

Post Office Horizon IT Inquiry

On behalf of Core Participants represented by Hodge Jones & Allen:

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Introduction

1. This Inquiry has, these past few years, held a mirror up to individuals and institutions, who (if they do not recoil at their reflection) remain unable to face their responsibility for the grave wrongs they inflicted on innocent people. This terrible story reflects badly on almost every aspect of our society and causes us to question everything we previously believed in about Britain.
2. Those who wrought such cruelty on their fellow human beings may not have been monsters but felt entitled to act as they did despite the serious and obvious risk, even knowledge, that blameless people would be ruined by their actions. Their motive for doing so was complex and multi-factorial. Political imperatives, involving the ambition of successive Governments that the Post Office should become self-sufficient, was a major cause of this disaster. Profit, political approbation, and personal prestige all played their part. Beneath all of this, however, lie inveterate prejudice, untrammelled privilege, and contempt for their perceived inferiors. The Subpostmasters were to be kept subordinate, and were to be further subjugated, even destroyed, should they ever dare to question the mantra of Horizon's infallibility.
3. It would be too easy to focus on the Post Office, from the Chair downwards, and scapegoat them. It sits at the centre of its web of wrongdoing, but Whitehall facilitated its wicked destruction of the Subpostmasters as surely as the lawyers, internal and external, who acted with sociopathic ruthlessness in the well-paid service of their master.
4. The Government guilty parties involve the entire apparatus of Whitehall: the Treasury, Cabinet Office, BIS, BEIS, DBT, ShEX and the UKGI. Government not only repudiated the obligations and responsibilities of ownership but abdicated accountability for sowing this State sponsored disaster in the first place.
5. The Government ignited this grotesque and protracted tragedy when it foisted Horizon on the Post Office. It then repudiated any responsibility for "operational" decisions under the fiction of "arm's length bodies." It thereafter became implicated in the cover-up by failing to hold the Post Office to account and (by refusing to demand answers) allowed the Post Office to suppress the truth for years. The failure by Whitehall to track the Swift Report is one example of its lax approach, but the cosy (even incestuous) nature of the relationship meant that Government sided with the oppressor time and again. Culturally this was unsurprising, given the overlap of Civil Servants, or Government staff, moving seamlessly into the Post Office and bringing with them that desire (so often seen in Whitehall) to control the narrative, at the expense of the truth, including pretending to do the right thing. This polluted the Post Office's priorities, communications, and decision-making. Typified in so many "if pushed" briefings, and requests for "defensive lines" the Post Office confused telling the truth with not getting caught in a lie. Most of the malefactors came from Establishment backgrounds, many in the civil service, and those who did not aspire to establishment plaudits and admission to the so called great and the good. The comfortable cross-fertilisation, even

cross-contamination of staff, between Government and Post Office, so pervasive and so deeply enmeshed, spawned this apocalyptic absence of accountability.

6. Within the Establishment, the Post Office and HMG were allies. This is reflected in Government's complicity in the containment of this scandal as well as the Post Office's obsession with secrecy. Their circumspection in sharing information was controlled and coordinated. To maintain they were separate entities is as fanciful as the spin of 'arms' length' was specious. There was not so much as a fingernail separating them, let alone an arm. In a very real sense, the Post Office remained an emanation of the State to be defended at all costs.
7. As for the lawyers, they did not question the ethics, propriety, even lawfulness of the objectives they were set, or excused every excess they were required to perpetrate under the principle that the interests of their client trumped all else. Civil and Criminal Justice was suborned by the Post Office for the purpose of advancing its commercial interests and brand reputation until one sceptical judge asked the questions that had not been asked by so many of his predecessors. The failure by the judiciary, for many years, to see through the Post Office's mirage of deceit, suppression, and even reversal of the burden of proof has not been examined to any degree. They were consistently lied to by "Britain's most trusted brand" but that alone is not a sufficient excuse for the failure of the Court system, which is supposed to protect the innocent.
8. The Corporate world, however, will not escape the Inquiry's gaze. There was no single point of failure: corporate governance has been shown to be unfit for purpose. Both the Post Office and Fujitsu have demonstrated a history of failure, as stark as it is profound. The NED model of oversight and challenge never came close to averting this disaster, and at a critical juncture in July 2013 set the perfidious trajectory for the years that followed.
9. It is inconceivable that the Horizon scandal is nothing but a twenty yearlong mistake. The chronic Bugs, Errors and Defects, the hacking into branch accounts, these secrets could not have stayed secret for so long if the truth were not being actively contained and suppressed. The courts and the Criminal Cases Review Commission (CCRC) were being actively misled, and the CCRC references ultimately depended on the outcome of the Horizon Issues Judgment, which explains why the Post Office waged that civil litigation with such aggression and continued to mislead Fraser J¹. This "affront to the public conscience" can only be remedied if the interlocking conspiracies to pervert the course of justice are uncovered and prosecuted.
10. We have already addressed the conspiracies which took place between 2000 and 2012 in our Phase 4 Closing Statement. This Statement will begin with re-visiting them and the accompanying allegations of perjury in light of the evidence from subsequent phases. Next, we will address the cover-up conspiracy, which began in 2013, and which can be pieced together from circumstantial evidence, none of which proves the conspiracy when looked at in isolation, but a compelling picture is presented by its accumulation. Finally, we will address how the Establishment's relationships allowed

¹ We have previously addressed the Post Office's manipulation of Civil and Criminal Procedure in **SUBS0000015**

the cover-up to persist until 2019, despite the Government's notional oversight of Post Office.

11. First, however, we will address the Chair's questions.

Post-conviction disclosure

12. We agree with the Chair's view that "prosecutors were obliged to comply with the duty of disclosure as described in *Nunn* from 1 January 2000 at the latest". We submit that Post Office Limited was obliged to disclose the advice (or the substance thereof) of Simon Clarke dated 15 July 2013 (the Disclosure Obligations Advice) to convicted postmasters and/or other persons convicted on the basis of Horizon data.
 - a. *Why such disclosure should have been made* – No prosecutor should withhold material which casts doubt on the credibility of a prosecution witness. There are additional disclosure safeguards involving the credibility of expert witnesses, reinforcing this principle, as provided for by Crim PR 19.2(3)(d) and CPD V Evidence 19A.7. The Disclosure Obligations Advice made it clear that the Horizon convictions rested upon the word of a prosecution witness who had not been telling the truth about the reliability of Horizon. This information undoubtedly cast doubt upon the safety of those conviction, and it therefore undoubtedly met the *Nunn* test for post-conviction disclosure. In the opinion of Mr Clarke, there was no room for doubt in that Mr Jenkins' credibility had been 'fatally undermined.'
 - b. *The extent of disclosure, if not the whole advice* – The recorded call between Mr Clarke, Mr Smith and Mr Jenkins should have been disclosed, as it was first-hand evidence that Mr Jenkins was aware of two bugs which he had not disclosed, and therefore that he may not have been telling the truth about the reliability of Horizon. It is less clear cut whether the Post Office was obliged to disclose Mr Clarke's analysis of why the content of that call undermined Mr Jenkins' credibility, as set out in his Advice. However, a prosecutor acting in good faith would have no reason not to provide this analysis in a cover letter, or disclosure note, to explain why the transcript of the call was being disclosed.
 - c. *To which convicted persons i.e. to all persons convicted on the basis of data produced by Horizon or only to those convicted on the basis of oral and written evidence of Mr Gareth Jenkins* – In the first instance, it would have been justifiable to disclose the existence of the bugs only to those whose convictions relied on Horizon data but not on Mr Jenkins's evidence. It was imperative, however, that those convicted on the basis of oral and written evidence of Gareth Jenkins received the fullest disclosure of material impugning his credibility and integrity, including that he had not been properly briefed (or at all) by the Post Office as to his duties to the court.
 - d. *When such disclosure should have been given* – the disclosure obligation arose as soon as the phone call took place, and disclosure should have been made as soon as reasonably practicable thereafter. However, the information

uncovered in the phone call should have prompted a thorough investigation of the practices and procedures within Fujitsu, which would have led to the discovery of Peaks, PinICLs and KELs, and the “remote access” problem, exemplified in the Receipts and Payments Mismatch Bug documents that were not disclosed at Seema Misra’s trial. That would, in turn, have led to ongoing disclosure of all material that cast doubt on the reliability of Horizon, and therefore on the safety of Horizon convictions.

13. We find it impossible to understand how two senior criminal barristers could have failed to recognise the need to disclose the fact of Mr Jenkins’ “taint”. Any first-six pupil would see the need to disclose material that undermines the credibility of a prosecution witness, especially an expert whose evidence was determinative in securing Mrs Misra’s conviction. Brian Altman KC specifically agreed with Simon Clarke’s assessment that Mr Jenkins’s credibility was “fatally undermined”. They both knew that Seema Misra had challenged Horizon’s reliability at trial, and that Gareth Jenkins had testified to refute her defence. There was simply no way of avoiding the need to disclose his knowledge of bugs in the system to, at the very least, Mrs Misra.
14. We submit that Mr Altman KC and Mr Clarke must have shut their eyes to this most obvious disclosure issue, which begs the question: why? The advice of Mr Altman KC that Cartwright King be kept apprised of the civil litigation, and Bond Dickinson’s involvement in criminal disclosure strategy, provide the answer.² It is our contention that had Mrs Misra’s appeal been brought swiftly it would have inevitably succeeded. Her appeal would have torn away the cornerstone in the façade of Horizon’s invulnerability, bringing the edifice crushing to the ground. Incipient group litigation orders would have proliferated. The Post Office’s policy of containment would have been rendered moribund, a whole six years before the Horizon Issues Judgment. We return to this in greater detail in paragraphs 271 to 304 below.

New evidence relevant to our Phase 4 Closing Statement submissions on the POL v Castleton Conspiracy, the Criminal Prosecutions Conspiracy and the R v Seema Misra Conspiracy

Fujitsu under Richard Christou and the POL v Castleton Conspiracy

15. In our Phase 4 Closing Statement we described how Fujitsu worked together with Post Office to advance the “POL v Castleton Conspiracy” and the “Criminal Prosecutions Conspiracy”. Since then, the Inquiry has heard evidence from Richard Christou. He joined ICL in 1990, was appointed Chief Executive in 2000 and then became Executive Chairman of Fujitsu UK. In April 2007 he became a Vice President of the Fujitsu holding company, leaving the executive leadership of Fujitsu UK to others. This promotion made him the person with ultimate responsibility for:
 - a. rolling out the faulty Legacy Horizon system, thereby requiring the Customer Services Directorate to compensate for poor development work. This was achieved by the SSC team routinely using “remote access” to tamper with

² POL00006581 p7

- branch accounts and otherwise managing the endemic Bugs, Errors and Defects on a “needs must” basis;
- b. establishing the litigation support unit within the Security team, which routinely produced misleading statements about the reliability of the Horizon system, thereby conspiring with Post Office lawyers and investigators to pervert the course of justice; and
 - c. allowing the litigation support offered to the Post Office in *POL v Lee Castleton* to culminate in Anne Chambers giving perjurious evidence in support of the Post Office’s false claims against and persecution of Mr Castleton.
16. With shocking arrogance, he denied any responsibility.
- a. First he said, in effect, that it was for those lower down in the organisation to take responsibility.³
 - b. Second, he was not prepared to accept that Fujitsu was obliged to provide a system that was fit for purpose:
... fitness for purpose was never part of the Codified Agreement; it was specifically excluded. What we did was to agree a specification, agree acceptance tests with the Post Office, and that was the basis of the contract.⁴
 - c. Third, having identified that discrepancies were not properly presented in evidence for court proceedings, he failed to acknowledge that happened because his Security team presented inadequate evidence in a misleading way: We accept – I mean, I accept now, having heard everything in the appeals against the cases, there were bugs. I don’t believe that it was the bugs that caused the issue. The issue is that these discrepancies weren’t properly presented in evidence. That’s what, I think. Why it happened I’m not competent to say but that’s my view.⁵
17. It was put to Mr Christou that over all the years he was in charge nobody apparently blew the whistle within Fujitsu, not even those who subsequently testified to the existence of serious malpractice (including Richard Roll and David McDonnell). He batted that off by erroneously claiming that no one thought about whistleblowing in those days,⁶ and asserting that his door had always been open.⁷
18. Tens, possibly hundreds, of people, must have been employed in the Horizon development and support teams on Mr Christou’s watch, all gaining first-hand knowledge of the poor quality of the Horizon system, and many becoming aware of remote tampering with branch accounts. Not one of them was able to find his open door. This is hardly surprising: his obdurate refusal even now to accept any responsibility shows what kind of reception he would have given to anyone brave or foolhardy enough to approach him with their concerns.
19. This is the culture within which the Fujitsu Security team dwelt, and it is a culture Mr Christou is responsible for, despite his protestations. We described the odious litigation support leadership of Peter Sewell in our Phase 4 Closing Statement.⁸ We also noted

³ INQ00001163 p4 (internal p15)

⁴ INQ00001163 p22 (internal pp87-88)

⁵ INQ00001163 p22 (internal p88)

⁶ The Public Interest Disclosure Act 1998 initiated mandatory protections for whistleblowers

⁷ INQ00001163 p23 (internal p89)

⁸ Paras 63-65

that it would have been interesting to hear from the people above him: Brian Pinder, Head of Security, and Naomi Elliot, Customer Services Director.⁹ They were the links in the chain between Mr Sewell and Mr Christou during the Castleton years. Although we have not heard from them, we have seen an important new email that followed the Chambers Afterthoughts document.

20. On 29 January 2007 Ms Chambers wrote down her Afterthoughts,¹⁰ and on the same day her boss, Mik Peach, sent them to Mr Pinder and Ms Elliot.¹¹ The new email chain dates from 5 February, when Colin Lenton-Smith sent Ms Elliot the Castleton judgment. He drew attention to the Tivoli event log being disclosed only after Ms Chambers had referred to it in evidence, and said *“full disclosure means full disclosure. Our Security team should take notice”*. An hour and 18 minutes later, at 11.34, Ms Elliot replied *“Thanks - This has been widely discussed in the team already and even before the judgement [sic] we have made some changes to the way we log requests and prepare for any similar cases.”*¹² An hour and 35 minutes after that, at 13.09, Mr Pinder replied to Mr Peach’s email attaching the Afterthoughts document, copying in Ms Elliot. We quoted that email in full in our Phase 4 Closing Statement, because, we submit, it reflected a deliberate rejection of the changes the Afterthoughts document implied were necessary to prevent future miscarriages of justice.
21. The email from Ms Elliot at 11.34 puts the responsibility for that deliberate rejection squarely at her door. After responding to the Lenton-Smith email she must have had a conversation with her subordinate, Mr Pinder, conscious that neither of them had responded to the SSC’s related concerns, as set out in the Afterthoughts document. The evidence suggests that the upshot of that conversation was Mr Pinder’s dismissive reply to Mr Peach.
22. It seems Mr Peach took his own steps to protect his team. It looks as if a *“mop up”* meeting between Security and SSC took place on 28 February 2007.¹³ This ties with an email from 8 August 2007, in which Mr Peach said that after Mrs Chambers *“ended up in court”*, a process was agreed essentially ensuring that SSC staff would not be required to provide data to be used in court. He concluded:
- It may be that the underlying issue is a lack of resource of a particular kind in the security team - someone who has both the technical knowledge to retrieve and understand the data, and who is capable of supplying the analysis in the correct legal terminology to POL. In the past, this role has largely been filled on an ad-hoc basis by Glenn Stevens and Gareth Jenkins. Glenn has obviously left, and I do not know the current relationship between the security team and Gareth.
- I can confirm that the SSC is NOT in position to undertake this role.¹⁴
23. When Andrew Dunks from the Security team testified at the Inquiry, he denied that the new process required him to give evidence that SSC staff should have given,¹⁵ but he

⁹ Para 58

¹⁰ FUJ00152299

¹¹ FUJ00152300

¹² FUJ00154661

¹³ FUJ00152300

¹⁴ FUJ00154664 pp2-3

¹⁵ INQ00001175 p13 (internal p51)

accepted that he routinely included information from those staff in his statements without attributing it to them.¹⁶

24. Furthermore, the *Misra* case shows how this practice hid technical problems from the court. Mrs Chambers was asked to look at the logs of call from Mrs Misra's branch, and she pointed out several technical issues that needed to be followed up. Mr Dunks was plainly not equipped with the knowledge or skills to do this follow up, but he nevertheless provided witness statements in the *Misra* trial that carried his usual wording that the calls were of a routine nature, implying that there were no system problems. One of them was filed or at least scanned alongside the email from Mrs Chambers, and he did nothing to amend it.¹⁷ This was put to Mr Dunks:

Ms Page: ... Let's go back to Mrs Chambers' email¹⁸, and that first paragraph:

"Gareth, sending just to you initially.

"I know you have even more on your plate than I do, but my involvement has always been unofficial and on the basis that I had time to do it."

Then at the very ending, she says:

"[If I am to do anything] it will have to be officially agreed with my manager— you can instigate that, if you like, but I don't think I can keep volunteering."

That was apparently accepted by you and your team member, Penny Thomas. You didn't press her, did you, to give an official witness statement. You didn't press her. You allowed her to just keep volunteering in this unofficial way, didn't you?

Andrew Dunks: Well, volunteering, yes. The same as I would speak to anybody within the SSC or anybody who was supplying me with information for me to do my role.

Ms Page: In effect, you were covering for Mrs Chambers, weren't you?

Andrew Dunks: Sorry, no. Covering for her? Covering for what?

Ms Page: Covering with the fact that she did not want to give evidence, she did not want to stand up and defend Horizon in court but you were perfectly happy to?

Andrew Dunks: I wouldn't say that was covering. I was happy with the role that I was tasked to and asked to do.

Ms Page: Neither you nor Ms Thomas thought to say to him – Mr Peach that is, "Actually, you know what, Mrs Chambers would be better placed to look into these technical matters that she says need to be investigated. Mrs Chambers ought to look into them and she ought to provide a witness statement". You didn't say that, did you?

Andrew Dunks: No, I didn't. No.

Ms Page: You were covering for SSC because they were not prepared to stand up and defend Horizon in court, weren't you?

Andrew Dunks: No. That's not how it worked, I'm sorry. It wasn't.¹⁹

25. Had Mrs Chambers been required to provide a statement she would have had to investigate the various technical issues she raised in the email, and disclose information about them, whereas Mr Dunks did nothing to follow up on those issues, and instead provided his usual statement without amendment. The result was that Mr Dunks'

¹⁶ INQ00001175 pp14-15 (internal pp53-59) - the corrupt process he used to create his witness statements is explored over these pages

¹⁷ FUJ00152990 p5

¹⁸ FUJ00152990 pp2-3

¹⁹ INQ00001175 p40 (internal pp157-159)

evidence did – in fact – cover up the technical issues that would have come to light had Mr Peach not put a ring of protection around his team.

26. The blame should not fall on Mr Peach in this instance. It appears that he attempted to make Ms Elliot take proper action after Mrs Chambers' experience in *POL v Castleton*. Nevertheless, the result was that SSC staff were protected from exposure to perjury, while those in the Security team provided statements that gave misleading reassurance about Horizon's integrity and reliability.
27. On the matter of perjury, we note the response dated 4 March from Stuart Biggs, representing Anne Chambers. We agree with the definition of perjury set out at Mr Biggs' paragraph 6, and that there can be no "perjury by omission". However, the facts Mrs Chambers chose not to reveal in the *Castleton* trial rendered false the statements she did make. Each statement she made that explicitly or implicitly asserted that the Marine Drive cash accounts were reliable was rendered false by her suppressing knowledge of:
 - a. the Known Error Logs;
 - b. SSC's ability to insert transactions into the Marine Drive accounts using Mr Castleton's login credentials; and
 - c. her own work on the week 42 data, which had revealed a known error.
28. We recognise that Mrs Chambers was an effective witness in her own cause. Were it not for her slip relating to her being told not to mention the Known Error Logs, we would have continued working on the assumption that lay behind Ms Page's questions on 27 September 2023, namely that she was an honest witness deluding herself through confirmation bias. But when she said, unbidden, that she had been told (when preparing for the *Castleton* trial) not to mention the Horizon Known Error Logs by at least one of Mr Peach, Mr Pinder, or Ms Elliott, the whole complexion of her evidence changed. Following this slip, we gave considerable thought to its implications for her evidence overall, hence the passage in our Phase 4 Closing Statement at §§78 to 89. By agreeing not to mention the Known Error Log and obscuring the potential for there to have been errors in the Marine Drive cash accounts Mrs Chambers helped to destroy Lee Castleton.
29. We therefore reject Mr Biggs' assertion that the accusation of perjury is "not supported by the evidence". Once seen through the prism of Mrs Chambers' acquiescence in suppressing vital evidence, all her testimony in the *Castleton* trial can be seen as part-truths, otherwise known as lies. Ultimately, she gave the judge a false factual basis for reaching his judgment, in which he dismissed each and every one of Mr Castleton's concerns about the reliability of Horizon, and he accepted Mrs Chambers' evidence which he summarised as "there was no evidence whatsoever of any problem with the system"²⁰.
30. This seminal moment in the catalogue of the Post Office Horizon scandals came just at the point when Mr Christou was handing over the executive reins of Fujitsu UK. We submit that it is fitting dénouement because it brings the culture of the organisation he led into sharp relief. Mrs Chambers was a pawn who was ultimately put into play

²⁰ POL00074269 p8 para 23

because middle managers in Development and Customer Services were too scared to confront those at the top with the unpalatable truth that Horizon was defective. Were it not for this connivance by Fujitsu, the Post Office's terrible claim against Mr Castleton could never have turned into the weapon it became, because although Richard Morgan KC played a legal 'sleight of hand' to disguise the importance of the Horizon evidence,²¹ the judgment shows that Ms Chambers' testimony was key.

Fujitsu under Duncan Tait and the R v Seema Misra Conspiracy

31. In our Phase 4 Closing Statement we described the "*R v Seema Misra Conspiracy*". By that stage the senior executive at Fujitsu was Duncan Tait, who arrived in 2009 as Managing Director of the division with responsibility for the Post Office Account. In April 2011 he became CEO. He was therefore in charge during the period after the Computer Weekly article began bringing Horizon problems into the public eye, and many of the media articles and programmes were brought to his attention:

Mr Blake: Why would the national media be so wrong about it? I mean it's like Groundhog Day. It's year, after year, after year, exactly the same thing comes up. There's a national report about Horizon integrity, and all there is is [sic] an email with a line that says everything is okay. Why wouldn't you, as Managing Director, and then CEO, not actually put in place a significant investigation into that issue?

Duncan Tait: Mr Blake, we had good governance in place. We had delivery assurance in place. We had assurance teams to govern new customer opportunities and the extensions of Horizon over time. We had Audit and Risk Committees in place and each one of these could have brought to the attention of the— to Fujitsu's CEO prior to me and during my period, that we needed to do something about it. Now, with hindsight, we absolutely should have done something about it because the media were absolutely spot on.²²

32. This complete lack of curiosity or interest was exemplified by an email which provided him with a link to the BBC's Inside Out programme, which started with Davinder Misra crying as he spoke of his wife's incarceration. On 8 February 2011 Mike Young sent it to him directly, saying this:

I need you to take a look at this if you haven't seen the Programme already.

[Link inserted]

Undoubtedly, Horizon integrity remains a core to our safe operation and to date, nothing has surfaced that suggests there is any evidence that the system is flawed in anyway. Can we briefly just talk through these latest developments.²³

33. Mr Tait accepted that the Post Office was a significant client for Fujitsu UK. This was an email from the Chief Operating Officer, asking him to click on a hyperlink. Mr Tait claims not to remember doing so. His excuse was that he felt Mr Young's second paragraph was sufficiently reassuring to negate the first one. More broadly, he said that he always relied upon the Post Office reassuring him that Horizon was reliable.²⁴

²¹ See Paras 30-44 of our Phase 4 Closing Statement and **SUBS0000032**

²² **INQ00001163** pp46-7 (internal pp184-185)

²³ **FUJ00174417**

²⁴ **INQ00001163** p39 (internal pp155-156)

34. Interestingly there is a conflict of evidence on this point, because Mr Young told the Inquiry that in late 2011 or early 2012 he spoke to Mr Tait after a Computer Weekly journalist had called him:

And I rang Duncan Tait up – you know, it’s like a continuous drib drab with Fujitsu – and just said, “Look, I’ve just had this call with Computer Weekly, this is where he says things are. This is reflecting badly on all of us, your brand and our brand in POL, and we need to address it, and there’s no two ways about it, Duncan, you know, we’re going to have to investigate this system thoroughly”.

... I’d got to the point where, you know, the wealth of subpostmasters that appeared to have been affected and the media outlay that was now coming more and more to the fore, where I felt we needed to be much more proactive ...

Every time there was a media outlay, I used it as a mechanism to say, “Are we sure about the system, are you sure you won’t have look at it”. You know, we’d had those conversations. This time around, I’d got to a point where I’d had enough and said, “We’re going to do it and, more importantly, I want your support”. And, in fairness to Duncan, he took a minute or two to think about that and calmly replied “Okay, I think you’re right”. And I said, which was an important point, rightly or wrongly – I said, “I’m expecting Fujitsu to pay for this audit but I want it to be under Post Office’s leadership”, and he agreed to that.

As soon as I’d finished that call, I rang Paula and repeated the conversation I had with Computer Weekly and the conversation I had with Duncan, and she said, “Right, okay then”. I said, “I’ve got to get you into other room with Duncan, so we can take this forward”.

... there was some form of telephone call between the two of them, which I know took place because I think in Paula’s evidence she suggests there were phone calls that took place.²⁵

35. Close examination of Ms Vennells’ statement and oral evidence reveals nothing to support Mr Young’s recollection of these conversations, nor have we identified any contemporaneous records of them. Nonetheless, even if Mr Young’s recollection is inaccurate or untruthful in whole or part, in casts into doubt Mr Tait’s already improbably sanguine approach. His abnegation of responsibility for his own product is quite as ludicrous as Mr Christou’s. We submit the most probable interpretation of these three accounts is that they were all three engaged in conversations at various times about the claims that Horizon was unreliable, and they chose to perpetuate the Horizon myth instead of investigating those claims properly.
36. In particular, Mr Tait was the executive responsible for the quality of the Horizon product, so he was both well-placed and duty-bound to investigate the claims that it was ruining lives. He did nothing, claiming that he did not even know about the work of the litigation support unit until Ms Vennells asked him to pass on thanks to that team,²⁶ and even then, he appears to have done nothing to find out what it was doing:

Mr Blake: ... Did you know that Fujitsu provided what we know as ARQ data, audit data, to the Post Office?

Duncan Tait: Not until after I left Fujitsu.

²⁵ INQ00001196 p24 (internal pp93-95)

²⁶ WITN03570100 p27 para 75

Mr Blake: What was your understanding of the role of Gareth Jenkins while you were at Fujitsu?

Duncan Tait: I was not aware of Mr Jenkins' role while I was at Fujitsu.²⁷

37. Maybe the truth is Mr Tait found out just enough to decide to turn a blind eye. Certainly Mr Jenkins' role as an expert witness did not bear scrutiny, and those higher up within Fujitsu must bear responsibility for leaving him to his own devices. This became especially egregious once Mr Peach put his ring of protection around the SSC. Mr Peach's email with Mrs Chambers' Afterthoughts must have been a red flag to Ms Elliot and those above her, but instead of re-thinking the "litigation support" strategy for covering up Horizon's flaws, they doubled down on it and allowed Mr Jenkins to go to the fore. Post Office must also bear responsibility for the fact that he was not properly instructed as an expert witness (which we refer to below and in §§ of our Phase 4 Closing Statement). Nevertheless, over his long career developing and supporting Horizon, Mr Jenkins was very well aware of its manifest failings.
38. His refusal to accept the findings of the Horizon Issues Judgment was inevitable,²⁸ because if he were to accept that the Horizon system was not remotely robust, that it was riddled with Bugs, Errors and Defects (BEDs) which affected branch accounts, he would no longer have been able to defend himself at all. As Fujitsu's Distinguished Engineer, intimately acquainted with Horizon for more than twenty years, it simply was not possible for him to say "I accept those findings now, but I did not realise that there were problems with Horizon at the time I was testifying to its reliability".
39. He therefore came into the witness box on the back foot, saying that *"I'm not sure that I, even today, I understand what bugs actually did cause the problems that people are - that people have suffered from."*²⁹ This implies either that Seema Misra and many others were not the victims of BEDs in Horizon, or – even worse for him – there were many more BEDs, which Mr Justice Fraser did not identify. He was, in effect, in complete denial.
40. This position not only flies in the face of the Horizon Issues Judgment, it also flies in the face of the contemporaneous evidence. In Ms Page's cross-examination of Mr Jenkins, it was put that he was aware of:
- a. the unreliability of Horizon cash accounts (Acceptance Incident 376) which was obvious to Fujitsu's 3rd and 4th line support, as evidenced by Professor Charles Cipione's analysis of Peaks and PinICLs;³⁰
 - b. remote tampering with branch accounts, which he plainly knew was a common practice as evidenced by an email³¹ that he unsuccessfully attempted to explain away in his 4th Witness Statement;³²

²⁷ INQ00001163 p48 (internal pp191-192)

²⁸ INQ00001166 pp4-5 (internal pp15-18)

²⁹ INQ00001166 p4 (internal p16)

³⁰ EXPG0000001 p118 & p137

³¹ FUJ00142197

³² WITN00460400 pp33-34 (para 106)

- c. bad error handling in the EPOSS code, as described by Gerald Barnes,³³ which meant that remote tampering could cause unintended consequences across the system;
 - d. the poor quality of the EPOSS code itself, some examples from the early days being described by Professor Cipione as “terrible”;³⁴ and
 - e. hardware failures causing missing transactions, his knowledge of which³⁵ he had tried to obscure by attaching his “data integrity report” to one of his statements in the Misra proceedings,³⁶ even though it was not an answer to the question he had been asked.³⁷
41. There were other glaring problems with his evidence:
- a. He was present at the meeting about the Receipts and Payments Mismatch Bug not long before giving evidence against Seema Misra, and at that meeting its impact on ongoing proceedings was discussed,³⁸ and yet he claimed that it just did not occur to him in the context of responding to Professor McLachlan's hypothesis relating to POL's ability to impact branch accounts through transaction corrections.³⁹
 - b. He made an absurd claim that he understood one of his statements about the reliability of “the computer” to mean the computer that was actually sitting on his desk as he wrote the statement.⁴⁰ (see my questions to Dunks on this as well).
 - c. He repeatedly tried to explain away answers given in evidence on the grounds that he had just answered the question narrowly, even when it plainly resulted in a misleading answer, such as when Warwick Tatford asked him if there could be problems with Horizon which would not be manifest to the user, and he did not reveal his knowledge that the Receipts and Payments Mismatch Bug was just such a problem.⁴¹
42. Ultimately, Mr Jenkins was in an impossible position when giving evidence to the Inquiry. He knew the Horizon system inside out, so he must have known that the branch accounts it produced were not 100% reliable. There was simply no excuse for his willingness to give evidence which suggested otherwise.

The involvement of Post Office and Royal Mail Executives pre-2012

43. The word Orwellian has been mentioned more than once in this Inquiry. The protagonist of 1984 wrote this in his illicit diary: *“Freedom is the freedom to say that two plus two makes four. If that is granted, all else follows.”* Subpostmasters in the period 2000 to

³³ INQ00001115 p33 (internal pp129-132) and INQ00001116 p5 (internal pp17-20)

³⁴ INQ00001018 pp39-40 (internal p154-157)

³⁵ FUJ00057524 p11-12

³⁶ POL00001643 p13

³⁷ FUJ00122794

³⁸ POL00028838

³⁹ WITN00460300 pp163-164 paras 471-473

⁴⁰ INQ00001167 p43 (internal p170). Note that this ties into problematic evidence Mr Dunks gave about the same wording - INQ00001175 pp41-42 (internal pp162-166).

⁴¹ INQ00001168 p27 (internal pp107-108)

2012 did not have that freedom. They were prosecuted and punished as traitors if they refused to accept the orthodoxy that Horizon was robust. Even when the Horizon numbers literally did not add up, Subpostmasters were forced to pretend that they did. If they had the temerity to say that two plus two makes four, woe betide them. Lee Castleton and Seema Misra were crushed and then put on display, to deter others from saying that two plus two makes four.

44. This was the Orwellian world that Post Office Executives were responsible for creating, and yet one after another, they came before the Inquiry and disclaimed all they must have known. We do not accept that. We noted at paragraph 103 of our Phase 4 Closing Statement that there is clear evidence of an investigator recruitment campaign at the point when the Post Office was readying itself for Horizon to be rolled out. Someone approved the budget for that, and for good reason. After all, one of the main reasons for automating the Network was to reduce fraud. It is safe to conclude that investigators were recruited to deal with the expected uptick in prosecutions. It was therefore incumbent on senior people within the Post Office to ensure that the investigations team was aware that the rollout had been chequered, that cash accounts were not 100% reliable, and that evidence gathered from Horizon should be treated with extreme caution.
45. Sadly, if consistently with other document destruction, after the passage of more than twenty years, and given the Post Office's erratic and sometimes criminal handling of records, it has not been possible to find out enough to ascribe knowledge of Horizon prosecutions at the senior executive level. It has not even been possible to trace the Cleveleys Coyne Report into the hands of senior executives, although we submit that it must have been brought to their attention.
46. However, once the Computer Weekly article appeared, and senior executives began to feel the pressure from MPs, lawyers representing Subpostmasters, and the media, the cracks began to show. Senior executive responsibility for the various conspiracies we refer to in our Phase 4 Closing Statement can be attributed from 2009.
47. Alan Cook finds himself on the wrong side of history, with an email that betrayed the ugly top-to-bottom anti-Subpostmaster culture that pervaded the Post Office. Michael Rudkin's email alerted Mr Cook to the JFSA's meeting at Fenny Compton, and Mr Cook's response to David X Smith among others was:

For some strange reason there is a steadily building nervousness about the accuracy of the Horizon system and the press are on it as well now

It is the more strange in that the system has been stable and reliable for many years now and there is absolutely no logical reason why these fears should now develop

My instincts tell that, in a recession, subbies with their hand in the till choose to blame the technology when they are found to be short of cash

Bizarrely the author of the email below was a very senior postmaster in the Fed who I know well but who's wife was found to be defrauding us and we have prosecuted
We should therefore be careful of approaching him for further info without talking to Paula first

Not sure what we can do but I do see this as an escalating and serious challenge - particularly as a new version of Horizon is due to go live in February!!⁴² [Emphasis added]

48. However, he left not long after this, and it was his successor, David Y Smith, who bears full responsibility for becoming a party to the *R v Seema Misra* Conspiracy. When he testified to the Inquiry, he accepted that he commissioned the Ismay whitewash, but he was wholly unconvincing when trying to explain the purpose of that Report. Numerous inconsistencies in the contemporaneous records, and Mr Ismay's evidence were put to him,⁴³ but his own internal inconsistency, which the Chair put to him, was perhaps the most devastating:

David Smith: ... What I didn't say was, "Go and do a fresh investigation, go and do a detailed investigation", or anything at all as to how he should carry out that investigation; I didn't give him that instruction.

Sir Wyn Williams: But what I draw from that, and this is what I want to be sure that I'm entitled to draw from that, that you did intend that he should effectively draw together conclusions which had already been arrived at. It was not an exercise in testing those conclusions.

David Smith: That is correct. It was not. I did not intend us to go and do a full forensic investigation, for example.

Sir Wyn Williams: So, if you like, so that I'm absolutely clear about this, there were a number of reasons already held in senior levels of the Post Office as to why Horizon was robust, and what you were asking him to do, in effect, was to reduce those into writing in one document so that everybody knew what they were?

David Smith: Largely, yes. Yes.⁴⁴

49. This was essentially confirmation of Rod Ismay's testimony that the report was intentionally a one-sided whitewash, because only pre-existing claims that it was robust were to be included. The Misra proceedings were, we submit, treated as an extension of this exercise. Mr Smith was aware of the case, and as his reported reaction to the "bandwagon" email shows, he encouraged his staff to pursue it as another method of shoring up Horizon.⁴⁵ In this way he became a conspirator.
50. Going down a rung, at the middle management level, we submit that at least two people were deeply implicated in the Conspiracies we avert to in our Phase 4 Closing Statement: Rod Ismay and Angela Van Den Bogerd. Mr Ismay's involvement in the POL v Castleton Conspiracy was already evidenced by the close of Phase 4, but there was abundant confirmation of it when he returned to give further evidence. First an email established that in the absence of the Finance Director, Peter Corbett, he took a coordinating role in seeking to settle the Cleveleys case.⁴⁶ Second he was taken to the records of the 2005 meeting about Horizon integrity, and the fact that his role in Finance would have required him to seek a budget from Peter Corbett to obtain an independent expert opinion, which he did not do.⁴⁷ Then third, he was taken to his previous answers

⁴² POL00158368 pp21-23

⁴³ INQ00001128 pp18-22 (internal pp70-86)

⁴⁴ INQ00001128 p22 (internal p86)

⁴⁵ POL00169170

⁴⁶ POL00142503 p1

⁴⁷ INQ00001145 pp29-30 (internal pp115-117)

about Mandy Talbot's triumphalist email at the end of the Castleton trial, in which he denied that he knew the case was to be used to deter others, and he described her language as "not pleasant". His response to her email, which was not available when he first gave evidence, was put to him on his return:

Mr Beer: It's the same email. If we go to the top of the first page, you replied: "*Mandy – I would also support your recommendations – your closing paragraph below captured it very well.*" You say:

"This should be a considerable addition to our armoury in responding to the number of other cases that may have been stirred up by Mr Castleton's letters into the SubPostmaster Magazine seen. One letter tried to get something like 'class actions'. He certainly had other agents writing in reply to him and suggesting more cases. Thanks, Rod."

So, firstly, you were an important voice in giving Mandy Talbot instructions in the case, weren't you?

Roderick Ismay: I wouldn't give Mandy instructions but I've fed back in a way that I'm not proud of, looking it that reply, but I would not be giving Mandy instructions.

...

Mr Beer: You were an enthusiastic adopter of her advice that the case should be weaponised to use against others, weren't you?

Roderick Ismay: I think we believed that, when there were shortages found at audit, possibly wrongly, my belief, from what Auditors were saying to me that they'd found, was that, actually, there was a genuine theft of something. So –

...

Mr Beer: Why did you view the Post Office as having an armoury to be used against subpostmasters?

Roderick Ismay: Well, I don't know why I've used that language there. That's not pleasant language but I've said –

Mr Beer: The last time you were criticising Mandy Talbot for using unpleasant language and, far from you doing that at the time, you gleefully adopted it, didn't you?

Roderick Ismay: Well, clearly, I have in there and I can't – I couldn't remember having said – but you've produced this email and I did. So I'm sorry, I'm not proud of what's in that email but I felt not proud of what you'd shown me before of what other people were saying, and now, evidently, I've said something similar.⁴⁸

51. The significant point is that Mr Ismay was clearly within the chain of command giving Ms Talbot instructions, and yet he continued to give the kind of prevaricating evidence to be expected of a conspirator:

Mr Beer: Who was responsible for signing off the expenditure of very high levels of legal costs on [the Castleton] civil litigation at this time?

Roderick Ismay: I don't know but I would expect that would have been up to a legal director at Board level.

Mr Beer: ... We've heard previously from Alan Cook that it would have been the Network Director – he wrongly named Paula Vennells as being the relevant Network Director at that time – is it right that it would be the Network Director that would be responsible for signing off the expenditure of legal costs, to your understanding?

⁴⁸ INQ00001145 pp30-31 (internal pp120-122)

Roderick Ismay: Well, I don't know who was. I would have had expected it would have been somebody in the legal line, who would have been responsible for signing legal expenses with something that was of big magnitude. They may well have consulted other people but I would have expected somebody at the legal line to sign off.

Mr Beer: Did the lawyers always have a client, i.e. a non-lawyer, as somebody that gave them instructions?

Roderick Ismay: I don't know.

Mr Beer: Were you ever that client?

Roderick Ismay: No. I wasn't a client ...

Mr Beer: Just as a point of information, if we scroll down, please, we can see, at this is time, November 2006, that Richard Parker was the acting Network Director.

Roderick Ismay: Okay. Right.

Mr Beer: Would he be responsible, to your understanding, for signing off the expenditure of large legal fees?

Roderick Ismay: I'm sorry, I don't know.⁴⁹

52. As well as Mr Ismay's involvement in the *Cleveleys* case, the 2005 Horizon integrity meeting, and the *Castleton* case, the evidence from within his department, Product and Branch Accounting, shows it was the control centre of "remote access". The Winn/Lusher email⁵⁰ first showed this, confirmed by Mr Winn's testimony.⁵¹ The recent Witness Statement from Jane Smith corroborates it, as well as stating that in 2011 there was a communication to P&BA and NBSC staff to the effect that they should not use the phrase "system issue" when speaking about Horizon.⁵²
53. Furthermore, Mr Ismay's subordinate, Andrew Winn, attended the 2010 meeting about the Receipts and Payments Mismatch Bug just before Mrs Misra's trial, and he told the Inquiry that he reported back from it either directly to Mr Ismay, or to him via Alison Bolsover.⁵³ Immediately after the trial Mr Ismay disseminated the Misra "bandwagon" email, and passed on Mr Smith's congratulations and thanks. Mrs Misra was sentenced on 11 November 2010.⁵⁴ Then, on 15 November 2010, there was a conference call to decide between the "Solutions" discussed in the Receipts and Payments Mismatch meeting.⁵⁵ Mr Ismay was among the eleven recorded attendees, who also included Dave Hulbert, Dave M King and Lynn Hobbs. The meeting invitation sets out the three "Solutions" verbatim from the meeting note, and then says the preferred option is Solution Two, with this rider: "*We are looking for you as senior stakeholders to agree this approach as a way forward.*"
54. We submit it cannot have been a coincidence that this meeting took place only after Seema Misra had been convicted and sentenced. Mr Ismay was the attendee with the most direct knowledge of the case. He must have been keenly aware that Mr Smith would not want the result of the case to be disturbed by the twin exposures from the meeting Mr Winn had attended, first that Horizon had a bug which had caused

⁴⁹ INQ00001145 pp31-32 (internal pp124-126)

⁵⁰ POL00117650

⁵¹ INQ00001059 pp44-45 (internal 176-178), answering questions relating to POL00092640

⁵² WITN05690100 pp28-29 paras 71-72

⁵³ INQ00001059 p43 (internal p172)

⁵⁴ UKGI00014943

⁵⁵ POL00294684

discrepancies in branch accounts, and second, that Fujitsu was able to tamper with branch accounts without the Subpostmaster's knowledge. We therefore submit that he will have taken steps to ensure that the meeting was not fixed for an earlier date.

55. It is also suspicious that there are no other records of the meeting. Mr Ismay would not have wanted to leave any trace that Post Office knew of Fujitsu's ability to tamper with branch accounts, given his assurance that there were no "back doors", and we referred to the disappearing Lynn Hobbs email in our Phase 3 and Phase 4 Closing Statements.
56. The next crumb of surviving evidence is an email dated 26 November from Mike Granville, which refers to Mr Ismay attending a recent meeting with him and Mike Whitehead and Lynn Hobbs.⁵⁶ The subject was the JFSA's concerns which, by then, had been raised with Ed Davey MP. BIS were asking for "lines" that they could take back to the JFSA, so Mr Granville was preparing a briefing for them:

Mr Beer: So what he's essentially saying to you, amongst others, is, "Is it okay if we say this to the Government?", yes?

Roderick Ismay: Yeah, yeah.

Mr Beer: *"The Horizon system and accompanying contractual processes remain fully robust. Their integrity and sound basis have been demonstrated over many years, and they have underpinned the provision of effective and sustainable service to Post Office customers. [Post Office] refutes the unsubstantiated allegations made by the JFSA."*

Would it be fair to describe that as the usual line: that Post Office say that the system is fully robust?

Roderick Ismay: I think so, yeah.

Mr Beer: He addresses here the Mrs Misra case ...

"It is probably inappropriate to comment to the MP about the detail of the trial [but point out that an IT expert was used] and a clear decision was arrived at by the court."

There's nothing in here about the receipts and payments mismatch bug, is there?

Roderick Ismay: No.

Mr Beer: There's nothing in here, take it from me, in the rest of the briefing to the Government, about the fact that Fujitsu can tamper with branch accounts without the subpostmaster being able to see that they've done so, is there?

Roderick Ismay: No. No, there isn't.

Mr Beer: Did you raise that point?

Roderick Ismay: I don't know.

Mr Beer: You knew about that, as you've accepted, having been at the meeting on 15 November 2010. When you received this email, "This is what we're going to brief the Government", did you think to say, "Hold on, I've got some new information"?

Roderick Ismay: No, I don't think I did. In hindsight, I can see that I probably should've but I don't think I did, no.⁵⁷

57. This was pure dissembling. The final nail in the coffin of Mr Ismay's credibility arrived in the form of the one email he left to posterity about his knowledge of remote access, which dates from 29 November 2010:

The issue sometimes known as the "Receipts and Payments Mismatch" has come up in some recent emails. There have been several business discussions about how to

⁵⁶ POL00120561 p1

⁵⁷ INQ00001145 p10 (internal pp37-40)

resolve it and an option had been referred to which, if adopted, would have led to adjustments being made direct in Horizon.

For clarity, whilst this was (for completeness) flagged as an option, my understanding is that it has always been rejected as it would undermine the long standing principle that all entries in Horizon be initiated or authorised by the branch.

It is undoubtedly possible with any IT system that special mechanisms could be developed to adjust users systems and data, however, POL IT colleagues have remained satisfied.

“(A) that POL would not wish this facility to be built for Horizon, and

“(B) that there are segregations of duties and change management controls which would prevent Fujitsu from deploying such functionality.

The specific ‘R&P’ issue has arisen from a non-compliant series of user actions in branch.⁵⁸

58. Mr Ismay’s evidence on this email was tortuous.⁵⁹ In sum, it was a transparent attempt to explain away and cover up the fact that he, and indeed the Post Office, knew that there were back doors into Horizon. There was a deep significance to that knowledge: if branch accounts could be tampered with then all the past convictions based on Horizon evidence were in doubt (as Mr Wilson had flagged⁶⁰). This email puts Mr Ismay in the centre of the frame for being party to the Criminal Prosecutions Conspiracy we outlined in our Phase 4 Closing Statement, as well as the *POL v Castleton* and the *R v Seema Misra* Conspiracies.
59. Angela Van Den Bogerd had a less lengthy but nonetheless important role to play in that Criminal Prosecutions Conspiracy. She was a recipient of the disappearing Lynn Hobbs email. This in itself was problematic for her, but it was followed swiftly by her involvement in the interview of a suspended Subpostmaster from Ferndown in Dorset. Ahead of the interview she had received an email from Tracy Marshall which informed her that Fujitsu could remotely change branch accounts, albeit offering various false but reassuring qualifications as well.⁶¹ During the Ferndown interview, in answer to direct questions, she gave misleading responses, and this is what she had to say about them:
- Q. ... In the light of the [Marshall] email that you'd received the month before on 5 December, what you said there wasn't true, was it?
- A. So on 5 December Lynn said Post Office can't, Fujitsu can, and that's what I've said there, that nobody in Post Office can get into the system.
- Q. Oh, come on, Ms van den Bogerd. Are you saying that what you said overall there is accurate?
- A. So that is accurate. We go on to talk later about Fujitsu, I believe, but, in terms of what I said there, that was accurate: Post Office -- nobody in Post Office can get into the system then and I still don't think anybody can now, even today even four years after I've left the business.
- Q. It was inaccurate by not being a full account, wasn't it?
- A. So –

⁵⁸ POL00120475

⁵⁹ INQ00001145 pp11-14 (internal pp43-53)

⁶⁰ POL00106867

⁶¹ POL00294728

Q. "Nobody in Post Office can do this but we found out that people in Fujitsu can", that would be the open and transparent thing to say, wouldn't it?

A. So, at the point here, as you can tell from the notes here, it's quite -- it was quite confrontational between Val and Kevin, and I came in at this to try and calm, so that we could actually start having a proper conversation there. But what I've said there is correct: nobody in Post Office can get into the system, and then Val went on to say about Business Development in the Chesterfield team and still nobody in Post Office can get into the system.

Q. Did you think that was the honest thing to do, to only talk about Post Office, when you knew very well about Fujitsu's facility remotely to access branch accounts?

A. So I think it was important in terms of the distinction. Nobody in Post Office can, and that's what I was saying. The conversation goes on but all I was doing at that point was distilling the confrontation exchange between Kevin and Val.⁶²

60. This typified Ms Van Den Bogerd's hard faced attitude: it was acceptable to mislead if it was expedient, for example to pacify someone. This was further demonstrated by Mr Beer KC putting it to Ms Van Den Bogerd that she did not tell the truth even in her GLO evidence, reciting from a Witness Statement in which she claimed not to have known that Fujitsu could insert transactions into branch accounts until 2018:

Q. In what respect were the communications of December 2010 and January 2011, the latter of which you took at face value, not formal or actual communications of the position?

A. ... The position was changing and, therefore -- and there was very strong messaging coming from within Post Office that these things weren't possible, so it was only really when I had the balancing transaction information confirmed that that really registered with me that that was the formal position and there was evidence of that having taken place in March 2020 --sorry, March 2010.

...

Q. So why didn't you say, "Well, hold on, I was told about it in December 2010"... "or January 2011"?

A. Because I think at that-- as I say, at that point, the [messaging] had been changing, and --

Q. I'm not that concerned about messaging. I'm more interested in the facts.

A. That was my recollection at the time: that it was the balancing transaction that -- for me, was that formal recognition from Fujitsu that that could be done.⁶³

61. Because it was expedient for the Post Office's case to attempt a distinction between what she called "formal recognition" in 2018 and receiving information in email from 2010/2011, Ms Van Den Bogerd felt entitled to provide a wholly misleading witness statement, unconstrained by her statement of truth.
62. Further evidence of Ms Van Den Bogerd willingness to pervert the course of justice comes in the Witness Statement from Davyd Nash. He says that in 2015 she spoke to him (and another) about a case being investigated *"and informed us that we must stop sending emails related to this and commit nothing in writing until we had discussed it with her. This was the only time I recall being asked this, and the explanation from Angela Van Den Bogerd was that this could affect cases of ex-postmasters who*

⁶² INQ00001136 pp16-17 (internal pp64-66)

⁶³ INQ00001136 p20 (internal pp77-78)

*had been caught committing fraud, and who were now looking for an excuse to 'get off' – and this issue might have given them that 'excuse'.*⁶⁴

63. Like so many other Post Office witnesses, Ms Van Den Bogerd equated not getting caught in a lie with telling the truth. The truth, however, is that Ms Van Den Bogerd was in on the remote tampering secret from late 2010; and she was also in receipt of the Ismay whitewash,⁶⁵ so she knew that Mr Ismay had asserted that there were no “back doors” into the system, and the implications for past cases brought against Subpostmasters. Very shortly after that she chose not to reveal her knowledge to a suspended Subpostmaster who was directly raising the issue. This is evidence that she understood the significance of her knowledge, and she was deliberately suppressing it, because of the impact it would have on past prosecutions and suspensions. This, then, was a late entry into the Criminal Prosecutions Conspiracy, and her active role in managing the Second Sight investigation shows how she carried that through into becoming an active party to the Cover-Up Conspiracy.

The Cover-up Conspiracy

The profit motive

64. When Paula Vennells became Chief Executive of Post Office Limited in 2012, she knew how her success would be defined: the Post Office needed to become profitable as quickly as possible. She almost admitted as much:

I had an objective, it is right, as the Chief Executive of the company, to bring it to – it wasn't profitability but a commercial sustainability so that it consumed less funding and less subsidy from the Government.⁶⁶

65. Coming to her job much later, Nick Read made this assessment of the Post Office's past: ... reducing reliance on the public purse for investment and subsidy became the company imperative. And the pursuit of trading profitability became the new mantra, often to the exclusion of many other considerations...

When the Post Office Limited separated from Royal Mail in 2012, the annual loss was some £120m. Reducing this loss and seeking greater commercial sustainability became the overriding priority of the business and its shareholder, not least to reduce reliance for funding from the Government. By 2016, in just 4 years, a loss had been turned to profit. That's no mean feat. But at what cost?⁶⁷

66. The cost is now clear: the only way profitability could be achieved over such a short time was by covering up the Horizon problem. This ensured that the Post Office was given the subsidy it needed for Network Transformation, the compulsory programme that required branches to fit into a mould that was profitable for Post Office.⁶⁸ In August

⁶⁴ WITN05850100 pp13-14 para 36

⁶⁵ POL00088956

⁶⁶ INQ00001153 p12 (internal p45)

⁶⁷ Speech delivered 8 April 2021, quoted with approval in his Witness Statement dated 13 September 2024:

WITN00760300 p31 and p33

⁶⁸ POL00027540 evidences the move to making it compulsory for branches to conform to one of three types which would lead to “a Post Office with higher and more robust profitability” (p4). The Paper and Annexes by Mark Davies were described by Sir Martin Donnelly as “distasteful” and “unpleasantly manipulative” – INQ00001188 p45 and p46 (internal p178 & p182).

2013, Alice Perkins described how the Second Sight Interim Report nearly threw the Network Transformation path to profitability off track:

the SS interim report and the timing of its publication had been potentially very serious indeed for the PO in terms of our national reputation and the effect it could have on our funding negotiations with the Government. In the event, it had not come out so badly partly because of the way the Minister had handled her statement in the House of Commons. But it had been very worrying at the time.⁶⁹

67. A £640m funding commitment was announced in November 2013.⁷⁰

68. This single-minded focus on funding and profit is an issue Dame Sandra Dawson and Dr Katy Steward considered. To put their findings in very broad terms, they point out departures from reasonably expected standards of corporate governance across the entire senior leadership: Paula Vennells, Alice Perkins, the successive General Counsels, the Non-Executive Directors and the RMG Board. The reason for such a widespread failure lies in the Board's priorities, which they discussed in their Report and their evidence:

MR BEER: ... Issue 1, the priorities of the Board in July 2013... paragraph 217 on page 58, you say:

"... the findings of the [Second Sight Interim] report contain sufficient information to warrant the Board giving priority to getting a stronger grip on Post Office's investigations and prosecutions policy and practice, particularly, but not solely, when Horizon data was used. The Board should also have been paying attention to what they were being told by Second Sight about Post Office's attitudes and approach to subpostmasters, particularly as it had resonance with what was becoming a familiar refrain from investigative journalists and MPs. [You] had not seen evidence that either the Executive or the Board saw those issues as priorities."

So can you expand upon or explain the conclusion that you reached there? This is about prioritisation.

DAME SANDRA: It's about, yes, where the gaze of the Board was falling. It was falling on brand and reputation, it was falling on securing Government agreement for ongoing funding, it was securing on -- it was focused on getting Government support for the strategic plan, which was connected to funding. It was helping RMG prepare for privatisation, and it was continuing to create the Post Office, an independent business, separate from RMG, in which they had to build their own standalone governance structures and central functions. All good priorities.

But, at the same time, there was the, as we've indicated, media, ministerial, Parliamentary interest and identity of what, on the face of it, appeared to be serious problems in the use of Horizon data in prosecutions. This, as far as we could see, was not a priority for the Board at all.⁷¹

69. The truth is that over twenty years the gaze of the Board did fall intermittently on the *"serious problems in the use of Horizon data"*. It is no coincidence that whenever it did fall there it was quickly diverted away. Had the Horizon problem been uncovered and faced in the summer of 2013, the same two ruinously expensive problems that face the

⁶⁹ POL00381455 p1

⁷⁰ BIS press release, 'Post Office secures additional government investment to complete branch modernisation', dated 27 November 2013

⁷¹ INQ00001206 p20 (internal pp78-79)

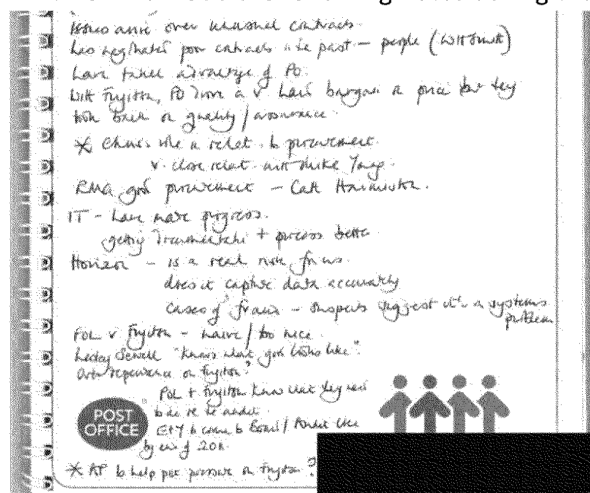
Post Office now would have been present then: 1) compensation, and 2) a Horizon replacement. As Alistair Cameron admitted in 2020:

We did not resolve underlying issues, allowing them to recur continuously as we prioritised other change and our journey to profit.⁷²

70. By looking away from the problem, even to the extent of covering it up where necessary, the eventual reckoning has grown, so – in principle – it would have made more sense to face up to it at an earlier stage. In practice, however, it was always easier for leaders to divert the gaze. The relationship the Post Office had with Government, and the way that officials accepted everything they said, gave the leadership reason to believe that their narrative, hostile to the Subpostmasters, would remain unchallenged. They had reason to believe that if they doubled down on the Horizon reliability myth the Horizon problem would never be exposed. They could not have known that the Subpostmasters would organise themselves so effectively to drag the Horizon problem out into the light, nor would they have bargained on Fraser J becoming their nemesis.

Burying knowledge of remote tampering – EY as a template

71. EY, the Post Office’s auditors, raised troubling findings in their 2011 management letter.⁷³ They were brought to Ms Perkins’ attention by Angus Grant, an EY partner, in September 2011. Ms Perkins made the following notes during their meeting:⁷⁴



72. Ms Perkins gave evidence about these notes as follows:

Mr Beer: You’re told in one sentence “Horizon is a real risk for us”. You’re told that the auditor has concerns over whether it captures data accurately and then you’re told that suspects are suggesting that it’s a systems problem. Aren’t those things linked together?

Alice Perkins: Well, clearly, now, they are absolutely linked together.

Mr Beer: Clearly, on the face of the page, they’re linked together: one follows the next.

Alice Perkins: They were not – they weren’t linked in that way in my mind, at that time.⁷⁵

⁷² POL00175235 p4

⁷³ POL00030217 p29-40 and p34 (end of top left hand box of text)

⁷⁴ WITN00740122

⁷⁵ INQ00001156 p7 (internal p25)

73. It is telling that Ms Perkins denied the natural reading of her notes. Many witnesses resorted to this when asked about problematic documents. She also fell into another typical pattern: she “remembered” details that supported the story she wanted to tell,⁷⁶ but could not remember anything of importance, such as what she did as a result of Mr Grant’s concerns, not even whether she discussed them with Ms Vennells.⁷⁷
74. Had she discussed them with Ms Vennells, it would have made no difference. Ms Vennells was also aware of EY’s concerns but there is nothing to suggest she took action as a result. The EY management letter for the year ended 27 March 2011 came shortly after Ms Vennells was promoted to Managing Director. In essence, it said that there was a failure to keep track of Horizon users, and who could access what within the system, giving rise to Fujitsu staff being able to access it remotely without any proper log of what they were doing. The EY management letter said “*This may lead to the processing of erroneous or unauthorised transactions*”.⁷⁸ The Executive Summary drew attention to this as the “*Main area*” for management to focus upon.⁷⁹
75. Ms Vennells’ team understood the implications. This email from November 2011 went to Rod Ismay, Chris Day, Mike Granville, Susan Crichton, Mike Young, Lesley Sewell and others. It says:
- The RMG ARC requested a paper on the IT controls and the Horizon claims. With input from various experts this has now been drafted but it is clearly a sensitive area so I attach the draft for your review and comments...⁸⁰
76. Chris Day’s name was on the draft RMG ARC Paper attached, which began with this:
- This paper sets out the controls that operate around the Post Office Limited (POL) Horizon system, the relationship with Fujitsu and why the Post Office is able to rely on these controls in the light of:
- a. IT control issues identified at last year's audit; and
- b. possible challenges against the integrity of the Horizon platform.⁸¹
77. Rod Ismay responded with this addition for the opening:
- The IT control issues identified during the audit did not question the integrity of accounting data in the system. Rather, they were recommendations about the documentation and authorisation of changes to the system and about opportunities for streamlined assurances.⁸²
78. He went on to give a rationale for his addition:
- The rationale for this is that for purposes of ongoing RMG Criminal Prosecution activity, Rob Wilson, (RMG Head of Criminal Law) has advised that were that not the case then current prosecutions would have to be stayed. It is important to make clear EY did not challenge the integrity of accounting data in the system.⁸³
79. The addition was duly made to paragraph 2, and the Paper was presented to RMG’s ARC in December 2011.⁸⁴ The ARC minutes also reflect Mr Ismay’s addition to the Paper,

⁷⁶ INQ00001156 p5 (internal pp19-20)

⁷⁷ INQ00001156 p6 (internal pp21-22)

⁷⁸ POL00030217 pp29-40 and p34 (end of top left hand box of text)

⁷⁹ POL00030217 p3

⁸⁰ POL00295091 p1

⁸¹ POL00295092 p1

⁸² POL00295091 p1

⁸³ POL00295091 p1

⁸⁴ RMG00000083

followed by a short paragraph on Horizon prosecutions and civil claims.⁸⁵ Plainly, therefore, neither POL’s senior leadership team, nor the members of RMG ARC could fail to make the connection between the EY findings and Horizon prosecutions.

80. In both the RMG ARC Paper and the Minutes it was said that the EY recommendations had been addressed. However, according to Lesley Sewell, no one took responsibility for the recommendations until she took charge and requested the RMG Internal Audit, which reported in March 2012.⁸⁶ The RMG Internal Audit *Review of Key System Controls in Horizon* was circulated to Ms Vennells, among others.⁸⁷ The findings included: *“It is difficult to detect and prevent inappropriate changes being made to master data.”*⁸⁸

81. It gave an update on the EY recommendations as at January 2012. Note that all the recommended actions were marked either “substantial progress made” or “further work required”, so none had been completed:⁸⁹

Appendix B - Update on Actions Arising from 2011 E&Y Audit

Finding	E&Y Rating	Summary	Status
1	High	Governance of outsourcing arrangement with Fujitsu: POL is responsible for the governance and risk and control frameworks and should have visibility and assurance over their design and operating effectiveness.	Substantial progress made
2	High	Segregation of change management duties: Inappropriate access should be revoked and roles for development and migration to live environment should be segregated.	Further work required
3	High	Change management process: All changes should be appropriately authorised, tested and approved prior to deployment to live environment.	Substantial progress made
4	High	Privileged access: Privileged access to IT functions should be reviewed to determine whether it is appropriate.	Substantial progress made
5	Med	Periodic POL-owned review of user accounts: To assist in the identification of inappropriate access and potential segregation of duties conflicts.	Substantial progress made
6	Med	User administration: Review the current user access policy and strengthen the existing user administration process within POL and third party service providers.	Substantial progress made
7	Low	Infrastructure logical security settings: Undertake architectural review and periodic scan of passwords as part of a penetration testing schedule.	Further work required
8	Low	Password parameters: Review and update the Information Security policy and configure all applications in line with policy requirements.	Further work required
9	Med	Access to generic privileged accounts: Review across all applications. Consider replacing with individual accounts and implement monitoring controls.	Substantial progress made
10	Low	Incident identification and resolution: Regular review of the problem and incident management process to ensure incidents are identified, classified and resolved on a timely basis.	Further work required

The findings above reflect our assessment as at the end of January 2012.

82. Ms Vennells mentioned during her evidence that she asked for a briefing document explaining EY’s findings.⁹⁰ There is a briefing addressed to her and Chris Day from Lesley Sewell, dated May 2012, which contradicts the above document. It states:

Through an independent Royal Mail Group audit conducted on the Post Office systems (November 2011), it was agreed that all actions had been completed as planned. Two actions had minor activities still to be completed, which were addressed by December 2011. (See Appendix A for a summary statement for each of the 2010/11 observations as agreed with the RMG audit.)⁹¹

83. Appendix A was identical to the above RMG Appendix except for the heading and the content of the “Status” column, which had the wording removed and replaced with colours:⁹²

⁸⁵ RMG00000003 pp4-5 paras (d) to (f)

⁸⁶ INQ00001148 p32 (internal pp127-128)

⁸⁷ POL00029474 p7

⁸⁸ POL00029114 p3

⁸⁹ POL00029114 p9

⁹⁰ INQ00001151 p40 (internal p158)

⁹¹ POL00143075 p2

⁹² POL00143075 p4

Appendix A Summary status of the 2010/11 audit observations – as agreed with the RMG independent audit in November 2011.

Finding	E&Y Rating	Summary	Status
1	High	Governance of outsourcing arrangement with Fujitsu: POL is responsible for the governance and risk and control frameworks and should have visibility and assurance over their design and operating effectiveness.	
2	High	Segregation of change management duties: Inappropriate access should be revoked and roles for development and migration to live environment should be segregated.	
3	High	Change management process: All changes should be appropriately authorised, tested and approved prior to deployment to live environment.	
4	High	Privileged access: Privileged access to IT functions should be reviewed to determine whether it is appropriate.	
5	Med	Periodic POL-owned review of user accounts: To assist in the identification of inappropriate access and potential segregation of duties conflicts.	
6	Med	User administration: Review the current user access policy and strengthen the existing user administration process within POL and third party service providers.	
7	Low	Infrastructure logical security settings: Undertake architectural review and periodic scan of passwords as part of a penetration testing schedule.	
8	Low	Password parameters: Review and update Information security policy and configure all applications in line with policy requirements.	
9	Med	Access to generic privileged accounts: Review across all applications. Consider replacing with individual accounts and implement monitoring controls.	
10	Low	Incident identification and resolution: Regular review of the problem and incident management process to ensure incidents are identified, classified and resolved on a timely basis.	

84. The May briefing was therefore claiming that all the actions marked green had been completed by November 2011, and the two marked yellow were completed by December 2011, whereas the RMG internal audit showed that by January 2012 none of the actions had been completed.
85. In her evidence Ms Sewell was happy to attest to the validity of the RMG audit, and own much of the contents,⁹³ but she was unable to explain the contradictions in the May briefing. In relation to the May briefing’s appendix she said “I think it’s unusual for it not just to be lifted”.⁹⁴ In other words, had the briefing been honest, it would have copied and pasted the Appendix from the RMG Internal Audit Review, rather than reproducing it with misleading changes.
86. It is notable that in the same month that the briefing was prepared, Ms Vennells and Ms Perkins met with James Arbuthnot and Oliver Letwin on 17 May 2012. It is not clear whether Lesley Sewell attended, as there is a question mark next to her name on the list of attendees.⁹⁵ In the Post Office plan for the meeting, it was envisaged that Ms Sewell would say words to this effect:
- Although we recognize that Horizon is not perfect, no computer systems [sic] is, it has been audited by internal and external teams, it has also been tested in the courts and no evidence of problems found (of the nature suggested by JFSA). Horizon was designed with integrity in mind from the very beginning.⁹⁶
87. The “External Scrutiny” section stated:
- Horizon and Post Office Ltd systems environment have always been subject to external scrutiny for both assurance and accreditation purposes. Ernst & Young carry out an annual financial systems audit...⁹⁷
88. It therefore seems that the May briefing was prepared to enable POL to mislead the MPs by relying upon the EY audit as if it were evidence of Horizon’s reliability, thereby covering up the truth that EY had in fact raised concerns about Horizon’s integrity, which had not been fully addressed by January 2012.

⁹³ INQ00001148 p33 (internal pp129-130)

⁹⁴ INQ00001148 pp33-34 (internal pp132-133)

⁹⁵ POL00033825 p2

⁹⁶ POL00033825 p5

⁹⁷ POL00033825 p12

89. In light of that, it is interesting that Ms Sewell presented at the Inquiry as very remorseful. She made notes during a call with Ms Vennells in the run-up to the Hamilton appeals hearing in April 2021. Mr Sewell's notes suggest that the main topic of conversation was knowledge of "remote access", and EY featured twice. At one stage she noted that "PV got jumpy".⁹⁸ The call made Ms Sewell sufficiently uncomfortable that she subsequently blocked Ms Vennells.⁹⁹ We submit that further investigation into the electronic properties of the misleading May briefing should be undertaken, to discover if Ms Sewell was the sole author.
90. Despite the misleading May briefing, neither Ms Vennells nor Ms Perkins can claim to be unaware of the true state of affairs. Not only were they both on the circulation list of the RMG Internal Audit *Review*, but Ms Perkins made handwritten notes on one copy, in which she said "which parts of this are relevant to the subpostmasters' issues?".¹⁰⁰ When asked about this, she said that she had read the *Review* in preparation for the meeting with the MPs, but she could not remember of whom she asked the question.¹⁰¹
91. She also wrote the word "Deloitte" on the front page of her copy of the *Review*.¹⁰² This evidently referred to misleading assertions made by Susan Crichton at the January Board meeting, which were recorded in the Minutes as follows:
- Les Owen asked for assurance that there was no substance to the claims bought [sic] by subpostmasters which had featured in Private Eye.
- 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 Deloitte. 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.
- ACTION: Susan Crichton suggested that she clear the audit report with the external lawyers and if it is possible to give the report privileged status it would be circulate it [sic] to the Board.¹⁰³
92. Both Susan Crichton¹⁰⁴ and Alice Perkins¹⁰⁵ received emails subsequently that explained that the involvement of Deloitte in the RMG Internal Audit *Review* fell far short of what the Board had been led to believe:
- The preparatory field work relating to the report was carried out by the Royal Mail Internal Audit and Risk Management team, which involved an IT expert seconded from Deloitte UK under an Outsourcing Agreement to assist in the review.¹⁰⁶
93. The assertion that the RMG Internal Audit report was "very positive" was also misleading, given its content, and the assertion that the business "*has won every criminal prosecution using Horizon evidence*" was simply untrue. As General Counsel,

⁹⁸ WITN00840103 p1

⁹⁹ INQ00001148 p34 (internal p135)

¹⁰⁰ POL00107127 p1

¹⁰¹ INQ00001156 p11 (internal pp42-43)

¹⁰² POL00107127 p1

¹⁰³ POL00021503 p6

¹⁰⁴ POL00142947

¹⁰⁵ POL00338794

¹⁰⁶ This wording appears in the email sent to Ms Crichton (POL00142947) and the email sent to Ms Perkins (POL00338794)

Ms Crichton was in a position to find out that Nichola Arch, amongst others, had been prosecuted on Horizon evidence, yet acquitted by the jury in very short order.

94. As for the plan to circulate the RMG Internal Audit report if it could be cloaked in privilege, the *Review* was indeed marked as such, in another instance of questionably invoked privilege. It was subsequently circulated “for noting” with the April Board pack,¹⁰⁷ and there was no attempt to correct what had been said about it in the January meeting. Both Ms Perkins and Ms Crichton knew, by then, that the Deloitte involvement came in the form of a secondee to RMG, but the rest of the Board was left with the impression that a reputable, independent firm had approved a “very positive” report from RMG. Les Owen, in particular, had raised an important question, and in his Witness Statement to the Inquiry he confirms that his concerns were satisfied as a result of Ms Crichton’s false assurances.¹⁰⁸
95. In light of the concerns Angus Grant had raised in September 2011, and following the January 2012 Board discussion prompted by Les Owen, it was incumbent upon Ms Perkins 1) to make sure that EY’s recommendations were fully implemented, and 2) before meeting with Mr Arbuthnot and Mr Letwin, to understand what impact the EY concerns had on Horizon prosecutions. Instead, she allowed both the Board and the MPs to be egregiously misled with false assurances.
96. This practice continued over many years, because Fujitsu’s ability to tamper with branch accounts was a hole beneath the water line, and every time it sprang a leak Post Office would apply a fix, only for a fresh leak to break through not long afterwards. The Deloitte Report was a particularly dangerous moment for those who were determined to suppress the truth, as a Cartwright King Note dated 27 March 2015 shows. It pointed out that the information about “balancing transactions” could be disclosable to convicted Subpostmasters, and described a call between lawyers:
- In a telephone conference with Rodric Williams of POL and Andrew Parsons of Messrs Bond Dickinson we were informed that the Deloitte Report was correct where it identifies a method of posting of 'Balancing Transactions'. We were instructed that it was possible to 'inject' a transaction unilaterally into a branch's accounting records without the consent, approval or indeed knowledge of the SPMR; an 'injected' transaction could be a negative-value transaction; it is not clear as to whether or not that 'injected' transaction would be visible to the SPMR or a defence expert witness.¹⁰⁹
97. Witnesses to the Inquiry have made various attempts to explain what they knew about “remote access”,¹¹⁰ but it is unavoidable that the truth was suppressed until the claimants forced it into the open through the Group Litigation. That in itself proves it was intentional suppression, all parties knowing that if the truth came out there would be serious consequences (as indeed there has been since it did). The fact that the suppression came from the top is proven by the notorious email Ms Vennells sent before her Select Committee appearance in 2015. This was another email deploying her

¹⁰⁷ UKGI00011499 p91

¹⁰⁸ WITN10340100 p19 para 52

¹⁰⁹ POL00029843 pp2-3 para 6

¹¹⁰ See para 63 above referring to Angela Van Den Bogerd, or Rodric Williams’ Witness Statement at paragraph 144, claiming that he did not “properly focus” upon the Deloitte finding that “Superusers” could delete transactions (WITN08420100).

trick discussed above at paragraph 104 above. She pays lip service to wanting the truth, while making it absolutely clear what she really wants her team to achieve:

1) "is it possible to access the system remotely? We are told it is."

What is the true answer? I hope it is that we know this is not possible and that we are able to explain why that is. I need to say no it is not possible and that we are sure of this because of xxx and that we know this because we have had the system assured...

Lesley, I need the facts on these - I know we have discussed before but I haven't got the answer front of mind - too many facts to hold in my head! But this is an important one and I want to be sure I do have it. And then Mark, to phrase the facts into answers, plus a line to take the conversation back up a level - i.e., to one of our narrative boxes/rocks.¹¹¹

Failing to "mark" Second Sight

98. Returning to 2012, it is possible (however extraordinary that may be) that Ms Vennells, and/or Ms Perkins, had not understood the scale of the Horizon problem by the time they met with MPs in May 2012. Such ignorance, inexplicable and inexcusable as it was, might be behind their instinctive reluctance to grip the issue. Ms Vennells had little excuse: although she had only been CEO since April 2012, she had been Head of Network throughout David Y Smith's tenure as CEO, and was part of his Executive Team. He had copied her into the "bandwagon" email that followed Mrs Misra's trial,¹¹² and she was included in a lengthy draft briefing for BIS (which was a typically "robust" refutation of the JFSA's claims including remote access) in the aftermath of the 2010 meeting between Alan Bates and Ed Davey.¹¹³ That 2010 document amounted to a blind defence of Horizon. Mike Granville, in a covering email, sought concurrence on the lines to take were Horizon to be challenged: "As you all have had an involvement in this particular issue — I'm looking to see if I can gain concurrence to this particular statement — or to check the process whereby concurrence can be quickly achieved." Ms Vennells was the first addressee on that email. Although there is no evidence that she was directly involved in the Ismay whitewash, she (as the covering email stated) "had an involvement in this particular issue" (i.e., formulating how BIS was to be briefed). It is now clear that grave inaccuracies, even lies, about remote access were approved in that briefing.¹¹⁴ Her burying of EY's concerns suggests a reckless disregard for the truth. If (at this stage) she did not know the Post Office "lines" about Horizon were pure myth, Ms Vennells ought to have done so. It is more likely that she had begun to dissemble.

99. Lord Arbuthnot believed – at first – that the Post Office was engaging "in good faith" with the Second Sight investigation.¹¹⁵ Ms Vennells and Ms Perkins may have appeared, initially, to have engaged honestly with the investigation, but the way they explained their actions to the Board reveals their true intentions. At the May 2012 Board, they mentioned the fact that they had hired Second Sight under Any Other Business:

Paula Vennells and the Chairman updated the Board on the meeting with James Arbuthnot MP and Oliver Letwin MP, taking them through their constituency cases which,

¹¹¹ POL00151046 p5

¹¹² POL00176067

¹¹³ POL00120561

¹¹⁴ POL00120561 pp9-10 – also see paragraphs 310 to 319 below which describes the creation and dissemination of those lies.

¹¹⁵ INQ00001127 p14 (internal pp53-54)

they believed, had challenged the integrity of the Horizon system. The meeting had been a success and James Arbuthnot had now agreed to facilitate another meeting with the other MPs who also had cases in their constituencies. The business had also agreed to use a forensic accountant to investigate the system and give further comfort to those concerned about these cases.¹¹⁶

100. Evidently hiring Second Sight was just a sideswipe, to get the troublesome MPs out of the way. Then in June 2012 Ms Vennells sent this email to the Post Office Board:

You may see or hear some coverage this evening/tomorrow am on the external review we have agreed to commission into the very few cases where Subpostmasters have claimed the Horizon system caused errors, resulting in them being falsely accused and/or convicted of fraud.

This is a deliberate decision by us to be utterly transparent and hopefully to close down what has become a bandwagon based on no fact.¹¹⁷

101. At this point, Ms Vennells believed that the MPs had got on the Misra bandwagon, and the strategy for closing them down was to let Second Sight tell them that there was nothing wrong with Horizon. This complacency meant that - at first - no one was “marking” Second Sight.

102. However, in March of the following year Ms Vennells and Ms Perkins got a shock, when Lord Arbuthnot wrote to Ms Perkins. His letter of 11 March 2013 said:

In my discussions with Ron and Ian, I gather that questions have been raised over the absolute integrity of Horizon, though without their being so fundamental as to say that the system is not fit for purpose. Since it is a system that remains in current use, there is the risk that existing SubPostmasters and mistresses may find themselves in exactly the same position as those whose cases are being investigated. I know that definitive results are not yet available, but I hope the Post Office would be ready to address this issue.¹¹⁸

103. On the same day, Ms Vennells wrote to Alwen Lyons:

Now to my biggest concern - we are taking big decisions on IT currently and irrespective of the independence of the SS work, which it is critical to protect, I/we should be aware asap if there are emerging issues with Horizon... I am surprised that I picked this up only by reading a letter from James to Alice. I'd have thought that a loyal supplier would have let us know... I don't want us being defensive as I'm pleased to find these things out (sort of!) - but goodness, this is very very serious if either true and/or leaked. Who is now working up the Comms, will you arrange a pre-brief for 25/3 and who do you think should attend?¹¹⁹

104. This email is a typical example of Ms Vennells writing to her team with a mixed message. On the one hand, she refers to the need for Second Sight to be independent, and says she is pleased to hear the hard truths they were telling “(sort of!)”, but at the same time, she makes it plain that leaks and “Comms” are at the front of her mind. It is extraordinary that she put the truth (i.e., about the “absolute integrity of Horizon”) on a par with adverse publicity (i.e., it being leaked). She pays lip service to the idea that Post Office should try to find out the truth about Horizon, but only while simultaneously reminding her team to contain any leaks. As the Inquiry has so often seen, what she

¹¹⁶ UKGI00019348 p8

¹¹⁷ POL00295359

¹¹⁸ POL00097588 p2

¹¹⁹ POL00144356 p2

would want her team to do would be to suppress and deny the truth. This happened, yet again, as a result of this email: those who questioned, let alone sought to challenge, the Horizon myth were stonewalled. In this instance it can also be seen from her email sent within days of her first shocked reaction to Lord Arbuthnot's letter, in which she describes *"tricky handling of colleagues and the Chairman regarding James Arbuthnot MP and Second Sight (who managed to leave him with the impression that there is a serious problem with Horizon, such that he has called an open meeting of MPs. Etc etc.)"*.¹²⁰ Clearly she very quickly satisfied herself that the concerns being raised by Second Sight should be dismissed out of hand.

105. If Ms Vennells had really wanted to find out the truth about Horizon, all she needed to do was let Second Sight carry on as before. Instead, as Lord Arbuthnot said in his Witness Statement, there was a change of course:

My letter caused strong push back from the Post Office, and on 19th March 2013 there was a meeting between myself and Alice Perkins. It appears from a speaking note ... that [she] said amongst other things: that the Post Office didn't believe anything was wrong with Horizon; that they were very concerned that any opinion being formed by Second Sight at this stage was being communicated; that Second Sight should not be expressing an opinion, not least as PO hadn't had right of reply; that there was a limit to the Post Office's willingness to continue funding investigations; that it seemed there would be some sort of deadline for cases of the end of February (though it is unclear from the note what this meant); and that the Post Office would not attend the meeting of 25th March 2013...¹²¹

106. In his evidence he said this response *"didn't sit well with the way that Second Sight had been appointed, which was almost a joint exercise between the Post Office and the MPs and the JFSA, and yet it seems that the Post Office was saying that Second Sight were not to talk to us, which seemed to us to be odd and wrong."*¹²² That, evidently, was the strategy that had emerged from Ms Vennells' team *"working up the Comms"*.
107. Over the next couple of months, as Ms Vennells and Ms Perkins realised that they were not going to be able to control the outcome of the Second Sight project, their exchanges became fraught. On 21 May Ms Vennells sent an email explaining all the ways in which she was hoping to be able to put Second Sight back in the box, and Ms Perkins responded with this: *"I do hope you can retrieve this as we are running out of lives on this issue and as Neil [McCausland] said, quite coincidentally yesterday, the timing would be terrible if this were to go wrong."*¹²³ This was undoubtedly a reference to Ms Perkins' chief concern over that summer, which was securing the funding Post Office needed to become profitable.
108. Meanwhile, the Board had received no update on Second Sight since the item mentioning the decision to *"use a forensic accountant to investigate the system and give further comfort"*.¹²⁴ The only information they received on Second Sight appeared in the Significant Litigation Reports, which were always at the back of the Board Packs,

¹²⁰ POL00097732 p1

¹²¹ WITN00020100 pp42-43 para 80

¹²² INQ00001127 p14 (internal p56)

¹²³ POL00098336 p1

¹²⁴ UKGI00019348 p8

for noting rather than discussion.¹²⁵ That included the September 2012 Report, which revealed to the Board, for the first time, that significant litigation included criminal prosecutions, some of which involved the theft of hundreds of thousands of pounds.¹²⁶ This noting paper was close to the back of a 105-page Board Pack. When pressed by the Chair, Susannah Storey, the Shareholder representative on the Board, confirmed that she didn't recall a discussion on the paper, nor did she recall anyone highlighting it.¹²⁷

109. However, the tactic of saying almost nothing about Second Sight to the apparently supine Board could not work indefinitely. A year after the AOB item, at the May 2013 Board meeting, they asked for an update on the investigation. This appears to have been unprompted, because it was raised during the discussion of the Chief Executive's Report,¹²⁸ but the Report has no reference to Second Sight or Horizon.¹²⁹
110. This must have brought home to Ms Vennells and Ms Perkins the reality that hiring Second Sight was not going to "close down" the Horizon problem. The first person to feel the heat was Susan Crichton. She was tasked with providing the Board with its requested Second Sight update, but over the next couple of months that was overtaken by the need to manage reactions to the Second Sight Interim Report. Ms Crichton became the scapegoat during this process. Both Ms Perkins and Ms Vennells wrote typed file-notes that explain why:

Ms Perkins' note following a meeting with Ms Crichton on 31/7/13: ... I understood that SS's investigation had to be independent but in the civil service there would have been someone marking it who was close to all the key people (SS, JA, JFSA) and knew what was going on between them... SC said that as a lawyer it was inappropriate for her to influence the key stakeholders. She would have been criticised had she become close to them. I commented that if she had felt unable to play that role, she should have flagged that up and someone else could have been brought in to perform it (Privately I am astonished at this view which I simply do not recognise from my experience elsewhere).¹³⁰

Ms Vennells' note: ... My reflection on what happened with SS as I write this today (2/9/13), is that Susan was possibly more loyal to her professional conduct requirements and put her integrity as a lawyer above the interests of the business.¹³¹

111. When giving evidence to the Inquiry, they both denied the natural meaning of their own words,¹³² but the similarity in what they wrote tells its own story. Ms Perkins and Ms Vennells must have discussed why the investigation that was supposed to "close down" Horizon problems had begun to expose them instead. These notes show that they convinced themselves at the time that it was reasonable to have expected Ms Crichton to "mark" Second Sight, and hence they wrote notes blaming her, which were no doubt intended to be self-serving. Looking back, however, they were able to see that these

¹²⁵ INQ00001184 p10 (internal p39) – Susannah Storey reflects on the change which took place after the Interim Report, when Horizon litigation was discussed at every Board meeting.

¹²⁶ POL00103348 pp90-94

¹²⁷ INQ00001184 pp11-12 (internal pp44-45)

¹²⁸ POL00021513 p7

¹²⁹ POL00027545 p270-272

¹³⁰ POL00381455 p2

¹³¹ POL00381629 p3

¹³² Vennells: INQ00001152 p45 (internal pp178-180); Perkins: INQ00001156 p39 (internal pp154-156)

notes were not in the least self-serving. Their expectation that Ms Crichton should “mark” Second Sight, and put the interests of the business ahead of her professional conduct requirements, demonstrates that their initial show of good faith was a façade.

The PR tail wagging the Executive dog

112. In the weeks leading up to the publication of the Second Sight Interim Report, Post Office leadership engaged in a scurrilous debate about how to refer to bugs in Horizon. This email from Alwen Lyons to Ms Vennells was an early example, dated 23 May 2013:
- Paula the only things that is not in the brief for James is our move away from ‘there are no bugs in Horizon’ to ‘there are known bugs in every computer system this size but they are found and put right and no subpostmaster is disadvantaged by them’ it would be good to be able to go on and say ‘or has been wrongfully suspended or prosecuted’. I do not think that is a phone call conversation but needs to be aired at some time with James, I would suggest at your meeting.¹³³
113. The date of this email ties to a conversation between Simon Baker of the Post Office and Ron Warmington of Second Sight. In an email exchange on 19 June, they refer to this conversation having taken place “about three weeks ago” or “a month or so ago”. Apparently, Mr Baker told Mr Warmington about “two system defects or bugs”.¹³⁴
114. It can therefore be inferred that in May 2013 Post Office senior management came to realise that Second Sight knew about two bugs, so it was no longer possible to say “there are no bugs in Horizon”. In a typical manoeuvre, they immediately came up with a new line, without taking the trouble to find out if it were true. Had they asked searching questions of their own Problem Management team, let alone of Fujitsu’s SSC team, they would have discovered that the new line was no more true than the original line. It did have the advantage, however, of being more plausible.
115. During late June the Post Office leadership focussed on finding replacements for the word bug. On 28 June Mark Davies and Alwen Lyons responded to an email describing how “Bug 14” manifested with an urgent dictat to replace the word “bug” with “incident”.¹³⁵ On 29 June, Lesley Sewell responded to a summary of the Receipts and Payments Mismatch Bug by saying that “bug” should be replaced with “fault”.¹³⁶ However, the perfect vocabulary change came on 2 July, when Ms Vennells asked her “*engineer/computer literate husband*” for a “*non-emotive word for computer bugs, glitches, defects that happen as a matter of course*” and he came up with “*exception or anomaly*”. Mark Davies said he liked exception “*v much*”.¹³⁷
116. This was put into immediate effect on 3 July. Lesley Sewell and Susan Crichton drafted a briefing ahead of a meeting with Lord Arbutnot, in which the two bugs were renamed “*systems exceptions (anomalies)*”.¹³⁸ Lesley Sewell made the point that “*We need to be careful in our comms not to indicate that we do not have anomalies or exceptions as*

¹³³ POL00105632 p1

¹³⁴ POL00130316

¹³⁵ POL00296821 p1

¹³⁶ POL00341348 p1

¹³⁷ POL00380985

¹³⁸ POL00145100 p6

*that is not the case.*¹³⁹ The same vocabulary was used in a letter of the 4 July from Ms Vennells to Lord Arbuthnot, summarising their discussions on the preceding day.¹⁴⁰

117. The change of language was not lost on Ron Warmington of Second Sight. On 28 June, Ms Crichton wrote to him from her holiday in Croatia to ask about the Interim Report, and he replied:

Croatia? Are you trying to get far enough away that the shockwave won't impact? Seriously, it's all getting a bit heated, not least because of the need to disclose those two Horizon '**defects**' (Gareth Jenkins calls them '**bugs**' in his report) that impacted 77 sub post offices and resulted in some SPMRs "being asked to make good an incorrect amount" (wording from Gareth's 23/06/13 report sent to us).¹⁴¹ [Emphasis added]

118. This was a leadership team obsessed with "spin" and "comms". This resulted in Mark Davies, as Head of Communications, having an unhealthy power within Post Office. His influence over Ms Vennells, indeed Ms Perkins, was obvious and striking. He was constantly on email copy, regardless of the content of the emails. The management of the media and messaging to "stakeholders" dominated the Post Office's strategy, and created a malign policy of "containment", a baleful euphemism for smothering the truth.

Neutering the review of past cases

119. Just before the Second Sight Interim Report was published, the Post Office was provided with a copy, and on Saturday 6 July Ms Vennells wrote to Ms Crichton seeking advice on a number of potential responses to it, including this:

Thirdly, our external lawyers review all prosecutions in the past 12/18 months since PO has been independent of RM, in the light of the SS findings. The JFSA/PO working group reviews the findings. [Why would they not review all cases of false accounting, e.g., over the last 5-10 years, especially where the amounts have been 'small'? I assume 'large' amounts would be less likely to get away with saying they were muddle-headed and not helped? But could we review all? It is the false accounting charge JA was most concerned about.]¹⁴²

120. Mark Davies responded to her alone at 08.27 on Sunday 7 July:

Could we have a word at some point today to discuss this, and specifically how far we go in terms of the wording below? I'm sending this just to you at this stage. I am very concerned that we may get to a position where we go so far in our commitments that we actually fuel the story and turn it into something bigger than it is. I am not at all complacent about the issues, but there is real danger in going too far in commitments about past cases. I say this for two reasons:

- first the substance of the report doesn't justify this response. Indeed the report is at such a level that our current media strategy would mean there would be some coverage, but not very much (the usual suspects). If we say publicly that we will look at past cases (and whatever we say to [James Arbuthnot] or JFSA will be public) whether from recent history or going further back, we will open this up very significantly, into front page news.

¹³⁹ POL00145100 p1

¹⁴⁰ POL00029649 p2

¹⁴¹ POL00189210

¹⁴² POL00099055 p2

In media terms it becomes mainstream, very high profile. It would also give JA a very strong case for asking for a Parliamentary statement from BIS.

- my second concern is the impact that this would have more broadly. It would have the "ballistic" impact which [Alan Bates] fears. It could lead to a very public narrative about the very nature of the business, raising questions about Horizon (the reality of what SS has found would be misunderstood) and having an impact on public views about the PO and really widening the issue to the whole network...¹⁴³

121. Note that later that morning Mr Davies sent this chain to Jonathan Edwards, Ms Vennells' Chief of Staff, saying "*Honestly, I think there is danger in this for her*", and Mr Edwards replied "*Spot on!*".¹⁴⁴

122. Ms Vennells responded:

You are right to call this out. And I will take your steer. no issue.

there are two objectives, the most urgent being to manage the media. The second is to make sure we do address the concerns of [James Arbuthnot] and Alan Bates, mainly looking forwards (but we should be aware AB's driver is really justice for the past); otherwise they will call for re opening cases. It may be that we get to manage AB/JA by playing on the 'go ballistic' view: i.e., I will meet him privately to hear his views about these cases but that we cannot refer to anything in relation to past convictions. Any challenge must go via normal legal routes.¹⁴⁵

123. This shows a leadership team deciding not to look into potential miscarriages of justice because it would create a media storm. The justification, apparently, was protecting Ms Vennells from "*danger*". Meanwhile Ms Vennells used a phrase usually associated with speaking truth to power – "*you are right to call this out*" – for what was actually a twisted show of loyalty to the CEO above all others. This was in keeping with extraordinary mutual praise and support between Mr Davies and Ms Vennells throughout their communications over many years.¹⁴⁶ They each carried this into the evidence that they gave to the Inquiry, as if they thought that their personal loyalty to each other was an indicator of their morality.

124. After further machinations, the end result was two separate neutered reviews of past cases: the mediation scheme, which was designed to fail to achieve justice;¹⁴⁷ and the Cartwright King review, which we discuss further below.

¹⁴³ POL00099055 pp1-2

¹⁴⁴ POL00115976 pp2-3

¹⁴⁵ POL00099055 p1

¹⁴⁶ See, for example, the exchange on 21 March 2019, after the Board had made the decision to apply to recuse Mr Justice Fraser: Davies to Vennells - "*Thank you for asking about me - that's kind of you. I'm ok thanks, I was so proud of the board yesterday. It's hard work but I think we are doing a good job.*" Vennells to Davies - "*Let me know you're ok? And yes, I felt the same about the board. Very proud and pleased. Difficult but completely the right decision.*" PVEN00000505 pp2-3

¹⁴⁷ See, for example, the email Ms Vennells sent to Board Members on 29 August, in which she says "*There are a range of outcomes, from an acceptance that that the subpostmaster was at fault and that no specific redress should will be required; to recognition that the Business could have more effective support which will feed in to the process re-engineering work now underway. There is the clear risk that in some cases the sub-postmaster will argue that financial compensation is appropriate, which again will have to be assessed carefully on a case by case basis. We will establish an approval mechanism to ensure that if any financial settlements are made they are correctly authorised and tracked. We certainly do not believe there are grounds for a blanket compensation scheme, and have not set up this process with this expectation.*" POL00146188 p2

Plan A: sacking Second Sight / Plan B: toning down their Report

125. Alongside neutering the reviews of past cases, as soon as it was clear to Post Office that the Interim Report was not going to “close down” the Horizon problem, minds turned to whether it would be possible to get rid of Second Sight. Martin Edwards, Chief of Staff to Ms Vennells, wrote this on 27 June 2013:

As discussed we need to think about a Plan B given the likelihood that James won't agree to delay the meeting/report. We also need to be very careful not to overplay our hand with SS - they could turn out to be quite dangerous if we threaten them with legal action or attempt to replace them with another firm. Easy for this to be portrayed in the media as heavy handed tactics because we don't like their findings (it plays directly into the existing perceptions we're trying to counteract).

So I think we're stuck with the softer option of explaining to JA calmly but firmly why he cannot allow SS to disseminate a misleading interim report - it either needs to be delayed or repositioned as a very neutral status update (with more detail on the one case that has been resolved).

And backing this up with a robust plan to get our messages out to the media (Mark, Alwen and I are catching up on is tomorrow).

126. Ms Vennells forwarded this to Alice Perkins the next day, adding that “*Susan has cancelled the last day of her holiday and is coming in on Monday as soon as she lands, to meet SS. All very tricky...*”.¹⁴⁸

127. Mr Edwards’ email reveals that Plan A, as discussed with Ms Vennells, was to delay the Interim Report possibly by means of threatening Second Sight with legal action or being replaced, but this was accepted as unrealistic and likely to lead to bad press. (Note that Ms Vennells forwarded the Edwards email with her approval, so she obviously did not expect Ms Perkins to cavil at Plan A on principle.) Plan B was aimed at massaging what the Second Sight Interim Report would say, and how the narrative could be controlled in the press.

128. The other important audience, however, was the Board. Still awaiting the update they had requested in May, in the event it was “blindsided”¹⁴⁹ in a telephone meeting on 1 July. This had originally been scheduled to discuss other matters.¹⁵⁰ The Minutes of the meeting state that the Board was given the lines - there were two “anomalies”, but all large systems have them – and that the Interim Report was soon to be provided to MPs. They show that Plan B was put into effect, because it was reported that the Board “*asked the Business to challenge Second Sight to ensure changes were made to the report where possible and asked the Business to prepare their communication to combat any inaccuracies*”.¹⁵¹ Evidently the Board was easily manipulated. They did not ask the difficult questions that ought to have been asked. They did not connect the dots or see the ramifications of what was by then obvious. They failed to challenge the perceptions they were being fed. The information was there, but ingrained bias, or a lamentable lack

¹⁴⁸ POL00098782 p1

¹⁴⁹ INQ00001184 p18 (internal p70)

¹⁵⁰ POL00098816

¹⁵¹ POL00099516

of intellectual rigour, “made them blind to the pieces of information that were coming forward.”¹⁵²

129. In the immediate aftermath, Ms Vennells wrote to Ms Perkins as follows:

I thought the Board were generous in their patience tonight over the SS discussion. It is helpful to know that they are supportive of the need to be robust. That said, I thought Alasdair's intervention was good - it is why we haven't been completely heavy handed yet. We can discuss nuances and next steps tomorrow.

I caught up with Susan this evening after we finished. She had finished her meeting with SS and wade [sic] of the view that they do now understand the risk of being caught up in something bigger and more sensitive. She is hoping their report should be more balanced, should say they have found no evidence of systemic Horizon (computer) issues but will confirm shortcomings in support processes and systems, and that Post Office has already identified and corrected a number of these...

Not a final position by any means nor one that controls what they might say rather than write but sounding slightly better.¹⁵³

130. Nothing in the Minutes gives an indication of what Alisdair Marnoch said, but Ms Vennells referred back to Plan A by use of the word “heavy-handed”. That suggests that Mr Marnoch, like Mr Edwards and Ms Vennells, took the view that Post Office should not threaten to take legal action against Second Sight, or seek to replace them, for fear of bad press.

131. There was clearly a reluctance to continue working with Second Sight. On 4 July Alice Perkins said “*If we have to continue with SS, my firm belief is that we need a totally different approach to managing and rewarding them*”.¹⁵⁴ There is also a Bond Dickinson attendance note of a meeting with Susan Crichton and Hugh Flemington on 10 July which says “*The board want to sack SS and of course are now not coping well with the fact that they are independent.*”¹⁵⁵

132. So it seems that Ms Crichton and Mr Flemington believed that the Board would have liked to go with Plan A. Nevertheless, in the above quoted email from 1 July, Ms Vennells describes Ms Crichton delivering Plan B. Rather than trying to sack Second Sight, she deployed a more subtle threat, telling them that they might find themselves “*caught up in something bigger and more sensitive*”, in order to persuade them to tone down their Report. This laid the groundwork for Mark Davies to deliver the second part of Plan B. All the Post Office’s public comment on the Interim Report delivered a twin message: first that it had found “no evidence of systemic failures”, and second, that the operational shortcomings identified in the Report were being addressed.¹⁵⁶ By 7 July, Ms Vennells was feeling confident about Plan B. She wrote to Ms Perkins in exuberant form:

In between some rest, we have been working v hard on the statement and the report. Attached is our latest statement, which responds to the report, which I shall mail shortly.

¹⁵² Evidence of Dame Sandra Dawson and Dr Katy Steward, **INQ00001206** p21 (internal pp81-82)

¹⁵³ **POL00296944**

¹⁵⁴ **POL00098990**

¹⁵⁵ **POL00407582** p1

¹⁵⁶ **POL00190340** is a Briefing ahead of a meeting with James Arbuthnot on 3 July 2013, which is an early example of the communications strategy.

Mark [Davies] and Martin [Edwards] have produced their usual high standards of editing and I am now comfortable with it. We have decided to take the welcomeit/collaborative approach but have made the reliability of Horizon the main intro. As in fact the report now does.

I have exchanged texts with Alan Bates and sent him a copy of this statement. He and JA [James Arbuthnot] were sent the report by SS [Second Sight]. AB and I are speaking tomorrow at 9am and meeting at 3pm... I shall try to get a call with James as well...

No counting chickens yet. But some good work under our belts.¹⁵⁷

133. However, Plan A did not go away. We will return to the 2014 sacking of Second Sight at paragraphs 329 to 331 below, but on 15 November 2013 Angela van den Bogerd wrote to another trusted lieutenant, Kevin Gilliland, about the mediation scheme, saying they needed to bring more people in to investigate claims: *“The people we need to undertake these roles effectively are the FSAs and their team leaders from the audit & training team. These individuals have the experience and skill set required to investigate the cases and will be highly credible with Second Sight as we start to initiate their exit from the Scheme.”*¹⁵⁸ From this slip it is reasonable to infer that there was never any deviation from the Plan A strategy. It was just a question of timing and tactics.

Removing the Horizon risk from the RMG flotation

134. We submit it is also reasonable to infer that the “something bigger and more sensitive” - which Ms Vennells referred to in the 1 July email - was the RMG flotation, or in more general terms, the Government’s strategic objectives for RMG and POL. The then Secretary of State, Sir Vince Cable, gave evidence about his strategic priorities to the Inquiry, the first of which was Network Transformation, and the second of which was RMG’s privatisation.¹⁵⁹ Network Transformation was the route map to profitability without closures, but an injection of considerable subsidy was needed to implement it. Ultimately, George Osborne’s Treasury was persuaded to give Post Office £2 billion for that purpose. In the meantime, however, the sale of Royal Mail brought in £3.3 billion. In addition, there was manoeuvring around the RMG pension pot, because its assets did not meet its liabilities, so HMG carved it out of the flotation. That meant that in the short term the Treasury received £28 billion from RMG, which was welcome, even though it meant that future administrations would for decades to come be paying out more than the £28 billion could cover. These facts and figures were all accepted by Sir Vince. What he did not accept, however, was the relationship between the subsidy and the privatisation, maintaining that his first and second priorities were separate.¹⁶⁰
135. We remain sceptical that George Osborne, the austerity Chancellor, would have heavily subsidised the Post Office in the years after 2013 if the RMG flotation had not gone ahead. More importantly, however, those politically astute within the Post Office in the summer of 2013 will have made that connection: they will not have wanted a Post Office problem to derail the RMG flotation *in case* it impacted the Network Transformation subsidy.

¹⁵⁷ POL00297379

¹⁵⁸ POL00027684 p3

¹⁵⁹ INQ00001181 p22 (internal p88)

¹⁶⁰ INQ00001181 pp22-24 (internal pp88-93)

136. The connection was certainly made in political circles. On 9 July 2013, James Arbuthnot made a statement in Parliament about the Second Sight Interim Report, and the Post Office Minister, Jo Swinson, reacted. The Whips' Briefing on this said *"Vince Cable and Michael Fallon are making a statement to Parliament on Wednesday 10 July, setting out the steps towards a Royal Mail transaction. In the eyes of many MPs, the media and the public at large, Royal Mail and the Post Office are the same entity. Although not related, the adverse coverage that Arbuthnot is seeking to attract is likely to have a significant and diversionary impact on the messaging of the Royal Mail statement"*.¹⁶¹
137. Bearing in mind that Post Office senior leadership were persuading Second Sight to tone down the Interim Report for fear of "being caught up in something bigger and more sensitive" in the ten days leading up to the Arbuthnot statement and the Cable/Fallon statement, it is clear that the potential for "diversionary impact" was not lost on them.
138. This must be why Ms Vennells and Ms Perkins involved themselves in what the RMG flotation prospectus said about the Horizon/Second Sight problem. Throughout August and September Ms Vennells and Mark Davies took a strong interest in what the Prospectus said about Post Office. They and the POL team objected to any mention of Horizon problems in the "IT Risks" section. Note that ShEx officials were also deeply involved and aligned with POL's efforts.¹⁶² Note also the motivation for their involvement. Ms Perkins said this to Ms Vennells: *On the content of the prospectus, Will was absolutely clear that this should be and would be properly sorted. You only need to read the Hansard of last week's Parliamentary debate to see how important that will be politically.*¹⁶³
139. On 18 September, an email revealed that Les Owen was their nemesis at RMG. He was the Non-Executive Director who raised the Horizon problem in the January 2012 POL Board meeting, leading to Ms Crichton's misleading reassurances (see paragraphs 91 to 95 above). He was no longer on the POL Board, but was on the RMG Board. RMG's lawyer at Slaughter & May said: *"please note that the Horizon point was raised specifically by one of the non-executive directors [Les Owen] who was adamant that a reference to this must appear in the prospectus."* ShEx officials were not happy about

¹⁶¹ UKGI00001679 p2

¹⁶² UKGI00001916 16/08/2013 Mark Davies trying to get "risks" put in a more favourable light, and Will Gibson of ShEx keen to do that.

POL00162032 16/08/2013 This update to Vennells from Davies includes 1) plans to "take control" of the media narrative on Horizon, and 2) comments on the Royal Mail prospectus: "the section on risks is very problematic for PO".

POL00372265 19/08/2013 Vennells email to Perkins which includes a section on the Royal Mail Prospectus and the risks section - Crichton has picked it up.

POL00381531 19/08/2013 This reply to Mark Davies shows that Vennells read and digested the contents of his email of the 16th.

POL00381592 28/08/2013 Crichton and Vennells discuss the changes POL wanted to make to the Royal Mail prospectus, including the risks section having a reduced reference to the 'issues with the horizon system', [x-ref to UKGI00001982 which appears to be the red-lined version attached to this email.]

UKGI00017369 30/08/2013 This appears to be Holiday Notes from Mark Davies, who states that the prospectus has "improved greatly but may still require some tinkering to be politically acceptable".

POL00299534 20/09/2013 Martin Edwards and Crichton say the "main sticking point" was POL's attempt to remove the sentence on Horizon/SS in "the IT risks" section.

UKGI00002063 20/09/2013 "The horizon point" is with "Rachel". Royal Mail "are being slippery because their directors are responsible for this, not us. But they appreciate the need to avoid political problems."

POL00299935 25/09/2013 Martin Edwards updates a group within POL, evidently pleased that the Horizon reference had been removed, but still complaining about the "negative tone" and so it's "over to you" to sort out the "defensive lines" for the press.

¹⁶³ **POL00419640**

this, but their lawyer advised against “*pushing further*”.¹⁶⁴ Mr Owen has stated that he would have wanted the reference to appear in the prospectus because he left POL believing that there was going to be an independent review of Horizon, and he had been told that there was a rising trend in prosecutions after Horizon was implemented, which led him to believe that there may be a problem.¹⁶⁵

140. On Friday 20 September, ahead of a deadline to finalise the Prospectus by 8am on Monday, Paula Vennells stepped in personally. She wrote to Jon Millidge, RMG’s Company Secretary, quoting the section she wanted removed: “*In July 2013, an interim report was published into alleged problems with POL’s “Horizon” computer system, which is used to record transactions in its branch network. The report confirmed that no system wide problems had been found in relation to the “Horizon” software, but suggests that POL should examine its support and training processes for sub-postmasters.*” She then said:

Our challenge is that this is not a risk to RM and is particularly misleading in the IT risks section. As your para states, the findings of the interim report related to Spmr training and support not IT faults. Can you get this para removed? Alice [Perkins] had offered to contact Donald [Brydon] if necessary but I don’t want to disturb her this weekend.¹⁶⁶

141. Mr Millidge complied. Ms Vennells (in addition to listing it as a key highlight in her appraisal¹⁶⁷) boasted about this to Ms Perkins on 22 September, saying that ShEx had failed to manage the issue, but she had “*earned her keep on this one*”.¹⁶⁸
142. Sir Vince naturally denied exerting any political pressure to ensure the RMG flotation was successful, and said that he did not recall Horizon or the Second Sight Interim Report being a recognised risk.¹⁶⁹ However, he was informed of Ms Vennells intervention in the Prospectus, and was taken to her description of Ms Crichton warning Second Sight to tone down their Interim Report for fear of becoming involved in “*something bigger and more sensitive*”, and said this:

Q: ... Are you confident that there was no one in Government putting any pressure on Post Office to do that sort of thing?

Sir Vince Cable: Well, I simply I don’t know. The ShEx, who were the unit responsible for Post Office, were also the people who were managing the privatisation from the BIS point of view, so it was the same group of people. Whether they acted the way you describe, I have absolutely no way of knowing but I can see that, if you’re looking for – no, conspiracy is too hard a word but, if you’re looking for attempts to manage the issue then what you say makes sense.¹⁷⁰

143. The officials at ShEx did not have to put it into words, any more than Sir Vince did: Ms Vennells, Ms Perkins and Mr Davies could see perfectly well for themselves that it would not go well for Post Office if the Second Sight Interim Report stood in the way of a successful, remunerative RMG flotation. That is why officials at ShEx were aligned with the Post Office on the Prospectus issue, and why Ms Vennells was so pleased with herself for succeeding where they had failed. The political reality in 2013 was that the

¹⁶⁴ UKGI00002054 p2

¹⁶⁵ WITN10340100 p26 para 72 & pp22-23 para 61

¹⁶⁶ POL00146462 pp2-3

¹⁶⁷ POL00158149 p5, bulletpoint 4

¹⁶⁸ POL00146462 p1

¹⁶⁹ INQ00001181 p24 (internal pp95-96)

¹⁷⁰ INQ00001181 p25 (internal p99)

Post Office and RMG were still perceived to be connected, if not indivisible, as the Whips' briefing had made clear. The truth about Horizon could have detonated a chain reaction. Ms Vennells, by the time she censored the prospectus, had participated in preventing Susan Crichton speaking to the Board; she knew about the Altman review, and why it was necessary, and that *"any issue with Horizon"* could be linked with *"past criminal prosecutions by Post Office Limited being reopened and overturned."*¹⁷¹ Moreover, she knew from that same document, that briefing on the Second Sight Interim Report (on or after 2 July 2013) that Gareth Jenkins had given evidence against Seema Misra.

The tainted witness cover-up

144. The Second Sight Interim Report prompted another development that would have been unwelcome to Post Office leaders. By 2013 POL was outsourcing their criminal prosecutions to Cartwright King, and in the process of one such prosecution Simon Clarke found out that Gareth Jenkins was aware of the two bugs disclosed to Second Sight.
145. This came about because on 28 June, Hugh Flemington, a senior POL lawyer, referred to the Samra prosecution within an email about the imminent publication of the Second Sight Interim Report. He directed Jarnail Singh *"to get CK up to speed"* so they were in a position to *"say something to judge re bugs PO have found and disclosed"*.¹⁷² Martin Smith of Cartwright King told the Inquiry that he found out about the bugs in phone calls around this time.¹⁷³ Then on 28 June he and Simon Clarke called Gareth Jenkins to discuss the bugs. They recorded and transcribed the call, and Mr Clarke sought confirmation that Mr Jenkins knew about the two bugs.¹⁷⁴
146. Mr Clarke decided that it was incumbent upon him to provide POL with two Advices as a result. The first was dated 8 July 2013, and he said that 1) POL needed to request a new "expert" witness from Fujitsu; 2) POL should report the findings of the Second Sight Interim Report to RMG, and let them know that POL had instructed Cartwright King to review past prosecutions with a view to disclosing the Second Sight Interim Report; and 3) the start date for the review should be 1 January 2010.¹⁷⁵
147. The second was the Disclosure Obligations Advice, dated 15 July.¹⁷⁶ He set out the expert's and the prosecutor's disclosure duties. He set out a timeline that indicated that Mr Jenkins knew of the two bugs when he made statements testifying to Horizon's reliability, in which he made no mention of the bugs. On Mr Clarke's analysis, Mr Jenkins's credibility was *"fatally undermined"*, and this had a *"profound"* effect on POL's prosecutions, putting POL in breach of its disclosure duties.¹⁷⁷

¹⁷¹ POL00111625 p2 para 8. Note: Seema Misra and Gareth Jenkins' evidence against her is referred to at paras 30-31

¹⁷² POL00060572 p2

¹⁷³ WITN09680200 p2 para 3

¹⁷⁴ POL00142322 p2

¹⁷⁵ POL00006365

¹⁷⁶ POL00006357

¹⁷⁷ POL00006357 pp13-14

148. The dates of these Advices indicate that from late June to mid July the implications of the call with Gareth Jenkins on 28 June were under discussion between Cartwright King and POL. On 10 July, Susan Crichton and Hugh Flemington had a meeting with Simon Richardson of Bond Dickinson, and the note says:

The **real worry** was around the Fujitsu expert who appeared to have known of some of the problems but not referred to them in his report or statement even though they could be dismissed. There are non-disclosure issues here. They are looking at replacing that expert with somebody else.¹⁷⁸ [emphasis added]

149. Ms Crichton was shown this note when she gave evidence to the Inquiry, and she said this:

Mr Blake: But that **real worry** ... did you pass that up the chain?

Susan Crichton: The real worry?

Mr Blake: (a) The worry and (b) the fact that a Fujitsu expert knew about problems and hadn't necessarily provided a full and accurate picture in evidence?

Susan Crichton: Yes, I did.

Mr Blake: Who did you tell about that?

Susan Crichton: I think I flagged it to Paula and also to the Board.¹⁷⁹

150. Ms Vennells denied hearing about these issues from Ms Crichton first:

Q. Can we please try to pin down the date on which you had knowledge of a problem with the Post Office's expert evidence?

A. It's difficult to find the date exactly. I remember that I -- so I learned of it, first, from Lesley Sewell, not from Susan Crichton. What had happened is I passed Lesley in the corridor. She was looking particularly concerned or grumpy about something, and I asked her what was the matter, and she said that she had just heard that -- so I don't know that she said this but I'm assuming from Susan -- that **the Post Office expert from Fujitsu, whom we had used in past cases, now had to be stood down because he had not revealed -- and, as I said yesterday, I think -- one or two bugs that he knew about in a case, and -- that's right, I think it was Mrs Misra's --** and the reason that Lesley explained he hadn't revealed those bugs in that case is that they hadn't been -- Mrs Misra's was a Horizon Online case and the -- sorry, the other way round. Mrs Misra's case was on Legacy Horizon and these bugs hadn't come into effect until Horizon Online.¹⁸⁰

151. A few months later, on 21 October, she said this in an email to Ms Perkins, which was copied to Chris Day and Martin Edwards:

My concern re Sparrow currently is our obligations of disclosure re an unsafe witness (the representative from Fujitsu made no statements about no bugs, which later could be seen to have been undermined by the SS report).¹⁸¹

152. Ms Vennells therefore knew that:

- a. a Fujitsu expert witness had given evidence in Seema Misra's case,
- b. he had not revealed his knowledge of bugs in Horizon,
- c. he had been "stood down" as a result,
- d. he was considered to be "unsafe", and
- e. this engaged Post Office's obligations of disclosure.

153. She then said "*We do not think it material but it could be high profile.*"¹⁸² This shows that she had discussed the above with others, and given her obsession with publicity

¹⁷⁸ POL00407582 p1

¹⁷⁹ INQ00001134 pp23-24 (internal pp92-93)

¹⁸⁰ INQ00001152 p19 (internal pp75-76) Note, this account was not put to Ms Sewell.

¹⁸¹ POL00382001 p1

¹⁸² POL00382001 p1

she must have been concerned, especially to send the email at 23.47 before going on holiday. This gives the lie to her protesting that *“we do not think it material”*.

154. The only person named in the email was Martin Edwards, because Ms Vennells said that he was briefed to respond to any questions Ms Perkins may have. It is interesting that Mr Edwards’ testimony on this was not prompted by the email itself, however, but by the Altman General Review:

Martin Edwards: ... the conversation I had with Paula was around the number of past cases which might be impacted. So the figure of five [mentioned in the Altman General Review] sounds familiar...

Mr Blake: So you think around this time you were aware that around five cases had been impacted by, what, the provision of evidence by Mr Jenkins?

Martin Edwards: What I recall, in Paula’s description of what impacts the Gareth Jenkins issue might have, I recognise a figure of five being described here as one of the reasons why she or the Legal team didn’t view this to be highly **material**.

Mr Blake: Because of the small number of people that it directly involved?

Martin Edwards: I think the combination of the small number of people and, I guess, a question – the impression I was given is that **it was clearly deeply unhelpful and deeply inappropriate but didn’t necessarily add to the disclosure of the two bugs the mselves**, which had been disclosed to past prosecutions with the Second Sight Report. It wasn’t conveyed to me that it added very much to that.

Mr Blake: Conveyed to you by who?

Martin Edwards: As I say, I’m basing this on the briefing – the verbal briefing I was given by Paula.

Mr Blake: So Paula Vennells had sent an email to Alice Perkins, she was about to go away, you were the person who had been briefed on the issue. Do you think that you were sufficiently briefed?

Martin Edwards: No, and I think, in practice, what she was expecting me to do – she wanted me to give Alice the name of someone she could contact in her absence. Susan Crichton, I think, if she hadn’t formally left the business was effectively left. I think, from memory, Chris Aujard had only just started, so it wasn’t really appropriate to give his name. I don’t think Alice would have known the names of the people who sat below Susan, so she was giving Alice my name to reaching out to and I would then liaise with the likes of Rodric Williams if further information was needed.¹⁸³ [Emphasis added]

155. Mr Edwards’ recollection of the word *“material”* is startling, and it is also significant that he was able to recall the distinction between disclosing the existence of the bugs as opposed to the Jenkins taint. He was even able to recall that Mr Aujard had indeed recently joined the business when this email was sent. We submit he was equally accurate in recalling that Rodric Williams would have been part of the *“we”* to whom Ms Vennells referred.
156. Mr Edwards did not name any external lawyers, but Brian Altman KC and Simon Clarke were both actively engaged in giving the Post Office advice on their disclosure obligations at that time. They both deny realising that the Jenkins *“taint”* engaged Post Office’s disclosure obligations, which leaves a mystery: why would the Post Office executives or internal lawyers have come up with this *“concern”* about their disclosure obligations of their own accord?
157. We submit that the mystery can only be explained by the existence of a deliberate and sophisticated conspiracy requiring everyone to be wilfully blind to the obvious truth that the Jenkins *“taint”* needed to be disclosed to Seema Misra. That case was the first

¹⁸³ INQ00001182 pp35-36 (internal pp141-142)

domino, and if that conviction fell it would inevitably lead to the exposure of Horizon's unreliability, and therefore the Post Office suppressed three problems: 1) adverse publicity which would have proliferated civil and criminal appeals; 2) massive damages to compensate all those who had been wronged by reliance on Horizon data and 3) the need to replace Horizon, which would have been financially ruinous.

158. This "*unsafe witness*" email between Ms Vennells and Ms Perkins must have been something of a mistake, a late night slip, perhaps designed self-servingly in case anything blew up while Ms Vennells was on holiday. She was at the same time deliberately downplaying it, allowing both her and Ms Perkins to do nothing with that knowledge about Jenkins, thus enabling the policy of containment to continue. It was sent at 23.47, and Ms Vennells referred the next day to a "*late night grump*".¹⁸⁴ It is noteworthy that none of the lawyers or other executives have committed anything to writing about disclosure obligations in relation to an "*unsafe witness*", despite Ms Vennells' email making it clear that it had been discussed. Ms Vennells and her inner circle must have decided not to disclose information about the Jenkins' taint, but because it was so obviously dangerous there was a conspiracy of silence about it. She knew, contrary to her protestation, that this information was "*material*". We say that because she used the word "*unsafe*", which is a term of art. She knew the convictions could not stand.

159. When Ms Perkins testified at the Inquiry it was put to her that she would have been concerned at reading that there was an issue of disclosure concerning an unsafe witness from Fujitsu, and she said:

I can't explain to you now why I didn't react to that. I wish that I had reacted to that but I think, if your Chief Executive is saying to you that she doesn't – "We do not think it's material and this is just in case", I'm afraid I took that at face value.¹⁸⁵

160. This excuse, of course, is consistent with the alibi (however ill-judged) this email was intended to provide when pretending to minimise the importance of this issue. Given Ms Perkins' knowledge and actions during the 2013 summer months we submit that this lacks credibility. Ultimately, both Ms Vennells and Ms Perkins are obliged to take cover behind General Counsel to try maintain their innocence in relation to the tainted witness cover-up. They each claim not to have been aware of the content of the Disclosure Obligations Advice, which – in effect – means that they claim to have been kept in the dark by General Counsel. The absurdity is that three successive General Counsel were in possession of the Disclosure Obligations Advice. None of them, least of all Ms Crichton, would have wanted to be responsible for keeping the contents under wraps.

Misleading the Board and "containing" Second Sight

161. Ms Vennells desire to control and contain the Second Sight narrative for the Board can be seen in the email she sent after the telephone Board Meeting on 1 July 2013.¹⁸⁶ Her first point is that they have not found any "*systemic*" issues. Her second point is that there will nonetheless be some points which make "*uncomfortable reading*", because – in essence – attempts to tone down the report can only go so far in the "*difficult and*

¹⁸⁴ POL00382001 p1

¹⁸⁵ INQ00001156 p49 (internal p193)

¹⁸⁶ POL00021515

carefully balanced situation". She then says *"we are focussing heavily on our media and stakeholder handling strategy"*. She finishes with this:

We will share a draft of our proposed media statement with the Board over the weekend, and I will also email you with any further significant updates tomorrow. Please also do not hesitate to call me or one of the team if you would like further detail on any of the points noted above or would like to discuss our approach. This is an extremely challenging and complex issue and I would greatly value your input, although some of the nuances and details are best discussed over the phone rather than by email.¹⁸⁷

162. We submit this was a deliberate attempt to keep any difficult discussions with Board Members unrecorded.
163. She made no mention of the implications of the Second Sight Report on prosecutions, but she could not maintain an indefinite silence on the subject. Ahead of the Post Office Board meeting on 16 July 2013, Susan Crichton prepared a crucial Board Paper, titled *Update following the publication of the Interim Report on Horizon*.¹⁸⁸ When she gave evidence about this Paper, she was taken to an earlier draft, and the changes she had made to it:
- a. She substituted "defects" for "bugs", in keeping with the senior leadership's desire to avoid the word "bug";¹⁸⁹ and
 - b. She initially stated that 5-10% of criminal cases involving Horizon might be successfully overturned,¹⁹⁰ but in the final version of the paper she said that in 5% of cases Post Office would need to provide additional disclosure, and then it would be up to the defence to consider and decide whether to apply to appeal.¹⁹¹
164. In this way, the final Paper that went to the Board significantly down-played the legal risks associated with Horizon convictions. Ms Crichton claimed that by making these changes she was "just stating the facts" which had been provided to her by Cartwright King (who were carrying out the review of past cases by this time).¹⁹² In reality, these passages were not factual. The changes suggest that the legal team headed by Ms Crichton was trying to make its recorded advice to the Board more palatable.
165. Even so, Ms Vennells and Ms Perkins did not trust Ms Crichton to speak to the Paper in the Board Meeting. Note that on 12 July Ms Vennells mentioned in an email to Ms Perkins that *"Susan btw has been splendid today"*, and on Saturday 13 July Ms Perkins wrote back saying *"could you please let me know what SC has decided to do? Or is she reflecting over the weekend? (Sorry, I can't remember what you told me about her timescale.)"* On Sunday 14 July Ms Vennells said *"Susan says she is up for it. She consulted a lawyer who we both know, and who I rate highly, who (to put it briefly) told her she should get on with it!"*, and she went on to say that she was making plans for Ms Crichton to be removed from her role heading up HR so she could be one of those leading the programme of work following the Second Sight Report. Ms Perkins

¹⁸⁷ POL00099009

¹⁸⁸ POL00145428

¹⁸⁹ POL00145427 – her email explaining that she'd made the change after it came to her walking her dog

¹⁹⁰ POL00191681 – the initial draft with the 5-10% figure

¹⁹¹ INQ00001134 pp27-28 (internal pp107-110)

¹⁹² INQ00001134 p28 (internal p109)

responded “Susan and I will need to talk if she is really up for it. Can't have stuff unspoken. It's too serious for that.” Ms Vennells then said:

I agree the two of you must restore the relationship; if not, it is not tenable for Susan to continue with this. I trust you implicitly, so do forgive me for stating the obvious, but belt and braces is always useful in sensitive situations: Susan shared her feelings with me in confidence and at a time when she was feeling very low about 'letting this happen to the business she worked for'.

I'm sure together you can repair it but it's a F2F conversation; as Susan and I need to have as well...¹⁹³

166. Ms Crichton did not actually leave her post until September, but this email chain shows that she and Ms Perkins were already at loggerheads. It is therefore hardly surprising that Ms Perkins chose to leave her outside the Board meeting held just two days later. In her evidence Ms Perkins claimed that she made the decision not to bring Ms Crichton into the meeting in two steps:

- a. first, the NEDs expressed concerns at the way she had handled the Second Sight investigation at their breakfast meeting, and she wanted to give them an opportunity to express those concerns in full Board without Ms Crichton present, so she initiated that discussion, planning to bring Ms Crichton in afterwards to present her paper;¹⁹⁴
- b. but then, once in the meeting, events “overtook” her, because “sometimes things kick off”.¹⁹⁵

... it was one of those discussions which just developed and developed, and took more time than I had expected possibly or wanted, and we had other things on the agenda that were really pressing. And I'm – I don't remember for certain but I may well have felt “I can't ask her to come in – having heard all of this, I can't just ask her to walk into this room without knowing something of what had been happening”.¹⁹⁶

167. This account was unheralded in her 232 page witness statement, and Ms Perkins could not explain why the Minutes of the meeting do not reflect it.¹⁹⁷ In fact, directly under the title *Horizon Update*, and adjacent to the Crichton Board Paper reference, the Minutes say “(a) The CEO explained that although the Second Sight report had been challenging it had highlighted some positive things as well as improvement opportunities...”¹⁹⁸ This clearly shows that the first person to speak to this agenda item was Ms Vennells. There is no suggestion that Ms Perkins began the item with a NED-led discussion about Ms Crichton's failings.

168. However, once Ms Vennells had attempted to put a positive spin on the Second Sight Report, it is clear that the NEDs did raise concerns on a number of heads:

- (b) The Board were concerned that the review opened the Business up to claims of wrongful prosecution. The Board asked if Susan Crichton, as General Counsel, was in

¹⁹³ POL00099223 pp1-2

¹⁹⁴ INQ00001156 pp34-35 (internal pp136-137)

¹⁹⁵ INQ00001157 p35 (internal pp137-138) – 2nd day of evidence

¹⁹⁶ INQ00001156 p35 (internal p137)

¹⁹⁷ INQ00001156 p35 (internal pp137-138)

¹⁹⁸ POL00021516 p6

anyway implicated in the prosecutions. The CEO reported that, up until eighteen months ago, Royal Mail Group Limited (RMG) had run the criminal law team and many of the cases in the review had arisen before separation. The CEO explained that the Business was a prosecuting authority and as such brought its own prosecutions. However since separation the General Counsel had proposed moving to the more normal position of using the CPS for prosecutions; this was being explored.

(c) The Board expressed strong views that the Business had not managed the Second Sight review well and stressed the need for better management and cost control going forward.

(d) The Board accepted that this was an independent review and therefore things could happen that were beyond the control of the Business.

(e) However the things that could be managed by the Business needed to be well managed with strong leadership and the Board asked the CEO if she had considered changing the person leading for the Business.

(f) The CEO had considered this and recognised that the Business did not have good governance in place around Second Sight, but that the independence of the review, and the input from MPs and Justice for Sub-Postmasters (JFSA) had made this complicated.

(g) The Chairman asked for a review, a post mortem, to report to the ARC explaining how we awarded and managed the contract. This should be put in hand swiftly. [ACTION: Susan Crichton]

(h) The Board asked the CEO to decide on the way forward in terms of the leadership of this work based on the option which had least risk for the Business. [ACTION: CEO]

(i) 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 were given notice of the review findings. [ACTION: CFO]¹⁹⁹

169. This does read as if the NEDs had a number of significant concerns, including in relation to Ms Crichton's role. However, it is also apparent that the concerns would have been better addressed if Ms Crichton had presented her paper and answered questions herself. Susannah Storey, the Government appointed NED, said that the NEDs did express considerable discontent at the way events had unfolded, but their concern was not particularly directed at Ms Crichton.²⁰⁰ The Board was first told about Second Sight as a matter of AOB in April 2012, then left in the dark until it asked for an update in May 2013,²⁰¹ after which it was bounced into a single agenda item phone meeting, at which they were told that the report was to be put before Parliament imminently.²⁰² It is therefore hardly surprising that the directors were concerned, and indeed it would be very surprising if their concerns were confined to General Counsel's role. Ms Storey's own view was that Ms Vennells was responsible for mishandling the interface between the Board and the Second Sight investigation.²⁰³

170. This is how Ms Vennells met the challenge that her presentation of Ms Crichton's paper was deliberately aimed at keeping the Board in the dark:

¹⁹⁹ POL00021516 pp6-7

²⁰⁰ INQ00001184 p17 (internal pp66-67)

²⁰¹ See paras 108 to 109 above

²⁰² POL00021515

²⁰³ INQ00001184 p17 (internal p66)

Mr Beer: Did you take over [Ms Crichton's] paper and present it, or the issues in it, to prevent the Board from hearing her opinion?

Paula Vennells: No. I've told you exactly what happened, which is I was expecting her to come in and, minutes before that should have happened, the Chairman told me she had decided to stand Susan down.

Mr Beer: Did you tell the Board about what you had been told, concerning evidence that the Fujitsu expert had given to courts which had led to prosecutions, in which he had not disclosed his knowledge of bugs in Horizon?

Paula Vennells: That I can't remember because the way it was presented to me was not in the way that I now understand it to have been so important, and I didn't see the Simon Clarke advice of 15 July [the Disclosure Obligations Advice]. It was presented to me as I've explained, as a frustration, and something that seemed – that was a logic that I couldn't follow – that Lesley Sewell had explained and I couldn't follow either. I can't imagine that I would have withheld that level of information but what you're asking me about is much more serious, and I didn't brief the Board on that aspect of it because I didn't know.

Mr Beer: Let's try and break that down. You hadn't got a copy of the Clarke Advice?

Paula Vennells: No.

Mr Beer: You had been told by two people, Lesley Sewell and Susan Crichton –

Paula Vennells: Yes.

Mr Beer: – that there was a concern that the Fujitsu expert had given evidence to courts in which he had failed to reveal his knowledge of bugs, errors and defects in Horizon?

Paula Vennells: Yes.

Mr Beer: There's no record of you telling the Board about that?

Paula Vennells: No, there isn't, and I don't know at what stage the Board became aware of it.

Mr Beer: Susan Crichton –

Paula Vennells: But if I may, the brief that was going to the Board was in Susan's paper.

Mr Beer: Susan Crichton did know about the Clarke Advice, didn't she?

Paula Vennells: I understand – yes, obviously she knew about the Clarke Advice.

Mr Beer: Ought this to have been the occasion on which the Board was briefed about the Clarke Advice?

Paula Vennells: Yes, it should have been in her paper because she was going to get the written evidence three days late – well, the day – she received the written evidence the day before the Board.

Mr Beer: The Post Office was in possession of expert legal advice to say "The expert we've relied on in criminal proceedings to secure the conviction of subpostmasters is an unreliable witness and breached his duties to the court". The person in possession of that information is sitting outside on a chair. You're not telling the Board about it. You have a summary of it on your account. How has this state of affairs come about?

Paula Vennells: I have been put in a position in the Board meeting with no notice to present the paper by Susan. As I say, I don't think there was a formal presentation of it because what took place was a wide-ranging conversation that the Board is dissatisfied and this wasn't in Susan's paper. So I had no prompt – first of all, I had no understanding about the degree of the seriousness of it, and we had, by that stage, stopped most of the prosecutions. So, in terms of it being an meet need of no longer having an expert that wasn't – which might have been my reflection, that wasn't front of mind.

Mr Beer: So this is a series of unfortunate events?

Paula Vennells: No, I was asked – I was asked to take this paper in that Susan had prepared, that was not in the paper, and I don't suppose it would have crossed my mind to have raised that because I was not aware at the time just how serious an issue it was.²⁰⁴

²⁰⁴ INQ00001152 pp36-37 (internal pp142-145)

171. Ms Vennells says that she was asked to speak to the paper “minutes before” they reached the agenda item. Alwen Lyons, the Company Secretary, said this:

Alwen Lyons: Yes, so at the relevant point in the Board meeting, I stood up and walked towards the door and was asked to hang on a minute, to sit down because there was going to be, I assumed, a discussion before Susan came into the room. I mean, that did happen sometimes, if the Board wanted a discussion on the paper before the executive member came in, that did happen. So I was asked to sit down –

Mr Blake: I could ask you to stop there: who asked you?

Alwen Lyons: I believe the Chair but – yes, I believe the Chair because it would have been the Chair who would have said they needed to have a discussion...

Alwen Lyons: So I sat back down as I was asked to do and then this part of the meeting progressed. I do believe that – and I don’t know at what point but, at some point during this Board update, I believe I said to the Chair “Do you want Susan in the room because she has the detail?”, and I was told “No”.²⁰⁵

172. We submit that the natural and obvious inference from the facts is that Ms Perkins and Ms Vennells were determined to manage the Horizon problem away, and they thought that would be easier to do if Ms Vennells spoke to Ms Crichton’s paper. As their would-be self-serving file notes show, they considered Ms Crichton’s failure to “mark” Second Sight was the result of letting her professional obligations come ahead of the needs of the business.²⁰⁶ They decided to leave her outside the room because they knew the NEDs were not happy about the way they had handled the Second Sight investigation, and they had decided to make her the scapegoat. Furthermore, Ms Vennells was concerned that if Ms Crichton spoke to her own paper it would be likely to lead to the revelation of the Gareth Jenkins problem.

173. The deceit on the specific issue of Gareth Jenkins is confirmed by Neil McCausland, Senior Independent Director on the Post Office Board, who gave this evidence to the Inquiry:

Mr Stevens: ... Did you ask, in February 2014 or before, why you couldn’t use the expert who had provided evidence in past prosecutions?

Neil McCausland: So at that time I did not ask but my memory is that I’d been told previously that the old Fujitsu expert had moved on and, therefore couldn’t be used.

Mr Stevens: Sorry, this is important, please. Who told you that?

Neil McCausland: I cannot remember. I’m guessing – I cannot remember. But my mind has it that somebody told me that the old Fujitsu expert had moved on but told me in such a way that I didn’t particularly think “Oh, my God, he’s been discredited”. I thought he’s retired, resigned, gone to work somewhere else, we needed to find someone new.

Mr Stevens: So your evidence is it was more of a practical matter: the old expert has gone, we need to find someone else?

Neil McCausland: Yes. There was certainly absolutely no hint that the expert had been discredited. So that was 100 per cent not known by me or the NEDs.

...

Mr Stevens: As we’ll turn to – we’ll come to this later on in your evidence – there was a discussion on the future prosecutorial role of Post Office in November 2013.

Neil McCausland: Yes.

²⁰⁵ INQ00001150 p36 (internal pp141-142)

²⁰⁶ See para 110 above

Mr Stevens: Could it have been around then [that the need for a new expert was discussed]?

Neil McCausland: Yes, absolutely. Yes... But I have a feeling I didn't learn about it in the ARC; I have a feeling I learnt about it in some different way.

Mr Stevens: So you don't think it alerted in the ARC – Audit, Risk and Compliance meeting – you think it was probably at or before November 2013. What other way do you think you may have been told of that information?

Neil McCausland: Either through Susan or Paula or Lesley, probably at a Board meeting. That's probably the – yeah, that's the most likely way.²⁰⁷

174. It seems, therefore, that following the October 2013 “unsafe witness” email the Board was deliberately kept in the dark about the real reason for Gareth Jenkins being “stood down”.

175. Ms Storey considered in her Witness Statement the question of whether the Board had been misled, and said this:

We were, despite best efforts, given repeated assurances from the executive and the business that turned out not to be entirely correct, and we were also given incomplete information by the executive team at critical points in this process. By way of example, I would say that firstly, at separation and when we started as a new Board, we were not given anything like the level of clarity on this issue as we should have been from RMG which had been managing this IT system and the prosecutions since 1999 nor from those POL staff involved; and while from July 2013, the level of Board's direct oversight of Horizon increased significantly and the Board received regular and relatively detailed updates on the work being undertaken in response to the Second Sight interim report at every meeting after this, **I now know from my preparation for this Inquiry, that at precisely the time when the executive should have been at their most open with us as a Board because of our questions and concerns, there was important information that we did not see.** In respect of the past prosecutions issue, in particular, it is quite clear that the Board was not provided with important documentation (including the material relating to Mr Jenkins' evidence) and that we never received a clear and frank account of the nature and scale of the risk that POL had acted as prosecuting authority in a large number of prosecutions that might now prove to be unsafe.²⁰⁸ [Emphasis added.]

176. When giving evidence, she was taken to the “unsafe witness” email, and said this:

Ms Page: Do you think that the Board's discussions, in the months leading up to November, would have made it clear to Ms Vennells and Ms Perkins that the Board would want to know about that unsafe witness?

Susannah Storey: I do. I've hopefully tried to give a general sense that we were quite a difficult set of Non-Executive Directors and we wanted to know things and, when something goes wrong, yeah, I think those are the times when you need to be absolutely as open as you can. And in my preparation for this Inquiry, I've now seen a lot of documents that I didn't see at the time, and I would say even since I wrote my witness statement my position on this issue has hardened.

Ms Page: When you say “hardened”, can you tell us exactly what you mean by that?

Susannah Storey: I mean that I've seen a number of things that I think were relative, contextual information that add to the weight of the issues being significant, which were then not reported to us as significant.²⁰⁹

177. We submit that there is clear evidence that Ms Vennells and Ms Perkins deliberately prevented the Board from receiving the information it needed about the Second Sight

²⁰⁷ INQ00001183 p26 (internal pp101-103)

²⁰⁸ WITN00920100 p94 para 208

²⁰⁹ INQ00001184 p31 (internal p124)

investigation and past prosecutions. In Ms Perkins case, there is no evidence that she knew of the Gareth Jenkins taint before receipt of the “unsafe witness” email, but we submit that if she had been acting in good faith by that stage she would not have sent such a sanguine response to it. As they went into the end of 2013, having secured the critical funding they needed to turn the Post Office’s losses into profits,²¹⁰ they took a further step, actively misleading the Board about the reason for Jenkins being “stood down”.

178. Meanwhile they created “Project Sparrow” as a known “risk” for the Board, so that all reaction to the Second Sight Interim Report could be put into that box and contained. On 19 November 2013, ExCo’s Quarterly Risk Review noted “Sparrow” as a “*Competition and Market Risk*”, and described it as “*Allegations relating to the integrity of the Horizon system*”, with the “*Current risk controls and assurance*” noted as “*containment*”.²¹¹ On 20 November this was reported to the Board in a Risk Management Update, as one of six critical risks which require “top management attention”:

Reputational damage following allegations relating to the integrity of the Horizon system

ExCo Owner: Chris Aujard

There is a risk that the allegations relating to the integrity of the Horizon system, if not contained, could raise wider questions over the robustness of our core systems and our ability to operate, damaging current partnerships, new areas of expansion & public and government confidence.

Key Impacts: Reputational - Consumer Confidence | Long term brand damage | reduced brand strength with potential partnerships/joint ventures | political impact.

Key Controls & assurance: Containment Project | Sparrow lessons learned work | Risk Function to carry out review.²¹²

179. This became part of the ARC Risk Register, and the explicit aim of “containment” continued to be a feature.²¹³

Managing away the recommendations of Second Sight and Detica

180. The Detica Report is dated 1 October 2013. Amongst the extensive findings the Second Sight Interim Report receives this endorsement:

Several of Second Sight’s observations resonate strongly, notably the disjointed response by the Post Office and the habitual desire to assign responsibility to an individual rather than to conduct root cause analysis to close gaps persisting across the branch network. In order to have a consistent approach across the [subpostmaster] estate, it is vital that the Post Office has the ability to robustly identify and monitor anomalous behaviour, so that the appropriate corrective action can be taken (whether this is tactical education, enhanced training, process or system redesign or audit/investigation).²¹⁴

²¹⁰ See footnote 70 above for the Press Release – the funding was announced on 27 November, but it must have been agreed earlier in the month.

²¹¹ POL00197630

²¹² POL00197997 p1

²¹³ See POL00204584 as an example from March 2014

²¹⁴ POL00029677 p11 para 3.2.3

181. The reference to “*system redesign*” was significant because under the heading “*Complex and Fragmented Systems*” it said this:
- Post Office systems are not fit for purpose in a modern retail and financial environment. Our primary concern here relates to difficulty in reconciling information from multiple transaction systems both in terms of timeliness, structure and access.²¹⁵
182. The reconciliation point was substantiated: they found that of Subpostmaster branches that had no additional services, such as an ATM or a lottery terminal, only 1% had a failed audit leading to suspension, compared with much higher rates for branches which offered additional services.²¹⁶ In other words, those Subpostmasters who had to reconcile information from different systems through Horizon were much more likely to be suspended. This chimes with the testimony of Subpostmasters, many of whom found that Horizon was highly likely to produce discrepancies relating to ATMs, lottery terminals, foreign exchange, etc.
183. These unwelcome findings show that no one was “marking” Detica either. John Scott’s Witness Statement describes the commissioning of it in this way:
- I subsequently commissioned (supported by Susan Crichton, POL General Counsel) Detica, a subsidiary of BAE Systems Plc, to conduct an initial review of POL’s systems with a loss and fraud digitalisation goal in mind. Following its review, **Detica advised that data mapping of all POL’s systems would be required to obtain a proper understanding of data management.** POL subsequently put out a tender for companies to carry out this process, which Detica won. Detica carried out the data mapping and published its final report in 2013, making various recommendations in respect of POL processes and systems... I worked with Detica to draw up a business case for implementing these recommendations. Detica estimated that the cost of the proposal would be between £3m and £5m. I discussed the case with the Chief Financial Officer [Chris Day] who deferred the decision to the Programme Director for the Branch Support Programme at the time – Angela van den Bogerd. **Angela van den Bogerd ultimately elected to go with a less expensive alternative solution provided by Fujitsu.** I had no part in this decision.²¹⁷ [Emphasis added]
184. While Second Sight were publicly raising concerns about the systems Subpostmasters had to work with, Detica was privately obtaining a proper understanding of those systems, and finding them unfit for purpose. The senior leadership reacted to Detica’s findings just as badly as they did to Second Sight’s.
185. The first sign of the Detica Report being circulated is a month after it was finished. On 30 October 2013 it was sent to a large group of people including Chris Day, Rod Ismay, Chris Aujard, Hugh Flemington, Angela Van-Den-Bogerd, Gayle A Peacock, Lesley J Sewell and John Scott. It was apparently sent on to Belinda Crowe just afterwards, and then nothing further was said.²¹⁸
186. The next reference to the Detica Report comes in the same email from Angela Van Den Bogerd that revealed the plan to get rid of Second Sight (quoted at paragraph 133 above), which began with this:

²¹⁵ POL00029677 p37 para 7.2.2

²¹⁶ POL00029677 pp33-34

²¹⁷ WITN08390100 pp9-10 para 25

²¹⁸ POL00342987

I understand Paula [Vennells] has had the discussion (albeit briefly) with you regarding splitting Project Sparrow so that Chris [Aujard] is sponsor for Project Sparrow with Belinda [Crowe] as Programme Director; you [Kevin Gilliland, Head of Network] become Programme sponsor for the Business Improvement work with me as Programme Director for this. I'll book some time in with Jackie so we can get together to discuss the finer detail of this programme and the Detica work which I am proposing should become a worksteam of this programme.²¹⁹

187. This shows the carving-up of the performative tasks arising from the need to appear to be responding positively to the Second Sight Interim Report.²²⁰ It also makes it clear that Paula Vennells put Angela Van Den Bogerd, the trusted lieutenant, in charge of the Business Improvement Programme, which later became the Branch Support Programme. (The other part of "Project Sparrow", to be led by Mr Aujard and Ms Crowe, was the mediation programme.)
188. Ms Vennells' personal involvement went further, because on 26 November Ms Van Den Bogerd drafted a document she called "*Business Improvement Programme - CEO POL Board Speaker Notes*". She set out nine "*workstreams*", the last of which was called "*Detica*". The "*Objective*" was described as:
- To develop a proof of concept that will inform the delivery of a data repository system. This is required to manage the gathering and analysing of Post Office data in order to ensure the most effective intervention is taken at the earliest stage.
189. The "*Level of change required*" was described as:
- How we gather, store and analyse branch data across Post Office
Tools and systems used to gather data
Capability of teams to use and interpret data
Intervention and management processes²²¹
190. The genesis of these notes was a request from Ms Vennells dated 24 November. She was aware that Chris Aujard's Horizon Update paper for the November Board referred to Ms Van Den Bogerd becoming the lead on the Business Improvement Programme. She said "*I know the Board will be reassured you are leading this. As I am. I also know that they may ask me lots of questions about it! Whilst I imagine you haven't yet fully scoped it, could you give a broad set of speaker notes (please liaise with Martin [Edwards] if you would like a steer) to cover the important points for me to get across.*"²²²
191. Reading between the lines of this scant material referencing Detica, we submit that it is quite clear that the senior leadership, including Ms Vennells, were aware of this uncomfortable report. Ms Van Den Bogerd was charged with tucking it away into the Business Improvement Programme. The Board was not to be told about it, except as a side note. The fact that it supported the Second Sight Interim Report, and the fact that it identified a clear need for wholesale system redesign costing £3 to £5m were not to be mentioned at all. Instead, it was managed away into one of nine "*workstreams*".

²¹⁹ POL00027684 p3

²²⁰ This was confirmed to the Board by Chris Aujard in a Horizon Update by Chris Aujard, for the November Board - POL00099945 p2 para 3.2

²²¹ POL00026963 p5

²²² POL00300676

192. Ultimately, Gayle Peacock was put in charge of the day-to-day running of the Business Improvement Programme/Branch Support Programme. On three separate occasions she wrote emails to Ms Van Den Bogerd setting out the work she was doing on the other eight workstreams, each time saying that she had left out “the Detica one”.²²³
193. It was left to Ms Van Den Bogerd to decide what she was going to do about it, and on 7 January 2014 she wrote this email about “*quick wins*” to Ms Peacock:
- The other consideration is the Detica approach. If we were to fund the Detica proposal how do we demonstrate return on investment i.e. will the Detica approach enable us to identify excess onch more speedily and more consistently than current methods? If so at what point? What currently is the average length of time is branch could inflate their cash before we would spot this and then act on that information? If the average cash inflation is £20k could Detica enable us to bring this average down If so by how much?²²⁴
194. This completely re-framed the Detica findings. The Report showed that the Post Office systems were letting Subpostmasters down, and the recommendations were aimed at improving those systems. Ms Van Den Bogerd turned that on its head, to assess whether the recommendations would enable the Post Office to crack down harder on Subpostmasters.
195. In the end, a false comparison was set up with the HORIce information tool, which was worked up to allow Post Office to look at a limited amount of Horizon data in real time. Because Fujitsu was offering HORIce for £100,000 the Detica proposals could be framed as wildly expensive.²²⁵ That enabled Ms Van Den Bogerd to manage the whole problem away by 16 January 2014 in an email to Ms Peacock saying “*We've received an invitation for a meeting tomorrow on Detica which I don't feel is necessary given where we are on the Horice v Detica scenario. So could you give me the comparison info you have been working on so that I can finally conclude this.*”²²⁶
196. Ms Vennells told the Inquiry that she was not told about the Detica Report.²²⁷ When asked to explain how she came to be so poorly informed in general she said this:
- Q. ...Ms Vennells, in the light of the information that you tell us in your witness statement you weren't given, in the light of the documents that you tell us in you witness statement that you didn't see and in the light of the assurances that you tell us about in your witness statement that you were given by Post Office staff, do you think you're the unluckiest CEO in the United Kingdom?
- A. I was given much information and, as the Inquiry has heard, there was information that I wasn't given and others didn't receive, as well. One of my reflections on all of this is that I was too trusting. I did probe and I did ask questions and I'm disappointed where information wasn't shared...²²⁸
197. It beggars belief, as the Detica example shows. The large group of senior executives who received the Report left a deafening void on the email chain, but they must have discussed what should be done about it. There was simply no reason for them to hide it from Ms Vennells. In particular, her trusted lieutenant, Ms Van Den Bogerd, would

²²³ POL00372698, POL00407824, POL00382710

²²⁴ POL00372882 p1

²²⁵ POL00168646 p15 para 8.17

²²⁶ POL00372933

²²⁷ INQ00001151 p26 (internal pp101-2)

²²⁸ INQ00001151 p2 (internal p6)

hardly want to hide the fact that Detica recommended expenditure of millions of pounds, and she must have sought more senior approval before deciding the expenditure was unnecessary.

198. The reality is that the senior leadership hid the Detica findings in what became the Branch Support Programme because it was expedient. They were obliged to respond to the Second Sight Interim Report, so they settled on the Mediation Programme and the Branch Support Programme as their performative remediation. It proved easy enough to bury the Detica Report in the latter.

Managing down the insurance notification

199. On 9 July 2013 Andrew Parsons of Bond Dickinson sent Rodric Williams an advice note.²²⁹ It was headed *“This note highlights the potential civil actions that a SPMR could try to bring against POL if, because of errors found in the Horizon system, (1) an ongoing criminal prosecution against an SPMR was abandoned or (2) an SPMR’s conviction was overturned.”*²³⁰ The four-page note considered a wide array of potential civil actions, but it was described as a “high-level brainstorm”,²³¹ and it is certainly no more than that, despite a rash foray into advising on the potential level of damages per case.
200. It arrived the day after Mr Clarke’s first advice, which made clear that POL had instructed Cartwright King to review past prosecutions with a view to disclosing the Second Sight Interim Report, the recorded telephone call with Gareth Jenkins having taken place on 28 June. It is an astonishing document because it contemplates actions for the tort of malicious prosecution. Coupled with the information received from Cartwright King, Post Office lawyers could not fail to see that they were potentially sitting on hundreds of wrongful prosecutions.
201. The advice note from Mr Parsons fed into the board paper which Ms Crichton wrote for the 16 July Board meeting, as she cited the same potential civil actions that could be taken against Post Office, including malicious prosecution.²³² Despite her exclusion from the meeting, the Board was sufficiently alarmed by her paper citing potential claims to task the Executive to consider the insurance position, and Chris Day was “asked to ensure the both RMG and the Business’ insurers were given notice of the [Second Sight] review findings.”²³³
202. A few days later Mr Day wrote to the Board saying that he had been advised by the broker that: the Directors and Officers policy was the one most likely to be engaged; that this was a joint policy with RMG; and a meeting was being set up with the brokers for POL and RMG before the RMG broker engaged with the insurer.²³⁴ Further emails followed, from which we can glean:
- a. the Board were principally concerned with the fundamental question of whether there was any insurance cover for claims arising from Horizon faults, and Mr Day did not have a clear answer to this question;

²²⁹ POL00352875

²³⁰ POL00198625 p1

²³¹ POL00352875 p1

²³² POL00145428 p4

²³³ POL00021516 p7

²³⁴ POL00099331

- b. Ms Vennells was playing catch-up after the meeting, not having even understood the shorthand terminology for Directors and Officers insurance vis-à-vis Professional Indemnity insurance;
 - c. the fact that the Directors and Officers policy was held jointly with RMG was seen by the Executive as an unwelcome complication; and
 - d. one member of the Board, Alisdair Marnoch, was advising the Executive in clear terms that they needed to keep the insurers informed, even if that did mean premiums increasing, whereas the concern within the Executive was to try not to ‘scare the horses’.²³⁵
203. It appears that the Board wanted to understand POL’s exposure, but the Executive was doing little to assist.
204. On 22 July Mr Parsons sent Mr Williams further advice which seems likely to have arisen from the Board meeting, because it focussed upon Directors’ duties, and it therefore touched upon the question of D&O cover.²³⁶ Interestingly, however, the issue that Mr Williams engaged with was whether a director could be held liable for a failure to disclose something in a criminal case. By this time he was in receipt of the Disclosure Obligations Advice.
205. After more back and forth between Mr Williams, Mr Parsons and Mr Singh,²³⁷ the issue was bottomed out in a way that would allow for a reassuring line to go into the 26 July Update to the Board. It said *“There are no personal consequences for a director under criminal law if POL has failed to make adequate disclosure in any criminal proceedings as no director has directly and personally led the disclosure process.”*²³⁸ However the Board was never given advice on the recently arisen duty incumbent on Post Office to ensure disclosure of the Gareth Jenkins “taint”.
206. Meanwhile, on 23 July 2013 Charles Colquhoun sought comments on a draft letter to JLT Risk Solutions, the RMG insurance broker. It was headed *“notification of a circumstance that may give rise to a claim”*. It made a brief reference to press reports about discrepancies arising from the Horizon IT system, then stated *“I am formally advising this as a potential circumstance that may give rise to a claim under our Directors and Officers Liability placed via yourselves”*.²³⁹ He sent it to Chris Day, Susan

²³⁵ POL00099331 and POL00108035

²³⁶ POL00407570 p2

²³⁷ POL00407570. Note that on 6 December 2013 Mr Parsons said that he could not find the Board Paper-POL00198596. He confused this further on 12 March 2014, when he said that the notification document he drafted *“had the dual purpose of advising the board (its contents were later reflected in a board paper) and acting as notification to POL’s insurers — hence why this doesn’t look like a traditional piece of legal advice.”* (POL00021991) When he gave evidence he said that this must be wrong, because he could not find any record of his document going to the Board (INQ00001160 p17 (internal p66)). When asked to explain why he had got it wrong, he said that he may have confused it with the advice he had provided on directors’ duties (INQ00001160 p21 (internal p82)). It is correct that his advice on directors’ duties was folded into Chris Aujard’s Note to the Board date 6 December 2013, dealt with below, as well as the 26 July Board Update, whereas there is no evidence of his notification document folding into a board paper.

²³⁸ POL00124445 p9. Note this Update was sent to the Board under cover of this email chain, which shows that Ms Perkins was determined to dispense with Second Sight’s services as soon as possible, and to control whoever chaired the mediation process - POL00193358.

²³⁹ POL00192766

Crichton, Alwen Lyons and Piero D'Agostino for comment, saying that it was the product of discussions with POL's insurance broker regarding "*what we should tell JLT re: Horizon issues.*"²⁴⁰ Susan Crichton forwarded it to Andrew Parsons for comment on the same day. He, not knowing that the Board had given a clear direction to notify insurers, responded in a typical vein:

The letter does nothing more than put POL's insurers on notice of the Horizon issues. It's very bland. My only hesitation is whether this is strictly necessary to do. From a PR perspective, it would look bad if this got into the public domain - sign of guilt / concern from the board.

I'd be happy to have one of our insurance lawyers look over the D&O policy to see if POL is required to notify the insurers. If not, then we might want to hold fire on this.

I would recommend tweaking the first paragraph. The current version suggests that there are problems with Horizon - when at present there are no systemic problems to report.

It should just say that the press have reported on "potential issues with Horizon" rather "financial discrepancies have occurred in Horizon".²⁴¹

207. This reflects the way the inner circle was in the habit of thinking: the first consideration was always how their conduct would look, rather than whether it was the correct course of action; and the second consideration was how to maintain an absolutely resolute defence of Horizon.

208. On further reflection and discussion with colleagues, Mr Parsons came back with even more questionable advice:

- The policy is unlikely to provide cover against the types of claims that SPMRs might bring against POL's directors arising out of the Horizon situation...
- There is therefore no strict requirement for POL to notify its insurer at the moment — though, if in doubt, best practice is to notify.
- The risk of notification is that it would look bad for POL if it ever became public knowledge that POL had notified its insurer.
- To reduce this risk, it is recommended that rather than sending a formal written notification, POL speaks to Chartis (renamed AIG) and verbally notifies them **so as to not leave a paper trail**. In our experience, AIG may be prepared to accept a verbal notification.
- POL should make expressly clear to AIG that the notification is subject to litigation privilege (this should help protect against disclosure under FOIA) ...litigation privilege only applies where "litigation" is actually contemplated, not where there is just the risk of a hypothetical claim. In the context of claims against a director, we have arguably not yet reached the stage of contemplated litigation, rather we are just dealing in hypotheticals.

Nevertheless, we would rely on Alan Bates' comment that he is aware of SPMRs lining up claims against POL's directors as evidence of contemplated litigation.

As POL is in the nexus between live litigation and theoretical claims, we recommend verbal notification to AIG so to balance insurance protection against brand protection.²⁴²

[Emphasis added]

209. Here we see Mr Parsons advising his client not to leave any evidence of the decision to notify its insurers of potential claims, for fear of how it may affect the brand, and performing mental gymnastics to allow him to advise that even the oral notification

²⁴⁰ POL00192765

²⁴¹ POL00145677 p1

²⁴² POL00145716 pp1-2

could be covered by litigation privilege. It seems, however, that AIG would not play ball, because on 7 August, Mr Parsons began drafting a notification document.²⁴³

210. The early drafts of this document squarely recognised the recently arisen duty incumbent on Post Office to ensure disclosure of the Gareth Jenkins “taint”. They stated:

... As a result of Second Sight's investigation/Interim Report, Post Office is reviewing all its criminal prosecutions over the last three years to identify any cases where a conviction may be unsafe.

In particular, the expert evidence of one Post Office witness, Dr Gareth Jenkins of Fujitsu, may have failed to disclose certain historic problems in the Horizon system. Under the criminal prosecution guidelines, Post Office has an obligation to disclose (even retrospectively) this previously undisclosed information to subpostmasters' defence counsel. **Post Office is required to make these retrospective disclosures where the additional information (i.e. Dr Jenkins' knowledge of historic, but now resolved, problems with Horizon) may have undermined a prosecution case or assisted with an accused's defence.**²⁴⁴ [Emphasis added]

211. In our submission it is highly significant that this wording did not survive a review by Rodric Williams and Cartwright King. On 26 August Mr Williams sent Mr Parsons a revised version of the document, saying “*I have amended following input from Cartwright King on the criminal law risks*”.²⁴⁵ The revised passage was:

As a result of Second Sight's investigation/Interim Report, Post Office is reviewing all its criminal prosecutions which have had a hearing since 1 January 2010.

Post Office has an obligation to consider whether further discourse [sic] should be made to defendants. It is of concern to Post Office that the expert evidence of one prosecution witness, Dr Gareth Jenkins of Fujitsu, may have failed to disclose certain problems in the Horizon system potentially relevant to a case.²⁴⁶

212. This revised wording obscures the obligation, specifically recognised in the Parsons draft, to disclose Mr Jenkins’s knowledge of problems with Horizon. It is no longer made clear that Mr Jenkins knew of the problems with Horizon, and the matter of concern could merely be that the problems themselves were not disclosed, rather than that Mr Jenkins may have misled the court or the defence. The revision also suggests there was only one case where there may have been a disclosure failure, unless it alludes to the only time Mr Jenkins gave oral evidence (i.e. against Seema Misra).
213. Furthermore, the terms of the Cartwright King review are no longer described as seeking to identify any case in which a conviction may be unsafe. They had limited themselves to deciding whether to disclose the Helen Rose Report and the Second Sight Interim Report so they were not seeking to identify cases where the conviction may be unsafe. But it begs the question: why did they limit themselves in that way?
214. We submit that these revisions to the Parsons document make it clear that Cartwright King and Mr Williams were deliberately obscuring the obligation to disclose Mr Jenkins’s “taint”. We will return to this issue below.

²⁴³ POL00193244

²⁴⁴ POL00193244 is the draft dated 7 August, and POL00021996 is the draft dated 15 August 2013, both of which include this wording at p2. Andrew Parsons testified that he drafted these- INQ00001160, p20 (internal p80)

²⁴⁵ WBON0001925 p2

²⁴⁶ POL00040026 p2

215. Meanwhile, although Mr Parsons was not originally alert to the need to avoid the Jenkins taint, he was ever alert to questions of disclosure and privilege. His document came on Bond Pearce letterhead from the outset, and it was headed “*CONFIDENTIAL & LEGALLY PRIVILEGED / COMMON INTEREST PRIVILEGE / LITIGATION PRIVILEGE*”. He told the Inquiry that he had taken advice on the kinds of privilege that would attach to an insurance notification.²⁴⁷
216. On 28 August, Rodric Williams sent the revised Parsons document to the brokers,²⁴⁸ and on 9 September RMG’s brokers sent it to the claims team at AIG, the D&O insurers, under cover of an email that reflected the wording in the revised document.²⁴⁹ Despite Mr Parsons and Mr Williams’ best efforts, the covering email did not bear any words suggesting it was privileged, although the attached document still had the heading set out above. From a note created by Herbert Smith Freehills in 2020, it appears that AIG confirmed receipt of the notification on 11 September, and responded with comments on 30 October 2013,²⁵⁰ but we have not been able to locate either of these documents.
217. At the Board meeting of 25 September, the Board prodded the Executive again. The Minutes show that when the status of actions from previous meetings was being considered at the end of the meeting:
- The Board asked for a noting paper to clarify whether any claims on the Business from the Horizon work would be covered by Professional Indemnity or Directors & Officers insurance and whether we had alerted our underwriters. The CFO [Chris Day], with input from Alasdair Marnoch, would ensure the appropriate notifications were made.²⁵¹
218. Chris Day (a recipient of the “unsafe witness” email) was present in the meeting, which means he was either unwilling or unable to update the Board at that point. We submit he was unwilling. Rodric Williams was in possession of all the relevant information, not only about the D&O notification, but he was also aware that POL’s insurance brokers had written on 6 August to say that POL’s professional indemnity policy would not cover Horizon claims (it seems to have been a limited and relatively recent policy intended to cover services performed by POL in relation to driving licences).²⁵²
219. It is hard to see why Mr Williams would not have kept Mr Day informed, given the task Mr Day was given by the Board in July. Even if Mr Williams had failed to keep Mr Day informed ahead of the 25 September meeting, in the normal course of events this further prompt from the Board would have led Mr Day to find out what was happening so he could report back at or before the October meeting. In fact, there was no mention of the insurance position at the meeting on 31 October.²⁵³ Instead, when a general Update on Horizon was tabled at the meeting of 27 November, the Board had to prompt the Executive yet again:
- The Board asked for a note from the General Counsel [Chris Aujard] explaining who was named in past prosecutions and the liability for the Business and individual Board

²⁴⁷ **INQ00001160** p18 (internal p70)

²⁴⁸ **POL00302493**

²⁴⁹ **POL00112856**

²⁵⁰ **POL00293235** pp1-2

²⁵¹ **POL00021518** p7

²⁵² **POL00145835**

²⁵³ **UKGI00019292**

members. The note should also include information on both PI and D&O insurance cover.²⁵⁴

220. Against this documentary background, Mr Day's evidence about his involvement in notifying the insurers simply does not stack up. On the one hand, he accepted that he knew the D&O policy was held jointly with RMG, adding a detail about the run-off period which can only have come from memory and a good knowledge of the facts:

I did take action to ensure that both Royal Mail Group and Post Office's insurers or their brokers were given notice of the [Second Sight review] findings, and the reason that Royal Mail Group were involved is that one of the policies, the Directors' and Officers' policy, was actually still part of Royal Mail, it was in a six-year run-off period since 2012, so we shared responsibility for that.²⁵⁵

221. This also reflects an acceptance that he had carried out the notification task that the July Board meeting had given him. Yet when the only existing notification – the Parsons document – was shown to him, he claimed he had no knowledge of it. The version that was shown to him was the original, before the Cartwright King/Williams revisions had been applied to it, but his total repudiation of it leaves no room for the notion that he may have seen the revised version which was sent to the brokers by Roderic Williams on 28 August 2013: *"I would be as sure as I can be that I've not seen this document before. I did not commission it. I would go further and say until this Inquiry, I didn't even know the name of the expert witness."*²⁵⁶

222. We submit that Mr Day's evidence makes sense only once it is understood as an example of the POL Executive deliberately looking away from the disclosure problems raised by the Gareth Jenkins "taint". He evidently did begin the task he had been given by the July Board, and probably initiated the draft letter written by Charles Colquhoun which was sent to him for comment, but once Susan Crichton sent it on to Mr Parsons difficult issues arose. Mr Day must have become aware of the machinations that followed, at least in broad terms, otherwise he would not have known that the notification had taken place. That he chose not to look too closely is proven by his active refusal to assist the Board with its concerns, both at the September Board meeting, and subsequently when it would have expected him to follow up on its clear request.

223. After asking Chris Aujard in November, the Board was eventually given the information it had been requesting since July. On 6 December, Mr Aujard sent a note, marked as legally privileged, in which he confirmed that POL's insurers had been formally notified, and set out sufficient detail in an annex to make it clear that he had been provided with information about the September notification.²⁵⁷ He also dealt with the following issues:

- a. liability, in his view, rested with POL because summonses had been issued in POL's name, but he said there may be "weak" arguments that RMG bore liability because its employees were acting on its instructions when bringing prosecutions. He noted that the Master Services Agreement was silent on the point;
- b. he gave an update on the numbers of prosecutions, including a table with numbers going back to 2009, and the fact that all current prosecutions were in

²⁵⁴ POL00021520 p2

²⁵⁵ INQ00001155 p21 (internal pp83-4)

²⁵⁶ INQ00001155 p37 (internal pp146-7)

²⁵⁷ POL00100003

limbo due to *“Counsel’s advice is that it would not be appropriate to proceed without first obtaining the opinion of an independent expert witness in relation to the integrity of Horizon system.”* He said nothing about Jenkins, and said that although an expert had been identified instructions would depend upon the Board’s views on whether to continue with prosecutions; and

- c. he repeated the line from the July paper: *“There are no personal consequences for a director under criminal law if Post Office Limited has failed to make adequate disclosure in any criminal proceedings as no director has directly and personally led the disclosure process.”* Again, this considered the duty of the Board in relation to ongoing disclosure during proceedings, but did not consider the duty of the Board in relation to post-conviction disclosure of the Gareth Jenkins “taint”.²⁵⁸

224. A few days later, on 12 December, Simon Clarke wrote an advice responding to the Parsons’ advice on potential civil claims. In broad terms it was a self-serving view that claims for malicious prosecution were highly unlikely because of the exemplary manner of the Post Office’s and Cartwright King’s conduct, but he also said *“Should a legitimate claim for Malicious Prosecution emerge, that claim would properly stand against prosecuting solicitors and not POL”*.²⁵⁹ Belinda Crowe of Post Office felt the need to make sure this meant what it said,²⁶⁰ so Mr Clarke provided a clarification: *“where POL follows it’s [sic] established procedure of instructing outside independent lawyers to advise upon and conduct prosecutions... any claim for Malicious Prosecution will lie against those outside lawyers (Cartwright King Solicitors)...”*²⁶¹
225. Chris Aujard, Rodric Williams, Hugh Flemington and Jarnail Singh were all in receipt of these documents from Mr Clarke, but they do not appear to have been disseminated further. Cartwright King went into administration in 2022, and was sold in a “pre-pack” for £200,000.²⁶² It seems likely that the promise Mr Clarke made in 2013 would be swiftly repudiated by its present-day insurers, but it must have been reassuring for the Post Office legal team at the time, at least with regard to the post-separation prosecutions (which were all carried out by Cartwright King). Cartwright King well knew that it had not conducted the prosecution of Seema Misra, and so the Post Office remained on risk in relation to the wrongful conviction it had inflicted on her. More would be needed to give the Post Office comfort as we shall see, when Cartwright King impeded her appeal.
226. From 2014 onwards there were further communications around insurance cover for Horizon claims. An update from February 2015 is a particularly egregious document, with a much-hardened stance on claims: *“Post Office has not found any systemic failing in its business processes or the Horizon system, and there is no evidence that the*

²⁵⁸ POL00100003

²⁵⁹ POL00114253 p3

²⁶⁰ POL00198765 pp1-2

²⁶¹ POL00198766 (Note the date of this clarification is stated to be 12 September 2013, but this is selfevidently wrong, since it is stated to be clarifying the Advice dated 12 December 2013. The email chain referenced above makes it clear that the Clarification was circulated on 16 December.)

²⁶² Legal Futures, [‘Major legal aid practice sold for just £200,000 in pre-pack’](#), dated 20 January 2023

conviction of any subpostmaster is unsafe".²⁶³ However, the Post Office Board never received a complete picture. The Aujard paper from December 2013 told the Board as much as it was ever told about what might give rise to Horizon claims, and yet it remained less complete than the information provided to its insurers in September 2013, which was itself less complete than the information Mr Parsons included in his original draft of the notification document. That, we submit, was not a mistake or a coincidence. It was the result of the Executive and the Post Office lawyers, internal and external, deliberately turning a blind eye to their disclosure obligations, and specifically their post-conviction disclosure obligations, which was the single issue most likely to give rise to claims.

Destruction of evidence

227. In early July the Post Office had begun weekly Horizon meetings on the advice of Simon Clarke, the aim of which was to ensure that all information about Horizon would be collated in one forum to assist with disclosure if Horizon issues were raised in future cases.²⁶⁴ Evidently this was unwelcome in some quarters, because there was an attempt to frustrate this aim by keeping the meetings "under the radar". At the first Horizon meeting, held on 19 July, surviving minutes show that Rob King, on behalf of the Security team, opened the meeting by saying that "we" will be taking notes, but no minutes would be circulated.²⁶⁵ Evidently, however, one of the attendees created minutes. The evidence suggests that John Scott reacted to that by ordering that they should be destroyed. He denied this when giving evidence, but the approach to note-taking was explored with him:

Mr Beer: Was the reality that ... you were part of an enterprise too that didn't want the creation of electronic communications which may be the subject of disclosure to a court?

John Scott: No. I ensured that there were notes taken.

Mr Beer: Handwritten notes?

John Scott: Handwritten notes or whatever notes –

Mr Beer: No, handwritten notes: that's what you ensured, isn't it?

John Scott: Yes.

Mr Beer: Why did you want handwritten notes to be created?

John Scott: To ensure that all the information was captured.

Mr Beer: Why not electronic notes?

John Scott: Because that's the brief I had from Susan Crichton.

Mr Beer: It's because they're not easily discoverable, isn't it?

John Scott: I don't know on that one.

Mr Beer: They leave no trace, don't they? They can be hidden away in a cupboard, can't they?

John Scott: I can only take my brief from Susan.

Mr Beer: An electronic note leaves a footprint, doesn't it?

John Scott: Yes.

Mr Beer: The fact that it existed but has been deleted leaves a footprint, doesn't it?

John Scott: Yes.

Mr Beer: That's why you don't want electronic notes created, isn't it?

²⁶³ POL00221095 p3

²⁶⁴ POL00006799

²⁶⁵ POL00083932 p1

John Scott: But notes were created. Notes were maintained.

Mr Beer: I'm asking you about why you wanted handwritten notes not electronic notes?

John Scott: Because that's the brief I had from Susan Crichton.

Mr Beer: It's because they are less likely to be found and disclosed, isn't it?

John Scott: (Non-verbal answer)

Mr Beer: Mr Scott?

John Scott: Mm-hm?

Mr Beer: It's because they are less likely to be founding [sic] and disclosed, isn't it?

John Scott: In terms of that she – I can only assume from my second paragraph that she wanted to reduce the risk of FOI disclosure with the legal privilege not wrapped around it.²⁶⁶

228. The final answer refers to an email exchange we return to below, but in essence it accepts that the rationale for keeping hand-written notes instead of typed notes was to reduce the risk that they would be disclosed. As events unfolded there can be no doubt that *someone* wanted to frustrate the purpose of the meetings by keeping them “under the radar” in this way, and that person can only have been Mr Scott or Ms Crichton.
229. The wrongdoing was exposed, to a degree, because on 31 July 2013 Martin Smith of Cartwright King spoke with Jarnail Singh about “*disclosure issues*”. Mr Smith’s note of the call says simply “*JSScott has instructed that typed minutes be scrapped.*”²⁶⁷ Mr Smith told the Inquiry that he was driving at the time he received this call, but he was shocked, and he pulled over to try to make a recording of what was being said but no recording survives. He told Mr Clarke about it forthwith.²⁶⁸ He understood Mr Singh to be telling him that there had been an order to destroy the typed minutes of the weekly Horizon meetings.²⁶⁹ He believed that order to have come from John Scott.²⁷⁰
230. The surviving typed minutes of the first meeting also show this comment attributed to Mr Parsons: “*Spoke about emails, written comets, etc ... if it's produced it's then available for disclosure, if it's not then technically it isn't.*”²⁷¹ Mr Parsons denied advising against producing minutes, and claimed in his evidence that this was not a verbatim note, but he relied upon his view that civil disclosure only attaches to documents, and therefore conceded that he may well have given advice on this issue in the meeting.²⁷²
231. Others present at the meeting included Mr Singh. Having spoken to Mr Smith on 31 July, the next day Mr Singh wrote Mr Smith an email saying: “*I know Simon is advising on disclosure. As discussed can he look into the common myth that emails, written communications etc.. meetings. If its produced its then available for disclosure. If it?s not then technically it isn?t? Possible true of civil cases NOT CRIMINAL CASES?*”²⁷³ The wording is almost the same as the minutes, which suggests that Mr Singh had access to the typed minutes. It may be that his call to Mr Smith was prompted by disquiet at

²⁶⁶ INQ00001083 pp17-18 (internal pp67-69)

²⁶⁷ POL00139745

²⁶⁸ INQ00001139 p46 (internal p181)

²⁶⁹ INQ00001139 p46 (internal p184)

²⁷⁰ INQ00001139 p47 (internal p185)

²⁷¹ POL00083932 p4

²⁷² INQ00001160 p10 (internal p39)

²⁷³ POL00139746

the instruction to shred them. Certainly his request for Mr Clarke to advise would allow any blame for failing to destroy the minutes to fall elsewhere.

232. Mr Clarke produced the “Shredding Advice” on 2 August. It gave the following account of events:

i. The minutes of a previous conference call had been typed and emailed to a number of persons. An instruction was then given that those emails and minutes should be, and have been, destroyed: the word “shredded” was conveyed to me.

ii. Handwritten minutes were not to be typed and should be forwarded to POL Head of Security.

iii. Advice had been given to POL which I report as relayed to me verbatim:

“If it’s not minuted it’s not in the public domain and therefore not disclosable.”

“If it’s produced its available for disclosure – if not minuted then technically its not.”

iv. Some at POL do not wish to minute the weekly conference calls.²⁷⁴

233. He then set out the duties of disclosure and retention of documents, advising that breaches of these duties were serious for all solicitors and barristers. He evidently understood with absolute clarity that the prosecutor’s disclosure obligations do not only attach to documents:

11. Material does not become ‘known’ only by virtue only of the fact that it is recorded, and the question whether or not material is to be disclosed or not does not turn merely upon whether or not it exists in written form. Thus in the context of Horizon issues, if an individual investigator knows of material (information) which may undermine the integrity of Horizon, then regardless of whether or not he has written down or otherwise recorded that material, for the purposes of his duty he knows of the material. Similarly, if he orally imparts that material to others, they too then know of the material; the fact that such material is not written down or otherwise recorded is not to the point.

12. ... the only proper way forward is for the conference calls to be properly minuted, those minutes to be centrally retained and made available to all those who properly require access thereto. And were it to be determined that those telephone conferences were no longer to take place, the duty to record and retain nevertheless remains: individual investigators with knowledge are bound both by the duty to record and retain and to inform the prosecutor – POL.²⁷⁵

234. An honest business receiving such advice would have reacted immediately with a concerted and sustained effort to root out those who wanted to destroy evidence which might undermine Horizon’s integrity. Even the cover letter from the senior partner at Cartwright King to Ms Crichton and Mr Flemington spelled out the urgency: *“I enclose for your urgent attention an advice...”*²⁷⁶ The fact that it did not produce the immediate, seismic reaction that it should have done tells its own story. Rodric Williams denied the idea that the advice sat in his desk drawer for two weeks, but it is undeniable that the response that he says he drafted was dated 16 August, two weeks after the date of the advice.²⁷⁷ It was signed off by Ms Crichton, and it says this:

I am therefore deeply concerned at the suggestion in Simon's note that there may have been an attempt to destroy documentary material generated in connection with the Horizon Calls, specifically any minutes of the calls. **I note that Simon's advice does not**

²⁷⁴ POL00006799 p2

²⁷⁵ POL00006799 p6

²⁷⁶ POL00006577

²⁷⁷ INQ00001133 p3 (internal p10)

suggest that material connected to the operation of Horizon itself may have been compromised.

Post Office Limited is committed to conducting its business in an open, transparent and lawful manner. Any suggestion to the contrary would not reflect Post Office Limited policy, and would not be authorised or endorsed by Post Office Limited. Accordingly, the purported statements referred to in Simon's note do not reflect or represent Post Office Limited's position.²⁷⁸ [Emphasis added]

235. As usual, the first consideration was to deny any suggestion that there was a problem with Horizon itself: the system must be defended at all costs. The second consideration in this letter is to cast doubt on the events described in Mr Clarke's advice, referring to them as "suggestion" and "purported statements". There is no suggestion that anyone tried to find out whether the described events happened.
236. On the contrary, it is clear that Ms Crichton's reaction was to downplay and then ignore the idea that John Scott was destroying evidence. Her above-quoted response starts "*Unfortunately I had not seen your letter [enclosing the Shredding Advice] and was not aware of it until Martin's email on 14 August*".²⁷⁹ In fact at 16.33 on 13 August, Martin Smith sent her an email saying "*I would be grateful if Harry's Response could be sent to Brian Altman QC together with the Review Protocol and Simon Clarke's Advice on Disclosure.*" [Emphasis added.] At 17.28 she forwarded that email to Andrew Parsons, saying "*Thought you might be interested to see what had started that particular "hare" running!*" Attached to the email was a document with the name "*DISCLOSURE – DUTY TO RECORD & RETAIN.pdf*".²⁸⁰ Between the tramlines of the Shredding Advice almost the same words appear: "*DISCLOSURE / THE DUTY TO RECORD AND RETAIN MATERIAL*".²⁸¹ It is therefore clear from the attachment and the content of her email to Mr Parsons that by 17.28 on 13 August Ms Crichton had read the Shredding Advice.
237. This is important because her next move at 20.34 that evening was to write the following email to John Scott, who was, at that time, her direct report:
- John - as part of our remedial action I had asked you to set up and chair this call, I have had very worrying feedback re this call from CK and it sounds like this is not being chaired, the participants are unclear as to its purpose and no minutes are being kept - or there is confusion.
Can we discuss?²⁸²
238. As a response to the advice she had apparently just read, this is an extraordinary email. The Shredding Advice did not name John Scott as the person who had given the shredding order, but it did say "*Handwritten minutes were not to be typed and should be forwarded to POL Head of Security.*"²⁸³ Any reasonable person, any reasonable line manager would be concerned to check whether this was true, i.e. to confirm or refute the suspicion that Mr Scott was the person who gave the shredding order. Any reasonable lawyer would recognise this as an allegation that Mr Scott and/or members of his team were engaged in perverting the course of justice.

²⁷⁸ POL00006797

²⁷⁹ POL00006797

²⁸⁰ WBON0000791

²⁸¹ POL00006799

²⁸² POL00139690

²⁸³ POL00006799 p2

239. When giving evidence about this Ms Crichton could see the problem, and she suggested that she may not have read the Shredding Advice when she wrote the email to John Scott:

Susan Crichton: So, from my memory, what happened is Jarnail and Hugh had had a conversation to say that the calls were being mismanaged and not achieving their objectives and it may be at that point I went off to look for the advice, or I had spoken to Martyn. I don't think I'd seen the advice from Simon at that point because, if I had, I wouldn't have contacted John Scott in these terms nor would I have suggested he then carry on to chair the calls because that would be illogical.

Mr Blake: Illogical or wrong?

Susan Crichton: Well, wrong, wrong, it would be wrong.²⁸⁴

240. The above evidence that she had the Shredding Advice on 13 August was not put to her, but she was probed further, and she conceded that she could not be certain she had not read it when she wrote to Mr Scott. She would also have to concede that what was illogical and wrong in the email she wrote to Mr Scott was not corrected by her on or after 14 August. Mr Scott wrote back to Ms Crichton in belligerent accusatory terms at 07.39 on the morning of 14 August:

The brief given by yourself for this meeting was to provide in effect an under the radar escalation point from across the business of issues that may impact the integrity of the Horizon system. You were frustrated in regards to the production and circulation of the Helen Rose report and therefore did not want any electronic communication which may be subject to FoI or Disclosure.

The conference calls have been set up and they are chaired by a senior manager from the Security Team and then I'm briefed thereafter (I wasn't aware I had to specifically Chair, but that is easily remedied). At the outset the purpose of the call was given that this was an informal escalation point and no electronic notes would be taken or circulated and communication would be created. Written notes have been taken for each call and activity has been driven behind the scenes. For example a potential Horizon glitch was raised that had been reported previously to Simon Baker. This was then managed subsequently directly with Rodric Williams and Steve Beddoe by myself in a manner to bring it under legal privilege as far as possible...

Clearly I will now attend the conference calls as Chair and following on from the previous discussions and the steer below, unless otherwise directed, this will become a formal meeting with terms of reference, electronic notes, actions and appropriate governance within such approach.²⁸⁵

241. Although Ms Crichton denied the allegations Mr Scott made against her when she gave evidence about this email, she did not put anything in writing to correct them at the time. More importantly, the letter to Cartwright King that she signed off on 16 August was at odds with the admissions Mr Scott made in this email. Although he did not admit to destroying evidence, he did admit: 1) that the meetings were intended to be "under the radar"; 2) that the aim was to avoid the production or circulation of electronic evidence about the integrity of the Horizon system; and 3) that handwritten notes were driving activity behind the scenes, which was being managed in a way to ensure that

²⁸⁴ INQ00001134 p40 (internal p160)

²⁸⁵ POL00139690

evidence of Horizon “glitches” was cloaked in privilege so far as possible. This was in keeping with three of the statements Mr Clarke relayed in his Advice:

ii. Handwritten minutes were not to be typed and should be forwarded to POL Head of Security.

iii. Advice had been given to POL which I report as relayed to me verbatim:

“If it’s not minuted it’s not in the public domain and therefore not disclosable.”

“If it’s produced its available for disclosure – if not minuted then technically its not.”

iv. Some at POL do not wish to minute the weekly conference calls

242. His advice made it plain that POL’s duty was to record and retain Horizon material for the purposes of disclosure, whereas Mr Scott admitted that the meetings were aiming to achieve the exact opposite of that. Yet in her letter of 16 August Ms Crichton said *“the purported statements referred to in Simon’s note do not reflect or represent Post Office Limited’s position”*. She was asked about this:

Mr Blake: ... why would you not be full and frank with your own lawyers as to the contents of John Scott’s very recent admission in his email to you?

Susan Crichton: I think I was trying to be full and frank because I think it was the intention, my intention that we set up this hub, we ran this properly, there were minutes, notes, and it was run from a central, you know, file, so that people could have access to it. I didn’t intend for it to be under the radar, in that sense.

Mr Blake: No, but you had told, very shortly before you sent this email, that the person who was meant to be chairing it saw it as precisely that?

Susan Crichton: Yes, I should have put those two things together.

...

Mr Blake: Having received Simon Clarke’s advice, did you press John Scott any further as to whether anything had been shredded?

Susan Crichton: I can’t recollect that.²⁸⁶

243. Ms Crichton’s failure to engage with the problems raised by the Shredding Advice and the Scott admissions (both at the time and when giving evidence) must be put into the context of what Ms Vennells and Ms Perkins were inflicting on her that summer. We refer above to way she was made a scapegoat for the adverse findings of the Second Sight investigation, and she left her position in September. When giving evidence she said that *“mentally I was in a bad place”* as a result of the way she was being treated.²⁸⁷ There is no evidence that the Shredding Advice ever went further than the legal team, but by then Ms Vennells and Ms Perkins were punishing Ms Crichton for putting her professional duties ahead of the business, as they saw it. They had shot the Second Sight messenger, so it is unsurprising that no proper action was taken as a result of receiving the Shredding Advice. Ms Crichton knew only too well that Ms Vennells and Ms Perkins would not support her if she tried to take on Mr Scott, and it is telling that she and Mr Williams made space in their short and non-responsive letter of 16 August for the standard Post Office defence of Horizon: *“I note that Simon’s advice does not suggest that material connected to the operation of Horizon itself may have been compromised.”*

244. Meanwhile Mr Scott found another way to frustrate the aim of the Horizon meetings. In his 14 August email to Ms Crichton he went on to say: *“We discussed and agreed that*

²⁸⁶ INQ00001134 p43 (internal p170-171)

²⁸⁷ INQ00001134 p47 (internal p186)

*this conference call... will now come under the governance of the Branch Support Programme.*²⁸⁸ Gayle Peacock's Branch Support Programme was no more than a sop, which achieved nothing because Ms Peacock knew nothing. She told the Inquiry that she had not even read the Second Sight Interim Report, having accepted Ms Van Den Bogerd's cherry-pickings from it, which Ms Peacock summarised in this way: *"The review made it clear that the Horizon computer system and its supporting provides function effectively across our network."*²⁸⁹ Once the Horizon meetings were absorbed into the Branch Support Programme, almost nothing of interest or relevance appears in the minutes.

Perverting the course of justice

245. The Post Office Executive and lawyers seek to blame each other for the suppression of the truth about Horizon, but there is no reason why one side would have conspired to keep the other in the dark. We submit that the conspiracy to suppress evidence of Horizon's failings, rather than to root it out and disclose it, spanned across the Executive and the lawyers. That suppression amounted to perverting the course of justice because Post Office was obliged to disclose all information that cast doubt upon the safety of convictions, in accordance with *Nunn*. Clearly evidence of Horizon's failings would cast doubt on convictions based on Horizon evidence, and that would have been as obvious to a lay person as to a lawyer. Nonetheless, the truth about remote tampering with branch accounts and the manifold Bugs, Errors and Defects was suppressed for many years, which had the effect of perverting the course of justice by preventing successful appeals.

246. The Post Office was put on formal notice of the need to consider the safety of Horizon convictions from 12 July 2013, when the Criminal Cases Review Commission wrote to Paula Vennells in these terms:

Our purpose is to review possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland and refer appropriate cases to the appeal courts.

For obvious reasons, we have read the recent media coverage concerning the Post Office Horizon computer system with interest. Clearly, it would be very useful for us to have more information directly from the Post Office, especially accurate information as to number of criminal convictions that might be impacted by the issue and what action is proposed, or being taken, in that respect.²⁹⁰

247. Ms Vennells was asked about this letter and said this:

Paula Vennells: I remember receiving the letter from the CCRC. I don't remember personally regarding it as unwelcome.

Mr Beer: It arrived at a time at which you would have been told, is this right, by Susan Crichton, about the need to review past convictions?

Paula Vennells: I would think so, yes.

Mr Beer: It would have arrived at a time when you'd been told by Susan Crichton and Lesley Sewell about the concern about the Fujitsu expert witness's evidence to the courts, including in the Seema Misra case?

Paula Vennells: Yes.

²⁸⁸ POL00139690

²⁸⁹ INQ00000985 p28 (internal pp110)

²⁹⁰ POL00100702

Mr Beer: A letter like this does not land on the doorstep of the CEO every day of the week, does it?

Paula Vennells: No.

Mr Beer: Would you agree that the right and honest thing to do would have been to let the CCRC know about the Post Office's concerns over Gareth Jenkins?

Paula Vennells: What I did with this letter was to ask Susan to reply as the legal expert in the organisation. I don't believe I would have given her direction as to how we should reply to it and, for clarity, I wouldn't have either instructed her to leave things out.

Mr Beer: The right and honest thing for the Post Office to have done would be to let the CCRC know and know promptly over its concerns about the truthfulness and reliability of the evidence that Gareth Jenkins had given to court, wouldn't it?

Paula Vennells: Yes, it would.

Mr Beer: That didn't happen for years and years, did it?

Paula Vennells: I understand that to be the case now, yes.²⁹¹

248. Ms Vennells took no responsibility for Post Office's failure to do the right and honest thing, yet the reaction from Post Office's many trusted lawyers was almost universally to do the wrong thing. This cannot have been a coincidence.

249. Ms Crichton received the CCRC letter on 15 July at 14.40. At 14.53 she sent it to Martin Smith and Simon Clarke asking whether they should draft the reply on POL's behalf, or whether POL should refer the CCRC to them. At 15.41 Mr Smith said that he had asked Mr Clarke to draft a response "tomorrow morning".²⁹² The timing is intriguing, because the Disclosure Obligations was dated 15 July, although it does not appear to have been sent to Post Office until 17 July.²⁹³ It is conceivable that Mr Clarke had already written the Disclosure Obligations Advice on the morning of the 15th, but it seems more likely that after receiving the letter from the CCRC the Cartwright King lawyers decided that the first priority was to draft the Advice, before turning to the CCRC response, to put them on the right side of the Gareth Jenkins problem.

250. As promised, on 16 July they sent Ms Crichton some carefully composed paragraphs that Mr Clarke suggested could go into POL's CCRC response:

... Where a defendant asserts, rightly or wrongly, that Horizon is at fault, it is for the prosecution to demonstrate the integrity of the system and the evidential audit trail derived from Horizon. This is usually accomplished by the serving of expert evidence. For many years both RMG and latterly POL has relied upon a single expert witness provided by Fujitsu Services Ltd., the Horizon manufacturer, maintenance and support contractor. That witness has provided expert evidence in many cases where the defendant has asserted irregularities with Horizon to be the cause of unexplained shortfalls, as to the operation and integrity of the Horizon system. **He has done so both to POL and, in expert witness statements and oral evidence, to the court. In particular he has: attested to the presence of defect detection and rectification systems; the robustness of the prosecution audit trail; and stated that, in his expert opinion, Horizon accurately records and processes all information submitted into the system. The Second Sight Interim report demonstrates that this was not the case...**²⁹⁴ [Emphasis added]

²⁹¹ INQ00001152 p22 (internal pp87-88)

²⁹² POL00145466 p1

²⁹³ POL00039999

²⁹⁴ POL00039995 pp1-2 (See POL00006548, the cover email, showing that this document was sent on 16/7/13)

251. This was as close as any of POL's lawyers got to doing the right and honest thing. Arguably he could have been more direct, as he was in his Advice. The issue would certainly have been more explicit if he had included his opinion that Mr Jenkins' credibility had been "fatally undermined". Furthermore his document went on to say that everything was under control, even saying that "*an independent firm of criminal specialists*" was carrying out a review of all impacted cases, without explaining that the firm was implicated in some of the past cases, and without revealing that the conflicted firm had drafted the Post Office's reply.
252. Nevertheless, even this half-baked attempt to do the right and honest thing was quickly buried. Ms Crichton said to Mr Parsons "*their advice 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 specialises in Criminal law or a barrister, somehow it feels as if there is a conflict here which I am not sure I understand.*" Mr Parsons responded by quoting the section in bold above, and commenting "*I consider this to be unhelpful given that the SS report found there to be no systemic problems with Horizon.*"²⁹⁵
253. Ms Crichton also sought input from Rob Wilson (presumably the former Head of Criminal Law), who gave this disingenuous response:
- From the draft reply it looks as though the expert has been less than forthcoming. If i am right this is disturbing. I understood that there were a couple of bugs identified that impacted on a limited number of prosecutions which is reflected in the later part of the reply. This is at odds with the sentence "The Second Sight Interim report demonstrates that this was not the case" which sounds as if POL wholesale have been involved in misleading parties to prosecutions. Having no knowledge of the unwritten background i wonder wether this statement can be softened?²⁹⁶ [Mistakes reproduced verbatim]
254. Mr Wilson, of course, had received the Jenkins papers about the Receipts and Payments Mismatch Bug just before Seema Misra's trial. In response, Ms Crichton asked him whether "*we need independent advice?*", to which he said "*not at this stage but could review when we see the CCRC reply*". This was in keeping with his intervention which prevented POL from instructing an independent IT expert in March 2010,²⁹⁷ and his involvement in the Ismay whitewash.
255. Mr Wilson was not alone in his desire to avoid any independent people getting involved. Hugh Flemington, Head of Legal, said this:
- Presumably we need to give off the signals that we are proactive, doing all the right things re writing to people to keep the AG and CCRC calm. Hopefully if they see that they may leave us to it for the moment.²⁹⁸
256. This idea of "giving off signals" so they could be simply "left to it" seems to have been the consensus, because once they had sent responses and received a reply, Gavin

²⁹⁵ POL00192192

²⁹⁶ POL00192154 p1

²⁹⁷ POL00106867

²⁹⁸ POL00122552 p1

Matthews, the Senior Partner at Bond Dickinson, said *“That’s an ideal response from the CCRC — they don’t look like they want to get involved.”*²⁹⁹

257. There is a hint in an email exchange that took place on the evening after the July Board meeting that Ms Crichton wanted to discuss the situation with a board member. Simon Richardson, another Bond Dickinson partner said *“Of equal importance is making sure board members fully understand the range of issues and the limitations or constraints upon POL/Legal. Gavin, Andy and I would be happy to accompany you, it’s your call as to which combination you consider will work best for you and the board member.”*³⁰⁰ We have not found any evidence to suggest that such a meeting took place, however.

258. In any event, it was Ms Crichton’s quandary about the CCRC response that led to the instruction of Brian Altman KC. Her initial view that there was *“a conflict”* became a back and forth with Bond Dickinson on the pros and cons of instructing another firm, and then an email from Gavin Matthews saying that *“POL needs to look at the response to the CRCC in the context of the overall strategic advice received from CK (including their advice re GJ/FJ)”*. This email was on 17 July, after the Disclosure Obligations Advice had been received. Mr Matthews mooted the idea that POL may have a cause of action against Gareth Jenkins, Fujitsu or Cartwright King, should they suffer losses as a result of Mr Jenkins’s failures as an expert witness. He therefore advised that it would be *“sensible to get a criminal QC to oversee the strategic advice being given by CK — I’m not saying that CK have definitely done anything wrong but they may have done and are trying to blame GJ/FJ so it is very important to check that their tactical approach is now overseen by someone completely unbiased.”*³⁰¹

259. By the following Monday, 22 July, the list of issues for Mr Altman KC to advise on had lengthened considerably,³⁰² and on 24 July a short response was sent to the CCRC:

This month Second Sight released an interim report that highlighted a number of issues that required further investigation but also reached the interim conclusion that there were no systemic problems with Horizon.

We are now looking at Second Sight’s findings in detail and are also investigating whether those findings have an impact on any historic or on-going prosecutions. I hope to be able to send you a more comprehensive response on these matters by the end of this week.³⁰³

260. Another letter, drafted by Bond Dickinson, was sent on 26 July. It cherry-picked from Simon Clarke’s reassuring paragraphs about *“the external firm of criminal specialist solicitors”* instructed to identify cases to determine the safety of convictions, but added the new, even juicier cherry:

POL has decided to instruct Brian Altman QC, former First Treasury Counsel with substantial prosecuting experience whose remit it is intended should be, in broad terms, to review and advise POL on its strategy and process for reviewing past/current prosecutions given the findings of the Second Sight interim report.³⁰⁴

²⁹⁹ POL00458652 p1

³⁰⁰ POL00192214 p1

³⁰¹ POL00407547 p1

³⁰² POL00297884

³⁰³ POL00219751 p5

³⁰⁴ POL00219751 p4 (note this appears as a draft letter, and we have not found a version in finalised form, but it must have been sent because the response from the CCRC on p3, dated 30 July, refers to it.)

261. The letter finally sent did not include Mr Clarke’s paragraphs about Gareth Jenkins. It presents an interesting parallel: just as Cartwright King’s review of Andrew Parsons’ insurance notification document resulted in neutering the information about the Gareth Jenkins “taint”, so the Bond Dickinson review of Simon Clarke’s CCRC response resulted eradicating information about the “taint”.
262. On 30 July the CCRC wrote the “ideal” response, saying that they would wait for Mr Altman KC’s initial conclusions.³⁰⁵ Post Office had bought itself time. Years and years of time, as it turned out, during which no one did the right or honest thing.
263. This would seem odd if Gavin Matthews was right to say that the Post Office had other parties to pursue if convicted Subpostmasters were due compensation as a result of Gareth Jenkins misleading the Court (as he did in his email of 17 July). However, Roderic Williams’s handwritten notes of 2 September 2013 show why the options outlined by Mr Matthews were not available:³⁰⁶

→ We do have an issue of how we can share the info	
MARTIN SMITH.	
INFERENCE.	SD - WE KNOW OF SOME OF THESE ...
① Syst designed to look for bugs, but doesn't mention doing	- WHAT WERE WE DOING TO INSTRUCT CJ.
↳ BT (MPLICATION, TELETYPE) ARE NONE. → Signed Shute After Telling SS of the Bugs.	
M. Smith - BIC NONE ARE MENTIONED.	
→ Don't think he's ever been advised of his duties.	↳ If will say, it's up to
→ Started in March. 2010	Df. Council to raise the issue.
→ Has turned up since (but not given).	
→ His duty is to the Court	↳ likely affected - it's not...
→ Seen to rely on this. → OK haven't done anything since.	↳ [ARE FJ reviewing this?] legal
	↳ "and correctly account for it."
	↳ misleading -

264. These notes show that Martin Smith informed Mr Williams that Mr Jenkins had not been advised of his duties as an expert. This begged the question Mr Williams posed on the right hand side: what were Post Office doing to instruct him? The unwelcome answer, of course, was that Post Office had not only failed to instruct Mr Jenkins properly, it had engaged in mis-instructing him in various ways in several cases. (See, for example: (a) Diane Matthews’ 2006 response to Gareth Jenkins’ request for guidance, “It is pretty much as you see on the TV really but remember that you....can only be asked specifically about your statement.”³⁰⁷; and (b), Mr Singh’s email to Mr Jenkins of 1 March 2010: “Just a reminder you are an Expert for Fujitsu, you will be giving evidence in Court, the Judge and Jury will be listening to you very carefully and a lot will hang on the evidence.”³⁰⁸)

³⁰⁵ POL00219751 p3
³⁰⁶ POL00155555
³⁰⁷ FUJ00152616 p2
³⁰⁸ POL00058502 p5

265. This explains why the Post Office did not pursue the angles Gavin Matthews had raised with Susan Crichton on 17 July: the Post Office could hardly bring a claim against Fujitsu or Mr Jenkins given its own lawyers and investigators mis-instructing him. Better to stay as silent as possible about Mr Jenkins, and do everything possible to block the CCRC and the rights of appeal of Seema Misra and others. This became its strategy, and instructing Brian Altman KC became part of that strategy. This was revealed by Andrew Parsons responding to Martin Edwards, who was compiling Paula Vennells' CEO Report:³⁰⁹

Edwards 18/10/13:

I think the Criminal Case review process needs more explanation, in particular an explanation of the implications of the 11 cases where disclosure has been recommended. (Even if we don't want to include too much on this in the text itself, useful for Paula to have in her background notes). Can we also have an explanation of the high level conclusions of the Brian Altman review, along the lines outlined by Rodric yesterday?

Parsons 21/10/13:

[Jarnail / CK to amend / complete]

Brian Altman QC's First Review has now been received. This First Review looked into POL's compliance with its prosecution duties in light of Second Sight's findings — in particular, it considered POL's legal duty to ensure that SS' findings were fully disclosed to any person who is currently being or has previously been prosecuted by POL. Mr Altman QC concluded that POL is complying with its duties and that the approach adopted by the prosecution team was "fundamentally sound". **This report gives POL good grounds to resist any formal external review of its historic prosecutions (i.e. by the Criminal Cases Review Commission).** [Emphasis added]

266. There is further evidence of the strategy of control and containment over the subsequent years. In 2015 the CCRC sent a s17 Notice to POL. Gavin Matthews instructed Brian Altman KC ahead of a conference, and said this:

Clearly someone (possibly Mr Arbuthnott [sic]) has agitated the CCRC to do something and this has resulted in the [s17] letter at enclosure 1.

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.**³¹⁰ [Emphasis added]

267. Alisdair Cameron's 2020 reflections included this recollection from 2015:

Paula, Jane [McLeod] and I discussed informally settling rather than closing the mediation scheme in 2015. Jane's strong and unwavering view was the issue could not be settled because any settlement would trigger a second wave of claims. Later, she also expressed concerns that it might trigger a change in CCRC view.³¹¹

268. Mr Cameron seeks to blame Ms McLeod, but what he describes here is a strategy which must have been approved by the CEO and the CFO: the CCRC must be held at bay, even if that means fighting the GLO all the way. This mirrored what Susan Crichton had said in 2013, picking up on Mr Altman KC's advice to the effect that compensation or an

³⁰⁹ POL00123003 p1 and p3

³¹⁰ POL00458653 p1

³¹¹ POL00175235 p6

apology would send the wrong signals to the Court of Appeal.³¹² The General Counsel may have changed by 2015, but the direction from the top had not: the CCRC must be controlled and contained because the Horizon convictions must hold.

269. A note of a meeting between Mark Underwood, Pete Newsome and Mark Wright from Fujitsu and two people from CCRC shows how the strategy was playing out in 2018. The meeting was at Fujitsu in Bracknell, ostensibly because “*the CCRC need to be able to tell the applicants they have been to Fujitsu’s offices and actually seen the KEL themselves.*” However, the CCRC was quickly diverted with a couple of dummy searches, and then “*the meeting became more of a conversation*”, and “*a good rapport was struck up*”. The CCRC revealed that it was using Misra as a test case. This was the comeback:

Post Office and Fujitsu shared with the CCRC some examples of what has been discovered upon the investigation of seemingly unexplainable transactions or events in branch .

Examples included:

- o A dog being 'caught' on CCTV jumping up on a counter, after hours, and pressing horizon keys.

- o A knitting needle being used as a stylus, and thus causing multiple screen replacements.

- o A man with a prosthetic hand using a frozen sausage as a finger, resulting in miskeying.

The point landed was that there is always an explanation.³¹³

270. This concerted cynical attempt to throw the CCRC off the scent was not the work of a few rogue employees at Post Office and Fujitsu. This must have come from the top, and it had the effect of denying, by delaying, justice for years.

The legal reviews – “an optic piece”

271. Neither Mr Altman KC nor Mr Clarke has offered a compelling or even clear explanation for their mutual failure to provide the CCRC and Mrs Misra with disclosure of the Gareth Jenkins’ “taint”. We submit that the explanation for this is simple but alarming: the Altman General Review and the Cartwright King sift review were “optic pieces” (akin to Hugh Flemington’s strategy “to give off the signals that we are proactive, doing all the right things”). They were designed to make it appear as if the Post Office was complying with its duties of disclosure, in order to keep the CCRC and claims for compensation at bay. It is therefore unsurprising that their sifts and reviews did not lead to the Post Office swiftly restoring matters to the Court, and providing the CCRC with a clear and comprehensive appraisal of Gareth Jenkins’ misleading evidence, and the Post Office’s abject failure to instruct him.

272. Mr Clarke’s Witness Statement claimed he was “*at a complete loss*”³¹⁴ to explain a startling conflict between two advices he gave. The first on 5 December 2013 (which he accepted was his work, although curiously not signed in his name) was in favour of disclosing both the Helen Rose report and the Second Sight Interim Report to Seema Misra. In contrast, on 22 January 2014 (under his own name) Mr Clarke said the exact

³¹² POL00139866 p7 Note also that in his General Review, Mr Altman KC said “*If there is any Horizon related civil litigation between any present or former sub-postmaster and Post Office Ltd, Cartwright King should be given complete visibility of the litigation in case this should affect any decisions they are making about criminal cases.*” (POL00006581 p7)

³¹³ POL00254122 pp2-3

³¹⁴ WITN08130100 p49 para 143

opposite. He could offer no explanation for this, because no honest or credible explanation for his U-turn is possible.

273. The first advice stated:

33. In the case of Misra the issues predate January 2010 but the Trial took place in October 2010. We have received no file in relation to this case but we have received the transcripts of the trial. It would seem that this is the only case in which the Fujitsu Services Ltd Expert, Gareth Jenkins, appeared in court and gave evidence on oath. It is our view that this case clearly passes the disclosure threshold and we will be disclosing the Second Sight Interim Report and the "Helen Rose" report to Misra's lawyers...³¹⁵

274. This unequivocal advice was reversed in the second advice, which also rejected disclosure of the Jenkins' taint:

69. As for the Helen Rose report, that matter goes solely to Gareth Jenkins' knowledge of Horizon concerns arising some 5 years after the events considered in Mrs. Misra's trial, and his credibility as an expert witness in 2013. An analysis of the events dealt with in that report, and the potential that Gareth Jenkins' credibility as a witness might be undermined in 2013, does not in my view lead to the conclusion that material which might undermine his credibility now ought to be made available so as to do so in relation to a trial which occurred in October of 2010.³¹⁶

275. This contradiction is simply irreconcilable. Nevertheless, when Mr Clarke gave evidence, he attempted to explain the inexplicable. He was no longer at a complete loss: he said that he had watched the evidence of Rodric Williams, Jarnail Singh, Martin Smith and Harry Bowyer, and had come to the view that the full Misra file had been deliberately withheld from him³¹⁷. He sought to suggest that this was relevant because his January advice had therefore relied solely on the transcripts rather than the file. This, he said, made him overly influenced by the trial judge's refusals to grant further disclosure.³¹⁸

276. This is nonsense. Mr Clarke was in possession of the trial transcripts in December 2013 (as the above excerpt from 5 December 2013 advice states) and had not been diverted by the judge's rulings when advising that disclosure "*clearly passes the disclosure threshold*" and would be given to Seema Misra. Moreover, the firm had been in possession of those transcripts for months before and had studied Jenkins' evidence.³¹⁹ He must have realised that the Gareth Jenkins' "taint" was disclosable when he wrote the January advice, but offered this spurious rationale to deny it.

277. Mr Clarke, in the course of his long-winded explanation, tried to suggest he had made an innocent mistake: "*To my mind, there were three strands of information. There was the Second Sight Report; the Helen Rose Report; and the third strand was the – my conclusion that Gareth Jenkins was a wholly unreliable witness. I accept that – now that that was wholly disclosable from day one.*"³²⁰ He never suggested or clarified how or when he returned to his original view that the "*third strand*" was disclosable.

³¹⁵ POL00040194 pp11-12 para 33

³¹⁶ POL00108223 p19 para 69

³¹⁷ WITN08130100 paragraph 140

³¹⁸ INQ00001144 pp32-34 (internal pp126-136)

³¹⁹ POL00066825 3 October 2013 "HB currently looking at Misra transcript to see what GJ said."

³²⁰ INQ00001144 p34 (internal pp133-134)

278. In fact it is clear from Mr Clarke's briefing note to Mr Aujard³²¹, and the paragraphs he prepared for inclusion in the CCRC response, that he knew that the Gareth Jenkins' taint was "*wholly disclosable from day one*", and he had realised that on day one. He was therefore complicit if not instrumental, in the failure to make that disclosure throughout his involvement in the Cartwright King sift review.
279. Turning to Mr Altman KC, his witness statement, dated 4 April 2024, states "*I have considered with great care whether there is anything I would or should have done differently. However, I cannot say there is.*"³²² However, in his evidence on 8 May 2024, Mr Altman said this:
- Q. What was done to inform past defendants and those in ongoing cases that Mr Jenkins had wrongly withheld knowledge about bugs in the Horizon system?
- A. I know what you're driving at, Mr Beer, and it's something in recent weeks which I have thought about and it's something that should have been disclosed to operate [sic – appropriate?] people.
- Q. Is the answer, then, that nothing was done to inform convicted defendants or those in ongoing cases that Mr Jenkins had wrongly withheld his own knowledge of bugs in the Horizon system?
- A. I think, unhappily, that has to be the case. I mean, with -- again, with the benefit of hindsight and having thought an awful lot about this, it's something that should have been considered for disclosure and disclosed in appropriate cases, no question.
- Q. And should have been considered for disclosure by you, Mr Altman?
- A. Yeah, I'm accepting that.³²³
- ...
- Q. Was it a failure of duty?
- A. No, absolutely not, because a failure of duty imports a positive conscious decision not to do something. My point is, the general review contained 50-odd pages of just about every thought I had and I record everything, and the fact, actually, when I came to look at this and I realised that I hadn't said it, in recent weeks, I was flabbergasted and I can't understand, putting myself back, all of those years, why I didn't but I didn't. And so it was a mistake, it was a genuine mistake...³²⁴
280. Mr Altman KC has re-visited these issues at least twice in recent years. First, during the Hamilton appeals those acting for Mrs Misra secured disclosure of the Disclosure Obligations Advice, of which he was undoubtedly aware, as he addressed the Court more than once on the issue. This must have caused him to consider what made it disclosable. Second, when he prepared his Witness Statement for the Inquiry, and gave what he says was careful consideration to the question of whether he should have done anything differently, he did not find himself flabbergasted at his own mistake. Yet he claims that in the weeks that followed, apparently unprompted, he had another look at his General Review, whereupon he did find himself flabbergasted at his own mistake. He did not, apparently, seek leave to submit a further Witness Statement. He did not seek leave to amend his Witness Statement at the outset of his oral evidence. Rather, when faced with a direct question, which he could not avoid, he said "*I know what*

³²¹ POL00108136 p5 para 10

³²² WITN10350100 p47 para 121

³²³ INQ00001143 p13-14 (internal pp52-53)

³²⁴ INQ00001143 p44 (internal pp174-175)

you're driving at, Mr Beer". This is not what might be expected from a person who has recently confronted their own catastrophic genuine mistake.

281. The contemporaneous evidence also militates against the recent accounts from Mr Clarke and Mr Altman KC. First, Mr Clarke attended a conference with the Prosecutor Fiscal in Scotland on 5 September 2013, together with Martin Smith and Jarnail Singh. The meeting began with the Scottish lawyers taking the view that all prosecutions must be stopped, due to the disclosure obligations arising under Scottish law, but Mr Clarke was able to persuade them otherwise. The note says this: "*[Simon Clarke] provided the meeting with a broad overview of the HOL difficulties (absent any direct or indirect reference to the role of GJ or Fujitsu).*"³²⁵ HOL is not defined in the document but is used as if it means the Horizon system. Therefore in describing the difficulties with Horizon prosecutions Mr Clarke, Mr Smith and Mr Singh did not reveal the Jenkins "taint", only the bugs, and yet the note shows that Mr Clarke's "third strand" was in mind.
282. Then, a further conference was held on 9 September, which Mr Clarke and Mr Altman KC attended, together with Jarnail Singh, Roderic Williams, Susan Crichton, Gavin Matthews, Andrew Parsons, Harry Bowyer and Martin Smith. The agenda was foreshadowed in an email of 30 August from Susan Crichton to Paula Vennells which reads: "*The issues that we want Brian Altman QC to advise [sic] on were agreed, final sign off of review process; and advice on prosecutions going forward.*" On 3 September this agenda was added to: "*Conference agreed for 9 September where the focus will be on our prosecutorial obligations of disclosure of any information which may be of assistance to the defence. After this conference we will finalise the terms of reference for Brian Altman's review; this will include, amongst other things a consideration of POL's position re criminal prosecutions.*"³²⁶
283. When the conference took place Gareth Jenkins and Seema Misra were at the forefront. The Bond Dickinson note mentions its ostensible purpose, "*to address the issue of POL's continuing duty of disclosure*".³²⁷ The Martin Smith note of the conference refers to the Misra case 11 times, and Jenkins and the need for a new expert were repeating themes. Mr Altman KC referred to the Nunn test for post-conviction disclosure by saying that material was disclosable if it went to the safety of a conviction.
284. This passage from Mr Smith's note is particularly revealing of the mindset, which is not recorded in the Bond Dickinson note:

QC: Misra concerned: Pre Hz online case – issues were as detailed as I've seen. **She went to prison. Jenkins gave evidence** – Training and Hz issues : Prof McL – much of it Hypothesis – **that is a case slipping through the net.** Susan comments that she has applied for mediation.

QC: How are we going to deal if she comes forwards and says similar... [sic]
Susan: Either review all pre 2010 cases – **or we do nothing and wait** for them to come forwards.

QC: **Next problem: What disclose?**
Rod: We will always have people who want to go back and if we do, trying to prove negative.

³²⁵ POL00139879 p4 para 12

³²⁶ POL00108087 p2

³²⁷ POL00006485 p1

QC: Cant avoid question:

Provisional view: sensible date to adopt. But **cant avoid possibility Misras may crawl out of woodwork: deal with on case by case basis unless someone states cut off unreasonable.**³²⁸ [Emphasis added]

285. This was a group of lawyers engaged in damage limitation. They were not trying to expose all the potential miscarriages of justice, they were actually doing their best to keep and contain as many as possible “in the woodwork”. Mr Altman KC’s open question “*what disclose?*” was immediately shut down by Mr Williams, but there were five experienced criminal lawyers in that room. Most of them will have been answering the question in their own heads, even if they avoided saying it out loud: the credibility of the key witness at the Misra trial was in doubt, and that information clearly met the disclosure test as outlined by Mr Altman KC. (The note shows that at a different juncture Jenkins’ credibility was mentioned: “*where GJ acted it goes to his credibility.*” Immediately underneath these words Mr Clarke is reported to have said “*scary*”.³²⁹)
286. Instead of seeking to make disclosure to ensure unsafe convictions could be overturned, the focus was on trying to prevent disclosure that might lead to appeals:
 BA [Brian Altman KC] advised considerable caution in relation to mediation cases involving previously convicted individuals (Seema Misra has already indicated an intention to be within the scheme). The concern is that lawyers acting for those individuals may be using the scheme to obtain information which they would not (be entitled to in order to pursue an appeal.³³⁰
287. A particularly striking omission from the notes of the discussion on 9 September is the failure of anyone to address or to seek advice in respect of the Post Office’s inexcusable failure to instruct Gareth Jenkins properly.³³¹ Mr Williams and Mr Smith in particular had discussed this issue just a week earlier on 2 September. The consequences were staring Mr Williams in the face: his note shows that he was thinking about damages, restitution and repayment of compensation. The Post Office was facing a catastrophe. Yet a week later Mr Williams demonstrably turned a blind eye to the flagrant and inexcusable failure to apprise Mr Jenkins of his duty to the Court, and the vital importance of independence, objectivity and impartiality, even though it was manifestly disclosable to all those who had been convicted or pleaded guilty as a result of Jenkins’ evidence. Mr Williams would not have been acting on his own initiative. He was merely the facilitator of a wider strategy to contain and avoid.
288. Following the meeting, on 26 September, Martin Smith sent this email to Susan Crichton: “*Brian [Altman KC] expressed a concern that the slightest apology to a convicted person or the payment of compensation could indeed give rise to an appeal. He was concerned that Misra would use the mediation scheme to obtain some sort of concession to allow her to appeal.*”³³²

³²⁸ POL00139866 p6

³²⁹ POL00139866 p10

³³⁰ POL00021998 p3

³³¹ POL00139866 p8 Mr Altman is recorded as saying “GJ not performed his disclosure role as expert witness. Why disclosure to SS – Incompetence rather than dishonesty” suggesting he was alive to the issue but did not advise on the consequences and neither Mr Williams nor Mr Smith engaged with it.

³³² POL00363173 p1

289. Martin Smith returned to this issue in May 2015, when he spoke with Andrew Parsons about disclosure in the mediation scheme. His note records him “*explaining*” that “*disclosure may give Misra ticket to C of A*”.³³³ This was not just about Mrs Misra. Mr Smith made this admission in his evidence to the Inquiry:

Mr Henry: ... it seems, at this stage, no one wanted to provide Mrs Misra with a “ticket”, to use your expression, to the Court of Appeal: do nothing, adopt a passive approach. Correct?

Martin Smith: I would certainly agree that the Post Office did not want, at that stage, to be actively encouraging people to go to the Court of Appeal.³³⁴

290. We submit that there is clear reason for this laser focus on blocking Seema Misra’s route to appeal: had she found a route to appeal, it would not only have exposed Mr Jenkins’ misfeasance, it would have exposed Post Office’s manipulation of his position as an expert witness who had not been instructed as such. It would also have been likely to expose the existence of more Bugs, Errors and Defects than previously admitted to. Lastly, it would have exposed the fact that Fujitsu could tamper with branch accounts, because the Gareth Jenkins Receipts and Payments Mismatch Bug materials, which she should have received before her trial, refer to the capacity to alter accounts without the Subpostmaster knowing. In short, Mrs Misra’s appeal would have brought the whole house of cards crashing down. The centrality of her case was obvious. This Mr Altman KC recognised in the Court of Appeal, on 21 March 2021, when he made this concession: “*Hers is a particularly bad example... of non-disclosure, given that one could say that Ms Misra’s trial was the high-water mark of litigation on issues of Horizon integrity.*”³³⁵

291. When he made this submission he was stating the obvious of which he had long been aware that Mrs Misra’s case was the cornerstone of the Post Office’s strategy to demonstrate and defend the integrity of Horizon. It was or had been a test case for the Post Office, and it had become a test case for the CCRC.

292. Returning to 2013, Mr Altman’s General Review of 15 October stated that Jenkins was “*tainted and his future role as an expert is untenable*”.³³⁶ On 21 October Ms Vennells wrote the “unsafe witness” email: *My concern re Sparrow currently is our obligations of disclosure re., an unsafe witness. (The representative from Fujitsu made statements about no bugs, which later could be seen to have been undermined by the SS report.) We do not think it material but it could be high profile.*³³⁷

293. The timing of this email, just six days after the General Review, is remarkable. Another important event took place in those six days, because on Monday 14 October Chris Aujard took over as General Counsel³³⁸ and on 16 October he was given a Briefing Note by Simon Clarke. The Note annexed his paragraphs for inclusion in the CCRC response, the Disclosure Obligations Advice and the Shredding Advice, among other key documents.

³³³ POL00066872

³³⁴ INQ00001140 p42 (internal pp167-8)

³³⁵ The transcript of this hearing is not on CP View.

³³⁶ POL00006803 p6

³³⁷ POL00372551 p1

³³⁸ WITN00030100 p1 para 1

294. When Mr Aujard testified he provided ample evidence of his ability to dance on the head of a pin. A section of the 16 October Briefing Note was put to him:

Mr Stevens: ...*“Dr Jenkins’ failure to mention the [Horizon Online] defects in his expert witness statements or to [Post Office Limited] and [Post Office Limited] prosecutors rendered his written statements inaccurate and misleading. That failure amounted to a breach of Dr Jenkins’ duty to inform the defence and the court (and [Post Office Limited]) of those matters – see paragraph 6 above. This was an important and far-reaching failure the consequences of which are only now beginning to crystallise. Of primary importance was the fact that, had [Post Office Limited] been possessed of this material during the currency of any particular prosecution, it would have undoubtedly been disclosable to the defence pursuant to [Post Office Limited’s] duty of disclosure.”*

It’s quite a startling paragraph, isn’t it?

Christopher Aujard: Yes, it is.

Mr Stevens: What were your views when you read it on the seriousness of this issue?

Christopher Aujard: I believe my views would have been informed by the general briefing, which was that this was an historic issue – recently discovered but nonetheless historic issue and that was being dealt with as part of the overall process that had been put in place to review cases by Cartwright King with – under the supervision of Brian Altman KC.

Mr Stevens: You said it was *“historic”*. The middle sentence says, *“This was an important and far-reaching failure, the consequences of which are only now beginning to crystallise”*.

Christopher Aujard: Mm-hm.

Mr Stevens: Do you think that can sensibly be described as *“historic”*?

Christopher Aujard: The issue, the failure, I believe, is historic and that’s, I believe, how it was described to me at the time: a recent historic failure, which will continue to have implications for the Post Office in the future.³³⁹

295. This will not withstand the most cursory scrutiny of the Briefing Note, which concludes under the hearing *“Present State of Affairs”* that *“the number of potential wrongful convictions is in single figures and that the Court of Appeal is likely to overturn only one or two of those”*.³⁴⁰ This was a current serious issue. Ms Vennells will have spoken with Mr Aujard in his first week, and a primary topic of conversation must have been not only Mr Jenkins’ *“far-reaching failure”*, the consequences of which were *“beginning to crystallise”*, but also Simon Clarke’s briefing regarding potential wrongful convictions being overturned.

296. We submit that committing the *“unsafe witness”* email to writing was a slip on the part of Ms Vennells, towards midnight as she cleared her tray before her holiday, because there is no other written evidence of the group she refers to as *“we”* giving any consideration to the question of whether the Gareth Jenkins *“taint”* should be disclosed. We submit that this was a conspiracy of deliberate silence, which extended to the external lawyers, who danced around the issue and did their best to avoid it.

297. In April 2014, Andrew Parsons made a damaging slip himself. Howe & Co, acting for applicants in the mediation scheme, had become aware of the Winn/Lusher email³⁴¹

³³⁹ INQ00001135 p20 (internal pp79-80)

³⁴⁰ POL00108136 pp9-10 para 27

³⁴¹ POL00117650

indicating that Post Office were aware of Fujitsu's remote access abilities in 2008. They were arguing that combined with the Helen Rose Report it made for a compelling reason to stay all the claims and investigate. They had also become aware that the version of the Helen Rose Report that was disclosed through the Cartwright King review of past prosecutions had a redaction.

298. On 8 April Mr Parsons wrote an email to Belinda Crowe, Angela Van Den Bogerd, Andy Holt, Rodric Williams, Chris Aujard, David Oliver, and Claire Parmenter. He said that he had spoken to Rodric Williams and Simon Clarke and they were all aligned on how to resist Howe & Co's complaints. He then said:

Just for background information, the material part of the Helen Rose report has nothing to do with her comments about reversal data. SS [Second Sight] and Howe are taking this point as evidence of a problem with the integrity of Horizon. In fact, ... [t]he concern was not with the data's accuracy but that the presentation of the data could be misleading if its limitation were not fully understood. Putting this issue aside, **the real (and confidential) reason that the report was disclosed** was because Helen's comment at the bottom of page 3 suggests that it was widely known that there were problems with Horizon. This statement (regardless of whether it is correct) **could have been used to attack Gareth Jenkins credibility** as POL's Horizon expert as he had previously stated that there were no problems with Horizon.³⁴² [Emphasis added]

299. Evidently these three lawyers had discussed the fact that Mr Jenkins' lack of credibility was disclosable, as well as the cunning and confidential way the Cartwright King review had contained the problem. Rather than actually letting defendants and the CCRC know that they believed Mr Jenkins to be a tainted or unsafe witness, they disclosed material that might lead them to that conclusion, but for good measure, they redacted his name. They also kept to themselves the transcript of the call of 28 June, which would have been far more capable of demonstrating his lack of credibility than the Helen Rose Report. Rodric Williams, of course, had appreciated all this months before when writing the following on 2 September 2013: "*so we know some of these [i.e., matters going to Jenkins' credibility] what were we doing to instruct GJ*" (underlined twice).³⁴³ He knew the Post Office's knowledge of the issue was explosive – redactions and non-disclosure were signs of his determination, and that of others, to suppress it.
300. Mr Parsons felt able to communicate this information to a senior group of lawyers and lay people at Post Office, which reveals that this was not a conspiracy of the lawyers alone. It was Post Office strategy, and the "unsafe witness" email shows that it had been discussed and approved at the highest level. The Cartwright King review was carefully designed to look like the Post Office was making appropriate disclosures, so the CCRC would be reassured and look no further, while actually obscuring the Gareth Jenkins "taint" as much as possible. The Altman General Review was laid on top to give the auspicious seal of approval from a former First Senior Treasury Counsel, negating the charge that Cartwright King was marking its own homework. This was the fulfilment of the strategy articulated in Mr Flemington's email referred to at paragraph 271 above.

³⁴² POL00029707 p1

³⁴³ POL00155555 p1

301. A conference on 24 January 2020 provides further evidence of the strategy. Mr Altman KC met with Catherine Emmanuel of Herbert Smith Freehills, Nick Vamos of Peters & Peters, and Rodric Williams. Mr Altman KC made it plain that he was unhappy at the decision to bring in another criminal silk to assist with the post-conviction disclosure exercise, which had been set in train at that point:

RW [Rodric Williams] - you've reviewed 2013 cases. Perception of marking your own homework. Not coming at it fresh clean with new eyes going fwd. Fact haven't done much during that time is significant. Worried about what James Arbuthnot wd say.

BAQC - know James Arbuthnot. Becs of reputation, no one wd hav anything to say abt my independence. Don't understand link between fact I advised on prosecutorial function in 2013, and now. Has nothing to do prosecutorial function. This is about how we discl. NPV says we shd go via wide route. If about portrayal, Board couldn't be more wrong. Couldn't justify going to another QC. If going to another junior QC, do risk impartiality. Taking POL's money. BAQC's position - independence. Always the case w/ private prosecution. Will make it worse rather than better. Ought to have meeting to disc this.

NV [Nick Vamos] - if using CPS as example, there wd b no question of bringing a/r QC unless previous QC had been attacked already. No question of pre-emptive substitution becs someone somewhere wd cast aspersions. Arbuthnot unlikely to do that. BQC best person to take it fwd. Assumption by Board of us marking own homework. It is not.

RW - Board sees lawyers as interchangeable, and tools for optics. Legal advice is polluted product for POL becs of high court litigation.

NV - if abt optics, strongest counter-argument.

CE [Catherine Emmanuel] - sounds like BAQC giving us advice and POL don't like it. **Board may want to put a 'I agree' lawyer at end.**

RW - getting conflicting advice. Need to crack on with review but now saying need new person who hasn't read in. **When saw CWK's [Cartwright King's] review, I thought they were marking own homework.** But didn't challenge. **Which is why BAQC brought on.** Need direction from Board, need action, and legal review properly directed. Process can get moving. And **if we need to bring someone new on, it will be akin to what BAQC did with CWK's review (optic piece).** Have a period of time to determine who that might be. Timing issue. Can challenge Board's direction and then have to crack on with work that has to be done.

BAQC - needs to be disc'd. Want a meeting. NV needs to be there.

...

CCRC agenda - want to make sure got docs, got right people, bow around it to give to counsel. Need to start reading CCRC files now. Feel from Board that they will go with wide review. We have material for 34 appns to CCRC incl Misra /Hamilton/ Thomas/ McDonald. **Board's concern is that there is a narrative and we're just letting it go. Board desperate to decide whether to take pot shots at Misra.**

BAQC - did Board suggest abt whether we should review safety or just disclosure. RW - no just on disclosure. Not opining on safety. Agree w/ staged approach to discl and want it started now.

CE - going to be diff issues on some of these cases.

BAQC - DMD has to be completed. No pt embarking on this w/out understanding policy and approach. EK drafting review template - on hold until Board decision. **To what extent does Board want us to review CWK's SIFT reports on Misra.**

RW - info useful but not replacement.

BAQC - not saying that. Has to be fresh review. **But if there is some concern about CWK's review, do we mention? RW - no.** if case reviewed by CWK, shd only be consulted if have seen original material, and only to extent of filling gaps. Treat it as second source.

...

Tom Cooper/Tim Parker - need to say "Misra has been saying x in the press, what our actual review of her case is x". Don't know and are looking to us to tell them. BAQC - know Misra well. ³⁴⁴

302. Mr Altman KC's outspoken opposition to bringing in an independent silk has to be seen in conjunction with his concerning questions about the Cartwright King sift report on Misra. The specificity of Mr Altman's questions suggests that he remembered, even seven years later, how deeply flawed that report was. It is also telling that he asked whether the Board wanted the report to be reviewed. He remembered the importance of turning his back on the disclosure obligation to Mrs Misra, and wanted to find out whether the Board had remembered as well. He got the instruction he was looking for: Mr Williams told him in clear terms that he should continue to turn away.
303. Mr Williams also conveyed the continuing obsession with trying to control the media narrative. The twin message was Post Office did not want to look at whether Cartwright King's decision to withhold disclosure from Mrs Misra was correct, nor whether her conviction was unsafe, but it did want to take pot shots to publicly discredit her. Mr Altman KC's reaction suggests he was not outraged by that, merely stating that he knew her case well.
304. He also appears to have been sanguine about the characterisation of his 2013 General Review as an "optic piece". Mr Williams seems to have said this in an attempt to mollify Mr Altman and reconcile him to the idea that Post Office was going to instruct another criminal silk. The comforting message was this: Just as you helped us to make a show of doing the right and honest thing in 2013, this new silk will also be making it look like we are doing the right and honest thing now, but there is no need to worry, because it is all just an optic piece. Crucially, no one will ask too many questions about what you and Cartwright King did back then, so you do not need to worry about us putting an "I agree" lawyer at the end.

Containment – the complicity of the “shareholder”

305. The Government's oversight of Post Office has been fixated with the size of the Network, subsidy and the drive to make the Post Office profitable. Anything deemed "operational" has been deliberately overlooked by officials, and ministers have been constantly reminded that they should leave such matters to the Post Office Board. Unfortunately, however, appointments to the Post Office Board were also driven by the desire to make the Post Office profitable. This meant that the Board's oversight of the

³⁴⁴ POL00337435 pp1-3

Executive had the same fixations as the Government. This was explained by the Inquiry's corporate governance experts:

23. The Inquiry has heard that throughout the relevant period people in governance and executive leadership positions in POL were guided by a strategic imperative to establish and sustain POL in fulfilling the twin, and sometimes conflicting, purposes of commercial financial viability and government policy for a universal public service...

24. Throughout the relevant period, commercial aspects of strategy were seen by successive POL boards to be very important. The Board's strategic priorities were survival, securing sustainable funding through commercial activity supplemented by successively agreed government funding, bolstering brand and improving operational efficiency. The Inquiry has heard that this demanding strategic agenda dominated the Board's programme and left little room for other things, especially if, like Horizon and prosecutions, they were seen to be 'operational'....

73. The Inquiry has heard that the NEDs who were successively appointed to the POL Board were selected for their expertise in the management of commercial organisations and governance by corporate boards. The Inquiry has heard that they felt a prime responsibility for enabling POL to become a commercially viable company.

74. The POL Board which emerged to govern the newly independent POL had an Executive whose members had limited or no experience of working at Board level in commercial corporations and NEDs with little or no experience of working in companies wholly owned by the government, with strategic goals in public policy as well as commercial viability.³⁴⁵

306. The result was almost the exact opposite of what was needed: the Executive were not experienced commercial operators, but the Board was. Neither the Board nor the Government were attuned to the "operational" risks posed by an unreliable IT system and an ethically moribund prosecution policy.

307. We have explained how the Post Office Executive began misleading the Board at paragraphs 161 to 179 above. The Executive began misleading the Government from an earlier stage. In 2010, in the aftermath of Alan Bates's meeting with Ed Davies MP, Post Office constructed the first of many lies told about "remote access". Sir Ed was shown two documents, the first a briefing prepared by Post Office, the second a briefing prepared by Mike Whitehead, an official in his team at BIS. The second had lifted this passage from the first:

The integrity of both Horizon and Horizon online is built on tamper proof logs, real time back ups, and absence of 'backdoors' so that all data entry or acceptance is at branch level and is tagged against the log-on ID of the user. This means that ownership of the accounting is at branch level and it is impossible to make changes to branch accounts remotely.³⁴⁶

308. This had, of course, been culled from the Ismay whitewash. Sir Ed was asked about it:

Mr Beer: ... The entirety of the information in the sections that I've read you appears to be a cut and paste from the Post Office briefing: they've right clicked, swiped, cut and paste, or copied and paste?

³⁴⁵ EXPG0000010_R p12 and p24

³⁴⁶ POL00088974 and UKGI00000062

Sir Edward Davey: (The witness nodded)

Mr Beer: Is that what you would have expected to have happen by your officials when they were briefing you, and not attributed it to Post Office?

Sir Edward Davey: It is not what I expected. When I saw these documents in the bundle sent to me it became obvious that there had been that cut and paste, as you say, and it surprised me.

Mr Beer: Why is it surprising that officials would simply swallow whole what the Post Office were telling them, by cutting and pasting an account into a Ministerial briefing?

Sir Edward Davey: I'd have thought they'd have had a meeting and argued – not argued but probed a bit because this meeting had been planned for. I'd asked for it in the July [2010], two months after coming into office. It didn't happen until the October [2010], so there was plenty of time for them to prepare and, given there'd been a number of written Parliamentary Questions and letters, this was a very important meeting to me and people knew that and I would have expected a quality brief.³⁴⁷

309. The Davey/Bates meeting took place on 7 October 2010. Seema Misra's trial began a few days later, the Receipts and Payments Mismatch documents from the September meeting were in circulation, and over the subsequent months Rod Ismay, Lynn Hobbs, Mike Granville, Angela Van Den Bogerd, and many others within Post Office management were made aware that Fujitsu **was** able to tamper with branch accounts. On 11 November they held the "senior stakeholder" meeting, which included Mr Ismay and Ms Hobbs, in order to decide which of the three "Solutions" would be deployed to resolve the Receipts and Payments Mismatch Bug. (See paragraph 53 above.)
310. Unfortunately for Post Office, this dawning knowledge of remote tampering overlapped with follow-up work from the Davey/Bates meeting. During November, Mr Granville was working on another briefing for BIS, and Mr Whitehead was chasing him for it.³⁴⁸
311. Meanwhile, after being convicted at trial, but before being sentenced, Seema Misra wrote to her MP, Jonathan Lord. He then wrote to Sir Ed, directly asking about "remote access".³⁴⁹ This question became part of the follow-up work that arose from the JFSA meeting. While the Granville briefing was still in the offing, on 26 November, Mr Whitehead wrote to Mr Granville:
- Re the Lord/Misra case, can we quote POL as categorically stating that there is no remote access to the system or to individual branch Horizon terminals which would allow accounting records to be manipulated as JFSA claims?³⁵⁰
312. This must have caused consternation within Post Office executives because by now many of them knew that categorical response to be untrue. They also knew that Mrs Misra had been convicted and sentenced to prison, and these questions from her MP might disturb the conviction with which their Managing Director, Mr Smith, had been so pleased. (Mr Smith says he resigned in "around November/December 2010", but he remained the Director of the POL Board for 6-7 months after that, having "handed over

³⁴⁷ **INQ00001177** p40 (internal pp158-159) Note Mr Whitehead states that "*While I did not explicitly set out that the sections had come directly from POL, I find it most unlikely that this would not have been understood by the Minister.*" **WITN11260100** pp17-18 para 42

³⁴⁸ **POL00107182** and **POL00120478**

³⁴⁹ **POL00094279** p9 and p7

³⁵⁰ **POL00417094**

the day-to-day running” to Paula Vennells.³⁵¹ He evidently remained an influential figure until mid-2011.)

313. On 29 November, Mr Granville drafted a reply to Mr Whitehead:

The system is based on a user log in, and all actions have to be endorsed by the user. POL cannot remotely control a branches system. Any technical changes by Fujitsu that impact the system have to go through clearance processes which would prevent any amendment to existing data. The independent audit file is in place and can show all the system activity, down to a single keystroke, in a particular branch.³⁵²

314. He sent it to Mike Young with this cover email:

If it is helpful re your meeting with Paula — please see below my draft response to BIS' (Mike Whitehead's) direct question which I'll send over to them later this afternoon. Of course, BIS may well just copy this in their letter back to the MP and we should bear in mind that it will become BIS' quotable position (they may, for example, come back and ask us about the nature of the clearance processes for example).³⁵³

315. Later on the same day Mr Ismay wrote his absurd email to Mr Granville, with convoluted wording that attempted to cover-up the Receipts and Payments Mismatch problem. Mr Granville seems to have made the decision to ignore this email. (See paragraph 57 above.)

316. In the end, on 2 December 2010, Mr Granville's briefing was finally sent to Mr Whitehead,³⁵⁴ and it included this knowingly misleading and clearly false section:

The system is based on a user log in, and all actions have to be endorsed by the user. POL cannot remotely control a branches system. Any technical changes by Fujitsu that impact the system have to go through clearance processes which would prevent any amendment to existing data. All system activity, down to the individual key stroke, is also recorded into a separate vaulted transaction file with every record encrypted and written to the log and with each record having a unique incrementing sequence number. This log is retained on a separate server independent of Horizon, is retained for at least seven years, cannot be altered in any way and all access to it is securely controlled. This approach is consistent with that of banking systems.³⁵⁵

317. The verbiage about individual key strokes being recorded must have been unevidenced, since we now know this to be untrue. More importantly, however, Solution One to the Receipts and Payments Mismatch Bug was not a “technical change”. This wording, apparently devised by Mr Granville and approved at least by acquiescence from Mr Young, deliberately threw BIS and Mr Jonathan Lord MP off the scent. The question Mr Whitehead passed on was whether accounting records could be manipulated. Post Office knew they could be. This answer, which was ostensibly about technical changes to the system, was diversionary, and reassuring, deliberately to give the false impression that accounting records could not be manipulated.

318. The tragedy is that Mr Whitehead seems to have read what he wanted to read in this verbiage. Ed Davey MP's 6 December reply to Jonathan Lord MP took the material from

³⁵¹ WITN05460100 p32 para 92

³⁵² POL00417094 p1

³⁵³ POL00417094 p1

³⁵⁴ POL00326826

³⁵⁵ POL00326827 p6

the Post Office briefing, but then added the categorical denial that Mr Whitehead was seeking:

POL also categorically states that there is no remote access to the system or to individual branch terminals which would allow accounting records to be manipulated in any way. In addition, I understand that all system activity, down to the individual key stroke, is also recorded into a separate vaulted transaction file with every record encrypted and written to the log and with each record having a unique incrementing sequence number. This log is retained on a separate server independent of Horizon, is retained for at least seven years, cannot be altered in any way and all access to it is securely controlled. This approach is consistent with that of banking systems and provides a fully secure audit file which can show all system activity down to a single keystroke in a particular branch.³⁵⁶ [Emphasis added]

319. Had the Post Office told the truth about “Solution One” and the Receipts and Payments Mismatch Bug to BIS, and had BIS told the truth to Mr Lord, Mrs Misra and others would have been able to appeal her conviction swiftly, on the grounds of new evidence, significantly shortening their suffering. For Mrs Misra that exoneration would have come only a month after the media reports of her being sent to prison. That, we submit, is exactly what Mr Ismay and others at Post Office were trying to avoid. The role of the officials, at least in the shape of Mr Whitehead, seems to have been a supine acquiescence, a willingness to accept and even exaggerate anything Post Office said, so they could dismiss the irritating noise from Subpostmasters.
320. This is the Establishment at work: when information, let alone a complaint, comes from outside the Establishment it is met with superiority, scepticism and grand resistance. Ranks are then closed against the footsoldiers, and their irritating “noise”, who are sacrificed as cannon fodder on the altar of protecting profit, but anything one part of the Establishment says to another will be “swallowed whole”, with complete credulity, and then parroted in perpetuity.
321. This closing of Establishment ranks involves de-humanising the little people, who are outside the Establishment. A particularly appalling example of this is found in the Minutes of one of the ARC meetings of the Shareholder Executive on 19 February 2014:
- The committee asked what project sparrow was – Risk 11. [Tim McInnes] explained that this is with regard to a financial system that is used by Sub Post Masters. Some of whom have received criminal convictions for misuse, however the Sub Post Masters are suggesting that the actual system was at fault. All the POL investigations so far have shown that the system is working correctly. However, the risk is the that if this system were to show up as defective then potentially the criminal convictions could be overturned and compensation from POL sought.³⁵⁷
322. Mark Russell, the Chief Executive Officer of ShEx, was asked about this:
- Ms Page:** ... Now, that is a matter, surely, of very, very high importance because what we’re talking about here and what actually is missed here is that the risk, the real risk, is not whether compensation may be sought; the real risk is that the organisation that you’re overseeing may have wrongfully convicted its trusted business partners and sent them to jail. That was obvious at the time, that’s not just a hindsight observation;

³⁵⁶ SMIS0000268 p3-4

³⁵⁷ UKGI00042124 p2

that's something that any person of integrity should have been able to identify from what was being expressed there by Mr McInnes. Do you accept that?

Mark Russell: I completely accept that.

Ms Page: Now, you tell us that you and your team would have relished uncovering the fact that the subpostmasters were right. Why do you think that this transparently somewhat misguided summary about compensation didn't get you thinking, didn't get you wondering: why is nobody wondering about the possibility that the postmasters have been sent to prison wrongly?

Mark Russell: I think the answer to that is we had no idea of the scale of what was going on here.

Ms Page: It doesn't matter the scale, if one person has gone to prison wrongly, that is a miscarriage of justice.

Mark Russell: It is a matter of – no, I completely agree with that. I completely agree with that. But I'd say it is, in part, scale. I agree, just one person going – being convicted wrongly is a matter of serious concern and I'd acknowledge that that – and, you know, I can't remember the discussion, I was there. But that, in itself, I completely agree, we should have jumped on that. I can only say, in mitigation, if this had been – if the indication had been that (a) this was likely, right – so this is an allegation at the moment – if this was likely and it was on any scale at all, I would like to think we would have jumped on it. But your point is well made. Just one incidence, we should have jumped on it.³⁵⁸

323. The officials allowed themselves to focus on metrics and money and scale, rather than on mere mortals, let alone the misery that could be inflicted in them. It was this cosy collaboration in wilful myopia that allowed them to advise Ministers, repeatedly, that it was important to let the Post Office deal with “operational matters”. The relationship was incestuous. Alice Perkins, a former civil servant, carried with her the Government's own historic 'baggage' in this matter. Her default instinct would have been to protect the 'shareholder' (HMG) from costs (Subpostmaster compensation or re-engineering Horizon) and reputational damage. Not least, Alice Perkins was clearly making up for lost time by accumulating a series of well-remunerated non-executive directorships, and so would have been reluctant on all counts to rock the boat. Her demand for a 'defensive line' surrounding further independent scrutiny of Horizon reveals precisely the wrong attitude, redolent of her civil service background.³⁵⁹
324. The symbiotic relationship between Government, including its role as shareholder, and the Post Office was anything but “Arm's length.” The cross-contamination between key personnel at the Post Office and within the civil service reveals the convenient “arms' length” rhetoric was a lie. The cross-over between Government and the Post Office was marked and extensive, in terms of staff background, outlook, and defensiveness in communications.
325. Lord Arbuthnot reflected on this in his witness statement, having described a typical brush off from Pat McFadden MP, Minister of State for Business, Innovation and Skills, which said that *“the Government had assumed an arms' length role in Post Office Ltd*

³⁵⁸ INQ00001171 p28 (internal pp110-112)

³⁵⁹ UKGI00001424

and that the issues I had raised were operational and contractual matters for POL and not for Government." He said:

While I was frustrated on receiving the Minister's letter, it did not then occur to me quite how troubling it was. In the years since then I have come to believe that in effect it left the British public with no redress against a Government-owned organisation which the Government was deliberately refusing to oversee. The only shareholder was repudiating the responsibilities of ownership.³⁶⁰

326. This deliberate repudiation of the responsibilities of ownership was expressed in the ShEx risk register. It identified "Project Sparrow" as a risk, which it described in these terms:

Impact of Risk: POL's reputation and brand are damaged by accusations. Costs spiral out of control, particularly if legal action is taken. Government risks being drawn closer into the scheme **or our level of involvement being made public.**

Mitigation Overview: Responsibility rests with POL to manage both the mediation scheme and stakeholders generally. POL Chair [Tim Parker] undertaking review with independent QC [Swift]. **We are managing Ministers' involvement** [Baroness Neville Rolfe], **with the intention of keeping the issue independent of Government.**

Further Mitigating Actions: Ensure POL are proactively managing interest and noise, and are aware of Ministers' expectations. **Manage interest and wobbles from Ministers or the centre, including preparing fall back options if current arms-length position becomes untenable.**

Current Status: Civil proceedings lodged at High Court by JFSA, POL have 3 months to respond to letter of claim. CCRC decision on cases not expected imminently. UKGI team considering handling depending on outcomes of these processes. POL are taking legal advice on whether to continue the final parts of Chair's review. Chair/BNR meeting on 19 July to discuss.³⁶¹ [Emphasis added]

327. This document identified that the Bates litigation presented a risk of damage to the Post Office's reputation and spiralling costs. It states Government intention to be "*keeping the issue independent of Government*", avoiding "*our level of involvement being made public*", unless and until the "*current arms-length position become untenable*". This, yet again a circumspect and staged approach, was despite coupling the civil proceedings and the CCRC referrals under the same "Project Sparrow" risk, which indicates that ShEx knew that if Post Office lost the civil proceedings the CCRC referrals would follow. As well as controlling the public narrative, the document states in terms that ShEx was "*managing the Minister's involvement ... and wobbles from Ministers and the centre*".
328. It is inconceivable that any private shareholder would have stood by washing its hands in these circumstances, with nothing more than an admonition to manage the "noise". This was, as Lord Arbutnot said, a repudiation of the responsibilities of ownership.
329. It also shows that, at times, the officials were deliberately on Post Office's behalf keeping ministers at bay. This seems to have been particularly prevalent while Richard Callard was on the Post Office Board. Jo Swinson had this to say:

³⁶⁰ WITN00020100 p8 para 8

³⁶¹ UKGI00006883 p2

So we've got an email where Richard Callard is saying, "I want to get her [Ms Swinson] in the right place on Sparrow"³⁶² ... and, if you contrast that with the note that I actually received when coming back from maternity leave about Post Office Limited, there is, I think, one sentence on Horizon, which is incredibly bland. It is buried in a paragraph called "Exceptional items", it isn't even highlighted as a risk, and it basically says that "The Working Group is set up, progress is a bit slower than we would have hoped and Post Office is seeking assurance on its position".³⁶³

And, you know, that's a very kind of 'nothing to see here' sort of sentence and so I just think that's a really interesting contrast, right? You know, that he was not actually giving me information about what was happening in Sparrow, and we know he wasn't because now when we look at the minutes of the Sparrow meetings, it's actually the opposite of what I was being told.

So the Sparrow meetings were talking about reducing the role of Second Sight, which was never mentioned to me, even in the final conversations that we had nearly a year later, "What about the closure of the Working Group", right? It was never mentioned in any of the subsequent points when, you know, knowing that Second Sight were important to me, when I came back from maternity leave, when I was asking questions about Horizon in September, when I was preparing for the Westminster Hall debate. I mean, if a civil servant knew that Second Sight's investigation was important to me and that Post Office were thinking of reducing their role, I mean that's something he should have been warning me about that was a problem, rather than hiding from me. And then we had what they were planning to do with the Working Group. Again, looking at the Sparrow minutes from that time, around about this April 2014 period,³⁶⁴ where they were basically saying that they were going to reinterpret how they engaged with the Mediation Scheme within that existing terms of reference and I mean, in a sense, when you see that, it's no wonder that trust broke down and that that all ground to a halt later that year. But when that trust was breaking down, I was being briefed by them, that this was because other people were trying to extend the scope of the scheme.

I mean, it's Orwellian, frankly. They were saying themselves that they were basically going to change the way they engaged with the scheme and then told me that other people were reinterpreting it or extending the scope. So, I mean, to me, I just cannot understand how a civil servant could operate in that way and I just want to say, because I obviously have in my witness statement been critical of Richard Callard, it is totally not the experience that I had dealing with dozens of civil servants across so many different areas of my brief.³⁶⁵

330. Ms Swinson had been provided with the Sparrow minutes by the Inquiry, and the content provoked this reaction because they made it clear that Post Office had been trying to get rid of Second Sight since at least April 2014 (in fact longer - see paragraphs 125 to 133 above). Having been kept in the dark about that, Ms Swinson relied upon their continued involvement in the December 2014 Westminster Hall debate, when she came under heavy fire from numerous MPs. She said this:

³⁶² UKGI00002288 p1

³⁶³ UKGI00017930 (in fact "Exceptional items" does appear as a sub-heading under "Key on-going risks". See also UKGI00002332 p9, a fuller description within a much longer briefing.)

³⁶⁴ POL00006565

³⁶⁵ INQ00001178 pp18-19 (internal pp71-74)

The hon. Member for North Durham said “do something”, and in such a situation what I would normally propose doing is to get a team of forensic accountants to go through every scenario and to have the report looked at by someone independent, such as a former Court of Appeal judge... I fail to see how action can be taken without properly looking in detail at every single one of the cases through exactly the kind of scheme that we have set up.³⁶⁶

331. By March 2015 Second Sight had finally been sacked.³⁶⁷

332. Baroness Neville Rolfe came after Ms Swinson. She said this in her Witness Statement:

... In my view ShEx had lost objectivity, and its officials were unable or unwilling to scrutinise POL properly – even though that was an essential part of their role. The advice they gave seemed close minded, deaf to the issues and constantly repeating the same mantra. As time went by I felt as though they were trying to obstruct, or shut down, my efforts to get to grips with the issues. This may have been connected in some way to a dogmatic belief that [Arms’ Length Bodies] should be entirely free of Government interference; and certainly I was repeatedly advised that POL should be left alone...

My relationship was mainly with Laura Thompson who was, for the most part hardworking, helpful and effective. However, she followed party lines decided above her by Richard Callard, the POL Board member, and others. In retrospect, ShEx was too close to [Post Office] for effective scrutiny and I was at times frustrated by their unwillingness to question the status quo.³⁶⁸

333. Mr Callard undoubtedly manipulated Ms Swinson, and it appears that he carried on controlling the narrative as much as possible under Baroness Neville-Rolfe as well, but it is not entirely clear why he became so wedded to the Post Office position. The Arms’ Length mantra from all the officials was unhelpful, but it seems to have been taken to an absurd extreme by Mr Callard. Like Mr Altman KC, in another context, Mr Callard kept on backing the wrong horse, no doubt driven by condescension and contempt toward the insubordinate Subpostmasters.

334. His term gave way to Tom Cooper’s, which was also the period during which the *Bates* litigation came to the fore. Mr Cooper sought to convey the impression that throughout his time he sought to challenge the Post Office’s position on the litigation, but the legal team was “a brick wall”,³⁶⁹ and he “didn’t get a lot of support” from his Board colleagues.³⁷⁰ On 6 November 2018 he wrote an email to the General Counsel at ShEx’s successor, UKGI:

Is it within the scope of the judge's remit in this case to express a view that prosecutions for fraud or false accounting were unsafe? Some of the press (eg the Computer Weekly article) seem to be pointing this way.

I'm wondering about the relationship between contract law (where postmasters take on the liability for missing cash where there is a discrepancy between the Horizon system and the actual cash in the till —this is the agency principle in the contract) and criminal law (where there usually needs to be intent and evidence that cash was actually stolen). I'm wondering whether the complainants can argue that even though

³⁶⁶ POL00030457 p21

³⁶⁷ POL00040926

³⁶⁸ WITN10200100 p34 para 124 and p61 para 239

³⁶⁹ INQ00001172 p30 (internal p117)

³⁷⁰ INQ00001172 p7 (internal pp25-26)

contractually postmasters are responsible for missing cash, prosecutions should not have been made without actual evidence of theft (ie it is insufficient to prosecute simply on the basis that some cash was missing without having proof that it had been stolen). I also wonder to what extent any coercive behaviour by POL (eg in encouraging a guilty plea as an alternative to a fraud trial) could be relevant to this argument as well — the judge in the last ruling mentioned POL's style in previous correspondence as being dismissive.

Is there a risk that some of the implied contractual terms being asked for by the complainants could feed this argument eg the implied term requiring losses to be investigated before deeming postmasters liable.³⁷¹ [Emphasis added]

335. There does not seem to have been a response from UKGI. In fact, as pointed out at paragraph 327 above, ShEx had already made the connection between the civil litigation and the potential for criminal appeals. Nevertheless, this was an insightful set of questions, (albeit based on the Post Office's flat-earth interpretation rather than the words actually in the contract it imposed on Subpostmasters) and it is revealing that, despite Mr Cooper's protestations in evidence, there is no contemporaneous evidence to show that he asked them – or anything like them – within Post Office.
336. We submit that Mr Cooper was kind to himself in hindsight. There is evidence which indicates that he took a far less benign view towards the Subpostmasters' claims than he would now like to project. As discussed at paragraph 301 to 303 above, in a conference on 18 February 2020, with Rodric Williams and Brian Altman KC, it was said that the Board were *"desperate to decide whether to take pot shots at Misra"*. The note also says that *"Tom Cooper/Tim Parker – need to say 'Misra has been saying x in the press, what our actual review of her case is x'."*³⁷²
337. This tallies with emails which show that: (a) in November 2019 Mr Cooper asked a colleague in UKGI to prepare a dossier of media stories about convicted Subpostmasters, including Mrs Misra;³⁷³ and (b) a week before the conference Mr Cooper said to UKGI colleagues *"Josh has a list of the cases that have been covered publicly. I'd to have a dossier of these cases which includes the claimants side of the story as a check against what POL will show us."*³⁷⁴
338. When the note of the conference was put to Mr Cooper, he had this to say:
- Mr Henry:** ... It suggests, doesn't it, that you wanted to impugn the credibility of the claimants, including, amongst them, Seema Misra, that you were asking Mr Scott to trawl for inconsistencies in their account.
- Thomas Cooper:** That is what it suggests. What I was trying to do was the opposite, which was find inconsistencies in Post Office's account...
- Mr Henry:** ... you appear to be suggesting that you are saying, "Stop", but [Roderic] Williams is saying, "Go". In other words, you are saying, "Black" and he is saying, "White"; you were saying "Night", he is saying "Day"; in other words, the instructions that the Board are giving are, as it were, totally reversed –
- Thomas Cooper:** Correct.³⁷⁵

³⁷¹ UKGI00008614

³⁷² POL00337435

³⁷³ UKGI00010737

³⁷⁴ UKGI00011190 p1

³⁷⁵ INQ00001172 p28 (internal pp109-110)

339. We submit there was no reason for Mr Williams to mis-portray what the Board wanted to do at this conference, and the slavishly loyal lawyer simply cannot have got the Board's intentions so utterly wrong.³⁷⁶ The most likely explanation is that Mr Cooper was showing two faces, one to Post Office and a very different one to UKGI. His questioning email of November 2018 went to UKGI rather than POL colleagues, and the same pattern is discernible in these records from 2020: He told UKGI colleagues that he wanted the dossier to be a "check" on what POL would say, but when he had the opportunity to speak directly in a meeting of the Post Office Board, he went along with the plan to impugn the credibility of Mrs Misra.
340. It is at least deeply unfortunate that the most senior people on both sides of the structure supposedly designed for oversight were unwilling or incapable of providing competent leadership. Tim Parker, like Alice Perkins, must take considerable blame. His handling of the Swift Review was extraordinary: apparently because he took Jane McLeod's Advice he withheld it from the Board, even though the Board was the personification of the client who had commissioned it, and even worse he actively disseminated unjustifiably positive summaries of it.³⁷⁷
341. Although Mr Parker came in as a highly experienced commercial operator, his engagement was superficial and distant. He should have picked up on the Horizon problem in short order. Even cursory due diligence would have made it clear that there was a very serious issue with the system and the Subpostmasters. This should have been item one on his agenda. For someone of his experience to claim that he set aside the Swift report on the basis of 'legal advice' would have been an error even for a Chair with half of Mr Parker's experience. Legal advice is important, but it should always be balanced by an experienced (or engaged) Chair or Director against all of the other commercial, ethical and governance issues that would have come into play. His fundamental failing was his willingness so aggressively to pursue the *Bates* litigation. This is what he had to say about it:
- Timothy Parker:** ... I tried to express this earlier, which is it's got a slightly unsatisfactory tinge to it because, of course, it implied that Sir Alan and the JFSA team had to spend money and had to get support to mount the GLO. But the GLO, although one might have a lot of aspects of dissatisfaction about the way it was run, actually did end up with a judge making determinations which will change the Post Office forever and, actually, set up a situation in which your clients, in time, should be properly compensated because the – there's been an absolute clarity in terms of what – which – you know, what was responsible for what.
- Mr Henry:** ... I just want to ask you if you feel that the answer you gave to Mr Beer about this really had to be resolved, as it were, adversarially was somewhat fatalistic and that more could have been done to strive to see the other side and to strive for settlement, without having to enter into the quagmire of litigation.
- Timothy Parker:** Yeah. I mean, look, there's no satisfactory answer to this. I played out – so if there had been an early settlement, I could easily imagine a situation in

³⁷⁶ We note that Tim Parker also claimed that Mr Williams mis-portrayed the Board's intent (INQ00001170 p46, internal pp182-183), but – we submit – both of these witnesses were bound to seek to distance themselves from such an ugly portrayal.

³⁷⁷ POL00025759

which your clients will be worse off because, instead of waiting until the end when it was absolutely determined by the judge that Legacy Horizon was not robust and, you know, Horizon Online wasn't robust, you could have ended up in a situation where, mm, computer system quite robust. This is the point I was trying to make earlier, where I played out – so the post – I know – I'm not trying to escape, you know, responsibility but **if we'd sort of said, "Well, you know, we think we've got a problem with the computer system, it's not reliable", the moment you start to get to a "there could be miscarriages of justice", "there could be a huge liability here", then the question starts being asked: well, what's involved?**³⁷⁸ [Emphasis added]

342. It is not surprising that Mr Parker struggled to keep these answers coherent. He seems to have wanted to say that it was good that Post Office used taxpayers' millions to fight the Subpostmasters tooth and claw, because if it had agreed a settlement that might have been a smokescreen, hiding the sins which came out in the end. This is transparently specious. As a new Chair, with a direction from the Minister to conduct an independent review, he should have made a determined effort to get behind the Post Office's smokescreens. Perhaps most telling is the final sentence above: the best foot he can put forward even now is that the Post Office was concerned to contain or prevent the obvious questions from being asked, rather than to explore or address their answers.

343. Meanwhile Sir Alex Chisholm, the Permanent Secretary, was otherwise engaged. This internal briefing from Alisdair Cameron to Nick Read is dated 30 September 2019:

Alex doesn't want us to do anything that might damage his career prospects.

Alex meets us very rarely to date. His views have been developed, starting with the last funding round, when he and Greg Clarke concluded that UKGI had gone native and they were anxious about Government investing, via us, commercially (not their skill set) and **how did they stop us throwing "good money after bad"?**

As a result, we got Tom into UKGI and then a separate and additional BEIS policy team so that they were more in control.

He has been infuriated by the GLO which he thinks we should have settled ages ago - and said so last year.

He has to manage between us and Treasury and that is often difficult.

Overall, BEIS have a lot of conversations about us not with us - but so would a private equity shareholder and we should not resent that, just work to improve it.³⁷⁹ [Emphasis added]

344. It was prompted by Nick Read saying:

we will need to formalise rules of engagement and ways of working with UKGI. My sense is they have too many people with not enough clear guidance around their role and deliverables.... [sic] I assume this demand for info will continue to escalate until we get to some breaking point or we have an 'incident'... [sic] this would be unfortunate. Al, I think it would be helpful, given your understanding of their motivations if you could think through some form of RACI and engagement model

345. Mr Cameron's cover email for the briefing said: *"there are multiple stakeholders with varying needs which I have tried to set down in the attached (which should not be forwarded please)";* he went on to recommend a clean split between policy at BEIS and commercial at

³⁷⁸ INQ00001170 pp45-46, internal pp181-182

³⁷⁹ POL00285355 p1

UKGI, reduced numbers at both, plus a major quarterly meeting at which the Minister, the Permanent Secretary and the Shareholder Representative on the Board would all be present; and finally *“Nick to build personal relationships with Kelly [Tolhurst] and Alex C[hisolm] so we can talk directly.”*³⁸⁰

346. Sir Alex agreed that he believed the Post Office should have settled the litigation. We submit that having decided that he could not direct them to settle,³⁸¹ his strategy was to distance himself from what he could see was a looming disaster; the same intention to insulate we saw spelled out in the ShEx risk register extract above. Note also our submissions on the failure of Sir Alex, and that of his Department to keep an eye on the Swift Report, which became lost with successive departmental transformations from BIS, BEIS to DBT.³⁸²

347. This hand-washing attitude is best demonstrated by what took place subsequently, when a Post Office inquiry was first being mooted. Nick Read said this in his evidence:

The conversations I had with Mr Chisholm on this particular topic, I had become very clear by early 2020 that there was a growing need and desire amongst those who had been impacted by the scandal to get to the truth, to understand what had happened, why it had happened and who was responsible, as opposed to the notion that we have an inquiry to make sure nothing like this could happen again. I think this was-- the point I'm trying to make here is that there was a clear distinction that-- and the conversation I had with Mr Chisholm, was that closure would not be achieved if we simply looked forward to see what had been done by the Post Office to ensure nothing could happen again, rather than addressing what it was that the victims of the scandal particularly wanted, which was to understand why it had happened, who was responsible, and what was going to be done as a consequence of that. It was that that I struggled with, and Mr Chisholm assured me that we would do a four-month forward-looking review to ensure that the Post Office was now in a position where nothing like this could happen again.³⁸³

348. Sir Alex justified his position in this way:

my view at that time, which is also the view of ministers, was that we'd had at that stage a lot of findings from the High Court.... We actually felt at that time – not correctly, as it turns out, but at that time we felt we had a good picture of what had been going on and the focus needed to be on the Post Office to make recompense...³⁸⁴

349. Mr Read is suggesting that over a decade after the JFSA first met, the year after the long GLO battle had been settled with a sum subsequent HMG allocations (if not payouts to surviving Subpostmasters) acknowledge as being woefully inadequate, there was “a growing desire amongst those who had been impacted by the scandal to get to the truth”. This is preposterous; those impacted had been fighting hard for many years to get to the truth. What changed in 2019/20 was that Fraser J laid bare the extent to which that truth had been withheld from its victims by the Post Office and its

³⁸⁰ **POL00285354**

³⁸¹ *“And to the question should we have ordered them or directed them to make a settlement? I think at that time it's not clear we had the legal authority to do so. You're probably aware of the Articles of Association of 2002 included a power of direction that had been removed in 2013, was reinstated in 2020 during my time. But that wasn't in place at that time, so we wouldn't actually have been able to do that.”* **INQ00001203** p49 (internal p195)

³⁸² **SUBS00000031**

³⁸³ **INQ00001193** p10 (internal pp38-39)

³⁸⁴ **INQ00001203** p47 (internal p188)

shareholder, and that attracted more media coverage. We submit that the real reason to avoid a proper inquiry was laid bare in brief notes taken by Nick Read on his phone, after he had an introductory dinner with Tim Parker on 4 September 2019.³⁸⁵ One of the bullet points reads: “Resolve the post office litigation situation quickly... [sic] and put it behind us and move on. Not the huge PR risk that BEIS believe it to be.”³⁸⁶ This reveals both Mr Parker’s and the Department’s desire to move on quickly, but in the view of Sir Alex’s Department, the reason to move on was “the huge PR risk”. A four-month forward-looking review would contain that risk by moving on.

350. BEIS was right, of course, because the Inquiry has been a PR disaster for the Department as well as the Post Office and the legal profession. We note that getting to the bottom of the Government’s role in the scandal has been hampered by a lack of comprehensive records, and there is still no adequate public explanation for that. The formidable Eleanor Sheikh is persisting with a Freedom of Information Request, and while she awaits a coherent response, we reserve our position on whether the loss of records is merely unfortunate or malign. Given the importance of transparency, and freedom of information, we are certain the Inquiry will demand answers to the questions she has posed, and secure the information she has requested.
351. As the evidence stands, ministers appear to have been more managed than malign, although obviously always concerned with optics and elections, as well as inter-departmental powerplays. Officials seemed far too keen to swallow whatever lies the Post Office told them, as well as permitting the reluctance to share information. We submit this collaboration came from the shared background and aspirations of key Post Office players and those tasked with oversight of them. The likes of Belinda Crowe (Cortes-Martin) and Mark Underwood, and their counterparts in Government, were squarely within the Establishment, and they were willing to defend it against anyone on the outside.³⁸⁷ When Lord Arbuthnot tried to support the little people, he was labelled “deranged” by Melanie Corfield in an email to Mark Davies.³⁸⁸
352. The Post Office was an arm, not merely an asset, of Government and had been for centuries. This is made abundantly plain in the skeleton argument for Seema Misra, Janet Skinner, and Tracy Felstead, dated 12 March 2021, by Lisa Busch KC and her juniors:
7. POL is an emanation of the State: *Whitfield v Lord Lé Despencer* (1778) 2 Cowp 754 at 764; *Mersey Docks & Harbour Board Trustees v Cameron* (1864) 11 HLC 443 at 464; *Tamlin v Hannaford* [1950] 1 KB 18; *Triefus & Co Ltd v Post Office* [1957] 2 QB 352 at 362; *Malins v Post Office* [1975] ICR 60; *Harold Stephen & Co Ltd v Post Office* [1977] 1 WLR 1172 at 1177.
 8. POL is now incorporated as a company. In exercising its powers as an investigator and a prosecutor, however, it has the same duties and responsibilities as other public

³⁸⁵ WITN00760300 p7 para 15

³⁸⁶ POL00448897

³⁸⁷ See, for example, Ms Cortes-Martin’s manifestly dissembling evidence to the Inquiry (INQ00001142 p38 (internal pp149-150)); and Mr Underwood’s egregious email about the “desired outcome” of reducing compensation applicants being better achieved through tight eligibility criteria than the “optically” bad idea of having an entry fee (POL00155397).

³⁸⁸ POL00321714

bodies which exercise those powers: for details see the CCRC SoR, paragraph 65; Criminal Procedure and Investigations Act 1996 Code of Practice (“CPIA CoP”), §1.1. Since its incorporation it has been the subject of judicial review proceedings, i.e. as a public body: *R v Post Office, ex p Association of Scientific Technical and Managerial Staffs* [1981] ICR 76.³⁸⁹

353. That Establishment history made its attitude to and acquiescence by the State immutable. The Post Office appears to have little difficulty taking hostage its state-owned sibling, law enforcement, because its parent allowed it to do so. The “arms’ length” argument was always too convenient. In the case of Richard Callard, there is evidence to indicate an extraordinary degree of capture by the Post Office, without protest from any of his colleagues. Ministers (with the exception of Baroness Neville-Rolfe) were too quick to accept the official line that Post Office should be left to deal with operational matters. Lord Arbuthnot (an Establishment exception proving the rule) has spent almost forty years in Government; he concluded this of permanent secretaries and ministers: “As a catalogue of failure of oversight, all this seems hard to beat.”³⁹⁰ Overall, the Government repudiated the responsibilities of ownership, allowing its animalistic “asset” to ruin hundreds of lives and ultimately ruin itself.

Conclusion – Being seen to do the right thing, not doing the right thing

354. Over a quarter of a century, the politicians, civil servants, executives and lawyers involved in the Post Office Horizon scandal have been obsessed with “optics”. This exchange between the Inquiry Chair and Paula Vennells was telling:

SIR WYN WILLIAMS: Yes, just before we break, can I just go back to that additional briefing document that you got the day before or during the morning of the Select Committee hearing. Mr Beer asked you questions on the basis of it was laying out a strategy for you, all right --

...

SIR WYN WILLIAMS: If I were to suggest to you that you were being advised to be very precise, very circumspect and very guarded about what you said, that was the effect of that document, would you agree?

A. I would, Sir Wyn. I'm not sure I would have noticed that on the morning of the day.

SIR WYN WILLIAMS: But -- you'll see the point in a moment -- that was the effect that was trying to be created by those who created that document?

A. It could have been, yes.

SIR WYN WILLIAMS: Right.

A. Yes.

SIR WYN WILLIAMS: Why?

A. (Pause) With hindsight, because possibly --

...

³⁸⁹ POL00142389 p3 paras 7 and 8

³⁹⁰ WITN00020100 p175 para 326

A. Yes. I understand the question. At the time, I didn't answer the question -- I didn't ask the question. It didn't cross my mind at all, and this may be back to the point I made at the beginning of the day that I could be too trusting of people: I took the information that I was given and went into a Select Committee. Why might they have set it out that way? With what I know now, it is -- but I find it very difficult because I knew the people who were producing that document but, from what I know now, **maybe other people knew more than I did and they were trying to direct me to answer in a certain way.**³⁹¹ [emphasis added]

355. Her notorious “remote access” email gives the lie to this desperate claim that her team must have conspired against. In fact, the briefing her team provided deployed what was a typical two-stage approach: first it set out the preferred message on “*remote tampering*”, but then it set out what to say “*if pushed*”.³⁹² This technique was also used in 2015, in response to Panorama’s investigation.³⁹³ There was no good reason for this approach. It is evidence of a mindset that aimed to keep uncomfortable truths secret. Sometimes it was taken to an absurd degree, as displayed in this email aiming to agree a defensive line with ShEx against another wing of the Government: “*I understand through Will [from ShEx] that Alice [Perkins] has asked us to agree a defensive line if pressed on the Cabinet Office commissioning the independent review [by Second Sight]*”.³⁹⁴

356. This approach, this entrenched mindset across the Post Office and Government, cannot have been the work of Ms Vennells’ team conspiring against her. In another of her doublespeak emails, she pronounced that it was her job “*to ask the hard questions even as I admire my execs for how they do their jobs!*”. This was part of a back and forth between her and Mark Davies, in which they discussed the way negative press had been received by Ms Vennells commuting friends, the proverbial men and women on the Clapham omnibus. She said:

My commuting friends were surprised when I explained our side and felt the BBC had not covered it well at all; and, felt aggrieved on our behalf. I was challenged as to what we do about the poor journalism. (Alice may want to take a view, if it is poor.)³⁹⁵

357. Ms Vennells created an understanding in her team that her occasional requests for the truth, her “hard questions”, were part of the “optics”. The real task was to help her repel the hard questions being asked of her, whether at a Select Committee or on the Clapham omnibus.

358. Ms Vennells’ team of executives and lawyers worked together to provide her with what she wanted. On behalf of Ms Vennells, Mr Casey sought to put a line between her and her General Counsel, but to no avail:

Mr Casey: ... Do you agree it would be an expectation of the POL Board that the General Counsel would collate legal risks to them?

DAME SANDRA: Yes, nothing can abrogate the responsibility of the chief executive for overall responsibility. One can define the responsibility of the director of marketing,

³⁹¹ INQ00001151 pp50-51 (internal pp200-201)

³⁹² POL00117097

³⁹³ POL00089009 p9

³⁹⁴ UKGI00001424 p1

³⁹⁵ POL00101345

the director of strategy, the finance director, unless he or she is a member of the board, and the general counsel, one can define their responsibilities but that responsibility is held within an executive team, and the chief executive is the responsible person for that executive team.

...

MR CASEY: Mr Aujard, who was one of the General Counsel during Ms Vennells' tenure, agreed with a proposition during his oral evidence that a general counsel should be proactive in identifying legal risks to the business; do you agree with that?

DAME SANDRA: Indeed I do.³⁹⁶

359. If this was an attempt to deny knowledge or deflect responsibility it spectacularly backfired, because Mr Aujard was deputed to oversee Project Sparrow when he joined the Post Office, and as we describe at paragraphs 178 to 179 above, that was part of the containment strategy.
360. Ms Crichton was also deeply implicated in Ms Vennells' containment strategy. On 24 January 2013 Simon Baker wrote to Susan Crichton about the risk posed by Second Sight. This is taken from his first witness statement:
- ... after a meeting with Crichton, Vennells, and Lyons, I emailed Crichton explaining that we should consider adding possible negative findings from the SS Review to POL's organisational risk register. I had wanted to bring this up during the meeting but hesitated, as the meeting was progressing smoothly through the agenda, and I felt that introducing a new and potentially challenging topic might not be well-received by Vennells and/or Lyons. Therefore, I chose to address my concerns with Crichton via email,³⁹⁷ hoping that, as Head of Legal and responsible for managing such risks, she might be able to present the suggestion in a way that would be better received by Vennells and Lyons.³⁹⁸
361. Not long after this, on 28 January 2013, Ms Crichton was keen to “box off” Second Sight.³⁹⁹ By April 2013 Mr Baker saw “*the opportunity to really contain the scope of the investigation*” and felt able to write to Crichton in that vein, as a would be confederate.⁴⁰⁰
362. The “optics” demanded that bad news was boxed off and contained. That strategy drove Ms Vennells, and it drove everyone working in her inner circle, whether legal or lay, expert in IT or otherwise.

Codicil - Compensation

363. The Post Office acted historically with lordly disdain for the SPMs, but flashes of its arrogance and entitlement continue to emerge during the compensation process – because the myth of its own exceptionalism and right to act as it pleases is never far from the surface. See, for example, a “Draft Rebuttals Document” dating from 2014, which justifies and perpetuates an approach to mediation claims that exactly mirrors

³⁹⁶ INQ00001207 p21-22 (internal pp84-85)

³⁹⁷ POL00184548

³⁹⁸ WITN04730100 p27 para 68

³⁹⁹ POL00059567 p2

⁴⁰⁰ POL00144482

the approach to compensation claims today.⁴⁰¹ The Post Office believed, and may still believe, that it could do as it liked untouched by legal constraint. This was seen grossly in the unmeritorious claw-back ploy, concerning ex gratia payments made between fellow claimants in the GLO after settlement had been reached. The Post Office's arrogant assertion that it was entitled to discount these modest sums was not merely without precedent but contrary to Law. Happily Lord Dyson rejected this attempt, but these spurious setoffs were advanced by the Post Office with the support of its advisors and officials.

364. The claw-back ploy may be said to have mirrored the abusive way in which Post Office had once mandated that a SPM was strictly liable for **any** losses occurring at their branch, even after the SPM had lost control of their own accounts to Horizon. The practice evolved that shortfalls would be relentlessly pursued, irrespective of whether negligence or misfeasance had occurred, not having been investigated, still less proven against the SPM concerned. This was a novel form of contractual construction that Mr Justice Fraser, in the Common Issues Judgment, roundly rejected. Miss Gallafent's closing submissions to Phase 3, at paragraph 29, nevertheless advanced what were purported to be the Post Office's genuinely held beliefs that such oppressive conduct was acceptable. This was a delusional mindset which persisted for so long because there was a grotesque imbalance of power.
365. That imbalance remains today, and the scales are even more tilted, because the victims of the Post Office are getting old. Many have been crushed by trauma, their anguish exacerbated by financial insecurity, and finding themselves starved of the resources, and the means to fight on, they are tempted to give up the fight, a temptation which the Post Office and the Government play on by offering readily available fixed sums, but only if they are accepted as full and final settlement. The survivors look around their ranks and seeing so many absent friends, who have died before the Post Office's day of reckoning, decide to settle for a derisory sum. In contrast, with extraordinary insensitivity, the Post Office racks up millions upon millions of pounds in legal fees, all paid for from public funds to Herbert Smith Freehills and other corporate law firms.
366. The Post Office's desire for domination of the SPMs is inextricably linked with its tactics of no holds barred litigation. Both have marred the compensation process.

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9 December 2024

⁴⁰¹ UKGI00002656