POL00043789

STRICTLY CONFIDENTIAL – SUBJECT TO LEGAL PRIVILEGE

CHAIRMAN'S REVIEW CHRONOLOGY AND SUPPORTING DOCUMENTS

FILE 3 OF 10

POL00043789

From: Christopher Knight <GRO>
To: Patrick Bourke <GRO>, Jonathan Swift <GRO>
Cc: Jane MacLeod <GRO>, Mark Underwood <GRO>, Steve Allchorn <GRO>, Rodric Williams <GRO>
Subject: RE: Post Office Matter
Date: Wed, 28 Oct 2015 17:12:18 +0000
Importance: Normal

Dear Patrick,

Many thanks for this. That all looks very helpful. I have received the file cabbed over this afternoon with most of the documents referred to in Jonathan's instructions (and an additional copy for Jonathan). I think it is chiefly the previous legal advice which is outstanding, which will doubtless follow relatively shortly.

It seems to me that the spreadsheet of summaries of the various Scheme cases (and within that, the criminal cases) might usefully be the priority so we can work out a way of most sensibly sampling. I have the Hamilton file you also cabbed over as an example to get my head round what they look like.

Can I check what the three zipped email files are of?

I also have separately the email with the s17 notices from the CCRC, which will be a helpful intro to those types of case.

I've spoken to the clerks who will hopefully get back to you today on fees (at least for me). I will also ask them to do so re Tuesdays so we can begin diary liaison. I should probably do some of the further reading in before planning who to speak to next; it may well be that the Horizon intro should be sooner rather than later, so we know what we are reading about.

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Dear Christopher

Many thanks for coming to see us at our offices yesterday.

I thought it would be helpful to offer up a summary of where I think our discussions concluded on the various points raised. I would be grateful for your view on whether they accurately reflect where we got to and we do, of course, understand that the nature of this project may necessitate some (hopefully) limited revisiting as you conduct your work.

Scope of Enquiries

We agreed that the broad territory to be covered was encapsulated in the four principal areas of contention identified by Jonathan in his meeting with Tim and Jane on 20 October. These are:

1. Whether individual charges brought against relevant Applicants to the Scheme were underpinned by a sufficiency of evidence;

2. Establishing, in so far as possible, whether the Horizon system was or was not the underlying cause of discrepancies in the branch accounts of Applicants to the Scheme;

3. Whether the advice provided to Applicants to the Scheme by the Helpdesk was appropriate and, in particular, whether the advice provided caused Applicants to commit false accounting; and

4. Whether the investigations into the cases in Scheme were appropriate and reasonable in scope and depth and, in particular, whether anything was missed which could, and ought, now to be looked at.

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The emerging thinking is relation to each of the four strands was:

1. We would identify all those cases in which multiple charges were in play against Applicants to the Scheme (usually theft and false accounting). You would choose a sample of cases from that list in order that you might come to a view, having reviewed the relevant material, about whether or not the appropriate evidential test was met. We agreed that we would sign post you to the relevant material through discussions with Cartwright King, who have conducted our prosecutions work for a number of years, as well as discussions with Brian Altman's junior who is in the process of reviewing the material in the cases being looked at by the CCRC. We agreed with your view that the CCRC cases are out of scope but nonetheless thought a conversation with Brian Altman's junior would be beneficial given her familiarity with Post Office prosecutions material generally.

2. In relation to the Horizon system, Jane outlined the very real difficulties involved in what is, at its heart, an exercise in proving a negative, only made more complicated by the age of the system. However, in addition to supplying you with all the documentation we have which contributes to an answer to the question, we would arrange for you to meet with the authors of the Deloitte report (no at Ernst & Young), Gareth Jenkins who used to act as our expert witness in relation to Horizon, and someone currently at Fujitsu with expert knowledge of the system. You would also consider whether UCL, in addition to these other experts, might answer some the specific allegations made about the system, for instance the notion that it is/was possible to manipulate live branch data remotely and without leaving an audit trail.

3. The Helpdesk issues are likely to be more straightforward. We can supply the documentation which covers off the processes and protocols which underpin the Helpdesk. In addition, we agreed to identify those cases in the Scheme in which accusations about the Helpdesk were particularly prominent, from which you would again select a sample so as to enable you to form a view as to the appropriateness of the support it provided. In addition, we are happy to arrange a meeting for you/Jonathan with those operating the Helpdesk.

4. On the question of the adequacy of the investigations undertaken as part of the Scheme, we agreed that we would again provide you with the documentation prepared at their outset, so that you are abl to see what the intended scope and methodology was. You would also meet with Angela Van Den Bogerd who was ultimately responsible for the investigations as a whole. Finally, by reference to a sample of cases of your choosing, the relevant investigator(s) could walk you through specific

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I am sending you, under separate cover, the s17 notices we have received from the CCRC and which Jane told Jonathan she would get across to Chambers.

You should use me as your primary point of contact but my colleagues Mark Underwood and Steve Allchorn, both of whom you met and are copied into this email, are also available to you and Jonathan for anything you might need.

I trust this cover everything but please contact me if you feel anything is missing or misunderstood. I also look forward to hearing from John Davitt on the question of fees as soon as practicable.

Kind regards

Patrick

Patrick Bourke

GRO

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#16.1

Metadata

Filename	7.63 (1).msg	ORIGINAL

POL00043789

From: Patrick Bourke <GRO>
To: Christopher Knight <GRO>, Jonathan Swift <GRO>
Cc: Jane MacLeod <GRO>, Mark Underwood1 <GRO>, Steve Allchorn <GRO>
Rodric Williams <GRO>
Subject: RE: Post Office Matter
Date: Thu, 29 Oct 2015 09:14:45 +0000
Importance: High

Dear Chris

Thanks for this.

As I indicated, the legal advice will come to you today.

The spreadsheet of all the cases will certainly help you – however, preparing summaries for each of the 13(may be a tall order. What we can do is give you a spreadsheet with sufficient detail to enable you to request more detail in relation to those which you wish to delved down into the detail of. As discussed, each has an Complaint from the Applicant, the Post office's Investigation Report, a Second Sight Review of the investigation and its findings and, in some cases, we have also prepared mediation statements. We would draw on these source documents to produce the summaries.

The Hamilton file I sent across is different in that its content relate only to documentation to show the sufficiency of evidence to underpin a theft charge. As such, it does not represent the 'full' Hamilton case fil in the sense outlined at 2 above.

The ZIP files do, however, contain precisely the information at 2 above, together with summaries, and thes will give you the best flavour of what a case 'looks like' from the documents now in your possession. These were prepared to provide our CEO with a flavour of the range of issues the Post Office was dealing with under the Scheme and is a pretty random collection at that.

I agree that an early visit to our model office to be taken through the system as it works in Post Offices up

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Subject: RE: Post Office Matter

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4. Whether the investigations into the cases in Scheme were appropriate and reasonable in scope and depth and, in particular, whether anything was missed which could, and ought, now to be looked at.

We had an initial discussion about how this ground might best be captured in your report and tentatively envisaged a thematic treatment, with specific examples drawn upon under each to support the overall finding. However, we were all agreed that this would need further consideration as time goes on.

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order that you might come to a view, having reviewed the relevant material, about whether or not the appropriate evidential test was met. We agreed that we would sign post you to the relevant material through discussions with Cartwright King, who have conducted our prosecutions work for a number of years, as well as discussions with Brian Altman's junior who is in the process of reviewing the material in the cases being looked at by the CCRC. We agreed with your view that the CCRC cases are out of scope but nonetheless thought a conversation with Brian Altman's junior would be beneficial given her familiarity with Post Office prosecutions material generally.

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You should use me as your primary point of contact but my colleagues Mark Underwood and Steve Allchorn, both of whom you met and are copied into this email, are also available to you and Jonathan for anything you might need.

I trust this cover everything but please contact me if you feel anything is missing or misunderstood. I also look forward to hearing from John Davitt on the question of fees as soon as practicable.

Kind regards

Patrick

Patrick Bourke

GRO

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#104.1

Metadata

Filename	7.64 RE Post Office Matter(1).msg	ORIGINAL

POL00043789

From: Rodric Williams <GRO>
To: Patrick Bourke <GRO>, Christopher Knight <GRO>, Jonathan Swift <GRO>
Cc: Jane MacLeod <GRO>, Mark Underwood1 <GRO>, Steve Allchorn <GRO>
Subject: RE: Post Office Matter
Date: Thu, 29 Oct 2015 18:06:04 +0000
Importance: Normal
Attachments: POST_OFFICE_LTD_REVIEW_DOCUMENT_[1]v.2.pdf; ADVICE_ON_SUGGESTED_APPROACH_TO_CRIMINAL_CASE_MEDIATION.PDF; POST_OFFICE_LTD_REVIEW_DOCUMENT_[2]v.4.pdf; Interim_Review_of_CK_Processes.pdf; ADVICE_ON_THEFT_&_FALSE_ACCOUNTING.PDF; A17895240_v0.8_Post_Office_Limited_Report_Legal_Analysis.docx
Inline-Images: image001.png

Christopher,

It was nice to speak with you earlier today. As discussed, Post Office Limited has received significant legal input from its in-house lawyers, external solicitors and counsel when considering and responding to the Horizon allegations. This input has been provided in a variety of forms, including formal advice notes, email correspondence, marked-up documentation and discussion (both face-to-face and telephone).

Rather than trying to pull this all together for you now, we agreed to start by providing you with the following formal advice notes:

Linklaters' "Report Into Initial Complaint Review And Mediation Scheme - Legal Issues" dated 20 March 2015. This report concerns the legal basis for the claims made by applicants to the Scheme, and was commissioned by Post Office's Board which wanted to better understand the exposure presented by the very substantial compensation claims being made by some applicants;

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e. "Advice on Theft & False Accounting" dated 8 March 2015, which advised on the "equality" of the offences of theft and false accounting.

No doubt this will lead to further lines of enquiry, but I hope it

Kind regards, Rod

POST OFFICE
Rodric Williams
Solicitor, Corporate Services

Post Office Ltd
20 Finsbury Street, London EC2Y 5AQ
GRO
rodric.williams GRO

From: Patrick Bourke
Sent: 29 October 2015 09:15
To: Christopher Knight; Jonathan Swift
Cc: Jane MacLeod; Mark Underwood1; Steve Allchorn; Rodric William
Subject: RE: Post Office Matter
Importance: High

Dear Chris

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The ZIP files do, however, contain precisely the information at 2 above, together with summaries, and thes will give you the best flavour of what a case 'looks like' from the documents now in your possession. These were prepared to provide our CEO with a flavour of the range of issues the Post Office was dealing with under the Scheme and is a pretty random collection at that.

I agree that an early visit to our model office to be taken through the system as it works in Post Offices up and down the country should be a priority. I will come back to you later today with some suggested dates ar times.

John Davitt left me a voicemail yesterday, so I will ring him this morning. Thank you.

Kind regards

Patrick

From: Christopher Knight [m GRO]
Sent: 28 October 2015 17:12
To: Patrick Bourke; Jonathan Swift
Cc: Jane MacLeod; Mark Underwood1; Steve Allchorn; Rodric Williams
Subject: RE: Post Office Matter

Dear Patrick,

Many thanks for this. That all looks very helpful. I have received the file cabbed over this afternoon with most of the documents referred to in Jonathan's instructions (and an additional copy for Jonathan). I think it is chiefly the previous legal advice which is outstanding, which will doubtless follow relatively shortly.

It seems to me that the spreadsheet of summaries of the various Scheme cases (and within that, the criminal

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sample of cases of your choosing, the relevant investigator(s) could walk you through specific investigations in practice. In each of the sample cases, you would also review all of the outputs of the investigation including Post Office's Investigation Reports, Second Sight's Case Review Reports and Post Office's Mediation Statements where relevant.

Ways of Working and Action Points

Finally, we had a discussion about ways of working, most of which we agreed would become apparent as we take the work forward. We did, however, agree a number of specific actions which are listed in the document I attach, some of which are already underway, and some of which we will need to agree dates and times for when you have had a chance to determine how you want to take the work forward.

I am sending you, under separate cover, the s17 notices we have received from the CCRC and which Jane told Jonathan she would get across to Chambers.

You should use me as your primary point of contact but my colleagues Mark Underwood and Steve Allchorn, both of whom you met and are copied into this email, are also available to you and Jonathan for anything you might need.

I trust this cover everything but please contact me if you feel anything is missing or misunderstood. I also look forward to hearing from John Davitt on the question of fees as soon as practicable.

Kind regards

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Patrick Rourke

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POST OFFICE LTD

GENERAL REVIEW

A. INTRODUCTION

1. The Post Office Ltd ("**POL**") has commissioned me to review past practice and make recommendations as to the future approach to the conduct of prosecutions.

2. Terms of Reference received from Bond Dickinson LLP ("**BD**"), solicitors advising POL, invited from me the following:

Instructions & Output

A. Written Reports

1 To prepare by 5 August 2013 an interim review of Cartwright King's current review process (as reflected principally in CK's document entitled

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2013 and/or on the role of *Dr* Gareth Jenkins (*sic*) [1] and his impact on any possible appeals;

(b) Its response to the CCRC, and any subsequent action required by it in dealing with, or responding to, any actual or potential appeals and/or in reaching the appropriate resolution of any CCRC investigation, and to advise POL about any further steps that may be required as regards any actual or potential appeals against conviction; and

(c) The identification of any flaws in the process of, or from the evidence arising from, the review of a statistically significant number of past prosecutions in which Horizon has been an issue in the proceedings.

B. Meeting/Reporting to the Post Office Audit Committee / Board

1 At the first available opportunity to:

(i) Explain the background to the criminal appeal process including appeals, and how you intend to fulfil your remit, and

(ii) On the efficacy of the process set out in A(1) above.

2 On or by a date to be agreed (but currently intended to be no later than 15 October 2013) to report on the efficacy of past prosecutions including the preparation and conduct of past prosecutions set out in A(2) above.

Process

1 To meet with Post Office's criminal law team to gather further background and contextual information.

2 Refine the scope of and finalise these Terms of Reference.

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4 To meet and interview as a fact-finding exercise anyone else you or POL consider relevant to the process of the investigation and commencement of prosecutions.

5 To review a statistically significant number of past prosecutions in which Horizon was an issue.

3. My Interim Review document of CK's current review process, dated 2 August 2013,[2] was submitted to POL through BD by email of the same date. In the Interim Review document, I made a series of interim recommendations to which Cartwright King ("**CK**") responded in writing on 13 August 2013.

4. Regarding the process by which I have been asked to conduct my review, and by reference to each in the above process list in chronological order:

Point 5: on 6 September 2013, I received a number of files from BD containing material in advance of the meeting on 9 September 2013. Among them there was a file containing 24 full case reviews performed by counsel employed by CK of cases passing the initial sift process, which I shall return to below. (On 30 September 2013, I received 6 more full reviews, and on 9 October 2013 I received one more by email.)

My Terms of Reference do not require me to review CK's decision-making or the individual judgments about the reviewed cases, merely to review their review process.

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Point 3: on 19 September 2013, I attended Guildford Classroom Training Office ("**CTO**") where I received a day's training on the Horizon system. Chris Gilding (Network Support Team Leader) trained me. Andy Holt (Business Relationship Manager) was on hand to assist and answer questions.

Point 2: on 23 September 2013, I received from Gavin Matthews of BD the final Terms of Reference by email, which I reviewed and agreed by return email the following day, having on 2 August 2013 refined an earlier draft in writing.

Point 4: at the time of writing I have not identified (or had identified to me) any other persons to meet and interview as part of a fact-finding exercise as relevant to the process of the investigation and commencement of prosecutions.

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B. EXECUTIVE SUMMARY

5. The following is a summary of the main findings and recommendations in the body of this review.

(i) The 1 January 2010 start date for Cartwright King's review of Horizon Online disclosure is logical, proportionate and practicable in light of all the known circumstances.

(ii) The scope of the review properly takes account, not just of those cases in which defendants have ben convicted following a trial, but also where they have pleaded guilty, as well as where disclosure might have been material to the sentencing exercise.

(iii) The scope of the review, which is to consider those cases, both past and present, in which disclosure of the Second Sight and Helen Rose reports should be made, appropriately also considers in past conviction cases the stance Post Office Ltd might take to any application for permission to appeal, or to any substantive appeal, should permission to appeal be granted, the question of the "safety" of the conviction being inexorably linked to the question of disclosure.

(iv) I advise that individual sift reviews and full reviews should not be undertaken by anyone who was professionally involved at any stage with the case being sifted or reviewed, in order to ensure and preserve independence and objectivity.

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identification of a person who is nominated to take responsibility for its management.

(vii) Should any new information emanating from the hub meetings be considered to affect, or possibly affect, any previously sifted or reviewed cases, consideration will have to be given to broadening the criteria for review, and to re-sifting and re-reviewing cases already considered.

(viii) Any future successful defence challenge in any Horizon Online-based case will have to be considered for future possible general disclosure.

(ix) Cartwright King should exercise supervisory control over the dissemination of information and material during the mediation process, and should remain alive to the possibility of having to make case-specific disclosure in the course of that process, or even making additional general disclosure in the course of its current review depending on the nature of any new information.

(x) I agree that Gareth Jenkins is tainted and his position as an expert witness is untenable. Thus, a new expert should be identified as soon as is practicable.

(xi) Post Office Ltd has responded to the Criminal Cases Review Commission appropriately in my opinion, but should the Commission continue to show interest in these cases there might have to come a time when Post Office Ltd considers sharing Cartwright King's review findings with the Commission, and

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Investigations Act 1996 but in practice should also adopt a similar or identical approach to past conviction cases falling within the current review), Post Office Ltd and Cartwright King must be prepared to keep under review, and reconsider, past case reviews and disclosure decisions.

(xiii) Where, as part of the review process, Cartwright King considers the stance that should be adopted in any possible appeal process, they should not adopt any over-rigid or robust approach, and must remain alive to changing circumstances and the need always to reconsider their stance.

(xiv) Any new or revised Post Office Ltd prosecution policy document must consider the retention and treatment of case files.

(xv) Post Office Ltd must ensure that Fujitsu Services Ltd retains all Horizon data.

(xvi) There should be an analysis for reconciliation purposes of all Second Sight's spot reviews with those Cartwright King cases that have been subject to sift and full review.

(xvii) If there is any Horizon-related civil litigation between any present or former sub-postmaster and Post Office Ltd, Cartwright King should be given complete visibility of the litigation in case this should affect any decisions they are making about criminal cases.

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C. BASIS OF THE REVIEW

6. Before coming to the focal point of this review document, it is necessary, simply by way of introduction, for me to deal with the following relevant discrete topics:

   (i) POL's prosecution role;
   (ii) The Horizon system;
   (iii) Horizon training and support;
   (iv) Second Sight's inquiry;
   (v) Gareth Jenkins; and
   (vi) The Helen Rose report.

(i) POL's prosecution role

7. On 1 April 2012, the shares in POL were transferred from the Royal Mail Group Ltd ("**RMG**") to Royal Mail Holdings plc ("**RMH**"), since which time POL has had an existence independent of RMG. Now, POL is a wholly owned subsidiary of RMH. The Secretary of State for Business, Innovation and Skills ("**BIS**") holds a special share in POL. RMH and BIS, through the Shareholder Executive ("**ShEx**"), have however no involvement in POL's day-to-day operations.[3]

8. Prior to POL's separation from RMG, RMG conducted the prosecution of

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9. POL is the only commercial organisation (albeit Government owned) I can think of (apart from RMG who retains a residual prosecuting function) that has a prosecution role, and it is, to that extent, exceptional if not unique. Separate Terms of Reference invite me to consider the future of POL's prosecutorial role.

10. In England and Wales POL's prosecutorial role is exercised by POL's in-house legal department and through the instruction of CK, CK's in-house advocates as well as by external counsel and agents. Prosecutions are conducted both in the Magistrates' Courts and the Crown Courts, and appeals are prosecuted in the Court of Appeal.

11. In Northern Ireland the Public Prosecution Service ("**PPS**") prosecutes POL cases albeit with input and assistance from POL investigators. In Scotland it is the Procurator Fiscal who prosecutes POL cases. Representatives of CK were in Scotland the week before we met in conference in order to discuss with the Procurator Fiscal's office the recent interim findings by Second Sight Support Services Ltd ("**SS**"). Currently, cases stand adjourned in Scotland, where, as I understand it, POL has been granted special agency status.

12. I understood in our meeting that CK had not yet spoken to the PPS in Northern Ireland. CK acknowledged the need for them to visit the PPS. However, to date there had been only two prosecutions in Northern Ireland,

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14. I take the brief history of the Horizon contract with POL and the Horizon system from part of the content of a witness statement prepared by the Horizon expert Gareth Jenkins dated 15 January 2013. The witness statement was prepared for the case of Khayyam Ishaq, the case file of which I have read.

15. Much, perhaps all, of the parts of the witness statement I quote from below appears based upon the content of two documents entitled "Horizon Data Integrity" dated 2 October 2009 and "Horizon Data Integrity for Post Office Ltd" dated 2 April 2012, which are marked respectively as Mr Jenkins' exhibits GIJ/1 and 2, and are exhibited to his 15 January 2013 statement.[4]

16. Although there are issues about Mr Jenkins' independence and objectivity (with which I deal below), I am content to rely on Mr Jenkins' witness statements (based as they appear to be in whole or in part on the Horizon integrity reports) for these purposes as providing a reasonably adequate, and almost certainly accurate, summary of the Horizon system.

17. According to Mr Jenkins, FSL was originally awarded a contract in 1996 to provide a Horizon system to POL. The most recent rollout of Horizon was, says Mr Jenkins, Horizon Online (internally known as HNG-X) in 2010, which was, according to Mr Jenkins (who was one of its architects), "a complete re-implementation of Horizon of the business functionality at the

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locally on the counter's hard disk in what is referred to as the MessageStore. Once the data has been successfully stored there it is then replicated (copied) to the hard disks of any other counters in the branch (and in the case of a single counter branch to the additional external storage on the single counter). Data is also passed on from the gateway counter to the Horizon data centre using similar mechanisms where it is stored in the MessageStore."

19. Mr Jenkins then describes how the replication process is designed to capture data that fails to copy immediately (for instance due to a failure of the local IT network in the branch or another counter being switched off or the branch being disconnected from the data centre). In such a case further attempts are made to replicate the data at regular intervals until it is finally copied successfully. Once the data reaches the data centre a further copy is taken by the "audit agent", which writes it to an audit file, which is added into the audit trail where it is available for retrieval for up to 7 years. Moreover, the data in the audit trail is "sealed" with a secure checksum ("**CRC**") that is held separately to ensure that it has not been tampered with or corrupted.

20. Mr Jenkins adds that every record written to the transaction log has a unique incrementing sequence number so it is possible to detect if any transaction records have been lost, and while customer sessions are in progress, transactions for that customer session are normally held in the computer's memory (known as the "stack") until the session is settled. When that

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22. Where data is retrieved for audit enquiries a number of checks are carried out: (1) that the audit files have not been tampered with; (2) the individual transactions have their CRCs checked to ensure they have not been corrupted; and (3) a check is made that no records are missing.

23. Mr Jenkins then deals with Horizon Online data flows, describing how the system is designed to store all data in an online database known as the branch database ("**BRDB**"). Transactions are carried out locally on counters, and a basket is built up during a customer session. Once the transactions have been processed, so that the value of the basket is zero, the entire basket is sent to the data centre as a "branch access layer" ("**BAL**") message where the BAL processes the message and all the accounting lines are recorded and committed to the BRDB as part of a single Oracle commit (i.e. all or none of the transactions in the basket are written). Once successfully committed, a response is returned to the counter indicating the transactions have been successfully committed, which then allows any receipt to be printed.

24. The Oracle commit also includes an audit of the data originally transmitted from the counter to the BRBD, which is the record used to provide extracts of transactions used for litigation support.

25. Any auditable message from the counter is stored in the "audit table" (known as the "message journal") in the BRBD. After midnight, files from the previous day are copied from the BRBD to a number of serial files, which

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26. The transactions in a basket are constructed using double-entry bookkeeping meaning that in addition to accounting lines relating to business transactions, separate accounting lines are generated also for the tender items such as cash or credit or debit cards, resulting in all accounting lines in the basket totalling zero. If the net value of all accounting lines does not total zero when the basket is written to the BRBD an alert is raised and the basket is discarded and an error response sent to the counter.

(iii) Horizon training and support

27. Because Horizon training is one issue that has been raised I requested sight of Horizon training materials. However, what I was provided with was information and materials regarding the training currently received on Horizon, and, because it is current, and may have been revised given recent events, it is important to exercise a degree of caution about it, as the materials may not reflect the precise nature and extent of the training that was offered to those who have fallen within SS's review, or fall within CK's review. Consequently, I cannot conclude that the training and follow-up support detailed below is necessarily reflective of that provided to those falling within the review period.

28. According to the materials I have been provided with, the training given to a Horizon operator depends on the operator's current level of experience and the nature of the post office to be run. I have been provided with a number of

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- Distance learning in the operator or the operator's staff's own time prior to transfer or conversion,[6] including a written foundation module;
- CTO for classroom training;
- On-site induction of 2 x 3 hour sessions for all members of staff;
- On-site training and support lasts from 6 days to 8 days depending on the number of members of staff.

29. The support thereafter consists of:

- Follow-up schedule at a balance one week following the on-site training;
- Post-transfer call from a Field Team Leader within 1-2 weeks of the transfer for feedback on the Field Support Advisor or on the training and support;
- Post-transfer visits after 1 month and 3 months, respectively;
- Post-transfer audit 6-9 months (the trainee operator is not informed of this).

30. The new entrant will receive a variety of hand-outs as part of the classroom training, covering subjects taught during the course attended. Copies of such hand-outs sent to me include "Horizon Cash Declarations – Top Tips Guide", "Daily Procedures and Horizon Reports", "Priority Service Despatch", and

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31. A Performance Standards Assessment ("**PSA**"), also copied to me, is a record of what the new entrant has been trained on and how the individual is performing. It is begun during classroom training (or on-site if no classroom training is given) and is completed during the on-site training. An action plan is produced, which is discussed and agreed with the new entrant. The new entrant also receives a copy of it.

(iv) Second Sight's inquiry

32. Following discussions in June and July 2012 between POL senior management, Rt Hon James Arbuthnot MP and Alana Bates and Kay Linnell representing the Justice for Sub-postmasters Alliance ("**JFSA**"), SS was engaged to perform a review into alleged problems with POL's Horizon system.

33. SS's remit was "to consider and to advise on whether there [was] any systemic issue and/or concerns with the "Horizon" system, including training and support processes …".[7] For this purpose, SS took POL's Information Manager's definition of "Horizon" as embracing the software, computer hardware and communications equipment installed in branch and central data centres, as well as software used to control and monitor the systems, and testing and training systems.[8] The inquiry was open to sub-postmasters, POL employees, contractors and agency staff; it was therefore open to all groups.[9]

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Horizon system operated by POL, and the way in which POL had dealt with the matters reported.[11]

35. By way of context, in its report, SS observed that the Horizon system had approximately 68,000 users, processing over 6 million transactions a day. The whole population of over 11,800 branches had been notified about SS's proposed investigation resulting in only a further 14 cases being accepted for notification.[12] I have also received a PowerPoint presentation, entitled "The Post Office – An Insight", which provides invaluable insight into the scale of Horizon transactions. One of the slides states that Horizon handles 47 million transactions a week, 22 million banking transactions every month, and 2.5 billion transactions a year with a cash value of £100 billion. Given the scale of the transactions Horizon is handling, it seems to me that the complaints and issues around Horizon are comparatively small.

36. The provisional result of the inquiry resulted in SS's Interim Report together with four sample spot reviews,[13] which were annexed to the main report, an accompanying document entitled "Raising Concerns with Horizon" (a document setting out the steps to be taken by current or past sub-postmasters who felt concerned or affected by issues with Horizon), and annexed to that was a document setting out further detail of SS's inquiry.

37. SS's interim report, which is dated 8 July 2013, was posted to POL's website the same day at http://www.postoffice.co.uk/post-office-statement-horizon

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38. The central conclusion to result from SS's review was that there was "no evidence of system wide (systemic) problems with the Horizon software."[14] The report identified only two "defects" with Horizon Online, which, according to SS, POL had disclosed it had discovered in 2011 and 2012, and which had impacted 76 branches:[15] first, the so-called "Receipts and Payments Mismatch Problem", which had impacted 62 branches, and amounted to a total discrepancy of £9,029 (the largest single shortfall being £777 and the largest surplus being £7,044. POL had addressed each of them with no loss to any sub-postmaster; the second, referred to as the "Local Suspense Account Problem", affected 14 branches only, and involved total discrepancies of £4,486, with a temporary shortfall of £9,800 at one branch and a surplus of £3,200 at another. Amounts of less than £161 affected the remaining 12 branches. POL only became aware of this defect a year after its first occurrence in 2011, when it reoccurred. Because the cause of the defect could not be identified, POL wrote off the amount. FSL investigated the issue in 2013 and corrected the defect.

39. It seems that it was Gareth Jenkins who had informed SS of the existence of the two defects, although, in their report, SS do not attribute the information to him.[16]

40. Several other issues with Horizon had, however, been reported to SS by multiple sub-postmasters as being of particular concern. Training and inadequate user / Helpdesk support were identified as two such concerns.[17]

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proceed therefore on the basis that the SS report remains an interim report, and, therefore, the conclusions I arrive at in this document are necessarily subject to further consideration of any additional or different conclusions SS might reach in the future.

42. In addition to SS's report and appendices, I have received under separate cover the underlying material to spot reviews 1, 5, 6, 10, 11, 12, 13, 21, 22 and 23, four of which (1, 5, 21 and 22) are reproduced, albeit anonymised, in the spot reviews annexed to the SS report. Each review file contains a *pro forma* sheet for completion by SS, providing the detail of the review reference number, sub-postmaster name, any loss to the sub-postmaster, the issue, the branch name, the status of the review, the date, the FAD (branch) code, and the category (one of 4 check boxes) which had been intended by SS to categorise where, apparently, the fault for the loss lay, but I am told the box categories fell into disuse and are no longer relied upon.

43. The *pro forma* sheet then sets out what the sub-postmaster says happened, the investigative work done by SS, POL's response to the claim (which is enclosed with the review file) and occasionally SS's preliminary conclusions. Some of the review files (by no means all) contain documentary evidence and exchanges of correspondence.

44. Clearly, I have only seen a fraction of the spot reviews done by SS.

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46. Gareth Jenkins, who has been involved in the Horizon project for many years, has been the sole expert instructed to speak to the integrity of the system. In his sample witness statement, to which I have made reference above, Mr Jenkins deploys (as he must) his expert credentials in order for him to be received by the court as an expert witness. In essence those credentials are that he graduated from Cambridge University in mathematics in 1973 and was awarded an MA in 1997; he says he is employed by FSL who are contracted to POL to provide Horizon systems operating in post offices nationwide; he was first employed by ICL in 1973, the forerunner to FSL before a name change; in the late 1990s he became a "Distinguished Engineer" with ICL; he provides detail of his memberships and associations - he is a member of the British Computer Society (MBCS), a Chartered Engineer (CEng) and a Chartered IT Professional (CITP); he says that since 1996 he has been working on the Horizon project in association with POL, and details his involvement with it; he states he understands his role as an expert, despite being in the employ of FSL.

47. Mr Jenkins was accepted as an expert, without apparent challenge, in the Misra trial (which pre-dates the current review, the theft having occurred between June 2005 and January 2008).[19] It appears that this was the first and, I am informed, only time he has ever given evidence in support of a POL prosecution, but has attended court in preparedness to give evidence.[20] However, Mr Jenkins has made several witness statements in various cases. Simon Clarke's Advice of 15 July 2013 lists a sample few he has made in

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(vi) The Helen Rose report

48. The Helen Rose report is a draft report by Helen Rose, a POL security fraud analyst, of 12 June 2013, which deals with one Horizon issue concerning unexplained reversals at the Lepton sub-post office.[22]

49. In summarising the facts in her report, Ms Rose describes a transaction occurring at Lepton on 4 October 2012 at 10.42 (*sic*) for a British Telecom bill payment for £76.09,[23] which was paid for by a Lloyds TSB cash withdrawal of £80. Change of £3.91 was given. At 10.37 the same day the British Telecom bill payment was reversed out to a cash settlement. The branch was issued with a transaction correction for £76.09, which was settled.

50. The draft report is based on an exchange of emails between Gareth Jenkins and Helen Rose during the period 30 January 2013 to 13 February 2013. Helen Rose's recommendation was that the system had functioned as it should, but that the available data was capable of misinterpretation, requiring the data to be presented differently so as to ensure that all system-created reversals were clearly identifiable. Again, I shall have to return to this.

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D. THE TERMS OF REFERENCE

51. It is against that background that I now confront the Terms of Reference set out above,[24] namely:

(a) POL's strategy and process for reviewing past and current criminal prosecutions in light of Second Sight's Interim Report of 8 July 2013 and/or on the role of Dr Gareth Jenkins (*sic*) and his impact on any possible appeals;

(b) Its response to the CCRC, and any subsequent action required by it in dealing with, or responding to, any actual or potential appeals and/or in reaching the appropriate resolution of any CCRC investigation, and to advise POL about any further steps that may be required as regards any actual or potential appeals against conviction; and

(c) The identification of any flaws in the process of, or from the evidence arising from, the review of a statistically significant number of past prosecutions in which Horizon has been an issue in the proceedings.

(a) POL's strategy and process of review

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and, as noted above, I have seen in conference POL senior management and representatives of CK, and BD, in which I was able to seek further particulars of POL and CK's review process.

53. Since the Horizon issue has arisen, CK has conceived a review strategy of all suitable cases meeting certain criteria. This applies both to past prosecutions resulting in conviction, after a contested trial, and to cases following pleas of guilty.

54. POL tends to prosecute sub-postmasters for three or four types of offence: theft and false accounting under sections 1 and 17 of the Theft Act 1968, and fraud by false representation or by abuse of position under sections 2 and 4 of the Fraud Act 2006. Typically, the investigation and eventual prosecution of such cases is dependent on the data output of Horizon. Naturally, the data supporting any prosecution needs to be explained and presented to a bench of justices or a jury, and it must not lack integrity, and, so far as it can be, the evidence about it must be unimpeachable.

55. Given the adverse publicity about Horizon thus far, it would be unsurprising if a "bandwagon" effect were soon to be evident (if not already so) and even in those cases where Horizon was not in issue at trial or before a plea of guilty may, following a process of post-rationalisation, suddenly become Horizon issue cases.

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57. POL, having accepted that in light of SS's interim inquiry report appropriate action had to be taken by it towards cases that might be impacted by their findings, has instructed CK to review past and indeed present cases.

Nature and scope of CK's review

58. The nature and scope of the review was defined in Simon Clarke's 8 July 2013 Advice, which coincided with the day of the publication of SS's report. The advice was that cases affected included RMG cases pre-separation, and the areas of concern were the proper functioning of Horizon, Horizon training and customer support.

59. Mr Clarke sought to distinguish between two issues:

    (1) The impact of the preliminary findings on past successful RMG prosecutions and on past and pending (or indeed future) POL successful prosecutions (whether on conviction or by guilty plea) as regards prosecution duties of disclosure; and

    (2) Issues of the "safety" of convictions (which is the test applied by the Court of Appeal).

60. Mr Clarke had no doubt that the SS report fell to be considered for

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contained within the Second Sight interim report been available when prosecuted." He advised that similar considerations applied to cases pending prosecutions but had yet to reach the trial or plea stage.

61. There was also consideration to the start date for this review. Horizon Online was migrated into all post office branches between January and September 2010. Thus, the advice given was that the start date for the review process should be 1 January 2010, that is to say the earliest date for the Horizon Online rollout. Mr Clarke advised that in advising upon this date, he had in mind issues of proportionality, resourcing, transparency and POL's reputation.

62. Simon Clarke's view was that any sub-postmasters prosecuted under the former Horizon data regime would have served any sentence of imprisonment, or performed any unpaid work requirement or paid a fine; and at all events the publicity from SS's report would put those defendants on notice.

63. Indeed, the SS report and the appendices to it are posted on POL's website and so it and its content are available to any member of the public without the need for recourse to a formal approach to POL. But I am afraid I do not see that those who have served their sentences, or those who had imposed on them community-based or financial sentences, should, for that reason, be excluded from the review. They have an interest if their conviction was

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branch balanced. I advised in the conference and repeat here that although POL has no positive duty to seek out individuals before the 1 January 2010 start date for a review of their case, nonetheless if POL was approached it would need to make *ad hoc* case-specific decisions about the need for disclosure.

65. The Misra case is an example of the type of case I have in mind that might surface. Although the Misra case was tried in October 2010, the allegation related to events between 2005 and 2008, long before the rollout of Horizon Online. However, the issues raised in the case, which were made late by the defendant in one or more defence statements, were very similar to those generally being raised currently in relation to the Horizon Online system: the defendant, Seema Misra, was eventually to claim the approximate £75,000 deficit in her post office was due to a technical error or her own incompetence, having initially sought to blame her employees for the theft.

66. There is no information that Mrs Misra is now seeking to appeal her conviction on the basis of the Horizon technical fault she claimed at her trial, though she is, I am informed, one of those seeking to apply to participate in the mediation process, which has recently been set up and permits those even convicted of crime to participate in the process, subject to a decision about suitability.[26]

67. I am informed that there are currently 12 or 13 conviction case applicants of

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68. In this regard, I have considered SS's inquiry, and I note that SS's inquiry is not time-limited. The only date given is 28 February 2013, now long past, as the latest date for any submission to SS's inquiry.

69. The definition of "Horizon" that SS relied upon is in fact widely drawn, and, despite the fact that that definition was provided to SS in May 2011, and on one interpretation appears to be focused on the system then installed in branch and the central data centres, the definition was not expressly limited to Horizon Online, and evidently SS did not take it that way.[27] Indeed, of the several spot reviews I have seen, many of them involve Horizon issues pre-dating the 2010 rollout of Horizon Online. The earliest I have seen (SR012 Hamilton) goes as far back as 2004-2006.

70. Despite the open-fronted nature of SS's inquiry, it is important to recognise that SS has so far only discovered and reported upon two Horizon defects respectively occurring in September 2010 (which I assume to be a defect with Horizon Online) and in 2011.[28]

71. In my judgment, the 1 January 2010 start date for CK's review is both a logical and practicable approach to take. That is not to say however that if a case pre-dating the rollout of Horizon Online presents itself POL and CK should exclude it from consideration. There may be cases that raise genuine thorny technical issues, which are not unrelated to issues concerning Horizon Online (which after all is next generation Horizon), and, if they arise, they

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72. During a telephone conference held on 4 October 2013, in which representatives of POL, BD, CK and myself participated, it was agreed by all that the 1 January 2010 start date for the CK review was logical and proportionate, and there should be no change to it.

73. In terms of the geographical scope of the review, as I have set out above, POL and CK prosecute in England and Wales, whereas the PPS of Northern Ireland conduct POL prosecutions, whereas in Scotland it is the Procurator Fiscal's office, which conducts POL prosecutions. There have been discussions between CK and Scottish prosecutors about SS's findings. Current Scottish prosecutions remain adjourned. CK is yet to discuss the issues with the PPS but there had only been two prosecutions in Northern Ireland, neither involving Horizon issues. Thus the real focus of CK's review has been England and Wales.

74. CK see the review issue as one of disclosure under the CPIA, the Code of Practice made thereunder, the Protocol for the Control and Management of Unused Material in the Crown Court, and the Attorney General's Guidelines on Disclosure.[29]

75. The question they have posed is: "Had POL been possessed of the material contained within the Second Sight interim report during the currency of any particular prosecution, should / would we have been required to disclose some or all of that material to the defence?" It is that question that CK state

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also subject to a second sift process, which has been written into CK's scheme, as a sensible control of the original sift review process.[30]

77. Essentially, the scheme involves CK identifying every case within the review period in which the primary or main evidence against the defendant is based on Horizon data. Once such a case is identified, then CK's senior in-house prosecutors (from the reviews I have read they are exclusively Simon Clarke and Harry Bowyer) review the case fully for a determination of the question that CK has posed.

78. CK has deliberately set the threshold low for a determination of the posed question, so as to ensure that those affected receive proper disclosure of the material. CK has been identifying cases (1) where the only evidence against the defendant is the Horizon data, such as unexplained transaction reversals or shortages; (2) where the main evidence is Horizon-based but there is some other supportive evidence, such as admissions or even demonstrable lies in interview or transfers of money into non-POL or personal accounts; and (3) any case in which CK has served expert evidence relating to Horizon. This is said to be a non-exhaustive list.

79. CK has also been identifying cases where the defendant has explicitly or implicitly raised a Horizon issue. This will include situations where the defendant suggests that he was only asked to do as he did by POL or a customer, or does not directly criticise Horizon but cannot explain the

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also. It also includes consideration of sentence and the impact of non-disclosure, as has been advised in one reviewed case.[31]

81. Once identified for review, the case is considered and the disclosure decision documented in a full review in writing by those CK counsel.

82. From my reading of the full reviews, which have been made available to me, counsel do not always limit themselves to making decisions on disclosure. In reviews of pending or current cases, in effect, they review the test, which POL adopts from the Code for Crown Prosecutors, namely, whether, in light of the disclosure, there remains "a realistic prospect of conviction".

83. At the time of writing, reviews of pending or current cases have thus resulted in the termination of four cases: Jishaan Patel, Brown, Wylie and Knight (typically due to the nature of the issue raised by the defendant, and the fact no replacement expert has yet been identified for Gareth Jenkins, the Horizon technical expert). While some of the decisions might, objectively, be regarded as generous, I do not suggest that these were decisions that no reasonable prosecutor could have made, applying his mind to the relevant test.

84. In reviews of past convictions counsel tend also to provide advice about what POL or CK's stance should be to possible appeals by offenders to the Court of Appeal, which must mean consideration of the "safety" of the conviction,

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85. The process intentionally encompasses both Magistrates' Court and Crown Court cases, but the process is a different one in the Magistrates' Court, where in the first instance, any appeal on conviction is to the Crown Court.

86. In order to standardise their approach, CK have compiled a document entitled "Initial Sift Protocol", which explains the review process through its stages, sets the parameters for the process, and is designed to direct the sifter's attention to the appropriate questions to be asked when deciding whether a given case should go to full review. The document annexes four appendices. In summary, Appendix 1 describes the sifting process, Appendix 2, the process of full review, Appendix 3, the required qualifications of the reviewer, and Appendix 4, the single page "Initial Sift Result Sheet", which synthesises the relevant questions to be asked by the sifter with boxes for the details of the decision to be recorded; this document is to be attached to the front of the relevant file. I have also seen and read through three sample files, which were sifted but did not go to full review.

87. The two essential questions asked in the sift review are:

1. "Was or might Horizon reasonably have been more than just the information provider?"
2. Irrespective of the plea, did the defence raise <u>at any stage</u>:
   a) Alleged or implied Horizon failings, however expressed,

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that sifters should be addressing in seeking to answer the questions in any given case.

89. I did find the first question to be somewhat cumbersome. I take it to direct the sifter's attention to the significance of the Horizon data as underlying the particular case under review. However, there are adequate checks and balances in the scheme, including the second control sift, to satisfy me that the focus of the question may be sufficiently understood so that deserving cases do not fall through the net.

90. Appendix 1 "Sift Reviews" addresses, among other things, the issue of guilty pleas, the fact that the threshold for moving from an initial sift to a full review has been set very low and the proper approach in borderline cases. Importantly, the Appendix ends by stating that at the conclusion of the sift review process, in all cases where the sifter has advised there should be no full review, senior in-house counsel will themselves sift those cases so as to ensure and preserve a uniformity of approach and to check the correctness of the original reviewer's decision. As indicated above, this process has now begun.

91. Appendix 2 "Full Reviews" addresses the analysis that is expected at this stage of the process. The sole question is said to be: "Would the Second Sight and Helen Rose material have been disclosable during the currency of the prosecution?" The instruction provided that it is not necessary to consider

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93. On this topic, I have been told that the sifters include CK solicitors Martin Smith and Andrew Bolc, who have been involved in sifting some of their own cases. Some of the barrister reviewers have occasionally had some input into cases, which were prosecuted by external counsel, such as advising on charge or evidence.

94. At the conference I did make the observation, which was foreshadowed in my interim review,[33] that lawyers should not be engaged in sifting or reviewing a case if they were responsible for conducting the case at trial, so as to ensure a proper level of objectivity and independence in the process.

95. In his response to my Interim Review document, Harry Bowyer suggests that if I felt the process was, to that extent, flawed then those cases that were not put up for a full review might be re-sifted by lawyers wholly independent of the case, and those full reviews that were reviewed by in-house counsel, who had some input into the case, can be re-reviewed, the numbers affected being relatively small.

96. I have considered the position. It seems to me that the control sift by senior counsel of all the original sift reviews, which were not recommended for full review, ought to ensure an independence (and indeed standardisation) of approach, so far as the sifting process is concerned. However, it would be better if those cases were not re-sifted by counsel if they were involved in

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97. I did hesitate at suggesting that any counsel who had any input at an earlier stage of a case, but did not later prosecute it at court, should not be involved in the full review, but, on balance, feel that it must be a logical and necessary step to ensure an entirely independent approach to the case that such a person should not be involved in the review.

98. I recognise also that there is always going to be the possibility of the suggestion of a commercial conflict of interest, given CK's professional relationship with POL and the fact that the very counsel and solicitors making decisions about POL cases are those who rely on CK and POL for this work.

99. I have considered this issue with some care and, having met with representatives of CK, and having considered the many Advices and other material I have seen emanating from CK representatives, I have seen no evidence other than a professional and independent approach to this review. Consequently, on the material available to me, I would reject any suggestion that CK's solicitors and counsel cannot act, or have not acted, with an independent and professional approach to the Horizon issues, which have arisen, and to their review.

100. Appendix 4 "Initial Sift Result Sheet" is an essential means by which the result of the sift review can be completed and attached to the case file. Like the full case review document, which goes with the case file, these are

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simply relied upon RMG policy as informing their prosecution policy. Indeed, a document entitled "Post Office Prosecution Policy", effective from 1 April 2012 and reviewable on 1 April 2013, (although I know not if it was reviewed on that date), appears to be largely derived from the wording of RMG's prosecution policy document of April 2011.

102. Equally, I understand that CK is in the throes of advising upon, and redrafting, the policy for POL's purposes. I have read through the several (sometimes overlapping) draft policy documents that have been sent to me. None I have seen provides for any POL policy about the retention and treatment of case files. POL must have a policy dealing with such matters, if none is already written. POL is subject to the Data Protection Act 1998, and it is a public authority by virtue of Part VI of Schedule 1 to the Freedom of Information Act 2000. Thus it must comply with the data protection principles. It is also open to FOI requests.

103. POL may envisage liability under these statutes as applying only in the course of its ordinary business, but they may apply equally to its prosecution role, which places an onus on it to have policies in place that inform, among other things, its case file retention policy.[34]

The case reviews

104. I have been sent a table setting out the statistics of the review thus far, which

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told, 18 cases yet to be fully reviewed. It is unclear to me whether any cases are still subject to a first sift.

105. I have had to query these statistics, because I was sent 24 full case reviews ahead of the conference I had with POL and CK on 9 September 2013. I have recently received an extra 6 reviews by email of 30 September 2013 (some of them being RMG cases) but all of those 6 case reviews post-date the 9 September 2013 date of the conference and they pre-date 26 September 2013, which means I had by on or about 30 September seen and read a total of 30 full reviews.

106. However, at the conference I was told by CK that by that date CK had in fact conducted 27 full case reviews. I had seen only 24 by then and so if that was accurate there were 3 case reviews missing from the number I had seen and read by the time of the conference, but those missing 3 could not be any of the 6 case reviews I have recently received because none of them (the 6) pre-dates 23 September 2013 or post-dates 26 September 2013. This suggests to me that CK must have reviewed at least 30 cases by 26 September 2013, and if there were 3 other case reviews missing from those sent to me in advance of the conference then they should have conducted 33 case reviews, not the 28 mentioned in the table.

107. Since then I have received information in an email from Martin Smith to Jarnail Singh of 2 October 2013 that over and above the 24 case reviews I

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case of Patel was reviewed and terminated verbally in light of the urgency of the case.

108. To complete the picture, on 9 October 2013, the case review of Robinson, dated 27 September 2013, was emailed to me. That means I have now seen and read 31 full reviews.[35]

109. I have also been provided with an Excel spreadsheet, which I am told is updated, and submitted to POL weekly, which purports to show current to 26 September 2013 the cases that have been reviewed. That spreadsheet, however, appears to me to show a total number of 175 reviews, and, according to Martin Smith, shows that as of that date CK has fully reviewed 28 cases, which is the number which has been inputted into the table I was originally sent. If I have understood Martin Smith's email correctly, the 6 further reviews are yet to be added to that weekly Excel spreadsheet (correct to 26 September) and therefore once added should make 34 full case reviews but I have no confidence that my assumptions are correct.

110. Thus, the statistical picture is confusing and I have been unable to reconcile the number of cases reviewed by CK with those seen by me. This needs rectification, if CK's audit trail is to be robust.

Other initiatives

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repository for all Horizon-related issues. The hub would collate, from all sources into one location, all Horizon-related defects, bugs, complaints, queries and Fujitsu remedies, thereby providing a future expert witness, and those charged with disclosure duties, with recourse to a single information-point where all Horizon issues could be identified and considered."

112. The rationale behind it is to put in place a mechanism to protect POL from future such issues. In the result a weekly Wednesday conference-call meeting has been established to meet the requirement. Attendees are expected to bring all Horizon-related issues to the meeting and minutes are kept. However, early teething and "cultural" problems arose as highlighted in Simon Clarke's 2 August 2013 Advice,[36] and indeed to me in Harry Bowyer's response to my interim review.[37]

113. However, the meetings have also produced information, which requires further investigation, and they and other future issues may highlight other Horizon-based issues, which POL was previously unaware of. CK must keep an open mind to any new Horizon issues as they arise and if it is considered that any information emanating from the hub meetings affects, or might affect, any of the cases previously sifted or fully reviewed, then CK will have to remain alive to the possibility of broadening the criteria for the review and having to re-sift or re-review cases already considered, both past and pending cases.

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115. The document sets out the fundamental principles of the prosecutor's duty of disclosure, the purpose of the hub meetings, its Chairman and members' functions, their duties and responsibilities, the recording and retention of relevant material, and the group's constitution. The protocol is aimed at what the authors call the "front-line in the information gathering exercise."

116. I make two observations about the document:

(1) In so far as the retention of material is concerned, as observed above at footnote 34, at clause 4.5.6.iv, the protocol provides for a retention period of not less than 6 years. The only observation I would make is that because, according to Gareth Jenkins, the data sent by the branch to the audit system of the data centre remain retrievable for 7 years, then the period of retention ought to be not less than 7 years;

(2) The all-important clause 6, which sets out in great and comprehensive detail the identification of equipment and material subject to the protocol, defines the "Horizon Online system" sufficiently widely to capture the categories of material that are expressed to be subject to the protocol. The only further criterion that might be considered is any information, which might indicate that past or present Horizon training is inadequate or not fit for purpose, further to the criterion that provides for any information

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for the central receipt of information from those contributing to the Wednesday hub meetings, and as an adjunct to it, and to avoid the risk of relevant information being lost, as well as for an individual to be nominated to take responsibility for managing it.

118. As a cautionary warning, I have noted from the product of the hub meetings that there appeared to be possibly greater focus on the fix to a problem rather than focus on actioning the issue for the purposes of disclosure. While the hub meetings may well serve a dual purpose, the central point of the hub meetings must not be overlooked or marginalised.

119. It is important that now I emphasise and comment upon certain issues about POL's disclosure duties.

POL's duty of disclosure

120. On 2 August 2013, Simon Clarke produced his Advice setting out fairly extensively, and accurately, POL's duties to record, retain and disclose material under the CPIA etc.

121. I would however add this: POL's relationship with FSL is, in the context of its prosecution role, unique. The prosecution of the typical case of theft, fraud or false accounting tends to rely wholly or primarily on data from Horizon. At its simplest, FSL is contracted to POL to provide the Horizon

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122. Not unnaturally, FSL is likely to regard its Horizon system as commercially sensitive, and would not be likely to wish it exposed to challenge, but despite that natural inclination, I was told by Rodric Williams at the conference that FSL has not been resistant to cooperation with POL's review but they have been slow.

123. Thus, because FSL is a third party for disclosure purposes, POL, as prosecutor, has, in the ordinary case, an obligation to take such steps as it regards as appropriate to obtain third party material that it regards as possibly relevant to the prosecution case, and, if the third party fails to cooperate, the prosecutor's duty is to seek access to the material if need be enforced by a witness summons.[39]

124. Moreover, it is important always to bear in mind that under the head of "General Responsibilities" the Code of Practice made under the CPIA provides that in conducting an investigation the investigator should pursue all reasonable lines of enquiry whether they point towards or away from the suspect.[40]

125. There are two other issues as regards FSL, which I need mention. First, I understand that POL is currently re-procuring its IT system, and, second, that FSL was considering migrating their system to new servers. The first is a business issue for POL but, in tandem with the second, as the review process continues, it is imperative that POL remain alive to the fact that past

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126. Following the conclusion of the proceedings, POL has a general common law duty to act fairly and to assist in the administration of justice. The post-trial duty of disclosure falls outside the provisions of the CPIA but the duty of disclosure continues so long as proceedings remain, whether at first instance or on appeal. The situation here is different as there are (so far as I know) no appeal proceedings outstanding that relate to Horizon issues but POL has, in the special circumstances obtaining here, very properly acknowledged its duty to consider cases for disclosure, which is inevitably interlinked with considerations of the safety of convictions.[41]

127. Although the test for disclosure in past conviction cases is not that under the CPIA, at common law the issue is one of "materiality", which is not a very different thing, and if CK has been conducting itself in the disclosure review exercise by applying the CPIA test even to past convictions, it is hardly likely to be criticised for doing so. The duty under the CPIA is a continuing duty of review, and it would be wise for POL and CK to apply a similar if not identical approach to past conviction cases falling within its current review, although, strictly, they fall outside any post-trial period criminal proceedings, where there remains a common law duty to disclose material that might cast doubt on the safety of the conviction.

128. Finally, in this regard, it must be borne in mind that any successful challenge to the Horizon system, defined in its broadest sense, whether in an on-going trial or on appeal, risks undermining other on-going cases as well as

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The mediation scheme

129. During the telephone conference of 4 October 2013, the main topic of discussion was the extent to which CK should be involved in exercising a supervisory function over the criminal cases going to mediation, such as Mrs Misra's case. There is understandable concern that offenders might use the mediation scheme to gain information as a platform from which to launch a fresh or new appeal, and so CK wish to exercise a measure of control over the dissemination of information and material during the process.

130. As a precursor to the telephone conference, a question had been floated about the Falkirk issue, as one example, as potentially bearing on the mediation scheme. The Falkirk event was raised in the Misra case. In the course of Gareth Jenkins' evidence in Misra, Mr Jenkins gave evidence about a Horizon event, which had occurred at Callendar Square post office in Falkirk in 2005, whereby information recorded on one terminal was not being correctly passed to another terminal within the branch, creating a receipts and payments mismatch.[42] A software fix of the problem was distributed into the system in March 2006 as part of a fairly major functional change, and, therefore, post-March 2006, the Falkirk defect was no longer an issue. In my view it represents an isolated instance, which has no relevance to events falling within CK's review but if during mediation an individual complained

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applicants. Mediation is not a formalised court process and the CPIA rules of disclosure do not apply. However, the mediation process in a particular case could give rise to the view that, mindful of its common law duties, case-specific disclosure ought to be made, and POL and CK must keep an open mind to this. The mediation process might even give rise to consideration of making further general disclosure within the current review, depending on the nature of the new information.

132. I recall being informed that SS is to be directly involved in the mediation process, which adds yet another dimension of possible uncontrolled dissemination of information and material. I have suggested that CK consider writing up a protocol or policy document to direct this part of their task so to ensure a uniformity of approach and to avoid too arbitrary an approach to cases going through the mediation process. That being said, I acknowledge that CK may have to take *ad hoc* decisions to cases, which fall outside the current review. I suspect however that such cases will be rare.

Disclosure letter

133. In those past conviction cases where, following a full review, CK advises that disclosure of the SS report and the Rose report be made, they send a *pro forma* letter, one copy of which I have seen in the Ishaq file. In on-going cases I suspect that CK simply sends the usual letter under section 3 of the CPIA or makes further disclosure in light of the evidence that is known to

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they inform the recipient that they have reconsidered their duties under the CPIA 1996, the Code of Practice and the Attorney General Guidelines.

135. As I have observed above, although not strictly accurate, I do not think that the application of the test under the CPIA etc is necessarily misplaced in post-conviction cases. However, because technically the duty is at common law and not derived from the provisions of the CPIA, the reference to the CPIA might be regarded as otiose. In conference I suggested that the letter be revised to include a reference also to POL's duty to consider the disclosure of material, which might cast doubt on the safety of the conviction. I have seen from recent examples I have been sent that that is now done.

Gareth Jenkins and his impact on possible appeals

136. In his Advice dated 15 July 2013, Simon Clarke advised about the future use of Gareth Jenkins as an expert witness in support of POL prosecutions. In the body of the Advice document, Mr Clarke sets out the relevant principles regarding the duty of an expert.[43]

137. That Jenkins is an expert on Horizon issues cannot be seriously doubted. His independence was unsurprisingly called into question in cross-examination in Misra when it was suggested to him that he was employed by FSL who were under contract to POL.[44]

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give expert evidence about, and his employer is contracted to the very organisation prosecuting the case in which he is a witness.

139. But a conflict of interest on the part of an expert witness does not operate so as automatically to disqualify him from giving evidence in the proceedings; the key question is whether his expression of opinion is independent of the parties and the pressures of litigation. It is the independence and objectivity of his opinion that is important.

140. Such a conflict will not infringe the requirement in Article 6 of the European Convention on Human Rights for an "independent and impartial tribunal", which is concerned with the integrity of the tribunal, and does not require that the same tests of independence applicable to a judge be satisfied by an expert witness.

141. Of serious consequence is where the expert fails in his overriding obligation to provide an unbiased and objective opinion, as provided by Part 33 of the Criminal Procedure Rules 2013, or fails to disclose material within his knowledge, which might cast doubt on the correctness of the prosecution case or might assist the defence case.

142. Of grave concern is that Mr Jenkins informed the SS inquiry of the two defects, which they reported at section 6 of the report, suggesting that he knew of them in a period Mr Clarke argues in his 15 July 2013 Advice to be

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143. It was during a telephone conference CK representatives had with Mr Jenkins on 28 June 2013 that Mr Jenkins informed CK that it was he who had informed SS of the two defects.[46]

144. Support for the proposition that Mr Jenkins was aware of integrity issues as long ago as February 2013 is found in Helen Rose's report of 12 June 2013 in which she sets out an exchange of email correspondence between her and Mr Jenkins regarding the Lepton sub-post office reversal issue. In an email to him dated 13 February 2013, she says, "I know you are aware of all Horizon integrity issues …" In isolation, this may not mean much, but coupled with the fact that it was Mr Jenkins who furnished the information about the two defects to SS, it lends itself to the reasonable interpretation that his true level of knowledge about the integrity of the system in general, and two defects in particular, was far greater than he was prepared to reduce to writing in his several witness statements during the material period of time.

145. Of course, it may be argued, possibly correctly, that the two defects that Mr Jenkins has divulged to SS do not amount to very much in terms of the overall integrity of the system, and why otherwise divulge them to SS if his intention had been to suppress them? But that would be to misunderstand the purpose of disclosure and the expert's duties. It is not for the prosecutor to make qualitative judgments about the utility or indeed the admissibility of the information to be disclosed, and it is not for the expert to make secretive judgments about such issues. So long as the material passes the test for

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knowledge to the prosecution no consideration to the question of disclosure could be made.

147. Mr Clarke concludes that all this means that Mr Jenkins was in breach of his duty as an expert, that his credibility as an expert is accordingly fatally undermined, and that he could no longer be relied upon to give expert evidence. The consequence of this advice has been to lead to POL commissioning the current CK review of past and pending or current prosecutions, and indeed my review of CK's strategy and process.

148. I am not clear whether Mr Jenkins was challenged about the non-disclosure to POL and, if so, what the explanation was for it. But given the SS inquiry, based in part on his revelations, has led to the current review, Gareth Jenkins is to that extent tainted and his future role as an expert is untenable. It should be remembered that POL had been unaware of the existence of the second of the two defects revealed to SS by Mr Jenkins until a year after its first occurrence.[47]

149. As yet no new expert has been identified, far less appointed, to replace Mr Jenkins, who is and was uniquely placed to give evidence about Horizon, which is an unhappy state of affairs about which little can be done. The Jenkins problem, even when a new witness is found, may not be at an end, because he will doubtless still remain employed by FSL, yet not be asked to report on, or be called by POL as a witness to speak to, Horizon's integrity.

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cases, which have been fully reviewed and their outcome, and it will have a better understanding of the scale of the problem.

165. If the CCRC was minded to consider and refer any cases, then the matter would be out of POL's hands. However, I emphasise that no reference may be made by the CCRC unless there has been an appeal, or an application for permission to appeal, which has been refused, which, unless there appears to the CCRC to be "exceptional circumstances" for making a reference, must limit dramatically the number of Horizon-based convictions that would be amenable to CCRC intervention.

166. Recently, I was made aware of POL's consideration to appointing Sir Anthony Hooper to the Chair of the mediation working party. I was sent the notes of his interview with POL on 24 September 2013. I noted in particular that, at paragraph 4c, he suggested (quite firmly) that it might be more appropriate for cases that have been through the courts to be referred to the CCRC rather than go through the mediation scheme. It seems the mediation process and CK's review was explained to him, and it may be that his initial suggestion was tempered by the explanation that was given.

167. I should add that during my conference with POL on 9 September 2013, I made my views clear about permitting persons who had been convicted of crime against POL to engage in a mediation process with POL. I thought there lurked real dangers in it. But I understood the policy reasons for it. If a

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(c) The identification of flaws in the review process

168. As I have stated, I have now seen and read 31 full reviews, albeit all 31 were not past prosecutions, and not all of those that were past prosecutions raised Horizon issues requiring disclosure, as is clear by the decisions on disclosure that was made by counsel reviewing them. However, I am satisfied that I have seen for myself a statistically significant number of past prosecutions where Horizon was deemed to be an issue so as to determine whether or not the review process is flawed in any way.

169. Except in the cases of Khayyam Ishaq and Lynette Hutchings I have not seen the original case files, but I have seen the full case review documents written up by Simon Clarke and Harry Bowyer.

170. As observed in my interim review,[56] CK's approach to the review process is, as I have concluded, fundamentally sound. Thus, I have not detected any systemic or fundamental flaws in the process of review, or in any of the evidence arising from it.

171. From what I have seen, CK has initiated an organised and efficient regime of disclosure, which is being considered at an appropriate level within CK, and it is addressing the right tests.

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the intervention of the court. The same must apply to their consideration of past prosecutions, as I have suggested above.

173. Although this is no answer to POL's duty of disclosure, the practical reality is that anyone who wants access to the SS report can gain it through POL's website. The Helen Rose report adds very little, it seems to me, other than to point to a particular issue at Lepton, and the implication from the report that as early as February 2013 Gareth Jenkins was aware of integrity issues with Horizon, none of which he revealed. The SS report and the Rose report are the limit of the current disclosure regime. I am unaware of anyone being provided with anything more than this.

174. The threshold that CK has set itself has been set deliberately very low, and CK must be prepared to reconsider disclosure decisions as and when it is appropriate to do so, as it must as regards its stance to possible appeals. Thus, the review must remain an on-going process in which POL and CK keep their mind open to reconsidering its past disclosure decisions, as it is in second sifting the cases, which have gone through a first sift but not to a full review.

175. Although CK points out that it is unconcerned with the question of the safety of convictions, there is an inexorable link between the disclosure decisions it makes and the view it might take towards possible appeals, based on its view of the strength overall of the other evidence in the case. It is right to observe

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(1) That there should be a reconciliation of all SS's spot reviews and those CK cases that have been subject to sift and full review, in order to check that there is no factual or other inconsistency between them as would affect CK's review. (I have been told that although there are around 30 SS spot reviews, only about 12 were ever sent to POL); and

(2) If there is any Horizon-related civil litigation between any present or former sub-postmaster and POL related to any of the Horizon issues that are the subject of CK's review, then CK should be given complete visibility of the litigation, in case this affects any decisions they are making about Horizon criminal cases.

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POST OFFICE LTD

ADVICE ON SUGGESTED APPROACH TO CRIMINAL CASE MEDIATION

Appeal proposal

1. On 31st July 2014, I held a conference call with Rodric Williams of POL and Gavin Matthews of Bond Dickinson on the approach suggested by Sir Anthony Hooper ("**AH**") to criminal cases falling within the mediation scheme.

2. As I understood it, AH had suggested that where an applicant in the mediation scheme had admitted a criminal offence (by a plea of guilty) POL should take one of three possible approaches to the issue of criminal appeal:

   1) POL should support an appeal
   2) POL should not oppose an appeal
   3) POL should oppose an appeal

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4. I am told that the Settlement Policy document has not been (and will not be) formally adopted by POL, and is confidential to POL, albeit POL has dealt with criminal cases in line with that process, so that if material is identified that affects the safety of the conviction, the process is suspended, the material is disclosed, and the applicant considers his position as regards any appeal. If the process that POL has been adopting within the mediation scheme is limited in this way then I see no problem with it. The problem arises with the notion that POL should consider its position on any future appeal.

5. The focus of our discussions on 31st July was around the practical utility of such an approach. The view I expressed was that I could not see any advantage to POL in adopting, far less being held to, a position on any criminal appeal during the mediation scheme. In fact, adopting such a course would be to court an unacceptable level of risk for the following reasons: -

   a) As I see it, the fact that a criminal case is entered into the scheme implies that there is or are, in broad terms, identifiable Horizon-related issues, which require investigation. Entry into the scheme does not necessarily imply that investigation has revealed any arguable grounds of appeal. Indeed, even if investigation identifies material that might give rise to grounds of appeal because it might impact on the safety of the conviction, and the material is disclosed, that does not mean that POL is then bound to adopt a position in advance of any such appeal, as appears to be suggested by the draftsman of paragraph 5.14.3 of the Settlement Policy document. In my opinion this provision (albeit it has

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conviction is nevertheless "safe" because the applicant fully confessed his guilt or there is other evidence pointing to his guilt. It is therefore important to recognise that the information gathered for the purposes of the scheme is incomplete and does not address the real issue that the Court of Appeal (Criminal Division) would have to consider on an application for permission to appeal from the Crown Court, namely, the safety of the conviction looking at the whole of the evidence.

c) This leads me to another issue. If only those cases in which the applicant had admitted the offence (e.g. by a plea of guilty) have been admitted to the mediation scheme then the scope for successfully challenging the conviction on appeal is even less sure. The applicant's argument would have to be that had the new material been made available before he entered his plea of guilty then he would not have been advised to plead guilty and/or would not have done so. The appeal would therefore have to be based on the "fresh evidence" represented by the new material. But mounting a successful appeal based on fresh evidence following an unequivocal plea of guilty, albeit not impossible, is far from easy.

d) The mediation scheme is expressly not designed to be an appeal process. The mediation pack makes clear that POL has no power to reverse or overturn a criminal conviction but if new information comes to light that affects the safety of the conviction, then POL has a duty to inform the applicant, which he may then use to advance an appeal. The

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being held to a position on criminal appeal at the early stage of mediation. An indication by POL at such an early stage based on limited information risks inviting an appeal. Also, at this stage the applicant will almost certainly not have even considered whether the new information gives rise to grounds of appeal let alone whether there are any grounds that are reasonably arguable.

7. The risk to POL is obvious: in general terms, once a criminal appeal is fully developed (as opposed to complaint in the mediation scheme) the circumstances may change. So POL may find itself prematurely supporting an appeal when upon mature reflection the written grounds of appeal show it ought not to have done so or it may oppose an appeal when events prove it was ill judged to have done so. The middle course of not opposing any appeal (while not supporting it) is a subtle halfway measure of not making concessions to an applicant for appeal and adds little.

8. A further important consideration is that each case is different and therefore a case-specific approach is of necessity wise, but by taking a position too early on individual cases with too little information POL risks inconsistency among like cases and accordingly may attract criticism.

False accounting proposal

9. Additionally, I am asked to consider a further recent proposal that AH has made (set out in Andy Parsons' email of 29th August): that POL could mediate a case where there has been a conviction for false accounting in order to

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criminal cases to the scheme; indeed I had expressed the opinion some months previously that it was a high-risk strategy to admit any criminal case to the mediation scheme. However, I understood that time had moved on and a practical solution had to be found to deal with those criminal cases that were now within the mediation scheme.

11. On 16th July, I considered therefore that there was less risk in admitting to the mediation scheme cases, in which the applicant had admitted his guilt by pleading guilty or as a pre-condition to being cautioned, which, as I recall discovering, embraced the vast majority of the current cases within the scheme. Misra and Banks are conviction cases, which have also been accepted into the scheme.

12. Given there are only two conviction cases within the scheme, I expect that the practical effect of AH's proposal is that mediation will in reality be restricted to those cases of false accounting where the applicant had admitted his guilt. If so, then consistent with my advice on 16th July, there would be less risk in relative terms to mediating such cases than in the case of conviction cases (not least because the applicant has admitted guilt when he could have contested it) but inevitably there is always some risk in having a free discussion between an applicant and POL around facts that gave rise to the applicant pleading guilty. However, I question what is to be gained by determining liability for the underlying loss when the applicant has admitted his guilt.

13. Moreover, I should emphasise that the advice I gave around finding a practical

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14. Indeed, there may be certain types of fraud that are committed and charged without actual loss (e.g. fraud by false representation, where the only intention required to be proved is that the offender intends to make a gain for oneself or to cause another loss or to expose another to the risk of loss); there may be certain types of theft committed and charged without proof of any actual loss or the precise amount of loss (e.g. theft of cheques which are "choses in action" or theft of property the precise value of which is incapable of exact quantification).

15. I query whether the proposal is just a new means of achieving a negotiated settlement between POL and applicants by a new and different route, and, more importantly, whether, once accepted, it would be suggested as a logical extension of it that the scheme ought also to embrace certain cases of theft and fraud in order to "determine liability for an underlying loss" where it was appropriate to do so.

16. There are other foreseeably difficult issues. First, if POL were to accept the proposal, it would bear the burden of scrutinising with care whether each and every case of false accounting was amenable to determining who was liable for the underlying loss. AH's proposal would require POL to determine whether there had been a determinable loss. Second, such a course would necessarily involve a re-examination of POL's case at court, and any mitigation that was advanced on the applicant's behalf (assuming the proposal is limited to cases where responsibility was admitted), as well as the sentence.

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17. Discussion about liability for underlying loss is, in my view, fraught with potential problems. I do not see the point of it, and what it can achieve, other than to provide an applicant with a false sense of hope or expectation that POL might accept whole or part liability for the loss, and settle. If nothing else, it would give the applicant an opportunity to seek to undermine and find flaws with POL's original case, the monetary applications it made on sentence, as well as in the court's orders, in an uncontrolled environment, which in my opinion, is not something POL should engage with.

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5th September 2014

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POST OFFICE LTD

REVIEW OF POST OFFICE LTD PROSECUTION ROLE

A. INTRODUCTION

1. In light of criticisms of past prosecutions, the Post Office Ltd ("**POL**") has commissioned me to review past practice and make recommendations as to its future approach to the conduct of prosecutions.

2. Terms of Reference received from Bond Dickinson LLP ("**BD**"), solicitors advising POL, invited from me the following:

Instructions & Output

A. Written Reports

1 To review, and, if appropriate, to recommend changes to the existing investigations and conduct of future prosecutions by POL, including, if appropriate, the investigative/prosecutorial role being undertaken by another authority (to be a available for publication).

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Process

1 To fully understand the Horizon system – reviewing training and materials.

2 To meet and interview as a fact-finding exercise anyone else you or POL consider relevant to the process of the investigation and commencement of prosecutions.

3 To review a statistically significant number of past prosecutions in which Horizon was an issue.

3. As regards the process by which I have been asked to conduct my review, and by reference to each point in the list above, in point order:

Point 1: on 19 September 2013, I attended Guildford Classroom Training Office, where I received a day's training on the Horizon system. Chris Gilding (Network Support Team Leader) trained me. Andy Holt (Business Relationship Manager) was on hand to assist and answer questions.

Point 2: on 9 September 2013, I met with POL senior management, Susan Crichton and Rodric Williams, Cartwright King ("**CK**") representatives, Simon Clarke, Harry Bowyer and Martin Smith, and BD representatives, Gavin Matthews and Andy Parsons, in my chambers at 2 Bedford Row, London, WC1.

On 4 October 2013, I participated in a telephone conference with Rodric Williams and Jarnail Singh of POL, Martin Smith and Simon Clarke of CK, and Gavin Matthews of BD in order to discuss issues surrounding the scope

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questions I have asked or issues I have raised by email in the course of my review.

Point 3: on 6 September 2013, I received a number of files from BD containing material in advance of the meeting on 9 September 2013. Among them there was a file containing 24 full case reviews performed by counsel employed by CK of cases passing an initial sift process. On 30 September 2013, I received 6 more full reviews, and on 9 October 2013 I received one more by email. I have therefore reviewed 31 case reviews in total.

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B. EXECUTIVE SUMMARY

4. This review is a legal review only. Accordingly, I must emphasise that it is no part of this review or my function to make recommendations about commercial, reputational or other non-legal strategic factors in favour of, or militating against, the retention of POL's investigative or prosecutorial role.

5. The following is a summary of the main findings and recommendations in the body of this review.

   (i) I have seen no evidence to suggest that Post Office Ltd exercises its investigations and prosecution function in anything other than a well-organised, structured and efficient manner, through an expert and dedicated team of in-house investigators and lawyers, supported by Cartwright King solicitors and their in-house counsel, as well as external counsel and agents where required.

   (ii) Post Office Ltd has a unique commercial relationship with Fujitsu Services Ltd with whom it has contracted for the supply and maintenance of the Horizon Online system. I have found no evidence that any commercial conflict of interest has caused or contributed to the current problems.

   (iii) The Horizon data integrity issue was an exceptional instance of Post Office Ltd prosecutorial failure of serial non-disclosure in breach of Post Office Ltd's disclosure obligations as prosecutor. Although the relevant information about the Horizon Online integrity issues was

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(v) Post Office Ltd's prosecution role is perhaps anachronistic, but Post Office Ltd has undoubted expertise in investigating and prosecuting the nature and volume of cases it handles annually, which provides it with a unique specialism, inevitably leading to good and efficient use of resources, as well as efficacy.

(vi) Moreover, Post Office Ltd has the distinct advantage of understanding intimately its products, its customers, its operations, and the business of those it employs and contracts with as agents, and, in general terms, it understands its data systems and its functions. Furthermore, Post Office Ltd inevitably benefits from central oversight of cases arising nationwide. Divestment of its investigative and/or prosecutorial role to police and/or another public prosecuting authority would result in little or no central oversight, thus risking an inconsistency of approach, which would ultimately be detrimental to the organisation.

(vii) It is against the background of all these considerations, and I re-emphasise within the narrow context of the issues I have been asked to consider, that I have concluded that there is no good reason to recommend that Post Office Ltd should discontinue its prosecution role, and seek to assign it to another public prosecution authority; indeed, there are many good reasons to retain it.

(viii) For identical reasons, I see no advantage, and only disadvantage, to a hybrid regime, whereby POL reserves its investigative function, while divesting itself of its prosecutorial role.

(ix) However, there is scope for improvement, and I, therefore, make the

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being produced by or on behalf of its Security and Compliance and Legal Departments completely and accurately reflects Post Office Ltd's policy going forward.

b) Once this has been achieved, the documentation should be submitted to the Board for approval as reflecting Post Office Ltd investigation and prosecution policy.

c) Following Board approval, Post Office Ltd should consider publishing its policy documentation on its intranet, as well as otherwise ensuring that its employed and agency staff are made aware of Post Office Ltd policies in this area in order to achieve a greater measure of transparency.

d) For the same reasons, Post Office Ltd should consider publishing its policy documents, or a summary of its prosecution policies, on its website.

e) Each and every prosecution policy document should be provided with an annual review date, and reviewed on or before the annual review date, or following any material changes, whichever be the sooner, and the Board should approve any such material changes.

f) Consideration should be given to including, within its prosecution policy, criteria detailing the range of factual or legal circumstances in which Post Office Ltd may decide to hand over cases to the police and/Crown Prosecution Service.

g) To the extent this is not already in hand, (which I

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undermine the integrity of the system, and to the requirement for the disclosure of such material or information in the course of criminal proceedings, as may be required.

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C. HISTORICAL BACKGROUND

Introduction

6. On 1 April 2012, the shares in POL were transferred from the Royal Mail Group Ltd ("**RMG**") to Royal Mail Holdings plc ("**RMH**"), since which time POL has had an existence independent of RMG. Now, POL is a wholly owned subsidiary of RMH. The Secretary of State for Business, Innovation and Skills ("**BIS**") holds a special share in POL. RMH and BIS, through the Shareholder Executive ("**ShEx**"), have no involvement in POL's day-to-day operations.[1]

7. Prior to POL's separation from RMG, RMG conducted the prosecution of criminal offences allegedly committed by sub-postmasters and/or staff in their employ. Following the separation out of POL's business from RMG, POL has assumed and retained the prosecution function hitherto enjoyed by RMG prior to separation, although RMG retains a residual prosecution role.

8. In England and Wales, POL's prosecutorial role is exercised by POL's in-house legal department and through the instruction of CK solicitors, its in-house advocates as well as by external counsel and agents. It is supported by the security department, which is responsible for conducting investigations. The security department is accountable to the Corporate Services Director.

9. Prosecutions are conducted both in the Magistrates' Courts and the Crown

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Currently, cases stand adjourned in Scotland, where, as I understand it, POL has been granted special agency status.

11. I understood in the conference of 9 September 2013 that CK had not yet spoken to the PPS in Northern Ireland. CK acknowledged the need for them to visit the PPS. However, there had been only two prosecutions in Northern Ireland, neither of which involved allegations surrounding Horizon.

History of Royal Mail and Post Office prosecution role

12. I have in my possession two documents, one an updated version of the other, entitled **A Brief History of Investigations, Prosecutions and Security in Royal Mail**, that have provided invaluable insight into the long and colourful history of the prosecution by the Post Office and Royal Mail of offences generally affecting the mail. This historical account helps explain the rationale behind POL's prosecution role.

13. One of the versions of the paper I sourced from the internet; the other was provided to me by POL. The version that was forwarded to me by POL was copyrighted by RMG in 2010; the internet version purports to be "an amended, corrected and updated version of an earlier draft" (I have assumed of the one sent to me by POL).

14. In terms of authorship, the copyright notice in the internet version gives thanks to Alan Baxter, former Head of Corporate Security, Post Office

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created after POL's separation from RMG in April 2012, but in fact adds nothing to the Baxter document.

16. Baxter's updated version sets out in some detail the history of RMG's investigative and prosecutorial role, which can be traced back as far as 1683, when the Attorney Richard Swift was appointed Solicitor to the General Post Office, which he served for 30 years and in respect of which he had "care of managing of all Law proceedings wherein the Office has been concerned." The narrative thereafter is quite literally of historical interest only.

17. With the creation of separate businesses under the Post Office banner, and following a review in 1996, and restructure, the Post Office Security & Investigation Services Department became responsible for conducting criminal investigations and providing specialist advice and services to each of the Post Office businesses.[2]

18. There was a further reorganisation in 1999 that saw the number of Post Office business units increase, and an equal number of smaller security teams formed in order to support those business units. Simultaneously, the three main businesses, POL, Royal Mail Letters, Parcelforce Worldwide began developing their own investigation teams to complement their security teams, for which they drew on Security & Investigation Services staff to resource their criminal investigations. Leadership and standards however were directed by the central Corporate Security Group, which was led by the Group Security Director.

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Ministry of Justice, as well as Police and Law Enforcement Agencies and other Governmental departments. POL, Royal Mail Letters and Parcelforce Worldwide maintained their operational security and investigation teams led by heads of security and staffed by professional investigators and security managers.

20. Royal Mail investigators were trained to rigorous standards and operated in accordance with legislation including the Police and Criminal Evidence Act 1984, the Regulation of Investigatory Powers Act 2000, and the Postal Services Act (which, given the apparent date of the paper, I take to mean the Postal Services Act 2000 rather than the Act of 2011).

21. Security managers normally had experience in a wide range of operational and commercial areas, and developed technical competence in fields such as crime risk management and modelling, physical and electronic surveillance, and behavioural security. In 2010 there were a total of 287 investigators and security managers employed within RMG.

22. However, although RMG investigators would enjoy access to police facilities and to criminal records and communication networks, they had no special powers. Suspects would be interviewed and searched on a voluntary basis, and, where arrests were required, the support of police officers or other statutory law enforcement officers was usually sought.

23. Royal Mail Legal Services, which was the successor to the Post Office

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Private prosecutions

26. While it is true that POL is a private prosecutor, POL is a public authority for other purposes, and so it enjoys a curious hybrid existence.[3] But it is quite unlike the private prosecutor of an isolated case given the volume of cases it handles annually. It has a security department, a compliance and legal team in-house, and it instructs on a regular and retained basis a nationwide firm of solicitors to prosecute for it in England and Wales, who also instruct external counsel and agents.

27. POL is thus the only commercial organisation (albeit Government owned) I have been able to identify (apart from RMG that retains a prosecution function) that has a commercially based, sophisticated private prosecution role, supported by experienced and dedicated teams of investigators and lawyers. To that extent it is exceptional if not unique.

28. By way of useful contrast, POL is unlike organisations such as FACT (the Federation against Copyright Theft), which is a trade organisation protecting its members' intellectual property through private prosecution, or the RSPCA, a charitable organisation, protecting the welfare of animals by private prosecution. Although Virgin Media successfully launched a private prosecution in or about 2011 for commercial fraud involving set-top boxes, that was likely to have been an isolated and exceptional instance of the company exercising the private right to prosecute.

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read provides any real guidance or criteria to be followed for such an eventuality; thus any such decision appears to be one made arbitrarily on a case-by-case basis.

30. The right to bring a private prosecution is preserved by section 6(1) of the Prosecution of Offences Act 1985. POL is under no duty to inform the CPS that a private prosecution has commenced. However, POL may notify the CPS, particularly if in due course POL considers that the CPS should prosecute the matter.

31. It is open to the CPS to take over any private prosecution in certain circumstances. Although POL does not have to inform the CPS that a private prosecution has commenced, it is open to POL to notify the CPS especially if it might be the case that the CPS is invited to prosecute the matter. The CPS can take over a private prosecution in certain circumstances, but the CPS would need to be satisfied that: (1) the evidential sufficiency stage of the "full Code test" is met;[5] (2) that the public interest stage of the "full Code test" is met; and (3) that there is a particular need for the CPS as a public authority to take over the prosecution.[6]

32. The last consideration is designed to cover the position where the investigative authorities with whom the CPS usually deals, such as the police, have not brought the case to CPS attention, and yet it is a case that merits the prosecution being conducted by a public prosecuting authority rather than by a private prosecutor. The CPS might consider taking over a

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33. The CPS may even take over a private prosecution only to stop it, even where the full Code test is met, for instance where the prosecution may damage the interests of justice such as by interfering with the investigation or prosecution of another criminal offence or charge, or where the defendant has been promised that no prosecution will follow.[8]

34. As I have commented above, it is unclear when POL will invite the CPS to intervene, and I have no statistics to inform me how many POL prosecutions, if any, have been taken over by the CPS, and, if so, on what grounds.

POL investigation and prosecution process, procedure and rationale

35. I have recently received a document entitled **Conduct of Criminal Investigation Policy**,[9] from which I have extracted (and in some places paraphrased) the following passages, which explain, from POL's perspective, the rationale underlying its investigation and prosecution role, and in very broad terms the type of considerations that apply, the variety of cases that may be raised, as well as the applicable investigation and prosecution structure and regime. Those passages state:

(a) Properly conducted investigations form a key part in POL strategy in protecting assets and reducing loss. If poorly managed, an investigation can lead to increased risk of future loss and significant damage to the corporate brand. In commencing any investigation POL needs to consider the impact in terms of the protection of

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subjected to the Codes of Practice and statutory requirements of the Police and Criminal Evidence Act.

(c) Moreover, there is another anomaly that sets POL aside from other commercial investigators. Of its 11,800 branches, only 370 of them are staffed by employees of POL. In the majority of cases, branches are either franchisees or agents who receive remuneration. As neither is deemed to be in the employ of POL, the usual practices and procedures of an employer/employee investigation do not apply.

(d) In cases where fraud is uncovered and good evidence of criminality exists, a criminal investigation will invariably commence. At the same time POL Contract Advisors have the responsibility of ensuring that any contractual breaches are investigated and any impact on the business is minimised. As a result, close communication needs to be maintained between the Security Manager investigating the criminal investigation and the Contract Advisor who needs to maintain POL services.

(e) The department must be seen, internally, as well as externally, to be acting fairly, appropriately and within the law. The investigation needs to be properly conducted to establish evidence that will support a successful criminal prosecution.

(f) Prior to commencing an investigation the Security Manager will

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(g) Cases may be raised from various sources. In each instance the information is passed to the relevant operational Team Leader who will evaluate the allegation and decide whether or not a case should be raised. Cases may be raised by a shortage at audit, or Post Office Card Account holder complaints of fraud, or from any one of its client bases: DVLA, Royal Mail, DWP etc.

(h) The course of action decided upon must be proportionate and necessary. Consideration may be given to other action that that will not necessarily lead to a criminal investigation, such as pursuing a civil enquiry for breach of contract or civil debt recovery.

(i) If the decision is to proceed with the prosecution case, the file is forwarded to CK, for advice on charges. However, in some instances Post Office Legal and Compliance Team ("**POLCT**") will decide on charges.

(j) CK will prepare advice and charges for the case (or advise no further action if appropriate). If further enquiries are required they contact the Security Manager direct, copying in the Team Leader and send an Advice detailing the further enquiries. The Advice along with charges and case file is then sent back to casework.

(k) The file is then forwarded to the designated prosecution authority ("**DPA**") for authority to proceed, who will review the case file and

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of the summonses the Security Manager will serve the summonses by way of posting them to the person concerned.

36. Although POL may handle a variety of cases, the cases that have been the subject of CK's review typically involve the prosecution of sub-postmasters or those working for or under them in sub-post offices. I do not believe of the case reviews or files sent to me I have seen a single prosecution case involving a Crown Post Office employee or an agent in the sense of an employee of a Co-op or a WH Smith for instance. The typical offence with which individuals are charged is theft and/or false accounting, though fraud by false representation often features.

37. Jarnail Singh, POL's in-house criminal lawyer, informs me that in 2012/2013 239 cases were raised, of which 48 were prosecuted.[10] In that year, compensation or confiscation sums amounted to in excess of £1.5 million, while the cost of prosecuting those cases was running at £217,000.

38. It is important to understand that POL's prosecuting role is not founded in any statutory power, and, as observed above, like RMG its predecessor, its investigators are accorded no special powers. Thus, when POL prosecutes it prosecutes purely as a private prosecutor.

39. An email from Charles Colquhoun, the Head of Corporate Finance, details the value of prosecuting in safeguarding network cash (by which I understand him to be arguing why POL should continue to conduct such

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network would quickly realise if there were a change in policy, which might increase the temptation for some agents.

ii. Retention of its prosecution role assists POL with its relationship with its insurers in that POL has one of the largest crime policies on the London market, which is underwritten by over 20 insurers. POL has an excess of £1m so most branch cash is self-insured, but POL's insurers are impressed by how seriously POL takes any leakage in network cash, so a change in its prosecution policy might worsen its relationship with its insurers.

iii. POL's current policy reassures its employees (from the Board to its front-line security teams) that securing company assets is taken seriously. Changing this policy would put some employees in a difficult position. If, for example, POL chose not to prosecute agents, it would be interesting to see how it would deal with Crown employees responsible for cash leakage.

40. I return to these arguments below, and welcome any further observations on these issues from POL.

POL investigation and prosecution policy documentation

41. In the course of this review, I enquired after any POL prosecution policy documentation and, although I was sent documents purporting to be policy

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Investigation Policy - has recently been finalised; it is detailed and complete but focuses on the POL investigations regime only.

42. The documents I have received are:

(i) **Investigation Procedures** – Version 2.0 – May 2002

(ii) Royal Mail Group Ltd - **Criminal Investigation and Prosecution Policy** – December 2007

(iii) **Royal Mail Group Prosecution Policy** - Version 3.0 - April 2011

(iv) **Royal Mail Group Policy Crime and Investigation (S2)** – Version 3.0 – April 2011

(v) **Royal Mail Group Policy Prosecution (S3)** – Version 3.0 – April 2011

(vi) Post Office Ltd – **Security Policy [Theft and Fraud by Sub Office Assistants]** – Version 1.0 – February 2002

(vii) Post Office Ltd – **Security & Audit Policy [Enquiries at Sub-Post Offices owned by Multiple Partners]** – Version 1.0 – undated

(viii) **Post Office Prosecution Policy** – Version 1.0 – April 2012

(ix) Post Office Ltd - **Internal Protocol - Criminal Investigation and Enforcement** – undated

(x) Post Office Ltd - **Criminal Enforcement and Prosecution Policy** – undated

(xi) **POL Criminal Enforcement and Prosecution Policy** and Appendix 1 flowchart – undated[11]

(xii) **Post Office Prosecution Policy – England and Wales** – November

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the document.[13] The document is effective from May 2002, and was therefore current 10 years before separation, and is directed at "Consignia Security Managers undertaking investigations". I have not been supplied with any updated version. Accordingly, I disregard it as irrelevant.

44. Also, I ignore the document listed at (ii) above, as this is several years out of date and appears to me superseded by more recent documents. The document at (iv) appears to be derivative, and an updated version, of the document at (iii), and so I deliberately disregard document (iii) also.

45. The documents listed at (iv) and (v) above, **Royal Mail Group Policy Crime and Investigation (S2)** and **Royal Mail Group Policy Prosecution (S3)**, are high level policy documents, respectively setting out the principal perceived criminal risks to RMG and its investigation response, and RMG's policy to prosecute those who have been investigated and who are believed to have committed a criminal offence against RMG.

46. Document (vi), **Post Office Ltd – Security Policy [Theft and Fraud by Sub Office Assistants]** is dated February 2002, and document (vii), **Post Office Ltd – Security & Audit Policy [Enquiries at Sub-Post Offices owned by Multiple Partners]**, is not dated. In so far as I am able to judge they appear to be investigation policy documents. Both are expressed to be POL security policy documents, but **Post Office Ltd – Security Policy [Theft and Fraud by Sub Office Assistants]** is of course pre-separation, and I have not been provided with any updated versions of either, and

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Security taking advice from POL Legal and HR "as appropriate and relevant", which I fail to understand as the decision to prosecute should surely be a legal one, not a security department one.[14] I observe that the term "as appropriate and relevant" renders the hierarchy of prosecutorial decision-making completely uncertain, fails to define roles clearly, and fails to make clear where and at what level exactly the discretion or judgment lies from whom to take advice "as appropriate and relevant".

48. POL's document provides also that in the event of any issue or disagreement arising in relation to any investigations or prosecutions, the matter is to be referred to the Director of HR & Corporate Services to provide guidance and advice to ensure that POL maintains a consistent prosecution policy.[15] I note that the Royal Mail policy document has the identical provision,[16] but RMG's provision, from which POL's is derived, is expressly based on the fact that, "It is a requirement of the Royal Mail Group Conduct Code, fully outlined in paragraph 8.4 of the Royal Mail Group Crime and Investigation Policy that in reaching decisions on conduct code actions the Human Resources Director or his or her representative must liaise with those handling any criminal investigation or prosecution."[17]

49. The same provision of the RMG policy document then deals with what is to happen in the event of "any disagreement about prosecution advice in England and Wales, or inconsistency between prosecution and conduct decisions anywhere in the United Kingdom", in which case the Head of the Criminal Law Team and the Head of the Investigation Team will consider

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document, is unclear. The fact that the identical POL provision avoids reference to any POL Conduct Code rather suggests that it may not, and, if not, highlights the problems of adapting RMG's policy provisions without consideration of POL's structure.

51. The POL document, mirroring the RMG document, appropriately applies "the full Code test" in the CPS Code for Crown Prosecutors to any decisions made to prosecute.[18]

52. The **Internal Protocol for Criminal Investigation and Enforcement** (document (ix)) "describes how POL ensures that all enforcement decisions arising from criminal investigations are taken in accordance with POL's Enforcement and Prosecutions Procedure." It is designed "to specify the role of POL's Enforcement and Prosecutions Procedure ("**EPP**") in the making of enforcement decisions by POL." "Enforcement" means "all dealings with staff, sub-postmasters or other members of the public resulting in prosecution and/or commencement of confiscation proceedings." The document is, however, a single page document, it is undated, and I am unconvinced it is complete. It purports to annex to it (as Appendix A) a flowchart, which, if it exists, is missing from the documentation sent to me.

53. **Post Office Ltd - Criminal Enforcement and Prosecution Policy** (document (x)) is an important document. I take this to be the EPP referred to in the Internal Protocol (to which that document occasionally refers). It aims "to ensure a fair and consistent approach to criminal enforcement decisions

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to the public through its retail operation. It continues, "POL is mindful that criminal acts against its business (in particular theft, fraud and false accounting) result in increased costs to the taxpayer, impact on its customers and challenges the viability of services."

55. It sets out how it intends reducing criminal acts against its business: by advice and education, fully investigating reported concerns, taking action (criminal or civil enforcement and disciplinary action) in appropriate cases, and in other instances (which are not specified) handing over investigations to the police to consider enforcement action.

56. The four guiding "Principles of Enforcement" are said to be proportionality; a fair and consistent approach; transparency; and enforcement to be focused where it is needed most. Each is then developed separately.

57. The document thereafter sets out POL's "Enforcement Options". The application of the options available to POL is said to "depend on the impact on the integrity of POL and the services it provides to the community, risks to people or to the environment, the past history and attitude of the offender, the consequences of non-compliance and the likely effectiveness of various enforcement options." In particular, POL will consider:

- The seriousness of any offence and extent of harm
- Duration of the offence
- The suspect's age, physical and mental condition

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59. Under the heading "Criminal Enforcement", the document states:

> **Prosecution** will be brought where the circumstances warrant it and where the alternative enforcement options are considered to be inappropriate. Any decision to prosecute will take account of the criteria set out in the Code for Crown Prosecutors.
>
> There must be:
>
> - Evidence of guilt sufficient to give a realistic prospect of success in criminal proceedings, and
> - A prosecution must be deemed in the public interest.
>
> Where there is a realistic prospect of conviction and formal action is in the public interest, circumstances, which warrant a prosecution may include:
>
> - Where the alleged offence has resulted in significant losses or impact on POL and the public
> - Where the alleged offence involved a flagrant or intentional breach of the law
> - Where there is a history of similar offences
> - Where the offender has refused to accept wrongdoing despite significant evidence to the contrary
> - Where the offender has failed to repay or make amends for any significant wrongdoing
>
> POL will consider the following circumstances when deciding whether or not to prosecute in addition to those above:
>
> - The seriousness and effect of the offence
> - The deterrent effect of a prosecution on the offender and others
> - Any mitigating factors

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The document requires periodic review. Although there is at the foot of the last page of the copy document sent to me a box allowing for insertion of the date of implementation of the policy, the date for its review, and the date of its formal approval, each is blank.

61. I am left totally unclear of the current status or origin of the **Internal Protocol for Criminal Investigation and Enforcement** (document (ix)) and the more impressive and detailed **Criminal Enforcement and Prosecution Policy** (document (x)) and how they, particularly document (x), are intended to fit within the new policy regime.

62. The document, clearly in draft, and undated, and entitled **POL - Criminal Enforcement and Prosecution Policy** (document (xi)) which annexes as Appendix 1 a flowchart, describes itself as "intended to be the new public facing policy under which Post Office will conduct all future investigations of alleged criminal activity against the Post Office". It states that it follows a review of current policy, which was largely based on previous RMG policy.[20]

63. How, if at all, it is, or was, designed to sit with the far fuller and detailed namesake **Criminal Enforcement and Prosecution Policy** (document (x)), to which I have made extensive reference above, I know not. The draft document sets out in short form and in basic terms over a mere two pages some of the policy ideas found elsewhere.

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careful consideration before it becomes final policy. It is important that POL's prosecution policy documentation includes criteria that accurately reflect POL prosecution policy and its guiding principles.

65. While it is not the principal function of this review to critique a draft document that may in time be submitted to the Board for approval as reflecting POL prosecution policy, nonetheless, I do have some preliminary comments to make about it.

66. Paragraph 1.3 in the "Introduction" section states, "This Policy statement is intended to explain the way in which Post Office Ltd will deal with allegations of crime committed against our assets in England and Wales". Footnote 1 makes the bold claim, "Post Office Ltd is a recognised prosecutor by the Ministry of Justice; currently Post Office Ltd delegates the prosecuting function to Messrs Cartwright King Solicitors." An identical claim was made for RMG in the document **A Brief History of Investigations, Prosecutions and Security in Royal Mail.**[21] I am unconvinced that this is or has ever been an accurate statement. The right to prosecute privately is conferred by section 6(1) of the Prosecution of Offences Act 1985, and I would be surprised if POL or RMG has ever been "recognised" by the Ministry of Justice to prosecute privately in any official sense.

67. In section 2, the scope and aims of the policy document are set out; it

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document, prosecute those alleged to have committed criminal offences against it, whether employee, non-employee, contractor or customer.[23]

68. In the section headed "General Principles",[24] the test to be applied to the decision to prosecute is appropriately expressed to be the two-stage test within the Code for Crown Prosecutors ("the full Code test"),[25] in addition to which POL will apply the further considerations set out in the policy document.

69. The decision-taker is to be a qualified lawyer independent of any POL department having a direct financial or other interest in prosecution.[26] This is said to mirror CPS practice. I have however detected two difficulties: (1) this provision seems to me to be in conflict with the identification of the Head of Security as the ultimate decision-taker (the DPA) as revealed in other policy documents including the very recently drafted **Conduct of Criminal Investigation Policy** document (document (xiii)),[27] and (2) in logic, this provision might exclude any POL in-house lawyer or the Director of HR & Corporate Services (if the hierarchical dispute resolution envisaged in **Post Office Prosecution Policy** (document (viii)) is, or is to be, written into POL policy) and such a provision might even exclude CK and its lawyers, as they are arguably excluded by the terms of paragraph 3.3.ii. The decision-making hierarchy and this provision therefore needs reconsideration.

70. The section headed "The Decision to Prosecute" then sets out factors, which it is said POL will apply, in addition to the full Code test. But the list of

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D. DISCUSSION OF THE CASE FOR AND AGAINST THE RETENTION BY POL OF ITS PROSECUTION ROLE

The arguments

75. The principal arguments for the retention by POL of its investigative/prosecutorial role are visibility and the effect of deterrence, "a clear signal" that POL will not tolerate dishonesty across its network. Thus, to assign an important function, for example, to the CPS, would be to send out the wrong message.

76. I would remain confident that if POL were to divest itself of its prosecutorial function, any such change would be managed in a way that the network knew that this was not a change of policy signifying POL was relaxing its view on dishonesty, but rather a change of approach, so that POL's network of staff and agents would realise that dishonesty would continue to be viewed extremely seriously and would, in appropriate cases, be reported to police.

77. Indeed, I suspect it is hardly likely that those working for POL (whether employees or agents) would suddenly regard a change of policy as a temptation to offend when previously they would not. A change of POL policy in this regard would not mean a change in the criminal law, and all staff and agents must surely know that theft and false accounting are contrary to the criminal law, and will be reported and prosecuted, whoever's function

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78. The second point Mr Colquhoun makes goes to one aspect of the business case for retention, about which I am in no position to comment. My review is not to consider the business or reputational case for retention, which is another matter entirely, and beyond my remit; mine is to look at POL's prosecution role purely from a functional perspective to see if there is a better case for POL's prosecution arm being subsumed into the prosecutorial function of an existing public prosecuting authority such as the CPS.

79. As regards Mr Colquhoun's third point, while I accept that POL has assets to protect, and that POL takes seriously securing company assets, in that regard POL is no different to banks and other financial and business organisations, who have no prosecution function, and who rely on the police and other enforcement agencies and prosecuting authorities, such as the CPS or the Serious Fraud Office, to investigate and prosecute criminal offending against them.

80. It may indeed be anomalous that of POL's 11,800 branches only some 370 of them are staffed by employees of POL, but that does not mean that agents are any more likely to offend than Crown employees or others. The real distinction, if one is to be made, is that agents such as sub-postmasters are likelier to be working in smaller concerns, often as an adjunct to a self-owned business, with less or no on-site supervision, but I do not accept that the mere change of policy would affect the behaviour of otherwise law-abiding agents and staff.

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that would have to apply across the board – not just to the prosecution of agents.

82. The **Post Office Prosecution Policy – England and Wales** document (document (xii)) emphasises POL's responsibility for, and guardianship of, its public and private assets, and the protection of reputation and integrity as important policy aims. The **Conduct of Criminal Investigation Policy** document (document (xiii)) argues that properly conducted investigations form a key part in POL strategy in protecting assets and reducing loss, and that, if it is poorly managed, an investigation can lead to increased risk of future loss and significant damage to the corporate brand, and in commencing any investigation POL needs to consider the impact in terms of the protection of business assets and limiting potential liabilities weighing against the reputation of the organisation or damage to the brand should the investigation fail.

83. What has potentially damaged POL's brand is the Horizon Online issue, which has shone a spotlight on POL, and its prosecuting function, as never before. The adverse publicity about it is also detrimental to public confidence in the criminal justice system in general and POL's prosecution capability in particular.

84. It is an irony that the Horizon issue was not something POL could have reasonably foreseen. The justifiable criticism that there have been possible miscarriages of justice in prosecutions based on Horizon Online data is

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86. The difficulty that presents itself to POL now is that a number of convictions, as well as current and pending cases, are and have been reliant on the correctness of Horizon Online data and the integrity of the system, and, in the context of the prosecution process and POL's obligations, the proper disclosure of material that might reasonably undermine the prosecution case or assist the case for the defence. It is that, which is the focus of CK's review that is underway.

87. In light of the SS interim report of 8 July 2013, POL and CK are presently engaged in an on-going rigorous and robust process of sift and review of all affected past and present cases. The focus is on the alleged non-revelation to POL and CK of relevant material by the Fujitsu Services Ltd ("**FSL**") expert customarily relied upon by POL to support the integrity of Horizon Online data, which underpins its prosecutions.

88. In cases, which are subject to the disclosure regime under the Criminal Procedure and Investigations Act 1996 ("**CPIA**"), CK is applying the test for disclosure as provided in section 3 of the CPIA to the material it now has in its possession. In past cases, CK is asking itself the question whether had POL been in possession of the material at the time of the prosecution it would have disclosed it in compliance with its disclosure duties, recognising its obligation post-conviction to disclose any information that might cast doubt on the safety of the conviction.

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enjoys, or none as efficient as POL's. It would involve CPS branch or regional offices local to the commission of the offence (possibly also supported by the local police force) deciding on charge and, if charged, prosecuting the cases. Realistically, this would mean a fragmented approach, with little chance of central control or close oversight of these cases, or the issues affecting Horizon.

90. The claimed problems with Horizon Online would not disappear, but in my opinion decentralisation of the investigation and prosecution of these cases could only operate to exacerbate the difficulty, and would inevitably lead to an inconsistent approach and barely reconcilable decisions being taken.

91. Having considered the issues carefully, I can see no advantage to POL shedding itself of its private prosecution function, and in fact only disadvantage. If POL's policy is to operate a prosecuting policy that is fair, open and consistent, then I cannot see that anything other than retention of this role by POL will achieve that.

92. The real benefit to POL, retaining its function, which in my opinion risks becoming totally diluted or lost if its function were assigned to a public prosecuting authority such as the CPS, is POL's undoubted expertise at investigating and prosecuting the very nature and volume of cases it handles annually, which provides it with a unique specialism inevitably leading to good and efficient use of its resources, as well as efficacy. That is not just of real benefit to POL but in my judgment it is also of real benefit to the general

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prosecuting where the Horizon Online system was or became an issue in the case.

94. In my opinion, there is no other organisation better placed than POL to perform this important function. Even if the police and the CPS had been carrying out the investigation and prosecution of those cases, which have become the subject of the current review, I do not see that they would have been in any better position than POL to appreciate the integrity issues, if, as is said to have happened, they were not revealed to POL by the FSL expert they instructed to report upon Horizon's integrity. Had that been the scenario, the CPS would have been in no better position to disclose the alleged Horizon Online defects or "bugs" than POL has been.

95. Although this is not a point that I have weighed in the balance in reaching my conclusions, nonetheless I think I should make the observation that if POL were to decide that it wished to free itself of its prosecution role to the CPS, in these times of budgetary restraint and depleted resources, from which the CPS has been far from immune, I think it unrealistic for POL to expect the CPS to welcome it, especially now.

96. The last consideration brings me also to consider one other hybrid possibility. Is there any sensible and rational argument to split POL's prosecution function from its investigations function? What is envisaged here is that while POL would continue to investigate the nature and number of criminal offences now investigated by it, the decision to charge in those

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expect must obtain now, where POL decides it should involve the police and CPS; POL investigators will retain involvement but the investigation itself is in partnership with the police (rather than the involvement of police being only for intelligence, arrest and/or search purposes), and, once complete, the file will be submitted to the CPS for a charging decision. I can see that there will be situations now where police involvement might be necessary, such as cases where there are concerns about the threat of violence or belligerence to POL staff by the suspect or others, or where the suspected offence or offender is such that the police and ultimately the CPS are considered better placed to deal with the case. But these must be rare or exceptional cases given the nature of the suspected offending POL typically investigates.

98. However, it is not the rare or exceptional case that the hybrid scheme envisages, but a wholesale divestment of the decision-making and prosecution function over cases POL investigates. While it may be argued there may be reputational or commercial advantage to POL in promoting such a scheme, (which I emphasise is not a matter for this review), first, it suffers the identical disadvantages I have highlighted above, and, second, the practical reality, to which I have also already adverted, is that the CPS is unlikely to be receptive to a request to assume ownership of the volume of cases raised and/or prosecuted by POL annually.

99. I recognise that I have to a large extent focused on Horizon issues that have given rise to the current review. I acknowledge also that the question whether POL should retain its prosecution role is a much wider question for POL,

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The potential for a conflict of interest

100. One other issue, which I have necessarily considered with some care, is whether FSL's commercial relationship with POL, and the expert witness's employment with FSL, did create, or was capable of creating, a conflict of interest, incompatible with the prosecutorial duties and obligations POL has as a prosecutor.

101. There are bound to be quite understandable commercial sensitivities to FSL's systems, which I am confident it would ordinarily be loath to divulge to its competitors, as would any company in its position. FSL is in a contractual relationship with POL, and the expert relied upon to speak to the integrity of the system is himself employed by FSL, and he was one of its architects.

102. If commercial sensitivity about the integrity of a system were to lead to the non-revelation of adverse issues with the very system used to underpin POL criminal prosecutions, then that would be inimical to POL's prosecutorial duty to act fairly and to disclose relevant material. It would, if it existed, create an intolerable conflict of interest. The two positions would be entirely incompatible. I make perfectly clear that I have seen no evidence, and I have heard no suggestion, that what is said to have happened here was due to commercial sensitivity or any real or perceived conflict of interest between POL and FSL, or on the part of the expert, and I would reject any such

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LEGALLY PRIVILEGED AND CONFIDENTIAL

INTERIM REVIEW OF CARTWRIGHT KING'S CURRENT PROCESS

Introduction

1. I am asked to provide an interim review of Cartwright King's ('CK') current process. I have been provided with:

   (1) A document headed "Draft Paragraphs for Insertion into Reply to CCRC", which was a document designed by CK to assist POL in replying substantively to a letter of 12 July 2013 from the CCRC; and

   (2) An Advice dated 15 July 2013 by Simon Clarke, a CK in-house advocate, who has advised about the future use of expert evidence relating to the integrity of the Fujitsu Services Ltd. Horizon system.

2. The first document is informative of the processes that CK is currently adopting to identify cases for review. The second document focuses on the problems of disclosure associated with the evidence of Dr Gareth Jenkins in past POL prosecutions and the approach to be adopted towards them and pending prosecutions.

3. I accept that given the intended nature of the first document, the detail of the review process CK is embarking on may be incomplete, and so any views and recommendations I express below should not be taken as anything more than

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confidential aspects of the Horizon system and/or Dr Jenkins' evidence on such grounds.

22. If there have been such cases then it will be essential to know the nature of the applications and the rulings.

23. *Custody cases*: individuals who come within the remit of the CK review who are in custody, whether as a convicted defendant or a defendant awaiting trial, must of course be prioritised.

Interim recommendations

24. On the basis of the information currently available to me, I make the following interim recommendations:

a) CK should consider the extent to which non-disclosure by Dr Jenkins of aspects of the Horizon system is the only issue potentially forming any grounds of appeal or whether their review should be broader based to encompass other related issues or potential grounds of appeal. If it is decided that the current review is too narrow, CK should set criteria for the broadening of the review.

b) CK should be alive to, and therefore consider their approach to, the potential for any conflict of interest between them and/or prosecuting counsel and Dr Jenkins. If any such conflict does arise, or may be thought to arise in any given case, counsel who

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d) One of the case files I examined (Ishaq) did not include an Initial Sift Result Sheet. The Initial Sift Result Sheet I have seen in the Hutchings file lists two questions, the second of which is subdivided into three questions. Given the 90 cases, which CK has examined so far, I cannot conceive that one person is performing the sifting process. The composition of the sift sheet attempts standardisation by focusing the sifter's attention on a series of questions. My concern is whether the questions may be too narrow. As the reviewing process continues, experience may provide the answer. However, if the questions do prove to be too narrowly drawn, and require recasting, cases that have already passed through the sift will need to be reconsidered.

e) In order that the sifting and review process does not overlook suitable cases in which the offender has pleaded guilty, CK should consider setting broader and more focused criteria to identify all such cases, which should come within the review.

f) To identify cases, if any, in which there have been any abuse of process hearings in which the Horizon system and/or Dr Jenkins has been at issue. If there have been any such abuse of process hearings, CK should provide the reasons for making any such application as well as the detail of any rulings given.

g) To identify cases, if any, in which there have been claims to PII, seeking, for instance, to protect commercially sensitive or confidential aspects of the Horizon system and/or Dr Jenkins' evidence on such grounds and the detail of any rulings given.

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summary the issue/s which has/have been determinative of the review. I envisage that the spread sheet will encompass on three separate work sheets (1) past relevant POL conviction cases (identify if RMG or POL); (2) pending trials; and (3) cases subject to appeal (application for permission or permission granted) on conviction and/or sentence or on sentence alone (and stage reached).

j) If the letter to which CK makes reference is different to the post-conviction post-review disclosure letter, I would please like to see a copy of a sample letter, together with an idea of the nature of any material CK is sending to potential applicants in addition to Second Sight's report, and any Helen Rose report.

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2 August 2013

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ADVICE ON THEFT & FALSE ACCOUNTING

1. I have been asked to advise POL on my view of the "equality" of the offences of theft and false accounting under the Theft Act 1968, and to consider the terms of the letter sent by POL to SS on 24th February 2015.

2. SS is, I am told, beginning to advance arguments that POL is abusing its prosecutorial role by charging subpostmasters with theft, when there is no evidence of it, in order only to pressure subpostmasters into pleading guilty to false accounting.

3. I have read M103 (the case of Timothy Burgess) where at §4.19 to §4.22, SS assert the following: -

    1) In the POIR, POL had said Burgess had initially been charged with theft "but this was subsequently withdrawn".
    2) The Magistrates declined jurisdiction based on their sentencing powers and sent the case for trial when theft was the only live matter.
    3) POL representations at court had been that Burgess had taken the money and altered the accounts to cover his tracks.
    4) At the Crown Court, POL responded favourably to a letter offering a plea to false accounting in the alternative to theft and so POL did not

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theft.[1]

9) Thus, SS concludes "this was possibly an abuse of Post Office's authority ..." and prior review say by the CPS might have led to the theft charge being discontinued before the case arrived at the Magistrates' Court.

10) SS have seen several such cases where the "practice has been frequently employed by Post Office to encourage defendants, in the absence of evidence of theft, to plead guilty to the "lesser" charge of false accounting in the hope of avoiding a custodial sentence".

4. I have read CK's response to these allegations upon which Jane McLeod's letter to SS of 24th February 2015 appears to be based.

5. I have also been made aware that Sir Tony Hooper has seen the letter, and the gist of what he has said, among other things, is that false accounting *is* a lesser charge than theft, so SS was not incorrect to characterise it as such. He added however that if someone steals, then that is more serious than if someone falsely accounts to cover up an accidental loss of £10,000. But if someone falsely accounted for say £500,000 then that offence is of greater seriousness.

6. In its advice, CK had said that SS's views were inexpert and wrong. On this particular topic, they said:

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- *In fact, both offences are equal in law: both are offences of dishonesty and both carry the same maximum sentence (7 years imprisonment).*

7. This was used as the basis for a letter that was sent to SS, which included the statement:

- *The suggestion that the offence of false accounting is a less serious offence to that of theft is incorrect. Both offences are equal in law: both are offences of dishonesty and both carry the same maximum sentence (7 years imprisonment).*

8. I understand that POL wishes to ensure that the statement made in its letter of 24th February 2015 is defensible. Thus, my specific advice is required on the following:

- As a basic legal point, whether both offences do carry the same maximum sentence and whether they are both offences of dishonesty (we presume that this is correct and is not the source of Tony's comment)?
- What arguments could be advanced to defend this statement?
- What arguments could be advanced to attack this statement?
- Whether in your view it is fair to characterise these offences as being equal (against whatever yardstick you think is most appropriate to apply)?

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seriousness than theft. But the examples he gives are of course also generalisations, and are not case-specific examples.

11. There will indeed be cases where a theft causing actual loss, if the default is say in the 10s of £1000s, will be of far greater seriousness than the false accounting that was undertaken to cover it up. Conversely, there will be cases where the false accounting was of far greater sophistication than the theft it was designed to cover up as to characterise that conduct as of greater seriousness.

12. To illustrate the point a little differently, the Sentencing Guidelines Council issued a definitive sentencing guideline effective from 5th January 2009 to cover theft including (at Section E) the situation where there had been theft in breach of trust for which the Council set custody starting points and ranges of sentence for certain financial levels of offending. Subject to additional aggravating or mitigating factors, under this guideline, the theft of £125,000 or more, or theft of £20,000 or more in breach of a high degree of trust attracts a starting point of 3 years' custody in the range of 2 to 6 years custody. The theft of £20,000 or more but less than £125,000, or the theft of £2,000 or more but less than £20,000 in breach of a high degree of trust attracts a starting point of 2 years' custody in the range of 12 months to 3 years' custody. The theft of £2,000 or more but less than £20,000, or the theft of less than £2,000 in breach of a high degree of trust attracts a starting point of 18 weeks' custody in the range of a high community order to 12

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different custody starting points were indicated within certain sentencing ranges depending on the harm caused and the culpability of the offender (high, medium or lesser) starting at Category 1 (£500,000 or more; high culpability) providing a starting point of 5 years 6 months in the range 4 years to 6 years 6 months' custody to Category 5 (less than £5,000; low culpability) providing a starting point of a fine in the range of a discharge to a low level community order.

14. My point is that merely because the charges involve dishonesty and maximum sentences of 7 years is not to tell the whole story of how in individual cases a judge is likely to sentence one from the other. Each involves a careful process of assessment of the culpability of the offender, the harm caused, the aggravating and mitigating factors and the individual guideline into which the offence fits.

15. If I may say so, the so-called "equality" of the offences is an unnecessary and unprofitable focal point of attention. The other issues raised by the letter have greater force and are defensible.

16. I also have in mind the case of *R v Eden* (1971) 55 Cr.App.R. 193. This was a Post Office prosecution case, the outcome of which turned on its own facts. However, the importance of the case lies in what it had to say about parallel theft and false accounting charges in such prosecutions.

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temporary gain. In future in Post Office prosecutions relating to parallel charges of theft and false accounting, the prosecution should make up its mind whether it intends to submit that there should be a conviction for false accounting only if theft is proved; if so, reliance should be placed on a count for theft only. On the other hand, there may be cases where it is wise to include in the indictment counts for false accounting also, as, for instance, where the prosecution intends to submit that temporary gain may have been the object of the defendant's dishonest act.

18. The distinction that was being made between theft on the one hand and false accounting on the other is that theft requires proof of the dishonest appropriation of property belonging to another with the intention of *permanently* depriving the other of it. False accounting is committed where a person *dishonestly* with a view to gain for himself or another or with intent to cause loss to another destroys, defaces, conceals or falsifies any account or record or document made or required for any accounting purpose. But "gain" or "loss" for the purposes of false accounting extends to any gain or loss whether *temporary* or *permanent*.

19. Thus the Court's view that it would be wise to have on the indictment a count of false accounting where for example a *temporary* gain could be the object of the dishonest act. A *temporary* gain could not be the subject of a theft charge where the deprivation has to be *permanent*. Otherwise the Court could not see the point in having two charges in parallel if the prosecution's

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In addition to those matters set out in the Code for Crown Prosecutors, Post Office Ltd. will apply the following considerations:

i. Alternative charges. Where a suspect is charged with offences of theft and false accounting arising out of the same basic facts, those charges will always be alternative charges.[12] This approach is not to be regarded as an invitation to plead guilty to any particular charge(s).

21. Footnote 12 stated, "This is consistent with the decision of Sachs LJ in *R v Eden* 55 Cr.App.R. 193 CA". I m not sure this is entirely consistent with the decision. However, where the evidence supports the addition of alternative charges, for instance, where POL cannot say on the evidence if there has been any actual financial loss or whether the false accounting was simply to cover up for accident or muddle where there has been no actual loss, alternative counts are entirely permissible, as they are where some distinction is to be made between permanent deprivation and a temporary gain or loss.

22. In conclusion advise:

1) Both offences of theft and false accounting do indeed involve dishonesty and do carry a maximum sentence of 7 years' imprisonment.
2) I think the only argument that may be advanced to defend the statement is that it is accurate *within the narrow context* in which it

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depend on its own facts, as is demonstrated by the many ways in which such offences may be committed, and how offenders may be sentenced for them.

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8th March 2015

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SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE

Dated 20 March 2014

POST OFFICE LIMITED

REPORT INTO INITIAL COMPLAINT REVIEW AND MEDIATION SCHEME

LEGAL ISSUES

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1 EXECUTIVE SUMMARY

1.1 We set out in this executive summary our key conclusions on the legal analysis of the complaints made by SPMRs about Horizon.

1.2 The relationship between SPMRs and the Post Office is governed by the standard form contract which, according to its terms, allows the Post Office to recover losses and is terminable on three months' notice without the need to specify a reason. The relationship between the SPMRs and the Post Office is one of principal and agent and the SPMRs are not employees. There is no broader duty of care which would extend the contractual duties owed by the Post Office in any respect relevant to the issues in this Report.

1.3 The key factual issue is whether and to what extent Horizon might be said to be reliable, what defects there may be in it and how any such defects might manifest themselves and translate into errors in the state of the account between an individual SPMR and the Post Office. Such relevant legal risks as exist arise only in the event that there are provable malfunctions in the Horizon system which are causative of losses on the part of the SPMR.

1.4 Absent such proof that Horizon is not working as it should, the Post Office should be able to recover losses which the Horizon records indicate are owing on an individual SPMR's account. If the Post Office is entitled to recover losses, then there can be no question of a consequential loss claim on the part of the SPMR relating to their recovery (for example for damage to the SPMR's business or for stress).

1.5 If, in an individual case, a SPMR is able to show that the account between him and the Post Office, as evidenced by Horizon, is inaccurate, he has a claim to the recovery of any losses he has mistakenly paid. This would not carry with it a right to claim consequential losses.

1.6 There may be cases in which the Post Office has given inadequate notice of termination of the contract with a SPMR (for example, terminating him summarily without justification). In those cases, the SPMR is entitled to payment of what he has lost in net income over the period – up to three months. He may also, on the facts, have a consequential loss claim if he argues and establishes that he has lost a chance to sell his business as a going concern in the period for which he should have been entitled to notice.

1.7 Some SPMRs allege that the Post Office has offered them inadequate training and support. We do not think that these claims, even if established, affect the Post Office's

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2 BACKGROUND

2.1 This Report has been commissioned by the Board of the Post Office Limited ("**the Post Office**") following concerns over the level of claims and costs and other potential legal and financial exposure for the Post Office in connection with the Initial Complaint Review and Mediation Scheme (the "**Scheme**").

2.2 We understand that the Scheme was established in August 2013 with the aim of resolving various allegations that had by then been made by certain interested parties about the Horizon financial transaction and accounting system ("**Horizon**") used by the Post Office and the Post Office's Subpostmasters ("**SPMRs**"). It was claimed by a small, but very vocal, minority of SPMRs that there were problems with Horizon and that if Horizon recorded that there were losses at a particular Subpostoffice this was not necessarily because the SPMR had stolen or otherwise lost money or stock but because Horizon was malfunctioning. This issue attracted political comment and there was debate in Parliament about it.

2.3 Importantly, Jo Swinson, the Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs, noted that there was no evidence of a systemic problem with Horizon.[1] This has also been the Post Office's conclusion on the information so far available to it. We note that there is, so far as we understand it, no objective report which describes and addresses the use and reliability of Horizon. We do think that such a report would be helpful, though there is a decision to be made about how broad and/or thorough it needs to be.

3 AIMS AND OBJECTIVES

3.1 We were initially instructed to prepare a report with the aim of addressing the following key issues:

3.1.1 Whether and to what extent the Post Office has any legal liability with respect to complaints made by applicants to the Scheme ("**Applicants**").

3.1.2 The nature and extent of the risks arising from and associated with the Scheme in its current form.

3.1.3 Whether and to what extent the Scheme, as currently structured, can be sensibly modified in order to improve the efficiency and effectiveness of its operation, and mitigate any of the risks identified above.

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3.3 We anticipate that the Post Office will wish to have regard to, and come to a view on, the following matters, in light of the conclusions reached in this Report in order to guide the Post Office's consideration of the issues in paragraphs 2.1.2 to 2.1.5 above:

3.3.1 Does the Post Office wish to consider paying compensation by reference to principles other than legal entitlement? If so, how will it articulate and apply those principles? How will it justify its position to all SPMRs (Applicants and those who have not complained) and to stakeholders?

3.3.2 Does the Post Office wish to establish a full baseline audit of the functioning of the Horizon system?

3.3.3 How important is it to the Post Office to determine the facts of each individual claim? In any claim is the Post Office's stance to be more conciliatory than adversarial? What are the limits of this approach?

3.3.4 How and to what extent will the Post Office wish to strike a balance between resolving past issues and putting the future operation of Horizon and the relationships with SPMRs on a sound footing?

3.3.5 How and to what extent will the Post Office wish to strike a balance between the matters above and achieving a satisfactory political outcome, including with regard to what has been said in Parliament about the Scheme and Horizon?

3.4 In accordance with our instructions, this Report addresses the issues as a matter of law, only. We fully appreciate that many of the issues will have political and public relations implications for the Post Office or may have such implications in the future. We can certainly, in due course, offer our views as to where such issues may arise in the context of the matters outlined in paragraphs 2.1.2 to 2.1.5 above. Some measure of political engagement will doubtless be called for. It is a decision for the Post Office what measure of criticism or public relations damage it could and should tolerate – this is a factor which applies whether the Post Office decides to compensate SPMRs otherwise than in accordance with their legal entitlements or declines to pay such compensation and thereby doubtless frustrates their expectations. The Post Office may decide that it is sensible to engage specialist public relations advice to guide the management of this issue.

4 BASIS OF THIS REPORT

4.1 The issues in this Report are discussed primarily from the perspective of the legal rights

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4.2.1 we have only reviewed certain documents prepared by or on behalf of Second Sight, the Working Group or SPMRs or the JFSA and have otherwise had no contact with any of those parties;

4.2.2 we have had no contact with Fujitsu, the company which designed, provided and supports the Horizon system;

4.2.3 we are not in a position to test the facts of any of the claims; and

4.2.4 we have been asked not to consider certain matters, including PI and D&O insurance.

4.3 We reference throughout this Report where appropriate the documents from which we have derived facts forming the basis of our views. All other facts referred to herein are based on discussions we have had with the Post Office Scheme project team. We would welcome any comments on facts or background we have stated in this Report which appear to be inaccurate or incomplete. They could affect the views and conclusions we have reached.

5 WHETHER AND TO WHAT EXTENT THE POST OFFICE HAS ANY LEGAL LIABILITY WITH RESPECT TO COMPLAINTS MADE BY APPLICANTS

Duties owed by the Post Office to SPMRs and duties owed by SPMRs to the Post Office

5.1 It is helpful to start this section with an overview of the legal relationship between the Post Office and the SPMRs. That, self evidently, provides the foundation for the issues identified in the various complaints made by SPMRs.

Contract

5.2 There is a contract which we are told is in standard form and which all SPMRs are required to sign. We have a copy described as the 1994 issue of the standard contract with SPMRs, amended to include all contract variations issued since 1994, although the document was never issued in this form to SPMRs ("**the Contract**").

5.3 We understand that certain SPMRs dispute whether they signed a contract at all and there may, in individual cases, be debate about which variations were received and/or are effective. This would be an issue which would need to be resolved in any particular claim. We have assumed in this Report that the contractual terms which apply are those in the version of the document which we have received.

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Non-employment

5.6 The SPMRs are not employees of the Post Office. This is critical as it means that there are certain legal protections, both statutory and at common law, to which SPMRs are not entitled. Not only is this clear from Clause 1 of the Contract it was also established in *Commissioners of Inland Revenue* v *Post Office Limited*[2] and we note that in later cases, for example *Moeze Lalji* v *Post Office Limited*,[3] the position seems to have been accepted and the contrary not argued.

No relevant duty of care

5.7 Where the parties are in a contractual relationship, that is the starting point for determining their duties where the conduct in question is covered by terms of the Contract. So if the conduct relied on for the claim is conduct covered by the Contract, the contract should determine the extent of the parties' rights and liabilities. That is not to say that there may not be an implied (or even an express) term to the effect that the party rendering the performance should do so with reasonable skill, care and diligence. Where the party in breach can be said to have performed his contractual duty negligently then the party suffering the loss can claim in either tort (negligence) or contract. But this does not mean that he can rely on a duty of care in negligence to extend the duties owed under the contract.

5.8 If the SPMRs wished to allege that the Post Office owed them a broader duty, not covered by the Contract, then they would need to allege and establish that the Post Office owed them a duty of care. On the usual principles, this would depend on an assumption of responsibility by the Post Office in the relevant respects. The existence of the Contract does not preclude there being a duty of care, but for matters covered by the Contract, the Court should not find that one party assumed a responsibility which would extend the duties he owed beyond the Contract.

5.9 What the SPMR cannot do is to extend the duties of the Post Office by claiming some ill-defined and over-arching duty of care covering all aspects of the relationship between the Post Office and the SPMR, as this would interfere with the allocation of risks under the Contract.

5.10 In the respects which are relevant for the purposes of this Report we do not consider that the SPMR will be able to establish a duty of care and we think that the relevant obligations will be defined by, and limited to, the Contract.

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Office as a result of their experiences with Horizon and several other or related complaints somewhere in between (some SPMRs have several of these issues). In particular, we have seen complaints made about:

5.12.1 wrongful "loss recoveries" in respect of amounts reported by Horizon as due to the Post Office, including in some cases, various categories of alleged consequential losses, in one case, following the determination of the relevant loss recovery action against the Applicant in Court and in another, after a SPMR had been suspended and lost access to Horizon;

5.12.2 Horizon-related customer payment malfunctions or lost cheques and transaction corrections resulting in the loss of limited sums (in some cases, under £100);

5.12.3 unauthorised foreign exchange transactions being entered into the Horizon system without a SPMR's knowledge, but without any specific allegation of loss incurred by the SPMR as a result;

5.12.4 printing of excess receipts in respect of a 67p postage transaction;

5.12.5 an inability of Horizon properly to account for GIRO payments and SPMRs having to trust the Post Office about transaction corrections;

5.12.6 criminal charges: in circumstances where the SPMR has been subject to criminal allegations of false accounting but where they say the false accounting arises from cheques being lost in the mail or where they have retracted an admission made under caution to the criminal conduct;

5.12.7 wrongful termination of SPMRs' contracts;

5.12.8 inadequate training given to SPMRs by the Post office in respect of Horizon; and

5.12.9 inadequate telephone or other day-to-day support services provided by the Post Office to SPMRs.

5.13 We have not, nor are we in a position to, investigate the facts of these complaints. They would have to be seen on a case by case basis. Our comments below are based on principles of general application, but the result they produce in any one case will depend on the particular facts. Horizon is a particular issue in this respect and deserves comment of its own (see paragraphs 5.20ff below).

5.14 Some of the complaints made are no more than observations on, and frustrations with, the operation of Horizon. They have not been translated from facts into allegations that a

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Wrongful loss recovery

5.17 The Post Office regularly recovers "losses" from SPMRs. This happens by one of four methods:

5.17.1 The SPMR notices that there is a loss shown in his statement of account and makes good that loss without a formal request from the Post Office;

5.17.2 The Post Office requests that the SPMR makes good a loss and the SPMR pays in response to that demand;

5.17.3 The Post Office, after an investigation process which envisages the participation of the SPMR, holds back money from the next payment due to the SPMR to cover a loss which has arisen; or

5.17.4 The Post Office takes civil proceedings for the recovery of a loss and is successful.

5.18 We note that the Post Office recovers losses through any and all of the above methods on a regular basis. The vast majority of SPMRs accept not only the Post Office's legal right to recover such losses, but also the way in which they are calculated through Horizon. The decisions made by the Board now as to the circumstances in which such losses will be "repaid" or reversed will potentially affect not only those SPMRs who have brought complaints to date but also all those SPMRs who have paid losses without complaint.

5.19 There are two main issues in the recovery of losses:

5.19.1 the way in which losses are calculated; and

5.19.2 the Post Office's legal entitlement to seek those losses from a SPMR.

The way in which losses are calculated

5.20 It is this question which has given rise to the dispute between aggrieved SPMRs and the Post Office. It focuses on the operation of Horizon.

5.21 We do not know what was said to SPMRs at the time of Horizon's introduction in 2000 as to its purpose and status. Nevertheless, it seems to be accepted by all involved that Horizon produces and maintains the accounts on which all parties rely.

5.22 The SPMR is, day to day, responsible for inputting transactions to the Horizon system. It provides a record not only of what the SPMR has received from the Post Office by way of stock but also what he has sold, and the cash he has received. Horizon is the only system

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"The Subpostmaster must ensure that accounts of all stock and cash entrusted to him by Post Office Ltd are kept in the form prescribed by Post Office Ltd. He must immediately produce these accounts, and the whole of his Post Office branch cash and stock for inspection whenever so requested by a person duly authorised by Post Office Ltd."

5.25 This duty to keep an account also arises under the general law by virtue of the principal/agent relationship. An agent is required to keep an accurate account of all transactions entered into within the scope of his agency and he has to be ready to produce that account at any time to his principal. If he fails to keep and produce accounts then the principal is entitled to assume everything against him.[5]

5.26 SPMRs are asked to agree accounts regularly. We understand that they signify their agreement by an appropriate entry on Horizon. If a SPMR disputes the state of his account, he is free not to agree that account on Horizon.

5.27 An agent is usually held bound by his own accounts save if he can show that he made a mistake. Once an account is agreed, the principal can sue on it. We think that there is a good argument that at law, once the SPMR signifies his agreement to an account on Horizon which shows a balance due to the Post Office, the Post Office can sue on this as an account stated. This appears to be the basis of the decision in the *Castleton* case. The principle of an account stated also applies where debts are owed in both directions. So, once Horizon has set amounts owed by the Post Office to the SPMR (if any) against amounts owed by the SPMR to Post Office in Horizon and the SPMR signifies his agreement to them, the accounts are settled. Generally, settled accounts will not be re-opened, unless drawn up under a mistake or the agent is guilty of fraud.[6]

5.28 Horizon is an electronic point of sale IT system used in Post Office branches. It tracks transactions and also records levels of cash and stock. We are told, and can readily appreciate, that Horizon is a complex double entry accounting system, made the more complicated because of the range of products and services which the Post Office sells. It also connects to other systems for particular services, for example, banking.

5.29 Suffice it to say for present purposes that it is possible that Horizon will, at the end of every day and therefore week, show either a shortfall or a surplus. There are two ways in which Horizon could present an inaccurate picture of the "true" state of account between SPMRs and the Post Office. Either the SPMR could have keyed in transactions incorrectly, or there could be some malfunction with Horizon itself. User error is a risk with any system. The Contract would entitle the Post Office to recover in any case where there was user

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This paragraph contemplates that the circumstances in which a SPMR will not be required to make good a loss will be "exceptional" although clearly this issue only arises if the SPMR is liable for the loss in the first place.

5.43 The wording of paragraph 12 is curious. It makes a SPMR responsible for losses caused by his "negligence, carelessness or error" but makes him strictly responsible, with no such qualification, for all losses caused by his Assistants. We do not know what the thinking was behind this distinction.

5.44 In any event, the fact that the SPMR must be in "error" is a low threshold and implies no mental element: the SPMR can be mistaken without being careless and without there being any question of dishonesty on his part. Taken at face value, however, and where the loss is caused by the SPMR rather than his assistant, the SPMR would not, under paragraph 12 be automatically responsible for all losses if it could not be shown that he was at least in error.

5.45 There is another basis for the recovery of losses which requires attention. As noted, the SPMRs are agents of the Post Office. The characterisation of the relationship as that of principal and agent gives rise to a number of duties as a matter of law, though where, as here, there is also a Contract, they have to be seen in the context of what the parties have thereby expressly agreed.

5.46 The agent is required to account in equity to his principal.[11] This is effectively a procedure which enables the financial position as between the principal and agent to be determined. It does not of itself entitle the principal to claim any shortfall. In order to claim whatever losses are highlighted by the taking of the account, the principal has to establish his right to them. For example, this may be through breach of contract or the common law duty of an agent who holds money for his principal to pay over or account for that money at the request of his principal.[12] Moreover, where the agent cannot satisfactorily explain what has happened to the principal's property or money, presumptions may be made against him which will lead to substantive liabilities such as those mentioned above.[13]

5.47 We understand that the Post Office does exercise discretion as to the recovery of losses where circumstances make that a reasonable reaction. For example, we were told that if there is a "scam" which is recognised to be popular the Post Office will take steps to warn SPMRs, it will issue a procedure giving guidance as to how the scam can be combatted and may consider (depending on the circumstances of the particular case) not recovering losses due to the scam for such period as it is reasonable to expect the SPMRs to be

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Claims for "compensation" for the recovery of losses by the Post Office from SPMRs

5.49 Whilst the issue in the complaints is sometimes referred to in terms of "compensation", this is not an accurate expression for the particular claim insofar as it relates to losses. The question is: in the particular case, did the Post Office have the right to recover losses? If the Post Office did, then there is no question of the SPMR being entitled to "compensation." If the Post Office did not, then again no question of compensation arises: the Post Office is simply unable to claim the money and if it has been paid, the SPMR has a right to recover it. This is a restitutionary, not a compensatory, claim.

5.50 In practical terms, the issue is cases in which the Post Office has, in fact, claimed and been paid the losses and the SPMR is now disputing its entitlement to do so and seeking to "reverse" that payment. It is important to distinguish three groups of cases:

5.50.1 those in which the Post Office has secured a conviction for theft or false accounting and the SPMR is now seeking to claim back the losses on which that conviction was based;

5.50.2 those in which the Post Office has secured a civil judgment for the recovery of the losses; and

5.50.3 those in which there has been payment of the losses (or potentially a claim on the part of the Post Office which has not yet been satisfied but from which the SPMR now seeks relief) but the Post Office's entitlement has not been determined by the civil or criminal Courts.

5.51 The Scheme is only apt to deal with cases in the third group. It is worth noting at this point that Section 2 of the Draft Scheme Settlement Policy states that the objectives of the Scheme are to:

5.51.1 listen to SPMRs concerns;

5.51.2 explain the Post Office's position;

5.51.3 offer solutions where possible;

5.51.4 compensate if loss has been unfairly suffered;

5.51.5 demonstrate that the Post Office is being transparent; and

5.51.6 ensure that the Post Office's decisions are defensible.

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conviction necessarily involves a finding that the SPMR acted dishonestly, this being a critical element of those offences. In such cases, there could be no strict liability basis for either a guilty plea or a finding of guilt. Moreover, SPMRs facing such allegations would in general have been eligible for legal aid under representation orders (if they could not fund legal representation themselves). It may safely be assumed, therefore, that in general they were legally advised and represented, or had the opportunity to be so.

5.54 If the SPMR has been convicted of a relevant offence the only basis as a matter of law on which the Post Office should entertain a claim for the repayment of sums claimed from the SPMR is if it were to conclude that there were doubts about the evidence on which the conviction was based. However, if the Post Office did so conclude, the situation would be much more complex than simply dealing with certain individual claims for "compensation."

5.55 The Post Office in its capacity as a prosecutor has duties of disclosure which extend beyond the date of conviction in any particular case. In *R v Belmarsh Magistrates' Court (Ex p Watts)*,[14] it was observed that private prosecutors are subject to the same obligations to act as ministers of justice as the public prosecuting authorities. Any material in the possession of the Post Office which might cast doubt on the safety of any particular conviction ought therefore to be disclosed to the convicted party. The "Settlement Principles" in the Draft Settlement Policy of December 2013 state:

> "5.6 Settlements involving convicted Applicants should only be offered where there is clear evidence of a miscarriage of justice."

This is consistent with the above analysis.

Cases in which there is a civil judgment

5.56 If the Post Office has obtained a civil judgment against the SPMR, the Post Office's entitlement is clear and established. The SPMR will have had an opportunity to dispute the claim and an opportunity to appeal the decision should he have been unhappy with it at the time. Indeed, as a matter of law he is prevented from seeking to re-open any issue covered in the prior claim: it is now *res judicata*. This means that the SPMR could not bring a civil claim seeking to reopen the issues covered by the judgment. In certain circumstances, however, he could seek to reopen the issues by seeking permission to appeal the civil judgment after the period within which he is ordinarily only entitled to do so. The appeal Court has a discretion whether to allow such a late appeal and will weigh various factors including the interests of the administration of justice, whether the failure to appeal in time was intentional and whether there is a good explanation for it. A SPMR

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5.58 The Scheme information memorandum states that Applicants "may put [their] case through the Scheme even if the Courts have already given judgment against [them]." Rejecting claims simply because there is a civil judgment covering the matter would seem to run counter to this. We do not know the thinking behind including this wording in the Scheme memorandum.

Cases in which the Post Office's entitlement is not yet established by a Court

5.59 If no Court has yet given a decision in relation to a SPMR, the Post Office has a genuine decision to make as to whether or not to press claims for losses or to repay those already recouped.

5.60 Each case would have to be considered on its own facts and depend on what the SPMR alleged about the reasons why the Post Office is not entitled to claim the losses. So far as we can see from the cases considered to date, there are:

5.60.1 general allegations as to the unreliability of Horizon; and

5.60.2 specific allegations as to factors which may have affected Horizon in the particular case.

5.61 General allegations about Horizon do not, we think, help. It would be far more satisfactory were there to be a reasoned Report as to why Horizon is thought to be working properly (if that is the case) but even without that, a general claim that there are "problems with Horizon" is not, we think, enough to cast doubt on the Post Office's claim for losses. The Horizon system works satisfactorily for the vast majority of those who use it and accounts will have been agreed, as noted above.

5.62 Specific allegations as to Horizon's malfunctions have also been made and to some extent "investigated" by Second Sight. These have included or been said to be caused by:

5.62.1 power cuts;

5.62.2 incompatible use of telephone lines with Horizon;

5.62.3 intermittent internet connectivity; and

5.62.4 the ability to "centrally input" transactions and thus directly, and without a SPMR's knowledge, adjust Horizon data sent by a SPMR.

5.63 Second Sight have certainly expressed concern – and more – in relation to certain of these supposed deficiencies in or effects of Horizon. But since they have singularly failed to

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there may therefore be a basis for re-opening it - the question arises of how the SPMR's claim for recovery would work. As a matter of common sense, if the Post Office decides that in a particular case it has no entitlement to claim the losses, we anticipate that the Post Office would simply refund the money/relieve the SPMR from the liability without the need for any formal claim or proceeding. But the SPMR would have a claim at law to recover the money and this is important since if the Post Office were repaying/relieving in such a case it may well wish to be sure that it was doing so in satisfaction of a legal obligation.

5.66 The Post Office's right to seek payment of the losses arises both under the Contract and the general law because of the agency relationship. If the losses do not exist – because the records produced by Horizon are not accurate, then there is no right on the part of the Post Office to claim them. Absent express provision to the contrary, it is not a breach of contract to claim money to which you are not entitled. Though it would be a breach of contract to withhold payment from other monies due. So, the question whether a loss recovery is also a breach of contract may turn on how the Post Office recouped the loss. This matters since there may be a claim for consequential losses if there is a breach of contract claim.

5.67 The SPMR would have the burden of showing not only that there were losses but also that there was a causal link between the losses and the actions of the Post Office on which he relies for his claim. Several cases we have seen suggest that there is at best a tenuous link between the alleged failings of Horizon and the loss incurred (if any such link is even alleged). For example, case M014 alleges that long running problems operating Horizon which gave rise to over £8,000 in loss recoveries to Post Office were largely fixed when a phone line was unplugged in a back office. This suggests a) there was nothing wrong with Horizon *per se* b) that the incorrect use of the phone line was an unfortunate error that might have been caused by inadequate training or support or could have been due to incompetence on the part of the SPMR or is an unusual set of circumstances which is not reasonably foreseeable. However, this could still give rise to liability on the part of the Post Office (albeit not in respect of Horizon failures specifically) if the Post Office is found not to be entitled to recover loss in those circumstances because the relevant SPMR's conduct was not negligent or in error, within the meaning of Section 12, paragraph 12 of the Contract.

Consequential losses

5.68 There can be no question of a claim for consequential losses based simply on the recovery

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parties as not unlikely to result from the breach. Normally, no damages would be awarded for injury to feelings, mental distress, anguish or annoyance. This is so even though such reactions might have been perfectly foreseeable at the time of the contract.[15] Whilst stress which is so severe that it causes an actual breakdown in health may be compensable if it was in the contemplation of the parties as a not unlikely consequence of the breach, it seems highly unlikely that that test would be met here. The SPMR would also have to show, by clear and cogent evidence, that the damage to his health had been caused by the Post Office's conduct in recovering losses to which it was not entitled.

5.71 Damages are also not normally awarded for loss of reputation flowing from a breach of contract, unless the loss of reputation in turn directly causes foreseeable financial loss. So, for example, an employee of a business run corruptly might be able to claim damages for consequential financial loss suffered as a result of reduced future employment prospects by reason of the loss to his reputation as a result of being associated with the business. It seems unlikely such consequential loss would be recoverable here for any loss recovery by the Post Office that is in breach of contract - the fact of the loss recovery would need to be made known widely and the SPMR would need to be able to show that this somehow harmed his future earning capacity.[16]

5.72 We think that the better analysis is that the question of consequential losses only arises if the Contract has been terminated on less than three months' notice, as to which, see paragraph 5.77 to 5.83 below.

Restitutionary claim

5.73 If an SPMR can show that he made a payment on the basis that he was liable to make that payment to the Post Office when in fact he was mistaken as to the existence of the liability, he has a restitutionary claim for the repayment of the money.[17] That claim focuses on the "unjust enrichment" which the Post Office will have received. It is not a damages claim but a restitutionary action for money had and received. For practical purposes this means that there is no question of a claim to consequential loss on the part of the SPMR. All that the SPMR would have to show is that there was no liability to make the payment but he believed that there was and this caused him to make the payment. There is no requirement for fault on the part of the Post Office and it does not matter if the SPMR has himself been careless.[18]

5.74 Such a claim can only work on behalf of the SPMR if the Post Office is not contractually (or otherwise legally) entitled to the payment.[19] On the basis of that analysis, it would mean, therefore, that a settled account would have to be re-opened or that the SPMR would need

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sensitive issue and would need to be explored in each case. The real question is whether in paying the money the SPMR was prepared to take the risk that it might not be legally due but it was in his interests to pay the money anyway.

5.76 It is also clear that if the SPMR was once entitled to a restitutionary remedy based on his mistake in making the payment, he will lose that right if the dispute with the Post Office is resolved and cannot be reopened. That would be the case if the civil Court had given judgment in favour of the Post Office. Then the SPMR could not recover without also setting aside the judgment. Even if there is no judgment, if proceedings have been started and the SPMR then pays to settle the claim he will be treated as having compromised. The law will not allow such bargains to be reopened, not least because of the concern to achieve and respect finality in litigation.[21] If litigation has not been started then there needs to be a contract of compromise before a restitutionary remedy will be ruled out.

5.77 The Post Office's Draft Settlement Policy of 2013 sets out, in section 5, certain "Principles for Settlement." Those principles indicate the Post Office's approach to settling claims with SPMRs. These include that the SPMR needs to establish that the matters raised have caused them loss, that the alleged harm arises directly out of or was an obviously foreseeable consequence of a breakdown in the business relationship between the SPMR and the Post Office and that settlements will generally be driven by commercial fairness rather than legal principles.

Termination of contracts

5.78 The Post Office is entitled to give three months' notice to terminate the Contract with the SPMR. If in a particular case the SPMR's Contract has been terminated on three months notice, he can have no remedy arising out of that termination. It does not matter that the Post Office based its decision to terminate on facts which turned out to be disputed, flawed or mistaken (such as the reliability of Horizon) as the Post Office is entitled to terminate the Contract on three months' notice for any or no reason.

5.79 The effect of this is that the most that a SPMR may be entitled to is the pay (or whatever entitlements) were due during the notice period, reduced for any costs of doing business if they were not incurred. Moreover, the SPMR is under a duty to mitigate his or her losses and so should look for alternative employment during that three month period. Any unreasonable failure to find an alternative source of income would reduce the claim (though with a three month notice period this is not of huge practical relevance).

5.80 There may well be cases in which the Post Office has terminated the contract [illegible]

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properly performed. Consequential losses (such as loss of use or lost profits) are also recoverable where they are not considered to be too remote.

5.82 The traditional test for remoteness is whether the loss "may fairly and reasonably be considered either as arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract".[22] The Courts have decided that the meaning of "reasonable contemplation" will depend on the knowledge of the parties at the time of the contract, and that the loss must be "of that kind" contemplated by the parties.

5.83 In any damages claim, there must be a clear link between the defendant's breach and the claimant's loss, or in any event the breach must be the "dominant cause" of the loss. An intervening act of a third party or the claimant itself may break the chain of causation, depending on the court's appraisal of the circumstances of the case, as may intervening events which were reasonably foreseeable by the parties.

5.84 In the case of a SPMR who runs an associated business, such as a convenience store or a newsagent, it may be said by the SPMR that terminating his Contract as a SPMR would be likely to have a knock on effect on the viability of his associated business. Moreover, it might be said that depriving an SPMR of the three month notice period also deprives him of a three month window in which to seek a purchaser of his business as a going concern. If the business does in fact close because of the termination of the SPMR's Contract and there is evidence that it might have been capable of being sold had the SPMR had three months in which to do so, there is the possibility of a claim for such losses. Whether such an argument could be made depends on the facts, not least whether there was an associated business and a candidate to take over the SPMR's role acceptable to the Post Office.[23] In practice in this sort of claim, because the Court is asked to consider a counterfactual which has not arisen, the Court makes an assessment of the prospects of a sale "the loss of a chance" and applies a discount to the claim to reflect this.

Inadequate training and support

5.85 Under the Contract the Post Office is obliged to provide training. Section 15 paragraph 7 provides:

> "7.1 Post Office Ltd will:
>
> 7.1.1 provide the Subpostmaster with relevant training materials and processes to carry out the required training of his Assistants on the Post

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provided by Post Office Ltd and to ensure that his Assistants receive all the training which is necessary in order to be able to properly provide the Post Office Products and Services."

5.86 This seems clear: the Post Office must provide training and keep it up to date. This is not defined but could well extend to a help-line or other day to day advice on the operation of Horizon. But the SPMR is still responsible for the day to day operation of the Subpostoffice. In other words, the SPMR accepts the consequences of any lack of training provided to his Assistants or their failure to put the training into effect.

5.87 Section 15, paragraphs 1 and 2 of the Contract are also relevant here. They provide that:

> "A Subpostmaster must provide, at his own expense, any suitable assistants with the relevant skills which he may need to carry out the Post Office work in his sub Post Office branch ("Assistants").
>
> Assistants are employees of the Subpostmaster and the Subpostmaster will consequently be held wholly responsible for any failure on the part of his Assistants to:
>
> 2.1 apply Post Office rules or instructions as required by Post Office Ltd;
>
> 2.2 complete any training necessary in order to properly provide Post Office Services ...
>
> The Subpostmaster will also be required to make good any deficiency of cash or stock which may result from his Assistants' actions or inactions."

5.88 It is also likely that there would be a term implied into the Contract to the effect that the SPMR should be entitled to reasonable training and support, particularly in relation to bespoke systems or practices, such as Horizon, which he could not be expected to know from his own general knowledge and past experience.

5.89 Many SPMRs do not seem to have a complaint as to the level of training and support which the Post Office has given them. We do not think that this is conclusive. Whilst Horizon operates as a common system and one person's experience of it should be similar to another's, the same could not be said for training and support. It would be quite possible for the Post Office to have failed to meet its obligations in relation to one SPMR whilst easily fulfilling them in relation to many others.

5.90 Moreover, in order for this to translate into a claim against the Post Office, it would have to

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services, OFCOM's own website makes it clear that it does not regulate the Post Office. The Post Office does not appear on the FCA register as an FCA-authorised entity. It does appear as an "appointed representative" (in connection with its provision of financial products on behalf of principals such as the Bank of Ireland) and a "payment services agent" (in connection with its provision of money transfer services on behalf of, for example, MoneyGram International). Neither of these functions requires the Post Office to have separate FCA authorisation.

Limitation

5.93 Limitation is a factor which may well be relevant in certain claims. The standard limitation period for claims in contract is six years from the date of breach. For tort claims it is six years from the date on which the loss was suffered. Restitutionary claims are time barred six years from the date of the enrichment on which the claim is based. Any claim brought outside the limitation period can be met with the defence that it is out of time and no further consideration of the merits is required.

5.94 Where the claim is based on a mistaken payment or a fact deliberately concealed from the claimant by the defendant, time does not start to run until the claimant has discovered the mistake or concealment, or could with reasonable diligence have done so.[24] Some of the cases we have seen suggest that SPMRs have been aware well before the Scheme was instituted of the matters about which they have complained to the Scheme. At least in those cases, the deferral of the commencement of any limitation period may not make any difference to the barring of the SPMR's claim.

5.95 The Settlement Principles state:

> "5.11 Settlements should reflect the fact that for the purposes of the Scheme, Post Office will not be relying on any legal limitation or time-bar defence and will consider all Complaints regardless of age."

We do not know what publicity has been given to this statement and whether the Post Office is free to, or indeed wishes to, reconsider its position.

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From: Patrick Bourke <pa GRO >
To: Christopher Knight <C GRO >
Cc: Jonathan Swift < GRO >, Mark Underwood1 < GRO >, Steve Allchorn < GRO >, Jane MacLeod <j GRO >, Rodric Williams < GRO >
Subject: Data Spread Sheet for Christopher Knight/Jonathan Swift
Date: Tue, 3 Nov 2015 16:44:07 +0000
Importance: Normal
Attachments: 151102_Scheme_Data.xlsx

Dear Chris

I attach a copy of the all-encompassing spreadsheet we talked about which, for each case in the Scheme, records the information you indicated you would find helpful to have, including details on criminal charges, whether the Helpdesk issue was complained of, Second Sight's thematic issues and so on. This should enable you and Jonathan to determine which cases to use as part of your sampling exercises. The password for the spreadsheet is GRO

My colleague, Steve Allchorn, has organised for your tour of Horizon (sorry) next Tuesday morning. It would be very helpful for us to meet (with or without Jonathan, depending on his availability) after that, so that we can develop a joint understanding of how you are likely to approach your enquiries so that we might support your work as effectively as possible. I would also like to take that opportunity to introduce you to Rodric Williams (copied), our in-house lawyer, who will be able to guide you in relation to the computer specific issues you will want to address and more generally.

In the meantime, please do not hesitate to contact us with any questions.

Kind regards

Patrick

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From: Rodric Williams <GRO>
To: "Christopher Knight <GRO>"
<GRO>
Cc: Patrick Bourke <GRO>, Mark Underwood1
<GRO>
Subject: Horizon "Core Audit Process"
Date: Mon, 9 Nov 2015 14:04:48 +0000
Importance: Normal
Attachments: Horizon_Core_Audit_Process_-_v1_0.ppt
Inline-Images: image001.png

Christopher,

In advance of the Horizon demonstration you will be attending tomorrow, I attach a PowerPoint prepared by Fujitsu in January 2014 which summarises Horizon's "Core Audit Process", i.e. the design features which "ensure that accurate and auditable records are kept of all sub-postmaster transactions". I thought this might help explain what happens to a transaction once it has been entered into Horizon by a branch.

The PowerPoint references two further documents which describe in more detail the core audit processes for both the original Horizon and current "Online" versions. I have not attached these as they are fairly technical, but can do so if you would like to see them.

Kind regards, Rodric

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GRO

rodric.williams@ GRO

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shaping tomorrow with you

Horizon Core Audit Process

30/01/2014
James Davidson

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Exec Summary

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- The Horizon Application has been designed to ensure that accurate and auditable records are kept of all sub-postmaster transactions
- When a transaction is conducted at a counter, an auditable mechanism has been built in to ensure these transactions are taken from the counter, stored in the Horizon main branch database and then copied to an audit database
- This mechanism can be considered a 'closed loop' where information is securely exchanged from the counter to the Horizon branch database and then on to the audit database
- Whilst copies of transaction data are provided to numerous external systems from the main Horizon database, once an audit record is created, it becomes security sealed and time stamped. Audit records cannot then be accessed or altered without detection and the creation of further auditable events
- The Core Audit Process is designed to provide a definitive log of all transactions. As such it is the "base" upon which any assessment as to "what was entered at the counter" should be derived from to the exclusion of all other systems that may take a feed of data from the Branch Database
- A number of 'assertions' can be independently examined to test the robustness of the Core Audit Process, these are listed from page 7 of this presentation

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Exec Summary continued

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- The enclosed summary and embedded documents provide an overview and technical description of the Horizon 'Core Audit Process' (CAP)
- This illustrates the design principles and safeguards built into the CAP to ensure that a record of sub-postmasters transactions are created, maintained and protected for the 7 year term from creation as required under contract
- There are 2 documents enclosed. These describe the audit processes for the original 'Horizon Core Audit Process' and also the revised 'Horizon Online Core Audit Process (Post 2010)
  - ARCGENREP0004.HorizonDataIntegrity.doc
  - HorizonOnlineDataIntegrity_POL.doc
- The documents are written in sufficient detail for an Independent Expert to gain an understanding of the key principles, technologies and processes involved in the CAP

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Key Principles

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- The Core Audit Process is designed to ensure that an exact record of counter transactions are created and kept in a secure audit database
- Safeguards are built into the process to check for transaction data corruption and integrity
- Principles of double entry book keeping are used to validate that items purchased are matched to monies received
- Each item in the audit trail has a unique incrementing sequence number. This means it is possible to detect if any transitions records have been lost
- Transaction records are 'sealed' using industry standard secure protocols
- All audit records are kept in a segregated audit database

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Horizon Online Core Audit Process

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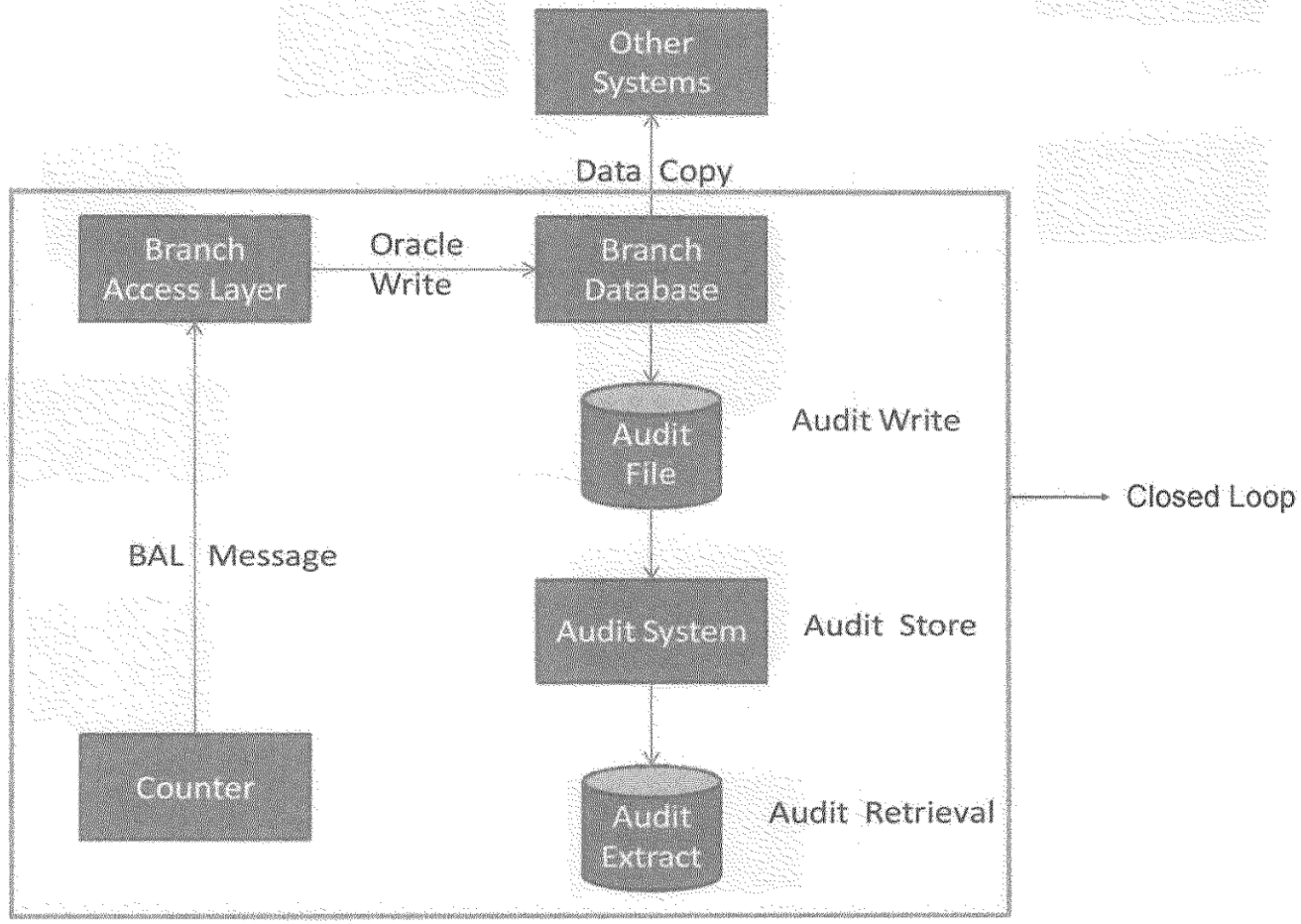

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Horizon Core Audit Process

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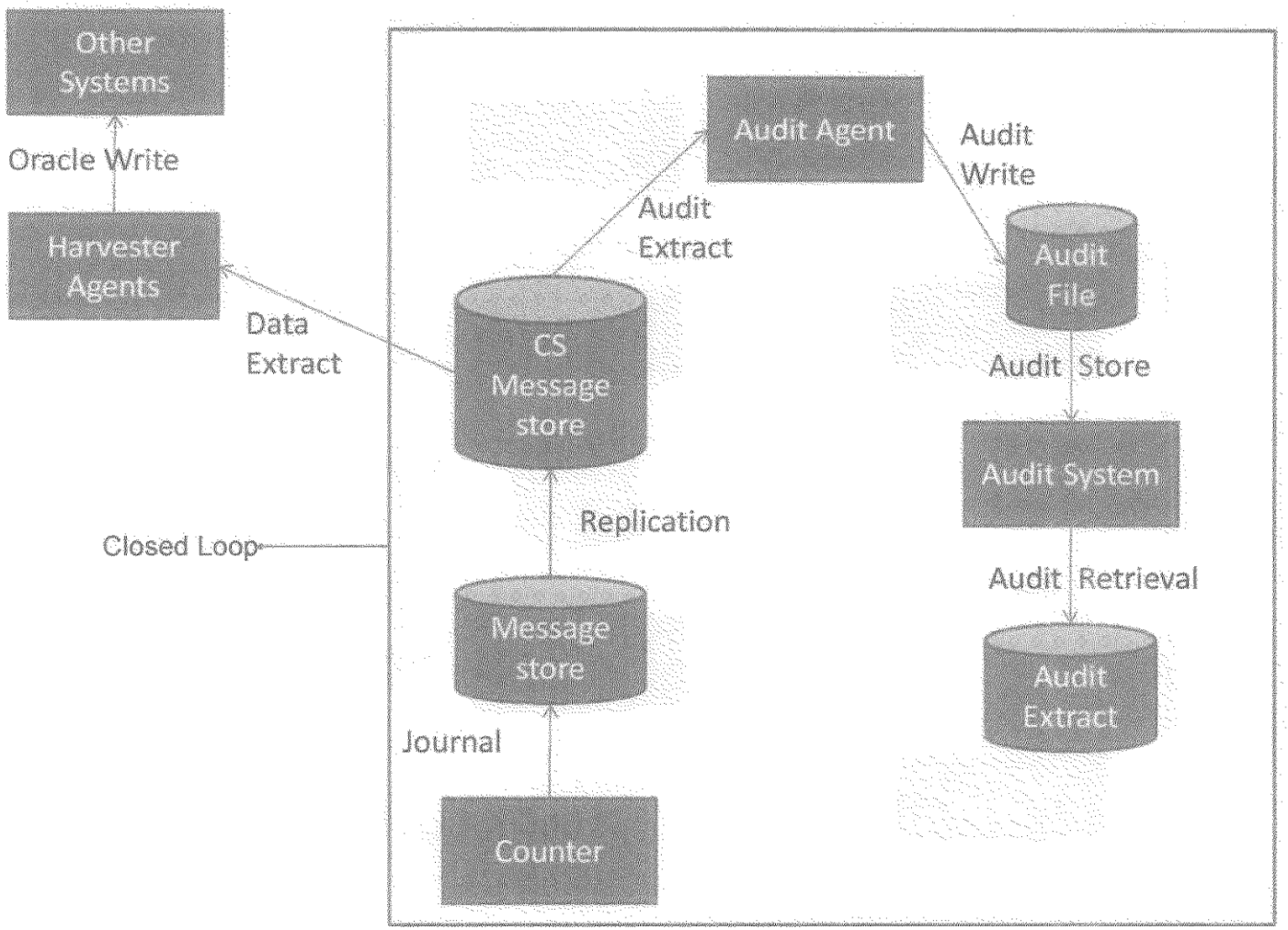

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shaping tomorrow with you

Horizon On Line Core Audit Process Scope For External Expert

Key Assertions to be Tested

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Summary

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- In order to provide assurance that the Core Audit Process is performing as designed for Horizon On-line*, a number of assertions related to the design and function of the CAP can be tested;
  - Baskets net to nil
  - Basket received is same as that seen by counter
  - Full basket enters audit trail
  - All baskets enter audit trail
  - No extra baskets enter audit trail
  - Audit trail has integrity

- *The Horizon Application was re-architected and rolled out in 2010 so the original implementation is no longer operational. Any examination of original Horizon transactions will need to refer to design documentation and archive data that still exists (kept for 7 years). It is important to note that the design principles of the CAP are consistent between the two versions.

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Baskets Net to Nil

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- That all of the transactions in a basket (a basket is defined as any number of items for one customer) received from the Post Office branch counter balance to zero against the customer payment.
  - When the contents of a Basket are written to the Branch database a check is made that the net value of all the accounting lines is indeed zero and should it not be, then an alert is raised and the basket is discarded and an error response returned to the counter.
  - The transaction cannot be completed until a successful response has been received from the BAL indicating that the message has been stored
  - Any failures in committing Auditable activities at the Data Centre will result in an error response being returned to the counter. In all cases the User is informed of what is happening. Such failures will not be visible in the transaction audit, but in normal operation will be visible in the system Event Log.

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Basket received is same as that seen by counter

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- To ensure that the message is not tampered with after being sent from the counter, each message has an associated Digital Signature. The mechanism for creating this Digital Signature is as follows:
  - At Log On, the Counter creates an RSA Public / Private key pair.
  - The Public key is sent to the BAL as part of the audited Log On message
  - The Log On message is concatenated with the Digital Signature and the BAL's signing certificate for its Public Key and signed by a BAL Private key (held in the data Centre Key Store) and added to the audit trail with a BAL generated jsn
  - All subsequent messages are digitally signed by the counter using the private key established at Log On.
  - Digitally Signing a message involves taking a SHA-1 Hash of the message and digitally signing the Hash value using RSA.
  - The Digital signature is stored alongside the message in the Journal table and is extracted with it into the Audit file as described below

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Full basket enters audit trail

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- When the contents of a Basket are written to BRDB a check is made that the net value of all the accounting lines is indeed zero and should it not be, then an alert is raised, the basket is discarded and an error response returned to the counter.
- Each night after midnight, the contents of this message journal table for the previous day are copied from the BRDB to a number of serial files. During this copy process, a check is made that indeed there are no missing or duplicate jsns for any counter and should any be found an alert is raised.
- Should there be no response from the Data Centre following an attempted commit of an auditable activity within a timeout period (currently set to 30 seconds), an automatic retry is invoked. This sends identical business data to the Data Centre where a check is made to see if the Audit data has already been committed to BRDB. Should the retry also timeout, then the User is prompted and asked whether they wish to Retry or Cancel the Activity. Such time-outs and any retries will not be explicitly visible in the transaction audit, but in normal operation will be visible in the system Event Log.
- Continual failures to Update the Database at the Data Centre mean that it is not clear at the counter whether or not the database accurately reflects the situation in the Branch. Therefore the system will force a Log Off at the counter to ensure that when communications are re-established, that the Recovery process is invoked to reconcile the counter view with that on BRDB. If there is a basket currently being processed, then a special Disconnected Session Receipt will be produced showing which transactions have been discarded and which are to be recovered making it clear what money needs to be exchanged with the Customer.

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No extra baskets enter audit trail

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- Within any counter (i.e. for a given Branch Id / Counter Id combination), the jsn will always increase by exactly one for each successive audit record. This enables a check to be made that there are no duplicated audit records
  - Every auditable request made by the counter will be logged in the message journal before the request is actioned by the BAL, The message journal performs two functions, firstly it provides auditing facility and secondly it provides a duplicate checking facility to prevent counter messages that may have been resent from being reprocessed.
  - Access to the counter system which enables the entry of transactions via the BAL is controlled through a secure key exchange mechanism which takes place as part of the Log on Process.
  - The jsn is stored within the message body which is securely encrypted using cryptographic keys
  - A check is made that there are no gaps or duplicates in the jsn sequence for any counter.

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Audit trail has integrity

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- Each message within the audit trail has its message body encrypted using the cryptographic keys used by the counter submitting the basket.
  - The jsn is stored within the message body which is securely encrypted using cryptographic keys
  - Each night after midnight, the contents of the message table for the previous day are copied from the BRDB to a number of serial files.
  - These files are then copied to the Audit system where they are sealed with digital seals. They are held there for a period of 7 years during which time they may be retrieved and filtered to produce the relevant audit data for a particular Branch.
  - The Digital Seal is calculated using an MD5 hash of the entire content of the file being sealed. This value is stored in a separate "Seals Database" held on the Audit Server.
  - Whenever data is retrieved for audit enquiries a number of checks are carried out:

1. The audit files have not been tampered with (i.e. the Seals on the audit files are correct)
2. The individual Baskets (and other records) have their digital signatures checked to ensure that they have not been corrupted
3. A check is made that no records are missing or duplicated. I.e. a check is made that there are no gaps or duplicates in the jsn sequence for any counter

  - There is adequate synchronisation of server and counter clocks throughout the process for time and datestamping purposes

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Detailed Documentation

FUJITSU

Horizon Online CAP

Horizon CAP

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Metadata

Filename	Horizon_Core_Audit_Process_-_v1_0.ppt	ORIGINAL

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2 Horizon Online Data Integrity

2.1 Overview of Normal Operation

Horizon Online is designed to store all data in an online database known as the Branch Database (BRDB). This database is a highly resilient Oracle database implemented using Oracle Real Application Cluster RAC (see also section 2.4). In particular no data concerning Business Transactions is retained at the counter other than in the memory of the Counter Business Application.[1]

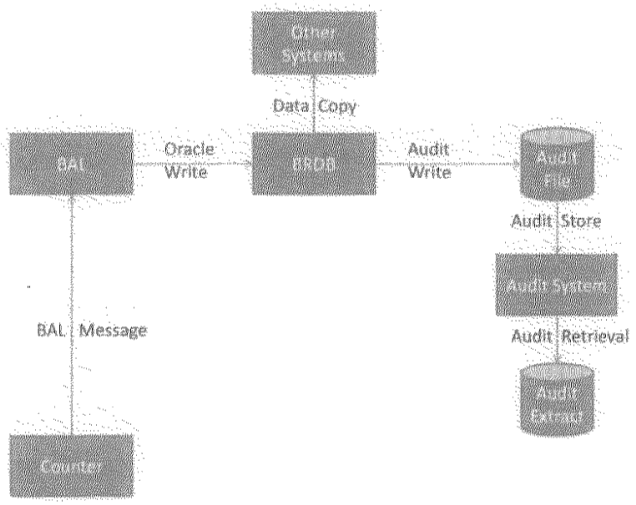

Figure 1 – Primary message flows

Transactions are carried out locally on the Horizon Online counters and a Basket is built up during a Customer Session. Each transaction will result in a Basket Entry consisting of one or more Accounting Lines. At the end of a Customer Session when the Basket has been completed and all Settlement items (or Tender lines) have been processed and added into the Basket as further Accounting Lines, such that the total value of the Basket is zero, the entire Basket is sent to the Data Centre as a BAL Message where the Branch Access Layer (BAL) processes the message and all the Accounting Lines are recorded and committed to the BRDB as part of a single Oracle Commit. This means that either **all** the transactions within a Basket are successfully written or **none** of them are. Once the Accounting Lines have been successfully committed a response is returned to the counter indicating this success and this then allows any receipts to be printed. The Basket is deemed to be fully completed once all relevant receipts have been successfully printed. Note that if there are no receipts to be printed, then the screen is updated to show the top level menu indicating successful completion of the previous Basket.

The Oracle Commit also includes an Audit of the data originally transmitted from the counter to the BRDB. This data is digitally signed at the counter using a key generated as part of the Log On process.

[1] In order to support recovery as described in section 2.3.6, the identifier of the last successfully completed Basket is recorded on the Hard disk at the counter. However this is not classed as Business Data.

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It is this audit record that is used to provide the extract of transactions used for Litigation support. Section 3 describes how this audit record is managed after it is committed to BRDB.

The audit record may also include application events that have been accumulated at the counter since the last auditable message was sent to the Data Centre. All major activities that affect the Branch also have an audit of the data sent from the counter to the Data Centre included in the audit log. Such activities include:

- Log On / Log Off of Users at the counter
- Creation / modification of User Accounts (including change of password)
- Attaching Users to Stock Units
- Balancing a Stock Unit
- Producing the Branch Trading Statement.

Each Audit record includes the following identification:

- Branch identifier (i.e. FAD Code)
- Counter identifier
- Sequence Number (known as a Journal Sequence Number or jsn)
- Counter timestamp

Within any counter (i.e. for a given Branch Id / Counter Id combination), the jsn will always increase by exactly one for each successive audit record. This enables a check to be made that there are no records missing from the audit trail when they are retrieved.

The transactions in a basket are constructed using the principle of double-entry bookkeeping. This means that in addition to the Accounting Lines that relate to the actual business transactions, separate Accounting Lines are also generated for the tender items (such as Cash, Cheques or Credit / Debit Cards), resulting in the total value of all Accounting Lines in a Basket adding up to zero. When the contents of a Basket are written to BRDB a check is made that the net value of all the accounting lines is indeed zero and should it not be, then an alert is raised and the basket is discarded and an error response returned to the counter.

> *Note that this could only happen as a result of a bug in the code and this check is included specifically to check for any such bugs.*

Baskets are also built up during Back Office Sessions and such Back Office baskets are handled in a similar way to Customer Baskets.

2.2 Detail of Normal Processing

The purpose of this section is to expand on the summary in Section 2.1 and identify other documents where more detail of the various steps are covered.

As outlined in section 2.1 above, the following is the key behaviour of the handling of a Basket:

1. The Clerk carries out one or more business transactions. Each Business transaction will construct a Basket Entry which is held in the memory of the counter and the value of which is visible on the screen.
2. When all the transactions for a customer have been completed, the clerk selects either the *Fast Cash* or the *Settle* functions on the screen.

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Note that if the total basket value is zero at this point then either button will result in immediately going to step 3 below.

a. Selecting *Fast Cash* results in the system calculating the amount to required to take the total value of the transactions in the basket to zero and constructs a Basket Entry for the Cash Product for this amount and adds it into the Basket. By definition, the total value of the basket at this point will be zero

b. Selecting Settle results in the system displaying a menu of permissible settlement options. The allowable settlement options are configurable and depend on various Business Rules, however are likely to include the following:

i. Cash

This allows a specific amount of cash to be entered (which may or may not be the full amount). It will take a sign based on attempting to move the Basket total nearer to zero.

A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

ii. Cheque

This allows a specific amount for a Cheque to be entered (which may or may not be the full amount). Its sign will always reflect the fact that a cheque is payable to Post Office Ltd (other than for Reversals).

A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

iii. Chip and PIN

This allows Chip and PIN transaction to be processed. The amount to be taken is entered, but defaults to the maximum amount allowable by business rules (which may or may not be the full amount). Its sign will always reflect the fact that a payment is being made to Post Office Ltd (other than for Reversals).

The details of the Business Rules are not relevant to the Integrity of the system.

A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

iv. Swipe

This allows magnetic swipe payment card to be processed. Note that if the Magnetic stripe indicates that the card is a Chip and PIN card then the transaction will be abandoned at this point. The amount to be taken is entered, but defaults to the maximum amount allowable by business rules (which may or may not be the full amount). Its sign will always reflect the fact that a payment is being made to Post Office Ltd (other than for Reversals).

The details of the Business Rules are not relevant to the Integrity of the system.

A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

v. Fast Cheque

This allows Cheque transaction to be processed. However in this case the system calculates the amount required to take the total value of the transactions in the basket to zero and constructs a Basket Entry for the Cheque Product for

this amount and adds it into the Basket. By definition, the total value of the basket at this point will be zero

vi. Fast Cash

This is the equivalent of the Fast Cash Button described at point a above

c. The User is then able to select any of the available options and add appropriate settlement items into the In memory and On-screen basket as descried. Should the Total value of the Basket not be zero after processing the settlement transaction, the settlement menu is re-displayed allowing further settlement transactions to be selected until the net value of the Basket becomes zero.

3. Once the Basket Total becomes zero, a message is constructed to send the entire basket content to the BAL. The structure of the message sent is defined in [DES/APP/AIS/0018]. A new connection is established to the BAL in order to send this message. The message sent is defined as being an auditable message and so will include a jsn. It may also pick up any outstanding Audit Events and Statistical data that have been accumulated at the counter since the last auditable message was sent from the counter to the BAL. This message will be signed by the counter using a Digital Signature constructed using a key that has been generated as part of the Log On process. This Digital Signature is sent as part of the message to the BAL.

4. When the BAL receives the message it detects that there is an associated jsn. This means that the Audit Filter is invoked which results in the entire data sent from the counter being added to the BRDB table BRDB_RX_MESSAGE_JOURNAL.

5. The BAL then processes the message and updates other tables in BRDB.

6. If all these updates are successful, then the BAL invokes a COMMIT to Oracle on BRDB which will commit all the changes at steps 4 and 5. Should there be any failure, then the BAL will issue an Oracle ROLLBACK which results in none of the changes in steps 4 and 5 being saved and it is then as if the interaction from the counter didn't take place. In either case a suitable response is returned to the counter and the connection tot the counter is closed.

7. When the counter has sent the message to the BAL (at step 3), it waits for a Response. There are 3 possible responses that can occur:

   a. The BAL update was successful (this is the normal case)

   b. There was a failure from the BAL

   c. No response is received within a configurable timeout period (usually 30 seconds)

   The first case is normal. The last 2 cases are considered to be Error Scenarios and are considered further in section 2.3, but are considered to be out of scope of the normal processing.

8. When the response is received, any receipts required are printed and then the In-memory and On-screen baskets are cleared and the screen is updated to the "Home" screen ready for a new Basket to be started.

Overnight, the content of the table BRDB_RX_MESSAGE_JOURNAL is copied to a set of serial files and passed to the Audit system. There is more information on this audit process in section 3 of this document.

2.3 Error Scenarios

2.3.1 Recoverable Transactions

Simplistically it could be assumed that if a Basket fails to commit then the content of that basket can just be discarded.

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This is similar to the normal model presented with on-line shopping, in that if your browser fails after trying to commit the basket, you are uncertain as to whether your purchase has been processed or not. You then need to carry out some other activity (e.g. phone the provider or check your Credit Card account the next day) before knowing whether or not to re-attempt the transaction.

However this is not really appropriate in a Post Office environment. For many transactions it can be assumed that the Basket has failed to commit and so the transactions in the basket are discarded and they can be re-attempted at some later date. However in some cases this is not appropriate since the Transaction may have had an impact on some external system. An example of this is a Banking Cash Withdrawal. In this case the Bank has been informed of the Transaction during the processing of the Banking Transaction and has removed the funds from the Customer's account. Therefore it is important that this transaction is completed. Such transactions are considered to be Recoverable Transactions.

If a transaction is to be Recoverable, then information about that transaction is recorded in the BRDB when the transaction is first initiated (and before the transaction is sent to the FI) allowing the transaction to be recovered should there be a failure. Note that this recovery information is not audited.

There are many types of Recoverable Transaction:

- All Banking transactions
- All Credit / Debit Card transactions
- All E-Top up transactions
- All Reversals
- Selected AP-ADC transactions (as defined in the transaction script)

2.3.2 Failures

Any failures in committing Auditable activities at the Data Centre will result in an error response being returned to the counter. Such an error response will be displayed to the User, thus informing them of the situation. The next action then depends upon the Auditable activity:

- If it relates to a basket settlement where the basket that contains 1 or more Recoverable Transactions, then a Forced Log Out is initiated and the normal Recovery process will tidy things up
- If it relates to a basket settlement where the basket doesn't contain any Recoverable Transactions, then the content of the basket is discarded and the User is returned to the Menu to continue working
- If it relates to a non-basket activity, then activity is abandoned and the User is returned to the Menu to continue working

In all cases the User is informed of what is happening.

Such failures will not be visible in the transaction audit, but may be visible in the system Event Log.

2.3.3 Time Outs

Should there be no response from the Data Centre following an attempted commit of an auditable activity within a timeout period (currently set to 30 seconds), an automatic retry is invoked. This sends identical business data to the Data Centre where a check is made to see if the Audit data has already been committed to BRDB.

- If it has been committed, then this means that the original activity was successful, but the response did not reach the counter in time. Therefore no action is taken in terms of updating the BRDB and a Success response is returned to the counter.

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- If it has not been committed, then the original activity either didn't reach the Data Centre, or it failed to be processed. In either case it is safe to re-process the data and the appropriate response is returned to the counter after the data has been processed which will be handled as if it was from the original request. Note that re-processing the data will include recording an audit of the data if the reprocessing is successful.

Should the retry also timeout, then the User is prompted and asked whether they wish to Retry or Cancel the Activity.

- Selecting Retry results in the Activity being retried once more as described above. If this also times out, then a further automatic retry is attempted and if this is still unsuccessful, then the User is again prompted as to whether to Retry or Cancel. This cycle then continues until either there is success, or the User finally gives up and selects Cancel.
- Selecting Cancel results in a Forced Log Out being invoked.

Such time-outs and any retries will not be visible in the transaction audit, but may be visible in the system Event Log.

2.3.4 Forced Log Out

Continual failures to Update the Database at the Data Centre mean that it is not clear at the counter whether or not the database accurately reflects the situation in the Branch. Therefore the safest thing is to force a Log Off at the counter and ensure that when communications are re-established, that the Recovery process is invoked to reconcile the counter view with that on BRDB.

If there is a basket currently being processed, then a special Disconnected Session Receipt will be produced showing which transactions have been discarded and which are to be recovered making it clear what money needs to be exchanged with the Customer.

2.3.5 Terminal Failure

Clearly a counter terminal can fail at any time. However the situation is not very different from that where a failure to contact the Data Centre has occurred as described above. Therefore the behaviour of the User needs to be as follows:

1. Work out the value of any Recoverable Transactions (there ought to be printed receipts associated with all of these)
2. From this work out what is owed to, or due from the customer
3. Consider whether any Credit / Debit Card payments may have been successful
4. From this work out any cash due to / from the customer.
5. Write out any necessary receipts by hand
6. Keep a record of exactly what happened to be used at Recovery time.

Clearly in this case the system is unable to assist the User in guiding them as to what to do.

2.3.6 Recovery

Recovery after a failure must always take place on the same counter position. Note that if the terminal has failed and needs to be replaced by an engineer, then recovery cannot be carried out until the replacement terminal is working correctly.

At every Log On a check is made in the Central Database to see if any Recovery is required. The following checks are carried out:

1. Is there any outstanding Recovery Data associated with this terminal?

If so return the outstanding Recovery Data to the counter so that the transactions can be recovered using Rollforward Recovery

2. Did the last session carried out on this terminal have a tidy Log Off?

   If not, return details of the last Basket (if any) that was successfully written from the last Log On session to the counter so that further recovery checks can be made

Otherwise all is well and No Recovery is required (i.e. the normal case).

During the Log On process, if the counter receives an indication that recovery may be required (i.e. one of the two cases described above), then the following occurs before the Log On is completed:

1. If Rollforward Recovery is requested, then for each Transaction with associated Recovery Data, then the appropriate Recovery script is executed, which will result in a Rollforward Recovery Basket being produced which is then settled to the Branch Database as normal and this will generate a recovery Receipt. This will normally match any Disconnected Session receipt (or other information recorded at the time of failure).
2. If there was no Basket Details of a Last successful Basket returned, then No Recovery is required
3. If further checks are requested, then the following checks are made at the counter:
   a. What was the identifier of the last successful Basket sent from the counter?

      The identifier of the last successful Basket is written to the Counter Hard Disk at the completion of the basket (i.e. after all Receipts have been successfully printed).

      Therefore, provided that the Terminal has not been replaced, then this is available to be checked for automatically.

      Where the terminal has been physically replaced, a dialogue is invoked to get the user to confirm the identity of the last Successful session which may involve displaying the last basket known to the Data Centre.

   b. If this matches the identifier of the Last Successful Basket that was returned from the Data Centre, then No Recovery is required and all is well.

   c. If they don't match (i.e. the Basket returned from the Data Centre was the one that the counter was trying to save at the time of failure), then the Forced Log Off process will have assumed that the Basket failed. Therefore the Recovery process needs to generate a Basket that reverses any non-recoverable transactions in that basket (since the forced Log Off would have discarded them). This is known as Rollback Recovery. This will also produce a Receipt. However it will not match the Disconnected Session Receipt exactly.

2.4 Database Characteristics

The database uses Oracle version 10gR2. It uses an Oracle Real Application Cluster (RAC), which runs the database over multiple nodes (servers). In practice there are normally 4 such database nodes

Partitioned tables store branch specific data. This provides high performance and scalability. Applications need to know in which partitions data is stored and which nodes manage these partitions. They use a convention based on Branch codes.

The design of the Branch Database supports non-stop trading during core hours.

- Oracle RAC is resilient. If one node fails, the remaining nodes carry on running and the database remains available for use. The database can meet its performance targets if one node fails.

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- The standby database allows very fast recovery if there is a data corruption that takes the live database offline. The maintenance of the standby database is automatic.

A disaster recovery site remotely mirrors the data. The mirroring of data is synchronous. This guarantees that no data is lost if there is a catastrophic site failure.

Data associated with a Basket is stored in 3 separate areas of the Branch database:

1. A copy of the actual Basket data as transmitted from the counter together with the associated digital signature is held in a table known as the message journal.

   Use of the data in the message journal is described further in section 3.

2. Individual accounting lines are extracted from the basket and each accounting line is written to two separate tables:

   a) Detailed transaction information for passing to Post Office Ltd Back end systems

      This data is retained for sufficient time to ensure it has been successfully passed to Post Office Ltd's back end systems (in practice it is held for about 4 days)

   b) Summary transaction information to support reporting and Branch accounts

      This data is retained to allow it to be used for any reporting and accounting period within the branch (in practice it is held for about 60 days)

Each night the reporting data is summarised within the branch database to provide daily totals for transactions based on product, mode, stock unit and accounting period. This summarised data is used (together with transactions for the current day) when balancing a stock unit, thus minimising the amount of data that needs to be considered.

Although the data used for generating the counter reports and passing to Post Office Ltd's back end systems is taken from the tables described in point 2 above, any data provided by Fujitsu in order to support litigation is based on the Audit taken at point 1 above. Since the processing for producing any report is based on the same source of data (ie the audited data sent from the counter) it is asserted that any report could be regenerated based solely on the audited data. As described in section 2.1, the audited data consists not only of the Basket information, but also any other significant events and in particular the Opening Figures (ie cash and stock levels) calculated at the start of a new period based on the balancing of an accounting period.

*It should be noted that such data is **not** presented as evidence as part of the normal litigation support service. Similarly we do **not** have tools that extract data such as Opening Figures into a readable form or to be able to re-generate reports based on the audit trail. However such data **is** available in the audit trail, and if required, such tools could technically be developed to resolve any dispute in that area. (Though there are clearly commercial considerations in terms of the cost and effort involved in doing so.)*

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3 Audit System

As outlined in section 2.1 and described in section 2.4, any auditable message from the counter is stored, together with its Digital Signature and other key attributes in an "Audit table" (known as the Message Journal) in BRDB.

To ensure that the message is not tampered with after being sent from the counter, each message has an associated Digital Signature. The mechanism for creating this Digital Signature is as follows:

1. At Log On, the Counter creates an RSA Public / Private key pair.
2. The Public key is sent to the BAL as part of the audited Log On message
3. The Log On message is concatenated with the Digital Signature and the BAL's signing certificate for its Public Key and signed by a BAL Private key (held in the data Centre Key Store) and added to the audit trail with a BAL generated jsn
4. All subsequent messages are digitally signed by the counter using the private key established at Log On.
5. Digitally Signing a message involves taking a SHA-1 Hash of the message and digitally signing the Hash value using RSA.
6. The Digital signature is stored alongside the message in the Journal table and is extracted with it into the Audit file as described below

Each night after midnight, the contents of this table for the previous day are copied from the BRDB to a number of serial files.

> *A number of files are generated due to the volume of data processed each day. All data from a given Branch will be concentrated into a small number of these files for ease of retrieval.*

At this point a check is made that indeed there are no missing or duplicate jsns for any counter and should any be found an alert is raised.

> *Note that this could only happen as a result of a bug in the code or by somebody tampering with the data in BRDB and this check is included specifically to check for any such bugs / tampering.*

These files are then copied to the Audit system where they are sealed with digital seals. They are held there for a period of 7 years during which time they may be retrieved and filtered to produce the relevant audit data for a particular Branch.

The Digital Seal is calculated using an MD5 hash of the entire content of the file being sealed. This value is stored in a separate "Seals Database" held on the Audit Server.

Whenever data is retrieved for audit enquiries a number of checks are carried out:

a) The audit files have not been tampered with (i.e. the Seals on the audit files are correct)
b) The individual Baskets (and other records) have their digital signatures checked to ensure that they have not been corrupted.

> *This involves finding the Public Key which has been saved with the Log On message and also checking the integrity of the Log On message using the Public Key Certificate of the BAL's signing key which is stored as part of the Log On audit message.*

c) A check is made that no records are missing or duplicated. I.e. a check is made that there are no gaps or duplicates in the jsn sequence for any counter.

It should be noted that this same Audit system was used to hold similar data from the old Horizon system. However on the old Horizon system the audit point was the message journal on the Riposte Correspondence Servers and thus the technology used for producing the audit of data is completely different between the old Horizon system and Horizon Online.

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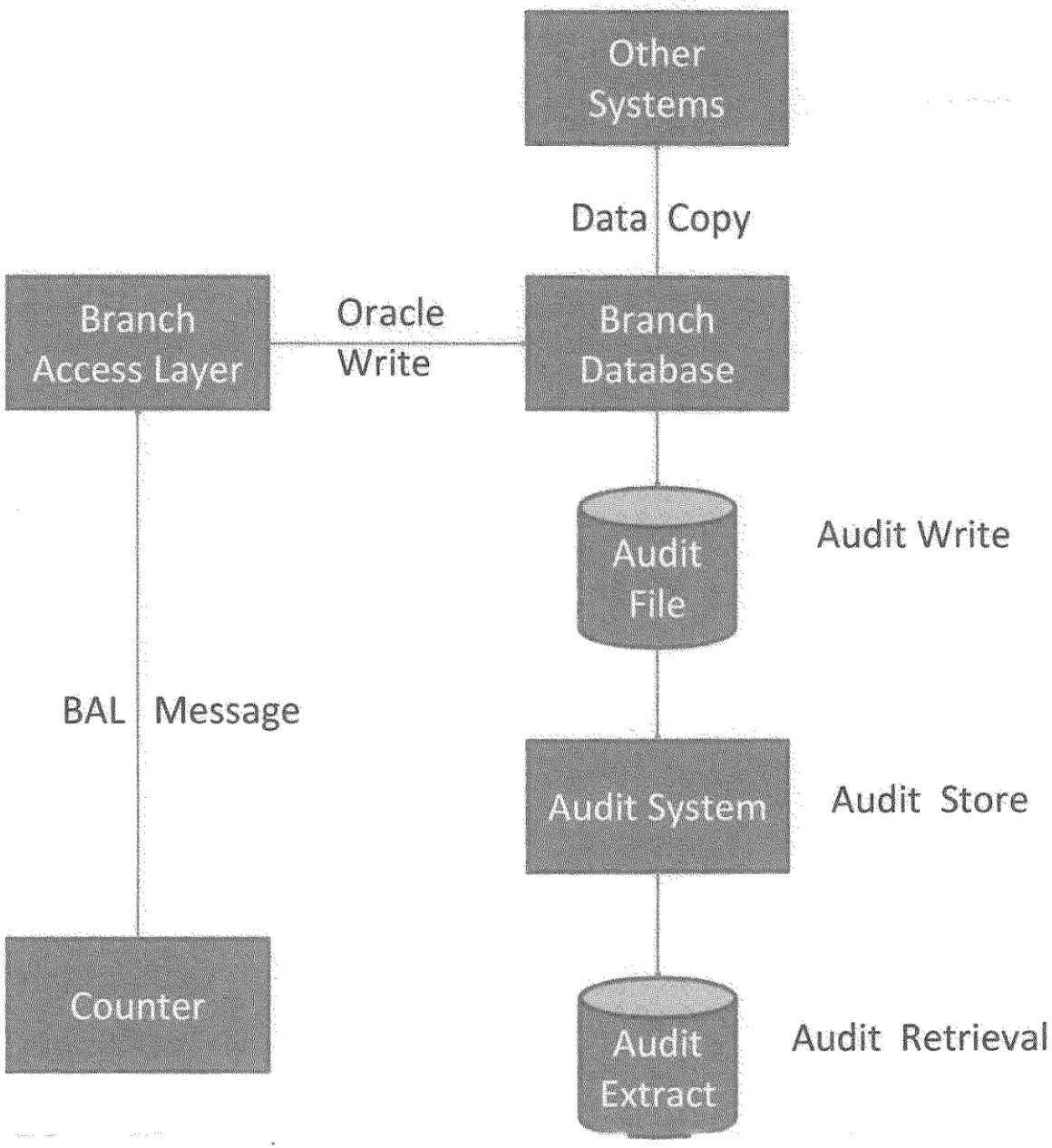

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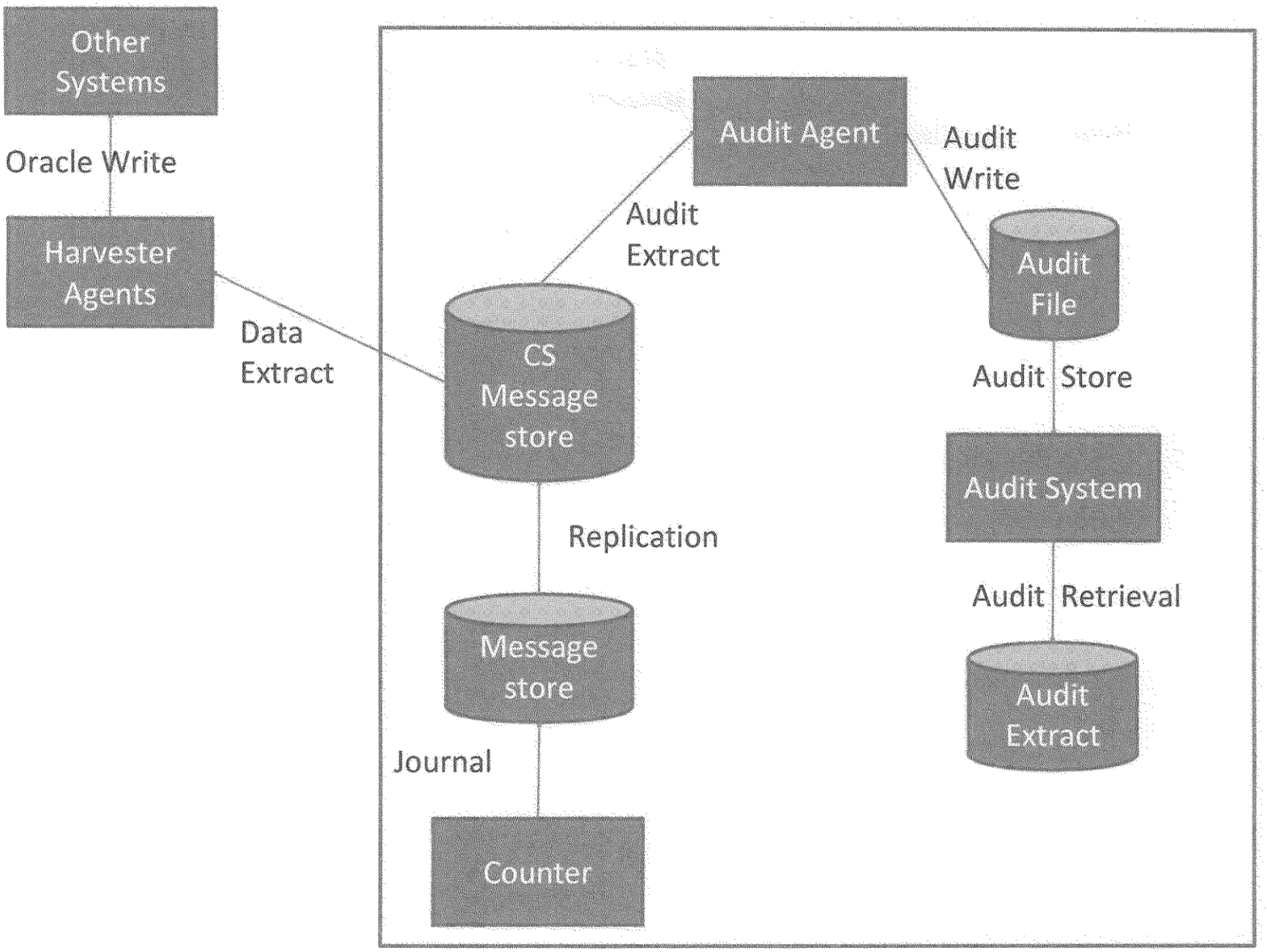

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Document Reference: ARC/GEN/REP/0004

Document Type: Report (REP)

Release: N/A

Abstract: This document describes the measures that are built into Horizon to ensure data integrity.

Note that it only covers Horizon and not HNG-X (Horizon Online).

Document Status: Final Draft

Author & Dept: Gareth I Jenkins

External Distribution:

Approval Authorities:

Name	Role	Signature	Date
Suzie Kirkham	Account Manager		

Note: See Post Office Account HNG-X Reviewers/Approvers Role Matrix (PGM/DCM/ION/0001) for guidance.

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0 Document Control

0.1 Table of contents

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0.2 Figures and Tables

0.2.1 Table of Tables

None.

0.3 Document History

Version No.	Date	Summary of Changes and Reason for Issue	Associated Change - CP/PEAK/PPRR Reference
0.1b	02/10/2010	First Informal Draft. Changes from version 0.1a were marked in red (like this) with ~~strikeout~~ for significant deletions.	
1.0	28/11/2013~~02/10/2009~~	Version for release to Post Office.	

0.4 Review Details

Review Comments by:	02/10/2009
Review Comments to:	Gareth Jenkins
Mandatory Review	
Role	**Name**
Suzie Kirkham	Account Manager
Jeremy Worrell	CTO
Optional Review	
Role	**Name**
Guy Wilkerson	Commercial Director
LaToya Smith	Commercial
Amanda Craib	Head of Commercial, Retail, Royal Mail and Telcos
David Smith	Post Office
Issued for Information – Please restrict this distribution list to a minimum	
Position/Role	**Name**

(*) = Reviewers that returned comments

(†) = Reviewers that returned no comments

0.5 Associated Documents (Internal & External)

Reference	Version	Date	Title	Source
PGM/DCM/TEM/0001 (DO NOT REMOVE)			Fujitsu Services Post Office Account HNG-X Document Template	Dimensions
ARC/GEN/REP/0001			HNG-X Glossary	Dimensions

Unless a specific version is referred to above, reference should be made to the current approved versions of the documents.

0.6 Abbreviations

Abbreviation	Definition
AP	Automated Payments
CRC	Cyclic Redundancy Check

0.7 Glossary

See also document ARC/GEN/REP/0001.

Term	Definition
Replication	The mechanism by which data is reliably copied between the local system and other systems (i.e. other counters, external storage in a single counter branch and the data centre)

0.8 Changes Expected

Changes
Review comments etc.

0.9 Accuracy

Fujitsu Services endeavours to ensure that the information contained in this document is correct but, whilst every effort is made to ensure the accuracy of such information, it accepts no liability for any loss (however caused) sustained as a result of any error or omission in the same.

0.10 Copyright

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1 Purpose

This document is submitted to Post Office for information purposes only and without prejudice. In the event that Post Office requires information in support of a legal case Fujitsu will issue a formal statement.

This document is a technical description of the measures that are built into Horizon to ensure data integrity, including a description of several failure scenarios, and descriptions as to how those measures apply in each case.

Note that this document only covers Horizon. It does not cover HNG-X (Horizon Online).

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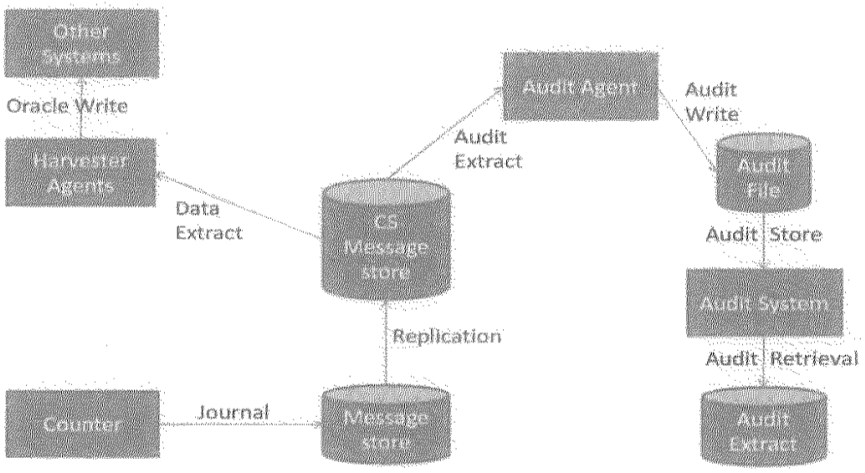
2 Horizon Data Integrity



The Horizon system is designed to store all data locally on the counter's hard disk. Once the data has been successfully stored there it is then replicated (copied) to the hard disks of any other counters in the branch (and in the case of a single counter branch to the additional external storage on the single counter). Data is also passed on from the gateway counter to the Horizon data centre using similar mechanisms.

The replication process is designed such that should the data fail to be copied immediately (for example due to a failure on the local IT network within the branch or another counter being switched off or the branch being disconnected from the data centre), then further attempts are made to replicate the data at regular intervals until it is finally copied successfully. Once the data reaches the Data Centre a further copy is taken and added into the audit trail where it is available for retrieval for up to 7 years. Data in the audit trail is "sealed" with a secure checksum that is held separately to ensure that it has not been tampered with or corrupted.

Every record that is written to the transaction log has a unique incrementing sequence number. This means it is possible to detect if any transitions records have been lost.

While a customer session is in progress, details of the transactions for that customer session are normally held in the computer's memory until the customer session (often known as the "stack") is settled. At that point all details of the transactions (including any methods of payment used) are written to the local hard disk and replicated (as described above). It should be noted that double entry bookkeeping is used when recording all financial transactions, ie for every sale of goods or services, there is a corresponding entry to cover the method of payment that has been used. When a "stack" is secured it is written in such a way that either all the data is written to the local hard disk or none of it is written. This concept of "atomic writes" is also taken into account when data is replicated to other systems (ie other counters, external storage or the data centre).

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The data for a stack will have been successfully secured to the local hard disk before the screen is updated indicating that a new customer session can be started. Note that although an attempt will have been made to replicate the data to an external system at this time, there is no guarantee at this point that such replication will have been successful. For example if there is a Network Failure followed by a Terminal failure there is a slight risk that transactions in the intervening period could be lost.

All data that is written includes a "checksum" value (known as a CRC) which is checked whenever the data is read to ensure that it has not been corrupted. Any such corruptions detected on reading will result in failures being recorded in the event logs which are held on the local hard disk for a few days for immediate diagnosis and also immediately sent through to the data centre where they are held for 7 years.

Any failures to write to a hard disk (after appropriate retries) will result in the counter failing and needing to be restarted and so will be immediately visible to the user.

Whenever data is retrieved for audit enquiries a number of checks are carried out:

1. The audit files have not been tampered with (ie the Seals on the audit files are correct)
2. The individual transactions have their CRCs checked to ensure that they have not been corrupted.
3. A check is made that no records are missing. Each record generated by a counter has an incremental sequence number and a check is made that there are no gaps in the sequencing.

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3 Scenarios

It should be noted that these scenarios are all to do with equipment failures and these will always be visible to Fujitsu through the event logs which are retained.

3.1 A counter fails

When a counter fails, there are two possible scenarios:

- It can be successfully restarted
- It cannot be successfully restarted, so needs to be physically replaced

In each case the Data Integrity considerations are different and so are described separately below.

Once the counter has been restarted (regardless of whether or not it has been replaced) recovery may be carried out if recoverable transactions are detected on the counter. This is also discussed below.

3.1.1 The Counter is Successfully Restarted

In this case all the data that had been secured prior to the failure is still present on the counter and so is available for use. If the User is in any doubt as to whether a transaction had been completed or not prior to the failure they can use the transaction logs to confirm one way or the other.

3.1.2 The Counter is Physically Replaced

In this case there is no data on the local hard disk of the replacement counter. However, since the data should have been replicated to other counters in the branch (or in the case of a single counter branch to the external storage – which should have been physically moved to the replacement counter), then the data should be retrieved and copied to the new counter. If for some reason the data were not available locally in the branch, then it will be copied back from the data centre. This all happens automatically as part of the counter replacement procedure.

Note that the hard disks are encrypted so there is no danger of data protection issues once the old counter has been removed (or if it is stolen).

When a counter is physically replaced, there is a possibility that not all data has been successfully replicated to another system prior to the failure. In this scenario it is essential that the user confirms what the last successful transaction on that counter was, again by using the transaction logs.

3.1.3 Transaction Recovery

Some classes of transaction generate recovery data as they go along, so as to ensure that in the event of a failure between the transaction starting and the basket being secured, there is sufficient information available to enable the transaction to be recovered. On Horizon there are two separate mechanisms to cover different classes of transaction:

- Banking Recovery
- AP Recovery

Both these mechanisms are automatically invoked during Log On, should the system detect that there has been a possible failure. These are described below.

3.1.3.1 Banking Recovery

This covers credit card and debit card transactions and e-Top-Up transactions as well as online banking transactions.

A check is carried out to see if any incomplete banking style transactions (i.e. network banking, credit / debit card or e-Top-Up) exist in the transaction logs for that counter. An incomplete transaction is one where an authorisation request has been sent to the financial institution, and there is no corresponding completion message which is normally secured as part of settlement at the end of the Customer session.

In most cases, recovery information stored in the transaction log can be used to ascertain the outcome of the transaction being recovered and a suitable completion record is then recorded at the time of recovery. In some cases the user is prompted to confirm whether or not the transaction has completed successfully and the response from that prompt is used to generate the completion record.

3.1.3.2 AP Recovery

In the case of Automated Payments (AP), the user is asked if they wish to carry out AP recovery and they have the option of doing so immediately or leaving it until later.

If the user carries out recovery they will be asked about the last successful AP transaction (which can be seen from the branch copies of the AP receipts that are printed) and the system will then check to see if it has been completed in the system. If it has not been completed in the system, then the system will use the AP Recovery data stored in the transaction logs to ensure that all incomplete AP transactions on the counter up until the one specified by the user are completed at recovery time. To assist with this process, each AP transaction has a unique, incrementing sequence number which is printed on the receipt.

Fujitsu understand that these processes are defined in Post Office's Horizon User Guides.

3.2 A counter has a "Blue Screen of Death"

This is just a special case of a counter failure, so please see section 3.1 above.

3.3 There are package collisions on networks

The replication protocols used to copy details of transactions between counters and also between the gateway counter and the data centre ensure that the data is copied successfully. Should packets collide on the network (or should there be any other network issues such as the IT communications link failing) then the replication protocols will ensure that the data is re-sent. Such retries will continue until the data is finally successfully transmitted.

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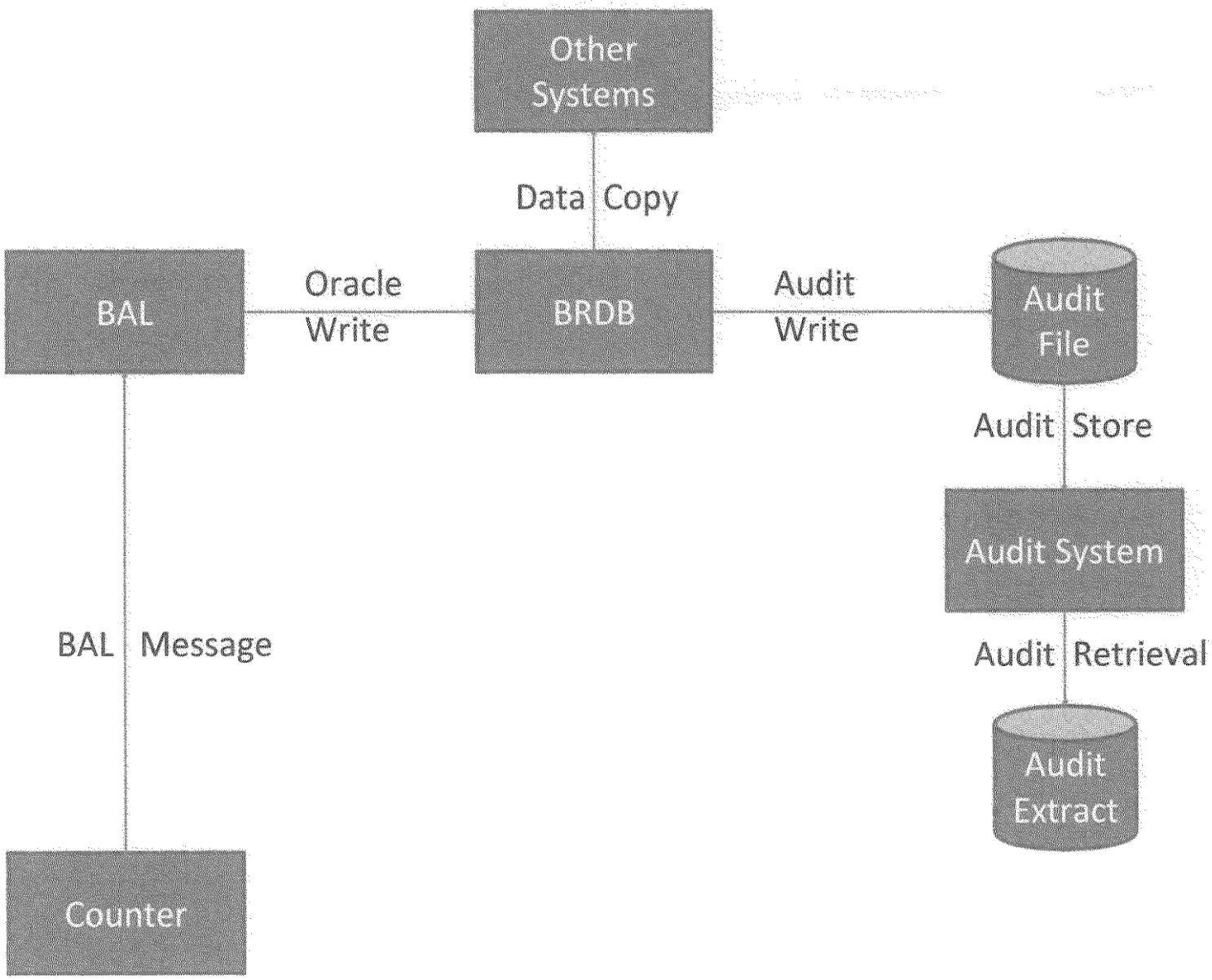
Metadata

Filename	embedded.docx	ORIGINAL

POL00043789

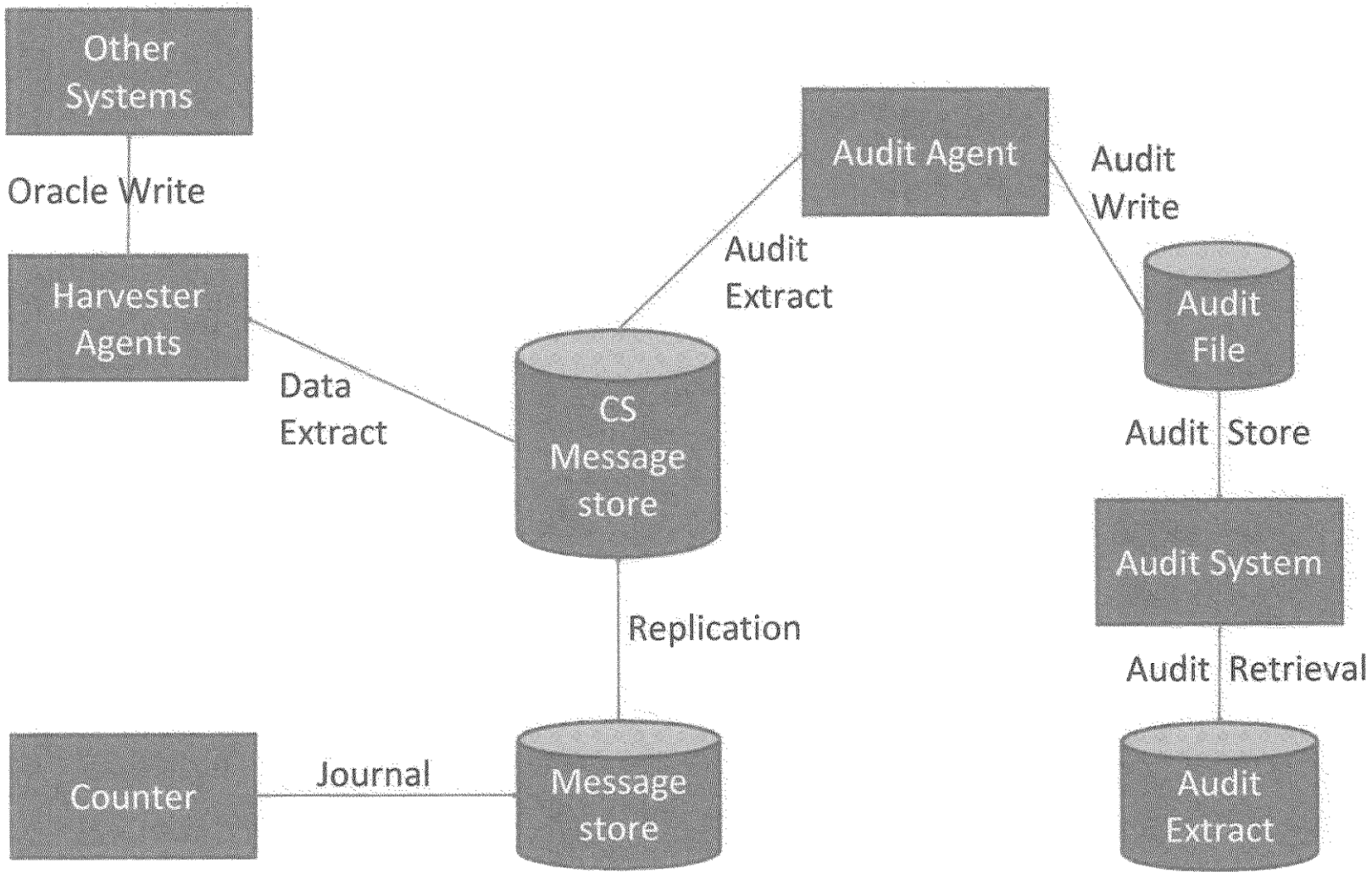


POL00043789

#927.1
Metadata

Filename	Microsoft_Office_PowerPoint_Slide1.sldx	ORIGINAL

POL00043789



POL00043789

#939.1

Metadata

Filename	Microsoft_Office_PowerPoint_Slide1.sldx	ORIGINAL

POL00043789

From: Rodric Williams <GRO>
To: Christopher Knight <GRO>
Cc: Patrick Bourke <GRO>, Mark Underwood1 <GRO>
Subject: RE: Horizon "Core Audit Process"
Date: Mon, 9 Nov 2015 18:07:52 +0000
Importance: Normal
Attachments: 20151109175431536.pdf; HorizonOnlineDataIntegrity_POL.DOC; ARCGENREP0004.HorizonDataIntegrity.doc
Embedded: FW:_E-mail_Delivery_from_Lexis(R)_Library

Chris,

As requested, please find attached:

1. Witness Statement of Gareth Jenkins dated 15 January 2013. Although I have taken this from the Ishaq prosecution files, it is stated to have been prepared for the "Jishaan Patel" case to provide "some general information regarding the Integrity of Horizon". Please let me know if you need the evidence prepared for the Ishaaq case specifically.

2. Email containing the judgment in Post Office Ltd v Castleton [2007] EWHC 5 (QB).

3. Fujitsu's "Horizon Data Integrity" document dated 2 October 2009.

4. Fujitsu's "Horizon Online Data Integrity for Post Office Ltd" document dated 28 March 2012.

I can have hard copies of any/all of these documents with me at our offices tomorrow if you require.

Kind regards, Rodric

-----Original Message-----
From: Christopher Knight [GRO
Sent: 09 November 2015 16:56
To: Rodric Williams
Cc: Patrick Bourke; Mark Underwood1
Subject: Re: Horizon "Core Audit Process"

Could we also have a copy of Gareth Jenkins' witness statement in the Ishaq prosecution please, dated 15 Jan 2013? Looks like it has a helpful overview of horizon.

Chris

> On 9 Nov 2015, at 14:07, "Rodric Williams" <GRO> wrote:
>
> Christopher,
>
> In advance of the Horizon demonstration you will be attending tomorrow, I attach a PowerPoint prepared by Fujitsu in January 2014 which summarises Horizon's "Core Audit Process", i.e. the design features which "ensure that accurate and auditable records are kept of all sub-postmaster transactions". I thought this might help explain what happens to a transaction once it has been entered into Horizon by a branch.
>
> The PowerPoint references two further documents which describe in more detail the core audit processes for both the original Horizon and current "Online" versions. I have not attached these as they are fairly technical, but can do so if you would like to see them.
>
> Kind regards, Rodric
>
>
> [cid:image001.png@01D03A1D.110B24F0]
>

POL00043789

> Rodric Williams
> Solicitor, Corporate Services
>
>
> Post Office Ltd
> 20 Finsbury Street, London EC2Y 9AQ
> GRO
> rodric.williams@ GRO GRO GRO
>
>
>
>
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> **********
> This email and any attachments are confidential and intended for the addressee only. If you are not the named recipient, you must not use, disclose, reproduce, copy or distribute the contents of this communication. If you have received this in error, please contact the sender by reply email and then delete this email from your system. Any views or opinions expressed within this email are solely those of the sender, unless otherwise specifically stated.
>
> POST OFFICE LIMITED is registered in England and Wales no 2154540. Registered Office: Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ.
>
> **********
> <image001.png>
> <Horizon Core Audit Process - v1 0.ppt>

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#214.1

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Filename	7.68 RE Horizon Core Audit Process (1).msg	ORIGINAL

POL00043789

From: Jonny Gribben GRO
To: Rodric Williams GRO
Subject: FW: E-mail Delivery from Lexis(R) Library
Date: Wed, 27 Nov 2013 12:44:21 +0000
Importance: Normal

Here you go

From: Lexis(R)Library GRO
Sent: 27 November 2013 12:43
To: Jonny Gribben
Subject: E-mail Delivery from Lexis(R) Library

All England Reporter/2007/January/Post Office Ltd v Castleton - [2007] All ER (D) 125 (Jan)

[2007] All ER (D) 125 (Jan)

Post Office Ltd v Castleton

[2007] EWHC 5 (QB)

Queen's Bench Division

Judge Richard Havery QC sitting as a judge of the High Court

22 January 2007

Account - Action for - Shortage on accounts of post office - Whether subpostmaster liable to account for shortage.

At the material time, the defendant was a subpostmaster. In accordance with the rules and practice of the claimant, accounts of transactions at the post office were prepared weekly. The accounts for weeks 42-51 of the year 2003/2004 showed a shortage of £22,963.34. On 23 March 2004, an audit took place which revealed a shortage of £25,758.75. The defendant was suspended from duty on that day, and his contract was subsequently terminated. The claimant issued proceedings for that sum, plus an additional £100.20 in relation to National Lottery moneys.

The defendant denied liability. He contended that the losses were illusory and not real, and were the product of the computer and accounting system used by the claimant.

The court ruled:

In the circumstances of the case, the accounting system had been working properly, and the shortage shown of £22,963.34 on the accounts was real, and not illusory. Moreover, the audit on 23 March had been accurate, and confirmed that the shortfall at the end of the previous account had been real. Further, the defendant was under a duty to account to the claimant in respect of the National Lottery moneys.

It followed that there would be judgment against the defendant in the sum of £25,858.95.

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Richard Morgan (instructed by Bond Pearce LLP) for the claimant.

The defendant appeared in person.

Aaron Turpin Barrister.

Judgment

[2007] EWHC 5 (QB)

QUEEN'S BENCH DIVISION

22 JANUARY 2007

JUDGE RICHARD HAVERY QC (Sitting as a Judge of the High Court)

APPROVED JUDGMENT

I DIRECT THAT PURSUANT TO CPR PD 39A PARA 6.1 NO OFFICIAL SHORTHAND NOTE SHALL BE TAKEN OF THIS JUDGMENT AND THAT COPIES OF THIS VERSION AS HANDED DOWN MAY BE TREATED AS AUTHENTIC.

HIS HONOUR JUDGE RICHARD HAVERY Q.C.

1. This is a claim by Post Office Limited on an account stated by one of its former subpostmasters, the defendant Mr. Castleton. Mr. Castleton admits that he was an accounting party. The statement of the account, though not its validity, is admitted. Accordingly, the burden of proof lies on Mr. Castleton to show that the account is wrong. On that point the law is clear. In Shaw v. Picton (1825) 4 B. & C. 715, 729, Bayley J. said

> It is quite clear, that if an agent (employed to receive money, and bound by his duty to his principal from time to time to communicate to him whether the money is received or not,) renders an account from time to time which contains a statement that the money is received, he is bound by that account unless he can shew that that statement was made unintentionally and by mistake. If he cannot shew that, he is not at liberty afterwards to say that the money had not been received, and never will be received, and to claim reimbursement in respect of those sums for which he had previously given credit.

And in Camillo Tank Steamship Company Limited v. Alexandria Engineering Works (1921) 38 T.L.R. 134, 143 Viscount Cave, in the course of a dissenting speech, made the following remarks, which I believe to be uncontroversial:

> The expression "account stated".....has more than one meaning. It sometimes means a claim to payment made by one party and admitted by the other to be correct. An account stated in this sense is no more than an admission of a debt out of court; and whilst it is no doubt cogent evidence against the admitting party, and throws upon him the burden of proving that the debt is not due, it may, like any other admission, be shown to have been made in error.

2. The accounts in this case are weekly accounts entitled Cash Account (Final), signed by Mr. Castleton as correct, of a post office at 14, South Marine Drive, Bridlington, Yorkshire, of which he was appointed subpostmaster in June 2003. In accordance with the rules and practice of the Post Office, accounts of the transactions at the post office (which has been called "Marine Drive") were prepared weekly for the periods from Thursday to the following Wednesday. The accounts in question were accounts for weeks 42 to 51 of the year 2003/2004, which relate to the weeks ending Wednesday 14th January 2004 to Wednesday 17th March 2004. The accounts built up substantial apparent discrepancies. The Cash Account (Final) for week 51 shows a shortage of £22,963.34. In consequence Marine Drive was closed all day on 23rd March 2004 for the purpose of an audit. That audit showed a shortage of £25,758.75. Mr. Castleton was suspended from his duties on that day. An additional sum of £100.20 is claimed in relation to National Lottery moneys. The total claim is for the sum of those two amounts, viz. £25,858.95. The burden of proof on Mr.

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Castleton can relate only to the figure of £22,963.34. In the event, as will appear, the identity of the party on whom lies the burden of proof is not important in this case.

3. The first significant discrepancy appeared in the accounts relied on by the claimant in week 43. Thereafter significant further discrepancies appeared in weeks 44, 46, 48, 49, 50 and 51. Mr. Castleton gave evidence that the first discrepancy, of approximately £1100, appeared by week 42, but that he made it good out of his own pocket. I am satisfied on the evidence of Mrs. Catherine Oglesby, his then line manager, that he told her shortly before New Year 2004 that a shortfall of about £1100 had occurred on week 39 (the week ending 23rd December 2003). Nevertheless, for some reason that has not been intelligibly explained, the first and only explicit mention of the figure in the accounts is a reference in the print-out of the Final Balance (see below) for week 42 of a "Discrepancy over" of £1103.00 and a "Discrepancy short" of £1103.60. The Payments column of the Final Balance shows a nett discrepancy of £0.60. Mr. Morgan did not accept that Mr. Castleton had paid in £1100. I shall return to that point. It goes only to credit, since none of the Final Balances or the Cash Accounts (Final) from week 39 onwards show a nett discrepancy of that sum. Mr. Castleton promptly reported shortfalls in weeks 43, 44, 46 and 48. Mr. Morgan disclaimed any dishonesty on the part of Mr. Castleton.

4. Mr. Castleton admits that on 23rd March 2004 there was an apparent shortfall in the account of Marine Drive in the sum of £25,758.75. He admits that he produced weekly Balance Lists (the documents in question are headed "Final Balance") and personally produced, signed off and submitted to the claimant Cash Accounts (Final) up to week 51. His case was that the losses apparently shown by the Balance Lists and Cash Accounts (Final) were illusory not real. It was entirely the product of problems with the Horizon computer and accounting system used by the claimant. The apparent shortfalls were nothing more than accounting errors arising from the operation of the Horizon system.

5. There were two computer terminals at Marine Drive. Each computer terminal included a processor, a touch-sensitive screen, a keyboard, a barcode scanner and a printer. The laid down practice, in outline, was and is as follows. The clerk records on the computer all transactions that he makes. Transactions other than on-line banking are recorded not only on the computer but also by a document, such as a television licence counterfoil, savings bank deposit or withdrawal slip or a cheque. Some transactions are known as APS (automated payment system) transactions. Those are transactions where a customer either uses a card containing a magnetic strip to pay a bill or pays a bill that is barcoded. There are corresponding APS slips recording APS transactions. The subpostmaster is responsible for checking daily the computer records of the transactions of the day against the documentation. He prints out the computer records of the transactions, and when satisfied that they tally with the documentation he sends the documentation in sealed bags or envelopes by the last collection of the day to the relevant centres. He receives cash, stamps and other cash-type items from time to time in sealed bags and has to record daily the amount of cash held by reference to the denominations of notes and coins. The subpostmaster is also responsible for producing a weekly balance. There are in the papers before me print-outs of weekly Final Balances for Marine Drive for the relevant weeks and of Cash Accounts (Final) signed by Mr. Castleton.

6. Every week, after close of business at 5.30 p.m. on Wednesday and before opening at 9 a.m. on Thursday, Mr. Castleton checked the stock at Marine Drive, as required by Post Office procedures.

7. It is obvious that the week's accounts of a post office balance if the difference represented by the receipts minus the payments equals the difference represented by the value of the stock at the end of the week minus the value of the stock at the end of the previous week. If those two differences are not equal, there is a discrepancy. If the former difference is greater than the latter, there is a loss, which is treated as a positive discrepancy. If the former is less than the latter, there is a gain. That is treated as a negative discrepancy. If

- An = the stock at the end of week n;
- Rn = the receipts during week n;
- Pn = the payments during week n;

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- D_n = the discrepancy for week n (positive for a loss, negative for a gain);

- S_n = the algebraic sum (i.e. the sum taking into account the sign, positive or negative) of the discrepancies for all relevant weeks up to and including week n;

then

- $R_n - P_n - (A_n - A_{n-1}) = D_n = S_n - S_{n-1}$.

i.e.

- $R_n + A_{n-1} + S_{n-1} = P_n + A_n + S_n$.

8. The weekly final balances produced by the Horizon system show both volume and value. I am concerned here only with value. The balances are set out in the following way. First, there is a list of the stock, described as "Stock & MOP" (cash, stamps, phone cards, postal orders and so on), giving the value of each item and a total (An). There follows a list headed Receipts which begins with an item "Balance brought forward". The balance brought forward is the sum of the previous week's Stock and MOP and the accumulated discrepancies as of the previous week, i.e. $A_{n-1} + S_{n-1}$. The rest of the Receipts column is a list of the receipts (Rn) for the week in question. A total, which thus represents $R_n + A_{n-1} + S_{n-1}$, appears at the bottom of the column. That is designated "Total receipts". There follows a column headed Payments. That includes a list of payments out to customers at the Post Office and remittances to central offices of the Post Office. Those payments out and remittances are what I have designated Pn. In the same column are included also the "Total Stock and MOP" (An) and "Nett discrepancies" (Sn). Those figures are totalled to give a "Total payments" figure which is $P_n + A_n + S_n$. The nett discrepancies are calculated so as to give rise to the same total in the Payments column as appears under the Receipts column. There is then a figure of "Balance carried forward" which is the algebraic sum of the Stock and MOP figure and the Discrepancies figure (i.e. $A_n + S_n$). The logic of the system thus requires that

- $R_n + A_{n-1} + S_{n-1} = P_n + A_n + S_n$,

as it should. The entries (but not the balances and discrepancies calculated by the system) were entered by Mr. Castleton or his assistant in all cases at Marine Drive while Mr. Castleton was subpostmaster. He accepts, and indeed asserts, that they are correct. The correctness of the arithmetic is not in issue.

9. Mr. Castleton, being alarmed by the growing discrepancies, was allowed by the claimant to put two accumulated discrepancies (deficits) into a suspense account. That was done by entering the relevant accumulated discrepancy as a fictitious expense in the Payments column of the Final Balance document. On each occasion the accumulated discrepancy was reset at zero.

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10. The figures in the weekly Final Balances were reflected in the weekly documents entitled "Cash Account (Final)" all of which were signed by Mr. Castleton as correct. The Cash Accounts (Final) showed the accumulated discrepancies appearing in the Final Balance print-outs. They also showed the suspense account figures in a table headed "Authorised Cash Shortages". The signed Cash Accounts (Final), unlike the Final Balance documents, included the authorized cash shortages in the Stock and MOP figures and in the figures carried forward (entitled "balance due to Post Office" in the Cash Accounts (Final)). The underlying logic of the two sets of documents was otherwise the same, and cannot be faulted.

11. Mr. Castleton cross-examined Mr. John Jones, who had heard Mr. Castleton's appeal against a decision of the claimant to dismiss him, on some figures that Mr. Jones had produced for the purposes of the appeal. Those figures had been extracted from the Cash Accounts (Final). The point put by Mr. Castleton was that Mr. Jones's figures showed that the receipts for weeks 42 to 51 inclusive totalled an amount less by £9240 than the payments, yet during the same period Mr. Jones's figures showed that the cash on hand (part of the Stock and MOP figures) had fallen by only £4700. Thus Mr. Jones's figures, far from showing a positive discrepancy (loss), showed a negative discrepancy (gain). Mr. Jones said that the figures were only an extract to show trends relating to cash. He did not rely on those figures in order to show that the shortage was a shortage of cash. However, in view of that line of cross-examination I have myself extracted from the Final Balances the relevant figures of Rn, Pn, An, An-1 and Sn. They appear in the table below.

Week	Sn (£)	An: Stock & MOP(£)	Rn (£)	Pn (£)
41	0.47	54,170.02		
42			122,120.66	83,915.81
43			89,237.88	109,950.20
44			76,450.26	79,158.56
45			86,575.89	82,704.43
46			66,959.03	90,580.12
47			125,739.13	87,064.04
48			64,477.79	101,368.22
49			113,583.93	79,312.39
50			64,186.39	79,984.08
51	11,210.56	47,084.67	63,689.54	74,857.91
Total			873,020.50	868,895.76
Difference	11,210.09	7,085.35		4,124.74

The last figure in the above table is the difference between the totals in the Rn and Pn columns, representing an excess of receipts over payments. It will be seen that that, plus the diminution in Stock & MOP, equals the increase in the accumulated discrepancy. Thus no flaw can be found on this account in the Horizon system. The payments figure in week 47 includes an authorized fictitious payment of £8,243.10. The payments figure in week 49 includes an authorized fictitious payment of £3,509.68. Those two payments, totalling £11,752.78, were debited to the suspense account, and they appear as authorized cash shortages in the relevant Cash Accounts (Final). The total of the discrepancies at the end of week 51, namely £11,210.56, plus the amount in the suspense account is £22,963.34. Thus the accounts show that sum to be due from Mr. Castleton to the claimants. Since Mr. Castleton accepts the accuracy of his entries in the accounts and the correctness of the arithmetic, and since the logic of the system is correct, the conclusion is inescapable that the Horizon system was working properly in all material respects, and that the shortfall of £22,963.34 is real, not illusory.

12. I shall nevertheless consider the points made by Mr. Castleton in relation to the reliability of the Horizon system.

13. Mr. Castleton submitted that there were anomalies in the operation of the Horizon system, thereby implying that the system was defective. The first anomaly was a discrepancy between a computer print-out of all inputs to the computer and a figure produced by the computer. The former showed that at 17:41:30 on 7th January 2004 Mr. Castleton (personally identified by his code) had declared (entered into the computer) a stamp total of zero. There were no subsequent relevant entries before 07:11 on 8th January. Yet the Final Balance printed out on 8th January at 07:11 showed a figure of £1183.22 for the stock of postage stamps (part of "Other postage items") and £1249.07 (total of "Other postage items") for week 41. There was no suggestion that the latter figures were incorrect. Mr. Castleton said that it was the former print-out stating "Declare stamp total £0.00" that was incorrect. (There was, however, an entry on the former print-out showing "Declare stamp total £1183.22" at 17:06:59 on 7th January). Mr. Castleton said that the figure of £1249.07 would show up as a loss on the next week's cash account. He said that the figure of £1249.07 was correct, but the zero entry would cause the computer to show a loss. As I understand his argument, the computer would do that because it would calculate the balance on the basis that the value of the stock of stamps had been diminished by

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£1247.09. Mr. Castleton submitted that the above matter led to the entry of "Discrepancy short" in the box at the top of the Final Balance for week 42. I reject that argument for the following reasons. First, it is abundantly clear that the computer did not calculate the balance on the basis that the value of the stock had been diminished by £1247.09. The figures printed out for week 42 were respectively £1041.96 (postage stamps) and £1094.82 (total of "Other postage items") which are consistent with the figures mentioned above for the previous week, allowing for the sale of some of the items. Second, the figure of discrepancy shown for the week was only 60p. In a box at the top of the Final Balance for week 42 that figure is shown as the difference between £1103 which Mr. Castleton said he paid in and £1103.60 which is described as "Discrepancy short". The production of the box, which does not enter into the calculation of the final balance, is unexplained. Third, the figure of about £1100 was the shortfall that Mr. Castleton had told Mrs. Oglesby had occurred before the previous Christmas. Thus, whilst the entry "Declare stamp total £0.00" is not explained, I am satisfied that Mr. Castleton's argument is misconceived.

14. The second anomaly on which Mr. Castleton relied was a difference between two figures of amounts of cheques. At 17:35 on 3rd March 2004 a sales report printed out by Mr. Castleton showed receipts of cheques to the value of £3533.30. At 07:37 on 4th March 2004 in the Final Balance there was an entry in the Payments column "Rem out Data Cen £3519.43". It was not in dispute that "Rem out Data Cen" means remitted out to Data Central, a department of the claimant which dealt with cheques, and that the entry could only refer to cheques. Between those two times twelve entries were, according to the record, made in to the computer, but it is not suggested that any of them are relevant to the present point. This apparent anomaly was put to Mr. Jones, who simply replied that the sales report had no input into the final balance, which is obviously correct. But Mr. Castleton's submission was that the discrepancy showed an anomaly in the operation of the computer. I do not accept that that is so. The computer totals the receipts of cheques as they have been entered into it. There is evidence that clerks sometimes erroneously enter cash as cheques. But in any case, the figure does not appear in the Final Balance or Cash Account (Final). The error in the figure of £3533.30, if error it be, is not significant evidence that the Horizon system was not working properly.

15. Mr. Castleton put forward a third anomaly. The print-out of inputs into the computer shows that on 14th January 2004 at 17:41:58 and again at 18:10:42 cash total £0.00 was declared. Mr. Castleton submitted that that could not have happened. The same print-out has the following further entries, among others: 14th January 2004, 18:27:54 "Declare cash total £81899.32"; on the same day at 18:43:14 "Report trial balance - Office copy"; on 15th January at 07:30:20 "Declare cash total £82997.32"; and on the same day at 07:33:17 "Declare cash total £83328.32". The last-mentioned figure appears in the Final Balance and in the signed Cash Account (Final). Mr. Castleton said that the figure of £81899.32 was correct and would have been entered into the computer by himself or by one of his assistants. He said that no-one would have entered a figure of £0.00: "It would be impossible for the computer to produce a report on it and not have it inputted on the other side", he said. By "the other side", I take it that he was referring to the Payments column in the Final Balance, which includes an amount for "Stock & MOP", which itself includes a sum for cash. The Final Balance and the Cash Account (Final) for the week in question (week 42) are based on the declared cash total of £83328.32. The point Mr. Castleton was making, I think, was that the record of inputs must be wrong in showing "Declare cash total £0.00". I have heard no expert evidence about the print-out of inputs into the computer. The fact that there appear entries "Declare cash £0.00" which have no apparent effect on the accounts is exiguous evidence that the Horizon system was flawed.

16. Another point arises here. A print-out of declared cash made at 07:33 on 15th January 2004 shows a total of £83328.32. The individual amounts represented by coins and notes of specified face values are set out in the print-out in a list, and the total comes to £83328.32. A manuscript page of the stocktaking of cash also shows the amounts represented by coins and notes of specified face values. Those figures are the same as those in the printed list, with a single exception. The manuscript note shows a total of £161 in 50-pence pieces. The print-out shows a total of £1590.00 in 50-pence pieces. If the figure of £161 were substituted for £1590, the total would come to £81899.32, the figure originally entered at 18:27:54 the previous night.

17. Mr. Morgan submitted that the figures shown in print-outs of stock of 20p. and 50p. coins for 15th January 2004 were implausible. There is a print-out of declared cash as of 07:33 on 15th January 2004. That is shown as week 42, being before opening time on the first day of week 43. There is also a print-out of cash on hand as of 17:32 on the same day. Cash on hand was counted and recorded daily in terms of the total value of the items of each denomination. There is a manuscript note of the count of cash on hand which was the basis of the print-out. Taking the figures in chronological order, we have 07:33; MS note; 17:32. I set out the figures in the table below, together with the numbers of coins, which are not in the original data.

	20p.-		50p.-	
Occasion	Value(£)	Number	Value(£)	Number
07:33	277.60	1388	1590.00	3180
MS	254.60	1273	161	322
17:32	2654.60	13273	84.50	169

18. It was said that week 42 had shown a loss of about £1100. The evidence is somewhat equivocal. Mr. Castleton wrote in his witness statement :

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- Until Wednesday 14th January 2004 we balanced £1103.15 short we could see no reason for this at the time.

Mrs. Christine Train was an experienced counter clerk who worked at Marine Drive at the material time. Mrs. Train wrote in her witness statement:

- When in week 42 we carried out the balance and the system shows [sic] a loss of around £1100 it was a surprise but we thought we must have missed a bundle of notes and a bag of coins. The cash was recounted but we arrived at exactly the same figure again.....We were unable to identify the source of the problem on the following morning. Ultimately, Mr. Castleton had to make good the £1100 loss or so in cash from his own pocket to allow the system to balance and so enable us to roll over for the following week.

19. The difference between the cash declared at 18:27:54 on 14th January and the cash declared at 07:33:17 on 15th January is equal to the difference between £1590 and £161. Mr. Morgan submitted that it was implausible that Mr. Castleton should have paid in that sum, £1429, in 50p. pieces. He told me that they would weigh over 20 kilograms and, if placed in a pile, would reach a height of 5 metres. Moreover, I would add that all of them and more had apparently been used up by the end of the day. At 17:32 on the same day, 15th January, the value of the stock of 50p. coins was shown as £84.50; at 17:34 on 16th January it was shown as £78.50. Mr. Castleton told me (though not by way of his evidence on oath) that he had an ample supply of 50p. pieces.

20. Mr. Morgan also submitted that it was implausible that the stock of 20p. coins should have increased by 11,885 over the day. He gave me even larger figures of weight and height. I accept that, especially given that the print-out of the cash on hand at 17:34 on the following day, 16th January, shows the stock of 20p.coins as having the value of £262.40. I am satisfied that the intermediate figure of £2654.60 cannot be right. It may be a mistyping of the entry into the computer. The error (and I am satisfied that the figure of £2654.60 must be wrong, whatever the reason) does not affect the weekly accounts. Nor has it been put forward as evidence of a fault in the Horizon system.

21. Mrs. Train was cross-examined about her recollection of the payment in of £1100, specifically whether it involved a large number of coins. She was clearly embarrassed by the questions and gave no definite answer. I am not satisfied that the sum was paid in.

22. During the hearing, Mr. Castleton sought to adduce evidence of other complaints from subpostmasters of other post offices about the Horizon system. I admitted in evidence the fact that there were a few such complaints, but I refused to admit evidence of the facts underlying such complaints, since that would have involved a trial within a trial. I heard evidence from Dorothy Day, who was currently the temporary subpostmaster at Marine Drive. She had found intermittent problems with the system. The most worrying and inconvenient problem was that debit and credit cards would intermittently fail to register when swiped through the gateway keyboard to pay for customers' transactions. She found a way round the problem, though it took some time before it was solved. Mrs. Day said that she had now been at Marine Drive post office for about 21/2 years and she was convinced that the problem was with the Horizon system. She recalled that in her previous post office, a small village post office, she experienced two anomalies that she could not explain. On one occasion she was several hundred pounds in surplus "which never turned up". The same thing happened again, inexplicably. Surely, she said, if she had missed inputting a Gyro payment or a National Savings and Investment payment someone would have missed it sooner or later?

23. I heard evidence from Anne Chambers, a system specialist employed by Fujitsu, the company that provides the Horizon service. She has a working knowledge of the Horizon computer system used by the claimant. She said that calls from postmasters relating to potential system problems are initially taken and logged by the Horizon system Helpdesk. I accept evidence of Mr. Castleton that he contacted the Helpdesk over problems with discrepancies in balancing accounts at Marine Drive on a number of occasions. If the helpdesks are unable to resolve the problem, calls may be passed to the System Support Centre, where Mrs. Chambers works. In this case, her first involvement with Marine Drive was on 26th February 2004. Mrs. Chambers examined the questions raised and concluded that there was no evidence whatsoever of any problem with the system. She was unable to identify any basis upon which the Horizon system could have caused the losses. Mr. Castleton cross-examined her about complaints from another branch, which he did not identify. She immediately recognized the branch with confidence as being a branch at Callender Square in Falkirk. The problem at Callender Square had, she said, arisen from an error in the Horizon system, but there was no

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evidence of such a thing at Mr. Castleton's branch. I found Mrs. Chambers to be a clear, knowledgeable and reliable witness, and I accept her evidence.

24. Successors to Mr. Castleton as subpostmasters at Marine Drive gave evidence before me. They were Ruth Simpson, Gregory Booth and Mrs. Day. Mrs. Simpson took over Marine Drive as temporary subpostmistress on Tuesday 23rd March 2004 and remained in that position until Wednesday 21st April 2004. Mr. Booth acted as temporary subpostmaster from 21st April 2004 until 28th May 2004. Mrs. Day, to whose evidence I have referred above, became temporary subpostmistress from about 29th May 2004. Mrs. Simpson said that she had had no problems with the computers other than the usual trivial problems that one tends to experience with computers on occasions. In particular, when the touch-sensitive computer screen was dirty, it would not accept commands, and information had to be entered via the keyboard. The screen did not freeze, nor was there any failure of communication between the two terminals. She once had to re-boot the computer because the screen went blank. She did not remember any of the equipment being changed. There were no large discrepancies during her term of office. The maximum discrepancy was £101.95. She thought it might have been due to a pension having been paid out twice. The next largest discrepancy was £19.38. Mr. Booth experienced no significant discrepancies other than two which were deliberately induced to check the operation of the Horizon system having regard to Mr. Castleton's allegations. Mrs. Day did not give evidence of having experienced any discrepancies at Marine Drive.

25. Mr. Andrew Wise, of the Network Directorate of the claimant, had worked for the Post Office since 1991 and had a working knowledge of the Horizon computer system. He wrote in his witness statement that he thought that every transaction (apart from online banking such as withdrawing or depositing cash at the counter) recorded by the clerk on to their computer has a corresponding physical document, such as TV licence counterfoil, savings bank deposit [or] withdrawal slip or cheque. After explaining the matter in some detail, he wrote this:

> Accordingly, it can be seen that if the clerk or subpostmaster makes a mistake when imputing [sic: inputting?] transaction details into their computer, there are a number of points at which this can be picked up, because there are daily and weekly reports that the subpostmaster[s] have to produce at which stage they have to check and satisfy themselves that the physical documents evidencing transactions (for example, cheques, giros, pensions and allowances) match what they have entered on the system. In addition to that, there are various teams responsible for different sorts of paperwork produced by the branch, including a giro bank team, cheques team and pension team. For example, if the clerk records an item incorrectly on the system, they should pick this up on either their daily or weekly report. However, if they fail to do so, this will be picked up at the Processing Centre. If an item has been wrongly recorded, an error notice would be generated, although this can easily take up to 12 weeks or so. This will mean that if a transaction has been over or under stated there will be either a claim error or a charge error respectively.

That evidence was not challenged, and I accept it.

26. Only three error notices relating to the operations of Marine Drive during the period in question, apart from those mentioned below relating to lottery moneys, were in evidence. One error notice was reversed and does not form part of the claim. The others are charge notices totalling £292. They are not separately claimed: I assume that they are included in the audited figure. The paucity of their number is consistent with the proper working of the Horizon system. An error due to a fault in the Horizon system could conceivably be ignored by the ultimate interested party and thus not relayed to the branch as an error notice, but there is no reason to suppose on that account that such a fault exists.

27. Helen Rose was at the material time an auditor employed by the claimant. On 23rd March 2004, she carried out an audit at Marine Drive. That involved counting the cash and stock and checking the paperwork such as Giro deposits and withdrawal receipts, Pensions and Allowances Reports. She found that the branch was short of cash in the sum of £25,758.75. I accept the accuracy of her audit. Moreover, it confirms that the shortfall at the end of the previous accounts week was real. It has not been suggested that Mr. Castleton did not start with a clean sheet.

28. There is a claim for £100.20 as the net receipts in Mr. Castleton's shop at Marine Drive of moneys placed in the National Lottery after close of post office business at 5.30 p.m. on 22nd March and during 23rd March 2004 when the post office was closed and the audit was carried out there. The till was in the shop, which was open at the material time. The claimant alleges that £176 was received at those times for lottery tickets, and that £75.80 was given out to customers by way of prize money. The normal practice was for those moneys to be taken into the post office accounts. That did not happen on this occasion since the post office was closed. The claimant claims by paragraph 11 of the particulars of claim a further adjustment to the account in the sum of £100.20. Before considering the merits of this claim, I shall describe the system.

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29. I read evidence of Mr. Michael Johnson, whom Mr. Castleton did not require to be called as a witness. He was employed by the claimant in the Lottery Exceptions Team. The following description of the lottery system is derived largely from his evidence. At the lottery terminal in the shop the customer pays the shop clerk for a lottery ticket, which is printed by the terminal. Details of the transaction are almost instantaneously downloaded to Camelot, which runs the National Lottery. The subpostmaster uses the shop till receipts to input the details of the lottery transactions into the Horizon computer terminal. Prizes up to a certain amount are paid out by the clerk on presentation of a winning ticket (not necessarily purchased in the shop). Those details are also entered into the Horizon system. Camelot electronically sends to the claimant's data centre details of the transactions for every relevant retailer. The information is automatically compared to the information received on the Horizon system from each branch. If there is a discrepancy, an error notice will be issued unless (not this case) the matter is dealt with directly with the branch. Mr. Johnson exhibited extracts from a spreadsheet taken from the claimant's Issued Errors Database for the Marine Drive branch. They showed a lottery charge error that occurred on 23rd March 2004 for £176, an amount by which lottery online sales had been understated in the receipts section. The money represented money that was received by the branch in relation to the National Lottery but not entered by the branch into the Horizon computer. In addition, a claim error notice was issued for £75.80. That represented Lottery prize payments that were understated by the Marine Drive Branch in the payments section. It represents a credit in favour of the branch.

30. The Cash Account (Final) for Mrs. Simpson's first week as postmistress, week 52, shows that £2218.50 had been entered as the amount of the lottery ticket receipts for that week. The figures from Camelot of lottery transactions at the shop for that week totalled £2394.50, a discrepancy of £176. Those figures were broken down into daily amounts. The amount for 23rd March was £176. I am satisfied that that error arose because Mrs. Simpson did not enter the amounts shown on the relevant till receipts into the Horizon system. Similarly, the figure entered in the Cash Account (Final) as National Lottery prizes for that week was £5792.80. According to Camelot, the figure should have been £5868.60, a discrepancy of £75.80. Mr. Johnson said, without explaining the mechanism, that the figure of £75.80 represented National Lottery prize payments that were understated by the Marine Drive branch.

31. The defence pleaded by Mr. Castleton's then counsel to the claim for £100.20 was

- No admissions are made as to the facts in paragraph 11, being matters that occurred after the defendant's suspension, and the claimant is put to proof of them but the defendant's liability is denied. Having been suspended as set out in paragraph 2 above, the defendant had no way of transacting those matters and/or the claimant's temporary subpostmaster had already assumed responsibility for the branch and/or the claimant's audit staff had balanced the accounts prior to her doing so.

In his skeleton opening argument, Mr. Castleton said that the lottery moneys and terminal receipts were given to Mrs. Simpson on the morning of 24th March. Although he wrote about Mrs. Simpson at some length in his witness statement, he made no mention there of any payment made to her or of the handing over of any documents to her. Mr. Castleton was cross-examined about the lottery moneys:

- Q. Moving on to consider the National Lottery, am I right in thinking that you now accept that you received £176 on 23rd March 2004 in respect to National Lottery sales and paid out prizes of £75.80?

- A. That has never been in question.

- Q. Is that a yes then?

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*

A. Yes. It was never a question of receiving the moneys. The fact that repaid ...[inaudible].

I assume that it is payment to Mrs. Simpson that he was referring to in the above partly inaudible answer. He did not say that he himself had paid the moneys to Mrs. Simpson. Mrs. Simpson gave evidence about the subject of lottery moneys generally in her witness statement. The relevant paragraph, paragraph 11, reads as follows:

*

There were two things at the Marine Drive branch that struck me as being strange at the time. One related to the National Lottery cash. The National Lottery terminal at the Marine Drive branch is in the shop rather than behind the post office counter. As the shop stayed open later than the post office counter, it would continue to sell lottery tickets, and this meant that before the opening of the post office business the next day, I would use the shop till receipts to input details of the lottery transactions into the Horizon computer terminal. When I came into the branch each morning, I would find the lottery cash that the shop had received overnight left in a bag just under the post office counter screen together with the lottery till receipt. I was therefore concerned that the lottery cash was being left unattended, because it was not secure and a customer could have taken it. On one occasion (I cannot recall precisely when), the lottery print-out (showing about £50 worth of sales) was there but there was no lottery cash. I therefore asked Mr. Castleton to make this amount good from the shop, which he did. I also asked for the lottery cash to be handed to me personally.

I accept that evidence of Mrs. Simpson.

32. Although the post office at Marine Drive was closed all day on 23rd March, the shop was open. The sum of £176 must have been paid in by customers, and the prize money paid out to customers, between 5.30 p.m. on 22nd March, when the post office closed, and 7.30 p.m., when the shop closed, and during the opening hours of the shop on 23rd March. Mr. Castleton did not put to Mrs. Simpson that he had paid her the lottery money. The nearest that he came to it was this. The discrepancy shown in the Cash Account (Final) for week 52, Mrs. Simpson's first week at Marine Drive, was £2.14 (Representing a loss of £2.14). Mr. Castleton put to her that she should have been £98 up. She gave a conditional answer that was inconclusive.

33. In her witness statement, Mrs. Train wrote that she went through Mrs. Simpson's paperwork and found the lottery tickets loose in an envelope that had not been entered

*

"which created the error notices. There is also a summary on which she wrote the amount of cash received from the shop on her first [day] in post. Not having a lottery terminal herself, she had made a mistake and did not account for the prize money already paid out. This should've been given back to Mr. Castleton or at least shown in the balance as being a gain but it was not".

I have added the word "day" which seems to be required by the sense of the passage.

34. The lottery receipts in question were not in evidence. Mr. Castleton, when cross-examined as to their whereabouts, said that they were in the post office. They were disclosed by neither party to the proceedings. During the course of the cross-examination of Mrs. Simpson by Mr. Castleton, the following exchange took place:

*

A. So have you got the actual lottery receipts?

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•

Q. They are not in evidence, I'm afraid.

•

A. Right. Well I would want to see those before I made that (inaudible).

When Mrs. Simpson was recalled for other reasons after the end of the evidence and submissions, Mr. Castleton indicated that he was in possession of the lottery receipts and wanted to put them to Mrs. Simpson in further cross-examination. On Mr. Morgan's objection, I refused to allow him to do so.

35. Mrs. Oglesby invited Mrs. Simpson to run Marine Drive on a temporary basis to take the place of Mr. Castleton. She described Mrs. Simpson as a very experienced postmaster. I accept that she was, and I found her to be a reliable witness. If Mrs. Simpson had had the lottery vouchers at the material time and entered them into the Horizon system, the error notices would not have been generated. I am satisfied that the reason why she did not enter them into the Horizon system is that she did not have them. Moreover, if she had received the moneys, then given that she did not enter the transactions into the computer, the system ought to have shown a corresponding gain of £100.20. It did not. It showed a loss of £2.14. However, that evidence is by no means conclusive since there could have been other errors.

36. Mr. Castleton was suspended from his postmastership on 23rd March. His duty to account to the claimant for the lottery moneys received on 23rd and 24th March in my judgement arises from his admitted receipt of the moneys. That point is not pleaded: but nor is the defendant's allegation that the moneys have been accounted for by way of payment to Mrs. Simpson. I am satisfied that the claimant is entitled to restitution of those moneys.

37. There will thus be judgment on the claim against the defendant for £25,858.95. I shall hear counsel and Mr. Castleton on the question of interest.

38. There is a counterclaim for damages in the sum of £11,250 on the ground that the claimant wrongfully determined the defendant's contract as a subpostmaster following his suspension.

39. The defendant's contract with the claimant was a contract for services dated 18th July 2003. The contract provides, by section 1, clause 5, that the subpostmaster is required to accept full responsibility for the proper running of his sub-office. Retention of his appointment is dependent on the sub-office being well managed and the work performed properly to the satisfaction of the claimant. Clause 8 provides that the terms of the appointment of the subpostmaster do not entitle the holder to be paid compensation for loss of office. Clause 10 provides for summary determination of the contract by the claimant in case of breach of condition by the subpostmaster or non-performance of his obligation; otherwise it may be determined by the claimant on not les than three months' notice. Section 12 clause 5 provides that the subpostmaster is held strictly responsible for the safe custody of cash, stock of all kinds and other property, papers and documents of the claimant, whether held by himself or by his assistants. Clause 12 provides that the subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for all losses of all kinds caused by his assistants. Deficiencies due to such losses must be made good without delay. Clause 13 provides that the financial responsibility of the subpostmaster does not cease when he relinquishes his appointment and he will be required to make good any losses incurred during his term of office which may subsequently come to light. Clause 15 provides that if a theft or burglary is committed or attempted at a sub-office.....the facts must be reported at once to the police and to the regional general manager. Clause 16 provides that if a sub-postmaster considers that any stock items have been accidentally lost or stolen he should make a report as quickly as possible to the Regional General Manager. There is no evidence of any such reports, and it is no part of the defendant's case that stock was lost whether by theft or accidentally. Section 15, clause 2, provides that a subpostmaster will be required to make good any deficiency of cash or stock which may result from his assistants' actions. Section 22 clause 3 provides that the subpostmaster will be responsible for ensuring that transactions will be carried out accurately.....and that all documentation is properly completed and despatched at the due time.

40. I am satisfied that the substantial unexplained deficiencies incurred in weeks 42 to 51 and in week 52 up to the close of business on 22nd March 2004 are real deficiencies and as such are irrefutable evidence that Marine Drive was not properly managed at the material time. I conclude that the claimant was entitled under clause 10 of section 1 to determine Mr. Castleton's contract summarily for non-performance of his obligation under clause 5 of that section. Moreover, the losses must have been caused by his own error or that of his assistants.

41. The counterclaim is dismissed.

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Witness Statement

Criminal Justice Act 1967, Section 9; Magistrates Court Act 1980, sub section. 5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

Statement of: Gareth Idris JENKINS

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Business Architect

This statement (consisting of eleven pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe true.

Dated the 15th day of January 2013

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1. Introduction

I am Gareth Idris Jenkins. I am employed by Fujitsu Services Ltd who have been contracted by Post Office Ltd to provide the Horizon systems operating in Post Offices around the country. However I understand that my role is to assist the court rather than represent the views of my employers or Post Office Ltd.

I graduated from Cambridge University with a degree in Mathematics in 1973 and was awarded an MA by Cambridge University in 1997. I was employed by ICL in September 1973 and have worked for that company ever since (though its name was changed to Fujitsu Services about 10 years ago). During my time with ICL / Fujitsu I have held a number of roles in customer support, development, design and architecture. During the early 1990s I was involved with representing ICL in developing Systems Management Standards and in 1992 I was the head of the UK delegation on Systems Management at the International Standards Organisation conference in Ottawa, Canada. In the late 1990s I become a Distinguished Engineer within ICL. Distinguished Engineers, were about 100 or so of the senior technical staff within the company (out of about 6000 to 7000 technical staff).

I am a member of the British Computer Society (MBCS), a Chartered

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Continuation Statement of Gareth Idris JENKINS

Engineer (CEng) and a Chartered IT Professional (CITP).

Since 1996 I have been working on the Horizon project in association with Post Office Ltd. My initial role was in the integration of the Riposte messaging system which is responsible for storing all data in the Post Office branches and replicating it to the Data Centres. I was also responsible for the design of the interface between Horizon and Streamline which processes all Credit and Debit Card payments for Post Office Ltd. More recently I've been involved in projects associated with interfacing data from Horizon to Post Office's back end accounting systems.

I have been asked to provide a statement in the case of Jishaan Patel. I understand that the integrity of the system has been questioned and this report provides some general information regarding the Integrity of Horizon.

The purpose of this report is to provide some further background information.

1.1 The Document Structure

Section 2 of the document describes the Horizon system at a high level, giving a time-line for its development, the Business scope and Architecture diagrams for both the original Horizon System and the current Horizon Online system.

Section 3 then summarises my views on the overall integrity of the Horizon system.

2. The Horizon System

2.1. Timeline

Fujitsu were originally awarded a contract in 1996 to provide a Horizon System to Post Office Ltd. The following provides some key dates and

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functional changes:

- Horizon Pilot 1996
- Horizon Rollout 1999 – 2002
- Network Banking 2003
- EMV 2004
- Cash Account removed 2005
- Data Centre Migration 2009
- HNG-X Rollout 2010

Horizon Online (or HNG-X) was a major re-implementation of Horizon. It was a complete re-implementation of the business functionality at the counter and utilised a central Database to hold details of all transactions rather than the MessageStore used by the original Horizon system.

All Post Office Branches migrated from the original Horizon to Horizon Online between January and September 2010. Historical transactions were made visible in the new system as part of the migration process.

2.2 Business Scope

The Business scope of Horizon is:

- Point Of Sale Application
- Transaction Recording
  - All such transactions are Audited
- Posting Summary Transactions to POL SAP (Post Office Ltd's back end accounting system)
- Posting Detailed Transactions to Credence (Post Office Ltd's back

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end Management Information system)

- Posting Remuneration Data to HR-SAP (Royal Mail Group's back end Payroll system)
- Delivering Client Data to Post Office Ltd's Clients (ie 3rd parties that Post Office Ltd acts as an agent for such as Local Authorities and Utility companies etc)

2.3. Architecture Diagrams

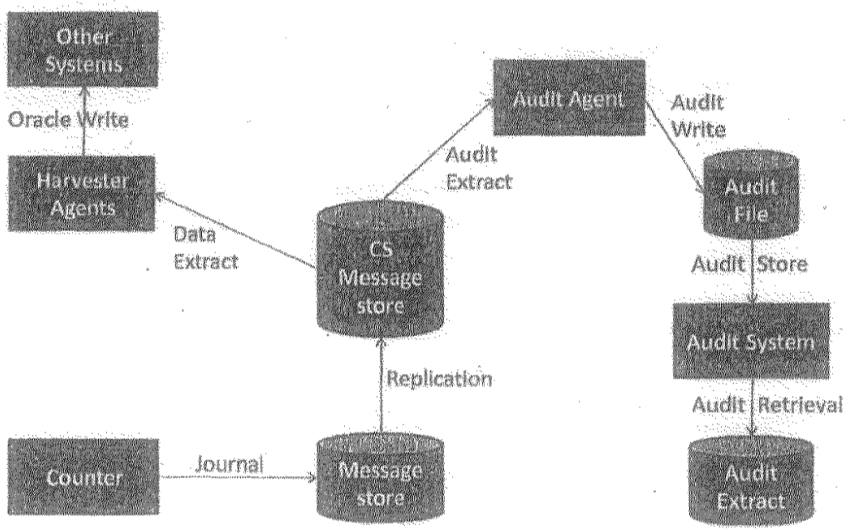

Figure 1 - Horizon Data Flows

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Criminal Justice Act 1967, Section 9, Magistrates Court Act 1980, sub section. 5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

Continuation Statement of Gareth Idris JENKINS

The Horizon system was designed to store all data locally on the counter's hard disk in what is referred to as the messagestore. Once the data has been successfully stored there it is then replicated (copied) to the hard disks of any other counters in the branch (and in the case of a single counter branch to the additional external storage on the single counter). Data is also passed on from the gateway counter to the Horizon data centre using similar mechanisms where it is stored in the CS Messagestore.

The replication process is designed such that should the data fail to be copied immediately (for example due to a failure on the local IT network within the branch or another counter being switched off or the branch being disconnected from the data centre), then further attempts are made to replicate the data at regular intervals until it is finally copied successfully. Once the data reaches the Data Centre a further copy is taken by the Audit Agent which writes it to an Audit File which is added into the audit trail where it is available for retrieval for up to 7 years. Data in the audit trail is "sealed" with a secure checksum that is held separately to ensure that it has not been tampered with or corrupted.

Other systems can also access the data from the CS Messagestore via Harvester Agents. However such systems are outside the scope of the integrity of the Audit trail.

Every record that is written to the transaction log has a unique incrementing sequence number. This means it is possible to detect if any transitions records have been lost.

While a customer session is in progress, details of the transactions for that customer session are normally held in the computer's memory until

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Continuation Statement of Gareth Idris JENKINS

the customer session (often known as the "stack") is settled. At that point all details of the transactions (including any methods of payment used) are written to the local hard disk and replicated (as described above). It should be noted that double entry bookkeeping is used when recording all financial transactions, ie for every sale of goods or services, there is a corresponding entry to cover the method of payment that has been used. When a "stack" is secured it is written in such a way that either all the data is written to the local hard disk or none of it is written. This concept of "atomic writes" is also taken into account when data is replicated to other systems (ie other counters, external storage or the data centre).

The data for a stack will have been successfully secured to the local hard disk before the screen is updated indicating that a new customer session can be started. Note that although an attempt will have been made to replicate the data to an external system at this time, there is no guarantee at this point that such replication will have been successful. For example if there is a Network Failure followed by a Terminal failure there is a slight risk that transactions in the intervening period could be lost.

All data that is written includes a "checksum" value (known as a CRC) which is checked whenever the data is read to ensure that it has not been corrupted. Any such corruptions detected on reading will result in failures being recorded in the event logs which are held on the local hard disk for a few days for immediate diagnosis and also immediately sent through to the data centre where they are held for 7 years.

Any failures to write to a hard disk (after appropriate retries) will result in the counter failing and needing to be restarted and so will be immediately visible to the user.

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Continuation Statement of Gareth Idris JENKINS

Whenever data is retrieved for audit enquiries a number of checks are carried out:

1. The audit files have not been tampered with (ie the Seals on the audit files are correct)
2. The individual transactions have their CRCs checked to ensure that they have not been corrupted.
3. A check is made that no records are missing. Each record generated by a counter has an incremental sequence number and a check is made that there are no gaps in the sequencing.

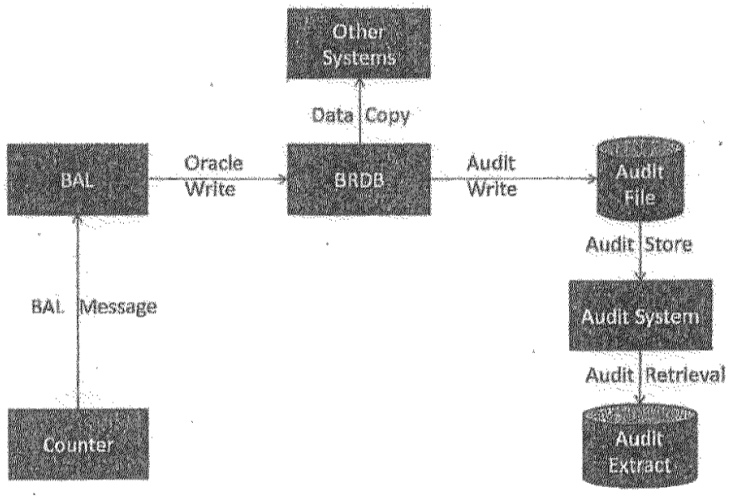

Figure 2 - Horizon Online Data Flows

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Witness Statement

Criminal Justice Act 1967, Section 9, Magistrates Court Act 1980, sub section. 5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

Continuation Statement of Gareth Idris JENKINS

Horizon Online is designed to store all data in an online database known as the Branch Database (BRDB). In particular no data concerning Business Transactions is retained at the counter other than in the memory of the Counter Business Application.[1]

Transactions are carried out locally on the Horizon Online counters and a Basket is built up during a Customer Session. Each transaction will result in a Basket Entry consisting of one or more Accounting Lines. At the end of a Customer Session when the Basket has been completed and all Settlement items (or Tender lines) have been processed and added into the Basket as further Accounting Lines, such that the total value of the Basket is zero, the entire Basket is sent to the Data Centre as a BAL Message where the Branch Access Layer (BAL) processes the message and all the Accounting Lines are recorded and committed to the BRDB as part of a single Oracle Commit. This means that either **all** the transactions within a Basket are successfully written or **none** of them are. Once the Accounting Lines have been successfully committed a response is returned to the counter indicating this success and this then allows any receipts to be printed. The Basket is deemed to be fully completed once all relevant receipts have been successfully printed. Note that if there are no receipts to be printed, then the screen is updated to show the top level menu indicating successful completion of the previous Basket.

The Oracle Commit also includes an Audit of the data originally transmitted from the counter to the BRDB. This data is digitally signed at the counter using a key generated as part of the Log On process. It is this audit record that is used to provide the extract of transactions

[1] In order to support recovery, the identifier of the last successfully completed Basket is recorded on the Hard disk at the counter. However this is not classed as Business Data.

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Signature witnessed by GRO

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Witness Statement

Criminal Justice Act 1967, Section 9, Magistrates Court Act 1980, sub section. 5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

Continuation Statement of Gareth Idris JENKINS

used for Litigation support.

Any auditable message from the counter is stored, together with its Digital Signature and other key attributes in an "Audit table" (known as the Message Journal) in BRDB. Each night after midnight, the contents of this table for the previous day are copied from the BRDB to a number of serial files.

> *A number of files are generated due to the volume of data processed each day. All data from a given Branch will be concentrated into a small number of these files for ease of retrieval.*

At this point a check is made that indeed there are no missing or duplicate jsns for any counter and should any be found an alert is raised.

> *Note that this could only happen as a result of a bug in the code or by somebody tampering with the data in BRDB and this check is included specifically to check for any such bugs / tampering.*

These files are then copied to the Audit system where they are sealed with digital seals. They are held there for a period of 7 years during which time they may be retrieved and filtered to produce the relevant audit data for a particular Branch.

The audit record may also include application events that have been accumulated at the counter since the last auditable message was sent to the Data Centre. All major activities that affect the Branch also have an audit of the data sent from the counter to the Data Centre included

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Witness Statement

Criminal Justice Act 1967, Section 9, Magistrates Court Act 1980, sub section. 5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

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in the audit log.

Each Audit record includes the following identification:

- Branch identifier (i.e. FAD Code)
- Counter identifier
- Sequence Number (known as a Journal Sequence Number or jsn)
- Counter timestamp

Within any counter (i.e. for a given Branch Id / Counter Id combination), the jsn will always increase by exactly one for each successive audit record. This enables a check to be made that there are no records missing from the audit trail when they are retrieved.

The transactions in a basket are constructed using the principle of double-entry bookkeeping. This means that in addition to the Accounting Lines that relate to the actual business transactions, separate Accounting Lines are also generated for the tender items (such as Cash, Cheques or Credit / Debit Cards), resulting in the total value of all Accounting Lines in a Basket adding up to zero. When the contents of a Basket are written to BRDB a check is made that the net value of all the accounting lines is indeed zero and should it not be, then an alert is raised and the basket is discarded and an error response returned to the counter.

> *Note that this could only happen as a result of a bug in the code and this check is included specifically to check for any such bugs.*

Baskets are also built up during Back Office Sessions and such Back Office baskets are handled in a similar way to Customer Baskets.

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Witness Statement

Criminal Justice Act 1967, Section 9, Magistrates Court Act 1980, sub section. 5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

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3. Horizon Integrity

This is described in the separate integrity documents ARCGENREP0004.HorizonDataIntegrity.doc which I now produce as exhibit GIJ/1 and HorizonOnlineDataIntegrity_POL.doc which I now produce as exhibit GIJ/2.

I have been involved personally in a number of challenges to the integrity of the original Horizon system and produced Witness Statements for a number of cases where the Integrity has been challenged. I am not aware of any cases where the Integrity of Horizon Online has yet been successfully challenged in court.

The main challenges in the cases in which I have been involved were presented as "Hypothetical issues" and my previous Witness Statements went through each of these hypotheses and showed that there was no specific evidence for any of them in the data presented.

In summary I would conclude by saying that I fully believe that Horizon will accurately record all data that is submitted to it and correctly account for it. However it cannot compensate for any data that is incorrectly input into it as a result of human error, lack of training or fraud (and nor can any other system).

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Metadata

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Document Title:	Horizon Online Data Integrity for Post Office Ltd
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Security Risk Assessment Confirmed	YES, security risks have been assessed, see section 0.10 for details.

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0 Document Control

0.1 Table of contents

0.2 Figures and Tables

0.2.1 Table of Figures

0.2.2 Table of Tables

None.

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0.3 Document History

Version No.	Date	Summary of Changes and Reason for Issue	Associated Change - CP/PEAK/PPRR Reference
0.1b	02/04/2012	This is a new document	

0.4 Associated Documents (Internal & External)

Reference	Version	Date	Title	Source
PGM/DCM/TEM/0001 (DO NOT REMOVE)			Fujitsu Services Post Office Account HNG-X Document Template	Dimensions
ARC/GEN/REP/0001			HNG-X Glossary	Dimensions
DES/APP/HLD/0020			Branch Database High Level Design	Dimensions
DES/APP/HLD/0123			HNG-X HLD - Settlement Functions	Dimensions
DES/APP/AIS/0018			XML Message Audit between Counter and BAL/OSR	Dimensions

Unless a specific version is referred to above, reference should be made to the current approved versions of the documents.

0.5 Abbreviations

Abbreviation	Definition
AP-ADC	Automated Payments – Advanced Data Capture. A mechanism that allows Post Office Ltd to produce scripts for specific transaction processing.
APS	Automated bill Payments Service
BAL	Branch Access Layer. The component that handles the interface from the counter and updated BRDB
BRDB	Branch Database
DRS	Data Reconciliation Service. A system used to reconcile transactions carried out with Financial Institutions.
FAD	Financial Accounting District
FI	Financial Institution
HNG-X	Horizon Next Generation – Plan X. Also known as Horizon Online
HR SAP	An SAP system used by Royal Mail Group to remunerate sub-postmasters
LFS	Logistics Feeder System. A System used to interface with Post Office Ltd's Cash and Stock Management services in POL SAP.
jsn	Journal Sequence Number. Unique identifier for an audited message from a specific Branch and Counter Position.
ONCH	OverNight Cash on Hand. The amount of Cash held in a Post Office Branch overnight. This is used to predict future cash requirements for the Branch.
POL SAP	An SAP system that carries out Post Office Ltd's accounting and cash management functions.

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Abbreviation	Definition
RAC	Real Application Cluster Or Request, Authorisation, Confirmation. The mechanism used for interfacing to Financial Institutions
TCP / IP	The standard communications protocol used for communications between the Counter and the Data Centre.
TPS	Transaction Processing System

0.6 Glossary

See also document ARC/GEN/REP/0001.

Term	Definition
Back Office	Administrative Functions carried out in a Post Office Ltd Branch such as Remitting In Cash / Stock
Basket	The set of transactions which are processed together. For example all the transactions associated with a single Customer (including those used for Settlement).
Client	An organisation for which Post Office Ltd acts as an Agent, for example DVLA where Post Office Ltd provides Motor Vehicle licences to customers on behalf of DVLA.
FAD Code	Unique identifier for a Post Office Ltd Branch
Settlement	Those transactions that represent the payment by the Customer for goods or Services or to the customer in respect of Out Pay transactions such as Cash Withdrawals.

0.7 Changes Expected

Changes
Review comments etc.

0.8 Accuracy

Fujitsu Services endeavours to ensure that the information contained in this document is correct but, whilst every effort is made to ensure the accuracy of such information, it accepts no liability for any loss (however caused) sustained as a result of any error or omission in the same.

0.9 Security Risk Assessment

No identified security risks.

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1 Purpose

This document is a technical description of the measures that are built into Horizon Online (also known as HNG-X) to ensure data integrity and descriptions as to how those measures apply in each case.

Note that this document only covers Horizon Online (HNG-X). It does not cover the original Horizon system, which is specifically excluded from this exercise. There is a separate document covering the original Riposte-based Horizon system.

Section 2 describes the measures taken in the design of the Counter, Branch Access Layer (BAL) and Branch Database (BRDB) to ensure integrity. Section 3 describes the audit system used to preserve the auditable messages sent from the counter to the Data Centre for use in Litigation Support.

The scope of this paper is restricted to showing the Integrity of the Audit trail and that it accurately reflects the transactions entered at the counter.

2 Horizon Online Data Integrity

2.1 Overview of Normal Operation

Horizon Online is designed to store all data in an online database known as the Branch Database (BRDB). This database is a highly resilient Oracle database implemented using Oracle Real Application Cluster RAC (see also section 2.4). In particular no data concerning Business Transactions is retained at the counter other than in the memory of the Counter Business Application.[1]

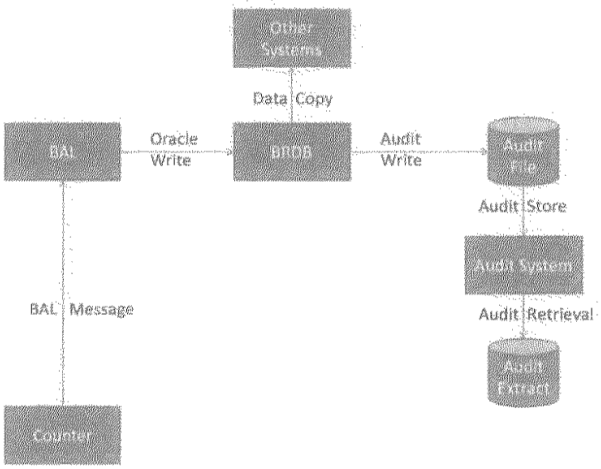

Figure 1 – Primary message flows

Transactions are carried out locally on the Horizon Online counters and a Basket is built up during a Customer Session. Each transaction will result in a Basket Entry consisting of one or more Accounting Lines. At the end of a Customer Session when the Basket has been completed and all Settlement items (or Tender lines) have been processed and added into the Basket as further Accounting Lines, such that the total value of the Basket is zero, the entire Basket is sent to the Data Centre as a BAL Message where the Branch Access Layer (BAL) processes the message and all the Accounting Lines are recorded and committed to the BRDB as part of a single Oracle Commit. This means that either **all** the transactions within a Basket are successfully written or **none** of them are. Once the Accounting Lines have been successfully committed a response is returned to the counter indicating this success and this then allows any receipts to be printed. The Basket is deemed to be fully completed once all relevant receipts have been successfully printed. Note that if there are no receipts to be printed, then the screen is updated to show the top level menu indicating successful completion of the previous Basket.

The Oracle Commit also includes an Audit of the data originally transmitted from the counter to the BRDB. This data is digitally signed at the counter using a key generated as part of the Log On process.

[1] In order to support recovery as described in section 2.3.6, the identifier of the last successfully completed Basket is recorded on the Hard disk at the counter. However this is not classed as Business Data.

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It is this audit record that is used to provide the extract of transactions used for Litigation support. Section 3 describes how this audit record is managed after it is committed to BRDB.

The audit record may also include application events that have been accumulated at the counter since the last auditable message was sent to the Data Centre. All major activities that affect the Branch also have an audit of the data sent from the counter to the Data Centre included in the audit log. Such activities include:

- Log On / Log Off of Users at the counter
- Creation / modification of User Accounts (including change of password)
- Attaching Users to Stock Units
- Balancing a Stock Unit
- Producing the Branch Trading Statement.

Each Audit record includes the following identification:

- Branch identifier (i.e. FAD Code)
- Counter identifier
- Sequence Number (known as a Journal Sequence Number or jsn)
- Counter timestamp

Within any counter (i.e. for a given Branch Id / Counter Id combination), the jsn will always increase by exactly one for each successive audit record. This enables a check to be made that there are no records missing from the audit trail when they are retrieved.

The transactions in a basket are constructed using the principle of double-entry bookkeeping. This means that in addition to the Accounting Lines that relate to the actual business transactions, separate Accounting Lines are also generated for the tender items (such as Cash, Cheques or Credit / Debit Cards), resulting in the total value of all Accounting Lines in a Basket adding up to zero. When the contents of a Basket are written to BRDB a check is made that the net value of all the accounting lines is indeed zero and should it not be, then an alert is raised and the basket is discarded and an error response returned to the counter.

> *Note that this could only happen as a result of a bug in the code and this check is included specifically to check for any such bugs.*

Baskets are also built up during Back Office Sessions and such Back Office baskets are handled in a similar way to Customer Baskets.

2.2 Detail of Normal Processing

The purpose of this section is to expand on the summary in Section 2.1 and identify other documents where more detail of the various steps are covered.

As outlined in section 2.1 above, the following is the key behaviour of the handling of a Basket:

1. The Clerk carries out one or more business transactions. Each Business transaction will construct a Basket Entry which is held in the memory of the counter and the value of which is visible on the screen.
2. When all the transactions for a customer have been completed, the clerk selects either the *Fast Cash* or the *Settle* functions on the screen.

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Note that if the total basket value is zero at this point then either bution will result in immediately going to step 3 below.

a. Selecting *Fast Cash* results in the system calculating the amount to required to take the total value of the transactions in the basket to zero and constructs a Basket Entry for the Cash Product for this amount and adds it into the Basket. By definition, the total value of the basket at this point will be zero

b. Selecting Settle results in the system displaying a menu of permissible settlement options. The allowable settlement options are configurable and depend on various Business Rules, however are likely to include the following:

   i. Cash

   This allows a specific amount of cash to be entered (which may or may not be the full amount). It will take a sign based on attempting to move the Basket total nearer to zero.

   A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

   ii. Cheque

   This allows a specific amount for a Cheque to be entered (which may or may not be the full amount). Its sign will always reflect the fact that a cheque is payable to Post Office Ltd (other than for Reversals).

   A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

   iii. Chip and PIN

   This allows Chip and PIN transaction to be processed. The amount to be taken is entered, but defaults to the maximum amount allowable by business rules (which may or may not be the full amount). Its sign will always reflect the fact that a payment is being made to Post Office Ltd (other than for Reversals).

The details of the Business Rules are not relevant to the Integrity of the system.

   A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

   iv. Swipe

   This allows magnetic swipe payment card to be processed. Note that if the Magnetic stripe indicates that the card is a Chip and PIN card then the transaction will be abandoned at this point. The amount to be taken is entered, but defaults to the maximum amount allowable by business rules (which may or may not be the full amount). Its sign will always reflect the fact that a payment is being made to Post Office Ltd (other than for Reversals).

The details of the Business Rules are not relevant to the Integrity of the system.

   A corresponding Basket Entry is created and added to the in memory and On-screen basket display with an updated total.

   v. Fast Cheque

   This allows Cheque transaction to be processed. However in this case the system calculates the amount required to take the total value of the transactions in the basket to zero and constructs a Basket Entry for the Cheque Product for

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this amount and adds it into the Basket. By definition, the total value of the basket at this point will be zero

vi. Fast Cash

This is the equivalent of the Fast Cash Button described at point a above

c. The User is then able to select any of the available options and add appropriate settlement items into the In memory and On-screen basket as descried. Should the Total value of the Basket not be zero after processing the settlement transaction, the settlement menu is re-displayed allowing further settlement transactions to be selected until the net value of the Basket becomes zero.

3. Once the Basket Total becomes zero, a message is constructed to send the entire basket content to the BAL. The structure of the message sent is defined in [DES/APP/AIS/0018]. A new connection is established to the BAL in order to send this message. The message sent is defined as being an auditable message and so will include a jsn. It may also pick up any outstanding Audit Events and Statistical data that have been accumulated at the counter since the last auditable message was sent from the counter to the BAL. This message will be signed by the counter using a Digital Signature constructed using a key that has been generated as part of the Log On process. This Digital Signature is sent as part of the message to the BAL.

4. When the BAL receives the message it detects that there is an associated jsn. This means that the Audit Filter is invoked which results in the entire data sent from the counter being added to the BRDB table BRDB_RX_MESSAGE_JOURNAL.

5. The BAL then processes the message and updates other tables in BRDB.

6. If all these updates are successful, then the BAL invokes a COMMIT to Oracle on BRDB which will commit all the changes at steps 4 and 5. Should there be any failure, then the BAL will issue an Oracle ROLLBACK which results in none of the changes in steps 4 and 5 being saved and it is then as if the interaction from the counter didn't take place. In either case a suitable response is returned to the counter and the connection tot the counter is closed.

7. When the counter has sent the message to the BAL (at step 3), it waits for a Response. There are 3 possible responses that can occur:

   a. The BAL update was successful (this is the normal case)

   b. There was a failure from the BAL

   c. No response is received within a configurable timeout period (usually 30 seconds)

   The first case is normal. The last 2 cases are considered to be Error Scenarios and are considered further in section 2.3, but are considered to be out of scope of the normal processing.

8. When the response is received, any receipts required are printed and then the In-memory and On-screen baskets are cleared and the screen is updated to the "Home" screen ready for a new Basket to be started.

Overnight, the content of the table BRDB_RX_MESSAGE_JOURNAL is copied to a set of serial files and passed to the Audit system. There is more information on this audit process in section 3 of this document.

2.3 Error Scenarios

2.3.1 Recoverable Transactions

Simplistically it could be assumed that if a Basket fails to commit then the content of that basket can just be discarded.

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This is similar to the normal model presented with on-line shopping, in that if your browser fails after trying to commit the basket, you are uncertain as to whether your purchase has been processed or not. You then need to carry out some other activity (e.g. phone the provider or check your Credit Card account the next day) before knowing whether or not to re-attempt the transaction.

However this is not really appropriate in a Post Office environment. For many transactions it can be assumed that the Basket has failed to commit and so the transactions in the basket are discarded and they can be re-attempted at some later date. However in some cases this is not appropriate since the Transaction may have had an impact on some external system. An example of this is a Banking Cash Withdrawal. In this case the Bank has been informed of the Transaction during the processing of the Banking Transaction and has removed the funds from the Customer's account. Therefore it is important that this transaction is completed. Such transactions are considered to be Recoverable Transactions.

If a transaction is to be Recoverable, then information about that transaction is recorded in the BRDB when the transaction is first initiated (and before the transaction is sent to the FI) allowing the transaction to be recovered should there be a failure. Note that this recovery information is not audited.

There are many types of Recoverable Transaction:

- All Banking transactions
- All Credit / Debit Card transactions
- All E-Top up transactions
- All Reversals
- Selected AP-ADC transactions (as defined in the transaction script)

2.3.2 Failures

Any failures in committing Auditable activities at the Data Centre will result in an error response being returned to the counter. Such an error response will be displayed to the User, thus informing them of the situation. The next action then depends upon the Auditable activity:

- If it relates to a basket settlement where the basket that contains 1 or more Recoverable Transactions, then a Forced Log Out is initiated and the normal Recovery process will tidy things up
- If it relates to a basket settlement where the basket doesn't contain any Recoverable Transactions, then the content of the basket is discarded and the User is returned to the Menu to continue working
- If it relates to a non-basket activity, then activity is abandoned and the User is returned to the Menu to continue working

In all cases the User is informed of what is happening.

Such failures will not be visible in the transaction audit, but may be visible in the system Event Log.

2.3.3 Time Outs

Should there be no response from the Data Centre following an attempted commit of an auditable activity within a timeout period (currently set to 30 seconds), an automatic retry is invoked. This sends identical business data to the Data Centre where a check is made to see if the Audit data has already been committed to BRDB.

- If it has been committed, then this means that the original activity was successful, but the response did not reach the counter in time. Therefore no action is taken in terms of updating the BRDB and a Success response is returned to the counter.

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- If it has not been committed, then the original activity either didn't reach the Data Centre, or it failed to be processed. In either case it is safe to re-process the data and the appropriate response is returned to the counter after the data has been processed which will be handled as if it was from the original request. Note that re-processing the data will include recording an audit of the data if the reprocessing is successful.

Should the retry also timeout, then the User is prompted and asked whether they wish to Retry or Cancel the Activity.

- Selecting Retry results in the Activity being retried once more as described above. If this also times out, then a further automatic retry is attempted and if this is still unsuccessful, then the User is again prompted as to whether to Retry or Cancel. This cycle then continues until either there is success, or the User finally gives up and selects Cancel.
- Selecting Cancel results in a Forced Log Out being invoked.

Such time-outs and any retries will not be visible in the transaction audit, but may be visible in the system Event Log.

2.3.4 Forced Log Out

Continual failures to Update the Database at the Data Centre mean that it is not clear at the counter whether or not the database accurately reflects the situation in the Branch. Therefore the safest thing is to force a Log Off at the counter and ensure that when communications are re-established, that the Recovery process is invoked to reconcile the counter view with that on BRDB.

If there is a basket currently being processed, then a special Disconnected Session Receipt will be produced showing which transactions have been discarded and which are to be recovered making it clear what money needs to be exchanged with the Customer.

2.3.5 Terminal Failure

Clearly a counter terminal can fail at any time. However the situation is not very different from that where a failure to contact the Data Centre has occurred as described above. Therefore the behaviour of the User needs to be as follows:

1. Work out the value of any Recoverable Transactions (there ought to be printed receipts associated with all of these)
2. From this work out what is owed to, or due from the customer
3. Consider whether any Credit / Debit Card payments may have been successful
4. From this work out any cash due to / from the customer.
5. Write out any necessary receipts by hand
6. Keep a record of exactly what happened to be used at Recovery time.

Clearly in this case the system is unable to assist the User in guiding them as to what to do.

2.3.6 Recovery

Recovery after a failure must always take place on the same counter position. Note that if the terminal has failed and needs to be replaced by an engineer, then recovery cannot be carried out until the replacement terminal is working correctly.

At every Log On a check is made in the Central Database to see if any Recovery is required. The following checks are carried out:

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1. Is there any outstanding Recovery Data associated with this terminal?

   If so return the outstanding Recovery Data to the counter so that the transactions can be recovered using Rollforward Recovery

2. Did the last session carried out on this terminal have a tidy Log Off?

   If not, return details of the last Basket (if any) that was successfully written from the last Log On session to the counter so that further recovery checks can be made

Otherwise all is well and No Recovery is required (i.e. the normal case).

During the Log On process, if the counter receives an indication that recovery may be required (i.e. one of the two cases described above), then the following occurs before the Log On is completed:

1. If Rollforward Recovery is requested, then for each Transaction with associated Recovery Data, then the appropriate Recovery script is executed, which will result in a Rollforward Recovery Basket being produced which is then settled to the Branch Database as normal and this will generate a recovery Receipt. This will normally match any Disconnected Session receipt (or other information recorded at the time of failure).
2. If there was no Basket Details of a Last successful Basket returned, then No Recovery is required
3. If further checks are requested, then the following checks are made at the counter:
   a. What was the identifier of the last successful Basket sent from the counter?

      The identifier of the last successful Basket is written to the Counter Hard Disk at the completion of the basket (i.e. after all Receipts have been successfully printed).

      Therefore, provided that the Terminal has not been replaced, then this is available to be checked for automatically.

      Where the terminal has been physically replaced, a dialogue is invoked to get the user to confirm the identity of the last Successful session which may involve displaying the last basket known to the Data Centre.

   b. If this matches the identifier of the Last Successful Basket that was returned from the Data Centre, then No Recovery is required and all is well.

   c. If they don't match (i.e. the Basket returned from the Data Centre was the one that the counter was trying to save at the time of failure), then the Forced Log Off process will have assumed that the Basket failed. Therefore the Recovery process needs to generate a Basket that reverses any non-recoverable transactions in that basket (since the forced Log Off would have discarded them). This is known as Rollback Recovery. This will also produce a Receipt. However it will not match the Disconnected Session Receipt exactly.

2.4 Database Characteristics

The database uses Oracle version 10gR2. It uses an Oracle Real Application Cluster (RAC), which runs the database over multiple nodes (servers). In practice there are normally 4 such database nodes

Partitioned tables store branch specific data. This provides high performance and scalability. Applications need to know in which partitions data is stored and which nodes manage these partitions. They use a convention based on Branch codes.

The design of the Branch Database supports non-stop trading during core hours.

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- Oracle RAC is resilient. If one node fails, the remaining nodes carry on running and the database remains available for use. The database can meet its performance targets if one node fails.
- The standby database allows very fast recovery if there is a data corruption that takes the live database offline. The maintenance of the standby database is automatic.

A disaster recovery site remotely mirrors the data. The mirroring of data is synchronous. This guarantees that no data is lost if there is a catastrophic site failure.

Data associated with a Basket is stored in 3 separate areas of the Branch database:

1. A copy of the actual Basket data as transmitted from the counter together with the associated digital signature is held in a table known as the message journal.

   Use of the data in the message journal is described further in section 3.

2. Individual accounting lines are extracted from the basket and each accounting line is written to two separate tables:

   a) Detailed transaction information for passing to Post Office Ltd Back end systems

      This data is retained for sufficient time to ensure it has been successfully passed to Post Office Ltd's back end systems (in practice it is held for about 4 days)

   b) Summary transaction information to support reporting and Branch accounts

      This data is retained to allow it to be used for any reporting and accounting period within the branch (in practice it is held for about 60 days)

Each night the reporting data is summarised within the branch database to provide daily totals for transactions based on product, mode, stock unit and accounting period. This summarised data is used (together with transactions for the current day) when balancing a stock unit, thus minimising the amount of data that needs to be considered.

Although the data used for generating the counter reports and passing to Post Office Ltd's back end systems is taken from the tables described in point 2 above, any data provided by Fujitsu in order to support litigation is based on the Audit taken at point 1 above. Since the processing for producing any report is based on the same source of data (ie the audited data sent from the counter) it is asserted that any report could be regenerated based solely on the audited data. As described in section 2.1, the audited data consists not only of the Basket information, but also any other significant events and in particular the Opening Figures (ie cash and stock levels) calculated at the start of a new period based on the balancing of an accounting period.

*It should be noted that such data is **not** presented as evidence as part of the normal litigation support service. Similarly we do **not** have tools that extract data such as Opening Figures into a readable form or to be able to re-generate reports based on the audit trail. However such data **is** available in the audit trail, and if required, such tools could technically be developed to resolve any dispute in that area. (Though there are clearly commercial considerations in terms of the cost and effort involved in doing so.)*

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3 Audit System

As outlined in section 2.1 and described in section 2.4, any auditable message from the counter is stored, together with its Digital Signature and other key attributes in an "Audit table" (known as the Message Journal) in BRDB.

To ensure that the message is not tampered with after being sent from the counter, each message has an associated Digital Signature. The mechanism for creating this Digital Signature is as follows:

1. At Log On, the Counter creates an RSA Public / Private key pair.
2. The Public key is sent to the BAL as part of the audited Log On message
3. The Log On message is concatenated with the Digital Signature and the BAL's signing certificate for its Public Key and signed by a BAL Private key (held in the data Centre Key Store) and added to the audit trail with a BAL generated jsn
4. All subsequent messages are digitally signed by the counter using the private key established at Log On.
5. Digitally Signing a message involves taking a SHA-1 Hash of the message and digitally signing the Hash value using RSA.
6. The Digital signature is stored alongside the message in the Journal table and is extracted with it into the Audit file as described below

Each night after midnight, the contents of this table for the previous day are copied from the BRDB to a number of serial files.

> *A number of files are generated due to the volume of data processed each day. All data from a given Branch will be concentrated into a small number of these files for ease of retrieval.*

At this point a check is made that indeed there are no missing or duplicate jsns for any counter and should any be found an alert is raised.

> *Note that this could only happen as a result of a bug in the code or by somebody tampering with the data in BRDB and this check is included specifically to check for any such bugs / tampering.*

These files are then copied to the Audit system where they are sealed with digital seals. They are held there for a period of 7 years during which time they may be retrieved and filtered to produce the relevant audit data for a particular Branch.

The Digital Seal is calculated using an MD5 hash of the entire content of the file being sealed. This value is stored in a separate "Seals Database" held on the Audit Server.

Whenever data is retrieved for audit enquiries a number of checks are carried out:

a) The audit files have not been tampered with (i.e. the Seals on the audit files are correct)
b) The individual Baskets (and other records) have their digital signatures checked to ensure that they have not been corrupted.

> *This involves finding the Public Key which has been saved with the Log On message and also checking the integrity of the Log On message using the Public Key Certificate of the BAL's signing key which is stored as part of the Log On audit message.*

c) A check is made that no records are missing or duplicated. I.e. a check is made that there are no gaps or duplicates in the jsn sequence for any counter.

It should be noted that this same Audit system was used to hold similar data from the old Horizon system. However on the old Horizon system the audit point was the message journal on the Riposte Correspondence Servers and thus the technology used for producing the audit of data is completely different between the old Horizon system and Horizon Online.

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#375.1

Metadata

Filename	HorizonOnlineDataIntegrity_POL.DOC	ORIGINAL

POL00043789

Document Title: Horizon Data Integrity

Document Reference: ARC/GEN/REP/0004

Document Type: Report (REP)

Release: N/A

Abstract: This document describes the measures that are built into Horizon to ensure data integrity.

Note that it only covers Horizon and not HNG-X (Horizon Online).

Document Status: Final Draft

Author & Dept: Gareth I Jenkins

External Distribution:

Approval Authorities:

Name	Role	Signature	Date
Suzie Kirkham	Account Manager		

Note: See Post Office Account HNG-X Reviewers/Approvers Role Matrix (PGM/DCM/ION/0001) for guidance.

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0 Document Control

0.1 Table of contents

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0.2 Figures and Tables

0.2.1 Table of Tables

None.

0.3 Document History

Version No	Date	Summary of Changes and Reason for Issue	Associated Change - CP/PEAK/PPRR Reference
0.1b	02/10/2010	First Informal Draft. Changes from version 0.1a were marked in red (like this) with ~~strikeout~~ for significant deletions.	
1.0	02/10/2009	Version for release to Post Office.	

0.4 Review Details

Review Comments by :	02/10/2009
Review Comments to :	Gareth Jenkins
Mandatory Review	
Role	**Name**
Suzie Kirkham	Account Manager
Jeremy Worrell	CTO
Optional Review	
Role	**Name**
Guy Wilkerson	Commercial Director
LaToya Smith	Commercial
Amanda Craib	Head of Commercial, Retail, Royal Mail and Telcos
David Smith	Post Office
Issued for Information – Please restrict this distribution list to a minimum	
Position/Role	**Name**

(*) = Reviewers that returned comments

(†) = Reviewers that returned no comments

0.5 Associated Documents (Internal & External)

Reference	Version	Date	Title	Source
PGM/DCM/TEM/0001 (DO NOT REMOVE)			Fujitsu Services Post Office Account HNG-X Document Template	Dimensions
ARC/GEN/REP/0001			HNG-X Glossary	Dimensions

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Unless a specific version is referred to above, reference should be made to the current approved versions of the documents.

0.6 Abbreviations

Abbreviation	Definition
AP	Automated Payments
CRC	Cyclic Redundancy Check

0.7 Glossary

See also document ARC/GEN/REP/0001.

Term	Definition
Replication	The mechanism by which data is reliably copied between the local system and other systems (i.e. other counters, external storage in a single counter branch and the data centre)

0.8 Changes Expected

Changes
Review comments etc.

0.9 Accuracy

Fujitsu Services endeavours to ensure that the information contained in this document is correct but, whilst every effort is made to ensure the accuracy of such information, it accepts no liability for any loss (however caused) sustained as a result of any error or omission in the same.

0.10 Copyright

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1 Purpose

This document is submitted to Post Office for information purposes only and without prejudice. In the event that Post Office requires information in support of a legal case Fujitsu will issue a formal statement.

This document is a technical description of the measures that are built into Horizon to ensure data integrity, including a description of several failure scenarios, and descriptions as to how those measures apply in each case.

Note that this document only covers Horizon. It does not cover HNG-X (Horizon Online).

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2 Horizon Data Integrity

The Horizon system is designed to store all data locally on the counter's hard disk. Once the data has been successfully stored there it is then replicated (copied) to the hard disks of any other counters in the branch (and in the case of a single counter branch to the additional external storage on the single counter). Data is also passed on from the gateway counter to the Horizon data centre using similar mechanisms.

The replication process is designed such that should the data fail to be copied immediately (for example due to a failure on the local IT network within the branch or another counter being switched off or the branch being disconnected from the data centre), then further attempts are made to replicate the data at regular intervals until it is finally copied successfully. Once the data reaches the Data Centre a further copy is taken and added into the audit trail where it is available for retrieval for up to 7 years. Data in the audit trail is "sealed" with a secure checksum that is held separately to ensure that it has not been tampered with or corrupted.

Every record that is written to the transaction log has a unique incrementing sequence number. This means it is possible to detect if any transitions records have been lost.

While a customer session is in progress, details of the transactions for that customer session are normally held in the computer's memory until the customer session (often known as the "stack") is settled. At that point all details of the transactions (including any methods of payment used) are written to the local hard disk and replicated (as described above). It should be noted that double entry bookkeeping is used when recording all financial transactions, ie for every sale of goods or services, there is a corresponding entry to cover the method of payment that has been used. When a "stack" is secured it is written in such a way that either all the data is written to the local hard disk or none of it is written. This concept of "atomic writes" is also taken into account when data is replicated to other systems (ie other counters, external storage or the data centre).

The data for a stack will have been successfully secured to the local hard disk before the screen is updated indicating that a new customer session can be started. Note that although an attempt will have been made to replicate the data to an external system at this time, there is no guarantee at this point that such replication will have been successful. For example if there is a Network Failure followed by a Terminal failure there is a slight risk that transactions in the intervening period could be lost.

All data that is written includes a "checksum" value (known as a CRC) which is checked whenever the data is read to ensure that it has not been corrupted. Any such corruptions detected on reading will result in failures being recorded in the event logs which are held on the local hard disk for a few days for immediate diagnosis and also immediately sent through to the data centre where they are held for 7 years.

Any failures to write to a hard disk (after appropriate retries) will result in the counter failing and needing to be restarted and so will be immediately visible to the user.

Whenever data is retrieved for audit enquiries a number of checks are carried out:

1. The audit files have not been tampered with (ie the Seals on the audit files are correct)
2. The individual transactions have their CRCs checked to ensure that they have not been corrupted.
3. A check is made that no records are missing. Each record generated by a counter has an incremental sequence number and a check is made that there are no gaps in the sequencing.

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3 Scenarios

It should be noted that these scenarios are all to do with equipment failures and these will always be visible to Fujitsu through the event logs which are retained.

3.1 A counter fails

When a counter fails, there are two possible scenarios:

- It can be successfully restarted
- It cannot be successfully restarted, so needs to be physically replaced

In each case the Data Integrity considerations are different and so are described separately below.

Once the counter has been restarted (regardless of whether or not it has been replaced) recovery may be carried out if recoverable transactions are detected on the counter. This is also discussed below.

3.1.1 The Counter is Successfully Restarted

In this case all the data that had been secured prior to the failure is still present on the counter and so is available for use. If the User is in any doubt as to whether a transaction had been completed or not prior to the failure they can use the transaction logs to confirm one way or the other.

3.1.2 The Counter is Physically Replaced

In this case there is no data on the local hard disk of the replacement counter. However, since the data should have been replicated to other counters in the branch (or in the case of a single counter branch to the external storage – which should have been physically moved to the replacement counter), then the data should be retrieved and copied to the new counter. If for some reason the data were not available locally in the branch, then it will be copied back from the data centre. This all happens automatically as part of the counter replacement procedure.

Note that the hard disks are encrypted so there is no danger of data protection issues once the old counter has been removed (or if it is stolen).

When a counter is physically replaced, there is a possibility that not all data has been successfully replicated to another system prior to the failure. In this scenario it is essential that the user confirms what the last successful transaction on that counter was, again by using the transaction logs.

3.1.3 Transaction Recovery

Some classes of transaction generate recovery data as they go along, so as to ensure that in the event of a failure between the transaction starting and the basket being secured, there is sufficient information available to enable the transaction to be recovered. On Horizon there are two separate mechanisms to cover different classes of transaction:

- Banking Recovery
- AP Recovery

Both these mechanisms are automatically invoked during Log On, should the system detect that there has been a possible failure. These are described below.

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3.1.3.1 Banking Recovery

This covers credit card and debit card transactions and e-Top-Up transactions as well as online banking transactions.

A check is carried out to see if any incomplete banking style transactions (i.e. network banking, credit / debit card or e-Top-Up) exist in the transaction logs for that counter. An incomplete transaction is one where an authorisation request has been sent to the financial institution, and there is no corresponding completion message which is normally secured as part of settlement at the end of the Customer session.

In most cases, recovery information stored in the transaction log can be used to ascertain the outcome of the transaction being recovered and a suitable completion record is then recorded at the time of recovery. In some cases the user is prompted to confirm whether or not the transaction has completed successfully and the response from that prompt is used to generate the completion record.

3.1.3.2 AP Recovery

In the case of Automated Payments (AP), the user is asked if they wish to carry out AP recovery and they have the option of doing so immediately or leaving it until later.

If the user carries out recovery they will be asked about the last successful AP transaction (which can be seen from the branch copies of the AP receipts that are printed) and the system will then check to see if it has been completed in the system. If it has not been completed in the system, then the system will use the AP Recovery data stored in the transaction logs to ensure that all incomplete AP transactions on the counter up until the one specified by the user are completed at recovery time. To assist with this process, each AP transaction has a unique, incrementing sequence number which is printed on the receipt.

Fujitsu understand that these processes are defined in Post Office's Horizon User Guides.

3.2 A counter has a "Blue Screen of Death"

This is just a special case of a counter failure, so please see section 3.1 above.

3.3 There are package collisions on networks

The replication protocols used to copy details of transactions between counters and also between the gateway counter and the data centre ensure that the data is copied successfully. Should packets collide on the network (or should there be any other network issues such as the IT communications link failing) then the replication protocols will ensure that the data is re-sent. Such retries will continue until the data is finally successfully transmitted.

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#376.1

Metadata

Filename	ARCGENREP0004.HorizonDataIntegrity.doc	ORIGINAL

POL00043789

From: Steve Allchorn <GRO>
To: Philip Jeary <GRO>
Cc: Patrick Bourke <GRO>, Mark Underwood1 <GRO>
Subject: Horizon Tutorial - Tuesday 10 November
Date: Wed, 4 Nov 2015 11:06:51 +0000
Importance: Normal

Hi Phil

Just to provide some confirmations ahead of next Tuesday's Horizon walkthrough.

Tuesday 10 November, 09:30-11:00

In attendance;

Jonathan Swift (QC)

Christopher Knight (Junior Barrister)

Chris Gilding (PO Lead Network Field Implementation Manager)

Patrick Bourke (Sparrow Director)

We may not need the full 1.5 hours but built in just as a contingency, as there may be several questions. Jonathan and Christopher's primary focus will undoubtedly be on the workings of the Horizon system itself and that is where most of their enquiries will focus, however it would also be worth their while still being taken through what other technology exists in branch (P&G, BES, Lottery etc.) and their connectivity to the system so that they get a rounded picture. You might however need to adjust your normal format and go with whatever flow materialises.

We have asked Chris Gilding to attend on the basis that he has himself a vast experience of Horizon but just as importantly has been heavily involved in investigating a number of the Sparrow cases and has a good understanding of some of the Applicant issues raised within their complaints. He will therefore make reference to these with interjections as you run through the tour however he is very much there as your comrade and as a support.

If you need anything else just give me a shout.

Steve

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#217.1

Metadata

Filename	7.69 Horizon Tutorial - Tuesday 10 November(1).msg	ORIGINAL

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From: Patrick Bourke <GRO>
To: Christopher Knigl GRO >, Jonathan Swift GRO >
Cc: Jane MacLeod <j GRO >, Mark Underwood1 < GRO >, Steve Allchorn < GRO >, Rodric Williams <r GRO >
Subject: Post Office Matter
Date: Thu, 12 Nov 2015 10:14:47 +0000
Importance: High

Dear Jonathan, Christopher

Many thanks for coming to see us on Tuesday.

I hope you found the Horizon demonstration session helpful and that we were able, through it, to bring some of the material you are wading through to life a bit.

I said I would send you a short recap on where the discussion we had afterwards has left us.

Meetings with prominent stakeholders

You expressed the view that it would be desirable to have meetings with Lord Arbuthnot, Second Sight and Alan Bates, together with Tim Parker, as soon as practicable. This would a) sensitise them to the fact that the enquiries are underway; b) potentially enable them to inform and/or supplement your lines of enquiry (and certainly provide a platform for this); and c) help us in terms of the overall external credibility of the process. These initial meetings could be built upon at a later stage for more detail, and if necessary. Tim' availability represents a serious challenge. For that reason, we are prioritising the Lord Arbuthnot meeting. However, we will start the ball rolling on getting all of these into the diary, liaising with your clerk in the process.

The 4 strands of enquiry

We had a general discussion about the handling of these, and drew the following conclusions:

Criminal cases – you were of the view that, in the light of the substantial work already undertaken by Brian Altman QC and Cartwright King, your role might be limited to recording whether or not, in your view, the Post Office had adopted appropriate policies and processes, perhaps by reference to specific recommendations and/or one or two cases. You asked whether we might have some suggestions as to those cases you might include in this sample and we, of course, will provide these.

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Investigations – you would, as anticipated, use the documentation we have provided (including the spreadsheet covering the 136 cases) to test the appropriateness/reasonableness of the scope and depth of our investigations under the Scheme using a sample of the actual cases to draw your conclusions from. We agreed to put you together with the relevant internal investigators at the appropriate time. You also asked whether we might suggest some cases which could usefully be included in your sampling exercise and we will, of course, provide you with some ideas.

Helpdesk – we discussed the challenges of testing the quality of support provided by the Helpdesk given the manner in which material is recorded, and I said we would come to you with a proposal for addressing these. I will write separately on this, but for the benefit of this note, the main elements will be to supply you with documents (over and above those you already have) which show how the Helpdesk system operates generally. Then, through the administrators of the system, work is already underway to try to identify those accounting issues most frequently raised by SPMs and the answers provided by reference to the Knowledge Base. We will try to establish how long those answers have been in effect for and any changes to them over the period. We will then arrange meetings for you with the relevant personnel (including, where possible, those responsible for the Helpdesk over the relevant time period).

Horizon – we will provide you with copies of reports prepared for the purposes of trying to confirm the reliability of the system for accounting purposes (this includes the Deloitte report(s), Second Sight's work, and the most recent ISAE3402 Report prepared by Fujitsu and Ernst & Young covering the Horizon processing environment).

We will also provide you with the "Spot Review" responses which Post Office and Fujitsu prepared in response to specific issues raised by Second Sight in connection with their July 2013 Report, and will review other potentially relevant Horizon accreditations (e.g. that obtained for Payment Card industry standards).

We will also ask Fujitsu to provide us with details of any system-wide upgrades which have taken place over the relevant time period which had, as one of their components, changes to the system's accounting processes. As we noted in our meeting, these will include counter, hardware, and infrastructure releases from which any specific changes to branch accounting/recording issues would need to be parsed out.

Lastly, we can consider whether some form of testing should be conducted once a specific, testable issue has been identified, bearing in mind that this would only demonstrate how the system is operating at this point in time.

Timings

We're all conscious of the time constraints we are working within, and it may be that some limited work will need to continue after Xmas (eg any testing you recommend) and be reported as being underway in the Chairman's report to the Minister. However, our ambition remains to complete all substantial elements of the work before then, so we will need to proceed at pace. My team here is available to provide you with any support or information you may need, so do please lean on us as necessary.

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At the appropriate juncture, we will want to revisit our early (and necessarily tentative) discussions about the shape and length of your report to Tim and to make arrangements for drafts etc.

The various outstanding issues identified in this note will reach you under separate cover.

Kind regards

Patrick

Patrick Bourke

GRO

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#286.1

Metadata

Filename	7.70 Post Office Matter(1).msg	ORIGINAL

POL00043789

From: Christopher Knight <GRO>
To: Patrick Bourke <GRO>
Cc: Jonathan Swift <GRO>, Jane MacLeod <GRO>, Mark Underwood1 <GRO>, Steve Allchorn <GRO>, Rodric Williams <GRO>
Subject: Re: Post Office Matter
Date: Thu, 12 Nov 2015 19:06:19 +0000
Importance: Normal

Dear Patrick,

Thank you for this helpful summary.

Can I reiterate and add some further requests please:

Could we have a formal POL response to the recommendations of Brian Altman QC concerning POL prosecution policies and procedures? (I've mentioned this to Rodric already.) This may already exist in a document which addresses each of them but if it does not, a formal letter to us explaining what has been adopted and what has not would be helpful.

There are some legal advice documents on the original list which are still outstanding. We would welcome those please.

I have reviewed the Hamilton file you sent through a fortnight ago. As I understand it, it contains the documents which particularly go to explaining consideration of sufficiency of evidence and the charging of theft and false accounting. Is that right? Much of that is very informative but it is clearly not the full case file: could we have an indication of the size of the full file? It may be appropriate for me to look over the full file of two or three criminal cases (which you are going to make suggestions about) to ensure there is nothing which might point in a different direction, and to get a clearer idea of what Ms Hamilton says.

We should probably also see (via huddle if easier) the trial transcript at least of the Misrah prosecution. (I may have misremembered the name - the one where Jenkins was cross examined for the only time.)

I have read the Castleton judgment, which is very helpful. Is this the only civil judgment on relevant issues? I would also like some further information which arises out of this case. At para 23 the judge discusses the evidence of Ms Chapman of Fujitsu which refers to an error in the Horizon system which affected a Falkirk branch. What was the nature of this error? Is it one of the three Mr Jenkins appears to have disclosed to Second Sight? If not, has it been disclosed at any point (and if not, what is the rationale for that?)? I do not think it was something discussed in Ms Chambers' witness statement by the way the judgment is phrased, so I recognise these questions may take some time to answer.

Just on meetings, my own view is that Second Sight need not be on the VIP list which the Chair need attend, or prioritised at the outset. We are likely to have a good deal more questions for them, and more critical questions, than stakeholders such as Lord Arbuthnot or Sir Anthony Hooper, and it may not be necessary or appropriate for the Chair to attend such a meeting. We will also be better placed to speak to Second Sight towards the end rather than the beginning.

Best wishes,

Chris

Sent from my iPad

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On 12 Nov 2015, at 10:15, Patrick Bourke <GRO> wrote:

Dear Jonathan, Christopher

Many thanks for coming to see us on Tuesday.

I hope you found the Horizon demonstration session helpful and that we were able, through it, to bring some of the material you are wading through to life a bit.

I said I would send you a short recap on where the discussion we had afterwards has left us.

Meetings with prominent stakeholders

You expressed the view that it would be desirable to have meetings with Lord Arbuthnot, Second Sight and Alan Bates, together with Tim Parker, as soon as practicable. This would a) sensitise them to the fact that the enquiries are underway; b) potentially enable them to inform and/or supplement your lines of enquiry (and certainly provide a platform for this); and c) help us in terms of the overall external credibility of the process. These initial meetings could be built upon at a later stage for more detail, and if necessary. Tim' availability represents a serious challenge. For that reason, we are prioritising the Lord Arbuthnot meeting. However, we will start the ball rolling on getting all of these into the diary, liaising with your clerk in the process.

The 4 strands of enquiry

We had a general discussion about the handling of these, and drew the following conclusions:

Criminal cases – you were of the view that, in the light of the substantial work already undertaken by Brian Altman QC and Cartwright King, your role might be limited to recording whether or not, in your view, the Post Office had adopted appropriate policies and processes, perhaps by reference to specific recommendations and/or one or two cases. You asked whether we might have some suggestions as to those cases you might include in this sample and we, of course, will provide these.

Investigations – you would, as anticipated, use the documentation we have provided (including the spreadsheet covering the 136 cases) to test the appropriateness/reasonableness of the scope and depth of our investigations under the Scheme using a sample of the actual cases to draw your conclusions from. We agreed to put you together with the relevant internal investigators at the appropriate time. You also asked whether we might suggest some cases which could usefully be included in your sampling exercise and we will, of course, provide you with some ideas.

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Helpdesk – we discussed the challenges of testing the quality of support provided by the Helpdesk given the manner in which material is recorded, and I said we would come to you with a proposal for addressing these. I will write separately on this, but for the benefit of this note, the main elements will be to supply you with documents (over and above those you already have) which show how the Helpdesk system operates generally. Then, through the administrators of the system, work is already underway to try to identify those accounting issues most frequently raised by SPMs and the answers provided by reference to the Knowledge Base. We will try to establish how long those answers have been in effect for and any changes to them over the period. We will then arrange meetings for you with the relevant personnel (including, where possible, those responsible for the Helpdesk over the relevant time period).

Horizon – we will provide you with copies of reports prepared for the purposes of trying to confirm the reliability of the system for accounting purposes (this includes the Deloitte report(s), Second Sight's work, and the most recent ISAE3402 Report prepared by Fujitsu and Ernst & Young covering the Horizon processing environment).

We will also provide you with the "Spot Review" responses which Post Office and Fujitsu prepared in response to specific issues raised by Second Sight in connection with their July 2013 Report, and will review other potentially relevant Horizon accreditations (e.g. that obtained for Payment Card industry standards).

We will also ask Fujitsu to provide us with details of any system-wide upgrades which have taken place over the relevant time period which had, as one of their components, changes to the system's accounting processes. As we noted in our meeting, these will include counter, hardware, and infrastructure releases from which any specific changes to branch accounting/recording issues would need to be parsed out.

Lastly, we can consider whether some form of testing should be conducted once a specific, testable issue has been identified, bearing in mind that this would only demonstrate how the system is operating at this point in time.

Timings

We're all conscious of the time constraints we are working within, and it may be that some limited work will need to continue after Xmas (eg any testing you recommend) and be reported as being underway in the Chairman's report to the Minister. However, our ambition remains to complete all substantial elements of the work before then, so we will need to proceed at pace. My team here is available to provide you with any support or information you may need, so do please lean on us as necessary.

At the appropriate juncture, we will want to revisit our early (and necessarily tentative) discussions about the shape and length of your report to Tim and to make arrangements for drafts etc.

The various outstanding issues identified in this note will reach you under separate cover.

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Kind regards

Patrick

Patrick Bourke

GRO

POL00043789

#290.1

Metadata

Filename	7.7.1 Re Post Office Matter(1).msg	ORIGINAL

POL00043789

From: Patrick Bourke <GRO>
To: Christopher Knight GRO
Cc: Jonathan Swift <GRO>, Mark Underwood1 <GRO>, Steve Allchorn <GRO>, Jane MacLeod <GRO>, Rodric Williams <GRO>
Subject: RE: Data Spread Sheet for Christopher Knight/Jonathan Swift
Date: Thu, 19 Nov 2015 17:45:59 +0000
Importance: Normal
Attachments: 151119_Richard_Roll_-_A_summary_of_Responses_to_his_Allegations_-_pb.docx

---

Dear Christopher,

Thank you for your email.

The files and documents related to the cases you have listed in your email will be available for you to view on and/or download from Huddle by close of business tomorrow at the latest. Can I just check that, since you have now identified a list, you no longer need suggestions from us of cases (whether criminal/non-criminal) you might wish to consider looking at ? In some ways, a selection exclusively made by 11KBW is better for the independence of your enquiries. Nonetheless, if you would still like suggestions, please just let me know.

In relation to the allegations made by Richard Roll on the Panorama broadcast, I attach a paper which sets out, as a table, the various lines, statements and correspondence, including those from Fujitsu, which between them cover the ground. Please let me know if you require a more formal statement from Fujitsu.

We are currently working through and making progress with the various documents requested in relation to the Helpdesk, Investigations, and the assurance of the Horizon system and should be in a position to provide these to you early next week.

Lastly, in respect of your request for information relating principally to legal matters(made in your email of 12 November 2015), Rodric is hoping to be able to provide these to you by close tomorrow.

Kind regards

Patrick

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From: Christopher Knight GRO
Sent: 19 November 2015 09:45
To: Patrick Bourke
Cc: Jonathan Swift; Mark Underwood1; Steve Allchorn; Jane MacLeod; Rodric Williams
Subject: RE: Data Spread Sheet for Christopher Knight/Jonathan Swift

Dear Patrick,

Jonathan and I have selected 11 scheme cases review the files of and we would be grateful if those files – including the pieces of evidence underlying the PO and SS reviews – could be uploaded to Huddle. We may not look at all the attached pieces of evidence in all the cases, but we will certainly do so in some. We have selected the cases at random, but ensuring that they cover all of the key thematic issues raised. We have excluded from this exercise any cases where there is a criminal conviction.

The cases are:

M014

M026

M037

M058

M070

M088

M100

M114

M131

M133

M148

Do let me know when they are uploaded.

There are various queries and requests we have outstanding from last week I believe.

Could we add a further one: the Panorama transcript contains allegations from a Richard Roll, formerly of Fujitsu, who appears to say that they could alter the coding to change transaction records and that they did so. Do we have any documented statement or similar from Mr Roll setting out the details of his account? Just as importantly, we will need a formal response from the PO and Fujitsu (particularly the latter) about Mr Roll's comments to Panorama. If there is already one, could we see it please (the statement about the

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programme generally does not address this issue). If not, can one be provided to us explaining the PO and Fujitsu response. Jonathan and I will certainly have to deal with what Mr Roll has said.

Best wishes,

Chris

From: Patrick Bourke [mailto: GRO
Sent: 03 November 2015 16:44
To: Christopher Knight
Cc: Jonathan Swift; Mark Underwood1; Steve Allchorn; Jane MacLeod; Rodric Williams
Subject: Data Spread Sheet for Christopher Knight/Jonathan Swift

Dear Chris

I attach a copy of the all-encompassing spreadsheet we talked about which, for each case in the Scheme, records the information you indicated you would find helpful to have, including details on criminal charges, whether the Helpdesk issue was complained of, Second Sight's thematic issues and so on. This should enable you and Jonathan to determine which cases to use as part of your sampling exercises. The password for the spreadsheet is GRO

My colleague, Steve Allchorn, has organised for your tour of Horizon (sorry) next Tuesday morning. It would be very helpful for us to meet (with or without Jonathan, depending on his availability) after that, so that we can develop a joint understanding of how you are likely to approach your enquiries so that we might support your work as effectively as possible. I would also like to take that opportunity to introduce you to Rodric Williams (copied), our in-house lawyer, who will be able to guide you in relation to the computer specific issues you will want to address and more generally.

In the meantime, please do not hesitate to contact us with any questions.

Kind regards

Patrick

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POL00043789

#177.1

Metadata

Filename	7.78 RE Data Spread Sheet for Christopher Knight Jonathan Swift(1).msg	ORIGINAL

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A Summary of Post Office and Fujitsu responses to the allegations made by Richard Roll

Date	Content	Supporting Document
15/06/2015	***Panorama Producer Conor Spackman email outlined areas of questioning including the below (without reference to Roll):*** • the suggestion that bugs in Horizon were more widespread than Second Sight have found • the suggestion that there were around 30 people working in "third line support" at Fujitsu and that they fixed dozens of system errors • the suggestion that errors were fixed by a team who could access transaction data, add transactions or make changes to transactions that would affect the balance in branch, without the sub-postmasters knowledge	Conor Spackman email - iv qs 12062015.msg
16/06/2015	***Pete Newsome, Business Change Manager (PO Account), Fujitsu, in response to request for information:*** • the suggestion that there were around 30 people working in "third line support" at Fujitsu and that they fixed dozens of system errors Fujitsu has provided during the lifetime of Horizon an industry standard support service to cover incidents that are raised by the customer service desk (now by its SISD) into Fujitsu Capability Units underpinning the live service which through the incident management process are placed in resolver groups and reviewed by subject matter experts to produce tactical workarounds and working procedures until the issue has been resolved. Third Line Support covers multiple disciplines within the live service across the Infrastructure, within the Application, Network and Security services provided to the customer. There are teams of subject matter experts reviewing system events, enterprise management alerts, security vulnerabilities, network logs and traces which arise through enterprise management toolsets or manual checks of system logs.	Pete Newsome 16 June 2015.msg

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17/06/2015	***Panorama producer Matt Bardo email (extract):*** We have interviewed a former employee at Fujitsu, who worked in "third line support" for the Horizon system. He says it was possible to remotely access data held on branch terminals and to amend that data. He also alleges that system errors were more widespread than has previously been reported.	Matt Bardo and MD emails 17062015.msg
22/07/2015	***Panorama producer Matt Bardo letter (extract – he highlighted in red the areas he had not previously raised):*** **Former Fujitsu employee who worked in "third line support" for Horizon prior to 2010.** • we have been told that it was possible to remotely access data held on branch terminals without the postmaster's knowledge and that this raises questions about whether computer evidence against postmasters can be 100% reliable • we have been told that under the Service Level Agreement, Fujitsu could be fined for transactions that went wrong. It was therefore in Fujitsu's financial interest not to report the extent of software and hardware problems to the Post Office • we have been told that errors in Horizon were more widespread than has ever been reported • we have been told that there were around 30 people working in "third line support" at Fujitsu and that they all worked full time to fix errors • we have been told that some of these errors were caused by Horizon misidentifying transactions because the code identifying the product and the code identifying the payment type could combine in transaction data in a way that resembled the data of other transactions. This meant that payments were sometimes misidentified and misdirected by the accounting system.	Matt Bardo letter 2272015.docx

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21/08/2015	***Mark Underwood, Sparrow team, email outlined key points for use in mediation as appropriate:*** Looking at the transcript, I think the below is the key sentence from RR. He states: *"**RR**: We went in through the backdoor and made changes. Sometimes you would be putting several lines of code in at a time. If we hadn't done that then the counters would have stopped working".* What RR is actually talking about here is, I think, open to interpretation. What we do know about RR is that he: • worked in 3rd / 4th line support on the 6th floor for a couple of years in the early 2000's; • worked on 'estate management' rather than the accountancy side; • left Fujitsu on good terms as he had become disillusioned with IT to become a chiropractor in the Bracknell area. What we know about Horizon pre- 2010 is: • It was a 'dial up' system (encrypted) and Fujitsu application software specialists could access the system remotely, as you would expect them to be able to do as part of any standard IT support function, but the system did not allow remote agents to manipulate branch transactions. These remote agents perform tasks like examining diagnostic information not transmitted to the central servers and modifying application functionality on behalf of the subpostmaster that is not part of the standard interface e.g. forcing the counter to re-download its personality and product set data. • Remote agents could not 'work' the terminals as there was no functionality for this	Mark Underwood email 21 August 2015.msg

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	• Every access was logged and so there is an auditable footprint where records are still within the retention period JS interpreted RR's statement to be in relation to financial records. The reality is that, given the above- RR's role would have involved putting in codes for various and numerous reasons - updating, maintaining etc - but this would have had nothing to do with branch transactions. This in mind, I think our initial reply should be that, RR was actually referring to providing support rather than editing transactional records. As included in our Scheme report [i.e. March 2015 report]: It is also possible for Fujitsu to view branch data in order to provide support and conduct maintenance but this does not allow access to any functionality that could be used to edit recorded transaction data. Having reviewed all the cases, no-one (including all the Applicants and Second Sight) has been able to identify a specific transaction that did not originate in branch. A number of different explanations were found for the 'unknown' transactions: - The transaction was conducted by the Applicant but they could not remember the transaction. Every input into Horizon is logged against the unique identity of the user. Each user ID is personal to that user and protected with a password that must not be shared. Where the transaction data was available, the Post Office was able to identify the user entering the questioned transactions. In some cases, this was the Applicant (where the Applicant had confirmed that their password was secure). - The transaction was entered using the Applicant's user ID but the Applicant had shared their password with other staff members. In these cases, the most likely explanation is that a staff member had conducted the transaction without the Applicant's knowledge.	

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	- A staff member had conducted the transaction with their own user ID without the Applicant's knowledge (albeit that a postmaster is able to determine this himself by accessing the branch records available through Horizon). - The entries correlated to periods when relief or temporary postmasters were running a branch. - The entries were conducted by Post Office staff conducting audits of branches and who had logged on to the branch terminals with the Applicant's full knowledge but these entries were determined not to affect the branch's accounting position. If, it is then asserted that RR was referring altering financial records or the Balancing transaction Process, I think our lines should be similar to: • As we have always said, Horizon does not have functionality that allows Post Office or Fujitsu to edit or delete the transactions recorded by branches • It has however always been possible for Post Office to correct errors in and/or update a branch's accounts. This is most commonly done by way of a transaction correction however it could also be by way of a balancing transaction or transaction acknowledgement. • A Post Office employee could also, in special circumstances, log on to a branch terminal locally (i.e. by being physically in a branch) using a new User ID and password and then conduct transactions (though these would register against that unique User ID). • All of the above processes for correcting / updating a branch's accounts have similar features. All of them involve inputting a new transaction into the branch's records (not editing or removing any previous transactions) and all are shown transparently in the branch transaction records available to Subpostmasters (as well as in the master ARQ data).	

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	• We have never made the BTP a secret. In fact we reference it in both our published Scheme Report and our Reply to Second Sight's Part Two Report.	
	Extract from Panorama rebuttal provided by Post Office to Minister [post-programme]: **Fujitsu 'Whistleblower' – Richard Roll** **Panorama: '..a team of computer technicians was dealing with Horizon errors, some of which he says, could create false losses. He also says financial records were sometimes changed remotely without the postmaster knowing. That is something the Post Office has always said simply can't happen....'** 29. Despite repeated requests, the Post Office was not provided with the identity or information about the Fujitsu 'whistleblower' before the Panorama broadcast and was therefore denied the opportunity to comment upon his capability to comment on the issues. 30. In fact, the 'whistleblower', Richard Roll, worked for Fujitsu from 2001-2004 and does not appear to have worked in IT again since that time. Fujitsu has informed us that he worked on 'estate management' and did not work on branch accounting aspects of Horizon. 31. Panorama referenced statements by Mr Roll about financial records being changed remotely. Transactions as they are recorded by branches cannot be edited and the Panorama programme did not show anything that contradicts this. 32. Mr Roll spoke of making changes 'through the back door' and 'putting in several lines of code in at a time'. Fujitsu has confirmed that this is likely reference to maintenance and support tasks as would be expected of any standard IT function. Such remote access could not be used to manipulate transactions. 33. Remote agents cannot and could not 'work the terminals' as there is no	Panorama Rebuttal - BIS.pdf

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	functionality for this. 34. Every access is logged and there is an auditable footprint where records are still within the retention period	
20/08/2015	***Pete Newsome, Business Change Manager (PO Account), Fujitsu, email (extract):*** And finally the following is all people could remember about Richard Roll: • Worked in SSC 3/4th line support on the 6th Floor for a couple of years in the early 2000s for a couple of years • Worked on estate management not accountancy side • Left Fujitsu on good terms as he had become disillusioned with IT to become a chiropractor in the Bracknell area	Pete Newsome email August 20 2015.msg
24/08/2015	***Pete Newsome, Business Change Manager (PO Account) email extract:*** 3rd line support is the SSC diagnosticians who apply technical knowledge to provide support and incident resolution services. They support service managers in the delivery of their service and undertake in-depth investigation into incidents by applying analytical skills to the symptoms and evidence gathered by 1st and 2nd line units. SSC diagnosticians have a general knowledge of most aspects of the Horizon system. They will also specialise in one or two areas such as estate management, reference data, databases, batch systems or counter process and accounting. SSC diagnosticians do not resolve incidents by amending any code used in the provision of live services. This is a 4th line responsibility which is deliberately separated from the 3rd line services provided by the SSC.	Pete Newsome email 24 August 2015.msg
19/10/2015	***Andrew Head, Executive Producer, BBC Panorama (extract from letter in response to formal complaint from Post Office; this slightly expands Mr Roll's allegations from those included in the programme)*** 2. You also suggest that Post Office's position, as laid out in their statement, was	BBC response to Post Office October 1

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	misrepresented when we reported that: *"[Richard Roll] says financial records were sometimes changed remotely without the postmaster knowing. That is something the Post Office has always said simply can't happen"*. You say that Post Office's position is actually the following: *"Post Office can correct errors in and/or update a branch's accounts by inputting a new transaction (not editing or removing any previous transactions). It is also possible to update the software remotely. However, such changes would be shown transparently in the transaction records."* Your description of Post Office's position seems to demonstrate that we reported it accurately. From the briefing we attended and the long Post Office reports that we read, it was clear that – after initially denying it - Post Office had come to accept that remote access to branch data was possible but that any changes would be shown transparently in the data. If all remotely executed changes to branch accounts are "transparent", then they must be transparent to the postmaster whose records are being changed. So the Post Office position is that any postmaster would know if his records were being changed. Mr Roll says that's not correct. He says that records were sometimes changed without the postmaster knowing. It follows that we correctly reported that he was saying something the Post Office has always denied. Indeed, he says he and his colleagues could make changes under the postmaster's log in. This process left no record that anybody else had been on the system. For example, Mr Roll explained to us that he could make it look as if a postmaster had sold a book of stamps when he had not	
16/11/2015	***CMS response to BBC regarding complaint (extract):*** Mr Head's letter further states that Mr Roll told the Panorama team that *""he and his colleagues could make changes under the postmaster's log in"* and that *""this process left no record that anybody else had been on the system"*. This allegation is likely to have coloured the BBC's decision to run its programme and yet this allegation was not put to our client. Mr Bardo's email of 17 June 2015 at 19:41 stated that *""a former employee at Fujitsu. ..says it was possible to remotely access data held on branch terminals and to amend that data"*. Post Office provided a response to this allegation.	 Stage 1b Complaint to BBC - 16 Novembe

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	However, this is a fundamentally different allegation to the allegation that changes could be made ""*under the postmaster's log in"* and that this ""*left no record"*. For the record, this allegation is strongly denied. If Post Office had been informed about allegations such as this in advance of the programme being broadcast, then it could have provided a technical response explaining what could, and, more importantly, what could not, be done with the Horizon system remotely.	

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Dear Mark

I am writing to let you know that our programme about the Post Office is now scheduled for broadcast on Monday, 10 August at 7:30pm.

When we were last in touch, I was pleased to hear that you were still considering an interview. We would now like to know how you will be responding because we are finalising the programme over the next week or so.

For your convenience, I have collated the information we have already given you about question areas in our previous emails. These have been grouped under headings and I hope this helps to ensure that you are fully prepared to respond.

You will see that we have listed the full range of points that have been raised by our case studies. This is to give you a fair opportunity to respond if you wish. However, as I have said in our previous correspondence, we would not want to raise all of these points with you in the interview if you decide that you cannot comment on individual cases for reasons of confidentiality. However it remains our view that these cases should not be treated as confidential because the postmasters have already been prosecuted in open court.

As our investigation has progressed, we have continued to analyse information and material. This has raised a few issues related to those that we sent to you before and for clarity we also wish to put these to Post Office. We have added these additional points below in red so that you can find them easily.

We believe you have been afforded a very fair and reasonable opportunity to respond over the past two months. If you would like to respond by way of an interview we would be looking to film this before Wednesday 29 July. If you choose to respond by a statement instead, then we would be grateful to receive that by 5:00pm on the same day.

I look forward to hearing from you.

Many thanks

Matt

Interviewees we plan to include

Jo Hamilton (former postmaster)
Seema Misra (former postmaster)
Noel Thomas (former postmaster)
James Arbuthnot (former MP)
Charles Mclachlan (computer expert)
Ian Henderson (Director, Second Sight)
Professor Mark Button (legal expert)
Former Fujitsu employee (whistleblower)

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Jo Hamilton

- the decision to charge Jo Hamilton with theft relied upon the Post Office's Horizon system
- why Ms Hamilton's branch was £2000 down on the Horizon system and why this doubled to £4000 when she followed the instructions from the help desk
- her claim that she sought help and the Post Office failed to provide it
- her explanation that she subsequently felt trapped and did not know what to do other than sign off inaccurate accounts
- that in its "POIR" report into Jo Hamilton's case, the Post Office now says the most likely cause for the losses "is a series of operational errors in the branch by the Applicant or her staff over an extended period of time". This suggests a change in position because theft is no longer the alleged cause of the shortfall
- we have also obtained extracts from Jo Hamilton's prosecution files. One extract is from the Post Office investigator's report into Ms Hamilton's case. On 17 May 2006 the Post Office investigator reported "I was unable to find any evidence of theft or that the cash figures had been deliberately inflated". Another extract includes comments made in a memo that was circulated on 16th November 2007 by the Principal Lawyer of the Criminal Law Division of Royal Mail. It talks about the importance of the theft charge in forcing Jo Hamilton to repay the missing money and says: "I am never confident with false accounting charges in relation to recovery under POCA 2002 and the theft charge makes life so much easier".
- that in a letter from the Principal Lawyer dated 19 November 2007, it was made clear that Jo Hamilton could not blame the computer system as part of the agreement to drop the charge of theft. However, the computer could have been to blame

Noel Thomas

- Mr Thomas' claim that that he told the helpline about his problems with the system and about the missing money
- that it is no longer possible to know the results of important tests carried out on Mr Thomas' system because those records have now been lost or destroyed
- Mr Thomas' claim that he was poorly treated after four decades of loyal service
- according to the Post Office's "POIR" report into Noel Thomas' case, it now believes that that the cause of the shortfall in Mr Thomas' branch is likely to

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be "the cumulative product of operational errors in the branch by the Applicant or his staff over an extended period of time".

Seema Misra

- Ms Misra's claim that she was not provided with adequate help to operate the Horizon system
- that Ms Misra's branch made dozens of calls to Horizon helplines, demonstrating that she was struggling to get to grips with the Horizon system
- that for two years there were cash shortfalls at Ms Misra's branch and that she used twenty thousand pounds of her family's money to make good the losses
- we have been told that the Post Office failed to disclose crucial information during Ms Misra's trial including technical information about Horizon to the defence's expert witness
- that the Post Office and Fujitsu had identified bugs in Horizon and that the jury was not told about them
- we have read extracts of minutes of a joint Fujitsu/Post Office meeting shortly before Ms Misra's trial at which one such bug was discussed. The minutes of the meeting state that this bug could impact "ongoing legal cases where branches are disputing the integrity of Horizon Data"

Post Office investigations and prosecutions

- the suggestion that the Post Office has a financial interest in prosecuting postmasters because it helps with the recovery of missing money
- we have been told that miscarriages of justice are more likely because the Post Office exercises both the power of investigation and prosecution (meaning there is less independent scrutiny before a case gets to court)
- the suggestion that the Post Office failed to consider or investigate the possibility that Horizon could be the cause of some of the losses
- the suggestion that these failings may have led to miscarriages of justice in some cases
- the suggestion that the Post Office is a bullying organisation that has abused its power
- that Chief Executive Paula Vennells has never given an interview to defend the Post Office's position on miscarriages of justice

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- the suggestion that Paula Vennells has been implicated in miscarriages of justice and should resign
- That the Post Office had been prosecuting an average of 33 postmasters a year in the five years up to 2014. However, last year it only prosecuted two postmasters. This suggests a significant change in prosecution policy

Horizon system

- that there have been multiple problems with Horizon and that sometimes transactions go astray
- that Horizon appears to have escaped full, independent scrutiny
- the suggestion that the complexity of the Horizon system adds to the likelihood of errors
- that Post Office prosecutions relied on the belief that the computer system was robust, when in fact computer errors may call this into question
- the claim by numerous postmasters that they were told by Post Office investigators they were the only ones having problems with the Horizon system

Second Sight's investigation

- we have been told that the Post Office had a culture of denial when it came to bugs occurring in the Horizon system
- that Second Sight reported two bugs that caused losses that postmasters would have been held liable for had the errors not been found. In one case it took the Post Office a year to discover the problem
- Second Sight's evidence that remote access to branch data is possible in spite of Post Office denials
- that Second Sight believe the Post Office may have used theft charges as a tactic to put pressure on postmasters

Former Fujitsu employee who worked in "third line support" for Horizon prior to 2010.

- we have been told that it was possible to remotely access data held on branch terminals without the postmaster's knowledge and that this raises questions about whether computer evidence against postmasters can be 100% reliable
- we have been told that under the Service Level Agreement, Fujitsu could be fined for transactions that went wrong. It was therefore in Fujitsu's

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financial interest not to report the extent of software and hardware problems to the Post Office

- we have been told that errors in Horizon were more widespread than has ever been reported
- we have been told that there were around 30 people working in "third line support" at Fujitsu and that they all worked full time to fix errors
- we have been told that some of these errors were caused by Horizon misidentifying transactions because the code identifying the product and the code identifying the payment type could combine in transaction data in a way that resembled the data of other transactions. This meant that payments were sometimes misidentified and misdirected by the accounting system.

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Panorama – Strictly Confidential – Subject to Legal Privilege

Overview

1. Prior to the broadcast of the Panorama programme and over a period of more than three months, the Post Office provided significant help and information to the programme's editorial team, including a two-hour 'on the record' briefing from senior people involved in Complaint Review and Mediation Scheme.

2. However, despite repeated requests, the Post Office was never provided with sufficient information about the allegations Panorama intended to include to enable full and meaningful responses, nor was it provided with the evidence upon which the allegations were being based.

3. It also became clear that Panorama was focussing on a very small number of individual cases, all of which have applied to the Criminal Cases Review Commission (CCRC) – a body who are subsequently being provided with all available information, including confidential legal material not available to others.

4. In addition to the Post Office's commitment of confidentiality to people who put forward cases to it for re-investigation, the CCRC should be allowed to complete its reviews without external comment.

5. Immediately following the broadcast, the Post Office issued its statement wholly rejecting the allegations. It is meeting with the BBC shortly regarding what it considers to be the programme's inadequacy in allowing proper right of reply and adherence to BBC guidelines. Formal complaint and legal routes are also being considered.

Prosecutions

Panorama: 'Crime wave sweeping middle England – the Post Office says it's caught dozens of postmasters with their hands in the till…'

6. The Post Office does not prosecute anyone for making innocent mistakes. From the 150 complaints put forward, 43 involve criminal convictions. These convictions have taken place over a period of more than 10 years.

7. The programme stated several times that the Post Office pursued theft charges against postmasters where there was 'no direct evidence of theft' or 'no evidence of theft'. This is entirely untrue.

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Panorama: 'Back then, the Post Office's own criminal investigator had found no evidence of theft'
Panorama: 'Second Sight thinks they may have used theft charges as a tactic to put pressure on subpostmasters....internal Post Office documents talk about how a theft charge could make it easier to get a court order to make Jo repay the missing money'

8. Panorama broadcast allegations that Post Office may have brought theft charges without supporting evidence, and that theft charges were brought improperly to put pressure on postmasters and/or support recovery of financial losses from them. Panorama referred to two internal Royal Mail documents from early on in the investigation into losses at Jo Hamilton's branch to support these allegations, and broadcast the suggestion that the prosecution is a "miscarriage of justice".

9. In deciding whether to prosecute, Post Office considers (among other factors) whether the tests set out in the CPS's Code for Crown Prosecutors are met, which require prosecutors to be satisfied that there is sufficient evidence for a realistic prospect of conviction on each charge in and of itself, and that the prosecution is in the public interest.

10. Post Office would not be complying with the Code if it had brought a theft charge in the manner alleged by Panorama, and our review of the Hamilton prosecution documents, in their full context within the prosecution file, does not support Panorama's allegations.

11. The Hamilton prosecution file shows that the evidence for a theft charge was investigated at the outset and kept under review throughout the prosecution, that specialist external legal counsel advised on the sufficiency of that evidence before charges were laid, and ultimately that the legal opinion that "there is evidence she has taken the money, and that there is sufficient evidence to support theft" informed the decision to insist that the full loss be repaid before Royal Mail (prosecuting for Post Office) would accept the defendant's offer to plead guilty to false accounting and abandon the theft charge.

12. Ultimately however, whether the Hamilton prosecution is a "miscarriage of justice" is being investigated by the Criminal Cases Review Commission. The Commission, the independent organisation set up by statute to investigate suspected miscarriages of justice from the courts in England, Wales and Northern Ireland, will be assisted in its review by being given access to all of the available Post Office files, including the legal advice received.

Panorama: 'Seema was jailed as a thief. But was the star witness for the prosecution, the computer, ever properly examined? The expert witness for the defence doesn't think so... in every criminal case disclosure is vital, so the question is, did she get a fair trial?'

13. Panorama broadcast allegations that there may have been inadequate disclosure to the defence about Horizon during the trial for theft of Seema Misra, such that she may not have had a fair trial.

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14. A review of the original trial transcripts undertaken in January 2014 by Post Office's external criminal law solicitors found that substantial disclosure about Horizon had been provided to the defence and its expert Charles McLachlan (a contributor to the Panorama programme). The review also found that Mrs Misra's defence made numerous applications for further disclosure and for the case to be stopped as an "Abuse of Process" because of inadequate disclosure. Each of those applications was however rejected by the presiding judge, such that the scope and extent of disclosure in the case can be said to have been scrutinised and sanctioned by the court.

Panorama: '...should Noel have been charged with theft in the first place.'

15. As with the Hamilton case, Panorama questions whether Mr Thomas should have been charged with theft as well as false accounting. Panorama refers to a Post Office document which it claims concluded that "that the missing money was probably caused by operational errors", and also notes that Horizon hardware in Mr Thomas's branch was removed for testing but the "results have now been lost".

16. Panorama did not report that the Post Office document (prepared recently in connection with the Mediation Scheme) notes (as it is right to) that the issue with the hardware testing ought to have been considered during the course of the prosecution if it was indeed relevant at the time.

17. This is however ultimately irrelevant. It is clear from the Panorama programme itself that Mr Thomas committed the crime of false accounting, and that he was following his legal advice when he chose to plead guilty to that offence. It is a matter for the court to determine sentence once a defendant pleads or is found guilty, having regard to all the circumstances of the case including the specific offence committed and its impact, and the defendant's conduct and character. In this case, the period of imprisonment to which Mr Thomas was sentence was for the crime of false accounting, not theft (although both carry the same maximum tariff).

18. Ultimately however, as with the Hamilton case, the Criminal Cases Review Commission is investigating whether Mr Thomas's prosecution is a "miscarriage of justice", with access to all of the available Post Office files.

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Panorama: Second Sight 'what was of interest to us was that a number of cases also started with an additional charge, which was that of theft. But in a significant number of cases, that theft charge was dropped in response to the defendant pleading guilty to false accounting..'

19. The Post Office made it very clear to Panorama that the Complaint Review and Mediation Scheme is not a criminal case review, but rather an investigation into whether Horizon operated as it should in a small number of cases.

20. Second Sight is a firm of accountants, it is not experts in criminal law or procedure, and was provided with all the relevant documentation to perform its role, as was agreed by the mediation scheme's Working Group (of which they were a member) in 2014. Again, the limitations of Second Sight's opinions regarding criminal law were made clear to the programme before broadcast.

Panorama: 'The Post Office has its own investigators and it brings private prosecutions. It doesn't have to go through the police or the Crown Prosecution Service.'

21. Panorama included comments about private prosecutions creating 'potential miscarriages of justice' from Professor Mark Button, who was presented in the programme as a legal expert but who does not have any involvement in the cases presented.

22. The Post Office has no special powers of prosecution – where it discovers evidence of criminal wrongdoing, it may exercise the right to bring a private criminal prosecution which is available to all companies and individuals in England and Wales. Many organisations conduct prosecutions within their own sphere of interest, including for example the Driver and Vehicle Standards Agency, Transport for London, the Environmental Agency, the BBC and many local authorities.

23. Post Office prosecutors are all experienced criminal lawyers, many of whom have significant experience in prosecuting for both Post Office and the Crown Prosecution Service. The Post Office follows the Code for Crown Prosecutors (the same code as the CPS). This requires a prosecution to have sufficient evidence and be in the public interest, both of which are kept under review right up to and including any trial. It means there must be sufficient evidence for ***each*** charge – if a theft charge is brought, there must be sufficient evidence for a realistic prospect of a conviction for theft.

24. External specialist criminal lawyers have continued to review material to ensure the Post Office complies with its continuing duty after a prosecution to disclose any information that subsequently comes to light which might undermine its prosecution case or support the case of the defendant.

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The Horizon system – 'operational errors'

Panorama: '...in paperwork we have obtained, the Post Office now admits that the most likely cause of the losses was operational errors...'

25. The Post Office and Second Sight's investigations did indeed produce overwhelming evidence that the majority losses complained of were caused by user actions (e.g. human operational errors made at the counter).

26. This does not change the Post Office's position regarding cases involving criminal convictions. Falsifying accounts can also contribute to branch losses. Where accounts have been falsified it is not possible to identify the transactions that may have caused discrepancies and losses, preventing the correction of the practices and procedures that generated those losses.

27. Over the course of the investigations, the Post Office has demonstrated that Horizon works as it should and is robust and effective in dealing with the six million transactions put through the system every day for people up and down the country at 11,500 Post Office branches.

28. Second Sight has not identified any transaction caused by a technical fault in Horizon which resulted in a postmaster wrongly being held responsible for a loss. Without this, there is no evidence to support any of the broad allegations about Horizon.

Fujitsu 'Whistleblower' – Richard Rolls

Panorama: '..a team of computer technicians was dealing with Horizon errors, some of which he says, could create false losses. He also says financial records were sometimes changed remotely without the postmaster knowing. That is something the Post Office has always said simply can't happen....'

29. Despite repeated requests, the Post Office was not provided with the identity or information about the Fujitsu 'whistleblower' before the Panorama broadcast and was therefore denied the opportunity to comment upon his capability to comment on the issues.

30. In fact, the 'whistleblower', Richard Rolls, worked for Fujitsu from 2001-2004 and does not appear to have worked in IT again since that time. Fujitsu has informed us that he worked on 'estate management' and did not work on branch accounting aspects of Horizon.

31. Panorama referenced statements by Mr Rolls about financial records being changed remotely. Transactions as they are recorded by branches cannot be edited and the Panorama programme did not show anything that contradicts this.

32. Mr Rolls spoke of making changes 'through the back door' and 'putting in several lines of code in at a time'. Fujitsu has confirmed that this is likely reference to maintenance and

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support tasks as would be expected of any standard IT function. Such remote access could not be used to manipulate transactions.

33. Remote agents cannot and could not 'work the terminals' as there is no functionality for this.

34. Every access is logged and there is an auditable footprint where records are still within the retention period

Second Sight

Panorama: Second Sight: 'In any large IT system it is inevitable that problems will occur. What seems to have gone wrong within the Post Office is a failure to investigate properly and in detail cases where those problems occurred. It's almost like institutional blindness.'

35. Ian Henderson, from Second Sight, said that there had been a 'failure to investigate properly and in detail cases where IT problems occurred'. This is incorrect – Post Office investigators' first task is to establish what has happened in the branch and its approach to each investigation will, by necessity, be influenced by the particular circumstances of the individual case.

36. That task will be frustrated when the branch accounts have been deliberately falsified, which is an act which precedes any Post Office investigation. By falsifying the accounts (whether through the inflation of cash on hand or otherwise) Subpostmasters or their assistants prevent Post Office from being able to identify the transactions that may have caused discrepancies and losses. The first step in identifying a genuine error is to determine the days on which the cash position in the accounts is different from the cash on hand. Where the cash on hand figure has been falsely stated, this is not possible.

37. The false accounting therefore hides any genuine errors from Post Office. It hides it at the time the losses occur and it remains the case now that Post Office is not able to identify which transactions may have caused the losses.

38. It is the Subpostmaster's (or their assistant's) false accounting that prevents Post Office from investigating the underlying losses, not the attitude of Post Office investigators.

'Bullying organisation'

Panorama: James Arbuthnot: 'It is a big organisation bullying individuals with no ability to cope in ways which sometimes see them sent to prison, made bankrupt, lose their livelihood...'

39. James Arbuthnot told the programme that the Post Office is bullying individuals with no ability to cope'.

40. This allegation simply not true – it is not borne out at all by any of the results that the Post Office has when it regularly asks people about their experiences of working in its network, or

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by any other evidence.

41. Mr Arbuthnot also said that he believed the Post Office CEO should resign. In fact, the CEO initiated the independent inquiry and committed to a series of actions, including providing funding to help people obtain independent professional advice to bring forward complaints against the company. It is hard to imagine any other company going to such lengths to get to the bottom of allegations being made by such a small minority of system users. The Post Office remains willing to discuss these matters with Members of Parliament as it has done with a number.

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16 November 2015

Your ref CAS-3485119-74B6PG
Our ref SCB/THRE/MIT/111850.00038

By Post and Email

Dear Sirs

NOT FOR BROADCAST

Panorama - Post Office Limited

We write further to the letter from Andrew Head, Executive Producer for BBC Panorama, dated 19 October 2015, in response to our complaint of 15 September 2015.

Our client is not satisfied with the response that it has received, for the reasons set out in more detail below, and therefore wishes to invoke your Stage 1b complaints procedure.

For ease of reference, we enclose copies of: (i) Mr Head's letter of 19 October 2015; (ii) our letter of 15 September 2015; and (iii) our letter of 10 August 2015.

Level of response

Key issues

- **No response to letter of 10 August 2015**

Our letter of 15 September included reference to our pre-broadcast letter of 10 August 2015. The points raised in our letter of 10 August were to be incorporated in our letter of 15 September, as was clearly set out in the letter. This was intended to avoid the need to repeat points already made in correspondence with the BBC.

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Mr Head's letter states that the reason for not addressing points made in this letter was because the BBC has already provided a response to the letter of 10 August. In fact, our client has received no substantive response to its letter of 10 August and, therefore, the response to our client's complaint is deficient in this manner.

Our client's letter of 10 August relates to the BBC's conduct prior to the broadcast of the programme. It is important to recognise that our client's complaint extends to the BBC's conduct in making the programme and in seeking our client's contribution. The complaint is not limited to the presentation and contents of the programme itself, which Mr Head's letter largely focuses on.

Right of Reply

Key issues

- **No valid justification for failing to provide adequate information to Post Office**
- **No valid justification for withholding 'whistleblower's' identity**
- **Failure to make clear that Mr Roll was not employed at the relevant time**

Under the heading "Right to Reply" in his letter, Mr Head responds to a number of points raised in our letter of 15 September. However, in doing so he appears to be basing many of his conclusions on a particular interpretation of the BBC Editorial Guidelines (the "Guidelines") which we cannot accept.

Mr Head's letter states "*[Paragraph 6.4.1] of the [Guidelines] refers to the informed consent of contributors who take part in the programme. Since Post Office declined an interview this does not apply...*". This statement is relied upon at various points in the letter, including as a justification for refusing to disclose the details of your 'whistleblower'. However, this interpretation of the Guidelines does not make any logical sense.

No valid distinction can be drawn between a party that provides a recorded interview and a party that provides a statement for broadcast. Both must constitute "contributors" to the programme. Furthermore, our client provided a detailed on-the-record briefing to the Panorama team. This alone should be sufficient to make our client a "contributor" to the programme.

More fundamentally, paragraph 6.4.1 of the Guidelines states that "*contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content*" and further that "*Before they participate, contributors should normally know...*". This Guideline clearly applies before parties asked to contribute have reached a decision about whether and/or how to participate in the programme.

Nevertheless, if the definition of a "contributor" is limited to parties that provide an interview for broadcast, it must be incumbent upon the BBC to comply fully with paragraph 6.4.1, in regard to all parties that it asks to contribute, up until the point where the decision over whether to grant an interview is given. We fail to understand how it can legitimately be argued that the BBC can retrospectively justify a failure to comply with this Guideline based on a decision taken by our client after the date of the breach.

Indeed, our client's decision not to put someone forward for interview was, in large part, reached because of concerns over the lack of information that the BBC was providing regarding the allegations to be raised and the evidence relied upon to support them. If the BBC had complied fully with paragraph 6.4.1 of the Guidelines, there is a strong likelihood that our client would have provided an interviewee.

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In this context, your suggestion that our client's decision to decline an interview justified the decision to withhold Mr Roll's details is illogical. Our client's repeated requests for the names of the contributors significantly predated its decision regarding an interview.

Mr Head further justifies the decision to not reveal the name of Mr Roll, in contravention of paragraph 6.4.1 of the Guidelines, on the basis that the BBC was "*keen to ensure that his testimony was not unduly affected by external pressure*". This statement also is not borne out by the facts. The involvement of the whistleblower was revealed in Mr Bardo's email of 17 June 2015. By an email of 23 June 2015, Mr Bardo explained that "*we wish to protect [the whistleblower's] identity*".

However, it was not until 23 July 2015 that our client wrote to Professor Button. To suggest that our client's letter to Professor Button was part of the circumstances that justified the BBC's decision to withhold Mr Roll's identity is clearly untrue. This appears to be an attempt, once again, to use a circumstance arising after a decision has been reached by the BBC to justify that decision retrospectively. Furthermore, our client's letter to Professor Button simply sought disclosure of any evidence that he may have had in his possession which suggested that there had been any miscarriage of justice. This request was made to ensure that our client complied with its ongoing legal obligation of disclosure and not, as suggested, to place "*external pressure*" on him.

While our client acknowledges that it corresponded with Mr Ian Henderson in advance of his interview with the BBC, this correspondence was initiated by Mr Henderson who notified our client of the BBC's request for an interview. Our client did not exert any undue external pressure on Mr Henderson. Furthermore, our client has a direct contractual relationship with Second Sight including obligations of confidentiality imposed on Second Sight that our client was entitled to discuss with Mr Henderson.

In any event, after your interview with Mr Roll was recorded, there would have been no reason to continue to withhold his identity. Revealing this information would have allowed our client the opportunity to comment on Mr Roll's capacity to provide meaningful evidence. It would have further allowed our client the opportunity to provide comment on the status of the Horizon system at the time of his employment and to highlight to the BBC (and potentially the viewers) that Mr Roll's knowledge and experience pertained only to a time period that was irrelevant for the three cases featured in the programme. Indeed, providing our client with the opportunity to make such comment would have assisted the BBC to achieve the "due accuracy" to which it is required to aspire.

The only detail that the BBC provided regarding Mr Roll was that he was employed prior to 2010. In fact, Mr Roll left Fujitsu's employment in 2004. We fail to see why the BBC chose misleadingly to characterise the timing of his employment which suggested that it was contemporaneous with the featured cases.

Furthermore, Mr Head's letter states that "*the dates of [Mr Roll's] employment at Fujitsu were written on the screen during his interview so this information was made available to viewers anyway*" and that "*Each postmaster also had the years of their tenure clearly presented in on-screen text. The extent of the overlap was therefore clear*". With the greatest respect for the viewing public, this line of argument assumes too high a level of attention to detail for the average viewer. It is unreasonable to suggest and highly unlikely that the vast majority of viewers would have paid much attention to the dates of the postmasters' tenures, much less remembered them and then compared them to the dates of Mr Roll's employment. Viewers would rightly assume, in the absence of any express statement to the contrary, that

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the individual being presented as a whistleblower would have been providing directly relevant information and, indeed, that he would have knowledge of the computer system as it was at the time of the specific incidents being featured in the programme. If our client had been provided with details of the Fujitsu employee that was contributing to the programme, then it could have made suitable comment to provide viewers with the necessary context to avoid them being misled.

Our client disagrees strongly with the suggestion that the Panorama team complied with paragraph 6.4.25 of the Guidelines. Providing information on the "*broad question areas for an interview*" does not constitute describing the allegations "*in sufficient detail to enable an informed response*". Our arguments on this point have been repeatedly rehearsed in correspondence. To date, we have received no satisfactory response to adequately explain why our client was not provided with more detail on the allegations to be made and provided with next to no details of the evidence upon which such allegations were to be based. As previously stated, it was essential that our client was provided with this evidence to ensure that it had the necessary information to enable an informed response.

As an aside, we note that Mr Head's letter states that the BBC was "*repeatedly in contact*" over a period of 12 weeks from 19 May 2015. This omits to mention that there was a four week 'hiatus' between the end of June and 22 July 2015 during which no further substantive correspondence was received from the BBC.

Proposed Meeting

Key issues

- **No valid justification for declining offer to review further evidence**

At paragraph 3 under the heading "The Right of Reply Process", Mr Head refers to our client's offer of a meeting to share confidential documents with the BBC that would have disproved the allegation that our client brought charges of theft in the absence of supporting evidence and that theft charges were used to put pressure to plead guilty to false accounting. This offer of a meeting was declined.

In justifying this decision to decline our client's offer, Mr Head cites two "*fundamental editorial reasons*".

Mr Head's first argument is that the fact that our client required any disclosed documents to be kept confidential would have "*[prevented the BBC] from verifying its accuracy*" and hence put it in breach of paragraph 3.4.2 of the Guidelines.

This argument is illogical. The fact that the BBC could not have disclosed the materials to any third party is not a justification for refusing to review them. First, in applying this logic, the BBC is making the assumption that the BBC would need to take further steps to verify the accuracy of the information, facts and documents being presented to it or that to do so would require their disclosure to third parties. It is perfectly possible that the review could have led to independent lines of enquiry without the need to disclose such materials. Indeed, situations akin to this must arise in a large number of BBC investigations

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and therefore BBC staff should be perfectly capable of handling such confidentiality. Secondly, it is illogical, and contrary to the principles of good journalism, to suggest that the BBC should avoid an open and important line of enquiry simply due to the concern that it may open up other lines of enquiry.

As stated previously, if the BBC had taken our client up on its offer to review documents that would have demonstrated that the allegations being made were false, then it would have been left with little material to broadcast. Mr Head's reference to the BBC's inability to refer to or attribute it in the broadcast would be irrelevant in the context of an allegation proved to be false and, hence, not broadcast at all.

As stated in our initial letter of 15 September, it would appear that the BBC would prefer to 'bury its head in the sand' and deny the inconvenient truth that Post Office has evidence to demonstrate that the allegations being broadcast were untrue, rather than check and verify the information and facts presented to the BBC by individuals with an axe to grind.

The second argument made by Mr Head in this respect is that the arrangement proposed by our client would have "*[compromised] the BBC's editorial integrity (see Editorial Guidelines 1.2.4 and 14.1)*". Paragraph 1.2.4 of the Guidelines states "*The BBC is independent of outside interests and arrangements that could undermine our editorial integrity. Our audiences should be confident that our decisions are not influenced by outside interests, political or commercial pressures, or any personal interests*". Paragraph 14.1 of the Guidelines similarly states that "*Our audiences must be able to trust the BBC and be confident that our editorial decisions are not influenced by outside interests, political or commercial pressures, or any personal interests*". Reviewing our client's evidence would not have constituted "*outside interests, political or commercial pressures, or any personal interests*". We do not accept Mr Head's argument here. The BBC regularly receives information, including from those who might be considered to be partisan and is perfectly capable of reviewing this information without undermining its "editorial integrity". At the very least, this information would have simply been more information for the BBC to consider when producing the programme. Hiding behind the nebulous defence of maintaining "editorial integrity" does not justify the decision to ignore valid concerns about the truth of the allegations to be broadcast.

Reflection of Statement

Key issues

- **Failure to include elements of Post Office's statement relating to the CCRC**
- **Misrepresenting the involvement of the CCRC**
- **Failure to include key elements of Post Office's statement relating to the manner in which Post Office conducts private prosecutions**

Despite the points raised by Mr Head, our clients maintain that the BBC failed fairly and accurately to reflect its response.

Without contradiction to the generality of the statement above, we would make the following points:

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- Mr Head's letter justifies the exclusion of our client's statements regarding the Criminal Cases Review Commission ("CCRC") on the basis that the programme "*did not suggest that Post Office was failing to co-operate [with the CCRC]*" and furthermore that that programme did not expressly state that the CCRC would not have access to all of the relevant materials in respect of the cases referred to it. This justification assumes a level of knowledge on the part of the average viewer regarding the work of the CCRC which is clearly unrealistic. Presenting the reference to the CCRC alongside the statement "*the sense of injustice is growing*" suggests to the uninformed viewer that in accepting a reference the CCRC is presuming some level of injustice when, in fact, applying to the CCRC is a right open to any person convicted of an offence in England, Wales or Northern Ireland. It would have been fair for these aspects of our client's response to be presented alongside this statement.
- Similarly, Mr Head states that our client's statement that Post Office follows the Code for Crown Prosecutors was not included because the programme did not expressly state otherwise. However, the programme did clearly state that "*[Post Office] doesn't have to go through the police or the Crown Prosecution Service*" and then went on to immediately feature statements from Professor Button to suggest that this "*creates potential risks of miscarriages of justice*". In this context, our client's statement that it follows the Code for Crown Prosecutors was entirely relevant and it was only fair that this be accurately reflected in the programme to avoid viewers being misled into believing that our client conducts its prosecutions in a manner contrary to that which is adopted by the Police and the CPS.

Mr Head's letter further states that Mr Roll told the Panorama team that "*he and his colleagues could make changes under the postmaster's log in*" and that "*this process left no record that anybody else had been on the system*". This allegation is likely to have coloured the BBC's decision to run its programme and yet this allegation was not put to our client. Mr Bardo's email of 17 June 2015 at 19:41 stated that "*a former employee at Fujitsu…says it was possible to remotely access data held on branch terminals and to amend that data*". Post Office provided a response to this allegation. However, this is a fundamentally different allegation to the allegation that changes could be made "*under the postmaster's log in*" and that this "*left no record*". For the record, this allegation is strongly denied. If Post Office had been informed about allegations such as this in advance of the programme being broadcast, then it could have provided a technical response explaining what could, and, more importantly, what could not, be done with the Horizon system remotely.

Presentation of facts

Key issues

- **Leading question asked to Mr Roll**
- **Misleading viewers into believing that Mr Roll had personal knowledge of the featured cases**

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- **Failure to include elements of Post Office's statement relating to allegations raised against Ms Vennells**

Our letter of 15 September raised concerns that a highly leading question was asked by Mr Sweeney to Mr Roll ("*It is possible that suffering could have been caused because there are problems in the Horizon system*?"). Such question was asked to Mr Roll despite him having no knowledge of the individual cases presented in the programme. Mr Head states that, contrary to our complaint, this does not constitute a breach of paragraph 3.2.3 of the Guidelines which requires the BBC to "*not knowingly and materially mislead its audiences [and to] not distort known facts*" because, according to Mr Head, "*the relevant guideline in this case is 3.4.12*". Paragraph 3.4.12 of the Guidelines state that "*[the BBC] should normally identify on-air and online sources of information and significant contributors, and provide their credentials, so that [its] audiences can judge their status*".

There is no reason why two guidelines cannot apply to the same issue. Mr Head offers no explanation for this argument. Indeed, he himself cites two paragraphs (1.2.4 and 14.1) in respect of a single issue earlier in his letter.

Paragraph 3.2.3 remains relevant to this point. No evidence is presented by Mr Roll or during the programme to suggest that any problem with the Horizon system has resulted in a loss for which any postmaster was prosecuted. However, the manner in which this question is asked is likely to have misled viewers into believing that Mr Roll had this level of knowledge. This is a clear breach of paragraph 3.2.3 of the Guidelines.

The fact that Mr Roll's job title was revealed on-screen does not mean that viewers would be aware of the fact that he lacked any personal knowledge of the featured cases or of the fact that he had not been provided with details of the individual cases to review in advance of his contribution. Indeed, to the contrary, his job title would have suggested that he was directly qualified to comment on the three cases featured in the programme. We fail to see how compliance with paragraph 3.4.12 serves to defend a breach of paragraph 3.2.3 of the Guidelines.

Mr Head's letter includes reference to the statement made by Mr Arbuthnot that "*some people are now calling for Paula Vennells to resign*". While the BBC's response denies that there is any inference that Ms Vennells is personally implicated in any alleged miscarriage of justice, it does not adequately explain why the actions taken by Ms Vennells, such as initiating the independent inquiry, as mentioned in our client's statement, were not reflected in the programme. This information was entirely relevant and its inclusion would have afforded our client some, albeit limited, form of "fair opportunity to respond" to this very serious allegation, as required by paragraph 6.4.25 of the Guidelines.

Under paragraph 5 of the section headed "Presentation of facts in the programme" in Mr Head's letter, he states that what was reported "*was...an accurate account of the facts*". We would repeat that this was only an account of the facts as purportedly held by the BBC. If, as mentioned previously, the BBC had taken up our client's offer to review relevant documents, subject to a duty of confidence, then the BBC would have noted that the internal documents being relied upon by the BBC had been taken out of context so as to present an inaccurate reflection of the facts.

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How experts were presented in the film

Key issues

- **Misleading viewers into believing that Mr McLachan was questioning the sufficiency of Post Office's investigations**
- **Misleading viewers into believing that Second Sight were experts on the sufficiency of Post Office's criminal investigations**
- **Misleading viewers into believing that Mr Head had personal knowledge of the featured cases**
- **Misleading viewers by presenting contributions from a narrow subset of relevant parties**

Under paragraph 1 of the section headed "How experts were presented in the film", Mr Head states that because the statement made by Mr McLachlan (namely "*Any computer system can go wrong. What's important is the way that you deal with things when they do go wrong*") appears early in the programme it would not be perceived as an allegation that Post Office failed to investigate the Horizon system or to deal with problems as they arose in the system. We disagree with this conclusion. In the context of the programme and where such comments follow allegations that there were "*errors with the system*", viewers will inevitably conclude that Mr McLachlan is opining directly on Post Office's response to complaints about the system and any identified problems.

Our client would acknowledge that in a different context "*Mr McLachlan's view matches Post Office's own view*" but, in that context, we fail to see why Mr McLachlan's comments in this regard were necessary.

Regarding Second Sight, Mr Head's letter states that "*Second Sight were not presented as experts in criminal law*". In the programme, Mr Henderson is presented as having been appointed to "*investigate*" problems with Horizon. Following his remarks, Mr Sweeney then refers to the Post Office having "*its own investigators*" and bringing private prosecutions. It is perfectly possible, and indeed highly likely, that viewers would not appreciate the distinction between an "investigator" of problems with the Horizon system and an "investigator" of the individual cases. We maintain that viewers would therefore have been misled into believing that Mr Henderson was in a position to comment of the adequacy of the investigation and evidence for the prosecutions, and that his reference to "*institutional blindness*" would be taken to refer to the prosecutions themselves. As stated previously, in these circumstances it would have been fair to have provided details in the programme of the Complaint Review and Mediation Scheme, the work of the Scheme's working group more generally and the involvement of the Centre for Effective Dispute Resolution. No explanation for these omissions was provided in Mr Head's letter.

Regarding Professor Button's contribution, Mr Head's letter states that his comments were borne of the fact that "*he believes the way private prosecutions are conducted at Post Office increases the risk of potential miscarriages of justice when compared with prosecution [sic] emanating from the Police*". The suggestion here is that the manner in which Post Office conducts its private prosecutions increases the likelihood of a miscarriage of justice in comparison with private prosecutions brought by other organisations. Please can you explain the basis for this statement. Our client takes its responsibilities as a

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private prosecutor very seriously and, at all times, acts in accordance with the Code for Crown Prosecutors. As stated previously, Professor Button would not have the requisite knowledge of or involvement in the three featured cases to make such a statement. If Mr Head's statement is intended to be a general comment that private prosecutions, regardless of who is bringing them, carry a greater risk of a miscarriage of justice than prosecutions brought by the Police, then our suggestion that Professor Button's statement is "entirely meaningless" is wholly valid. We maintain that the comments made by Professor Button were broadcast in a manner that would mislead viewers into believing that he was speaking specifically about the three cases featured in the programme.

Our letter of 15 September 2015 also made reference to the fact that, in compiling the programme, the BBC appeared to have targeted contributions from a narrow subset of relevant parties. For example, the BBC failed to include any contribution from the National Federation of Subpostmasters which supports and represents some 5,000 postmasters across the UK. This omission was not addressed in Mr Head's letter and Post Office maintains that, by including a contribution from such a neutral body, the programme would have been fairer, more balanced and less likely to mislead viewers.

Next Steps

Our client is disappointed in the conclusions reached by the BBC in respect of its complaint. We strongly dispute the suggestion that Post Office does not have grounds to complain about the programme.

Our client has valid concerns that the Guidelines were breached both in the making of the programme and in its broadcast; breaches that the BBC appears to be seeking to justify retrospectively. Furthermore, for the reasons stated above, in many cases, the justifications given by Mr Head are illogical or simply do not marry up with the facts regarding the correspondence between the parties and the manner in which the programme was created.

Our client therefore wishes to escalate its complaint to Stage 1b. If no satisfactory response is received our client reserves its right to further escalate its complaint to the Editorial Complaints Unit and the BBC Trust.

Furthermore, as stated in our letter of 15 September, our client is considering its options in respect of more formal action, including an action against the BBC for defamation. These options remain under review by our client pending the conclusion of the BBC complaints procedure. The manner in which the complaint is handled will have a bearing on our client's decision of what further actions to take against the BBC.

We note that your response to our Stage 1a complaint took significantly longer than the 10 working day target that the BBC aspires towards. We would request that your response to this Stage 1b complaint be provided within the 20 working day estimate or that you promptly provide us with an anticipated date for your response.

Yours faithfully

GRO

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British Broadcasting Corporation TVCA, 1st Floor, Broadcasting House, Ormeau Avenue, Belfast, BT2 8HQ
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19th October 2015

Dear Sirs,

Thank you for your letter of 15 September, in which you raised a number of concerns as part of a formal complaint about the BBC Panorama programme, "*Trouble at the Post Office*". I was the Executive Producer of the programme and I have been asked to respond to your complaint.

You also attached an earlier letter that was sent to BBC Programme Legal Advice on 10 August 2015. As the BBC has already provided a response to that letter, I won't be commenting on it further. This response will only address the points raised in your letter of 15th September.

Before dealing with your detailed points, I want to address your concerns about the role Nick Wallis played on the programme. Nick is a freelancer who has followed this story for several years and we therefore invited him to join the programme team. He was a secondary producer who was supervised by the lead producer Matt Bardo and me. This ensured the BBC's impartiality.

I have set out my response under four headings, which I think summarise the main issues you have raised:

The Right of Reply process

1. You raised concerns about the conduct of the Right of Reply process, alleging that the BBC breached guideline 6.4.25 by depriving Post Office of an adequate opportunity or ability to respond to the allegations that were broadcast. Under the Editorial Guidelines, those against whom allegations are being made should have sufficient time and information in order to respond to any allegations that the BBC intends to broadcast.

Your letter also suggests that the overall conduct of the Right of Reply process breached paragraph 6.4.1 of the BBC Editorial Guidelines. This section of the guidelines refers to the informed consent of contributors who take part in the programme. Since Post Office declined an interview this does not apply and the relevant guidelines are 6.4.25 and 6.4.26.

As we expressed in our correspondence with Post Office at the time, we are satisfied we provided sufficient information to ensure Post Office had a full opportunity to respond. John Sweeney's email to Post Office of 19th May set out the broad question areas for an interview and he provided more detail about the allegations in his email of 27th May.

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After analysing the on the record briefing that Post Office provided, Conor Spackman gave more details about the question areas in his email of 12th June. From 19th May until broadcast – a period of 12 weeks - we were repeatedly in contact about substantially the same issues. Our aim throughout was to ensure that Post Office was given a full and fair opportunity to respond. Indeed, we provided quotations from documentary evidence in support where we thought it was appropriate to do so. The editorial guidelines do not oblige the BBC to share such material, as Matt Bardo explained in his email of 17th June. On this occasion, we made an exception because of the complex nature of the story and our determination to be fair.

2. You were also concerned that the BBC did not provide the name and employment dates of Richard Roll as part of the Right to Reply process. As you may know, a solicitor from the Post Office did contact two of our contributors (Professor Mark Button and Ian Henderson) prior to broadcast. We wanted to report the whistleblower's honestly held beliefs because we believed they were important and in the public interest. Therefore we were keen to ensure that his testimony was not unduly affected by external pressure. The guideline that deals with this, 6.4.1, is about the preparation for an interview, which at that stage we were hoping to get. It states that we should normally tell contributors the names of other likely contributors. It does, however, give programme makers the right to withhold names where appropriate. We gave Post Office the names of all the contributors except Mr Roll, which we believe was appropriate in the circumstances I have described. Not providing his name did not affect Post Office's ability to respond to what Mr Roll had told us. We described the whistleblower's job and the title of the team he worked for at Fujitsu. Moreover, as I have explained above, the guideline did not end up applying in this case anyway, as Post Office was not a contributor in the programme.

We also took extra steps to ensure that Post Office was in a position to respond to Mr Roll's allegations. We described the whistleblower's job and the title of the team he worked for at Fujitsu. We mentioned that the whistleblower had worked at Fujitsu prior to 2010 because we had reason to believe the system had changed when the updated version of Horizon (Horizon Online) was rolled out that year. You suggest that had Post Office known the identity of Mr Roll in the right of reply process, it would have pointed out that he ceased working in IT in 2004. However, the dates of his employment at Fujitsu were written on screen during his interview so this information was made available to viewers anyway.

3. Your letter also states that during the right of reply process, an offer was made to meet and share confidential documents and that during such a meeting Post Office could have disproved the allegation that Jo Hamilton was prosecuted without sufficient evidence and potentially with financial considerations in mind. You suggest that because the BBC did not take you up on this offer, the programme has breached paragraph 3.4.2 of Editorial

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Guidelines, which states: *"In all our content we must check and verify information, facts and documents, where required to achieve due accuracy. If we have been unable to verify material sufficiently, we should say so and attribute the information"*.

We were satisfied that our source material for raising our questions about Jo Hamilton's prosecution was very strong and that it wasn't being taken out of context.
We did consider the offer to have sight of confidential material very carefully indeed before deciding that we would have to decline. There were two fundamental editorial reasons for declining the offer. Firstly, Post Office was only willing to share the material on a basis that would prevent us from verifying its accuracy. In an email of 13 August, Post Office wrote to the BBC:

"we can only allow you to inspect these documents on the basis that the BBC only use them for this specific purpose and that you confirm to us that you accept disclosure on that basis. For the avoidance of doubt, this means that you could not share the information with any third party, and that you be in breach of confidence if you did so."

The proposal to share information on this basis falls foul of the paragraph in the Editorial Guidelines that you are concerned about: 3.4.2. We would have needed the opportunity to check and verify the information provided in order to ensure "due accuracy" and that would have involved discussion of the material with other sources, which we would not have been able to do.

Secondly there was a concern that the arrangement could compromise the BBC's editorial integrity (see Editorial Guidelines 1.2.4 and 14.1) because we were being asked to give up our ability and duty to verify it, nor would we be able to refer to or attribute it in the broadcast.

The documents we relied upon in the programme were reviewed by senior editorial staff and we are confident that they were not taken out of context.

Reflection of the Right of Reply

1. You were particularly concerned that in key areas the BBC had failed to fairly reflect the statement that Post Office provided and that this breached paragraph 6.4.26 of the BBC Editorial Guidelines. The paragraph states: *"Any parts of the response relevant to the allegations broadcast should be reflected fairly and accurately"*.

We were provided with a lot of material by Post Office and were repeatedly led to believe that an interview would be arranged. When we were finally informed that neither Paula Vennells nor anyone else from Post Office would be interviewed, we took care to select

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appropriate excerpts from the statement Post Office provided and used research about Post Office's views to ensure our reporting was fair. We are not required to include full quotations from a statement or include a response to something which is not, in the end, included in the programme.

You highlighted that the broadcast included reference to the involvement of the Criminal Cases Review Commission (CCRC) and its investigation of postmasters' cases. We reported that: *"The CCRC is now investigating the convictions of 20 postmasters to see whether miscarriages of justice have occurred. Among them Noel, Seema and Jo."* You suggest that we needed to include a statement to the effect that Post Office was co-operating with the CCRC investigation. However, as we did not suggest that Post Office was failing to co-operate there was no need to include this part of Post Office's statement. We did not include Post Office's statement that the CCRC will be able to access all of the relevant materials for the same reason.

Similarly, we did not include the fact that every person charged with a criminal offence is entitled to their own legal advice because we did not suggest that they were not. It is also widely known that people accused of crimes are allowed to have a lawyer. You also say that the statement by Post Office that it follows the Code for Crown Prosecutors should have been included in the programme. However, the programme did not question that.

The key question raised by the programme was the possibility that Post Office's prosecution policy and practice could be contributing to miscarriages of justice. Therefore we included the following words covering the principle that Post Office abides by the Code: *"The Post Office says it 'complies with all legal requirements'. And has a duty to protect public money. It says it only prosecutes where there's a 'realistic prospect of conviction' and never for making innocent mistakes."*

The point we were making when we said that Post Office *"doesn't have to go through the police or the Crown Prosecution Service"* is that there are fewer checks and balances in the system. The police have to present their evidence to a separate body, the CPS, which decides whether to prosecute or not. Post Office investigates and prosecutes, so there is no review of the evidence by an independent organisation.

2. You also suggest that Post Office's position, as laid out in their statement, was misrepresented when we reported that: *"[Richard Roll] says financial records were sometimes changed remotely without the postmaster knowing. That is something the Post Office has always said simply can't happen"*. You say that Post Office's position is actually the following: *"Post Office can correct errors in and/or update a branch's accounts by inputting a new transaction (not editing or removing any previous transactions). It is also*

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possible to update the software remotely. However, such changes would be shown transparently in the transaction records."

Your description of Post Office's position seems to demonstrate that we reported it accurately. From the briefing we attended and the long Post Office reports that we read, it was clear that – after initially denying it - Post Office had come to accept that remote access to branch data was possible but that any changes would be shown transparently in the data. If all remotely executed changes to branch accounts are "transparent", then they must be transparent to the postmaster whose records are being changed. So the Post Office position is that any postmaster would know if his records were being changed. Mr Roll says that's not correct. He says that records were sometimes changed without the postmaster knowing. It follows that we correctly reported that he was saying something the Post Office has always denied. Indeed, he says he and his colleagues could make changes under the postmaster's log in. This process left no record that anybody else had been on the system. For example, Mr Roll explained to us that he could make it look as if a postmaster had sold a book of stamps when he had not.

In summary, I disagree that the natural process of editorial selection reduced the force of Post Office's position or that we represented it unfairly or inaccurately.

Presentation of facts in the programme

1. You expressed concerns about how Richard Roll's testimony was presented because you thought it suggested that his time working at Fujitsu was contemporaneous with the other events being covered in the programme. We do not agree that it was presented in this way. The years of his employment at Fujitsu were clearly presented in on-screen text. Each postmaster also had the years of their tenure clearly presented in on-screen text. The extent of the overlap was therefore clear. While not presented as contemporaneous, the whistleblower was presented in such a way as to suggest that his evidence was important and relevant to the postmasters who have been prosecuted over the past fifteen years. There are many more of them than the three who we featured in the programme and we made clear that the postmasters we interviewed were representative of a wider issue.

We thoroughly checked the testimony of Mr Roll with other sources and we believe his evidence was significant. Much of the detail of his evidence was too technical to be included in the film. For example, he told us about errors caused by Horizon misidentifying transactions because the code identifying the product and the code identifying the payment type could combine in transaction data in a way that resembled the data of other transactions. This meant that payments were sometimes misidentified and misdirected by the accounting system. We put this to Post Office in our letter of 22nd July and it was not disputed.

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In summary, however, Mr Roll's position was quite simple. His job, along with others in his department involved handling and fixing errors with Horizon transactions. He told us that errors were more widespread than has ever been reported and that some of these could create false losses. That is important evidence in itself.

2. You suggest that when the reporter, John Sweeney, asked *"Is it possible that suffering could have been caused because there are problems in the Horizon system?"* he was in breach of paragraph 3.2.3 of the BBC Editorial Guidelines because Mr Roll was not sufficiently qualified to respond. The guideline states: *"The BBC must not knowingly and materially mislead its audiences. We should not distort known facts, present invented material as fact or otherwise undermine our audiences' trust in our content."*

I think the relevant guideline in this case is 3.4.12, as it deals with the way we identify sources so that the audience can judge their status. The broadcast was consistent with this guideline because Mr Roll's job was described accurately in commentary, in on-screen text and in his own account of his role. He was not presented as an expert on the recent Post Office controversy; he was presented as a computer technician who is well-placed to comment on errors in the Horizon system. We are entitled to broadcast his view that the losses for which people have been prosecuted may have been caused by a fault in the computer system and it was clear that what he said was simply that – his view. Indeed, this concern was one of the reasons he wanted to speak to us. Nonetheless we were careful how we handled his comments and we did not report them as fact. Accordingly, we ended this section of the film by concluding that it had raised important questions: *"His evidence could call into question the reliability of the computer records. If financial data can be changed without the knowledge of the postmaster, is it safe to rely on the computer's evidence?"*

3. In relation to the Seema Misra case, you argue that the programme breached paragraph 3.4.2 of the Editorial Guidelines (quoted above) because it failed to consult public domain material relating to Ms Misra's legal case in order to corroborate our account. You say that had we done so we would have known that the scope of disclosure in her case was sanctioned by the court. In fact, we consulted a lot of publicly available sources, including the full transcript of the trial and were fully aware of the arguments in court over disclosure.

While it is true that the courts always make the final decision on disclosure, they can only order the disclosure of documents that they know about. Nobody outside of Post Office and Fujitsu knew about the memo discussing a bug which could *"impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data."* We were right to question whether Post Office should have disclosed this memo to the trial. Post Office has acknowledged that it has a duty to volunteer relevant material.

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As journalists we are fully entitled to scrutinise the legal process, especially where the fairness of trials has been called into question or the possibility of a miscarriage of justice has arisen. In order to make the context of our enquiries clear, we reminded the viewer several times that the jury had found Ms Misra guilty and the judge had sentenced her to jail.

4. In relation to the call for Ms Vennells' resignation, you complain that some viewers may draw the inference that she is personally implicated in wrongful prosecutions. There is no suggestion in the film that Ms Vennells is implicated in having wrongfully prosecuted postmasters. She was appointed to a senior role at Post Office in 2007 and has been Chief Executive since 2012. It was the alleged failure of Post Office to satisfactorily investigate alleged wrongful convictions during this period that led James Arbuthnot to call for Ms Vennells' resignation. The Post Office review was commissioned after Mr Arbuthnot made representations to Paula Vennells and other members of senior management. He is therefore extremely well-informed about the issues and it was entirely proper to represent his views in the appropriate context in the film.

5. You also dispute that Post Office pursued theft charges when there was *"no evidence of theft"*. This phrase was based on a note written by a Post Office criminal investigator about Jo Hamilton. Nevertheless, she was subsequently prosecuted for theft anyway. What the programme reported was, therefore, an accurate account of the facts. We also accurately reflected Post Office's denial in the programme.

How experts were presented in the film

1. Your letter is critical of the BBC's handling of contributions from experts which you say were misleading. You give the example of Charles Mclachlan who said: *"Any computer system can go wrong. What's important is the way that you deal with things when they do go wrong"*.

This interview clip appears early in the programme when the context of our line of enquiry is being set up. We do not believe that this is, as you suggest, an allegation (that Post Office has failed to investigate the Horizon system or deal properly with problems). Mr Mclachlan is outlining a point of policy about how to run a large computer system. Errors will sometimes occur - it is how they are dealt with that is important. The programme goes on to examine how Post Office dealt with problems after explaining this context to the viewer.

Indeed, Mr Mclachlan's view matches Post Office's own view as it was presented at the on the record briefing provided to Tim Robinson and Matt Bardo on 9 June. Patrick Bourke told us: *"So we're not saying the system is perfect, we are saying it's subject to security updates, it's audited by any number of organisations on an annual basis, it needs to exceed all industry standards in terms of its performance. Now you know when discrepancies arise,*

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there are a couple of systems whereby those discrepancies are addressed." Angela Van Den Bogerd said to us: *"So I think the crux here is that the system is designed to cope with things that go wrong"*.

2. Post Office's statement mentions the limited role of Second Sight, saying their *"review was not and has never been a criminal case review... Second Sight are accountants, not experts in criminal law or procedure"*. You say that this limited role should have been made clear in the programme because it would have allowed the viewer to properly assess the contribution provided by Second Sight. In particular you argue that the comments in Ian Henderson's interview about Post Office's failure to investigate and its *"institutional blindness"* could be interpreted as a comment on legal process.

Second Sight were not presented as experts in criminal law at any point in the programme. The clip which you question is the first time that Mr Henderson appears after he has been accurately introduced to the viewer as a representative of the investigators that Post Office itself has appointed. He talks about the failure of Post Office to investigate Horizon problems properly. It is our reporting that moves the story into an area of legal process, not Mr Henderson's contribution. Mr Henderson was well placed, perhaps uniquely so, to comment on the way Horizon has been investigated. Mr Henderson's company was picked by Post Office to review, independently, complaints about the Horizon system and he has been working with Post Office over the past three years to investigate these matters.

3. You suggest that Professor Mark Button was wrongly presented as if he had knowledge of the cases of specific postmasters. In fact, he was quite clearly presented as an expert in the general principles surrounding Post Office prosecutions. Our interview with him was full and detailed and involved discussion about non-disclosure in the light of the same extract of the minutes that we quoted in the programme. The two clips that we selected for broadcast from our interview were important general principles, and views that he is qualified to express as one who has studied miscarriages of justice and fraud.

In the first clip he made the point that he believes the way private prosecutions are conducted at Post Office increases the risk of potential miscarriages of justice when compared with prosecution emanating from the Police. It is important context that an expert in this field believes that to be the case. We cannot agree that it is *"meaningless"*, as you suggest.

In his second clip he sets the importance of non-disclosure in a case such as Seema Misra's in a broader context by saying "*there have been lots of cases where inadequate disclosure by the prosecution have led to the collapse of prosecutions and have led in some cases to convictions being overturned when that's subsequently been found out*". As you yourself say in your letter, the Professor was making a 'general comment" in the case of Seema Misra. We do not agree that it is irrelevant to include his explanation of the importance of disclosure in

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cases such as Seema Misra's. On the contrary, we believe it is important to make this significance clear to viewers.

For the reasons set out above, we do not believe Post Office has grounds to complain about this programme. We think we raised valid questions and included Post Office's response on each and every one, leaving viewers to form their own judgement while making it clear that the further legal process may provide more definitive answers.

Yours sincerely

Andrew Head
Executive Producer
BBC Panorama

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#631.1

Metadata

Filename	Microsoft_Word_Document2.docx	ORIGINAL

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From: Newsome Pete <GRO>
To: Melanie Corfield GRO
Cc: Harvey Micha GRO, Mark Underwood1 <mark.underwood1 GRO, Goulden Graham <GRO, Bell Gavin <GRO
Subject: Further Questions
Date: Tue, 16 Jun 2015 09:25:49 +0100
Importance: Normal
Inline-Images: image001.gif; image002.gif; image003.gif; image004.gif; image005.png; image006.gif

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Mel

In answer to the new statement below:

the suggestion that there were around 30 people working in "third line support" at Fujitsu and that they fixed dozens of system errors

Fujitsu has provided during the lifetime of Horizon an industry standard support service to cover incidents that are raised by the customer service desk (now by its SISD) into Fujitsu Capability Units underpinning the live service which through the incident management process are placed in resolver groups and reviewed by subject matter experts to produce tactical workarounds and working procedures until the issue has been resolved.

Third Line Support covers multiple disciplines within the live service across the Infrastructure , within the Application , Network and Security services provided to the customer. There are teams of subject matter experts reviewing system events , enterprise management alerts , security vulnerabilities , network logs and traces which arise through enterprise management toolsets or manual checks of system logs.

On the other highlighted statements that refer to Fujitsu I assume Post Office are comfortable with the support already provided by Fujitsu.

Thanks

Pete

Pete Newsome

Business Change Manager

Post Office Account, Fujitsu UK&I

Tel: GRO

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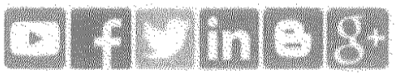
E-Mail: pete.newsome GRO

Web: http://uk.fujitsu.com



Fujitsu is proud to partner with Shelter, the housing and homelessness charity


Please consider the environment - do you really need to print this email?

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#633.1

Metadata

Filename	Pete Newsome 16 June 2015.msg	ORIGINAL

POL00043789

From: Mark Underwood1 <GRO>
To: Angela Van-Den-Bogerd <GRO>, "Lorraine Lynch" <GRO>, "Ward, Alexandra" <GRO>
Cc: Steve Allchorn <GRO>, Melanie Corfield <GRO>
Subject: RE: Transcript of Panorama
Date: Fri, 21 Aug 2015 14:30:44 +0000
Importance: Normal
Inline-Images: image001.png

Hi,

With thanks to Mel for obtaining the large part of the below information from Peter Newsome…

Looking at the transcript, I think the below is the key sentence from RR. He states:

*"**RR**: We went in through the backdoor and made changes. Sometimes you would be putting several lines of code in at a time. If we hadn't done that then the counters would have stopped working".*

What RR is actually talking about here is, I think, open to interpretation.

What we do know about RR is that he:

worked in 3rd / 4th line support on the 6th floor for a couple of years in the early 2000's;

worked on 'estate management' rather than the accountancy side;

left Fujitsu on good terms as he had become disillusioned with IT to become a chiropractor in the Bracknell area.

What we know about Horizon pre- 2010 is:

It was a 'dial up' system (encrypted) and Fujitsu application software specialists could access the system remotely, as you would expect them to be able to do as part of any standard IT support function, but the system did not allow remote agents to manipulate branch transactions. These remote agents perform tasks like examining diagnostic information not transmitted to the central servers and modifying application functionality on behalf of the subpostmaster that is not part of the standard interface e.g. forcing the counter to re-download its personality and product set data.

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Remote agents could not 'work' the terminals as there was no functionality for this

Every access was logged and so there is an auditable footprint where records are still within the retention period

JS interpreted RR's statement to be in relation to financial records. The reality is that, given the above- RR's role would have involved putting in codes for various and numerous reasons - updating, maintaining etc - but this would have had nothing to do with branch transactions.

This in mind, I think our initial reply should be that, RR was actually referring to providing support rather than editing transactional records.

As included in our Scheme report:

It is also possible for Fujitsu to view branch data in order to provide support and conduct maintenance but this does not allow access to any functionality that could be used to edit recorded transaction data. Having reviewed all the cases, no-one (including all the Applicants and Second Sight) has been able to identify a specific transaction that did not originate in branch.

A number of different explanations were found for the 'unknown' transactions:

- The transaction was conducted by the Applicant but they could not remember the transaction. Every input into Horizon is logged against the unique identity of the user. Each user ID is personal to that user and protected with a password that must not be shared. Where the transaction data was available, the Post Office was able to identify the user entering the questioned transactions. In some cases, this was the Applicant (where the Applicant had confirmed that their password was secure).

- The transaction was entered using the Applicant's user ID but the Applicant had shared their password with other staff members. In these cases, the most likely explanation is that a staff member had conducted the transaction without the Applicant's knowledge.

- A staff member had conducted the transaction with their own user ID without the Applicant's knowledge (albeit that a postmaster is able to determine this himself by accessing the branch records available through Horizon).

- The entries correlated to periods when relief or temporary postmasters were running a branch.

- The entries were conducted by Post Office staff conducting audits of branches and who had logged on to the branch terminals with the Applicant's full knowledge but these entries were determined not to affect the branch's accounting position.

If, it is then asserted that RR was referring altering financial records or the Balancing transaction Process, I think our lines should be similar to:

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- As we have always said, Horizon does not have functionality that allows Post Office or Fujitsu to edit or delete the transactions recorded by branches

- It has however always been possible for Post Office to correct errors in and/or update a branch's accounts. This is most commonly done by way of a transaction correction however it could also be by way of a balancing transaction or transaction acknowledgement.

- A Post Office employee could also, in special circumstances, log on to a branch terminal locally (i.e. by being physically in a branch) using a new User ID and password and then conduct transactions (though these would register against that unique User ID).

- All of the above processes for correcting / updating a branch's accounts have similar features. All of them involve inputting a new transaction into the branch's records (not editing or removing any previous transactions) and all are shown transparently in the branch transaction records available to Subpostmasters (as well as in the master ARQ data).

We have never made the BTP a secret. In fact we reference it in both our published Scheme Report and our Reply to Second Sight's Part Two Report.

Does this give you what you need?

Mark Underwood

Complaint Review and Mediation Scheme

GRO

From: Mark Underwood1
Sent: 21 August 2015 12:11
To: Angela Van-Den-Bogerd; Lorraine Lynch; Ward, Alexandra
Cc: Steve Allchorn
Subject: RE: Transcript of Panorama

Hi Angela, understood – leave it with me

Mark

Mark Underwood

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Complaint Review and Mediation Scheme

GRO

From: Angela Van-Den-Bogerd
Sent: 21 August 2015 12:05
To: Mark Underwood1; Lorraine Lynch; Ward, Alexandra
Cc: Steve Allchorn
Subject: RE: Transcript of Panorama

Mark,

Would you also provide our (PO) response to what Richard Rolls' said on the programme. I expect this to be a key discussion point on Monday and I'd like to have a robust response/explanation of the mention of going in by the back door and altering the coding - I need a lay person's explanation on what this actually means.

Thanks,

Angela

POST OFFICE
SWYDDFAR POST
Angela Van Den Bogerd
Head of Support Services
1st Floor, Ty Brwydran,
Atlantic Close,Llansamlet
Swansea SA7 9FJ
M: GRO
L: GRO

From: Mark Underwood1
Sent: 21 August 2015 11:29
To: Lorraine Lynch; Angela Van-Den-Bogerd; Ward, Alexandra
Cc: Steve Allchorn
Subject: RE: Transcript of Panorama

Angela & Lex,

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With reference to the below – please see attached

Mark

Mark Underwood

Complaint Review and Mediation Scheme

GRO

From: Lorraine Lynch
Sent: 21 August 2015 11:08
To: Mark Underwood1
Cc: Steve Allchorn
Subject: Transcript of Panorama

Mark

Would you be able to send the transcript of Monday night's Panorama to Angela and Lex Ward (BD) please. They are mediating M005 on Monday and her mediation statement has mentioned the programme.

L

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Metadata

Filename	Mark Underwood email 21 August 2015.msg	ORIGINAL

POL00043789

From: Conor Spackman <GRO>
To: "mark.r.davies GRO" <GRO>
Cc: Matthew Bardo <GRO>, "melanie.corfield GRO" <melanie.corfield@GRO>
Subject: BBC Panorama interview
Date: Fri, 12 Jun 2015 15:56:44 +0000
Importance: Normal

Dear Mark,

Firstly, I would like to thank you for the time you and your colleagues spent with Matthew Bardo and Tim Robinson on Tuesday. It was very helpful to be able to discuss this subject in detail with the relevant people.

Since we last wrote to the Post Office, our research has continued and I am now able to give you more information about the points that are likely to be raised in the programme.

Our evidence suggests that the Post Office may have unfairly used theft charges to put pressure on sub-postmasters to plead guilty to false accounting and/or repay apparent losses identified by the Horizon computer system. The evidence also suggests that the Post Office failed to consider or investigate the possibility that Horizon could be the cause of some of the losses. As you know, it has been suggested that these failings may have led to miscarriages of justice in some cases.

Having read reports written by Second Sight and Post Office responses to them, we wish to address the following question areas in an interview. They are broken down below under the subject matter to which they relate:

Jo Hamilton

the decision to charge Jo Hamilton with theft

why Ms Hamilton's office was £2000 down on the Horizon system and why this doubled to £4000 when she followed the instructions from the help desk

her claim that she sought help and the Post Office failed to provide it

her explanation that she subsequently felt trapped and did not know what to do other than sign off inaccurate accounts

Noel Thomas

—Mr Thomas's claim that that he told the helpline about his problems with the system and about the missing money

the suggestion that it is no longer possible to know the results of important tests carried out on Mr Thomas' system because those records have now been lost or destroyed

the suggestion that Mr Thomas was poorly treated after 42 years of loyal service

that the Post Office now believes that the cause of the shortfall in Mr Thomas' branch is likely to have been mistakes by him or his staff

Seema Misra

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Ms Misra's claim that she and her staff were not provided with adequate help despite making more than 900 calls to the helpline

—the suggestion that the Post Office failed to disclose crucial information during Ms Misra's trial including technical information about Horizon to the defence's expert witness

—that the Post Office and Fujitsu had identified bugs in Horizon prior to Ms Misra's trial that were not disclosed to the defence

the suggestion that this information could have helped Seema and other sub-postmasters stay out of prison

Post Office investigations and prosecutions

the suggestion that the Post Office has a financial interest in prosecuting sub-postmasters because it helps with the recovery of missing money

—particularly in that context, the suggestion that miscarriages of justice are more likely because the Post Office exercises both the power of investigation and prosecution

—the suggestion that the Post Office has unfairly pursued theft charges to pressure people into paying up

the claim by numerous sub-postmasters that they were told by Post Office investigators they were the only ones having problems with the Horizon system

Horizon system

the suggestion that the complexity of the Horizon system adds to the likelihood of errors

the suggestion that the lack of an automatic paper record from the Horizon system adds to the likelihood of errors

the suggestion that Post Office prosecutions relied on the belief that the computer system was robust, when in fact computer errors may call this into question

the suggestion that bugs in Horizon were more widespread than Second Sight have found

the suggestion that there were around 30 people working in "third line support" at Fujitsu and that they fixed dozens of system errors

the suggestion that errors were fixed by a team who could access transaction data, add transactions or make changes to transactions that would affect the balance in branch, without the sub-postmasters knowledge

Second Sight investigation and select committee in parliament

Second Sight's claim that their work has been hampered by an increasing lack of co-operation

Second Sight's understanding that this is the result of legal advice

Second Sight's claim that the Post Office has failed to provide full access to legal and prosecution files

The apparent failure of the Post Office to provide Second Sight with emails relating to the eyewitness account of an incident in Bracknell in 2008

Second Sight's evidence that remote access to branch data is possible in spite of Post Office denials

Please could you let us know the time that you have scheduled on Wednesday 17 June for the interview? I would be grateful if we could arrive about an hour before the interview begins in order to set up. It usually takes about half an hour to pack the kit away again after we have finished filming.

Thanks for your help.

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Conor

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Metadata

Filename	Conor Spackman email - iv qs 12062015.msg	ORIGINAL

POL00043789

From: Matthew Bardo <N GRO >
To: 'Mark R Davies' < GRO >, Conor Spackman < GRO >
Cc: Melanie Corfield < GRO >
Subject: RE: BBC Panorama interview
Date: Wed, 17 Jun 2015 18:41:45 +0000
Importance: Normal

Hi Mark

Thank you for getting back to me.

I am afraid I do not agree that there is nothing new in the story that we are covering. In the past few months there have been a number of significant developments. Among them are the release of Second Sight's final report that includes criticism of the Post Office by its own investigators, the acceptance of twenty cases for consideration by the Criminal Cases Review Commission and the information obtained as a result of our investigation. I think we are scrutinising new evidence that raises important questions about the way the Post Office has behaved.

The purpose of the briefing that you kindly arranged was for you to brief us on the background to our key lines of enquiry. It was made clear beforehand that we would not be briefing you about our research. The briefing has informed the allegations that we emailed to you on Friday and it will help us to report your position fairly and accurately on the areas that will be covered by the programme. It is now the purpose of the interview for us to put our questions and allegations to the Post Office in order to obtain a filmed response for broadcast.

As a former BBC journalist, you may remember that we do not tell people in advance what questions will be asked in an interview. This helps maintain our editorial independence. We normally provide interviewees with question areas and sufficient information to enable them to understand any allegations that might be put to them. In this case, I believe we have done that.

We do not normally share the evidence that supports our allegations. However, I accept that in this case there are a lot of detailed and complex points. We want the interviewee to have a full and fair opportunity to answer questions that relate to decision-making at the highest level of the organisation.

Therefore, we are willing to share the following key pieces of evidence so that you are in a better position to respond:

We have read extracts of minutes of a joint Fujitsu/Post Office meeting at which a bug was discussed. We obtained these extracts from the Second Sight final report and we understand that this meeting took place in autumn 2010. The minutes of the meeting state that this bug could impact "ongoing legal cases where branches are disputing the integrity of Horizon Data."

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We have interviewed a former employee at Fujitsu, who worked in "third line support" for the Horizon system. Hesays it was possible to remotely access data held on branchterminals and to amend that data. He also alleges that system errors were more widespread than has previously been reported.

We have also obtained extracts from Jo Hamilton's prosecution files. One extract includes comments made on 16th November 2007 by the Principal Lawyer of the Criminal Law Division of Royal Mail working on Jo Hamilton's case. The lawyer wrote that when it comes to asset recovery, "the theft charge makes life so much easier". Another extract is from the Post Office investigator's report into Ms Hamilton's case. On 17 May 2006 the Post Office Investigator reported "I was unable to find any evidence of theft or that the cash figures had been deliberately inflated".

We can also tell you that in the programme we currently expect to include interviews with Jo Hamilton, Seema Misra, Noel Thomas, James Arbuthnot, a computer expert, a forensic accountant and a former Fujitsu employee.

I am keen to confirm a date on which we can film the interview. You have mentioned that diary pressures mean that next week is now the earliest that this could be done. If we could make it early in the week, that will help us to consider the points raised and ensure that they are reflected fairly throughout the programme. We have to finish the edit by next Friday in order to have the programme ready for broadcast.

Please do also send over the information that you said you would provide to Tim and me when we attended the briefing.

Thanks for your help.

Matt

From: Mark R Davies [r GRO]
Sent: 16 June 2015 10:34
To: Matthew Bardo; Conor Spackman
Cc: Melanie Corfield
Subject: RE: BBC Panorama interview

Dear Conor and Matt

Many thanks for your email of late Friday afternoon and for the further detail it provides in terms of the ground you appear to wish to cover in your programme, and for Matt's follow up. My apologies for getting back to you slightly later than I had planned.

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As you know, I remain puzzled and concerned that the BBC did not see fit to raise the majority of these issues and the very serious allegations within them with us when we met your colleagues at our offices last Tuesday.

In your email, you say that you have evidence for the propositions you advance but, to date, no-one engaged in the making of the programme (nor, indeed, of other BBC programmes featuring this issue) has actually provided that evidence to us. Accordingly, and once again, I would ask that you provide us with any evidence you have to support the allegations you make, the list of contributors, what they are saying and what they have been asked to comment on, so that we might be in a position to respond to it appropriately as we are entitled to do.

The general thrust of what you say is not new. Claims of a similar nature have been levelled at us before but no one has ever been able to provide us with any actual evidence to support them. For the avoidance of doubt, the Post Office has been guided in all that it has done in relation to the cases you cite, and indeed all complaints made of a similar nature, by the individual circumstances which each presents and the actual evidence of what, in fact, took place. You will understand that it would be entirely inappropriate for the Post Office, or indeed any other organisation, to be guided in its actions by anything which does not carry this essential quality of substantiation, particularly when the allegations being raised with us are so serious.

What you have so far presented us with is, in essence, a repetition of various assertions and allegations made to us in the course of this process, each of which has been thoroughly re-investigated by both ourselves and Second Sight and repeatedly addressed over a period now stretching back some 3 years. As you are aware, the Criminal Cases Review Commission (CCRC) is also examining a number of cases (they having been referred to them) and the Post Office is co-operating fully with the Commission in that process. In the circumstances, the Post Office believes that where there has been any critical finding such an investigation by the CCRC is the appropriate route to determine many of the issues raised.

As we made clear in the lengthy session we had with your colleagues last Tuesday, we are not prepared to engage in a public debate about individual cases. We gave each applicant to the scheme an assurance that we would afford them absolute confidentiality in the handling of their complaint. This was also the agreement reached with the Justice for Subpostmasters Alliance, Second Sight and others involved in the establishment of the scheme, and was appropriate given that the cases often raise matters of a highly sensitive personal nature for Applicants; and we have responded to each of the points raised in full: we have done so directly with each individual with a case in the scheme and with Second Sight.

It follows that I will not be addressing each and every point raised in your email. However, I am happy to respond more thematically as follows:

Prosecutions

- The Post Office does not prosecute subpostmasters for making mistakes – on the contrary, it has on occasion done so when there is sufficient evidence for a realistic prospect of conviction and where it is in the public interest to take that prosecution forward

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- Post Office complies with the Prosecutors' Code of Practice which sets out this requirement

- Decisions as to how to plead to a charge are taken by those individuals and their independent legal advisers only, informed by their own independent legal advisers

- It is a matter of public record that none of the individuals whose cases you have chosen to highlight with us has appealed their conviction – an option which remains open to them

- The Post Office as prosecutor has a continuing duty to disclose any information which may assist the defence even if it undermines the prosecution case; the Post Office has complied and continues to comply with that duty

Horizon

- Over the last 3 years, and across all the complaints we have received and comprehensively re-investigated, there is no evidence to show that Horizon was responsible for the losses incurred in the relevant branches

- Post Office cannot edit, amend or otherwise alter branch data remotely; it can add a transaction to a branch account – this is, naturally, subject to rigorous authorisation protocols and carries a unique identifier code rendering it immediately distinguishable from any other transaction

- Post Office volunteered this information to Second Sight in 2013 and again made it clear in its response to Second Sight's final report in April of this year

- This process has only been used in this way on one single occasion since the introduction of Horizon OnLine, during pilot testing work and this was done with the full knowledge and indeed co-operation with the relevant subpostmaster

Second Sight

- We have provided Second Sight (which has acknowledged it is not expert in matters of criminal law or procedure) with a very significant amount of information over the course of the last 3 years including all non-legally privileged materials relating to prosecutions. It is a basic tenet of our justice system that discussions between a client and his or her lawyer are privileged from disclosure, even to a Court, and this applies equally to the advice a defendant receives, e.g. as to how to plead guilty to a charge and with what consequence

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- A number of applications to the CCRC have been made by individuals with cases in the scheme (note these should not be confused with appeals) and the CCRC will review all the relevant material including all legally privileged material

- This provides an absolute assurance to those individuals that all aspects of their prosecution and conviction will be looked at by an independent body

As I hope to have made clear, whatever theories have been advanced in relation to the Horizon system, no one has shown it to be responsible for any of the losses incurred in the relevant branches. Even Second Sight acknowledged that human actions are the most common explanation. I would again stress the importance we attach to seeing the evidence which supports any allegations that you are proposing to make and I look forward to receiving your reply in this regard. I also look forward to receiving the list of contributors, what they are saying and what they have been asked to comment on.

We will of course continue to engage with you on any subject or question. I am concerned, however, at the direction the programme appears to be taking [outlined very clearly in Conor's email]. Given the BBC's previous coverage of this issue and the apparent direction of the Panorama programme [which does not appear to be taking the issue forward] I wanted to inform you that I will be making representations more widely within the BBC.

In relation to the timing of an interview, any interview would need to take place next week because of diary pressures and the rescheduling of your broadcast to 29 June. In the meantime, I am sending Matt Bardo and Tim Robinson the information which we did not have immediately to hand when they came to see us last week.

Best wishes

Mark

From: Matthew Bardo GRO
Sent: 12 June 2015 20:06
To: Mark R Davies; Conor Spackman
Cc: Melanie Corfield
Subject: RE: BBC Panorama interview

Hi Mark

Thanks for coming back to us so swiftly.

On the issue of theft charges being used to pressure sub-postmasters to plead guilty, you will be aware that this allegation is repeatedly raised in Second Sight's reports and our evidence is drawn from their written investigative findings.

We made clear ahead of the briefing that its purpose was for the Post Office to brief us and not for us to brief the Post Office about our research. The contents of the briefing were very helpful and will help us to

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represent fairly and accurately the Post Office's position on the things we discussed.

On the subject of the date of the interview, we are very keen to record it next week as that will give us sufficient time to consider the points raised and to ensure that they are reflected fairly throughout the programme. Would it help if we were to move the interview to Thursday or Friday of next week instead?

All the best

Matt

From: Mark R Davies GRO
Sent: 12 June 2015 17:25
To: Conor Spackman
Cc: Matthew Bardo; Melanie Corfield
Subject: Re: BBC Panorama interview

Dear Conor

Many thanks for this.

We will of course come back to you in more detail next week but for the time being I make the following points:

- you make below some extremely serious allegations about the Post Office. I am gravely concerned that you make these three days after we sat with your team for two hours. I am at a loss to understand why these very specific and serious allegations could not have been raised at the briefing.

- you informed us earlier in the week that your programme schedule has changed and you plan to broadcast on June 29. Given that, diary pressures and the scale and seriousness of the allegations you are making, we will look to arrange the proposed interview in the week of the 22nd. This remains in line with your proposed schedule had your programme been due to broadcast on June 22.

- you quote evidence to suggest the Post Office may have unfairly used theft charges to put pressure on SubPostmasters. Please as a matter of urgency provide some evidence for that very serious allegation.

Best wishes

Mark

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Mark Davies

Communications and Corporate Affairs Director

Mobile: GRO

On 12 Jun 2015, at 16:56, Conor Spackman GRO > wrote:

Dear Mark,

Firstly, I would like to thank you for the time you and your colleagues spent with Matthew Bardo and Tim Robinson on Tuesday. It was very helpful to be able to discuss this subject in detail with the relevant people.

Since we last wrote to the Post Office, our research has continued and I am now able to give you more information about the points that are likely to be raised in the programme.

Our evidence suggests that the Post Office may have unfairly used theft charges to put pressure on sub-postmasters to plead guilty to false accounting and/or repay apparent losses identified by the Horizon computer system. The evidence also suggests that the Post Office failed to consider or investigate the possibility that Horizon could be the cause of some of the losses. As you know, it has been suggested that these failings may have led to miscarriages of justice in some cases.

Having read reports written by Second Sight and Post Office responses to them, we wish to address the following question areas in an interview. They are broken down below under the subject matter to which they relate:

Jo Hamilton

the decision to charge Jo Hamilton with theft

why Ms Hamilton's office was £2000 down on the Horizon system and why this doubled to £4000 when she followed the instructions from the help desk

her claim that she sought help and the Post Office failed to provide it

her explanation that she subsequently felt trapped and did not know what to do other than sign off inaccurate accounts

Noel Thomas

Mr Thomas's claim that that he told the helpline about his problems with the system and about the missing money

the suggestion that it is no longer possible to know the results of important tests carried out on Mr Thomas' system because those records have now been lost or destroyed

the suggestion that Mr Thomas was poorly treated after 42 years of loyal service

that the Post Office now believes that the cause of the shortfall in Mr Thomas' branch is likely to have been mistakes by him or his staff

Seema Misra

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Ms Misra's claim that she and her staff were not provided with adequate help despite making more than 900 calls to the helpline

the suggestion that the Post Office failed to disclose crucial information during Ms Misra's trial including technical information about Horizon to the defence's expert witness

that the Post Office and Fujitsu had identified bugs in Horizon prior to Ms Misra's trial that were not disclosed to the defence

the suggestion that this information could have helped Seema and other sub-postmasters stay out of prison

Post Office investigations and prosecutions

the suggestion that the Post Office has a financial interest in prosecuting sub-postmasters because it helps with the recovery of missing money

particularly in that context, the suggestion that miscarriages of justice are more likely because the Post Office exercises both the power of investigation and prosecution

the suggestion that the Post Office has unfairly pursued theft charges to pressure people into paying up

the claim by numerous sub-postmasters that they were told by Post Office investigators they were the only ones having problems with the Horizon system

Horizon system

the suggestion that the complexity of the Horizon system adds to the likelihood of errors

the suggestion that the lack of an automatic paper record from the Horizon system adds to the likelihood of errors

the suggestion that Post Office prosecutions relied on the belief that the computer system was robust, when in fact computer errors may call this into question

the suggestion that bugs in Horizon were more widespread than Second Sight have found

the suggestion that there were around 30 people working in "third line support" at Fujitsu and that they fixed dozens of system errors

the suggestion that errors were fixed by a team who could access transaction data, add transactions or make changes to transactions that would affect the balance in branch, without the sub-postmasters knowledge

Second Sight investigation and select committee in parliament

Second Sight's claim that their work has been hampered by an increasing lack of co-operation

Second Sight's understanding that this is the result of legal advice

Second Sight's claim that the Post Office has failed to provide full access to legal and prosecution files

The apparent failure of the Post Office to provide Second Sight with emails relating to the eyewitness account of an incident in Bracknell in 2008

Second Sight's evidence that remote access to branch data is possible in spite of Post Office denials

Please could you let us know the time that you have scheduled on Wednesday 17 June for the interview? I would be grateful if we could arrive about an hour before the interview begins in order to set up. It usually takes about half an hour to pack the kit away again after we have finished filming.

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Thanks for your help.

Conor

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Metadata

Filename	Matt Bardo and MD emails 17062015.msg	ORIGINAL

POL00043789

From: Newsome Pete <GRO>
To: Melanie Corfield <GRO>
Cc: "Mark Underwood1 (GRO)" <GRO> <GRO>
Subject: RE: 3rd/4th line support
Date: Mon, 24 Aug 2015 10:36:47 +0100
Importance: Normal
Inline-Images: image001.gif; image002.gif; image003.gif; image004.gif; image005.png; image006.gif

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Mel

I have the explanations below. I have copied Mark as I know you may be in leave today.

3rd line support is the SSC diagnosticians who apply technical knowledge to provide support and incident resolution services. They support service managers in the delivery of their service and undertake in-depth investigation into incidents by applying analytical skills to the symptoms and evidence gathered by 1st and 2nd line units.

SSC diagnosticians have a general knowledge of most aspects of the Horizon system. They will also specialise in one or two areas such as estate management, reference data, databases, batch systems or counter process and accounting.

SSC diagnosticians do not resolve incidents by amending any code used in the provision of live services. This is a 4th line responsibility which is deliberately separated from the 3rd line services provided by the SSC.

Let me know if you need more explanation.

Thanks

Pete

Pete Newsome

Business Change Manager

Post Office Account, Fujitsu UK&I

Tel: GRO

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E-Mail: pete.newsome GRO

Web: http://uk.fujitsu.com

From: Melanie Corfield [mailto: GRO
Sent: 21 August 2015 14:19
To: Newsome Pete < GRO
Subject: 3rd/4th line support

Hi Pete
Can you please provide me with a brief explanation re what is meant by 3rd/ 4th line support. I remember you telling me different levels (I guess like we have on various issues depending on importance/ priority?)
We need something in layman's terms as soon as possible (today if you can) for mediations that we have coming up, so that we can put the 'whistleblowers' remarks in as much context as possible.
Needs only to be brief.
Thank you
Mel

From: Newsome Pete GRO
Sent: 20 August 2015 13:42
To: Melanie Corfield
Subject: Messages

Mel

At the moment for your eyes and verbal use I put together the following words:

Post Office and Fujitsu have a long and close relationship which started in the Pathways Joint Venture and including Test and Reference Data Teams being co-located having access to the systems issue logs used for Horizon both in the live and test environments. The service has been monitored closely by Post Office through regular Service and Commercial Reviews with full access to all incident and service level reports being available.

In order to verify the integrity of the service Fujitsu delivers on behalf of Post Office it maintains compliance to ISO 27001 (Security), ISO9001 (Quality) and ISAE3402 (financial) standards through regular internal and external audit schedules. In addition Fujitsu support Post Office maintain their accreditation to the Payment Card Industry Data Security Standard (PCI DSS) and to Link v 1.8 Security standard for ATM's, (or in Post Office's case Pin Pads).

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You also asked us to remind them of the different reviews of Horizon they have instigated (I don't have the terms of reference for these but I am sure someone in IT does). I remember the following:

KPMG

Ernst and Young

Deloittes

Second Sight

Imperial College London (ICL)

And finally the following is all people could remember about Richard Rolls:

Worked in SSC 3/4th line support on the 6th Floor for a couple of years in the early 2000s for a couple of years

Worked on estate management not accountancy side

Left Fujitsu on good terms as he had become disillusioned with IT to become a chiropractor in the Bracknell area

Hope you enjoy your leave.

Pete

Pete Newsome

Business Change Manager

Post Office Account, Fujitsu UK&I

Tel: GRO

E-Mail: pete.newsome GRO

Web: http://uk.fujitsu.com

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Metadata

Filename	Pete Newsome email 24 August 2015.msg	ORIGINAL

POL00043789

From: Newsome Pete <GRO>
To: Melanie Corfield <GRO>
Subject: Messages
Date: Thu, 20 Aug 2015 14:42:22 +0100
Importance: Normal
Inline-Images: image001.gif; image002.gif; image003.gif; image004.gif; image005.png; image006.gif

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Mel

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Hope you enjoy your leave.

Pete

Pete Newsome

Business Change Manager

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#652.1

Metadata

Filename	Pete Newsome email August 20 2015.msg	ORIGINAL

POL00043789

From: Christopher Knight <GRO>
To: Patrick Bourke GRO
Cc: Jonathan Swift GRO, Mark Underwood1 <GRO>, Steve Allchorn <GRO>, Jane MacLeod <GRO>, Rodric Williams <GRO>
Subject: RE: Data Spread Sheet for Christopher Knight/Jonathan Swift
Date: Thu, 19 Nov 2015 17:51:43 +0000
Importance: Normal

Patrick,

Thank you very much for the update. I think for the moment there is no need for your suggestions on cases to review.

However, our selection excluded cases with a criminal conviction, and we will probably need to have a look at 3 or so of those cases to make sure we are happy with the way those were dealt with. Suggestions for those will be helpful, but no particular rush for that.

Best,

Chris

From: Patrick Bourke GRO
Sent: 19 November 2015 17:46
To: Christopher Knight
Cc: Jonathan Swift; Mark Underwood1; Steve Allchorn; Jane MacLeod; Rodric Williams
Subject: RE: Data Spread Sheet for Christopher Knight/Jonathan Swift

Dear Christopher,

Thank you for your email.

The files and documents related to the cases you have listed in your email will be available for you to view on and/or download from Huddle by close of business tomorrow at the latest. Can I just check that, since you have now identified a list, you no longer need suggestions from us of cases (whether criminal/non-criminal) you might wish to consider looking at ? In some ways, a selection exclusively made by 11KBW is better for the independence of your enquiries. Nonetheless, if you would still like suggestions, please just let me know.

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In relation to the allegations made by Richard Roll on the Panorama broadcast, I attach a paper which sets out, as a table, the various lines, statements and correspondence, including those from Fujitsu, which between them cover the ground. Please let me know if you require a more formal statement from Fujitsu.

We are currently working through and making progress with the various documents requested in relation to the Helpdesk, Investigations, and the assurance of the Horizon system and should be in a position to provide these to you early next week.

Lastly, in respect of your request for information relating principally to legal matters(made in your email of 12 November 2015), Rodric is hoping to be able to provide these to you by close tomorrow.

Kind regards

Patrick

From: Christopher Knight GRO
Sent: 19 November 2015 09:45
To: Patrick Bourke
Cc: Jonathan Swift; Mark Underwood1; Steve Allchorn; Jane MacLeod; Rodric Williams
Subject: RE: Data Spread Sheet for Christopher Knight/Jonathan Swift

Dear Patrick,

Jonathan and I have selected 11 scheme cases review the files of and we would be grateful if those files – including the pieces of evidence underlying the PO and SS reviews – could be uploaded to Huddle. We may not look at all the attached pieces of evidence in all the cases, but we will certainly do so in some. We have selected the cases at random, but ensuring that they cover all of the key thematic issues raised. We have excluded from this exercise any cases where there is a criminal conviction.

The cases are:

M014

M026

M037

M058

M070

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M088

M100

M114

M131

M133

M148

Do let me know when they are uploaded.

There are various queries and requests we have outstanding from last week I believe.

Could we add a further one: the Panorama transcript contains allegations from a Richard Roll, formerly of Fujitsu, who appears to say that they could alter the coding to change transaction records and that they did so. Do we have any documented statement or similar from Mr Roll setting out the details of his account? Just as importantly, we will need a formal response from the PO and Fujitsu (particularly the latter) about Mr Roll's comments to Panorama. If there is already one, could we see it please (the statement about the programme generally does not address this issue). If not, can one be provided to us explaining the PO and Fujitsu response. Jonathan and I will certainly have to deal with what Mr Roll has said.

Best wishes,

Chris

From: Patrick Bourke GRO GRO
Sent: 03 November 2015 16:44
To: Christopher Knight
Cc: Jonathan Swift; Mark Underwood1; Steve Allchorn; Jane MacLeod; Rodric Williams
Subject: Data Spread Sheet for Christopher Knight/Jonathan Swift

Dear Chris

I attach a copy of the all-encompassing spreadsheet we talked about which, for each case in the Scheme, records the information you indicated you would find helpful to have, including details on criminal charges, whether the Helpdesk issue was complained of, Second Sight's thematic issues and so on. This should enable you and Jonathan to determine which cases to use as part of your sampling exercises. The password for the spreadsheet is **Hendy01**.

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My colleague, Steve Allchorn, has organised for your tour of Horizon (sorry) next Tuesday morning. It would be very helpful for us to meet (with or without Jonathan, depending on his availability) after that, so that we can develop a joint understanding of how you are likely to approach your enquiries so that we might support your work as effectively as possible. I would also like to take that opportunity to introduce you to Rodric Williams (copied), our in-house lawyer, who will be able to guide you in relation to the computer specific issues you will want to address and more generally.

In the meantime, please do not hesitate to contact us with any questions.

Kind regards

Patrick

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Filename	7.79 RE: Data Spread Sheet for Christopher Knight Jonathan Swift(1).msg	ORIGINAL