

Wednesday 10 July 2024

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 2 (9.45 am)
 3 MS HODGE: Good morning, sir. Can you see and hear us?
 4 SIR WYN WILLIAMS: Yes, I can, thank you.
 5 MS HODGE: Thank you, sir. Just to remind you, there will
 6 be a fire alarm test today at 10.00 am.
 7 SIR WYN WILLIAMS: Yes, I'll just remain online as usual.
 8 MS HODGE: Thank you, sir. Please could the witness be
 9 sworn.
 10 THOMAS KNUT GLENN COOPER (affirmed)
 11 Questioned by MS HODGE
 12 MS HODGE: Please give your full name.
 13 A. It's Thomas Knut Glenn Cooper.
 14 Q. Thank you, Mr Cooper. As you know my name is Ms Hodge
 15 and I ask questions on behalf of the Inquiry. Thank you
 16 for coming to the Inquiry this morning to answer those
 17 questions and for the detailed witness statement which
 18 you provided in advance. You should have a copy of that
 19 statement in front of you dated 13 June of this year; is
 20 that right?
 21 A. Yeah.
 22 Q. That statement runs to 150 pages. I understand you'd
 23 like to make some minor corrections to the statement; is
 24 that right?
 25 A. That's correct.

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1 refer to the minutes of a further meeting of the Post
 2 Office Board on 10 December 2019. The document you cite
 3 as evidence of that meeting is UKGI00019332. Again, the
 4 same problem arises in that some relevant parts of that,
 5 those meeting minutes have been redacted; is that right?
 6 A. Yes.
 7 Q. You therefore would like to amend the reference to
 8 POL00290368, where we can find an unredacted version of
 9 the same minutes?
 10 A. Yes.
 11 Q. Thank you. Subject to those corrections, is the content
 12 of your statement true to the best of your knowledge and
 13 belief?
 14 A. It is.
 15 Q. Thank you. I'm going to ask you some brief questions
 16 about your professional background, before you joined UK
 17 Government Investments. You started your career in
 18 accountancy; is that right?
 19 A. Yes.
 20 Q. Moving then to the investment bank UBS where you worked
 21 for 21 years?
 22 A. Yes.
 23 Q. At UBS you were appointed as Head of European Mergers
 24 and Acquisitions; is that correct?
 25 A. Yes.

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1 Q. The first of those, I understand, relates to
 2 paragraph 69(i). It's a typographical error in the
 3 third line from the bottom of that paragraph, where it
 4 reads "making better informed contributions to the Board
 5 decisions", should read "discussions"?
 6 A. Correct.
 7 Q. Thank you. The second correction you'd like to make is
 8 at paragraph 75 of your statement. You refer to
 9 an email from Rodric Williams to Richard Watson, and
 10 Joshua Fox dated 12 February 2018. Should that in fact
 11 be dated 2019?
 12 A. Yes, it should.
 13 Q. Thank you. Then dealing with some amendments to
 14 document references, at paragraphs 238 and 239 of your
 15 statement you refer to the minutes of a meeting of the
 16 Post Office Board on 17 September 2019. The document
 17 you cite as evidence of that meeting is POL00104327.
 18 However, the relevant part of that document has been
 19 redacted; is that right?
 20 A. That's correct.
 21 Q. You would therefore like to amend the reference to
 22 POL00103667, which contains an unredacted version of the
 23 same meeting minutes; is that right?
 24 A. Yes.
 25 Q. Finally, at paragraphs 253 and 254 of your statement you

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1 Q. You subsequently worked as Global Co-Chairman of Mergers
 2 and Acquisitions at Deutsche Bank before joining UKGI in
 3 November 2017; is that right?
 4 A. Yes.
 5 Q. Upon joining UKGI, you became a member of the
 6 Shareholder Team for POL; is that right?
 7 A. Yes.
 8 Q. Did you immediately take up leadership of that team in
 9 November 2017?
 10 A. No, not until early 2018.
 11 Q. Who was leading the team at the time when you joined?
 12 A. It was Richard Callard.
 13 Q. In March 2018, you replaced Richard Callard as the
 14 Shareholder Non-Executive Director on the Post Office
 15 Board and remained in that role until May 2023; is that
 16 right?
 17 A. Yes.
 18 Q. Is it right that, whilst you were serving as the
 19 Shareholder NED on the Post Office Board, the Post
 20 Office was not the only Government asset for which you
 21 were responsible?
 22 A. That's correct.
 23 Q. Of the various assets for which you had responsibility,
 24 would it be right to say that the Post Office posed, or
 25 was assessed to pose, the greatest risk to the

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1 shareholder?

2 **A.** Oh, yes, easily, and it involved by far the greatest
3 part of my time.

4 **Q.** At paragraph 7 of your statement you say that you are
5 responsible for UKGI's risk reporting for its assets and
6 projects; is that right?

7 **A.** Yes. Something I took over when -- basically when Mark
8 Russell left UKGI, which I think was late 2020.

9 **Q.** Can you please explain in general terms how UKGI records
10 and reports on risks relating to its assets?

11 **A.** Yes. So this -- it's basically a bottom-up approach.
12 So each team involved in a project or an asset completes
13 a risk register and that then feeds up into essentially
14 two separate processes. The first is it forms part of
15 the reporting to the Board, so the Board receives
16 a summarised version of the risk registers from each of
17 the teams, and then it also feeds into our portfolio
18 review and project review processes, which are part of
19 our oversight of what our teams are doing in relation to
20 their assets and projects.

21 I'm speaking about how it works today, rather than
22 how it worked previously.

23 **Q.** My next question was: has there been any material change
24 in the way in which UKGI reports risk during the time in
25 which you've worked there?

5

1 understood that Post Office had, for several years, been
2 engaged in an intractable dispute with a group of
3 subpostmasters concerning issues with Horizon?

4 **A.** Yes.

5 **Q.** You also understood that efforts had been made to
6 resolve the dispute, which included an investigation by
7 Second Sight and the establishment of a Mediation
8 Scheme, but these had not been successful?

9 **A.** Correct.

10 **Q.** You were also told, were you not, that the Chairman of
11 Post Office, Tim Parker, had commissioned a review and
12 had reported back to the Minister in positive terms?

13 **A.** Yes. At least what I think the team took to be
14 reassuring terms.

15 **Q.** Did you request to see any of the material which
16 underpinned this briefing?

17 **A.** No. I didn't receive the material until later.

18 **Q.** Why did you not request to see any of the material
19 underpinning the briefing?

20 **A.** I think at that stage I was learning, it was obviously
21 the very start of my induction into Post Office and, you
22 know, I took what I was being told at face value.

23 **Q.** Having now read that material, do you think it would
24 have assisted you to have read the reports prepared by
25 Second Sight and the review commission by the Chair at

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1 **A.** Fundamentally, no. I don't think so. I mean, obviously
2 I wasn't responsible for this beforehand but I think
3 what's happened is it's -- the basic process is the
4 same, it's evolved and it's more -- I think it's more
5 mature and sophisticated probably than it was five years
6 ago.

7 **Q.** What do you mean by that: more mature and sophisticated?

8 **A.** I think it's more integrated than it was. So, for
9 example, I'm not sure, historically, that risk registers
10 were regularly part of the portfolio review and project
11 review processes and part of the papers that came to
12 those. Now, they are. So it's things like that.
13 Refinements, if you like, like that.

14 **Q.** Thank you. On joining the Shareholder Team, you were
15 informed that the Post Office was engaged in ongoing
16 litigation with the group of subpostmasters; is that
17 correct?

18 **A.** Yes.

19 **Q.** In your statement you describe receiving a high level
20 briefing about the litigation from your predecessor,
21 Richard Callard; is that correct?

22 **A.** Yes.

23 **Q.** This briefing was given to you orally; is that right?

24 **A.** Correct.

25 **Q.** From this briefing, would it be fair to say that you

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1 that time?

2 **A.** Very much so. I think the Swift Review in particular,
3 which I read in 2020, I think was a very key document,
4 and informed -- I think, with hindsight, would have been
5 hugely helpful with the litigation.

6 **Q.** Can you be a little more specific as to why you say
7 that?

8 **A.** Well, I think the main -- for me, the key thing were the
9 recommendations at the end, and I think when you read
10 the -- I think four of the recommendations relate to the
11 system, and the way I read it, when I did read it, when
12 you take those four together, it basically is saying the
13 company had never assured itself properly that the
14 system actually worked, and I think that would have
15 given me, you know -- so when the management team or the
16 lawyers were saying in the context of the litigation,
17 "Well, the system is fine, it works, you know, there's
18 no systemic problem", comparing that with the Swift
19 Review recommendations, it begs the obvious question,
20 "Well, how do you actually know that?" And I think that
21 would be the obvious question I would have asked, had
22 I had the Swift Review earlier.

23 **Q.** At the time that you received your briefing from
24 Mr Callard, did you understand that the Post Office had
25 assured itself that the system worked properly, or did

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1 you not address your mind to the question at that stage?

2 **A.** It was expressed in many -- you know, in different ways,
3 but the consistent message from the -- I know you're
4 asking about Mr Callard but I think he said that -- and
5 I think his main source for this was the first Second
6 Sight Report, in saying no systematic errors had been
7 found. He used the term "smoking gun"; there was no
8 smoking gun in relation to the system. But this was all
9 reinforced very heavily by the management team in the
10 company, who consistently said the system is fine.
11 I mean, you know, I'm paraphrasing but there were
12 various forms of language that amounted to that.

13 **Q.** At this early stage in your tenure, what did you
14 understand the nature of the concerns about Horizon to
15 be?

16 **A.** Well, that the system had caused discrepancies in the
17 branch accounts which had caused losses for postmasters,
18 and then there was the question of remote access as
19 well.

20 **Q.** So at that time, you were alive to both of those issues;
21 is that right?

22 **A.** Yes, I mean, I had watched the Panorama programme which
23 had an impact on me. I remember watching it and feeling
24 that there was something real there.

25 **Q.** Did you give any consideration at this early stage to

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(Pause for fire alarm test)

2 **Q.** I think we are now finished.

3 **A.** Okay, yes.

4 **Q.** The question I'd asked was in relation to your
5 perception that the litigation had become the fastest
6 way to resolve these issues, whether that was
7 a perception you had when you received this briefing in
8 early 2018?

9 **A.** No, not that early. It was -- it evolved over time.
10 I mean, I was learning about the litigation over the
11 first several months of being on the Board, so it was
12 later rather than earlier in that period.

13 **Q.** Do you consider that there was an opportunity in that
14 early phase to explore that option of an alternative to
15 litigation?

16 **A.** No, I think, even in March 2018 when I joined the Board,
17 I think the conclusion would have been the same.

18 **Q.** You've explained in your statement that it was apparent
19 to you from the outset that an important part of your
20 role would be to monitor the progress and conduct of the
21 Group Litigation; is that right?

22 **A.** Yes.

23 **Q.** Presumably the purpose of monitoring the litigation was
24 to enable you to identify any significant risks and to
25 take appropriate steps to mitigate them; is that right?

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1 the possibility of those issues, those questions about
2 Horizon, being resolved by means other than litigation?

3 **A.** I did, and I think, you know, particularly the Horizon
4 issues -- to me, and particularly with hindsight,
5 I think the litigation process was not a particularly
6 good way of resolving this or getting to the facts.
7 During the course of my introduction and learning about
8 the litigation, I did think about what alternatives
9 there might be and it seemed to me at that point --
10 because it was only a matter of months before the
11 hearings were due to begin -- that any other process
12 would be -- wouldn't produce as definitive an outcome
13 any more quickly.

14 You know, the advantage at that point of the Horizon
15 Issues hearings, it seemed to me, was that both sides
16 were funded, they had expert witnesses, they would have
17 the benefit of discovery and, you know, a judge
18 overseeing it. And it seemed to me, at that point in
19 time, that was going to be the best way of getting to
20 the bottom of what had happened.

21 **Q.** When you say "at that point in time", are you referring
22 to early in 2018 --

23 **A.** '18 -- yes, I mean, really during the first half of 2018
24 because during this period I was still sort of getting
25 up to speed with -- it's about to --

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1 **A.** Yes.

2 **Q.** Would it be right to say that you initially felt
3 hampered in your role by the reluctance of the Post
4 Office to share with you and your colleagues in UKGI
5 information subject to legal professional privilege?

6 **A.** Yes, absolutely. I think it's worth sort of breaking
7 the role down into a couple of parts, so the first as
8 a Non-Executive Director, obviously the oversight of the
9 litigation was part of my role because I was on the
10 subcommittee. So I needed to understand it and, if you
11 like, monitor it from that perspective. But then there
12 was also clearly a need to inform -- keep the Department
13 informed as to what was going on, as well, through the
14 Shareholder Team, which I led, and the key element of
15 that was getting a protocol in place,
16 an information-sharing protocol, that was an agreement
17 that essentially enabled Post Office or gave them the
18 comfort, as it were, to provide the information to the
19 Department in a controlled way.

20 And that document didn't get agreed until June 2018,
21 you know, even though it had been agreed, I think even
22 before I joined the Board, that there would be
23 a protocol.

24 **Q.** So by June 2018, an agreement had been reached, in
25 effect, that enabled UKGI to obtain information and

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1 documents from the Post Office relating to the substance
2 of the litigation; is that right?

3 **A.** Yes.

4 **Q.** Shortly after the agreement of the protocol, you
5 obtained a copy of the merits opinion produced by David
6 Cavender QC in relation to the Common Issues; is that
7 correct?

8 **A.** Yes.

9 **Q.** You also held a meeting with the Post Office's General
10 Counsel, Jane MacLeod, in which you discussed the Post
11 Office's approach in relation to the 23 contractual
12 issues in dispute in the litigation; is that right?

13 **A.** Yes, that was around July, if I recall.

14 **Q.** Would it be fair to say that you agreed at that stage
15 that there was an important point of principle at stake
16 in relation to the litigation, namely the nature of the
17 contract between the Post Office and its agents, the
18 subpostmasters?

19 **A.** Yes, but it wasn't just Jane's view that I took on this.
20 It was also Richard Watson, because we discussed the
21 merits opinion together.

22 **Q.** Sorry, could you just confirm his role, please?

23 **A.** Oh, Richard Watson was the General Counsel at UKGI. So
24 he was, really, apart from Post Office's lawyers, the
25 only source of other legal input I had and he and

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1 of some of them, and the liability clause I felt was the
2 standout example of that. But I felt, you know,
3 particularly in the context of a litigation and
4 a dispute that had been going on for so long, that on
5 a lot of these, the companies should be looking for
6 compromise, rather than disputing everything, just for
7 the sake of it, effectively.

8 So one of the 23 clauses was, for example, that Post
9 Office should agree to provide a computer system that
10 worked. Well, a working computer system was fundamental
11 to the whole relationship, so it didn't seem at all
12 unreasonable to me that Post Office should agree to
13 provide that. And I couldn't under -- Jane MacLeod's
14 initial response to this, when we had our first meeting
15 on it, was to say -- I did ask her, you know, "If Post
16 Office loses on these points, what's your response going
17 to be?", and she said, "Oh, we'll appeal everything".

18 So that didn't really make sense to me. It seemed
19 completely, you know, inappropriate for a situation that
20 the company found itself in.

21 **Q.** You've mentioned the liability clause. What was the
22 nature of your concerns about that clause?

23 **A.** Well, I thought it was completely unfair. I mean, that
24 the postmasters should be responsible for all the losses
25 whether they were responsible or not seemed, you know,

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1 I worked very closely together on the litigation all the
2 way through. But his, you know, obviously his views on
3 the merits opinion were important for me, and the point
4 about the relational contract and the good faith
5 elements that flowed from it were viewed, I think,
6 consistently, not just by Post Office's lawyers but by
7 all the other lawyers involved, including HSF when they
8 were part of the team and, actually, Slaughter and May
9 when they came in to pitch for the work. All of them
10 said that this point was unusual and would have
11 significant implications: effectively, an extension of
12 the law.

13 And my own experience in business is that, you know,
14 business contracts in this country are not good faith
15 agreements and the reason for that is that the lawyers
16 who draft them, the parties, want clarity about what the
17 terms are, and good faith obligations create uncertainty
18 for all the parties involved. So it was an -- my own
19 take on it was it was a very unusual thing to have in
20 a business context.

21 **Q.** So although you accepted or agreed that that was
22 an important point of principle, you felt, did you not,
23 that some of the points raised by the claimants were
24 reasonable and ought to be conceded by the Post Office?

25 **A.** Yes, absolutely. Not only -- well, certainly in respect

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1 unfair, unethical and I think actually undermined the
2 basis of the partnership between postmasters and the
3 company because, in effect, it let the company off the
4 hook of doing what it should do in supporting the
5 relationship. So it just seemed completely at odds with
6 what the contract should be trying to do.

7 **Q.** In your discussions with the Post Office's General
8 Counsel and its lawyers, you described the position on
9 the liability clause as defending the indefensible; is
10 that right?

11 **A.** Yes.

12 **Q.** In your statement, you expressed a strong sense of
13 frustration by this stage about the Post Office's
14 conduct of the litigation.

15 **A.** Mm.

16 **Q.** I wonder, please, if we could look at what you say at
17 paragraph 119 of your statement, which bears the
18 reference WITN00200100. You say:

19 "[Post Office] was robust in its view that it should
20 continue to defend [the liability clause], arguing that
21 any other approach to liability was not operationally
22 possible. I recall feeling a significant degree of
23 frustration about this issue and thinking that if
24 I could not persuade [Post Office] on this
25 straightforward point (as I saw it), I would not be able

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1 to persuade them of the need to compromise on any of the
 2 other contractual issues on which [Post Office] was
 3 vulnerable, such as training and providing
 4 a fit-for-purpose computer system."

5 Were you concerned by the late summer of 2018 about
 6 the quality of the legal advice which the Post Office
 7 was receiving?

8 **A.** Yes, I was. Flowing directly out of the conversations
 9 I'd had with Jane MacLeod, the very entrenched position
 10 that the company was taking, both of those, it seemed to
 11 me, were at odds with actually trying to reach
 12 a resolution to the dispute, which in the end, one way
 13 or another, would have to be solved.

14 **Q.** Is it right that your concerns about the conduct of the
 15 litigation were heightened when Mr Justice Fraser, as he
 16 then was, dismissed the Post Office's application to
 17 strike out substantial parts of the witness evidence
 18 adduced by the lead claimants?

19 **A.** Yes. It seemed obvious from his comments that Post
 20 Office was not handling the litigation -- whatever the
 21 rights and wrongs of it, it was handling the litigation
 22 in a very cack-handed way.

23 **Q.** Could we please take a look at the update you received
 24 from the Post Office's General Counsel, Jane MacLeod, on
 25 16 October 2018. It is UKGI00008532.

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1 a very high threshold for strikeout, and concluded that
 2 we had not established to the necessary standard that
 3 the claimants' evidence could never be relevant to the
 4 case, given the number of Common Issues, the
 5 'considerable legal analysis' each will require, and
 6 what our case on those issues is.

7 "However he confirmed that he will apply properly
 8 the law on admissibility when it comes to the trial, and
 9 that the November 2018 Common Issues Trial will not rule
 10 on matters which concern Horizon or whether Post Office
 11 actually 'breached' its obligations to the claimants
 12 (matters to which most of the disputed evidence goes and
 13 which will be dealt with in later trials)."

14 If we could scroll down, please, a little further,
 15 Ms MacLeod reported that:

16 "In deciding the application, the Managing Judge was
 17 critical of our conduct of the case, including
 18 intimating that we were not acting cooperative and
 19 constructively in trying to resolve this litigation
 20 (which criticism was levelled equally between the
 21 parties); and that we had impugned the court and its
 22 processes by making the application for improper
 23 purposes.

24 "This response is extremely disappointing given the
 25 approach we have been adopting, and his challenge as to

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1 If we could please scroll to the bottom of the page.
 2 So at the bottom there, we can see an email from Jane
 3 MacLeod addressed to Richard Watson -- you've confirmed
 4 he was General Counsel at UKGI --

5 **A.** Mm-hm.

6 **Q.** -- and Joshua Fox. What was his role, please?

7 **A.** He was a member of the UKGI Shareholder Team, he wasn't
 8 a lawyer.

9 **Q.** Sorry, he was --

10 **A.** He's not a lawyer.

11 **Q.** Not a lawyer?

12 **A.** Mm.

13 **Q.** The email is copied to you and Rodric Williams, a lawyer
 14 at the Post Office. It reads:

15 "Richard, Josh,

16 "Further to Rod's emails on 9 and 10 October, the
 17 Managing Judge Mr Justice Fraser has now ruled on our
 18 application to strike out as inadmissible parts of the
 19 claimants' evidence. We received the judgment late last
 20 night.

21 "We were not successful on the application:

22 "The application was decided on case management
 23 grounds which the Managing Judge has considerable
 24 discretion;

25 "Applying that discretion, the Managing Judge set

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1 the purpose for which we had applied for strikeout is at
 2 odds with comments he had made during various procedural
 3 hearings over the past year. Nevertheless, we are
 4 refining our preparation for trial -- including our
 5 reactive communications plan -- in the context of the
 6 judge's remarks."

7 In your statement you describe feeling surprised by
 8 the judge's criticisms of the Post Office -- is that
 9 right --

10 **A.** Yes.

11 **Q.** -- and concerned by his reference to impugning the
 12 court?

13 **A.** Yes.

14 **Q.** As a result of your concerns, you sought the opinion of
 15 Richard Watson, the General Counsel at UKGI, who
 16 requested a copy of the judgment from the Post Office;
 17 is that right?

18 **A.** Correct.

19 **Q.** His response, having reviewed that judgment, can be seen
 20 at the top of the page, please. So halfway down there,
 21 from Richard Watson to you on 17 October, so the
 22 following day. So his initial reaction:

23 "Tom

24 "You will see I have asked to see the judgment.

25 "I am concerned that the judge felt [Post Office]

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1 had impugned the court and made the application for
2 improper purposes but need to understand the detail.

3 "I infer the judge is getting a little tired of the
4 satellite litigation and wants the parties to focus on
5 the trial and possible resolution of this case.

6 "His criticism of the [Post Office's] conduct in
7 their litigation tactics should not influence the legal
8 issues he has to decide but may be relevant in decisions
9 on costs, not only of the failed application (which
10 I assume they will have to pay) but also more widely.

11 "It is easy to be wise with the benefit of hindsight
12 but on the assumption that the [Post Office] were
13 concerned some witness evidence was not relevant to the
14 issues in the first trial I am a little surprised [Post
15 Office] were advised to make this application. Judges
16 are very used to disregarding irrelevant evidence and
17 submissions about that aspect could have been made at
18 the start of the trial so he was on notice as to the
19 [Post Office's] position."

20 Now, those are his initial thoughts before he has
21 read the judgment.

22 **A.** Mm.

23 **Q.** After reading the judgment, he reports to you feeling
24 very uncomfortable, from the Post Office's perspective,
25 about the comments made in it; is that right?

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1 realistic. To me, what this was signalling was that the
2 company needed to change. It should change the
3 substance of what it was doing -- and that goes back to
4 the discussions I'd had with Jane earlier in the
5 summer -- but I think realistically at this point, that
6 was -- it was too late. And so the best one could hope
7 for here was a change of tone or approach or the way the
8 hearings themselves were handled by the Legal Team. But
9 it was clear -- they needed to change what they were
10 doing. That's what Justice Fraser was communicating.

11 **Q.** You've just said now, and you said in your statement,
12 that you felt, really, a sense of resignation at this
13 stage --

14 **A.** Mm.

15 **Q.** -- and a concern that your advice was falling on deaf
16 ears; is that fair?

17 **A.** Correct.

18 **Q.** Did you report your concerns about the Post Office's
19 conduct of the litigation to either the CEO or the Chair
20 of UKGI at that time?

21 **A.** I don't recall. To be honest, I doubt it, actually. My
22 main concern was that the Department should be sighted
23 on the litigation and the team and I had spent quite
24 a lot of effort trying to get this meeting for the
25 Minister and the Permanent Secretary on 17 -- which

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1 **A.** Yes.

2 **Q.** He said that it gave him very considerable cause for
3 concern about the Post Office's litigation tactics and
4 handling, not to mention the merits of the case itself.
5 You explain in your statement that you agreed with the
6 concerns which Mr Watson expressed; is that right?

7 **A.** Yes.

8 **Q.** So his very considerable concerns about the litigation
9 tactics handling and the merits of the case?

10 **A.** Yes.

11 **Q.** As a result of the concerns you both had, you invited
12 the Chair of Post Office, Tim Parker, to read the
13 judgment for himself; is that right?

14 **A.** Yes.

15 **Q.** And you raised the issue with the CEO, Paula Vennells;
16 is that correct?

17 **A.** Correct.

18 **Q.** You were assured by Ms Vennells that a change of tack
19 would be implemented but it was your perception that
20 this would likely result in a change of tone, rather
21 than substance; is that right?

22 **A.** Yes, I think you need to bear in mind that this was
23 mid-October and the hearings were due to start in early
24 November, and so this was sort of one minute to midnight
25 in relation to the hearings, so it didn't seem

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1 finally happened on 17 October. So it was right on top
2 of the strikeout -- it was just before we knew about the
3 strikeout application.

4 And that was my priority -- was to get the
5 Department sort of properly involved, partly in order so
6 they understood what was going on but also so that they
7 could challenge the company on the issue of their
8 contingency planning, which I felt was, you know, very
9 inadequate, and that was, I think, the area where I felt
10 the Department, at that stage, could be most effective
11 in trying to get change.

12 **Q.** Did you communicate to the Department the extent of your
13 concerns about the Post Office's conduct of the
14 litigation by this stage?

15 **A.** Not in those terms. I mean, the Department, I think,
16 was kept updated as to what was going on. I mean, with
17 hindsight, one of the things I think was missing in the
18 preparation for the 17 October meeting was a pre-meeting
19 with the Minister and the Permanent Secretary and that
20 would have been my opportunity to talk about that issue
21 and, you know, I remain -- my memory is that we tried to
22 get a pre-meeting. I haven't been able to stand that up
23 from the documents but that was -- that is my memory.

24 But I think, you know, I'm still surprised that the
25 Minister and the Permanent Secretary went into the

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1 17 October meeting without hearing, having a pre-meeting
2 discussion with the people handling it day-to-day, and
3 I think, you know, these concerns would have come out
4 then.

5 **Q.** When it became apparent that you couldn't have
6 a pre-meeting, in advance of the briefing on 17 October,
7 did you give any consideration to putting in writing
8 your serious concerns about the conduct of the
9 litigation so that the Department could go into that
10 meeting informed as to the nature of your concerns?

11 **A.** I didn't because it was so late. I mean, I think the
12 die was cast at that point, in terms of what was going
13 to happen in the hearings. And a lot of this, I think
14 you need to also bear in mind that the real levers for
15 change here, I think, was, as I saw it, given the
16 interactions we'd had with the Department, was at the
17 company level.

18 The company was running the litigation, the Board
19 was in control of it, and it was really through that
20 mechanism that, if change was going to happen, it was
21 going to happen in the time frame that was available.
22 And, you know, I was actually disappointed when I did
23 raise the liability clause issue, which I thought was
24 completely obvious, you know, I was -- it was
25 disappointing to me that I didn't get a lot of support

25

1 **Q.** Can you please briefly explain what you were told about
2 the background to that inquiry?

3 **A.** Yes, so I had a very good briefing from Elizabeth
4 O'Neill who was our General Counsel at the time -- she
5 was Richard's predecessor -- and, essentially, what
6 I was told was that there were some very significant
7 learnings from the Magnox Inquiry that UKGI was
8 implementing in relation to major bits of litigation,
9 where our assets were involved.

10 And the core elements of that were to make sure that
11 the Department was properly informed as to what was
12 going on and what the litigation strategy was, that the
13 Department would have access to the documents, even
14 privileged material, and the vehicle by which that would
15 happen would be the protocol, and that there was enough
16 communication going on, there was the opportunity for
17 the Department to have formed its own views as to how
18 the litigation was being approached, so that they could
19 express views where they had them.

20 **Q.** Do you recall whether your briefing with Ms O'Neill
21 covered the reporting of risk to the Board of UKGI?

22 **A.** No, I don't think it did.

23 **Q.** Were you aware that UKGI had produced a written report
24 into the lessons learned from the Magnox Inquiry?

25 **A.** I don't think I was. I had, I thought, a very

27

1 from -- or I didn't feel I got much support from my
2 colleagues on the Board.

3 **Q.** What did you understand your responsibilities to be
4 concerning the reporting of risk which you identified in
5 the Post Office's conduct of the litigation?

6 **A.** Internally, within UKGI?

7 **Q.** Internally and to the Department?

8 **A.** So within UKGI there was a risk register. It identified
9 the litigation as the top risk. And I think, if you
10 like, that was the responsibility of the team. I mean,
11 you know, I also had interactions, obviously, with Mark
12 Russell and Mark actually was very good in coming to
13 find me and asked me how things were going. So we did
14 talk relatively frequently. I have to say, I think
15 with -- my memory is that most of those conversations
16 really were about the relationship issues I was having
17 with the company at the time, rather than necessarily
18 the litigation. But I think, in terms of risk
19 reporting, you know, the main vehicle was the risk
20 register.

21 **Q.** Thank you. We will come on to that a little later. You
22 had been made aware, had you not, on joining UKGI, that
23 it had recently been involved in a non-statutory inquiry
24 into the award of the Magnox decommissioning contract?

25 **A.** Yes.

26

1 comprehensive -- I thought Elizabeth had communicated to
2 me what I needed to know and what I needed to take away
3 and actually put into action. So it was the protocol,
4 it was contingency planning, how do you resolve this
5 dispute, to get those things firmly on the agenda with
6 the company and make sure those issues were covered.
7 And then the merits opinion, as well, was I think the
8 fourth element, so that everyone was sighted on the
9 merits of the case.

10 **Q.** Could we please take a look at that report that was
11 produced by UKGI. It bears the reference UKGI00009275.
12 Its title is "Initial review into UKGI's role in the
13 competition, award and challenge of the Magnox/RSRL
14 decommissioning contract". It's stated to be a draft,
15 dated 25 October 2017. The section of the report which
16 is entitled "General lessons learned" commences at
17 page 26. Could we take a look, please, at some of the
18 recommendations on page 27 of the report.

19 Just pausing there, having seen the title to that
20 report, do you recall whether you were shown a copy of
21 it at around the time that you joined UKGI?

22 **A.** I actually don't think I've seen this report -- it's the
23 report itself -- until I received it from the Inquiry.

24 **Q.** Thank you. Please could we scroll to the bottom of
25 page 27, where we can see the final bullet point, which

28

1 reads:

2 "Use the Non-Executive Director appointed by
3 Government as a means of obtaining better quality
4 information."

5 So that's the recommendation.

6 "The forthcoming appointment of a UKGI Director as
7 an NDA NED is an opportunity for fuller feedback on
8 board discussions (and the performance of the NDA Board
9 members). To optimise this, specific guidance should be
10 provided to NEDs to enable them to fully inform the
11 shareholder in a way that remains consistent with their
12 obligations to the NDA."

13 This is obviously a recommendation specific to
14 Magnox. Did you receive any guidance when you first
15 joined UKGI about the sharing of information, which you
16 would have obtained in your capacity as Shareholder NED
17 on the Post Office Board?

18 **A.** Well, as I said, I think the main vehicle, as
19 I understood it, for providing information to the
20 Department was through the protocols. So that the
21 Department would get privileged material, the merits
22 opinion, and so forth. And, you know, Richard was
23 really my -- you know, I was reliant on Richard,
24 effectively, to -- as to how that operated. So he was,
25 if you look at the email chains, for example, usually it
29

1 happened as frequently as they should have. It was
2 quite hard to gauge, to be honest, how interested the
3 Department was in this. You know, they'd received
4 briefings, quite fulsome briefings, actually, on the
5 background to the litigation, and no questions came
6 back. Nothing came back. So, you know, from my
7 perspective, the action was at the board level. The
8 action wasn't at the departmental level.

9 **Q.** On that topic, we can digress because you've raised it,
10 you suggest in your statement that, when you first
11 joined UKGI, there was an insufficient level of
12 engagement by the Department in matters concerning the
13 Post Office; is that fair?

14 **A.** Yes, it was partly structural because there wasn't
15 a policy team in the Department at that time. It's
16 something I raised with Alex Chisholm, I remember asking
17 him, you know, "Who do I talk to, Alex, if it's not
18 you?" And I think at that point the penny dropped and
19 he quite quickly got a policy team in place and I think
20 they were there from August.

21 **Q.** How did the BEIS policy team interact with the
22 Shareholder Team in UKGI?

23 **A.** It was an evolving picture because it was a small team
24 to start with, and so, I think, like all of us with Post
25 Office, there was quite a learning curve for them. It's
31

1 was the lawyers in Post Office communicating with
2 Richard, who then passed things on to the Department.

3 **Q.** Sorry, just to clarify, Richard Watson?

4 **A.** Richard Watson, yes. Sorry.

5 **Q.** No, no, we've got several Richards at UKGI.

6 Did you consider that there were any obstacles to
7 you reporting risk you'd identified in the Post Office's
8 conduct of the Group Litigation.

9 **A.** No, absolutely not. No.

10 **Q.** Did you recognise that, in your role as Shareholder
11 Non-Executive Director and as a member of the Litigation
12 Subcommittee, that you would be a very important source
13 of information for UKGI and the Department about the
14 risks to the Post Office arising from the litigation?

15 **A.** Yes, and, as I say, I felt this at the time but I feel
16 it even more so now, that I think we would have
17 benefited by a lot more in-person contact. So things
18 like the --

19 **Q.** With the Department?

20 **A.** With the Department, and I've given one example being
21 the pre-meeting -- the lack of a pre-meeting before the
22 October meeting with the company, and, you know, there
23 were times in 2019 when I tried to reach out to the
24 Department, particularly the Minister, to talk to her
25 about it. And, you know, they -- I don't think they
30

1 a complicated business and set-up. So -- but, you know,
2 there was clearly a much -- a big step-up in activity
3 and interest after the Common Issues judgment.

4 **Q.** What do you think were the practical consequences of the
5 Department not having a dedicated policy team in the
6 first half of 2018?

7 **A.** Well, I think it would have been -- you know,
8 realistically, access to ministers and Permanent
9 Secretary level is very hard to come by, they're very
10 busy people, and the discussions you have with them are
11 focused. We don't -- as UKGI, we don't have regular
12 touchpoints with them. So when you can drop in
13 a comment and say, "Oh have you seen that or seen the
14 other", the interactions we have aren't like that
15 because we don't see the ministers and Permanent
16 Secretary on a day-to-day basis. So a policy team does
17 have those interactions and so I think it would have
18 been an opportunity for us to talk through more of the
19 day-to-day concerns, you know, the things that were
20 perhaps of concern to us as a team, like some of the
21 issues around the handling of the litigation, that one
22 way or another the policy team could then have fed up
23 through their day-to-day interactions, in addition to
24 whatever they got formally.

25 **Q.** Would it be right to say that you saw the policy team as
32

1 a more effective channel of communication through to
 2 the --
 3 **A.** Yes.
 4 **Q.** -- Minister and senior officials in the Department?
 5 **A.** Yes, that's, you know, part of what they're there for.
 6 **Q.** So leaving to one side then reporting to the Department,
 7 to whom within UKGI did you report your knowledge of
 8 risks relating to the litigation?
 9 **A.** That was primarily through the risk register.
 10 **Q.** But to whom -- forgive me, are you saying that you
 11 inputted your knowledge into the risk register?
 12 **A.** Team -- the team did.
 13 **Q.** So, sorry, to whom in the team did you report your
 14 concerns?
 15 **A.** So -- well, Richard, primarily. But members of the team
 16 had signed the protocol, so Josh Scott, for example, Tom
 17 Aldred, who was my number 2, were all quite heavily
 18 involved in the litigation, so they knew what was going
 19 on, and the team, you know, drafted the risk register.
 20 I mean, I think, with -- again, with hindsight, there
 21 would have been -- you know, I think I could have talked
 22 more to Mark Russell about this, the fact that I thought
 23 that they were -- I didn't agree fundamentally with the
 24 way the company was approaching the common issues
 25 hearing and its unwilling -- its unbending approach to

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1 Inquiry report. So it's the second bullet point from
 2 the bottom, which reads:
 3 "In holding the NDA [I should have clarified, the
 4 Nuclear Decommissioning Authority] Board to account,
 5 UKGI should utilise its own board and its in-house legal
 6 function on consideration of risks. To assist and
 7 develop its role in holding [I think it should be 'an']
 8 asset's boards to account, UKGI could make more use of
 9 the UKGI internal risk management process to encourage
 10 discussion and debate of the major identified and
 11 Horizon risks being faced by the assets it manages,
 12 especially by drawing on the expertise of the UKGI Board
 13 and UKGI in-house legal colleagues."
 14 **A.** Mm-hm.
 15 **Q.** Now, were you told, when you joined UKGI, that you
 16 should escalate any major risks which you identified in
 17 the Group Litigation to the Board?
 18 **A.** Not in specific terms about the litigation but, I mean,
 19 it's obvious as a general point that, you know,
 20 whereas -- where the Shareholder Team has concerns about
 21 a -- big concerns about an issue, you want your seniors
 22 to be aware of it. That's clearly true. And, on this
 23 recommendation, I think, obviously, the learning about
 24 involving legal colleagues was absolutely implemented.
 25 I mean Richard was fully involved.

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1 the 23 issues. I really don't think it would have made
 2 any difference at that point.

3 The focus, I think, was -- in relation to the
 4 Department and the Government side of this, to me, the
 5 critical thing was the contingency planning. What would
 6 happen if the company lost? You know, could branches
 7 stay open, for example? I mean, these were quite
 8 critical questions, not -- you know, setting aside
 9 obviously -- the issues like compensation could be dealt
 10 with afterwards but, if there would be real-world
 11 impacts, potentially, on the provision of services to
 12 the public if the litigation was lost.

13 So the best example is, if Justice Fraser had said
 14 Horizon doesn't work, the current version of Horizon
 15 doesn't work, what happens? Can the company actually
 16 continue to operate? Will people be able to get money
 17 out of branches? Those kind of things.

18 And I think, you know, those -- it was action on
 19 that that I was trying to lever, to get the Department
 20 to get the company focused on -- really focused on those
 21 questions. That seemed to me the area where I could
 22 get, if you like, most bang for my buck out of the
 23 Government side.

24 **Q.** In terms of managing risk within UKGI, could we look,
 25 please, at a further recommendation made in the Magnox

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1 **Q.** On the issue of reporting to the UKGI Board, is it your
 2 evidence that, whether or not you'd seen this report,
 3 you recognised that might be necessary when dealing with
 4 a major risk?

5 **A.** Yes, yes. I mean, the specific benefit that the UKGI
 6 Board brings is -- I mean, obviously the expertise that
 7 the Non-Executive Directors bring and their experience
 8 and they're very good sounding boards, and I did use --
 9 I did benefit hugely from Robert Swannell's input and
 10 Jane Guyett's input during 2018. But I think the other
 11 key element of the UKGI Board is, because we have
 12 Treasury and, you know, in this case, fortuitously
 13 BEIS -- we had BEIS on the Board through the Permanent
 14 Secretary -- it's a very good vehicle for, if you like,
 15 escalating issues that are of concern on the Government
 16 side and, you know, I've used that vehicle as well,
 17 subsequently.

18 **Q.** So you very much saw at the time that there was an open
 19 channel of communication to the UKGI Board, where you
 20 were concerned about a major risk; is that fair?

21 **A.** I felt comfortable reaching out to the Chair and the
 22 Non-Executive Directors. I think I wasn't responsible
 23 for reporting to the Board myself so, you know, the
 24 chain of command, as it were, for that were the team
 25 into the management at UKGI, obviously led by Mark

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1 Russell, and, you know, they decided what should and
 2 shouldn't be reported to the Board. So I can't really
 3 speak to what was in the Board papers at the time
 4 because I didn't see them and I didn't go to the Board
 5 meetings.
 6 **Q.** But you did on occasion reach out directly to Board
 7 members; is that right?
 8 **A.** Yes, and the particular issue I got the benefit of their
 9 wisdom on was the relationship issues I was having with
 10 the company. You know, I was getting complaints about
 11 how, you know, intrusive I was being.
 12 **Q.** Yes, thank you. We dealt with that in your statement,
 13 unless there's anything you wish to add at this stage
 14 about that?
 15 Shortly after the dismissal of the Post Office's
 16 strikeout application, you established a possible link,
 17 did you not, between the unfairness of the liability
 18 clause and the Post Office's conduct of past
 19 prosecutions?
 20 **A.** Yes.
 21 **Q.** Please could we look at UKGI00008614. This is an email
 22 from you to several colleagues in UKGI dated 6 November
 23 2018, and it's addressed to Richard Watson and Joshua
 24 Fox. You've explained already their roles. It's also
 25 copied to Tom Aldred and Stephen Clarke. Could you

1 prosecute simply on the basis that some cash was missing
 2 without having proof that it had been stolen). I also
 3 wonder to what extent any coercive behaviour by POL
 4 ([for example] in encouraging a guilty plea as
 5 an alternative to a fraud trial) could be relevant to
 6 this argument as well -- the judge in the last ruling
 7 mentioned POL's style in previous correspondence as
 8 being dismissive."
 9 Just pausing there, from where had you obtained the
 10 idea that the Post Office that acted coercively in its
 11 conduct of past prosecutions?
 12 **A.** I'm not sure -- no, I don't think I was talking about
 13 past prosecutions here. I think I was talking about its
 14 coercive behaviour generally, in relation to its
 15 handling of postmasters.
 16 **Q.** Well, you give an example of encouraging a guilty plea
 17 as an alternative to a fraud trial?
 18 **A.** Oh, I see, yes, sorry. Yes. I'm sorry. Where had
 19 I got that from? I honestly can't remember. I'd have
 20 to think about it but I can't remember off the top of my
 21 head.
 22 **Q.** The email goes on to read:
 23 "Is there a risk that some of the implied
 24 contractual terms being asked for by the complainants
 25 could feed this argument [for example] the implied term

1 please confirm their roles within the Shareholder Team?
 2 **A.** Yeah, so Tom, as I mentioned, was my number 2, he was
 3 an Executive Director, and Stephen was a more junior
 4 member of the team. Stephen was quite heavily involved
 5 in working with Richard on communicating with the
 6 Department about the litigation but, again, the only
 7 lawyer on this list was Richard.
 8 **Q.** Thank you. So it reads "Richard", it's addressed to
 9 Richard Watson:
 10 "Is it within the scope of the judge's remit in this
 11 case to express a view that prosecutions for fraud or
 12 false accounting were unsafe? Some of the press ([for
 13 example] the Computer Weekly article) seem to be
 14 pointing this way.
 15 "I'm wondering about the relationship between
 16 contract law (where postmasters take on the liability
 17 for missing cash where there is a discrepancy between
 18 the Horizon system and the actual cash in the till --
 19 this is the agency principle in the contract) and
 20 criminal law (where there usually needs to be intent and
 21 evidence that cash was actually stolen). I'm wondering
 22 whether the complainants can argue that even though
 23 contractually postmasters are responsible for missing
 24 cash, prosecutions should not have been made without
 25 actual evidence of theft (ie it is [sufficient] to

1 requiring losses to be investigated before deeming
 2 postmasters liable."
 3 So that's your email to Richard on 16 October. You
 4 appear in this email to have identified not one but two
 5 possible risks. First, that the complainants, by which
 6 I think you mean the claimants in the Group Litigation,
 7 their convictions might be unsafe because, absent data
 8 from the Horizon system, there was no evidence that
 9 money had been stolen. Would you agree with that?
 10 **A.** Yeah, I mean in very simple terms, if you can't
 11 establish a contractual claim, how do you establish
 12 criminal -- a conviction? I mean, in very simple --
 13 much simpler language than this. That was what I was
 14 trying to understand the relationship between those two
 15 things. And it was a question -- I mean, this was very
 16 much a question. I hadn't -- you know, this was me
 17 trying to understand the consequences of the litigation
 18 and adverse judgments in the absence of help on this
 19 from Post Office because, you know -- and it
 20 particularly struck me with hindsight that, in all of
 21 the contingency planning conversations we had with Post
 22 Office at this time, convictions never came up.
 23 In other words, the risks they identified, one of
 24 the risks they -- they didn't identify as a risk that,
 25 if we lose the litigation, there will be unsafe

1 prosecutions.

2 **Q.** You say they didn't raise that with the Board?

3 **A.** Yeah.

4 **Q.** Does it follow that the suggestion that Post Office has

5 encouraged a guilty plea as an alternative to a fraud

6 trial was not something which had been suggested to you

7 by the Post Office --

8 **A.** No, it -- this came from --

9 **Q.** -- that there was a risk to that effect?

10 **A.** Correct, yes. This was something I'd extracted

11 essentially from commentary, I think external commentary

12 is my best guess as to where I got this from.

13 **Q.** I think, in fairness to you, you're making a connection

14 which many others hadn't yet made at that time?

15 **A.** Well, it certainly hadn't been made by Post Office

16 within my hearing, that's for sure.

17 **SIR WYN WILLIAMS:** Had it been discussed in any Litigation

18 Subcommittee, for example?

19 **A.** Not in these terms, Sir Wyn. I think the backdrop to

20 this on convicted postmasters was that it had very

21 little profile in any of the discussions we had -- in

22 the Board at this time or in my discussions with the

23 management team. There was a very strong sense,

24 I think -- two things I think I took away from it, and

25 I can't date when these -- when I got these impressions,

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1 Issues judgment -- was that the company couldn't

2 establish a claim, a contractual claim, ie the money has

3 gone but it's not the postmaster's responsibility for it

4 missing, how can you prosecute them, on what basis? You

5 don't have the fact that the money is even missing, let

6 alone whether they intended to steal it.

7 **SIR WYN WILLIAMS:** Well, all right, fine. Back to you,

8 Ms Hodge.

9 **A.** I'm sorry, I'm possibly not answering your question very

10 helpfully here but I don't think it came from -- I mean,

11 this was just my thought process.

12 **SIR WYN WILLIAMS:** All right.

13 **MS HODGE:** You said, Mr Cooper, in your evidence just now

14 that the consistent advice you received, including from

15 Brian Altman QC was that a guilty plea really was the

16 end of the matter.

17 **A.** Yeah.

18 **Q.** But you seem -- you were raising here the possibility

19 that that might not be right, if the Post Office had

20 coerced a subpostmaster into submitting a guilty plea,

21 in return for dropping a more serious charge?

22 **A.** Well, even if they hadn't, I mean, the fundamental point

23 was, you know, if the money -- if the postmaster wasn't

24 responsible for missing money, then how could they be

25 guilty of a crime?

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1 but the first was that the majority of people who'd been

2 convicted -- and we had no idea about numbers -- but the

3 majority had pleaded guilty to the offence concerned

4 and, secondly, that a guilty plea would, if you like,

5 trump anything else.

6 If a postmaster had pleaded guilty, they were guilty

7 of something and, you know, it didn't -- effectively,

8 what had happened to get you there and to get the

9 conviction in place, sort of didn't really matter. And

10 that view, I have to say, persisted for a very long

11 time. I remember, you know, when Brian Altman first

12 came to the Board in early 2020, that was my takeaway

13 from the first meetings we had with him.

14 So this was a very strong view.

15 **SIR WYN WILLIAMS:** Sorry to cut you off, I'm sure that these

16 issues became more and more prominent as the litigation

17 unfolded, and after it, but Ms Hodge is rightly pressing

18 you about your, if you like, perceptiveness in realising

19 this problem before the Common Issues trial had even

20 taken place and we were wondering how you were so

21 perceptive, in effect.

22 **A.** Well, to me, it was a logical question, and it was the

23 link. As I say, to me what was an obvious question,

24 which was, if you can't -- if the effect of the Common

25 Issues judgment would be that -- or an adverse Common

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1 **Q.** Did it occur to you at the time that, if the points you

2 were raising in this email were correct, that a very

3 serious miscarriage of justice might have occurred?

4 **A.** I think so, but I -- this discussion I don't think

5 developed. From memory, I don't remember receiving

6 an answer to this email and I think I moved on because

7 there were other things going on. And I didn't really

8 come back to it until after the Common Issues judgment

9 and when we were discussing the appeals strategy.

10 **Q.** Does it follow that, when you first identified this

11 risk, you didn't therefore ask the Post Office for

12 information about the number of prosecutions which had

13 been brought against subpostmasters?

14 **A.** No. And I -- again, with hindsight, I don't think the

15 company would have been able to answer the question

16 because when we did get the information, it took months

17 to get that, the number. The number of 750, I think it

18 was roughly, Post Office prosecutions, and 950 in total,

19 it took the company months, and months, and months to

20 get that data.

21 **Q.** Did you take any steps to bring your concerns to the

22 attention of your colleagues on the Post Office Board?

23 **A.** I don't remember. Like I say, I think this discussion

24 sort of stopped. It didn't progress and I don't

25 recollect exactly why.

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1 **Q.** Having raised your concerns with Mr Watson, the General
2 Counsel, what, if any, action did you expect him to take
3 to manage or mitigate the risk that you'd identified?

4 **A.** Well, I think, if we'd followed this on and if he'd
5 encouraged me, I think I would have raised it at the
6 Board and really tried to get the company's response to
7 this, the Legal team's response.

8 **Q.** In terms of your reporting internally within UKGI, did
9 you report your concerns about a possible miscarriage of
10 justice to either the CEO or the chair of UKGI at the
11 time?

12 **A.** I think it was identified in, you know, obliquely at
13 least, in the risk registers, but I didn't raise this
14 particular issue, as I say, because it didn't really go
15 anywhere at the time.

16 **MS HODGE:** Sir, that may be a convenient point to take our
17 first morning break. I've come to the end of that
18 particular line of questions.

19 **SIR WYN WILLIAMS:** Yes, can I just clarify with you,
20 Mr Cooper, my understanding of your evidence up to the
21 beginning of the Common Issues trial. Summaries can be
22 deceptively simple, so if you think I'm being too
23 simple, please say so.

24 But the impression, the strong impression, I have is
25 that in relation to what I'll call one of the central

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1 the 23 implied terms, a compromise could have been
2 reached on those so that the liability clause would have
3 been, you know, fair, and the company would have agreed
4 to provide a computer system that worked. It seemed to
5 me those areas were entirely open to compromise and then
6 you wouldn't have needed the Common Issues hearing. You
7 could have just focused on the Horizon Issues.

8 **SIR WYN WILLIAMS:** Yes, all right. I understand fully.

9 Thank you, Ms Hodge, for delaying the break so that
10 I could clear my head. So what time shall we start
11 again?

12 **MS HODGE:** Shall we return at 11.15?

13 **SIR WYN WILLIAMS:** Fine.

14 (11.00 am)

(A short break)

16 (11.15 am)

17 **MS HODGE:** Good morning, sir. Can you see and hear us?

18 **SIR WYN WILLIAMS:** Yes, thank you, yes.

19 **MS HODGE:** Thank you, sir.

20 Mr Cooper, I'd like to ask you some questions now
21 about the risk register which was maintained by UKGI in
22 relation to the Post Office. You've said earlier this
23 morning that the risk register was the principal method
24 by which UKGI recorded and reported significant risks in
25 relation to each asset; is that right?

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1 issues in the Common Issues trial, namely whether the
2 contract with subpostmasters was relational, all the
3 legal advice that you had received, both from Post
4 Office's lawyers acting in the litigation and from UKGI
5 lawyers, was that the likelihood was that this was not
6 a relational contract?

7 **A.** Correct, and --

8 **SIR WYN WILLIAMS:** But that could only be resolved by
9 litigation because the parties were so far apart.

10 **A.** Correct. I think from --

11 **SIR WYN WILLIAMS:** Then, secondly --

12 **A.** Sorry.

13 **SIR WYN WILLIAMS:** -- and then you can put your caveats, if
14 you may, but you thought that some of the issues which
15 were identified for resolution in the Common Issues
16 trial ought to have been compromised, in the sense that
17 the Post Office should have taken a different tack
18 towards certain specific points and the one you
19 highlighted is the liability clause?

20 **A.** Yes. I mean, I didn't take it to its logical conclusion
21 but it seemed to me where -- you could argue that where
22 the common issues should have ended up, and I think what
23 I was reaching for, was a scenario where the parties
24 could have agreed that it wasn't a relational contract,
25 because that wasn't necessary and was unusual, but that

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1 **A.** Correct.

2 **Q.** Is it right that there was a specific register
3 maintained in relation to each asset, including the Post
4 Office?

5 **A.** Yes.

6 **Q.** Did you have any direct input into the contents of the
7 register?

8 **A.** Yeah, as a team we were responsible for it. So I can't
9 say that I looked at it every word, every time but, you
10 know, collectively we were responsible for producing the
11 risk register.

12 **Q.** So it was a document that was held and controlled by the
13 Shareholder Team; is that right?

14 **A.** Correct.

15 **Q.** Therefore, circulated amongst the members of the team --

16 **A.** Yes, usually.

17 **Q.** -- and from there, where did it go?

18 **A.** Then it fed up into the management at UKGI -- I can't
19 remember the individuals -- but it then informed the --
20 the purpose of it -- you know, one of the main purposes,
21 as I said earlier, was to inform the Board report that
22 UKGI Board received, so certainly today, and I think it
23 was true then, the -- effectively, the risk registers
24 were summarised in the Board reports, so that the key
25 risks to the individual assets were brought out into the

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1 Board reporting to the UKGI Board.

2 **Q.** Please can we take a look at a copy of the register
3 dated 29 June 2018, so this is about six months into
4 your tenure. It bears the reference UKGI00021096.

5 **A.** So this is June, you said?

6 **Q.** June 2018.

7 **A.** Okay.

8 **Q.** Thank you, that's the covering page. If we could go to
9 the Post Office tab, please. Thank you. We can see
10 there, if we scroll to the top, please -- I'm
11 grateful -- we have the civil litigation risk there at
12 number 11. But if we just pause here, so there's
13 several columns. The risks are numbered in the
14 left-hand column, we can see there "Summarised" in the
15 next; a risk overview is provided; then an impact; the
16 type of risk identified; a RAG rating; mitigation;
17 overview; and mitigation rating; further mitigation
18 actions; and, finally, comments on the current status.
19 Can you see those at the top?

20 **A.** Yeah.

21 **Q.** If we scroll down then, please, to number 11. So this
22 is described as "Possible civil litigation against the
23 Post Office". That's not right, of course by this stage
24 we're in June 2018 so the litigation is well underway?

25 **A.** Correct.

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1 **Q.** So is it your understanding that text was inherited from
2 an earlier copy of the register?

3 **A.** I believe so.

4 **Q.** It goes on then, in the next column, in terms of the
5 impact of the risk, to say there's:
6 "Potential for significant compensation claims if
7 civil or criminal courts rule against POL. More likely
8 however, and certainly in the short-term, is that this
9 continues to be a significant distraction (and cost) to
10 the business as they defend their actions."
11 Now, you've said earlier this morning that you
12 believe that the risk of criminal convictions being
13 overturned had been flagged in the register. Is this
14 entry the one to which you were referring?

15 **A.** Yes, I mean, it says, "acted illegally", and it talks
16 about criminal courts. So, you know, it's not stated in
17 perhaps as clear a language as we might like, with
18 hindsight, but I think it's there.

19 **Q.** In relation to the RAG rating, please, this is said to
20 apply to the legal, reputational and financial risks.
21 Are you able to explain how the figures shown there were
22 calculated?

23 **A.** Well, shall I -- is it worth just using a stupid analogy
24 to explain the two sets of columns in grey? So if you,
25 for example, think about your house and the risk of why

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1 **Q.** Your name is shown there. Do you know why that is?

2 **A.** Probably because I was the main person on the team
3 involved in the litigation.

4 **Q.** So would that mean that you were the primary source of
5 information or you, in fact, inputted the information
6 that we see here? Can you --

7 **A.** No, I didn't input the information. I actually think
8 some of this -- a lot of this wording was inherited from
9 the previous team and then it evolved over time as there
10 were more developments in the litigation.

11 **Q.** What is the significance of the red text, please, do you
12 know?

13 **A.** I'm sorry, I've no idea.

14 **Q.** If we look, then, first under the column "Risk
15 overview", it reads:
16 "Civil litigation and/or Court of Appeal processes
17 judge that POL has acted inappropriately or illegally.
18 Even in the absence of such a finding ongoing risk that
19 they ..."
20 I think there's some text missing there.

21 **A.** There may -- it's in the top:
22 "... that they continued to be perceived to have
23 acted in that way."

24 **Q.** "In that way", thank you.

25 **A.** Yeah.

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1 fire in your house, the left-hand column is saying,
2 "What's the chance of my house burning down and what's
3 the impact of that?", yeah? And then on the right, it's
4 saying, "After I've taken mitigation", in this case
5 buying a fire extinguisher or a fire blanket, my
6 probability is reduced. But, in this case -- so
7 essentially this is what this is saying: if there wasn't
8 mitigation, the probability of there being serious
9 consequences from the litigation is high, that's what
10 the 4 means in probability, and that reduces to 3 as
11 a result of the mitigation.
12 The impact of the event is very high, that's 5, and
13 it's very high in both cases because the mitigation
14 doesn't -- in this case, with the litigation, doesn't
15 reduce the impact of the -- of a negative event.

16 **Q.** So far as you were concerned, did that accurately
17 reflect the impact risks that you perceived in relation
18 to this litigation?

19 **A.** Yes, I think it was always perceived that -- and if --
20 perhaps we could scroll up to the -- would you mind
21 scrolling up to the top and to the heatmap?

22 **Q.** I don't think we have a heatmap on this version of the
23 risk register.

24 **A.** Oh, okay.

25 **Q.** I'll take you to another version --

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- 1 A. But I think it's important, if you do have another
2 version with it, it might be helpful to look at it.
3 The point I was going to make is that this was the
4 top risk. It was identified as the top risk affecting
5 Post Office at the time. It was in the top right-hand
6 corner, it was red, both in terms of probability and
7 impact and so I think, you know, from a team's
8 perspective it was clearly identified as, you know --
9 and there were many risks attaching to this company.
10 I mean, as you've seen, there are 12 items listed but it
11 was the -- you know, it had the potential to be the most
12 significant issue.
- 13 Q. Now, the Inquiry has heard evidence from the chair of
14 UKGI, Robert Swannell, to the effect that the Board was
15 first alerted to the risks of the Group Litigation in
16 January 2019.
- 17 A. Mm.
- 18 Q. Given that this was recognised to be one of the greatest
19 risks relating to the Post Office why is it, do you
20 think, that it did not reach the Board of UKGI as
21 a significant risk until January of the following year?
- 22 A. It's very hard for me to say because I -- I think I've
23 explained this, there's a link in the chain, another
24 link in the chain between this document and what the
25 Board sees. So what the Board sees is a summarised

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- 1 That, in fact, occurred in October, is that right,
2 that meeting?
- 3 A. Well, the meeting with the company, as I think I said.
4 So a few points on this. So Andrew Griffiths was the
5 Minister at this time but, obviously, he left quite
6 quickly, I think, and then Kelly Tolhurst arrived in
7 July. She actually was the third Minister we'd had in
8 a period of some months. So that changed and then the
9 briefings we'd provided, we'd provided a briefing,
10 I think, by this point, to the Permanent Secretary,
11 possibly to Andrew Griffiths, as well, I don't recall
12 but Kelly Tolhurst received the briefing papers,
13 I think, later on after -- in advance of the October
14 meeting.
- 15 Q. Was the turnover of ministers an issue for UKGI in
16 relation to its communication reporting of risk?
- 17 A. It's always an issue because you don't have continuity
18 and, you know, naturally it takes them time to get
19 appraised of what's going on. They have to do their own
20 priorities. I mean, you know, it's not -- it really
21 isn't helpful to try and get good decision making.
- 22 Q. The final column, Q, this concerns the current status,
23 so would be the most sort of up-to-date information as
24 at June 2018, presumably.
- 25 A. Mm-hm.

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- 1 version of these risk registers and, obviously, my team
2 wasn't involved -- as far as I know, I don't think the
3 team was involved in preparing those summaries.
- 4 So I think what may have gone wrong here is that the
5 process of summarising these things didn't feed through
6 properly to the Board paper.
- 7 Q. Thank you. Then just before we move on to the next
8 register, just dealing then with actions taken to
9 mitigate risk, so in the column K, that is the
10 "Mitigation Overview", which identifies that the Post
11 Office have their own external legal advisers employed
12 on the civil litigation, including a silk, and they
13 continue to update UKGI. Now, were you -- this is
14 obviously late June. You began to have some quite
15 significant concerns, did you not, about the quality of
16 the legal advice that the Post Office was receiving?
- 17 A. Yeah. But this was before. I mean, if it's June, that
18 was before I really got into this topic.
- 19 Q. Then if we look at column P, which I think bears the
20 heading "Further mitigation actions", it confirms that:
21 "UKGI have briefed the Minister Andrew Griffiths and
22 will keep ministers, SpAds and the Permanent Secretary
23 update at key points through the new disclosure
24 protocol, with POL's legal counsel to provide an oral
25 briefing on 10 September."

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- 1 Q. It reads:
2 "POL preparing for the first main hearing in
3 November to determine scope of contract between Post
4 Office and postmasters and concurrently the second main
5 hearing on the integrity of the Horizon IT System. UKGI
6 has put in place a disclosure protocol with the Post
7 Office to keep the Permanent Secretary, BEIS and the
8 Minister updated at key stages while protecting legal
9 privilege integral to the Post Office's defence. Post
10 Office's counsel to give a briefing, as we've discussed,
11 particularly to cover contingency planning."
12 That's a matter you've raised in you evidence this
13 morning:
14 "No inherent increase in risk in this case at this
15 stage."
16 Does that reasonably fairly summarise where you were
17 in late June 2018?
- 18 A. I think so, and I think what -- perhaps we'll talk about
19 this in the later versions of this, but I think it's
20 important to understand that this risk register at this
21 stage, given the information we had, could only
22 articulate the risks at quite a high level. If you --
23 another word for contingency planning that we were
24 asking the company to do is identify the risks, "Please
25 tell us what the risks are of this going wrong and what

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1 the consequences are"; it's another version of a risk
 2 register. And that would have -- I think, had we had
 3 good contingency planning from the company, it would
 4 have informed and allowed us, enabled us to produce
 5 a much better risk register that was, you know,
 6 particularly with the benefit of hindsight well
 7 articulated.

8 **Q.** Can we please take a look at a later copy of the
 9 register, dated 31 December 2018. So about six months
 10 later. It bears the reference UKGI00015921. So this
 11 register contains the heatmap to which you referred.

12 **A.** Mm-hm.

13 **Q.** Was there a particular point you wish to raise in
 14 relation --

15 **A.** I'm hoping, given what I've said, that number 9, which
 16 is in the top right, is the litigation.

17 **Q.** I believe it bears the same reference, if we scroll
 18 down, please?

19 **A.** Yeah.

20 **Q.** So you're saying here, really it's been flagged on the
 21 map as the most serious risk?

22 **A.** Yeah.

23 **Q.** If we look at the summary, beside the register,
 24 please -- sorry, besides the heatmap, it contains an
 25 overview at point 1; at point 2, an overall delivery

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1 **Q.** You've said earlier in your evidence that you're not
 2 sure why the risks relating to the litigation didn't
 3 penetrate up into the UKGI Board until January 2019. Do
 4 you think that the practice of pithy summaries like this
 5 might explain why it didn't necessarily register, absent
 6 a heatmap, as a very serious risk?

7 **A.** Possibly. Possibly. But I think, you know, given that
 8 it's number 9, it's in the top right and there's a much
 9 better explanation below, I don't think it's much of
 10 a leap to identify what's really going on from this.

11 **Q.** If we scroll down, please, to page 4, we see the detail
 12 there in relation to risk number 9. So now described as
 13 "Civil litigation against the Post Office". You're no
 14 longer named underneath, it's Stephen Clarke who's
 15 named. Do you know why there was a change of the guard?

16 **A.** I don't.

17 **Q.** So the first column is substantially the same as it
 18 appeared in the risk register to which we referred in
 19 June. There's an additional entry under the impact
 20 column, where it reads:

21 "Even a positive legal outcome is likely to have
 22 considerable comms fallout for Post Office and UKGI.
 23 The complainants have a track record of successfully
 24 airing their grievances through the media."
 25 So picking up again on that interest in the press

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1 risk; and at point 3, a summary of the reputational
 2 risk. That's registered to be high, and it reads:
 3 "There is significant political risk in the Post
 4 Office Network and there are a number of clear policy
 5 objectives. Risk is mainly centred on these areas but
 6 it can also be linked to executive management and
 7 remuneration issues."
 8 It then deals with the ongoing litigation.
 9 "There is an ongoing [Post Office] litigation case
 10 which could potentially generate a high level of
 11 negative coverage. The UKGI [Post Office] team are
 12 aware of the pressures and are working [collectively]
 13 with Post Office Limited to manage the risks away."
 14 Do you think that accurately reflected the level of
 15 risk at that time; is that a fair summary, do you think?

16 **A.** No, I don't think so. I think the sentence I would
 17 rewrite or should have rewritten at the time, was one
 18 about there is an ongoing litigation case which could
 19 potentially generate a high level of negative coverage.
 20 I mean, I don't think I or the team were thinking about
 21 this from a coverage point of view. What we were
 22 thinking about was the consequences. As I've said, the
 23 primary focus, certainly with the Department, was to get
 24 the contingency planning done. It was what are the
 25 consequences of a negative judgment?

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1 reporting, rather than the substance of the litigation;
 2 do you know why that is?

3 **A.** Actually, yes, and I -- again, I repeat what I said
 4 earlier. I think there's too much focus here on
 5 communication, relative to actually what the team was
 6 doing. I also think the word "distraction" in here is
 7 inappropriate as well. I mean, the point that was
 8 trying to be made here is that the absorbed -- it was
 9 absorbing a significant amount of management time, which
 10 obviously diverted them away from doing other things.
 11 But it -- the implication here is that the word
 12 "distraction", I think, has connotations, which I think
 13 again weren't in our mind at the time.

14 **Q.** If we go on, the RAG rating remains the same, as it did
 15 in June. We can see there the rating of 20. In the
 16 previous version, I think that wasn't visible, but it is
 17 the same, so 4 for probability; 5 for impact; an overall
 18 rating of 20.

19 Under column K, the "Mitigation Overview" repeats
 20 that Post Office have external legal advisers including
 21 a silk:
 22 "They continue to update UKGI through the Board
 23 where UKGI's Non-Executive Director [you] sit and
 24 directly to UKGI's legal counsel, under the disclosure
 25 protocol."

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1 Now, by this stage, we are now in December 2018,
 2 it's right, is it not that you had lost confidence in
 3 the Post Office's Legal Team?
 4 **A.** Yes, yes. But I don't think that -- again, I think it's
 5 easy to conflate my personal views with what we were
 6 still hearing from the company, so in December, which
 7 obviously was after the hearing had started but before
 8 the judgment arrived, the company was still, you know,
 9 expressing great confidence in the outcome of both
 10 hearings. So I think it's -- you know, it's important
 11 that one person's perspective doesn't necessarily colour
 12 what goes into these things too much because, you know,
 13 I might have been right, I might have been wrong. And
 14 I think the important thing was to -- here, was to try
 15 to convey, you know, if you like, the expert, the expert
 16 view, as it then was.
 17 **Q.** Well, starting with you've accepted, I think, that you,
 18 as Shareholder NED, was the primary source --
 19 **A.** Yes.
 20 **Q.** -- of reliable and accurate information about risks
 21 relating to the civil litigation?
 22 **A.** Yeah.
 23 **Q.** This is a register maintained by UKGI of the risks that
 24 it has identified --
 25 **A.** Mm-hm.

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1 any advice to ministers, maintaining a position that
 2 Government will not comment on an ongoing legal issue
 3 and will work with POL and the Post Office and BEIS
 4 Policy/Comms to review this depending on outcome. First
 5 judgment on first trial expected in January."
 6 So that appears to acknowledge, does it not, that by
 7 this stage BEIS are quite closely involved, in the sense
 8 that their own Legal Team are receiving advice and input
 9 and they're feeding that advice up to their ministers?
 10 **A.** Yes, and I mean that had been true for some time, at
 11 this stage.
 12 **Q.** Because you, I think you expressed earlier in your
 13 evidence a concern about a lack of engagement on the
 14 part of the Department until after the Common Issues
 15 trial. What this appears to be suggesting is that the
 16 Department was already quite actively engaged.
 17 **A.** I think what this is conveying is that the Department
 18 was receiving the information. What I was trying to say
 19 earlier was that we weren't getting a lot back. There
 20 weren't many questions coming out of that information.
 21 So we'd provide a briefing, and there was no -- it was
 22 noted or received and -- but we wouldn't get questions
 23 back or we wouldn't say, "This is important, you know,
 24 or interesting, please can we have a meeting to discuss
 25 it?" That was the bit that was missing. So, yes, they

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1 **Q.** -- in relation to the civil litigation and it puts
 2 forward, as positive mitigation, that the Post Office
 3 have an external Legal Team and advice from a silk --
 4 **A.** Mm-hm.
 5 **Q.** -- in whom you had, by this stage, lost confidence. Is
 6 that not somewhat inaccurate and misleading and not
 7 reflecting your views as Shareholder Non-Executive
 8 Director about the concerns you had?
 9 **A.** I actually think, to bring that out, you would probably
 10 have changed the probability. I'd have -- you know, we
 11 would have probably tried to stay, instead of a 3, it
 12 should be a 4 for probability of losing and, you know,
 13 we've put it as a 4 because Tom Cooper thinks, you know,
 14 the lawyers have got it wrong. Again, I think I --
 15 I don't think that's, you know, yes, that is a possible
 16 argument.
 17 **Q.** Under column P, this relates to "Further Mitigation
 18 Action" and initially repeats what was recorded in the
 19 earlier risk register in June, in that:
 20 "UKGI is keeping ministers, SpAds and the Permanent
 21 Secretary updated at key points through the disclosure
 22 protocol and POL's legal counsel provided an oral
 23 briefing on 17 October."
 24 It goes on to say:
 25 "BEIS Legal are also up to speed and contributing to

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1 were informed but the point I was making earlier about
 2 engagement was there wasn't much coming back.
 3 **Q.** Under the final column Q, which is "Current Status",
 4 a slightly lengthier entry this time, it reads:
 5 "POL awaits judgment on the first trial to determine
 6 scope of contract [so as as previously expected], which is
 7 expected mid to late January and is making contingency
 8 and Government arrangements to deal with a 'bad
 9 judgment' and taking a decision on whether to appeal
 10 such a judgment. At the same time POL is preparing for
 11 the second trial in March 2019 on the integrity of the
 12 Horizon IT System. UKGI has put in place a disclosure
 13 protocol with POL to keep the Permanent Secretary, BEIS,
 14 and the Minister updated at key stages whilst protecting
 15 legally privileged information."
 16 It goes on to confirm that:
 17 "POL's legal counsel briefed the Minister and the
 18 Permanent Secretary on 17 October. UKGI continues to
 19 forward legal updates from POL's counsel to the
 20 Minister."
 21 Forgive me, there's two separate -- thank you:
 22 "POL's Group Communications Director has met BEIS,
 23 (Policy and Comms) and UKGI on 3 January [sorry, will
 24 meet, presumably] to discuss comms ahead of the judgment
 25 and will keep in regular touch. There has been

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1 considerable media interest so far, Daily Mail,
2 Telegraph, Financial Times, Computer Weekly, in
3 particular, while Nick Wallis, freelance journalist with
4 crowd funding responsible for a Panorama feature in 2015
5 is covering the case every day through a dedicated
6 website and regular Tweets. At the request of the
7 Permanent Secretary, UKGI's legal counsel briefed Her
8 Majesty's Treasury on the case on 13 November and
9 discussed the settlement process should this be
10 required. UKGI will comprehensively review both risk
11 and mitigations once the first judgment is handed down."

12 Would you agree that this was quite a process-driven
13 factual update, which did not offer any real insight
14 into your own thought processes as shareholder on the
15 Post Office Board?

16 **A.** Correct. Yeah.

17 **Q.** It's right, is it not, that your understanding of the
18 risks relating to the Group Litigation had changed quite
19 significantly in the period between June and December
20 2018?

21 **A.** Yes, from a personal perspective, yes. I was quite
22 gloomy about the way Post Office was handling it.
23 I mean, I think -- but, you know, I'm not a lawyer, and
24 I think you need to just bear that in mind: that my own
25 personal views were not -- were never the best informed,

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1 litigation. One was Common Issues the other was Horizon
2 Issues, and the Horizon Issues, at least to my way of
3 thinking, was, in a way, more important than the
4 contractual issues.

5 And no one was -- I had no view, and no one was
6 telling me that -- at that stage, that Post Office was
7 going to lose on the Horizon Issues. So the fact that
8 I had strong views about the way the Common Issues was
9 being handled didn't impact on -- actually, particularly
10 strongly on the bigger issue, which was what's the
11 Horizon Issues judgment going to be?

12 So I don't think -- I mean, this picture and this
13 scoring, I don't think would change -- even if my views
14 had been fed in here about the way the Common Issues had
15 been handled, I don't think actually it would change the
16 picture in an overall sense in a substantive way,
17 because the big issue was, you know, whether Horizon
18 worked or not.

19 **Q.** You suggest that was the principal issue. But you had
20 already established, had you not, a concern about the
21 liability clause and its link to a potential miscarriage
22 of justice. So the Common Issues trial itself
23 potentially gave rise to very, very significant risks,
24 didn't it?

25 **A.** I agree with that and I had figured that out but, as

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1 because I'm not a lawyer, and so what this is trying to
2 be is an objective description of what was going on, and
3 so on. But I was -- you know, effectively, I was in
4 a minority of one, here, in terms of -- you know, in
5 relation to the Post Office. I was the only person on
6 the pitch who was -- at least it felt that way -- who
7 was questioning, you know, the litigation and how it was
8 being handled, and so on.

9 So I think, you know, if you're going to put in
10 something that's seeks to be reasonably objective there,
11 it can't -- you can't colour it too much by the opinions
12 of one person who's not objective -- or sorry, not --
13 I don't mean not objective -- is not an expert.

14 **Q.** It's right, is it not, that the very purpose of your
15 role as a Shareholder Non-Executive Director on the
16 Board was to provide oversight --

17 **A.** Mm-hm.

18 **Q.** -- and to report back any risks you identified --

19 **A.** Yes.

20 **Q.** -- to UKGI and the Department?

21 **A.** Yes. That's right. But what was the risk I'd
22 identified? The risk I'd identified was that Post
23 Office had was -- would -- had missed an opportunity to
24 solve the Common Issues hearing in a consensual way.
25 But the -- you know, there were two parts to this

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1 I said earlier, it kind of -- it didn't go anywhere, and
2 again, had I -- had that topic been followed up,
3 particularly with Richard, if I'd got support and
4 encouragement for that from Richard, it might well have
5 appeared in here but, more importantly, it would have
6 surfaced at the Board, I'd have raised it at the Board,
7 which is, you know, the place where change could be
8 affected more quickly than through the UKGI channel.

9 I'm not saying the UKGI channel didn't matter but
10 what I'm trying to say is, if you actually want stuff to
11 change, the place that it was going to happen was at the
12 Post Office Board.

13 **Q.** Is that entirely right? Is it not right that UKGI,
14 through the Department, had the power to effect change
15 in the way in which the Post Office was conducting its
16 litigation?

17 **A.** Yeah, but it's all -- you know, it's slower, for
18 a start. You need to persuade lots of people. You've
19 got to persuade your CEO, you've got to persuade your
20 Board, you've got to persuade the Department, all of
21 which takes time. It can be very effective but this
22 is -- you know, this is all happening in short --
23 a short timescale.

24 **Q.** Looking back, do you think that your senior colleagues
25 in UKGI and the Board of UKGI would have benefited from

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1 knowing a bit more, or indeed at all, about the very
2 strong subjective views you had about the conduct of the
3 Group Litigation?

4 **A.** Possibly, yes. But I -- what the consequences of that
5 would have been, it's very hard to say. I think it's
6 very speculative to say that that would have made
7 a difference. I mean, remember, this is December now.
8 So it's all happening. It's all happened, you know, the
9 hearing has started.

10 **Q.** I mean, looking back, do you consider that the Post
11 Office risk register was an adequate tool for recording
12 and reporting the risks relating to the civil
13 litigation?

14 **A.** No, I don't agree with that, I'm sorry. I think it's --
15 we can discuss the wording and whether it could be
16 worded better but I think the critical thing, which is
17 this risk was identified as the key risk, it was in the
18 top right, it was red, on all counts, I think that
19 conveyed the key issue. It has the key issue.

20 **Q.** I'd like to move on to another topic, please, concerning
21 your reaction to the Common Issues judgment. You
22 received an update from the Post Office's General
23 Counsel on 8 March 2019, in which she confirmed the
24 outcome of the Common Issues trial; is that right?

25 **A.** Yes.

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1 characterises as 'extraordinarily partisan'

2 "He struck out the key contractual provisions which
3 require postmasters to account to Post Office, and

4 "He has stated that the Branch Trading Statement --
5 which is the key document on which Post Office relies
6 for postmasters to account for cash and stock in
7 branches -- cannot be relied on as a statement of
8 account."

9 She goes on to say that the judgment will be handed
10 down later in the week, possibly the following week,
11 and, in the meantime, the Post Office are working on
12 grounds for appeal.

13 She confirms:

14 "[The Post Office has] activated contingency
15 planning in order [to have] communications and detailed
16 plans available and ready to launch at the point the
17 judgment is formally handed down."

18 On receiving this update from the General Counsel,
19 you requested to see a copy of the draft judgment, did
20 you not?

21 **A.** Mm-hm, yes.

22 **Q.** In your statement, you describe feeling shocked when you
23 learned the basis on which the Post Office had pursued
24 certain arguments in the Common Issues trial; is that
25 right?

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1 **Q.** Please could we look at that email, which bears the
2 reference POL00103411. If we scroll to the bottom of
3 page 1, please. Thank you. We can see there the very
4 start of an email from Jane MacLeod on 8 March 2019, and
5 it reads -- and just to confirm we don't have the
6 recipients there. To the best of your knowledge, was
7 the email addressed to the same individuals we see
8 copied in to your email of 8 March at 4.28 pm?

9 **A.** Yeah, I think this would have been a reply all from me.

10 **Q.** Thank you. So if that's the case, it's an email to the
11 members of the Post Office Board?

12 **A.** Yeah.

13 **Q.** It says:

14 "All

15 "We received the judgment this morning in the Common
16 Issues trial. It's 325 pages and very detailed, and as
17 a result, we've not yet read it completely or fully
18 understood all the arguments. However a high level
19 review indicates:

20 "We have lost on all material points

21 "The judge has criticised Post Office
22 comprehensively -- both as to our historic operations
23 and behaviours and our conduct of the case

24 "The judge accepts the evidence of the lead
25 claimants but is sceptical of our witnesses who he

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1 **A.** Absolutely, yes.

2 **Q.** You also state that you agreed with the judge's
3 characterisation of the Post Office's position in the
4 litigation as being unrealistic; is that right?

5 **A.** Yes, yes.

6 **Q.** Please can we take a look at what you say at
7 paragraph 167 of your witness statement, please. It's
8 at page 79. Paragraph 167, thank you. This paragraph
9 reads:

10 "I was also shocked by some of the flaws pointed out
11 by the judge in [Post Office's] processes, including for
12 example the inability of [subpostmasters] to effectively
13 dispute items, the unfairness and oppressive effect of
14 having to 'settle centrally' before disputing an item
15 and the inadequacies of the branch trading statement.
16 I thought POL's Legal Team would have been more fully
17 aware of these points in the run-up to the Common Issues
18 hearing. There were major defects in [the Post
19 Office's] processes and therefore in [Post Office's]
20 case. But none of these issues had been brought to the
21 attention of the subcommittee nor, if they were ongoing
22 in [Post Office's] business, the [Audit and Risk
23 Committee] and the Board. I also reflected that these
24 flaws did not seem to have been brought to light in the
25 past by any of the safeguards that the company had in

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1 place, including internal and external audit. It was
2 also shocking to learn that some of [the Post Office's]
3 witnesses, particularly Angela van den Bogerd, had been
4 heavily criticised. Justice Fraser said she had not
5 been frank and had sought to mislead the court. My
6 view, which I believe was shared by other members of the
7 Board, was that the Legal Team had comprehensively
8 mismanaged the litigation."

9 Does that accurately reflect your response at the
10 time to reading the Common Issues judgment?

11 **A.** Yes.

12 **Q.** You make reference in the final sentence to
13 mismanagement of the litigation by the Legal Team, is
14 that intended to be a narrow reference to the Post
15 Office's Legal Team or are you referring more broadly to
16 the Post Office's wider team of external solicitors and
17 independent counsel?

18 **A.** Oh, all of them collectively.

19 **Q.** A meeting of the Post Office Board was convened on
20 12 March 2019 to discuss the judgment; is that correct?

21 **A.** Yes.

22 **Q.** That meeting took place by telephone and was attended by
23 David Cavender QC; is that right?

24 **A.** Yes.

25 **Q.** When he advised the Board that the Post Office had

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1 judgment, you say in your statement that you considered
2 that he was not considering the judgment sufficiently
3 objectively; is that right?

4 **A.** Yes, I mean it struck me that there were significant --
5 on a reading of it, a lot of what Justice Fraser was
6 saying, it seemed to me, made total sense and I thought
7 it -- personally, I thought it was premature to talk
8 about appeal when we hadn't actually evaluated the
9 judgment itself and worked out which parts of it the
10 company actually agreed with and which parts they really
11 disagreed with and on what basis they disagreed with
12 them.

13 It seemed to me that was an important exercise to go
14 through first before you started talking about appeal.

15 **Q.** So, in a nutshell, your concern was that there was
16 a knee-jerk reaction --

17 **A.** Yes.

18 **Q.** -- by the Legal Team that the judgment needed to be
19 appealed in its entirety?

20 **A.** Yes.

21 **Q.** You received an update from the Post Office's General
22 Counsel on 15 March, so three days later, concerning
23 further advice which the Post Office had sought on
24 bringing an appeal against the judgment; is that
25 correct?

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1 strong grounds of appeal, you questioned that advice; is
2 that right?

3 **A.** Well, I think, if I recall, the preamble -- there was
4 important preamble to understand what had gone wrong and
5 I remember challenging Jane MacLeod, for example.
6 I mean, one of the things that horrified me about the
7 ruling was the argument that Post Office's counsel had
8 put forward that -- in relation to contracts, that even
9 if a subpostmaster had not signed their contract, they
10 were somehow meant to be bound by a contract that was
11 left in a cupboard somewhere in the branch by their
12 predecessor. And I thought this was risible as
13 an argument.

14 And I challenged Jane on this in the meeting and
15 said, "Who advised us -- who advised the company to
16 argue this?" And she said something like, "Well, if we
17 hadn't done that the whole Post Office edifice would
18 have crumbled", and it was at that point that I thought,
19 you know -- I'd completely lost confidence in the Legal
20 Team at that point.

21 So before we got to the appeal part of the
22 discussion, you know, there was a short post mortem on
23 the hearing itself.

24 **Q.** So far as Mr Cavender's advice is concerned, to the
25 effect that there were strong grounds to appeal the

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1 **A.** Yes.

2 **Q.** Could we take a look at that update, please, which can
3 be found at POL00103438. If we could scroll to the
4 second page, please. Thank you. We see an email from
5 Jane MacLeod to you and Tim Parker, Chair of Post
6 Office. It reads:

7 "Dear Tim and Tom

8 "As flagged on the Board call on Tuesday, we have
9 sought further advice on appeals and as to whether we
10 have grounds to request the judge to recuse himself on
11 the grounds of bias."

12 Under the heading "Advice", it reads:

13 "We have sought advice from Lord Neuberger who
14 stepped down last year as the President of the Supreme
15 Court (and as such was the highest judge in the UK). We
16 sought his views as to whether the draft judgment
17 demonstrated the following grounds for appeal:

18 "Whether the judge has correctly interpreted and
19 applied the law ...

20 "[Secondly] Whether there are grounds to argue that
21 findings have been made as a result of serious
22 procedural irregularity ... and

23 "(Most urgently) Whether Mr Justice Fraser
24 demonstrated grounds on which we could apply for him to
25 recuse himself.

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1 "The test for recusal is 'whether the fair-minded
2 and informed observer, having considered the facts,
3 would conclude that there is a real possibility that the
4 [Judge] was biased'.

5 "Attached is Lord Neuberger's preliminary advice ...
6 as you will see in paragraph 5 [he] states that although
7 he has only looked at the issues very cursorily, 'at
8 least some of them raise quite significant points on
9 which the [Post Office] has a reasonable case, and at
10 least on the face of it, some points on which the [Post
11 Office] has a pretty strong case'.

12 "Further however, he suggests ... that if we wish to
13 rely on the ground of procedural unfairness at
14 an appeal, then '[Post Office] has little option but to
15 seek to get the judge to recuse himself at this stage'
16 and ... that if we fail to act promptly during the
17 Horizon trial we 'risk being held to have waived [our]
18 rights, or at least weakened our position on the recusal
19 [application]'."

20 In your statement, you describe your reaction to
21 reading this email as being one of astonishment.

22 **A.** Yes.

23 **Q.** Why is that?

24 **A.** Well, as I said just now, there hadn't even been
25 a proper post-mortem on the judgment itself and, you

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1 "Alex

2 "The judgment in the first trial is out and it is
3 adverse to POL. You'll get the briefing by 3.00 pm.

4 "There are a couple of things I need to brief you on
5 and on which POL is asking for a quick decision. It's
6 a high profile decision to do with handling the case
7 with significant implications for BEIS.

8 "Do you have time for a call later today or over the
9 weekend?"

10 The response you receive back -- so forgive me,
11 before we look at that, you've obviously copied this
12 email to Richard Watson, Mark Russell and Gavin Lambert,
13 and if we scroll up, please, we see a response from
14 Richard Watson, he's not copied Mr Chisholm or
15 Mr Lambert. He says:

16 "Tom

17 "Not including Alex or Gavin in this email but
18 copying Patrick and Gareth from BEIS Legal with whom
19 I have raised the issue about a possible recusal
20 application on the grounds of bias. I shared with them
21 Jane's email and the accompanying note from Lord
22 Neuberger and they have engaged on this issue at a high
23 level in the Government Legal Department.

24 "The particular concern here is anything that could
25 be seen as [Her Majesty's Government] not upholding the

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1 know, the company's Legal Team were talking about taking
2 very extreme action, in my view, without having
3 considered it properly.

4 **Q.** Shortly after receiving the update from Jane MacLeod,
5 you sought advice from Alex Chisholm, the Permanent
6 Secretary at BEIS; is that right?

7 **A.** Correct.

8 **Q.** I think your request to Mr Chisholm prompted Richard
9 Watson, General Counsel at UKGI, to send you some advice
10 about your involvement in the decision as to whether the
11 Post Office should apply to recuse the judge?

12 **A.** Correct.

13 **Q.** Now, you say in your statement that Mr Watson advised
14 you that it would be inappropriate for you, as
15 a representative of the Government, to participate in
16 a decision concerning the recusal of a member of the
17 judiciary.

18 **A.** Correct.

19 **Q.** Is that how you recall?

20 **A.** Yes.

21 **Q.** Can we take a look, please, at the email to which you
22 refer in your statement. It bears the reference
23 UKGI00009208. If we scroll to the very bottom of that
24 document, please. We can see your original email to
25 Alex Chisholm, you say:

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1 independence and integrity of the judiciary.

2 "While we think it is okay for Alex to be informed
3 we don't not [presumably we've got a double negative
4 there] consider the shareholder should be involved in
5 a decision whether or not to make a recusal application.
6 That is probably a matter for the [Post Office] Board.
7 I am, of course, happy to assist you as a Director on
8 the Board in carrying out your role."

9 Now, just pausing there, we'll come on, because
10 you've received several pieces of advice, but this first
11 chain is not concerned with your involvement, is it,
12 strictly speaking? The advice you're receiving here is
13 that it wouldn't be appropriate for the Permanent
14 Secretary or the Department to be involved in the
15 decision?

16 **A.** No, I didn't read it that way and I don't think that's
17 accurate. I think the bit -- the bit that I think
18 matters here is the bit that says, "We don't consider
19 the shareholder should be involved in a decision whether
20 or not to make a recusal application", and, you know,
21 I was the shareholder representative on the Board, so
22 anything I said in the Board meeting was likely to be
23 interpreted as the shareholder's view. I mean,
24 obviously, as Board member, you have two hats, as it
25 were: one is as the shareholder representative and then

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1 you're there in your personal capacity as a Director.
2 But, you know, as you'll see from the subsequent
3 emails -- and I hope we'll get to it -- this was a case
4 where there was -- the two would -- were bound to get
5 conflated.

6 I think it was, in this situation, impossible for me
7 to distinguish my personal views from those of the
8 Department because of the significance, and you'll see
9 an email that addresses that later on, hopefully.

10 **Q.** If we scroll up, please. The next email in the chain is
11 from Mr Watson to Mr Evans and Mr Kilgarriff. You're
12 not copied into this email but it is forwarded to you
13 later in the chain, so it is relevant to you. It reads:

14 "Gareth, Patrick,

15 "Would you agree that the UKGI director on [Post
16 Office's] Board should not be involved in any decision
17 by the company about a recusal application?"

18 "While I'm not convinced that there is a conflict of
19 interest I think that given the concern, rightly, that
20 [Her Majesty's Government] should not be seen as
21 questioning the independence and integrity of the
22 judiciary it feels presentationally difficult for
23 a Director appointed by the shareholder to be involved
24 in the decision. Put another way it seems preferable
25 that the UKGI Director is not involved."

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1 if you like, a policy, broad policy perspective, and so
2 I took that away as the first message. And the second
3 message was the last sentence, which is "you shouldn't
4 be involved".

5 **Q.** So far as you were aware, had the Department ever
6 brought a recusal application before; did you make any
7 enquiries as to that?

8 **A.** No, I mean, again, for -- again, remember there was very
9 little time here. I mean, this was 15 March and this
10 debate was -- the decision itself was taken on the 20th,
11 I think there was a weekend in between, I'm not sure.
12 So I -- I was reliant on the legal input here. How
13 branches of Government interact with each other was way
14 out of my field.

15 **Q.** If we scroll up, please, we can see the response that
16 Mr Watson received from Patrick Kilgarriff, he says:

17 "Richard, Gareth

18 "I don't think I would want to say Government NEVER
19 consider a bias challenge -- but inns sense of never say
20 never.

21 "I would have thought the function of the UKGI
22 Director might be to ensure the Board fully realised the
23 seriousness of what was proposed including the impact on
24 the shareholder (and the difficulties of distinguishing
25 between strategic direction and the operational matters

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1 So the concern which Mr Watson articulates here is
2 not that the application would give rise to a conflict
3 of interest for you as a Non-Executive Director of the
4 Board; is that fair?

5 **A.** Correct, I don't think it was ever seen as a conflict
6 issue. It was seen as, if you like, a policy issue
7 around relationships within the overall context of
8 Government. At least that was the way Richard saw it
9 and he's articulated it here. I'm not sure whether --
10 you know, how far that was discussed in those terms in
11 the Department. I haven't seen, either then or now,
12 seen how that issue was discussed in the Department.
13 But certainly in the Legal Team, in the Department, they
14 seemed to share that view, and that's what I took away
15 from these emails.

16 **Q.** The concern he articulates here and which he returns to
17 in a later advice is that it feels presentationally
18 difficult for you to be involved in that decision; what
19 did exactly did you understand him to mean by that?

20 **A.** I have no idea, to be honest. I didn't really
21 understand the word "presentationally". To me, the key
22 points I took away were, you know, the -- one branch of
23 Government, ie in this case the Department, should not
24 be undermining the judiciary, and any action I took in
25 the Board of supporting such a decision was wrong, from,

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1 in Parliament and the media) as well as the wider
2 litigation strategy on Horizon, that the Board had taken
3 and properly considered legal advice -- not a step to
4 take on finely [balanced] merits, and finally had
5 reflected properly on whether there was a bias or
6 (painful as it is) inferences drawn ultimately properly
7 from hearing the evidence expressed in pithy and robust
8 language. If the UKGI Director has done that, I would
9 agree that s/he may stand back from the decision to take
10 the challenge or not."

11 So it was not suggested by Mr Kilgarriff that you
12 must not take part in the decision, was it?

13 **A.** Not explicitly, no.

14 **Q.** His email suggests that it's a matter of discretion for
15 the UKGI Director?

16 **A.** Yes, but I think I mentioned earlier there was another
17 email exchange.

18 **Q.** I'll come to that one. So there's one a little later.
19 In fairness, I think we should look at Mr Evans'
20 response as well. He expresses himself in slightly
21 stronger terms.

22 Well, sorry, before we do that, Mr Watson forwards
23 on that advice to you from Mr Kilgarriff, and he says:

24 "I think Patrick's view is a sensible one, ie flag
25 the things the Board need to be cognisant of but not to

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1 be part of the formal Board decision."

2 So Mr Watson seems to read Mr Kilgarriff's email as
3 suggesting that, although you have a discretion, the
4 sensible course to take is not to take part in the
5 decision.

6 **A.** Correct.

7 **Q.** Now, Mr Evans' response is at UKGI00009211. His email
8 is dated 15 March, we can see Mr Watson forwards that to
9 you the same day but, in the middle of the page there,
10 Mr Evans' email to Mr Watson and Mr Kilgarriff,
11 following on from the email we've just seen, the advice
12 from Mr Kilgarriff, who says:

13 "I agree. Government has to give [the Post Office]
14 the wider context of any application. That could come
15 from Alex [Alex Chisholm, the Permanent Secretary] or it
16 could come from Tom. Tom would be best to deliver that
17 view but having delivered it he should withdraw.
18 Crucially, it would be painful if Tom was the casting
19 vote either way. And that suggests he should not
20 participate in the decision."

21 What did you understand Mr Evans to mean when he
22 said it would be painful if you were the casting vote
23 either way?

24 **A.** Well, it comes back to this one branch of Government
25 undermining another, and his point is that, if the

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1 action was not to participate.

2 **Q.** You make it clear in your statement that you always
3 thought it was a bad idea for the Post Office to apply
4 to recuse the judge --

5 **A.** Yes.

6 **Q.** -- and you explain that you had a discussion about the
7 recusal application with Alex Chisholm on 15 March -- is
8 that right --

9 **A.** Yes.

10 **Q.** -- prompted by your email that we saw a short time ago.
11 Please can we look at what you say in your statement
12 about that discussion. It's at paragraph 185 of
13 page 88. So it reads:

14 "In addition to discussions that Richard Watson was
15 having with BEIS Legal, I had discussed the recusal idea
16 with Alex Chisholm on 15 March. It was clear that UKGI
17 and BEIS were both deeply uncomfortable with the
18 application being made. But it was considered
19 inappropriate for me, as the Government's representative
20 on the Board of an arm's-length body, to be party to
21 a decision that sought to challenge the judiciary."

22 You say:

23 "In essence, this was the 'presentational' concern
24 referred to in Richard Watson's email of 18 March."

25 Can we take a look at that email, please,

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1 decision swung towards recusal because of my vote, there
2 will be a clear -- you know, it would be clear that it
3 wouldn't have happened, had it not been for the
4 shareholder representative on the Board and,
5 effectively, the actions of the Department, and that
6 would create the opposite intent of what the -- what was
7 intended here, of me not participating.

8 **Q.** What would be the problem with your vote: tipping the
9 balance the other way, namely in stopping the Post
10 Office from making the application?

11 **A.** Well, what this exchange is saying is that I shouldn't
12 cast -- the previous sentence, if I was casting the vote
13 either way -- I mean, to be honest, I didn't focus on
14 that bit. You know, I felt very strongly that this was
15 a very rash thing to do and I think everyone's instinct
16 here was to try to avoid it happening.

17 So the idea of me voting in favour of recusal, you
18 know, at this time, I think, was not in contemplation.
19 I have thought about -- I mean, we might come on to
20 that, you might ask me the question: what would I have
21 done as a Director if I had been in the meeting and
22 heard all the arguments? But I don't think that was
23 relevant to this, to this email exchange.

24 I mean, it was clear to me, and it's clear from this
25 email and the subsequent one, that the right course of

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1 UKGI00009273.

2 By this stage you had canvassed the opinions of
3 Mr Chisholm, that's correct?

4 **A.** Yes.

5 **Q.** It was your understanding that, like you, he was opposed
6 to application; is that right?

7 **A.** Yes. I think it was clear from his email that he had
8 reservations but I think he set out -- because I'd
9 forwarded to him Lord Neuberger's note, which he read,
10 and I think it was -- he also knew, because I think I'd
11 told him that Lord Grabiner's view was even stronger at
12 that time. We hadn't heard his advice but it was
13 reported that his advice was even stronger than Lord
14 Neuberger's. So that was part of Alex's email.

15 So I think perhaps it's worth reading it but, you
16 know, he set out, I think, why the Board might
17 reluctantly come to a decision to support recusal but
18 then went on to say it was clear in his mind that the
19 Department should -- I think he used words like maintain
20 a distance from this, which clearly supported -- in my
21 view, was totally consistent with the views of the Legal
22 team that we've just looked at, that I shouldn't
23 participate.

24 **Q.** So, obviously, there's a difference between, on the one
25 hand, the Department expressing a view, or becoming

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1 involved, and you as a member of the Board?
 2 **A.** Correct.
 3 **Q.** Those are distinct. In terms of your involvement, you
 4 received some further advice from Mr Watson on 18 March.
 5 Can we look, please, at the top of page 2. This is in
 6 response to a request from you for a script to explain
 7 why it is that you're proposing not to participate in
 8 the decision. He says this:
 9 "I have discussed this with the BEIS Legal Director.
 10 I should be clear that the [Secretary of State] does not
 11 have the power to direct you not to participate in the
 12 actual Board decision and I do not consider you have
 13 a conflict of interest. So in fulfilling your role as
 14 a Director you could properly reach the view that you
 15 should participate in the actual decision. However, the
 16 reason we are suggesting that you follow something along
 17 the lines of the above script is because of the
 18 presentational concerns that may arise if it transpired
 19 that the shareholding appointed Director participated in
 20 the actual Board decision."
 21 So here, Mr Watson reiterating the advice that
 22 there's no legal barrier to your participation in the
 23 decision; do you agree?
 24 **A.** Correct.
 25 **Q.** He states --

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1 about how it's going to look, rather than the actual
 2 decision that you need to make; is that fair?
 3 **A.** Well, I think I've tried to explain what I think
 4 "presentational" means in this context and I don't think
 5 it's just a style point or a form over substance point.
 6 I think it's a real concern about, you know, how the
 7 decision would be interpreted and how my action on the
 8 Board would be interpreted by the outside world in this
 9 particular, very special, context.
 10 **Q.** Given the strength of feeling that you had about the
 11 merits of the recusal application, and the feelings
 12 articulated to you by BEIS, did you consider whether you
 13 had a duty to vote against it in your capacity as
 14 Shareholder Non-Executive Director?
 15 **A.** I did but it seemed to me that I -- the proper thing to
 16 do here was to take -- to follow the legal advice, and,
 17 you know, if we could come back -- if we can find the
 18 engineering and outcome email, I think I can -- that
 19 would help.
 20 **Q.** Is that an email from Alex Chisholm to which you're
 21 referring?
 22 **A.** No, this is an exchange between Richard Watson and
 23 Gareth Evans in the Department. It's between the
 24 lawyers in the Department.
 25 **Q.** We'll see if we can find that.

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1 **A.** But I think the word "presentational" here actually
 2 makes, you know, makes a lot of sense because what
 3 I think he's communicating was that it would be very
 4 hard, I think, for anyone in the outside world to
 5 understand the distinction between my role as the
 6 departmental representative on the Board and my own
 7 personal view. This is the point I was making earlier.
 8 I think the two would get conflated and, you know, if --
 9 let's say I voted in favour of the recusal and that was
 10 criticised, and the Department then had to say publicly,
 11 "Well, you know, Tom was just expressing his personal
 12 view". Nobody would believe that.
 13 And I think this comes out quite clearly in a later
 14 email which talks about engineering an outcome which is
 15 where the decision effectively gets thrown back to the
 16 Department. So I don't know if you've got that
 17 available but I think it's worth looking at.
 18 **Q.** We'll have a short break and I'll see if we can find
 19 that one to which you're referring.
 20 **A.** Yeah.
 21 **Q.** Before we do, is it not right that what's being
 22 expressed here is a concern about style over substance,
 23 namely that you're being advised that Mr Watson from
 24 UKGI, as UKGI General Counsel, and his colleagues in
 25 BEIS, with whom he's consulted, they're really concerned

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1 **A.** Thank you.
 2 **MS HODGE:** Thank you, sir. This might be a convenient time
 3 to take our second morning break.
 4 **SIR WYN WILLIAMS:** Yes, certainly.
 5 **MS HODGE:** Shall we --
 6 **SIR WYN WILLIAMS:** Yeah, what time, please?
 7 **MS HODGE:** Shall we resume at 12.35?
 8 **SIR WYN WILLIAMS:** Yes, fine.
 9 (12.24 pm)
 10 (A short break)
 11 (12.35 pm)
 12 **MS HODGE:** Hello, sir. Can you see and hear us?
 13 **SIR WYN WILLIAMS:** Yes, thank you. Yes.
 14 **MS HODGE:** Thank you.
 15 Mr Cooper, just before the break you mentioned
 16 an email chain containing some further commentary about
 17 the recusal application.
 18 **A.** Yes.
 19 **Q.** We've managed to locate that, that bears the reference
 20 UKGI00009308. Now, this is an email chain, it
 21 originates with an update from the Post Office's General
 22 Counsel, and you explained earlier in your evidence that
 23 you forwarded some legal advice to Alex Chisholm. So we
 24 see his email at the start of the chain. We can go to
 25 that if you wish but I think the part to which you were

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1 referring earlier in your evidence can be found at
 2 page 2, please. It's at the middle of the page.
 3 **A.** Would it be possible just to look at Alex's sort of
 4 punchline at the end?
 5 **Q.** Yes, by all means.
 6 **A.** That would just be helpful.
 7 **Q.** So at the middle of page 3, please, we can see Alex's
 8 email to you of 19 March. So if we scroll down to
 9 page 4, please, I think it's fair to say that you've
 10 already summarised the gist of what he said. In the
 11 final paragraph, please, nearer to the bottom of
 12 page 4 -- thank you -- is this the one to which you were
 13 referring:
 14 "The Department should maintain its clearly distinct
 15 and detached position, so that it is free and credible
 16 for dealing with the consequences as they unfold.
 17 Ministers may want to show appropriate concern about the
 18 criticisms and may express a desire for [Post Office] to
 19 act appropriately but should not comment substantively
 20 in ongoing litigation in which the Department has
 21 a clear interest but no direct involvement."
 22 **A.** Yes. Can I just say, this email was very important for
 23 me, and the key bit of this is the first sentence in
 24 that paragraph that says, "maintain a clearly distinct
 25 and detached position". And I do understand what you're
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1 object ie some sort of conditional Board approval. As
 2 shareholder I don't consider she has the legal power to
 3 prevent this even if it was an appropriate thing for her
 4 to express a view on, which I think we agree it isn't
 5 but instead is properly a matter for the Board.
 6 "It is of course proper for the Minister to
 7 understand [Post Office's] decision and why their
 8 position might have changed since her call with the
 9 Chair on the weekend. I understand that might be the
 10 subject of a call with the Minister later today."
 11 **A.** Okay. So the key bit of this is "are we agreed that we
 12 should not try to engineer a position today whereby",
 13 et cetera, "ie some sort of conditional Board approval",
 14 and I say "I have no intention of engineering such
 15 an outcome".
 16 And what this is saying is that, if I had to express
 17 comments here in the Board of saying I really don't
 18 think we should be doing this or, in the opposite
 19 direction, I really think we should be, there would have
 20 been a very high chance -- whatever I'd said about this
 21 being my personal opinion, nothing to do with the
 22 Department, I think other members of the Board would
 23 interpret it as informed by the views of the Department
 24 and that would increase the risk that Board would say,
 25 "Well, we've received legal advice that says we should
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1 going to say, you're going to say "Yes, but this doesn't
 2 talk about you, Tom, it talks about the Department", and
 3 I get that but I think -- and we'll come on to that with
 4 this other email -- but I think this totally reinforced
 5 the view I was getting from the Legal Team in UKGI and
 6 BEIS, in other words from everything I knew, all the
 7 bits of the Department were saying the same thing, which
 8 was "Stay out of this thing", yeah?
 9 **Q.** In your mind, are you saying that you are unable to see
 10 any material distinction between the Department's
 11 position and your casting a vote as a shareholder
 12 representative on the Board?
 13 **A.** No, I'm not saying that. I understand that distinction
 14 very well. What I'm saying is in this particular
 15 situation, it would be impossible to separate the two
 16 and this other email, I'm trying to -- I'm pointing you
 17 to, is -- I think highlights that quite well.
 18 **Q.** If we scroll up, please -- sorry, to page 2, I think, is
 19 the email from Richard Watson. Yes.
 20 **A.** Yeah, okay.
 21 **Q.** Thank you. This is 20 March, two days later:
 22 "All
 23 "Are we agreed that we stood not try to engineer
 24 a position today whereby if the Board decides to proceed
 25 with the recusal the Minister is given a chance to
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1 go for recusal, we think reluctantly that's what we
 2 should do but we'll only do it if the Department agrees
 3 that that's what we should do", and that's the
 4 conditional approval, yeah?
 5 And so my concern, which I believe is totally valid,
 6 is that any view I expressed to the Board was likely to
 7 increase the chance for the conditional approval or
 8 rejection which was exactly what the Department didn't
 9 want. The Department did not want this decision to come
 10 back to them. That's, I think, very clear, from all the
 11 emails and also the subsequent actions of the Minister
 12 because you'll see, in the second paragraph of this, it
 13 says it's proper for the Minister to understand and --
 14 since her call at the weekend, and she might have a call
 15 later today. She did want to have a call, there's
 16 an email chain to that effect, but then decided against
 17 it.
 18 So I think everything in these exchanges was telling
 19 me that I should not take any action that would increase
 20 the chance of this decision coming back to the
 21 Department.
 22 **Q.** What you appear to be saying, is it right, is that, so
 23 far as you were concerned, the Department didn't want to
 24 make this difficult decision?
 25 **A.** Correct.
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1 Q. You didn't want to make this difficult decision?
 2 A. I don't think it was -- I think in this situation, my
 3 personal views, I think, were overridden by my
 4 principal, by the Department. I didn't feel -- I don't
 5 feel I could have explained afterwards, if I -- let's
 6 say I had spoken at the meeting and the result of that
 7 would have been that it came back to the Department,
 8 I think I would have had a very difficult job to explain
 9 why I'd done what I'd done.
 10 Q. Are you saying, therefore, you felt constrained by the
 11 position that the Department took, in expressing your
 12 own personal views to the Board about the merits of the
 13 application?
 14 A. Absolutely. I felt I had very clear -- the sum of all
 15 of this is I felt I had instructions not to participate.
 16 Q. I'd like to address one final topic with you, please,
 17 Mr Cooper, before I hand over to the recognised legal
 18 representatives of the Core Participants. This relates
 19 to the Department's oversight of Post Office in the
 20 litigation. Now we covered that a little earlier in
 21 your evidence this morning when we discussed the policy
 22 team, the late establishment of the policy team, and
 23 communications between UKGI and BEIS. You said in your
 24 evidence that you felt there was a lack of engagement on
 25 the part of the Department and ministers. I think you

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1 that I believe the recognised legal representatives
 2 would like to use to ask questions to see if we're able
 3 to upload them for Mr Cooper to consider them.
 4 In terms of timings, sir, I think the indication is
 5 that there may be about half an hour, possibly slightly
 6 more, of questions, cumulatively from Core Participants.
 7 If you're content for those questions to be placed now,
 8 we can take a slightly later lunch break and hopefully
 9 enable Mr Cooper to finish his evidence this morning --

10 SIR WYN WILLIAMS: By all means, yes.

11 MS HODGE: -- in this session.

12 SIR WYN WILLIAMS: Yes, let's do that.

13 MS HODGE: So I think we're hearing first from Hudgells.

14 **Questioned by MR MOLONEY**

15 MR MOLONEY: Thank you, sir, and thank you Ms Hodge.

16 Mr Cooper, in your witness statement -- and if we
 17 could please go to it, it's page 112 and paragraph 242,
 18 if possible. Just whilst that's coming up, you
 19 addressed the late disclosure of KELs before judgment in
 20 the Horizon Issues trial, at a time when POL was
 21 considering settlement.

22 A. Yes.

23 Q. You explain in paragraph 242 -- and it's magically there
 24 now -- that:

25 "The Board was advised of the steps that were being

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1 explained that, so far as you were concerned, UKGI were
 2 feeding information to the ministers but you weren't
 3 getting much back. Is that a fair summary of your
 4 evidence?

5 A. Correct, yeah.

6 Q. Now, you also referred to a meeting you attended with
 7 the Minister, Kelly Tolhurst, on 17 October 2018; that's
 8 correct, isn't it?

9 A. Yes.

10 Q. Do you recall, as part of the outputs of that meeting,
 11 the Minister requesting access to more information and
 12 the advice that the Post Office was receiving in
 13 relation to the litigation?

14 A. I actually don't recall that. I think the first time
 15 I recall that was in the immediate aftermath of the
 16 Common Issues judgment, and there was a phone call on
 17 16 March, in the afternoon, with Tim Parker and others
 18 from the Post Office, which Kelly Tolhurst was on, and
 19 I recall her asking for more information then. And it
 20 may be in the record, I don't know, but I don't remember
 21 it in the aftermath of the 17 October.

22 Q. It might refresh your memory, if we could take a look at
 23 UKGI00008608.

24 Sir, we unfortunately don't have those documents to
 25 hand at the moment. It may be that we can take the time

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1 taken to address the disclosure failure, including work
 2 to assess the evidential significance of the new
 3 material and whether the errors by Fujitsu might give
 4 rise to a cause of action against Fujitsu in relation to
 5 this specific incident."

6 Then you carry on to discuss about whether or not
 7 there might be further evidence.

8 You return to the topic when dealing with
 9 post-settlement events at paragraph 256, which is
 10 page 117, if we may. So we can see there, it's under
 11 "Post-settlement", and if we scroll down to
 12 paragraph 256, it reads -- if we could just go perhaps
 13 a few more lines so we can see the top of 118:

14 "The subcommittee had previously requested advice
 15 about whether POL had an action against Fujitsu so that
 16 it could recover at least part of the settlement cost
 17 from Fujitsu. Ben Foat reported that initial advice had
 18 been received but a final advice was awaited. My
 19 recollection is that POL was ultimately advised that any
 20 claim it wanted to make against Fujitsu would almost
 21 certainly be time-barred."

22 So just, as it were, considering both of those
 23 paragraphs together, at paragraph 242, you talk about,
 24 as it were, the origins of the advice, or the request
 25 for the advice and, in respect of that advice, on

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1 whether any errors by Fujitsu might give rise to a cause
2 of action. Was that advice sought following
3 encouragement by the Board and/or the subcommittee or
4 was it initially sought simply on the initiative of
5 POL's lawyers?

6 **A.** My recollection is that Ken McCall asked this question
7 in the subcommittee or in the Board, I'm not sure which.
8 Ken was, I think, rightly interested to know whether
9 Post Office could recover anything against Fujitsu. And
10 I think there were actually two -- twice it came up
11 during my tenure that the Board asked about this and
12 wanted it reconfirmed, and the answer basically came
13 back the same both times that -- and I am probably
14 expressing this in too simplistic a term for the
15 lawyers -- but, essentially, it's that Post Office knew
16 or should have known, more than six years before, that
17 there were problems with the system and that, therefore,
18 you know, any claim would be time-barred.

19 **Q.** Right, okay. Just to move away from the terms of the
20 advice but you sought the advice in order to see whether
21 POL, and ultimately the public purse, could recover at
22 least part of the settlement cost?

23 **A.** Correct.

24 **Q.** It would clearly be important because it would help in
25 working at what would be a reasonable settlement and

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1 **A.** It was not -- I -- well, just a bit more context for
2 you. I think one of the things that hampered -- it was
3 HSF who were giving the advice here and I think one of
4 the things that hampered them -- and this issue also fed
5 into the whole discussion about malicious prosecution
6 that happened later, and Limb 2 abuse, is that their
7 visibility -- Post Office's visibility on events
8 pre-2010 particularly was very limited, and so the
9 advice they were giving here was very -- was hampered by
10 that or constrained by their lack of knowledge of the
11 history -- complete knowledge of the history.

12 So I think HSF's advice was always -- on this topic
13 of what could be recovered from Fujitsu was always
14 caveated by "Well, we don't have the whole story but
15 this is what we think you can't claim".

16 **MR MOLONEY:** All right. Thank you very much, Mr Cooper.

17 **Questioned by MR HENRY**

18 **MR HENRY:** Mr Cooper, I ask questions on behalf of number of
19 subpostmasters, including Mrs Seema Misra who sits
20 beside me.

21 Common Issues judgment, 15 March 2019. Obviously
22 a watershed for you personally.

23 **A.** Yes.

24 **Q.** By 15 November 2019, the Horizon Issues trial had been
25 and gone and you were awaiting a judgment, weren't you?

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1 when to make the settlement during the negotiations?
2 **A.** Yes, and I don't think it -- yes, it wasn't totally
3 financially driven. I think there was a real sense of
4 culpability here, that both -- I mean, obviously, Post
5 Office itself was culpable but I think there was also
6 a very strong feeling that Fujitsu was culpable here and
7 that they should be, you know, part of the resolution
8 and remediation process.

9 **Q.** There was initial advice reported by Ben Foat, you say,
10 at paragraph 256, and then you refer to, as it were, POL
11 being ultimately advised on any claim it wanted to make.
12 So two stages to this, as you've just outlined to the
13 Chair.

14 **A.** Yes.

15 **Q.** The initial advice reported by Ben Foat, did you
16 actually see any documents relating to that advice or
17 was it just reported by Ben Foat?

18 **A.** I think there was a document that we were shown, that we
19 received, yes, but I can't pin -- I couldn't pin down
20 for you when or in what forum.

21 **Q.** Then in terms of the final advice, did you, as a member
22 of the Board, then see that final advice?

23 **A.** It was probably in that context that we got the final
24 advice.

25 **Q.** Yes.

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1 **A.** 15 November?

2 **Q.** 2019, you were awaiting a judgment?

3 **A.** Awaiting the Horizon Issues judgment?

4 **Q.** Yes.

5 **A.** Yes.

6 **Q.** By this time, again, you must have been thoroughly
7 disenchanted by the brief you'd been given? I mean, the
8 Common Issues judgment was a disaster and, so far as the
9 Horizon issues, the prospects looked grim, didn't they?

10 **A.** Well, the advice we were receiving then from Tony
11 de Garr Robinson had changed a lot. It had moved from
12 great confidence to gloom about the prospects. So
13 I think at that time the expectation was that the
14 Horizon Issues judgment would be negative as well, and
15 I think, yes, I think that's clear from the minutes too.

16 **Q.** So I'm going to be probing how you personally responded
17 to that and I'm going to take you now to UKGI00010737.
18 Could we just scroll further down, it's from Joshua
19 Scott, "Hi Toms", that's to you and Tom Aldred:

20 "You both tasked me with doing some research on the
21 convicted claimants in the GLO so I have decided to lump
22 them together in one document.

23 "Tom A in relation to how they were treated in the
24 last mediation and Tom C in how their stories are
25 portrayed in the public domain.

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1 "Please see attached an initial draft of what I've
2 done so far. Let me know if this ticks the boxes or
3 not.

4 "I've looked specifically at 5 of the convicted
5 claimants, 2 of whom (Jo Hamilton and Seema Misra)
6 feature quite prominently in multiple media releases and
7 the [Nick Wallis] blog."

8 That must be a reference to Nick Wallis, "NW":

9 "I have to say it has been a little harrowing
10 reading up on the stories but I think a useful exercise
11 to understand some of the convict claimants' positions."

12 Now, Mr Cooper, I suggest there that Josh Scott is
13 going a little off piste, over emotional or seeking to
14 distance himself from what was your ulterior purpose,
15 because I suggest you wanted to know how, there, the
16 convicted claimants' stories were portrayed in the
17 public domain, to see if you could undermine them,
18 didn't you?

19 **A.** Um, with respect, that is completely the opposite of
20 what I was trying to do. So if I could give you a bit
21 of background.

22 **Q.** Of course.

23 **A.** You'll see from my witness statement that I spent quite
24 a lot of time talking about my attempts to get
25 an understanding of the lead cases and the

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1 matters that refer to you within this note. We know
2 that this note was composed, because we can see from the
3 first line, on 24 January 2020 and, in the course of
4 this note you are reported, together with Tim Parker,
5 wanting to know if you can take pot shots at Seema
6 Misra, who sits beside me, whilst telling the lawyers
7 not to consider safety. So I want to go, please, to
8 page 3 of this document.

9 Now, do you see there:

10 "Horizon training -- [Rodric Williams] -- leave that
11 with me."

12 I'm going to assume, because there doesn't appear to
13 be any further initial before "CCRC agenda", that it is
14 Rodric Williams speaking:

15 "CCRC agenda -- want to make sure got [documents],
16 got right people, bow around it to give to counsel.
17 Need to start reading CCRC files now. Feel from Board
18 that they will go with wide review. We have material
19 for 34 [applications] to CCRC [including] Misra/
20 Hamilton/Thomas/McDonald. Board's concern is that there
21 is a narrative and we're just letting it go. Board
22 desperate to decide whether to take pot shots at Misra."

23 What do you say to that, Mr Cooper?

24 **A.** First of all, I'd like to say sorry to Mrs Misra that
25 she would have read this. I'm sure it's one of many

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1 understanding, a real -- a proper understanding of the
2 facts in the lead cases, and I was frustrated in that.
3 I actually tried to Google the lead cases in the Common
4 Issues judgment and found very little in the public
5 domain. I'd made at least two attempts to try and get
6 an understanding and the claimants' perspective and Post
7 Office's response to individual cases, the lead cases,
8 in the Common Issues judgment, and didn't get
9 satisfactory -- I got fobbed off both times.

10 So by the time we reached this point, I was
11 expecting the same thing to happen again and what
12 I wanted -- what I was asking the team to do here was
13 to -- let's see what's in the public domain. I can't
14 trust the Post Office to give me a proper description of
15 what the claimants are saying because of the history
16 here, and so let's research what we can and if the Post
17 Office don't address them in the information we get, we
18 can cross-check against the two. And I think there's
19 an email I sent Josh Scott, actually, that says it in
20 pretty much those terms.

21 **Q.** We'll come to that in due course but I want to go now to
22 POL00337435.

23 Now, this is a consultation with Mr Altman, Rodric
24 Williams, Nick Vamos of Peters & Peters, and others.
25 You are not present but want to ask you about some

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1 things she'd have found very insulting in this whole
2 saga.

3 All I can say to you is that I have no idea where
4 this came from. At this point in time, I was
5 actually -- as you'll see, my attempts to look at the
6 press coverage of Mrs Misra's case and others was to
7 actually challenge Post Office's description of events,
8 and I was -- I hadn't -- I was not in a position at this
9 point in time to decide -- I mean, if I was ever going
10 to take pot shots at anyone, whatever that means --

11 **Q.** Well, you know what pot shots means?

12 **A.** Well, yes, but I mean the key meeting here was
13 28 February, which was our first meeting with Brian
14 Altman on the convictions. So my research on the
15 history of these cases was in the run-up to that. I had
16 no view about Mrs Misra's case at that point in time.

17 **Q.** I'm going to put it to you straight. What do you say,
18 "Board is desperate to decide whether to take pot shots
19 at Misra"; are you saying that Williams just invented
20 that?

21 **A.** As far as I'm concerned, yes.

22 **Q.** Let's go to the next immediate paragraph below. Brian
23 Altman, Queen's Counsel:

24 "... did Board suggest about whether we should
25 review safety or just disclosure? [Rodric Williams] --

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1 no just on disclosure. Not opining on safety."
 2 Did the Board fetter the lawyers, "Don't advise on
 3 safety, just advise on disclosure"?
 4 **A.** No, absolutely not. I mean, the Board's perspective on
 5 this was that, clearly, as far as the company could
 6 possibly do so, this situation of the postmasters
 7 concerned, who had been convicted/terminated/harmed in
 8 any way, needed to be compensated/resolved/apologised
 9 for in every way -- you know, in every way possible and
 10 this was the opposite of what the Board was trying to
 11 do.
 12 **Q.** Can we go to the last two lines on this page, please.
 13 Here you are mentioned in the same breath as Tim Parker.
 14 It's unattributed who is speaking. But it says:
 15 "Tom Cooper/Tim Parker -- need to say 'Misra has
 16 been saying x in the press, what our actual review of
 17 her case is x'."
 18 **A.** Yeah.
 19 **Q.** Then Mr Altman says, "Know Misra well", in other words,
 20 the case.
 21 It suggests, doesn't it, that you wanted to impugn
 22 the credibility of the claimants, including, amongst
 23 them, Seema Misra, that you were asking Mr Scott to
 24 trawl for inconsistencies in their account.
 25 **A.** That is what it suggests. What I was trying to do was
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1 a check against what POL will show us."
 2 **A.** Yes. Yes, I wasn't trying to check what the claimants
 3 were saying; I was trying to check what Post Office was
 4 saying. I mean, you have to remember, I had -- Post
 5 Office's record in providing me with accurate
 6 information about individual cases was woeful and
 7 I didn't trust what I was hearing.
 8 **Q.** Did you think that the Misra case was particularly
 9 important?
 10 **A.** Everything we'd been told by the Legal Team was, yes,
 11 that her case in some -- many respects was a watershed
 12 case.
 13 **Q.** It was the paradigm case of the Post Office's
 14 misfeasance towards the convicted claimants, wasn't it?
 15 **A.** Correct.
 16 **Q.** That is why, presumably -- and there's no need to get it
 17 up -- but it's UKGI00038672, you're writing to somebody
 18 called Tasila; do you remember?
 19 **A.** Yes, Tasila Banda, yes.
 20 **Q.** You say:
 21 "I think it would be worth asking HSF to take you
 22 through some of the history of the prosecutions and
 23 maybe some typical examples. There was a pattern to
 24 many of these cases which might help the team understand
 25 what the issues might be from a malicious prosecution
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1 the opposite, which was find inconsistencies in Post
 2 Office's account. As I say, there's an email I sent
 3 Josh Scott to that effect.
 4 **Q.** Well, let's go to that email because I apprehend we're
 5 going to be thinking about 11 February 2020, and it's
 6 UKGI00011190. But before it's put up on the screen, you
 7 appear to be suggesting that you are saying, "Stop", but
 8 Williams is saying, "Go". In other words, you are
 9 saying, "Black" and he is saying, "White"; you were
 10 saying "Night", he is saying "Day"; in other words, the
 11 instructions that the Board are giving are, as it were,
 12 totally reversed --
 13 **A.** Correct.
 14 **Q.** Well, I suggest --
 15 **A.** Does that surprise you?
 16 **Q.** I suggest that's not credible.
 17 **A.** Well, I'm sorry, in that case but I am being entirely
 18 truthful when I'm talking about this.
 19 **Q.** Let's go to this email and, if we could scroll up
 20 a little bit, and this is from you:
 21 "We have a meeting on [the] 28th with the lawyers to
 22 go through some of the criminal cases in detail.
 23 "Josh has a list of the cases that have been covered
 24 publicly. I'd like to have a dossier of these cases
 25 which includes the claimants' side of the story as
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1 perspective. Also the Misra case, because it's so
 2 important."
 3 Because it was a quintessential malicious
 4 prosecution, was it?
 5 **A.** Yes, I don't know if we knew that then. I can't
 6 remember -- what's the timing of this -- if I knew?
 7 **Q.** That's 30 March 2021?
 8 **A.** Oh yes, we knew by then.
 9 **Q.** Right. My final question to you arises out of your
 10 answers to Ms Hodge earlier today, and could we go to
 11 UKGI00027113.
 12 Now, this is you writing to Mr Scott again, together
 13 with Shanice Swales, Richard Watson, Carl Cresswell and
 14 it's the debate pack. I want to concentrate on three
 15 references: page 10, page 16 and page 24:
 16 "[Page] 10 should refer to previous management as
 17 well given that Horizon was introduced in [year] and the
 18 claims in the GLO relate to events going back to the
 19 late 1990s in some cases. The claims predate Paula
 20 Vennells' involvement in the company -- we should not
 21 mention her by name except in response to a specific
 22 question. Should also mention that POL was part of the
 23 [Royal Mail Group] when Horizon was introduced."
 24 Dealing with the last point first, of course that
 25 was a reference, was it not, to the fact that the Royal
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1 Mail Group, before separation was responsible for
2 prosecutions, correct?

3 **A.** Correct. Well, sorry, correction. I don't think I knew
4 then that Royal Mail -- actually, their Legal Team did
5 the prosecutions at that stage. So I don't know if it
6 was exactly the point you're making lay behind what
7 I was saying.

8 **Q.** But we can agree that there was an insistence -- or not
9 an insistence but a suggestion by you -- that Paula
10 Vennells is not to be referred to unless there's no
11 alternative?

12 **A.** Well, no. Not unless there's no alternative.

13 **Q.** Well, unless there is a specific question?

14 **A.** Correct.

15 **Q.** Yes, which would leave no alternative. By that time,
16 I suppose, she was damaged goods?

17 **A.** Sorry, is that a question?

18 **Q.** Yes. Why the insistence or the suggestion, rather,
19 don't mention her by name?

20 **A.** This isn't specific to Paula. I think my comment would
21 have been the same in respect of any individual that (1)
22 you don't need to mention people's names. I didn't feel
23 that it would be appropriate to mention anyone's name in
24 this context. If I actually had the draft, I could
25 probably explain it to you better.

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1 Your response to that is:
2 "Nothing wrong with it but it rather begs the
3 question about what happened before."
4 The answer to the question it begs is that,
5 effectively, you were supine, weren't you?

6 **A.** Me, personally?

7 **Q.** ShEx oversight was essentially --

8 **A.** Oh, I see.

9 **Q.** -- supine?

10 **A.** Oh, you're talking about ShEx.

11 **SIR WYN WILLIAMS:** I think, Mr Henry, it's not realistic to
12 expect a meaningful answer about things before the
13 witness joined the organisation, which was 2017/18,
14 wasn't it?

15 **MR HENRY:** 2018, sir.
16 March, I think, was it?

17 **A.** Yes.

18 **Q.** Yes, March.
19 Well, then, if I rephrase it in this way.
20 Mr Swannell yesterday summed it up when he said "When in
21 curiosity meets a toxic culture bad things happen"; do
22 you agree with that diagnosis?

23 **A.** I can understand why he said that. I wouldn't quote it
24 as a generalisation but I can understand why in the
25 context of the Post Office he said it.

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1 **Q.** So be it.

2 **A.** But I haven't looked at that document but I think this
3 was a general point I would have made irrespective of
4 whether it was Paula Vennells or someone else.

5 **Q.** It's now 2 March 2020, and you say:
6 "[Page] 16. References to change/culture
7 improvement are well under way is premature (couple of
8 similar references elsewhere). Better to use the
9 language about Nick Read being committed to
10 an overhaul."
11 So would that reflect, essentially, that the
12 culture, the toxic culture was deep rooted?

13 **A.** Yes.

14 **Q.** Yes.

15 **A.** And I think what I didn't want anyone -- I felt it would
16 be wrong and misleading for the Minister to give the
17 impression that everything had been fixed. Absolutely,
18 the opposite was the case. It was still huge amounts of
19 work to do.

20 **Q.** Then page 24, you say:
21 "Do we want to say this? 'On the litigation,
22 following the critical Common Issues judgment, UKGI
23 challenged the Post Office Board's strategy and approach
24 and supported on activities to enable the successful
25 mediation to take place in December 2019'."

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1 **Q.** Were you reassured by the constant mantra and refrain,
2 "It's not systemic, it's not systemic"?

3 **A.** I took it at face value to start with. But I think over
4 time -- you know, it became very clear, over time, and
5 again, I can't pin down a date of when exactly, but this
6 case wasn't about systemic problems.

7 **Q.** Exactly.

8 **A.** This was about the system causing problems for
9 individual postmasters --

10 **Q.** Precisely.

11 **A.** -- and their balances and it was -- if you articulate it
12 in that way, which is, in my view, the correct way, it's
13 a very different question from systemic issues.

14 **Q.** So the question was being phrased wrongly. Horizon's
15 failures did not have to be system-wide, the problems
16 could be sporadic, intermittent, random but capable of
17 causing losses as claimed by the victimised
18 subpostmasters?

19 **A.** Correct.

20 **Q.** When did you get that?

21 **A.** Well, I've just said, I can't pin it down to a date.
22 But I think in the -- it was after the summer of 2018.
23 Probably before the Common Issues judgment.

24 **Q.** Well, then, if so, why didn't you do something about it,
25 if you saw the questions so clearly that the question or

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1 the mantra that they were espousing was wrong, why
 2 didn't you do something about it?
 3 **A.** Because I think, to the earlier question, the approach
 4 I took to the Horizon issue was that that was a matter
 5 for the experts. The experts who were far better
 6 qualified than I to resolve this question were going to
 7 do so in the Horizon Issues judgment. I am not
 8 a lawyer, I'm certainly not an IT expert, and they were
 9 the people who were best qualified to do it. And I felt
 10 confident that we would get the answer to that question.
 11 **Q.** But did you make your concern known, even if you felt
 12 "It's not a matter for me but my concern at least should
 13 be relayed to the lawyers so that it can then be
 14 forwarded to the experts"?
 15 **A.** I don't recall what I said, but my -- dealing with the
 16 Legal Team at that point in time was dealing with
 17 a brick wall. I might be exaggerating slightly but that
 18 was how it felt. They were completely -- you couldn't
 19 get any traction with these people on anything.
 20 **MR HENRY:** I've nothing further to ask you, Mr Cooper.
 21 Thank you.
 22 **SIR WYN WILLIAMS:** Thank you. Are there any other
 23 questions?
 24 **MR STEIN:** Sir, yes, I have questions for Mr Cooper.
 25 Sir, I will be five minutes, possibly six or seven
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1 "I considered this to be a wholly unreasonable and
 2 untenable position to maintain in general, but
 3 particularly in the litigation."
 4 Okay? Right, so this is a matter that you in your
 5 statement referred to very strongly; in your evidence
 6 today you've repeated your strong concerns about this
 7 particular issue.
 8 Now, my questions are these: were you told that
 9 before 2012, this liability clause had been differently
 10 worded but, nevertheless, the Post Office had
 11 consistently always imposed liability regardless of
 12 fault, going right the way back to the beginning of the
 13 Horizon time?
 14 **A.** No, I hadn't. I'd been told that it had changed so, in
 15 the July 2018 meeting, around about then, I had with
 16 Jane MacLeod, both versions of the liability clause were
 17 discussed. So -- but I was not told about how it was
 18 applied in practice in the past.
 19 **Q.** Right. So at the time we're looking at this -- we can
 20 see the bottom of that particular paragraph there's
 21 reference to a date in October 2018. So around this
 22 sort of a time, quite close to when you joined as a NED
 23 the POL Board, you're learning about this liability
 24 clause which you really dislike?
 25 **A.** Yeah.
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1 minutes.
 2 **SIR WYN WILLIAMS:** On this occasion, I will hold you to
 3 that, Mr Stein.
 4 **MR STEIN:** Sir, given the timing, I'm not surprised.
 5 **Questioned by MR STEIN**
 6 **MR STEIN:** Mr Cooper, my name is Sam Stein. I represent
 7 a large number of subpostmaster/mistresses, if you like,
 8 and people who worked in branches. I'm instructed by
 9 a firm of solicitors called Howe+Co, who have had a very
 10 long engagement with these issues with the Post Office.
 11 Can I take you straightaway, please, to your
 12 statement, paragraph 118. That's page 57.
 13 So paragraph 118, page 57, please. Now, here
 14 Mr Cooper what you're referring to is a clause that you
 15 felt particularly strongly about, that's the liability
 16 clause. Now, you've given evidence about this in part
 17 today and you've said to Ms Hodge, who was asking you
 18 questions earlier today, that you felt this clause was
 19 completely unfair. That's at 16.1 on the [draft]
 20 transcript. What you're saying here is this:
 21 "I understood that in 2012, the liability clause had
 22 been changed by POL to say that [subpostmasters] were
 23 liable for losses regardless of fault."
 24 About seven lines down from there, same paragraph,
 25 you say this:
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1 **Q.** Right, okay. You don't know that before 2012 the same
 2 interpretation had been placed upon it, going back for
 3 12 years before that?
 4 **A.** Correct.
 5 **Q.** Right. At this point, though, you're learning that this
 6 is the way that matters are dealt with, with
 7 postmasters, postmistresses and people in branches.
 8 What happened? Did you say, "Hang on are we still doing
 9 this to people, right now? Forget about the litigation,
 10 is this still going on"?
 11 **A.** No, I think the message we received from the management
 12 team at Post Office was any bad practices that existed
 13 in the past, for example, investigations, you know,
 14 asking for money that wasn't owed, that had been -- bad
 15 training had all been remedied.
 16 **Q.** Okay, so you were being reassured about that. Who told
 17 you, as you say at the beginning of that paragraph,
 18 "I understood that in 2012 the liability clause had been
 19 changed"; who told you that?
 20 **A.** Jane MacLeod.
 21 **Q.** Right, paragraph 119 over the page, please, to page 58.
 22 Now, that says:
 23 "However, POL was robust in its view that it should
 24 continue to defend it, arguing that any other approach
 25 to liability was not operationally possible."
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1 A. Mm-hm.
 2 Q. Then you talk about a feeling of a significant degree of
 3 frustration. Wasn't that telling you that this was
 4 still going on, that this is the way POL looked at its
 5 world view regarding the Horizon system?
 6 A. I didn't interpret it in that way. But I can
 7 understand --
 8 Q. That's what you appear to be saying?
 9 A. Perhaps, with hindsight, I should have interpreted it
 10 that way but that wasn't what I was hearing from the
 11 management team.
 12 Q. Okay. Right, now see what's happening from the POL
 13 perspective, its response. Now, equally, you've got
 14 an entire team working with you in relation to your
 15 responsibilities as the NED for UKGI. Yes?
 16 A. Yes.
 17 Q. What did you do about the other way, so going to the
 18 owners, the shareholders that own POL, the Post Office,
 19 what did you say to them? "This can't go on, we've got
 20 a real problem with a liability clause I utterly
 21 disagree with"; what happened woman that perspective?
 22 POL's no good, they're batting you away. What did you
 23 do about going back to Government and saying, "We've got
 24 to stop this"?
 25 A. Yeah, I think we talked about that earlier.

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1 owner do about it?
 2 A. Nothing, but I think, in fairness, I don't think -- to
 3 them, there was no -- they didn't -- I hadn't
 4 communicated to them how strongly I felt about it. Why?
 5 Because where I felt I could make -- get the most out of
 6 the Department at that time was on the contingency
 7 planning.
 8 Q. Right. Well, you anticipated my next question, this is
 9 therefore my very last question, you said the reason,
 10 the why you didn't press this harder with, as I put it,
 11 the owner is because you felt you could get more on
 12 other issues.
 13 Now my last question therefore is this: is that
 14 something that you thought of at the time? Did you sit
 15 there at your desk or at your laptop and go "Hang on,
 16 whilst I'm really frustrated about this issue I don't
 17 think I should raise it because it's like a seesaw, I'll
 18 get better traction on something else", or is that
 19 a post-event rationalisation as to what's happened,
 20 Mr Cooper?
 21 A. No, it's at the time. I'm not sure I thought about it
 22 exactly the way you've described but I -- you know, you
 23 have to prioritise what you can get out of senior people
 24 and, to me, that was the one where I thought they would
 25 engage the most.

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1 Q. A bit but this is rather (*unclear*).
 2 A. So my -- the point at which I raised this with -- you
 3 know, my, if you like, most significant engagement,
 4 because there was more than one -- with the Legal Team
 5 and the Board was on 30 October. It's also important to
 6 understand that I was actually on a journey of actually
 7 understanding this stuff. I'd only got involved in
 8 March. My first meeting on the 23 implied terms was in
 9 July. So this was quite quick, I think, in -- I hope
 10 you'd agree, in sort of legal time frame.
 11 So I -- you know, my, if you like, point of maximum
 12 exasperation on this was on the 30 October meeting,
 13 which was only a few days before the hearing was due to
 14 commence. And I think, in practice, the die was cast.
 15 In terms of what -- the way Post Office were going to
 16 deal with this in court, was, you know, were they going
 17 to concede the liability clause --
 18 SIR WYN WILLIAMS: I think, if I may say so, we all know
 19 that they defended that clause in court.
 20 A. Yes.
 21 MR STEIN: The question, actually, Mr Cooper, is not about
 22 that: it's about what the owner did when you were saying
 23 to the owner, as part of that team, "Look, there's
 24 a real problem here. They're getting this utterly
 25 wrong. This is morally indefensible". What did the

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1 SIR WYN WILLIAMS: Right, thank you very much.
 2 MR STEIN: Thank you, Mr Cooper.
 3 SIR WYN WILLIAMS: Now, then, Ms Hodge, is there anything
 4 you want to ask in terms of having found a document or
 5 not, so to speak?
 6 MS HODGE: Sir, the NFSP would like five minutes to ask
 7 questions. Obviously, I'm conscious we've run quite --
 8 SIR WYN WILLIAMS: I don't think I'm going to carry on
 9 indefinitely. We are going to stop now. We just need
 10 to decide when we start again.
 11 MS HODGE: If we were to return at 2.15, the NFSP could put
 12 their questions for five minutes and, if I needed to,
 13 I could put any outstanding matters for five minutes.
 14 That would take us to around 2.30. I think that would
 15 leave sufficient time in the afternoon for Mr Stevens,
 16 as I understand it, with our next witness.
 17 SIR WYN WILLIAMS: Well, can I take it clear to everyone
 18 that today is a day where I cannot sit beyond 4.30
 19 because I've arranged a meeting relating to the next
 20 phase of this Inquiry, which I need to have promptly
 21 after 4.30. So I'm just warning people that that is the
 22 cut-off point today. All right?
 23 MS HODGE: Thank you, sir.
 24 SIR WYN WILLIAMS: So we'll start again at 2.15.
 25 MS HODGE: Thank you.

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1 (1.29 pm)

2 (The Short Adjournment)

3 (2.15 pm)

4 **MS HODGE:** Good afternoon, sir, can you see and hear us?

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

6 **MS HODGE:** Sir, there will be some short questions from the
7 NFSP.

8 **SIR WYN WILLIAMS:** Yes.

9 **Questioned by MS SHAH**

10 **MS SHAH:** Can you see and hear me now?

11 Good afternoon, Mr Cooper, my name is Rohini Shah
12 and I represent the National Federation of
13 SubPostmasters. I'm going to refer to some sections of
14 your witness statement. There is no need to turn it up
15 unless you wish to review them. At paragraphs 13 to 14
16 of your witness statement, you refer to your role on the
17 Nominations Committee and explain that this committee
18 dealt with senior appointments at the Post Office. As
19 a member of the nomination committee and given what
20 you've said today about the conduct of the litigation,
21 did you or anyone within UKGI suggest that any board
22 member or senior management members of the Post Office
23 resign following the judgment of Mr Justice Fraser?

24 **A.** Yes. Absolutely. Yes, I mean, Jane MacLeod was asked
25 to leave the company.

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1 Common Issues judgment and so, effectively, Post Office
2 said unilaterally "We are going to interpret the
3 contract in a way that's compliant with the Common
4 Issues judgment", and that avoided then the need for
5 subpostmasters to sign new contracts.

6 **Q.** Finally, in terms of finances in the future would you
7 accept that Post Office will likely never be able to
8 afford the costs involved of the Horizon scandal, in
9 terms of administration and redress without ongoing
10 financial support from the Government?

11 **A.** Well, never say never. But I think, certainly at the
12 time I left the Board, which was over a year ago now,
13 I think it's clear that Post Office would not be able
14 to -- it's abundantly clear it wouldn't be able to
15 afford the cost of the compensation and the ongoing
16 business model was unsustainable, financially. Yes.

17 **MS SHAH:** Thank you very much, those are my questions.

18 **SIR WYN WILLIAMS:** I'm very sorry that -- hang on, I seem to
19 have disappeared. No, here we are.

20 I'm very sorry that I asked you to wait for
21 45 minutes for delivering those. If I had thought that
22 you'd have been as short winded as that, I would
23 certainly have permitted you to ask the questions before
24 lunch. So my apologies.

25 **MS HODGE:** Thank you, sir, I have some very brief follow-up

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1 **Q.** Other than Jane MacLeod, was anybody else discussed?

2 **A.** No. I mean, the priority then was to change the Legal
3 Team, and get new advisers on board.

4 **Q.** Okay. At paragraph 252 of your witness statement, you
5 refer to a Board meeting on 26 November 2019 at which it
6 was confirmed that the Common Issues appeal decision had
7 gone against POL and that it was now necessary to
8 implement the findings of the Common Issues judgment in
9 full, including asking subpostmasters to sign new
10 contracts.

11 However, postmasters were never asked to sign new
12 contracts and the NFSP were never informed that it was
13 considered that postmasters should sign new contracts.
14 Could you explain why that was?

15 **A.** Yes. I can. So I think the initial advice that Post
16 Office got and the Board got was that postmasters would
17 need to be asked to sign new contracts. I think the
18 team led by Nick Read considered that and I think the
19 practical answer that they came up with was for the
20 company to restate all its policies in relation to how
21 the contract would -- the existing contract would be
22 interpreted.

23 So there were new policies issued around things like
24 terminations, suspension, investigation and disputes,
25 those kind of -- all those issues that came out of the

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1 questions, please, if I may.

2 **Further questioned by MS HODGE**

3 **MS HODGE:** Mr Cooper, I would like to briefly revisit the
4 issue of the Department's level of engagement in the
5 Group Litigation. Could we look, please, at what you
6 say about that at paragraph 80 of your witness
7 statement. It's page 39, please. Thank you.

8 You explain in the preceding paragraph,
9 paragraph 79, that the Department had the same rights as
10 UKGI in relation to receiving information and reports
11 from the Post Office, concerning the litigation; is that
12 right?

13 **A.** That's what I believe the protocol said, yes.

14 **Q.** You go on to say at paragraph 18:

15 "In practice, however, it was made clear by the
16 Department that it expected UKGI to take the lead on
17 monitoring the litigation and keeping the Department
18 informed. As I explain below, the Department was
19 provided with regular updates throughout the litigation.
20 My perception was that the Department was interested in
21 the progress of the litigation, and wished to be
22 updated, but did not envisage playing an active role in
23 the oversight of the proceedings. This is reflected in
24 the read out from the UKGI quarterly portfolio meeting
25 on 5 July in which it is record that whilst it was

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1 UKGI's view that the Department's Legal Team should be
2 involved at every stage of the litigation, securing such
3 a level of engagement 'may be a challenge'."

4 Do you consider that you were hampered in your
5 oversight of the Group Litigation by the Department's
6 refusal to engage more meaningfully, as you saw it?

7 **A.** Sorry, was my effectiveness hampered?

8 **Q.** By your perception that the Department were not engaging
9 more meaningfully?

10 **A.** I think the Department could have been more effective on
11 areas where I had thought it would matter to them, yes,
12 had they been more involved. And, as I said earlier,
13 I think the absence of meetings to talk about this, the
14 litigation, was, you know, regrettable.

15 **Q.** You go on to say in the same paragraph that:

16 "As I explain below, there was a step-change in the
17 active interest from the Department following the
18 handing down of the Common Issues judgment and the
19 subsequent progress towards settlement, but, with the
20 exception of the meeting between [Post Office] the
21 Minister, the Permanent Secretary and others in October
22 2018, prior to that point the model was largely one of
23 UKGI providing the Department with progress updates."

24 I just want to test with you briefly whether your
25 recollection in relation to the timing of the

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1 in November. So I think that meshes, that's consistent.
2 But you're right, I had said earlier I had no
3 recollection of Kelly asking for more information until
4 March 2019, and you're right, there's evidence here that
5 she was asking for it earlier.

6 **Q.** Thank you. Finally, I'd like to ask you some brief
7 questions about the Department's reactions to the Common
8 Issues judgment. You address these at paragraph 170 of
9 your statement on page 80. That reads:

10 "The Common Issues judgment was formally handed down
11 on 15 March 2019. On the same day there was a meeting
12 for [Post Office] to brief Departmental officials. The
13 ministerial briefing to which I referred in my email to
14 the Board took place on 16 March, the day after the
15 judgment was handed down. I recall the Department being
16 very concerned about the judgment and what could be said
17 publicly in response. During the course of the briefing
18 ... I recall the Secretary of State, Greg Clarke MP,
19 making a comment to the effect that he had always
20 believed the [subpostmasters] were right and that it was
21 now important that these cases were resolved as quickly
22 as possible."

23 You then go on to say:

24 "I had not previously heard those views previously
25 expressed by the Secretary of State (or anyone else in

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1 Department's intervention is quite right. Can we look,
2 please, at UKGI00008656. This is a summary of a meeting
3 you attended with Kelly Tolhurst on 19 November 2018
4 produced by an official in UKGI. It reads:

5 "All,

6 "We had a meeting with Kelly Tolhurst this
7 morning -- Tom C [presumably a reference to you] dialled
8 in, whilst Sam W, Sam R and I were in attendance.

9 It goes on to say:

10 "Kelly had concerns over [Post Office's] potential
11 liabilities over the court case.

12 "She was sorry to hear Paula is leaving but
13 suspicious about the timing given the ongoing litigation
14 case and asked about the process for getting her
15 replacement."

16 It says:

17 "Keen to be properly briefed as the litigation case
18 progresses and would welcome both verbal and written
19 updates on a biweekly basis ...

20 "She would also welcome a face-to-face meeting with
21 Tom C ..."

22 **A.** Thank you, yes, so I understand what you were saying
23 earlier now. So I think, firstly, my witness statement
24 is accurate because the period I was addressing in my
25 witness statement was up to October 2018, this email is

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1 the Department)."

2 You appear to be suggesting at various points
3 throughout your statement that the handing down of the
4 Common Issues judgment marked a turning point in the
5 Department's engagement in the litigation; is that fair?

6 **A.** Yes.

7 **Q.** Were you emboldened by the intervention of the Minister
8 to take more decisive action in your oversight of the
9 litigation?

10 **A.** Not really. I felt I was engaging with the litigation
11 in the way I thought it was appropriate for
12 a Non-Executive and a member of the Shareholder Team.
13 I don't think I was particularly -- I mean, the Common
14 Issues judgment was massive event, and it needed to be
15 fixed. I don't think I needed Greg Clarke's views about
16 the litigation to change how I approached that.

17 My point in relation to his views were that I think
18 they -- had I known, it possibly might have made
19 a difference before the Common Issues judgment and
20 I think it might have made me more challenging in terms
21 of what I was hearing from the postmasters. I mean, it
22 would be good to know why he thought the postmasters
23 were always right and, perhaps, you know, that would
24 have been good to get, to help me. So my point was in
25 relation to pre-Common Issues, rather than post.

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1 Q. His intervention coincided, did it not, with your
2 decision to initiate discussions with the Chair about
3 the replacement of the Post Office Legal team?
4 A. Yes, but they're not connected. I formed my own --
5 I think I explained earlier the first Board meeting
6 after the Common Issues judgment was handed down, and
7 the interaction I'd had with Jane MacLeod at that
8 meeting, and I said earlier that I -- something to the
9 effect that at that point I'd lost all faith, whatever
10 faith I had left in the Legal Team, and it was off the
11 back of that that I felt it was imperative that the
12 Legal team was changed, and that prompted me to discuss
13 it with Tim Parker and we got on quickly with making
14 that change. So that would have happened independently
15 of whatever Greg Clarke had to say on the topic or not.
16 Q. Do you consider the Department was in any way
17 instrumental in bringing about a change in strategy
18 within the Post Office in respect of the litigation?
19 A. No, because I think everyone was completely aligned.
20 I mean, the Department was -- and the Board were in the
21 same place. You know, something had gone badly wrong,
22 it needed to be fixed as a matter of urgency.
23 Where I think -- had the Department said, "Hang on
24 a minute, we don't want you to settle with the claimants
25 or, you know, spin this out as long as you keep -- as
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1 beginning of your role as a director or did that sort of
2 emerge as time went by, so to speak?
3 A. No, it was pretty early on, Sir Wyn, and, you know, the
4 kind of formal feedback I got through Tim Parker to Mark
5 Russell came, I think, in the summer of 2018, but it was
6 clear earlier on that some of the individuals we'd dealt
7 with in the company were not happy with the way -- with
8 what we were trying to do.
9 SIR WYN WILLIAMS: All right. Can you actually pinpoint any
10 individuals who made that clear to you?
11 A. I think, if I can say, the communication of it came more
12 through actions than words, or responses to requests,
13 and I think that the issues we had were with the --
14 predominantly the Legal team, with Jane MacLeod and Rod
15 Williams primarily, and, you know, there were specific
16 issues with the Finance Team, with Al Cameron.
17 SIR WYN WILLIAMS: All right, thank you very much.
18 Well, thank you, Mr Cooper, for your detailed
19 witness statement and for giving evidence interesting
20 the course of this morning and into this afternoon. I'm
21 grateful to you.
22 THE WITNESS: Thank you.
23 SIR WYN WILLIAMS: So, Ms Hodge, I won't disappear. I don't
24 think I need to disappear. I'll just wait for the
25 handover.
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1 long as you can", whatever, if they'd had a different
2 motive or agenda from the company, then the Department's
3 views would have made a difference but I think all of us
4 were completely aligned in what we wanted to happen
5 afterwards.
6 Q. To whom, therefore, do you credit the significant change
7 in litigation strategy which resulted in a settlement of
8 the Group Litigation later in 2019?
9 A. Sorry, say that again?
10 Q. To whom do you credit the change in litigation strategy,
11 which resulted in the settlement in late 2019?
12 A. The Board. The Board. This had gone badly wrong, it
13 needed to be solved and the claimants were right, the
14 Post Office was wrong. It had to be settled and the
15 people affected had to be compensated.
16 MS HODGE: Thank you. I've got no further questions.
17 A. Thank you.
18 **Questioned by SIR WYN WILLIAMS**
19 SIR WYN WILLIAMS: Just before you finish, Mr Cooper, at
20 various points in your witness statement, you suggest
21 that Post Office Executives thought that your approach
22 to your role as a Non-Executive Director was a bit too
23 enquiring and a bit too interfering.
24 Can I just try and get some detail of that? First
25 of all, was that something you felt almost from the
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1 MS HODGE: Thank you, sir.
2 SIR WYN WILLIAMS: I see Mr Stevens is in pole position next
3 do you so --
4 MS HODGE: Ready to go. Thank you.
5 (Pause)
6 MR STEVENS: Good afternoon, sir. Can you hear and see me?
7 SIR WYN WILLIAMS: Yes, thank you very much.
8 MR STEVENS: Thank you, sir. We'll be hearing from
9 Mr O'Sullivan.
10 **PATRICK HENRY PIERCE O'SULLIVAN (sworn)**
11 **Questioned by MR STEVENS**
12 MR STEVENS: Thank you. Please can you state your full
13 name.
14 A. Patrick Henry O'Sullivan.
15 Q. Thank you, Mr O'Sullivan, for giving evidence to the
16 Inquiry and thank you to you for producing a written
17 witness statement, which should be in front of you. Is
18 that in front of you?
19 A. Yes.
20 Q. For the record that witness statement is reference
21 number WITN11000100. Before I take you to your
22 signature, I understand there's a correction to be made.
23 Please can we bring up page 2 of the statement,
24 paragraph 5. So in paragraph 5, there are two
25 corrections to your qualifications in the second
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1 sentence. I believe the first is that the words "arts
2 in" should be removed so it just says, "bachelor's of
3 business studies"; is that correct?
4 **A.** Correct.
5 **Q.** Secondly, the words "master's of economics" should be
6 removed and in place it should read "MSC in accounting
7 and finance"?
8 **A.** Correct.
9 **Q.** Thank you. That statement can come down now. Thank
10 you. Can I ask you, please, in your hard copy to turn
11 to page 23.
12 **A.** Yes.
13 **Q.** There should be your signature or a Docusign version of
14 it; do you see that?
15 **A.** I do.
16 **Q.** It is your signature, is it?
17 **A.** Yes.
18 **Q.** Can you confirm, please, that the facts stated in that
19 witness statement, subject to the corrections you've
20 just made, are true to the best of your knowledge and
21 belief?
22 **A.** They are.
23 **Q.** That now stands as your evidence to the Inquiry. The
24 statement will be published on the Inquiry's website
25 shortly. I am going to ask you some questions about it.

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1 commitment for the role of Deputy Governor was one day
2 per week?
3 **A.** That expanded, depending on the need at the time. It
4 could have been --
5 **Q.** You anticipated my next question. In practice, how
6 often did you, on an average week, spend working as
7 Deputy Governor?
8 **A.** Two days a week.
9 **Q.** Two days a week. You were appointed as a Non-Executive
10 chair of Old Mutual Plc in 2010?
11 **A.** Correct.
12 **Q.** In your witness statement, you say that the time
13 commitment for that was four days a week?
14 **A.** That is correct.
15 **Q.** In practice, how much time did you need to spend on
16 that?
17 **A.** Three days a week.
18 **Q.** So less time than -- okay. From 2013, you were Chair of
19 Lloyd's Syndicate 218?
20 **A.** Correct.
21 **Q.** Do you remember roughly when in 2013 you started that
22 role?
23 **A.** I believe it was September.
24 **Q.** September 2013?
25 **A.** *(The witness nodded)*

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1 I'll start with your background. You trained as
2 a chartered accountant; is that right?
3 **A.** Correct.
4 **Q.** During your career, you worked in a number of executive
5 positions at various financial institutions?
6 **A.** Correct.
7 **Q.** You began to undertake Non-Executive roles in 2007?
8 **A.** Correct.
9 **Q.** I think your last executive role was as Vice-Chairman of
10 Zurich Financial Services, which you resigned from in
11 2009?
12 **A.** Correct.
13 **Q.** Since then you focusing on non-executive roles.
14 **A.** *(The witness nodded)*
15 Correct.
16 **Q.** Thank you.
17 You became Non-Executive Chairman of the Audit
18 Committee of the Bank of Ireland in 2009?
19 **A.** Correct.
20 **Q.** You became Deputy Governor of the same institution in
21 2011?
22 **A.** That's correct.
23 **Q.** You stayed there until 2015?
24 **A.** Yes.
25 **Q.** In your witness statement, you say that the time

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1 **Q.** What was the time commitment for the Lloyd's Syndicate
2 role?
3 **A.** One day a month.
4 **Q.** Did that translate into how much time you actually spent
5 on it?
6 **A.** It did, except for the occasional phone call, et cetera.
7 **Q.** So you were appointed to become the Chair of the
8 Shareholder Executive Board -- well, you were appointed
9 on October 2011 but you started that position in March
10 2012?
11 **A.** That's correct.
12 **Q.** In your witness statement, if we could bring it up,
13 please, paragraph 6, page 2, so in the middle, we see it
14 says -- sorry, before there we see you refer to the
15 Deputy Governor role. Then you say:
16 "The Secretary of State appointed me as Chair of the
17 [Shareholder Executive] Board in October 2011, with
18 a start date of March 2012. The time commitment for
19 each of these roles was one day a week."
20 Pausing there, I think in practice you said that was
21 two days --
22 **A.** *(The witness nodded)*
23 **Q.** -- and then two days a month respectively. So what
24 you're saying in the witness statement is the Chair role
25 took up two days a month; is that right?

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1 **A.** Excuse me, that's technically incorrect. It was one day
2 a week.

3 **Q.** One day a week. That statement can come down. Thank
4 you. Did you have sufficient time to commit to
5 Shareholder Executive, given your other commitments to
6 Old Mutual and the Bank of Ireland?

7 **A.** Yes, in -- I put in the extra time to the extent that it
8 was required, at weekends, evenings, or whatever.

9 **Q.** At any point did you feel that you were in conflict, in
10 the sense that you had too many tasks for different
11 companies?

12 **A.** Well, jumping ahead, that was one of the major reasons
13 that I did not extend beyond September '14 because the
14 intensity of the work with Old Mutual was exceptional at
15 that point.

16 **Q.** Did you feel you were able to honour your commitment and
17 the time required to the role as Chair of ShEx?

18 **A.** Yes.

19 **Q.** Let's look, then, at the role of ShEx, please.
20 Actually, if we can bring back up the statement,
21 page 10, paragraph 26. It says that:
22 "I am asked to address matters that go to reporting
23 and risk structures within ShEx. These evolved over
24 time, and I understand the evolution of these matters
25 will be addressed fully by other UKGI witnesses to the
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1 is that right?

2 **A.** That is correct.

3 **Q.** We don't need to bring this up but, at paragraph 18.2 of
4 your statement, you say that you think this document
5 fairly reflects the role of the Board of ShEx?

6 **A.** That is correct.

7 **Q.** In particular, you refer to paragraphs 6 and 7 of some
8 terms of reference which are appended to it. If we
9 could look further down the page, please, paragraph 7 is
10 quoted there, and it says:
11 "... of the existing Terms of Reference sets out the
12 Board's overall remit: 'The Board has an advisory role
13 in relation to the work of the Shareholder Executive as
14 a whole. This will include setting strategic direction
15 in the light of Ministerial objectives, periodically
16 reviewing the delivery of objectives as set out in the
17 business plan and considering any specific issues
18 referred to it by the Executive Committee.'
19 It says:
20 "This holds true but, more specifically, the Board
21 should expect to ..."
22 Then if we turn the page, thank you, we see some
23 other points there. One of them is:
24 "Review the progress and status of big projects ..."
25 "Projects", is that referring or will it include
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1 Inquiry."
2 I think you may be referring to Mr Russell, who
3 appeared yesterday, and the witnesses next week; is that
4 right?

5 **A.** That's correct.

6 **Q.** Would you agree that one of the core roles of the
7 Executive of any body or company or Government
8 department is to identify, analyse and mitigate risk?

9 **A.** Yes, it's among the important governance requirements of
10 any Executive Team.

11 **Q.** In respect of ShEx, the Executive were required or
12 needed to take steps to identify, analyse and consider
13 mitigation for risks of its assets, such as Post Office
14 Limited; would you agree?

15 **A.** I do.

16 **Q.** Whose responsibility was it to carry out that risk
17 management?

18 **A.** That was the responsibility of the team specifically
19 within ShEx reporting to the CEO.

20 **Q.** I want to look at the ShEx Board now, of which you were
21 the Chair and look at what its role was in respect of
22 risk management whilst you were there. Please could we
23 bring up UKGI00041953.
24 This is a paper on the ShEx Board's remit, which
25 I understand was prepared by your predecessor as Chair;
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1 assets such as the Post Office?

2 **A.** Yes, but it's important to remember that the Post
3 Office, when this was written, of course, was such
4 a division of Royal Mail.

5 **Q.** Yes. Until April 2012, when it became under direct ...

6 **A.** Correct.

7 **Q.** We're going turn to that shortly, but do you agree with
8 the suggestion here that this also formed part of the
9 Board's responsibilities?

10 **A.** Absolutely.

11 **Q.** That document can come down, thank you.
12 At the Board level, what role did you see the ShEx
13 Board as having in respect of risk management?

14 **A.** Well, as I think has been pointed out by Mark Russell
15 yesterday, it was an evolving process but it was very
16 clear that the experience level of the Shareholder
17 Executive at the time that I assumed my position did not
18 have, at that point, the benefit of current risk
19 management, as practised in most major corporations that
20 I was part of. And it became our objective to begin to
21 improve that process and, as you heard, a Risk Committee
22 was established under Fiona MacGregor, and then, later
23 on, the RAG or Red, Amber and Green analysis process was
24 commenced and then refined in 2014.

25 **Q.** You say that it evolved. When you started in your role
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1 as Chair, what steps did you take as chair, or did the
2 Board take, in respect of improving risk management?

- 3 **A.** We spent quite a bit of time discussing the process as
4 currently practised at that point in the corporations
5 that I happened to be involved with, with Mark, and he
6 duly took up the cudgel and went to work on applying
7 those standards, taking advice from some of the
8 corporations that I worked with.
- 9 **Q.** In order for the Board to properly carry out its role,
10 did it need to satisfy itself that the executive had
11 identified the appropriate risks for each asset?
- 12 **A.** Well, as I indicated, it was an evolving process and
13 just the number and size and complexity of what was
14 being looked at and reviewed at that time was, by any
15 standards, very heavy. Particularly in the light of the
16 fact that Royal Mail was being floated and all of those
17 issues around the impact on the shareholder's investment
18 in Royal Mail, nuclear decommissioning, which was
19 costing hundreds of millions of pounds a year, the
20 establishment of the British Business Bank, the Green
21 Investment Bank, so in the context of looking and
22 reviewing the risks around those investments, it
23 depended on the size and scope of the particular
24 investment.

25 And at that point in time, at the beginning in 2012,
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1 do you think it would have assisted the ShEx Board to
2 have someone with experience of the legal function of
3 a corporate body?

- 4 **A.** Well, in the context of the Board's knowledge or indeed
5 the Shareholder Executive's knowledge of what the
6 prosecutions were being -- what the impact of those
7 prosecutions were at the time, it was very, very
8 limited. In fact, I cannot remember a discussion at any
9 point in time in my tenure on the Post Office
10 prosecutions issues. There was a discussion which was
11 between myself and the Chairperson of the Post Office
12 around the key issues that were concerning her at the
13 time. This was the standard type of questioning that
14 I had for each Board member that I interacted with, and
15 her response was that it was just some challenges
16 dealing with the subpostmasters and their union.
- 17 **Q.** We're going to come to that. I assume you're talking
18 about a meeting with Alice Perkins?
- 19 **A.** Correct.
- 20 **Q.** We'll come to that shortly. Can we please bring up
21 UKGI00045855. This is a letter to you dated 4 October
22 2011, it's your letter of appointment. If we could turn
23 to page 3, please, to paragraph 3b. It says:
24 "As Chairman, your key role will be to provide high
25 level strategic direction to the Shareholder Executive."
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1 Post Office would have been well down the list in the
2 context of the perceived levels of risks.

- 3 **Q.** I'm asking you questions generally there but we'll test
4 that as we go through the chronology. I'll stick with
5 a few other general questions first, though. The first
6 is: did anyone on the ShEx Board have expertise in the
7 legal function of a corporate body?
- 8 **A.** Not specifically.
- 9 **Q.** Why not?
- 10 **A.** We were not a corporation that was constituted under the
11 Companies Act. We were an advisory board and, as
12 judged, I think, by my predecessor and subsequently
13 reinforced by me, the key was to get a skillset around
14 that board table of great experience, which would
15 complement and supplement some of the lack of experience
16 within the Shareholder Executive.
- 17 **Q.** Two points, there. Firstly, in terms of identifying the
18 skills required at the ShEx Board meetings and who was
19 a member of the Board, was that your responsibility as
20 Chair?
- 21 **A.** I inherited a Board from the outset and changes to that
22 Board were my responsibility.
- 23 **Q.** When we consider that one of the assets that ShEx was
24 overseeing, Post Office Limited, we consider that it was
25 prosecuting subpostmasters, which was a legal function,
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1 We don't need to go through all of them. One of
2 them is to:

3 "develop a constructive, frank and open relationship
4 with the Chief Executive, holding him/her accountable
5 for the effective implementation of decisions ..."

6 Did you consider that to be a personal
7 responsibility, to hold the Chief Executive to account,
8 in respect of his duties in relation to risk management?

- 9 **A.** Most certainly.
- 10 **Q.** That can come down. Thank you. My last sort of general
11 topic on Post Office Limited as an arm's-length body.
12 Please could we bring up your witness statement at
13 page 3, paragraph 10. Thank you. You say at
14 paragraph 10:
15 "The Secretary of State for [the Department of
16 Business, Innovation and Skills], at the time, had
17 ultimate responsibility for the ... shareholdings in
18 Royal Mail Group and [Post Office Limited]. The
19 Secretary of State could not delegate his
20 responsibilities."
21 When you refer to the Secretary of State's
22 responsibilities here, what are you actually referring
23 to?

- 24 **A.** In respect of arm's-length bodies.
- 25 **Q.** Could you define precisely what the responsibilities
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1 are?

2 **A.** We did not, no, those were defined either in practice,
3 or --

4 **Q.** Sorry, what I mean is when you're here in your witness
5 statement saying "had ultimate responsibility", and
6 you're saying the Secretary of State could not delegate
7 his responsibilities, my question is: precisely what
8 responsibilities are you referring to when you write
9 these sentences?

10 **A.** I can't recall the distinction between whether they were
11 actually delineated in writing but, obviously, the rules
12 and the overview of how an arm's-length body, such as
13 the Post Office would have been run and managed would
14 have been set out either in emails or statutorily.

15 **Q.** Let me ask it another way: when you were writing this
16 part of your statement, what did you think was required
17 of the Secretary of State when you said that the
18 Secretary of State could not delegate his
19 responsibilities?

20 **A.** Well, I believe that the Shareholder Executive was
21 acting as his agent, if you like, that may be the wrong
22 legal term, in ensuring that he was -- he or she, but it
23 was a he -- were aware of all of the key issues that
24 needed to be elevated to his level, so that issues that
25 were important, either politically or in the context of

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1 shareholder.

2 "Principle 2. Businesses should operate a 'no
3 surprises' policy ensuring that the Government as
4 shareholder is informed well in advance of anything
5 potentially contentious in the public arena."
6 As an intelligent and informed shareholder, should
7 the Government have taken steps to satisfy itself that
8 the businesses it owned were following these principles?

9 **A.** Well, the Government was -- through Martin Donnelly, the
10 Permanent Secretary, was assured on an ongoing basis as
11 to where we might or might not have been performing
12 under these requirements, these principles.

13 **Q.** Let's frame it in another way. If the Shareholder
14 Executive is, I think using your words, acting as an
15 agent of Government -- I think that's what you said
16 earlier?

17 **A.** Yes.

18 **Q.** You're nodding. Yes. When it says, "What government
19 expects of its businesses", let's consider "business"
20 there to be Post Office?

21 **A.** The business to be?

22 **Q.** The Post Office?

23 **A.** Yes, correct.

24 **Q.** Do you think, as the Shareholder Executive in managing
25 the Government's shareholding function, that the

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1 funding, et cetera, were made very clear to him.

2 **Q.** If we look, maybe, at UKGI00044314, please. You refer
3 to this in your witness statement as the ShEx Handbook.
4 At page 2, please, right at the bottom, so "The
5 Shareholder Executive model of corporate governance":
6 "The Government intends to operate as an intelligent
7 and informed shareholder."
8 Then, if we go over the page, please. "How the
9 Government intends to operate as a shareholder", it
10 says:
11 "The basic shareholder model as set out below
12 summarises the key actions of the shareholder ..."
13 Then in the box, we don't have to read it all but
14 you'll see it there, the final one is:
15 "The shareholder monitors the performance of the
16 business to satisfy itself that the strategic plan is on
17 track and ensure that any interventions required are
18 well informed and appropriate."
19 Are these the responsibilities you were referring
20 to?

21 **A.** Yes, they certainly were among the key responsibilities.

22 **Q.** If we can turn the page, please, we have what the
23 Government expects of its businesses:
24 "Principle 1. Businesses should seek an honest,
25 open and ongoing dialogue with the Government as

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1 Shareholder Executive should have taken steps to see
2 that, for example, the Post Office was complying with
3 principles 1 and 2?

4 **A.** There was no reason to doubt that an honest, open and
5 ongoing dialogue was not taking place between Post
6 Office Executives and the Shareholder Executive.

7 **Q.** That's a slightly different answer. That's to whether
8 or not what actually happened. I'm asking as a matter
9 of principle whether you accept that the Shareholder
10 Executive, as acting as an agent of government, as you
11 said, owed steps to satisfy itself that principles 1 and
12 2 were being complied with?

13 **A.** I agree completely.

14 **Q.** That can come down. Thank you. Can we go back, please,
15 to your witness statement, page 3, paragraph 11. You
16 say that:
17 "The Secretary of State, in my view, cannot have
18 been expected to have taken any more of an active role
19 in overseeing the day-to-day operations of Royal Mail
20 Group and/or [Post Office]. This reflects usual
21 practice -- the role of a shareholder is not to manage
22 the operations of the company."
23 There's a difference, isn't there, between managing
24 the operations of a company on the one hand and
25 overseeing the management of a company's operation on

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1 another?
 2 **A.** There is.
 3 **Q.** You go on. You say:
 4 "Nor was it the function of [the Department for
 5 Business, Innovation and Skills] (or ShEx, as
 6 an organisation within [that Department]) to be
 7 responsible for the operations of Royal Mail Group
 8 and/or [Post Office Limited]. Responsibility for the
 9 company's operations was with the [Post Office] Board,
 10 comprised of senior management and independent
 11 Non-Executive Directors, including a representative of
 12 the Secretary of State, through ShEx, the Shareholder
 13 NED."
 14 Breaking that down, you say it wasn't the
 15 Department's role to be responsible for the operations
 16 of Royal Mail or Post Office. Is that your evidence?
 17 **A.** Correct.
 18 **Q.** You then say that the responsibility for the company's
 19 operation was with the Post Office Board?
 20 **A.** Yes.
 21 **Q.** You say that the Post Office Board was comprised of
 22 Executive Directors and independent Non-Executive
 23 Directors --
 24 **A.** Yes.
 25 **Q.** -- and the responsibility for the company's operation

1 **A.** I would.
 2 **Q.** I want to look at some of the specifics now in the
 3 oversight of Horizon. Could we look at page 20 of your
 4 witness statement, please, paragraph 45. Thank you. At
 5 45, you say that you've been asked -- that's asked by
 6 the Inquiry -- whether the ShEx Board was informed or
 7 had knowledge of the following matters and in the
 8 subparagraphs there's listed various matters, including
 9 some documents that the Inquiry sent you. You see
 10 there's the Second Sight Interim Report at 45.3; then
 11 the Clarke Advices; and 45.7 there's Deloitte's Project
 12 Zebra Report.
 13 If we turn over the page, please, and have
 14 paragraphs 46 and 47 on screen, if we can. Thank you.
 15 You say:
 16 "The matters and documents referred to at paragraph
 17 45 ... were not raised with the ShEx Board."
 18 **A.** That's correct.
 19 **Q.** Now, in paragraph 47, you refer to a conversation with
 20 Richard Callard about the instruction of Deloitte. I am
 21 going to come to that later. Excluding that, were any
 22 of the matters or documents referred to in paragraph 45
 23 raised with you personally outside of the Board?
 24 **A.** No, they were not.
 25 **Q.** At 46, if we can just go back up, please, you say:

1 therefore lay with those Directors?
 2 **A.** Yes.
 3 **Q.** One of those Directors was the Shareholder Non-Executive
 4 Director, correct?
 5 **A.** Correct.
 6 **Q.** That was a Shareholder Executive official, correct?
 7 **A.** Correct.
 8 **Q.** You describe that person as the Secretary of State's
 9 representative?
 10 **A.** Yes, correct.
 11 **Q.** Why, then, do you say that ShEx and the Secretary of
 12 State did not have responsibility for the day-to-day
 13 running of the company?
 14 **A.** Well, what I said was they don't get involved on
 15 day-to-day decisions nor the normal requirements of
 16 management in deciding on investment policy, et cetera.
 17 This is an issue where the Secretary of State, through
 18 the full time appointment of a ShEx representative of
 19 the Board, ensured that adequate oversight and review
 20 was happening.
 21 **Q.** Yesterday, the Inquiry heard evidence from both Mark
 22 Russell and Robert Swannell. They agreed that, as
 23 an arm's-length body, the Minister was ultimately
 24 responsible and accountable for the operations of Post
 25 Office; would you agree with that?

1 "What information is passed to the ShEx Board is
 2 dependent on what ShEx Team and the ShEx CEO deem to be
 3 an issue that required the attention or advice of the
 4 ShEx Board. It is now clear that the documents referred
 5 to raised serious issues in relation to the functioning
 6 of the Horizon system, and the prosecution and treatment
 7 of subpostmasters. I think that both ShEx and the Board
 8 should have been made aware of these very significant
 9 matters."
 10 That can come down. Thank you.
 11 It may seem an obvious question but can I ask you
 12 why you believe that the ShEx Board should have been
 13 made aware of those documents and matters?
 14 **A.** It became clear, in hindsight, reading the documents
 15 now, that there was a lot of -- there were many issues
 16 happening in the context of that relationship with the
 17 subpostmasters and, indeed, although not in absolute
 18 volume terms, a huge number of issues being raised in
 19 Parliament. Though we should have had a mechanism that
 20 would have allowed us to be aware of just those factors.
 21 Whether it would have led to a different advice is
 22 something I couldn't comment on.
 23 **Q.** I mean, is it the fact that the matters raised go to the
 24 heart of the operations of Post Office Limited?
 25 **A.** They --

1 Q. The significant issues, for instance.
 2 A. Yes, they do.
 3 Q. On that basis, they posed a significant risk to the
 4 business?
 5 A. Yes, and that's only evident on hindsight. For example,
 6 the Linklaters report, which mentioned a risk of
 7 100 million, 0 to 100 million in settlement risk, which
 8 was a significant number in reference to the P&L of the
 9 Post Office. That should have been flagged.
 10 Q. Can I ask you how often would you meet people from the
 11 Post Office team within the Shareholder Executive?
 12 A. My role was to meet with the Chairperson, which would
 13 be, at most, twice a year.
 14 Q. Let me clarify the question, sorry. I'm talking about
 15 within the Shareholder Executive those persons working
 16 on the Post Office as an asset? How often did you --
 17 A. Most of my time was spent with the Chief Executive,
 18 Stephen Lovegrove, followed by Mark Russell, and the
 19 individual team members only as issues arose. So the
 20 leader of the team, Susannah Storey or, in later cases,
 21 Roger, the -- it was more frequent but on, I should say,
 22 an unplanned basis.
 23 Q. When you say "as issues arose", what issues are you
 24 referring to?
 25 A. Well, I'm referring in the main to Royal Mail issues at

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1 A. No.
 2 Q. Let's look at your first Board meeting as Chair, please.
 3 It's UKGI00045852. We see 7 March 2012, you're listed
 4 as in the Chair. If you could go to the bottom, please,
 5 of the document. There's an introductory paragraph, and
 6 it says:
 7 "Patrick informed the Board that he would step out
 8 if there were any discussions on the Royal Mail side
 9 relating to Bank of Ireland as he was Deputy Governor."
 10 Did you ever have to do that: step away from
 11 a discussion on Royal Mail because of your ongoing
 12 relationship with the Bank of Ireland?
 13 A. Yes, of course it should say Post Office, because the
 14 relationship between Bank of Ireland on the Financial
 15 Services side was with the Post Office, and I do recall
 16 at least on one occasion recusing myself.
 17 Q. Do you recall what the issue was about?
 18 A. The financial arrangements of the transaction.
 19 Q. When you say "the transaction", is --
 20 A. The agreement between Post Office Limited and Bank of
 21 Ireland to supply certain Financial Services products.
 22 Q. If a person was raising with you an issue about Horizon,
 23 which was the system that generated the data on which
 24 Post Office put together its accounts and which it
 25 provided information to its clients, would you have been

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1 the time.
 2 Q. So Royal Mail issues, so the company had separated in
 3 April 2012 --
 4 A. Correct.
 5 Q. -- is that correct?
 6 A. Correct.
 7 Q. The Secretary of State maintained a shareholding until
 8 I think it was the next year; is that right?
 9 A. Correct.
 10 Q. Is your evidence that the Post Office team were dealing
 11 with Royal Mail issues still?
 12 A. The -- no. I'm misleading you. The issue was that the
 13 dominance of the Royal Mail issues in the context of
 14 what the Shareholder Executive was reviewing and
 15 following up with, it became a major exercise.
 16 Q. For example, you mentioned Susannah Storey earlier.
 17 What issues did you discuss with Susannah Storey?
 18 A. Well, things were discussed, really, through the Chief
 19 Executive as to her experience on the Royal Mail Board
 20 and the Post Office Board, and I believe Mark referred
 21 to it yesterday, Mark Russell, when he said it was not
 22 an easy relationship.
 23 Q. Can you recall any issues relating to the Post Office as
 24 a business, which you were aware of through Susannah
 25 Storey?

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1 able to deal with that or consider it without being in
 2 conflict?
 3 A. Yes, indeed. I don't think it would have been in
 4 conflict at all.
 5 Q. Why do you think that?
 6 A. Because the system -- the operation system through the
 7 Post Office was not really related to the services
 8 provided by Bank of Ireland.
 9 Q. Are you aware of there being any reluctance or reticence
 10 within the team to discuss issues with you regarding
 11 Post Office because of your relationship with the Bank
 12 of Ireland?
 13 A. None.
 14 Q. We mentioned earlier Susannah Storey and the appointment
 15 of the Shareholder Non-Executive Director. Are you
 16 aware how Susannah Storey was selected for that role?
 17 A. That was the choice of the Chief Executive.
 18 Q. Are you aware of whether anyone -- well, let's say the
 19 Chief Executive considered her suitability for the
 20 appointment, or what consideration he applied?
 21 A. It had already occurred by the time I started so
 22 I didn't -- it didn't arise.
 23 Q. Could we look, please, at page 19 of your statement,
 24 paragraph 43. You say:
 25 "Following [Post Office Limited's] separation from

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1 Royal Mail its status was raised to priority level.
 2 [Post Office Limited] had been a division of a major
 3 asset, and now it was a major asset in its own right,
 4 receiving substantial levels of funding from the
 5 government and so it was wholly appropriate for ShEx to
 6 take a more direct role in its governance."

7 When you say it was raised to priority level, what
 8 did that mean in practical terms?

9 **A.** In practical terms, it probably meant that it was more
 10 visible within the portfolio --

11 **Q.** Visible to whom?

12 **A.** Visible to the Shareholder Executive management and, in
 13 respect of peer reviews, for example, within the
 14 Shareholder Executive, it would have been under much
 15 greater scrutiny than it had been as a division of Royal
 16 Mail. They're the points that strike me most of all,
 17 I think.

18 **Q.** Was it raised as a priority for the Board?

19 **A.** No.

20 **Q.** Why not?

21 **A.** Because -- in the sense that it was reported on
 22 occasionally in the time that I was in charge, it --
 23 there was no change in intensity, in the sense that Post
 24 Office was not perceived at that time to be an issue of
 25 concern, of great concern.

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1 Executive's visibility of the risk to Post Office
 2 Limited were not clear, shall we say?

3 **A.** That would be absolutely a fair description.

4 **Q.** If we turn to the page 2, please. If we go down to
 5 Royal Mail, thank you, item 4, we see Royal Mail is
 6 discussed. Over the page, please. It talks about State
 7 Aid approval for Post Office funding. Then 4.2:

8 "Board members discussed a transaction, specifically
 9 points around a trade sale [versus] IPO; employee shares
 10 and the mutualisation consultation for the Post Office;
 11 and union interest."

12 It doesn't appear that there was any discussion, or
 13 a deep dive, as it were, into the risks of Post Office
 14 Limited as an asset in itself --

15 **A.** Correct.

16 **Q.** -- or in fact to the corporate governance of Post Office
 17 now as an asset?

18 **A.** It would have been too early in the life of the Post
 19 Office as an independent business to do that, at that
 20 time.

21 **Q.** Do you think, at some stage, that should have been done
 22 by the Shareholder Executive --

23 **A.** Yes.

24 **Q.** -- and by the Board?

25 **A.** Yes.

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1 **MR STEVENS:** Sir, that's probably a good time for the
 2 afternoon break. If I could ask that we come back at
 3 3.30, I'd be grateful. Thank you, sir.

4 **(3.20 pm)**

(A short break)

6 **(3.30 pm)**

7 **MR STEVENS:** Sir, can you see and hear me?

8 **SIR WYN WILLIAMS:** Yes, I can, thank you.

9 **MR STEVENS:** Please can we bring up UKGI00036711. It's
 10 minutes of a Board meeting on 8 May 2012. You say in
 11 your witness statement that you're satisfied that these
 12 minutes accurately record the discussions at the various
 13 meetings.

14 **A.** Correct.

15 **Q.** This is the first meeting after Post Office Limited
 16 becomes independent of Royal Mail; is that right?

17 **A.** Correct.

18 **Q.** So in terms of, as we discussed before, the governance
 19 shifted in that, for the first time, the Shareholder
 20 Executive and the Secretary of State were directly --
 21 had a direct line, essentially, into Post Office
 22 Limited?

23 **A.** Correct.

24 **Q.** And is it fair to say that, previously, as Royal Mail
 25 Group, as part of Royal Mail Group, the Shareholder

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1 **Q.** How long should it have waited until it --

2 **A.** Oh, only 18 months after establishment.

3 **Q.** Why at this stage, when it was a business that had been
 4 running for a while, in terms of the actual business of
 5 the Post Office, why was then not the ideal time to
 6 analyse what the risks were to the business?

7 **A.** The structure of the spin-off of the Post Office from
 8 Royal Mail was one where it was business as usual for
 9 the Post Office. There were no major changes in its
 10 operating procedures.

11 **Q.** Wasn't this a time when, after not having visibility of
 12 the Post Office, ShEx now had visibility and could
 13 understand the risks that that business had? Why didn't
 14 it do that?

15 **A.** Well, as I said, I think some period of time after its
 16 official foundation would have been more appropriate.

17 **Q.** Would you accept that the Board should have done risk or
 18 a deep dive of a risk assessment of Post Office Limited
 19 within the first six months, say, of separation?

20 **A.** There were no reasons at that point of time, visible to
 21 the Board or to the ShEx Executive, that would suggest
 22 that such a deep dive was required.

23 **Q.** How could the Board satisfy itself that that was an
 24 appropriate course of action without having done a deep
 25 dive of what was effectively a new relationship with

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1 an asset?

2 **A.** Well, you'll have seen the split of the categorisation

3 of the various parts of the portfolio and, at that point

4 in time, we had just appointed the first Shareholder

5 Executive representative to the Post Office Board. That

6 person and the whole organisation needed time to bed

7 down.

8 **Q.** On that point, can we look, please, at UKGI00019348.

9 These are minutes of the Post Office Limited Board

10 meeting on 23 May 2012. Can we turn, please, to page 4.

11 If you can go down, thank you.

12 The Inquiry asked you to consider the entry at

13 POLB12/60 and your evidence was, or is, that you didn't

14 see these Board minutes at the time.

15 **A.** Correct.

16 **Q.** If we look, it says Susannah Storey here is outlining

17 the reasons for representation of ShEx on the Board of

18 Post Office Limited and we see that she says at the end

19 of paragraph (a):

20 "She clarified that she would not be sharing the

21 Board papers with her colleagues at [Shareholder

22 Executive]."

23 Was that something you were aware of?

24 **A.** No.

25 **Q.** Given the role of the Shareholder Non-Executive Director

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1 **A.** She was highly regarded within the Shareholder

2 Executive. She was one of the most experienced members

3 of staff at that level and, of course, much of this too

4 would have been a learning experience for her, as well

5 as everybody else appointed to such positions.

6 **Q.** Shortly after that meeting, Second Sight were instructed

7 to address concerns raised by Members of Parliament in

8 June/July 2012. Were you aware of that at the time?

9 **A.** No.

10 **Q.** The MPs represented subpostmasters, some of whom had

11 been convicted on the basis of data generated by the

12 Horizon IT System; were you aware that there were such

13 convicted persons?

14 **A.** I was not.

15 **Q.** Second Sight's terms of reference were to consider and

16 to advise on whether there are any systemic issues

17 and/or concerns with the Horizon system including

18 training and support processes, giving evidence and

19 reasons for the conclusions reached, so effectively

20 an investigation into Post Office's front-end accounting

21 system; do you agree?

22 **A.** Yes.

23 **Q.** If Second Sight had found any issues with that, any

24 problems, that would have been significant to the Post

25 Office?

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1 was so important in oversight of Post Office Limited,

2 should the Board of ShEx have been aware of this

3 position?

4 **A.** It would have been perfectly reasonable for the

5 Chairperson to have requested that Board papers did not

6 go outside the Boardroom whether it was for the Post

7 Office or any other public company. However, there was

8 nothing to prevent Susannah from communicating the

9 essence of what the Board meeting and what the Board

10 papers were saying.

11 **Q.** But why wasn't you, as chair, and the Board aware of

12 what appears to be quite a significant self-imposed

13 restriction on sharing Board papers?

14 **A.** This is nothing unusual in the context of normal Board

15 practice.

16 **Q.** So is it your evidence that the Board of ShEx didn't

17 need to know about this?

18 **A.** At that point, no.

19 **Q.** So how could the Board understand the flow of

20 information from its assets, such as Post Office

21 Limited, to the Board?

22 **A.** Through Susannah as the representative.

23 **Q.** What steps did you take to satisfy yourself that

24 Ms Storey was discharging her role as Shareholder NED

25 effectively?

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1 **A.** It would.

2 **Q.** Firstly, there would have been, or there could have

3 been, unsafe convictions if they'd found issues; do you

4 agree?

5 **A.** With the benefit of hindsight, absolutely.

6 **Q.** Secondly, the data on which Post Office produced its

7 accounts would possibly be unreliable. Would you agree?

8 **A.** There's always a possibility. That depends on the

9 impact of what the judgment was in the context of the

10 financial impact on the balance sheet and P&L of the

11 Post Office.

12 **Q.** At paragraph 31 of your statement you refer to meetings

13 of the Board on 11 July 2012 and the 12 September 2012

14 and you say there was no -- well, there was no reference

15 in those meeting minutes to the launch of the Second

16 Sight investigation. Why was such a significant issue

17 not raised with the Board; can you assist us with that?

18 **A.** Well, as I -- as I think -- again, with hindsight, it is

19 clear that these matters were believed to be business as

20 usual, and it was an internally sponsored inquiry.

21 **Q.** It might be a surprise to some that the Chair of the

22 body of ShEx with responsibility for overseeing Post

23 Office wasn't aware of the Second Sight review. With

24 hindsight, where do you think the problem lay in this

25 not being raised to the Board?

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- 1 **A.** I believe that the *modus operandi* of the Post Office
2 Management team was the assumption that the system was
3 adequate and did not have systemic issues. It may have
4 been a self-reinforcing view that they took and their
5 approach to any review of the system as a consequence.
- 6 **Q.** Do you think you should have taken more interest in the
7 Post Office itself as an asset?
- 8 **A.** I think that interest grew significantly as time
9 progressed. But perhaps, with hindsight now, the answer
10 is probably yes.
- 11 **Q.** When did it grow, your interest?
- 12 **A.** It grew over the two years that I was -- two and a half
13 years that I was Chairman.
- 14 **Q.** What caused your interest to grow?
- 15 **A.** The size of the request for Government funding, the
16 nature of the political decisions around, sadly, not the
17 ones we're discussing here, but rather the issues of
18 Post Office representation around the country, the
19 ownership of last mile in delivery and postcodes. Those
20 issues became very important.
- 21 **Q.** So as you gained more interest and became more involved
22 can you help us with how you, as you say, in your
23 statement, remained unaware of issues such as the
24 prosecution of subpostmasters?
- 25 **A.** Can you say the question again, please?
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- 1 It never came up in that context.
- 2 **Q.** Just to be clear, when you say concerns, is that
3 concerns in relation to the business or concerns in
4 relation to Post Office Limited or concerns in relation
5 to how ShEx was overseeing the business?
- 6 **A.** All of the above.
- 7 **Q.** You say -- we don't need to bring it up -- that in one
8 of the meetings with Alice Perkins -- sorry, sir, it's
9 page 14 paragraph 31.2, if you want to review it -- you
10 say that you remember Alice Perkins mentioning, almost
11 as a passing comment, that there was a small segment of
12 difficult subpostmasters and ongoing difficulties with
13 the union?
- 14 **A.** That's correct.
- 15 **Q.** Did you ask any questions about those difficulties?
- 16 **A.** I can't recall what the substance of the conversation
17 was but it was very much in the vein I've mentioned of
18 this is just business as usual, we're getting on with
19 it.
- 20 **Q.** Did you discuss, though, those issues with anyone at
21 Shareholder Executive?
- 22 **A.** Mark Russell and I had some conversations about the
23 effectiveness of the Post Office Management, which
24 was -- some of my concerns were that they could have
25 been doing a better job.
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- 1 **Q.** Yes, so as your interest grew and you took more of
2 an interest in Post Office Limited, can you assist us
3 with how, when you were discussing Post Office with
4 people, you apparently remained unaware of issues such
5 as prosecution of subpostmasters?
- 6 **A.** I think I said at the beginning that these issues were
7 regarded as business as usual, by Post Office
8 Management. In that sense, there was no evidence or
9 urgency around it, nor that indeed it might be severely
10 damaging.
- 11 **Q.** You referred to, in your statement, biannual meetings
12 with the Chair of Post Office, yes?
- 13 **A.** Correct.
- 14 **Q.** What was the purpose of those meetings?
- 15 **A.** My role in taking over the chairmanship was to bring
16 corporate experience to bear on the review of portfolio
17 companies. I'd had a lot of that experience in prior
18 roles as Chief Executive and subsequently Chief
19 Financial Officer of financial institutions.
- 20 We instituted what was called a fireside chat review
21 with the Chairpeople, where there was an attempt to
22 create an atmosphere that was non-threatening, so that
23 they could express, without fear of retribution, any
24 issue around their major concerns. The question
25 normally phrased was "What keeps you awake at night?"
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- 1 **Q.** Who within Post Office Management?
- 2 **A.** That's the chairperson and the CEO.
- 3 **Q.** So you had a conversation with Mark Russell about
4 whether they could have been doing a better job?
- 5 **A.** We -- and that is normal. We did this with all the
6 portfolio management team.
- 7 **Q.** What were your concerns with the Chair and the CEO?
- 8 **A.** I -- in particular in the context of the Chair,
9 an appointment which preceded my time in ShEx, I had
10 a concern that Alice's experience was not particularly
11 suitable to the role of chairing a business of this
12 nature.
- 13 **Q.** What were the basis for those concerns?
- 14 **A.** My personal experience.
- 15 **Q.** What about Paula Vennells? What were your concerns with
16 her?
- 17 **A.** No, those were more in the nature of the points raised
18 which led to a review of her performance later on.
- 19 **Q.** What were they?
- 20 **A.** I can't recall.
- 21 **Q.** When you were having meetings, these fireside chats, as
22 you described them, were you briefed by anyone at
23 Shareholder Executive prior to the chat?
- 24 **A.** Yes, by the portfolio responsible -- portfolio
25 individual responsible.
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1 Q. As part of that briefing, did no one raise with you the
 2 Second Sight review?
 3 A. No, they did not.
 4 Q. Let's move forward in the chronology. We have the
 5 Second Sight Report that's published, the Interim Report
 6 on 8 July 2013. My understanding of your evidence is
 7 that this wasn't discussed at Board level?
 8 A. That's correct.
 9 Q. Your evidence is that you weren't made aware of it?
 10 A. Correct.
 11 Q. Were you made aware of the involvement of the CCRC in
 12 investigating past convictions of subpostmasters?
 13 A. I was not.
 14 Q. I want to look at one matter in particular where you say
 15 you do have some knowledge. Can we bring up, please,
 16 page 20, paragraph 45 of your statement -- sorry,
 17 page 21, paragraph 47. So we've been to paragraph 46
 18 already, that's where you discuss your knowledge of
 19 various documents. Paragraph 47 says:
 20 "... I should add that I recall a conversation with
 21 Richard Callard in which he referred to Deloitte having
 22 been instructed to conduct a review to give assurance in
 23 respect of concerns raised in Parliament. I recall
 24 saying to him that I had experience of Deloitte, and
 25 would recommend them."

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1 Q. Would you consider to be business as usual for
 2 a business to face concerns raised in Parliament about
 3 its accounting software?
 4 A. It's highly unusual and, looking back on it with
 5 hindsight, there was a level at which the inquiry, the
 6 inquiries, or rather the issues, being raised by MPs,
 7 had risen to a volume that should have been brought to
 8 the attention of the Shareholder Executive in the first
 9 place, and possibly to the Board after that.
 10 Q. Well, if we bring up your witness statement, please, at
 11 page 22, paragraph 50.
 12 SIR WYN WILLIAMS: While that's being done, can you give me
 13 some indication of the year in which you had the
 14 conversation with Mr Callard, ie was it towards the end
 15 of your period or some other time?
 16 A. Yes, sir, it was towards the end of my period about
 17 April time.
 18 SIR WYN WILLIAMS: Yes, April 2014, yes.
 19 A. Yes.
 20 SIR WYN WILLIAMS: Fine. Thank you.
 21 MR STEVENS: In these paragraphs, you're saying, you're
 22 commenting, on things you would have handled differently
 23 and giving reflections. In paragraph 50 you say, as
 24 a leader point, you say:
 25 "I believe that it could have been helpful for ShEx

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1 In what context was that conversation with Richard
 2 Callard?
 3 A. He was the head of the team at the Shareholder Executive
 4 with responsibility for Post Office and, in my normal
 5 occasional conversation with those positions, those
 6 people in those positions, I tried to impart some of my
 7 knowledge of who would be the best people in the context
 8 of an external review. It was at that point -- I had
 9 never heard of Second Sight, never -- had no experience
 10 of them. So I tried to press on him that the Deloitte
 11 team would be best equipped to do the kind of deep dive
 12 required to determine what the issues were. As it
 13 turned out, they did a desktop review.
 14 Q. Did you ask what the issues were, that were to be
 15 investigated?
 16 A. He mentioned they were around the Horizon system at that
 17 time, the "systems", quote/unquote.
 18 Q. Did he refer to the fact of subpostmasters being
 19 prosecuted?
 20 A. No, he did not, to my memory.
 21 Q. You say that he was -- he said it was to review to give
 22 assurance in respect of concerns raised in Parliament.
 23 Did you continue to believe that it was business as
 24 usual at this stage?
 25 A. Yes, I did.

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1 board packs to have a schedule of significant issues
 2 raised in Parliament relating to Government assets where
 3 ShEx handled the shareholder role."
 4 Well, the fact that Parliament was -- concerns had
 5 been raised in Parliament was raised directly with you
 6 by Richard Callard, why did that not set alarm bells
 7 ringing as to the significance of this issue with Post
 8 Office Limited?
 9 A. Most probably because of the timing. In other words,
 10 the reviews were just, in the case of Deloitte,
 11 beginning, rather than at the end, and I had not had any
 12 knowledge of the Second Sight Interim Report.
 13 Q. Do you think, at this stage, you should have asked more
 14 questions on the background to the issue?
 15 A. With perfect hindsight, absolutely.
 16 Q. Well, not with hindsight. If you're told that there are
 17 concerns raised in Parliament about a business that the
 18 Shareholder Executive is overseeing, do you think, with
 19 the information you had at the time, you should have
 20 asked more questions about it?
 21 A. I think the level at which the number of questions being
 22 raised -- it started in the single figures, and then
 23 eventually rose to 47, I believe, by about this time; 47
 24 is certainly a number that should have been raised.
 25 Q. 47 what, sorry?

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1 **A.** 47 specific questions in Parliament from different MPs
 2 about the Horizon system.
 3 **Q.** That's a slightly different question. I'm asking: at
 4 the time, with what you knew, should you have asked more
 5 questions of Richard Callard or the Shareholder
 6 Executive Team, once you'd been told that Deloitte were
 7 involved and there were concerns raised in Parliament?
 8 **A.** At the time, I felt I addressed the issue
 9 satisfactorily.
 10 **Q.** Let's look at the Board Briefing, please. It's for the
 11 Deloitte report. It's POL00028069. You've had a chance
 12 to read this in preparing for your witness statement and
 13 the Inquiry has seen it several times. I'll whistle
 14 through the key points. Can we look at page 3, please,
 15 and at the bottom, "Limitations and Assumptions". As
 16 you said earlier, it's a desktop report. It says:
 17 "... we have not validated whether Horizon has been
 18 implemented or operated as described in the
 19 documentation reviewed."
 20 Second bullet point refers to "significant gaps
 21 existing in the information available".
 22 If we go over the page, please, you see it says that
 23 the assumptions include that:
 24 "The documents proffered are a complete and accurate
 25 representation of the Horizon design."

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1 Then over the page at 8, please. Down to Matter 5,
 2 "Balancing transaction process", it says:
 3 "... an emergency process, accessible only to
 4 restricted individuals in Fujitsu, which can create
 5 transactions directly in Branch ledgers. This process
 6 creates an identifiable transaction in the ledger,
 7 verbally asserted by [Post Office Limited] staff to be
 8 visible to subpostmasters in their branch reporting tool
 9 but does not require positive acceptance or approval by
 10 the subpostmaster. The use of the process has a full
 11 audit trail, monitored by Fujitsu."
 12 It goes on to say some various assertions. Then
 13 finally, over the page, please, it refers again to the:
 14 "Balancing transaction processes [that] are
 15 controlled by Fujitsu via formal change control and
 16 monitoring processes. An audit trail is retained over
 17 the use of this process and, since 2008, when reporting
 18 became easier, it is asserted by Fujitsu staff that the
 19 audit trail is monitored by a Fujitsu department
 20 independent of those with access to the function also in
 21 Fujitsu. The degree of formality over this monitoring,
 22 and its frequency, is unknown."
 23 It goes on.
 24 If this report had been put before the Board as, in
 25 your evidence, you say it should do, what action do you

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1 Then, finally:
 2 "Assertions made by [Post Office Limited] and
 3 Fujitsu staff have been accepted as accurate without
 4 corroboration or verification."
 5 Those are quite significant assumptions, aren't
 6 they?
 7 **A.** They are.
 8 **Q.** Can we turn to page 7, please. If we go down -- sorry,
 9 stay there for the moment. Matter 3, the issue is:
 10 "Baskets of transactions recorded to the Audit Store
 11 are complete and 'digitally sealed', to protect their
 12 integrity and make it evident if they have been tampered
 13 with."
 14 We don't need to go through all the detail but, if
 15 we see the third bullet point down, the final sentence:
 16 "This could allow suitably authorised privileged
 17 staff in Fujitsu to delete a sealed set of baskets and
 18 replace them with properly sealed baskets, although they
 19 would have to fake the digital signatures ..."
 20 "We have not identified any document controls
 21 designed to:
 22 "Prevent a person with authorised privileged access
 23 from deleting a digitally sealed group of data and
 24 replacing it with a 'fake' group within the Audit Store
 25 ..."

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1 think would have been taken by the ShEx Board?
 2 **A.** We would have pointed out that a desktop review in the
 3 context of everything that had been written warranted
 4 a full blown analysis of what was going on with the
 5 system.
 6 **Q.** When you say it warranted a full belong analysis, what
 7 precisely do you mean?
 8 **A.** It would mean going into a deep dive and audit of
 9 transactions from start to finish, and the fallout or
 10 implications of those actions, where there were, for
 11 example, discrepancies.
 12 **Q.** If the report was before the Board, we've heard from
 13 witnesses -- I think you listened to yesterday's
 14 evidence about the degree by which oversight was
 15 exercised by the Shareholder Executive, I think people
 16 referred to arm's lengthening or shortening, would this
 17 report have led to a shortening of the arms, in terms of
 18 oversight of --
 19 **A.** It most likely would have.
 20 **Q.** I'll move on and look at a matter in your statement
 21 about Shareholder Executive, page 12, paragraph 30,
 22 please. You set out, in paragraph 30, the various
 23 structures that were in place to oversee Post Office
 24 which we turn to. I don't need to read out.
 25 You say:

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1 "... I believe that there was a governance structure
2 in place that provided an appropriate level of oversight
3 of [Post Office]."

4 Does that remain your belief?

5 **A.** It does.

6 **Q.** How do you reconcile that with the fact that you say the
7 Board weren't aware of the significant issues referred
8 to, that you say it should have been aware of?

9 **A.** Because the oversight function is a two-way process,
10 it's both bottom-up and top-down. We were in the
11 top-down role as the Shareholder Executive. The
12 bottom-up process of understanding the risks, the
13 importance of those risks, the significance of them, and
14 bringing them appropriately to the Post Office Board,
15 failed.

16 **Q.** Could we look, please, at UKGI00016718. This a Board
17 meeting on 16 July 2014 of the Shareholder Executive.
18 You're in the Chair and Robert Swannell, who gave
19 evidence yesterday, who became Chair in September, was
20 also in attendance, marked as RS, you're POS. If we go
21 down to "Risk Registers":

22 "The Board agreed that the revisions to the risk
23 register were a significant improvement."

24 It says at the end that:

25 "[You] summarised that the key aim of the risk
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1 burden on top of that process, if it was working
2 effectively. However, here we have a situation where
3 the Government is at arm's length from the shareholder,
4 in other words is arm's length from the business, but we
5 have a responsibility on behalf of the owners of that
6 business, who are the citizens of this country, and
7 their representatives in Parliament, who, when they
8 raise issues of significance -- and that's the key
9 difficult item to define, what is significant and what
10 is not -- that process should -- the full circle should
11 occur, which brings it back into the realm of the
12 Government bodies charged with looking after those
13 investments.

14 **Q.** Does there need to be better communication between the
15 Department and -- sorry, let me rephrase that.

16 When you were there, did you think there needed to
17 be better communication on issues like that between the
18 Department and ShEx?

19 **A.** I never that the impression that I wasn't -- didn't have
20 sufficient time, or not discussing the right issues with
21 both the Permanent Secretary and the ministers.

22 **Q.** At paragraph 51, you --

23 **SIR WYN WILLIAMS:** Before we get to 51, Mr Stevens, in terms
24 of the schedule of significant issues raised in
25 Parliament, I suppose the advantage of that is that it
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1 registers should be to provoke questions and cautioned
2 against further significant changes."

3 What significant changes were you cautioning
4 against?

5 **A.** I can't recall what was being proposed at the time but,
6 at this point, we had implemented the colour-coding and
7 the heatmap and that was best practice in industry at
8 the time.

9 **Q.** Were you satisfied with the process of risk management
10 in ShEx at this point?

11 **A.** At that point, yes. With hindsight, clearly there were
12 some shortcomings.

13 **Q.** Please can we bring up your witness statement at
14 paragraph 50. I want to look at some of the
15 recommendations that you suggest. It's page 22, sorry.
16 I should have said. We've been to paragraph 50 already.
17 This is where you say you believe it would be helpful
18 for the ShEx Board pack to have a schedule of
19 significant issues raised in Parliament. Do you think
20 that would add anything additional to a well-run risk
21 management process where risks were identified and
22 brought to board level?

23 **A.** It might. It may not. In the context of a risk
24 management system which cascaded the key issues to the
25 correct levels, it might have been an extra, additional
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1 takes away judgment about risks, ie if something is
2 significant enough to be raised in Parliament, it's
3 significant enough for you to pay attention to it.

4 **A.** Well, sir, I would expect there would be a healthy
5 tension between the risk register in Parliament and the
6 risk function in the underlying businesses.

7 **SIR WYN WILLIAMS:** Exactly so. Yes. Sorry, Mr Stevens.

8 **MR STEVENS:** Not at all. Thank you, sir.

9 Paragraph 51, you say:

10 "In addition, I would like to have raised as a query
11 at ShEx board level the way in which ShEx Teams received
12 and challenged information received from Government
13 assets, as I believe it is now clear that there were
14 deficiencies in information flow within [Post Office
15 Limited] and up to ShEx."

16 What type of queries did you have in mind when you
17 were drafting this statement?

18 **A.** Well, I'm referring to the risks, the whole Horizon
19 issues, and whether these were being surfaced at the
20 right levels in the underlying asset, in this case Post
21 Office. So corporate practice, I might add, was in
22 constant change in the previous 10 years to this, where
23 a lot of risks were inadequately addressed in many
24 corporations. You only have to look at the failures,
25 but we won't go there, of public corporations. This was
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1 an ongoing exercise to improve how you raised the issues
2 and who signed off on raising those issues, so there was
3 accountability for raising the issue and being held
4 accountable that the issue was properly addressed in due
5 course.

6 **Q.** So if you were thinking about what chairs of businesses
7 or bodies should do in future, what type of queries they
8 should be asking, what springs to mind?

9 **A.** Well, Boards are entirely dependent on management, and
10 the experience of the Board members. It becomes
11 a really critical issue, in the case of the Post Office
12 Board, whether they had the right mix of skills to
13 properly challenge internal audit, legal, risk
14 management, on the issues, and that is, of course, where
15 some of the weaknesses can appear.

16 **Q.** The Inquiry will hear in the coming weeks from witnesses
17 who make other recommendations. One suggestion that
18 will be made is that there should be a change in the law
19 to empower a minister to become directly involved in the
20 decision making of the board of a company, such as Post
21 Office. What would your view of that be?

22 **A.** I think my view is that ministers have total authority
23 right now to investigate anything they wish to look at
24 and it might be superfluous.

25 **MR STEVENS:** Sir, that concludes my questions. I think
185

1 matter for POL."

2 Is that your understanding of where we were --

3 **A.** That's correct.

4 **Q.** -- at the time. So it follows then, doesn't it, that it
5 was your understanding that the ShEx team was informed
6 and instructed by POL, Post Office, in relation to
7 complaints that were escalated, or being attempted to be
8 escalated, to ministers through MPs?

9 **A.** I would not have had any sight of those issues.

10 **Q.** Yes. But what you've said is that it was because of the
11 messaging from POL, which was being communicated to the
12 Minister via ShEx. So you were aware of the messaging
13 from POL, weren't you?

14 **A.** Yes, that was a normal -- this is, in effect, a sort of
15 dual mandate for the Shareholder Executive to
16 communicate back to the Minister and to help assist the
17 arm's-length business with that exercise.

18 **Q.** What I want to ask you then is, in relation to
19 paragraph 37, Mr O'Sullivan you say:

20 "If the issues being raised by subpostmasters with
21 Horizon and the associated ministerial complaints had
22 been flagged as significant or as a significant issue by
23 the ShEx team, I would have expected to have had sight
24 of it."

25 Is that your understanding?
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1 there are two sets of Core Participant questions, one
2 from -- how long?

3 Five minutes from Howe+Co and ten minutes from Hodge
4 Jones & Allen. That should bring us to a close within
5 time.

6 **SIR WYN WILLIAMS:** Good. So I shall look forward to the
7 discipline of the advocates in ensuring that,
8 Mr Stevens.

9 **Questioned by MR JACOBS**

10 **MR JACOBS:** We act for Alan Riddell, who is a subpostmaster
11 from Sunderland, and he has travelled down here today
12 with Jean Smith. His wife Carol, who is watching,
13 I understand, remotely is unable to attend today. Now,
14 they were involved with the East Boldon Post Office, and
15 their member of Parliament, Stephen Hepburn, wrote to
16 Ed Davey as a minister in February 2012, and they say
17 they never received a proper reply beyond simple
18 acknowledgement.

19 Now, you say at paragraph 36 of your statement that
20 you had no involvement in this particular case. At
21 paragraph 38, you say:

22 "The messaging from Post Office through the ShEx
23 Team was that Horizon was robust, POL was addressing
24 matters including by way of the Second Sight Review and
25 the ShEx team considered that this was an operational
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1 **A.** That's correct.

2 **Q.** So what sort of complaint made by a subpostmaster or
3 subpostmistress communicated through a Member of
4 Parliament would have amounted to a sufficiently
5 significant issue for you to get involved,
6 Mr O'Sullivan; what would it have taken?

7 **A.** The reality in these situations is that it might have
8 been communicated on the basis of complaints about the
9 effectiveness or rather the usefulness of the IT system.
10 That would be a normal operating issue, not one for the
11 Board.

12 **Q.** So that sort of complaint would get through to you?

13 **A.** It would not, normally.

14 **Q.** What would get through to you, was my question?

15 **A.** Well, it's very clear now, with hindsight, that, as the
16 issues of complaints arose about the process used with
17 the subpostmasters to prosecute them and to prosecute
18 them as part of the Post Office's remit, which was
19 different than handing to it an external counsel to do
20 it, that sort of issue would have been -- should have
21 been raised.

22 **Q.** Should have been. But what you said in your statement
23 is that complaints, ministerial complaints, if they were
24 flagged as a significant issue by ShEx, those are the
25 ones you would have expected to have sight of. I'm not
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1 talking about with hindsight; I'm talking about back in
 2 2012 --
 3 **A.** Yes.
 4 **Q.** -- and thereafter. What was a significant issue that
 5 would have led to you having sight --
 6 **A.** At that time, a threat to the financial performance of
 7 the Post Office.
 8 **Q.** So there's nothing, really, it seems, that
 9 a subpostmaster could have done to have gone over the
 10 heads of the Post Office, to the owner of the company,
 11 to the Minister, there's nothing that really would have
 12 got to your attention; is that what you're saying?
 13 **A.** It's difficult to see how that might have happened but
 14 that's hence my recommendation that there would be
 15 a risk register within Parliament to -- back to the
 16 owner.
 17 **Q.** Do you accept, then, I think it follows, that when
 18 subpostmasters such as my clients who sit behind me,
 19 when they sought to escalate their cases to the
 20 Minister, via their Members of Parliament, through the
 21 democratic process, it was the Shareholder Executive who
 22 blocked those attempts, wasn't it?
 23 **A.** No, I would not agree with that.
 24 **Q.** Well, your statement says that these were considered to
 25 be operational matters because of the messaging from
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1 **A.** Contractual in the context of the day-to-day operations
 2 of the business. As the significance of them grew,
 3 based on the circumstances, independent judgement at
 4 that time might have judged differently as to how
 5 operational they were or how significant they were.
 6 **Q.** Isn't the reality of the matter that, if the Shareholder
 7 Executive had said, "Our advice is these are probably
 8 contractual matters, probably operational matters, but
 9 these appears to be significant matters and the Minister
 10 should look at them if the Minister feels that that
 11 would be the right thing to do", that's the advice you
 12 should have given, isn't it?
 13 **A.** If we had had the information, absolutely.
 14 **Q.** You no doubt accept, then, that the Shareholder
 15 Executive, in not giving that advice, failed
 16 subpostmasters who tried to escalate their cases to the
 17 Minister?
 18 **A.** I respectfully disagree. I repeat that the issue is
 19 what information the Shareholder Executive had to be
 20 able to make those judgements as to complexity,
 21 importance or significance from a Post Office
 22 perspective.
 23 **MR JACOBS:** Thank you. I don't have any further questions
 24 for you.

Questioned by MR HENRY

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1 POL. So they didn't get through.
 2 **A.** But in the context of the Post Office Board, who had the
 3 responsibility to determine the significance of these
 4 issues, along with management, executive management. It
 5 was not ShEx's role to second guess at that point what
 6 the POL Board was doing.
 7 **Q.** You will no doubt have been following the evidence in
 8 the Inquiry --
 9 **A.** Correct.
 10 **Q.** -- and you will have heard perhaps the evidence in the
 11 Human Impact hearings from subpostmasters?
 12 **A.** Yes, and like everybody else, I regret them deeply.
 13 **Q.** These are all significant matters, aren't they, that
 14 everybody has raised, all the subpostmasters?
 15 **A.** They are indeed.
 16 **Q.** So these issues were in the public domain. Do you
 17 accept that, when subpostmasters tried to use the
 18 democratic process -- MP, Minister -- to escalate their
 19 complaints, the Shareholder Executive should have let
 20 them do that, should have let the Minister --
 21 **A.** The Shareholder Executive did not stop the complaints
 22 from Parliament reaching either the ministers or the
 23 Post Office Board.
 24 **Q.** Well, they advised ministers that these were contractual
 25 and operational matters?
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1 **MR HENRY:** Mr O'Sullivan, you were appointed in 2011. Can
 2 you help us when that was?
 3 **A.** I believe it was October. It's on the appointment --
 4 the appointment letter from my predecessor. Let me have
 5 a look.
 6 **Q.** Let's take it as October, then, Mr O'Sullivan. So that
 7 would be October 2011.
 8 **SIR WYN WILLIAMS:** I think, Mr Henry, just to help, his
 9 witness statement says appointed October 2011, started
 10 March 2012.
 11 **MR HENRY:** Thank you very much, sir.
 12 So October 2011, coincidentally, there was
 13 an article in Computer Weekly which said 85
 14 subpostmasters seek legal support in claims against the
 15 Post Office computer system.
 16 Throughout this Inquiry, we have seen, from inside
 17 the Post Office -- and obviously not necessarily ShEx
 18 because that was different -- but inside the Post
 19 Office, an obsession with the media and how the plight
 20 of the subpostmasters is being portrayed in the media.
 21 Were you aware of that background?
 22 **A.** No, I was not.
 23 **Q.** So it follows that, before your appointment, the six
 24 stories in Computer Weekly -- I can go through them, if
 25 you like -- the BBC News programmes, et cetera,
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1 et cetera, none of that permeated your consciousness?
 2 **A.** Correct.
 3 **Q.** During your tenure, which was from March 2012 to
 4 September 2014, we've got ten stories in Computer
 5 Weekly; you were presumably not made aware of those
 6 either?
 7 **A.** That's correct.
 8 **Q.** Right, could we go to UKGI00016739, and while that is
 9 being put up, you would accept, sir, would you not, that
 10 the vital thing in any flotation is that the listing
 11 particulars in the prospectus are completely accurate,
 12 that you get a warts and all -- forgive that
 13 expression -- but a warts and all picture of the
 14 business so that anybody who wishes to subscribe or take
 15 up shares is fully acquainted with proper risk?
 16 **A.** I agree.
 17 **Q.** Right. So this is a ShEx Board meeting of 13 March 2013
 18 and at page 17 of 39 we go to the proposed flotation of
 19 RMG, and it's noted that:
 20 "A number of critical transaction 'enablers' have
 21 been confirmed in the last two months."
 22 I omit words, and then further down we can see, if
 23 we go to number 3:
 24 "On the basis of this work we are now in a position
 25 to recommend that:

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1 completely?
 2 **A.** I couldn't -- I couldn't necessarily agree with that
 3 because --
 4 **Q.** Why not?
 5 **A.** -- the analysis would and the counter -- the rebuttal
 6 might have been sufficient to mitigate what was
 7 perceived at that time as an unlikely event.
 8 **Q.** So, in other words, it would be compounded because there
 9 would be, therefore, a false denial of accountability
 10 and, down the line, there would be, when this all blew
 11 up, there would no doubt be recriminations that it had
 12 been wrongly priced?
 13 **A.** If you -- the Board was entitled to look at the
 14 Linklaters, I believe, review, which categorically
 15 stated that the probability of loss from the
 16 postmasters' actions was low, although it could be
 17 100 million, was the number. That should have been
 18 stated.
 19 **Q.** Categorically is somewhat overstated. It was a very,
 20 very highly caveated report, was it not?
 21 **A.** Well, in reading it post-the event, yes.
 22 **Q.** Yes. May I ask you, were you aware that people from
 23 your Department, people from ShEx, were trying to remove
 24 what were perceived to be adverse or critical remarks
 25 about Horizon from the prospectus?

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1 "We should pursue a sale of shares.
 2 "We should prepare for an IPO in autumn 2013."
 3 Then over the page at page 18 we have "Key risks"
 4 and we've got "Industrial relations", this is under
 5 paragraph 5, "Financial performance"; "Investment
 6 appetite"; "Market Economic Conditions"; "Regulation".
 7 Then going over to page 19 internally but 18 on the
 8 document itself, we've got at paragraph 6 at the top of
 9 the page:
 10 "These risks are significant and there remains
 11 a strong possibility that one or more could materialise;
 12 we are continuing to assess contingency options should
 13 this be the case. However, at this stage we (and [the
 14 Union Bank of Switzerland]) remain of the view that
 15 a sale should be feasible from autumn 2013."
 16 Now, the position, as you say, however -- if I may
 17 be forgiven for making an observation -- improbable it
 18 is, that you had no idea about the noise, as it has been
 19 contemptuously described, generated by the
 20 subpostmasters, but the position is that the risk of
 21 historical prosecutions, of sending innocent people to
 22 prison, appears nowhere in this document.
 23 **A.** That's correct.
 24 **Q.** You would surely agree with me that, if that had been
 25 a known risk, it would have killed the flotation

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1 **A.** I was not.
 2 **Q.** So, therefore, it follows that you cannot have been
 3 aware that the Chief Executive Officer of the Post
 4 Office, when the officials at ShEx had failed,
 5 intervened and actually had what was perceived to be
 6 damaging and critical material of Horizon removed from
 7 the prospectus?
 8 **A.** I was not aware of that.
 9 **Q.** That would be, on any view, given what we now know,
 10 contrary to the whole principle of candour and
 11 transparency so far as risk; do you agree?
 12 **A.** You could reach that conclusion.
 13 **MR HENRY:** I'm grateful. Thank you.
 14 **SIR WYN WILLIAMS:** Thank you, Mr Henry.
 15 Thank you to everyone for bringing this afternoon's
 16 proceedings to a timely close. I'm grateful to you.
 17 I'm also grateful to you, Mr O'Sullivan, for making
 18 your witness statement and for coming to answer
 19 questions at the Inquiry this afternoon.
 20 **THE WITNESS:** Thank you, sir.
 21 **SIR WYN WILLIAMS:** Right. So we won't sit tomorrow and we
 22 will resume on Friday --
 23 **MR STEVENS:** That's correct, sir, yes.
 24 **SIR WYN WILLIAMS:** -- I take it, Mr Stevens?
 25 **MR STEVENS:** Sorry, sir. Spoke over you, then.

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1 **SIR WYN WILLIAMS:** No, no. I take it at 9.45 on Friday?
 2 **MR STEVENS:** Yes, 9.45, thank you.
 3 **SIR WYN WILLIAMS:** Fine. Thank you all very much.
 4 (4.27 pm)

5 (The hearing adjourned until 9.45 am
 6 on Friday, 12 July 2024)
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