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Statement by Chair relating to written Closing Submissions

Post Conviction Disclosure

1. The expert evidence commissioned by the Inquiry (the reports of Duncan Atkinson KC) does not consider the duty (if any) imposed upon a prosecutor to disclose to a defendant material about which the prosecutor becomes aware after that defendant has been convicted of a criminal offence. I did not (and still do not) consider such evidence to be necessary since I consider that the duty is sufficiently described and explained in the decision of the Supreme Court in Nunn, R (on the application of) v Chief Constable of Suffolk Constabulary 2015 AC 225. In summary, that case confirms that the duty imposed upon a prosecutor is to disclose any material to a convicted defendant which might cast doubt upon the safety of the conviction.

2. I appreciate that the decision in Nunn was handed down by the Supreme Court in 2014. However, my provisional view is that the duty as described by the justices (summarised by me above) had existed and had been understood to exist from at least 1 January 2000 and that all prosecutors knew or should have known of the existence of the duty throughout the whole period of time under consideration by the Inquiry.

3. I would be grateful to Core Participants if, in their written closing submissions, they indicate whether they agree or disagree that prosecutors were obliged to comply with the duty of disclosure as described in Nunn from 1 January 2000 at the latest. If they agree a sentence to that effect will suffice. If they do not agree, they are asked to make submissions as to nature of the duty of disclosure following conviction which was and/or is imposed upon a prosecutor in the period between 1 January 2000 and the publication of the decision in Nunn.

4. I also invite written submissions on behalf of all Core Participants as to the duty (if any) of Post Office Limited to disclose the advice (or the substance thereof) of Mr Simon Clarke dated 15 July 2013 to convicted postmasters and/or other persons convicted on the basis of Horizon data. Those who contend that the advice/substance of the advice should have been disclosed should explain (i) why such disclosure should have been made; (ii) the extent of disclosure, if not the whole advice; (iii) to which convicted persons i.e. to all persons convicted on the basis of data produced by Horizon or only those convicted on the basis of oral and written evidence of Mr Gareth Jenkins; (iv) when such disclosure should have been given. Those who contend that there was no disclosure obligation at all should explain why.

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The expert evidence of Jonathan Laidlaw KC obtained by Post Office Limited

5. On 29 February 2024, in a written statement published on the Inquiry's website, I made a ruling to the effect that I would not admit into evidence reports prepared by Mr Jonathan Laidlaw KC on behalf of Post Office Limited. Additionally, I said that I would not take account of those parts of the written submissions made on behalf of Post Office Limited at the conclusion of Phase 4 of the Inquiry which were based upon Mr. Laidlaw's reports. My reasons for reaching those conclusions were set out in the statement of 29 February 2024.

6. By letter dated 23 March 2024 the recognised legal representatives of Post Office Limited asked me to reconsider my ruling. In effect, the letter invites me to admit the reports into evidence and take account of the written submissions which have been made on behalf of the Post Office Limited about their contents. In summary, the letter suggests that my ruling of 29 February 2024 failed to take into account relevant considerations and that, in any event, I had created a legitimate expectation that I would admit Mr Laidlaw's reports into evidence and take into consideration that evidence and the submissions of the Post Office which were based upon it.

7. The foundation for these contentions is said to be discussions which took place between Mr Beer KC and Ms Gallafent KC on 18 August 2023 and 1 September 2023. The Post Office contend that in these discussions Mr Beer KC conveyed views to Ms Gallafent KC which I had expressed to him and which Ms Gallafent KC then conveyed to those instructing her in an email of 1 September 2023. The relevant part of the email is quoted verbatim in the letter of 23 March 2024.

8. For the purpose of this ruling, I proceed on the basis that the email sent by Ms Gallafent KC to her instructing solicitor on 1 September 2023 accurately records what she was told by Mr Beer KC and that he accurately conveyed to her what I had said to him. In summary, I am recorded as saying:- (1) the Inquiry would receive Mr Laidlaw's report if the Post Office sent it to the Inquiry and provide it to Mr Atkinson KC so that he could consider "whether it affected any of his views" but (2) I was not minded at that stage to formally admit the report into evidence or call Mr Laidlaw to give evidence although (3) that the report could be used by the Post Office to "form the basis of their submissions in due course".

9. I simply do not see how the observations attributed to me could be the foundation for a legitimate expectation that I would admit into evidence a report written by Mr Laidlaw KC that was to be provided to the Inquiry by the Post Office at some future time. As of 1 September 2023 I had not seen and considered any report prepared by Mr Laidlaw KC and I had communicated to the Post Office

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expressly, via leading counsel, that I was not minded to formally admit as evidence such report as was disclosed.

10. On 20 September 2023, the Post Office disclosed to the Inquiry a report from Mr Laidlaw KC (his "first report"). This disclosure took place on 20 September 2023 - approximately 2 weeks before Mr Atkinson was due to give oral evidence to the Inquiry. On the same date Mr. Laidlaw's first report was disclosed to all Core Participants (including the Post Office attached to an email which included the following:

"Please be advised that the Inquiry has disclosed a Review of POL Private Prosecutions, undertaken by Jonathan Laidlaw KC (POL 00137190). The review was commissioned by POL and was disclosed to the Inquiry voluntarily. It has been sent to the Inquiry's prosecutions expert Duncan Atkinson KC, however, the Chair is not presently admitting it into evidence."

11. The email to Core Participants quoted above contains a clear statement that I was not prepared (at that time) to admit the first report prepared by Mr Laidlaw KC as evidence in the Inquiry. Further, it informed Core Participants that the report of Mr Laidlaw KC had been sent to Mr Atkinson KC. In my view all Core Participants would have realised that the report was being sent to Mr Atkinson KC so that he could consider it and, if necessary, adjust his evidence to take proper account of it.

12. The email of 20 September 2023 was silent as to whether Mr. Laidlaw's first report could be used by the Post Office "to form the basis of submissions in due course." Yet, there was no request from the Post Office for clarification. I find it very difficult to accept that the Post Office genuinely considered that it could place reliance upon the discussion which it maintained had occurred between Mr Beer KC and Ms Gallafent KC when the email was silent on the topic but dealt with other matters raised in the discussion. However, as will become apparent from paragraph 19 below, I need not reach any conclusion upon this narrow issue.

13. Mr Atkinson KC gave oral evidence to the Inquiry on 5 and 6 October 2023. He confirmed that the Inquiry had sent him Mr Laidlaw's first report. The extent, if at all, that the oral evidence he gave was influenced by the first report of Mr Laidlaw can be ascertained from the transcript and/or a comparison between the transcript of his oral evidence and his written report to the Inquiry (disclosed to Core Participants on 30 May 2023).

14. At no stage during the oral hearings in Phase 4 which followed 5 and 6 October did I indicate that I had changed my mind about admitting into evidence Mr Laidlaw's first report.

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15. In the letter of 15 March 2024, the Post Office acknowledge that it did not make an application to me to the effect that I should admit into evidence Mr Laidlaw's first report either before Mr Atkinson gave his evidence on 5 and 6 October 2023 or during the course of the Phase 4 hearings. Indeed, I must stress that Post Office did not apply to me to admit such evidence until I received the letter of 15 March 2024. Further, I can think of no basis upon which the Post Office could reasonably believe that I was prepared to admit Mr Laidlaw's first report into evidence without an application being made to me after I had said in terms that I was not prepared to admit it as evidence.

16. Mr Atkinson KC produced a second report which was disclosed to all Core Participants on 29 November 2023. He gave oral evidence about the contents of that report and some additional matters on 18 and 19 December 2003. While, earlier, the Post Office had indicated that Mr. Laidlaw KC would write a second report to deal with matters raised by Mr Atkinson KC in his second report, no application was made to me to admit a second report from Mr Laidlaw KC before I received the letter of 23 March 2024. More detail as to the sequence of events surrounding the Post Office's attempt to rely upon Mr Laidlaw's second report are set out in my ruling of 29 February 2024 and need not be repeated.

17. For the avoidance of any doubt, I have never suggested either to Core Participants by written notification or to the Post Office in writing or orally via Mr Beer KC that I would be prepared to admit into evidence the reports prepared by Mr Laidlaw KC. I reject the contention that I created a legitimate expectation that I would admit those reports into evidence. I reject, too, the suggestion that I failed to take into account material considerations when reaching the conclusions I expressed in my ruling of 29 February 2024.

18. In the circumstances I decline to admit Mr Laidlaw's reports as evidence within the Inquiry.

19. That said, does fairness demand that I afford to the Post Office and any other Core Participant who is so inclined the opportunity to make written submissions about the written and oral evidence given by Mr Atkinson KC to the Inquiry? The answer to that question is yes. I acknowledge that if it was my intention that no challenge to Mr Atkinson's evidence was to be permitted, I should have made that clear in the email sent to Core Participants on 20 September 2023 when Mr Laidlaw's first report was disclosed. Furthermore, it does not necessarily follow from my decision to refuse to admit Mr Laidlaw's reports that I am bound to accept each and every aspect of Mr Atkinson's written and oral evidence. Mr Atkinson's evidence is made up of expert opinion about and factual description of the law and practice relating to the conduct of prosecutions in England and Wales. By virtue of my career as a barrister and judge I have considerable

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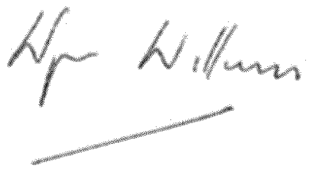
expertise in this area of law and practice. I am confident that I can evaluate written submissions made by those who choose to make them about Mr Atkinson's evidence without there being the need for any additional evidence.

20. The Post Office has, in effect, already made such submissions in its phase 4 closing submissions albeit by reference to the evidence of Mr Laidlaw. It will not be difficult for it to produce a section of its written final submissions to include any criticism of Mr Atkinson's evidence which it wishes to make. All other Core Participants have within their legal teams sufficient expertise to be able to align themselves with Mr Atkinson's views or dispute them – as the case may be.

21. I stress, however, that my willingness to accept written submissions about Mr Atkinson's evidence should not be taken as an invitation to lengthen the written closing submissions. All Core Participants are reminded of the unwavering stance I have adopted throughout this Inquiry to the effect that the findings of fact and the conclusions of law made by the Court of Appeal (Criminal Division) in *Hamilton and others* are my starting point and cannot be questioned. That means that in close to 100 cases which were heard between 2000 and the end of 2013 in Crown Courts in England and Wales, the Court of Appeal has found that there were such egregious failures of investigation and/or disclosure on the part of the prosecutor that all the convictions in those cases should be quashed. I doubt whether a minute examination of each aspect of Mr. Atkinson's evidence will be of much consequence or assistance to me compared with that inconvertible state of affairs.



Sir Wyn Williams

13 November 2024