

Thursday, 21 September 2023

1
2 (10.00 am)
3 **MR BLAKE:** Good morning, sir. Can you see and hear
4 me? I think you may be on mute.
5 **SIR WYN WILLIAMS:** Yes, I can hear you. That's
6 fine.
7 **MR BLAKE:** Thank you very much. Can I call
8 Mr Dilley, please.
9 **SIR WYN WILLIAMS:** Yes.
10 **STEPHEN JOHN DILLEY (sworn)**
11 **Questioned by MR BLAKE**
12 **MR BLAKE:** Thank you very much can you give your
13 full name, please.
14 **A.** Stephen John Dilley.
15 **Q.** Mr Dilley, you should have in front of you,
16 a very lengthy witness statement, 194 pages in
17 total. Could I ask you to have a look at
18 page 178, which should have a signature. Yes.
19 Is that signature yours?
20 **A.** Yes, it is.
21 **Q.** Is that statement, dated 8 June 2023, true to
22 the best of your knowledge and belief?
23 **A.** Yes, it is, save for three points I wish to draw
24 to the Inquiry's attention.
25 **Q.** What are those?

1

1 and at paragraph 359 I quote from the note.
2 That meeting note is not exhibited to my
3 statement and that is my error, for which
4 I apologise to the Inquiry. We have sent it to
5 the Inquiry who already had it, so they're aware
6 of that but I wish to draw it to your attention.
7 **Q.** Is there one more?
8 **A.** There's just a final point. When I reread the
9 statement which is 194 paragraphs (*sic*) and,
10 with all the exhibits, comes to over 1,700 pages
11 in these three/four lever arch folders. The
12 impression that that can create is that this is
13 a statement entirely from my memory. It isn't.
14 When I got the Rule 9 Request in -- I think it
15 was April, I looked down the request and
16 I looked at the questions and this was a case
17 that, this October, I took on about 18 years
18 ago.
19 And I looked at the questions, and I thought
20 "I don't know that one, I don't know that one,
21 I don't know that one, I do know that one, I do
22 know that one, I don't know that one". So
23 I could have given a very, very short statements
24 to the Inquiry that largely said "I don't
25 remember". I didn't think that would be helpful

3

1 **A.** Can we turn to paragraph 130, please. At
2 paragraph 130 I talk about a letter that I sent
3 to BDO Stoy Hayward on 22 August 2006. That was
4 a letter to which the Inquiry directed me at
5 question 24 of 49 in its Rule 9 Request.
6 I subsequently talk about a draft accountancy
7 report that BDO prepared. When you read
8 paragraph 130 and subsequent paragraphs, you may
9 conclude that it was that letter of 22 August
10 that led to the draft accountancy report.
11 In fact, there was a very similar letter of
12 22 August, which the Inquiry has not put to me
13 but I sent to the Inquiry -- and I know that
14 they have it, they had it from Post Office --
15 that led to the draft accountancy report. So
16 I would not wish to create the impression that
17 it was that particular letter that led to it.
18 **Q.** Thank you. Is that the only amendment you'd
19 like to make?
20 **A.** No. Can we turn to paragraphs 357 and 358. In
21 paragraph 357 of my statement, I talk about
22 a meeting with Andrew Wise on 14 June 2006.
23 I talk about the agenda of the meeting which
24 I produced to the Inquiry. At paragraph 358,
25 I talk about an attendance note of that meeting,

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1 because we're here to learn.
2 I thought what would be a more helpful
3 approach is to go through the information to
4 which the Inquiry directed me, plus more
5 documents from my firm's file, to be able to
6 reconstruct the story for you and to make it
7 easy and that's what I have done, and I said as
8 such in my witness statement. But I don't want
9 to create the impression -- the process of doing
10 that helped me remember it but I don't want to
11 create the impression it's all been from my
12 original memory. It hasn't been.
13 **Q.** Thank you very much, that witness statement has
14 the unique reference number WITN04660100. That
15 will be published in due course and it will be
16 on the Inquiry's website, available to the
17 public.
18 Mr Dilley, you are currently a solicitor and
19 partner at Womble Bond Dickinson; is that
20 correct?
21 **A.** Yes.
22 **Q.** Womble Bond Dickinson was, at the relevant time,
23 known as Bond Pearce?
24 **A.** That's correct.
25 **Q.** You had conduct of the case of Mr Lee Castleton?

4

1 A. Yes, I did.

2 Q. You clearly reflected a lot on the contents of
3 your witness statement and, before we begin,
4 having reflected on the evidence, the evidence
5 of the Inquiry as a whole, is there anything you
6 would like to say to Mr Castleton or to his
7 family?

8 A. No, there isn't.

9 Q. Do you consider that you bear some
10 responsibility for what happened to
11 Mr Castleton?

12 A. In what way?

13 Q. There's nothing you wish to say to him. Is that
14 because you consider that this case was
15 conducted appropriately?

16 A. I have been asked in this statement whether
17 I would do anything differently in this case.
18 And now might be a good time to turn to that
19 part of this statement because that contains my
20 evidence on this.

21 Q. I'll take you to the statement in due course but
22 I'm asking you a question about anything you'd
23 like to say to Mr Castleton and your answer is
24 no. My question for you today is whether you
25 consider you bear any responsibility for what

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1 were not secured at lunchtime if the
2 subpostmaster was not on the premises, that
3 travellers' cheques were not kept in the safe
4 and foreign currency was not held securely, that
5 standard procedures for adjusting losses and
6 gains were not adhered to (because losses were
7 unauthorised) and personal cheques on hand had
8 been incorrectly treated. However I should add
9 that I believe the reason Mr Castleton was
10 subsequently suspended was because the Marine
11 Drive branch was short of significant amount of
12 cash rather than because of the control gaps
13 that the security inspection identified."

14 That paragraph there takes up approximately
15 a third of that summary of events leading up to
16 the litigation. Did you include that paragraph
17 in this witness statement to suggest, in some
18 way, that Mr Castleton was sloppy or slapdash?

19 A. I included that paragraph to reflect the
20 evidence given to me in not one but two witness
21 statements of Helen Rose in the case and that
22 was the evidence that was contained in her
23 statement. I have read our note of the trial
24 and one thing I think she either may say in
25 her -- either in her statement or in our note of

7

1 happened to Mr Castleton in the conduct of the
2 case, in the way that the case was conducted by
3 yourself?

4 A. I'm satisfied that I acted and my firm acted
5 professionally and politely and appropriately at
6 all times.

7 Q. I'd like to look at your statement. Can we get
8 up on screen, please, WITN04660100. Thank you
9 very much. Scroll down to page 4, please. From
10 page 4 onwards, for the next few pages, there is
11 a summary of events leading up to the
12 litigation, as you've described it.

13 Can we please look at paragraph 13, which is
14 on the next page. Thank you.

15 You describe there at paragraph 13 evidence
16 that Helen Rose gave in her statement to the
17 court in the *Lee Castleton* case and, if we
18 scroll down, there is a large paragraph,
19 paragraph 15, which quotes from paragraph 9 of
20 that statement.

21 A. Yes, that's right.

22 Q. That reads as follows:

23 "The inspection revealed that the safe was
24 left open, the safe keys were left in the safe
25 door and it was not secured, that cash and stock

6

1 the trial is that the security checks that she
2 started to do were not finished. They became
3 overtaken by events. So I wouldn't want to
4 suggest that that was completed.

5 Q. Indeed, there was a paragraph before that
6 paragraph in her witness statement that
7 explained that those checks had not been
8 completed and did you hear her evidence to the
9 Inquiry that she said that was simply incorrect,
10 that paragraph?

11 A. I didn't hear that part of her evidence to the
12 Inquiry, no.

13 Q. Why is it so prominent in your summary of the
14 events? Why did you select that paragraph in
15 particular?

16 A. Because that was her evidence. That was her
17 evidence to me at the time, contained in two
18 witness statements.

19 Q. Can you see it doesn't make Mr Castleton look
20 very good, does it, the suggestion that, in some
21 way, he left the safe open, for example?

22 A. What Helen Rose said is not my evidence, that's
23 her evidence.

24 Q. But you've included in your evidence --

25 A. Yes.

8

1 Q. -- and you've selected from her witness
 2 statement two specific paragraphs --
 3 A. I have --
 4 Q. -- and included that quite prominently?
 5 A. It's a short statement she made. Paragraph 9 is
 6 longer than paragraph 5, and so it would come
 7 across as more prominently because it is longer.
 8 But the really important thing from Helen's
 9 statement, in my view -- the really important
 10 thing -- was the fact that the audit involved
 11 physically counting -- and that's a shorter
 12 paragraph, because it's shorter to say --
 13 physically counting cash and stock at the Marine
 14 Drive branch.

15 And in the process of her counting -- and
 16 she had an assistant it was somebody called, I'm
 17 going to say someone like Chris Taylor. She had
 18 an assistant and in the process of physically
 19 counting the cash and stock she found that there
 20 was insufficient cash. That's the really
 21 important point from her statement.

22 Q. So why include paragraph 9?

23 A. Because it's part of her statement. That's what
 24 she said in her statement that she found.

25 Q. Let's look at her statement, it's POL00071196.

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1 Inquiry has been either yesterday or the day
 2 before. My statement was produced in June.

3 Q. Yes. Absolutely. I'm not suggesting that you
 4 knew what she was going to tell the Inquiry but
 5 it's quite a significant paragraph in your
 6 witness statement to this Inquiry. Do you
 7 accept that that paragraph, paragraph 9, is
 8 highly prejudicial against Mr Castleton?

9 A. I think it is prejudicial, yes, I do. But if
 10 you look at paragraph 8, my understanding from
 11 what she was saying in that -- and she may
 12 have -- from the evidence she's given to the
 13 Inquiry, she may say that effectively I'm wrong
 14 but my understanding from what she was saying is
 15 that the security check had been started, the
 16 issues she'd found are at paragraph 9 but the
 17 security check hadn't been finished.

18 Q. In fact, her evidence to the Inquiry was that
 19 that list of safe was left open, safe keys left
 20 in the safe door was simply a checklist that
 21 hadn't been completed. Did you hear that
 22 evidence?

23 A. I did not.

24 Q. If we scroll down, please, staying with that
 25 paragraph 9 but over to the next page, in the

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1 This is the second witness statement. Can we
 2 turn over the page, please, page 2. So there
 3 are a number of paragraphs before paragraph 9
 4 and if we look at paragraph 8, she says there:

5 "As part of a normal audit, we have to
 6 complete a procedural security inspection. This
 7 was initiated by my colleague Chris Taylor.
 8 When a postmaster is suspended then any
 9 remaining compliance tests are not completed,
 10 because of the large number of compliance tests
 11 (including security compliance) that have to be
 12 completed for each audit. Accordingly, although
 13 the procedural security inspection was started
 14 as a matter of routine, I do not recall it being
 15 completed because Mr Castleton was suspended
 16 prior to its completion and it then became
 17 irrelevant."

18 You didn't include that paragraph in your
 19 statement for this Inquiry, did you?

20 A. No, I have not.

21 Q. No, and it was paragraph 9 that you included,
 22 which Ms Rose has told the Inquiry should not
 23 have been included because it didn't happen. It
 24 was not correct.

25 A. That's not -- you know, her evidence to the

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1 last sentence there she says:

2 "However, I should add that I believe the
 3 reason Mr Castleton was subsequently suspended
 4 was because the Marine Drive branch was short of
 5 a significant amount of cash, rather than
 6 because of the control gaps that the security
 7 inspection identified."

8 A. Yes.

9 Q. Its purpose, therefore, was not to prove the
 10 case against Mr Castleton of that paragraph; is
 11 that fair?

12 A. That is fair.

13 Q. In fact, its purpose is simply to prejudice
 14 against Mr Castleton?

15 A. I think the control gaps, which I had understood
 16 her to have identified through the incomplete
 17 security report, may have begun to offer
 18 an explanation to what happened to the cash.
 19 One thing I was clear about at the time, and I'm
 20 clear about today, is I did not think that
 21 Mr Castleton had been dishonest.

22 Q. The impression given by paragraph 9 is one of
 23 a sloppy postmaster, is it?

24 A. That's the impression that I take from that. It
 25 says that travellers' cheques were not kept in

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1 the safe, that they were not held securely, that
 2 standard procedures for adjusting losses and
 3 gains were not adhered to, but because losses
 4 were unauthorised -- I mean that -- I'm
 5 surprised that she has resiled from that because
 6 it is correct that, in Mr Castleton's case, that
 7 process wasn't adhered to: losses were
 8 unauthorised.

9 **Q.** Well, that's one very short part of that
 10 paragraph but the significant passages that
 11 relate to the safe being left open, the safe
 12 keys, et cetera -- I mean, the impression that's
 13 given in your witness statement is that this is
 14 a neat legal case about whether somebody signed
 15 or didn't sign accounts. What I'd like to
 16 understand is actually the relevance of any of
 17 that, even if it were true, to the case that was
 18 being brought against Mr Castleton?

19 **A.** Well, I think it offers, or may offer -- but not
 20 if Helen Rose doesn't support it -- but it may
 21 begin to give some alternative insight into what
 22 happened to the money.

23 **Q.** Putting to one side that significant evidence
 24 that, in fact, Ms Rose says was incorrect, more
 25 broadly, do you consider that the case that was

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1 the Horizon System though, didn't it?

2 **A.** In Mr Castleton's branch, it did.

3 **Q.** Mr Castleton's evidence to this Inquiry was that
 4 you said that the Post Office would ruin him.
 5 Did that happen?

6 **A.** I do not believe that it did, no.

7 **Q.** Well, I'd like to look at some documents which
 8 show the general approach that was taken over
 9 the course of those proceedings. Can we look at
 10 LCAS0000535, please. This is the original claim
 11 form, so we're starting on 9 June 2005. If we
 12 scroll down, we'll see the statement of claim on
 13 the next page or the page after, page 3 and if
 14 we look at paragraph 7, that's at the bottom of
 15 page 4, you have there the sum that is said to
 16 be owed and paragraph 7 says:

17 "Such loss, and the Defendant's failure to
 18 account for it, could not have occurred without
 19 the Defendant's negligence, carelessness or
 20 error and/or the action or inaction of the
 21 Defendant's assistants."

22 **A.** Mm-hm.

23 **Q.** If we now turn to the defence, POL00082222,
 24 page 2 of that, this is the Defence and Counter
 25 Claim of 15 August 2005. If we could scroll

15

1 conducted by yourself was intended to make
 2 an example of Mr Castleton?

3 **A.** I think that question really goes to Post
 4 Office's motives in this case, Post Office's
 5 state of mind, and I have said in this statement
 6 and I believe it today: I don't think that there
 7 was one single consistent motive that dominated
 8 throughout the entire life of this case.

9 I think when the claim was first issued, it
 10 was issued to pursue what Post Office believed
 11 was a debt. However, as the case continued,
 12 I think the motivation of Post Office changed
 13 and what they wanted out of the case changed.
 14 I think it was less about making an example of
 15 Mr Castleton and more about sending a message
 16 that they were willing to defend the Fujitsu
 17 Horizon System.

18 **Q.** Do you see a significant distinction in making
 19 an example of Mr Castleton by setting a legal
 20 precedent and defending the Horizon System?

21 **A.** This case had the potential to set a new legal
 22 precedent. It had the potential to become
 23 a test case but, ultimately, it didn't. It just
 24 reconfirmed old law.

25 **Q.** Well, it did say some significant things about

14

1 down, thank you, and over to the next page, it's
 2 here that Mr Castleton raises issues with the
 3 Horizon System. He said:

4 "The Defendant repeatedly sought assistance
 5 from his managers within the Claimant company
 6 during the period over which the apparent
 7 shortfall accumulated. No assistance was
 8 forthcoming. The Defendant avers that any
 9 apparent shortfall is entirely the product of
 10 problems with the Horizon computer and
 11 accounting system used by the Claimant."

12 Could we scroll down, please, to the
 13 "Counterclaim". Mr Castleton then brings
 14 a counterclaim and at paragraph 9 he says:

15 "The Defendant avers that the Claimant
 16 wrongfully terminated the Defendant's contract
 17 as a subpostmaster following his suspension and
 18 that the true cause of the apparent shortfall in
 19 the accounts of Marine Drive Post Office is the
 20 Claimant's own computer system not any
 21 misconduct or negligence on the part of the
 22 Defendant or his assistant."

23 The Horizon accounting system is at the core
 24 of Mr Castleton's case; do you accept that?

25 **A.** I accept that, absolutely, that Mr Castleton

16

1 made allegations about the computer system. But
2 a really important point is Post Office
3 succeeded in its claim in spite of the computer
4 system. It succeeded in its claim on the basis
5 of physical accounting records.

6 **Q.** We'll get to that in due course. But in terms
7 of the case that he is bringing, so his defence,
8 his counterclaim, Horizon is front and centre?

9 **A.** That's correct.

10 **Q.** Let's look at how this was dealt with, bearing
11 in mind the allegation that you said to
12 Mr Castleton that the Post Office will ruin him,
13 an allegation that you deny. Let's look at
14 POL00072669, so we're starting now 24 February
15 2006, so early 2006. This is an attendance note
16 following, I think, a conversation between
17 yourself and Mandy Talbot, who was the Post
18 Office Legal Case Manager; is that right?

19 **A.** For the majority of the case, that's right.

20 **Q.** It says there:

21 "I had a telephone conversation with Mandy
22 Talbot ...

23 "Internally the Post Office feels conflicted
24 about which direction to go in with the
25 *Castleton* case. The Post Office believes the

17

1 *Castleton*. She even said that she thought it
2 might be damaging to settle the claim on
3 confidential terms rather than fight it and
4 lose."

5 I put to you earlier about Mr Castleton made
6 an example of. Does that not give you the
7 impression that the Post Office were seeking to
8 make an example of him?

9 **A.** We're looking at this now some 17/18 years later
10 but the advantage that I do have is that I was
11 there at the time. Mr Castleton will see
12 this -- completely understandably -- this point
13 about -- being about him, but really what Mandy
14 was saying is Post Office wanted to show that
15 they were willing to defend the system.

16 In fact, this talk about their motivation is
17 in some ways, in some ways, irrelevant because,
18 once the claim had been issued and once the
19 counterclaim had been issued, which most of the
20 time was put at £250,000, the Post Office had no
21 choice. The Post Office could not simply
22 discontinue their claim without having to deal
23 with the counterclaim and Post Office tried many
24 times to settle with Mr Castleton.

25 I think the -- in that paragraph I think

19

1 Horizon System is robust, but the downside is
2 the cost (In Post Office's time and money) in
3 proving a negative (ie that there are no faults)
4 and that is expensive. For example, Mandy would
5 need to get a report from Fujitsu (who
6 apparently have difficulty writing in plain
7 English) and get someone in the Post Office to
8 review Fujitsu data to see if there are any
9 anomalies."

10 This the significant passage that I'd like
11 to take you to, although I will return to that
12 first paragraph. It says there:

13 "It is Mandy's view that the Post Office
14 must [I think it says it must mean 'not', 'must
15 not'] show any weaknesses and even if this case
16 will cost a lot, there are broader issues at
17 stake than just the Castleton claim: if the Post
18 Office are seen to compromise on Castleton then
19 'the whole system will come crashing down',
20 ie it will egg on other subpostmasters to issue
21 speculative claims. Mandy knows that
22 Mr Castleton is talking to Barjarge (the other
23 subpostmaster bringing a Horizon based claim).
24 The Post Office's clear line to the industry
25 must be that we are to take a firm line with

18

1 that's a reference to Mr Bajaj, and there's
2 a typographical error in how that's been spelt.
3 So I don't -- the way I understood it, it
4 wasn't -- and Mr Castleton will feel this, of
5 course he will -- but it wasn't about making
6 a personal example of him; it was about sending
7 a message that they were willing to defend the
8 system against somebody pursuing them for
9 a large counterclaim.

10 **Q.** Irrespective of the personal effect on
11 Mr Castleton, do you agree with that?

12 **A.** Can you put the whole question together for me?

13 **Q.** I mean, it was quite short. Your suggestion is
14 that it wasn't about him but it was certainly
15 irrespective of the personal impact on
16 Mr Castleton and in knowledge of?

17 **A.** I think they were cognisant of the personal
18 impact on Mr Castleton and they didn't want to
19 go to trial. They wanted to settle.

20 **Q.** Well, that's not what the last sentence there
21 says. It says:

22 "She even said that she thought it might be
23 damaging to settle the claim on confidential
24 terms rather than fight it and lose [it]."

25 **A.** That was Mandy's thought and she -- as you'll

20

1 have seen from my attendances note, she says
 2 things that are eminently quotable but you have
 3 to look at the actions where they tried to
 4 settle because actions speak louder than words.
 5 And they tried on multiple occasions -- and I've
 6 set out a table in this statement that would
 7 illustrate my point if we were able to find it.
 8 They tried on multiple occasions to settle this
 9 case.

10 **Q.** But looking at 24 January 2006 at least, so
 11 relatively early stages of this litigation, it
 12 certainly seems, as far as Mandy Talbot was
 13 concerned, that the case shouldn't be settled
 14 and that Mr Castleton should effectively be
 15 sacrificed in order to prevent further
 16 challenges against the Horizon System. Do you
 17 agree with that?

18 **A.** No, I don't.

19 **Q.** Okay, well, let's look at more contemporaneous
 20 documents as time goes on. Let's look at
 21 7 March 2006, that's POL00070882. If we could
 22 start at page 2 of this document and halfway
 23 down. It's an email from yourself to Mandy
 24 Talbot and you say:

25 "Dear Mandy ..."

21

1 provides context?

2 **A.** Because these emails need to be set in the
 3 context in which we were operating. On
 4 7 November 2005, I was instructed by Mandy
 5 Talbot, just before then, to offer a mediation
 6 to see if the claim can be settled and we did.

7 On 8 November, Mr Castleton's solicitor
 8 replied and said he would only mediate after
 9 disclosure.

10 On 17 November, on behalf of the Post
 11 Office, we urged Mr Castleton to reconsider his
 12 position on mediation.

13 On 5 January, with the blessing of Mandy
 14 Talbot, we made an offer pursuant to part 36 of
 15 the Civil Procedure Rules to try to settle the
 16 claim.

17 **Q.** Can I stop you there. Is the point that you're
 18 trying to make that throughout the Post Office
 19 were trying to settle the claim?

20 **A.** Absolutely.

21 **Q.** Okay. I'll continue with these emails. Can we
 22 look at POL00070824, please. It's over the
 23 page. Thank you. This is an email from
 24 yourself to Mandy Talbot. We're now on 24 April
 25 2006. I'll go chronologically throughout April,

23

1 I'm looking in particular at the final
 2 paragraph there:

3 "Is there any tactical preference for
 4 getting Castleton tried for Bajaj or the other
 5 way around? It sounds as though Bajaj has not
 6 issued a claim yet so presumably it would be
 7 helpful to have a favourable judgment on
 8 Castleton asap before Bajaj goes to trial (if
 9 either of them get that far)."

10 **A.** Please can you scroll up, so I can see the date
 11 on that?

12 **Q.** Absolutely, that's 7 March 2006. Then, if we
 13 scroll up further, we can see her response.
 14 Thank you. She says there:

15 "Bajaj has not as yet issued proceedings so
 16 tactically a decision on Castleton or better
 17 still Castleton disappearing would be
 18 advantageous."

19 **A.** Mm-hm.

20 **Q.** Let's look at the --

21 **A.** And I take "Castleton disappearing" to mean
 22 Castleton settling and I can give you the
 23 context of that on page 107 of my statement.

24 **Q.** We don't need to turn up your statement.

25 Perhaps you can tell us why you think that

22

1 June, August. "Assets", then we have the final
 2 paragraph that's currently on the page, thank
 3 you. You say there:

4 "Dear Mandy ..."

5 You address the issue of Mr Castleton's
 6 assets and then you say:

7 "There is a 'bigger picture' ie that the
 8 [Post Office] wishes to be seen to be taking
 9 this claim very seriously, to defend the Horizon
 10 System and to discourage other subpostmasters
 11 from pursuing similar claims. However, looking
 12 at the case in isolation, the cost/benefit of
 13 pursuing it to trial, even if you succeed, is
 14 uncertain."

15 That bigger picture being to dissuade other
 16 subpostmasters from bringing Horizon based
 17 claims?

18 **A.** Yes, and that goes to the point that I've been
 19 seeking to make: they were trying to show that
 20 they were willing to defend the Horizon System.

21 **Q.** But not willing to, as we'll see in due course,
 22 disclose very much material relating to the
 23 Horizon System?

24 **A.** Well, I'm really happy to be taken through
 25 disclosure.

24

1 Q. Thank you. We'll get to that shortly. Can we
 2 look at POL00071165, we're now on 6 June 2006.
 3 This is an attendance not. It has Adrian
 4 Bratt's name. Who was Adrian Bratt?
 5 A. He was a solicitor at Bond Pearce. I think at
 6 the time he was probably a trainee.
 7 Q. Thank you. In attendance was yourself, somebody
 8 called Mared Hughes, some people from Fujitsu,
 9 so we have Anne Chambers there, for example,
 10 Gareth Jenkins, and others.
 11 A. That should say Andy Dunks.
 12 Q. Andy Dunks, yes, thank you. If we look at the
 13 first substantive paragraph under "The Horizon
 14 Disputes", we have:
 15 "The meeting open with SJD ..."
 16 I think that's you.
 17 A. Yes.
 18 Q. "... introducing the agenda and outlining the
 19 Castleton case. [You were] outlining [the Post
 20 Office's] point of view with regards to
 21 settlement and that they are very keen not to
 22 set a precedent and they would like to take
 23 a firm line, thus giving a clear signal, such
 24 that the accounting system is okay and they do
 25 not want to be taken for a ride. [You think]

25

1 "Explaining that what initially started as
 2 a debt recovery matter has now turned into
 3 a much broader point given the Horizon type
 4 defence of Mr Castleton and that Post Office
 5 Legal consider that if they are seen to settle
 6 on this case, or walk away, then that will open
 7 floodgates for lots of other subpostmaster
 8 claims given that they are talking to each other
 9 on blogging websites, however explaining to her
 10 the costs given 7-10 days in court and ten or
 11 more witnesses could well be [£200,000 or
 12 £300,000]. Accordingly, if you look at the case
 13 in isolation it is completely nonsensical,
 14 especially given that Mr Castleton's asset
 15 position suggests that he would be unable to
 16 pay. However, the PO have taken a broader
 17 view."

18 That is, is it not, entirely consistent with
 19 the suggestion that Mr Castleton would be ruined
 20 if the case went ahead?

21 A. Can you take me, please, if we're going to talk
 22 about Mr Castleton being ruined, to the
 23 attendance notes of the calls I'd had with him
 24 in November 2006. Look, I entirely accept that,
 25 insofar as we could understand Mr Castleton's

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1 that we will struggle to settle this case."

2 Then there's a reference to other cases,
 3 Bajaj and Bilkhu.

4 A. Yes.

5 Q. So at that stage, it was clear to you that there
 6 were other cases in the pipeline relating to the
 7 Horizon System?

8 A. Yes. There were two other cases, those of
 9 Mr Bajaj and Bilkhu.

10 Q. Thank you. If we move forward to August 2006.
 11 Can we look at POL00071088. This is
 12 an attendance note, a telephone attendance note
 13 from you, 18 August in the Castleton case and it
 14 refers to a telephone conversation you had with
 15 Cheryl Woodward. Do you remember who Cheryl
 16 Woodward was?

17 A. Distantly. Cheryl Woodward was the person who
 18 I think first instructed my firm to issue the
 19 claim. She was based in Chesterfield in the --
 20 I think what was known as the former Agents
 21 Debts Team. So she worked in the business.
 22 I didn't understand her to be in the Legal team.

23 Q. Okay. You summarised the claim and the defence
 24 to her and I'm just going to read this
 25 paragraph. It says:

26

1 asset position, there was a significant risk
 2 that he would be unable to pay.

3 He did take out insurance and, at one point,
 4 I wrote to his solicitors and said, "You haven't
 5 served a notice on us" because, prior to the
 6 Jackson reforms in 2013, if you took out
 7 an insurance policy, if it was an
 8 after-the-event insurance policy you were
 9 required to serve a notice, and the fact that
 10 I wrote that letter suggests to me that, at one
 11 point, we didn't know if it was
 12 an after-the-event insurance policy -- which, if
 13 it was and we'd have succeeded, could have
 14 potentially paid some or all of our costs -- or
 15 before-the-event insurance policy, and we
 16 weren't sure how much it was for.

17 Nevertheless, I entirely accept that we had
 18 advised Post Office more than once that it was
 19 a serious risk that, if they succeeded in their
 20 case against Mr Castleton, that he would be
 21 unable to pay all of their claim.

22 Q. We are going chronologically. We may well come
 23 to November. If we don't, then you can have
 24 an opportunity after lunch to identify the
 25 particular document that you'd like to bring to

28

1 the Chair's attention.

2 **A.** I think it gives really important context to the

3 point that you're trying to make.

4 **Q.** Well, we have, as at 18 August 2006, a clear

5 suggestion that Mr Castleton would be unable to

6 pay any costs against him.

7 **A.** That is correct.

8 **Q.** We also have the very fact that, at the end of

9 the trial, Mr Castleton was unable to pay the

10 costs against him.

11 **A.** That is also correct.

12 **Q.** So it would have been clear to the Post Office

13 that the effect of this litigation would, in

14 effect, be to ruin him?

15 **A.** Whether that is correct or not, I refute using

16 that language and I'm happy to take you to the

17 contemporaneous attendance note of the calls --

18 notes of the calls that I had with Mr Castleton

19 about that.

20 **Q.** So is your evidence that, if you had said you

21 would ruin him, you would have made a clear note

22 of that and put it on your case file?

23 **A.** Well, two things on the "ruin" comment. When --

24 first of all, it just doesn't sound like --

25 I know myself and it just doesn't sound like

29

1 please get the note on screen that I've made of

2 the call in November, it doesn't fit with the

3 other part of the note, the tone of the note, in

4 which I said to Mr Castleton -- I think it was

5 probably for the first time that I'd said that

6 to him because he started acting in person --

7 I said to Mr Castleton "Look" -- I didn't need

8 to say this but I believed it and I still

9 believe it, I said to him: "I don't think you've

10 been dishonest", and I believe that today.

11 I don't think he dishonestly took money from

12 Post Office and I think, and I hope, it will

13 give him some comfort for me to confirm that to

14 this Inquiry. I said it to him at the time.

15 Our barrister -- it can be seen from the

16 transcript of the -- our note of the -- written

17 note of the hearing, our barrister said it at

18 the end of the case, "I disavow any allegations

19 of any honesty". It was not in our pleaded

20 case. I'd said it to his solicitors, who had

21 said it to him -- who'd told me they'd said it

22 to him many times, that's captured in a note,

23 and I said it to Mr Castleton again.

24 It's just a really odd -- in that attendance

25 note of a call I had with him, where he alleges

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1 language I would use. It just doesn't sound at

2 all like something I would say. It makes me

3 sound like a Vinnie Jones character from an East

4 End gangster film. It's just not at all who

5 I am. But the second -- you know, that sort of

6 knowing myself.

7 But the second point really, I -- to be able

8 to address this question, I think it would be

9 really helpful to go to the contemporaneous

10 attendance notes. Those contemporaneous

11 attendance notes were only made for me. You

12 know, I'm the only audience. There is one note,

13 not a note I'm talking about, where I talk about

14 a call or a letter to BDO, and what gets typed

15 up is "video". These notes aren't written for

16 anybody else.

17 You've already spotted a typographical error

18 in one. They're written for myself and they

19 were dictated after the call. So --

20 **Q.** So is your evidence that you would have written

21 it down had you said it?

22 **A.** Yes. And more than that, in the -- that's part

23 of it and the contemporaneous note shows that

24 that language wasn't used but, also, if you --

25 if we could -- to answer the question, if we

30

1 that I said this, it's really odd for me to say,

2 on the one hand "I don't think your dishonest

3 but we're going to ruin you". It just doesn't

4 fit with the tone of it.

5 **Q.** It was, though, consistent with the position of

6 the Post Office at that time, that they would

7 been proceedings against him that would have the

8 effect of bankrupting him?

9 **A.** You're asking me about use of specific language.

10 That attendance note shows that I had a call

11 with Mr Castleton and in part of the call I was

12 saying to him that -- I'd like to be taken to

13 the attendance note so I can remember it better,

14 please -- but that attendance note shows that,

15 in the call I had with him, I was saying to him

16 "The costs are going to be significant,

17 significant if we win", and that's entirely

18 right.

19 That's very different, very different, from

20 saying to somebody "We or Post Office are going

21 to ruin you". It's really different. But it's

22 right to record that I was saying to him that

23 the costs are going to be significant. Whether,

24 you know -- I don't want to speculate on what

25 his mind was saying to himself as I said that

32

1 because that would be my opinion evidence, not
 2 evidence of fact. But I'm clear, really clear,
 3 that the language I used to Mr Castleton was not
 4 that Post Office would "ruin" him.
 5 **Q.** So there's a dispute as to the particular words
 6 that were used but, while he was a litigant in
 7 person, you did say to him that the costs that
 8 will fall against him will be huge?
 9 **A.** If you would like precision about what I said or
 10 more accuracy, we need to go to the note.
 11 **Q.** Was there only one conversation then --
 12 **A.** -- but.
 13 **Q.** -- because you're taking us to a particular
 14 note --
 15 **A.** Yeah, I'm sorry. Let me look it up in my --
 16 **Q.** No, we can get to it in due course but was there
 17 only ever one conversation between you and
 18 Mr Castleton?
 19 **A.** No.
 20 **Q.** So you're focusing on a particular note,
 21 a particular point in time --
 22 **A.** I am, because that's when I think he has said
 23 something like we -- "Mr Dille called me after
 24 such-and-such a date", and I was trying to find
 25 when abouts, by reference to comments, he had

1 trial approaching. At the bottom there's
 2 "Meeting with Mandy Talbot":
 3 "Mandy Talbot said the difficulty is this
 4 has almost become a test case in spite of
 5 itself. The Post Office other solicitors' cases
 6 are waiting and watching on this."
 7 So, at that point in time, was there
 8 significant pressure coming from the Post Office
 9 in order to succeed in this particular case?
 10 **A.** I don't recall Mandy Talbot calling -- in any
 11 conversations, applying pressure on us. We
 12 wanted, as you do with any client, to do your
 13 best by them, within, of course, the rules of
 14 the court and your professional ethics rules and
 15 so, in an adversarial system, it is my absolute
 16 duty to do -- to act in their best interest.
 17 But I don't recall Mandy saying to me "Stephen,
 18 you've absolutely got to win, win, win this", or
 19 anything like this.
 20 **Q.** But she did say it's "become a test case in
 21 spite of itself"?
 22 **A.** That's the language that she used and it did
 23 have the potential, at one time, to have become
 24 a test case. It ultimately didn't become a test
 25 case because Mr Castleton did not produce any IT

1 made that we could have had this conversation.
 2 But the other point you just made is --
 3 I think you might have made is that: were these
 4 comments only made to Mr Castleton? During the
 5 course of 2006, we had, on more than one
 6 occasion, told Mr Castleton's solicitors -- he
 7 had solicitors for the vast majority of the
 8 case. We told Mr Castleton's solicitors that
 9 the costs of going to trial would exceed
 10 £200,000. So they knew.
 11 **Q.** That was a matter that you specifically brought
 12 up in conversation with him in November when he
 13 was unrepresented?
 14 **A.** Yes.
 15 **Q.** Can we look at POL00069622, please. We're now
 16 in September 2006, 11 September, and this is
 17 after a conference with counsel Richard Morgan
 18 in counsel's chambers. The main purpose of the
 19 conference was to meet four of the key witnesses
 20 to go over their draft statements with him.
 21 I'll return to this particular attendance
 22 note because it's quite significant in relation
 23 to a number of different witnesses but could we
 24 just have a look at the bottom of page 5,
 25 please. So we're now in September 2006 with the

1 evidence. So it just became a case in the end
 2 that reconfirmed old law.
 3 **Q.** Are you not aware of the Post Office in any case
 4 having brought the *Lee Castleton* case to the
 5 court's attention in order to support the
 6 robustness or otherwise of the Horizon System?
 7 **A.** I can only speak to the cases in which I was
 8 involved and I have set them out in my
 9 statement. I think what it's fair to say or
 10 would have been fair to say in other cases is
 11 that, in the case involving Mr Castleton, Anne
 12 Chambers of Fujitsu had taken a call and she'd
 13 had a look at the system and what she had said
 14 to us is that she'd been unable to find anything
 15 wrong with it.
 16 Make of that what you will but her comments
 17 were confined to this case. So you could say
 18 "Well, we've had a look at it and we can't find
 19 anything wrong with it". Yes, but in this case.
 20 And I've been clear in my statement that when
 21 I was looking at issues, whether there were
 22 issues with the Horizon System and considering
 23 the points that Mr Castleton's solicitors were
 24 putting on his behalf to us, I was interested
 25 really in whether there were issues at his

1 branch.

2 **Q.** We'll get to that in due course and we'll get
3 the words in Ms Chambers' statement?

4 You've said that she made it clear that the
5 system check was only in this case. Do you
6 think you made that sufficiently clear to the
7 court in the *Lee Castleton* case.

8 **A.** Well, look. You've got the transcript of
9 evidence. You've got --

10 **Q.** I don't think we've got a transcript. We've got
11 some rough notes.

12 **A.** Sorry, I apologise. You've got my handwritten
13 notes. You've got a transcript of -- the
14 transcripts that we've been able to locate of
15 certain of the witnesses' evidence. The
16 transcripts, I have to say, some of the sound
17 quality recording wasn't good but you've also
18 got our typed note and my recollection, albeit
19 distant now, was that, yes, that was made clear.

20 **Q.** Thank you. We're now going to 10 November 2006,
21 so around the period in which you've said that
22 you were speaking to Mr Castleton. Can we look
23 at POL00069779, please. This is an email from
24 yourself to Mandy Talbot 10 November 2006. It's
25 over the page, please, (d):

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1 would be a significant commercial advantage to
2 the Post Office.

3 So, at that time, you knew that there were
4 a number of other cases that were challenging or
5 potentially challenging the Horizon System.

6 **A.** I certainly knew there were two.

7 **Q.** It was important at that stage -- you say it
8 wasn't ultimately, but at that stage -- it was
9 important for the Post Office to get a good
10 precedent in order to avoid other claims that
11 were challenging Horizon from succeeding?

12 **A.** "Precedent" is a really interesting word because
13 we all use it in different ways. The way
14 lawyers and barristers and judges will
15 understand the word "precedent" is almost
16 certainly a legally binding precedent, a case
17 law precedent. Okay? In -- within law firms,
18 that use of the word exists but there's another
19 usage as well. We talk about "precedents" in
20 the sense of know-how, in a much wider sense.

21 So "Stephen could you give me a precedent
22 particulars of claim" or what -- in looser
23 language, "What sort of knowledge do we get from
24 that case?" It's a looser language of the word
25 "precedent".

39

1 "Even if the [Post Office] wins and is
2 awarded its costs without a capping order, its
3 costs would be set against the assessment the [Post
4 Office] may be awarded 60% to 70% of its costs.
5 This could mean that the irrecoverable element
6 of just those costs that are incurred between
7 now and the end of the trial could easily be
8 around £40,000. This would more than cancel out
9 any 'gain' of the extra £3,500 the [Post Office]
10 might make if it gets judgment. Of course,
11 balanced against this is that there would be
12 a significant commercial advantage to the [Post
13 Office] to having a reasoned judgment in its
14 favour: it would send out a clear message to
15 other subpostmasters."

16 **A.** Can you just scroll up to the date of that,
17 please?

18 **Q.** Absolutely. We're quite late on, quite close to
19 trial now, 10 November 2006. The trial was in
20 December.

21 **A.** It was.

22 **Q.** Yes. A similar time to the period in which you
23 were speaking to Mr Castleton. It was very
24 clear to you and Ms Talbot that, although you
25 are unlikely to receive your costs back, there

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1 In this case, we didn't know until quite
2 late on that Mr Castleton would not be serving
3 expert evidence. We were robustly defending
4 what I believe that Fujitsu believed and Post
5 Office believed to be a good system and we were
6 ready to meet the case that didn't come. And
7 there was a PTR, a pre-trial review, in November
8 and the date will be absolutely in my statement,
9 and it was only then, it was only then, where,
10 because Mr Castleton had had previous
11 opportunities to serve expert evidence and
12 hadn't, that the judge decided to debar him from
13 doing so. So we didn't know -- we didn't know
14 until quite late on, relative to the trial, that
15 the case we were prepared to meet, if it did
16 come, would come.

17 **Q.** You've spoken about different interpretations of
18 the word "precedent". I mean, it's quite clear
19 in that very final sentence that the precedent
20 that the Post Office was hoping for was a clear
21 message to other subpostmasters not to challenge
22 Horizon?

23 **A.** Yes, and I think that's right. So what I'm --
24 what I mean by that and don't mean by that,
25 I don't mean a legally binding case that sets

40

1 out clear rules for whether Horizon is good or
2 bad because it only looked at Horizon in
3 Mr Castleton's case and there was no expert --
4 there was no CPR part 35 expert report into
5 Horizon. But it did send out a commercial
6 message that Post Office were prepared to defend
7 the system, and you're absolutely right about
8 that.

9 **Q.** Even if the effect of that would be to ruin
10 Mr Castleton?

11 **A.** Well, Post Office were aware of the risks that
12 they would not be able to enforce their
13 judgment.

14 **Q.** This continues after judgment as well. Perhaps
15 we can look in May 2009 -- sorry, must be
16 May 2006 -- POL00070237. It does say 2009,
17 actually. If we scroll down to the bottom,
18 there's a message from yourself to Mandy Talbot,
19 and this is talking about the Castleton case.
20 It relates to the bankruptcy proceedings,
21 et cetera --

22 **A.** Mm-hm.

23 **Q.** -- so that explains perhaps why it's a few years
24 down the line. You say there at the bottom:

25 "It is frustrating that there is no

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1 In terms of precedent, though, by
2 reconfirming that old law, which includes --
3 which was all about a case called *Shaw v Picton*
4 from the 1900s, insofar as that was concerned,
5 I do think, I do think that helped -- could have
6 been helpful as a precedent. But that concerned
7 accountancy principles rather than the Horizon
8 System.

9 **Q.** Putting aside legal niceties as to the
10 definition of a precedent, this statement from
11 you makes very clear that Post Office's main
12 goal was to defend the Horizon System. Do you
13 accept that?

14 **A.** I think that their main goal changed during the
15 course of the litigation but that by certainly
16 well before the end of the litigation they
17 wanted to show that they were willing to defend
18 the Horizon System. But I think if that's where
19 the analysis ends, it misses some really
20 important points.

21 **Q.** Do you think it was fair for the Post Office to
22 bankrupt somebody in order to defend the Horizon
23 System?

24 **A.** Post Office didn't bankrupt Mr Castleton.

25 **Q.** Do you think it was fair for the Post Office to

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1 financial recovery in this instance although we
2 knew that the prospects were slim particularly
3 after he was made bankrupt. Post Office
4 Limited's main goal in pursuing Mr Castleton was
5 achieved in that we had a good judgment
6 precedent which helps us to defend the Horizon
7 System."

8 So although your evidence was that,
9 ultimately, it wasn't really about the Horizon
10 System, the Post Office and yourself seemed to
11 have very much seen it as a judgment precedent
12 that helps to defend the Horizon System.

13 **A.** I don't now agree with the comment I made in
14 that second sentence there, because when you
15 step back and look at the judgment, all it did
16 was reconfirm old law in terms of a legally
17 binding precedent and so the -- my language
18 there was broader and I was trying really,
19 I think, in that email, to remind Mandy of
20 the -- of their goal in pursuing Mr Castleton.

21 I might have more accurately have written
22 that -- something like what you've already
23 showed me, you know, that Post Office were
24 willing to demonstrate that they were willing to
25 defend the Horizon System.

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1 engage in legal proceedings against Mr Castleton
2 in a case in which he raised significant issues
3 with the Horizon System and resulted in his
4 bankruptcy in order to defend the Horizon
5 System?

6 **A.** Post Office didn't commence the claim against
7 Mr Castleton with a view to defending the
8 Horizon System. Post Office commenced the claim
9 against Mr Castleton to recover a debt. He
10 pursued them. He, in return, issued
11 a counterclaim for £250,000 and we wrote to his
12 solicitors and said, "Look, are you sure you've
13 suffered £250,000 loss?" And they wrote back to
14 us reasonably late on and insisted that he did
15 have that claim, that he had suffered that loss.

16 And once they they'd issued their claim,
17 once they'd issued any claim, it will either
18 settle or go to trial, and once they'd issued
19 that claim, Post Office had no choice but to go
20 to trial or to settle. That's the only way for
21 it to end and they tried really, really hard to
22 settle the case.

23 And I do have one regret, actually, in the
24 case, you were asking me about that earlier, and
25 that is that we were unable to settle it.

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1 Q. The impression that's given in your statement
2 and in some of your evidence this morning is
3 that the case wasn't really about the Horizon
4 System but it was a neat little legal argument
5 about accounts and the signing of accounts. Do
6 you accept that the intention in this case
7 throughout, through the documents that I've
8 shown you this morning, was indeed to defend the
9 Horizon System and to avoid further litigation
10 in relation to the Horizon System?

11 A. I think that the Post Office -- as I say, they
12 didn't have any choice. They couldn't have
13 voluntarily ended this litigation and so their
14 motives, in some ways, were entirely academic
15 because they didn't have control over the
16 endpoint of this litigation. I think perhaps
17 the irony of this case is, because no expert
18 evidence was served in relation to the Fujitsu
19 Horizon System, because no evidence was served
20 in the end, although they were ready to meet the
21 case, it didn't become about Horizon.

22 Of course, Horizon Issues were discussed in
23 the trial. You had Anne Chambers give evidence,
24 for example, about what she found, but it didn't
25 become about that. It became about accounts.

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1 what Horizon was saying and the paperwork,
2 I would have expected an error notice to have
3 been generated -- not I would have expected but
4 that's what the witnesses were telling me
5 because, you know, it wasn't my evidence. But
6 the really interesting thing in Mr Castleton's
7 case is I think there were only about 15 error
8 notices generated.

9 If the computer system changed what he or
10 his assistant typed into it, you would expect
11 there to have been loads of error notices and
12 there weren't.

13 Q. Mr Dilley, how on earth could you know that,
14 though? Are you an expert on the Horizon
15 System?

16 A. I'm -- a really important point that I make in
17 my statement is that the only thing I can tell
18 anybody about this now is from what people have
19 told me. So I'm -- this is my secondary
20 evidence, if you like. This is my evidence of
21 their evidence.

22 Q. But, I mean, you're in some ways suggesting
23 that, as a matter of fact, that is what would
24 happen but, in fact, what you're saying is
25 you're just simply regurgitating what you've

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1 And you talk about it in a neat little way as
2 though it wasn't a substantive point. It's
3 a really, really, super important point. By the
4 end of the trial -- Richard Morgan, the
5 barrister for Post Office in the case, by the
6 end of the trial, he was all over the numbers.
7 I don't know, of course, what he will remember
8 but he was all over the numbers and, by the end
9 of the trial what he had done, he's got all the
10 primary accounting documents, all the primary
11 accounting documents, and reconciled in them to
12 the cash accounts.

13 So if we'd have done, again, a taking of
14 account, it would have come to the same result
15 and Mr Castleton confirmed that in evidence.
16 So, in the end, the reversal of the burden of
17 proof on that, yes, it was helpful, I won't say
18 it didn't matter, but it sort of didn't matter
19 because we could do it. So we proved this case,
20 irrespective of the Horizon System.

21 I've talked in my statement of what I would
22 have expected to have seen, based on my
23 understanding of what witnesses were telling me,
24 had there been an issue with the Horizon System,
25 and that is where there was a mismatch between

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1 been told by others?

2 A. It is -- it was my belief by what I was told
3 from a number of the witnesses that that would
4 happen, and the error notice system was nothing
5 to do with Horizon or Fujitsu, nothing to do
6 with that. So this case was brought on the
7 basis of physical paper accounts, agnostic of
8 the Horizon System, and that's why, in some
9 ways, it's an odd case to be looking at.

10 Q. Mr Dilley, I'll ask you one last time about this
11 final sentence here:

12 "Post Office's main goal in pursuing
13 Mr Castleton was achieved in that we had a good
14 judgment precedent which helps us to defend the
15 Horizon System."

16 Was the main goal of the Post Office in that
17 case to defend the Horizon System?

18 A. They didn't have one consistent goal throughout
19 the life of the case but it is reasonable to say
20 that, partway through the case, certainly we'd
21 advised them -- and you've taken us to my
22 advice, rightly to my advice -- they believed
23 that the starting goal of a recovery of a debt
24 wasn't going to be achieved and so what they
25 wanted to show is that, if the Horizon System

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1 was challenged, they were willing to meet that
 2 challenge.
 3 As I say in the end, the irony was the case
 4 didn't come on the IT. Notwithstanding what
 5 I say there, the case did not come on the IT
 6 because the IT expert evidence was not produced,
 7 and that's the somewhat irony.
 8 The case in the end was based on paper
 9 accounts.
 10 **Q.** I said I'll only ask once but perhaps I'll take
 11 it slightly differently. You've already given
 12 evidence about how consistent your paperwork and
 13 your notes are with what you actually did at the
 14 time. Your note here clearly says that Post
 15 Office's main goal was defending the Horizon
 16 System. Do you accept that that was, in fact,
 17 their main goal?
 18 **A.** It became a goal. It became their main goal
 19 that they would be willing to litigate where
 20 subpostmasters and, in this case, one
 21 subpostmaster was making an allegation about the
 22 system because, for all the documents you've
 23 rightly taken me to this morning, they were
 24 willing to have -- litigate to send the message
 25 that they would stand firm, and that's what
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1 wasn't our main objective"?
 2 **A.** I don't recall but it's entirely possible you've
 3 got a response --
 4 **SIR WYN WILLIAMS:** I make it clear, Mr Dilley.
 5 I don't know the answer to that question.
 6 I'm just asking you whether you know.
 7 **A.** I don't but the file might tell us.
 8 **SIR WYN WILLIAMS:** All right, thank you.
 9 **MR BLAKE:** Thank you, sir. Shall we take our
 10 mid-morning break until 11.30?
 11 **SIR WYN WILLIAMS:** Yes, of course. Fine.
 12 **MR BLAKE:** Thank you very much.
 13 **SIR WYN WILLIAMS:** Sorry, what time?
 14 **MR BLAKE:** Just after 11.30.
 15 **SIR WYN WILLIAMS:** Yes, that's fine.
 16 **MR BLAKE:** Thank you.
 17 (11.11 am)
 18 (A short break)
 19 (11.30 am)
 20 **MR BLAKE:** Sir, can you see and hear me?
 21 **SIR WYN WILLIAMS:** Yes, I can, thank you.
 22 **MR BLAKE:** Thank you very much.
 23 Mr Dilley, we'll move on to the topic of
 24 disclosure, something that you wanted to talk
 25 about. Can we look at POL00082222, and that is
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1 these documents show.
 2 **SIR WYN WILLIAMS:** Mr Dilley, I've got two questions
 3 about that sentence, which I hope will resolve
 4 this issue. First of all, is that sentence
 5 accurate? Secondly, if it is not, why did you
 6 write it?
 7 **A.** I don't think it is as accurate as I would have
 8 liked it to have been, rereading that now.
 9 I think I was simplifying --
 10 **SIR WYN WILLIAMS:** But you were --
 11 **A.** -- simplifying in a way what Post Office were
 12 doing, and --
 13 **SIR WYN WILLIAMS:** So what should you have written?
 14 **A.** I should have said something like:
 15 "Post Office's main goal in pursuing
 16 Mr Castleton was achieved in that we showed the
 17 world, if you like, you were willing to defend
 18 allegations about the Horizon System."
 19 It also set a useful precedent, insofar as
 20 it renewed the authority, the old authority in
 21 *Shaw v Picton*. That would have been a bit wordy
 22 but it would have been more precise.
 23 **SIR WYN WILLIAMS:** When Ms Talbot received that
 24 communication from you, did she write back
 25 saying, "Hang on, you've got it wrong; that
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1 the defence and counterclaim from Mr Castleton.
 2 I took you to this much earlier today, and
 3 I took you to paragraph 5, that's over the page,
 4 and also paragraph 9, and the point that was
 5 made was that the Horizon System was certainly
 6 front and centre of Mr Castleton's defence and
 7 counterclaim. It was a broad attack on the
 8 Horizon System.
 9 Can we look at POL00069298, please. This is
 10 a response to a request for further information.
 11 So for those who aren't aware of the process,
 12 the Post Office makes a request for further
 13 information and a defendant to proceedings will
 14 respond in the way they have here, providing
 15 that information. Can you see that on your
 16 screen in front of you?
 17 **A.** Yes, I can.
 18 **Q.** Is that a correct summary of the process?
 19 **A.** Yes, it is.
 20 **Q.** Yes. Can we scroll down, please. This response
 21 is dated 10 April 2006. Now, the wording there
 22 is the Post Office's wording, in that it sets
 23 out what the request from the Post Office was to
 24 Mr Castleton. Can you see that? There's no
 25 need to look at hard copy documents, they're all
 52

1 coming up in front of you?

2 **A.** Thank you. Yes, I can.

3 **Q.** Yes. Paragraph 1.1, you've asked or the Post
4 Office has asked Mr Castleton to please state
5 precisely:

6 "The full nature and extent of the problems
7 that the Defendant alleges he encountered with
8 the Horizon System and on what occasions he
9 encountered them.

10 "1.2 How and why each of the alleged
11 problems with the Horizon System meant that the
12 losses in question were allegedly theoretical
13 rather than real."

14 **A.** Yes.

15 **Q.** If we go over the page, we'll see his reply to
16 that request for further information.

17 **A.** Yes.

18 **Q.** He sets out there a number of problems that he
19 said he encountered with the Horizon System.

20 **A.** He does.

21 **Q.** If we look at (i) he says, "Not communicating
22 properly". I think if we look down that
23 paragraph, it says:

24 "The Defendant believes that periodically,
25 several times throughout a day's trading, the

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1 **A.** Yes.

2 **Q.** "The Defendant believes that the Horizon system
3 'rolled over' cash figures in the weekly
4 cashflow figure (a report that can be produced,
5 also known by the Claimant as On Hand Cash
6 Handling, or ONCH) giving a figure that was 4-5
7 times as big as the actual cash declaration for
8 that day."

9 **A.** Yeah.

10 **Q.** If we scroll down at the end of that paragraph,
11 it says:

12 "On average, the figure given by the system
13 was incorrect on at least one occasion each week
14 (although previously, prior to the Defendant
15 being aware of the facility to print the
16 figures, Ms Train had noticed that the figure
17 was incorrect more frequently, often several
18 times each week)."

19 The next problem he identified "Lost
20 transactions":

21 "The Horizon System would 'lose', ie fail to
22 record, transactions which the Defendant knew he
23 had entered onto the system."

24 **A.** Yes.

25 **Q.** Can we scroll down over to the next page,

55

1 base unit would then transmit data input both to
2 it and through the node unit, onwards to the
3 central station. On occasions too numerous to
4 recall during the period in question, the
5 Defendant told the Claimant that he considered
6 that the 2 units were not communicating with
7 each other properly."

8 The next problem that he encountered,
9 "Screen freezing".

10 **A.** Yes.

11 **Q.** If we look at the last sentence there:

12 "This problem was a regular occurrence and
13 happened approximately weekly during the period
14 in question."

15 **A.** Yes.

16 **Q.** Over the page, "Blank screen":

17 "The display of one or other or both of the
18 terminals would suddenly go blank before
19 returning to the sales screen. This problem
20 occurred approximately monthly during the period
21 in question."

22 **A.** Yes.

23 **Q.** Next one "Card swipe not reading"?

24 **A.** Yes.

25 **Q.** Next one "Rolling over cash figures"?

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1 please, and Mr Castleton says here at 1.2:

2 "How and why each of the problems
3 experienced by the Defendant with the Horizon
4 System means that the alleged losses in question
5 were theoretical rather than real, is an issue
6 that will require disclosure from the Claimant
7 for the period in question, in particular as to
8 the correct operation of the Horizon System's
9 software (including any modifications or
10 upgrades), and the correct operation of the
11 hardware maintained by Fujitsu Services
12 (including any replacement equipment), together
13 with expert evidence, both in the field of
14 Information Technology and Accountancy."

15 **A.** Yes, he does.

16 **Q.** Then, without prejudice to that, he provides
17 a response.

18 **A.** May we just go down and quickly look at the
19 remainder of the response? Thank you.

20 **Q.** Thank you. Can we look at LCAS0000354, please.
21 This is the disclosure list. It's dated 18 May
22 2006, so a month after that response to the
23 request for information. Many of the complaints
24 in Mr Castleton's request for information are
25 familiar to the Inquiry. Is there any detail in

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1 the list that follows of any of those
2 complaints -- of any investigations having been
3 conducted with Fujitsu, for example, to identify
4 wider problems with the Horizon System? Can we
5 scroll down.

6 **A.** Yeah, have a look. You're really testing my
7 memory but, please, take me to it.

8 **Q.** Okay.

9 **A.** Yeah, can we go on to the list which was
10 attached, please. No, not that one. Keep
11 going. Okay. Just keep scrolling down. Yeah.
12 Keep scrolling down. Go on to the next page,
13 please. Just keep going through this list.
14 That's helpful. Thank you. Mm-hm. Mm-hm.
15 Mm-hm. Mm-hm. If you can just slow down now,
16 please.

17 Okay. Go on to the next page. Thank you.
18 Mm-hm. Okay. That's fine, thank you.

19 **Q.** So having looked at that list, I think you had
20 a smile on your face --

21 **A.** Oh, sorry, I forgot the question! Can you put
22 the question?

23 **Q.** Is there disclosure in that list of, for
24 example, investigations having taken place in
25 relation to those kinds of problems in the

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1 into it.

2 But it is also fair to say, for
3 completeness, that in this list of documents, it
4 doesn't contain the entirety of Post Office's
5 disclosure because, after this list was served,
6 Mr Castleton's solicitors asked -- and when I --
7 when we prepared this list, I believed at the
8 time that this was a thorough list, and I still
9 believe that, I believe they carried out -- Post
10 Office carried out a reasonable search, but it
11 is fair to say, and I must say for completeness,
12 this wasn't the entirety of the information
13 supplied to Mr Castleton and his team.

14 **Q.** Well, at this point in time, this was the
15 disclosure list that was provided to
16 Mr Castleton --

17 **A.** Yes, it was.

18 **Q.** -- May 2006 --

19 **A.** Yes, it was.

20 **Q.** -- and that followed his response to the request
21 for information?

22 **A.** Yes, that's right.

23 **Q.** Now, this isn't a law exam but what do you
24 understand the tests for inclusion in that list
25 to have been, broadly?

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1 Horizon System?

2 **A.** Gosh, that would require me to remember what all
3 of those documents -- all of those documents
4 meant and I don't. But what I can see the list
5 does include is Fujitsu product codes,
6 transaction logs, which is -- my understanding
7 of what I was told is that was the line-by-line
8 IT record of each transaction processed in
9 a branch; an events log, which is a record of
10 events on the Horizon System, such as logging
11 on, logging off, printing reports, everything
12 that happens on the system; overnight cash
13 holdings, I don't know if we saw a mention of
14 that in the part 18 response that you took us to
15 a moment ago; Horizon System Helpdesk logs; and
16 NBSC call logs.

17 In the Horizon System Helpdesk logs, I would
18 imagine you -- I mean, I haven't got them in
19 front of me but, if they're in the pack, we
20 could go to them. I would imagine in the
21 Horizon System Helpdesk log, which I think was
22 the second tier of the Helpdesk, as I recall it,
23 there would have been evidence of or information
24 about Mr Castleton calling the Horizon System
25 Helpdesk and what they did, I think, to look

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1 **A.** Yeah, so, Post Office's duty -- and I've set it
2 out from the rules in my statement, so you've
3 got it word for word -- was to carry out
4 a reasonable search for documents that could
5 help or harm its case or Mr Castleton's case.
6 My belief at the time this list was prepared is
7 that they had done a thorough job.

8 **Q.** The tests include material that would adversely
9 affect the Post Office's case --

10 **A.** It absolutely does, that's right.

11 **Q.** -- and it includes material that would support
12 Mr Castleton's case?

13 **A.** That's correct, and when you have to take into
14 account the -- you have to take into account
15 four factors that are relevant to the
16 reasonableness of a search and they include the
17 number of the documents involved; the nature and
18 complexity of the proceedings; the ease and
19 expense of retrieval of any particular
20 documents; and the significance of any document
21 which is likely to be located during the search.

22 **Q.** Given the centrality of the Horizon System to
23 Mr Castleton's own case, do you think that was
24 sufficient?

25 **A.** At the time, I did.

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1 Q. Do you now consider it to have been
2 insufficient?

3 A. Well, I have explained that we prepared
4 a supplemental list of additional documents that
5 we disclosed after this list had been prepared.
6 I would have preferred, had I known about those
7 other documents, to have put them in this list
8 here.

9 Q. Can you tell us -- you may not be able to tell
10 us off the top of your head, perhaps by
11 refreshing your memory from your statement --
12 when you disclosed further documents?

13 A. Yes, I can. Promptly, promptly after serving
14 this list, reasonably promptly, Mr Castleton's
15 solicitors wrote back to me and said "We haven't
16 got the full audit trail we want" and I picked
17 that up with Post Office and tested that with
18 them and they said that's what the transaction
19 logs are. So he had got that but another thing
20 he picked up with me is, for example, they
21 wanted to see software updates.

22 So there was -- Mr Castleton had a belief,
23 I think, that, when Fujitsu released software
24 updates, it could cause problems with his system
25 and so his solicitors wrote to us and said,

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1 original defence and counterclaim, he later
2 amended it -- was quite broad and high level.

3 So what we wanted to do is draw out in that
4 Part 18 Request more specifics so we could
5 understand what he was saying and focus on the
6 problems that he was putting to us.

7 Q. Having received that response to your request
8 for further information, a month before this
9 list was produced, do you think there is
10 sufficient information in this list relating to
11 all those problems that he identified?

12 A. It certainly took us a step further than we had
13 been in, it's absolutely right to record that,
14 and that was useful. When we, however, stood
15 back, even from that list, and reflected on it
16 over the course of a period of time,
17 particularly after I'd gone to see with
18 a colleague Mr Bratt, Fujitsu in June, we were
19 still struggling to understand not what he was
20 saying, because, you know, he said what he said
21 in the response, but how that would -- was said
22 to have caused illusory losses at his branch.

23 Q. On receiving his response to your request for
24 information, did you put in train enquiries
25 about Horizon terminals not communicating

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1 "Well, we want to know, when was this software
2 updated?" Perfectly reasonable question on the
3 part of his solicitors, it seems to me. We went
4 back to them promptly with a spreadsheet of the
5 software updates so they could know. What we
6 then did, later on in the case, because we made
7 various further disclosures, is later on in the
8 case, we pulled those together in a supplemental
9 list that, for the most part, referred back to
10 disclosure -- further disclosure we had then, by
11 the time that supplemental list was preparing,
12 had made.

13 Q. This list was provided on 18 May 2006?

14 A. Yes.

15 Q. Do you think, by that stage, you were
16 sufficiently on notice that Mr Castleton's case
17 focused on the entire Horizon System and the
18 reliability of that system?

19 A. It's absolutely clear, at that case, that
20 Mr Castleton was concerned, very concerned, with
21 the operation of the Horizon System at his
22 branch, yes. What we found it harder to
23 understand, much harder, which is why we served
24 the Part 18 Request, is the specifics of that
25 because his defence and counterclaim was -- the

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1 properly, screen freezing, blank screen --

2 A. Yes.

3 Q. -- card swipe not reading?

4 A. Yeah, yeah, yeah.

5 Q. So you put in train an investigation into each
6 one of those issues and you disclosed the
7 product of that investigation?

8 A. What we did, and it's documented in my statement
9 and the exhibits to it, is, even before we got
10 that list in November, in -- I think it was
11 about November 2005, my date might be wrong, but
12 it was certainly in 2005 -- we prepared back
13 then a letter to Fujitsu, before we had that
14 Part 20 information, and we said, "This is
15 a case where this is our claim, this is the
16 defence. There are allegations about the
17 system. We need from you, we need from you" --
18 and that was our thinking at that point in
19 time -- "an IT expert report into it".

20 And I sent it to a chap at Post Office
21 called Nick Samuel, who doesn't otherwise really
22 feature in the case, and said, "I don't know who
23 to speak to at Fujitsu, can you pass that on to
24 them?"

25 We didn't -- I didn't get -- I didn't get

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1 any response. I can see in the additional
2 documents in the core bundle, some of which have
3 been passed to me very recently, that Post
4 Office got a response from Fujitsu. When I saw
5 that the other day, I cross checked it against
6 our correspondence file, I turned the page on
7 it, I couldn't see it anywhere in our file which
8 led me to believe that we weren't given that
9 response, as far as I can tell. And I can't
10 remember having got a response at that time.

11 So in November we commission -- we say,
12 "Come on, Fujitsu, this person's telling us
13 there's problems with the system", but to my
14 knowledge, we didn't get a response.

15 There's then a call -- I'm going to say it
16 was about March, but that date may be wrong.
17 There's then a call we have with Hugh James
18 solicitors, who were at that time looking at the
19 cases of Mr Bajaj and Mr Bilkhu, and we have
20 a call and we say, "How are we going to get
21 information from Fujitsu?" And it was decided
22 on that call we'd have to go and see them and
23 there was no shortcut to going to see them, and
24 I was to go and see them and, initially, with
25 a partner at Hugh James, called Mr Hulbert,

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1 **A.** To the best of my knowledge and belief at the
2 time, we did, save for -- save for one document
3 which came out much later, much later, and that
4 document is called a Tivoli event log.

5 **Q.** We will also get to that but I'm focusing now
6 on, let's say, 18 May 2006. You've produced
7 this document. I actually want to take you back
8 in time and let's look at POL00073739, please --
9 sorry, POL00070563. Thank you very much.

10 So this is November 2005, this is six months
11 before that disclosure list that you were
12 required under the Civil Procedure Rules to
13 provide. It's a letter from Mr Castleton's
14 solicitors to Bond Pearce, and I'm going to read
15 quite a lot of that letter into the record.

16 They say:

17 "We refer to [an earlier letter] and ... the
18 November 2005 edition of the SubPostmaster
19 Magazine.

20 "You will see the highlighted section is
21 a letter from a subpostmaster in Chelmsford
22 complaining of acute problems with the operation
23 of the Horizon computer system, and the complete
24 unwillingness on the part of both the Post
25 Office and the Horizon helpline to assist with

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1 although ultimately he sent somebody else, and
2 we went to see them in June and we put to them,
3 we put --

4 **Q.** I'm going to stop you there because we will get
5 to this period in time but can you tell us where
6 are you in timings now? Where are we?

7 **A.** So when we went to see -- so we had, in about
8 November 2005 said to Fujitsu "We're going to
9 need some information from you". In the spring
10 of 2006 we hadn't got that information, and we
11 thought "We need that information from them",
12 and in June --

13 **Q.** Did you get that information?

14 **A.** In June 2006 I went to see them and I put to
15 them -- by which stage of course, you're
16 entirely right, we had Mr Castleton's response
17 to our request, and I put that to them and we
18 went through it with them, point by point, and
19 tested it with them, to understand whether what
20 he was saying would have the effect that he was
21 describing.

22 **Q.** Is it your case that, despite that taking place
23 after this list had been written, you then
24 subsequently provided all of that information to
25 Mr Castleton?

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1 the problem, or even acknowledge that a problem
2 exists.

3 "The parallels with our own client's
4 position are striking. Indeed, our client's
5 research shows that the situation in which the
6 subpostmaster in question finds himself is
7 duplicated among a substantial number of other
8 subpostmasters around the country.

9 "We are instructed that your client has been
10 forced to settle claims bought against other
11 subpostmasters, some of which involved very
12 substantial payments being made to the
13 subpostmaster, rather than take the matter to
14 trial. Your client then commonly insists on the
15 insertion of a confidentiality clause into the
16 settlement agreement to prevent the
17 subpostmaster discussing either the dispute or
18 the terms of the settlement.

19 "One entirely reasonable assumption, based
20 on the above, is that your client is only too
21 aware that the Horizon System does not perform
22 properly but that it cannot and will not
23 publicly acknowledge that fact because to do so
24 would potentially expose it to a wave of claims
25 from subpostmasters who have been accused of

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1 shortfalls and who have made good the alleged
2 losses. To acknowledge the problem would also
3 most cause acute embarrassment to your client
4 and, most likely, a public relations disaster.

5 "In short, this not an isolated incidence of
6 problems with Horizon. This is entirely
7 consistent with our client's position since the
8 dispute first arose. Your client flatly refused
9 to countenance that the alleged shortfall could
10 be the result of anything other than user error
11 (or even outright fraud) on the part of our
12 client or his employees, despite the fact that
13 it knew very well that there are numerous other
14 cases with similar, if not identical facts,
15 around the country."

16 **A.** Mm-hm.

17 **Q.** I mean, that's spot on, isn't it, about the
18 situation with Horizon at that time?

19 **A.** My knowledge was actually -- concerns -- the
20 sort of limit of my knowledge concerns two other
21 cases, Mr Bajaj and Bilkhu. If Post Office
22 themselves knew about more than those other
23 cases, then that's -- I can't give that evidence
24 because I don't know.

25 **Q.** But in November 2005, you were being told by
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1 call logs to which I have referred, they
2 demonstrate Mr Castleton trying to contact two
3 different helpdesks and raising issues with the
4 system but it would be fair to say, if this is
5 your question, that our disclosure didn't relate
6 to other branches. That would be absolutely
7 right to say.

8 **Q.** And that your investigations didn't relate to
9 other branches?

10 **A.** Correct.

11 **Q.** Despite the fact that, as we've established, the
12 Horizon System was front and centre of this
13 case?

14 **A.** Well, I was absolutely concerned to investigate
15 the operation of the Horizon System at
16 Mr Castleton's branch. I've explained -- you
17 know, this question has been put to me in
18 evidence and I've worked through it fully,
19 I don't think I can add to it in oral
20 submissions today. But I've explained how we
21 approached this, we looked at the cost of -- we
22 went away after I got this letter -- and you're
23 right to say it's a significant letter. We went
24 away and looked at the cost of getting
25 information about other branches and we were
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1 Mr Castleton's solicitors that the problem is
2 with the Horizon System, not simply
3 Mr Castleton's own Horizon terminal?

4 **A.** Yes, but that was not in his pleaded case.

5 **Q.** Well, we can go back to his pleaded case. Let
6 me just finish this letter first because the
7 letter is quite important. If we go over the
8 page, please, they say:

9 "In the circumstances, this supports our
10 previously-expressed requirement that your
11 client provide full and frank disclosure of the
12 problems that it has experienced with the
13 Horizon System, the claims that it has pursued
14 against other subpostmasters on the basis of
15 alleged shortfalls and the outcome of those
16 claims. We shall expect your client to comply
17 with its disclosure obligations in this regard
18 as and when these proceedings move on to the
19 service of List of Documents."

20 So this was November 2005. We've looked at
21 the list of documents. Is it fair to say that,
22 in that list of documents, there was no such
23 disclosure of problems with the Horizon System
24 that had been experienced by the Post Office?

25 **A.** No, it's not fair to say that because, in the
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1 told it would take a certain amount of time and
2 cost a certain amount of money, but really --

3 **Q.** £2,000 to £3,000?

4 **A.** Yeah, but the other point is, can you just flick
5 to the --

6 **Q.** We'll go to that --

7 **A.** Can you just flick back a page? The other point
8 I think they were saying here -- just scroll
9 down, please -- the other point I think they
10 were, as I understand it, they were saying they
11 wanted -- please may we just scroll down
12 a little bit more? If we just go on to the next
13 page again.

14 So look, in this paragraph here, what
15 I understood Mr Castleton's solicitors to be
16 talking about is (1), disclosure in relation to
17 any problems its experienced with Horizon
18 system, and (b) the claims it has pursued
19 against other subpostmasters on the basis of
20 alleged shortfall and the outcome of those
21 claims, which may or may not, in that instance,
22 relate to problems with the Horizon System.

23 Do you see that? That's how I'd understood
24 it at the time and I just thought that was
25 super, super, super broad. Super broad. And
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1 way, way, way beyond, way beyond Post Office's
2 disclosure duties to carry out a reasonable
3 search -- way beyond.

4 **Q.** We spent much of this morning looking at how
5 Post Office saw defending the Horizon System as
6 a main plank of -- main part of this case?

7 **A.** Mm-hm.

8 **Q.** Do you not think that disclosure about wider
9 problems in the Horizon System would have
10 assisted Mr Castleton's case or undermined the
11 case for the Post Office?

12 **A.** You're asking me to speculate on what such
13 disclosure would have revealed but where I come
14 back to in the case against Mr Castleton is --
15 and so that's sort of a "what if" speculation
16 but where I come back to in the case against
17 Mr Castleton is this was a case that, in the
18 end, whilst absolutely he said, as we've seen
19 all morning, there are problems with this
20 system, is that what the case was decided upon
21 was agnostic of the Horizon System.

22 It was based upon physical records and we
23 knew, we knew, that we had the underlying
24 primary accounting documents that matched the
25 cash accounts. So if the system had been

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1 your information, together with an article from
2 the November 2005 edition of the SubPostmaster
3 Magazine in which a subpostmaster in Chelmsford
4 complains of problems with the operation of the
5 Horizon computer system. Other subpostmasters'
6 problems are in my view irrelevant to the issue
7 of whether the Horizon worked for Mr Castleton,
8 unless there is evidence of widespread problems.
9 Mr Castleton's specific point is that there are
10 widespread problems with Horizon and accordingly
11 he should not have been dismissed."

12 **A.** Correct.

13 **Q.** So you've identified there that the issue, so
14 far as Mr Castleton saw it, related to the
15 widespread problems in Horizon?

16 **A.** Yeah, and I was -- as I say, the only other
17 issues about which I was made aware, as far as
18 I recall, are in two other branches at that
19 time: Mr Bajaj and Mr Bilkhu. And when we put
20 to Post Office -- because it's important of
21 course you put these points -- when we put the
22 point to the Post Office "Is this system
23 robust", whenever we put those points they came
24 back and said that that's what they believed.

25 **Q.** Could we scroll up, so it'll be the first page,

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1 causing illusory losses, there would have been
2 this mismatch.

3 **Q.** Mr Dilley, that was your case, that was the Post
4 Office's case. It was Mr Castleton's case that
5 there were problems with their overall Horizon
6 System. Was it not right to afford him the
7 opportunity to have disclosure of wider problems
8 with the Horizon System?

9 **A.** I stand by what I've said. I understand the
10 point you're putting and I understand you have
11 to put the point, of course you do, but I stand
12 by what I said in my evidence and I absolutely
13 believe that Post Office met its duty of
14 carrying out a reasonable search by the criteria
15 in the Civil Procedure Rules.

16 **Q.** Can we look at POL00073739, please, and it's the
17 bottom email. That I'd like to start with.

18 This is an email from you to Mandy Talbot,
19 11 November 2005. So that's the day after the
20 letter that I've just drawn to your attention --

21 **A.** That's right, that's right.

22 **Q.** -- was received. You say in the bottom
23 paragraph there:

24 "I attach a letter dated 10 November 2005
25 for Mr Castleton's solicitors to Bond Pearce for

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1 it's the further email from yourself to Mandy
2 Talbot and Cheryl Woodward. It says:

3 "Mandy, please can you let me know whether
4 the Post Office has experienced widespread
5 problems with Horizon?"

6 So that's the question that you've just
7 referred to.

8 **A.** Yes.

9 **Q.** "Mr Castleton's solicitors disclosure of this
10 sort of information before they agree to
11 mediate. If it would be difficult for you to
12 find out this information, please can you give
13 me an idea of how and why it would be difficult
14 (and expensive) to retrieve it? (eg perhaps
15 there are no central records). This will give
16 me some ammunition to go back to Mr Castleton's
17 solicitors with to explain why the Post Office
18 does not feel it is appropriate to disclose it
19 and to try to persuade them to mediate sooner
20 rather than later."

21 **A.** And that led, I think, to either a call or
22 an email exchange with a chap at the Post Office
23 called Dave Hulbert, to which I've referred.

24 **Q.** You're there seeking "ammunition" to try to bat
25 away a disclosure request.

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1 A. I thought the disclosure request from
 2 Mr Castleton's solicitors at the time was far
 3 too wide but it is also fair to say that, in
 4 a lot of litigation, you do have an issue where
 5 the claimant's solicitors want as wide
 6 a disclosure as possible and, to my mind, what
 7 they were seeking was miles too wide. It wasn't
 8 just -- you remember from the letter -- issues
 9 with Horizon; it was any litigation with any
 10 subpostmaster.

11 Q. So at this stage --

12 A. And I -- and what I did think, though, would be
 13 relevant is if there were issues at his branch.

14 Q. At this stage, November 2005, you didn't have
 15 instructions from the Post Office yet to say
 16 that it was too onerous; it was your view that
 17 it was too onerous and you seemed to be asking
 18 the Post Office there to give you some
 19 ammunition to bat it away?

20 A. Gosh, it's difficult to be definitive about that
 21 but I think when I saw -- you know, with the
 22 distance of time, but I think when I saw their
 23 letter, I thought "Yeah, this is much, much too
 24 wide". Not a bit too wide but miles too wide.
 25 That was my view, based on the view that

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1 I knew at the time that there were thousands of
 2 Post Office branches, and I've looked back for
 3 the purposes of this statement and we've got
 4 some records from a Post Office document
 5 submitted to Parliament that at this time there
 6 were about 14,000, okay? That's loads of Post
 7 Office branches up and down the country.

8 If I had been made aware that there'd been,
 9 for example, thousands and thousands and
 10 thousands of people saying that their computer
 11 system was wrong, it was causing illusory
 12 losses, you'd have had to have thought much
 13 harder about all sorts of things, but including
 14 what your duty of disclosure was and the scope
 15 of it.

16 Q. So the example you've given is thousands and
 17 thousands and thousands. If there were
 18 thousands and thousands and thousands, would you
 19 have disclosed wider problems with the Horizon
 20 System, if they existed, if you'd searched for
 21 them?

22 A. I think that is much more likely.

23 Q. Hundreds?

24 A. What are hundreds as a percentage of 14,000
 25 branches?

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1 I genuinely held based on the Civil Procedure
 2 Rules, my understanding of them, the way
 3 Mr Castleton was putting his defence at the
 4 time.

5 Q. If you had known, at the time, that there were
 6 a large number of challenges bubbling away and
 7 bubbling up, do you think you might have taken
 8 a different approach -- challenges about
 9 Horizon?

10 A. Gosh, that's certainly a good question that
 11 I would want to reflect on, because I -- I mean
 12 I do say, if there are widespread issues, it
 13 would have been something I would have had to
 14 have really thought hard about. But the ones
 15 that I recall being told about is that there
 16 were two.

17 Q. So you recall being told about two?

18 A. Mm-hm.

19 Q. If you had been told about a larger number, do
 20 you think that would have encouraged you to make
 21 much wider investigations into the Horizon
 22 System?

23 A. If Post Office had said to me, you know,
 24 "We're" -- I don't know whether this is true,
 25 I'm going to pluck figures out of thin air --

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1 Q. So you would have taken an arithmetical
 2 calculation as to --

3 A. No, it's really -- these are "what if"
 4 questions. You have to make decisions. The
 5 beauty now is we have the benefit of knowledge
 6 some 17/18 years later. At the time, you have
 7 to do the best with the information you were
 8 given and what Mandy -- I certainly don't recall
 9 it and I believe I absolutely would recall this,
 10 Mandy didn't come back to me and say, "Hi, we've
 11 got loads of problems with Horizon, Stephen".
 12 And I don't think -- well, she will have to give
 13 evidence about what she was aware, but in
 14 relation to one particular problem, which
 15 Mr Castleton told us about late on, she emails
 16 me and said to me that this came as a bolt out
 17 of the blue and that's the language in her
 18 email.

19 Q. We know much further down the line that at the
 20 Bates litigation, for example, there were 555
 21 claimants.

22 A. Mm-hm.

23 Q. If there was a significant action like that
 24 afoot, would that have prompted you to make
 25 wider enquiries in the --

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1 **A.** If there had been a class action pursued by 550,
 2 I think you said, ish, subpostmasters, your
 3 disclosure duties would have to be looked at
 4 very differently.
 5 **Q.** Can we look at POL00070496, please, and it's the
 6 bottom email. 21 November 2005, so very soon
 7 after.
 8 **A.** Mm-hm.
 9 **Q.** An email from Tom Beezer to yourself and others?
 10 **A.** Yes.
 11 **Q.** The very last line on that page:
 12 "Hugh James are currently trying to contain
 13 an embryonic and not yet issued class action
 14 relating to the Horizon System. A judgment in
 15 relation to it (even a default) is currently
 16 very bad news for [Royal Mail]."
 17 **A.** Mm-hm.
 18 **Q.** Isn't that an example of a class action that is
 19 happening, in its embryonic stages, which might
 20 have prompted you to rethink your disclosure
 21 obligations?
 22 **A.** I understand the purpose of the question, you
 23 must put it, but when we probed with Mandy what
 24 that was, our understanding was really that she
 25 was talking about Bajaj and Bilkhu. And I don't

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1 **Q.** -- talking about a not-yet-issued class action.
 2 Were you not getting concerned at that time
 3 about getting together sufficient information to
 4 disclose to Mr Castleton in respect of the core
 5 of his claim?
 6 **A.** I think it's fair to say, when I first inherited
 7 the case, a lot of the focus was on setting
 8 aside a default judgment, which Mr Castleton had
 9 obtained, but I do recall, from refreshing my
 10 memory on the file that I looked at, pre-action
 11 disclosure which had been done. And, at that
 12 point in time, as I record in my statement,
 13 I did have concerns about pre-action disclosure,
 14 which had been done and whether it could have
 15 been more extensive.
 16 **Q.** Do you see as a missed opportunity to look
 17 further into the Horizon System?
 18 **A.** It was an opportunity that was probed with Mandy
 19 by asking her what it was about. And can you
 20 scroll up, please, on to the preceding page and
 21 just scroll up to the -- yes, there we go. So
 22 this email exchange, this internal email
 23 exchange between Tom Beezer, who was the
 24 supervising partner on the case, and myself,
 25 was -- the context on this was off the back of

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1 wish to criticise Mandy Talbot but she did have
 2 a turn of phrase that wasn't always, I came to
 3 learn, that wasn't always accurate and the only
 4 two cases that came to my attention when we dug
 5 on this are those two.
 6 If she was aware of more cases, 550 cases,
 7 she never told me and she never told my firm.
 8 **Q.** Wouldn't the mention of a class action make you
 9 think about your disclosure obligations in this
 10 particular case?
 11 **A.** Well, I agree with you, the mention of a class
 12 action caused us -- caused us to have
 13 conversation about what this was about. But
 14 actually there was two other cases. So, yeah,
 15 you're right. You do have to think about it.
 16 I mean, disclosure hadn't come up at that point
 17 in time but you do have to think about it, you
 18 do have to think ahead. But when we tested that
 19 with her, there was Mr Bajaj and Mr Bilkhu.
 20 **Q.** In November 2005, so you've received a letter
 21 I think, from Mr Castleton's solicitors about
 22 wider problems.
 23 **A.** Mm-hm.
 24 **Q.** You've received information from Mandy Talbot --
 25 **A.** Mm-hm.

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1 our discovery that Mr Castleton had obtained
 2 default judgment.
 3 So it's a very -- Tom is reporting the
 4 conversation he had, so my evidence of it, of
 5 course, is secondary. Tom is reporting
 6 a conversation that he had with Mandy Talbot.
 7 The right thing to do, which we did, was to
 8 probe and understand that and get under the skin
 9 of it, which we did, and what we were told, what
 10 we were told, is that there were issues with
 11 Mr Bajaj and Mr Bilkhu.
 12 If -- now, Mandy may or may not have been
 13 aware of more but that's what we were told.
 14 But, if that is the extent of what was going on,
 15 I think it would have been inaccurate of Mandy
 16 to have talked about an embryonic and
 17 not-yet-issued class action but she was quite
 18 dramatic and I think she was saying this in the
 19 context of worrying because a default judgment
 20 had been obtained.
 21 **Q.** Can we scroll down and over the page, please,
 22 because there are "Requests from Mandy":
 23 "Mandy has made number of requests that I
 24 feel we MUST comply with."
 25 Looking at number 2:

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1 "that she be sent a full set of proceedings
2 (in order) and a full set of correspondence ...
3 from the outset of the matter. Stephen, this
4 MUST BE DONE ASAP. Mandy has a meeting on the
5 Horizon matter on Friday this week. She needs
6 this paperwork. Please confirm that the files
7 and an appropriate covering letter ... will be
8 sent out in tomorrow's DX ...
9 "3) due to the matters handled by Hugh James
10 relating to Horizon ..."
11 So that's the matter we've just been talking
12 about.
13 **A.** Those two matters, yes.
14 **Q.** Pardon?
15 **A.** They were handling two matters, Mr Bajaj and
16 Mr Bilkhu, separate matters.
17 **Q.** Where does it say that?
18 **A.** No, that's what I came to learn.
19 **Q.** Well, the wording here is:
20 "... Mandy asked that we speak to them to
21 ensure we were all pulling in the same
22 direction. This is even more important given
23 the threatened class action ..."
24 She again repeats the word "class action"?
25 **A.** Yes, it is.

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1 "an updated spreadsheet is being prepared
2 listing all Horizon related cases. From my end
3 you are aware of Blakey and Patel."
4 So are those the two that you were talking
5 about or where does Bajaj fit into that?
6 **A.** No, Bajaj and Bilkhu. That's what Tom is saying
7 to Mandy Talbot.
8 **Q.** So those are, sorry, the two cases or are there
9 now more than two cases?
10 **A.** Well, I mean, this is my evidence of
11 a conversation that somebody else had with Mandy
12 Talbot but what that email is saying is, "From
13 my end, you are aware of Blakey and Patel".
14 That is not Bajaj and Bilkhu.
15 **Q.** So there is a spreadsheet being prepared of
16 Horizon cases?
17 **A.** Mm-hm.
18 **Q.** Now, it seems there are at least, at a minimum,
19 four because there are the three that you
20 mentioned --
21 **A.** Yes, correct, correct.
22 **Q.** Of course, these are only matters that have
23 reached court proceedings, they aren't a list
24 of, for example, complaints about the Horizon
25 System. They're matters that have actually

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1 **Q.** "Who makes this call is partly dictated by how
2 many Horizon related cases we currently have."
3 **A.** Mm-hm.
4 **Q.** "More on this below.
5 "4) Mandy asks that we NEVER issue
6 proceedings on a claim based on Horizon evidence
7 (or connected in any way to Horizon) without her
8 specific consent. Please let everyone know
9 this."
10 Is this -- do we see the Post Office trying
11 to exert control over the conduct of
12 Horizon-based litigation, so far as you could
13 tell at that time?
14 **A.** Yes.
15 **Q.** "5) Mandy wants a report on how many Horizon
16 based claims we currently handle. Please action
17 with your teams. I will coordinate the response
18 ..."
19 Can we, please, now go to POL00070492.
20 We're now on 22 November 2005. If we look at
21 the bottom email, it's an email to Mandy -- is
22 it from you -- no, you're copied in. I think
23 it's from Tom Beezer; is that correct?
24 **A.** Mm-hm.
25 **Q.** He says at (3):

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1 reached at least the litigation stage, whether
2 it be pre-action or in court?
3 **A.** That's my inference. What I don't know, though,
4 from looking at this, is how do you define
5 "Horizon related matters". For example, is
6 it -- do you define that as a case where you're
7 running it based on evidence from the Horizon
8 System? Do you define it as a case where the
9 subpostmaster or subpostmistress has said
10 "I don't think Horizon is working very well".
11 So I don't know, looking back on that, what the
12 definition was.
13 **Q.** Were those questions you asked at the time?
14 **A.** I just -- I just can't recall but, you know, it
15 was just so long ago. I can't -- I don't now
16 know what was meant by "Horizon related cases".
17 I mean, the Horizon computer system was in every
18 Post Office branch. So if you took a really
19 expansive view, you could say, well, any
20 litigation must be. Well, that didn't mean that
21 the litigation that a subpostmaster said,
22 "There's a Horizon based problem", and it didn't
23 necessarily mean that it was pursued on reliance
24 of Horizon information. So I just can't
25 remember at this stage, I'm sorry.

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1 Q. This is November 2005, so well before that
 2 disclosure list in May 2006.
 3 A. Mm-hm.
 4 Q. You were, by that stage, aware of a spreadsheet
 5 relating to Horizon cases?
 6 A. Mm-hm.
 7 Q. The case of Blakey, the case of Patel, two other
 8 cases. You're aware of mention of an embryonic
 9 class action.
 10 A. Mm-hm.
 11 Q. Did that make you think there that it would be
 12 reasonable and proportionate to do broader
 13 searches into problems with the Horizon System?
 14 A. So Blakey, Patel, as I say, I don't -- they
 15 weren't cases that I recall myself working on,
 16 and I don't know how we defined "Horizon related
 17 issues". Bilkhu and Bajaj handled by Hugh James
 18 were the only other two. Four? No.
 19 Q. Well, it's a spreadsheet, it may not just be
 20 four.
 21 A. Well, I don't remember seeing the spreadsheet.
 22 I might have done but, certainly, as I've turned
 23 the page on our file relating to Mr Castleton,
 24 I haven't seen it.
 25 Q. Pursuing a claim that was ultimately going to

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1 related problems at the [Post Office], details
 2 of the claims made involving shortfalls and the
 3 Horizon System ..."
 4 A. That's right.
 5 Q. So it seems as though it was narrowed to details
 6 of the claims made involving shortfalls in the
 7 Horizon system and the outcome of those claims:
 8 "This is because they state that there are
 9 endemic problems with Horizon."
 10 You say there:
 11 "This seems like an onerous request."
 12 That's the --
 13 A. I'm summarising that but I actually think their
 14 letter was broader than that. Yeah, it did seem
 15 to me, absolutely, it did seem like an onerous
 16 request.
 17 Q. The request here relates to two Horizon
 18 helplines --
 19 A. Mm-hm.
 20 Q. -- and you say:
 21 "Calls are not logged by category, so
 22 someone would manually have to go through the
 23 records of every ... call logged to tell whether
 24 it concerned a Horizon based problem."
 25 A. Yeah.

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1 lead to somebody's bankruptcy, for the purpose
 2 of defending the Horizon System, reading about
 3 Horizon related cases at this time, might it
 4 have been worth pressing the Post Office and
 5 Fujitsu a little bit more?
 6 A. I don't think the case would necessarily have
 7 resulted in Mr Castleton's bankruptcy, even if
 8 he could not have afforded to pay the judgment
 9 debt. I don't think that was by any stretch set
 10 in stone at that point in time. But all I can
 11 say, with the knowledge that I had in the time,
 12 is that I was more than satisfied, as I've
 13 recorded in emails at the time, that -- and
 14 I advised Post Office, "Look, we must do
 15 a thorough job", and I thought they had.
 16 Q. Can we look at POL00070455, please. We're still
 17 in 2005, November 2005, 24 November. This is
 18 an email from yourself to Tom Beezer, I think he
 19 was also a solicitor at your firm; is that
 20 correct?
 21 A. He was a partner in the firm who supervised me
 22 on this case.
 23 Q. "You will recall that one of the questions
 24 Mr Castleton's solicitors have raised is that we
 25 should give them wider disclosure of all Horizon

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1 Q. "[David] Hulbert estimated a junior manager
 2 would have to do this and it would take them 3
 3 to 4 weeks to go through 3 to 4 months worth of
 4 call logs and this would cost the [Post Office]
 5 approximately £2,000 to £3,000."
 6 A. Mm-hm.
 7 Q. "Obviously the time and cost are increased if
 8 more than 3 to 4 months worth of information is
 9 needed."
 10 A. Mm-hm.
 11 Q. How much did the litigation ultimately cost the
 12 Post Office?
 13 A. In -- by the end of the litigation, it was,
 14 I think, over £300,000, although we did not know
 15 that it would cost that, at that point in time.
 16 Q. Do you think that £2,000 to £3,000 would be so
 17 unreasonable, so disproportionate, in the
 18 context of --
 19 A. In the context of what I knew at the time, yes.
 20 And if you look at (1), point (1):
 21 "Horizon System helpline ... which receives
 22 12,000 to 15,000 calls per month. This is for
 23 technical problems with Horizon."
 24 When I have a computer problem at work
 25 I will ring our IT support desk. That will

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1 mostly flush out that I've made a mistake with
2 the computer and I've done something. So the
3 production of Horizon System -- you know, 12,000
4 to 15,000 calls a month, I think would have
5 flushed out potentially that sort of issue that
6 I've raised. It may have also flushed out other
7 issues, I don't know because we didn't go and
8 get it.

9 **Q.** So is 12,000 to 15,000 a large number or a small
10 number?

11 **A.** Of calls, 12,000 to 15,000 calls a month seems
12 to me to be a large number but what that note
13 doesn't say, it says -- "for technical problems
14 with the Horizon", but it -- you know, as I say,
15 ring my IT support desk because I think I've got
16 a problem with my computer and, when you make
17 the call, it's mostly me.

18 **Q.** You've described 12,000 to 15,000 as a large
19 number.

20 **A.** I think so.

21 **Q.** Wouldn't that be precisely a reason for
22 investigating the Horizon System further?

23 **A.** I don't think so, no. I think that 12,000 to
24 15,000 calls a month isn't telling us that --
25 yes, it's telling us that the subpostmasters

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1 **Q.** That's a matter for him though, isn't it?
2 I mean, you said it might flush --

3 **A.** One of the criticisms --

4 **Q.** -- relevant information --

5 **A.** One of the criticisms claimants -- when you hear
6 about disclosure being talked about, one of the
7 criticisms claimants sometimes make is "Oh, the
8 defendant has absolutely swamped us".

9 **Q.** So providing him with relevant information --
10 you said it might flush out relevant
11 information -- providing him with relevant and
12 irrelevant information, in your view, would have
13 been too much for him?

14 **A.** I believe that what was absolutely relevant was
15 the IT at his branch, unless Post Office were
16 telling me there were lots of problems with the
17 system. We have seen them tell me that there
18 are two other people -- two other people -- it
19 has come through to, that there were issues and
20 the previous email which you showed me mentioned
21 two different people but I don't know how
22 Horizon was defined in that, as I've explained.

23 **Q.** "Absolutely relevant", is that the test for
24 disclosure? Those the words you've just used,
25 "absolutely relevant". Is there some sort of

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1 raised issues but it's not telling us what
2 caused those issues and, as I say, to draw my
3 own analogy, kind of a large amount of the time,
4 it's me, and I don't cast any judgment on the
5 subpostmasters for this.

6 One thing I took away, if nothing else, from
7 this, is this system wasn't the easiest system
8 to use. I remember at trial, we had in the
9 trial bundle a user manual that was one or two
10 lever arch folders thick and if you had a user
11 manual that was one or two lever arch folders
12 thick I think you've got a problem with its
13 usability, if nothing else.

14 **Q.** Am I to understand you correctly that 12,000 to
15 15,000 is too many to search but not enough to
16 show that there's a problem with Horizon?

17 **A.** I didn't think that -- I think there's two
18 issues with this. First of all, I didn't think
19 it would generate relevant information or it
20 might have flushed out, I suppose, both relevant
21 and irrelevant information and, if you like,
22 drowned Mr Castleton because if people are
23 ringing with problems that are caused by
24 themselves, then providing him with information
25 about that is not going to help.

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1 qualification on relevance?

2 **A.** I think that searching through 12,000 to 15,000
3 calls per month for what, for how long? When's
4 the start date? When's the end date? I think
5 that what would be -- you know, you have to
6 factor into account the reasonableness of the
7 search and the CPR say that includes the number
8 of documents involved. Well, we had 12,000 to
9 15,000 calls a month to sort through, and this
10 was a claim that, yes, there was a counterclaim
11 for £250,000, but the claim was for about
12 £25,000/£26,000.

13 And I thought that the fact that they would
14 have to look at 12,000 to 15,000 calls per month
15 was a factor that you had to take into account.
16 I mean, it's not what I say, it's what the Civil
17 Procedure Rules say.

18 **Q.** How much was the counterclaim at that stage?

19 **A.** It was put at £250,000 and we --

20 **Q.** At that stage, November 2005 --

21 **A.** It was -- I think it was put at that stage, if
22 memory serves me correctly, at £250,000. We
23 thought it was not -- we believed that the
24 quantum was materially overstated, as ultimately
25 proved to be the case when we got an amended

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1 defence and counterclaim shortly before trial
 2 that reduced it to about, I'm going to say, in
 3 the region of £11,000.
 4 **Q.** You have a counterclaim that's worth £250,000 or
 5 valued by the defendant at £250,000. You
 6 have --
 7 **A.** It --
 8 **Q.** I haven't finished.
 9 **A.** Sorry, sorry.
 10 **Q.** You have a case that, we have established, was
 11 significant for the Post Office in defending the
 12 Horizon System. There are documents, 12,000 to
 13 15,000 calls per month that you think might
 14 flush out relevant information and you don't
 15 think that £2,000 to £3,000 is a cost worth
 16 incurring?
 17 **A.** Well, you have to bear in mind a number of
 18 factors. The number of documents involved
 19 £12,000 to £15,000 per month -- sorry, 12,000 to
 20 15,000 documents -- calls per month, how many
 21 documents does a call generate? I'm imagining
 22 each call generates one document; does it
 23 generate more? But it -- I'm assuming that
 24 there's 12,000 to 15,000 documents per month
 25 over what period? When do you start? When do

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1 **A.** No. But I didn't say that I didn't have any
 2 regrets in this case. I record in my statement
 3 that I do regret that we were unable to reach
 4 a settlement but we did try hard to do so and
 5 it's right to record that.
 6 **Q.** Yes. This is November 2005. May 2006, we have
 7 the disclosure list. Can we look after the
 8 disclosure list, POL00069878. We are now in
 9 December 2006, so shortly before the matter goes
 10 to trial.
 11 **A.** Mm-hm.
 12 **Q.** Can we go over the page, please. Sorry, if we
 13 go slightly above we can see who it's to and
 14 from. It's to Mandy Talbot from Juliet -- in
 15 fact, sorry, can we start from the very bottom
 16 email. Thank you. Mandy Talbot says to Juliet
 17 McFarlane:
 18 "Juliet can you drop me a line urgently to
 19 let me have your comments about why these cases
 20 were dropped if they involved allegations about
 21 the HORIZON System at all. We need this
 22 urgently because we have a civil trial which
 23 challenges HORIZON on next week. I know that
 24 there is not a lot of information to identify
 25 the cases but please let me know what you can."

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1 you end?
 2 But, yes, the conclusion I came to or would
 3 have come to, is that went -- bearing in mind
 4 the number of documents involved, the nature and
 5 complexity of the case, we didn't think it could
 6 have been a £250,000 claim because the contract
 7 with him contained a three-month termination
 8 provision for no fault. So I don't think the
 9 true value of the claim was £250,000, although
 10 it is absolutely right to record that his --
 11 even when put to his solicitors, they said "No,
 12 no, no, it is", until quite late on where they
 13 changed their position.
 14 But, bearing in mind all the factors, all
 15 the factors that you have to take into account,
 16 yeah, I think this would have gone -- my view
 17 that I held is that this would have gone way
 18 beyond, way beyond.
 19 **Q.** Mr Dille, we started today and I asked you if
 20 you had anything to say to Mr Castleton --
 21 **A.** Mm-hm.
 22 **Q.** -- and you didn't have any regrets. I mean,
 23 looking at this particular issue, do you regret
 24 not providing disclosure in relation to those
 25 calls?

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1 **A.** Mm-hm.
 2 **Q.** If we look above, we have an answer:
 3 "Mandy,
 4 "Thomas is my case."
 5 I think that's Hughie Noel Thomas, whose
 6 conviction was subsequently overturned; are you
 7 aware of that?
 8 **A.** No.
 9 **Q.** "He was charged with Theft of [£48,000]. He
 10 blamed the online banking system claiming that
 11 reports had several transactions showing NIL
 12 transaction."
 13 So you were looking, very shortly before the
 14 trial, at these different cases. Is that
 15 because they were raised by Mr Castleton
 16 himself?
 17 **A.** I think so, yes. And when he put specifics to
 18 us, we asked Post Office to look at them, to see
 19 if they were relevant.
 20 **Q.** So the way that the process worked is you waited
 21 for Mr Castleton to identify cases that the Post
 22 Office might be involved in and then to identify
 23 what they involved. In this case --
 24 **A.** That --
 25 **Q.** -- an allegation that there were issues with the

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1 transactions?

2 **A.** The question suggests or implies that we didn't
3 give consideration to the issue of other cases
4 on disclosure, and we did. And, to the best of
5 my recollection at the time, bearing in mind
6 what the court rules say, we believed that we
7 had more than met our duties and that -- or that
8 Post Office had more than met its duties.
9 That's my recollection.

10 But when Mr Castleton raised specific cases,
11 I thought it was -- you know, you want to be
12 thorough. That's not saying we weren't thorough
13 earlier but if there's information that comes to
14 light that he raises, I wanted to put the point
15 to Post Office and I thought it was right that
16 we should point the point to Post Office and we
17 did.

18 **Q.** Why was the burden, though, put on Mr Castleton
19 to identify cases that might involve disputes
20 about the Horizon System?

21 **A.** We weren't putting the burden on Mr Castleton.
22 He did raise them and, when he raised them, it
23 was right to test it with Post Office.

24 **Q.** Was this a case that the Post Office had made
25 you aware of before December 2006?

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1 "[Richard Morgan] is saying that we need
2 a Fujitsu witness to identify why there was
3 a problem, but Lee Castleton's was not. Was
4 there a latent defect or a software problem from
5 a subsequent update or a hardware problem
6 specific to that branch?

7 "[Richard Morgan] saying he was concerned
8 about whether we have to give disclosure of this
9 fact. He thought probably yes, but wanted to
10 find out if the judge thought it was relevant."

11 **A.** That's right.

12 **Q.** "[Richard Morgan] was prepared to put off
13 a decision this until after his opening.
14 [Richard Morgan] asked [Mandy Talbot] to get
15 some definitive answers from Fujitsu. [Richard
16 Morgan] saying that we may finish in court by
17 lunchtime tomorrow."

18 **A.** Mm-hm.

19 **Q.** So there you have become aware of a problem at
20 the Callendar Square branch?

21 **A.** Yes, that's right.

22 **Q.** That is one of the bugs, errors or defects that
23 is in the *Bates and Others* judgment. I don't
24 know if you're aware of that?

25 Can we look at POL00070131. If we scroll

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1 **A.** No.

2 **Q.** Can we please look at POL00070175, please, and
3 we're looking at the second page. A bit further
4 down, please. This is an email to Lesley Joyce
5 and it says:

6 "Hi Lesley

7 "The last one this week and then I am on
8 leave for a week. There are two visits that
9 have direct reference to losses although some
10 from earlier years allude to problems with
11 balancing."

12 That is the case of Ferryhill.

13 **A.** Mm-hm.

14 **Q.** Was that a new case to you?

15 **A.** Yes.

16 **Q.** Can we please look at POL00070126. This is the
17 attendance note that I think you alluded to
18 earlier, 6 December 2006, very close to trial.

19 **A.** Mm-hm.

20 **Q.** "[Mandy Talbot] saying that today's news about
21 problems with the Horizon System at the Falkirk
22 branch had come as a bolt from the blue, that
23 she had known nothing about it and that Fujitsu
24 did not give any indication. Could we get
25 a Fujitsu witness to give evidence?

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1 down to the bottom of the page, it's an email
2 from Mandy Talbot to Lynne Fallowfield:

3 "Lynne further to our chat can you advise
4 what are the names of the postmasters and the
5 addresses of the branches if possible of the
6 following FAD codes.

7 "In [February] of this year you wrote to
8 Gary Blackburn and he wrote to Shaun Turner and
9 then Sandra MacKay about these branches which
10 had apparently registered complaints about the
11 HORIZON system."

12 So that's four branches.

13 **A.** Mm-hm.

14 **Q.** "Fujitsu have told us that in respect of
15 Callendar Square that there was a problem when
16 stock was transferred from one stock unit to
17 another but this would only apply when there was
18 more than one stock unit [something] than one
19 position at the counter.

20 "Did you find out what the problems were at
21 the other branches and what did [Post Office]
22 and Fujitsu do to correct them?"

23 **A.** Mm-hm.

24 **Q.** We're now in 6 December 2006.

25 **A.** Mm-hm.

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1 **Q.** The impression that's given is it's quite a lot
 2 of last minute scrabbling about in relation to
 3 a number of different complaints and problems
 4 with the Horizon System. Do you agree with
 5 that?

6 **A.** I have to set that question in its context.
 7 Firstly, when we did disclosure back in May
 8 time, we didn't get Mr Castleton's disclosure
 9 and it was -- I had to -- it felt a little bit
 10 like, in some of it, going to the dentist and
 11 pulling teeth. I had to pull it out over a long
 12 period of time. Later disclosure came in and,
 13 in civil litigation, litigants are under
 14 an ongoing duty of disclosure.

15 Mr Castleton -- so you -- yes, you do
 16 disclosure at a moment in time but you're also
 17 under a duty to keep it under review.
 18 Mr Castleton raised these cases, brought them to
 19 our attention. When they were brought to our
 20 attention late -- I can't help that -- what we
 21 did do is put them to Post Office. The issue
 22 around other branches was put to the trial judge
 23 and he made a ruling on it.

24 **Q.** The suggestion seems to be that Mr Castleton was
 25 disclosing matters late. These were bugs,
 105

1 attention. I do know, actually, when it came
 2 out, it turned out to be -- it was discussed in
 3 the trial and it actually turned out to be, in
 4 this instance, a complete red herring. But it
 5 was looked at and, fortuitously, Anne Chambers
 6 had looked at it and was able to give evidence
 7 about it and her evidence about it was,
 8 number 1, it could only happen when there was
 9 something called individual stock unit
 10 balancing. Mr Castleton didn't have that in his
 11 branch.

12 The way I understand that, to use
 13 a metaphor, is his computers, just to use
 14 a metaphor, had what I'll call a hive mind. But
 15 Callendar Square -- the Callendar Square problem
 16 could only happen, according to Anne Chambers,
 17 when there was individual unit stock balancing.

18 The other point that -- she made other
 19 points about it, including that it happened at
 20 more than one site and that, when it happened,
 21 it was obvious to Fujitsu.

22 **Q.** You described it as a "red herring". Horizon
 23 was front and centre of Mr Castleton's case,
 24 problems with the Horizon System. Do you still
 25 not think that a bug, error or defect of the
 107

1 errors or defects or allegations of bugs, errors
 2 or defects at Post Office branches. Why on
 3 earth would be the burden have been on him to
 4 identify bugs, errors or defects?

5 **A.** Well, both parties have disclosure duties to
 6 provide information which helps their case, or
 7 might harm their case or the other person. So
 8 both parties have duties and I've explained how
 9 we approached that, insofar as Post Office's
 10 duties were concerned. But it wouldn't be right
 11 to say that the only party that has a duty is
 12 Post Office but it did, of course, that have its
 13 duty.

14 **Q.** How was that going to work, then? Was he
 15 expected to go up and down the country to
 16 different post offices asking them if they had
 17 bugs, errors or defects, if they had Horizon
 18 problems?

19 **A.** I didn't advise Mr Castleton in relation to how
 20 he approached disclosure to comply with his
 21 duties.

22 **Q.** Do you think the suggestion that he failed in
 23 his duty of disclosure relating to Callendar
 24 Square is a little ridiculous?

25 **A.** I don't know when Callendar Square came to his
 106

1 significance of the Callendar Square problem
 2 should have been disclosed to Mr Castleton far
 3 earlier in the case by the Post Office?

4 **A.** No.

5 **MR BLAKE:** Sir, I'm moving on to another topic.
 6 I am happy to start it or we could take
 7 a slightly early lunch. We do have quite a lot
 8 to get through today.

9 **SIR WYN WILLIAMS:** Well, if that's the case, I think
 10 we'll take an early lunch so that we have breaks
 11 at reasonably -- well, at reasonable intervals.
 12 So let's have lunch now. What time shall we
 13 start?

14 **MR BLAKE:** Sir, if we start at 1.45.

15 **SIR WYN WILLIAMS:** All right, fine.

16 **MR BLAKE:** Thank you very much.
 17 (12.46 pm)

18 (The Short Adjournment)

19 (1.45 pm)

20 **MR BLAKE:** Good afternoon, sir.

21 **SIR WYN WILLIAMS:** Good afternoon.

22 **MR BLAKE:** Thank you.

23 Mr Dilley, I'm going to move on to
 24 a different topic, general case strategy against
 25 Mr Castleton. Can we begin on 29 September
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1 2005, POL00072389, thank you very much.
 2 This is a memo to yourself from Denise
 3 Gammack. Who was she?
 4 **A.** She was a solicitor who used to work at Bond
 5 Pearce and, for a time, she had conduct of the
 6 case before me, before she left.
 7 **Q.** Is this a briefing note, essentially, to you
 8 about the Lee Castleton case?
 9 **A.** It is.
 10 **Q.** If we scroll down, there is some background.
 11 She says:
 12 "CMS have been passed bulk instructions from
 13 Royal Mail ..."
 14 Who are CMS?
 15 **A.** "CMS" stood for Credit Management Services.
 16 **Q.** Is that part of Bond Pearce?
 17 **A.** Yes.
 18 **Q.** So they'd been passed bulk instructions from
 19 Royal Mail via Stephen Lister:
 20 "... to prosecute subpostmasters/mistresses
 21 for losses that Royal Mail say occurred during
 22 the course of their employment. Indeed, the
 23 losses normally lead to their dismissal."
 24 Then it says:
 25 "Traditionally, Royal Mail's approach to
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1 recovering money?
 2 **A.** That's what the note tells me, yes.
 3 **Q.** From your experience of the Royal Mail and the
 4 Post Office, can you understand or did you
 5 understand why there was that move?
 6 **A.** The only knowledge I have of this is what this
 7 note tells me.
 8 **Q.** So in your long time dealing with the Post
 9 Office and the Royal Mail, they didn't give you
 10 any indication as to why they were moving to
 11 taking more civil recovery actions, civil
 12 actions?
 13 **A.** My long time?
 14 **Q.** Well, how long were you involved?
 15 **A.** This was the first case I'd worked on.
 16 **Q.** Yes, and consequently?
 17 **A.** I set it out in my statement: I was involved in
 18 two other cases.
 19 **Q.** So in your time involved in this case and those
 20 two other cases and what looks like quite
 21 a considerable amount of correspondence between
 22 yourself and Mandy Talbot, for example, quite
 23 a lot of communication over that period, did she
 24 or did anybody else give you any indication as
 25 to why that strategy had changed?
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1 this has been to prosecute the former employee
 2 for theft and to get them convicted, to make
 3 a public showing of the fact that these losses
 4 will not be tolerated. However, the focus now
 5 is very much on recovering the money rather than
 6 obtaining a conviction."
 7 Were you aware of a change in strategy, as
 8 far as the Post Office was concerned?
 9 **A.** This note tells me that there was a change of
 10 strategy, but I wasn't -- I don't recall being
 11 aware beyond this note. I should say that the
 12 first paragraph in this note contains a material
 13 inaccuracy.
 14 **Q.** Which is that?
 15 **A.** "CMS have been passed bulk instructions from
 16 Royal Mail (via Stephen Lister) to prosecute
 17 subpostmasters ..."
 18 We didn't do any prosecutions. This case
 19 wasn't a prosecution; it was a civil claim.
 20 **Q.** So, in fact, it may be intended to say they've
 21 passed bulk instructions to take action against
 22 subpostmasters?
 23 **A.** To pursue civil claims.
 24 **Q.** Yes. Traditionally their approach was to
 25 prosecute but now they're moving on to
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1 **A.** Not as far as I recall, no.
 2 **Q.** Did you suspect any reason for that change?
 3 **A.** I'm not sure that I considered it much.
 4 **Q.** Can we go back, please, to POL00072669. This is
 5 the note of 24 February 2006 and we saw this
 6 note earlier and it's the first paragraph, where
 7 it says:
 8 "Internally the Post Office feels conflicted
 9 about which direction to go in with the
 10 Castleton case. The Post Office believes the
 11 Horizon System is robust, but the downside is
 12 the cost (in Post Office's time and money) in
 13 proving a negative (ie that there are no faults)
 14 and that it is expensive."
 15 Now, for example, Mandy would need to get
 16 a report from Fujitsu who apparently was having
 17 difficulty with writing in plain English.
 18 That's the passage I took you to earlier.
 19 **A.** Mm-hm, it was.
 20 **Q.** Were you aware that a concern that the Post
 21 Office had was that it was difficult to prove
 22 that there were no faults with the Horizon
 23 System, legally?
 24 **A.** I -- let me set the context to this
 25 conversation. Mr Castleton's solicitors had put
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1 various points to us in exchanges of
 2 correspondence -- to us, by which I mean my
 3 firm. One example of which was a report by
 4 Bentley Jennison but, over the life of the case,
 5 there were a number of others. My approach, and
 6 you can see this time and again, and I relearnt
 7 it when I reread the file, my approach was to go
 8 to Post Office to try to find the person who
 9 could address the concern put to us to see -- to
 10 understand what the answer was and then to be
 11 able to understand whether it was a real issue
 12 and to respond appropriately to Mr Castleton's
 13 solicitors.

14 And so I suspect my work in dealing with
 15 that, one example of which is a report disclosed
 16 to us -- I think it might have been on
 17 a without-prejudice basis by a firm of
 18 accountants called Bentley Jennison. So the way
 19 I suspect that came across to the Post Office is
 20 that Stephen Dilley was running around trying to
 21 prove a negative because, in a sense, I was.

22 **Q.** Proving a negative, ie that there are no faults,
 23 is a difficult burden for the Post Office to
 24 overcome?

25 **A.** It was, particularly in circumstances in which

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1 Mr Castleton's Retail Line Manager, told us that
 2 subpostmasters could change information in
 3 Horizon after the event. I don't recall,
 4 however, that the specific way to -- or the
 5 context in which she was saying that.

6 **Q.** "The only way to prove the loss is in taking the
 7 starting position and the ending position and
 8 see what the difference is. Richard Morgan
 9 explained that the alternative is to say that we
 10 rely on the admission with of the cash accounts,
 11 ie that they were signed by the subpostmaster."

12 Then it goes on to say:

13 "It is not easy to prove that the Post
 14 Office is owed money. To achieve proof will
 15 cost more money than the claim is worth. Anne
 16 Chambers will be persuasive but she is
 17 investigating an occurrence where the
 18 subpostmaster said that the electronic banking
 19 authorisation and said that the system could not
 20 rescind it. Cath Oglesby was sensitive as to
 21 whether the decision was taken in advance of the
 22 hearing to dismiss Mr Castleton. This doesn't
 23 affect the case legally, but it isn't great PR.
 24 However, the accounting work to be done with
 25 litigatory [I think it may be 'litigating'] the

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1 we believe the allegations were not specific or
 2 insufficiently specific.

3 **Q.** Can we look at POL00069622, please. This is
 4 an attendance note of 11 September 2006.
 5 I think we've already looked at it. It's the
 6 attendance note where there was a conference
 7 with counsel and it's the significant meeting
 8 with various Fujitsu witnesses?

9 **A.** Yes, yes.

10 **Q.** Could we, please, look at page 5. There is
 11 a summary of a meeting, the meeting with Mandy
 12 Talbot.

13 **A.** Mm-hm.

14 **Q.** The bottom of page 5, sorry:

15 "Tom explained that the big issue in this
 16 case was proving the loss. Horizon is like
 17 a big calculator and it can be changed after the
 18 event (Tom went on to explain why)."

19 Just pausing there, are you aware of what
 20 was meant by being able to change after the
 21 event?

22 **A.** My recollection, which I've explained in my
 23 statement, is -- and it might be contained in
 24 this note, higher up -- is that during this
 25 meeting, Catherine Oglesby, who was

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1 opening audit to see where the cash had gone.
 2 We will move the territory away from Horizon to
 3 what cash came in and what cash went out. Their
 4 dense is that the Horizon System was to blame,
 5 but they haven't really made their defence very
 6 clear."

7 **A.** Mm-hm.

8 **Q.** So is it right to say that the strategy that had
 9 been developed by September 2006 was to rely on
 10 the admission of the cash accounts, that they
 11 were signed by the subpostmaster, and the Post
 12 Office's case was trying to move the case away
 13 from the Horizon System?

14 **A.** It is partly right, yes. But it isn't the
 15 complete story, because we did -- we sent the
 16 two letters to BDO in August, one of which asked
 17 them to prepare an IT report, which I think we
 18 must have ultimately asked them to pause on.
 19 But the other issue is this: we didn't know at
 20 that point in time whether Mr Castleton would
 21 produce himself an IT report and, by which,
 22 I mean an IT expert's report, and if he had done
 23 so. You know, we were ready to meet the case
 24 but that didn't come.

25 So that's what I mean that it was partially

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1 right.

2 **Q.** Did you feel that you had provided him with

3 sufficient disclosure in order to properly

4 instruct and inform an expert?

5 **A.** Yes.

6 **Q.** Can we look at paragraph 304 of your witness

7 statement. It's WITN04660100. It's page 133 of

8 that statement.

9 **A.** I've got it in hard copy.

10 **Q.** It says:

11 "I have summarised the key parts of Amended

12 Particulars of Claim much earlier in this

13 statement. The relevant point from this is that

14 POL pursued this matter as an accounting claim.

15 In this regard, POL needed to carry out

16 a reasonable search for relevant accounting

17 documents for the purposes of disclosure."

18 It seems as though the strategy that was

19 adopted avoided, in your personal view, the need

20 to make disclosure of Horizon problems because

21 you were focusing on the fact that it was

22 an accounting claim.

23 **A.** Can we have a look at paragraph 305, 306, 307,

24 308, which then talks about the other side of

25 the coin, which is Mr Castleton's defence and

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1 the matter and write an accountancy report; is

2 that correct?

3 **A.** Yes, it is.

4 **Q.** This is an earlier letter from them, 5 September

5 2006, where they set out some initial findings.

6 If we look at the first page, if we could scroll

7 down, they say:

8 "We realise this is a complex matter with

9 possible implications that a far wider than just

10 Mr Castleton's operation of his sub post

11 office."

12 Had you made it clear to BDO that, actually,

13 what you were looking at was a wider challenge

14 to the Horizon System?

15 **A.** I wasn't looking at a wider challenge to the

16 Horizon System. I knew about and we talked

17 about this morning the cases of Mr Bajaj and

18 Mr Bilkhu, and then there were two other cases

19 mentioned which, if you take them at their

20 highest total form, I knew there were 14,000

21 branches and those four together, if you take

22 them at the highest, is less than 0.03 of

23 1 per cent.

24 **Q.** What about the class action that was referred

25 to?

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1 counterclaim. What I had said in paragraph 303

2 is I thought it would assist the Inquiry if

3 I set out the statements of case -- plural --

4 because that's the framework through which

5 disclosure in a civil claim is done.

6 **Q.** I'm sorry, what's the point you would like to

7 make from that?

8 **A.** Statements of case, plural. So it wasn't just

9 about Post Office's Amended Particulars of

10 Claim, it was also about the defence and

11 counterclaim. And I had spent some time trying

12 to understand the points that Mr Castleton was

13 putting to us about the IT issues he said he was

14 experiencing.

15 **Q.** Did you think you had made sufficient enquiries

16 and received sufficient information from the

17 Post Office and Fujitsu to properly satisfy

18 yourself that that wasn't something that needed

19 further investigation?

20 **A.** Yes, I did.

21 **Q.** Can we look at the BDO report that was obtained.

22 That's POL00069592. Sorry, this is a letter

23 from BDO. So there came a point at which you

24 had instructed the chartered accountants, BDO

25 Stoy Hayward, to carry out an investigation into

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1 **A.** Well, I've talked about that this morning. The

2 only cases we were talked about -- that we were

3 told about, were Bajaj and Bilkhu, so I don't

4 think the phrase "class action" was right.

5 **Q.** What about the spreadsheet that was being

6 compiled?

7 **A.** Well, there were two cases mentioned on it or

8 referred to in that email, to which you directed

9 me. I mean, as a proportion of the network,

10 it's minuscule.

11 **Q.** So it wasn't you that gave BDO the impression

12 that this matter had far wider implications?

13 **A.** BDO -- I don't think I can add to my evidence

14 about what BDO knew. I think the implications

15 the wider implications which we talked about

16 this morning were more that, over the course of

17 this case, Post Office's motive changed and it

18 became, for them, about showing that they were

19 willing to stand firm to defend a system that

20 they believed and Fujitsu believed was fine.

21 **Q.** Can we move to page 3 of this document, please,

22 and it's the bottom of page 3. I'm just going

23 to read for the transcript what they say about

24 their early indications of problems with the

25 Horizon System. They say:

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1 "We have found there is some indication of
2 possible problems with Horizon from our initial
3 review of the electronic information you sent
4 us. You sent the transaction summaries for
5 January, February and March 2004. In theory the
6 system should reflect the double entry nature of
7 each transaction, eg the system should show the
8 sale of a stamp and the receipt of the cash paid
9 by customer. Therefore the Horizon transaction
10 entries for a period ... should total zero.
11 From our initial review we can see that the
12 March balances but January is out by £2.47 and
13 February by £4.05. We have found which
14 transactions cause the differences and will
15 investigate them in due course. Although these
16 are very small amounts they do indicate that
17 some problems may exist, ie that the double
18 entry is not being put through."

19 A. Mm-hm.

20 Q. I'll take you now to the actual final report.

21 That's --

22 A. Sorry, there wasn't a final report.

23 Q. The final draft report, shall I say.

24 A. Yes.

25 Q. POL00069955. So you've made very clear that
121

1 instructed not to disclose it?

2 A. That was one. There's seven reasons why it
3 wasn't finalised. So it would be a summary but
4 it wouldn't be complete.

5 Q. Okay, would you like to give us briefly the
6 seven reasons why you consider it wasn't
7 disclosed?

8 A. Yes. Pursuant to the order of Master Turner of
9 23 October it was envisaged there would be
10 a sequential exchange of accountancy experts'
11 reports. This was so that Post Office's
12 accountancy expert could consider any specific
13 allegation Mr Castleton was making in respond to
14 it. We never received an accountancy expert
15 from Mr Castleton.

16 I pause here, incidentally, to say I know
17 that he had one but we never got it so I don't
18 know what it said.

19 Secondly, the draft report from BDO was
20 supplied to me after a time when the court had
21 ruled that the parties could not adduce expert
22 evidence. We were debarred.

23 The third point is that before receiving
24 this report, counsel was content that Post
25 Office's case was made out on the basis of the
123

1 there was no final report?

2 A. No, there wasn't.

3 Q. Did you ask for the work to be stopped at this
4 point when you received the report?

5 A. Can I just take a moment to find where I deal
6 with this in evidence because I think it's
7 answered in my statement.

8 Q. You can speak to it now as well? We have what
9 you say in your statement. But certainly --

10 A. Sorry, it's a long statement and I'd like to
11 refresh my memory, if that's okay.

12 Q. Absolutely.

13 A. Thank you.

14 Q. I'm told it may be paragraph 140.

15 A. Thank you.

16 Q. Does that assist?

17 A. *(The witness nodded)*

18 Q. How does it assist?

19 A. I think you were asking me about the
20 finalisation of this report, and what that --
21 what paragraph 141(a) to (g) explain is where we
22 got to on that report and why it was not
23 finalised and I'm happy to take the Inquiry
24 through that if that would assist.

25 Q. In summary, is it right to say that you were
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1 witnesses of fact. So we'd not decided, even
2 before getting it, that we'd definitely use it
3 in any event.

4 The fourth reason was this was only supplied
5 in draft and we would have wanted BDO to have
6 corrected it for any errors, although noting it
7 was their report and they would have been
8 content with its accuracy to have finalised it.

9 The next reason is that I'm not sure that it
10 would have been possible for BDO to have
11 corrected any errors and finalised their draft
12 report in the seven days prior to trial. I'm
13 not sure, actually, we'd have also got
14 permission to use it out of time.

15 The other -- next point is that counsel
16 advised us not to disclose it and he didn't
17 think Post Office needed to -- needed it to
18 prove its case.

19 And the final point is that, as you rightly
20 said, that Mandy Talbot instructed me not to
21 disclose it.

22 Q. Thank you. Can we look at page 6, please, which
23 is the "Introduction and Terms of Reference".

24 The authors say there, at 3.1.2:

25 "I have been asked to focus on the issue of
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1 whether the losses can be proved
2 arithmetically."

3 **A.** Yes, that's right.

4 **Q.** Was that at your request?

5 **A.** Yes.

6 **Q.** Can we look at page 7. It goes on to address
7 "Sources of Information" at 3.2. Is it right to
8 say that no information in respect of this
9 report was sought from Fujitsu, the providers of
10 Horizon?

11 **A.** Gosh, it was a long time ago. Let me just think
12 for a moment.

13 **Q.** I'm happy for you to read 3.2 to yourself if it
14 assists?

15 **A.** Thank you.

16 I think, in order to properly answer that
17 question, to be confident about my answer, I'll
18 need to be taken to the letter to which
19 I referred to this morning, which was the letter
20 of 22 August that I sent to BDO about
21 an accountancy report that might contain the
22 answer to the question.

23 **Q.** Well, it may be that we look at that in due
24 course but, looking at the sources of
25 information that are set out in BDO's report, is
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1 thoroughly.

2 **Q.** Would you accept that there is no record there
3 of them being -- having been provided outside
4 of, for example, witness statements, detailed
5 information about bugs, errors or defects that
6 may have been in the Horizon System?

7 **A.** Not outside of the witness statements but Anne
8 Chambers', you know, statement, for example, set
9 out the investigation that she'd carried out but
10 there, no, not outside of that.

11 **Q.** Because I think you said that Anne Chambers
12 wasn't investigating the Horizon System; she was
13 just investigating Mr Castleton's branch?

14 **A.** Yes, but the system at his branch but not more
15 broadly, no, you're right.

16 **Q.** Can we look at page 13, please, where there is
17 a description of an overview of Horizon. If we
18 scroll down, 5.2.1 says:

19 "Each transaction should be a double entry
20 accounting basis, for example that sale of
21 a postage stamp for cash will show in Horizon as
22 a sale and as an increase in the cash balance."

23 If we scroll down to 5.2.3:

24 "The system is designed to record all
25 financial transactions at the post office."
127

1 there any suggestion in that that they were, for
2 example, provided with information that there
3 might be bugs, errors or defects in the Horizon
4 System?

5 **A.** Well, the -- at -- first of all, it's right to
6 record that this report that they were producing
7 was an accountancy report and not an IT expert
8 report and we didn't pretend it was. But the
9 information I think that they were provided
10 with, which I think must ultimately have come
11 from Fujitsu, is contained at 3.2.3, which is
12 the transaction and events records, unless
13 there's any other sources of information on the
14 following page.

15 So yes, the various witness statements. So
16 if any of the witness statements with -- which
17 we had supplied them with, so for example if
18 we'd have -- if we supplied them with Anne
19 Chambers' witness statement, if we had supplied
20 them with Andrew Dunks' witness statement, he
21 was somebody else from Fujitsu, you know, that
22 would have set out that side of things. But I'm
23 ever so sorry, I just can't remember now the
24 particular documents that we had sent to them
25 without going back through the records
126

1 Is it right to say that that is
2 an assumption, it's not something that they are
3 saying definitively occurs.

4 **A.** I just can't remember, it was so long ago. I'm
5 sorry.

6 **Q.** 5.3.5, please. It says:

7 "Operating a modern computer system such as
8 Horizon should reduce the scope for staff error.
9 Many transactions are dealt with by scanning
10 barcodes on products such as books of stamps and
11 other products are entered by using
12 a touchscreen system where the clerk selects the
13 item sold from a picture menu. The need to add
14 up the price stamps sold and similar manual
15 entries should be eliminated. There is also
16 a simplification in that Horizon prints postage
17 labels which eliminates the need to use high
18 value stamps for parcels etc. Clearly this will
19 never eliminate the possibility that a clerk may
20 give the wrong change or pay out too much in
21 pensions."

22 Again, the suggestion or the statement there
23 that Horizon should reduce the scope for staff
24 error, reading that now, do you think that they
25 were provided with detail of bugs, errors or
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1 defects in the Horizon System or sufficient
 2 detail of bugs, errors or defects in the Horizon
 3 System?
 4 **A.** As I say, we're asking them. This was
 5 an accountancy report, this was not an IT
 6 report. So I can't amplify the evidence I've
 7 already given you about what they were provided
 8 without being taken to the primary document and
 9 I'm happy to do that if it would assist the
 10 Inquiry but that's the limit of my memory.
 11 **Q.** Can we look at page 18, please, 6.1.1:
 12 "The Horizon System records every accounting
 13 transaction at a post office from the sale of
 14 a single postage stamp to the receipt of cash
 15 for the weekly payment of pensions. The system
 16 operates on a double entry system which it is
 17 possible to extract a trial balance in the form
 18 of a weekly cash account."
 19 Looking at all of this, I appreciate you say
 20 it's an accounting report --
 21 **A.** Yes.
 22 **Q.** -- but, knowing what we know now about the
 23 Horizon System, do you think that they were
 24 provided with sufficient information about bugs,
 25 errors or defects in the Horizon System?
 129

1 period Mr Castleton has tried to reconcile
 2 manually) and that it is represented by two
 3 separate amounts of 92p on 12 January and £1.55
 4 on 15 January."
 5 If we continue to scroll down, he summarises
 6 at the very end of this section, so 6.2.4 he
 7 says:
 8 "I do not have an explanation for these
 9 errors but my review of the transactions
 10 listings for the three months has given no
 11 indication of any other errors."
 12 **A.** Mm-hm.
 13 **Q.** I think he addresses this in his final
 14 conclusions. If we go back to page 4, it's
 15 2.1.2(a), he says:
 16 "My conclusions can be summarised as follows
 17 ..."
 18 (a) is:
 19 "The only indications of possible computer
 20 problems that are apparent from the accounting
 21 records are three very small differences in the
 22 cash account (trial balance) but each are less
 23 than £5. This is discussed in section 6.2."
 24 So it does look as though he was looking
 25 into whether there were possible computer
 131

1 **A.** Well, you probably know more now than I do
 2 because my involvement was confined to this case
 3 and two other cases that I've described in my
 4 statement. I'm not pretending I don't --
 5 I certainly am aware of Mr Justice Fraser's two
 6 judgments but, you know, I had no reason to
 7 believe at the time that they weren't provided
 8 with enough information. I've no reason to
 9 believe that now either in particular.
 10 I thought they had and think they had more
 11 than sufficient information. But -- but, but,
 12 but -- if this was an IT report, I would have
 13 expected them to be supplied with different
 14 information but quite what that looks like after
 15 the passage of all these years I'm not sure I'd
 16 be able to tell you.
 17 **Q.** If we scroll down, they refer to "Addition
 18 errors"?
 19 **A.** Yes.
 20 **Q.** They say:
 21 "I have looked at the three transaction
 22 spreadsheets and observe that two out of the
 23 three (January and February) do not add up by
 24 small amounts of £2.47 and £4.05. I have
 25 identified that the £2.47 falls in week 42 (the
 130

1 problems, doesn't it?
 2 **A.** Yes.
 3 **Q.** In fact, he has found a difference in the cash
 4 account?
 5 **A.** Yes.
 6 **Q.** So, even without information from Fujitsu about
 7 bugs, errors or defects in the Horizon System,
 8 there is at least an indication of a possible
 9 computer problem with Horizon in that report?
 10 **A.** I read that conclusion differently to you.
 11 I read that conclusion as, in essence, that
 12 there was no -- that, in essence, in essence,
 13 there was no computer problem because the issues
 14 they found were really small. And, look, this
 15 was a draft report. Had we got it much earlier
 16 in time we'd have had to work through that and
 17 there may well have been answers to those
 18 questions, as we tended to find when other
 19 points were put to us and we went away and
 20 investigated them.
 21 **Q.** I mean, it does say that there are indications
 22 of a possible computer problem there?
 23 **A.** Well, look, this is their report but if you have
 24 a look at paragraph 6.6.4 (*sic*), I think there's
 25 some more information that would help the
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1 Inquiry on this.

2 **Q.** Paragraph 6-point?

3 **A.** 6.4.

4 **Q.** 6.6.4?

5 **A.** If we can go to that.

6 **Q.** Of this report?

7 **A.** Yes.

8 **Q.** 6.4 or --

9 **A.** 6.6.4 (*sic*).

10 **Q.** I'm not sure that that exists. What page do you

11 say it's on?

12 **A.** Can we just do a scroll down until I find it?

13 **Q.** When you referred to "6.6.4" were you looking at

14 a note of some sort or was it your witness

15 statement?

16 **A.** It's not paragraph 6.6.4 of my witness

17 statement. Keep going down -- ah, sorry, 6.4.4:

18 "If Mr Castleton had suffered a problem with

19 the Horizon computer system I would have

20 expected to see that he was reporting a daily

21 cash balance that suddenly fell below the

22 cumulative calculated cash balance ... but that

23 looking at the daily balances up to the next

24 Wednesday there would be the same difference (or

25 at least a very close one) until the weekly

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1 that was disclosable to Lee Castleton?

2 **A.** Well, can you go, please, to 9.3.1, because

3 I think that --

4 **Q.** Well, we can return to that in a second but I'm

5 sticking with this particular paragraph --

6 **A.** No.

7 **Q.** -- the identification of a possible computer

8 problem?

9 **A.** No.

10 **Q.** Was that disclosable to Mr Castleton?

11 **A.** No, no.

12 **Q.** No, it wasn't disclosable to Mr Castleton?

13 **A.** This report was, in my view, not disclosable.

14 **Q.** This report may not have been disclosable but

15 was that information disclosable to

16 Mr Castleton?

17 **A.** What -- I don't know how that information would

18 have been released without referring to this

19 report, which had been debarred and which was

20 only a draft, which wasn't a finalised report.

21 **Q.** Did you discuss --

22 **A.** There wasn't -- you know, disclosure involves

23 carrying out a reasonable search for documents.

24 What documents would we have been carrying out

25 a reasonable search for that we hadn't

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1 reconciliation was performed. There is no

2 indication that this was happening in January

3 and February 2004 at Marine Drive."

4 Further down, at 9.3.1 --

5 **Q.** Can we just stop there, we will pause at that

6 particular one. Are you now saying that they

7 are computer experts?

8 **A.** Only BDO can account for what they are. But

9 this is written in their report.

10 **Q.** But your evidence was that this was an

11 accountancy --

12 **A.** It wasn't -- it was. I think they were, from

13 memory, I think they were -- I mean, BDO are

14 accountants but experienced in dealing with

15 reports where there are IT issues but, as to

16 their actual experience, you know, after the

17 passage of the thick end of 17 years since this

18 was done, you'd have to put that to them.

19 **Q.** Because, although that particular paragraph may

20 be helpful to you, the point that I was taking

21 you to was right at the front of his summary of

22 conclusions. Can we go back, please, to page 4,

23 2.1.2(a), and he has indicated at the very

24 beginning of his conclusions that there is

25 a possible computer problem. Do you think that

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1 disclosed?

2 **Q.** Did you discuss whether this information

3 triggered any wider disclosure duties on the

4 Post Office?

5 **A.** I anticipate that we would have discussed --

6 I believe that I discussed this report with

7 counsel. I cannot now recollect, after the

8 passage of time, all the details of this

9 discussion. But counsel was made aware of it

10 and he advised not to disclose it. I'm sure

11 that if he'd had considered that there -- that

12 it should have been disclosed, he would have

13 given me that steer.

14 **Q.** Leaving aside the particular report and

15 disclosure of that particular report, do you

16 think that information should have set in motion

17 some action, on your part, on the Post Office's

18 part, to provide further information to

19 Mr Castleton regarding issues with the Horizon

20 System?

21 **A.** I mean, that talks about three small differences

22 in the cash account trial balance. Those

23 documents had been disclosed.

24 **Q.** So you don't think it should have provided

25 an incentive to look further?

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1 A. No.

2 Q. Out of fairness to you, please do take us to the
3 passage that you wanted to in this report?

4 A. Please may we have a look at 9.3.1.

5 Q. So that is a section, it begins on page 32 and
6 it is headed "The accounting records after
7 Mr Castleton was suspended". So it's one
8 section of the report and we have the conclusion
9 in respect of that section at the bottom of the
10 page.

11 A. You skipped over it. Can we go to 9.3.1. This
12 is his conclusion.

13 "I would have expected that if there were
14 computer problems affecting the accounting
15 system that they would have continued in the
16 weeks after Mr Castleton was suspended. There
17 is no indication that this has happened."

18 And they were right about that.

19 Q. Do you think that an accountant from BDO Stoy
20 Hayward would be the right person to make that
21 conclusion?

22 A. Mm-hm.

23 Q. Yes?

24 A. Yes.

25 Q. But that of course would be helpful to your case

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1 a handheld device with these little cassettes,
2 you used to take the cassette out, attach it to
3 a file and walk it down a corridor to be typed.
4 So, sometimes, either my diction wasn't as clear
5 as it needed to be or, sometimes, the quality of
6 the cassette wasn't as good. Needless to say,
7 "video" rhymes with "BDO" and sometimes you get
8 some slightly amusing typing like that.

9 Q. So:

10 "... in view of [BDO's] letter about the
11 proposed costs of £62,000 in relation to the
12 Accountancy Report. Also Tom expressing his
13 concerns that the expert said that they found
14 some early indications of possible problems with
15 Horizon from their initial view of the
16 electronic information."

17 So it was sufficiently significant to you to
18 put that in that note?

19 A. Yeah, yeah, yeah.

20 Q. "They say that Horizon should show the double
21 nature of the transaction, eg sale of a stamp
22 and receipt of cash by customer. However, they
23 said January is out by £2.47 and February by
24 £4.05. My comment to Tom is that I thought
25 those amounts were quite small and that there

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1 but 2.1.2(a), if we go back to page 4, it's the
2 paragraph I was drawing to your attention
3 before, you don't consider that that information
4 would have assisted Mr Castleton in his case?

5 A. I don't think that I can add to the evidence on
6 this report that I've already given to the
7 Inquiry.

8 Q. Can we look at POL00069612, please. This is
9 an attendance note, it has your name on it,
10 dated 7 September 2006. I believe this is after
11 receiving BDO's first letter, so perhaps it was
12 before the draft report but after receiving the
13 letter. You say here:

14 "I had a telephone conversation with Tom
15 Beezer ..."

16 I think he was a solicitor at Bond Pearce.

17 A. Mm-hm. He was a partner at Bond Pearce, yes.

18 Q. "... to discuss strategy in view of ..."

19 This is where the "video" comment is --

20 A. Yes.

21 Q. -- so I think that's "BDO"?

22 A. Yeah.

23 Q. Was this dictated or --

24 A. At the time, this is going to make me sound very
25 old-fashioned, we used to dictate into

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1 will probably turn out to be a rational
2 explanation because I have met Fujitsu and they
3 are utterly convinced of the integrity of their
4 system and really it is just an electronic
5 calculator so it is only as good as the person
6 who inputs information into it."

7 A. Mm-hm.

8 Q. In summary, you didn't think much of the
9 discrepancy and you're satisfied with Fujitsu's
10 explanation?

11 A. And the conclusions in BDO's draft report, to
12 which I've also taken the Inquiry.

13 Q. Can we look at the final paragraph there, it
14 says:

15 "Agreeing with Tom that the strategy should
16 be that we pick up the phone to Lee Castleton's
17 solicitors, point out to them that Castleton has
18 made an error analysing the cash account
19 (without necessarily disclosing the Fujitsu
20 analysis), tell them what our accountancy expert
21 alone is going to cost and invite them to ADR
22 [Alternative Dispute Resolution] before we
23 instruct an expert. Tom agreed and we agreed
24 that we should speak to counsel about this and
25 Mandy about it on Monday."

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1 So having received that indication from BDO,
2 that it was possible for Horizon to show
3 a discrepancy, your view was you should pick up
4 the phone to Lee Castleton's lawyers and enter
5 into dispute resolution without disclosing that
6 information?

7 **A.** This attendance note is dated 7 November 2006.
8 I received BDO's draft report by email on
9 29 November 2006.

10 **Q.** Yes. So the letter that you received, that
11 summarised their initial findings, that was then
12 subsequently replicated in the draft report, you
13 had received that letter --

14 **A.** Mm-hm.

15 **Q.** -- you'd received that information --

16 **A.** Mm-hm.

17 **Q.** -- and your view of the appropriate strategy to
18 take in those circumstances was to phone Lee
19 Castleton's solicitors without disclosing the
20 information and telling them how much the
21 accountancy is going to cost, despite the fact
22 that you knew there was, in fact, something
23 undermining your case in the potential report?

24 **A.** It doesn't say -- that was "without necessarily
25 disclosing the Fujitsu analysis". I think that

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1 **Q.** I appreciate my question was long. Can we
2 please highlight, in the first paragraph, the
3 words:

4 "Also Tom expressing his concerns that the
5 expert said that they found some early
6 indications of possible problems with Horizon
7 from their initial view of the electronic
8 information."

9 Now, those concerns were about BDO's letter,
10 weren't they?

11 **A.** In that paragraph, yes. That's right.

12 **Q.** Yes. Your case strategy that followed that
13 information, that there might be early
14 indications of possible problems with Horizon,
15 was not to pick up the phone to Mr Castleton's
16 solicitors and say, "We may have found some
17 early indications of problems with Horizon", it
18 was, in fact, to not disclose that information
19 and try and force settlement, wasn't it?

20 **A.** I don't think that is an accurate representation
21 because, firstly, BDO -- BDO's letter was not
22 their finished analysis by any stretch. So we
23 didn't know what their considered view was. And
24 the strategy, insofar as ADR was concerned,
25 I mean, consistently throughout the case,

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1 is a reference to a piece of work carried out by
2 Gareth Jenkins and Anne Chambers into cash
3 account period -- I'm going to get this the
4 wrong way round. I think they did some analysis
5 in relation to cash account period 42, which
6 Mr Castleton's solicitors had written to us
7 about, I think, in June 2006 and said, "Look
8 there's a problem with this, you need to -- you
9 know, we've got a problem with this issue". And
10 we commissioned, we asked Fujitsu via Brian
11 Pinder, who was our liaison person at Fujitsu to
12 get somebody to look into it, and he got --
13 that's -- I wrote to a lady called Penny Thomas,
14 it got passed on to Anne Chambers and Gareth
15 Jenkins they looked at it and my distant
16 recollection of their analysis was that,
17 actually, it was fine.

18 Now, when it -- when I ultimately came to
19 put it to Mr Castleton's solicitors over the
20 phone, I'm pretty sure they said, "I know we
21 wrote to you about week 42 but we really meant
22 week 49", and they'd just done all this analysis
23 for nothing.

24 So I think that's what that analysis is
25 meant there in brackets.

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1 consistently, we tried to settle and we'd been
2 rebuffed.

3 In this instance, I think what we were
4 trying to do was to settle before incurring
5 additional cost, as my experience of cases is
6 the more money you incur, you can -- I mean, the
7 advantage of incurring more money and it leaving
8 it too close to the trial is you're in
9 possession of more information but the more
10 costs you incur. And so, if you can settle
11 earlier, you know, you need to think hard about
12 that and that's what we've been trying to do.

13 **Q.** Mr Dilley, you spoke earlier in your evidence
14 about an ongoing duty of disclosure.

15 **A.** Mm-hm.

16 **Q.** Having received those concerns from BDO, you are
17 picking up the phone to Lee Castleton's
18 solicitors to point out an error that
19 Mr Castleton had made but it's no part of your
20 strategy to disclose to Mr Castleton that, in
21 fact, he might be on to something?

22 **A.** If we had got a finalised report from BDO --
23 final report within BDO, within the -- that
24 expressed a considered view and that raised
25 problems with the system and it was a final

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1 report within the time period in which we were
2 allowed to disclose it, I'm sure we would have
3 done so, absolutely. That was our approach.

4 We didn't run away. We did not run away
5 from issues put to us in this case. We
6 investigated them, time and again. Here --
7 here, I don't know what BDO's view is. I know
8 that they're looking at something but they
9 haven't finished their conclusion yet. It seems
10 sensible to let that play out.

11 **Q.** You took us very carefully through paragraph 141
12 of your witness statement, all of those
13 different entries are the reasons for not
14 serving the report on Mr Castleton.

15 **A.** Yes.

16 **Q.** Might a reason be that some of it was not
17 helpful to you?

18 **A.** You're entitled to put that to me and you must
19 do so, but that was -- I thought that the BDO
20 report, actually, notwithstanding your points
21 about these really small numbers, I actually
22 thought, as I've recorded, that the BDO report
23 was helpful. So I don't accept that that was
24 a reason we did not disclose it. Not at all.

25 **Q.** Is that a reason you didn't finalise it?

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1 you had received that draft report, most of that
2 expense had already been incurred?

3 **A.** I don't know because the -- I just really don't
4 know because the letter was quite short and it
5 took from the 7 September to quite late in
6 November to get even a draft. So my -- if I --
7 if you, you know, it's really a question for BDO
8 as to when they did their work on costs but my
9 view is that most of their work fell after this
10 point in time.

11 **Q.** Absolutely. Absolutely. I don't suggest
12 otherwise. The draft report is dated
13 29 November 2006.

14 **A.** Yes.

15 **Q.** So very close to trial.

16 **A.** Yes.

17 **Q.** By that stage, overwhelmingly the majority of
18 the cost would have already been incurred,
19 wouldn't it?

20 **A.** I would have thought so, by BDO. I would have
21 thought so a lot of the costs would have been
22 incurred by them. I don't know, because we
23 never did finalise it, how much work it would
24 have taken to finalise it. We would have
25 certainly wanted them to correct it for any

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1 **A.** No, I've explained the circumstances in which it
2 wasn't finalised. We were debarred. We were
3 debarred. We couldn't use it. We couldn't use
4 it, we were really close to trial. Could they
5 have even done that in time?

6 I tell you what you can see on the file,
7 absolutely comes through, is me pressing and
8 pressing and pressing BDO to get on with their
9 report but, in fairness to them, we'd asked them
10 to pause work because we'd got really close to
11 settlement and then hadn't. So we'd paused all
12 that preparation and Mr Castleton, via
13 solicitors, I think it was, made a settlement
14 proposal, we signed a Tomlin order, they
15 wouldn't sign, and so all this work that we'd,
16 you know, got going to prepare for the trial, we
17 stopped, to save costs, to save money because we
18 thought -- we hadn't signed -- well, we'd signed
19 the Tomlin Order but it hadn't been signed --
20 you know, we thought we would get there and
21 settle.

22 **Q.** In the email that we still have up on the screen
23 or the note that we still have up on screen, it
24 said that an accountancy report would cost
25 £62,000. Presumably, by this stage, by the time

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1 errors.

2 **Q.** The additional costs, though, would not have
3 been significant in the grand scheme of things,
4 would it?

5 **A.** I don't know, I don't know what the additional
6 costs would be. It's an event that didn't
7 happen.

8 **Q.** It is your evidence that there was no motivation
9 in respect of not finalising that report brought
10 about by their -- the first of their
11 conclusions?

12 **A.** None whatsoever.

13 **Q.** Can we look at POL00069490, please. 10 October
14 2006, so we're going slightly back in time but
15 I want to talk to you about the ability for
16 Mr Castleton to challenge the case against him.
17 We have a note of a telephone conversation
18 between yourself and Mr Morgan.

19 **A.** Mm-hm.

20 **Q.** Paragraph 4 is the paragraph I'd like to read.
21 It says:

22 "Richard thinks we should play some
23 brinkmanship and press for a December trial. If
24 they disclose an expert's report that harms us
25 then as they are doing so late, we can always

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1 ask the court to vacate the trial. However at
 2 the moment, they have not disclosed an experts
 3 report and he thinks we [should] go to trial
 4 without one. However, he wants us to get client
 5 approval for this strategy."
 6 **A.** Mm-hm.
 7 **Q.** So, as far as the expert's report was concerned,
 8 you were playing a strategy of brinkmanship, is
 9 that what you understood the Post Office to have
 10 been playing?
 11 **A.** Yes.
 12 **Q.** Can we look at POL00072432, less than a week
 13 later, 16 October. A telephone conversation
 14 between yourself and Mandy Talbot.
 15 **A.** Mm-hm.
 16 **Q.** "Mandy said she noted that I had had problems
 17 getting from the Post Office copies of the
 18 opening audit. Telling her that that was
 19 correct and that the reason we wanted it was to
 20 compare the handover position with the closing
 21 position to try to get Horizon out of the
 22 picture."
 23 Paragraph 3:
 24 "Counsel was much happier with the case now
 25 that we had all these witness statements ..."

1 tactics of this. She said that the only thing
 2 with a December trial is that the Post Office
 3 get very busy before Christmas generally."
 4 **A.** Correct.
 5 **Q.** I'm going to take you to one more document.
 6 POL00069453, 18 October, two days later. This
 7 is your note of your conversation with Mandy
 8 Talbot:
 9 "She has spoken with Claire ..."
 10 I think that's Clare Wardle, the general
 11 counsel at the Post Office at the time; is that
 12 right?
 13 **A.** I believe so, yes.
 14 **Q.** "...and Catherine ..."
 15 I think that must be Catherine Oglesby, is
 16 it? No.
 17 **A.** No. It'll be -- I think there was a Catherine
 18 someone or other in the Legal team.
 19 **Q.** Thank you:
 20 "They are happy to follow counsel's advice
 21 and go for a December trial purely as a tactic,
 22 even though acknowledging that is an unlikely
 23 event. However if the other side seeks to
 24 [I think that must be 'produce'] evidence we
 25 must preserve our ability to reply ..."

1 **A.** Yes.
 2 **Q.** "... and in fact thought that they were thorough
 3 and we didn't really need expert evidence at
 4 this moment, because the statements proved the
 5 case by themselves ..."
 6 **A.** Correct.
 7 **Q.** "... unless that is that Mr Castleton's
 8 solicitors serve late experts' reports from
 9 either IT or Accountancy that we need to deal
 10 with. Counsel therefore wants to play some
 11 brinkmanship ..."
 12 Again, the word "brinkmanship"?
 13 **A.** Yes.
 14 **Q.** "... with the other side, ie push for a December
 15 trial, but preserving our ability to get that
 16 adjourned if they serve a late report that we
 17 need to deal with. I said that we could prepare
 18 for a December trial if necessary and I was
 19 happy to do so, but I was concerned to make sure
 20 that we could reply to any expert reports served
 21 by Castleton. I also think that our counsel was
 22 effectively trying to ambush the other side
 23 because he thinks that when we serve these
 24 fifteen witness statements on them, they will be
 25 knocked reeling a bit. Mandy appreciates the

1 **A.** Mm-hm.
 2 **Q.** So that is the Post Office agreeing to pushing
 3 for a trial in December --
 4 **A.** Yeah.
 5 **Q.** -- and what has been described as ambushing
 6 Mr Castleton with 15 witness statements.
 7 **A.** Mm-hm.
 8 **Q.** Can we look at POL00069618, please. Now, there
 9 was a case management conference on 23 October
 10 2006 --
 11 **A.** Yes, there was.
 12 **Q.** -- and this is the skeleton argument that was
 13 produced for that. The Post Office's position,
 14 paragraph 2, if we look at the end of
 15 paragraph 2, is that:
 16 "... the Claimant presently wishes to keep
 17 the trial date if possible."
 18 **A.** Mm-hm.
 19 **Q.** That is effectively keeping that December date?
 20 **A.** Yeah.
 21 **Q.** Then perhaps if we could look at the bottom of
 22 page 2, "Experts":
 23 "Pursuant to the Order of Master Fontaine,
 24 the parties have permission to rely on the
 25 evidence of experts in the fields of accounting

1 and information technology."

2 **A.** Yes.

3 **Q.** "This expert evidence is meant to go to [the
4 Defendant's] assertion that in some way the
5 losses recorded by him were not real losses."

6 **A.** Yes.

7 **Q.** "[The Claimant] has sought clarification of the
8 way [the Defendant] intends to make his case but
9 still does not understand how [the Defendant]
10 says losses did not in fact occur ... The cost
11 of expert evidence is high (even more so in
12 a case worth only some £25,000) and [the
13 Defendant's] statements of case do not [the
14 Claimant's] experts to be instructed to focus on
15 any particular aspects of the thousands of
16 transactions conducted within the relevant
17 period."

18 **A.** Yes.

19 **Q.** "[The Defendant] accepts that sequential
20 exchange is desirable. In the circumstances,
21 [the Claimant] invites the Court to direct that
22 there be sequential exchange of experts' reports
23 within a timetable that allows [the Claimant]
24 some time to respond, alternatively that there
25 be no expert evidence at the trial, given that

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1 **A.** What I'm wondering but I just can't remember is
2 at that point in time, and the order might tell
3 us, is if at that point of time we'd exchanged.
4 I don't think we'd exchanged witness statements
5 but at one point I do remember we were ready to
6 go and wanting to exchange and Mr Castleton
7 wasn't and, in the end, we sent him our
8 statements and I can see from my little timeline
9 at the beginning of my statement that
10 Mr Castleton's statements and summaries were
11 provided on 29 November. I can't remember when
12 ours came.

13 **Q.** Do you think that it was realistic for
14 Mr Castleton to be expected to produce an expert
15 report in the absence of any significant
16 disclosure on the wider Horizon System first?

17 **A.** I think in the circumstances of the case, it was
18 realistic for Mr Castleton to produce a report.
19 We had -- and he'd been given more than one
20 opportunity to do that. On 9 March we'd had
21 a timetable approved by the court for bringing
22 the claim to trial, into which Mr Castleton's
23 solicitors had inputted, and that was the
24 timetable number 1.

25 The dates, though, got pushed back by the

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1 it is now so late and [the Defendant] does not
2 seem to have any expert evidence to advance."

3 **A.** Yes.

4 **Q.** Now, this submission was made to the court at
5 the time where you knew that you had 15 witness
6 statements to serve on Mr Castleton, including
7 some from Fujitsu witnesses addressing the
8 Horizon System; is that right?

9 **A.** I'm just going to remind myself of when we did
10 witness exchange.

11 **Q.** So the reference to 15 witnesses was a note of
12 16 October 2006 --

13 **A.** Yeah.

14 **Q.** -- and this is 23 October 2006, so shortly
15 before you had been talking about the
16 brinkmanship on behalf of the Post Office and
17 the service of 15 witness statements for the
18 November trial.

19 **A.** I -- in order to answer the point you're
20 putting, can we find anywhere, because I think
21 this will help the Inquiry, can we find the
22 order by consent of Master Fontaine of 25 August
23 2006?

24 **Q.** We will have a break this afternoon, so we can
25 certainly have a look.

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1 order of -- by consent of Master Fontaine on
2 25 August 2006, until we go before -- we have
3 two further case management hearings, there's
4 a CMC on 23 October and a PTR before His Honour
5 Judge Seymour QC on 27 November. And my genuine
6 view, in this case, is Mr Castleton had a number
7 of opportunities to produce expert evidence and
8 it was clear that when -- after our disclosure
9 was provided in May, I mean, Mr Castleton's
10 solicitors came back to us with what else they
11 wanted to see, and we were on it and provided
12 it.

13 So I think they had a number of chances,
14 they inputted into the timetable. So they were
15 on board with that. They -- I don't recall them
16 saying to us "We've just not had a proper chance
17 to do this".

18 **Q.** Do you think the Post Office or yourself
19 recognise the practical or technical limitations
20 that he would have had in obtaining an expert
21 report based on bugs, errors or defects in the
22 wider Horizon System?

23 **A.** In the wider Horizon System? We talked about
24 disclosure this morning and we didn't provide
25 disclosure about other branches.

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1 Q. Do you think that caused him limitations in what
 2 he could really obtain in respect of an expert
 3 report?
 4 A. I do think he had relevant information in
 5 relation to his branch.
 6 Q. Did he have relevant information in relation to
 7 the case that he was pursuing that was a wider
 8 attack on the Horizon System?
 9 A. I thought so. I thought so.
 10 Q. That's in the past tense. Do you think so now?
 11 A. I should like to, in order to be able to
 12 properly, properly answer that question, have
 13 a very deep understanding of the Horizon Issues
 14 judgment in the GLO and to really reflect on
 15 what other information, if any, might exist that
 16 I don't know about. And I think unless you do
 17 that, you know, that's what you'd have to do to
 18 really properly answer that question.
 19 Q. The submission at the case management conference
 20 that, given it was only a £25,000 claim the cost
 21 of expert evidence was high, was it realistic to
 22 suggest that Mr Castleton should incur that
 23 cost, knowing what you knew about his financial
 24 position?
 25 A. Well, you say knowing what I know. We did know
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1 it, for Mr Castleton. The risk was that he
 2 would produce something at a later stage that
 3 then they would have to deal with, but the idea
 4 behind that was, if he produced a report, it
 5 would have more -- which we believed, and were
 6 ready to deal with if he did, that's why we sent
 7 BDO the letter on 22 August -- if it had more
 8 specificity, we could have produced our own more
 9 targeted report, which would have been more
 10 proportionate because, without that, you'd have
 11 had to have produced a general report.
 12 You know, where do you start and stop
 13 looking? It's -- it's like trying to board the
 14 ocean, potentially. So I thought the idea of --
 15 certainly of a sequential exchange was a good
 16 way of dealing with it. But I'm sorry, because
 17 I -- can you put to me your second question
 18 again?
 19 Q. Given what we've heard, the emails that we've
 20 read about ambushing with 15 statements, for
 21 example, or the words used, "brinkmanship", do
 22 you think that is appropriate where the claimant
 23 is a publicly owned company?
 24 A. I mean, I think the word "ambush" that I think
 25 I use now was a bit strong, because, you know,
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1 some things but we didn't have a complete
 2 picture. We knew that he had before-the-event
 3 insurance. We didn't know how much and I didn't
 4 know -- you know, in some instances that could
 5 have picked up the costs. What I also knew is
 6 that he'd already produced what I've recorded as
 7 the Bentley Jennison report and his solicitors
 8 either told me or wrote to me at one point and
 9 said that Mr Castleton is "not a man without
 10 means", language they used.
 11 But what I can't absolutely and don't
 12 pretend to get away from, is Mr Castleton's
 13 means, I expect, would have been less than --
 14 much less than the Post Office's means. You
 15 can't get away from that and I can't change that
 16 in any litigation of this nature.
 17 Q. Looking back, do you think the brinkmanship and
 18 the tactics were appropriate?
 19 A. Yes.
 20 Q. Does it make a difference that the Post Office
 21 was a publicly owned company, in your mind?
 22 A. The -- sorry, just picking up very quickly on
 23 a point of brinkmanship. I thought that the
 24 brinkmanship point to me is that Post Office
 25 were taking a risk. It wasn't a risk, as I saw
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1 I -- when I joined the profession as a trainee
 2 in 1999, people used to say that before the
 3 Woolf Reforms came in, before the Civil
 4 Procedure Rules, you could ambush to the side
 5 but that had gone because the exchange of
 6 witness statements was mutual, simultaneous, you
 7 know? Everyone saw each other's at the same
 8 time.
 9 But what I do think it would be fairer to
 10 characterise that as is I suspect Mr Castleton's
 11 solicitors were not expecting us to be as well
 12 prepared as we were and we wanted to be
 13 thorough.
 14 Q. I'd like to ask you some questions about the
 15 nature of Mr Castleton's alleged wrongdoing.
 16 Can we look back again at a document we've
 17 already looked at, it's POL00071165, and it's
 18 the significant meeting of individuals from
 19 Fujitsu.
 20 If we scroll over the page there is
 21 reference to Mr Castleton's response to the
 22 request for further information, and it is dealt
 23 with with Mr Jenkins and, if we keep on
 24 scrolling, we can see that Mr Jenkins addresses
 25 that.
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1 A. Mm-hm.

2 Q. Then if I could ask you about page 4, where you
3 went through various call logs with Anne
4 Chambers. It's at the bottom of the page.
5 One thing to note at the beginning is that:
6 "[She] noted that she is third line support
7 and only one of Lee Castleton's calls came
8 through to her."
9 So although there is a long list of calls,
10 in fact, she only had personal experience of one
11 of them?

12 A. Yes.

13 Q. Can we go to page 6. Pages 5 and 6 for some
14 reason, I think, are out of order and so, in
15 fact, page 6 comes before page 5. Then if we
16 scroll back to page 5, this is -- sorry, if we
17 scroll down page 6, just to have a look at that
18 very briefly, there's reference to various call
19 logs and, at the bottom, that's dealing with one
20 particular call log.

21 A. Yeah.

22 Q. Then if we turn back to page 5, we will see
23 that's the same bit continued.

24 A. Mm-hm.

25 Q. If we scroll down half the page, halfway down,

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1 issues. However, he also made 2 other comments
2 which were not especially helpful ..."

3 A. Yeah.

4 Q. He said:
5 "Lee Castleton told him that it was only
6 when he transferred cash to the suspense account
7 that the problems seemed to multiply. Lee told
8 Greg he hadn't taken any money and Greg believes
9 him ..."

10 A. Mm-hm.

11 Q. "Greg believes that Lee Castleton was
12 an inexperienced subpostmaster and before he was
13 suspended he sought support and help from the
14 [Post Office] but didn't get it. He knows of
15 another case (no names mentioned) where another
16 branch lost money and a different ..."
17 I think that's regional line manager?

18 A. I think it might mean Retail Line Manager.

19 Q. Retail Line Manager:
20 "... gave the subpostmaster much more
21 support in marked contrast to this case. He
22 also knows [Lee Castleton] is speaking to other
23 subpostmasters."

24 A. Yes.

25 Q. You say:

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1 it says:
2 "It was [Anne Chambers'] feeling that it was
3 sloppy inaccuracies rather than fraud.
4 Additionally as the [postmaster] is actually
5 declaring the discrepancies this gives the
6 impression of incompetence."
7 At paragraph 379 of your statement and, in
8 fact, in your evidence today, I think you said
9 you didn't feel that Mr Castleton was dishonest.

10 A. No, I didn't and I don't.

11 Q. Can we please look at POL00071040. This is
12 24 August 2006. It's an email from yourself to
13 Richard Morgan. Can you tell us who Richard
14 Morgan was?

15 A. Yes. He was counsel for Post Office, so we
16 instructed him and he was our barrister in the
17 case.

18 Q. You tell Mr Morgan there at paragraph 2, you
19 say:
20 "I've spoken to Greg Booth (temporary
21 subpostmaster of Marine Drive from 21 April to
22 28 May 2004) and have agreed to meet him on
23 Wednesday next week to take a statement. The
24 gist of what he will say is that he didn't have
25 any problems balancing or experience any IT

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1 "I assured Greg that [Lee Castleton] did get
2 support, but perhaps the issue was that [Lee
3 Castleton] didn't actually see all of that
4 because work was done in other places such as
5 NBSC. In any case, Greg's comments are
6 unhelpful which [I think that's Lee Castleton]
7 might fish for in cross-examination or I fear
8 Greg may volunteer."
9 A. I suspect it meant to say "Lee Castleton's
10 counsel".

11 Q. Thank you. So, in essence, Greg Booth is saying
12 that he believed that Lee Castleton hadn't taken
13 any money?

14 A. Yes.

15 Q. Could we go back, please, to POL00069612,
16 please, 7 September 2006. You say:
17 "Explaining to Tom that I had a conversation
18 with Castleton's solicitors earlier this week
19 and they say they had not ruled out ADR but
20 believed the whole case well turn on what the
21 experts say and there is therefore no purpose in
22 having ADR until their expert (hopefully for
23 them) comes up with something to win the case
24 for them. Tom asked me if I thought that
25 Castleton had taken money for himself and I said

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1 he may not have done and may have mixed it with
2 the car auction money, but this is just
3 a hypothesis. However he has persuaded himself
4 for one reason or another that the computers may
5 be at fault."

6 **A.** Mm-hm.

7 **Q.** Can we look again at the draft BDO report,
8 that's POL00069955. It's page 5 of that report.
9 BDO say:

10 "There is a suggestion by Mr John Jones of
11 the Post Office that Mr Castleton had omitted
12 receipts from a car auction customer which paid
13 in large amounts in cash to its Girobank
14 account. My conclusions are that the three
15 large amounts that Mr Jones refers to were
16 correctly dealt with in the cash account."

17 **A.** Yes.

18 **Q.** Is that the hypothesis that you had slightly
19 earlier, that BDO are saying is not actually
20 right?

21 **A.** Quite possibly, yes.

22 **Q.** Thank you. That can come down.

23 So we have there your own witness saying
24 that he wasn't dishonest?

25 **A.** Mm-hm.

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1 to do some more analysis around.

2 On 21st June, Rowe Cohen raised an issue
3 around software updates, which we found some
4 information out from Fujitsu and put back to
5 them, to see if that would be an issue. When
6 Greg Booth rang me up and said, actually, in my
7 first witness statement I said I hadn't had any
8 problems with suspense account but I now have,
9 we did a second statement and POL was supportive
10 of that.

11 An issue about something about a Tivoli
12 events log arose late in the case. POL were
13 happy for us to disclose them and supportive of
14 the action we took which, was not to oppose the
15 continuation of the hearing.

16 There was an issue raised to us, I think, in
17 about November/December time about the computer
18 going down. We went and checked that with Brian
19 Pinder; Post Office were supportive of that.
20 Don't get me wrong, I don't think Post Office
21 believed that Mr Castleton's -- you know, the
22 information I was getting from them in
23 conversations we were having and emails we were
24 getting is they believed the system was robust,
25 but they were supportive of us, rightly

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1 **Q.** Anne Chambers suggesting it was sloppiness,
2 rather than something worse.

3 **A.** Yeah.

4 **Q.** You had a theory but that then has been
5 disproved?

6 **A.** Yeah.

7 **Q.** Do you think that the Post Office were
8 sufficiently open-minded to other possibilities
9 in this case?

10 **A.** I do, because when points were put to us, we
11 went away and investigated them. That was our
12 approach. So I set out in my statement a number
13 of examples of us doing that. The Bentley
14 Jennison report, another CPR Part 35 expert
15 report came in, and it put an issue to us which,
16 at first, I thought was quite serious. I went
17 away and investigated it, and there was a benign
18 explanation.

19 At the Part 18 request I went away and had
20 a meeting with Fujitsu, which POL knew I was
21 going to have and was supportive of. I also
22 subsequently met Andrew Wise and I referred to
23 the attendance note in the meeting in opening
24 this morning. There was an issue raised into
25 week 42, which POL were happy to support Fujitsu

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1 supportive of us, testing that and testing the
2 points put to us to make sure.

3 **Q.** You're getting issue after issue pointing away
4 from significant issues in the Castleton case.
5 You've spoken a lot about settlement and why
6 didn't Mr Castleton settle.

7 **A.** Yes.

8 **Q.** Now, did the Post Office at any point consider
9 whether they should simply withdraw?

10 **A.** You can't.

11 **Q.** Well, I appreciate there was a counterclaim but
12 did they at any point say to Mr Castleton "We're
13 happy to not proceed"?

14 **A.** At pages 107 to 111 of my statement I have tried
15 to summarise all the steps that we took on
16 behalf of Post Office to try to reach
17 a resolution. And if -- I mean, what Post
18 Office could have done, in theory, is
19 unilaterally serve a notice to discontinue their
20 claim. They could have done that. There would
21 have been two consequences of that: (1) they'd
22 have been liable for Mr Castleton's costs in
23 relation to that claim; and (2) it would have
24 left live the counterclaim. So all these, or
25 certainly a lot of these issues we were

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1 litigating over would still have had to have
2 been litigated and costs incurred.

3 So withdrawing by serving a notice of
4 discontinuance, even had POL wanted to do it,
5 would not have made this go away.

6 **Q.** Can we look at POL00069404, please. This is
7 an email from you to Brian Pinder. I'm going to
8 read to you that second paragraph there. You've
9 spoken to Greg Booth, who, as we heard earlier,
10 was the temporary subpostmaster?

11 **A.** Yes.

12 **Q.** "Greg spoke to me last week and reported that
13 his computer froze on Wednesday 25 or Thursday
14 26 October 2006 (I will clarify which day)
15 whilst he was serving a customer and partway
16 through a transaction. The transaction had not
17 been settled. It related to a postage label.
18 When he logged back in again, the computer had
19 lost the transaction of £1.27. The computer did
20 not prompt him to recover it. Greg is away this
21 week, but I will be contacting him upon his
22 return to obtain a supplemental witness
23 statement about this point. Prior to then,
24 Greg's evidence was that he had never known the
25 system to lose a transaction. In this

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1 thing to do. You know, prior to that point,
2 that was his evidence. Something had come up to
3 change his evidence, and we'd put in a second
4 statement.

5 **Q.** Can we look at POL00069418, please. 27 October,
6 you had a conversation with Greg Booth --

7 **A.** Mm-hm.

8 **Q.** -- who had just received your letter and then he
9 describes the issue. It says:

10 "I asked him whether he thought that the
11 system could lose transactions totalling about
12 £26,000 and he said no. This was the only time
13 in all his years working as a subpostmaster that
14 he had known it to happen. However he thought
15 he should draw it to my attention."

16 Do you think he was qualified to answer the
17 question of whether his particular error could
18 or could not mean that the Horizon System was
19 capable of losing £26,000?

20 **A.** I wanted to understand his -- he had experiences
21 as a subpostmaster and I wanted to get -- and
22 I did not. I did not work the system and I just
23 wanted to understand what he thought. I didn't
24 hold him up as, you know, an IT expert, for
25 example, in -- or an expert in how the system

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1 particular case, Greg was £1.27 up because he
2 had taken money from a customer. However,
3 I anticipate the reverse would have happened if
4 he had been paying money out."

5 **A.** Mm-hm.

6 **Q.** So now you have Greg Booth telling you not only
7 that he didn't think that Mr Castleton was
8 dishonest but he now tells you that he, in fact,
9 himself experienced a loss transaction?

10 **A.** Yes. It wasn't Post Office's case that
11 Mr Castleton had been dishonest but, yes,
12 Mr Booth told me there was a problem and the
13 right and proper thing to do was to talk to him
14 about it, to understand it, to get under the
15 skin of it and to produce a second witness
16 statement about it, whether or not -- whether or
17 not -- that witness statement counted for us or
18 against us.

19 In the end -- in the end -- that's what we
20 were going to do -- in the end, when we
21 investigated it and began to understand it,
22 actually -- I mean, Greg Booth puts this in his
23 second statement -- it was -- there was
24 an issue, which I put down as what I call user
25 error so it was benign. But it was the right

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1 worked but I just wanted to understand his sense
2 of it.

3 **Q.** Can we now look at the statement from Catherine
4 Oglesby in the *Lee Castleton* case, it's
5 WBON0000095. Thank you very much. This is the
6 statement that was filed on behalf of Catherine
7 Oglesby. Can we look at page 15 of the
8 statement, please. It's paragraph 53. So she
9 says there:

10 "Since Mr Castleton had been suspended, the
11 temporary subpostmasters had worked with exactly
12 the same Horizon kit and the balance had
13 continued to be fine each day within expected
14 parameters. Mr Castleton had not given any
15 credible explanation for the unauthorised
16 shortfalls. In the circumstances, I decided to
17 terminate summarily ..."

18 If we turn over the page, this was signed on
19 19 October so it was shortly before you had that
20 conversation with Greg Booth.

21 **A.** Mm-hm.

22 **Q.** Now, it's obviously right to say that Mr Booth
23 hadn't experienced problems at Marine Drive but,
24 shortly after this witness statement was
25 written, you were aware, and in fairness to you,

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1 you did evidence that in a statement, that the
2 temporary subpostmaster did experience a loss at
3 another branch?

4 **A.** Mm-hm.

5 **Q.** Looking at this period of time, you had a loss,
6 albeit small, from the temporary subpostmaster.

7 **A.** Mm-hm.

8 **Q.** You had that issue raised in the BDO draft
9 report about a possible errors with the Horizon
10 System. You had all the various issues that
11 we've discussed today. Was it not a time to
12 relook at, for example, your disclosure
13 obligations or the conduct of the Post Office in
14 this case? Was it not the time to question
15 whether there were, in fact, problems with the
16 Horizon System?

17 **A.** Well, in the light of what Greg Booth was
18 saying, that's exactly what we did do. We did
19 look at whether there was a problem and we were
20 satisfied with the answer.

21 **Q.** You looked at a problem in relation to
22 Mr Booth's specific problem on that specific
23 occasion?

24 **A.** Yes, but --

25 **Q.** But did that not prompt you to dig a little bit
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1 screen the BDO letter of instruction because
2 that's a document you wanted to be brought up
3 earlier. It's POL00071065. Is this the letter
4 that you were referring to?

5 **A.** No.

6 **Q.** No?

7 **A.** Can you see, this is the mistake I made, as
8 well, third line in bold "IT expert's report"?
9 The letter which generated the accountancy
10 report says there "Accountancy expert's report"
11 and, although the accountancy expert's report
12 letter of instruction was not put to me by the
13 Inquiry, what I ought to have done, which I was
14 trying to explain this morning, at paragraph 130
15 of my witness statement, which deals with
16 this -- it's question 24 of 49 of the Rule 9
17 Request -- is I would have preferred -- it's
18 entirely on me and I'm very sorry -- I would
19 have preferred to also give to the Inquiry --
20 I know you already have it but I would have
21 preferred to draw to your attention to the
22 accountancy expert's report. We sent it in when
23 I realised this. It might have been last week,
24 but you already had it, of course.

25 **Q.** So was BDO approached to provide an IT expert's
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1 deeper than you had been digging in relation to
2 wider problems with the Horizon System?

3 **A.** We were entirely satisfied with what Mr Booth
4 said in his second statement. It was a problem
5 that was resolved.

6 **MR BLAKE:** Sir, I have a few more questions but not
7 many. No more than about ten minutes but
8 perhaps we can our break now. There are
9 certainly questions to come from recognised
10 legal representatives as well.

11 **SIR WYN WILLIAMS:** Yes, by all means. So what time
12 shall we start again?

13 **MR BLAKE:** Thank you. If we come back at 3.25,
14 please.

15 **SIR WYN WILLIAMS:** Okay, fine.

16 **MR BLAKE:** Thank you very much.

17 (3.11 pm)

(A short break)

19 (3.24 pm)

20 **MR BLAKE:** Thank you, sir. I can see you on screen.

21 We may be slightly early but I think we can
22 begin.

23 **SIR WYN WILLIAMS:** Very well.

24 **MR BLAKE:** Thank you.

25 Mr Dilley, I'm just going to bring up on
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1 report?

2 **A.** At the -- it's so long ago but the conclusion
3 I draw from this is that there were two letters,
4 two letters on 22 August. One was asking BDO to
5 do an accountancy report and that's the report
6 that you've taken us to, the draft report. The
7 other was this, asking them to do an IT expert's
8 report, but the conclusion I draw, not from my
9 memory, is that we must have said to BDO "Pause
10 on this", because in the end what happened was
11 we wanted Mr Castleton to produce his IT expert
12 report so we could do something more tailored
13 and responsive to it.

14 **Q.** Is another possible explanation that that draft
15 report that we have seen, in fact, was intended
16 to capture both the accountancy aspect and the
17 IT aspect of the report?

18 **A.** It's possible but I don't believe at all that
19 that's what it was doing.

20 **Q.** Perhaps if we scroll down, there is a list of
21 documents, if we keep on scrolling, and more
22 scrolling, please, thank you. If we could keep
23 on going, "Documents enclosed".

24 If I could ask you just to have a read to
25 yourself of the documents that were enclosed --
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1 A. Mm-hm.
 2 Q. -- and over the page, further down. Am I right
 3 to summarise there that the information that was
 4 provided along with that letter of instruction
 5 did not contain wider analysis of the Horizon
 6 System outside of Mr Castleton's own branch?
 7 A. Yes.
 8 Q. I'm going to move on to a different topic and
 9 that is the evidence of Anne Chambers. Could
 10 we, please, look at POL00073838. Just for the
 11 record, we do, in fact, have the other document.
 12 I won't bring it up on screen now because I'm
 13 not entirely sure it is with those sitting
 14 behind me but for the record it is POL00071069.
 15 Anne Chambers. We have here her draft
 16 witness statement. This early draft, if we look
 17 at page 3, contained a section on the Helpdesk
 18 calls.
 19 A. Yes.
 20 Q. Are these words drafted by yourself?
 21 A. I -- the way we prepared, the general way we
 22 prepared witness statements in this case is
 23 I went to see -- I went to physically meet
 24 almost all of the witnesses. We had a meeting
 25 with them. Made notes on what they said, and
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1 just wanted someone to fulfil the narrative
 2 function of describing what they meant.
 3 Q. We can see that in FUJ00122285, where she emails
 4 you -- it's the second email on the page, and
 5 she says -- sorry, it's page 3. Thank you. She
 6 says:
 7 "I'm somewhat concerned about my witness
 8 statement containing all the PowerHelp calls,
 9 given that I had no involvement at the time ...
 10 I was unaware of problems at the branch until
 11 26 February when the call was sent to SSC.
 12 "The way it is laid out at the moment is
 13 neither a verbatim transcript of the calls, nor
 14 my interpretation of what was probably meant at
 15 the time. I can provide the latter if that is
 16 what is required, but there needs to be a clear
 17 delineation between what was stated then and
 18 comments I make now.
 19 "I do not particularly want to be questioned
 20 on the handling of calls by HSH, since I did not
 21 and continue to have no responsibility for
 22 this."
 23 I mean, it seems as though she was not
 24 comfortable with the inclusion of --
 25 A. Correct, and, if she wasn't comfortable, the
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1 then I tended to put together the first draft.
 2 It is entirely possible that I put this first
 3 draft together based on, you know, the meeting
 4 I had had with Anne Chambers but I don't have
 5 a specific memory of that any more.
 6 Q. Do you tend to produce a statement includes as
 7 much as you would like to and ask the witness,
 8 effectively, to reduce it down if they need to?
 9 A. I think that would be an oversimplification.
 10 The statement is -- the way the statements are
 11 prepared is an iterative process, it's the
 12 witness's statement, really important they have
 13 to be completely content with it. In Anne
 14 Chambers's example, in Anne Chambers's example
 15 it was reduced from the first draft because,
 16 looking act those "E" numbers, my recollection
 17 is that those were references to Horizon System
 18 Helpdesk call logs.
 19 At the time, I think we were saying to Anne
 20 Chambers "Can you put into -- can you just
 21 explain what these call logs meant? We know you
 22 didn't deal with them but can you explain what
 23 they meant?" And, ultimately, she wasn't
 24 comfortable doing that but Andy Dunks was so we
 25 rightly took them out of her statement but we
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1 right thing to do was not to ask her about it.
 2 Q. Can we look at POL00071092, please. 17 August
 3 2006, this is an attendance note made by
 4 yourself in a conversation with Anne Chambers
 5 and, similarly, it says:
 6 "Basically, she felt uncomfortable
 7 commenting on any of the calls other than those
 8 she was involved in", et cetera.
 9 Then it's the second paragraph:
 10 "7(a) we will probably leave as it isn't
 11 really relevant and paragraph 40 in the
 12 Conclusion she will have to review to see if she
 13 feels properly able to say that. Anne will go
 14 over the statement and also put it more into her
 15 own words and explain the limits of her
 16 involvement. She will come back ... tomorrow."
 17 So you had drafted an original conclusion
 18 paragraph 40 --
 19 A. Mm-hm.
 20 Q. -- and she was considering whether she could
 21 properly say that?
 22 A. Yes, that's right.
 23 Q. Perhaps can we look at that side by side with
 24 POL00073838, and that's the draft witness
 25 statement, and if we could, on the left-hand
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1 side turn, to the page 9. Thank you. So the
 2 conclusion, as drafted by yourself was:
 3 "There are no reasonable grounds for
 4 believing that the information stored on the
 5 Horizon System would be inaccurate because of
 6 improper use of the computer terminal. To the
 7 best of my knowledge and belief, during the
 8 material time, the Horizon System was operating
 9 properly at the Marine Drive branch or if not,
 10 any respect in which it was not operating
 11 properly was not such as to affect the
 12 production of audit record or accuracy of their
 13 contents."

14 Thank you. Can we now look at FUJ00152292.
 15 This is a document you've only recently seen.
 16 It comes from Fujitsu. It doesn't really add
 17 very much to what we've already seen, but
 18 I would like your thoughts on it.

19 It's an email from Anne Chambers to Gareth
 20 Jenkins and she addresses the statement at the
 21 bottom. She says:

22 "This hasn't had my full attention, lots of
 23 people are on leave and Martin landed me with
 24 a tricky POLFS/FP issue. Also, yesterday I got
 25 my witness statement which is (as I expect you
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1 know that they'd not passed that on to her then.
 2 Q. Can we now look at POL00069622, please. This is
 3 the meeting, the 11 September note. Can we
 4 look, please, at page 4, and it's the bottom of
 5 page 4, "Meeting with Anne Chambers":

6 "We went through Anne's witness statement.
 7 She said she had personally got a new set of
 8 referrals for six years."

9 Now it says:

10 "Three to four years subpostmasters had been
 11 complaining that there is a problem or have
 12 complained if there is a problem. Sometimes
 13 there is a major ..."

14 It's not clear, it may be something is
 15 highlighted there and photocopied or something
 16 it's not entirely clear what's missing there:

17 "... for example, all the cash and stock
 18 appears to have vanished out of the office."

19 Now, I think you have said in your witness
 20 statement that your reading of that -- if we
 21 could scroll up and perhaps just have the bottom
 22 of the page above, thank you very much -- your
 23 reading of this is that she said that there are
 24 three to four subpostmasters each year. Isn't
 25 it equally possible that she was saying that for
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1 found) full of things I didn't say or do,
 2 including all those PowerHelp calls."

3 Did you understand her to feel uncomfortable
 4 with the process at all?

5 A. She -- it's right to record that she was not
 6 comfortable with giving evidence on the
 7 PowerHelp calls.

8 Q. I don't think that that is necessarily limited
 9 to the PowerHelp calls, where she says, "Full of
 10 things I didn't say or do, including the
 11 PowerHelp calls". Did you sense a general
 12 concern on her part, in respect of the evidence
 13 that she was being asked to give?

14 A. It came to my attention in a document that
 15 I first saw on Monday, in the additional
 16 documents bundle, which is basically a *post*
 17 *mortem* by Anne Chambers a while later, that
 18 Fujitsu had not told her, until shortly before
 19 the meeting I assume we had with her in June
 20 2006, that we wanted her to give evidence. But
 21 I told Fujitsu that in April, so -- but I didn't
 22 know that at the time. I didn't know that at
 23 the time.

24 But it, you know, that's in a document that
 25 she wrote after the *Castleton* case, but I didn't
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1 three to four years, subpostmasters had been
 2 complaining that there is a problem with the
 3 Horizon System?

4 A. Look, I wish -- I wish my note, my dictation had
 5 been clearer. I checked the original, checked
 6 the original, and it's not a highlighting issue,
 7 the word's missing, which suggests to me my
 8 dictation wasn't as clear. That's not my belief
 9 that that's what she was saying.

10 Q. You say that's not your belief. I mean, you
 11 can't recall either way; is that right?

12 A. I can't be sure, no. That is right.

13 Q. If it was something that Anne Chambers had told
 14 you, would that have been disclosable?

15 A. In civil proceedings you don't disclose
 16 information, you disclose documents. That's
 17 really different from the criminal proceedings.
 18 You carry out a search for documents. It's just
 19 it feels like the two are being mixed up in the
 20 question.

21 Q. Would that have caused you to rethink the
 22 reasonableness and the proportionality of your
 23 search if she had said to you that for three to
 24 four years subpostmasters had been complaining?

25 A. Well, I'm not sure, even if that's what she had
 184

1 said, it would have done, because the -- if you
2 go a little bit further down somewhere, she
3 says -- yeah, no:

4 "Sometimes there was a major [and then
5 there's a missing word] for example, all the
6 cash and stock appears to have vanished out of
7 the office. But those sorts of errors are
8 singular and not continual."

9 And the impression I got from that is there
10 weren't systemic issues with the system because
11 they were -- well, they were singular and not
12 continual.

13 And, you know, I certainly didn't get the
14 impression -- it was a long time ago, but
15 I would remember it -- I did not get the
16 impression from that meeting with Anne Chambers
17 that there was a bigger problem with the Horizon
18 System. I didn't.

19 **Q.** She's coming to give evidence next week. If her
20 evidence is that she said that for three to four
21 years subpostmasters had been complaining, do
22 you think that that should have prompted you to
23 carry out wider investigation of the Horizon
24 System?

25 **A.** No.

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1 version on the left-hand side, has been changed
2 from "There was no evidence whatsoever of any
3 system problem but the continued losses and
4 calls suggested the Marine Drive branch needed
5 some business assistance" and it now reads "My
6 conclusion was that there was no evidence
7 whatsoever of any system problem".

8 **A.** Yeah.

9 **Q.** Was that changed to try to maintain the line
10 that this was opinion evidence rather than
11 expert evidence?

12 **A.** Anne Chambers was a subject matter expert but
13 she wasn't a CPR Part 35 expert. I think that
14 the change was to put the statement into
15 language that was -- she was content with saying
16 and I don't think it was about whether it --
17 I don't -- I don't think we were thinking is it
18 opinion is it facts, specifically. I think it
19 was more about, look, this is the witness, she's
20 got to be completely happy, completely happy
21 with her evidence.

22 **Q.** Do you think she could have said that there was
23 no evidence whatsoever of any system problem --

24 **A.** Um --

25 **Q.** -- because I think your evidence earlier was she

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1 **Q.** If we scroll down, paragraph 5 and paragraph 6
2 in fact, she says that they want to delete
3 paragraph 16.

4 **A.** Mm.

5 **Q.** Perhaps we can look at FUJ00122323. Can we look
6 at paragraph 16, that's page 5. Do you think
7 it's correct to say that that it is the
8 paragraph at that meeting she would like to have
9 deleted?

10 **A.** I'm not sure without going to the part of my
11 witness statement where I set this out. In the
12 preparation of my witness statement, I went
13 through every draft of Anne Chambers' system on
14 our computer, so that I could understand how
15 we'd got from the first version to the final
16 version. So it would help refresh my memory if
17 we could go to the right part, if you could help
18 me with that.

19 **Q.** What I can do is bring on to screen the final
20 witness statement and, perhaps, can we keep that
21 one on screen and can we also see LCAS0000112,
22 and it's page 5 of that. Thank you. On the
23 left-hand side, if we can go to page 5, thank
24 you very much.

25 So the final version, this is the signed

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1 didn't interrogate the entire system?

2 **A.** She didn't and so she was wanting to talk about
3 the investigations she had carried out, and what
4 she hadn't done -- you know, she didn't
5 represent to the court that she had carried out
6 a huge investigation of the system. She was
7 quite specific with the judge, with the trial
8 judge about what she had done and the limits of
9 it, so we were changing her statement that made
10 it more accurate and put it into the words with
11 which she was content.

12 **Q.** Would it have been more accurate, on the
13 left-hand side, to have added words such as
14 "affecting Lee Castleton's specific branch",
15 where she says, "My conclusion was that there
16 was no evidence whatsoever of any system
17 problem"?

18 **A.** Ah, it was blindingly obvious at the trial,
19 blindingly obvious, that that was what she was
20 talking about. She was not absolutely saying --
21 and we didn't say to the trial judge, in fact it
22 was the opposite, we said -- and you'll see it
23 in our note of the trial -- we said "We are not
24 saying this system is free of problems,
25 generally". That was put before the judge.

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1 So it was blindingly obvious. I think this
2 is one of the things where we're all looking
3 back, as we only can 17 years later, and going
4 "Could we have done this? Could we have done
5 that?" But, at the time, we were satisfied, and
6 she was satisfied that it was clear and it was.

7 **Q.** You say it was "blindingly obvious".

8 **A.** At the trial, yeah, at the trial, really, really
9 clear.

10 **Q.** Reading that statement, it's rather close to the
11 line, isn't it?

12 **A.** Look, she was -- I just don't think I can add to
13 my evidence on this point. She had to be
14 satisfied with what she was saying and I think,
15 if we looked at page 16, which she refers to of
16 her exhibit, which is on page 338 of the trial
17 bundle, I see, the conclusion was reflecting
18 actually something that she had written at the
19 time.

20 **Q.** The one on the right-hand side though, "There
21 was no evidence whatsoever of any system
22 problem", as originally drafted by you, was
23 plainly wrong, wasn't it?

24 **A.** Yeah, well, she was not content to say that and
25 it was right that she had to talk about her

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1 was a fair criticism of the way the case was
2 conducted?

3 **A.** Let's break it down into parts because she says
4 quite a lot there. "Once in court I felt myself
5 being treated as an expert witness". I suspect
6 if -- this my conjecture but, if you said to
7 Anne Chambers "Do you mean a CPR Part 35
8 witness?" She'd have said, "What's CPR 35?"

9 I think it is fair to say and perhaps more
10 accurate to say she was regarded as somebody,
11 and rightly regarded, as somebody who was
12 knowledgeable about the Horizon System. She was
13 and that's how she came across. I think the
14 other -- she then talks about "I was able to
15 fulfil the wider role".

16 I think what she might be driving at there
17 is the Callendar Square bug issue that got
18 raised shortly before the trial, upon which she
19 was then asked, and it was handy because she was
20 the person who had investigated the Callendar
21 Square bug and she was able to -- so I think
22 that's the context in which she is talking.

23 **Q.** Do you think you properly explained to her the
24 difference between an expert witness and
25 a witness of fact?

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1 investigation.

2 **Q.** The very final document that I'm going to take
3 you to is FUJ00152299, and this is the document
4 that you referred us to, the afterthoughts on
5 the Castleton case.

6 **A.** Mm.

7 **Q.** I'm going to skip through it very briefly
8 because we will be hearing from Ms Chambers,
9 "Review of technical evidence". She says that
10 she was concerned that there was no technical
11 review of the Horizon evidence before the
12 original call and going to court. She says:

13 "Once in court, I found myself being treated
14 as an expert witness and answering a wide
15 variety of questions about the system, although
16 nominally I was a witness of fact and my witness
17 statement covered just the investigation done in
18 2004."

19 She goes on in the final paragraph there to
20 say:

21 "If there is similar cases in the future,
22 where the system is being blamed, would it not
23 be sensible to have a technical review of all of
24 the evidence ..."

25 Was her criticism there, do you think that

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1 **A.** I -- gosh, this is a very long time ago to
2 remember specific conversations and advice but
3 I am sure we would have been alive to that. We
4 certainly made it clear to Fujitsu in the end
5 that, if we were going to get an expert
6 evidence, you know, it wouldn't be them,
7 notwithstanding the letter I sent to them on
8 22 November. So had we been concerned about
9 that, I'm sure we would have dealt with it
10 properly.

11 **Q.** Do you think that the way that the evidence had
12 been presented put her in a difficult position
13 in that respect?

14 **A.** No.

15 **Q.** Scrolling down to "Disclosure of evidence", very
16 briefly, she said that:

17 "Fujitsu made a major legal blunder by not
18 disclosing all the relevant evidence that was in
19 existence. I found myself in the invidious
20 position of being aware that some information
21 (Tivoli event logs) existed, but not sure
22 whether they should be disclosed", et cetera.

23 Scrolling down, she refers to
24 a conversation, I think, with yourself.

25 **A.** And she quotes from something that I must have

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1 said.

2 **Q.** She said:

3 "This suggests that disclosure of the
4 message store itself was an afterthought,
5 although it is fundamental to the system",
6 et cetera.

7 She refers to fraud cases. She says:

8 "Many other files are also archived to the
9 audit servers as a matter of course and could
10 hold relevant information, although the Security
11 team are not necessarily aware of their
12 existence or potential relevance. I'd like to
13 suggest that a list of these files is compiled
14 so that similar mistakes are not made in
15 future."

16 **A.** Mm-hm.

17 **Q.** "And what about calls on PEAK, which may have
18 evidence attached?" et cetera.

19 Do you think her criticisms of the lack of
20 disclosure that was made to Mr Castleton are
21 fair?

22 **A.** No.

23 **Q.** Why not?

24 **A.** I'd need to take you to the part of my statement
25 dealing with the signature of the first

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1 be a non-issue. It didn't help Post Office's
2 case but it didn't help Mr Castleton's case
3 either.

4 **Q.** Looking at the reflections of a witness in the
5 case, a witness with significant experience with
6 the Horizon System, looking back at all you did,
7 do you think that you could have made and should
8 have made wider disclosure than, in fact, you
9 did make to Mr Castleton?

10 **A.** No.

11 **MR BLAKE:** Sir, those are all the questions that
12 I have. There are a number of questions from
13 Core Participants, sir. I think we're going to
14 hear from Ms Page first. I suspect we may go on
15 beyond 4.30 or are likely to go beyond 4.30.

16 **SIR WYN WILLIAMS:** I'm not sure about that. This is
17 all what I might call detailed and intricate
18 evidence and I want to ensure that my
19 concentration levels are the same now as they
20 were about five hours ago. So I'm not at all
21 sure that I'm going to be prepared to sit for
22 any significant length of time beyond 4.30. So
23 I think we need to have a realistic time
24 estimate now of how much further questioning
25 there is and decide how we deal with that.

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1 disclosure list and the email conversation I was
2 having with somebody called -- I think she was
3 called Vicky Young -- to begin to explain that.

4 **Q.** Can you briefly summarise what the point is that
5 you would like to make on that?

6 **A.** Vicky -- sorry, Vicky Harrison. Vicky
7 Harrison -- you know, I said to Post Office
8 "Look, you've got a duty to carry out this
9 reasonable search, the penalties for not
10 disclosing are severe", or something like that,
11 "we have to be thorough". And Vicky Harrison
12 wrote to me, I think it's -- it is set out in my
13 statement -- and said what I believe to be the
14 case, which "You've got this, you've got that,
15 this is how I've done it, including this stuff
16 from Fujitsu".

17 And so I believed that -- absolutely
18 believed that Post Office had more than -- more
19 than carried out their duties of carrying out
20 a reasonable search. All that said, all that
21 said, as I've said, we did disclose other
22 documents after our list of disclosure was
23 prepared, including, including Tivoli event
24 logs, which is different from an events log, but
25 actually, the disclosure of that turned out to

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1 So can I first of all ask Ms Page what she
2 has in mind, since she obviously represents
3 Mr Castleton, and this is primarily, if not
4 exclusively, about Mr Castleton.

5 **MS PAGE:** Thank you, sir. I was hoping or planning
6 to take around 40 minutes.

7 **SIR WYN WILLIAMS:** Right. Are there other counsel
8 who wish to question?

9 **MR BLAKE:** There are. Ms Dobbin has some questions
10 but I don't think a great deal of questions.

11 **MS DOBBIN:** Sir, I wasn't anticipating being
12 anywhere as long as Ms Page, so probably about
13 20 minutes.

14 **MR BLAKE:** About 20 minutes on behalf of Mr Jenkins.

15 **SIR WYN WILLIAMS:** Well, I am prepared to have
16 20 minutes' worth of questions now but then
17 I fear Mr Dillely will have to return either
18 tomorrow or at some other suitable occasion,
19 which is convenient to everyone involved.

20 **MR BLAKE:** Thank you, sir.

21 Can I just check with Ms Page whether she
22 would still like to go first in light of that or
23 whether she'd like the evening?

24 **MS PAGE:** I'm content to go first.

25 **MR BLAKE:** Thank you.

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1 **SIR WYN WILLIAMS:** Well, then bring it to a close,
2 Ms Page, at around about 4.20, all right?

3 **MS PAGE:** Certainly, sir.

4 **Questioned by MS PAGE**

5 **MS PAGE:** Mr Dilley, you'll have gathered from that
6 that, alongside number of other subpostmasters,
7 I represent Mr Castleton, who sits to my right.

8 **A.** Mm-hm.

9 **Q.** Mr Dilley, do you say that Mr Castleton has
10 fabricate his evidence to this Inquiry, in that
11 he says that there was a conversation in which
12 you told him that the Post Office would ruin
13 him?

14 **A.** I don't believe that in making that comment
15 Mr Castleton has been dishonest but I do believe
16 that he is mistaken.

17 **Q.** Do you recognise that this case was
18 a life-changing catastrophe for Mr Castleton?

19 **A.** I imagine it was, yes.

20 **Q.** Do you not think that moments like this were
21 seared onto his memory?

22 **A.** I don't believe that his recollection of that
23 conversation was accurate.

24 **Q.** When settlement was discussed, Mr Dilley, at no
25 stage did Post Office offer to pay Mr Castleton

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1 a debt that he did not owe?

2 **A.** I regret that the parties were unable meet each
3 other around the table on a without-prejudice
4 basis and try to resolve their differences.
5 That's not just -- when you go to these
6 meetings, it's not just about money. I think it
7 would have been quite powerful, for example, for
8 Post Office to have said, as I did to
9 Mr Castleton in two conversations, "It's not
10 part of our case that you have been dishonest".

11 I think it would have been helpful to have
12 said that in a meeting, if we'd have been able
13 to get there.

14 **Q.** We'll pass over, perhaps, the need for
15 Mr Castleton to have judgement from the Post
16 Office on his honesty and instead turn to
17 a document: POL00072691. If we look at the
18 middle paragraph of this telephone note of your
19 call with Mandy Talbot, it says that:

20 "She reiterated that the Post Office are not
21 going to settle this case lightly and her view
22 is that they should take it to trial, just to
23 take a firm line", et cetera.

24 We've heard this sort of thing before. But
25 the final sentence:

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1 anything, did they?

2 **A.** There was no offer from either side to pay each
3 other -- the other person anything. That's
4 correct.

5 **Q.** Seeking settlement just meant that Post Office
6 wanted him to pay the claim and say that Horizon
7 was working?

8 **A.** I remember writing to Mr Castleton's solicitors,
9 trying to persuade them and Mr Castleton to come
10 to mediation and citing specifically a case that
11 said, "Until you get into the settlement
12 meeting, you don't really know the bottom line".

13 **Q.** Well, you say that your only regret in the way
14 that this case panned out was that you didn't
15 manage to settle the claim. So what you do
16 there, really, Mr Dilley, you may think, is that
17 you turn Mr Castleton's courage around. In his
18 courageous refusal to pay a debt he didn't owe,
19 you say, "Oh, what a shame he didn't agree to
20 pay that debt".

21 **A.** Sorry, I haven't got any comment on
22 Mr Castleton's courage. I have no doubt,
23 though, that going to trial was difficult for
24 him. It's difficult for any litigant.

25 **Q.** Your only regret is that he didn't agree to pay

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1 "However, we should be seen to be settling
2 and that's why she is willing to agree to
3 Castleton's offer of mediation."

4 "We should be seen to be settling".

5 **A.** Mm-hm.

6 **Q.** The offers of mediation were never sincere, were
7 they, Mr Dilley? It was completely a sham?

8 **A.** I completely disagree. It was so serious. We
9 wrote and wrote and wrote. Mr Castleton's
10 solicitors blow hot and cold and I have set out
11 in pages 107 to 111 --

12 **Q.** Yes, we've heard you say that before.

13 **A.** -- the instances of it.

14 **Q.** If we can go, please, to another document
15 POL00072741, and after she could go, please, to
16 page 2 and scroll to the bottom. This is a note
17 of a meeting between you and counsel Richard
18 Morgan, and your partner was there as well,
19 Mr Beezer?

20 **A.** Mm-hm.

21 **Q.** You interject at the bottom of page two, "SD"
22 I assume being you?

23 **A.** Mm-hm.

24 **Q.** "... this would have settled without the
25 computer/Horizon issue and the subsequent

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1 subpostmaster's bloggers website."
 2 Yeah? So that's you telling counsel that
 3 the case would have settled, absent the Horizon
 4 issues.
 5 **A.** I certainly think -- I certainly think that
 6 complicated this, it made it way beyond, as
 7 we've heard this morning, Post Office's original
 8 goal of what they saw as a debt claim. It
 9 absolutely complicated it. That's absolutely
 10 fair to say.
 11 **Q.** All right. Well, let's go to counsel's reaction
 12 towards the end of the meeting, which is on
 13 page 6 of this note, and the second paragraph:
 14 "RM [Richard Morgan] stating that it should
 15 be stated to POL that this is madness and we
 16 could settle with drop hands and the
 17 confidentiality clause."
 18 Then he goes on to talk about an estimate of
 19 costs.
 20 **A.** Mm-hm.
 21 **Q.** "Madness"; do you accept that's his advice?
 22 **A.** If you look at this case in isolation as
 23 an economic exercise in the recovery of money,
 24 I do.
 25 **Q.** Right, well, let's look at how this advice was
 201

1 Horizon System and hopefully send a clear
 2 message to other subpostmasters that the [Post
 3 Office] will take a firm line", et cetera.
 4 **A.** Yeah.
 5 **Q.** What is not said is that this is madness,
 6 nothing like. Counsel's advice was not passed
 7 on, was it?
 8 **A.** I don't agree. I think the -- it's certainly
 9 true that the word "madness" wasn't used but the
 10 sentiment in counsel's advice was absolutely
 11 passed on.
 12 **Q.** All right. The opening sentence, do you accept
 13 that this is, effectively, Mr Beezer expressing
 14 to Post Office the fact that he's already well
 15 aware that Post Office are not going to listen
 16 to reason on this?
 17 **A.** No. I think Post Office had their reason but
 18 their reason hadn't become a net economic
 19 recovery in this case. It's how it had started,
 20 but it had changed.
 21 **Q.** The only way that they were going to settle this
 22 case was strictly on their own terms, wasn't it?
 23 **A.** Where does it say that?
 24 **Q.** Well, I'm inferring it from the fact that there
 25 was no prospect of settling this case in a way
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1 communicated to Post Office because they were
 2 not at that conference. If we turn to
 3 POL00071081, please, and if we go to page 2,
 4 please, about halfway down. There's that
 5 paragraph that says -- I'm taking this quite
 6 briefly but this letter is basically following
 7 the conference with counsel and passing on
 8 various points from the conference to counsel.
 9 It was written by Mr Beezer.
 10 **A.** Mm-hm.
 11 **Q.** That paragraph at the bottom of the page:
 12 "As we discussed (and apologies for raising
 13 this matter again -- I know you are aware of
 14 this advice -- but I raise it here for the sake
 15 of completeness), the costs of pursuing this
 16 claim will significantly exceed what is at
 17 stake. Accordingly, even if you win, the [Post
 18 Office] will almost certainly not make a net
 19 gain as your costs will be assessed and possibly
 20 capped ... irrecoverable ... exceed the value of
 21 the ... claim. In any event, you may well find
 22 it difficult to enforce any judgment because of
 23 Mr Castleton's asset position ... Accordingly
 24 the purpose of pursuing this claim now is not to
 25 make a net financial recovery, but to defend the
 202

1 that was going to satisfy their purpose, unless
 2 Mr Castleton paid the claim and said Horizon was
 3 working.
 4 **A.** I certainly think that the longer the claim went
 5 on, the harder it became to settle, that's
 6 right. And that's why, you know, before the
 7 costs got really high, we'd offered mediation in
 8 November 2005 and it's right to record that.
 9 And the longer it went on, the more money they'd
 10 spent on it, I think probably the more they
 11 wanted out of it.
 12 Whether -- what we'll never know, because we
 13 never went to a settlement meeting -- let's
 14 imagine we'd have gone to a settlement meeting
 15 and Mr Castleton had said, "Hello, Stephen
 16 Dilley and Post Office, my assets are X.
 17 I will -- look, so, you know, there's no
 18 economic point in this, but I will accept,
 19 I will accept, if we're able to reach
 20 a settlement, that I withdraw my allegations
 21 about Horizon System".
 22 We will now never know whether that would
 23 have resulted in a settlement but I think at
 24 some point we would have had -- we would have
 25 worked very hard to recommend that sort of
 204

1 proposal to Post Office but we will now never
2 know.
3 **Q.** Well, I'm not going to go back over ground that
4 you've already been taken to this morning. What
5 I would like to go to, though, is the final
6 exchanges on this issue, which is at POL00069775
7 and if we go down, please, to start off with
8 page 3 of this document. This is in the
9 November before the trial in the December.

10 **A.** Mm-hm.

11 **Q.** The email we're looking at now is from Ms Talbot
12 to the business but also copying you in, and she
13 says that:

14 "[Everyone will be] pleased to know that the
15 solicitors acting for Castleton have
16 substantially accepted our counterproposal."

17 In brief, the counterproposal is that
18 Mr Castleton was to pay everything and was to
19 give a non-disparagement -- I think that was the
20 legal terminology being used --
21 a non-disparagement undertaking, to the effect
22 that Horizon was working fine. We see that at
23 the bottom:

24 "I [Mr Lee Castleton] the former postmaster
25 at Marine Drive Post Office admit that a sum of
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1 **A.** But I also think it would have been a good
2 result overall. It would have saved
3 a significant amount of money, for example, and
4 it would have avoided the stress of a trial.

5 **Q.** Mr Castleton paying a debt that he didn't owe
6 and paying costs that had been run up
7 expediently and in order to make him into
8 an example to hold up to others? That would
9 have been a good result for him, would it?

10 **A.** The judge found, having heard the evidence from
11 all the witnesses at the time, that he did owe
12 the debt.

13 **Q.** Well, let's just focus on whether that would
14 have been a good result for Mr Castleton, shall
15 we?

16 **A.** His solicitors had advised him -- they told me
17 they'd advised him to settle and that they
18 thought -- they thought that he had bad case.

19 **Q.** You were aware, weren't you, that at this point
20 in time Mr Castleton was not well, weren't you?

21 **A.** At some point he did become ill, that's right.

22 **Q.** Yes. Let's just go up, please, to the response
23 from the business. It's on page 2. What we see
24 is a response from Keith K Baines. It's
25 addressed to Mandy Talbot, and there are various
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1 money was owed by me to Post Office as a result
2 of errors which arose while I was the postmaster
3 ... I had thought that this debt arose due to
4 a malfunction of the HORIZON system but I [now]
5 accept that I was mistaken and that the debt
6 arose out of human error. I declare that the
7 HORIZON system did not contribute to the errors
8 in any way and formally withdraw all statements
9 I made to the contrary."

10 That was the attempt to resolve the case
11 before the trial in the November, isn't it?

12 **A.** It wasn't the attempt; it was an attempt. But
13 there were several rounds of conversation
14 between respective counsel and, in terms of
15 disparagement, there was a mutual disparagement.
16 So Post Office were to also, my recollection
17 was, withdraw their -- you know, any
18 suggestion -- which they hadn't made, by the
19 way -- that Mr Castleton had been dishonest. So
20 it was a two-way street.

21 **Q.** This was the Post Office getting everything that
22 they wanted, wasn't it?

23 **A.** I certainly thought it would have been a really
24 good result for Post Office.

25 **Q.** Yes.

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1 people from Post Office copied in.

2 **A.** Mm-hm.

3 **Q.** I don't know if any of these names mean anything
4 to you, Biddy Wyles?

5 **A.** That name is familiar. I think she might have
6 been in the Legal team.

7 **Q.** Clare Wardle, likewise in the legal team,
8 I believe?

9 **A.** Yes, yes.

10 **Q.** Then we see a John D Cole, a Marie Cocket,
11 a Richard W Barker, a Rod Ismay. Are these
12 people that you communicated with directly at
13 any stage before?

14 **A.** Not insofar as I recall.

15 **Q.** No. So on this occasion, and only on this
16 occasion, you received an email direct from
17 Keith Baines in the business and it was because
18 he got involved with the wording of the
19 non-disparagement clause, isn't it? Do you see
20 that?

21 **A.** Mm-hm.

22 **Q.** So it was the only thing that they cared about,
23 really, wasn't it?

24 **A.** It did become really important to them. I don't
25 think it was the only thing but it was certainly
208

1 an important thing.

2 **Q.** The offers to mediate were a sham, weren't they,

3 Mr Dilley?

4 **A.** Absolutely not.

5 **Q.** They wanted this wording to show off, to make

6 sure that all of the subpostmasters out there

7 who might be bringing claims against them

8 blaming Horizon would cower and would go away.

9 That's what this case was all about, wasn't it,

10 Mr Dilley?

11 **A.** You're asking me to give evidence about Post

12 Office's state of mind and I think that's more

13 accurately put to them. You know, I've given

14 the evidence that I can do about their thinking,

15 especially throughout the morning session.

16 **MS PAGE:** Sir, that may be a good moment to break

17 off.

18 **SIR WYN WILLIAMS:** All right.

19 First of all, Mr Dilley, are you able to

20 return tomorrow morning without very

21 considerable inconvenience to you?

22 **THE WITNESS:** I can. I would much prefer to get

23 finished today, if we can, and I would be happy

24 to --

25 **SIR WYN WILLIAMS:** I appreciate that. I understand

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1 **MR BLAKE:** Thank you, sir. Perhaps we can resume at

2 9.30 tomorrow morning?

3 **SIR WYN WILLIAMS:** Is it just Ms Page and counsel

4 for Mr Jenkins, did you say?

5 **MR BLAKE:** Yes, Ms Dobbin.

6 **SIR WYN WILLIAMS:** Yes. So we're looking at

7 a maximum of another 45 minutes, or thereabouts?

8 **MR BLAKE:** Yes, that's correct.

9 **SIR WYN WILLIAMS:** Fine. All right.

10 **MR BLAKE:** Sir, can we give Mr Dilley the usual

11 warnings in respect of his evidence?

12 **SIR WYN WILLIAMS:** Yes.

13 I'm sure it's correct that I do so,

14 Mr Dilley, even though I'm equally sure that you

15 wouldn't dream of talking to anyone about your

16 evidence. That would be the last thing you

17 would want to do, I assume, having talked about

18 it all day. But, in any case, I do ask you to

19 refrain from discussing your evidence with

20 anyone, and I'll see you again at 9.30 tomorrow

21 morning.

22 **THE WITNESS:** Thank you.

23 **MR BLAKE:** Thank you very much.

24 (4.17 pm)

25 (The hearing adjourned until 9.30 am

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1 that and, normally, I would do my best to

2 accommodate a witness but I have decided that

3 I need to be concentrating fully on every aspect

4 of your evidence and it's very difficult to keep

5 concentrating from now on, and I am afraid

6 that's a reason why I'm calling a halt.

7 I appreciate that that will inconvenience you,

8 and I would wish to avoid it but I don't think

9 I can.

10 So is anybody else who wishes to participate

11 in the sense of asking Mr Dilley questions

12 unable to appear tomorrow morning?

13 **MR BLAKE:** No, sir.

14 **SIR WYN WILLIAMS:** Then we'll resume tomorrow

15 morning. Is there a need to start a little

16 earlier tomorrow morning to accommodate both

17 Mr Dilley and Mr Morgan?

18 **MR BLAKE:** I'm told by Mr Beer that there is no

19 problem with Mr Dilley returning tomorrow

20 morning. It may be perhaps we could ask

21 Mr Dilley whether he would prefer an earlier

22 start to the usual start.

23 **THE WITNESS:** That would be very kind, if you could.

24 **SIR WYN WILLIAMS:** Well, certainly I'm prepared to

25 start at 9.30.

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1 **the following day)**

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