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IN THE POST OFFICE HORIZON IT INQUIRY

INQUIRY CLOSING SUBMISSIONS (HUDGELL CP GROUP)

9 DECEMBER 2024

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1 INTRODUCTION

1.2 These submissions are prepared on behalf of all of the CPs represented by Hudgell Solicitors throughout the Inquiry. We are grateful for the opportunity to make these submissions in writing. [1] They are intended to be read together as a whole with our existing submissions made in opening the Inquiry and at the Closing of Phases 2, 3 and 4.

1.3 This Inquiry is about the public interest. It is the latest step in a long, long search for justice. A search for justice that began as a campaign under the banner Justice for Subpostmasters. A group of people came together to put right a terrible wrong perpetrated against them by the Post Office, a wholly State-owned institution. People who were first brought together by someone who would not give up and who could not move on. The campaign - in the way that campaigns are wont to do - ran on for years.

1.4 The campaign for justice was hard fought. Some really could not afford the petrol to Fenny Compton. They endured.

1.5 There was help along the way. For some from family and friends who stood strong, ill-believing the Post Office branded truth. For those in the JFSA and the 555, there was a close band of supporters. There were accountants and lawyers and journalists who believed in the SPMs

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[1] These submissions adopt acronyms familiar to the Inquiry unless otherwise designated (e.g. POL for Post Office Limited). Throughout "the Department" refers to the sponsoring Department for Post Office, regardless of changing names throughout the relevant period.

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cause during those years in the wilderness. Some of those have attended at the Inquiry or have given evidence.

1.6 However, at the heart of this Inquiry are the people whose lives have been unbearably altered by the scandal.

1.7 The impact of the events which sit behind this Inquiry – this scandal – were undoubtedly life-altering. SPMs and their stories must sit at the heart of this Inquiry. Officials and Ministers who gave evidence deeply regretted they had not appreciated the impact of the scandal. Their pain cannot be forgotten. Homes and families lost and broken. Savings and prospects destroyed. Stability and health ruined. Reputation and dignity damaged irreparably.

1.8 Some did not live to see their conviction overturned. As one example, Karen Wilson – a Hudgell Core Participant (CP) represents her husband Julian in this Inquiry (and displayed his photograph while she gave evidence). Moreover, very sadly, CPs such as Lynette Hutchings and Robert Boyle – represented by Hudgell Solicitors in this Inquiry - died while evidence was being heard and are now represented by their families. David Blakey – another of the Hudgell CP group – recently lost his wife Gillian. Together they ran Riby Post Office. The Inquiry has announced and mourned name upon name.

1.9 As we did in our opening statement, on 13 October 2022, and as we have done at the closing of each phase, we reiterate the value of this Inquiry's work for those we represent. Through three years of work, and many, many hours of evidence, the Core Participants we represent have followed the Inquiry. Many have attended in person. Others have watched at home. Others still find it too painful to hear the minutiae of the scandal which stole their lives. Yet, for them all, its work is crucial.

1.10 Many have recalled for the Inquiry their terror facing a trial or sentencing. This process could easily have been re-traumatising. Each of our clients is grateful for the work of all of the Inquiry team. Thanks are expressed for the professional but compassionate approach taken throughout. Everyone involved in the proceedings, from the Chair and his assessors to counsel and solicitors, from the ushers and the shorthand writer to the staff here at Aldwych House and at the IDRC have treated the SPMs with dignity and care and this Inquiry with the seriousness due. We and our clients are grateful.

1.11 The remainder of this submission follows a simple structure:

(a) First we consider the last of the evidence heard on investigations and prosecutions.
(b) Second, we look at Phases 5-6 and the years, upon years spent by the Post Office, supported by Fujitsu, in their unblinking defence of Horizon and their prosecution practices. (In this part, we address two significant questions from the Chair on the duties owed by Post Office as a prosecutor.)
(c) Third we look to the role of regulated legal professionals in this scandal.
(d) Fourth, management, governance and oversight.
(e) Fifth, we turn to redress, restorative justice and rebuilding trust.
(f) Sixth, and finally, we ask where are we now as the Inquiry ends.

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1.12 Throughout we seek to identify possible conclusions and recommendations designed to assist the Inquiry. For ease of review, we identify some recommendations in **bold**. In this introduction, there are four initial propositions we invite the Inquiry to consider.

1.13 First, on the role of the Inquiry and its limits. The terms of reference for this Inquiry start in building on the conclusions of Mr Justice Fraser in the GLO and on the conclusions of the Court of Appeal Criminal Division. It has a critical role in asking what exactly went wrong and who knew what when, in order that lessons might be learned for the future.[2] For many we represent, recovery will only begin with a full understanding of why the Post Office was allowed to continue as it did for so long.

1.14 Our Core Participants are very conscious that this Inquiry may not be the last step in the process of accountability. The Metropolitan Police Service (MPS) is a Core Participant and continues its investigation concerning possible criminal offences arising from this scandal. Operation Olympus is a national operation and is ongoing.[3] While not for this Inquiry to determine any question of civil or criminal liability, this cannot inhibit the Inquiry's duty to reach conclusions on the facts and make recommendations within its terms of reference.[4] The Inquiry will be well conscious of the administration of justice offences which may be under investigation and their elements.[5] It is not for the Inquiry to establish those tests are met. While those we represent expect to see criminal prosecution pursued where the evidence warrants it: this is not the job for this Inquiry. The integrity of any possible prosecution ought to be closely guarded. It would be a devastating result for those we represent and for the public interest should any person liable to investigation, prosecution and conviction escape (or unnecessarily delay) trial for procedural reasons, no matter how spurious. Yet, nothing prevents the Inquiry from reaching conclusions which point to there being an evidential basis for criminal investigation. That such investigations are already ongoing suggests such evidential basis is well established. Indeed, in order to understand what went wrong, the Inquiry may be required to reach findings on the facts on matters which may be central to such further work.[6]

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2 Terms of Reference "TOR", A: Understand and acknowledge what went wrong in relation to Horizon, leading to the civil proceedings in *Bates and others v Post Office Limited* and the quashing of criminal convictions, by drawing from the judgments of Mr Justice Fraser in Bates and others, the judgments of the Court of Appeal (Criminal Division) in *R v Hamilton and others*, other judgments in which convictions have been quashed, affected postmasters' experiences and any other relevant evidence in order to identify what key lessons must be learned for the future. TOR, B: B: Build upon the findings of Mr Justice Fraser and the judgments of the criminal courts specified in A above by obtaining all available relevant evidence from Post Office Ltd, Fujitsu, BEIS* and UKGI to establish a clear account of 1) the implementation and failings of Horizon over its lifecycle and 2) Post Office Ltd's use of information from Horizon when taking action against persons alleged to be responsible for shortfalls.

3 See, e.g. **RLIT0000551** Sky News, *Post Office Horizon Scandal: Four suspects identified by police*, 19 November 2024.

4 **RLIT0000558** Inquiries Act 2005, s2

5 For example only, someone who acts or embarks on a course of conduct which has a tendency to pervert the course of justice, and is intended to pervert the course of public justice will commit an offence. **RLIT0000520** Archbold, Chapter 28, 28-1, **RLIT0000549** *Vreones* [1891] 1, Q.B. 360, CCR; *Andrews* [1973] Q.B. 422, CA. A positive act, whether of concealment or distortion, is required. Inaction is insufficient: *Headley* [1996] R.T.R. 173, CA (failing to respond to a summons); *Clark* [2003] EWCA Crim 991; [2003] R.T.R. 27; *Jabber* (§ 28-5). An attempt or incitement or conspiracy to pervert the course of justice is likewise indictable: *Andrews*, above; *Sharpe and Stringer* (1938) 26 Cr. App. R. 122, CCA; Panayiotou and Antoniades (1973) 57 Cr. App. R. 762, CA.

6 TOR, A, B. Note, by analogy only, the distinction between determining and investigating a matter drawn in the consideration of s.10 **RLIT0000524** Coroners Act 2009 in **RLIT0000516** *Regina (GS) v Wiltshire and Swindon Senior Coroner* [2020] EWHC 2007 (Admin), [73] (albeit, Coroners do not benefit from the clear guidance in s.2(2) Inquiries Act 2005 **RLIT0000558**. See also, **RLIT0000547** Beer, Public Inquiries, OUP (2011), 2.144-2.145.

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1.15 Second, on knowledge. A key question has always been who knew what and when. This must include evidence individuals were purposefully shutting their eyes when faced with evidence that ought obviously to have been explored.[7] This included failing to confront risks inherent and failing to tell people about those risks. The evidence supports that throughout this scandal – structural problems at both Post Office and Fujitsu aside – there were people within the business who knew, was reckless to the truth or was wilfully blind when confronted with the possibility of failures in the integrity of Horizon and that Post Office prosecution practices were deeply flawed.[8] Horizon was seen to be too important to fail.

1.16 Thirdly, while explanations may be properly offered, we urge the Inquiry to carefully scrutinise any conduct which may have contributed to this scandal. Excuse can be distinguished from explanation. For example:

(a) First, on individual memory. The events in this scandal span decades. The Inquiry is familiar with how the law approaches evidence and memory. Calls for caution inevitably and reasonably echo in earlier submissions. The Inquiry has substantial contemporary documentation against which it may test recall and faulty memory. Those we represent have found it difficult to hear – and surprising – some witnesses vague in their recollection then surprisingly sharp in their recall of exculpatory conversations or meetings.[9] While recognising the frailties of memory over time, the Inquiry and the Chair ought not be inhibited in testing the credibility of witnesses' evidence where such is plainly due.

(b) Failures in institutional memory may help provide an explanation why Horizon – broken from the start and forced into being from the wreckage of a different project with a different purpose – was thought to provide a solid foundation for the investigation and prosecution of SPMs. Such failures are no excuse for later individual failures to grapple with the evidence Horizon lacked integrity.

(c) "*I was poorly advised*" – after decades – is no excuse when the questions asked were skewed or advice ignored or obvious matters left unpursued. We consider the role of the role of regulated legal professionals in Section 4 and management, governance and oversight in Section 5.

(d) "*I wasn't told*" – which may provide an explanation for some - is no excuse when the culture of the business was set from the top to deny any possibility that Horizon was flawed or that the prosecution practices of the Post Office had operated egregiously for years. There were witnesses who were simply told enough to know the Post Office and Fujitsu were running a risk in the conduct of investigations and prosecutions based on Horizon data. The Inquiry might conclude there were questions screaming to be asked. It might conclude that even when problems were known to the Post Office or to Fujitsu, that these were met with unjustifiable ignorance or wilful blindness.

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7 Tasked expressly with considering "cover up", the Infected Blood Inquiry said: "*A better expression to convey what happened is "hiding the truth". Hiding the truth includes not only deliberate concealment but also a lack of candour: the telling of half-truths such as the "no conclusive proof line*". **RLIT0000538** Infected Blood Inquiry Report, Vol 1, HC 569-I, [7.9].

8 *Knowledge in criminal proceedings extends to constructive knowledge "wilfully shutting one's eyes to the truth*": Lord Reid in **RLIT0000517** *Warner v Metropolitan Police Commr* [1969] 2 A.C. 256 at 279, HL;**RLIT0000521** *Atwal v Massey* (1972) 56 Cr. App. R. 6, DC; and **RLIT0000525** Flintshire CC v Reynolds [2006] EWHC 195 (Admin); 170 J.P. 73, DC. See the dictum of Lord Bridge in **RLIT0000518** Westminster City Council v Croyalgrange Ltd (1986) 83 Cr. App. R. 155 at 164, HL *("... it is always open to the tribunal of fact ... to base a finding of knowledge on evidence that the defendant had deliberately shut their eyes to the obvious or refrained from inquiry because they suspected the truth but did not wish to have their suspicion confirmed"*).

9 For example, **INQ00001151** (Paula Vennells questioned by Mr Beer KC), 73:1 – 75:1.

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1.17 Fourthly, and finally, any suggestion that the Inquiry must identify the villain of this piece as either Fujitsu or the Post Office draws a false premise. From the outset this Inquiry was not only about faulty IT but about people. We highlight (again), the powerful statement from Tim Brentnall in opening:
"*Horizon merely provided the data that showed a shortfall but it was* ***people*** *who chose to believe that data over myself or hundreds of other subpostmasters. It wasn't Horizon that prosecuted us. It was the Post Office. It wasn't Horizon that encouraged us to pay back money under threat of theft charges. That was* ***people*** *at the Post Office* "[10]

1.18 We have heard apology upon apology and we anticipate further contrition to come at the conclusion of the Inquiry. Those we represent acknowledge that admissions have been made by the Post Office and Fujitsu, in their submissions, and by witnesses in their evidence. Such frank acknowledgments are welcome. However, after decades of dogged resistance these are difficult to hear. They are difficult to hear alongside mismanagement of disclosure in this Inquiry and evidence which suggests that for five years since the judgments in the GLO, both Post Office and Fujitsu has remained slow to recognise the scale and significance of this scandal. They are difficult to hear alongside witness upon witness slow to accept there was a problem. It is perhaps telling that Fujitsu accepted a moral responsibility to the victims of this scandal in late January 2024 (a few short weeks after the showing of *Mr Bates*). Contrition now feels self-serving for many CPs: another in a long line of manoeuvres in brand management, defence and damage limitation.

1.19 At the end of Phase 4 we said it is only when the tide goes out we see who was swimming without a costume. The serious failings of both Post Office and Fujitsu have been humiliatingly exposed.

1.20 These last Phases have seen increasing tension exposed in the relationship between the two businesses as they try to minimise their culpability. The Post Office may invite us all to look at the failures of Post Office and Fujitsu to grapple with an IT problem. [That is what it always did.[11]] Fujitsu may again emphasise just how poor Post Office practice was. [The Inquiry will recall the recent evidence of correspondence between Fujitsu and the Post Office as Fujitsu attempts to distance itself from ongoing police investigations.]

1.21 This scandal would not or could not have happened if either Fujitsu or the Post Office systems had acted on the appreciation that Horizon was not infallible and had listened when SPM after SPM told them there was a problem. If individuals at Fujitsu had considered the possibility that the problems arising were not by default "*User Error*" or if Post Office had paused to consider what losses were real before a SPM was forced to "*make good*", we may not be here today.

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10 **INQ00001034,** 1 March 2022 48:24 – 49:2.

11 Second Sight was to look only for systemic problems, of which Post Office were sure there were none See for example, **INQ00001152**, 23 May, 108:6 – 11:22, **INQ00002021** (22 May 2013) (Recording of Susan Crichton "*So Paula agrees that the original scope of the investigation did not go so far as looking at whether – it was the miscarriage of justice point, Ron and Ian. So that – that's not what she's looking for. She's just looking for the systematic or systemic, rather, not systematic – systemic weaknesses in the Horizon system*").

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1.22 Without errors by both; and clear failures in the oversight exercised by Government this scandal would never have happened. This story is also about poor decisions in Government. The Inquiry might conclude that in dodging – or fumbling - important strategic decisions about the future of the Post Office network in a digital age, Government kicked the wrong can along the road. They left the wrong people in charge at a time of existential crisis for a much loved national institution and sowed the seeds of this disaster. When things had plainly gone horribly wrong, they were slow to step in, for reasons of political expediency.

1.23 In this, the biggest miscarriage of justice in modern legal history: transparency and accountability really matter. After years of obfuscation and denial, this Inquiry has served to bring some clarity as to how and why the Post Office came to wrongfully prosecute hundreds of its people.

1.24 There is blame enough to go round. However, it is time now to "*make good*".

2 INVESTIGATIONS AND PROSECUTIONS

2.2 Before moving to Phases 5, 6 and 7 we consider two broad matters:

(a) Post Office Investigations and Prosecutions: We address the evidence of Phase 4 witnesses called in this stage, including Mr Jenkins, Mr Dunks and Mr Ward.

(b) Investigation and Prosecution: Are things any different now?

2.3 We do not revisit our lengthy and detailed submissions made at the close of Phase 4. We repeat and adopt them. However, by way of context, a summary may assist.

(a) First, the approach of the Post Office, supported by Fujitsu, to investigation and recovery of losses as well as prosecution of alleged offences was deeply and fundamentally flawed.

(b) Second, the management and oversight of investigations and prosecutions by the Post Office, as supported by Fujitsu, was wilfully blind to, or disregarding of, the proper, lawful administration of justice. Briefly, the challenges to the integrity of Horizon brought by SPMs were brought to the attention of management in the Post Office in individual prosecutions, in civil claims and, eventually, in the press. Still the Post Office did not hear those warnings and/or refused to hear them. We return to this in our submissions on the defence of Horizon, management and governance, in Sections 3 and 5.

(c) Thirdly and finally, an overarching focus on the commercial interests of both the Post Office and Fujitsu - including in protecting the brand reputation of both companies – contributed significantly and detrimentally to the prosecution of individuals, in the face of faults in Horizon, of which the Post Office were or ought to have been aware.

(a) Post Office Investigations and Prosecutions

2.4 The failures in the investigative practices of Post Office, of course extended beyond prosecutions. We believe there is little more to say after the conclusion of Phase 4 as to the investigative practices of the Post Office (supported by Fujitsu) in connection with civil or criminal proceedings. The evidence of that Phase was damning. The further evidence heard in Phase 5 only serves to underline that it is entirely right that this scandal is already with the police for investigation (as above).

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2.5 The evidence heard over the Summer and Autumn confirms that the approach of Post Office to prosecution was fundamentally flawed. It was built on a toxic premise. It was run by those who were incompetent, ill-trained, under-supervised and overly aggressive, and, ultimately, motivated by commercial and/or personal interest. It is clear from the many documents disclosed in Phase 4 that there were many actions taken by the Post Office and Fujitsu in investigations and prosecutions which have been outside the proportionate reach of this Inquiry.[12] In previous submissions, the Post Office has cautioned against an impression led only by the scandalous cases covered in the Inquiry's case studies ("*it is important for the Inquiry not to lose sight of the fact that the selected sample of case studies is not representative*". This perhaps means, in lay terms "*we weren't all bad*"). However, the Inquiry has masses of documents relevant to many matters beyond the Case Studies – including for CPs participating in this Inquiry and others not participating – where the Inquiry may conclude that similar patterns arise. In the evidence from the Fujitsu Prosecutions Support Team and their POL counterparts in Phase 4, the Inquiry heard of work done on the initial template statements of Fujitsu and statements produced by others including Bill Mitchell and Neneh Lowther and others. The sickening picture painted by the Case Studies – over and over again – ought not to be diminished. Regrettably, the submissions of the Post Office we referred to above echo an earlier Post Office refrain – it was fine most of the time – let's ignore when it wasn't.

2.6 There should be no thought that, in our focusing on the evidence in this last part of the Inquiry, that the learning of Phases 3 and 4 can be forgotten.

(a) There were structural and individual failures in investigations and prosecution at the Post Office from the start, which contributed to this scandal and for which there must be accountability.

(b) As ought to be clear from previous submissions, the evidence in Phase 4 is such that those we represent are satisfied that there is an evidential basis for further criminal investigation of a number of those involved in prosecutions at the Post Office.

(c) While focus may principally have been on Mr Bradshaw and on Mr Singh, there remains considerable concern that the actions of others (including those who did not give evidence) ought not to be overlooked whether for criticism by the Inquiry or other outcome.

(d) Examples of poor conduct pepper the Phase 4 evidence and closing submissions by all parties. One stark example is found in the interview of David Blakey, covered in the evidence of Paul Whitaker: unfounded insinuations of an affair aside, the implicit threat that continuing to resist the allegations of the Post Office would result in the interview and investigation of his ill wife was egregious and oppressive conduct which ss76 and 78 of PACE ought to prevented.[13] Another example is the questioning of Lynette Hutchings by Gary Thomas (accompanied by Graham Brander) as to why they had retained Issy Hogg as their solicitor instead of a local solicitor.[14] Ms. Hogg had first defended Jo Hamilton and went on to represent a number of other SPMs who raised concerns about Horizon when they were prosecuted. She believed in the SPMs' cause at a time when it was not a *cause celebre.* She was plainly a thorn in the side of Post Office and that question should never have been asked. Ms. Hogg died on 26 November this year after a

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12 **SUBS0000028**, [35].
13 **POL00044830**. **INQ00001095**, 16 November 2023, 88-92.
14 **POL00056417** (at around 19.34)

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long fight against cancer, whilst living every moment of what life was left to her to the full. We pay tribute to her courage and integrity.

(e) We anticipate that such prosecution files that remain available and subject to complaint by individual SPMs have been passed not only to the Inquiry but to the MPS.

2.7 However, the evidence of each of the witnesses heard in this Phase was starkly illustrative of the flaws in processes at both POL and Fujitsu. In turn we consider now briefly: Graham Ward, Andy Dunks and Gareth Jenkins. (Like many other witnesses in this Inquiry, all three were, quite properly, given the warning against self-incrimination.)

(i) Graham Ward

2.8 First, Mr Ward was recalled to address a single issue. Mr Ward had testified that he absolutely did not delete sections from the statement of by Mr Jenkins in the case of Noel Thomas (represented by Hudgell Solicitors) which were considered unhelpful to the Post Office.[15] On return, confronted with his own tracked changes, he admitted he must have done.

(a) We return to this matter in the context of Mr Jenkins' evidence, but this episode in the handling of Mr Thomas's case shows the slipshod and self-serving approach of Post Office to the prosecution of its people was set at an early stage.

(b) Mr Ward's recall to the Inquiry underlines our opening caution on memory. Of course, memory may fail as the years pass. However, this Inquiry has seen considerable certainty on the part of witnesses as to a recall of past practice or past conduct which is exculpatory. This episode illustrates the danger of approaching such assertions uncritically.

(c) We anticipate the Metropolitan Police Service (Mr Ward's current employer) may wish to further explore the whole iterative saga of Mr Jenkins' evidence in Noel Thomas's prosecution and the evidence of Mr Ward. Mr Ward was aware this statement was being prepared for the purposes of criminal proceedings and the evidence before the Inquiry goes directly to Mr Ward's intent in applying the amendments which he did.

(d) Regardless, Mr Ward's actions were indicative of the attitude of staff within the Post Office who were directly tasked at working hand in hand with Fujitsu on prosecutions. It shows their concerns about the risk to the business were known and were being escalated up the line, here to the late Mr Baines. We return to this in our section on Governance failures, but for now we suggest that the documents put to Mr Ward do indicate that, within the business, dots were being joined between the growing Horizon challenges. Moreover, knowledge of the risk in civil and criminal proceedings was being managed across teams and responsibilities within the POL business and at RMG (by 2005, including Mandy Talbot, Rod Ismay, Keith Baines, Dave Smith (IT) and others).[16]

(e) Broadly, the Post Office were commissioning statements from Fujitsu with a closed mind. "*[w]e'd likely need a statement which outlines how you can confirm that there were no operating errors within this office's system*." Checks then requested for no serious errors on the system, by Mr Ward. "[*c]learly in this case I didn't have an open mind, no*."[17]

(f) They were willing to lean on Fujitsu when answers came that did not serve those purposes; when they ought instead to have been asking for a closer examination of the system.

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15 **INQ00001124**, 1 February 2024, 173:1 – 174:7.
16 **POL00119895** (6 December 2005)
17 **INQ00001124**, 1 February, 152:21 – 154:20

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(g) Mr Ward proved this extended to amending expert evidence in the understanding that providing the original to the Defence would not help POL.

(h) This was not a frolic limited to Mr Ward. He wrote to Brian Pinder, Keith Baines and others to describe Mr Jenkins's evidence – and the reference to system failure – as "*potentially very damaging*".[18]

(i) Everyone involved in this process knew that the material was being generated for the purposes of prosecution, with the associated implications for the accused. (The Inquiry will, of course, recall a similar group involved in discussion of human error in other statements produced by Fujitsu in mid-2004).[19]

(j) Mr Jenkins was lined up to go to Court in late 2006.[20] Noel Thomas pleaded guilty and there was no trial. The Inquiry heard moving testimony from Noel Thomas about his spending his 60th birthday in prison, losing his status as a local councillor, and all the other humiliations that came with his conviction.

(k) The Inquiry has the later correspondence of Mr Ward, including that notorious "*Wolfie Smith*" exchange with Gary Thomas, many years later.[21] The Inquiry is invited to treat Mr Ward's distancing of himself from that message as incredible. His uncritical, self-interested reply speaks volumes.

(l) The Inquiry might conclude that far from his attitude in Noel Thomas's case being isolated: instead it reflected an ingrained approach taken by the POL team which prioritised the needs of the business over the risk to individual SPMs and the truth.

(ii) Andy Dunks

2.9 Second, Mr Dunks. At the start of his evidence, Mr Dunks confirmed that he remained employed by Fujitsu as an IT Analyst in the Security Team.[22] After his participation in this scandal, and the criticism levelled at him, this may be surprising.

2.10 Mr Dunks continued to maintain that while providing an opinion as to the state of the computer in any number of witness statements he produced, he would not have the technical capacity to express such an opinion. Instead, this was an opinion he would have garnered from talking to others (not generally mentioned in the statements). The absurdity of that situation is patent in the responses to questions put by Mr Beer KC on both occasions Mr Dunks came to give evidence.

2.11 While the Inquiry might conclude that Mr Dunks position reflects lack of care on the part of both POL and Fujistu for the evidence placed before the Court in these proceedings; it also shows some lack of care on the part of Fujitsu for Mr Dunks training and capabilities and a lack of care on the part of Mr Dunks beyond doing precisely what his employer asked of him.

(a) There are numerous examples of requests from POL which the Inquiry might conclude are pointed in their seeking a statement to serve their ends; not an analysis to prove the truth of any loss.[23]

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18 **INQ00001124**, 1 February, 168:15 – 171:20. **FUJ00122210**.

19 **INQ00001124**, 1 February, 100:3 – 102:14.

20 **FUJ00153934**. In a report prepared in 2013, Mr Jenkins confirms, "*I was due to go to court in September 2006, but was advised that a deal had been done at the last minute and so didn't need to appear*." (**POL00165933** shows Mr Jenkins on the list of witnesses whose availability was checked for trial).

21 **POL00329521**, **INQ00001124**, 1 February, 141:18 -146:8.

22 **INQ00001175**, 16 July, 5:22 -25.

23 See, e.g. **FUJ00123329** (November 2010),

(b) POL had no qualms about asking for exactly what they wanted;[24] (There was evidence that POL had been congratulating Fujitsu for their work on successful prosecutions since at least 2002.[25] Mr Dunks thought they had always used a template statement.)

(c) For Fujitsu, Mr Dunks seemed to have no problem providing it. His description of the process is perhaps telling:
"[T]he statements weren't fixed because I could add things, or Post Office would request things to be taken out and put under discussion, so most of the time it would have been a compromise – I say a compromise under discussion of what was put in and taken out. I cant recall what the process was or what discussions were or reasons why that was left out."[26]

(d) Mr Dunks accepted when called for the second time that he would be expressing an opinion on the calls he reviewed; not only producing a statement of fact;[27]

(e) He accepted that he was relying on others and would not have the skill to be able to check whether what he was being told was right or wrong;[28]

(f) He accepted that, his evidence as to the routine nature of calls could be based on a wholly untested assumption that if the SPM complained about a system error, and the call was diverted back to the NBSC, then automatically, the SPM was wrong. It must have been a commercial error or a user error. While entirely in keeping with the default to User Error attitude identified in Phase 4, the Inquiry might conclude that this was a wholly unsatisfactory basis on which to sign off a statement that there was nothing in any helpdesk calls which would indicate Horizon was not operating as it should.[29]

(g) The Inquiry might take a view that Mr Dunks was, in parroting these boilerplate statements giving opinions he had no expertise to give and backing them with consequently meaningless statements of truth.

(h) The approach taken in the case of Jerry Hosi is perhaps illustrative. Phil Budd writes to Mr Dunks:
"*You remember I analysed a couple of counters back in July 07 then you got me to sign a new witness statement in June 08 well, they came back again and wanted me to sign another one – just a single paragraph to say the counters were in 'full working order and would not cause a discrepancy'. I was not happy with the implications of 'full working order' since I did not perform test transactions…*"

(i) Peter Sewell then replies to them both:
"*Your statement is fine and is all you can actually say. If they stump up the cash the counter equipment can won't be of much use as the 42 days retainer of the message store is long gone, and will be endorsed by Gareth.*"[30]

(j) It appears there were a number of individuals at Fujitsu who were not willing to provide witness evidence (e.g. Mrs Chambers post Castleton, Ms Bains, and here Mr Budd) and others who were more willing (including Mr Dunks and Mr Jenkins).

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24 See, e.g. **FUJ00083702** (Porters Avenue) "*Can you please provide another full statement for the above office including in the outcome of the faults reported that it would have had 'no effect on any counter discrepancy'.* **FUJ00083703**.

25 **FUJ00155555**. Mr Dunks couldn't recall if he was working on the account then. However, it was his view they'd always used standard form statements throughout his time. **INQ00001175**, 16 July, 88-89.

26 **INQ00001175**, 16 July 2024, 110-111.

27 **INQ00001175**, 16 July, 27:9 – 15. See **POL00003219** for an example of the scale on which statements were being produced by POL even in the years 2004-2005.

28 **INQ00001175**, 16 July, 55:2-23.

29 **INQ00001175**, 16 July, 61:3 – 64:22.

30 **FUJ00225644**.

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(k) The Inquiry might exercise a sceptical view over Mr Dunks current evidence on how he understood the boilerplate in the statements routinely produced. As the Inquiry noted, his evidence differs substantively from that given in the GLO, when he was cross examined and unsure of its meaning.[31]

(l) Mr Dunks provided statements in numerous of the Case Studies, and others, including for many in the Hudgell CP group. For example:

i. The Inquiry considered his evidence in Mrs Hamilton's case. His statement is produced without addressing a query from Graham Ward about the inclusion of a call suggestive of a fault. He said he'd have done his usual investigation – looked at things and spoken to people. There were KELs involved which referred to faults and to message store corruption. KELs which Mr Dunks would have been unable to understand without help from the SSC. He confirmed he would not have looked at any data himself to see whether there were any data integrity issues,[32]

ii. His approach to evidence on the Hosi case was similarly misleading, built on assumption and opinion expressed that could not possibly have been his own.[33] The Inquiry will recall his responsiveness to Lisa Allen's request that his statement be amended to include the crucial opinion: "*in my opinion, the calls would have had no affect on any counter discrepancies*" His response coming within only an hour. Seemingly little time to review the obviously relevant KELs and to obtain a second hand expert view from the SSC and then to magically convert that into an opinion of his own.[34] The Inquiry will assess whether his claim to have been working on the issue before the formal request arrived is credible.

(m) The Inquiry might conclude that Mr Dunks had absolutely no business making these statements. He seemingly signed multiple statements of truth without valid foundation. The Inquiry might further conclude that his employers knew he did not have sufficient expertise to make the statements he was making and yet, he was left, for years, to give opinions that were (on their face) entirely without basis. He did this when many others in the business were not – it would seem – willing to stand up the integrity of Horizon in Court.

(iii) Gareth Jenkins

2.12 Finally, Mr Jenkins. Mr Jenkins also demonstrated no reticence to sign statements and go to Court. In the interests of proportionality, we take this evidence relatively briefly.

(a) We do not address the Clarke advice of July 2013 at length here. It appears that Mr Jenkins was not accurately informed by POL of the substance of that advice and nor was Fujitsu.[35] Instead Fujitsu was informed that advice on "rules of evidence" meant that an independent witness was required. This was passed to Mr Jenkins. (Fujitsu noted in that context they were successful in moving discussion away from a full 'system' review, making it clear that access to any Fujitsu witnesses would be in a "*controlled way*" and they would reserve the right to challenge the findings of any external expert. This work would be charged to POL. The Inquiry might consider in what "*controlled way*" Fujitsu envisaged Mr Jenkins providing support to that kind of process.)

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31 **INQ00001175**, 16 July, 94-99, **FUJ00201401**.
32 **INQ00001175**, 16 July, 99:20-108:4
33 **INQ00001175**, 16 July, 109-132:4.
34 **INQ00001175**, 16 July, 127:1-132:4.
35 **INQ00001168**, 27 June 2024, 181:22 – 186:12. **FUJ00156923**,

(b) We do not deal further with the obvious flaws in Mr Jenkins' engagement in the trial of Seema Misra (nor the role of Warwick Tatford) already addressed in Phase 4. We anticipate these matters will be addressed at length by those representing Mrs Misra (as they have been during the hearings and in their written and oral submissions). We repeat our Phase 4 submissions and see parallels in the evidence of the work done in Mrs Misra's trial in the preparation of Mr Jenkins statement for Noel Thomas's trial in 2006, years earlier.

(c) The evolution of Mr Jenkins' role in prosecutions can be – perhaps – traced back to that contact: Just do the statement, give POL what they need, they usually plead guilty anyway, bill it to the Post Office Account and move on. (The Inquiry will recall that POL paid extra for this work. There was evidence of John Scott railing against the absurdity of Post Office paying Fujitsu to stand up that their system worked and Rob Wilson accepted in evidence to the Inquiry that it was wrong.[36] Yet, the work of the Prosecution Support Unit was governed by arrangements agreed by POL and Fujitsu as long ago as 2002.)

(d) Mr Jenkins agreed that in all the time he had worked with Fujitsu, he was unaware of any internal work being done to guarantee that the system was up to the task of supporting prosecutions and civil actions conducted by POL.[37] He had been involved in the earliest development of Horizon and in the problems thrown up by Riposte during the early days of Horizon's development and live operation. He recalled chat at Fujitsu around the black box situation created by PFI. He had worked on IMPACT, which the Inquiry heard threw up its own problems. He described a disconnect between his work and that of the SSC, first claiming it would be happenstance as to who was working on any particular bug, error or defect, as to whether he knew. Then he said he was aware that "*bugs that actually impacted the accounts were rare*". He could not reconcile how he could have the confidence to comment on the rarity of such occurrences without first-hand knowledge, beyond, he conceded, a confidence in Fujitsu's systems.[38] He had been involved in support – on the Fourth Line – and accepted that while he could have examined the PEAKs, PinICLs and KELs for existence of problems of a similar kind, when giving evidence, he accepted that he did not.[39] He accepted that – albeit in hindsight – by 2018/19, the Riposte lock issue did not just impact Callendar Square. Even then, the Inquiry might conclude he was unreasonably reluctant to accept that there may have been other impacts that could have been better understood but for a lack of contemporary investigation and support.[40] The Inquiry will take a view on whether in the face of repeated allegations of Horizon going wrong, this history was one that was easy to forget (even if, as Mr Jenkins asserts, it was believed problems had been fixed as they arose).[41]

(e) In his experience, he was always brought in after the decision to prosecute was taken.[42] While the gathering of evidence post-charge might be said to be standard prosecution

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36 **POL00133297** "Why should we pay for Fujitsu to defend their own IT system? (John Scott described being over a barrell), **INQ00001106**, 12 December 2023, 16:7 – 17:5.

37 **INQ00001169**, 28 June, 42:17-25.(Probably fair)

38 **INQ00001166**, 25 June, 18 – 34 :2

39 **INQ00001166**, 25 June, 223:1 – 17.

40 **INQ00001166**, 25 June, 193:20 – 194:16.

41 e.g. **INQ00001166**, 25 June, 51:12 – 52:2: *"I didn't think it was a problem as far as that was concerned because, at the times I was giving evidence for, I believed that the EPOS system was stable and was operating correctly. So the fact that there were problems during the pilot and the rollout don't necessarily mean that the problems carry on into the system. I was confident in the way that problems were being picked up and fixed and knew things were being put into the system to actually manage the issues that are being found early on."*

42 **INQ00001169**, 28 June, 54:9-19.

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practice,[43] this hinges on there being a sufficiency of evidence for charge. In cases involving Horizon integrity, where the case sits on Horizon data, the existence of a loss arguably could not be proved until after the integrity of the data is assured.

(f) It will be for the Inquiry to reach a view on whether Mr Jenkins was or was not instructed as to his expert duties effectively. The 2005 Bond Dickinson correspondence addressed in questions by Mr Beer KC and addressing the CPR expert duties is telling.[44] Addressed to Fujitsu, Mr Jenkins was, of course, forced to concede he would have received it (having previously confirmed that if he'd received it, he would have read it).[45] However, the Inquiry might consider that, in engagement upon engagement, referral back to that single correspondence alone as fit and proper instruction might be thought wishful thinking. Whatever instruction was provided; it plainly was not monitored effectively by Bond Dickinson (nor counsel, where instructed). No statement provided by Mr Jenkins appeared to comply with the standards set out in that 2005 instruction. (We return to the role of lawyers in Section 4).

(g) Mr Jenkins claims he did not appreciate he was being instructed as an expert are further significantly undermined by his repeated engagement with expert reports produced by the defence and accompanied by the usual undertakings. Time and again, he was described as an expert.[46] He would have seen and read, time and time, and time again, those undertakings. Time and again, he participated in discussions with experts. He agreed joint statements or reports. Time and time again, he would have known he could not bring himself to sign any CPR compliant undertaking. He was an expert and he knew he was an expert. He was not independent and nor could he separate himself and his approach to evidence from the interests of Fujitsu, the company where he had made his (distinguished) career.[47]

(h) In 2006, Mr Jenkins agreed to his witness statement in the Thomas case being substantively amended by Mr Ward (who had no technical expertise to speak of). Having pushed back against the inclusion of the boilerplate, he is, somehow persuaded to leave it in. These changes are secured in the knowledge of the significance of these cases for POL. This shift, from push back, to resignation, might be seen to shape the continuation of Mr Jenkins engagement on prosecution work.

(i) In 2005, following the Bond Dickinson instruction, Mr Jenkins conceded that despite his willingness to speculate at length, that "*without doing a detailed analysis of everything that has gone on in the branch it is difficult to speculate as to what has happened. Certainly the most likely explanation is misoperation or fraud. However I appreciate that that is not sufficient for a prosecution.*"[48] The Inquiry saw that, even with such a useless caveat applied to obvious speculation, the message eventually to be passed to POL (and sent to Mr Jenkins for approval) had the detail removed by Mr Pinder. It was

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43 **SUBS0000028**, p8, fn 34. (POL Phase 4 Closing Submissions) '*Suggestions have been made at various points (e.g. TS/12/23 at p.,87) that POL should have obtained and disclosed all of its evidence (e.g. the Fujitsu witness statements producing ARQ data) prior to the commencement of a prosecution and the entering of the pleas (so that the accused had the evidence prior to deciding whether to plead guilty). Such a view is not consistent with the statutory scheme or general criminal practice.*'

44 **FUJ00152573** (Page 13), **INQ00001166**, 25 June, 64 :25 - 73 :16.

45 **INQ00001166**, 25 June, 64 :25 -73 :5-16.

46 Including by himself, e.g. **FUJ00152866** (December 2009). See also, **POL00097123**: "*"Thanks for the clarification ... If I am required to go to court ... I need some more background on the specific case and exactly what's being alleged. I appreciate that is not covered by my statement, but if I need to be an expert witness, I need to understand what is happening."* **FUJ00083741**.

47 **INQ00001169**, 28 June, 90:1 – 112:5.

48 **INQ00001166**, 25 June, 77 :17 – 78 :9.

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said that Mr Jenkins could not comment.[49] The reason for removal appears obvious: to remove any ambiguity or nuance from Fujitsu's message that the problem was not theirs but the SPMs or to avoid a close examination of the data. (The Inquiry has seen the extent to which the data was considered in Castleton, by Mr Jenkins and Mrs Chambers and covered in Phase 4. Again, we do not address the detail, which we anticipate being addressed by his recognised legal representatives.[50])

(j) Years later, Mr Jenkins was persuaded to agree and sign a generic statement in repeated cases, without receiving any data to analyse or consider before agreeing his evidence. He says that he believed they were not for use in specific cases. He then observes and acknowledges that they are being so used; he says he doesn't have data but proceeds anyway.[51] He says he was "*confused*". However, Mr Jenkins expresses not concern about the ultimate use of the statement ("*Can't you use the report I have already sent to you?*") but about the need for "*commercial cover*" to be in place for his services. These events, the Inquiry might consider, reflect a pattern set early, even before Thomas, in the 2005 discussion of the Castleton case. It might be asked whether Mr Jenkins default was always to start with a set view of the likely position, before considering the evidence? Was that default to User Error the same that infected the operations of SCC and NBSC? Was it indicative of the reluctance seen throughout Phases 3 and 4 on the part of anyone at POL or Fujitsu to countenance that Horizon could be the problem? The Inquiry might consider that for Mr Jenkins to adopt this approach in expressing an expert view to support a prosecution is particularly unacceptable.

(k) The Inquiry might consider whether he and Mr Dunks demonstrated an altogether disastrously flippant approach to their roles. On Mr Hosi's case, Mr Jenkins wrote: *"I've got to do another 'expert report' and this time I want to actually read your logs properly!"*. That is indicative of the toxic attitude driving this work.[52] By this time, he had produced statements for use in Thomas and Misra.

(l) The implications of that approach are plain in evidence concerning the preparation for trial of Khayyam Ishaq, one of the last SPMs to be prosecuted and convicted (while the work of Second Sight was ongoing). The Inquiry might think it astonishing that Mr Jenkins' approach had not moved on. He still had no qualms over stepping into the shoes of the prosecution to speculate beyond his expertise in agreeing a joint statement with the expert accountant instructed.[53]

(m) By this time, of course, Mr Jenkins had been involved in the email exchanges covered in the Rose Report on Lepton, discussing their implications with Angela Van Den Bogerd directly at the end of January 2013 (some time before the Second Sight Interim Report).[54]

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49 **INQ00001166**, 25 June, 81 :6 – 89 :15. **FUJ00152573**, Page 1-3.

50 **INQ00001166**, 25 June, 105:12 – 106:10. Anne Chambers experience and her reluctance to give evidence again, as reflected in her Afterthoughts document appears to have been common knowledge. The Inquiry has seen Ms Chambers and will take a view on whether anyone would have been likely to consider her reluctance was solely due to a lack of courage to be pushed beyond a comfort zone.

51 **POL00097137**, **INQ00001168**, 150:23-156:17; (He indicated he would have taken guidance from within Fujitsu, including a Fujitsu lawyer (156:7, 162:16-20, 23- 163:2, 164: 16-21)) Mr Jenkins evidence is that he would have seen that the words "*I understand that my role is to assist the court*" had been added to the draft statement, he believed by Cartwright King but he was not 100 % sure. (167:6-168:2) See also 176:9 – 18:24).

52 **FUJ00083741**.

53 Questioned by Mr Moloney: **INQ00001169**, 28 June, 90:1 – 112:5. See also, questions put on the approach to the Grant Allen case and Mr Jenkins expressing a direct concern for the precedent that might be set in that case for POL and Fujitsu. **INQ00001169**, 28 June, 82:6 – 87:2. He accepted that he must have had in mind considerations of reputational risk for Fujitsu and the interests of the business who had been his effective employers for the whole of his career.

54 **INQ00001166**, 25 June, 117:21 on.

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As would become plain in the Helen Rose report, it was clear that POL did not have a grasp of the difference between the standard ARQ data and the additional raw audit data held by Fujitsu (albeit it had been plain in the successive Prosecution Support Policies which followed since first agreed in 2002). POL was on notice – if it wasn't before – that Fujitsu had data which could tell POL more about what was going on in branch accounts than could be viewed in a standard ARQ. [As an aside, the Inquiry might consider whether, this was information that ought to have been acted upon, in the light of the prosecution duty of POL, quite aside from the input of Second Sight later in July 2013].

(n) The incredulity of Mr Jenkins' evidence on his understanding of the boilerplate statements that he was being asked to repeatedly sign is patent. As Mr Beer clarified: "*So you're saying, by that, that the Word Processor or other computer on which the statement was being typed, or typed for you, was working properly?. And the response: "And whatever was being used for doing the analysis, and so, on, yes.*"[55] The Inquiry has the evidence and will reach their own view. However, his assertion that he did not understand that these were designed to be an assurance of Horizon or a statement to back the system's integrity in any individual case is simply unbelievable when seen in context. He was an intelligent, seemingly considered man. The Inquiry might consider his transparent attempts to explain this material away wholly destructive of his credibility.[56]

(o) In January 2013, Mr Jenkins was asked to produce, a reflection for Fujitsu management on the cases in which he had provided evidence in at that stage. This was to be produced for Fujitsu at "*Executive Level*" and an apparent draft document provides a summary of the Second Sight investigation and Mr Jenkins contact with Second Sight.[57]

(p) Fujitsu Legal were not isolated from this process. In 2010, for example, the Inquiry saw that Mr Jenkins directly approached Fujitsu Legal (JP Prenovost) for guidance on engagement with Charles McLachlan in the matter of Misra.[58] There were other examples.

(q) Fujitsu was well aware of the arrangements in place for prosecution support from 2002 on. The policy documents were not left stagnant, but revisited and revised throughout the relevant period. (It is not enough for Mr Patterson to recognise now that the Fujitsu approach to giving statements was wrong; without recognition that Fujitsu ought to have known then that it was shameful.)[59]

(r) Fujitsu was clearly conscious of its role in this continuing scandal long, long before the GLO. It was a commercial partner in supporting the prosecutions pursued by POL by design. When sought (and we know POL did not always seek data or statements to stand up its case), it charged, over and over again, for evidence designed to give a cloak of integrity to Horizon generated figures. And it was deployed to persuade SPMs, defence solicitors and barristers and Courts alike that resistance to any prosecution was futile.

(s) Mr Jenkins described the approach to this work undertaken by POL as chaotic, but he remained ever willing to help.[60] He conceded, at the last, that he would have been (at

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55 **INQ00001167**, 26 June 2024, 145:6-17.

56 **INQ00001167**, 26 June 2024, 141:15 -150:14; **INQ00001169**, 28 June, 71:19-23 ; He said (in response to questions from Mr Stein KC) as to whether he would be happy to include such statements, given the reading attributed to them by the Inquiry. He "*was happy that the Horizon system was working correctly. I wasn't -- I wouldn't have said that it was working correctly everywhere in all particular circumstances but I didn't think that's what I was being asked to say.*"

57 **FUJ00153934**.

58 **FUJ00156248**. **INQ00001166**, 25 June, 141 – 147.

59 **INQ00001117**, 19 January, 33:17 – 34:8.

60 **INQ00001166**, 25 June, 123:2-11.

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least by 2013) conscious of the reputational impacts for Fujitsu and the commercial interests of the business which had employed him for the whole of his career.[61] What is underlined by this Phase is that this work could not and should not have been assuring to POL. POL had an undisturbed and settled view which the Inquiry may consider wholly unwarranted by what was being communicated to the business by Fujitsu, by SPMs, by Ernst & Young and, ultimately, by the press and Parliamentarians. It was a view which time and again, POL sought evidence to affirm.

(b) Investigation and Prosecution: Where are we now?

2.13 In order to consider whether the Post Office has learned the lessons of the past, the Inquiry must consider how its approach to investigation and prosecution has changed. While the Post Office has stopped prosecuting, the Inquiry may consider concerns remain.

2.14 First, we underline that while much store was placed in the decision to stop prosecutions in 2014, this was not a swift full stop. That decision appears to be one taken with much reluctance; and with resolution of the issue of an independent assurance of Horizon pending. We note there appeared to be at least some evidence of a discussion of a return to prosecution as late as 2019. The fact that at least some of these conversations involved Rodric Williams and Martin Smith may be of particular concern.[62] (These appear to have preceded the judgments in the GLO). It should go without saying, that the Post Office should never be permitted to pursue private prosecutions in their own right ever again.

2.15 Second, the considerable evidence heard in Phase 7 as to the process of self-reflection underlying the very recent work on Project Phoenix and Past Roles is deeply disappointing. It appears that this work was prompted only by the work of this Inquiry and the evidence of SPM CPs on human impact. That there was no process of internal reflection as to the conduct of prosecutions at POL, whether as a result of the outcome of the Second Sight Interim Report or as part of the Mediation Schemes, might appear shortsighted but it is wholly in keeping with the Post Office's blinkered impression of its own infallibility. Of course, in our Phase 4 Closing we referenced Jackie McDonald's application to the mediation scheme. She told Second Sight the Post Office investigators had acted like bullies: like the Mafia.[63] The Post Office did not listen or did not want to hear.

2.16 Even though it has begun, this work is illustrative of a lack of understanding or appreciation of the substantial failings which confront the Post Office and which were starkly depicted in Phase 4. We note that much of the contemporary documentation on which the Inquiry may reach its findings (and the information drawn from questioning auditors, individual investigators and financial investigators, lawyers and others) might have been available to Post Office, long, long ago. Yet, we note that the thematic Phoenix report was concluded only in August 2024.[64] Moreover, Post Office employees were supported to come before this Inquiry to give evidence on their involvement in the scandal while continuing to be employed in roles with direct consequence for SPMs; not least in the Remediation Unit (e.g. Rodric Williams, Caroline Richards to name a few), where they were involved in the consideration of redress for those

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61 **INQ00001169**, 28 June, 82:6 – 87:2.

62 **POL00126175**: *"I see the main purpose of this current activity is to work out…what it is we need to do and have in place if we are to start prosecuting again."* (Rodric Williams, 2 January 2019). See also **POL00126180**.

63 **POL00099689.**

64 **POL00458007**.

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directly harmed by the actions of the Post Office. Mr Bartlett was shown **POL00447931** the "*Service Support Overview of Teams and Responsibilities*", the meta data of which suggested it was created in May 2021 and it listed individuals including Christopher Knight, Stephen Bradshaw and Robert Daily within the Security Team at Post Office. He confirmed that these individuals (or at least some of them) remained involved in the Network Crime and Risk Support Team and this involved interacting with SPMs. He agreed this was a problem.[65]

2.17 Learning that these individuals remained within the employment – and confidence of – the Post Office was distressing for some of those we represent. For others, it felt like business as usual. The time which it has taken the Post Office to progress this work (and despite challenge by the SPM NEDs progress had seemingly been glacial until post-January 2024) adds insult to injury. While there may be complex employment obligations in play; the Post Office has considerable access to legal advice. This process of self-reflection simply didn't matter to the business, until it had the potential to embarrass senior management during the coverage of this Inquiry.

2.18 Third, there must be no question or ambiguity as to how and when investigations are passed to the police when there is suspicion of criminality and when the Post Office might conduct interviews under caution.[66] The Inquiry might conclude from the evidence it heard that there was a degree of uncertainty as to how that process should be managed. The contract provided to SPMs was heavy-handed and misaligned. Mr Read agreed that in his view it was not appropriate that SPMs were told that the Investigation Division retained the power to interview under caution. **The Inquiry is invited to recommend that POL revisit the contract and its latest policy to afford clear guidance on when a PACE-compliant interview will or will not be appropriate; and when the police ought to be contacted to take over any individual investigation. The Inquiry might consider a more robust line appropriate, such that there should be no provision for interview under caution. However, this approach ought to be guided by the need to ensure fairness to any SPM who may be interviewed by POL and subsequently subject to investigation.**

2.19 Fourth, there is a need for clarity over how the continuing lack of confidence in Horizon impacts both the investigative work of POL and the engagement of Fujitsu and POL with the police. This is important not only for those who may be subject to investigation for breach of contract or potential criminality but also for the public interest in preserving the integrity of the Post Office. The Inquiry has the evidence of Mr Cameron on the stress he experienced challenging the Post Office on the evidential basis for shortfalls before he left his role.[67] It is clear, at least from the ongoing disagreements between POL and Fujitsu as to reliance upon Horizon data for the purposes of prosecutions, that until something changes or Horizon is replaced, then the business may struggle to maintain integrity going forward. Genuine losses due to theft, fraud or incompetence might be legitimately recovered. Indeed, they ought to be given the losses are to the public purse. However, it appears that until both Fujitsu and POL can express confidence in Horizon figures, any such action remains stalled.

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65 **INQ00001198**, 17 October 2024, 10:5 – 13:22.

66 **POL00000254**. **INQ00001194**, 10 October 2024, 22:7 – 27:12.

67 **INQ00001189**, 1 October 2024, 191:21 – 192:8: *"I couldn't get sensible data out of it so I had to put an EY team in there to get sensible data out of it. And it was perfectly clear that they were hardly investigating any of them, and it just wasn't a basis to be asking people for money at all. And that – there was a lot of resentment that I was asking those questions out of the Operations Directorate. So all of that was very stressful."*

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2.20 The Inquiry heard evidence on the approach to interaction with the Police from both Mr Read for POL and Paul Patterson of Fujitsu. The implications that either would refuse to comply with an ongoing police investigation appear to have been ill-understood. The bluster of the correspondence from Fujitsu appeared almost near-staged for the benefit of this Inquiry. First: "*The approach of Fujitsu is to cooperate with the police and any other third party, exercising independent investigative, prosecutorial, regulatory or judicial powers. However, we are concerned by the behaviour of the Post Office Investigation Team on this matter.*" This went on seemingly to rule out reliance on Horizon for either criminal or civil enforcement: *""It seems that the Post Office may be continuing to pursue postmasters for shortfalls in their accounts. We would have expected that the Post Office has changed its behaviour. It should not essentially be relying on Horizon data as the basis for that enforcement.*" Similarly: ""*A witness statement from [Fujitsu] attesting to the reliability of the Horizon system, and of data from it in criminal proceedings would amount to expert opinion evidence. [Fujitsu] is incapable of providing expert opinion evidence, as it is neither independent nor has it sufficient information to provide such an opinion.*"[68] Mr Patterson said they were actively supporting police in their inquiries. However, Mr Patterson appeared committed in his reluctance: "*A witness statement from us on what comes out of the Horizon application is still a problem to us, for exactly the reasons I said earlier, because the Horizon system is one lens on the entire supply chain in the Post Office, and we can't attest to everything that goes on in that, from left to right.*" Yet, when asked whether Fujitsu had themselves had any independent company report on the reliability of the system, Mr Patterson could not answer. He said, he did not know. This would appear to be an astonishing lack of insight, if credible.

2.21 There was a figure of 33 prosecutions ongoing referenced in the Inquiry. Mr Read was taken to the decision of the POL Senior Executive Group to decline to delegate to the Director of A & CI the ability to disclose evidence to the police without Board approval.[69] As above, he agreed there was a misalignment between the SPM contract (described as heavy-handed) and the way that Post Office investigations are now intended to operate. He said it was not consistent with how POL *"support postmasters when they have issues"*. The Inquiry may consider this misalignment indicative of the care with which Post Office treats matters of critical significance for SPMs post-GLO. As to cooperation with the police and investigations, Mr Read appeared to agree with a description of POL as "*paralysed*".[70] Mr Patterson confirmed there were four cases on which Fujitsu were in correspondence with police. He confirmed to the Chair that if asked, Fujitsu would at least try to find someone to give an appropriate witness statement. The worst of all possible worlds might be one where SPMs under investigation find themselves again faced with evidence which appears impossible to challenge but which lacks integrity. However, behind any delay in the engagement of POL and Fujitsu in these proceedings are people who may or may not be subject to investigation and later trial. The uncertainty and fear in such delay are feelings familiar to many of those we represent and ought not to be underestimated. This is plainly an issue which must be resolved and which cannot wait for the roll out of NBIT, whenever that may be.

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68 **INQ00001205**, 11 November 2024, 189 - on
69 **INQ00001194**, 10 October 2024, 5 - on
70 Ibid, 16-17.

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2.22 Fifthly, while a renewed commitment to whistleblowing appears positive on paper, in practice, the Inquiry might be concerned that the commitment is hollow. The Inquiry heard of numerous investigations, begun and farmed out to independent processes, which then seemingly stall for months at a time, if not longer. Considering the evidence on the NBIT complaints alone, the seriousness with which the commitment to learning from whistleblowing is taken appears wholly undermined by what the Inquiry was told happened in practice. Progress seemingly stalled for so long until those involved appear to have moved on from the organisation. Investigation after investigation, indicative of an organisation in crisis.

2.23 Sixthly, a true change in approach is unlikely to occur until the toxic attitude of disbelief and distrust in SPMs is made a thing of the past. We return to SPM NEDs on the Board in Section 5. However, the lessons learned in the evidence of Saf Ismail and Eliot Jacobs suggest that there is a wide gulf between the public commitment of the Post Office to a change which puts SPMs at the heart of the business and the attitudes of some to staff. A change in culture will only occur when led positively from the top down and at all levels of the business. As Mr Cameron acknowledged, there was believed to be a fundamental conflict of interest in the interests of the Post Office and its SPMs: "*if Post Office wants to meet a financial target, the easiest way it can do that is not pay as much money to postmasters. And what we have seen was – I mean, a deliberate and you know, I can explain it – attempt to reduce the overall postmaster remuneration between 2012 and 2018, which is all disclosed, and that was done through largely Network Transformation*".[71] He said that Mr Read was very clear that SPMs should be put first as a "*rallying cry*" in 2021. Since then Mr Cameron said it was "*uncomfortable*" using that phrase as "*if you looked at the way we were divvying the money up, we put hitting our financial targets first and postmaster remuneration second, and he said he hadn't been using that phrase for some months at that time.*"[72] Evidence on the actions taken over the past 5 years suggests to those we represent that the work of the Post Office has regrettably been, as ever, focused first on self-preservation. For an organisation in crisis, recovery, rehabilitation and a change of culture will go hand in hand. The replacement of the Chair and the CEO as we come to the close of this Inquiry ought to be an opportunity for a clean slate. The Inquiry has the new strategic review and coverage of public commitments of the new Chair (to which we return, below). Whether these come to pass and are accompanied by a change in attitude across the business remains to be seen. A first step on the road to change would be an open commitment by the Post Office (and the Department) to the implementation of any and all recommendations of this Inquiry without undue delay.

2.24 Seventhly, the limited evidence available to the Inquiry concerning the conduct of investigations by POL principally relates to NED members of the POL Board. This material suggests that the approach being taken within the A & CI team to investigations may yet require serious attention. If the experience of Eliot Jacobs at Director level can be so unsatisfactory, the Inquiry may wish to ask what might happen in another serious investigation elevated to the A & CI team. The evidence of Mr Jacobs suggests that while the Post Office is saying the right things, their approach to investigations may remain aggressive, unprofessional and intrinsically anti-SPM.[73] It is particularly concerning that his experience was with the A & CI team (the team which is now to be responsible for the assurance of investigations throughout POL). We note that,

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71 **INQ00001189**, 1 October 2024, 183: 21 – 184:10.
72 Ibid 184:24 – 125:8
73 **WITN11180100**, [19] – [28].

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despite the recommendations of KPMG's review of investigations, it took two and a half years to progress to a meeting with the College of Policing to discuss a training package for POL.[74] The speed of this work suggests nothing short of extreme reluctance or lack of care. However, in the light of the approach to Phoenix and Past Roles, this may be unsurprising. We are conscious the Inquiry has few other examples of work on live investigations now, whether within the Retail Team (Mel Park) or the A & CI (John Bartlett), but would encourage scepticism. The case for continuing, independent external scrutiny of non-police investigation activity by the Post Office appears strong.

2.25 Finally, there is scope for learning beyond the Post Office in this Inquiry. While the Post Office may have stopped pursuing private prosecutions there are a number of bodies which have pursued (and continue to) pursue non-police investigations with a view to prosecution in both the private and public sectors. Local authorities,[75] DWP[76] and other bodies conduct investigations pursuant to PACE, with a view to investigation. (Other non-police bodies conducting investigations which may lead to prosecution of offences include the TV Licensing authority[77] and the RSPCA[78]).[79] In our closing submissions in Phase 4 we raised that there was no equivalent of the IOPC for the Post Office Police. The IOPC does consider some non-police investigations in the public sector, including HMRC. However, as was clear in the course of this Inquiry, even where a body is not using compulsory powers or the use of force, misconduct in the course of investigatory work can be devastating. **We invite the Inquiry to recommend Government conduct a review of the operation of private criminal investigations and prosecutions within the UK, focusing on both public and private bodies who pursue these activities outside of the ordinary activities of the police and CPS. This ought to include consideration of the creation of a body responsible for independent complaints handling for any non-police investigation of criminal offences. In addition (or in the alternative), the Inquiry may wish to recommend standard guidance for all public and private bodies conducting non-police investigations (including those which purport to conduct PACE compliant interviews with a view to prosecution). This could draw on the lessons learned in this Inquiry about the recruitment, training, deployment and conduct of investigators.**

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74 **INQ00001198**, 17 October 2024, 25:1 – 29:22. The proposal was not yet finalised.

75 **RLIT0000573** See, only for example, South Hams District Council Enforcement Policy, which commits all investigations to compliance with PACE and other relevant legal standards.

76 General complaints about handling of some complaints by the DWP can be pursued with an Independent Case Examiner after the exhaustion of a local complaints process. However, they cannot deal with complaints that have been subject to legal proceedings, for example. Complaints may be made to the Parliamentary and Health Services Ombudman. This does not focus on investigatory powers.

77 TV Licensing Officers are required to comply with a Prosecution Code of Conduct, but they do conduct interviews under caution, deploying bodyworn cameras for this purpose: "*Our Officer will tell you why they're visiting. They'll be polite, considerate and fair. And they will follow our code of conduct*". There has been recent extensive criticism of the use of the single judge procedure for the processing of TV license offences in the magistrates courts. While beyond the scope of this Inquiry, it may be noted that these prosecutions are not rare and although they involve lower level offending, they have had a reportedly devastating impact on some. **RLIT0000560** Telegraph, *Secret court for speeding and TV licence fee offences must end, magistrates urge*, 25 March 2024.

78 While widely reported that the RSPCA announced its intention in 2021 to end its practice of private prosecutions, following recommendations by the HC DEFRA Committee in 2016, transitioning to work with the CPS on cases of animal cruelty, we understand that it continues to investigate and may remain involved in prosecutions. See, e.g.**RLIT0000566** Countryside Alliance, Tim Bonner, *Post Office scandal puts spotlight on RSPCA*, 11 January, 2024
https://www.rspca.org.uk/whatwedo/endcruelty/investigatingcruelty/process

79 **POL00006802** The Inquiry will recall the review of this anachronistic practice in Brian Altman QC's advice to Post Office in 2013.

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2.26 The House of Commons Justice Select Committee has previously recommended that an inspectorate for private prosecutions be created (together with a power for Government to strip a body of the ability to pursue private prosecutions and the introduction of other safeguards). This would have included the introduction of a binding code of standards.[80] These proposals were rejected by Government ("*we are not persuaded that introducing a binding and enforceable code of standards (or the inspection regime proposed ...) would be a proportionate response*").[81] This response came before the evidence of Phase 4. **We invite the Inquiry to revisit these recommendations and associated safeguards and to urge the Government to establish an inspectorate of private prosecutions without delay in order to ensure that no repetition of this scandal can ever occur.**

3 A ROBUST DEFENCE

3.2 While the history of Horizon raised a number of legitimate questions, when concerns were raised, the response by Post Office (and its leaders) was studiously, if not culpably, incurious.

3.3 The response to any question over the integrity of Horizon was defensive: defensive of Horizon, defensive of Fujitsu and defensive of the Post Office. Phases 5 and 6, taken together, provided months of shocking evidence on the actions taken year on year that would keep the truth about Horizon and the Post Office's mistreatment of SPMs out of the public domain.

3.4 In this section, we invite the Inquiry to consider ten propositions on the Post Office response to concerns about Horizon and unsafe convictions.

1. The Robust Defence of Horizon did not start in 2013.

3.5 The seemingly unblinking defence of Horizon didn't start in 2013, when, as Mr Cameron described it, POL "*doubled down*".[82] We refer the Inquiry to our earlier submissions on this point. The business knew from roll-out that if the Post Office were to survive, its ethos had to be Horizon-centric.[83] There wasn't a Plan B.[84] From the apparent ignorance or ignoring of the warnings in Jeremy Folkes' parting red-flags to the business (commissioned by David Miller) [85], to the critical failure to engage with the joint expert report in Cleveleys, everything in the

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80 **RLIT0000530** HC 487, Ninth Report of Session 2019–21, *Private prosecutions: safeguards* (29 September 2020). **RLIT0000567** In January 2024, the Committee invited the Government to revisit its decision to reject the safeguards recommended by the Committee: *"The Government's response to the Committee's Report rejected the Committee's recommendation on the need for all bodies that conduct prosecutions to be subject to inspection. The Committee further called for the creation of a power to strip an organisation of its power to conduct private prosecutions, which the Government also rejected. The Government also rejected the Committee's recommendation for a binding code of standards for all private prosecutors and investigators. Given the information that has come to light on the Post Office's approach to prosecutions, and the limited power of the justice system to provide safeguards to those targeted, we would ask that the Government look again at these recommendations."*

81 **RLIT0000531** HC 1238, Tenth Special Report of Session 2019–21, *Private prosecutions: safeguards: Government Response to the Committee's Ninth Report* (2 March 2021).

82 **INQ00001189** , 1 October 2024, 173:3 – 18: *"And what I meant by doubling down is Post Office retreated into "Well, we'll do the Mediation Scheme, but ..." you know, and to become much more defensive again, and that is what I meant, and that seemed to be around 2013."*

83 **POL00031230** (January 1999).

84 **INQ00001016** (Stuart Sweetman), 2 Nov 2022, 11:24 – 17:20.

85 **INQ00001005**, 3 Nov 2022, 14:3 – 20:25. **WITN05970123** (February 2000 updated 2022). *"[W]e had gone through a tough five years and there were a number of things that I felt that I wanted to be able to write down to -- should anybody try to do this thing again, to avoid some of the problems." "I was concerned that not enough appeared to*

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first days of Horizon pointed to the prospect of it going wrong being too big a reality to face. Consequently, it was not faced.

3.6 The Inquiry has good grounds to be sceptical as to whether the history was forgotten or, instead, a blind-eye was wilfully turned in the face of growing evidence. What we do know suggests the approach to risk-management for Horizon was deeply flawed. The evidence of Phases 3 and 4 demonstrates the continued refusal to countenance any message that the operation of Horizon (and the approach of Post Office to the investigation and prosecution of its own people) was worthy of concern. The evidence of Mr Ismay, who had been Head of Control and Risk and author of the notorious Ismay report is telling.[86] In reality, the seeds for the approach to the defence of Horizon and the Post Office's prosecution practices by the business (acting together with its legal teams) were sown and nurtured early.

3.7 We return to the issue of risk management and good governance in Section 5 below.

2. Independent Technical Interrogation of Horizon was dodged time and again.

3.8 One obvious step that might have averted this scandal would have been a full technical audit of Horizon; including as it operated on the counter. Opportunity upon opportunity to consider and conduct a full independent investigation was passed over before the engagement of Second Sight. There had been legal advice from Rob Wilson and a conversation in conference with Richard Morgan (now KC) about the risk associated with such an investigation, first in 2010, and then in 2012.[87] It was a lose-lose prospect for Post Office.

3.9 Recommendations for independent investigation of Horizon as a system went ignored or were allowed to drift. Phase 5 confirmed these went beyond mere coal face speculation.

3.10 Phase 4 revealed Horizon challenges drawn to the attention of management, including Rod Ismay and David Smith at the Post Office, as early as 2005. Mandy Talbot's suggested responses to these challenges included a clear recommendation of the involvement of independent expertise beyond Fujitsu, and a more consistent joined-up approach by the Post Office.[88] Her recommendations were seemingly discussed and then largely stalled.

3.11 Proposals for an independent external review in March 2010 were shut down following contact between the relevant Senior Managers, including Rob Wilson (the Head of Criminal Law), John Scott (the Head of Security) and Rod Ismay (the Head of Product and Branch Accounting).[89] The Ismay whitewash followed.

3.12 In Phase 5 we also learned that the parent RMG had asked about independent review. In September 2011, Mr Brydon, Chair of RMG had written to Ms Vennells expressing his surprise over reporting of the class action in Private Eye. He questioned whether there had ever been an independent audit of Horizon.[90]

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have been done or we had not had enough visibility of it, as to how the system would behave in cases of failure". The evidence is that nothing happened with Mr Folkes concerns including his proposals including for hostile testing.

86 **INQ00001063**, **INQ00001064**, **INQ00001145**.

87 **POL00106867** (Rob Wilson, 3 March 2010), **POL00006484** (Richard Morgan QC, 12 June 2012 (Conference Attendance Note).

88 **POL00107426**, **POL00071202**.

89 **POL00107426**.

90 **WITN00740126**. **INQ00001151**, 22 May, 151:5 – 153:2.

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3.13 The Inquiry heard of Ms Vennells chasing Mr Young in frustration, with the BBC asking more questions. She wrote a message to Ms Sewell headed "*Horizon independent assessment*". She said this was in response to the Brydon queries. Ms Sewell had said Fujitsu intended to use Pen Test Partners but would instead now go to KPMG. Ms Vennells asked "*how can it be independent if Fujitsu are choosing and swapping suppliers? Is that sustainable evidence in court – independently verified by a company they choose?*" This might be the closest we see – before Second Sight – to an interest in pursuing any independent interrogation of Horizon. It coincided with the first Shoosmiths 'letters before claim' being live. Ms Vennells wrote of her concern about how a class action could be "*hugely negative reputationally*" and "*it could cost us a lot of money and this verification, which presumably could be of enormous help is not even off the blocks*." She was on holiday, cross and frustrated. She explains her frustration: "*I know everyone is working very hard but I'm a bit disappointed that I found out only by asking as a result of potential BBC coverage*." But it might legitimately be asked whether Ms Vennells was more worried about the need to see off the BBC than she was of the risk the Post Office had acted unlawfully? Ms Sewell had rolled the lawyers into her reply (to which we will return). Ms Vennells sent her ill-tempered reply to Mr Young alone (seemingly albeit in error).

3.14 It appears little more was said as focus turned to Second Sight in 2012: a technical, interrogation akin to an audit by Deloitte being passed over in favour of Mr Henderson and Mr Warmington. For reasons which remain unclear, the business did not want to instruct the Big Four.

3. Any Independent View was to be Ignored, Dismissed, Avoided or Diminished.

3.15 Any critical (or potentially critical) external view on Horizon delivered to the Post Office was forgotten, ignored, dismissed, avoided or diminished. Alternatively, its circulation was limited with the very real prospect that it was hidden.

3.16 First, the Inquiry has evidence of the role played by Fujitsu in the evidence of Paul Patterson. The Inquiry has the evidence of Phases 2-4. Fujitsu undoubtedly did not pass on everything it should to POL in the way it should (the handling of the EPOSS Task Force a case in point). Where bugs were passed on, they appear to have been consistently dismissed, diminished or explained away as "*fixed*" or "*not relevant*" with limited questioning. This was precisely how it appeared each of the bugs considered in the Second Sight Interim Report had been handled long before 2013. We have addressed the approach to Mr Jenkins' evidence above.[91]

3.17 However, despite apparent resistance to an external view, there were red flags in those which did get through to POL (or ought to have done): the Phase 4 evidence on the handling of the expert evidence in Cleveleys and Castleton is starkly illustrative.

3.18 Ernst & Young raised the flag on remote access in 2011 and continued their work into 2012. Alice Perkins was full of apology that she didn't get to the bottom of what was going on. Yet, at the start of her tenure, in September 2011, Angus Grant at Ernst & Young appears to have given her an idea. Jotted down in a Post Office notebook, with a prescient logo: "*We do not see things as they are, we see them as we are!*" – she recorded: "*With Fujitsu, [Post Office] drove a very hard bargain on price but they took back on quality/assurance.*" "*Horizon -- is a real risk*

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91 **POL00134295**, **POL00144533** (GJ work on the Lepton Spot Review). The Inquiry has seen some evidence of his drafting on Spot Reviews for Second Sight also amended, by Bond Dickinson.

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for us."[92] Days later, as Ms Perkins recognised, Donald Brydon, Chair at the parent RMG, was questioning what he'd read in Private Eye about Horizon.[93] Even if – as suggested by Ms Perkins – Ernst & Young's concerns were for the past (which was patently not the case) – this was a glaring warning that perhaps there might just be something in the SPMs claims that Horizon lacked integrity.

3.19 The appointment of Second Sight was apparently a sea change in attitude at the Post Office; and it ought to have been. Yet, despite denials, the business plainly saw the appointment *not* as an opportunity for rigorous interrogation of the technical capacities of Horizon and honest reflection on Post Office's own past practices but, instead, as a means of shutting down press and Parliamentary pressure. Ms Perkins said it herself when she told the Board she had met James Arbuthnot and "*hoped that she could find a way to convince him and the other MPs that the system was not at fault.*"[94]

(a) It was never a technical audit. One had been offered, considered and eschewed. The Post Office never wanted a Big Four firm.[95]

(b) The Inquiry heard evidence on how Post Office sought to constrain and shape the investigation. There was disagreement upon disagreement over the scope of the investigation and its purpose. There was a critical distinction to be made between systemic and systematic. What was systemic? Post Office wanted focus strictly on the system despite determining at the outset a full technical audit of Horizon was not on the cards. Susan Crichton told Second Sight: "*Paula agrees that the original scope of the investigation did not go as far as looking at whether – it was the miscarriage of justice point…So that's not what she's looking for. She's just – she's looking for the systematic – or systemic, rather, not systematic – systemic weaknesses in the Horizon system*".[96] The business wanted to have its cake and eat it. An investigation that focused on Fujitsu systems but which was not a full technical audit. An investigation independent enough to see off the MPs, but not so independent it would cause more trouble.

(c) Disclosure from Post Office and Fujitsu to Second Sight was mismanaged and incomplete. At the start, they were provided with very little coherent information at all. When they asked for the general file, they were told there wasn't one.[97]

(d) The visceral response within Post Office to the Interim Report is telling. Susan Crichton had failed to "*man mark*" Second Sight.[98] It was thought by her leaders that she had lost sight of the interests of the business. Leadership appears to have concluded her professional obligations as a lawyer got in the way. Ms Vennells described this as clumsy language but it is more likely that it was a note never meant to see the light of day.[99]

(e) When the result was not what the Post Office intended it rewrote the narrative. The results were spun, miscast and publicly misrepresented. Second Sight were dismissed, diminished and ultimately removed.

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92 **WITN00740122**. **INQ00001156**, 5 June, 11:10 – 29:15.
93 **INQ00001156**.
94 **INQ00001156**, 5 June, 53:23 – 56:25. **POL00021505**.
95 **INQ00001156**, 6 May 2024, 74-75: Ms Perkins suggested this was to meet concerns of Lord Arbuthnot. **INQ00001152**, 23 May 2024, 4 (Paula Vennells); **INQ00001134** (Susan Crichton), 23 April 2024,53. **INQ00001136**, 25 April 2024, 179 (Angela Van Den Bogerd: "*My take would be that that would have been less costly than getting one of the big four in.*"
96 **INQ00001152**, 23 May, 108:6 – 111:5.
97 **INQ00001162**, 18 June, 144:22 – 145:4.
98 **POL00381455**. **INQ00001156**, 5 June, 154 – 159.
99 **INQ00001152**, 23 May, 178:8 – 180:8.

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(f) There were opportunities seemingly missed throughout the engagement of Second Sight. To take just one: Second Sight's heavily caveated critique of Post Office investigations and investigators seems prescient in light of the evidence in Phase 4. There is evidence this went to Susan Crichton and Chris Aujard and the Inquiry might think it ought to have triggered some self-reflection and inquiry.[100] Yet, staggeringly, as we learned in Phase 7 that it took the Human Impact Hearings of this Inquiry to trigger Project Phoenix and Past Roles. And that work of critical – and long overdue – self-reflection still continues.

3.20 The handling of expert, external input after the Second Sight Interim Report is a sorry tale. Witnesses invite the Inquiry to conclude that conspicuous red flags were missed, misunderstood or held back by a few individuals. After Second Sight, the whole business ought to have been on alert. But it was not because, instead, it was on the defensive. It will be for the Inquiry to conclude whether to accept incompetence truly did ensure ignorance. We urge scepticism. The actions taken in the post-2013 period invite close scrutiny and suggest an organisation desperate to defend itself; supported by an aggressive legal team driven above all to protect a narrow view of their client's best interests to the detriment of all else. Unblinking in its defensiveness, at best, it appears individuals shut their eyes to information which didn't suit the narrative. At worst they may have buried it. The greater the opportunity for dots to be joined, the defences to be broken, the more the credibility of claims of incompetence or ignorance might diminish.

3.21 The handling of the Clarke advice of July 2013 was shameful. We deal with this relatively briefly, as the Inquiry has substantial evidence on this issue

3.22 The Clarke advice was plainly seen by many lawyers for the Post Office; both internal and external.[101] It went to General Counsel and to Bond Dickinson. Its significance is plainly understood from the outset, with Gavin Matthews (Bond Dickinson) and Susan Crichton, as early as 16 July, discussing potential liabilities for Post Office, Fujitsu and Cartwright King as a result of Mr Jenkins failures to comply with his obligations as an expert witness.[102]

3.23 This is consistent with an appreciation of the common law duty that would have been known to any reasonable practitioner. In *R (Nunn) v Chief Constable of Suffolk Constabulary* [2015] AC 225, Lord Hughes explained:

"*There can be no doubt that if the police or prosecution come into possession, after the appellate process is exhausted of something new which might afford arguable grounds for contending that the conviction was unsafe, it is their duty to disclose it to the convicted defendant.*"

3.24 That was always the common law duty. It was always the duty, before 2014 and before 2000. It was the duty for the whole of the relevant period of this Inquiry. Every reasonable criminal lawyer would and should have known that.

(a) As to the continuing duty of disclosure owed by POL to those it had prosecuted in the Horizon era, the premise of the Cartwright King sift review is that the existence of such a duty was understood by POL and those advising them extended to the disclosure of potentially exculpatory material which may render the convictions in question unsafe. It

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100 **INQ00001162,** 18 June, 146:16 – 154:11. **POL00344051**.
101 **INQ00001160**, 13 June, 29:21 – 37:23. **INQ00001135**, 24 April, 78:2-21. **INQ00001132**, 18 April, 141:10 – 147:22.
102 **INQ00001160**, 13 June, 29:21 – 37:23; and the documents therein, in particular **WBON0000133**.

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was in the understanding and application of the duty that things went wrong. There appears to be no contention that POL was bound, and the organisation and its advisors knew they were bound, by such a duty. The consideration given to disclosure was wholly inadequate. To fail to even consider disclosure of the substance of the Clarke advice, both in terms of the information it disclosed about Mr Jenkins and his state of knowledge and the substance of the advice that he was unsafe, was plainly wrong.

(b) Both the substance of the advice and the information about Mr Jenkins which it incorporated ought to have been disclosed in appropriate cases. That is, cases where it might afford arguable grounds for contending the conviction was unsafe. It follows:

i. It should definitely have been disclosed to all those who had been convicted on the basis of the evidence of Gareth Jenkins;

ii. It should also have been disclosed to all those who raised the unreliability of Horizon at any stage of the proceedings (including in unexplained discrepancies); whether they were subsequently convicted after trial or convicted by their own plea. That is because the reliability of Horizon was essential to their convictions.

(c) What should have been disclosed is the substance of the advice;

(d) The disclosure should have been given as soon as practicable after receipt of the Clarke advice (POL having had this information since early July and in writing from 16 July). (When there appears to be a real prospect that further inquiry will uncover something which may affect the safety of the conviction, then police or prosecutors ought to co-operate in making such inquiries (*Nunn*, [41]). However, when it is plain that material goes to the safety of the conviction; the duty of disclosure bites (*Nunn*, [35] (above)). The only reasonable delay ought to have been in identifying that there were cases which relied on Horizon integrity. As explained above, it should also have been disclosed to affected SPMs.

3.25 The information in the Clarke advice ought to have gone to the Board and directly to the CCRC in July 2013 (if necessary, after a short investigation to confirm the premise of Mr Clarke's advice). There were plainly cases within POL's knowledge where Horizon integrity had been in issue (including cases considered by Second Sight). That Bond Dickinson's initial concern over disclosing the tainted witness issue to the CCRC as reflected in the draft response was not immediately contradicted (not by Cartwright King nor by Brian Altman KC[103]) was a patent and terrible error.

3.26 Had a proper inquiry been conducted, consistent with the duties of the Post Office, then a range of other exculpatory matters may have been discovered. This may have included that Mr Jenkins (and indeed, other Fujitsu witnesses) had not been properly instructed before each case by the Post Office, their legal team or Fujitsu. They would have, arguably, discovered Mr Jenkins' far

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103 **INQ00001143**, 8 May, 57:20 – 58:5. "Mr Altman KC admitted to an error in his consideration of the "tainted witness" issue: *"I don't think privilege would have -- if I had applied my mind to the fact that Gareth Jenkins' credibility was in issue and his assessment as an expert was in issue, I think I would ultimately have advised that that ought to be disclosed in appropriate cases. I clearly didn't. I can't think now why I didn't. I'd like to say it was a misjudgement but I'm not even sure there was a judgement. I don't know why, I think we were – if I have to think back and speculate, I think the focus was so geared towards these two new bugs that that just slipped thorough, as it were."* When pressed as to disclosure to the CCRC, Mr Altman intimated his general review went to the CCRC (We understand this was some time later, in February 2015). He agreed again that the failure to advise that the Clarke Advice and his own opinion as to the tainted witness issue ought to have been considered for disclosure. **INQ00001143**, 8 May, 66:9 – 21.

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wider knowledge of BEDs relevant to Horizon (including in its development) and knowledge of KELs etc. Further, on examination of his earlier witness statements, it would be, we say, inevitable that the trail of edits relating to Mr Jenkins' statement in the Thomas case would have been discovered. As above, the advice should have been disclosed without delay (together with any other disclosable material discovered in any subsequent inquiry). Instead, the narrow focus of Cartwright King (and in turn, the Post Office) fell horribly short. The Inquiry has numerous examples. To take one, the Inquiry has the advice of Andrew Parsons on the approach to the Helen Rose report as disclosed: "*Instead, our preferred approach is to downplay the importance of the [Helen Rose] report in any [Post Office] investigation reports. We recommend minimising or ignoring entirely the [Helen Rose] Report when responding*". Again, limiting disclosure and downplaying the significance of a document which if disclosed without redaction could have exposed the position of Mr Jenkins[104] (We return to this in Section 4 on regulated legal professionals).

3.27 The conflict of interest in Cartwright King's position was plain. In any event, it was raised in the initial review of BAKC but seemingly not pursued further.[105] Advice aside, it ought to have been a matter of common sense that Cartwright King had skin in the game and their role in the sift review and other matters going forward was wholly inappropriate.

3.28 Sufficient information was passed to Paula Vennells and to Alice Perkins that they were (or ought to have been) aware of the substance of the advice of July 2013. Ms Crichton's recollection of dates was unclear, but she testified that she would have briefed Ms Vennells on the Cartwright King advice sometime after they advised at the London office on 3 July. Ms Vennells conceded that she would have known about the problem with the Fujitsu witness at least a month before 27 September 2013 and definitely in July.[106] She insisted that she never saw the advice and never had its full implications explained to her. On her own explanation as to what she knew, it is simply incredible that she did not ask to be fully briefed. The Inquiry might regard the evidence of Ms Vennells as both vague and yet strangely precise at the same time, in the manner it appears exculpatory. However, the Inquiry might consider that, in her evidence, she accepted she did know sufficient of the essence of the issue to beg the question why she would possibly have let it lie. On her own explanation as to what she knew, it is simply incredible that she did not ask to be more fully briefed at any time after 16 July. Similarly, that Ms Crichton and Mr Aujard (and then Ms McLeod) all proceeded in the tasks that they did without ensuring the full understanding of the CEO as to the serious implications of this revelation for the business appears simply incredible. (Again, the Inquiry will determine whether the suggestion that no request was ever made for a fuller briefing or a copy of the advice (nor one offered or discussed) is either credible or merely convenient.)

3.29 Ms Perkins asserts that she was unaware of the Clarke advice until much later; that is, during the appeals. She said it ought to have been provided to her by Ms Crichton: "*I see this as one of a number of failed turning points in this very sorry story. And I do really believe that, in that summer of 2013, things could have been very different, and they weren't.*"[107] Yet, it is Ms

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104 **POL00129392, INQ00001161**, 14 June 2024, 37 – 44 (Mr Parsons evidence was that this would have been on the advice of Cartwright King).
105 **POL00006583** at [16].
106 **INQ00001153**, 24 May, 34:24 – 35:7.
107 **INQ00001156**, 5 June, 161: 1- 20.

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Vennells' evidence that she told her Chair what she knew. We observe that this appears supported by the "*unsafe witness*" email of 21 October 2013.[108]

3.30 If all the evidence is taken at face value; this has to be (at best) one of the most egregious examples of reckless incompetence on the part of each of the players. However, on the basis of what it appears Ms Vennells (and Ms Perkins) knew of the issue, if not the advice, then if not escalated to the Board in all the circumstances of mid-2013 this was simply extraordinary.

3.31 The Board was updated at the disastrous meeting of 16 July. General Counsel was held outside. The Board had her paper, including Appendix 1. It didn't deal with the tainted witness. Whatever the Board was told, it causes sufficient concern for wrongful prosecutions and the liability of POL and its Directors asking for a briefing on the insurance position and tasking the team to update the insurers.[109] Did no one in that meeting (or any later meeting) ask to talk to the lawyers directly about what exactly triggered the real risk to the business? And were there no repercussions for the Board members who failed to ask such questions? (The Inquiry has the Governance Experts Case Study 2.)

(a) Whilst the plight of SPMs was conspicuously ignored, we know this concern triggered a series of inquiries about insurance for Directors and Officers liabilities and notification to the Board's insurers.[110]

(b) Members of the Board were told that there was a need for a new witness.[111] They knew this conversation was going on against the background of years of challenge to POL's historic prosecutions. Did no one really ask – why now? What's wrong with the one we used to use? Again, is this incompetence or might the absence of any question suggest that the reason had already been explained, even – or especially – if not recorded?

(c) The Inquiry heard that the Board continued to be involved in conversations on changing policy on prosecutions and on prosecutions being paused. The suggestion that during that time there was no discussion of the true reason *why* the pause had become necessary, again, appears either incredible, or by egregious design.

(d) The Inquiry might conclude that there was altogether too great a focus on the possible civil liabilities of the Post Office (and its directors) and scandalously little regard had for the impact of the serious miscarriages of justice which had occurred on SPMs. The nadir of this might be in the discussion of the options for continuing or ending prosecution by POL, in November 2013, with the benefit of advice from Brian Altman KC, and the shameful reluctance of Executive and Board members in the ARC to step away from the

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108 **POL00382001**.

109 **POL00099218** (Update Paper) and **POL00021516** (Minute). We note that the Annex 1 summary of the issues, while seriously deficient, does focus upon both the prospects for appeal and the overturning of convictions; but also on potential civil liability for POL (albeit alongside a focus on communications).

110 The Inquiry will recall how that notification was ultimately handled, with input from Bond Dickinson and a suggestion that verbal notification might be used (avoiding a paper trail) (**POL00145716**) and input from Cartwright King diminishing the seriousness and the significance of the information conveyed about the "*tainted witness*" issue. Later amendments to a March 2014 notification were passed through Rodric Williams and Andy Parsons) **INQ00001160**, 13 June, 71:11 – 80:22.

111 See, for one example, the significant litigation report circulated in November 2014: **POL00149638 (at p168):** *"There are number of cases which could have been prosecuted (e.g. those with full and frank admissions to theft /fraud), but prosecutions were not commenced to avoid adverse judicial comment. Several cases have also been terminated while POL obtains an independent expert report on the Horizon branch accounting system (see below). There are currently 14 cases which are being kept under review as to whether a prosecution (supported by an expert report) can be commenced."* This then goes on to refer to Imperial College as the *"New Experts"*. By March 2015, the significant litigation report included: "*Steps continue to be taken to determine the basis on which Imperial College London may be able to provide expert evidence to support prosecutions which involve data obtained from the Horizon system.*" **POL00353031** (25 March 2015) at p95.

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anachronistic practice of POL acting as prosecutor, with a now all too familiar focus not only on deterrent but recoveries.[112] We note Ms Vennells sought to stress the impact a change of policy might have on the ongoing position in relation to the integrity of past prosecutions: "*any change of policy is likely to be closely scrutinised and over-interpreted – with the likely inference that this is an admission that we were wrong to pursue prosecutions in the past.*" Again, the perceived commercial interest of the business was to prevail over what was obviously good sense

3.32 In October 2013, Detica concluded: "*Post Office systems are not fit for purpose in a modern retail and financial environment.*" The work of Detica ought to have reinforced the conclusions of Second Sight, seen by those at the heart of work on what came next and who had reporting lines direct to the CEO (namely, Angela Van Den Bogerd, Lesley Sewell and Chris Aujard) but seemingly it had little impact.[113]

3.33 This was, of course, concurrent with Cartwright King being tasked to check (albeit only some of) their own work on some of their past prosecutions. In the light of the evidence of Brian Altman KC, Martin Smith, Simon Clarke and Harry Bowyer, and that of Jarnail Singh, the Inquiry might consider that the question of conflict of which the Post Office ought to have been aware was obvious. It was plain that at least some in the Post Office had considered the position of Cartwright King and their liability for malicious prosecution: Mr Singh had asked Cartwright King to comment on Bond Dickinson's advice and responses being given on civil liability, asking about not only the position of POL vis Cartwright King but his own position (See also the evidence of Ms Cortes-Martin).[114]

3.34 The approach to the Cartwright King Sift Review was shaped first by PR input (to which we return below) and the input of both Bond Dickinson (the Post Office's civil solicitors) and the Post Office into the overlaid work of Brian Altman KC.[115]

3.35 The Post Office team were also drawing on the expertise of Sir Anthony Hooper, after his appointment. It was his evidence that he warned Ms Vennells and Ms Perkins that the Post Office position didn't make sense. He suggests that although he didn't see the Bond Dickinson advice, he thought the Post Office believed the process would see them paying out small amounts. He told them otherwise: substantial payments ought to be anticipated. He accepts he

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112 **INQ00001135**, 24 April, 98:4 – 99:13. **POL00021424**. **POL00030900**. Noting that the Board were advised of the commercial impact of ending prosecutions thus*: "it would be open to us to use the civil courts to recover losses, though this is a more time consuming process, and there is greater scope for assets to be hidden from view."* See also the engagement of Ms Vennells, Ms Perkins and other Board Members. Ms Vennells being firmly in favour of retaining prosecutions but with a higher bar: **POL00027688**. See also **POL00100223** and the first witness statement of Ms Vennells, **WITN01020100** at [743].

113 **INQ00001151**, 22 May, 101:21 – 107:22.

114 **POL00164253, POL00100003, POL00198765, POL00327114 (16 December 2013)**: "*Am I right in interpreting this as meaning that as Post Office does not conduct its prosecutions in house – that is, it uses Cartwright King rather than directly employed lawyers – any claim for malicious prosecution would properly stand against Cartwright King and not POL, provided we follow our normal processes as described in the advice*." Advice is available which appears to be a Cartwright King view on the Bond Dickinson advice, confirming that where POL instructs outside lawyers, the claim for malicious prosecution will lie against those outside lawyers (Cartwright King): **POL00198766**. **See also POL00327117, POL00327118**. Mr Singh's concern for his own position appears clear: "*What about cases I advise on and have done as part of Royal mail in house prosecution team."* This message is marked urgent and not copied to anyone else but Cartwright King (17 December 2013).

115 See, e.g. **POL00021980**: Gavin Matthews advising as to Brian Altman's terms of reference and his query as to whether his review should consider the efficacy or safety of past prosecutions. It was the view of Bond Dickinson that Mr Altman should leave the question of safety to Cartwright King.

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ought to have asked to speak to the Board to impress upon them "*the fundamental implausibility of the Post Office case*".[116] We return to consider regulated legal professionals in Section 4 below.

4. Public Relations governed the Public Interest

3.36 Any concern about Horizon or the safety of prosecutions was met first with concern for the business and its public perception. At the end of Phase 4, we addressed the toxic culture at Post Office: it was not a superficial problem but how far it went remained to be seen in Phase 5. While those in corporate control of an organisation must have concern for its brand, reputation and public relations, evidence before the Inquiry was of a Post Office wholly driven by a desire to protect the brand, its message and commercial interests to the exclusion of all else. Steps responsive to substantive concerns raised about Horizon or about prosecutions were never about asking the right questions – *Is this thing working? Are we the bad guys?* Instead they asked – how do we defend ourselves from this attack?

3.37 Often, the first thought of management was to stonewall any doubters and protect the brand. This extended to interactions with Parliament: do only enough to protect the position of the business, to hammer home our message. Stay in your boxes. Go no further than pushed. No more. This was keenly illustrated in the briefing of Ms Vennells for her February 2015 appearance before the House of Commons Business, Innovation and Skills (BIS) Select Committee.[117] Whatever you do, never accept the premise that something might just be wrong at the Post Office. It ruled the Executive response to crisis. We cite a couple of examples from many:

(a) When confronted with immediate news of the death of Martin Griffiths, with his family and Mr Bates laying blame at the door of the business, Ms Vennells (and her team) thought first of how to protect the Post Office: "*I had heard but have yet to see a formal report, that there were previous mental health issues and potential family issues*".[118] The Inquiry heard that a number of the Executive and management team were involved in the immediate response within Post Office, including Mr Davies asking Ms Crichton to line up a specialist media lawyer.[119] The first thought was to protect the brand. Ms Van Den Bogerd said: "*in all my time with Post Office, from very early on, I was very conscious that, you know, PR was very important*".[120] This was correspondence never intended for exposure beyond the Post Office inner circle. It is a most shocking and telling insight into the toxic culture that had been allowed to fester in the business. The public face masked a very different attitude behind closed doors.

(b) In early July, with the face of the incoming Second Sight Interim Report and with the knowledge of the tainted witness issue already in the business; Ms Vennells took the PR man's steer away from a full historic review of past prosecutions (the historic review proceeds but is curtailed to January 2010): "*There are two objectives, the most urgent being to manage the media*." (The second, was, of course, manage James Arbuthnot and Alan Bates without dealing with the reopening of past cases).[121] Ms Vennells' continued

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116 **INQ00001127**, 10 April, 134 – 139.

117 **INQ00001151**, 22 May 178: 7 – 192:13. See **POL00117096** and **POL00117097**. (Addendum to the briefing for Select Committee (2 Feb 2015), with reference back to **POL00029812**.

118 **INQ00001151**, 22 May, 60:1 – 72:13. **POL00301440**. **POL00027757**. **POL00393535**. See also Angela Van Den Bogerd, **INQ00001137**, 26 April 2024, at 10:17 – on.

119 **POL00162068**.

120 **INQ00001137**, 26 April 2024, 15:22 -25.

121 **INQ00001152**, 23 May, 49:15 – 68-1 (see 64:18 – 66:7). **POL00099056**. **POL00099055**.

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assertions that she didn't favour the advice of PR is fundamentally undermined in light of the evidence heard of repeated occasions where it appears that is precisely what occurred. This was plainly a moment where, had the right thing been done, the true picture may have emerged without need for years of hurt and legal costs.

3.38 The Post Office "lines" on Horizon evolved, but at the core of the business remained a toxic combination of disdain and contempt for SPMs and an unwarranted, untested and unquestioned assertion as to Horizon's integrity.

Subpostmasters were incompetent or on the take:

3.39 We have addressed in our Phase 3 and 4 closing submissions, the dangerous default that where there was an error, or a discrepancy, the SPM was to blame.

3.40 User error was a go-to explanation in the absence of any root cause. Some SPMs were always going to be considered incompetent (regardless of any evidence they were or not). SPMs were always considered responsible for losses (regardless of whether or not that was actually what the contract said or not).

3.41 Whether in Mr Cook's casual reference to "*subbies with their hands in the till*"[122] or Ms Vennells telling James Arbuthnot of the "*temptation*" some SPMs gave into,[123] there was a consistent narrative led from the top that SPMs were not only incompetent (or muddle-headed) but dishonest.

Horizon was robust:

3.42 The Inquiry is now well familiar with the stock line which had been settled in POL by at least February 2010. In response to yet another press query, it was said: "*I am providing our stock line which states the system is robust*".[124] We have had three years of evidence, and we still have no clear picture as to who signed off that "*stock line*".

3.43 We do know from the evidence of Phases 2, 3, 4 and now, Phases 5-6, that it was a view reached despite there being knowledge within the business of BEDs, remote access, and that there had been errors in the handling of audit data.

3.44 We do know that it was a line that persisted. As late as February 2019, Tom Cooper and Paula Vennells exchanged views on press strategy on the GLO. Ms Vennells recommended business as usual: "*As before, we hold the ground: the system is robust…So, 'aggressive' no, robust – absolutely no question.*"[125] We do know that it was a line parroted with enthusiasm by the NFSP. (The Inquiry will recall the message from Mr Bates to Mr Thomson concerning the Second Sight investigation and the response forwarded to Post Office: "*I have just received this rubbish from JSA, obviously I will tell him Horizon is secure and robust and to go away.*"[126]

3.45 We do know, and the Post Office knew or ought to have known well before 2010, that it was a stock line wholly without foundation. The Inquiry has heard since Phase 3 that POL was notified

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122 **POL00158368** (15 October 2009).
123 **JARB0000001** (18 June 2012). See also **INQ00001151,** 22 May, 45:20 – 52:12.
124 **POL00002268** (1 February 2010) (Michelle Graves to Hayley Fowell).
125 **POL00111694**.
126 **POL00184390**. **INQ00001165**, 21 June, 97:4 – 102:18.

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of BEDs (including Callendar Square) since early in the life of Horizon. After 2012 and the POL shift in position from "*there are no bugs*" to "*there are bugs, but...*"; and after 2013 and the revelations of the Second Sight Interim Report, this "*line*" became a shocking misrepresentation of information available to the business, including the CEO, the Chair and the Board.

3.46 We propose to say little about George Thomson and the NFSP. They supported the Post Office. The Common Issues judgment says all that needs to be said. The individuals involved over the relevant period – and the continuing work of the organisation – continue to generate considerable anger for many of those we represent. Where they ought to have been a source of support and assistance for SPMs, they provided nothing but further pain, trauma and isolation while echoing the Post Office stock lines. They were perhaps persuaded by the next mantra: Horizon worked for most people. It must be your fault.

Horizon worked across the network and across many. many transactions:

3.47 We addressed the evolution of that message and its repetition in our Phase 4 closing submissions. It was a message – as our submissions on "*Our Story*" identified – that made its way from PR into statements prepared for Court, with terrifying, unchecked ease.

3.48 In Phases 5 and 6 we saw how that narrative was adopted by the leadership. It was a go-to in the misleading and positive spin placed on the publication of the Second Sight Interim Report.[127] It continued to permeate. In August 2015 – in the appreciation of there being bugs in Horizon, with the benefit of the Second Sight Report and in the understanding of the tainted witness issue – Ms Vennells continued to assert: "*our priority is to protect the business and the thousands who operated under the same rules and didn't get into difficulties.*"[128] As a line, it was disingenuous, and logically flawed. Obviously so.

It didn't matter if what was said was wrong if the myth stood.

3.49 The myth that the Post Office had never lost a case where Horizon was challenged was repeated time and again; and used to support the integrity of Horizon. Paula Vennells had used it to deflect queries which came after the Chair at RMG read the SPMs allegations in Private Eye with some horror.[129] She rolled it out in one of her first meetings with James Arbuthnot. The Inquiry heard this was only months after Nichola Arch had been acquitted in April 2012.[130] Efforts to explore the root of this myth may prove fruitless. Susan Crichton gave this message to the Board in January 2012, she told us, relying on information from Mike Young.[131] This was a matter which was patently wrong and easily checked. Yet, it seems, no one thought ever to ask, "*is that right*?" "*is that still right*?"

(a) The myth that Deloitte had checked Ernst & Young's critical work on IT controls at Fujitsu was peddled first to the Board and then again to James Arbuthnot (in seeming error) and never corrected despite investigation showing this to be wholly incorrect.[132]

(b) The Inquiry heard that, repeatedly, Post Office staff claimed that data showed "*keystrokes*". This was plainly with the implication that Post Office knew all, had checked

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127 **POL00113770** (8 July 2013) Press Release on Post Office statement on findings of interim report into Horizon computer system.
128 **INQ00001151**, 22 May, 35:6 – 40:11. **POL00102438**.
129 **WITN00740126**. **INQ00001151**, 22 May, 151:5 – 153:2.
130 **JARB0000001**. **INQ00001151**, 22 May, 45:14 – 51:23.
131 **INQ00001134**, 23 April, 27:1 – 38: 1.
132 **INQ00001156**, 5 June, 50:14 – 55:7.

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all, and there was nothing in the SPMs complaints. Yet, this was entirely wrongheaded. The Inquiry has all the evidence it needs on the data POL could (and could not) access both at the counter and through Fujitsu. Even before considering bugs, errors and defects in the audit data, POL neglected to obtain what it could, and it did not acknowledge that data did not follow every keystroke. Yet, even after Ms Van Den Bogerd was well aware of the Helen Rose Report on Lepton – which made plain what POL couldn't see (i.e. raw data held by Fujitsu) – she met with Panorama in 2015 and repeated again the myth of every keystroke being recorded.[133]

(c) Ms Van Den Bogerd was asked why in briefing James Arbuthnot on Mrs Hamilton's case she neglected to consider Graham Brander's comment on the lack of evidence of theft in the Investigation Report he prepared.[134] She suggested that she would not have seen the Investigation Report but only the audit: "*I just wanted to present the picture as I saw it from the information available.*" There are documents disclosed to the Inquiry which suggest Ms Van Den Bogerd was provided with a copy of the Investigation Report, such that she read it and asked for the Appendices to be provided to her (which they were). We invite the Inquiry to address this with Ms Van Den Bogerd. It appears her recollection is incorrect: she had access to this information but did not share it.[135] Was it information which distracted from an otherwise very clear narrative that the Post Office wished to paint for the MPs, so it was not addressed?

3.50 Even when those at the top were told the earlier message had been wrong, this did not prompt any serious or proper reflection. First, Ms Vennells was told that there were bugs in Horizon and the Post Office line needed to change before the conclusion of the Second Sight report. It became that it isn't that there are no bugs, there are some, but they're fixed and not relevant anyway.[136] Second, the issue of remote access (we return to this below). In response to the GLO letter before claim; Ms Vennells is told the company's previous line on remote access isn't quite right either. The position on super-user rights has to be amended.[137] Wrong, and wrong again. This was in the midst of a years' long defence of the indefensible, and the Post Office (and those at its helm) didn't skip a beat.

It didn't matter if what was said was offensive. There were moments when the mask truly slipped.

3.51 Mark Davies' appeared on the Today show in December 2014, at a time when the business had the Second Sight Interim Report (and more). SPMs who were convicted, broken and in poverty were experiencing "*lifestyle difficulties*".[138] Shameful.

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133 **POL00140211**,**INQ00001137**, 26 April 2024, 135 – 140.

134 **POL00044389**. **INQ00001137**, 26 April 2024, 123:13 – 130:11.

135 **POL00124944**. This sees Chris Darvill in Legal Services write to Ms Van Den Bogerd on 14 May 2012. He writes that he has been unsuccessful in locating the prosecution files which would have been prepared for the purposes of the criminal proceedings. He then attaches both the audit report and the investigation report prepared by the security team. Ms Van Den Bogerd replies asking for each of the three appendices to the investigation report as a matter of urgency (with the implication she had read the investigation report). He sends on the appendices on 15 May, and Ms Van Den Bogerd forwards these on herself to Tracey J Cutts.

136 **POL00105632**. "*Paula the only things that is not for 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 wrongly suspended or prosecuted'.* **INQ00001150**, 21 May 2024, 87-89 (Alwen Lyons).

137 **POL00041258**. **POL00110482. WITN10010100** (Jane McLeod), [219] on.

138 **WITN09860100**, [86]. See **POL00150393** (23 December 2014) Email thread subject matter "Comment on Mark's blog". "See below a couple of comments that have come in response to Mark's internal blog on the intranet." Melanie

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3.52 Ms Vennells asked the Inquiry to believe that she rolled her eyes and said, "*Oh Mark.*" Yet days later, we see her unguarded, late evening post-One show congratulations. She was more bored than outraged by the plight of the SPMs. Mrs Hamilton lacked passion. Ms Vennells was so apologetic when shown this whilst sitting in the room with Mrs Hamilton.[139] Yet, in 2014, she was so proud of her team she copied this to the Chair, Ms Perkins, twice. Once in the original, and again, recirculating her missive the next morning in the cold light of day.[140] Shameful.

3.53 The Inquiry saw example upon example (from Kipling references to Roosevelt) of Post Office staff – including Mr Davies (the PR man) – casting themselves as heroes in a worthy battle against their SPMs.[141] Any effort at distance from the crowing, Singh "*bandwagon*" email circulated by Mr Ismay to those at the top appears ill-served. There was no contemporaneous distancing.

3.54 Toxicity within the investigation team towards SPMs and those challenging the integrity of Horizon ran through Phase 4 (on the part of both Post Office and Fujitsu). The Inquiry might conclude that this message came from the top and trickled through the business at POL. Or it was a self-perpetuating narrative allowed to fester. Regardless, the poison infected all.

3.55 The Inquiry may be invited to treat these as gratuitous, moments of unguarded "*chat*" between colleagues under pressure. Instead, they paint a telling picture of the true story. For every day of this scandal, the Post Office leadership acted up in a fiction of a fight against its own people to protect Horizon, to protect the commercial interest of Post Office and Fujitsu and, for some, to protect their own self-interest. In the face of SPMs battling for justice, struggling with broken lives, this was not only offensive it was grotesque.

5. The message from the top was – I need to know all is well. So, tell me what I need to know. Tell me what I want to hear.

3.56 This was a message the Inquiry saw echoed throughout Phase 5.

(a) David Smith, CEO, confirmed the evidence of Mr Ismay that his whitewash had been commissioned with a particular purpose in mind.[142] Despite the use of the term "*objective*" in its text, it was meant to be nothing more than a collected summary of POL's claimed justifications for its preconceived view of Horizon.

(b) Paula Vennells, of course, wrote to her team in similar terms in preparation for her February 2015 appearance before the House of Commons Departmental Select Committee:[143] *"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 XX and that we know this because we have had the system assured."*

Corfield was checking whether "these people have any connection to the scheme". David Heslop wrote: "*You will also forgive me if the words of Mark "lifestyle issues (Yes going to jail/been made bankrupt is a lifestyle issue) Davies do little to assure me.*"

139 **POL00109806**. **INQ00001153**, **24 May, 133:13 – 143:16.**

140 **POL00150352**. **INQ00001157**, 6 June 2024, 167:18 – 173:23.

141 **POL00101860**, **INQ00001157**, 6 June 2024, 82-88.

142 **INQ00001128**, 11 April, 74 – 79. Mr Smith agreed that Mr Ismay's evidence on what he was instructed to do *"Broadly, that sounds right, yes."*

143 **POL00029812**. **INQ00001151**, 22 May, 178 – 200. : 7 – 192:13 See **POL00117096** and **POL00117097**. (Addendum to the briefing for Select Committee (2 Feb 2015), with reference back to **POL00029812**.

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(Emphasis added). (The Inquiry heard how that was ultimately handled and how the message was misleading and incomplete – driven again by the PR team.) Her explanation was that Ms Perkins had taught her this was the kind of direction she needed to give her team. [144] "*Alice Perkins* but– *not related to this particularly but I can remember Alice Perkins saying to me at some stage, "Paula, if you want to get the truth and a really clear answer from somebody you should tell them what it is you want to say very clearly and then ask for the information that backs that up*".[145] (While denied, Ms Perkins has considerable experience in coaching and the Inquiry might accept that Ms Perkins did believe Ms Vennells required coaching in some matters of management.) This may be entirely consistent with a view of Ms Vennells the Inquiry saw had been expressed behind closed doors by UKGI.[146] It is consistent with the general approach taken by POL when considering any question of Horizon integrity: starting with a settled view and closed to any objective evidence which would support a change of mind.

6. Litigation privilege – and secrecy in all its forms – was overused by the Post Office.

3.57 The Inquiry has heard a lot about concerns for privilege within the Post Office. What the Inquiry has heard, again, and again, about privilege (and, more widely, secrecy) underlines the criticism made of POL by Mr Justice Fraser.

3.58 First, RMG Legal circulated the Springford warning in the face of the Shoosmiths letters before claim. The Inquiry will recall the warning around document retention and the detailed advice on both document retention and document creation, and on maximising privilege.[147] On document creation:

"It is very important that we control the creation of documents which relate to any of the above issues and which might be potentially damaging to POL's defence to the claims, as these may have to be disclosed if these claims proceed to litigation. Your staff should therefore think very carefully before committing to writing anything relating to the above issues which is critical of our own processes or systems, including emails, reports or briefing notes. We appreciate that this will not always be practicable, however.

Where it is necessary to create a document containing critical comment on these issues, it will in certain circumstances be possible to claim privilege over the document, so that POL will not have to disclose it in any proceedings. As litigation is now a distinct possibility, the document will be privileged if its dominant purpose is to give/receive legal advice about the litigation or to gather evidence for use in the litigation. This also applies to communications with third parties - i.e. with other organisations - provided they are confidential and their dominant purpose is as set out above. All of the following steps should be taken in order to maximise the chances of privilege attaching to the document:

** If the dominant purpose of the communication is not to obtain legal advice, try to structure the document in such a way that its dominant purpose can be said to be evidence gathering for use in the litigation;*

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144 **INQ00001151**, 22 May, at 181:19-182:1: *"Alice Perkins – not related to this particularly but I can remember Alice Perkins saying to me at some stage, "Paula, if you want to get the truth and a really clear answer from somebody you should tell them what it is you want to say very clearly and then ask for the information that backs that up". That was why I phrased this that way."*

145 **INQ00001151**, 22 May, 181:18 – 183:16.

146 See e.g. **UKGI00002440; UKGI00042677**

147 **POL00176467** (including an example of its cascade through the business).

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** Mark every such communication "legally privileged and confidential";*

** If you are sending the document to someone, state in the covering email/memo/letter that you are not waiving privilege by doing so;*

** Request that the recipient of a communication confirm that the document will be kept confidential and that he/she will not forward it to anyone else;*

** Think very carefully before "replying to all" on an email - do all the recipients need to see the communication?*

** Where possible and appropriate, copy a member of Legal Services into the communication, and make clear that you are doing so to enable them to advise on the content. Please note that copying a member of Legal Services into the communication alone will not necessarily suffice.*

If in doubt, call Legal Services before committing anything to writing which relates to these issues and contains critical wording."

3.59 The Inquiry might consider similar warnings over paper trail communicated by Bond Dickinson and Mr Parsons in summer 2013, following the Second Sight Interim Report and throughout his engagement with the business.[148]

3.60 Second, other repeated warnings were circulated once the GLO was live. This was done on a regular basis and cascaded through the business. These dealt with document retention and document creation in robust terms. [149]

3.61 The Inquiry might wish to consider the implications of this approach:

(a) The Inquiry heard evidence on the notorious shredding advice in Phase 4 and again in Phase 5/6.

(b) The Inquiry will recall the extreme caution with which it appeared communications with the Board, the Department and others were being treated as a result of concern over litigation privilege. The Inquiry might conclude that concern for litigation privilege was arguably operating to limit the capacity of the Board (and the business more generally) to access advice and understand the advice it was paying for – and the capacity of the Department – and to appropriately manage risk.

(c) The Inquiry will recall that the notification to Post Office's insurers and the role privilege played in the note prepared by Bond Dickinson stamped Common Interest Privilege.[150] The Inquiry might ask whether the bounds of any privilege was being inappropriately asserted wherever possible (or even impossible) in an attempt to maximise secrecy (in that instance, around the tainted witness issue and the role of Mr Jenkins).

(d) The Inquiry might consider the proximity of Mr Parsons' advice on disclosure risks, document creation and privilege in the context of the Clarke shredding advice.[151] The

148 **POL00083932**, **INQ00001160**, 13 June 2024, 37 – 50.
149 **INQ00001199**, 18 October, 98:1 – 10:1.
150 **INQ00001160**, 13 June, 66:9 – 70:9.
151 **INQ00001160**, 13 June, 37 :24 – 50:8. And other documents which see Mr Parsons advising against disclosure, softening or tempering messages from Post Office which might concede of a problem, including: **POL00006799**, **POL00145716**.

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mantra of secrecy – don't write anything down, don't create anything potentially damaging – created an inevitability that things were shielded. Transparency and accountability sacrificed to the litigation and the defence of the Post Office.

3.62 While Bond Dickinson appear to have taken the lead in advising Post Office on privilege and they were not specialist criminal solicitors, they did appreciate the interaction between litigation privilege and the prosecutorial duty. Not least, as early as 13 August 2013, they asked Cartwright King for their view and (albeit Mr Bowyer focused singularly on the duty owed in an ongoing prosecution) were told by Mr Bowyer: *Disclosure always trumps privilege.*[152] The Inquiry might consider whether Cartwright King had good reason to focus on a forward looking approach to the Post Office's duties or whether, in this context, this was an oversight. The understanding of the continuing duty of disclosure sat behind the justification for the sift review and consideration of disclosure of the Second Sight Interim Report and the Helen Rose report (albeit the approach to those materials was ultimately, horribly flawed).

3.63 Lawyers for Post Office were very quick to assert that this was standard commercial litigation practice. Yet, this scandal was simply not a matter of standard commercial practice.

(a) The Inquiry is asked to believe that at no time does it appear that anyone paused to consider the relationship between privilege and the ongoing prosecutorial duty of disclosure. It appears no-one at the Post Office (or in its highly paid, highly qualified legal teams) grasped this fundamental.

(b) The Inquiry has seen no evidence of any consideration whether this kind of direction – whether those given by Mr Williams or the more extreme form produced by Ms Springford – was appropriate where an organisation might wish to assert legal professional privilege but also was subject to continuing duties of disclosure as a prosecuting authority.

(c) At no time did it appear that a business wide alert was cascaded to underline the duties of disclosure owed by the business to those it had historically prosecuted.[153]

(d) Finally, this was not a commercial organisation in the traditional sense at all. It was a corporation wholly owned by central government which served an important social function it was required to discharge.[154]

3.64 The Inquiry may wish to consider whether the Nolan principles of honesty, openness and accountability fit entirely with aggressive resort to litigation privilege by any public body, not least where a publicly funded body is fighting its own people over the integrity of convictions it imposed on them.

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152 **WBON0000806**. See also **POL00325695**. By December 2013, Mr Parsons was invited to advise again on specific governance work, privilege and disclosure. Again he deferred to Cartwright King to check his advice. He wrote: "*a privileged document may still have to be disclosed in criminal proceedings in accordance with POL's prosecution duties.*"

153 **INQ00001199**, 18 Oct 2024, 97:23 – 101:23.

154 The Post Office raises an issue as to whether or not the Post Office would be considered a public authority for the purposes of administrative law in its closing submissions ("*it is far from clear that POL is in fact a "public authority*"" **SUBS0000028**, at [52]-[54], citing *R(Sidpura) v POL* [2021] EWHC 866, where Holgate J, it is accepted, accepted a "for sake of argument" point he did not have to determine). We do not address this argument in detail here, as it is not a matter which the Inquiry need decide conclusively. However, the Inquiry does have evidence that the business believed itself subject to a risk of judicial review, including in relation to the proposed removal of Second Sight. **POL00006571** minutes the Sparrow Board sub-committee discussion of advice being on the risk of judicial review (albeit risk of a successful application was considered to be low. (Disclosure on Relativity refers to the instruction of Tom Weisselberg KC).

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3.65 The Inquiry may consider the approach to privilege and its impact good reason to underline the Government's commitment to a new public duty of candour. We return to this issue below.

7. The Post Office did not respect obligations as a prosecutor / duties to the court

3.66 We address this point above, in the context of the failure to disclose the Clarke advice. By way of contrast to the approach taken to privilege, it appears that there was little understanding or little respect for the duties of POL as a prosecutor and the continuing duty of disclosure. It is plain that POL were advised, in the Clarke advice, and in the advice of Brian Altman KC, both of which were predicated on the duty. However, the Inquiry may wish to consider whether the business ever understood, respected or took true ownership of that duty.

3.67 It appears that if the business – including General Counsel, the Executive, CEO and Chair - did not understand the scope or significance of this duty, then there was no corporate or individual effort to expand understanding. Unlike the legal professional privilege enjoyed by POL, where the message was cascaded through the business to help protect its position; it appears the business took as guarded an approach to the appreciation of its prosecutorial duty as it did to the duty itself. There was no evidence this messaging was ever cascaded through the business.

3.68 When this duty was spelled out for the business it was seemingly restricted in its circulation (Clarke advice/Brian Altman KC advices and later the information in the Project Zebra Report, Board Summary and Action Summary). Annex 1 to the Crichton update paper produced for the meeting on 16 July, as deficient as it may be, did indicate that the sift review was necessitated by the continuing duties of the Post Office ("*We have an continuing legal duty as the prosecutors to do this.*").[155]

3.69 Those who ought to understand (and had a responsibility to do so) ought to have done better. It appears that successive lawyers, failed to appreciate the scope and implications of the continuing common law duty of disclosure or approached it in an unduly narrow way in its application. The Inquiry may take a view on why that may have occurred. Cartwright King and Brian Altman KC, as legal specialists had a critical responsibility but others, including General Counsel,such as, Susan Crichton, Chris Aujard and Jane McLeod and Bond Dickinson, all ought to have understood the duty by virtue of information provided to them by Cartwright King or Brian Altman KC.

3.70 We return to consider the position of regulated legal professionals in Section 4.

8. When problems were escalated through the business there was a wholly inadequate response

3.71 What all this boils down to is that when issues were escalated, no one acted as they should. When information which could have changed the path of this scandal crossed the desk of anyone at the Post Office, the response fell short. We cite just a few examples:

(a) We have covered the July 2013 Clarke advice.

(b) Project Zebra and its erstwhile Zebra Action Summary.

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155 **POL00145428**, p4. The Inquiry will recall the exchanges with Mr Blake on the drafting of this document, at **INQ00001134**, 23 April 2024, 99 – 110.

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3.72 We urge the Inquiry to consider the handling of Deloitte to be a paradigm example of Post Office's approach to external, expert input. The Zebra project was, of course, so closely guarded that when disclosure was eventually given, the name remained redacted for privilege (hence the comments on the absurdity of the approach to privilege from Mr Justice Fraser (Common Issues: [38] – [42]).

3.73 Project Zebra resulted from advice to the Board from Linklaters designed to satisfy the Board that all was well. It was in its essence – work for the Board. The work was to expressly consider data integrity. The Zebra Action Summary eventually disclosed into the GLO (albeit in a redacted form) shows that the business was plainly aware of the significance of the Deloitte work for the integrity of Horizon.

3.74 The Report, the Board Summary and the Action Summary contain information about remote access and the integrity of data which was out of step with the position of the business (including that provided to Second Sight). (The work was done under contemplation of litigation and treated as privileged from the outset (see Appendix 4, engagement letter signed by Chris Aujard). There were two critical pieces of information in the 72-page report from May 2014: one related to Balancing Transactions and the other to superuser access to the audit trail allowing for deletion of a basket and its replacement, seemingly without a trace. For example (see, e.g. item 4(g) on page 31):

"g. Branch Database: *We observed the following in relation to the Branch Database being: A method for posting 'Balancing Transactions' was observed from technical documentation which allows for posting of additional transactions centrally without the requirement for these transactions to be accepted by Sub-postmasters (as 'Transaction Acknowledgements' and 'Transaction Corrections' require). Whilst an audit trail is asserted to be in place over these functions, evidence of testing of these features is not available;*

[. . .]

For 'Balancing Transactions', 'Transaction Acknowledgments', and 'Transaction Corrections' we did not identify controls to routinely monitor all centrally initiated transactions to verify that they are all initiated and actioned through known and governed processes, or controls to reconcile and check data sources which underpin current period transactional reporting for Subpostmasters to the Audit Store record of such activity;

Security of the Branch Database around the 'Messaging Journal table' is a key area of risk due to the branch transactional data being held on this table for up to a day before being written to the Audit Store. It was unclear from the documentation reviewed whether specific assurance work had been carried out in this area; and Controls that would detect when a person with authorised privileged access used such access to send a 'fake' basket into the digital signing process could not be evidenced to exist".[156]

And Item (f) on Page 31, immediately above this section:

156 **POL00028062**. (23 May 2014)

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"*would potentially allow privileged users at Fujitsu to delete a legitimate sealed file, and replacement [sic] with a 'fake' file in an undetectable manner*".[157]

3.75 The Board Summary (a ten page document), dated 4 June 2014, said:
"*We have not identified any documented controls designed to:…. Prevent a person with authorised privileged access to the digital signing process from sending a 'fake' basket into that digital signing process*".

"All processes, with the exception of Balancing Transactions, operate on the principle of full subpostmaster disclosure and acceptance."[158]

3.76 In a cover email – prepared by Chris Aujard or Lesley Sewell – the Board is sent the full summary (of ten pages) but the key findings were said to include: "*Deloitte has "not become aware of anything to suggest that the system as designed would not deliver the objectives of processing of baskets of transactions and keeping copies of them in the Audit Store with integrity*" and "*POL has in place key controls over the day to day IT management of Horizon. These have been independently tested and assured by Ernst & Young since 2012*".[159] Mr Aujard accepted this was far too abridged a summary.[160]

3.77 Not least, as reflected in the Action Summary (a seven page document):
"One point raised in the report was that it was possible for someone with privileged access to delete data from specific areas of Horizon. This is always a risk with individuals using admin or power user accounts and is a persistent risk, one that needs to be catered for in almost any organisation. Due to the sensitive nature of the information contained in the databases, monitoring of those databases should be put in place using technology to detect and record deletions and administrative changes to the databases. If possible, alerts should also be generated for mass deletions and high level risk changes to database schemas. "[161]

3.78 The action to be taken was to include logging and logs being reviewed on a "*daily basis*". Ownership of the Report and the Board Summary and the follow up Zebra Action Summary appears to have been shared by Chris Aujard and Lesley Sewell.[162] The Inquiry may conclude that the covering message sent to the Board was wholly inadequate. The Inquiry may wish to consider whether it was deliberately inadequate. Mr Aujard was involved in discussions on the Action Summary which also engaged Mr Ismay.[163]

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157 The Inquiry has evidence of this risk detail being discussed in email correspondence between Rodric Williams and Chris Aujard with Deloitte on 20 May 2014. See **POL00029728**, 20 May 2014, and as put to Mr Aujard in his evidence, **INQ00001135**, 126 – 130.

158 **POL00028069**.

159 **POL00029733**

160 **INQ00001135**, 24 April 2024, 145:2 – 147:3. Mr Aujard went on to address a number of reports on Zebra, including **POL00031410**.

161 **POL00031409**, 12 June 2014. See also discussion at **POL00346958** of meetings to discuss the Action Summary. It refers to discussion with Chris Day, Chris Aujard and Lesley Sewell.

162 **POL00138463** (2 July 2014). In discussion of feedback on later actions, including in respect of a "detailed review of balancing transaction use" and "*verification work over key Horizon features*" and "analytic testing of Audit Store Data" including with Gareth James of Deloitte, ownership overall is discussed and Malcolm Zack (at this stage) asserts "This resides with Chris A and Lesley who initiated the review." Chris Aujard replies: "*But just to be clear: a review is a review. That said, the actions that arise out of a review need to be allocated properly*".

163 **POL00346958** of meetings to discuss the Action Summary. It refers to discussion with Chris Day, Chris Aujard and Lesley Sewell.

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3.79 The Board did receive a later Board Summary that ought to have been a red flag. Richard Callard, at that time the Government NED, agreed he had read the original report. He said he couldn't recall reading the later Board Summary but said that he should have read it, and he should have understood its significance. This was a source of regret for him.[164]

3.80 The close guarding of the Swift review by POL staff and Tim Parker is again, telling. While Sir Jonathan Swift covered a lot more than Zebra, Zebra was central to his recommendations for follow-up work.[165]

3.81 Tim Parker said he was told four people were to be within the "*tightly knit*" circle of distribution for the Swift Review.[166] Whether the motivation was secrecy in the interests of once more shutting down further inquiry, or an interest in preserving privilege in the GLO, its handling entirely neglected the history of POL as a prosecutor. Badged as privileged, the focus firmly remained on the GLO and disclosure in the claim. It ought to have gone to the Minister, the Board and the CCRC. But it did not. Yet another opportunity missed.

3.82 The suggestion that the business failed to grasp the significance of Zebra until Jonathan Swift highlighted it in his report in 2016 is not tenable. The Zebra Action Summary puts paid to that.

3.83 Work continued for Deloitte: on Bramble. Bramble continued on through 2016 to, it appears, 2018[167] and seemingly informed the work of the Post Office on the defence of the GLO.

3.84 On Zebra, Mr Aujard may point to Ms Sewell and Ms Sewell to Mr Aujard.[168] Mr Ismay, again, who wrote the whitewash, which, of course, covered integrity issues, was again, in the mix. The Inquiry may conclude that questions of accountability must be considered for all.

3.85 The timing of the original Zebra report was significant. In mid-May 2014, a Post Office response to a request from Second Sight for a formal certification that remote access was not possible was produced, on agreement of Angela Van Den Bogerd, Rodric Williams and Andrew Parsons (Mr Williams had been closely involved in the work of Deloitte). The position adopted was that there could be no deletion without it being apparent to the subpostmaster.[169] It appears Second Sight were never shown the Deloitte report.

3.86 This was yet another seemingly missed (or dodged) opportunity for things to have gone so very differently. It ought to have been disclosed, in 2014, or in 2016 when the question was raised by Jonathan Swift. It was considered by Cartwright King on 25 March 2015, but it appears was not disclosed.[170] This was information which could, the Inquiry might consider, call into question the credibility of any conviction based upon Horizon data (including in the face of

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164 **INQ00001173**, 12 July, 157:5 – 159:6.
165 **POL00006355**, including [147]. (See also **WITN11750100**)
166 **INQ00001170**, 3 July 2024, 18:15 – 24.
167 See e.g. **POL00174563**, **POL00029097**.
168 **INQ00001140**, 2 May 2024, 28:9-23. **INQ00001148**, 16 May 2024, 141 – 143.
169 **POL00304478**. See also **INQ00001140**, 2 May (Chris Aujard), 20:13
170 **POL00029843** (27 March 2015). Advice from Simon Clarke identifies the information as potentially disclosable, with reference to a conference with both Rodric Williams and Andy Parsons. While this advice purports to focus solely on the issue of balancing transactions, it does refer to "fake" transactions in the report, which might suggest the second issue had also been picked up. Further information was requested to allow for a final advice.

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unexplained discrepancies) and which ought to have been disclosed.[171] Instead, the Post Office continued, for years, to resist arguments on remote access.[172]

9. This hardened, 'beat-all' defence – of Horizon, of POL, of the individuals involved – prevented any notion of true accountability and infected the approach to both the mediation scheme and the GLO.

3.87 The defend at all costs attitude calcified and hardened the approach of the Post Office to every step in this scandal. This included the mediation and the conduct of the GLO. Again, the evidence heard by the Inquiry fully justified the criticisms laid at the door of the business by Mr Justice Fraser.

3.88 First there was the mediation scheme. The Inquiry might reasonably conclude this was another device designed to put this all to bed; designed with the hands of the PR man firmly on the tiller from the outset. Get the SPMs in a room, keep Second Sight on side only so long as to keep Mr Bates and Lord Arbuthnot happy, offer them a conversation, offer to explain why their complaints were ill-founded.[173] Compensation, where necessary, was anticipated to be small, token sums.[174] Post Office was simply being seen to do something. Again, when this didn't go as the Post Office anticipated, the scheme was remade under in-house administration. When Second Sight was sacked, the only way forward for the JFSA was group litigation and its associated costs risk.

3.89 Mr Justice Fraser's analysis of the Post Office's conduct cannot be impeached. If anything, what the Inquiry has heard is even greater cause for concern.

(a) First, the approach Disclosure. The Inquiry will recall the exchange on the disclosure of policy in the PO Investigation Guidelines requested by Freeths, and the discussion of the relatively benign 2013 edition which included "*Should the recent Second Sight review be brought up by a subject or his representative during a PACE interview the Security Manager should state: 'I will listen to any personal concerns or issues that you may have had with the Horizon system during the course of this interview.*" Ms Prime wrote to Mr Williams, using language settled by Mr Parsons: *"For now, we'll do what we can to avoid disclosure of these guidelines and try to do so in a way that looks legitimate. However, we are ultimately withholding a key document and this may attract some criticism from Freeths. If you disagree with this approach do let me know. Otherwise, we'll adopt this approach until such time as we sense the criticism is becoming serious."*[175] Involving those with primary responsibility for the process, the Inquiry might consider this language (not seemingly contradicted by Mr Williams) was a clear insight into the strategic thinking of POL on approach to the GLO and its duties

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171 Asked if the May 2014 Zebra Report was considered for disclosure, Mr Aujard said: "*I'm not sure that they did.*" "*So the answer is I just don't know but I don't believe so*". He agreed that someone should have looked through and asked those questions. He thought that if it hadn't been sent to Cartwright King for that purpose it would have been a "*matter of absolute deep regret*." **INQ00001135**, 24 April 2024, 130-132.

172 Returning to the matter of privilege briefly, the Inquiry will recall discussion around this matter when it came to disclosure of the Action Summary into the GLO [**POL00255949**.] and Mr Justice Fraser's concern over the assertions of privilege retained in that document (as above). **INQ00001133**, 19 April 2024, 164 – 170.

173 **INQ00001152**, 23 May 2024,59-79. **POL00099055**.

174 **POL00116218**, **INQ00001152**, 23 May 2024, 161, 166.

175 **WBON0000467**, **INQ00001160**, 13 June 2024, 116 – 132.

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of disclosure. The Inquiry may recall a very similar approach taken by Mr Parsons to the Known Error Log.[176]

(b) Second, the approach to witness evidence. The evidence of Mr Parker, Ms Van Den Bogerd and Mr Dunks in the Inquiry might stand as examples of how the Post Office approached evidence in the High Court.[177] The Inquiry, again, has the criticisms of Mr Justice Fraser. (Ms Van Den Bogerd confirmed, of course, that despite such criticisms, she did receive an annual bonus from Post Office in 2019).[178]

(c) Third, strategy. The participants in the GLO believed the criticised strategy adopted by POL had behind it a purpose: to increase pressure to settle as funds ran out to continue. Despite what may appear as hollow denials from Mr Parsons, his strategy memo of 11 February 2018 appeared to put this beyond doubt. This was more than a said-to-be "*crazy*" view – a straw man – it was indicative of the mindset of those running this litigation, their instinct: "*That said, my instinct is the [claimants'] funding is under pressure and they do not want to be burning money on a 3rd trial." "Drawing the attached together, I think we need a plan that can be [flexed] to accommodate the possibility of an appeal. Also tactically the best option for [the Post Office] are (i) to force the [claimants] to burn money and (ii) to target limitation.*"[179]

(d) The Inquiry has evidence which may suggest a chaotic approach to advice on merits and quantum;[180] (There may have been questions for Ms McLeod on this had she appeared, of course).

(e) That alone might be sufficient to beg the question whether this litigation was being embarked upon seriously or as an unthinking continuation of the win-at-all-costs and unblinking defence of Horizon. By this stage, in the face of increasing cost, risk and publicity, the Inquiry might question where the shareholder was in all this? The Inquiry has heard time and time again of the impact of value for money in public decision making; it might ask whether (in the seeming absence of a clear picture on merits and costs) any true assessment of value and risk were conducted whether at POL, UKGI or in the Department. As was addressed in the evidence of Ms Gratton and Mr Donald, changes were made to provide for greater visibility over litigation following the GLO.[181] The Inquiry might wish to consider why, given the obvious risk, Government did not step in sooner. The evidence appeared to point to this being considered the Post Office's fight; with the Government reluctant to step into the fray. The Inquiry might consider the Government was waiting to see which way the wind blew on a matter of some substantial risk to the public interest and the public purse. (We return to the role of the shareholder in Section 5, below).

3.90 We note that UKGI guidance on litigation risk for shareholder teams has been updated since the GLO (updated in August 2023).[182] This spells out that Boards, Shareholders and UKGI should be sighted on the detailed legal advice the business receives on both merits and strategy. Earlier

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176 **POL00245938**: "*I've not made any express reference to the [Known Error Log]. Even the phrase 'known error' could set hares racing so I've avoided it entirely. I hope however the key message ('cart before horse') still comes across.*" **INQ00001160**, 13 June 2024, 116 – 132.

177 See, e.g. **INQ00001062** (Mr Parker), **INQ00001136** (Ms Van Den Bogerd) (including 81-90).

178 **INQ00001137**, 26 April 2024, 163.

179 **POL00111290**

180 See, for example, **POL00276474, INQ00001199**, 18 October 2024 (Ben Foat), from 61 – 65 – *"I hope this helps explain why there hasn't been an overall opinion on the merits of the litigation in general."* **POL00276883**.

181 **WITN11310100** (Lorna Gratton) [56] – [57]. See also **INQ00001204**, 8 November 2024, 98 – 105.

182 **UKGI00044278.**

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guidance (2018) had been informed by the lessons learned in the Magnox litigation. The Inquiry might consider that some of this guidance was common sense or obvious risk management which ought to have been available before the GLO in any event (including how litigation risk ought to be reported to Boards, and then on to the shareholder). **The Inquiry may wish to encourage UKGI to revisit its guidance on litigation to consider approaches to risk management in litigation involving risk to public funds and/or to the public investment. At a minimum, lessons learned in previous strategy ought to be revisited in the light of the evidence before the Inquiry.**

3.91 The Post Office was, of course, entitled to take advice on appeal (and to pursue an appeal if so warranted). Again, full legal argument now on the merits of the advice and how it was presented are outside the scope of these submissions. The reasons of Lord Justice Coulson stand. The Board heard directly from Lords Grabiner and Neuberger before deciding on the nuclear course of recusal That they did decide to proceed, despite doubts, and without intervention by Government, is indicative of the extent of the unbreakable entrenched view in the unblinking defence. It was an opportunity for intervention by Government, lost. For the Post Office, the battle against their own people simply could not be lost. We offer a few limited propositions on this last stage of the scandal:

3.92 The Inquiry will, we anticipate consider how the explanation came to be given by counsel to the High Court with regard to Mr Jenkins. The Inquiry has the evidence of Mr De Garr Robinson KC ("*the upshot was that I was told in emphatic terms that Mr Jenkins was not a reliable witness. The solicitors said that Mr Jenkins had given misleading evidence.*").[183] This being the case, how could the explanation given to the High Court and described at [512] of the Horizon Issues judgment have come to pass? Mr De Garr Robinson KC said "*Certainly Andy Parsons would have approved.*" This explanation, having been given, how could Bond Dickinson and the Post Office – both with knowledge of the true reason for Mr Jenkins being kept at arms-length – not have caused it to be corrected? Again, the Inquiry might conclude that this was an entirely improper attempt to conceal what was known to all about the nature of Post Office's concerns over Mr Jenkins' role in the prosecution of SPMs. Mr Jenkins' role was open to challenge and ought to have been disclosed in 2013: here was perhaps an example of the most extreme actions to prevent that information coming to light even in the closing of the GLO. In conference, with HSF, the Inquiry will recall the note of counsel's debrief on 4 October 2019 (after submissions, but pre-judgment): "*They say the fact that we didn't call Gareth Jenkins is suppression". "And you know what, that might be right.*"[184] Well, quite.

3.93 On the settlement of these proceedings, we address the indicators of attitude towards strategy above. Even if not set in stone; the Post Office's appreciation of the costs risks facing the 555 was highly significant. The Inquiry heard that the Government was actively involved in the consideration of the approach to settlement (and the figures which would require active approval by the Department would plainly have informed the Post Office's approach to negotiation). The Post Office and the Government knew all along that the funds in settlement would be substantially eaten up in costs. These were costs which were critical; without the funding to proceed, there would have been no GLO and no judgments of Mr Justice Fraser. This scandal would have doggedly remained on the pages of Private Eye and the domain of committed

183 **INQ00001158**, and in particular, 73 – 112.
184 Ibid, 111:15 – 112:4.

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bloggers rather than in prime time. However, they and the settlement ultimately created a situation of incredible unfairness, where those who had perhaps committed most to change were left without any route to full and fair compensation without action the part of Government. That the Government took so long to rectify the position of the 555 underlines the painfully incremental movement by Ministers and officials away from business as usual and towards fair.

3.94 We address the Board and legal advice in Sections 4 and 5; and refer the Inquiry to the views of its Governance Experts on access to legal advice and reliance upon legal advice. Advice remains just that: decisions to continue to litigate are not taken by lawyers but their clients. The Inquiry heard from Alisdair Cameron on his views towards settlement: "*We should have settled the claims, apologised and moved on years ago. We have defended ourselves inappropriately to avoid the consequences of our actions. This has been a waste of public money and a postponement of justice.*".[185] The Inquiry might agree. It appears – the Post Office, its Executive and legal advisers were locked in a battle to the end – and could not countenance the dismantling of the artifice of their robust defence (until the humiliation of the unsuccessful recusal application and the failure of its appeal).

3.95 Government remained wholly responsible for the Post Office. Officials must have known by this time any liabilities incurred would ultimately be met by central Government. Yet on both the decision making and what came next, they abrogated that responsibility for reasons of political expediency. The Inquiry might conclude that Ministers and Officials wished to have clean hands when they were already steeped in Post Office wrongdoing.

3.96 The evidence of Carl Creswell is perhaps telling as to the impact of the hands-off approach taken by Government.[186] There appeared to be a visceral reaction to the loss which appeared to drive the response within POL. Yet, the Inquiry might conclude the Government designed to leave POL to stew in their own mess, until far too late. Seemingly entirely neglectful of the fact that POL's mess was the Government's mess and one that would ultimately be owned by the taxpayer.

3.97 The Post Office took its advice on the most nuclear of options (recusal) from a former President of the Supreme Court. Regardless of the merits of that approach, it is perhaps unedifying that the name of the very senior figure who had advised then had to be so shrouded in secrecy: the weight of his or her gravitas being seemingly communicated by implication and speculation for so long. The Inquiry might ask, no matter how strong the Board, nor how clear the guidance: what courage would it take for any Executive or NED to gainsay the advice of someone who had been the one of the most senior legal figures in our constitutional settlement? This begs a question for Government: ought those in the most senior judicial roles in our constitution expect to return to a paid commercial practice and provide advice? And does such practice risk that they are trading (or perceived to be trading) on the status of that former function such that their ability to advise effectively (and in circumstances where necessary for that advice to be effectively challenged) is undermined? In the face of such risks – whether for this Inquiry or not – the current practice ought to be reviewed and reformed.

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185 **INQ00001149**, 17 May 2024, 39:11-19.

186 See, e.g. **INQ00001202** , 6 November 2024, 132: "*I think people were -- were dubious that the appeal would succeed, but felt that it was a judgement for the Post Office Board about whether to request that appeal.*"

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10. Fujitsu supported POL till the end.

3.98 We addressed the role of Fujitsu in support of the actions of the Post Office in Phases 2, 3 and 4. We do not repeat those submissions here but re-iterate that while the decision making of Post Office was front and centre in the final stages of this Inquiry, Fujitsu's role remains critical.

3.99 The lowlights from the previous Phases remain. Taking only a few:

(a) Fujitsu actively agreed arrangements with POL for prosecution support which were seemingly designed to take the least work for Fujitsu and which both parties knew or ought to have known did not provide a full picture of all the data held by Fujitsu beyond the agreed ARQ. This was plain from the negotiation of the first Network Banking Prosecution Support arrangements in 2002, covered in the evidence of Graham Ward, at the end of Phase 4.

(b) The Inquiry might conclude that the product was just bad.[187] The ICL decision not to rewrite after the conclusions of the EPOSS Task Force jointly authored by Jan Holmes may be one which remains with Fujitsu – and perhaps code writers globally – forever.

(c) Jan Holmes appears again in Cleveleys, of course. The dismissal of Mr Coyne as a "*git*" entirely unwarranted and perhaps the least worrying of the criticism of the approach taken by Fujitsu in that matter. Brian Pinder appears in that case too. He's relevant later, of course, in the decision that Mrs Chambers is stood up in Castleton and thereafter in quietly shelving her critical wash up document.

(d) The distasteful *Castleton* gloating – he was just a "*nasty chap*" - from the leadership at the Prosecution Support Team.[188] "*We all protect our own companies*" confirmed Peter Sewell.[189] In this blind loyalty, to the detriment of SPMs, we saw Fujitsu staff share the commitment of the POL team to their brand.

(e) We deal with the position of Mr Jenkins, Mr Dunks and others signing statements and providing evidence in the course of prosecutions and other proceedings, above. The Inquiry might conclude that Fujitsu left its own people with entirely inadequate training and oversight. It may also consider that some Fujitsu staff remained too willing to act outside their competence to please their employer and a major contractor.

(f) When pressed – in the face of known problems – to commit to stand up their system in Court, at every turn, the Inquiry might conclude, that they did.

3.100 Phase 5 and 6 confirmed that Fujitsu remained committed to the Post Office account, providing support in both the progress of the work of Second Sight and in the mediations. However, we note, as they Inquiry may, that even in those exercises, it appears that it was not beyond the purview of Bond Dickinson to edit the input from specialists when it did not precisely appear to meet the needs of Post Office's narrative.

3.101 The significance of Fujitsu to the GLO was clear from the outset. Even as POL fashioned its response to the letter before claim; it was suggesting to the Board that new information from Fujitsu on remote access necessitated a late amendment. Late disclosure was occurring till the bitter end in the Horizon Issues trial (an occurrence familiar in this Inquiry). Yet, the Inquiry might consider that this was information which was or which ought to have already been well

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187 **FUJ00080690**, consistent with the view of the EPOSS Task Force that the process of development and fixes, had resulted in poor workmanship and bad code. **INQ00001018**, 153:21-154:25. **INQ00001017**, 68:7-69-19; **INQ00001018**, 71:21-72:20.

188 **FUJ00154750**

189 **INQ00001116**, 18 January 2024, 112.

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known to POL. The time which Mr Jenkins spent working at the time of the GLO paints a picture of Fujitsu's involvement. He was retired and working on consultancy: "*one to two days a week, for a period of about five or six months*". He estimated he would have spent half that time on the litigation in 2018-19.[190] Until closings, Mr Justice Fraser may have been baffled over how Mr Jenkins came to be supporting the evidence to the High Court, without being called himself to give evidence.[191] The eventual disclosures of the Clarke advices were enlightening. In this Inquiry, it appears, we learn that Mr Jenkins may have been, himself, baffled given (apparently) no one had told him there had been anything wrong with his earlier evidence. The Inquiry heard about seemingly growing frustration within POL about changes in the information provided by Fujitsu to them, including on remote access. It heard about extremely late disclosure of KELs in the Horizon Issues trial, again laid at the door of Fujitsu. Yet, repeatedly, for years, POL had maintained the mantra that Horizon had integrity. Some witnesses, the Inquiry might find, still found that mantra difficult to abandon.

3.102 We know there is a standstill agreement between Fujitsu and POL. We have no understanding as to when the standstill agreement reached. There is no explanation beyond Tom Cooper's evidence on advice to the Board as to contemplation of position on Fujitsu at Board level, deterred by advice from General Counsel. Fujitsu were they never joined to the GLO, but they played their part. Without Fujitsu as a party, this remained all about the Post Office and the myth of the "*subbies with hands in the till*".

3.103 Fujitsu remained, behind the scenes, and in the witness box, as ever, in support of the Post Office and its own poor performing product, that should have been consigned to history in 1999.

4 REGULATED LEGAL PROFESSIONALS

4.2 Whether working in-house at Post Office, or acting for Post Office when based externally in firms and chambers, regulated legal professionals might be expected to provide the requisite independence to rein in a blinkered corporate resistance to criticism. Indeed, the professional codes which bind both solicitors and barristers are designed to ensure a degree of professional independence and detachment. Lawyers, whether solicitors or barristers owe an overriding duty to the administration of justice beyond any duty to their client.[192] Put most simply, and perhaps as a matter of common sense, professional regulated lawyers should be independent and act only within their areas of competence.[193] These are, of course, reflected in the professional

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190 **INQ00001166**, 25 June 2024, 13:1-8, 15:4019.

191 We address the position of counsel, in the evidence of Mr De Garr Robinson KC, above.

192 e.g. **RLIT0000554** SRA Principles 1*: You act in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice*. **RLIT0000569** BSB Handbook, Core Duties: CD1 *You must observe your duty to the court in the administration of justice [CD1].*

193 **RLIT0000568** e.g.SRA Principles 3: You act with independence. SRA Code of Conduct 3: Service and Competence: 3.2: *You ensure that the service you provide to* clients *is competent and delivered in a timely manner*. **RLIT0000569** BSB Handbook, Core Duties: *CD4 You must maintain your independence [CD4]. CD5 You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession [CD5]; CD7 You must provide a competent standard of work and service to each client [CD7].*

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principles adopted by Parliament in the Legal Services Act 2007.[194] The risk that lawyers who work in-house will lose their independence when embedded in a team is well-acknowledged.[195]

4.3 Yet, in this scandal, all too often both internal and external lawyers formed an integral part of the robust defence of Horizon and the civil and criminal proceedings which were founded on its corrupt data. All too often, lawyers were seen to fight a rearguard action for Post Office whether they were involved in civil proceedings, criminal prosecutions, reviews of convictions or the group litigation. We have touched on examples of this where necessary in other parts of this submission but rehearse just a few more with direct relevance to the actions of lawyers.

4.4 As recognised by the governance experts instructed by the Inquiry, and as we set out above, none of this can excuse individual and structural failures of individuals within the Post Office. For example, failing to ask the right questions or to act on legal advice when given (e.g. the handling of the Simon Clarke (Gareth Jenkins advice) and the report of Jonathan Swift QC (as he was then) or shaping questions asked in instructions so that advice was constrained (for example, Brian Altman QC, (as he was then), asking whether POL wanted to explore the safety of convictions or not) or asking a specialist then deferring to the non-specialist firm whose advice best fit the interests of the business (e.g. asking Bond Dickinson to instruct Brian Altman QC and to advise Post Office on its approach to his contribution). It may be shutting one's eyes to obvious, common sense, conflicts of interest while the advice being given appeared to cover off risks to the business (e.g. Cartwright King and the continuing sift-review). However, the role played in this scandal by legal professionals who failed to meet their own regulatory standards, time and time and time again is stark.

4.5 It may be said by some that the whole of the justice system failed the SPMs, with defence lawyers and judges also implicated in the Horizon debacle by failing to challenge. While tempting, given the evidence heard by the Inquiry as to the approach taken to prosecution by the Post Office, and, in particular, to disclosure, it may be thought that the cards were stacked against fairness from the start.

4.6 As addressed in our Phase 4 closing submissions, for some, referral to their Regulator (or consideration as part of the ongoing criminal inquiries) could reasonably be contemplated. While SRA referral was raised by Peters & Peters in the evidence considered by the Inquiry;[196] it might be asked whether the Post Office lawyers themselves (where the Post Office is now willing to recognise where things had gone wrong) ought to have made those referrals independently long ago.

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194 **RLIT0000570** Section 1(3). The "professional principles" are—
(a)that authorised persons should act with independence and integrity,
(b)that authorised persons should maintain proper standards of work,
(c)that authorised persons should act in the best interests of their clients,
(d)that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
(e)that the affairs of clients should be kept confidential.

195 e.g **RLIT0000535** SRA, *In-house solicitors, Thematic Review*, March 2023.

196 **POL00128970** (And the questions put on 11 December 2023, from p4). Concerning advice from counsel on Jarnail Singh, Rob Wilson and Juliet McFarlane.

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(i) Civil Proceedings

4.7 The early proceedings which led to the bankruptcy of Lee Castleton are informative of the approach which was to be taken by Post office throughout this scandal. Post Office had nothing other than a vindication of Horizon to gain from fighting to a conclusion against a man who was experiencing health problems.[197] They should have settled but they didn't and forced a conclusion in their favour.

4.8 But, as explained earlier, it was the response to the letters before claim from Shoosmiths which laid the foundations for the inexorable outcome that POL's legal strategy was to become as much a part of the robust defence of Horizon as the actions of its PR driven Executive and its *mafiosi* investigators. As outlined above, an email from Emily Springford, circulated to heads of department within Post Office at 15.51 on 21 October 2011 was pivotal to that approach.[198] We do not copy the crucial parts set out above at XX:

4.9 That email had at its core that if any critical comment about Horizon reliability was to be made, it preferably should not be reduced to writing and then it need not be disclosed. It also provides strategy for avoiding disclosure in circumstances where committing critical comment about the reliability of Horizon to writing is unavoidable. While some evidence appeared to suggest this was an example of standard litigation practice, the Inquiry might conclude it went beyond what is proper and acceptable. Rodric Williams[199] thought the instructions in respect of critical comment were more "focused and targeted" than he had seen in other litigation hold communications. Paula Vennells did not think it was a fair approach.[200]

4.10 Echoes of this guidance can be found in the advice offered by Bond Dickinson in the aftermath of the Second Sight Interim Report and beyond.

4.11 But the advice from Emily Springford immediately became the orthodoxy within Post Office. This is seen through an exchange between Paula Vennells and Lesley Sewell (highlighted above). Paula Vennells sent an email to Lesley Sewell at 15.48 on 21 October 2011; just three minutes before the Springford edict. The email's subject header was "*Horizon Independent Assessment*". It was copied to Mike Young and Kevin Gilliland. When Lesley Sewell replied to that mail at 17.39 – just one hour and 48 minutes after Emily Springford's email – the 'Horizon Independent Assessment' subject header had been replaced with "*Legally Privileged and Confidential*". And whilst Mike Young and Kevin Gilliland remained copied in, Hugh Flemington and Emily Springford were also copied. All completely consistent with the edict issued at 15.48 on that day.

4.12 For any organisation, that approach to document creation appears designed to stretch privilege beyond its bounds. For an organisation that conducted its own prosecutions it was fundamentally wrong. It was entirely at odds with the requirements for disclosure in criminal cases (as considered above). It could not fail to lead to significant injustice for those who challenged the reliability of Horizon as part of their defence to criminal charges. In the

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197 As recorded in the telephone attendance of Mr Dilley "*the Post Office driver had been getting a judgment against Mr Castleton to show that the computer system wasn't wrong and deter other subpostmasters from bringing a claim. I therefore thought the most important thing for them was getting judgment for the full amount, and that we want as much costs recovery as possible*". **POL00069794**.

198 **POL00176467** (including an example of its cascade through the business).

199 **INQ00001133** , 19 April.24 159:23

200 **INQ00001153** , 24 May 2024. 113:04

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circumstances, the Inquiry might conclude that it both fitted the narrative within the business (any questions about Horizon going unasked and, where problems arose, information kept to a close circle) and operated to further increase the tendency towards defensiveness on Horizon. While this ought not to have gone unnoticed by the Executive team at Post Office, the Inquiry might conclude that the fact that the relationship between legal privilege and the continuing duty of disclosure was seemingly fumbled by both Cartwright King and by Bond Dickinson was wholly unacceptable.

4.13 And until the Clarke advice of 15 July 2013 shattered forever the smug triumphalism of Post Office prosecutors, epitomised by the email from Jarnail Singh at the conclusion of the trial of Seema Misra[201], no lawyer had ever turned their mind to whether such an approach created issues for the prosecutions conducted by RMG and Post Office. John Scott may only have been acting in accordance with long standing practice which followed the Springford edict; echoed in the repeated language emanating from Bond Dickinson in the aftermath of the Second Sight Interim Report (and the July 2013 Clarke advice)[202] when he shredded the notes of the review meeting and ordered that no notes be taken other than by his department.

4.14 While Post Office may point to their taking the right steps in response to the advice – and there being ultimately no loss of information – this neglects what ought to have been learned from the episode.[203] If the Head of Security truly thought that instruction was proper, what did that say about the approach of the business to work under his purview or the attitudes within the business to transparency, fairness and accountability? What had been happening in the years prior? It ought to have been cause for Post Office and its legal teams – both at Cartwright King and Bond Dickinson – to reflect on the culture within the business.

(ii) Criminal Prosecutions

4.15 But there was much, much more to be concerned about with the behaviour of internal and external Post Office lawyers than merely the attitude to disclosure in the business. There is no time to do justice to the wealth of material available to the Inquiry. We address some themes in the Case Studies in our Phase 4 closing.

(a) The treatment of the evidence of Gareth Jenkins as an expert witness is almost inconceivably poor. That *none* of the lawyers involved in deploying his evidence realised at the time that Gareth Jenkins was acting as an expert witness and therefore should be guided as to his duties as an expert and properly deployed by them as such is difficult to believe.

(b) Jarnail Singh's evidence that he did not consider Gareth Jenkins to be an expert witness was exposed as utterly untenable[204].

(c) Warwick Tatford admitted to clear failings in his duty when dealing with experts when Mr. Jenkins was a witness in the Seema Misra trial[205] . The various iterations of Mr. Jenkins' statements following conferences with him were never disclosed to the defence.

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201 **POL00093686**, page 5.

202 **INQ00001160**, 13 June, 37 :24 – 50:8. And other documents which see Mr Parsons advising against disclosure, softening or tempering messages from Post Office which might concede of a problem, including: **POL00006799**, **POL00145716**.

203 **SUBS0000028**, [32].

204 **INQ00001102**, 1 December 2023, 23: 15 to 65

205 **INQ00001094**, 15 November 23: 53 to 74

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Jarnail Singh conceded that particular disclosure failing amounted to a "*serious dereliction of a prosecutors' duties*"[206].

(d) The responsibility of others at POL, must not be overlooked, including Rob Wilson, who might have the Inquiry believe that he entirely abrogated responsibility for supervision of individual matters. That position appears entirely unsustainable, not least in the light of Mr Wilson's 3 March 2010 intervention in the consideration of an independent look at Horizon.

(e) Nobody at Cartwright King sought to ensure that Mr. Jenkins' evidence complied with the requirements for an expert witness. They were all experience lawyers and it did not occur to any of them. Mr. Andrzej Bolc thought that Mr. Singh must have taken care of educating Mr. Jenkins as to his duties; whilst at the same time saying that he had such a low opinion of Mr. Singh that he didn't understand how he was in the job he had.

4.16 The approach to disclosure was very often flawed. Post Office, whether through its internal or external lawyers, and whether in respect of third party disclosure concerning Fujitsu or responses to defence requests, failed to fulfil its disclosure duties. The approach to disclosure revealed a defensive mindset. In January 2010, Mr Singh described disclosure requests by Mrs Misra's legal team as "*unreasonably and unnecessarily raised*". The examples of disclosure failures were too numerous for all of them to be cited here. Some notable examples included:

(a) Post Office failed to disclose that SPMs who took over from the defendant SPM continued to suffer losses in branch in the same way their predecessor defendant SPM had done.

(b) Post Office failed to disclose that it had concluded that there was no evidence of theft when pressing ahead with theft charges.

(c) On 1 July 2013, the day before the Second Sight Interim report was due to be published, prosecutors made an *ex parte* application at Birmingham Crown Court to withhold disclosure of the findings of the report on the basis of public interest immunity and asked for an adjournment of the trial of Mr. Samra that was due to commence that day. The public interest to be protected was ostensibly parliamentary privilege. Counsel who conducted that hearing, Simon Clarke, said that he was instructed to make the application on that basis by Rodric Williams and Jarnail Singh[207]. He wrote an attendance note for Post Office[208]. It was entirely consistent with the robust defence of *Horizon* prevalent before the dam burst with Mr. Clarke's later advice. It read in material part:
"... it's worth commenting on the reasoning behind my advice that we seek a PII certificate in this case. Post Office were, rightly in my opinion, very concerned at the potential adverse publicity which would inevitably have been generated by the revelation of the existence of a (draft) Second Sight Report..... Such speculation would have seriously damaged the reputation of POL and would have greatly undermined public confidence in both POL and POL systems. Our objective was to avoid such consequences: that objective was achieved."

In the light of Mr. Clarke saying in that attendance note that it was *his "advice that we seek a PII certificate in this case",* it may be that Mr. Clarke's memory of where his instructions came from is faulty. In any event, the reasoning *"behind my advice"* is at one

206 **INQ00001102**, 1 December 2023, 121-122
207 **INQ00001144** 9 May 2024: 169
208 **POL00172804**

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with the robust defence of Horizon permeating the business. The objective which was achieved was to protect the reputation of POL and maintain public confidence in POL and POL systems.

4.17 Disclosure in criminal cases - whether privately or publicly prosecuted – should not be the minimum that can be legitimately justified. It should never be guided by the desire to protect the prosecuting body. It should never result from a feat of mental gymnastics which effectively satisfies the prosecutor that they have fulfilled their disclosure duties without revealing all that would reasonably assist the defence.

4.18 Prosecutors failed to conduct adequate scrutiny and supervision of investigations, including in their failure to identify reasonable lines of inquiry. We addressed this issue in our Phase 4 closing submissions and do not repeat it here.

(iii) Reviews of Convictions

4.19 Following Second Sight's revelations, POL announced that it had

"....instructed an independent firm of criminal specialist solicitors to identify every criminal case prosecuted by the Post Office and Royal Mail Group prior to their separation"[209]

4.20 As Simon Clarke accepted[210], that was not accurate. In fact, it was positively misleading. Cartwright King were not independent. The Inquiry might regard the explanation of Mr Smith that they were "*independent of Post Office*" both as plainly wrong and wholly incredible as a view that he could have held at the time.[211] Only weeks before they were appointed as an "*independent firm of criminal specialist solicitors*" they had secured a *PII* certificate with the stated objective being to protect the reputation of POL. They had been prosecuting the very cases they were looking into. They were marking their own homework. As Harry Bowyer conceded, there were cases where disclosure should have been made and it was not. For example, Mr. Bowyer conceded that his advice on whether disclosure should have been made to Gillian Howard was "*badly wrong*"[212]. In interview, Mrs. Howard had raised problems with balancing along with suspicions about the sons of a member of staff. Disclosure should have been made to her of very relevant material prior to her later entering a guilty plea. That relevant material was that the son of the member of staff had been stealing from the branch after Mrs. Howard was dismissed. It wasn't disclosed. In his advice, Mr. Bowyer had concluded that[213]:

"This is an extremely worrying case. It is only through good fortune, sensible prosecution counsel and a sympathetic judge that we are not going to have to disclose material which would cause [Post Office Limited] a great deal of embarrassment."

4.21 Once again, the interests of the prosecuting body were at the forefront of the thoughts of the prosecutor. Mr. Bowyer decided at that stage that disclosure was not necessary because: *"It is my view that there could not possibly be an appeal against conviction .....bearing in mind the admissions in interview and the basis of plea"*

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209 **INQ00001139**, 1 May 2024, 165:21 – 169:12.
210 **INQ00001144**, 9 May 2024: 84
211 **INQ00001139**, 1 May 2024, 169-169
212 **INQ00001140** , 2 May 2024:47
213 **INQ00001140** , 2 May 2024: 43

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4.22 Mr. Bowyer thus prejudged the prospects of success of the appeal in deciding that no disclosure was necessary. That was not his job. As he candidly accepted, that was a decision for Mrs. Howard, not him. It was arguably a feat of mental gymnastics by him justifying non-disclosure of material which would cause "*a great deal of embarrassment*"

4.23 If a truly independent firm had been commissioned to carry out the review, it may be that the full substance of the Clarke advice would have been disclosed as it should have been.

4.24 It was simply not good enough to rely on the input of Brian Altman KC to cover off any possible criticism of the Post Office's approach. The Inquiry has the evidence of Mr Parsons and Mr Altman as to how the initial instruction of Mr Altman was pursued and how the scope of those instructions were constrained following questions counsel raised in his Interim Review, including as to conflict and Cartwright King and as to the review of the safety or efficacy of prosecutions. The Inquiry might consider that the desire for material from Mr Altman QC to be privileged legal advice (and so, not published) and yet, relied upon to assuage others that the Post Office's house was in order, was inherently contradictory. It could be seen as entirely consistent with the defensive, secretive and adversarial approach being taken by Post Office in its defence. Yet, as Warwick Tatford did, counsel conceded mistakes were made. Brian Altman KC conceded at the Inquiry that he should have considered the disclosure of the substance of the Clarke advice and disclosed in appropriate cases.[214] Prospective appellants were entitled to know that Gareth Jenkins was considered a tainted witness and had wrongly withheld his own knowledge of bugs in the Horizon system. This was an error which endured. Although Mr Altman's advice had been provided to the CCRC in 2015, and would have included information about the tainted witness, the Inquiry might conclude that there were repeated later opportunities to question whether this information had been disclosed appropriately in the relevant cases.

4.25 Jarnail Singh, Rodric Williams, Susan Crichton and Chris Aujard all have more to explain about why the full import of the Clarke advice on Gareth Jenkins was seemingly not conveyed to the Board. While Mr Aujard *appeared* to suggest that he didn't raise the issue because it had been grappled with before his time and were being dealt with by Cartwright King as part of the review process, the Inquiry may take a view as to the credibility of this rationalisation.[215] This was such a significant issue of POL's position as a prosecutor that the absence of any reference to it in any subsequent papers prepared (including those dealing with appointment of an independent witness or the policy on prosecutions) may beg more questions than it answers. The Inquiry might conclude that similar questions arise in relation to the Project Zebra report and its Action Summary, including for Mr Aujard. He was aware of the substance of the report and its recommendations and ought to have been aware of its implications for the Post Office position on remote access. Moreover, he was aware or ought to have been aware that this engaged the continuing duty of the business as a prosecutor.

(iv) The Group Litigation

4.26 The GLO saw the continued aggressive defence of the position of Post Office by internal and external lawyers. That Mr. Justice Fraser considered it necessary to refer to the litigation strategy adopted by POL in such terms is a measure of how apparent that approach was (as highlighted

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214 **INQ00001143**, 8 May 2024:53
215 **INQ00001135** 24 April 2024, 93:11 - 18

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in some detail in Section 3, above). The application to recuse the trial judge and the subsequent appeal against the refusal of that application were, in reality, not inconsistent with that strategy.

4.27 As said earlier, while the client must take responsibility for the direction of strategy in any litigation, the lawyers advising must bear appropriate responsibility where the advice given lacked due objectivity or competence.

4.28 As another brief example, the Inquiry heard about the approach which may have been taken by Ms McLeod to guarding privilege in the context of the GLO.[216] Did her failure to recognise the relationship between the criminal duties of POL and its interests in the civil litigation (like those before her) mean that costs and time were unnecessarily wasted on pursuit of the GLO? These were, of course, questions the Inquiry was unable to ask Ms McLeod. She remains out of the jurisdiction and refused to cooperate by attending to give evidence.

4.29 Issues of independence, conflict and competence arise throughout the evidence of the legal professionals paid (ultimately from the public purse) to support POL through this crisis. As to independence and competence; the Inquiry might conclude that the continuing heavyweight role played by Bond Dickinson (and, in particular, by Mr Parsons) in matters where the criminal law duties of POL were inappropriately put second to POL's interests in civil litigation, raises questions over actions outside of competence and deserves particular attention. The firm was involved in representing the Post Office on a long retainer and played a role at each stage. They were involved in advising on the early civil Case Studies; they were involved in the Second Sight process; and in the shaping of the mediation scheme and in the GLO.

(v) Conclusion

4.30 The Inquiry might conclude that this evidence taken together makes a strong case for the more effective regulation of both professions. It may wish to call for a substantial change in the guidance which the SRA and the BSB provides to solicitors and barristers on the dangers of losing independence and the significance of maintaining an objective distance from the interests of one's clients, including when acting in house and on long retainers. However, shortly before the conclusion of the Inquiry, the SRA has, in fact, issued new guidance for in-house lawyers on the ethical challenges they face. The Inquiry might conclude that it contains little which is new and most of it ought to have been common sense to everyone involved in advising the Post Office (whether internal or external). Rather, the Inquiry might consider the evidence heard painted a picture of a wholly bigger problem for the ethics of the legal profession (which ought to be entirely without reproach).[217] The catastrophic failure of existing standards in this scandal calls for radical rethinking.

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216 **WITN10010100**, [151]. "From April 2016 when we were informed that Freeths, the Claimants' solicitors, had filed a claim in the High Court, I was more sensitive about confidentiality and privilege issues given the risk that litigation was imminent, and therefore some updates were verbal only."

217 The Inquiry may wish to consider the recommendations of Professor Richard Moorhead, in his third Hamlyn lecture. He suggests the scandal evidences three problems: (a) excessive aggression in legal work; (b) mutually irresponsible management of legal decisions shared between lawyers and clients and (c) the abuse of confidentiality and legal professional privilege. He recommends that an independent commission is established to consider the provision of legal services (akin to the Clementi Commission which led to the Legal Services Act 2007,), and in particular to consider how to improve honesty, integrity and effectiveness in the ethical position of the professions. Its goal ought to be to ensure the effectiveness of ethical standards in the rule of law upheld by individual lawyers, clients, the

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4.31 **The Inquiry is invited to recommend the establishment of** holistic review **of ethical standards in the legal profession, to incorporate a full independent review of the law on privilege and its** scope for **abuse. This ought to be supported by Government but independent, including of each of the professions.**

5 MANAGEMENT, GOVERNANCE AND OVERSIGHT

5.2 The considered evidence of Dame Sandra Dawson and Dr Katy Steward provides ample basis for the Inquiry to conclude that devastating failures of governance, by the Executive, the Board and the Shareholder Department, at each stage, contributed to this scandal. We do not repeat wholesale the picture of failed governance in their combined expert reports (collectively, referred to as the Experts/Reports, herein), but raise several observations.

5.3 Although there were four separate periods in the evolution of the Post Office's governance, at each stage, the Executive, CEO, Chair, Board and Shareholder shared responsibility for the management of risk in the organisation alongside their other duties:

(a) **Phase 1 (1999-2001):** For these early years of Horizon, POC and POL were subsidiary to the Post Office Authority or Consignia (wholly owned by Government). The parent had powers of direction by virtue of the POC Articles of Association (including to do or refrain from doing things asked by the parent Board). The POC Executive were responsible for the operation of the business (including reporting on key risks and other matters it considered the parent should know).[218]

(b) **Phase 2 (2001 – 2012):** The Executive was directly accountable to the Royal Mail Group parent (RMG). POL Articles of Association gave the parent and Shareholder department powers over POL. In 2003, the Government created the Shareholder Executive (ShEx). ShEx retained various formal and informal routes for oversight of RMG/POL, including meetings, reports, signing off on strategy, recruiting the Chair, CEO and NEDs. The officers of ShEx were senior civil servants.[219]

(c) **Phase 3 (2013 – 2019):** During this period, POL became a public corporation with its own Articles, Board, independent Chair, NEDs and two Executive Directors (CEO and CFO). POL created its own Board Committees, including the Audit, Risk and Compliance Committee ("ARC"). The CEO managed its General Executive ("GE"), comprising

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regulators and also by the judicial system. It would incorporate a full independent review of the law of privilege and its abuse. Specific considerations for lawyers include revised education and training; for the courts, to integrate legal risk management into corporate governance rules and guidance; and, to revisit professional regulation and guidance and the codes of conduct. A single ethical code of conduct across the professions might be considered. Richard Moorhead, **RLIT0000539** *Lawyers Ethics: A Call for Action*, 14 November 2024. The Full Third Hamlyn Lecture, *Frail Professionalism, Routes back to proper professionalism*, Professor Richard Moorhead, can be viewed online.

218 **EXPG0000006_R**, p16-17. The leaders at POA/Consignia at this time were Neville Bain (Chair) and John Roberts (Chief Executive), with Mr Roberts also acting as Chair at POCL and Stuart Sweetman as Managing Director. Jonathan Evans was Company Secretary.

219 **EXPG0000006_R**, p17-18 Successive leaders at RMG during this time were Neville Bain (Chair, 2001), Alan Leighton (Chair, 2002 – 2009), Donald Brydon (Chair, 2009-2013), John Roberts (Chief Executive, 2001-2002), Adam Crozier (Chief Executive, 2003-2010), and Moya Greene (Chief Exec/Director, 2010-2012). At POL, Alan Leighton (Chair, 2002-2003), Michael Hodgkinson (Chair, 2003-2007), Donald Brydon (Chair, 2009-2011), David Mills (MD, 2002-2005), Alan Cook (MD, 2006-2010) David Smith (MD, 2010); Paula Vennells (MD, 2010-2012). Jonathan Evans remained Company Secretary at both RMG and POL until 2010 having commenced in the role in 2001.

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direct reports and supported by Executive Committees including the Risk and Compliance Committee ("RCC"). In 2016, ShEx was replaced by UKGI.[220]

(d) **Beyond 2019**: Changes were made to the GE (renaming this the Strategic Executive Group ("SEG") and reducing attendance) governance arrangements remain largely unchanged.[221]

5.4 The principles of accountability were plainly shared by the leaders, Executives, Directors and the Shareholder in POL regardless of whether it was a private company or a public corporation.[222]

5.5 We do not repeat the specific duties of each entity rehearsed by the Expert evidence but refer below to specific accountabilities and duties where necessary or illustrative.[223]

5.6 The Experts identify themes from three case studies which paint a picture of failures by each of those responsible for the business, in both 2004 and 2013 (and beyond) which the inquiry might conclude were infected by wrongdoing, wilful blindness, incompetence or inertia. There were individual, collective and structural failures in the governance of Post Office which were directly relevant to the scandal throughout the period of this Inquiry.[224] In addition to the case studies of the Experts, we raise a few further examples by way of illustration.

5.7 Despite extensive disclosure and gathering of oral evidence, the Inquiry may never have an entirely full picture of what precisely successive Boards were and were not told and when. The passage of time means that correspondence and Board papers are not necessarily complete in the material provided to the Inquiry. The Inquiry heard evidence that minutes were not necessary a complete reflection of events (for example, the record of the 16 July 2013 discussion following Susan Crichton's exclusion from the Boardroom) and that, at least historically, oral briefings and conversations out of Board were not necessarily always reduced to paper.[225] The material that is available, and the recollection of witnesses, is sufficient confirmation that those in charge at the Post Office either did not understand their true functions or did not function in them as they should.

5.8 We highlight important issues of governance for the consideration of the Inquiry beyond the case studies identified by the Experts, as follows:

(a) First, Pre-2013. Failures in Governance were not limited to the period post-separation.

(b) Second, Post-2013. The Case Studies are not a full picture of the failings post-2013.

(c) Third, we consider three themes in the evidence:

i. Wrongdoing, wilful blindness, incompetence or inertia.

ii. Board Effectiveness.

iii. The Role of the Shareholder.

5.9 Additionally, we address a number of further issues for the Inquiry to consider:

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220 **EXPG0000006_R**, p18-19. Paula Vennells remained as CEO until she was replaced by Alisdair Cameron as Interim CEO; and then Nick Read. Alice Perkins stepped down in 2015 and was replaced by Tim Parker.

221 **WITN11360100** (Karen McEwan), [69].

222 Ibid, p21, [2.2]. See also **EXPG0000010_R**, p11, at [21] – [22].

223 **EXPG0000006_R**

224 **EXPG0000010_R**

225 For example only, Jane McLeod, **WITN10010100**, at [150] – [151].

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(a) Specialist Board Members;
(b) The Role of General Counsel;
(c) Legal advice, Litigation and LPP;
(d) Whistleblowing;
(e) A Duty of Candour

a) Pre-2013

5.10 Failures in Governance were plainly not limited to the period post Second Sight. The Cleveleys Case Study (Case Study 1) reaches significant conclusions about the weaknesses in Governance at POL and RMG in the period around 2004. There were plainly other failures – whether in communication, failures to exercise curiosity or to act on obvious indications of risk – which directly contributed to the making of this scandal or which were obvious missed opportunities to avert it. Putting the Cleveleys Case Study (Case Study 1) in context is critical. A few examples follow.

(a) The same David Miller, the Executive Board Member who signed off the Cleveleys settlement, had been Programme Manager for Horizon. The same Mr Miller now accepts that he ought not to have told the POC Board, before acceptance, that Horizon was robust and fit for service.[226] Whatever he did or did not say, it is minuted that continuing problems were reported and those were left hanging, unchallenged and seemingly not followed up at Board level ("*members were concerned that a number of technical issues remained unresolved*").[227] The Inquiry has considered the letter from Ernst & Young, and whether used as a negotiating tool or not, it appears that ought to have been escalated to Board level.[228] The January 2000 Third Supplementary Agreement which allowed Horizon to go live across the whole network had been signed by Mr Miller and witnessed by the late Keith Baines.[229] Mr Miller confirmed he had commissioned and seen the wash up document produced by Mr Folkes in February 2000 which highlighted technical areas to pay attention to and concerns as to the need for ongoing assurance during live operation of the system. Mr Baines role in Case Study 1 (and the approach to his second statement) is dissected in the evidence of Susanne Helliwell. This was, of course, an exercise in which Fujitsu, through Jan Holmes, was embroiled (Jan Holmes co-authored the EPOSS Task Force report and was involved in settling the arrangements for litigation support at Fujitsu).[230] Mr Baines had been central to the troubled birth of Horizon, being Head of Horizon Commercial.[231] That both he and Mr Miller may have treated the troubled path of Horizon in 1999-2000 as irrelevant by the time of their engagement on Cleveleys in 2004 deserves considerable scepticism. After 2000, there was a shocking absence of management regarding the known risk that technical problems could undermine accounting integrity. That risk was seemingly ignored while focus turned to more commercial matters.

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226 **INQ00001130**. Transcript, 16 April 2024, 16@13 – 17:4 (The Chair pressed him to clarify if he accepted the minutes were correct, despite his lack of memory: "*I'm afraid so, sir, yes*".) The Inquiry has followed the Minutes of **POL00000354**, **POL00000336** (11 January 2000) and **POL00021476** (12 June 2001) (Consignia).

227 **INQ00001007**, Transcript, 28 October 2022, 62 :15 – on. He previously confirming in questions that he did not tell the Board it was "robust and fit for service" at 107:2-4. **POL00000352** (Board Meeting, 20 July 1999). Noting **POL00028362** (August 1999) which refers to the steer from the Board being not to accept a sub-standard system. This was, after Mr Miller was said to have provided his July update.

228 **POL00090839** (August 1999)

229 **FUJ00118186, INQ00001130**. Transcript, 16 April 2024, 21:1- 11. The Inquiry has followed the Minutes of **POL00000354**, **POL00000336** (11 January 2000) and **POL00021476** (12 June 2001) (Consignia).

230 **FUJ00152501** (11 February 2002).

231 **POL00028540**

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(b) The failure to act in response to the growing recognition of problems in the context of proceedings ongoing at the same time as the *Castleton* proceedings evidences continuing failure. We note that management and strategic discussion in this context included the cases of Bajaj and Thomas and was again indicative not only of serious individual failures but structural and collective failures of governance around management of risk.[232] The findings of the draft expert report produced by BDO for POL ought to have been escalated (particularly in light of the Cleveleys position). It would be astonishing if the fact and implications of the outcome were not escalated. Yet, the Inquiry heard that the case was being treated by POL as a test for Horizon, and the value of a precedent hunted.[233] Mandy Talbot's recommendations on a more coherent approach – copied to Rod Ismay – prompted the Horizon strategy meeting in December 2005 (as above).[234] That was attended by Ms Talbot, Graham Ward (his involvement in Noel Thomas's conviction is addressed above) and Keith Baines. As a result, Mr Baines was to discuss an independent expert with Fujitsu. Matters were to be directly escalated to Mr Corbett to consider independent interrogation of Horizon and the involvement of auditors. It is plain it was intended this issue was to be escalated up. Instead evidence from Fujitsu is pursued. Whether there was a failure to join the dots on these cases by design or, instead, negligent omission by management, Executive or the Board, this all evidences a serious failure of risk management, a failure of good governance and a significant missed opportunity.

(c) By March 2006, Keith Baines was being copied in on important correspondence regarding expert evidence on prosecutions (Graham Ward was editing the draft Jenkins statement on system failure for Noel Thomas' prosecution which was thought to be "*potentially very damaging*").[235] (At almost the same time, he was coordinating with Mandy Talbot and highlighting the issues raised in the Thomas case and others for Castleton).[236] Whether aware of the Cleveleys and/or Castleton reports, or not, this discovery, both of the position of Mr Jenkins and that POL was actively seeking to doctor supposed expert evidence ought to have been escalated up the Executive line and beyond. Against the background of the Cleveleys and Castleton experiences, it ought to have been a clear indicator of a problem for both POL and Fujitsu in their approach to Horizon integrity and the support of proceedings against SPMs, whether in the criminal or civil courts.

(d) As above, by February 2010, the "*stock line*"[237] had been developed and was being used by the Executive correspondence team. This begs the question, if the leaders of the business were blind to the significance of these issues, who signed off the stock line?

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232 **POL00107426**, Email thread beginning 23 November 2005, from Mandy Talbot to David X Smith, Tony Utting, Rod Ismay and others, copied to Clare Wardle in RMG Legal. See also, **POL00071202,** Email thread 3 March 2006 *("Keith and Dave Hulbert have brought the case of Hughie Noel Thomas to our attention as yet another discipline case where HORIZON is being blamed. Also that of Hogsworth Post Office Skegness").* In this correspondence there is coordination with a view to Fujitsu providing evidence to support the functioning of Horizon. Bill Mitchell's witness statement in the Shobnall Road case (a case concerning phantom transactions) is circulated.

233 e.g. **POL00069794**.

234 **POL00119895** (6 December 2005)

235 **FUJ00122210** (24 March 2006)

236 See also, **POL00071202,** Email thread 3 March 2006 *("Keith and Dave Hulbert have brought the case of Hughie Noel Thomas to our attention as yet another discipline case where HORIZON is being blamed. Also that of Hogsworth Post Office Skegness").*

237 **POL00002268** (1 February 2010) (Michelle Graves to Hayley Fowell) ("*I am providing our stock line which states the system is robust".*) INQ00001129, 12 April 2024, 178: 18-24. It was Mr Crozier's evidence that he was unaware of any stock line but he agreed that if Horizon integrity were in question and a stock line was being used that would be a serious matter for the Post Office and RMG. He added "*it would also be entirely wrong.*"

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(e) The shutdown of proposals for an independent investigation in March 2010 is familiar to the Inquiry. Again, we see both Ms Talbot (RMG), Mr Ismay and Mr Scott playing a role in this conversation alongside Mr Wilson (also, RMG).[238] By 2010, there can be no question of any disconnect between the legal team in RMG (of which Ms Talbot and Mr Wilson formed part) and those working on Horizon integrity problems at POL (and, notably, it appears there was coordination touching on Thomas and other cases as early as 2006). The commissioning of the Ismay report – a report which directly builds on the advice of Mr Wilson – belies a significant understanding at Executive and CEO level of a significant risk to the business.

(f) The Ismay Report was sufficiently significant that it was treated as essential reading for Alice Perkins from the outset.[239] Mr Ismay had, of course, been Head of Risk and Control. The internal contradictions in this whitewash of a document are patent. (The failure to take this further after POL – including Mr Ismay – are on notice of the Receipts and Payments bug is catastrophic). The lack of any constructive action to further interrogate Horizon or to consider the safety of prosecutions pursued on Horizon data signals either corporate neglect by Mr Smith (and others) or a positive effort to avoid addressing a known risk to the business on the part of those who read it. Having commissioned this document in the face of growing criticism and questioning of Horizon[240] – later provided internally (with some enthusiasm) to the incoming Chair – it is not credible that prior to separation it was escalated no further than David Smith, the POL Managing Director in 2010. It was, of course, the evidence of Mr Smith that although timed with further inquiries by Channel 4, the report resulted from engagement with ShEx, who set the "*exam question*".[241] There is no question the Report ought to have been interrogated further, escalated and discussed in keeping with the rationale of the Cleveleys Case Study (Case Study 1). That its inadequacies were missed – and that it was subsequently relied upon by new leaders – is indicative of at least a considerable lack of care and, at worst, confirmation that the document was intended to be used solely to present the proud illusion of Horizon as robust without any rational consideration of the contrary possibility.

(g) In 2011, the first SPM letters before claim arrived. These were being run under the RMG legal team (with advice on privilege, for example, circulated throughout POL by Emily Springford in October 2011 (addressed above in Sections 3 and 4).[242] That this messaging was reaching the POL Executive was plain from Ms Vennells correspondence with Lesley Sewell and Mike Young where again, she chased further information on yet another potential independent look at Horizon (to vindicate the position of POL) which seemingly never came to pass.[243] RMG legal services may have been providing briefings.[244] We note that, in this messaging at least, there appears to be an intention that these issues could

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238 **POL00106867** (3 March 2010), Email Rob Wilson to Dave Posnett and others.

239 **WITN00740100**, [133].

240 A reply to Ed Davey having been written in May 2010, for example. This being in the midst of frustration in the relationship between Fujitsu and POL over integrity in the development of Horizon Online, with Mike Young asking for independent review and "open book" exercises. See **INQ00001128** (David Smith).

241 **INQ00001128, 72: 2 – 72:14, POL00417098, POL00417100.**

242 **POL00176467** (20 October 2011) (Although this appears in various iterations). It appears that the RMG Legal team engagement by Ms Springford on Horizon integrity preceded this time. See **POL00106869** which appears to Ms Springford forwarding to Ms Talbot a Fujitsu document on Horizon integrity and a 2009 copy of the standard Fujitsu WS originally sent from Mr Smith (IT) to "*Hayley, Emily and Michele*" (Ms Graves, Ms Springford and Ms Fowell).

243 **POL00294928** (21 October 2011)

244 **POL00413669** at p15 (included as part of papers behind the "supper with Paula" diary entry). This is a Briefing Note on Current Status of Claims Involving Horizon, prepared by Legal Services (12 March 2012).

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be escalated up to the Board or Board queries on the issue of Horizon integrity were anticipated.[245]

(h) In September 2011, Mr Brydon, Chair of RMG had written to Ms Vennells expressing his surprise over reporting of the class action in Private Eye. He asks if it was appropriate for the Board papers to have a litigation/legal report but that would be "Alice's call". Ms Perkins is copied in. He goes on to indicate the Audit and Risk Committee (which was a committee of RMG) ought to take an interest, and (as above) he questioned whether there had ever been an independent audit of Horizon.) In reply, Ms Vennells provides assurance on an entirely false basis: that every time Horizon integrity had been challenged in Court, the Post Office position had prevailed. This information was demonstrably false. (She claimed it must have been provided by the legal team).[246]

(i) The Ernst & Young work done on integrity – and inappropriate system privileges including APPSUP - from 2011 through 2012 did engage Moya Greene. She said this had been raised, she thought at the initiative of Donald Brydon.[247] By 2011, the issue of the Shoosmiths claims had been reported up to RMG, through the ARC, in the context of an update on the Horizon relationship and the work of Ernst & Young on IT control issues ("*A small number of these have defended the claims on the basis that they were not guilty of the charges made but that Horizon was faulty.*" "*Prosecutions and civil debt recovery actions by POL where the defence claim Horizon is flawed – these have consistently been won on the facts of the Horizon transaction logs. Judges have spoken supportively of Horizon*"). This was a paper presented by Chris Day with Lesley Sewell and Rod Ismay.[248] Ms Greene said the Board and the ARC had ultimately been assured. Yet, in 2012, it appears that while progress had been made in the auditors control work, there was work yet to do. An update was circulated, including to Dame Moya Greene.[249] No one appears to have asked – if Fujitsu is fixing this – and there was a problem – what did that mean for past integrity? For those cases? Instead, the Board remained assured. In 2012, when Les Owen actively pursued the issue of Horizon integrity, the information he (and the rest of the POL Board) received appears to have been misleading and – while the significance of the assurance was recognised by Ms Perkins - seemingly never corrected. She regretted having not nailed it down at the time.[250] She admitted she should have done more.[251]

(j) We note that the engagement of the RMG Chair does not appear to have ended entirely in 2011 or 2012, whatever assurances afforded. During the fractious conversation with Ms Crichton in Costa on 30 August 2013, and as recorded by Ms Vennells herself, Ms Vennells commits to engaging with Ms Perkins, including on her believing Donald [Brydon] "*and BIS comments about a … cover up.*" This suggests at least that there were conversations between the two chairs about the implications of the Second Sight Interim Report during that summer. It appears the Department were also engaged and that – at least in the impression of Ms Crichton – there were concerns even at that stage for a risk

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245 **POL00294928** "*I could easily have sent a note in response to a Board query, saying not to worry because there's a verification underway and the results are due any day soon!"*

246 **WITN00740126**. **INQ00001151,** 22 May, 151:5 – 153:2.

247 **INQ00001178,** 19 July 2024, 148:16 – 162:16.

248 **RMG00000083**

249 **POL00029114**

250 **INQ00001134**, 23 April 2024, 36: 14 – 39:25. **INQ00001156** (Alice Perkins) 39 :17- 45 :8

251 **INQ00001156** (Alice Perkins) 50:1-3 *"I think that I was more reassured than I should have been and I can see now, looking back at this, that I should have asked more questions about this."*

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of cover up. (Ms Vennells hangs a lot on the addition of a question mark to indicate this was all news to her.)[252]

5.11 The Inquiry is invited to treat with some scepticism any assertions of those in leadership (whether at POL or RMG) of ignorance of the prosecuting function of the Post Office or the continuing questioning of Horizon integrity. Mr Miller was, for example, clear that he understood that function and the role of RMG Legal when part of the Executive team before he retired in 2006.[253] There may, of course, have been a difference in understanding as between those working in hands on positions and those above Executive level; but Mr Miller was a Board member. Sir Michael Hodgkinson conceded that he would have been aware that POL was prosecuting its own people during the end of his tenure (he left in 2007). He said that the processes for investigation and prosecution had been discussed in the RCC at a general level and knew that Horizon data was used to support prosecution.[254] Mr Evans, the Company Secretary until January 2010, was clear that, from his prior roles, he understood the business prosecuted its own people.[255] The visibility of this is apparent from:

(a) The investigation and prosecution activities of RMG were discussed by POL Board, RMG Board Committees and POL Committees.[256]

(b) The RCC was engaged in the work of Tony Utting and his team, and in particular, engaged with the proposed use of the Proceeds of Crime Act 2002 as a tool for Post Office recoveries. On 5 January 2005 there is a discussion of "*Internal Crime*". Mr Ismay was Head of Risk and Control but sent his apologies. At that time, the RCC was told that there were over 600 cases over 39 investigators. Financial investigations – proceeds of crime – were discussed with prospects for. It recorded there had been £1.2M recovered. A new risk model for profiling SPMs was discussed. Sir Mike Hodgkinson was in the Chair and seemingly offered to assist in securing Home Office training.[257]

(c) The often contradictory evidence of witnesses who had worked closely together. To examine one example, that of Mr. Cook:

i. It was the evidence of Mike Young that he was aware of the process of prosecution at POL precisely because it had been described to him by his boss, at POL, Alan Cook. Yet, it was Alan Cook's evidence that he was entirely unaware that POL was acting as a prosecutor until 2009 (albeit he was aware there were court cases) ("*I didn't realise that Post Office…had initiated the prosecution*").[258]

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252 **INQ00001152,** 23 May, 168:25 – 171:25 **POL00381629**

253 **INQ00001130**, 33:3-20.

254 **INQ00001128**, Transcript 11 April 2024, 176:7-23.

255 **INQ00001003**, Transcript 4 November 2022, 4 : 7 – 6 :6 (Albeit he claimed to be unaware that the Horizon data would provide the basis for prosecutions, 96: 21 – 98:7. It was Mr Evans evidence that he did initiate a report to the Board on litigation. It seems that he was aware that matters of litigation ought to be visible and/or escalated to the Board.

256 For example, **POL00021485** (POL Board Minutes, 13 October 2004). "*The board agreed that in situations where fraud had been perpetrated against the company, the appropriate civil orders would be used immediately and in advance of any criminal proceedings. This would help recovery efforts by ensuring that the assets of those involved in criminal activity were quickly secured. David Miller would verify the current procedures and report back to the board.*" Mr Evans queried whether this being approved by the Board raised more questions that it answered (**INQ00001003**). We note that the POCA 2002 came into force in March 2003. The recovery of losses and perceived debt to the company had been a particular focus of IMPACT. See, e.g. **POL00038878** (Also March 2004). **POL00021503,**

257 **POL00021416.** See also 6 April 2005 : **POL00021417.**

258 **INQ00001129**, 12 April 2024,

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ii. Alan Cook had close, regular contact with Tony Utting (although it appears as yet unclear whether he retained line management responsibility for the Security and Investigations team, or this vested with the Company Secretary).

(d) To take another, Ms Vennells maintained she was unaware of the role of POL as a prosecuting authority until 2012. She had by that time, been in the business since 2007. In the familiar "*subbies with their hands in the till*" message, on 15 October 2009, copied to Ms Vennells, Mr Cook writes, "*Bizarrely the author of the email below was a very senior postmaster in the Fed…whose wife was found to be defrauding us and we have prosecuted*". The Inquiry will recall questions put to Ms Vennells on the absurdity of her having been Network Director, then Managing Director then Chief Executive, and a member of the RCC, without apparent appreciation of the role of the POID or the Security and Investigations Team thereafter.[259]

(e) The Inquiry heard of correspondence relevant to investigations and prosecutions and complaints about Horizon being handled in Executive (and Board level). That included flagged cases from members of Parliament.[260] This correspondence remains difficult to see for many of our clients. It peppered the evidence of Phase 5 and 6. In one example of the management of such correspondence, Mike Young told the Inquiry he instructed John Scott to escalate to him anything that "*was likely to escalate to the Board – POL Board and the Royal Mail Group Board – and certainly anything coming from the shareholder*".[261] This suggests, at least, that correspondence of this nature was being escalated (or there was an awareness that it ought to have been). Mr Cook confirmed himself that in 2008, he would have read a detailed reply to Sami Sabet defending his prosecution by the Post Office before he signed it. David Smith acknowledged that while there would be discretion within the team as to what came across his desk, he would have some oversight of that team.[262]

(f) At the end of the day, Mr Crozier reiterated that Mr Leighton (Chair of RMG) sat on the POL Board and the Company Secretary (Jonathan Evans) was on both Boards and attended throughout the relevant period, until 2010.[263] It was suggested the purpose of this was to act as a safeguard against issues being unnoticed by RMG.

5.12 If the parent did remain in the dark, this raises questions of both structural and individual responsibility. It was the responsibility of the Company Secretary (acting with the Chair) to ensure that persons were appropriately inducted and understood the scope of the business's legal obligations and their implications for the business. It was the evidence of Mr Crozier that Mr Evans had line management responsibility for the RMG legal team, for General Counsel and for the Head of Security within the Post Office.[264] It is the evidence of Catherine Churchard that as Director of Legal Services till 2006, she was managed by the Company Secretary but the Criminal Law Team moved from her report and became part of Security Services (there appears no question it remained as part of RMG at this time).[265] Douglas Evans, General Counsel from

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259 **INQ00001151**, 22 May 2024: 81:4 – 95:4

260 **POL00062444**, **POL00107713**, **POL00143535**

261 **POL00019281**. **INQ00001196.** Transcript, 15 October 2024, 7:11 – 10:1. See specifically, 9:18-10:1.

262 **INQ00001128,** 56:6 – 58:13.

263 **INQ00001129**, Transcript, 12 April 2024, 120 :4-24.

264 **INQ00001129**, Transcript, 12 April 2024, 138:16 – 142:9 (albeit he believed there were separate POL and RMG legal teams, both under the supervision of the Company Secretary). This appears consistent with the evidence of Catherine Churchard from 2002 (before which, she recalls that the reporting line was through the Managing Director (Stuart Sweetman) (**WITN11230100** at [19] – [20]).

265 **WITN11230100**, [16], [20], [21]. (A separate team for POL being discussed but rejected as not cost effective).

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2006 till 2010 confirmed there was no separate legal function for POL. He confirmed that the Criminal Law Team remained under his supervision. He described 1:1s with Mr Wilson.[266] Mr Evans remained as Company Secretary for both RMG and POL until January 2010 (when succeeded by Susan Crichton; and then Alwen Lyons). The Inquiry might conclude that if Mr Evans' role was intended to provide an additional safeguard, this proved ineffective.

5.13 Finally, in respect of the situation pre-2013, we note the conclusion of the Experts that the risks in POL prosecutions were "*ultimately the responsibility of the Parent RMG, not simply because RMG was the parent holding company, but also because prosecutions reported to the legal function which in 2004 was still a central function managed by RMG.*"[267] This remained the position until separation. (The Inquiry has seen a record of fractious discussions over the settling of an MOU to follow separation on investigation and prosecution.[268]) This seems an unassailable reflection of the corporate position, even if not as understood by those in charge. It may place the efforts of Ms Vennells to remove references to Second Sight and Horizon integrity challenges from the prospectus for floatation in a different light (although the Inquiry has heard no evidence on the disposition of existing liabilities between RMG and POL post-separation).

5.14 At the closing of Phase 2, we regretted that there had been apparently little attempt to retain institutional memory as key players (including Mr Miller) were moved on. Yet, there was sufficient continuity of personnel engaged in these problems in 2004 and beyond – until the Ismay report in 2010 – that any suggestion that the connection between the genesis of Horizon and its tumultuous evolution was forgotten or lost rings hollow. Horizon had been Mr Miller's domain. It had been he and Keith Baines who got it over the line. Mr Ismay had been at the heart of the Cleveleys debacle, and it was he who escalated the matter to David Miller. Keith Baines signed a statement giving a wholly incomplete picture of the problems arising in the development of Horizon. Mr Miller sat on the Board of POL. Efforts to take the issue further in December 2005 were destined for the Executive through Mr Corbett. They seemingly went nowhere. Mr Ismay, in his role at P & BA was well aware of the technical flaws arising in connection with IMPACT[269] and, following the Cleveleys settlement, had been involved by Mandy Talbot in discussions over how to address case upon case raising Horizon integrity. The saga of his whitewash is truly shameful.

5.15 At each of these stages, there were commercial incentives and imperatives to look the other way. In 2005-2006, IMPACT was being rolled out.[270] By 2006, plans were beginning for Horizon Next Generation. The Board wanted it to be cheaper and the planning was discussed by the Board both at POL and RMG.[271] These provided the foundation for cheaper operations and for the growth of Network Banking. No one appears to have considered the operational experience for the SPM.[272] By 2006, POCA was looking attractive for recoveries against SPMs. In 2010, acceptance of Horizon Online was squarely in issue. Throughout, there were financial

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266 **WITN11240100**

267 **EXPG0000010_R**, at [205].

268 **POL00179491** Email thread beginning with exchange between John Scott and Mike Young, 6 March 2012.

269 **POL00021420** (22 March 2006, RCC Minutes): *""IMPACT and the POLFS accounting system have moved on significantly since the last report ..."The system is not yet processing all transactions correctly and so the end state of POLFS ledgers which automatically interface to the main business account has not yet achieved.*

270 While Mr Ismay appeared to deny any connection between IMPACT and the pursuit of SPMs for recoveries. This position is simply incredible. See **INQ00001063**, Transcript, 11 May 2023, 49:9 – 50:23.

271 **RMG00000033**. In this context, at RMG level, a concern was raised by Richard Handover, a NED, and CEO of WH Smith, that cost reductions being offered by Fujitsu could be accompanied by service degradation.

272 **POL00329630** (6 February 2006). **INQ00001128**, Transcript, 11 April 2024, 163: 18 – 166:10.

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challenges with risk of insolvency, personal risks for Directors and threats to the survival of the business.[273] We return to this below.

5.16 The time before 2013 and Second Sight remains fundamentally important. Prosecutions continued apace after the failures at Cleveleys. The name Noel Thomas bears repeating. Noel was of course convicted in 2006 but he is only one of many. Between 2005 and 2010, those convicted included Jo Hamilton, David Blakey, Carl Page, Alan McLaughlin, Tahir Mahmood, Harjinder Butoy, Durandra Clarke, Pauline Stonehouse, Abiodun Omotoso, Julian Wilson, Sami Sabet and Susan Rudkin.

5.17 Even in the three years between the Ismay report in 2010 and 2013, many more people had their lives ruined. They included – again, to name only a few - Wendy Buffrey, Timothy Brentnall, Allison Henderson, Jackie McDonald, Jerry Hosi, David Hedges, Gurdeep Singh Dhale, Lynette Hutchings and Della Robinson.

5.18 None of this might have happened had those at the top done their job and exercised even the minimum of professional curiosity. These were no small failures. Every missed opportunity to act; every time the problem was studiously avoided and every time someone refused to act on the repeated challenges to integrity were to be devastating for someone else who was prosecuted after that opportunity was missed.

b) Post-2013

5.19 There are serious failures of governance illustrated in the two Case Studies in 2013: (Case Study Two) the Second Sight Interim Report and (Case Study Three) the handling of the Simon Clarke advice of July 2013. We do not add significantly to what we say on these matters above. Briefly:

(a) The failures identified must be viewed in context of a history of years of defensive retrenchment on the part of the leadership at POL;

(b) A toxic culture of anti-SPM feeling, disbelief and retrenchment saw staff, leadership and the Board unmovable from the mantra that Horizon was robust;

(c) That stock line had become an unassailable orthodoxy: an unquestioned belief of which no challenge could be countenanced or tolerated;

(d) That carried into every aspect of POL's engagement with the issue of Horizon integrity: in relationships with the individual sub-postmasters, the press, parliament and the courts;

(e) The evidence, including as analysed in both Case Studies, supports the conclusion that precisely those who had the opportunity to halt this scandal – the CEO, the Chair and the Shareholder – singularly failed.

5.20 We note that the Experts do not set out to reach any conclusion on the facts. They express their views on the facts as they see them. Conclusions on individual actions and who knew what when will remain for the Inquiry. We highlight concerns throughout these submissions as to opportunities missed, at Executive and Board level.

(a) As to the response to the Second Sight Report, for example, the D & O assurance sought illustrates that, from the outset, someone on the Board did appreciate the seriousness of

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273 See, for example, Sir Michael Hodgkinson **INQ00001128**, Transcript, 11 April 2024, 113: 8-11: *"It was a constant theme throughout the whole period, where Directors had to be constantly looking at this for fear of becoming vulnerable themselves for overtrading and being liable for creditors."*

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the advice given on wrongful prosecutions but the first thought was to protect themselves and the business.

(b) As to the Clarke advice, for example, there were many occasions beyond 2013 where opportunities to brief the Board and opportunities for the Board to ask questions were missed. But equally, there were actions taken by some to positively remove reference to the toxic witness issue from draft documents. This may suggest something more than a failure to appreciate the problem or an unwillingness to face the truth. Instead, it may suggest an appreciation within the business that information exposing POL to a terrible truth should be hidden. From where did that message come? The evidence may support that those from the top were deliberately asking only to be told what was convenient. At best, the culture within the business was so degraded that the seeming protection of the Post Office position was seen to be valued over truth and personal integrity.

(c) On the latter, it will be for the Inquiry to determine the extent to which the Chair and the CEO, Ms Vennells and Ms Perkins had knowledge of the "tainted witness" and either did not act on it; or positively averted their attentions to avoid such knowledge.

(d) Ms Perkins described the Board on her arrival as embryonic.[274] Both she and Ms Vennells knew that the governance arrangements in place post-Separation were in their infancy. This ought to have been a reason for greater care and transparency, not less.

(e) The Inquiry heard repeatedly about concerns individuals had about Ms Vennells and her performance in her role. Most significantly, the Inquiry has seen that there was discussion of her position by UKGI (seemingly without reference to the Chair if Ms Perkins evidence is accepted). The Inquiry heard from witnesses in this scandal, that they had been promoted into jobs for which they perhaps had little or no appropriate prior experience.

(f) The Inquiry might conclude that there were people within POL who were overpromoted and perhaps rewarded for their loyalty to the business.

(g) It might conclude that Ms Vennells and Ms Perkins sat at the top of a precarious tower of individuals who were the wrong people, in the wrong jobs at the wrong time.

(h) However, the buck stopped somewhere. If there were issues of competence within the Post Office, those responsible – in the Board and at the shareholder – failed to act and must be held accountable.

5.21 By their actions, the Inquiry may conclude that individuals within the business took steps patently designed to shield Horizon, the Post Office and themselves rather than to discover the truth. The Inquiry may conclude that collectively the Chair and Directors failed to challenge and interrogate obvious risks so that, structurally, the governance arrangements in place became pointless.

5.22 We anticipate the Inquiry will consider the totality of missed opportunities for the Executive and the Board to have acted on this scandal as it continued to unfold. In the interests of proportionality, we consider a few further examples of failed governance.

(a) The work of Deloitte on Project Zebra in 2014 had been commissioned following advice to the Board from Linklaters. The Inquiry might conclude there was a complete failure on the part of Chris Aujard and Lesley Sewell to escalate this information to the POL Board in a manner which was appropriate. The email cover letter circulating the information was incomplete and misleading. The seriousness of the information

274 **INQ00001156**, 5 June, 23:6-10.

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disclosed by Deloitte was plainly understood within the business as reflected in the Zebra Action Summary discussed with Chris Aujard, Lesley Sewell and Rod Ismay. In short, they knew that remote access by Fujitsu was possible. There was a corresponding failure on the part of the CEO, the Chair and the NEDs (including the Shareholder NED, Richard Callard), to respond appropriately to the information that was conveyed to them.[275] This work ought to have entirely altered the attitude of the business to the issue of remote access. Not least, this information ought to have been disclosed to Second Sight and to Sir Anthony Hooper in the course of the mediation scheme. It ought to have been disclosed to those who had been prosecuted on the basis of Horizon data and it ought to have been disclosed to the CCRC. This might have led sooner to the further substantive interrogation of Fujitsu by Deloitte (Bramble limped on until 2018). It may have turned up what was known inside POL about remote access (the Lynne Hobbs email; the Lusher/Wynn email exchange; the exchanges on the options to respond to the receipts and payments bug in March 2011) and it may have revisited some of the history within Fujitsu.[276] Instead, the business continued to insist – in press, in parliament and in its own rhetoric – that interference with Post Office accounts was not possible. Whether singularly, or in the context, it was plainly a failure of governance that this material was not considered at Board level and acted upon.

(b) The subsequent handling of the Swift Review and its recommendations illustrates that Board weakness in the management of risk continued under the fresh Chairmanship of Tim Parker. The decisions taken on that Review and next steps and the decision to close down further work in the light of the GLO are perhaps illustrative of the entrenchment of the toxic culture within POL: a culture which refused to countenance the possibility of miscarriage of justice even in the face of Ministerial challenge and expert review. If properly understood in the context of the Post Office's role as a prosecutor (as outlined above), then that this work might be disclosable (not only in the GLO but to the CCRC) was reason that it ought to have been conducted rather than shut down. That the actions for which Tim Parker was eventually, and wholly inadequately, censured by the Department were permitted by those around him are testament to the continuing failings in the culture of the business. That this work was permitted to continue as it did without contemporary follow-up by the Shareholder in 2016 – whether by Ministers or officials - suggests a corresponding failure of governance on the part of the Department.

5.23 For reasons of proportionality, we only briefly address governance in the period post Common Issues judgment. In short, Phase 7 exposed the Post Office in the post-Vennells era as a broken, dysfunctional organisation from the top down. The Chair, the CEO and the Shareholder (Ministers and Officials) together failed utterly to grasp the scale and constitutional significance of the judgments in the GLO, while continuing to issue public sympathetic messages of intent to do the right thing.

5.24 We take just one issue briefly: strategy. The Inquiry has heard evidence that the Chair, Tim Parker, was asked to focus on vision and mission in 2020. Nigel Railton, upon taking up the

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275 As addressed, above, in Section 3.

276 **FUJ00088036 - "Secure Support System Outline Design", version 1.0 dated 2 August 2002.** Page 15: paragraph 4.3.2: "All support access to the Horizon systems is from physically secure areas. Individuals involved in the support process undergo more frequent security vetting checks. Other than the above controls are vested in manual procedures, requiring managerial sign-off controlling access to post office counters where update of data is required. Otherwise third line support has: "Unrestricted and unaudited privileged access (system admin) to all systems including post office counter PCs ..."

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position of interim Chair, observed the problem of a prolonged lack of strategy within the business.[277] This business in crisis was allowed to continue on without strategy. A business stands and falls on strategy. Here, there was none. It seems that the CEO, the Chair, the Board and the Shareholder were all operating in crisis without a roadmap over the course of a number of years. Worse still, the Inquiry may conclude that where there was call for strategy (NBIT), the leadership utterly dropped the (very expensive) ball. It took a minimum of two external consultant reports (Grant Thornton and Teneo) before the Post Office was able to construct and agree a strategy for the future. Even then, it was not complete in time for witnesses from the Board to be questioned on it at this Inquiry. Nor, it appears, can the strategy be treated as truly final. The Inquiry heard strategy of the business is intrinsically linked to the vision of Government for the Post Office and the network.[278] Governance at the Post Office remains broken. While the commitments of Mr Railton, Mr Brocklehurst and their new team, both at the Inquiry and in subsequent press, may have been encouraging, considerable effort, engagement and resource will be required to effect any positive change. Those requirements remain – at least in part – in the gift of His Majesty's Government.

5.25 Regrettably, we and the Inquiry are inhibited in any observation as to the future governance of the business. In the absence of a clear picture from central Government as to Post Office policy for the future, any recommendation for change may be an exercise in sculpting wet sand.

5.26 We return to compensation in Section 6 and NBIT and the future of the business in Section 7.

b) Themes

5.27 Below, we identify four themes permeating the Governance failures at Post Office.

i) Wrongdoing, wilful blindness, incompetence or inertia

5.28 Individual failures, incompetence or wrongdoing cannot excuse the collective and obvious failures of governance. We urge the Inquiry to recognise that there were failures which were individual, collective and structural. An inability of those in charge at the Post Office to do the right thing infected every aspect of governance at the business. We anticipate fingers will point – it wasn't my fault, it was theirs. There is blame enough to be shared.

5.29 Catastrophic failures (or even wrongdoing if that were the case) by a General Counsel or a Company Secretary cannot excuse a CEO, a Chair, a Board or a Shareholder from accountability if they fail entirely in their duties to ask the obvious questions, take the obvious actions and utterly fail to meet their own duties. So, consistent with the view of the Experts (and our submission above) – the mishandling of the Clarke advice on Mr Jenkins was not solely the responsibility of successive General Counsel. Similarly, that the Deloitte Zebra report and all that followed.

5.30 In the Executive and the Board bearing responsibility for an organisation which acted as victim, policeman and judge in the prosecution and conviction of its own people, it is astonishing that each stage of this scandal was, at best, allowed to unfold without intervention from the Board of Royal Mail Group or Post Office Limited. At worst, it appears there were very serious failings

277 **WITN11390100** (Nigel Railton), [40].
278 **INQ00001192**, 8 October 2024, 122, 141

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which were actively facilitated by those at the top and action then taken to prevent those failings coming to light. Where key players were involved for many years in the management of Post Office and issues of Horizon integrity, it becomes more difficult to accept that any oversight or failure results from simple error. Those we represent anticipate that the conclusions of this Inquiry may help them understand why there were failures. To repeat: they understand that it may not be the last step in the process of accountability. Necessary conclusions as to the responsibility of individual Directors for the failures identified by the Experts are likely to have significant reputational impacts for all of those involved in successive iterations of the Board. Other consequences for Directorial failure have not been directly considered by the Inquiry.

ii) Culture and the role and value of SPMs in POL Governance

5.31 The evidence on the challenging experiences of the first shareholder NEDs was some of the most shocking of Phase 7. Witness upon witness gave testimony as to how important it was that shareholder NEDs sat on the Board. Yet, suspicion and concern that a lack of independence or "trade union rep" tendencies might undermine the interests of the business, permeated evidence of any interaction with other Directors, including ShEx. SPM NEDs are obviously, patently not independent. They bring with them the experience and expertise of the SPMs on the network precisely because they are not so. It is difficult to understand how a non-independent Shareholder NED might pass muster where a non-independent SPM NED might be labelled "not to be trusted". Yet, this is what the evidence suggests may have occurred in the engagement of Saf Ismail and Eliot Jacobs. The changes proposed by Grant Thornton must be implemented without exception to ensure parity of experience across Directors. With both SPM NEDs due to stand down, contemplation ought to be given to ensuring staggered replacement to preserve institutional memory. Given evidence as to the limited training and support offered, a dedicated programme of training and induction ought to be offered to new SPM NEDS. In addition, they ought to be reimbursed (including for their time away from their business). NFSP designs on a Oversight Committee may be duplicative and easy to exclude from real decision making (should the culture of the business remain unmoved). Those we represent recommend that in order for true culture change to be effected, the interests of the network and SPMs must be embedded in the organisation from the top and understood (not tolerated) by the Chair, the CEO, the Executive and NEDs, including the Shareholder NEDs). This ought not to mean just time spent in a rural branch close to home (although that may not hurt). It will require a wholesale shift in attitude which sees SPMs as partners in a network which serves a social purpose, and which holds both financial and wider community value. A concrete commitment to honesty in conversations with SPMs about the viability of the network and sustainable remuneration for the future. If change needs to come to the Post Office, SPMs ought to be treated with the respect due (on an equal footing to the corporate partners and clients the Inquiry saw treated with kid gloves in some correspondence).

5.32 The Inquiry is invited by POL to place faith in the promises of Mr Railton that the future will be different. It is a source of real concern that only days after his appearance at the Inquiry, Post Office strategy was announced with fanfare in the press.[279] Closures – but so we can pay SPMs more!

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279 **RLIT0000557** The Guardian, *Post Office to announce branch closures and job cuts in cost-cutting drive*, 12 November 2024.

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5.33 For many of our clients, they want nothing more to do with the Post Office. They would struggle to pass the branch next door to this Inquiry. For others, that this scandal appears to have destroyed their lives and may yet see the end of a national institution is a source of real sadness. For all, regrettably, press before substance feels only so much like business as usual.

iii) Board Effectiveness

5.34 There were governance failures at POL at every stage of this saga. POL was not an insubstantial business. In all of its iterations it was a high-profile organisation. It was, for the most part, a public corporation with an active Government shareholder (albeit one actively engaged in both seeking to preserve a socially important and politically sensitive network of commercially challenged outlets while seemingly cutting reliance on public funding). The Chairs and Directors at POL who were appointed to safeguard the interests of the business were heavyweight individuals with impressive CVs. They were credible business professionals with a history and a "name", operating or building portfolio careers towards retirement. Dame Sandra confirmed that this was not an unusual practice.[280] If a business of this calibre can fail over and over again to meet good practice, it begs the question whether failings are happening behind many, many Boardroom doors which will go undetected until crisis hits. We invite the Inquiry to ask what safeguards there are to ensure that Directors are not simply left to check their own homework or to reinforce collective incompetence or inertia. We raise three issues:

(a) **Overboarding:** Thinking on the practice of overboarding has evolved over the period of this scandal. When asked, every witness, perhaps unsurprisingly denied being overcommitted. While Dame Sandra appeared reluctant to accept that change may be necessary, overcommitment breeds risk and self-policing requires an awareness which may falter in the face of opportunity. **The Inquiry may wish to consider whether there is a case for the FRC to revisit more concrete guidance and rules on overcommitment amongst Directors and Chairs. In any event, the Inquiry may consider UKGI ought to introduce more concrete rules for appointment to roles in public asset governance.**

(b) **Directors: guidance and training:** Dame Sandra was asked if there was any training or continuing professional development for Directors.[281] **The Inquiry may wish to invite FRC to revisit guidance for Directors and Boards on continuing development and training for both Chairs and Directors through the life of an appointment. UKGI ought to consider the training requirements and guidance currently offered for Directors in publicly owned companies, in order both to consider gaps, and to consider any learning that might be drawn from the conclusions of this inquiry.**

(a) **Board Effectiveness Reviews:** The Experts were asked what measures were in place to act as a check on Directors' competence, commitment and honesty – beyond crisis. Were these closed Boardrooms filled with very experienced people expected to get on with it, self-regulate, or be relied upon to call each other out before anything went horribly wrong? We asked about training and other measures. The Experts pointed to regular Board Effectiveness Reviews, governed by the Code and associated guidance. Dame Snadra referred to reviews every two to three years sometime involving external facilitation. The Inquiry has copies of the Board Effectiveness Reviews completed by

280 **INQ00001207**, 13 November 2024, 59 on. (Questioned by Mr Moloney).
281 **INQ00001207**, 13 November 2024, 61 on. (Questioned by Mr Moloney).

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POL. However, that these were simply ineffective to prevent the wholesale failure identified by the Experts and in the evidence before this Inquiry is clear. Ironically, at the disastrous 16 July 2013 meeting dealing with the Second Sight Interim Report, the Board discussed its last Board Effectiveness Review. As minuted, the Board wanted fewer presentations from the Executive Committee (perhaps apt with Susan Crichton waiting outside) and more time for discussion where NEDs shared their "*own thinking*". Papers were to be clear and not overly optimistic. Questions of fact ought not to be necessary. This suggests that – at that time – the Board were aware that the papers being provided were inadequate – and required probing with the authors – again, why was Susan Crichton left outside? Finally, and perhaps with tragic prescience, the Board discussed the use of advisors, and the CFO was asked to provide a paper highlighting the processes in place for monitoring the use of advisors, procuring advisors and negotiating their terms (we note the focus on cost, not ensuring that the Board is well briefed on the advice it had paid for).[282] **The Inquiry may wish to invite the FRC to revisit its provision for Board Effectiveness Reviews, in order to consider whether steps might be taken to increase their effectiveness. UKGI guidance ought to be revisited in the light of this inquiry to consider whether specific provision for reflection within publicly owned companies ought to be improved to increase opportunities for regular learning and reflection in the interests of transparency and accountability.**

5.35 We note that in October 2024, the IOD published its first voluntary Code of Conduct for Directors (**RLIT0000571**) . There are echoes of the Post Office scandal in its foreword:
"We can be rightly proud of UK business organisations much of the time. However, on occasion, business decision makers fall short of what society expects. Those at the top may lose touch with what really matters – namely the need to demonstrate exemplary values and integrity in both their business decisions and their personal behaviours. As a result, we have in recent years observed scandals and controversies which have exerted a negative effect on the esteem in which business is held. In the absence of public trust, businesses may find that their freedom to forge their own destiny is increasingly called into question".

5.36 The publicity surrounding the launch highlighted first and foremost that its principles were voluntary. They are not backed by regulation, nor are they compulsory. They are simple principles, and some echo Nolan:

- Leading by example: Demonstrating exemplary standards of behaviour in personal conduct and decision-making.
- Integrity: Acting with honesty, adhering to strong ethical values, and doing the right thing.
- Transparency: Communicating, acting and making decisions openly, honestly and clearly.
- Accountability: Taking personal responsibility for actions and their consequences. Fairness:
- Treating people equitably, without discrimination or bias.
- Responsible business: Integrating ethical and sustainable practices into business decisions, taking into account societal and environmental impacts

5.37 When asked by the Chair whether the Nolan principles ought to be familiar in good corporate practice in any event, the Experts replied positively. During the public consultation exercise on the Code, most respondents thought the principles were "*common sense*". If true, the Inquiry

282 **POL00021516**

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might ask why these principles highlighted by the IOD might not be compulsory (and regulated) for all assuming responsibility for Director roles. If not all, certainly those Directors in public bodies or companies in public ownership, ought to be bound both by the Code and by Nolan (and conduct tested to that standard in any review of Board Effectiveness). **The Inquiry may wish to invite the FRC to consider revisiting its guidance on conduct, oversight and professional development for Directors and Boards. The Board Effectiveness process might be reviewed and revisited to ensure that it is taken seriously; and more regularly involves independent oversight. Again, UKGI is invited to consider specific guidance for its portfolio in any event.**

(iv) The Role of the Shareholder

5.38 This was a public corporation where civil service oversight of risk through ShEx and then UKGI saw the public nature of the POL business lost, as successive Shareholder NEDs became co-opted in the unsustainable, unquestioned POL narrative that Horizon was robust and that no miscarriage of justice could ever have occurred. The Nolan principles and any concept of good governance seemingly forgotten. We do not rehearse the evidence of Richard Callard and Tom Cooper, with which the Inquiry will be familiar, including the detailed consideration of their participation in Board discussions and activities and the consideration of risk.

5.39 **The Inquiry may recommend that UKGI take ownership of the failings of the successive NEDs in this process and accountability for the failures of oversight afforded by Government generally. There ought to be a serious process of reflection within UKGI and Government more generally as to the effectiveness of the safeguards in place for the management of risk in government assets, taking on board all of the learning in this Inquiry and its conclusions.**

5.40 We deal with the issue of compensation in Section 6.

d) Further issues for the Inquiry to consider

5.41 We invite the Inquiry to consider recommendations on the following further issues.

i) Specialist Board Members

5.42 The Experts are dismissive in their view of the role of Specialist Board Members, whereas witnesses who played a role in decision making were asked specifically about the value of both legally skilled Directors and those with IT experience and responded positively. Witnesses, particularly in Phase 2, thought greater expertise at the top (particularly in IT) may have helped scrutiny of the Horizon project. The Inquiry may wish to indicate that Specialist Board Members on a business of the scale of Post Office (or any other which sits on critical IT or which regularly takes legal action) may benefit from a Board with specialist expertise. The Experts indicate best practice may prefer external advice to be brought in to advise on issues requiring expertise.[283] The current 2018 FRC Guidance on Board Effectiveness does not address specialism, for example.[284] This view appears to neglect that it may take a specialist view to appreciate when such external advice is essential or to understand precisely the questions that must be asked of the expert to protect the interests of the business. The Inquiry may wish to prefer the view

283 **EXPG0000010_R**, [85] for example.
284 **RLIT0000528** FRC Guidance on Board Effectiveness (2018)

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garnered from the experience of the witnesses embroiled in this scandal, who thought greater expertise at Board level may have provided greater insight.

ii) The Role of General Counsel

5.43 The absence of GC in the 16 July 2016 discussion of the Second Sight Interim Report had, in the view of the Experts, a damaging and iterative effect. The current GC, Ben Foat, has described what he believes are behaviours which exclude him from meetings and which limit his capacity to advise the Board effectively. While very serious criticism must be laid at the door of many of the lawyers who lost sight of their professional duties in this scandal, structurally, the availability of GC to the Board of any business – whether as a Board member or as a required attendee at Board meetings – appears an invaluable resource. Clearer guidance on how Boards access and understand legal advice must be a lesson drawn from the experience of this Inquiry. There is no formal provision for the role of General Counsel in the Code (it is perhaps telling that Part 1 of the Inquiry Expert Governance Report includes no reference to "General Counsel"). "*I'm not legal*", "*I'm not a lawyer*" and similar siloed approaches to legal guidance within any Executive ought not to operate as a barrier to clear communication by a Board on matters of legal risk. Clearer guidance on the most visible legal resource available in a corporate setting appears apt and timely.

5.44 The first consideration may be formal attendance on the Board where a company has General Counsel appointed to protect its interests/play a role. While it might be said that specific GC attendance could be required for items of specific legal interest, there are specific benefits of regular attendance which might be missed. First, lay Board members might miss when legal advice would be essential or helpful to a Board. While a topic may not be within the expertise of counsel, they may be more alert to situations where a Board ought to take legal advice of a specialist nature. Secondly, where a GC might be required to advise on a range of issues across a business, regular attendance at Board will allow for the development of a holistic picture of the Board's priorities, concerns and risks which might not otherwise be garnered from a paper reading of minutes which may not paint a full and nuanced picture of any discussion.

5.45 In a consultation response by around 70 GC and academics on the last FRC amendment of the Code, it was observed that it was "*extraordinary*" for there to be no specific reference within the Code or its supporting Guidance to the role of GC. They note that GC "*has a particularly broad influence across the full range of topics that the Code seeks to support, whether pure governance, ethical and cultural standards, or enterprise risk management.*" They unsuccessfully called for the role to be formalised in the Code.[285] Drawing on the comparative US experience reflected in Sarbanes Oxley and in the Dodd-Frank Act, they wrote: *"the General Counsel intervenes on risk issues without the hindrance of internal business conflicts that other executives may suffer. They are also strengthened by the professional duties of legal services regulation that require and enable them as an 'authorised person' to hold the business accountable to its responsibilities, while maintaining professional independence from the organisation as its legal advisor. In this they hold a primary duty to protect the rule of law and, in situations of doubt, to do so in ways that protect the public interest, particularly the public interest in the administration of justice."*

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285 **RLIT0000527** GC Response to FRC Corporate Code Consultation, 30 August 2023 (One of the signatories is Richard Moorhead (member of the HCAB).

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5.46 The Inquiry is invited to recommend that the Government invite the Financial Reporting Council to revisit the omission of any clear role for GC from the latest iteration of the Corporate Code (2024). Where a company is required to have a Company Secretary, clear guidance should be available on the relationship between the two roles. UKGI is free to set parameters and guidance independently of the Code for companies within public ownership. UKGI should revisit its own directions and guidance for its portfolio to direct that its companies must demonstrate how they are operationally managing legal and associated risks. Consideration should be given to a direction that any General Counsel should be either a member of the Board or a required attendee at Board Meetings (with alternative attendance permitted by a legally qualified, regulated Deputy).

iii) Guidance: Legal advice, Litigation and LPP

5.47 Other issues arising in evidence included (i) the ineffective communication of legal advice to the Executive and the Board; (ii) access to and instruction of specialist external legal expertise; and, (iii) specific advice on legal risks in litigation. We consider some but not all the examples from the evidence above in the context of the actions taken by the POL in defence of its position and in addressing the role of lawyers in this scandal.

5.48 **However, in revisiting the position of GC and identifying guiding principles which ought to govern work in such roles, it might be recommended that the FRC consider principles in the Code (in the context of risk) which cover access to clear, appropriate and accessible legal advice for Boards and the appropriate management of legal professional privilege (including in the context of litigation). Again, independently, UKGI might be recommended to revisit its own directions and guidance for its portfolio and to direct that its companies have access to clear guidance on the management of internal and external legal advice, including as to the appropriate management of legal professional privilege (especially in the context of litigation).**

iv) Whistleblowing

5.49 We repeat what we say in Section 2. While the renewed commitment to whistleblowing in the business is positive and perhaps to be expected, it is in the practice that the policy will be tested. On the evidence heard by the Inquiry, as to the state of the ongoing inquiries, including those arising from NBIT, and the evidence of the mishandling of the "Pineapple" concerns raised by the SPM NEDs, there is considerable cause for caution.

v***) A Duty of Candour***

5.50 This is at its heart, an inquiry about what happens when an organisation and the individuals within it are disrespectful of the extent of their legal obligations to others and to the public interest. It is also an inquiry about what happens when an organisation – owned by the public – fails to come clean when things are going wrong. A failure to reflect honestly on mistakes as they are happening and a closing of eyes to the truth compounded the pain and trauma of many, many SPMs convicted wrongfully for years. The Government intends to bring into law a duty of candour for public servants and those acting with public functions, referred to colloquially as the "Hillsborough Law" following recommendations made by Bishop Jones after his consideration of the disaster and following a Bill produced under the banner "Hillsborough Law Now" (and previously pursued as a private members bill). The Kings Speech promises: *"My Government will take steps to help rebuild trust and foster respect. Legislation will be brought forward to introduce a duty of candour for public servants [Hillsborough Law]."*

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5.51 In his speech to his Party conference, the Prime Minister said:

"But Conference, for many people in this city the speech they may remember was the one here two years ago. Because that's when I promised, on this stage, that if I ever had the privilege to serve our country as Prime Minister one of my first acts would be to bring in a Hillsborough law – a duty of candour.

A law for Liverpool.
A law for the 97.
A law that people should never have needed to fight so hard to get, but that will be delivered by this […] Government.
It's also a law for the sub-postmasters in the Horizon scandal.
The victims of infected blood. Windrush. Grenfell Tower.

And all the countless injustices over the years, suffered by working people at the hands of those who were supposed to serve them.

Truth and justice concealed behind the closed ranks of the state.
And Conference, this is the meaning of Clause One. Because today I can confirm that the duty of candour will apply to public authorities and public servants, the Bill will include criminal sanctions, and that the Hillsborough law will be introduced to Parliament before the next anniversary in April.

It's work that shows how a government of service must act in everything it does.

Our driving purpose. To show to the working people of this country that politics can be a force for good. Politics can be on the side of truth and justice. Politics can secure a better life for your family through the steady but uncompromising work of service.

Because service is the responsibility and opportunity of power.
The pre-condition for hope. The bond of respect that can unite a country, bind us to the politics of national renewal. Service doesn't mean we'll get everything right.

It doesn't mean everyone will agree. But it does mean we understand that every decision we take, we take together."[286]

5.52 The cost of a lack of candour in this scandal has been devastating. We can do no more than repeat our Phase 4 Closing. The harm to both SPMs and the public institution of the Post Office has been deeply damaging to the public consciousness.

5.53 **The Inquiry may wish to invite CPs to comment should the Bill be published prior to the completion of its report. The proposed statutory duty of candour promised by the Prime Minister must extend to the Post Office. Its scope must not exclude application to other publicly owned assets. The legacy of scandal must be a commitment to truth.**

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286 **RLIT0000429**

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e) Conclusions

5.54 Dame Sandra and Dr Steward conclude that, after 2013, successive Boards did not see the problems in prosecutions, investigations and culture that had been included in the Second Sight Interim Report and graphically described by SPMs, as well as in the media and at Westminster. They term this a governance failure. It sits alongside the other detailed failures they identify. Sitting atop years of seeming failure to grapple with the function of the Post Office as prosecutor and the relevance of Horizon integrity issues, stretching from the development of Horizon, through Cleveleys and beyond: the Inquiry might conclude it was a catastrophic failure of individual and collective accountability.

5.55 By 2013, if not by 2010, a toxic group think culture infected each level of governance at the Post Office (including the Shareholder):

"So deep were the assumptions embedded in the culture of the organisation, so corrosive was the company's ethos that the Board did not call the Executive to account to face up to POL's role in perpetuating the miscarriages of justice which were increasingly evident to others. Failure to uncover and correct the dark spots in the culture is a failure of management and governance."[287]

5.56 This continued well beyond 2013. Each and every opportunity to do the right thing was overlooked; often in favour of a commercially motivated, brand-saving spin which was ill-grounded in consideration of the facts; and later driven by a committed communications Director who appears to have led rather than advised the Executive, CEO and Chair. Where facts were inconvenient or called for further examination, they were seemingly confined to an inner circle and/or the Inquiry is asked to believe they were missed, overlooked, or underappreciated (from Cleveleys to the handling of the Swift advice). Corporate accountability at every level can never, and must never, be suborned to the interests of the "*message*" or the "*stock line*".

5.57 But this toxic culture did not manifest by itself. From the outset, the attentiveness of all the players in this scandal to the commercial interests of both POL and Fujitsu, operated to the detriment of the legal obligations on the Post Office as a prosecutor and their responsibilities to individual SPMs. It operated against the public interest.

5.58 This scandal always had at its heart, leaders who were acutely aware of the existential challenges to the Post Office and the critical role that Horizon played in the business' commercial prospects for survival. There was an acute focus on profitability and reduction of the public subsidy; ever striving recovery of seemingly "*lost*" profits and on increasing the efficiency and profitability of the network. This never changed. The observations of the Experts appear to concur:

"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

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287 **EXPG0000010_R** p18, [145].

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room for other things, especially if, like Horizon and prosecutions, they were seen to be 'operational" [288]

5.59 We echo our Phase 4 closing. They could not or would not listen, because their ears were stuffed with cash.

6 REDRESS, RESTORATIVE JUSTICE AND REBUILDING TRUST

6.2 In this section, we focus on redress.[289] As observed in Section 1 (Introduction), above, the impact on SPMs and their families affected by this scandal has been life-altering. For many, including those who were wrongfully convicted, and those who were bankrupted by the Post Office, the Horizon scandal has been truly devastating. This Inquiry – and the wider public – has seen only a glimpse of the harm which our clients and their families have lived for years. For them all, engaging with the process of making their case for compensation has been personal, painful and for many, re-traumatising.

6.3 Those we represent are entitled to redress for the harm done to them. The schemes considered by the Inquiry are intended to put them, as far as possible, in the position they would have been had their lives not been ruined by their experiences in the Post Office. Consequential loss, trauma, distress and personal injury aside; shortfalls made good time and again represent sums paid to Post Office that must be repaid. SPMs were required to "*make good*" shortfalls without delay; yet delay has been an enduring feature in securing compensation for the SPMs we represent. Given the commitment to compensation being full, fair and prompt, it is shocking that almost 5 years on from the first judgment in the GLO, wrongly convicted SPMs continue to die without redress.

6.4 We adopt below the following acronyms for each of the schemes now operating: Horizon Shortfall Scheme (HSS), Overturned Convictions Scheme ("OCS"), Suspension Remuneration Review ("SRR") and POL Process Review (POL Process Review) (all of which processes are run by the Post Office through its Remediation Unit) and the Group Litigation Scheme ("GLO") and Horizon Compensation Redress Scheme ("HCRS") (which are run by the Department). We do not repeat the history of each scheme or its evolution, or their purpose and parameters, with which the Inquiry is now familiar. We consider:

(a) First, conclusions that the Inquiry may draw from the general approach to compensation for SPMs and recommendations to improve delivery of compensation to those harmed by the wrongful actions of the State (or State-owned bodies) in the future.

(b) Second, specific conclusions and recommendations which the Inquiry is invited to make in order to ensure that those schemes might operate now to better help secure redress which truly is full and fair.

(c) Third, the position of Fujitsu and its contribution to redress.

a) Compensation: Full, fair and prompt

6.5 Full, fair and prompt compensation has been the touchstone commitment repeatedly given by Ministers and the Post Office since 2021. From its outset, this Inquiry has consistently asked

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288 **EXPG0000010_R** p12, [24].

289 These paragraphs should be read together with our earlier submissions on compensation (including in February 2022, April 2022, June 2022 and April 2023) which are not repeated here. See **SUBS0000004** and **SUBS0000013**.

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whether those twin goals of full and fair compensation could be delivered promptly.[290] Compensation has not been prompt. For many, it has so far been neither full nor fair.

6.6 The path to full, fair and prompt compensation has been beset with problems. For example:

(a) HSS was closed prematurely to late applications (until submissions were made to the Inquiry including from Hudgell Solicitors);

(b) The Government position on the GLO settlement and its implications remained unsettled for too long. There had been simply no route to redress for the group of GLO claimants who had not been convicted and had their convictions quashed until the GLO scheme was announced in March 2022. Yet, the scheme did not open for applications until April 2023;

(c) Interim payments were initially treated as an afterthought other than for those whose convictions had been overturned (again, submissions to this Inquiry prompted a change in approach);

(d) Entirely predictable tax and bankruptcy questions caused apparently insuperable delays until intervention by the Inquiry;

(e) Delays in disclosure from the Post Office to SPMs and their legal teams impacted significantly on progress in individual claims (the Inquiry heard evidence that Ministers and officials were well aware of the difficulty and cost associated with securing appropriate disclosure from the Post Office in these claims)[291];

(f) The complexity of each of the schemes appeared designed to deter SPMs from claiming compensation for losses they were entitled to pursue. The Inquiry heard this may have been in the contemplation of the Post Office staff and management who appear to have viewed complexity as a more palatable gatekeeping alternative to the charging of fees in the HSS;[292]

(g) For many the fairness of this process has been fundamentally undermined from the outset because part of the scheme for redress remained owned by those known to be responsible for the scandal. Revelations during the course of this Inquiry – including as to the role of HSF in the latter stages of the GLO and the continued work of staff embroiled in the scandal (including Rodric Williams, Caroline Richards and Steve Bradshaw) in the continuing work of the Post Office and its Remediation Unit – have further undermined the trust and confidence of SPMs. Confidence in the Department, as shareholder, remains little higher.

(h) We addressed these and many other issues in earlier submissions to the Inquiry and do not propose to further dissect the early failings in the design and operation of the HSS and the GLO scheme.[293] However, the spectre of huge numbers of undersettled claims in the HSS remains. We consider the Government's afterthought appeal mechanism briefly

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290 *Progress Update on Issues relating to Compensation,* August 2022. See also, **INQ00002027**, HC1749, *First Interim Report: Compensation*, 17 July 2023.

291 **BEIS0000763**. Read out of a meeting dated 30 April 2024 involving the Minister and officials discuss compensation schemes and the fixed term offer with speculation that most people will take the fixed sum "*even to a place where no disclosure at all*." It discusses teams working on disclosure switching between GLO and OC2 (which was to become the HCRS).

292 **POL00155397**. Email from Mark Underwood to Rodric Williams, Ben Foat and others on 10 January 2020. "I think you can achieve the same desired outcome though having a very tight and clearly communicated set of eligibility criteria and requirements in terms of the documentation applicants have to provide in order to be accepted into the scheme". It was Simon Recaldin's evidence that he did not recognise this; but if it had been in contemplation It would be outrageous to have deliberately designed eligibility criteria that would be restrictive: "*you just don't go there, you don't do that*". **INQ00001200,** 4 November, 20:25 – 22:19.

293 See, for example, letter from Hudgell Solicitors, 22 April 2022; Hudgell Solicitors CP Group Compensation Submissions, 10 June 2022.

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below. The proposals for appeal must be wide enough to catch those who settled without legal advice in the first dysfunctional days of that scheme.

6.7 All of these failures contributed to cause delay and to undermine the trust of SPMs in each of the schemes. The impact of delay is not insubstantial. The fatigue experienced by SPMs and others considering settlement is real. For many the re-traumatising impact is confirmed in expert evidence. Put simply, many awaiting compensation continue to live in poverty. Many are aging and desperate to move on. These vulnerabilities should not be ignored or exploited.

6.8 A large number of problems have been resolved only after questions were asked in this Inquiry.[294] Initiatives and improvements very often coincided with developments in the Inquiry's programme.[295] (This continued until very recently, with significant questions for Mr Recaldin put by counsel to the Inquiry on the basis of correspondence from Hudgell Solicitors, on the reasons for continuing delay in the HSS.)[296] This tying of progress to habitual oversight necessarily raises serious concern over the approach to redress when the Inquiry's work concludes. If work towards full and fair compensation only progressed under a watching eye, it begs the question how seriously the commitment was being taken by those responsible for each of the schemes.

6.9 **There will be a continuing role for the Horizon Compensation Advisory Board ("HCAB") and for Parliament in maintaining close oversight of the operation of each of the schemes. The Inquiry may wish to ask for an update from all CPs on compensation prior to the finalising of its report, whether in the form of written evidence from the Post Office and DBT, together with submissions from others as appropriate. We anticipate the Department continuing to publish regular updates and statistics on the operation of the scheme, to facilitate transparency and oversight. However, statistics have been shown to distort the truth. For example, the Inquiry heard that shining numbers on the numbers of offers made (and even the number of cases resolved) do not necessarily paint a true picture, as claims are delayed following derisory low first offers and undersettled by vulnerable applicants unsupported by effective advice. The Inquiry is invited to consider whether a more fundamental shift in approach by both Post Office and the Department is necessary to secure the confidence of SPMs (and the wider public) in the continuing process.**

6.10 The Secretary of State retains ultimate responsibility as to whether redress is full, fair and prompt whether in the Post Office schemes or those run by DBT.[297] He has said: "*So, whatever the level of redress is required, I can guarantee that this Government, that the British State, will be able to pay for that, and that has already been agreed with the Treasury and has appeared in the budget.*"[298] (The annual budget provides for "*around £1.8billion*" which has been "*set*

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294 **RLIT0000559** HC1749, *First Interim Report: Compensation*, 17 July 2023.

295 For example, the Interim Report notes that although the GLO scheme was announced in March 2022, in advance of oral submissions on behalf of BEIS (now DBT, who administer the scheme) a statement was made in Parliament on 7 December 2022 and a process document for the scheme published the same day) (Interim Report, at [27]).

296 **HUJ00000007**. **INQ00001200,** 4 November 2024, 161:1 This included examples of offers being substantially increased including in one case from £4,410.42 to £133, 738.86 and in another case from £363, 095.50 to £649.414.94. It illustrated that years were being taken to reach these results. This correspondence raised a number of additional issues, including the propriety of referral back to panel. Mr Recaldin's response is at **HUJ00000006.** *("I share your concerns on many of the issues you raise.")*

297 **INQ00001205**, 11 November 2024, 2:5-13.

298 **INQ00001205**, 11 November 2024, 9:25 – 10:6.

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aside for costs from 2024-25".)[299] He told the Inquiry that while the numbers able to seek compensation may yet rise, he would envisage further conversations with Treasury to meet that commitment.[300] Doing what is necessary to ensure confidence in full and fair compensation without further delay or waste is critical. The commitment to that course made by Government must be adhered to.

6.11 The Interim Report reflected on the temptation to be sceptical as to whether the commitment to full and fair compensation could be achieved (at [132]). That temptation remains, even in the wake of continued progress. Scepticism appears justified in the light of the conclusions in the Inquiry's survey of applicants for compensation which indicate that higher value claims correlate with having had legal advice and that those who failed to take legal advice on the extent of their loss were less satisfied with the approach taken and the outcome.[301] (This reflects the considerable experience of Hudgell Solicitors that unassisted individuals may not appreciate their loss/its value and the HSS Panel may fail to identify heads of loss that have not been advanced by unrepresented applicants).

6.12 The Inquiry should consider <u>why</u> the repeated commitment made by the Post Office and Ministers has proved so difficult to realise. We suggest that the following reasons have played a part.

6.13 The initial attitude of both Ministers and officials to the need for redress has failed entirely to reflect the seriousness of the egregious behaviour at the heart of this scandal and was shortsighted in failing to learn from the past.

6.14 For much too long, Ministers and officials saw this scandal as a "*business as usual*" problem and sought a "*business as usual*" solution designed to spend as little as possible (except on their own costs), and do as little as possible, to tidy away a thoroughly inconvenient past. The realisation of the radical nature of the scandal and its impact was frustratingly incremental, with Ministers and officials at the Department likened to boiling frogs, trying to meet the biggest miscarriage of justice in modern legal history, denied for decades, with a business as usual

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299 Clarifying some confusion in the evidence of his junior Minister, the Secretary of State appears to have confirmed that this sum is not £1.8m in new budgeted money; it is a £0.4m increase on the commitment of the previous government with a commitment that this money is earmarked and available. He said: "*Of course, whilst that's an increase, it's actually even more significant than that because you will know the compensation previously for this -- for the four redress schemes was accounted for in the Treasury Reserve, which was heavily overspent, so essentially not only does the budget put a greater sum towards redress, it confirms that is real money in place*" **INQ00001205**, 11 November 2024, 9:15-21.

300 **INQ00001205**, 11 November 2024, 12:4-11.

301 **EXPG0000007**. The Survey concludes that the lower the claim, the more likely it would be that POL would agree the value (there being a dramatic drop off in agreement by POL over that value) (see Figure 36). Significantly, only 11% of claims included a claim for personal injury; only 49% included any claim for distress and inconvenience; and only 37% included any claim for loss of earnings (Figure 37, Page 51). Only one in three (33%) recall having been informed of their right to obtain legal advice at any time during their application. Only 10% positively remember being provided with information on how they could contact a legal representative. Only 12% obtained legal advice during the application process (Page 52). Only 9% of those who had an application outcome had obtained legal advice on their offer (Page 55). Of the 30 respondents who entered dispute resolution, only half (15 applicants) secured legal advice (Page 56). See also **EXPG0000009**: "*Those who received legal advice at any stage of the process were more likely than those who did not to be dissatisfied with: The amount of information provided about how the outcome was determined (66% vs. 47%), The offer amount (77% vs. 56%), The time it took to reach an outcome (71 % vs. 50%)*".

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solution.[302] Sarah Munby regretted those briefing her focused on facts and had not brought home the impact on SPMs. She agreed Ministers briefings were similarly flawed. She said, people might ask "*How can you have taken so long? You should have done something completely different at the start*". Well, quite.

6.15 Even before the revelations of this Inquiry, the scale and significance of this problem was patent: as the Court of Appeal (Criminal Division) had made abundantly clear, the Post Office had wrongly prosecuted and convicted its own people. It had done so for years in some of the most unfair ways imaginable. Mr Beer KC opened this Inquiry predicting it "*may in due course*" conclude this scandal "*is the worst miscarriage of justice in recent legal history*".[303] What has since emerged serves as firm foundation for that conclusion. "*Business as usual*" was a fundamentally inapposite response.

6.16 The Inquiry heard about the frustration within the Post Office over the handling of the £600,000 fixed offer in the OCS announced with fanfare by Ministers in September 2023. It was termed political and seemingly imposed on the business and the Remediation Unit with such speed that officials continued to query how it was supposed to work in early 2024.[304] POL pushback against the exoneration Bill took on a similarly distasteful flavour.[305]

6.17 Ms Badenoch, the former Secretary of State said: "*Being seen to do the right thing, in my view, is just as important as doing the right things*". When pressed as to whether doing the right thing was more important than being seen to do so would not budge: both were important.[306] This may give some insight into the thinking of the Government on the motivation to act.

6.18 It was August 2023 before Ministers in the Department attempted to push things on for the GLO scheme. This Inquiry had heard witness upon witness over a year and a half. The Interim report had been published on 17 July. Those attempts to push things on were blocked by the Chancellor: "*in relation to the specific proposal for fixed sum awards on the GLO scheme, while successful delivery is paramount, we must also have regard to our responsibility for the public finances*", "*making fixed sum awards on the GLO would incur significant and repercussive risk and cost, including to the HSS*". They were sent back to the "*explore the full breadth of other options*".[307] Officials then proposed a higher scrutiny threshold to speed things up. They floated again the idea of an upfront payment, reduced to £75,000. The Chief Secretary to the Treasury again proved a roadblock, citing the impact on other compensation schemes and "*the strong views of the Chancellor*", then Jeremy Hunt.[308] Former Minister Hollinrake told the Inquiry that Treasury officials and the Chancellor did not differ – he recalled the requirement to protect

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302 Sarah Munby, **INQ00001201**, 5 November 2024, 161:15 – 162:9; 199:12 – 203:9. Mr Recaldin maintained that there was no consideration of value for money or the guidance in *Managing Public Money*: "*in terms of the independent panels, there is no reference to that for a consideration at all*". **INQ00001200**, 4 November 2024, 31:20 - 25. However, when pressed at to the impact of value for money considerations in releasing funds from the Department to fund the compensations schemes, this was less clear cut. He explained: "*My challenge around this has always been it's very difficult to articulate a process that nobody has ever done before. This is the biggest miscarriage of justice ever and my frustration has been around the whole process, and the Government know this, you've seen all my emails, is that we're trying to squeeze a non-BAU process in -- business as usual process into a business as usual process and this breaks the mould.*" **INQ00001200**, 4 November 2024, 32:6 - 25.

303 **INQ00001044**, 14 February 2022, 9:8-14.

304 **INQ00001200**, 4 November 2024, 176-192.

305 **INQ00001195**, 11 October 2024, 21:13 – 23:7. See also, **POL00448381 and POL00448701**.

306 **INQ00001200**, 11 November 2004, 102:22 – 104:3.

307 **BEIS0000705**.

308 **BEIS0000722**.

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public money sat alongside fairness to all SPMs.[309] He did not accept that the Treasury failed to see the scandal with priority. However, Ms Badenoch and Mr Hollinrake could not move the Treasury. Ministerial directions were seemingly impossible without the Chancellor. Ms Badenoch, as former Secretary of State, sought to blame the "*government machine*" for delay but struggled to explain what that meant beyond the "*government*" of which she was part.[310] No one seemingly sought to challenge whether the Treasury interpretation of *Managing Public Money* was right. Successive editions have confirmed that in considering compensation in the face of national scandal, value for money plays only one part. The impact of the scandal on those harmed, the effectiveness of the compensation and administration cost are also critical considerations for the public interest.[311] Had the Cabinet believed a swift, radical solution necessary, one could have been found from the start. This was more "*business as usual*".

6.19 January 2024 saw a change to all that. Politicians firmly in the sight of an imminent election cycle saw the plight of the SPMs take on a reinvigorated political impetus. Schemes little promoted now saw a peak of new applications. The exoneration bill announced on 10 January, tabled and passed swiftly. Fixed offers *for all* – identified as the new hope for swift redress – eventually rolled out to the GLO in January and to the HSS in March.

6.20 Business as usual had to go. That it did go is to be welcomed. But the necessity for a television drama watched by millions who sympathised with the plight of the SPMs to stop that business as usual is to be regretted.

6.21 **Despite public commitments on the part of the Post Office and Ministers to full, fair and prompt compensation, the Inquiry might conclude that until a change in political momentum in January 2024, behind the scenes an overly legalistic, slow and potentially obstructive attitude operated to constrain the amounts of compensation paid. Loud echoes of that obstruction continue.**

6.22 **Fair redress for harm caused by the State ought never to hinge on the glare of publicity or political expediency. Ministers ought not to be first motivated by being seen to do the right thing; but rather by the moral imperative that when the State harms its citizens it is accountable both politically and financially for putting things right and for doing so quickly.**

6.23 Many historic compensation and redress schemes have been repeatedly criticised for the kind of bureaucratic failures which the Inquiry has heard have undermined the SPMs' confidence in the veracity of Ministers' repeated public commitments to do the right thing.

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309 **INQ00001202**. 6 November 2024, 48:6 – 50:6.

310 **INQ00001205**. 11 November 2004, 165:22 – 167:25.

311 **RLIT0000540** National Audit Office, *Lessons learned: Government compensation schemes* (July 2024), Session 2024-25 HC 121, at [1.12], with reference to the 2023 edition: "*Government schemes, irrespective of how they have come into being, are within scope of HM Treasury's Managing Public Money (MPM) guidance. It sets out factors to consider when deciding whether financial compensation is appropriate, including whether the action or inaction of the public body has caused knock-on effects, hardship or additional costs. It says that the design of a compensation scheme should aim towards the same key goals as the design of any other services, including good management, efficiency, effectiveness, and value for money. MPM observes that some specific issues should be taken into consideration, including attention paid to: • scheme coverage; • scheme rules; • issues of fairness and proportionality; • testing of systems, such as piloting; • designing in sufficient flexibility; • avoidance of excessive administration costs; and • assurance that the scheme is acceptable generally if it is to set a precedent.*"

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6.24 In July 2024, the National Audit Office ("NAO") concluded that a lack of a "*central coordinated approach*" to compensation within Government resulted in a *"relatively slow, ad-hoc approach*" to these critical schemes.[312] This had led to mistakes and inefficiencies in design and delays in getting money to those who needed it. Confidence could be further undermined by a lack of independence from those who had caused the harm. It recommended that "*Redress should be swift, decisions fair, proportionate and transparent and those harmed should be at the heart of decision making*."[313]

6.25 Examining schemes from Windrush to the Infected Blood Compensation Scheme and taking evidence from officials and others on the operation of the Horizon schemes, the NAO observed repeated problems in need of a consistent solution. The work done by the NAO is not the first time that Government has had to grapple with criticism of the approach to compensation in the face of a major scandal.[314] The NAO noted that it had reported on many of these problems before.[315] Their observations are mirrored in the evidence before the Inquiry. To take only a few examples:

(a) "*Long time lags before introducing compensation can increase both the harm to those who have suffered, and the difficulties presented for those who are eventually tasked with designing and operating the schemes*" (at [1.7]) Time and again, those we represent have underlined that delay is extending their suffering. Even as the Government promises to introduce an appeal in the HSS, we have no idea of the shape of that process. Announced with fanfare in 2024, it will not be operational until an as yet unclear time in 2025.

(b) *"Involving stakeholders in the design of schemes can help to achieve buy-in and improve the quality of the scheme"* (at [2.8]). While the first of the Horizon schemes, HSS, flows from the GLO settlement; the design and operation of the scheme (and others) have changed and evolved as a result of the criticisms levelled at their performance before this Inquiry and informed by the experiences of SPMs. A more collaborative approach from the outset would have avoided delay, frustration and further trauma.

(c) *"It is important for the scheme's credibility with claimants that both its design and operation can be seen to be independent from those judged to have caused the harm"* (at [2.9]). The NAO recognises that there are different models for ensuring independence and highlights the conclusion of the Interim Report on the potential for the HCAB to play an "*extremely important safeguarding role*." The HCAB was, of course, a late addition. It plays no role in individual claims. We, of course note, the appointment of Sir Gary Hickinbottom at the OCS Panel in April 2024 and the HCRS very recently; and Sir Ross

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312 **RLIT0000540** National Audit Office, *Lessons learned: Government compensation schemes* (July 2024), Session 2024-25 HC 121

313 Ibid.

314 The Inquiry will be familiar with the work done by Sir Brian Langstaff most recently in the Infected Blood Inquiry; in his **RLIT0000537** Second Interim Report (5 April 2023) and his work in his **RLIT0000536** Compensation Framework (7 June 2022), leading to the creation of the Infected Blood Compensation Authority earlier this year.

315 See, for example, the NAO, **RLIT0000523** Briefing: Administration of time-limited compensation schemes, 2008, which reported that it in turn drew on influential work already done by the PHSO, in their Principles for Remedy. In 2008, even then the NAO sought to supplement existing learning, including as reflected in the then current edition of Managing Public Money. Other more recent, relevant work includes the report of the **RLIT0000555** APPG on *Fair Business Banking, Building a Framework for Compensation and Redress*, February 2023 (which considers learning from both private and public schemes). This in turn draws on earlier relevant research including, for example, the Cranston Review of the **RLIT0000556** Griggs Review. Recent academic writing has included, for example, from King's College London, Pal, Shaila and Nowell, Elly, **RLIT0000561** *The Windrush Compensation Scheme: A Comparative Analysis* (February 9, 2024). Further consideration of this work at a KCL Legal Clinic Roundtable led to proposed recommendations building on the work of the NAO (**RLIT0000548** King's Legal Clinic, *Reforming Redress Schemes, Roundtable Report,* October 2024).

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Cranston as the independent reviewer for the GLO Scheme in September 2023. This model stands in contrast to the recent establishment of the Infected Blood Compensation Authority as a non-departmental body in its own right, following the recommendations of Sir Brian Langstaff. Structural independence is obviously critical to credibility. Yet, Ministers and officials told the Inquiry that the initial approach – with HSS and OCS run by POL – was based on a belief the Post Office ought to take responsibility for redress in order that it might clean up its own mess.[316] This was contrary to the views expressed by Post Office senior management. This approach was patently wrongheaded from the start.

6.26 If Ministers had learned more effectively from the past in their approach to redress, the commitment to full, fair and prompt compensation may have been a more credible and achievable promise. If compensation for SPMs (and their families) destroyed by the biggest miscarriage of justice in modern legal history can falter despite political will, then something must change before the next near-inevitable national scandal.

6.27 **The recommendations of the NAO in July 2024 call for consistency of approach in future compensation schemes. We invite the Inquiry to build on their work. A centre of expertise within government ought to be established to provide guidance, expertise or a framework for public bodies seeking to set up any compensation scheme. The Cabinet Office must review arrangements to allow such schemes to begin and operate in a more timely, efficient and effective way as recommended. This must ensure effective participation by those harmed and structural independence from the outset.**

6.28 **We invite the Inquiry to include a recommendation that Government commit to the creation of a standing public body to act as a compensating authority to administer future schemes. The Inquiry might consider that the impact of its own oversight on decision making on compensation in this scandal proves the point made by the NAO.[317]**

6.29 **The establishment of such a central repository of experience within Government and an independent body with expertise and authority would provide an opportunity to create binding principles to govern the development and operation of any such scheme. Such principles must be designed in consultation and must ensure accessibility and fairness in any scheme, including through the provision of appropriate advice and advocacy for those harmed by the actions of the State. This would be a lasting legacy for all those harmed by the State, including SPMs and their families.**

b) Rebuilding trust: Work yet to be done

6.30 The Secretary of State recognised that the pace of payments had substantially increased in the four months following the general election in July 2024. He insisted that he did "*not believe*

316 See, e.g. Thomas Cooper, **WITN00200300**, 02 October 2024, p 11, par 30.

317 We note Mr Hollinrake's apparent acceptance that a standing body might help resolve issues in compensation more quickly than those in embroiled in an issue: *"And I think this is what the National Audit Office have said. I don't think a select committee can ever play that role. It might do some oversight or an advisory board can do some oversight but it needs somebody right in the middle who is not incentivised for this process to take longer… So if somebody in the middle can say, "No I'm not worried about this small element of this claim or that particular legal point you're raising, I'm taking a view on this."… so that it is generous and seen to be generous to the claimants who are involved in the scheme; I don't think you can do this just by lawyers arguing on either side."* **INQ00001202**, 6 November 2024, 102:19 – 103:14.

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that increase in pace has been at the cost of fair or accurate compensation being made".[318] The Inquiry heard evidence on continuing problems in each of the schemes and gaps in the Government's approach to compensation, not least in the operation of fixed sum offers (which appear to be the primary reason for the apparent increase in pace). There are a number of issues of principle which arise in the evidence before the Inquiry (and in the wider experience of Hudgell Solicitors' clients) which require resolution to ensure fairness.

Fixed offers and access to legal advice

6.31 The primary reason for an increased speed in the processing of claims is the proportion of applicants recently now accepting a fixed offer in settlement. In response to questions from the Chair, it was accepted that progress now hinges on the numbers taking the up-front offer.[319] The Inquiry heard of an intent to ensure that such offers incorporate an element of jeopardy. So, in the HSS and GLO, a £75,000 fixed offer is available; but if refused in favour of a full assessment that decision is final. Similarly, where £600,000 is offered as a fixed offer whether in the OCS or (it appears) in the HRCS, the offer is a one-time offer available to secure swift settlement as an alternative to full assessment. In both cases, neither offer is treated as a floor. If an applicant opts for full assessment, it must be in the appreciation that they may be offered less than the fixed-sum. In the HSS, there was evidence this was capped at £50,000. In our experience, this sum is not a given and sums in question, by reference to existing offers, can be significantly lower. Where a £600,000 offer is available; interim payment will be made at £450,000.

6.32 While setting the fixed sum at a value which makes it a good deal for many; for others, the jeopardy is real in the absence of a true understanding of the value of their claim. There is no right to funding for legal advice in the HSS prior to consideration of the fixed offer and therefore, early settlements at the fixed sum may be reached with no appreciation by the person concerned as to whether they are full and fair. This stands in stark contrast to previous practice where – prior to the introduction of the fixed offer – any offer would trigger a right to funded legal advice. The Secretary of State appeared to accept that this was a known and intended risk of this policy. (He went on to explain that however the new HSS appeals policy might operate, no appeal would be open to anyone who accepted a fixed sum.)

6.33 **The Inquiry is invited to recommend a consistent approach which provides for individual applicants to access funded legal advice <u>prior</u> to the acceptance of a fixed sum offer. If a case is obviously low in value (or such that the claimant chooses to proceed without exercising an option to legal advice) it may be that the option is not pursued by many. Keeping the option open ensures that any choice to accept any fixed sum is a true choice; such that the compensation available is fair (regardless of whether it may be full).**

6.34 Any decision on a fixed sum offer is a one-off decision. This rigid "*once and for all*" approach is shortsighted. Aside from those who might refuse the offer and proceed to full assessment without legal advice; many participating in these schemes are vulnerable and fatigued. A decision to move on to full assessment may prove too much when the process is begun. It is not hard to imagine how a change in circumstances might create an even greater incentive for settlement to be prompt rather than full or fair. The only option then is for the client to proactively make an offer to settle at the fixed sum; with any response being at the discretion of

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318 **<u>INQ00001205</u>**, 11 November 2024, 5:14 – 7:4.
319 **<u>INQ00001201</u>**, 05 November 2024, 86:7-21.

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the PO (if considered to be permitted within the bounds of the scheme). This may create undue pressure – and the unnecessary continuation of legal costs – whether to accept the fixed offer up front or to continue on with an assessment regardless of any impact on the applicant's health, wellbeing or other personal circumstances. Continuing and significant delays in decision-making combine with this impossible position to create wholly undue pressure on applicants to accept the fixed-sum offer. While innovation is welcome, the Inquiry might consider that deliberately putting the squeeze on the vulnerable in order to bring this saga to a close is unedifying.

6.35 **The Inquiry is invited to recommend that any fixed sum offer is available in circumstances where applicants have access to funded legal advice should they choose to take it. Similarly, should an applicant opt for full assessment (particularly in the absence of legal advice) and later take a different view, the fixed sum offer should remain available as an alternative.** While this may remove the element of jeopardy; this jeopardy will bite principally in borderline cases where there is the greatest chance of unfairness.

Low offers, value for money and legalism

6.36 The assessment of claims continues to see initial offers which are at best, at the very bottom of any reasonable range or, at worst, derisory. The experience of Sir Alan Bates in his own first offer in the GLO being at 30% of his total claim is well reported. More recently Mrs Betty Brown, one of the oldest surviving victims of the scandal, at 91, described her initial offer, of 29% of her claim, as "*being treated like dung*".[320] This is a familiar gambit. Entire heads of loss are neglected or claims are undervalued where applicants proceed to claim in the absence of legal advice (and consistent with the data produced by the You Gov Survey (as above)). Examples were given by Hudgell Solicitors to the Inquiry with tens and hundreds of thousands of pounds difference after challenge.[321] While HSS offers are subject to consideration by Panel, it remains an enduring concern for those we represent that the Panel are supported by HSF and, without any allegation of intentional impropriety, the practice of an adversarial, legalistic approach appears entrenched.[322] Regrettably, a similar approach to initial low first offers appears in each scheme, including the GLO scheme which is a step apart from Post Office and HSF, assessed by DBT with the input of Addleshaw Goddard and Dentons. For those who have had their claims subject to assessment, this process has been time consuming and re-traumatising. A *tit for tat* approach to the valuation of claims is at odds with the stated intention of Government, and more in keeping with the Post Office's reputation for aggressive litigation conduct recognised by Mr Justice Fraser in the Common Issues judgment. A fairer, simpler model must be found to reduce the adversarial style which is currently required to reach settlement in each of the schemes. Such an approach might be one which reduces the stages in

320 **RLIT0000522** BBC News Online, Oldest Post Office victim offered a third of payout, 2 Dec 2024.

321 **HUJ00000007**

322 The Inquiry has the view of Mr Cameron on the role of HSF and the initial stages of the HSS, elicited in questions from the Chair: **INQ00001189** 1 October 2024, 213:8 – 214:9: : "*So it was set up on the basis of a negotiation between lawyers and, essentially, there was an element of that in the way that HSS was constructed. And I think that was a mistake -- and Simon Recaldin, again, will talk about this, I'm sure -- but my recollection of him coming in was challenging everyone to say: should this be a negotiation between lawyers or should this be, you know, a genuine attempt at remediation, that people feel, at the end of it, that they're satisfied, justice is satisfied, we can move on, and that they've been properly compensated for everything that's happened to them? And I think that did conflict with the sort of legal advice, committees, you know, bureaucracy of the schemes, you know, quite badly.*"

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the process with associated savings in unnecessary costs, including legal costs.[323] It would do much to ensure that more constructive settlements could be reached sooner and with less likelihood of exacerbating the existing trauma of applicants.

6.37 **The Inquiry is invited to recommend that the Post Office and the Department take steps to stop the seemingly normal practice of very low first offers. Without such a change, progress for any claimant who does not accept a fixed sum offer will remain slow. Without such a change, for example, any promise to process all claims submitted in the GLO by Christmas before March 2025 will mean little. A first offer, in the experience of Hudgell Solicitors, has historically been the start of a process which resets the clock for the Department and Post Office and begins a very long wait of up to 2-3 years for applicants. These offers are not made without reference to existing guidance and practice, but they are informed by the work of lawyers working on behalf of the Post Office and the Department in turn. If necessary, as shareholder, the Secretary of State might be invited to intervene to discover how this practice has seemingly become entrenched and to take steps to direct change. The capacity, skill and resources of the Panel ought to be considered and supplemented as necessary.**

Bureaucracy, trauma and want of care

6.38 The NAO recognises a critical element of any scheme must be to avoid the re-traumatising of those harmed by the State.[324] While delay is re-traumatising, the processes of these schemes are themselves damaging at present. The Inquiry has heard from SPMs how the request for further information process has landed. Detailed applications, supported by legal and accountancy advice, with a multipage response requesting hundreds of answers. In our experience, while some of these questions may be well warranted, often questions are already answered in the application and sometimes, questions may be impossible to answer for an SPM (we have heard of one example of an SPM being asked for evidence from a deceased parent (the bereavement being painful and spelled out in the application documents)). In reshaping the approach to all of these schemes to remove some of the skills garnered in seemingly sharp litigation practice, a little humanity could go a long way.

Disclosure and evidential sufficiency

6.39 Ministers and officials remain conscious of the significance of disclosure to effective legal advice on value. While a fixed sum may be appropriate for many; speedy (or indeed, any) disclosure may yet be critical for some to make that decision and essential for effective assessment to proceed. Similarly, in order for a fixed sum offer to be an informed choice, an individual must have legal advice and disclosure sufficient to understand their claim. Where expert evidence may be essential (including medical evidence) that ought to be agreed and facilitated without delay and without unnecessary need for multiple examination by battling experts. An essential shift in attitude designed to truly afford some benefit of the doubt to those

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323 After the close of evidence at the Inquiry, figures were provided by HSF in Parliament as to the substantial legal costs incurred by the Post Office in the running of the HSS. This included discussion of an estimated average figure of £21,000 per case (which Alan Watts for HSF, considered reasonable). Business and **RLIT0000541** Trade Committee, *Oral evidence: Post Office Horizon scandal: fast and fair redress* (19 November 2024), HC 341 Q. 197. See also at Q. 204 Watts confirms that the £21,000 figure is incorrect. The agreed amount with POL is £15,000 per case.

324 **RLIT0000540** National Audit Office, *Lessons learned: Government compensation schemes* (July 2024), Session 2024-25 HC 121, pp. 7, 27 and 33.)

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SPMs disadvantaged by the years of denial of this scandal ought to extend to the agreement of reliable expert evidence and a sensible approach to disclosure where necessary.

6.40 Mr Recaldin asserted that evidential uncertainty in the HSS was always resolved in favour of the SPM. Yet, discounts are routinely applied (seemingly without consistency) to reflect evidential insufficiency. Mr Recaldin accepted this was the case when shown a series of offers made to Hudgell clients routinely reduced.[325] These are not exceptions to the rule but the norm. Rather than any benefit of the doubt, this leaves applicants with a sense that their case remains subject to question or that they are disbelieved.

6.41 **The application of repeated discounts for want of evidential sufficiency (including discounting entire heads of loss) continues to be at odds with the stated intention to give SPM applicants the benefit of any doubt in this process. A change in approach truly designed to achieve a fair result would move away from the application of discounts in this way (there being little to nothing an applicant can do in circumstances where evidence has been lost to time and the actions of the Post Office) unless there was a firm basis for saying that the applicant's claim must be wrong.**

Inclusive and fair: scope of redress

6.42 There remain gaps in eligibility under the existing schemes which do not cover the recoverability of loss (including for personal injury and trauma) for a range of persons who have suffered pecuniary or non-pecuniary loss as a result of these events. Mr Recaldin accepted that the HSS is an anomaly in excluding joint losses of a partner or a spouse (recoverable in other schemes).[326] This may be all the more surprising in the light of the broad evidence the Inquiry has about many victims who ran their branches as true family businesses. The Inquiry may recommend to Ministers that consideration be given as a priority to the scope of each of the existing schemes and the outstanding legal and moral responsibilities for redress which may be outstanding. A first step may be consistency in approach to joint losses. The Minister accepted that conversations are ongoing in respect of the approach to compensation for assistants and managers and also, for family members, whose losses (including for personal injuries) are not recoverable under existing schemes. The Minister confirmed that while these conversations were ongoing, he had not received any official advice on possible costings.[327] It is concerning that consideration of these kinds of losses and impacts have not been rigorously considered and costed before now (not least in the light of the Secretary of State's positive messaging on budget).

6.43 For example, the Inquiry heard of the work being done by Lost Chances for Subpostmaster Children to secure support from Fujitsu to recognise their trauma and their lost opportunities suffered as a result of their families' experiences with Horizon. They began this work because they had no route to redress for the harms they suffered through any existing scheme. The Minister admitted that he had not heard of their work.[328]

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325 **INQ00001201**, 5 November 2024, 79:14 – 81:15.
326 **HUJ00000006**, **INQ00001201**, 5 November 2024, 86:23 – 87:3.
327 **INQ00001205**, 11 November 2024, 11:13 – 12:22.
328 **INQ00001205**, 11 November 2024, 73:22 – 74:2.

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6.44 As the form of redress for these groups are identified, that work must be done in collaboration and consultation, with SPMs, their representatives and the groups affected. As above, the benefits of early collaboration are significant. It would be deeply regrettable if the Department failed to learn from the omissions of the past and further, new delay was the result.

6.45 **We invite the Inquiry to recommend that priority ought to be given to identifying a form of redress for the families of SPMs who have suffered pecuniary and non-pecuniary loss as a result of these events. This must be a collaborative process designed to ensure the proposals made get it right from the start.**

6.46 Other access issues continue. For example, an application is made by someone who operated within a franchise or a partner operation; the scheme makes provision for any application to be made by that business (e.g. Morrisons, WH Smith etc and not directly by the person suffering the loss or harm).

6.47 **The Inquiry is invited to recommend that the Department conduct a review of access to each of the Schemes with a view to providing adequate resource to ensure that advice is available to prospective applicants on eligibility and the process / substance of their application without up-front cost or delay (we address legal advice pre-application, above). Where third parties are required to act to ensure access to redress for any individual then those routes must be clear to both the applicant and the third party and fair in their administration.**

Clarity and consistency: Acquittals and Cautions–

6.48 There remains enduring uncertainty on the correct and fair route to redress for those who were not convicted, but who were prosecuted and for those who were administered cautions.[329] A number in these categories had been signposted into the HSS. Others dealt with on own circumstances in a manner akin to OCS. Plainly, that uncertainty must be removed as soon as possible.

In addition, specific problems continue in each of the individual schemes:

HSS

6.49 Where an initial offer is contested in the HSS, and further information provided, the Post Office Remediation Unit routinely sends the whole claim back to the Panel for further consideration. SPMs are then often waiting many months for a revised offer. Mr Recaldin accepted that this practice departed from the procedure envisaged by the scheme, which provided instead for the dispute resolution process (DRP) to begin. Mr Recaldin has indicated that applicants will now have a choice.[330] Where Government is working towards greater speed in the settlement of claims, it is surprising the insertion of a second layer of bureaucracy and further delay was ever considered appropriate.

6.50 **The proposal that applicants choose whether to return to Panel or not is new. It again means that SPMs bear the responsibility to drive the process forward in the face of**

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329 **INQ00001202**, 06 November 2024, 212:21 – 213:21. See also, **INQ00001204**. Transcript, 08 November 2024, 38:9 – 39:20.

330 **INQ00001200**, 04 November 2024, 99:12 – 100:5.

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possible further delay. SPMs should be asked instead, proactively, by the Unit whether they wish their challenge to proceed to the DRP or instead to rejoin the queue for Panel.

6.51 Although the scheme has always provided for POL to depart from the recommendations of Panel, until very recently, POL was extremely reluctant to depart from any Panel recommendation, even where the adjustment of the award significantly upwards was plainly warranted. It would, of course, be unconscionable if recommendations were adjusted downwards. Very recently, Hudgell Solicitors have observed a seeming change in practice, with POL showing willingness to negotiate in the manner which the original Dispute Resolution Process had anticipated. In one example (without breaching confidentiality), Post Office noted that a Panel decision had offered over £100,000 less than had been considered by the business at an escalation meeting. A discretionary offer was made which split the difference. Tentatively, this appears a positive step in the right direction, but only if such discretion were to be applied with consistency and transparency.

6.52 The latest statistics on the HSS (3rd December 2024) make for difficult reading. Of the 4,802 claims received, 2,511 have been paid (with 34 more awaiting payment). 637 applicants have offers which are not accepted. However, there are, at present, 1,620 applicants awaiting offers.[331] This plainly raises significant concerns for many in that group of over 2,000 people awaiting resolution. The Inquiry heard that the HSS continues to receive around 30 new applications a week, with that number expected to "*ramp up significantly*".[332] It is plain that a significant increase in capacity at Panel (beyond anything so far envisaged) will be necessary to keep up, let alone, to significantly increase the speed of resolution.

6.53 There is insufficient detail in the public domain as to the scope of the proposed appeals mechanism in HSS for us to comment much beyond offering a constructive welcome. As we set out above, we retain considerable concern over settlements reached without any legal advice (whether on a fixed offer or otherwise). As above, evidence supports the conclusion that loss can be under-settled in the absence of advice and support.

6.54 **Any HSS appeals mechanism ought to make provision for access to appeal in relation to any settlement where legal advice had not historically been available (or where there is evidence that the applicant was unaware of any right to secure funded legal assistance).**

OCS

6.55 The history of redress for those with overturned convictions has not been straightforward. Many clients – on the back of the early promise of full, fair and prompt compensation – were deeply disappointed at the time taken to make any significant progress towards settlement. However, after years of work, the OCS stream is now working better. Cases which remain tend to be more complex. The appointment of Sir Gary Hickinbottom has brought a new collegiate approach to case management not reflected in other schemes. While offers no take around 3 months from the submissions of a claim, this has been built on the back of delay for some of those whose claims spearheaded the process. Turnaround of full, considered claims could be quicker. This timescale could yet be reduced by a third if some layers of governance between

331 **RLIT0000565** DBT, *Post Office Financial Redress Data as of 29 November 2024*, published 3 December 2024.
332 **INQ00001201**, 5 November 2024, 86:3-6

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the Post Office and the Department were simplified. Some issues continue. For example, claims for loss of a chance remain challenging to resolve. It is proposed that Sir Gary will give guidance (which may also be helpful in other schemes).[333] In the same manner as Lord Dyson's role in the ENE improved progress, an independent, authoritative steer may get things moving. The HCAB has encouraged this approach and the production of formal guidance routinely where appropriate. Where possible to publish principled guidance without impinging on the privilege and privacy of individual claimants, this ought to be done swiftly.

6.56 For many in this group, and those who are now eligible for the HCRS, their loss has been catastrophic and can never be truly remedied in cash terms. However, for those now able to settle mortgages, repay debt and even think of a holiday for the first time in decades, payment (albeit delayed) may bring relief, a renewed dignity and, for some, an opportunity to start a recovery that once appeared impossible. Money can never replace years lost nor undo the indignities imposed upon them by the Post Office.

GLO

6.57 Continuing delay is felt particularly acutely by those in the GLO who are still awaiting compensation. Priority should be given to the administration of GLO claims submitted by Christmas before the end of March 2025 – as stated by Ministers. While the Secretary of State was firm in his view that he did not wish to set a deadline which might result in injustice;[334] targets ought to be set without risk of injustice. Resource ought to be added or prioritised to ensure that these claims are processed swiftly to offer and beyond. The offer within 40 days is only the first step. The steps necessary to reduce post-offer delay are in the gift of Ministers. The approach taken to offers shouldn't be derisory but constructive and designed to achieve settlement; progress to settlement should be negotiated in good faith and unnecessary bureaucracy avoided wherever possible.

HCRS

6.58 There remains the considerable risk that there are individuals who were wrongly convicted who remain unaware of their eligibility for redress. The measures being taken to publicise the scheme must be subject to close scrutiny. The Secretary of State expressed his frustration with the limitations of the records available and the difficulties in tracing individuals. He said "*the nightmare scenario frankly would be someone receiving a letter who wasn't eligible to receive it.*"[335]

6.59 In the latest published Ministry of Justice statistics on quashed convictions (5th December 2024) a total of 957 individual cases have been identified as in the scope of the Redress Scheme. Of those 957 cases, 875 have been assessed by the department.[336] There remains 82 cases to be assessed, some 5 months after the scheme was opened. Of the 875 cases assessed, these fall into three categories. First, those cases where convictions have been identified as suitable for quashing, those number 561. Letters have been issued on 526 of those cases, leaving 35 more letters to go out. Another 157 cases have been identified where further information is

333 **RLIT0000533** HCAB, 18th Meeting, Minutes, 31 October 2024.
334 **INQ00001205**, 11 November 2024, 30:5 – 32:9.
335 **INQ00001205**, 11 November 2024, 37:3 – 23.
336 **RLIT0000564** MOJ, *Quashed Convictions Management Information: 5 December 2024,* 5 December 2024.

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requested. In relation to those, 125 letters have gone out leaving 32 to go. There have then been another 157 cases where the individuals convictions are seen as out of scope of the legislation. There are a number of concerning features that emerge from the latest statistics. Although 526 letters have been issued to individuals about the quashing of their convictions, only 251 thus far have applied for interim compensation. Of those only 98 have received final compensation. This leaves a disconnect of 275 people, some of which will be in the system, but most not it seems. Somewhere of the order of 200 individuals have yet to seek compensation from that cohort alone.

6.60 Hudgell Solicitors who represent 234 registered individuals in the HCRS – separately from the CPs in this Inquiry – have some insight on why people may be falling through the gaps. There are 32 people who cannot be written to as a result of the MOJ not holding their current address. However, letters are not routinely dispatched to individuals as not seen within the scope of the Act. This leaves them with continuing uncertainly, and no proactive invitation to seek legal advice to check the approach is correct. (The cohort of identified individuals increased by 8 in the last two weeks, as a result of all 8 self-identifying with the Ministry of Justice).

6.61 **Where Ministerial concerns hinge on wrongly informing a person they might be exonerated and eligible for redress under the HCRS, the greater injustice might be in the risk that another SPM might die without an acknowledgement that their unlawful conviction has been quashed and redress was available. The approach taken to correspondence with this group must be more proactive. Whether leaving confusion for those entitled to compensation (and so, further delay) or creating false hope for those who are ineligible, uncertainty is unhelpful for everyone. An appropriate publicity campaign in different media to reach those who may be eligible might be recommended.**

6.62 We are conscious that convictions pursued by other agencies, including DWP, during the Horizon era remain subject to consideration. The position of those who pursued appeals without success who would otherwise have been captured by the application of the statutory exoneration remains outstanding. These are complex issues of considerable concern with which the Department must grapple before this sad chapter for the Post Office can truly be closed.[337]

Restorative Justice

6.63 Beyond the immediate need for financial redress, the Inquiry is invited to consider that not all redress need be financial. Non-financial redress, including apologies to those harmed, can be powerful in contributing to putting things right and restoring trust. In this case, those we represent have heard apology upon apology during the context of this Inquiry, both from the dispatch box and from witnesses at the Inquiry. The few which were believed to be genuine apologies have impacted powerfully. However, for the most part, while wrangling continues over responsibility for the past, many apologies have appeared insincere.

6.64 The focus has been on the critical question of financial compensation. That is where focus rightly remains. It remains disappointing that so many are without redress and there are very badly damaged groups who appear to remain at the periphery of contemplation. Where thought has begun on restorative justice options – for example in the work of Lost Chances for

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337 **INQ00001205**. 11 November 2024, 37:24 – 39:21

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Subpostmaster Children – there has been (so far) little or no constructive engagement by the parties.

6.65 **The Prime Minister should be invited to issue a further formal full apology on behalf of Her Majesty's Government be issued following the conclusion of this Inquiry, in full consideration of all of its conclusions, to cover the true institutional responsibility for the harm suffered by SPMs and their families. We anticipate that such would not be controversial. We would regret if the Inquiry's conclusion (at least at a Government and corporate level) was met with anything other than contrition and an informed apology. In light of the damning evidence heard, including as to the failings of governance and oversight, any other approach would be unacceptable.**

6.66 **We welcome the indication by the Minister and by Fujitsu that they would be open to engaging with Lost Chances for Subpostmaster Children. A more innovative and open-minded approach to restorative justice for those impacted by this scandal is well warranted. Engagement and innovative thinking on restorative justice options should complement rather than distract from the primary goal of full and fair compensation.**

Timetable, deadlines and resourcing

6.67 The Inquiry has the measure of the work yet to be done. It is aware that SPMs, including those in the GLO, continue to suffer, and not in silence. Mr Bates is willing to go back to Court. If he were to ask, this time around, his costs might be healthily crowdfunded. While a hard deadline ought not to rush or exclude anyone, public targets for officials and Ministers to meet such that can be monitored by Parliament and by the HCAB are critical. Change needs to happen to ensure swift progress without further wasted cost or further wasted time.

6.68 Yet, even on the best case scenario; with many accepting fixed sum offers, the complexity of claims outstanding means that compensation will continue for years (with 18 months to 2 years standing as the best conservative estimate). We address the HSS statistics and the 30 new applications a week, above. This could run far, far longer than 2 years, with all predictions hinging on the numbers accepting the fixed sum and nothing else changing.[338] In that time, how many more will die waiting for redress? How many are likely to be tempted to bend to the jeopardy of the fixed offer, when they really should stand their ground?

6.69 If time pressure is likely to force choices by the most vulnerable SPMs, steps need to be taken to ensure those choices are as fair as possible. Legal advice, disclosure, a step back from aggressive low-ball tactics and towards a true benefit of the doubt, are urgently needed for all who opt to proceed to full assessment. The input of the Inquiry has (slowly) pushed Ministers to accept that progress must happen and happen as soon as is possible. Many OCS claims are now subject to full and final settlement and others are well progressed. We anticipate the HCRS will build on the principles established in the OCS (together with the learning from this inquiry). However, a sea change in approach is required to secure fairness and speed for all. If this change is not effected soon, and before this Inquiry publishes its final report, any conservative best estimate timetable will be yet another scandal. That timetable might prove unrealistic in any event, as the scheme may yet have to adapt and expand to address issues with which Ministers

338 **INQ00001201**. 05 November 2024, 84:21 – 86:6.

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continue to grapple (above). The impact of the Capture miscarriages of justice and compensation for the pre-Horizon era remains to be considered.

6.70 **This simply isn't good enough. Even before considering that the timetable is conservative and the schemes might shift and expand, applications continue to come in and are expected to ramp up. The Post Office and the Department must treat this as a priority. As above, processes and attitudes need to change to remove delay. However, if more resource is needed and greater numbers of staff required, or significantly greater capacity at Panel, this ought to be done as a priority.**

6.71 These schemes ought to have been administered wholly independently from the start. We express the hope that the experience of the Infected Blood Compensation Authority and the recommendations of the NAO trigger a real change in approach on the part of Governments for others who suffer at the hands of the State. While this would have created a different story for Horizon compensation, we are where we are. We regret that wholesale change now might be a cause of fresh delay, with learning lost and cost incurred in administration. However, the Post Office and Ministers must act now and with radicalism. Every wrongfully convicted SPM lost without resolution is a source of enduring national shame. This scandal simply cannot be allowed to stretch on, year upon year.

c) Fujitsu

6.72 Fujitsu have repeatedly and publicly accepted that they have a moral obligation to contribute to redress.[339] This position was inevitable on the evidence heard by the Inquiry as to the shared responsibility of Fujitsu for the failings in Horizon and in the action taken in support of proceedings against SPMs in civil and criminal courts and *again* in the actions taken to defend the system (above). These public promises appear designed both in their timing and implementation to best protect the brand position of Fujitsu and to protect its commercial interests, rather than serving any deeper underlying moral imperative to remedy their own contribution to the failings of the past. For example, although Mr Patterson committed in January 2024 to meeting with anyone impacted if asked to do so; it was over 8 months before he met with Lost Chances for Subpostmaster Children and Hudgell Solicitors. He gave the somewhat baffling response when asked about that engagement that beyond a financial contribution, Fujitsu (a multinational company) were struggling to imagine how they could help. (The Inquiry might be surprised at the lack of resource or imagination which sits behind the public acknowledgement of moral responsibility.) Despite chasing by the legal representatives of 'Lost Chances', that engagement petered out; until Mr Patterson committed to reengage while giving evidence to the Inquiry. (He acknowledged that initiatives around education and mental health had been discussed.) When pressed, Mr Patterson could not confirm whether Fujitsu's goal to act at the end of this process was meant to take place at the conclusion of Phase 7 in December 2024 or following the publication of the Chair's report (whenever that may be). He gave the incredible intimation that this critical issue of timing had not even been in his contemplation. This is indicative of the degree of credibility with which the Fujitsu position on redress ought to be treated. (Since then he has indicated that Fujitsu will contact Lost Chances and will discuss next steps after final submissions). The Inquiry is invited to press Mr Patterson and Fujitsu to provide clarification on the intent of the business to act on

339 **INQ00001117**, 19 January 2024, 4:5-16 and 100:11 – 102:9. See also, **INQ00001205**, 11 November 2024, 218:16 – 219:23.

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its moral obligation, as well as the timing of any action, before the end of hearings. Action need not wait, but if it must, Fujitsu ought to be absolutely transparent over its position.

6.73 Mr Patterson confirmed the existence of an as-expected standstill agreement in place between the Post Office and Fujitsu (it is not clear precisely who the parties to the agreement are).[340] The approach to settlement and litigation between those who clearly share responsibility for the scandal should not be a further cause of delay in steps taken towards redress and restorative justice, whether now or once the Inquiry has concluded its Report. The evidence before the Inquiry (and in the documents held by both POL and Fujitsu) ought to be adequate for all parties to be effectively advised on risk, liability and responsibility. It is beyond belief that Fujitsu simply hasn't taken advice at this stage (and throughout the Inquiry) on its likely legal liabilities (and on how to limit such).

6.74 There is a public interest in transparency over the approach being taken to any settlement and final contribution (if any) by Fujitsu to the cost paid from the public purse. The Inquiry remains quite firmly in the dark. The public interest in transparency would be ill-served if that position were set in stone by the agreement of behind-closed-doors confidential agreements on settlement.

6.75 **The Inquiry is invited to recommend that Government (and Fujitsu) commit to arrangements being put in place (beyond the pursuit of individual FOI requests or activities by Parliament) to publish/and/or ensure transparency around the final contribution and any commitment Fujitsu makes to the enduring costs of this scandal not only for Government but for SPMs and their families. While this may depart from the traditional position where settlement of any civil proceedings might be achieved in confidence; the public interest would not be served in speculation over the ultimate cost of this scandal to the tax payer nor the continued engagement of Fujitsu in public contracting without a full reckoning as to the extent their admission of moral responsibility has hardened into a financial contribution to the cost of making things right.**

6.76 **Restorative justice must form part of the discussion on redress. In the light of Fujitsu's public commitment to adhere to its moral responsibilities, the Inquiry is invited to recommend that work towards restorative justice programmes founded on moral responsibility (if not strict legal liability) need not wait until the conclusion of any ongoing or potential legal proceedings between the corporate parties involved in this scandal. (One part of the moral commitment made by Fujitsu might just be to provide financial and other support to restorative justice programmes designed to reflect the lost chances of those impacted by indignity, stigma and poverty as a result of a parent's wrongful conviction.)**

d) Conclusions

6.77 This is a scandal founded on flawed corporate culture and repeated corporate failings. A scandal where the Post Office (with the support of Fujitsu) prioritised corporate interest, brand and messaging over a substantive consideration of risk to SPMs and the wider business. In each

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340 However, the Secretary of State gave evidence that he had not "received any specific information in relation to that" when asked about approaches to Government in relation to Fujitsu's contribution to compensation. **INQ00001205**, 11 November 2024, 55:13 – 56: 16.

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Phase, the Inquiry heard evidence of toxic, dismissive and aggressive attitudes to SPM complaints; both within Fujitsu and the Post Office. Those attitudes were driven by corporate interest and a repeated defensiveness of business and brand. It is perhaps ironic that the question of redress has been only improved by the glare of publicity (and concern for the political toxicity of the Post Office to damage the Fujitsu brand).

6.78 Where the actions of the State harm its citizens there must be a moral obligation to see justice as more than simply an opportunity for good press or political popularity. This must extend to circumstances where that harm is caused by a corporate entity which is in Government ownership. True momentum to compensate those who have been wronged simply cannot depend on television commissioning and the skill of artists willing to tell a good story.

6.79 As this Inquiry draws to a close, despite repeated public declarations of intent from Post Office, Ministers and Fujitsu to do the right thing, there is considerable work yet to be done to ensure that all those harmed by Horizon and the acts of the Post Office receive adequate redress in full and fair compensation.

6.80 The State must accept that when it is wrong and its citizens are damaged, the value of compensating those who suffer must be measured in more than solely pounds and pence. This is a lesson which appears long overdue. It ought to have been learned time and again in previous schemes which have repeatedly created new trauma for individuals seeking to pick up the pieces of lives broken by State failures and wrongdoing. It is one which ought to be marked in this Inquiry.

6.81 This injustice cannot be undone; it cannot be forgotten; redress for all may start to rebuild trust for some. However, no SPM will truly be able to move on – nor can the Post Office even begin to be rehabilitated in the public consciousness – until that is achieved.

7 WHERE ARE WE NOW?

7.2 When Mr. Read gave evidence to the Inquiry on 11 October 2024 he recognised that securing a replacement for Horizon should be something that Post Office should quickly deal with. Horizon has caused so much damage to so many lives that it must go as soon as possible.[341] He claimed that as long ago as April 2023 POL had developed a firm idea of how the New Branch IT system (NBIT) would work. Under further questioning, he acknowledged that the plans to replace Horizon were not as certain in June 2024. He was unaware of whether there was a firm plan for a Horizon replacement in the Strategic Review as he had stepped back from his primary role for six weeks in order to prepare for evidence to the Inquiry.

7.3 On 4 December 2024, the Daily Mail reported that Post Office had "*dumped*" plans for introduction of NBIT.[342] Instead, Post Office has agreed a one year extension to its Horizon contract with Fujitsu.

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341 **INQ00001195**, 11 October 2024: 122

342 **RLIT0000544** Mail Online, *Post Office dumps its replacement for scandal-hit Horizon IT system after setbacks caused costs to skyrocket to around £2b*, 4 December 2024.

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7.4 Whilst the 'New Deal' for postmasters was trumpeted on 13 November, it is now five years since the Horizon Issues Judgment conclusively established the unreliability of the system. It is over three and a half years since the quashing of the convictions of 39 postmasters in *Hamilton and others.* There still appears to be no firm plan for the replacement of Horizon. It is not just that plans have not been implemented, it appears that there is no firm plan for what to do. That progress is too slow.

7.5 Mr Cameron suggested of NBIT and its management over the past 5 years, that the problems were both structural and individual.[343] He and other witnesses agreed that the funding rounds of central government were necessarily not suited to a dynamic business or the planning of longer term commercial projects. However, he also appeared to accept that the failure to grapple with this scandal went back to the failure of management during separation. That is an issue we address above.

7.6 The Inquiry might also consider the roots of this scandal in a bigger sense: tied inherently to a more fundamental schism in the Post Office, in an unhappy marriage between the public and the private. At the inception of Horizon, the Post Office was in existential crisis; looking into the future to a very different business model to support the move away from a network supported by a closed market in benefits collection. As the pension book system was ripped up, successive Governments sought to both maintain the community model for the Post Office and, at the same time, impose a more commercial, efficient operation designed with a long term goal to reduce reliance on public funds.

7.7 Yet, through all the projects, and all the strategies, up to Network Transformation and beyond, it must be asked whether anyone really considered whether a successful commercial operation would or could ever operate on the same model as a network designed to preserve a nationally valued community resource. The tension between these goals runs through the evidence before the Inquiry. In failing to grapple with this problem effectively in 1999, and again and again and again throughout the last 25 years, it might be said that successive Governments contributed to the position of crisis and commercial hunger which drove the Post Office as an institution, and individuals within it, to lose sight of the true value of the network and the individuals within it. The focus of all in 2013 on the future of the Post Office as a free-standing entity - with an eye on mutualisation as Royal Mail passed into private ownership - was plain in the evidence of Ms Vennells and Ms Perkins. If Horizon were to fail, mutualisation, (the public goal for the future of a commercially viable post office) would be impossible. The strategy for the future of the Post Office – and the propriety of the harnessing of commercial enterprise as a tool of public policy - is perhaps beyond the scope of this Inquiry. However, it is a problem with which this

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343 **INQ00001189**, 1 October 2024, 202-204: *"settlements which might be for one year or might be for three years, but that isn't a brilliant way to fund a trading business where circumstances can change radically. It's really designed to say, "Well, you'd like to spend 10 billion on green technology, we're only giving you £1 billion, do what you can", and it doesn't really work. And I think we have -- I'm not suggesting for a moment that Post Office hasn't muddled some of this. So we simply didn't ask for enough money for the Horizon replacement, I mean, nowhere near enough. And the more we got into it -- it was very early stage, and it was a sort of budget for software -- the more difficult, complex and expensive the actual rollout looks like it's going to be. This is a software and a hardware change; it's the first one for 20 years; the last one went catastrophically badly. So there is no trust in the system, and so -- you know, I remember being part of a software rollout in a commercial company as an employee and, at one point, they just said, "Look, we cannot cope with being on two systems at the same time. So we know it's not working brilliantly, we're just going to push everything onto the new system and we'll fix it later".*

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Government and any that follows must grapple with honestly. A truthful strategy that understands the value of the network to the communities we live in now must be the starting point.

7.8 What happened to the SPMs can never be allowed to happen to others again. It is not acceptable for decent, hard-working people of good character to be collateral damage in the pursuit of commercial imperatives. *Their* value must be recognised. The value of what they do must be recognised. 'High net worth' should not just be viewed as how much money a person has. It should be measured by what worth the person is to the community in which they live; the contribution to the lives of others; to education, to healthcare, to the arts and security. The role of SPM is of high net worth and should be treated accordingly.

7.9 Although Post Office refused to hear the concerns of SPMs and dismissed them as subbies with their hands in the till who lacked passion and had lifestyle problems, this Inquiry has listened intently to them and evidence of the reasons for their plight. They are uniformly grateful for that and now await the findings and recommendations of the Inquiry.

TIM MOLONEY KC
ANGELA PATRICK

DOUGHTY STREET CHAMBERS

HUDGELL SOLICITORS

9 DECEMBER 2024