

A T T E N D A N C E N O T E

CLIENT: Post Office

MATTER: The Post Office Group Litigation

MATTER NO: 31026612

DATE: Friday 4 October 2019

PERSON ENGAGED: Antony de Garr Robinson QC ("**Tony**"), Simon Henderson (Counsel)
Andrew Parsons ("**Andy**"), Katie Simmonds (WBD)
Alan Watts, Alex Lerner, Kate Emmanuel, Fiona Lin (HSF)

TIME ENGAGED: 14:30-15:55 (1 hour 25 minutes)

Alex's question list

1. *To what extent can we use the expert evidence on bugs from the Horizon trial to eliminate shortfalls in individual cases? What I would like to understand is whether there is any scope for Post Office to apply the expert evidence to particular claimant cases and essentially conclude that [x] bug could not have caused [y] shortfall. If so, how might I go about this? Just so you know, the reason I would like to know the answer to this question is (i) it may inform our work on assessing quantum in the context of producing merits/settlement advice (ii) it may assist us in identifying suitable/unsuitable test claimants for the next trial and (iii) this analysis could be important if Fraser J concludes that Post Office will need to prove shortfalls (in circumstances where it has very little by way of records for the period prior to 2007).*
2. *How can we quickly identify which branches / claimants have reported KELs?*
3. *Which bugs left a 'footprint' in the software? Questions (2) and (3) both go to the point about identifying suitable/unsuitable test claimants.*
4. *At trial, did the Claimants advance a case that Post Office suppressed evidence regarding the existence of bugs? If so, please can you point me to the relevant parts of the closings / the trial transcripts? I want to have read up on this issue if it is something that you think might get raised in the judgment.*
5. *Any other steps you think we should be taking to prepare for the judgment. Just so you know, I am in the process of reading your closings – same number of pages as certain editions of Crime and Punishment – and Fiona is preparing a table to help us quickly pull out and identify the key points from the judgment when it is handed down. However, I suspect the judgment will be long, so any pointers on what I can do to prepare / what to look out for when it is handed down would be gratefully received. (And don't worry, I don't plan to send you the table - I remember how much you dislike tables!).*

Call note

Preliminary points	
Tony	<p>(1) The obvious issue is that none of this will be of great utility until judgment. There are so many ways that judge can write the case. There is one way that we could do quite well, and infinite ways that we can lose. There are no end of ways in which he could put us down.</p> <p>How he approaches it could have a massive effect on how we approach the questions you raise.</p> <p>(2) Another point that is important to recognise is that it would be wrong to assume that the only bugs that are relevant, that we need to know about, are the known bugs.</p> <p>An important part of the Claimants' case is that there are lots of bugs lurking in the system, anguishing poor sub post masters ("SPMs"). In other words, there are lots of bugs beyond the known bugs.</p> <p>Every claim and witness statement has been drafted in such wide and vague terms that it is difficult to identify which bugs they are referring to. On that basis, I don't think the Claimants will restrict themselves to known bugs.</p>

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	<p>Whatever we talk about for the next hour or so, we will talk about known bugs. Bugs detected by Fujitsu processes, systems identified and they have been fixed – and hopefully consequences compensated for.</p> <p>A large part of the other side's case is that there are lots of other bugs.</p> <p>Please be aware that we can do lots of work, but we cannot be home and dry with known bugs.</p> <p>Their approach and judge's approach – is Horizon generally reliable or not? It is not going to be: "where there isn't a known bug, Horizon is reliable, but where there is, not reliable". Those words won't come out of his mouth. Judge won't give clear/bright lines, and he won't say [x] bug did this/did not do this because he is not intellectually honest.</p> <p>I would be surprised if the judge thinks that. If he were intellectually honest (which I don't think he is), then he might say "Horizon is reliable 99.5% of the time, but the 0.5%... That number is consistent with the number of Claimants in front of me."</p> <p>(3) A third point consistent with what I've made, we've possibly invited the judge not to make findings that dispose of individual Claimants. He initially wanted to look at bugs, and how they affected Claimants. But that did not happen.</p> <p>Our closings had an appendix of bugs. We ended up dealing with the 28 issues, and we had more on those, and we had 50-60 bugs and submissions – fuller detail. So in the end we actually went further in trying to get the judge to make findings on the scope and operation of the bugs, but I would be surprised if he did in fact make findings on the 50-60 bugs.</p>
Question 1	
Tony	It would surprise me if we got something in the judgment which said "this bug did this, this bug did that...". Maybe with 3-4 of the big bugs, the known bugs, but not the other bugs.
Andy	Will he not go through the 29 bugs and if they have financial impact? I think he might.
Tony	He might – I think he will do it in general terms. He will not draw circles of problem areas for Post Office ("PO"). He will just say that there are clouds of problems in the sky, so many of them, so diverse – and you can't see what they are. He'll say my strong impression is that Horizon is not reliable.
Andy	But he likes working through the evidence, he might churn through it.
Tony	<p>He may, but... What I would say is that the trial was bizarre. The bugs were identified by the experts – half were identified by Dr Worden. Their expert's treatment of it was superficial in the extreme. Our expert's treatment was less superficial, but wayward, and frankly casual.</p> <p>The Claimants said hardly anything about them. Except "this is awful".</p> <p>The only people who said anything coherent about it was us. We did it in our appendix – and the Claimants can't and won't make any responsive submissions.</p> <p>It would be consistent with his approach to life. The only material in front of him is our submissions, but he would take great glee in going through and telling us that it's not reliable, it's wrong: in other words, he may seek to assassinate our evidence.</p>
Andy	I think he will like to cover all bases so the judgment is not appealed.
Simon	If he does help us, in going through detail and slicing and dicing – in highlighting claims more or less vulnerable – but that will be entirely accidental. He will be careful to not give anything useful.
Alex	Can I ask a stupid question? What use will the trial have been?
Tony	Both the Claimants and the Defendant told judge that there was no right in doing an <i>a priori</i> trial on the reliability of Horizon over 20 years. There are no specific pleadings. It was bound to be impressionistic.

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	<p>You need test cases – 3 from early 2000s, 3 from late 2000s, 3 from early teens – that way we can see how Horizon operates.</p> <p>The judge said no. He just said that he wanted to be quicker. He just wanted to do it within a year. That's how we ended up with a trial that has no utility whatsoever.</p> <p>In that case, if it is trial on generic reliability, then we have got to win. Because in any view, Horizon is reliable in the vast majority of cases – and that has been our case the entire trial.</p> <p>All their case is – is that Horizon is reliable the vast majority of time, but there are cases where it is not reliable, and we represent those small portion of cases. Horizon isn't so reliable that it is unlikely that we don't have viable claims. You can't rely on Horizon to show that there is a genuine shortfall.</p> <p>The key finding will be whether the judge says Horizon was reliable enough to eliminate the likelihood that the Claimants would be the rare cases in which the system has gone wrong. The judge is unlikely to say particular bugs cause particular shortfalls because the Claimants never gave him enough information to do that.</p>
Andy	<p>The judge misunderstood the degree of dispute between the parties. He got the impression – which the Claimants wanted to convey – that they thought Horizon was a bad system. They could have only got out of the trial by disabusing them of the notion that they think Horizon is a bad system.</p> <p>Now that he can't do that, he'll have to do something else.</p>
Simon	<p>This is why it is difficult to get the analysis you want, Alex – judge will say that it is "likely" or "unlikely" that bugs will affect. But can't show what bug would have what effect. He won't paint himself into that corner.</p> <p>He'll just say he's satisfied that there's all sort of problems – he will go into the breach trials thinking that it is likely that the bugs caused issues.</p> <p>In your question 1, the analysis will be difficult to carry out.</p>
Tony	<p>Now the good news. There are things that we can do. I'll give you one thing on question 1 – to what extent can we use expert evidence?</p> <p>We can't use expert evidence. Coyne's evidence was superficial and wayward. Our expert's evidence was better – but still a bit wayward. Both were wayward.</p> <p>However, we do have a resource which is much greater and better than in most cases. We have a series of KELs and PEAKs – known error logs, which is a big database of issues – once Fujitsu identifies issue with Horizon, they create a log in what is known as KEL, describing the issue. As time goes on they'll amend KEL, they'll show the resolution.</p> <p>We'll have KELs – we should have a pretty good correlation between KELs and known bugs. There should be link between KELs and bugs causing known financial loss.</p> <p>Unfortunately we don't have complete list of KELs – we don't have some from early days of Horizon (this is a flipping nightmare – this only scratches the surface) – 9500 KELs, probably 1500 KELs missing from the early days that we don't have anymore. Those KELs capture the vast majority of bugs that have been identified. Small proportion of KELs existing – but if you go through KELs, you will find the vast majority of the known bugs causing losses to branches.</p> <p>As well as the KELs – such an important thing to understand – we have 220,000 odd PEAKs. These are not complete – my heart sinks when I talk about how (in)complete they are – there are a vast number of PEAKs that have been phoned in or brought to the attention of Fujitsu. Every time problems were notified to Fujitsu, there was a work stream created. For every bug, you expect to have a PEAK – when it was first brought to Fujitsu's attention.</p> <p>It is often phoned into PO – but sometimes system might notice (e.g. duplications, mismatch in payments, receipts – all sort of automatic checks) – automatic reports, SPMs phoning into the hotline and then getting passed on to Fujitsu. Every time that happens, the person opens a new</p>

	<p>PEAK – a new problem. Invariably that PEAK will name at least one branch affected – unless of sort not affecting branches. Sometimes branch refers to great number of branches – but often 1, 2 or 3.</p> <p>Often you have same problem raised in 5, 10 or 20 branches – but that is reported separately. There should be a lead PEAK – but often separate.</p> <p>There are a vast number of PEAKs – which chart in accurate and comprehensive way – which show all the issues raised with Fujitsu, who raised these with Fujitsu, when these were raised with Fujitsu – and in perhaps half of cases, they explain symptoms. And it will be possible to tell if this is capable of causing losses at branches.</p> <p>And the supplemental expert report which Robert Worden produced – which he wasn't allowed to rely on – that supplemental report took an approach to the documents which we ourselves can take.</p> <p>Rather than looking at system at whole and trying to figure out which caused losses, I'm going to look at PEAKs and KELs and figure out which relate to Claimants. We now have codes for each branch – Robert wrote programme allowing us to search all PEAKs and KELs – and analyse which PEAKs and KELs affected which branches.</p> <p>It was so sophisticated that it could exclude branches when they weren't run by Claimants. We can use the programme to (1) identify which problems arose in Claimant branches when they were running it (2) what problems/symptoms were identified by Claimants and were they the type of bugs that could cause shortfalls? And (3) what period is covered by them?</p>
Andy	Do you mean the branches which are Claimant-run? Isn't this what Worden did?
Tony	It's more – it's getting it to tell us all PEAKs and KELs that relate to claimant branches (it will take some time), then get someone intelligent (not Worden – as he is not reliable) – you want someone who understands the case and the documents (someone with experience – not trainee, not 1st year qualified, not someone cold to the case) – likely from WBD.
Andy	Katie is sat with me right now.
Tony	It is a boring job, it will take days and days. The questions to answer are: (1) for each claimant branch, have there been PEAKs or KELs that refer to them? (2) Is there sufficient detail to identify the bugs?
Andy	I think there is a fundamental flaw in the process. Your view is that you can (1) take a claimant (2) what years they were in a branch (3) identify all PEAKs and KELs raised in that period...
Tony	We have 601 Claimants...
Andy	No, 551 Claimants.
Tony	<p>Go to the 1st Claimant, do a search of KELs, see which KELs refer to which Claimants. Having done that, you look and see whether KELs cover a period which overlaps or is consistent with when the Claimant was at that branch. If there is a hit, then figure out what kind of bug, what kind of loss (it is likely to be pennies).</p> <p>The third point – then you identify the period in which it was extant. All the KELs which would have been identified would have been fixed.</p> <p>Do that with the KELs. Do the same thing with the PEAKs. Then you have fairly comprehensive analysis of whether any Claimant branch experienced any kind of potentially relevant problem during which the Claimant would be running it.</p> <p>That analysis would be fantastically useful for choice of test Claimants – so you know how to avoid – and also useful for settlement. E.g. why is that person reporting £150k loss when they had no relevant problems that they reported to Fujitsu. We're not going to give you lots of money for almost no problem.</p> <p>We would need Worden's help. We need his software.</p>

Andy	Maybe we don't, we reverse-engineered using our software.
Tony	And you can do the analysis by periods?
Andy	Yes. The only issue is that KELs don't name branches, rarely, so anyway PEAKs will, but this gives a small pool – not that helpful. That's what Worden did on the PEAKs. From memory, we only found 3-4 hits?
Katie	Yes, we found a few.
Tony	<p>This would be a valuable exercise for us as it (a) would help us choose test cases and (b) be helpful for mediation meeting.</p> <p>Yeah, you could keep arguing that there were squirrel bugs that had an effect. But we know there are thousands of branches which did not experience any issues.</p> <p>We will have a story regarding the unknown bugs – that it is unlikely that these would have come up. And we will also have a story to tell regarding the known bugs – they are not worth anything and we can prove it based on our analysis.</p>
Andy	I think that's the thing – we need to expand our search – it will generate noise, but we need to filter the noise.
Tony	<p>Exactly, and you need people who know the case to do this.</p> <p>That was the first piece of discrete work. But now the second piece – this is more difficult. The Claimants would say that the helpline was actually called the "hell line" (even our own witnesses).</p> <p>The problem is that there were people with employment incentives not to pass problems on to first tier. And then people were left to sink on their own. The Claimants would say that it's understandable lots of people did not raise an issue to Fujitsu – that is our entire case – they weren't reported to Fujitsu.</p> <p>The only way that we can address that – and I don't have enough knowledge of system (as not directly part of Horizon) – and the only way to tackle that, because we have records of helpline calls, we can do a similar analysis with the helpline.</p> <p>That could be big – I don't know what records we have, I don't know what was recorded, I don't know about the detail – the spreadsheet doesn't make much sense.</p> <p>This is more of a question not a statement. Andy – could we do a similar exercise for such helpline records that we've got?</p>
Andy	Yes, we could. We'd have to flag limitations – e.g. lines changing over the years, etc. Are HSF going through call logs for individual case reviews?
Kate	<p>Yes we are – we are trying to figure out what we should extract.</p> <p>We can tell you what we are currently trying to extract, what PO says, what we think it is significant – but makes sense to dovetail with us as to what is useful.</p>
Andy	You should track it to the WBD Horizon team, who did the trial.
Tony	I think you should do an initial sift to see what is irrelevant, then a second sift by someone who knows what they're doing, to identify what is relevant.
Kate	Let's discuss offline to make sure we are capturing all relevant information.
Tony	That is my answer to question 1. Don't look at the expert evidence – look at PEAKs, KELs, call logs. Then what you'd have is a table setting out all hits we've got in enough detail to analyse whether each Claimant is making a plausible case as to shortfalls.
Andy	Yes, that makes sense to me. Let's get back and work out how to break it down.

Question 2	
Tony	<p>Question 2 – how can we quickly identify which PEAKs/KELs relate to Claimants?</p> <p>We have sort of answered that. Most KELs only identify the first branch who deals with it. So the first tier deals with it, they can pass on to second tier. Then a PEAK is raised. Then it could be passed on to the third tier.</p> <p>When it gets to the third tier (Fujitsu) – then that is when supposedly the new KEL is raised.</p> <p>Most KELs – at least some – will identify particular branches. What is very rare, however – perhaps unprecedented (save for the Canada Square bug) – maybe 1 KEL... To do with... when the system breaks down, when there are crashes and so on. That has got 300 branches referred to. But most KELs only relate to 1, 2, 3 branches – that is by no mean a proper reflection of all branches affected; it is more of a reflection of the way in which KELs are recorded.</p> <p>In order to identify all branches affected. First of all – and primarily – look at PEAKs, as Andrew has explained. There will be PEAKs that have involved branches calling in, where it affects branches. The problem is that when there is a known error that hasn't been resolved the Fujitsu system is such – once they have realised that (after a PEAK or KEL has been opened) – if the same problem gets phoned in to Fujitsu, the new person will not create a new PEAK or KEL.</p> <p>And when they realise that lots of PEAKs deal with same problem – then you have master PEAK – it sounds byzantine but it works. But all of that would suggest that PEAKs are more important.</p> <p>But – as Andy said – they had this policy, they didn't want a proliferation of PEAKs – often problems would be held back, and they wouldn't make it into PEAKs, where there is a master PEAK. I just don't know where those held back PEAKs are – no point asking Fujitsu as they are idiotic.</p>
Simon	<p>I think all the exercises are good, but you shouldn't be too confident in completeness once it is done. None of the records are perfect, once the analysis is done...</p>
Tony	<p>In answer to question 2, there is a simple analysis, then you should use KELs not PEAKs – you can do it by a word search. Look at branch name, post master – do a search along those lines, and then you will get a number of hits. Then you'll have to read PEAKs themselves.</p> <p>E.g. if you do name search of SPM, you get 10 PEAKs – may be irrelevant. You need to read PEAKs.</p> <p>The exercise won't be perfect as problems would be held back. Seems to be this must be recorded – but unclear to me where.</p> <p>There's an exercise (I'm repeating what I said) – they would say that they never had chance to speak with Fujitsu, as they were held back by uncooperative helpline people. In addition to searching PEAKs and KELs, you need to look at helpline.</p> <p>On the helpline, one additional point. We spoke about it as one coherent thing. But there were in fact 2 different lines and also a further <i>ad hoc</i> line. Calls to the <i>ad hoc</i> line were not captured by NBSC.</p>
Andy	<p>We can get the PO line and Horizon line. But otherwise, it's like dialling other phone lines – there are no records.</p>
Tony	<p>The answer to question 2 is like the answer I've given to your question 1. But tell me your other point.</p>
Andy	<p>Do we look at BIMs? Because it might show Fujitsu showing PO to make change.</p>
Tony	<p>Let me explain what BIMs are. One of the great frustrations of trial – because there weren't pleadings, we didn't know what the Claimants were saying.</p> <p>We were anxious to demonstrate what bugs were raised, the nature.</p>

	<p>Coyne suddenly went on that there was no evidence that the branches were given compensation. But disclosure was not done on that basis. By the time the point came up, hard to get evidence etc.</p> <p>This was unfair – another example that trial should not have occurred in this way – we discovered at a late stage that if Fujitsu identified bug that would cause problem, then they would write a report a BIMs, which stands for...</p>
Andy	Business Incident Management...
Tony	It was a little form that went from Fujitsu to PO and it told PO that there was this problem, that it affected this branch, it should be corrected and compensated like this.
Simon	<p>I don't know if we have all of them, but we have a lot of BIMs and we disclosed them at a late stage. Some affected some of the branches with bugs.</p> <p>We got them at a late stage, but Andy correct me if I'm wrong, I think our records are complete.</p> <p>But correct me if I'm wrong, there will be lots of branches affected by bugs – and useful to word search through BIMs and to see if there are any BIMs referring to relevant Claimant branches in the relevant branches.</p> <p>If there are any – but there might not be any – it could be incredibly useful.</p>
Andy	We'll have to work through what we get. There are lots of BIMs generated as a result of business as usual (BAU) practices. Some will just be BAU BIMs, some are bugs BIMs – but let's get that down first.
Tony	<p>Once we've got that corpus of BIMs, once we have it – the use could be quite multi-various. I'd be surprised if we used it to show that Claimant A was affected and then compensated – if we could, that could be great.</p> <p>But, more to the point, e.g. claimant 56 might say that I had a problem in April – and nobody returns my calls, and I had to pay for loss – if in fact that there was BIMs showing that there were problems with ATMs and then the Claimants were made good, that would be ideal.</p> <p>The Claimants are definitely capable of only telling their side of the story. And then we can show the impressions for which they hotly complain are completely unfounded.</p> <p>That brings me to the point I made before you chipped in – once we got this analysis of what Claimants might be affected by relevant problem in Horizon, when affected, and the nature of the effect. What we should do, is that we should then compare it with the schedules of information. In the schedules of information they don't give much information, but they will show dates of when they suffered it from.</p> <p>We have bitter experience that the Claimants plead one claim, give evidence on another slightly different claim, then fundamental evidence on a completely different claim. They shift goalposts. But nonetheless, may be helpful to reconcile information we get with what the Claimants say to show that their claims don't stack up.</p> <p>It may be the case that for a large portion of the claims made, then a large number of the claims don't generate records in PO or Fujitsu to have been made based on what we expect how problem should have been.</p>
Andy	We know the schedules of information are bad, but we can try.
Question 3	
Tony	<p>Moving onto the third question – what footprint did the bugs leave in the software? I don't know. I thought the trial would be about software – opining on software.</p> <p>But it wasn't really about it. It was about PEAKs/KELs. Therefore the experts weren't helpful, as the lawyers were just as able to do this.</p> <p>The answer was there was no consideration as to what footprint there was in the software.</p>

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	<p>There were footprints... not to do with bugs, but to do with remote access. You will remember that there are a number of different categories of claim made.</p> <p>There are two types of claim. One – the paradigm claim – (1) bugs causing shortfalls.</p> <p>Another claim – (2) the remote access caused shortfall in accounts. For reasons that I won't bore you with, it is there in 50-75 pages in opening submissions – but it is our strong view that remote access is the biggest red herring in the world.</p> <p>We don't think Fujitsu substantively fiddled with branch accounts, although they did do it sometimes.</p> <p>And in that context, there were footprints in the snow. If you break into a system you have footprints, and if you do a proper analysis then the system will tell you.</p> <p>But that can only be determined if you do a proper analysis.</p>
Andy	But we can cross-rely on a paper trail for remote access, but that relies on Fujitsu.
Tony	<p>For HSF's benefit – up to now the conversation is about bugs causing shortfalls. But there is also discussion about remote access and false TCs causing shortfalls.</p> <p>Looking at false transaction corrections, each case should be analysed on merits. Nothing we can do <i>a priori</i> now. Correct me if I'm wrong, most Claimants haven't reported anything in detail.</p> <p>But looking at remote access – we had pretty good evidence that when it was extremely rare that PMs weren't told about it. We have records of OCRs/OTPs and MSCs [logs/tickets relating to Horizon change proposals and changes made].</p> <p>Worden, in his supplemental report which he was not allowed to rely on – he did a similar analysis of OCRs... He did a similar analysis to that on PEAKs and KELs. As Andy suggested, we could do the same on these.</p> <p>It will show how and to what extent Fujitsu has record of what Fujitsu has done in relation to SPM data. This comes to a relatively small number of cases. It may be worth doing that.</p>
Andy	Go on Tony.
Tony	All I would say is that if you look at underlying OCRs and OTPs then it may show that it is not clear if there has been manipulation of branch data or not. Those things are not very important.
Andy	Yes, the relevant thing is that they look at control documents – remote access was a rare thing, it was inconsistently documented – the reality is that we're trying to prove a negative with imperfect information which is impossible, but we can remove evidential risk.
Tony	Yes, I agree.
Andy	<p>Just on the footprints of bugs – it might not exist on a software level, but may exist in accounts.</p> <p>E.g. on remming in bugs – if we are looking at particular set of accounts – for PMs claiming remming in, we can sort by date, duplication. E.g. we can say that there would not be duplicated entries. But to get there...</p> <p>So for a number of bugs falling within 28 bugs in issue. So we could knock out a number (particularly remming issues) on that basis.</p> <p>But you'd have to do it on a bug-by-bug basis, branch-by-branch – it would probably take 6 months for each of the 560 something Claimants.</p> <p>So if we want to get into the weeds of the bugs, then that is the kind of work we would do.</p> <p>For the purposes of the call, that kind of work is beyond us.</p>

Tony	<p>Before we move on, can I ask you one question Alex?</p> <p>You give 3 reasons for why you'd like to know the answer for this: (1) quantum for settlement negotiations (2) you say that it is good for choosing test Claimants and (3) this analysis could be relevant for if PO has to prove shortfalls for where it has little records.</p> <p>We can have a discussion for how useful that process would be – I'm not sure how useful that process would be for question (3).</p> <p>I don't think this is that useful. Fraser likely to make generic findings. The above exercise is likely helpful for settlement, but not proving shortfalls.</p>
Alex	Okay.
Question 4	
Tony	<p>Moving onto your question 4 Alex, the answer is yes. They did it in a number of different ways.</p> <p><u>Gareth Jenkins</u></p> <p>First of all, they made huge complaints that we didn't call Gareth Jenkins, who is a god but an unreliable god. They say that the fact we didn't call Gareth Jenkins is suppression.</p> <p>And you know what, that might be right. They would have killed him at trial.</p> <p>The judge will love it – he is likely to go large on it. By all accounts he would have been disastrous. Anyone who has dealt with Gareth would say that he would kill our case.</p> <p>Also, Gareth Jenkins was the expert used for the criminal cases. And unfortunately he seems to have given expert evidence to say that they were no bugs in Horizon whatsoever.</p> <p>And I can't even imagine... Fujitsu seems to have the extraordinary ability to say what is opposite to the case. For example, on remote access, Andy had a meeting where Fujitsu tried to say there was no remote access.</p> <p>Anyway, Gareth has given evidence, and criminal solicitors who used him said do not use Gareth as expert.</p> <p><u>Approach to disclosure</u></p> <p>They also made huge complaints as to disclosure. And that was about us trying to hold back damaging evidence. I think, from my own perspective, we held the line on that and a fair-minded judge would accept our position on that. But we don't have a fair-minded judge. So we can expect thumping.</p> <p><u>Suppression of evidence about bugs</u></p> <p>There were also lots of complaints about false evidence about bugs and remote access. At the very least, they may say that we were economical with the truth.</p> <p><u>Response to their LBA</u></p> <p>They complained about our response to LBA. In our LBA we say that we only told them about 3 bugs. But now we know that there are more than a dozen, 20 bugs that may cause false shortfalls.</p> <p>But the Claimants' position misrepresents the response to the LBA because, in fact, the response to the LBA purported to give them examples of bugs and did not close off the possibility of other bugs.</p> <p>Their case is that we know a lot more about bugs causing shortfalls, that we know more about remote access, and we're quite happy to give people the impression (e.g. in Parliamentary Select Committees, press releases) that Horizon is reliable.</p>

ATTENDANCE NOTE

	<p>We say Horizon is reliable – which by the way it is (says Tony) – but the Claimants will say that there was suppression.</p> <p>So the answer to your question, Alex, at the trial – what was at the forefront of the case. It wasn't what the case is about. They haven't pleaded a fraud claim. But they have tried to establish the building blocks of such a claim. And I wouldn't be surprised if I saw this in the future.</p>
Simon	<p>And you ask for relevant parts of trial transcripts. I wouldn't worry about it. I would read their closings carefully. They signal well – they signal them very hard.</p> <p>I won't give you page references. But if you read their closings carefully, then you can see where they establish blocks.</p>
Alex	<p>I will read with interest. Are they longer or shorter than ours?</p>
Tony	<p>They are shorter. Because they didn't address the 28 bugs at all. Their entire strategy is not to deal with individual bugs, just to make it scattergun – the point that they are trying to make is that when you look at everything in the round it is "really bad".</p> <p>We were the ones who said that there were 28 bugs identified, 60 odd bugs, then we identified and addressed each one. We were the only people who did that. We'll see if it did us any good – probably won't, but we'll see.</p> <p>The Claimants have taken a rather American approach to this case. Don't try to tell judge comprehensively what you want them to find. Just point out best prejudicial points and then let judge fill in rest.</p> <p>And so far they've had 100% success with it.</p> <p>Overall, although suppression of evidence was not at the forefront of their case, there are elements in the Claimants' case that could form the basis of a claim in fraud against Post Office and I wouldn't be surprised if such a claim was on the horizon. Read their closings very carefully and you'll get a sense of what I mean.</p>
Alex	<p>Thank you, I'll read that.</p>
<p>Question 5</p>	
Tony	<p>Then your 5th and last question – any other steps to prepare for judgment?</p> <p>There is nothing, but just do the above. The steps above should be done as soon as possible.</p> <p>In terms of preparing for judgment, it could take a number of different forms. The only thing I know is that he will do us down, but it's how he will do it that really matters.</p> <p>He is in the best possible position to put us down in a way that can't be appealed.</p> <ul style="list-style-type: none"> - Firstly, the issues here are purely factual. No legal points. Just generic issues. What's more, the issues are not precisely formulated. He's got a lot of flexibility in terms of dealing with the issues. That means it's difficult to predict... Forget predict – it's hard to criticise him for how to deal with particular issues – as there are no rules for how to deal with it. - What's more, because they're facts in a TCC-style trial, then the Court of Appeal ("CA") will be even slower to challenge TCC-style facts. Then he'll be feeling particularly confident that he can screw us in a way that is unimpeachable and un-appealable in CA. - That said... two points he will likely address are (1) evidence and (2) disclosure. On (1), the extraordinary point is that their most important witnesses became the best for us and vice versa – I have never done a case like that. - When they closed their case, we thought that we had won, our tails were up. - But then our factual witnesses came up – and they didn't come up to proof. The important ones didn't know what they said in evidence or contradicted their own evidence. Occasionally, the even said that we only said what the lawyers had told them to say. - They just threw themselves and the lawyers under the bus, and they did it blissfully

	<ul style="list-style-type: none"> - unaware. - Godeseth was unspeakably bad and completely collapsed in cross-examination. He simply did not have detailed knowledge of a number of the issues he had tried to address in evidence. - Parker actually stood up reasonably well to cross-examination. Everything else being equal, we were okay with him, but everything isn't equal – so we're not okay. - There's enough to be scathing for factual evidence, just within our own witnesses. - Also, with disclosure, there were issues (which are unfair) but points he could take. - The judge is spoilt for choice to do us down in ways that CA can't challenge and so I expect him to make painful findings on our evidence and disclosure. <p>All of this is bad news, but having said that – bearing in mind Common Issues trial:</p> <ul style="list-style-type: none"> - The judge is very ambitious, very vain – he has this tendency not just to find against a particular party. Once he's decided who's going to lose, he goes on to make findings against the experts, witnesses, lawyers – he's done this in nearly every judgment he's made. He doesn't restrict it just to parties – he goes to find bad faith in everyone who's worked for the losing side. This is dispiriting. - But perhaps he might overreach himself – that might offer crumbs for complaints. <p>The most important is that if he does do it down – he's got the crumbs – and if he does it smartly, there's almost nothing we can do to protect ourselves.</p> <p>And I still think if he was intellectually honest then he must give something in our favour – but he won't give that judgment – he clearly doesn't want to. Assuming he doesn't want to give that judgment, then we won't be able to appeal it – appealing is difficult at the best of times, but here we might not be able to say anything at all.</p> <p>Outside of appealing, what steps can we take to prepare? There are two other options (neither of which I can opine on): (1) steps on how to communicate to press and then (2) steps on how to improve business processes surrounding the operation of Horizon.</p> <p>I can't advise on either, but we have done some of this – Andy?</p>
Andy	Yes, there is an entire programme of work on both points.
Tony	Is there anything you want to ask me, anything you want?
Alex	I need to digest that, do more reading – I'm sure I'll have more questions – but that is extremely helpful for now.
Tony	<p>If you want a reading list, I would start with their closing submissions – it is a painful read, it is not organised in clear way – but then they're organised in slightly unfair way, different points merged together to make it look like they're bigger points.</p> <p>But if you're stripping that away, then actually, if you read their submissions – a pen and piece of paper beside you – then you can see their key themes. And that's a good way of getting in to their side of the case.</p> <p>The ironic thing is that I think that the judge won't take their course, so he could do anything – and as a result, it is difficult to predict what course he will take.</p>