

Thursday, 6 July 2023

(10.00 am)

Administrative Discussion

MR BEER: Good morning, sir. Can you see and hear me?

SIR WYN WILLIAMS: I can, yes.

MR BEER: Sir, you'll recall that Gareth Jenkins was previously scheduled to give evidence on 4 and 5 May this year but, very shortly before that time, he indicated that he had taken the decision not to rely on the privilege against self-incrimination and would accordingly provide the Inquiry with a witness statement and answer the questions that the Inquiry had of him. As that happened very shortly before Mr Jenkins was due to give oral evidence, his evidence had to be postponed from 4 and 5 May to allow time for the provision and then the disclosure of his witness statement.

Mr Jenkins duly provided a witness statement, it's 75 pages long, addressing the Inquiry's Phase 3 questions. His Phase 3 oral evidence was therefore rescheduled for today and tomorrow with him returning to the Inquiry after the summer break to give evidence about Phase 4

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involved a triage process, so that documents that may be relevant to our Phase 4 witnesses and, in the case of Mr Jenkins, relevant to him in the context of Phase 3, were to be prioritised by the Post Office in the order in which witnesses are being called this week and over the next three weeks.

As I mentioned when questioning Mr Foat, this late disclosure process meant that Mr Blake was given some documents only the night before Mr Ferlinc gave evidence that related to him in some way.

The Post Office sent us seven documents the night before Mr Marsh gave evidence yesterday that related to him in some way.

At the same time, the Post Office gave us 95 documents that related to Mr Jenkins in some way that are responsive to our earlier disclosure requests from last year and ought previously to have been disclosed. The Post Office apologised to the Inquiry for sending us these documents so late.

In the time available, we have had the barest of opportunities to read and analyse these documents that relate to Mr Jenkins, less

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issues.

Events have happened in the last two days which mean that it is now not appropriate for Mr Jenkins to be called to give evidence today and tomorrow. Instead, his evidence will be taken on Phase 3 and Phase 4 issues after the summer break and I will explain why.

You'll recall that in his evidence on Tuesday, Post Office's group general counsel, Mr Ben Foat, said -- and I'm summarising -- that what he described as a disclosure remediation process was being undertaken by the Post Office following the revelation of two failings in Post Office's disclosure: firstly, the failure to look at documents within a family to see whether those documents were responsive to the Inquiry's disclosure requests; and, secondly, as a result of a de-duplication exercise, a failure to include within the pool of documents over which searches were undertaken, documents which would have, in fact, been responsive to our disclosure requests and which were themselves within families of other documents which were responsive to our disclosure requests.

This remediation exercise, as he called it,

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still to consider which of them should be disclosed to Core Participants, giving them a reasonable opportunity to read and to analyse them and to send their Rule 10 questions to us. Nor has it afforded any opportunity for Mr Jenkins to read and analyse the documents -- he hasn't even been given them yet -- and to consider them with his own legal representatives.

SIR WYN WILLIAMS: I should say, Mr Beer, I haven't seen them either.

MR BEER: No, exactly.

What we can say is that the documents contain relevant information that we would wish to ask Mr Jenkins about. They contain relevant information which Core Participants should have the opportunity to see and to formulate questions of Mr Jenkins, and which Mr Jenkins could have the opportunity to see before he enters the witness box.

One of the responsibilities of counsel to an Inquiry acting neutrally and independently is to seek to assist you in ensuring that these Inquiry proceedings are fair to all but especially are fair to the Core Participants and

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1 to witnesses. Moreover, we wish these
2 proceedings to be conducted in a way that
3 ensures that any conclusions which you reach in
4 your final report, especially conclusions which
5 are critical or damning about an individual or
6 an organisation, are not vulnerable to attack on
7 the grounds that the process which led to them
8 being made was itself unfair.

9 There are three other dynamics relevant to
10 the advice which I gave you, and which you have
11 accepted, that it wouldn't be appropriate to
12 call Mr Jenkins now.

13 Firstly, as I emphasised to Mr Foat when he
14 was giving his evidence, this Inquiry is itself
15 investigating the late or non-provision of
16 disclosure to others by the Post Office in
17 a series of criminal prosecutions that lasted
18 over a decade and the non-disclosure of
19 documents in civil proceedings, and the
20 unfairness that such non-disclosure had on
21 parties and on witnesses. We, of all people,
22 will not entertain the making of the same
23 mistakes of the past whilst simultaneously
24 investigating those mistakes.

25 Second, as is well known, Mr Jenkins is

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1 "Approach to de-duplication rectification
2 exercise.

3 "The Post Office is conscious of the need to
4 mitigate the potential consequences of 'Item
5 level de-duplication' applied in respect of at
6 least some of the responses to Rule 9 requests.
7 We address now how the Post Office proposes to
8 mitigate any implications of the evidence of
9 Gareth Jenkins and Phase 4 generally.

10 "The Post Office is still developing
11 a methodology to address this issue but, more
12 broadly, anticipates that the approach will need
13 to be tailored according to what is reasonable
14 in all the circumstances, having regard to the
15 Inquiry's protocol on the disclosure of
16 documents and the potential impact of the
17 de-duplication issue in respect of each witness
18 and/or each Rule 9 Request.

19 "The Post Office has made numerous enquiries
20 with its eDiscovery provider, KPMG, as to
21 whether they, in fact, carried out any
22 de-duplication in respect of any documents to be
23 reviewed for responsiveness to Rule 9 questions
24 potentially bearing on the evidence of Gareth
25 Jenkins, but they have been unable to confirm

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1 under criminal investigation by the Metropolitan
2 Police Service for serious criminal offences
3 relating to his role in the Horizon scandal.
4 The evidence that he gives to this Inquiry may
5 be used in any criminal investigation,
6 prosecutorial decision making or in any criminal
7 proceedings brought against him.

8 Thirdly, the Inquiry's timetable can
9 accommodate a hearing which hears evidence about
10 Phases 3 and 4 from Mr Jenkins later in the
11 year, a hearing that will now probably last four
12 days or so.

13 I should say that, additionally, at 10.32 pm
14 last night, the Post Office wrote to the Inquiry
15 drawing our attention to the fact that, amongst
16 the 95 documents that it had recently disclosed,
17 it had recently identified that one of them was
18 a new document that the Post Office said was
19 "likely to be of significant interest to the
20 Inquiry", and it identified it to us. That was
21 indeed amongst the documents that we ourselves
22 had identified as being of significant interest
23 to the Inquiry.

24 The letter went on, and I'm going to read
25 it:

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1 this in the time available.

2 "Therefore the Post Office has focused on
3 family documents to duplicates of the 13
4 documents produced by the Post Office which
5 exist on the Inquiry's Core Participant platform
6 and which are referred to by Gareth Jenkins in
7 his second witness statement, being materials
8 that POL's eDiscovery provider might have
9 excluded. There are 4,767 such documents,
10 excluding previously produced documents. Of
11 these documents, POL will review for
12 responsiveness to the Inquiry's Rule 9 Requests
13 and/or interest to the Inquiry. This may also
14 include documents that the Post Office has
15 reviewed previously but not produced to the
16 Inquiry.

17 "From the Post Office's initial high-level
18 review of 600 of the 4,767 documents, it appears
19 that many of them are duplicative of documents
20 that have been already reviewed. However, it
21 has not been possible to confirm this in the
22 time available so the Post Office will re-review
23 any such documents. The Post Office will
24 produce any additional documents as soon as
25 possible and will continue to reflect on how to

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1 manage this issue as an urgent priority."

2 This is, of course, grossly unsatisfactory,
3 to be told at 10.32 pm on the night before
4 an important witness gives evidence that there
5 are 4,767 documents that are at least
6 potentially relevant to a witness who is being
7 called 11 hours and 28 minutes later, some of
8 which might be duplicates of material already
9 provided to the Inquiry but some of which may
10 not.

11 You'll be issuing directions today, sir, or
12 tomorrow in the light of Mr Foat's evidence that
13 seek to ensure that this kind of interference by
14 the Post Office with the work of the Inquiry
15 does not continue to disrupt and to disturb us.

16 I realise that this news will be upsetting
17 and distressing for many people, some of whom
18 will have made arrangements to travel to the
19 Inquiry for today and tomorrow. All I can say
20 is that we are determined to uncover the truth,
21 but to do so in a way that ensures fairness to
22 all and which leads to conclusions in a report
23 from you which are unimpeachable.

24 We will notify the public and Core
25 Participants in due course when, after the

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1 **MR BEER:** He is. Ms Dobbin is here.

2 **SIR WYN WILLIAMS:** Well, Ms Dobbin, I wish to
3 express my regret that Mr Jenkins has been
4 inconvenienced in this way. Whatever role he
5 may or may not have played in the events that we
6 are enquiring into, no doubt giving evidence in
7 these circumstances is of considerable strain to
8 him and it is of a matter of regret to me that
9 he has been inconvenienced in this way.

10 **MS DOBBIN:** I wonder if I could just say a word or
11 two on his behalf. We understand entirely that
12 this is not a position that you or the Inquiry
13 would wish to be in and, of course, it's not
14 a position that he would wish to be in either.
15 Right up until the 11th hour he was preparing
16 and ready to give evidence today. But, of
17 course, we're driven to agree with Mr Beer that
18 it's intolerable and unfair to all Core
19 Participants that a witness should be called to
20 give evidence when there is this volume of
21 evidence that's outstanding and potentially
22 relevant to them.

23 So, regrettable though this position is, it
24 would obviously be unfair for Mr Jenkins to give
25 evidence but unfair to all Core Participants in

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1 summer, Mr Jenkins will give his evidence.

2 Sir, that's all I intended to say this
3 morning.

4 Sir, I think you're still on mute.

5 **SIR WYN WILLIAMS:** Sorry, Mr Beer. Thank you very
6 much for that full and clear exposition of
7 events which have been unfolding over the hours
8 leading to now. I don't propose to repeat in my
9 own words what you have so eloquently expressed
10 but I cannot help but express my frustration
11 that this has happened at this time. It is
12 a very important time for the Inquiry, and we do
13 not need dislocation.

14 I express my regret to all of those, my
15 apologies, in fact, and regret to all of those
16 who have made special arrangements to either
17 view or be present at today's hearing. Clearly,
18 the evidence which was intended to be heard was
19 of considerable significance and of interest to
20 very many people.

21 Is Mr Jenkins present in the room?

22 **MR BEER:** No, he's not, sir. In the time available
23 last night, we stood him down from travelling
24 late last night.

25 **SIR WYN WILLIAMS:** Is he represented today?

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1 this Inquiry.

2 **SIR WYN WILLIAMS:** Thank you, Ms Dobbin. The
3 lawyers amongst you may well have observed that
4 I haven't invited any submissions about whether
5 or not his evidence should be postponed. That
6 is for the simple reason that what Mr Beer has
7 told me is, in effect, incontestable. It would
8 not be fair for him to be called in the
9 circumstances described and, in those
10 circumstances, no useful purpose would be served
11 by me inviting submissions from lawyers about
12 what has been patently obvious to me since I was
13 told about it last night.

14 So the result is that there will be no
15 evidence or no further evidence this week and we
16 will recommence hearing evidence next Tuesday.
17 As Mr Beer has already referred to, I intend, as
18 quickly as I can, to issue appropriate
19 directions to seek to regulate the future
20 conduct of disclosure in this Inquiry, in
21 particular disclosure by the Post Office, and
22 I will expect that my directions are complied
23 with literally to the letter.

24 **MR BEER:** Thank you very much, sir.

25 **SIR WYN WILLIAMS:** So I'll see you all to at 10.00

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1 on Tuesday.
2 **MR BEER:** Yes, thank you.
3 **(10.16 am)**
4 **(The hearing adjourned until 10.00 am on Tuesday)**
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