

Thursday, 9 May 2024

1
2 (9.45 am)
3 **MR BLAKE:** Good morning, sir, can you see and hear me?
4 **SIR WYN WILLIAMS:** Yes, I can, thank you.
5 **MR BLAKE:** Thank you very much. This morning we're going to
6 hear from Mr Clarke.
7 **SIMON ANDREW CLARKE (affirmed)**
8 **Questioned by MR BLAKE**
9 **MR BLAKE:** Thank you. Can you give your full name, please?
10 **A.** Simon Andrew Clarke.
11 **Q.** Mr Clarke, you should have in front of you a witness
12 statement?
13 **A.** I have.
14 **Q.** Is it dated 23 March 2024?
15 **A.** If you give me a moment -- it is.
16 **Q.** Can I ask you to turn to page 69?
17 **A.** I have it.
18 **Q.** Is that your signature?
19 **A.** It is.
20 **Q.** Is that statement true to the best of your knowledge and
21 belief?
22 **A.** It is.
23 **Q.** Thank you very much. That statement has the URN
24 WITN08130100. That statement will be published on the
25 Inquiry's website shortly.

1

1 **Q.** Yes. In terms of Post Office work, while you were at
2 Cartwright King, is it right to say that you only
3 undertook work for the Post Office after separation from
4 Royal Mail Group?
5 **A.** Some -- can I just add one other point first? I also
6 practice at the independent Bar.
7 **Q.** Thank you. In addition to your own --
8 **A.** In addition to my own firm.
9 In answer to your question, I joined Cartwright King
10 in January 2010 and, effectively, was General Defence
11 Counsel for their clients. I was aware, from just
12 general background noise, that they prosecuted for Royal
13 Mail Group through Post Office. I was aware that Post
14 Office separated in April, I think, 2012, from Royal
15 Mail Group but I didn't receive any instructions from
16 the in-house Head of Advocacy to undertake any Post
17 Office work substantively until about April/May 2013,
18 although I did one or two brief mention hearings,
19 I think, before that. So, really, 2013 was when my
20 involvement started.
21 **Q.** Thank you. What did you understand Cartwright King's
22 role to be in relation to those Post Office cases; were
23 you an agent for the Post Office or something else?
24 **A.** Again, this is all background noise. Pre-separation,
25 I understood that Royal Mail Group had a number of agent

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1 Mr Clarke, many people in this room will already
2 know but you are a barrister?
3 **A.** Yeah.
4 **Q.** You were called to the Bar in 1997?
5 **A.** Yeah.
6 **Q.** You practised at the self-employed criminal Bar until
7 2010?
8 **A.** I did.
9 **Q.** Then you joined Cartwright King?
10 **A.** That's correct.
11 **Q.** You were based at Cartwright King until 2016?
12 **A.** Yes.
13 **Q.** You then set up your own firm with Mr Bowyer and
14 Mr Smith --
15 **A.** Yes.
16 **Q.** -- both of whom we've heard from. Like Mr Smith,
17 I think, did you have access to Cartwright King emails
18 and electronic repositories at some point thereafter?
19 **A.** I did. We retained a consultancy with them, largely in
20 the area of work that we'd set up the firm for but also
21 because they wanted, from time to time, additional help
22 with the Post Office work they continued to do.
23 **Q.** Thank you. You're still senior partner of that firm; is
24 that correct?
25 **A.** The firm I set up, yes.

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1 solicitors across the country that they would ask to
2 deal with matters in their own areas, prosecuting in the
3 Magistrates' Court and instructing counsel in the Crown
4 Court. Post-separation, Andy Cash at Cartwright King,
5 one of the senior partners, had some links with Post
6 Office and he used those links to obtain a contract
7 between Post Office and Cartwright King that Cartwright
8 King would conduct all of the Post Office prosecutions
9 across England and Wales from 1 April 2012.
10 That was my understanding of the position. I know
11 that to be the case because, when I did get involved,
12 I looked back to see what the position was.
13 **Q.** In terms of authority to make certain decisions in how
14 cases are run, where did you see that lie, at Cartwright
15 King or the Post Office or a combination of the two?
16 **A.** Our function, as I saw it, and certainly my function,
17 was to advise and Post Office were responsible for
18 taking the decisions because Post Office were the
19 prosecuting authority.
20 **Q.** That is all fine in theory but was that the reality?
21 **A.** There were times when Post Office didn't follow our
22 advice and there were times when they did. There were
23 times when they were resistant to our advice, there were
24 times when they accepted it. But you have to remember
25 that, from my point of view, I was only ever instructed

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1 to prosecute substantively a single case and it was that
 2 case that, effectively, I think, led us to where we are
 3 today. In my mind, certainly it is.

4 **Q.** We see reference in your witness statement to being
 5 instructed by Andy Cash, who was the senior solicitor at
 6 Cartwright King?

7 **A.** Yeah.

8 **Q.** To what extent did you consider that you had to be
 9 specifically instructed to carry out that Post Office
 10 work in respect of individual pieces of work?

11 **A.** We used the word "instructed" generically. Andy Cash
 12 was, at the time, Head of Criminal Advocacy, one of his
 13 functions was to allocate in-house Cartwright King cases
 14 and clients to particular barristers to work on, and
 15 Andy Cash allocated that case to me.

16 **Q.** We'll come to quite a few different advices that you
 17 wrote over the years. Sometimes it seems as though they
 18 weren't specifically requested by the Post Office?

19 **A.** No, no.

20 **Q.** To what extent did you have autonomy to simply act as
 21 an effectively standing counsel to the Post Office?

22 **A.** I never saw myself as standing counsel to the Post
 23 Office. I was an employee of Cartwright King.
 24 I occasionally saw something that concerned me and
 25 advised because I was concerned, not because I had been

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1 description, if you like, could best be seen as the
 2 solicitor to the case and, if you want to formalise
 3 things and talk about who instructed whom, Martin was
 4 effectively the instructing solicitor and was referred
 5 to that from time to time, internally as the instructing
 6 solicitor on a case, with Andy Cash as the boss, if you
 7 like.

8 But Martin would also give advice off of his own bat
 9 to Post Office, from time to time. I know that because
 10 I've looked at the hearings and, to my surprise, have
 11 learnt that, in some respects.

12 **Q.** What do you mean, to your surprise?

13 **A.** Well, I knew he was speaking to Jarnail Singh -- Jarnail
 14 Singh would phone him up extremely regularly and he was
 15 speaking to Jarnail Singh and giving Jarnail Singh
 16 *ad hoc* advice on a daily basis and, occasionally -- no,
 17 more than occasionally -- Martin would come to us and
 18 say, "Jarnail's asked this, what do you think?" But,
 19 quite often, Martin would give the advice himself.

20 My surprise comes because I've seen a number of
 21 written documents where Martin appears to have been
 22 dealing directly with Andrew Parsons and Jarnail Singh
 23 separately or together, without -- I just don't
 24 recognise the documents.

25 **Q.** You don't recognise the documents?

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1 specifically instructed to advise, and a good example is
 2 what happened in the Samra case.

3 **Q.** Thank you. We'll get to the Samra case shortly. We've
 4 heard from Mr Smith. The impression given by Mr Smith
 5 that he relied on you for guidance and would, in many
 6 ways, defer to you; is that impression correct?

7 **A.** No.

8 **Q.** Why not?

9 **A.** Martin Smith was the communications route, if you like,
 10 the point of contact between Post Office and Cartwright
 11 King and so everything I did, occasionally I would deal
 12 with Rodric Williams directly but, most of the time,
 13 everything I did and everything Harry Bowyer did went to
 14 Martin, who would forward it to Jarnail Singh and/or
 15 Rodric Williams and occasionally, I think, other people
 16 in Post Office. So he was the main conduit between the
 17 two.

18 **Q.** He may have been a main conduit, which was effectively
 19 how he described himself, but, in terms of actual
 20 responsibility, understanding, involvement in the
 21 underlying cases, do you agree or disagree with the
 22 evidence that he gave in that respect?

23 **A.** I disagree to an extent. We -- because Harry Bowyer and
 24 I were barristers, we tried to maintain the
 25 barrister-solicitor relationship. So Martin's

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1 **A.** Yeah, some that were put to him the other day.

2 **Q.** So they may have been written but without being shared
 3 with yourself?

4 **A.** Yeah.

5 **Q.** Mr Smith also admitted certain short comings in his own
 6 knowledge?

7 **A.** I saw that.

8 **Q.** Were you aware of that at the time?

9 **A.** No. Again, if I can clarify, I came in in April/May
 10 2013. By that time, Martin Smith and Andy Cash had been
 11 prosecuting for Post Office for quite a long time and
 12 I had no knowledge of what they were and what they
 13 weren't doing during that period because I wasn't
 14 involved. So when I came in in 2013 and stopped the
 15 prosecutions, effectively, from June onwards, I didn't
 16 look to see what Martin's state of knowledge was; I was
 17 more interested in repairing the damage which had
 18 plainly been caused.

19 **Q.** Were you aware of any shortcomings in his legal
 20 knowledge?

21 **A.** He would ask me questions on law and I would help him
 22 with them. I don't think there was any particular
 23 deficit that I can point to. I was surprised when he
 24 said the other day that he had no knowledge of
 25 prosecution disclosure duties because he was a defence

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1 solicitor.
 2 **Q.** I think post-conviction disclosure duties?
 3 **A.** Well, it's not that different. The fundamental
 4 principles, as Brian Altman confirmed to us in advice,
 5 are the same: is there material that might reasonably be
 6 expected to undermine the convictions such as to render
 7 it unsafe? I paraphrase but, by and large, it's the
 8 same principles.

9 But the other point which concerned me, which did
 10 surprise me, is that the defence lawyers are expected to
 11 know prosecution duties of disclosure and prosecution
 12 duties *vis à vis* expert witnesses as well because,
 13 otherwise, how can you properly defend your client in
 14 the face of disclosure issues or expert witness issues?

15 **Q.** At paragraph 9 of your witness statement you say that,
 16 in late 2012, you were instructed to provide some
 17 general advice on prosecution procedures to Mr Smith.
 18 Are we to understand that as training, or something
 19 else?

20 **A.** It's -- you'll forgive me, it's a slightly vague
 21 paragraph and I think it's intended to be because
 22 I don't -- I recall giving advice. I do not recall
 23 giving training and so it's likely -- and I make
 24 a reference in the paragraph, I think, to written advice
 25 about -- I may have provided written advice about

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1 experience of the Post Office, you say at paragraph 34
 2 of your witness statement that the Post Office appears
 3 to work in silos.

4 **A.** You don't mind if I turn it up?

5 **Q.** That's absolutely fine. I don't think we need to bring
 6 it onto screen.

7 **A.** No, it's here. Yes.

8 **Q.** Can you assist us with what you meant by the Post Office
 9 working in silos?

10 **A.** When I first raised the issues relating to expert
 11 witnesses with Post Office, they became very defensive
 12 in a general sense, and when I spoke to people in Post
 13 Office on the telephone, I think we had a couple of
 14 meetings, I spoke with Rodric Williams, with Jarnail
 15 Singh, with Chris Aujard and his predecessor, who
 16 I think was Susan Crichton, and I was aware of hearing
 17 around Cartwright King and around Post Office generally
 18 that people just weren't talking to each other.

19 And, as an example, Rodric Williams wouldn't know
 20 what Post Office Security was doing; Jarnail Singh
 21 wouldn't have much communication with Rodric Williams;
 22 the Investigation -- this is all stuff I picked up --
 23 Investigation Teams weren't really talking to anybody
 24 substantively. Everybody was living in their own
 25 particular work environment and there was no

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1 evidential requirements in a particular case but I don't
 2 recall. That, I think, is what I'm referring to.
 3 Martin would have given me a file and said, "Can you do
 4 me an advice on evidence?", for instance. I think
 5 that's what I am referring to. It's not training.
 6 I delivered no training to anybody.

7 **Q.** Within Cartwright King, were you aware of any training
 8 about the role of a prosecutor, duties of disclosure,
 9 duties in respect of the instruction of expert witnesses
 10 or --

11 **A.** Prior to my involvement in May 2013, I just wouldn't
 12 know, because I wasn't involved. There was none after,
 13 other than -- I've just said I didn't deliver any
 14 training, that's not, strictly speaking, true. After
 15 the Samra case, I gave training for the purposes of the
 16 sift process that you've heard about. I had to train
 17 those who were doing the first sift, so they knew what
 18 they were looking for but that was the extent of it.

19 **Q.** (*Unclear: simultaneous speaking*) ... say, a solicitor
 20 who had conduct --

21 **A.** No.

22 **Q.** -- of a criminal prosecution? No?

23 **A.** No. I've just committed the offence of talking over you
 24 with the shorthand-writer, I'm sorry. No.

25 **Q.** In terms of how the Post Office worked in your

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1 communication across the business, if you like, and it
 2 was quite frustrating because you would send an advice
 3 in and, a week or so later, you would say to somebody
 4 "You've seen my advice?" and they would say, "Well, no",
 5 and you would have to then track down and find out why
 6 they hadn't seen it when you know they ought to have
 7 seen it, and it was largely because people weren't
 8 communicating with each other.

9 **Q.** We'll come on to talk about the weekly meetings and the
 10 central hub --

11 **A.** Yeah.

12 **Q.** -- but was that a theme that continued throughout your
 13 time at the Post Office, or ...

14 **A.** It was. It got worse, I think. One of the reasons why
 15 I advised that the weekly hub meetings were convened was
 16 to cure this problem, was to make people speak to each
 17 other, about Horizon in particular, because I rather
 18 suspected at the time -- I know better now -- but at the
 19 time, I rather suspected that one of the reasons why
 20 these two Horizon bugs detected by Second Sight escaped
 21 people's attention was because nobody was talking to
 22 each other, as simple as that.

23 **Q.** What do you put that down to, fundamentally?

24 **A.** Office politics? I don't know. It's speculative. It
 25 became something more after the event. But, at the time

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1 I was encountering it in June, July, August 2013, I put
2 it down to office politics. People were working within
3 their own comfort zones and never the twain shall meet,
4 as they say.

5 **Q.** I'm going to take you to another passage from your
6 statement it's WITN08130100, and if we can look at
7 paragraph 47, page 138, please.

8 **A.** Can I just read it?

9 **Q.** You can. I'm going to bring it onto screen as well.
10 It's page 47 and it's the second half of paragraph 138
11 that I want to take you to?

12 **A.** Yeah, I know --

13 **Q.** You say there:

14 "Looking back, I now see what appears to have been
15 three strands of thought within [the Post Office] on the
16 topic of disclosure. The first strand amounted to
17 an article of faith: 'Horizon is both robust and
18 reliable -- there is nothing wrong with it and if
19 Horizon says money is missing then it is missing'. The
20 second strand considered that the cost of providing
21 disclosure was prohibitive and should always be
22 discouraged. The third strand, I felt, arose out of
23 an almost religious panic: 'Horizon must not be seen to
24 have been impugned'."

25 Now, at least the second strand and the third strand

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1 bugs", which is why I asked for the call to be made to
2 Gareth Jenkins the following day.

3 **Q.** We'll come to that call but, in terms of -- you've used
4 the word "fundamental" just now, in terms of nothing
5 fundamentally wrong.

6 **A.** Yeah.

7 **Q.** Your first strand here is there is nothing wrong with it
8 and if Horizon says money is missing, then it's missing.

9 **A.** Yeah.

10 **Q.** By at least the time you'd spoken to Gareth Jenkins, you
11 knew that that couldn't have been correct?

12 **A.** Yeah, I think that's probably right, yeah.

13 **Q.** Thank you. You've been very clear in your evidence just
14 now and also in your statement about various failings at
15 the Post Office. Do you think that you also might have
16 taken too tough a stance, particularly in relation to
17 disclosure to subpostmasters?

18 **A.** I think that's arguable, yes.

19 **Q.** We'll come and look at it over time. Let's start in
20 late June/early July 2013. That can come off the
21 screen, please.

22 You say that you first became aware of bugs on
23 27 June 2013, then you were told about the Second Sight
24 Interim Report by Martin Smith. Can you just elaborate
25 on that slightly?

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1 there were presumably things you knew from quite
2 an early stage, as in you were aware that they were
3 concerned about the costs --

4 **A.** Yes.

5 **Q.** -- and you were also aware that they were very resistant
6 to allegations about the reliability of Horizon?

7 **A.** I agree.

8 **Q.** In terms of (1), we know that you certainly found out
9 that it wasn't accurate at the latest by the phone
10 conversation that you had with Gareth Jenkins and the
11 Second Sight Report -- you look reluctant.

12 **A.** Just slightly. You say I "certainly found out". That
13 was when I learned that there were bugs in the system.
14 That, at the time, didn't necessarily speak to the
15 general unreliability of Horizon because we were still
16 hearing that the systems that were in place to deal with
17 bugs -- this is what we were told on the day we were
18 told, on 27 June, I think, that there were potential
19 bugs -- that there was nothing fundamentally wrong with
20 Horizon. So I would suggest that a better take on that
21 phone call would be I had concerns because I had been
22 told, I think by Martin Smith, that there were -- that
23 Second Sight had identified two bugs, and were to
24 publish this report, and my instinctive reaction was,
25 "We need to find out who told Second Sight about those

14

1 **A.** We had heard -- and I don't know whether it's that day
2 or not -- but we had heard very close in time to me
3 being told, that Post Office had commissioned
4 an organisation called Second Sight to look into Horizon
5 and that they had done so as a result, I think -- and
6 this is anecdotal -- of pressure from Justice for
7 Subpostmasters organisation, or the like. And the
8 messages we were getting back from Post Office around
9 about 25/26 June, were "We've got nothing to worry
10 about, Second Sight are going to give it a clean bill of
11 health".

12 27 June, I think Martin must have had some contact
13 with either Jarnail Singh or Rodric Williams because he
14 then came to me and I think -- I can't say where we were
15 or what we were doing it might have been by telephone or
16 it might have been in person but he said to me "Second
17 Sight are going to say there are two bugs", and that
18 really was the extent of it and my immediate reaction
19 was "Who told them?" And the reason who told them was
20 so important was because if it were the expert that they
21 were relying on to give evidence, then his evidence had
22 not been entirely complete, in the early cases.

23 **Q.** Was that an immediate thought, as early as 27 June?

24 **A.** Oh, yes. Oh, yes. To be told that there were -- that
25 the report was going to tell us that there were bugs in

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1 the system is a process-stopping mechanism. You can't
2 go anywhere from that other than to say "Well, how?
3 Why? Who told them?", because your duties as
4 a prosecutor are so absolute in those circumstances that
5 any competent barrister is going to say "Well, stop. We
6 have to see what's going on here".

7 **Q.** You say in your statement that you saw the Helen Rose
8 Report soon after.

9 **A.** Yeah.

10 **Q.** That report was written on 12 June 2013.

11 **A.** Yeah.

12 **Q.** It identified issues at the Lepton Branch --

13 **A.** Yeah.

14 **Q.** -- it included certain correspondence with Gareth
15 Jenkins and there was a mention in it of Horizon
16 integrity issues.

17 **A.** Yeah.

18 **Q.** Can you assist us at all with when you were likely to
19 have seen that? Was it before the conversation with
20 Gareth Jenkins?

21 **A.** No, it was after.

22 **Q.** It was after.

23 **A.** I know it was after because up until that point, Horizon
24 was -- I don't mock but Horizon was "robust", it's
25 integrity was sound, it worked perfectly. What put me

17

1 contacted Jarnail Singh for the contact details but
2 I don't know what he said to them.

3 **Q.** There was no conversation on your part --

4 **A.** No.

5 **Q.** -- with the Post Office?

6 **A.** No.

7 **Q.** Did you have a long conversation with Mr Smith before
8 this call?

9 **A.** I don't believe so. My reaction was "We need to speak
10 to the expert. Can you set it up please?" I'm pretty
11 sure is the way it would have gone.

12 **Q.** You said it was very clear that there was a problem with
13 Gareth Jenkins on the 27th.

14 **A.** Yeah.

15 **Q.** Can you recall Mr Smith's position?

16 **A.** No, forgive me. There wasn't a problem with Gareth
17 Jenkins on the 27th; there was a problem that indicated
18 there were bugs with Horizon. My concern, and the
19 reason for the Gareth Jenkins call, was to find out who
20 told Second Sight because I think the language in the
21 Second Sight Report was "We have been informed", and
22 I --

23 **Q.** I think --

24 **A.** -- wanted to know who the informant was and my first
25 port of call was to ask the expert, and it was only when

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1 on notice that it might not have done was the
2 conversation with Martin Smith that there were bugs in
3 the system, as per Second Sight. Had I had the Lepton
4 report prior to that then my reaction that occurred on
5 27 June would have occurred when I first saw that Helen
6 Rose Report. It's that report that reinforced my view
7 that there was something seriously wrong.

8 So I would have seen it after I was told by Martin
9 Smith about --

10 **Q.** Within a week, within two weeks?

11 **A.** Well, did I refer to it in my 15 July Advice?

12 **Q.** We'll come to look at that.

13 **A.** Well, if I refer it -- I'm not -- I'm not going to get

14 into "I don't remember", but if I refer to it in my

15 15 July Advice, then I had it before 15 July. If

16 I don't, then I had it after.

17 **Q.** Thank you. Let's look at the phone call with Gareth
18 Jenkins, that's at POL00142322. That's 28 June.

19 **A.** Yeah.

20 **Q.** So Mr Smith has told you on the 27th about the potential
21 bugs?

22 **A.** Yeah.

23 **Q.** Was there a conversation with anyone at the Post Office
24 before this conversation took place?

25 **A.** Well, I asked Martin to set this call up. I imagine he

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1 I spoke to the expert during this call that I realised
2 the problem was with -- lay with Gareth Jenkins.

3 **Q.** I had understood your earlier evidence to be that, when
4 you were aware of the bugs on the 27th, that immediately
5 caused you to be concerned --

6 **A.** Yes.

7 **Q.** -- about the reliability of Mr Jenkins?

8 **A.** Yes, yes.

9 **Q.** What about Mr Smith? Was he as concerned about you as
10 Mr Jenkins, or not?

11 **A.** I don't think we had -- vague recollection -- I don't
12 think we had much of a conversation about it. I'm not
13 convinced that Martin Smith appreciated the full import
14 of the problem at that point.

15 **Q.** I'm going to read to you some passages from this
16 transcript.

17 **A.** Please.

18 **Q.** You say:

19 "Hi, is that Gareth Jenkins?"

20 He says: "It is indeed."

21 You say: "Oh hi Gareth, it's Simon Clarke, I'm
22 a barrister prosecuting a case for Jarnail on Monday at
23 Birmingham Crown Court", and that's the Samra case?

24 **A.** Yes.

25 **Q.** He says: "Right."

20

1 You say: "Jarnail suggested that we give you a call
 2 because we've heard that the Insight Committee Report is
 3 due to go before MPs next week I think I don't know if
 4 you have heard the same thing, have you?"
 5 He says: "8 July is the date I have been told."
 6 Just pausing there, "Jarnail suggested that we give
 7 you a call" was it Jarnail's suggestion or ...
 8 **A.** It was mine --
 9 **Q.** Was that a way of you --
 10 **A.** Sorry, I'm speaking over you.
 11 **Q.** Can you assist a with why you said that Jarnail had
 12 suggested it?
 13 **A.** It's likely a rhetorical device to open the conversation
 14 with Gareth Jenkins.
 15 **Q.** If we scroll down, please, you say:
 16 "Okay, well can I give you a brief sort of thumbnail
 17 sketch? Basically this is a postmistress who is alleged
 18 to have made double transaction withdrawals from Horizon
 19 when people have come in and taken money out of the Post
 20 Office Card Accounts. Do you follow?"
 21 He says: "Yes, I think I've heard about that sort of
 22 scam going on, yes."
 23 You say: "Yes, and essentially what she is doing she
 24 is asking them to put their PIN number in a second time
 25 claiming it hasn't worked the first time, and
 21

1 wouldn't have any impact whatsoever on that part of er
 2 what's going on erm and I think we've, we are confident
 3 that the audit trail that you are using for prosecution
 4 has not been compromised by those bugs."
 5 Just pausing there, "2 bugs that we have declared to
 6 Second Sight"; did that cause you any concern,
 7 suspicion?
 8 **A.** That confirmed to me that it was Gareth Jenkins that had
 9 told Second Sight about the bugs and, more importantly,
 10 that he knew about them.
 11 **Q.** If we scroll over the page, please:
 12 You say: "What I'm looking for is confirmation
 13 effectively that you have given so can I ask you
 14 a couple of questions which may prompt yes or no
 15 answers?"
 16 He says, "Sure."
 17 Did you have a script ready or --
 18 **A.** No.
 19 **Q.** -- was this off the top of your head?
 20 **A.** Sorry, I'm indicating off the top.
 21 **Q.** The stenographer will have --
 22 **A.** I'm thinking. About the poor --
 23 **Q.** -- difficulty typing your hand signal.
 24 You say: "As far as the data that the transactions
 25 conducted over Horizon, which include the sums of cash
 23

1 accordingly then taking the money out herself.
 2 "Yep."
 3 Then you say: "All of and I mean all of the evidence
 4 we have got against her is Horizon data evidence."
 5 He says: "Yep."
 6 Then you say: "And when I say that what I mean is
 7 that all the transactions are conducted over the counter
 8 through Horizon."
 9 He says: "Yep."
 10 I'll skip the next bit. You then go on to say:
 11 "Okay. The problem I have got is that we are not
 12 allowed to see the report but we are told that there are
 13 up to 30 offices where bugs have been identified, yeah,
 14 and we know that Hurst Lane is not one of the branches
 15 where there has been an identified bug. Still with us?"
 16 He says: "Erm right as I say certainly I am aware of
 17 2 bugs. Is it. Firstly is they something that has been
 18 done on Horizon on the new Horizon system or the old
 19 system."
 20 You say "It's the."
 21 He says: "What's the date?"
 22 You say: "It's Horizon Online."
 23 He then says: "Okay right. So there is 2 bugs that
 24 we have declared to Second Sight in that sort of erm and
 25 erm we know exactly which branches are affected and they
 22

1 from Post Office card accounts is there any reason to
 2 believe that Horizon can be can slip into error?"
 3 He says: "Not that I'm aware of."
 4 Then, if we scroll down, you then say: "Okay. Where
 5 are we going from here. What's the questions I posed
 6 earlier. Sorry I've got Martin Smith", and you
 7 introduce Martin Smith at that point who he
 8 acknowledges.
 9 Then he says: "Hi. It's the Horizon function is
 10 functioning perfectly ..."
 11 Then you say: "This is the other point. Bugs have
 12 been identified in Horizon which call into question some
 13 of the aspects of the way in which it operates. That's
 14 a fair assessment, isn't it?"
 15 Mr Jenkins says: "Erm yes."
 16 Then you say: "Yeah, okay. How can we be sure that
 17 (a) we have identified all of the bugs that there are
 18 and (b) that although Horizon has been demonstrated that
 19 to be fallible that insofar as the case we are
 20 conducting is concerned we can eliminate the possibility
 21 of error."
 22 He says there: "Right I mean clearly we can't you
 23 can never say there are no more bugs in the system so
 24 we've got to be careful about trying to say anything
 25 like that ..."
 24

1 Just pausing there, any reaction from you?

2 **A.** Now? Well, the problem is that's what he's been saying
3 in all of his previous reports. You'll recall that,
4 after this telephone conversation, I asked Martin to
5 provide me with half a dozen of his previous statements
6 and what he was saying in his previous statements was
7 absolutely contrary to what he's just said here.

8 **Q.** Then he says: "... but what we can show is that nothing
9 has been found to show that there is a problem in the
10 integrity of the audit trail which is what has been used
11 for the erm your evidence."

12 You say: "So your view is that erm that if the
13 defence were to suggest erm there is a problem with
14 Horizon and therefore we can't rule out that there might
15 be other problems with Horizon what you say is as far as
16 you're concerned the integrity of the system is intact?"

17 He says: "Yes."

18 So just summarising that conversation, it seems as
19 though there are two bugs that you hadn't previously
20 been aware of --

21 **A.** Yes.

22 **Q.** -- that he has confirmed exist and also that he can't
23 say that there aren't more bugs in the system?

24 **A.** There's a third strand, which to me was the most
25 important, and that was that he knew, at the time of

25

1 **Q.** We're going to come in due course to formal advice that
2 was written on this issue --

3 **A.** Yeah.

4 **Q.** -- but did you, at that point, have another conversation
5 with somebody at the Post Office?

6 **A.** Ooh, possibly with Jarnail Singh. I certainly told
7 somebody at Post Office orally. I don't think it would
8 have been Rodric Williams because, at that point, I had
9 no contact with him, I hardly knew who he was. So, if
10 anybody, it would have been Jarnail Singh. It's highly
11 likely that I would have said to him on the telephone
12 "You've got problems", and I would have explained the
13 nature of the problem to him.

14 **Q.** Do you think it's likely that you spoke to anybody else
15 at that point --

16 **A.** No.

17 **Q.** -- or just Jarnail Singh?

18 **A.** No, the only person I knew at Post Office at that time
19 was Jarnail Singh and I didn't actually know him; I just
20 knew he was the contact for Martin Smith.

21 **Q.** We're now going to come to the case of Samra and there
22 is a hearing a few days after that conversation on the
23 1 July?

24 **A.** Day listed for trial.

25 **Q.** Yes, can we please bring up onto screen POL00172804.

27

1 this conversation and beforehand, that those bugs were
2 extant because it was he who had informed Second Sight
3 of them, and that, to me, was the most important element
4 of that conversation.

5 **Q.** Putting those all together, was that quite a bombshell
6 moment for you?

7 **A.** Yes, it was.

8 **Q.** Is this the first time in your career where
9 a conversation with a witness has been recorded in this
10 way or is it at least unusual for you to have recorded
11 it?

12 **A.** It's unusual but it's not the first time.

13 **Q.** Why did you feel it was necessary to record it?

14 **A.** I thought it was hugely important that we knew who told
15 Second Sight of the bugs because, if it had been Fujitsu
16 or Gareth Jenkins, then, frankly, Gareth Jenkins was in
17 trouble and I needed a record of what was said. And
18 just so that you understand the position -- because when
19 you sent this document to me you didn't know who the
20 author was or what the conversation was about and
21 I explained it in my witness statement -- I had said to
22 Martin Smith "We ought to record this". He recorded it
23 on his mobile telephone and then I said to him "Can you
24 transcribe it please?", and clearly you've located it in
25 the records and, frankly, thank goodness I said that.

26

1 We're going to spend a bit of time on your attendance
2 note from that hearing.

3 **A.** That's cool.

4 **Q.** If we scroll down, it's a hearing note written by you?

5 **A.** Yes, if I signed it it's mine.

6 **Q.** Yes, it has your name at the bottom, 1 July 2013.

7 There's some background to the case at the top,
8 paragraph 2 I'll read. That says:

9 "All of the duplicate transactions were conducted
10 over the counter through Horizon, this being the only
11 portal through which Post Office Card Accounts may be
12 conducted. Accordingly transactions are evidenced
13 through entries appearing in Post Office Card Account
14 statements. Those entries represent Horizon data."

15 That's, effectively, what you told Mr Jenkins in
16 that conversation, that the evidence was fundamentally
17 relying on Horizon data?

18 **A.** Yeah, I cringed if you saw because I hate using the word
19 "evidenced" as a verb but yes.

20 **Q.** If we scroll down, please, to the bottom of paragraph 3,
21 you say there:

22 "Further, whilst she has not directly suggested that
23 Horizon data is wrong, there is an implicit suggestion
24 that if the complainant's accounts of not having made
25 duplicate transactions is correct, then the fault must

28

1 lie with Horizon."
 2 So an acknowledgement from yourself that, although
 3 it hadn't been pleaded, it was --
 4 **A.** It follows.
 5 **Q.** -- something that was highly relevant to that trial?
 6 **A.** Yeah.
 7 **Q.** "Recent information", paragraph 4:
 8 "The limited information available to me comes from
 9 a number of sources within Post Office Limited: Head of
 10 Litigation Hugh Flemington; Head of Criminal Law Jarnail
 11 Singh; and Gareth Jenkins of Fujitsu Services Limited."
 12 We've heard you talk about Jarnail Singh, we've
 13 heard you talk about Gareth Jenkins. Can you assist us
 14 with any conversation you had with Hugh Flemington at
 15 this time?
 16 **A.** I don't believe I have ever spoken with Hugh Flemington.
 17 I saw him the other day and didn't recognise him.
 18 Information from Hugh Flemington, if I had had any --
 19 and it's likely I had because of this -- would have come
 20 through Jarnail Singh.
 21 **Q.** Thank you. You say:
 22 "I first became aware of the issue of bugs within
 23 the Horizon system on 27 June", exactly as we've just
 24 been discussing.
 25 **A.** Yeah.

29

1 **A.** No, it's more basic than that. Fujitsu gave the bugs
 2 names. I think they gave a bug a name called Bug 64 and
 3 then another bug was called the Callendar Square bug and
 4 then there was something else called the Falkirk bug,
 5 and then somebody told me that the Falkirk bug was the
 6 Callendar Square bug. So it was a confusion in their
 7 naming of the bugs, which caused this paragraph, which
 8 made me not sure whether there were two or more.
 9 **Q.** Where did that confusion come from; can you recall who
 10 the conversation was with?
 11 **A.** Again, most of this would have come through -- oh, in
 12 fact, I mention is there, Bug 68 -- most of it would
 13 have come through Jarnail Singh and through him via
 14 Martin Smith, or directly.
 15 **Q.** You then say:
 16 "The two bugs I'm instructed of by [the Post Office]
 17 are: Bug 14, so called because it affected 14 post
 18 offices, and Bug 68 (named for similar reasons?)."
 19 So you weren't clear whether that was the number of
 20 branches affected or some other reason. It could, in
 21 theory, have been the 68th bug that they had found?
 22 **A.** Yes, this exemplifies the confusion.
 23 **Q.** "vi. The effect of Bug 14 has been the appearance of
 24 incorrect financial balance information in the system,
 25 known to include the false indication of financial data.

31

1 **Q.** The Second Sight Report indicated that:
 2 "... Horizon may not be 'bug' free. I am instructed
 3 that the report is to be provided to Parliament prior to
 4 publication, perhaps as early as Monday (1 July).
 5 I have not seen the report.
 6 "Prior to 27 June I had seen no reference in any of
 7 the expert reports tendered for the prosecution in other
 8 cases to the existence or possible existence of bugs.
 9 On 27 June and through the following day I was
 10 instructed that, in a number of post offices, the
 11 Horizon system may have produced false balances."
 12 Then you say that you are informed of the following,
 13 and (i), if we scroll down please, over the page:
 14 "All of the information used by Hewlett Packard is
 15 derived directly from Horizon.
 16 "Horizon is not 'bug' free.
 17 "Fujitsu Services Ltd had reported the existence of
 18 two bugs to the Second Sight committee.
 19 "A number of bugs have been identified which have
 20 affected number of post offices although it is not clear
 21 to me that those are the same as disclosed to the Second
 22 Sight committee by Fujitsu."
 23 Now is that a reference to the Helen Rose Report or
 24 to some other conversation or to that Gareth Jenkins
 25 conversation?

30

1 "Hurst Lane Post Office ..."
 2 So that's the one in this particular case.
 3 **A.** Yeah.
 4 **Q.** "... is not one of those post offices identified as
 5 having been affected.
 6 "The report's authors were instructed to investigate
 7 a number of cases of apparent Horizon error, including
 8 at least one where prosecution was contemplated. That
 9 prosecution would have been relied heavily upon data
 10 obtained from Horizon ..."
 11 Now, I don't think that is information that we saw
 12 in that Gareth Jenkins recording. Do you know where
 13 that information came from?
 14 **A.** Again, it would have come through Jarnail Singh,
 15 possibly from people behind him.
 16 **Q.** Paragraph 7:
 17 "Once we became aware of the timetable for
 18 publication of the Second Sight Report and its preview
 19 to Parliament, Martin Smith and I and with Head of
 20 Criminal Law Jarnail Singh's agreement, contacted Gareth
 21 Jenkins in order to establish what was known about the
 22 status of Horizon integrity."
 23 So it seems as though there was a conversation with
 24 Jarnail Singh, where he agreed to you phoning up --
 25 **A.** I accept that, yeah.

32

1 Q. There's then a summary of the phone call. I'm not going
2 to go through those points. We have already read the
3 transcript. Can we scroll down to paragraph 8, please.
4 You say:

5 "The information may be distilled thus: Fujitsu
6 Services Limited and Post Office Limited after aware
7 that Horizon had suffered bugs -- Bug 68 and Bug 14 (it
8 is highly likely that the two bugs reported to Second
9 Sight by Fujitsu are Bugs 14 and 68). One bug has been
10 neutralised, the other remains extant. The extant bug
11 affects Horizon to a limited degree and at specific post
12 office locations; it manifests itself by producing false
13 balances; whilst Fujitsu Services Ltd continue to have
14 faith in the integrity of Horizon, and whilst there is
15 no other indication of any more bugs, further possible
16 bugs within Horizon cannot be ruled out."

17 Similar words to those used by Gareth Jenkins in
18 that conversation?

19 A. And forgive me, it's stating the obvious.

20 Q. I please go over to page 6, paragraph 14. This is --
21 you address the law of disclosure and then you go on to
22 address public interest immunity.

23 A. Yeah.

24 Q. You say at paragraph 14:

25 "In some circumstances it is possible to apply to
33

1 grant of a PII certificate) from the trial judge that we
2 need not disclose to the defence the fact that the
3 Second Sight Report was to be presented to Parliament
4 today; and that the report contained references to the
5 existence of bugs in Horizon both past and present; and
6 2) to adjourn the trial until such time as we were able
7 to fully comply with our disclosure duties."

8 First of all, can I just ask, that hearing took
9 place in the absence of notice to the defendant; is that
10 correct?

11 A. No, it's not correct.

12 Q. That's not correct?

13 A. No. It is common practice amongst counsel that, if
14 a PII application is to be made, that defending counsel
15 will be informed informally at court by prosecuting
16 counsel and that's what I did.

17 Q. So you informed defence counsel and then had the PII
18 hearing.

19 A. Yeah. Can I just add to that that the proposition that
20 I could just go and see the judge without telling
21 defence counsel would, at the very least, have prompted
22 defence counsel to say, "What's going on?" So defence
23 counsel would have had to have been informed and he was.

24 Q. If we scroll down, paragraph 17:

25 "The effect of the late development in this case is
35

1 a judge for a certificate not to disclose material to
2 the defence where that material was subject to a public
3 interest immunity. Such applications most often occur
4 in cases involving national security or where police
5 have used informants and undercover officers. The list
6 of such cases however is not closed: in a case where the
7 public interest may be the prevention of a widespread
8 loss of confidence in a public institution, or the loss
9 of trust in a system operated by such an institution, or
10 the prevention of journalistic speculation as to the
11 efficacy of systems almost universally relied upon by
12 the public, there may be an argument that the protection
13 of a [public interest immunity] certificate is
14 appropriate.

15 "PII Hearings are always held in chambers, that is,
16 in the absence of any defendant or defence
17 representative, and usually in the judge's chambers
18 (retiring room). No other person may be present other
19 than a court clerk, any relevant police officer and the
20 prosecuting solicitor."

21 Over the page, please, you say:

22 "In this case I took the view that such an approach
23 to the problem might be appropriate. Accordingly Martin
24 Smith and I, in conjunction with Jarnail Singh, decided
25 that the best way forward was to seek a ruling (the
34

1 that we could not commence this trial as scheduled. To
2 do so would be to mislead the court into believing that
3 we had complied with our duties as prosecutor and that,
4 we cannot contemplate."

5 A. Yes.

6 Q. There isn't detail here about what the judge was
7 actually told?

8 A. No.

9 Q. Can you assist us with -- I mean, we see paragraph 14,
10 for example, about the possible heads of public interest
11 immunity that could be argued. What was it that you
12 were saying to the judge in chambers that persuaded him
13 to grant a PII certificate?

14 A. Pretty much what we knew. I told the judge about the
15 issue with the expert, that bugs had been identified,
16 that we could no longer rely on our expert. I told the
17 judge that there was a report due to be published to MPs
18 and something that had been impressed on me by Post
19 Office through Jarnail Singh was the issue of
20 Parliamentary privilege. It is possible that it would
21 have been a breach of Parliamentary privilege to have
22 effectively produced the report before Parliament had
23 released it for production. I told the judge that and
24 that really was the basis of the application.

25 I wanted to comply with my disclosure duties but
36

1 I couldn't, on that day, largely because I believed
2 Parliamentary privilege prevent me from doing so and so
3 that's what I said to the judge.

4 **Q.** You've said in paragraph 14 that a potential argument
5 could be made about journalistic speculation about the
6 system. Was that something that was raised before the
7 judge?

8 **A.** It would have been. What I've raised, I'm reluctant
9 just to settle on just one point in paragraph 14 as
10 a single compelling point. The overall issue was all of
11 them taken together suggested to me that publishing the
12 report to the defence at that time would be
13 inappropriate.

14 **Q.** Paragraph 18 then says:

15 "The judge, His Honour Judge Chambers, was
16 ultimately persuaded of the arguments advanced in
17 support of the grant of a certificate."

18 Then certain orders were made.

19 **A.** Yeah.

20 **Q.** "Defence to be told that a report had been commissioned.

21 "The prosecution to be permitted to withhold
22 information ...

23 "Non-disclosure Order to be temporary and reviewed
24 at a 'mention' hearing."

25 Then adjourned for eight weeks. If we scroll over

37

1 **Q.** That's because a trial was due to take place that had to
2 be vacated or some other reason?

3 **A.** Not just because, effectively, we were wasting the
4 court's time by aborting a trial that was due to start
5 that day but because the prosecution had plainly not
6 done that which they ought to have done in time for the
7 trial.

8 **Q.** Paragraph 20, you provide a comment and conclusion. You
9 say:

10 "I am not particularly concerned at the judge's
11 requirement for a written explanation from [the Post
12 Office] -- to a large degree the Heads of Litigation and
13 Criminal Law were in much the same position as were
14 Martin Smith and I and accordingly I have no difficulty
15 insisting with the preparation of an explanation."

16 You say there the Heads of Litigation and Criminal
17 Law were in the same position. What do you mean by
18 that?

19 **A.** That's what I'd been told, that they'd only just
20 discovered the existence of the bugs at roughly the same
21 time that I did and, if that was right, then they were
22 in the same position we were.

23 **Q.** Was that a specific conversation with the Head of
24 Litigation and the Head of Criminal Law?

25 **A.** No, it would all have come through Jarnail Singh.

39

1 the page --

2 **A.** Before you do that, can I just say, that is everything
3 I asked for from the judge. I did not want a PII
4 certificate that prevented disclosure completely. I was
5 looking to buy time so that Parliament could deal with
6 the report and I could then comply with my disclosure
7 duties, and that's why the judge timed me. I think he
8 limited it to eight weeks. I asked for less but I think
9 he gave me eight weeks.

10 **Q.** Yes, well, the case was adjourned for eight weeks.

11 **A.** Yeah, but I only wanted a short period in order to allow
12 for the publication of the report so that I could then
13 comply without worrying about what Parliament was
14 doing -- comply with my disclosure duties.

15 **Q.** Paragraph 19:

16 "The judge also commented that this situation should
17 never have arisen and that the Post Office were to
18 provide a written explanation as to why this information
19 had been withheld from solicitors and counsel until as
20 late as last Thursday."

21 So it seems as though you explained to the judge
22 that this was all news to you?

23 **A.** Yes. I'd only learnt a few days before. I smile
24 because he was a bit more scathing about the situation
25 than that paragraph suggests. He was quite upset.

38

1 **Q.** Thank you. Paragraph 21, you say:

2 "Of greater concern is the absence of any reference
3 to Bug 68 or Bug 14 any of Fujitsu Services Limited's
4 statements served in support of other criminal
5 prosecutions. This is a matter to be returned to at the
6 appropriate time."

7 So this is your concern about the potential impact
8 on historic cases that relied on Gareth Jenkins'
9 evidence?

10 **A.** Yes, it is and I think what I'm doing here is flagging
11 up that I'm going to advise to, as I did on 8 July and
12 15 July, I think I'm sort of pointing in that direction.

13 **Q.** Was that something you mentioned to the judge at the PII
14 hearing, that there were concerns about a witness who
15 had been used in both --

16 **A.** Oh yes, oh yes. It would have been wrong to with hold
17 that.

18 **Q.** If we scroll down and over the page, please,
19 paragraph 23 says:

20 "It is also the case that we shall have to review
21 any other prosecution which relies upon Horizon data,
22 for the same reasons."

23 So you're flagging there what became ultimately your
24 review?

25 **A.** Yeah, to a degree the writing of these documents

40

1 involves a thought process which helps you to marshal
2 where you want to go and that's, I suspect that's the
3 beginning of me thinking we need to go wider than this
4 case.

5 **Q.** Finally, paragraph 24 says:

6 "Finally, it is worth commenting on the reasoning
7 behind my advice that we seek a PII certificate in this
8 case. [The Post Office] were rightly, in my opinion,
9 very concerned at the potential adverse publicity which
10 would inevitable have been generated by the revelation
11 of the existence of a (draft) Second Sight Report into
12 Horizon. To permit this information to enter the public
13 domain at such an early stage would have been to
14 encourage extremely unhealthy and likely virulent
15 speculation as to the content of any report, most
16 probably in the national press. Such speculation would
17 have seriously damaged the reputation of [the Post
18 Office] and would have great any undermined public
19 confidence in both [the Post Office] and [the Post
20 Office] systems. Our objective was to avoid such
21 consequences: that objective we achieved."

22 Now, that isn't anything about Parliamentary
23 privilege.

24 **A.** No.

25 **Q.** That is about publicity and avoiding publicity. So do

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1 confidence in both the Post Office and Post Office
2 systems. It doesn't say anything about privilege.

3 **A.** I agree but, to an extent, I disagree with you about the
4 import of paragraph 24. One of the things we were
5 concerned with -- it wasn't just -- forgive me, it
6 wasn't just Parliamentary privilege we were concerned
7 with, we were also concerned with -- I, because I made
8 the application and I advised the application be made --
9 I was concerned with the proposition that if the
10 existence of the report and the existence of the
11 suggestion that there were bugs in Horizon had come out
12 before the report had been presented to Parliament, then
13 the speculation would be damaging, not just to Post
14 Office, but to the entire financial system upon which
15 Post Office was based and, because the speculation could
16 be inaccurate, it could be wild, for all the reasons
17 I suggest here.

18 **Q.** Insofar as your application was, in fact, based on
19 Parliamentary privilege, is this paragraph here
20 something that we are all guilty of, which is perhaps
21 gloating in an attendance note about something that you
22 know the client would be happy about?

23 **A.** I hate the word "gloating" but I think you're probably
24 right. Yeah.

25 **Q.** That's 1 July.

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1 you accept that a significant part of the reasoning
2 behind seeking that certificate was to avoid speculation
3 and publicity?

4 **A.** I do.

5 **Q.** Looking back at it, do you think it was a proper
6 application to have been made?

7 **A.** Yes. I would go so far as to say, if I were in the same
8 situation now, with the same information I had, I would
9 make that application again. That is, if there was
10 a report which was subject to Parliamentary privilege,
11 and it was important that Parliament saw the report
12 first -- and we've all seen in the press the number of
13 times Parliament has complained about people saying
14 things before going to Parliament -- I would make the
15 application again.

16 I consider that the issues that I had raised fell
17 squarely within the main authority on the subject, which
18 was *Re H and Re C*, where it's suggested that the
19 categories to which public interest immunity applied
20 were not closed, and I thought this was a proper
21 category to make the application.

22 **Q.** Mr Clarke, that all sounds very reasonable, but
23 paragraph 24 does not mention at all Parliamentary
24 privilege. Paragraph 24 is very much about the
25 reputation of the Post Office and undermining public

42

1 **A.** Can I just make the point, which I think is quite
2 important, is that the judge did grant the application
3 so the suggestion that it was an improper application,
4 I would go so far to suggest, can't stand because the
5 judge granted it and the judge, therefore, felt that it
6 was a proper application to make. That sounds slightly
7 defensive but it's a point I make because, had it been
8 an improper application, the judge would have said, "I'm
9 not granting this".

10 **Q.** What we don't have is the information the judge was
11 presented with. I haven't made a suggestion that it was
12 an improper application but what I would suggest is that
13 paragraph 24, looking at that, it seems as though the
14 objective that is set out in paragraph 24 is not itself
15 a proper objective to make a PII application.

16 **A.** I think I agree with that. The reason I speak about the
17 propriety of the application is I have heard it
18 suggested elsewhere -- and perhaps I'm getting ahead of
19 myself and shouldn't --

20 **Q.** You're protecting yourself from Mr Moloney, which is --

21 **A.** Well, I suppose if you want to put it that way, yes.

22 I saw what Mr Moloney asked of Martin Smith and
23 I disagreed quite seriously with the propositions that
24 were being put.

25 **Q.** Yes. Mr Moloney didn't suggest it was improper, just --

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1 **A.** Oh, fine then. Thank you, I'm happy.
 2 **Q.** In your witness statement, paragraphs 43 and 44, you say
 3 that you went to the Post Office's offices on 3 July, so
 4 a couple of days after this hearing.
 5 **A.** Yeah, if that's what it says, yeah.
 6 **Q.** I think, you say in your statement, most likely with
 7 Rodric Williams and Jarnail Singh. Are you able to
 8 assist us at all with how likely that is?
 9 **A.** Very likely. I would have that to have met him very
 10 early on and so it's -- I suspect it was almost
 11 inevitable that I would have met him at that meeting.
 12 I can't think of a reason why I wouldn't have met him at
 13 that meeting. It makes absolute sense.
 14 **Q.** When you say "him", we know you had conversations with
 15 Jarnail Singh --
 16 **A.** Yeah.
 17 **Q.** -- what about Rodric Williams?
 18 **A.** No, that's what I'm saying. I think it's inevitable
 19 that that's when I first met Rodric Williams.
 20 **Q.** Thank you.
 21 **A.** I think that's absolutely right.
 22 **SIR WYN WILLIAMS:** Mr Blake, what number paragraph was that,
 23 did you just refer --
 24 **MR BLAKE:** 43 and 44.
 25 **SIR WYN WILLIAMS:** 43 and 44, thank you.

45

1 **MR BLAKE:** I'm just thinking about a mid-morning break. I'm
 2 coming to a point but I think let's go on --
 3 Actually, no, sir, I think if we're going to take
 4 two morning breaks, I think now is actually
 5 an appropriate time.
 6 **SIR WYN WILLIAMS:** All right. That's fine. Rather than,
 7 say, 10.58, let's say 11.00.
 8 **MR BLAKE:** I think it's only a ten-minute -- oh, yes.
 9 **SIR WYN WILLIAMS:** Yes, I'm giving you 12 minutes, Mr Blake.
 10 **MR BLAKE:** Thank you very much, sir.
 11 (10.48 am)
 12 (A short break)
 13 (11.00 am)
 14 **MR BLAKE:** Thank you, sir. Can you see and hear me?
 15 **SIR WYN WILLIAMS:** Yes, yes.
 16 **MR BLAKE:** Thank you.
 17 Mr Clarke, we left off on the case of Samra. It's
 18 right to say that, in that case, you had disclosable
 19 information about bugs, errors and defects in Horizon,
 20 correct?
 21 **A.** Correct.
 22 **Q.** It was a case that involved Horizon?
 23 **A.** Yes.
 24 **Q.** It's a case that the effectiveness or inadequacy of
 25 Horizon could have affected the outcome?

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1 **MR BLAKE:** Am I right in saying you never met Hugh
 2 Flemington?
 3 **A.** I have no recollection of ever having met him. He may
 4 have been in a room with me, I don't know. I did not
 5 recognise him when I saw him on the screen the other
 6 day. I can't put it any higher than that.
 7 **Q.** Thank you. It's at that meeting that you advised there
 8 should be this central hub, I think, later followed up
 9 in writing?
 10 **A.** Likely, yes. I think that's right.
 11 **Q.** Did you, at that meeting with Rodric Williams, explain
 12 the real concerns that you have explained to us about
 13 Gareth Jenkins?
 14 **A.** Yes. It was the point of the meeting.
 15 **Q.** What was the reaction to that; what do you recall of the
 16 reaction to that?
 17 **A.** I expected surprise, shock, horror; I did not see any of
 18 those things. He appeared to me to be taking it into
 19 his is it right and his concern was with where we went
 20 from here.
 21 **Q.** Did it seem as though you weren't providing him with new
 22 information?
 23 **A.** I think it would be unfair to say that, I can't look
 24 into his mind. All I can say is I did not see the
 25 surprise and astonishment I expected.

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1 **A.** Yes.
 2 **Q.** Public interest immunity enabled that information to be
 3 hidden from the public for the time being?
 4 **A.** Yes, for a limited period.
 5 **Q.** The result was that you didn't need to say in open court
 6 something that you would have had to have said, had that
 7 not taken place via the PII mechanism?
 8 **A.** I don't think I would have had to have said it in open
 9 court; I simply would have had to have disclosed the
 10 material to the defence and then they would have made
 11 what they would of it.
 12 **Q.** Exactly, so it would have been used in open court --
 13 **A.** Yes.
 14 **Q.** -- had it not been covered by the envelope of public
 15 interest immunity?
 16 **A.** Yeah, that's correct.
 17 **Q.** I'm going to move on to what happened to cases where
 18 there had been convictions or ongoing prosecutions or
 19 some ongoing actions and disclosure that was or wasn't
 20 made in those cases. Can we please look at POL00145145,
 21 please. Thank you. If we please could look at page 5,
 22 this the very same day as that public interest immunity
 23 hearing. We have an email from Andrew Parsons, if we
 24 scroll down to -- it's an internal email, but you'll see
 25 it's forwarded to you. He attaches ten letters to

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1 subpostmasters, for review. Are you aware -- I'll take
 2 you to those letters but I think you've seen them quite
 3 recently -- they are letters about a bug called B14; do
 4 you recall that issue?

5 **A.** Vaguely, yes. I've seen the documents recently, yes.

6 **Q.** Mr Parsons sends certain subpostmasters from those 14
 7 branches letters disclosing that issue. Could we please
 8 turn to page 1. It's what we know as the local suspense
 9 account issue.

10 **A.** Okay.

11 **Q.** If we look at the bottom of that page, please, we have
 12 an email from Rodric Williams to you and to Martin
 13 Smith, and he says:
 14 "Simon, Martin,
 15 "Two issues from the conference today ..."
 16 So it seems as though you had a conference on
 17 3 July, in fact that's the one we just talked about, is
 18 it?

19 **A.** Yes.

20 **Q.** So we know, as we see -- I mean, it's copied to Hugh
 21 Flemington, does that indicate in any way that Hugh
 22 Flemington might have been at that meeting?

23 **A.** No, he was copied into lots and lots of emails, I think
 24 for information purposes. As I understood it, he was --
 25 I may be wrong -- I think he was Head of Legal at Post

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1 It seems to me that these letters will somehow get in
 2 the public domain (Justice for Subpostmasters
 3 Alliance??). If that were to happen then again we run
 4 the risk of adverse speculation at least until Second
 5 Sight is published (if it is to be)."

6 Very much echoing what was said at the end of that
 7 attendance note about adverse publicity, adverse
 8 speculation. It does seem as though you were, as at
 9 4 July, particularly concerned with limiting adverse
 10 speculation.

11 **A.** I agree.

12 **Q.** "Merthyr Dyfan. In this case there are competing
 13 interests: open and transparent dealing by the Post
 14 Office as against the proposition that this is likely to
 15 be an appeal case. Could you hold off on this letter
 16 for a short while -- I will come back to you this
 17 afternoon once I've more fully considered the position
 18 and seen what [the Post Office] have forwarded to Martin
 19 Smith."

20 Now, you've explained in your statement that this
 21 was some sort of concern about the sub justice (*sic*)
 22 rule, can you assist us with --

23 **A.** *Sub judice* rule?

24 **Q.** Yes.

25 **A.** Probably not that. I've always been very cautious about

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1 Office, so it's not surprising he was copied into
 2 everything.

3 **Q.** "1. Letters to Branches
 4 "I attach the letters we propose sending to branches
 5 affected by B14."
 6 Then he refers to the Merthyr Dyfan letter, which
 7 concerns a Costcutter branch:
 8 "... which might have involved a Police prosecution
 9 of a branch assistant."
 10 They're no clearer on the status of that
 11 investigation/prosecution.
 12 If we look at the final paragraph on that page, it
 13 says:
 14 "During our conference, you explained prosecuting
 15 counsel's duty of disclosure. Please also net us know
 16 whether we could satisfy our duty of disclosure,
 17 (ie that we know of an issue which might be relevant to
 18 criminal proceedings) by notifying the police/Costcutter
 19 prosecuting counsel of B14 so that they can take a view
 20 on whether they should disclose it to the defence
 21 [according to] their duty."
 22 Your response is at the top of the page and you
 23 respond as follows:
 24 "All letters. Is it necessary to inform each of the
 25 offices of the fact that other branches are affected?"

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1 the Court of Appeal and involvement in potential appeals
 2 because, as far as I'm concerned, the Court of Appeal is
 3 the final arbiter in whether or not convictions are safe
 4 or otherwise, and so I'm always very careful when it --
 5 and, to this day, I'm very careful about what I do and
 6 say in the knowledge that the Court of Appeal may end up
 7 reviewing what's been done. So I always approach issues
 8 of appeal with caution and that's what I'm doing here.

9 **Q.** You've described these as competing interests. On the
 10 one hand, you have being open and transparent --

11 **A.** Yeah.

12 **Q.** -- on the other hand, you have the potential impact on
 13 an appeal. It certainly sounds as though you are
 14 concerned that, if you are open and transparent, it may
 15 assist the appeal.

16 **A.** I think that's reasonable, a reasonable assertion.

17 **Q.** Yes, and you think that is not the best approach or best
 18 advice that you could have been giving at that time?

19 **A.** Again, I think that's right. I would ask you to
 20 remember that we're on the 4 July so, literally, only
 21 a few days into my involvement in the entire Post Office
 22 process, substantively, with quite limited information
 23 and, effectively, trying to preserve the position until
 24 I knew what I was doing. I think that's what it comes
 25 down to. But I accept that the commentary you pass on

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1 this is perfectly valid.

2 **Q.** Could we please look at POL00297182, same day, a bit
3 later on. You respond, Simon Clarke, yourself, to
4 Rodric Williams, although --

5 **A.** It's not up.

6 **Q.** -- it's forwarded. Yes, it's POL00297182.
7 I think maybe you wrongly or inadvertently sent it
8 to Martin Smith first but it's certainly forwarded to
9 Rodric Williams and it's to Rodric Williams. Perhaps
10 you thought Martin Smith was going to forward it. Are
11 you able to assist us at all?

12 **A.** Looking at this, it's likely that I forwarded it to
13 Martin Smith for him to pass on. Again, this was very,
14 very early on in my dealings with Rodric Williams and so
15 it's likely I would have thought it had better gone
16 through Martin to Rodric than through me direct but
17 that's just a silly protocol thing.

18 **Q.** If we scroll down it says, as follows:
19 "Rodric, what we had initially believed to be
20 perhaps one of the more difference cases in fact turns
21 at to be one of the easiest. This defendant is awaiting
22 his trial and accordingly has not been convicted and
23 sentenced. Because we are ..."
24 Just pausing there, so it seems as though it was not
25 an appeal case that you were concerned about because

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1 suggested be disclosed. Are you still confident that
2 that was the right advice to have been giving?

3 **A.** It's right as far as it goes, that is the duty is to
4 disclose to the CPS so that the CPS then take over
5 responsibility for the general disclosure function but
6 I agree with you that there should have been more.

7 **Q.** You say:
8 "They will know the defence being run and if the
9 defence is based on the proposition that Horizon may be
10 responsible or that it is implicit in the defence (per
11 Samra) then they will disclose. If not then they will
12 not!"
13 "I think contact with the CPS should be made by us
14 at this end so as to maintain a firewall between [the
15 Post Office] and this overall problem; so that you are
16 seen to be acting independently and transparently
17 through lawyers; and because we are in any event dealing
18 with the other reviews."
19 Can we please move on to POL00145201. If we could
20 start on page 2, this is going to assist us with the
21 timing of various things. We see there 4 July, Hugh
22 Flemington is sending you a first rough draft from
23 Second Sight of one half of the Interim Report. That is
24 a significant part of that report that details the two
25 bugs.

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1 they haven't yet been convicted?

2 **A.** I think that must be right. Can I add this: this also
3 looks like it's a case being prosecuted not by Post
4 Office but by the Crown Prosecution Service.

5 **Q.** Yes, and, in light of that, your advice is as follows:
6 "Because we are not the prosecutor our duty extends
7 to the following:
8 "1. Identify the name of the defendant;
9 "2. Identify the prosecuting CPS area ...
10 "3. Inform the CPS area of the existence of B14;
11 that it has affected [that] branch; and that a report is
12 due soon;
13 "4. Disclose the Second Sight Report to the CPS
14 once we have it.
15 "If we follow this route the disclosure 'ball' will
16 then be in the CPS court and our duty is satisfied."
17 Just pausing there, is that right? I mean, you had
18 more information than just the existence of B14 and the
19 fact that the Second Sight Report was going to be
20 published. You had that transcript of the conversation
21 with Gareth Jenkins; you had your knowledge about Gareth
22 Jenkins having been involved and about his reliability;
23 you had the various other discussions; I don't know if
24 by this time you had the Helen Rose Report or not but
25 you certainly that more information than is being

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1 **A.** Yeah.

2 **Q.** If we go on to page 1, Martin Smith sends an email at
3 the bottom of this page, saying:
4 "Our advice overall with regard to disclosure has
5 not changed. The disclosure of a partial report would
6 not meet with our duties or help the current situation.
7 I think the disclosure of a partial report would provide
8 partial information and give rise to adverse publicity
9 and speculation. It would be far better to advise once
10 we have seen the entire report. Having said that, the
11 Second Sight Report would not need to be disclosed in
12 every case -- that decision would be taken on
13 a case-by-case basis. In many cases, it will not be
14 disclosable."
15 He says "our overall advice"; is it fair to suggest
16 that you inputted into this?

17 **A.** Yeah.

18 **Q.** To what extent was it his advice, to what extent was it
19 your advice? Whose typing was this, for example? Do
20 you think you sent it to --

21 **A.** It's got my style about it. I can't say I wrote it but
22 it looks as though I've given some real input into it.

23 **Q.** We know the Second Sight Report is almost complete.
24 5 July, you are expressing concerns again about adverse
25 publicity and speculation.

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1 A. Yeah, I agree.
 2 Q. Can we go to POL00129740. Now we're going to look at
 3 the draft letter to the Merthyr Dyfan post office and
 4 the one that was ultimately sent. So there are, in
 5 fact, two documents that I'd like to bring up on screen,
 6 side by side. This one is the draft letter that was
 7 sent to you, and we saw the covering email. Then I want
 8 to look at the final letter, and that is POL00002213, at
 9 page 16. Thank you very much. If we could go back one
 10 page on the left-hand side, thank you.

11 So, on the right-hand side, we have that earlier
 12 draft that you commented on; on the left-hand side, we
 13 have the final version which was sent on 5 July, so the
 14 day after that first draft Second Sight Report.

15 If we could look at the whole of the document on the
 16 left-hand side, please. Thank you very much. Let's
 17 keep them side by side and focusing on the right-hand
 18 side, first paragraph, it says:

19 "As a result of central data reviews in the Post
 20 Office Finance Service Centre, we have identified
 21 a small number of branches whereby a system error in
 22 data archiving processes has led to an error in the
 23 calculation of losses and gains at branch level."

24 Just pausing there, is that right? Are you aware
 25 that the basis for that finding, that particular bug,

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1 been confirmed as relating to a specific and unusual set
 2 of circumstances which are not due to any mistake by
 3 yourself."

4 So the suggestion, the clear statement there, from
 5 the Post Office that it wasn't the subpostmaster's
 6 fault, that doesn't seem to have made it into the final
 7 version.

8 Then if we scroll over, both pages, please. In
 9 fact, on the left-hand side, if we ask could stay with
 10 the first it may assist. That top paragraph on the
 11 right-hand side:

12 "This has impacted only 14 branches and we are
 13 issuing similar correspondence to all parties concerned
 14 to confirm that the issue is understood and the proper
 15 remedial action has been taken."

16 That doesn't appear in the final letter either, can
 17 you see that?

18 A. I've not -- oh, I see, yes. I see that.

19 Q. Now, we saw your advice earlier was a concern about
 20 notifying the branches that there were other branches
 21 and the publicity that that might generate.

22 A. Yes.

23 Q. Do you recall seeing that advice?

24 A. Yeah.

25 Q. It looks very much as though that advice was adopted by

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1 was a result of central data reviews in the Post Office
 2 Finance Service Centre?

3 A. No, as I understood it, the bug was informed by Gareth
 4 Jenkins/Fujitsu to Second Sight.

5 Q. It then says:

6 "Your branch is one of that small number affected."

7 We can see on the left-hand side that sentence:
 8 "Your branch is within of that small number affected"
 9 has been removed in the final draft; do you see that?

10 A. I see that.

11 Q. Then says:

12 "We apologise for any confusion this matter may have
 13 caused and we want to assure that we have subsequently
 14 worked with our suppliers to understand the root cause
 15 of the issue and take action to resolve it. You may
 16 however not have been aware of this matter at the time
 17 but we nevertheless felt it important to make you aware
 18 of this incident and its resolution.

19 "The purpose of this letter is to summarise the
 20 outcomes of this review and to confirm the remaining
 21 steps which we'll be taking to conclude this incident."

22 Those 2 paragraphs are the same in both.

23 A. Mm-hm.

24 Q. But then it's the next paragraph on the right-hand side:

25 "The occurrence of this amount as a discrepancy has

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1 the Post Office, who then removed any mention to the
 2 individual subpostmaster that there were other branches
 3 that were affected.

4 A. It does.

5 Q. Yes. What part of a criminal prosecutor's duty do you
 6 see it as to be concerned with adverse publicity?

7 A. None.

8 Q. So the advice that you gave to the Post Office in
 9 respect of this letter, do you think that was
 10 appropriate or inappropriate advice?

11 A. It was ill judged and inappropriate.

12 Q. I'd like to now move on to the --

13 **SIR WYN WILLIAMS:** Before you do, Mr Blake, in defence of
 14 the author of the final letter, if you look at the first
 15 paragraph, it does indicate in that that more than one
 16 branch was affected, does it not?

17 **MR BLAKE:** It does. Although it does remove --

18 **SIR WYN WILLIAMS:** It waters it down, let's put it like
 19 that, yes?

20 **MR BLAKE:** Yes, absolutely.

21 **SIR WYN WILLIAMS:** Fine. Thanks.

22 **MR BLAKE:** Thank you. If we could take that down, please.
 23 Moving on to the general advice and sift, can we please
 24 look at POL00006365.

25 So we're now at 8 July, so we're a week after that

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1 public interest immunity hearing and you have written
 2 your general advice about -- if we scroll down, it
 3 begins addressing alternative Fujitsu experts and how
 4 Gareth Jenkins should be replaced, and we can see there
 5 at paragraph 221 that the Second Sight Report is about
 6 to come out, it's due to be published at 6.00 that
 7 evening.

8 **A.** Yeah, just in terms of chronology, I would ask you to
 9 recall that I'm still only eight or nine days into this
 10 process so it's still very much a learning curve for me.

11 **Q.** If we turn to page 3, please, it is the subject of the
 12 "Start Date for the Review Process"?

13 **A.** Yes.

14 **Q.** I'm going to read those three paragraphs. It says:

15 "A number of start dates are suggested: 12 months
 16 back from today; the date of separation of [the Post
 17 Office] from [Royal Mail Group]; the initial [Horizon
 18 Online] migration date; others.

19 "Considerations as to the selection of the start
 20 date include proportionality; resourcing; transparency;
 21 and [the Post Office] reputation. I have come to the
 22 view that all of those considerations militate in favour
 23 of a date close to the initial [Horizon Online]
 24 migration date of 2010, perhaps using 1 January of that
 25 year.

1 about, please?

2 **Q.** What I'd really like is just your reflections as to
 3 whether, at the point you are writing this, you thought
 4 that you had sufficient knowledge about to be these
 5 cases to make such a significant judgement.

6 **A.** This is in relation to the start date?

7 **Q.** Yes.

8 **A.** Yeah. I think I had sufficient knowledge to make the
 9 decision about the start date because the most important
 10 factor in that respect was that we had been told that,
 11 on 1 January 2010, the new online system had been rolled
 12 out, so to speak, and that every branch had been audited
 13 prior to that rollout to ensure that everything balanced
 14 properly and so it was a good benchmark to say, from
 15 this date, there were no problems with Horizon and Post
 16 Office Accounts, and so anything moving forward from
 17 that date could be inspected to see whether or not there
 18 was an issue with the bugs, et cetera. Prior to that,
 19 we were dealing, I think, with an old system.

20 **Q.** That's paragraph 132 of your witness statement --

21 **A.** Oh, thank you.

22 **Q.** -- and that's exactly what you've said.

23 **A.** Thank you.

24 **Q.** It's difficult to understand why an audit at the end of
 25 Legacy Horizon/beginning of Horizon Online would make

1 "I arrive at this view not least because any
 2 [subpostmaster] prosecuted prior to that date would have
 3 been prosecuted using original Horizon data; any
 4 sentence of imprisonment, Unpaid Work or fine would by
 5 now have been completed; and the publicity which is
 6 bound to arise once [Second Sight] has published will
 7 place 'older' defendants on notice."

8 Just pausing there, you said that you had only very
 9 recently got involved. Do you think you were
 10 sufficiently informed by that stage to have been giving
 11 this advice?

12 **A.** Can I ask you, please, to take me to my statement,
 13 paragraph where I deal with this because I have thought
 14 very carefully about this and I want to confirm what
 15 I said to you.

16 **Q.** Yes, please do let us know which paragraph --

17 **A.** I'm struggling to find it, to be honest, but I did deal
 18 with it.

19 **Q.** Can you try your best without referring because we have
 20 what's in your statement, it would be best --

21 **A.** I stand by what I wrote in my statement. Somebody has
 22 put my statement up now.

23 **Q.** Yes, but I don't intend to take you to any particular
 24 paragraphs --

25 **A.** No, can we go back to the document you were asking me

1 a difference in terms of that date. Can you elaborate
 2 on that?

3 **A.** Oh, yes, because on the date the audit was done you knew
 4 that there were no discrepancies in the accounts, you
 5 knew there were no questions about whether or not the
 6 relevant subpostmaster had fallen into error or made
 7 mistakes or even had committed offences. It was a very
 8 clean start point.

9 **Q.** But what if you had been prosecuted before the change to
 10 Horizon Online, had stopped becoming a subpostmaster,
 11 were in prison, may have had your life ruined, your
 12 children's lives ruined; how would the audit at the end
 13 there have assisted at all with knowing whether they
 14 were fairly prosecuted?

15 **A.** It wouldn't have done but our understanding, at the time
 16 this decision was made, was that the two bugs we had
 17 been told about affected the Horizon Online system,
 18 which only started after 1 January.

19 **Q.** But you also knew, at that time, that Gareth Jenkins was
 20 an unreliable witness --

21 **A.** We did.

22 **Q.** -- who had given unreliable evidence --

23 **A.** We did.

24 **Q.** -- and you knew that a system, such as Horizon, could be
 25 capable of having additional bugs?

- 1 **A.** Old Horizon, as well, yes, we did.
- 2 **Q.** So, with that in mind, it may seem to some -- although
- 3 we know Mr Altman agreed with you -- that that date was
- 4 chosen, given that people had been prosecuted for
- 5 a number of years before, some, including Ms Misra's
- 6 case, although that was ultimately looked at, involving
- 7 Gareth Jenkins?
- 8 **A.** Well, there are two parts to my answer to that question,
- 9 I think. The first is that we had to choose a date. It
- 10 seemed, at the time, that, for the reasons I've given,
- 11 it was the most logical date to choose. But we then
- 12 learnt very quickly after that that Brian Altman had
- 13 been instructed to supervise us -- the word "supervise"
- 14 was used: to supervise us -- and one of the things he
- 15 did was he looked at the start date, considered the
- 16 rationale behind it and agreed with it. And had he
- 17 said, "I don't agree with that start date, we should go
- 18 back further", I don't want to push responsibility on to
- 19 somebody else because I stand by the decision I made.
- 20 **Q.** I mean, he was --
- 21 **A.** But --
- 22 **Q.** -- reviewing the advice you'd already given.
- 23 **A.** Forgive me. We had given the advice that the start date
- 24 should be 1 January. Brian Altman reviewed it and said,
- 25 "I agree with the" -- whatever language he used --

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- 1 **A.** Yes, over the sift process, it became clear to us --
- 2 perhaps we were rather dim about it but it became clear
- 3 to us that the issues with Horizon extended back before
- 4 1 January 2010 and we started receiving cases for review
- 5 that went back before that. I'm not convinced we
- 6 received every case that had been prosecuted but we did
- 7 expand the ambit of the Horizon -- the pre-1 January
- 8 review but I can't say when that took place. And
- 9 I think, in the end, we reviewed something like -- I've
- 10 got a figure of either 400 or 700 cases but we reviewed
- 11 a lot of cases, and some of those would have been pre-
- 12 January 2010. So we did go back after a time.
- 13 **Q.** Not a comprehensive look?
- 14 **A.** No, I don't think that was. No, I think you're right.
- 15 **Q.** Consideration, such as the fact that a sentence of
- 16 imprisonment or unpaid work or fine would now have been
- 17 completed and therefore you shouldn't look at them, do
- 18 you look back at them and think that wasn't the best
- 19 advice?
- 20 **A.** Yeah, I think probably I do.
- 21 **Q.** A separate criticism of the review is regarding
- 22 independence and an alleged lack of independence; what
- 23 do you say about that?
- 24 **A.** Generally or specifically? In general terms, I don't
- 25 think there was any real issue of conflict in the

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- 1 "I agree with the start date chosen by Mr Clarke", that
- 2 vindicated my decision. If he had said, "No I think you
- 3 should go back 10, 15, 20 years", I have no doubt that
- 4 that's what we would have done.
- 5 **Q.** If we look at this now, though, the very first phone
- 6 call you had with Gareth Jenkins, he said he can't rule
- 7 out there being other problems, which made a lot of
- 8 sense to you; second Sight Interim Report had identified
- 9 two bugs impacting 76 branches, admittedly involving
- 10 Horizon Online; Helen Rose Report, it's not clear yet
- 11 whether you've read it by this date or not but that also
- 12 raised issues of Horizon integrity issues.
- 13 Did this not all cause you to think that there might
- 14 be some issues with what we know as Legacy Horizon?
- 15 **A.** It didn't at the time, I rather suspect largely because
- 16 we had followed the route that 1 January 2010 was the
- 17 appropriate start date and, if you want to suggest that,
- 18 in a sense, that put blinkers on us going forward, then
- 19 I think that would probably be correct.
- 20 **Q.** Yes, because all prior assurances you had received had
- 21 proved to be wrong?
- 22 **A.** Yeah.
- 23 **Q.** Did you at any stage, other than today, look at it and
- 24 advise that, actually, "We might want to rethink the
- 25 start date"?

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- 1 review.
- 2 **Q.** Who was carrying out the review?
- 3 **A.** Well, there were two aspects to it. The first aspect
- 4 was that every case has to be sifted to determine
- 5 whether or not Horizon figured in the prosecution
- 6 evidence. If Horizon didn't figure in the prosecution
- 7 evidence and an example would be there was a case where
- 8 an SPMR was taking money from the Post Office and
- 9 loaning it to family members, that's clearly not
- 10 a Horizon case, then they were put to one side. If it
- 11 was flagged up -- and I think the threshold was quite
- 12 low -- if it was flagged up as a Horizon issue case then
- 13 it was reviewed by either me, Harry Bowyer and we had
- 14 three or four external counsel that we instructed on
- 15 an *ad hoc* basis to come in and conduct reviews as well.
- 16 **Q.** Would you be surprised if I said that you and Harry
- 17 Bowyer, in terms of the sifts, reviewed 76 of 81 sifts?
- 18 **A.** Not at all.
- 19 **Q.** You reviewing 33, him 43?
- 20 **A.** Not at all.
- 21 **Q.** In those circumstances, do you think it can fairly be
- 22 characterised as a review that's being carried out by
- 23 an independent firm?
- 24 **A.** Yes.
- 25 **Q.** But the same firm that had been prosecuting on behalf of

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1 the Post Office, do you think it can fairly be
 2 described -- even if you say, "Yes, I looked at this and
 3 I was personally independently minded", do you think it
 4 can fairly be characterised as a review being carried
 5 out by an independent firm?
 6 **A.** I can see why people might think otherwise. For my own
 7 part at the time, I didn't. But I accept that there is
 8 a view which goes, yes, it actually probably wasn't as
 9 independent as it ought to have been.
 10 **Q.** I'm going to move on now to the Gareth Jenkins advice.
 11 **A.** I would also accept, forgive me for interrupting you --
 12 I would also accept, now that you've given me the
 13 numbers, that there might also have been a degree of
 14 becoming case hardened by reviewing so many cases.
 15 I accept that's a possibility as well.
 16 **Q.** What do you mean by that?
 17 **A.** Well, when you review case 1, you're absolutely fresh at
 18 it and much more vigorous, I expect. By the time you
 19 get to case 35 it's inevitable, human nature tends to
 20 dictate that you've seen it all before and perhaps you
 21 become slightly more -- what's the word -- cynical about
 22 what you're doing. I accept that, I think that's
 23 an appropriate comment to make.
 24 **Q.** I mean, it might be suggested that in carrying out those
 25 sifts, you should have spotted trends and themes that

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1 "Why aren't you using him any more?"
 2 **Q.** Mr Smith responds:
 3 "Simon is preparing a further advice about Gareth
 4 Jenkins [and that's, I think, the one we'll come to].
 5 However, he touched on the [Gareth Jenkins] point in his
 6 advice of the 8th."
 7 That I think we saw as well, the beginning
 8 paragraphs.
 9 **A.** Yeah.
 10 **Q.** If we could look at POL00191966, please. There's
 11 an email from Rodric Williams to Andy Parsons:
 12 "Andy,
 13 "As discussed, please see the attached which sets
 14 out the high level issue which Cartwright King (our
 15 criminal law solicitors) has identified with the Fujitsu
 16 evidence Gareth Jenkins has been providing in support of
 17 the criminal prosecution cases conducted before Post
 18 Office Limited. A more detailed note should arrive on
 19 Monday, which I will forward to you once I have it.
 20 "Can you please consider this in light of the
 21 contractual arrangements we have with Fujitsu and draft
 22 a suitable email to Fujitsu to put it on notice of the
 23 issue."
 24 That's Rodric Williams to Andrew Parsons, copying in
 25 a number of other individuals.

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1 were arising?
 2 **A.** Yeah. I accept that.
 3 **Q.** Is that also, you think, down to becoming immune or case
 4 hardened?
 5 **A.** That's exactly what I'm referring to. That's the point
 6 I'm making: that because you become slightly cynical,
 7 jaded, as inevitably is going to be the case, then you
 8 do miss things. Yes, I accept that.
 9 **Q.** Moving on to the Gareth Jenkins advice, can we please
 10 look at POL00297607. This is before I come on to your
 11 formal written advice, which is 15 July.
 12 **A.** Yes.
 13 **Q.** We're going to start on 10 July 2013, and the bottom
 14 email, an email from Rodric Williams to you. He says:
 15 "Martin, Simon,
 16 "Do you have some suggested wording for how we break
 17 the [Gareth Jenkins] news to [Fujitsu], including why it
 18 is a problem for you from a criminal law perspective?"
 19 **A.** Yeah.
 20 **Q.** Can you assist us with what's meant there, "breaking the
 21 news to Fujitsu"?
 22 **A.** Well, they had to be told that their expert had
 23 misconducted himself --
 24 **Q.** If we scroll up --
 25 **A.** -- because they would be asking the obvious question

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1 Can we please look at the bullet points that were
 2 attached to that. They can be found at POL00191967.
 3 Now, these are quite brief, these bullet points.
 4 **A.** Yeah.
 5 **Q.** Let's read them.
 6 "Fujitsu and Gareth Jenkins have for some time been
 7 providing [the Post Office] with expert witness
 8 statements and expert evidence for criminal
 9 prosecutions;
 10 "A full report which considers Fujitsu and Gareth
 11 Jenkins' provision of expert evidence is being prepared;
 12 "The initial view seems to be that statements and
 13 evidence provided by Gareth Jenkins did not contain all
 14 that they should have done;
 15 "In particular there seems to have been a reluctance
 16 to deal with known Horizon issues in the
 17 statements/evidence;
 18 "As a consequence it has been necessary to conduct
 19 a review of cases so as to determine whether or not any
 20 particular defendant has been prejudiced by the absence
 21 of information."
 22 Do you think that that's underplaying the issue
 23 somewhat?
 24 **A.** No, I hadn't conducted my review then. I think I'm
 25 preparing them for what's coming.

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1 Q. I mean, the conversation that you had with Gareth
2 Jenkins, I described it as a bombshell --
3 A. Yeah.
4 Q. -- and you agreed with that. I think you expressed to
5 me serious concerns --
6 A. Yeah.
7 Q. -- from that conversation and from the information you'd
8 received the day before. Do you think that a reluctance
9 to deal with known Horizon issues is an accurate
10 reflection of the strength of your feelings?
11 A. I think there's a difference between having serious
12 concerns, which I had and which I told you about, and
13 condemning a man before I completed my report, is quite
14 important. But what I didn't want to do is point the
15 finger at Gareth Jenkins in writing and say, "You have
16 misled the court" until I was certain of my position.
17 Q. Then we have your advice. That can be found at
18 POL00006357, please, and that's 15 July.
19 Were you aware involved in the instruction of Gareth
20 Jenkins?
21 A. No.
22 Q. Prior to this issue having arisen, had he ever been
23 a topic of conversation within the office at all with
24 your colleagues?
25 A. Not that I'm aware of. You've got to again remember
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1 were involved in his cases, to have known about how to
2 properly instruct him?
3 A. Yes.
4 Q. Martin Smith's evidence was that he wasn't aware of the
5 legal requirements; were you surprised by that?
6 A. When I saw him say that the other day, I was surprised,
7 yes.
8 Q. Had you understood his knowledge at that time to be
9 sufficient to have that kind of knowledge?
10 A. I think "assumed" is a better word. I had assumed at
11 the time that things had been done properly, yes.
12 Q. One thing that you point into your witness statement was
13 that Gareth Jenkins had signed off his witness
14 statements, that he understood his role was to assist
15 the court?
16 A. Yes.
17 Q. Did you, at that point, on reading those statements,
18 question why he didn't have the usual expert declaration
19 within those statements?
20 A. No, because I wasn't, at that point, concerned with
21 whether or not he'd been instructed properly. That
22 was -- I was instructed -- I was interested in effect,
23 not cause. The effect was he had failed to tell the
24 court that which he ought to have told them both in his
25 witness statements and orally in the Seema Misra case;
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1 that -- were you aware that Cartwright King operated
2 from a number of different offices --
3 Q. Yes.
4 A. -- and, until I was instructed and even during the
5 course of the Samra case, I was based in the Nottingham
6 office and the Post Office department, I think, was
7 based across Derby and Leicester. So I wouldn't have
8 been a party to any conversations prior to the Samra
9 case, in any event. During the course of -- well, it
10 was during the Samra case that this arose and then, yes,
11 of course, he then became pretty much the central topic
12 of discussion.
13 Q. Prior to the research that you carried out for this
14 advice, were you aware or did you have any knowledge
15 about the basis on which Gareth Jenkins had been
16 instructed?
17 A. No. Didn't even know of the existence of the man.
18 Q. You had that conversation on the 28th?
19 A. Yes.
20 Q. Before that conversation, were you aware of how he had
21 been put forward as a witness --
22 A. No.
23 Q. -- in those proceedings?
24 A. Just not at all.
25 Q. Would you have expected those at Cartwright King, who
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1 that's what I was concerned with.
2 So I didn't look to see whether he'd been instructed
3 properly in the first place because that's in the past
4 and that was of no concern to me. My concern was: he
5 hasn't told the court what he ought to have told them.
6 How do we deal with that?
7 Q. Can we look at page 14. We've seen this advice, I'm not
8 going to go take you through every paragraph --
9 A. No, I wrote it.
10 Q. -- of the advice, the Chair has it. If we look at
11 page 14, there are some conclusions. If we could scroll
12 up, please. It says:
13 "Notwithstanding the failure is that of [Gareth
14 Jenkins] and, arguably, of Fujitsu Services Limited
15 being his employer, this failure has a profound effect
16 upon [the Post Office] and [Post Office] prosecutions,
17 not least because by reason of [Gareth Jenkins']
18 failure, material which should have been disclosed to
19 defendants was not disclosed thereby placing [the Post
20 Office] in breach of their duty as a prosecutor."
21 Very strong words there.
22 A. I don't know where I get "Dr" from but, yes, very strong
23 words.
24 Q. "By reason of that failure to disclose, there are
25 a number of now convicted defendants to whom the
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1 existence of bugs should have been disclosed but was
2 not. Those defendants remain entitled to have
3 disclosure of that material notwithstanding their now
4 convicted status."

5 As you say, powerful stuff. Are you aware of who
6 this advice was shared with within the Post Office?

7 **A.** I can't remember how it got to Post Office. I don't
8 know whether I sent it or whether I gave it to Martin to
9 forward to Jarnail. To my direct knowledge, Jarnail
10 Singh had it and Rodric Williams had it. Where it went
11 thereafter, I can't say. I would add, with hindsight,
12 which I've already said in my statement is a cruel
13 master but, with hindsight, I now know that a number of
14 the advices that I wrote did not go where they ought to
15 have gone, even though I had expected that they would.

16 **Q.** Even if you're not aware of where that actual written
17 document went, are you aware of any other names within
18 the Post Office who you are aware received the substance
19 of your advice?

20 **A.** No. I can't say who did and who didn't see it or who
21 did or who didn't receive the import of the advice.

22 **Q.** I'm going to move on to the Criminal Cases Review
23 Commission. Can we please look at POL00039994. This is
24 a letter you'll have seen me take Mr Smith to.

25 **A.** Yeah.

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1 legal argument available to the defendant -- for which
2 see below."

3 If we scroll down, we can see a comment by you:

4 "As to the second, the Second Sight Interim Report
5 would fall within the scope of that criterion on the
6 basis that it was important information not known at the
7 time of the original trial and which has emerged since
8 conviction."

9 It seems as though, as at 16 July 2013, it was
10 pretty clear to you that the Second Sight Interim Report
11 fell within that second limb of important new evidence?

12 **A.** That must be right, mustn't it? Not that it was clear
13 to me but it fell within that category, yes, I agree.

14 **Q.** Can we please look at POL00039995. This is the draft
15 reply. If we scroll down, you say there at that bottom
16 paragraph:

17 "Where a defendant asserts, rightly or wrongly, that
18 Horizon is at fault, it is for the prosecution to
19 demonstrate the integrity of the system and the
20 evidential audit trail derived from Horizon."

21 Now, were you aware, anecdotally, at least, from
22 those involved in those prosecutions, that in reality,
23 the burden was largely put on the defendants themselves.

24 **A.** I became aware of that after my involvement in Post
25 Office, yes.

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1 **Q.** It's a letter from the CCRC to Paula Vennells, 12 July
2 2013. If we scroll down, we can see it's after the
3 publication of the Second Sight Report and, they say:

4 "For obvious reasons, we have read the recent media
5 coverage concerning the Post Office Horizon computer
6 system with interest", and they would like more
7 information.

8 Could we look at POL00039998, please. Top email
9 says:

10 "Please find attached documents prepared by Simon in
11 response to that letter ..."

12 So it seems as though you have received a copy of
13 that letter and drafted two documents, one is a draft
14 response and another is another document that I'll take
15 you to first, that is POL00039993. Thank you.

16 What was the purpose of this document?

17 **A.** I think they asked me what the ambit of -- or scope of
18 the role of the CCRC was and I think here I summarised
19 as best I can, in fairly plain language, layman's
20 language, what the role of the commission was.

21 **Q.** There are two criteria that are applied. The first
22 being that they had tried to appeal?

23 **A.** Yeah.

24 **Q.** The second:

25 "There must also be some important new evidence or

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1 **Q.** When you say after your involvement?

2 **A.** Well, I didn't know before May 2013 because I had
3 nothing to do with it, Post Office.

4 **Q.** At the time of writing this, in July 2013, were you
5 aware that that was the case, having presumably already
6 been sifting a number of files?

7 **A.** Early on in the sift, I don't think I'd formed --
8 I formed that view later. I don't think I'd fully
9 formed that view then but I think it's fair to say that
10 there were indications emerging that those who were
11 prosecuting were not doing that which they should have
12 done.

13 **Q.** We then move on to Gareth Jenkins. It says:

14 "This is usually accomplished by the serving of
15 expert evidence. For many years both [the Royal Mail
16 Group] and latterly [the Post Office] has relied on
17 a single expert witness provided by Fujitsu Services,
18 the Horizon manufacturer, maintenance and support
19 contractor. That witness has provided expert evidence
20 in many cases where the defendant has asserted
21 irregularities with Horizon to be the cause of
22 unexplained shortfalls, as to the operation and
23 integrity of the Horizon system. He has done so both
24 [the Post Office] and in expert witness statements and
25 in oral evidence to the court. In particular he has:

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1 attested to the presence of defect detection and
2 rectification systems; the robustness of the prosecution
3 audit trail; and stated that, in his expert opinion,
4 Horizon accurately records and processes all information
5 submitted into the system. The Second Sight Interim
6 Report demonstrates that this was not the case."

7 You knew by the point at which you were drafting
8 this letter that Mr Jenkins wasn't to be relied upon
9 because, as you've explained, he was the very source of
10 those bugs that were disclosed to Second Sight.

11 **A.** Yes, I agree.

12 **Q.** Why do you think that wasn't set out in this letter?

13 **A.** What, that I knew ...

14 **Q.** That there was a real concern not simply that there was
15 new information that had appeared but that the very
16 expert that had been instructed in prosecutions was, in
17 your view, by that stage, unreliable?

18 **A.** Well, I think this letter does say that.

19 **Q.** If it does that, it does that in a very subtle or
20 unclear way, in fact, doesn't it? I mean, it doesn't
21 raise there any real concerns about the integrity of
22 Gareth Jenkins?

23 **A.** I'm going to have to disagree with you. I think that
24 last paragraph you read does precisely that.

25 **Q.** I mean, you had written the very day before, 15 July --

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1 has been published after the expert has given evidence,
2 prosecutions have concluded, has proved that information
3 that he had provided is now no longer the case?

4 **A.** Yes.

5 **Q.** But it doesn't raise any concerns about the actual
6 information that he was giving to the court?

7 **A.** I think that's read into that paragraph. We can get
8 bogged down by this but I think --

9 **Q.** Let's have a look at this, if we could zoom out perhaps
10 and look at the words "Where a defendant" down to "this
11 was not the case", where do you say that was reflected
12 in this paragraph?

13 **A.** "For many years ... RMG and latterly POL has relied on
14 a single expert witness", and then it goes on to say
15 what the expert witness says:

16 "That witness has provided expert evidence in many
17 cases where the defendant has asserted irregularities
18 ... He has done so both to POL and in expert witness
19 statements and in oral evidence to the court. In
20 particular he has: attested to the presence of defect
21 detection and rectification systems; the robustness of
22 the prosecution audit trail; and stated that, in his
23 expert opinion, Horizon accurately records and processes
24 all information submitted into the system."

25 That is setting out what the expert has said in his

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1 **A.** Yeah.

2 **Q.** -- a very significant piece of advice with very strong
3 words -- I took you to those last two conclusions --
4 placing Post Office in breach of their duty as
5 prosecutor, et cetera. Do you think that the sentence,
6 the paragraph I've just taken you to, do you think that
7 accurately reflects the strength of your advice to the
8 Post Office?

9 **A.** That's a different question, isn't it? The question you
10 were asking me -- forgive me, I don't want to be rude --
11 the question you were asking me was whether or not I was
12 advising in terms that the CCRC be told about Gareth
13 Jenkins. And the answer to that question is they are
14 here, I agree with you that I don't say it in such
15 trenchant terms as I do in my written advice to Post
16 Office, but --

17 **Q.** It is a particularly tepid response to the CCRC in
18 circumstances where you had real concerns about the
19 reliability of Mr Jenkins, isn't it?

20 **A.** I don't agree with your choice of words.

21 **Q.** Do you think it is reflective of the advice that you
22 gave to the Post Office?

23 **A.** It tells the CCRC that the expert that has been relied
24 upon has not done that which he ought to have done.

25 **Q.** It suggests that the Interim Second Sight Report, which

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1 reports. The following sentence, "The Second Sight
2 Interim Report demonstrates this was not the case", very
3 clearly in my view says that that gives the lie to
4 what's been said in the preceding paragraph.

5 **Q.** Does it say, "He knew it at the time"?

6 **A.** No, it doesn't.

7 **Q.** Why doesn't it?

8 **A.** I thought that was sufficient.

9 **Q.** Do you think that conveyed your opinion that he knew it
10 at the time.

11 **A.** Yes.

12 **Q.** Looking back at it, do you stand by that?

13 **A.** Yes.

14 **Q.** If we scroll down, please, page 2:

15 "To that end [the Post Office] has instructed
16 an independent firm of criminal specialist solicitors to
17 identify every criminal case prosecuted by [the Post
18 Office] and [Royal Mail Group] prior to their separation
19 ..."

20 That's the point I was asking you about before. Do
21 you think that is a fair description of the role of
22 Cartwright King or do you think that is somewhat putting
23 a gloss on Cartwright King?

24 **A.** Well, I think I'd already answered that question and you
25 know my view now. At the time, I thought it was right;

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1 my view now is perhaps not.

2 **Q.** Was it intentionally drafted that way to give the
3 appearance that it was something that it wasn't?

4 **A.** No. I've just told you: at the time, I thought it was
5 the correct view.

6 **Q.** If we could go over the page, please, to page 3. If we
7 scroll down, please. It says:

8 "Where counsel has advised the possibility of
9 grounds of appeal, letters have been written to
10 solicitors who defended, informing them of the issues
11 and providing copies of the Second Sight Interim Report
12 and such other material as they ought to have received
13 during the currency of the prosecution, had we then been
14 possessed of that material. It would then be for the
15 defendant and his lawyers to determine whether or not
16 they wished to launch an application for leave to appeal
17 out-of-time; we would certainly support grounds to allow
18 the application out-of-time."

19 So reference there to "the Second Sight Report and
20 such other materials", I think, actually, that phrase is
21 lifted from Brian Altman's -- or it certainly appears in
22 Brian Altman's interim review. I don't know if you
23 recall taking it --

24 **A.** It's entirely possible.

25 **Q.** We still there don't have any mention beyond Second
85

1 says to Andrew Parsons:

2 "Andy -- we received a letter from the CCRC
3 yesterday which I have asked Cartwright King to review.
4 Their advice feels odd to me as if given on a take it or
5 leave it basis and I am not comfortable that's
6 particularly useful in this context. Could we discuss,
7 I am happy to go to another firm that specialises in
8 criminal law or a barrister, somehow it feels as if
9 there is a conflict here which I am not sure
10 I understand."

11 Were you aware that the Post Office had concerns
12 about the strength of your response or the content of
13 your response?

14 **A.** No.

15 **Q.** Looking at that now and the discussion we've just had,
16 do you think, actually, looking back at that draft, it
17 was too -- I was going to use the word "robust",
18 I wouldn't necessarily use the word robust -- but it was
19 too punchy?

20 **A.** What, my draft response?

21 **Q.** Yes.

22 **A.** That it was too punchy?

23 **Q.** That it was limited in the information that it provided,
24 justifying the work that Cartwright King was carrying
25 out and was not an open, transparent and fair response
87

1 Sight, of, for example, the Helen Rose Report, we don't
2 have any mention of any other information, the kind of
3 information that was very clearly apparent to you from
4 that Gareth Jenkins conversation on the 28th. Do you
5 think that is sufficient information that was being
6 provided at that stage?

7 **A.** Well, the only information we had was the Second Sight
8 Report, the fact that it was Gareth Jenkins who had
9 informed Second Sight of the existence of the bugs and
10 the Lepton report. That, I think, was the extent of
11 that which we had.

12 **Q.** Was the Helen Rose Report mentioned there?

13 **A.** No, it's not.

14 **Q.** Are the concerns that were immediately apparent to you,
15 the bombshell conversation from the 28 June; is that
16 reflected there at all?

17 **A.** I think it's a more measured response.

18 **Q.** A more measured response or a carefully worded response
19 to make it seem as though there wasn't very much
20 material to be handing over?

21 **A.** Two answers. Yes, it was carefully worded. Everything
22 I write I try to word as carefully as I can. But, no,
23 it was not carefully worded in order to minimise.

24 **Q.** Can we please turn to POL00192214, bottom of page 3.
25 Susan Crichton has received your draft letter and she
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1 to the CCRC's request for information?

2 **A.** No, I don't agree with that.

3 **Q.** Did anybody at the Post Office ever raise with you
4 concerns in respect of that letter?

5 **A.** They didn't, but I read this email as Post Office taking
6 the view that it was too strong. This looks to me as
7 though they're suggesting that they might want to water
8 it down. I speculate.

9 **Q.** When you say "water it down", what do you mean by that?

10 **A.** Well, they clearly didn't like what I'd written.
11 Looking back from what I know now, from what I've heard
12 during these proceedings, it rather looks to me as
13 though they were thinking I was going too far.

14 **Q.** Providing too much information?

15 **A.** Yes, but that's me speculating.

16 **MR BLAKE:** Thank you, sir. I think that's an appropriate
17 moment to take our second mid-morning break. Perhaps we
18 could come back at 12.10.
19 I think you're on mute, sir.
20 Sorry, sir, we can't hear you.

21 **SIR WYN WILLIAMS:** Yes, sorry, unless it interferes with
22 your train of questioning, in which case I don't need to
23 know the answer to this question now, but what, in fact,
24 happened to that draft? Was it sent in that form or
25 not?
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1 **MR BLAKE:** I don't think we have a final letter. Certainly,
 2 there was not a letter sent for a very long period after
 3 that.
 4 **SIR WYN WILLIAMS:** Right. Fine. Thank you. Do you need
 5 an extra minute now, Mr Blake, after my intervention?
 6 **MR BLAKE:** 12.10 will be fine, thank you, sir.
 7 **SIR WYN WILLIAMS:** Right.
 8 (12.00 pm)
 9 (A short break)
 10 (12.10 pm)
 11 **MR BLAKE:** Thank you, sir. For your benefit, there is
 12 correspondence with the CCRC at POL00040190. I won't
 13 bring it up on screen, and, sir, we can look at that in
 14 longer time --
 15 **SIR WYN WILLIAMS:** Right.
 16 **MR BLAKE:** -- as to whether it's a holding response or
 17 something more substantive.
 18 **SIR WYN WILLIAMS:** Yes, sure.
 19 **MR BLAKE:** Also, Mr Clarke, you asked about the Helen Rose
 20 Report and whether that was mentioned in your advice of
 21 15 July 2013. It was mentioned, it's at paragraph 26 of
 22 that advice.
 23 **A.** Fine, so I got it before then. Yes, that's fine. Thank
 24 you.
 25 **Q.** I'm going to move on now to your document retention or

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1 **Q.** From conversations you had at the time, was it your
 2 understanding that it would happen?
 3 **A.** Post Office appeared to me to have accepted the advice
 4 and protocol wholesale.
 5 **Q.** Thank you. I'm going to go through chronologically the
 6 issue with John Scott and conversation with John Scott.
 7 That's POL00139745, it's a document I took Mr Smith to
 8 and that just sets the scene. 31 July 2013, we have
 9 that conversation between Jarnail Singh and Mr Smith.
 10 **A.** Oh yeah.
 11 **Q.** The summary there is:
 12 "Discussing disclosure issues: [John Scott] has
 13 instructed that typed minutes be scrapped."
 14 Then we move on to POL00139746, Jarnail Singh emails
 15 Mr Smith the same day, and he says:
 16 "I know Simon is advising on disclosure. As
 17 discussed can he look into the common myth that emails,
 18 written communications etc meetings. If its [not]
 19 produced its then available for disclosure. If it's not
 20 then technically it isn't? [Possibly] true of civil
 21 case NOT CRIMINAL CASES?"
 22 You're not a named recipient there, is this is
 23 an email that you saw or was conveyed to you at the
 24 time?
 25 **A.** No, the first time I saw this email, I think, was during

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1 what's been referred to as the "shredding advice"?
 2 **A.** Oh, yeah.
 3 **Q.** You had advised a central hub to be created?
 4 **A.** Yes.
 5 **Q.** Was it your understanding that all Horizon related, for
 6 example, bugs, errors and defects and remedies would be
 7 kept in that hub?
 8 **A.** It was my understanding, I wrote a protocol which
 9 required that.
 10 **Q.** Participants could bring to those meetings any concerns
 11 about Horizon, however critical they were of the Horizon
 12 system?
 13 **A.** I repeat: that was a requirement of the process and it
 14 appears in the document, the protocol that I wrote,
 15 which was to apply to these meetings.
 16 **Q.** Minutes were to be kept?
 17 **A.** Yes.
 18 **Q.** Minutes were to be disseminated?
 19 **A.** Yes.
 20 **Q.** Was it your understanding, save for the fact that it was
 21 written down in a protocol, that it would, in fact,
 22 happen?
 23 **A.** That was the point of the protocol. I required it to --
 24 in so much as I could, as an advising barrister,
 25 I required it to happen.

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1 these proceedings when it was sent to me.
 2 **Q.** Did you understand that Mr Singh had requested advice of
 3 that nature?
 4 **A.** No.
 5 **Q.** He says there, "I know Simon is advising on disclosure",
 6 what was your understanding, as at 1 August, as to any
 7 request for advice on disclosure? Was it the shredding
 8 advice that we see or was it something else?
 9 **A.** It wasn't the shredding advice. It was the -- I presume
 10 it's a reference to the advice I'd done earlier on about
 11 setting up the hub and Post Office's general disclosure
 12 duties. I presume that's what he was referring to.
 13 **Q.** Thank you. Can we move on, then, to POL00006799, and
 14 that is the advice on disclosure, "The Duty to Record
 15 and Retain Material". That's written by you on 2 August
 16 2013?
 17 **A.** It was.
 18 **Q.** You've addressed it at paragraph 47 of your statement
 19 and also at 93 to 95 of your statement. I don't need to
 20 take you to those.
 21 **A.** Okay.
 22 **Q.** We can have a look at the advice itself, page 2,
 23 paragraph 5, please. So you say there, you're
 24 describing, you're summarising your state of knowledge
 25 at that time, and you say:

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1 "At some point following the conclusion of the third
2 conference call, which I understand to have taken place
3 on the morning of Wednesday, 31 July, it became unclear
4 as to whether and to what extent material was either
5 being retained centrally or disseminated. The following
6 information has been relayed to me:

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

12 Now, can you assist us with where that came from,
13 and the word "shredded"; who was it who conveyed those
14 words to you?

15 **A.** That came from Martin Smith. I remember particularly
16 because I was going on holiday. That was the day my
17 leave was to start and I postponed my departure upon
18 receiving that information from Martin Smith because
19 I took the view that that was just too serious to
20 ignore.

21 **Q.** Martin Smith said he couldn't quite remember the exact
22 words used. The fact that you've used that in speech
23 marks, does that imply that it was, in fact, the word
24 that was used by Martin Smith?

25 **A.** I'm certain that that is the word that was conveyed to
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1 "If it's not minuted it's not in the public domain
2 and therefore not disclosable.

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

5 I think you said in your statement that Jarnail
6 Singh said that that was Mr Parsons. Again, was it
7 Mr Smith telling you that he had been told by Jarnail
8 Singh or is that direct from Mr Smith?

9 **A.** I would have -- sorry, I'm frowning because I'm thinking
10 of the shorthand writer who has told me off already.
11 That was from Mr Smith, all of those instructions came
12 from Mr Smith but I've got a scratchy memory that
13 I might have telephoned Jarnail Singh to confirm. I can
14 see myself in the Nottingham office on the telephone and
15 I have just got that scratchy recollection that I might
16 have telephoned Jarnail Singh to confirm these
17 instructions.

18 **Q.** Then at iv:
19 "Some at [the Post Office] do not wish to minute the
20 weekly conference calls."

21 In your statement, I think you've said that those
22 were Jarnail Singh's own views; is that right?

23 **A.** That tends to suggest that my scratchy memory is
24 correct, that I had a telephone -- a brief telephone
25 call with him to confirm the instructions but,
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1 me and the reason I'm certain is because this was
2 written 1/2 August, and it was 1/2 August that I would
3 have received this instruction, and so it would have
4 been fresh in my mind. This, in effect, is a record of
5 the conversation I had with Martin Smith.

6 **Q.** Thank you. Mr Singh said that those were John Scott's
7 instructions. To your understanding and from what you
8 were told at that time, was John Scott seen as a lone
9 wolf or someone who was working with others in that
10 respect?

11 **A.** The impression I got from within Post Office and within
12 Cartwright King, that he was regarded as being a bit of
13 a power unto himself, which is effectively the same as
14 what you've just suggested, I think.

15 **Q.** "ii. Handwritten minutes were not to be typed and
16 should be forwarded to [Post Office] Head of Security."

17 I think you've said in your statement that Jarnail
18 Singh said that was John Scott who had conveyed that.
19 Is that secondhand --

20 **A.** Yes.

21 **Q.** -- through Mr Smith?

22 **A.** I'm thinking of the -- yes, it's secondhand through
23 Mr Smith.

24 **Q.** "iii. Advice had been given to [the Post Office] which
25 [you] report as relayed to [you] verbatim:
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1 certainly, that was the information I received, yes.

2 **Q.** Who did you understand to be the "some" at the Post
3 Office?

4 **A.** I don't think anybody identified who the "some" were
5 but, given that it was John Scott who gave the
6 instruction to shred, looking back, I suspect it was --
7 I was thinking, at least in part, of John Scott.

8 **Q.** Thank you.

9 **A.** To suggest anybody else would be speculation.

10 **Q.** Could we please turn to page 5 and paragraph 9.

11 "The duty to record and retain material cannot be
12 abrogated. To do so would amount to a breach of the law
13 and, in the case of solicitors and counsel, serious
14 breaches of their respective codes of conduct.
15 Accordingly no solicitor, no firm of solicitors and no
16 barrister may be a party to a breach of the duty to
17 record and retain. Neither may they act in
18 circumstances where they are aware, or become aware,
19 that a practice has developed within the investigative
20 or prosecutorial function such that the duty to record
21 and retain is being deliberately flouted, or avoided.
22 Again to do so would amount to breaches of both the law
23 and Codes of Conduct. A decision-based failure to
24 record and retain material would readily amount to such
25 a practice. Such a decision, where it is taken partly
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1 or wholly in order to avoid future disclosure
 2 obligations, may well amount to a conspiracy to pervert
 3 the course of justice on the part of those both taking
 4 such a decision, and those who implement such a decision
 5 where they do so in the knowledge that it was taken
 6 partly or wholly for that purpose."

7 Again, very strong words used by you in that advice.

8 Do you agree with the advice you have given here?

9 **A.** Yes, of course.

10 **Q.** Next paragraph, paragraph 10:

11 "In view of the matters referred to in the previous
 12 paragraph, were the issue of disclosure to be raised in
 13 court in circumstances where an investigator or [Post
 14 Office] officer/employee suggest that advice different
 15 from that contained within this document had been given,
 16 such would amount to a waiver of Legal Professional
 17 Privilege so that this document would itself become
 18 admissible in proceedings."

19 What was your concern here?

20 **A.** Andrew Parsons' advice, I think, because it was Andrew
 21 Parsons who gave that ludicrous advice about if it's not
 22 written down it's not disclosable, I think that was
 23 directed to him as a warning of the path he was
 24 apparently contemplating.

25 **Q.** I suppose this all raises the question of why wasn't
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1 told that, even in the discussion of these issues, there
 2 is a shredding taking place in relation to the minutes
 3 of those meetings that you had personally advised should
 4 be recorded.

5 **A.** Yeah.

6 **Q.** Did that not raise, for you, an issue of whether you
 7 should still be acting for the Post Office?

8 **A.** No.

9 **Q.** Why not?

10 **A.** For the reason I've just explained. On the shredding
 11 point, I took the view, and I think the view was
 12 confirmed, that it was John Scott on a frolic of his
 13 own. In terms of the earlier material, I saw my
 14 function as being one to advise Post Office as to how
 15 they ought to remedy the situation they had got
 16 themselves into and help them find a way through it.
 17 I don't think I was -- if the real question is did
 18 I consider that I was in conflict or that a conflict
 19 existed such that I ought to have withdrawn? No,
 20 I didn't.

21 **Q.** Not so much a conflict but, certainly, what might seem
 22 a maddening situation, by that time, that everything
 23 that you had been told about the reliability of the
 24 system was in question and now you're being told about
 25 shredding.

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1 this the very last piece of work that you ever carried
 2 out for the Post Office?

3 **A.** Because my understanding was this was not a Post Office
 4 policy or instruction. This was John Scott on a frolic
 5 of his own and -- forgive me for interrupting you -- and
 6 I saw it as my function to bring it to the attention of
 7 Post Office in a formal advice document so that they
 8 could then take the necessary steps to make sure that
 9 the policy that he seemed to be advocating was not put
 10 in place.

11 And I rather saw my role as telling Post Office what
 12 one of their staff was contemplating and for them to
 13 take the appropriate action to deal with it, and
 14 I understand that they did. I know it sat in a drawer
 15 for a couple of weeks but they did.

16 **Q.** You've explained that you were pretty new to Post Office
 17 prosecutions --

18 **A.** Yes.

19 **Q.** -- in the summer of 2013?

20 **A.** Yes.

21 **Q.** You've had this bombshell from Gareth Jenkins, you've
 22 found out about bugs in Horizon that were said not to
 23 have been there; you've had concerns about the
 24 reliability of evidence given in previous prosecutions;
 25 you've had the Helen Rose Report, and now you're being

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1 **A.** I'm just a bit old-fashioned about this: barristers
 2 don't walk away from their clients when life gets
 3 difficult. I saw my role as to be their barrister
 4 through Cartwright King and to give them palatable or
 5 unpalatable advice, whichever, in the hope that I could
 6 do some -- it's trite but in the hope that I could do
 7 some good for them. I don't walk away from clients
 8 because life gets difficult. I didn't then and I don't
 9 now.

10 **Q.** You wrote this advice; who did expect to have seen the
 11 advice?

12 **A.** In a word? Everybody.

13 **Q.** Did you yourself follow up to ensure that it had been
 14 seen by everybody?

15 **A.** I did. I think I told you, I was just about to go on
 16 leave the day I wrote it. I did. When I came back --
 17 I think I went to Gibraltar, which is home. When I came
 18 back, about two weeks later, I asked Martin what had
 19 resulted, had we heard anything back, what was the
 20 effect? And he said he hadn't heard anything, and
 21 I think he contacted Jarnail Singh to find out what the
 22 position was.

23 That's a vague recollection but I think that's how
 24 we learned that it had sat in a drawer for a couple of
 25 weeks, rather than gone to the people it ought to have

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1 gone to. I think I deal with that in my witness
2 statement.

3 **Q.** So we have the covering letter at POL00298236, sent by
4 Mr Cash, for the attention of Susan Crichton and Hugh
5 Flemington only. Would it have been unusual for Mr Cash
6 to have been taking the lead on this?

7 **A.** Can I just read it, sorry?

8 **Q.** Absolutely.

9 **A.** It would have been unusual for him to get involved but,
10 recalling the immediate prelude to writing the advice,
11 I was in the Nottingham office at the time, effectively
12 saying my goodbyes, and Martin was there as well and
13 I think Stephen Gelsthorpe, who was the senior equity
14 partner, overheard what Martin was telling me and
15 I think Stephen Gelsthorpe suggested that the advice
16 be -- now, you've reminded me of this -- that the advice
17 be sent by Andy Cash because he was the senior lead at
18 Cartwright King for Post Office. I think that's how
19 that came about.

20 **Q.** So was it intentionally sent by somebody senior to give
21 the impression that it was a significant piece?

22 **A.** Oh, I see. I can't say. I wrote the advice, I gave it
23 to Martin and said "That has to go", and then I went on
24 holiday. I wasn't a party to the decision that Andy
25 Cash send it but I can quite see why he was chosen to be

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1 First of all, I think you've said you didn't see
2 this letter; is that right?

3 **A.** I don't think I did, no. I don't recognise it, other
4 than having seen it during these proceedings.

5 **Q.** Was it communicated in some way to you that the Post
6 Office had responded --

7 **A.** Yes.

8 **Q.** -- to your advice?

9 **A.** Yes.

10 **Q.** What was said about the response?

11 **A.** That's why I set that enquiry in train when I returned
12 from holiday, and what came back was, effectively, this
13 was John Scott on a frolic of his own and it was not
14 Post Office policy.

15 **Q.** So if we scroll up, in fact, the point about it being --
16 Susan Crichton not having seen it, I think -- yes, she
17 says:

18 "Unfortunately, I had not seen your letter and was
19 not aware of it until Martin's email on 14 August."

20 So presumably 14 August was when you returned from
21 holiday?

22 **A.** Yes, and that's me asking Martin to chase it up, I would
23 think.

24 **Q.** If we scroll down again, I mean, it's referred to in
25 this letter as "purported statements". From

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1 the sender.

2 **Q.** It's marked there as for the attention of Susan Crichton
3 and Hugh Flemington only. Had you selected those as the
4 recipients?

5 **A.** No.

6 **Q.** What is your understanding as to why they would have
7 been the recipients, rather than, for example, Jarnail
8 Singh?

9 **A.** Well, I can only speculate but Hugh Flemington was Head
10 of Legal and Susan Crichton was General Counsel. So
11 it's going to the people who really ought to have seen
12 it.

13 **Q.** Thank you. Can we please turn to POL00006797. This was
14 the response to Mr Cash of Susan Crichton. I don't know
15 if you saw the evidence of Susan Crichton?

16 **A.** No.

17 **Q.** I took her to this document. If we scroll down, perhaps
18 I'll read from the penultimate paragraph. That says:

19 "Post Office Limited is committed to conducting its
20 business in an open, transparent and lawful manner. Any
21 suggestion to the contrary would not reflect Post Office
22 Limited policy, and would not be authorised or endorsed
23 by Post Office Limited. Accordingly, the purported
24 statements referred to in Simon's note do not reflect or
25 represent Post Office Limited's position."

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1 conversations that you had with Jarnail Singh, for
2 example, was your understanding that they were purported
3 statements or definitive?

4 **A.** They were definitive.

5 **Q.** Were you aware, outside of Jarnail Singh's knowledge,
6 the knowledge of others within the Post Office, as the
7 same, effectively?

8 **A.** No, the impression that Jarnail Singh conveyed to me,
9 I think during that phone call I thought I'd had, was
10 that this was John Scott doing what John Scott does.

11 **Q.** Did Jarnail Singh seem concerned about it?

12 **A.** Yes. I think the proper word is frightened.

13 **Q.** It was your impression that it was going to go any
14 further?

15 **A.** Sorry, in what sense?

16 **Q.** That it was going to be taken further within the Post
17 Office or --

18 **A.** What --

19 **Q.** Your advice?

20 **A.** Oh, yes. Well, I expected it to be. I expected it to
21 go to the very highest levels of Post Office and for
22 them to deal with John Scott.

23 **Q.** Can we please look at POL00006485. This is a meeting of
24 9 September 2013, with Brian Altman KC, Susan Crichton
25 is there, Rodric Williams is there, Jarnail Singh is

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1 there, and you and the others from Cartwright King are
2 in attendance. If we look at the final paragraph of
3 that page:

4 "[Rodric Williams] then confirmed that the weekly
5 hub meetings were started to bed in, picking up any
6 issues across the business which may relate to Horizon."

7 Now "SC", it seems that is a reference to you. It's
8 slightly confusing because both Susan Crichton and Simon
9 Clarke are "SC"?

10 **A.** Yes.

11 **Q.** But if we scroll down, it looks as though it was you who
12 said there had been some cultural issues at the start
13 which have now been overcome but you thought that it was
14 necessary to put duties on individuals:

15 "Consequently [Cartwright King] are in the process
16 of writing a protocol to explain the purpose of the
17 weekly hub meetings, the roles and responsibilities of
18 individuals."

19 Can you assist us with what you meant by "cultural
20 issues"? First of all, does this accurately reflect the
21 conversation you had at that meeting?

22 **A.** I was going to say I think that likely is me speaking.
23 I think it -- I don't recall the specifics of the
24 meeting but I think that it does certainly record my
25 concerns and so, yes, it is an accurate note.

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1 overcome"; how did you know that they had been overcome?

2 **A.** Well, Martin would have reported back to me about the
3 status of the meetings.

4 **Q.** Did you think that by 9 September all of those issues
5 that you had raised in your advice had been overcome?

6 **A.** Well, that was the reports that I'd received. We'd
7 dealt with the shredding issue, including the delay in
8 Post Office higher echelons seeing it, and Martin was
9 reporting that people were bringing things to the table,
10 so to speak, at the weekly meetings.

11 **Q.** That paragraph continues:

12 "[The Post Office] were picking up issues which were
13 compiled ..."

14 **A.** Sorry, I don't see that -- oh.

15 **Q.** "... in the matrix and it was observed that there had to
16 be continuity of individual attendance at the meeting
17 and everyone must be on message."

18 **A.** Yeah.

19 **Q.** Can you assist us with what's meant by "continuity of
20 individual attendance ... and everyone must be on
21 message"?

22 **A.** Yeah, when the meetings first started, attendees would
23 change. I think the idea was that each department had
24 an appointed representative at the meetings and I think
25 we noted that appointed representatives changed perhaps

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1 **Q.** Cultural issues: there's no reference there to
2 shredding, destruction of documents. It doesn't look as
3 serious as perhaps your advice was, when it refers to
4 "'cultural issues' [that] had now been overcome"?

5 **A.** Well, this is not my note of the meeting. I would not
6 have said, "Oh, there's been a few cultural issues", and
7 moved on, not least because Brian Altman would have
8 needed to know what the cultural issues were. And the
9 cultural issues went beyond John Scott's shredding
10 instruction. The distinct impression I got from the
11 conduct of the early hub meetings was that most of the
12 attendees from Post Office were quite reluctant to
13 discuss and bring to the table what they knew and
14 I don't think, culturally, they understood that this has
15 to be -- had to be a complete, open and transparent
16 forum, otherwise there was no point in the exercise.

17 I think that's what I meant by "cultural issues"
18 generally. They had to understand that they had to be
19 full and frank about what was going on at the meeting.

20 **Q.** Were your real concerns about the destruction of
21 documents discussed at that meeting?

22 **A.** I can't say. I don't recall. It's likely they were but
23 I'm not going to nail my colours to the mast on that.
24 I can't say.

25 **Q.** It says that the cultural issues have now "been

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1 on a meeting-by-meeting basis, which we didn't want,
2 because that removed continuity, and so we wanted the
3 message to go out. I'm not referring to being on
4 message here. We wanted the message to go out that the
5 same people must attend every time.

6 **Q.** Thank you. I'm going to now look at Martin Smith's
7 notes of the same meeting. Those are at POL00139866.
8 I think you've said that Martin Smith was a competent
9 notetaker, I think, was --

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

11 **Q.** If we go over to page 2, I'm just going to read to you
12 what looks like the discussion of the cultural issues.
13 It says:

14 "Simon: We discussed last Friday: main problem is
15 cultural. People in different departments. Needs to be
16 a proper coming together.

17 "Rod [says]: A lot of issues not important --
18 eg turn computer off and then on again. And then things
19 which may affect continuity -- still need a steer."

20 You say: "We said we would write a protocol: roles
21 and responsibilities etc, centrally archived: owners of
22 issues."

23 Then it says: "QC: Refers to a couple of
24 non-identified individuals, (referring to [Simon
25 Clarke's] Advice on Disclosure and Duty to Retain).

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1 "Simon: Think POL have resolved those issues.
 2 "QC [says]: Different individuals on call."
 3 Susan Crichton then says: "People then dump
 4 [something]."
 5 Is that likely to be the extent of the discussion
 6 about your advice on disclosure at that meeting?
 7 **A.** No. These, I think, are shorthand notes.
 8 **Q.** Can you assist us with what Mr Altman may have been
 9 talking about there where it says, "Refers to a couple
 10 of non-identified individuals"?
 11 **A.** I think that has to be Andrew Parsons and John Scott.
 12 **Q.** Do you think that, if this is an accurate note of that
 13 meeting, the issue was first of all not dealt in any
 14 great depth and also somewhat minimised?
 15 **A.** No, it certainly wasn't minimised. There's a reference
 16 here where Mr Altman says -- "Refers to a couple of
 17 non-individuals (referring to ... Advice ... Disclosure
 18 ... Duty to Retain)", that's clearly referring to the
 19 shredding advice or the stop shredding advice. My
 20 response, "[I] Think POL have resolved those issues", is
 21 my response to I think POL have dealt with John Scott
 22 and there is no shredding going on.
 23 **Q.** The Bond Dickinson minutes that we saw -- so if we go
 24 back, please, to POL00006485 -- that confines the issue
 25 to that one paragraph and quotes "cultural issues".

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1 Telephone Conferences held for the purpose of the
 2 Identification, Recording and Retention of Material
 3 which may be subject to the Duties of Disclosure."
 4 You set out in the preamble how very important
 5 disclosure is to the criminal justice system. Then, in
 6 the first substantive paragraph, you say:
 7 "As a prosecutor, Post Office Limited is under
 8 a positive duty to identify, record and retain any
 9 information which might assist a defendant in preparing
 10 or presenting his case or which might undermine the
 11 prosecution case against him. In addition we must also
 12 be able to prove that, where we rely on information
 13 provided by Horizon Online to prosecute, that system is
 14 reliable and accurate", et cetera.
 15 Now, in terms of the first, is this in some way you
 16 and Cartwright King making clear that, in criminal
 17 cases, the duty of disclosure is very different to civil
 18 cases; was that one of the purposes of this preamble,
 19 for example, to reference the criminal justice system?
 20 **A.** I don't think the civil protocol was in my mind because
 21 I didn't know or understand the civil protocol. This
 22 was me saying to Post Office, "As prosecutors, this is
 23 your duty".
 24 **Q.** We see there reference to Horizon Online and, if we
 25 scroll down to a third paragraph, in again the final

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1 **A.** Yeah.
 2 **Q.** Do you think that their minute of this meeting was in
 3 some way minimised about the -- I mean, to begin with,
 4 I think there was some criticism of a Bond Dickinson
 5 lawyer in respect of the retention of information?
 6 **A.** There was.
 7 **Q.** So to what extent do you think that paragraph was
 8 intentionally brief?
 9 **A.** It would be speculation to be firm about that but it
 10 certainly looks as though there's minimisation going on
 11 there. I would agree with your proposition that they
 12 are not telling the whole story.
 13 **Q.** I'm now going to look at the protocol you drafted, that
 14 was POL00128993, please. So this is the protocol. Was
 15 there a protocol earlier then, before the information
 16 you had been given about shredding or only after?
 17 **A.** I believe this is it.
 18 **Q.** Were you specifically instructed to do this or was this
 19 another piece of work that you were carrying out because
 20 you thought it was necessary?
 21 **A.** The latter. I did it because I thought it was necessary
 22 and I thought it was necessary because I thought Post
 23 Office needed guidance on how to conduct the issue.
 24 **Q.** It's entitled:
 25 "Protocol for the conduct of Wednesday morning

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1 sentence of that paragraph, it says:
 2 "Accordingly we will with future collect and retain
 3 any and all information which might suggest that Horizon
 4 Online may not be working as it should, or that our
 5 training and back-up systems are less than we would
 6 wish."
 7 Now, I appreciate that any future prosecutions
 8 would, of course, be based on Horizon Online but was
 9 there, at that stage, a bit of a blinkering in respect
 10 of Legacy Horizon and a focus limited to Horizon Online.
 11 **A.** No, this was looking forward, the whole function of this
 12 hub was to deal with disclosure duties going forward
 13 and, therefore, any issues with the Horizon system
 14 generically would have arisen out of Horizon Online
 15 because that was the system in use going forward. This
 16 bore no relationship to -- I think they called it Legacy
 17 Horizon because they weren't using Legacy Horizon.
 18 **Q.** At those meetings, though, people could bring forward
 19 issues that related to Legacy Horizon, couldn't they?
 20 **A.** I would certainly hope so.
 21 **Q.** This policy doesn't mention Legacy Horizon at all?
 22 **A.** No, because it wasn't directed to Legacy Horizon. It
 23 was directed to collating and retaining and disclosing
 24 material which arose out of the use of Horizon Online,
 25 looking forward.

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1 Q. Do you think that there may have been a lack of interest
2 or a lack of thinking about the impact on those Legacy
3 cases?
4 A. Not for this because this was a wholly different
5 purpose. But in a more -- to answer your question in
6 a more general sense, I think possibly, yes.
7 Q. Although I appreciate that this for going forward, does
8 it not reflect, in general, that attitude that the focus
9 at that time was on Horizon Online?
10 A. Just going back to what you suggested earlier, you've
11 used the phrase "lack of interest and blinkered".
12 I don't accept "lack of interest", I accept "blinkered".
13 Yes, we were looking forward, I'm not convinced I agree
14 with you that this document reflects that blinkered
15 approach because this document was produced for
16 a specific purpose, the specific purpose being the
17 collation and retention of material derived from Horizon
18 Online, looking forward. And so I separate that issue
19 out from what had gone before. But I, again, say
20 I accept your criticism that goes "You are being a bit
21 blinkered about what had gone before".
22 Q. I'm going to move on to a different topic and that is
23 the redrafting of the Post Office Prosecution Policy.
24 A. Yeah.
25 Q. You've addressed that in your witness statement, in fact

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1 Office cases for a few years, was it surprising that the
2 firm didn't hold a copy?
3 A. Yes.
4 Q. You've described it as wholly inadequate. What, in
5 particular, stood out as being wholly inadequate?
6 A. Oh, all of it, it's -- you know, you see sometimes --
7 and it happens in this case occasionally -- a badly
8 photocopied document, so that -- I remember it
9 distinctly -- so that the wording is at a slight angle
10 to the edges of the -- this is what I received.
11 A single A4 document, badly photocopied with slanting
12 writing and writing on both sides. I can't remember
13 what it said but it wasn't a prosecution policy. It had
14 that title but it wasn't the prosecution policy.
15 Q. What do you mean by that?
16 A. Well, it just wasn't.
17 Q. You say there that you drafted a new policy with
18 a two-stage test, for example.
19 A. Yes.
20 Q. What was the test set out --
21 A. In that?
22 Q. Yes.
23 A. There wasn't one. There was no test, there was no
24 threshold test for whether or not you ought to consider
25 an investigation and a prosecution. There was no basis

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1 perhaps we could bring that on to screen WITN08130100
2 and it's page 23. Page 23, paragraph 67. You say
3 there, I think that's:
4 "[In] some point in mid-2013 ([you] can't recall
5 when) [you] asked Martin Smith to obtain a copy of [the
6 Post Office's] formal Prosecutions Policy. Martin Smith
7 asked Jarnail Singh to send a copy and in due course
8 [you were] provided with a copy of what [you] considered
9 to be a wholly inadequate policy. [You] therefore
10 commenced drafting a detailed policy intended to at
11 least meet the standards set out in the Code for Crown
12 Prosecutors, including the then two-part test for
13 commencing a prosecution."
14 Was it surprising to you, in mid-2013, that
15 Cartwright King didn't hold a copy of the Post Office's
16 prosecution policy?
17 A. Yes, this was part of my ongoing learning process, early
18 on in my involvement in the whole of the Post Office
19 work, if you like. And at some point it occurred to me,
20 I need to see what their prosecution policy was.
21 I asked for one and was told that there wasn't one with
22 Cartwright King. So I said "Well, Post Office must have
23 one", and I asked Martin Smith to obtain one from Post
24 Office.
25 Q. As a firm that had, by then, been prosecuting Post

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1 upon which any sensible solicitor could say, "We will
2 apply this and, if the answer comes out yes, we'll
3 prosecute and, if it comes out no, we won't prosecute".
4 There was -- I can't recall what it said but it was not
5 a prosecution policy.
6 Q. Can we please look at the POL you drafted that's at
7 POL00030686. This is effective from 1 November 2013, so
8 is that likely to be the kind of time that you drafted
9 the policy?
10 A. I would probably look -- I would have been looking
11 forward a couple of weeks or a month, so this would have
12 been drafted -- if that says November --
13 September/October-ish, I think.
14 Q. Thank you. Can we please turn to page 6, where you set
15 out some general principles. You say at 3.2:
16 "The decision as to whether to prosecute in
17 a particular case, or to continue with any prosecution,
18 will always be taken by Post Office Limited."
19 Then you say:
20 "The decision taker will be:
21 "i. A qualified lawyer.
22 "ii. Independent of any Post Office Limited
23 department having a direct financial or other interest
24 in the prosecution."
25 Then if we scroll down, we can see footnote 8, it

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1 says:

2 "This practice mirrors the approach of the Crown
3 Prosecution Service, and is designed to ensure that the
4 decision to prosecute is taken by someone who is
5 independent of the victim/loser and of the
6 investigation."

7 What awareness did you have of who actually was the
8 decision maker in the Post Office prosecutions, prior to
9 this policy being drafted?

- 10 **A.** I recall asking Martin Smith. I didn't really get
11 a coherent answer. I don't blame him for that because
12 I think he didn't get a coherent answer from those he
13 asked at Post Office. But the distinct impression I got
14 was that John Scott had some sort of say in it and
15 I thought Rodric Williams had some sort of say in it,
16 but there was never a clear answer given to me.
17 **Q.** Were you concerned at all as to whether decisions had
18 been taken outside of the Post Office not by the Post
19 Office?
20 **A.** I've no evidence to support that. It didn't occur to me
21 that that might be -- when you say outside, what --
22 **Q.** Let's say Cartwright King were carrying out prosecutions
23 for the prosecution --
24 **A.** Yes.
25 **Q.** -- and we're discussing here the decision to prosecute;

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1 of all, I felt that a prosecution policy ought to have
2 discretion where discretion was merited but there ought
3 to have been certain hard and fast rules, as well,
4 particularly about thresholds. And I derived that from
5 the Code for Crown Prosecutors, which works in exactly
6 that way: it provides certain areas of discretion but
7 there are some very hard and fast thresholds.

8 And when I saw Brian Altman's draft policy -- and
9 it's clear in some of advices I wrote -- I rather
10 thought he was watering down some of those hard and fast
11 requirements that should have been there. I didn't
12 agree with some of what he said.

- 13 **Q.** Was that in some way due to your understanding of the
14 way that the Post Office worked? Was there something
15 specific to them that required hard and fast rules or
16 was there some other reason why you thought it was
17 important?
18 **A.** I wanted the Post Office policy to reflect general
19 public policy, and general public policy was set down in
20 the Code for Crown Prosecutors. And I thought that the
21 Post Office should, at the very least, set itself at the
22 same level as the Code for Crown Prosecutors, if not
23 more so.
24 **Q.** We can very briefly look at the advice that you gave at
25 POL00125210. There may have been more responses to

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1 did you have any concerns that Cartwright King
2 themselves may have actually --

- 3 **A.** Right.
4 **Q.** -- ultimately been the decision maker in a decision to
5 prosecute because of a lack of instruction?
6 **A.** In terms of straight-line thinking, Cartwright King
7 would, as I understood it, advise Post Office as to
8 whether or not a prosecution ought to proceed, and Post
9 Office would respond yes or no. In reality, I rather
10 suspect your alternative is quite likely.
11 **Q.** What do you mean by that?
12 **A.** I mean, it is likely that, in the absence of clear
13 instructions from Post Office, Cartwright King made
14 a decision themselves. But I hasten to add -- forgive
15 me -- I have no direct evidence of that. I was looking
16 backwards at what had gone on before my time but that is
17 a distinct impression that I have.
18 **Q.** Thank you. Ultimately, I think, the Post Office asked
19 Mr Altman to draft the policy?
20 **A.** Yes.
21 **Q.** I think you have said that you took a more prescriptive
22 approach than Mr Altman?
23 **A.** Yes.
24 **Q.** Can you assist us with what you mean by that?
25 **A.** Yes, I disagree with his policy. I felt -- well, first

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1 Mr Altman's draft policy but this is what looks like
2 a more formal response. If I could please turn to
3 paragraphs 5 and 6 on page 1, the bottom of page 1. You
4 say as follows, you say:

5 "In considering the formulation of this policy, we
6 observe that, whilst the principles to be applied are
7 clear and concise, much of the policy is couched in
8 terms of generality so that a decision-maker is here
9 granted a wide discretion in interpreting and applying
10 those principles.

11 "Such a wide discretion, whilst advantageous in some
12 respects, may in fact provide unhelpful consequences,
13 for any decision is open to review and the wider the
14 discretion granted to decision-makers the more amenable
15 to review the decision will be."

16 Can you assist us; is that the same concern? As
17 I say --

- 18 **A.** I am being polite about it but that expresses the
19 concern I have just expressed to you.
20 **Q.** Was there something particular about Post Office that
21 caused you a concern giving them wide discretion or was
22 it a general concern that that's just simply how it
23 should be in a criminal prosecution?
24 **A.** It was my view as to how a criminal -- a prosecution
25 policy ought to work, and I go back -- you may recall

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1 from one of the advices I wrote about this is that, in
2 drafting the policy I drafted, I had considered not just
3 the Code for Crown Prosecutors but I'd obtained copies
4 of the policy used by the RSPCA, for instance, and
5 I think the NSPCC, who are recognised prosecutors or, at
6 that time, were recognised prosecutors, and one or two
7 others, and I sought to distil all of those into what
8 I hoped was a proper policy for Post Office. I was
9 disappointed when it was watered down.

10 **MR BLAKE:** Thank you.

11 Sir, I'm going to move on to a new topic so that
12 might be an appropriate time to take our lunch break.

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

14 **MR BLAKE:** Thank you very much. Perhaps we could come up
15 back at 1.55, please.

16 **SIR WYN WILLIAMS:** Yes, fine.

17 **MR BLAKE:** Thank you.

18 (12.55 pm)

(The Short Adjournment)

20 (1.54 pm)

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

22 **SIR WYN WILLIAMS:** Yes.

23 **MR BLAKE:** Thank you.

24 Mr Clarke, we're going to move now to January 2014.

25 Just to recap as to where we are, by the beginning of
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1 first trial listing."

2 You say:

3 "... Mrs Misra partially resiled from the allegation
4 that staff members were stealing from the office, and
5 instead asserted that her training was deficient; again
6 allegation was made that the Horizon system was at fault
7 for the now unexplained losses."

8 Paragraph 9, you record certain details from the
9 defence statement, including at subparagraph (ii):

10 "She telephoned the helpline repeatedly and despite
11 these calls the losses increased."

12 Over the page:

13 "Training was mentioned but seemingly not
14 criticised."

15 Then at paragraph 10, you say:

16 "On the first day of her trial, listed in June 2009,
17 Mrs Misra raised issues of Horizon fallibility for the
18 first time. She explained in the October trial that she
19 had learned about Horizon failings from an article in
20 Computer Weekly magazine -- she read this on the day
21 before her first trial and realised that the
22 'doubling-up' errors described there had happened to
23 her. That is why the judge postponed the trial."

24 You then go through the evidence that was adduced at
25 trial and, if we could keep scrolling down, please, to

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1 2014, you've had that conversation with Gareth Jenkins;
2 you've written the advice on the issue of his evidence
3 that it had been -- I think the word was fatally
4 undermined; you had the Second Sight Report; you had the
5 Helen Rose Report; the shredding advice; and the issue
6 you were just addressing before lunch was a historically
7 inadequate prosecution policy --

8 **A.** Yes.

9 **Q.** -- that wasn't even really a policy in itself?

10 **A.** Yes.

11 **Q.** Can we please look at POL00108223. This is a case
12 review that you carried out in respect of Seema Misra.

13 The date of this review is 22 January 2014. If we
14 scroll down, we can see, well known to this Inquiry, the
15 offence for which she was sentenced to a term of
16 imprisonment, 15 months' imprisonment. If we scroll
17 down, please, you have a look at the case history,
18 various timelines, you look at the defence statement at
19 paragraph 7, and I'd like to look at paragraph 8 to
20 begin with.

21 At paragraph 8 you say there was a first defence
22 statement and then:

23 "Mrs Misra ... changed her solicitors and a second
24 defence statement was served rather late in the day,
25 either just prior to or perhaps on the first day of the
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1 page 8 and the summary of the evidence of Gareth
2 Jenkins. The evidence of Gareth Jenkins is set out from
3 paragraph 20 onwards. Paragraph 23 says:

4 "There is no evidence to support any of the
5 hypotheses [that had been put forward]. There is no
6 evidence to suggest that the system is corrupt."

7 Then you address the Callendar Square issue. By
8 this stage, January 2014, what do you know about the
9 Callendar Square bug?

10 **A.** I think I knew that it was a Horizon Legacy bug and that
11 it produced false balances, and I think that was the
12 extent of it. I never claimed to be an expert on what
13 these bugs did or didn't do.

14 **Q.** No, but you knew about the two in Horizon Online --

15 **A.** Yeah.

16 **Q.** -- and the issues of reliability with Mr Jenkins and we
17 now have here a third bug, one that is in fact affecting
18 Legacy Horizon.

19 **A.** Yes.

20 **Q.** Did that not cause you to rethink that 2010 start date
21 for the Sift Review?

22 **A.** I think I raised that with Brian Altman after I did this
23 advice in one of our conferences but that was pretty
24 much the first inkling that I had that we ought to have
25 gone back further.

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1 Q. What was Mr Altman's response?
 2 A. I think he was receptive to the suggestion but I don't
 3 think we did enough to make it happen at that stage. It
 4 happened later on but I accept it should have happened
 5 earlier.
 6 Q. It says there, about halfway down 24:
 7 "Mr Jenkins researched the Callendar Square problem
 8 and, whilst he did not examine the data logs, determined
 9 the problem was fixed."
 10 Over the page to paragraph 26, halfway through that
 11 paragraph it says:
 12 "The Callendar Square issue as it may have affected
 13 West Byfleet was then dealt with in some considerable
 14 detail. Importantly, Mr Jenkins said he had identified
 15 two isolated events similar to the root cause of the
 16 Callendar Square problem but not in the tens of
 17 thousands of events as had manifested at Callendar
 18 Square."
 19 So it seems as though there were some events, some
 20 issues, albeit not as serious as Callendar Square:
 21 "27. In his analysis of just under half a million
 22 transactions from West Byfleet, Mr Jenkins had found no
 23 evidence of any computer malfunction other than the
 24 already mentioned Callendar Square problem."
 25 Then 29, you say as follows:

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1 A. Okay. That document was written off the back of -- and
 2 this is going to take me onto another concern I've had
 3 since then -- that document was written off the back of
 4 a transcript only of the judge's summing-up in the Seema
 5 Misra trial. I'd asked for the entire file, was told it
 6 wasn't available. I wasn't told why it wasn't available
 7 but I was told they had a transcript of the summing-up.
 8 Frankly, it never occurred to me to ask why have you
 9 only got a transcript of the summing-up? But there you
 10 are.
 11 The first -- the December document I wrote off the
 12 back of the judge's summing-up and the judge's
 13 summing-up, the way in which that was crafted suggested
 14 that disclosure ought to be made.
 15 Q. It was very clear in that December advice that your
 16 view, or Cartwright King's view, as it was put --
 17 A. Yeah.
 18 Q. -- was that disclosure should be made to Mrs Misra?
 19 A. Yeah, well, Martin Smith was right to the extent that
 20 I always sign my own documents. That was signed
 21 Cartwright King because I suspect there was -- sometimes
 22 I would write the bare bones of something and then give
 23 it to Harry Bowyer or Martin Smith and say, "Right,
 24 that's essentially what want to say. Finish it off and
 25 send it out", and I suspect that's how it came to be

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1 "It becomes apparent in cross-examination of
 2 Mr Jenkins that, whilst he had disclosed material to
 3 Professor McLachlan, he had done so on in a piecemeal
 4 basis, only when asked to do so and very late."
 5 Now, isn't that exactly what was happening to you
 6 back in June 2013, late disclosure of information that
 7 you weren't aware of?
 8 A. No, non-disclosure in 2013.
 9 Q. Is it consistent with the view that you had taken back
 10 in 2013 that he was an unreliable witness?
 11 A. Well, there's a sort of time line to this. I've seen
 12 and heard reference to a document on the Misra, Seema
 13 case produced in December, a very short document, which
 14 has been erroneously attributed to Harry Bowyer. What
 15 in fact happened was that -- I can't remember whether
 16 I asked to review the Seema Misra case or they asked me
 17 to review it but it came up for renew and, in December
 18 2013, I did a very short form initial review and I think
 19 that's the document that was attributed to Harry Bowyer
 20 because I didn't sign it.
 21 Q. Yes.
 22 A. And that review suggested -- advised disclosure of the
 23 material we were --
 24 Q. Absolutely, and that's a document I'll take you to in
 25 a moment.

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1 sent out under the Cartwright King banner rather than
 2 under my name. But if you look at the document it's
 3 clearly my writing style, my narrative. It's my
 4 document.
 5 What then happened was I was delivered the
 6 transcripts of the evidence of the trial in January 2014
 7 and this document effectively was written off the back
 8 of those transcripts. Again, no file, no prosecution
 9 papers, no witness statements, nothing. Just those
 10 documents, and I wrote this off the back of the
 11 transcripts of the entire trial, and what I'm doing is
 12 recalling the evidence here, as it appeared in the
 13 transcripts, and I came to a different conclusion, which
 14 why disclosure wasn't directed at that time.
 15 So that's the time line between -- and then there
 16 was a -- I think there was a third look at the Seema
 17 Misra case later on in the year by Brian Altman and
 18 Brian Altman said, in terms, "You're wrong, you should
 19 order disclosure in this case", and so we did. That's
 20 the time line of what happened but I don't want people
 21 to think that Harry Bowyer produced a document
 22 I produced.
 23 Q. That's quite a long answer to quite a simple question --
 24 A. It is, sorry, yes.
 25 Q. -- which is: paragraph 29, wasn't it clear to you, by

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1 that stage, you had formed the view that Gareth Jenkins'
 2 evidence had been fatally undermined and he was
 3 an unreliable witness --
 4 **A.** Yes, that --
 5 **Q.** -- and, combined with paragraph 29, that what, in fact,
 6 happened in that Seema Misra case, you had formed the
 7 view that he disclosed material on a piecemeal basis --
 8 **A.** Yes.
 9 **Q.** -- only when asked to do so and very late?
 10 **A.** Yeah.
 11 **Q.** Do you not look at that trial, at that point in time,
 12 knowing the conversation you had personally had with
 13 Gareth Jenkins, and knowing all of the various points
 14 that I've taken you to a number of times that happened
 15 after that, and think "We need to be disclosing material
 16 to Seema Misra"?
 17 **A.** I've looked at that paragraph several times since and
 18 questioned myself as to why I wrote it and didn't ask
 19 for disclosure. The only -- and it's not
 20 a justification but maybe it's an explanation -- the
 21 only explanation I can come up with is that I can
 22 imagine myself looking at the transcripts of the trial
 23 which went back to 2010 and asking myself the question:
 24 what was the position in 2010? At that point, according
 25 to the time line, if you like, Gareth Jenkins was not
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1 than a generalised indictment of Horizon; I mean you
 2 were in the same position, weren't you, back then?
 3 **A.** Yeah.
 4 **Q.** You weren't aware of how Legacy Horizon could cause
 5 issues with balancing?
 6 **A.** Yes.
 7 **Q.** So do you think that's an unfair statement?
 8 **A.** Yes.
 9 **Q.** At the bottom of the page, paragraph 58, the final
 10 sentence on that page says:
 11 "Accordingly I conclude that no meaningful criticism
 12 can be made of the disclosure process taken by [Royal
 13 Mail Group] during the pre-trial and ongoing disclosure
 14 phases of this prosecution."
 15 Am I to understand that, on reflection, you disagree
 16 with that?
 17 **A.** Yes, at the time I was overinfluenced by the views of
 18 the trial judge, that was an error, and I agree with
 19 your characterisation that that is a wrong view.
 20 **Q.** Thank you. Can we please turn to page 19, paragraph 68
 21 onwards:
 22 "68. Having considered both Mrs Misra's case and
 23 the details of the Second Sight Interim Report, I can
 24 divine no instance where there is any convergence of
 25 similarity of complaint on the issue of Horizon
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1 a tainted witness, and he had given evidence and,
 2 according to the transcripts there had been three
 3 separate attempts at litigating in front of the judge
 4 the disclosure issue, and the Falkirk bug had been
 5 litigated and the judge had, on three occasions, ruled
 6 no disclosure.
 7 Now, I accept that was looking at things the
 8 reasoning way now but I think that must have been my
 9 thought process then. Now, I can't reconcile this
 10 document with what should have happened. I accept that.
 11 So the short answer to your question is: yes, you're
 12 right.
 13 **Q.** Could we please turn to page 15.
 14 Paragraph 57, you're setting out here various
 15 conclusions:
 16 "In coming to my conclusion on this aspect of the
 17 disclosure process, I have considered Ms Misra's failure
 18 to raise Horizon as a defence until so late in the day;
 19 her inability or unwillingness to offer anything more
 20 than a generalised and incoherent indictment of Horizon;
 21 the approach taken by Professor McLachlan; and the
 22 duties relating to disclosure placed upon the shoulders
 23 of any prosecutor."
 24 Just pausing there, the failures of her to raise
 25 Horizon as a defence, inability to offer anything more
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1 fallibility. It is not the function of the prosecution
 2 to respond to general and unspecified allegations and
 3 request for disclosure in the hope that material may
 4 turn up to make them good. And in this case I conclude
 5 that this is precisely the test to be applied on issues
 6 of post-trial disclosure. I am also of the view that
 7 the Second Sight Interim Report does not and cannot cast
 8 doubt on the safety of the conviction, not least because
 9 the vast majority of matters dealt with in the report
 10 post-date this trial by several years and those that fit
 11 the chronology of this case bear little or no factual
 12 resemblance to Mrs Misra's circumstances. In any event
 13 the report is now in the public domain and most likely
 14 in the hands of Mrs Misra."
 15 Pausing there, reflecting on that, do you agree that
 16 the advice there or your conclusion there is
 17 problematic?
 18 **A.** It's not problematic; it's wrong. The first part of the
 19 paragraph is a paraphrasing of the decision in *Re H and*
 20 *Re C* and the second part of the decision is wrong.
 21 **Q.** Thank you. Paragraph 69:
 22 "As for the Helen Rose Report, that matter goes
 23 solely to Gareth Jenkins' knowledge of Horizon concerns
 24 arising some 5 years after the events considered in
 25 Mrs Misra's trial and his credibility as an expert
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1 witness in 2013. An analysis of the events dealt with
2 in that report, and the potential that Gareth Jenkins'
3 credibility as a witness might be undermined in 2013,
4 does not in my view lead to the conclusion that the
5 material which might undermine his credibility now ought
6 to be made available so as to do so in relation to
7 a trial which occurred in October of 2010."

8 Again, do you disagree --

9 **A.** Yeah.

10 **Q.** -- with that now?

11 **A.** Yes, it's wrong.

12 **Q.** "Conclusion

13 "... I advise that neither the Second Sight Interim
14 Report nor the Helen Rose Report meet the test for
15 disclosure in this case and neither report should be
16 disclosed to Mrs Misra's representatives."

17 The focus in this and in all of, I think, the other
18 similar cases that you looked at was on disclosure of
19 the Second Sight Report and the Helen Rose Report. Do
20 you think that was also an error because there was more
21 information that you were aware of that related to, for
22 example, thing the jigsaw together, regarding the
23 unreliability of Gareth Jenkins?

24 **A.** Well, I think that -- you say there was more
25 information. To my mind, there were three strands of

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1 I never saw it.

2 **SIR WYN WILLIAMS:** Is it your view -- let me ask you the
3 direct question -- that the file, whether in electronic
4 or paper form, was deliberately withheld from you?

5 **A.** That is now my view.

6 **SIR WYN WILLIAMS:** Is that now your view, in the sense of
7 a view you've come to, having no doubt listened to parts
8 of the Inquiry and looked at various documents, or was
9 that a view which you formed earlier than that?

10 **A.** I think it crystallised -- I'll be frank. I watched
11 Rodric Williams, I watched Jarnail Singh twice,
12 I watched Martin Smith and I watched Harry Bowyer and,
13 as a result of that, combined with the documents that
14 I've seen in this process, that crystallises my view
15 that I was misled and deceived.

16 **SIR WYN WILLIAMS:** Thank you. Right.

17 **A.** Forgive me, in particular in reference to the sight of
18 the Seema Misra file.

19 **SIR WYN WILLIAMS:** Yes, that's what we were talking about.
20 That's what I understood you to mean.

21 **A.** But also in general.

22 **SIR WYN WILLIAMS:** All right. So that I'm clear about what
23 I am saying, you are asserting that you were misled
24 deliberately in the Seema Misra case --

25 **A.** That's my belief, yes.

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1 information. There was the Second Sight Report; the
2 Helen Rose Report; and the third strand was the -- my
3 conclusion that Gareth Jenkins was a wholly unreliable
4 witness. I accept that -- now that that was wholly
5 disclosable from day one.

6 **Q.** I think I can probably take you through the rest quite
7 quickly in that case. Can we have a quick look at
8 POL00066850.

9 **SIR WYN WILLIAMS:** Before that comes on the screen, can
10 I just confirm that you have understood you correctly:
11 in both your appraisals of the Seema Misra case, the
12 information that you were acting on, in the sense of the
13 paper before you, was simply various transcripts: in
14 December a transcript of the summing-up; in January
15 a transcript of the evidence given. At no stage, did
16 you see the prosecution file; is that correct?

17 **A.** That is correct. I had asked for it on a number of
18 occasions. I learned from this process that somewhere
19 there is a digital file. I came to the conclusion,
20 during the course of this process, that it was
21 deliberately withheld from me. I could not understand
22 why Post Office had a transcript of the summing-up and
23 later were able to produce a transcript of the trial
24 proceedings but, according to them, did not have their
25 own file, their own prosecution file, and papers. But

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1 **SIR WYN WILLIAMS:** -- by the withholding of the file, in
2 effect?

3 **A.** That is my belief, yes.

4 **SIR WYN WILLIAMS:** But you also say that you have a belief
5 that you were misled on a wider basis?

6 **A.** Yes, the Post Office repeated their protestations that,
7 since day dot, there was nothing wrong with Horizon,
8 when they clearly knew that there were issues with
9 Horizon.

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

11 Sorry, Mr Blake.

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

13 Just following on from that, can you assist us with
14 who it was that you were communicating with at the Post
15 Office in respect of the Seema Misra file?

16 **A.** Jarnail Singh, Rodric Williams, at arm's length, first
17 of all, Susan Crichton and Christopher Aujard. I think
18 that's probably about it. We had meetings
19 occasionally -- I had no direct -- I think I had
20 a meeting with Christopher Aujard and I had maybe one or
21 two meetings with Susan Crichton. By and large,
22 everything I got came through Jarnail Singh and Rodric
23 Williams, but you could see from the emails that those
24 two individuals were very regularly copied in to this
25 correspondence, so that's why I include them as well.

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1 Q. Thank you. We see from the document that is currently
 2 on screen that you completed the Misra full review on
 3 22 January 2014 -- is that correct -- or thereabouts?
 4 A. That's what it says, yes.
 5 Q. Can we please go to POL00066853. This is an email that
 6 you will have seen in your preparation.
 7 A. Yes.
 8 Q. The bottom email, from you, says, "Phew". Now, the
 9 suggestion might be that that was "Phew, we don't need
 10 to disclose anything to Seema Misra"?
 11 A. Yes, that's not what it meant. I had just conducted
 12 a review of the case, from probably 8 or 9 inches of
 13 transcript of evidence. The "phew" was in reference to
 14 that task.
 15 Q. Thank you. If we could please turn to the December
 16 document, that's POL00198595. This is the December
 17 advice, I think you were talking about, where, at
 18 page 11, it addresses Seema Misra's case -- at the
 19 bottom of the page, and scrolling down -- and a very
 20 clear picture is painted there that there should be
 21 disclosure to Seema Misra.
 22 A. Yeah.
 23 Q. That is 5 December 2013. You've explained your reasons
 24 for having formed that view but is it now, on
 25 reflection, your view that, actually, in effect, your

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1 Helen Rose Report would not have been disclosable during
 2 the currency of the prosecution and accordingly do not
 3 now fall to be disclosed."

4 Is that a conclusion that you stand by?

5 A. No.

6 Q. Why not?

7 A. On the face of it, if you look at the case of *Eden*,
 8 which is the case that's being referred to here, and
 9 I paraphrase, the Court of Appeal talks about it being
 10 culpable, if you like, to -- let's rewind slightly.

11 People will false account in order to explain
 12 losses. The case of *Eden*, deals with that proposition
 13 by indicating that people who have done that will be
 14 guilty of the offence regardless, even if the
 15 falsification is simply to put off the fateful day when
 16 they have to account for their actions.

17 I think I was overly influenced by what the Court of
 18 Appeal said in that case, without paying enough
 19 attention to the reasons behind the pleas themselves,
 20 and the reason behind the pleas themselves were patent:
 21 Ms Hutchings didn't know why the errors were occurring
 22 but was seeking to -- as it's describes in *Eden* -- put
 23 off the fateful day.

24 Q. Looking back at these two examples, are they indicative
 25 of, on reflection, an overly-narrow approach to

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1 gut instinct was the right one?

2 A. Yes, clearly.

3 Q. I'm going to look at one other case review, it's earlier
 4 in time. It's POL00060715. We're going back to 19 July
 5 2013, and this is the case of Hutchings. If we could
 6 look at page 2, please. At the bottom of page 2, you
 7 set out Mrs Hutchings' defence at trial -- sorry, in her
 8 prepared statement at interview. She said that she
 9 migrated to Horizon Online in 2010:

10 "Ever since we have been with [Horizon Online] the
 11 balances have been wrong ...

12 "At no stage have we stolen money ... nor are we
 13 aware of making mistakes in our day-to-day [operations].

14 "Because of this we have always believed that the
 15 incorrect balances would be sorted out through
 16 transaction corrections."

17 She then, over the page, please, sets out various
 18 other issues: difficulty with the helpline and various
 19 other hardware as well.

20 Page 5, please, is your conclusion. If we scroll up
 21 to page 15, you say:

22 "... given the chronology and circumstances of the
 23 guilty plea, and the reference in the Basis of Plea to
 24 the leading case on the topic of the charging of False
 25 Accounting, the Second Sight Interim Report and the

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1 disclosure to people who had been convicted of criminal
 2 offences?

3 A. Yes, I think I suggested this morning that we probably
 4 got a bit case hardened, a bit cynical, and we shouldn't
 5 have done, and I think these are good examples of
 6 that -- well, for my part. I don't speak for my
 7 colleagues.

8 Q. I'm going to turn now to the topic of mediation, and the
 9 mediating of cases where convictions had occurred. Can
 10 we please turn to POL00125222. This is an advice of
 11 9 July 2014. So we're moving on now to the summer of
 12 2014. You were asked to advise on the differentiation
 13 between a caution, guilty plea and a full trial verdict,
 14 "appeal rights exhausted", and whether there is
 15 an impact on the risk level to the Post Office.

16 Can you assist us with why this advice was produced?

17 A. I think that Post Office wanted some help with the way
 18 in which the courts, the process, approaches these
 19 individual issues. I think there was a deficit of
 20 knowledge in criminal procedure in Post Office and in
 21 the Mediation Scheme and they wanted to understand how
 22 things worked.

23 Q. If we could turn to page 5, please, paragraph 17. I'm
 24 just going to read those final paragraphs, 17 onwards.

25 You say:

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1 "Given that no applicant has thus far sought to
2 obtain permission to appeal from the Court of Appeal, it
3 may properly be inferred that none will do so save in
4 the event that some new circumstances arises which
5 alters the position. The request by some applicants
6 that [the Post Office] assists in this process is
7 an example of where, if [the Post Office] were to accede
8 to such a request, such a change could result in
9 an appeal.

10 "Of more concern in the context of appeals launched
11 off the back of the Mediation Scheme, is the potential
12 for inadvertently placing a different gloss or
13 interpretation on facts, or otherwise saying anything
14 which may be said to be inconsistent with the way in
15 which the case most originally prosecuted. There, the
16 risk to [the Post Office] is substantial -- a concession
17 for instance that a Horizon shortage was or may have
18 been the result of human error, could fatally undermine
19 the original basis for the prosecution and conviction.
20 Such a concession might well lead to an appeal."

21 "Thus in the context of the risk of mediating a case
22 if the [subpostmaster] has a caution or conviction, the
23 risk is twofold:

24 "i. Whilst no [subpostmaster] or clerk convicted of
25 an offence prosecuted by [the Post Office] has sought to

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1 can mediate with somebody whom you have caused to be
2 convicted and sentenced for a criminal offence. To do
3 so would undermine the very proposition that you had
4 properly prosecuted and caused them to be convicted in
5 the first place. The proper place for a complaint
6 against the conviction and sentence was the Court of
7 Appeal and I very strongly felt that, by allowing people
8 who had been convicted into the Mediation Scheme, was
9 trespassing upon the territory that was properly the
10 Court of Appeal's.

11 **Q.** The way that it's phrased though, in this advice and
12 future advices, relates to giving potential appellants
13 the material upon which they can found their appeal.

14 How is that improper?

15 **A.** Because the disclosure process that we were operating
16 was intended to deal with that problem.

17 **Q.** The concern that you've raised here, though, is wider
18 than just disclosure of, say, the Gareth Jenkins, the
19 Second Sight Report or the Helen Rose Report, which is
20 what your review was looking at. It's simply
21 a concession that, for example, a shortage may have been
22 the result of human error. So it's small pieces of
23 information is your concern, going to potential
24 appellants, on which they can found proper grounds of
25 appeal.

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1 lodge an appeal ... mediating a case ... has, off the
2 back of the scheme, already appealed and lost,
3 a [subpostmaster] may receive material on which he might
4 base a further appeal.

5 "ii. An applicant [subpostmaster] who has not
6 sought to appeal against his conviction may nevertheless
7 do so in circumstances where he received material upon
8 which he could found proper grounds of appeal.

9 "We judge the risk to the Post Office of the former
10 as being minimal, if non-existent. We judge the risk to
11 [the Post Office] of the latter occurring as being
12 substantial, and only mitigated by very careful
13 consideration of [the Post Office] Mediation Responses
14 prior to publication to the Working Group or the
15 applicant."

16 Reflecting on what is said there -- and we'll come
17 to look at more of your advice in respect of the
18 Mediation Scheme -- do you think that it was right to
19 caution against mediation that would provide people with
20 material upon which they could found proper grounds of
21 appeal?

22 **A.** I was fundamentally opposed to the proposition that
23 those who had been convicted of criminal offences ought
24 to be allowed into the Mediation Scheme. My view has
25 always been, and remains: I cannot understand how you

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1 **A.** I think it goes beyond that. The very proposition that
2 you are mediating with the a convicted postmaster can be
3 taken to the Court of Appeal as a ground of appeal, was
4 the concern I had.

5 **Q.** Looking back at it now, do you still hold that view or
6 do you think that was unduly restrictive?

7 **A.** Two answers: my view now about trespassing on the
8 territory of the Court of Appeal remains. I'm a bit
9 straight line like that, as I think I suggested earlier.
10 But I agree that what I formulated here is too
11 restrictive but it all encapsulates the very basis of my
12 opposition to mediating with those who had been
13 convicted in the first place.

14 I just thought it was -- well, there were two things
15 I thought: the first was I thought it was the wrong way
16 round; and the second -- and this is why I was opposed
17 to the Mediation Scheme, in general, as far as those who
18 were convicted -- is because I saw it as a way of Post
19 Office keeping them quiet, and I thought that was
20 improper as well.

21 **Q.** Can we please turn to WBON0000870. I'm taking you to
22 this version just because there was a redaction to, for
23 the purpose of the transcript, POL00148710, although
24 I believe that redaction may now be lifted.

25 It's the bottom of the page. Sorry, could we go to

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1 the bottom of page -- yes. If we could scroll down
 2 slightly, thank you. There's an email from Martin Smith
 3 to Andrew Parsons:
 4 "Please find attached the Advice of Simon Clarke
 5 which contains speaking notes as requested."
 6 Can you recall what the purpose of the speaking
 7 notes was?
 8 **A.** I think it was set out in the earlier email. Wasn't it
 9 because there was a going to be a meeting of the Working
 10 Group and somebody wanted a shorthand way of describing
 11 what I was saying in my advice? I am slightly
 12 speculating but I think that's what -- the idea of the
 13 speaking note. So I did the advice in full and then
 14 I think at the end I gave some bullet points as to how
 15 to encapsulate these in short form.
 16 **Q.** If we scroll up, please, we then have an email from
 17 Andrew Parsons to Mr Smith, and he says, as follows, he
 18 says:
 19 "At the Working Group meeting last Thursday, the
 20 Post Office floated the idea of not mediating criminal
 21 cases (as per your advice) and received fierce pushback
 22 from the Justice for Subpostmasters Alliance and some
 23 resistance from Tony Hooper. For various reasons we
 24 never directly addressed the questions of mediating [two
 25 named cases] those questions are likely to be raised on
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1 of a criminal offence committed against the Post Office
 2 should be allowed into the Scheme, for to mediate such
 3 applications will be to leave [the Post Office] open to
 4 a number of alarming consequences. These consequences
 5 include, but are not limited to ...
 6 "The fact of entry into the scheme ... indicates
 7 that [the Post Office] is at least prepared to concede
 8 that they may have erred.
 9 "Similarly, the fact that one such applicant has
 10 been allowed to enter into the scheme sets
 11 an unfortunate precedent ..."
 12 Then we have iii, it says as follows, I'm going to
 13 read to you the final sentence in iii. It says:
 14 "Hear the risk to POL is substantial -- a concession
 15 for instance that a Horizon shortage was or may have
 16 been the result of human error would certainly undermine
 17 the original basis for a prosecution and conviction
 18 founded upon the reliable and integrity of Horizon,
 19 perhaps fatally."
 20 That's an expansion of the point --
 21 **A.** Yes.
 22 **Q.** -- that we were previously looking at.
 23 Then if we scroll down to iv, you say:
 24 "The very process of mediating ... gives rise to the
 25 possibility that [it] may yield results ... the risks
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1 the weekly Working Group call on Thursday.
 2 "The Post Office would prefer to avoid leaving the
 3 Working Group with a 'yes/no' decision on whether to
 4 mediate a criminal case or not."
 5 He says further down, he says:
 6 "Please bear in mind that [the Post Office] are
 7 going to get pushed hard on this topic by the Justice
 8 for Subpostmasters Alliance/Tony Hooper so your advice
 9 needs to be very robust. We may need to set up
 10 a meeting/call with you and Post Office so they can test
 11 your thinking."
 12 So you were aware at this stage that Sir Anthony
 13 Hooper, former Court of Appeal judge, was strongly in
 14 favour of mediating cases?
 15 **A.** I don't know about strongly in favour. I knew he was in
 16 favour of it, yes.
 17 **Q.** We see then another advice, the second advice, 15 July.
 18 That's POL00148720. What was the purpose of this second
 19 advice? Was this to set out in more detail --
 20 **A.** I think.
 21 **Q.** -- so the information you had already set out?
 22 **A.** I think so, yes.
 23 **Q.** There's a section, if we scroll down, "Criminal
 24 Offenders and Mediation":
 25 "It is our considered view that no applicant guilty
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1 are manifest:
 2 "i. Any competent lawyer would advise that such
 3 an outcome represented a substantial concession by [the
 4 Post Office] to the effect that the conviction or
 5 caution was 'unsafe'. Such advice would inevitably lead
 6 to an appeal.
 7 "ii. The setting of a precedent ..."
 8 If we scroll down:
 9 "iii. The message sent by the mediation of such
 10 [applicants] will, in our view, never be a positive one.
 11 Honest [postmasters], staff agents and employees ... may
 12 feel undermined and devalued."
 13 Then you offer further potential and, in your view,
 14 likely, side effects. This is where we get to the issue
 15 of publicity, and you say as follows, you say:
 16 "Whilst the issue is strictly outside of our
 17 criminal purview, we feel bound to point out the
 18 potential for adverse publicity, generated by the
 19 mediating of criminal applications and particularly
 20 where some concession, agreement or payment is made by
 21 [the Post Office], is inestimable."
 22 You refer there to the "Knock-on" effect, you, also
 23 at iii speak to a considerable assessment and disclosure
 24 exercise that would be caused; and iv, claims for
 25 compensation for incarceration, loss of reputation, loss
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1 of income and assets, and for general loss."
 2 Looking back at those four topics, do you think that
 3 they were appropriately contained within your advice?
 4 **A.** These represent my fundamental opposition to those
 5 convicted of criminal offences being entertained in the
 6 Mediation Scheme at all. But, yes, I agree with the
 7 proposition you advance. They're not really proper
 8 considerations, are they?
 9 **Q.** Because if, for example, in respect of publicity, if
 10 somebody has properly been given information that allows
 11 them to appeal and others find out about it, there's no
 12 problem with that, is there?
 13 **A.** No. No. I think my concern -- my more valid concern
 14 was the fundamental one that I've already expressed,
 15 which goes, if you mediate with somebody with whom
 16 you've been involved in convicting and sentencing, you
 17 are immediately saying to them: "We haven't done our job
 18 properly and you should go to the Court of Appeal". And
 19 my view has always been that is the venue for such
 20 a complaint.
 21 **Q.** That is a risk that is identified in this advice.
 22 **A.** Yes.
 23 **Q.** But do you agree or accept that, in fact, if you look at
 24 this advice in the round, there are number of other
 25 factors that you've highlighted and relied upon that are

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1 Mr Parsons?
 2 **A.** I don't recall it but it seems likely.
 3 **Q.** Why is that? Were you here justifying a position that
 4 Bond Dickinson had taken?
 5 **A.** Well, can you move it up a bit to see what I said?
 6 **Q.** Yes. Perhaps we can see it side by side with WBON --
 7 **A.** No, no, forgive me. This particular document, can I see
 8 paragraph 8, please?
 9 **Q.** Yes, absolutely.
 10 **A.** Yeah.
 11 **Q.** It's phrased in the terms of "We are of the view of X,
 12 Y, Z", but, in fact, it also seems to have been the view
 13 of Mr Parsons, prior to this being written. Are you in
 14 some way selling a combined approach that avoids
 15 mediation with those who had been convicted?
 16 **A.** No, I'm setting out at paragraph 7 the proposal that
 17 appears in the Bond Dickinson email, and, in paragraph 8
 18 I'm saying it should not happen. I was and remain --
 19 "horrified" is the wrong word, but I did not like the
 20 proposition that went "We should have discussions of any
 21 sort with those who had been convicted by Post Office of
 22 criminal offences", because (a) it gave those persons
 23 false hope as to what may or may not be the outcome of
 24 those discussions, but (b) it goes back to my central
 25 thesis, that the complaints were the purview of the

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1 not proper --
 2 **A.** Yeah, I think went too far. Yes, I agree with that.
 3 **Q.** Could we please look at page 4. You say you went too
 4 far; why did you go so far?
 5 **A.** That's difficult to assess this far down the line.
 6 **Q.** Was there a concern within your firm that, in fact, you
 7 had been involved in the prosecution of subpostmasters?
 8 **A.** No. I think it was more to do with the concern within
 9 Post Office that they were keen to avoid adverse
 10 publicity. And I suppose, to a degree, therefore, we
 11 and I are pandering to that concern here.
 12 **Q.** There's then an alternative approach set out in
 13 paragraph 7, and it says:
 14 "It is suggested that rather than mediate
 15 applications for criminal applicants, an alternative
 16 process be adopted. That proposed process consists of
 17 the holding of face-to-face meeting with the criminal
 18 applicant so as to permit [the Post Office] to both
 19 frame a different agenda and to 'explain POL's findings'
 20 rather than to 'settle' a dispute, in circumstances
 21 where it is made clear that no compromise is being
 22 offered."
 23 Those exact words are contained in the email from
 24 Mr Parsons that I took you to before. Do you recall
 25 copying the alternative approach that was suggested by

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1 Court of Appeal and for Post Office to pretend to
 2 discuss potential remedies for people who had been
 3 convicted without those remedies coming from the Court
 4 of Appeal, was frankly dishonest. I felt and feel that
 5 this was an attempt by Post Office to keep people quiet.
 6 **Q.** Thank you. I'm going to take you to a couple of emails
 7 of 8 October 2014. Can we start with POL00349361,
 8 please. It's the bottom email. You say to Jarnail
 9 Singh:
 10 "I suggest that strenuous efforts are made to
 11 dissuade Sir Anthony Hooper from exercising his casting
 12 vote in favour of permitting any criminal applicant into
 13 the Mediation Scheme, particularly where the issue is
 14 '... whether the [Post Office] would agree to support
 15 an application for permission to appeal that
 16 conviction'. If not:
 17 "Many of the remaining 37 criminal Applicants will
 18 seek a similar concession, no doubt spurred on by
 19 [Second Sight].
 20 "If an appeal succeeds: Horizon's reputation would
 21 be fatally damaged; a further disclosure exercise would
 22 be required; and further appeals would be launched
 23 including some of those 300+ criminal convictions we
 24 have reviewed.
 25 "Whilst [the Post Office] could refuse to mediate

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1 this issue, the publicity generate by [Second Sight]
 2 would be unfortunate."
 3 Do you think those concerns were appropriate?
 4 **A.** This is me again saying to Post Office "You should not
 5 include convicted postmasters in the Mediation Scheme".
 6 **Q.** Taking, for example, number 2, "Horizon's reputation
 7 being damaged, further disclosure exercise, further
 8 appeals", they in themselves would not have been a bad
 9 thing, would they --
 10 **A.** No.
 11 **Q.** -- if they were based on --
 12 **A.** Sorry, I'm talking over you.
 13 **Q.** If they were based on new disclosures being made, that
 14 wouldn't be a bad thing?
 15 **A.** No, item number 2 is a statement of fact. If you went
 16 down this path, this is likely what would happen.
 17 **Q.** But it's part of your reasoning why strenuous efforts to
 18 should be made to dissuade Sir Anthony Hooper?
 19 **A.** It's part of my efforts to stop them from doing that
 20 which I thought they ought not to do.
 21 **Q.** Do you think, looking back at number 2, those were
 22 appropriate --
 23 **A.** No.
 24 **Q.** -- considerations to have had?
 25 **A.** No.

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1 **A.** Yes. Because I'm seeking to dissuade them from
 2 following that path and this is one of the tools with
 3 which I sought to dissuade them. I accept, it's not
 4 a proper consideration in the decision as to whether or
 5 not to mediate. My concern was that those convicted of
 6 criminal offences ought not to be in the Mediation
 7 Scheme at all, and this is a further effort on my part
 8 to prevent that happening and, in that context,
 9 I thought it was an appropriate tool. This is what will
 10 happen if you don't follow my advice.
 11 **Q.** We do see, and we've seen from some very early documents
 12 that I've taken you today, the repetition of concerns
 13 about the press, concerns about --
 14 **A.** Yeah.
 15 **Q.** -- about publicity, we have that public interest
 16 immunity hearing, avoiding press reported on issues that
 17 were then arising. Do you think you were unduly or
 18 overly concerned about press intrusion?
 19 **A.** I think the PII hearing goes into a separate category
 20 but, putting that to one side, all of the rest of it, it
 21 was made very clear to us by Post Office that that was
 22 a major concern of theirs and I've used the word
 23 "pandering" and I don't resile from that.
 24 **Q.** Who at the Post Office was concerned about it?
 25 **A.** Oh, the people I dealt with: Rodric Williams, Jarnail

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1 **Q.** No? We then see at POL00349378, I think Mr Singh has
 2 asked you to email again on, if we scroll down, we can
 3 see the same issues, same day. Do you recall, it's
 4 a later email, I think despite the time stamp here
 5 showing 12.34, it is, in fact, a later email to the one
 6 we've just been seeing. Might you have been asked to
 7 send one that could be forwarded on, for example?
 8 **A.** It's likely.
 9 **Q.** We see there very similar points being made.
 10 **A.** Yes.
 11 **Q.** If we scroll down, please. If we have a look at, for
 12 example, 2(iv), it says:
 13 "The Court of Appeal sits in open hearing and the
 14 press are permitted to attend and report upon
 15 proceedings. Given media interest thus far it is
 16 inevitable that a (largely hostile) press would attend
 17 and report widely on the proceedings."
 18 Do you think that was an appropriate consideration?
 19 **A.** It's a statement of fact as to what would happen. It's
 20 not a proper consideration. But it's a statement of
 21 fact as to what I thought would happen.
 22 **Q.** Is it proper you to have advised the Post Office that
 23 an implication of conducting mediation with those who
 24 are convicted is that there could be effectively bad
 25 press?

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1 Singh.
 2 **Q.** Could we please turn to POL00150390. This a draft
 3 letter to Sir Anthony Hooper, 19 December 2014. You
 4 say:
 5 "We are asked to suggest the text of a letter to
 6 Sir Anthony Hooper ..."
 7 Halfway down 2, please. Halfway down, there's just
 8 a sentence there that I'd like a little bit of clarity
 9 on, you say:
 10 "For Sir Anthony to suggest that, because an offence
 11 of false accounting could have been founded upon
 12 a pre-existing but unidentified Horizon fault such that
 13 culpability of the offender is reduced because there may
 14 be no real loss, takes matters no further and indeed
 15 misses the point."
 16 Can you assist us with what you meant there?
 17 **A.** It is parroting or paraphrasing what was said in *Eden*,
 18 wasn't it?
 19 **Q.** Can you expand on that, slightly?
 20 **A.** Going back to the authority of *Eden*, about false
 21 accounting to hide unexplained loss, thereby putting off
 22 the fateful day is still false accounting, is
 23 essentially what *Eden* says, and I'm paraphrasing that
 24 here.
 25 **Q.** If we scroll down, it's paragraph 4 that has the

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1 proposed wording. I'm just going to take you to a few
2 paragraphs from this. The second paragraph down ends as
3 follows, it says:

4 "... I would point out that in every case the
5 available evidence has been considered and nothing has
6 been identified which could be said to render the
7 conviction unsafe."

8 "We are concerned that by permitting the hearing of
9 one convicted applicant's case, we may be setting
10 a precedent which others would wish to follow, where
11 necessarily they could not. This is particularly true
12 of those charged with fraud as opposed to false
13 accounting -- in many cases the facts were similar, cash
14 was being declared as on the premises when it was not.

15 "We are further troubled by the possible
16 implications which may arise once an applicant has had
17 his or her their hearing. We consider that there
18 emerges a clear potential for the launching of appeal
19 proceedings in circumstances where there should be none.
20 The suggestion that the identification of some fault or
21 root cause in the Horizon system in order to determine
22 liability for an underlying loss might permit a mediated
23 settlement with those convicted of false accounting
24 outside of, or exclusive from, the criminal legal
25 process is in our view plainly misconceived."

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1 to a former Court of Appeal judge. Why did you consider
2 your view to have been better than Sir Anthony Hooper's?

3 **A.** We're all lawyers. We're all entitled to take contrary
4 views.

5 **Q.** I'm going to read to you the final paragraph on this
6 page. You refer there to an alternative process and
7 then, if we scroll down at the very end, you say, or you
8 propose saying, sorry, at the top of page 5 -- you're
9 commending an alternative approach as:

10 "... the best method of achieving a just and
11 equitable outcome for all concerned, without engendering
12 any false hope and the launching of misconceived
13 appeals."

14 Are you aware that the Post Office considered this
15 to be too strongly worded?

16 **A.** I didn't know that.

17 **Q.** Could we please look at POL00150493, at the bottom of
18 page 1. This is an internal Post Office email and it
19 says, as follows:

20 "Earlier in the week Chris asked me to draft him
21 a letter to Tony Hooper fulfilling the request to look
22 again at Post Office's approach to mediating criminal
23 cases. We had a draft from [Cartwright King] that
24 contained some helpful material but tone was not ideal
25 ..."

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1 Over the page, please, to the penultimate paragraph
2 on page 3. You then point to substantial constraints,
3 that's halfway down this paragraph, to the process: "

4 "... both by reason of the ages of some cases and
5 the consequent limited available of information and
6 papers. Further complications arise because of number
7 of applications contain, at best, significant
8 misrepresentations as to law and asserted fact, and in
9 some cases, manifest lies. Finally on this point, the
10 logistics and expenditure required to complete such
11 an exercise would not be inconsiderable and clearly
12 outweigh any possible benefit, which we do not in any
13 event consider there to be."

14 Finally, this paragraph:

15 "In terms of likely appeals arising out of the
16 mediation settlement, we are of the firm view that such
17 an exercise would be an exercise in futility, for as you
18 [are] aware, the Court of Appeal are concerned only with
19 whether, upon all the evidence presented, a conviction
20 may be safe. Evidence of a guilty plea, tendered by
21 a defendant with the benefit of legal advice and in full
22 knowledge of the consequences, would be clear evidence
23 of guilt notwithstanding that there may have been
24 an unidentified Horizon fault."

25 These are all very strong words proposed in a letter

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1 I mean, it doesn't say that it was too strongly
2 worded, I suppose, but were you aware that the Post
3 Office took a different view to you on the concerns
4 raised in your letter?

5 **A.** I am now because I was taken to this in -- during the
6 disclosure process of these proceedings but I certainly
7 hadn't seen that before. Forgive me, the short answer
8 to your question is: no, I had no idea.

9 **Q.** I think it's fair to say from your evidence today you
10 very much stand by your view on --

11 **A.** I do.

12 **Q.** -- mediation?

13 **A.** I do, yes.

14 **Q.** I'm going to take you to two very brief topics before
15 I finish and then we will take a break before questions
16 from Core Participants.

17 The first is stopping prosecutions. Can we please
18 turn to POL00114253. This is advice from you of
19 12 September 2013, and it starts:

20 "We have been provided with a copy of Bond
21 Dickinson's helpful note entitled 'Civil claims by
22 [subpostmasters]' ..."

23 You're commenting on that note. Do you recall what
24 that note was about?

25 **A.** Not at this stage but this will help.

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1 Q. If we scroll down, "Cases terminated", you say as
2 follows:
3 "To clarify, whilst a number of criminal
4 prosecutions against subpostmasters and clerks have been
5 terminated since the publication of the Second Sight
6 Interim Report, none was stopped because of errors found
7 in the Horizon system. In all cases the prosecution was
8 stopped because it was considered that the continued
9 prosecution of a particular subpostmaster or clerk no
10 longer remained in the public interest."

11 Do you think that is accurate?

12 A. Yes.

13 Q. Do you think it was also because of an evidential issue
14 with regards to being able to prove the reliability of
15 the Horizon system?

16 A. By and large, that is the reason why the prosecutions
17 were stopped. That's different from being stopped
18 because of errors. It's because Post Office were not
19 able to demonstrate the integrity of the system because
20 they didn't have an expert witness who was able to do so
21 and, therefore, it -- we took the view it was not in the
22 public interest to continue those prosecutions.

23 Q. But is that a public interest issue or is that
24 an evidential issue?

25 A. I think it's both.

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1 mainly by Harry Bowyer, but I may have written one or
2 two, which in terms said, "This case has been sitting
3 around for too long because of our inability to find
4 an expert witness", which I can deal with separately,
5 I have some comments about that. But, because of our
6 inability and because it's therefore been sitting around
7 too long, it ought to be stopped, because it's not in
8 the public interest to continue it.

9 Q. Very briefly, because we are running out of time, what
10 was your view in terms of the failure to find an expert
11 witness? You've said you had some views.

12 A. Well, I thought we were strung along for that. My very
13 firm advice right at the beginning was "You find
14 an expert witness", post Office said to me "Identify
15 candidates". I identified candidates, I recommended
16 a particular organisation as being the most independent.
17 I think it was Imperial College professors,
18 I recommended. I advanced that recommendation to Post
19 Office, they -- I repeatedly said to Rodric Williams
20 "When are we going to hear? When are we going to hear?"
21 and it all came to naught, and I eventually heard on the
22 Grapevine that the reason it all came to naught was
23 because it was too expensive.

24 Q. Thank you. Very finally, theft and false accounting,
25 I probably don't need to take you to --

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1 Q. Do you think here and elsewhere, it might have been sold
2 internally as a public interest issue?

3 A. No, I'm not selling anything. My view was that this was
4 a public interest issue. It is not in the public
5 interest to prosecute people if you can't prove your
6 systems were working properly.

7 Q. You say here:

8 "In all cases the prosecution was stopped because it
9 was considered that the continued prosecution ... no
10 longer remained in the public interest."

11 It seems you're ignoring there the fact that, in
12 fact, you couldn't prove the reliability of the Horizon
13 system?

14 A. No, you have to remember that the prosecutions that were
15 stopped were stopped after a review. They were stayed,
16 if you like. The investigations were pending. We
17 devised a system called the stacked case system and, if
18 I'm not mistaken, this is what we're referring to here.
19 And the problem with the stacked case process was that
20 they remained incomplete for a period of time and there
21 comes a time, under the public interest test, where too
22 long has elapsed between the index offence, if you like,
23 and whether or not it's appropriate to continue to
24 prosecute.

25 And I know there were advices written, I think

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1 A. No, you don't.

2 Q. -- the advice. I don't know if you're aware of
3 Sir Anthony Hooper's evidence on that issue, effectively
4 that your advice didn't reflect the real world. What do
5 you say about that?

6 A. I think in terms of pure black-letter law, I was
7 correct; I think in terms of real-world behaviour, he
8 was correct. I think that that people do see a plea of
9 guilty to false accounting as being a plea of guilty to
10 a lesser offence than one of theft. I accept that. My
11 advice was directed, because sometimes I think that way,
12 as a direct linear black line letter, both carry seven
13 years, they are both offences of dishonesty, they're
14 equal. But I think Sir Anthony was right on his
15 real-world take.

16 Q. There are those who watch this Inquiry who are
17 interested in legal ethics.

18 A. Yes.

19 Q. Looking back and reflecting on that, do you think it was
20 part of your job to reflect also the real world as
21 opposed to the black-letter law?

22 A. Yeah, I think probably it was, yeah.

23 MR BLAKE: Thank you.

24 Sir, those are all of my questions. We do have
25 quite a few questions from Core Participants but perhaps

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1 this is the moment to take our mid-afternoon break.

2 **SIR WYN WILLIAMS:** Let's devise a plan before we do, though.

3 How many questioners are there?

4 **MR BLAKE:** Well, we have Ms Watt from the NFSP who is going

5 to be very short. We then have Ms Allan, who represents

6 Susan Sinclair. Between them, they're going to

7 effectively represent the Scottish side of things.

8 We then have Mr Henry, Mr Stein, Mr Moloney, who are

9 all going to be relatively brief.

10 Then we have Ms Oliver, who has slightly more.

11 **SIR WYN WILLIAMS:** Right. So what's the time now?

12 **MR BEER:** It's 3.00, or almost 3.00.

13 **SIR WYN WILLIAMS:** Right. Well, if we're only having one

14 break it had better be 15 minutes, which gives us

15 an hour and a quarter, or thereabouts.

16 **MR BLAKE:** Yes.

17 **SIR WYN WILLIAMS:** So --

18 **MR BLAKE:** Alternatively, we can take two 10-minute breaks,

19 if that would take things easier?

20 **THE WITNESS:** Could I just say I don't mind running over, if

21 that's convenient for others, rather than come back

22 tomorrow.

23 **SIR WYN WILLIAMS:** I'm sure that that's right, Mr Clarke,

24 but I have already said that my concentration levels,

25 starting at 9.45, start to wane, to put it mildly, once

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1 said today that you spoke to defence counsel to give

2 notice?

3 **A.** Yeah.

4 **Q.** May I ask you what they said in response at all, if

5 anything?

6 **A.** I don't recall, to be honest. Usually, the response

7 would be "Okay, what" --

8 **Q.** I'm just going to try and keep it tight here. So I mean

9 no rudeness, Mr Clarke, but there's lots of people to

10 ask questions.

11 **A.** Okay.

12 **Q.** But you don't recall. Do you recall what you said to

13 them about what your application was in respect of or

14 anything like that?

15 **A.** I would have said I'm making a public inquiry interest

16 (*sic*) application and an application to adjourn the

17 trial.

18 **Q.** Right but no more details?

19 **A.** No more detail than that.

20 **Q.** Thank you very much. Now, the material to be disclosed:

21 you were always of the view that the information in the

22 Second Sight Interim Report, as you understood it, was

23 disclosable in the case of Samra?

24 **A.** Yes.

25 **Q.** You said that the necessity not to infringe

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1 we are going significantly past 4.00.

2 **THE WITNESS:** Okay.

3 **SIR WYN WILLIAMS:** So, rather brutally, what I do is not

4 make the witness come back but make the advocates ask

5 their questions in much shorter form.

6 So I think what I'm going to say is that we'll start

7 the process with those advocates who intend to be five

8 minutes or less, keeping strictly to that, and then,

9 once they've finished, I will see how much time is left,

10 and died it up accordingly. So we'll start again at

11 3.15, and then we'll take it like that, all right?

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

13 **(2.59 pm)**

(A short break)

14 **(3.15 pm)**

15 **MR BLAKE:** Sir, we're going to first hear from Mr Moloney.

16 **SIR WYN WILLIAMS:** Right.

17 **SIR WYN WILLIAMS:** Right.

18 **Questioned by MR MOLONEY**

19 **MR MOLONEY:** Mr Smith -- sorry --

20 **A.** I'm Mr Clarke.

21 **Q.** -- Mr Clarke, rather. That's a great start. The only

22 matter I'm going to ask you about is the public interest

23 immunity application on 1 July 2013 and the only

24 document I'm going to ask you to look at its

25 POL00172804. First of all, in respect of this, you've

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1 Parliamentary privilege was the real basis for your

2 application?

3 **A.** Yes.

4 **Q.** So, therefore, it was important to establish the origins

5 and purpose of this report?

6 **A.** Yes.

7 **Q.** Because, if you weren't sure that there really were

8 issues of Parliamentary privilege, then it would have

9 been wrong to make an application for public interest

10 immunity?

11 **A.** Oh, I agree.

12 **Q.** So what steps did you take to confirm with Post Office

13 that the report was a report where Parliamentary

14 privilege had any relevance or application?

15 **A.** That's where that information came from. I was told by

16 Rodric Williams and Jarnail Singh that the report was

17 privileged Parliamentary, and that I should ask for

18 it -- I gave my advice, on the back of them telling me

19 that Parliament were going to get the report on 1 July.

20 In the end, I don't think they did but that's what I was

21 told, and I was asked "Could you apply for a certificate

22 because it was privileged", that I think -- I can't

23 remember the exact wording but the wording was along the

24 lines, I paraphrase, "Because we can't publish it before

25 Parliament has authorised it".

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1 Q. That was both Rodric Williams and Jarnail Singh that you
2 spoke to?
3 A. I spoke to both of them about it, yes.
4 Q. Spoke to both of them and they both asked you to make
5 an application for public interest immunity?
6 A. Post Office asked through them. I don't know if you can
7 say they both asked me, that rather suggests that each
8 one separately asked me. I don't think that's the
9 position. I was asked by them jointly, on behalf of
10 Post Office, to make the application and that's what
11 I did.
12 Q. As counsel, trial counsel, as it was, the trial starting
13 1 July, same day you make the application, as trial
14 counsel, what were the legal principles that underpinned
15 your approach to how public interest immunity might
16 operate in those circumstances?
17 A. Well, I followed the case of *R v H; R v C*, which sets it
18 out very clearly, those are the principles that applied.
19 Q. Help me as to how that might apply, from *H&C*?
20 A. In what sense?
21 Q. Well, what part of *H&C* do you suggest allows you to make
22 an application on the basis of Parliamentary privilege?
23 A. Matter of national interest.
24 Q. Matter of national interest. Right, okay. Now, there's
25 no express mention of Parliamentary privilege in your
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1 Can we go on to paragraph 16, and here we see:
2 "In this case I took the view that such an approach
3 to the problem might be appropriate."
4 This links into paragraph 14 and you are there
5 saying that, with Jarnail Singh, you took the view that
6 the best way forward was to seek a ruling, grant of PII
7 certificate:
8 "... that we need not disclose to the defence the
9 fact that the Second Sight Report was to be presented to
10 Parliament today and that the report contained
11 references to the existence of bugs in both Horizon past
12 and present to adjourn the trial."
13 So no mention again there of Parliamentary
14 privilege.
15 Then, at paragraph 24, we see that:
16 "... it's worth commenting on the reasoning behind
17 my advice that we seek a PII certificate in this case.
18 [Post Office] were, rightly in my opinion, very
19 concerned at the potential adverse publicity which would
20 inevitably have been generated by the revelation of the
21 existence of a (draft) Second Sight Report. To permit
22 this information to enter the public domain [et cetera,
23 et cetera]. Such speculation would have seriously
24 damaged the reputation of POL and would have greatly
25 undermined public confidence in both POL and POL
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1 post-hearing attendance note, is there?
2 A. No.
3 Q. So can we just look, just to make that clear,
4 paragraph 14, please, which is on page 6 of 9. We see
5 there -- and this is obviously from a distillation of
6 your understanding of the principles set out in *H&C*,
7 possible to apply to the judge for a certificate, most
8 often occurs in cases involving national security but
9 the list is not closed and where the public interest may
10 be the prevention of a widespread loss of interest in
11 a public institution, et cetera, then that is your
12 basis, but there's nothing there about Parliamentary
13 privileged, is there?
14 A. No, that's the consequence of breaching Parliamentary
15 privilege in a case -- in this case. That's what would
16 happen if I didn't apply for the certificate, and
17 I reiterate that, if the application was in any way
18 improper, the judge would not have granted it.
19 Q. Well, those are the consequences of a breach of the
20 publication of the report. There is no mention of the
21 consequences of a breach of Parliamentary privilege in
22 there, is there? There's no mention of it.
23 A. If your suggestion is that I was not applying on the
24 basis of Parliamentary privilege, then you are mistaken.
25 Q. Let's not bother about suggestions, please, Mr Clarke.
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1 systems. Our objective was to avoid such consequences:
2 that objective was achieved."
3 Again, nothing about Parliamentary privilege and the
4 consequences of breaching Parliamentary privilege, other
5 than, essentially, it's not going to be great for Post
6 Office.
7 A. I disagree with your characterisation.
8 Q. Well, where is there any reference of the consequences
9 of breach of Parliamentary privilege, if there is even
10 obliquely, over and above the interests of Post Office?
11 A. It's not in that paragraph and it's not in the document
12 but that does not mean that that was not the basis upon
13 which I approached it.
14 Q. I never suggested that, Mr --
15 A. I think you have.
16 Q. I'm just asking you why it's not there. Why isn't it in
17 there?
18 A. An oversight, a mistake, I don't know. But it's not
19 there.
20 Q. All right, then just to complete this, if we could look
21 at paragraph 18, please. We see that the judge, His
22 Honour Judge Chambers, was ultimately persuaded of the
23 arguments advanced in support of the grant of a PII
24 certificate."
25 Then it says, "See paragraph 14 above", by
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1 implication, those were the arguments in paragraph 14
 2 that I've already taken you to that were advanced in
 3 support of the PII application, with absolutely no
 4 mention of Parliamentary privilege in paragraph 14. Why
 5 didn't you say there, for example, "And of course we
 6 based all of that on the issue of Parliamentary
 7 privilege"?

8 **A.** Looking back, I can't say. But the judge granted the
 9 certificate.

10 **Q.** Yeah, and, therefore, it was appropriate if the judge
 11 granted the certificate?

12 **A.** Well, of course.

13 **Q.** Right. In any event, you say that Parliamentary
 14 privilege was the basis for your application in respect
 15 of the Second Sight Report. Now, you had received
 16 information directly, both from Gareth Jenkins and from
 17 Post Office, hadn't you, prior to this hearing?

18 **A.** Yes, I'd explained that.

19 **Q.** Yes, and but you hadn't seen the Second Sight Report?

20 **A.** No.

21 **Q.** You'd received information from Gareth Jenkins. If we
 22 could look at, please, paragraph 7 of the report, just
 23 going up the page, and just at (i) there:
 24 "He had informed the Second Sight Committee of two
 25 bugs which had affected Horizon."

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1 Then going down, and this paragraph 6 without going
 2 through all of it, at (iv):
 3 "A number of bugs have been identified ..."
 4 Then going down, to (vii):
 5 "Hurst Lane ... is not one of those post office
 6 identified as having been affected", but you have
 7 received information from Post Office about what has
 8 been discovered, haven't you?

9 **A.** The reason I objected to your question was because you
 10 said a lot of information had been given to me.

11 **Q.** All right.

12 **A.** It hadn't. The information that had been given to me is
 13 recorded here and is about two bugs, neither of which
 14 affected the Hurst Lane office. That was the --

15 **Q.** You've had information from Post Office and you've had
 16 information from Gareth Jenkins directly, and you've
 17 been told by Post Office's expert that he had informed
 18 the Second Sight committee of two bugs, which had
 19 affected Horizon, and it's his view that, were the
 20 defence to suggest a problem with Horizon, he cannot
 21 rule out that there may be other problems with Horizon?

22 **A.** That's the information I was given.

23 **Q.** Why wasn't that immediately disclosable to the defence?

24 **A.** Because I had to wait for the publication of the Second
 25 Sight Report.

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1 So that had been provided to the Second Sight
 2 committee, two bugs that had affected Horizon; he told
 3 you that?

4 **A.** Yes.

5 **Q.** It told you directly that. Then at (v), if we could
 6 please, we've got the other matters there:
 7 "It is his view that, were the defence to suggest
 8 a problem with Horizon, he cannot rule out that there
 9 may be other problems with Horizon."
 10 Yes?

11 **A.** Yes.

12 **Q.** We saw as well -- and we've no need to go there for time
 13 reasons -- but at paragraph 6, a whole lot of
 14 information was given to you by Post Office directly,
 15 not looking at the Second Sight Report?

16 **A.** I never said that.

17 **Q.** Well, let's just have a look at paragraph 6, please. At
 18 the top. Yes:
 19 "On 27 July and through the following day I was
 20 instructed that a number of post offices the Horizon
 21 system may have produced false balances. I am however
 22 informed of the following ..."
 23 Then you set out your instructions in relation to
 24 information from Post Office, or at (ii), "Horizon is
 25 not 'bug' free".

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1 **Q.** Why did you have to wait for the publication of that
 2 Second Sight Report when that was information which
 3 undermined the prosecution case, which was known to you
 4 from the expert, commissioned by Post Office, who was
 5 the expert in Post Office's prosecutions, that had come
 6 directly to you from him, why wasn't that immediately
 7 disclosable?

8 **A.** Because I wanted a PII -- we're going to go round in
 9 circles here. I wanted a PII certificate on the
 10 instructions from Post Office to suppress the
 11 publication of that material until such time as
 12 Parliament had seen and released the document from
 13 whence this information comes, and I wanted time, as
 14 I explain in the document, to consider my disclosure
 15 duties before commencing on a trial and, in order to do
 16 that, I did not commence on a trial. And, in due
 17 course, the material was disclosed within a matter of
 18 weeks.

19 **Q.** That had nothing to do with the Second Sight Report, did
 20 it, other than the fact that what their expert had
 21 directly told you was disclosable, it was there, and
 22 would eventually end up in the Second Sight Report.
 23 That was the view of the expert which was disclosable,
 24 wasn't it?

25 **A.** That is an opinion you advance. I took the view that

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1 what the expert told me was what was contained in the
 2 Second Sight Report.
 3 **MR MOLONEY:** Thank you, sir.
 4 **SIR WYN WILLIAMS:** Just, my memory may be playing tricks on
 5 me, Mr Clarke, but my recollection of having made and
 6 adjudicated upon PII applications, that, although
 7 they're done without the presence of the defence, they
 8 are either recorded by a shorthand writer or
 9 electronically.
 10 **A.** Yes, that's right.
 11 **SIR WYN WILLIAMS:** Was this one recorded?
 12 **A.** I can't say specifically. It should have been and I --
 13 **SIR WYN WILLIAMS:** That would be your expectation, that it
 14 would --
 15 **A.** Oh, yes, certainly. I certainly didn't ask for it not
 16 to be recorded.
 17 **SIR WYN WILLIAMS:** Fine. That's all, thanks.
 18 **MR MOLONEY:** Sir, if it assists, the evidence of Mr Smith
 19 was that it was recorded.
 20 **SIR WYN WILLIAMS:** Right. I'd forgotten he'd said that,
 21 sorry.
 22 Whose next, Mr Blake?
 23 **Questioned by MR STEIN**
 24 **MR STEIN:** Mr Clarke, I have a few questions for you. Can
 25 I take you immediately to a document, which is
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1 screen, which is dated 8 July. Okay. Now, it says
 2 under paragraph 1(i), "Alternative Fujitsu expert":
 3 "I suggest Fujitsu be told something in the
 4 following terms:
 5 "[That Mr 'Jennings', it says here -- Jenkins] has
 6 provided expert advice in a number of POL prosecutions
 7 ... he was involved [in the] Second Sight process."
 8 Then it goes on to say basically counsel has advised
 9 POL that there ought to be at least one degree of
 10 separation between any expert witness called in support
 11 of POL prosecution and the SS process.
 12 Okay?
 13 Just help us understand what's going on here. By
 14 this point, do you agree that you had come to the
 15 conclusion from the telephone call that Mr Jenkins had
 16 misled the courts?
 17 **A.** I'd come to the conclusion that he'd not fulfilled his
 18 duties as an expert witness, as he should have done.
 19 **Q.** As we understand it from your subsequent advice, when
 20 you came to write that, your conclusion at that point --
 21 **A.** Yes.
 22 **Q.** -- was that he had not provided truthful evidence about
 23 his knowledge of bugs to a court or in his statements to
 24 court; is that right?
 25 **A.** I'm being careful about "not provided truthful evidence"
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1 POL00006365, and it'll come up on your screen in
 2 a moment, and we can go to the bottom of the document
 3 but I'm not going to ask that the -- to do so, if you
 4 can take it from me, that the document is dated 8 July
 5 2013. Okay?
 6 **A.** Yeah.
 7 **Q.** Right. So the sequence of events that relates to
 8 Mr Jenkins, and your concerns about his evidence that
 9 he's misled the court, that's what this is. So the
 10 sequence of events is this: that on 27 June, Martin
 11 Smith told you about an unpublished report, the Second
 12 Sight Report, which stated there were bugs in the
 13 Horizon system.
 14 **A.** That's correct.
 15 **Q.** You've given your evidence earlier that you were very
 16 concerned and you wanted to find out who told them that?
 17 **A.** Yeah.
 18 **Q.** Okay? So that's those events. That then led you on
 19 28 June, with Martin Smith, to have the telephone call
 20 that you've given evidence about, that was recorded with
 21 Gareth Jenkins. Okay, so far?
 22 **A.** Yeah.
 23 **Q.** All right. Now, in between that time and 15 July, the
 24 Jenkins advice, the Clarke/Jenkins advice that we all
 25 call it, you wrote this advice, the one that's up on the
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1 because I'm not a judge of his position; I don't know
 2 why he did or didn't do what he did. I had come to the
 3 conclusion that he had not complied with his duties as
 4 an expert witness and I think I make that very clear in
 5 my 15 July advice.
 6 **Q.** You do but this is quite serious, it's something that
 7 can't be ignored, you've got to do something about it.
 8 Mr Smith said of you that you have a bit of a tendency,
 9 that does make sense, to write advices, to write
 10 documents to record your thoughts and --
 11 **A.** Yes.
 12 **Q.** -- your advice.
 13 **A.** Yes.
 14 **Q.** Is that right --
 15 **A.** It is.
 16 **Q.** -- what you tended to do?
 17 **A.** It is.
 18 **Q.** We can see a series of advices that relate to that that
 19 appear to show that you do exactly that.
 20 **A.** Yes.
 21 **Q.** Okay. So where we are looking at this particular
 22 advice, general advice here, saying "Alternative Fujitsu
 23 expert", can you help us understand why it doesn't say,
 24 on 8 July, "There are some really worrying things about
 25 Mr Jenkins, maybe I'm still processing it, but we need
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1 to tell Fujitsu that there's a real hole opening under
 2 Mr Jenkins' and Fujitsu's feet"; do you follow?
 3 **A.** I follow the question. I hadn't, at that point, come to
 4 that definitive conclusion. I was still processing
 5 stuff. I had formed the view that Gareth Jenkins -- at
 6 this point, 8 July, I'd formed the view that Gareth
 7 Jenkins could not and should not be it a witness in the
 8 future, not just because of the faults that he had
 9 alluded to but because he was an employee of Fujitsu.
 10 **Q.** So what we're getting is we're getting layers of this:
 11 you're processing what's going on in relation to
 12 Mr Jenkins, you've come to the conclusion, by this
 13 stage, that there needs to be an independent, truly
 14 independent expert, not someone from Fujitsu?
 15 **A.** Yes.
 16 **Q.** Then you get the 15 July advice, whereby things have
 17 become more concrete in your mind --
 18 **A.** Yes.
 19 **Q.** -- and you're more trenchant, a word you used earlier
 20 about matters relating to Mr Jenkins.
 21 **A.** Yes.
 22 **Q.** Is, again, that fair?
 23 **A.** That's fair.
 24 **Q.** After 15 July is Fujitsu told what has happened, and
 25 your trenchant thoughts about Mr Jenkins?

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1 been candid with the courts in statements and his
 2 evidence, we don't know why but, surely we should
 3 investigate this"; did you have that discussion with
 4 Mr Altman?
 5 **A.** He knew about it because he had seen my advices. Did
 6 I have a specific discussion with him about this
 7 subject? It seems unlikely that I wouldn't have done.
 8 **Q.** Quite.
 9 **A.** But I don't recall one. In terms of the other theme of
 10 your question, which goes, "Did you think it ought to be
 11 investigated", it's not my function. I did not see it
 12 then as my function to conduct an investigation into
 13 whether or not Gareth Jenkins was an honest or
 14 a dishonest witness. That was the role of Fujitsu and
 15 Post Office.
 16 **Q.** Okay. Fine. You'll agree with me that, by the time
 17 you've reached the 15 July advice and that has then gone
 18 to Mr Altman, that the position seems to be that Martin
 19 Smith is aware of the problems with Jenkins --
 20 **A.** Oh, yes.
 21 **Q.** -- putting it neutrally, you obviously are as well,
 22 because you've written the advices that we've now been
 23 looking at, and Mr Altman is now on board.
 24 **A.** Yeah.
 25 **Q.** But nobody seems to say that this man needs to be

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1 **A.** I don't know.
 2 **Q.** Right. Just to help us a bit further, did you advise
 3 eyes that Fujitsu, the employer of Mr Jenkins, should be
 4 told what you've discovered?
 5 **A.** I would have said it orally to Rodric Williams,
 6 I don't -- I may be wrong, you may find something --
 7 I don't know whether I put it in writing or not.
 8 **Q.** Okay, so you just don't know what's happened in relation
 9 to Fujitsu?
 10 **A.** No.
 11 **Q.** You don't know whether the impression that was left in
 12 this advice, which is only to tell Fujitsu about
 13 an independent expert needed, you don't know whether
 14 that was ever corrected into "Oh my god, there's a real
 15 problem with Jenkins"?
 16 **A.** No, I don't.
 17 **Q.** Okay, fair enough. When Mr Altman came on board, in
 18 relation to you, quite a much more senior barrister or
 19 silk at that time, someone with considerable experience
 20 with lots of quality assurance tags around him --
 21 Treasury Counsel, Senior Treasury Counsel, First
 22 Treasury Counsel -- he's a very well-known individual.
 23 Did you have a discussion with Mr Altman when he first
 24 came on board saying to him, "I've never seen anything
 25 like this. We've got this expert, he's not, it seems,

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1 investigated.
 2 **A.** I don't think you can say that. I don't know what was
 3 going on in Post Office. If your question is: did any
 4 of the external lawyers, you've named them -- Smith, me,
 5 Altman -- have that conversation, I don't believe we
 6 did, and I don't believe we did because we would -- and
 7 I'm convinced that Mr Altman would have taken the same
 8 view -- it is not counsel's function to conduct
 9 an investigation into the propriety of a witness.
 10 **Q.** Okay, I don't mean to cut you off, Mr Clarke, I just
 11 want to get to the final part --
 12 **A.** Sure, that's fine. Carry on.
 13 **Q.** -- so that we can conclude and other people can then
 14 take over.
 15 Now, our work as barristers, particularly criminal
 16 barristers before the courts, and solicitor advocates
 17 before the Magistrates' Court and Crown Courts, and so
 18 on, right, if we make a mistake and we misled the court
 19 and it's an error, what do we normally do about it?
 20 We --
 21 **A.** We confess. We tell the court we made a mistake.
 22 **Q.** Precisely. We immediately do so, don't we?
 23 **A.** Yes.
 24 **Q.** I don't know whether you're like me but, in that
 25 situation -- we've all done it, we've all made errors,

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1 we've all unknowingly, unwittingly come to say something
 2 that then turns out to be wrong or we've made
 3 a mistake -- frankly, if you don't correct it, it makes
 4 you feel -- you know, you don't correct it immediately,
 5 you're worried about it, aren't you?
 6 **A.** If you don't correct it immediately, you're guilty of
 7 professional misconduct.
 8 **Q.** Well, quite. So what you try and do is, as soon as it
 9 is possible, at the right moment, to intervene with the
 10 judge to say, "Look, there's been this problem", you put
 11 your hands up and you say sorry and try and explain, if
 12 you possibly can, why; is that fair?
 13 **A.** I agree.
 14 **Q.** Right, okay. Now, in the situation we've got to with
 15 Mr Jenkins, we've reached the conclusion, by 15 July,
 16 that, for whatever reason, he does not seem to have told
 17 courts in statements and then in his evidence, live
 18 evidence, what he should have done. In other words,
 19 that there are bugs in the system, right? So you agree
 20 with that?
 21 **A.** Sorry, I'm nodding, yes.
 22 **Q.** You're nodding agreement with me because I'm right.
 23 **A.** But I'm saying, yes, because of the shorthand writer.
 24 **Q.** I understand. Okay, fine.
 25 So those courts are in an ongoing situation, whereby
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1 juncture. Were you operating under the duties that
 2 characterise an advocate working on behalf of the CPS,
 3 in other words someone with the higher duties in
 4 relation to prosecution, the minister of justice duties?
 5 **A.** No.
 6 **Q.** Right. So when you were providing the advice to the
 7 Post Office in relation to Mr Jenkins, "Look, there is
 8 this massive problem, really it's a real problem", was
 9 that to a private client?
 10 **A.** Yes.
 11 **Q.** Right. Now, thinking back, in relation to this, do you
 12 think that you were right to apply what appears to be
 13 a different ethical standard to the way that you dealt
 14 with the advice regarding Mr Jenkins by providing advice
 15 on the private client basis, versus the prosecution
 16 basis?
 17 **A.** I don't agree with the basis of your theory.
 18 **Q.** Okay, well, then help unpick why on earth a barrister
 19 that has been qualified for quite some time by this
 20 point, you didn't immediately say to yourself and all
 21 the other lawyers involved "We've got to do something
 22 about what Jenkins has said and correct it before the
 23 court"? Help us unpick it, if it's not a choice between
 24 ethical situations?
 25 **A.** My function as a barrister in front of the court is not
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1 they have not been given the right evidence by
 2 Mr Jenkins by the time you've realised that; do you
 3 agree?
 4 **A.** I do.
 5 **Q.** Right. Now, if that was you when you'd made those
 6 errors, you'd immediately have corrected it, yes?
 7 **A.** I would.
 8 **Q.** Right. You're now prosecuting on behalf of the Post
 9 Office, yes?
 10 **A.** No.
 11 **Q.** Ah. Right. Why do you say at this juncture that you're
 12 not prosecuting on behalf of the Post Office?
 13 **A.** Because I wasn't.
 14 **Q.** Okay.
 15 **A.** I was not a --
 16 **Q.** Unwrap that, would you?
 17 **A.** Certainly, I was not a prosecuting barrister for the
 18 Post Office. I was never a prosecuting barrister for
 19 the Post Office. I was instructed to prosecute one
 20 case, the case of Samra. That case got to trial on
 21 1 July and I stopped it and I then stopped every other
 22 case from being prosecuted thereafter. So I was not
 23 a prosecuting barrister; I was the barrister who stopped
 24 the prosecutions.
 25 **Q.** Right, okay. So let's think about your duties at that
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1 to mislead the court. There is no circumstance in this
 2 Post Office saga in which I had misled a court,
 3 therefore I had no duty to go back to the court and
 4 correct anything I had or had not done. This was
 5 an entirely different situation. This was a situation
 6 where I had discovered, as I say, a witness in
 7 prosecutions in which I was not involved in had misled
 8 the court. It was therefore not my function to go back
 9 to the court that he had misled and tell the court, "Oh,
 10 by the way, court, that witness you heard from six years
 11 ago had misled you".
 12 My function was to advise Post Office as to what
 13 they ought and ought not to do in the circumstances that
 14 I had identified.
 15 **Q.** Okay. Two last things: do you think that
 16 characterisation of your position is what was, if we
 17 were to try to look at it in the way that you've looked
 18 at it, what was really going on between yourself,
 19 Mr Smith and Mr Altman, in other words, it was advice to
 20 the Post Office, rather than trying to rectify problems
 21 that have occurred with Jenkins in the past to the
 22 courts?
 23 **A.** No, I don't agree with that at all. I was advising the
 24 Post Office on how they should deal with the problem
 25 that I'd identified, and that advice consisted of
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1 reviewing the cases, disclosing the material that ought
 2 to have been disclosed and setting up systems in order
 3 to ensure that that didn't happen in the future. That
 4 was my function.

5 **Q.** I have, in my questions to you, built up, as you say,
 6 a sort of construct that relates to the way that ethical
 7 matters should be considered --

8 **A.** And I don't agree.

9 **Q.** -- or could be considered; you don't agree with that?
 10 Did you ever have that discussion with Mr Altman? Did
 11 you ever say to him "What are we doing here? Are we
 12 advising Post Office or are we acting as prosecutors?"
 13 Did that discussion ever occur?

14 **A.** No, because I knew where my footing was. I was advising
 15 Post Office.

16 **MR STEIN:** Thank you, Mr Clarke.

17 **MR BLAKE:** Thank you, sir. Next we have Ms Watt and
 18 Ms Allan.

19 **SIR WYN WILLIAMS:** When you say that, do you mean they are
 20 going to ask questions alternatively, or what?

21 **MR BLAKE:** No, Ms Watt has one very brief question and then
 22 we'll move on to Ms Allan.

23 **SIR WYN WILLIAMS:** Oh, right.

24 **Questioned by MS WATT**

25 **MS WATT:** Thank you, sir.

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1 Cartwright King and Jarnail Singh, Head of Criminal Law
 2 at Post Office, you took the time and trouble to go to
 3 Scotland to try to prevent the Procurator Fiscal from
 4 terminating those criminal prosecutions, didn't you?

5 **A.** Yes.

6 **Q.** You told the Crown Office and Procurator Fiscal Service
 7 that you were getting an expert report that would show
 8 Horizon was fine and so the prosecutions did not need to
 9 be terminated?

10 **A.** No, I don't agree with that.

11 **Q.** Why don't you agree with that?

12 **A.** We told the Procurator Fiscal's Office that we had
 13 concerns about the existing expert and that we were
 14 hoping to instruct a new expert, clearly that new
 15 expert, Post Office hoped, would identify that Horizon
 16 was sound, but -- the --

17 **Q.** That never materialised, did it?

18 **A.** Sadly not, but I've explained why not. But the space
 19 around that instructing of the new expert was to be
 20 wide. The new expert was to look at all aspects of
 21 Horizon and determine whether it was working improperly,
 22 as well as properly.

23 **Q.** Of course, you were very pleased at the end of that
 24 meeting to note you'd achieved the objective:
 25 prosecutions in Scotland would not be terminated after

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1 Good afternoon, Mr Clarke. I represent the National
 2 Federation of SubPostmasters. I'll be quick.

3 You went to Scotland in September 2013 to meet with
 4 the Crown Office and Procurator Fiscal Service; do you
 5 remember that?

6 **A.** I do.

7 **Q.** This was because there was to be a termination of
 8 Scottish criminal cases on the basis that Horizon was
 9 unreliable?

10 **A.** No, it's because Post Office had been informed by the PF
 11 Office that that was the route they wished to take.

12 **Q.** Now, when you went to this meeting, you knew about
 13 Gareth Jenkins, we've just been talking about that?

14 **A.** I did.

15 **Q.** You knew about bugs in the Horizon system?

16 **A.** I did.

17 **Q.** You knew about the Second Sight Report --

18 **A.** I did.

19 **Q.** -- which although it said "no systemic issues" it had
 20 concerning material in it, did it not?

21 **A.** Yes.

22 **Q.** And you knew that prosecutions in England had been
 23 paused?

24 **A.** Yes.

25 **Q.** But, despite this, a group effort of two lawyers from

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1 all?

2 **A.** We didn't think they ought to be terminated because we
 3 thought that they ought to be approached on
 4 a case-by-case basis and that was what I sought to
 5 persuade the PF's representative ought to take place
 6 and, if you look at the note that was the result of that
 7 meeting, it explains very carefully that that is, in
 8 fact, what the PF's Office agreed to do. They agreed to
 9 look at it on a case-by-case basis and the reason we
 10 advanced that proposition was because not all
 11 prosecutions were Horizon based -- and I've given the
 12 example already of the postmistress who was loaning Post
 13 Office money to family members -- and I think that might
 14 even have been a Scottish case.

15 I took the view, and I suspect if I'd have put it to
 16 Post Office they would have taken the same view, that it
 17 would be wrong to stop a prosecution in a case like
 18 that.

19 **Q.** Well, taking all of what I've put to you together, I'm
 20 suggesting to you that, collectively, you were all, at
 21 the very least, disingenuous in the way you sought to
 22 persuade a Crown Office officer, a representative of
 23 Scotland's most senior law officer, the Lord Advocate,
 24 not to terminate such prosecutions; would you accept
 25 that?

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1 A. No, of course not. That's a preposterous suggestion.

2 MS WATT: Thank you.

3 **Questioned by MS ALLAN**

4 MS ALLAN: Mr Clarke, I represent Scottish Core Participant,
5 Susan Sinclair.

6 During your evidence, both written and oral today,
7 you have mentioned the two-stage process for disclosure
8 covered in England and Wales by the Criminal Procedure
9 and Investigations Act 1996. What is or was your
10 knowledge of the relevant continuing disclosure and
11 regulation obligations of Specialist Reporting Agencies
12 such as POL in Scots Law?

13 A. Such as who, sorry?

14 Q. Post Office Limited.

15 A. None.

16 Q. There is no continuing duty of disclosure --

17 A. No, you asked me what my understanding was, I think.

18 Q. What is your understanding?

19 A. I had very little. I don't know what the duties were of
20 a Scottish prosecutor.

21 Q. What I'm asking you is, what the duties were of Post
22 Office, as a Specialist Reporting Agency in Scotland in
23 terms of disclosure?

24 A. Oh, to inform the PF's Office of everything they knew
25 about.

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1 in July 2013?

2 A. That's, forgive me, a two-part question. The first part
3 of the question, did I disclose my advice? No,
4 I wouldn't have dreamed of disclosing my advice. It was
5 privileged and it was privileged to Post Office.
6 Whether or not Post Office disclosed it, which was their
7 right or not, I don't know. That's the first part of
8 your question.

9 In terms of the second part of your -- I'm afraid
10 you're going to have to remind me of it, I'm sorry.

11 Q. As it was whether you shared your concerns as to the
12 reliability of Gareth Jenkins?

13 A. Yes, I did. If you look at -- I don't know what the POL
14 reference number is but there's a note from BDO (*sic*)
15 where they conducted a meeting with -- I think Martin
16 Smith was involved and a representative of the
17 Procurator Fiscal's office -- in which they discuss the
18 issues about Gareth Jenkins.

19 Q. Do you recall when that was?

20 A. I think I had was a day or so before the meeting I had
21 with the PF's Office.

22 Q. Okay, thank you.

23 A. It's in the papers, and it very clearly says that BDO
24 (*sic*) told the PF's -- Paul somebody -- the PF's
25 representative about Gareth Jenkins.

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1 Q. Were you aware of anyone within Post Office's Legal
2 Department or, indeed, the relevant team at Cartwright
3 King, who was qualified to advise on issues on Scots
4 Law?

5 A. In qualified (*sic*) King -- forgive me, in Cartwright
6 King there was nobody qualified. I don't know what the
7 position is or was in Post Office.

8 Q. Would you consider if there wasn't anybody in Scots Law
9 qualified that this was perhaps an oversight in Post
10 Office?

11 A. Well, my understanding of the position was that you
12 could not bring a private prosecution, which essentially
13 is what we're talking about here, in Scotland. You had
14 to be an appointed specialist or similar to bring the
15 matter you're concerned with to the attention of the
16 Procurator Fiscal and the PF would then be responsible
17 for conducting the prosecution. That was my
18 understanding of the process. Whether or not Post
19 Office understood that or not, I don't know.

20 Q. Thank you. Did you or the Post Office disclose your
21 advice document regarding Gareth Jenkins' reliability as
22 an expert witness -- for the record, that's
23 POL00006357 -- or share your concerns with your
24 counterparts in the devolved jurisdictions, such as the
25 Crown Office and Procurator Fiscal Service in Scotland

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1 Q. Okay, thank you. During your involvement with the Post
2 Office, were you aware that the Post Office had
3 instructed a Scottish firm, BTO Solicitors?

4 A. That's who I'm referring to. BTO, yes.

5 Q. Thank you. What was your understanding of the
6 instruction of BTO Solicitors?

7 A. I don't know.

8 Q. Was BTO represented at meetings with Post Office,
9 Cartwright King and the Crown Office and Procurator
10 Fiscal Service in Scotland?

11 A. I think Martin Smith acted as a sort of liaison between
12 Post Office and the PF's Office and BTO. I had very,
13 very little to do, other than the meeting, with the
14 Scottish aspect or, indeed, the northern Ireland aspect
15 of this thing. I was concentrating on England and
16 Wales.

17 Q. Thank you. I know Ms Watt had touched upon this but
18 I wanted to just touch upon your contact with the Crown
19 Office, on 4 and 5 September 2013. Was this meeting at
20 Crown Office's request, as opposed to the Post Office's?

21 A. I can't say.

22 Q. You refer to the purpose of this meeting with the Crown
23 Office in Scotland being to see if anything could be
24 done to dissuade it from the status quo -- the stated
25 course of terminating all Post Office prosecutions in

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1 Scotland at this time, not just those relying on
 2 Horizon-based evidence, due to concerns of public
 3 relations storm for Post Office.
 4 **A.** Sorry, I missed the last bit of that.
 5 **Q.** Due to concerns about public relations storm --
 6 **A.** No.
 7 **Q.** -- for Post Office?
 8 **A.** No, I don't accept that.
 9 **Q.** I'm sure that's in your witness statement but you go on
 10 in your witness statement at paragraph 57 to say you
 11 were ultimately successful in persuading it to review
 12 each Post Office case and make a decision on the basis
 13 of each individual case. Was this approach not contrary
 14 to your advice to Post Office in July 2013, that all
 15 ongoing or future prosecutions should be put on hold
 16 until an independent expert had been properly
 17 identified?
 18 **A.** No, that's what I was asking the PF's Office to do, to
 19 put -- not -- the PF's Office were proposing to stop
 20 everything to stay all of the prosecutions. I was
 21 asking them not to do that. I was asking them to do
 22 what we had done in England and Wales, which is to
 23 suspend or -- what's the word -- just stop the
 24 prosecutions to the extent that they should be
 25 considered on a case-by-case basis before determining

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1 continuing in September 2013, and this was perhaps,
 2 would you accept, a missed opportunity and caused undue
 3 delay in putting a halt to Scottish prosecutions?
 4 **A.** No, I don't agree with your characterisation of what
 5 took place or what I said. What I said was I was proud
 6 to have stopped the Post Office prosecutions, I was
 7 referring to the England and Wales jurisdiction. I had
 8 no power or authority to even advise or stop Scottish
 9 prosecutions. That was a matter entirely for the
 10 Procurator Fiscal and so, no, I don't accept your
 11 thesis.

12 **MS ALLAN:** Okay, thank you Mr Clarke.

13 **MR BLAKE:** Thank you, sir. It's Mr Henry next. We have
 14 Mr Henry and Ms Oliver left.

15 **MR HENRY:** Sir, may I raise something very quickly? With
 16 great deference to you, sir, to whom I express my
 17 gratitude, but Ms Oliver and I have a substantial number
 18 of questions and I fear that it is simply not possible
 19 to conclude by 4.30, in fairness to Ms Oliver as well.

20 I raise it now, without, I hope, any impertinence
 21 but simply to apprise you, sir, of the gravity of the
 22 matters that I have to put to this witness and also, of
 23 course, the fact that Ms Oliver has a number of very
 24 important matters to address.

25 **SIR WYN WILLIAMS:** I appreciate that -- well, can I take it

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1 whether or not they ought to be discontinued because, to
 2 the minds of Post Office and my mind, it would have been
 3 wrong to stop prosecutions where the allegations were
 4 not dependent upon Horizon, and I've given an example,
 5 as to where that might be the case. That was my aim and
 6 that is what I achieved.
 7 **Q.** At paragraph 194 of your witness statement, you describe
 8 being professionally and personally proud of the fact
 9 that you stopped POL prosecutions from 2013 onwards. We
 10 know now that there were up to 60 prosecutions in
 11 Scotland between 1999 and 2015 involving Horizon
 12 evidence, some of which were brought after your meeting
 13 with Crown Office in September 2013. Is it not the case
 14 that, actually, the Crown Office and Procurator Fiscal
 15 Service was eventually responsible for making that
 16 decision in Scotland?
 17 **A.** I never claimed to have stopped the prosecutions in
 18 Scotland. I claimed to have stopped them in England and
 19 Wales, which was the primary jurisdiction with which
 20 I was concerned.
 21 **Q.** If I refer to your witness statement, you stopped all
 22 POL prosecutions from 2013 onwards.
 23 **A.** Yes, in England and Wales.
 24 **Q.** But rather, in Scotland, you'd engaged in a course of
 25 actively seeking to dissuade the Procurator Fiscal from

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1 that your questions relate to one or more of your
 2 clients, first of all?

3 **MR HENRY:** They do.

4 **SIR WYN WILLIAMS:** In the main, is it Ms Misra?

5 **MR HENRY:** It is Mrs Misra.

6 **SIR WYN WILLIAMS:** Does it relate essentially to the conduct
 7 of the reviews in her case or is it wider than that?

8 **MR HENRY:** It's wider than that.

9 **SIR WYN WILLIAMS:** Well, if you just start, if you would,
 10 with the wider than that and let's see where we are
 11 going.

12 **MR HENRY:** Yes.

13 Questioned by MR HENRY

14 **MR HENRY:** I want to understand your status. Were you
 15 advising the Post Office as a corporate or were you
 16 acting as part of a firm of solicitors that had
 17 effectively taken on board their entire prosecution
 18 facility and service?

19 **A.** Well, I think the latter is a proper characterisation.

20 **Q.** So the latter is the proper characterisation and we
 21 know, and there's no need to take you to them, unless
 22 you specifically wish to, that you were aware of
 23 potential civil claims?

24 **A.** At what point are you referring to?

25 **Q.** 2013, July.

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1 A. Yes, that's likely.
 2 Q. Yes. You were aware of potential civil claims and, in
 3 the course of that quarter between July and September,
 4 you had written some extremely accommodating advices to
 5 the Post Office stating that they would not be liable
 6 for malicious prosecution, the responsibility would fall
 7 on Cartwright King?
 8 A. I don't agree with your characterisation about
 9 "extremely accommodating". I wrote advices as I saw the
 10 position to be.
 11 Q. Well, it is extremely accommodating to say, "We'll throw
 12 ourselves under the bus for you", isn't it, Mr Clarke?
 13 A. I don't agree with you.
 14 Q. A curious thing that, in fact, they asked you to write
 15 a second advice on 12 September 2013 because they
 16 probably couldn't believe their luck, Mr Clarke. You,
 17 on behalf of your firm, were basically saying, "We will
 18 take the rap for malicious prosecution. POL will be
 19 completely absolved from responsibility". What were the
 20 pressures on you, Mr Clarke?
 21 A. I'll answer the first point first: you are wrong. And
 22 the second point is there were no pressures on me and
 23 I'm not resistant to pressure. Forgive me, I won't take
 24 pressure.
 25 Q. Well, we'll see about that. I'm afraid I'm not wrong
 201

1 Q. Do assist us: just tell us what you said?
 2 A. I said that I did not think that Mrs Misra ought to have
 3 disclosure of the documents.
 4 Q. You're aware of your duty, aren't you, where, after the
 5 conclusion of proceedings material comes to light that
 6 might cast doubt on the safety of the conviction, the
 7 prosecutor must consider disclosure of such material;
 8 you were aware of that?
 9 A. Yes.
 10 Q. You had a positive duty, either as part of the firm or
 11 to advise the corporate, that disclosure must be made to
 12 Mrs Misra as soon as possible?
 13 A. You had my advice. You've seen it, you've read it.
 14 That was my view at that time.
 15 Q. I'm going to ask you, please, to reflect on the
 16 9 September 2013. You attended a conference at
 17 2 Bedford Row, together with Bond Dickinson, members of
 18 the Post Office, to see Mr Brian Altman, correct?
 19 A. Yes.
 20 Q. Right. Mr Altman, called in 1981, just stood down as
 21 First Senior Treasury Counsel, illustrious reputation;
 22 did you rely on him, take a steer from him?
 23 A. Of course.
 24 Q. Yes. You were called in 1997. According to your
 25 website, you've had a high level criminal defence
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1 and, therefore, I'm going to put on to the record for
 2 you, sir, to review in due course POL00114253,
 3 12 September 2013, and POL00198766, the 12 September
 4 2013. But anyway, you accept that --
 5 SIR WYN WILLIAMS: Let me make sure I've got those
 6 correctly, Mr Henry: 00114253 was the first?
 7 MR HENRY: That's correct, sir.
 8 SIR WYN WILLIAMS: 198766 the next, and are --
 9 MR HENRY: Sorry, 198766 next, after two 0s.
 10 SIR WYN WILLIAMS: That's it, yes. Are they both date
 11 12 September?
 12 MR HENRY: They're both date 12 September, they're both
 13 written by this witness.
 14 SIR WYN WILLIAMS: Yes, thank you very much.
 15 MR HENRY: Right. So you're advising the corporate, and you
 16 have already given answers to Mr Stein this afternoon
 17 that you didn't feel under any obligation at all to
 18 inform the solicitors of a woman who had gone to jail
 19 whilst pregnant because it was nothing to do with you?
 20 A. I don't think that's what I said.
 21 Q. Well, that's the gist of what you said, isn't it?
 22 A. That is not what I said. I am not interested in gist;
 23 I'm interested in what I said.
 24 Q. Well, then what did you say?
 25 A. You know what I said, you have it on record.
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1 practice for over 25 years, so by 2013 you'd have had 16
 2 years' experience?
 3 A. Yes.
 4 Q. Right. It is inconceivable, I suggest, that you would
 5 have failed to recognise the relevance of your
 6 conversation with Mr Gareth Jenkins on 28 June, which
 7 you distilled in your Clarke Advice of 13 July 2013, or
 8 15 July 2013. It is inconceivable that you would not
 9 that have recognised the importance of disclosure to
 10 Mrs Misra.
 11 A. Forgive me, is that a question? Are you asking me
 12 whether or not I agree or disagree with the proposition?
 13 SIR WYN WILLIAMS: Take it that that --
 14 MR HENRY: Just --
 15 A. I beg your pardon?
 16 SIR WYN WILLIAMS: Take it that that is question, Mr Clarke.
 17 A. Thank you. I disagree.
 18 MR HENRY: You disagree. You would have keenly appreciated
 19 the vulnerabilities of Jenkins as a witness, whom you
 20 described as "fatally undermined" and you would have
 21 known the role that he played in the conviction of
 22 Mrs Misra, and you did know the role that he played in
 23 the conviction of Mrs Misra by 9 September 2013.
 24 A. Yes.
 25 Q. So did Mr Altman, didn't he?
 204

1 A. I imagine so.

2 Q. Yes, because you know that he had read all of the papers
3 by the time you arrived. Now, let me just ask you this:
4 if you were counsel for Seema Misra, what use would you
5 have made of the material that you then knew, Mr Clarke?

6 A. I wasn't counsel for Mrs Misra.

7 Q. Oh, come on.

8 A. I wasn't counsel for --

9 Q. You understand what I'm saying. You have to look at the
10 position of what the material would do if placed in the
11 hands of competent counsel. Don't evade: what would you
12 have done?

13 A. I wasn't counsel for Mrs Misra and I cannot answer that
14 question.

15 Q. You know perfectly well that it would have given rise to
16 an irresistible appeal, don't you?

17 A. I know that's what would have been the outcome but that
18 was not your question.

19 Q. You're splitting hairs, Mr Clarke. You know that it's
20 inescapable. You know that the material that was inside
21 your head was absolutely dynamite; it was a bombshell;
22 and it would have given rise to an inevitable appeal for
23 Mrs Misra, as soon as it had been notified to her.

24 A. What I know is that I advised that the material ought
25 not to be disclosed and that I now accept that that was

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1 A. I had nothing to do with the civil claims and I had, at
2 that time, almost no knowledge of civil law, other than
3 what I've learnt at university years beforehand.

4 Q. You already conceded to me that you knew about the civil
5 claims, when I put that to you.

6 A. What I said was I wasn't part of them. I had no role in
7 the civil claims.

8 **SIR WYN WILLIAMS:** Sorry to be pedantic: at the point in
9 time that I thought we were talking about, September
10 2013, there were indications of civil claims, as
11 I understand it, in that a firm of solicitors had
12 indicated a possibility of it, that is Shoosmiths --

13 **MR HENRY:** That is correct, sir.

14 **SIR WYN WILLIAMS:** -- at the beginnings of the mediation.
15 Is that what you're talking about, Mr Henry?

16 **MR HENRY:** I am, sir.

17 **SIR WYN WILLIAMS:** Just so I can be clear. Right. Thank
18 you.

19 **MR HENRY:** Let's be clear about this. Bond Dickinson are
20 there. What were Bond Dickinson doing at the conference
21 or the consultation on 9 September 2013?

22 A. There came a time during that conference when -- and
23 there was another conference where it happened again --
24 where the criminal lawyers in terms were asked to leave,
25 and the conference continued after we had left.

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1 an error.

2 Q. We'll come to that. I'm asking you now about the
3 9 September because I've looked at two notes of that
4 consultation with Mr Altman and it doesn't seem that any
5 discussion, either around the damaged or tainted status
6 of Mr Jenkins and disclosure to Mrs Misra, arose at that
7 conference, in either of the notes.

8 A. If you're asking me was there such a discussion,
9 I believe there was.

10 Q. Right. So, therefore, it follows that there must have
11 been a discussion, as you say, you believe there was
12 and, obviously, the discussion resulted in saying,
13 "We're not going to give her anything".

14 A. I'm not sure that's right. At some point, Mr Altman
15 pointed to my January advice and said -- and
16 I paraphrase -- "That's wrong, you ought to disclose".
17 I don't know whether --

18 Q. We're talking about 9 September.

19 A. Well, if I can finish my answer. I don't know whether
20 or not that took place on or about 9 December (*sic*) or
21 after.

22 Q. Let us go, please, to your knowledge of the civil
23 because you would have realised, wouldn't you, that, if
24 Mrs Misra had appealed, it would have undermined the
25 defence of the civil claims?

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1 Q. You knew that they were the Post Office's civil lawyers?

2 A. Oh, yes.

3 Q. Yes.

4 A. Yes. That's why, I assumed, we were asked to leave.

5 Q. You said earlier today that you should have asked the
6 question why there were the transcripts of the Misra
7 trial; do you remember saying that?

8 A. Yes, I do.

9 Q. Well, we can give you an answer for that and maybe
10 you've already become aware of it by watching the
11 Inquiry because, on 16 December 2010, Ms Talbot wrote
12 an email to Mr Singh saying that the Misra transcripts
13 will help with the civil actions. I ask you again: were
14 you not aware of the unique and special importance that
15 Seema Misra's case formed as a precedent to deter civil
16 and criminal claims?

17 A. The first knowledge I had about the email you've just
18 referred to is when you just told me just now. I didn't
19 know about the existence of that email or that was how
20 the transcripts came into being. The first I knew of
21 the transcripts was when I was sent the transcript of
22 the summing-up in, I think it was December 2013.
23 Frankly, what you've just told me reinforces my view
24 that I was drip fed the Misra file over the following
25 year.

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1 Q. Well, we'll come to what you were given in December.
 2 But you were aware, were you not, that Mr Altman advised
 3 that Cartwright King be kept fully informed of the civil
 4 litigation?
 5 A. I don't know. If you say so then that must be right,
 6 but I don't know. I took no interest and no part in the
 7 civil litigation.
 8 Q. Right. Now, if I were to put to you that Mr Altman, by
 9 one way or another, had had his instructions chamfered,
 10 so that responsibility to advise on Seema Misra's case
 11 fell squarely upon Cartwright King, what would you say?
 12 A. I'd be surprised. It's new to me, if that's what
 13 happened --
 14 Q. Right.
 15 A. -- and, frankly, from what little I know of Mr Altman,
 16 I would be surprised if he accepted that sort of
 17 pressure.
 18 Q. You did gather, however, what his approach was to the
 19 Misra appeal; would you agree?
 20 A. I don't understand what you're referring to. You say
 21 his approach to the Misra appeal; you'll have to expand,
 22 I'm sorry.
 23 Q. Well, if I were to put to you that, during the
 24 consultation on 9 September, he expressed concern that
 25 the slightest apology to a convicted person or the

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1 Q. Why am I wrong?
 2 A. I was not fully sighted. I --
 3 Q. You were certainly aware of civil litigation?
 4 A. I've told you -- at that point, I was not. I've already
 5 explained that, I took no part in the civil litigation
 6 and I was not aware that there was any pending civil
 7 litigation in September 2013.
 8 Q. But you've been sent, Mr Clarke -- and you've advised
 9 upon it -- you've been sent on 11 December 2013
 10 an attachment which talks about civil claims against the
 11 Post Office and you were asked to advise on it?
 12 A. You were asking me about September 2013.
 13 Q. Well, I'm talking there -- I was talking then about Bond
 14 Dickinson being at the consultation?
 15 A. Well, I'm sorry, you didn't make that clear. I did not
 16 know, in September 2013, of any pending civil
 17 litigation.
 18 Q. Right. Do you agree or do you disagree with the fact
 19 that Mr Altman advised that the firm, Cartwright King,
 20 be kept fully informed regarding civil litigation?
 21 A. I can't say.
 22 Q. Right. Well, is it that you can't remember or that you
 23 choose not to answer?
 24 A. I find the second proposition offensive. The first --
 25 Q. Forget any construction on it, just answer the question.

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1 payment of compensation could, indeed, give rise to
 2 an appeal and he was concerned that Misra would use the
 3 Mediation Scheme to obtain some concession to allow her
 4 appeal.
 5 A. Is that what it says in the note?
 6 Q. That is what is said in a note sent by Mr Smith to Susan
 7 Crichton, following the consultation?
 8 A. I know nothing of that note.
 9 Q. But you were at the conference?
 10 A. I was.
 11 Q. You knew that Mr Altman was saying that he was worried
 12 that "other Misras would crawl out of the woodwork", and
 13 that you shouldn't mediate with Mrs Misra under any
 14 circumstances.
 15 A. I don't agree with your use of the phrase "crawl out of
 16 the woodwork", I think that's offensive to those who
 17 were convicted.
 18 Q. I'm quoting from a note.
 19 A. That may be so but I still don't approve of it.
 20 Q. There we are. What I'm suggesting to you is that you
 21 were fully sighted on the importance of Seema Misra's
 22 case and that, if Seema Misra's appeal succeeded, it
 23 would cause pandemonium for the Post Office, wouldn't
 24 it?
 25 A. You're wrong about that.

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1 A. I did. You offend me when you suggest that I'm not
 2 being truthful.
 3 Q. I'm going to suggest to you that it is absolutely
 4 impossible that you could have advised in the way you
 5 did, given your experience, because -- let's look at the
 6 position. You knew that Horizon was essential to
 7 Mrs Misra's conviction on theft, didn't you?
 8 A. I'm sorry?
 9 **SIR WYN WILLIAMS:** Sorry, Mr Henry could you stop a second,
 10 please.
 11 Let's get it out into the open. Are you suggesting
 12 that the two -- I'll call them reviews of whether or not
 13 disclosure to Ms Misra -- are you suggesting that those
 14 two reviews were written in the way that they were for
 15 a completely ulterior motive and an improper motive, as
 16 opposed to being an assessment, whether right or wrong,
 17 about whether disclosure should be given?
 18 **MIR HENRY:** I'm trying to explore with the witness how he
 19 could have reached such an untenable conclusion, sir,
 20 which --
 21 **SIR WYN WILLIAMS:** Right. Well, he says he made
 22 a mistake -- those are my words, not his. If you're
 23 going to suggest to him that it's something more than
 24 that, then put it in a form of direct question and then
 25 we can move on.

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1 **MR HENRY:** Were you part of the suppression of material that
 2 would have allowed Mrs Misra to appeal promptly to the
 3 Court of Appeal?
 4 **A.** No, and I think the suggestion that you put to me is
 5 a disgraceful one.
 6 **Q.** Well, then I must explore with you, therefore, you wrote
 7 the Grant Allen advice on 16 July 2013; do you remember?
 8 **A.** I don't.
 9 **Q.** You don't?
 10 **A.** No, I wrote many advices, you can't --
 11 **Q.** I'm going to quote from it, and if you would like to
 12 have it put up on the screen, by all means, but I'm
 13 going to quote from it first:
 14 "In a case where we have relied upon Dr Jenkins as
 15 to the efficacy of Horizon, we are bound to disclose
 16 material which undermines his status as an expert
 17 witness."
 18 You wrote that on 16 July.
 19 **A.** I accept that.
 20 **Q.** How on earth could you have reached a different
 21 conclusion with Mrs Misra in January 2014?
 22 **A.** Because I was talking about Horizon Online cases in
 23 which Gareth Jenkins had provided witness statements.
 24 Mrs Misra went back to pre-Horizon Online and, at that
 25 point, we weren't looking at pre-Horizon Online.

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1 say at Seema Misra's trial that everything was fine, bar
 2 one irrelevant rectified Falkirk bug? Yes, correct?
 3 **A.** Are you quoting me?
 4 **Q.** No, I'm just putting you the question: did the Post
 5 Office say, or claim, at Seema Misra's trial, through
 6 Gareth Jenkins, that everything was fine, bar one
 7 irrelevant rectified Falkirk bug? Your answer would be
 8 "Yes"?
 9 **A.** I can't say. Without going back to the documents,
 10 you're talking about a trial I took no part in years
 11 before I was anything to do with the Post Office.
 12 I can't say what was and was not said at the Seema Misra
 13 trial today.
 14 **Q.** But you knew this, didn't you, Mr Clarke: you knew that
 15 the person who gave evidence against Seema Misra had
 16 failed to disclose the existence of bugs, errors and
 17 defects?
 18 **A.** Yes.
 19 **Q.** You knew that he had given evidence to the contrary?
 20 **A.** Yes.
 21 **Q.** You knew that he had put the Post Office in breach of
 22 its duty as a prosecutor?
 23 **A.** Yes.
 24 **Q.** How on earth, therefore, did you advise that she should
 25 not get disclosure when you advised in January?

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1 **Q.** But you've already said that you were aware of bugs.
 2 You said that to Mr Blake, that you were aware of bugs
 3 in old Horizon as well.
 4 **A.** Yes, but I was looking at new Horizon.
 5 **Q.** But let's just concentrate on this. You agree that
 6 Horizon was essential to Mrs Misra's conviction on
 7 theft?
 8 **A.** Legacy Horizon.
 9 **Q.** Legacy, yes.
 10 **A.** Yes.
 11 **Q.** Okay. "Horizon could have additional bugs, Mr Blake
 12 asked you", and you answered, "Old Horizon as well, we
 13 did".
 14 So are there bugs in Horizon? Your answer would be
 15 "Yes", wouldn't it?
 16 **A.** Yes.
 17 **Q.** Right. Horizon Online obviously, yes, but old and
 18 Legacy Horizon, yes.
 19 **A.** Yes.
 20 **Q.** Right. Was Horizon Online developed to replace a less
 21 robust system? You would agree yes, wouldn't you?
 22 **A.** I have no idea --
 23 **Q.** Right.
 24 **A.** -- I'm not a computer expert.
 25 **Q.** Well, let us move on, then. Did we, the Post Office,

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1 **A.** I think you'll find that I've already accepted that that
 2 was an error on my part.
 3 **Q.** What happened, I suggest, is that, eventually, only the
 4 Second Sight Interim Report and the Helen Rose Report
 5 was handed over to the CCRC in 2015; that's correct,
 6 isn't it?
 7 **A.** I don't know what was given to them.
 8 **Q.** Right. The Second Sight Interim Report just expressed
 9 the existence of bugs but not that someone had lied
 10 about them and misled the court; you would agree with
 11 that?
 12 **A.** That's what the Interim Report that I saw said, yes.
 13 **Q.** Yes. So the critical factor of lying and misleading the
 14 court was not within the Second Sight Interim Report or
 15 the Helen Rose Report?
 16 **A.** No.
 17 **Q.** No. Again, I ask you, how could you, an experienced
 18 barrister, have come to the conclusion, having expressed
 19 the view in December that she should get disclosure and
 20 in January you said that she should not?
 21 **A.** Just as Mr Stein suggested earlier: we all make mistakes
 22 and I have accepted I made a mistake.
 23 **Q.** You offered as an explanation, as rationalisation, that
 24 you only had the transcript of the summing-up at the
 25 time you wrote the December document; do you remember?

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1 **A.** I've told you: that was the fact of the position.
 2 **Q.** Well, that is not what you write in the December
 3 document. In fact, in the December document you don't
 4 say, "transcript of the summing-up" you say,
 5 "transcripts of the trial". So you had clearly read the
 6 transcripts of the trial, paragraph 33 of POL00198595.
 7 You had clearly read the transcripts of the trial by the
 8 time you wrote that advice on 5 December, hadn't you?
 9 **A.** I disagree, and my disagreement is consistent with the
 10 writing of the 20 January 2014 advice and the "Phew"
 11 email.
 12 **Q.** That "Phew" email, obviously one recognises the
 13 explanation you gave but are you sure that you were not
 14 put under pressure because you knew the central
 15 foundational, the -- that she was the foundation stone,
 16 the Seema Misra conviction, for deterring civil claims
 17 and also deterring criminal ones?
 18 **A.** I've already told you that I do not accept that
 19 contention. I did not have that knowledge and that is
 20 not -- and I was placed under any pressure. And I would
 21 add, had anybody sought to place me under pressure of
 22 the sort you describe, I would have immediately
 23 withdrawn.
 24 **Q.** Right. Can I just ask you then in conclusion to go back
 25 to 9 September 2013, and you've read, presumably, as
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1 **SIR WYN WILLIAMS:** No pressure on you. It's entirely for
 2 you to tell me what suits you.

3 **MR BLAKE:** We have a thumbs-up.

4 **SIR WYN WILLIAMS:** So we'll have a five-minute break and
 5 then we will complete Mr Clarke, which will make him
 6 happy, as well, by 4.50.

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

8 (4.22 pm)

9 (A short break)

10 (4.27 pm)

11 **Questioned by MS OLIVER**

12 **SIR WYN WILLIAMS:** Yes, Ms Oliver?

13 **MS OLIVER:** Thank you, sir. Good afternoon, Mr Clarke,
 14 I ask questions on behalf of Mr Jenkins. I'm going to
 15 take this as quickly as I can, okay?

16 **A.** I know you will. Thank you.

17 **Q.** We have heard from your colleague at Cartwright King and
 18 later business partner, Martin Smith, who indicated that
 19 at or around the time of your 15 July 2013 advice
 20 concerning Mr Jenkins, he came to the conclusion that
 21 neither Post Office nor Cartwright King had ever
 22 instructed Mr Jenkins as to his expert duties; do you
 23 remember that aspect of his evidence?

24 **A.** From what I know now, I know that to be the position.

25 **Q.** All right. Is that a conclusion that he discussed with
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1 part of the information pack the notes taken of the
 2 consultation by your colleague, Mr Smith?

3 **A.** Yes.

4 **Q.** You have. There was no investigation, as you have
 5 already explained to Mr Stein, because you didn't feel
 6 that it was appropriate, into why Gareth Jenkins had
 7 done what he did, correct?

8 **A.** Correct.

9 **Q.** Can you offer any explanation how Mr Altman came to the
 10 conclusion, as is reported in the conference, that it
 11 was more to do with incompetence than dishonesty?

12 **A.** No. You'd have to ask him that question.

13 **MR HENRY:** Right.

14 **SIR WYN WILLIAMS:** Thank you, Mr Henry.

15 **MR HENRY:** Thank you, sir.

16 **SIR WYN WILLIAMS:** Right, now then, we have one questioner
 17 left. First of all, a time estimate please, Ms Oliver?

18 **MS OLIVER:** Sir, my time estimate to Mr Blake was
 19 30 minutes. I think, truncating things, I could do it
 20 in 20. I think I might struggle to do it nine.

21 **SIR WYN WILLIAMS:** No, that's fine.

22 Transcriber, if we have another short break, are you
 23 prepared to sit on for 20 minutes to complete Mr Clarke
 24 today?

25 **MR BLAKE:** We have a thumbs-up.
 218

1 you at the time?

2 **A.** No.

3 **Q.** When did you come to your conclusion about those
 4 failings on the part of the Post Office and Cartwright
 5 King?

6 **A.** In relation to whether or not Gareth Jenkins had been
 7 properly trained? Oh --

8 **Q.** Whether he'd been informed about his expert duties?

9 **A.** During the course of these proceedings.

10 **Q.** All right. We'll come on to that. Were you ever party
 11 to discussions within Post Office at the time of your
 12 advice, or around that time, as to the same conclusion
 13 that Mr Smith had reached?

14 **A.** That he hadn't been trained?

15 **Q.** Yes.

16 **A.** No.

17 **Q.** Did you have any suspicions of your own as to the
 18 sufficiency of his instruction?

19 **A.** Truth is, I didn't turn my mind to it because I think,
 20 as I used the phrase earlier, I was more interested at
 21 the time in effect rather than cause.

22 **Q.** All right. Thank you. I just want to explore that
 23 a little bit further, if I can. We've heard from
 24 Mr Smith that you, he and Mr Bowyer worked closely
 25 together, as of the time of 2013?
 220

1 A. Pretty well, yeah.
 2 Q. Thank you. He gave evidence that "we were a three";
 3 would you agree with that characterisation?
 4 A. No.
 5 Q. I think you've already indicated that you don't agree
 6 that he was content to follow your lead, as someone that
 7 had more prosecution experience than him?
 8 A. No. No I don't agree.
 9 Q. You don't agree with that proposition?
 10 A. Yeah.
 11 Q. At paragraph 35 of your statement to this Inquiry, you
 12 indicate that you discussed a range of matters
 13 concerning Post Office prosecutions with Mr Bowyer and
 14 Mr Smith?
 15 A. Yeah.
 16 Q. Not least because, shortly after the time of your July
 17 advice, you took over running the Post Office
 18 Prosecutions Department at Cartwright King?
 19 A. Yes, that's right.
 20 Q. Thank you. We've seen an example this morning of
 21 an email dated 10 July that was addressed to you and
 22 Martin Smith jointly on the topic of Gareth Jenkins.
 23 A. Okay.
 24 Q. Do you agree with that?
 25 A. If I've been taken to it, yes.

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1 A. Yes.
 2 Q. -- during this time around your advice?
 3 A. Yes.
 4 Q. We know, from a manuscript note that you may have seen,
 5 that this lack of expert instruction was something that
 6 Mr Smith appears to have discussed with Rodric Williams
 7 on or around 3 September 2013; do you know what I'm
 8 referring to?
 9 A. I saw that -- was it that handwritten note that was put
 10 to Mr Smith?
 11 Q. It was.
 12 A. I saw that --
 13 Q. Thank you.
 14 A. -- and I accept your contention.
 15 Q. Thank you. So it appears that both Mr Smith and
 16 Mr Williams, at least, were sighted on the issue either
 17 that Mr Jenkins had not been properly instructed or, at
 18 the very least, there was a serious question about
 19 whether he had --
 20 A. I'm afraid it does.
 21 Q. -- as at September 2013?
 22 A. Yeah.
 23 Q. So, where that leaves us appears to be this: Mr Smith
 24 had come to this wide-ranging and serious conclusion
 25 about Post Office and Cartwright King failings towards

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1 Q. Thank you. You had also, at that time, come to your own
 2 independent conclusions about Post Office's competence
 3 in terms of disclosure following your meeting with them
 4 on 3 July --
 5 A. Yes.
 6 Q. -- is that right?
 7 A. Yes, I wouldn't use the word "competence".
 8 Q. No, I think you say at paragraph 43 of your statement
 9 an "apparent failure by POL to understand their
 10 disclosure duties"?
 11 A. Yes.
 12 Q. Was that a matter of concern to you?
 13 A. Well, of course.
 14 Q. You talked this morning about Post Office and their
 15 lawyers becoming defensive when you raised the issue of
 16 expert evidence with them --
 17 A. Yes.
 18 Q. -- do you recall that?
 19 A. I do.
 20 Q. Did that raise concerns on your part?
 21 A. Yes, it did.
 22 Q. Again, just referring to your statement -- I'm not going
 23 to turn it up -- if I might, it's paragraph 36. You
 24 indicate that you worked closely with Rodric Williams of
 25 Post Office --

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1 Mr Jenkins at or around the time of your advice, yes?
 2 A. Yes.
 3 Q. He had shared it with a Post Office lawyer?
 4 A. Yes.
 5 Q. You too were actively engaged at the time in liaising
 6 with the Post Office about the apparent revelation of
 7 these bugs and the resulting issue with Mr Jenkins, yes?
 8 A. Yes.
 9 Q. You're making the Samra call, if I can refer to it like
 10 that, on 28 June?
 11 A. Sorry, the --
 12 Q. You and Mr Smith together are making a call to
 13 Mr Jenkins about the case of Samra?
 14 A. Yes, yes.
 15 Q. You're writing an advice in July that deals expressly
 16 with the alleged breach of expert duties?
 17 A. Yes.
 18 Q. You have developed your own concerns about Post Office's
 19 knowledge of their disclosure obligations and the way
 20 they operated in these prosecutions?
 21 A. Yes.
 22 Q. You've said this morning that Mr Jenkins became the
 23 central topic of discussion; do you remember giving that
 24 evidence?
 25 A. Yes.

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1 Q. And you're in regular discussions with Mr Smith and
2 Mr Williams, who it seems were sighted on this issue as
3 of September?
4 A. I don't link the two together. I accept I was in
5 discussions with Rodric Williams but not about that, as
6 I've explained, and you can describe this as crude, if
7 you wish, but I wasn't interested in why Gareth Jenkins
8 had done or not done what he ought to or ought not have
9 done; I was interested in how it was fixed.
10 Q. We'll come on to the relevance of the why question.
11 A. Yeah, yeah.
12 Q. But you're anticipating my next question. Given all
13 those factors that you accept, is it right that your
14 evidence is that Mr Smith never discussed with you this
15 conclusion that he had come to as to the lack of expert
16 instruction --
17 A. That is correct.
18 Q. -- and neither did Mr Williams?
19 A. Yes, that is correct.
20 Q. You never came to a similar conclusion yourself?
21 A. Not knowingly, no.
22 Q. It wasn't something you had any suspicions about?
23 A. I didn't turn my mind to it.
24 Q. It wasn't a possibility to which you turned your mind at
25 all?

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1 to get involved in that, because, not least, Post Office
2 were not going to be relying on him as an expert witness
3 in the future. So there was no need to consider the
4 issue, as far as I was concerned, of his training in
5 being an expert witness.
6 Q. Just to be clear, it's not about training; it's about
7 instruction --
8 A. Yes.
9 Q. -- by the lawyers who commissioned his evidence; is that
10 what you mean?
11 A. However you want to characterise it, I was not concerned
12 because it was looking back and I wanted to look
13 forward.
14 Q. You're saying that although you've come to that
15 realisation now, that's not something you turned your
16 mind to at the time --
17 A. No, I --
18 Q. -- and you disagree with my characterisation of that as
19 being surprising?
20 A. Yes, I do.
21 Q. Right. Can I turn, then, to something you say about
22 expert duties in your statement, please.
23 A. Please.
24 Q. When you looked at Mr Jenkins' statements for the
25 purposes of your 15 July advice, did you note that they

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1 A. Not at all.
2 Q. Do you agree that, given all of those features that I've
3 just run through, that seems surprising?
4 A. No.
5 Q. Is it, in fact, the case that you, either by yourself or
6 through discussion with Mr Smith or Mr Williams, came to
7 exactly the same conclusion that Mr Smith had come to
8 around the time of your advice, that Mr Jenkins had
9 never been informed of his duties and never knew about
10 his duty of expert disclosure?
11 A. No. I accept the proposition you put that he wasn't
12 trained, and that he didn't know about -- didn't know to
13 the extent or what his duties were or were not.
14 I accept that now because I have seen compelling
15 evidence that that's the position. I simply did not
16 turn my mind to it at the time because it was of no
17 interest to me. I was only interested in putting right
18 what had gone wrong and you have to -- forgive me for
19 almost cutting you off. I was going to say you have to
20 appreciate, you don't.
21 I wasn't at that point looking back to what had --
22 to why things had gone wrong. It's clear that Gareth
23 Jenkins -- it's clear to me that Gareth Jenkins had
24 clearly not been trained or instructed in his duties
25 before my involvement in Post Office. I saw no reason

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1 were all Section 9 statements?
2 A. I don't think I did.
3 Q. Did you note that they did not set out the instructions
4 he had been given or the questions which he was to
5 answer?
6 A. No.
7 Q. Did you note that they didn't set out the written
8 material which had been provided by the prosecutor or
9 the documents, statements or evidence that he had taken
10 into account?
11 A. No.
12 Q. Did you note that they did not contain an expert
13 declaration?
14 A. No.
15 Q. Do you agree all of those things I've just listed are
16 necessary inclusions for an expert report?
17 A. Yes.
18 Q. Did any of that therefore cause you concern about
19 Mr Jenkins' level of knowledge about his expert duties
20 when you were reviewing those statements?
21 A. I think I've already explained: my interest was in
22 curing the damage that he had done, not in the reasons
23 as to why the damage had been done and so, no, I took no
24 notice of any of that.
25 Q. With respect, the task that you were doing in your

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1 advice of 15 July is, before you come to that
 2 conclusion, analysing a certain number of the statements
 3 that he has provided --
 4 **A.** Yes.
 5 **Q.** -- do you agree? Do I understand your evidence to be
 6 that, at the point that you were continuing that
 7 analysis and undertaking that analysis, none of the
 8 absence of those necessary inclusions caused you any
 9 concern?
 10 **A.** No, I was analysing the evidence that he was given --
 11 sorry, that he was giving -- in the documents.
 12 **Q.** It didn't come to your attention that none of those
 13 documents contained the necessary inclusions for expert
 14 evidence?
 15 **A.** No, because that wasn't my concern. My concern was what
 16 had he told the court through the documents.
 17 **Q.** It didn't cause you any concern about his level of
 18 knowledge about his expert duties?
 19 **A.** No, for the same reason I was interested in what he had
 20 told the court through those documents, and that's where
 21 my concern was about whether or not he had complied with
 22 his duty.
 23 **Q.** Do you think that was an oversight on your part --
 24 **A.** No.
 25 **Q.** -- not to turn your mind to that?
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1 **A.** No, I disagree with that.
 2 **Q.** First of all, do you agree with the evidence that we
 3 have heard from Duncan Atkinson KC, who has been
 4 an expert instructed in this Inquiry, that those words
 5 included at the end of the statements you looked at,
 6 without more, were insufficient to satisfy the
 7 requirements of an expert declaration, either at common
 8 law or under the Criminal Procedure Rules?
 9 **A.** I do.
 10 **Q.** Thank you. Do you agree that it's not enough to satisfy
 11 the prosecutor's obligation as to expert instruction
 12 that a statement simply bears an expert declaration
 13 because, as Mr Atkinson KC said, it is the duty of
 14 a prosecutor to ensure that the expert understands what
 15 expert duties entail -- for example, the expert duty of
 16 disclosure -- and complies with them?
 17 **A.** I agree with all of that, yes.
 18 **Q.** Thank you. So, in other words, even if Mr Jenkins'
 19 statements had included a proper expert declaration,
 20 which they did not, that expert declaration in itself
 21 would be insufficient to inform you that he understood
 22 his expert duties?
 23 **A.** I agree.
 24 **Q.** So, having agreed with all of that and bearing those
 25 factors in mind, do you agree that, if it was your
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1 **A.** No, and I think I've explained why, because I wasn't
 2 looking back; I was looking forward to cure the defect
 3 that had arisen.
 4 **Q.** Thank you and, rest assured, I will come on to that
 5 question.
 6 **A.** I'm sure.
 7 **Q.** At paragraph 87 of your statement, you say something
 8 that you've not reiterated in evidence, and I just want
 9 to make sure whether it's something you stand by.
 10 **A.** 87?
 11 **Q.** Paragraph 87 of your statement. You indicate that the
 12 fact that Mr Jenkins' statements included the words,
 13 "I understand that my role is to assist the court rather
 14 than represent the views of my employers or Post Office
 15 Limited", informed you that, quite to the contrary of
 16 not turning your mind to the absence of knowledge on the
 17 part of Mr Jenkins, that he did understand the duties of
 18 an expert witness?
 19 **A.** Yes.
 20 **Q.** Now, is that a conclusion you came to or isn't it?
 21 **A.** No, that is what prompted me to dismiss any thought of
 22 looking backwards.
 23 **Q.** So it's not, in fact, the fact that you didn't turn your
 24 mind to it; you turned your mind to it and came to the
 25 opposite conclusion to the one that I've suggested?
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1 conclusion at the time that Mr Jenkins knew of his
 2 expert duties on the basis of that phrase alone being
 3 included in his statements, that was not a safe
 4 conclusion?
 5 **A.** I agree with that but that was not something I was
 6 considering, as I've explained why.
 7 **SIR WYN WILLIAMS:** Well, I'm sorry, Mr Clarke, I think what
 8 is being put to you is that, at paragraph 87 of your
 9 statement, you concluded -- well, you, first of all,
 10 quote "I understand that my role", et cetera, and then
 11 you say, on the basis of that:
 12 "This narrative informed me that Gareth Jenkins
 13 understood that his witness statements and oral evidence
 14 in court was provided by him as an expert witness [1].
 15 That narrative also informed me that he understood the
 16 duties of an expert witness [2]."
 17 So, I'm sorry, but a plain reading of that does
 18 suggest to me that you did, in the summer of 2013,
 19 understand or you did form the view that Mr Jenkins
 20 understood his duties on the basis of that statement in
 21 his witness statements.
 22 **A.** Looking back, I think that informed me that I need
 23 conduct no further enquiry, and the reason I didn't
 24 choose to conduct any further enquiry was because, as
 25 I've explained to counsel, I wasn't interested in what
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1 had gone before.

2 **SIR WYN WILLIAMS:** Well, all right. You carry on, then.

3 **MS OLIVER:** Do you see the difference?

4 **A.** I do, yes.

5 **Q.** I'm grateful to the Chair for distilling the difference
6 between the absence of turning your mind to the question
7 and a positive conclusion, as you seem to indicate in
8 your statement, as to the question of whether there had
9 been adequate expert instruction?

10 **A.** Yeah.

11 **Q.** Do you see the difference between those two things?

12 **A.** I do. It's a conflict. I see it.

13 **Q.** Thank you. If it is the fact that you are saying you
14 came to a positive conclusion, do I understand your
15 evidence now to be that that wasn't a safe conclusion,
16 in light of the propositions I've put to you from
17 Mr Atkinson's evidence?

18 **A.** Oh, I think that's right, yes.

19 **Q.** Thank you very much.

20 Can we turn, then, to this question of why
21 Mr Jenkins may have, as you say, failed to comply with
22 his expert duties. I'm not going to take you to the
23 advice; I'm going to summarise it on the basis that you
24 will be familiar with it. In paragraph 37, in your
25 conclusion, you set out that there's been a breach of
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1 I didn't pursue this -- there's a degree of speculation
2 going here because these thought processes were going on
3 10/11 years ago but, thinking about the way in which
4 I think about things, I suspect that I abandoned the
5 need for a face-to-face conference with Gareth Jenkins
6 because, by the time I wrote the 15 July advice, I had
7 decided that I wanted to look forwards rather than back.
8 That's a bit of speculation but that's the way my
9 thought processes probably worked.

10 **Q.** So rather than an intervening event, you think it was
11 just the development and evolution of your thought
12 process; is that right?

13 **A.** Yes, yes.

14 **Q.** Why didn't you consider it vitally important to
15 understand why Mr Jenkins had, in your view, failed in
16 his expert duty of disclosure?

17 **A.** Because I was concerned with the damage that he'd done
18 to the prosecutions and convicted status of the
19 postmasters and correcting that. Why he had done or not
20 done that which he ought to or ought not to have done
21 was a matter for a different inquiry.

22 **Q.** But wasn't it an obvious and important course for you to
23 check the manner in which he'd been instructed?

24 **A.** At the time, I didn't think so.

25 **Q.** Not least because there was a clear nexus, wasn't there,
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1 the expert duties of disclosure and you quote from that
2 duty in that paragraph.

3 Then, at paragraph 38, you effectively say that the
4 reasons for this failure are beyond the scope of your
5 review.

6 **A.** Which -- as I think I've explained just a moment ago.

7 **Q.** Thank you. If we can just very briefly, please, turn to
8 POL00172804, and it's paragraph 22 of that advice at the
9 bottom of page 8. It's the advice that you give on
10 1 July in the case of Samra -- thank you.

11 It seems, from the very last sentence of this
12 advice, that, as of 1 July, you say:

13 "In any event I require a face-to-face conference
14 with Gareth Jenkins upon publication of the Second Sight
15 Report."

16 **A.** Yeah, never happened.

17 **Q.** I was going to say: why did that face-to-face conference
18 never happen?

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

20 **Q.** Why did you go from requiring, in quite strong terms,
21 a conference with Mr Jenkins to, two weeks later,
22 advising that the reasons why he might have failed, in
23 your view, to comply with the duty of disclosure, was
24 beyond the scope of any of your review?

25 **A.** Because I was looking forward. It's probably why
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1 between the very breach that you were alleging against
2 him and criticising him for and his knowledge of the
3 expert duty of disclosure?

4 **A.** I think the latter part of that is right but, as I can
5 only repeat, at the time, I thought my priority was
6 different.

7 **Q.** Also, not least because, if he hadn't been given
8 instructions or not given proper instructions about his
9 duties, that might raise issues that had their own
10 impact -- or effect, to use your words -- on past
11 prosecutions, mightn't it?

12 **A.** I'm not convinced it would have changed the landscape,
13 that is we were faced with a series of prosecutions
14 which ought not to have gone ahead. I don't think it
15 would have changed that. I think it would have changed,
16 perhaps, the reasoning behind why those prosecutions
17 ought not to have gone ahead.

18 **Q.** Can I make some suggestions as to why I say it should
19 have changed the landscape?

20 **A.** Please.

21 **Q.** Firstly, it might have revealed concerns about the
22 conduct or misconduct of individual cases which were
23 under review by Cartwright King at the time?

24 **A.** I'm not convinced I agree with that. We were concerned
25 with whether or not proper disclosure had been made, not
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1 whether or not Gareth Jenkins had given -- because in
 2 lots of the cases he hadn't given evidence, even by
 3 written statement.
 4 **Q.** But if there was a case where a lawyer had failed to
 5 properly instruct their expert and you were reviewing
 6 that, that failure on the part of that lawyer was
 7 an important issue in that case, wasn't it?
 8 **A.** No, I wasn't looking at whether or not a lawyer had been
 9 improperly instructed or -- sorry, forgive me -- whether
 10 an expert had been properly instructed or had failed to
 11 be instructed at all. I was looking at the proposition
 12 that Gareth Jenkins had, for whatever reason, failed to
 13 tell us, the lawyers, and Post Office and the courts
 14 about the existence of bugs when he ought to.
 15 **Q.** But another reason why it might have changed the
 16 landscape is, if there had been that failure, it might
 17 have given rise to wider-ranging concerns about the
 18 basic competency of the prosecutors within Post Office
 19 and Cartwright King and their conduct of these past
 20 prosecutions.
 21 **A.** I think that's fair.
 22 **Q.** It would also, perhaps, have nuanced the extent of the
 23 taint that you attribute to Mr Jenkins, there being,
 24 I think you would agree, a significant qualitative
 25 difference between a witness who has deliberately

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1 disclose, wouldn't they?
 2 **A.** I think, looking back, that's a proper contention. At
 3 the time, we were looking in a different area.
 4 **Q.** You gave your advice on 15 July on your own initiative,
 5 you've told us.
 6 **A.** Pretty much, yeah.
 7 **Q.** Post Office hadn't asked you for it?
 8 **A.** Not really, no.
 9 **Q.** You had no terms of reference? You were in complete
 10 control of its parameters --
 11 **A.** Yeah.
 12 **Q.** -- is that right?
 13 **A.** Yeah.
 14 **Q.** Is the reason why you turned your mind from this issue
 15 in your advice and shut it down because you and Mr Smith
 16 knew full well that a very big part of the explanation
 17 as to why Mr Jenkins had not disclosed these matters is
 18 because of failings attributable to Post Office and
 19 Cartwright King lawyers?
 20 **A.** No, I didn't know that at the time. I have already
 21 explained that I had no knowledge of the instructions
 22 that had or had not been given to Gareth Jenkins.
 23 **Q.** Do you agree, if that had become known, it would have
 24 been professionally damaging to Cartwright King?
 25 **A.** Oh, yes.

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1 withheld information and a witness who has unwittingly
 2 and inadvertently failed to disclose something that he
 3 didn't know he was supposed to disclose?
 4 **A.** I never accused Mr Jenkins of misconduct. I said that
 5 he had not complied with his duty. I was very careful.
 6 And I've heard questions in earlier proceedings that go
 7 to the question of, "Well, why wasn't Mr Jenkins
 8 reported to the police?" There's a very specific answer
 9 to that and it links in with your question.
 10 Mr Jenkins wasn't reported to the police because we
 11 didn't know why he had not done that which he ought to
 12 have done and, frankly, your questions, and your
 13 advocacy on behalf of Mr Jenkins demonstrates precisely
 14 why it would have been wrong to report him to the police
 15 because, clearly, at this stage, his culpability is
 16 much, much lower than it might otherwise have been.
 17 **Q.** All of those factors that I've suggested might have
 18 changed the landscape might have impacted, mightn't
 19 they, on the scope of the disclosure obligation that
 20 would arise towards convicted defendants?
 21 **A.** I think I've already accepted that we ought to have
 22 disclosed the issues about Gareth Jenkins in addition to
 23 the Second Sight and Helen Rose Reports, yes.
 24 **Q.** But if you'd asked the "why" question, further issues
 25 might have arisen that you would also have had to

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1 **Q.** And it would have resulted in an obvious conflict for
 2 Cartwright King continuing their review process?
 3 **A.** Oh, I think that must be right.
 4 **Q.** Thank you. Do you think that might be the reason why
 5 Brian Altman QC was not informed of the acknowledged
 6 failure on the part of instructing Mr Jenkins?
 7 **A.** Well, that presupposes that I knew about it and
 8 I didn't. Martin Smith clearly knew about it. Perhaps
 9 he ought to have told me and Brian Altman but he didn't.
 10 **Q.** Thank you. In the final three minutes that I have, I'm
 11 just going to very quickly deal with the Samra call, if
 12 I may.
 13 **SIR WYN WILLIAMS:** (*Unclear*) minutes but three minutes it
 14 is.
 15 **MS OLIVER:** Thank you.
 16 On 28 June you told us you and Mr Smith made a call
 17 to Mr Jenkins concerning the case of Samra. It was your
 18 idea. You asked Mr Smith to set it up. It was recorded
 19 on his phone.
 20 **A.** Yeah.
 21 **Q.** Who prepared the transcript?
 22 **A.** Martin Smith.
 23 **Q.** Thank you. Do you know when he did that?
 24 **A.** I am pretty sure I would have said "I want it done
 25 straight away".

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1 Q. All right. Mr Jenkins was given no warning of that
 2 call?
 3 A. No.
 4 Q. He had no prior knowledge of the case --
 5 A. Forgive me, I don't know whether he was given any
 6 warning of the call. We just telephoned him without
 7 knowing whether or not he'd been told by, for instance,
 8 Jarnail Singh to expect the call.
 9 Q. Fine. He had no prior knowledge of the case of Samra?
 10 A. I expect not, I don't know.
 11 Q. Mr Smith said that, at the time, you and he were, at the
 12 very least, suspicious of Mr Jenkins?
 13 A. I don't agree with that because the purpose of the call
 14 was to find out who told Second Sight about the two bugs
 15 that Second Sight spoke about.
 16 Q. To that extent, do you agree it was to test Mr Jenkins'
 17 credibility?
 18 A. No. It was to ask him whether or not he knew how Second
 19 Sight learned of those bugs.
 20 Q. Mr Jenkins was not told the call was being recorded?
 21 A. No.
 22 Q. He was given no chance to check the note for accuracy or
 23 understanding?
 24 A. I don't believe so.
 25 Q. You say to Mr Jenkins at the beginning of that call,
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1 A. Oh, I --
 2 Q. -- rather than we?
 3 A. He said "we" and I inferred the "we" to be him.
 4 Q. All right. Can you tell us why we don't see any mention
 5 in the transcript where Mr Jenkins says one of the bugs
 6 was extant --
 7 A. No, I --
 8 Q. -- or where Mr Jenkins told you that the earlier bug was
 9 historic and a patch had been applied, which remedied
 10 the problem?
 11 A. No. As I say, Mr Smith produced the transcript.
 12 I don't know why --
 13 Q. So are you saying the transcript was inaccurate or your
 14 advice was an inaccurate summary?
 15 A. Oh, no, my advice was an accurate summary. I don't
 16 resile from my advice one jot all.
 17 MS OLIVER: Thank you, those are my questions.
 18 SIR WYN WILLIAMS: Time out?
 19 MS OLIVER: Thank you, sir.
 20 SIR WYN WILLIAMS: That's it, Mr Blake.
 21 MR BLAKE: It is, yes, sir. Thank you.
 22 SIR WYN WILLIAMS: Well, Mr Clarke, I'm very grateful to you
 23 for your participation in this Inquiry. You have
 24 fielded a good many questions, some of which have been
 25 hostile, which you have dealt with with resolution, if
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1 "Mr Singh suggested we get in touch".
 2 A. Yeah.
 3 Q. You described that as a rhetorical device this morning.
 4 Do you mean by that that it was something that wasn't
 5 true? Was it an attempt to put Mr Jenkins at his ease
 6 in that call?
 7 A. No, it was to -- it was simply a rhetorical device so
 8 that he could connect with why we were calling
 9 because -- forgive me -- if he had been warned, as
 10 I would have expected, it would have been by Mr Singh.
 11 Q. In your advice -- I'm not going to take you to it, it's
 12 paragraph 30, your advice of 15 July -- you summarise
 13 that call and, in that summary, you say that:
 14 "Dr Jenkins told us it was he who had informed the
 15 Second Sight committee of the existence of two bugs
 16 which had affected Horizon. He told us that the extant
 17 bug affects Horizon to a limited degree and at specific
 18 Post Office locations only. Bugs had been identified in
 19 Horizon which call into question some of the aspects of
 20 the way in which it operates. He said that the earlier
 21 bug was historic and a patch had been applied to Horizon
 22 which remedied the problem."
 23 Can you help us with why in the transcript we don't
 24 see any mention that Mr Jenkins said he personally had
 25 told Second Sight about the two bugs --
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1 I can put it in that way.
 2 THE WITNESS: Thank you, sir.
 3 SIR WYN WILLIAMS: So thank you for your participation.
 4 THE WITNESS: Thank you.
 5 MR BLAKE: 9.45 tomorrow.
 6 SIR WYN WILLIAMS: 9.45, provided my train is on time,
 7 Mr Blake.
 8 MR BLAKE: Thank you, sir.
 9 (4.56 pm)
 10 (The hearing adjourned until 9.45 am the following day)

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