

IN THE COURT OF APPEAL
CRIMINAL DIVISION

REGINA

- v -

HAMILTON & OTHERS

**RESPONSE TO DISCLOSURE REQUEST MADE ON BEHALF OF APPELLANTS
REPRESENTED BY EDWARD FAIL, BRADSHAW & WATERSON**

1. This is a response to the disclosure request¹ document dated 1 February 2021² made on behalf of the five Appellants represented by Edward Fail, Bradshaw & Waterson (the “EFBW Disclosure Request”).
2. The EFBW Disclosure Request raises three substantive issues to which this document responds:
 - (i) The Relevant Period;
 - (ii) Privilege; and
 - (iii) Specific disclosure requests.

RELEVANT PERIOD

3. Paragraphs 14 to 24 of the EFBW Disclosure Request take issue with the Relevant Period³ for disclosure purposes ending in 2013. It appears to be suggested that disclosure should not be subject to any limitation by way of a Relevant Period.

¹ The heading of the document refers to itself as a “Disclosure Management Document”, whilst paragraph 1 refers to the document as an “Appellants Document Management Document (“ADMD”)”. Since it is not a Disclosure Management Document, and to avoid the risk of confusion with the Addendum DMD, it is referred to herein as the “EFBW Disclosure Request”.

² In fact, the document is dated “1.1.21.”, although this appears to be a typographical error since the document was served on the Respondent on 2 February 2021 and refers to documents post-dating 1 January 2021.

³ See paragraph 5 of the DMD and 19 to 22 of the Addendum DMD.

4. Paragraph 14 of the EFBW Disclosure Request states:

“The Respondent has, for some unspecified purposes, decided that the cut-off point for disclosure is the decision by the Post Office to stop private prosecutions in 2013, yet it also has provided disclosure that post-dates 2013.”

To assist EFBW, the reasons why the Relevant Period was chosen can be summarised as follows:

- (i) As the Court of Appeal has repeatedly emphasised, in large and complex cases (as this unquestionably is), disclosure must not be allowed to become a disproportionate and open-ended exercise;
- (ii) The passage from *Nunn* quoted in paragraph 16 of the EFBW Disclosure Request helpfully emphasises that the post-conviction disclosure duty on POL is “to make available what should have been provided at trial as well as material relevant to existing grounds of appeal”;
- (iii) Given the size and scope of POL, to extend the Relevant Period beyond 2013 would necessitate consideration of e-mail repositories containing an enormous quantity of data. Such an exercise, even if heavily focussed and limited to specified users, would take many additional months to extract, process and consider;
- (iv) In considering the reasonableness and proportionality of such an endeavour, it must be remembered that POL had ceased to prosecute any case in which Horizon was relied upon by the end of 2013. Since any consideration of the safety of a conviction, whether based on abuse of process or otherwise, must look at the circumstances at the time of the prosecution, this means that the direct value of post-2013 material will be limited;⁴ and
- (v) The post-2013 material that is most likely to contain relevant material (i.e. material from the group litigation data room) has been searched using relevant search terms (as per the DMD and Addendum DMD). As such, post-2013 material that might reasonably be thought to inform the position during the Relevant Period in such a way as to undermine or assist has been identified for disclosure⁵.

⁴ Documents post-dating 2013 which demonstrate the position that existed within the Relevant Period may well be disclosable, and many such documents have been disclosed within the PCDE. In addition, see paragraph 20(ii) of the Addendum DMD for further circumstances in which post-2013 material will be disclosable.

⁵ The above passage from paragraph 14 of the EFBW Disclosure Request acknowledges that disclosure of post 2013 material has been made.

5. The EFBW Disclosure Request submits that any material suggestive of improper conduct by POL, irrespective of when such conduct occurred, is disclosable as a form of “bad character” evidence, and thus the PCDE should be extended beyond the current Relevant Period so as to identify any further possible examples indicative of such conduct. EFBW’s contention that such an exercise is necessary for them properly to advance their limb 2 abuse is not accepted:

- (i) For the reasons set out in the Addendum DMD, the Respondent maintains that a document produced or event occurring post-conviction can only be relevant to consideration of limb 2 if it provides evidence of knowledge and/or deliberate conduct or misconduct before or during the prosecution proceedings.⁶ Where post-conviction conduct does not provide such evidence, it has no relevance to the issues the Court has to evaluate on limb 2 abuse;⁷
- (ii) In permitting limb 2 to be argued, the Court of Appeal was clear that they placed considerable weight on the assurances of those instructed by Aria Grace Law, who were the sole team wishing to advance limb 2 arguments, that they were content to do so within the confines of the existing timetable (and disclosure). The Court emphasised that it would exercise robust case management to ensure that the appeals would not be delayed;⁸
- (iii) EFBW have already received (and are continuing to receive) very substantial disclosure of material by way of the PCDE and the judgments of Fraser J can also be deployed in any argument as to “bad character”. Given the material already disclosed to EFBW, it is unclear what “bad character” submission they consider they are unable to make without additional, wider disclosure. To seek to widen the scope of disclosure into an open-ended and speculative “fishing exercise” for further examples of misconduct in these criminal appeal proceedings would be wholly disproportionate and contrary to the approach adopted by the Court in this case; and
- (iv) To extend the scope of the PCDE in such a fundamental way would necessarily require the vacating of the current hearing dates and a delay of the resolution of the

⁶ See paragraph 20(ii) of the Addendum DMD.

⁷ The Court has already expressed scepticism as to the extent to which post-conviction conduct can be relevant to the question of whether a prosecution was an affront to justice at the time of that prosecution (as it would need to be to satisfy limb 2)

⁸ As noted below, EFBW positively argued against the Court considering limb 2 arguments both in written submissions and in oral submissions at the hearing on 17 December 2020. In doing so, they emphasised that their clients’ primary concern was to ensure that the hearing of the appeals was not delayed.

appeals into late 2021 or 2022. The Respondent considers this to be grossly unfair to the vast majority of Appellants (including those represented by EFBW) whose appeals have predominantly already been conceded on limb 1 and who are anxious to have their appeals heard expeditiously.

6. The timing and nature of this late application is particularly surprising given the history of these appeals:

- (i) The Relevant Period was clearly identified in the DMD dated 19 August 2020. No concern or objection was raised by EFBW;⁹
- (ii) At the directions hearing on 18 November 2020, the DMD and disclosure generally was being considered by the Court and the Court timetabled the appeals predicated upon the disclosure process set out therein. EFBW did not raise any concern as to the scope of disclosure generally or to the Relevant Period specifically;
- (iii) At the hearing on 17 December 2020, EFBW did not raise any suggestion that the Relevant Period for disclosure should be extended. Indeed, it is notable that EFBW opposed the Court considering limb 2 abuse precisely because their clients' primary concern was to avoid the risk that it might delay the resolution of their clients' appeals¹⁰.

7. The Respondent repeats the observations made at paragraphs 19 to 22 of the Addendum DMD, and declines to amend the Relevant Period unless the Court so directs.

ISSUES RELATING TO LPP

8. Within paragraphs 25 to 35 of the EFBW Disclosure Request, the following matters are raised in relation to LPP:

- (i) At paragraph 27, there is a request that the Respondent clarifies where it has "drawn the waiver line"; and
- (ii) At paragraph 35, the Respondent is urged to consider disclosure in light of the principles of privilege set out within paragraphs 25 to 35.

⁹ The only Appellants to take issue with the Relevant Period specified in the DMD were those represented by Aria Grace Law (their representations were addressed at paragraphs 19 to 22 of the Addendum DMD)

¹⁰ Both in their written submissions (see §25) and in the oral submissions by Mr Orrett.

9. The issue of waiver was raised by Mr Stein QC at the hearing on 18 November 2020, during which the Court referred him to para 79 of the DMD which provides:

“Where the reviews identify documents (or material within documents) as a part of the case specific or GDR exercise that would have attracted LPP but which are considered by the review team to be disclosable, that material will be disclosed notwithstanding the LPP that might otherwise have attached to them.”

10. The Respondent re-iterates its position as follows:

- (i) All consideration of disclosure is conducted in accordance with the approach in the DMD.¹¹ Accordingly, if the Respondent’s disclosure counsel considers that a document is disclosable, then it will be disclosed irrespective of whether it is a document that attracts LPP;¹²
- (ii) Questions in relation to the extent of “waiver” therefore do not arise. Disclosure in these proceedings is not a voluntary waiver of LPP, but rather in compliance with a competing legal obligation, namely the prosecutorial duty of disclosure, which takes precedence.¹³ In making disclosure in accordance with its obligations under *Nunn*, the Respondent is providing the material solely for the purposes of the criminal proceedings and is not waiving LPP generally nor in relation to any other proceedings;¹⁴
- (iii) Since the Appellants are receiving disclosure, including material attracting LPP, and are able to use it within the proceedings (subject to the Court’s absolute right to regulate the admissibility of fresh evidence), considerations as to the extent of any waiver are irrelevant for the purposes of these proceedings. It follows that a detailed analysis of the extent of any waiver could only be relevant in relation to consideration of whether the material could be used in other proceedings. However, since use of any disclosed material outside of the appellate proceedings is prohibited by the express and implied undertakings against collateral use, any question as to

¹¹ Instructions to review counsel include provision that they should flag potentially disclosable material irrespective of whether LPP might apply, and disclosure decisions are taken by the senior and experienced criminal counsel identified in the Addendum DMD, namely Jacqueline Carey in respect of case specific material and Simon Baker in respect of generic disclosure.

¹² Whether that LPP is legal advice privilege or litigation privilege.

¹³ See, for example, *British Coal Board v Rye Ltd (No. 2)* [1988] 1 WLR 111.

¹⁴ The fact that LPP is not being waived generally has been re-iterated in the correspondence attaching the first tranche of disclosure in this case and again at paragraph 44 of the Addendum DMD. The entitlement to retain LPP over material disclosed under a duty of prosecutorial disclosure in criminal proceedings, is well established (see, for example, *British Coal Board v Rye Ltd (No. 2)* [1988] 1 WLR 111).

whether LPP applies to any particular document such as to prevent collateral use is wholly academic.

11. Furthermore, the focus on the “transaction principle” in the EFBW Disclosure Request appears to be a misunderstanding of the purpose and applicability of that principle. Paragraph 30 of the EFBW Disclosure Request suggests that the cited passages¹⁵ of *CAA v Jet2 [2020] EWCA Civ 35* govern the nature and extent of waiver of privilege. In fact, these passages arise out of consideration of “the proper approach to the collateral waiver of privilege in respect of documents otherwise non-disclosable, as the result of the voluntary disclosure of other privileged documents”.¹⁶ More specifically, the “transaction test” arises where a party has *voluntarily* disclosed some privileged material, and an issue arises whether that effects a waiver of privilege over “all documents of the same category or all documents relating to all issues which the disclosed document touches” so as to avoid the limited waiver being “made in such a partial or selective manner that unfairness or misunderstanding may result”.¹⁷ Given the nature of the disclosure in these proceedings, such considerations simply do not arise in this case. Likewise, it is unclear how the “iniquity exception” holds any application in relation to the Respondent’s approach in these proceedings.

SPECIFIC DISCLOSURE REQUESTS

12. The following observations relate to the specific disclosure requests made under paragraph 36 of the EFBW Disclosure Request. The overwhelming majority of requests are for documents that were disclosed to all Appellants last year, but there are two requested documents that will be disclosed within tranche 4B on 19 February 2021 (copies of which are also attached herewith) and an additional document that is being voluntarily disclosed, attached herewith.

¹⁵ Paragraphs 113 and 114 of the judgment.

¹⁶ See paragraph 2 of the judgment.

¹⁷ See paragraph 111 of the judgment.

§36(i) - Papers relating to various reviews

13. The reviews and documentation referred to within this request have been reviewed. Material considered to meet the test for disclosure has been disclosed to the Appellant in whose case it arises.
14. Such material has also been reviewed and considered for generic disclosure as part of the GDR. This includes the Helen Rose Report, the Second Sight reviews, Board Reviews, Advices from the 2013/14 Cartwright King PCDE and the General Review by Brian Altman QC. Where such material meets the test for disclosure, and is deemed to be of potentially generic disclosure value (as opposed to being solely of case specific disclosure relevance), such material has been disclosed as part of the GDR.
15. In respect of the request for a list of all reviewers and copies of all reviews, reviews will be disclosed only insofar as they meet the test for disclosure. Where the test is met, they have been be disclosed.
16. In respect of the 2013/14 PCDE conducted by Cartwright King, disclosure has already been made of the scope and methodology of this exercise within the Disclosure Note in relation to the Context for the Clarke Advice.¹⁸ As noted within that Disclosure Note, Cartwright King were provided with the case files and asked to consider whether the Helen Rose Report and/or Second Sight report should be disclosed as post-conviction disclosure. Copies of the Cartwright King advices have not been disclosed by way of generic disclosure as:
- (i) They are fact and case specific;
 - (ii) The post-conviction opinion of independent counsel is not disclosable in circumstances where the material on which any such opinion is based (i.e. the case file, Helen Rose Report and Second Sight report) has already been disclosed to the affected Appellants such that any appeal argument can be advanced on the basis of primary material;¹⁹ and

¹⁸ This Disclosure Note was provided to all parties in advance of the hearing on 3 December 2020 in relation to Nick Wallis' application for provision of a copy of the Clarke Advice.

¹⁹ Where a Cartwright King advice sets out material that is considered to be generically disclosable, such as accounts given by SPMs blaming Horizon or identifying alleged Horizon issues at the time of their audit or interview or trial, and such material has not already been disclosed elsewhere, such material has been disclosed

- (iii) Whether independent counsel's view in relation to the disclosability of the Helen Rose and/or Second Sight reports, expressed long after conviction, was correct or not is irrelevant to any consideration of the safety of those convictions (whether under limb 1 or limb 2 abuse).

17. In relation to the request for the "General Review" dated 15 October 2013 by Brian Altman QC, the document has been considered for disclosure, including its terms of reference and documentation provided to be considered within the review, and it does not fall to be disclosed.

§36(ii) – Statement from Simon Clarke

18. The Respondent does not propose to obtain a statement from Simon Clarke.

19. Insofar as it is relevant and disclosable, the background and context for the Clarke Advice has already been disclosed by way of the Disclosure Note. Moreover, the Clarke Advice itself sets out what material was considered in reaching its conclusions.²⁰

20. Similarly, and as outlined above, the instructions given to Cartwright King in respect of the 2013/14 PCDE exercise are already disclosed by way of the Disclosure Note in relation to the Context for the Clarke Advice, as well as within the Advice itself.

21. In respect of the requests relating to why the Clarke Advice was not disclosed within the civil proceedings and/or why Gareth Jenkins was not called as a witness, the Respondent does not intend to obtain statements from those with conduct of the litigation as such requests are irrelevant and not disclosable. EFBW will be aware that, unlike the prosecutorial disclosure duty in criminal proceedings, disclosure obligations in civil litigation do not override LPP and so the Clarke Advice and other such privileged documents would not have been disclosable in the civil litigation. More importantly, any such decisions taken as to conduct of civil litigation many years after the conclusion of any prosecution are not disclosable in these proceedings in relation to the safety of convictions.

by way of extract (subject to the principle identified at §34 of the DMD that where multiple examples of the same have already been disclosed then it may not be necessary or proportionate to disclose every example).

²⁰ See paragraphs 16 to 18, and then subsequent paragraphs which set out the specific material considered in greater detail.

§36(iii) – PEAKS & KELs

22. All PEAKs and KELs referred to in the Horizon Issues Judgment (“HIJ”) have been disclosed as part of the GDR.

23. In relation to the specific PEAKs/KELs mentioned in the EFBW Disclosure Request:

- (i) KEL aha959T was disclosed in tranche 3 (disclosed in December 2020) with document ID 152003756;
- (ii) PEAK PC0065021 was disclosed in tranche 2 (disclosed in September 2020) with document ID 152003701;
- (iii) PEAK PC0208335 was disclosed in tranche 2 (disclosed in September 2020) with document ID 161157449;
- (iv) PEAK PC0103864 was disclosed in tranche 2 (disclosed in September 2020) with document ID 161053980;
- (v) The PEAK referred to in §479 of the HIJ is PC0027887²¹ which was disclosed in tranche 2 (disclosed in September 2020) with document ID 152005106;
- (vi) The PEAK referring to hanging in the middle of transactions referred to in §480 to 483 of the HIJ is PEAK PC0065021 (see (ii) above);
- (vii) The KEL dealing with phantom transactions referred to in §485 of the HIJ is KEL PSteed154J which was disclosed in tranche 3 (disclosed in December 2020) with document ID 133006000;
- (viii) The PEAK referred to in §486 of the HIJ is PEAK PC0204765 which was disclosed in tranche 3 (disclosed in December 2020) with document ID 161153879;
- (ix) KEL BALLANTJL759Q referred to in §487 of the HIJ was disclosed in tranche 2 (disclosed in September 2020) with document ID 133001142;
- (x) PC0204537 referred to in §487 of the HIJ was disclosed in tranche 3 (disclosed in December 2020) with document ID 152006131;
- (xi) KEL WRIGHTM33145J referred to in §487 of the HIJ was disclosed in tranche 3 (disclosed in December 2020) with document ID 442014266; and

²¹ See page 40 of the transcript of day 12 of the Horizon Issues Trial (document 152003631 disclosed in tranche 3 in December 2020).

- (xii) PEAK PC0229446 referred to in §490 of the HIJ was disclosed in tranche 3 (disclosed in December 2020) with document ID 152006648.

§36(iv) – Requests for audit documents

24. Although the precise meaning of this request is unclear, it is taken to be a request either for any material from branch audits of Appellants’ branches in which issues have been raised as to Horizon reliability or a request for material taken from audits of POL (by Ernst & Young) which raises concerns as to Horizon reliability. In either case, all such material has been reviewed and any material raising concerns as to Horizon reliability disclosed.²²
25. If the request was for disclosure other than that understood by the Respondent, EFBW is invited to provide a clearer and more particularised request.

§36(v) – Defence disclosure requests re Horizon issues

26. All such material from POL prosecutions in the Respondent’s possession²³ has been reviewed and any material raising concerns as to Horizon reliability has been disclosed.²⁴ Insofar as the Respondent is in possession of equivalent material from civil litigation, the same applies.

§36(vi) – Expert statements

27. Copies of reports from prosecution and defence experts addressing Horizon integrity and/or reliability of Horizon that are in the Respondent’s possession²⁵ have been disclosed.²⁶

²² Subject to the principle identified at §34 of the DMD that where multiple examples of the same have already been disclosed then it may not be necessary or proportionate to disclose every example

²³ Within the repositories identified in the DMD and Addendum DMD.

²⁴ Subject to the principle identified at §34 of the DMD that where multiple examples of the same have already been disclosed then it may not be necessary or proportionate to disclose every example

²⁵ Within the repositories identified in the DMD and Addendum DMD.

²⁶ Subject, in the case of the “standard” statements served in POL prosecutions, to the principle identified at §34 of the DMD.

§36(vii) – Documents referred to within the civil litigation

28. The document referred to by Fraser J at paragraph 420 of the Common Issues Judgment (“CIJ”) is a report entitled “Network Development Enhanced User Help & Support” dated 25 October 2016.²⁷ The document, which is set out in greater detail within paragraph 542 of the CIJ (pages 170 and 171 of the judgment) has been reviewed. There is nothing within the document not already disclosed on the face of the CIJ that is disclosable.

§36(viii) – Documents referred to by Fraser J in the Common Issues Judgment paragraphs 41 & 542

29. In relation to the request for disclosure of the “X Action Summary” document referred to at paragraph 41 of the CIJ²⁸, a copy is being disclosed within tranche 4B, and a copy is also attached herewith. It is noted that this related to a review conducted in June 2014, after the end of the Relevant Period and long after the conclusion of any prosecutions to which these appeals relate.

30. In relation to the documents referred to in paragraph 542:

- (i) The e-mail chain between Frank Manning and Sue Locke was disclosed in tranche 2 (September 2020) with document reference BRS0000003273;
- (ii) A copy of the e-mail from Jacqueline Whitham dated 8 February 2007²⁹ is being disclosed within tranche 4B, and a copy is also attached herewith;
- (iii) The TC/Debt Recovery Review dated 14 November 2008 is disclosed in full within paragraph 542 of the CIJ;
- (iv) The “Review of the creation and management of Transaction Corrections in POLFS to correct accounting errors in Horizon” document dated 10 February 2010 was disclosed in tranche 3 (in December 2020) with document ID 119226299;
- (v) The internal e-mail about Mrs Stubbs dated 26 May 2010 was disclosed in tranche 2 (September 2020) with document ID 152000594;
- (vi) The internal e-mail from N Allen dated 28 July 2010 was disclosed in tranche 2 (September 2020) with document ID 152000629;

²⁷ Fraser J mistakenly gives the date as being 24 October 2016 in §420 of the CIJ.

²⁸ Contained in the Common Issues trial bundle at G/40/1-7.

²⁹ Contained in the Common Issues trial bundle at G/2/1

- (vii) The Post Office Branch Audit Trend Analysis dated 7 September 2012 was disclosed in tranche 1 (August 2020) with document ID GA_149526917;
- (viii) The Receipts/Payments Mismatch Note was disclosed in tranche 2 (September 2020) with document ID BRS0000002988;
- (ix) The document entitled “Local Suspense Problem” was disclosed in tranche 2 (September 2020) with document ID 152004293;
- (x) The document entitled “Benefits of extending life of business transaction data” was disclosed in tranche 2 (September 2020) with document ID GA_151194738;
- (xi) The document entitled “Network Development Enhanced User Help & Support” is addressed above; and
- (xii) The 127-page Operations Board document dated 17 October 2017 has been reviewed and contains nothing disclosable beyond that disclosed on the face of the CIJ.

§36(ix) – Operational documents re bugs and errors within the Horizon system

31. All documents identified³⁰ as being potentially relevant to issues of bugs or errors within the Horizon system have been reviewed and, where appropriate, disclosed.

32. In relation to the documents identified within the request:

- (i) The “Horizon Programme Update”³¹ was disclosed within tranche 2 (September 2020) with document ID GA_147007926;
- (ii) The Network Functional Report dated May 2010³² has been considered for disclosure. There is a single passage within the document which refers to issues with Horizon in April 2010.

The Horizon issues in April 2010 had already been disclosed within the GDR (for example, within document GA_147007949 which was disclosed in tranche 2 in September 2020). Although the requested report adds nothing to that already disclosed, the passage from within the requested report dealing with Horizon issues in April 2010 is as follows:

³⁰ The process by which such material is identified is set out in the DMD and Addendum DMD.

³¹ The footnote in the request suggests that it is referred to at §12 of the HIJ. No such document is referred to in §12. It is assumed that this is a typographical error and should refer to §244.

³² Contained in the Horizon Issues trial bundle at F/639.1.

“Disappointingly a large percentage of the core & outreach operations experienced on line service disruption again during April and whilst these appear to have been resolved, the field team are still dealing with the aftermath - cores close to resigning their outreach operations; customer and stakeholder complaints and a loss of customers due to the unreliability of the service. In the main, core & outreach operations are quite fragile and any further disruption to service would undoubtedly see some cores 'hand back the keys', therefore it is critical that we restore confidence in this part of the network.”

The issues in April 2010 related to Horizon service disruption and not to bugs or errors; and

- (iii) The Branch Support Programme document dated 25 June 2014³³ has been reviewed but is not considered to be disclosable. It speaks to the status of the branch support programme in 2014, and insofar as it refers to proposed improvements to remove the possibility for errors, it is referring to errors by SPMs rather than Horizon.

§36(x) – Briefing notes in advance of meeting with MPs on 17 May 2010

- 33. The requested document was disclosed in tranche 1 (August 2020) with Document ID GA_069_127003882.

§36(xi) – Lessons Learned Log document

- 34. The requested document was disclosed in tranche 2 (September 2020) with Document ID 152004167.

§36(xii) – All concerns raised by the NFSP

- 35. Wherever material was identified by the PCDE process containing concerns raised during the Relevant Period in relation to the reliability of Horizon, such material has been disclosed³⁴. This includes instances where matters were raised by individuals associated with the NFSP.

³³ Contained in the Horizon Issues trial bundle at F/1225.1.

³⁴ Subject to §34 of the DMD.

36. Since the search terms applied did not seek to identify communications from the NFSP,³⁵ the Respondent cannot confidently assert that all communications with the NFSP have been reviewed. However, it is hoped that the application of the search terms set out spreadsheets appended to the DMD and Addendum DMD will have identified communications conveying concerns as to Horizon issues, albeit not specifically as NFSP communications.

§36(xiii) – Opening and closing statements made on behalf of POL in the civil litigation

37. Opening and closing submissions from the civil litigation have not been disclosed as they are submissions rather than evidence or judicial findings. The judgments have been disclosed and, where disclosable, the underlying material upon which submissions or findings were based have been disclosed (save insofar as they are already fully disclosed on the face of the judgment).
38. The Appellants are invited to identify the basis upon which it is suggested that submissions are themselves disclosable. The Respondent will consider any such request in light of the reasons given.

§36(xiv) – Statements of Mr Dunks & Mr Godeseth from the civil litigation

39. The witness statement of Mr Godeseth was disclosed in tranche 3 with document ID 152004598. Additionally, the transcript of his evidence at trial was disclosed in tranche 3 with document ID 152003583.
40. In relation to Mr Dunks, a number of witness statements served as evidence within prosecutions have been considered for disclosure. Where the content of such statements is deemed disclosable, the statement has been disclosed. Insofar as his evidence in the civil litigation is concerned, a transcript of his evidence has already been disclosed in tranche 3 with document ID 152003629. His witness statement³⁶ has not been disclosed as there is

³⁵ The search terms were identified in the DMD and no Appellant has ever requested that NFSP be included within the search terms. It was not, and is not, thought that it was necessary, reasonable or proportionate to include NFSP as a search term.

³⁶ Contained in the Horizon Issues trial bundle at E/2/10.

nothing disclosable within the statement that is not already on the face of the transcripts or within Fraser J's findings in the HIJ. However, since the Appellants have requested a copy of this statement, the Respondent is content to provide it and a copy is attached herewith.

§36(xv) – Letters from POL's solicitors

41. In relation to the POL response to the Letter of Claim dated 28 July 2016, the document has been reviewed. POL's stance in respect of the claim generally, and the Callendar Square bug specifically, is disclosed on the face of the judgment³⁷. It is not considered that there is anything within the letter not already disclosed within the CIJ and HIJ which is disclosable.

42. In relation to the letter purportedly dated 11 January 2019 referred to in paragraph 422 of the HIJ, the Respondent has not been able to identify the letter. No letter of that date matching the description given in paragraph 422 is contained within the trial bundles.³⁸ However, given Fraser J's observations in relation to that letter set out on the face of the HIJ within paragraphs 422 and 426, it is not considered that the absence of this document will cause any prejudice to the Appellants.

§36(xvi) – The RPM note & "Correcting Accounts for Lost Discrepancies"

43. The Receipt/Mismatch Payment Note was disclosed in tranche 2 (September 2020) with document ID BRS0000002988.

44. The "Correcting Accounts for Lost Discrepancies" document was disclosed in tranche 1 (August 2020) with document ID 205000740.

³⁷ Notwithstanding the content of §422 of the HIJ referred to within the EFBW disclosure request, Fraser J acknowledged that the letters from POL's solicitors were not "factually inaccurate" and that the position disclosed by Mr Godeseth in his evidence was not known to POL until early 2019 (see §426 HIJ).

³⁸ There is one letter dated 11 January 2019 contained within the correspondence section of the trial bundle, but that letter does not contain the assertion referred to in §422, nor does it deal with the Callendar Square bug.

§36(xvii) – Internal FSL presentations

45. The document referred to at paragraph 448 of the HIJ was the Branch Outreach Issue (Initial Findings) presentation disclosed in tranche 2 (September 2020) with document ID 152006987.

§36(xviii) – IT Risk Management documents

46. The document referred to in paragraph 460 of the HIJ is a briefing paper for the POL Risk & Compliance committee setting out the IT risks as at July 2017. The risk assessment as in 2017 is not disclosable in relation to these appeal proceedings.

§36(xix) – Calls Spreadsheet document

47. The disclosure request is for a “calls spreadsheet” referred to within paragraph 464 of the HIJ. No such spreadsheet is referred to in paragraph 464. The Respondent has already disclosed all NBSC and HSD call logs, where such logs exist, to the Appellants by way of case specific disclosure, and by way of schedules by way of GDR disclosure. It is hoped that this effectively resolves the request, but if it does not then EFBW are invited to clarify which document they are seeking.

§36(xx) – Bug Table

48. The document referred to as the Bug Table in the HIJ can be found in the second joint statement of Jason Coyne and Dr Robert Worden, dated 25 February 2019 (disclosed in tranche 3) with document ID 152004562.

PETERS & PETERS

11 February 2021