

Wednesday, 8 May 2024

1
 2 (9.45 am)
 3 MR BEER: Good morning, sir, can you see and hear us?
 4 SIR WYN WILLIAMS: Yes, thank you very much.
 5 MR BEER: Thank you. In a moment I'm going to call
 6 Mr Altman, King's Counsel, but, before I do, I should
 7 say that because it's a Wednesday there's a file drill
 8 at 10.00 and so the feed will be cut for those that are
 9 following online.
 10 SIR WYN WILLIAMS: All right, that's fine.
 11 MR BEER: We will all remain in the room.
 12 SIR WYN WILLIAMS: Yes.
 13 MR BEER: Mr Altman then, please.
 14 **BRIAN ALTMAN (affirmed)**
 15 **Questioned by MR BEER**
 16 MR BEER: Thank you, Mr Altman. As you know, my name is
 17 Jason Beer and I ask questions on behalf of the Inquiry.
 18 Can you give us your full name, please?
 19 A. Brian Altman.
 20 Q. You should have in front of you a witness statement with
 21 the URN WITN10350100, which is 48 pages in length. Can
 22 you turn to the last page, please, page 48.
 23 A. Yes.
 24 Q. Is that your signature?
 25 A. It is.

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1 A. That's correct.
 2 Q. When you were instructed, were you conscious, then and
 3 afterwards, that the Post Office wished to trade on your
 4 former status as First Senior Treasury Counsel?
 5 A. I wasn't conscious of it but I would say I suppose it
 6 didn't surprise me that they would come to somebody with
 7 that history.
 8 Q. It didn't surprise you?
 9 A. No.
 10 Q. Was there anything more than that?
 11 A. No one ever said to me that, "We are instructing you
 12 because of your professional history".
 13 Q. Can we look at some documents --
 14 A. Yes, of course.
 15 Q. -- that touch on this issue, please. They come up on
 16 the screen. POL00192287. Page 2, please, at the
 17 bottom. This is an email chain that you're not party
 18 to: it's not to you, it's about you. You'll see that
 19 it's dated 18 July 2013, between Gavin Matthews and the
 20 people set out on that distribution list. He was
 21 a partner at Bond Dickinson, who was then to instruct
 22 you.
 23 A. Yes.
 24 Q. He says to Susan Crichton, then General Counsel at the
 25 Post Office, "Here's a list of possible candidates" and

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1 Q. Are the contents of it true to the best of your
 2 knowledge and belief?
 3 A. They are.
 4 Q. Thank you very much for providing the witness statement,
 5 a copy of that will go up online on the Inquiry's
 6 website. I'm not going to ask you questions about every
 7 part of it.
 8 Can I start, please, with your background. I think
 9 it's right that you were called to the Bar in 1981?
 10 A. Yes.
 11 Q. You took silk in 2008. You served as Treasury Counsel
 12 between 1997 and 2013, the last three years of which you
 13 served as First Senior Treasury Counsel?
 14 A. Yes.
 15 Q. You, at the material times we're concerned with,
 16 practised principally in criminal law; is that right?
 17 A. Yes.
 18 Q. Thank you. Can I start, please, with the general
 19 approach that you took to the work that you did on
 20 behalf of the Post Office and your understanding of what
 21 they wanted from you. I think you ceased to be First
 22 Treasury Counsel at the end of June 2013; is that right?
 23 A. Yes.
 24 Q. You were instructed first by the Post Office the very
 25 next month in July?

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1 you'll see, I think, Mark Ellison, in a link on that web
 2 page, Ian Winter at Cloth Fair Chambers, you at
 3 2 Bedford Row, Nick Purnell at Cloth Fair Chambers and
 4 then a couple of others whose names aren't revealed by
 5 the URNs.
 6 I'll skip over the next paragraph, the "From
 7 speaking to colleagues". It says in the following
 8 paragraph:
 9 "Brian Altman QC is interesting in that he is First
 10 Treasury Counsel (though his practice is not big on
 11 fraud cases). Simon [Simon Richardson, one of the
 12 solicitors] points out the possible attraction
 13 politically of having First Treasury Counsel on board."
 14 Then if we scroll up, please, and keep going and
 15 just stop there. Gavin Matthews says he's spoken to the
 16 various clerks. Then under "2 Bedford Row", that's you,
 17 and if we scroll down please, at the top of the page it
 18 says:
 19 "He [you] is no longer First Treasury Counsel (from
 20 1 July) but he has the ear of the [Director of Public
 21 Prosecutions/Attorney General's] office."
 22 Then at the top of the page, if we keep going,
 23 please, Mr Flemington, one of the lawyers, says:
 24 "How long is a 'few' weeks in Brian's case ..."
 25 I think that's how long you're away for, and then:

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1 "His connections sound useful."
 2 Did anyone communicate to you, upon instruction or
 3 otherwise, that an attraction of having you as counsel
 4 would have a political dimension to it, in particular
 5 because you had the ear of the DPP or AG's Office.
 6 **A.** Never.
 7 **Q.** Were there any conversations that you had upon
 8 instruction or otherwise in which such sentiments were
 9 revealed to you?
 10 **A.** Not once that I recall, no.
 11 **Q.** Would you understand why a client in the position of the
 12 Post Office in mid-2013, reviewing its past disclosure
 13 in criminal proceedings and possible miscarriages of
 14 justice, would see a political attraction of having you
 15 as its counsel?
 16 **A.** No. I see the attraction of having me from a legal
 17 perspective as their counsel but not politically.
 18 **Q.** A legal perspective because you were a very experienced
 19 prosecutor?
 20 **A.** Yes.
 21 **Q.** Can you understand what they're talking about here at
 22 all, your connections, your having the ear of the AG's
 23 Office?
 24 **A.** I can see immediately from that email it was not me who
 25 made that representation but I can see, probably, it was

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1 the Post Office as to the continuation or
 2 non-continuation of those functions. Can we just look
 3 at page 40, please -- scroll down -- where you sign it
 4 off; do you see that?
 5 **A.** Yes.
 6 **Q.** Against your name and your chambers is footnote 33, and
 7 footnote 33 takes us down to the foot of the page where
 8 it says that you're a practising barrister; you were
 9 first appointed First Senior Treasury Counsel to the
 10 Crown at the Central Criminal Court by the Attorney
 11 General in December 2010 -- you remained in post until
 12 the end of your tenure in June 2013; appointed Junior
 13 Treasury Counsel in 1997 and Senior Treasury Counsel in
 14 2002; appointed a Recorder of the Crown Court in 2003;
 15 Queen's Counsel in 2008; and were made a Bencher of the
 16 Middle Temple in 2010 and then there's a link to your
 17 chambers webpage.
 18 We asked you, when you were preparing your witness
 19 statement, whether this was your usual practice, to
 20 footnote your name or some other part of written advices
 21 and set out a mini career history, and you said it
 22 wasn't your practice to do that --
 23 **A.** No.
 24 **Q.** -- and you couldn't recall why you did it on this
 25 occasion.

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1 that that attracted them.
 2 **Q.** You can see that, what, a belief that you had
 3 connections may have attracted them?
 4 **A.** Oh, yes.
 5 **Q.** Did you ever use any such connections?
 6 **A.** No.
 7 **Q.** Were you ever asked to use such connections?
 8 **A.** Absolutely not.
 9 **Q.** Why do you think you can see why they would think that
 10 you having political connections would be useful?
 11 **A.** I can't answer that, Mr Beer, because I don't know what
 12 was in their mind, other than they may have thought that
 13 having somebody like me on the Post Office side
 14 instructed by them might give them some leverage in the
 15 political arena, but they were totally wrong if they
 16 did.
 17 **Q.** Thank you. That can come down. Can we look, please, at
 18 POL00006802. This is your review, it's an advice, but
 19 it's badged up in the tramlines as a review, of
 20 19 December 2013 and, essentially -- we're going to look
 21 at the detail later -- but, in summary, it consists of
 22 a review of the Post Office's investigatory and
 23 prosecutorial functions --
 24 **A.** Yes.
 25 **Q.** -- and, in particular, by looking backwards, advising

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1 **A.** I can't. Correct.
 2 **Q.** Can I suggest some possibilities: was it that you knew
 3 or believed that your advice might be deployed outside
 4 the organisation?
 5 **A.** I mean, I thought about this because I was asked the
 6 question and the interesting thing is there's an absence
 7 of a biography like this on the general review.
 8 **Q.** Yes. I think I understand the point you're making
 9 there: you're saying, if there was to be a document that
 10 was to be deployed outside the organisation, it would be
 11 more likely to be the general review?
 12 **A.** Exactly. The only thing I can think of -- but this is
 13 purely speculative -- is that I was told or understood
 14 that this document would go to the Board. But whether
 15 I was ever told there was a possibility this review
 16 would go outside the organisation, I can't say.
 17 **Q.** If you were told that the document would or might go to
 18 the Board, why would that lead you to emphasising these
 19 points, as you do in footnote 33?
 20 **A.** Well, all I can imagine is that I was either asked or
 21 I felt it was appropriate for the Board to know who was
 22 given the advice because the advice in this review was
 23 not all one way. One of the points I made, having
 24 trawled through all of the policies that Post Office and
 25 Royal Mail had before Post Office, or at the same time

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1 as Post Office, were that they were in a parlous,
 2 unsatisfactory state of affairs. So that could have
 3 been my thinking but I'm speculating.

4 **Q.** The essence of the advice that you gave was that the
 5 Post Office could properly carry on investigating and
 6 prosecuting crime on its own behalf?

7 **A.** On what I understood at that time, yes.

8 **Q.** Did you think that that overall conclusion might be
 9 deployed either outside the organisation or to the Board
 10 and, therefore, you needed to emphasise how senior and
 11 experienced you were?

12 **A.** Well, again, one of the thoughts I've had is they must
 13 have known who they were instructing anyway, so this was
 14 just, if you like, telling them what they already knew.

15 **Q.** Yes, because we're five months in now?

16 **A.** Yeah. But I agree, I don't know the answer to that.

17 **Q.** So for you this a curiosity too?

18 **A.** I can't remember. I mean, we're going back over
 19 a decade and I can't remember and I'm not going to say
 20 I was asked or if I felt it was a good idea to do it or
 21 somewhere in between; I just don't know any more.

22 **Q.** Can we turn please to POL00214820. This is an exchange
 23 of emails, again to which you were not party, in
 24 December 2014, so a couple of years further on. The
 25 exchange is about what to say and what not to say to

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1 written in by Rodric Williams, one of the Post Office
 2 litigation lawyers, he says:
 3 "We should ask for this opinion -- the privilege
 4 over it could have been waived.
 5 "The 'expert' cannot comment on what our 'culture'
 6 is, at least not without speaking to us first.
 7 "... if this 'expert' believes miscarriages of
 8 justice are likely to occur, he should set out for us
 9 the how and why so that we can be sure they don't.
 10 Justice demands that."
 11 Then his:
 12 "We have consulted former First Senior Treasury
 13 Counsel Brian Altman QC in accordance with our
 14 prosecution practices. Brian's advice is privileged,
 15 and we CANNOT do anything which might waive that
 16 privilege. Please therefore do NOT do anything
 17 referencing Brian without clearing it with Legal first.
 18 "We have let Brian know that we may want to name
 19 check him, and this was contemplated when he was
 20 instructed."
 21 So two questions arising from that. Is it right
 22 that when you were instructed, you were told that you
 23 might, to use these words, be "name checked" --
 24 **A.** If I was, I've long forgotten it.
 25 **Q.** -- ie that your name might be deployed?

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1 Nick Wallis in answer to questions that he was asking
 2 for the proposed broadcast of a second One Show piece.
 3 Can we go to page 4, please, at the foot of the page,
 4 please. Thank you. His question is at 6:
 5 "We would like to put to you some opinion about the
 6 Post Office's approach to investigating and prosecuting
 7 subpostmasters. We are in possession of an expert
 8 opinion from a professor in criminal justice which
 9 implies Post Office's dual function as an investigator
 10 and prosecutor and its 300-year cultural history of
 11 using it against its agents is unique. That's not to
 12 say he thinks you are the only organisation with
 13 prosecuting powers but that you have a unique culture of
 14 prosecuting your agents. He implies this approach lacks
 15 the checks and balances of a typical prosecution by the
 16 CPS. In his opinion this creates a situation where
 17 miscarriages of justice are more likely to occur."
 18 I'll stop there.
 19 *(Pause for fire alarm test)*
 20 **MR BEER:** Thank you. Can I just check that you're still
 21 online, sir, and that you can see and hear us?
 22 **SIR WYN WILLIAMS:** Yes, I can, thank you.
 23 **MR BEER:** Thank you very much.
 24 Mr Altman, I read the question, the Nick Wallis
 25 question, but then the answer, and I believe this is

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1 **A.** Yeah, I have absolutely no recollection of that.
 2 **Q.** Then later on, by December 2014, can you recall again
 3 being told that they, the Post Office, may want to
 4 deploy your name to the BBC?
 5 **A.** I don't. I have absolutely no recollection of that
 6 either.
 7 **Q.** Was this is an issue that ever arose, to your
 8 recollection, that we want to say "We, the Post Office,
 9 have got Brian Altman on board, he was First Senior
 10 Treasury Counsel, you can be assured that we're doing
 11 the right thing"?
 12 **A.** No. Well, as I sit here now, I have absolutely no
 13 recollection of that.
 14 **Q.** Can we go forwards, please, to POL00297951. We're going
 15 back to the time of your instruction. This is
 16 an exchange between Andrew Parsons, then a senior
 17 associate at Bond Dickinson, to Rodric Williams in the
 18 Post Office, a lawyer, and Gavin Matthews the partner,
 19 with you as its subject heading.
 20 I think this is after you had given them the
 21 short -- I think your clerk, John Grimmer, put it as
 22 a 20-minute freebie.
 23 **A.** I can't remember the 20-minute freebie, to be frank with
 24 you, but the email, I seem to recall, was dated 18 July,
 25 so this was a few days afterwards.

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1 Q. "In short, Brian looks like the right man for the job.
 2 In my view he was very impressive.
 3 "He's clearly taken this type of exercise before and
 4 is very live to the political dimension."
 5 Again, were you made aware that your client believed
 6 that there was a political dimension to the issues that
 7 the Post Office was facing?
 8 A. Well, if that line in this email is accurate, then,
 9 clearly, I must have been but what it was, particularly
 10 at that time, I can't tell you.
 11 Q. Was this political dimension described to you?
 12 A. Well, as I say, Mr Beer, I can't remember. If the email
 13 is accurate, maybe something was said about it but
 14 I can't remember what that was.
 15 Q. They seem to think that you were very alive to it, the
 16 political dimension?
 17 A. Well, everybody probably at that time who read anything
 18 about Post Office was probably alive to the political
 19 dimension. I don't think I had any unique insight into
 20 it.
 21 Q. What would you understand the political dimension to
 22 have been in mid-2013?
 23 A. Well, again, speculating, because I can't remember this,
 24 it would inevitably be the fact that Post Office was, in
 25 effect, a government-owned organisation and, clearly,

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1 independent review and I think, unless you correct me,
 2 that all of the terms of reference, in fact all of the
 3 drafts, were always couched in terms of
 4 non-publishability and that was always my understanding,
 5 and you'll note what I said in my witness statement
 6 that, when I did come to write the general review, it
 7 was headed "Legally professionally privileged". I set
 8 out all the terms of reference, which included its
 9 non-publishable nature and, also, that it was clear to
 10 me that this was advisory in nature and not
 11 an independent investigation.
 12 Q. So, of those two species of instruction set out there,
 13 you understood this to be client advice in the ordinary
 14 sense?
 15 A. Yeah, private.
 16 Q. You were not being asked to conduct a public or
 17 independent review of the Post Office's prosecutorial
 18 investigatory practices or its past prosecutions?
 19 A. No, sir.
 20 Q. If the latter had been the case, that you were
 21 instructed to conduct an independent assessment of the
 22 Post Office's criminal law position, as it's put out
 23 there, how would you have approached your task
 24 differently?
 25 A. I might have asked for more assistance than I had, so

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1 the balloon was going up in respect of what had happened
 2 during the course of past convictions.
 3 Q. Mr Parsons carries on:
 4 "Big question -- is Brian's work private advice for
 5 [the Post Office] or an independent assessment of [the
 6 Post Office's] criminal law position? One for us to
 7 think about."
 8 Do you understand the distinction between those two
 9 species of instruction?
 10 A. Absolutely.
 11 Q. Of those two, firstly, can you explain what you
 12 understand the distinction to be?
 13 A. Well, private advice is advisory work to the client,
 14 which is privileged; and an independent assessment of
 15 Post Office's criminal law position, with the emphasis
 16 on the word "independent" would be something that might
 17 be published.
 18 Q. How was the instruction first presented to you on those
 19 two alternatives?
 20 A. Mr Beer, like me, you will know that the terms of
 21 reference went through so many drafts and, frankly, when
 22 I saw them, for the purposes of making my statement,
 23 I couldn't sort out one from the other with any great
 24 ease. But I have to say, at no time did I ever
 25 understand that this was going to be some publishable

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1 I might certainly have suggested that it would have to
 2 be far more wide-ranging and searching, if it was in the
 3 nature of a proper investigation, rather than advisory.
 4 So I would have almost certainly said I wanted
 5 resources, terms of reference might have been different
 6 because, in the nature of even a non-statutory inquiry
 7 or an investigation, you want to think about procedural
 8 fairness to people who might be criticised in the course
 9 of a public -- publishable documents. So all of those
 10 things I would have thought about and I think my
 11 approach to it would have been very different.
 12 Q. So your instructions, your terms of reference, would
 13 have been different; your approach would have been
 14 different; the resources that you would have asked for
 15 would have been different; and, presumably, your
 16 relationship with your client would have been different?
 17 A. Yes, I mean, the whole thing -- the whole approach would
 18 have been entirely different, I would have kept them at
 19 arm's length and I think it would have taken
 20 a substantial period of time longer than it actually
 21 did, although the general review took, as you can
 22 imagine, a long time to put together without any
 23 assistance. I'm not criticising but that's the fact,
 24 but it would have taken much, much longer to do -- to
 25 perform a proper independent investigation, of which,

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1 since that time, I have experience.

2 **Q.** Later in the piece, the Inquiry is aware that the Post
3 Office came to rely on the work that you did do, as
4 having given the reviews conducted by Cartwright King
5 great or greater credibility?

6 **A.** Yeah.

7 **Q.** Were you aware when you were instructed that that might
8 occur, or was to occur?

9 **A.** Forgive me for asking, do you mean within the
10 organisation or outside the organisation?

11 **Q.** Outside the organisation. To, for example, the CCRC.
12 Essentially, and I'm summarising greatly here, "You can
13 trust the integrity and reliability of what we've done
14 in reviewing our past convictions, after all we've got
15 First Senior Treasury Counsel reviewing the work of
16 Cartwright King"?

17 **A.** Well, I think I was aware that the Post Office was
18 either likely to do that or had done it. I know I was
19 privy to some of the correspondence that went to the
20 CCRC. But, yes, I suppose I was alive to that
21 possibility.

22 **Q.** So, in that sense, the Post Office was treating your
23 work as falling between two stalls; it was private work
24 enjoying privilege but the existence of which was relied
25 on for benefits when deployed outside the organisation?

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1 Government owned?

2 **A.** I think I was actually asked that question and I'm
3 struggling right now to remember where it is
4 I confronted that issue, but I did, but, at the same
5 time, I don't think it made any real difference to my
6 approach to the questions I was asked to answer.

7 **Q.** Why was that?

8 **A.** Because, at the end of the day, whether you're a private
9 prosecutor or a public authority which prosecutes, the
10 principles are the same.

11 **Q.** Did you consider whether you were approaching the matter
12 from the perspective of being subject to the same
13 ethical standards, as if you had been asked to advise,
14 say, the CPS?

15 **A.** Yeah, my ethics would never have changed.

16 **Q.** This issue, the capacity in which you were advising,
17 doesn't appear to be touched on in any of the advices,
18 ie "I'm advising you as a commercial entity but the same
19 applicable ethical standards apply". Was there a reason
20 for that?

21 **A.** I can't say if there was a reason. I probably didn't
22 even think it was necessary to have to spell out the
23 precise capacity in which I was acting but, as I have
24 said, I can remember very early on advising the Post
25 Office of what its duties were and that it had to act

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1 **A.** Yeah, I suppose you could say that.

2 **Q.** So they kept your advice private but used your name to,
3 would you agree, bolster the integrity of what they were
4 doing?

5 **A.** That's a possible inference.

6 **Q.** This can come down, sorry.

7 After receiving these instructions to advise the
8 Post Office, were you advising as a prosecutor, briefed
9 by a prosecuting authority, or as a member of the
10 independent Bar, with considerable prosecution
11 experience, advising a commercial entity?

12 **A.** Principally the latter but not forgetting the former.

13 **Q.** Why do you say it was principally the latter, advising
14 a commercial entity that happened to prosecute people?

15 **A.** Yeah, well, because Post Office is, or was, a private
16 prosecutor. But, at the same time, because of my
17 history and my experience, you have to always have in
18 mind that even a private prosecutor has to act as
19 a minister of justice and act with fairness and I made
20 that clear, I hope, pretty early on. So I always had in
21 mind all of the principles which I was very much alive
22 to, in advising them.

23 **Q.** In that calculus, did you bring into account the fact
24 that, although the Post Office was a commercial entity,
25 it could be seen in a public authority in that it was

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1 with fairness.

2 **Q.** Was there any shift in the basis on which you were
3 instructed when you were instructed on behalf of the
4 Post Office in the Court of Appeal, essentially to
5 prosecute?

6 **A.** Any shift?

7 **Q.** Yes, any difference?

8 **A.** None that I can think of, no.

9 **Q.** Were you ever contacted by, or did you ever contact,
10 BTO, a firm of solicitors in Scotland, instructed to
11 advise the Post Office in Scotland?

12 **A.** Not once.

13 **Q.** Do you know whether your draft or final versions of your
14 advices, that were addressed to the Post Office, were
15 distributed to BTO Solicitors in Scotland or to the
16 Crown Office and Procurator Fiscal in Scotland?

17 **A.** I have absolutely no idea about that.

18 **Q.** Was there any communication with you about the
19 distribution north of the border of the advice you were
20 giving?

21 **A.** None that I recall.

22 **Q.** Thank you. Can I turn to the second topic then, please.
23 This is Mr Clarke, Simon Clarke's advice of 15 July 2013
24 and the treatment of Gareth Jenkins. I think you, as
25 you've said already, you were asked for your views and

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1 observations on the terms of reference for your initial
 2 instruction, correct?
 3 **A.** Yes.
 4 **Q.** So you were asked to advise on what you should be asked
 5 to advise on?
 6 **A.** Yeah.
 7 **Q.** I've got that right, yes?
 8 **A.** Yes.
 9 **Q.** Okay. Can we look, please, at POL00006804. If we go to
 10 the final page, which is page 5, please, and scroll down
 11 a little, we'll see that this is your document and it's
 12 signed off on 2 August 2013. So, if we go back to the
 13 first page, please. These are essentially your
 14 observations on the draft terms of reference, your
 15 instructions?
 16 **A.** Yes.
 17 **Q.** Do you know why they weren't just called instructions,
 18 if this was a straightforward client-barrister
 19 relationship giving private advice?
 20 **A.** I suspect because they came from Bond Dickinson and the
 21 nature of that firm. They weren't a criminal firm and
 22 I'm not even sure that Gavin Matthews, who was the
 23 principal point of contact, was a litigation lawyer.
 24 **Q.** Even in civil law, though, when barristers are
 25 instructed, they're normally called instructions?

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1 covers it, as is acknowledged in paragraph 2.3 of the
 2 covering email, and in my view should be the wording
 3 adopted for both the overarching and abbreviated terms
 4 of reference documents."
 5 In your witness statement you say -- no need to turn
 6 it up, it's paragraph 21 on page 8:
 7 "It is clear from this [this document] that early on
 8 in my instruction, I did consider whether to meet Gareth
 9 Jenkins. I do not have a copy of the document I am
 10 referring to here which must be an earlier iteration of
 11 the draft terms of reference and I do not know now what
 12 was queried, how it was queried, or by whom. In the
 13 event, I did not meet Gareth Jenkins, and I cannot find
 14 any record I had any further discussions about it or any
 15 record of my reasoning for not doing so."
 16 If we go back a page, please. Scroll down. In that
 17 final paragraph on the page there, why were you
 18 concerned that not meeting or hearing from Mr Jenkins
 19 would risk exposing your final report to criticism?
 20 **A.** Well, I think it's in the first line, "where there may
 21 be questions potentially impacting on non-disclosure by
 22 him". So I suspect I had in mind, at that point, the
 23 question why was it that Gareth Jenkins, particularly in
 24 the *Seema Misra* case, where he gave live evidence, had
 25 not disclosed what he knew about those two Horizon

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1 **A.** You may be right but, I have to say, I didn't see any
 2 substantive difference between the use of the term
 3 "terms of reference" or "instructions".
 4 **Q.** In any event, this is your advice on the things that
 5 you're asked to advise on?
 6 **A.** Yeah.
 7 **Q.** If we look, please, at page 3, underneath heading
 8 "Process", you say:
 9 "Paragraph 2 of the 'Process' section of the
 10 overarching Terms of Reference ... includes the
 11 possibility of my meeting Dr Jenkins. I note this is
 12 queried.
 13 "Not meeting and hearing him, where there may be
 14 questions potentially impacting on non-disclosure by him
 15 and his role as an expert, risks exposing the final
 16 report to criticism. However, this not a judicial or
 17 public inquiry with the formal receipt of evidence.
 18 This is something I shall need to think about carefully;
 19 at this very early stage I am not unnaturally undecided.
 20 For now it may be better for the terms of reference to
 21 remain silent about him."
 22 **A.** I think I say something more over the page, as well,
 23 about that.
 24 **Q.** Yes:
 25 "At all events, paragraph 3, as generally worded,

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1 Online bugs? And so I suspect my thoughts at that time
 2 were targeted at that particular issue but --
 3 **Q.** I'm so, sorry.
 4 **A.** No, it's all right, but I suspect as time went on I came
 5 to the conclusion that the reasons why he had not
 6 revealed those bugs in trials in which he had provided
 7 witness statements or, in Seema Misra's case, in
 8 particular, where he'd given live evidence, was not
 9 ultimately material to the questions I was being asked
 10 to consider. It was the impact of that non-revelation
 11 on convictions that was what I was being asked to look
 12 at.
 13 **Q.** Mr Altman, I'm going to explore that distinction that
 14 you've just drawn, that reasons irrelevant, impact
 15 important. Would it be that, as you've written here,
 16 that not meeting him would be turning a blind eye to
 17 a potentially useful source of information? That's why
 18 you wouldn't want to do it?
 19 **A.** That's why I would or would not want to do it?
 20 **Q.** Would not want to do it?
 21 **A.** If you're suggesting that I'm turning a blind eye, I was
 22 not turning any blind eye to anything.
 23 **Q.** You'd identified here that, if you didn't meet him or
 24 didn't hear from him, it would expose your final report
 25 to criticism. In the event, you didn't meet with

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1 Mr Jenkins, did you?
 2 **A.** No, I didn't.
 3 **Q.** Whilst we're on this point, why was the product of your
 4 instructions, your terms of reference, to be called
 5 a "final report" rather than what we normally provide,
 6 which is advices and opinions?
 7 **A.** It was just the use of the words. I think if you --
 8 I mean, I regarded this as an advice and, in fact, the
 9 review document is referred to as a "review" not
 10 a report.
 11 **Q.** You say it's not a judicial or public inquiry, with the
 12 formal receipt of evidence, the thing that you were
 13 undertaking.
 14 **A.** Yeah.
 15 **Q.** Does that suggest that you thought that it was some form
 16 of inquiry, a private inquiry or a private review,
 17 rather than just client advice?
 18 **A.** Well, I think there is a mixing of terms here. But
 19 I have no doubt that I was being asked to give private
 20 advice to the Post Office.
 21 **Q.** In the last line you say:
 22 "For now, it may be better for the terms of
 23 reference to remain silent about [Mr Jenkins]."
 24 Why did you consider it best for the terms of
 25 reference to remain silent on Mr Jenkins?

25

1 Post Office.
 2 **Q.** Why didn't you give advice that the Post Office should
 3 investigate why Mr Jenkins had come to give evidence
 4 that was, according to Mr Clarke, misleading and in
 5 breach of his duties to the court?
 6 **A.** Because I come back to what I had thought, that the
 7 advice I was giving was about the impact of that failure
 8 on the prosecutions and the convictions and not the
 9 reasons why he had failed to do it.
 10 **Q.** What did you know at this point about how Mr Jenkins had
 11 been instructed?
 12 **A.** Do you mean his instruction as an expert?
 13 **Q.** Yes.
 14 **A.** I'm not sure I was told.
 15 **Q.** Did you ever ask for or review any instructions that he
 16 was given?
 17 **A.** I can't remember having done.
 18 **Q.** So did you ever appreciate the risk that Mr Jenkins had
 19 himself been manipulated by the Post Office or
 20 misinstructed?
 21 **A.** No. I suspect I assumed, because I was not told
 22 otherwise, that he'd been properly instructed
 23 throughout.
 24 **Q.** Did you check whether that was, in fact, the case?
 25 **A.** There is nothing in the material I've seen to say that

27

1 **A.** Because I didn't -- hadn't resolved at that point
 2 whether I was going to see him.
 3 **Q.** That's a separate issue, isn't it, whether or not you
 4 saw him, to whether or not the terms of reference should
 5 mention him?
 6 **A.** No, well, I think I see what you're driving at but
 7 I just felt that we were debating, me and Gavin
 8 Matthews, as to what the terms of reference should be
 9 and so my view was, if I had -- I had not yet resolved
 10 to see him, then there were no point sticking it in the
 11 terms of reference, which were ultimately my
 12 instructions.
 13 **Q.** Had the centrality of Mr Jenkins to the issues been
 14 communicated to you by this stage, August 2013?
 15 **A.** Well, I'd clearly understood what had happened in the
 16 trials and I'd clearly read the Clarke Advice.
 17 **Q.** So it had either been communicated to you or you had, by
 18 this time, realised that he was a central figure?
 19 **A.** I understood that.
 20 **Q.** Why wasn't there an investigation into how and why
 21 Mr Jenkins came to give evidence that Mr Clarke had
 22 advised was misleading and a breach of his duties to the
 23 court?
 24 **A.** Well, when you say an investigation -- because I wasn't
 25 conducting an investigation; I was giving advice to the

26

1 I did.
 2 **Q.** Did you check whether Cartwright King were going to
 3 address that issue, namely the proper instruction of
 4 Mr Jenkins as an expert?
 5 **A.** Address it with?
 6 **Q.** By examining the files or by speaking to Mr Jenkins?
 7 **A.** I can't remember if that was said or not.
 8 **Q.** As part of your assessment that we're going to come to
 9 in the general review later on, you say that Cartwright
 10 King's review was fundamentally sound?
 11 **A.** The process I felt, yes.
 12 **Q.** This issue, by removing him from the terms of reference,
 13 meant that the Gareth Jenkins issue remained shelved,
 14 didn't it, never to be returned to?
 15 **A.** Not during my review, no.
 16 **Q.** Did you ever get the sense that nobody in the Post
 17 Office, or indeed Cartwright King, wanted to look too
 18 deeply at how Gareth Jenkins had been instructed and,
 19 instead, their better narrative was that he personally
 20 was to blame for disclosure failings?
 21 **A.** I never thought that and I never saw it and, doing the
 22 best I can, I don't think I ever heard it either.
 23 **Q.** Now, the document you said in your witness statement
 24 that you hadn't got, the draft terms of reference upon
 25 which you were commenting, can we look at those, please.

28

1 I think they are POL00298010. These are dated 26 July
2 2013 and are prepared by Bond Dickinson, as we can see
3 in the top right. So these are the draft terms of
4 reference.

5 If we just pan out a little bit, please. You can
6 see they're divided into "Instructions", "Process",
7 "Output" and then, over the page, is "Timing". Just on
8 instructions --

9 **A.** Pausing there, Mr Beer, you made the point before that
10 the word "Instructions" wasn't used; it is.

11 **Q.** Under the heading of terms of reference?

12 **A.** Yeah, but the fact is the word "instructions" is to be
13 found there.

14 **Q.** "1. To review and advise [the Post Office] in a written
15 report on its strategy and process for reviewing
16 past/current criminal prosecutions given the findings of
17 the Second Sight Interim Report dated 8 July 2013.

18 "2. To advise [the Post Office] on its response to
19 the CCRC and any subsequent action required in dealing
20 or responding to any actual or potential appeals.

21 "3. To advise the Post Office, where not covered by
22 1 above, on the role of Dr Gareth Jenkins and the impact
23 on possible appeals."

24 So Bond Dickinson had included, as we see,
25 instructions to advise on the role of Gareth Jenkins,

29

1 **Q.** Yes.

2 **A.** Well, I haven't seen this and I didn't recall advising
3 that it was that paragraph that came out because I did
4 advise on Gareth Jenkins, the role and the impact on
5 possible appeals.

6 **Q.** But you said, we see in your advice, that these terms of
7 reference should remain silent on Gareth Jenkins. So
8 why should Gareth Jenkins be excised from the terms of
9 reference; why should he be cut out?

10 **A.** Well, I mean, he wasn't cut out because I did advise
11 about his impact, and I think I come back to the answer
12 I gave earlier, that I felt the reasons why he had
13 failed as an expert to discharge his duties of
14 disclosure was not what I was being asked to advise
15 upon. It was the impact, that's what I did.

16 **Q.** You were given the opportunity to self-define what you
17 were asked to advise on?

18 **A.** You're right, I was, and that's the only answer I can
19 give you. That must have been my thought process.

20 **Q.** But why at this very early stage were you putting out of
21 reach the possibility of an exploration of Mr Jenkins'
22 role?

23 **A.** I think my answer has to be the same: I was looking at
24 the impact, I felt and, by the time I got to agreeing
25 the final terms of reference, that was what was in my

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1 and the impact on possible appeals, yes?

2 **A.** Yeah.

3 **Q.** Then under "Process", if we scroll down a little bit,
4 under 2:

5 "To meet with Jarnail Singh and Cartwright King [and
6 then in brackets, Dr Jenkins?] to understand the past
7 and current procedure for prosecutions."

8 **A.** Sorry, Mr Beer, I heard you name Jarnail Singh, where do
9 I find that?

10 **Q.** Under 2.

11 **A.** Under "Output" --

12 **Q.** Under "Process":

13 "To meet with Jarnail Singh and Cartwright King [and
14 query Dr Jenkins]."

15 Yes?

16 **A.** Yes, that's a query I must have had in mind.

17 **Q.** So your draft terms of reference did include, as one of
18 the five things that you were asked to do, explicitly to
19 advise on the role of Gareth Jenkins and its impact on
20 possible appeals?

21 **A.** Yeah.

22 **Q.** Why did you consider it wasn't appropriate to advise the
23 Post Office on the role of Gareth Jenkins, ie why did
24 you suggest that paragraph 3 was removed?

25 **A.** Forgive me, paragraph 3 under "Instructions"?

30

1 mind. I didn't feel -- I suppose, if -- I suppose,
2 partly speculating, it was because did not feel I was
3 an investigator at this stage. It was simply gathering
4 information and writing an advice on the impact.

5 **Q.** Weren't you not loading the dice by excising him in this
6 way?

7 **A.** I don't see it that way.

8 **Q.** If we look at the final terms of reference, the one that
9 was settled after your advice, POL00040044. These are
10 the settled terms of reference for your appointment. If
11 we just look, if we scroll down gently, we can see that
12 Mr Jenkins' role and, indeed, any reference to him has
13 been entirely cut out from these terms of reference,
14 hasn't it?

15 **A.** Yes.

16 **Q.** Can I turn to what you say in your witness statement
17 about this, if we turn it up, please.

18 **A.** What paragraph is it?

19 **Q.** It's paragraph 26.5 on page 13. In the third line you
20 say:

21 "Why Mr Jenkins had failed to reveal in his witness
22 statements or evidence the bugs or defects he knew about
23 was not a matter for my review."

24 Yes? That's because you cut it out.

25 **A.** Absolutely.

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1 Q. You're explaining, in this paragraph, a later aspect of
 2 your instructions and you're explaining to us why your
 3 reviews didn't address the issue of why Mr Jenkins had
 4 failed to reveal in his witness statements or evidence
 5 the bugs or defects that he knew about, and you say,
 6 "It's not a matter for my review", but, again, that's
 7 because it was your choice to exclude it, wasn't it?
 8 A. It was excluded. I don't know what discussions I had
 9 with Gavin Matthews. I don't know what my thought
 10 processes were between the July version of the draft and
 11 the final September version of the terms of reference,
 12 other than what I said in the observations document.
 13 Q. Doesn't the approach that you took rather ignore the
 14 point that the reason for Mr Jenkins' failures might
 15 well be relevant to whether or in which cases they were
 16 disclosable?
 17 A. I'm not sure that's right, actually, Mr Beer.
 18 Q. Explain why.
 19 A. Because what he said about individual cases I don't
 20 think would necessarily make a difference, if he had not
 21 understood his duties as an expert and, as Simon Clarke
 22 pointed out, was by and large making the same statements
 23 in every case. Then, generically, I think his failures
 24 fell for disclosure. I don't think asking him about
 25 every single case in which he made a statement and the

1 A. Yeah.
 2 Q. -- ie the terms of reference we've just looked at.
 3 A. Yes.
 4 Q. Can we look at a part of it, please, on page 47, and
 5 paragraph 148. I should have introduced this a bit more
 6 broadly to you. If we go back to page 44.
 7 A. Page 44?
 8 Q. Yes, under the heading "Gareth Jenkins and his impact on
 9 possible appeals", it's within that section. If we go
 10 forwards, please, to paragraph 148 on page 47, you say:
 11 "I am not clear whether Mr Jenkins was challenged
 12 about the non-disclosure to [the Post Office] ..."
 13 That's the non-disclosure of a bug:
 14 "... and, if so, what is the explanation for it.
 15 But given the [Second Sight] inquiry, based in part on
 16 his revelations, has let to the current review, Gareth
 17 Jenkins is to that extent tainted and his future role as
 18 an expert is untenable. It should be remembered that
 19 [the Post Office] had been unaware of the existence of
 20 the second of the two defects revealed to [Second Sight]
 21 by Mr Jenkins until a year after its first occurrence."

22 Before writing this, did you enquire as to the
 23 reason for Mr Jenkins' non-disclosure?

24 A. You can read that first sentence in one of two ways:
 25 I either did and wasn't clear about it, or I didn't and

1 whys and wherefores would necessarily impact, as perhaps
 2 you think it would, on disclosure.
 3 Q. If the failures arose from a failure by the Post Office
 4 to (a) provide Mr Jenkins with a proper letter of
 5 instruction, (b) instruct Mr Jenkins as to his relevant
 6 duties as an expert witness, those failures would be
 7 disclosable too, over and above the mere fact of his own
 8 failure to disclose knowledge of bugs, errors and
 9 defects, wouldn't they?
 10 A. I agree with that but those are generic issues of
 11 disclosure, not case specific.
 12 Q. And therefore require to be investigated, don't they?
 13 A. Well, if that was right, and obviously I didn't know
 14 that, but, if that was right, they would be disclosable
 15 but I don't think they need to be investigated.
 16 Q. How would you discover whether that was the fact?
 17 A. If somebody had told me.
 18 Q. But you've cut it out, haven't you; you've excised it?
 19 A. I know, but it's slightly circular because if somebody
 20 had told me he'd never been properly instructed, I might
 21 have taken a different view.
 22 Q. Can we move on, please, to your generic review, please.
 23 POL00006803. This your general review dated 15 October
 24 2013 and this is the main product of your terms of
 25 reference, as they've been called, yes --

1 I wasn't clear about it.
 2 Q. Did you see any Post Office instructions to Mr Jenkins
 3 in his role as a witness giving expert evidence in
 4 prosecutions or correspondence involving the Post Office
 5 Legal Department or Post Office external lawyers,
 6 regarding Mr Jenkins giving evidence in legal
 7 proceedings?
 8 A. Again, as I sit here now, I've got no recollection of
 9 that.
 10 Q. If you didn't see such instructions to Mr Jenkins -- and
 11 I've no material to suggest that you did -- why did you
 12 not ask to see them to inform your work?
 13 A. You know, with the clarity of hindsight, Mr Beer, we can
 14 all do things better and that's something I could have
 15 done better but I didn't.
 16 Q. You were working, I think, on the basis that Mr Jenkins
 17 knew about the receipts and payments mismatch bug and
 18 that he had first revealed it to Second Sight --
 19 A. Yes.
 20 Q. -- in the course of their investigations in 2013, yes?
 21 A. Yeah.
 22 Q. You did not discover and you were not told, that he'd in
 23 fact disclosed the existence of the receipts and
 24 payments mismatch bug to the Post Office IT Team and
 25 an operational team in late September 2010.

1 A. You're talking about the issues notes?
 2 Q. Yes.
 3 A. I didn't know that.
 4 Q. You didn't know that he had written the report, the loss
 5 discrepancies document --
 6 A. No.
 7 Q. -- of 29 September and that had been sent to a Post
 8 Office Investigator, Alan Simpson, and, indeed, sent on
 9 to lawyers, Rob Wilson, Juliet McFarlane and Jarnail
 10 Singh; you didn't know about that at the time you were
 11 writing?
 12 A. No, not only that but I seem to recall that when the
 13 Second Sight Report dealt with the receipts and payments
 14 mismatch bug, it reported that Post Office didn't know
 15 about it until 2011.
 16 Q. Yes.
 17 A. Yeah. No, I didn't know about it.
 18 Q. You didn't know that, through Mr Jenkins, disclosure of
 19 the receipts and payments mismatch bug had been provided
 20 to the Post Office the working day before Seema Misra's
 21 trial started?
 22 A. I've learnt that obviously since but I didn't know it at
 23 this time.
 24 Q. All of that would have put an entirely different
 25 complexion on the advice you were giving, wouldn't it?

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1 Q. On this topic, were you aware that the Post Office did
 2 not escalate the Mr Clarke's Advice, the 15 July 2013
 3 advice about Gareth Jenkins --
 4 A. Escalate it?
 5 Q. -- to Fujitsu?
 6 A. I wasn't aware of what was going on in the background.
 7 Q. So you didn't know one way or another?
 8 A. I don't think I did.
 9 Q. I think it follows that you weren't informed at the time
 10 you were advising the Post Office that it was known to
 11 the Post Office that Mr Jenkins either hadn't been
 12 properly instructed or may not have been properly
 13 instructed as to the duties owed by a person giving
 14 expert evidence to a criminal court?
 15 A. Yes, I should have known that.
 16 Q. Or at least that there was a very serious question as to
 17 this?
 18 A. Yes.
 19 Q. We've got some manuscript notes of a discussion held
 20 between lawyers in September 2013 about that issue,
 21 whether Mr Jenkins had been properly instructed, and
 22 that it appeared that he may not have been properly
 23 instructed. That discussion between lawyers, it was
 24 Rodric Williams and Martin Smith, was not revealed to
 25 you?

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1 A. I accept that.
 2 Q. Just explain why you accept that it would have put
 3 an entirely different complexion on matters?
 4 A. Well, because, if I had known about the issues notes and
 5 the other document, the correcting accounting for
 6 discrepancies document, all of which came into being, as
 7 you say, very shortly before Mrs Misra was tried in
 8 October 2010, I suspect I would have taken the same view
 9 as we took much later during the criminal appeals, that
 10 that is something that should have been considered for
 11 disclosure and disclosed to Mrs Misra before her trial.
 12 Q. Did you give any consideration to the procedure by which
 13 the expert witness, Mr Jenkins, had been instructed?
 14 A. Well, as I've said, Mr Beer, nobody indicated to me he'd
 15 never been properly instructed. Looking back, of
 16 course, it is something I should have queried but
 17 I rather blindly, I suspect, assumed that that must have
 18 been the case.
 19 Q. I think you agreed that it would have been responsible
 20 to recommend to the Post Office that the issue of how
 21 evidence from Mr Jenkins had been obtained was looked
 22 into?
 23 A. It would have been responsible for the Post Office and
 24 those instructing me to let me know. I think it would
 25 have been, in my case, better to have asked, yes.

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1 A. Did you say September?
 2 Q. Yes, 2 September.
 3 A. No.
 4 Q. Do you agree you ought to have been informed of this,
 5 a realisation amongst some of the lawyers that
 6 Mr Jenkins had not been properly instructed or that
 7 there was a serious question as to whether he had?
 8 A. Yes.
 9 Q. Is that because the issue went to whether it might be
 10 indicative of broader failings on the part of Post
 11 Office prosecutors?
 12 A. It would certainly have gone to that issue, yes.
 13 Q. It might be relevant to the scope of disclosure that
 14 needed to be given?
 15 A. Yes, and also -- I suppose it's easy for me to say
 16 now -- it may have changed my view about what to do
 17 about the Jenkins problem.
 18 Q. What do you mean it might have changed your view?
 19 A. Well, I might have come back and said, "Well, perhaps
 20 I now ought to speak to him" and find out what was
 21 really going on.
 22 Q. Or call for any papers that go to the issue of the
 23 instruction of Gareth Jenkins?
 24 A. Or the absence of them in our search, I don't know, but
 25 that's what probably would have happened.

40

1 Q. But it might have gone to the issue of whether there
2 were broader failings on the part of Cartwright King --
3 A. Yes.
4 Q. -- and whether there was a conflict, accordingly, in
5 Cartwright King advising on its own cases?
6 A. That's an interesting take on it Mr Beer but, yes,
7 I suppose that's right.
8 Q. Well, it's not any interesting; it would be a matter
9 that would concern you, wouldn't it? If this train of
10 inquiry had been pursued, if this thread had been
11 pulled, ie who has instructed, Gareth Jenkins, and how,
12 that may have been revelatory of disclosure failings but
13 also of misconduct by prosecutors, mightn't it?
14 A. Potentially.
15 Q. It goes to the issue of how deep into the organisation
16 and how close to the lawyers the problem is, doesn't it?
17 A. I agree.
18 Q. I think you're now aware that not only was Mr Jenkins
19 not instructed as to his expert duties but the Inquiry
20 has seen evidence in a series of communications that
21 prosecutors actually misstated the nature of an expert's
22 duties?
23 A. I'm not sure I am aware of that. Certainly I'm aware of
24 the former. I'm not sure I'm aware of the latter.
25 Q. For example, he was asked -- he sent an email to

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1 generic statement written by Mr Jenkins came to be
2 created?
3 A. No.
4 Q. Is it the case that you became aware that there were
5 serious issues as to the use made by the Post Office of
6 Mr Jenkins and their instruction of him in the course of
7 the criminal appeals?
8 A. I learned a lot then, which I was unaware of previously.
9 Q. So I think it follows that no one informed you at the
10 time of your 2013 Advices that Mr Singh, Juliet
11 McFarlane, another lawyer in Post Office Legal, and Rob
12 Wilson were provided with the two detailed notes about
13 the receipts and payments mismatch bug --
14 A. No.
15 Q. -- and that, whether by inaction or by a positive
16 decision, those documents were not disclosed into Seema
17 Misra's trial?
18 A. Well, obviously, I didn't prosecute Mrs Misra. There is
19 any number of reasons why that might have happened but
20 it didn't happen.
21 Q. Were you told at the time of advising in 2013 that
22 people that were called "senior stakeholders" within the
23 Post Office had been informed of the receipts and
24 payments mismatch bug in November 2010 and had been
25 informed by a note about the receipts and payments

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1 a lawyer saying, "What do I expect when I give
2 evidence?" and he was told, "Like any other witness,
3 you've just got to tell the truth in relation to
4 questions asked of you."
5 A. Well, forgive me if I've missed it, because I was sent
6 an awful lot of documents over the last seven days, but
7 I'm aware now but I'm not sure I was aware of that.
8 Q. He was told, "You can only be asked questions about
9 issues that you've addressed in your report. You can't
10 be asked questions about things that aren't addressed in
11 your report."
12 A. I didn't know that.
13 Q. But the Post Office never volunteered to you that it
14 hadn't instructed Mr Jenkins as to his expert duties?
15 A. No.
16 Q. Did it provide any email communications which Mr Singh
17 had with Mr Jenkins?
18 A. Sorry, ask that again, Mr Beer?
19 Q. Yes. Did the Post Office provide you with email
20 communications between Mr Jenkins and Mr Singh, in
21 particular in the course of the *Seema Misra* trial?
22 A. You mean, after my instruction in 2013?
23 Q. Yes.
24 A. I can't remember.
25 Q. Were you told about the process by which the so-called

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1 mismatch bug?
2 A. Who do you mean by "senior stakeholders"?
3 Q. Well, if we look at the document, POL00294684. You'll
4 see this is an email of 15 November 2010.
5 A. Yeah.
6 Q. The subject is "Receipts & Payments resolution proposal
7 meeting". I think it's an invitation. You'll see
8 there's a list of required attendees and optional
9 attendees and a note is attached. Then if we scroll
10 down, please -- thank you:
11 "The aim of the meeting is to discuss the Working
12 Group proposal -- to resolved discrepancies generated by
13 branches following a specific process during the
14 completion of the training statement."
15 Then if you just scan the next few paragraphs.
16 A. Do you want me to read those, Mr Beer?
17 Q. Yes, please.
18 A. Yeah.
19 Q. If we go over the page, please, just look at the foot of
20 the previous page:
21 "There are several solutions to resolve the issue at
22 the affected branches, they are as follows ..."
23 Then if we scroll down, Solution One, Two, Three;
24 you probably recognise those --
25 A. I do, yeah.

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1 Q. -- because they're from the note of late September/early
 2 October 2010 --
 3 A. Yes.
 4 Q. -- where there was a discussion over which of these
 5 three solutions to adopt. And I think you recognised
 6 subsequently that Solution One was a very significant
 7 one, not only for the receipts and payments mismatch bug
 8 but because it revealed that Fujitsu had the ability
 9 manually to write entry values into the local branch
 10 account without the subpostmaster knowing; is that
 11 right?
 12 A. I think so, yeah.
 13 Q. So it seems, on 15 November 2010, that this is still
 14 an open discussion about which solution to adopt and
 15 then, if we scroll down, please, at the foot of the page
 16 it says:
 17 "We are looking for you as senior stakeholders to
 18 agree this approach as a way forward."
 19 So the point I'm making is that there had been some
 20 non-disclosure in Seema Misra's case before trial and
 21 then, afterwards, there was still a discussion going on
 22 in November 2010, within senior stakeholders of the Post
 23 Office, as to the receipts and payments mismatch bug.
 24 A. Yeah.
 25 Q. This would all have been news to you, advising in 2013,

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1 A. Yes.
 2 Q. So he is sending a draft section of the Second Sight
 3 Report that deals with the two bugs, yes? Then, if we
 4 scroll up, please, a reply from Mr Baker:
 5 "I need to double check a few things."
 6 Then keep going up, please. Stop there, Mr Baker,
 7 seemingly to Lesley Sewell, says:
 8 "Just got this from Ron.
 9 "I can get back to him on most of the questions but
 10 need your help on who in Post Office knew about it.
 11 I know from the email that Rod sent that Mike Young
 12 knew, but don't know if it went any higher."
 13 So, within Post Office, a discussion of how high up
 14 within the organisation knowledge of the receipts and
 15 payments mismatch bug went.
 16 Then scroll up, please. Lesley Sewell, the Chief
 17 Information Officer, replies, copying in the Company
 18 Secretary:
 19 "I don't know if it went any higher than Mike, Andy
 20 Mc also managed service at the time and if I remember
 21 correctly Mark Burley was also involved.
 22 "I can't [recall] whether we said anything to the
 23 press.
 24 "... we didn't have an independent Board, Paula
 25 [Vennells] would have been Network Director ..."

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1 because you were under the impression that the receipts
 2 and payments mismatch bug had been discovered by Second
 3 Sight?
 4 A. Second Sight on the information of Gareth Jenkins.
 5 Q. Yes, and so you didn't know, when you were advising, how
 6 high up in the Post Office knowledge of the receipts and
 7 payments mismatch bug had gone?
 8 A. I knew none of this at that time.
 9 Q. No. Can we look closer to the time that you were
 10 advising, then, please, at POL00029618. If we scroll
 11 down, please, and keep going -- thank you -- an email of
 12 25 June from Mr Warmington of Second Sight to Simon
 13 Baker within the Post Office, giving an extract from the
 14 draft Second Sight Report:
 15 "This is the draft section of the report dealing
 16 with the two defects. Please let me know if I've got
 17 anything wrong."
 18 A. Sorry, I'm just trying to pick up where you found that.
 19 Q. Yeah, so where it says:
 20 "Simon:
 21 "This is the draft section of the report dealing
 22 with the two defects."
 23 A. Oh, "Please let me know", yeah, sorry.
 24 Q. "Please let me know if I've got anything wrong."
 25 Yes?

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1 So there was an internal discussion proximately to
 2 the time that you were being instructed, as to how high
 3 up within the organisation knowledge of the receipts and
 4 payments mismatch bug went, yes?
 5 A. Yes. I mean, I never saw any of this.
 6 Q. No, I'm about to say. The fact of the knowledge of the
 7 receipts and payments mismatch bug by senior stakeholder
 8 was not revealed to you?
 9 A. No.
 10 Q. The fact that lawyers responsible for prosecuting knew
 11 about the receipts and payments mismatch bug was not
 12 revealed to you?
 13 A. No.
 14 Q. The fact that, proximately to the time you were being
 15 instructed, the Post Office was having an internal
 16 debate about how high up within the organisation
 17 knowledge of the receipts and payments mismatch bug went
 18 was not revealed to you?
 19 A. No.
 20 Q. When were you first made aware of the mismatch bug?
 21 A. The RPM, the receipts and payments mismatch bug, you
 22 mean?
 23 Q. Yes.
 24 A. When I read the Second Sight Interim Report, the 8 July
 25 one.

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1 Q. When did you see, firstly, an RPM, as you call it,
2 document referring to the three options?
3 A. I first actually saw the reference to those three
4 solutions, if my memory serves me, in Mr Justice
5 Fraser's judgments on the Horizon Issues Trial.
6 Q. So after December 2019 --
7 A. Yeah.
8 Q. -- in or after December 2019?
9 A. Yeah. Although, not to be unfair to Post Office, one of
10 the documents I was asked to look at, one of the
11 additional documents, which I hadn't seen before, was
12 my -- was an index to the bundle of the material which
13 Rodric Williams sent to me for the purposes of the 2016
14 review, and under the second section in relation to
15 balancing transactions, was reference to the issues
16 notes and the correcting discrepancies document, but
17 I don't think I ever opened up that part of the bundle
18 because you'll recall Rodric Williams and I agreed in
19 2016 that I wouldn't be advising on the balancing
20 transactions issues because they were instructing
21 Deloitte to finalise a report.
22 So, not to be unfair to Post Office, it was there
23 but I don't think I ever saw or read it in 2016 and,
24 frankly, if I did, whether I would have appreciated its
25 impact, I'm not sure.

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1 of theft, if you are trying to prove that there has been
2 the permanent -- or the appropriation of money with the
3 requisite intention, you would struggle if that was
4 known and, sitting here thinking about it, it would
5 probably also impact on potential allegations of false
6 accounting as well.
7 Q. In what way, in relation to false accounting?
8 A. Well, in the situation where a postmaster would offer
9 the prosecution a plea to false accounting in
10 consideration of the Post Office dropping theft. If
11 a postmaster had known that this kind of activity had
12 interfered with the branch accounts, then they might be
13 pleading guilty on an entirely false basis, that any
14 false accounting for which they felt they were
15 responsible for or had almost certainly been responsible
16 for, might not be the case.
17 MR BEER: Thank you. Sir, that's an appropriate moment to
18 take a break, if it's convenient to you, until 11.15.
19 SIR WYN WILLIAMS: Yes, certainly.
20 MR BEER: Thank you very much, sir.
21 (11.04 am)
22 (A short break)
23 (11.15 am)
24 MR BEER: Good morning, sir, can you still see and hear us?
25 SIR WYN WILLIAMS: Yes, I can. Thank you.

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1 Q. We saw that under Solution One, as well as obviously
2 revealing the fact of the RPM bug, it also gave
3 an insight into the facility for a form of remote
4 access?
5 A. Yeah, can we go back to it, do you think?
6 Q. Yes, I think so. POL00294684. Page 2, "Solution One".
7 A. Yes, thank you.
8 Q. What were the implications for you that a form of remote
9 access, meaning that branch accounts could be changed
10 without branch knowledge, either in error or by
11 a malicious actor, meant to the prosecution of offences?
12 A. Well, as I say, I didn't actually see, in the sense of
13 read the documents, until we came to the criminal
14 appeals. But it would have raised the possibility of
15 unexplained shortfalls not being unexplained.
16 Q. Was there anything -- would it have revealed anything
17 broader than that, about the ability of a prosecutor to
18 stand before a court?
19 A. What, and say this is a real loss?
20 Q. Yes.
21 A. Well, of course, it would impact on that.
22 Q. Sorry, I missed your answer.
23 A. Forgive me. Of course it would impact on that.
24 Q. How would it impact and in what way?
25 A. Well, it would impact on any prosecution of the offence

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1 MR BEER: Thank you.
2 Mr Altman, having looked at what was cut out from
3 your review in relation to Gareth Jenkins and what
4 information was not revealed to you by the Post Office,
5 can we look at what you did do on your more limited
6 understanding or knowledge of the position in relation
7 to Mr Jenkins.
8 Can we see, firstly, your general advice, please,
9 your general review. POL00006803. Remembering this is
10 your general review of 15 October 2013. Can we look at
11 page 6, please, and scroll down to paragraph (x) and
12 this is essentially an executive summary of the review
13 and, in relation to Mr Jenkins, you say:
14 "I agree that Gareth Jenkins is tainted and his
15 position as an expert witness is untenable. Thus, a new
16 expert should be identified soon as is practicable."
17 Yes?
18 A. Yeah.
19 Q. Were you basing that view principally upon what you had
20 read in Simon Clarke's Advice of 15 July 2013?
21 A. Yes, I think that must be the case.
22 Q. What was done to inform past defendants and those in
23 ongoing cases that Mr Jenkins had wrongly withheld
24 knowledge about bugs in the Horizon system?
25 A. I know what you're driving at, Mr Beer, and it's

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1 something in recent weeks which I have thought about and
2 it's something that should have been disclosed to
3 operate people.

4 **Q.** Is the answer, then, that nothing was done to inform
5 convicted defendants or those in ongoing cases that
6 Mr Jenkins had wrongly withheld his own knowledge of
7 bugs in the Horizon system?

8 **A.** I think, unhappily, that has to be the case. I mean,
9 with -- again, with the benefit of hindsight and having
10 thought an awful lot about this, it's something that
11 should have been considered for disclosure and disclosed
12 in appropriate cases, no question.

13 **Q.** And should have been considered for disclosure by you,
14 Mr Altman?

15 **A.** Yeah, I'm accepting that.

16 **Q.** Thank you. Can we look at Mr Clarke's advice on Gareth
17 Jenkins to see what he said. That's POL00006798.

18 This is the Advice of 15 July, we can see that from
19 the last page, page 14, so the Clarke Advice of 15 July
20 about Gareth Jenkins, and you certainly had got this,
21 I think other material shows, by at least 2 August --

22 **A.** Yes.

23 **Q.** -- 2013, so within a couple of weeks of it having been
24 written. Then, if we just look at what Mr Clarke had
25 said, by looking at page 5, at paragraph 15 he says:

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1 "... those current and ongoing cases where [Gareth
2 Jenkins] has provided to an expert witness statement, he
3 should not be called upon to give that evidence ... we
4 should seek a different, independent expert to fulfil
5 that role."

6 You agreed with those views, didn't you?

7 **A.** Yes.

8 **Q.** Was the agreed position, then, that you and Mr Clarke
9 had arrived at -- that Mr Jenkins hadn't complied with
10 his duties to the court, to the prosecution or the
11 defence, that he was in plain breach of his duty as
12 an expert witness, that his credibility as an expert was
13 fatally undermined -- to your knowledge, ever disclosed
14 to past or current defendants?

15 **A.** At that time, no.

16 **Q.** Just to be clear, we're not here referring to the fact
17 of his knowledge of the bugs, errors or defects said to
18 have been concealed by him but rather an assessment by
19 the prosecutor that his credibility had been fatally
20 undermined. They're two different facets; do you agree?

21 **A.** They are and I accept, as I've said already, that, to my
22 knowledge, that was not disclosed.

23 **Q.** Was there ever an investigation into whether others
24 involved in the prosecution of subpostmasters knew about
25 bugs but had not disclosed them?

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1 "[Gareth Jenkins] has provided many expert
2 statements in support of the Post Office and Royal Mail
3 Group prosecutions; he has negotiated with and arrived
4 at joint conclusions and joint reports with defence
5 experts ..."

6 There is a cross-reference to Khayyam Ishaq's case
7 there, footnote 7:

8 "... and he has attended court so as to give
9 evidence on oath in criminal trials."

10 Then if we go forwards, please, to paragraph 37 on
11 page 13:

12 "What does all this mean ... it means that [Gareth
13 Jenkins] has not complied with his duties to the court
14 the prosecution or the defence.

15 "38. The reasons as to why [Gareth Jenkins] failed
16 to comply with this duty are beyond the scope of [the]
17 review. The effects ... must be considered. I advise
18 the following to be the position:

19 "[Gareth Jenkins] failed to disclose material known
20 to him but which undermines his expert opinion. This
21 failure is in plain breach of his duty as an expert
22 witness.

23 "[His] credibility as an expert witness is fatally
24 undermined; he should not be asked to provide expert
25 evidence in any ... prosecutions.

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1 **A.** I'm just struggling to think about who you mean, others
2 involved in the prosecution --

3 **Q.** Well, Jarnail Singh, Mandy Talbot, Rob Wilson, a whole
4 group of investigators who had knowledge of bugs?

5 **A.** Mandy Talbot, I'm not sure that's a name familiar with
6 me; Jarnail Singh, obviously is; and Rob Wilson, I never
7 met but I know the name. And, forgive me, the question
8 is whether it became obvious to me?

9 **Q.** No, was there, to your knowledge, ever
10 an investigation --

11 **A.** An investigation.

12 **Q.** -- into how wide the knowledge of bugs, errors and
13 defects pre-prosecution, pre-July 2013, went?

14 **A.** No.

15 **Q.** If Mr Jenkins had withheld from prosecution cases his
16 knowledge of bugs, did you ever advise the instigation
17 of an investigation as to whether such concealment of
18 bugs was known about or facilitated by others?

19 **A.** Being frank, on my state of knowledge at the time -- and
20 one always has to be careful, and I'm sure you'll accept
21 this, Mr Beer, that, you know, as I termed it earlier,
22 that the clarity of hindsight provides a clear
23 sightedness, as it were, that you didn't have at the
24 time. But, at that time, I don't think it crossed my
25 mind that it went wider than Gareth Jenkins.

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1 Q. That document can come down. Thank you.
 2 Was any consideration given by you or, to your
 3 knowledge, by others as to whether the agreed position,
 4 that we've just seen reached by you and Mr Clarke, was
 5 not privileged?
 6 A. I don't believe we ever had that discussion.
 7 Q. Do you think there ought to have been a discussion as to
 8 whether this meeting of minds between prosecutors was
 9 not a privileged -- was not privileged information and
 10 ought to have been revealed?
 11 A. I've already agreed with you about the latter and, if
 12 the latter had been the decision I'd arrived at or the
 13 advice I gave, then I don't think privilege would have
 14 come into it.
 15 Q. So is it, on your understanding, a failure to think
 16 about the issue --
 17 A. Yes --
 18 Q. -- rather than thought being given but privilege
 19 cloaking the answer?
 20 A. I don't think privilege would have -- if I had applied
 21 my mind to the fact that Gareth Jenkins' credibility was
 22 in issue and his assessment as an expert was in issue,
 23 I think I would ultimately have advised that that ought
 24 to be disclosed in appropriate cases. I clearly didn't.
 25 I can't think now why I didn't. I'd like to say it was

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1 A. Yeah.
 2 Q. -- that was not disclosed.
 3 A. Yeah.
 4 Q. Can you help us, why was that?
 5 A. I've given the reason. I think the focus was so
 6 targeted towards these two new bugs and their impact on
 7 affected cases, that it, you know, it's hard to look
 8 back and think, "How on earth did I miss that?" But
 9 I think I just missed it; it's as simple as that.
 10 Q. Is it a little worse than that, though? Because, if we
 11 look at the Second Sight Report, ie the thing that was
 12 disclosed to convicted or some convicted defendants --
 13 POL00029650. This is the Second Sight Report of 8 July
 14 2013. If we look at page 5, please, at the foot of the
 15 page, 6.4:
 16 "In the course of our extensive discussions with
 17 [the Post Office] over the last 12 months, [the Post
 18 Office] has disclosed to Second Sight that in 2011 and
 19 2012 it had discovered 'defects' in Horizon Online that
 20 had impacted 76 branches."
 21 Then it continues with the first defect and second
 22 defect over the page.
 23 So the Second Sight Report was saying that the
 24 disclosure of the bugs came from Post Office.
 25 A. Yeah, which I frankly don't understand.

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1 a misjudgement but I'm not even sure there was
 2 a judgement. I don't know why, I think we were -- if
 3 I have to think back and speculate, I think the focus
 4 was so geared towards these two new bugs that that just
 5 slipped through, as it were.
 6 Q. The disclosure that was given on your advice to
 7 convicted, or some convicted, defendants, was (a) the
 8 Second Sight Report --
 9 A. Yes.
 10 Q. -- and (b) the Helen Rose Report?
 11 A. Yes.
 12 Q. Neither of those documents revealed anything about
 13 Gareth Jenkins' state of knowledge of the two bugs, did
 14 they?
 15 A. No, I accept that. They didn't.
 16 Q. That's a further problem, isn't it --
 17 A. Yeah.
 18 Q. -- because you reached a position that Mr Jenkins was
 19 fatally undermined, he breached his duties, the response
 20 to which is to disclose two documents, neither of which
 21 reveals that information to a defendant?
 22 A. No, there would have been a gap in anybody's knowledge.
 23 I accept that.
 24 Q. There was, therefore, a well of knowledge sitting below
 25 the surface --

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1 Q. Not Gareth Jenkins?
 2 A. Yeah, but which surprised me because, clearly, Second
 3 Sight not just Cartwright King -- I've read that and
 4 I am well aware of 6.4 and I didn't understand why
 5 Second Sight itself was not reporting it was Gareth
 6 Jenkins. I'm not criticising them at all for one
 7 minute, please don't misunderstand --
 8 Q. So you knew it was Gareth Jenkins who was said to have
 9 made the relevant disclosure --
 10 A. Yeah.
 11 Q. -- and, therefore, if the report had included that, it
 12 would have been --
 13 A. Disclosed.
 14 Q. -- a disclosure of his own knowledge --
 15 A. Yeah.
 16 Q. -- of bugs --
 17 A. Yeah.
 18 Q. -- that he hadn't closed at the time?
 19 A. Can I say I didn't realise this at the time. I don't
 20 think it registered. Obviously since, I've looked at
 21 this again and I've puzzled about 6.4, why it was Second
 22 Sight didn't name him but they didn't, because it wasn't
 23 Post Office. I don't think it was Post Office, anyway.
 24 Q. So the document that is disclosed to some convicted
 25 subpostmasters materially misleads them on this point?

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1 A. Yeah, but I wouldn't want you to elide the failure to
 2 advise disclosure of the fact that it was Gareth Jenkins
 3 who brought this to the attention of Second Sight and
 4 the fact that Second Sight itself reported Post Office.
 5 I don't think anybody made that link.
 6 Q. Thank you. That can come down.
 7 A. In fact, I know no one made the link and I certainly
 8 didn't.
 9 Q. What criminal offences may have been committed by Gareth
 10 Jenkins, based on the facts, as you knew them, by the
 11 time you were advising in October 2013?
 12 A. I'm not prepared to speculate about that and I'm not
 13 prepared to speculate because, if you're thinking about
 14 perjury, perjury requires certain conditions, which
 15 nothing I had seen suggested might be present, and
 16 perverting the course of justice and having a tendency
 17 to pervert the course of justice with the requisite
 18 intent is a particular offence and I was not prepared to
 19 speculate, nor am I now, as to whether he was dishonest
 20 or just incompetent.
 21 Q. I asked what criminal offences may have been?
 22 A. Yeah, well, I -- the "maybe" would include those two
 23 but, as I say, it's speculative on my part because
 24 I don't know all the evidence.
 25 Q. So, at the time, on the basis of the information that

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1 Q. You're ahead of me, Mr Altman, a little bit, but I'm
 2 asking at the moment why we see no consideration of it?
 3 A. For that reason: it wouldn't have crossed my mind that
 4 any police investigation or any consideration of whether
 5 he had committed offences was anything (a) I was asked
 6 to do or (b) I would have volunteered.
 7 Q. Given that the assessment by Mr Clarke was that
 8 Mr Jenkins had known about the bugs in the Horizon
 9 system and had failed to reveal them, whilst
 10 simultaneously stating that the Horizon system was
 11 robust when he gave evidence in the *Seema Misra* case,
 12 why was the question of the commission of a possible
 13 criminal offence not discussed by anyone?
 14 A. Well, I think I've answered that, Mr Beer.
 15 Q. Was it discussed outside the confines of the advices,
 16 ie in conference or in telephone conversations?
 17 A. I have no recollection of that.
 18 Q. Was there any discussion about the provision by
 19 Mr Jenkins of statements which had given false
 20 information, ie the criminal consequences or possible
 21 criminal consequences of that?
 22 A. I have no recollection of that either.
 23 SIR WYN WILLIAMS: I'm sorry, Mr Altman. We have heard
 24 a lot at this inquiry of "I can't remember" or "I have
 25 no recollection". I am taking what you are saying --

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1 you had, the possible offences that may have been
 2 committed by Gareth Jenkins included possibly attempting
 3 to pervert the course of justice?
 4 A. Perverting the course of justice.
 5 Q. Right. Conspiring to pervert the course of justice?
 6 A. Well, that depends on whether there are two or more
 7 parties involved.
 8 Q. And possibly perjury?
 9 A. Possibly.
 10 Q. Do you agree that nowhere in the Clarke Advice on
 11 Mr Jenkins, in any subsequent advices written by
 12 Mr Clarke that you saw and nowhere in your advices was
 13 the question raised as to whether or not Mr Jenkins had
 14 possibly committed criminal offences?
 15 A. No.
 16 Q. Why was the question of possible perjury or possibly
 17 perverting the course of justice never addressed?
 18 A. Because I think at that early stage -- and, in fact with
 19 all witnesses who give evidence to civil or criminal
 20 courts or, indeed, in public inquiries -- simply because
 21 a witness hasn't complied with their duty, in this
 22 particular case, as an expert does not lead inexorably
 23 to the conclusion that somebody has committed any of
 24 those offences and, again, it would never have crossed
 25 my mind that that required a police investigation.

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1 well, let me not say that.
 2 How am I to take what you're saying: that you simply
 3 had no recollection one way or the other --
 4 A. Yes.
 5 SIR WYN WILLIAMS: -- or -- yeah, that's it, fine.
 6 A. Yeah, I'm sorry, I know it's rather loose language. But
 7 I'm being asked for recollections of conversations which
 8 I've never put in writing from getting on for 11 years
 9 ago. So --
 10 SIR WYN WILLIAMS: Oh, no, I follow that but, in my
 11 experience, some people say, "I have no recollection of
 12 that", when they mean "I don't know one way or the
 13 other".
 14 A. Yeah.
 15 SIR WYN WILLIAMS: Others use it when they actually mean,
 16 "I don't recollect anything of that kind but, if there
 17 had been, I rather think I would remember", if you see
 18 what I mean.
 19 A. Do. Well, it's the former.
 20 SIR WYN WILLIAMS: The former. Thank you.
 21 MR BEER: Mr Altman, you have said today that you think your
 22 approach at the time would have been that this was just
 23 one of those occasions, of which there are many, on
 24 which a person gives false or inaccurate evidence to
 25 a court or an inquiry; is that right?

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- 1 A. Yes.
- 2 Q. Did you instigate or advise the instigation of any
3 inquiries or an investigation into whether that was in
4 fact the case or not, ie by Post Office?
- 5 A. No.
- 6 Q. Wasn't that important?
- 7 A. It could have been important but I don't think that that
8 was my role.
- 9 Q. You seem to be saying, Mr Altman, that the fact that
10 a witness has given false evidence in court is just one
11 of those things?
- 12 A. No, I'm not saying that.
- 13 Q. Well, can you help us with the exactly how you thought
14 about it, then, because we don't see in any of these
15 papers the suggestion that the conclusion that he had
16 given false evidence be revealed to defendants, that the
17 police be called in, that he might have committed
18 a criminal offence or that anyone should pursue, in any
19 way, whatsoever the evidence that he gave? It sounded,
20 from your answers earlier, that lots of people give
21 evidence that's false in court, meant that you just
22 ascribed it as "one of those things", am I wrong to take
23 that --
- 24 A. Well, I may well have done. I may well have come to the
25 conclusion (a) that I was not prepared to speculate

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- 1 A. No.
- 2 Q. I think you said that it didn't cross your mind to
3 advise to call in the police?
- 4 A. No.
- 5 Q. Would you agree that, as you didn't advise those things,
6 that that failure contributed to those facts not
7 emerging until the Court of Appeal Criminal Division?
- 8 A. I'm not sure I am prepared to accept that because the
9 CCRC had the general review, and every word you've
10 quoted at me from it so far, in February 2015.
- 11 Q. So are you suggesting that, if the CCRC had wanted to
12 disclose that to defendants, or applicants or
13 appellants, it was down to them to do so?
- 14 A. They were able to do it subject to their duties under
15 the Act, under which they operate but the fact is they
16 had all of that information and, if they had felt that
17 any part of what I had done had been remiss or there
18 were gaps in the advice I had given, then it was within
19 the gift of the CCRC to conduct their own investigation.
- 20 Q. If Mr Jenkins, as a mainstay of the Horizon system, one
21 of its architects --
- 22 A. Did you say "if"?
- 23 Q. Yes, if Mr Jenkins, a mainstay of the Horizon system,
24 had concealed some bugs, did the possibility occur to
25 you that more bugs were in his knowledge?

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- 1 about what he had done and, as I said earlier, why he
2 had done it but, secondly, witnesses can be incompetent
3 and not dishonest and I am -- was not probably sure at
4 that time that that wouldn't be a huge hammer to crack
5 a nut.
- 6 I just had not been presented, I felt, with
7 sufficient evidence to infer what you seem to be
8 suggesting I should have done.
- 9 Q. Nowhere in your general review, would you agree, was any
10 consideration given to the disclosure of the Clarke
11 Advice about Mr Jenkins' lack of credibility, your view
12 that Mr Jenkins was a tainted witness, to the CCRC?
- 13 A. Not at that time, no. But it went to the CCRC as you
14 know, the general review.
- 15 Q. Do you agree that the failure to advise that the Clarke
16 Advice and your own opinion, or at least the substance
17 of the conclusions that were reached, ought to have been
18 considered for disclosure?
- 19 A. If we're still talking about Gareth Jenkins' credibility
20 and the assessment of a witness, I've accepted that
21 twice now.
- 22 Q. Did you consider the question of making a report to the
23 Attorney General --
- 24 A. No.
- 25 Q. -- or the DPP?

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- 1 A. I think not, because I think he was clearly prepared to
2 reveal to Second Sight, in a report which he must have
3 realised would be published, those two bugs in Horizon
4 Online, and so, no, I wasn't aware, and it didn't occur
5 to me that there were many more, certainly not what came
6 out in the Horizon Issues Trial.
- 7 Q. At no point in Mr Clarke's Advices nor in, I think,
8 yours, is the question of the relevance of the
9 conclusions which you'd reached about Mr Jenkins
10 addressed through the prism of a possible abuse of
11 process argument considered; is that right?
- 12 A. Well, I think, in general terms, I was talking about
13 non-disclosure.
- 14 Q. Yes, and so you didn't view this through the different
15 lens of its effect on an abuse of process argument?
- 16 A. Well, I did later but these are different sides of the
17 same coin. You know, non-disclosure itself can often be
18 the argument which underlines the first limb of abuse of
19 process. It's all much the same argument.
- 20 Q. Can we look forward many, many years to UKGI00018137.
21 This is the Horizon Issues judgment, with which
22 you'll be very familiar, and I think you were provided
23 with a copy of this under the embargo provisions --
- 24 A. Yeah.
- 25 Q. -- at the time that it was still in draft, in December

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1 2019, and asked by the Post Office to advise on it, yes?
 2 **A.** I think I was only given certain sections of it.
 3 **Q.** Oh, I see.
 4 **A.** Yeah. I don't think -- I wasn't given the whole thing.
 5 **Q.** Can we look, please, at page 150, paragraph 508, "The
 6 absence of Mr Gareth Jenkins", that's the absence of
 7 Gareth Jenkins from the Horizon Issues Trial:
 8 "It is entirely a decision of the parties which
 9 witnesses they choose to call in any proceedings. The
 10 position of one person, however, who did not appear in
 11 the Horizon trial, must be considered in more detail
 12 than would be usual as the claimants make considerable
 13 complaint about this. The person in question is Gareth
 14 Jenkins ..."
 15 Then if we go to page 152, please, paragraph 511:
 16 "When Post Office served their evidence ..."
 17 Sorry, my monitor has gone blank. Has yours as
 18 well, Mr Altman?
 19 **A.** Yes.
 20 **SIR WYN WILLIAMS:** Amazingly, mine hasn't.
 21 **MR BEER:** Sir, can we pause for two minutes, please.
 22 *(Pause)*
 23 I'm told that RTS are just rebooting the system.
 24 Thank you.
 25 We were just looking, at paragraph 511:
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1 Mr Jenkins in relation to the *Misra* trial, Post Office
 2 was concerned that the Horizon Issues trial could become
 3 an investigation of his role in this and other criminal
 4 cases.
 5 ""144.2. Moreover, Post Office was conscious that
 6 if it only adduced firsthand evidence in the trial, it
 7 would end up having to call more witnesses than could be
 8 accommodated within the trial timetable.
 9 ""144.3. Furthermore, so far as Post Office was
 10 aware, the relevant parts of Godeseth 2 were most
 11 unlikely to be controversial. For example, the *Misra*
 12 trial was a matter of public record, the four bugs were
 13 covered by contemporaneous documentation and Post Office
 14 had no reason to doubt Fujitsu's account of the
 15 documents it held."
 16 End quote.
 17 Did the fact that the Post Office explained the
 18 absence of Mr Jenkins in this trial as a witness in
 19 these terms in any way concern you or surprise you?
 20 **A.** I'm not sure which part of the judgment this is and
 21 whether these are the parts of the judgment that were
 22 sent to me. But what surprises me is, I suppose if
 23 that's the question you're asking me, is -- and I'm
 24 being careful here because this is the commercial
 25 litigation but -- of which others had conducted -- but,
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1 "When the Post Office served their evidence of fact,
 2 the claimants had asked the Post Office why there was no
 3 statement from Mr Jenkins, whether Mr Jenkins was
 4 available to give evidence and also whether he was
 5 involved in one of the team of what the claimants
 6 referred to as the 'shadow experts'. This description
 7 was challenged by the Post Office and the question of
 8 shadow experts is addressed further below. No
 9 explanation was given for Mr Jenkins' absence in
 10 response to these requests or in evidence in the trial,
 11 although it was confirmed that Mr Jenkins was not one of
 12 the team of so-called 'shadow experts'.
 13 "512. There the matter might have rested. However,
 14 in the Post Office's written closing submissions,
 15 an explanation of sorts was for the first time
 16 provided."
 17 Reading on:
 18 "This explanation by the Post Office included the
 19 following passages in its written submissions:
 20 ""144. [The claimants] understandably complain that
 21 Mr Jenkins and the other source of Mr Godeseth's
 22 information could have given some of this evidence
 23 firsthand. However:
 24 ""144.1. Taking into account that Mr McLachlan's
 25 evidence specifically addressed things said or done by
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1 using him in the background as a shadow expert to inform
 2 their case, I suppose, is the key issue.
 3 **Q.** The reasons 1, 2 and 3 given for not calling him, in
 4 their closing submissions, do not include that
 5 Mr Jenkins had, at least since 2013, been regarded as
 6 an unreliable or tainted witness?
 7 **A.** I see that here, Mr Beer. I don't know because I'm just
 8 not sufficiently familiar with this judgment, certainly
 9 not now, whether that was dealt with anywhere else.
 10 But, if you're focusing my attention on that particular
 11 paragraph, then you're right.
 12 **Q.** Did you think, when reading this, "Hold on, there's
 13 nothing here about Mr Jenkins having been assessed by
 14 the Post Office to have been a tainted and unreliable
 15 witness"?
 16 **A.** I can't tell you what I thought when I read this.
 17 **Q.** I take it that you didn't consider it part of your duty
 18 to raise that kind of issue with the Post Office?
 19 **A.** Mr Beer, I can't remember what I thought when I read
 20 this paragraph, or assuming I did, back in, what was it,
 21 2019?
 22 **Q.** Thank you. Can we go back, please, to the breadth of
 23 your terms of reference, by looking at POL00006801 and,
 24 again, this a copy of your interim review, dated
 25 2 August 2013, so a stopping off point towards your
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1 general review. If we look at page 5, please, and
 2 paragraphs 11, 12 and 13, you say:
 3 "... I wonder whether non-disclosure by [Gareth
 4 Jenkins] of aspects of the Horizon system is the only
 5 potential issue that arises in these cases, or whether
 6 there may be other issues, which need to fall within the
 7 remit of [your] review.
 8 "I question whether the sole issue of non-disclosure
 9 is too restrictive an approach to take to the review.
 10 I have considered the list of issues, which were
 11 reported to Second Sight in the course of their review
 12 by multiple [subpostmasters] as being of particular
 13 concern. One such concern was '[Post Office]
 14 Investigation and Audit Teams that have asset-recovery
 15 or prosecution bias and fail to seek the root cause of
 16 reported problems'.
 17 "I have also considered Spot Review SR22, in which,
 18 according to the [subpostmaster] the issue was the lack
 19 of synchronisation between [Post Office] and Camelot
 20 records for 'remmed-in' scratchcards."
 21 Reading on:
 22 "This case example does not appear to me necessarily
 23 to be an issue of non-disclosure but one that may be
 24 argued to relate solely to the proper functioning of the
 25 system. The spot review leaves the reader with the

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1 **A.** Yeah.
 2 **Q.** Was the issue that you raised in paragraphs 11, 12 and
 3 13 heeded?
 4 **A.** Well, there's a question, Mr Beer, because this was
 5 2 August. Obviously, my terms of reference weren't
 6 crystallised until the back end of September and the
 7 review, as you know, or the final review, was dated
 8 15 October that year. I have looked at this, and
 9 I can't remember what happened in the meantime or
 10 whether anybody came back to me and, if so, how, about
 11 their views about this or what their responses were.
 12 **Q.** I mean, to be clear, we're not so much here focusing on
 13 the terms of reference --
 14 **A.** No.
 15 **Q.** -- for you.
 16 **A.** No.
 17 **Q.** This is you raising issues about the breadth of the
 18 Cartwright King review?
 19 **A.** Well, it is that. But I suppose I would have expected,
 20 if there had been any amendment to this, then I would
 21 have seen it in the terms of reference somehow
 22 expressed.
 23 **Q.** Who did you understand to be making decisions about the
 24 breadth of the Cartwright King review?
 25 **A.** At that time? Cartwright King, I suppose.

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1 sense that there remains a dispute between the
 2 [subpostmaster] and [the Post Office] regarding this
 3 case. Has this case and others like it, fallen within
 4 [Cartwright King]'s review?"
 5 So in those three paragraphs you're saying that the
 6 review by Cartwright King is focused on non-disclosure,
 7 reading what Second Sight and some associated documents
 8 say, I wonder whether the terms of reference for their
 9 review need to be much wider, agreed?
 10 **A.** Yes.
 11 **Q.** What issues other than non-disclosure did you apprehend
 12 or appreciate?
 13 **A.** Well, looking at paragraph 12 again, it's almost
 14 impossible to put my mind back and, as it were,
 15 back-engineer what I was thinking about in those
 16 paragraphs, but one issue has to be those last three
 17 lines of paragraph 12, that Post Office was manipulating
 18 its prosecutorial function in order to embark on debt
 19 recovery.
 20 **Q.** So that's one example and I think 13 contains another
 21 example --
 22 **A.** Yeah.
 23 **Q.** -- namely functioning of system --
 24 **A.** Yeah.
 25 **Q.** -- causing losses, rather than disclosure issues?

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1 **Q.** Did you understand whether civil litigators,
 2 ie non-criminal lawyers, at Bond Dickinson were having
 3 influence over the breadth of the Cartwright King
 4 review?
 5 **A.** All I was -- all I would say about that is that,
 6 clearly, it was Bond Dickinson, particularly Gavin
 7 Matthews, who was communicating with me about the terms
 8 of reference. So I assume Bond Dickinson had some
 9 contribution to that question.
 10 **Q.** Can we look at what happened as a result of your raising
 11 the breadth of the Cartwright King review. POL00298123.
 12 Start by page 3, please, 2 August, your email sending
 13 through both of your documents, dated 2 August,
 14 including the second of them, the interim review, yes,
 15 which is the document we've just looked at.
 16 Then, if we scroll up, please, Simon Richardson says
 17 that you're away but:
 18 "... that gives you [Susan Crichton] time to discuss
 19 with Gavin [Matthews], and internally, the terms of
 20 reference."
 21 Then scroll up, please. This Mr Matthews' reply.
 22 You're not copied in on any of these?
 23 **A.** No, no.
 24 **Q.** This is Mr Matthews' reply, saying he's now had a chance
 25 to review your interim review of Cartwright King's

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1 process, ie of the document we've just read, and set out
2 "my/[Simon Richardson's] comments and suggestions for
3 future action":

4 "It is clearly good news that the current limited
5 process [Cartwright King] have adopted is broadly fine.

6 "2. He raises the issue of whether the current
7 review is too narrow (see paragraphs 11, 12 and 13
8 [which I've just read to you]) -- he references the list
9 of issues in the [Second Sight] report and Spot Review
10 22 as examples of other issues which may need to fall
11 within the ambit of [Cartwright King's] review. Whilst
12 this should be put to [Cartwright King], my own view is
13 that it may be very difficult for [Cartwright King]
14 expand the review on issues on which [Second Sight] have
15 failed to come to any conclusion."

16 Then scroll down, please:

17 "Our advice is ...

18 "3. Bond Dickinson (Andy Parsons) should sit down
19 with Brian Altman to walk him through the spot review
20 process and the [Second Sight] Report so he can
21 understand the impact of his review on the civil side."

22 Sorry, so we're on 3. Forgive me --

23 Q. Yes.

24 A. -- I was reading 1 and 2.

25 Q. So we read 1 and 2 of the first part and then 3 of the

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1 there should be a sit down with you to walk through the
2 Second Sight Report, so you can understand the impact on
3 the civil side?

4 A. What's the date of this email, please?

5 Q. If we scroll to the top, it's 5 August.

6 A. Is it 5th August? The only way I can answer that and,
7 if it was contemporaneous -- and you've got my work log,
8 I think, for that period -- I think you'll find the
9 first conference I ever had, and it's work record 1 was
10 9 --

11 Q. 9 September?

12 A. Yeah.

13 Q. So outside of that --

14 A. Well, beyond it, yeah.

15 Q. I'm sorry?

16 A. 9 September post-dates this email by several weeks.

17 Q. So, outside of that, what is contemplated here, that the
18 civil lawyers sitting down with you --

19 A. Oh, a civil lawyer. Andy Parsons, you mean?

20 Q. Yes.

21 A. If I had such a conference, it would be reflected in my
22 work record.

23 Q. So that didn't happen?

24 A. I have no recollection of anything like that happening
25 I'm afraid, no.

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1 second part.

2 A. Right. Well, that didn't happen.

3 Q. Were the ramifications of widening the scope of the
4 Cartwright King discussed with you?

5 A. No, I don't think they were.

6 Q. Was the fact that it might impact on the civil side,
7 ie on the civil claims, raised with you?

8 A. No.

9 Q. Were you aware told that that issue, broadening out the
10 limited Cartwright King process, needed to be treated
11 with some circumspection?

12 A. You mean the -- what's expressed there in point 3?

13 Q. Yes.

14 A. No.

15 Q. In your interim review, we've seen that you were alive
16 to the fact that Second Sight was raising questions
17 which were unanswered --

18 A. Yes.

19 Q. -- may need following up, hence your paragraphs 11, 12
20 and 13.

21 A. Yes.

22 Q. But here bond Dickinson seemed to think otherwise, don't
23 they?

24 A. It appears to be so, yeah.

25 Q. Did you meet Andy Parsons, as is suggested here, that

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1 Q. So what happened to the point that you raised in your
2 paragraphs 11, 12 and 13 about the broadening of the
3 Cartwright King review?

4 A. I don't know.

5 Q. What happened when you realised, as you must have done,
6 that your suggestions had not been followed?

7 A. I -- again, at this distance in time, I just can't
8 remember.

9 Q. Did you ever get a sense of a lurking difficulty here,
10 that the things that you were suggesting ought to occur
11 for the purposes of the criminal law were causing the
12 civil lawyers some concern?

13 A. Well, this is the thing, Mr Beer: no. I cannot remember
14 anybody saying to me, you know, "Brian, if you advise
15 this, this is going to have an impact on civil
16 liability". I don't recall anybody saying that to me
17 because, if I had, there would only have been one
18 answer.

19 Q. Which would have been?

20 A. That I am afraid that the advice I give you on
21 disclosure will have no bearing on your exposure to
22 civil liability.

23 Q. But at all events, what was contemplated by the civil
24 lawyers here, namely a sit down and a walk through of
25 the impact of your activity on the civil side did not

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1 occur, to your recollection?
 2 **A.** On this occasion, I'm going to go further and say it
 3 didn't happen.
 4 **Q.** Thank you. Can I turn to my third topic then, the
 5 cut-off date of 1 January 2010 --
 6 **A.** Yes.
 7 **Q.** -- and, in particular, Seema Misra's case.
 8 **A.** Yeah.
 9 **Q.** This document can come down. Thank you.
 10 Now, I think by the time you came to write your
 11 general review in October 2013, you knew that Seema
 12 Misra had been convicted of a criminal offences in
 13 October 2010?
 14 **A.** Yeah, but she had also, of course, pleaded guilty to
 15 offences of false accounting in 2009.
 16 **Q.** Yes. By the time you came to write your general review
 17 in October 2013, you were aware, I think you'll agree,
 18 of a wide range of material that undermined the Post
 19 Office's key witness in the case against her, Gareth
 20 Jenkins?
 21 **A.** Yes.
 22 **Q.** By the time of your general review of October 2013, you
 23 knew that it was Gareth Jenkins who had given live oral
 24 evidence against Seema Misra?
 25 **A.** Yes.

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1 **A.** Yes.
 2 **Q.** You agree that the information contained in the advice
 3 was disclosable on the basis that the Post Office had
 4 allowed -- and I'm going to use a neutral expression
 5 there -- misleading evidence to be adduced in a number
 6 of trials in written statements and, in one case,
 7 through live evidence, promoting the safety of the
 8 Horizon system and even allowing a defendant to be
 9 convicted on the back of that disclosure failure?
 10 **A.** Well, I think it's the same question you're asking me,
 11 Mr Beer, about what I've already accepted, that his
 12 credibility should have been considered for disclosure,
 13 and disclosed with the benefit of hindsight.
 14 **Q.** I'm asking it specifically now, through the lens of the
 15 *Seema Misra* case?
 16 **A.** Well, the *Seema Misra* case is slightly more complicated,
 17 I'm afraid, because, at that time, as I said earlier,
 18 the focus was on Horizon Online. Her branch was
 19 affected -- or the theft count was, if my memory serves
 20 me, between 2005 and 2008, so it was a Legacy Horizon
 21 issue and I accept that when we came to the, you know,
 22 appeals, all those years later, the landscape was
 23 completely different. But, at that stage, I think one
 24 of the problems was that -- and perhaps taking a naive
 25 view -- that the two new bugs -- and I only knew about

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1 **Q.** Most significantly, you were in possession of the
 2 15 July Simon Clarke Advice?
 3 **A.** Yes.
 4 **Q.** On reading the Clarke Advice, you didn't disagree with
 5 the conclusions that Mr Jenkins' conduct was in breach
 6 of duties to the court as an expert and that his
 7 credibility had been fatally flawed; indeed, you agreed
 8 with them?
 9 **A.** I did.
 10 **Q.** You didn't disagree with the advice that there were
 11 repercussions for past and present prosecutions and
 12 repercussions for past convictions; indeed, you agreed
 13 with them?
 14 **A.** Yes.
 15 **Q.** The Clarke Advice was, amongst the papers you received,
 16 a very significant document, wasn't it?
 17 **A.** It was significant advice, yes.
 18 **Q.** It had obvious implications, didn't it, for the safety
 19 of trials in which Gareth Jenkins had given evidence,
 20 whether in a witness statement or oral evidence?
 21 **A.** It had significance for -- in terms of disclosure and
 22 a possible impact, in some cases, on safety, yes.
 23 **Q.** It wasn't restricted to that, was it, though? It also
 24 opened up the proper functioning of the system, namely
 25 the disclosure of bugs by the Post Office?

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1 three, I think, at that time, Callendar Square or
 2 Falkirk, which was a Legacy bug, and the two new bugs in
 3 Horizon Online, which had been revealed to Second Sight
 4 and on which they had reported on -- I felt could not be
 5 material in her case.
 6 **Q.** What I'm going to explore over the next, I think, half
 7 an hour or so is the change of view --
 8 **A.** Yeah.
 9 **Q.** -- between the position you took in mid-to late 2013,
 10 and then the position adopted in the Court of Appeal
 11 seven or so years later?
 12 **A.** Yeah.
 13 **Q.** So, by the conference on 9 September 2013, you knew that
 14 Mr Jenkins was the sole expert witness for the
 15 prosecution in Seema Misra's trial because I think you'd
 16 read the transcripts by then?
 17 **A.** I think I -- yeah, I mean, it's hard to -- again, to
 18 recollect exactly what I had seen but there's no
 19 question I had seen some transcripts, because the --
 20 **Q.** I'll try and help you on this. Let's look at
 21 POL00006485. This is one of two notes of the conference
 22 on 9 September 2013.
 23 **A.** Yeah.
 24 **Q.** You are recorded as opening the conference by confirming
 25 that you had read through all five of the ring binders

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1 delivered by Bond Dickinson.
 2 Then if we go to page 3, please, and the second
 3 paragraph, you're recorded as saying that you required
 4 a full transcript of Day 6 of Seema Misra's case, the
 5 copying had only copied every other page --
 6 **A.** Yeah.
 7 **Q.** -- and that was going to be sent on to you. So, by this
 8 time, you had got into the detail of Seema Misra's case?
 9 **A.** I had certainly read it, yes.
 10 **Q.** Yes. Can we see, according to the other version of the
 11 minutes, what you said or were recorded as having said
 12 about Seema Misra's case. POL00139866. Notes of the
 13 meeting with you on 9 September and you'll see who was
 14 present.
 15 **A.** I have only seen this note in the past few days.
 16 **Q.** I'll take it slowly, then. Again, a similar start:
 17 "QC [that's you] said he had read all of the
 18 papers."
 19 Then if we go to page 6, please, and about a third
 20 to a half of the way down where it says, "QC", if that
 21 can be highlighted.
 22 "QC [this is you]: Misra concerned: pre-Horizon
 23 Online case -- issues were detailed as I've seen. She
 24 went to prison. Jenkins gave evidence -- training and
 25 Horizon issues: Professor McLachlan -- much of it

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1 I have no reason to think it's inaccurate.
 2 **Q.** Just scrolling up a little bit, where it says, "Slipping
 3 through the net", can you see that --
 4 **A.** Yeah, yeah.
 5 **Q.** -- that the *Misra* case might be a case slipping through
 6 the net, was that an acknowledgement that Mrs Misra's
 7 case fell outside the parameters of the review that you
 8 approved?
 9 **A.** I mean, on one interpretation and, if the note is
 10 accurate, answer: yes.
 11 **Q.** Was the cut-off date a principled decision, rather than
 12 an attempt to close down complaints and prevent the
 13 floodgates from opening?
 14 **A.** Not from my perspective.
 15 **Q.** Did you gain any impression that, from the Post Office's
 16 perspective, the cut-off date of 1 January wasn't
 17 a principled decision but, instead, an attempt to close
 18 complaints down and prevent the floodgates from opening?
 19 **A.** I dealt with this, you'll recall, in my general review
 20 and I made comments in various places about Cartwright
 21 King keeping their mind open --
 22 **Q.** I'm going to come, if it helps, to the general review in
 23 a moment.
 24 **A.** -- I'm sure you will but this was always my thinking.
 25 To answer your question, I remember making some comments

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1 hypothesis -- that is a case slipping through the net."
 2 Susan commented that she had applied for mediation.
 3 You say:
 4 "How are we going to deal with it if she comes
 5 forward and says similar ..."
 6 Susan Crichton says:
 7 "Either review all pre-2010 cases -- or we do
 8 nothing and wait for them to come forwards."
 9 You say: "Next problem: what disclose?"
 10 Rod [Rodric Williams]: "We will always have people
 11 who want to go back and if we do, trying to prove
 12 a negative."
 13 You're recorded as saying: "Can't avoid the
 14 question."
 15 "Provisional view: sensible date to adopt. But
 16 can't avoid possibility Misras may crawl out of the
 17 woodwork: deal with on a case-by-case basis unless
 18 someone states cut off [is] unreasonable."
 19 Does this record of this conference fairly reflect
 20 your view that the cut-off date of 1 January 2010 was
 21 sensible to adopt but that there was a possibility that
 22 "Misras might crawl out of the woodwork"?
 23 **A.** As I say, I have seen this conference note for the first
 24 time in the last seven days and I didn't have
 25 an opportunity to look at it all those years ago but

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1 about Simon Clarke's view about the cut-off date and
 2 I had some views that some of the factors he brought to
 3 bear on that decision were nothing I could support and
 4 did support.
 5 **Q.** We'll see that in a moment when we look at the general
 6 review: you say that some of his logic was not
 7 supported?
 8 **A.** Sorry, I'm jumping ahead but, to answer your direct
 9 question, I don't recall getting the impression that
 10 Post Office saw it in the way that you suggest they
 11 might have done.
 12 **MR BEER:** Sir, can we take our second break at that point,
 13 please? I'm going to come back to the meeting after the
 14 break until 11.25.
 15 **SIR WYN WILLIAMS:** You read my mind there, Mr Beer.
 16 **MR BEER:** Thank you, sir. 11.25.
 17 (12.14 pm)
 18 (A short break)
 19 (12.25 pm)
 20 **MR BEER:** Good afternoon, sir. Can we go back, please,
 21 Mr Altman, to the note of the conference of 9 September
 22 2013, POL00139866, page 6, about halfway down, thank
 23 you, and you're recorded as saying, in relation to,
 24 I think, to Ms Misra's case, that it is a case slipping
 25 through the net. Then Susan Crichton replied or she

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1 commented that, "she [Ms Misra] had applied for
2 mediation". Yes?
3 Would you understand that to mean or to be
4 a suggestion that she wasn't slipping through the net
5 entirely because, after all, Mrs Misra had applied to be
6 a party to the mediation.
7 **A.** I'm not sure I would, at least at that time, have linked
8 the two, my comments and hers.
9 **Q.** You subsequently advised against the inclusion of
10 Mrs Misra in the Mediation Scheme, didn't you?
11 **A.** Yes.
12 **Q.** So, to the extent that this is a suggestion by Susan
13 Crichton that she wouldn't slip through the net, your
14 subsequent advice had the effect of meaning that she
15 would slip through the net and the Mediation Scheme
16 would not save her?
17 **A.** Well, you could infer that from this but I suspect, at
18 the time that I was thinking about Mrs Misra and the
19 mediation, my view was principled that, clearly, I was
20 concerned that she was a case slipping through the net
21 but my approach to mediation, not just for Mrs Misra,
22 although she was the name that put to me -- I don't
23 remember any other names of any other postmasters being
24 put to me other than hers -- but mine was a principled
25 approach to it.

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1 a single-word response like that or there was more to
2 what I said, I can't tell after all of these years, then
3 it could have related to the fact that she was the only
4 case in which Gareth Jenkins had given evidence.
5 **Q.** What was the significance of that; what were the
6 consequences of that?
7 **A.** You know, the trouble is, in the context of a note like
8 this, I can't tell you but the consequences were that
9 I suppose she wouldn't know that Gareth Jenkins had
10 revealed what he had to Second Sight. I suppose looking
11 back with hindsight, after all these years, but I -- the
12 trouble, is, looking at this note and the way it flows
13 and, if we carry on, perhaps, and --
14 **Q.** Go over the page, please.
15 **A.** If you would because I think you should have more
16 context to this. I just wonder whether it was part of
17 the conversation about the mediation.
18 **Q.** What, that the fact that she was unique was a --
19 **A.** Well, I -- you know, Mr Beer you're asking about
20 a single word in a document I've only seen this week,
21 which I didn't see at the time, and I'm doing my best
22 with what's in front of me. I don't know.
23 **Q.** Shall we look at what's about a third of the way down
24 the page there?
25 **A.** Yeah.

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1 **Q.** But you would you agree that, despite that principled
2 approach, it would have the effect of excluding
3 Mrs Misra from the mediation and thereby obtaining any
4 information --
5 **A.** Yes.
6 **Q.** -- through that route?
7 **A.** Harsh though it may appear and unpalatable after all
8 these years, that is and was the effect of it.
9 **Q.** If we read further on in the attendance note, if we
10 scroll down, please, you say:
11 "Can't avoid [the] question ..."
12 Then reading on to where I stopped off, you're
13 recorded as saying:
14 "So any individual for 2005: I was prosecuted and
15 [pleaded guilty]."
16 Then you're recorded as saying that Mrs Misra was
17 "unique".
18 **A.** Yeah.
19 **Q.** Did you regard her case as being unique?
20 **A.** Well, there are two words there which -- I take it this
21 Martin Smith's note --
22 **Q.** I think it is.
23 **A.** -- that he recorded, which I didn't see at the time. If
24 I used the word "unique", and I'm prepared to accept
25 I might have done, but whether it was simply

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1 **Q.** It's recorded that Gavin Matthews asked "Misra: [should
2 we] Apologise?" and you replied, it is recorded
3 "I wouldn't".
4 **A.** Yes.
5 **Q.** Can you recall the question of apologising to Seema
6 Misra arising?
7 **A.** Well, if Mr Smith's note is accurate, then it did and,
8 again, if Mr Smith's note is accurate, I must have said
9 something along those lines. Whether it would have
10 simply been a two or three-word response, I doubt very
11 much.
12 **Q.** Looking back now, can you think why you would have
13 advised not to apologise to Seema Misra?
14 **A.** Yes, I can because -- for really -- for two reasons, it
15 wasn't just about the fact that she had been convicted
16 of theft but she'd also pleaded guilty to several
17 offences of false accounting in 2009 which, at that
18 time, on what I understood, could not be related to any
19 issues with Gareth Jenkins and, therefore, if Mrs Misra
20 was admitted to the mediation, as a point of principle,
21 I just couldn't begin to understand why, in some form of
22 quasi-civil process, Post Office wanted to ride both
23 horses at the same time.
24 Here they were saying "This conviction is safe and
25 those pleas of guilty are safe", and, at the same time,

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1 "We want to engage" or "We could engage in mediation
2 with her". I just didn't understand the question of
3 apologising to somebody, Mrs Misra, as it was understood
4 at that time and, at the same time, potentially talking
5 about financial compensation.

6 So it was a principled point. I'm afraid her pleas
7 of guilty, the convictions arising out of those pleas of
8 guilty and the conviction for theft were, like everybody
9 else who were convicted claimants, were unoverturned at
10 that point and it was for the Court of Appeal to disturb
11 those convictions, not the Mediation Scheme.

12 **Q.** You address these issues in your general advice. Can we
13 turn that up, please. POL00006581.

14 **A.** We had 6803, I think, before.

15 **Q.** Yes, we've obviously got it --

16 **A.** Never mind. It's the same document.

17 **Q.** Can we look at page 23, please?

18 **A.** Page 23?

19 **Q.** Yes.

20 **A.** Yeah.

21 **Q.** From this point, page 23 onwards, under the
22 cross-heading, "Nature and scope of [Cartwright King's]
23 review", you, in broad terms, in summary, address the
24 scope of the review --

25 **A.** Yeah.

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1 focus on when deciding whether to look for material that
2 may disclose a miscarriage of justice?

3 **A.** I think I dealt with this, didn't I, in the general
4 review, which -- where I said they weren't proper
5 factors.

6 **Q.** Yes, and so the four factors set out there --
7 proportionality, resourcing, transparency and
8 reputation -- which of them were not proper factors?

9 **A.** Well, if all four were designed to identify 1 January as
10 the start date, as it were, for the review, all of them.

11 **Q.** So none of them is a proper factor?

12 **A.** I didn't think so and I'm sure -- I think I said that
13 a little earlier, Mr Beer, at 63 and onwards, I think
14 I deal with this.

15 **Q.** You come on to address some of them?

16 **A.** Yes, or some of them but I didn't think any of them
17 applied and certainly not Post Office's reputation.

18 **Q.** Yes, so deciding how far back to look on whether exists
19 material relevant to a miscarriage of justice, the Post
20 Office's reputation is not something to bring into
21 account?

22 **A.** It was nothing to bring into account, and that's why
23 I said what I did.

24 **Q.** You record in 62:

25 "Simon Clarke's view was that any subpostmasters

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1 **Q.** -- looking at geography extent, temporal extent and
2 other issues, correct?

3 **A.** Yes.

4 **Q.** So if we look at 58:

5 "The nature and scope of the review was defined in
6 Simon Clarke's 8 July Advice, which coincided with the
7 day of the publication of [Second Sight's] report. The
8 advice was that cases affected including [Royal Mail
9 Group] cases pre-separation, and the areas of concern
10 were the proper functioning of Horizon, Horizon training
11 and customer support."

12 Then if we go, please, to over the page. I'm afraid
13 it's going to be necessary to read quite a bit of this,
14 from 61 onwards you address the temporal scope of the
15 review:

16 "There was also consideration to the start date of
17 the review. Horizon Online was migrated into all post
18 offices between January and September 2010. Thus, the
19 advice given was that the start date for the review
20 process should be 1 January 2010, that is to say the
21 earliest date for the Horizon Online rollout. Mr Clarke
22 advised that in advising on this date, he had in mind
23 issues of proportionality, resourcing, transparency and
24 [the Post Office's] reputation."

25 Just stopping there, were they all proper reasons to

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1 prosecuted under the former Horizon regime would have
2 served any sentence of imprisonment or performed any
3 unpaid work requirement or paid a fine and at all events
4 the publicity from [Second Sight] report would put those
5 defendants on notice."

6 At 63, you record that the appendices in the Second
7 Sight Report are posted on the website. Then line 3,
8 you say:

9 "I am afraid I do not see those who have served
10 their sentences [et cetera], should, for that reason, be
11 excluded from the review. They have an interest if
12 their conviction was unsafe and there must be people who
13 fall within [the] current review who have been released
14 from their sentences or had non-custodial sentences
15 imposed on them."

16 So you're saying that that element of Simon Clarke's
17 reasoning, that all these people have done their time,
18 is illogical and can't be relied on?

19 **A.** Yeah, I mean, with respect to Simon Clarke, I just
20 didn't -- I frankly didn't understand those points and
21 then, as you'll see, I dealt in that final sentence with
22 two other of the factors which I'd listed above,
23 resourcing and the reputation.

24 **Q.** Beside the point, correct. Then you continue:

25 "When I queried the rationale behind the cut-off

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1 date I was told and entirely accept that prior to each
 2 branch rollout, a cash audit was done so that each
 3 branch balanced. I advised in conference and repeat
 4 here that although [the Post Office] has no positive
 5 duty to seek out individuals before the 1 January 2010
 6 start date for a review of their case, nonetheless if
 7 [the Post Office] was approached it would need to make
 8 *ad hoc* case-specific decisions about the need for
 9 disclosure.

10 "The *Misra* case is an example of the case I have in
 11 mind. Although [she] was tried in October 2010, the
 12 allegation related to events between 2005 and 2008, long
 13 before the rollout of Horizon Online. However, the
 14 issues raised in the case, which were made late by the
 15 defendant in one or more defence statements, were very
 16 similar to those generally being raised currently in
 17 relation to the Horizon Online system: [she] was
 18 eventually to claim that the approximate £75,000 deficit
 19 in her post office was due to a technical error or her
 20 own incompetence, having initially sought to blame
 21 employees ...

22 "There is no information that Mrs Misra is now
 23 seeking to appeal her conviction ... although she is ...
 24 seeking to apply to participate in the mediation
 25 process."

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1 have to be dealt with as required on a piecemeal basis.
 2 If it got to the stage where the floodgates of
 3 pre-Horizon Online cases began to open, then [Post
 4 Office] and [Cartwright King] will have to remain alive
 5 to the possibility of commencing a subsidiary review."

6 So you say that the cut-off date is logical and
 7 practicable. Dealing with practicability first, why was
 8 it practicable?

9 **A.** I think it was practicable because the bugs which had
 10 been revealed to Second Sight and reported by them in
 11 the interim review were accessible, in the sense that
 12 they were more recent and, second, I have in the back of
 13 my mind that there was some problem in going back to
 14 Legacy Horizon and understanding what might have
 15 happened with that system.

16 **Q.** Where did you get that understanding from?

17 **A.** I am sure I knew about that. I know I don't say it
 18 here, but I'm sure I knew about that.

19 **Q.** What was the nature of the thing that you knew about?

20 **A.** Simply, I think, that there -- it was -- was the system
 21 archived or not live any more, something like that.

22 **Q.** In terms of the logic, you say that it is a logical
 23 approach to take. In saying that it was the logical
 24 approach to take, did you take as your starting point
 25 the assumption that there were no bugs in the old

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1 67, there are currently 12 or 13 conviction case
 2 applicants.

3 Then, over the page, you've considered Second
 4 Sight's inquiry, you note it is not time limited. The
 5 definition of Horizon that Second Sight relied upon is
 6 widely drawn and you note, in the last three lines of
 7 that paragraph the spot reviews, or several of them,
 8 involve Horizon issues pre-dating 2010 rollout of
 9 Horizon Online.

10 Then 70:

11 "Despite the open-fronted nature of [Second Sight's]
 12 inquiry, it is important to recognise that [Second
 13 Sight] has so far only discovered and reported upon two
 14 Horizon defects respectively occurring in 2010 (which I
 15 assume to be a defect with Horizon Online) and in 2011."

16 Then your conclusion:

17 "In my judgment, the 1 January 2010 start date for
 18 [Cartwright King's] review is both a logical and
 19 practicable approach to take. That's not to say,
 20 however, that if a case pre-dating the Horizon Online
 21 rollout presents itself that CK should exclude it from
 22 consideration. There may be cases that raise genuine
 23 thorny technical issues, which are not unrelated to
 24 issues concerning Horizon Online (which after all is
 25 next generation Horizon) and, if they arise, they'll

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1 Horizon system?

2 **A.** No, I didn't take that as an assumption because I knew
 3 that there was one, which was Callendar Square, but
 4 I suppose it was looking at the two new bugs which had
 5 come to light, Callendar Square or Falkirk had been
 6 litigated in the course of Mrs Misra's trial in 2010 and
 7 was, to that extent, in the public domain. These were
 8 two new bugs and they were two new bugs in Horizon
 9 Online, and that came online and was migrated to
 10 branches from -- by 1 January 2010 and that was the
 11 logic to it.

12 **Q.** The balance of 71 is essentially a way of saying that,
 13 "If any other cases crawl out of the woodwork", wasn't
 14 it --

15 **A.** Yeah.

16 **Q.** -- "We'll face them when they arise"?

17 **A.** Well, I think that's a rather harsh judgement, Mr Beer,
 18 because I think what I'm really saying is I'm saying to
 19 Cartwright King and Post Office, for that matter, "You
 20 must remain alive to the possibility of commencing
 21 a subsidiary review". So, you know, to the extent that
 22 I did use that term, in the course of the 9 September
 23 meeting, I mean, this document is 15 October, so it's
 24 five or six weeks on and my thinking had moved on.

25 And I recognised and I wanted Post Office and

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1 Cartwright King to recognise that, if there is a Legacy
 2 Horizon system problem, then you're going to have to
 3 potentially consider commencing a subsidiary review.
 4 That's what I meant by it.

5 **Q.** Can we look at a stepping off point between the
 6 9 September conference and the 15 October general
 7 review, namely an email of 3 October. POL00066825.
 8 This is an attendance note from Martin Smith of
 9 Cartwright King of 3 October 2013, of a conversation
 10 that he had with Gavin Matthews of Bond Dickinson. So
 11 this is after your 9 September conference but before
 12 your 15 October general review.

13 **A.** Yes.

14 **Q.** The "Summary":
 15 "[Telephone call] Gavin Matthews. He has spoken to
 16 [Brian Altman QC] ...
 17 "Detail
 18 "[Telephone call] Gavin Matthews. He has spoken to
 19 [Brian Altman QC]: Mediation cases can go on separate
 20 spreadsheet. So far as date is concerned -- understand
 21 why 1/1/10 but on the basis no bugs prior to then on old
 22 system he advises only need to review Horizon Online
 23 cases since that date.
 24 "[Martin Smith] said [he is] not sure that is
 25 correct. HB currently looking at *Misra* transcript to
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1 log, which would only be fair. The next --
 2 **Q.** It would be the 4th?
 3 **A.** 4 October, yes. So I had a conference call with Gavin
 4 Matthews, Cartwright King and Post Office for half
 5 an hour.

6 **Q.** On the 4th?
 7 **A.** On the 4th but, as you will know, that related to the
 8 scope of the review and that is recited in the general
 9 review but I don't recall anybody suggesting to me
 10 "You've misunderstood".

11 **Q.** Thank you. That can come down. Sitting here today, do
 12 you stand by the advice that the correct cut-off date
 13 was 1 January 2010?
 14 **A.** Yes, on the basis of my understanding at the time, which
 15 did -- in my mind, it must have included I knew about
 16 the Callendar Square bug in Legacy, that was the only
 17 bug I knew about in Legacy. Yes I do.

18 **Q.** The corollary of which is that the Post Office should do
 19 nothing in relation to subpostmasters convicted before
 20 that date and instead wait to see whether they came
 21 forwards?
 22 **A.** Yes, and that was based on mixed fact and law. The law
 23 has never been, post-conviction, that a prosecutor has
 24 to go out and search for cases which may be unsafe, on
 25 the basis of little or no information, and that was
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1 see what [Gareth Jenkins] said."
 2 **A.** HB, Harry Bowyer?
 3 **Q.** Probably:
 4 "Think it likely to contain a reference to the *Misra*
 5 bug. [Gavin Matthews] suggests that [you] may well have
 6 advised on the basis of an incorrect assumption.
 7 [Martin Smith] said [he] would call tomorrow."
 8 Then the rest is about something else.

9 **A.** Right.
 10 **Q.** Are they right that you advised on the basis of
 11 an incorrect assumption that there were no relevant bugs
 12 pre-Horizon Online?
 13 **A.** I can't see that as possible. I can't see that's
 14 possible because, by 3 October, as you pointed out
 15 earlier, I'd read the transcripts from the *Misra* trial.
 16 **Q.** Did either of them raise their belief that you were
 17 advising on an incorrect basis with you?
 18 **A.** No, I saw this as part of the disclosure to me.
 19 Frankly, I can't remember if it's in my original bundle
 20 or the additional documents but it doesn't matter.
 21 I was totally unaware of it.
 22 **Q.** So Mr Smith did not call you the next day, to the extent
 23 that that's a reference to him going to call you the
 24 next day?
 25 **A.** Well, I don't want to say no without looking at my work
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1 confirmed, actually -- not at that time but I'd always
 2 understood that to be the position -- that was confirmed
 3 in the Supreme Court in the case of *Nunn* in 2014.
 4 **Q.** Had you not given consideration at this point to the
 5 fact that you regard Mr Jenkins as an unreliable
 6 witness, he had been a cornerstone of the case against
 7 Seema Misra and that, at least in her case, there ought
 8 to have been such disclosure?
 9 **A.** The fifth time of agreeing with you, Mr Beer. I've made
 10 that plain. Yes, I can see that.
 11 **Q.** What accounts for the failure?
 12 **A.** If I cast my mind back, I think the only thing that
 13 would have gone through it is the fact that the failure
 14 by him was to identify in her trial bugs in Horizon
 15 Online, which would not have impacted.
 16 **Q.** You've told us today that your concern about admitting
 17 people like Seema Misra to the Mediation Scheme was that
 18 they remained convicted defendants, the Mediation Scheme
 19 could do nothing about that.
 20 **A.** Yes.
 21 **Q.** Only the CACD could?
 22 **A.** Yes.
 23 **Q.** Can we look, please, at POL0006485. This is the other
 24 note of the conference on 9 September?
 25 **A.** Yes.
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1 Q. If we scroll down, please, keep going.
 2 A. Which page do you want, Mr Beer?
 3 Q. I think it's on the second page. Stop there. Yes. On
 4 the screen, it's the second paragraph from the top --
 5 sorry, no, that's the wrong paragraph. If we keep
 6 reading, please. Keep going on the scrolling.
 7 Yeah, there, third paragraph:
 8 "There was then a discussion in relation to the
 9 overlap between the intended mediation process and
 10 criminal cases.
 11 "[Andrew Parsons] reported the current position in
 12 relation to the mediation process and how it was
 13 intended to work. Individuals currently being
 14 prosecuted are not eligible though individuals who have
 15 previously been convicted are eligible for the scheme."
 16 You are recorded as saying that you:
 17 "... advised considerable caution in relation to
 18 mediation cases involving convicted individuals (Seema
 19 Misra has already indicated an [indication] to be within
 20 the scheme). The concern is that lawyers acting for
 21 those individuals may be using the scheme to obtain
 22 information they would not normally be entitled to in
 23 order to pursue an appeal."
 24 Is that, so far as you can recall, an accurate
 25 summary of your advice as to why convicted individuals

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1 clear in my witness statement and, if you go to the
 2 general review, you will find me expressing, perhaps
 3 more accurately than this is prepared to do, that the
 4 concern -- in fact, I think I used the words
 5 "understandable", but that the concern was Cartwright
 6 King's. And if my memory serves me, I think you'll find
 7 that in paragraph 129 of the general review.
 8 Q. So this paragraph in the conference note, which I think
 9 you did have an opportunity to settle at the time,
 10 didn't you?
 11 A. No, I don't think I did.
 12 Q. You weren't sent this to --
 13 A. I'm not saying --
 14 Q. -- approve or amend?
 15 A. -- I wasn't sent it but I don't think I was sent it to
 16 approve and, frankly, if I'd have looked at it,
 17 obviously all these years after, one can go through it
 18 with a fine-tooth comb, as we are but, even if I had,
 19 I don't think I'd have done that or looked at it with
 20 any particular -- unfortunately using the word
 21 "concern". But I can tell you, categorically, that
 22 second sentence was not any concern I advised on. It
 23 was not my concern; it was theirs.
 24 Q. So this should either be a new paragraph after the end
 25 of the words "the scheme" and beginning with "the

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1 should not be admitted to the scheme?
 2 A. No, that was not my advice at all. My advice was that
 3 there should be caution in relation to the mediation
 4 cases and that was for the reasons I've already given.
 5 The way this is written may suggest this was my advice,
 6 it wasn't. The concern that lawyers acting for those
 7 individuals may be using the scheme to obtain
 8 information they wouldn't normally be entitled to was
 9 Cartwright King's or Post Office's. It wasn't my
 10 concern, as I made clear in subsequent paragraphs in the
 11 advice I later gave.
 12 Q. This doesn't record as the reason for not admitting
 13 subpostmasters who have been convicted --
 14 A. No.
 15 Q. -- to mediation --
 16 A. No.
 17 Q. -- that they remained convicted?
 18 A. No.
 19 Q. It's recorded as you expressing a concern about lawyers
 20 getting information to which their clients are not
 21 entitled?
 22 A. No, I'm sorry but that is a misreading or it's
 23 an unfortunate juxtaposition of two sentences. The
 24 first was my advice. This one doesn't say, "BA said",
 25 this one said, "The concern is that", and I made that

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1 concern"?
 2 A. Well, yes.
 3 Q. It should read "Cartwright King held a concern"?
 4 A. If I was writing it and I'd applied my mind to it, if
 5 you think that this was me saying it, I'm afraid,
 6 Mr Beer, you're very wrong; I was not. And, as I say,
 7 I made that perfectly clear when you come to look -- as
 8 I say, I think it's paragraph 129 of the general review
 9 because this was an ongoing theme, and I think 129 is
 10 where I recite the conference we've just been looking
 11 out of 4 October. It's the same thing and, if you look,
 12 in that paragraph -- I think I'm right in saying it's
 13 129 -- you'll see I set out exactly the same words,
 14 almost, that it was Cartwright King's concern.
 15 Q. Did you say to them "That's an improper concern to
 16 hold"?
 17 A. I think what I said is what appears again in somebody
 18 else's note in the paragraphs that follow.
 19 Q. Were you concerned at all about the need for the Post
 20 Office or Cartwright King to take control over what
 21 Second Sight was disclosing in the course of the
 22 mediation process?
 23 A. Yes, it was about supervision, and it was about
 24 controlling the information disclosed or being
 25 disseminated to individuals who were within that scheme.

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1 Not being blindsided by evidence that they were not
 2 aware of and auditing the information, which, in my
 3 experience, is no different to what any prosecuting
 4 authority does in any disclosure process. And, again,
 5 actually, Martin Smith's note on this occasion sets it
 6 out pretty clearly because I had said -- I think it may
 7 be page -- I can't remember now, page 8, possibly
 8 page 6, where he noted that I said that there should be
 9 a sharing of the information and it should all be
 10 recorded by Cartwright King. That's what I was talking
 11 about.

12 **Q.** You weren't concerned that Cartwright King or the Post
 13 Office should control what Second Sight was disclosing
 14 in the course of the mediation process?

15 **A.** I felt there was a risk, as I recall it, that Second
 16 Sight -- this was an uncontrolled environment. So
 17 I felt there was a risk and that's why I gave the advice
 18 I did. This wasn't about not disclosing; this was
 19 simply advice about "Supervise what's happening so that
 20 you know what's going out of the door", it was as simple
 21 as that: a record, an audit trail, you know what's being
 22 disclosed.

23 **Q.** Can we look, please, at POL00337202. This is an email
 24 from you to Gavin Matthews about a fortnight after the
 25 conference. The first page concerns the terms of

1 **Q.** That's a slightly different issue, isn't it, that they
 2 should have visibility of what is disclosed?

3 **A.** No, it's the same thing. I spoke in terms -- I used the
 4 term "control" and "supervision" pretty interchangeably.
 5 It was I wanted them -- and I've already said, that what
 6 Second Sight, I think or what I understood, was doing,
 7 was uncontrolled. I wanted Cartwright King to know what
 8 was being disclosed.

9 **MR BEER:** Sir, it's 1.00, might we take the lunch break
 10 until 1.50, please.

11 **SIR WYN WILLIAMS:** 1.50 is a truncation of the transcriber's
 12 lunch break, in any event. How do you foresee this
 13 afternoon going, Mr Beer?

14 **MR BEER:** I envisage going until about 3.20, and then some
 15 questions from Core Participants.

16 **SIR WYN WILLIAMS:** So we need to have ten minutes less for
 17 lunch, do we?

18 **MR BEER:** I'm afraid so.

19 **SIR WYN WILLIAMS:** All right then, 1.50.
 20 (1.00 pm)

21 (The Short Adjournment)

22 (1.50 pm)

23 **MR BEER:** Good afternoon, sir. Can you see and hear us?

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

25 **MR BEER:** Thank you.

1 reference. Can we look at the second page, please.

2 "Regarding the conference note [I think that's the
 3 conference note for 9 September], it accords with my
 4 recollection, except in the case of couple of matters
 5 listed above ..."

6 Then:

7 "As to the final paragraph of the draft conference
 8 note, I did advise that [Cartwright King] needed to
 9 rethink the terms of the letter they are sending out."

10 Then:

11 "I also recall advising:

12 "1. There was no positive duty to seek out
 13 individuals [before 1 January 2010] but if [the Post
 14 Office] was approached it would need to make
 15 case-specific decisions on disclosure."

16 Secondly, you recall advising:

17 "About the need for [the Post Office]/[Cartwright
 18 King] to take control over what [Second Sight] was
 19 disclosing it mediation process."

20 Why was it necessary for Cartwright King to take
 21 control over what Second Sight was disclosing?

22 **A.** For the reasons I've already given, that I wanted to
 23 ensure that Cartwright King, as Post Office's external
 24 solicitors, understood what material was going out to
 25 postmasters.

1 Good afternoon, Mr Altman. Can we turn to my fourth
 2 topic, please, which is the legal advice you gave in
 3 relation to the Post Office's investigation and
 4 prosecution roles. Can we start by looking at your
 5 advice on this issue, which is POL00006802. This is
 6 dated 19 December 2013, on its last page. I just want
 7 to ask you about a couple of parts of it. Can we start
 8 by looking page 4, please. Again, you provide
 9 an executive summary and under paragraph 5.1 you say:

10 "I have seen no evidence to suggest that the Post
 11 Office exercises its investigations and prosecution
 12 function in anything other than a well-organised,
 13 structured and efficient manner, through an expert and
 14 dedicated attempt of in-house investigators and lawyers,
 15 supported by Cartwright King and their in-house counsel,
 16 as well as external counsel and agents where required."

17 How did you come to the view that the Post Office
 18 was exercising its investigation function in
 19 a well-organised, structured and efficient manner?

20 **A.** I think based on what Post Office had sent to me, I had
 21 met Cartwright King, I had met Rodric Williams, I'd met
 22 Jarnail Singh once, maybe twice, and I had read by that
 23 stage certainly two of the prosecution files. I had
 24 more insight into the Post Office through the general
 25 review and I think the overarching view I came at was --

1 is reflected in that paragraph.

2 **Q.** Focusing on the functions performed by Investigators,
3 and your conclusion there about them, had you examined
4 any documents or material relating to the training of
5 Investigators?

6 **A.** I've got an idea I might have asked for something but
7 I can't remember.

8 **Q.** Had you examined the knowledge and experience of Post
9 Office Investigators?

10 **A.** I think I knew that some of them were former police
11 officers.

12 **Q.** Was that the extent of it?

13 **A.** I can't remember.

14 **Q.** Had you examined the Investigators' knowledge of and
15 practical application of the law of disclosure?

16 **A.** The Investigators'?

17 **Q.** Yes.

18 **A.** No.

19 **Q.** Had you examined the extent to which Investigators
20 actively investigated all reasonable lines of inquiry --

21 **A.** No.

22 **Q.** -- including those which pointed away from the guilt of
23 the suspect?

24 **A.** No.

25 **Q.** Had you varied what supervision checks and balances, if

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1 person was?

2 **A.** Of that person? No. But the point I made, I think, was
3 it ought to be in the hands of a legal individual.

4 **Q.** Did you examine how much consideration that person gave
5 to an analysis of the evidential strength of a case?

6 **A.** No.

7 **Q.** Did you examine what tests that decision maker applied
8 when deciding whether a case was to be prosecuted?

9 **A.** No.

10 **Q.** Given all of those things, how were you able to say that
11 the Post Office exercises its investigatory function in
12 a well-organised, structured and efficient manner?

13 **A.** I think I was talking more about the hierarchical
14 structure and what had been presented to me in the way
15 that Post Office, through those various policies, were
16 structured. I don't think I was deep diving nor do
17 I think I was expected to deep dive all of the factors
18 that you've just mentioned. If I had, this would have
19 been a completely different exercise.

20 **Q.** Do you think there was a danger in the conclusion that
21 you wrote there being misunderstood and, therefore,
22 misapplied and being used as a weapon by the Post Office
23 in fending off criticisms of it?

24 **A.** On the basis of what I've just said, yes, I can see
25 that. At the time, I suspect I didn't appreciate that

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1 any, existed to superintend the work of the
2 Investigators?

3 **A.** Well, I understood that Cartwright King were involved as
4 the external agents and I understood that they were the
5 instructing solicitors, and I had met Simon Clarke and
6 I had met Harry Bowyer and I remember being impressed by
7 them.

8 **Q.** That's being impressed by lawyers. I'm asking at the
9 moment about superintendence or supervision of the work
10 of the Investigators?

11 **A.** No, but I rather thought that Cartwright King that that
12 superintendence.

13 **Q.** Had you examined how, in practice, decisions as to
14 whether to prosecute or not were made in practice?

15 **A.** No.

16 **Q.** Had you discovered who the decision maker was in
17 relation to any decision to prosecute?

18 **A.** Well, if my memory serves me, during the course of this
19 review, I had referred to several Post Office policies
20 and I think one of those policies put the hands of --
21 the ultimate decision making in the hands of somebody
22 who was non-legal.

23 **Q.** Had you examined --

24 **A.** Forgive me, so I made a point about that.

25 **Q.** Had you examined what the training or experience of that

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1 it would be.

2 **Q.** If we go forwards, please, to page 39, and
3 paragraphs 105, 106 and 107. You say:
4 "It may be thought that [the Post Office's]
5 prosecution role is anachronistic, and highly
6 problematic ..."

7 "106. The recent events have to be seen in the
8 proper context. The serial non-disclosure of relevant
9 material occurred in circumstances in which [the Post
10 Office] asserts that it and its advisers were wholly
11 unaware that there might be disclosable material or
12 information and so, whatever the reason, were not placed
13 in a position whereby they knew of its existence and
14 could deal with it appropriately."

15 **A.** Yeah.

16 **Q.** You tell us in your witness statement that later events
17 proved your information and understanding, that you set
18 out there, to be wholly incorrect?

19 **A.** I think I say "catastrophically incorrect".

20 **Q.** We'll just check that.

21 **A.** Which paragraph do you have?

22 **Q.** 41.1 on page 21.

23 **A.** Certainly somewhere I recognised that it was
24 catastrophic or the information I had afterwards but not
25 then. Yeah, no, it's not in that paragraph but

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1 certainly somewhere else I say that.
 2 **Q.** Page 21 at the foot of the page, please, bottom of the
 3 page. The paragraph that I've just cited from your
 4 advice is followed with the sentence:
 5 "Later events proved by then information and
 6 understanding to be wholly" --
 7 **A.** No, you're right but I'm fairly sure somewhere here
 8 I made the similar point, but somewhere else, that it
 9 was catastrophic.
 10 **Q.** That it was catastrophic?
 11 **A.** Yeah.
 12 **Q.** Can you please set out what you now know that
 13 demonstrates that the information upon which you were
 14 advising was wholly incorrect, firstly in terms of the
 15 Post Office being in possession of disclosable
 16 information?
 17 **A.** I'm afraid I can't give you detail because it's so
 18 complicated and, you know, my knowledge has developed
 19 over the course of the years up to and including the
 20 appeals in March 2021, but what I discovered in later
 21 years -- and by later years, I actually mean the Horizon
 22 Issues trial onwards and that judgment -- was that the
 23 landscape, as I called it earlier, was entirely
 24 different, that it was perfectly clear to me that
 25 individuals within the Post Office were very well

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1 the material that you had been given, ie it's your
 2 subjective assessment?
 3 **A.** Perfectly possible that it's an inference from
 4 everything I saw --
 5 **Q.** Thank you.
 6 **A.** -- or everything I was told, or perhaps not told.
 7 **Q.** That can come down, thank you.
 8 Were you told about a possible plan to transfer
 9 cases to the CPS to consider for prosecution?
 10 **A.** What, that Post Office had a positive plan to do that?
 11 **Q.** Yes, or was considering whether to do that.
 12 **A.** Well, I think it was something, obviously, I looked at
 13 in this review document. Whether I did it off my own
 14 bat or whether somebody suggested to me "Is this
 15 something we should be looking at", or further than that
 16 "There is a plan to do this", I simply can't recall.
 17 **Q.** Can we have a look at an email exchange, please,
 18 POL00147419. You'll see this is an email exchange that
 19 you're not included on, it's from Rodric Williams,
 20 litigation lawyer at the Post Office, to Chris Aujard
 21 and others, dated 11 January 2014. It's a summary of
 22 what he says was his discussion with you earlier that
 23 day.
 24 **A.** But which obviously post-dates this review by a month or
 25 two.

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1 sighted on all of the problems, some of them you have
 2 demonstrated during the course of your examination
 3 today.
 4 And, you know, I look at paragraph 106, which I've
 5 read more than once, as a remarkable insight into my
 6 ignorance and what I wasn't told and what I didn't
 7 understand.
 8 **Q.** In terms of the Post Office being "wholly dependent on
 9 Fujitsu and/or the expert to reveal material, so that
 10 Post Office could perform its prosecution duties", who
 11 provided you with that incorrect information?
 12 **A.** Sorry, which paragraph is that?
 13 **Q.** It's highlighted on the screen --
 14 **A.** Oh, forgive me, it's my --
 15 **Q.** -- it's a citation from your advice:
 16 "Post Office was, inevitably, in a position where it
 17 was wholly dependent on Fujitsu and/or the expert to
 18 reveal material so that Post Office could perform its
 19 prosecution duties."
 20 I am asking who provided you with that material,
 21 that information?
 22 **A.** I just don't know but it was clearly something that was
 23 in my mind at the time that wrote this.
 24 **Q.** Was that, in fact, not information that was provided to
 25 you but, rather, a conclusion which you drew by reading

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1 **Q.** Yes. Can you see that under "A", just in passing, you
 2 seem to have advised, in the light bullet point:
 3 "Board minutes/discussions about pursuing
 4 a prosecution policy for commercial aims may need to be
 5 disclosed if the application of that policy was ever
 6 called into account. This presents a risk of
 7 reputational damage."
 8 **A.** And the key message beneath that.
 9 **Q.** Yes.
 10 **A.** Yeah.
 11 **Q.** Where it records a key message, do you think that's him
 12 summarising a key message that you told him, Rodric
 13 Williams?
 14 **A.** Well, I think it's the penultimate bullet. The one
 15 above the highlighted one.
 16 **Q.** So where it says, "Key message" that's, essentially,
 17 something that you said or would have said to
 18 Mr Williams?
 19 **A.** Well, "Chris -- here's a summary of my discussion with
 20 Brian earlier today".
 21 **Q.** What I'm just looking at, at the moment, is the
 22 attribution of words here and whether or not --
 23 **A.** Oh, I see.
 24 **Q.** -- the key message is something that is Mr Williams
 25 setting out his key message --

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1 A. Yeah, I see.
 2 Q. -- or setting out your key message?
 3 A. I suspect that's his key message, his takeout from his
 4 understanding of the advice I'd given that day.
 5 Q. But based on what you had advised?
 6 A. Yes.
 7 Q. I understand. Can we look, please, further down the
 8 page to B, "Jumping 'A' (status quo) to 'C' (all CPS)"?
 9 A. Yeah.
 10 Q. "A change of policy is not an admission that past
 11 practices were wrong. It would still be open to someone
 12 (eg a 'conspiracy theorist') to say that this did drive
 13 the change, referring to the temporal connection between
 14 the change in policy and the challenges to past
 15 prosecutions;
 16 "This could lead to enquiries about the reason for
 17 the change, eg requests for disclosure or questions in
 18 Parliament;
 19 "It is far from certain that the CPS would take on
 20 any of our cases given the budgetary pressure it is
 21 under;
 22 "We should start discussions at a high level within
 23 the CPS if we want to take this on (ie don't just
 24 announce that the CPS is going to prosecute criminal
 25 conduct in our network without raising it with the CPS
 121

1 "eg a conspiracy theorist", I wouldn't have said, "to
 2 say that this did change the change, referring to the
 3 temporal connection between the change in policy and the
 4 challenges to past prosecutions", that's not the way
 5 I expressed myself. And so I looked at it and I was not
 6 convinced that this was me.
 7 The next bullet point "far from certain CPS would
 8 take on any of our cases given the budgetary pressure
 9 it's under", I know I did have that view and I expressed
 10 it in the review document we've just been looking at.
 11 Q. Are you saying you think you've been verballed here?
 12 A. Sorry?
 13 Q. Are you saying you think you've been verballed?
 14 A. I don't want to be unfair to Mr Williams. There are
 15 possibilities that I had this discussion. I just looked
 16 at it and I just didn't think it reflected the way
 17 I would express myself but, you know, it's possible.
 18 I just don't know.
 19 Q. In any event, did you advise Mr Williams that shifting
 20 cases to the CPS would "risk sending the wrong message
 21 to the network"?
 22 A. I don't think that's something that I would say because
 23 that was a business case and I don't think -- I don't
 24 think, looking at this now, that this was something that
 25 would have been within my ken or understanding. That
 123

1 first!);
 2 "We should not lightly give up (or cede to another)
 3 our expertise in identifying and (where appropriate)
 4 prosecuting criminal conduct in our network.
 5 "Key messages: Jumping from 'A' to 'C' risks sending
 6 the wrong message to the network about how we view
 7 criminal conduct (both past and present), and losing our
 8 expertise in monitoring our network, without any
 9 certainty that prosecutions would be picked up by the
 10 CPS. However, a change in policy (however dramatic)
 11 does not present a pure legal risk of challenge to past
 12 convictions."
 13 Does that accurately record the past advice you
 14 gave?
 15 A. I can't say it does and I can't say it doesn't, not
 16 least because I have to say, when I looked at this
 17 email, I was not totally convinced. I was prepared to
 18 accept that I'd given the advice in the conversation
 19 under A but I looked at B and when I first looked at it
 20 I wasn't sure that that was what I had said. So I can't
 21 answer that question, I'm afraid. I don't remember this
 22 conversation at all. This part of it, anyway.
 23 Q. What made you think that it might not be you speaking in
 24 relation to the issues under B?
 25 A. Simply because I wouldn't have said words like
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1 was my something, I think, Post Office were very keen
 2 on, about the message.
 3 Q. What message were they very keen on?
 4 A. The one you've just identified about, you know, the
 5 network and postmasters understanding that we'll pursue
 6 prosecutions.
 7 Q. Exactly, so exactly what message were they happy or keen
 8 on being distributed to the network?
 9 A. Well, that if you have your hand in the till, we'll
 10 prosecute you.
 11 Q. Thank you. That can come down. Can I turn to the fifth
 12 topic then, please, which is the advice you gave about
 13 the distinctions or absence of distinctions between
 14 offences of theft and false accounting?
 15 A. Yeah.
 16 Q. Can we begin by looking at POL00006588, please. This is
 17 your advice on theft and false accounting?
 18 A. Yes.
 19 Q. It's dated 8 March 2015 on its last page.
 20 A. Yeah.
 21 Q. Can we just read through some of the paragraphs, first
 22 paragraph 1. You'd been asked to:
 23 "... advise the Post Office on my view of the
 24 equality of the offences of theft and false accounting
 25 under the Theft Act 1968 and to consider the terms of
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1 a letter sent by Post Office to [Second Sight] on
2 24 February 2015."

3 Then over to page 2, please.

4 **A.** Well, do you mind, before you do that, going to
5 paragraph 2, because that's the information I had as to
6 why I was being advised -- it wasn't just about the
7 letter.

8 **Q.** Of course.

9 **A.** The arguments --

10 **Q.** You were told --

11 **A.** Yeah.

12 **Q.** -- that Second Sight is:

13 "... beginning to advance arguments that the Post
14 Office is abusing its prosecutorial role by charging
15 subpostmasters with theft when there is no evidence of
16 it, in order only to pressurise them into pleading
17 guilty to false accounting."

18 **A.** Yes, thank you.

19 **Q.** Then over the page, please, to page 2, paragraphs 5 and
20 6. You say you've been:

21 "... made aware that Sir Tony Hooper has seen the
22 letter ..."

23 That's a letter sent by the Post Office to Second
24 Sight:

25 "... and the gist of what he has said, amongst other
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1 of attention. The other issues raised by the letter
2 have greater force and are defensible."

3 Then, lastly, paragraph 22, on page 7:

4 "In conclusion, I advise that:

5 "Both offences of theft and false accounting do
6 indeed involve dishonesty and do carry a maximum of
7 seven years' imprisonment.

8 "I think the only argument that may be advanced to
9 defend the statement is that it is accurate within the
10 narrow context in which it was stated.

11 "The point is that false accounting may be a lesser
12 offence, and may be a lesser offence in the context in
13 which it is charged, so to argue it is not a lesser
14 offence is not accurate; it all depends on the
15 circumstances of the individual case, as Tony Hooper's
16 illustrations show.

17 "The statement is undermined by the fact that the
18 seriousness or otherwise of any offence of theft or
19 false accounting must always depend on its own facts, as
20 is demonstrated by the many ways in which such offences
21 may be committed and how offenders may be sentenced for
22 them."

23 Do you think you really addressed the substance of
24 the issue being raised, namely that there was
25 an allegation or suggestions being made that the Post
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1 things, is that false accounting is a lesser charge than
2 theft so [Second Sight] was not incorrect to
3 characterise it as such. He added however that if
4 someone steals, then that is more serious than if
5 someone falsely accounts to cover up an accidental then
6 of £10,000. But if someone falsely accounted for say
7 £500,000 then that offence is of greater seriousness."

8 Then page 3, please, scroll down to paragraph 9, you
9 say:

10 "First, there is no legal concept of the 'equality'
11 of offences in all. All I think [Cartwright King] meant
12 by it was that both are offences of dishonesty carrying
13 identical maximum sentences. This was a generalisation
14 but in reality means little or nothing."

15 Then page 5, please, paragraphs 14 and 15. You say:

16 "My point is that merely because the charges involve
17 dishonesty and maximum sentences of seven years is not
18 to tell the whole story of how in individual cases
19 a judge is likely to sentence one from the other. Each
20 case involves a careful process of assessment of the
21 culpability of the offender, harm caused, the
22 aggravating and mitigating factors and the individual
23 guideline in which the offence fits.

24 "If I may say so, the so-called 'equality' of the
25 offences is an unnecessary and unprofitable focal point
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1 Office had a practice of charging theft when there was
2 no or insufficient evidence of theft, in order to
3 pressurise subpostmasters into pleading guilty to the
4 lesser offence of false accounting, which had been
5 included on the indictment, and that Cartwright King had
6 said that Second Sight's suggestion that false
7 accounting was a lesser offence was inexpert and wrong?

8 **A.** No, because I wasn't asked in that advice to address the
9 allegation which I set out in paragraph 2. I was simply
10 asked to address -- and that's what I did address -- in
11 my instructions, the defensibility or otherwise of the
12 letter which Post Office, crafted by Cartwright King,
13 had sent to Second Sight.

14 **Q.** Wasn't the point that, in the context of the real world
15 involving cases of subpostmasters being prosecuted,
16 an alternative charge of false accounting to theft would
17 inevitably be a lesser offence in terms of the likely
18 sentence?

19 **A.** It can be, not necessarily always. It depends on the
20 facts. These are fact-specific issues. But I wasn't
21 asked to state what anybody who practices in crime knows
22 that people will plead guilty to offences or lesser
23 offences in order to attract a lesser sentence.

24 **Q.** But that was the issue, wasn't it?

25 **A.** I didn't think it was.
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1 Q. You confined yourself to the very narrow question --
 2 A. Yes.
 3 Q. -- of whether, technically, what your client had said in
 4 a letter could be defended?
 5 A. And that's what I was asked to do, Mr Beer. If they had
 6 said to me "And by the way, Mr Altman, do people
 7 sometimes plead guilty to lesser offences to attract
 8 a lesser sentence?" I would have said exactly the same
 9 and, you will know because there is an email, that
 10 I asked Andy Parsons who instructed me to find out from
 11 Tony Hooper what it was that he was saying. I wanted to
 12 understand what his complaint about the letter was. And
 13 he came back to me, he told me what Sir Anthony Hooper's
 14 complaint was about the letter, and that is what
 15 I addressed. I'm sorry, I disagree.
 16 Q. Were you straining, here, to help Cartwright King out
 17 and not advising on the --
 18 A. No.
 19 Q. -- the obvious issue that in this context of counts
 20 charged as alternatives to each other --
 21 A. No, I'm sorry, Mr Beer. That, for me, is a complete
 22 misreading -- and I say that with great respect -- of
 23 what I was asked to do in this advice and what this
 24 advice confronted. If I had been asked to advise on the
 25 question you would like me to have been instructed on,

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1 Q. Wasn't it clear to you that Sir Tony Hooper was taking
 2 the point that it's really an irrelevance to say that
 3 the two offences are equal to each other by simply
 4 looking at whether they contain, as an element,
 5 dishonesty --
 6 A. No.
 7 Q. -- and whether they have the same theoretical maximum
 8 sentence?
 9 A. No. I mean, if you want to look at the email I got --
 10 I know you have it, it's at B31 -- but the email I got,
 11 because I was keen to understand what Sir Anthony Hooper
 12 had in mind, if Andy Parsons had made that point to me,
 13 and if that's what had been passed on to him, then
 14 I would have given the advice, of course. It is
 15 a lesser offence, and it's one to -- and anybody in any
 16 environment will often plead guilty or offer a plea of
 17 guilt to what they perceive to be a lesser offence.
 18 I would have said it plainly, "of course I know that to
 19 be the case; I've been in practice for over 40 years".
 20 But this is not what I was being asked to do.
 21 Q. Let's look at tab B31, POL00125777. Can we look at
 22 page 2, please. At the foot of the page, email from you
 23 to Andrew Parsons, in the run-up to giving this advice,
 24 third paragraph:
 25 "In the meantime one question I have for you is I'd

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1 I would have responded and, in response to your other
 2 points that I was helping out Cartwright King, I don't
 3 see how I was when you read out what I said in
 4 paragraph 22, including "The point is that false
 5 accounting may be a lesser offence and may often be
 6 a lesser offence in which it is charged, so to argue it
 7 is not a lesser offence is not accurate". And it's
 8 absolutely accurate, as I continued here to say, it
 9 depends on the circumstances as Tony Hooper's
 10 illustrations showed.

11 So, forgive me, I fundamentally disagree.

12 Q. So you didn't think it was part of your function to --
 13 A. No.
 14 Q. -- to make the obvious point?
 15 A. No, because it is an obvious point and Cartwright King
 16 would have known it and anybody else would, who
 17 practices in crime. I did not, for one second, think
 18 I was being asked to advise on that. What I was being
 19 asked to advise on is exactly what I set out, is this
 20 paragraph -- in other words, "Have we got this right?
 21 Sir Tony Hooper is saying this is nonsense, Cartwright
 22 King has given us this advice and that has been
 23 reflected in this letter, are we right or are we wrong?"
 24 And the product of my advice is in the conclusions in
 25 paragraph 22. That is what I was asked to do.

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1 like some expansion -- if you can get it -- of precisely
 2 what Tony Hooper said. The 'equality' of offences is
 3 not actually a criminal legal concept, although
 4 I understand what this is really all about."
 5 What did you mean when you said, "I understand what
 6 this is really all about"?
 7 A. It was all about a letter. It was all about a letter
 8 which had been sent by Post Office on the advice of
 9 Cartwright King to Second Sight about which Tony Hooper
 10 had issues. That's what it was all about.
 11 Q. Aren't you saying there that "It's not the technical
 12 issue of the maximum sentence of imprisonment or whether
 13 they contain both offences, a requirement to prove
 14 dishonesty. I understand what this is really all
 15 about", meaning subpostmasters being pressurised into
 16 pleading guilty to a lesser offence and lesser in that
 17 context?
 18 A. No, because you need to read the next sentence, the --
 19 Q. "What I'd unlike to know is what Tony did say, how he
 20 expressed himself", et cetera.
 21 Then if we go, please, to the reply. At page 1,
 22 please, foot of the page:
 23 "Brian
 24 "Tony's comments were that:
 25 "I don't know where you [Post Office] are getting

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1 your legal advice from but is wrong.
 2 "False accounting is a lesser offence than theft."
 3 That's what you concentrated on, didn't you?
 4 **A.** That's exactly what I did concentrate on because that's
 5 what I thought I was being asked -- it was all about, if
 6 you go back to the advice, it was all about Cartwright
 7 King -- and you didn't take me to this actually,
 8 Mr Beer, when we went through my advice but it's
 9 paragraph 6 and then paragraph 7 of the advice. That's
 10 what this was all about. Paragraph 6:
 11 "In its advice" --
 12 **Q.** Hold on, Mr Altman, we --
 13 **A.** POL --
 14 **Q.** I can give the reference.
 15 **A.** All right.
 16 **Q.** POL00006588. Second page, foot of, I think you wanted
 17 to read paragraph 6, didn't you?
 18 **A.** Yes.
 19 "In its advice, CK had said that SS's views were
 20 inexpert and wrong. On this particular topic, they
 21 said:
 22 "The suggestion that the offence of false accounting
 23 is a less serious offence to that of theft. This
 24 suggestion has appeared in a number of contexts most
 25 commonly where an applicant has plead the guilty to the
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1 **A.** Yeah, well I'm afraid, if, Mr Beer, with respect, you're
 2 saying that that was some delphic suggestion that
 3 I should be looking at the points you're making, then it
 4 passed me by. I was looking at the defensibility or
 5 otherwise of that letter --
 6 **Q.** So you thought your task was just to look at the very
 7 narrow --
 8 **A.** Yes.
 9 **Q.** -- issue of defensibility?
 10 **A.** I did, I'm afraid. I did.
 11 **Q.** Can we move to a separate topic then, please, Mr Altman,
 12 the legal advice you gave in relation to disclosure.
 13 That can come down from the screen, thank you.
 14 Beginning by looking at POL00123003. If we just
 15 scroll down, please. Yes. Just scroll back up, please.
 16 It's that sentence or that paragraph, three from the
 17 bottom, beginning "Brian Altman QC's First Review has
 18 now been received". If we just go to the top of the
 19 page, please, to get the context. It's not a chain
 20 you're copied in on. It's dated 21 October 2013, from
 21 Andrew Parsons to a range of lawyers, and Belinda Crowe.
 22 Back down to where we were then, please:
 23 "Brian Altman's first review has now been received."
 24 We've seen that.
 25 "The First Review looked into [the Post Office's]
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1 former offence so as to avoid 'the more serious' charge
 2 of theft, or has pleaded guilty to 'the lesser offence'
 3 of false accounting."
 4 Then, please, to the next bullet point.
 5 **Q.** Over the pages.
 6 **A.** "In fact, both offences are equal in law: both are
 7 offences of dishonesty and both carry the same maximum
 8 sentence (7 years' imprisonment)."
 9 Then paragraph 7:
 10 "This was used as the basis for a letter which was
 11 sent to [Second Sight], which included the statement:
 12 "The suggestion that the offence of false accounting
 13 is a less serious offence to that of theft is incorrect.
 14 Both offences are equal in law: both are offences of
 15 dishonesty and both carry the same maximum sentence ..."
 16 That's what I was addressing.
 17 **Q.** Just look at paragraph 8, please.
 18 **A.** Yes.
 19 **Q.** Scroll down, please. Bullet points 1, 2 and 3 focus on
 20 the statement.
 21 **A.** Yeah.
 22 **Q.** Bullet point 4 asks you:
 23 "Whether in your view it is fair to characterise
 24 these offences as being equal (against whatever
 25 yardstick you think is most appropriate ...)?"
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1 compliance with its prosecution duties in light of
 2 Second Sight's findings -- in particular, it considered
 3 [Post Office's] legal duty to ensure that [the Post
 4 Office's] findings were fully disclosed ..."
 5 **A.** Second Sight's findings.
 6 **Q.** Yes:
 7 "... fully disclosed to any person who is currently
 8 being or has previously been prosecuted by [the Post
 9 Office]. [You] concluded that the Post Office is
 10 complying with its duties and that the approach adopted
 11 by the prosecution team was fundamentally sound. This
 12 report gives [the Post Office] good grounds to resist
 13 any formal external review of its historic prosecutions,
 14 ie by the CCRC."
 15 Had you, in fact, advised that your advice or report
 16 or review gave the Post Office good grounds to resist
 17 any formal external review of its historic prosecutions?
 18 **A.** No.
 19 **Q.** Was there discussion with you after the production of
 20 your review that that was how the Post Office was going
 21 to treat it, that it gave good grounds to resist any
 22 review by the CCRC?
 23 **A.** No, I -- no, absolutely not. Not least because this
 24 email, as you just pointed out, is dated 21 October.
 25 We've looked at my work log and I think the last
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1 conference I had was 4 October.

2 **Q.** Was that an accurate statement of the import of your
3 general review advice?

4 **A.** No.

5 **Q.** Was that ever discussed with you: that the review was
6 viewed by the Post Office as a weapon, a shield or
7 a sword, to resist any oversight or investigation by the
8 CCRC?

9 **A.** No.

10 **Q.** You didn't see it that way?

11 **A.** I certainly didn't see it that way and I never saw this.

12 **Q.** Can we move forwards, please, to February 2014,
13 POL00021750. Can we start on page 3, please. On
14 page 3, we should see a series of questions to you of
15 27 February 2014 from Andrew Parsons, the then senior
16 associate at Bond Dickinson. He attaches a report in
17 Mrs Brewer's case and:

18 "At the end of the report [Second Sight] draw the
19 following conclusion:

20 "Whilst we have not been able to establish a direct
21 causal link between communication line problems and the
22 losses reported, we believe that communication line
23 problems did play some part in these losses."

24 "Post Office should be grateful for your thoughts on
25 whether this type of comment is of a type that would be

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1 prepared to concede that remains to be seen."

2 Then over the page:

3 "Were they not to soften their stance and stand by
4 their conclusion then we may have a problem. You might
5 then have to think of whether there is any other expert
6 [the Post Office] might instruct who could undermine
7 [Second Sight's opinion] on this. How realistic this is
8 in practice and politically only you [will] know."

9 Then page 1, please. Foot of the page, please.
10 You're not included on this, Mr Parsons distributes this
11 advice:

12 "Please see below from Brian Altman re the comms
13 issue in the [Second Sight] report. Brian's view is
14 that the SS statement is probably disclosable to other
15 prosecuted/convicted [subpostmasters] in a similar
16 situation.

17 "My view is that we are unlikely to make [Second
18 Sight] change their opinion."

19 Next paragraph:

20 "That is not to say [the Post Office] should not
21 challenge [Second Sight's] conclusion -- we should be
22 getting [Fujitsu's] view and (assuming its strongly
23 supportive) giving it to [Second Sight] ... [Fujitsu's]
24 analysis can be deployed at mediation and may (subject
25 to Brian's further thoughts) prevent the need for

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1 disclosable in other past or future criminal cases.

2 I appreciate that this is a very broad hypothetical
3 question and that disclosures need to be considered on
4 a case-by-case basis. We are looking for a steer on
5 whether this type of general, unevicenced view could
6 ever be over the disclosure threshold."

7 If we look at your reply on page 1, page 2, scroll
8 up, you say:

9 "Dear Andy

10 "In principle the comment found in paragraph 5.1
11 would I'm afraid prima facie be disclosable in any case
12 in any case involving assertions by a defendant that
13 there was some [causal] link between ..."

14 **A.** Yes, it says "casual" it should have been "causal".

15 **Q.** Yes:

16 "... and reported losses. The fact that [Second
17 Sight's] view is unevicenced would not alter its
18 potential disclosable as such."

19 Then if we go to the bottom of the page, please, you
20 say:

21 "The best result for now would be a concession from
22 [Second Sight] that this is a conclusion that is
23 specific to this case only, and does not apply across
24 the board, unlike, for example, their conclusions in
25 their 8 July report. Whether [Second Sight] might be

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1 disclosure/mitigate the impact of the [Second Sight]
2 report in criminal proceedings."

3 When you gave your advice, you began by saying, "I'm
4 afraid that this disclosable"; why were you afraid?

5 **A.** It's just a term that I use.

6 **Q.** Were you softening your response to the Post Office by
7 using that phrase?

8 **A.** Softening my response?

9 **Q.** Yes, by saying, "Look, I'm on your side but I'm afraid
10 I've got to give you some unpalatable advice"?

11 **A.** I don't think so, it is, I'm afraid, a term I use
12 an awful lot and I just used it there -- I mean, I'm
13 very colloquial in the way I write and I suspect that's
14 all it is.

15 **Q.** You came up with ways in which the Post Office might be
16 able not to disclose this information to other convicted
17 defendants?

18 **A.** No, I don't think that's fair, actually, Mr Beer. What
19 I was saying was, before disclosure in cases that may
20 arise, that's the second paragraph, that you should, as
21 it were, hammer this out with Second Sight and find out
22 if it's an expert rather than an inexperienced opinion, and
23 see what those discussions bring. That's all I was
24 saying. I did not soften my approach to that and I did
25 not say that this should not be disclosed. I said

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1 before disclosure, in respect of any cases that may
2 arise. So in other words, I had already given the
3 advice that it was *prima facie* disclosable but that Post
4 Office were entitled to know what the issue was, whether
5 it was a matter of expertise, and whether the expertise
6 suggested by Second Sight was expert or inexperienced.
7 That's all I was saying.

8 **Q.** You said, "The best result for now would be
9 a concession"?

10 **A.** Yes.

11 **Q.** "This is case specific"?

12 **A.** Yes.

13 **Q.** Can we move on then, please.

14 Seventh topic: Mr Clarke's advice of 2 August 2013.
15 Can we look, please, at that to remind ourselves of it.
16 POL00006799. I'm not going to go to the last page,
17 because it will take too long but we know this is dated
18 2 --

19 **A.** 2 August, yeah.

20 **Q.** This was sent on to you, wasn't it?

21 **A.** I think -- I'm sure I saw it, yes.

22 **Q.** Can we look, please, at page 2, please, at paragraph 5,
23 to see the information on which Mr Clarke was basing his
24 advice.

25 **A.** Yeah.

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1 disclosure and [the Post Office's] duty to record and
2 retain material. In it, he confirmed advice he had
3 given [the Post Office] at a meeting at Head Office on
4 3 July that, '... there ought to be a single, central
5 hub, the function of which was to act as the primary
6 repository for all Horizon issues. The hub would
7 collate, from all sources into one location, all
8 Horizon-related defects, bugs, complaints, queries and
9 Fujitsu remedies, thereby providing a future expert
10 witness, and those charged with disclosure duties, with
11 recourse to a single information point where all Horizon
12 issues could be identified and considered'.

13 "The rationale behind it is to put in place
14 a mechanism to protect [the Post Office] from future
15 such issues. In the result, a weekly Wednesday
16 conference call meeting has been established to meet the
17 requirement. Attendees are expected to bring all
18 Horizon-related issues to the meeting and minutes are
19 kept. However, early teething and 'cultural' problems
20 arose as highlighted in Simon Clarke's 2 August advice,
21 and indeed to me in Harry Bowyer's response to my
22 interim review."

23 You refer there to what Mr Clarke had described
24 about an instruction to destroy or shred minutes as
25 an early teething or a cultural problem; is that how you

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1 **Q.** "After the call on the 31, the following information was
2 relayed to him, 1:

3 "The minutes of a previous conference call had been
4 typed and emailed to a number of [people].
5 An instruction was then given that those emails and
6 minutes should be and have been, destroyed: the word
7 'shredded' was conveyed to [him].

8 "Handwritten minutes were not to be typed and should
9 be forwarded to [the Post Office] Head of Security.

10 "Advice had been given to [the Post Office] which
11 [he] relayed verbatim as:

12 "'If it's not minuted it's not in the public domain
13 and therefore not disclosable.

14 "'If it's produced it's available for disclosure --
15 if not minuted then technically it's not'."

16 Then (iv), please. If we can go up, thank you.

17 "Some at [the Post Office] do not wish to minute the
18 weekly conference calls."

19 Can we look, please, at POL00006803, which is your
20 general review, and look at page 36, please, and
21 paragraph 111 at the foot of the page. Under "Other
22 initiatives", you say:

23 "I have been provided with an Advice written by
24 Simon Clarke dated 2 August [that's what we've just been
25 looking at] in which he advised on the question of

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1 saw it, a teething issue?

2 **A.** I'm not sure necessarily the teething applies to that
3 part of that advice, but the word "cultural", you'll
4 see, is in inverted commas, and I think that refers back
5 to the conference I had on 9 September 2013, where you
6 will see it referred to as "cultural", which is --

7 **Q.** Yes, Susan Crichton said there had been some cultural
8 problems.

9 **A.** Yes -- no, I think it was Simon Clarke, actually, not
10 Susan Crichton, because there is a "he" that comes
11 afterwards so it was Simon Clarke who is referring to it
12 and he also said, in that September conference, that it
13 had been overcome, and so --

14 **Q.** What were the teething problems you were referring to
15 then?

16 **A.** I can't remember but the cultural problems were
17 certainly -- I think, was it, John Scott?

18 **Q.** The Head of Security?

19 **A.** Yeah, the Head of Security who had come up with some
20 ridiculous suggestions, as you've just read out to me
21 and reminded me of in the 2 August advice. I don't know
22 what conversation we had about it during the 2 September
23 conference. I'm sure we did but I had been assured that
24 that had been overcome, I think that's the word that's
25 used, and I moved on.

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1 Q. So are you saying it that the teething and cultural
2 problems are referring to something other than the
3 destruction or shredding of minutes?
4 A. No, I think the cultural problems refers to the
5 allegation or the idea that Scott had that minutes
6 should be destroyed. I don't know if "early teething"
7 refers to the same thing or something different.
8 I think I also --
9 Q. If you look that sentence has, footnote 36" against it,
10 can you see?
11 A. Yes.
12 Q. Which --
13 A. I can't see the footnote at the moment. It is --
14 Q. Go down to --
15 A. -- paragraph 5.
16 Q. Yes, exactly, which is the paragraph I read to you.
17 A. Maybe I did refer to it in that way but that was not to
18 be dismissive of it. It was clear to me, bearing in
19 mind the date of this is 15 October, I'd been told, five
20 weeks earlier, that the problem had been overcome and
21 I may also have understood by them then that, in fact,
22 nothing had been destroyed or nothing had been shredded,
23 despite the content of paragraph 5 of Simon Clarke's
24 2 August advice, and that's why I didn't deal with it at
25 any length here.

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1 the Head of Security is suggesting that evidence should
2 be shredded is something a little more than teething,
3 isn't it?
4 A. I accept that.
5 Q. Were you made aware -- that document can come down,
6 thank you -- of any investigation that had been
7 conducted by Post Office into the allegation made
8 against Mr Scott?
9 A. I understood, as I've just said, that the issue had been
10 overcome, so I assumed there had been and he'd been
11 spoken to.
12 Q. What did you understand had happened in order to
13 overcome the issue?
14 A. I can't remember now.
15 Q. Was the essence of it that the problem had been squared
16 away?
17 A. Had been?
18 Q. Squared away?
19 A. I am not sure I understand that term, what that means,
20 squared away.
21 Q. He had been spoken to, he had apologised, he had said
22 that he wouldn't do it again, or some other form of --
23 A. I assume he'd been given words of advice that "This is
24 not what happens and it won't happen in the future".
25 But I can't remember, I'm sure there may have been

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1 Q. Was the suggestion of the shredding of evidence, made by
2 the Head of Post Office Limited's Security, Head of
3 Security, where that evidence related to bugs, errors
4 and defects in Horizon, a "teething problem"?
5 A. I'm sorry don't -- can you take me back to paragraph 5
6 of Simon Clarke's Advice, so I can just see that again?
7 Q. Exactly. POL00006799, and over the page, and it's
8 paragraph 5.
9 A. Sorry, where does it say, "Bugs, errors and defects"?
10 Q. That's what I'm asking.
11 A. Yeah. No, I mean this all dealt with -- this all
12 related to the Wednesday hub meeting.
13 Q. The purpose of which was to?
14 A. To collate issues.
15 Q. About?
16 A. Yes, of course. I get what you're saying. But I had
17 understood, all this time later, that it was
18 a proposition put forward by John Scott, which had --
19 and it had been dealt with and dealt with swiftly and
20 he'd been told, in no uncertain terms, that that would
21 not happen. I also understood that that had not
22 happened, and it had been overcome. Maybe it's an
23 unfortunate choice of a word but I didn't mean to
24 dismiss it, as I said already.
25 Q. You would agree that the words "a teething problem" when

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1 a discussion about it but I can't remember what was done
2 about it, but, as I keep on saying, I knew by
3 9 September that whatever had happened and whatever he
4 had said had been overcome.
5 Q. Did you give any consideration around October 2013 to
6 the issue of whether an instruction by the Head of
7 Security to destroy or shred recorded information
8 concerning Horizon issues fell to be disclosed?
9 A. No, I didn't.
10 Q. Can we turn to my eighth topic then, please, legal
11 advice in relation to the CCRC. Can we start by looking
12 at POL00040046. An email to you of 23 October 2013 from
13 Mr Matthews, subject "CCRC draft letter"?
14 "As I mentioned at yesterday's meeting with Chris
15 [Augar] I attach a proposed letter to the CCRC in the
16 light of the fact that you have now completed your
17 review of past/current prosecutions.
18 "Leaving aside the fact that I have drafted it to be
19 sent by Susan ... please can you review and amend it.
20 "I am not precious about my drafting ..."
21 Can we look at the attachment, please. POL00040047.
22 It's a one-page letter to the CCRC, second paragraph:
23 "I am now in a position to confirm that Brian Altman
24 [Queen's Counsel] has complete his review of [the Post
25 Office's] strategy and process for reviewing

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1 past/current prosecutions given the findings of the
2 Second Sight Interim Report ... I am now in a position
3 to give you an update.

4 "As you would expect, Mr Altman's review has been
5 thorough, leading to a detailed report, and I am pleased
6 to confirm that overall, his view is that the review is
7 fundamentally sound and he has not detected any systemic
8 or fundamental flaws in the review process, or in the
9 evidence arising from it. He has however highlighted
10 that because the review is a continuing process and [the
11 Post Office] has a continuing duty of disclosure, both
12 [the Post Office] and the external firm of solicitors
13 must be prepared to keep under review, and reconsider,
14 past [cases] and disclosure decisions.

15 "To give you detail, the process involves reviewing
16 all cases ... going back to 1 January 2010 (this being
17 the earliest date on which Horizon Online was migrated
18 into all post office branches and is a start date, which
19 Mr Altman QC considers to be logical, proportionate and
20 practicable in the light of the known circumstances) ...
21 the scheme involves [the Post Office's] solicitors
22 identifying every case within the above mentioned review
23 period in which the primary or main evidence against the
24 defendant was based on Horizon data. This is done by
25 a sift review process. Once such a case is identified

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1 ought to have been mentioned?

2 **A.** Yes, I agree.

3 **Q.** There's no reference there to the Helen Rose Report
4 either, is there?

5 **A.** Well, I'll take it from you, there is a reference to the
6 Second Sight Interim Report but not to that, no.

7 **Q.** Do you know why that is?

8 **A.** I've no idea.

9 **Q.** Was the impression ever conveyed to you that, in
10 relation to the Helen Rose Report, from the Post
11 Office's perspective, the least said is the soonest
12 mended?

13 **A.** No.

14 **MR BEER:** Sir, can we take our afternoon break there,
15 please, until 3.00.

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

17 **MR BEER:** Thank you very much, sir.

18 (2.49 pm)

(A short break)

20 (3.00 pm)

21 **MR BEER:** Good afternoon, sir. Can we continue, Mr Altman,
22 by looking at the disclosure to the CCRC issue which is
23 my eighth and last topic.

24 Can we turn to 2014 and look at POL00124350. This
25 is a letter dated 5 June 2014 to the CCRC, if we go over

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1 in-house, senior in-house prosecutors at the solicitors
2 carry out a full case review to determine the question
3 'Had [the Post Office] been possessed of the material
4 contained within the Second Sight Interim Report during
5 the currency of any particular prosecution should/would
6 Post Office have been required to disclose some or all
7 of that material to the defence?'"

8 Then there are some statistics to be set out.

9 Would you agree that the description of your review
10 is very much put at its highest there and lacks all of
11 the caveats which you yourself placed on the Post Office
12 review of its continuing disclosure duties?

13 **A.** Well, it doesn't set them all out. I agree with that,
14 and it does tend to put it at its highest, or at least
15 is an attempt at a summary.

16 **Q.** Of course, there is no mention about the concern over
17 the integrity of Mr Jenkins' evidence?

18 **A.** No. I can speculate why. But I suspect because Gavin
19 felt that this was a letter that was going to CCRC about
20 historic cases but I also -- in other words, that Gareth
21 Jenkins' taint, going forwards, that he would not be
22 used was not in this letter but I take the point if, by
23 it, you mean it should also have referred to that fact.

24 **Q.** This was the occasion, this might be the sixth case
25 I have asked you about it, in which that very issue

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1 the page, please. We can see it's signed off by Chris
2 Aujard and, if we go up the page to page 1, please, he
3 says to the CCRC -- in the first paragraph, some
4 apologies over the lack of an update. Second paragraph:

5 "I confirm that Brian Altman QC complete his review
6 of [the Post Office's] strategy and process for
7 reviewing past/current prosecutions, given the findings
8 of the Second Sight Interim Report to which Susan
9 Crichton referred in her letter to you dated 26 July
10 2013."

11 That's the draft which we've just looked at:

12 "As you would expect, Mr Altman's review was
13 thorough, leading to a detailed report, and I am pleased
14 to confirm that, overall, his view was that the review
15 was fundamentally sound and he did not detect any
16 systemic or significant flaws in the review process, or
17 in the evidence arising from it. He did however
18 highlight that because [the Post Office] has
19 a continuing duty of disclosure, both [the Post Office]
20 and the external firm of solicitors with vast experience
21 of managing and prosecuting these cases, must remain
22 prepared to keep under review, and reconsider, past case
23 reviews and disclosure decisions.

24 "To give you some detail, the process involved
25 reviewing all cases going back to 1 January 2010

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1 [et cetera]. Essentially the scheme involved Post
2 Office solicitors identifying every case within the
3 above mentioned review period in which the primary or
4 main evidence against the defendant was based on Horizon
5 data, and also included those cases involving suggested
6 problems with Horizon training or support. This was
7 done by rigorous sift review process."

8 Then an escalation to senior counsel.

9 Then over the page, please.

10 "[This] involved [the Post Office's] external
11 solicitors carrying out a sift of 308 [cases], a second
12 sift of 229 cases, a full review of 53 (in which
13 disclosure was advised in 26), and the discontinuance of
14 4 cases.

15 "I can confirm that since the publication of the
16 Second Sight Interim Report and despite [the Post
17 Office's] thorough review it has not received any
18 application for permission to appeal ..."

19 Were you aware that the Post Office intended to pray
20 in aid your position with the CCRC when it was writing
21 to them like this?

22 A. When you say my position, by which you mean?

23 Q. le the conclusions of your general review.

24 A. I don't know what I knew, I can't say now, at this
25 distance in time, whether I saw this letter at the time

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1 Q. 5 June, I'm so sorry, we have just read. Then there's
2 some standard text.

3 It is considering situation regarding the Horizon
4 system and the associated criminal proceedings:

5 "The Commission requires you to identify all
6 documents and materials in your possession relating to
7 this matter and to produce them, specifically the
8 commission requests a copy of Brian Altman QC's report."

9 Yes?

10 It encloses a notice under section 17 of the CAA95
11 requiring the Post Office to do this. Do you remember
12 this development?

13 A. I'm sure I must have done.

14 Q. Do you remember there was a conference in chambers with
15 you at the end of January 2015 to discuss the CCRC's
16 request for a copy of your general review?

17 A. Yes, I'm fairly confident that must have happened.

18 Q. Can we look, please, at POL00151181. This is the reply
19 to that letter and, it seems, a chase call on the 27th:

20 "The Post Office has had the opportunity to consider
21 fully the letter ..."

22 Then scroll down. The author notes that the
23 commission is now considering -- this is Jane MacLeod,
24 incidentally, the author of this letter, the then
25 General Counsel:

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1 or not.

2 Q. That is what I was going to ask, were you given the
3 opportunity to input into this, to the letter that was
4 eventually sent on 5 June 2014?

5 A. I really can't say one way or the other.

6 Q. So you can't help us whether the description of your
7 conclusions here, which again lack some of the caveats
8 that we've seen in your general review --

9 A. Yeah.

10 Q. -- was something which you had the opportunity to point
11 out?

12 A. I can't but, not to be unkind to Mr Aujard, if you look
13 at the final paragraph "I appreciate that the above is
14 a short *précis* of a very extensive procedure and should
15 you have any further questions, don't hesitate to
16 contact" -- I mean, he left open to the CCRC to come
17 back with further questions, I suppose, is all that can
18 be said.

19 Q. So if we go to POL00150847, thank you, this is the
20 CCRC's letter of 14 January and, if we scroll down, it's
21 a "Requirement to Produce Materials":

22 "I write in relation to ongoing correspondence ...
23 Your most recent letter was dated 5 [July] ..."

24 That's what we just read.

25 A. 5 June.

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1 "The commission is now considering the situation and
2 notes that the letter and notice specifically requests
3 a copy of Brian Altman QC's report.

4 "Background

5 "We trust you will appreciate that the request you
6 make is (with respect) wide and in the most general of
7 terms, notwithstanding the specific request for Brian
8 Altman QC's report. I have reviewed the previous
9 correspondence ... I summarise that correspondence as
10 follows ..."

11 Then she summarises some correspondence. Then if we
12 go over the page, please, and scroll down, and then
13 under "POL's position":

14 "Having considered the position more fully against
15 this background, I am unfortunately currently unable to
16 see how the request you make fits within the guidance of
17 paragraphs 4-6 of the commission's 'Formal memorandum --
18 the commission's power to obtain material from public
19 bodies under section 17 of the Act'.

20 "This is especially so, given that Mr Altman's
21 report does not address individual cases but rather [the
22 Post Office's] strategy for reviewing past and current
23 prosecutions generally. [The Post Office] continues to
24 assert that LPP attaches to Mr Altman's report, whilst
25 remaining aware of its duty under section 17.

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1 "Further, the position on individual cases remains
2 that, in respect of the cases which it has prosecuted,
3 it has not been made aware, since the publication of the
4 Second Sight Report, of any applications having been
5 made for leave to appeal ..."

6 Then the rest of it concerns -- oh, there's
7 a sentence which says:

8 "Post Office nonetheless wishes to emphasise that it
9 wants to and will work with the commission."

10 Was it the conclusion of the conference that you had
11 at the end of January that the Post Office should
12 maintain or assert privilege in respect of your general
13 review?

14 **A.** I can't remember what happened in the course of that
15 conference but, undoubtedly, the general review was
16 legally privileged but, of course, that didn't
17 disentitle of the commission from having sight of it.

18 **Q.** No. Did you form a view at the time that the Post
19 Office was, on the one hand, praying in aid your
20 conclusions in correspondence with the CCRC and, with
21 the other, saying "You're not entitled to see those
22 conclusions"?

23 **A.** No. I mean, first point, as you've demonstrated, yes.
24 Second point, no. I think all that this letter
25 demonstrates is that Post Office wanted to be absolutely

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1 **Q.** Can we move on, please, to POL002235559.

2 **SIR WYN WILLIAMS:** Whilst that's happening, I take it from
3 an earlier answer, Mr Altman, that, despite this letter,
4 shortly thereafter, your report was disclosed to the
5 CCRC?

6 **A.** Yes, 27 February 2015.

7 **SIR WYN WILLIAMS:** Yes.

8 **MR BEER:** Cross-reference for that, sir, is POL00151296, for
9 the transcript.

10 **SIR WYN WILLIAMS:** Yes.

11 **MR BEER:** 27 February 2015.

12 This is an agenda for a conference with you on
13 27 March 2015, within a project or operation Sparrow; do
14 you see the heading there?

15 **A.** Yes.

16 **Q.** You're one of the people to whom this agenda is
17 distributed, "Please find below agenda ... at Finsbury
18 Dials". Then topic 4:

19 "Approach to/obtaining comfort from pre-1 January
20 2010 prosecutions."

21 Do you remember a conference in which the Post
22 Office wished to obtain comfort in relation to
23 pre-1 January 2010 prosecutions?

24 **A.** I'm afraid I don't even remember this conference, let
25 alone the agenda and I can only speculate what point 4

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1 clear on what basis my review was going to be disclosed
2 to them under the notice.

3 **Q.** It doesn't say that, though, does it? It doesn't say,
4 "We need clarity as to the basis on which" --

5 **A.** Oh, I think it does, because if you go back to the
6 previous page at the bottom, isn't Jane MacLeod talking
7 about the memorandum and, if my memory serves me,
8 doesn't the memorandum say that the commission can only
9 ask for, or issue, a notice in relation to specific
10 cases, rather than the sort of generic notice? I think
11 that's all that was being said here.

12 **Q.** So why was the Post Office deploying your advice at all,
13 then, to the CCRC?

14 **A.** Well, that I can't answer.

15 **Q.** I think, by 2015, it's right, isn't it, that you had
16 taken a different position to that of Cartwright King on
17 a number of matters?

18 **A.** I would have or I did?

19 **Q.** You did: you had taken a different position to them on
20 a number of matters?

21 **A.** I think so, yes.

22 **Q.** Were you aware of whether or not, by this time, the CCRC
23 had been sent a copy of the Clarke Advice of July 2013?

24 **A.** Well, we know now that they never were. Your question
25 is more focused as to whether, by that time -- I didn't.

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1 was about but, looking --

2 **Q.** Can you help us?

3 **A.** It's pure speculation but, looking at the date, 26 March
4 2015, bearing in mind that my general review was at the
5 back end of -- or the autumn of 2013, we're talking
6 about 18 months on from there and, as far as I know,
7 nothing had changed in terms of information. It may be,
8 I don't know, that the CCRC had asked questions about
9 the cut-off date, 1 January, and maybe I was being asked
10 to advise whether it was still appropriate and
11 proportionate and all the rest of it but, to my mind, my
12 knowledge of bugs did not change. In fact, it didn't
13 change until the Horizon Issues trial. So that's my
14 speculation.

15 **Q.** Can we look, lastly, then please at what might be
16 a handwritten note of the conference?

17 **A.** All right.

18 **Q.** POL00155545. Can you see a date in the top right-hand
19 corner of 27 March 2015 --

20 **A.** Yeah.

21 **Q.** -- which corresponds with the date set out on that
22 agenda.

23 **A.** Yeah, and whose note is this?

24 **Q.** I don't think we know.

25 **A.** Oh.

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1 Q. It looks similar to some writing that we've seen
 2 elsewhere but I'm not going to turn myself into
 3 a handwriting expert.

4 A. No.

5 Q. Can we see two-thirds of the way down the page, please,
 6 if you just pan out, please -- yes, sorry, it's about
 7 halfway down the page, next to "CCRC":
 8 "CCRC sets out statement of reasons, goes to Court
 9 of Appeal, defendant has own representation."
 10 Does that sound like the kind of thing you might
 11 have summarised in a conference about the process?

12 A. Yes, if I'd been asked about the process, to remind
 13 them, I would have said this --

14 Q. Then "Court of Appeal miscarriage because error in
 15 conduct, judge made error, new evidence point of law."
 16 I should have said "misdirection/ruling" against
 17 "judge made error". So a summary of some of the grounds
 18 on which an appeal might be contemplated or even
 19 allowed.

20 A. Yes.

21 Q. Then scroll down, please. Underneath the two horizontal
 22 lines:
 23 "Look at "Horizon -- sufficiently reliable?"
 24 "If not, what happened in particular case?"
 25 Can you help us as to whether that was you speaking

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1 Horizon -- sufficiently reliable?", was there any
 2 discussion in March 2015, to which you were a party,
 3 over whether or not the Post Office needed to look again
 4 at whether Horizon was sufficiently reliable?

5 A. Just basing myself on the history of my instruction and,
 6 obviously, you understand that I wasn't working on Post
 7 Office every day of every week, far from it. In some
 8 years, I popped up for individual instruction and then
 9 went away for weeks or months, obviously doing other
 10 work and other professional commitments. So, to answer
 11 your question, "Look at Horizon -- sufficiently
 12 reliable? If not, what happened in the particular
 13 case?" I cannot remember, after March 2015, until I was
 14 asked to do a further review in 2016, other than I'm
 15 sure the odd email, possibly a conference, that anything
 16 of any substance of that nature was ever put my way.

17 MR BEER: Thank you.
 18 Thank you, Mr Altman, for answering my questions.

19 THE WITNESS: Thank you, Mr Beer.

20 MR BEER: Sir, I think there are three Core Participants who
 21 wish to ask questions in the order of Mr Stein,
 22 Ms Patrick and then Mr Henry.

23 SIR WYN WILLIAMS: Right. Is approximately 15 minutes each
 24 sufficient for them, Mr Beer?

25 MR BEER: Absolutely. In particular because Mr Stein said

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1 and, if so, what you might have been saying?

2 A. Can we just zoom back out so I can see the whole page?

3 Q. Yes.

4 A. Because I'm just questioning, I don't know, if you look
 5 at the style of the note it begins with arrowed bullet
 6 points and then, as you point out, it's got the two
 7 horizontal lines and then two points, (1) and (2). So,
 8 if we assume this note is still part of the same
 9 conference note of 27 March and if we assume that this
 10 was me asking questions, then I think the answer to your
 11 question, Mr Beer, is in the words which are written
 12 there, if that makes sense.

13 Q. Okay, if we scroll down a little further, please --
 14 sorry, up, up, up -- at the foot of the first page in
 15 capital letters:
 16 "This is what we've got. It's not everything."
 17 Can you help us with any context in which that might
 18 have been discussed?

19 A. Really not. I wonder if the document handler would
 20 kindly zoom out again, so I can see where it fits on the
 21 page but I'm not even sure if this is not a note to
 22 self, by the --

23 Q. By the author?

24 A. -- by the author.

25 Q. The passage under the two horizontal lines "Look at

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1 he would be 10 or 12 minutes.

2 SIR WYN WILLIAMS: Right.

3 MR HENRY: I thought I was going to be 20. I told Mr Beer
 4 that. I hope you could forgive me, if I'm given 15
 5 I might go to 20 because I have a bit of material to put
 6 to Mr Altman.

7 SIR WYN WILLIAMS: All right, we'll see how we go.
 8 Mr Stein, let's see how accurate you can be.

9 MR STEIN: Yes, sir, thank you.

10 **Questioned by MR STEIN**

11 MR STEIN: Mr Altman, can we just help everybody understand
 12 what it means by being Senior Treasury Counsel and First
 13 Treasury Counsel. Now, these are terms that we're all
 14 used to, those of us that practice in criminal law.
 15 Senior Treasury Counsel, your work is engaged with
 16 reviewing, both pre -- that's before -- and after
 17 charge, serious cases that are brought to you; is that
 18 fair?

19 A. It can include that work.

20 Q. Yeah, and it includes advising on such cases that are
 21 brought to you, so that you can advise in relation to
 22 the way investigations are being conducted and
 23 thereafter investigations continue once an individual is
 24 charged; is that right?

25 A. Yes, it can include that.

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1 Q. Yes, and the work that you've done in that role, as
 2 Senior Treasury Counsel then First Senior Treasury
 3 Counsel, would have included the most serious of cases
 4 that are prosecuted or considered for prosecution within
 5 England and Wales; is that right?
 6 A. Yes.
 7 Q. Okay. You would have been used to advising on sensitive
 8 cases, in other words cases that carry issues that
 9 relate to the different types of police services; is
 10 that also correct?
 11 A. By which you mean?
 12 Q. Well, sensitive issues that relate to matters that might
 13 be covered by PII?
 14 A. Yes.
 15 Q. Yes? You're trusted to consider those cases, those most
 16 serious of cases, and give advice as to their progress,
 17 yes?
 18 A. Yes.
 19 Q. All right. So, simply put, you're used to dealing with
 20 serious, complex, big cases and advising as to what you
 21 believe should happen and what would be the right thing
 22 to do?
 23 A. Yes.
 24 Q. Okay. Now, just help us a little bit more. Your
 25 position is set out somewhat by some quotes from

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1 position, in other words you didn't set out that you're
 2 following the ethical guidance for advocates within the
 3 CPS. You didn't reference to that as an example, did
 4 you?
 5 A. I don't think that was the question I was asked.
 6 I think the question I was asked was, whether because
 7 I was acting for a commercial organisation, I was
 8 following the same ethics. He did not ask me, as
 9 I recall it, whether that was or should have been set
 10 out in my general review or any of the advisory work.
 11 Q. Well, I'm sure Mr Beer would apologise for not asking
 12 that direct question but help us please understand what
 13 ethical guide were you following when advising the Post
 14 Office?
 15 A. Well, the same ethics I've always employed, Mr Stein.
 16 Q. What, as someone that is a prosecutor, that guidance, or
 17 as a member of the Bar, which?
 18 A. Well, both.
 19 Q. Right. Now, you used the term "minister of justice".
 20 That's perhaps a short form way of describing the
 21 ethical standpoint of a prosecutor; is that fair?
 22 A. But it was targeted, in this particular case, at the
 23 Post Office as a private prosecutor.
 24 Q. Right. Does that mean that your advice was any
 25 different, do you think, to POL as a private prosecutor

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1 various, I think, directories that deal with barristers
 2 and some of those quotes are set out in your website.
 3 You're described as being "one of the greats at the
 4 Bar". That's one of the quotes, do you remember that?
 5 A. Well, somebody has said that of me in a testimonial on
 6 the website, yes, that's right --
 7 Q. Yes, on the website for chambers.
 8 A. Yes.
 9 Q. It also describes you as being a "brilliant operator"?
 10 A. Yes.
 11 Q. That's also on the website for chambers. Now, let's
 12 then turn to how that helps us understand what happened
 13 here. Now, the Crown Prosecution Service is
 14 an organisation that considers and engages in the
 15 prosecution of serious cases where people may go to
 16 prison; do you agree?
 17 A. Yes.
 18 Q. The Post Office at the time that you were first
 19 instructed was also an organisation that engaged in the
 20 consideration of and prosecution of serious cases
 21 whereby individuals may go to prison?
 22 A. Yeah.
 23 Q. Yes. You've described, in the evidence that you've
 24 given to Mr Beer, that you didn't address your mind in
 25 any of your advices or your review to your ethical

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1 versus, say, the CPS if you've been asked to look at
 2 similar things?
 3 A. I don't think so, no.
 4 Q. Right. So you applied the same ethical standards to the
 5 work that you did for the Post Office as you would have
 6 done for the CPS?
 7 A. I'd like to think so, yes.
 8 Q. Well, did you?
 9 A. I'd like to think so, Mr Stein, yes.
 10 Q. Well, you've had plenty of time to reflect upon this
 11 question. Did you apply the same ethical standards --
 12 A. Yes.
 13 Q. -- to the work you carried out for the Post Office --
 14 A. Yes, Mr Stein.
 15 Q. -- as you would have had done for the CPS?
 16 A. Yes, Mr Stein.
 17 Q. You applied the same professional standards, in other
 18 words professional standards of competence, to the work
 19 you did for the Post Office as you would have done for
 20 the CPS?
 21 A. Yes.
 22 Q. Is that also the same?
 23 A. Yes.
 24 Q. Okay. Now, what's your first duty as a barrister?
 25 A. Well, there are many core duties as a barrister.

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1 Q. Yes. What would you say your first duty is? What,
2 generally speaking, do most barristers say is their
3 first duty?
4 A. Integrity, independence, doing the best for your client.
5 Q. What about duty to the court?
6 A. Of course.
7 Q. Of course. How far do you rank that? Do you say that's
8 your first duty or does that come somehow second after
9 a client, as an example?
10 A. No.
11 Q. Right. So where you've got an issue that relates to
12 your duty to the court versus your duty, in this case,
13 to the Post Office, which goes first?
14 A. Well, the duty to the court is the duty that you have
15 when you are an advocate and I was not an advocate for
16 Post Office until I appeared in the criminal appeals.
17 The duty to the court is not to mislead the court. The
18 duty here, which I am talking about -- and these are
19 other core duties -- are integrity and independence, and
20 the other core duties which appear in the BSB Handbook.
21 Q. I thought we'd gone through these questions that related
22 to your ethical approach to matters for the Post Office
23 and I thought you'd agreed that you were carrying out --
24 A. You're putting to me, Mr Stein, what the hierarchy is.
25 The duty to the court can't apply until you're in court

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1 about what you did about that. Did you, as an example,
2 suggest in your advices, that the Post Office really
3 needs to rectify this misleading of a court? Did you do
4 that?
5 A. What do you mean by "rectify"?
6 Q. Well, go to the court and say, "This is what's happened,
7 this I what we believe has occurred. Mr Jenkins has
8 misled the court".
9 A. No.
10 Q. Did you advise that --
11 A. No, you know I didn't, Mr Stein.
12 Q. Right. So we get to the point, is this correct,
13 Mr Altman, that you knew that had happened, but you
14 decided not to try to rectify the misleading problem?
15 A. No.
16 Q. Is that correct?
17 A. No.
18 Q. Well, help us understand, Mr Altman --
19 A. Well, will you let me give an answer, please, Mr Stein.
20 Q. I did. You said, "No". So help us understand what you
21 did about that problem?
22 A. The evidence I have given is I did not apply my mind at
23 the time to revealing or disclosing or advising on
24 disclosure of the taint by Gareth Jenkins for the
25 reasons I've given. What you're suggesting is I applied

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1 and I wasn't in court on behalf of the Post Office until
2 I appeared in the criminal appeals.
3 Q. Right. Well, let's think about how that worked out in
4 practice. We've got the position that's set out by
5 Mr Clarke as regards Gareth Jenkins and that you
6 summarise in your statement at -- I think it is
7 paragraph 26(5), page 13 of your statement. That should
8 be on the screen or I'll deal with it directly. You're
9 addressing the questions that arise in Mr Clarke's legal
10 advice, and you put it this way:
11 "Why Mr Jenkins had failed to reveal in his witness
12 statements or evidence the bugs or defects he knew about
13 was not a matter for my review."
14 Okay, that's what you are saying there.
15 A. Yes.
16 Q. So you're saying there and accepting in evidence, as we
17 understand it, that you were of the view that Mr Jenkins
18 had failed to set out all he knew about bugs and defects
19 in his statements and in his oral evidence, yes?
20 A. Yeah.
21 Q. Right. Okay. So you accept that Mr Jenkins, on the
22 basis of that understanding, had misled the court; do
23 you agree?
24 A. He had, yes.
25 Q. Yes, okay. Help us understand a little bit, therefore,

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1 my mind and made positive decisions or negative
2 decisions but I didn't. You won't find a single word
3 unhappily about it in the general review.
4 Q. You say unhappily because you recognise, obviously,
5 something should have been done; is that fair?
6 A. Yes, I've conceded and I've accepted on several
7 occasions, when Mr Beer asked me the question, that what
8 I should have done is I should have advised
9 consideration of the disclosure of the fact that Gareth
10 Jenkins was tainted and that his assessment -- or the
11 assessment of him as an expert by Cartwright King and me
12 was disclosable and should have been disclosed in
13 suitable cases.
14 Q. Mr Altman, what would you have done if the situation had
15 been that you were working as Senior Treasury Counsel,
16 advising the CPS and within an investigation that's
17 brought to you, the police officers tell you "Look,
18 we've got this expert, we've used him in the past, we're
19 thinking about using him this time but actually it turns
20 out that we think he's bent, and the reason why we think
21 he's bent is we think he's frankly not told the court
22 the truth in the past". What would you that have done
23 in that situation, advising the CPS about that expert?
24 A. Well, I mean, with the sort of clarity of the question
25 that you have just posed to me, Mr Stein, I would have

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1 said, "We can't use him", and what is the CPS doing
 2 about past cases?
 3 **Q.** Yes, and what about, perhaps, an investigation into that
 4 particular expert, that person that has provided that
 5 evidence to the court; what would you have said about
 6 that, Mr Altman?
 7 **A.** I don't know. I'd need to understand what the specifics
 8 were in the actual case.
 9 **Q.** Well, let's make it simple, Mr Altman, the situation as
 10 you had here, arising in a CPS case, you would have said
 11 "This needs to be looked at with care and investigated";
 12 do you agree?
 13 **A.** Well, I would have certainly gone to the CPS and say,
 14 "Frankly", I would have said, "you deal with this. You
 15 need to look at what's happened. You need to turn out
 16 all the cases he's been involved in". If you're talking
 17 about a police investigation or an internal
 18 investigation, I'm not entirely sure, but it might have
 19 come to the same thing.
 20 **Q.** But you didn't do that here?
 21 **A.** No, I didn't and I --
 22 **SIR WYN WILLIAMS:** All right. I think we've actually
 23 established that many hours ago now and, Mr Stein, your
 24 time is running out, so to speak.
 25 **MR STEIN:** I recognise the clock and the sands are going
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1 I realised that I hadn't said it, in recent weeks, I was
 2 flabbergasted and I can't understand, putting myself
 3 back, all of those years, why I didn't but I didn't.
 4 And so it was a mistake, it was a genuine mistake
 5 but any inference that anyone chooses to draw that
 6 I made a conscious decision not to do it is wrong and
 7 it's also wrong because the CCRC had the general review
 8 in February 2015. That's not mitigation and I'm not
 9 making an excuse. But I make mistakes like everybody
 10 else, I'm not perfect and I did my best with the
 11 resources I had here. I didn't have prosecuting
 12 authority like the CPS or the SFO around me to help me
 13 in the decision making.
 14 **Q.** So you say a failure of duty only applies if you make
 15 a positive decision to either look at something and then
 16 not consider it?
 17 **A.** No --
 18 **Q.** What about just simply failing to do something,
 19 Mr Altman?
 20 **A.** No, I think in -- well, no, you can't -- you can fail in
 21 your duty but the duty sometimes has to have
 22 a motivation or intention behind it and I think you're
 23 imputing that to me. That's my take on your questions
 24 to me, and there was none.
 25 **Q.** Okay, let's move on as I have very little time left,
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1 through.
 2 We have recognised that and you've explained that
 3 you're frankly tired of people asking you these
 4 questions --
 5 **A.** No, I haven't said that, Mr Stein. No, I haven't said
 6 that, Mr Stein. I have made my position perfectly clear
 7 every time that Mr Beer has asked me --
 8 **Q.** Why, didn't you? Do you now, after all of this time,
 9 have any reason that you can give why someone who
 10 appears, on the face of it, to have straight misled the
 11 court, you did nothing about it? In other words, you
 12 allowed it to continue; can you explain it?
 13 **A.** No, I didn't allow anything to continue. I'm human,
 14 like the rest of us, Mr Stein. Probably including you
 15 and I make mistakes and we all make mistakes and, as
 16 I said earlier, I would like to say was misjudgement.
 17 I don't think I made the judgement about it, it passed
 18 me by, I don't know why I didn't see it. It's
 19 regrettable and I regret that I didn't.
 20 **Q.** Was it a failure of duty?
 21 **A.** No, absolutely not, because a failure of duty imports
 22 a positive conscious decision not to do something. My
 23 point is, the general review contained 50-odd pages of
 24 just about every thought I had and I record everything,
 25 and the fact, actually, when I came to look at this and
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1 indeed if any at all.
 2 You've directed yourself to the question which is
 3 you've learnt matters that arose in the High Court,
 4 because you were asked to review the High Court
 5 decisions, and you learnt then that the Post Office had,
 6 within the organisation, awareness of, as an example,
 7 the mismatch bug in 2010. That's one of the things you
 8 learned, okay?
 9 You then went on to prosecute matters in the Court
 10 of Appeal --
 11 **A.** I responded to matters in the Court of Appeal.
 12 **Q.** You then went on to respond to matters in the Court of
 13 Appeal, on behalf of the Post Office; do you agree?
 14 **A.** Yes.
 15 **Q.** Okay. So by the time it got to the Court of Appeal
 16 stage, you must have said to yourself, "Well, the Post
 17 Office appears to have known certain information --
 18 mismatch bug, remote access", that they didn't tell you
 19 about when you conducted your review; do you agree?
 20 **A.** That follows.
 21 **Q.** Right, okay. Did you address your mind to the fact
 22 that, therefore, you were also someone that had been
 23 misled by the Post Office, that they had failed in
 24 disclosing material to you? Did you turn your mind to
 25 that?
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1 A. I think it was implicit in the fact that everything
 2 I read in the Horizon Issues judgment suggested that
 3 there were bugs errors and defects which had never been
 4 brought to my attention.
 5 Q. Were you not a witness Mr Altman --
 6 A. No.
 7 Q. Can I finish the question?
 8 A. Yes, you finish.
 9 Q. Were you not therefore a witness, based on what you've
 10 just agreed, to those failures of disclosure to you,
 11 others words someone that could testify to the fact that
 12 here is the Post Office instructing Senior Treasury
 13 Counsel, ex-senior Treasury Counsel on serious matters
 14 requiring serious reviews and yet they hadn't told you
 15 the truth?
 16 A. I was never a witness, I was never likely to be
 17 a witness, for the simple reason, Mr Stein, that the
 18 Court of Appeal was looking at abuse of process at the
 19 time of the prosecutions and the convictions and not
 20 afterwards.
 21 Q. There was decision made in relation to the response, as
 22 you put it, by the Post Office to those appeals that
 23 a consideration was given to essentially looking at the
 24 evidence that related to the period up until 2013, the
 25 end of the prosecutions conducted by POL?

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1 question would fall to be answered by reference to
 2 decisions made post-February 2020. The significance of
 3 the date of February 2020, is that the --

4 **SIR WYN WILLIAMS:** I've got it.

5 **MR STEIN:** I understand.

6 **SIR WYN WILLIAMS:** It relates to the extent of the waiver of
 7 privilege, doesn't it?

8 **MR STEIN:** I know, that's why I was asking questions about
 9 whether Mr Altman considered, rather than whether he
 10 discussed it with his team.

11 **SIR WYN WILLIAMS:** Anyway, I think, on any view of it,
 12 you've had a very generous 15 minutes, Mr Stein.

13 **MR STEIN:** Thank you, sir.

14 **SIR WYN WILLIAMS:** So we are going to call it a day at that
 15 point.

16 **MR STEIN:** Yes, sir.

17 **MR BEER:** Thank you, sir.

18 **SIR WYN WILLIAMS:** Ms Patrick, you have until 3.55, which
 19 gives you a very generous 15 minutes.

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

21 **Questioned by MS PATRICK**

22 **MS PATRICK:** Mr Altman, my name is Angela Patrick. I act
 23 with Huggells Solicitors and Mr Moloney KC for number of
 24 subpostmasters who were convicted and have since had
 25 their convictions quashed.

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1 A. That's not right. That's not right --
 2 Q. Okay, well you correct me then.
 3 A. You're ignoring the Disclosure Management Document which
 4 is dated August 2020, in which it was made perfectly
 5 clear, in paragraph 5, what the relevant period was,
 6 that was updated by the Addendum Disclosure Management
 7 Document of 11 January 2021, paragraphs 19 through to
 8 21, which describe in absolute detail why the relevant
 9 period was picked and, as you know, Mr Stein, because
 10 you were involved in the appeals, the Court of Appeal
 11 agreed.
 12 Q. The decision making in relation to it taking up to 2013,
 13 as being generally the period of time to consider for
 14 disclosure -- not entirely, but generally -- that
 15 excluded all of the work that you did that followed
 16 2013, the reviews you did at the High Court, what you
 17 did or didn't know, potentially, that was provided to
 18 the High Court, the other advice and work that you had
 19 done for the Post Office, didn't it?
 20 A. Well, if you're saying that that was a deliberate
 21 decision, you're absolutely wrong.
 22 Q. I'm asking whether it excluded it and then I'm going to
 23 ask you whether that was considered by you as being
 24 a defect in looking at the time period.
 25 **MR BEER:** Sorry to interrupt, I think the answer to that

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1 I'd like to look at one issue and you've referred to
 2 advices after the general review. I'd look at the 2016
 3 post-swift Review advice and I really any want to look
 4 at, as one example, the review of Mrs Hamilton's case.
 5 You see Mrs Hamilton sits next to me today.

6 A. Yes.

7 Q. So if we could turn to POL00022854, please. You can see
 8 there on page 1, it's headed, "Review of Post Office
 9 Limited Criminal Prosecutions". Just to start with,
 10 this was not full independent review of all criminal
 11 prosecutions, was it?

12 A. Oh, no. No. These were cases selected for me by Post
 13 Office.

14 Q. I think I can help further, if we scroll to the bottom
 15 of the page at paragraph 3, you can see it yourself now,
 16 it's on screen, but just very briefly, the instruction
 17 was limited only to the question whether, in the limited
 18 number of prosecutions you were asked to look at,
 19 whether POL had acted properly in charging both false
 20 accounting and theft?

21 A. Yes, this arose from the earlier Swift Review.

22 Q. Yes, and if we can look very briefly -- I'm conscious of
 23 time -- at page 28, we see your conclusion on
 24 Mrs Hamilton's case file. We see there:

25 "While it cannot be said on the material I have seen

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1 in this case that the count of theft was charged and
 2 indicted solely (and improperly) to influence or
 3 encourage guilty pleas to the counts of false
 4 accounting, at the stage at which Mrs Hamilton had
 5 indicated she would plead guilty to the false accounting
 6 charges, the condition of repayment in return for the
 7 dropping of the count of theft, in my view, could lend
 8 itself to the possible, unfortunate allegation that what
 9 occurred provides evidence of the manipulation by the
 10 prosecution of the criminal process by securing the
 11 repayment of its losses through the criminal process, in
 12 particular, by the charging of theft."

13 Sorry, that took a little while to read out but
 14 I thought for the transcript it's important to know
 15 there we're starting. If we could look now -- sorry,
 16 I apologise.

17 If we look now, there are some other explanations
 18 earlier in your advice for the basis of your approach.
 19 So if we could go to page 27 -- sorry, page 8,
 20 paragraph 27, please, you'll see there about arguments
 21 to resist the allegation that was improper to charge
 22 alternative offences, and you deal with:

23 "... the defendant was able to challenge the
 24 sufficiency of the evidence said to underlie the theft
 25 charge, and if so advised, to seek its dismissal;

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1 that the Post Office had complied with its obligations
 2 on disclosure in the face of defence requests?
 3 Essentially, were you assuming that the Post Office had
 4 done its job properly when it was asked for disclosure
 5 by the defence?

6 **A.** At the time of prosecution, you mean?

7 **Q.** Indeed, and at the time in 2016, when you were being
 8 asked to look again at some of these cases?

9 **A.** Well, I think I must have been, yeah.

10 **Q.** Can you recall whether, at that point, in 2016, your
 11 confidence in being able to take that kind of assumption
 12 may have been impacted by what you knew by 2016,
 13 including the issues which had led to your original
 14 instruction?

15 **A.** Forgive me. Ask me that again, please, Ms Patrick.

16 **Q.** Was your confidence in any assumption about what POL
 17 might have done in respect of its disclosure duties
 18 impacted by what you knew in 2016, including the issues
 19 that led to your original instruction?

20 **A.** This review was not about bugs, errors and defects.
 21 This review, as you know, was for a particular purpose.

22 It was -- actually, it led on from what Mr Beer was
 23 asking me about before, Second Sight's --

24 **Q.** Indeed, and I think we clarified that at the start.

25 **A.** Yes, well, the point is that the disclosure decisions in

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1 indeed, it was open to the defendant to contest all
 2 charges and seek to make a submission of no case to
 3 answer ... if so advised the defendant could, through
 4 his advisers, seek disclosure, which might reasonably
 5 assist his case ... finally, it is the defendant's
 6 decision to plead guilty to a charge", and so on.

7 **A.** Sorry, forgive me, Ms Patrick, is this in relation to
 8 Mrs Hamilton or this just --

9 **Q.** This is the general approach?

10 **A.** The general, yes, thank you.

11 **Q.** I just want to say there, you're emphasising there in
 12 paragraph 27 the role of the defence and the ability of
 13 the defence to seek disclosure. By this time in 2016,
 14 just to be absolutely clear, you had not been asked to
 15 look at how the Post Office typically responded to
 16 defence requests for disclosure of material relevant to
 17 bugs, errors or defects in Horizon?

18 **A.** Generally, no.

19 **Q.** Thank you. Did your advice proceed on an assumption
 20 that the Post Office had complied with all of its
 21 obligations on disclosure in the face of any defence
 22 request?

23 **A.** Sorry, can you ask me that again?

24 **Q.** Sorry, I think I may be trying to go too quickly,
 25 I apologise. Did you advice proceed on the assumption

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1 the individual cases I was asked to look at did not
 2 cover bugs, errors and defects but other issues and,
 3 therefore, I wasn't looking at that and, did it impact
 4 on my confidence? I think, in terms of what I saw here,
 5 and given that I was looking at particular issue, no.

6 **Q.** Thank you.

7 You raised a particular concern about a condition
 8 placed on not proceeding with the theft charge and, if
 9 we look at page -- sorry, I apologise -- 27, we can see
 10 at 107 you elaborate on that.

11 I apologise, I'm trying to do this as quickly as
 12 possible.

13 Again, you say:

14 "The effect of the arrangement was that the
 15 prosecution was in effect allowing Mrs Hamilton to buy
 16 her way out of a charge upon which the in-house lawyer
 17 and counsel had advised there was sufficiency of
 18 evidence. Second, the question might be asked why if
 19 the prosecution felt the evidence was sufficient ...
 20 third, if Mrs Hamilton did have a tenable defence to the
 21 count of theft (although I have seen no defence
 22 statement providing any defence and I doubt that
 23 a defence statement was ever served) then it might be
 24 argued that the suggestion she should repay losses in
 25 return for the dropping of the theft count, which was

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1 the idea originating with the prosecution", blah, blah,
2 blah, blah, blah.

3 You say, again there, you're emphasising the lack of
4 a tenable defence. We'll come back to that point but do
5 you recall did the Post Office take any action on this
6 advice you gave on the conditionality of its approach to
7 the theft charge?

8 **A.** On this review in Mrs Hamilton's case, is that what
9 you're asking me?

10 **Q.** Yes.

11 **A.** I don't know.

12 **Q.** Thank you. If we look very briefly, because I am
13 conscious of time, at the specific consideration of
14 Mrs Hamilton's case and the facts therein, if we can
15 scroll up a little to 25, at paragraphs 100 to 101, and
16 at 100, we won't repeat it, it sets out Mrs Hamilton's
17 conviction and the sentence that she was serving and the
18 relevant undertaking to pay back the monies said to be
19 owed to the Post Office. It goes on to say a little
20 about the review, and you say:

21 "I agree, absent any tenable explanation from
22 Mrs Hamilton consistent with her not being guilty of
23 theft, there was indirect evidence to support the charge
24 of theft", and you say why.

25 You say at the bottom there:

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1 You set out what the Investigator had examined in
2 respect of the call logs. A number of calls had been
3 reported but the Investigator concluded he could not
4 see:

5 "... 'anything 'that relates to a single or multiple
6 discrepancies that would account for the audit deficit
7 of £36,644.89'."

8 You're saying there, the Investigator had examined,
9 and I assume you would have seen the Investigator's
10 report by Mr Brander?

11 **A.** I'm sure I must have done because I refer to it in this
12 document.

13 **Q.** I think here, looking at what you were actually looking
14 at, you were looking in this advice at what the
15 Investigator had seen and what had then passed to the
16 Legal Team for them to consider the charge; is that
17 fair?

18 **A.** I think so.

19 **Q.** That was the basis on which you were looking at whether
20 any explanation had been offered by Mrs Hamilton,
21 tenable or otherwise; is that fair?

22 **A.** I was looking at all of the evidence and all of the
23 evidence -- when I say "all of the evidence", I don't
24 know if I simply had investigators' reports, advices,
25 and that sort of thing, possibly some of the background

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1 "In her prepared statement, which is the only word
2 she uttered about the audit shortage, she appeared to
3 blame a lack of training and shambolic [Post Office]
4 systems. However, further investigation of her calls to
5 the Horizon Helpdesk and to the NBSC helpline failed to
6 explain the loss of over £36,000 and, more importantly,
7 the reason why she would need to falsify the
8 declarations to such an extent", and so on.

9 Now, absent any tenable explanation, this seemed
10 critical to your conclusions, there, and we've seen the
11 reference to the calls.

12 In paragraph 67 --

13 **A.** Well, first of all, when I talk about indirect evidence,
14 I think what I was talking about there was
15 circumstantial evidence.

16 **Q.** Indeed. I simply want to explore what you had seen at
17 this stage. We don't need to turn it up, we can if you
18 want to but, at paragraph 67, it reads:

19 "Insofar as calls to the helpline go" --

20 **A.** Forgive me, which paragraph are we looking at?

21 **Q.** 67.

22 **A.** That's not up on the screen.

23 **Q.** I apologise, 67, please, it's page 18. It says:

24 "Insofar as calls to the helpline go, the

25 Investigator had examined ..."

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1 information I frankly can't remember after all of this
2 time, but I was looking at all of the evidence.

3 **Q.** Now, we won't go through it and we don't have time to go
4 into the detail, we are all familiar with the conclusion
5 of the Court of Appeal Criminal Division in *Hamilton*,
6 Mrs Hamilton has been a case study in this Inquiry, the
7 Inquiry has heard reference to call logs and to
8 statements, including by Andrew Dunks of Fujitsu, and to
9 treatment of ARQ, including in a statement by Penelope
10 Thomas, again of Fujitsu.

11 You wouldn't have reviewed the detail of call logs
12 yourself in 2016?

13 **A.** No, just I was presented with presumably summaries or
14 other such documents which helped me write what I wrote.

15 **Q.** You wouldn't have looked at the Fujitsu evidence in the
16 case yourself or any ARQ material?

17 **A.** No, no.

18 **Q.** A full independent investigation of what actually
19 happened in Mrs Hamilton's case was beyond your
20 instructions --

21 **A.** Yes.

22 **Q.** -- on this advice. That's really just not what you were
23 being asked to do by the Post Office at this time, was
24 it?

25 **A.** No, I wasn't. I was being asked to look at one issue,

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1 which had been raised by Jonathan Swift in the Swift
2 Review.

3 **Q.** Would I have been open to you to ask the Post Office to
4 extend your instructions or to advise them that they
5 might want to look more widely at the conduct of
6 investigations?

7 **A.** Well, anything was open but I was asked to do a specific
8 task which had come out of the Chairman's report, which
9 was written by Jonathan Swift and Christopher Knight,
10 so, yes, technically open but I don't think it would
11 have occurred to me to have suggested it.

12 **Q.** I just want to look at one point in Mr Brander's report.
13 Could we look at POL00044389, please, and page 2.
14 Before it comes up, I'll explain what I want to look at.
15 We're looking at the description of the audit that was
16 conducted at Mrs Hamilton's branch very briefly, and
17 I want to look at the bottom of page 2.

18 We see there:

19 "Mr Stuart completed a full audit of the cash and
20 stock and identified a deficit of £36,583.12, which is
21 broken down afterwards follows ..."

22 We don't need to look at the breakdown. At the
23 final paragraph on that page:

24 "Mr Stuart also identified an additional £61.77
25 shortage on Horizon, which couldn't be accounted for,
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1 concern about the approach to conditionality on theft in
2 Mrs Hamilton's case.

3 **A.** Mm.

4 **Q.** Was there no basis, no basis at this time, to be at
5 least professionally curious as to whether all
6 reasonable lines of inquiry, any tenable exploration,
7 had properly been investigated by the Post Office?

8 **A.** Well, I come back, Ms Patrick, to what I said, you're
9 talking about a figure of 61.77. You're assuming that
10 I read it, I absorbed it and I diverted by attention or
11 should have diverted my attention from what I was being
12 asked to do. I'm afraid I didn't.

13 **Q.** One final point: you mentioned that your advice turned
14 your general review, and Mr Beer has dealt with you with
15 that. It was provided to the CCRC eventually. Do you
16 know if this later advice, in 2016, which included your
17 view on the conditionality attached to the position and
18 theft, do you know if that was provided to the CCRC?

19 **A.** I'm fairly confident it wasn't.

20 **MS PATRICK:** Thank you, Mr Altman. That's all the questions
21 I have.

22 **SIR WYN WILLIAMS:** Perfect timing, Ms Patrick.

23 Mr Henry, 4.15 is your cut-off point.

24 **Questioned by MR HENRY**

25 **MR HENRY:** Thank you, sir.
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1 and thus the figure posted to late accounts was", and
2 the figure is then given.

3 In the context of your engagement with the Post
4 Office and the issues that had been raised by Horizon,
5 having read this report, would that information that
6 an additional sum during the audit, when Mrs Hamilton
7 wasn't present, had been found that simply couldn't be
8 accounted for, did that give you any cause for concern?

9 **A.** I'm afraid, Ms Patrick, the reality is when I looked
10 through this, I suspect that didn't register or didn't
11 register in the way that, after all of these years, one
12 can look at and confidently say, "You know, there's
13 a problem screaming out for examination". As I repeat,
14 I was looking at all of these cases and not just
15 Mrs Hamilton's, but I think seven others, for
16 a particular purpose and identifying flaws -- although,
17 looking back after all these years, clearly significant
18 was not something that I would have registered.

19 **Q.** Just to take pause, given what you knew by the time you
20 were being instructed to provide this advice in 2016,
21 you'd seen the Second Sight Report on bugs, you'd seen
22 the Simon Clarke Advice, the Helen Rose Report, and its
23 treatment, you'd conducted your own critical analysis of
24 how historic prosecution policies at the Post Office had
25 operated and, in this case, you had raised your own
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1 Looking back, thinking about the iterative process,
2 the negotiations, the horse trading, arm wrestling,
3 whatever you call it, as to how you had your terms of
4 reference established and the carefully bevelled or
5 chamfered ambit of those terms of reference, do you
6 think that you might have been set up?

7 **A.** By the Post Office?

8 **Q.** Yes.

9 **A.** That's a very interesting proposition, Mr Henry.
10 I haven't quite thought about things like that. I have
11 thought, and I'll be frank with you, whether the fact
12 I just left TC's room, Treasury Counsel's room, and
13 I just finished my first tenure as First Senior Treasury
14 Counsel and looking at an email which I'd never seen
15 before, before this week, about the different Queen's
16 Counsel at the time people were looking at, whether they
17 took comfort from the position I had been in, I've never
18 thought that I was set up, I have to be frank with you,
19 but it's a thought to wrestle with.

20 **Q.** But this, I think probably, if -- unless I'm making, you
21 know, an assumption, after many, many years, assiduously
22 acting on behalf of the Crown, how much of this sort of
23 investigations, sort of, white collar work, effectively,
24 had you done?

25 **A.** Around that time, actually, just around that, I think --
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1 I mean, I haven't gone back through my diary, Mr Henry,
2 you understand -- but I was doing something -- in terms
3 of white collar, I think I would that have done some
4 advisory work around that time but, if you are asking me
5 had I been prosecuting fraud cases, no.

6 **Q.** You said this morning, when Mr Beer was asking you some
7 questions, that you ought to have assessed for
8 disclosure Gareth Jenkins' credibility, "His credibility
9 should have been considered for disclosure and
10 disclosed, with the benefit of hindsight", and Mr Beer
11 was asking you specifically through the lens of the
12 *Seema Misra* case.

13 You said, at that stage in your evidence:

14 "Misra was a slightly different case. The focus at
15 that time was Horizon Online. Her branch was affected
16 between 2005 and 2008 so it was a Legacy Horizon issue.
17 When it came to the appeals years later, the landscape
18 was completely different."

19 Then these words:

20 "One of the problems was that perhaps, taking
21 a naive view, the two new bugs in Horizon Online
22 revealed to Second Sight, I felt could not be material
23 in her case."

24 **A.** Yeah.

25 **Q.** I mean, forgive me, but naivety is not an attribute

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1 **A.** Not least because, if my memory is right, Second Sight
2 say it didn't arise until September 2010.

3 **Q.** Mm. Well, leave that to one side. You've accepted that
4 you're not perfect, that you're human and you're
5 fallible. Do you accept that, when you look back over
6 this now, over number of years, you made some mistakes
7 in the advice you gave the Post Office?

8 **A.** I've conceded that.

9 **Q.** Yes, and that those mistakes, if you had been aware of
10 them at the time, they would have put you in conflict
11 with your own client, wouldn't they?

12 **A.** I don't quite understand the question.

13 **Q.** Well, I mean, let's just take two examples to sort of
14 make it concrete. The 2010 cut-off date that you
15 accepted was logical, proportionate, et cetera,
16 et cetera. Do you accept now that that was a mistake?

17 **A.** No, I don't. As I said, because Mr Beer asked me the
18 same question -- I don't.

19 **Q.** I see.

20 **A.** -- because --

21 **Q.** Well, I'll move on to something which you know I'm
22 coming to because it's now the eighth time. The
23 non-disclosure to Seema Misra of the Clarke Advice, you
24 do accept that that was a mistake?

25 **A.** Of the advice itself?

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1 normally associated with former First Senior Treasury
2 Counsel?

3 **A.** I was meaning it in terms of my understanding of the
4 technicality.

5 **Q.** I see.

6 **A.** So, in other words, Mr Henry, of course looking back,
7 you're right and the taint should have been disclosed,
8 certainly to Mrs Misra, and I've conceded that now,
9 probably for the seventh time. But what I mean by
10 naivety is my naivety about the impact of a system like
11 Horizon, whereby, if you have two new bugs and
12 Mrs Misra's branch was Legacy Horizon, I did not
13 understand, and nobody put me right, that those bugs
14 could not be referred backwards to the Legacy system.
15 That's what I meant by it.

16 **Q.** Did you form the same view in respect of the receipts
17 and payments mismatch bug when you became aware of that,
18 that that only affected, for example, I think you
19 thought only Horizon Online?

20 **A.** Do you mean -- forgive me, I've a terrible throat -- do
21 you mean the receipts and payments mismatch bug which
22 Second Sight revealed in their Interim Report?

23 **Q.** Mm.

24 **A.** I thought that was just Horizon Online.

25 **Q.** I see.

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1 **Q.** Yes, not to disclose the fact that Gareth Jenkins was
2 a tainted witness to Mrs Misra's lawyers?

3 **A.** Yes, forgive me, there are two different things. The
4 Clarke Advice is a document, if that's what you mean,
5 no. The information within it, yes.

6 **Q.** Yes, exactly. Right.

7 **SIR WYN WILLIAMS:** Let me understand this. The Clarke
8 Advice, as an advice, presumably would be legally
9 privileged and you wouldn't disclose that as a document
10 but you should have disclosed the relevant parts of it.

11 **A.** Well, the part which I've been asked about eight times
12 now, yes.

13 **SIR WYN WILLIAMS:** Yes, well, I'm in danger of making it
14 nine but just so that I've got it right. It's not the
15 document itself?

16 **A.** No.

17 **SIR WYN WILLIAMS:** It's part of the information contained in
18 the document?

19 **A.** Yes.

20 **MR HENRY:** Now, what I'm trying to concentrate on here is
21 that -- and I hope you well forgive me, I have to put
22 a characterisation on it -- but the advice you were
23 giving to the Post Office, for example, in connection
24 with the CCRC, was "Engage with them, by all means,
25 appear to be helpful but let them make the running"?

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- 1 **A.** I think the relationship with the CCRC is a different
 2 one where the CCRC issues notices but, as I understood
 3 it, Post Office were cooperating and were engaging with
 4 the CCRC.
- 5 **Q.** I see. Can I just put to you fairly and squarely, what
 6 I'm suggesting to you is that, regrettably, as is
 7 demonstrated by the monstrous delay before these matters
 8 went to appeal, the policy of disclosure was a lack of
 9 proactive engagement and candour with the CCRC. What do
 10 you say to that?
- 11 **A.** By Post Office?
- 12 **Q.** Yes.
- 13 **A.** I know in later years Post Office were keen to carry on
 14 talking to the CCRC but I think there came a point -- in
 15 fact, I know there came a point -- when they would have
 16 been very happy if CCRC had stopped their interest.
- 17 **Q.** Now, can I just ask you to consider this: you've
 18 accepted that you made mistakes but what I'm going to be
 19 suggesting to you is that you were in the position,
 20 Mr Altman, of being somebody who had been constantly
 21 backing the wrong horse, so far as the strategic and
 22 tactical advice you'd been giving the Post Office. Do
 23 you think that's unfair?
- 24 **A.** Strategic advice I had been given or --
- 25 **Q.** Yes, you had been giving them?

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- 1 of what the Horizon judgment or the limitations, as
 2 I understood it, at that time were.
- 3 **Q.** The judge actually quotes Gareth Jenkins' evidence in
 4 Mrs Misra's case, doesn't he?
- 5 **A.** I don't remember --
- 6 **Q.** Well, he does --
- 7 **A.** I'm sure you're right. I'm not going to dispute it,
 8 Mr Henry. I just don't remember.
- 9 **Q.** Not to worry. Let's move on to paragraph 13. You
 10 accept that:
- 11 "What is POL's duty? If material comes to light
 12 after the conclusion of proceedings which might cast
 13 doubt on the safety of a conviction, then there's a duty
 14 to consider disclosure. This is just another way of
 15 saying that if there was any material non-disclosure at
 16 trial, POL has a duty to consider the matter for
 17 disclosure. That said, I am far from sure in the light
 18 of the limitations in the Horizon judgment that anyone
 19 can say presently that any material has come to light
 20 which might cast doubt on the safety of any of the
 21 convictions without there being a wholesale review of
 22 each and every one of them."
- 23 Do you still stand by that judgment?
- 24 **A.** At the time -- at the time and, in fact, during the
 25 appeals, our argument was and my view had always been --

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- 1 **A.** Giving?
- 2 **Q.** Yes, backing the wrong horse.
- 3 **A.** Post Office were my client.
- 4 **Q.** Well, let's go to your note on the Horizon Issues
 5 judgment which is POL00006396. If we could go, please,
 6 to paragraph 4, and this is after the monumental
 7 judgment of Mr Justice Fraser and you had been first of
 8 all given sections A to L and then section M, and then
 9 you read the technical index, but the monumental
 10 judgment of Mr Justice Fraser on the Horizon Issues
 11 judgment, and this is what you say at paragraph 4:
- 12 "In my view, these passages are a good reminder to
 13 any convicted claimant as well as the CCRC that this
 14 judgment has its limitations. The judge did not make
 15 any findings about individual convicted cases. He did
 16 refer to the *Misra* case at various points in the
 17 judgment ... But in none does he analyse the evidence
 18 against her or make any particular finding which could
 19 advance any appeal in her case."
- 20 Looking back on that now, Mr Altman, that's
 21 a somewhat curious judgement by you, isn't it?
- 22 **A.** I was asked by Post Office, and I think it was
 23 Herbert Smith at that time, to point out to Post Office
 24 and them post Office's exposure to risk, which is what
 25 Post Office always wanted to know, and this was my view

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- 1 and I say "our", it wasn't just me, it was the whole
 2 team but I obviously take responsibility for it -- was
 3 that the Court of Appeal would have to look, would have
 4 to review each and every case, case specifically, yes.
- 5 **Q.** I see. But anyway, there we have it. You've correctly
 6 stated the *Nunn* test there, because obviously that is
 7 the *Nunn* test, isn't it? If material comes to light
 8 after the conclusion of proceedings, which might cast
 9 doubt on the safety of a conviction, then there's a duty
 10 to consider disclosure.
- 11 **A.** Well, it's part of the *Nunn* test.
- 12 **Q.** Yes, it is, isn't it? Let's go to a manuscript note
 13 which is attributed to Mr Williams. It's POL00155554.
 14 Could we just make it a little bit bigger. Do you see
 15 that you're recorded to have said that you were
 16 perplexed about Mr Justice Fraser? Can you remember
 17 saying something about being perplexed about him?
- 18 **A.** Well, it doesn't attribute that remark to me but let's
 19 assume it was my remark.
- 20 **SIR WYN WILLIAMS:** I'm sorry to interrupt but I thought that
 21 Mr Beer said, when this document was put to Mr Altman,
 22 that we didn't know who the author was?
- 23 **A.** This was a different document, Sir Wyn.
- 24 **SIR WYN WILLIAMS:** Different, I'm sorry.
- 25 **A.** Yes. It certainly says at the top "Conference with

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1 BAQC". As I say, it doesn't attribute that remark to
2 me. Maybe I was perplexed but what the perplexing was,
3 I can't tell you.

4 **MR HENRY:** It goes on to say:

5 "Whether it gives the CCRC what they want is
6 questionable."

7 **A.** Yeah.

8 **Q.** Then it goes down further, if we could just scroll up,
9 please:

10 "Little assistance to CCRC beyond our understanding
11 about Horizon."

12 **A.** And above that, if I may -- and this is attributable to
13 me:

14 "No findings, individual complainants affected by
15 a bug or remote access on a branch account, mere
16 potential, neither here nor there."

17 So the way I read the judgment -- and, of course,
18 this advice or this view didn't age very well, because
19 we all know the CCRC took a very global approach to the
20 issues, as did the Court of Appeal -- and I'm certainly
21 not criticising, I understand precisely why but, at that
22 time, and later, certainly my view was, based on my
23 understanding of this kind of situation, that the Court
24 of Appeal would have to look at each individual case --

25 **Q.** Yes.

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1 "Fail to see how anyone can make arguments on the
2 basis of his convictions."

3 Should that be conclusions?

4 **A.** I didn't write the notes --

5 **Q.** Of course.

6 **A.** -- but I assume that ought to be the word, Mr Henry,
7 yes.

8 **Q.** Next paragraph:

9 "CCRC under-resourced and overworked. CCRC has to
10 do the work with PO cooperation. Cannot make reference
11 to the Court of Appeal unless they come to a view that
12 there is a reasonable prospect of success", et cetera,
13 et cetera.

14 **A.** I doubt I'd have said "reasonable" because I think the
15 test is "real".

16 **Q.** Yes, go to the next page, please, and we've got, have we
17 not, at the bottom of that page, under your view, "BAQC
18 view", last sentence:

19 "CCRC may never make a reference."

20 Is that advice that you think you might have said on
21 20 December 2019?

22 **A.** Well, do you mind if we look at the paragraph under my
23 initials to see what the advice was, which was to engage
24 with them to show that we, in other words Post Office,
25 are being responsible. And this is -- I mean, you say

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1 **A.** -- case specifically.

2 **Q.** But you accept that you backed the wrong horse?

3 **A.** Well, I don't like that term, Mr Henry, because
4 you're -- the suggestion to me is I should have given
5 different advice or given advice which I felt was
6 otherwise, and I didn't. This is the advice I gave. So
7 if that's what you mean by a horse, you may think it's
8 the wrong horse; at the time I felt it was the right
9 horse.

10 **Q.** All right, well, let's just go to POL00337432. This is
11 the note of a consultation with you on 20 December 2019.

12 **A.** I think I may have seen this in the further bundle I got
13 this week and I don't think I'd seen it before then. Do
14 you know whose note it is?

15 **Q.** I'm afraid not but it is on the system attributed to
16 a consultation with you on 20 December?

17 **A.** And is it dated?

18 **Q.** Forgive me?

19 **A.** Is this note dated?

20 **Q.** I'm not sure if the note itself is dated but you are
21 definitely referenced in it, Mr Altman.

22 **A.** Right, okay.

23 **Q.** Could we scroll up, please, and we can see, "Horizon
24 Issues judgment -- has [its] limitations", et cetera,
25 et cetera. Next paragraph:

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1 it's a note of the conference, for the reasons you give,
2 and the "we" may be the author of this document who was
3 within Post Office but, be that as it may:

4 "... we are being responsible and that we with [as
5 it reads] to cooperate and that we are willing to
6 cooperate but seek their guidance and want to avoid any
7 missteps. Might at the same time get an idea where they
8 are/where they are not, would avoid the risk of Post
9 Office being criticised for being self-serving/
10 uncooperative."

11 **Q.** Of course.

12 **A.** "If didn't engage, and we had done X when they wanted us
13 to do Y -- back to the drawing board.

14 "An auditable, sensible attitude to take -- shows PO
15 in good light. Anything that we do has the stamp of
16 approval -- can't go own way -- would in my view be pain
17 daft [plain daft]. CCRC may never make a reference."

18 I mean, some of that could have been my advice, some
19 of it might have been the author of this note's takeout
20 from my advice and, Mr Henry, it's perfectly possible
21 that I could have said in the end they may never make
22 a reference.

23 **Q.** Now, Mr Altman, I have got very, very little time and
24 I've got two more topics to put to you with the
25 Chairman's permission, so, if you will forgive me, if we

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1 don't put it up on the screen unless you specifically
2 wish to, but you were shown a document during the lunch
3 hour -- and I will give the reference in case you would
4 like to see it put up on the screen -- it's 00333839,
5 and you're reported to have said in a note that the only
6 basis upon which you would advise disclosing the draft
7 Deloitte report --
8 **A.** Which draft, what's the date of this conference, please?
9 **Q.** Shall we go to the date of the conference then, please.
10 **A.** I think it was November 2016.
11 **Q.** November 2016. Thank you. The only basis on which you
12 would advise disclosing the draft Deloitte report
13 outside the constraints of the Section 17 notice is if
14 it would help the Post Office. Now, obviously, that was
15 advice that is attributed to you. Do you think that you
16 might have said that?
17 **A.** I'm not sure of the context but I did read very quickly
18 the notes which you asked me to look at over the lunch
19 hour and I think, in the end, after a round-table
20 discussion when Rodric Williams turned up, I think the
21 advice was that the Deloitte report, whatever it was,
22 should go to the CCRC with a request for a notice for
23 it.
24 **Q.** Was it not that, in fact, they should make a Section 17
25 request, which would be covered, of course, by
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1 Sight, he would have revealed others that he knew.
2 **Q.** So that was an assumption?
3 **A.** It was obviously a wrong assumption but, yes, it was
4 an assumption, I suspect.
5 **SIR WYN WILLIAMS:** Thank you very much, Mr Henry. You've
6 had your two extra points, and made them.
7 So I think that brings this evidence session to
8 an end, does it not, Mr Beer?
9 **MR BEER:** Yes, it does, sir.
10 **SIR WYN WILLIAMS:** Right.
11 Thank you, Mr Altman, for your witness statement,
12 and for answering a great many detailed questions during
13 the course of today. I'm grateful to you.
14 So we will continue tomorrow with the evidence of
15 Mr Clarke.
16 **MR BEER:** That's right, sir. 9.45.
17 **SIR WYN WILLIAMS:** Right. Thank you very much.
18 **MR BEER:** Thank you, sir.
19 (4.19 pm)
20 (The hearing adjourned until 9.45 am the following day)
21
22
23
24
25

1 Section 25?
2 **A.** Yeah, inevitably at that time. Yeah.
3 **Q.** Well, I'm going to move on, very last subject, one
4 you're familiar with: you were asked why there wasn't
5 an investigation into how Mr Jenkins came to give
6 misleading evidence that Mr Clarke said was fatally
7 undermining of his credibility. You responded:
8 "I was giving advice to the Post Office. I thought
9 the advice I was giving was on the impact of that
10 failure on the prosecutions and the convictions and not
11 the reason why he had failed to do it."
12 Can you see the connection between the failure to
13 investigate that issue and the validity or defensibility
14 of the 2010 cut-off?
15 **A.** Ask me that, again, please, Mr Henry.
16 **Q.** Well, ought there not to have been an investigation,
17 Mr Altman, into the extent of the bugs that Mr Jenkins
18 might have been aware of because that would be, of
19 course, highly material to whether the 2010 cut-off was
20 a defensible position?
21 **A.** You know, with hindsight, the answer is an obvious yes
22 but the position I was in at the time, and the
23 realisation that Gareth Jenkins had revealed, himself,
24 those bugs to Second Sight, I suppose I had come to the
25 view that, if he had revealed those bugs to Second
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