SUBS0000064

IN THE MATTER OF THE POST OFFICE HORIZON IT INQUIRY

CLOSING SUBMISSIONS:
PHASES 5, 6 & 7
***On behalf of* POST OFFICE LIMITED**

INTRODUCTION

1. These submissions are made on behalf of Post Office Limited ('POL') in accordance with the Chair's directions of 22 August 2024. As has been the case with all phase end submissions, they are necessarily brief so as to keep to the Chair's requested page limit, and structured by key issues and themes arising from the evidence heard in Phases 5, 6 and 7,[1] rather than seeking to address each of the relevant issues in the Completed List of Issues in turn.

2. These submissions are structured as follows:

A. Preliminary points (§§4 to 46)

Phases 5/6

B. Overarching themes
- (1) POL Board's / senior executives' state of knowledge of:
  - a. POL's role as prosecutor (§§47 to 51)
  - b. Matters identified by CTI as not having been disclosed to Lord Arbuthnot (June 2012) (§§52 to 60)
  - c. Key advices (§§61 to 67)
- (2) POL's use / understanding of privilege (§§68 to 100)
- (3) POL's relationship with Fujitsu (§§101 to 109)
- (4) Remote Access (§§108 to 119)

C. Phase 5/6 core topics
- (1) Second Sight reports and ICRMS (§§120 to 185)
- (2) Governance Experts' views on POL's approach to the Wolstenholme case and SSL issues (§§186 to 189)
- (3) Cartwright King's role (§§190 to 206)
- (4) POL's interactions with the CCRC (§§207 to 234)
- (5) The Group Litigation (§§235 to 257)

Phase 7

D. Introduction (§§258 to 260)

E. Compensation
- (1) "Full and fair" compensation vs public purse considerations (§§261 to 266)
- (2) Body responsible for the administration of compensation schemes (§§267 to 273)
- (3) Other Issues raised (§§274 to 276)

F. Organisational, Governance and Cultural Changes
- (1) Organisation and Governance changes (§§277 to 318)
- (2) Whistleblowing (§§319 to 321)
- (3) Cultural Changes (§§322 to 338)

G. Fujitsu
- (1) Future of Horizon and POL's reliance on Fujitsu (§§339 to 341)
- (2) The Patterson Correspondence (§§342 to 351)

H. Conclusions (§§352 to 358)

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[1] References to transcripts in this document are given in the form T day/month/year [page:line – page:line]. For reasons of space and clarity, POL has used abbreviations for individuals and firms (set out at first mention of each individual, full list annexed at the end of these submissions). It has also referred to them as they are now known rather than known at the time (e.g. Lord Arbuthnot rather than James Arbuthnot MP, Womble Bond Dickinson rather than Bond Pearce or Bond Dickinson etc.).

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3. Before turning to POL's substantive submissions, POL emphatically reiterates its sincerest apology to all who have been affected by its actions, which have been the subject of such rigorous scrutiny in this Inquiry. It has been a humbling experience, not only for those who gave evidence, but also for those who currently work at POL, or used to, who are equally as appalled by POL's failures. As the Inquiry will have seen in Phase 7, POL today is a very different place; it is not perfect and does not pretend to be, but it is firmly committed to learning the lessons from this Inquiry and ensuring that nothing like this could ever happen again.

A. PRELIMINARY POINTS

4. POL makes six preliminary points.

(1) POL's approach to the evidence

5. First, it is important to emphasise, particularly in the context of Phase 7, that POL's status in this Inquiry as a Core Participant is in its corporate capacity, in which capacity it has instructed solicitors and counsel to advise and represent it in the Inquiry.

6. Whilst a number of POL individuals have been called to give evidence in their corporate capacity[2], many others have been asked to give statements and evidence in their personal capacity rather than as a corporate witness. In line with its commitment to listen and learn from all the evidence, POL has sought to ensure that those of its current employees and Board members[3] who are called to give evidence in a personal capacity are able to give their evidence fully and frankly, without (wrongly) feeling the need to adopt any form of 'party line'. To that end, POL has facilitated separate, independent legal representation for a number of employees and Board members.

7. Clearly, and – as would be expected in any forum where individuals are asked to recall events going back months or years – individual memories and opinions will differ to some extent, and sometimes fundamentally. In the somewhat unusual circumstances of this Inquiry, and the combination of corporate and personal evidence in Phase 7 in particular, POL does not consider that it could properly make detailed submissions to the Inquiry as to whose version of events (in part or whole) should be preferred. Accordingly, POL has largely sought to focus on structural and corporate issues, rather than the disputes of fact and opinion.

8. POL means absolutely no disrespect to the Inquiry by not doing so, and submits that its approach fully supports §A of the Inquiry's statutory Terms of Reference (ToR), which require it to '*understand and acknowledge what went wrong in relation to Horizon, leading to the civil proceedings in Bates and others v Post Office Limited and the quashing of criminal convictions … affected postmasters' experiences and any other relevant evidence in order to identify what key lessons must be learned for the future"* (§A, emphasis added).[4] In other words, the primary and express purpose of the making of such findings of fact in this Inquiry as to what went wrong in relation to Horizon is to identify the key lessons which must be learned for the future.[5] Whilst POL fully accepts that the Inquiry is likely to be critical of a number of individuals (not only from POL), it submits that the primary purpose of doing so should be in order to learn the lessons for the future to avoid recurrence. In a case such as the Horizon scandal it would appear unlikely that the learning of those lessons will come from the criticisms of a particular individual's actions; rather, the most

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2 And are therefore supported by POL's lawyers.

3 POL has also facilitated the instruction of independent legal representation for all of the ex-POL employees and Board members who have sought it its assistance in this respect.

4 See too ToR §F by which the Inquiry must "*examine the historic* [sic] *and current governance and whistleblowing controls in place at Post Office Ltd, identify any relevant failings, and establish whether current controls are now sufficient to ensure that failing* [sic] *leading to the issues covered by this Inquiry do not happen again.*"

5 This is consistent with the Government's view, as expressed to the House of Commons Public Administration Select Committee in 2004, that "*the primary purpose of an inquiry is to prevent recurrence*" and "*the main aim is to learn lessons, not apportion blame":* see §10 of the report "*Government by Inquiry*" (**RLIT0000451**).

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significant learning of lessons will come from an understanding of the system which permitted or enabled those actions not to be checked, which resulted in relevant failures.

(2) Corporate / individual knowledge

9. Secondly, in terms of approaching evidence going to knowledge it is important to distinguish between the approach taken in the criminal context and that which should be adopted in the inquiry context.[6]

10. In *Hamilton* the Court of Appeal (Criminal Division) ('CACD'), having noted POL's (accurate) submission that "*Fraser J in his judgments did not need to consider, and did not consider, who in POL knew precisely what about Horizon, and when*" (§110), went on to consider the issue of knowledge in the following terms: "*POL knew that there were problems with Horizon. POL knew that SPMs around the country had complained of inexplicable discrepancies in the accounts. POL knew that different bugs, defects and errors had been detected well beyond anything which might be regarded as a period of initial teething problems. In short, POL knew that there were serious issues about the reliability of Horizon* […] *In short POL as prosecutor brought serious criminal charges against the SPMs on the basis of Horizon data, and by its failures to discharge its clear duties it prevented them having a fair trial on the issue of whether that data was reliable."* (§121 & 123).[7]

11. The reason why the CACD adopted this approach is because s.3(1) of the Criminal Procedure & Investigation Act 1996 (CPIA) imposes the duty on a "*prosecutor*" to disclose any prosecution material which might reasonably be considered capable of undermining the prosecution case or assisting the defence, and s.2(1) defines "*prosecutor*" as "*any person acting as prosecutor, whether an individual or a body.*" In the case of POL, prosecutions were brought by it as a corporate body rather than by any individual person, hence it was POL the corporate body which was the prosecutor for the purposes of disclosure in the prosecutions, and therefore for the purposes of appeals brought on the grounds of failures in disclosure. As such, the knowledge of POL, as prosecutor, is the aggregated knowledge of the organisation as a whole, not just the knowledge of an individual investigator, lawyer or IT support person.

12. However, in the context of this Inquiry there is no justification or rationale for adopting this approach. Whilst in principle a POL employee (X) could properly be criticised for a failure of curiosity by not asking for information which might have been relevant to their decision-making or communications, there is no reason why X should or could be fixed with the knowledge of person Y, or Z etc.[8] It follows that considerable care must be taken to disaggregate knowledge held within POL at a corporate level, and (i) knowledge actually held by X and (ii) knowledge held by Y, or Z etc. who X ought to have asked in order to make a decision or communicate a position. Any criticism of X based simply on corporate knowledge that they could not reasonably have been expected to seek out and obtain, would be ill-founded and unfair.

(3) Witness recollection

13. Thirdly, POL would respectfully remind the Inquiry of the well-established approach to witness recollection, as set out in the judgment of Leggatt J (as he then was) in *Gestmin v SGPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm).[9] The relevant parts of that decision were set out in POL's Phase 2 written closing submissions[10], and are not duplicated here, save to reiterate the key applicable principles:

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6 A point previously been flagged at footnote 12 to §12 of POL's Phase End Submissions for Phase 4 (**SUBS0000028**).

7 There is obviously no need for the Inquiry to make this finding afresh, its ToR expressly provide that it should draw upon the judgment of, amongst others, the CACD in *R v Hamilton*: §A. (**COPF0000004**)

8 POL notes that this is the approach adopted by the Inquiry's Governance Experts: see §186 to 189 below.

9 **RLIT0000446**.

10 POL's Phase End Submissions for Phase 2 at §4 (**SUBS0000016**).

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a) Memory is unreliable; but we generally believe our memories to be more reliable than they are. Two common errors are to suppose: (1) that the stronger our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) the more confident another person is in their recollection, the more likely their recollection is to be accurate;

b) In light of these facts, the best approach is to place little if any reliance on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.

14. The issues highlighted in *Gestmin* are particularly heightened in this case, given (i) the time that has passed since the events in questions – up to 25 years ago in some cases; (ii) the high-profile nature of the scandal, including the publicity given to it by the Inquiry as well as the media. Inevitably, current recollections of witnesses are likely to affected by such factors, through no fault of their own.[11]

(4) Cognitive bias

15. Fourthly, in considering the evidence not only in Phases 5/6 but earlier, the Inquiry is invited to have regard to the principles of cognitive bias, that is systemic patterns of deviation from the norm and/or rationality in judgement. The most well-known is confirmation bias, being the tendency to look for and/or overvalue information that confirms one's preconceptions and beliefs, a bias which was first raised in Phase 2,[12] and has since been put to a number of POL witnesses (as well as those from Cartwright King ("CK") and Fujitsu). Other well-known and well-established potentially relevant biases include ingroup favouritism (the tendency to favour members of one's own group over those in other groups), the ostrich effect (which causes people to avoid information that they perceive as potentially unpleasant), plan continuation bias (the continuation of an original plan even when information suggests the plan should be abandoned), and anchoring bias (which causes people to base their decisions on previously accepted information or the first piece of information they learn about a topic). A further potentially relevant psychological factor (already flagged by a number of witnesses[13]) is the concept of "groupthink", that is a mode of thinking, which people in a group engage in, where striving for unanimity overrides the motivation to realistically appraise alternative courses of action.

16. In suggesting that the Inquiry should consider the evidence before it through one or more of these prisms, POL is not suggesting that the potential existence of such biases absolves an individual or group of individuals of responsibility for their actions. Rather, an understanding of the existence of these types of biases (which everyone has, although some may have sufficient insight to take steps to overcome them) is important in understanding that system failures, such as that which occurred at POL, are not just the product of e.g. poor policies and procedures, inadequate training, inadequate supervision etc., but the product of innate ways of thinking. It is self-evident that recommendations which take into account only the external systems, not the internal ones, are inherently less likely to prevent subsequent failures.

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[11] An example being (with no personal criticism whatsoever intended) Sir Vince Cable who recalled in his witness statement that POL had lied to him, but accepted that the position was simply that "*I've been trying to follow the Inquiry at some distance and that is the kind of language and interpretation that I've heard*". T 25/07/24 [79:3 – 79:5] **(INQ00001181)** When asked if he could identify anyone within ShEx who was lied to by their POL counterpart he confirmed *"no, I certainly can't do that."*.

[12] E.g. in Phase 2, Jeremy Folkes, having identified a key question for the Inquiry as being "*what gave POCL such confidence in Horizon to start using it for prosecutions of Subpostmasters, especially after the rather chequered history of the system from 1996-2000 and in particular the experiences of 1999?*", answered his own question in this way: "*My only way of answering the question is that there were people within the investigation and prosecution side in POCL who – I think it is called "confirmation bias". They were convinced that subpostmasters were misbehaving and then, if the system came up and showed that somebody was 14,000 down, rather than taking into account "Is the system right or is there some mistake?" it gave them what they wanted.*" T 03/11/22 [35:8 – 35:16] **(INQ00001005)**. Ed Henry KC has put it to several witnesses that there was institutional bias to behave in a certain way: John Longman T 17/04/24 [120:8 – 120:9] **(INQ00001131).**

[13] Alisdair Cameron ("AC") T 17/05/24 [44:13] **(INQ00001149)**, RC T 12/07/24 [5:22 – 6:18] **(INQ00001173)**. Martin Edwards T 26/07/24 [168:5 – 168:11] **(INQ00001182).**

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(5) The standards by which POL should be measured

17. An important issue, both in terms of the Inquiry's finding of facts and its potential recommendations, is the standards by which POL should be measured.

18. This issue was raised by CTI in Phase 4 in the context of the conduct of civil proceedings to recover shortfalls[14] and in Phase 5/6 in the context of the GLO,[15] communications,[16] and governance.[17] [18] Most recently it was raised during the Phase 7 hearings[19] by Sir Martin Donnelly ("SMD") by way of comment on the evidence heard in Phase 5/6 in relation to the GLO.[20] On each such occasion it has been suggested that POL should be held to a higher or different standard to other limited companies.

19. It is entirely proper (and indeed effectively required under the Inquiry's Terms of Reference) that it should want to hold POL to account in circumstances where its conduct fell short of any relevant standards.[21] However, it is obviously critical that its findings and recommendations are based on a proper legal basis, given the potential significance of imposing higher standards than might otherwise have applied to a limited company not only to POL but to all and any other organisations to whom the basis for imposing higher standards on POL would be equally applicable.

20. The legal basis for CTI's suggestion has been characterised variously as being because: (i) POL is a public corporation;[22] (ii) POL is a public body;[23] (iii) POL is a publicly owned company;[24] (iv) POL is a public authority;[25] and/or (v) POL discharges functions of a public nature.[26] Before addressing the issue of whether any of these statuses would, in principle, result in POL being held to a higher standard, it is helpful to understand the nature of the characterisations themselves.

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[14] See too §§50–54 of POL's Phase 4 end closing submissions.

[15] ***Mr Beer***: *Was that a concept with which you were familiar at the time: public authorities may have to behave differently, when they come into contact with the law, than private companies?* (RW T 18/04/24 [120:1 – 120:4] **(INQ00001132)**).
Mr Beer: *It might be said by some that, when acting for an organisation which is a public authority or a quasi-public authority, whether or not dealing with issues that involve its status as a public authority or not, a different approach to litigation may be called for* (ADGRKC T 11/06/24 [11:23 – 12:4] **(INQ00001158))**

[16] ***Mr Blake***: *You were working for a company that was wholly owned by the Government. Did you think that it was appropriate* ***in those circumstances to spin the report in this way?*** (Mark Davies ("MD")), T 14/05/24 [57:11 – 57:13] **(INQ00001146)**).

[17] ***Mr Blake:*** *What, if any, difference did you see in the governance of a publicly listed compared to a publicly owned company?* (AL T 21/05/24 [17:3 – 17:5] **(INQ00001150))** It is not clear why the comparison was made between POL and a publicly listed company (i.e. a company listed on a stock exchange through which its shares can be traded) as distinct from an ordinary (non-listed) limited company owned by shareholders. POL has interpreted the question as being intended to distinguish between a publicly owned company, in the sense of a company owned by a public body (usually Government), and a company owned by private persons (whether publicly listed on any form of stock exchange or not).

[18] For completeness, POL notes that CTI asked BAKC whether, when advising POL on post-convictions issues, he "[brought] *into account the fact that, although the Post Office was a commercial entity, it could be seen as a public authority in that it was Government owned?*" albeit without suggesting that that fact would be relevant. BAKC's unequivocal answer was 'no', "*because, at the end of the day, whether you're a private prosecutor or a public authority which prosecutes, the principles are the same."* T 08/05/24 [18:23 – 19:10] **(INQ00001143)**. POL therefore does not make any further submissions on the issue of standards in prosecutions.

[19] Albeit that his evidence concerned Phase 5/6.

[20] Witness statement §§59-60 T 27/09/24 [176:9 – 176:24] **(INQ00001188)**.

[21] Accepted in POL's Phase End Submissions for Phase 4 at §2 **(SUBS0000028)**.

[22] ***Mr Beer***: *Would your view be that any different considerations apply if the putative defendant is a public authority or a public corporation?* (Transcript of evidence of Richard Morgan KC ("RMKC") T 22/9/2023 [58:8-11] **(INQ00001078))**.

[23] RW T 18/04/24 [116:22 - 116:25] **(INQ00001132)**.

[24] ***Mr Blake***: *Does it make a difference that the Post Office was a publicly owned company, in your mind?* (Stephen Dilley T 21/09/23 [158:20 – 158:21] **(INQ0001077)**.

[25] ADGRKC T 11/06/24 [11:2 – 11:5; 11:22 – 12:4] **(INQ00001158)**, RW T 18/04/24 [120:1 – 120:4] **(INQ00001132)**.

[26] ***Mr Beer***: *It's sometimes said that public authorities, public bodies or organisations who discharge functions of a public nature should operate by different standards in litigation or quasi-litigation, like a mediation.* RW T 18/04/24 [118:21 – 119:1] **(INQ00001132)**.

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(i) Public corporation

21. The Cabinet Office publication "*Classification of Public Bodies: Guidance for Departments*"[27] states that the 'public sector' (as defined by the Office of National Statistics) is formed of three sub-sectors: Central Government (which includes Government Departments and their Arms Length Bodies (ALBs)[28])[29], Local Government and Public Corporations.

22. As stated on the Government website, Post Office is "*a public corporation of the Department for Business and Trade*".[30] To fall within the definition of a 'public corporation' a body must: derive more than 50% of its production cost from the sale of goods or services at economically significant prices; be controlled by central government, local government or other public corporations; and have substantial day to day operating independence so that it should be seen as an institutional unit separate from its parent department.[31] Examples of other 'public corporations' include the BBC World Service, the Civil Aviation Authority, Channel Four Television Corporation and Ordnance Survey.[32]

23. In this context POL notes that although it has frequently been referred to in the Inquiry as being an ALB of the DBT, that characterisation is inconsistent with the Cabinet Office guidance (under which ALBs fall into the 'Central Government' sub-sector, rather than the 'public corporation' subsector of the public sector), as confirmed by SMD.[33] POL does not suggest that this distinction is relevant to the issue in principle of the relevant standards, given the definitions are driven by accounting purposes, but may be on the issue of oversight.

(ii) Public body

24. The concept of a 'public body' is also defined in the Cabinet Office guidance as *'a formally established organisation that is (at least in part) publicly funded to deliver a public or government service, though not as a ministerial department. The term refers to a wide range of entities that are covered as within the Public Sector.'*[34] As a 'public corporation', and therefore an entity within the Public Sector, it follows that POL is also a 'public body' in accordance with the Cabinet Office guidance.

(iii) Publicly owned company

25. POL is wholly owned by Government / the Crown via the Secretary of State for Business and Trade. It is this ownership, with its attendant ultimate powers of control (as to which see §281 to 292 below), which results in POL being characterised as a public corporation. POL does not consider that the characterisation of it as a publicly-owned company adds anything to the analysis otherwise applicable to it as a public corporation.

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27 **RLIT0000325**.

28 As well as Executive Agencies, Non-Departmental Public Bodies, and Non Ministerial Departments and any other non-market bodies controlled and mainly financed by the relevant Government Department.

29 For completeness, POL notes that although it has frequently been referred to in the Inquiry as being an 'arms length body" of the Department of Business and Trade, that does not in fact appear to be consistent with the Cabinet Office guidance, which provides that ALBs fall into the 'Central Government' sub-sector, rather than the 'public corporation' subsector of the public sector. POL does not suggest that this is directly relevant given the definitions are driven by accounting purposes.

30 **RLIT0000447**.

31 Cabinet Guidance at p.29. The concept of a 'public corporation' derives from a sectoral classification system, based on the European System of Accounts 1995, which implements the United Nations System of National Accounts 1993, which is designed to allow Member States to establish a system of accounts that can be used to establish (and compare) significant economic activity.

32 See HM Treasury: Public Expenditure Statistical Analyses 2011 – Chapter 8 Public Corporations (**RLIT0000450**).

33 T 27/09/24 [123:22 – 124:22] (**INQ00001188**).

34 Cabinet Guidance at p.5 (**RLIT0000325**).

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(iv) Public authority

26. The term 'public authority' appears (so far as potentially relevant in this context)[35] in the Human Rights Act 1998 ("the HRA"), which makes it unlawful for a public authority to act in a way which is incompatible with a Convention right (s.6(1)). A public authority is defined to include "*any persons certain of whose functions are functions of a public nature*" (s.6(3)(b)). However, "*in relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private"* (s.6(5)). As such, even were POL to be a 'public authority' for the purposes of the HRA,[36] if the nature of the act is private then there could be no unlawfulness.

27. POL is not aware of any case in which its status under the HRA (if any) has been determined, but notes that in the GLO the claim form originally included a general claim for breach of the Claimants' rights under Articles 6 and 8 ECHR and/or Article 1 of the First Protocol contrary to s.6(1) HRA, which was subsequently amended to narrow the claim under the HRA to a claim by reason of POL's conduct in relation to the prosecution or referral for prosecution of Claimants.[37] It would therefore appear that, at least in that litigation, it was ultimately accepted that the nature of all other acts of POL impugned by the Claimants (including the agency relationship between them and POL, procuring repayments and the settlement of claims) were private, and POL therefore is not a public authority for those purposes.

28. The term 'public authority' is also used (often interchangeably with 'public body') in the context of judicial review. As POL previously noted in its Phase 4 end closing submissions, it is far from clear that POL is in fact a "*public authority"* for the purposes of administrative law, such that public law principles would have applied to any civil litigation conducted by it. In *R (Sidhpura) v POL* [2021] EWHC 866, a challenge to the HSS, Holgate J accepted for the sake of argument, but did not determine, that POL was, at least for some purposes, a public authority, for the purposes of analysing whether a "*a public law element has been injected into the dispute"*, giving by way of example a claim based on negligence, contract or property law where the decision is the subject of the procurement code (a statutory regime) which would render it amenable to judicial review (§30). However, he went on to find that there was no possible basis for argument that the HSS had any public law character or engaged any principle of public law (§43). Notably, in reaching this conclusion he found that any dispute that was not resolved under the HSS would be resolved by the county court or arbitration "*applying private law principles to what remains throughout a private law dispute"* (§42).

(v) Discharging functions of a public nature

29. The issue of whether POL is discharging functions of a public nature was the very issue considered in the High Court in *Sidhpura,* following the well-established case law as to when a body is doing so such that judicial review is available.[38] The same points as set out at (iv) above therefore apply equally to this characterisation.

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[35] The term 'public authority' also appears in the Freedom of Information Act 2000, which defines a "public authority" to include "*a publicly-owned company"* which "*is wholly owned by the crown*" (s.3(1)(b) read with s.6(1)(a)). As such, POL is a public authority for the purposes of FOIA. However, POL does not understand it to be suggested that there is any relevance to that designation for the purposes of the issue of standards under consideration.

[36] POL is unaware of any case in which this issue has been considered.

[37] See Amended Claim Form (**POL00110802**)

[38] *R. v. Panel on Takeovers and Mergers ex parte Datafin plc* [1987] Q.B. 815 (**RLIT0000457**); *Hampshire County Counsel v Graham Beer t/a Hammer Trout Farm* [2003] EWCA Civ 1056 (**RLIT0000455**) and *R (Holmcroft Properties Limited) v KPMG LLP* [2018] EWCA Civ 2093 (**RLIT0000456**).

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Analysis

30. In summary, POL is a public corporation, a public body and owned by Government, which, for the sake of argument, may be a public authority and therefore amenable to judicial review but only if the relevant function in issue is of a public nature. It is therefore helpful toanalyse the proposition that it should be held to a higher standard than a limited company without any of the five characteristics, by reference to each of the 'functions' or areas of activity identified by CTI in this context.

(i) Governance

31. As set out in its Annual Report and Accounts 2022-23, in the section Corporate Governance Overview 2022/23, POL's approach to corporate governance is as follows:

> *"The Post Office maintains standards of corporate governance appropriate to its ownership structure and is committed to continuous improvement. Guidance on observance of standards of good corporate governance is set out in the Shareholder Relationship Framework Document. While not a listed company, Post Office takes into consideration the requirements of the 2018 UK Corporate Governance Code ("UKCGC") and, where necessary, sets out where certain provisions do not apply. The Post Office also has regard to the principles of the Corporate Governance Code for Central Government Departments. Post Office keeps corporate governance arrangements under review to ensure they remain in line with relevant legal and regulatory changes, as well as generally accepted principles of good corporate governance. Examples of where governance arrangements differ for Post Office from those set out in the UKCGC and the Corporate Governance Code for Central Government Departments are principally where alternative governance arrangements apply or because the Post Office is not listed, not a Central Government Department or not an Arm's Length Body."*[39]

32. In other words, POL seeks to comply with governance principles where they represent good practice, save where its particular status precludes it. This reflects the approach endorsed as good practice by the Inquiry's Governance experts: "*Whilst there are differences between publicly listed and publicly owned companies, it is notable that in matters of governance during the relevant period, one finds the requirements and expectations for all organisations in the UK have tended, and tended to be encouraged by governments and regulators, to follow the approach adopted in law and guidance for publicly listed companies. It is these laws and guidance which have set generally accepted standards, which are then adapted in detail, but not in principle, for the situation of companies wholly owned by the government. There are additional, and occasionally alternative, laws and regulations which apply to government ownership and oversight (right hand columns of Annex A.) These add complexity and layers to governance, but do not undermine the principles set out in the left-hand columns.*"[40]

33. This also reflects the evidence of Alwen Lyons ("AL") who was asked "*What, if any, difference did you see in the governance of a publicly listed [company] compared to a publicly owned company?"*, to which her answer was that **"***I think we had a difference – a different type of governance because we had governance through to the Government and, therefore, we had, for instance, a non-exec that was a Shareholder Executive representative. So in some ways there was additional governance in terms of how we were responding.*"[41]

34. However, it clearly does not follow from the fact that POL's governance arrangements were and are different to that of a company **not** wholly owned by the Government that it should be held to a higher standard in respect of its conduct in matters such as civil litigation and communications.

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[39] **POL00447849** p.18.
[40] First Report of the Governance Experts at §1 iv. (Introduction), p. 6/133; see also §1.6.11 (**EXPG0000006**).
[41] T 21/05/24 [17:6 – 17:11] (**INQ00001150**).

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(ii) Civil Proceedings

35. Even assuming that POL is a public authority and/or discharging functions of a public nature (the 3rd and 4th characteristics identified by CTI), for the reasons given in *Sidhpura*, there is no basis for imposing any higher standard on POL when it is involved in civil proceedings than would be imposed on any other limited company when a litigant. There was and is clearly no 'public law element' in a dispute between POL and a subpostmaster ("Postmaster") or Postmasters which concerned or was founded on the contractual relationship between them.[42]

36. As far as the first three characteristics identified by CTI (public corporation, public body and /or publicly owned) are concerned, there is simply no established legal principle that could, in principle, impose higher standards in the conduct of civil proceedings on a company simply because it falls into one or more of those categories (and none has been suggested).

37. Notably, the judgment of Fraser LJ in the Common Issues Judgment ("CIJ") is entirely consistent with the standards being the same. He criticised POL for its disclosure failures in the following terms:

> *"The Post Office appears, at least at times, to conduct itself as though it is answerable only to itself. The statement that it is prepared to preserve documents– as though that were a concession – and the obdurate [sic] to accept the relevance of plainly important documents, and to refuse to produce them, is extremely worrying. This would be a worrying position were it to be adopted by any litigant; the Post Office is an organisation responsible for providing a public service, which in my judgment makes it even worse. (§523)*

38. As such, he did **not** suggest that the applicable standards of disclosure were different for POL as compared to any other litigant – on the contrary, the standards referred to in that paragraph are characterised as being the same as for any other litigant – rather, he considered that it is the fact that POL is an organisation which provides a public service means that the failure to adhere to those standards can be perceived as being more reprehensible.[43]

39. It is against this background that the comments of SMD[44] should be considered:

> *"I have been surprised to learn that some at least in POL appear to have seen the group litigation by sub-postmasters as ordinary commercial litigation without it making any difference that POL was Government-owned. I would have expected everyone within the Post Office, as elsewhere in the public sector, to have seen a duty of care towards their staff[45] including sub-postmasters as a core part of their work. The Inquiry may wish to consider whether it should be made explicit, if it is not already, that the senior management and Board of public corporations such as POL are expected to abide by public sector values, by for example requiring them to sign up to the Nolan Principles [46]."* [47]

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[42] As RMKC pointed out, when asked "What are those different considerations that apply if the putative defendant is a public authority or a public corporation [in civil proceedings?" he correctly distinguished between public and private law: "*Well, one might want to think about what the public law duties are of that public corporation, but I was being asked to advise a private company.*" T 22/09/23 [58:12 – 58:18] **(INQ00001078)**.

[43] POL accepts, of course, that Fraser LJ was highly critical of a number of other aspects of POL's defence to the claim, including the application to strike out, the recusal application etc., but nowhere did he make any finding that such criticisms arose from POL being required to be held to a higher standard than any other company engaged in commercial civil proceedings.

[44] Permanent Secretary at DBT 2010 – 2016.

[45] On the distinction between Postmasters and 'staff' / 'employees' see §44 to 46 below.

[46] The application of the Nolan Principles would not be as straightforward as this implies, e.g. Nolan Principle 1 (that holders of public office should act solely in the public interest) would conflict with a board director's duties under s.172 Companies Act 2006 (the duty to promote the success of the company for the benefit of its members).

[47] SMD1 at §60 (**WITN11250100**).

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40. With respect to SMD, this analysis conflates: (a) the law in relation to tort, in particular the circumstances in which a duty of care arises (which has not been determined in any legal proceedings[48] nor considered as an issue in this Inquiry); (b) a requirement that POL abides by public sector values by signing up to the Nolan Principles (notwithstanding the obvious difficulties that would arise by e.g. a requirement that POL Board members '*act solely in terms of public interest'* (Principle 1) when its aims are in significant part commercial); and (c) the obligations on a litigant in commercial litigation. For the reasons set out above, there is no principled basis upon which POL could or should have regarded the GLO as anything other than "*ordinary commercial litigation"* . Indeed, POL's approach was wholly justified having regard to the fact that its external legal advisers considered it to be ordinary commercial litigation, and at no point did UKGI or DBT suggest otherwise.[49]

(iii) Communications[50]

41. The standards to which public service communicators should be held is set out in the Government Communication Service's publication "*Propriety & Ethics Guidance for Government Communicators"* (first published 2014, last revised February 2024). That provides (so far as relevant in this context) that "*Government communication should be objective and explanatory not biased or polemical"*.[51]

42. However, the Government Communication Service is the professional body only for public service communicators "*working in government departments, agencies and arm's length bodies"*.[52] As set out above, POL is a public corporation and therefore does not fall within any of those categories, as a result of which it follows that its published guidance would not apply, now or in the past, to POL.

43. POL recognises that the Inquiry may wish to consider whether to recommend that the Propriety & Ethics Guidance should be extended to apply to public corporations, whilst noting that the underlying rationale for a number of the principles in it arise from the particular role of civil

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[48] Whilst the GLO Generic Particulars of Claim (**WBON0001175**) contained an allegation of a concurrent duty in tort to that claimed under contract (section D §80), this issue was not determined in the CIJ ("*whether any of the other tortious causes of action brought by the Claimants against the Post Office extend to or include remedies in respect of such matters is not within the scope of the Common Issues trial*." §752). Given that the issue was live, and disputed, POL could not reasonably have been expected to have approached the GLO on the basis that it *did* owe Postmasters a duty of care. As for the duties claimed under contract, Fraser LJ approached the matter as being one of private law between a company and its agents, from which the implied terms arose due to the nature of the relationship; POL's status as a public corporation did not form any part of his analysis.

[49] When asked whether, given that POL was effectively spending public funds, he did not consider that there was a greater accountability on POL than in the case of a private commercial entity, RC's evidence was that it "*wouldn't be that different to a commercial company ... the way ShEx works is to almost treat its businesses to the extent it can as commercial entities because that's what we want them to be"* T 12/07/24 [10:21 - 10:25] **(INQ00001173).**

[50] POL has sought to address this issue as a matter of principle, but notes that the factual context in which the issue was raised during the hearings would not be a fair basis on which to make any finding that POL had in fact fallen short of any higher standards, were they to apply. In particular, the document which was challenged as falling short of the standards applicable to a company wholly owned by the Government was (a) a first draft, (b) was subject to comment and revision by others within POL (e.g. **POL00189919**); and (c) the final version contained none of the elements of the first draft which were subject to criticism by CTI (**RLIT0000454**). It is also relevant to note that the statement to the House of Commons on 09/07/13 by Jo Swinson (then the Parliamentary Under-Secretary of State for Business, Innovation and Skills) welcomed POL's statement in response to the SSL Interim Report (Hansard HC 09/07/13 Column 198) (**RLIT0000449**).

[51] "*It is important that any information shared with the public, either directly or via the media, is as objective as possible. As set out above, government communications should seek to explain the decisions of the government of the day in a balanced and objective way. It should not be biased in terms of how the information is presented or what is shared with the public. Government communications should not attack or be critical of groups which may oppose a decision or policy. This is what we mean when we refer to government communications as not being polemical in tone. This would not be an acceptable use of government resources and risks affecting the ability of civil servants to work with such groups constructively either now or in the future.*" - Propriety & Ethics Guidance for Government Communicators (**RLIT0000445**).

[52] 'Government Communication Service: What we do' (**RLIT0000480**)

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servants and their relationships with ministers, and the commercial rather than public nature of POL's business (and that of other public corporations such as Ordnance Survey), which distinguish public corporations from government departments, agencies and ALBs. However, in the meantime there is no principled basis on which to impose a higher or different standard on POL in respect of its public communications.

(6) Postmasters are not employees

44. Although it is now well established that Postmasters are neither employees nor workers,[53] some of the questioning of witnesses came close to eliding that distinction.[54] For example, Tracy Marshall was asked whether she thought that Postmasters not being paid or remunerated for undertaking a half-day course on investigating discrepancies was a significant barrier to engaging with such training.[55] However, the idea that POL should pay a Postmaster for undertaking training is fundamentally inconsistent with the Postmaster being in business on his or her own account.[56]

45. Similarly, the Chair suggested that Postmasters should be under the function of someone called a Chief People Officer (by which he meant someone who is performing functions in respect of all the people in the business) by which the CPO has specific functions in relation to Postmasters.[57] Whilst Karen McEwan ("KMc") wholeheartedly agreed, it is important to be clear that the imposition of specific functions on the CPO in respect of Postmasters could not and would not cover the full range of functions a CPO has in respect of employees as the relationship is fundamentally different. This is clearly demonstrated by the difference between employees of POL in Directly Managed Branches ('DMB', also known as Crown Offices) and Postmasters; the former have no responsibility for the commercial strategy of the post office, whereas the latter are entrepreneurs, free to develop their branch in accordance with their own strategic vision (subject of course to compliance with the necessary rules in relation to POL services). Indeed, for many that distinction is precisely the reason for becoming a Postmaster rather than taking employment in a DMB.

46. It is therefore important, in the interests of the Postmasters as well as POL, that their status is not elided with those of employees when considering what factual findings should be made, or when considering appropriate recommendations.

PHASE 5/6

A. OVERARCHING THEMES

(1) POL Board's / Senior Executive's State of Knowledge

(i) <u>POL's Role as a Prosecutor</u>

47. By way of starting point when considering POL's response to the emerging scandal, the apparent absence of knowledge or understanding on the part of senior executives and Board members about POL's role in conducting its own prosecutions against Postmasters was striking.

a) Jonathan Evans ("JE") (Company Secretary of Post Office 1999-2001, Company Secretary of RMG 2001-10) not only knew of POL's role but was the line manager of the Head of Litigation such that he was ultimately responsible at Board level for prosecutions.[58] He had no recollection

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[53] *Wolstenholme v Post Office Ltd* (2003 ICR 546) (**POL00124432**), *Baker v Post Office Ltd* Case No: 1402149/18 and 119 others (**RLIT0000441** - see §159 setting out the history of such cases from 1980 leading to *Wolstenholme*).

[54] Such distinction also appears to have been elided by Henry Staunton, who told the Inquiry that he thought that the distinction between the duty of care that POL owes to its employees, and the absence of the same duty of care to Postmasters (as had been explained by BF) "*completely mist* [sic] *the point*" and that he "*thought we owed them probably a greater duty of care than to our employees*" T 01/10/24 [34:15 - 36:1] **(INQ00001189)**.

[55] T 16/10/24 [42:24 - 43:1] **(INQ00001197)**.

[56] POL does not charge Postmasters for attendance on any training course (but does not reimburse travel costs).

[57] T 08/10/24 [106:6 - 107:9;106:6 - 107:9] **(INQ00001192)**.

[58] T 04/11/22 [106:8-106:16] **(INQ00001003)**.

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of any discussion at board level about prosecuting Postmasters based on Horizon data,[59] said that there was *"no upward reporting to suggest that,"*[60] and he could not recall any discussion at board level about the Computer Weekly articles in 2009.[61] He only became aware that Postmasters were being prosecuted on the basis of data produced by Horizon when he read about it in the papers some years ago, long after he had left POL: and it had not crossed his mind that prosecutions based on a paper audit trail were likely to be evidentially different from those based on a computer system.[62]

b) Alan Cook ("AC") (POL NED 2005-6, MD 2006-10) said that although he understood that POL investigated theft, fraud and false accounting, he was unaware that POL was the prosecuting authority until 2009.[63]

c) AL worked for RMG or POL for some 33 years, including as POL Company Secretary from 2011-17, but thought that she had not become aware of POL's prosecutorial function until POL was talking about Sparrow[64] (so about July 2013[65] at the earliest). In her view oversight and accountability for investigation and prosecutions did not lie with the Company Secretary but with the legal team.[66] She accepted that someone ought to have explained the prosecution procedure to the Board and that as someone who was responsible for the governance function within the Board, she bore some responsibility for that failing.[67]

d) Paula Vennells ("PV")'s evidence was that it was not until 2012 (when she became CEO) that she realised that POL brought its own prosecutions: she had assumed until then that prosecutions were conducted through external authorities.[68] She said that she (and others) were surprised by this but nevertheless could not recall any discussion of POL's prosecutorial function at the Risk and Compliance Committee, the Board or the Executive Team.[69] PV agreed

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59 T 04/11/22 [96:6 – 96:12] **(INQ00001003).**

60 T 04/11/22 [100:7 - 100:14] **(INQ00001003).**

61 T 04/11/22 [100:15 - 100:22] **(INQ00001003).**

62 T 04/11/22 [96:21 - 98:7] **(INQ00001003).**

63 T 12/04/24 [14:13 – 15:11] **(INQ00001129)**; T 12/04/24 [14:13 – 15:11] **(INQ00001129)**. It follows that when he became MD, no-one had thought it necessary to inform him of that fact ([18:20 – 19:10]). It was suggested that the wording of a letter dated 3/9/08 (**WITN01820101** pp.6-7) which he signed made it clear that POL was taking the decision of whether to prosecute but he insisted that he had not realised that it was POL's sole decision (T 12/04/24 [36:17 – 39:17] **(INQ00001129)**). MY, who managed the split from RMG on POL's behalf from 2010 (the split itself taking place in 2012), said that when he joined POL (i.e. prior to the separation) ACo told him that RMG and Legal (i.e. RMG's legal department) were responsible for conducting investigations and prosecutions (although this was not part of MY's responsibilities) MY1 §105-6 **WITN11130100**. His initial knowledge of POL's prosecutorial role appears to have come from his direct experience whilst a policeman of RMG having done so: T 15/10/24 [6:17 - 24] **(INQ00001196)**. Adam Crozier's view was that ACo's evidence, that he did not know that POL had a prosecutorial function until 2009, was *"surprising"* (T 12/04/24 [164:3 – 164:15] **(INQ00001129)** and see also T 12/04/24 [18:20 – 19:10] **(INQ00001129)**). It was suggested that the wording of a letter dated 3/9/08 (**WITN01820101** pp.6-7) which he signed made it clear that POL was taking the decision of whether to prosecute but he insisted that he had not realised that it was POL's sole decision (T 12/04/24 [36:17 – 39:17] **(INQ00001129)**. MY, who managed the split from RMG on POL's behalf from 2010 (the split itself taking place in 2012), said that when he joined POL (i.e. prior to the separation) ACo told him that RMG and Legal (i.e. RMG's legal department) were responsible for conducting investigations and prosecutions (although this was not part of MY's responsibilities) MY1 §105-6 **WITN11130100**. His initial knowledge of POL's prosecutorial role appears to have come from his direct experience whilst a policeman of RMG having done so: T 15/10/24 [6:17-24] **(INQ00001196)**.

64 T 21/05/24 [7:12 – 7:24] **(INQ00001150)**, T 21/05/24 [7:12 – 7:24] **(INQ00001150)**.

65 SC1 **WITN00220100** §21.

66 T 21/05/24 [18:6 – 18:12] **(INQ00001150)**, T 21/05/24 [18:6 – 18:12] **(INQ00001150)**. AL considered that the GC was her boss (save whilst CA was interim CG when she reported directly to PV); if that is right, save for the interim period, no-one with responsibility for prosecutions attended Board meetings.

67 T 21/05/24 [32:2 – 32:13] **(INQ00001150)**, T 21/05/24 [32:2 – 32:13] **(INQ00001150)**.

68 T 22/05/24 [88:3 – 88:21] **(INQ00001151)**, T 22/05/24 [88:3 – 88:21] **(INQ00001151)**, T 22/05/24 [88:3 – 88:21] **(INQ00001151)**, T 22/05/24 [88:3 – 88:21] **(INQ00001151).**

69 T 22/05/24 [88:22 – 89:8] **(INQ00001151)**, T 22/05/24 [88:22 – 89:8] **(INQ00001151)**, T 22/05/24 [88:22 – 89:8] **(INQ00001151).**

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that the fact that so many senior people (including herself) were unaware of this prosecutorial role was *"completely unacceptable"*.[70]

48. It was suggested that these witnesses' professed ignorance of POL's prosecutorial function was not credible based on a few contemporaneous documents.[71] However, none of these documents were sufficiently clear and obvious on the point that a reasonable reader would have immediately been put on notice that their existing understanding was wrong; on the contrary, if they believed that prosecutions were conducted by a third party, the words can quite reasonably be read as meaning that prosecutions were conducted on behalf of (or in conjunction with) POL. Nevertheless, for such senior persons not to have understood that POL itself was acting as a prosecuting authority during the relevant period, is a serious failure.

49. Some witnesses referred to the many challenges which were faced when POL split from RMG in 2012.[72] POL ceased to be a subsidiary of RMG and had its own Board, including a UKGI NED, and the Board underwent governance training. Alice Perkins ("AP") described how, during the period leading up to separation, she received *"the most enormous quantity of new information about all kinds of very complex and fraught issues to do with the separation from Royal Mail and the future strategy for the Post Office"*,[73] but none of this information appears to have concerned POL's prosecutorial function (or if it did, it was not communicated in a way that demonstrated its significance). The process of planning for and implementing separation required all policies and procedures to be reviewed so that POL started as an independent company with all relevant policies in place. The fact that POL acted as prosecutor – and the central importance of Horizon data to such prosecutions - should have been included in briefings to all incoming Board members or senior executives.

50. In all the circumstances, the failures in understanding were symptomatic of wider structural governance failings within POL:

    a) Individuals were able to assume key roles without any briefing as to this important aspect of POL's work, demonstrating: (i) a corporate failure to take sufficiently seriously the importance of the fact of prosecutions or of how prosecutions were conducted; and (ii) an inappropriate and damaging compartmentalisation of knowledge within POL – plainly there were many people at POL who had the relevant knowledge but what was lacking was the structure to ensure that such knowledge was consistently and appropriately communicated throughout the organisation;

    b) Once key individuals did discover the true position they failed either to recognise that it was unusual or significant, or to ensure that other key individuals (both current and future) were told. There was no sufficient mechanism for ensuring that crucial information was not lost to subsequent appointees;

    c) There was a lack of clarity about who was ultimately responsible to the Board for POL's prosecutions. JE was clear that this was his responsibility as Company Secretary;[74] AL seemed less sure that this was her role and in any event considered that she reported in to the General

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[70] T 22/05/24 [89:9 – 89:20] **(INQ00001151)**, T 22/05/24 [89:9 – 89:20] **(INQ00001151).**

[71] See footnote 63 above. It was similarly suggested to PV that she must have understood the words "*we have prosecuted ...*" in a string of emails forwarded to her about a case (not originally sent from or to her) [**POL00158368**] to mean "*POL itself*" rather than another authority on its behalf. She was clear that that had not been her understanding T 22/05/24 [95:13 – 97:24] **(INQ00001151)**.

[72] PV1 § 234 to 236 **(WITN01020100)**.

[73] T 05/06/24 [57 :20 – 57 :24] **(INQ00001156)**.

[74] This would be the conventional role of the Company Secretary. See the Governance Experts' First Report on Governance dated 26 March 2024 **(EXPG0000006)** (§2.2.33 on internal p.29): "*A Company Secretary is an officer who is appointed by the company's directors to advise the board on all governance matters and codes. They will normally seek to ensure compliance with the company's legal obligations...*". It is difficult to see how a Company Secretary could fulfil this role unless the individual was ultimately responsible to the Board for POL's prosecutions which in turn meant that the Head of Legal needed to report to the Company Secretary on such matters.

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Counsel albeit that it was she (AL) who attended Board meetings. There was a real risk that the Board would not have adequate oversight of prosecutions which were having devastating effects on individual Postmasters; and

d) The result was that lines of accountability were unclear and not widely understood. That in turn meant that the prospect of holding executives properly to account was severely diminished.[75]

51. These failures meant that there was a real risk (even an inevitability) that the prosecutorial function was not being properly supervised or considered at a senior level.

(ii) Matters identified by CTI as not having been disclosed to Lord Arbuthnot (June 2012)

52. One of the earliest responses by POL to the emerging scandal was at the meeting on 18 June 2012 between Lord (James) Arbuthnot ("LA"), AP, PV, Angela Van Den Bogerd ("AVDB") and AL. The minutes of that meeting record that PV told him that (i) "*the Horizon System is very secure*", (ii) "*Every case taken to prosecution that involves the Horizon system thus far has found in favour of the Post Office*" and that (iii) "*there has not been a case investigated where the Horizon system has been found to be at fault*".[76] When giving evidence to the Inquiry CTI asked LA if he had been made aware at that meeting of 18 separate issues,[77] being:

a) Civil and criminal cases: The case of Julie Wolstenholme, who ran the Cleveleys Post Office; (ii) the expert report of Jason Coyne ("JC") which was served in that case; (iii) the case of Lee Castleton; (iv) the obtaining of the report from BDO Stoy Hayward, which found errors in the operation of the Horizon System; (v) the acquittal of Maureen McKelvey by a jury in 2006;[78] (vi) the acquittal of Susan Palmer ("SP") by a jury in 2007; and (vii) the jury question raised in SP's case to the effect of "*what was she supposed to do if she did not agree with the figure in Horizon"*.

b) Bugs, Error and Defects: (viii) Callendar Square / Falkirk Bug (operative between 2000 and 2006);[79] (ix) Receipts and Payments Mismatch bug (operative in 2010); (x) Suspense Account Bug (operative between 2010 and 2013); (xi) Dalmellington Bug (operative since 2010);[80] (xii) Remming in Bug (operative in 2010);[81] (xiii) Remming out Bugs (operative in 2005 and 2007); (xiv) Local Suspense Account Bug (operative in 2010); (xv) Reversals Bug (operative in 2003); (and xvi) Giro Bank Discrepancy Bugs (operative in 2000, 2001 and 2002);

c) Other matters: (xvii) Previous consideration given by POL (/ POCL) to commissioning an independent expert review and POL's decision not to do so, in particular (a) in December 2005; and (b) in March 2010, where the decision was "*seemingly on the grounds that it might be*

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75 As the Governance Experts remark in their First Report dated 26 March 2024 (**EXPG0000006**) at §1.1.3 on internal p.8: "*The underlying question guiding corporate governance developments is: who is most likely to hold Executives to account and, if necessary, replace them, if they are found to be ineffective, incompetent, negligent or single mindedly self-interested, and thereby, jeopardising the company's assets and the owners' investment*".

76 **JARB0000001**.

77 T 10/04/24 [42:13-46:1] (**INQ00001127**).

78 CTI erroneously suggested that this acquittal was in 2004.

79 Fraser LJ found it to be operative in 2010, per the Horizon Issues Judgment (HIJ) - Technical Appendix §150 (**POL00022841**).

80 POL was not notified of the Dalmellington BED until late 2015. More specifically, it appears the first call to the NBSC was on 08/10/15 (see §2.5 of **POL00153765**), and the earliest any of VP, AL, AP or AVDB were aware is that FJ provided a presentation to AVDB on 09/12/15 (per the reference to "*The presentation Pete PN supplied to you last Friday*" in the email of 16 December 2015 at **POL00323428**). Hence this BED could not have raised with LA in 2012. So, whilst CTI's statement that it was "still operative at the time of the meeting" is factually correct, the implied greater criticism of POL's failure to disclose it to him is misplaced.

81 CTI asserted that that all of matters (xii) to (xvi) had been "*discovered and notified to the Post Office by this time*". T 10/04/24 [43:20 – 43:25] (**INQ00001127**). This would be accurate only in the technical sense that there may have been a PEAK to KEL seen by those at POL working with the SCC.

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disclosable in criminal proceedings";[82] (xviii) problems with ARQ data & whether those issues should be revealed to criminal courts who are hearing criminal charges against Postmasters based on ARQ data.[83]

53. The purpose of this line of questioning may safely be inferred to have been in order to set up POL for criticism for not having brought any or all of the 18 matters to LA's attention. However, two important points arise in that context.

54. First, for the reasons set out at §9 to 12 above, whilst it could in principle be suggested that POL as a corporate body should have informed LA about all or some of the 18 matters above, whether any individual who attended the 18 June 2012 meeting could reasonably and fairly be criticised for not having done so depends entirely on their own personal state of knowledge at the time.

55. Secondly, as a matter of fact, based on the contemporaneous documents available, there is no evidence that by 18 June 2012 (and for some time thereafter), any of AP, PV, AVDB or AL knew about any of the 18 matters put to LA by CTI save that:

    a) AP had been sent a briefing note which referred to the Castleton case on 12 March 2012[84] and a further briefing pack dated 22 March 2012 (which included the Computer Weekly article dated 11 May 2009 featuring the Castleton case) on 26 March 2012,[85] and the Ismay Report (which referred to both the Wolstenholme and Castleton cases)[86] on 27 March 2012;[87]

    b) AL had been sent the briefing pack dated 22 March 2012[88] and the Ismay Report[89] on 26 March 2012; and

    c) AVDB had been sent the Ismay Report in December 2010.[90]

56. Whilst PV's PA was copied into the email of 27 March 2010 to AP's PA attaching the briefing pack and Ismay Report, there is no direct evidence that PV was sent the Ismay Report or the March 2012 briefing pack prior to the 12 June 2012 meeting, or at all whilst CEO.[91]

57. It follows that the only types of criticisms that could, in principle, be made of any of the four POL attendees would be that (a) insofar as they had seen the Ismay Report they ought to have realised that the Castleton and Cleveleys cases were matters which they ought to have brought to LA's attention; and/or (b) in respect of matters of which they were *not* aware, they ought to have taken steps which would have ensured that they *were* aware of all or at least some of the 18 matters prior to the 18 June 2012 meeting.

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[82] Given that the outcome was the Ismay Report, which was circulated relatively widely, it is difficult to see why AP, AL, PV and/or AVDB ought to have known anything about the process by which its commissioning had come about.

[83] It is not entirely clear why it is suggested that AP, AL, PV and/or AVDB should have known about ARQ data. It was not until exchanges between AVDB, Helen Rose ("HR") and JG in January and February 2013 that it became apparent (at least to POL) to the effect that the data contained in ARQ requests was not fixed and the 'standard' ARQ request did not contain all relevant data (**POL00144296**).

[84] In anticipation of an earlier meeting between her and LA on 13/03/12 (**POL00179438**). The briefing note stated: "*The integrity of Horizon has been the subject of legal challenge. In the case of Post Office Ltd v Castleton, the Court ruled that the losses claimed were real deficiencies and that the Horizon system provided irrebuttable evidence that Mr Castleton had failed to properly manage the branch.*"

[85] **POL00137237** ; **POL00029476**.

[86] **POL00029475**.

[87] **POL00413531.**

[88] **POL00179515**.

[89] **POL00338796.**

[90] Email of 5 December 2010 (**POL00088956**). AVDB could not recall receiving the report, but assumed "*I would have been reassured by its content at the time*" T 25/04/24 [40:19 – 40:21] (**INQ00001136**).

[91] This is consistent with PV's evidence was that when she saw that document in preparation for the Inquiry it "*seemed a surprise to me and I don't – I haven't seen any documentation to say that I received it*". T 24/05/24 [12:6 – 12:10] (**INQ00001153**).

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58. On (a), POL submits that whilst the Ismay Report itself is clearly open to criticism, there is no basis for criticising AP, AL or AVDB for not having informed LA[92] about those cases. On Cleveleys the report stated in terms that the reason for settlement was the lack of audit transaction logs to refute the claim and "*this case would not have the same outcome today because of improved liaison between Fujitsu and POL and availability of logs*".[93] On Castleton, the report said that once POL had presented the audit transaction log to his solicitor, he "*promptly advised Castleton there was no basis to his case. Castleton sacked him, lost the case, was found liable for £300k and went bankrupt. The judged decided there was 'no flaw' in the Horizon system*".[94] Whilst POL does not seek to suggest that this was a fair characterisation, there is no reason at the time why any of AP, AL or AVDB would have thought, based on this report, that there was any issue with these cases that ought to have been raised with LA.

59. As to (b), POL submits that there is a limit to which the POL attendees could reasonably be criticised for not making further enquiries about the particular 18 matters, and pressing those who briefed them, at that stage. Such documents as had been provided to AP and AL in March 2012 were reassuring rather than otherwise, as had been the Ismay Report (wrongly), and there is no obvious reason why they would have doubted what they were being told. For example, there was no reason for them to have sought information as to whether there had been any acquittals in cases relying on Horizon in circumstances where (i) the Ismay report had expressly stated that the only acquittal since 2005 had nothing to do with any Horizon challenge[95] and in any event (ii) as a criminal jury does not give reasons for an acquittal it does not follow from the fact of an acquittal that the jury thought that there was any issue with Horizon.[96] Moreover, it needs to be borne in mind that the information was not presented to the attendee in that way at the time and that instead the information came to them over time and diffusely i.e. often as part of general information on a wide range of subjects. AP put it well in the context of a comment made by the auditors at the time of her joining: "*I think that I just had not --I hadn't weighed the Angus Grant comment, which was made in September, in that -- in my mind, in the way in which it is now being -- that you are -- obviously, I can see why you're asking these questions but it is as though we're describing something that was happening in a short space of time and it was the only issue on the table. And I think what I am wanting to try and explain is that I was, over that period, receiving the most enormous quantity*

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92 Or suggested to PV that she should inform LA.

93 **POL00029475** at p.17. Also relevant to the suggestion that LA should have been informed about JC's report in the Cleveleys case, the Ismay Report stated that: "*the defence produced a report which showed how Horizon "could" have caused an error and POL did not have the audit transaction logs to refute the claim*." As such, no reader could reasonably have been expected to have sought to make further enquiries or consider it relevant to the meeting.

94 *Ibid.*

95 "S*ince 2005, which was the start of the existing case management system, there have been 382 Criminal Law cases forwarded for legal advice of which 230 proceeded to court. Of those 169 have been found guilty and 18 defendants cautioned. Of the remaining 43, 1 was found not guilty but this was nothing to do with any Horizon challenge and 42 cases were not carried forward. There is no suggestion in any of these 42 cases that POL had any concerns itself about Horizon – the decisions not to proceed included compromised passwords preventing a case against an individual, "not in the public interest" such as where there were medical issues, decisions by the Procurator Fiscal not to proceed (which he needed not narrate) and inability to identify the suspect.*" **POL00026572** at p.17. POL accepts that this statement was wrong, because it did not include the cases of Maureen McKelvey and Susan Palmer (both occurring after the start of the then-existing case management system in 2005, unlike the case of Nicola Arch); this may have been an error on the part of RI or in the case management system, but either way it was regrettable.
In this context the Inquiry has heard evidence from Tony Marshall ("TM") suggesting that where there was an acquittal a solicitor in Legal Services would prepare a report, together with the barrister instructed, that would come back to the Head of Investigations, and that if a defendant had raised any Horizon issues in his or her defence, that would have been reported to POL and the would have known that was the basis of the defence, including (The Chair's words) people "up the chain" T 05/07/23 [62:25 - 65:3] (**INQ00001068**). However, no such reports have been identified, either in the PCDE conducted for the purposes of the criminal trials, or in the disclosure exercises conducted for the purposes of the Inquiry, and no other witness has given evidence about any such process.

96 On the facts of Palmer and McKelvey it is far more likely that the jury simply concluded that they could not exclude the possibility of the Postmaster making a genuine error rather than acting dishonestly. See e.g. DAKC2 at §235 (**EXPG000004R**).

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of new information about all kinds of very complex and fraught issues to do with the separation from Royal Mail and the future strategy for the Post Office and I just didn't hold these strands, that do all come together, of course they do, and of course I see that now, but I was not holding those strands at the same time in my mind and bringing them all together in the way that I obviously now wish that I had."[97]

60. However, POL fully recognises that criticisms could properly be made of its structures and systems more broadly, which failed to capture and collate at least a critical mass of the matters that could and should have prompted POL to investigate further much earlier.[98] In particular, AP, PV, AL and /or AVDB ought to have been informed sooner about BEDs.[99]

(iii) Key Advices

61. A potentially related issue to POL's approach to privilege is its approach to the sharing of significant legal advice with the Board and/or senior executives, which may have (at least in part) reflected its concern not to lose privilege in legal advice. POL submits that, as a matter of good governance in principle: (i) when legal advice is being communicated to a board it is not necessary for the full, written advice to be provided in every case; but, crucially, (ii) such information as is communicated (whether in writing or orally) should fairly and accurately reflect and summarise the underlying advice. This accords with the view of the Governance Experts that relevant information can and should be communicated to the board *"without crushing [them] with masses of information which does not require the Board's attention, or too much detail on the matters with which the Board should deal*"[100] and that they would expect the Chair to summarise key advices and then provide them to the board. [101] It follows that the relevant question is not e.g. "*did you ever see the 1st Clarke Advice?"* but "*were you ever informed of the substance of the 1st Clarke Advice?"*[102]

62. The substance of the 1st Clarke Advice [103] was provided to Hugh Flemington ("HF"), Susan Crichton ("SC") and Jarnail Singh ("JSi") by Rodric Williams ("RW") on 12 July 2013[104]. SC "flagged" the advice to PV,[105] who recalled that SC told her that, as a result of advice given by an external lawyer, POL had to commission a review to ensure that proper disclosure had been given for prosecutions,[106] and that Lesley Sewell ("LS") had told her that the expert witness that POL had used in criminal cases had failed to mention that there were bugs in Horizon (although the bugs were irrelevant to the cases in which the witness had given evidence).[107] However, there is no

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97 T 05/06/24 [57:12 – 58:5] **(INQ00001156).**

98 See also §§83 – 85 of POL's Phase 4 end closing submissions concerning governance issues arising from the handling of the Cleveleys and Castleton cases, in which from 2005 there appears to have been more co-ordinated understanding and approach to cases involving challenges to Horizon than previously understood, but the issues arising from them did not appear to have been raised at that time with the Board or any executive group below Board.

99 For example, AW, AS, RW, Antonio Jamasb ("AJ") and other relatively senior employees at POL were aware of the Receipts and Payments Mismatch BED PM / 62 Branch Anomaly for more than a year before AP, PV, AL or AVDB appear to have been made aware. On 11/11/10, AJ says "*I have a conference call on Monday with senior stakeholders within POL. I need a full update on Receipts and Payments…[I need] a summary from Fujitsu stating why we have no other integrity issues with Horizon and why we couldn't see this issue*" (**FUJ00081214**). In February 2011, Fujitsu put together a report which RI says "*will assist in an explanation of the issue to senior management, and, if necessary, the press*" (**FUJ00081542**). LS1 (**WITN00840100**) suggests that she knew of RPM in 2010 [§17] and that there was some specific communication mechanism between her and the Executive level about 'P2s' (i.e. incidents involving Horizon which included Local Suspense and RPM) [§19].

100 Second Governance Expert Report at §58 (**EXPG0000010_R**).

101 T 13/11/24 [16:22 – 17:14] **(INQ00001207).**

102 See §207 to 231 below on the position in relation to the post-conviction disclosure. The obligation is not to disclose a particular document but the relevant information.

103 **POL00006357**.

104 **POL00191966** and **POL00191967**.

105 T 23/04/24 [126:14 - 127:8] **(INQ00001134).**

106 T 23/05/24 [6:18 - 10:9] **(INQ00001152).**

107 SC1 (**WITN00220100**) §563.

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evidence that the 1st Clarke Advice, or its substance, was shared with the Board at the time[108] which is consistent with SC's evidence that it was not general practice to circulate advice received from Counsel to the Board or generally within POL outside of the POL Legal Team,[109] only a summary of that advice "*as it related to the Board ... or the business"* and SC accepted that she should have put a process in place to ensure the Board was made aware of the substance of key advices.[110]

63. This was a serious failure of governance; the significance of the 1st Clarke Advice ought to have been clear to the POL Legal Team, and ought to have been communicated to the Board, whether in substance or in its original version. However, this appears to have arisen from a collective failure to recognise its true significance, or inadequate processes for information sharing: rather than any deliberate attempt to prevent the 1st Clarke Advice being considered by the Board, it was a series of governance failures.[111]

64. SC subsequently prepared a Significant Litigation Report for the Board in September 2013[112] (reiterated in subsequent Board meetings) which informed the Board that: (i) POL was reviewing past and present prosecutions to ensure that POL continued to satisfy the evidential, public interest, and disclosure standards required[113] and (ii) that POL was not issuing any new criminal summons pending the instruction of a new, independent expert who could give evidence to support the Horizon system. The process of identifying this expert was noted as being underway. Whilst the reason for these steps being taken was not provided explicitly by reference to the 1st Clarke Advice, the Board was at least kept informed about there being a need to instruct a new expert (and, by implication at least, issues with the old one), and that there was a process underway for determining whether POL had fulfilled its disclosure obligations (and by implication, the risk that it had not done so). However, the Board should not have been left to infer what the problem may have been, not least as that did not enable them to reach their own view of its significance and the adequacy of the steps being taken as a result.

65. Two further pieces of external advice illustrate the issues further. First, the "Horizon Risks Advice Note" drafted by WBD dated 23 August 2013.[114] The Note identified risks to POL as including civil risk as well as criminal/civil crossover claims in the event that a conviction was unsafe and

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[108] AL said that she did not see it at the time (AL1**WITN00580100** §§235-236) and contemporaneous correspondence indicates that the dissemination of both Clarke Advices was very limited (see **POL00297761** between SC, RW, HF and APa). However, it appears that the substance at least of the 1st Clarke Advice was more widely disseminated and CA's evidence was that issues with GJ were "*common knowledge*" within POL by that time (**T** 24/04/24 [132:6 - 132:25] **(INQ00001135)**.

[109] SC1 at §258 **(WITN00220100)**.

[110] T 24/04/24 [13:13 – 13:23] **(INQ00001135).**

[111] The treatment of SCl's advice dated 02/08/13 ('the 2nd Clarke Advice' concerning POL's duty to record and retain material: **POL00006799**) was equally unsatisfactory, but for slightly different reasons. Whilst SC accepted that it (or its substance) should have been provided to the Board (T 24/04/24 [8:24 - 14:6] **(INQ00001135)**); the more fundamental failure was that POL failed to take adequate steps to investigate the serious allegation that John Scott ("JS") (POL's Head of Security) had intended to destroy evidence. Whilst RW and SC were aware of its importance (RW having drafted an email for SC to send to the Head of Advocacy at CK, giving assurances as to POL's intentions to continue to hold Horizon calls and to conduct its business in an open, transparent and lawful manner (**POL00193605**), RW could not recall if he had carried out any sort of investigation into the substance of the allegations nor whether he had talked to SCl or JSi about them(T 19/04/24 [140:3 - 143:12] **(INQ00001133)**). SC recalled speaking to JSi, SCl and MS and thought that she spoke to APa and JS about it, but couldn't recall when (T 23/04/24 [171:8 - 172:4] **(INQ00001134)**). JS's evidence was that he did not admit to SC that he had sent out instructions to shred documents and did not know where she might have got that idea from (T 11/10/23 [78:10 – 78:22] **(INQ00001195)**), and that he was never criticised or disciplined (JS1at §120 **(WITN08390100)**). In any event, PV's evidence was that she was not aware of the 2 nd Clarke Advice at the time and that SC simply told her that an external lawyer had criticised JS for directing that discussions at weekly meetings should not be recorded in minutes (T 22/05/24 [9:19 – 9:22] **(INQ00001151)**) and (T 22/05/24 [73:1 - 73:25, 74:5] **(INQ00001151)**). This would represent a significant downplaying of the issues, if accurate, and failed to engage with the broader issue of what had actually happened, and the appropriate consequences if the allegations were found to be true.

[112] Significant Litigation Report December 2011 **(WITN00740106)**.

[113] This characterisation of the question asked is an obvious example of the effect of confirmation bias.

[114] **POL00112856**. See §76 below on the privilege issues in relation to this document.

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later overturned by the criminal courts. It concluded that POL is in a "*highly contentious situation*" and could find itself open to litigation from a "*number of different sources*".

66. Andrew Parsons ("APa") subsequently suggested in March 2014 that the note *"had the dual purpose of advising the board (its contents were later reflected in a board paper*"[115] (as well as acting as notification to POL's insurers). However, there is no evidence that the note itself was ever shared with the Board,[116] or that it was later summarised for it (as suggested by APa).[117] The omission of this crucial part of the advice[118] may to some extent explain (but certainly does not excuse) why POL appears not to have focused on the real risk of convictions being overturned and claims for malicious prosecution as a result at an earlier stage. That is a significant governance failing.

67. The second piece of external advice is the Deloitte 'Project Zebra' report. Chris Aujard ("CA") stated that he reviewed this report but did not read it in its entirety, his main concern being "*to answer the Board's request for a readily digestible, simple report that they could read*" and the report itself was, in his opinion, too lengthy, detailed and technical to fit that brief.[119] He agreed that the detailed and technical nature of the report should not have stopped someone in the business reading it in full,[120] but his recollection was that numerous people had reviewed the report, including RW "*who had carriage of sort of the detail of this report* (sic)".[121] He accepted that, on reflection, the summary produced for the Board was too abridged, and regretted that he did not (based on the documents) appear to give a fuller briefing to the Board on remote access issues and cited intense time pressure and pressure from PV, although he thought it "*highly likely*" that he discussed the Board Briefing with PV and/or AP.[122] He also accepted that the report ought to have been shared with CK and that, although he could not recall whether he did in fact take those steps, it would be "*a matter of absolute deep regret*" if he did not.[123] There is no evidence of a deliberate attempt to prevent the information from reaching Board level, but this is a further example of highly relevant information not reaching the Board, not with any actual intent to keep such information from them but because the significance of such information was apparently not understood.

(2) POL's Use / Understanding of Privilege

68. POL's general practice not to share significant legal advice with the Board and/or senior executives, may have arisen (at least in part) from a concern not to lose privilege in legal advice by over-sharing. POL's approach to legal privilege during the relevant period has, rightly, come under close scrutiny, particularly in relation to four areas: (i) the October 2011 advice from RMG solicitor Emily Springford ("ES"); (ii) advice given by APa; (iii) approach to privilege in the Initial Complaint Review and Mediation Scheme ("ICRMS"); and (iv) advice in relation to the Swift Report.

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[115] **POL00021991**.

[116] APa accepted in oral evidence that he could not find any record of the note going to the Board (**T 13/06/24 [66:2 - 66:25, 67] (INQ00001160)**) and Chris Day ("CD") (**T 04/06/24 [144 - 147:1-2] (INQ00001155)**), AL (**T 21/05/24 [153:22 - 25, 154, 155:1 - 6] (INQ00001150)**) and AP all denied seeing the note at the time (**T 05/06/24 [177 - 180:11]**) **(INQ00001156)**.

[117] **T 13/06/24 [82:19 - 23] (INQ00001160)** - "*I think in the week or two before* [the Horizon Risks Advice Note] *I had provided Post Office with an email of advice on directors' duties and, looking back now, I wonder if I got those two points confused.*"

[118] **POL00021996**, **POL00112856**. A separate issue arises from the fact that the notification as sent to the insurers simply stated that "*It is of concern to* [POL] *that the expert evidence of one prosecution witness,* [GJ], *may have failed to disclose certain problems in the Horizon system potentially relevant to a case.*" By contrast, the document provided by APa to POL in March 2014, for the purpose of onward transmission to Linklaters in order to obtain legal advice, was an earlier draft which contained the more accurate statement that "*the expert advice of one* [POL] *witness,* [GJ] *may have failed to disclose certain historic problems in the Horizon system*".

[119] T 24/04/2024 [129:5 - 129:20] **(INQ00001135).**

[120] T 24/04/2024 [130:6 - 130:12] **(INQ00001135).**

[121] T 24/04/2024 [130:13 - 132:5] **(INQ00001135).**

[122] T 24/04/2024 [143:24 - 147:3] **(INQ00001135).**

[123] T 24/04/2024 [131:6 - 132:5] **(INQ00001135).**

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(i) 20 October 2011 advice from ES

69. Following receipt of four letters of claim from former Postmasters making allegations about training, support and the Horizon system itself, on 20 October 2011, ES emailed a number of senior RMG and Post Office staff on the subject of *"JFSA Claims- disclosure and evidence gathering"*.[124] The first part of that email concerning document preservation is unimpeachable; it is the second part on document creation that gives rise to issues. The starting point was the statement that staff "*should ... think very carefully before committing to writing anything relating to the above issues which is critical of our own processes or systems ... We appreciate that this will not always be practicable, however."* This is followed by advice on steps to be taken in order to maximise the chances of privilege attaching to a document (i.e. a document containing critical comment on POL's processes of systems), and therefore not being disclosable, which included: *"If the dominant purpose of the communication is not to obtain legal advice, try to structure the document in such a way that its dominant purpose can be said to be evidence gathering for use in the litigation*".

70. The genesis of the substance of the email appears to have been the first meeting of "Steering Group 1" on 14 October 2011, chaired by Rod Ismay ("RI"), set up in response to the receipt of the four letters before action. That meeting was attended by, amongst others, ES and another member of Legal Services, RM. The minutes record that "*All parties must be very careful to preserve all documents which may be relevant to the claims, and to take steps to ensure that any new documents which may undermine POL's legal case are privileged. Advice is to be sought from Legal Services in case of any doubt."* One of the 'actions arising' (for all) was "*correspondence to be marked "Legally Privileged and Confidential" and copied to Rebekah or Emily in Legal"*.[125] It is therefore unclear who first proposed the adoption of the approach to legal privilege in the way subsequently set out in the 20 October 2011 email.

71. What is surprising, and unfortunate, is that neither of the more senior lawyers who were copied into the 20 October 2011 email, HF, Head of Legal in the RMG Post Office Legal Team, and SC (Head of Legal) appear to have identified the issues arising from the problematic elements of the 20 October 2011 email. HF acknowledged in his witness statement that he had received that email but said he had no specific recollection of it.[126] He was not asked about his views or response to it when he gave evidence. SC did not refer to the email in her witness statement, nor was she asked about it when she gave evidence. It is therefore unclear why the problematic elements were not identified at the outset. None of the other recipients[127] were legally qualified so it would have been reasonable for them to have relied upon legal advice from a qualified lawyer without questioning its accuracy or correctness. In turn, as requested by ES, they shared her email with members of their teams who, equally, were entitled to rely upon it.

72. The real issue is the extent to which, as it was put to AVDB, "*from 2011 onwards*… [POL sought] *to use claims of legal professional privilege as a tool to cloak communications in privacy*?"[128]. Whilst AVDB "*didn't think so at the time*"[129], "*from the information I've seen as part of this process, then I think there's -- there was a tendency to do that*"[130]. POL would, regrettably, agree with that analysis.

73. Perhaps the clearest example was the treatment of the assurance review entitled "*Review of Key System Controls in Horizon"* undertaken by RMG Internal Audit & Risk Management in early 2012.[131] The draft report (dated February 2012) was marked "legally privileged and strictly confidential" on every page, yet there is nothing in the document itself which points to it being

[124] **POL00176465**.
[125] **POL00363235_007**.
[126] HF1 at §68 (**WITN08620100**).
[127] AVDB, LS, Mike Granville, DP, DS, MY, KG, CD, Sue Higgins and JS.
[128] T 25/04/24 [26:21 - 27:1] **(INQ00001136).**
[129] Or indeed at the time of making her statement, in which she denied that POL had used privilege to try and prevent the disclosure of documents: AVDB1 §71 **WITN09900100**.
[130] T 25/04/24 [27:5 - 27:7] **(INQ00001136).**
[131] **POL00029114**.

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privileged and there is no evidence of SC or any other lawyer having had any role in its commissioning or production.[132] How it came to be marked up in that way appears to have been the result of a discussion at the Board meeting on 12 January 2012 at which a NED asked for assurance that there was no substance to the claims brought by Postmasters which had featured in Private Eye. The minutes record: *"Susan Crichton explained that the subpostmasters were challenging the integrity of the Horizon system. However, the system had been audited by RMG Internal Audit with the reports reviewed by Deloittes. The audit report was very positive. The Business has also won every criminal prosecution in which it has used evidence based on the Horizon system's integrity."*[133] The action identified was: "*Susan Crichton suggested that she clear the audit report with the external lawyers*[134] *and if it is possible to give the report privileged status it would be circulate it* [*sic*] *to the Board."*[135] This clearly reflects a fundamental misunderstanding of the nature of privilege, which cannot be retrospectively applied,[136] as well as a concerning approach to governance (that a document was required to be characterised as privileged in order for it to be shared with the Board). However, it is, regrettably, consistent with the approach to privilege in the 20 October 2011 email.

(ii) Andrew Parsons' Advice

74. The Inquiry has been taken to a number of occasions on which APa advised POL to invoke legal privilege as, it has been suggested, an (impermissible) shield against disclosure.

75. APa has repeatedly denied giving the advice credited to him at the first weekly Horizon meeting on 19 July 2013 in the terms suggested:[137] specifically, he disputes its characterisation *as "if it's not written down it's not disclosable"* advice[138]. However, APa acknowledged having advised POL, just 10 days later on 29 July 2013, not to record in writing to its Insurer that there were issues with Horizon,[139] but rather to arrange for verbal notice to be given to insurers "*so as not to leave a paper trail*"[140] with the explicit instruction to "*make expressly clear* (to the insurers) *that the notification is subject to litigation privilege*" with a view to avoiding disclosure obligations arising under the

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[132] The audit was apparently requested by LS, POL Head of IT & Change T 16/05/24 [128:2 - 128:8] **(INQ00001148)**. It appears from an email from ES (21/10/11) that "*the instructions [had] been framed as a request for information in order for [POL's] legal team to provide legal advice*" in an attempt to ensure that its audit was privileged: **POL00460640**. POL is not aware of any contemporaneous document setting out any such instructions, nor of any legal advice subsequently given by POL's legal team in respect of the internal audit.

[133] **POL00021503**.

[134] It is not known who the external lawyers were, but it is safe to assume it was WBD.

[135] It appears from APa's evidence that the Review in its finalised form (marked throughout as "*legally privileged and strictly confidential*") was provided at least to her at some point after March 2012 T 05/06/24 [37:5 - 38:14] **(INQ00001156).**

[136] The general position is that an unprivileged document cannot be turned into a privileged one after it has been created. There is a narrow exception to this in that in certain circumstances a copy of a pre-existing unprivileged document obtained by a solicitor from a third party for the purposes of litigation is privileged from production in the action for which it is obtained, even though the original is not privileged (see *The Palermo* (1883) 9PD 6 – **RLIT0000461**) but this is not relevant here.

[137] See **POL00083932** minute of "Regular Call re Horizon Issues". APa is credited with suggesting there is a "*need to limit public debate on the Horizon issue as this may have a detrimental impact on future litigation*"; separately on the question of emails, written comms, APa is recorded as suggesting "*if it's produced it's then available for disclosure, if it's not then technically it isn't*". APa suggested in his oral evidence that this was "[not] *a verbatim record of what was said*" (T 13/06/24 [39:1 - 39:2] **(INQ00001160)**); he did not agree that it his comments might be interpreted as "*advice that people shouldn't be writing things down*" **(T 13/06/24 [39:13 - 39:15] (INQ00001160))**. This was subsequently characterized – and condemned – by CK as advice that if matters were not minuted, they were not in the public domain and therefore not disclosable **(T 13/06/24 [40:15 - 40:20] (INQ00001160))**. When pressed, APa continued to deny that the minutes accurately recorded his advice (T 13/06/24 [49:21 - 50:8] **(INQ00001160).**

[138] See SC's evidence: T 09/05/24 [97:20 - 97:22] **(INQ00001144)**. POL notes that, APa's advices and views notwithstanding, the weekly Horizon meetings were in fact recorded and minutes taken.

[139] T 13/06/24 [42:10 – 42:25] **(INQ00001160)** albeit that he denied the similarity between this advice & the 19 July advice: T 13/06/24 [45:9 - 46:13] **(INQ00001160).**

[140] T 13/06/24 [43:16 - 44:3] **(INQ00001160).**

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Freedom of Information Act 2000.[141] Whilst he acknowledged that "*litigation privilege only applies where 'litigation' is actually contemplated, not where there is just the risk of a hypothetical claim… we have arguably not reached the stage of contemplated litigation, rather we are just dealing with hypotheticals"* he went on to advise that *"Nevertheless, we would rely on Alan Bates' comment that he is aware of SMPRs lining up claims against POL's directors as evidence of contemplated litigation*".[142]

76. POL's insurers were eventually notified in writing by WBD, in the Horizon Risks Advice Note, that there was "*a growing number of accusations from subpostmasters that the Horizon system is unreliable*".[143] The notice was headed "*confidential & legally privileged; common interest privilege; litigation privilege*" and drafted in such a manner, CTI has suggested, that it was *"designed to look like legal advice…[in] an attempt to cloak it in privilege, thereby not disclosing it"*.[144] APa denied this suggestion.[145]

77. CTI also put to APa that, in the context of transactions raised in the midst of the GLO, APa attempted to *"blanket"* information in privilege to avoid its being disclosed.[146] On that point, and in respect of his advice generally:

a) The Inquiry is reminded of the evidence of RW: that while he was consulted with or informed of certain decisions about privileged documents, this was infrequent and for the most part, issues of privilege or disclosure were managed by POL's external legal team;[147] and

b) POL regrets any occasion on which it was advised, erroneously, that material was privileged when in fact it was not and accepted that advice. It accepts responsibility for any failures of scrutiny on the part of its own internal legal advisers in this regard.[148]

(iii) Privilege in the ICRMS

78. POL initially provided Second Sight Limited ("SSL") full access to case files, including privileged material, as part of the first phase of their investigation (that is, up to the Interim Report on 8 July 2013), subject to an undertaking dated 19 October 2012 that SSL agreed that POL did not waive privilege over that material.[149] POL, however, changed approach during the second phase of SSL's investigation (i.e. during the ICRMS) by removing or redacting certain information from case files on the basis that it was privileged.[150]

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[141] **POL00145716**.
[142] The Inquiry has also seen evidence of presentations given by APa in October 2013 which characterise legal privilege as being "*vital to success*"(**POL00022002**).
[143] **POL00112856**.
[144] T 13/06/24 [67:6 - 68:22] **(INQ00001160).**
[145] T 13/06/24 [70:9] **(INQ00001160).**
[146] T 13/06/24 [190:19 - 191:5] **(INQ00001160)**. As a further example, see **WBON0000467** an email drafted by APa's colleague APr for the attention of RW on 05/10/16. It is amended by APa to include a paragraph "*for now, we'll do what we can to avoid disclosure of these guidelines and try to do so in a way that looks legitimate*." APa acknowledged the regrettable wording in his witness statement **WITN10390200** §413.
[147] RW1**WITN08420100**, §§195-6.
[148] POL's former Head of Security, JS, provided evidence as part of Phase 4 to the effect that POL General Counsel, SC, "*tasked*" him with "*limit[ing] the manner and circulation of notes of [Horizon issues] meetings*", albeit that, as he acknowledged, "*when it transpired that this was considered not to be the appropriate course, corrections were quickly made.*" **(WITN08390200** §35**)**. SC has explicitly denied suggesting that information or discussions should not be recorded (T 23/04/24 [171:56 - 171:7] **(INQ00001134)**).
Asked about JS's suggestion that she "*wanted things covered by legal professional privilege*" (JS's evidence as paraphrased by CTI (T 23/04/24 [164:12 - 164:32] **(INQ00001134)**) SC confirmed that "*there was a view from the civil litigation lawyers on the [Horizon weekly conference] call that they wanted to try to protect information by legal privilege*" but maintained that she "*left that to the civil litigation lawyers that were on the call*" T 23/04/24 [164:04 - 164:16] **(INQ00001134).**
[149] RW1 §46 **WITN01050100**; IH1 §42 **WITN00420100**; **POL00182434**; **POL00182438**; **POL00025726**.
[150] **POL00151094**.

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79. According to an email sent by RW to Melanie Corfield copying in various others on 3 February 2015, POL's rationale for the change of approach was:[151]

a) POL was entitled to assert privilege over privileged material where it had not been waived;

b) There was an increased risk of losing privilege during the ICRMS as material was shared more widely than SSL (that is, to applicants, their advisors and JFSA);

c) That risk arose in the context of a formal ADR scheme, with a real threat of litigation to follow if matters were not resolved, and the involvement of the CCRC;

d) SSL's request to see all *"legal"* documents was too broad;

e) Matters of law were outside SSL's expertise as forensic accountants such that there was no need for them to analyse POL's legal advice; and,

f) SSL, in any event, did not need to see POL's legal advice to discharge their function (that is, determining as a matter of fact what had caused shortfalls).

80. The evidence suggests the change of approach was driven, in part, by POL's reaction to the adverse findings which SSL had made in their Interim Report, in particular the concern expressed by the Board on 16 July 2013 that the *"business had not managed the Second Sight review well"* and the stress it placed on *"the need for better management"* going forward.[152] The evidence also suggests that it was, in part, a consequence of the approach advised by POL's external legal advisors, specifically APa[153] (on civil disclosure issues) and Brian Altman KC ("BAKC")[154] and CK [155] (on criminal disclosure issues).

81. POL accepts that it will rightly be criticised for the change of approach, which undoubtedly represented a more adversarial approach than that which it had adopted during the first phase of SSL's investigation. The change was not consistent with the terms POL had agreed with SSL and JFSA as to the conduct of SSL's investigation in the 'Raising Concerns with Horizon' document, which essentially stated that SSL could have access to unrestricted information provided it was relevant and in POL's control,[156] and there is also no evidence that POL informed SSL and/or JFSA at the outset of the ICRMS that it intended to take a different approach.

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[151] **POL00151094**.

[152] Minutes of Board meeting on 16/07/13: **POL00021516**, p.6, POLB 13/63(c). See JS's email to SC, RW and others dated 22/07/13 with the subject line "*Protection of Commercially Sensitive and/or Legally Privileged Information*", which reveals that POL had conducted a review *"in respect of commercially sensitive and/or legally privileged information, in particular with the management and exchange of information subject to the Second Sight review"*: **POL00142323**. It is unclear precisely what that review entailed. SC said that she could not recall any discussion with JS in relation to protecting sensitive or privilege information: T 23/04/24 [154:16 - 156-9] (**INQ00001134**). RW said that he was unaware of the review or what had triggered it: T 18/04/2024 [123:19 - 123:22] (**INQ00001132**). Nonetheless, given its timing, it appears likely to have been a reaction to the Interim Report.

[153] See, for example, APa's presentation to the Project Sparrow Committee dated 08/10/13 on the ICRMS which stated "*Legal Privilege = vital to success*": **POL00022002**.

[154] BAKC advised in conference on 09/09/13 that considerable caution needed to be exercised in mediating cases involving convicted Postmasters. His concern was that lawyers acting for those individuals would use the ICRMS to obtain information they would not ordinarily be entitled to pursue an appeal. He advised that it was vital that POL and CK took control over all the information disclosed and that CK audited all the information being sent out to individuals: **POL00006485**. While this did not specifically address the provision of privileged material, the advice clearly ran contrary to POL's initial approach of providing unrestricted access to case files relating to convicted Postmasters.

[155] See, for example, CK's advice, specifically HB's advice on 08/04/14 that investigator's reports should not be disclosed in the ICRMS as they were prosecuting working documents intended to set out the facts and background of a case in order that a decision to prosecute might be made and contained sensitive material: **POL00141689**.

[156] **POL00060374**, p.5.

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82. It is plainly regrettable, given all that followed, that POL failed to continue with the more transparent approach to the provision of material it had previously adopted. However, the move into the ICRMS provides important context to the change of approach. While it is right that the ICRMS was set up to be a collaborative and cooperative scheme to resolve Postmasters' concerns, including the identification of potential miscarriages of justice,[157] it is also right to recognise that it was a formal ADR scheme with a real threat of litigation to follow. It is not surprising nor, in principle, unreasonable that POL sought to assert its right to rely on legal professional privilege in respect of privileged material in that context. Notably, Sir Anthony Hooper ("SAH") supported POL's right to rely on privilege.[158]

83. But for it representing a change from the approach agreed and adopted in the first phase of SSL's investigation, and subject of course to POL asserting the right fairly and complying with its post-conviction disclosure duties which trumped legal privilege, it ought not to be open to criticism.[159]

(iv) Privilege in the Swift Report

84. There are two elements to the issue of privilege in the Swift Report: (a) the non-sharing of the report with the Board (and the Minister) and (b) the advice of Anthony De Garr Robinson KC ("ADGRKC") on it in connection with the GLO.

85. So far as the non-sharing of the report is concerned, Jane MacLeod ("JM") was of the opinion,[160] and advised Tim Parker ("TP") at the outset,[161] that the Swift Report constituted legal advice to TP and thus was privileged. She advised TP that that would be the case in an email to him on 30 October 2015 at the outset of the review. It is also clear that Jonathan Swift KC, now Mr Justice Swift ("Swift J") shared the view that his review report was privileged.[162]

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[157] The 'Overview' document for ICRMS which was agreed between POL and JFSA made clear that the ICRMS was *"established to help resolve the concerns of Subpostmasters regarding the Horizon system and other associate issues"*: **POL00206823**.

[158] He is recorded to have stated during a Working Group meeting 30/10/14, in response to SSL's request to see prosecution files during the ICRMS, that they would contain privileged material which SSL was not entitled to see: **POL00043629**.

[159] In particular, the assertion that RW improperly asserted privilege over the Brander Report (which assertion was not put to him during his evidence) is not supported by the contemporaneous documents: see **POL00034551**, **POL00141689**, **POL00228237**, **POL00034782**, **POL00063517**, **POL00228237**, **POL00228243**, **POL00228240**, **POL00315727**, **POL00021684**, **POL00025188**, **POL00065542**, **POL00065538**, **POL00137120**, and **POL00006394**, §§57-108 & 101-103. Three points follow from that chronology of events. **First**, it is evident that the removal of the Brander report from the POIR took place in 2014 because of POL's general policy decision not to disclose any such investigator reports following CK's advice that they should not be disclosed. We have seen no evidence to suggest that it was because POL had assessed it, at that stage, as potentially harmful to its interests. **Second**, while it is clear that POL became concerned in May 2015 as to the embarrassment that disclosure of the Brander Report would likely cause, it seems equally clear that POL considered that there was a legitimate basis to assert that the Brander Report was covered by legal advice privilege in that it set out the investigator's instructions to POL's criminal lawyers to seek their advice on charge/prosecution. POL, therefore, considered that it was entitled to resist its disclosure, at least from a civil disclosure perspective. **Third**, in making the decision to withhold the report, it is not apparent that POL gave consideration to POL's post-conviction disclosure duties, and the effect of privilege in that context. However, by failing to do so, it cannot then be said that they deliberately withheld a document which they had assessed as disclosable post-conviction. It is relevant in that context that CK had already advised, and POL had accepted, that investigator reports should not be disclosed which may well explain the approach. However, POL do not appear to have sought any advice from CK on whether the Brander Report specifically should have been disclosed post-conviction, notwithstanding the view that it was privileged. They clearly should have done. It represented a serious failing on POL's part, for which POL apologises to Mrs Hamilton.

[160] See e.g. §178 of JM1: **WITN10010100**.

[161] **POL00102649**.

[162] Email from JM to TP dated 22/01/16 which stated that Swift J had advised that sharing the review report with the Minister could result "*in the loss of legal privilege in connection with the document*": **POL00103108**; Swift J's comments on the draft letter from TP to BN-R in respect of the review report included a comment from Swift J: "*Would you like to offer to provide a copy of the review report? If so, consider whether or not you wish to maintain privilege in the report*": **POL00131715**.

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86. TP's evidence was that, when Swift J sent him an early draft of the review report on 11 January 2016, JM was concerned to maintain confidentiality and privilege over it and, therefore, advised him that because of the "*upcoming litigation*"[163] distribution should be limited to a handful of individuals, thereby impliedly excluding the Board, which he accepted.[164] JM accepts that she discussed confidentiality and privilege with TP, but disputes any suggestion that she advised him not to provide the review report to the Board on those or any other grounds, whether because of impending litigation or for any other reason.[165] TP could not recall in his oral evidence whether JM had advised him directly that privilege prevented it being provided to the Board, but said that that was his understanding of the advice.[166] Whatever the advice or discussion, the result was that it was not shared with the Board. That was profoundly unfortunate since it deprived the Board of the opportunity to consider its findings and recommendations and to determine the next steps. POL accepts that the Inquiry will be critical of the failure to ensure that the Board saw and discussed the Swift Report and was therefore unable to take its findings into consideration in the context of the GLO.[167]

87. Significantly, TP does not appear to have been advised that it was his privilege to waive and that, if he chose, he could have waived it either generally or, more likely, on a limited basis so as to share the Swift Report with the Board,[168] nor was he advised to take personal legal advice on it as JM's role as GC was to advise the Board. Nor was he apparently advised that the Board's common interest in the report was a potential basis to share it with them without losing privilege. Those omissions are regrettable given TP's evidence that it was only his understanding of the advice he received on privilege that prevented him from sharing the review report with the Board.[169]

88. As for why TP did not share the Swift Report directly with the Minister/DBT, Swift J had advised JM and TP that there was a risk of losing privilege in the report if it was provided directly to the Minister/DBT during a call on 22 January 2016,[170] which advice JM reiterated by email to TP on

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[163] See Tom Cooper's ("TC") email to CD, SM, Mark Russell ("MR") and Richard Watson ("RWat") on 26/08/20 setting out that explanation from TP after the failure to disclose and discuss the review report with the Board had emerged: **WITN10010105**.

[164] TP's evidence: T 03/07/24 [79:15 - 80:15] **(INQ00001170)**; §55 of TP1: **WITN00690100**; Email from JM to Amanda Brown stating that she had agreed with TP that she would restrict distribution of the report to her, Patrick Bourke, RW and Mark Underwood: **POL00022627**.

[165] JM1 **WITN10010100** §180-184. She also disputes that the review was not discussed at Board level. She recalls Ken McCall asking whether the Board would be briefed on the findings of the review, but she could not say when. She also believes that she provided an oral briefing to the Board as to the scope and findings of the review and explained that the full report was available on request. However, none of that is supported by Board minutes. The Board minute dated 22/09/15 include a brief of reference to the review: "*The CEO reported that the Minister had asked the new Chairman for his independent review of Sparrow*": **POL00158255**, p.1. However, there is nothing in the minutes thereafter. There is a document titled 'Post Office Board Meeting – 26/01/16 - Speaking Notes' which included a brief update as to the receipt of the draft report: **POL00158304**. However, there is no evidence to suggest that that update was actually provided to the Board.

[166] T 03/07/24 [80:18 - 83:21] **(INQ00001170)**; TP1 §57 **WITN00690100**.

[167] UKGI has been highly critical that the review report was not shared with the Board at this time given its import: see email 27/08/20 from RWat, UKGI General Counsel to SM and others: "*In terms of Tim's explanation of why he did not disclose the advice to the board clearly the QC's report was confidential and legally privileged but that in itself does not explain why it should not be disclosed to the board. These is no risk of a company's legal privilege being lost or confidentiality being breached simply by legal advice it has received being disclosed to the board. So I am really struggling to understand why Jane Macleod gave that advice.*" However, it is important to emphasise that the legal privilege in the report was not the "*company's*" in this context, but TP's. Swift J conducted the review on TP's instruction and behalf (see Swift Report §1 and §3 stating that the review was conducted on TP's behalf and instruction: **POL00006355**. See also JM's email to TP which stated that "*the review is being conducted for you personally*" and "*Post Office has limited its involvement to the supply of information to [Swift J] and providing logistical support*": **POL00103108**.

[168] T 03/07/24 [85:25 - 89:23] **(INQ00001170).**

[169] T 03/07/24 [80:18 - 83:21] **(INQ00001170).**

[170] "*We also discussed with Jonathan whether there were any limitations from his perspective on the content of your briefing to the Minister. Jonathan confirmed that there were no limitations from his perspective, although he noted that if a physical or electronic copy were provided, this could result in the loss of legal privilege in connection with the document, recognising that, in the absence of privilege, the report could be disclosable under a FOI request.*" **POL00103108**.

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19 February 2016.[171] She also explained that POL had received a call from the *"Minister's office"* who had wanted to understand "*how the reporting would be undertaken"* as *"BIS officials"* were *"also concerned as to the legal status and positioning of any report."*[172]

89. Due to the perceived risk of privilege being lost, JM recommended in her email on 19 February 2016 that TP send a letter to the Minister which described the report's scope, findings and recommendations rather than providing the report itself. The rationale was said to be that it would carry *"fewer risks should it ultimately (have to) be made public by BIS"*. Accordingly, she attached to that email a draft letter, which sought to balance "*a description of the scope of work that has been done and the resulting key findings, with the need to retain privilege."*[173] She stated that she had discussed that approach with DBT and understood that it would be *"acceptable to the Minister."*[174] On 1 March 2016, JM emailed TP with a revised version of the letter following Swift J's comments and amends to it.[175] She stated that she had discussed the positioning of the letter with LT to ensure that POL were not *"inadvertently creating disclosure issues for BIS or the Minister."* The letter from TP to the Minister was sent with TP's approval on 4 March 2016.[176]

90. In light of the above, it appears that neither POL, UKGI nor DBT considered the option of TP waiving privilege either generally or, more likely, on a limited basis so as to share the report in full with the Minister/BEIS, or the option of relying on UKGI's and DBT's common interest in the report such that it could be shared without losing privilege, or any options which could have allowed the report to be shared whilst mitigating the risk of loss of privilege.[177] That was another regrettable omission because it is clear that the letter of 4 March 2016 was not an adequate substitute for the full report. While it was reviewed and amended by Swift J in order that he could satisfy himself as to how his findings were presented, and for the most part it provided a materially complete and accurate summary of the report, it significantly did not record Swift J's findings that POL's public statements had previously failed to give the full picture as to Horizon's remote access functionality as described in Deloitte's Project Zebra report.[178] It is clearly unsatisfactory that matters proceeded without UKGI, DBT and the Minister being made aware of that finding.

91. Finally, it is relevant to note that the evidence clearly shows that POL had made UKGI, DBT and the Minister aware as to the existence of the review report by, at the very latest, 4 March 2016 when POL sent the letter summarising its contents.[179] As UKGI concedes in its Opening Statement at §193, there was, therefore, an opportunity for UKGI and DBT to demand to see the review report themselves if they so wished and/or to bring its existence to the Board's attention. The concerns about, and any objections to providing the report because of, confidentiality and privilege could

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[171] **POL00390488**.

[172] **POL00390488**. Later correspondence from JM to TP on 01/03/16 , however, suggests that she may have confused LT, Assistant Director of UKGI, for someone working at the Minister's office/DBT **POL00390488** (see BN-R's evidence: T 23/07/24 [134:4 – 134:25] **(INQ00001179)**) though the distinction likely matters little given LT's responsibility for briefing the Minister directly.

[173] **POL00390488**; It is worth noting that that recommendation appears to have come from POL Legal/JM rather than Swift J. When Swift J commented on the draft letter, he raised the query: "*Would you like to offer to provide a copy of the review report? If so, consider whether or not you wish to maintain privilege in the report*": **POL00131715**. The evidence suggests that the draft of the letter with Swift J's comments and amends was not sent to TP (and were described as "*minor*" to him) nor was TP otherwise asked whether he wanted to provide a copy of the review report: **POL00390488**.

[174] **POL00390488**.

[175] **POL00390488**.

[176] **POL00024913**.

[177] See TP's evidence: T 03/07/24 [85:25 - 89:23] **(INQ00001170)**. Note that, as set out in their Information Sharing Protocol dated 11/06/18, that is the approach POL, UKGI and DBT took in the GLO so as to share privileged material in which they had a common interest without losing privilege: **BEIS0000079**.

[178] **POL00024913**.

[179] In JM's email to TP on 22/01/16 she states that she had pre-briefed DBT officials on 20/01/16 that the draft report had been sent to TP, so DBT appear to have been made aware of the existence of at least the draft report as early as then: **POL00103108**. BN-R's suggestion that she did not understand by the letter dated 04/03/16 that Swift J had produced a report makes little sense, given it set out his findings and recommendations and referred expressly to the "*review report*": §161 of her statement **WITN10200100**; T 23/07/24 [130:22 - 130:8] **(INQ00001179)**.

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then have been scrutinised and likely overcome. Thus, the failure by those involved at POL, UKGI and DBT to ensure the review report was considered in full at this time was a collective one.

92. On the separate but related issue of ADGRKC's advice in respect of the Swift Review, the starting point is that on 27 May 2016, Swift J advised JM that ADGRKC should be asked to advise POL on whether, in view of the litigation, the work conducted to complete the Swift Review recommendations should be "*continued, paused or re-defined.*"[180] APa emailed ADGRKC seeking his advice on that issue on 8 June 2016.[181] He noted that TP felt that he should follow through on the Swift review recommendations to honour his commitment to Baroness Neville-Rolfe ("BN-R") unless he was presented with a good reason not to. He stated that "*POL*"[182] were "*looking to us (and quite frankly you with your magic QC seal!) to give them some reasons for why Tim completing the JSQC recommendations would be ill-advised … If we can give POL a piece of advice that says TP should stop any further work. TP would then feel empowered to say to BIS that, on the basis of the legal advice, he is ceasing his review. I'm conscious that this feels somewhat unpleasant in that we are being asked to provide political cover for TP.*"

93. APa expressed the view that it would be "*much safer*" for the Swift Review recommendations to be conducted as part of the litigation to preserve privilege. ADGRKC replied that he was not there to "*provide political cover*" but he was concerned that POL "*should protect its interests as a defendant to this substantial piece of litigation.*" He considered the preservation of privilege to be the "*overriding*" issue. However, he queried what TP's position would be if the litigation team ultimately decided not to conduct the investigations Swift J had recommended. APa replied that the litigation team could only say that they might carry out the recommendations, but it would depend on how the litigation progressed. He said that they could not "*artificially squeeze work under the litigation umbrella just to cover off a political issue.*" He considered the critical point was to preserve privilege which was a "*good enough reason to shut TP down*". ADGRKC noted that he would welcome the proposed investigations and that "*from a pure litigation perspective, these investigations are highly desirable*"[183].

94. ADGRKC advised further on this issue in a conference with POL on 9 June 2016.[184] He could not independently recall what advice he provided nor is there an attendance note of the conference.[185] However, in an email to TP on 10 June 2016, JM said that his "*strong advice was that work being undertaken under the aegis of your review should not continue in light of the litigation*" but "*should continue provided it is re-scoped and re-instructed for the purpose of the litigation.*"[186] ADGRKC considered that a fair summary of his view at the time; that is, the relevant work should be undertaken for the purposes of the litigation.[187]

95. On 21 June 2016, APa wrote to TP to set out ADGRKC's advice on the matter:[188]

> "*Mr Robinson's "very strong advice" was that Mr Parker's review should cease immediately. Given the overlap of issues between Mr Parker's review and the Group Action, Mr Robinson advised that it would still be prudent for Post Office to implement the 4th 5th 6th and 8th recommendations of Mr Swift to the extent that these were required to advance Post Office's case in the Group Action and as appropriately adapted to meet the needs of the litigation. This work should however be instructed and overseen exclusively by Post Office's legal team (or by others instructed by Post Office's legal team) so to maximise the prospect of asserting privilege over this work and protect against the risk that material related to these actions could be disclosed to the Claimants*

[180] **POL00242552**.
[181] **POL00242402**.
[182] It is not specified in the email to whom that referred but it appears to be the Postmaster Litigation Steering Group.
[183] **POL00242402**
[184] §25 of ADGRKC1 (**WITN10500100**).
[185] T 11/06/24 [53:2 - 53:6 & 61:6 - 61:20] (**INQ00001158**); §15 of ADGRKC1 (**WITN10500100**).
[186] **POL00242552**.
[187] T 11/06/24 [59:3 - 53:10] (**INQ00001158**).
[188] **POL00006601**.

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in the Group Action, undermining Post Office's prospects of success and/or negotiating position."

96. While ADGRKC could not recall what had been discussed at the conference on 9 June 2016, he agreed that this letter did not accurately convey the exchange of views he had had with APa on 8 June 2016.[189] In particular, he was unsure why the letter advised that only 4th, 5th, 6th and 8th recommendations should be taken forward, insofar as it implied that he had advised that 1st, 2nd, 3rd and 7th should be stopped. Further, he accepted that the suggestion that these recommendations only be implemented "*to the extent that these were required to advance Post Office's case…and as appropriately adapted to meet the needs of the litigation*" was different to what he had said in his emails.[190]

97. ADGRKC accepted that both he and APa were looking at this issue solely from the narrow perspective of civil litigators advising on the civil litigation.[191] In which respect, he said that he was concerned to ensure that POL protected its right to assert privilege as defendant to a substantial piece of litigation.[192] He accepted that meant that if the results of the investigations were adverse to POL, POL would not need to reveal them, save in the criminal context. However, he observed that that was always the position with privilege which was a "*fundamental principle that protects the interests of parties in civil litigation.*"[193]

98. In face of the litigation, there was nothing wrong, in principle, with POL seeking to avail itself of privilege in respect of the investigations recommended by Swift J which it would be necessary to conduct in any event in response to the claim. However, as CTI highlighted and ADGRKC acknowledged, there were broader considerations at play than the civil litigation.[194] First, there was the simple fact that Swift J had advised that the recommendations be carried out to bottom out Postmasters' complaints and TP had agreed that they should be done. Second, the recommendations were, in part, concerned with uncovering potential miscarriages of justice. Third, what was in POL's interests within the civil litigation, was not necessarily in POL's, the Postmasters' and public's interest more broadly.

99. It does not appear that these factors were raised with TP, either internally or by DBT, nor that they were otherwise taken into account, in deciding that the Swift Review recommendations should only be taken forward as part of the litigation.[195] In that way, the decision appears to have been concerned with protecting POL's position in the litigation over all else. It was clearly intended to compromise the transparency of the work done on the recommendations. Though, as ADGRKC rightly alluded to, any material which emerged from that work which cast doubt on the safety of convictions would not have been protected by privilege from post-conviction disclosure regardless of the disclosure position within the civil litigation.[196]

100. Further, it risked compromising the fullness of the work done to meet Swift J's recommendations if they were to be re-scoped to meet the needs of the litigation. However, the evidence suggests that that risk did not ultimately materialise. WBD had already completed the 7th recommendation by their review into the complaints about call handlers at the NBSC dated 4 May 2016.[197] BAKC completed the work on the 1st, 2nd and 6th recommendations, which related to practice of, and evidential basis for, charging theft alongside false accounting and the post-conviction disclosure of

[189] T 11/06/24 [61:25 - 64:10] **(INQ00001158).**
[190] T 11/06/24 [61:21 - 63:15] **(INQ00001158).**
[191] T 11/06/24 [41:24 - 43:25 & 52:4 - 52:8] **(INQ00001158).**
[192] T 11/06/24 [43:22 - 43:25 & 47:7 - 48:6] **(INQ00001158).**
[193] T 11/06/24 [40:14 - 41:16] **(INQ00001158).**
[194] T 11/06/24 [41:24 - 42:7] **(INQ00001158).**
[195] T 11/06/24 [42:10 - 43:1 & 47:14 - 47:21] **(INQ00001158).**
[196] T 11/06/24 [41:6 - 41:16] **(INQ00001158).**
[197] **POL00022769**.

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the Deloitte Project Zebra report, by his advice/review of 26 July 2016.[198] Deloitte completed their work on the 3rd, 4th, 5th and 8th recommendations as part of Project Bramble within the litigation.[199]

(3) Relationship with Fujitsu

101. At the conclusion of Phase 4, POL submitted that the Inquiry should pay careful regard to the repeated assurances that reached POL lawyers and investigators from Fujitsu that Horizon was reliable, and that "*Individuals within POL, who themselves had no or very limited technical understanding, could reasonably be expected to place considerable reliance on those assurances.*"[200] The evidence that the Inquiry has received in Phases 5 and 6 has been consistent with that position; POL was, and remains, the subordinate partner in the relationship both contractually and in terms of technical capability. The consequence of POL's operational and technical dependence on Fujitsu was that POL did not have a sufficient understanding of how Horizon functioned. POL's acceptance of Fujitsu's assurances about Horizon's accuracy led to inaccurate and misleading statements being made by senior POL officers about remote access, and its assurances as to its operation led to unsatisfactory disclosure and positioning by POL during the GLO.

(i) POL's operational dependence on Fujitsu

102. POL has been operationally and technically dependent on Fujitsu since 1999[201] in three core ways:

a) First, POL has relied on Fujitsu both to identify, investigate and rectify BEDs and to report to POL about the extent to which Fujitsu was meeting these obligations.[202] 'Service Review' frameworks and forums governed the arrangements by which POL could monitor Fujitsu's delivery of those services[203] and ostensibly provided for a level of oversight by POL of Fujitsu's compliance. However, the underlying Operational Level Agreements, Service Level Agreements and Contractually Controlled Documents placed the onus on Fujitsu to provide POL with the data about how Horizon was operating, which POL required in order to hold Fujitsu accountable for any operational failures.[204] POL was and is dependent on Fujitsu to self-report operational shortcomings.

b) Second, POL relied on Fujitsu to provide technical support and assistance to Postmasters and branches via a Service Desk which,[205] as originally envisaged, would *"deal with all calls relating to the operation, configuration and end-user* [Postmaster] *support of counter terminal equipment, their operating systems software, application software and processes*".[206] Fujitsu accept that, "*If a postmaster needed support when completing their cash account, Service Desk was the first point of contact.*"[207]

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198 **POL00006394**.
199 See, for example, the Noting Paper on the Deloitte Reports by BEIS for the Litigation Steering Group meeting on 03/11/17: **POL00006508**.
200 POL's Phase End Submissions for Phase 4 at §11 (**SUBS0000028**).
201 See SO2 (**WITN03680200**) and SO3 (**WITN03680300**) and PP1(**WITN06650400**).
202 PP1 (**WITN06650400**) §§26-36.
203 SO2 (**WITN03680200**) §§49-53.
204 SO2 (**WITN03680200**)§50-102. See in particular, '*Sources of Information for Service Review at the Senior Management Level*' §§79-102, detailing the '*Service Review Book*' and the '*Operational Forum Reporting*', both of which depended on data provided by Fujitsu to POL.
205 PP1 (**WITN06650400**) §§35-53.
206 PP1(**WITN06650400**) §36(c) refers to *Reference 524, Schedule A16 (***FUJ00000071**). It was intended that Postmasters' requests for support would be "*categorised according to type such as hardware, software, network, advice & guidance, configuration, etc*" and the Service Desk would provide "*problem and fault diagnosis and* [would] *control any necessary hardware or software maintenance activities*".
207 PP1(**WITN06650400**) §42(c) refers to Schedule 11, under the heading "*needs support when completing cash account*" (**FUJ00080405**).

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c) Third, in Legacy Horizon systems POL relied on Fujitsu to reconcile transaction discrepancies.[208]

103. POL recognises that their dependence does not absolve POL of its own responsibility to Postmasters to have provided a reliable IT system, nor of its failure properly to escalate or interrogate those BEDs of which POL did become aware. Criticisms of POL can be fairly made in this respect, but any criticism ought to take into account POL's dependence on Fujitsu throughout.

104. Whilst POL has made efforts to increase its own and third-party commissioned monitoring of Fujitsu's operation of Horizon since the HIJ, regrettably those efforts have not been wholly successful as a result of insurmountable technical, contractual and cost barriers to doing so.[209]

(ii) POL's dependence on Fujitsu during the SSL Investigations

105. POL relied on Fujitsu during the SSL investigations: (i) when formulating POL's responses to SSL's Spot Reviews on individual cases;[210] (ii) when providing information generally in respect of Horizon in the first phase of SSL's investigation;[211] (iii) for the information contained in the Post Office Investigation Reports ("POIRs") on individual cases in the ICRMS;[212] (iv) for the information contained in POL's responses to both SSL's initial Part 2 Briefing Report in August 2014 and final Part 2 Briefing Report:[213] and (v) SSL itself directly relied on Fujitsu for technical information about Horizon. Ian Henderson ("IH") attended a workshop with Fujitsu to get a technical understanding of the Horizon system on 13 September 2012[214] and it is clear from the covert SSL tapes that Gareth Jenkins ("GJ") was a direct and key source of technical information for SSL.[215] Criticism of POL's conduct in connection with SSL's investigations ought properly to take into account POL's dependence on Fujitsu for the failings in its technical understanding of Horizon.

(iii) POL's dependence on Fujitsu during the GLO

106. As noted by Fraser LJ in the HIJ,[216] POL relied upon Fujitsu for both information about Horizon and disclosure of core material about Horizon during the GLO. The evidence that the Inquiry has heard about Fujitsu's internal arrangements at that time compounds those findings because it demonstrates a lack of rigour and candour in the way that Fujitsu gathered and communicated the relevant information to POL:

a) Remote access: Fujitsu's internal understanding of their own processes was deeply flawed. GJ's evidence was that he had not known that the SSC had unaudited and unrestricted

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[208] Fujitsu were contracted to provide a Reconciliation Service that provided detailed reports for reconciliation exceptions for transaction data and to resolve any reconciliation exceptions (PP1 §§130 – 133) (**WITN06650400**) referring to §1.8 Schedule A16 of the Codified Agreement).

[209] SO3 (**WITN03680300**) §80-82; and see these submissions at §339 to 351.

[210] E.g. RWar's email regarding the slow progress of validating the spot reviews with data from Fujitsu (**POL00296103**).

[211] E.g. the information about the 'Local Suspense' problem. SB sent RWar two reports by GJ in June 2013, one on the Receipts and Payments Mismatch problem dated 06/05/11 and one on the Local Suspense problem dated 10/05/13. (**POL00130316**; **POL00029607**; **POL00029618**; **POL00029609**).

[212] E.g. arrangements for Fujitsu to assist POL during the mediation process (**FUJ00156876**) and for Fujitsu technical specialists be available for questions relating to Horizon and data for the mediation process (**POL00199737**). POL/Fujitsu weekly meetings on mediation cases (**FUJ00239626**).

[213] **POL00030160**.

[214] **POL00237085**, p.5.

[215] **SSL0000108** p.11: "*RON WARMINGTON: Ian, one other point supporting what you just said, we've had incredibly high quality material put together by Gareth Jenkins of Fujitsu, who obviously knows the system like the back of his hand ...*" and see also **SSL0000129** p. 2 "*IAN: One of the key meetings that I had was with Gareth Jenkins at Fujitsu, who was incredibly helpful; was the architect of really the whole system over many years, knew it sort of absolutely backwards and was very helpful to us in terms of explaining the infrastructure and explaining the control environment and explaining change control and so on.*"

[216] Bates v Post Office Ltd [2019] EWHC 3408 (QB) §253 (**POL00022840**).

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privileged access to all systems including counters throughout[217] and had not realised the SSC had that extent of access until preparation for the Inquiry in 2021.[218] Fraser LJ's finding was that the evidence of Torstein Godeseth ("TG") and Stephen Parker ("SPa") – based on information provided to them by GJ – changed during the course of the trial in light of the evidence of Richard Roll ("RR") that demonstrated the audit system lacked integrity.[219] POL had been misled about this by Fujitsu who clearly themselves had not taken steps to ascertain the extent of the SSC's privileged access. (See further below at §108 -119).

b) Poor practice in disclosure and preparation of evidence: The evidence of Matthew Lenton ("ML") and Pete Newsome ("PN") demonstrated that Fujitsu was insufficiently organised and resourced[220] to provide the requisite levels of support, documentation and accurate information to or on behalf of POL during the GLO.[221] [222] Fujitsu's conduct in these respects caused POL's lawyers to present inaccurate information to the Court on POL's behalf during the HIJ, inadvertently causing them to mislead the Court.

c) Misrepresentations about KELs: Fujitsu gave an incorrect response to the Electronic Disclosure Questionnaire despite understanding its importance.[223] Fujitsu wrongly represented to POL's lawyers WBD in March 2018 that Fujitsu had provided all KELs, including 'historic' KELs, to WBD.[224] When in September 2018 it became clear to Fujitsu that Fujitsu would need to inform WBD that it was possible to retrieve deleted KELs, Fujitsu employee John Simpson ("JSim") intimated that Fujitsu might conceal the existence of a deleted KEL: "*I will see if I can dig out the deleted KEL details, or would you prefer that it is just stay as 'deleted'?*" [sic][225]. Fujitsu did not provide an honest explanation for the failure to disclose historic KELs previously[226] and Fujitsu's internal correspondence shows that it had reservations about providing the deleted KELs to the claimant's IT experts.[227] Fujitsu then did not identify to WBD that it had provided false information in the November 2017 EDQ until asked directly on 30 September 2019,[228] despite knowing this to be the case from September 2018. This resulted in POL disclosing 6,155 deprecated KELs after the conclusion of the HIJ.[229] Responsibility for these disclosure failures rests with Fujitsu.

107. As Fraser LJ anticipated, POL was dependent on Fujitsu for its technical information about Horizon, and for disclosure from Horizon during the HIJ. Criticism of POL's conduct in the HIJ must take account of Fujitsu's own significant failings in this regard.[230]

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[217] T 26/06/2024 [61:18 – 61:23] **(INQ00001167)**.
[218] T 26/06/2024 [61:24 - 62:12] **(INQ00001167)**.
[219] Bates v Post Office Ltd [2019] EWHC 3408 (QB) §§317-321 **(POL00022840)**. The reason why RR's evidence meant that the system lacked integrity is because he asserted that transaction data could be manipulated in such a way that it would not be apparent that Fujitsu has made the change on any later review.
[220] ML agreed with CTI that "*the process of disclosure by Fujitsu was not supported by appropriate legal advice and oversight*" (T 12/06/24 [184:23 - 185:3] **(INQ00001159)**).
[221] ML1 **(WITN00530100)** and (T 12/06/24 [90:18 - 210:25] **(INQ00001159)**). PN1 at §§59, 76-79 **(WITN04580100)**.
[222] For example, Fujitsu in setting up a Data Integrity SharePoint to collect and share disclosable material with POL's lawyers failed to include key documents potentially stored by GJ on his laptop (T 12/06/24 [106:15 - 107:25] **(INQ00001159)**).
[223] The EQC was inaccurate **(FUJ00158119)** in stating "*The KEL only contains the current database entries and is constantly updated and so the current version will not necessarily reflect the version that was in place at the relevant time. The previous entries / versions of the current entries are no longer available*" (emphasis added).
[224] T 12/06/24 [121 - 124] **(INQ00001159)**; **FUJ00220950**; PN1 §74 **(WITN04580100)**.
[225] **FUJ00220950**; **FUJ00179940**; T 12/06/2024 [131 - 133;138 - 193] **(INQ00001159)**.
[226] T 12/06/24 [131 - 133; 140:14 - 141:9] **(INQ00001159)**.
[227] T 12/06/24 [150:10 - 150:25] **(INQ00001159)**; **FUJ00181400**.
[228] T 12/06/24 [158:2 - 159:25] **(INQ00001159)**; **FUJ00166835**.
[229] T 12/06/24 [160:3 - 25] **(INQ00001159)**; **FUJ00166835**.
[230] For an explanation of the position since the GLO, see §339 to 351.

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(4) Remote Access

108. POL accepts that its conduct concerning the issue of remote access should fairly attract criticism. It is clear that some individuals within the organisation had a degree of knowledge about the existence of Remote Access rights which was inconsistent with statements made on behalf of POL, and that there was a repeated and sustained refusal to accept that those statements were misleading. POL also accepts that it should be criticised for the fact that it took the GLO to uncover the true extent of Fujitsu's ability to remotely access and edit transactional data. POL does not seek to minimise or mitigate that and apologises unreservedly for the distress, confusion and harm that its misleading comments caused to affected Postmasters and their families. In considering the appropriate scope and nature of such criticisms POL invites the Inquiry to have due regard to three aspects of this topic.

(i) Nature and incidents of Remote Access: the need for accuracy

109. POL does not here repeat, but invites the Inquiry to refer back to, the important preliminary points made about the nature of remote access at §§97-99 of POL's Phase 4 Closing Submissions. It is important to be clear about the significance of the Remote Access issue. There is very limited evidence before the Inquiry as to the use of Remote Access by Fujitsu (as was the case in the Horizon Issues Trial);[231] the evidence of the Fujitsu witnesses performing such Remote Access is that the exercise of those rights in a way that could impact on transaction data, were "*very few and far between*";[232] and there is no evidence that any shortfall was in fact caused by the use of Remote Access by Fujitsu. In particular, there is no evidence that it was used for any malign purpose, and some evidence specifically that it was not.[233] That does not, of course, obviate the need for POL to have disclosed potentially relevant information about Fujitsu's ability to exercise its Remote Access rights in a way that could impact on transaction data in the context of criminal prosecutions, but it *is* relevant to the extent to which POL should be criticised for its lack of proper understanding of those rights and how they may have been exercised.

(ii) Safeguards and Fujitsu's contractual responsibility for observance of safeguards

110. Fujitsu had contractual obligations to provide a secure infrastructure for the Horizon systems that complied with security policies.[234] Those policies made specific provision for the exercise of Remote Access Rights.[235] There was a requirement for an audit trail "*sufficient to identify the action, by whom it was undertaken, when it was undertaken, why it was undertaken, where it was undertaken and the resulting outcome*".[236] Legacy Horizon Contractually Controlled Documents ('CCDs') stated that remote data insertion ability would be an "*exceptional*" process to "*correct*" data, subject to adherence to "*agreed authorisation procedures*"[237] and, "*In all cases, updates to code or data by application support staff require two staff to be present when the change is made and all such changes to be audited, identifying what has been changed (before and after values) and the individual who made the change*".[238] Horizon Online CCDs provided that such rights would be limited to inserting correcting transactions, would not include "*any privileges to update or delete records in the database*"; "*must be audited*" and specified certain "*non-derived values*" would be inserted into the balancing transaction data to ensure the insertion was capable of later identification

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[231] §§1005-1006. Bates v Post Office Ltd [2019] EWHC 3408 (QB) (**POL00022840**).

[232] T 02/05/23 [206:4 - 206:7] (**INQ00001140**). See also T 17/01/24 [100:10 - 100:15] (**INQ00001115**).

[233] RWar at §16 (**WITN01050200**); SP1 at §86: "*I do not remember any examples of unauthorised or malicious use of remote access while I was working with Horizon*" (**WITN00680100**).

[234] Fujitsu accept this at PP1 §174 §177 §180 §186 and §190 (**WITN06650400**).

[235] PP1 §177 (**WITN06650400**) citing §7.4 of the approved Security Police in place during the time of the Codified Agreement, and SO2 §263 (**WITN03680200**).

[236] PP1 §174c (**WITN06650400**) and Codified Agreement p40: *Requirement 699 -General Audit: Trail* (**POL00028212**).

[237] See the Access Control Policy (for Legacy Horizon) version 3 of 18/12/98 (**POL00401199**) which refers to Fujitsu Application Support Managers having the ability to "*correct data under controlled conditions*" (8.7.2) See also SO2 §§256 -258 (**WITN03680200**).

[238] See the Access Control Policy (for Legacy Horizon) version 3 of 18/12/98 (**POL00401199**) §8.7.3. See also, 'approved' version 4.1 of the same policy at §4.5.5.3 and §4.5.5.4 (p.p. 39-40) (**POL00000943**) and PP1 §179(e) (**WITN06650400**).

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as having been inserted by Fujitsu.[239] The exercise of Remote Access rights were thus governed by provisions intended to provide significant, reliable and transparent safeguards.[240]

(iii) Fujitsu's failure to implement the contractually required safeguards

111. Fujitsu did not adhere to these safeguards:[241] certain members of Fujitsu's SSC exercised 'elevated' or 'privileged' user rights, in particular to "*full modify / delete / insert access to tables holding branch transactions*"[242] in a manner which was at least initially "*unrestricted and unaudited*".[243] Such rights were exercised by Fujitsu without POL's knowledge or consent. Fujitsu made express representations to POL that no such rights were possible,[244] and repeated assertions to POL regarding auditability that implied they were adhering to the auditing requirements.[245] Fujitsu knew – as has now been established[246] – that there was a significant extent of difference between the system design (which provided for a highly restricted, controlled and audited form of transaction data insertion capability) and operational practice (which at its highest provided for an almost unrestricted, uncontrolled and unaudited transaction data modification capability). That gap is for Fujitsu to explain.

112. Fujitsu's CEO Paul Patterson ("PP") expressly accepts there were such failings.[247] This is a significant concession and is welcome. However, it is clearly at odds with representations that Fujitsu made to POL in the past for example, when, on or around 15 September 2014, Fujitsu provided POL with its response on the Part Two Final Report.[248]

(iv) Fujitsu's failure to communicate to POL about its disregard for safeguards in the exercise of rights

113. POL did not and could not have known that Fujitsu was failing to abide by its contractual obligations and Security Policies. Fujitsu had a monopoly on knowledge regarding Remote Access and exclusive access to the records that ought to have been kept of its use: it has transpired from

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[239] This or equivalent language is used in successive versions of the Fujitsu CCD 'Branch Database High Level Design' starting with v. 1 dated 17/11/09 (**POL00115409**); see Section 5.7.2 and the table at the bottom of p. 66 which specifies the "non derived values" – such as "hard coding to 99" which would ensure such insertions were visible in the transaction data as having been inserted by Fujitsu. See Section 5.7.2 (Inserting Balancing Transactions). For circulation of this document to POL see **FUJ00235022**.

[240] SO2 (**WITN03680200**), in response to R9(48) and PP1 (**WITN06650400**) and the underlying CCDs about Remote Access as referred in to footnote 40 above.

[241] See for example: Bates v Post Office Ltd [2019] EWHC 3408 (QB) (**POL00022840**) at §345 *("...this is another example of Fujitsu failing to observe its own design intent...*") and §1006 *("...the design intent in the Low Level Design document in relation to this tool had plainly been overtaken, over time, as the numerous other times it was used showed...*"); [2] the summary of the Experts' 4th, in particular issue 11 items 1 to 5 and [3] The evidence of Anne Chambers (T 02/05/23 [195:1] (**INQ00001140**)) that some use of remote access was unaudited. Bates v Post Office Ltd [2019] EWHC 3408 (QB) (**POL00022840**), in particular issue 11 items 1 to 5 and [3] the evidence of Anne Chambers (T 02/05/23 [195:1] (**INQ00001140**) that some use of remote access was unaudited.

[242] ACh1 §198 (**WITN00170100**), and T 02/05/23 [194:24 - 195:1] (**INQ00001140**).

[243] T 08/03/23 [18:7 - 21:20] (**INQ00000982**); T 10/05/23 [97:16 - 99:4] (**INQ00001145**); T 17/01/24 [80:12 - 81:18] (**INQ00001115**); T 09/03/23 [77:21 – 78:3] (**INQ00001058**); T 08/11/22 [40:1 - 40:20] (**INQ00001002**); T 26/06/24 [61:18 – 62:12] (**INQ00001167**); T 02/05/24 [195:8 – 196:5] (**INQ00001140**); T 19/06/24 [65:5 - 67:16] (**INQ00001163**)

[244] See for example the 08/12/14 email from James Davidson ("JD") of Fujitsu to POL (**POL00214061**) and its attachment (**POL00214062**)

[245] E.g. GJ's 08/07/15 paper titled "*Old Horizon*" (e.g. **POL00238783**) which explained that "*There were processes in place to allow 3rd line support staff to inject messages if necessary in order to correct issues...subject to the operational change processes and ...signed off by* [POL]*....I am not aware of any specific instances where this would have happened and I do know that it would only have been done if there was no other option to correct a fault....*[A]*ny such message would be included in the audit trail ... This means that it should be possible to identify them if they had occurred. However, such identification would be time consuming*."

[246] Correspondence between ML and SP in January 2019 (**FUJ00189522** p.3) shows that Fujitsu was aware at this time that "*in the earlier years*" no change control processes were adopted for the use of APP SUP privileges to 'inject' data (see the oral evidence of ML on this T 12/06/24 [196:1 - 197:25] (**INQ00001159**)).

[247] PP1 §198 (**WITN06650400**).

[248] Fujitsu response: **FUJ00087125** at p.4. Note this response was found in the following email: **POL00029943**; Compiled by GJ, JD, Pete Newsome and Mike Harvey.

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the evidence given to this Inquiry that Fujitsu's own document control processes allowed the SSC to maintain its own internal website within Fujitsu's systems which contained work instructions for the SSC relating to the reporting and management of BEDs, PEAKs and KELs, which prior to 2016 was accessed and controlled solely by the SSC.[249] There is no evidence that these documents were provided to POL prior to 2016 and some evidence that they were not.[250] Fujitsu did not hold all documents appropriately; not all relevant documents were stored in the data integrity share point and it was "*common that people did hold lots of data on their laptops and on file shares* (in 2013)."[251] Data held by GJ in this way was not included within Fujitsu's data integrity share point.[252] It was possible that GJ also retained 'local' copies of deleted KELs on his own laptop.[253]

114. As Fraser LJ observed, Fujitsu failed to provide POL with the relevant information from which POL could have ascertained this for itself, up to and including the GLO (as detailed at§106 to 107 above). Moreover, it appears that Fujitsu decided not to undertake the work that would have been required for them to give full and accurate information about the use of Remote Access Rights,[254] and additionally decided not to explain this to POL's lawyers,[255] instead giving the knowingly false assurance to WBD that any use of the role would be fullyaudited and accounted for.[256]

(v) Who in POL knew what when

115. POL and its representatives made numerous statements regarding Remote Access that were wrong. [257] Up to the GLO there was or ought to have been operational knowledge in POL that Fujitsu had the ability to insert data into Postmasters' accounts, for three reasons.

116. First, the facility for Remote Access was anticipated in contractual documents for both Legacy Horizon and Horizon Online. This information was available to POL at all relevant times. Those within POL who had read the contract and the underlying CCDs would or should have understood that a limited and controlled number of Fujitsu IT support roles had the ability to insert corrective data in order to fix errors in branch transaction data, and that these types of insertions were audited so as to ensure a permanent audit trail both of who had made the change and the change that was made.

117. Second, the facility was discussed from time to time for operational purposes. In LegacyHorizon, managers in certain parts of POL's business knew of this functionality either because they had authorised use,[258] or because they had needed to investigate whether it had been used.[259] In Horizon Online certain individuals within POL became aware of the facility from: the Receipts/Payments Mismatch issue notes of Oct/Nov 2010;[260] Mike Granville ("MG")'s preparation of a response to ShEx (and in turn to SED, BIS, the JFSA and SAB) concerning JFSA's assertion that "*POL can access the system remotely and make changes to it*" in December 2010;[261] and the January 2011

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[249] T 12/06/24 [97:1 - 99:25] (**INQ00001159**).
[250] T 12/06/24 [102:11 – 102:19] (**INQ00001159**).
[251] T 12/06/24 [106:12 – 106:21] (**INQ00001159**).
[252] T 12/06/24 [107:5 - 107:25] (**INQ00001159**).
[253] T 12/06/24 [129:3 – 129:12] (**INQ00001159**).
[254] Fujitsu internal email traffic in January 2019, concerning a request from WBD for disclosure of logs relating to the authoring of privilege user access shows that a search of SSC databases found nine instances of logs of the use of elevated privileged access role from SSC users, but that SPa's view was that there should additionally be 'subtasks', a further search for which identified 61 more such logs, and that it was possible that the elevated privileged access had been used many more times but it was not practicable to establish this because each of the 220,000 would need to be individually examined. (**FUJ00188147** at pp.5-6) (**FUJ00188147** at pp.5-6).
[255] T 12/06/24 [173 - 175] (**INQ00001159**); **FUJ00188147**.
[256] T 12/06/24 [176 - 177] (**INQ00001159**); **FUJ00089798**.
[257] As in e.g. Second Sight's Interim Report dated 08/07/13 (**POL00099063**) and Second Sight's Part One Report dated 25/07/14 (**POL00004439**).
[258] E.g. PC0152014 (**POL00029328**) and OCP 17510 (**FUJ00164021**) in 2007, c.f. evidence of GB (NBSC Team Leader) at T 28/02/23 [205:6 - 209:2] that he could not recall when he first learned of Fujitsu's capability.
[259] An example is the 23/10/08 'Lusher / Winn email' between Andrew Winn and Alan Lusher (**POL00029710**).
[260] **POL00117662**.
[261] See Lynn Hobbs: "*Fujitsu can actually put an entry into a branch account remotely*" (**POL00417095** at p.5).

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investigations concerning the Ferndown branch.[262] The evidence is that those individuals reasonably assumed that Fujitsu were exercising that facility on the terms contractually required of them.[263]

118. Third, POL was alerted to the facility by three external sources. The first of these was the Audit Reports of POL's auditors Ernst & Young ('E&Y') for the financial years ending March 2011 and March 2012[264] which made recommendations that could have led POL to seek an explanation from Fujitsu of the rights that attached to the APPSUP role within the Horizon system control framework. It appears that POL (Mike Young ("MY") and LS viewed E&Y's recommendations as being that greater IT control measures were needed into the monitoring and control of *who* had 'privileged access rights',[265] rather than requiring them to establish *what* those 'privileged access rights' would enable a Fujitsu employee to do. That is consistent with POL's corporate understanding at this time that all forms of Remote Access within Horizon would leave an audit trail.[266] One feature of the E&Y management letters which was put to a number of POL witnesses was the sentence in both years' reports that "*Unrestricted access to privileged IT functions increases the risk of unauthorised/inappropriate activities which may lead to the processing of unauthorised or erroneous transactions.*"[267] All such witnesses said that they had not understood from this at the time that Fujitsu had an ability remotely to access and make changes to Horizon branch transaction data,[268] and POL submits that this is plausible and consistent with contemporaneous documentation. (The Inquiry will note that all recommendations made by E&Y in this part of the report concern the POLSAP system rather than Horizon, and no part of the E&Y report concerns the ability to make changes to branch transaction data.) The second external source was Deloitte's May 2014 email (later reflected in the Zebra Board Briefing[269]) which highlighted Fujitsu's theoretical ability to replace a basket of transactions within the Audit Store with a "*spoof*" basket.[270] The third external source came in August 2015 when RR stated on BBC's Panorama programme that his Fujitsu team "*went in through the back door and made changes*" which could "*create false losses*".[271]

119. Information did not reach the relevant personnel, including the Executive and Board. POL accepts that there were corporate failures in this respect, including:

a) Failure by those who did know of such capability to either input into the Ismay Report at the time it was drafted, or to subsequently correct it, meaning that the incorrect statements in that report continued to have currency at a time when it should have been recognised as dangerously inaccurate.

b) Failure to interrogate information from Fujitsu: the evidence of LS is that there was a failure by Fujitsu, particularly those corresponding with POL senior management, and/or senior

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[262] See email from TM to KG, AVDB cc'd HR 05/01/11 (**POL00294728**) and exchanges about Fujitsu's remote access in interview with Mr & Mrs Athwal: Entry 758, p. 41 (**POL00294743**).

[263] See MY1 (**WITN11130100**) §52 to 53.

[264] See Ernst & Young Management letter to POL for year ended 2011 (**POL00030217**) and IT component of management letter for the year ended 25/03/12 (**POL00397529**).

[265] There is significant detail in the succession of events by which POL and Fujitsu recognised and acted upon the recommendations made by E&Y in its succession of annual management letters in support of E&Y's audit function. Consider: **POL00238126**; **POL00029438**; **POL00027098**; **POL00142943**; **POL00142947**; **POL00143037**; **POL00143058**; **POL00029519**; **POL00181045**; **POL00143524**; **POL00137282**; **POL00144001**; **POL00183706**; and **POL00137294**.

[266] MY1 §§161-165 (**WITN11130100**).

[267] See p.34 of the 2011 letter (**POL00030217**) and p.5 of the 2012 letter (**POL00397529**).

[268] See CD (T 04/06/2024 [46:1 - 46:9] (**INQ00001155**)); DMG1 §73 (**WITN10310100**); PV said: "*Reading that today, with everything we know, yes, absolutely. I'm not sure, at the time, that I would have understood that.*" (T 22/05/24 [157:5 – 157:14] (**INQ00001151**)).

[269] **POL00028069.**

[270] Email from MW to RW (cc'ing CA) on 20/05/14 called this a "*small risk (that can only really be discounted by detailed testing)*" (**POL00029728**).

[271] BBC Panorama, Trouble at the Post Office, broadcast in August 2015 (minute 15-16 of this **Video Link**).

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members of POL's IT Team to be candid with POL senior management that such access was possible when asked.[272]

c) Failure to accurately to share information: members of the Executive only saw the final version of MG's response to ShEx in which the response on remote access obfuscated the answer by confirming that Fujitsu had an ability to remotely access the system to make "*technical changes*", rather than clarifying that this included inserting transaction data. The detail of the Deloitte Zebra Briefing was also inadequately summarised for Board members.[273] [274]

d) Failure of Board members properly to read the detailed material for themselves: there was some uncertainty from Board members who gave evidence to the Inquiry as to whether they read Deloitte's Zebra Board Briefing (June 2014),[275] or if they did whether they understood it and were consequently aware of Fujitsu's abilities.[276] The Board also did not discuss the Briefing at the meeting of 10 June 2014.[277]

C. PHASE 5/6 CORE TOPICS

(1) SSL reports and ICRMS

(i) Appointment of SSL and Scope of SSL review

120. Up and until POL's meeting with LA on 17 May 2012, POL's intention was to instruct Deloitte to carry out a system review.[278] However, the evidence before the Inquiry is that LA expressed a wish at that meeting not to use one of the "*Big Four*" accountancy firms, but favoured use of a smaller firm of forensic accountants, who had good soft skills, to investigate what had happened in individual cases.[279]

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[272] See evidence of LS that that between April 2010 until some point after the publication of the SSIR: "*the number of times that I and others asked* [Fujitsu or POL "Architects Team"] *about branch data and we were consistently given the same message: that it was not possible*" (T 16/05/24 [97:4 - 97:7] **(INQ00001148)**).

[273] See AL evidence: T 21/05/24 [176:6 – 176:25, 177] **(INQ00001150)** in which she expresses that the Deloitte Zebra Briefing should have been written in a way that "*people can understand*" and RW's evidence: T 19/04/2024 [42:25 - 43:17] **(INQ00001133)**. See also summary email draft by LS and CA, enclosing the copy of the Deloitte Briefing as provided to the Board (including RC of ShEx) provides no details of Balancing Transactions on 04/06/14 **(POL00029733)**.

[274] Minutes of Board meeting held on 03/04/14 **(POL00021524)** show this was not mentioned by GJa of Deloitte.

[275] **POL00028069.**

[276] CA's evidence was that the cover email was "*on reflection…far too abridged*" **(T 24/04/2024 143:24 to 147:3 (INQ00001135))**. See also: PV1**(WITN01020100)** §883-892; AP1 **(WITN00740100)** §367; Neil McCausland ("NMc") NMc1 **(WITN10290100)** §169; AL1 **(T 21/05/2024 [206:12 - 209:17] (INQ00001150))**.

[277] NMc1 **(WITN10290100)** §170; no mention of Deloitte's Zebra report in the Board minutes dated 10/06/14 **(POL00021526)**.

[278] AP offered LA a "*further review of the system by an IT expert specifically looking at the integrity of the data and discrepancy errors thrown up in sub-postmaster's balances*" during their meeting on 13/03/12 **(POL00105481)**. POL entered discussions with Deloitte about the work in April-May 2012 and obtained a proposal **(POL00002000)**; **(POL00028066)**. In the notes of a meeting between AP, PV, SC and AL on 03/05/13, it was noted that POL would explain to LA that it would review the new system and was "*intending to do so using Deloittes [sic] as they have the technical IT forensic expertise.*" AP said in an email on 13/05/12 that she would present the Deloitte proposal to LA in the meeting of 17/05/12 **(POL00105601)**. The Deloitte proposal was also included in the pack for that meeting **(POL00105479)**.

[279] AP said that her clear recollection was that when the proposal was discussed with LA, he did not want to use an organisation like Deloitte, i.e. one of the *"Big Four"*, but preferred an organisation that was "*more boutique, off the beaten track*": see AP T 05/06/24 [74:5 - 75:6] **(INQ00001156)** and §149 of AP1, **WITN00740100**. PV stated that it was LA who proposed that POL should engage a forensic accountant and he wanted "*a forensic expert to establish precisely what had happened in individual cases referred to MPs…*": §275.f. of PV1 **(WITN01020100)**. AP's email of 22/05/12 in respect of the meeting on 17/05/12 referred to LA's "*recommendation of a forensic accountant*" and that POL had offered to investigate MPs' individual cases and have the process validated by the forensic accountant **(POL00027707)**. AL's email to PV copying in SC on 21/05/12 recorded AP's recollection of what had been agreed at the meeting, which included that POL "*would find a forensic accountant with good people skills and ask them to look at each case, talk to the subpostmaster,*

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121. At a meeting on 7 June 2012 POL considered two competing proposals: a proposal by Deloitte to conduct a full review of the integrity of the Horizon system,[280] and a proposal by SSL to conduct a review of individual cases in which complaints were made.[281] It decided that SSL should be preferred,[282] the dominant factor appearing to have been LA's preference to avoid the 'Big Four' in favour of an organisation that could relate well to Postmasters.[283] There is little to suggest that the nature of the respective reviews weighed heavily in the decision and, critically, the decision pre-dated RMKC's advice on 12 June 2012 against a system review due to the risk to POL;[284] his advice could not, therefore, have been taken into account.

122. As for the suggestion that POL appointed SSL to avoid the risk involved in Deloitte reviewing the system[285], that overlooks the fact that SSL's review was self-evidently not a risk-free option for POL, as proved to be the case. Indeed, RWar's evidence was that before SSL's appointment he was explicit with PV, AP and SC about the "*extraordinary risks*" to POL presented by SSL's investigation.[286] Whatever the Inquiry's assessment as to POL's own evaluation of that risk given the internal view that Horizon was robust, the fact is that POL took on that risk by appointing SSL.[287]

123. Moreover, POL did not have the only or final say on SSL's appointment.[288] On 4 July 2012, LA and a number of other MPs met with SSL to determine whether or not SSL should conduct the review. There was specific discussion as to whether a system review and/or case review should be undertaken. SSL advised against a system review on the basis that it would be of limited benefit

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see the records and files, and look at how the software is validated." RWar stated that he was approached by SC by way of an email on 22/05/12 which said that she was "*looking for a forensic accountant with a human face*": §12 of RWar1 (**WITN01050100**). The meeting pack for POL's meeting with MPs on 18/06/12 said that the idea of a forensic audit was LA's idea (**POL00058004**). Although none of this evidence was put to LA, his recollection of the meeting (**WITN00020100** §§43-45) is not inconsistent with the contemporaneous documents or the separate recollections of AP and PV.

280 **POL00002000**; **POL00028066**; **POL00027716**.

281 **POL00116801**.

282 **POL00116795**; **POL00180209**.

283 AP T 05/06/24 [73:17 - 75:9] (**INQ00001156**); PV T 23/05/24 [3:3 - 5:9] (**INQ00001152**). See also PV's note of her meeting with SC on 31/07/13 in which she stated: "*I had backed SC's judgement on the appointment of SSL because we did not want to appoint one of the big four...*": **POL00381455**. See also the first footnote in the SSL Assurance Review by POL dated 24/06/14 which stated: "*It was noted, SSL presented a more "human face" for this sensitive task compared to the popular 'Big 4' corporate audit companies*": **POL00227400.**

284 Note of conference with RMKC on 12/06/12: **POL00006484**; PV's evidence was that neither she, the Executive nor the Board were made aware of RMKC's advice so did not take it into account when deciding to instruct SSL or setting the scope of SSL's review: T 23/05/24 [9:18 - 9:24, 15:8 - 16:2, 25:2] (**INQ00001152**); AP also said that she was unaware of it: §155 of AP1 (**WITN00740100**); SC said that the advice did not influence the decision not to appoint Deloitte (T 23/04/24 [53:21 - 53:24] (**INQ00001134**)).

285 As was put to PV and AP, see PV T 23/05/24 [5:12 - 6:3] (**INQ00001152**); AP T 5/06/24 [78:14 - 78:19] (**INQ00001156**).

286 RWar T 18/06/24 [135:14 - 135:19] (**INQ00001162**); §23 of RWar1, **WITN01050100**.

287 See, for example, PV's email to SC, copying in AP and AL on 21/06/12 stating that she had told RWar during a meeting with him that POL's "*primary objective of this exercise is to be transparent and to deal with whatever outcomes and conclusions he comes to*": **POL00180779**.

288 SSL were instructed to hold off doing any work until MPs, specifically LA, approved the decision to appoint them: **POL00339291**.

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and too costly.[289] The consensus reached was that the case review would likely reveal whether a system review was necessary.[290] The MPs, therefore, approved SSL's appointment.[291]

124. LA and SSL subsequently met (12 July 2012) with Sir Alan Bates ("SAB") and Kay Linell ("KL") on behalf of JFSA to seek their approval of SSL, when they too endorsed the appointment of SSL to conduct a case review rather than a system review.[292] Following SSL's appointment, POL consulted on and agreed the remit of their review with SAB on behalf of JFSA and SSL,[293] being "*to consider and to advise on whether there are any systemic issues and/or concerns with the "Horizon" system, including training and support processes…*"[294] It also provided that SSL "*will determine the process it will follow for the Inquiry using its judgment, after consultation with Post Office Limited and JFSA*".[295] In short, within the overall remit, it empowered SSL to investigate as it saw fit.

125. It is, therefore, clear that, in line with the earlier discussion around SSL's appointment, it was envisaged that SSL would be able to report adequately on the Horizon system through the case review. POL accepts, as has been suggested, that there was an apparent incompatibility between reviewing a relatively small number of cases and drawing conclusions as to *"systemic"* (or system-wide[296]) issues with Horizon. Nonetheless, the evidence shows that the view held at the time was that the review of cases would likely surface problems with the system if they existed.[297]

126. The suggestion that had a full review of Horizon's integrity been carried out, the issues with Horizon would or may have emerged[298] has to be considered against this background. Clearly, with hindsight, it would have been preferable to have commissioned Deloitte (or another similar firm) to conduct a system review either instead of, or alongside, the SSL review, recognising that POL's reliance on previous court decisions, reviews and audits as assurance as to Horizon's integrity was misplaced.[299] However, it is difficult to say with any certainty that such a review would have unearthed the issues with Horizon, at least in the way that they emerged during the GLO, in particular because it was only compelled disclosure of the PEAKs and KELs held by Fujitsu, in a repository controlled and accessible only to the SSC, that enabled the analysis in those reports.

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[289] IH T 18/06/24 [7:12 - 10:2] **(INQ00001162)**. IH also stated that he did not read SSL's initial proposal on 01/06/12 as suggesting that they would "*study and selectively test the system*" in the sense of a technical code review of the software but rather that they would look at inputs and outputs and how the system worked in practice: IH T 18/06/24 [6:3 - 6:20] **(INQ00001162)**.

[290] CTI's suggestion that POL had offered to LA, and he had understood, that there would be a full review of the Horizon system (T 10/04/24 [33:12 - 33:24] **(INQ00001127)**) therefore does not reflect subsequent developments, nor does the implicit criticism that SSL had initially proposed that they should test the Horizon system but that did not happen (SC T 23/04/24 [55:12 - 55:18] **(INQ00001134)**; PV T 23/05/24 [7:14 - 8:6] **(INQ00001152)**; IH T 18/06/24 [6:3 - 6:20] **(INQ00001162)**).

[291] **JARB0000022**; **POL00180832**; **POL00091028**.

[292] **POL00091028**; **POL00096817**; SAB T 09/04/24 [120:5 - 120:22] **(INQ00001126)**. KL was of the view that "*if you didn't check it through case reviews, you wouldn't know what anomalies you would be looking for. You'd be checking 100 per cent of the system at vast cost and it would take an enormous amount of time*". She, therefore, agreed with the concept of starting with the problems raised by the cases and "*working back to see what went wrong*". T 20/06/24 [120:8 - 120:21] **(INQ00001164)**.

[293] See for example the 'Raising Concerns with Horizon' document is signed by each of those three parties: **POL00060374**.

[294] **POL00060374**, p.4.

[295] **POL00060374**, p.7.

[296] That is how SSL understood the term: see IH T 18/06/24 [15:24 - 16:6] **(INQ00001162)**.

[297] LA expressed the view in the meeting on 04/07/12 that "*individual case examination would surely give an indication of whether a systems investigation would be necessary*": **JARB0000022**. RWar similarly advised that "*it would be surprising if the sample of cases pushed forward by the MPs would fail to surface to the reviewers instances of the sort of Horizon-induced shortages that have been so publicly alleged if they are there to be found*": **POL00180832**. See also Neil McCausland T 29/07/24 [29:17 - 30:8] **(INQ00001183)** and KL T 20/06/24 [120:8 - 120:21] **(INQ00001164)**.

[298] See, for example, PV T 23/05/24 [6:3 - 6:17] **(INQ00001152)**.

[299] As succinctly highlighted by Linklaters' advice on 20/03/14, there was at that stage "*no objective report which describes and addresses the use and reliability of Horizon"*: **POL00107317**, §2.3 and §5.36.

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(ii) POL's response to SSL's findings

127. POL acknowledges that SSL's investigation had the potential to be a turning point in the scandal. In that context, POL notes, with profound regret, that the evidence in relation to SSL's investigation shows, in broad terms, that its employees who were involved in SSL's investigation:

a) Were defensive in response to SSL's adverse findings;
b) Were closed-minded to the possibility that Horizon and POL's processes and behaviours, not Postmasters', may be at fault for losses;
c) Were too focused on SSL's interim finding that they had not yet found systemic issues with Horizon and misused it as positive assurance of the system;
d) Failed to take into account the corroborative findings made by Detica in its report on 'Fraud and Non-Conformance in the Post Office' in evaluating SSL's work;[300]
e) Took an increasingly adversarial and litigious approach to SSL's investigative work, particularly after the Interim Report;
f) Sought in the ICRMS to constrain SSL's remit to opining on individual cases and whether they revealed fault with the Horizon system itself rather than the broader associated issues of concern in respect of POL's processes and behaviours;
g) Did not provide SSL with all the key material and/or information they required to fulfil the remit;[301] and
h) Were generally preoccupied with protecting the interests of the business over the interests of Postmasters.

128. However, in evaluating the reasons for POL having taken that approach and determining the extent to which POL is to be criticised, the Inquiry is invited to pay careful regard to three factors. First, the role of external advice and input in shaping POL's response to SSL's investigative work. Second, SSL's capability in terms of resource and professional expertise. Third, what adverse findings were as a matter of fact communicated to POL during SSL's investigation.

(iii) Role of external advice and input in shaping POL's response to SSL's work

129. POL bears ultimate responsibility for its evaluation of, and decisions it made in response to, SSL's work. It does not, by these submissions, seek to avoid that responsibility, but the persistent criticism of SSL by POL's advisors or third parties explains, to a significant extent, why POL felt justified and reassured in its concerns as to SSL's competence, performance and output, and, thus, in rejecting their adverse findings.

Womble Bond Dickinson

130. The evidence shows that APa was unrelenting in his criticism of SSL's work. For example, in response to SSL's Interim Report, he advised:[302]

> "*On the whole, I'm deeply unimpressed with the report.*
> *Headline thoughts:*
> *1. Despite the rhetoric, SSL have not managed to identify a problem in Horizon or a gap in our SR responses.*
> *2. In general, SSL has provided little if any analysis. Predominantly, they have just quoted the SMPRs and POL's views without adding their own assessment. This was not the scope of work*

[300] In particular, Detica's finding that "*Several of [SSL]'s findings resonated strongly, notably the disjointed response by the Post Office and the habitual desire to assign responsibility to an individual rather than conduct root cause analysis*" at §3.2.3 (**POL00004408**).
[301] Though POL provided SSL access to some 34,000 documents according to §29 of IH1, it is clear that some key material was either not provided or not in a timely fashion. For example, POL failed to provide full and timely documentation concerning BEDs of which it was aware (e.g. Callendar Square/Falkirk bug and the RPM bug) and the substance of the Clarke advice.
[302] **POL00297285.**

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agreed with SSL who were supposed to neutrally evaluate the position — I see little if any actual evaluation.
3. The few views expressed by SSL generally lack justification and explanation. They draw conclusions without providing supporting reasons. This is in breach of the Investigation agreement."

131. There are many other like examples.[303] Plainly, as POL's principal external legal advisor on SSL's investigation, his advice was influential in informing POL's assessment of, and response to, SSL's work.

Linklaters

132. In February 2014, the POL Board, recognised the need to check the advice POL was receiving from WBD.[304] Linklaters was instructed to advise. Linklaters, however, was equally scathing about SSL's work.[305] In particular, in its advice dated 20 March 2014, Linklaters queried whether SSL had "*the expertise which would allow them to do the work required to a satisfactory standard.*"[306] That was a significant piece of advice from a magic circle firm to the Board. It inevitably had the effect of compounding POL's concerns as to, and the rejection of, SSL's work.

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[303] In response to a draft of SSL's Part One Briefing Report, he advised that "*all the opinions are unsupported by either logical reasoning or evidence*": **POL00304151**. In response to an early draft of SSL's Part Two Briefing Report, he advised that the report suffered "*the same problems as SSL' previous reports — a lack of detail, evidence and justifications to back up some fairly sweeping conclusions. On the positive side, if this is the best points that SSL can raise then there is little in here to concern POL. However, a report that is this poor will add very little, if anything, to the mediation process and may in fact confuse matters, making resolution more difficult*": **POL00006552**. He made numerous specific critical comments on that draft: **POL00006553**. He prepared a draft response to the CRR M022, which identified a *"number of reoccurring issues"* including poor analysis, factual inaccuracy, no evidence, confirmation bias, lack of counterpoint, inexpert views, confused structure: **POL00040176**; **POL00040179**. In relation to the approach Imperial College London intended to take to their proposed review of Horizon, he advised that "*the structure proposed by ICL really highlights the deficiencies in SSL' approach*": **POL00148672**.

[304] See minutes of the Board meeting on 26/02/14: **POL00021522**. In a note to the Board on 17/03/14, PV wrote: "*At the Feb Board, the Executive were asked 'where we were getting advice from' as we look into the options available to us. We agreed we would engage a top law film to bolster our thinking, particularly with a view to understanding the legal position re, compensation, but also horizon scanning legal impacts of any changes we might consider…*": **POL00147778**.

[305] Linklaters' advice on 20/03/14 stated, among other criticism of SSL: "[SSL] *have descended into the detail of individual cases and commented on the particular issues of which complaint is made. They have done so without reference to any robust evidence as to how and why there may have been malfunctions with Horizon or how any such malfunctions could have caused the losses in the particular case. The views which Second Sight have expressed in individual cases are not supported by the sort of detail or evidence which would enable any conclusions to be safely drawn from them*": **POL00107317**, §5.31-5.35. Christa Band of Linklaters also addressed the Board directly at its meeting on 26/03/14 and again criticised SSL's approach. In particular, she criticised SSL's failure to produce a baseline review of the system before considering specific complaints and to "*cite hard evidence to back up any conclusions made*": **POL00006564**. Jonathan Swil of Linklaters advised POL further on 06/08/14 in respect of SSL's draft Part Two Briefing Report:[305] "*The report is well below the standard we would expect of a firm of "experienced accountants" engaged to prepare an independent, evidence-based report. As with Second Sight's previous work-product, the report largely fails to draw conclusions from any of the issues which it identifies and seeks to explore, and those conclusions it does draw do not appear to be based on any facts or evidence available to Second Sight. It also opines on issues and facts on which Second Sight are not qualified to opine, or are not reasonably within their remit i.e. because they are not sufficiently connected with Horizon. Plainly, the report does not serve Post Office's interests. From a wider perspective and perhaps more importantly, the report does nothing to advance the Applicants' positions either or assist the satisfactory operation of the Scheme. It will create even more unrealistic expectations and make settlement or other resolution of claims even harder. This point should be made clear to the Working Group, and the Chairman in particular, in order to ensure that to those whose opinions matter, if and to the extent it is not finalised in an acceptable form, the report reflects much more poorly on Second Sight than it does on Post Office*": **POL00021814**.

[306] **POL00107317**, §5.35.

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SAH

133. The contemporaneous evidence shows that SAH also expressed criticisms in respect of SSL's work. On 24 February 2014, at a meeting with PV and CA, SAH explained that SSL found it hard to express an opinion on the merits of each case.[307] Further, following a Working Group meeting on 7 March 2014 at which it was agreed that SSL's initial Case Review Reports had to be revisited in order to, among other matters, ensure the conclusions were "*reasoned and supported by evidence*",[308] SAH took it upon himself to produce a note to aid SSL with their reports.[309] His note placed a heavy emphasis on SSL providing *"reasoned opinion"*.[310] On 26 March 2014, PV updated the Board that SAH had challenged SSL on the quality of their work and he was insisting on more "*evidence based reports*".[311] Richard Callard ("RC") similarly informed his ShEx colleagues at that time that SAH considered SSL's reports to be "*substandard and unsubstantiated*" and, given the note he had produced for SSL, expressed the view that "*clearly his faith in SSL is waning*".[312]

134. SAH disputed that his faith in SSL had ever waned. He said his only concern about SSL's work was in respect of form rather than substance. He said that he "*just thought the reports could be written more clearly.*" He also said that SSL "*were extremely busy, they were overloaded, and [he] was doing [his] bit to try to get their reports in a way that would be easily understandable and readable by the mediator.*"[313] Whatever the precise views SAH had formed, it is understandable why POL and ShEx took from the fact and nature of his intervention at the time that he had real concerns at that point with the quality of SSL's work.[314] It was a significant step for the independent chair of an ADR scheme to interfere in the production of an expert's report in this way. It evidently bolstered POL's own critical appraisal of SSL's work.

Fujitsu

135. On 15 September 2014, Fujitsu provided POL with its comments on SSL's draft Part Two Briefing Report.[315] Fujitsu noted:

> "*Our key concern with this briefing report (and the previous Second Sight reports that have been shared with Fujitsu by Post Office) is that the allegations and/or assertions made by Second Sight are consistently made without any reference to any primary source evidence to support and/or provide a basis to support the allegation or assertion. We have raised this concern repeatedly with Post Office but, thus far, it remains unaddressed by Second Sight. This means that the briefing report, to the extent to which it relates to the Horizon application (we do not feel it correct for us to comment on any other element of the report) constitutes unsubstantiated subjective opinion which, in our opinion, is without merit or basis.*"

136. Those comments were transparently defending Fujitsu's interests. Nonetheless, it was further reassurance to POL as to the position it had taken in respect to SSL's work.

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[307] **POL00100335**; SAH failed to directly answer CTI's question as to what he had meant by that: SAH T 10/04/24 [134:3 - 135:6] **(INQ00001127)**.

[308] **POL00026656**.

[309] **POL00302815**; **POL00026643**; **POL00303152**.

[310] **POL00302815**.

[311] **POL00006564**. See also PV's speaking note for that meeting which noted a concern in respect of the quality SSL's work and that SAH was "*engaged in actively managing quality – gone so far as to provide Secodn [sic] Sight with a template for their reports*": **POL00303281**.

[312] **UKGI00002221**.

[313] SAH T 10/04/24 [145:19 - 148:5] **(INQ00001127)**.

[314] In a speaking note for PV for the Board on 26/03/14 , she noted in respect of SSL's work: "*Quality of work a problem – All three reports submitted so far sent back for substantial rework by the Working Group – SAH engaged in actively managing quality – gone so far as to provide Secodn [sic] Sight with a template for their reports*": **POL00303281**.

[315] **FUJ00087125**.

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137. As stated, POL does not highlight these examples to deflect responsibility for its rejection of SSL's findings. Instead, it does so to show that POL's concerns as to SSL's competence, performance and output were not, as has been suggested, manufactured in response to SSL challenging POL. Rather, they were genuinely held and were informed and compounded by those advising POL. The effect of those concerns, along with the evident mindset which prevailed within POL, that Horizon and POL's processes could not be to blame for postmaster losses, explains to a significant extent why POL rejected SSL's adverse findings.

(iv) SSL's capabilities

Resource

138. It is self-evident that the review which SSL were appointed to carry out in mid-2012 was very different to the review and work within the ICRMS that they ultimately ended up undertaking. When SSL submitted their proposal on 1 June 2012, it was anticipated that the review would involve a handful of MPs' cases and that it could be concluded by Autumn 2012.[316] By February 2013, the number of cases to investigate during the first phase of their investigation had increased to 47 cases.[317] By November 2013, during the ICRMS, it had increased to 136 cases.[318]

139. On any view that was a considerable increase in caseload. It is inevitable, therefore, that SSL, who until early 2014 comprised only Ron Warmington ("RWar") and IH, did not have sufficient resource to investigate all the additional cases in a timely manner. RWar stated that they recognised the resource issues early on and so took on additional investigators.[319] However, the evidence shows that SSL did not take on any additional investigators until February 2014, some three months after applications to the ICRMS had closed.[320] Even then, they only took on one, and then a further two in July-August 2014.[321]

140. Given the increased caseload and complexity of cases, during the first phase of their investigation, SSL had to resort to a fast track and spot review process in order to improve the rate of progress.[322] Even with those measures, SSL were only able to report on four spot reviews by the time of their Interim Report, a year after they had started the investigation.[323] Whatever the criticism of the delays in obtaining information from POL and Fujitsu, that was slow progress. During the ICRMS, SAH said that there was no way as a "*very small company*" that SSL "*could keep up*".[324] Despite which, SSL maintained that "*throwing more bodies at the job*" was not the solution,[325] instead preferring to "*work around the clock*".[326]

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316 **POL00122393**; **POL00027848**.
317 See, for example, **POL00097951**.
318 **POL00021791**, §1.9.
319 §39 of RWar1, **WITN01050100**.
320 Chris Holyoak joined in or around February 2014: **POL00021740**.
321 Kim Evans joined in or around July 2014: **POL00305453**. Niall Young joined in or around August 2014: **POL00306947**.
322 **POL00097951**; **POL00002228**, §3.
323 **POL00002228**.
324 SAH T 10/04/24 [133:3 - 133:24] (**INQ00001127**). SAH also said to PV and CA in a meeting on 24/02/14 that SSL were very "*resource-challenged*": **POL00201179**.
325 **POL00100336**.
326 At §42 of RWar1, he said: "*as pressure mounted, with the number of cases; their complexity; the volume of documents and the necessary research all increasing, along with pressure to increase the pace of report production, we considered hiring in more investigators. IH and I agreed that the more investigators we deployed, the less likely it would be that we would see any linkages between cases. We would risk failing to observe and report on the often re-appearing 'thematic issues' that we had recognised as being central to the matter in hand. We also knew how long it had taken us to get to grips with the enormous complexities of POL's systems, processes and behaviour, and how long it had taken us to teach our three new investigators what was needed in order to give them a chance of meeting our high standards of investigation and report writing. We came to the conclusion that the answer was simply for the five of us to work around the clock. For me, that meant seven days a week, starting at 8:00am and often not finishing until 02:00 or 3:00 the next morning.*" **WITN01050100**

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141. It has variously been suggested that POL's internal discussions about replacing or bolstering SSL resource with a bigger firm were merely a reaction to SSL's adverse findings.[327] In considering that criticism, the Inquiry should have careful regard to the increased caseload, SSL's limited resource and the slow rate of progress (as well as the concerns about SSL's performance). It was not, in principle, unreasonable for POL to consider means of addressing the extreme resource pressure on SSL by the use of a bigger firm to improve the rate of progress.[328] Notwithstanding SSL's acquired knowledge, it is hard to understand SSL's position that "*more bodies*" was not the solution given the considerable increase in cases.

Limits of SSL's professional expertise

142. POL's position was that SSL, as forensic accountants, in principle, had the professional expertise to *investigate* historic criminal cases and make findings as to what the evidence showed as a matter of fact.[329] [330] However, the question of whether any factual finding SSL made cast doubt on the propriety of prosecutions and the safety of convictions was ultimately a legal one which was outside their expertise.

143. Notwithstanding, it has been suggested that POL sought to prevent SSL investigating criminal cases.[331] That mischaracterises POL's position. POL did try to restrain SSL from opining on matters of criminal law, but not from investigating criminal cases. That is reflected in the Terms of Engagement which SSL signed on 1 July 2014.[332] RWar told the Inquiry that he was so displeased with the terms that he could not sign it.[333] In fact, the contemporaneous evidence shows that he was content to sign.[334] Indeed, the evidence generally shows that SSL understood that they could not opine on matters of criminal law.[335]

144. As a matter of principle, POL's position that SSL should not opine on matters of criminal law ought not, therefore, to be subject to criticism, particularly with the work of criminal lawyers and the CCRC process running in parallel to SSL's investigation.

(v) <u>What findings were made and communicated to POL during SSL's investigation</u>

145. The findings which are set out in SSL's Interim Report, draft report on POL's *"Investigation Function*", Case Review Reports and Part One and Part Two Briefing Reports are a matter of documentary record. However, it has been stated by SSL and SAH that they also communicated a number of other significant findings or views to POL during the currency of SSL's investigation which were not documented. It will be for the Inquiry to determine the accuracy of those

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[327] See, for example, AVDB T 25/04/24 [179:22 - 180:14] **(INQ00001136)** .

[328] See, for example, **POL00100335**, §5.

[329] See, for example, **POL00021792** §22.2-22.6 and **POL00004432**, §2.5.

[330] See, for example, the Overview document for the ICRMS which stated: "*You may put your case through the Scheme even if you have already received a Police caution or have been subject to a criminal prosecution or conviction*": **NFSP00000976**.

[331] See, for example, §66 and §142 of IH1, **WITN00420100** and §142 of LA1, **WITN00020100**.

[332] §5.1 states that "*it is acknowledged that matters relating to criminal law and procedure are outside Second Sight's scope of expertise and accordingly shall not be required to give an opinion in relation to such matters*": **POL00000213**.

[333] §43 of RWar1, **WITN01050100**.

[334] See pp.41-42 of transcript of the recording of discussion between CA, IH and RWar on 01/07/14 in which RWar states he would be happy to sign the Terms of Engagement: **SSL0000131**.

[335] In reply to an email from SB on 21/05/13 about possible unsafe convictions, RWar said: "*I'm surprised that you have raised as these include matters that are outside our scope of work…Our role is to establish the facts relating to specific MP or JFSA nominated cases. We are not qualified to answer a legal question about what may or may not be an unsafe conviction or suspension*" **POL00144687**. In a meeting between SSL and MPs on 08/07/14, SSL similarly said in reply to a question about whether the issues they had identified in their Interim Report impacted convictions: "*Second Sight said that was a legal question which they were not qualified to answer and they did not consider it was appropriate to express an opinion. They have to present facts and it is for others to consider the impact on any historic cases".* **POL00029664**.

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statements. POL's position, on analysis of the evidence, is that they are not accurate. The more significant statements are as follows.

146. **First**, SSL stated that on conducting an initial review of the criminal case files they discovered and raised findings of likely prosecutorial misconduct and miscarriages of justice with SC and JSi in Autumn 2012.[336] There is no written record of such findings or any documented discussion about them. That is surprising given their nature and seriousness. It is also surprising because RWar said he told SC that they needed to be reviewed and ratified by a criminal barrister.[337] It is unclear how that was expected to take place if they had not been committed to writing.

147. Further, Simon Baker ("SB") emailed SSL on 21 May 2013 specifically asking whether their investigative work to date had revealed unsafe convictions.[338] RWar answered that they were "*not qualified to answer a legal question about what may or may not be an unsafe conviction or suspension.*" On 8 July 2013, Andrew Brigden MP ("ABMP") similarly asked SSL if "*the issues that they had identified had an impact in relation to the historic convictions.*"[339] They again answered that that "*was a legal question which they were not qualified to answer*", though suggested Spot Review 22 *"makes a reference to something that is germane to this.*"

148. It is very difficult to reconcile those answers with the suggestion that they had otherwise already identified and raised serious concerns about prosecutorial misconduct and miscarriages with POL. IH suggested in his oral evidence that they should have done more to highlight the findings.[340] That is somewhat of an understatement if they had, in fact, made those serious findings at the time. The inevitable conclusion, which is consistent with all the contemporaneous documentation, is that they had neither made nor communicated those findings at the time.

149. **Second**, IH said in his statement to the Inquiry that he told AL and LS after a meeting with GJ on 13 September 2012 that GJ had informed him that Fujitsu routinely accessed branch accounts remotely without postmaster knowledge and approval and could generate "*indistinguishable keystrokes*". IH considered that that had major implications for the safety of convictions.[341] However, that account is neither corroborated by nor is it consistent with the evidence.

150. There is no written record of any such discussion either with either AL or LS. Neither of them mention such a discussion in their evidence. That is surprising given the seriousness of the information and its potential implications. Further, it is difficult to understand why SSL subsequently adopted the approach of seeking full email records for staff at Bracknell to establish whether unauthorised remote access occurred, if GJ had already straightforwardly told them that it did. The obvious course of action would have been to ask him to confirm what he had said in writing.

151. Significantly, IH had already given an account of his meeting with GJ in his statement dated 28 September 2018 for the Horizon Issues Trial.[342] It is materially inconsistent with his account to the Inquiry. In it, he stated that GJ told him that remote access was only used *occasionally* to troubleshoot problems. He made no mention of having been told that remote access was used without Postmaster consent and knowledge, and no mention that it could be done without leaving a trace. All of which would have been highly material information for the Horizon Issues Trial.

152. Consistent with IH's original account, GJ said that he had "*no reason to doubt that [he] would have said something* [to IH] *to the effect that Fujitsu used remote access "occasionally". That would have reflected [his] understanding in 2012 that Fujitsu's use of remote access was very rare. That*

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[336] §46 of RWar1 (**WITN01050100**); §38 & §53 of IH1 (**WITN00420100**); IH T 18/06/24 [58:11 - 59:2] (**INQ00001162**) .
[337] §46 of RWar1 (**WITN01050100**).
[338] **POL00144687**.
[339] **POL00029664**.
[340] IH T 18/06/24 [61:22 - 63:14] (**INQ00001162**) .
[341] §43-56 of IH1 (**WITN00420100**)
[342] §2.2-2.3 (**POL00091426**).

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remains [his] understanding."[343] He did not consider that he was telling him anything "*sensitive*" by that. GJ also said that, until September/October 2018, he understood that any transactions or data inserted remotely would have been visible (not, as it were, "*indistinguishable*").[344]

153. The evidence, therefore, suggests that IH has, whether consciously or not, imputed his understanding of the evidence on remote access which later emerged during the GLO to his recollection of the meeting on 13 September 2012. That explanation is consistent with the absence of any record of this information emerging in September 2012, SSL's and POL's subsequent investigation into remote access functionality, the information which Fujitsu provided about remote access during SSL's investigation,[345] and his original account of his meeting with GJ in his Horizon Issues statement.

154. **Third**, SAH said that he advised PV and AP "*over and over again*" that POL's case that Postmasters stole the sort of sums of money involved did not make sense, particularly because within the days of the alleged theft they would have to balance the books.[346] He said it was "*fundamentally implausible*".[347] While that view may well have occurred to him at the time, there is no evidence to corroborate him having actually communicated it to AP and/or PV.

155. AP denied having been told that by SAH. She said she would have remembered it. Further, she said that she only met SAH once, early on in the ICRMS, so was surprised if he had come to any clear view.[348] That meeting took place on 25 November 2013, but it was not minuted.[349] There is nothing, however, in the surrounding correspondence to suggest that SAH had raised such a concern. There is also no mention of it in the minutes of his meetings with PV.[350] She was not asked about it in evidence.

156. Had a former Court of Appeal judge challenged POL on the merits of its case on numerous occasions, as described, one would expect there to be a record of it in minutes or correspondence. There is, however, no evidence that such a discussion ever took place. Moreover, it would be highly unusual for an independent chair to an ADR scheme to have offered such strong views on the merits of one side's case.[351] For all those reasons, the evidence tends to suggest that SAH did not, in fact, communicate this view.

(vi) POL's Response to the Second Sight Interim Report

157. POL accepts that its Board was not fully apprised of, and did not fullyunderstand, the implications of the Second Sight Interim Report ("SSIR"), and that consequently the Board focused on its concerns as to the management of the SSL review rather than on ensuring an appropriate response to the SSIR. The evidence the Inquiry has heard and seen demonstrates that there are a number of reasons for this.

158. The evidence shows multiple failings on the part of the Executive: not adequately briefing the Board on the SSIR, in particular by painting too favourable a picture in respect of its findings[352] and

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[343] §22 of GJ4 (**WITN00460400**).
[344] §170-172 of GJ4 (**WITN00460400**).
[345] See, for example, what Fujitsu told POL on 17/04/14 as to the visibility of balancing transactions and that they had only been used once in 2010 (**POL00108538**).
[346] SAH T 10/04/24 [134:21 - 135:14] (**INQ00001127**) .
[347] SAH T 10/04/24 [137:16 - 137:21] (**INQ00001127**) .
[348] AP T 06/06/24 [30:25 - 32:10] (**INQ00001157**) .
[349] **POL00116227**; **POL00198121**.
[350] It was not mentioned in SAH's meeting with PV on 24/09/13: **POL00381770**. Nor was it mentioned in the meeting on 24/02/14: **POL00201179**.
[351] Note that SAH himself drew the distinction in his meeting with PV on 24/09/13 between the functions he would be performing as Independent Chair of the Working Group as compared to acting in an advisory capacity: **POL00381770**.
[352] For example, PV T 23/05/24 [133:16 – 133:24] (**INQ00001152**), Report 2 of the Governance Experts §§268 – 270 (**EXPG0000010**).

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focussing excessively on the finding that SSL had not yet found systemic problems with Horizon[353]; focussing overly on the concerns about the poor quality of the SSIR[354] against the background of their general concerns about SSL's capability as above; generally being defensive in respect of SSL's adverse findings and, consistent with the prevailing mindset, refusing to countenance the possibility that Horizon and POL's treatment of Postmasters may be at fault; and, focussing excessively on brand protection and communications or public relations aspects. (See also 'Second Sight' § 120 to 156 and 'ICRMS' §170 to 185).

159. The evidence also shows that the Board failed to properly scrutinise both the SSIR and SC's Update Paper on the SSIR for the Board meeting on 16 July 2013[355], and failed to fully challenge the Executive as to the extent of the risks which arose given their contents.

160. POL accepts that all of these factors impaired its understanding of the full implications of the SSIR, and that this was a significant missed opportunity.

Clarity of the Second Sight Interim Report

161. POL accepts that the SSIR raised sufficiently clear concerns in a number of important respects (including as to the existence of BEDs, POL's investigation function and its treatment of Postmasters) such that further investigations were required by POL to establish the nature and extent of the risk that they posed. That included potential risks relating to the accuracy of Horizon data and the safety of convictions based on it, noting that the latter issue was recognised by SC and WBD at the time.[356] Notwithstanding the advice POL sought and received from CK and its establishment of the Sift Review, POL accepts that it failed fully to explore the extent of the risk of unsafe convictions arising from the SSIR at the time.

162. While POL accepts its failings in respect of its assessment of, and response to, the SSIR, it is important to note that (as identified by the Inquiry's governance experts[357]), the way in which the SSIR was drafted meant that critical elements were not as obvious as they should have been on first reading.[358] This is likely to have contributed to critical information in the report being minimised, overlooked, not appreciated and/or given insufficient attention by POL's Executive and Board. Regrettably, inadequacies in communication to the Board did also occur(i.e. in SC's Update Paper, as discussed below, and its presentation by PV[359]), and Board members did not themselves pick up on the need for greater scrutiny of the SSIR.[360]

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[353] For example, PV T 23/05/24 [121:2 – 122:12] **(INQ00001152)**, SC **T 23/04/24 [84:5 – 84:8] (INQ00001134).**

[354] For example, PV T 23/05/24 [91:5 – 91:20] **(INQ00001152)** .

[355] **POL00099218**.

[356] See discussion of SC's Update Paper and the Horizon Risks Note below.

[357] Dame Sandra Dawson ("DSD") said "*when these bits of information came in from the Second Sight review* […], *they don't come in in a sort of well encapsulated way*" T 12/11/24 [80:20 - 80:24] **(INQ00001206)**; "[Important issues are] *not handed on a plate. Its hardly handled in any way but, within the report, very important matters are raised*" T 12/11/24 [103:14 - 103:16] **(INQ00001206)**; "*the* [SSIR] *had lots of bits of information which were highly germane to the issue of POL's -- the Post Office's prosecutions and investigations, attitudes to subpostmasters, the use of Horizon data in prosecutions, and the robustness of Horizon. They were peppered around, and that, as I've said before, wasn't handed on a plate.*" T 12/11/24 [105:252 - 106:6] **(INQ00001206)**; "*the* [SSIR] *contained enough information, although not necessarily coherently brought together*" T 13/11/24 [19:16 - 19:18] **(INQ00001207)** .

[358] They were scattered though the body of the report and did not feature in its conclusions, nor was there any executive summary. Inquiry's governance experts in their report, **EXPG0000010**, §§309 and 310.

[359] Which did not appear to summarise the key findings of the SSIR, mentioning only SSIR's findings on the relative proportion of the "*tiny number of cases",* that "*no systemic issues*" with Horizon had been found and the "*cultural issues which had to be addressed to improve the support*" for Postmasters: **POL00021516**.

[360] This includes the then shareholder representative, who gave evidence that she would have read the whole of the SSIR.[360] However, her evidence was that she recalled being concerned about the points on training and support, and helplines, rather than about BEDs or POL's investigation function: "*I think I would have been more likely to be reading the Second Sight Interim Report to try to understand what it was saying and I do have a memory of being concerned by what it was saying and, in particular, thinking about this point on training and support, and helplines*" T 30/07/24 [56:17 – 57:21] **(INQ00001184)**.

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Position of SC and impact of interpersonal difficulties on the Board's receipt of legal advice

163. The Board received limited legal advice about the implications of the SSIR. This was exacerbated by a difficult relationship[361] which developed between PV and AP on the one hand, and SC on the other, as a result of PV and AP's criticisms directed at SC's management, judgement and leadership in relation to the SSL review, their view that SC had not adequately controlled SSL (despite SSL's independence)[362] and the manner in which PV and AP handled their relationships with SC. As a result, PV and AP did not ensure that the Board received the legal advice that it needed[363] and SC's ability to communicate her advice to the Board was impaired.[364] Furthermore, SC did not always communicate all relevant points to the Board.[365]

164. The exclusion of SC from the Board meeting on 16 July 2013 by the then Chair was the unfortunate result of these relationship difficulties, combined with a lack of time at Board to consider the issues arising from the SSIR.[366] It led to a situation where SC's advice was not adequately conveyed to the Board.[367] The Chair should have ensured that SC presented the Horizon Update Paper to the Board and that she had been fully briefed by SC notwithstanding the strains in their relationship. POL accepts these were failings in governance.[368]

165. POL further accepts that there were inadequacies in SC's Update Paper for the Board insofar as it did not highlight the critical findings which needed to be discussed and interrogated at Board level to determine the appropriate response from POL.[369] It is likely that this was an additional factor that contributed to the Board's focus on the management of the SSL review process rather than the substance of the SSIR itself.

Notification to insurers

166. The minute of the Board meeting of 16 July 2013 records that following the CEO's discussion of the SSIR, the Board was noted to be "*concerned that the review opened the Business up to claims of wrongful prosecution*" and "*The CFO was asked what the insurance position was. He promised the Board a note on this. He was also asked to ensure the both RMG and the Business' insurers*

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[361] PV refers to "difficult conversations": PV T 23/05/24 [92:4] **(INQ00001152)**.

[362] T 23/04/24 [93:19 – 94:4] **(INQ00001134)**.

[363] For example, PV T 23/05/24 [143:1 – 144:15] **(INQ00001152)**, and AP T 05/06/24 [140:6 - 141:25] **(INQ00001156)**.

[364] For example, T 23/04/24 [103:17 – 103:22] **(INQ00001134)**.

[365] For example, PV accepted that advice about the effect of the SSIR in relation to GJ and the safety of convictions should have reached both her and the Board, T 23/05/24 [94:16 – 96:23] **(INQ00001152)**.

[366] AP accepted that there were two issues, and that her decision to exclude SC from the Board's discussion of the first, being the management of the Second Sight process meant that SC was also excluded in relation to the second, being legal claims that POL might face. T 05/06/24 [139:5 – 139:16] **(INQ00001156)**. PV gave evidence that the Board ran out of time, and that SC was therefore never brought in to the discussion. T 23/05/24 [149:2 - 149:3] **(INQ00001152)**.

[367] AP accepted in her evidence responsibility for the Board's failure to fully consider the implications of SC's paper, T 05/06/24 [144:17 – 144:25] **(INQ00001156)**. PV gave evidence that she was not in a position to properly speak to SC's paper, and that she did not provide the Board with a full presentation of its contents, T 23/05/24 [132:19 – 133:3, 141:1 – 141:12] **(INQ00001152)**. In an email on 6 July 2013, PV asked SC about the potential review by external lawyers of past convictions for false accounting – demonstrating an appreciation of the impact of potential issues with private prosecutions. It is likely this appreciation and its significance was lost because of the interpersonal difficulties (**POL00099051**, see also PV1, **WITN01020100** §476). It is also unfortunate that other Board members, including the shareholder representative, did not appreciate or act on the issue that the GC's paper was being presented by the CEO and was not being discussed in full; SS said that she did not recall anything about SC sitting outside, or thinking about why SC's paper was being presented by PV. T 30/07/24 [68:18 – 69:8] **(INQ00001184)**.

[368] **EXPG0000010**, §§285 – 289.

[369] **POL00099218**, as identified by the Inquiry's governance experts at §§324-325 (**EXPG0000010**). It did not cover all of the issues in the SSIR, particularly those adverse ones about existence of BEDs, investigation practice, and treatment of postmasters, though it did highlight the concern arising about potential unsafe convictions; it did not contain a clear summary of the key points that the Board needed to know, and did not summarise the SSIR's impact on POL's strategic plans and risk profile.

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were given notice of the review findings."[370] The then CFO, CD, agreed that notifying the insurers indicated the Board was concerned about the risks faced by POL.[371] At the 23 July 2013 Board meeting, further concerns were raised about Board members' own potential liability.[372]

167. POL obtained advice from WBD, which resulted in the notification on 3 September 2013 from POL to its public liability insurers (QBE) and to its D&O[373] insurers by way of the "Horizon Risks Advice Note".[374] [375] (See §74 to 77).

168. POL accepts that the Inquiry is likely to find that the concerns raised at Board level about claims for wrongful prosecution and discussions and advice in respect of (and showing the rationale for) notifying the insurers suggest that there was greater understanding at POL as to the potential implications posed by the findings of the SSIR in terms of POL's liability (including for wrongful prosecutions) than POL stated publicly at the time (notwithstanding the absence of evidence that the Horizon Issues Advice Note was shared with or summarised to the Board (see § 65 to 66), and that there was a failure by the Executive and Board to properly explore those potential implications so as to fully understand the risk they posed and what needed to be done about them.

169. Having recognised the potential for claims for malicious prosecution and personal liability of directors in light of the findings of the SSIR, POL did not ensure that the associated risks were recorded on its risk register, which was a governance failing.

(vii) <u>The Initial Complaint Review and Mediation Scheme</u>

Approach to the ICRMS

170. The genesis for the ICRMS was, to a significant extent, the outline process for resolving the cases which SAB had proposed to PV and LA on 11 July 2013, save insofar as it assumed POL would be liable to pay compensation in every case.[376] POL discussed the proposed approach at a meeting with LA and SSL on 22 July 2013[377] and with SAB (on behalf of JFSA) and SSL at a meeting on 26 July 2013.[378] Everyone agreed that a mediation scheme was the best way forward, having discussed and rejected adjudication and arbitration as options.[379] SAB, SSL and POL subsequently agreed the mechanics of the ICRMS[380] and SAH later approved of mediation as the way forward.[381]

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[370] **POL00021516**, page 7. CD's evidence was that he did not recall whether he did provide the Board with the requested note, CD T 04/06/24 [83:19] **(INQ00001155)**.
[371] CD T 04/06/24 [83:5 – 83:10] **(INQ00001155).**
[372] SC said that the concern about personal liability was at Board level. T 23/04/24 [131:7 – 132:9] **(INQ00001134)**, **POL00021516**
[373] Directors & Officers.
[374] **POL00112856**.
[375] The covering email (**POL00302493**) indicates that the brokers will notify the D&O insurers but the email chain only contains confirmation of notification to the PL insurers. The insurance broker, Miller, advised CD that the most likely policy impacted was the D&O policy and AL and PV were informed of this in an email from CD on 19/07/2013 (**POL00108035**).
[376] **POL00095441**; **POL00191954**. APa said in his evidence that POL did not agree with SAB's proposal insofar as it assumed that POL was liable for losses and, thus, envisaged a compensation scheme: APa T 13/06/24 [135:9 - 136:22] **(INQ00001160)**.
[377] **POL00099354**; **JARB0000069**.
[378] **POL00116113**.
[379] **POL00116113**.
[380] **POL00027665**.
[381] **POL00381770**. SAH was appointed Independent Chair to the Working Group having been proposed by KL of JFSA: **POL00108207** and §§57-58 of KL1 **(WITN00550100)**.

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171. POL's position in relation to the ICRMS, informed by initial advice from WBD[382] and later strengthened by advice from Linklaters[383], was that it would not pay significant compensation.[384] However, Linklaters also advised POL that mediation was the mechanism least likely to establish the truth about Horizon.[385] Consistent with that advice, there is evidence to suggest that, rather than conducting investigations within the ICRMS which sought to get the truth of the matters complained of, POL sought to "*limit investigations to practical conclusions*" that would assist the mediation process.[386] POL recognises that that was a short-sighted approach. As ultimately occurred in the GLO, POL ought to have recognised that a comprehensive investigation as to whether Horizon was capable of causing shortfalls was critical to the satisfactory resolution of complaints.[387]

172. In these circumstances, POL accepts that the Inquiry will likely be critical of its decision to enter into, and persist with, a lengthy and costly complaint review and mediation scheme, which it outwardly stated was to help Postmasters resolve complaints about Horizon.[388] However, in considering the extent to which it is critical of POL's approach to the ICRMS, and in particular the allegation that POL acted in bad faith in respect of the ICRMS or that it was a "*sham*"[389] the Inquiry is invited to have careful regard to the following.

173. First, it is common for parties to a dispute to engage in alternative dispute resolution, such as mediation, rather than resorting to litigation, notwithstanding that those parties may have apparently polarised and rigid views on liability. Indeed, it is encouraged by the judiciary and civil procedure rules. It can often yield unexpected results in terms of resolution or, at least, narrow the issues for any future litigation.[390]

174. Second, it is invariably the case that mediation does not result in admissions or determinations as to the truth of the matters complained of or the correctness of the parties' positions on liability. Instead, where a mediated agreement is reached, it is often an outcome which reflects a compromise between both parties' positions on liability. In that context it is not entirely surprising nor, in principle, unreasonable that POL would seek to prioritise resolution of the complaint over truth seeking. However, POL accepts that that approach was inconsistent with its original commitment to SSL, SAB/JFSA and LA that it sought to establish the truth of the complaints via the ICRMS.

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[382] **POL00023296**.

[383] **POL00107317**, §1.8. Note that POL sought advice from Linklaters to check WBD's advice as to their likely liability partly in response to the suggestion by SAH that compensation could be more significant than POL were being advised in certain cases: see, for example, BC's note to CA dated 25/02/14: **POL00302354**; Minute of Board meeting on 26/02/14: **POL00021522**; and, PV's note to the Board on 17/03/14: **POL00147778**.

[384] **POL00146234**; **POL00199361**; **POL00100337**.

[385] **POL00107317**.

[386] **POL00040153**; **POL00040154**. See also CA's comment in a call with SSL on or around 04/03/14 that mediation was "*not the best device*" to get to the "*absolute truth of the matter*" and was a "*mucking compromised process*": **SSL0000131**, p.1.

[387] Linklaters advised that it was "*the reliability of the Horizon system as a matter of principle which is important. If there are doubts about the reliability of the system then this could obviously impact on the Post Office's ability to claim losses since it calls into question whether such losses exist at all. This is the fundamental question and one which has not yet been satisfactorily addressed*", §5.30 (**POL00107317**).

[388] The Overview document in the ICRMS information pack stated that it had "*been established to help resolve the concerns of Subpostmasters regarding the Horizon system and other associated issues. Post Office is determined to ensure that Horizon and its associated processes are fair, effective and reliable, and that Subpostmasters can have confidence in the system*": **NFSP00000976**.

[389] See e.g. **POL00040935**, p.126; §130 of IH1 (**WITN00420100**); §157 of SAB1 (**WITN00050100**); §206 of LA1 (**WITN00020100**); LA T 10/04/2024 [87:18 - 88:19] (**INQ00001127**); RWar T 18/06/24 [198:9 - 198:24] (**INQ00001162**); APa T 14/06/24 [45:7 - 45:12; 51:17 - 52:24] (**INQ00001161**); AVDB T 26/04/2024 [69:22 - 71:5] (**INQ00001137**).

[390] APa's evidence was that, while he had initially advised that mediations in the majority of cases would fail because of the "*large delta between Post Office's view of the world and the subpostmasters' view of the world*", the shape of the scheme moved on "*where the cases would be reinvestigated first and then mediate, which [he] thought would close the gap and give mediation more of a prospect of success.*" T 13/06/24 [133:25 - 134:12] (**INQ00001160**).

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175. Third, the evidence suggests that, while POL did not consider that it would pay significant compensation to applicants because of its view that Horizon was robust and not the cause of shortfalls, it did envisage that it might pay some compensation, particularly where its processes and treatment of Postmasters had been found lacking.[391] Initially there was uncertainty about precisely what level of compensation that might be pending receipt of applications to the ICRMS,[392] but, as applications were received and processed, the evidence shows that POL and its advisors realised quickly that there was a substantial expectation gap between the parties as to outcome.[393] While POL accepts that it was too slow to inform applicants as to its general position in respect of liability and compensation,[394] it did have transparent discussions relatively early on in the scheme with SSL and SAH about its position, the emerging expectation gap and how best to manage it,[395] and it appears also with LA and SAB.[396]

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[391] The Board "*Update on the work programme arising from the Horizon report*" dated 26/07/13 stated that there was a "*clear risk that in some cases the sub-postmaster will argue that financial compensation is appropriate, which again will have to be assessed on a case by case basis. We certainly do not believe there are grounds for a blanket compensation scheme, and will not be setting up the process in that expectation*": **POL00006590**. The Overview document in the ICRMS information pack 27/08/13 stated that "*compensation is one possible solution that could be agreed by the parties but this will depend on what happened in your case*": **NFSP00000976**, p.10; WBD stated in its presentation to POL on the ICRMS's objectives, policy and settlement process 08/10/13 that one of the aims of the scheme was to "*compensate if loss had been unfairly suffered*" and it set out principles for compensating Postmasters: **POL00023296**. CA's paper for ExCo 13/11/13 stated that POL had "*always envisaged that some cases will result in a financial settlement*": **POL00146797**, §5.3; The latest draft of POL's ICRMS Settlement Policy 12/13, which had been approved by SteerCo and ExCo envisaged that compensation would be paid "*if loss has been unfairly settled*": **POL00199361**.

[392] SC's evidence was that compensation could be one of the outcomes, but that POL would not know what level it would likely be until the scheme had properly started: T 23/04/24 [175:7 - 175:18] (**INQ00001134**). AVDB's evidence was that there was an expectation, on advice, within POL that "*we weren't massively exposed in terms of compensation payments*", but that the level of compensation would depend on what was claimed and the findings: T 23/04/24 [62:1 - 70:5] (**INQ00001134**).

[393] POL paper entitled 'ICRMS – Managing Expectations' 04/11/13: **POL00196848**; CA paper for ExCo on, among other matters, managing the expectation gap in the ICRMS: **POL00146797**. AVDB's evidence was that once it became clear that people were looking for large sums, POL formed the view that that would not happen: T 23/04/24 [68:15 - 68:22] (**INQ00001134**). PV's evidence was that "*as we got more and more of the detail, and the claims came through, we were suddenly faced with a potential bill of 100 million*": T 23/05/24 [166:6 - 166:15] (**INQ00001152**). That is consistent with RWar's evidence that he initially thought the scheme was being operated in a good faith, but there became a point where he began to doubt that: T 18/06/24 [199:9 - 200:20] (**INQ00001162**).

[394] It is clear that POL recognised the need to manage the expectation gap and make clear its position on liability in a transparent manner: see, for example, Board paper on the dissemination of Linklaters' advice dated 24/04/14: **POL00022123**, §5.1. However, it appears that the first time POL formally set out their general position in respect of liability to the applicants was not until its reply 22/09/14 to SSL's draft Part Two Briefing Report 21/08/14: **POL00021791**. Though, there is evidence to suggest that SAB on behalf of JFSA had understood through working group discussions as early as 3/14 that POL's position was that it would not pay significant compensation: see **SSL0000131**, p.35. Equally, PV's contemporaneous note of a chance encounter with KL on 17/09/14 records KL's position as being that "*she wasn't – at all – in the place of believing we would settle any more, nor expecting SPMRs to reap great payouts. The point was to let the[m] have 'their day in court'*": **POL00101367**.

[395] Transcript of call between SSL, CA and Belinda Crowe ("BC") 05/12/13: **SSL0000119**, pp.23-25; Transcript of call between SSL, PV and CA 24/02/14: **SSL0000132**, pp.11-15; Meeting between PV, CA and SAH 24/02/14: **POL00201179**, §2 & 7; Transcript of call between SS, CA and BC likely 04/03/14: **SSL0000131**, pp.7-8

[396] Briefing for PV's meeting with LA 28/01/14 stated that the expectation gap should be discussed, though it is unclear from the notes of the meeting whether it was, in fact, discussed: **POL00093696**; **POL00100151**. LA, however, had discussed it with SSL on 27/01/14 and indicated his intention to raise it with POL at the meeting on 28/01/14 so he was aware of the concern: **SSL0000105**, pp.8-9. While not recorded in the Working Group minutes, there is evidence which suggests that SAB had understood through working group discussions before 3/14 that POL's position was that it would not pay significant compensation: see **SSL0000131**, p.35.

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176. Fourth, a not insignificant portion of the cases which were mediated in the ICRMS did reach an agreed resolution.[397]

177. POL therefore disputes the suggestion it did not act in good faith and that it was a sham.

178. Further, in the interests of balance and fairness, it ought to be recognised that, despite having come up with the broad concept for the ICRMS and having agreed to enter into the ICRMS to try to resolve the Postmasters' complaints, the contemporaneous evidence shows that SAB on behalf of JFSA and a number of other Postmasters were of the opinion that mediation would fail given the gap between the parties, and they were, therefore, using the ICRMS as a means of gathering information for the litigation which would likely follow.[398] In response to CTI's question as to what his view was of POL's decision to terminate the scheme, SAB stated frankly:[399]

> "*I suppose publicly, I was very dismayed about it. I think privately, I was ecstatic about it, because I'd been thinking of pulling out of that scheme for about 12 months and I'd been sitting in there the whole of that period to get as much information and reports out of them in order for us to move on to the next step of legal action.*"

179. Thus, it is fair to say that the criticisms which have been levelled at POL as to how transparent it was in respect of what it intended by, and expected to achieve from, the ICRMS, can be applied equally to SAB/JFSA.

Ending the ICRMS and SSL's engagement

180. It has been alleged that in March 2015 POL ended the Working Group, the ICRMS and SSL's engagement because it was concerned that SSL's investigation was getting too close to discovering the truth about Horizon.[400] While it is easy to understand why those outside POL might have formed the view that POL was shutting down the truth, in reality, the evidence as to POL's internal discussions and decision-making does not support the allegation. Further, it mischaracterises precisely what steps POL took.

181. First, POL did not end the ICRMS in March 2015. Instead, it made the decision to refer all non-criminal cases to mediation and not to mediate the criminal cases in order to accelerate the scheme. That rendered the Working Group, whose sole role was to determine which cases should be referred for mediation, redundant. As a consequence, the Working Group was disbanded but the scheme continued while cases were mediated.[401] The last mediation took place in February 2016.[402]

182. Second, while POL did serve notice on SSL on 10 March 2015 terminating their existing engagement, it agreed that SSL could complete its outstanding investigations into cases within the ICRMS and its final Part Two Briefing report dated 9 April 2015.[403]

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[397] CEDR's Final Report on the ICRMS 5/16 stated that 84 cases were referred to mediation, 36 were subsequently withdrawn by applicants, 2 were withdrawn by POL and 2 settled before mediation. The remaining 44 were mediated, 50% of which reached an greed resolution. CEDR stated that "*considering the significant length of time that many of these disputes have been running, the strong sense of grievance amongst many applicants, the claim amounts at stake, and various external factors involved, a settlement rate of 50% where applicants accepted final resolution of difficult and sensitive personal circumstances is, in our view, reasonably successful*": **POL00246095**. Overall, 24 cases of the 136 cases which entered into the ICRMS reached an agreed resolution at mediation or before.

[398] Transcript of call between SSL, CA and BC on 05/12/13: **SSL0000119**, p.25; Transcript of call between SSL, PV and CA on 24/02/14: **SSL0000132**, pp.14, 21; Transcript of call between SSL, CA and BC likely on 04/03/14: **SSL0000131**, pp.35-36.

[399] T 09/04/24 [161:14 - 162:3] **(INQ00001126).**

[400] §249-253 of LA1, **WITN00020100**; LA T 10/4/24 [107:4 - 107:24], **INQ00001127**; §123 of IH1, **WITN00420100**; §157 of SAB1, **WITN00050100**.

[401] See, for example, JM and MD's paper to the Board 02/03/15 : **POL00040909**; §§1-14 of POL's Final Report on the ICRMS: **POL00236638**.

[402] **POL00246095**.

[403] See, for example, §§1-14 of POL's Final Report on the ICRMS: **POL00236638**.

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183. Third, POL took those decisions, not because it was concerned that SSL was "*getting close to the truth*", but, in essence, because there remained a fundamental dispute between the parties in respect of liability and, as a consequence, a yawning expectation gap as to outcome which was causing the ICRMS to unravel. In particular, POL had formed the view that:[404]

a) Having completed all of its investigations into the cases within the ICRMS, there was no evidence that Horizon was at fault for losses nor to suggest that convictions were unsafe;

b) The ICRMS had, in large part, failed because applicants and other relevant stakeholders who supported them wrongly believed that Horizon, or POL in other ways, was responsible for the losses they had suffered; and,

c) The Working Group was no longer working because AB/JFSA was refusing to fully participate in it, was threatening litigation, and had precipitated MPs to withdraw their support for the ICRMS, and SSL were not acting impartially.

184. It is acknowledged that POL's belief – that the applicants were wrong to seek to blame Horizon and POL for their losses – was, itself, wrong.[405] Nonetheless, the evidence shows that the belief was genuinely held. Indeed, as SAH pointed out in his evidence, the difficulty with the ICRMS was that it did not reveal a "*smoking gun*" about Horizon capable of unseating that belief, which only occurred with Fraser LJ handing down the HIJ.[406]

185. Given POL's firm belief in its position, and the difficulties encountered with the ICRMS, it is easy to understand why POL considered that things could not simply continue as they were and that, in effect, the ICRMS had run its course.[407] As set out above, it is clear that for equal and opposite reasons SAB had also reached the conclusion that there was little point continuing with the ICRMS and that litigation was the next resort.[408]

(2) Governance Experts' views on POL's approach to the Wolstenholme case and SSL issues

186. Although the Governance Experts gave evidence in Phase 7, their Second Report[409] concerns matters relating to Phases 4 and 5/6, and does not consider any of the evidence in Phase 7 or events after 2013. Their evidence does not, therefore, assist the Inquiry in relation to the governance arrangements currently in place at POL.

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[404] See, for example, the draft paper to the Board entitled 'Sparrow Reset' 01/01/15: **POL00150467**; CA's paper to the Sparrow Subcommittee 08/01/15; **POL00022293**; JM and MD's paper to the Sparrow Subcommittee 11/02/15: **POL00102162**; JM and MD's paper to the Board dated 02/03/15 : **POL00040909**.

[405] As noted in POL's Phase End Submissions for Phase 3, there is no evidence before the Inquiry that any particular BED caused identifiable loss to a specific Postmaster, §§98-99 (**SUBS0000024**). The issue of whether, as a matter of fact, a particular loss was attributable to a BED (or whether an applicant was wrong in making that assertion) was never considered or determined in the ICRMS.

[406] T 10/04/24 [156:6 - 156:10; 169:13 - 169:23; 170:10 – 170:23] **(INQ00001127)**

[407] As AC put it in an email on 03/03/15, when endorsing the proposed approach, "*It allows us to make a step towards an end game. Of course, that could trigger a reaction in parliament, the media or the courts but if it does, it is probably only hastening the inevitable*": **POL00138860**.

[408] SAB queried in a letter to SAH dated 10/11/14 whether, in view of POL's denial of liability, there was any point continuing with the scheme: **POL00107151**. He did so again in Working Group meeting on 14/11/14: **POL00212261**. It is clear from the transcript of SAB's conversation with RWar on 17/11/14 that plans had been put in motion to commence litigation by that time: see **SSL0000101**, pp.8-9. In the transcript of his call with RWar on 05/12/14, SAB said that he was "*not playing ball anymore*" and would "*attack*" POL, but would "*hang in with*" the ICRMS and "*let* [POL] *pull it*": **SSL0000122**, pp.3-4. In his oral evidence, in respect of POL's decision to terminate the ICRMS and the question of making a decision to commence legal proceedings, he said "*the writing was on the wall, or had been for a number of months, and we'd spoken to a few firms.*" T 09/04/24 [161:16 - 162:3] **(INQ00001126).**

[409] **EXPG0000010**.

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187. So far as Phase 4 is concerned, POL has previously accepted that there were failings in governance in relation to its consideration and handling of Mrs Wolstenholme's case in 2004 by the Executive.[410] In respect of Phase 5/6, POL has also accepted that there were failings by the Board in its response to the SSIR by the Board in July 2013 (see §127 above), and failings by the Executive in handling the 1st Clarke Advice in 2013 (see §61 to 66 above). As such, POL accepts the findings of the Governance Experts as to governance failures at POL in relation to these matters, subject to one reservation.[411] POL also agrees generally with the approach that the experts have taken to knowledge attributable to POL employees or to POL as a corporate body,[412] although disagrees with the experts' summary of the facts and/or inferences to be drawn from the evidence on two points.[413] However, these limited areas of disagreement do not impact on POL's broad acceptance

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[410] **SUBS0000028** §§55-70.

[411] POL finds it difficult to follow the Governance Experts' finding that there was a conflict of interest inherent in the GC's line responsibility for the security and legal teams (which were responsible for POL prosecutions) when the GC was (i) involved in discussion about the SSIR and the 1st Clarke Advice because these raised criticisms of POL investigation and prosecution practices and implied these practices could open the business to claims for wrongful prosecution (ii) due to their executive responsibility for managing SSIR, the continuation of SS's work through the Working Party and the task of reporting to the Board on the award and management of the SS contract, §§ 101-103, 374, 486, 490 such that action needed to be taken by the GC, CEO and/or Chair to manage the conflict. POL notes that, as acknowledged by the Experts, both SC and CA advised POL to cease its own prosecutions and hand over prosecutions to the CPS (and by the time CA became Interim GC, POL had for all relevant purposes effectively ceased the bringing of prosecutions). Moreover, it is difficult to see how their conduct in response to the SSIR, the 1st Clarke Advice or any of the other matters raised in the Second Report could be criticised in the absence of any evidence that the alleged conflict had any impact on the way the GCs carried out their functions. POL notes that the issue identified by the experts as to conflict of interest was not put to SC or CA when they gave evidence.

[412] Which accords with the approach POL says ought to be adopted by the Inquiry (see §9 to 12 above).

[413] (i) In respect of the Wolstenholme case-study, the experts conclude that the RMG GC and POL CEO "*must have understood from the exchange* [in **POL00142503**] *about Mrs Wolstenholme's case that the Horizon system posed a risk to the validity of SPM branch accounts to the safety of prosecutions on Horizon data*", §161. This inference goes too far given that the legal advice to POL was to settle the case given the non-availability of documentary evidence to rebut the findings in the Coyne report. The experts appear to have assumed that Jim Cruise at Group Legal was RMG's General Counsel whereas it appears that he was simply a member of the RMG Legal Team. The RMG employee who was Director of Legal, and the Post Office Solicitor, from 1993 to June 2006 was Catherine Churchard, who reported to the RMG Company Secretary, Jonathan Evans (§§1, 6 and 11 of **WITN11230100** and §1 of **WITN03460100**) and, it appears, was succeeded by Douglas Evan, who held the title of General Counsel of RMG from June 2006 (§1 of **WITN11240100**). Ms Churchard states that although the Team Leaders of different parts of the Legal Team reported into her, she would "rarely have been involved in the discussion of specific work" (§17) and that she has no recollection of any of the cases to which the Inquiry has referred her (§17) including the case of Ms Wolstenholme (§37). Jim Cruise stated in his email of 17/03/04 (from which the extract in §159 appears) that "*there were no copies of error notices or entries in the suspense a/c for this office. The agents expressed their concern at the lack of documentation for the losses.*" The findings in JC's report could not be challenged because POL did not have the evidence to do so in that case. This was also the view of counsel instructed by POL (whose advice was attached to one of the emails in the chain [**POL00142503**]: "*The evidential difficulty is that the primary evidence by which such losses could be established and calculated no longer exists. The Post Office will be forced to rely upon secondary evidence as to what such primary evidence would have shown…. In view of the negative expert's report in this case regarding the computer system in place. Mrs Wolstenholm's suggestion that the errors that arose were the result of defects in the computer system must be taken seriously. It is sufficient to place genuine and significant doubt on the evidence relied upon by the Post Office. In my opinion, to dispel that doubt and to persuade a court that its claim was justified, the Post Office would need to be able to produce to the Court sufficient original evidence in support of its claim. It is unable to do so. I therefore conclude that the Post Office's claim against Mrs Wolstenholme in respect of losses on her account would be likely to fail.*" [**POL00142504** §§16 and 17]. POL accepts that the RMG GC and the POL CEO should have realised from this email exchange that the Horizon system *might* pose a risk to the validity of Postmaster branch accounts and therefore to the safety of prosecutions. However, it goes too far to say that, based on this email exchange, the RMG GC and the POL CEO must have known that the Horizon system was unsafe such that it posed a risk to the validity of Postmaster branch accounts and to the safety of prosecutions based on Horizon data. POL accepts that the concerns arising from the Wolstenholme case should have been escalated within POL and RMG and due to a failure in governance, that did not happen.

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and agreement with the findings of the experts as to failings in Board level governance and Executive management and organisation.

188. In the Overview section of their report, the experts provide a thematic summary of their observations on governance at POL.[414] Whilst the experts say that their thematic findings are "*based largely*" on the description and analysis of the three case studies "*informed by a wider reading of a selection of the evidence before the Inquiry*",[415] the evidence upon which they rely to support their findings is derived principally from 2004 and 2013 and relates to the subject matter of the three case studies.[416] The experts provide the Inquiry with helpful analysis of deficiencies in governance at POL in relation to those three (with hindsight, at least in respect of the Wolstenholme case) significant events. But in assessing the failures in respect of those three events, care must be taken to consider them against the background of the governance controls in place at the material time:

a) In 2004, there were structural weaknesses in the governance arrangements for POL as a result of its status as a subsidiary of RMG,[417] which led to a lack of accountability for POL prosecutions and civil recoveries. RMG had overall responsibility for ensuring that potential risks arising from POL prosecutions were properly managed and monitored, as the parent company and because the legal function was centrally managed by RMG.[418] However, POL accepts that the POL Executive should have escalated the potential risk for prosecutions based on Horizon, as a result of the Wolstenholme case (despite this being a civil action), to the POL Board and/or the POL Risk Committee. There was a lack of understanding about POL's prosecutorial role at this time which reflected wider structural governance failings (see from §47 above). At this time, the government did not exercise a direct oversight function (via UKGI) by sitting on the RMG or POL Board.

b) By 2013, the governance structures at POL were more developed (albeit in their infancy). POL became a public corporation, which was wholly government owned,[419] following the split from RMG in 2012 with its own Articles, own Board of directors, an independent Chair, independent NEDs (including a Senior Independent Director), a Shareholder NED and two Executives

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(ii) In respect of the SSIR case-study, the experts go too far in their description in the Overview section of the level of risk for POL's investigation and prosecution practice which was set out or contained in the SSIR when they say; "*the Board did not see the major problems in prosecutions, investigations and culture included in the* [SSIR]" §31 and "*The main features of POL's investigations and prosecutions policy and practice, which represented a big risk for POL, and could be seen in the* [SSIR].." §115. These sentences serve as a summary of their more detailed findings as to what POL should have taken from the SSIR but do not accurately summarise those findings. POL agrees with the underlying findings of the experts to the effect that the SSIR raised sufficient concerns about the robustness of Horizon, POL's investigation and prosecution policies and practices and POL's attitude to and treatment of Postmasters, that the Executive and Board needed fully to interrogate and discuss these issues so as to establish the level of risk and whether there were major risks; §§ 137, 217, 285, 309, 310 and 328.

[414] In sections B2 and B3 (**EXPG0000010_R**)

[415] See §17 (**EXPG0000010_R**). Unusually for an expert report, no reading list has been provided.

[416] Even in respect of the case studies, they acknowledged that they could not know if the material they have considered is exhaustive, see §7.

[417] In 2004, POL was a wholly owned subsidiary of RMG holdings. RMG, as the parent holding company, had responsibility for prosecutions and civil cases because the legal function was in RMG. POL did not have a GC and the RMG GC did not sit on the POL Board. POL prosecutions were not the subject of report to the RMG Board or to the Group Audit and Risk Committee. There was a majority of Executives over NEDs on the POL Board (see Governance Experts' Report 2, §§ C2, C3). In 2004, the RMG holding company was wholly government owned. The POL Articles of Association 2002 gave some direct powers to the Secretary of State for Trade and Industry in their capacity as Special Shareholder, RS1 §24 (**WITN11120100**). The shareholder function was carried out by a team in UKGI but there was no Shareholder NED seat on the RMG Board, and hence, the oversight/monitoring function was limited to receiving information, RS1, §12. Routes for UKGI to exercise formal and informal oversight of the RMG Group, including POL, included regular meetings, regular reports from the Executive on policy and financial matters, signing off on strategy, recruiting the Chair, CEO and NEDs and articles of association in 2000 and 2002, Governance Experts' Report 1 §1.6.9.

[418] Governance Experts' Report 2 §205, T 12/11/24 [64:19 – 65:13] (**INQ00001206**).

[419] The SoS of DBT held a special share in POL.

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(CEO and CFO). The Board provided first line accountability and oversight via committees. The Shareholder exercised additional oversight over POL's corporate governance through the Shareholder team within UKGI and via the shareholder NED.[420] Despite these more developed governance structures, there were a series of governance failings at Executive and Board level (including by the independent Chair, independent NEDs and the Shareholder NED) to interrogate and act upon information about Horizon risks. This situation arose from a combination of factors. These include the entrenched beliefs in the organisation about the robustness of the Horizon system (discussed below), a breakdown in personal relationships between the GC, Chair and the CEO which led to a focus on criticism of the GC's management of SSL. The latter led to the GC's exclusion from the Board meeting on 16 July 2013 when she was the person who understood the legal risks of wrongful prosecution claims arising from the SSIR (see §**163**-165 above). There also appears to have been a collective failure of the POL legal team and Executive to understand the significance of the 1st Clarke Advice combined with inadequate information sharing , leading to a situation where the advice or its substance was not shared with the Board (see §61 to 66 above).

189. The experts would not generally be drawn in their oral evidence as to the seriousness of the individual failings because they had not approached their task by applying "*a measure of failure*" or expressing an opinion as to where individual failings sit on a spectrum of severity. Their approach rather was to identify failures which were germane and which added together, amounted to a "*general failure*" of governance.[421] The experts nevertheless highlighted the failure on the part of the Executive and the Board to address the embedded culture in the organisation as their area of strongest criticism in respect of the three case studies; the failure of the Executive and Board to uncover and correct the "dark spots" or the incorrect assumptions embedded in POL's culture, including as to the robustness of Horizon.[422] Their assessment was that this culture was so corrosive of the company ethos that the Board did not call the Executive to account to face up to its role in perpetuating miscarriages of justice that were increasingly evident to others.[423] POL accepts that the failure to challenge and correct these fixed beliefs was a serious governance failing at Executive and Board levels during the period covered by the Governance Experts' Second Report.

(3) Cartwright King's Role

(i) Post Conviction Disclosure

190. POL agrees with The Chair's provisional view[424] that the duty of post-conviction disclosure set out in the UKSC decision of *Nunn [2015] AC 225* is a duty that pre-existed that decision and should have been known to exist since at least 2000 (and as such, any reasonable prosecutor ought to have been aware of).[425]

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[420] Which in 2013 was occupied by Susannah Storey. UKGI exercised oversight of risk, remuneration of senior roles by means of quarterly reviews to assessment performance against government objectives, especially network sustainability, the Shareholder NED role and Articles which give Government consent rights over appointment and removal of Directors, borrowing, approval of the strategic plan, disposals and winding up. At that time, the Shareholder NED did not lead the Shareholder Team within UKGI and there were restrictions on information sharing. Copies of Board papers were not automatically shared with the Shareholder Team and so there was an informal flow of information from the POL Board to UKGI; Charles Donald ("CDo") § 24 (**WITN10770100**). From 2016, a UKGI NED has sat on the Board. In 2018, it was agreed that policy oversight sits with DBT and corporate governance oversight sits with UKGI, Governance Experts' Second Report §1.6.10 (**EXPG0000010_R**).

[421] T 12/11/2024 [70:23 – 71:12] (**INQ00001206**). This does not, of course, mean that each individual involved could or should be personally criticised for that "*general failure*".

[422] Governance Experts' Report 2 §§133 and 145 (**EXPG0000010_R**).

[423] §145, T 12/11/24 [164:15 – 165:15] (**INQ00001206**).

[424] Statement by Chair relating to written Closing Submissions 13/11/24, §§1-3.

[425] MS confirmed in evidence that he only became aware of the post-conviction duty of disclosure upon discussing KI's case with SCl, in the context of the CK review, and that he could now see that it was a concern that he wasn't aware of the test for disclosure once people had been convicted T 01/05/24 [160:6 - 160:20] (**INQ00001139**).

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191. POL did not take any steps pursuant to that duty until the initiation of CK's review of POL's criminal prosecutions on 8 July 2013.[426] The review consisted of two stages: an "*initial sift*" during which reviewers were asked to consider whether Horizon might "*reasonably have been more than just the information provider*" and whether "*irrespective of plea*" the defence raised at any stage: alleged or implied Horizon failings – "*however expressed, general, nebulous or ill-defined*" – lack of training, or inadequacy of customer support by POL.[427] If the answer to either of those questions was or may have been yes, then the case was escalated for a full review. CK produced advices following a full review in 81 cases, 65 of which were concluded cases.[428] The review was limited both temporally (to cases active on or after 1 January 2010, i.e. when Horizon Online began to be rolled out) and in scope (to potential disclosure of the SSIR and/or the Helen Rose Report ("HRR").[429]

192. POL considers that there are four potential bases for criticism of that exercise.

193. First, in relation to the temporal limit, SCl advised that "*considerations as to the selection of the start-date include proportionality; resourcing; transparency; and POL reputation*" which militated in favour of a date close to the initial Horizon Online migration date of 2010.[430] In his General Review[431] BAKC agreed that the 1 January 2010 start date was "*both a logical and practicable approach to take*" (§71), albeit for different reasons to SCl.[432] BAKC's advice was on the basis that "*prior to each branch rollout, the cash audit was done so that each branch balanced. I advised in the conference and repeat here that although POL has no positive duty to seek out individuals before the 1 January 2010 start date for a review of their case, nonetheless if POL was approached it would need to make ad hoc case-specific decisions about the need for disclosure.*" (§64) In particular, he advised that "*if it got to the stage where the floodgates of pre-Horizon* [Online] *cases began to open, then POL and CK will have to remain alive to the possibility of commencing a subsidiary review*", (§71) and that "*so long as POL through CK recognise it is their continuing duty in pending cases to keep disclosure under review in light of new or different information, then POL will have complied with its duty, subject always to the intervention of the court. The same must apply to their consideration of past prosecutions*". (§172)

194. When assessing the 1 January 2010 cut-off, it is important to acknowledge the difference between the current state of knowledge of issues with Horizon, and that which was known in July 2013.[433]

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[426] The review started on 08/07/13 and concluded on 09/09/14.

[427] Initial Sift Protocol (**POL00129452**).

[428] The other 16 were either at the pre-charge stage or the prosecution was ongoing. None of those cases resulted in a conviction, and therefore the issue of *post* conviction disclosure did not arise. Of the 65 post-conviction cases: in 10 cases both the SSIR and HRR were disclosed (in one case only following review by BAKC); in 17 cases the SSIR was disclosed but not the HRR; in 38 cases neither the SSIR nor the HRR were disclosed.

[429] It will be noted that, insofar as Scottish cases were concerned, POL drew the attention of COPFS to the ISSR, HRR and the non-disclosure by Gareth Jenkins no later than 29 July 2013 (see **POL00139902**) and continued to keep COPFS updated on developments thereafter (see, for example, **POL00139879** & **POL00043068**). Although some criticism has been levelled at POL by COPFS witnesses (see **WITN11770100** and **WITN10510300**) and CPs for seeking to persuade COPFS not immediately to abandon all ongoing POL prosecutions (as COPFS initially wished to do), it will be noted that the stance advocated by POL, that prosecutions could still safely be pursued in cases where the reliability of Horizon was not essential, is ultimately the stance taken by the CACD in *Hamilton*.

[430] SCl General Advice, 08/07/13 (**POL00006365**).

[431] BAKC General Review §§71 (**POL00006581**).

[432] BAKC also stated within his General Review that resourcing and POL's reputation were "*beside the point*", and the justification for the 1 January 2010 cut-off was that the identified BEDs were limited to Horizon Online. He also did "*not see that those who have served their sentences, or those who had imposed on them community based or financial sentences should, for that reason, be excluded from the review. They have an interest if their conviction was unsafe, and there must be people who fall within CK's current review who have been released from their sentences or had non-custodial sentences imposed on them.*"

[433] What is clear now, with the benefit of the Horizon Issues Judgment, Common Issues Judgment and the judgment in *Hamilton & Others* [2021] EWCA Crim 577, would not necessarily have been clear to CK at the time of the review. The SSIR indicated that Second Sight had "*so far found no evidence of system wide (systemic) problems with the Horizon software*".

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At that time, the temporal limit could be said to have been a reasonable starting point, given that the Horizon bugs identified in the SSIR related to Horizon Online, rather than Legacy Horizon and had impacted a specific set of branches during a specific period. However, several Legacy Horizon cases were included in the review as the cut-off date related to when a case was active rather than the date of the alleged offending[434] and disclosure was advised in a number of them.[435] Given POL's continuing duty through CK to keep disclosure under review in light of new or different information, once multiple Legacy Horizon cases requiring disclosure had been identified by CK, the original rationale for the cut-off date became difficult to sustain. It ought to have become apparent to CK that limiting the scope of the review in this way was not a sound approach.[436]

195. Secondly, in relation to limiting the scope of the review to the SSIR and HRR, SCl accepted both that the issues in relation to GJ should have been disclosed,[437] and that the original rationale for limiting the scope[438] was weakened when further information about potential BEDs and remote access became known to CK.[439] Although the CK Sift Review concluded in 2014, the Inquiry may take the view that, as further such information came to light, CK ought to have considered whether a fresh disclosure review was necessary. Unlike POL, who had prosecuted these cases over a 13-year period, CK considered 81 cases during a single review process conducted over a 15-month period. One might reasonably have expected SCl and Harry Bowyer ("HB") (who had between them reviewed 77 of the 81 full review cases) to have identified a pattern of Postmasters raising unexplained losses, particularly in circumstances where they had acknowledged that this could amount to an implicit Horizon challenge, and others were directly challenging the system. Once that pattern had been identified, it is not unreasonable to have expected this to impact on CK's approach to disclosure or that it ought to have put them on notice that the issues with the system went beyond the content of those reports.

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[434] Such that e.g. SM's case was included in the sift, in circumstances where the alleged offending was prior to 01/01/10 but her trial was in 2010. See **POL00201067** in which MS confirmed to WBD that "*the parameters* [of the CK review] *included any case that was live from 1st January 2010*".

[435] e.g. Senapathy Narethiran (**POL00294522**).

[436] SCl suggested in evidence that "*over the sift process, it became clear to us – perhaps we were rather dim about it but it became clear to us that the issues with Horizon extended back before 1 January 2010 and we started receiving cases for review that went back before that. I'm not convinced we received every case that had been prosecuted but we did expand the ambit of the Horizon – the pre-1 January review but I can't say when that took place*". T 09/05/24 [67:1 - 67:8] (**INQ00001144**). That was incorrect: certain Legacy Horizon cases were caught by the sift because it included all cases in which the prosecution was active on or after 1 January 2010 and there is no contemporaneous material to suggest that CK became aware of, or advised on, the need to review Legacy Horizon cases where the conviction pre-dated 01/01/10.

[437] T 09/05/24 [238:17 - 238:23] **(INQ00001144).**

[438] There is only one case in CK's review – that of Jerry Hosi **POL00294528** – in which disclosure of material other than the SSIR and HRR was provided. SCl advised that Mr Hosi ought to receive disclosure in relation to the "Callendar Square" issue, which had impacted the Falkirk branch in 2005 and involved information recorded on one terminal not being correctly passed to another terminal within the branch. A software fix for the issue was distributed to the system in March 2006. In his General Review, BAKC stated "*post-March 2006, the Falkirk defect was no longer an issue. In my view it represents an isolated instance, which has no relevance to events falling within CK's review.*" (§130) **POL00006581**.

[439] e.g.MS, HB, and SCl were all part of a 2016 email chain in which an issue with transaction corrections which had been raised on a Horizon call was discussed. The email referred to the "*risk that Transaction Corrections may have... been issued to other branches which may have caused losses, possibly going back as far as 2005.* " **POL00153939** & **POL00241095**. CK also had knowledge in 2012 of the possibility of remote access, as this was disclosed via Gareth Jenkins' report in the case of Kim Wyllie. It was however, at this point, understood that whilst remote access was theoretically possible, any such access was visible and auditable (and could therefore be established or excluded as a matter of fact), and was therefore not a generic issue requiring disclosure in cases where such access was not shown on the ARQ data. It is at least arguable that, seized of this knowledge/understanding, CK ought to have asked in every case they prosecuted for confirmation that the ARQ data did not reveal remote access, and to review past convictions to confirm the same (and, if there had been, to make post-conviction disclosure of that fact). Once they were provided with a version of the Deloitte "Project Zebra" Report (23/05/14) in 2015, CK ought to have ascertained whether such checks had been conducted during prosecutions: **POL00222757** and **POL00222758.** Further to that, CK were informed on 15/07/15 (by APa) that this issue related to Legacy Horizon. At this stage, there ought, at the very least, to have been consideration of conducting the checks referred to above and/or whether a fresh disclosure exercise was necessary. **POL00029867** and **POL00029872**.

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196. Thirdly, the Initial Sift Guidance drafted by CK was internally inconsistent, and likely to give rise to cases wrongly being sifted out at the initial stage and therefore not subject to a full review. In particular, the guidance treated cases in which defendants admitted covering losses and cases in which unexplained losses were raised as mutually exclusive. It stated "*Question I(b) If there is a preponderance of other evidence against the defendant and the Horizon evidence is merely the starting point for the investigation then the case should NOT go forward for Full Review. Examples include… pleas of guilty to alternative charges, e.g. false accounting to cover unexplained shortages/losses etc.*" As demonstrated by the fact that some such cases were escalated for full review, and disclosure advised, this instruction should not have been given.

197. The guidance then stated "*Question II(a): Has the defendant raised Horizon failings as part or all of the defence? Obvious examples go forward for Full Review. But what of implied failings? E.g… the defendant DOES NOT criticise Horizon but cannot explain the shortage/loss. Such cases WOULD go forward for full review.*" This was the correct approach. It was, however, inconsistent both with the earlier instruction (see above) and with a later section of the guidance which stated, "*Note that there will be cases where a guilty plea WILL BE determinative of the Sift, e.g. where a defendant has pleaded guilty because, whilst he/she is unable to explain the loss or has blamed Horizon failings, he/she admits (in interview; DS, correspondence or written Basis of Plea(s)) to having hidden/covered-up the shortage(s) by making false entries. In this situation the case SHOULD NOT go forward for Full Review.*" (Appendix 1 §1).

198. This is an incorrect approach for a number of reasons. Firstly, to exclude cases from review simply because a defendant had admitted falsely covering up a shortfall misses the fact that the safety of a false accounting conviction may be undermined if there were evidence to show the underlying shortfall was, or may have been, Horizon generated (this is dealt with in greater detail below). Furthermore, a conviction following a guilty plea may still be unsafe if the plea was entered after an abuse of process, such as a material failure of disclosure.[440]

199. This inconsistent guidance may have contributed to a degree of confusion not only at the initial sift stage but also during the full review, during which there was inconsistency between the decisions to disclose in some cases and not in others (see below).

200. Fourthly, as a result of both the failure to identify a clear test for disclosure and apply it consistently in all cases, and the failure to consider the impact of individual decisions on the global approach, there was significant inconsistency in the advice given in individual cases. For example:

    a) There are examples of the SSIR and HRR not being disclosed in fraud and false accounting cases because the defendant had admitted to covering a loss. However, there are also examples of the reports being disclosed in other cases because the defendants had raised unexplained losses and therefore implicitly challenged the integrity of Horizon. In relation to the former, CK appear to have incorrectly taken the view that if there was a guilty plea or clear evidence (e.g. admissions) that accounts had been falsified to cover up a shortfall, then there was no need to make disclosure because disclosure could not affect the safety of the conviction. This failed to recognise that such a conviction may be unsafe if the false accounting was to cover up a shortfall which never in fact existed, save as a result of a Horizon error (although this appears to have been acknowledged by CK in other cases where disclosure was advised, which makes their failure to recognise it in others all the more difficult to understand).

[440] The principle that an abuse of process could render a conviction unsafe despite the fact of a guilty plea had been made clear by the Court of Appeal in *R v Togher & others* [2001] 1 Cr App R 33 (**RLIT0000458**), and so should have been known by CK at the time of their review.

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b) There was significant inconsistency in CK's treatment of the HRR. HB failed to consider it in the majority of the cases he reviewed,[441] whilst SCl incorrectly deemed the report relevant only to GJ's credibility in some cases yet disclosed it in others in which GJ had not been involved.[442]

201. Finally, POL notes that the advice given by SCl on 22 January 2014 in relation to Seema Misra ("SM")'s case – in which he concluded that neither the SSIR nor the HRR was disclosable – was clearly wrong, as SCl accepted.[443] However, his suggestion in this context that he had *never* seen the prosecution file, and that the file was "*deliberately withheld"* from him is also wrong.

202. On 22 September 2015[444] RW emailed SCl and others at CK stating: "*I note that because the full prosecution file was not available to Simon when he produced his note, he undertook his review and based his advice on the information he was able to extract from the trial transcripts. Through the disclosure exercise we are undertaking in response to the CCRC's review of Ms Misra's prosecution, we have now obtained a substantial number of prosecution documents which concern the disclosure made in the prosecution, including in response to Defence challenges about Horizon reliability. These documents can now be reviewed through the Millnet dataroom …Conscious of Post Office's continuing duty of disclosure in criminal cases, I wonder whether Simon should revisit his advice in the context of the attached notes and original prosecution documents.*"[445] Having received no response, RW chased the matter on 19 November 2015.[446] On 7 December 2015, SCl provided a further note on the case, stating, "*I have reconsidered my advice of the 22nd January 2014 and the R v Misra case papers*" and that all matters of disclosure fell to be determined by the CCRC and not POL.[447]

203. It is therefore not only wrong that SCl never saw the prosecution file in Ms Misra's case, but incorrect that the file was withheld from him, deliberately or at all. On the contrary, RW was anxious to receive updated advice on disclosure from SCl in light of having obtained the original prosecution documents.[448]

(ii) Conduct of Criminal Prosecutions

204. HB accepted that by 2013 CK was "*not covered in glory, as far as their role as independent lawyers [were]I concerned*"[449] and that (a) both Martin Smith ("MS") and Andrew Bolc ("ABo") had limited prosecution experience, which "*plainly wasn't a safe state of things*";[450] (b) CK's approach to POL work was "*somewhat disjointed*" giving rise to a risk that "*advice on one topic might fail to take into account the impact of that topic on another area of POL work*" which was "*plainly unsatisfactory*";[451] (c) that POL was an "*enormous*" client for CK and that this factor "*must have*"

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[441] HB only considered whether the HRR was disclosable in 5 of the 38 advices he provided.

[442] **POL00131603** – Advice re Damian Owen; **POL00294442** - Advice re Jerry Hosi; **POL00108042** – Advice re Nicola Grech; **POL00040038** – Advice re Della Robinson; **POL00168977** – Advice re Robert Boyle.

[443] T 09/05/24 [132:4] **(INQ00001144).** The fact that SCl was also the author of the 5 December 2013 CK document which stated that SM's case "*clearly passes the disclosure threshold and we will be disclosing the Second Sight Interim Report and the Helen Rose report*" makes his error even more inexplicable. In giving evidence SCl suggested that he had probably "*got a bit case-hardened*" and "*cynical*" T 09/05/24 [133:24 - 133:25; 134:1 - 134:5] **(INQ00001144)**.

[444] RW having received the review document in respect of SM from on 4 September 2015.

[445] **POL00065718**.

[446] **POL00065718**.

[447] **POL00065904**. On 25 April 2016, RWs forwarded SC's advice to GM (WBD) and APa, stating, "*I remain a little uncomfortable with simply ceding responsibility for disclosure to the CCRC, and wonder if there is anything more POL needs to do to comply properly with its duties… Could you please take a look – it may be something we want to take to Brian Altman for specific advice?*" **POL00137142**.

[448] These emails also undermine the suggestion made on behalf of SM that POL "*supressed*" material that would have allowed her to appeal and had pressured SCl to advise against disclosure in SM's case because she was the "*foundation stone*" of criminal convictions T 09/05/24 [217:12 - 217:23] **(INQ00001144)**.

[449] T 30/04/24 [187:11 – 188:13] **(INQ00001138)**.

[450] T 30/04/24 [126:6 - 126:24] **(INQ00001138)**.

[451] T 30/04/24 [128:5 - 130:11] **(INQ00001138)** and **POL00293276**.

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played a part (whether consciously or unconsciously) into how CK approached its advice and its ability to advise impartially and independently.[452]

205. So far as the instruction of GJ is concerned,

a) HB accepted that: (a) given GJ's lack of functional independence it was all the more important to ensure he understood the nature of expert duties;[453] (b) he had deleted reference in the draft generic GJ statement to the spreadsheet and summary of specific cases that HR had collated and GJ had considered, along with any mention of specific cases, to avoid defendants requesting "*vast quantities of paperwork*" relating to the cases listed, but was unable to confirm whether this information was recorded on an unused schedule in the Wyllie case, or if it was treated as unused material (potentially disclosable) in other cases;[454] (c) the statement did not contain an expert declaration or set out the substance of GJ's instructions;[455] and (d) he was unable to recall whether anyone advised JSim that the statement needed to set out the requirements for expert evidence in criminal proceedings, including confirmation that GJ had complied with his expert duties, and he was unable to say why this point was not flagged or whether he had taken steps to ensure GJ had been properly instructed.[456]

b) MS accepted that: (a) he was unaware of the legal requirements on a prosecutor to ensure an expert was fully informed of their duties and by the time of the 1st Clarke Advice it was clear that expert reports had been sought from GJ in a non-compliant manner;[457] (b) no formal letter of instruction was provided to GJ before he drafted the 'generic statement', and MS did not consider at the time whether GJ's witness statements were non-compliant;[458] and (c) with the benefit of hindsight, the non-compliance in terms of instructing GJ was highly relevant to anyone reviewing the safety of convictions involving GJ's evidence. MS did not reflect on it deeply at the time / the need to brief the CCRC, POL and / or BAKC.[459]

206. It is very clear that CK was not an appropriate firm for POL to have instructed, given CK's lack of relevant expertise and management of the POL account, and the devastating consequences of such. However, POL must also take some of the responsibility for a failure to conduct the necessary due diligence before instructing CK,[460] and a failure to supervise and monitor its work.[461]

(3) POL'S Interactions with the CCRC

207. A number of criticisms have been levelled at POL's interactions with the CCRC, including withholding the Simon Clarke ("SCl") advice of 15 July 2013 in respect of GJ ('the 1st Clarke Advice'), providing incomplete briefings, and having '*schmoozed*' the case worker, as well as that POL ought to have made post-conviction disclosure independently of the CCRC's then ongoing investigations.[462]

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[452] T 01/05/24 [21:23 - 22:12] **(INQ00001139)**.
[453] T 30/04/24 [173:6 - 173:10] **(INQ00001138)**.
[454] T 30/04/24 [175:5 - 177:11] **(INQ00001138)**.
[455] T 30/04/24 [177:12 - 177:21] **(INQ00001138)**.
[456] T 30/04/24 [177:23 - 179:14] **(INQ00001138)**.
[457] T 02/05/24 [95:2 - 97:4] **(INQ00001140)**.
[458] *Ibid.*
[459] T 02/05/24 [185:10 - 188:10] **(INQ00001140)**.
[460] JSi told the Inquiry that he "*was glad you had Cartwright King with the senior experienced expertise to work with, that's the sort of thing I was looking for, basically, and I just fitted in with their team"* T 30/11/23 [33:7] **(INQ00001101)**.
[461] When asked what level of supervision and oversight of CK's work he had undertaken, JSi replied "*I didn't. I don't – I think you're right, probably was more of a – I can't remember, to be honest. It was – it just – I don't know, I mean, is the answer to that. I certainly – it was more like I described to you, it's a relationship where they basically knew I worked very well, and I think they came on board on the sub-postmasters' cases early 2011.*" T 30/11/23 [152:17] **(INQ00001101)**. It would be fair to conclude that the answer is therefore 'none'.
[462] POL's approach to the CCRC's investigations can only properly and fairly be understood having regard to the distinction between a prosecutor's ongoing duty of disclosure post-conviction and the duty to make disclosure

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208. The CCRC first contacted POL on 12 July 2013 (shortly after the media coverage of the SSIR), asking for "*more information directly from* [POL], *especially accurate information as to the number of criminal convictions that might be impacted by the issue and what action is proposed, or being taken, in that respect.*"[463] An initial response was drafted by CK on 16 July 2013 which referred to a witness who had provided expert evidence in many cases having given evidence that Horizon accurately records and processes all information submitted into the system, which was demonstrated not to be the case by the SSIR. Having set out the steps then underway (the CK sift review), the draft concluded by hoping that the process POL had initiated allayed the CCRC's concerns and that of the Attorney-General.[464] Having received it, SC sought a second opinion from WBD as she was not comfortable with CK's advice which "*feels odd to me as if given on a take it or leave it basis and I am not comfortable that's particularly useful in this context. Could we discuss, I am happy to go to another firm that specializes in Criminal law or a barrister, somehow it feels as if there is a conflict here which I am not sure I understand*".[465] There is no evidence that WBD advised POL that it instruct a firm specialising in criminal law rather than WBD on these issues, despite WBD's complete lack of expertise in criminal law.

209. Subsequent letters to the CCRC were drafted by WBD, including a holding response on 24 July 2013 (indicating that it was investigating whether Second Sight's findings had an impact on any historic or on-going prosecutions),[466] and the substantive response on 26 July 2013 setting out POL's proposed course of action (namely, BAKC's review and CK's review of prosecutions over the previous 3 years to determine the safety of the convictions, and once such a case is identified (i.e. where there may be issues over the safety) to determine the proper approach to be taken).[467] Neither of these drafts referred to any issue with GJ. There is no evidence that this was at the request of POL rather than at the instigation of WBD.

210. The CCRC responded indicating that it was pleased to hear of the review, and suggested that it would make sense for them to wait until BAKC had reached some initial conclusions before it asked for further details.[468] However, although BAKC finished his review in Autumn 2013, POL did not respond further until 5 June 2014 (which may partly have been the result of SC's departure in October 2013), noting that BAKC had highlighted POL's continuing duty of disclosure suchthat POL and its solicitors must remain prepared to keep under review, and reconsider, past case reviews

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to the CCRC. The CCRC is a statutory body established by s.8 of the Criminal Appeal Act 1995 ("CAA") (**RLIT0000460**) with the power to send or refer a case back to an appeal court if it considers that there is a real possibility the court will quash the conviction or reduce the sentence in the case (s.13(1)). In support of that power it has the power pursuant to s.17 CAA to require a person serving in a public body - 'public body' is defined, so far as relevant in this context, as '*any government department, local authority or other body constituted for purposes of the public service*' (s.22(1)(a)), to produce to it documents/other material which may assist the CCRC in the exercise of their functions, where it is reasonable to do so. (Given the nature of that definition, and POL's status as a commercial limited company, it is understandable that POL initially took advice as to whether it fell within the definition of a "*body constituted for purposes of the public service*" (**POL00138821**).

This power is without prejudice to the CCRC taking any steps which it considers appropriate for assisting them in the exercise of those functions. Where a person required to produce materials pursuant to s.17 notifies the CCRC that any information contained within said material is not to be disclosed by the CCRC without their prior consent, the CCRC is not permitted to disclose that information without that consent (s.25(1)). That consent may not be withheld unless (a) the person would have been prevented by any "*obligation of secrecy or other limitation on disclosure from disclosing the information*" to the CCRC save for the requirement that he do so under s.17 and (b) it is reasonable for the person to withhold their consent.

463 **POL00040190**, p.1.

464 **POL00039995**, p.4.

465 **POL00192192**, p.3.

466 **POL00040190**, p.2.

467 **POL00040190**, p.3 (which is the draft to be typed on POL headed paper, but appears to be otherwise as sent).

468 **POL00040190**, p.4. Whilst GM suggested that the CCRC's response was "*ideal*" as they did not seem to want to get involved (the relevant email from GM does not appear to have been disclosed on the CP platform but POL disclosed it to the Inquiry with production number: **POL00458652**) there is no evidence to suggest that this was POL's position.

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and disclosure decisions.[469] The letter set out the sift review process conducted by CK, noting that a sift of 308 case files resulted in disclosure being advised in 26 cases, and invited the CCRC to contact POL (CA) should it have any further questions / require any further clarification. BAKC accepted in his evidence to the Inquiry that the letter (which he had reviewed in draft) omitted important information, including the caveats to his advice on continuing disclosure duties, the issues with GJ's credibility and mention of the HRR.[470]

211. On 14 January 2015 the CCRC served a s.17 notice on POL requesting: (i) a copy of BAKC's report; (ii) either an updated summary of the decisions and actions taken by POL as a result of BAKC's report or copies of documents recording those decisions; and (iii) the preservation of any materials associated with the affected cases.[471] A conference was arranged with BAKC to discuss and devise an appropriate strategy for dealing with POL's response, in advance of which WBD suggested to BAKC that "*POL are of course happy to provide the CCRC with whatever documentation they are legally required to hand over and to engage positively with the CCRC but are concerned that this exercise does not become a never ending request for documentation. If possible they want to control the exercise.*"[472]

212. WBD subsequently drafted a letter to the CCRC sent by POL on 11 February 2015 which pushed back on the CCRC's request for a copy of BAKC's report, as it did not address any specific cases, but rather, had advised on strategy and purpose and was subject to LPP, noting that the "*request for all documents relating to this matter*" (i.e. Horizon prosecutions) was very broad, and requested an explanation as to why it was reasonable for POL to produce the documents requested. The letter concluded: "*I hope that it is clear from the above that Post Office will work with the Commission on this matter, and that it has a legitimate need to understand the powers the Commission is seeking to exercise before it responds further.*"[473]

213. The CCRC responded the following day emphasising the breadth of its powers, even without an application from a convicted person, stating that its assessment of the case suggested that BAKC's report would be of assistance to them as a starting point for determining any further steps.[474] JM's view in response to the CCRC letter was that POL would need to disclose BAKC's report and asked WBD for advice as to what should be provided in relation to the Horizon system.[475] WBD's advice was that BAKC's report could be disclosed subject to the protections of s.25. He also advised that the CK sift review was relevant to the CCRC's work and that they needed "*to think about 'guiding' them in that direction but only to a sample of files … Overall we need to consider how far POL pushes back on this latest letter – the danger is that once we open the door to them we will find it hard to close it!*"[476]

214. POL duly provided the BAKC report to the CCRC on 27 February 2015, noting that "*I*[477] *am conscious that providing 'an updated summary of the decisions and actions taken by the Post Office as a result of Brian Altman QC's report or copies of the documents recording those decisions and actions' on all of the findings and recommendations would take some time to pull together, but may not actually address the issues you want to investigate. Could I therefore suggest you identify for us those findings and recommendations which are pertinent to your investigation, and we could respond on those?*"[478] The BAKC report referred to the 1st Clarke advice, and set out the substance of that advice as well as his own view on the impact of GJ's evidence on possible appeals: see §§136-155.[479] On 13 March 2015, WBD emailed POL and CK indicating that it was anticipated that the CCRC would request further documents referred to in BAKC's review and attached a

[469] **POL00124350**.
[470] T 08/05/24 [151:24 - 154:18] **(INQ00001143).**
[471] **POL00230470**.
[472] **POL00458653**.
[473] **POL00151181**, p.3.
[474] **POL00025768**.
[475] **POL00222429**, p.2.
[476] **POL00222427**, p.1
[477] JM.
[478] **POL00223161**, p.1.
[479] **POL00006581**.

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schedule of documents, which included the 1st Clarke advice, requesting that they be collated so that if the CCRC requested them, POL could respond speedily.[480]

215. On 18 March 2015 the CCRC emailed POL (RW) suggesting a meeting between CCRC and POL "*so that we can better establish the issues and clarify the level of CCRC involvement*",[481] and JM agreed that they should meet.[482]

216. On 19 March 2015 the CCRC issued a further s.17 notice requiring POL to produce and preserve material for the CCRC: (i) produce a copy of the final report by SSL; (ii) produce a copy of the HRR referred to at §§48-50 of BAKC's report; and (iii) preserve all material relating to all cases considered by SSL, CK and all applications for participation in the ICRMS.[483] The CCRC did not ask for production of the 1st Clarke advice as referred to at §§136ff of BAKC's report.

217. JM's internal response was that "*at that meeting* [with the CCRC] *we need to discuss these requests generically*[484] *and how we can assist the CCRC (including the best way of providing the requested materials).*"[485] That meeting took place on 8 May 2015, for which RW provided an internal POL speaking note.[486] A further meeting with the CCRC took place on 6 November 2015 for which WBD provided a speaking note which identified POL's objectives for the meeting as being to "*ensure that the CCRC are being effectively support by POL; try to set some parameters around future disclosures and timings.*" [487]

218. On 8 February 2016, Swift J provided his advice (the Swift Review) which touched upon the role of the CCRC, CK sift review and BAKC's endorsement of that process, in which he advised that "*it would be inappropriate for POL to conduct a wider review of the safety of any particular conviction when that work is being independently carried out by the CCRC. POL should continue to co-operate with and support the CCRC process and address any matters which arise as a result in due course.*"[488]

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[480] **POL00142282**.
[481] **POL00313259** p.3.
[482] *Ibid* p.2.
[483] **POL00118592**.
[484] By this time POL had also received a s.17 notice in respect of Julian Wilson requesting all documents relating to his conviction: **POL00063503**.
[485] **POL00225127**.
[486] A number of criticisms of this note were put to RW by CTI – see T 18/04/24 (**INQ00001132**) , which on a proper reading of it (and of the BAKC General Review) were misplaced.
(1) It was suggested that this note stated that early 2012 was the first time that the attribution of branch losses was raised (T 18/04/24 [175:1 – 176:5] (**INQ00001132**)) which assertion was a misreading of the note; "*early 2012*" was the date on which LA had asked POL to look into that issue and did <u>not</u> relate to the timing of the attribution of branch losses.
(2) RW was asked why there was no reference to what POL had found out about GJ in the sections on SSL and categories of responsive documents and materials (implying that there should have been), but as RW pointed out by this date POL had disclosed BAKC's report which had reviewed the impact of the GJ issue (T 18/04/24 [176:6 – 178:7] (**INQ00001132**)). Pressed as to why the CK advices were not shared with the CCRC RW (accurately) explained that POL "*tended to respond to requests for information from the CCRC and we – it was – the Cartwright King advice was referred to in Brian's advice and we invited the CCRC to tell us which documents they would like from it*" (T 18/04/24 [178:11 - 178:16] (**INQ00001132**)). Pressed further as to "*how would the CCRC know about the Clarke advice*". RW indicated that he thought it was referenced in BAKC's advice and volunteered to check, which offer CTI declined (T 18/04/24 [178:19 – 179:2] (**INQ00001132**)). Had he accepted it RW would have confirmed that it was referred to at §§136-147. Instead, CTI suggested that it was something that ought to have been volunteered (T 18/04/24 [179:3] (**INQ00001132**)), but that suggestion (and the implicit criticism in it) was equally misplaced. RW (accurately) recalled that "*the process we had going forward with them was not to show them what we thought they might be interested in but for them … to conduct their own investigation and follow the lines of inquiry that they would want to. That was the repeated advice I recall us receiving, is the CCRC would conduct their own investigations and should be left to it.*" (T 18/04/24 [179:7 – 179:17] (**INQ00001132**)).
[487] **POL00065670** p1.1. The minutes (produced by WBD) of that meeting are at **POL00065671**.
[488] **POL00022635** at §99, internal pp.33-34.

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219. On 14 March 2016, POL provided the Deloitte Reports to the CCRC.[489]

220. On 25 July 2016, RW provided the CCRC with an update on POL's responses to the various live s.17 notices at that time, to which the CCRC responded on 1 August 2016 with some further questions.[490] RW forwarded the email to WBD asking for a discussion about how POL could start "*forcing the issue with the CCRC*".[491] WBD responded on 2 August 2016, but there is no evidence that POL ever adopted any of the "*possible areas to develop*" suggested by them.[492]

221. On 7 November 2016, WBD circulated a CCRC strategy paper which stated that the CCRC Review had been active since February 2015 and its approach had been "*thorough but slow. Post Office has been highly cooperative throughout and not sought to influence the course of the CCRC review.*"[493] The paper set out a number of "*difficulties*" caused by the open CCRC review, namely: (1) it was difficult for POL to commence new prosecutions; (2) several of the cases under review arose in the Group Litigation and it was unlikely those civil cases could be closed until the CCRC review was concluded; and (3) until the review closed, there was a "*general sense that there is an unanswered question about the integrity of Post Office's conduct in relation to prosecutions.*" The paper's stated objective was to "***close down the CCRC review as quickly as possible*** *while (i) maintaining a positive relationship with the commission and (ii)* ***avoiding any appeal recommendations*** *(emphasis added)*". The paper indicated that a conference should be arranged with BAKC and POL to form an initial view (with his input) on a number of decision points, namely:

    a) Whether to disclose a copy of the Deloitte Report[494] – it was noted that the report could assist the CCRC in closing down lines of questioning but was not written in plain English and the lack of clarity meant scope for further questions.
    b) Whether to disclose BAKC's July 2016 report – it was said that the report's central findings should provide the CCRC with assurances about POL's prosecution practices, however there were potential criticisms therein and there was a "*query whether the report would close down one line of questioning while simultaneously opening another.*"
    c) Whether to disclose any of the civil litigation correspondence between WBD and Freeths – it was noted that parts of this dealt specifically with POL's approach to prosecutions, but some of it was duplicative of BAKC's report. Finally, it was noted that these were "*carefully positioned statements in the context of litigation which may be not appropriate for* ***the more transparent approach POL is seeking to take*** *with the CCRC*" (emphasis added).

222. Throughout the course of 2017 and 2018, the CCRC continued to issue Section 17 notices in relation to convicted individuals and other documentation such as the General Particulars of Claim, General Defence and Counterclaim from the GLO and Swift J's report (which had already been provided by POL).

223. On 6 December 2018 – in response to an indication from the CCRC that it would be helpful to consider the expert reports of JC and Dr Robert Worden ("RWo") – RW emailed the CCRC stating, "*We appreciate the interest that the CCRC has in the expert reports filed for the Horizon Issues trial. We are also conscious that those reports have been prepared pursuant to orders made by the Managing Judge in the Group Litigation, for the specific purpose of assisting him to determine at a trial in March 2019 issues concerning the Horizon system, as part of the overall resolution of the Group Litigation. We trust you will understand that we do not wish to do anything improper which might conflict with the Court's processes.*"[495] RW requested that a Section 17 Notice be issued for the reports, and which was done on 13 December 2018.[496]

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[489] **POL00376964**.
[490] **POL00103238**, internal pp.2-3.
[491] *Ibid* p.2.
[492] *Ibid* p.1.
[493] **POL00245012**.
[494] i.e. Project Bramble.
[495] **POL00260703** p.2.
[496] **POL00042205.**

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224. On 2 January 2019, RW emailed WBD in relation to the CCRC's request for JC and RWo's reports. He said he had considered the notice and thought that it compelled POL to disclose the reports, however he wanted a second opinion, "*given that providing the reports to the CCRC creates the risk that it will form views, and possibly even make decisions, on their content, potentially usurping the specific purpose for which they were prepared, i.e, to assist the Managing Judge determine the "Horizon Issues" in the Group Litigation.*"[497] He asked WBD to advise on whether POL were "*legally obliged to provide the reports in response to the S17 notice?*"

225. On 3 January 2019, WBD replied agreeing that the notice compelled POL to disclose the reports, noted that the CCRC's power under Section 17 was "*very wide*" and that subsection 4 made it clear that "*the duty on POL is not affected by any obligation of secrecy or other limitation on disclosure… this therefore overrides the usual rule that the expert reports should not be disclosed for any purpose outside the Group Litigation.*" They advised that, when the reports were disclosed to the CCRC, they should be notified that they were not to be disclosed by the CCRC without POL's prior written consent pursuant to Section 25.[498]

226. On 11 October 2019 – in response to a Section 17 Notice in relation to Wendy Buffrey's case – APa sent an email to various individuals within POL, WBD and CK, stating that the CCRC ought to be reminded of the documents POL were providing and from which sources. He stated that the notice required POL to provide "*ALL documents, being what I suspect is the CCRC's standard wording, but of course we have an agreed protocol of the classes of documents we are supplying. For example, we are not searching all of Jarnail's emails for relevant material.*"[499] APa queried whether it would be a good idea to remind the CCRC of this. POL's protocol in relation to disclosure to the CCRC indicated that the email accounts of likely custodians would not be searched. APa's email suggests that this protocol was shared and agreed with the CCRC, POL has been unable to identify any correspondence which confirms the same.

227. RW replied that this was an excellent suggestion, however CK responded noting the "*comment that 'we are not searching all of Jarnail's emails for relevant material.' Whilst I have not seen any protocol agreed with the CCRC I was somewhat surprised given the position Jarnail occupied at POL. In my experience section 17 notices require all documents etc to be provided and so I would advise that any protocol agreed with the CCRC be checked to determine whether this potential source of material has been expressly excluded."*[500] WBD replied stating, *"In short, Post Office holds way more documents than the CCRC wanted to review so they agreed (indeed asked) that PO limit electronic disclosure to certain searches (which may incidentally pick up Jarnail's emails) with a standing offer to the CCRC to expand those searches if they want something wider or were seeking specific documents."*[501]

228. On 24 November 2020 the CCRC issued a s.17 notice requesting the 1st Clarke Advice. Against this background, POL submits that:

    a) POL had disclosed the fact, and substantive content, of the 1st Clarke Advice to the CCRC in February 2015 by way of disclosure of BAKC's report. Whilst the CCRC chose to request other material referred to in that report (including the HRR and the SSIR) it chose not to make any request in respect of the 1st Clarke Advice itself. This may have been because it considered that it was adequately summarised in BAKC's report or for some other reason, but it could not reasonably be suggested that POL had sought to withhold it in such circumstances.

    b) It is equally apparent that POL were fully prepared to provide the 1st Clarke Advice were a s.17 notice to be issued for it. JM contemplated that the CCRC might make requests for documents referred to in the General Review and asked for that material to be collated in anticipation of the same. Shortly thereafter, WBD prepared a schedule of documentation referred to in the

[497] **POL00260703** p.1.
[498] **POL00260753** p.1.
[499] **POL00114196** p.2.
[500] **POL00460648.**
[501] **POL00458658.**

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General Review (including the 1st Clarke Advice), indicating to WBD that they were "*seeking to be proactive*" and wanted to be in a "*position to respond to the CCRC's reasonable requests speedily.*"[502] It is difficult to reconcile this with the suggestion that POL was attempting to withhold the 1st Clarke Advice from the CCRC.

c) POL, based on reasonable legal advice, understood that the CCRC wished to direct its own legal investigation, and that the CCRC would issue s.17 notices for specific documents if and when they wished to see them. Insofar as it has been suggested that POL ought nonetheless to have proactively disclosed material without awaiting a s.17 request, there is no proper basis for any such suggestion in the evidence available, not least given the extensive description of its contents in BAKC's advice. Moreover, for POL to proactively disclose the 1st Clarke Advice would have marked a departure from the CCRC's normal s.17 process and meant that POL would have forfeited the statutory safeguards attaching to documents disclosed to the CCRC pursuant to Section 25 CAA. In circumstances where the CCRC already had the information which might lead POL to proactively disclose the advice, it is difficult to criticise them for not doing so.

d) It is arguable that the 1st Clarke Advice was responsive to an earlier Section 17 notice issued on 24 March 2015 in respect of Khayyam Ishaq ("KI"), which requested "*all documents and other materials in your possession relating to this case and to produce them including, but not limited to… external reviews.*" The 1st Clarke Advice briefly referred to KI's case (at §16, 23 and 24), so it could be argued that it was responsive to this request. Whether POL, WBD and CK would have appreciated that at the time, however, is unclear (as it was not part of the case papers or an advice in relation to that specific case). Moreover, POL had already disclosed the substantive content of the 1st Clarke Advice to the CCRC within BAKC's advice in February 2015.

229. In the circumstances any suggestion that POL deliberately withheld the 1st Clarke Advice from the CCRC is misplaced. Equally misplaced would be a suggestion that it should, rather than liaise with the CCRC, have itself proactively disclosed the 1st Clarke Advice to Postmasters whose prosecutions had relied upon GJ's expert evidence. In circumstances where POL was liaising with the CCRC from July 2013, and received advice in February 2016 that it should not itself be reviewing the safety of individual cases, it cannot fairly be criticised for adopting the approach that disclosure should be made to the CCRC rather than individual Postmasters (POL fully accepts that the information from and about GJ, contained within the 1st Clarke Advice, ought properly to have been disclosed to convicted Postmasters in appropriate cases as a part of the CK sift prior to the CCRC's involvement, although (as set out below) POL reasonably relied on external legal advice from CK, including SCl himself, and reviewed by BAKC, as to what should be disclosed in such cases).

230. It follows that POL does not contend that there was no criminal disclosure obligation at all inrespect of the 1st Clarke Advice.[503] As for whether it should have been disclosed in its entirety, or only part of it, POL's position is that:

a) Much of the 1st Clarke Advice does no more than set out matters of law and background which would not cast doubt on the safety of any conviction and would therefore not be disclosable;

b) Insofar as it sets out the content of the HRR, it is the HRR that would be disclosable in cases where Horizon reliability was in issue, and not SCl's summary of, and any opinions on, that document which would not be relevant or admissible in the criminal sphere, and therefore not disclosable.

c) SCl's summary of the SSIR is equally not relevant or disclosable for the same reasons.

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[502] **POL00142282.**

[503] See §4 of the Chair's Statement on 13/11/24.

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d) The element of the 1st Clarke Advice which should have been disclosed[504] is the description of the conversation and emails that passed between GJ, SCl and MS, which establish that GJ had been aware of at least some Horizon issues prior to giving evidence in a number of cases, and yet had failed to disclose them and had given evidence which, at the very least, might not be considered accurate in the light of the Horizon issues that he accepted in those exchanges that he knew of at the time. Those are matters which could reasonably be thought to cast doubt on the credibility and reliability of GJ as a witness (especially as an expert witness).

e) It follows that in any conviction case in which GJ's evidence was material, evidence capable of showing that he was tainted as a witness such that his evidence may be unreliable would be disclosable under *Nunn* principles given that it could be argued that a conviction that relied on such tainted evidence was unsafe.

f) In cases in which GJ had *not* given evidence, the fact that his credibility and reliability was tainted would not cast doubt on the safety of the conviction. As such, the content of the 1st Clarke Advice setting out the relevant exchanges would not have needed to have been disclosed in such cases.

231. As for the other criticisms made (incomplete briefings and having '*schmoozed*' the case worker), the chronology set out above makes clear the absence of any factual basis for such.

232. In this context POL notes §20 the Chair's Statement of 13 November 2024, in which he stated "*The Post Office has, in effect, already made such submissions* [by way of challenge to Mr Atkinson's evidence] *in its closing phase 4 closing submissions albeit by reference to the evidence of Mr Laidlaw. It will not be difficult for it to produce a section of its written final submissions to include any criticism of Mr Atkinson's evidence it wishes to make.*" However, he went on to make it clear that this should not be taken as an invitation to lengthen the written closing submissions, on the basis that he doubted that "*a minute examination of each aspect of Mr Atkinson's evidence will be of much consequence or assistance to me compared with that incontrovertible state of affairs* [i.e. the findings of fact and conclusions of law made by the CACD. POL makes two points in response.[505]

233. First, POL does not understand the suggestion that the findings of the CACD in *Hamilton* and other cases reduce or remove the need for each aspect of DAKC's evidence to be examined. Indeed, the very rationale for the Inquiry commissioning DAKC's two reports must have been precisely because the CACD judgments did **not** address every aspect of the POL's approach to prosecutions reliant on Horizon which the Inquiry considered ought to be addressed by it under its ToR. In particular, DAKC considered each of the criminal case studies in exhaustive detail (including every stage of the decision-making) in his second report, an exercise which has never been undertaken by the CACD, not least as POL has conceded every case in which an appeal has been allowed and therefore it has been unnecessary for the CACD to do so in those cases.

234. Secondly, it would be impossible to respond comprehensively and adequately bearing in mind the 100 page limit to which the Chair has requested the parties adhere for closings in Phases 5, 6 and 7 (during which 100 witnesses gave evidence, compared to 62 in Phase 4, inclusive of DAKC). POL notes that JLKC's two reports combined totalled 750 pages, not dissimilar to the length of DAKC's. POL had hoped to assist the Inquiry through the provision of JLKC's reports, which conveniently cross-reference and draw together the evidence in a manner that might have assisted the Inquiry. However, the points that POL wishes to advance are set out within the Phase 4 submissions, and the evidence to support them is already before the Inquiry (even if the allotted page count does not permit POL to cross-reference the evidence within the submissions).

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[504] It is the substance of the information that is disclosable rather than the format. POL could therefore have disclosed the underlying emails themselves, or summarised their contents by way of a disclosure note, or disclosed the relevant extracts of the 1st Clarke Advice.

[505] UK Parliament - Future of the Post Office. Volume 756: debated on 13 November 2024 (**RLIT0000453**).

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4. The Group Litigation

235. The core issues in the Inquiry's CLI in relation to the GLO can be distilled as being: towhat extent did POL rely on legal advice in determining its strategy, and was that strategy appropriate.[506]

(i) Reliance on Legal Advice

236. WBD first became involved in advising POL in early 2013 when APa was instructed to advise on letters before claim from Postmasters raising concerns about the Horizon system. He was then a 5 years PQE associate at WBD.[507] He advised on the disclosure (or otherwise) of issues with Horizon in letters to Postmasters,[508] despite the fact that he "*didn't understand the nature of the error in hardly any detail*",[509] and advised on crucial wording in correspondence based on his understanding that it was normal for lawyers to "*soften wording*".[510] He made "*recommendations*"[511] to POL on his own initiative without instructions or without the "*level of thought*"[512] required to understand the impact on disclosure in other matters.

237. He remained POL's main external legal adviser in civil matters to POL until 2019 during which period he played a substantial role in shaping POL's strategy in relation to key responses to the emerging scandal (including the response to SSIR and the ICRMS).[513] He was made a Partner in May 2016 (just weeks after proceedings in the GLO were issued),[514] and thereafter had principal responsibility for the conduct of POL's defence in the GLO, sitting on the Postmaster Litigation Steering Group (PLSG) and attending some meetings of the Board Subcommittee (established in early 2018).[515] This was despite having no previous experience of group litigation.[516] APa in turn delegated a number of tasks to a colleague, Amy Prime ("APr"), including the instruction of BAKC in relation to the criminal appeals,[517] and liaising with POL to provide background to the pleading in the GLO.[518] At this time APr was less than one year PQE.[519]

238. It was obviously a mistake for POL to rely on such an inexperienced legal adviser in APa, and, in turn, for him in turn to rely on such a junior colleague,[520] in a matter of such significance to POL. Indeed, the absence of any tendering process for appointment as POL's lawyers in the GLO, or even any evidence at its inception there was anything more than a cursory consideration of instructing another firm of solicitors (and in any event no consideration apparently given to instructing a more senior partner), was an obvious error. It is now clear (and ought to have been clear to POL at the time) that APa had neither the experience nor the judgement to provide POL with the depth of advice that the GLO required. Moreover, his involvement from a very junior stage of his career appears to have led APa to overidentify with his client in litigation and to lose his ability clearly to

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[506] POL does not here repeat its submissions on the standards by which POL's conduct should be judged, set out at §17 to 43 above, but this point is critical when considering whether POL's strategy was "*appropriate*".
[507] T 13/06/24 [2:14 – 3:6] **(INQ00001160)**.
[508] T 13/06/24 [9:2 – 25:12] **(INQ00001160).**
[509] T 13/06/24 [10:5 – 10:6] **(INQ00001160)**, in reference to the suspense bug in particular, see [7:25 – 10:4]**.**
[510] T 13/06/24 [10:5 – 10:6, 11:5] **(INQ00001160)**.
[511] T 13/06/24 [11:15] **(INQ00001160)**.
[512] T 13/06/24 [13:14] **(INQ00001160)**. APa also said he did not give '*that level of thought*' to: the wording of a letter to Postmasters [18:17]**, or** to the purpose of WBD drafting the notification to insurers [72:19-20]**.**
[513] SC described WBD and APa in particular as "*an extension of the in-house Legal Team*" T 24/04/24 [69:8 – 69:11] **(INQ00001135)**.
[514] T 13/06/24 [2:19] **(INQ00001160)**; APa1 §29.3 **WITN10390200**.
[515] APa characterised his role in the context of disclosure: "*As the partner in charge of the litigation…, I was the highest point of escalation within the WBD team for more difficult issues that could not be resolved by more junior solicitors*" (APa1 §651 **WITN10390200**).
[516] T 13/06/24 [11:15] **(INQ00001160)**.
[517] APa1 §991 **(WITN10390200)**.
[518] APa1 §501 **(WITN10390200)**.
[519] APr §6, §12 **(WITN10760100)**.
[520] APa acknowledged that he was not sufficiently supported to manage the HIT, noting that it "*might have been helpful had there been a further matter Partner instructed at the time*…" APa1 §858 **WITN10390200**. There is no evidence that APa ever suggested this course of action to POL.

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assess issues of disclosure, evidence, strategy and costs.[521] As a result, POL was deprived of legal advice which was truly objective. In particular:

239. Disclosure:[522] APa was heavily involved in formulating and advising POL on its approach to disclosure before and during the GLO litigation. RW's evidence was that POL had not instructed WBD to take a "*rigid hard-line*" approach to disclosure,[523] but APa effectively advised POL to adopt an approach which was designed to avoid or delay disclosure of relevant information:[524]

a) As early as 2013, during the first Horizon weekly call, APa is recorded as providing advice on disclosure that was (at best) naïve as to how non-lawyers would understand it,[525] particularly given the advice of CK that the purpose of the Horizon weekly calls was to have a central record of Horizon issues.[526]

b) APa advised POL to withhold disclosure of what he considered to be a key document (POL's Investigation Guidelines) and to adopt that approach until "*the criticism is becoming serious*."[527] POL acknowledges that RW (wrongly) did not challenge this advice.[528]

c) APa's advice to POL was not to review the 14,000 KELS that came to light after the conclusion of the Horizon Issues trial because to do so would risk uncovering material that would highlight further bugs in Horizon which POL would then have to disclose.[529]

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[521] e.g. in his response to Panorama, T 13/06/24 [110:1 – 112:19] **(INQ00001160)** and to SSL, T 13/06/24 [113:18-25, 140:8-14] **(INQ00001160).**

[522] A number of criticisms were made by Fraser LJ in the HIJ which, in line with The Chair's stated approach fall to be treated as '*established and incontrovertible"* (September 2021 Progress Update from the Chair p.7 – **RLIT0000462**). These include: the finding that APa's argument that at the time when the Horizon Issues defence was drafted the KELs were not in POL's "control" based on APa's analysis of the contractual documentation was "*verging on the unarguable, given the express terms of the Fujitsu contract* (HIJ §605) (an argument that APa maintained in his statement in the Inquiry – APa1 §§568 – 569 **(WITN10390200)**; the finding that, having been ordered by Fraser LJ to provide a statement explaining the late disclosure of further documents (including PEAKs) dealing with "*central elements of the Horizon system*" whilst the HIT was underway and in the context of an oral submission as to the reason for the late disclosure having been shown to be wrong, APa's explanation was found to be "*extraordinarily opaque*" and the "*wholesale lack of explanation…puzzling"*, concluding that "*disclosure was given in a manner that could only have disrupted and delayed proper investigation of the issues contained in the documents."(*HIJ §§616-620, **AMCL0000013**). Additional matters of which Fraser LJ would not have been aware included that whilst APa was keen to emphasise that WBD took steps to keep Fujitsu's further input on the 29 bugs post the experts' Second Joint Statement for the HIT separate from RWo, so as to ensure that RWo and JC had equal access to information (APa1 §799 **WITN10390200**), he did not acknowledge that that approach had not been adopted by WBD when Worden 1 was prepared. On the contrary, an earlier draft of Worden 1 explicitly set out the documents he had seen (making the inequality of information clear: §1.3 **POL00029046**), the final report provided a list of documents making the inequality less obvious: §1.3 **POL00028877**.

[523] T 18/04/24 [68:25 - 71:9] **(INQ00001132)**.

[524] T 13/06/24 [123:8 - 19; 131:4 – 11] **(INQ00001160)**.

[525] **POL00083932**, T 13/06/24 [38:11 – 39:15; 41:20 - 42 :9 ; 46:14 – 47:16] **(INQ00001160)**, APa's advice formed part of the background to the events described in the "*shredding advice*" of SCl: **POL00006799**. Regardless of APa's contention before the Inquiry that the minutes of the 19/07/13 were inaccurate, it is clear that his advice, characterised by SCl as "*ludicrous"*, was understood to be: "*if it's not written down it's not disclosable*". See SCl T 09/05/24 [97:20 - 97:22] **(INQ00001144)**; JS T 03/05/24 [99:17 - 100:23] **(INQ00001141)**; and JS2 §19 **WITN08390200**.

[526] See SCl §44 **WITN08130100**.

[527] **WBON0000467**, **POL00038852**, T 13/06/24 [118:10 – 123 :7] **(INQ00001160)**. He sought to distance himself from the advice on the basis his additions to an email authored by APr were not "*building upon the substance of her email*", when he was the supervising partner with overall responsibility for the advice to the client: APa1 **WITN10390200** §413.

[528] T 18/04/24: [67:24 – 68 - 71:9] **(INQ00001132)**.

[529] **POL00043147**. T 13/06/24 [126:14 - 129:9] **(INQ00001160)**. Notwithstanding this advice, in fact (and as drawn to CTI's attention by POL on day 2 of RW's oral evidence (T 19/04/24 **(INQ00001133)**), WBD informed Freeths of the existence of 14,000 KELs and sent an index of the same on 28/10/19, thereby effectively fulfilling POL's disclosure obligation of 'disclosure by list' in advance of any request by the claimants for copies of all or any of such documents (**POL00285691**; **POL00043107**; **POL00424141**; **POL00424142**; **POL00287839**; **POL00043187, FUJ00166835).**

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240. Taking instructions and informing the client: there is evidence that APa drafted documents on behalf of POL without taking detailed instructions,[530] removed admissions from letters,[531] and failed to include crucial information when updating POL.[532] Ben Foat ("BF") had to 'call out' APa in June 2019 for suggesting that the claims had not been quantified, and that APa had not made the size of the claims clear to the Board.[533]

241. Role and competence: APa regularly advised outside his role as a civil litigation lawyer, and in particular, he strayed into the territory of criminal law[534] as well as PR and other areas. He gave advice on communications, "*the need to limit public debate*" and the "*PR perspective*" regarding a letter to insurers,[535] and in relation to the response to Panorama (attacking the credibility of individuals).[536]

(ii) APa and the role played by GJ

242. APa was made aware as early as 17 July 2013 that CK had significant concerns about GJ's role as an expert.[537] APa acknowledged in his witness statement[538] that the HRR was "*undoubtedly important in the context of historic prosecutions where Cartwright King had advised that Gareth Jenkins had given misleading testimony.*" He stated: "*I was aware that for this reason, post-conviction disclosure of the report had been given in a number of cases ... However, whether POL was required to disclose the report to a convicted SPM was not a Mediation Scheme matter, but rather something to be managed outside of that process by Cartwright King as POL's criminal solicitors.*"[539] APa was, however, actively involved in deciding the strategy for managing the HRR in the Mediation Scheme (see 'ICRMS' §170 to 185).

243. APa's account of the use made of Fujitsu and GJ during the GLO is not consistent with the conclusions reached in the HIJ or the evidence before the Inquiry.

a. APa's subsequent denials before the Inquiry notwithstanding,[540] Fraser J (as he then was), concluded in the HIJ that GJ was unquestionably "*closely involved in the litigation*".[541]

b. APa maintained before the Inquiry that it was clear that "*as a result of his past conduct in relation to criminal prosecutions, Gareth Jenkins' credibility as a witness was fatally compromised such that he could not be stood up as a witness in the group litigation.*"[542]

c. APa had been aware of GJ's credibility issues since 2013 (see §242 above). Yet in a GLO briefing email dated 7 September 2018 and sent to RW in anticipation of a meeting with counsel and CK, APa suggested "*having spoken to FJ, there are parts of points 2 and 3 [re remote edits to branch data and bugs identified by the claimants] that only GJ can realistically provide…. To be clear,* ***Gareth would be called as a witness of fact****….*" (emphasis added). APa accordingly suggested the conference could "*discuss the risks of using GJ as a witness given his previous role as a prosecution witness*".[543] APa acknowledged under cross-examination before the Inquiry that GJ's credibility was "*shot*".[544] He sought to justify

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[530] T 13/06/24 [23:25 – 24:22] (**INQ00001160**).
[531] T 13/06/24 [16:9 – 17:9] (**INQ00001160**).
[532] T 13/06/24 [85:1 – 88:24] (**INQ00001160**).
[533] See the minutes of the Postmaster Litigation Subcommittee 12/06/19 (**POL00103642**), and 20/06/19 (**POL00006752**) at which the Committee expressed serious concerns about these failures, which impacted not only on POL's potential strategy but its Annual Report and Accounts.
[534] See, for example §65 and 226.
[535] T 13/06/24 [38:14 -16, 42:23-25] (**INQ00001160**).
[536] T 13/06/24 [112:20 –113:9] (**INQ00001160**).
[537] See CK Advice dated 15/07/2013 (**POL00006357**) in which counsel SCl concluded that "*Dr Jennings* (sic – clearly referring to GJ) *has not complied with his duties to the court, the prosecution or the defence*" §37. This was sent to SC by MS on 17/07/13 and immediately forwarded to APa: **WBON0000770**.
[538] APa1 §§86-9; 177 (**WITN10390200**).
[539] APa1 §177 (**WITN10390200**).
[540] APa1 §807 (**WITN10390200**): "neither Fujitsu nor GJ helped 'prepare' the case".
[541] [2019] EWHC 3408 (QB) §§77, 509 – 514 (**AMCL0000013**).
[542] APa1 §813 (**WITN10390200**).
[543] **POL00042010.**
[544] T 14/06/24 [82:3 – 82:4] (**INQ00001161**).

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revisiting the possibility of GJ as a witness for the GLO on the basis that he was aware "*there was a concern that there would be points on which only GJ may be able to give evidence, but until the issues in the litigation took shape…. [in] August 2018… the point around GJ's role and his role as a witness hadn't …. really taken hold.*"[545]

d. The suggestion that APa consistently believed that other FJ witnesses– TG and SPa – would be able to provide the evidence necessary to sustain POL's case[546] is not supported by the evidence. As APa himself acknowledges in his witness statement, SPa was an extremely reluctant witness,[547] who held a managerial role and consistently deferred to TG on technical matters; TG, in turn, as Fraser LJ found, relied heavily on GJ.[548]

e. APa seeks to excuse this in his written statement on the basis that he was not involved in interviewing either SPa or TG and that he did not review many of the email exchanges into which he was copied.[549] As the partner with conduct of the litigation on POL's behalf, this was regrettable. It appears that Jonathan Gribben, the WBD solicitor (junior to APa), who was most deeply involved in the Fujitsu evidence was not asked to give evidence to the Inquiry.

f. POL similarly regrets that leading counsel instructed on its behalf, ADGRKC was likewise kept unaware of the extent of GJ's involvement in the preparation of the GLO, despite his unequivocal advice on the need to limit his involvement as much as possible.[550] APa maintained in his witness evidence that he sent ADGRKC the 1st Clarke Advice along with his original instructions in June 2016.[551] Whilst it is correct that the index with which ADGRKC appears to have been provided does indeed include a reference to the Clarke advice,[552] it does not, however, make clear that GJ was "fatally compromised"; rather, it suggests that "*Jenkins' evidence during certain prosecutions was **not as fulsome** as it should have been. Although his evidence was **not incorrect**, he **perhaps gave the impression** to the Court that there were no bugs in Horizon despite the fact that there were plainly some minor bugs in Horizon albeit ones **not pertinent to the cases on which he was giving evidence***" (emphasis added).

244. In an email sent on 7 September 2018 prior to the meeting with SCl, APa wrote– "*I've attached an advice note Simon did 5 years ago about why POL should be wary about relying on Gareth Jenkins, which sets the context for the meeting.*"[553] This suggests that ADGRKC either had not received the 1st Clarke advice previously or had not been made fully aware of its significance. ADGRKC's written and oral evidence suggest both propositions are correct.[554] APa was not taken to this evidence or challenged on this point.

245. APa acknowledged in his written evidence: "*Looking back, I accept now (and recognised then) that this was an unsatisfactory state of affairs. The unfortunate reality was that there was no alternative witness with the requisite depth of technical knowledge within Fujitsu*".[555]

246. POL accepts that it must ultimately take responsibility for the inappropriate reliance that was placed on GJ during the GLO, a situation which it profoundly regrets, but the extent to which this issue was managed (or rather, mismanaged) by APa /WBD is clearly relevant to how the situation came about.

(iii) POL's strategy

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[545] T 14/06/24 [105:17 – 105:25] (**INQ00001161**).
[546] See APa1 §818. (**WITN10390200**).
[547] See APa1 §839 (**WITN10390200**), and **WBON0000194**.
[548] HIJ §456 (**AMCL0000013**).
[549] APa1 §791 (**WITN10390200**).
[550] **WBON0000342**.
[551] APa1 §813 (**WITN10390200**); **WBON0000194**.
[552] **WBON0001011** entry 112 on p.23.
[553] **WITN10500105.**
[554] See ADGRKC1 at §95 (**WITN10500100**) and T 11/06/24 [19:7-10, 71:6-71:11] (**INQ00001158**).
[555] ADGRKC1 at §823 (**WITN10500100**).

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247. Much of the questioning in relation to POL's strategy has focused on two WBD papers prepared for the PLSG meeting on 11 September 2017,[556] based on which it has been suggested that POL adopted a strategy of "attrition" towards the GLO claimants, i.e. seeking to exhaust their legal funding such that they would have to give up their claims. Whilst POL fully recognises the strongly held belief on the part of some Postmasters that this was POL's strategy, based on their personal experience of the impact of the litigation, the evidence before the Inquiry does not support any finding that that was, in fact, a strategy chosen and executed by POL.

248. The decision paper[557] recommended a three-pronged strategy "*to try to force the Claimants into a position where they give up or settle"*[558], being to: "*Attack the fundamental basis of the Claimants' claims, being their attempts to imply new terms into the standard postmaster contracts ("Weaken the foundation"*) … *Look to strike out weak claims to reduce the number of Claimants ("Thin the herd") ... Bring down over-inflated claim valuations*" (§4.4). Nowhere did it refer to 'attrition'.

249. The Litigation Strategy Options paper[559] set out five options, and their benefits and risks. The "*recommended approach* [was] *Option 2 combined with Option 3*", which referred to focusing on contractual issues and on weak claims. The other options were not recommended, including option 5 "*attrition*"[560] for which the recommendation was that "*This option is not recommended as we believe the pressure on, and cost to, Post Office would become unbearable before the Claimants gave up*". APa's evidence was that "*I don't believe I ever advised Post Office to take such a strategy*"[561] and RW's evidence was that he did "*not recall* [attrition] *being seriously considered or pursued at any stage of the litigation*".[562] That position is entirely consistent with the strategy that *was* in fact adopted, which reflected the recommendations that *were* made in the decision paper and Litigation Strategy Options paper, in that POL did (albeit unsuccessfully) focus on contractual issues and on weak claims.

250. POL accepts that aspects of the strategy adopted by it during the GLO litigation seem bullish with the benefit of hindsight, such as the application made by POL to strike out large parts of the claimants' evidence relied on for the Common Issues Trial ("CIT"). It was, however, the firm recommendation of WBD and counsel that POL make that application.[563] POL also sought merits advice in advance of the CIT in which counsel advised that POL had "*the stronger arguments*" on most of the common issues and they anticipated POL succeeding on those issues, although there were reasons for caution.[564] In advance of the HIT, WBD prepared a risk assessment table which advised POL that it was likely to win 10 of the 15 Horizon issues based to a large extent on the positive opinion of POL's expert RWo.[565]

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[556] **POL00006380** and **POL00006379**.

[557] **POL00006380**.

[558] POL recognises that the language used in this document, and the accompanying options paper, will be regarded as inappropriate by many Postmasters. However, it has to be read as being 'of its time', in that this obviously pre-dated Fraser LJ having effectively redefined POL's understanding of the nature of the relationship established by Postmasters' contracts in the CIJ.

[559] **POL00006379**.

[560] Being to "*stretch out the litigation process so to increase costs in the hope that the Claimants, and more particularly their litigation funder, decide that it is too costly to pursue the litigation and give up."*

[561] Being a "*pure attrition strategy, where a party takes unreasonable points for the predominant purpose of causing one's opponent to incur costs*" T 14/06/24 [10:15 - 10:17] **(INQ00001161)**.

[562] RW1 §203 **(WITN08420100)**.

[563] **POL00139561**. WBD paper for PLSG Meeting on 05/09/18 **(POL00023285)**: "*Neither counsel nor we have ever seen a case where a party has so blatantly sought to rely on so much plainly irrelevant and inadmissible evidence.*" "*The recommendation of WBD and Counsel is to make the application, We anticipate that the Judge will be broadly supportive of the application, striking out may parts of the Claimants' evidence but perhaps not striking out everything that Post Office seeks*" p.3, **POL00256627**, **POL00257086**.

[564] Opinion on the Common Issues – DCKC and ADGRKC §3 **(POL00103462)**; updated opinion §2 **(POL00022669)**; Minutes of Postmaster Litigation Subcommittee of 15/05/18: "*Overall view is the PO has the better of args in most 23 args*." **(POL00006754)**.

[565] **POL00091438**. See also **POL00006753**, Minutes of the PGLS of 21/02/19: per ADGRKC "*The key issue was the robustness of the Horizon system and our view was that it was critically robust.*" And "ADGRKC

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251. POL Board members did question in March 2019 whether WBD remained the right firm to instruct, given its longstanding involvement, but there was concern about being seen to instruct a 'Magic Circle' firm in WBD's place and the tight timescales, although Norton Rose did start to undertake some work for POL.[566]

252. The GLO strategy was also heavily influenced by the counsel team, upon whom POL reasonably relied and some of whose advice was trenchant (and who POL felt it necessary to ask to adopt a less aggressive approach toward the judge).[567] This is well illustrated by the recusal application and appeal.

253. POL's confidence in the strategic advice was shaken by the CIJ. The suggestion of a recusal application was first raised by David Cavender KC ("DCKC"),[568] following which a second opinion was sought from Lord Neuberger ("LN"). Lord Grabiner KC, retained to present the application, strongly supported LN's views[569] and was asked to advise the Board – the record of that conference record that the legal advice was questioned by Board members[570] but ultimately accepted. POL submits that when presented with the clear advice of two such eminent barristers (one the ex-President of the Supreme Court), realistically it would be unfair to criticise POL for accepting it.

254. Following the refusal of permission by Fraser LJ, there was a consensus within POL that fresh representation was required.[571] Herbert Smith Freehills (HSF) were instructed and advice was taken from Helen Davies KC on the appeal.[572] POL's view by June 2019 was that the "*Judge's findings to date have been consistently and highly critical, creating heightened legal risk and brand damage. We decided to introduce a new team because our existing advisors did not believe that our strategy and approach should change in the light of this criticism*" and that "*We are planning a different tone as well as scope and have asked a different QC to lead the appeal*".[573] POL accepted its litigation strategy had been flawed.[574] The change of solicitors and counsel led to a change of course in terms of strategy and tone,[575] resulting in the settlement in December 2019.[576] POL equally submits that there is no basis for criticising its strategy in this respect.

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reported that "*we remained reasonably optimistic but somewhat less than before Christmas*." Key risks in the case were also flagged by ADGRKC. See also ADGRKC1 (**WITN10500100**), §157(2) "*I provided a high level briefing. It was my view that, on the question of Horizon's reliability, POL had good arguments and, although some aspects of the system would probably be criticised, I still felt cautiously optimistic.*"

566 **POL00006700**.

567 **POL00277085**: "*A minor point but Rod can you ensure that all the relevant barristers are briefed not to character assassinate the judge. He is a judicial officer who rightly or wrongly has a firm view about how Post Office conducts itself. Again, Tony Robinson QC went a bit too far. It right to call out that the claimants [sic] case clearly resonates with the judge more than ours but we have repeatedly been through this issue before and Im [sic] not sure why it does not land with the counsel team.*"

568 **POL00022688**.

569 **POL00006792**.

570 **POL00023261**.

571 **POL00274605**.

572 **POL00103560**. WBD continued to act in relation to the HIT.

573 **POL00023738**.

574 **POL00006767** (page 5) and **POL00276672**.

575 e.g. **POL00277607**.

576 WBD had advised that it was difficult to advise on the merits of the claim **POL00276984**. Although it has been suggested that settlement should have occurred sooner (e.g. ACmKCB **T 07/11/24** [195:14 – 195:20] (**INQ00001203**)), the timings of the trials made that difficult. At the time the CIJ was handed down on 15/03/19 the HIJ was already underway and was scheduled to continue until early July with an Easter break. Following HSF's instruction POL's Board were advised by them on 24/04/19 to appeal the CIJ and look to settle before the appeal was heard, and in parallel explore with the claimants settlement with a view to stopping the litigation before the HIT continuing (scheduled to restart in early June) (**POL00023789** at p.11). Whilst the parties agreed that a mediation should be held, the claimants' KC had indicated that it should be after the HIT had completed (September 2019) and POL agreed to hold that window for a mediation (**POL00276681** at p.3). By 30/07/19 work was taking place to prepare for mediation and settlement which could commence in the middle of October or beginning of November 2019 (**POL00021568**). In the light of the then-anticipated handing down of the HIT between mid-September and mid-October 2019, and the hearing in the Court of Appeal on 09/10/19, mediation was subsequently regarded

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(iv) Relevance of potential criminal appeals

255. It has also been suggested that POL's strategy in the GLO was motivated in part by a desireto "*kill the prospects of any future criminal appeals that rested on the outcome*",[577] which prompted the Chair to suggest that "*the claims in the GLO on behalf of some of the claimants included claims for malicious prosecution.*[578] *So, inevitably, the propriety of the prosecutions were in issue, in effect, in the civil proceedings?*"[579] (emphasis added). Whilst SAB agreed with that proposition, it would be incorrect insofar as it suggested that the propriety of the criminal convictions were in fact ever directly an issue in the GLO.

256. Indeed, it was precisely to avoid any such inference or misunderstanding that Fraser LJ set out in his judgment in the HIJ the distinction between the civil proceedings and any potential criminal law issues:

> "*66.6 This group litigation is concerned only with the issues arising in the civil claims being brought against the Post Office by the claimants, and the Post Office's counterclaims. It will result in a series of judgments on those issues which are public. What, if anything, the CCRC do in any respect following any of the judgments is entirely a matter for the CCRC and forms absolutely no part whatsoever of the group litigation. ...*
> *7. This court has no jurisdiction in respect of any of the convictions of those SPMs who were successfully prosecuted by the Post Office.*"[580]

257. While the Court of Appeal (Criminal Division) in Hamilton [2021] EWCA Crim 577[581] accepted and adopted Fraser LJ's findings of fact as to problems with Horizon being raised by Postmasters from 2000 onwards (§122), it recorded that Fraser LJ "*was not directly concerned with any criminal proceedings*" in the GLO (§6). This is unsurprising as in most circumstancesit will be an abuse of process for a civil court to be asked to decide that a subsisting conviction was wrongful.[582] It follows that the propriety of the prosecutions resulting in convictions[583] was not, and could not have been, directly in issue in the GLO, and any inference thattheir propriety influenced POL's conduct of the litigation as a result would be misplaced.

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as likely to take place in mid-November 2019 (**POL00155501**). It was initially scheduled for 27-28/11/19 (**POL00327588**), and ultimately concluded in the GLO Settlement Deed on 10/12/19. In all these circumstances whilst, with hindsight, it would have been preferable for all if the GLO could have settled sooner, POL would not accept that it could fairly be criticised for not having done so.

577 As put to SAB T 09/04/24 [176:21 – 176:22] **(INQ00001126).**

578 The original GLO Claim Form (**POL00000463**) issued on 11/04/16 included a claim for malicious prosecution, but the generic Particulars of Claim filed on 06/07/17 stated that *"the Claimants do not plead particulars of these [malicious prosecution] claims pending the outcome of the Criminal Case Review Commission review which is currently ongoing in relation to the convictions of (currently) over 30 of the Claimants.*" (**POL00004128** §123-4).

579 T 09/04/24 [178:5 – 178:11] **(INQ00001126)**. This suggestion was made in the context of questioning about potential criminal appeals, hence POL has understood The Chair's reference to "prosecutions" to mean prosecutions resulting in a conviction.

580 This is consistent with the terms of the Tomlin Order (*"Neither the stay in paragraph I of this Order, nor the discontinuance provided for in paragraph 2 of this Order, shall prejudice the right of any convicted claimant to bring an individual claim for malicious prosecution which, for the avoidance of doubt, have not been compromised under the terms of Confidential Schedule I to this Order."*(§3)) and the Settlement Deed, by which the Settled Claims did not include *"claims against the Defendant for Malicious Prosecution"* (§4.2.2) (**POL00026509**).

581 The Court of Appeal also observed in Hamilton (§31) that a Public Inquiry was ongoing (POHITI) and that "*terms of reference of the Inquiry do not include POL's prosecution function or matters of criminal law.*" (**COPF0000004**).

582 See Lord Hoffmann in *Hall v Simons* [2002] 1 A.C. 615 (§26) (**RLIT0000448**); where the essential elements of a case have already been adjudicated upon in previous hearings (*Ahmed v DG* [2020] EWHC 3458 (QB), (§108) (**RLIT0000439**); *Amin v The Security Service [2015] EWCA Civ 653* (§44) (**RLIT0000440**), it is an abuse to initiate proceedings for the purpose of mounting a collateral attack on a pre-existing final decision of another court of competent jurisdiction: Lord Diplock in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (§541B-C) (**POL00004058**).

583 The abuse identified in *Hall v Simons* would not arise in the case of claimants who had been prosecuted but not convicted, as in the absence of a conviction an exploration of the propriety of their investigations and prosecutions would not have been an abuse.

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PHASE 7

D. Introduction

258. As with any statutory inquiry, the scope of the Inquiry was established by the Terms of Reference ("ToR") issued by the government (1 June 2021), pursuant to which the Inquiry "*will consider only those matters set out in the preceding sections A-F*".

259. It is important to emphasise (as the ToR does) that the stated purpose of the Inquiry's assessment of POL's organisation, culture and governance, is to avoid a repeat of the issues covered by this Inquiry, that is, "*the failings associated with Post Office Ltd's Horizon IT system*".[584] It has clearly never been government's intention for this Inquiry to assess (and potentially make recommendations about) much wider issues than those associated with the IT Horizon system, such as whether POL should be mutualised. Indeed, it is difficult to see how the Inquiry itself could reach any view on the future of POL in a broad sense, given not only the far narrower scope of its ToR but also the limited evidence it has heard on the 'bigger picture'.[585]

260. That is not to say, of course, that the Inquiry has no role in terms of considering the proposals flowing from the Strategic Review. A number of those proposals are relevant to the Inquiry's assessment of the relationship between Postmasters and POL (i.e. ToR §E), including increased remuneration for Postmasters, increased engagement with them by way of a new Postmaster panel to improve the support and training for Postmasters, and the representative Consultative Council that will work with POL's senior management on how its new plans will be taken forward, as well as the impact of the new strategy on POL's IT systems.[586]

E. Compensation

(1) "Full and fair" compensation vs public purse considerations

261. In his evidence to the Inquiry, Henry Staunton ("HS") suggested that the approach adopted by POL in making offers of compensation took account of the interests of the public purse, being distinct and less generous than full and fair compensation.[587] However, his evidence appears to have been based on a misunderstanding as to differences in application of those concepts in the context of compensation.

262. The principles guiding the amount of compensation to be paid to Postmasters in the HSS and OCS have always been determined by what amounts to "*full and fair*" compensation to the Postmaster.

a) In the HSS, an independent advisory panel ("IAP") assesses every eligible application and recommends an offer of compensation.[588] As stated in the terms of reference of the IAP, the overriding objective for the IAP is to "*assess and recommend to Post Office a fair outcome for Eligible Claims made to the Scheme for Shortfall Losses and Consequential Losses.*"[589] The IAP are guided by broad considerations of fairness and the panel looks to achieve a fair result in the circumstances of each case.[590] The IAP's discretion is not restricted to the specific heads of loss claimed by the Postmaster so long as the loss was caused by a Horizon shortfall or is a

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[584] First, unnumbered, paragraph of the "Scope of the Inquiry" part of the Terms of Reference.
[585] The Strategic Review commenced in June 2024, involving over 60 members of Post Office staff and Board members and 180 Postmasters and other stakeholders or experts
[586] Minister's statement to the House of Commons, 13 November 2024 **(RLIT0000453).** Albeit that the Inquiry could not, for example, reach any conclusion as to whether the proposed increased level of remuneration was adequate in the absence of having sought or heard any evidence on the point.
[587] HS1 **WITN11410100**, §19-20; and HS T 01/10/24 [167:5 – 168:17] **(INQ00001189)**. AC stated that he had "*never heard it expressed like that*" T 01/10/24, [211:18 – 212:13] **(INQ00001189)**.
[588] **POL00448026,** §§ 16-19. POL has never made an offer at a level less than that recommended by the Panel, and in some cases have increased it.
[589] **POL00448026** at §1. SR T 04/11/24 [95:18 - 96:4] **(INQ00001200)** (emphasis added).
[590] **POL00448026** at §31.

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consequential loss.[591] The IAP's approach to fairness includes making a recommended offer for heads of loss not claimed by the Postmaster,[592] and undertaking a 'backward review' of all decided cases where a new head of loss has been introduced or they have adjusted their approach to a principle or head of loss.[593]

b) The OCS was established to ensure that swift and fair redress was provided to Postmasters with overturned convictions[594] as quickly as possible.[595] The Operations Agreement between POL and DBT confirms that the "*shared objective of POL and DBT is to see that affected postmasters receive swift and fair compensation for credible claims against POL*".[596] Pecuniary claims are assessed in accordance with delivering compensation which is "*fair in all the circumstances*".[597] The terms of reference for the Independent Pecuniary Compensation Assessment Panel states that "*the Panel's overriding objective is to facilitate fair and independent resolution of disputes*" which it does, inter alia, by "*making recommendations as to pecuniary compensation which are fair and consistent as between Claimants*".[598] Non-pecuniary claims are decided with reference to Lord Dyson's Early Neutral Evaluation with the objective of delivering full and fair redress in all the circumstances.[599]

263. This approach was reflected in the evidence of Nick Read ("NR"), who expressly assured the Inquiry that it was still the aim of the Post Office to provide compensation that was full and fair,[600] and Simon Recaldin ("SR") who explained that there are no restrictions or 'value for money' considerations in the amount of redress available for payment to Postmasters[601] noting that the £1.4 billion provision that has been made available for redress in the Post Office schemes is "*sacrosanct*".[602] Sarah Munby ("SMun") and Carl Creswell ("CC") supported SR's evidence by confirming that compensation has been paid in accordance with the original policy intent, set by the Minister, namely that compensation should be full and fair.[603]

264. Where the concept of the 'public purse' (or 'value for money') *is* potentially relevant is in respect of the principles that govern the administration and delivery of the schemes,[604] including by ensuring that the administration of the schemes are not subject to fraud and error.[605] The distinction between the "*full and fair*" principles that govern the amount of compensation offered to Postmasters and the 'value for money' principles that govern the administration of the

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[591] **POL00448026** at §31.
[592] **POL00448026** at §31; and SR T 04/11/24 [93:8 – 94:12] **(INQ00001200)**.
[593] SR T 04/11/24 [105:4 – 105:17] **(INQ00001200)**.
[594] And those who were prosecuted but not convicted.
[595] SR7 **WITN09890700**, §13.
[596] **BEIS0000902**, §3.
[597] **POL00448916,** §4.1.
[598] **POL00448910,** §1.
[599] SR7 **WITN09890700**, §47. Both the HSS and OCHS are therefore functionally independent from the POL Executive, the POL Board, UKGI and Government and their recommendations and decisions cannot be influenced by objectives such as value for money in the absence of a fundamental re-writing of the Terms of Reference and procedures of each scheme.
[600] NR T 10/10/24 [168:15 – 68:22] **(INQ00001194)**.
[601] SR T 04/11/24 [30:3 – 30:5] **(INQ00001200)**.
[602] SR T 04/11/24 [30:8 – 30:12] **(INQ00001200)**. When asked about HS's evidence AC also stated that he had "*never heard it expressed like that*" T 01/10/24, [211:18 – 212:13] **(INQ00001189)**.
[603] SMun T 05/11/24 [129:15 - 129:20;177:4 – 177/12] (INQ00001201). As further confirmed by CC3 **WITN11730300** at §5 and KHMP2 **WITN11460200** at §3-8.
[604] SR T 04/11/24 [30:19 – 31:5] **(INQ00001200)**; SM T 05/11/24 [127:12 – 128:20] **(INQ00001201)**.
[605] SMun T 05/11/24 [127:22 – 128:15] **(INQ00001201)**.

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compensation scheme,[606] and the fact that the latter does not take priority over or affect the former, is clear from the Terms of Reference of the Horizon Redress Overturned Convictions Board:[607]

"*Both redress schemes [HSS and OCS] share two main objectives:*

- *To see postmasters whose convictions are overturned be offered full and fair financial redress.*
- *To design and operate the redress schemes in a manner which represents Value for Money (VfM) for the taxpayer.*"

265. Another potentially relevant factor raised in the Phase 7 hearing was promptness. As SMun explained, the objective to be achieved in compensating individuals is dependent on the ministerial direction and policy objectives,[608] and prior to late 2023, the ministerial objective was to achieve full and fair compensation with less emphasis on promptness. However, from the end of 2023 onwards, promptness has been pushed to the fore. While SMun suggested that promptness meant foregoing some fairness between claimants, Kevin Hollinrake MP ("KHMP") and Gareth Thomas MP ("GTMP")[609]confirmed that they have not given a ministerial steer to elevate promptness over full and fair compensation. POL accepts and apologises that the redress processes for which it is responsible have taken a considerable amount of time causing delay to Postmasters achieving final redress. POL welcomes the Government's emphasis on securing redress promptly and POL has taken a number of steps to speed up the redress process. For example, in respect of the HSS, POL is hiring more individuals to process claims,[610] increasing the frequency of escalating meetings,[611] offering face to face negotiations rather than re-submitting disputed applications to the Panel,[612] and exploring whether the Shortfall Analysis process can be automated.[613]

266. For completeness, POL notes HS's evidence that he was instructed to stall compensation payments to Horizon victims so that the government could "*'limp into the election' with the lowest possible financial liability*".[614] POL wishes to reassure the Inquiry, and Postmasters, that compensation payments were not deliberately stalled, nor was there any attempt to do so. SR confirmed that he had not been instructed to stall payments and that he considered it would be highly unlikely that such a request was made.[615] As AC explained, the money for compensation was set aside by the Treasury. Therefore, there was no advantage to anyone to slow down compensation.[616] This is borne out by the funding agreements for the HSS and the OCS.[617]

(2) Body responsible for the administration of compensation schemes

267. It has been the long-held view of both NR and SR that the compensation schemes should not be administered by POL and should be run independently of POL, as it was not appropriate for POL,

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[606] The Value for Money ('VfM') concept was initially included in the draft POL/BEIS HSS Operations Agreement as at February 2021 as requiring that "*POL will provide BEIS with a … VfM analysis, updated from time to time, that demonstrates the merits of proceeding with the HSS instead of proceeding with any alternative options. Any anticipated increase in the expected overall cost of the HSS will require HMG approval and an updated VfM analysis.*" (**UKGI00017881**, §6). Whilst the later POL/DBT OC Operations Agreement (undated but post-April 2023) indicates that VfM should be considered "*both on an individual and programme-wide basis*" (**BEIS0000902** §4), POL has never understood that to suggest that an offer which was otherwise full and fair should be reduced on the basis of VfM considerations, nor has it ever adopted any such approach.

[607] **BEIS0000903** at page 1.

[608] SMun T 05/11/24 [128:21 – 130:4] (**INQ00001201**).

[609] SMun T 05/11/24 [128:21 – 130:4] (**INQ00001201**); CC T 06/11/24 [181:21 – 182:6] (**INQ00001202**); KHMP2 **WITN11460200** at §7-8; GTMP T 08/11/24 [5:6-6:15] (**INQ00001204**).

[610] SR T 04/11/24 [85:3 – 85:15] (**INQ00001200**).

[611] SR T 04/11/24 [113:20 – 114:10] (**INQ00001200**).

[612] SR T 04/11/24 [114:23 – 115:14] (**INQ00001200**).

[613] SR6 **WITN09890600** at §115. A number of aspects of the redress process are already automated.

[614] HS T 01/10/24 [138:9 – 139:4] (**INQ00001189**).

[615] SR T 04/11/24 [34:6 – 34:18] (**INQ00001200**). SMun also confirmed that she had never told HS directly or indirectly that POL should stall on compensation T 05/11/24 [170:6 – 170:18] (**INQ00001201**).

[616] AC T 01/10/24 [186:4 – 186:25] (**INQ00001189**).

[617] HSS: **UKGI00000031**; and OC: **POL00448915**.

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as the perpetrator of the injustices faced by the Postmasters, to also administer the assessment of redress.[618]

268. However, it was suggested to NR that he had now come to that view in the light of the events which have happened, on the basis that POL had not communicated it to the Inquiry at any of the interim compensation hearings.[619]

269. It is clear from the contemporaneous evidence[620] that on 5 March 2021 NR wrote to Postal Affairs Minister Paul Scully MP in respect of compensation for Postmasters with overturned convictions.[621] NR explained that it would be "*more appropriate for the shareholder to administer the process of settlements directly*" given that it would be more efficient for the shareholder to administer the scheme, as the shareholder would be funding the compensation in any event.[622] NR also explained that it would enable POL to "*place more of its focus on enabling current Postmasters to thrive*".[623] NR further discussed it with the Minister on 15 March 2021.[624] Minister Scully rejected NR's proposal on 22 April 2021, stating that "*I believe it is more appropriate for Post Office to continue to have ownership over its past historical issues rather than Government*".[625] The Minister explained the practical difficulties he considered the DBT and UKGI faced, in that neither DBT nor UKGI had the capacity or capability to take on the role of administering the settlement process and the need to rely on confidential and legally privileged information held by POL would risk complicating the process.[626]

270. In June 2021, the matter was further considered by the Minister, the Secretary of State (Kwasi Kwarteng) and Lord Callanan.[627] Although it was recognised that there was a "*significant likelihood that POL will fail to deliver in a way that meets public expectations for speed*", it was decided by the Ministers that the OC process would be better left with POL, with oversight from DBT, for practical reasons and because it was POL's "*legal and moral responsibility*".[628] NR explained that he understood that there was a "*desire for the Post Office to experience some of the discomfort that had been caused.*"[629]

271. In those circumstances, POL had no choice but to commit to designing and implementing the OCS, as agreed with DBT.[630] SR explained that "*from that point, the die was set and there was probably little point in pushing against that because the agreement had been settled.*"[631] As for POL's role in the HSS, that was enshrined in the GLO settlement deed (Schedule 6) and POL sought to continue to fulfil that commitment.[632] POL did not consider there to be any further merit in trying to persuade DBT to take a different decision after the indication of Ministers in Spring / Summer 2021, particularly given the risk of disruption to the schemes and the risk that payments to Postmasters would be slowed.

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[618] NR T 09/10/24 [101:6 – 102:20] **(INQ00001193)**; SR T 04/11/24 [13:5 – 14:16] **(INQ00001200)**.
[619] NR T 10/10/24 [1:9 – 4:22] **(INQ00001194)**.
[620] None of which was put to NR during this area of questioning.
[621] **UKGI00013382**. As to why this letter only concerned what would become the OCS not the HSS, it should be remembered that under the GLO Settlement Deed POL had responsibility for running the scheme in relation to shortfalls in accordance with Schedule 6. It is difficult to see how, just four months after the HSS deadline for applications had passed, POL could have sought to pass this to DBT, at least without considerable disruption. The OCS, on the other hand, was in its very early stages as at March 2021, thereby providing an opportunity to do things differently for that cohort.
[622] **UKGI00013382**.
[623] **UKGI00013382**.
[624] **UKGI00039176**, §1.
[625] **UKGI00013544**.
[626] **UKGI00013544**.
[627] **BEIS0000989**; **BEIS0000990**; **BEIS0000991**.
[628] **BEIS0000989**; **BEIS0000990**; **BEIS0000991**; SMun2 **WITN11520200**, §60-62.
[629] NR T 09/10/24 [102:7 – 102:20] **(INQ00001193)**. See also BF T 18/10/2024 [84:6 – 84:11] **(INQ00001199)**.
[630] SR T 04/11/24 [14:8 – 14:16] **(INQ00001200)**, see also **BEIS0000902**, §7.
[631] SR T 04/11/24 [14:8 – 14:16] **(INQ00001200)**.
[632] **POL00026509** at Schedule 6.

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272. As for why POL did not raise this issue at the interim compensation hearings, the scope of the compensation hearings was specific to the directions issued by the Chair. For example, on 21 March 2022, the Chair sought specific information about the eligibility of categories of persons to claim under existing schemes,[633] and on 10 May 2022, the Chair invited submissions specifically on the principles and procedures of the HSS, the OCS and the GLO.[634] POL made representations on these matters at the compensation hearings on 6 and 13 July 2022 and 8 December 2022 respectively.[635] On 23 March 2023, in advance of the fourth and final compensation hearing on 27 April 2023, the Chair invited written submissions on issues relating to bankruptcy, the exemption from taxation of compensation payments and progress updates in respect of payments of compensation under HSS, OCS and GLOS.[636] POL did not consider it appropriate to stray outside of those directions, nor did POL consider it would be appropriate or welcome (either on the part of the Inquiry or DBT) to seek to re-open the settled matter as to who should administer the schemes. POL certainly meant no disrespect to the Inquiry by not raising it. Rather, in circumstances where POL had already committed to administering the schemes it considered that it was crucial to demonstrate progress, rather than attempt to absolve itself of responsibility. The fact that POL did not raise the issue at any of the interim compensation hearings in no way undermines the truth of NR's (objectively and contemporaneously evidenced) views on whether POL was the appropriate body to administer compensation schemes.[637]

273. More recently, interim Chair Nigel Railton ("NRa") has re-opened the issue, and advocated for POL not to be involved in redress and the payment of compensation. He is hopeful that at some point the HSS and OCS will move to DBT.[638] Given DBT's increased focus on promptness of payments as an imperative, the issue of whether the HSS and/or OCS should be administered by DBT rather than POL has come back to the fore, and will be considered in a different context.[639]

(3) Other Issues raised

274. The £75k fixed sum offer: POL agrees with DBT that the fixed sum offers will result in many Postmasters receiving significantly more than the strict value of their claim, if it was assessed according to established legal principles.[640] However, it was explored with SR and KHMP that there was a risk and a "*downside*" that a Postmaster must make a "*once-and-for-all choice*" to accept the fixed sum offer therefore precluding the Postmaster from having their claim fully assessed.[641] While POL seeks to avoid unfairness for Postmasters, it is POL's view that leaving the fixed sum offer open for acceptance while the Postmaster proceeded down the full assessment route would defeat the purpose of the new offer. It is more likely than not that, understandably, a

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[633] Announcement from the Chair on Compensation (**INQ00002030**)
[634] Submissions on Issues of Compensation. (**INQ00002031**)
[635] Chair Progress Update on Issues relating to Compensation, dated 15 August 2022 (**INQ00002032**); and Chair's Statement on Issues relating to Compensation dated 9 January 2023 (**INQ00002033**).
[636] See First Interim Report: Compensation, dated 17 July 2023, §14 (**INQ00002027**).
[637] It was also suggested on the third day of NR's evidence that he was wrong to suggest that the requirement that POL administer the HSS and OCS was effectively an instruction from UKGI, based on TC3, see NR T 11/10/24 [1:10 – 6:24] (**INQ00001195**). Whilst TC's evidence was consistent with NR's in that in Spring 2020, POL had proposed that the compensation workstreams should be separated from POL (and therefore further undermined any suggestion that NR had only at that point come to the view that POL should have no role in administering compensation), TC's evidence was that the proposal had received little or no support from the Board (TC3 **WITN00200300**, §30). However, NR remained clear that the decision not to separate the compensation workstreams (by way of the concept of 'good bank / bad bank'), which proposal was vociferously supported by Carla Stent (Chair of the Audit and Risk Committee at the time) was an instruction from UKGI. The Inquiry may feel that it is not necessary to resolve this conflict of evidence given that, on any view, the evidence is that NR's view was, as he said, longstanding and DBT had rebuffed any attempt by POL to move the administration of the OCS to DBT.
[638] NRa T 08/10/24 [117:11 – 177:23] (**INQ00001192**).
[639] POL understands that DBT are considering whether to administer the OCS and the HSS. See Business and Trade Committee on the Post Office Horizon Scandal: fast and fair redress, Oral Evidence of GTMP, Tuesday 19 November 2024, Question 181 (**RLIT0000442**).
[640] SR6 **WITN09890600** at §121, §165 and §190; KHMP2 **WITN11460200** at §9.
[641] SR T 05/11/24 [90:21 – 93:16] (**INQ00001201**); KHMP T 06/11/24 [108:15 – 112:12] (**INQ00001202**).

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number of applicants would proceed to individual assessment given the potential to receive an amount higher than £75,000, which would incur further cost and time delay. Such a proposal cannot be compared to a version of the Part 36 regime in the Civil Procedure Rules where the cost consequences are ignored,[642] because it is the cost consequences built into CPR Part 36 which makes the regime effective. If the £75,000 offer was open for acceptance at any time, applicants would not be incentivised to accept the offer and the administrative burden and delay associated with the HSS would be unlikely to be reduced.

275. Legal advice on the £75k fixed sum offer: POL has learnt through its analysis of the HSS, and learning from the YouGov survey, that providing Postmasters with legal representation at an early stage of the HSS has increased the amount of redress received by Postmasters and the HSS as a whole.[643] As such, it is POL's view that legal advice should be offered when the £75k fixed sum is offered to Postmasters.[644] The fixed sum offers are a valuable tool to reduce the administrative burden on the Postmasters themselves and reduce the costs associated with administering the schemes.[645]

276. Extending the redress schemes to employees, assistants and family members: POL understands the difficulties faced by Postmaster's assistants and employees who did not have direct contracts of employment with POL and therefore are ineligible for any of the redress schemes.[646] SR explained in evidence that he has communicated his views to DBT that the implications of extending the schemes need to be considered.[647] It is understood that DBT is now considering extending the schemes and if there was a significant extension to the categories of eligible claimants to the schemes, Jonathan Reynolds MP would secure Treasury agreement for additional funding.[648] POL welcomes DBT's consideration of this issue.

F. Organisational, Governance and Cultural Changes

(1) Organisation and Governance changes

277. In considering whether the current governance and whistleblowing controls are sufficient to ensure that failings leading to the issues covered by this Inquiry do not happen again, it is important to distinguish between decisions and controls that are within POL's power to take and enforce, and those that are not by virtue of its ownership structure and status. The Government has wide powers, as sole Shareholder, to exercise control over the governance of POL. The Inquiry will no doubt have these powers in mind when considering proposals for alternative governance structures (see further §§314 - 317 below). The Inquiry has heard evidence as to the challenges involved in the operation of those powers given that POL's interaction with its Shareholder involves UKGI, DBT and the Treasury. However, POL does not consider that additional or alternative governance structures are required.

278. As a limited company wholly owned by the Government / the Crown via the Secretary of State for Business and Trade ('the Shareholder'), it is UKGI in its supervisory role, carried out principally by the UKGI NED on the Board, which operates as a key control mechanism in respect of POL's corporate governance and as an interface between POL and Government. DBT has a separate supervisory function in relation to the policy objectives set by Government for POL.

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[642] As was suggested by the Chair, T 06/11/24 [110:23 – 111:7] **(INQ00001202)**.
[643] SR T 04/11/24 [129:15 – 130:8] **(INQ00001200)**. POL seeks to remind the Inquiry that the YouGov Survey (**EXPG0000007**) is only a survey and not an expert report, as was suggested by CTI on numerous occasions during SR's evidence. It has not been carried out in compliance with Part 35 of the Civil Procedure Rules 1998 and the Guidance for the instruction of experts in civil claims (August 2014).
[644] SR T 04/11/24 [148:6 – 148:19] **(INQ00001200)**.
[645] SR notes in SR6 that there are around 500 Postmasters who may qualify for the fixed sum offer, and indications suggest that many of them may wish to accept it and that 85% of settled claims to date have been for far less than £75,000, SR6 **WITN09890600** at §121, §165 and §190. SR also stated in oral evidence that the average value paid to a HSS eligible applicant was £52,000 - T 04/11/24 [136:19 – 137:6] **(INQ00001200)**.
[646] Except for PNC employees who are eligible for HSS and OCS. SR7 **WITN09890700** at §31.
[647] SR T 04/11/24 [57:4 – 58:5] **(INQ00001200)**.
[648] JRMP T 11/11/24 [10:24 – 12:11] **(INQ00001205)**.

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279. Some of the most important decisions made by POL about its strategy and operations are not decisions for the Board but decisions for the Shareholder alone or decisions requiring approval of the Shareholder.[649] The Government holds POL to account through the mechanisms contained in the Articles of Association, the Shareholder Relationship Framework document and the Funding Agreement.[650]

280. All Board member and CEO appointments and removals are made by the Shareholder or subject to Shareholder approval:[651]
    a) The Shareholder appoints and removes the Chair. This is a public appointment, and the process must follow the Governance Code of Public Appointments.
    b) The Shareholder appoints and removes the Shareholder NED as its representative director on the Board.
    c) POL's Board appoints the other directors, including the CEO, on the advice of the Nominations Committee (NomCo) but the appointment is subject to the prior written consent of the Shareholder.

281. The inability of POL to appoint and remove its own Board members has had a marked impact on its strategic operations and ability to function effectively:
    a) When PV was underperforming in the business in 2014, it rested with UKGI to take action to address this by recommending her removal and for DBT to agree and Treasury to fund a replacement.[652] It was said throughout 2014 that the POL Board were "*increasingly frustrated*" with PV's performance,[653] that she was "o*verly passive*" and "a*cting more like a NED than a CEO*" and that they shared the concerns of ShEx.[654] However, the Board lacked autonomy to address this issue itself. PV remained in role.
    b) NR has been the only executive on the Board since AC stepped away from the business in March 2023 with the effect that there has been executive under-representation on the Board during a challenging period for the business. POL has no role in the appointment of the

[649] Whilst a private company with a single shareholder might typically be required to seek shareholder approval in relation to substantial investment or strategy decisions, the difference in POL's case is that the Government decision-making takes place in the context of political as well as commercial considerations.

[650] **POL00327615**, **POL00362299**, **POL00363148**. See also Governance Experts' Report 1 **EXPG0000006**; §2.3.1 "*Shareholders should be the quiet drivers of governance. Technically they are all powerful in that it is they who elect (or appoint, in government owned companies) the Board who will approve the strategy and oversee operations to a plan which will have been approved by the shareholders at the AGM, or by some other means in Government owned companies e.g. via an Annual Letter or Review*".

[651] Articles 8.1(A), 37 - 42 of the Articles of Association (as amended by written resolution on 14/12/2022), Shareholder Relationship Framework Document; **POL00362299** §§ 7.2 – 7.4.

[652] In early 2014, UKGI conducted an Annual Review of POL which raised concerns about the suitability of PV to hold the CEO position, Annual Review: **UKGI00042083**; Meeting Minutes of 12 January 2014: **UKGI00042089**. Also see witness statement of MR **WITN00800100** at p.49-50. The review, published in February 2014, made clear that the consensus was that PV was "*no longer the right person to lead POL*" and cited reasons that PV had not shown an "*understanding of political considerations*", that there was a lack of delivery of the Network Transformation Plan and that she had been "*unable to work with personalities that provide robust challenge to her*". Presentation: **UKGI00042677**; Meeting Minutes of 19 February 2014: **UKGI00042124**. UKGI were concerned to ensure strong and focused leadership to lead the Network Transformation plan. The options posited were to retain, retain and review in a year, remove her from post or undertake a senior management restructure with an appointment of a COO. It was agreed that RC, the new Shareholder NED on the POL Board, would investigate further; Contemporaneous note of August 2014: **UKGI00002440**. Serious efforts were made by UKGI to look to replace PV. They engaged and paid for an external recruitment agency, Egon Zehnder, to map out likely suitable candidates and UKGI considered internal candidates who could step up to the role. Contemporaneous notes suggest that the exercises produced nil results. RC explained in evidence that it was felt that "*it would be quite hard to persuade ministers to part with Paula in return for the…more expensive cohort of people* [that] *had come through*"; T 12/07/2024 [151:24 – 152:5] **(INQ00001173)**. It was decided that the CFO would be replaced instead, and AP would continue to coach PV and PV's team would be strengthened. That decision appears to have been made by RC, NMc and AP alone. UKGI continued to have concerns about PV's capability in 2015 and 2016 but did not raise this subject for discussion at any Board meeting.

[653] Contemporaneous note of August 2014: **UKGI00002440**.

[654] RC1 **WITN00140100** at §49; Quarterly Review in 2014 **UKGI00042615**; T 12/07/24 [144:3 - 144:10] **(INQ00001173)**.

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Shareholder NED, but this individual has a significant influence on decision-making at Board level. They are the only NED to spend effectively the majority of their time working on POL business and sit on all the Board Sub-Committees. By virtue of their knowledge and status as the Shareholder NED, they have a substantial influence on Board decision-making.[655] Experience has shown that the effectiveness of the oversight function of the Shareholder NED depends substantially on the ability and engagement of the individual in role, as well as the extent to which that individual reports and raises issues of concern with UKGI's CEO and the Minister at DBT.[656]

282. The remuneration and terms of engagement of any Board member have to be agreed by the Shareholder. The Remuneration Committee (RemCo) will make recommendations to the POL Board. Remuneration which exceeds the threshold set by HM Treasury's Guidance for Approval of Senior Pay requires additional approval of the Chief Secretary to the Treasury.[657]

283. POL cannot borrow money externally[658] or spend more than £50,000,000 on any transaction, without the written consent of the Shareholder.[659]

284. POL is required to have in place a Strategic Plan covering a period of at least 3 years and must agree that plan (and any material amendment) with the Shareholder before it is adopted.[660] DBT (through the Policy Sponsor within DBT) sets and monitors the policy objectives for POL. The funding of POL by the Shareholder is subject to obligations including that POL must maintain a national network of outlets in accordance with minimum access criteria (11,500 Post Office branches across the network) for access to public funding.[661] There is substantial Shareholder oversight to ensure compliance with the Government's policy objectives and financial reporting requirements.[662] POL must report to the Shareholder on targets and budgets in the Strategic Plan and performance over the previous quarter including the quarterly draw down on the SPEI Network Subsidy Payment.[663] Hence, the Board lacks the power to determine its business strategy. Given that the Government's funding of POL is dependent upon POL undertaking to fulfil the social purpose determined by Government (to maintain the national network of outlets and to provides Services of Public Economic Interest across the network), POL's wider strategy has to meet these policy objectives.[664] The Government's delay in carrying out a review of the requirements imposed on POL to fulfil this social purpose has created serious problems for POL and is the heart of the governance problems in the organisation (see §305 below).

285. POL must agree an annual business plan with the Shareholder which will include POL's annual budget and the proposed quarterly drawings by POL on the government funding.[665] The short-term nature of the funding cycle impedes POL from adopting a long-term strategy for the business

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[655] NR3 **WITN00760300** at §117.

[656] RC did not raise the serious concerns about PV's capability with the Minister, Jo Swinson, in August 2014. He appears to have discussed matters with her private secretary, but Ms Swinson was clear in her recollection that she had not been briefed on concerns by UKGI about PV's performance; **WITN10190100** at §§21 – 22, T 19/07/2020 [69:1 - 69:9] **(INQ00001178)**. CDo accepted that the challenge and curiosity from the Shareholder NED was not sufficient in respect of the Swift review because that should have been presented to the Board. There was some tension in the evidence of Lorna Gratton ("LG") who gave evidence that UKGI's risk registers do not track risks to POL but risks to UKGI [T 7/11/2024 [17:9 – 18:16] and CDo who accepted that it was a function of the UKGI and Shareholder Team and ARC to assure themselves that the risks identified by the Board and ARC are correctly channelled through to DBT and can act as a separate channel [T8/11/2024 [73: 1 – 73:21].

[657] **POL00327615**: Articles 8.1(E), 50 - 52; **POL00362299**: §§7.5 – 7.6.

[658] Other than intra-Group borrowing between POL and its subsidiaries.

[659] **POL00327615,** Articles 8.1(AA) and 8.1(X).

[660] **POL00327615,** Articles 8.1(U), 46 and 47 and Framework Agreement **POL00362299** §4.

[661] The Funding Agreement as set out in Rachel Scarrabelotti ("RS")2 **WITN11120200** §19.

[662] POL must also report to the Shareholder on targets and budgets in the Strategic Plan and performance over the previous quarter including the quarterly draw down on the SPEI Network Subsidy Payment. RS2 **WITN11120200** §21.

[663] RS2 **WITN11120200** §21.

[664] **POL00363148**.

[665] Framework agreement **POL00362299** §4. POL must also send to the Shareholder its Annual Report and its audited accounts in draft before they are laid before Parliament.

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because it does not know whether sufficient funding will be available. This creates a "*begging bowl*" situation for POL in relation to government[666] which has resulted in short-term funding cycles and interventions intended to address problems within POL when they arose. Inevitably this has produced short-term solutions but has not addressed systemic or underlying issues.[667]

286. The need for the Treasury to approve the funding, and the uncertainty of how long such approval may take, creates another layer of complexity for, and oversight of, POL.[668] The Treasury may not agree with DBT and/or UKGI about the funding sought or required.[669] The Treasury's decisions, and therefore funding for POL is "*driven by budget, rather than by need*".

287. The consent of the Shareholder is required for a wide variety of other activities: to vary POL's Articles, for voluntary winding up of the company or any subsidiary, to form any subsidiary company and issue shares, to deal in shares of subsidiary companies, for any unplanned substantial alteration in the nature of the business, and to sell any material assets in the absence of which POL could not continue to perform business as provided for in the Strategic Plan.[670]

288. The Shareholder has a power to give directions to POL which requires POL to take "*all steps within its power*" to comply what that direction.[671] The exercise of this power would be an option of last resort.[672] As the Governance Experts have said, the *"sticky"* nature of shares held by shareholders of publicly listed companies should incline the government, as Shareholder, to be even stronger in its shareholder role of holding the Board to account for current performance and future strategy.[673]

(i) Changes to governance at POL

289. POL began taking steps to address the harmful culture identified in the Governance Experts' Second Report (and the subject of evidence during the Phase 5/6 hearings) and to focus on re-orientating the business towards the interests of Postmasters following the arrival of NR as CEO in September 2019. Over the past five years, a number of initiatives have been adopted including the appointment of Postmaster NEDs and a Postmaster Engagement Director, as well as the introduction of a new Behaviours Framework which is embedded in the recruitment process and used to measure the performance of everyone at POL. POL recognises that more needs to be done to bring about fundamental cultural change and to restore trust with Postmasters and the public.[674] POL has more recently made further efforts to improve its governance (described in more detail below) with the aim of enhancing the Board's ability to challenge the Executive, improving accountability at Executive level and enhancing integration of the legal function into the wider business.

290. In March 2020 a revised Shareholder Framework Document was signed in response to the October 2019 report for DBT on the "*Future of the Post Office Network*" and introduced together with revised 2020 Articles of Association.[675] Together they effected notable governance changes by amending the remit of POL's decision-making ability, and documenting POL's responsibilities for enabling oversight and providing assurance to its Shareholder.[676]

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[666] SMun (**INQ00001201**).
[667] Kemi Badenoch MP ("KBMP") T 11/11/24 [172:8-18] (**INQ00001205**).
[668] KBMP T 11/11/2023 [10:11-10:23] (**INQ00001205**).
[669] KBMP: "*The more requirements there are on the Treasury, the more likely it is that the Treasury is going to be saying no or creating value for money arguments...and everybody is just getting a little bit of what it needs, rather than a big chunk to deliver and perhaps provide transformation.*" T 11/11/2024 [149:23-150:5] (**INQ00001205**).
[670] Article 8.1.
[671] Articles 7F, 45 (subject to Article 80).
[672] LG T 07/11/2024 [82:22 – 86:9] (**INQ00001203**).
[673] **EXPG0000006** §2.3.6.
[674] SMun said that POL governance had "*very much improved but still not adequate*" by the time she left in early 2023, T 05/11/24 [189:23 -190:5] (**INQ00001201**). Regarding POL's work on culture, see §321-329; NR1 **WITN00760100** §173-273; NR2 **WITN00760200**; and KMc1 **WITN11360100**.
[675] It was signed in March but came into effect on 1 April 2020. Amended in 2022 - **POL00327614**.
[676] RS2 **WITN11120200**.

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291. The ongoing review of the latest Shareholder Relationship Framework Document, which was received by POL on 5 July 2024 though it was due to be reviewed by March 2023, presents a long awaited opportunity for further governance reforms through changes to the constitutional framework.[677]

292. Once the revised Framework Document came into effect on 1 April 2020, POL reviewed and improved the ToRs for Board Committees, making them more detailed and more explicit about the expectations for that Committee.[678]

293. The Group Executive was reduced in January 2024 (and re-named the SEG) to focus discussions, improve the speed of decision-making and create capacity for the CEO. This change was supported by the implementation of more formal procedures to enhance accountability.[679]

294. The addition of Postmaster NEDs to the POL Board in June 2021 not only fostered a culture of inclusion[680] but ensured that SPMs' voices are represented at POL Board level. Saf Ismail ("SI") and Elliot Jacobs ("EJ") helped shape the future direction of POL by drawing on their operational experience and perspectives.[681] POL recognises that the potential conflicts of interest for the Postmaster NEDs have, on occasion, presented a governance challenge but POL has proved both willing and able to navigate through these issues.[682] The occasions on which the Postmaster NEDS were excluded were limited.[683] The role of Postmaster NEDs have been a very positive addition to the Board and POL are committed to their retention.[684]

295. The first Postmaster NEDs were provided with a full Board induction[685] but, recognising their feedback and evidence to the Inquiry, POL recognises that the induction process could be improved and with the benefit of feedback from SI and EJ the recruitment process, induction schedule and materials for their successors are being reviewed.

296. In 2022 the Government Internal Audit Agency reviewed DBT's sponsorship of the Post Office. It "*produced a 'moderate' opinion, finding that some improvements were required to enhance the adequacy and effectiveness of the framework of governance, risk management and control.*"[686]

(ii) The Grant Thornton governance review

297. POL commissioned Grant Thornton ("GT") to review its corporate and operational governance in 2023. Whilst there was a delay between receipt of the draft reports in February and March 2024 and the final report of June 2024,[687] this was contributed to by the need for the appointment of an Interim Chair. There were no significant changes to the content of the reports and POL did not seek significant amendments, or the removal of critical aspects of the report.[688]

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[677] NR1 **WITN00760100**.
[678] For NomCo, the April 2020 TORs emphasised the need for Shareholder engagement and a greater emphasis on succession planning, for ARC the revised TORs provided more detail about its purpose and areas of responsibility. Further, the revised RemCo TORs were more focused on aligning remuneration policies and practices to support strategy and promote long-term sustainable success. The RemCo ToRs were improved again in February 2024 through the implementation of the recommendations from the Simmons & Simmons review and the Amanda Burton report. See RS2 **WITN11120200**.
[679] NR1 **WITN00760100**. The GE had 13 members but the SEG is smaller; KMc1 **WITN11360100** §66-9; 80; 84; oral evidence: T 08/10/24 [35:10 – 36:19] **(INQ00001192)**. See also **POL00458464**.
[680] RS at T 04/10/24 [27:8 - 27:13] **(INQ00001191)**.
[681] RS2 **WITN11120200**.
[682] RS T 04/10/24 [27:8- 27:13] **(INQ00001191)**.
[683] NR T 11/10/24 [9:3- 9:18] **(INQ00001195)**.
[684] NR T 10/10/24 [9:3- 9:18] **(INQ00001194)**.
[685] RS2 **WITN11120200**.
[686] Gareth Davies MP 2 **WITN11020200**.
[687] **POL00446477**.
[688] SI T 24/09/24 [73:3 - 74:9] **(INQ00001186)**.

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298. GT recognised that POL faces significant challenges which include conflicting objectives, balancing government ownership with operation in competitive markets, navigating conflicts of interest at the Board, diverse shareholder and government interests, and broader political agendas.

299. POL accepted GT's conclusion that POL requires a unifying strategy, greater role clarity, streamlined decision-making processes, significant improvements in succession planning and a cultural shift towards accountability and long-term planning. To implement changes to its wider strategy (in order to fulfil the Government's policy objectives and to take that strategy forward , POL are dependent on the Shareholder for both funding and direction (see §§278 - 288 above).[689]

300. In response to the GT report POL produced action plans for operational and corporate governance in August 2024, on which regular updates will be provided to SEG and the Board. Many of the actions identified in the POL trackers have been awaiting the result of the Strategic Review (see §§310 – 314 below) but POL has taken action in relation to others where it can.

301. To improve the composition and competency of the Board, POL has reviewed and updated the skills matrix for NEDs, which has informed the most recent recruitment exercise, in particular the need for greater experience of business transformation and civil service or government.[690] The Interim Group General Counsel is now a regular attendee at Board meetings to bring legal expertise to its discussions.[691]

302. In the interests of continuity, EJ's term as Postmaster NED has been extended to June 2025. Following SI's resignation from the Board on 3 December 2024, two new Postmaster NEDs (Sara Barlow and Brian Smith) have been appointed.

303. In order to improve the quality of the information on which the Board reaches decisions, the template and process for providing papers have been updated to ensure they have the right focus and detail. The Secretariat team have been empowered to return any that do not. POL accepts GT's conclusion that the Board was over-burdened with issues that should be dealt with at the Executive level. The Interim CEO and the Chief of Staff now consider the Board agendas and papers to identify priority issues for the Board based on their operational understanding. POL is also in the process of identifying policy amendments to encourage delegation where it is appropriate to do so.[692]

304. To improve Executive decision-making, POL is undertaking a wholesale review of the Executive level committees in place to assess their utility, ToRs, and membership, which should conclude in March 2025.

305. Consistent with the Governance Experts' view that issues within POL should be owned and addressed at Board level, POL has introduced a Culture Dashboard. First presented on 8 July 2024, it will be presented on a bi-annual basis along with the results of the Postmaster and Employee surveys to allow the Board to understand and drive the cultural change within POL.

(iii) <u>The importance of strategy and purpose</u>

306. POL agrees with GT that "*a unifying purpose and group-wide strategy between [POL] and its shareholder*"[693] is required to address the conflict around the role of the Shareholder versus the Board, and the breakdown of the relationship, which are at the heart of the governance dysfunction

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[689] **POL00446477**.
[690] NRa T 08/10/24 [112:6 - 112:25] **(INQ00001192)**.
[691] NRa T 08/10/24 [112:6 - 112:25] **(INQ00001192)**.
[692] The POL Group Investigations & Co-operation with Law Enforcement Policy has been revised to delegate the authority to share Horizon data with the police from Board to the Director of Assurance & Complex Investigations and the in-house criminal counsel collectively. This will be presented to the Board in January 2025. RS accepted that the Board had previously been "*overly cautious*" in retaining this oversight T 04/10/24 [68:19 – 70:16] **(INQ00001191)**.
[693] **POL00446477**.

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in POL.[694] POL accepts that the absence of such purpose and strategy has negatively influenced the day-to-day running of the business and hindered the pace of decision-making within POL.[695]

307. POL has been loss-making since separation from RMG and, in the face of significant commercial and structural challenges, those losses are worsening. The Government has nonetheless long held the view that POL should be financially self-sustaining, rather than reliant on Government subsidy. Ministers have, however, declined to seek or provide clarity on how that could or should be achieved.[696]

308. The Shareholder's policy for the Post Office has been unchanged since 2010 when it published '*Securing the Post Office Network in the Digital Age.*'[697] (see §288 above). POL has been urging the Shareholder to carry out or participate in a fresh review of its policy for POL since November 2021.[698] In 2022, despite being aware of the need for a wide-ranging review and greater clarity about POL's long-term purpose and funding, Ministers declined the opportunity to carry out a review because of a fear of "*political toxicity*".[699]

309. POL's proposal for financial self-sustainability is set out in the Strategic Review which is detailed below.

(iv) <u>POL's strategic review and transformation plan</u>

310. In June 2024, in the absence of a Government review, POL, supported by Teneo, began its own comprehensive strategic review which drew on members of POL staff, Board members, Postmasters and other stakeholders or experts (the 'Strategic Review'). At its conclusion in September 2024 the Strategic Review identified a plan for the transformation of POL which will frame, prioritise and guide governance design in the future. POL is working with Teneo to develop a program to implement the findings of the Strategic Review and begin the process of transformation it recommends. Fundamental to the implementation of the Strategic Review is POL's plan to deliver a "*New Deal for Postmasters*" which will significantly increase their total annual income through revenue sharing and strengthen their role in the direction of the organisation.[700] The implementation of the Strategic Review will be informed by strong Postmaster engagement through the establishment of a new Consultative Council to work with POL's senior management on how these plans are taken forward and a Postmaster Panel to work with POL to improve the support and training provided to SPMs. The Strategic Review is also aimed at bringing about cultural change in the organisation by further re-focussing the business on serving the interests of Postmasters.

311. Subject to Government funding, implementing the Strategic Review will provide a route to add an additional quarter of a billion pounds annually to total Postmaster remuneration by 2030. The process will take five years. In addition to tangible changes for Postmasters such as strengthening their commercial offering and investing in automating services in-branch, implementing the

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[694] NRa T 08/10/24 [141:3 - 141:17] **(INQ00001192)** and **POL00446477**.
[695] NRa T 08/10/24 [119:4 - 119:14] **(INQ00001192)** and the NR1 **WITN00760100**.
[696] LG accepted that Ministers had declined to provide "*a steer*" on this issue (T 07/11/24 [5:25 - 6:9] **(INQ00001203)**). SMun confirmed that the Government was due in 2022 to conduct a review into POL's long-term strategy but declined to do so (T 05/11/24 [191:3 - 191:24] **(INQ00001201)**). CDo's evidence was that striving for self-sufficiency put "blinkers" on the management's perspective T 08/11/2024 [71:2 - 71:20] **(INQ00001192)**.
[697] NR T 10/10/24 [97]. **(INQ00001194)**.
[698] NR1 **WITN00760100** and NR T 10/10/24 [97] **(INQ00001194)**.
[699] SMun confirmed that the Shareholder was aware that a "*full review of Post Office's roles and responsibilities*" was required to provide a "*fundamental refresh*" of the branch footprint, the services provided and the nature of the financial relationship. There was a need either seriously to increase the level of public subsidy or be prepared to say that there would be fewer post offices. This left POL in a period of "*really challenging ambiguity*" **(INQ00001201)**. See also oral evidence of KBMP, who gave evidence that POL was in an "*awkward half-way house*", a state of "*permanent starvation*" [T 11/11/2024 [171: 4 – 172: 18] **(INQ00001205)**.
[700] Chairmans Speech 13 November 2024 **(RLIT0000444)**.

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Strategic Review will allow POL to create a new operating model in which a streamlined central organisation acts as a support function for Postmasters.

312. The Strategic Review was submitted to Government in September 2024 and POL made clear its desire to make progress against it. As the Chair has noted the Government has generated/commissioned several of its own reports in relation to POL, including from Grant Thornton (on the topic of POL's "purpose"); Boston Consulting Group (on the best model for POL's future governance, whilst recognising that significant changes will be required to the overall business model and governance of POL),[701] and the Government Internal Audit Agency (on risk appetite as between POL and DBT).[702] In addition, the Inquiry heard that a Green Paper will be published in 2025.[703]

313. POL cannot simply await the publication of the Green Paper, and Government consideration of its outcome, before making further governance changes.[704] It has already acted on a number of GT's recommendations (see §§300 - 305) and has embarked upon the initial stage of the implementation of the Strategic Review (which includes organisational redesign and changes to SEG to ensure that the business is in the best place to deliver the change required).[705]

314. POL would welcome being involved in the reviews that the Government has commissioned, and having sight of the reports so that it can ensure that work done pursuant to the Strategic Review is aligned with government plans for POL. POL welcomes the Secretary of State's confirmation that these issues are a personal priority.[706]

(v) Governance suggestions from other witnesses

315. As noted at §305 above, GT found that the relationship between POL and the Shareholder is at the heart of the governance dysfunction in POL, and a "*unifying purpose and group-wide strategy"* is required to address the inherent conflict between the Board and the Shareholder. POL has sought to address this issue in the course of the Strategic Review, but ultimately it is in Government's hands as to (a) whether it agrees with the proposed strategy, and (b) whether it will be funded.

316. In the meantime, a number of witnesses giving evidence to the Inquiry[707] have offered their views on potential changes. In particular:

a) Pat McFadden MP, who was far from sure that "*making Ministers the Shadow Chief Executives*" would be practical given the number of ALBs that there are, posited "*some sort of body that ... can be called in to launch an inquiry or take action when the level of allegations reaches a point that it looks like that is the right thing to do*", wondering if "*some sort of inspectorate or body to be called in is the right way to go".*[708]

b) Calum Greenhow (CEO, NFSP) did not believe that the problems with the governance of POL could be resolved by the creation of Postmaster NEDs (given the inherent conflict in their position of directors in their own businesses as well as the POL Board), and suggested the establishment of an oversight committee to sit alongside the POL Board, comprising a Government representative, as well as representatives from Unite, the CWU, the NFSP and 'consumer champions'. He regarded the purpose of the oversight committee to be twofold: (i) for representatives of employees and Postmasters to work with Government to ensure that there is a strategy in place for the good of the business, and (ii) where things are being done wrong,

[701] NR T 11/11/24 [8:10 - 8:16] **(INQ00001205)**.
[702] LG T 07/11/24 [22:6-24] **(INQ00001203)**.
[703] GTMP T 08/11/24 [41:4 – 41:8] **(INQ00001204)**.
[704] JRMP T 08/11/24 [54:18 – 55:7] **(INQ00001204)**.
[705] **(POL00448414)**.
[706] JRMP T 11/11/24 [5:1 - 5:4] **(INQ00001205)**.
[707] In Phase 5/6 as well as 7.
[708] Pat McFadden MP T 18/07/24 [70:24 – 72:8] **(INQ00001177)**.

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to highlight this and "*hold Post Office to account*".[709] He accepted that this proposal was not the only way to improve governance at POL.[710]

c) Sir Alex Chisholm (BEIS) ("ACmKCB") suggested that where an ALB had failed in the trust the public places in it there should be more frequent and more intrusive government scrutiny, which he suggested could be done by a mechanism for the formal reporting and tracking of concerns, "*overseen by an independent committee with mandatory reporting responsibilities to the Board, as well as authority to write to the Secretary of State annually with any concerns*". However, he recognised that "*it's not a straightforward matter because you have run the risk of undermining the Board and its own responsibilities and you've got guards, for guards, for guards, and that itself ... can obscure the underlying reality.*".[711] [712]

317. POL notes that the Governance Experts were not supportive of an oversight committee (preferring responsibility and accountability to rest with the Board), although welcomed initiatives aimed at improving consultation [713]. To an extent, POL considers that the NFSP's suggestion of an oversight committee is reflected in the proposal for a Postmaster Consultative Council,[714] which will be working together with POL on the delivery and implementation of the Strategic Review. POL has no doubt that were things to go wrong it would highlight this and seek to escalate any concerns.

318. As for the other suggestions, whilst POL welcomes 'blue sky' thinking in this context, it considers that it would be unnecessary for any form of independent committee or inspectorate to be established before the current changes to POL's governance, including the strengthening of the Postmasters' voice, are properly bedded in.

(2) Whistleblowing

319. POL accepts that it did not have sufficiently robust Speak Up (or whistleblowing) arrangements in place up until at least 2017. In particular, POL's Speak Up policies and processes did not cover Postmasters, the policies and processes were not well socialised, there was no dedicated Speak Up team, there is some evidence that there was fear of detrimental treatment if a whistleblowing report was made, there were very few Speak Up reports and there was limited monitoring of the reports and oversight.[715]

320. From 2017, though admittedly with greater emphasis from 2019, POL has taken significant steps to improve the robustness of its Speak Up arrangements. These include: internal and external reviews of the arrangements; updating the policies and processes, inter alia, to cover Postmasters and to clarify the definition of Speak Up reports (as compared to other complaints); aligning the Speak Up policies and processes with the complaints and investigation policies and processes; increasing training, communications and outreach to POL employees, Postmasters and partners about Speak Up arrangements to improve awareness and engagement; introducing a dedicated centralised Speak Up team (including a triage function to filter out complaints which are not Speak Up reports) and a NED Speak Up Champion; establishing an accessible and multi-channel reporting function (including through the, externally hosted, initial InTouch /NAVEX (formerly Expolink) and now Convercent Speak Up platforms); developing and improving monthly MI on Speak Up reports (and other complaints) for SEG, RCC, ARC and the NED Speak Up Champion; and, introducing a Speak Up strategy.[716]

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[709] Calum Greenhow T 26/09/24 [113:7 - 114:16] **(INQ00001187)**.
[710] Calum Greenhow T 26/09/24 [121:8 – 121:9] **(INQ00001187)**.
[711] ACmKCB T 07/11/24 [167:11 - 168:20] **(INQ00001203)**.
[712] ACmKCB T 07/11/24 [167:11 - 168:20] **(INQ00001203)**.
[713] DSD T 13/11/24 [76:13 – 78:5] **(INQ00001207)**.
[714] Which comprises representatives of the CWU, Unite, NFSP and the Voice of the Postmaster, and the Postmaster Experience Director.
[715] John Bartlett ("JB")1 **WITN11190100** §§13-58, 69(c), 89(d), 91(a), 93(a)-(h) and 101.
[716] JB1 **WITN11190100** §§59-75, 89(d)-(z), 90, 93(i)-(r), 97, 99-102; JB2 **WITN11190200** §§118-121, 127-128, 140-143, 146-148; BF6 **WITN09980600** §§261-287; CD3 **WITN10770300** §§41-42, 48-52; Zarin Patel **WITN11430100** §§49-60.

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321. There has, as a result, been a marked increase in reported Speak Up cases from 2017 onwards.[717] POL externally benchmarked its Speak Up arrangements with PROTECT (a whistleblowing charity), and by November 2021 had significantly increased its self-assessment scores to 80%.[718] In 2023, POL's Speak Up policies and processes were externally reviewed by EY and internally by Group Assurance, who found them to be adequate and effective. POL has implemented their respective recommendations as appropriate.[719] POL's Speak Up Strategy for 2023-2025 has at its heart the need to continue increasing awareness and confidence in the Speak Up function as part of its determination to restore trust.[720] The weight of witness evidence is that POL's current Speak Up arrangements are effective, meet industry standards and compare well to other organisations, such that they should surface any wrongdoing.[721]

(3) Cultural Changes

(1) The Grant Thornton review: culture and ED&I

322. GT has identified, and POL has accepted, that it is – or has been –
   a. plagued by a pervasive culture of reluctance to make decisions;
   b. driven by fear of public scrutiny;
   c. lacking clear accountability; and
   d. reluctant to manage underperformance.[722]

323. NR addressed the conclusions of the GT report in his witness evidence and set out the specific actions taken in response.[723] NRa has re-confirmed POL's intention to implement everything arising from the GT report that it is possible to implement as quickly as possible, failing which, it will be implemented as part of the Transformation Plan.[724]

324. GT also made a number of recommendations regarding POL's approach to ED&I - (the "ED&I Audit").[725] POL has made substantial changes to its recruitment processes in response.[726]

325. In terms of POL's culture more generally, as set out by NR:

"Post Office recognises the need for fundamental cultural change. It recognises the presence of oppressive behaviour and intimidating actions in the past which led to a lack of respect and trust between Post Office and its Postmasters. It acknowledges that there has been a lack of effective

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[717] JB1 **WITN11190100** §§89(r), 93(h), 93(k)(vi), 93(m)(iii) and 93(o); JB2 **WITN11190200** §§122-126.
[718] JB1 **WITN11190100** §75.
[719] JB2 **WITN11190200** §§132-138.
[720] **POL00447996**.
[721] Chris Brocklesby ("CBro")1 **WITN11350100** §§67-69; KMc1 **WITN11360100** §§146-151, 166-167; Brian Gaunt ("BG")1 **WITN11320100** §72; Owen Woodley ("OW")1 **WITN11380100** §§134-140; Andrew Darfoor ("AD")1 **WITN11340100** §§39-40; Ben Tidswell ("BT")1 **WITN11290100** §49; NR3 **WITN00760300** §§89-90; Amanda Burton ("ABu")1 **WITN11330100** §§50, 78-82; TC2 **WITN00200200** §§75-84, 88-91; LG1 **WITN11310100** §§133-135; BF6 **WITN09980600** §§287; CD3 **WITN10770300** §59.
[722] GT Report 25 June 2024, p.7 **POL00446477**; NR1 **WITN00760100**, §259.
[723] NR1 **WITN00760100**, §§258-265.
[724] NRa T 08/10/214 [140:3-140:11] **(INQ00001192)**. NRa has given evidence confirming the need for a resetting of POL's purpose, a task which he considers will be effected by the Strategic Review and which will lay the ground for the right behaviours to be put in place which will in turn foster an appropriate change in POL's culture (T 08/10/24 [144:15 – 144:19] **(INQ00001192)** . He has confirmed his view of POL's purpose: "the social value, the purpose of the centre of the Post Office is to support postmasters to support the communities that they serve." (T 08/10/24 [144:21-144:23] **(INQ00001192)**).
[725] **POL00447900**.
[726] NR2, **WITN00760200**, §16. In addition to this: POL has been a charter signatory to a number of relevant organisations; it has developed a number of relevant ED&I policies and has introduced specific requirements of ED&I accountability from its senior leadership and ED&I monitoring across the business; a number of ED&I networks have been established by POL employees and are highly regarded and nurtured by POL; a system of surveys to assess colleague demographics and colleague satisfaction has been introduced, as well as a substantial amount of ED&I training to support the business; the People Team has been restructured; and POL has set tangible diversity milestone goals NR2, **WITN00760200**, §§17, 18-39, 40-53, 73-74.

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leadership, a lack of effective training and support; and a lack of responsibility within the organisation. It accepts that it has work to do to restore trust with Postmasters and with the public as a whole. Cultural changes in the Post Office are integral to the rebuilding of that trust."[727]

326. In the past five years, changes have been made including the following:

a) In December 2019 the GLO litigation was settled.
b) Whilst POL's initial response to the CIJ and then the HIJ focussed on trading profits, government subsidy and investment rather than Postmasters, NR took immediate and symbolic steps to reprioritise the role of Postmasters, removing them from the 'cost' column in the corporate P&L and rephrasing the way they were referred to.[728]
c) Purpose and Scope work which concluded in January 2020 merged into work arising from the CIJ and HIJ to become part of the bigger programme of change.[729]
d) As set out in NR's first major speech in March 2020,[730] POL's focus moved to being Postmaster centric rather than focused on profits. Rather than focusing on a £100m trading profit, POL retargeted its investments towards Postmasters.[731]
e) In May 2021, the then Chair, TP, wrote to Postmasters who had been wrongly convicted to apologise, following the quashing of convictions in *Hamilton.*
f) Since 2019 there has been a complete change in investigative approach to discrepancies or losses.[732]
g) There has been a complete change in the NEDs who served on the board at the time of the CIJ with three new independent NEDs appointed between March and June 2023.[733]
h) The Improvement Delivery Group ("IDG") was established in 2021 to provide oversight of progress in conformance with the findings of the CIJ and HIJ;[734] subsequently repurposed to become IDG2, responsible for further considering the findings of the CIJ, HIJ and *Hamilton* judgments, along with Phase 1 of the Inquiry.
i) The Ethos Programme was established in Spring 2023 to attempt cultural change based on the findings of Fraser LJ in the CIJ.[735]

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[727] NR1 **WITN00760100**, §174. See also NR's comments to the Inquiry: T 10/10/24 [125:11 - 129:10] **(INQ00001194)** and OW1, **WITN11380100**, §93: *"as a result of the work of the last several years, the business today has a very different culture compared with when I joined. The needs of Postmasters are now of paramount importance to the purpose of the organisation, and senior leaders engage much more regularly with Postmasters on the front line through branch visits. My firm impression is that the vast majority of POL employees are nothing but horrified by the details of the Horizon scandal. Many colleagues have commented to me that they had no idea Postmasters were being treated this way by the organisation for which they worked, and are very alarmed that something of this nature could have occurred during their time at POL. As such, I believe colleagues care deeply about continuing to improve the culture and engagement with Postmasters, and most of all ensuring that Postmasters are never again subjected to the terrible wrongs of the past."* See also Veronica Branton 1 **WITN11420100**, §149: *"In my opinion, the Board's approach towards SPMs was changed by acceptance that POL had been responsible for the huge miscarriage of justice linked to its wrongful pursuit of prosecutions of those SPMs affected by the faulty Horizon IT system. That recognition by the Board in my view led to support to prioritise responding to the findings of the judgments and support for the programme of work designed to better support current SPMs."*

[728] NR3, **WITN00760300**, §32.

[729] NR3, **WITN00760300**, §34 NR1, **WITN00760100**, §179: drawing on the McKinsey Report, POL developed a new purpose, recognising that the business was built upon the service that Postmasters deliver, and that POL's role was to support Postmasters in that role.

[730] **POL00458399**.

[731] NR3, **WITN00760300**, §46.

[732] NR1, **WITN00760100**, NR T 10/10/24 [83:3 - 85:11] **(INQ00001194)** and Melanie Park 1 **WITN11600100** at §102.

[733] See RS6, **WITN11120600** §37(f).

[734] See RS6, **WITN11120600** §43(a).

[735] See KMc1 **WITN11360100**, §§ 88-91. See OW1, **WITN11380100**, §46: *"since joining POL Nick has been committed to changing the culture of the organisation and re-orientating the general strategy to increase the focus on Postmasters as the heart of POL's business and as the face of its brand"*. See also OW1, **WITN11380100**, §91 in which he refers to POL's culture *"notably shift[ing]"* after the appointment of NR. See OW1, **WITN11380100** §92(f): *"The goal was to set the tone from the top downwards, with a view to agitating for greater pace and to aggregate existing cultural initiatives, rather than delivering particular projects itself. I*

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j) The Strategic People Plan,[736] which arose from the Ethos Programme and focuses on colleague experience, capability and inclusion, was approved by the Board in February 2024, designed to enable the People to transform POL into a 'great place to work' by April 2027. This sets out a three-stage approach: 'building foundations', 'growth' and 'sustainability' and spans three key streams: 'inclusion', 'capability' and 'colleague experience.[737]

k) Having previously suffered from a lack of proper induction, a comprehensive induction programme has now been introduced.[738]

l) Training via a Horizon Scandal Training Module,[739] launched in February 2024 is now mandatory. Mandatory training including GLO awareness training has been introduced. A mechanism was devised by KMc and Reward Director, Ian Rudkin, agreed by RemCo, whereby in order to embed cultural change, for 2024, all mandatory training requirements needed to have been completed by 31 March 2024 for staff bonuses to trigger.[740]

m) POL's HR function has been reviewed and revamped with the removal and replacement of a number of roles. A Colleague Experience and Engagement Manager has been created and a number of experiences, policies and frameworks have been introduced to embed positive cultural change.[741]

n) In January 2024, POL engaged BusinessFourZero to support Ethos to facilitate a series of workshops with the SEG to develop a set of strategic drivers, a behavioural framework and a business purpose.[742]

o) In June and July 2024 POL launched the Behaviours Framework[743], developed following those workshops, which are intended to act as a guide to everyone across the business in terms of "how to approach work" and included:

   i. asking the questions that need to be asked and pushing for the truth if it ever appears to be missing ("Be Curious");
   ii. keeping momentum, pushing things to completion, and encouraging others to do the same ("Move It Forward");
   iii. taking responsibility, running with it, and seeing it through ("Own The Outcome"); and
   iv. supporting each other and embracing diversity to build an inclusive culture ("Back Each Other").

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took the Ethos programme to the SEG and we then decided that POL should engage external support from a cultural specialist firm to get advice on the approach and help us to develop the programme. This was around the same time that Karen McEwan joined POL as CPO. She took on accountability for cultural initiatives, including Ethos, and Tim Perkins moved into her team." See also LG1, **WITN11310100**, §93.

[736] **POL00458453**.

[737] See KMc1 **WITN11360100**, §§31 and 97; and KMc T 08/10/24 [15:10-16:1] **(INQ00001192)**. Note that KMc acknowledged in her oral evidence that the Strategic People Plan *"doesn't address subpostmasters"* (T 08/10/124 [16:8 – 16:9] **(INQ00001192)**) but gave evidence to the effect that *"there are efforts in the business to do that."* (T 08/10/24 [17:18 – 17:19] **(INQ00001192)**). Focus is being given to assessing where there are elements of the Strategic People Plan that may extend to benefit Postmasters, this is particularly in regard to wellbeing, however, is likely to extend beyond this workstream. As KMc acknowledged in her oral evidence before the Inquiry, the People Plan does not talk specifically about postmasters: as she made clear, however, *"the work that [POL is] doing is absolutely focused on improving the relationship and definitely improving trust and communication with [Postmasters]."* (T 08/10/24 [100:17 – 100:25] **(INQ00001192)**).

[738] See NRa1, **WITN11390100**, §31 and his draft induction plan by way of example: **POL00448518**. See KMc1, **WITN11360100**, §33. Prior to joining POL, all Band 4 colleagues are also provided with a reading list which includes journalist Nick Wallis' book on the Post Office Scandal, the ITV drama and documentary, *'Mr Bates v the Post Office',* both the CIJ, the HIJ and the *Hamilton* judgments and the BBC Panorama programmes broadcast in June 2020 and April 2022.

[739] **POL00458471**. Further, a GLO Awareness Training module was introduced in 2022.

[740] See KMc1,**WITN11360100**, §75.

[741] See KMc1, **WITN11360100**, §§107-8.

[742] The Strategic drivers were: 1. Creating capacity to reduce Postmaster costs and increase Postmaster income ("Save to Invest"); 2. Improving partnerships with Postmasters, strategic partners and commercial partners ("Thriving Partnerships"); 3. Building digital capability ("Fuelled by Digital"); and 4. Rebuilding trust in and the confidence of the business ("Create New Confidence") (see OW1, **WITN11380100** §92(g)).

[743] **POL00458463**, also see KMc1 witness statement **WITN11360100**, §70.

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The Behaviours are enforced by being built into the recruitment process[744] so that "*the people that [POL] recruit[s] to the Post office have the right values and the right behaviours and…. the technical expertise…*".[745]

p) Ethics-driven code of business standards have been introduced.[746]

q) All senior members of the POL team are encouraged to 'Adopt an Area' which drives a personal, enduring relationship with specific Postmasters.[747]

r) Weekly Wednesday communications have been implemented for POL staff; previously conducted by outgoing CEO NR,[748] now held by Neil Brocklehurst. These are attended both physically and remotely and are complemented by four-weekly meetings with the Executive Teams.[749] These meetings allow for a weekly Q&A to address questions and issues in real time.

s) Members of the SEG are encouraged to represent POL at Restorative Justice Sessions around the country to allow Postmasters and their families to describe the details of POL wrongdoing and the profound impact on them and their families.[750]

t) New complaints channels have been implemented via the Postmaster Survey, Colleague Engagement Survey, Strategic Partner Survey conducted annually.[751]

u) A specialist in Equality Diversity and Inclusion ("EDI") has been appointed, and joined the business on 1 October 2024, reporting to the Talent and Capability Director, Hawa Newell-Sydique.[752]

v) The appointment of Postmaster NEDs (see §§289 and 294) and the appointment of a Postmaster Experience Director: Hithendra Cheetirala from 2021 to December 2023, succeeded by Mark Eldridge, working in POL head office two days each week and liaising with the relevant Executive teams as a conduit between Postmasters and POL, providing the operational experiences and concerns of Postmasters.[753]

(ii) Culture at Board level

327. POL regrets that EJ and SIs, have at any time felt themselves to be considered *"an annoyance due to the challenging nature of our questioning about POL practices"*.[754] This is not a description POL, or any of its other witnesses to the Inquiry, recognise.[755] Rather, the Postmaster NEDs have

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[744] KMc T 08/10/24 [54:7 - 54:15] **(INQ00001192)**.

[745] KMc T 08/10/24 [54:7 - 54:12] **(INQ00001192)**.

[746] This includes a refreshed Code of Conduct and Ethical Decision Making Framework, NR1 **WITN00760100**, §§232-3.

[747] See CBro1, **WITN11350100**, §38(c) and NR1, **WITN00760100**, §196(c).

[748] NR initiated these sessions short after joining POL (NR1 **WITN00760100**, §193(a)), as well as longer monthly "Townhall sessions with a Q&A session with online and in persons questioning (NR1 **WITN00760100**, §193(b)). See also KMc T 08/10/24 [41:9 - 41:17] **(INQ00001192)**.

[749] KMc T 08/10/24 [41:18 - 41:25] **(INQ00001192)**.

[750] See CBro1, **WITN11350100**, §44.

[751] See OW1, **WITN11380100**, §92(d); ABu1, **WITN11330100**, §50, notes that Postmaster surveys are now discussed at Board meetings. See also NRa1, **WITN11390100**, §51 which acknowledges the management team's low approval ratings and the need for proper direction, clear strategy, effective governance and clear expectations around behaviour.

[752] They will be responsible for EDI and producing training for every member of the Post Office team, including the non-executive directors and the Board. See KMc T 08/10/24 [27:18 - 27:24] **(INQ00001192)**; and NR2 **WITN00760200**, §51.

[753] See KMc1 witness statement **WITN11360100**, §101; LG1, **WITN11310100**, §92: LG notes the role of the Postmaster Director in the Operational Excellence Programme, which is intended to provide a financial incentive to Postmasters to meet operational best practice (such as cash declarations) at close of business each day. Note OW evidence that Mark Eldridge, at his request, is inviting Postmasters to address weekly all-colleague meetings: see OW1, **WITN11380100**, §92(b).

[754] See SI1 witness statement **WITN11170100**, §276. See also his oral evidence to the Inquiry in which he suggested his appointment and that of EJ was a "*tokenist gesture*" (T 24/09/24 [83:12 - 83:19] **(INQ00001186)**). POL rejects this suggestion and regrets that SI has had this perception.

[755] ABu refers to them as *"invaluable colleagues, for whom I have the utmost respect"* ABu1 **WITN11330100**, §57. She continued: *"In my view it is absolutely critical that Mr Ismail and Mr Jacobs are treated in the same way as any other NED. This is not only a matter of basic professional respect, but it is also essential to the proper*

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been regarded as a visible example of necessary cultural change who have been instrumental in translating Postmaster issues into information that is presented to the POL Board.[756]

328. EJ and SI were the first Postmaster NEDs: some teething problems were inevitable. Work is, however, underway to provide more training for future Postmaster NEDs.[757] (See §295.)

329. NR has acknowledged the unique challenges faced by Postmaster NEDs as the sole elected NEDs on the Board.[758] NR in particular has acknowledged the difficulties in the period in which 'Project Pineapple' arose[759] and the importance of re-establishing stability and cohesion in the Board thereafter.[760] He has also acknowledged that, in retrospect, he might have done more to rebuild bridges at the time.[761]

330. A number of POL witnesses have expressed concerns regarding HS's tenure as Chair of POL.[762] ABu stated in her evidence to the Inquiry: *"There has been a noticeable improvement in the working relationships at Board level since the departure of Mr Staunton and the appointment of the Interim Chair. Our proceedings are professional, respectful and friendly. Throughout my time on the Post Office Board, the Board has been prepared to challenge management and hold them to account."*[763] POL would agree.

(iii) NR correspondence with Alex Chalk MP

331. On 13 January 2024 HS emailed NR[764] on the subject of NR's letter to Alex Chalk MP ("ACMP") of 9 January 2024, which had attached a copy of an email sent by Nick Vamos ("NV") of Peters &

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running of the Board and therefore effective corporate governance. It is incumbent on all of Mr Ismail's and Mr Jacobs' board colleagues to do all that we can to address the concerns that they raised." **WITN11330100**, §58. CBro confirmed in his witness statement that: *"The observation that the Postmaster NEDs are `ignored' is far from the truth… I am not a member of the Board but have presented regularly and attended many meetings. During those presentations the two Postmaster NEDs have been given significant opportunities to comment and their opinions have carried weight and have swayed the Board's conclusions*." CBro1, **WITN11350100** §72. See also LG1 **WITN11310100**, §87: "*I have not formed the impression that Mr Ismail and Mr Jacobs are "ignored and seen ... as an annoyance" by the NEDs on the Board, or by the past and current Chairs. I value their contribution, and I believe that other NEDs and the Chair do as well*." See also OW1 **WITN11380100**, §175: *"I do not believe that Saf Ismail and Elliot Jacobs were ignored or seen as an annoyance by other members of the Board. Indeed…, it is my view that they have made a very positive difference to the nature of the dialogue at Board meetings. They are unafraid to express their views firmly, raise issues to the Board, and express their frustration when they believe that change is not moving fast enough."*

[756] See LG1 **WITN11310100**, §84; LG - "*I think Elliot and Saf have added huge amounts of value to the Post Office Board and they have genuinely changed -- I wasn't on Board before. My understanding is they completely changed the dynamic in the Board room by bringing their perspective and lived experience as postmasters to the discussion.*" (T 07/11/24 [25:21 – 26:2] **(INQ00001203)**).

[757] LG1, **WITN11310100**, §85.

[758] NR T 10/10/24 [68:11 - 69:9] **(INQ00001194)**.

[759] NR T 10/10/24 [70:11 - 71:17] **(INQ00001194)**.

[760] NR T 10/10/24 [73:24 - 74:2] **(INQ00001194)**.

[761] NR T 10/10/24 [74:4 - 74:8] **(INQ00001194)**.

[762] See KMc1 **WITN11360100**, §200: KMc referred to HS's behaviour as "*not in keeping with a culture that a modern business would want to create and nurture*" and described him as at times "*aggressive and rude*". ABu similarly gave evidence to the Inquiry that HS spoke to individuals, particularly the General Counsel and Chief People Officer in conversations that were of an "*aggressive nature*" T 27/09/24 [60:14 - 60:17] **(INQ00001188)**. LG expressed similar concerns in her witness statement, referring to HS as "*dismissive and aggressive*" (LG1 **WITN11310100**, §141). LG was particularly concerned by HS's failure to provide the leadership or cultural change that POL needed during his time in the post (see LG1 **WITN11310100**, §148). The Tutin Report, found that HS had made remarks which were "*discriminatory on grounds of race and sex, and therefore not in accordance with the Dignity at Work policy. The remarks go well beyond his characterisation of them as potentially 'politically incorrect' statements*." (**POL00448641**, p.12 §28).

[763] ABu1, **WITN11330100**, §49.

[764] **POL00448703**.

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Peters to POL[765] on 7 January 2024.[766] HS wrote "*A third party would see this letter as Post Office's lawyers 'continuing to defend the indefensible', 'Post Office has not changed' etc.*"[767] HS told the Inquiry that he was "*absolutely horrified*" when he saw the NV letter.[768]

332. In considering HS's evidence the background to this letter is important. NV's email to POL was unsolicited and appears from its introduction to have been prompted by him listening to reports that ACMP was "*actively considering 'stripping POL of its role' in appeals and/or using legislation to overturn every conviction. I assume he is considering the HCAB recommendations in their 14 December 2023 letter and attachment.*[769] *My concern is not that the Government will implement any of the recommendations, but that it will do so on a false basis because it does not have all the relevant information and advice it needs to determine whether it will increase the number of successful appeals*"[770] (emphasis added). The remainder of the letter needs to be read against that clear statement.

333. On 9 January 2024 the Legal Services Director in the RU emailed, amongst others, NR, HS and BT, on the subject of the debate on the Post Office Compensation Bill the previous evening, noting that mass exoneration was an option and "*we have had some early engagement from DBT, who have asked that we/P&P liaise with MoJ to assist them with the detail*".[771] BF replied on the same date: "*There are a number of facts that are actually erroneous in the media ie that all convictions are unsafe etc. If ... such matters are overtaken by a political decision and legislation I believe it will be important to have an accurate position of why it wasthat the Government and POL were in this position i.e. CACD not all 700 are unsafe convictions based on Hamilton; current legal rules mean that the convicted claimant must bring the Appeal – it's not up to POL to just overturn all of them etc.; POL does NOT have special prosecution powers etc.*"

334. NR's letter of the same date welcomed the extraordinary publicity generated by the ITV drama, and for the spur it gave for the acceleration of redress, but he "*would argue that Post Office has a duty to ensure that any decisions which may be taken by Government are fully informed. We also have a duty to the Court in respect of our role as prosecutor in some 700 of those cases which resulted in convictions.*" Having noted the work being done by POL on the Proactive Case Review in respect of historical prosecutions,[772] he wrote: *"We make absolutely no value judgment about what you and your colleagues determine as the right course of action, but consider it essential for you to understand the very real and sensitive complexities presented* [by] *each case. We stand ready, together with our legal advisers, to offer you and your officials every assistance as you consider these issues and we can make ourselves available to you and/or your officials at any time. In the meantime, I attach a note prepared by Peters & Peters which covers this and other issues you may find helpful in your deliberations.*"

335. In circumstances where both NV's email, and NR's letter to ACMP, expressly eschewed any intention to influence the Government's decision, only to provide it with relevant information, POL does not accept that it should be criticised for writing in this way.

336. Nor does POL accept that NR should be criticised for writing to ACMP without consulting the Board. Although HS denied that this letter had ever come to him,[773] NR forwarded a copy of the

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[765] SR and two lawyers in the RU.
[766] **POL00448701**.
[767] It is notable that HS did not characterise that as his view, only that of a hypothetical third party; on the contrary, he was keen to emphasise in his email to NR that such an assessment by others "*would do a huge disservice to the efforts of the current Board and management team as we seek to accelerate justice and generosity for wronged postmasters*".
[768] HS T 01/10/24 [96:5 - 96:6] **(INQ00001189)**.
[769] In that letter the HCAB stated "*a small minority of these people were doubtless genuinely guilty of something. However, we believe it would be worth acquitting a few guilty people (who have already been punished) in order to deliver justice to the majority - which would not otherwise happen.*" **(BEIS0000893)**.
[770] NR T 11/10/24 [25:13 - 25:25] **(INQ00001195)**.
[771] **POL00448699**, p.2.
[772] Of which the Inquiry was informed at the Interim Compensation Hearing.
[773] HS T 01/10/24 [93:15 - 93:16] **(INQ00001189)**.

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NV email to HS (cc. BT) on 8 January 2024, noting it was an interesting counter-balance to the momentum gathering on how to speed up appeals.[774] (His evidence of being horrified upon seeing it is not easy to square with him not raising any issue in respect of it until five days later Sunday 13 January 2024.) It was also sent to two other members of the Board, BT and Brian Gaunt, on the same date.[775] Given the exceptional speed with which matters were developing that week, it was just the following day, 10 January 2024, when KHMP made a further statement that he thought the Horizon Compensation Advisory Board's ("HCAB") recommendation for the overturning of all postmasters prosecuted in the Horizon scandal was absolutely right, and Government would be working with the HCAB to speed up the process – it was understandable that NR should have decided to write to ACMP without consulting the full Board.

337. As for the circumstances in which the NV email came to be put onto POL's website, whilst NR was unable to assist on that point during his oral evidence,[776] at the request of the Inquiry he has subsequently made a fifth witness statement in which he explains his understanding now that this was done in circumstances where: (i) pursuant to a 'publication handling plan', which outlined POL's engagement with key stakeholders, on 21 February 2024 OW emailed CC to notify him that NR's letter and NV's email would be provided to HCAB the following day, and simultaneously published on POL's website, to which CC responded saying "*that's a very good call from my point of view*" (§13); (ii) on 22 February 2024 POL duly provided NR's letter and NV's email to the NCAB at its request, and advised the HCAB that both would be published on POL's website in the interests of transparency (§11(b)(iii)); and pursuant to the 'publication handling plan' BSFf were instructed to inform the Inquiry of the publication of both NR's letter and NV's email, which it did on 22 February 2024, providing links to both documents on the website (§13).

338. POL equally submits that it should not be criticised for proceeding in this transparent way. Indeed, were POL *not* to have made the documents publicly available in this way it may reasonably be assumed that it would have been, rightly, subject to criticism.

G. Fujitsu

(1) Future of Horizon and POL's reliance on Fujitsu

339. POL accepts that, like all such systems, there are BEDs in the Horizon system, which all parties recognise is an end-of-life product. POL has worked hard to remediate those BEDs and significant progress has been made through the Horizon Improvement Programme; a programme put in place from 2020 to address the issues in the Horizon system identified by Fraser J in the HIJ and to make ongoing improvements.[777] POL has not been wholly successful in improving its management of and control over Fujitsu's own processes, not least because of the approach that Fujitsu has decided to adopt of resistance in some respects to external testing and auditing.[778] POL's Internal Audit function (assisted by SO) has carried out an assessment of the Horizon system in November 2024 which provides reasonable reassurance, in particular in relation to financial statements (see §347 below).

340. In parallel to the improvements POL has been able to implement, POL has been working since 2021 to replace Horizon through the NBIT programme, and in March 2024 the Board agreed to seek to negotiate a new contract with Fujitsu for an extension of its Horizon services until 2028, with contingency to extend further to 2030.[779] Discussions with Fujitsu are ongoing on this.

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[774] **POL00460827**.
[775] **POL00460850.**
[776] NR T 11/10/24 [26:25 - 27:3] **(INQ00001195)**.
[777] Simon Oldnall ("SO") 3 **WITN03680300**; T 15/10/24 [155 - 164] **(INQ00001196)**.
[778] SO3 **WITN03680300**, §§40-86.
[779] SO3, §§87-104; Board minutes of March 2024: "*Subject to seeking a 3-year break provision, the proposed strategy for an extension of up to 5 years of the Horizon Support contract with Fujitsu from 1 April 2025 until 31 March 2030 be and is hereby APPROVED";* and *"The inclusion of a binding commitment to Fujitsu that an alternative approach to supporting the Horizon platform through commencement of a programme to*

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341. In his evidence to the Inquiry NRa has explained that as a result of the recent Strategic Review the NBIT programme of work is intended to be reset.[780] Subject to approval from the DBT, new proposals are in development that are intended to move support for POL's branch IT systems away from Fujitsu either in-house to POL or to new third party suppliers incrementally, such that POL will have no reliance on Fujitsu at the end of the contract and will replace elements of the system with newer technology. NRa's evidence was that it is not envisaged that POL will build all of this technology in-house, nor limit itself to like-for-like replacement of Horizon functionality, and that this approach can reasonably be expected to carry less risk, more advantage, and cost less than had formerly been the case. Post Office intends to work closely with postmasters to define the programme.

(2) The Patterson Correspondence

342. The Inquiry has heard evidence from several witnesses about an exchange of correspondence which took place between April and July 2024[781] principally between PP and NR / OW. The correspondence concerns Fujitsu's apparent lack of willingness to provide a witness statement regarding the reliability of the data in Horizon in the context of a police investigation, and its position that POL should not be relying on Horizon data save in support of claims for redress.

343. It remains unclear what prompted this exchange of correspondence. Despite the long history of the Horizon issues, and Fujitsu's close involvement in all aspects of it, the statements made in this correspondence were not ones which had ever been made previously. CB's evidence in respect of PP's initial letter of 17 May 2024 was that:

> "*I believed at the time this letter was written specifically to be discovered by this Inquiry, and I could see no other reason why, at this particular time, considering that this version of Horizon has been supported by Fujitsu for many years, they have hundreds of technical experts supporting Horizon, they know that it's used by postmasters on a daily basis to run every aspect of their business, and we have an open book in terms of the outstanding defects on the system, and they know that none of those branch affecting defects would materially impact any of the data on the system, that I didn't understand why this statement had been made.*" [782]

344. That CB's view is likely to have accurately reflected PP's motivation is supported by PP's final word on the subject to POL (letter of 26 July 2024), in which he stated that he did not intend to engage further in the matters raised but that:

> "*The original purpose of writing to Nick was to escalate, CEO to CEO, the concerns relating to certain behaviours within the Post Office. It seems clear that the Post Office continues to have significant cultural issues, sees itself as a "victim" with the enforcement and prosecution of postmasters considered as a business as usual activity of a commercial retail company. As I stated in my correspondence to Nick and during our discussion, Fujitsu finds the language and the suggested behaviour unacceptable from Post Office investigators.*" [783]

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insource/reprocure elements be activated if there is not sufficient time within the term extension to fully migrate from Horizon to NBIT be and is hereby APPROVED." (**POL00448648**).

[780] NRa T 08/10/24 [154:12-164:17] (**INQ00001192**).

[781] Email chain involving SO, Daniel Walton and JB 11-19/04/24 **FUJ00243203**; PP to NR 17/05/24 **FUJ00243199**; NR to PP 30/05/24 **FUJ00243201**; PP to NR 08/07/24 **FUJ00243204**; OW to PP 23/07/24 **FUJ00243209**; PP to OW 26/07/24 **FUJ00243211**; see too JB to Daniel Walton and others 19/04/24 **FUJ00243203** and JB to Chris Breen and others 01/05/24 **FUJ00243158**.

[782] T 02/10/24 [81:21 – 82:7] (**INQ00001190**), referring to PP to NR 17/05/24 **FUJ00243199**. Tracy Marshall was similarly confused when she saw the 17/05/24 letter in the context of the Inquiry: "*I'm quite confused with the letter from Paul Patterson and why Fujitsu won't stand behind their data. I'm not a data expert or an IT expert but it's fascinating that they can't stand behind the data when the data is fundamental to everything that we do in our operations, quite frankly, across our network.*" T 16/10/24 [102:13 - 102:19] (**INQ00001197**).

[783] **FUJ00243211**.

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345. Moreover, as set out in NR's response of 30 May 2024[784], a number of the points made by PP in the 17 May 2024 letter were wrong and demonstrate a serious lack of understanding (or mischaracterisation) of POL's (and, it would seem, Fujitsu's) current position:

a) PP states that Fujitsu "*will not provide support for any enforcement actions, taken by the Post Office against postmasters, whether civil or criminal, for alleged shortfalls, fraud or false accounting*".[785] However, POL is not undertaking any prosecutions against Postmasters or any third parties as the prosecuting body; and is also not currently using Horizon data for civil recoveries from postmasters. POL's requests to Fujitsu only relate to cases where POL is supporting criminal investigations or prosecutions pursued by independent third parties, such as the Police or the CPS;

b) Fujitsu states that POL is requesting that Fujitsu give "*expert opinion evidence to be used in criminal proceedings*…[and that] …*[a] witness statement from [Fujitsu] attesting to the reliability of the Horizon system and of data from it in criminal proceedings would amount to expert opinion evidence*".[786] However, POL accepts that Fujitsu is not able to provide expert opinion attesting to the overall reliability of the Horizon system and has not asked that Fujitsu do so: POL has simply asked Fujitsu to engage with the police and provide a statement, when requested to do so.[787] It is for the police to clarify the nature of any statement required; POL is simply asking Fujitsu to comply with its contractual obligations and to provide the support in relation to individual transactions which Fujitsu is contractually obliged to; and

c) More generally, Fujitsu's position – that POL should not be relying on Horizon data in respect of shortfall enforcement – appears (as noted by the Chair)[788] to be at odds with the findings of Fraser LJ in the HIJ (which the Chair has indicated he will regard as "*established and incontrovertible*")[789], recording the experts' agreement that the current version of Horizon (HNG-A) is relatively robust and far more robust than either Legacy Horizon or HNG-X.[790]

346. The impression given in the correspondence, that Fujitsu was writing to POL for the purpose of tactical positioning in the eyes of the Inquiry, was reinforced by PP's second appearance before the Inquiry.[791] Although he confirmed that the Horizon system today is *"performing to its contractual performance levels in terms of its SLAs",*[792] he said he was not qualified (and so unable) to confirm whether Horizon operated in a way that would allow Postmasters to produce their accounts to a suitable degree of integrity.[793] Notwithstanding such equivocation, he insisted that *"[Fujitsu] are actively supporting the police in their enquiries"*[794] and, in answering questions from the Chair, confirmed that, in relation to the four active cases where the police had sought Fujitsu's assistance, Fujitsu had provided all documents requested and would, if asked, provide any data requested as well as a witness statement.[795] PP's ultimate position when pressed seems to be no more than that, with the benefit of hindsight, reliance should not be placed *solely* on Horizon data and corroborating evidence should be used where possible.[796] POL agrees and in itself that seems an unremarkable

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[784] **FUJ00243201**.
[785] **FUJ00243199**.
[786] **FUJ00243204**.
[787] **FUJ00243209**.
[788] T 09/10/24 [152:12 – 153:24] **(INQ00001193)**.
[789] The Post Office Horizon IT Inquiry, September 2021 Progress Update from the Chair, p.7 **(RLIT0000462)**.
[790] **AMCL0000013** § 977.
[791] T 11/11/24 **(INQ00001205)**.
[792] T 11/11/24 [184:9 – 184:10] **(INQ00001205)**.
[793] T 11/11/24 [184:23 – 185:15] **(INQ00001205)**. Note that the provision of unreliable data is a clear breach of contract on Fujitsu's part: see, for example,PP4, dated 8 August 2024, §31 **(WITN06650400)** referring to Clause 15 of the HNG-X Agreements (Service Standards).
[794] T 11/11/24 [196:16 – 196:20] **(INQ00001205)**.
[795] T 11/11/24 [208:7 – 209:13] **(INQ00001205)**.
[796] T 11/11/24 [234:14 – 234:19] **(INQ00001205)**. POL has done considerable work to investigate discrepancies: see §§99 - 207 of the Witness Statement of Melanie Park **(WITN11600100)** which addresses the work of the Network Support and Resolution Team and Postmaster Account Support Team, an overview of the review or

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conclusion, albeit not one that appears anywhere in the correspondence with POL, or could conceivably have formed a reasonable basis for the terms and tone of the 17 May 2024 letter.

347. Quite apart from the apparently opportunistic use of the City of London Police's investigation[797] by Fujitsu to seek to leverage their position, the correspondence on this issue gives rise to three issues for POL.

(i) POL's substantive response to the issue of reliability of Horizon

348. The first is POL's substantive response to Fujitsu's indication that POL could not rely on Horizon data in the context of shortfalls, only in the context of compensation. Following a request from PwC (POL's independent auditors) in support of their audit of the 2023/24 annual accounts, to ensure that there was reasonable assurance and evidence to support the reliability of Horizon in particular as it relates to the financial statements, an internal audit was undertaken in November 2024. Internal Audit (assisted by SO) followed a high-level assessment based on available information, which did not include detailed testing of the information that was provided. Internal Audit concluded that the awareness of potential issues with Horizon, and the procedures and checks now in place to ensure that such issues, where they arise, are identified and addressed, provide reasonable assurance and evidence to support the reliability of Horizon in particular as it relates to the financial statements; and that nothing that PP has said undermines that.

349. In addition, in order that Postmasters can have confidence in the Horizon system, POL is in the process of commissioning an external review focused on Horizon data integrity and the end-to-end discrepancy management process. POL is in the process of engaging with Postmasters on this review. This exercise is currently in the contracting phase and POL is hoping it will start work imminently. It is estimated that it could take c.4 months.

(ii) POL's internal governance

350. Secondly, insofar as it was implied in questioning that NR ought to have shared PP's 17 May 2024 letter with the Board, NR explained that when he received it, he shared it with BT, HS, andLG but that, despite the frustration that he felt at Fujitsu's position, he did not think it necessary to alert the whole Board to the issue.[798] NR saw the matter as *"more of a spat than anything else"*.[799] POL submits that he was justified in doing so, given the points highlighted from §§342 - 346 above. Were any of the three recipients nevertheless to have considered it necessary to share the letter with the full Board then it was open to them to do so.

(iii) Disclosure of correspondence to law enforcement agencies

351. JB was asked whether POL had disclosed PP's 17 May 2024 letter to the police,[800] in response to which he explained that POL had taken legal advice on the point.[801] POL does not waive privilege in such advice but makes the following points:

a) POL was not, and is not, acting as prosecutor or investigator in any ongoing case. POL's current role is limited to being a complainant and/or witness. Accordingly, there is no disclosure obligation placed on POL either by the Criminal Procedure and Investigations Act 1996

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dispute function and a detailed explanation of the dispute process. See also the defect management process as described at §§429 – 440 of the Second Witness Statement of SO (**WITN03680200**).

[797] That involved alleged organised crime rather than the types of allegations with which the Inquiry has been concerned.

[798] T 09/10/24 [148:25 – 150:10] **(INQ00001193)**.

[799] T 11/10/24 [56:20 – 57:4] **(INQ00001195)**.

[800] T 17/10/24 [200:14 – 202:8] **(INQ00001198)**.

[801] T 17/10/24 [200:14 – 202:18] **(INQ00001198)**.

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("CPIA")[802] or the common law.[803] Further, POL notes that there is no suggestion in the material provided by Duncan Atkinson KC (nor any other witness) that under English law a complainant owes a disclosure duty where they do not act as investigator or prosecutor. POL's duty is to tell the truth and not mislead investigators (including by omission).

b) The matters set out in Fujitsu's letters are already in the public domain (indeed the letters themselves have been made public in the POHIT Inquiry), and it is for the police to decide what information, if any, they require from Fujitsu and POL.

H. CONCLUSIONS

352. In its Opening Statement at the beginning of Phase 2 of the Inquiry, in October 2022, POL made it clear that it regarded its role at the Inquiry as having two key elements: to listen and learn from all the evidence and representations made by other CPs; and to do all that it could to assist the Inquiry with its work.

353. As far as listening and learning is concerned, POL has listened carefully to the very many witnesses called by the Inquiry and scrutinised carefully the written witness evidence and documentation. POL wishes to extend its thanks to the Chair, Ms Eliasson-Norris, Mr Page and Inquiry counsel and solicitor teams for their thorough investigation and examination of the evidence.

354. Some of the evidence has been deeply uncomfortable for POL to hear and the mistakes that were made, and opportunities missed, when viewed through the sharp prism of hindsight, are ones which POL deeply regrets. The collective mindset that developed, which POL has referred to in previous Submissions, that Horizon had no flaws so that the fault necessarily lay with Postmasters (who were, in addition, not kept properly informed) is a matter of profound regret. POL remains committed to playing its full role in delivering full and fair redress to Postmasters as quickly as possible.

355. POL remains determined to learn from these matters and considers that it has made significant progress since the HIJ was handed down and settlement reached in the GLO. Through the further ongoing changes referred to above, POL is embarking on further, and more fundamental, change to refocus the business on Postmasters and re-establish their trust, including cultural change. Whilst POL has been waiting for a policy review from Government for many years, it has undertaken the Strategic Review with the aim of creating a viable offering for the future, increased remuneration for Postmasters and, importantly, re-orientating the business so that the centre serves Postmasters, rather than the other way round. POL is ready to start pushing forward its plan for transformation which arises out of the Strategic Review (including structural and technological change), subject to confirmation of funding from Government. POL acknowledges that it will rightly be judged on its actions over the coming months and years. It has begun to take some steps whilst waiting for funding decisions.

356. As far as assisting the Inquiry is concerned, POL has made strenuous efforts to comply with all of the Inquiry's requests including very significant requests for documents and witness statements. The process has been hugely complex.

357. POL readily accepts that many aspects of its past behaviours and decisions will inevitably, and rightly, be the subject of criticism from the Inquiry. It has sought to approach such matters, in these and previous Phase End Closing Statements, candidly and appropriately and after proper reflection. It is understandable that those affected by the issues being considered by the Inquiry may seek to

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[802] S.3(1) CPIA requires a prosecutor to disclose any prosecution material which might reasonably be considered capable of undermining the prosecution case or assisting the defence; and s.2(1) defines "prosecutor" as *"any person acting as prosecutor, whether an individual or a body"*.

[803] The common law duty of disclosure has largely been displaced by the statutory scheme and therefore now has very limited scope, for example in relation to disclosure at the very early stages of proceedings,4 or post-conviction disclosure (see eg *ex parte Lee* [1999] 2 Cr App 304 – **RLIT0000459**). However, the common law duty of disclosure is also a duty that only applies to the prosecutor (or, very occasionally, the investigator in respect of disclosure at a pre-charge stage).

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focus blame on individuals. Although it is clear that there were failings by some individuals, POL invites the Inquiry not to lose sight of the underlying governance[804] failures that occurred at POL over the relevant period. POL raises this point not to excuse those failings but to explain the context in which they occurred.

358. This statement must inevitably end as it began, with an apology. POL reiterates its sincerest apology to all who have been affected by its actions and its determination to continue with the process of learning the lessons from this Inquiry. POL remains firmly committed to ensuring that nothing like this could ever happen again.

9 DECEMBER 2024

[804] "*Governance...is a series of processes, structures, systems and rules, underpinned by behaviour and culture*". Governance Experts at T12/11/24 [21:24 – 22:02] (**INQ00001206**)

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Table of Abbreviations[805]

Name	Abbreviation
Sir Alex Chisholm KCB	ACmKCB
Alex Chalk MP	ACMP
Alice Perkins	AP
Alisdair Cameron	AC
Alwen Lyons	AL
Amanda Burton	ABu
Amy Prime	APr
Andrew Parsons	APa
Angela Van Den Bogerd	AVDB
Anthony De Garr Robinson KC	ADGRKC
Antonio Jamasb	AJ
Belinda Crowe	BC
Brian Altman KC	BAKC
Brian Gaunt	BG
Baroness Neville-Rolfe	BN-R
Ben Foat	BF
Ben Tidswell	BT
Carl Cresswell	CC
Cartwright King	CK
Chris Aujard	CA
Chris Brocklesby	CBro
Chris Day	CD
Charles Donald	CDo
Dame Sandra Dawson	DSD
David Cavender KC	DCKC
Elliot Jacobs	EJ
Emily Springford	ES
Lord Justice Peter Fraser	Fraser LJ
Gareth Jenkins	GJ
Gareth Thomas MP	GTMP
Gavin Matthews	GM
Grant Thornton	GT
Harry Bowyer	HB
Helen Rose	HR
Helen Rose Report	HRR
Henry Staunton	HS
Horizon Compensation Advisory Board	HCAB
Hugh Flemington	HF
Independent Advisory Panel	IAP
Initial Complaint Review and Mediation Scheme	ICRMS
Ian Henderson	IH

[805] All initialisms and defined terms are defined where first used. However, it was considered useful to add this table for ease of reference. It is only for this reason that submissions have exceeded 100 pages.

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Jarnail Singh	JSi
Jason Coyne	JC
John Bartlett	JB
Jonathan Evans	JE
Jane MacLeod	JM
John Scott	JS
Karen McEwan	KMc
Kemi Badenoch MP	KBMP
Kevin Hollinrake MP	KHMP
Khayyam Ishaq	KI
Kay Linnell	KL
Lorna Gratton	LG
Lesley Sewell	LS
Lord (James) Arbuthnot	LA
Lord Neuberger	LN
Mark Davies	MD
Mark Russell	MR
Martin Smith	MS
Matthew Lenton	ML
Mike Harvey	MH
Neil McCausland	NMc
Nick Read	NR
Nick Vamos	NV
Nigel Railton	NRa
Owen Woodley	OW
Paul Patterson	PP
Paula Vennells	PV
Pete Newsome	PN
Rachel Scarrabelotti	RS
Richard Callard	RC
Richard Morgan KC	RMKC
Richard Roll	RR
Robert Worden	RWo
Rod Ismay	RI
Rodric Williams	RW
Ron Warmington	RWar
Richard Watson	RWat
Saf Ismail	SI
Sarah Munby	SMun
Seema Misra	SM
Second Sight Interim Report	SSIR
Second Sight Limited	SSL
Simon Baker	SB
Simon Clarke	SCl
Simon Recaldin	SR
Simon Oldnall	SO

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Sir Alan Bates	SAB
Sir Anthony Hooper	SAH
Sir Martin Donnelly	SMD
Susan Crichton	SC
Stephen Parker	SPa
Susannah Storey	SS
Justice Jonathan Swift KC	Swift J
Terms of Reference	ToR
Tim Parker	TP
Thomas Cooper	TC
Tony Marsh	TM
Torstein Godeseth	TG
Value for Money	VfM
Womble Bond Dickinson	WBD