



# Case Study 2

## Ethics and Values Workshop

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Please read the following facts, and then discuss the “Discussion Points” below, with your group.

At the end of the session, this document must be returned.

1. In connection with subpostmaster (“SPM”) prosecutions, the Post Office routinely relied on FSL Post Office Account employees to provide opinions regarding the robustness of the Horizon IT system.
2. During some of these cases, the Post Office presented these FSL employees as expert witnesses in connection with both civil and criminal proceedings. The duty of an expert witness is to the court, to help the court assess the facts through the technical knowledge that the expert has. The expert's duty to the court overrides any obligation to the person instructing or paying them to act as a witness. An expert assists the court by giving an opinion which is objective and unbiased, in relation to matters within their expertise.
3. At least three FSL employees provided expert witness evidence on the reliability of the Horizon system in court for the Post Office including Gareth Jenkins, former FSL Chief Architect for the Post Office Account. Mr. Jenkins produced written evidence for at least 12 criminal prosecutions. Mr. Jenkins also gave live oral testimony at trial in some of these cases.
4. Along with other FSL employees, Mr. Jenkins gave evidence in support of the Post Office in relation to the highly publicised prosecution of Seema Misra for false accounting and theft.
5. FSL L&C's involvement in assisting Post Office Account employees in Ms. Misra's case was limited. In February 2010, a Post Office Account Security Analyst emailed a FSL L&C employee (Lawyer A) questioning a request from the Post Office for FSL to provide expert testimony at Ms. Misra's trial.
6. The response from Lawyer A was:  
  
*“it is for POL to decide what they want us to do to support the prosecution ... we are engaged to support POL contractually and will need them to cover the work involved”.*
7. This was then reiterated to the Post Office's Head of Legal:  
  
*“Fujitsu is very keen to try and help POL with this matter and provide information to respond to the Defence request. Please let me know if I can help in any way”.*
8. Lawyer A flagged internally that Ms. Misra's case could have implications for FSL's relations with the Post Office if mishandled as there were “key issues here about our systems” and so they were “keeping close to it for a while”.
9. Three days later, Lawyer A emailed a senior lawyer at the Post Office stating, “I am very happy for you to correspond direct with...Gareth on what you need in terms of information etc. There is no requirement for me to be the conduit”.
10. No one from FSL L&C was involved in (or copied into) subsequent interactions between Mr. Jenkins and the Post Office / Post Office's legal counsel.
11. Mr. Jenkins was put under pressure to include language supporting theft allegations, by both the Post Office and the Post Office's legal counsel, when he was preparing his witness statement.

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12. Mr. Jenkins was discouraged from his opinion that he could not rule out Horizon hardware issues with 100% certainty – doing so was considered a “*damaging concession*”. Mr. Jenkins eventually dropped this caveat from his witness statement, stating instead “*no scenario has been presented that could account for any losses due to the miss-calibration[sic] of the screen*”.
13. Ms. Misra was found guilty of theft after a long criminal trial. The senior Post Office lawyer in charge of the prosecution was satisfied with Fujitsu’s role:  
  
“*This case turned from a relatively straightforward general deficiency case to an **unprecedented attack on the Horizon system**. We were beset with unparallel degree of disclosure requests by the Defence. Through the hard work of everyone and through the considerable expertise of Gareth Jenkins of Fujitsu we were able to destroy to the criminal standard of proof (beyond all reasonable doubt) every single suggestion made by the Defence*”.
14. As a result of Mr. Jenkins’ role in SPM prosecutions and the evidence he provided, he is now the subject of an investigation by the Metropolitan Police for perjury. Ms. Misra, a former SPM, was pregnant with her second child when she was convicted of theft and sent to jail in 2010. She gave birth in prison. Ms. Misra’s conviction was subsequently overturned in April 2021 and her prosecution was held to be an affront to the conscience of the court.

## Discussion Points

1. Imagine you were in L&C at the time and were aware of these activities. How would you react?
2. Would you have challenged the Post Office team despite the contractual obligation to provide court support services, and the strategic importance of this customer?
3. What causes of concern, if any, would members of the L&C team have been able to identify at the time?
4. How would this type of request now be handled and who from L&C would be involved?

Disclaimer - these case studies are based on facts and events that occurred within FSL over the past 25 years. However, some of the names of FSL employees have been anonymized and some of the events and roles have been modified or composited for the purpose of this exercise to encourage discussions around key themes that have arisen during the course of Project Holly and the Post Office Horizon IT Inquiry.