



## POST OFFICE GROUP LITIGATION

### GARETH JENKINS

#### 1. EXPERT EVIDENCE USED IN PROSECUTIONS

- 1.1 The criminal offences prosecuted by Post Office related mainly to allegations of false accounting; theft or fraud said to have been committed by SMPR or their staff.
- 1.2 To prove the offences, where the defendant argued that Horizon was at fault, the prosecutor would often require expert evidence to demonstrate the integrity of the system and the evidential audit trail derived from Horizon.
- 1.3 Expert evidence would generally detail the expert's qualifications and standing; the purpose and function of the Horizon system; and the mechanisms in place to detect and identify any problems with Horizon (if there were in fact any problems). The expert evidence would also address any specific complaints raised about Horizon by the defendant.
- 1.4 The Criminal Procedure Rules require an expert witness to:
  - 1.4.1 give an unbiased opinion and if that opinion changes, they must inform the parties and the court; and
  - 1.4.2 act in the cause of justice.
- 1.5 An expert who knows something which casts doubt upon their opinion is under a positive duty to tell their instructing solicitor, who in turn has a duty to disclose that material to the defence. The duty extends to anything which might arguably assist the defence.
- 1.6 An expert must also not omit material facts which detract from their opinion. If their opinion changes, this change of view must be notified to the other side and the court without delay.
- 1.7 The defence is entitled to see the information upon which an expert bases their opinion, together with any material which on one view might undermine the opinion, as such material may assist the defence expert in arriving at an alternative opinion.

#### 2. DR. GARETH JENKINS

- 2.1 Dr. Gareth Jenkins of Fujitsu was the single expert witness for Post Office (and Royal Mail Group) for many years who provided opinion evidence in prosecutions where shortfalls and other irregularities were, in broad terms, alleged to be caused by deficiencies in the Horizon system.
- 2.2 Dr. Jenkins previously worked for Fujitsu's predecessor company ICL from 1973. He worked on the Horizon project from 1996 and was considered a leading expert in the operation and integrity of Horizon. He retired a number of years ago.
- 2.3 Dr. Jenkins provided witness statements; expert evidence; joint reports and conclusions with the defence's experts and attended court on at least one occasion to give evidence (prosecution of Seema Misra).
- 2.4 A common feature of Dr. Jenkins' evidence was that Horizon was accurately recording and processing data. In his evidence, Dr. Jenkins repeatedly stated that failures will only occur "... as a result of a bug in the code or by somebody tampering with the data in BRDB and this check is included specifically to check for any such bugs/tampering" or that a problem can "... only happen as a result of a bug in the code and this check is included specifically to check for any

*such bugs*". He does not say that any bugs have been identified, either by the checks referred to or otherwise. The inevitable conclusion is that "... *if that is right, there must be no bugs.*"

#### Dr. Jenkins' knowledge

- 2.5 In June 2013, Helen Rose (a Post Office Security Fraud Analyst), considered an issue at the Lepton SPSO where a transaction was interrupted part way through and the system generated a reversal. This matter was recorded in a document that has become known as the "Lepton Report" or the "Helen Rose Report". It documented that Ms Rose exchanged emails with Dr. Jenkins:
- 2.5.1 On 30/1/2013 Dr. Jenkins tells Ms Rose that: "It isn't clear what failed..."; "...the counter may have rebooted and so perhaps may have crashed in which case the clerk may not have been told exactly what to do..... the system is behaving as it should"; and "It is quite easy for the clerk to have made a mistake....",
- 2.5.2 In her email of 13/2/2103 Ms Rose says: "I know you are aware of all the Horizon integrity issues...."
- 2.6 Ms Rose's ultimate conclusion was that this was not an issue which suggested a failing of Horizon itself; rather it was an issue of data presentation. However, the 30th January email suggests that Dr. Jenkins did not know what went wrong; and the 13th February suggests that Dr. Jenkins knew of other Horizon issues.
- 2.7 The Second Sight Interim Report dated 8 July 2013 also indicated that Dr. Jenkins had prior knowledge of Horizon issues. It appears that between 2010 to 2012, there were some "defects" which impacted a number of branches. Post Office conducted an investigation in 2012 which failed to reveal any Horizon system defect. It was not until early 2013 that Fujitsu looked into the matter and then corrected the defect. Dr. Jenkins disclosed on 28 June 2013 to Cartwright King that he informed Second Sight of the existence of two bugs which had affected Horizon as set out in the Second Sight Interim Report.
- 2.8 In July 2013, Post Office obtained advice from Cartwright King on the reliability of Dr. Jenkins' expert evidence. The conclusion was that Dr. Jenkins attested to the integrity and robust nature of Horizon – i.e. there was nothing wrong with the system. Unfortunately that was not the case at the time he was giving his evidence as he knew there were issues with Horizon as early as 2010.
- 3. WHY IS THIS A PROBLEM?**
- 3.1 Dr. Jenkins did not comply with his duties to the court, the prosecution or the defence. He failed to disclose material known to him but which undermined his expert opinion. That failure was a serious, and possibly criminal, breach of his duty as an expert witness.
- 3.2 The effects of that failure set out by Cartwright King in 2013 were:
- 3.2.1 Dr. Jenkins failed to disclose material known to him but which undermined his expert opinion. This failure was in plain breach of his duty as an expert witness.
- 3.2.2 His credibility as an expert witness was fatally undermined; **he should not be asked to provide expert evidence in any current or future prosecution.**
- 3.2.3 Material which should have been disclosed to defendants was not disclosed which placed Post Office in breach of their duty as a prosecutor.
- 3.3 The Court of Appeal may consider whether or not any conviction is unsafe. In so doing they may well inquire into the reasons for Dr. Jenkins' failure to refer to the existence of bugs in his expert witness statements and evidence.

#### **4. SIFT REVIEWS**

- 4.1 As a result of the conclusions above, Post Office instructed Cartwright King to conduct reviews of all Post Office prosecutions so as to identify those who ought to have had the material disclosed to them. These were called the "Sift Reviews".
- 4.2 In summary Cartwright King identified the sole issue as one of non-disclosure. They identified every criminal case prosecuted by Post Office (and Royal Mail Group prior to their separation) between August 2010 and September 2013 so as to determine, in each case, whether Post Office's duties of disclosure were met. The threshold for answering the question was set at a very low level.
- 4.3 Following the identification of such a case, Cartwright King asked their in-house counsel to review the case in full so as to determine the proper approach. All cases identified were subjected to a full written case review conducted by counsel.
- 4.4 The output of the review is that the Lepton report was disclosed to a number of defendants who had been prosecuted. In giving the disclosure, Post Office was advised that it did not need to, and thus did not, explain why the disclosure was being given or its relevance to the prosecution.
- 4.5 This has led to the Lepton Report being cited in Second Sight's Report and referred to repeatedly in the Horizon Issues trial. However, in both instances the focus has been on the Lepton Report's comment on the accuracy of another system called Credence, rather than that it shows Mr Jenkins' state of knowledge. As far as we are aware, nobody outside of Post Office has alighted on the significance of this document in relation to Mr Jenkins' historic evidence.

#### **5. CALLING GARETH JENKINS AS A WITNESS IN THE HIT**

- 5.1 Consideration was given to calling Gareth Jenkins as a witness for Post Office in the HIT.
- 5.2 We originally assessed that we required evidence from Fujitsu in relation to three broad areas:-
  - 5.2.1 the general operation of Horizon;
  - 5.2.2 the allegation that Post Office remotely edits branch data; and
  - 5.2.3 the specific bugs identified by the Claimants.
- 5.3 Fujitsu suggested that there were parts of the second and third areas that Dr. Jenkins would be best placed to give evidence on (such as the historic bugs that he dealt with). Given that Dr. Jenkins had previously appeared as an expert witness in prosecutions and because of the above issues, we set up a consultation with Leading Counsel to discuss the risks of using Dr. Jenkins as a witness in the HIT.
- 5.4 The con took place on 10 September and was attended by Tony Robinson QC, Simon Henderson, Andy Parsons, Rodric Williams and Martin Smith and Simon Clarke from Cartwright King. During the con, Cartwright King advised strongly against Post Office calling Dr. Jenkins as a witness in the HIT on the basis of the above problems. The decision was taken that Dr. Jenkins' could not be called and we need to look for a viable alternative witness.
- 5.5 It was explained to Fujitsu that Post Office did not wish to call Dr. Jenkins because we did not wish to mix civil and criminal evidence. We do not believe that Fujitsu are aware of the issues in this paper. They proposed using Mr Godeseth (Dr. Jenkins' replacement when he retired from Fujitsu) to cover the areas that Dr. Jenkins would have covered in his witness evidence. It was recognised that doing this was a risk because Mr Godeseth did not have the breadth of experience of Dr Jenkins, particularly in relation to Legacy Horizon.
- 5.6 Post Office's witness evidence was served in September 2018 and November 2018. On 30 January 2019 Freeths wrote to us asking why Dr. Jenkins was not being called as a witness. We responded on 12 February 2019, pointing out that Dr. Jenkins had acted as expert witness in

relation to a number of prosecutions that are being reviewed by the CCRC and it was therefore not appropriate to call him.

- 5.7 On 7 February 2019, TRQC briefed Jane MacLeod ahead of the HIT. He explained the risk of hearsay evidence from FJ and the reasons why Dr. Jenkins had not been called. On 21 February 2019, TRQC briefed the board sub-committee on the key risks in the Horizon Issues Trial. Three key risks were highlighted, the second of which was FJ witnesses not coming up to proof because of a number of reasons, including that they were not drawing evidence from first-hand experience.
- 5.8 During the HIT, Mr Godeseth was subject to extensive cross-examination and performed very poorly. The Claimants also made submissions about Dr. Jenkins not being called as a witness and the adverse inferences that should be drawn from this, but not as strongly as they could have done. It is anticipated that Mr Godeseth's evidence will be heavily criticised by the Judge and likely rejected in full. It also expected that he will comment on Dr. Jenkins not giving evidence despite him being a key person at Fujitsu.

**Womble Bond Dickinson**

**14 November 2019**