 118/8 120/6 120/19 122/17 123/2 123/24 124/15 124/18 124/19 125/2 125/11 126/7 131/10 132/24 133/13 133/21 134/18 134/19 135/6 135/17 135/21 136/8 138/4 139/25 140/3 140/24 142/13 143/14 147/9 150/11 150/12 151/19 153/8 153/14 154/10 158/18 161/18 162/4 166/23 167/4 169/10 169/22 171/10 171/14 171/24 175/5 175/5 175/20 176/18 177/13 178/17 183/4 183/9 184/5 184/14 188/12 189/16 189/19 189/25 190/16 190/23 191/6 191/19 191/23 192/5 192/17 192/23</p> <p>ignore [1] 40/6</p> <p>ignoring [2] 110/22 112/13</p> <p>iii [1] 115/22</p> <p>image [1] 34/11</p> <p>imagine [1] 36/15</p> <p>imagined [1] 48/6</p> <p>imagining [1] 32/1</p> <p>immaterial [1] 23/24</p> <p>immediate [2] 10/6 10/11</p> <p>immediately [2] 27/1 169/5</p> <p>immunity [4] 145/10 148/3 148/15 150/9</p> <p>impact [1] 60/24</p> <p>impart [1] 58/5</p> <p>imparted [1] 67/23</p> <p>Imperial [1] 99/17</p>	<p>impetus [1] 167/5</p> <p>implication [1] 43/25</p> <p>implications [5] 5/17 50/19 54/18 99/20 135/5</p> <p>implies [1] 27/3</p> <p>importance [3] 19/13 110/20 112/12</p> <p>important [9] 6/9 19/2 87/17 98/15 126/9 147/21 148/1 148/10 181/25</p> <p>imposed [1] 54/15</p> <p>impossible [1] 94/8</p> <p>imprecise [1] 48/9</p> <p>impressed [1] 62/12</p> <p>impression [6] 7/25 64/8 72/6 93/17 93/21 193/3</p> <p>imprisonment [2] 84/1 105/19</p> <p>inactivity [1] 171/20</p> <p>inadequate [2] 87/9 107/23</p> <p>inadvertently [1] 121/24</p> <p>inappropriate [3] 112/19 123/24 124/2</p> <p>incident [4] 75/6 75/7 75/10 76/12</p> <p>inclination [1] 3/5</p> <p>include [3] 115/13 120/4 133/15</p> <p>included [2] 124/17 167/17</p> <p>including [7] 22/3 30/15 43/18 47/21 120/1 121/10 159/13</p> <p>inclusion [1] 116/18</p> <p>income [1] 35/12</p> <p>incoming [1] 46/13</p> <p>incompetent [1] 41/4</p> <p>incomplete [1] 107/24</p> <p>incorrect [7] 42/23 65/2 68/12 82/9 118/2 132/1 178/16</p> <p>incredibly [1] 98/20</p> <p>incumbent [2] 27/19 27/23</p> <p>incurious [1] 41/21</p> <p>indeed [24] 1/19 2/24 2/24 6/3 11/3 15/4 15/16 16/10 19/4 20/5 36/7 37/14 39/2 40/14 40/24 42/9 49/23 50/15 54/12 55/1 103/17 105/1 136/2 193/12</p> <p>indelible [1] 24/3</p> <p>independent [7] 40/22 45/8 48/14 135/18 135/22 159/4 159/10</p>
--	---	---	---	--

<p>I</p> <p>independently [2] 18/11 20/8</p> <p>indicate [3] 46/15 184/5 192/1</p> <p>indicated [2] 7/20 162/3</p> <p>indicates [2] 115/16 191/10</p> <p>indicating [1] 193/9</p> <p>indication [1] 41/15</p> <p>indicative [1] 30/15</p> <p>indirect [2] 141/8 141/13</p> <p>individual [10] 29/9 33/13 37/25 38/2 50/9 70/12 93/10 111/11 141/25 180/11</p> <p>individually [1] 78/15</p> <p>individuals [7] 9/22 25/15 40/1 40/13 53/7 53/20 165/7</p> <p>industry [2] 21/13 30/6</p> <p>inestimable [1] 116/9</p> <p>inevitable [1] 177/22</p> <p>inevitably [3] 3/19 74/4 149/22</p> <p>inexpensive [1] 7/13</p> <p>inexplicable [1] 132/3</p> <p>inextricably [2] 14/4 14/19</p> <p>infallibility [1] 177/15</p> <p>infer [1] 100/21</p> <p>inference [1] 183/5</p> <p>influence [1] 68/22</p> <p>info [1] 184/17</p> <p>inform [6] 3/8 38/19 40/15 43/18 44/18 152/22</p> <p>information [75] 3/8 10/20 25/18 26/17 36/16 37/19 37/21 49/20 52/11 59/15 59/23 62/4 62/6 64/5 64/14 64/20 64/23 65/2 65/21 65/23 66/4 67/22 68/25 70/14 70/17 75/20 77/1 77/10 77/22 79/24 79/25 80/2 81/5 81/8 81/11 81/13 82/22 83/1 85/9 89/15 97/14 98/16 99/22 99/24 100/9 100/10 100/11 102/19 102/22 103/21 108/10 109/3 119/2 123/13 124/13 126/2 127/9 132/12 144/7 144/8 149/24 160/9 161/19 166/2 172/3 172/4 173/15 177/9</p>	<p>178/11 178/12 178/23 185/1 189/17 189/21 189/23</p> <p>informed [9] 10/22 18/16 85/24 91/23 96/2 98/13 140/12 183/20 183/21</p> <p>informing [1] 161/5</p> <p>inherent [1] 119/23</p> <p>initial [5] 76/19 77/4 119/8 126/20 176/11</p> <p>initially [7] 74/2 79/6 103/11 103/19 104/4 121/20 133/8</p> <p>initials [1] 83/9</p> <p>initio [1] 135/13</p> <p>inject [2] 92/6 93/15</p> <p>innocence [1] 7/5</p> <p>innocent [1] 8/20</p> <p>input [3] 21/15 89/24 115/6</p> <p>inquiry [14] 38/5 38/15 38/21 39/3 40/10 41/9 48/4 55/15 57/7 110/7 165/25 175/2 182/7 194/1</p> <p>insert [2] 51/2 90/21</p> <p>inserted [1] 52/5</p> <p>inserting [1] 26/13</p> <p>instance [1] 138/11</p> <p>instances [1] 5/22</p> <p>Instead [1] 110/19</p> <p>instruct [4] 49/9 49/16 65/10 183/12</p> <p>instructed [15] 44/4 47/21 48/18 48/19 71/3 82/13 87/14 98/3 180/2 180/13 180/14 184/3 185/7 186/8 186/20</p> <p>instructing [5] 70/3 147/10 179/20 181/5 181/7</p> <p>instruction [18] 44/5 60/1 64/9 64/13 67/14 95/8 95/20 96/15 96/25 127/10 135/22 180/20 181/17 182/16 186/7 186/25 187/7 188/3</p> <p>instructions [5] 19/23 96/7 180/11 180/19 189/10</p> <p>instrumental [1] 19/17</p> <p>insurers [1] 3/25</p> <p>integrity [12] 19/5 21/15 22/22 23/2 28/14 89/13 89/15 89/18 122/22 124/4 135/4 138/1</p> <p>intention [5] 37/16 37/17 61/22 134/7 162/4</p>	<p>intentionally [2] 58/24 109/5</p> <p>intents [1] 147/10</p> <p>interest [13] 42/4 145/10 146/22 147/20 148/3 148/10 148/11 148/12 148/15 149/7 150/9 151/24 152/7</p> <p>interested [2] 33/20 112/5</p> <p>interfering [1] 170/25</p> <p>interim [13] 20/20 45/5 46/13 67/20 97/12 127/7 129/1 129/3 136/10 143/20 144/20 152/24 174/13</p> <p>internal [4] 31/24 53/3 72/9 131/7</p> <p>internally [3] 32/18 91/18 122/11</p> <p>interpret [1] 192/3</p> <p>interpretation [2] 99/7 129/3</p> <p>interpreted [1] 37/13</p> <p>interrupt [1] 145/25</p> <p>interview [1] 135/12</p> <p>interviewed [2] 6/21 7/2</p> <p>interviewee's [1] 7/5</p> <p>interviewing [1] 2/9</p> <p>interviews [2] 8/1 8/17</p> <p>into [34] 5/18 5/25 14/8 21/16 35/11 35/12 36/18 65/3 69/2 73/1 73/6 78/1 81/16 82/13 87/10 92/14 106/8 108/11 109/18 110/7 115/6 115/10 115/15 115/20 116/19 123/16 131/25 140/20 149/23 152/15 157/13 167/7 168/23 178/14</p> <p>Introduction [1] 190/25</p> <p>invariably [1] 154/8</p> <p>investigate [12] 8/9 8/16 9/8 9/9 9/10 19/19 19/22 78/7 100/4 100/6 100/14 191/24</p> <p>investigated [4] 26/5 98/7 100/8 137/19</p> <p>Investigating [1] 108/24</p> <p>investigation [22] 7/22 8/3 8/5 10/2 10/14 37/3 78/9 105/21 105/25 106/8 107/8 107/23 108/12 108/25 110/21 110/24 157/13 159/5 159/10 159/13 159/19 163/19</p> <p>investigations [6]</p>	<p>3/19 6/25 9/7 9/15 92/14 92/17</p> <p>investigative [1] 8/1</p> <p>Investigator [1] 7/20</p> <p>Investigators [3] 6/25 7/4 8/18</p> <p>invite [1] 107/21</p> <p>invited [1] 190/13</p> <p>inviting [1] 193/11</p> <p>involve [2] 98/8 121/17</p> <p>involved [22] 31/15 35/1 41/23 42/9 62/19 73/13 74/6 83/25 86/16 93/12 93/22 94/3 96/24 97/7 102/15 105/14 112/16 121/6 142/10 174/24 180/22 186/10</p> <p>involvement [6] 5/5 72/16 115/2 170/6 187/22 190/11</p> <p>involves [1] 20/14</p> <p>involving [4] 111/18 112/11 120/12 159/13</p> <p>irresistible [1] 169/23</p> <p>irrespective [2] 104/6 105/12</p> <p>irritatingly [1] 41/24</p> <p>is [405]</p> <p>ISAE [1] 23/13</p> <p>Ishaq [6] 118/16 118/18 179/16 190/8 190/14 191/2</p> <p>Ishaq's [2] 102/4 190/18</p> <p>Ismay [1] 29/19</p> <p>isn't [24] 4/4 6/2 6/9 8/24 14/14 16/4 16/8 16/12 16/23 26/18 26/20 61/20 86/22 100/16 104/17 110/10 119/15 128/16 128/21 131/21 137/18 147/21 147/24 173/9</p> <p>isolated [1] 76/12</p> <p>issue [41] 3/13 3/24 4/3 18/25 19/13 20/7 22/15 23/23 28/17 28/18 45/11 45/12 46/7 50/18 74/19 75/13 75/14 75/19 76/12 76/14 76/18 78/22 78/24 83/1 83/14 83/16 84/5 84/22 86/15 93/11 94/10 94/22 95/2 102/1 102/7 113/1 113/2 116/4 121/4 137/25 156/13</p> <p>issue' [1] 87/2</p> <p>issued [10] 76/2 76/3 76/6 76/10 76/16</p>	<p>78/14 78/21 153/22 154/17 154/23</p> <p>issues [48] 16/3 18/15 19/7 36/23 36/25 43/9 44/6 63/18 65/18 65/19 65/24 66/5 69/16 70/7 70/8 70/10 71/13 71/23 73/16 73/19 78/19 81/15 83/8 83/10 88/20 98/6 98/11 99/5 99/12 99/16 101/10 107/24 110/4 110/5 122/14 122/17 122/21 123/23 127/2 128/20 131/25 136/22 136/25 138/2 141/12 142/7 166/10 166/12</p> <p>Issues/Observations/ Comments [1] 83/10</p> <p>issuing [1] 133/2</p> <p>it [607]</p> <p>It'll [1] 138/5</p> <p>it's [108] 4/2 4/3 4/18 5/25 6/13 6/17 11/11 12/8 12/8 12/14 14/3 15/12 15/25 16/2 16/4 16/7 16/11 20/13 20/14 23/11 24/15 24/19 24/22 24/22 24/22 24/24 26/14 26/16 26/18 26/20 26/24 29/13 29/14 29/18 31/12 41/8 47/1 47/5 50/25 53/1 53/2 57/5 59/14 60/19 67/6 68/1 68/8 75/14 76/18 76/20 84/7 84/8 85/13 85/14 85/15 86/22 88/10 90/5 90/20 92/4 94/5 98/1 100/15 102/10 104/2 105/13 107/13 107/15 107/15 108/21 109/6 111/14 113/7 116/24 121/7 123/22 128/15 130/9 131/5 131/6 131/7 142/6 145/7 147/24 148/24 148/24 154/5 154/8 154/11 159/5 159/7 159/8 163/12 167/4 171/5 171/5 174/9 174/10 180/8 181/25 182/19 182/21 183/18 183/23 184/15 185/11 188/13 188/14</p> <p>items [3] 78/2 78/3 78/17</p> <p>its [10] 12/21 22/25 32/1 34/11 63/22 87/4 98/16 101/22 109/20 154/9</p> <p>itself [4] 13/9 48/3 59/13 115/15</p>
---	---	---	---	---

I	171/5 183/10 John [9] 5/25 6/1 56/7 65/15 67/6 67/7 162/3 163/24 195/7 John/Andrew [2] 65/15 67/7	145/3 145/12 145/22 149/13 149/14 149/14 150/12 154/19 159/3 159/11 161/15 163/8 166/8 168/22 171/2 173/8 175/5 179/7 182/24 184/10 187/15 188/1 188/10 188/12 189/20	163/4 163/25 173/14 174/21 174/22 175/5 180/1 180/18 180/22 181/21 182/8 186/10 186/14 187/3 187/13 187/21 King's [6] 99/2 111/20 168/18 169/2 170/22 181/17	land [1] 120/14 landscape [1] 62/12 large [5] 39/17 45/16 45/17 78/7 135/8 last [14] 1/7 5/14 15/7 15/16 24/12 38/6 40/10 41/9 43/8 45/10 50/16 60/13 60/14 81/6 lastly [1] 8/8 late [4] 33/21 35/15 41/24 86/22 later [6] 63/1 63/2 79/11 142/23 143/16 168/20 latter [2] 56/14 161/15 launch [1] 102/20 launching [1] 103/25 law [8] 3/2 7/17 33/6 130/25 133/1 137/9 155/20 181/8 lawful [1] 63/23 lawyer [8] 2/22 34/21 40/21 100/19 106/14 111/1 115/25 163/17 lawyers [30] 13/24 23/21 48/17 68/22 71/1 71/3 71/3 71/4 71/8 71/12 71/16 71/19 72/4 72/9 72/10 72/17 73/8 83/7 87/14 87/20 100/20 111/9 138/18 140/1 151/3 163/15 169/16 169/17 174/14 177/13 lay [1] 58/7 lead [5] 15/3 93/19 99/25 107/1 108/16 Leader [1] 76/21 leadership [1] 5/19 leads [1] 167/7 leapt [1] 47/12 learned [3] 53/22 182/6 189/12 learnt [2] 126/11 161/8 least [12] 4/14 38/23 47/16 49/17 93/22 115/16 128/19 128/24 137/7 138/22 156/19 186/1 leave [1] 115/11 leaving [1] 191/25 led [8] 3/13 3/19 4/24 4/25 52/23 84/1 157/16 187/21 ledger [1] 53/9 ledgers [2] 19/20 53/8 left [24] 15/18 16/1 24/3 49/11 56/9 57/1 57/6 79/2 79/7 79/13 79/14 79/15 79/17
J	James [4] 24/20 51/7 51/9 53/24 January [13] 6/12 6/16 101/16 165/7 167/13 167/16 175/11 175/22 177/4 178/7 178/8 178/17 178/22 January 2014 [1] 6/12 Jarnail [11] 56/10 58/17 65/13 66/11 66/17 66/19 128/7 129/20 134/13 161/9 177/11 Jenkins [103] 16/7 17/11 40/7 43/7 43/10 46/22 47/16 47/17 47/21 48/18 49/10 49/16 71/24 83/23 88/8 88/11 89/8 90/13 93/7 94/10 95/2 96/4 96/8 96/10 97/16 109/20 110/4 110/5 112/8 119/2 127/2 128/16 128/21 132/8 132/10 132/16 132/19 132/22 141/9 141/14 141/18 142/14 143/19 143/23 144/3 156/13 156/14 156/18 156/20 156/24 157/10 157/14 157/17 157/21 157/25 158/2 158/3 159/2 159/9 159/13 159/16 159/19 160/14 160/16 163/19 165/14 166/5 166/11 171/6 171/18 171/21 176/19 179/7 179/13 179/15 180/2 180/10 180/14 180/20 181/5 181/7 183/22 184/2 184/22 185/4 185/7 185/15 185/20 186/8 186/20 186/25 188/15 189/2 189/14 189/25 190/13 190/20 190/25 192/10 192/12 192/20 192/24 193/8 Jenkins' [9] 45/4 88/9 110/8 112/7 158/10 186/2 187/7 189/15 190/18 Jennings [1] 185/15 jigsaw [1] 72/15 Jishaan [1] 72/6 job [2] 9/9 40/19 jog [4] 27/10 47/3	joined [6] 2/4 2/9 2/10 6/4 10/23 49/13 joining [4] 2/17 5/19 48/1 49/19 jointly [1] 93/22 Jolly [1] 113/14 journalistic [1] 149/16 judge [12] 143/8 143/11 143/17 145/4 145/20 146/1 146/2 146/10 146/12 149/7 152/16 152/17 judge's [4] 126/21 152/16 168/17 176/13 judgment [1] 169/24 Julie [8] 24/10 24/21 26/9 27/12 27/24 28/20 28/21 29/13 July [26] 17/3 17/11 19/19 30/17 31/17 38/8 38/20 59/20 62/7 92/3 98/1 114/22 114/24 116/23 130/16 130/20 134/2 143/9 151/15 163/3 169/5 170/14 176/17 176/21 182/2 182/10 July 2013 [1] 130/16 jump [1] 69/18 June [11] 15/13 22/14 24/22 29/14 52/25 53/15 86/4 169/4 176/17 176/21 188/14 jury [2] 126/21 168/17 just [90] 1/17 1/22 6/23 7/18 7/24 10/19 10/23 16/19 17/11 18/11 20/13 20/17 22/5 22/12 22/12 24/18 24/19 24/23 29/11 29/14 32/7 33/25 39/24 40/3 42/14 45/19 49/6 50/21 50/25 54/20 57/19 62/5 62/9 63/12 79/1 79/14 84/8 91/19 93/13 94/13 95/25 107/13 109/10 113/5 113/8 116/23 121/24 124/13 126/20 127/24 127/25 130/19 133/22 134/5 134/8 135/6 136/7 136/18 137/18 138/3 138/4 139/9 139/17 139/24 141/10	justice [6] 137/13 155/16 155/18 155/22 158/22 158/24 Justiciary [1] 138/22 justification [1] 167/19 justified [1] 108/5	kit [2] 74/24 108/1 knell [6] 12/5 12/19 12/21 12/23 13/1 13/3 knew [22] 49/1 97/14 110/4 121/10 121/13 128/16 128/24 129/9 129/12 129/16 131/19 136/9 137/17 138/13 144/1 144/7 145/12 149/4 169/3 182/7 185/25 186/8 knock [1] 116/10 knock-on [1] 116/10 know [68] 3/9 6/11 10/2 16/4 22/7 24/4 26/12 28/19 32/16 35/20 39/23 43/24 44/9 49/5 52/17 54/20 54/23 62/18 62/22 63/6 67/21 68/12 72/10 74/14 75/20 77/22 80/18 81/14 86/13 86/16 90/17 92/16 94/23 105/5 106/6 108/7 111/4 123/16 124/18 133/21 135/15 141/15 142/24 142/24 144/2 144/9 144/16 146/25 147/2 148/6 150/22 151/11 151/12 152/18 159/1 162/14 163/20 168/2 169/7 172/2 172/4 177/20 182/18 184/10 185/22 187/16 188/2 193/4 knowing [3] 7/11 54/23 154/6 knowingly [1] 158/15 knowledge [8] 19/1 21/1 47/16 49/15 51/1 51/22 54/6 189/5 known [7] 54/17 61/12 69/7 132/15 157/25 187/19 189/7 knows [1] 50/18 Kramer [1] 97/3
		K		
		KC [1] 133/14 KC's [2] 46/17 101/15 keep [15] 41/6 62/24 68/1 87/17 105/7 122/25 124/10 165/13 165/17 165/20 166/4 168/22 173/18 173/22 173/22 keeping [7] 20/2 72/23 84/21 84/23 85/3 85/5 193/20 kept [7] 23/2 67/5 67/17 84/18 85/5 85/6 161/11 key [5] 4/3 22/18 100/10 112/11 112/22 Khayyam [1] 191/2 Kim [3] 88/9 89/13 kind [2] 67/8 78/8 181/2 kinds [1] 95/24 King [94] 4/19 17/1 17/2 17/16 18/18 40/2 42/8 43/9 45/12 48/17 56/23 57/4 57/6 58/1 58/20 58/21 58/21 58/24 59/1 59/10 60/25 61/2 61/4 66/16 67/9 72/9 79/2 79/7 79/10 79/12 79/17 79/19 79/20 80/8 80/10 80/11 80/12 80/14 83/5 83/6 83/9 85/1 85/2 85/3 93/24 95/15 102/15 102/21 103/3 103/17 103/24 104/2 105/3 105/11 106/12 106/14 106/15 109/10 110/15 111/3 112/16 113/5 114/3 114/7 114/10 114/12 114/16 114/18 118/7 120/1 121/9 125/12 130/22 153/20 161/24 162/6 162/10 162/21		
		L		
		lack [9] 23/22 54/7 73/16 73/18 129/5 182/15 186/25 187/7 187/11 lady [2] 86/16 168/5 laid [1] 148/2		

L	limited [27] 5/5 37/9 48/8 61/5 63/18 63/22 63/25 64/1 71/10 72/2 72/3 81/5 81/12 87/6 100/25 101/1 115/13 123/12 125/5 131/23 142/7 143/24 146/23 149/20 150/5 150/6 192/22	98/4 99/10 101/21 102/7 102/11 104/24 104/25 109/6 114/20 119/18 121/8 124/21 131/25 146/4 150/18 155/12 188/12 192/13 192/25	152/8 152/13 161/23 162/17 169/11 177/19 188/15 190/20 190/23	93/20 111/5 111/15 120/8 131/11 132/5 133/1 133/6 133/17 183/5 195/7
left... [11] 79/18 79/19 80/3 84/25 85/2 113/11 114/11 114/12 114/15 183/5 183/13	Limited's [3] 64/3 124/4 150/7	looked [18] 9/20 18/4 25/2 29/17 34/11 47/9 78/1 78/4 98/18 105/18 105/20 111/19 118/16 129/17 176/13 177/6 177/8 193/10	Mahoney [3] 75/2 76/21 77/17	Mason [1] 29/19
left-hand [1] 49/11	limits [1] 193/21	looking [22] 9/13 18/3 24/17 27/13 31/24 57/11 69/20 69/23 85/25 87/11 88/3 88/3 97/22 101/11 101/12 101/16 108/6 127/9 160/10 160/11 187/2 187/16	Mail [3] 103/18 181/11 188/4	mass [1] 25/23
Legacy [4] 92/16 92/20 98/14 98/22	line [6] 6/3 24/5 29/16 74/22 110/7 110/9	looks [3] 37/13 83/13 99/9	main [4] 42/19 102/14 104/20 134/24	masterly [1] 171/20
legal [18] 2/5 2/23 34/22 35/3 35/5 40/22 49/24 50/18 64/19 67/17 80/22 96/18 97/11 123/13 133/7 135/2 136/18 193/19	lines [6] 105/7 133/6 171/2 173/7 173/8 183/6	loose [1] 173/25	mainly [1] 33/6	material [27] 11/25 26/18 26/22 43/19 44/13 45/17 48/2 48/15 59/21 83/18 100/14 102/22 118/8 119/7 145/21 147/22 148/8 148/12 157/25 158/4 162/11 163/21 173/16 176/20 176/21 182/3 187/1
legally [1] 95/7	link [3] 110/2 112/7 112/10	loosest [1] 155/16	majority [1] 2/15	matter [36] 11/11 14/22 15/2 17/7 29/3 31/22 32/15 32/16 35/8 35/25 37/18 38/3 39/24 41/9 42/12 81/25 82/2 82/5 86/7 86/12 86/21 97/6 105/24 106/10 111/11 112/1 143/14 144/18 152/25 174/9 175/11 175/21 176/2 178/6 188/1 188/5
Lesley [8] 23/18 27/25 28/21 28/22 28/23 30/1 31/5 31/5	linked [1] 14/4	Lord [3] 5/2 5/5 137/9 5/2 5/5	make [31] 2/25 4/9 10/6 13/19 22/22 23/9 26/11 27/10 37/5 37/17 39/14 42/4 54/13 55/17 55/20 57/7 61/3 73/10 75/21 82/7 87/5 88/14 96/1 110/2 119/13 123/2 145/4 151/4 157/4 184/7 187/14	matters [19] 16/22 23/20 32/6 34/3 37/2 38/1 38/6 42/4 48/3 48/4 48/21 50/1 54/24 112/5 121/11 136/2 141/18 153/20 160/1
less [8] 3/20 4/12 5/3 36/24 87/5 101/6 143/4 153/12	Linklaters [6] 4/18 13/12 13/12 13/15 14/11 14/17	Lord Arbuthnot [2] 5/2 5/5	making [22] 16/18 34/4 35/2 39/24 42/20 42/22 57/20 73/2 81/18 87/20 97/12 119/12 121/25 125/20 139/9 145/5 145/13 145/13 147/5 147/8 148/20 152/14	Matthews [3] 170/23 171/10 172/5
let [10] 27/1 66/15 77/22 106/5 107/16 111/4 155/25 171/5 171/17 171/18	list [5] 26/21 49/11 65/24 78/23 127/14	Lords [1] 148/2	Malcolm [3] 29/19 30/1 31/1	Matthews' [1] 107/17
let's [22] 3/23 5/24 6/22 14/8 28/24 35/24 38/3 59/13 63/4 73/10 73/20 80/4 90/15 145/1 145/3 153/17 156/12 158/23 158/24 161/6 170/23 188/11	listed [4] 78/22 88/10 143/12 143/15	lose [1] 58/9	malfunction [1] 191/25	Matthews' [1] 107/17
letter [11] 15/12 16/18 16/20 17/6 17/6 18/11 44/5 58/12 96/9 120/20 120/24	listening [3] 40/3 40/5 40/7	loss [5] 11/22 36/20 74/23 149/9 149/11	malfunctioning [1] 191/22	maximum [1] 12/17
letters [2] 96/15 127/3	litigation [15] 3/25 13/20 65/1 68/4 68/13 68/16 73/10 73/13 73/23 74/5 82/17 83/19 87/21 169/21 177/24	losses [4] 11/7 11/22 76/7 132/3	malfunctions [1] 193/9	may [95] 1/1 8/11 8/13 18/24 19/24 19/25 20/10 20/14 21/22 21/25 22/3 26/1 28/7 28/7 28/7 28/8 32/9 32/10 37/13 37/14 47/17 50/9 50/21 52/23 53/15 58/10 63/11 71/7 71/12 75/1 76/5 76/6 76/13 76/15 76/18 77/23 79/22 80/2 80/2 80/5 80/7 80/10 80/11 83/3 83/5 83/15 87/8 90/16 91/15 91/19 93/12 94/3 103/1 103/8 105/15 105/20 106/7 107/21 107/22 108/16 110/17 115/4 115/4 115/5 115/17 117/5 120/25 121/7 122/8 122/21 122/22 123/6 123/7 125/13 135/17 137/20 137/22 142/22 154/8 170/11
letting [1] 93/19	littles [10] 7/7 7/18 8/8 33/5 36/3 39/4 114/14 148/24 178/12 183/4	lot [12] 2/12 12/3 12/25 14/10 72/15 100/4 100/9 100/11 102/2 102/3 136/24 168/24	man [1] 132/8	
level [5] 5/23 25/23 26/2 187/10 188/3	little [10] 7/7 7/18 8/8 33/5 36/3 39/4 114/14 148/24 178/12 183/4	lot [12] 2/12 12/3 12/25 14/10 72/15 100/4 100/9 100/11 102/2 102/3 136/24 168/24	managed [1] 78/16	
levels [1] 4/23	livelihood [1] 11/22	lunch [2] 113/11 114/3	management [2] 26/7 114/16	
liability [1] 4/2	lodged [1] 132/6	Lusher [1] 51/14	manager [1] 22/10	
liaise [1] 81/21	logging [3] 25/11 26/2 26/4	lying [1] 58/8	management [2] 26/7 114/16	
light [4] 53/24 54/5 54/24 107/11	logs [4] 26/4 192/2 193/10 193/15	M	manager [1] 22/10	
lights [1] 40/16	London [4] 33/14 99/18 134/16 135/1	M Smith [1] 183/6	manner [8] 51/3 59/6 63/23 125/5 180/2 181/22 185/8 186/20	
like [22] 15/6 15/22 18/23 41/12 57/19 66/10 68/4 73/6 83/15 88/22 94/5 95/10 96/13 106/5 106/9 121/22 126/15 157/15 164/11 173/18 173/22 173/23	long [8] 22/3 22/4 37/24 55/13 75/17 113/7 148/25 183/24	M060 [2] 109/23 110/1	many [6] 11/15 45/18 48/3 48/3 70/24 135/14	
likelihood [1] 116/11	longer [9] 9/14 10/16 76/25 85/15 97/16 97/17 98/14 98/17 100/8	made [59] 3/15 7/22 14/13 17/3 21/5 24/2 28/10 28/12 37/22 50/16 50/16 54/1 57/16 58/15 58/17 59/3 59/3 63/16 65/7 72/12 76/1 85/1 85/23 85/24 89/20 103/11 103/12 108/17 109/19 109/20 116/8 117/24 118/3 118/5 118/13 121/9 124/1 126/7 127/7 130/4 131/14 134/6 135/11 143/25 144/15 146/22 147/8 148/4 148/7 151/14	March [9] 73/21 73/25 75/12 75/25 79/6 79/8 79/20 91/7 114/13	
likely [10] 105/13 133/19 133/24 135/9 143/19 144/20 149/5 150/1 184/7 184/10	look [53] 5/24 6/10 6/22 6/23 12/7 20/13 24/18 28/24 29/12 35/7 35/24 57/9 59/13 63/4 63/5 69/20 70/19 73/20 74/17 76/19 77/24 79/21 80/4 80/6 80/24 80/25 81/16 82/13 83/3 83/15 85/10 86/4 89/18 97/5		March 2016 [1] 114/13	
limit [1] 179/9			mark [2] 107/4 190/18	
limitation [1] 78/9			marked [1] 10/12	
limitations [1] 54/5			MARTIN [16] 56/7 77/19 80/7 83/11 92/8	

M	11/4 12/5 12/19 13/8 13/13 14/22 14/24 15/3 15/5 37/10 50/13 51/12 54/8 73/9 102/8 102/17 102/19 103/9 103/13 103/21 104/6 105/1 109/14 111/8 111/10 111/11 111/19 111/25 114/21 119/6 123/18 125/19 166/21 172/8 172/16 172/25	91/24 108/25 186/7 methodology [1] 91/14 methods [1] 108/13 mid [2] 35/15 134/2 mid-August [1] 134/2 mid-to [1] 35/15 middle [3] 36/4 37/24 120/6 midst [1] 2/5 Miele [3] 140/8 141/22 141/22 might [32] 5/8 7/21 11/15 12/2 12/3 12/24 14/9 34/7 62/19 64/20 66/13 71/20 71/23 86/10 86/10 93/14 102/18 103/12 108/11 113/9 121/8 121/23 125/6 130/14 142/23 159/9 160/18 160/21 161/12 183/10 183/16 191/13 mind [9] 45/11 62/17 62/22 94/13 122/6 137/1 156/7 160/23 160/23 minds [1] 163/6 mine [1] 83/20 mini [2] 157/13 163/19 minimisation [3] 131/18 131/21 132/16 minimising [2] 110/22 112/13 mining [1] 33/16 minister [4] 34/6 155/15 155/18 155/22 minor [2] 11/6 121/25 minute [5] 55/17 61/19 62/15 127/18 170/25 minutes [44] 1/10 1/11 1/12 1/13 15/10 50/17 50/22 58/18 59/4 59/24 60/1 61/8 65/10 65/20 67/5 67/14 68/7 69/1 69/7 69/24 70/1 70/5 70/16 70/18 86/8 113/11 138/6 138/7 139/17 139/21 143/2 143/5 153/5 153/8 153/11 161/11 162/4 164/1 164/9 164/9 164/11 164/22 166/6 174/6 minuting [1] 69/13 miscellaneous [1] 87/24 misleading [1] 16/8 misled [3] 158/16 160/17 163/20 mismatch [1] 189/18	misplaced [1] 37/20 Misra [23] 16/12 122/23 123/7 125/7 125/9 126/16 166/9 166/16 167/21 168/11 168/21 169/5 170/9 171/1 171/11 171/24 172/20 173/2 174/8 175/13 175/24 178/20 178/21 Misra's [14] 102/17 122/9 123/10 126/5 167/17 169/22 170/5 170/6 174/14 176/5 176/12 177/5 177/13 177/22 Misras [3] 170/11 170/11 170/15 missed [1] 29/2 missing [1] 168/19 mission [1] 50/6 misunderstanding [3] 3/12 3/24 4/2 misunderstood [1] 58/25 mitigation [1] 126/3 MJS [2] 122/13 122/16 Mm [4] 26/23 47/24 82/3 162/12 Mm-hm [1] 26/23 mobile [4] 56/17 56/17 56/19 56/22 mode [1] 5/18 Moloney [11] 1/10 18/21 18/22 33/1 53/22 139/16 143/1 143/6 153/6 195/4 195/11 moment [3] 76/23 173/8 183/11 money [13] 7/11 12/3 12/25 13/7 14/10 14/12 35/11 35/12 35/19 35/21 35/22 35/24 36/17 monies [1] 35/10 monitor [1] 91/4 monitoring [1] 25/19 month [4] 24/24 32/8 79/18 79/19 months [6] 2/20 12/16 78/6 81/9 92/24 130/10 months' [1] 105/19 mood [1] 5/18 more [41] 3/18 3/20 4/11 5/3 9/10 10/19 10/22 15/10 21/19 22/16 28/20 30/11 34/4 34/12 36/16 37/18 39/4 42/14 55/6 70/17 72/15 75/20 96/23 100/3 100/4	101/6 104/16 106/25 110/18 136/24 139/17 139/21 144/8 153/13 176/16 177/8 178/11 184/7 184/10 192/2 193/14 morning [19] 1/4 1/25 30/12 31/4 31/11 31/14 43/6 55/16 56/2 59/20 62/1 67/24 67/25 68/5 72/19 90/17 161/21 173/13 194/5 mornings [1] 29/25 most [5] 6/19 65/22 68/20 137/9 150/2 move [15] 3/6 29/11 38/3 65/11 65/12 87/24 90/15 92/3 95/2 102/1 102/5 113/11 114/3 160/10 166/7 moved [2] 56/24 78/13 moving [3] 57/9 122/25 124/10 MP [1] 34/6 MPs [2] 131/15 152/24 Mr [384] Mr Altman [15] 16/10 50/14 99/2 101/15 102/11 119/20 120/2 165/6 168/18 170/22 172/11 173/9 173/13 173/17 187/8 Mr Altman's [1] 47/16 Mr Andrew [1] 20/14 Mr Aujard [28] 1/7 1/16 1/17 1/22 3/23 10/11 10/18 12/4 12/18 17/9 18/23 20/18 22/8 26/13 27/7 27/16 29/11 30/17 31/3 32/23 33/4 36/6 41/19 42/6 42/17 43/6 55/3 90/17 Mr Blake [9] 133/11 139/21 139/23 164/8 169/10 173/12 177/10 193/22 195/10 Mr Bowyer [14] 70/15 79/16 89/4 90/10 96/12 104/7 104/10 104/24 106/20 106/23 175/7 175/11 175/20 178/5 Mr Bowyer's [1] 181/6 Mr Brian [1] 164/25 Mr Cash [2] 89/5 162/22 Mr Cash's [1] 162/25 Mr Clarke [70] 17/10
----------	---	---	--	---

M	192/20 192/24 193/8	184/6	134/7 136/3 139/22	150/3
Mr Clarke... [69]	Mr Jenkins' [5] 45/4	Mrs [29] 63/7 102/17	142/25 148/18 148/25	natural [1] 3/5
59/16 60/16 61/11	88/9 186/2 187/7	123/10 125/9 126/5	153/4 160/4 164/13	nature [8] 14/19
62/3 62/4 79/16 91/5	189/15	151/3 151/13 166/16	164/23 166/12 174/2	16/17 25/18 44/10
91/12 93/17 94/6	Mr Matthews [3]	167/17 167/21 168/11	190/24 191/4 191/5	44/17 44/23 103/6
94/16 96/3 104/8	170/23 171/10 172/5	168/21 169/5 169/22	191/9	191/20
104/9 104/10 104/16	Mr Miele [2] 141/22	170/5 170/6 170/9	must [15] 2/22 37/20	NBSC [1] 74/24
104/25 106/20 106/22	141/22	171/24 174/8 175/24	41/2 41/2 43/25 44/22	necessarily [4] 14/24
126/23 129/18 130/4	Mr Moloney [11] 1/10	176/5 176/12 177/5	81/13 146/12 156/5	64/11 97/14 191/17
134/3 134/17 142/13	18/21 18/22 33/1	177/13 177/22 178/20	157/23 165/23 168/4	necessary [5] 36/16
142/16 143/11 143/16	53/22 139/16 143/1	178/21 179/3 189/22	168/9 172/20 190/22	62/21 62/24 154/2
144/2 144/5 144/22	143/6 153/6 195/4	Mrs Crichton [1]	my [101] 2/11 2/14	177/18
145/5 145/13 145/19	195/11	63/7	2/15 3/3 3/7 3/8 4/25	need [26] 3/10 6/11
148/19 148/23 149/6	Mr Parsons [16]	Mrs Misra [11] 125/9	5/5 5/13 5/21 9/1 9/2	30/1 30/14 30/19 31/6
150/11 150/19 150/23	61/20 61/23 65/13	167/21 168/11 168/21	9/19 10/12 10/20	31/14 36/8 36/10
151/1 151/11 152/13	66/2 68/5 68/8 68/24	169/5 170/9 171/24	12/10 12/14 17/4	40/21 45/24 55/2
152/16 156/19 157/12	93/20 107/2 109/7	174/8 175/24 178/20	17/15 18/9 18/14	57/14 57/22 66/8
161/2 161/7 163/8	111/17 116/24 123/6	178/21	20/12 23/25 23/25	85/25 101/12 101/16
168/16 175/12 175/22	124/9 125/9 169/17	Mrs Misra's [12]	27/10 28/15 28/18	108/8 110/24 120/13
176/13 177/8 177/17	Mr Posnett [1] 62/11	102/17 123/10 126/5	28/19 29/8 31/21 33/8	122/23 123/2 134/4
178/3 178/24 182/1	Mr Rodric [1] 20/15	167/17 169/22 170/5	37/7 37/19 38/24	147/24 180/7
182/9 182/12 184/8	Mr Ron [1] 6/13	170/6 176/5 176/12	39/12 41/12 41/17	needed [15] 3/21
184/9 186/6 186/12	Mr Scott [8] 59/10	177/5 177/13 177/22	41/20 42/7 42/15 43/1	14/1 16/3 25/10 31/25
188/3 188/8 188/15	65/6 65/9 65/13 66/2	Mrs Oliver [1] 179/3	44/17 45/21 46/1 46/4	37/21 38/11 41/13
189/15 189/20	84/3 161/10 162/9	Mrs Samra [1]	48/7 48/10 48/24	41/15 41/16 47/20
Mr Clarke's [10]	Mr Scott's [1] 6/14	189/22	48/25 52/16 53/22	123/25 125/2 155/17
57/10 63/14 64/6 91/6	Mr Singh [23] 56/15	Mrs Samra's [2]	56/17 56/18 56/21	155/19
97/15 110/10 147/4	59/7 59/8 59/9 59/11	151/3 151/13	60/16 60/22 62/8	needless [2] 4/24
160/23 181/4 184/25	60/8 60/11 60/18 62/2	Mrs Seema [1]	62/25 64/18 66/21	8/23
Mr David [1] 59/11	62/5 62/8 63/1 65/5	166/16	67/15 70/11 71/11	needs [5] 21/21
Mr Davidson [1]	66/20 66/21 67/3	Ms [34] 1/9 1/12 1/25	73/14 80/18 84/20	25/16 26/5 85/9 126/7
51/25	67/12 134/16 161/23	2/2 11/12 15/10 17/25	84/25 85/9 87/6 88/14	nervous [1] 71/1
Mr Gareth [1] 132/19	162/3 181/6 181/8	18/10 18/19 38/10	91/13 94/13 94/13	net [1] 166/13
Mr Henry [7] 164/19	194/6	38/13 43/3 43/4 55/9	97/21 106/19 112/1	never [11] 91/19
164/20 164/21 170/24	Mr Singh's [1] 66/2	75/4 81/4 81/19 83/9	115/3 119/13 121/14	110/5 180/2 180/3
171/3 179/1 195/13	Mr Smith [36] 1/16	88/18 127/14 127/17	125/18 126/5 127/12	181/15 184/2 185/7
Mr Hooper [1] 120/3	55/19 56/4 56/9 72/18	127/21 127/22 139/7	138/3 138/8 139/2	185/8 186/4 192/9
Mr Ishaq [2] 118/18	83/21 99/4 101/2	166/21 172/20 179/4	142/19 143/1 149/20	193/4
190/14	106/14 106/22 112/3	179/9 183/1 193/18	162/2 166/6 168/23	nevertheless [2]
Mr Ishaq's [1] 102/4	113/25 122/5 127/12	195/3 195/6 195/9	173/1 178/18 181/16	6/22 64/12
Mr Jenkins [71] 16/7	127/24 143/7 145/3	195/14	182/6 182/11 188/5	new [21] 39/17 83/8
17/11 40/7 43/10	147/11 148/22 150/17	Ms Crichton [1]	188/11 189/12 191/6	87/17 96/25 97/8
46/22 47/16 47/17	151/6 153/4 153/17	166/21	193/17	97/18 97/20 101/11
47/21 48/18 49/16	154/11 156/4 159/23	Ms Misra [1] 172/20	myself [8] 31/1 67/19	102/20 104/1 109/10
88/11 89/8 90/13	163/10 163/21 164/2	Ms Oliver [5] 1/12	70/13 91/13 105/11	119/2 130/5 130/7
94/10 96/4 96/8 96/10	168/4 171/2 171/15	43/3 55/9 179/9	134/16 135/1 161/2	130/11 134/4 135/24
97/16 128/21 132/16	176/9 179/6 187/19	193/18		141/21 147/4 148/17
132/22 142/14 143/23	193/25	Ms Page [6] 1/9 1/25	N	160/11
144/3 156/13 156/18	Mr Stein [12] 1/11	15/10 18/19 38/10	name [12] 13/25 18/2	newly [2] 37/9 37/25
156/20 156/24 157/10	33/2 33/3 42/25	38/13	63/11 66/17 81/3	newly-arrived [1]
157/14 157/17 158/2	127/24 153/7 153/16	Ms Page's [2] 17/25	86/10 91/6 111/13	37/25
159/2 159/9 159/13	164/6 169/2 189/12	18/10	112/21 114/23 174/20	next [12] 4/3 23/16
159/16 159/19 160/14	195/5 195/12	Ms Panter [1] 88/18	177/2	30/12 33/2 40/2 50/18
160/16 163/19 171/6	Mr Stevens [4] 1/21	Ms Vennells [1]	named [2] 93/10	122/6 139/17 153/8
171/21 176/19 179/13	16/15 39/2 55/15	11/12	132/8	166/15 167/7 168/5
179/15 180/2 180/10	Mr Thomas [2]	Ms Watt [6] 127/14	namely [3] 22/19	NFSP [1] 127/14
180/14 180/20 181/5	105/18 106/9	127/17 127/21 127/22	51/13 169/4	night [4] 15/16 24/12
181/7 183/22 184/2	Mr Warmington [1]	139/7 195/9	names [4] 30/22	33/22 41/24
184/22 185/4 185/7	6/15	much [33] 1/5 5/12	62/18 76/16 93/9	nightmare [1] 101/25
186/8 186/20 186/25	Mr Williams [15]	22/16 29/11 32/23	narrative [1] 77/21	nine [1] 105/19
188/15 189/2 189/14	27/4 49/21 51/7 63/7	36/24 40/1 42/12	narrow [2] 36/17	no [154] 2/15 3/10
189/25 190/13 190/20	65/6 81/21 81/24 82/4	49/25 67/11 73/7	136/25	3/14 3/23 6/5 7/7 9/14
190/25 192/10 192/12	84/12 86/11 86/16	80/24 83/13 107/9	nasty [1] 68/10	9/18 12/22 13/3 14/24
	183/7 183/17 183/20	113/18 113/24 129/4	national [2] 33/14	15/9 17/15 20/10 21/7

<p>N</p> <p>no... [139] 21/23 26/10 27/8 27/17 28/6 29/24 32/3 32/20 36/16 38/22 39/12 39/21 40/3 42/7 42/23 45/8 45/14 45/22 45/23 46/5 48/21 49/18 50/2 51/18 54/1 56/21 57/5 59/11 65/9 66/12 71/19 72/1 73/25 75/5 78/11 79/1 82/2 82/4 82/6 82/15 84/12 84/17 84/25 85/18 90/7 92/2 93/4 95/17 96/10 96/15 96/15 96/19 97/16 97/17 98/14 98/17 99/9 101/22 104/20 106/2 106/24 107/13 108/2 109/5 111/19 112/24 113/2 115/8 116/18 117/23 117/23 118/15 118/15 119/17 121/19 123/9 125/16 127/3 127/6 132/18 137/11 137/16 146/8 150/15 150/22 151/5 151/5 151/10 151/18 152/10 152/12 153/24 155/13 156/10 156/11 157/3 159/11 159/17 159/18 161/2 161/2 164/3 164/4 164/5 165/6 166/1 167/2 167/6 167/21 168/2 169/25 171/4 171/4 171/16 172/25 177/5 177/18 178/5 178/9 178/10 181/1 183/8 184/4 185/9 185/24 186/23 187/15 188/22 188/24 189/1 189/2 189/5 190/2 190/3 190/5 192/11 192/16 193/7 193/22</p> <p>nobody [1] 9/12</p> <p>Noel [1] 105/17</p> <p>noise [1] 69/17</p> <p>non [4] 46/23 47/18 47/23 180/20</p> <p>non-compliant [1] 180/20</p> <p>non-disclosure [3] 46/23 47/18 47/23</p> <p>none [3] 7/19 85/16 178/3</p> <p>nonetheless [1] 129/19</p> <p>nonsense [2] 177/25 178/2</p> <p>normal [1] 40/11</p> <p>not [235]</p>	<p>note [36] 11/17 12/7 21/20 44/24 49/4 49/7 49/13 49/22 50/8 58/4 58/11 64/2 84/21 89/20 122/12 130/16 132/23 134/9 137/3 137/5 142/16 150/12 150/13 150/14 150/15 150/16 150/25 167/18 182/20 182/23 183/16 184/5 184/12 184/24 188/20 190/3</p> <p>notebook [1] 84/20</p> <p>noted [3] 11/20 49/8 107/18</p> <p>notes [21] 70/12 70/14 84/20 84/23 84/25 84/25 85/3 85/5 85/9 132/1 142/13 142/20 145/14 146/17 147/9 152/14 164/24 165/1 165/3 165/10 184/12</p> <p>nothing [12] 16/16 27/10 46/3 82/18 112/19 112/23 132/7 132/20 167/10 167/23 170/18 171/19</p> <p>notice [5] 151/4 151/17 151/20 152/4 152/9</p> <p>notified [2] 3/25 169/23</p> <p>notifying [1] 151/13</p> <p>noting [2] 107/13 112/21</p> <p>notional [1] 14/8</p> <p>Nottingham [1] 60/16</p> <p>November [3] 12/12 88/5 116/23</p> <p>November 2013 [1] 12/12</p> <p>now [71] 1/24 6/1 9/14 12/1 12/4 16/2 29/12 33/18 34/20 36/21 39/4 39/6 42/25 47/6 47/11 49/5 54/23 55/17 57/9 64/4 64/9 69/2 69/20 69/23 72/14 73/22 76/18 77/20 77/23 82/12 83/17 84/15 84/15 85/2 86/5 86/18 88/5 92/4 93/5 98/7 100/19 101/11 109/21 113/25 116/23 118/20 120/17 123/16 128/15 132/23 133/2 133/14 134/8 145/17 146/25 155/14 156/16 157/20 160/3 161/6 161/7 162/8 164/6 164/18 174/5 174/5 175/10 176/24 178/14 187/4 187/17</p>	<p>Nowhere [1] 159/2</p> <p>number [28] 4/10 9/20 15/4 18/5 53/4 59/25 62/14 74/20 76/8 77/5 78/7 82/25 88/2 100/20 109/17 111/23 115/12 122/11 127/13 132/2 134/19 136/22 147/3 182/24 183/14 186/9 190/11 191/20</p> <p>number 3 [2] 53/4 77/5</p> <p>number iv [1] 62/14</p> <p>numerous [3] 32/17 64/10 103/2</p> <hr/> <p>O</p> <p>o/s [1] 165/13</p> <p>oath [1] 1/23</p> <p>objective [3] 137/4 150/7 150/8</p> <p>objectives [2] 40/20 68/4</p> <p>obligation [1] 186/3</p> <p>obligations [1] 185/2</p> <p>Observations [1] 83/10</p> <p>observed [1] 90/24</p> <p>obtain [9] 77/1 96/20 133/20 133/22 133/25 134/4 189/23 192/15 193/5</p> <p>obtained [10] 52/11 62/6 136/20 168/8 181/23 186/13 191/13 192/4 192/6 192/8</p> <p>obtaining [2] 7/1 47/22</p> <p>obvious [6] 28/2 101/7 159/23 167/5 169/8 187/21</p> <p>obviously [5] 64/11 150/22 157/3 177/21 186/9</p> <p>occasion [4] 42/14 42/15 147/15 181/14</p> <p>occasions [1] 122/11</p> <p>occupying [1] 2/14</p> <p>occur [3] 21/23 39/14 155/10</p> <p>occurred [11] 17/18 48/10 55/18 64/7 64/9 118/2 118/21 167/11 167/12 181/14 185/9</p> <p>occurs [1] 135/13</p> <p>October [12] 45/1 45/16 45/21 46/17 47/7 85/25 102/10 102/13 102/25 105/14 107/17 128/6</p> <p>October 2013 [1] 128/6</p> <p>odd [2] 86/14 100/15</p>	<p>off [20] 11/9 13/11 26/9 31/17 47/13 55/16 56/9 58/7 69/18 72/23 83/11 138/4 169/12 170/16 170/20 175/8 175/8 175/11 175/16 175/18</p> <p>offence [3] 7/14 42/11 115/9</p> <p>offences [3] 108/18 121/12 158/18</p> <p>offender [2] 105/25 106/8</p> <p>offenders [1] 102/18</p> <p>offer [3] 178/5 178/8 192/25</p> <p>office [179] 2/4 2/23 3/13 5/3 17/13 17/16 17/22 19/2 20/6 20/24 21/23 24/6 26/24 27/1 27/5 27/21 33/8 33/11 34/3 34/7 34/10 35/13 39/8 42/19 42/20 43/13 45/15 46/6 46/23 47/20 48/18 48/25 49/13 49/15 50/11 51/2 52/9 53/16 54/8 54/12 55/4 58/6 58/14 61/5 61/9 61/14 62/15 63/5 63/18 63/22 63/24 64/1 64/3 64/24 65/8 67/12 67/18 67/23 67/23 71/3 71/4 72/2 72/3 72/22 72/25 73/5 74/5 74/6 77/2 80/13 80/14 80/16 80/20 85/5 87/6 87/13 87/18 89/6 89/7 90/1 92/14 93/2 93/18 94/24 96/12 97/17 98/21 98/23 101/15 103/10 103/15 103/19 104/4 104/14 105/20 108/12 109/8 110/21 111/9 111/22 111/25 112/3 112/10 115/10 115/12 115/16 116/1 116/9 117/10 117/13 121/20 122/4 122/18 124/4 125/5 125/19 128/20 129/21 129/21 129/23 130/6 130/17 130/21 131/1 131/6 131/13 132/5 132/17 133/2 133/3 133/19 133/21 133/25 134/1 134/3 134/10 134/12 134/24 135/5 135/25 137/14 138/17 138/18 138/19 140/4 140/17 140/21 141/1 143/24 146/23 149/9 149/12 149/20 150/4 150/6 150/6 153/21 155/6</p>	<p>160/1 160/21 160/24 161/10 162/23 163/5 167/24 174/4 180/18 181/8 181/10 181/21 182/23 184/1 187/3 187/8 187/20 188/4 191/21 192/15 192/22</p> <p>Office's [12] 21/6 50/12 64/17 65/22 71/22 94/14 109/19 122/22 128/8 135/8 180/21 181/18</p> <p>officer [3] 108/24 137/8 137/9</p> <p>officials [1] 134/10</p> <p>offline [6] 83/12 84/5 84/7 84/7 85/7 85/20</p> <p>oft [1] 34/10</p> <p>often [5] 7/4 11/21 34/12 91/16 93/24</p> <p>Oh [2] 168/4 171/25</p> <p>okay [23] 28/24 32/25 33/18 36/8 36/14 38/9 54/21 79/21 128/15 134/8 138/9 145/1 146/21 146/23 146/24 147/19 148/6 148/18 157/12 157/16 157/20 158/14 160/7</p> <p>old [17] 30/13 67/19 92/15 92/18 97/10 98/4 98/5 98/14 99/6 99/15 99/19 100/4 100/6 100/16 100/18 100/24 155/14</p> <p>old-fashioned [1] 155/14</p> <p>older [2] 81/16 81/19</p> <p>Oliver [10] 1/12 43/3 43/4 55/9 179/3 179/4 179/9 193/18 195/6 195/14</p> <p>on [307]</p> <p>on oath [1] 1/23</p> <p>once [3] 21/9 23/11 52/4</p> <p>one [59] 3/3 3/21 4/12 8/3 10/21 13/20 15/7 20/13 25/12 25/16 28/1 33/15 35/8 38/3 42/14 42/14 50/21 56/17 57/13 57/25 57/25 65/8 72/4 72/14 74/1 75/15 79/6 79/8 89/4 91/13 96/24 97/9 97/21 101/7 104/18 105/2 105/4 105/6 105/10 105/11 113/3 114/22 115/19 123/11 130/19 130/22 132/8 132/11 132/19 135/17 138/5 138/7 149/6 167/2 167/6</p>
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<p>O</p> <p>one... [4] 167/21 175/14 176/2 186/11</p> <p>ones [4] 26/8 115/4 138/23 160/21</p> <p>ongoing [5] 20/11 42/9 46/6 46/14 86/20</p> <p>online [10] 21/1 87/19 98/8 99/1 101/20 141/7 141/12 166/9 167/14 174/17</p> <p>only [25] 8/20 27/5 52/5 53/6 59/7 71/2 72/12 72/14 81/6 99/1 99/7 113/10 119/7 123/11 133/9 138/5 141/2 144/1 148/7 149/4 151/21 152/7 153/5 171/6 174/16</p> <p>onto [2] 56/24 137/13</p> <p>onwards [1] 96/15</p> <p>open [5] 5/3 36/22 63/23 82/13 115/12</p> <p>openness [2] 64/15 187/11</p> <p>opens [1] 11/12</p> <p>operate [2] 40/14 41/21</p> <p>operated [1] 149/12</p> <p>operates [1] 3/17</p> <p>opine [2] 13/16 86/2</p> <p>opinion [6] 43/19 71/11 87/6 108/23 149/20 158/1</p> <p>opinions [1] 108/13</p> <p>opportunity [8] 56/13 90/2 123/3 124/6 124/20 125/4 125/22 126/9</p> <p>opposed [1] 18/9</p> <p>opposite [1] 46/4</p> <p>options [1] 26/6</p> <p>or [167] 2/9 2/20 2/21 4/18 4/19 6/20 7/2 7/6 7/7 8/17 10/3 10/11 10/24 11/15 13/6 13/7 15/2 17/6 18/11 19/10 21/2 21/8 21/9 23/23 25/15 26/8 27/9 28/4 28/7 28/8 28/10 28/17 28/20 30/12 30/12 32/15 32/21 34/6 35/10 35/12 36/2 38/23 42/10 43/19 43/19 44/6 45/4 45/12 47/4 47/16 47/17 48/14 48/17 48/21 49/15 49/16 49/19 50/5 51/4 51/22 52/18 53/12 53/18 54/2 54/7 54/25 56/16 57/2 58/11 58/24 59/6 59/9 59/22 60/6 62/23 63/7</p>	<p>63/25 64/2 64/6 65/3 65/10 66/19 66/22 66/25 69/17 70/7 72/11 73/10 74/13 76/12 76/12 79/11 79/18 82/23 84/3 86/10 86/13 87/9 89/1 91/13 91/16 91/17 93/25 94/2 94/17 96/25 98/15 99/23 101/5 101/6 102/20 103/12 103/17 104/1 104/16 104/18 105/5 106/8 107/23 108/12 108/13 108/24 108/25 110/22 111/1 112/13 116/8 117/6 117/7 120/21 121/13 121/21 121/22 121/25 124/1 124/12 124/13 134/5 135/12 137/21 137/22 141/8 141/9 141/13 142/22 144/13 144/17 144/17 146/11 151/7 151/17 156/8 160/23 161/5 164/9 167/9 174/2 174/3 176/19 178/8 184/17 185/1 185/16 187/3 188/4 189/10 190/3</p> <p>oral [1] 171/6</p> <p>orally [1] 176/19</p> <p>order [7] 19/18 25/5 31/25 94/16 114/17 172/10 192/15</p> <p>ordered [1] 23/1</p> <p>orders [1] 87/18</p> <p>ordinarily [2] 147/23 150/16</p> <p>organisation [8] 10/23 24/15 25/17 30/2 31/7 32/2 39/8 68/11</p> <p>organisations [1] 97/23</p> <p>original [8] 73/23 117/5 117/25 118/10 118/14 136/6 141/20 142/3</p> <p>originally [3] 15/17 15/19 74/15</p> <p>other [42] 11/22 13/21 22/18 23/21 27/4 32/4 32/4 32/22 34/18 36/23 37/4 48/4 48/21 57/16 60/22 62/23 69/17 76/6 76/13 76/14 83/6 100/20 106/3 111/22 116/2 119/14 124/11 130/22 139/4 145/7 146/19 150/20 154/9 159/8 162/24 163/18 165/20 170/11 170/13</p>	<p>170/18 177/19 183/25</p> <p>others [5] 17/6 18/2 97/11 116/12 125/13</p> <p>otherwise [11] 3/18 4/22 61/12 64/20 87/9 117/5 125/4 156/22 161/12 181/12 189/11</p> <p>ought [12] 3/1 3/4 3/9 49/21 50/12 94/18 118/9 144/11 160/25 177/2 178/21 187/7</p> <p>our [21] 30/7 36/18 36/19 55/16 75/15 84/15 87/14 96/10 110/19 114/25 115/8 116/4 120/13 150/7 153/9 157/7 160/9 160/10 163/6 164/6 174/11</p> <p>ourselves [1] 103/9</p> <p>out [56] 8/14 9/5 9/14 16/23 22/6 29/6 33/25 35/18 35/20 35/21 37/19 40/16 44/6 45/3 47/10 57/1 64/9 64/10 68/11 68/12 72/16 73/2 78/17 80/5 83/22 83/23 84/2 95/13 96/9 97/8 97/9 98/9 107/24 108/12 109/13 111/21 116/5 120/13 127/4 130/25 132/18 136/24 139/4 139/21 150/11 150/23 165/7 170/15 171/17 171/18 172/19 174/18 177/2 180/13 185/17 191/20</p> <p>outcome [3] 15/3 133/19 133/24</p> <p>outcomes [2] 11/14 15/5</p> <p>outline [1] 44/1</p> <p>outlined [1] 135/22</p> <p>outset [1] 140/16</p> <p>outside [5] 81/22 116/4 165/13 166/4 172/16</p> <p>outweighs [1] 148/12</p> <p>over [29] 1/25 6/3 9/16 24/23 26/17 32/1 55/10 56/11 59/14 64/18 67/11 72/24 73/15 76/15 77/3 86/5 87/25 94/20 102/16 102/22 107/2 116/17 126/11 127/21 138/3 140/24 146/19 173/15 194/2</p> <p>overall [5] 3/12 30/2 31/7 31/19 44/23</p> <p>overridden [1] 68/3</p> <p>overview [5] 14/14 141/7 141/11 141/17 141/17</p>	<p>overwhelming [1] 7/25</p> <p>overwhelmingly [1] 7/1</p> <p>owe [2] 12/3 12/25</p> <p>owed [2] 43/17 166/18</p> <p>own [6] 58/7 66/17 114/3 117/21 155/1 157/7</p> <hr/> <p>P</p> <p>pack [2] 46/16 71/6</p> <p>page [75] 1/9 1/25 2/2 8/10 15/10 18/19 25/8 34/1 36/2 36/4 38/10 38/13 47/2 47/13 51/6 51/24 53/2 53/3 53/3 57/11 59/14 65/12 69/18 74/17 77/3 77/3 79/3 80/25 83/8 86/5 86/5 86/21 88/5 88/7 88/18 89/8 90/16 90/20 91/21 97/7 97/25 102/11 105/17 107/2 107/3 107/25 116/17 116/22 119/19 133/13 134/20 134/20 135/6 140/3 140/24 157/19 162/1 162/8 165/10 166/7 168/19 170/23 171/10 172/15 172/24 173/6 173/7 183/1 183/11 183/13 184/14 185/12 191/19 192/17 195/3</p> <p>page 1 [2] 107/2 107/3</p> <p>page 12 [2] 34/1 162/1</p> <p>page 13 [2] 157/19 185/12</p> <p>page 14 [1] 162/8</p> <p>page 2 [11] 51/24 59/14 74/17 77/3 80/25 83/8 86/5 89/8 91/21 105/17 191/19</p> <p>page 3 [7] 36/2 36/4 86/21 88/18 97/7 140/3 165/10</p> <p>page 31 [2] 90/16 90/20</p> <p>page 4 [6] 51/6 88/5 88/7 135/6 184/14 192/17</p> <p>page 47 [1] 47/2</p> <p>page 6 [2] 25/8 166/7</p> <p>page 7 [5] 53/3 107/25 170/23 171/10 172/15</p> <p>page 78 [1] 116/22</p> <p>page 8 [4] 53/2 172/24 173/6 173/7</p> <p>Page's [2] 17/25</p>	<p>18/10</p> <p>pages [1] 22/3</p> <p>paid [5] 7/4 12/14 12/15 13/7 35/11</p> <p>painted [3] 11/21 69/11 69/21</p> <p>Panter [3] 88/8 88/18 89/1</p> <p>papers [3] 23/24 104/21 180/12</p> <p>para [1] 110/6</p> <p>para 53 [1] 110/6</p> <p>paragraph [75] 3/10 6/23 7/18 8/9 8/12 9/9 11/12 11/14 11/17 22/6 22/9 22/15 23/17 23/17 23/18 24/5 25/9 46/25 47/1 47/3 47/4 47/6 47/14 47/15 47/24 48/21 58/2 63/13 63/20 77/25 86/25 88/12 89/17 89/18 91/8 93/1 112/22 114/25 115/7 115/23 116/2 116/17 124/8 125/7 126/5 131/10 132/2 132/4 133/5 133/24 134/21 135/21 135/23 140/11 140/15 140/24 141/3 141/20 142/6 142/16 157/19 157/20 162/1 162/8 173/12 174/10 174/18 174/19 174/23 175/4 175/20 180/8 180/17 185/13 185/19</p> <p>paragraph 1 [1] 6/23</p> <p>paragraph 12 [4] 140/24 141/3 142/6 142/16</p> <p>paragraph 129 [1] 173/12</p> <p>paragraph 13 [1] 135/21</p> <p>paragraph 14 [2] 135/23 141/20</p> <p>paragraph 148 [2] 47/1 47/4</p> <p>paragraph 2 [4] 11/12 91/8 114/25 115/7</p> <p>paragraph 21 [2] 180/8 180/17</p> <p>paragraph 217 [1] 23/18</p> <p>paragraph 254 [2] 22/6 22/9</p> <p>paragraph 255 [1] 23/17</p> <p>paragraph 3 [3] 7/18 88/12 116/2</p> <p>paragraph 33 [2] 174/10 175/20</p> <p>paragraph 37 [1]</p>
--	---	---	--	--

<p>P</p> <p>paragraph 37... [1] 185/13</p> <p>paragraph 38 [3] 157/19 157/20 185/19</p> <p>paragraph 393 [1] 3/10</p> <p>paragraph 394 [1] 9/9</p> <p>paragraph 4.2.2 [1] 25/9</p> <p>paragraph 45 [1] 162/1</p> <p>paragraph 5 [1] 116/17</p> <p>paragraph 52 [1] 162/8</p> <p>paragraph 7 [1] 11/17</p> <p>paragraph 8 [1] 140/11</p> <p>paragraph 9 [2] 134/21 140/15</p> <p>paragraph iv [1] 115/23</p> <p>paragraphs [5] 34/1 128/4 132/25 175/8 185/12</p> <p>paragraphs 132 [1] 128/4</p> <p>paragraphs 37 [1] 185/12</p> <p>parked [1] 56/13</p> <p>Parliament [1] 149/2</p> <p>Parliamentary [1] 148/22</p> <p>Parsons [28] 20/15 20/19 25/1 61/20 61/23 65/13 66/2 67/6 68/5 68/8 68/24 91/22 92/4 93/9 93/20 98/1 105/23 106/17 107/2 109/7 111/17 116/24 122/13 122/16 123/6 124/9 125/9 169/17</p> <p>part [32] 3/7 9/1 27/12 27/16 34/25 35/12 36/8 45/19 47/19 52/25 56/14 60/14 60/14 71/15 73/16 73/18 90/19 92/1 92/16 93/6 98/10 102/24 109/3 132/1 135/24 141/21 161/15 181/10 181/21 185/4 187/20 191/20</p> <p>parte [1] 145/7</p> <p>partial [2] 101/21 176/12</p> <p>Participant [1] 1/8</p> <p>Participants [5] 1/9 87/25 113/12 127/13 193/20</p>	<p>particular [16] 2/13 35/8 35/25 36/25 45/20 54/25 62/23 67/13 132/11 139/18 142/8 145/21 149/3 168/19 170/6 192/19</p> <p>particularly [5] 22/4 35/17 116/7 163/1 181/25</p> <p>partner [3] 89/6 89/7 162/23</p> <p>partners [2] 162/20 162/24</p> <p>parts [2] 91/8 107/9</p> <p>party [3] 145/7 165/17 183/25</p> <p>pass [2] 22/18 94/1</p> <p>passages [1] 63/13</p> <p>passed [1] 190/9</p> <p>passes [1] 174/11</p> <p>passive [1] 167/23</p> <p>past [13] 8/11 9/16 28/19 34/5 34/14 41/23 43/13 91/12 96/11 181/22 187/2 187/23 191/10</p> <p>pasted [1] 66/20</p> <p>Patel [1] 72/6</p> <p>pathway [2] 7/13 7/16</p> <p>Paul [1] 140/8</p> <p>Paula [2] 2/16 38/18</p> <p>Pause [1] 166/5</p> <p>paused [1] 129/14</p> <p>pausing [1] 141/10</p> <p>pay [1] 8/17</p> <p>payable [1] 11/24</p> <p>paying [2] 14/16 42/3</p> <p>payment [2] 11/16 116/8</p> <p>payments [2] 11/19 189/18</p> <p>payouts [1] 11/5</p> <p>peachy [1] 16/23</p> <p>pending [2] 130/5 133/15</p> <p>penned [1] 161/7</p> <p>people [23] 26/24 28/2 28/3 28/10 28/11 28/12 28/16 32/17 40/14 61/3 62/23 64/10 69/16 82/9 103/25 104/3 105/9 111/16 121/18 122/2 167/25 177/19 190/11</p> <p>perceived [1] 54/11</p> <p>perception [1] 62/8</p> <p>Perfect [1] 43/3</p> <p>perhaps [22] 3/21 5/1 6/9 15/1 25/3 28/9 35/23 44/1 53/1 67/11 79/13 87/16 96/5 108/9 118/17 124/11 124/12 139/17 160/20</p>	<p>160/24 177/8 177/9</p> <p>period [7] 76/15 79/1 79/10 94/15 95/6 128/2 192/19</p> <p>perjury [2] 158/20 158/23</p> <p>Perkins [1] 2/16</p> <p>permanent [1] 10/1</p> <p>permit [1] 149/24</p> <p>permitted [2] 50/21 87/3</p> <p>persistent [1] 25/16</p> <p>person [2] 23/5 93/22</p> <p>personal [5] 4/1 40/18 56/17 56/21 84/25</p> <p>personnel [1] 21/6</p> <p>persons [3] 32/20 42/10 59/25</p> <p>perspective [5] 5/8 65/1 65/1 83/19 117/1</p> <p>persuade [2] 137/8 138/12</p> <p>persuasive [1] 139/20</p> <p>perverting [2] 158/22 158/23</p> <p>PF [2] 135/15 140/8</p> <p>PF's [2] 134/22 136/6</p> <p>Phase [1] 75/15</p> <p>Phase 3 [1] 75/15</p> <p>Phew [2] 175/15 175/23</p> <p>phone [7] 56/16 56/17 56/17 56/19 56/22 57/10 161/14</p> <p>phrase [3] 99/19 122/10 172/18</p> <p>phrased [2] 60/12 103/8</p> <p>phraseology [1] 60/11</p> <p>physical [1] 6/7</p> <p>physically [1] 23/9</p> <p>pick [1] 47/10</p> <p>picked [3] 15/21 15/24 16/21</p> <p>picture [4] 11/21 69/11 69/21 86/23</p> <p>piece [6] 10/9 24/17 29/22 72/14 92/10 135/17</p> <p>Pii [6] 147/25 148/16 151/4 151/6 151/14 152/19</p> <p>pipeline [1] 137/17</p> <p>place [15] 25/20 26/1 26/8 30/2 31/6 31/25 56/18 59/19 91/4 95/8 105/14 138/23 139/10 142/5 167/15</p> <p>places [1] 112/6</p> <p>plain [5] 17/25 26/24</p>	<p>134/22 140/16 158/7</p> <p>plainly [2] 31/13 31/14</p> <p>plan [2] 30/15 169/25</p> <p>platform [1] 102/19</p> <p>play [1] 168/4</p> <p>played [1] 73/15</p> <p>playing [2] 60/16 73/18</p> <p>plea [4] 96/22 126/3 135/10 146/11</p> <p>pleas [1] 138/23</p> <p>please [83] 5/25 7/24 8/12 20/18 22/5 24/18 25/8 29/12 33/5 35/7 36/1 36/2 47/1 49/4 49/4 49/7 51/5 51/6 51/10 51/24 52/21 53/1 57/9 57/11 59/15 63/5 65/11 65/12 70/19 73/20 74/17 76/19 76/23 77/3 77/21 77/22 80/6 80/25 83/7 86/18 86/21 88/6 89/8 90/16 92/3 97/5 97/25 98/10 102/7 102/11 105/16 105/17 106/5 107/2 107/8 109/6 111/4 113/16 116/17 116/22 119/18 120/8 120/19 145/3 153/14 153/17 157/18 165/10 166/7 168/22 170/23 173/6 182/19 183/4 184/11 184/14 185/10 185/11 188/11 190/16 190/24 191/19 192/17</p> <p>pleased [2] 137/3 139/6</p> <p>pm [5] 113/19 113/21 164/15 164/17 194/9</p> <p>point [56] 9/25 20/12 23/9 25/12 59/18 61/7 62/23 64/17 68/14 68/16 74/3 77/14 79/11 80/1 80/18 84/4 89/5 93/24 96/14 96/24 104/20 104/25 105/3 105/4 105/6 105/10 105/11 110/1 110/17 114/14 116/5 119/11 119/13 119/13 123/14 123/14 123/17 126/18 126/19 133/21 136/1 136/20 136/22 136/24 137/16 144/1 145/21 149/3 154/12 160/4 163/3 165/17 168/12 171/3 185/6 186/1</p> <p>pointed [1] 95/13</p> <p>points [11] 13/23 31/9 47/10 69/2 88/14</p>	<p>88/22 111/21 120/14 126/4 182/24 183/14</p> <p>POL [36] 2/11 4/20 4/23 5/17 6/4 6/25 7/4 7/13 8/21 9/3 11/3 11/23 12/1 12/2 12/3 12/11 12/13 12/24 13/11 14/10 14/20 14/25 17/4 20/12 24/2 36/22 37/1 37/5 37/5 50/5 53/10 134/23 136/1 138/20 150/14 163/24</p> <p>POL00006357 [2] 157/18 185/11</p> <p>POL00006581 [2] 47/1 102/7</p> <p>POL00006797 [1] 63/6</p> <p>POL00006799 [1] 59/14</p> <p>POL00021774 [1] 91/6</p> <p>POL00028062 [1] 90/16</p> <p>POL00028069 [1] 53/1</p> <p>POL00029867 [1] 92/3</p> <p>POL00031409 [1] 24/19</p> <p>POL00040805 [1] 36/1</p> <p>POL00043435 [1] 83/3</p> <p>POL00059602 [1] 190/24</p> <p>POL00066872 [1] 122/8</p> <p>POL00100335 [1] 11/11</p> <p>POL00108538 [1] 51/5</p> <p>POL00112928 [1] 116/22</p> <p>POL00119447 [1] 190/16</p> <p>POL00120311 [1] 80/6</p> <p>POL00120321 [1] 86/4</p> <p>POL00124350 [1] 15/12</p> <p>POL00139681 [1] 73/21</p> <p>POL00139747 [1] 57/9</p> <p>POL00139866 [2] 164/24 184/12</p> <p>POL00139879 [1] 134/9</p> <p>POL00139902 [1] 130/15</p> <p>POL00139906 [1]</p>
--	---	--	---	---

<p>P</p> <p>POL00139906... [1] 132/23</p> <p>POL00140004 [1] 75/12</p> <p>POL00141471 [1] 88/4</p> <p>POL00142322 [1] 188/14</p> <p>POL00148714 [1] 97/6</p> <p>POL00148720 [1] 114/20</p> <p>POL00150342 [1] 119/18</p> <p>POL00150390 [1] 120/19</p> <p>POL00153939 [1] 76/20</p> <p>POL00155555 [2] 49/4 182/20</p> <p>POL00168949 [1] 105/16</p> <p>POL00198595 [1] 174/9</p> <p>POL00241095 [1] 77/17</p> <p>POL00304478 [2] 20/16 20/17</p> <p>POL00323676 [1] 70/19</p> <p>POL00325492 [1] 65/11</p> <p>POL00325867 [1] 109/6</p> <p>POL00327054 [1] 57/22</p> <p>POL00344051 [1] 6/23</p> <p>POL00346958 [1] 29/12</p> <p>POL00411347 [1] 86/19</p> <p>police [5] 158/25 159/4 159/10 160/12 161/5</p> <p>policies [1] 100/12</p> <p>policy [5] 63/25 117/8 140/13 168/6 168/9</p> <p>political [2] 34/6 34/17</p> <p>pose [2] 66/15 66/22</p> <p>posed [1] 66/1</p> <p>position [29] 19/10 21/22 24/24 27/20 29/6 42/17 64/3 64/24 70/25 87/5 98/23 116/13 120/13 122/4 122/13 122/17 130/11 132/17 132/18 132/21 134/22 136/6 140/17 141/20 142/3 144/6</p>	<p>145/23 157/24 159/24</p> <p>positive [5] 43/17 53/12 54/12 115/6 165/7</p> <p>Posnett [2] 59/12 62/11</p> <p>possession [1] 81/11</p> <p>possibility [5] 14/21 53/19 122/24 161/4 170/14</p> <p>possible [18] 16/1 19/10 20/25 21/15 25/13 25/22 66/24 67/2 89/20 89/22 89/23 92/19 108/4 120/9 121/7 155/17 183/18 193/9</p> <p>possibly [8] 3/16 4/19 5/6 12/6 33/20 74/20 76/7 126/15</p> <p>post [178] 2/4 2/23 3/13 5/3 17/13 17/16 17/22 19/2 20/6 20/23 21/6 21/23 24/6 26/24 27/1 27/5 27/21 33/8 33/11 34/3 34/7 34/10 35/13 39/7 42/18 42/20 43/13 45/15 46/6 46/23 47/20 48/17 48/25 49/13 49/15 50/11 50/12 51/2 52/9 53/16 54/8 54/11 55/4 58/6 58/14 61/5 61/9 61/14 62/15 63/5 63/18 63/22 63/24 64/1 64/3 64/17 64/24 65/7 65/22 67/11 67/18 67/23 67/23 71/2 71/3 71/22 72/2 72/3 72/22 72/25 73/5 74/5 74/6 77/2 80/13 80/14 80/16 80/20 87/5 87/13 87/18 89/7 90/1 92/14 93/2 93/18 94/14 94/24 96/12 97/17 98/21 98/23 101/15 102/2 102/6 103/10 103/15 103/19 104/4 104/14 105/20 108/12 109/8 109/19 110/21 111/9 111/22 111/24 112/3 112/10 115/9 115/11 115/16 116/1 116/9 117/10 117/13 121/20 122/4 122/18 122/22 124/3 125/5 125/18 128/8 128/20 129/20 131/1 131/5 131/13 132/5 133/2 133/3 133/19 133/21 133/25 134/1 134/3 134/24 135/5 137/14 138/17 138/19 140/17</p>	<p>140/21 143/24 146/23 149/9 149/12 149/20 150/4 150/6 150/6 152/15 153/21 155/6 159/25 160/21 160/24 161/10 163/5 167/24 174/4 180/18 180/21 181/8 181/10 181/18 181/21 182/23 184/1 187/3 187/8 187/20 188/4 191/21 192/14 192/22</p> <p>post-conviction [2] 102/2 102/6</p> <p>post-qualification [1] 152/15</p> <p>posted [1] 78/2</p> <p>posting [3] 90/23 90/25 91/24</p> <p>postmaster [3] 19/2 19/21 21/24</p> <p>postmasters [2] 27/2 32/10</p> <p>postmistresses [1] 137/21</p> <p>potential [12] 23/15 50/7 60/24 97/22 99/5 103/4 116/6 123/23 126/16 134/6 149/21 161/3</p> <p>potentially [6] 63/1 65/2 99/20 110/14 158/20 192/11</p> <p>power [1] 25/15</p> <p>practice [4] 27/25 153/22 153/25 154/8</p> <p>practised [1] 147/2</p> <p>pre [6] 139/25 165/7 166/9 167/9 170/18 174/17</p> <p>pre-1 January [1] 165/7</p> <p>pre-2010 [2] 167/9 170/18</p> <p>pre-Horizon [1] 174/17</p> <p>precedent [2] 115/21 115/24</p> <p>precise [3] 66/6 69/4 76/9</p> <p>precisely [8] 54/16 100/22 110/9 162/24 167/8 167/11 170/4 188/19</p> <p>predated [1] 20/10</p> <p>predominantly [1] 33/11</p> <p>prefer [2] 71/13 107/16</p> <p>preference [1] 73/6</p> <p>preferred [2] 41/6 110/19</p> <p>prejudice [1] 148/10</p> <p>premise [1] 100/23</p>	<p>preparation [2] 174/24 191/14</p> <p>prepared [13] 6/18 18/4 24/10 63/15 93/2 96/21 97/21 115/16 125/1 131/3 144/12 188/23 188/25</p> <p>preparing [2] 83/19 142/20</p> <p>present [6] 67/19 71/2 80/4 83/4 136/4 162/2</p> <p>presentations [1] 42/1</p> <p>presented [7] 14/2 38/12 95/12 103/15 106/21 125/21 152/24</p> <p>presenting [1] 122/1</p> <p>presents [1] 81/6</p> <p>press [2] 150/3 153/7</p> <p>pressure [3] 169/18 177/21 178/3</p> <p>presumably [3] 31/9 60/19 184/19</p> <p>presumption [5] 3/16 4/4 4/16 4/23 8/4</p> <p>pretty [1] 73/7</p> <p>prevent [4] 23/5 121/18 122/2 129/21</p> <p>prevention [2] 149/8 149/15</p> <p>previous [7] 41/22 59/24 68/9 81/8 83/6 84/11 141/1</p> <p>previously [7] 38/7 48/8 103/18 117/3 117/19 148/16 148/21</p> <p>primary [1] 93/9</p> <p>principal [1] 93/22</p> <p>principally [3] 6/7 18/17 127/15</p> <p>principle [3] 28/5 105/25 106/10</p> <p>principles [2] 12/15 176/17</p> <p>prior [10] 12/13 30/23 38/24 45/8 48/10 85/25 101/13 101/16 156/13 189/5</p> <p>priority [1] 30/8</p> <p>prison [2] 108/19 166/11</p> <p>private [6] 84/17 136/16 143/8 143/11 145/4 163/17</p> <p>privilege [4] 58/9 64/19 148/22 163/12</p> <p>privileged [5] 23/6 25/13 163/10 163/21 164/2</p> <p>probably [7] 72/1 97/9 134/5 150/3 150/22 153/9 181/15</p> <p>problem [14] 3/14</p>	<p>3/22 4/8 7/21 9/13 66/6 69/5 69/6 123/1 126/7 146/5 156/20 172/25 173/1</p> <p>problems [8] 3/5 69/12 69/13 99/6 99/25 172/17 172/18 173/2</p> <p>procedure [2] 147/21 152/4</p> <p>proceed [5] 124/14 146/5 146/8 153/17 189/21</p> <p>proceeded [1] 54/14</p> <p>proceeding [1] 126/6</p> <p>proceedings [7] 83/25 83/25 84/1 117/5 118/11 118/14 119/8</p> <p>proceeds [1] 122/18</p> <p>process [20] 2/9 11/4 13/14 26/7 34/4 52/10 53/5 53/6 53/8 85/22 91/14 102/5 102/23 111/25 121/15 121/16 123/10 170/2 173/16 188/6</p> <p>Procurator [15] 128/9 129/13 129/21 130/2 130/6 134/11 138/17 140/4 140/7 140/14 140/17 140/21 141/1 141/19 142/10</p> <p>procured [1] 26/8</p> <p>produce [3] 20/24 98/20 131/14</p> <p>produced [2] 188/20 190/14</p> <p>producing [1] 182/9</p> <p>Product [1] 75/16</p> <p>professionally [1] 187/13</p> <p>Professor [2] 97/3 166/12</p> <p>Professor Kramer [1] 97/3</p> <p>Professor McLachlan [1] 166/12</p> <p>profit [2] 35/12 36/19</p> <p>programming [1] 87/4</p> <p>progress [3] 16/22 16/23 75/2</p> <p>progressing [1] 95/14</p> <p>Project [2] 24/7 52/22</p> <p>prompt [2] 47/19 177/14</p> <p>prompted [4] 47/25 48/12 48/16 48/22</p> <p>prompting [1] 50/2</p> <p>promptly [2] 169/11</p>
--	---	---	--	--

P	proved [1] 4/21	126/1 157/15 159/22	quickly [7] 3/22 51/5	28/17 148/9 157/1
promptly... [1]	provide [9] 7/12	159/23 169/19	85/10 88/2 90/10	realise [5] 69/25 73/5
169/22	44/12 85/8 89/12	puzzle [1] 72/15	90/11 181/9	165/24 166/15 166/17
proofread [2] 115/5	99/14 103/12 141/10	Q	quite [35] 11/25	realised [2] 69/24
150/18	167/21 170/9	QC [9] 65/22 133/14	13/17 15/14 16/1	168/9
proper [4] 8/17 82/7	provided [31] 10/8	17/24 33/20 54/18	17/24 33/20 54/18	reality [2] 5/15 71/15
82/16 116/18	15/20 17/21 22/14	54/18 60/13 60/19	62/23 69/9 69/15	really [23] 8/21 12/12
properly [12] 10/7	23/24 37/21 45/1	70/13 71/22 77/10	70/13 71/22 77/10	13/8 13/24 16/3 27/5
11/24 12/2 12/24	46/16 70/17 77/20	77/25 93/15 94/7	95/15 123/9 130/8	28/16 36/10 84/9
49/16 73/3 73/4 99/10	96/16 99/12 99/17	130/12 134/13 135/2	141/17 143/22 163/22	86/13 89/6 91/19
144/6 144/14 155/19	103/21 104/13 104/22	141/17 143/22 163/22	165/21 168/20 168/24	95/17 108/6 119/11
184/3	124/18 125/3 125/3	165/21 168/20 168/24	183/18 186/9 190/10	127/9 138/10 146/14
proposals [2] 54/13	141/4 141/6 157/4	192/13	192/13	148/7 163/9 163/22
119/22	168/18 168/21 170/4	R	Rachael [3] 88/8 89/1	182/11 191/5
propose [1] 89/11	188/2 189/16 192/9	Rachael [3] 88/8 89/1	89/10	reason [13] 32/21
proposed [4] 111/5	192/10 193/1 193/4	radar [2] 82/12 94/13	89/10	33/8 54/10 76/9
111/19 112/4 135/22	provides [2] 7/15	raise [4] 58/11 71/12	radar [2] 82/12 94/13	116/18 148/19 153/13
proposing [1] 138/19	89/14	71/16 129/5	raise [4] 58/11 71/12	169/8 177/20 185/25
proposition [2] 22/20	providing [4] 34/23	raised [13] 17/5 20/3	71/16 129/5	186/2 186/2 187/11
36/17	62/4 84/24 193/25	20/8 25/4 25/12 31/9	raising [2] 103/10	reasonably [2]
prosecuted [9] 99/5	provision [3] 44/4	43/10 65/25 71/17	103/11	100/21 100/21
103/5 103/16 103/25	166/2 181/4	75/19 88/22 91/3	ramifications [2]	reasons [7] 32/22
104/3 104/7 119/5	Provisional [1]	110/9	174/4 177/22	54/19 79/8 99/13
125/15 168/11	170/13	range [2] 45/16 45/17	range [2] 45/16 45/17	157/21 185/20 185/22
prosecuting [8]	public [24] 27/20	rapidly [2] 41/19 42/2	range [2] 45/16 45/17	reassuring [1] 16/18
94/20 103/4 115/17	29/6 64/20 65/3 73/1	rare [1] 89/25	range [2] 45/16 45/17	recall [80] 46/20
144/24 151/11 156/2	73/7 108/11 117/9	rather [16] 3/18 4/25	range [2] 45/16 45/17	46/25 48/24 52/23
156/5 179/19	138/11 145/10 146/21	8/5 8/13 11/18 14/11	range [2] 45/16 45/17	57/20 60/9 60/11
prosecution [28]	147/20 148/3 148/10	34/5 34/12 42/20	range [2] 45/16 45/17	60/12 60/12 60/15
75/5 75/9 87/7 95/15	148/11 148/12 148/15	42/22 46/8 71/21	range [2] 45/16 45/17	62/20 74/6 75/18 78/9
95/16 98/8 99/21	149/7 149/17 149/24	73/23 105/8 124/11	range [2] 45/16 45/17	78/11 79/23 79/25
106/25 109/17 110/6	150/5 150/9 151/24	141/12	range [2] 45/16 45/17	80/1 81/2 81/11 82/4
112/9 117/7 117/8	152/6	re [4] 36/11 45/9	range [2] 45/16 45/17	91/10 91/15 93/5 93/6
117/17 137/18 146/23	publicity [3] 64/25	122/14 122/17	range [2] 45/16 45/17	94/4 94/10 94/14
151/7 153/20 153/22	116/6 149/21	re-reading [1] 45/9	range [2] 45/16 45/17	94/16 103/1 103/6
154/1 154/6 154/7	publicly [1] 28/12	reach [1] 121/22	range [2] 45/16 45/17	103/8 112/20 113/7
155/5 156/7 168/6	publish [1] 54/13	reached [4] 176/15	range [2] 45/16 45/17	113/8 119/25 120/3
168/9 180/14 185/16	published [2] 67/21	184/2 187/6 187/12	range [2] 45/16 45/17	120/23 121/3 121/8
prosecutions [30]	149/2	react [2] 34/7 64/11	range [2] 45/16 45/17	121/13 126/23 131/20
9/16 43/13 50/11	pull [1] 78/16	reaction [2] 5/16	range [2] 45/16 45/17	135/1 142/12 143/10
85/16 85/20 100/12	pulled [1] 56/11	162/25	range [2] 45/16 45/17	145/18 146/3 147/18
128/3 129/7 129/13	purported [4] 15/13	read [18] 8/14 10/21	range [2] 45/16 45/17	148/5 148/23 149/10
129/16 129/17 129/22	64/1 64/4 64/6	37/14 38/16 47/7 47/8	range [2] 45/16 45/17	149/13 149/18 150/10
129/25 130/3 131/1	purportedly [1] 63/16	48/6 48/7 58/2 63/12	range [2] 45/16 45/17	150/15 152/21 153/2
136/2 136/4 136/11	purports [1] 16/2	78/14 90/6 90/7	range [2] 45/16 45/17	162/24 170/5 173/23
136/16 137/10 137/15	purpose [3] 13/5	100/17 103/24 161/25	range [2] 45/16 45/17	175/25 176/7 182/14
138/12 138/13 140/18	33/9 85/4	168/16 178/17	range [2] 45/16 45/17	183/6 183/19 183/23
140/22 147/4 180/21	purposes [2] 84/22	reading [11] 22/12	range [2] 45/16 45/17	183/25 184/19 184/21
181/22 187/2 187/23	147/11	45/8 45/9 46/8 47/2	range [2] 45/16 45/17	188/19 188/20 188/23
prosecutor [12]	pursue [1] 125/23	47/11 47/19 88/13	range [2] 45/16 45/17	188/25 189/24 190/12
43/18 43/23 95/19	purview [1] 116/5	101/7 150/25 165/22	range [2] 45/16 45/17	190/19 190/21 192/11
96/1 148/7 148/11	push [3] 71/20 92/9	reads [4] 9/6 22/12	range [2] 45/16 45/17	193/6
151/19 151/23 152/2	123/17	25/11 29/20	range [2] 45/16 45/17	receipt [2] 24/1 27/14
152/6 155/8 155/17	pushing [2] 19/9	ready [2] 21/21 127/9	range [2] 45/16 45/17	receipts [1] 189/17
prosecutorial [1]	117/11	real [5] 3/23 14/8	range [2] 45/16 45/17	receive [3] 21/25
177/14	put [24] 5/21 10/21		range [2] 45/16 45/17	27/18 94/1
prosecutors [2]	14/8 18/1 25/20 26/16		range [2] 45/16 45/17	received [12] 12/13
155/15 155/23	30/2 31/6 31/25 41/10		range [2] 45/16 45/17	24/6 24/23 45/20 46/2
protect [2] 22/22	45/25 51/11 98/23		range [2] 45/16 45/17	46/4 48/1 58/9 62/10
122/4	108/11 121/20 134/14		range [2] 45/16 45/17	106/11 106/13 121/2
protects [1] 23/10	140/13 142/13 145/2		range [2] 45/16 45/17	receiving [3] 46/1
protocol [1] 177/7	151/3 168/24 175/16		range [2] 45/16 45/17	79/23 112/25
protocols [1] 21/14	177/13 178/3		range [2] 45/16 45/17	recent [2] 29/22
	putting [6] 46/10		range [2] 45/16 45/17	81/15

R	107/12 108/4 Rees [1] 24/20 refer [5] 11/4 22/19 107/5 128/5 182/24 reference [22] 3/18 4/8 7/6 20/16 22/14 44/6 72/12 76/1 91/8 91/21 97/13 118/19 125/6 127/3 127/7 141/8 141/14 142/7 143/25 157/5 172/20 192/3 referenced [1] 23/17 references [5] 53/19 74/4 90/21 109/11 115/1 referencing [1] 109/21 referred [8] 52/20 64/2 64/4 81/8 83/4 184/20 185/14 188/3 referring [9] 8/25 12/20 12/22 12/23 17/2 55/6 58/16 104/15 191/12 refers [5] 63/13 74/19 109/23 116/10 186/12 reflect [4] 63/24 64/2 64/16 108/8 reflected [3] 18/14 44/25 165/23 reflection [4] 58/10 108/9 108/10 109/1 reflections [4] 9/1 138/25 139/2 139/3 regard [12] 22/24 23/25 27/11 46/6 47/3 67/10 95/8 99/14 122/21 123/23 134/6 135/4 regarding [6] 88/16 89/15 117/24 136/9 136/11 159/15 regards [1] 98/11 regret [1] 29/3 regular [1] 73/22 Regulation [1] 154/23 regulatory [3] 40/20 154/16 154/22 relate [1] 181/17 related [6] 65/18 65/19 90/2 100/9 100/11 110/25 relates [7] 65/14 70/21 92/5 93/7 99/4 159/9 191/9 relating [14] 75/7 82/22 86/15 96/25 97/14 98/16 101/22 121/11 122/9 127/15 135/13 141/18 161/19 168/21	relation [57] 5/11 6/7 10/25 23/20 32/6 34/3 38/6 39/23 40/7 40/8 40/20 41/13 43/10 45/25 46/5 50/8 65/9 68/24 84/5 87/21 93/11 93/18 95/19 97/5 99/21 104/5 104/9 105/1 108/3 111/10 117/13 126/4 126/16 132/16 133/3 148/14 153/25 157/9 159/15 159/18 160/1 162/7 162/17 163/5 166/2 170/5 171/22 172/14 178/23 179/14 180/11 180/21 182/8 188/13 189/9 189/13 191/21 relations [1] 5/2 relationship [1] 160/22 relatively [7] 7/12 38/2 48/8 88/1 136/23 136/25 147/4 relayed [7] 59/7 59/16 59/23 60/4 61/10 61/15 61/17 relaying [1] 60/16 released [1] 149/1 relevance [2] 50/8 188/7 relevant [6] 44/5 44/18 141/18 186/19 187/1 187/1 reliability [3] 71/24 129/24 177/15 reliable [1] 135/19 reliance [1] 3/16 reliant [2] 17/16 192/14 relied [4] 23/22 117/16 126/2 149/17 relies [1] 49/24 rely [1] 97/17 remain [2] 70/25 117/11 remained [2] 85/1 114/14 remaining [4] 1/8 38/3 79/10 174/5 remediation [1] 25/25 remember [29] 22/3 24/8 35/8 35/13 39/11 45/3 45/7 46/18 68/19 72/11 78/25 79/17 93/13 94/8 105/15 112/25 112/25 123/9 126/25 143/14 146/14 146/15 146/17 150/12 152/17 165/5 176/11 192/9 192/10 remembering [1]	148/18 remind [1] 1/22 remit [1] 65/16 remote [9] 18/24 19/10 51/1 88/1 88/16 88/21 89/19 94/11 94/15 remotely [5] 1/17 19/20 51/3 51/20 89/21 remove [2] 9/22 56/23 removed [3] 56/21 56/24 74/24 repeat [3] 119/1 154/19 162/7 repeated [2] 70/15 192/25 repeatedly [1] 16/10 repeating [2] 118/20 119/11 repercussions [1] 125/5 replacing [1] 23/7 report [103] 5/25 6/18 8/7 9/5 9/24 21/25 22/3 22/4 22/6 23/13 23/16 24/1 24/6 24/14 24/24 25/4 25/8 25/12 27/14 32/14 38/9 39/1 39/10 41/2 45/5 52/22 61/15 62/10 67/20 69/3 71/5 88/9 88/9 89/14 90/15 91/9 91/23 96/13 97/12 98/19 98/21 99/12 99/17 101/23 107/11 107/17 107/25 109/12 109/16 109/20 109/24 109/24 110/3 110/13 110/18 110/20 110/22 110/25 111/21 112/6 112/7 112/13 112/14 113/10 122/19 126/24 126/25 127/7 127/8 129/1 129/4 129/9 131/3 131/5 131/6 131/7 131/14 132/9 133/8 133/9 133/20 133/22 134/1 136/10 136/10 136/19 136/22 137/2 137/24 143/20 143/24 144/10 144/20 148/21 149/1 149/4 149/23 150/2 152/22 152/24 174/13 174/13 189/9 reported [6] 6/2 59/11 161/23 162/22 163/8 171/12 reporting [2] 6/3 53/11 reports [12] 27/18 87/7 96/4 105/21	105/25 106/8 107/8 110/21 122/25 132/13 157/4 187/17 represent [1] 64/3 representation [1] 23/1 representative [4] 130/17 130/21 135/8 137/8 representatives [4] 140/4 140/25 142/10 193/19 representing [1] 140/7 reputation [2] 60/25 150/4 request [10] 16/20 17/7 37/18 82/7 83/14 84/2 107/21 121/1 138/17 192/18 requested [3] 19/24 20/23 77/5 requests [3] 108/16 108/17 117/14 require [8] 10/2 10/11 51/4 52/7 53/12 54/2 65/23 77/22 required [13] 10/5 10/14 26/2 34/23 39/20 39/22 47/11 52/6 65/21 97/18 116/11 191/11 192/23 requirement [3] 68/1 91/1 181/13 requirements [4] 95/7 96/18 136/13 154/9 requires [2] 55/4 164/9 requiring [2] 53/17 191/9 requisite [5] 28/2 28/4 29/9 32/20 155/10 resolved [3] 66/7 165/14 166/5 respect [5] 17/17 27/21 118/19 119/4 177/25 respond [8] 17/7 51/11 57/15 57/17 57/21 107/6 112/18 112/21 responded [1] 176/1 responding [2] 110/23 112/14 responds [2] 88/18 89/8 response [26] 16/20 18/13 53/23 54/1 54/5 57/23 63/4 63/10 68/23 76/19 76/20 77/7 77/16 88/11 90/13 98/11 112/4
----------	--	---	--	--

R	11/1 15/18 15/22 17/23 18/19 19/16 26/18 28/13 28/14 35/7 37/22 37/24 40/25 42/24 43/10 49/7 53/21 55/8 55/12 83/14 101/14 109/15 114/9 117/24 118/5 124/25 128/22 128/23 129/11 139/10 139/11 139/14 143/1 143/16 143/22 145/15 147/19 148/6 148/18 149/6 151/3 152/22 153/3 153/13 155/25 156/12 156/16 157/8 157/10 158/6 158/14 158/18 158/21 158/23 159/12 161/6 166/20 168/22 169/1 171/10 173/8 174/5 179/2 179/16 180/16 182/10 182/21 183/9 183/10 183/25 184/11 185/10 186/16 186/19 187/25 188/11 188/14 188/16 188/17 189/14 190/6 190/8 192/17 right-hand [3] 49/7 182/21 183/10 rightly [1] 149/20 rights [6] 28/2 28/4 28/4 29/10 32/21 154/13 ring [2] 150/20 151/1 rise [4] 17/10 50/9 116/14 119/24 risk [25] 4/1 13/20 13/21 14/3 14/8 14/9 25/15 25/16 25/23 26/6 27/17 30/7 30/16 31/16 31/22 35/2 35/5 38/1 38/2 41/5 71/12 76/5 87/7 107/22 148/9 risks [7] 14/2 14/20 37/6 38/12 42/5 116/2 119/23 road [1] 56/12 robust [7] 99/19 99/23 117/12 118/17 118/19 118/22 119/4 robustness [2] 88/16 88/21 Rod [5] 29/18 29/21 30/10 30/25 120/17 Rodric [21] 20/15 20/20 24/25 29/7 49/6 62/20 63/11 73/8 80/22 81/20 82/1 82/18 83/12 83/18 91/22 92/9 109/7 119/19 120/7 169/16 182/23	Rodric's [1] 83/13 role [18] 3/7 6/6 10/2 33/10 34/25 39/17 40/17 41/3 42/2 45/17 48/2 49/24 111/20 140/12 141/9 141/14 151/13 155/11 Ron [2] 6/13 6/17 room [1] 90/19 root [1] 7/8 roots [1] 12/21 Rose [27] 38/9 39/1 39/9 41/2 109/12 109/16 109/20 109/23 109/24 110/3 110/13 110/18 110/20 110/22 110/25 111/21 112/7 112/12 112/14 126/25 127/8 129/9 131/6 133/8 136/10 136/21 174/13 round [1] 46/10 Royal [4] 33/14 103/18 181/11 188/4 rule [2] 117/2 117/18 rules [3] 135/10 148/14 152/4 run [1] 91/12 running [1] 58/7 runs [1] 23/10 RW [2] 81/19 86/7	saw [11] 4/15 17/20 61/19 63/6 86/18 90/19 112/4 122/3 144/22 189/15 192/24 say [60] 3/11 4/3 5/4 10/24 21/16 23/4 23/17 27/9 27/11 29/2 34/2 36/9 36/14 40/21 42/17 47/8 55/3 56/24 57/21 58/19 59/9 60/13 70/21 73/9 75/24 78/5 79/15 83/5 90/3 90/11 92/2 98/2 98/18 98/22 99/22 103/8 104/4 105/23 106/13 107/6 111/15 116/24 128/8 128/10 128/15 133/5 133/16 144/21 145/15 145/19 148/5 148/16 149/6 149/11 149/15 149/19 158/9 174/25 183/2 184/10 saying [32] 6/20 14/5 17/12 17/15 18/12 35/23 39/5 50/3 62/20 67/7 79/23 79/25 81/5 81/19 82/4 84/14 93/1 93/20 100/15 108/14 112/18 112/23 144/22 146/4 150/12 150/23 158/2 173/18 176/14 177/2 191/17 193/14 says [65] 6/5 11/13 20/22 25/5 26/10 38/17 53/5 58/3 59/16 59/16 60/4 60/5 61/16 63/14 63/21 65/14 68/25 69/5 74/21 75/3 76/21 76/22 77/18 77/25 78/4 78/12 78/20 81/23 84/7 86/6 88/12 88/19 89/9 89/19 92/7 92/21 102/12 107/2 109/9 110/12 113/4 114/25 115/7 116/3 120/7 120/16 126/5 132/6 137/5 140/24 141/3 157/20 158/3 158/12 165/16 166/22 166/24 167/4 171/10 175/5 175/23 183/12 184/16 190/25 191/22 SC [1] 141/5 scant [1] 7/4 schedule [1] 118/8 schemas [1] 25/24 scheme [30] 2/7 2/13 4/10 5/11 12/5 12/19 13/3 15/5 37/10 50/13 51/12 54/8 102/8 102/19 103/9 103/13 103/21 104/6 105/2	109/14 114/22 115/10 115/15 115/20 116/19 119/6 123/18 125/19 172/17 173/1 scoot [1] 8/8 scope [4] 157/22 172/16 185/21 185/23 Scotland [9] 128/6 129/19 130/11 134/15 136/14 137/15 138/21 139/10 142/19 Scotland's [2] 137/9 137/13 Scott [12] 6/1 59/10 65/6 65/9 65/13 66/2 67/6 84/3 161/10 162/3 162/9 163/24 Scott's [2] 6/1 6/14 Scottish [9] 127/16 128/3 128/8 128/11 129/24 132/24 135/10 138/18 141/4 screen [3] 139/25 157/18 166/8 scroll [26] 36/3 57/13 59/14 63/20 65/25 66/14 68/23 69/4 74/18 77/3 77/4 83/7 86/5 86/25 88/11 89/8 91/7 97/25 113/3 114/24 120/6 132/25 133/13 135/6 135/21 183/4 scrolling [1] 8/13 scrutiny [2] 2/12 117/22 sealed [3] 21/13 22/21 23/7 searching [1] 92/23 second [62] 13/13 14/12 14/15 17/22 19/9 19/19 20/8 27/21 32/7 36/16 37/21 45/4 50/13 51/12 51/17 53/23 54/8 55/3 57/11 58/2 61/7 65/12 67/20 70/11 97/12 99/4 99/8 102/8 105/22 112/5 117/6 117/11 124/8 126/5 126/24 127/7 129/1 129/3 131/4 131/5 131/11 131/13 131/18 131/22 131/22 131/24 133/9 133/13 133/24 134/19 136/10 136/21 142/9 143/20 144/20 148/20 149/1 149/23 174/13 180/6 188/11 189/17 secondly [4] 44/12 90/9 141/13 179/13 section [5] 11/2 22/17 90/18 96/20 190/25
----------	---	---	--	--

S	57/25 85/23 104/13 104/16 137/9 170/2	settlement [1] 121/23	108/15 119/21 120/2 175/24	163/8 175/5 188/1 188/5 188/8
section 1 [1] 190/25	seniority [1] 104/18	seven [2] 23/3 76/25	show [4] 6/11 11/23 32/3 53/15	since [6] 23/14 24/23 24/24 72/16 78/2 136/24
section 4.2 [1] 22/17	sense [6] 15/2 32/13 50/2 70/6 70/7 153/7	several [3] 92/24 107/13 130/10	showing [1] 74/23	Singer [1] 33/14
secure [1] 21/14	sensible [2] 116/21 170/13	severe [1] 6/14	shown [4] 3/17 6/12 7/7 21/19	Singh [34] 56/10
secured [1] 171/25	sensibly [1] 109/2	Sewell [6] 23/18 27/25 28/21 28/22 28/23 31/5	shred [2] 84/3 162/4	56/15 58/17 59/7 59/8 59/9 59/11 60/8 60/11 60/18 62/2 62/5 62/8 63/1 65/5 65/13 66/11 66/17 66/19 66/20 66/21 67/3 67/12 128/7 129/20 134/13 134/16 161/9 161/23 162/3 177/11 181/6 181/8 194/6
security [6] 6/8 6/21 61/5 61/9 161/10 163/24	sensitive [5] 25/18 108/13 108/14 108/25 118/8	SH [2] 81/1 81/18	shredding [9] 161/6 161/7 161/16 161/18 161/19 161/22 162/8 162/11 163/23	Sight [45] 13/13 14/12 14/15 19/9 19/19 20/8 27/22 32/7 36/16 37/21 45/4 50/13 51/12 51/17 53/23 54/8 55/3 67/20 97/12 102/9 105/22 112/6 117/6 117/11 126/24 127/7 129/1 129/3 131/4 131/11 131/14 131/18 131/22 131/22 131/24 133/9 136/10 136/21 143/20 144/20 148/20 149/1 149/23 174/13 189/17
see [86] 1/4 1/17 8/6 10/15 11/13 11/17 17/14 22/8 24/20 27/7 29/15 32/11 36/4 36/6 36/10 40/25 41/3 47/6 47/12 49/8 56/2 57/12 57/13 57/19 61/16 63/20 66/14 68/15 68/23 73/22 74/25 77/4 77/14 77/21 79/3 79/21 80/22 81/7 88/13 91/8 96/7 97/20 98/17 99/9 99/11 101/17 101/23 101/24 107/16 109/1 110/6 113/22 115/1 118/18 118/24 119/14 120/23 122/2 124/8 125/4 127/25 129/4 138/3 140/15 143/7 143/17 144/22 145/4 147/9 150/22 165/11 166/8 166/25 171/2 172/15 172/16 173/6 175/10 179/7 180/23 182/21 183/1 183/4 185/13 187/4 190/16	sent [27] 13/11 15/12 24/9 24/11 24/12 27/9 29/18 53/23 64/9 64/10 66/16 66/19 67/2 67/6 79/6 105/8 105/20 105/21 108/18 109/24 111/14 126/24 127/4 150/13 175/12 175/14 178/14	shall [5] 6/22 55/16 55/21 113/14 166/7	side [8] 10/21 49/8 49/11 56/11 87/18 137/14 163/23 183/10	single [4] 64/22 72/12 99/21 104/17
seeing [5] 27/8 125/24 143/11 150/15 189/16	sentence [7] 99/4 99/8 100/23 107/17 107/20 142/1 167/7	SH [2] 81/1 81/18	Sight [45] 13/13 14/12 14/15 19/9 19/19 20/8 27/22 32/7 36/16 37/21 45/4 50/13 51/12 51/17 53/23 54/8 55/3 67/20 97/12 102/9 105/22 112/6 117/6 117/11 126/24 127/7 129/1 129/3 131/4 131/11 131/14 131/18 131/22 131/22 131/24 133/9 136/10 136/21 143/20 144/20 148/20 149/1 149/23 174/13 189/17	sinister [2] 94/22 94/25
seek [4] 13/19 87/8 137/12 165/7	sentenced [1] 105/19	she [25] 11/13 15/18 28/1 76/21 76/22 77/17 78/4 78/4 78/12 86/11 88/8 88/19 107/18 133/2 164/8 164/11 166/10 166/18 166/21 166/23 167/4 167/5 171/8 172/19 177/2	sift [3] 41/14 45/25 170/2	sir [55] 1/4 1/6 1/8 1/20 2/1 2/3 10/19 11/10 11/18 11/20 12/23 13/5 14/9 15/6 17/15 17/20 18/3 18/20 18/23 35/17 43/1 43/5 50/22 55/6 55/11 55/19 55/22 56/2 113/9 113/22 119/22 119/25 120/20 120/25 121/11 121/14 127/12 127/23 138/3 139/16 142/25 143/4 146/3 146/14 153/5 153/11 164/11 164/18 164/23 171/4 175/2 179/5 179/10 193/24 194/6
seeking [5] 81/4 88/8 96/4 97/8 112/12	separate [2] 21/12 23/10	she's [2] 11/13 167/2	sign [3] 31/16 175/8 175/8	Sir Anthony [13] 11/10 11/18 11/20 12/23 13/5 14/9 35/17 119/22 119/25 120/20 120/25 121/11 121/14
seem [2] 7/7 72/11	separated [1] 28/5	shift [2] 178/7 178/19	signatures [1] 26/17	Sir Wyn [1] 175/2
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13	separately [2] 21/19 141/24	Shirley [3] 80/23 81/1 81/2	signed [3] 18/11 24/21 26/9	sitting [3] 39/7 166/15 168/4
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1	September [12] 49/5 49/14 70/20 128/6 129/12 134/12 139/11 140/1 140/5 142/9 182/22 184/14	short [6] 41/25 55/25 113/20 164/16 168/23 172/10	significant [5] 23/23 32/15 42/13 77/10 93/16	situation [7] 3/19 101/25 135/14 139/5 151/25 165/14 166/5
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22	September 2013 [1] 129/12	shortcomings [1] 58/8	similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	six [3] 2/20 76/24 138/20
seemingly [5] 81/4 88/8 96/4 97/8 112/12	sequences [1] 87/3	shortfall [1] 7/9	similarly [5] 76/6 86/22 99/3 115/19 116/14	size [5] 3/12 3/24 4/3 4/8 4/10
seem [2] 7/7 72/11	series [4] 37/10 51/22 66/1 179/2	shortlist [1] 97/22	Simon [42] 38/8 38/15 38/19 39/9 39/14 40/6 57/12 58/4 58/9 67/18 79/9 92/5 92/8 93/21 94/2 98/25 101/19 109/8 111/5 111/15 114/1 114/13 114/23 124/12 128/7 128/19 128/25 129/20 130/22 132/14 134/13 135/2 135/21 136/9 141/6 141/10 175/7 175/9 175/16 184/15 184/20 185/10	skills [2] 154/2 155/10
seem [2] 7/7 72/11	serious [14] 5/17 9/16 49/17 50/10 50/11 138/14 148/9 162/15 162/17 176/9 176/10 176/11 181/20 181/23	shortly [2] 49/13 49/19	signed [3] 18/11 24/21 26/9	slightly [3] 66/15 76/25 153/12
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13	seriously [3] 150/4 184/18 185/3	should [71] 4/21 8/10 11/23 12/14 17/17 25/5 25/20 25/22 27/13 30/7 36/22 37/2 42/6 42/7 42/10 46/3 46/12 50/19 54/21 55/1 55/5 58/22 60/2 61/8 71/9 76/3 81/18 81/20 82/24 96/13 99/1 101/5 102/15 105/2 105/25 106/4 108/13 108/15 109/1 109/2 115/10 119/9 120/3 124/18 125/3 125/19 126/14 134/23 140/18 146/5 148/3 148/7 148/8 151/23 152/6 154/25 155/7 156/1 156/1 159/3 161/11 164/1 170/1 170/1 170/3 174/8 174/14 176/5 176/25 178/20 180/10	sign [3] 31/16 175/8 175/8	slip [1] 153/9
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1	server [2] 21/8 21/13	shouldn't [5] 106/9	signatures [1] 26/17	slipping [1] 166/13
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22	Service [2] 129/22 134/11		signed [3] 18/11 24/21 26/9	small [7] 11/15 63/13 72/14 90/6 90/9 125/20 136/23
seemingly [5] 81/4 88/8 96/4 97/8 112/12	services [3] 33/10 33/12 80/24		similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seem [2] 7/7 72/11	set [24] 9/5 16/23 19/22 22/6 29/6 33/25 35/5 45/3 67/24 73/2 76/8 79/15 123/2 124/20 126/8 131/12 131/16 131/23 150/11 150/23 169/12 180/12 180/13 191/20		signatures [1] 26/17	
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13	sets [4] 1/9 115/20 132/18 185/17		signed [3] 18/11 24/21 26/9	
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1	setting [4] 44/6 87/17 96/9 115/23		significant [5] 23/23 32/15 42/13 77/10 93/16	
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22			similarly [5] 76/6 86/22 99/3 115/19 116/14	
seemingly [5] 81/4 88/8 96/4 97/8 112/12			Simon [42] 38/8 38/15 38/19 39/9 39/14 40/6 57/12 58/4 58/9 67/18 79/9 92/5 92/8 93/21 94/2 98/25 101/19 109/8 111/5 111/15 114/1 114/13 114/23 124/12 128/7 128/19 128/25 129/20 130/22 132/14 134/13 135/2 135/21 136/9 141/6 141/10 175/7 175/9 175/16 184/15 184/20 185/10	
seem [2] 7/7 72/11			signed [3] 18/11 24/21 26/9	
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13			significant [5] 23/23 32/15 42/13 77/10 93/16	
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1			similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22			signatures [1] 26/17	
seemingly [5] 81/4 88/8 96/4 97/8 112/12			signed [3] 18/11 24/21 26/9	
seem [2] 7/7 72/11			significant [5] 23/23 32/15 42/13 77/10 93/16	
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13			similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1			signatures [1] 26/17	
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22			signed [3] 18/11 24/21 26/9	
seemingly [5] 81/4 88/8 96/4 97/8 112/12			significant [5] 23/23 32/15 42/13 77/10 93/16	
seem [2] 7/7 72/11			similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13			signatures [1] 26/17	
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1			signed [3] 18/11 24/21 26/9	
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22			significant [5] 23/23 32/15 42/13 77/10 93/16	
seemingly [5] 81/4 88/8 96/4 97/8 112/12			similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seem [2] 7/7 72/11			signatures [1] 26/17	
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13			signed [3] 18/11 24/21 26/9	
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1			significant [5] 23/23 32/15 42/13 77/10 93/16	
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22			similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seemingly [5] 81/4 88/8 96/4 97/8 112/12			signatures [1] 26/17	
seem [2] 7/7 72/11			signed [3] 18/11 24/21 26/9	
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13			significant [5] 23/23 32/15 42/13 77/10 93/16	
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1			similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22			signatures [1] 26/17	
seemingly [5] 81/4 88/8 96/4 97/8 112/12			signed [3] 18/11 24/21 26/9	
seem [2] 7/7 72/11			significant [5] 23/23 32/15 42/13 77/10 93/16	
seema [7] 16/11 122/9 123/7 125/7 126/15 166/16 175/13			similar [6] 7/22 61/19 107/24 116/12 166/24 167/4	
seems [14] 7/10 40/5 42/3 78/8 81/7 86/8 103/3 104/18 139/25 142/5 147/13 167/20 170/8 183/1			signatures [1] 26/17	
seen [27] 5/13 15/14 27/19 27/23 28/7 30/22 31/13 58/4 80/1 81/13 91/15 91/16 104/17 104/21 104/22 112/6 115/4 116/23 121/7 121/19 141/2 147/14 150/13 150/16 166/10 168/13 192/22			signed [3] 18/11 24/21 26/9	
seemingly [5] 81/4 88/8 96/4 97/8 112/12				

S				
smaller [2] 142/22 142/22	157/8 157/9 157/12 157/16 158/2 164/12 164/22 165/20 166/20 167/2 171/1 171/19 173/3 173/10 173/17 174/18 174/25 175/10 179/17 180/14 181/16 185/13 186/16 189/9 191/12 191/17 193/25	93/15 93/25 94/1 94/12 108/24 108/25 118/8 118/10 120/22 121/22 122/1 123/25 124/25 125/18 146/13 148/21 179/24 182/12 188/8	SPMs' [1] 51/21 spoke [1] 162/24 spoken [6] 20/20 109/10 113/5 120/17 144/3 169/15 springing [1] 94/12 Square [1] 72/13 SRA [1] 154/23 SS [1] 20/21 staff [6] 21/2 53/10 89/24 92/7 93/15 137/21 stage [22] 27/17 39/13 64/21 67/8 72/4 72/17 87/10 94/12 97/13 103/15 144/5 144/19 149/25 157/13 158/14 167/21 167/25 170/9 186/8 186/10 189/13 190/12 stages [1] 119/2 stance [5] 117/13 118/18 118/19 118/22 119/4 standard [3] 7/15 21/14 35/3 standards [5] 30/6 154/17 155/7 155/14 156/6 stands [1] 165/11 start [16] 5/24 26/19 28/15 33/5 55/21 57/11 88/4 88/5 97/7 100/15 105/16 113/15 113/16 135/14 164/12 178/11 started [5] 35/15 103/9 111/21 123/10 155/5 starting [6] 1/24 30/3 31/8 31/20 110/2 136/1 startling [2] 16/16 16/17 starts [6] 6/24 67/7 120/23 132/2 176/2 184/15 state [2] 115/5 180/9 statement [36] 3/10 4/9 4/25 6/5 9/2 11/2 13/19 22/7 29/7 32/13 34/1 46/15 50/6 52/17 55/13 65/7 70/11 72/8 72/11 72/12 88/13 88/14 89/12 90/5 90/12 96/20 128/4 128/5 162/1 174/25 180/7 180/8 190/14 190/20 191/2 191/6 statements [11] 29/8 45/6 52/7 63/16 64/2 95/4 96/17 109/18 186/12 186/13 194/1 states [4] 51/20	170/16 191/3 192/20 stayed [1] 10/1 Stein [12] 1/11 33/2 33/3 42/25 127/24 153/7 153/16 164/6 169/2 189/12 195/5 195/12 stenographer [1] 146/18 steps [1] 40/2 Steve [3] 57/23 58/15 190/18 Stevens [4] 1/21 16/15 39/2 55/15 still [15] 1/22 8/19 24/2 57/4 57/5 75/21 80/10 80/13 80/14 80/16 80/20 83/4 83/4 85/3 119/3 stint [1] 33/15 stock [1] 74/22 stone [1] 168/5 stop [2] 3/4 133/2 stopped [1] 129/16 store [5] 22/21 22/25 23/8 23/9 24/3 stored [1] 21/12 storing [3] 172/17 172/18 173/2 straight [3] 123/3 124/20 126/8 Street [3] 30/13 67/19 97/10 strictly [1] 116/4 strong [2] 106/19 120/4 struck [1] 34/17 structure [2] 13/4 49/23 structured [2] 14/25 69/15 struggle [2] 5/21 142/12 struggling [1] 180/23 style [1] 91/20 subcommittee [1] 5/13 subject [7] 21/20 29/16 36/5 81/25 154/16 154/22 180/4 submitted [1] 21/21 subparagraph [1] 115/22 subparagraph iii [1] 115/22 subpostmaster [7] 21/2 21/17 52/2 52/8 53/13 53/18 84/2 subpostmasters [10] 53/11 54/7 91/2 129/6 131/13 131/15 131/17 137/15 137/20 137/22 subpostmasters' [2] 13/16 35/10
Smith [43] 1/16 49/11 55/19 56/4 56/7 56/9 72/18 80/8 83/21 99/4 101/2 106/14 106/22 112/3 113/25 122/5 127/12 127/24 143/7 145/3 147/11 148/22 150/17 151/6 153/4 153/17 154/11 156/4 159/23 163/10 163/21 164/2 168/4 171/2 171/15 176/9 179/6 183/5 183/6 183/13 187/19 193/25 195/7	so-called [2] 23/12 45/25 software [1] 191/21 software/hardware [1] 191/21 solicitor [7] 147/10 147/12 147/20 148/6 151/13 152/14 154/20 solicitors [10] 95/11 110/14 110/16 128/8 132/24 134/11 141/2 154/5 154/23 162/18 solution [2] 26/1 26/3 solutions [1] 26/7 some [65] 2/14 9/25 15/1 16/12 18/17 34/2 39/6 50/25 57/6 57/15 59/18 62/15 73/20 74/3 74/4 78/8 79/11 80/1 81/7 81/13 88/14 89/15 92/13 94/7 100/25 103/13 103/18 108/18 109/18 114/14 116/8 119/16 121/22 121/25 123/14 123/19 123/20 124/1 124/13 125/24 125/25 126/4 128/1 130/14 131/4 131/12 131/17 132/5 135/3 136/7 137/19 144/7 147/21 152/14 154/12 161/20 166/20 168/20 170/18 183/9 186/9 189/21 191/23 191/25 193/11 somebody [12] 6/1 15/24 58/25 59/9 59/10 60/6 80/23 86/14 119/16 126/15 140/8 177/21 somehow [2] 36/18 121/23 someone [11] 5/22 25/13 36/10 41/4 41/5 125/11 125/22 158/15 170/16 170/20 173/1 somersault [2] 176/5 176/8 something [41] 10/9 10/13 11/11 13/8 17/3 27/6 29/3 34/18 39/11 39/25 40/12 42/13 44/10 44/14 44/20 47/7 52/21 58/11 61/10 64/6 86/1 86/2	sometimes [2] 150/18 150/19 somewhat [1] 4/12 somewhere [1] 39/7 soon [3] 60/7 67/20 120/9 sorry [29] 8/10 12/6 19/8 28/8 29/1 40/15 47/4 53/15 55/6 55/10 74/15 79/4 98/22 101/4 113/7 114/2 130/19 134/20 137/11 138/16 145/25 146/18 149/13 152/1 154/19 154/20 171/25 180/23 183/8 sort [9] 2/19 13/24 49/25 98/23 101/23 123/19 123/20 124/1 184/6 sorts [3] 33/18 99/11 108/11 sought [3] 96/21 137/8 189/9 sound [1] 66/10 south [1] 131/1 Sparrow [1] 5/13 speak [2] 138/8 189/20 speaking [2] 25/7 173/9 specialist [1] 23/10 specific [18] 5/22 7/6 9/3 9/4 9/18 16/20 17/7 25/14 51/11 55/4 55/5 88/14 113/2 114/12 146/13 180/12 192/2 193/14 specifically [7] 20/3 48/19 75/18 88/15 115/6 120/11 154/7 specifics [1] 88/17 specify [2] 180/17 191/23 speculate [1] 32/19 speculating [1] 177/7 speculation [4] 82/9 149/16 150/2 150/3 spend [2] 14/10 14/12 spent [2] 102/3 139/17 SPMR [5] 7/2 7/11 7/14 8/2 36/18 SPMRs [2] 7/23 8/19 SPMRs' [1] 8/16 SPMs [1] 51/4	stays [1] 51/21 stayed [1] 162/24 spoken [6] 20/20 109/10 113/5 120/17 144/3 169/15 springing [1] 94/12 Square [1] 72/13 SRA [1] 154/23 SS [1] 20/21 staff [6] 21/2 53/10 89/24 92/7 93/15 137/21 stage [22] 27/17 39/13 64/21 67/8 72/4 72/17 87/10 94/12 97/13 103/15 144/5 144/19 149/25 157/13 158/14 167/21 167/25 170/9 186/8 186/10 189/13 190/12 stages [1] 119/2 stance [5] 117/13 118/18 118/19 118/22 119/4 standard [3] 7/15 21/14 35/3 standards [5] 30/6 154/17 155/7 155/14 156/6 stands [1] 165/11 start [16] 5/24 26/19 28/15 33/5 55/21 57/11 88/4 88/5 97/7 100/15 105/16 113/15 113/16 135/14 164/12 178/11 started [5] 35/15 103/9 111/21 123/10 155/5 starting [6] 1/24 30/3 31/8 31/20 110/2 136/1 startling [2] 16/16 16/17 starts [6] 6/24 67/7 120/23 132/2 176/2 184/15 state [2] 115/5 180/9 statement [36] 3/10 4/9 4/25 6/5 9/2 11/2 13/19 22/7 29/7 32/13 34/1 46/15 50/6 52/17 55/13 65/7 70/11 72/8 72/11 72/12 88/13 88/14 89/12 90/5 90/12 96/20 128/4 128/5 162/1 174/25 180/7 180/8 190/14 190/20 191/2 191/6 statements [11] 29/8 45/6 52/7 63/16 64/2 95/4 96/17 109/18 186/12 186/13 194/1 states [4] 51/20	170/16 191/3 192/20 stayed [1] 10/1 Stein [12] 1/11 33/2 33/3 42/25 127/24 153/7 153/16 164/6 169/2 189/12 195/5 195/12 stenographer [1] 146/18 steps [1] 40/2 Steve [3] 57/23 58/15 190/18 Stevens [4] 1/21 16/15 39/2 55/15 still [15] 1/22 8/19 24/2 57/4 57/5 75/21 80/10 80/13 80/14 80/16 80/20 83/4 83/4 85/3 119/3 stint [1] 33/15 stock [1] 74/22 stone [1] 168/5 stop [2] 3/4 133/2 stopped [1] 129/16 store [5] 22/21 22/25 23/8 23/9 24/3 stored [1] 21/12 storing [3] 172/17 172/18 173/2 straight [3] 123/3 124/20 126/8 Street [3] 30/13 67/19 97/10 strictly [1] 116/4 strong [2] 106/19 120/4 struck [1] 34/17 structure [2] 13/4 49/23 structured [2] 14/25 69/15 struggle [2] 5/21 142/12 struggling [1] 180/23 style [1] 91/20 subcommittee [1] 5/13 subject [7] 21/20 29/16 36/5 81/25 154/16 154/22 180/4 submitted [1] 21/21 subparagraph [1] 115/22 subparagraph iii [1] 115/22 subpostmaster [7] 21/2 21/17 52/2 52/8 53/13 53/18 84/2 subpostmasters [10] 53/11 54/7 91/2 129/6 131/13 131/15 131/17 137/15 137/20 137/22 subpostmasters' [2] 13/16 35/10

S	30/23 80/23 92/7 93/15 suppose [5] 9/23 17/5 61/2 157/15 173/17 supposition [1] 65/3 suppressed [1] 172/3 suppressing [1] 169/18 sure [26] 2/25 4/17 8/14 10/6 16/18 26/11 28/10 35/2 37/5 42/4 46/25 47/8 47/9 73/2 75/22 96/1 104/22 139/9 160/6 163/22 165/21 166/1 178/15 189/19 191/4 192/5 surely [7] 41/2 84/3 99/4 99/7 106/18 165/23 169/23 surprises [1] 68/10 surprising [1] 130/8 Susan [18] 6/18 9/21 10/9 15/17 16/1 16/21 17/8 63/10 70/20 70/23 97/10 97/19 129/14 130/1 133/1 165/11 165/11 167/9 Susan's [1] 15/24 suspense [6] 35/11 36/6 36/11 36/19 37/11 189/18 suspicious [3] 156/20 156/21 189/13 Swift [1] 27/6 swiftly [1] 88/21 switched [1] 36/11 sympathetic [1] 120/13 system [54] 4/5 4/20 18/6 19/6 21/7 49/1 63/19 78/6 82/22 87/3 88/16 89/14 89/21 89/23 98/4 98/5 98/19 98/19 98/23 99/10 99/15 99/19 99/23 100/4 100/7 100/14 100/16 100/18 100/24 101/11 101/23 114/16 128/25 131/2 131/5 131/7 131/8 132/7 132/9 132/11 132/19 132/21 135/4 135/7 135/10 136/18 137/13 138/1 141/4 149/12 191/22 191/25 192/19 193/9 system' [1] 107/19 systemic [3] 4/14 7/21 9/13 systems [7] 29/23 30/3 31/8 31/20 32/2 149/16 150/7	T table [2] 77/21 78/20 Tactical [1] 165/17 tainted [3] 48/24 49/1 49/3 take [31] 2/6 15/6 15/9 22/5 34/10 36/22 36/24 37/6 37/24 40/9 40/22 42/21 46/12 48/12 49/10 57/14 57/18 76/25 84/6 88/1 93/19 95/16 113/25 122/7 128/3 130/14 136/8 154/6 155/5 163/7 168/3 taken [29] 3/13 5/11 9/2 25/5 31/19 35/12 36/18 39/22 41/13 41/15 41/16 44/24 45/23 45/24 53/22 59/19 65/20 69/1 83/11 90/18 108/1 117/13 118/19 119/4 141/24 167/19 174/6 175/11 184/18 taking [22] 10/25 17/17 28/6 37/1 56/18 70/2 70/13 92/24 102/9 118/7 118/17 118/22 119/7 120/3 132/14 137/6 137/23 142/13 146/17 147/9 154/11 185/2 talk [4] 27/24 91/13 169/18 169/19 talking [4] 94/11 146/18 191/15 191/16 tampered [1] 22/23 tape [1] 172/3 taped [1] 159/13 task [2] 2/25 92/24 tasked [2] 27/13 31/24 tasks [1] 3/3 team [26] 5/19 6/21 8/3 9/4 9/6 9/23 10/4 21/6 23/22 27/12 27/16 31/24 31/24 36/11 42/18 50/2 50/18 67/17 75/16 76/21 86/9 86/14 109/8 110/24 121/9 176/5 Teams' [1] 49/24 technical [5] 23/20 25/9 28/16 37/22 90/24 technically [1] 36/11 technology [1] 25/20 telephone [15] 60/23 65/25 66/21 66/25 91/21 92/1 102/13 102/24 103/2 105/13	122/16 130/16 132/23 144/3 188/15 tell [19] 32/7 39/11 44/2 59/9 59/10 75/17 147/17 160/12 160/18 160/24 160/25 162/20 167/2 167/6 175/2 176/3 177/4 183/1 185/6 telling [5] 9/15 12/1 56/15 124/21 145/25 tells [1] 98/21 tended [1] 34/4 tenor [1] 5/19 term [1] 155/22 terminal [1] 21/8 terminate [4] 134/25 137/10 137/14 140/21 terminated [3] 134/23 136/2 140/19 terminating [2] 129/22 130/3 termination [1] 128/11 terms [19] 4/7 4/16 11/5 19/11 22/17 34/16 41/18 44/6 44/9 44/16 44/22 73/4 96/9 136/17 155/14 160/10 180/18 181/5 181/23 terribly [2] 12/6 40/15 test [7] 22/19 101/22 107/20 107/21 168/6 189/14 189/19 tested [1] 98/15 testing [2] 23/14 108/2 tests [1] 107/19 text [2] 78/15 120/24 than [32] 3/18 3/20 4/12 4/12 5/1 8/5 8/13 14/11 15/10 32/4 34/5 34/12 36/16 37/18 42/14 42/20 42/22 46/8 48/4 70/17 71/21 73/23 96/23 104/16 105/8 106/3 106/25 121/10 121/14 124/11 141/12 143/4 thank [76] 1/5 1/6 1/20 1/21 2/1 2/3 11/1 12/10 15/16 18/20 18/23 29/11 32/23 32/25 33/1 42/24 43/5 44/12 44/24 45/10 47/2 50/23 50/24 51/6 53/3 55/13 55/14 55/22 56/3 56/4 57/7 59/13 63/4 72/18 80/24 87/23 113/18 113/23 113/24 114/20 127/11 127/20 127/23 128/1 139/8 139/22	142/25 143/4 153/4 164/6 164/13 164/14 164/18 164/23 165/5 179/1 179/5 179/10 180/6 181/2 181/16 181/20 181/25 182/6 182/19 182/20 184/11 185/13 190/23 190/24 191/19 193/17 193/18 193/25 194/4 194/8 thanks [5] 31/2 70/24 107/4 120/17 193/19 that [1466] that I [2] 79/18 166/15 that'll [1] 31/5 that's [109] 1/20 4/3 4/14 6/9 8/10 8/23 13/24 14/7 14/14 16/1 16/9 16/14 17/11 17/23 17/24 19/16 20/17 22/9 23/15 24/9 24/11 25/7 26/9 27/3 27/8 28/19 32/23 33/17 34/25 35/23 42/15 55/6 55/12 62/14 65/7 67/12 69/11 69/21 70/3 75/4 77/17 81/19 81/20 82/17 82/25 85/16 86/13 86/19 86/20 90/15 91/5 96/20 99/7 103/7 103/22 105/17 109/11 110/9 114/11 119/11 119/13 119/13 119/22 127/19 128/23 129/11 130/15 131/25 132/23 135/17 135/20 136/8 139/8 139/11 139/14 139/15 140/6 141/7 141/20 143/10 143/22 145/9 145/16 145/17 145/18 145/25 147/24 148/17 152/7 153/5 158/12 164/3 165/9 165/22 167/11 171/8 173/5 173/9 177/25 177/25 179/22 180/5 180/16 181/2 184/7 186/16 188/17 193/22 193/24 their [37] 4/1 9/7 9/9 11/7 14/16 21/2 22/22 23/3 30/22 37/2 37/3 44/18 50/8 53/11 58/7 60/25 71/6 71/21 87/22 94/2 96/2 98/5 99/14 107/1 109/22 111/24 117/16 122/4 129/6 141/20 142/3 160/18 160/25 180/18 185/2 187/22 193/20 them [31] 3/5 3/8 8/17 8/18 19/18 19/22
----------	---	--	---	---

T	these [46] 21/18 23/20 26/24 31/18 32/6 36/23 36/25 38/1 38/10 42/5 44/19 53/14 69/2 69/7 73/22 74/4 80/17 88/22 91/1 92/16 100/22 106/3 109/13 110/5 111/2 124/10 125/24 126/4 129/14 138/1 138/22 139/9 139/10 156/5 160/1 163/10 163/18 164/24 165/4 165/10 170/10 179/19 181/22 187/17 192/24 193/8	thinking [4] 10/22 62/19 121/13 133/23 third [9] 9/23 59/18 61/13 62/20 62/24 68/17 134/20 165/17 190/6 thirdly [2] 44/18 179/14 this [363] this' [1] 108/3 Thomas [3] 105/17 105/18 106/9 thorough [1] 178/14 those [87] 5/8 5/12 8/16 18/7 18/15 25/6 25/19 32/4 32/14 33/18 33/19 35/13 35/15 35/17 38/13 41/7 41/8 44/1 44/9 44/16 44/22 50/4 53/24 60/1 65/21 66/23 67/25 68/7 69/13 70/4 70/12 71/16 71/18 71/24 77/6 85/23 87/8 87/10 88/17 94/19 95/24 97/15 101/2 101/17 103/5 106/8 107/20 108/4 108/17 114/23 115/13 116/20 118/1 118/1 118/13 118/23 119/5 120/1 120/11 121/11 122/19 123/11 123/22 123/24 126/11 126/13 127/12 128/10 130/7 131/20 135/24 139/1 139/2 139/5 140/7 144/15 150/11 158/19 159/19 179/17 182/4 182/25 185/22 187/23 190/19 193/15 193/17	through [18] 15/2 15/4 18/6 21/7 26/6 65/2 83/21 88/13 91/13 94/2 100/12 105/4 111/14 121/25 144/13 150/19 166/13 170/1 throughout [6] 48/25 80/5 95/6 104/15 114/24 115/1 throwaway [4] 59/2 103/12 121/21 174/3 Thursday [2] 1/1 122/24 Thus [1] 122/8 ticket [8] 121/24 122/5 122/10 122/23 123/8 125/7 167/22 170/10 tight [1] 173/22 time [124] 2/6 2/11 2/14 2/15 2/19 5/21 6/7 9/12 9/19 9/24 10/12 10/21 15/8 16/25 17/4 17/12 17/15 18/15 20/12 37/16 39/16 48/7 48/25 49/18 54/22 55/10 55/21 57/6 58/14 58/23 62/19 63/9 63/9 64/12 64/17 64/18 65/5 65/6 65/6 67/21 68/16 69/18 69/25 70/1 71/2 72/24 73/5 73/15 74/8 74/13 75/17 76/15 78/8 79/10 80/19 84/4 85/22 88/5 90/7 93/14 94/7 98/13 102/3 103/1 103/18 105/6 113/7 113/9 113/14 116/20 118/3 118/24 123/19 123/20 126/18 126/19 128/15 128/24 129/11 129/12 132/15 134/5 134/5 136/20 136/22 136/25 137/16 138/3 139/18 139/19 139/21 145/12 145/16 145/21 145/24 148/25 149/4 153/19 156/18 159/12 160/2 162/2 168/12 168/15 168/20 168/23 169/4 172/19 177/7 178/10 178/18 178/18 179/8 179/18 182/9 182/13 182/16 183/7 183/24 187/5 188/9 188/12 192/19 193/20 timed [1] 5/15 timeline [1] 123/9 timely [2] 90/14 184/23	times [5] 16/12 69/16 113/13 131/8 150/20 timescale [2] 123/16 178/15 today [8] 1/16 48/4 54/19 56/5 70/25 139/20 166/16 194/2 together [5] 34/21 125/8 128/7 137/6 147/15 told [19] 32/8 43/16 60/22 72/8 131/2 135/20 136/12 143/21 144/2 144/19 156/24 168/14 169/6 177/10 180/3 185/8 186/4 189/25 190/2 tomorrow [1] 194/5 Tony [2] 120/10 120/12 Tony's [1] 119/22 too [3] 67/11 118/17 118/22 took [24] 6/3 10/24 68/3 70/13 73/12 82/17 87/20 96/19 105/14 108/22 123/21 124/15 138/23 139/10 142/5 147/4 164/25 165/1 171/3 173/12 175/16 175/18 181/3 184/13 tool [1] 53/11 top [7] 12/8 20/18 51/5 51/24 79/3 107/6 182/21 topic [6] 40/6 41/1 50/22 102/14 188/11 190/6 topics [2] 87/24 179/11 totality [2] 18/14 41/14 touched [1] 72/7 towards [3] 36/22 36/24 190/10 tower [2] 184/18 185/2 tracking [1] 31/23 trading [1] 52/7 traffic [8] 74/7 82/2 82/4 82/15 82/24 84/12 84/14 105/4 trail [2] 24/3 192/1 train [2] 134/17 142/18 trained [1] 154/7 training [3] 15/2 95/18 166/11 transaction [20] 7/6 21/1 21/9 21/17 52/1 52/4 53/5 53/9 53/17 75/13 76/2 76/5 76/10 76/15 77/6 78/13
----------	--	--	---	---

T	86/18 86/21 91/21 105/16 105/21 107/2 116/22 140/3 140/24 156/12 164/18 179/17 184/11 185/10 188/11	70/9	60/21 95/23	112/6 119/1 119/1 126/13 127/5 131/15 184/24
transaction... [4] 78/16 78/18 78/21 92/7	turned [1] 139/4 turning [2] 146/17 190/6	understand [34] 5/7 10/3 17/24 18/12 26/16 39/4 48/6 58/15 59/19 64/24 65/16 72/18 82/10 89/13 92/12 100/9 104/8 106/1 127/17 130/12 134/4 136/8 138/14 144/12 145/11 145/15 145/16 145/17 160/4 163/12 174/1 174/5 191/17 192/14	up [59] 1/10 3/5 3/11 5/18 5/22 8/11 8/13 9/12 11/10 15/21 15/24 16/21 18/6 22/8 31/21 39/19 39/20 50/25 56/13 57/13 66/14 67/24 68/23 71/23 72/2 77/8 79/2 79/15 83/1 83/12 83/17 84/5 84/15 85/13 85/14 86/1 86/25 87/15 87/17 88/11 89/8 90/12 113/3 120/6 126/21 131/12 131/16 131/23 134/16 146/17 155/12 157/18 168/17 172/17 172/18 173/2 173/7 176/13 178/18	vast [1] 2/15 Vennells [2] 11/12 38/18 verbally [1] 53/10 verbatim [2] 61/15 61/17 verify [1] 30/23 version [8] 22/13 24/22 26/9 29/16 29/17 29/18 52/19 165/1
transactions [23] 21/16 21/18 22/20 23/1 26/13 26/14 26/15 51/3 52/6 53/8 54/2 54/6 87/3 90/22 90/25 91/1 92/6 92/11 92/15 92/18 92/23 93/8 93/11	twice [1] 55/14 two [21] 5/6 5/7 12/1 14/20 19/7 24/23 39/16 49/1 50/22 83/6 127/7 128/5 128/24 138/6 138/7 138/22 144/4 144/17 147/15 174/18 193/25	understandable [1] 102/18 understanding [16] 18/14 18/16 45/21 48/7 48/9 48/24 54/17 58/13 58/23 64/16 112/1 114/9 135/24 141/21 190/4 191/11	update [2] 77/20 96/21 upon [11] 2/17 34/23 45/9 46/1 47/25 103/16 117/16 125/19 165/23 167/14 176/22	very [92] 1/5 5/5 5/12 5/17 11/7 11/21 15/11 19/2 22/9 28/12 29/11 29/12 32/23 39/19 40/1 41/17 41/17 42/12 45/17 45/17 45/18 46/1 48/9 49/17 49/25 54/12 55/13 60/7 60/14 60/21 61/19 64/21 67/16 67/19 68/5 71/10 72/14 80/24 83/13 86/19 89/25 90/9 90/10 90/11 90/14 93/12 94/5 97/9 100/15 101/1 113/18 113/24 120/25 123/12 124/4 124/24 125/2 125/21 126/1 133/7 134/7 134/22 137/3 137/7 139/20 139/22 140/16 142/6 142/25 147/11 148/25 149/21 151/6 153/4 153/6 156/19 160/4 164/13 164/23 172/10 172/13 173/20 174/2 178/12 179/18 181/2 182/1 186/1 186/4 190/10 190/24 194/4
transactions' [2] 90/23 91/25	typical [1] 35/6 typing [2] 142/18 165/2	understood [8] 10/7 24/2 26/24 44/20 100/11 104/7 154/11 192/5	urgent [2] 40/12 88/10 urgently [1] 40/9	via [4] 52/9 72/9 72/9 163/19 vice [3] 173/18 173/22 173/23 vice-like [1] 173/23 victims [2] 137/22 139/5 video [1] 1/16 view [50] 10/12 11/18 11/23 12/24 29/8 44/17 46/7 64/5 64/18 64/22 67/15 68/3 68/14 68/16 70/2 70/2 73/12 82/17 87/20 96/19 97/15 106/7 108/10 108/22 115/1 115/8 116/16 119/6 120/2 120/3 120/4 123/21 124/15 144/25
transcriber [1] 164/8 transcript [5] 38/16 68/8 157/7 157/8 188/13	typed [6] 59/25 61/8 142/23 165/1 165/4 184/12	undertake [1] 26/2 undertaken [1] 108/2 undertaking [1] 30/16	us [23] 1/18 39/4 39/11 43/16 44/2 51/11 55/20 56/5 58/13 66/13 71/7 77/23 88/25 97/20 98/10 111/14 118/2 122/12 142/21 146/18 176/3 183/11 183/21 use [10] 64/19 99/19 102/18 114/10 114/19 128/21 138/8 167/22 180/21 191/4	vi [1] 192/18
transcripts [1] 8/1 transferred [1] 21/11 translate [1] 37/4 transmission [1] 21/11	typo [2] 86/10 86/13 typographical [3] 57/15 57/19 70/6	undoubtedly [2] 96/5 162/22 unequivocal [1] 135/11 unfortunate [1] 115/21 unhappily [1] 54/14 unhealthy [1] 150/1 unhelpful [2] 122/17 123/22 unimpressed [1] 61/25 unique [2] 171/1 171/8 universally [1] 149/17 unless [6] 3/17 93/3 118/9 170/16 170/19 193/15 unlikely [3] 90/4 130/9 181/11 unnecessarily [2] 73/1 73/7 unnecessary [1] 73/11 unpaid [2] 74/22 78/1 unreasonable [2] 170/17 170/21 unreliability [1] 83/23 unreliable [3] 128/13 135/17 138/14 until [3] 4/21 168/20 194/10 unusual [3] 60/19	used [18] 2/8 2/19 2/21 43/12 60/10 60/12 60/22 61/16 61/23 92/14 96/11 96/14 114/16 122/5 122/11 136/15 155/15 168/7 useful [2] 14/3 81/16 usefully [1] 191/7 user [1] 25/15 using [6] 7/16 21/13 25/15 25/20 56/17 131/20 utilised [1] 87/8	value [2] 74/23 76/10 van [3] 20/16 20/19 24/25 various [18] 13/23 65/24 78/23 79/22 80/4 82/8 90/20 91/3 95/7 96/18 97/22
transmitted [1] 21/9 transparency [3] 64/15 72/21 73/4 transparent [2] 3/7 63/23 travelling [1] 60/15 trawl [1] 68/10 treatment [1] 179/15 trial [16] 43/17 102/4 102/4 117/25 143/12 143/15 144/13 144/13 144/17 144/17 146/5 146/6 146/9 146/11 174/16 193/6 trials [1] 118/21 tried [3] 29/21 47/10 156/3 tries [1] 193/5 trigger [1] 48/12 trivial [1] 125/20 trouble [1] 14/19 true [3] 14/6 46/4 89/21 trust [2] 71/22 149/12 truth [4] 166/18 176/4 177/4 178/19 truth' [1] 8/6 try [14] 45/2 60/23 71/12 71/20 80/5 88/17 110/19 129/21 143/4 145/3 146/16 146/20 147/19 189/20 trying [13] 20/6 33/21 35/18 36/24 39/11 48/6 58/7 75/21 122/2 122/3 123/20 138/12 193/12 turf [2] 67/8 67/10 turn [17] 73/21 75/12	U ultimately [3] 73/15 75/21 90/12 Um [1] 151/8 unable [1] 126/23 unambiguous [1] 173/3 unavailable [1] 78/7 unaware [3] 15/25 95/19 181/14 unclear [4] 10/16 13/18 15/23 59/20 uncomfortable [1] 117/9 uncommon [3] 66/22 91/12 94/1 unconnected [1] 7/23 uncovering [1] 131/19 under [17] 23/13 49/11 53/4 64/8 80/22 80/23 80/25 93/17 117/22 135/7 139/19 152/3 178/21 183/13 190/25 191/19 193/3 underline [1] 172/18 underlying [2] 7/8 193/1 undermined [3] 150/5 158/11 176/18 undermines [1] 158/1 underneath [1] 78/20 underplayed [2] 70/8	used [18] 2/8 2/19 2/21 43/12 60/10 60/12 60/22 61/16 61/23 92/14 96/11 96/14 114/16 122/5 122/11 136/15 155/15 168/7 useful [2] 14/3 81/16 usefully [1] 191/7 user [1] 25/15 using [6] 7/16 21/13 25/15 25/20 56/17 131/20 utilised [1] 87/8	V value [2] 74/23 76/10 van [3] 20/16 20/19 24/25 various [18] 13/23 65/24 78/23 79/22 80/4 82/8 90/20 91/3 95/7 96/18 97/22	

V	143/22 145/11 145/22 147/7 152/12 152/17 156/24 161/13 165/2 167/3 168/20 169/5 171/14 174/22 178/1 184/25 190/2	weekly [12] 62/7 62/16 63/17 65/14 65/17 69/3 70/21 73/23 74/2 74/12 74/13 74/15 weeks [3] 24/23 50/4 153/1 well [95] 3/21 5/24 6/9 6/22 7/24 8/13 10/5 13/10 14/14 15/21 17/23 28/24 31/4 35/23 40/5 59/7 61/2 62/8 62/20 64/25 68/13 69/23 69/25 73/9 73/12 73/25 75/19 79/21 80/17 80/21 80/22 81/13 81/17 82/21 84/10 84/13 84/19 85/8 93/12 93/12 94/21 96/5 98/13 98/18 100/2 100/6 100/17 100/19 100/25 101/9 105/15 107/21 117/5 120/25 130/1 131/21 131/22 134/16 137/16 138/7 143/15 143/16 145/1 145/19 146/4 147/7 147/19 151/10 153/13 154/14 158/20 162/25 165/23 167/7 167/18 169/8 170/8 171/23 172/10 172/12 173/25 174/1 174/22 175/20 177/25 178/2 178/3 184/8 186/12 188/1 188/10 192/8 193/4 193/13 194/4	42/7 42/16 42/21 44/13 44/13 46/23 48/7 48/23 49/9 50/19 54/19 54/23 55/20 56/15 58/13 58/16 59/4 59/5 59/8 59/11 59/21 60/21 62/8 66/6 67/12 69/4 74/15 74/25 75/21 77/24 79/21 80/5 89/11 92/15 93/20 94/6 96/21 98/11 98/23 105/12 108/4 108/14 113/14 121/9 124/23 125/24 129/9 131/18 131/19 135/15 135/20 136/9 136/12 136/14 137/5 137/12 137/17 138/18 138/25 142/8 143/19 143/20 143/22 143/23 144/1 144/19 144/20 145/16 145/17 145/18 146/1 146/1 146/7 146/10 146/12 146/21 147/17 147/24 149/5 152/1 152/6 152/19 153/25 155/7 155/20 156/3 156/14 157/10 158/12 158/18 159/15 160/3 160/12 161/8 161/13 161/16 161/24 162/25 163/8 163/11 163/12 163/20 163/23 165/21 166/1 167/11 167/12 169/3 170/4 170/25 171/23 171/23 173/20 176/14 177/3 178/19 179/23 183/12 184/19 186/24 187/18 189/23 190/4 192/1 193/12	156/1 156/5 159/23 165/24 174/7 175/14 181/10 188/25 192/24 where [27] 11/21 14/25 21/13 29/9 35/18 35/20 40/25 41/3 53/20 60/4 63/7 66/18 77/5 84/11 86/25 91/24 103/22 116/8 128/8 134/9 135/11 138/23 148/7 165/6 173/13 173/17 187/16 Where's [1] 35/23 whereas [2] 11/6 186/9 whereby [1] 153/19 whether [47] 2/21 6/11 14/5 15/23 18/25 19/10 23/22 28/10 35/11 35/20 43/24 44/2 46/22 48/13 48/19 49/17 57/2 57/5 59/21 62/22 74/13 76/11 80/18 82/23 85/16 86/13 93/5 93/25 94/17 96/17 99/23 103/17 121/13 126/23 144/16 151/17 162/24 164/8 164/9 166/1 170/3 176/5 182/15 183/19 184/23 187/2 189/10 which [131] 3/14 4/11 6/7 6/20 9/1 11/15 11/18 12/20 13/4 16/3 16/21 17/10 18/1 18/2 19/18 23/10 30/17 34/15 35/5 37/3 38/4 40/12 41/2 41/7 44/24 44/25 45/1 47/21 49/2 50/10 51/3 52/15 52/22 52/24 53/7 54/14 55/4 55/18 59/19 60/17 60/18 61/14 64/20 64/23 70/12 71/13 71/21 72/7 76/3 76/6 76/12 76/15 76/20 79/8 81/4 88/14 90/24 96/5 96/22 98/8 99/18 100/9 101/6 101/7 101/10 101/19 102/14 102/20 103/12 103/16 105/21 106/2 107/9 107/18 108/10 108/23 109/2 117/3 117/7 117/19 119/7 119/24 120/20 122/7 122/10 123/11 123/19 123/25 124/1 124/25 125/20 125/22 127/3 128/6 131/4 131/5 132/6 133/15 135/4 136/11
view... [16] 160/25 165/17 169/2 169/3 170/13 173/2 174/1 174/1 174/2 174/11 181/3 181/9 183/20 184/25 186/24 192/12	waste [1] 166/6 watch [1] 63/9 watching [3] 90/17 124/22 124/22 water [1] 125/1 watered [5] 68/2 123/1 124/11 124/14 126/6 Watt [6] 127/14 127/17 127/21 127/22 139/7 195/9 Watts [1] 107/23 way [57] 3/15 9/4 10/8 10/19 13/13 15/1 21/16 35/23 35/25 37/13 37/14 40/5 40/14 40/17 41/22 46/10 64/12 68/18 68/21 74/25 85/21 91/10 96/4 98/15 100/15 103/7 104/12 105/7 109/21 117/7 118/24 119/14 119/16 121/19 122/1 124/2 124/3 125/21 126/2 137/7 142/18 144/22 145/2 150/24 155/14 155/17 156/1 156/6 156/25 159/22 159/23 160/2 172/7 180/6 180/24 181/1 187/15	Wendy [3] 75/2 76/21 77/16 went [21] 15/4 19/5 19/7 28/13 56/22 73/5 76/4 92/9 96/14 129/19 134/17 136/2 138/16 139/18 140/20 143/17 145/4 145/5 152/15 166/10 177/2	where's [1] 35/23 whereas [2] 11/6 186/9 whereby [1] 153/19 whether [47] 2/21 6/11 14/5 15/23 18/25 19/10 23/22 28/10 35/11 35/20 43/24 44/2 46/22 48/13 48/19 49/17 57/2 57/5 59/21 62/22 74/13 76/11 80/18 82/23 85/16 86/13 93/5 93/25 94/17 96/17 99/23 103/17 121/13 126/23 144/16 151/17 162/24 164/8 164/9 166/1 170/3 176/5 182/15 183/19 184/23 187/2 189/10 which [131] 3/14 4/11 6/7 6/20 9/1 11/15 11/18 12/20 13/4 16/3 16/21 17/10 18/1 18/2 19/18 23/10 30/17 34/15 35/5 37/3 38/4 40/12 41/2 41/7 44/24 44/25 45/1 47/21 49/2 50/10 51/3 52/15 52/22 52/24 53/7 54/14 55/4 55/18 59/19 60/17 60/18 61/14 64/20 64/23 70/12 71/13 71/21 72/7 76/3 76/6 76/12 76/15 76/20 79/8 81/4 88/14 90/24 96/5 96/22 98/8 99/18 100/9 101/6 101/7 101/10 101/19 102/14 102/20 103/12 103/16 105/21 106/2 107/9 107/18 108/10 108/23 109/2 117/3 117/7 117/19 119/7 119/24 120/20 122/7 122/10 123/11 123/19 123/25 124/1 124/25 125/20 125/22 127/3 128/6 131/4 131/5 132/6 133/15 135/4 136/11	
virtually [2] 94/8 105/12 virulent [1] 150/1 visibility [3] 19/21 21/18 75/22 visible [3] 17/4 52/7 53/10 Vision' [1] 8/7 vital [2] 93/4 172/3 volume [1] 48/1	Watt [6] 127/14 127/17 127/21 127/22 139/7 195/9 Watts [1] 107/23 way [57] 3/15 9/4 10/8 10/19 13/13 15/1 21/16 35/23 35/25 37/13 37/14 40/5 40/14 40/17 41/22 46/10 64/12 68/18 68/21 74/25 85/21 91/10 96/4 98/15 100/15 103/7 104/12 105/7 109/21 117/7 118/24 119/14 119/16 121/19 122/1 124/2 124/3 125/21 126/2 137/7 142/18 144/22 145/2 150/24 155/14 155/17 156/1 156/6 156/25 159/22 159/23 160/2 172/7 180/6 180/24 181/1 187/15 we [336] we'd [7] 55/16 67/22 68/16 96/19 97/11 143/22 144/8 we'll [10] 1/15 55/19 70/3 79/21 143/3 164/6 164/12 167/18 170/8 194/5 we're [13] 22/7 26/11 68/18 68/18 76/18 88/4 116/23 134/20 134/21 139/16 156/25 161/18 164/18 we've [16] 27/4 29/17 30/22 42/24 87/11 98/18 102/2 104/17 112/6 116/23 118/25 141/2 147/14 160/8 160/9 182/22 wel/you [1] 71/13 Wednesday [10] 59/20 61/25 67/24 67/25 68/5 74/1 74/1 74/14 82/21 161/21 week [9] 1/7 5/14 30/12 40/10 41/9 43/8 45/10 133/18 138/21	Wendy [3] 75/2 76/21 77/16 went [21] 15/4 19/5 19/7 28/13 56/22 73/5 76/4 92/9 96/14 129/19 134/17 136/2 138/16 139/18 140/20 143/17 145/4 145/5 152/15 166/10 177/2 were [237] weren't [6] 95/23 106/22 117/16 147/11 171/24 176/3 what [171] 3/1 4/3 4/17 5/4 8/10 9/18 10/3 10/3 10/17 14/5 14/14 17/15 17/23 18/12 20/2 21/4 22/19 24/14 25/5 26/10 27/3 27/13 27/20 27/25 28/16 28/18 28/19 30/1 31/6 32/3 32/4 32/12 33/25 34/2 35/9 35/10 38/13 38/14 39/2 39/4 39/10 39/12 39/23 40/2 41/4 42/5	what's [9] 9/10 25/10 75/22 85/4 90/21 108/14 108/16 128/2 174/20 whatever [1] 124/5 whatsoever [1] 169/14 when [60] 2/4 2/9 2/10 3/13 6/3 8/4 11/9 14/8 18/6 19/14 35/10 38/5 38/13 40/10 41/9 45/15 49/13 55/3 56/24 61/16 67/12 67/13 68/10 70/1 70/10 74/23 79/15 84/7 87/16 90/11 92/14 94/21 96/3 103/8 106/13 110/23 112/14 123/3 123/10 124/20 125/3 126/8 128/2 131/8 134/2 135/1 138/13 145/15 148/3 152/2 155/5	
wait [2] 124/11 167/10 waiting [2] 90/19 166/6 Wales [1] 130/9 want [19] 17/11 26/19 32/19 82/10 83/18 84/14 88/17 89/18 102/5 112/19 128/1 136/7 144/8 167/25 170/9 173/25 174/5 179/11 190/7 wanted [11] 4/5 11/3 11/5 11/6 75/20 121/17 140/21 144/18 153/8 167/21 189/20 wanting [3] 74/6 123/17 123/21 wants [1] 120/10 Ward [1] 51/15 warfare [2] 67/8 67/10 Warmington [2] 6/13 6/15 warn [2] 157/2 157/3 warning [1] 189/2 wary [1] 188/12 was [680] wasn't [60] 2/5 9/17 10/7 12/5 12/19 13/1 13/14 17/4 19/2 24/16 27/9 37/16 40/3 45/22 46/2 46/13 57/2 58/20 61/1 62/9 62/12 73/13 80/11 90/8 91/12 93/25 94/12 94/13 95/10 100/7 100/14 106/24 109/3 121/14 123/25 124/19 124/25 125/16 125/17 131/23 133/23 134/24 143/12	well [95] 3/21 5/24 6/9 6/22 7/24 8/13 10/5 13/10 14/14 15/21 17/23 28/24 31/4 35/23 40/5 59/7 61/2 62/8 62/20 64/25 68/13 69/23 69/25 73/9 73/12 73/25 75/19 79/21 80/17 80/21 80/22 81/13 81/17 82/21 84/10 84/13 84/19 85/8 93/12 93/12 94/21 96/5 98/13 98/18 100/2 100/6 100/17 100/19 100/25 101/9 105/15 107/21 117/5 120/25 130/1 131/21 131/22 134/16 137/16 138/7 143/15 143/16 145/1 145/19 146/4 147/7 147/19 151/10 153/13 154/14 158/20 162/25 165/23 167/7 167/18 169/8 170/8 171/23 172/10 172/12 173/25 174/1 174/22 175/20 177/25 178/2 178/3 184/8 186/12 188/1 188/10 192/8 193/4 193/13 194/4	what's [9] 9/10 25/10 75/22 85/4 90/21 108/14 108/16 128/2 174/20 whatever [1] 124/5 whatsoever [1] 169/14 when [60] 2/4 2/9 2/10 3/13 6/3 8/4 11/9 14/8 18/6 19/14 35/10 38/5 38/13 40/10 41/9 45/15 49/13 55/3 56/24 61/16 67/12 67/13 68/10 70/1 70/10 74/23 79/15 84/7 87/16 90/11 92/14 94/21 96/3 103/8 106/13 110/23 112/14 123/3 123/10 124/20 125/3 126/8 128/2 131/8 134/2 135/1 138/13 145/15 148/3 152/2 155/5	which [131] 3/14 4/11 6/7 6/20 9/1 11/15 11/18 12/20 13/4 16/3 16/21 17/10 18/1 18/2 19/18 23/10 30/17 34/15 35/5 37/3 38/4 40/12 41/2 41/7 44/24 44/25 45/1 47/21 49/2 50/10 51/3 52/15 52/22 52/24 53/7 54/14 55/4 55/18 59/19 60/17 60/18 61/14 64/20 64/23 70/12 71/13 71/21 72/7 76/3 76/6 76/12 76/15 76/20 79/8 81/4 88/14 90/24 96/5 96/22 98/8 99/18 100/9 101/6 101/7 101/10 101/19 102/14 102/20 103/12 103/16 105/21 106/2 107/9 107/18 108/10 108/23 109/2 117/3 117/7 117/19 119/7 119/24 120/20 122/7 122/10 123/11 123/19 123/25 124/1 124/25 125/20 125/22 127/3 128/6 131/4 131/5 132/6 133/15 135/4 136/11	

W	wide [1] 48/3	72/11 90/5 90/12	47/24 48/5 48/6 48/12	wrong [12] 8/14
which... [31] 141/5	widely [1] 54/14	95/20 96/2 96/11	48/22 49/20 50/18	32/10 37/13 37/14
141/17 144/11 147/22	widespread [3] 4/13	96/17 108/24 109/19	52/6 52/7 58/10 58/19	46/10 52/14 103/23
149/21 151/21 151/23	7/21 149/8	128/4 128/5 128/17	59/4 59/9 59/10 60/7	108/16 108/20 111/17
152/8 158/1 167/13	will [36] 1/6 1/10 7/12	128/21 138/14 158/8	61/2 61/10 61/18 62/2	132/7 132/20
167/14 167/16 168/6	14/4 15/9 21/17 21/20	158/11 159/24 165/24	63/24 63/25 64/24	wrongly [1] 76/16
171/6 172/7 174/17	23/2 30/14 30/19	176/18 180/7 194/1	65/23 66/19 66/21	wrote [7] 36/14 96/3
175/12 175/23 179/24	31/13 31/14 36/10	witnesses [7] 75/15	67/4 68/14 71/13	101/6 174/19 174/22
180/3 180/11 181/14	38/16 56/4 57/4 57/7	88/2 95/9 135/23	71/16 72/1 73/9 74/1	175/3 175/20
181/22 182/2 182/11	69/8 71/5 76/25 76/25	159/15 159/18 161/4	75/5 82/10 82/12	Wylie [4] 88/9 89/2
183/14 185/12 186/20	81/16 81/21 88/3	Womble [1] 105/5	84/19 86/14 87/20	89/4 89/13
188/3 190/24 193/12	89/25 98/8 104/22	won't [2] 21/20 119/1	88/21 90/4 92/18	Wyn [1] 175/2
while [2] 114/14	106/1 107/22 115/11	wondered [1] 184/22	92/23 93/21 94/23	
129/3	123/2 127/15 142/14	woodwork [1]	94/24 94/25 97/18	Y
whilst [11] 9/14 71/7	153/14 174/12 180/24	170/15	98/3 98/20 98/20	yeah [5] 3/3 25/7
73/2 87/2 105/24	Williams [32] 20/15	word [6] 2/21 60/2	99/10 99/20 100/17	28/23 74/11 139/11
116/4 135/7 136/21	24/25 27/4 29/7 49/6	165/11 175/14 175/23	100/21 101/1 101/10	year [7] 31/9 81/6
142/20 144/7 154/7	49/21 51/7 62/21 63/7	183/5	101/20 101/24 101/24	110/10 126/13 126/13
whirlwind [1] 94/9	63/11 65/6 73/9 80/22	words [22] 2/8 2/18	105/7 105/21 106/5	126/14 186/11
who [68] 1/9 1/10	81/20 81/21 81/24	37/4 38/10 49/11	107/5 107/10 107/16	years [8] 39/6 94/20
1/11 1/12 6/1 8/19	82/1 82/4 83/18 84/12	60/10 61/16 61/22	110/17 115/25 116/11	95/21 112/4 126/12
8/21 17/5 29/9 32/7	86/11 86/16 91/22	101/2 101/3 122/5	116/14 117/1 117/9	147/3 151/9 186/9
36/11 37/9 43/23	109/7 119/19 120/7	124/11 131/20 142/21	117/25 118/4 119/8	years' [1] 23/3
50/18 57/23 58/6	169/16 182/23 183/7	163/18 165/20 170/10	119/16 123/1 124/17	yes [194] 1/5 1/19
58/21 59/11 62/17	183/17 183/20 184/6	170/14 170/18 173/23	124/19 125/16 126/6	2/24 2/24 3/2 3/3 6/3
62/19 65/21 66/4 66/5	Williams's [1] 82/18	183/1 183/13	126/7 129/4 130/9	6/9 6/17 11/7 12/8
66/13 68/24 70/4 73/9	willing [1] 162/10	work [31] 4/4 14/16	130/22 131/16 132/14	13/23 14/7 14/18
79/9 81/18 85/9 85/23	willingness [1] 7/7	14/17 22/10 24/17	133/19 133/19 133/22	14/23 14/24 15/16
86/9 87/8 103/5 106/8	Wimbledon [10]	29/23 34/20 35/1	133/24 133/25 134/1	15/23 19/4 19/4 19/7
108/17 109/21 112/5	74/19 74/19 75/8	40/20 45/11 56/19	134/3 136/19 137/24	19/8 19/12 19/16
113/12 118/23 119/5	75/13 76/1 77/11	72/22 80/5 92/18	141/23 142/19 145/22	19/16 19/22 20/1 20/1
120/15 121/11 127/14	78/22 80/25 82/24	92/25 95/16 106/22	147/23 147/23 148/6	20/5 20/6 20/10 22/1
132/8 133/1 135/24	83/11	108/12 114/17 120/13	148/9 148/13 149/8	24/18 25/7 26/21
140/8 144/3 145/5	Winn [5] 51/14 74/18	120/17 120/21 120/22	149/11 149/15 149/22	27/16 30/21 31/11
147/12 158/15 160/14	75/1 75/14 75/15	123/20 154/1 154/6	149/25 150/3 150/5	33/17 33/24 34/9
162/22 168/5 172/1	Winn/Alan Lusher [1]	154/7 154/11 154/25	150/13 150/16 150/19	34/25 35/1 35/6 35/7
172/2 172/12 172/16	51/14	155/5 155/7	151/22 152/5 157/9	35/15 38/2 39/2 39/2
174/18 174/22 175/3	wish [5] 62/15 64/25	worked [7] 4/21	162/22 164/11 166/18	40/24 43/1 43/11
175/16 177/17 181/6	102/21 111/23 173/14	23/18 33/6 33/13	167/24 169/11 170/2	43/11 46/19 46/19
187/1 188/23 190/11	wished [2] 111/10	41/23 147/12 147/15	171/15 171/17 171/18	47/6 49/23 50/15
who'd [1] 120/1	143/18	working [15] 4/6 13/4	171/23 171/23 175/6	53/19 53/21 54/4 55/1
whole [3] 17/12	with' [1] 22/23	14/16 17/13 20/23	175/7 176/14 176/21	55/6 55/19 55/20
168/9 177/14	withhold [4] 143/18	33/18 35/9 54/9 57/1	177/15 177/23 178/17	55/22 56/3 56/6 56/13
whom [2] 104/6	144/18 148/20 152/23	79/12 80/12 89/1 89/3	184/7 187/12 187/21	57/18 61/12 61/18
108/18	withholding [3]	147/16 153/19	189/7 189/16 191/13	61/21 74/13 74/16
why [55] 5/8 9/21	109/3 147/22 148/12	works [1] 40/17	191/24 192/23	75/11 75/12 77/13
17/24 32/16 49/3 59/3	within [23] 4/20 4/23	world [4] 14/8 28/17	wouldn't [20] 13/2	80/9 80/15 80/21
59/5 60/22 65/9 74/23	8/3 12/11 23/8 24/2	55/7 95/13	13/3 14/21 32/11 37/7	81/10 83/15 84/13
75/18 79/8 82/10	26/2 34/7 35/5 39/7	worried [1] 100/3	61/12 75/9 84/19	86/24 95/5 95/22 97/2
82/20 88/25 93/8	42/18 51/1 54/11 58/6	worthy [1] 7/21	134/14 150/20 153/24	97/4 100/2 106/12
93/21 94/24 95/15	58/14 67/25 71/24	would [185] 4/13	153/25 169/12 171/13	106/16 107/15 108/20
100/22 101/5 101/20	77/2 84/8 106/11	5/21 9/20 9/23 9/25	171/14 171/16 176/23	113/17 113/23 114/5
104/10 111/13 111/15	106/13 123/19 184/1	10/14 10/20 10/22	177/16 187/23 189/10	114/8 118/12 119/11
117/25 118/4 118/25	without [17] 19/1	12/25 14/20 15/3 15/6	write [1] 100/21	120/5 122/10 122/20
119/3 130/13 139/14	19/21 21/1 21/24 50/2	16/18 18/16 23/21	writes [2] 91/16	127/19 127/25 128/14
141/10 141/13 142/21	51/21 52/1 53/17	26/25 27/11 27/19	173/13	128/18 129/2 129/8
148/19 154/5 156/22	90/25 122/21 123/22	27/23 28/12 28/16	writing [6] 66/25	129/11 130/18 133/12
157/6 157/21 158/24	144/13 151/20 152/4	28/18 28/19 30/1	100/20 169/19 176/20	134/19 135/1 137/5
160/7 162/13 168/2	152/9 191/25 192/1	30/10 30/11 31/3	182/13 182/16	139/8 140/2 140/6
169/5 171/8 175/10	witness [35] 4/9 9/2	39/18 39/18 39/21	written [13] 23/11	140/10 140/23 142/4
175/20 175/21 176/4	15/7 32/13 43/12	40/11 41/10 41/16	44/5 46/17 49/14 91/5	145/9 147/1 147/16
177/20 178/2 185/20	44/11 44/17 45/6	42/11 42/13 42/23	96/7 114/1 128/20	147/25 154/21 154/24
185/22 187/11 192/25	46/15 52/17 55/13	44/10 44/10 44/16	150/25 171/7 171/14	155/2 155/4 155/24
	70/11 72/8 72/10	46/10 47/7 47/9 47/12	175/7 180/10	156/3 156/15 156/16

Y	33/5 33/18 34/1 34/5
yes... [61] 156/17	36/10 37/4 38/21
156/21 156/23 156/23	40/19 40/20 40/22
157/11 157/15 157/16	41/3 41/25 42/3 42/6
158/5 158/13 158/17	42/21 45/10 45/10
159/20 159/21 159/22	46/7 46/7 46/15 47/3
160/16 161/22 162/16	47/19 48/11 48/13
162/19 163/14 163/16	48/16 55/13 56/16
164/13 165/4 165/9	58/13 58/23 61/22
165/12 165/15 165/19	64/5 64/16 65/5 70/24
165/21 165/22 166/14	71/15 72/18 72/19
166/19 167/1 167/12	72/21 83/6 83/9 84/9
170/22 172/15 172/23	85/5 85/6 86/10 87/12
173/5 173/10 173/18	90/5 95/3 104/15
173/21 175/1 176/10	104/18 106/7 106/18
176/24 179/22 179/25	111/13 112/21 114/3
180/5 180/16 181/19	114/3 117/21 119/15
182/5 183/3 183/18	121/16 122/8 126/12
184/21 186/15 188/17	128/4 128/5 128/19
189/4 190/9 190/9	129/3 129/19 130/25
190/15 191/15 193/11	133/23 134/11 136/15
193/16 194/6 194/7	137/4 138/24 138/25
yesterday [14] 56/9	138/25 142/8 145/10
60/9 61/20 68/7 72/7	146/16 146/20 148/14
72/19 83/22 86/19	151/6 151/9 153/25
95/10 95/13 112/4	155/1 155/7 156/7
118/16 148/21 194/2	159/24 160/4 160/23
yet [3] 9/10 42/4	160/25 162/1 163/5
170/19	165/3 167/18 167/22
you [817]	168/22 171/5 172/1
you'd [16] 20/2 28/9	174/25 175/3 177/2
28/10 31/6 33/6 33/13	178/16 179/8 179/15
34/13 41/22 53/25	179/19 180/6 183/10
57/18 143/19 144/19	183/20 184/12 185/6
148/21 161/8 161/9	187/22
184/2	yourself [8] 39/7
you'll [7] 1/8 36/3	70/20 98/1 105/10
52/23 79/3 109/16	105/22 116/24 120/7
124/8 165/5	121/10
you're [36] 1/22	yourselves [2] 140/1
12/20 17/1 34/20	159/14
38/25 39/10 40/5 40/7	
52/19 57/13 62/4 74/9	Z
75/8 77/23 83/3 84/17	Zack [1] 29/19
85/4 85/6 88/25	Zebra [8] 24/7 24/13
100/19 101/2 108/14	29/15 29/16 29/18
113/3 119/15 128/2	31/10 31/13 52/22
130/16 133/13 137/3	Zen [1] 86/21
150/24 150/25 154/10	
158/14 160/24 168/3	
171/1 176/14	
you've [19] 15/14	
25/2 39/25 50/25	
83/21 91/9 95/3	
119/12 121/16 122/5	
133/10 137/4 147/2	
160/16 161/13 164/21	
169/9 177/17 183/21	
Young's [1] 23/13	
your [123] 1/24 2/25	
3/10 5/15 6/5 9/9 11/2	
11/17 13/19 17/25	
18/1 22/5 22/7 26/21	