

Friday, 18 October 2024

1
2 (9.00 am)
3 **MR BLAKE:** Good morning, sir.
4 **SIR WYN WILLIAMS:** Good morning, Mr Blake. Before you begin
5 today's evidence session, in my haste to publicly
6 announce the revised arrangements for today's hearing,
7 I inadvertently omitted to thank Mr Bartlett for
8 providing two detailed witness statements and giving
9 oral evidence during the course of the whole of
10 yesterday. So I'd like to repair that omission by
11 thanking him publicly now.
12 **MR BLAKE:** Thank you very much.
13 This morning we're going to hear from Mr Foat
14 remotely. *(Pause)*
15 Ah, either Mr Foat is on silent, or there is nothing
16 in the room.
17 **THE WITNESS:** Good morning.
18 **MR BLAKE:** Ah, there we go.
19 **BENJAMIN ANDREW FOAT (affirmed)**
20 **Questioned by MR BLAKE**
21 **MR BLAKE:** Thank you very much, can you state your full
22 name, please.
23 **A.** My full name is Benjamin Andrew Foat.
24 **Q.** Thank you very much, Mr Foat. You have produced a very
25 large number of witness statements throughout the course

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1 **A.** That is correct.
2 **Q.** Thank you very much.
3 Mr Foat, all of those statements will be uploaded to
4 the Inquiry's website in due course. You are
5 a qualified solicitor; is that correct?
6 **A.** Correct.
7 **Q.** Before joining the Post Office, you worked in a number
8 of different firms in Australia and also in England.
9 **A.** That's correct.
10 **Q.** You joined the Post Office in August 2015 as Head of
11 Legal for Financial Services --
12 **A.** Correct.
13 **Q.** -- and you became Legal Director in 2016 and worked in
14 that role until 2019?
15 **A.** Correct, in August 2016 I was appointed Legal Director.
16 **Q.** Thank you. During that period Jane MacLeod was General
17 Counsel?
18 **A.** That's correct.
19 **Q.** You then became General Counsel from May 2019?
20 **A.** Correct.
21 **Q.** You have been on a leave of absence for health reasons
22 since April 2024; is that correct?
23 **A.** Well, a mixture of time to focus on the Inquiry, I was
24 due to give evidence in Phase 5 and 6 and, again, for
25 Phase 7. So it's a mixture.

3

1 of this Inquiry. I'm not going to take you to each one
2 individually but I'll just go through each of them to
3 confirm that they are all true to the best of your
4 knowledge and belief.
5 The first witness statement is POL00114188ds, that
6 is dated 23 March 2023.
7 The second is dated 21 June 2023 and has a URN of
8 POL00118164ds. That one, in fact, you have sworn on
9 your last appearance.
10 The third witness statement is WITN09980300, dated
11 22 August 2023.
12 The fourth is WITN09980400, dated 3 May 2024.
13 The sixth is dated 8 October 2024, and has a URN of
14 WITN09980600.
15 There are also a number of interim disclosure
16 statements. The first of those is POL00114170ds, dated
17 27 May 2022.
18 The second is POL00114173ds, dated 18 October 2022.
19 The third is POL00114176ds, dated 30 November 2022.
20 The fourth is POL00114177ds, dated 12 January 2023.
21 Are you able to confirm that your signature appears
22 on all of those statements?
23 **A.** It does.
24 **Q.** Can you confirm that all of those statements are true to
25 the best of your knowledge and belief?

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1 **Q.** Thank you very much.
2 Today will be in two halves. The first will address
3 issues relating to Phases 5 and 6, and that deals with,
4 for example, the Group Litigation, the CCRC, et cetera.
5 The second half will address Phase 7, so the current
6 practice at the Post Office. Each of those will
7 probably last around an hour each and we will have
8 a break in between the two, and we will see how we go in
9 terms of timing. It may be that we take a third break
10 as well.
11 To start with, knowledge of Horizon issues. You
12 refer in your witness statement to being told that
13 Horizon was robust. I think you've said like an air
14 traffic control system. Can you assist us with who told
15 you that and how you were told?
16 **A.** So upon joining Post Office when I was working in the
17 Financial Service area of the business, I think the
18 Panorama episode had aired and there was a communication
19 that was issued to employees that set out Post Office's
20 position in relation to the matter, and over the -- and
21 that set out that Post Office thought that the system
22 was robust.
23 In terms of the comment about the air traffic
24 control, that was a statement that I heard on a number
25 of occasions from people. I don't recall specifically

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1 the individual who said it but it was a phrase that was
2 used. I suspect it came from someone in the IT
3 Department, given the nature of it. But that was -- it
4 was a comment that I remembered that phrase, because it
5 seemed like an unusual comparison.

6 **Q.** You also say that you knew very little of the Post
7 Office's role in prosecuting subpostmasters when you
8 joined. Was the Panorama programme the first time that
9 you became aware of that role?

10 **A.** Correct.

11 **Q.** Was the prosecution of subpostmasters something that was
12 discussed in the Legal Team in the early years of your
13 time at the Post Office?

14 **A.** In 2015, not that I recall. At that point, I was very
15 much focused on coming up to speed of what was needed in
16 my Head of Legal Financial Services role, specifically
17 the establishment of the Banking Framework Agreement,
18 establishing the Post Office Insurance Intermediary
19 business.

20 So Post Office established, for the first time
21 an insurance intermediary that was regulated by the FCA,
22 and I sat on the Risk and Compliance Committee of that,
23 and the Executive Committee. So I don't really recall
24 much discussion about the Group Litigation. It was
25 clearly something that the organisation was involved and

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1 include legal manuals, so trying to make sure that the
2 company understood all of the legal matters that it
3 actually has, understand where they come from in the
4 business, so that the company can have a more mature
5 approach to the management of legal risk.

6 **Q.** Thank you. I'm going to take you to a document from
7 2017 that touches on matters relating to prosecutions.

8 Could we bring up on to screen POL00357840. For
9 your assistance that's at E41. It's an email chain
10 from, as I say, June 2017. If we scroll down to the
11 bottom of the first page, we can see it's an email that
12 begins from Alisdair Cameron to you and he says as
13 follows, says:

14 "The guidance yesterday was that we should not
15 attempt to prosecute any cases where the losses had
16 arisen from or were identified via trading and Horizon
17 rather than a straight theft, until two things happen.
18 Firstly we complete the Deloitte work on systems
19 reliance. Secondly the CCRC opine. The former is fine
20 and I gather we are close. The second I want us to make
21 as a formal judgment with Paula engaged because it is
22 a big deal, with an open timetable and a strong sense
23 that this is now costing us blood.

24 "My preference would be to do the Deloitte work and
25 then seek a prosecution relying on Horizon in a single

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1 there were general communications, but it wasn't my
2 focus at that point.

3 **Q.** In terms of the Head of Legal for Financial Services,
4 did any matters relating to prosecutions come up in that
5 particular role?

6 **A.** No.

7 **Q.** No. How about the Legal Director role?

8 **A.** No, when I was appointed to Legal Director, I had
9 a discussion with Jane MacLeod about what she wanted me
10 to do. It was a newly established role, so the role
11 didn't exist prior to me doing so. She said, in terms
12 of the division of labour, that she would focus on the
13 Board issues and the Executive, and what she wanted me
14 to focus on was managing the Legal Team of this circa 20
15 lawyers and that she wanted me to focus on improving the
16 legal operations of the business because there, to put
17 it frankly, there wasn't much by way of legal
18 operations.

19 So that was the division of labour.

20 **Q.** What do you mean by legal operations, briefly?

21 **A.** Legal operations is the controls and policies that
22 a Legal Department can put in place in order to not just
23 help the Legal Department but also help the business.
24 So that might include a central repository of contracts,
25 it would include contract framework agreements, it would

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1 sympathetic case -- admission, good evidence, not too
2 sympathetic a postmaster, not part of the GLO etc. And
3 then we will know.

4 "In the meantime I have a specialist team setting up
5 prosecutions that will never happen. We can get them
6 doing other stuff for now but I need to lay them off if
7 the prospects aren't there?"

8 If we scroll up, we can see a response from Jane
9 MacLeod. Halfway through that second paragraph, she
10 says:

11 "Since security operations transferred out of LRG
12 ..."

13 Can you assist us, what does LRG mean?

14 **A.** LRG is Jane MacLeod's team, so the "L" stands for Legal,
15 "R" stands for Risk, and "G" stands for Governance,
16 which in effect is meant to be secretariat.

17 **Q.** Thank you:

18 "Since accurate operations transferred out of LRG
19 last September, we have discussed only one case that
20 could potentially be subject to prosecution. Most of
21 the prosecution team -- including the necessary legal
22 resource, left the business 2 years ago under the wave 1
23 redundancy programme.

24 "So one of the factors to be considered would be
25 whether we want to undertake our own prosecutions with

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1 the likely increased cost, or whether we refer them to
2 the police and provide the necessary support."

3 Can you assist us with why, in June 2017, you were
4 sent emails or copied into emails relating to the
5 potential resumption of prosecutions?

6 **A.** Yes, certainly. So I sat on AI's property Board meeting
7 and so, in the course of that meeting, he happened to
8 speak to me -- well, it was actually after the
9 meeting -- and he expressed the desire to resume
10 agent -- what was referred to as agent debt recovery,
11 and I think you can see from his email that he
12 illustrates that.

13 And so, because he had spoken to me, he wrote the
14 email to me, but then you see, of course, that it's
15 actually Jane who responds to him because the way that
16 it was structured in terms of the Group Litigation is
17 that Jane and Rod Williams, who was the Head of Legal
18 for Dispute Resolution, was in a working group and
19 a programme to manage the Group Litigation. And that
20 had a SteerCo and obviously a Board subcommittee. So
21 that's why AI raised the question with me but it's why
22 Jane actually responds.

23 **Q.** Did you have a view in respect of Mr Cameron's proposal?

24 **A.** I didn't have a firm view. I felt I was a bit too
25 removed from the issue to be able to opine on it and

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1 Litigation.

2 I think what this email shows is that I obviously
3 don't know enough of the context of what's being
4 discussed and I'm trying to get up to speed. One of the
5 things I had asked Rod to do was, although I wasn't
6 involved -- and indeed, I had actually asked to be
7 involved, but if Rod could keep me up to date just on
8 the milestones of the GLO.

9 **Q.** Did you work in an office with Rodric Williams?

10 **A.** Correct.

11 **Q.** Did you meet regularly; did you have team discussions?

12 **A.** Yes, I had one-to-one discussions usually on a monthly
13 basis with all of my Heads of Legal. Rod predominantly
14 worked on the Group Litigation. However, he also was
15 responsible for a number of other matters, as well, and
16 so -- and importantly, given my focus was on legal
17 operations, I was keen to make sure that, for him as
18 Head of Legal for Dispute Resolution, that he was
19 looking at a claim protocol, for instance, so that if
20 claims are served on Post Office branches, how do we
21 make sure that we actually get to see those claims in
22 the Legal Department?

23 So there are a number of different operations that
24 I was requiring the Heads of Legal to undertake, for
25 instance making sure that all matters that they had

11

1 Jane had answered the question, had responded in the
2 email.

3 **Q.** Thank you. I think you do take some action following
4 this. If we could turn to POL00249526, that's your E70.
5 I think you forward this chain to Rodric Williams and
6 ask him to do some further work on it. You say:

7 "Can you do a [background] note on this area ...

8 "The questions that need to be answered including:

9 "The time limit on bringing a prosecution;

10 "The different reasons for not pursuing prosecutions

11 ...

12 "What categories of loss should be pursued ...

13 "Whether the prosecutions team help with the civil
14 investigations that need resource ..."

15 Can you assist us, at this point in time, where did
16 Rodric Williams fall within line management: were you
17 managing him?

18 **A.** Yes, so I managed Rod holistically in terms of all of
19 his remit. However, the way that it works at Post
20 Office is that, in this particular case, because the GLO
21 programme wasn't a BAU matter, Rod reported directly to
22 Jane MacLeod on the issue. So that's why, for instance,
23 I'm not involved in the working groups, I'm not involved
24 in instructing counsel, I'm not involved in the GLO
25 steering committees or attending the Board on the Group

10

1 conduct of were set out, so that we had a central
2 repository, and also making sure we understood where the
3 accountable owners were in the business, and also giving
4 some estimate of time, so that we could better
5 understand where the risk -- the legal risk of the
6 business sat.

7 So Rod was heavily involved in the GLO but he did
8 have number of other obligations, which I was
9 particularly interested in making sure continued.

10 **Q.** Was one of his roles related to matters relating to
11 criminal matters?

12 **A.** Correct. Though I understand that Rod had a firm called
13 Cartwright King and that he would engage those matters.
14 I wasn't involved in those matters, but I understand he
15 reported to Jane on those.

16 **Q.** Would he have been your principal, go-to person within
17 the team for matters relating to criminal prosecutions?

18 **A.** During my tenure, yes, that's correct.

19 **Q.** Thank you. I'd like to take you to a document that you
20 will not have seen at the time it was produced. It's
21 POL00315631, that's your E45. This is a document that's
22 well familiar to the Inquiry. You may have seen it in
23 previous phases. It's an advice from Cartwright King,
24 dated 27 March 2015. It addresses what we know as
25 Project Zebra, the investigation relating to remote

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1 access. I'd just like to read to you a few passages
2 from this note. They say, "Note: Deloitte Report --
3 Questions for [the Post Office]".

4 I'll start at paragraph 2. They highlight at
5 paragraph 2 that, within the Deloitte report, it:
6 "... identifies a method of posting 'Balancing
7 Transactions', that is, the post of '... additional
8 transactions centrally without the requirement for the
9 transactions to be accepted by the subpostmasters ...'
10 The paragraphs goes on to indicate that, 'Whilst
11 an audit trail is asserted to be in place over these
12 functions, evidence of testing of these features is not
13 available ..."

14 There are also later extracts in that report that
15 are reported to be of concern. The first is:

16 "'For balancing transactions ... we did not identify
17 controls to routinely monitor all centrally initiated
18 transactions to verify that they are all initiated and
19 actioned through known governed processes ...'

20 "'Controls that would detect when a person with
21 authorised privileged access used such access to send
22 a fake basket into the digital signing process could not
23 be evidenced to exist'."

24 Then Cartwright King say this:

25 "This material is potentially disclosable in cases

13

1 Was this issue, so remote access, potential
2 disclosure, in criminal cases, those who had been
3 convicted of criminal offences, was that ever brought to
4 your attention by Rodric Williams?

5 **A.** No, and I think this document is a document before I was
6 employed at --

7 **Q.** Absolutely, yes. During your time though, I mean, you
8 had some involvement in the Group Litigation, for
9 example, and we'll get to that in due course. Did
10 Rodric Williams ever bring up this knowledge that we see
11 in this document?

12 **A.** No.

13 **Q.** No. Looking back, what is your view of Mr Williams'
14 competence and credibility?

15 **A.** My observation that I had was he was a very experienced
16 litigation lawyer. I recall that I think he commenced
17 his legal career in New Zealand. He was also admitted
18 to the New York Bar. He had also practised in the
19 United States, and he had also practised here for number
20 of years, all specialising in commercial litigation.
21 I found him to be a very diligent and passionate lawyer.
22 I didn't have issues around his technical competence; in
23 fact, I found his technical competence to be sound.

24 **Q.** Do you have any reflections on that now or is that still
25 your view?

15

1 where a convicted defendant had raised, as a part of his
2 defence (either expressly or by implication), the
3 suggestion that:

4 "[The Post Office] or some other third party had
5 manipulated, interfered with or otherwise compromised
6 Horizon; or

7 "Horizon was created or was the victim of a system
8 generated but inexplicable loss/entry/transaction(s); or

9 "The defendant simply had no idea how the relevant
10 loss arose."

11 Reading this, the Zebra report had identified
12 a number of pieces of information relevant to the issue
13 of remote access and the discussion is as to the
14 disclosability of that to those who had been convicted.

15 Moving on to paragraph 6, it refers there to
16 a telephone conference with Rodric Williams of the Post
17 Office and Andrew Parsons of Bond Dickinson, who were:

18 "... informed that the Deloitte Report was correct
19 where it identifies a method of posting of 'Balancing
20 Transactions'."

21 It says:

22 "We were instructed that it was possible to 'inject'
23 a transaction unilaterally into a branch's accounting
24 records without the consent, approval or indeed
25 knowledge of the [subpostmaster] ..."

14

1 **A.** Well, I understand that Mr Williams has identified that
2 there are areas that were missed and, of course, with
3 that in mind, obviously any lawyer, you know, would be
4 incredibly mindful of missing such pertinent
5 information, which particularly in the circumstances of
6 where it can lead to such devastation, and I know that
7 that has played on Mr Williams.

8 But my genuine observation of working with him is
9 that he is a person of integrity and he's tried to do
10 his best in the circumstances, but I acknowledge that
11 clearly issues have been missed.

12 **Q.** I'm going to take you to a number of emails regarding
13 document retention that were sent by Mr Williams. Can
14 we start, please, with POL00255859. That's your E47.

15 **A.** Thank you, sir.

16 **Q.** This is an email of 20 April 2016. We can see near the
17 bottom of the distribution list you were a recipient of
18 this email.

19 If we scroll down, please, it says:

20 "As you may be aware, 91 mostly former postmasters
21 have issued a High Court claim against Post Office
22 Limited advancing allegations about the Horizon IT
23 system and the Post Office's engagement with them.
24 A list of the 91 claimants is attached, and we have been
25 told that others may join the claim in due course."

16

1 This email is 20 April 2016. Were you aware of the
 2 Group Litigation before this email?
 3 **A.** Yes, I would have been. At this point of time, I was
 4 Head of Legal for Financial Services but I -- even upon
 5 joining Post Office, I was made aware that there was
 6 this matter. Indeed, I think I received communications
 7 from the business in a relatively short time, having
 8 commenced at Post Office. During this period, though,
 9 for the reasons I've given before, I wasn't particularly
 10 focused on this and I didn't supervise Rod at this
 11 juncture.
 12 **Q.** Thank you. A number of instructions. The first is:
 13 "You must not destroy or delete any documents which
 14 may be relevant to the claim ..."
 15 The second:
 16 "You must not meant any existing documents that may
 17 be relevant to the claim."
 18 It's the third that I'd like to focus on, which is:
 19 "You must recognise that any documents that you
 20 create from now on may have to be disclosed to the other
 21 side in the case. If in any doubt, think about whether
 22 you would be happy for the email or document to be read
 23 out loud in court."
 24 To what extent, at this point in time, were you live
 25 to that third issue?

17

1 an advice or guidance note on what is legal professional
 2 privilege.
 3 I don't really recall specifics about it, other
 4 than, I mean, generally the maturity of -- or the
 5 business's knowledge about such legal matters would have
 6 been very limited.
 7 **Q.** From your interactions with, for example, the Executive
 8 and the Board level, as you progressed through your
 9 career, what was your view of their appreciation and
 10 understanding of legal professional privilege?
 11 **A.** I think they perhaps had a misguided understanding. So,
 12 for instance, I think people thought that the mere fact
 13 that you include a lawyer in correspondence, that that
 14 may make a document become privileged. That's not
 15 correct. Legal professional privilege is set out in the
 16 *Three Rivers* decision under English law, and so, you
 17 know, basically it's twofold: one, it arises under
 18 litigation; and/or the provision of legal advice. And
 19 that's the only two bases upon which -- and I'm
 20 over-simplifying the topic area, of course, but that is
 21 the two bases upon which legal professional privilege
 22 applies.
 23 **Q.** Jane MacLeod has provided a witness statement to the
 24 Inquiry where she says that often documents were marked
 25 as privileged when they weren't, in fact, privileged;

19

1 **A.** I mean, I would clearly have received the email.
 2 I don't particularly recall reading the email, but
 3 I understand -- I mean, in some respects, this is
 4 a general email that would be sent to make sure that
 5 the -- any organisation, when it's in receipt of legal
 6 proceedings, that it makes sure it tells the business
 7 that it needs to retain its documentation.
 8 **Q.** Do you see any issue with the third point or, in your
 9 view, is that standard wording?
 10 **A.** I think what Rod is -- and it's perhaps an informal
 11 expression, but what he's articulating to the business
 12 here is for them to be mindful that obviously when you
 13 commit information to writing, of course that is -- that
 14 can be disclosable and it's just reminding people of
 15 email usage.
 16 **Q.** Was legal professional privilege more broadly something
 17 that was well understood within the Post Office at this
 18 time?
 19 **A.** I don't think it was well understood -- and, forgive me,
 20 this is going back several years. Legal professional
 21 privilege was an area that I think training was actually
 22 provided to certainly the Legal Department, to make sure
 23 the lawyers understood, and I think -- there was
 24 training and particularly when we had what we referred
 25 to internally as the "legal academy", we issued I think

18

1 was that your experience?
 2 **A.** I don't think I was involved, in terms of the disclosure
 3 parts of the Group Litigation, because it was
 4 essentially before my time. But as a general point,
 5 I could imagine that that is the case: that people --
 6 certainly if it's done by business colleagues -- though
 7 query why business colleagues would be writing the word
 8 "Privileged", that is something that a lawyer would
 9 write.
 10 **Q.** Ms MacLeod has also highlighted that from April 2016,
 11 when the business was informed that Freeths had filed
 12 a claim, she was more sensitive about confidentiality
 13 and privilege issues, given the risk that the litigation
 14 was imminent, and some updates were therefore given
 15 verbally only from that point. Is that something that
 16 you experienced?
 17 **A.** Well, I -- as said, as Legal Director, I really wasn't
 18 involved in the Group Litigation programme but I was
 19 aware of the fact that Jane would give verbal updates to
 20 the Board. I think -- and this is probably some time
 21 later, probably in, I think, 2018, but she was
 22 particularly concerned around the disclosure of
 23 information between Post Office and the shareholder
 24 and/or UKGI. And so one of the areas that she had
 25 highlighted to Rod -- and I think I was included in

20

1 that -- was the need for a litigation protocol or
 2 a document protocol between the respective
 3 organisations, so that, if there was what's called
 4 common interest privilege, that that could be
 5 maintained.

6 **Q.** Do you think that that impacted in the level of
 7 information that was shared with UKGI?

8 **A.** I really don't think I could comment because I simply
 9 wasn't there.

10 **Q.** I'm going to return to the circular email from Rodric
 11 Williams, I'll take you to another version of the same
 12 email. It's POL00245909. That's your E49. We're now
 13 on 23 November 2016.

14 If we scroll down or zoom out, we can see it's
 15 exactly the same email that we've already looked at, in
 16 terms of the 1, 2 and 3. If we scroll up we can see
 17 it's sent by Rodric Williams to Rob Houghton and Jeff
 18 Smyth; do you know who they were?

19 **A.** Yes, so Rob Houghton was the Chief Information IT
 20 Officer of the company between -- and forgive me if the
 21 dates aren't quite precise -- but I think between 2015
 22 or 2016 and 2019, and Jeff Smyth became the Chief
 23 Information Officer in or about 2022 onwards.

24 **Q.** Thank you. He highlights there:
 25 "Point number 3 in the email highlights the need for
 21

1 **Q.** If we could please turn to POL00293080, that's your E57.
 2 Moving on in time slightly in the summer of 2017, we're
 3 now in August 2017, this is a letter to the registrar of
 4 the Criminal Appeals Office on Post Office headed paper
 5 sent by Mr Williams. If we scroll down, we can see he's
 6 the author of this letter. That middle paragraph says:
 7 "Royal Mail Group and Post Office became separate
 8 organisations on 1 April 2012 ... and we are currently
 9 establishing whether Royal Mail Group or Post Office
 10 hold material in relation to this case."
 11 So there is an appeal to the Court of Appeal in the
 12 case of Mr Butoy, and Mr Williams appears to be dealing
 13 with that matter. You were, by this stage, his line
 14 manager; is that correct?

15 **A.** Correct.

16 **Q.** Did you see or were you kept informed of these kinds of
 17 developments?

18 **A.** No, as I said, matters that were pertaining to the Group
 19 Litigation, that was something that he would have
 20 separate conversations with Jane MacLeod directly on.
 21 She would quite regularly come down to the floor, take
 22 him into a meeting room, have conversations with him on
 23 the matters that related to the Group Litigation.
 24 I think, subsequently, I had seen that there -- as
 25 part of trying to make sure that there's good legal
 23

1 care when creating documents."
 2 Are you aware of a concern within the Legal Team
 3 focusing in particular on the creation of documents and
 4 the need, for example, for things not necessarily to be
 5 written down?

6 **A.** No, I was not.

7 **Q.** The same email chain is sent in May 2017. We can have
 8 a look at POL00415520, that's your E50. There are other
 9 examples that I could take you to but I don't think we
 10 need to because what's relevant really is just the point
 11 in time. If we scroll down to page 2, we see there the
 12 same email sent in May 2017. By this stage, were you
 13 supervising Mr Williams?

14 **A.** In May 2017, yes, I -- Rod reported into me generally
 15 but not in relation to this matter.

16 **Q.** No, but generally, and from your observations of
 17 Mr Williams -- because we'll see there were a number of
 18 other occasions where the same email is forwarded -- was
 19 he somebody who struck you as particularly concerned
 20 about the recording or not recording of particular
 21 information in light of legal professional privilege
 22 concerns and in light of the litigation?

23 **A.** I wasn't aware of that concern. I'm not disputing what
 24 you're saying but I personally wasn't aware of that
 25 concern.

22

1 operations in the company, that it was noted -- in a --
 2 I used to try to get the team to get monthly reports up
 3 to Jane MacLeod, and I have subsequently seen that there
 4 was a reference -- I think there's a sentence in
 5 relation to this matter -- but I was not involved in
 6 this appeal at all and I didn't give any advice or any
 7 decisions in respect of it.

8 **Q.** Your references to the Group Litigation -- this is
 9 obviously separate, this is an appeal to the Criminal
 10 Court of Appeal -- was that also being kept separate
 11 from your role and responsibilities?

12 **A.** Correct, because they were inherently linked and so
 13 I did not have any involvement in that.

14 **Q.** At this point in time, was there any consideration given
 15 in your department to expertise in criminal law,
 16 somebody who is well familiar with criminal disclosure,
 17 for example?

18 **A.** At this point, my understanding was that Rod would
 19 interact with Womble Bond Dickinson, Cartwright King and
 20 I think there were counsel that were involved. But we
 21 did not have a criminal lawyer and I think that part of
 22 the reason was that, at this point, and since I had been
 23 Legal Director, Post Office did not undertake criminal
 24 prosecutions. But I accept your -- I accept your point.
 25 I think you may be suggesting that it ought to have had
 24

1 its own criminal lawyer but my understanding was that,
 2 because Post Office wasn't undertaking criminal
 3 prosecutions, it therefore didn't have a criminal
 4 lawyer, and we had a fairly tight inhouse Legal Team.
 5 **Q.** Do you think you had sufficient expertise within the
 6 department to be able to be dealing with, for example,
 7 the Criminal Cases Review Commission?
 8 **A.** As I said, I mean, that is a matter again that Rod
 9 worked with Jane on. I understand he did have support
 10 through Cartwright King, who I understand are criminal
 11 law specialists, and that he had counsel, and I never
 12 heard from him that he felt unsupported in that way. My
 13 observation was that there wasn't that much, in terms of
 14 any criminal law issues, at that time, but I'm clearly
 15 removed from the details of all of this. So I wouldn't
 16 have had the best -- I wouldn't have been in the best
 17 position to have made such observations.
 18 **Q.** If we could turn to POL00257831. That's your E54. This
 19 is an appeal chain that you're not copied into, and I'm
 20 just going to really, by way of timeline, if we scroll
 21 down to the bottom we're now in October 2018. This is
 22 an email from Mr Williams to individuals at UKGI. He
 23 says:
 24 "The purpose of this email is to let you know that
 25 on Thursday, 11 October 2018 the Criminal Court of
 25

1 matters with you?
 2 **A.** Because she's the General Counsel and it was her
 3 decision to divide the work in this way, which I don't
 4 think is necessarily unreasonable, in the sense that the
 5 Group Litigation was a significant matter and, as the
 6 General Counsel now, I think she wanted to have the
 7 Subject Matter Expert -- which internally within the
 8 team was Rod -- and she wanted to work in that way that
 9 she had that direct access.
 10 Moreover, there were a significant number of legal
 11 issues other than the Group Litigation that also needed
 12 to be managed, which was my focus, and so that was the
 13 basis upon which she divided the labour.
 14 I did actually ask twice to -- I offered my services
 15 to help on the Group Litigation but she said that that
 16 wasn't necessary.
 17 **Q.** What was your understanding as to why that wasn't
 18 necessary?
 19 **A.** Because she said we already had a lot of lawyers
 20 involved in the matter.
 21 **Q.** If we could please turn to POL00259733. That's your
 22 E23. This is an email chain from 29 November 2018. If
 23 we scroll down to the bottom, we can see it's an email
 24 from Grove Road Post Office, sent to a number of people
 25 including Paula Vennells.
 27

1 Appeal will hear an application from a former postmaster
 2 seeking permission to appeal ..."
 3 If we scroll up, we can see that is relating to the
 4 case of Mr Butoy, who we saw a letter in relation to
 5 just before. It says:
 6 "Mr Butoy's application for permission to appeal was
 7 refused earlier today."
 8 Then in the next paragraph it says:
 9 "In response to Tom's enquiry from earlier this
 10 morning, Mr Butoy has not applied to the Criminal Cases
 11 Review Commission for a review of his conviction, ie he
 12 is not one of the 33 Post Office prosecutions currently
 13 being reviewed by the CCRC."
 14 Were you aware at this stage of the significant
 15 number of Post Office prosecutions that were being
 16 reviewed by the CCRC?
 17 **A.** No. My understanding at this stage -- I was aware that
 18 the CCRC had been involved in the Group Litigation.
 19 I think my understanding at this point was the CCRC was
 20 waiting to understand what was happening with the Group
 21 Litigation. I mean, I had a very limited understanding
 22 around the process around the CCRC at this point.
 23 **Q.** As somebody who managed Mr Williams, why is it that so
 24 much is taking place between Mr Williams and Ms MacLeod,
 25 rather than Mr Williams discussing these kinds of
 26

1 If we scroll down, we can see the author says:
 2 "I have not left my position as postmaster for Hope
 3 Farm Road and Grove Road post offices. I still hold
 4 a valid contract for both branches. I am however
 5 precautionarily suspended from my duties at the moment
 6 due to your client's perception of circumstances that
 7 I have, as yet, not been given the opportunity to have
 8 a dialogue with your client's representative to put my
 9 side of the story to your client. I have a meeting
 10 arranged for 4 December 2018 to discuss this.
 11 "I dispute that I owe your client the sum of
 12 [£35,000] in fact I am currently making repayments
 13 towards this figure from my remuneration albeit under
 14 duress and without prejudice."
 15 It then says:
 16 "To this end I have registered as a secondary
 17 claimant to the Group Litigation Order currently being
 18 dealt with by the High Court in the matter of Bates &
 19 Others ..."
 20 If we scroll up, we can see a response, it's
 21 forwarded, I think, to you by Jane MacLeod. She says:
 22 "Please get someone to deal with this."
 23 If we scroll up above we see your response:
 24 "We are on it and I'll revert back with a note to
 25 you on how it is being managed."
 28

1 By November 2018, had you become more involved in
 2 matters relating to the Group Litigation?
 3 **A.** Not the Group Litigation programme itself but I think at
 4 that stage the issues around the contracts and agent
 5 debt had been raised, and so I think, in this respect,
 6 it would have been either the Head of Legal for Retail
 7 because the -- it's a current postmaster, I think, at
 8 that point, and/or it would have gone to Rod.
 9 **Q.** Is it fair to say that by November 2018 you were aware
 10 of issues concerning the resumption of prosecutions,
 11 those first documents that we saw, and you were also, to
 12 some extent, involved in matters touching on the Group
 13 Litigation?
 14 **A.** I don't think I was aware of the resumption of
 15 prosecutions.
 16 **Q.** Involved in discussions relating to the resumption of
 17 prosecutions?
 18 **A.** I was not involved in resuming any criminal
 19 prosecutions.
 20 **Q.** Involved in discussions relating to those: the emails
 21 that we saw when we started today?
 22 **A.** Sure but I was not involved in any discussions relating
 23 to that matter. I did not instruct Cartwright King.
 24 I did not make any decisions on that. So whilst it may
 25 be in a document that I have been copied into, I was not
 29

1 fit within your team?
 2 **A.** So because Jane had said to me that Rod was spending,
 3 understandably, a lot of time on the Group Litigation,
 4 she -- and, of course, I needed him to do other
 5 litigation work, we came to the view that we needed
 6 an additional litigation lawyer to be part of the
 7 inhouse team. So he became involved in supporting the
 8 litigation areas within the Legal Department.
 9 I think -- actually, no, I don't recall which law
 10 firm he may have come from.
 11 **Q.** He says:
 12 "I know there's a framework around information
 13 sharing with UKGI -- my immediate thought concerns the
 14 status of the document when it goes across in terms of
 15 privilege and restrictions from subsequent disclosure by
 16 them under [the Freedom of Information Act]?"
 17 If we scroll up, we can see an email from Amy Prime,
 18 junior solicitor at Womble Bond Dickinson. She's
 19 responding to him, so the "Ben" referred to there is
 20 him. She says:
 21 "It would be easier to maintain privilege over
 22 an advice note to [the Post Office] that is being shared
 23 with UKGI, rather than a note to UKGI. The problem with
 24 a note to UKGI is that they are not the lawyer's ...
 25 client and so legal advice privilege does not apply. We
 31

1 involved in that matter whatsoever.
 2 **Q.** In relation to the GLO, by November 2018, is it fair to
 3 summarise as some involvement on the sidelines?
 4 **A.** Well, I may have been copied into matters that related,
 5 if you want to say "on the sideline", but to be clear,
 6 I did not attend the Working Group, I was not involved
 7 in instructing any external lawyers, I was not involved
 8 in attending the SteerCo, in which decisions were made,
 9 and I did not attend the Board subcommittee that made
 10 the decisions in respect of the matter.
 11 It's not to say that I didn't have any information
 12 about it and I absolutely was aware of the major
 13 milestones. So, of course -- and, indeed, I actually
 14 asked Rod to keep me up to speed on the major issues.
 15 **Q.** Thank you. 15 March 2019, so moving on a little, that
 16 was the Common Issues Judgment, and I'd like to look at
 17 an email of the same day, that's POL00023809. That can
 18 be found at your E9. If we start at the bottom of
 19 page 3 into page 4. If we scroll up slightly we can see
 20 it's an email from Jane MacLeod and you're copied in at
 21 this stage:
 22 "Please see attached a first draft of the 'more
 23 detailed' briefing to go to UKGI ... tomorrow ... on the
 24 detail of the judgment."
 25 If we scroll up, please. Mr Beabey, where did he
 30

1 think this would be a document prepared for the purpose
 2 of litigation, and therefore attract litigation
 3 privilege, but it's not 100% clear cut."
 4 If we scroll up, there's a response from
 5 Mr Underwood, Mark Underwood. He says:
 6 "Amy -- please see attached. Presumably, similar
 7 problems arise re privilege and [Freedom of Information
 8 Act]. Is there a way to navigate our way through those
 9 in relation to the attached briefing which Patrick has
 10 prepared for UKGI/Ministers?"
 11 The response is the first email on the page.
 12 Ms Prime says:
 13 "Yes, the same problem arise [for] this document.
 14 "For UKGI, is necessary to produce a separate paper
 15 to Jane's briefing note which is being shared under the
 16 protocol?"
 17 "For BEIS, it is not 100% clear cut that litigation
 18 privilege would apply to this document ..."
 19 She says below that:
 20 "We would therefore recommend that the document does
 21 not contain any information that would be awkward or
 22 damaging to Post Office if it was publicly released."
 23 Now, that's an email chain that you're copied into.
 24 I think you've already explained some concerns within
 25 the Department or from Ms MacLeod relating specifically
 32

1 to UKGI. Were there concerns at this point in time in
 2 the business with sharing certain information with UKGI
 3 because of privilege issues?
 4 **A.** Yes. I think Jane had concerns and I think it may have
 5 even predated this document, but I -- my recollection
 6 generally is that she did have concerns about
 7 information, the way it could be communicated to UKGI
 8 and the Government Shareholder. I think her concerns
 9 were whether a privilege would be lost or, if
 10 information does go to a Government department and it's
 11 then on-forwarded or shared further, the -- of course,
 12 as lawyers will know, that then undermines or creates
 13 a risk that you lose confidentiality, you lose the
 14 privileged status that is attached to the document.
 15 **Q.** Thank you. That can come down.
 16 The 9 April 2019 was the recusal judgment. Were you
 17 in any way involved in that matter?
 18 **A.** No, but I was made aware of the recusal. I remember
 19 Jane -- I remember having a conversation with Jane and
 20 she said -- she informed me that recusal application was
 21 going to be made in the Group Litigation. I expressed
 22 surprise. I made the -- I actually remember the comment
 23 saying that, "Oh, I thought it would be a high bar", and
 24 she said, "No, actually, it's" -- and then she
 25 articulated what the legal test was to me.

33

1 Irrespective of the fact that it was her job to manage
 2 the overall risk, do you think, at this stage, you had
 3 been given sufficient information, sufficient updates,
 4 sufficient briefings, relating to matters such as the
 5 Group Litigation and the CCRC?
 6 **A.** No, because although I, from my own pro-activeness,
 7 asked for updates, I wasn't involved in any of the
 8 Working Group meetings, I didn't instruct counsel,
 9 I didn't attend the Executive SteerCo that oversaw this
 10 matter from an Executive position in the company, and
 11 nor did I attend the Board subcommittee, which made all
 12 of the decisions in relation to the matter.
 13 The General Counsel ultimately has responsibility
 14 for supporting the business to manage its legal risk and
 15 so there is no higher person, and that was her decision
 16 to manage it in that way. And she was supported.
 17 I think it's important to note that she was supported by
 18 several QCs because when I offered my support -- not
 19 just once, twice, I recall offering it -- she was
 20 supported by multiple Queen's Counsel, now King's
 21 Counsel, as well as a number of barristers and a law
 22 firm.
 23 **Q.** Thank you we'll just go to that document. It's
 24 POL00359988, it's at your E42. It's an email from
 25 Ms MacLeod to herself. I think she sends it to her

35

1 So for some reason that's really the only bit that
 2 I remember, but I was aware that the recusal application
 3 was going to be made but, again, I didn't appoint any of
 4 the barristers -- Lord Neuberger, Lord Grabiner,
 5 I wasn't involved in their appointment -- and I wasn't
 6 involved in the Board meetings.
 7 **Q.** One of your areas of responsibility as Legal Director
 8 was managing legal risk. Do you think you were
 9 sufficiently informed by Ms MacLeod, by those involved
 10 in that litigation of the legal risks involved at that
 11 stage?
 12 **A.** It's Ms MacLeod who, as the General Counsel, ultimately
 13 manages and supports the business to manage legal risk.
 14 So I reported to Jane MacLeod. She was my boss and she
 15 is an admitted solicitor and she was managing the Group
 16 Litigation. So I -- as an independent regulated
 17 solicitor, I didn't think it's unreasonable for the
 18 General Counsel to take ownership of the matter and she
 19 had a different role in the Group Litigation, in that
 20 she would -- she attended the Common Issues trial,
 21 I think almost every day, and she attended the Horizon
 22 Issues trial. So that was her decision to resource the
 23 legal matters in that way.
 24 **Q.** We're going to look at one last document before we break
 25 and it relates to Ms MacLeod stepping down.

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1 personal email account from perhaps her work email
 2 account -- or certainly two of her own accounts. It's
 3 subject is "Update":
 4 "Monday
 5 "Meeting 15/4/2019", with Mr Cameron.
 6 I'll just read to you a few passages from that. She
 7 says there:
 8 "Al then said 'I'm going to say something that will
 9 make you angry'
 10 "Then informed me that 'we' weren't happy with the
 11 litigation" --
 12 **A.** I'm sorry to interrupt. I think the connection dropped
 13 out. If you're able to -- I got the beginning of the
 14 document.
 15 **Q.** Thank you. So it's an email from Ms MacLeod to herself.
 16 She records a meeting from 15 April 2019 with Mr Cameron
 17 and she sets out there in the fourth bullet point that
 18 Mr Cameron said to her "I'm going to say something that
 19 will make you angry":
 20 "[They] informed me that 'we' weren't happy with the
 21 litigation, and wanted to bring in ..."
 22 Is that Herbert Smith?
 23 **A.** Correct. That's what I presume, yes.
 24 **Q.** "... to run it."
 25 So what was Herbert Smith's role before this?

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1 A. Herbert Smith was not involved at all.

2 Q. Do you know who made the decision for them to be brought
3 in?

4 A. I understand subsequently that the Chairman -- or,
5 sorry, obviously the former Chairman, the Chairman at
6 the time, Tim Parker, the Government Shareholder
7 representative, Tom Cooper, together with Al Cameron who
8 was the interim CEO and, of course, the subsequent CFO,
9 they approached two law firms one of which was Herbert
10 Smith, and they appointed Herbert Smith.

11 Q. Thank you. That's consistent with the bullet point
12 below. It then says that:

13 "[Mr Cameron] was vague about role (taking it over,
14 independent or just replacing me).
15 "I expressed concern about the timing *vis à vis*
16 current process.
17 "I asked whether change that immediate effect -- it
18 did.
19 "I Asked if [Herbert Smith] were expecting to be
20 instructed this week -- they were. I asked whether he
21 wanted me involved in briefing [Herbert Smith] -- he did
22 and asked me to meet with them that day ..."

23 Can you assist us: what was the feeling within the
24 company, within the senior levels of the company, at
25 this stage, towards the way the litigation had been

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1 current accountability) or a [Group Executive] member,
2 but no one else was close to the issues."

3 Was it ultimately you --

4 A. In -- sorry, in what sense?

5 Q. -- who would instruct Herbert Smith or who would be the
6 direct liaison with Herbert Smith?

7 A. So when I became General Counsel, so obviously the Board
8 had made a decision to appoint HSF, and so there's
9 obviously an engagement letter that needs to be signed
10 off the back of it. But, yes, as General Counsel,
11 I would then, and did so, liaise with HSF.

12 Q. As someone who was lower than Ms MacLeod's
13 accountability, did you feel comfortable taking on that
14 role?

15 A. Well, it was a step up, if that's the question. So yes,
16 I obviously was the Legal Director, and I would be --
17 not that I think I knew at this point but, subsequently,
18 Al had a conversation with me and he said that he would
19 like to appoint me as General Counsel.

20 Q. What was your view as to whether that was a good
21 opportunity, something that you were qualified and
22 experienced for, or something that you weren't
23 sufficiently experienced for?

24 A. I knew it would be a challenging role. I have had the
25 benefit of having excellent previous experience, whether

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1 handled?

2 A. Well, when the Common Issues Judgment was handed down
3 and was communicated, I think it came as a great shock
4 to the organisation and I think that people such as Al,
5 and some members of the Board, were very disappointed in
6 the legal advice, in the sense that the legal advice was
7 simply not borne out in the judgment.

8 Q. If we scroll down, there's mention of speaking to you to
9 give you the heads up of the proposed changes; do you
10 recall that conversation?

11 A. Yeah, I recall she asked me to go to her office and
12 I went into her office and she appeared upset and she
13 said that HSF were, in effect, replacing her role.

14 Q. If we scroll down, was it clear to her that she was
15 being replaced more broadly than just in relation to
16 Group Litigation?

17 A. Oh, yes, that, in effect -- I don't recall if these
18 words were used, it's hard to remember the actual
19 conversation -- but I think it was she felt redundant.

20 Q. She then refers to another conversation with Mr Cameron
21 around 9.20, and it's just a passage I'd just like to
22 ask you about, it's the fourth bullet point:

23 "I asked who would instruct [Herbert Smith]/to whom
24 would a secondee report to? Al was unclear on this and
25 asked my view -- I said it was either Ben (lower than my

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1 it's as a senior associate in private practice or
2 teaching law at university, or publishing as well as
3 working in an inhouse role as -- for corporate lawyer
4 for a major financial services institution and, indeed,
5 by that point I'd also been on subsidiary executive
6 committees and also risk and compliance committees, and
7 so I've had the benefit of extensive experience but
8 I accept the point that it was my first General Counsel
9 role.

10 MR BLAKE: Thank you.

11 Sir, that might be an appropriate moment to take our
12 first morning break.

13 SIR WYN WILLIAMS: Yes, by all means.

14 MR BLAKE: Can we come back at quarter past?

15 SIR WYN WILLIAMS: Yes, by all means.

16 MR BLAKE: Thank you very much.

17 (10.06 am)

18 (A short break)

19 (10.15 am)

20 MR BLAKE: Thank you, sir.

21 Mr Foat, could we move on now to 11 May 2019. If we
22 could turn to POL00023233, and that's at your E8. The
23 Court of Appeal had refused permission to appeal in
24 relation to the recusal application. If we turn over to
25 page 2, we can see Mr Parsons providing an update on

40

1 that at the bottom of page 2. If we scroll down
2 slightly, he says:
3 "Please find attached the Court of Appeal's decision
4 refusing permission to appeal ..."

5 Then we have your response on page 1, at the bottom
6 of page 1. You say:

7 "Thanks both -- we will need to explain the CEO and
8 the Board why we received advice that is again contrary
9 to the outcome. Can we summarise the [Court of
10 Appeal's] conclusions and what was it that caused there
11 to be a different conclusion from the advice that was
12 given. I am concerned that credibility is being lost so
13 let's be clear on how this is to be positioned."

14 To what extent were you involved in the decision to
15 appeal to the Court of Appeal in respect of the recusal
16 application?

17 **A.** So the decision to appeal was already taken by the Board
18 on 20 March, so in the Board resolution -- I only know
19 this subsequently, of course -- but if you look in the
20 minutes of the Board resolution, they had made the
21 decision to recuse, at first instance, and should Lord
22 Justice Fraser now not grant permission, that the Board
23 authorise that recusal appeal be made. So the Board,
24 I understood had made that decision on 20 March.

25 **Q.** Thank you. In respect of the refusal of permission, how

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1 **A.** I think it's someone in the IT Department.

2 **Q.** He says:

3 "Rob

4 "We have reached out to an independent test company
5 Ten10 to review our current and test strategies,
6 focusing on the Horizon/[Fujitsu] estate. We anticipate
7 the review will produce outputs around mid-June. We
8 will keep you informed and I will ask Isabel to
9 circulate the [Terms of Reference] for the work. If we
10 need to be more specific on Horizon then happy to accept
11 the feedback."

12 We can see on page 1 where this all leads to, and
13 it's advice from Mr Parsons from Womble Bond Dickinson,
14 yes, in May 2019 now, 17 May. He says:

15 "The work below makes me nervous. If the report
16 flags any risk in Horizon, we will be obliged to
17 disclose it to Freeths. The report landing in mid-June
18 would be terrible timing as it might land when Worden is
19 giving evidence or just as we are preparing closing
20 submissions. I would advise against conducting this
21 work whilst the Horizon trial is live.

22 "We will have an ongoing duty of disclosure all the
23 way up to the Horizon judgment being handed down (and
24 potentially beyond that). If we disclose the report
25 after the Horizon trial closes but before judgment,

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1 was that received within the business?

2 **A.** This is Lord Justice Fraser's refusal on the permission
3 in the --

4 **Q.** No, I think this is appeal, isn't it? The Court of
5 Appeal refusing permission. If we scroll down, sorry,
6 over the bottom of page 2 into page 3?

7 **A.** Sure. So I think the business was disappointed and it
8 was disappointed because, understandably, the Board had
9 taken advice from Lord Neuberger, Lord Grabiner and
10 David Cavender QC, and I think -- importantly, I think
11 it was in April that HSF was appointed and so I think,
12 from the Board's perspective, the Board was given legal
13 advice that suggested the Post Office had good merits in
14 making the application to appeal, or making the recusal
15 application and the appeal, and so the Board was, again,
16 disappointed like they were disappointed in the Common
17 Issues Judgment, which is why I make the point about
18 being concerned of the Legal Department losing
19 credibility.

20 **Q.** Could we turn to POL00042675, please. That's your B13.
21 If we could start on page 3. So the recusal application
22 having been lost and Court of Appeal having refused
23 permission, there's an email chain shortly after,
24 15 May, and it says as follows, from Mr Mitchell -- who
25 was Mick Mitchell?

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1 there is a risk that Freeths will seek to put in extra
2 submissions to the judge.

3 "In an ideal world from a litigation perspective,
4 this work would not happen until after the Horizon
5 judgment given is. I appreciate however that there is
6 a need to balance litigation risk against normal
7 business activity."

8 You respond above, saying:

9 "Thanks Andy -- very helpful."

10 Was that work undertaken?

11 **A.** The test?

12 **Q.** Yes.

13 **A.** Yes, I understand it was in August.

14 **Q.** So was it undertaken after the trial?

15 **A.** That's correct.

16 **Q.** Yes, and was that intentionally so, in light of
17 Mr Parsons' advice?

18 **A.** I'm not aware of that.

19 **Q.** Is this another example of concern within the business
20 about creating material that would be disclosable in
21 litigation?

22 **A.** I think the point of this was just making sure that --
23 it's joining the -- as General Counsel, I'd say joining
24 the dots across the organisation. So it was just making
25 sure that the business -- if they don't need to do

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1 something and there's no obligation to do something and
2 that can create risks, well, then normally lawyers will
3 advise the accountable business owner of that. That's
4 not to say, if there are adverse documents that have to
5 be disclosed, then they will be disclosed.

6 But I think it's just making sure that there was
7 coordination between the IT Department and the Legal
8 Department. My understanding is that the test did go
9 ahead and, if there was anything adverse, then that
10 would have been disclosed.

11 **Q.** The kind of advice given by Mr Parsons there, do you
12 think that is appropriate, in the circumstances where
13 the Post Office is owned by the Government and also in
14 circumstances where the Post Office has historically
15 prosecuted people?

16 **A.** At the relevant time, I think I was in as General
17 Counsel for about two or three weeks, I'm not sure
18 I would necessarily have quite understood all of the
19 context of the question you just put but I think --
20 I mean, I simply asked for the legal advice and this is
21 legal advice that came back, and I think what they're
22 saying here is that looking at it, as he says, from
23 a litigation perspective, if you don't have to do
24 something, and therefore he's saying not to, but what
25 I'd be very clear is -- and indeed, I think it's

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1 lawyer is to advise on the legal risks.

2 But you're right: there are other considerations
3 that a decision maker ought to take into account.

4 **Q.** If you were the decision maker, what would your view be?

5 **A.** I'm not the decision maker.

6 **Q.** But if you were the decision maker what would your
7 decision be?

8 **A.** It's not the role of the General Counsel to be the
9 decision maker.

10 **Q.** But if you were the decision maker what would your
11 decision be?

12 **A.** I don't have a view on it. It is not my role.

13 **Q.** Can we turn to POL00021556, please.

14 This a Board meeting of 28 May 2019, if we scroll
15 down we can see you are in attendance as General
16 Counsel. How often would you attend Board meetings?

17 **A.** I would attend for the relevant section of the Board
18 meeting that would be -- would pertain to me. So when
19 I became General Counsel, I would attend in respect of
20 the Group Litigation.

21 **Q.** Is it right that throughout your time as General
22 Counsel, the role was somebody who would attend the
23 Board but would not be a member of the Board?

24 **A.** That's correct. The General Counsel is not a Board
25 Director and so, therefore, it's not a member of the

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1 implicit in his point, that there is an ongoing duty of
2 disclosure, and so, if something does happen, it will
3 need to be disclosed.

4 **Q.** Irrespective of your state of knowledge at that
5 particular time, you were subsequently General Counsel
6 for a fair amount of time, looking at your role and
7 looking at the Post Office, do you think it is
8 appropriate for that kind of a position to be taken by
9 the Post Office, in light of its Government ownership
10 and in light of its historic prosecution function?

11 **A.** I am not aware of any specific rules of why it wouldn't.
12 My understanding is that this is legal advice, it's
13 litigation legal advice, and so it would follow the
14 normal course, which is --

15 **Q.** Irrespective of the advice that's being given, though,
16 in terms of a position, so let's say that advice was
17 adopted by the company, do you think it is appropriate
18 for the Post Office to adopt that position?

19 **A.** That's ultimately a question for the decision makers.
20 They would need to factor in or consider the legal
21 advice but they, as -- whether as Board Directors or
22 whether as other accountable business owners, they need
23 to have regard number of considerations. That would
24 include, for instance, the criteria or additional
25 elements that you have put forward, but the role of the

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1 Board. It will only attend upon the invitation by the
2 Board and, in Post Office's case, the General Counsel
3 doesn't sit through the entire Board meeting. It only
4 attends in relation to specific agenda items.

5 **Q.** In your view, is that usual or unusual?

6 **A.** I'm aware from an industry perspective there are
7 different models. My personal perspective is that it
8 does make my role more difficult not to be attending the
9 Board -- not a member because I'm not a Board
10 Director -- but not to attend the Board makes it more
11 challenging because you don't actually get to hear all
12 of the other agenda items. You don't get to hear, for
13 instance, you know, what is discussed about NBIT or what
14 is discussed about other topics, and so it just makes it
15 a little bit harder for that.

16 **Q.** Do you feel that, during your time as General Counsel,
17 you were given sufficient information as to what was
18 going on at Board level?

19 **A.** In relation to what? Sorry.

20 **Q.** Broadly: was your level of information regarding the
21 company sufficient for your role?

22 **A.** From time to time, I don't think it was adequate. There
23 are a number of occasions where certain documents
24 I asked for and I wasn't provided with. The model that
25 Post Office has does make it more difficult, unlike my

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1 predecessor, who was both the General Counsel and the
2 Company Secretary, had the benefit of being able to sit
3 throughout the entire Board meeting and, personally,
4 I do think that is a more helpful model.

5 **Q.** Thank you. If we go over the page we see there
6 reference to:

7 "... a number of attacks on the [Post Office] brand
8 through the Group Litigation and with the Horizon trial
9 about to resume; the Daily Mail campaign to 'Save our
10 Post Offices'; continued opposition in some quarters to
11 franchising ... and, the case brought by 123 postmasters
12 on employment rights. We needed to undertake a review
13 of postmaster remuneration which provided sustainable
14 solutions. Ideally, an announcement would be made in
15 November 2019 for introduction in April 2020, however,
16 this might need to be fast tracked depending on
17 publicity and disquiet sounding the Horizon trial."

18 Were you aware from within the business of
19 consideration being given to essentially provide good
20 news to counteract what was going on in the Horizon
21 trial?

22 **A.** Not specifically. We -- Post Office has
23 a communications department. I assume that is probably
24 where that -- comments are coming from.

25 **Q.** Can we turn, please, to page 4, which is where the Group
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1 system and what the issues had arisen over the period of
2 time covered by the case."

3 The suggestion there that the expert witnesses -- if
4 we scroll up -- may renege, do you recall a concern of
5 that sort?

6 **A.** No, my recollection, albeit this may be a subsequent
7 recollection, was -- there was a question mark as to
8 whether or not the experts had come up to proof in the
9 sense -- and I think what was communicated, in the
10 nicest possible way, perhaps both of the expert
11 witnesses had not put their best foot forward.

12 **Q.** Was there a concern within the business?

13 **A.** Pertaining to?

14 **Q.** That the experts would renege on their previous position
15 that Horizon was a robust system?

16 **A.** I think there was a general concern about the conclusion
17 that would be reached about Horizon. Horizon is
18 an essential system to the provision of the Post Office
19 services.

20 **Q.** Yes. Can we move on to POL00091437. That's your E13.
21 It's 10 June 2019, an email from Rodric Williams. It's
22 summarising the cross-examination of the claimant's
23 expert, Mr Coyne. It identifies his evidence in
24 relation to bugs. He said:

25 "Mr Coyne's evidence on this seemed confusing,

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1 Litigation update is provided and I think that's the
2 agenda item for which you attended. It says there:

3 "Alan Watts introduced the paper and he and Ben Foat
4 updated the Board on recent developments. We had 21
5 days to make an application to the Court of Appeal for
6 leave to appeal", and then it refers to new counsel.

7 There's a paragraph below on the recusal costs being
8 around £300,000.

9 It then goes on to say a number of points were
10 raised, and it's the second bullet point that I'd like
11 to ask you about. It says:

12 "Whether there was anything further we could do to
13 influence the outcome of the Horizon trial? It was
14 reported that Fujitsu's witnesses had not been strong,
15 while [the Post Office's] had been satisfactory. Only
16 the expert witnesses has yet to provide evidence and it
17 was important that they did not renege on their previous
18 position that Horizon was a robust system. It was
19 critical that Horizon was seen as a robust system today.
20 It was likely that the expert witnesses would say that
21 the system had bugs. This was not in dispute but the
22 issue was the degree to which it was a robust system
23 that could be relied upon and that there was nothing in
24 the judgment that suggested the system was unfit for
25 purpose today. We had looked at the evidence of the
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1 ranging from 13 to 22 bugs."

2 Was it clear in your mind at this stage that Horizon
3 had bugs and those bugs were at least 13 to 22, as
4 suggested here?

5 **A.** I'm not entirely sure, but I thought I probably had the
6 view that the question was not so much about the bugs
7 itself but the impact of bugs and I -- tangentially,
8 I remember a reference about that there was very little
9 bugs given the broader context, but I wouldn't have
10 necessarily have known much more than that.

11 **Q.** Given your previous understanding in terms of the air
12 traffic control system, the robustness of Horizon, did
13 there come a point at which you started to question the
14 line that had been taken by the business and, if so, at
15 what point was that?

16 **A.** I think it became evident only in the trial itself
17 that -- querying whether or not the witnesses came up to
18 proof, and I think it was the reporting back to the
19 Executive and the Board about the witnesses and the
20 evidence.

21 **Q.** If we could turn, please, to POL00136421. That's your
22 E18. If we could start on page 7. We're now into June
23 2019. At the bottom of the page, it's an email from Tim
24 McCormack to Mr Cameron, and he emails Mr Cameron about
25 another computer error. We see there, if we scroll down
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1 slightly, he says:
 2 "I don't know what they have brought to your
 3 attention recently but the single-most important piece
 4 of information you should be dealing with right now is
 5 a new error in your computer systems that, as it stands,
 6 cannot be introduced into the current trial but should
 7 be."
 8 If we scroll up, we can see Mr Cameron asks for more
 9 detail. If we keep on scrolling up, Mr McCormack says
 10 that:
 11 "The error in question is serious. Details of it
 12 are being treated as confidential ..."
 13 There is then, if we scroll up, Mr Cameron wants to
 14 speak to Mr McCormack. He says:
 15 "[For your information] I will speak to him."
 16 If we keep on scrolling up, there is a message from
 17 Mr Mark Davies, the Director of Communications, slightly
 18 above, at the bottom of page 5, please. He says:
 19 "My advice is to wait before speaking to him so that
 20 we can brief you. But if you are speaking today, please
 21 be aware that as you do it is a direct line to likely
 22 public comment/journalists. I'm uneasy about saying
 23 more on email. I suggest you read this blog ... in some
 24 depth before speaking to him. I also suggest giving
 25 Angela a call: she has dealt with him on many occasions

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1 **A.** At that point, Post Office's position was still that the
 2 system was robust. It had received advice saying that
 3 the witnesses had not come quite up to the proof that
 4 was expected, but I don't think anyone was suggesting
 5 that they wouldn't look into bugs, errors or defects.
 6 **Q.** Could we please turn to POL00280270, that's your E33.
 7 It's an email from AI Cameron, the Interim Chief
 8 Executive at that time of 2 August 2019. He says as
 9 follows:
 10 "Ben, I have been made very uncomfortable about
 11 an issue at Little Milton Post Office ... They
 12 approached me recently because they had been asked to
 13 pay a significant amount ... to us. Kim Abbotts got
 14 involved but could not explain what had happened
 15 remotely. At my suggestion an audit was held and the
 16 belief now seems to be that there was no loss, just
 17 misbooking of stock and mis-remming of cash. However,
 18 Kim has not yet been able to explain things to my
 19 satisfaction.
 20 "Could you please work with Kim while I am away to
 21 understand what has happened and answer two questions.
 22 "1. Is our understanding of what is happening in
 23 branch sufficient for us to be able to ask for money or
 24 suspend postmasters -- it doesn't feel like it.
 25 "2. Secondly, should there be any implications for

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1 over the last seven years."
 2 If we keep on scrolling up, please, to page 3 --
 3 perhaps the bottom of page 2, actually -- it seems that
 4 all the correspondence with Mr McCormack has been kept
 5 on file "including Rod's letters to him when he was
 6 regularly emailing Paula".
 7 Was there at this time, June 2019, a caution within
 8 the business in relation to looking further, in relation
 9 to bugs, errors and defects? We saw that Ten10 email
 10 and the testing and the concern about carrying out
 11 further testing at that stage. Were there wider
 12 concerns within the business about looking too deep into
 13 current bugs, errors and defects in the Horizon system?
 14 **A.** No, I don't believe that's so. My understanding -- and
 15 a lot of this I'm not actually necessarily involved
 16 directly but it -- my understanding of this email chain
 17 was concerned that the Comms Team were raising with AI
 18 about discussing, had AI been the interim CEO at the
 19 relevant time, having a conversation with Tim McCormack.
 20 I understood that there was a long history, the details
 21 of which I wasn't involved, but I think that's the
 22 concern that's been raised by the Comms Team.
 23 **Q.** Was there, though, more broadly, a concern within the
 24 business, or perhaps a lack of reflection within the
 25 business, as to the extent of the problems with Horizon?

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1 our defence of the GLO.
 2 "Given our shareholder's focus on a rapid
 3 settlement, I would rather you looked at the questions
 4 without it being clear I am asking -- I haven't used the
 5 whistleblowing process to protect privilege but I am
 6 asking for that confidentiality and protection. You do
 7 not therefore have my permission to discuss this
 8 elsewhere, other than talking to Kim about the
 9 specifics."
 10 A few questions on this. First of all, the
 11 reference there is, "the shareholder's focus on a rapid
 12 settlement"; can you assist us with what that meant as
 13 at August 2019?
 14 **A.** I think that was part of the change of strategy that had
 15 been discussed by the Board with the shareholder, which
 16 was, as opposed to what had happened in the Common
 17 Issues Judgment, when AI was appointed as interim CEO
 18 and after the Horizon Issues Judgment, I think there was
 19 a concerted effort to re-examine the approach that had
 20 been taken. Obviously the comments by Lord Justice
 21 Fraser, both the tone of which and his findings, came as
 22 a shock to the organisation and so there was a change of
 23 approach to make sure that the company understood that
 24 and, in particular, that there'd be a focus on mediation
 25 or resolving the matter, rather than just through

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1 litigation.

2 **Q.** We see an email on the same day, POL00327569. That's

3 your E39, from you. You forward the concern to Norton

4 Rose and ask for advice. I think the suggestion in

5 there is that it may have been raised by Mr Cameron

6 because he had been unsuccessful in his application to

7 become the CEO. What was your view of the concerns that

8 were being raised by Mr Cameron?

9 **A.** I remember the way that I treated this was to treat it

10 with what -- I would say a straight bat, so I treated it

11 as if it was a potential whistleblowing matter and,

12 because it provided an unusual set of circumstances that

13 this was the CEO purporting to make a potential Speak

14 Up, in circumstances where it was his own area of

15 responsibility, so the -- at this point, he was

16 responsible for the operations, where he -- the issues

17 around stamps and Little Milton occur. So it was

18 a unique situation of someone whistleblowing for which

19 they are themselves accountable for the work.

20 I was also mindful of the fact that, as the General

21 Counsel, I reported in to the interim CEO, and then

22 I was also mindful of the different hats that, at that

23 point, I was wearing because I inherited Jane's work,

24 and so I was both the whistleblowing officer but also

25 the General Counsel.

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1 in that respect that I'd just like to look at now.

2 Could we please turn to POL00042755, that's your E11.

3 We're going back in time only slightly. We're in June

4 2019, if we scroll down, please, we can see advice from

5 Andrew Parsons of Womble Bond Dickinson. He says:

6 "All

7 "We spoke couple of weeks ago about a plan for

8 moving forward settlement in the Group Litigation. In

9 simple terms, this was to ask Freeths to provide better

10 claim valuation information either alongside or as

11 a precondition to mediation. Has that plan changed

12 following the Board subcommittee last week?"

13 He says at the bottom of that second paragraph:

14 "Either way, we may wish to write to Freeths sooner

15 rather than later about settlement.

16 "If we're still following the same path, I think

17 that HSF were preparing a first draft of a letter to

18 Freeths? In the meantime, we have now received advice

19 from Brian Altman QC on settling with convicted

20 claimants -- attached."

21 Scroll down, please:

22 "His conclusion is:

23 "In my opinion, there is some risk to including

24 convicted claimants in any settlement agreement or

25 package. At this stage, and in the abstract, I am

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1 And so it put me in a unique and difficult position

2 and so I sought external legal advice.

3 **Q.** Irrespective of the difficult position because of

4 Mr Cameron's role, do you have any concern about the

5 difficulties in getting to grips with apparent

6 shortfalls?

7 **A.** I specifically raised -- it's not to NRF, but to Herbert

8 Smith, it was specifically raised with them, to make

9 sure that that was looked into.

10 **Q.** Was there a concern in the business at that stage that

11 there may be wider problems that hadn't really been

12 identified?

13 **A.** At that stage I think they were trying to work out what

14 actually happened at Little Milton and, of course, it

15 was somewhat problematic, in that we had to sort of

16 proceed obviously with not mentioning AI, but I was able

17 to have a conversation with a relevant person in the

18 Operations Team. As I said before, HSF were actually

19 appointed to look into the specific issue and then,

20 subsequent to this issue, the issue around remming in

21 and stamps, et cetera, was looked into.

22 **Q.** You've said that during this period, the summer of 2019,

23 there was a movement towards settlement --

24 **A.** Correct.

25 **Q.** -- and it's settlement and some advice that was received

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1 unable exactly to define or quantify the risk. While it

2 has to be a matter for others to advise and decide how

3 far the Post Office should go in progressing

4 a differential approach among the convicted Claimants

5 and the rest, my advice must be that reaching any

6 settlement agreement with the convicted Claimants should

7 be a red line for all the reasons given above'."

8 What did you understand by the risk that had been

9 identified by Mr Altman?

10 **A.** My understanding was that it -- and I'm not sure if my

11 understanding is based on that or other advice on the

12 point. My understanding is that it was contrary to

13 public policy that you can't compensate people while

14 they have the conviction. So that was, I think, the

15 conundrum with the settlement, which is: how do we

16 settle the claims that the original 555, a number of

17 which did have criminal convictions? The vast majority

18 did not but there were some that did, and so I think, in

19 the end, the settlement agreement settled holistically

20 with the -- with everyone, including the convicted

21 criminals. But it didn't include compensation around

22 the overturning of their criminal convictions because

23 that had not yet occurred.

24 **Q.** Did you have any concerns in respect of the advice that

25 had been given by Mr Altman?

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1 A. I don't have any recollection of this particular point
 2 specifically.
 3 Q. That can come down, please. In terms of the settlement
 4 and the legal costs, were you aware that a substantial
 5 proportion of any settlement would go to pay the costs
 6 and litigation funders on the part of the claimants?
 7 A. Correct, yes.
 8 Q. How early were you aware of that situation?
 9 A. From memory, I think there was discussions with HSF
 10 around, I would say August, perhaps? August to
 11 September? And certainly going into mediation, we
 12 understood that the challenge would be around litigation
 13 funding. I remember asking about whether or not it was
 14 a recoverable head of loss.
 15 Q. I want to move on to tactics more broadly in the Group
 16 Litigation. Can we please turn to POL00276474. If we
 17 start on page 2. That's your E29. I won't read out
 18 this email because it's an email that we've seen, we
 19 dealt with it in depth with Mr Parsons. He there sets
 20 out, essentially, why it was that an opinion on the
 21 merits in the litigation hadn't been provided or
 22 obtained originally, and it sets out there the strategy
 23 that had been adopted.
 24 What was your view on the strategy as set out here
 25 and the fact that there wasn't an overall opinion on the
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1 heard numerous people advise that the claimants had not
 2 provided anything on quantum ..."
 3 Briefly, can you assist us with what your view was
 4 in respect of how the litigation had originally been
 5 approached?
 6 A. So as I think Andy is explaining there, I think Post
 7 Office took a very technical and legal approach to the
 8 matter and so, yes, it was setting out to me what had
 9 previously occurred in the Common Issues Judgment, which
 10 I understood took place in November 2018.
 11 Q. Were you concerned by the fact that there wasn't, for
 12 example, an advice, an overall opinion on the merits of
 13 the litigation?
 14 A. Yeah, I think at this point because the strategy had
 15 changed, it even -- it changed even in respect of the
 16 Common Issues appeal, to narrow it down, to make sure
 17 the tone was right, to make sure that we were looking at
 18 mediation rather than a technical litigation defence.
 19 I think the strategy clearly had changed in June 2019.
 20 I think what Andy is explaining there was a look-back,
 21 if you like, at what the previous litigation was.
 22 Q. If we please turn to POL00276883, that's your B68. If
 23 we scroll down, please, it's on the same theme. It's
 24 an email from you raising concerns in relation to the
 25 lack of information regarding quantum that had been
 63

1 merits?
 2 A. I do apologise. Which document is this one?
 3 Q. E29 of your bundle. It should end 6474.
 4 A. Thank you.
 5 Q. Page 2 is the email from Mr Parsons. He sets out there
 6 that the strategy was to contest the Common Issues trial
 7 and he sets out the thinning the herd strategy, and he
 8 says that:
 9 "The strategy was never to seek an outright win
 10 through the court process [because] that would mean
 11 ultimately defending 500 plus individual claims ..."
 12 He explains:
 13 "I hope this helps explain why there hasn't been
 14 an overall opinion on the merits of the litigation in
 15 general."
 16 If it assists, if we turn over the page to the first
 17 page, you say there:
 18 "It does leave the Post Office in a difficult
 19 position. I remain surprised that no overall assessment
 20 on merit has been undertaken when we are two trials in."
 21 You also say that you should point out that "AI",
 22 I think that's Al Cameron:
 23 "... was particularly disappointed on learning that
 24 the claimants had in fact provided a Schedule of
 25 Information in relation to quantum. Like him, [you] had
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1 provided. It seems as though there was an email, one
 2 and a half years ago but since, notwithstanding that
 3 email which had been forwarded to you in the chain
 4 below, you say:
 5 "... even I have constantly heard since becoming
 6 involved that the claimants have not provided us
 7 anything on quantum."
 8 It appears, in fact, that they had provided some
 9 figures.
 10 In what way did that, in your view, delay the
 11 settlement of the case, the lack of information that
 12 appeared in the business regarding the quantum of the
 13 claim?
 14 A. I'm not sure it necessarily delayed settlement, in the
 15 sense that, for me -- and, again, I'm sure others may
 16 have a different opinion -- but from where I was
 17 standing, it seemed to me that the catalyst for change
 18 was the handing down of the Common Issues Judgment and
 19 the failed recusal application. That -- because that
 20 was a shock and that was really the crystallisation of
 21 change.
 22 But what I'm saying in this particular email is that
 23 there are things that the way that the previous lawyers,
 24 or Womble Bond Dickinson in this case, had taken,
 25 although they didn't -- I didn't think that they were
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1 doing it intentionally, I think they were making
 2 generalised statements and, unfortunately, sometimes
 3 those generalised statements can be misinterpreted, and
 4 so I was just picking up the point that I had observed,
 5 or been indeed told, that the claimants hadn't
 6 particularised their claim when, in fact, what in
 7 reality was, was that they had provided some information
 8 about their claim, albeit it wasn't particularly
 9 particularised as it ought to be in a legal claim.

10 So I guess what I was saying to Andy here is, "You
 11 need to be more precise with your language because it
 12 could mislead", and I'm conscious, obviously, as the
 13 then General Counsel, I'm conscious to make sure that my
 14 lawyers, you know, don't leave a false impression or
 15 mislead the Board, notwithstanding any -- of course, no
 16 intention to do so.

17 **Q.** Thank you. The final topic before we move to Phase 7
 18 and the final topic also before our next break is
 19 records management. Could we please have a look at
 20 POL00401613, that's your E58.

21 You have previously given evidence in respect of
 22 disclosure to the Inquiry and this is a similar topic.
 23 This is a Risk and Compliance Committee meeting in which
 24 you were present on 10 September 2020 and it's page 2 of
 25 those minutes that I'd like to look at. If we scroll

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1 legal matters as well. It was critically important that
 2 we have a data universe and that we understand what that
 3 data universe is and that the business is complying with
 4 our document retention policy and the document
 5 preservation notices.

6 **Q.** Thank you. Can we please turn to POL00021462 and that's
 7 your E59. The issue is then raised on 22 September at
 8 the Audit and Risk Committee. If we scroll over to
 9 page 5, into page 6, please, the same topic:

10 "The team is extremely busy dealing with requests
 11 related to Historic Shortfall Scheme and related/linked
 12 FOI requests."

13 If we can scroll down please, it says:

14 "Of serious concern and Committee discussion, was
 15 the discovery of 31,000 boxes previously unknown to the
 16 wider organisation, which are being reviewed ... The
 17 Committee questioned whether management had a handle on
 18 data management controls such as archiving, and remarked
 19 on the lack of accountability within [the Post Office].

20 "NR [I think Mr Read] remarked that this was
 21 an unacceptable incident and that he did not expect this
 22 to be brought to the Committee's attention by
 23 compliance. A paper on data controls is expected at
 24 [Group Executive] for discussion.

25 "The Committee recommended a data amnesty ..."

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1 down, please, there's the section there on "GLO/Freedom
 2 of Information Request/GDPR". It says:

3 "... the team remains stretched responding to
 4 Historic Shortfall Scheme and related/linked [Freedom of
 5 Information] requests ... Following receipt of 41
 6 [Freedom of Information] enquiries considered vexatious
 7 from one journalist, 31,000 boxes of data (previously
 8 unknown) have now been identified in storage. These are
 9 being reviewed by legal, [Herbert Smith Freehills] and
 10 Peters & Peters and a separate paper for [the Audit and
 11 Risk Committee] will be prepared regarding this issue.

12 "The Committee recognised the need for improved data
 13 retention/management training across the group and in
 14 the retail network."

15 Can you briefly assist us with the 31,000 boxes and
 16 how it is that they were identified?

17 **A.** So my understanding was that, in the course of mapping
 18 out the relevant data repositories, that documents that
 19 I understand came from the retail part of the business
 20 was discovered and it hadn't otherwise been indexed, or
 21 at least there was an issue around the indexing of the
 22 documents, and that it hadn't been captured in the
 23 previous reviews. And so I was extremely mindful of the
 24 fact that -- and not just for this matter -- sorry, and
 25 I mean the Group Litigation, but in respect of other

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1 There is one more document that I'd like to take you
 2 to and that's POL00167390. That's your E60. This is
 3 a Board meeting, 22 September 2020. We see, if we
 4 scroll down there, there's the Committee report from the
 5 Audit and Risk Committee:

6 "Carla Stent provided a brief overview of the topics
 7 discussed at the ARC Committee meeting held earlier in
 8 the day including the pensions assurance update and the
 9 identification of 31,000 boxes ..."

10 By this time, so we're September 2020, the Post
 11 Office had been involved in the Group Litigation since
 12 2016. Did the Post Office have a sufficient grip on its
 13 own records, in your view, by this date?

14 **A.** No, it did not.

15 **Q.** Who do you consider is responsible for that?

16 **A.** Well, data had sat with the CFOO, there had been a data
 17 director in the company who reported to Al Cameron.
 18 Data then transferred to the IT Department but, to be
 19 fair, the accountability for data was something that was
 20 raised, or rather the accountabilities generally, of
 21 which data was one, was raised as an area that needed
 22 resolution.

23 I wasn't aware of the state of the organisation's
 24 data until this issue around the 31,000 boxes and then,
 25 subsequently, all the remediation work that needed to be

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1 undertaken. But I had raised clarity around
2 accountabilities at a broad level and, certainly, when
3 I became aware of Post Office's data, and the state of
4 its data, specifically the data universe, I repeatedly
5 raised it to both the RCC, the ARC and Nick Read.
6 **Q.** I don't think I need to take you to it, but there's
7 an ARC meeting on 12 November 2020, that's POL00423519,
8 it's your E61, but I think we can deal with that without
9 looking at the document. By that stage, sampling still
10 hadn't taken place in respect of those boxes, so we're
11 a couple of months later.

12 Do you think sufficient priority was being given
13 within the business to assessing that data, given that
14 the appeals were, at that point, going to be heard in
15 March 2021?

16 **A.** I think it's yes and no. So there were aspects where we
17 were encouraging all the business to make sure that they
18 have provided all data, to make sure that we understood
19 what the data universe was. At this time, Mr Salter had
20 a Head of Data that was in his team and, in the end,
21 I actually shifted some of my resources, such as my
22 Compliance Director and my Operations Director, to
23 support the accountable business owners to map out the
24 data universe to make sure -- and I personally went down
25 to the archiving unit, and I also went up to

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1 **MR BLAKE:** Thank you very much.

2 Sir, we're going to move on to Phase 7 issues.
3 Perhaps that is a convenient moment to take a 10-minute
4 break.

5 **SIR WYN WILLIAMS:** Of course.

6 **MR BLAKE:** Could we come back at 11.15?

7 **SIR WYN WILLIAMS:** Okay.

8 (11.08 am)

(A short break)

10 (11.17 am)

11 **MR BLAKE:** Thank you, sir. Can you see and hear me?

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

13 **MR BLAKE:** Can we begin our Phase 7 examination by turning
14 to POL00289903. That's E39 of your Phase 7 bundle.

15 **A.** Thank you.

16 **Q.** This is correspondence, if we scroll down, of
17 7 September 2019, with Mr Watts. Was he a solicitor at
18 Herbert Smith Freehills?

19 **A.** Mr Watts is the partner.

20 **Q.** Partner, thank you. He says in this email:

21 "Again, we do not want to hear anything more from
22 them other than an appropriate offer and settlement deed
23 wording. We aren't going to have sessions with them in
24 Chesterfield or wherever. Frankly I don't think there
25 is anything more to be said. As for Nick and I, we need

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1 Chesterfield. I walked thorough every room, together
2 with a third party.

3 I was particularly concerned from this point onwards
4 about the state of the data and whether or not the
5 organisation had got to grips on it, and I devoted more
6 resource from my team to facilitate that.

7 **Q.** Do you think the company is now properly on top of its
8 records?

9 **A.** I think considerable effort has now been made.
10 I obviously, as you will have seen undoubtedly in the
11 ARC and RCC minutes, raised the legal risk around
12 failure to have our historical data properly managed and
13 the legal risks that that creates.

14 A substantial work and Remediation Programme has
15 taken place. There's now -- (*audio disruption*) -- of
16 a data director, which -- there has been establishment
17 of a data counsel.

18 **Q.** Sorry, I think you cut off briefly.

19 **A.** Oh, I apologise. So in short, in short, a number of
20 remediation steps have occurred with a data director,
21 a data counsel, a lot more -- because of the frankly
22 embarrassing and unacceptable issues around disclosure,
23 that the Inquiry is well aware, the company is far more
24 cognisant about its data management and a lot more
25 resource has been put in place.

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1 to focus on the other 10,000 postmasters who are running
2 the Branch Network [sorry, this is from you] and serving
3 customers over the busy December period. Hopefully that
4 gives you enough clarity to pass on to the other side."

5 Is this a point in time where you're discussing
6 settlement and providing instructions to Herbert Smith?

7 **A.** Correct. I think this was day 9 or day 10 of the
8 mediation.

9 **Q.** Thank you. The reference there to needing to focus on
10 the other 10,000 postmasters, was it your view, at this
11 stage, that the focus of the business needed to be reset
12 onto existing postmasters rather than historic matters?

13 **A.** No, it wasn't as broad as that. What this email relates
14 is that the original settlement and mediation had been
15 set down for two days, I think the parties had
16 an extensive negotiation and settlement. Post Office
17 had provided a lot of additional information. Amanda
18 Jones, the Postmaster Director at Post Office, had met
19 with those in attendance at the mediation. Julie
20 Thomas, the Operations Director, had met. They'd
21 explained the improvements that they were making.

22 Post Office also accepted to meet with the claimants
23 for the following year to update them on progress.

24 My concern at this point, and this is an email
25 between lawyers in the matter, is that the mediation had

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1 gone a lot longer than it had been intended and, of
 2 course, although the Group Litigation is clearly one of
 3 my, you know, key matters, I am General Counsel for all
 4 the other matters as well and I am -- I guess this is
 5 some frustration that I'm expressing on Saturday about
 6 trying to balance all of that.

7 **Q.** Can we turn to POL00290399. That's your E40. If we
 8 have a look on page 2 it's a circular that was sent by
 9 Mr Read on 11 December within the organisation. He says
 10 there:

11 "We are committed to a reset in our relationship
 12 with postmasters, placing them alongside our customers
 13 at the centre of our business. As we agree to close
 14 this difficult chapter, we look forward to continuing
 15 the hard work ahead of us in shaping a modern and
 16 dynamic Post Office ..."

17 Mr Read's evidence to the Inquiry was to the effect
 18 that you presented the issue of prosecutions to him as
 19 a historic issue; would you agree with that?

20 **A.** I did see Mr Read's evidence. I categorically deny that
 21 I told him not to dig into the past. I would not have
 22 said that. Indeed, I don't think any General Counsel
 23 would. But I couldn't have said it because I am clearly
 24 on record in the documents saying that, even with the
 25 Horizon Issues trial being undertaken, once the judgment

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1 of concerns to Mr Read and to -- obviously I raised
 2 them, as well, with the Board, and I just wasn't getting
 3 the traction and so I didn't feel it was appropriate for
 4 me to remain having that title when it didn't reflect
 5 the reality.

6 **Q.** You've referred elsewhere in your statement to
 7 prioritisation of costs management over quality and
 8 speed. To what extent does that feed into that issue?

9 **A.** It is part of the issue, particularly when I did
 10 a review of the HMU and Inquiry programmes, when Declan
 11 Salter, the previous director, left and just prior to
 12 the appointment of the two new directors, and I made the
 13 observation that there was too much focus on cost
 14 management. Even, indeed, when the two directors were
 15 in the role, both if they expressed the concern that
 16 40 per cent of the time was to do with managing costs,
 17 rather than the delivery of the programme.

18 **Q.** Putting compensation and redress to one side because
 19 we'll address that as a separate topic, how has that
 20 focus on cost impacted on, for example, addressing the
 21 concerns raised by Lord Justice Fraser?

22 **A.** I would say that there is genuine desire by the business
 23 to get things done. I think the Retail Team --
 24 I haven't been able to watch all of the evidence with
 25 apologies, but you will have heard from Tracy Marshall

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1 is handed down, the issue around criminal convictions
 2 would need to be looked into.

3 And that's well documented that I said that in
 4 SteerCos, and to the Board, and I said that before
 5 Mr Read started and I said it after Mr Read started.

6 So for me to have said anything contrary to that is
 7 very odd.

8 **Q.** You've said in your statement that there came a time at
 9 which you became more removed from the Board: you've
 10 used words such as "increasingly sidelined". When did
 11 that happen and what happened to your relationship with
 12 Mr Read?

13 **A.** So I was appointed as a temporary sponsor for the GLO
 14 and Inquiry programmes but, increasingly, my direction
 15 and advice on matters were not being taken up and
 16 I wasn't included in meetings that I asked to be
 17 included, such as meetings with Herbert Smith, such that
 18 it was making it increasingly difficult for me to
 19 maintain the veneer of the title of temporary sponsor.
 20 And I raised this in March 2023 with Mr Read, again in
 21 April and, ultimately, in July I said to Mr Read that
 22 I would not continue to be the temporary sponsor of
 23 those programmes in those circumstances.

24 **Q.** Where does this originate from, in your view?

25 **A.** I made a number of recommendations and I raised a number

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1 and Mel Park, I believe, and I think they have tried to
 2 progress matters as quickly as possible. My view is
 3 that they, like other parts of the organisation, have
 4 been stretched and, with constant restructures and
 5 constant cost reduction exercises, it has necessarily
 6 meant that reprioritisation has had to be undertaken in
 7 their areas, as indeed my own area.

8 **Q.** Focusing now on compensation and redress, what was your
 9 formal role in relation to compensation and redress as
 10 at the beginning of 2020?

11 **A.** I was the General Counsel. At the beginning of 2020, we
 12 would have had -- the Horizon Issues Judgment had
 13 landed, the settlement of the original 555 had occurred,
 14 and the establishment of the -- what we called the
 15 post-GLE -- sorry, my apologies, the post-GLO programme,
 16 and that programme was chaired by Nick, and the purpose
 17 of that was to manage all of the implications that were
 18 arising from the Common Issues Judgment appeal, ie the
 19 Post Office was not successful in terms of the Common
 20 Issues Judgment, and so, for -- and therefore to ensure
 21 that it incorporated all of the components of the Common
 22 Issues Judgment and that they were operationalised
 23 across the business.

24 It included, similarly, the implications that arose
 25 from the Horizon Issues Judgment, and so that's where

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1 you will have seen that Peters & Peters and a series of
2 counsel teams are appointed in respect of the criminal
3 work. There was also a number of workstreams, including
4 the settlement conformance.

5 So there were a number of obligations that were set
6 out in the settlement agreement that Post Office needed
7 to comply with. So it was a broad programme of work.

8 **Q.** I'd like to ask you about the overall business's
9 attitude towards compensation and redress, as at that
10 period. If we could turn to POL00155397. That's your
11 E10. It's an email that the Inquiry has already been
12 looking at. At the bottom of page 1, it's an email from
13 Mark Underwood to Rodric Williams and you. Scroll down,
14 please. He emails saying:

15 "Hi Rod,

16 "Some comments for your consideration ..."

17 This is about setting up the Historic Shortfall
18 Scheme.

19 If we scroll down to the bottom, we can see the
20 section on fees. He says as follows:

21 "My strong view is that you cannot seek payment from
22 applicants -- however small and regardless of the
23 rationale behind it."

24 Were you aware of consideration being given at that
25 stage to charging fees to applicants?

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1 be accepted into the Scheme."

2 One reading of that is that a plan is being devised
3 to make it more challenging for applicants to apply to
4 the scheme; what's your view on that?

5 **A.** In reality, that isn't the case, if you read the
6 eligibility scheme. So the eligibility scheme for the
7 HSS -- firstly, the HSS, just for context, was actually
8 part of the settlement. It was suggested by the
9 claimants that they thought having such a scheme was
10 important for other postmasters that weren't included in
11 the original 555. They also made the point that it was
12 important that such a scheme not require legal
13 representation because the original 555 had had to have
14 legal representation because, obviously, it went through
15 the court process.

16 So with that in mind, Post Office established the
17 scheme. The eligibility criteria for the scheme just
18 required that you were, in fact, obviously a postmaster,
19 that you say you have shortfalls and that, as per the
20 Horizon Issues Judgment, your shortfalls arose under
21 what was called HNG-X or previous versions of Horizon,
22 such as Legacy Online Horizon.

23 So in those circumstance, there is not a hurdle or
24 challenge to applying to the HSS.

25 **Q.** There has been suggestion that the original forms were

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1 **A.** I think there was reference made in a legal advice note.
2 My understanding was it was in relation to the
3 escalation process.

4 **Q.** Can you assist us with what you mean by that?

5 **A.** So my understanding in that email -- certainly -- well,
6 my view to Alan at the time was there should be no fees.
7 My understanding was that there was -- I think it was
8 UKGI who raised the issue generally around that in
9 schemes, you need to make sure that there's fraud
10 controls within it, and then there was a subsequent
11 dialogue and legal advice that Post Office obtained.

12 And I think what Mr Underwood is saying here is that
13 he wouldn't have an application fee but what he was
14 suggesting is a nominal fee for the -- for claims that
15 were not resolved by the independent claim, that it was
16 for the -- if they wanted to pursue it to a mediation,
17 which was part of the dispute resolution process.

18 **Q.** He then continues:

19 "Optically, this would be extremely challenging and
20 would be a position that I believe the business would
21 struggle to maintain under political and media pressure.
22 I think you can achieve the same desired outcome [that
23 must be 'through'] having a very tight and communicated
24 set of eligibility criteria and requirements in terms of
25 the documentation applicants have to provide in order to

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1 complicated. Who was responsible for that original
2 documentation?

3 **A.** Herbert Smith Freehills drafted the original scheme
4 documents. Obviously, Post Office is not a claims
5 management company, in that it sought advice from HSF as
6 to the establishment of the scheme. I am mindful of
7 also this Inquiry's previous consideration in respect of
8 the issue and I accept, of course, I think with the
9 benefit of hindsight being able to make things clearer,
10 being able to put things in more plain English, I think
11 are entirely fair observations.

12 **Q.** If we scroll up, we can see that this email chain, it's
13 sent to you but also to Rodric Williams. Mr Underwood
14 says there:

15 "Hi Rod and Ben,

16 "Further to the below and purposely just to you --
17 I am not sure the workstream leads set out in Appendix 1
18 are set in stone yet. For example, I am not sure Nick
19 wants me to lead the Historical Claims workstream owing
20 to my prior involvement in the Complaint & Mediation
21 Scheme, Chairman's Inquiry and the GLO."

22 Rodric Williams, that's obviously a name that we've
23 been seeing from the very beginning of today and it's
24 somebody that the Inquiry has already heard from. Had
25 there been any prior discussion about people like Rodric

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1 Williams, who have a history in the underlying matters,
2 being involved in any of those matters going forward,
3 given their past role?

4 **A.** Yes, there had been. The challenge -- and
5 I particularly felt this quite acutely -- which is this
6 was a very complex, longstanding matter that had been
7 running for years and trying to get up to speed with
8 everything, trying to understand where all the documents
9 are, trying to get across the huge breadth of issues and
10 detail was very difficult, and so, on the one hand, it
11 was important to be able to have corporate memory, and
12 be able to have people like Rod and others support us;
13 equally, there needed to be a counterbalance to that.

14 So I felt the fact that when, obviously, Rod was
15 working on these matters, he was heavily overseen by
16 external lawyers and, indeed, the function of HSF was
17 overseeing the litigation, that that brought the
18 counterbalance.

19 Indeed, the external lawyers themselves actually
20 advised that it would be very difficult for them to do
21 their work if they didn't have access to those people.

22 **Q.** Do you have a view as to whether the process that was
23 set up was too confrontational?

24 **A.** I don't think it was intended to be confrontational. As
25 I said before, it was a well-intentioned scheme, in the

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1 that each change to the form or criteria, or anything of
2 that nature, has been drafted by outside lawyers not by
3 POL inhouse?

4 **A.** Indeed. But I would add that those documents did go
5 through governance, it did go through the Board steering
6 committees, and UKGI and our Government Shareholder.

7 **SIR WYN WILLIAMS:** So the process is, if there's to be
8 a change, outside lawyers draft it and then it's
9 approved by the appropriate people within the Post
10 Office?

11 **A.** Correct. I would add that, at this point, there were
12 number of inhouse lawyers as well supporting the
13 external lawyers to do so, but the work -- I think if
14 I understand your question, the work itself was
15 undertaken directly by the external lawyers.

16 **SIR WYN WILLIAMS:** Yes, I'm not suggesting that there
17 wouldn't have been conversations with internal lawyers
18 but the actual end result is the result of work by
19 external lawyers and then approved by the Board or
20 whoever, to whomsoever the Board has delegated that
21 function?

22 **A.** Correct, sir.

23 **MR BLAKE:** There's been a suggestion in the Inquiry that the
24 view at the Post Office was that the scheme should be
25 run by the Department for Business and Trade. Was that

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1 sense that we were acting on feedback from the original
2 GLO 555. We sought to make a scheme whereby they didn't
3 need to have legal representation, like the original 555
4 had had. We were directly acting on that feedback. The
5 scheme itself was one where we would have an external,
6 independent -- I think it was three representatives that
7 would assess the claims. It provided a dispute
8 resolution procedure and, in fact, the structure of it
9 had been provided to the original 555 claimants, that
10 that would -- there would be that escalation procedure.

11 I think the fact that we understood that from
12 an evidential standard, that obviously it wouldn't be
13 the same bar as one would employ in terms of litigation,
14 and so I think it was well intentioned but, at the same
15 time, I do recognise, of course, that there are things
16 that could have been done better.

17 **SIR WYN WILLIAMS:** Can I just ask, I'm obviously aware that
18 there have been changes to the scheme -- that's the HSS
19 scheme -- over time. Are all those changes the work
20 either of Herbert Smith or some other outside firm of
21 solicitors?

22 **A.** Yes, there's -- we've had a number of advisers, not just
23 HSF, but there has also been a number of Queen's Counsel
24 that have also opined on matters.

25 **SIR WYN WILLIAMS:** The only point I'm seeking to make is

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1 view ever expressed to you?

2 **A.** Yes, if I could perhaps -- what was expressed to me
3 wasn't necessarily that it would be BEIS or UKGI.
4 I think, initially, what was discussed was whether or
5 not it was appropriate for Post Office to run the
6 schemes. My understanding is that Post Office raised
7 that issue with UKGI and the Government Shareholder.
8 There was a strong observation back to the Board that
9 the Government Shareholder would not allow -- that the
10 matter had to stay with Post Office and that Post Office
11 had to administer the scheme.

12 Once that was understood, the Board then made the
13 decision that, if that was the case, then it would
14 separate these -- the compensation matters into
15 a separate business unit from what we call the BAU
16 business.

17 **Q.** In respect of Mr Read's views, were you aware of his
18 views as to whether it was appropriate or not for the
19 business to be running the scheme, as opposed the
20 Government?

21 **A.** I think number of representatives, including Mr Read,
22 including Al Cameron, advised that -- they raised the
23 question of, putting it in frank terms, whether the
24 perpetrator, so to speak, should be administering the
25 compensation. It was a point directly raised.

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1 Q. Raised with whom?
 2 A. The Government Shareholder and UKGI.
 3 Q. Is it your evidence that the Government Shareholder and
 4 UKGI were not open to that possibility?
 5 A. Correct.
 6 MR BLAKE: Thank you.
 7 Sir, I'm going to move on from compensation unless
 8 you have any further questions?
 9 SIR WYN WILLIAMS: No, thank you.
 10 MR BLAKE: I'd like to deal with the Pineapple email, as we
 11 know it, that's POL00448302. I'm not sure what your
 12 reference is for that particular document but I'm sure
 13 it will be one that you're well familiar with, as are
 14 we. If we scroll down further over the page, please.
 15 So this is the Project Pineapple note from
 16 Mr Staunton to himself. It's a note of the conversation
 17 he had with the two Subpostmaster Non-Executive
 18 Directors on 14 January 2024. You'll be familiar with
 19 paragraph that addresses yourself, if we scroll down.
 20 It says:
 21 "Equally, Saf and Elliot are FED UP WITH THE AMOUNT
 22 OF POWER WIELDED BY FOAT. He and other members of the
 23 senior team act as if [postmasters] ARE GUILTY UNTIL
 24 PROVED INNOCENT ('as per my experience' they both
 25 said)."

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1 given that I stopped being the sponsor of the Inquiry,
 2 and I was conflicted, and I did not attend the Inquiry
 3 SteerCos from July 2023.
 4 So for half a year, I'd not been involved in the
 5 Inquiry and yet here is an email suggesting I am, in
 6 capitals, "WIELDING POWER", as a result of my work in
 7 the Inquiry.
 8 So I explained that to them. I also explained that
 9 the reference to Steve Bradshaw was incorrect because
 10 Steve Bradshaw and the investigators in that team had
 11 never reported to me. They are not part of the A&CI
 12 team, which wasn't created until 2022 and so, any
 13 conflation between what previous investigators may have
 14 done with my team was not right and was unfair.
 15 And the other issues around -- I think there's
 16 a reference to me "pushing Phoenix into the long grass",
 17 I told them that I would show them the emails that, when
 18 I was involved in terms of the particular investigation,
 19 that I had, in fact, done the opposite, which was to ask
 20 my team to strategically prioritise it, to ask my team
 21 to progress it and, indeed, it was the actual -- the
 22 then Inquiry Director who had overridden that direction.
 23 And so I went through this email with the Postmaster
 24 NEDs explaining why this was not a factually accurate
 25 observation, and which they apologised to me for it, and

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1 Just pausing there, is that something that you have
 2 said?
 3 A. I have never said that people are guilty until proven
 4 innocent. I have maintained the view throughout my
 5 entire tenure at Post Office that we need to adhere to
 6 the Common Issues Judgment, the Horizon Issues Judgment
 7 and Hamilton, that people are innocent until proven
 8 guilty, that is one need not be a senior lawyer to know
 9 that point, and I am on record repeatedly saying due
 10 process needs to be done but absolutely people are
 11 innocent until proven guilty.
 12 Q. They continue:
 13 "WHILST FOAT IS AT THE HELM, NOTHING WILL CHANGE."
 14 What do you think went wrong here between you and
 15 the Non-Executive Director Subpostmasters?
 16 A. I think this came off the back of an issue with
 17 Mr Staunton. After this email was given to me
 18 I received an apology from the two Postmaster NEDs.
 19 They were in the apology to me -- it was a meeting.
 20 They said that Henry had whipped up this issue and
 21 I said to them -- and I went through this email with
 22 them because I wanted to explain to them that the
 23 observations/allegations that were made in this email
 24 were false, so that, for instance, the power that I was
 25 wielding as a result of the Inquiry could not be right,

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1 I have had seen part of their evidence, and I noted that
 2 they did row back from -- I think clearly in this email
 3 they mentioned "Foat", and I think in their oral
 4 evidence they talk about "Legal" rather than myself
 5 specifically.
 6 Q. Two follow-up questions from that. The first: Stephen
 7 Bradshaw and Project Phoenix, why was it taking so much
 8 time?
 9 A. So Project Phoenix was established as a result of the
 10 Inquiry response tracker. This was an operational
 11 process that I put forward for the Inquiry Team to do,
 12 so that we could track all issues that were coming from
 13 the Inquiry. It actually wasn't just the Inquiry, it
 14 was also as a result of lawyers as well, and that the
 15 business, the relevant accountable business owners,
 16 could address it.
 17 Part of that response tracker included allegations
 18 that had been made by certain people and, at the time,
 19 I think the A&CI team was relatively newly established.
 20 They had very little resource. We did communicate with
 21 the Executive Board about the lack of resource. But
 22 I was very clear in 2023 to JB, Sarah and Diane Wills,
 23 to say that Phoenix had to be strategically prioritised
 24 and, even, I think, in an email in March 2023,
 25 I directed the Legal Director, who oversees the A&CI

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1 Director, to even take other lawyers off if necessary to
2 make sure that Phoenix was addressed and was given the
3 priority that it ought to.

4 To be fair to the team, I do want to say they did
5 repeatedly raise the fact that they needed more resource
6 and support to the Finance Team, and to the Executive,
7 which I supported them in doing so.

8 **Q.** Was there difficulty obtaining the funding for that?

9 **A.** Yes, they asked for it three times and it was denied
10 twice, and then, in the end, they did secure additional
11 resource towards -- I think it was August, from memory.

12 **Q.** Who, in your view, was responsible for the delay?

13 **A.** I think in part it was multifaceted. I would have
14 thought that, had there been more resource, more
15 funding, that would have enabled the A&CI team to
16 complete its part of the work and then, of course, it's
17 then handed over to HR, who then has the panel
18 discussions, which were, I believe, set up in October
19 '23.

20 So I don't necessarily think it is one individual
21 person. At the time I think one has to also acknowledge
22 that the HR department, you know, Karen McEwan only
23 started in October 2023, so I think it was difficult for
24 the HR team, as well, prior to that time.

25 So I don't think there's one individual but I do
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1 this balance between corporate memory but also making
2 sure that there was the counterbalance of having
3 external people, so I can't speak more broadly for the
4 organisation, but I had worked on that issue in respect
5 of my team.

6 **Q.** Thank you. Before I pass over to Core Participant
7 questions, do you have any reflections in respect of the
8 role of General Counsel, the role that it plays within
9 the business, how it might be improved?

10 **A.** Yeah. I think it's fair to say that being the General
11 Counsel in this period of Post Office's history was and
12 is a challenging role. One needs to be able to
13 challenge Board Directors, Executives but also be able
14 to coach your team, be able to liaise with other parts
15 of the business. I think having a mindset of embrace
16 lifelong learning, which is a value -- a personal value
17 and a corporate value of a previous company that
18 I worked at -- having that mindset, but also leading
19 from the front, in terms of making sure that people
20 understand that legal conformance is a licence to trade.

21 It's not optionality, it's mandatory and making sure
22 that the business understands it at all levels, that
23 complying with the law is essential to good business
24 practice.

25 **MR BLAKE:** Thank you very much.

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1 think a significant part of the delay was the fact that
2 the A&CI team was a new team and had not been adequately
3 resourced, despite the fact that they did ask for that.

4 **Q.** We heard from Mr Bartlett yesterday in respect of the
5 resourcing. Why do you think it is that they are not
6 sufficiently resourced in both yours and Mr Bartlett's
7 view?

8 **A.** I think, at the time, when -- and this is -- this is,
9 like many things, including in other organisations, when
10 you start a new function and then you start to lift
11 rocks, you start to try to make improvements, you try to
12 remediate, examine the issue and address the issue, the
13 workload increases. And I think, in part, it wasn't
14 fully understood just how many different types of
15 investigations would be needed from the A&CI team.

16 **Q.** Why didn't those investigations or why wasn't the
17 mechanism put in place far earlier? So I think you've
18 mentioned that it was in response to the Inquiry. Why
19 wasn't it before then? Why were people still working in
20 roles and why was there no investigation into those
21 people prior to it being raised as a matter relating to
22 the Inquiry?

23 **A.** I think -- well, certainly in respect of my team, I had
24 considered the issue. I had raised the issue with Nick
25 Read. We had looked at a number of people in roles, and
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1 We have some questions from Core Participants.
2 We're going to take a break at 12.15 but perhaps we can
3 deal with -- Mr Stein isn't currently in the room. Are
4 there other questions or is it just Mr Stein?

5 Yes, Mr Henry and Mr Moloney, perhaps we can hear
6 from them first.

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

8 **Questioned by MR HENRY**

9 **MR HENRY:** Mr Foat, can I understand your evidence about the
10 compensation forms, in particular the HSS. You said
11 that you didn't consider them to be, as it were,
12 over-technical or unfair. Am I right in thinking that?

13 **A.** I'm not sure I did say that. I think I acknowledged
14 that, in hindsight, they could have been clearer. And
15 I'm obviously mindful of the issues that the Inquiry has
16 already identified, in particular around consequential
17 loss.

18 **Q.** Yes. I'm going to deal with those in submissions
19 because that is what the Chairman invited me to do when
20 I was putting that to Mr Read. But let me concentrate
21 on the issue of contemporaneous documents. The guidance
22 in the appendix which was drafted, as you say, by
23 Herbert Smith Freehills, uses the term "contemporaneous"
24 ten times. You acknowledge, don't you, that
25 historically subpostmasters were put in incredible
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1 difficulties by being deprived access to contemporaneous
2 documents?
3 **A.** Yes, I understand that to be the case.
4 **Q.** Yes. I mean, because although this happened
5 historically, it was referred to in the Common Issues
6 Judgment --
7 **A.** Sure.
8 **Q.** -- and you remember that?
9 **A.** *(The witness nodded)*
10 **Q.** So that, of course, would have been nine months old, the
11 Common Issues Judgment, when these forms were being
12 discussed and when these forms were being drafted,
13 wouldn't it?
14 **A.** I imagine so, yes.
15 **Q.** Yes. So, therefore, at 3.2.2 of the form, it says:
16 "Greater weight will be attached to contemporaneous
17 evidence, loss of earnings. This will require evidence,
18 preferably contemporaneous, that the subpostmaster was
19 suspended ..."
20 This is 5.22.
21 "... or had their contract terminated without
22 sufficient notice."
23 Further references to "contemporaneous
24 correspondence" being required in relation to loss of
25 earnings.

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1 **Q.** Yes. So, therefore, I mean, in the case of Janet
2 Skinner, for example, she has been asked to provide
3 a fifth expert report. You obviously can't comment on
4 the circumstances of her case but that suggests, does it
5 not, an exacting standard being advanced on behalf of
6 the Post Office by its representatives?
7 **A.** I'm not aware of the specific details. I could suggest
8 that having five expert reports -- oh, sorry, you are
9 frozen on my screen.
10 **Q.** Am I frozen?
11 **A.** Can you still hear me?
12 **Q.** I can still hear you very well. Can you still hear me?
13 **A.** Yes, I can hear you. In fact, apologies, you are back
14 now, sorry.
15 **Q.** Right.
16 **A.** So just in respect of, as a general observation,
17 I would -- it would seem that five experts would seem
18 a lot but I don't know the particulars of the claim as
19 to why that's been required. Obviously, I think
20 Mr Salter -- sorry, Mr Recaldin is going to be before
21 the Inquiry on Monday, but I can take that away if you
22 would like me to look into.
23 **Q.** Thank you. Final thing. You accept, do you not, that
24 in these negotiations over compensation the Post Office
25 must act with the utmost good faith, and not indulge or

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1 Further requirement for contemporaneous documents in
2 respect of loss of profits, and it goes on.
3 I don't think I need to go through all ten
4 instances. But you accept don't you that subpostmasters
5 were at a disadvantage in providing contemporaneous
6 documents relating to matters which may have been, by
7 that time, decades old?
8 **A.** Yes, and I understand your point. I think it's helpful
9 to note that, in terms of the scheme, that the
10 evidential bar was not going to be on a litigation
11 standard and that, of course, it is helpful if the
12 postmasters do happen to have documents but it's not
13 saying that they -- that only reference is to be had to
14 that. It's, of course, if that documentation does exist
15 and they have it, that it would be helpful to provide
16 it.
17 **Q.** Moving aside now from the Historic Shortfall Scheme but,
18 so far as compensation is concerned, it ought not to be
19 an adversarial process, do you agree; it was never
20 designed to be an adversarial or litigation process, was
21 it?
22 **A.** Yes, it's -- yes, correct. It's different from
23 litigation in a court. So if I understand the purpose
24 of your question, it is different from the court
25 litigation process.

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1 transgress into any sharp practice. That goes without
2 saying, does it not?
3 **A.** Correct, sir.
4 **MR HENRY:** Thank you very much.
5 **MR BLAKE:** Thank you.
6 **SIR WYN WILLIAMS:** On the issue of compensation, you will
7 probably have realised that, in every progress update
8 and in my interim report, I have been careful to quote
9 what both the Government and Post Office have said on
10 a number of occasions, namely the aim is to provide
11 compensation which is full and fair, all right? Forget
12 the prompt side of it for the moment.
13 When I asked questions of both Mr Staunton and,
14 I think, Mr Cameron in the recent phase, that is in
15 Phase 7, they appeared to be acknowledging that,
16 nonetheless, there was a balance to be struck between
17 the compensation payable to the postmaster and the fact
18 that it was coming from public funds, in other words,
19 public money had to be protected.
20 As far as you're concerned, Mr Foat -- and
21 I appreciate you may not be directly concerned in
22 individual cases in the compensation schemes which the
23 Post Office is administering -- do you think that there
24 is a balancing exercise taking place, or do you think
25 that the panels or negotiators or whatever the correct

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1 terminology may be, are seeking to fulfil the commitment
 2 to full and fair compensation?
 3 **A.** Thank you, sir. I think I do understand your question.
 4 With respect to my colleagues, I think they are
 5 conflating two separate issues. One is to do with
 6 an overarching financial envelope that the Government
 7 Shareholder may have set aside, as distinct from the
 8 individual assessment of claims. The individual
 9 assessment of claims is done with reference to three
 10 external panel members, one being a QC (*sic*), one being
 11 an accountant, one being a retailer representative.
 12 They are then assessed with respect to principles
 13 and, indeed, at the requirement of Government, we also
 14 needed to do test cases, and they are with reference to
 15 well-recognised established heads of loss. So, you
 16 know, that would include general damages, past and
 17 economic loss, special damages, et cetera.
 18 So I don't see that managing public monies, although
 19 that is a separate legal obligation on Post Office
 20 generally, that does not pertain directly to the
 21 individual claims assessment in these cases.
 22 **SIR WYN WILLIAMS:** Thank you.
 23 **MR BLAKE:** Thank you, sir, if we could have questions from
 24 Mr Moloney before we take a ten-minute break.
 25 **SIR WYN WILLIAMS:** Certainly.

1 preservation notice.
 2 **Q.** Thank you, Mr Foat. Can we just look very quickly
 3 again, please, at one of the documents that Mr Blake
 4 showed you this morning, which is POL00415520.
 5 **A.** With apology, what's the bundle reference number?
 6 **MR BLAKE:** It's E50 of your Phase 5/6 bundle.
 7 **MR MOLONEY:** I'm grateful to Mr Blake and I apologise to
 8 Mr Foat.
 9 **A.** No, that's all right.
 10 **Q.** Thank you.
 11 **A.** Yes, sir.
 12 **Q.** Thank you, Mr Foat.
 13 The first page is simply an urging of all to read
 14 the email carefully. At page 2 of this document, we see
 15 the three crucial document rules which are the standard
 16 practice, Mr Foat, and you've been taken to those.
 17 I don't need to go into those in any detail, but if we
 18 go on to the next page, we see, "What is a 'document'?",
 19 and, "What are 'relevant' documents?"
 20 We see the definition of a document at number 1 but:
 21 "Relevant documents are any document that could:
 22 either support or undermine the case of any party to the
 23 litigation."
 24 So the additional note includes advice on documents
 25 and duty to disclose documents which exist.

1 **Questioned by MR MOLONEY**
 2 **MR MOLONEY:** Thank you, sir.
 3 Mr Foat, can I take you back to the start of your
 4 evidence this morning, or certainly the early part, when
 5 Mr Blake was drawing your attention to the repeated
 6 messages sent by Mr Williams, and cascaded through the
 7 business about matters of privilege in respect of GLO,
 8 ultimately.
 9 **A.** Sure.
 10 **Q.** Mr Blake focused on the instruction that was given in
 11 relation to the creation of documents and your evidence
 12 was that, while you wouldn't have been supervising
 13 Mr Williams in this work, you would have seen this as
 14 standard practice in civil commercial litigation?
 15 **A.** Yes, so there is a standard process around what we call
 16 a document preservation notice and when -- not just for
 17 this matter but when there are any -- which I think the
 18 legal test is anticipated legal proceedings, it is
 19 appropriate for a company -- or indeed a party -- to
 20 issue a document preservation notice as part of --
 21 I think, later when I became Legal Director,
 22 I established a central repository of precedence, and
 23 I understand that the document preservation notice,
 24 although not necessarily Rod's, but subsequently there
 25 is a -- what one might say is a more enhanced document

1 You told the Inquiry this morning that, as his
 2 supervisor, you said you knew that Mr Williams was
 3 relying on Cartwright King when it came to any criminal
 4 matters?
 5 **A.** That's what I -- yes, that's what I understood the
 6 resource was that he was relying on.
 7 **Q.** Yes. There's no mention in this email of the Post
 8 Office's continuing duties as a prosecutor?
 9 **A.** That's correct.
 10 **Q.** Yes. Would you have expected anyone to whom this email
 11 was being cascaded -- and, by that, I mean people in the
 12 business working in other roles outside the Legal
 13 Teams -- to be able to understand any relationship
 14 between litigation privilege in civil claims and the
 15 ongoing duties of the organisation as a prosecutor, from
 16 this email?
 17 **A.** No, I think you're quite right, sir. I think this email
 18 was limited to a document preservation notice in
 19 reference to the High Court litigation. So the civil
 20 litigation, rather than a criminal matter.
 21 **Q.** Entirely. Just a question about your experience and
 22 perhaps quite complex experience here: this was a case
 23 involving civil litigation in a commercial context,
 24 brought in part by individuals who had been prosecuted
 25 by the business. So a rare species of litigation. Had

1 you, at that point in your career, had experience of
 2 commercial litigation against a prosecuting
 3 organisation?
 4 **A.** No, sir.
 5 **Q.** As his line manager, did you know whether Mr Williams
 6 had had that unusual combination of experience either?
 7 **A.** I was aware that he had been handling this matter for
 8 some years, so I was aware that he had experience. Just
 9 to clarify, he wasn't a criminal lawyer but he had
 10 experience of both areas of law, if I can put it in
 11 those terms.
 12 **Q.** Yes. Are you able to assist on whether, at any time
 13 during your supervision of Mr Williams and before the
 14 conclusion of the GLO, there was any message cascaded
 15 through the business clarifying that, privilege aside,
 16 Post Office may owe duties of disclosure to those who
 17 might have the basis for a criminal appeal?
 18 **A.** Not off the top of my head, sir, no. I don't recall it.
 19 My vague recollection from 2019 was that there was
 20 a device that -- and I think, actually, this was the
 21 same basis upon which the CCRC proceeded -- was that it
 22 was awaiting the outcome of the Horizon Issues Judgment.
 23 **Q.** Yes.
 24 **A.** I take your -- sir, if your point is that there is
 25 an ongoing duty of care of disclosure, that is correct,
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1 **MR BLAKE:** Thank you, sir. Could we take a ten-minute
 2 break?
 3 **SIR WYN WILLIAMS:** Yes, by all means.
 4 **MR BLAKE:** Thank you very much, sir. 12.25, please.
 5 **SIR WYN WILLIAMS:** Yes.
 6 **MR BLAKE:** Thank you.
 7 (12.14 pm)
 8 (A short break)
 9 (12.27 pm)
 10 **MR BLAKE:** Thank you, Mr Foat.
 11 Mr Stein?
 12 **Questioned by MR STEIN**
 13 **MR STEIN:** Mr Foat, good afternoon. Can you see and hear
 14 me?
 15 **A.** Yes, I can thank you.
 16 **Q.** I'm not going to be very long, I have two areas of
 17 questions to ask you about, so can I take you then
 18 directly to a document I think you'll find in your
 19 module 7 bundle at E3, and on the screen, please
 20 FUJ00243199.
 21 Mr Foat, this is a letter written by Mr Patterson of
 22 Fujitsu to Mr Read. The date you'll see on the face of
 23 the document is 17 May 2024, and I'm going to take you
 24 to one particular part of this letter, which is at the
 25 bottom half of that first page, please, and then under
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1 sir.
 2 **Q.** Thank you. Just one final thing, please, Mr Foat. In
 3 the autumn of 2020, lawyers were preparing for the
 4 criminal appeals hearings, which were to take place in
 5 February 2021.
 6 **A.** Correct.
 7 **Q.** To your knowledge, was the fact of the discovery of
 8 31,000 boxes of materials ever revealed to the Court of
 9 Appeal Criminal Division?
 10 **A.** I think it was. It was flagged to HSF and Peters &
 11 Peters. There were what was called tranches of
 12 disclosure that was made and so there were a number of
 13 QCs, there were quite a number of junior barristers, who
 14 were conducting the exercise, and it occurred over
 15 several months -- forgive me, I think it was around
 16 August and I think the last disclosure was around
 17 February.
 18 **Q.** To your knowledge, did all of that disclosure in the
 19 criminal appeal proceedings, did that follow examination
 20 of the 31,000 boxes?
 21 **A.** I would have thought so, sir, given that Peters & Peters
 22 were directly briefed on the issue and were a part of
 23 the resolution of that.
 24 **MR MOLONEY:** Thank you very much, Mr Foat.
 25 **SIR WYN WILLIAMS:** Thank you, Mr Moloney.
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1 the second point there, which is "Pursuit of Shortfalls
 2 from Postmasters". I'll just go through this:
 3 "It seems that the Post Office may be continuing to
 4 pursue postmasters for shortfalls in their accounts
 5 using Horizon data. We would have expected that the
 6 Post Office has changed its behaviour in light of the
 7 criticisms and is appropriately circumspect with respect
 8 to any enforcement actions."
 9 Then Mr Patterson goes on to say:
 10 "It should not be relying on Horizon data as the
 11 basis for such shortfall enforcement."
 12 Just as a reminder, Mr Foat, Mr Patterson is the
 13 European Director of Fujitsu, so a very, very senior
 14 figure within Fujitsu's operations.
 15 Now, my first question about this letter is that,
 16 bearing in mind the date, 17 May this year, when was it
 17 first brought to your attention?
 18 **A.** So I was on leave at the relevant time, so I wasn't
 19 involved in this matter. I was due to give evidence
 20 previously and I returned to the office and the Interim
 21 General Counsel flagged to me this broad issue. I don't
 22 necessarily know if I've seen this letter, other than
 23 I have seen that it has been raised in other witnesses.
 24 **Q.** Right. So after 17 May, when you return from that
 25 period of leave, this letter was brought to your
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1 attention but you didn't see a hard copy or a digital
 2 copy of it; is that what you're saying it?
 3 **A.** I don't recall. I recall the Legal Director -- or,
 4 sorry, the now Interim General Counsel, flagging that
 5 there had been an issue between Post Office and Fujitsu
 6 and that there was correspondence between the CEO.
 7 I don't know if I have the -- all of the details of it
 8 but I am aware of this letter, if that's your question.
 9 **Q.** When it was brought to your attention at that time, on
 10 the basis of there's been this issue between Fujitsu and
 11 the Post Office, was it brought to your attention on the
 12 basis of, well, this is a bit awkward, Fujitsu are not
 13 necessarily saying that you should rely upon the Horizon
 14 system to look at shortfalls -- in other words that this
 15 is quite an important issue; was it brought to your
 16 attention in that way?
 17 **A.** Yes, it was raised with me that Post Office didn't
 18 accept for Fujitsu to be saying that their system -- and
 19 I think part of what Sarah said was that, you know,
 20 obviously Post Office is paying for a system and Post
 21 Office expects that it's fit for purpose, and so -- but
 22 she -- the -- the conversation that I had with her is
 23 she was reassuring me that there was this issue, it's
 24 being looked into, that the Legal Team -- and,
 25 I understood it, an external lawyer was involved in this
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1 advice. I was telling you what Mr Bartlett said in his
 2 evidence, Mr Foat, which is the effect of his evidence
 3 is that they sought advice which led to this document
 4 not going out to police investigations. Don't you agree
 5 that seems surprising, given the background to this
 6 matter and this scandal?
 7 **A.** I would want to see the advice before I comment.
 8 **Q.** One of the concerns that might be said about what's
 9 going on here is this is very much same old/same old:
 10 information that should go to the police, so that they
 11 can investigate either in one direction against
 12 an individual or to consider whether their information
 13 is correct, is being stopped at a bottleneck at the Post
 14 Office. Well, that sounds like history repeating
 15 itself, Mr Foat; do you agree?
 16 **A.** No, that's absolutely not the ethos of the Post Office
 17 Legal Team or the A&CI Team. I don't believe that
 18 that's the case but it's a bit difficult for me to
 19 comment on an advice I haven't seen.
 20 **Q.** Yes. In your current situation, are you able to look at
 21 such information and consider it and then consider
 22 whether it should be reviewed by the team supporting the
 23 Post Office before this Inquiry, and then consider that
 24 for disclosure purposes?
 25 **A.** Certainly, sir. I can take that away and revert back.
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1 correspondence. But I'm afraid I didn't have any other
 2 detail in respect of it.
 3 **Q.** Understood, Mr Foat. Let me press you a little bit
 4 further. We heard yesterday from Mr Bartlett,
 5 Mr Bartlett being the Director of Assurance & Complex
 6 Investigations, that's John Bartlett. Now, his evidence
 7 included a reference to this particular document and he
 8 explained that advice had been taken, it seemed to be
 9 from outside of the Post Office advice, which allowed
 10 the Post Office not to disclose it to police
 11 investigations; are you aware of that step being taken,
 12 in other words advice being taken regarding this
 13 correspondence leading to the outcome, which is
 14 non-disclosure?
 15 **A.** I'm not aware of that, sir.
 16 **Q.** Given the background history of this scandal, which in
 17 really short terms is about non-disclosure, it's about
 18 not giving people the right information anywhere close
 19 to the right time, it does seem surprising that the Post
 20 Office still seems to be keeping back information that
 21 may be useful for the exercise of a police
 22 investigation; do you not agree?
 23 **A.** Sir, I'm not aware of that advice. I haven't been given
 24 that advice. I can't comment on that.
 25 **Q.** Well, I wasn't asking you about the details of that
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1 **Q.** My last question concerns something slightly different.
 2 Mr Moloney asked you some questions just before the
 3 short break regarding the lead-up period to the appeals
 4 in the Court of Appeal Criminal Division.
 5 Now, at that time in the lead-up to the appeals in
 6 the Court of Appeal criminal division, we know that
 7 Brian Altman KC was leading on behalf of the Post
 8 Office, responding to those appeals in the Court of
 9 Appeal. We also know that Mr Altman had a very
 10 long-term involvement in matters touching upon issues
 11 that relate to this Inquiry, including at least being
 12 engaged on issues that relate to disclosure or indeed
 13 non-disclosure, and he's admitted that he's made
 14 a mistake in relation to dealing with the matters of
 15 disclosure himself.
 16 Did he ever come to you or, to your knowledge, any
 17 other member of the Legal Team and say, "I'm worried
 18 about whether I should be, in fact, presenting matters
 19 on behalf of the Post Office"?
 20 **A.** No, he did not but it was the other way round.
 21 **Q.** I was going to ask the other way round. Thank you very
 22 much. What was the other way round, Mr Foat?
 23 **A.** Thank you, sir. By that I mean it was Post Office that
 24 raised the fact of -- obviously, Brian had been
 25 involved. Mr Altman is an extremely experienced senior
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1 criminal lawyer and, frankly, he had a lot of
2 information and memory on issues, which someone like
3 myself or indeed a lot of other people didn't have, so
4 he was valuable from that perspective. But the Board
5 discussed the matter and the Board determined that Zoe
6 Johnson QC, another very capable, experienced Queen's
7 Counsel, should be appointed as independent from Brian
8 Altman and, in addition, the Board also appointed
9 Sir David Calvert-Smith who would oversee and
10 specifically advise the Board itself, separate from
11 Brian Altman and Zoe Johnson QC.

12 So I think those measures or controls helped make
13 sure that there was that counterbalance that I've
14 referred to previously, that, even if someone had been
15 involved in the matter that there was independent advice
16 and expertise that sat independent from it and, indeed,
17 that there was also Sir David Calvert-Smith.

18 **Q.** Right. To your knowledge, did Mr Altman say or express
19 his own concerns that "I, Brian Altman, was part of the
20 decision-making process and made an error in that
21 process on disclosure issues", and express his therefore
22 concerns about whether he had a conflict; was that ever
23 discussed with you?

24 **A.** No.

25 **Q.** In the reverse, was that ever discussed with him, "Look,
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1 Court of Appeal Criminal Division.

2 Sir, we've managed to make some checks during the
3 time that Mr Foat gave his answer and, in fact, those
4 documents were reviewed prior to the substantive hearing
5 of the criminal appeals.

6 **SIR WYN WILLIAMS:** Thank you, Mr Moloney. Ms Allan?

7 **Questioned by MS ALLAN**

8 **MS ALLAN:** Good afternoon, Mr Foat. My name is Christie
9 Allan, and I ask questions on behalf of Core Participant
10 Susan Sinclair, who was the first subpostmaster to
11 successfully appeal her conviction in Scotland.

12 At paragraph 231 of your fourth witness statement,
13 which I don't propose to turn up, you refer to steps
14 taken by the Post Office between 2019 and 2020 in
15 relation to individuals who may have been affected by
16 bugs, errors and defects with Horizon, especially those
17 convicted claimants and those who had suffered historic
18 shortfalls.

19 In that context, you describe liaising with external
20 advisers and criminal law experts in terms of the Post
21 Conviction Disclosure Exercise and as a result of
22 ongoing communication from the CCRC.

23 Can you confirm any proactive steps that Post Office
24 took, particularly in light of the Horizon Issues
25 Judgment in 2019, to immediately seek to rectify the
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1 Mr Altman, you're experienced, you're valuable to us
2 because you've done a lot of work on this", did the Post
3 Office ever say, "You were part and parcel of that
4 history of non-disclosure, should you really be part of
5 this"; was it ever really raised in that term?

6 **A.** So the reverse -- as I said before, the reverse is true.
7 Post Office recognised that he had involvement. But
8 just to be clear to your question, it was only until he
9 gave evidence at the Inquiry that I understand he
10 acknowledged that issue. Before that time, Mr Altman
11 has never -- well never to me or anyone else that I'm
12 aware -- has acknowledged that point, if that's -- if
13 that's the question.

14 **MR STEIN:** It's part of it. Thank you, Mr Foat.

15 I'll just check.

16 Nothing else. Thank you, Mr Foat.

17 **THE WITNESS:** Thank you, sir.

18 **MR BLAKE:** Sir, we have one small matter from Mr Moloney and
19 then we have another small matter from Ms Allan.

20 **Further questioned by MR MOLONEY**

21 **MR MOLONEY:** Simply this, and I'm obliged to Mr Foat.

22 Mr Foat may remember that I asked him the question
23 about the 31,000 boxes and the extent to which they had
24 been reviewed and material from them disclosed for the
25 purposes of the criminal appeal proceedings before the
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1 miscarriages of justice which had occurred in Scotland
2 as a result of its failings in its duty of disclosure?

3 **A.** So immediately after the Horizon Issues Judgment was
4 handed down, legal advice was immediately obtained,
5 setting out the potential implications to criminal
6 convictions. Subsequent to that, then Peters & Peters
7 was appointed and, as we've just heard through the
8 questionings with Mr Stein, there were a number of other
9 Queen's Counsel and judge appointed to that process.

10 My understanding is that Peters & Peters also
11 engaged with a Scottish criminal law firm and, I do
12 apologise, I can't recall the name of that law firm, but
13 those issues were then communicated back through Peters
14 & Peters.

15 **Q.** Perhaps I can maybe assist you with the name of that law
16 firm. I think that might have been BTO Solicitors;
17 would that be correct? Does that ring a bell?

18 **A.** I don't know but I understood that there was a Scottish
19 law firm to advise under Scottish law.

20 **Q.** Thank you. Did or has the Post Office engaged with the
21 Scottish Criminal Cases Review Commission or Crown
22 Office in Scotland directly to seek to rectify its
23 failings from the past and to identify those affected
24 subpostmasters in Scotland?

25 **A.** My understanding is that there has been a liaising
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1 between the Scottish CCRC and with Peters & Peters. I'm
 2 not across the detail but that is correct.
 3 **MS ALLAN:** Okay, thank you.
 4 **SIR WYN WILLIAMS:** Thank you, Ms Allan.
 5 **MR BLAKE:** Sir, before we finish, I remembered that when
 6 I read out the witness statement at the very beginning
 7 I read the first witness statement, second witness
 8 statement, third, fourth and sixth. I forgot the fifth
 9 witness statement, which is WITN09980500, dated 29 May
 10 2024. Mr Foat, can you just confirm for us that your
 11 signature appears on that statement and that it is true
 12 to the best of your knowledge and belief?
 13 **A.** It does appear on this statement and it is in accordance
 14 with my belief. Thank you.
 15 **MR BLAKE:** Thank you.
 16 **SIR WYN WILLIAMS:** Thank you.
 17 Well, first of all, thank you very much, Mr Foat,
 18 for providing all the witness statements to which you
 19 have attested. I am grateful to you for that. I am
 20 very sorry that in the summer, when you were ready to
 21 give evidence, that couldn't take place. I am very
 22 grateful to you for giving oral evidence this morning
 23 and agreeing with arrangements for starting early in
 24 order to facilitate what I have to do this afternoon
 25 and, finally, I'm grateful to you for your oral evidence

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1 today.
 2 **THE WITNESS:** Thank you, sir.
 3 **SIR WYN WILLIAMS:** I would like to say publicly that I'm
 4 grateful to everyone who has cooperated with making
 5 today happen, starting very early and the hearing
 6 running very smoothly. So thanks to you all.
 7 We now have, I think, a fortnight's break and we
 8 resume on 4 November with Mr Recaldin, is it not,
 9 Mr Blake?
 10 **MR BLAKE:** That's correct, sir, yes.
 11 **SIR WYN WILLIAMS:** All right. See you all then.
 12 **MR BLAKE:** Thank you very much.
 13 **(12.44 pm)**
 14 **(The hearing adjourned until Monday, 4 November 2024)**

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