

Witness Name: Simon Clarke
Statement No.: **WITN08130100**
Dated: 23 March 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF SIMON CLARKE

I, SIMON CLARKE, will say as follows.

1. This witness statement is made to assist the Post Office Horizon IT Inquiry (the “**Inquiry**”) with the matters set out in the Rule 9 Request dated 13 December 2023 (the “**Request**”).

INTRODUCTION

2. I am a former employee and later, a director, of Cartwright King Solicitors (CK). Throughout my time at CK I held the position of senior in-house counsel. My employment commenced on 6 January 2010 and ended in March 2016.
3. I was called to the Bar in October 1997 and entered independent practice in chambers until I joined Cartwright King in 2010. My practice in independent practice was almost entirely in criminal law. I left Cartwright King having become disillusioned by my time there. Upon leaving Cartwright King I set up my own law firm, with two other partners, Harry Bowyer and Martin Smith, practising in a very niche area of Civil Regulatory law. I remain the Senior Partner of that Firm. In July 2023 I decided to return to criminal practice on a limited basis whilst continuing to be an active partner and lawyer in my law firm.

4. Some of the material I provide in this statement will be subject to poor recall, may be second-hand, was information I had picked-up merely by working around others more involved in a subject-area, or was simply going on in the background of my time with Cartwright King. Where I say anything which is directly known to me I shall indicate that to be the case – equally, where I am unsure of something, or where I mention something which is not directly known to me, poorly or not remembered at all, or is ‘background’, I shall again indicate that to be the case. Where something did not happen, or I was unaware of something, I shall again indicate that to be the case.

BACKGROUND

5. For the first (almost) three years my work at CK was that of a criminal defence barrister, representing clients of CK before the criminal courts. I was based out of CK’s Nottingham offices, visiting other offices only to meet with the clients allocated to me by, firstly, Stephen Gelsthorpe, and later Andrew Cash and later again Mark Hopwell, all in their turn the Heads of the CK Advocacy team.
6. I was aware that CK undertook some ‘Agency’ work for the Royal Mail Group (“RMG”) of whom Post Office Limited (“POL”) were a constituent part. I recall being involved in the prosecution of perhaps two postal delivery workers accused of stealing letters and parcels, but I undertook no work related to POL until after separation, which occurred on 1 April 2012.
7. My understanding of the position prior to separation was that RMG acted as prosecutors, instructing local agents to act on their behalf in various geographical areas. I understood that CK were the agents of choice for the

Midlands area, but this was all managed by Andrew Cash and Martin Smith, both Solicitors for CK. Whilst I was aware that CK undertook work for RMG, other than undertaking CK instructions in the 'postman' cases I have mentioned, I had no knowledge of, or involvement in, the RMG work – this includes any work undertaken by CK for Post Office (as it then was).

8. In about February or March 2012 I became aware, simply by hearing what was going on at the Derby and Leicester offices, which I occasionally visited when I had general criminal work at Leicester or Derby Crown Courts, that POL was to separate from RMG as a stand-alone organisation. I also heard that Andrew Cash, whom I believe was the RMG lead for CK pre-separation, had used his contacts at RMG to tender for the prosecution work of the new POL entity, and that he had been successful in doing so. This work was to be conducted from the Derby and Leicester offices of CK.
9. I recall that, late in 2012 I was instructed to provide some general advice on prosecution procedures to Martin Smith for POL, and I may have provided written advice about evidential requirements in a particular case, but I do not recall – I'm afraid I only have a vague memory of having done so and cannot be sure as to dates.
10. I also recall being instructed by Martin Smith to attend at Newcastle Crown Court to represent POL in two 'mention' hearings, and one at Chester Crown Court. 'Mention' hearings are interlocutory 'housekeeping' hearings. I think that I conducted these hearings in early-2013 but I cannot be sure – one or more may

have occurred in late-2012. I may also have settled an opinion on the merits of a proposed prosecution, but these were very few in number.

11. I was only instructed to prosecute two trials during my time at CK, one (*R v. Paul Swanson*) in (I think) 2018, the defendant being a Director of POL accused of stealing Virgin Holiday Gift Vouchers, and other vouchers, intended as prizes for internal competitions run by POL. That case was not Horizon-related in any way – the theft consisted of the purchase of vouchers by a Marketing Director based at POL Head Office using his authority to spend POL monies to do so, and he then stealing the product of those purchases.

12. The only other case I was instructed to prosecute was that of *R v Samra*, about which I shall speak below. I am reasonably certain that Andrew Cash was the instructing solicitor because at this time I was aware that he ran the CK POL prosecutions department out of the Derby office. It was also he who instructed me to represent POL in Newcastle and Chester.

13. I resigned from my position at CK by giving 3-months' notice of my intention to do so in December 2015, and I left the firm on 31 March 2016.

14. I shall now describe my understanding of the hierarchy at CK *vis a vis* the POL prosecutions function. Stephen Gelsthorpe was the Managing Partner of the firm, and it was he to whom all others reported. Stephen Gelsthorpe ran the Advocacy department at CK, based in Nottingham from where all of the barrister advocates worked, and was thus my line manager from January 2010. He later

appointed Andrew Cash and then Mark Hopwell to that role. Whilst they occupied that role I reported to each in turn.

15. As I understood the position, prior to my joining CK and until POL's separation from RMG in April 2012, Andrew Cash was the line manager for CK's POL prosecution function, working with Martin Smith. I later became aware that Andrew Bolc (based at CK's Leicester office) also worked in the CK POL department. Again, my understanding through this period, gained only from having heard 'around the office', was that those three would attend Magistrates' Court prosecutions for POL and would instruct counsel from the Independent Bar to conduct Crown Court prosecutions.

16. Occasionally Harry Bowyer, who I think had joined CK some 18-months before me as in-house counsel, received instructions from the POL department to advise them on the conduct of a few prosecutions. Other in-house counsel at CK between January 2010 and December 2015 included Alwyn Jones (solicitor), Barry White, Matt Smith, Julie Warburton, Clarkson Baptiste, and Philip Bown. Stephen Gelsthorpe, as head of Advocacy, allocated general criminal work; Andrew Cash instructed counsel in respect of POL work. I cannot say who Andrew Cash instructed, other than that I was aware that POL prosecutions were conducted at CK.

R v Samra

17. In about May of 2013, I am unable to recall the precise date, I was allocated the prosecution of Mrs Samra by Andrew Cash. The allegation against Mrs Samra, from recollection, was that she was said to be defrauding elderly and frail

holders of Post Office Account Card holders by asking them to enter their PIN numbers twice on the pretext that the first entry had not gone through. I recall reviewing the evidence and noted perhaps 8 or 9 witness statements from those said to have been defrauded, together with some evidence showing the double-withdrawals in question. I believe that this latter evidence (I cannot recall) was provided by POL investigators and derived from Horizon. I recall considering that, on this evidence alone, there was a case for Mrs Samra to answer.

18. Prior to my instruction in this case, I had no real knowledge of Horizon.

19. Notwithstanding that those representing Mrs Samra had not raised any Horizon-related defence in her Defence Statement, I nevertheless considered it important that an expert witness be asked to provide evidence that Horizon was functioning properly, that the data relied upon was accurate, and that there were no known defects in the system – I advised to this effect.

20. During the period in which I was working on the Samra prosecution I became aware that criticism was being levelled at Horizon, and that POL rejected the criticism. I had also, at about the same time, heard that an organisation called 'Second Sight' was inquiring into Horizon for POL as a response to that criticism.

21. On 27 June 2013 Martin Smith told me about an unpublished report which stated that there were bugs in the Horizon system. On 28 June 2013 Martin Smith and I conducted a telephone conference call with Gareth Jenkins. I asked him about the Samra case; he informed me that all of the information concerning the double-entries would have derived directly from Horizon.

22. Gareth Jenkins told us that it was he who had informed Second Sight of the existence of two bugs. He told me that the existence of the two bugs would not have adversely affected the post office in the Samra case and that he was satisfied that the integrity of Horizon was intact. Martin Smith recorded this telephone call and I asked for a transcript of this call to be made – I believe that transcript is **POL00142322**.

23. The 28 June 2013 telephone call was the first occasion upon which I learned of Gareth Jenkins – I had never heard the name prior to my involvement in the Samra prosecution and, since that date I have never met him nor, to the best of my knowledge, had any other communication with him.

24. Following the 28 June 2013 telephone call, I determined that I would review Gareth Jenkin's work to identify whether, and if so to what extent, he had failed in his duties as an expert witness. Here I took it upon myself to advise – I do not recall any specific instructions to undertake this work or to advise in writing on the topic. But I thought it too important not to undertake the work.

25. To complete the work, I asked Martin Smith to provide me with copies of statements prepared by Gareth Jenkins in other prosecutions. I considered those statements against his duties as an expert witness and drafted my 15 July 2013 Advice document – the entire process took a couple of days, ending on the date I signed the Advice. The resultant Advice document **POL00006357** speaks for itself. I recall advising Jarnail Singh that Gareth Jenkins could no

longer act as an expert witness in prosecutions and should be replaced without delay.

26. I would here rely on my Advice document dated 15 July 2013 (**POL00006357**) and refer to paragraphs 29 and 30 therein. I was provided with a copy of the 'Second Sight Interim Review' ("Interim Review") as was clear from my paragraph 30 of **POL00006357**.

27. I also advised POL that the prosecution against Mrs Samra be postponed until I had taken the opportunity to review that prosecution in the light of what was then a changed landscape. On 22 July 2013 I advised that the prosecution against Mrs Samra be discontinued – see **POL000040022**. I recall attending court at Birmingham Crown Court for that purpose.

28. I am asked to consider to what extent, if at all, I was asked or encouraged to provide general advice to POL on Horizon issues. Prior to my involvement in the Samra prosecution I was not. This was because I had very little involvement in the CK POL prosecution function. Following my involvement in the Samra prosecution, again I do not recall having received either request or encouragement from POL to provide general advice on any Horizon issue. I would say that, as best my memory serves, all my general advice was generated as the direct result of my concerns with the rapidly evolving Gareth Jenkins situation, the need to stop prosecutions pending the appointment of a new expert witness, the need to review previous prosecutions, the requirement for a proper POL Prosecutions Policy and a proper Disclosure Management process – all of which I shall consider in more detail below. I did however receive the

occasional instruction to advise on a specific topic and I refer to such advice in later in this statement.

Use of Horizon data at trial

29. I am asked to summarise what I understood of the nature and operation of the Horizon IT System, distinguishing between Legacy Horizon and Horizon Online. I know nothing of Legacy Horizon. I know a little of Horizon Online, but only in the most general of senses. I recall attending a briefing at (I think) Fujitsu's offices but cannot now say when that occurred. The briefing was attended by (I think) Martin Smith and Rodric Williams with perhaps 7 or 8 others present. That briefing again was given in general terms – a whiteboard was used to sketch a depiction of the Horizon Online processing functions – it consisted of the drawing of several boxes with lines running between them, accompanied by an oral description. It seemed to me that the object of the briefing was to inform us as to the robust nature of Horizon Online – I learned little from this briefing. I am aware, but only anecdotally, that other CK personnel visited, and received training on an Horizon Online terminal located at POL Headquarters in London.

30. I am asked to describe my understanding of the nature of the data produced by the Horizon IT System, which was used to pursue criminal prosecutions against SPMs and to consider identified certain matters. I have very little understanding of the data produced by Horizon. I was only ever called upon to prosecute a single SPM, the case of Mrs Samra to which I refer earlier in this statement. As to the other identified matters:

- a. I cannot say how data was produced. I have no knowledge or experience of this aspect of Horizon.
- b. I am not able to comment on the extent, if at all, there may have been issues or limitations in such data. I did not in fact prosecute any POL trials or conduct any meaningful preparation to do so. Accordingly, I have no sufficient experience upon which to found any comments.
- c. I am unable to comment on the extent, if at all, I was aware that Fujitsu held more data than was produced to court or relied on by POL in prosecutions – I did not prosecute any POL cases to trial and have no experience of this issue.
- d. I have no knowledge of ARQ audit data. Whilst I had heard references to this phrase during my time at CK, I do not know what ARQ audit data is.

31. I have been asked to set out what my view was on the importance of the following factors concerning prosecutions that relied in whole or in part on Horizon data. If this question is directed specifically to cases prosecuted by me, then I cannot provide a view because I did not prosecute any relevant cases for CK/POL to trial, including that of Samra. In general terms however, my views are, by reference to the formatting of the question:

- a. *“the integrity of the Horizon IT System”*.

Save in a few rare cases, the need to demonstrate the integrity of the Horizon IT system is paramount. Those exceptions arise only in cases in

which Horizon is neither a source of prosecution evidence nor is an element of the prosecution case. A good example of such a prosecution would be that of *R v. Paul Swanson*, to which I refer to at my paragraph 11 above. My detailed view on this topic is set out in my Advice of 15 July 2013 - **POL00006357**.

- b. *“the defendant’s access to information concerning the integrity of the Horizon IT System”*.

The Criminal Procedure and Investigations Act 1996 established a two-stage process for disclosure. The first stage requires the prosecutor to serve any material which meets the test for disclosure, or a statement that there is no such material. The second stage requires a defendant in the Crown Court to serve a Defence Case Statement – in the Magistrates’ Court the defendant *may* serve a Defence Case Statement (“DCS”). A DCS should set out the nature of the defence advanced and must be sufficiently detailed so as to enable the court and Parties to identify the real issues in the trial. Upon service of a DCS the prosecutor is required to identify, and serve any material which meets the test for disclosure in respect of the defence disclosed. By these provisions it is clear that *any* POL defendant who had served a Defence Statement and so was going to trial, would be entitled to receive detailed and complete information concerning the integrity of the Horizon IT System and, in my view, such material ought to be disclosed to a defendant as part of the first stage mentioned above. In reality, any prosecution brought in reliance on data from a non-robust Horizon IT system ought not to be brought at all. This is why I stopped the Samra prosecution.

- c. *“expert evidence on the integrity of the Horizon IT System and/or the presence or absence of bugs, errors and defects within the same”.*

It is difficult to understand how the integrity of any IT system can be attested to without the assistance of an expert witness. Such a witness must be independent of the Parties and indeed the CPR provides that such a witness, whomsoever called the witness, is a witness *to the court*, not to the calling party. The expert witness(es) should be fully informed of all bugs, errors and defects and should comment directly upon them. Again, I rely on my opinion set out in **POL00006357**.

- d. *“the impartiality of any expert evidence given, whether in writing or orally”.*

Similarly, any witness must be impartial, regardless of the medium of the delivery of evidence. This is one of issues I commented on in my 8 July 2013 General Advice document – see **POL00006365**.

Work for POL prior to July 2013

32. I believe I have summarised the work I carried out for POL prior to July 2013, as I recall it.

The Second Sight Interim Review and initial advice

33. I am asked to describe the nature and extent of my involvement in reviewing POL's past convictions to consider providing further disclosure, including any advice I may have provided on this topic.

34. Having identified the issues set out above concerning the Second Sight Interim Review and the role played by Gareth Jenkins, I provided various pieces of advice to POL. I would note here that I had not been asked, nor instructed, to provide any particular piece of advice; rather, I took it upon myself to advise POL, considering it my duty to do so in what, to me, appeared to be a rapidly evolving crisis. My decision to do so was informed, in part, by the distinct impression I had formed that POL appeared to work in silo's, no one department either communicating meaningfully with, or listening to, the other.

35. I am asked to set out the details of any discussions or conferences I had with employees, agents, or representatives of POL (including counsel) or Fujitsu (including Gareth Jenkins, whether or not he was employed or contracted by Fujitsu at the material time) to discuss a number of matters listed in the request. I would have discussed all such matters as are listed with Harry Bowyer and Martin Smith, for shortly after I had written my 15 July 2013 Advice (**POL00006357**) I was asked by Stephen Gelsthorpe to take over the running of the POL prosecutions department at CK. I recall that Stephen Gelsthorpe was very supportive of the CK POL department but my discussions with him were usually only on an 'overview' basis. I do recall discussing with him the general culture I detected at POL and in particular a sort of 'back-covering' mentality following the publication of the Second Sight Interim Review. At some point (I do not recall when) Stephen Gelsthorpe appointed Mark Hopwell to oversee the Advocacy department and so I reported to him – I had no discussions at all with Mark Hopwell on these matters; he seemed to me to be entirely disinterested in the work we did. Whilst I met with Rupert Hawke regularly, I do not recall that we ever discussed POL matters, for he was an accountant not a lawyer.

36. Outside of CK, I would have discussed and/or conferred with on various aspects of the POL work, with Jarnail Singh and Rodric Williams, both of POL, and Andrew Parsons of Bond Dickinson. I recall meeting Chris Aujard on perhaps one or two occasions; I do not recall ever meeting with, or speaking to, John Scott, but he may have been present at meetings; I met with and discussed various matters with Brian Altman QC (as he then was) on several occasions and read his various Advice documents; I have never met with Gareth Jenkins and only spoke to him on a single occasion (see my paras. 21 & 22 above).

37. From about 15 July 2013 onwards my main point of contact was Martin Smith, who communicated with Jarnail Singh daily, usually several times per day. I learned that Jarnail Singh reported to Rodric Williams. On occasions I forwarded advice documents to Rodric Williams – a case in point being **POL00006357**. Over the next few weeks and months, I began to settle written advice documents on a variety of topics all connected with the Horizon system. Those advice documents generally set out the issues under discussion and contained my advice on how POL should proceed. I also made requests for information about the functionality of Horizon and, where specific issues came to my attention, I requested information about those issues.

38. I attended meetings with Jarnail Singh and Rodric Williams – it seemed to me that Rodric Williams was far more interested in the civil aspect of his work as a POL lawyer, whilst Jarnail Singh was underequipped for his role as Head of Criminal Law (as he described his title to me). Consequently, I received very few direct instructions but rather interpreted my instructions from what was

discussed at meetings and in telephone calls, seeking to identify issues which required advice and then acting.

39. I was aware from the Second Sight Interim Review that a multitude of complaints had been made over the years about both the functionality of the Horizon system and the training provided to SPMs by POL on the system. During the Review Process I occasionally came across logs from Chesterfield (I think, the help line location) and perhaps from some documents I saw in the Mediation Scheme, but had no more dealings with this aspect of the system beyond that (although I may have commented occasionally on the training issues in my written documents). I cannot comment on POLs response to complaints other than to say that I saw that Second Sight considered the response to be inadequate.

40. In the following paragraphs I will comment on particular issues I advised on. I shall deal with each discreet topic before moving on to the next – this will explain why some dates referred to do not run chronologically.

Disclosure

41. I first became aware of the issue of bugs within Horizon on 27 June 2013, just prior to the commencement of the trial of Balvinder Samra. I was informed that an unpublished Interim Review, commissioned from Second Sight by POL, had stated that Horizon was defective and contained at least two bugs. I recall that one of my first actions was to attend Birmingham Crown Court to ask the Judge to delay the Samra trial pending the release of the Second Sight Interim Review, an application to which he acceded. I made that application because I needed

to preserve the position whilst I considered the impact of the Second Sight Interim Review on the Samra prosecution.

42. I recall that I was also, around this time, provided with what later became known as the 'Helen Rose' report. This too revealed issues with Horizon and added to my concerns about Gareth Jenkins, for here Gareth Jenkins was telling Helen Rose about Horizon problems.

43. On 3 July 2013 I attended a meeting at POL Head Office. I do not recall who was present, but it would most likely have been Rodric Williams and Jarnail Singh. We considered issues relating to the Horizon computer system and the prosecution of criminal offences, including the findings of Second Sight. My concern was the apparent failure by POL to understand their disclosure duties, including the recording and dissemination of material which might require consideration for disclosure. Here, I was concerned that POL appeared to me to be operating in silos, that is, not communicating essential information across the relevant departments – at the time I concluded that the failure to communicate the existence of defects in Horizon to those who should know of them, including the prosecuting lawyers, arose out of this '*silo mentality*'.

44. At the 3 July 2013 meeting I advised POL that there ought to be a single, central hub, the function of which was to act as the primary repository for all Horizon-related issues. The hub would collate, from all sources into one location, all Horizon-related defects, bugs, complaints, queries, and Fujitsu remedies, thereby providing a future expert witness, and those charged with disclosure duties, with recourse to a single information-point where all Horizon issues could

be identified and considered. The rationale behind this advice derived from the need to protect POL from the current situation repeating itself in the future.

45. POL accepted that advice and accordingly a weekly conference-call meeting was established to meet the requirement of the central hub. Participants were informed that they should bring all Horizon-related issues they had encountered to the meeting, minutes were to be taken, centrally retained, and disseminated to those who required the information including any new POL Horizon expert witness. Hub meetings were conducted by conference call on Wednesday mornings, with representatives from CK attending each meeting. A minute-taker was appointed for each call.

46. In order to assist the Hub's work, I drafted a Protocol to be followed by those attending the Hub and working on the disclosure task. Working. I recall drafting the Protocol; I have not been provided with a copy of my Protocol but reference to it may be found at paragraph 116 of Brian Altman QC's 'General Review' dated 15 October 2013 – see **POL00006581**.

47. On 2 August 2013 I was in the CK Nottingham office on what was my last day at work, immediately prior to taking a holiday. As I was leaving the CK Nottingham office I was contacted by Martin Smith; he said that he urgently needed to speak to me. He told me that he had just been informed by Jarnail Singh that some at POL did not wish to minute the weekly conference calls. I was told by Martin Smith that POL's Head of Security, John Scott, had instructed those attending the Disclosure Hub meetings that handwritten minutes taken at the meetings were not to be typed, but should be forwarded to John Scott; he,

as was relayed to me, had directed that the minutes of previous Disclosure Hub meetings which had been typed and emailed should be, and had been destroyed. I was also told that the feeling was that material not minuted was not in the public domain and so was not disclosable.

48. I immediately telephoned Jarnail Singh and he told me that John Scott had instructed him directly to shred – this direct instruction was, he said, the reason for his contact with Martin Smith.

49. This instruction was not, in my then view, an act of incompetence on the part of John Scott or POL – he was a former police officer with experience of the criminal investigative process.

50. I immediately postponed my departure and drafted an urgent Advice document to POL, see **POL00006799**. I believe Martin Smith forwarded **POL00006799** to Jarnail Singh and or to Rodric Williams. I do not recall receiving any response or other feedback from this document or hearing anything more on the topic.

51. From time to time, I provided POL with further disclosure advice, and I recall drafting a Disclosure Protocol for use by POL. I know that Duncan Atkinson KC considered that Protocol (with, I think, approval) but I have not been provided with a copy of the Protocol.

Review Process

52. In my 8 July 2013 General Advice document **POL00006365** I advised POL that all prosecutions under way and all convictions going back to 2010 be reviewed,

and CK was instructed to commence that review. Prior to giving this advice, I had discussed the matter with Harry Bowyer, and we were agreed on what should happen.

53. The Review was intended to consider all prosecutions back to 1st January 2010.

The purpose of the Review Process was defined as being to identify those cases where, had POL been possessed of the Second Sight and Helen Rose reports during the currency of the prosecution, that material might have met the test for disclosure. I established the criteria for the Review Process, in consultation with Harry Bowyer, although the final process decision was mine.

54. I deliberately set a very low threshold for applying this test: if the material MIGHT

have been disclosable then we would advise that POL should provide the Second Sight and Helen Rose documents to the defendant under review, so that an SPM could consider whether to appeal against any conviction. This test, and indeed the entire process, was directed towards the duty of any prosecutor to provide to a defendant any disclosable material notwithstanding that we were dealing with *post*-conviction disclosure.

55. We first asked POL and RMG to provide us with all of their prosecution files

going back to 1 January 2010. Whilst we received many files we also learned that some files were no longer available. Cases were subjected to a 'sift' review in which those identified as being 'risk' cases were separated out and subjected to a 'Full Review' The sift review was conducted by a qualified criminal solicitor and entailed the reviewer reading the case papers, identifying the issues, and considering whether Horizon was the source of evidence in the prosecution. Sift

Reviewers were required to have relevant criminal experience and received training in both POL prosecution practice and disclosure prior to commencing work on the Sift process.

56. Full Reviews were conducted by senior counsel experienced in prosecuting and defending criminal cases. In each 'Full Review' case a report was provided. Where it was determined that disclosure ought now to be made, the reports were disclosed to the defendant's representatives. I conducted a number of Full Reviews, as did Harry Bowyer – CK also engaged several barristers from the Independent Bar to conduct Full Reviews.

57. I also advised POL that they should not conduct or continue any further prosecutions until such time as they had identified and received a full report from an independent expert witness - I have not been provided with the written document in which I gave that advice, but I note that the need to cease prosecutions is implicit in my written advice of 8 July 2013.

58. On 4 and 5 September 2013 I, Martin Smith, and Jarnail Singh met with the Procurator Fiscal for Scotland. The meeting had been called for by POL because the Procurator Fiscal had informed POL that all SPM prosecutions in Scotland were to be terminated. The Procurator Fiscal had taken this decision on the basis that, as POL were then unable to prove that Horizon was wholly reliable, and were concerned that a conviction could potentially be unreliable. POL were concerned that an intention to stop all cases, rather than just those where evidence of alleged misconduct derived from Horizon would have raised a considerable public relations storm for POL. The Procurator Fiscal agreed that

not all prosecutions should be stopped; rather, he would review each case separately and take a decision taken on the facts of each individual case. The Procurator Fiscal said that he would adjourn all his prosecutions for 6-months whilst POL to instructed a new, independent expert.

59. On 2 August 2013 Brian Altman QC delivered his 'Interim Review of Cartwright King's Current Process' - **POL00006583**. This Review found the approach taken by CK to be fundamentally sound, and advised certain steps to be taken to improve the scope and content of the CK Review Process; those steps were taken. On 13 August 2013 Harry Bowyer provided his 'Response to the Interim Review of Cartwright King's Current Process' by Brian Altman QC - **POL00066807**.

60. On 16 October 2013 I prepared a Briefing Note for POL's incoming General Counsel - see **POL00108136**. I was not asked to provide this but considered it important that new General Counsel would benefit from a short note on what we were doing.

61. On 5 December 2013 I provided a document entitled 'Observations and Analysis of the Cartwright King Prosecution Review Process' to POL - **POL00040194**. That document sets out in some detail the process I designed and oversaw, and I rely on the contents therein.

62. When we commenced the sift and Review Process I advised POL that they ought to stop all prosecutions until a new expert witness had been instructed. We were instructed that we should 'pause' all current prosecutions and review

them on a regular basis to determine whether or not they should be continued or abandoned. These 'paused' cases were referred to as the 'Stacked Cases' (I don't know why). I recall a number of stacked cases being stopped over time. I do not recall any cases being prosecuted through the courts after 15 July 2013 – in effect I had stopped all POL prosecutions for the foreseeable future.

Alternative Expert Witness

63. In my 15 July 2013 Advice document **POL00006357** I advised POL that Gareth Jenkins should not be asked to provide expert evidence again. I had previously advised in my 8 July 2013 Advice document about the need for a replacement expert – see para.1 of **POL00006365**. On 13 August 2013 Harry Bowyer reiterated this advice in his 'Response to the Interim Review of Cartwright King's Current Process' by Brian Altman QC of that date – see paragraph vii) of **POL00066807**.

64. In due course I was asked by POL to provide a shortlist of proposed candidate experts and, over the next few months I visited a number of IT specialists to ascertain whether they were suitable to provide the independent services required. I met with, amongst others, BAE Systems, Qinetiq, and Imperial College Consultants. I was always accompanied by Martin Smith to these meetings – I am aware that Jarnail Singh has stated that he had met with and interviewed potential expert witnesses and am able say that he did not on any occasion attend any such meetings with me.

65. In considering the requirement for an independent expert witness I drafted a number of documents setting out the requirements I considered necessary for the role.

66. In due course I advised POL that in my view the most qualified and appropriate proposed expert was Imperial College Consultants. On 23 July 2014 I settled a document entitled 'Advice - Expert Report - Imperial College, London' **POL00148749**. It seemed clear to me at the time of writing that there was an attempt by some in POL to limit the scope of the proposed work and seek to 'steer' it in directions convenient to POL. My objections to such a course were, I think, made very clear in my 23 July 2014 Advice.

Prosecution Policy

67. At some point in mid-2013 (I cannot recall when) I asked Martin Smith to obtain a copy of POL's formal Prosecutions Policy. Martin Smith asked Jarnail Singh to send a copy and in due course I was provided with a copy of what I considered to be an wholly inadequate policy. I therefore commenced drafting a detailed policy intended to at least meet the standards set out in the Code for Crown Prosecutors, including the then two-part test for commencing a prosecution. My draft can be seen at **POL00030686**.

68. That Policy was never accepted although I recall being asked to review a different document, 'Post Office Enforcement and Prosecution Policy for England and Wales' which, I think, may have been drafted by Brian Altman QC. My review appears at **POL00125210**.

Specific Requests to Review Documents

POL00022598 (the Helen Rose Report) and POL00099063 (Second Sight's Interim Review)

69. I cannot now recall when I first saw the Helen Rose Report, but I am sure it was very shortly after I first saw the Second Sight Interim Review – I know this to be the case because I considered both when advising POL in July 2013. I first heard of the Second Sight Interim Review on 27 June 2013 – Martin Smith informed me that he had been told of it. I first saw the report in early July, but I cannot recall the exact date. I know I must have seen it before 15 July 2013 when I wrote my 'Gareth Jenkins advice because I refer to it there.

70. It was my reading of these documents, together with Gareth Jenkins admission to me on 28 June 2013 that he knew of the bugs referred to in the Second Sight Interim Review, which prompted me to review Gareth Jenkins witness statements and to draft my 15 July 2013 Advice document.

71. I have to say, the repeated assertions by Gareth Jenkins in his witness statements and by POL to anyone who asked were, in my view plainly wrong. I remember wondering just how much POL knew, but at the time thought that any lack of knowledge was cultural – no one department ever seemed to talk to another – this is why I advised the Disclosure Hub. It did not occur to me at the time, as it now has, that we at CK were not being told the truth.

72. My concerns as to disclosure are fully recorded in my 15 July 2013 Advice.

POL00145130 (email from Rodric Williams to me on 3 July 2013) and attachments (numbered sequentially from POL00145131 – POL00145141), POL00145142 (email from Rodric Williams to me on 4 July 2013), POL00145145 (my email to Rodric Williams on 4 July 2013) and POL00029648 (email from Susan Crichton to Simon Baker on 4 July 2013).

73. I have to say that I do not recall these emails and many of them do not appear to have been directed to me. Thinking back, it looks like I was advising on the need for disclosure of the existence of 'Bug14' so-called because (I think) it affected 14 offices. I recall the meeting at POL on 3 July 2013 – I refer to it in my 2 August 2013 Advice **POL00006799**; it seems that we discussed this bug at that meeting.

74. My reply to Rodric Williams' email of 3 July 2013 (**POL00145145**) suggests that I was concerned not to pre-empt publication of the Second Sight Report – I had been told by Rodric Williams that it could not be published until Parliament and the responsible Minister had authorised publication – there was a suggestion made to me of Parliamentary Privilege.

75. I am asked about an email from Hugh Flemington to me dated 4 July 2013 at 8:01 (**POL00145142**). From a reading of the email, I would suggest that Hugh Flemington is asking reasonable questions about the disclosure process in relation to B14. My reply does not appear in the bundle provided to me by the Inquiry.

76. I had no knowledge of any bugs, errors, or defects in the Horizon system prior to 27 June 2013 – it should be remembered that I had very little to do with CK's POL prosecutions department prior to my instruction in the Samra prosecution

and so knew very little about Horizon generally. The Samra case was my first real involvement in CK/POL prosecutions. By 3 July 2013 I had heard of the existence of bugs and errors in the system because I had then been informed and/or seen the Helen Rose Report and Second Sight's Interim Review.

77. In my 4 July 2013 reply to Rodric Williams' 3 July 2013 email (**POL00145145**) I say this: "*Merthyr Dyfan. In this case there are competing interests: open and transparent dealing by POL as against the proposition that this is likely to be an appeal case.*" This appears to be a typographical error on my part, but it appears to me that I was saying that "*this is likely to be....*" My instinct (many years later of course) is to suggest that I thought it might be an appeal case; if that is right then the competing interests would be between open and transparent dealings on the one part with the need to protect the *sub judice* principle on the other.

POL00062162 (email: Rodric Williams to me and others, 5 July 2013)

78. This email is not as described, but is an email dated 31 October 2014 from Rodric Williams to Belinda Crowe. I have never seen this email before.

POL00006365 (my note entitled General Advice, 8 July 2013)

79. This General Advice document has the appearance of having arisen out of a telephone conversation, in which questions were asked of me. At this point we at CK were still in a reactive stage, responding to a changing environment. I do not think that, at that time, we understood the full implications of our (CK) discovery that Gareth Jenkins, prior to 27 July 2013, had not been giving a truthful account in his witness statements and oral evidence. My immediate response was to advise the stopping of ongoing prosecutions, the removal of

Gareth Jenkins as an expert witness, and a proper consideration of the disclosure position. So, this is me reacting to an unfolding situation, hence the somewhat disparate structure of this General Advice document.

80. The reference at paragraph 1 of the document - Alternative Fujitsu expert – I think arose because I had already advised that Gareth Jenkins could no longer act as an expert witness, and POL had asked what Fujitsu be told about why he could no longer occupy that role. My recollection is that POL did not want to offend Fujitsu and so asked me to provide them with a ‘form of words’ to relay to them.

81. I am asked to expand on my sentence “*Considerations as to the selection of the start-date include proportionality; resourcing; transparency; and POL reputation*”. This document was drafted prior to the commencement of the Review Process and at a very early stage of my involvement in POL work for CK. I had not at this point seen the Second Sight Interim Review, published on the same day as I wrote this Advice.

- a. **Proportionality.** At this point we had no real idea of the extent of the problem. We had been informed that these issues were only related to Horizon-on-Line, which went live at the beginning of 2010. At this point I therefore asked myself the question: *Do we need to look at the original pre-online system?* and concluded that it would be disproportionate to do so. This approach quickly changed when we realised, much later, that we were dealing with a bigger problem than at first thought.

- b. **Resourcing.** This consideration again related to our then current information, that the problem only went to Horizon-on-Line and so the cost of going back any further, in the circumstances then known to me, would be disproportionate. Again, this changed.
- c. **Transparency.** I considered this to be the most important consideration – it was in my view essential that POL was not to be seen to be acting to limit our work in any way; hence my dismissal of start dates of the previous 12-months and *post-separation*.
- d. **POL reputation.** I felt it important that POL was seen to be acting in a proper and ethical way in dealing with the possibility of wrongful convictions – again this consideration informed my advice against shorter start dates.

82. I would note here the following:

- a. In his Interim Review of Cartwright King's Current Process' document of 2 August 2013, Brian Altman QC said this at his paragraph 15: "*I can conclude on the available information that the approach of CK and counsel appears to be fundamentally sound.....*". Had he had any concerns about the start date for the Review this would have been his opportunity to comment – here it is to be noted that in this document Brian Altman QC did offer several recommendations for improvements to the Review Process, all of which were adopted.

- b. In his General Review document of 15 October 2013 Brain Altman QC said this: *“The 1 January 2010 start date for Cartwright King's review of Horizon Online disclosure is logical, proportionate and practicable in light of all the known circumstances.”* Had he suggested an earlier start date I am sure that we would not have demurred.

83. At the time I was considering the issue of start-dates I believed that, with the knowledge I then had, 1 January 2010 was the correct starting point for the Review; here I would note that others agreed with that proposition – see above.

84. I am asked to summarise the written and oral instructions I received to prepare my advice dated 15 July 2013. Paragraphs 24 and 25 of this witness statement refer.

85. Whilst I would undoubtedly have discussed the issues raised in my 15 July 2013 Advice document, this would only have been on a generalised level, not least because it was my function to advise rather than his. I have dealt with my discussions with Jarnail Singh and Rodric Williams elsewhere in this witness statement.

POL00142322 (undated transcript of call between me, Gareth Jenkins and Martin Smith)

86. I set out at paragraph 22 of this witness statement the circumstances of this telephone call. The transcript at **POL00142322** is a full transcript of the telephone call. This is the only occasion upon which I have communicated with Gareth Jenkins.

87. The role of an expert witness is to assist the court – it is not a partisan role.

Gareth Jenkins understood this – in each of the witness statements I have seen he says this: “*I understand that my role is to assist the court rather than represent the views of my employers or Post Offices Ltd.*” This narrative informed me that Gareth Jenkins understood that his witness statements and oral evidence in court, was provided by him as an expert witness. That narrative also informed me that he understood the duties of an expert witness.

POL00006357 (advice: ‘Prosecutions – Expert Evidence’, 15 July 2013

88. I have been asked to expand on my narrative: “*Dr Jenkins credibility as an expert witness is fatally undermined.*” I consider this statement to be self-explanatory, and it was intended to be so. In the Court of Appeal decision in *Hamilton & Ors v Post Office Ltd* [2021] EWCA Crim 577 Lord Justice Holroyd said that in this document I was “*expressing [my]self...clearly and firmly*” – see para. 87 therein. For the avoidance of doubt, I meant that Gareth Jenkins had failed in his duties as an expert witness and should never assume that role again.

89. In my view, and as I had advised repeatedly, POL was duty-bound to inform all those who had been prosecuted in reliance on Horizon data and/or any evidence provided by Gareth Jenkins, in part or otherwise, that Gareth Jenkins credibility as an expert witness had been fatally undermined.

Horizon weekly call and my advice on the duty to record and retain material.

90. Beyond advising as the requirement for a weekly Horizon weekly call and my drafting of a Protocol for the conduct thereof, I had very little involvement in the process. I may have sat in on a call on a single occasion.

91. I have been asked to comment on my email at **POL00139747**. All of this occurred at the CK Nottingham office, where Stephen Gelsthorpe and Rupert Hawke were based. When I initially spoke with Martin Smith about the “shredding” issue Stephen Gelsthorpe was present. Having spoken with Martin Smith in more detail, and with Jarnail Singh, I set to drafting my advice. I copied my *draft* advice (**POL00006799**) (dated 2 August 2013, NOT 3 August as stated in para.20 of the Rule 9 questions) to the recipients of this email because the subject-matter revealed what I considered might amount to serious criminal conduct. Stephen Gelsthorpe was the Senior Partner of CK, Rupert Hawke was the Managing Partner, and Andrew Cash was the POL point of contact for senior POL staff. Given the serious nature of the subject-matter I felt it important that the senior echelons of CK knew what had occurred and what I was doing about it. Stephen Gelsthorpe’s comments in his email neatly encapsulated our feelings on the point. I do not know if Andrew Cash spoke with Hugh Flemington as suggested in his reply to Stephen Gelsthorpe’s email.

92. I recall that my conversations with those listed would have been conducted in surprise and shock – we had just been informed that our client, or some of their staff, were potentially acting criminally by attempting to pervert the course of justice. We considered it essential that POL immediately be advised both of the

unlawful conduct and the underlying law and duties on them to prevent such conduct. This is why I delayed the start of my leave, due to commence that very day. The conversation revolved around how we could best achieve stopping the unlawful conduct and it was agreed that I would write **POL00006799** immediately in in this respect please note the timings of the emails at **POL00139747**.

93. Stephen Gelsthorpe was at the Nottingham office when I wrote **POL00006799** and I recall speaking (in somewhat shocked terms) about the conversations I had just had with Martin Smith and Jarnail Singh. What Stephen Gelsthorpe describes in his email as "*factions within [POL] who are running around trying to lay off blame for their own shortcomings by lying about the advice they have received then they lose privilege*" represents our general feeling on that day as to what was being done at POL. We were at a loss to understand why John Scott would give such an instruction or why others within POL did not wish to minute the weekly conference calls. The obvious conclusion, and the one which we quickly arrived at, is neatly encapsulated in Stephen Gelsthorpe's narrative. We perceived the shortcomings referred to as being a complete lack of judgement and understanding on the part of some, to fully appreciate the importance of retaining material for disclosure, and in respect of others, a deliberate back-covering exercise. As to whom we were referring to, the former category included Jarnail Singh, and his criminal law team, and some other department representatives attending the Weekly calls; in the latter category we included John Scott and his security and investigative staff, all of whom should, and likely did, know better.

94. I am asked to consider paragraph 3 of **POL00006799**. Please set out the basis on which you wrote and / or the source of information for writing "*Participants were informed that they should bring all Horizon-related issues they had encountered to the minutes were to be taken, centrally retained and disseminated to those who required the information, this list to include POL's Horizon expert witness.*" I was the source: I wrote this requirement into my advice on the Disclosure Hub/Weekly meetings Protocol.

95. I am asked to consider paragraph 3 of **POL00006799** and comment on the various elements of that paragraph. I am able to do so succinctly: Martin Smith was my direct source for all of this material; he in turn was informed of it all by Jarnail Singh. When I spoke with Jarnail Singh on the telephone to confirm what was said and done. The source of each sub-paragraph was:

- a. Jarnail Singh told me that it was John Scott who had given the instructions contained in my sub-paragraphs i. and ii.
- b. Jarnail Singh told me that the advice in sub-paragraph iii. re Privilege came from Andrew Parsons at Bond Dickinson; and
- c. Sub-paragraph iv. Represented Jarnail Singh's own views.

96. I was provided with all of this information on 2 August 2013; it is what prompted my written advice of the same day.

97. I asked Jarnail Singh in my telephone call of that day to inform me of what documents had been shredded. He informed me that because the minutes had been emailed to others they would not all have been destroyed. I asked him to ensure that this was the case and to forward to Martin Smith copies of the minutes of all previous meetings – I also asked Martin Smith to follow up on this request.

98. **POL00006799** contains my advice to POL to remedy the failures set out there and as to the future conduct. It also set out very clearly the implications for those misbehaving themselves in the ways there set out.

99. I am asked to consider **POL00006797** (letter from Susan Crichton to Andy Cash dated 16 August 2013). I do not recall ever having seen this document. I can say that I sent my Advice (**POL00006799**) on 2 August 2013, I believe Martin Smith forwarded to Jarnail Singh and or to Rodric Williams. I recall asking Martin Smith to follow up, to learn whether there had been any response to my Advice. Later Martin Smith informed me that he had telephoned Jarnail Singh, who had said not. He (JS) had made enquiries and had learned that it had been left in a drawer in Rodric Williams' desk but that it had now gone to General Counsel. I expect that the **POL00006797** email was the result of this discovery.

100. I am asked to consider the CK Review of Convictions. I explain the process earlier in this witness statement. I believe that the review was adequately resourced. The only documents we received were the prosecution files – many of these were incomplete; we asked for further material where we required it but were invariably told (by Jarnail Singh) that we had been provided with everything

available. None of the reviewers believed that they were assessing the quality of work carried out by Cartwright King, not least because so few of the cases were prosecuted by CK. It should be recalled that, prior to separation CK acted as agents for RMG(POL) and that CK prosecuted very few cases after separation.

101. To the best of my recollection, the Helen Rose Report and the Second Sight Interim Review were regarded as amounting to a single piece of disclosure, that is, if one went out so too did the other.

102. I am asked to consider **POL00039998** (email from Martin Smith to Susan Crichton on 16 July 2013) together with **POL00039993**, **POL00039994**, **POL00039995**, **POL00039996**, **POL00039997** and **POL00039998**. I recall some involvement in advising POL about CCRC requests; I recognise **POL00039993** and **POL00039995** as being my work. I have not seen email **POL00039996** before and make no comment on it.

103. I am asked to consider "*we are not aware of any cases which meet the first criterion*". The meaning of this comment is self-evident, the first criterion being set out in the first sub-paragraph of **POL00039993**, as "*The defendant has at least tried to appeal his/her case to the Court of Appeal or, in the case of a Magistrates' Court conviction, the Crown Court or High Court.*"

104. I am asked to say why I did not suggest informing the CCRC as to the concerns regarding the credibility of Gareth Jenkins raised in my 15 July 2013 advice. I suspect that I had thought that, together with my analysis of the

problem highlighted in the document, and my sentence “*The Second Sight Interim Review demonstrates that this was not the case*” would have been sufficient to indicate that this should be done. I also know that I would have told Rodric Williams that CCRC should be cooperated with in every respect and that they should receive full disclosure. With the benefit of hindsight, I agree that I should have put this advice in writing.

POL00060715 (advice in R v. Lynette Hutchings dated 19 July 2013)

105. Whilst the SPM in this case denied dishonesty at interview, in my experience of general criminal practice I am aware that some facing allegations of misconduct make denials in interview, but later change what they say, often having received detailed legal advice. The unequivocal reference to R v. Eden (1971) 55 Cr. App. R. 193 in the Basis of Plea was, to my mind, such a change, for only a lawyer providing expert advice would have been familiar with the principles set out in that decision. Taking what I knew at the time, that is, that Gareth Jenkins was a tainted witness, and that the Interim Review noted in its preliminary conclusion: “*a) We have so far found no evidence of system wide (systemic) problems with the Horizon*” I clearly did not think that the Interim Review or the Rose Report were disclosable. With the benefit of hindsight, that is, knowing now that Horizon was itself unreliable, I would advise disclosure.

Advice to discontinue prosecutions

POL00040022 (advice in the case of R v. Samra dated 22 July 2013) and **POL00133633** (advice in the case of R v. Wylie on 23 July 2013).

106. Whilst both the Interim Review and the Helen Rose Report identified issues with Horizon, the preliminary conclusion of the Interim Review was that there

were “....no (systemic) problems with the Horizon”. The problem here was the absence of a reliable expert witness who would be able to provide evidence that Horizon was not systemically unreliable or that Horizon was not at fault in these cases. In the absence of such a witness/evidence, there could be no question of pursuing a conviction. Again, it should be noted that I was working with what was then known to me.

POL00108042 (advice in R v. Nicola Grech dates 23 July 2013).

107. I am asked to identify the source of the information which led me to state that: “*Routine systems analysis revealed that there was a high level of utility bill reversals being conducted under Ms. Grech’s Horizon User ID*”. I cannot recall, but this information would have been taken from a witness statement or other document in the prosecution file.

108. I am asked to consider the narrative “*When challenged that this explanation did not make sense as the reversals were all being carried out on the same day, often only minutes apart, she was unable to offer any further explanation.*” And to say to what extent, if any, I considered this to be a case where SPM could not explain the data generated by Horizon. Looking back, I did not. The SPM has stated in interview herself that she had conducted a number of reversals herself and that she was aware that others had also done so. It is quite likely that here, the SPM was pointing to a factual basis (known to her) for the discrepancies rather than a data-based absence of knowledge.

109. I would also note that I considered the Helen Rose Report separately here and thought that it had a bearing on the issues in the case. I would note that this

advice was a 'holding' advice pending the receipt of further inquiries asked for by me: see my paragraph 17: "*Once we have the information indicated in the preceding paragraph, and a Defence Statement, we can then determine whether the Second Sight Interim Review and the Helen Rose report are to be disclosed.*" I would also note that a general stop on all prosecutions was imposed at about this time – this case would have gone into the 'Stacked Cases' file.

110. I cannot now say whether the Interim Review and the Helen Rose Report were served; it is unlikely if the prosecution was terminated.

The impact of the review on ongoing prosecutions

POL00040095 (Bond Dickinson note titled "Civil claims by SPMRs) and **POL00114253** (note dated 12 September 2013).

111. I recall that on or about 12 September 2013 I CK was sent a copy of **POL00040095** and was asked to comment on the document. Martin Smith asked me to respond, and I did so - **POL00114253**. I believe, but cannot be sure, that **POL00040095** was sent by either Jarnail Singh or Rodric Williams.

112. It is likely that I would have emailed the Advice to Martin Smith who would then have forwarded it to the intended recipient.

113. I am asked to consider my narrative: "*To clarify, whilst a number of criminal prosecutions against SPMR"s and clerks have been terminated since the publication of the Second Sight Interim report, none was stopped because of errors found in the Horizon system*" and to say how many prosecutions were

terminated following the Second Sight Interim Report – I cannot now provide the figure as I do not have access to the entire body of files. As to my meaning in writing those words, it must be recalled that, at the time, we were still receiving reassurances that Horizon was reliable and robust notwithstanding the bugs noted in the Interim Report; and again, the Interim Report itself stated that there were no systemic problems with Horizon.

114. I am asked to consider my narrative: *“In all cases the prosecution was stopped because it was considered that the continued prosecution of a particular SPMR/clerk no longer remained in the Public Interest”*. The reasons for termination were those set out in paragraph 1a. of **POL00040095**. What this means was that, given that POL no longer had access to a reliable expert witness, we could not be satisfied that the test for continuing a prosecution was met. Simply put, in the absence of a reliable expert witness where one was required, it could never be in the public interest to maintain a prosecution. It is likely that this was true of all prosecutions stopped.

115. I am asked the question *“To what extent, if at all, was there a difference in frequency or the reasons with which POL terminated prosecutions following the Second Sight interim report in comparison to before its release?”* I am unable to answer this question. My substantive work commenced with the prosecution of Balvinder Samra – it was this case which caused me to advise POL that all prosecutions be stopped. Thus, I have almost no POL history prior to the immediate release of the Interim Report.

Brian Altman KC's Review of the Process

POL00006583 (Brian Altman KC's Interim Review of Cartwright King's Current Process) and **POL00066807** (Harry Bowyer's advice titled "Response to the Interim Review of Cartright King's Current Process by Brian Altman QC").

116. I am asked to consider paragraph 6 of these documents. I was not then concerned that some cases had been initially sifted by the solicitor responsible for the prosecution of the case, for the reasons set out by Harry Bowyer in his document. I discussed these issues with Harry Bowyer at the time he wrote his response, and his comments represented our joint view on the matters raised. That view was this: that the issue we were grappling with was not one of Horizon reliability – what is now known was then unknown to us – the issue under consideration was the reliability or otherwise of Gareth Jenkins, and the effect of that issue on the disclosure process.

117. I am asked to describe my view of Brian Altman QC identifying a concern at paragraph 12 of **POL00006583**. This concern was not a consideration in the Review Process, which concentrated on the disclosure problem. The "*root cause of reported problems*" was, in our then view, clouded by Gareth Jenkins failure to inform us (and, we then believed, POL) of the presence of bugs.

118. I am asked to consider paragraph 14 of these documents and to set out whether I, Cartwright King or POL gave any further consideration to disclosing documents other than the two identified. The only documents then at our disposal were the Interim Report and the Helen Rose Report.

119. We were already alive to the issues posed in Guilty plea cases and indeed the Review Protocol catered for those cases. We conducted a sift review on every case sent to us and I have seen nothing to suggest that any Guilty plea case 'slipped through the net'.

120. Brian Altman QC describes his concern in the form of a rhetorical question: "*My concern is **whether** the questions may be too narrow.*" He then indicates his view that experience may inform the answer. Given that Brian Altman QC did not return to this concern in his later review, it is likely that he (and we) considered the questions to be appropriately cast.

POL00006485 (note of conference on 9 September 2013) and **POL00139866** (note of conference on 9 September 2013).

121. This meeting was arranged by POL. Prior to the meeting the Review Process was the subject of detailed discussions between me, Harry Bowyer and, to a lesser extent, Martin Smith. Others worked on the process by it was driven primarily by me, with the assistance of Harry Bowyer. Prior to this meeting we not met with Brian Altman QC. Limited discussions were had with Jarnail Singh and Rodric Williams whilst we got on with the task.

122. I believe **POL00139866** to have been drafted by Martin Smith – it bears his style.

123. I have very little recollection of the meeting but I do say that Martin Smith was a competent minute-taker and his note is likely to be reliable.

124. I have been asked to consider the narratives: “SC said that there had been some “*cultural issues*” at the start which had now been overcome but he thought that it was necessary to put duties on individuals” in **POL00006485**, and “Simon: We discussed last Friday: main problem is cultural. People in different departments. Need to be a proper coming together” in **POL00139866** and to respond to a number of questions:

- a. I do not recall any discussion about a failure to record minutes or the “shredding” episode.
- b. The term “*cultural issues*” is a reference to the silo mentality prevalent at POL and the apparent resistance by some there to what we were doing.
- c. I am unable to comment on Susan Crichton’s word: “*Susan: People then dump...*”. I have no recollection of that being said. It is, in context, likely to have been a reference to the “*cultural issues*” I had raised.

125. I do not know who coined the term “*band wagon*” but it did not originate within CK. I did not approve of the term but, to my regret, did not prevent its use. Whilst not seeking to justify the use of the term in any way, it must again be recalled that, at the time, we were still being reassured by POL that Horizon was sound and that the only Horizon-related problem was that of the expert.

126. I have been asked to consider the narratives: “MS stated that he thought that there was a lot of Horizon information within Fujitsu that had not been getting to Gareth Jenkins” and “Simon: Goes back to GJ. Either he not aware of info or FJ

ivory tower – not being taken seriously". I have very little recollection of the meeting or of what was said there. I do recall discussing the sentiments expressed there with Martin Smith and it the note represents our joint views on the matter. For my own part I recall my view being stronger that is expressed here: I considered it to be the case that Gareth Jenkins had deliberately failed in his duty as an expert witness for reasons best known to him.

127. I have been asked to expand on "*Prior to the HOL rollout there was a cash audit done so that all POL branches balanced. BA Advised that there was no positive duty to seek out individuals pre-1 January 2010 but if POL was approached it would need to make a case-specific decisions on disclosure*" in **POL00006485** and "*Susan: That's when the system rolled out – knowing that branches balanced – so thought justifiable date.*" I have no recollection of this discussion, but this narrative represents one of the considerations informing the choice of start-date. The fact of the pre-rollout branch audit would have been a major contributing factor to the choice of start-date, because the audit represented a fixed point at which branches balanced.

128. I do not recall any discussion of the Callender Square bug; that is not to say there was none, merely that I cannot now remember.

129. I have been asked to expand on: "*BA advised considerable caution in relation to mediation cases involving previously convicted individuals...The concern is that lawyers acting for those individuals may be using the scheme to obtain information which they would not normally be entitled to in order to pursue an appeal*". I do not believe that I offered any contribution to this part of the

debate, for it seems to me that it raises issued of civil law disclosure, about which I then knew almost nothing of.

130. I have been asked to consider "*BA advised that in relation to the Hutchings case...that he believed that there should be disclosure*". I do not now recall the grounds on which Mr Altman QC disagreed with me. Brian Altman QC occupied a supervisory role over the entire Review Process and the CK disclosure exercise and so, where he advised disclosure, we provided that disclosure.

131. I am asked to consider **POL00006581**, Brian Altman KC's note of advice titled General View and dated 15 October 2013. I do not recall when I first had sight of this document, but it is likely to have been within a few weeks of the date it was signed. I recall being impressed by the scope of the review and, to that point, had neither been informed nor realised the scope of Mr Altman QC's instructions. Neither was I aware that he was reading the reviews completed by me and Harry Bowyer. My overall impression was that Brian Altman QC approved of the work we were doing and that, subject to a few improvements, too the view that we should continue in the same vein. Importantly for me, he approved of my decision to commence the Review with cases from 1 January 2010 and of the rationale behind that decision. His view that, should a pre-2010 case present itself as suitable for review then it should be reviewed, was one of the factors leading to the enlargement of the review.

132. I have been asked to consider paragraph 64 of **POL00006581** "*When I queried the rationale behind the cut-off date, I was told, and entirely accept, that, prior to each branch rollout, a cash audit was done so that each branch*

balanced” and to provide my understanding of what Mr Altman KC meant, and the source of his information. One of the considerations behind my decision to select 1 January 2010 as the start date was the fact that all branches had been audited to provide a baseline for the rollout of Horizon On-line. I was informed of this fact by either Rodric Williams or Jarnail Singh. I do not know Brian Altman QC’s source, but it is likely to be either one or both of those I mention, or some higher authority within POL.

133. I did not take part in the 4 October 2013 telephone conference, and I do not believe that anyone from CK took part – I do not believe that we were informed that the conference was to take place. We had already been informed, by Second Sight *via* their Interim report, and repeatedly by POL, that Horizon was systemically sound. Our concern was centred upon the disclosure issues raised by the Gareth Jenkins problem rather than by the question whether Horizon was faulty – our instructions were that it was sound. We at CK, and I, had no role in the mediation scheme, other than providing some advice concerning certain aspects of criminal law.

134. I have been asked to consider paragraph 129 of **POL00006581**, “*There is understandable concern that offenders might use the mediation scheme to gain information as a platform from which to launch a fresh or new appeal, and so CK wish to exercise a measure of control over the dissemination of information and material during the process*”. I played almost no role in the mediation scheme, although I recall thinking that it was a bad idea when explained to me by, I believe, Jarnail Singh. But CK was not instructed to be involved in the scheme and so had no input into the formulation or operation of the scheme. I

remember thinking that it had been established by POL as a public relations exercise in the hope of limiting reputational damage. I do not know of the particular concerns referred to but we at CK were concerned with what amounted to a review and disclosure process.

135. I do not recall taking any substantive steps in response to this advice, not least because the advice expressed a general approval of what we were doing. I would have implemented the small changes suggested and it was, in part at least, this advice which led to the widening of the scope of the Review Process to include *pre-2010* cases.

Advice regarding Julie Cleife

136. I have been asked to consider **POL00112905** and the basis of my advice not to disclose the Second Sight Report or the Helen Rose Report. Whilst this SPM had stated to auditors upon arrival that she had " *no idea where the money was ... [T]he discrepancy had been building up for a long time*", she within a short period thereafter provided a number of explanations as to where the money had gone, including having delayed entering transactions and giving cash to her children, sometime as much as £1,000. These were clear admissions of misconduct wholly unrelated to the operation of Horizon. My full reasons are contained in **POL00112905**.

Cartwright King reflections in December 2013

137. I have been asked to consider **POL00040194**. Whilst the document is not signed by any individual, I believe to have been written by me, not least because

I recognise both the style of narrative and the content. In particular I am asked to consider the passage: consider “*Until the publication of the Second Sight Interim Review the Prosecutors for Post Office had adopted a firm approach to requests for disclosure in relation to the Horizon system which was treated as being robust and reliable*” and to say how the “firm approach” to disclosure differed from the post-Interim Report approach.

138. It should be recalled that, prior to the publication of the Interim Report I had almost no dealings with POL and POL casework. For this reason alone, my knowledge of pre-Report disclosure protocols at the time I wrote **POL00040194** consisted of the result of enquiries made by me of Jarnail Singh and from my case reviews. Looking back, I now see what appears to have been three strands of thought within POL on the topic of disclosure. The first strand amounted to an article of faith: ‘Horizon is both robust and reliable – there is nothing wrong with it and if Horizon says money is missing then it is missing.’ The second strand considered that the cost of providing disclosure was prohibitive and should always be discouraged. The third strand, I felt, arose out of an almost religious panic: ‘Horizon must not be seen to have been impugned’.

139. Paragraph 17 was a shorthand for the Review Process test – in every case reviewed by me and Harry Bowyer the full review process was applied *per* the protocol I had drawn up. That is not to say we were perfect, but we followed the protocol, as attested to by Brian Altman QC during his oversight.

Initial advice regarding Seema Misra

140. Here I consider **POL00108223**. During the course of the Review Process, it became clear to us that we should conduct a review of the *pre*-2010 prosecutions. I had, I believe, been informed by Jarnail Singh that this case was quite high profile and that it should be reviewed. I called for the file but found it to be very short of relevant documentation, containing, I think, only trial transcripts. I recall asking Martin Smith to obtain the full file, but it never came – I cannot explain why. POL was quite keen for me to review the case and so I did what I could from the trial transcripts alone – please see my preamble to the Review . I did wonder why a transcript of the trial proceedings had been obtained – this was, and is, most unusual in anything other than an appeal case.

141. Whilst I cannot be sure, I think that the narrative concerning Professor McLachlan's hypothesis was taken from the judicial comments as they appeared in the transcript. Certainly, I recall that a Judge had, on several occasions, heard and refused applications for disclosure from those representing the SPM. It was on this basis that I considered there to be no valid criticism of the approach taken by RMG to the topic – a Judge had ruled on fully argued applications and had, by his ruling, arrived at that conclusion. I must confess however that my advice in this case was almost entirely predicated on the assumption that a Judge had repeatedly ruled on such applications, against disclosure. As to the issue of "*general and unspecified allegations*" this was a reference to Professor McLachlan's requests for material, again as described, I think, by the Judge.

142. It is easy now to look back and say, with the knowledge I now have, that "*I was wrong*". But I do agree that, had I been asked to conduct this review again and with what I now know, I would have advised differently. I say this because I then relied solely on trial transcripts of what was said in court, which never reflects the full position, and by the Judge's views on the topic, which is less information than I now know the position to be.

143. I am at a complete loss to explain the conflict between paragraph 33 of **POL00040194**, dated 5 December 2013 and **POL00108223**, dated 22 January 2014.

Advice regarding Jerry Hosi

144. I am asked to consider **POL00133638**. At paragraph 36 of my Advice, I say that "*....I take the view that material relating to the 'Callendar Square' or 'Falkirk' bug should have been disclosed to the defence in this case.*" (see also para.40.ii of **POL00133638**). I further note that, at paragraph 43 of my Advice I refer to Brian Altman QC's General Review document of the 15 October 2013, in which he set out the test to be applied in cases such as this one. I applied that test. Having advised POL in the terms there set out I had no further involvement in this case.

Dealing with the Procurator Fiscal

145. I recall attending a meeting with the Procurator Fiscal in Edinburgh; this topic is dealt with at my paragraph 58 above. I think we asked Jarnail Singh about prosecutions in Scotland and Northern Ireland and he replied that POL had representatives in both jurisdictions, who would investigate cases and refer

them to the relevant prosecuting authority. I believe that I suggested that CK contact the Procurator Fiscal's office in order to identify, and review, any Scottish prosecutions. This was the genesis for the 3 - 5 September meetings.

146. I do not now recall precisely what I said to the Procurator Fiscal at the meetings – I note my comment to the effect that I provided a “*The meeting with a broad overview of the HOL difficulties*”. Given what we then knew, that is, that Gareth Jenkins was a tainted witness; that Second Sight had concluded that there were no systemic failings with Horizon; and that we had not then managed to recruit a replacement expert witness, my discussions would have centred on POL's inability to provide expert evidence in support of Horizon reliability and that, until we were able to do so, we could no longer prosecute Horizon-evidence based cases.

147. I have been asked to consider a meeting with the Procurator Fiscal I am said to have attended on or about Monday 5 October 2015. I am sorry to say, I have no recollection of this meeting.

General Counsel's briefing note POL00108136

148. I recall producing this document on my own initiative – I do not recall the precise timeline for its production, but I believe it was prompted by a change of POL General Counsel. I recall thinking that it was important that new General Counsel be informed of what CK was doing and our progress. I recall that the document was largely welcomed by General Counsel, and I think it led to a meeting with me, Martin Smith, Roderic Williams and Jarnail Singh at POL

headquarters. I recall that, once completed, I forwarded the Briefing to either Jarnail Singh and/or Rodric Williams.

149. I am now unable to recall which prosecutions I thought the Court of Appeal might have overturned.

Post Office Prosecution Policy

150. I am asked to describe the nature and extent of my involvement in POL's review of its prosecutorial role and its policies relevant to the investigation and prosecution of offences. I certainly recall asking Martin Smith to obtain a copy of POL's written prosecutions policy – shortly after I made that request he produced a document sent to him by Jarnail Singh. This document, which purported to be the then current policy was, I thought, wholly inadequate. I therefore asked Martin Smith to obtain POL's instruction that I draft a new policy; Jarnail Singh provided those instructions, and I commenced work.

151. The product of this work is represented in document **POL00030686**; I was the sole write of this document, although I did consult with Harry Bowyer on its content. The only material provided to me by POL was that 'policy' mentioned in the preceding paragraph; any other material I used arose out of my own research. My main source material was the Crown Prosecutions Service's Code for Crown Prosecutors, the Criminal Procedure and Investigations Act 1996 and the Code of Practice issued under Part 11 of that Act, the Protocol for the Control and Management of Unused Material in the Crown Court, and the Attorney-General's Guidelines on Disclosure. All of the ideas, concepts, principles and

tests set out in my Policy were my own and represented my thinking on the matters contained therein. I received no input at all from POL.

152. I had no access to any past POL prosecution policy save that mentioned in my paragraph 150 above. As I have already said, I considered that document to be wholly inadequate in perhaps every respect.

153. At the time the MoJ retained a list of 'recognised' prosecution organisations, which included the RSPCA, NSPCC and others. POL was on that list.

154. I am asked to consider my paragraph 4.5(i)(b) in the Policy and why whether a shortage had been repaid was relevant to the public interest stage of the full code test. Repayment of a modest amount of stolen money is but one consideration within the overall public interest test and will never be determinative; I have, and had then, seen instances where the repayment of a sum had militated against prosecution. The public interest test requires a consideration of issues of proportionality and, in some cases, that aspect of the test may result in non-prosecution. Here I note paragraph 4.14. f) of the current Code for Crown Prosecutors, which applies a proportionality test:

f) Is prosecution a proportionate response?

- In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:
 - i. The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in

paragraphs 4.14 a) to g), but cost can be a relevant factor when making an overall assessment of the public interest.

POL00112937 (Brian Altman's note of advice titled "Review of Post Office Ltd Prosecution Role" **POL00125209** (email from Gavin Matthews to Brian Altman KC on 4 July 2014) and **POL00125210** (my comments on Brian Altman KC's draft policy).

155. I have no knowledge of the email chain between Gavin Matthews, Brian Altman and Jarnail Singh at **POL00125209**. I was aware however that Brian Altman QC had some reservations about my proposed policy, and he commented to that effect. We never met, or spoke, on the subject, all communications being *via* email between me and POL. I am also able to say that I had no substantive communications with POL on the detail of either my or Brian Altman QC's documents.

156. It is fair to say that Brian Altman QC and I took differing approaches to such a policy: he preferred a generalised policy whilst I tended in favour of a more prescriptive policy. These differences of approach can be seen in both of our reviews of the other's documents, at **POL00112937** and my **POL00125210**. I think in the end Brian Altman's views prevailed at POL, although some of the recommendations which I offered were adopted.

POL00026941 (my note of advice on prosecution policy dated 24 August 2018) and **POL00126145** (policy with amendments in tracked changes).

157. I am asked to set out the background to my advice document **POL00026941**. I am unable to recall when, or indeed why, I was instructed to advise at this point. I note however that I provided detailed and substantive advice and offered

further minor but important amendments. Looking at the documents now, it seems that I was asked to amend the policy document itself, which I did on 25 August 2018. I cannot say why I was instructed to complete this work – I do not believe that I was given a reason. It does however seem to me to have been a sensible request.

Fujitsu prosecution support and finding a new expert.

158. I am asked to set out the nature and extent of my involvement in (a) POL finding a replacement expert to provide evidence on the integrity of Horizon and (b) the prosecutorial support provided by Fujitsu.

159. On 15 July 2013 I advised POL that they should find a new expert witness to replace Gareth Jenkins. I was asked by POL – Rodric Williams I think, to identify a shortlist of suitable experts who might fill the role and I did so having visited and interviewed several. I record this work at my paragraph 64 above.

160. Whilst I note that I was copied in the email at **POL00145361**, I have no recollection of ever having seen it – that is not to say I did not, I simply do not remember. I do not believe that I had any involvement in advising on the Transitional Support Service Change Control Note.

POL00040040 (Draft scope for computer experts dated 17 September 2013) and **POL00138289** (email chain ending on 9 May 2014) and **POL00138290** (attachment).

161. I was asked by POL to draft a 'Scoping Document' to assist any proposed new expert with the parameter and aims of the work to be undertaken. The result of that instruction was this document, **POL00040040**.

162. I have never seen the email chains at **POL00040040** and **POL00138289** of the Fujitsu document at **POL00138290**, but they clearly arise out of my recommendation that Imperial College Consultants be instructed as the new experts. I note however the restrictions seemingly placed by Fujitsu on the process and the suggestion that the work be restricted solely to the Mediation Process – this is new to me, and I note that it did not follow the spirit or substance of my advice.

163. I cannot say what steps POL took to carry out the work described in the emails.

POL00146900 (email chain ending on 22 November 2013) **POL00146901** (attachment), **POL00146917** (email from Rodric Williams dated 26 November 2013) and **FUJ00156931** (note titled "Update on Issues Impacting on the Horizon System Arising from Second Sight Audit").

164. I have no recollection of the email chain **POL00146900**. I do not believe that I attended any such meeting. I do not believe that I have not seen **POL00146917** or **FUJ00156931** before today.

POL00113136 (draft memorandum) and **POL00113135** (note on Securing Data for Future Prosecutions dated July 2014).

165. I see that I was instructed to produce **POL00113136** but do not recall doing so. I believe either Rodric Williams or Jarnail Singh would have told me of the Fujitsu consideration of the proposed MoU – this on the basis that I generally dealt with only those two from POL.

166. I am asked to consider paragraph 4 of **POL00113135**. I do not recall the view of Fujitsu's commercial and legal team communicated to me. I do not think the contract I refer to can be **FUJ00000069**, because that document does not contain the pertinent clause numbers. My understanding was that POL had an entitlement to receive all data from Fujitsu as was required by POL, but that POL would be required to pay for the time required to extract the data sought. I also understood that POL considered the charges levied by Fujitsu to be expensive.

POL00148748 (email from Jarnail Singh to Chris Aujard dated 23 July 2014) and **POL00148749** (attachment).

167. I believe I was forwarded the Andy Holt email **POL00148748** by Jarnail Singh and was instructed to advise on the email because one or the other wanted my input into the agenda for the proposed meeting. As is clear from my Advice, which I settled without specific instructions to do so, I considered the content of Mr Holt's email to be inappropriate and wrong. I am not aware of any steps POL took in response to my advice.

The Mediation Scheme

168. We at CK had very little involvement in the Mediation Scheme, save as is discussed below. Similarly, we played no part in the work of the Working Group.

169. I do not specifically recall any instructions to advise as I did in **POL00148720**.

I do not see how my view on whether POL should mediate cases who had not been convicted of a criminal offence is relevant. I was a lawyer instructed from time to time to advise on matters of law. As **POL00148720** makes clear, my advice was that no applicant guilty of a criminal offence committed against POL should be allowed into the Scheme – my reasons for providing this advice are set out in **POL00148720**. In short, I was of the opinion that the proper route for a convicted SPM was the Court of Appeal. Here I am asked to provide a personal view based on hindsight. I am unable to do so, for I do not see how my now informed view can properly inform past decisions. Furthermore, such a view amounts to an invitation to say that I was wrong to advise as I did – I cannot say that when considering what I knew at the time. Had I then known what I now know then my view might have been different, but I consider the ‘with hindsight’ approach to be an unfair exercise to engage in.

POL00148720 (advice on criminal applicants to the Mediation Scheme).

170. The law does not restrict the definition of acting “*dishonestly, with a view to gain for himself or another or with intent to cause loss to another*” to a financial or monetary loss and the “*gain*” or “*loss*” can be a non-financial gain or loss, *e.g.* the loss may be the gaining or loss of an opportunity. In circumstances where an SPM stated they believed the discrepancy was not a real loss but unexplained, who has then acted in the way described because they believed the discrepancy was not a real loss but was an unexplained one, may still fall within the definition set out above. Here, the question is one of whether an SPM

who was 'forced' into the conduct complained of because of a proper and real fear, is one going to the application of the public interest aspect of the prosecution decision. That is why I advised in the terms set out in **POL00148720**.

POL00023832 (advice on Second Sight dated 16 February 2015)

171. I am asked to set out the basis for my opinion that "*both offences are equal in law: both are offences of dishonesty and both carry the same maximum sentence*". This is not an opinion but rather a statement of the law – each of the offences mentioned carry a maximum sentence of 7-years imprisonment, see ss.17&17 of the Theft Act 1968. Accordingly, these offences are of identical seriousness.

POL00130708 (email from Laura Pinkney to Jessica Barker dated 29 October 2014)

172. I had very little involvement in POL's preparation of its responses to applications to the Mediation Scheme, although I do recall occasionally providing advice such as that set out in **POL00130708**.

Deloitte's Project Zebra and remote access

173. I am asked to set out the extent of your knowledge on Fujitsu's ability remotely to write, edit or delete entries in branch accounts. Initially I had no knowledge of such matters, not least because I had almost no dealings with POL prior to my being instructed to prosecute the Samra case. After that instruction I recall hearing from Jarnail Singh that some were suggesting that POL/Deloitte were able to enter Horizon "*through the back door*". I was informed by Jarnail

Singh that such a thing was not possible. Later I recall Rodric Williams telling me the same. I do recall visiting premises (possibly Fujitsu's) for a presentation on Horizon. I do not recall all of those present, but I believe that Rodric Williams was in attendance.

174. The presentation was delivered by persons I did not know but whom I now presume to have been Fujitsu staff. The presentation took the form of a White Board explanation of Horizon functionality. It was a much-simplified presentation, with a box being drawn on the white board with an explanation as to how it was not possible for POL/Fujitsu to enter remotely. The distinct impression I was left with was that Horizon was very secure and could not be remotely accessed by anyone.

175. As time progressed the suggestions of a 'back-door' entrance to Horizon grew louder, but each time I asked about the possibility, I was informed that there was no 'back door'. I have looked at **POL00028062** (Deloitte – Horizon Desktop Review of Assurance Sources and Key Control Features, Draft for Discussion, dated 23 May 2014) and can say with a degree of certainty that I did not see this document in 2014. I recall hearing about it anecdotally and, because I considered it to be relevant to our disclosure exercise, I asked for it on a number of occasions, informally and in writing, *e.g.* on 23 July 2014 - see POL00148749 at paragraph 9.ii. I was told that it did not reveal any 'back door' and that it was commercially sensitive.

176. Eventually a redacted version was provided to me and here I note the date as being 26 February 2015. This document was the source of **POL00029843**,

a document I produced. My thoughts on the relevance of this document to the disclosure process is set out at paragraph 4 in **POL00029843**.

177. I refer to my paragraph 6 of **POL00029843**: my telephone conference with Rodric Williams and Andrew Parsons represented the first occasion upon which I was informed that it was possible to 'inject' a transaction unilaterally into a branch's accounting records without the consent, approval or indeed knowledge of the SPMR. This instruction led me to produce **POL00029843**. I recall that, having seen Andrew Parsons' reply to my questions (**POL00029843** and attachments) I asked Martin Smith to organise a meeting with POL to discuss the Deloitte findings and Andrew Parsons' response, but I do not think this meeting took place.

178. I have considered **POL00021781** and attachments. It seemed clear to me at the time that the Deloitte material should be the subject of a fresh disclosure exercise – it seriously undermined POL's strong assertions, given by them over the years (and repeatedly, to me), that there was no 'back door'. That is why I asked my questions, and it is why I was not satisfied with the response to my questions, and it is why I asked for a meeting on the topic.

179. I see from several documents provided to me that I advised that there were disclosure implications arising out of the Deloitte findings.

180. By May 2015 CK had, I think, completed its Review Process and disclosure exercise and POL seemed less than interested in a further exercise. Around this time, I established a new and unrelated department within CK and most of my

energies were directed towards establishing a CK presence in an altogether different area of law. I did however continue to advise POL on matters but to a lesser degree than hitherto. As an aside, I do not ever recall having dealings with a 'Project Zebra' although this may have been because we were simply unaware of any codename.

Ongoing involvement

181. I am asked to consider **POL00067067** (email chain between Richard Pike and Martin Smith on 7 May 2015). I do not recall providing any further advice on this specific instance, but I think I provided some advice on other cases. I recall commencing work on a list of cases where disclosure ought to be considered, and because of my working habits, a list would have been produced. I cannot say what has happened to that list. I have also looked at **POL00065434**. I do not recall this work but clearly I had been instructed to deal with the disclosure implications of the Deloitte Report and would have done so. It is equally clear from the documents that I was concerned to ensure that proper disclosure decisions were made.

182. I'm afraid I have no recollection of the Brian Altman QC meeting.

183. I have looked at **POL00029867** (email from Andrew Parsons to you on 15 July 2015) and **POL00029868** (attachment). I am asked to provide my views on the content of those documents. I have no recollection of seeing them although plainly I did. I was by this time doing much less on the POL work and more in my new department (in which Martin Smith and Harry Bowyer were also engaged). It seems clear to me now that Andrew Parsons' desire to narrow the

scope of any investigation into legacy Horizon was ill-judged, and it is likely I would have thought so at the time. I say this because it was me who effectively stopped POL prosecutions after July 2013 and I instigated the disclosure review process. I do not think it likely that I would have taken a different view to what is frankly astonishing material revealing, as it does, a high degree of corporate if not personal failure on the part of POL.

184. I have considered **POL00092640** (email from Martin Smith to Harry Bowyer, copied to you, on 21 August 2015). I recall nothing of this correspondence, although the reference to Martin Smith being “...on the CPC course” is a reference to his training course for the new CK department I referred to above, at my paragraph 180. The internal view at CK by this point was that we had at the very least been mis-instructed on the issue of ‘back doors’ into Horizon. By this time, we were coming to the realisation that something was seriously wrong with POL’s corporate culture when dealing with Horizon-related issues whether in a criminal or civil arena.

185. **POL00065718** (email from Rodric Williams to you and others on 19 November 2015) and **POL00065904** (my note of advice on R v. Misra – Disclosure dated 7 December 2015). In this document I was saying that the CCRC were now the lead organisation dealing with Mrs Misra’s case and that, by reason of the CCRC’s statutory standing, it was that organisation to whom disclosure should be given. I say this because by a s.17 Order, POL were required to provide the CCRC with all documents and other material obtained or created during any investigation or proceedings relating Mrs Misra. To this

extent I was of the view that, whilst POL's disclosure duties persisted, those duties were owed to the CCRC standing in the shoes of Mrs Misra.

186. **POL00140004** (email from Martin Smith to Andrew Winn on 30 March 2016).

I am asked to describe what further involvement I had with the issue of potentially erroneous transaction corrections. In December 2015 I gave CK 3-months' notice of my resignation. Although that notice period expired on 30 March 2016, I had stopped working for CK a few weeks prior to 30 March 2016. Accordingly, I had no further involvement with this issue.

187. **POL00156681** (email from Rodric Williams to Gavin Matthews and another on 25 April 2016), and documents attached (**POL00065652**, **POL00065904**, **POL00110276**, **POL00001733** and **POL00021847**). I have no memory of **POL00001733** and **POL00021847**. I certainly do not recognise them, and I do not think I ever saw them.

188. **POL00067037** (email from Harry Bowyer to Lucy Bremner on 19 October 2018). I am asked to explain Harry Bowyer's narrative: "*I further concluded that, had we known then what we now know, we would have disclosed the Helen Rose and Second Sight reports*". I refer to my paragraph 142 herein in reply.

The Group Litigation

189. I had no involvement in assisting POL prepare for the Group Litigation or in providing advice arising from the same and was never asked to advise on the matter.

190. **POL00066972** (Advice on Disclosure Issues arising from the CCRC and Civil Proceedings dated 20 December 2017). I do not recall the instructions I received to produce this Advice document, although clearly I was so instructed. My instructions almost always came *via* Jarnail Singh, so it is likely that he requested this advice, perhaps at the request of Rodric Williams. As to my view that, whilst POL's disclosure duties persisted, those duties were owed to the CCRC, that advice was given in respect of the s.17 Notice as it applied to Mrs Misra. It was not my view that this represented a general abrogation of the duty in respect of any other case, but only those the subject of a s.17 Notice.

191. **POL00042015** (email from Rodric Williams to me on 7 September 2018). I have no recollection of the conference to which this email refers and indeed do not believe I attended a conference with Antony de Garr Robinson KC. If I did I do not know why; I was not involved in the 2018 GLO proceedings in any respect. I do not believe that I reviewed any documents in the proceedings.

Other Documents

192. I am asked to consider a range of documents and to say whether I was provided with and/or read a document, and if so to provide my views and whether I considered that it ought to be disclosed. I can deal with this question shortly: other than as set out elsewhere in this statement, I was neither provided with or read any of the documents listed and indeed have never heard mention of them.

General

193. I am asked to say whether, in hindsight, there anything that I would have done differently in respect of the matters raised in your statement. It was I who first identified the issues with Gareth Jenkins, and I instigated the Review Process, Disclosure Hub and other initiatives intended to seek to cure the problem. I occasionally wonder, had I not identified the 'Gareth Jenkins issue' when I did, for how long POL prosecutions would have continued: for some time, I think.

194. I am professionally and personally proud of the fact that it was I who stopped POL prosecutions from July 2013. Whilst I see various references to prosecutions continuing until 2015, I recall none prosecuted by CK although I acknowledge that some cases continued to be investigated after July 2013 (the so-called 'Stacked' cases). I am also aware that the Crown Prosecution Service continued to prosecute cases until 2015 – I recall being asked to visit two (I think) CPS offices to advise them of the Gareth Jenkins issue.

195. I would ask the Chair to note the remarks of Lord Justice Holroyd's judgement in *Hamilton & others -v- Post Office Limited* [2021] EWCA Crim 577 at paragraphs 81 to 90:

81. As a result of its review of the many documents, POL disclosed further material which had not been seen by Fraser J but which this court has been able to consider. It includes what has been referred to for convenience as "the Clarke advice" and other documents which were relied upon in the appellants' submissions before us.

82. The Clarke advice is dated 15 July 2013, but was first disclosed in these proceedings in November 2020. It was written by Simon Clarke, a barrister employed by a firm of solicitors which was instructed by POL in relation to prosecutions. It was written in order to advise POL about the use of expert evidence in cases of alleged crimes

by SPMs. Mr Clarke noted that POL generally only prosecuted for three types of offence: theft, false accounting and fraud. He commented that –

"The detection and successful prosecution of such offences is almost always dependant [sic] upon the proper analysis and presentation of Horizon data and accordingly it is imperative that the integrity and operation of the Horizon system is demonstrably robust."

He went on to summarise the nature of defences which either made an express assertion that Horizon had failed in some way, or asserted that Horizon must be at fault because the SPM had acted properly and the alleged shortfall was otherwise inexplicable. He also noted that defendants who had pleaded guilty to false accounting or fraud alleged that they had been covering up inexplicable losses. He added that in all these situations defendants often also complained about a lack of training on Horizon and/or inadequate customer support.

83. Mr Clarke then set out the duties of an expert witness, as required by the Criminal Procedure Rules. He summarised the prosecution's disclosure duties under section 3 of the CPIA.

84. Mr Clarke stated that an employee of Fujitsu, Gareth Jenkins, had provided expert evidence as to the operation and integrity of Horizon. He referred to a number of statements which Mr Jenkins had provided to POL in various cases, attesting to the robustness and integrity of Horizon. Mr Jenkins had ended most of those statements as follows:

"In summary I would conclude by saying that I fully believe that Horizon will accurately record all data that is submitted to it and correctly account for it."

85. Mr Clarke summarised the statements as Mr Jenkins saying that there was nothing wrong with the system. He continued:

"Unfortunately that was not the case, certainly between the dates spanned by the statements I have extracted here, the 5th October 2012 and the 3rd April 2013."

Mr Clarke went on to say that Mr Jenkins had been aware of at least two bugs which had affected Horizon Online since September 2010, one of which was still extant and would not be remedied before October 2013, but had failed to say anything about them or about any Horizon issues in his statements. He expressed the firm opinion that if Mr Jenkins had mentioned the existence of the bugs, that would undoubtedly have required to be disclosed to any defendant who raised Horizon issues as part of his or her defence.

86. Mr Clarke advised that Mr Jenkins had failed to comply with the duties of an expert witness and should not be asked to provide expert evidence in any future prosecution. We are aware that there is an issue as to whether Mr Jenkins had been used by POL as an independent expert witness, a role which he could not fulfil for the simple reason that he was an employee of Fujitsu. We do not think it necessary to say anything about that issue, because whilst it may be important in other contexts,

it does not affect our consideration of POL's breach of its disclosure obligations. That is because the following conclusions expressed by Mr Clarke are equally applicable whether Mr Jenkins prepared his statements as an independent expert or as an employee of Fujitsu with particular knowledge of Horizon:

"- Notwithstanding that the failure is that of [Mr Jenkins] and, arguably, of Fujitsu Services Ltd, being his employer, this failure has a profound effect upon POL and POL prosecutions, not least because by reason of [Mr] Jenkins' failure, material which should have been disclosed to defendants was not disclosed, thereby placing POL in breach of their duty as a prosecutor.

- By reason of that failure to disclose, there are a number of now convicted defendants to whom the existence of bugs should have been disclosed but was not. Those defendants remain entitled to have disclosure of that material notwithstanding their now convicted status. (I have already advised on the need to conduct a review of all POL prosecutions so as to identify those who ought to have had the material disclosed to them. That review is presently underway.)
- Further, there are also a number of current cases where there has been no disclosure where there ought to have been. Here we must disclose the existence of the bugs to those defendants where the test for disclosure is met."

87. Given that SPMs had been complaining about Horizon for well over a decade, we are bound to say that we find it extraordinary that it was necessary for Mr Clarke to advise in those terms. We commend him for expressing himself as clearly and firmly as he did. But it should not have been necessary for him to have to give such basic advice to a prosecuting authority about its duty in respect of disclosure.

88. Mr Clarke wrote a further advice on 2 August 2013. From this it is apparent that, before sending his earlier advice, he had advised POL in conference on 3 July 2013. At that conference he had advised the creation of a single hub to collate all Horizon-related defects, bugs, complaints, queries and Fujitsu remedies, so there would be a single source of information for disclosure purposes in future prosecutions. POL had accepted his advice and had set up a weekly conference call, three of which had taken place by the time Mr Clarke wrote his later advice. After the third, he said, the following information had been relayed to him:

"(i) The minutes of a previous call had been typed and emailed to a number of persons. An instruction was then given that those emails and minutes should be, and have been, destroyed: the word 'shredded' was conveyed to me.

(ii) Handwritten minutes were not to be typed and should be forwarded to POL Head of Security.

(iii) Advice had been given to POL which I report as relayed to me verbatim: *'If it's not minuted it's not in the public domain and therefore not disclosable.'* *'If it's produced it's available for disclosure - if not minuted then technically it's not.'*

(iv) Some at POL do not wish to minute the weekly conference calls."

89. Mr Clarke then set out the relevant provisions governing disclosure. He emphasised the seriousness of any attempt to abrogate the duty to record and retain material, observing that a decision to do so may well amount to a conspiracy to pervert the course of justice. He ended with the following:

"Regardless of the position in civil law, any advice to the effect that, if material is not minuted or otherwise written down, it does not fall to be disclosed is, in the field of criminal law, wrong. It is wrong in law and principle and such a view represents a failing to fully appreciate the duties of fairness and integrity placed upon a prosecutor's shoulders."

90. Again, we commend the firmness and clarity of Mr Clarke's advice. That he should have had to give it is, if anything, even more extraordinary than the fact that he needed to write his earlier advice. The need to give it suggests there was a culture, amongst at least some in positions of responsibility within POL, of seeking to avoid legal obligations when fulfilment of those obligations would be inconvenient and/or costly to POL.

196. Hindsight is a spiteful master, but I can say that, had I been in the same situation again I would have striven to act as I then did. I recall that the disclosure decisions I then made were made on the basis of what I then knew; obviously had I been aware of other more serious failings, then I would have acted accordingly.

197. I can unequivocally say that I was never involved in the conviction of any SPM. We at CK had no basis upon which we could have known that the real issue was not that of Gareth Jenkins failures as an expert witness, but was rather the lack of integrity in Horizon itself, Gareth Jenkins being but a symptom of that wider malaise.

198. Returning to the benefits of hindsight, I am now sure that POL must have deceived both me and CK; I say this because it is now obvious to me that highly relevant material was not provided to me either at all, or when it should have

been provided. I conclude that this failure to properly inform me was a decision taken by those in a position to do act as they did.

Statement of Truth

I believe the content of this statement to be true.

Simon Clarke

Signed: Simon Andrew Clarke

Dated: 23 March 2024

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52	POL00138289	Email from Julie George to Lesley J Sewell CC Gareth James and Rodric Williams re Expert on the Horizon System - Subject to Common Interest Privilege	POL-BSFF-0000514
53	POL00138290	Note regarding Terms of Reference for Horizon Integrity Audit for "Mediation Process" (date taken from parent email)	POL-BSFF-0000515
54	POL00146900	Email from Michael Harvey to Rodric Williams cc James Davidson and Pete Newsome re Expert on the Horizon System - Subject to Common Interest Privilege	POL-BSFF-0006027
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57	POL00113136	Proposed memorandum of understanding between Post Office Limited and Fujitsu, RE: Horizon.	POL-0110520

58	POL00113135	Post Office Ltd, Note to POL, Securing data for future prosecutions- prepared by Simon Clarke, Senior counsel	POL-0110519
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66	POL00029843	Note from Cartwright King Solicitors re: Deloitte Report - Questions for POL	POL-0026325
67	POL00021781	Email from Andrew Parsons to Simon Clarke and Martin Smith cc: Rodric Williams, Paul Loraine RE: Balancing Transactions [BD-4A.FID20472253]	POL-0018260
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81	POL00067037	Email chain from Harry Bowyer to Lucy Bremner re: Post Office Group Litigation [WBDUK-AC.FID27032497	POL-0063516
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