WITN10500100

Witness Name: Anthony John de Garr Robinson

Statement No: WITN10500100

Dated: 14 May 2024

POST OFFICE HORIZON INQUIRY

FIRST WITNESS STATEMENT OF
ANTHONY JOHN DE GARR ROBINSON

I, Anthony John de Garr Robinson, will say as follows.

INTRODUCTION

1. I am a barrister practising from One Essex Court, a commercial set of chambers in London. Its full address is One Essex Court, Middle Temple, London EC4Y 9AR. I acted for Post Office Limited ("**POL**") in the group action by which subpostmasters ("**SPMs**") brought claims against POL in relation to the Horizon IT System ("**Horizon**") and their contractual relationship with POL (the "**GLO Proceedings**") .
2. This witness statement is made to assist the Post Office Horizon IT Inquiry (the "**Inquiry**") with the matters set out in a Rule 9 Request dated 28 March 2024 (the "**Request**").

MY PROFESSIONAL BACKGROUND

3. I was called to the Bar in 1987. In 1988, I joined the chambers of Benjamin Levy at 9 Old Square in Lincoln's Inn. In 1990, I moved to One Essex Court. I was appointed Queen's Counsel in 2006.

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4. I undertake English High Court and appellate proceedings, offshore litigation, international arbitration (as an advocate and as an arbitrator) and advisory work. My practice covers a wide range of disciplines, including commercial, commercial chancery, banking and finance, company law and civil fraud.

THE GLO PROCEEDINGS

5. In paragraphs 2 to 35 of the Request, I am asked a large number of questions which are organised in quite a complicated way. In the following sections of this witness statement, I answer those questions to the best of my ability and knowledge. Before doing so, there are two points that I wish to make clear.
6. First, as explained in my email to a member of the Inquiry's legal team on 28 March 2024, as a result of certain professional commitments, I was unable to start work on this witness statement until Saturday 4 May 2024. The purpose of my email was to ask for an extension of time in which to provide my draft witness statement, until Thursday 23 May. In response, the Inquiry gave me until Friday 10 May 2024. On that Friday, at my request the Inquiry gave me a further extension until Sunday 12 May 2024.
7. The Inquiry will have had good reason for specifying these deadlines. But I should make it clear that, as a result, I have only had nine days in which to read the documents with which I have been provided and to prepare a statement answering the many questions I have been asked. This has not allowed me much time to review the documents in my possession.
8. Second, the questions I have been asked concern events that took place several years ago (between 2016 and 2019). At this remove in time, my recollections are very limited. Indeed, in relation to several of the points raised I have no direct recollection at all. The documents with which I have been

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provided have refreshed my memory to some extent, and so have some documents I have found. But my recollection remains incomplete. In the rest of this witness statement, I have tried to be clear about the points in relation to which I am giving my direct recollection, as opposed to explaining documents or doing my best to reconstruct what would have happened.

INTRODUCTION TO THE GLO PROCEEDINGS

9. In paragraph 2 of the Request, I am asked to set out the background to my instruction by POL and to describe the nature and extent of my role in advising and representing POL in relation to certain matters.

10. My first involvement in this case occurred in May 2018. As I recall, I was told that POL was having a series of meetings with several counsel with a view to instructing one of them to act in a dispute in which it was involved. I was to be one of the counsel whom POL would be meeting. On 18 May 2018, my clerks forwarded to me copies of a letter of claim written by SPMs' solicitors ("**Freeths**"), a copy of a claim form and a briefing note containing a high level summary of the dispute prepared for the purpose of these meetings.

11. The meeting with me took place on 20 May 2018. I do not remember much about the meeting, but I think that Jane MacLeod, POL's General Counsel, was present. I also recall a discussion about a point which involved some real concern for POL. This was the fact that, on the basis of information provided by Fujitsu, POL had on several occasions formally confirmed that it was not possible for anyone to use Horizon to alter branch transaction data remotely (something which became known as "remote access"). POL now knew that this was possible, and the question was how to manage this problem. I said that POL should be open about it, and not to try to hide anything.

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12. I subsequently learned that I would be instructed on the case. Thereafter, I received papers. There was a substantial amount of reading in to be done. I see from an email exchange on 1 June 2016 (POL00140216) between me and Andy Parsons (a partner of the firm which was then called Bond Dickinson and which I shall call "**WBD**") that my reading in was going slowly and that I already had a number of questions to ask. I also see that I wanted a junior to be brought in to help me. In due course, Owain Draper was instructed.

THE SWIFT REVIEW

13. When I was first instructed, the priority was for WBD to provide a full response to Freeths' letter of claim, which had been sent in April 2016. The letter of claim was a long document. There were numerous points to respond to, including factual claims, legal arguments and a proposal for the making of a Group Litigation Order (a "**GLO**"). My focus at that time would have been on reading into the case, trying to understand how the relationship between SPMs and POL worked and trying to work out what POL's answers were to the various claims made. However, I see from POL00242402 that, on 8 June 2016, Andy Parsons asked me for my views on whether POL should carry out further investigative work in accordance with some recommendations that Jonathan Swift QC and Christopher Knight had made to the chairman of POL on 8 February 2016.
14. This email came at an early stage of my involvement in this case. I have no recollection of this email exchange or of having expressed any views about these recommendations, either before the email or after it. However, having read my email exchange with Andy Parsons on 8 June, I see that:

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(1) In his email to me at 2:42pm, Andy Parsons referred to the recommendations that had been made, indicated that these investigations would overlap with issues in the GLO proceedings and suggested that, as these points would need to be investigated in the proceedings in any event (probably in a more robust way), it would be better for any investigative work to be done as part of the proceedings so as to ensure that POL had the protection of privilege.

(2) I responded at 3:19pm. Andy Parsons had talked about providing what he called "political cover" for the chairman. I said that I was not there to provide political cover but I was concerned that the client (POL) should protect its interests as a defendant to a substantial piece of litigation. The consideration that seemed to me to be important was that privilege should be preserved. I ended by asking what would happen if (contrary to my assumption) it was decided not to carry out the recommended investigations.

(3) Andy Parsons replied to this question by saying that whether the investigations were carried out would depend on how the litigation went. I responded by saying that, from a pure litigation perspective, it was highly desirable that the investigations be carried out.

15. As I have already said, I do not recall this exchange. Nor do I recall discussing the point further at a conference on 9 June 2016 (although I believe that I had a conference at POL's offices on that day: see paragraph 25 below). As I have said, I have no recollection of POL's response to the Swift review being raised with me at any time. But it does not surprise me that I appear to have advised POL that, as POL was facing a substantial claim raising issues which covered the same ground as the relevant investigations, it would have been unwise for

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POL to undertake those investigations in such a way as to lose the protection of privilege. It was my duty to promote POL's interests in the GLO Proceedings by all proper means, and maintaining POL's privilege in the GLO Proceedings would have seemed an obvious means of achieving that objective.

16. The papers with which I have been provided include a letter from Andy Parsons to POL dated 21 June 2016 (POL00006601). I do not recall seeing that letter or being told about its contents. I make some comments on the letter in paragraph 174(1) below.

POL'S LITIGATION STRATEGY

17. As I have said, when I was first instructed, the priority was for WBD to provide a response to Freeths' letter of claim. That was a substantial task, not least because the letter of claim covered a long period of time and contained many elements. The letter of response was ultimately sent on 28 July 2016 (POL00110507).

18. My recollection is not clear, but Owain Draper and I would have concentrated on the legal claims asserted in the letter, including the breach of contract claims. A wide variety of causes of action were identified by Freeths, although not always in a way that was easy to follow (for example, implied terms were said to constrain Post Office's discretions and powers, but the specific discretions and powers which they were said to constrain were not identified). Legal research had to be done on these claims, and sections responding to the claims had to be drafted.

19. As I recall, WBD undertook the drafting of the letter (they had knowledge of the long history). Unsurprisingly (given their knowledge and our recent instruction), WBD were responsible for the structure, thrust and most of the wording of the

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letter. Having said that, I (and Owain Draper) would have reviewed and made suggestions about the structure and would have gone through the letter several times during its gestation, querying points, asking questions, suggesting amendments, and generally ensuring that the letter and its various schedules made sense, asserted a properly arguable case and adopted positions that were reasonable in law.

20. The letter of response contained a robust rejection of the claims made in the letter of claim. The central point it made was that, although Horizon was not perfect, it was a reliable system which the vast majority of SPMs used without difficulty. Freeths suggested otherwise, but they did not have evidence or particulars to justify that allegation. It seemed to me that POL (and, indeed, Andy Parsons) believed this to be true. As I understood it, this was not a case in which POL recognised that Horizon had serious flaws which POL wished to play down. It was a case in which POL expected to be able to show in due course that Horizon was at least as good as any other comparable IT system in use. That remained my understanding throughout the proceedings.

21. Turning to the legal claims asserted, the letter of response set out POL's case as to the rights and obligations of the parties under the relevant SPM contracts, the breaches of contract which POL was alleged to have committed, and the various causes of action asserted by the claimants. With the assistance of some research notes produced by WBD on discrete points, Owain Draper and I played a substantial role in formulating the legal arguments advanced in the letter. As I recall, my view at the time was that those arguments were not merely proper arguments to advance but that they were right.

22. While the letter of response was being drafted, a separate line of correspondence was being conducted on the question whether a Group

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Litigation Order should be made, which I would have commented on. In that correspondence, POL had accepted that such an order should be made. The letter of response therefore contained some proposals in relation to the scope of the common issues to be covered by the GLO and also some proposals in relation to a large number of requests which Freeths had made for immediate (i.e. voluntary) disclosure. I would have reviewed those proposals and discussed how to respond to them with Andy Parsons.

23. In relation to disclosure, POL's position was complicated by the fact that the claim covered a long period approaching 20 years. At some point (I do not remember precisely when, but at an early stage) I was informed that, during this period, POL's business had changed in various ways and its storage of documents had also changed. This was going to make it difficult to identify and/or locate all the documents that Freeths wanted. Similarly, I was informed that, in relation to the operation of Horizon, many relevant documents were held by Fujitsu. This meant that POL was dependent on Fujitsu to tell it what documents were relevant and to retrieve all the relevant documents. In these circumstances, it would have been difficult for POL to give early disclosure of many of the requested documents. Andy Parsons and I would have discussed points of this sort at this time. Such points supported the view that, from POL's perspective, it would be better for the disclosure of these documents to be managed by the Court in due course.

POL'S DECISION MAKERS

24. I do not recall being specifically told who was responsible for POL's decision making in relation to the letter of response, but I note that Andy Parsons' email to me of 8 June 2016 (POL00242402) referred to a POL litigation steering group

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and I believe that the draft letter was shown to and commented on by members of POL's senior management. During the GLO Proceedings, it was my impression that the importance of this claim meant that decisions on significant issues were considered by senior management, rather than just by POL's in-house lawyers. In the normal way, it was WBD who liaised with the client, although there were occasions when POL's in-house lawyers attended calls and conferences with me.

25. My diary indicates that I had a conference at the client's offices on Thursday 9 June 2016. This was at an early stage of my instruction. I cannot remember who was present or what topics were discussed at the conference, but I note that it is referred to in Andy Parsons' letter of 21 June 2016 (see paragraph 16 above). I also note that the letter describes the conference as having been with POL's legal team "and others". I expect that Jane MacLeod would have attended the conference, but I cannot say for sure that she did so and nor can I say whether members of POL's management were present.

THE ADEQUACY OF MY INSTRUCTIONS

26. As I saw it, I was being instructed by a defendant to a large and complicated set of claims, which the client denied on substantial grounds. As time went on, further documents were provided to me and answers were given to questions which I asked. In my experience, this is not unusual in a large and complicated case of this sort. At the time, I do not recall thinking that my instructions were inadequate or that the documents with which I had been provided were inadequate.

27. In Request 12, I am asked whether my views on the adequacy of my instructions have changed with the benefit of hindsight. My answer to that

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question is yes. I explain this further below, when dealing with the Horizon Issues.

28. Over the period following the letter of response, the correspondence with Freeths continued. In due course, there were several hearings at which directions were given regarding the GLO Proceedings, covering matters such as the common issues to be tried and generic pleadings. Thereafter, generic pleadings were exchanged, including a Generic Defence and Counterclaim (POL00003340), which was served by POL on 18 July 2017. In the normal way, the Generic Defence and Counterclaim was settled by counsel (i.e. by Owain Draper and me). As far as I recall, it was consistent with the thrust of the case that had been put in WBD's letter of response.

29. By July 2017, Owain Draper and I had received more information about the claim and our understanding of the factual issues regarding Horizon was better. This included information contained in several reports produced by Deloitte under the name "Project Bramble", namely:

    (1) a report dated 31 October 2016 was emailed to me on 10 November 2016 (POL00031502); and

    (2) a draft executive summary of a further report (drafted by WBD with amendments and comments from Deloitte) was emailed to me on 19 June 2017 (WITN10500101 and WITN10500102).

    It also included matters that would have been discussed at a conference with WBD, POL and Deloitte in my chambers of 22 June 2019.

30. At the time of the Generic Defence and Counterclaim, I did not think that my instructions were inadequate or that the documents with which I had been provided were inadequate.

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31. It would of course have been preferable to have had a comprehensive set of instructions and bundles containing documents which conveniently contained all the information we needed. But in my experience, substantial cases are not run like that. It is normal to ask questions as the case goes on and to form an overall understanding from a variety of documents produced, emails sent and meetings tasking place over a period of time.

32. In Request 11, I am asked about the extent to which I was aware of the contents of Deloitte's Project Bramble reports during the GLO Proceedings. In addition to the reports I refer to in paragraph 29 above), I believe that the following reports were sent to me, namely:

    (1) a report dated 1 September 2017 (POL00041491); and

    (2) a report dated 19 January 2018 (POL00028928).

    I have found no email to me attaching Deloitte's Project Sparrow report dated 8 July 2016, the Project Bramble report dated 27 July 2016, the Project Bramble report dated 3 October 2017, or the project Bramble report dated 15 December 2017.

POL'S CASE ON PARTICULAR ISSUES

33. In Request 2.3, I am asked to describe the nature and extent of my role in relation to POL's case on implied terms, on the existence of bugs or errors and on remote access.

34. First, dealing with POL's case on implied terms, that case was based on the advice that I (and Owain Draper) gave POL. Our advice was given on the basis of legal research which was primarily undertaken by Owain Draper and was reviewed (and approved) by me, both before the letter of response was served and before the Generic Defence and Counterclaim was served.

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35. The sort of factors we took into account in arriving at our views on implied terms can be seen from the formal joint opinion that was produced subsequently, in May 2018 (POL00103462). This joint opinion was signed by me, David Cavender QC, Owain Draper and Gideon Cohen. It was the product of more legal research than had been done previously, but it is consistent with my and Owain Draper's thinking when we advised on the letter of response and when we drafted the Generic Defence and Counterclaim.

36. As is set out in paragraphs 111 to 153 of the opinion, we took the view that it was necessary to imply into the SPM contracts 1) a term requiring each party to refrain from taking steps to inhibit or prevent the other from complying with its contractual obligations, and 2) a term requiring each party to provide to the other with such reasonable cooperation as was necessary to the performance of the other's contractual obligations. On the basis that these terms were to be implied, we did not think that it was necessary to imply any of the other terms alleged by the claimants. We recognised that some of these terms were arguable, but our view was that POL had the better of the argument.

37. Second, turning to POL's case as to the existence of bugs, errors and defects in Horizon, that case was based on instructions from POL, which instructions were (as far as I was or am aware) based on information provided by Fujitsu.

38. In Schedule 6 to the Letter of claim, WBD addressed three particular bugs that had been identified by Second Sight. The Schedule admitted that these three bugs had in way one or another caused shortfalls in branch accounts and explained that these bugs had been identified and fixed and that the accounting problems they had caused been resolved. Paragraph 1.8 of the Schedule made it clear that these were not the only possible bugs in Horizon and in paragraph 1.3 it stated that the important issue was not whether bugs existed, as they

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likely did, but whether there were adequate controls in place to identify them and take any necessary remedial action.

39. A similar approach was adopted in the Generic Defence and Counterclaim, at paragraphs 49 to 56. Disclosure and expert evidence would plainly be needed to identify any other relevant bugs (i.e. bugs which caused shortfalls in branch accounts) and to determine whether the controls being operated were adequate to identify such bugs, fix them and remedy their consequences.

40. Third, in relation to remote access:

    (1) The letter of response addressed remote access at paras 5.14 to 5.18. In paragraph 5.16.4, it indicated that a small number of specialist Fujitsu administrators had edit permissions and that, as far as WBD was aware, such permissions had not been used to alter branch transaction data and WBD were seeking further assurance from Fujitsu on this point.

    (2) These points reflected my instructions, and I had no reason to doubt them.

    (3) Since my first meeting with POL in May 2016, my consistent advice had been that Post Office should be transparent on the question of remote access. As Andy Parsons explained in an email to me on 27 July 2016 (WITN0500103), he had included in the draft letter of response a direct statement that privileged user permissions could be used to change branch accounts. However, POL were uncomfortable about saying this in terms, since it might lead to “public criticism”. His email set out the wording which POL was comfortable with. Andy Parsons sent this email the day before the letter of response went out. He knew that I was very busy on another matter but indicated that my views would be welcome.

    (4) I do not have a direct recollection of responding, but I would have responded. I would have taken the view that Freeths would understand

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POL's approved wording to be indicating that privileged administrators could use their permissions to alter branch transaction data.

(5) The subsequent correspondence between Freeths and WBD had more to say on this subject. I have not reviewed all the correspondence, but I have found WBD's letter to Freeths of 30 November 2016 (WITN10500104), in which WBD explained POL's understanding of Fujitsu's administrator permissions and how they could be used.

(6) By the time the Generic Defence and Counterclaim was served in July 2017, Deloitte had been investigating the issue with Fujitsu and I had been provided with a copy of their Project Bramble report dated 31 October 2016, which resulted in my raising some questions on 10 November 2016 (POL00337340). Deloitte continued their work and, on 19 June 2017, Andy Parsons emailed to me a draft executive summary of the work they had done in the intervening time (WITN0500101 and WITN10500102). He informed me that this summary had been drafted by WBD, that Deloitte had broadly agreed with it. The attached summary contained comments from Deloitte.

(7) A few days later, my diary indicates that, on 22 June, Deloitte attended a conference in my chambers.

(8) As I recall, when Owain and I drafted the paragraphs of the Generic Defence and Counterclaim addressing the risk of Fujitsu privileged users abusing their access rights in order to amend or delete transaction data (paragraphs 57(4), 59 and 60), we took care to ensure that these paragraphs were consistent with what Deloitte were saying.

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THE PROCESS OF DRAFTING THE DEFENCE

41. In Request 10, I am asked to summarise the process by which the Generic Defence and Counterclaim was drafted and my involvement in the same, and to address certain issues in particular.

42. The Generic Defence and Counterclaim was drafted by me and Owain Draper. In accordance with my normal practice, I would have played an active role in the drafting process. It would have taken us a considerable time to draft and the draft would have gone through a significant number of iterations, several of which would have been shared with WBD for comment. We would have a number of meetings and/or calls to discuss drafts with WBD and possibly also POL. We would have taken care to ensure that it was based on our instructions and was consistent with the documents and information with which we had by then been provided.

43. In Request 10.1, I am asked to consider paragraphs 43(1) to (3) of the pleading and to consider the basis on which POL pleaded that "The blocked value is not (and is not treated as) a debt due to Post Office":

    (1) These paragraphs would have been pleaded on the basis of instructions from POL, supplemented by the Branch Trading Manual referred to in paragraph 43(4) (and quite possibly other documents also, although I cannot now identify what other documents we looked at in this regard).

44. In Request 10.2, I am asked to explain the basis on which POL denied in paragraph 48(3)(b) that Fujitsu edited or deleted specific items of transaction data.

    (1) As I read the paragraph, what was denied was the claimants' allegation that Fujitsu had managed fixes to coding errors and bugs that had the

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effect of editing or deleting specific item of transaction data. To be clear, the claimants' case regarding remote access was addressed in a different part of the Generic Defence and Counterclaim (paragraphs 57 to 60).

(2) This denial would have been pleaded on the basis of my instructions from POL, which it would have given after consulting Fujitsu.

45. In para 10.3, I am asked to explain the basis on which POL denied in paragraph 48(3)(c) that Fujitsu had implemented fixes that affected the reliability of accounting balances, statements and reports.

(1) This would have been pleaded on the basis my instructions from POL, which it would have given after consulting Fujitsu.

46. In para 10.4, I am asked to explain the basis on which POL pleaded in paragraph 50(4) that, to the best of its knowledge information and belief, there was no issue in the Known Error Log that could affect the accuracy of a branch's accounts or the secure transmission or storage of data.

(1) This would have been pleaded on the basis of information provided by Fujitsu.

47. In paragraph 10.5, I am asked to explain the basis on which POL pleaded, in paragraph 57(4), that 1) for Fujitsu's privileged users to have abused their rights to so as to alter their transaction data and conceal that this had happened would have been an extraordinarily difficult thing to do, involving complex steps which would require months of planning and an exceptional level of technical expertise, 2) POL had never consented to the use of privileged user rights to alter branch data, and 3) to the best of POL's knowledge information and belief, these rights had not been used for this purpose.

(1) Point 1) would have been pleaded on the basis of the Project Bramble report dated 31 October 2016, of the Project Bramble executive summary

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which was provided on 19 July 2017 and of the information / confirmations which Deloitte would have provided in conference on 22 June 2017.

(2) Point 2) would have been pleaded on the basis of instructions from POL.

(3) Point 3) would have been pleaded on the basis of instructions from POL, which it would have given after consulting Fujitsu.

CONFERENCES WITH POL'S LEGAL DEPARTMENT OR THE BOARD

48. In Request 9, I am asked to describe any conferences or significant discussions which I had with POL's legal department or the board or POL's decision makers in relation to the matters set out in Request 2. During the GLO Proceedings, I generally dealt with WBD. I had a fair number of dealings with POL's in-house lawyers, but to the best of my recollection I would not describe them as frequent. I would describe my dealings with POL's management as infrequent.

49. My diary indicates that, between the date of my initial meeting with POL in May 2016 and the date on which the Generic Defence and Counterclaim was served in July 2017, I had the following conferences or telephone conferences with POL:

(1) a conference with POL on 9 June 2016 at POL's offices in Finsbury Dials;

(2) two telephone conferences involving Angela Van Den Bogerd on 28 June and 5 July 2016;

(3) a conference with POL on 14 November 2016;

(4) a telephone conference with POL on 28 November 2016;

(5) a conference with POL on 7 June 2017; and

(6) a conference with POL (and Deloitte) on 22 June 2017.

50. I have no direct recollection of these conferences, who attended them or what they covered. Doing my best to reconstruct:

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(1) The 9 June 2016 conference would probably have concerned the claims put forward by the claimants and how best to respond to them. I assume that it will also have included a discussion about the Swift recommendations.

(2) I suspect that the two telephone conferences with Ms Van Den Bogerd were calls to allow me to understand some of the factual points relevant to the dispute, such as how POL conducted relevant aspects of its business and/or how it dealt with SPMs.

(3) I have been provided with an agenda for the conference on 14 November indicating who were to attend on POL's side and what points were to be discussed (POL00024971). I do not remember this conference or what was said on these points but, in relation to the remote access item, I note that the conference took place a few days after I had received the Project Bramble report dated 31 October 2016. I infer that this item may have involved or included a discussion of the progress Deloitte were making in its investigations into remote access and what further work they could do in this regard.

(4) The conferences with POL on 7 June and 22 June 2017 would have involved discussion of points arising on the Generic Defence and Counterclaim that Owain Draper and I were then drafting. My diary entry for the 22 June conference is marked "Defence".

(5) Later on in the GLO Proceedings, I recall attending conferences with members of the POL board. I discuss these subsequent conferences below. However, I cannot say whether any of the conferences referred to above were with board members.

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51. I may well have had further telephone conferences which were attended by POL personnel as well as WBD. I do not remember any specific calls. To the extent that there were any, I suspect that they would have been with POL's in-house lawyers rather than with management.

DISCLOSURE AND THE USE OF LEGAL PROFESSIONAL PRIVILEGE

52. I note that, in Request 2.4, I am asked to describe the nature and extent of my role in relation to POL's case in relation to disclosure and the use of legal professional privilege. The only documents with which I have been provided having relevance to disclosure and privilege during the period between my initial instructions and the Generic Defence and Counterclaim concerned the Swift review, which I consider above. However, as leading counsel for POL I would have advised POL on any issues of disclosure and privilege that WBD raised with me, if I was available. And I represented POL at several Case Management Conferences ("**CMCs**") at which disclosure was dealt with (including the first CMC, considered in paragraphs 134 and 135 below). Where issues of disclosure and/or privilege were addressed at the hearings at which I appeared, I would have advised on those issues and I would have commented on any witness statements that were served in relation to those issues.

53. According to my diary, I had two conferences at POL's offices in relation to CMC strategy and directions. These took place on 14 September 2017 (under the entry "CMC Strategy") and 29 September 2017 (under the entry "CMC / Directions etc"). I have no recollection of the particular points that were discussed at those conferences or who attended them.

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THE COMMON ISSUES

54. I did not represent POL at the Common Issues trial, which took place between 7 November 2018 and 6 December 2018. David Cavender QC was instructed on that phase of the GLO Proceedings. I believe that he become involved towards the end of 2017. In addition, a junior barrister called Gideon Cohen was brought in to work alongside Owain Draper.

55. As I recall, David Cavender took the lead on the Common Issues from around the time he was instructed. He also provided some help on a few aspects of the Horizon Issues. I had a trial on another substantial matter between January and March 2018 and I would have had limited capacity to work on the GLO Proceedings in the months leading up to my trial and during the trial itself. But I was still copied in on at least some of correspondence, and I recall subsequently being involved in the drafting of individual Defences in the claims that were prepared for the purposes of the Common Issues Trial (the Defences bear my name and those of Owain Draper and Gideon Cohen). I also recall representing POL at a CMC at which an application was made to strike out some of the evidence which the claimants wished to rely on at the Common Issues trial. But I do not have a clear recollection of how matters developed during the course of the Common Issues phase of the litigation.

56. In Request 13.1, I am asked to provide an account of the nature and extent of my role in advising POL on the Common Issues in respect of the development of POL's case on the settle centrally button:

    (1) I have no recollection of POL's case on this point developing in the Common Issues phase, or of having performed a role in the development of that case.

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(2) I see from POL00364016 that, on 22 February 2019 (in the run up to the Horizon Issues trial), I sent an email to Owain Draper raising a question about settling centrally. In that email, I noted that the claimants' expert for the Horizon Issues (Jason Coyne) had asserted that, at the Common Issues trial, POL's case had been that a disputed shortfall which was settled centrally was recorded as a debt due to POL. I asked for Owain Draper's thoughts (he had appeared at the Common Issues trial).

(3) Owain Draper replied by telling me that, having checked the document which Mr Coyne relied on in support of this claim, the document did not say what Mr Coyne said it said. In fact, the document indicated that the amount settled centrally would be treated as a debt due to POL unless it was disputed by the SPM.

(4) I have no direct recollection of this email exchange or of what was subsequently said about the settle centrally button. But I believe that this is the case that was asserted in the Generic Defence and Counterclaim.

57. In Request 13.2.1, I am asked to provide an account of the nature and extent of my role in advising POL on the Common Issues in respect of POL's case on the question whether there should be an implied term that POL was not to suspend or terminate SPM contracts (a) without reasonable and proper cause or (b) in circumstances where POL was in material breach of duty itself:

(1) In its Generic Defence and Counterclaim of July 2017, POL denied that the SPM contracts contained an implied term constraining either its right to suspend SPM contracts or its right to terminate SPM contracts (see paragraphs 99, 100, 105 to 106). As far as I recall, this remained POL's case in the Common Issues phase of the proceedings.

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(2) As I mention in paragraph 35 above, in May 2018 POL's counsel team produced a joint opinion in which we explained our views on this question (POL00103462). In September 2018, we produced a joint update to this opinion (POL00022669).

(3) I do not believe that it is necessary for me to set out the views expressed at length in these opinions. Amongst other things, we explained our view that the express rights to suspend and terminate were absolute contractual rights which POL was entitled to exercise in its own interests, not contractual discretions which POL was required to exercise in the interests of both parties. I confirm that these opinions reflected my considered views.

58. We also explained our view on the question whether the claimants could rely on an implied term to the effect that POL's contractual discretion would not be exercised dishonestly or in an arbitrary, capricious or irrational manner (see Request 13.2.2). We recognised that such a term is frequently implied so as to constrain contractual discretions, but we also noted that, in their Generic Particulars of Claim, the claimants did not seek to apply such a term to any true contractual discretions.

59. The joint opinion was dated 10 May 2018. I have been provided with unsigned minutes of a meeting of the Postmaster Litigation Subcommittee of POL 5 days later, on 15 May 2018 (POL00006754). I have some recollection of attending, with David Cavender, a meeting with members of POL's board at or around this time. As I recall, David Cavender did much of the talking at this meeting, and he spent some time explaining in simple terms the Common Issues and our views as to the merits on those issues. I do not have a detailed recollection of the meeting, however.

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60. The meeting was with members of POL's board, and I note the reference in the minutes to it being a meeting of the "Postmaster Litigation Subcommittee". This was not the only meeting we attended at POL's offices in relation to the Common Issues: according to my diary, we also attended such a meeting on 29 June 2018. However, I do not recall whether this was another meeting with POL board members or with POL's in-house lawyers. Nor do I recall what was discussed.

61. As I explain further below, I subsequently attended some further meetings with board members in relation to the Horizon Issues. It would thus have been clear to me that, at least on important matters, the persons responsible for decision making were these board members. However, I cannot say what demarcation was applied between points that were decided on by these board members and points that were decided on by POL's in-house lawyers.

62. I do not remember having any telephone calls with POL on the Common Issues. No such calls are identified in my diary, but this does not mean that none took place.

COMMON ISSUES DISCLOSURE

63. In Request 13.3, I am asked to provide an account of the nature and extent of my role in advising POL on the Common Issues in respect of disclosure. I repeat paragraphs 54 and 55 above. I recall representing POL at more than one CMC where questions of disclosure were dealt with, but I do not have a clear recollection of the relevant hearings, and I do not have any CMC judgments on disclosure to hand which could refresh my memory.

64. I believe POL was represented by David Cavender QC at one or more CMCs in 2018, but I do not recall whether any of these CMCs dealt with disclosure or, if

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they did, whether the disclosure related to the Common Issues or the Horizon Issues. If and to the extent that any disclosure issues were addressed at the hearings attended by David Cavender, I may also have advised on those issues and commented on any relevant witness statements. But I do not remember.

COMMON ISSUES WITNESS STATEMENTS

65. I do not recall performing any role in relation to the POL witness statements that were prepared for the Common Issues trial. I have no recollection of attending any conferences or significant discussions with POL's witnesses to discuss the form or content of their evidence. The only role which I remember performing in relation to the evidence at the Common Issues trial was representing POL at the hearing of its application to strike out some of the claimants' witness evidence.

RECUSAL

66. I had no role in advising POL in respect of the decision to apply for an order that Fraser J be recused. The Common Issues judgment was handed down on 15 March 2019, and the Horizon Issues trial started on 11 March 2019. During the relevant period, I was extremely busy. I did not have the time to read the Common Issues judgment, still less to advise on its implications. POL and WBD ensured that I was not involved in the process of considering the Common Issues judgment and determining what action should be taken in relation to it.

CONFERENCES WITH POL'S LEGAL DEPARTMENT OR THE BOARD ON THE COMMON ISSUES

67. In Request 20, I am asked to describe any conferences or significant discussions I had with POL's legal department or the board or POL's decision

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makers on the matters set out in Request 13. The only Common Issues conferences or discussions of which I am specifically aware are those I refer to in paragraph 60 above. However, it is possible that the conferences I refer to in paragraph 53 above addressed matters relevant to the trial of the Common Issues.

THE ADEQUACY OF MY INSTRUCTIONS ON THE COMMON ISSUES

68. Regarding the adequacy of my instructions on the Common Issues, I repeat paragraph 26 above. As I recall, the Common Issues largely concerned matters which were within POL's own knowledge and documents which were within its control. In relation to the Common Issues matters I dealt with, I do not recall feeling any concern about the adequacy of my instructions at the time. However, I did not take part in the Common Issues trial and, when the Common Issues judgment was handed down, I did not have time to read the judgment (I was hard at work on the Horizon Issues). Not least for these reasons, hindsight has not given me a new perspective on the adequacy of my instructions on the Common Issues.

THE HORIZON ISSUES

69. Before giving an account of the nature and extent of my role in advising and representing POL in the Horizon Issues phase of the GLO Proceedings, it may be helpful to say a few words about the procedure pursuant to which those issues were tried.

70. The Horizon Issues covered a wide range of questions, but as I saw it at the time, the critical questions were 1) the incidence of bugs in Horizon that were capable of adversely affecting branch transaction data and thereby creating

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false shortfalls for SPMs, 2) whether the controls operated in relation to Horizon were adequate to identify such bugs and fix them, 3) whether the controls operated were adequate to identify the branch accounts which were affected by these bugs and to correct those branch accounts, and 4) whether there was a risk of Fujitsu or POL remotely accessing branch accounts so as to edit or delete transaction data and thereby to create false shortfalls for SPMs.

71. The directions given in relation to the Horizon Issues trial were in my experience unusual. The trial dealt with issues that covered a long period of time, nearly 20 years, during the course of which the Horizon system changed substantially. On the basic question whether the Horizon was reliable, POL had to wait and see what points were raised in the claimants' expert evidence (by Mr Coyne). A direction had been made requiring the claimants to serve an outline document setting out the nature of their allegations in relation to the Horizon Issues, but as I recall this was of little help.

72. My purpose in saying this is not to complain about it: there were valid reasons for organising the GLO Proceedings in this way. For example, it would not have been possible for the claimants to plead a proper case on the critical issues until after disclosure had been given and after Mr Coyne had reviewed the disclosure. But the chosen procedure meant that POL could not know the case it had to meet until it saw Mr Coyne's first expert report ("**Coyne 1**"). Directions had been made for sequential reports, but the directions did not allow for much time between the claimants' expert report and POL's expert report (by Robert Worden), and supplemental reports. And Coyne 1 was long and complex, raising innumerable issues and exhibiting innumerable documents, many of which were highly technical and difficult for understand. All the experts' reports were long and complex.

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73. The timetable would have caused difficulties for both sides. Looking at it from the perspective of POL's legal team, it meant that there was little time for us to understand what Mr Coyne's key criticisms were, what practical significance they had, whether they were well founded and what the answers to them were.

74. In seeking to understanding these things, we needed help from Dr Worden. The need for his help was reinforced by the fact that, on their own, many of Fujitsu's documents were incomprehensible to an outsider. These included thousands of Peaks and KELs and many other documents of which we subsequently became aware, such as OCPs, OCRs and MSCs. It was necessary to spend a great deal of time with Dr Worden in order to gain a proper understanding of the critical parts of Mr Coyne's and his expert reports.

75. Quite apart from the expert reports, the court also directed witness statements to be served, with an initial exchange of statements before Coyne 1 was due to be served and supplemental statements being served during the period in which that report was being assimilated by POL and Dr Worden's first report ("**Worden 1**") was being prepared.

76. In these circumstances, the last few months of 2018 and the first few months of 2019 were a very intensive period. I and the rest of the counsel team were working very hard in order to get ready for trial. By that stage, a senior junior IT specialist, Simon Henderson, had been brought in to work with me and Owain Draper on the Horizon Issues. At some later point, it was recognised that we needed more support and a further junior from Simon Henderson's chambers was also instructed (Rebecca Keating). We were very busy indeed. There was no time to reflect on matters, or to read the vast number of documents that were in the trial bundles. I did not even have time to read all the documents exhibited to Coyne 1 and Coyne 2.

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BUGS AND REMOTE ACCESS

77. In Request 22.1, I am asked about my role in advising and representing POL in respect of the development of POL's case on the existence of bugs in Horizon and on remote access.

78. It is not possible for me to provide a comprehensive answer to this question because such an answer would require a detailed consideration of many documents, including the Judgment of Fraser J on the Horizon Issues, the expert reports and joint memoranda served by the parties and POL's written submissions for the Horizon Issues trial. I have not had time to do this. Indeed, I have not had time to look at most of these documents at all. In the following paragraphs, I set out my recollection of the position. These paragraphs give an overview which of necessity cannot include everything that might be considered relevant. A thorough account of the position would take an extremely long time to write.

Bugs

79. In order to develop POL's case on relevant bugs (i.e. bugs which were capable of adversely affecting branch transaction data), we (the counsel team) needed a clear account of what bugs had arisen in Horizon, how they had been detected and what had been done about them. There were a small number of bugs which the parties had known about for some time, and POL was able to obtain from Fujitsu documents and information about those bugs and how they were dealt with. Its case on those bugs was straightforward. But as for other bugs, my understanding was that POL's case was based on what Fujitsu told it. This was that there were likely to be other bugs, but in the normal course of things these were detected and fixed and their consequences were identified and remedied.

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It was also that Horizon system was designed and operated by Fujitsu in a way that ensured that there were no systematic flaws that remained hidden in the system and so had a lasting adverse effect on branch data.

80. The expectation was that these points would be substantiated once disclosure was given of the relevant Fujitsu documents and parties' experts had gone through those documents.

81. The experts went through the disclosed documents and each of them identified a number of bugs that were capable of affecting branch transaction data. These bugs were listed in a table jointly prepared by the experts. That table became a primary focus of analysis and argument at the trial. It covered 28 or 29 bugs (some of which included more than one variant). For each bug, the table identified the year of the bug, identified the evidence supporting the existence of the bug and summarised the experts' respective views on whether it was a bug, its nature and effect, and how it had been dealt with.

82. As I recall, Dr Worden's view was that not all the bugs in the bug table were bugs, or bugs which could be said to have an adverse effect on branch transaction data. But many were, and in relation to those he essentially took the view that the systems in operation were effective at identifying such bugs, fixing them, identifying their consequences and remedying those consequences.

83. My recollection is that, once the bug table was produced, it and the documents it referred to became the principal battleground between the parties. But there was also some witness evidence on bugs, including from Torstein Godeseth, Fujitsu's Chief Architect on the Post Office Account, and Stephen Parker, who was Fujitsu's head of Post Office Application Support.

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84. Thus, in relation to most of the bugs that were in issue, POL's case was developed in the course of the expert evidence processes. As I recall, the case became very much more specific, but its essential thrust remained the same.

85. Once the issues between the parties on these bugs were identified, my role was to put POL's case on the relevant bugs to Mr Coyne in cross examination, to oversee (and take part in) the process of drafting written closings which addressed the evidence and to address the Judge in oral closings. For these purposes, I had the assistance of detailed notes prepared by WBD containing a detailed analysis of relevant bugs. I may also have had the assistance of call with Mr Parker, although I see from FUJ00155196 that the call may have been about remote access only. I discuss this call below.

86. WBD's notes were of particular help to me when preparing my cross examination of Mr Coyne. My brief review of WBD's note on remote access (considered below) reminds me that these notes were based on analyses of the documents on which Mr Coyne relied for his opinions and of other evidence in the case, together with insights and explanations provided by a team of people at Fujitsu and also some notes from Dr Worden. I see from POL00140306 that it included comments from Gareth Jenkins, whom I discuss below.

87. I relied heavily on these notes in formulating the points that were put to Mr Coyne in cross examination and to the Judge in closing. I found them persuasive. My view was that the information and analyses they contained, together with the other material referred to above, provided substantial support for the detailed case that was asserted in POL's written and oral closings.

Remote Access

88. In relation to remote access, POL's case was also developed in the course of the witness and expert evidence processes. As with POL's case on bugs, its

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case on remote access did not change radically, although it became more detailed, particularly in relation to the controls applied to privileged Fujitsu users who had administrator access and the audit records of the occasions on which they exercised such rights. My recollection is that Dr Worden's evidence was consistent with the case pleaded in the Generic Defence and Counterclaim. It may be worth noting that, even if privileged users could alter branch transaction data remotely without any risk of detection, POL contended that it would never have been in their interests to do so. POL's case was that it was unreal to suggest that, over two decades, some of Fujitsu's senior employees had abused their privileged access to create large (or small) shortfalls in the branch accounts of a large number of SPMs.

89. From my perspective, during the run up to the Horizon Issues trial the most striking development that occurred in relation to remote access was the claimants' service of Mr Roll's witness statement, which made claims about the widespread use of remote access to alter branch transaction data during the early years of Horizon. These claims were impossible to reconcile with anything that I had previously been told or any of the documents that I had seen. Not surprisingly given the lapse of time, Mr Roll's statement was expressed in very general terms. This made it difficult to deal with, but it did have to be dealt with. It was therefore necessary to call evidence from Mr Parker, who had worked with Mr Roll in those early years. Mr Parker fundamentally disagreed with Mr Roll's account and suggested that he might be confusing other remote processes with remote access to alter branch data.

90. Again, my role was to put POL's case (including Mr Parker's evidence) on remote access to Mr Roll and to Mr Coyne in cross examination, to oversee (and take part in) the process of drafting written closings and to address the

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Judge in oral closings. Again, I had the assistance of a detailed note prepared by WBD on remote access. I also had the assistance of a call with Mr Parker in May 2019. I see from FUJ00155195 that, on 22 May 2019, Mr Parker was sent an email which attached a document in anticipation of that call (FUJ00155196). This document was the note that WBD had prepared to help me on remote access.

91. FUJ00165648 indicates that my call with Mr Parker was postponed. My diary suggests that it in fact took place on 24 May 2019. The call would have been to help me prepare for my cross examination of Mr Coyne on remote access. It took place during the adjournment of the Horizon Issues trial resulting from POL's recusal application. By that stage, POL's factual evidence had all been given: Mr Parker was POL's last factual witness, and he gave evidence on 11 April 2019 (day 12 of the trial).

92. Again, my view was that the information and analyses contained in WBD's notes and the other material referred to above provided substantial support for the detailed case on remote access that was asserted in POL's written and oral closings.

HORIZON ISSUES WITNESS EVIDENCE

93. Turning to my role in the preparation of POL's witness evidence, this was not a case in which counsel gave detailed advice on who should be giving evidence on POL's behalf and the points that should be covered in their witness statements. However, counsel did advise on the question whether POL should call Gareth Jenkins as a witness.

94. For reasons which will not need to be explained, Gareth Jenkins was an obvious candidate to give evidence for POL. However, I was aware from WBD

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that there were doubts about his reliability: he had given expert evidence about the Horizon system in several criminal trials which was now said to be false. I recall Andy Parsons telling me that he had set up a meeting with a solicitor who had acted for POL in one or more of these trials and that I needed to hear what this solicitor had to say. I do not remember the solicitor's name or his firm, but I see from Andy Parsons' email to me and Simon Henderson of 7 September 2018 that two solicitors came to my chambers, Simon Clarke and Martin Smith (WITN10500105). I did not know either of them.

95. My recollection of this meeting is not clear – indeed, until I saw the above email I had thought that we had a telephone call. But the upshot was that I was told in emphatic terms that Mr Jenkins was not a reliable witness. The solicitors said that Mr Jenkins had given misleading evidence. They suggested in no uncertain terms that I should be very cautious about calling him as a witness.

96. POL was a defendant to a substantial civil claim in which the reliability of Horizon was in issue. This was adversarial litigation. POL's case was that Horizon was reliable and, in order to prove that case, the witness evidence that it called needed to be reliable. As counsel for POL, it was my duty to promote POL's interests by all proper means, and it would not have been consistent with that duty for me to advise POL to call an unreliable witness.

97. My conclusion was that, if POL needed a witness from Fujitsu, it needed a witness who could be relied upon, not a witness who could not. If POL did not call Mr Jenkins, the claimants would obviously turn this point to their advantage, inviting the Judge to draw adverse inferences against POL on important issues. But on the basis of what I was told, it was clearly in POL's interests not to call him.

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98. Fortunately, Mr Godeseth was available. His knowledge of Horizon across the entire relevant period was not as great as Mr Jenkins', but I was informed that it was substantial.

99. I see from POL00134909 that, after the end of the Horizon Issues trial and before judgment, Simon Henderson and I had a conference with WBD and Herbert Smith Freehills ("**HSF**") in which I addressed various questions asked by Alex Lerner, an assistant at HSF. I have some recollection of a call or meeting of this sort but not of what was said. POL0034909 is HSF's attendance note of the conference. As to that note:

    (1) I see from page 1 that I was asked whether, at the Horizon Issues trial, the claimants advanced a case that POL suppressed evidence regarding bugs.

    (2) Pages 9 and 10 record my answer to this question. I see that part of my answer related to the decision not to call Mr Jenkins as a witness. Essentially, I said that the claimants had asserted that the fact that POL did not call Mr Jenkins was suppression, and I explained why he was not called.

    (3) Although the terms in which I spoke are rather more colourful than I would use in a witness statement, the reasons I gave for not calling Mr Jenkins were the reasons I have set out above. He would have been an unreliable witness and at trial the claimants would have been able to undermine his credibility.

100. While on the subject of Mr Jenkins, I note that Request 29 asks me to provide an account of what I was told about him and what my impression of him was. My recollection of what I was told about Mr Jenkins is set out above. I do not recall having my own impression of him.

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101. Turning to the witness statements on which POL relied for the purposes of the Horizon Issues trial, these were served in several rounds: the first round of evidence was in late September 2018, and the second was in mid November 2018. POL also served some additional evidence in January and February 2019, I think without permission. The further rounds of evidence reflected the fact that new points were raised in the claimants' witness and expert evidence, and also the fact that POL had discovered that some of its existing evidence needed to be corrected or clarified.

102. For example, following receipt of the claimants' first round of witness evidence and Coyne 1, it was necessary to respond to Mr Roll's first witness statement ("**Rolls 1**") and also to provide Fujitsu's comments on a number of KELs which Mr Coyne had identified in his report. The natural person to do that was Mr Parker. He therefore made his first witness statement ("**Parker 1**"), which was included in POL's second round of evidence (POL00000692).

103. All the witness statements on which POL relied were drafted by WBD, and their drafts were circulated to counsel for our comments. Our comments covered a wide variety of matters, including: asking questions; requesting clarification; identifying obvious errors; querying points which appeared not to be consistent with other statements, documents, or our understanding of the position; drawing attention to the implications of the drafting which may not have been intended, asking that sources of information be identified; suggesting deletions of unnecessary text; and identifying additional points that the witnesses might address.

104. In relation to the statements that were served in September, I believe that drafts were shared with me and Simon Henderson. However, they were shared only a few days before they were due to be served. I was asked to comment on them

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and I did so as best I could in the time I had. I believe that the draft Godeseth statement on which I was asked to comment was sent to me the day before it was due to be served and my comments on it were hurried.

105. In relation to the statements that were subsequently served, my recollection is that Simon Henderson and I often provided joint comments, and that we were generally acting under significant time pressure. As I explain in paragraphs 70 to 76 above, during this period, the whole of POL's legal team was extremely busy.

106. It is also my recollection that more than a few of the draft statements with which were provided to counsel were unclear, difficult to follow and/or raised new questions. These drafts included passages which were poorly explained or incomplete and passages which failed to make it clear that what was being said was based on information provided by other parties. They sometimes appeared to contain contradictions. And in relation to points on which I believed that I had an understanding, they sometimes said things which threw my understanding into disarray and appeared to require me to reorganise my thoughts.

107. This was frustrating, not least because we did not have a great deal of time in which to deal with problems or bottom questions out.

108. To the best of my recollection, the biggest difficulties were with Fujitsu. My perception from the draft statements I was seeing was that they sometimes found it hard to give clear answers, and sometimes appeared to express themselves in ways that raised more questions than they answered. In the normal way, all interviews with actual or potential witnesses were conducted by WBD. But the problems encountered with the Fujitsu witnesses were such that, rather than spending time that we did not have to send draft statement back and forth between Fujitsu, WBD and counsel, there was an occasion on which we

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felt it necessary for Simon Henderson to meet with Fujitsu with a view to achieving clarity. I imagine that this is the meeting that Jonny Gribben refers to in his email of 15 November 2018 (POL00363816).

109. These are the sorts of problems which would have been what I had in mind when, in my email to Andy Parsons dated 18 November 2018 (POL00363851), I referred to facing "striking difficulties" in getting clear instructions from POL and Fujitsu. I see that I was there talking about the difficulties in obtaining the factual instructions that were needed to produce POL's witness statements in accordance with the tight timetable within which we were working.

110. The documents with which I have been provided illustrate the role I played in the preparation of POL's witness statements. In the following paragraphs, I provide some examples in relation to the two witnesses with whom I have been particularly asked to deal, namely Mr Godeseth and Mr Parker.

111. In relation to Mr Godeseth:

    (1) I see that, on 23 February 2019, I queried whether Mr Godeseth might need to correct some of the things that he had said about remotely deleting transaction data in his first statement ("**Godeseth 1**") (POL00000682). In an email from Andy Parsons (POL00367005), I was told that Mr Godeseth had confirmed that Fujitsu did not remotely delete transaction data (see also POL00364020). Andy Parsons suggested that the point be clarified by the giving of an explanation of the distinction between transaction data and other data. I agreed. I believe that this explanation was given in Mr Godeseth's third statement (POL00000686) ("**Godeseth 3**").

    (2) I see from POL00363955 that, on 18 February 2019, I sent Andy Parsons two emails attaching some notes, the first of which identified points on

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which the counsel team wanted supplemental evidence to be prepared and the second (POL00363956) identified points which we thought that Mr Godeseth might need to correct or consider in the light of Mr Coyne's second report ("**Coyne 2"**) and of the claimants' supplemental evidence. WBD would have raised these points with Mr Godeseth when drafting Godeseth 3.

(3) I see from POL00364056 that, on 27 February 2019, I provided comments on the current draft of Godeseth 3 to Jonny Gribben of WBD. I also see that Jonny Gribben provided some responses to my comments and that I provided some responses to his responses in capitals. I note that, in my comments, I indicated that if Mr Jenkins was to be the source of any information which Mr Godeseth relied on, Mr Jenkins needed to be identified in the witness statement. I added that I would prefer his statement not to be based on such information (for the reasons indicated above). I believe that the relevant paragraphs of this draft (paragraphs 26.1 and 26.2) were omitted from the final version of Godeseth 3. Mr Parker dealt with these points without needing to rely on any source of information (see paragraphs 17.1 and 17.2 of Parker 3 at POL00000689).

(4) I also see from POL00364056 that, on 28 February 2019, Jonny Gribben told me that Mr Godeseth now considered that, with enough access rights a privileged user could inject transaction data and asked me whether this should be made clear in Godeseth 3. I imagine that I advised that the point should be made clear and I see that it was, in paragraph 14 of Godeseth 3.

112. In relation to Mr Parker:

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(1) As I have already explained, Parker 1 responded to Mr Roll's statement, provided some information on KELs and Peaks and attached a table addressing a number of KEL's which Mr Coyne had relied on in Coyne 1. As to this table:

(a) I see from paragraph 66 of Parker 1 that the table was said to contain the initial explanations produced by a team from Fujitsu's SSC.

(b) I also see that, on 12 November 2018 (four days before Parker 3 was finalised and served), Jonny Gribben sent an email to Simon Henderson and me in which he said that the relevant KELs were being analysed by Mr Parker's team plus Mr Jenkins (POL00363775). In my reply, I balked at this, reminding him that as we had decided that Mr Jenkins should not be a witness, he should also not be a source of information. I pointed out that where Mr Jenkins was acting as a source, the claimants would know this (i.e. because sources have to be identified). I expressed dissatisfaction at the fact that Mr Jenkins kept popping up on technical questions and I asked that his involvement be limited as much as possible.

(c) Jonny Gribben replied by confirming that WBD were limiting Mr Jenkins' involvement as much as possible but that if Mr Godeseth or Mr Parker covered the bugs they still needed to speak to Mr Jenkins.

(d) Parker 1 did not say that, in the course of producing the table, Mr Parker had spoken to Mr Jenkins. If explanations contained in the table had been produced by Mr Jenkins rather than the team from the SSC, this should have been made clear. But it was not made clear. On the basis of these documents, I believe that I bear responsibility for this. I sincerely regret that it happened.

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(2) I see from email exchanges at POL00366967, POL00366968, POL00133074 that, shortly after Mr Parker's second witness statement was served ("**Parker 2**", at POL00000687), Fujitsu informed WBD that the statement contained an error, in a footnote to paragraph 35 dealing with Giro payments. Jonny Gribben raised this with counsel, asking whether a short letter should be written correcting the relevant footnote. Simon Henderson and I both expressed concern. I was particularly concerned because it appeared me that this error undermined the point that Mr Parker was making in paragraph 35. I expressed the view that, if I was right, the point was "horrifying". However, I did not know whether I was right, and I advised that we needed to know the true position. I also said that this should be escalated to the highest level of Post Office and Fujitsu.

(3) I see from the email exchanges at POL00364052 and POL00364056 that, in late February 2019, Jonny Gribben sent me a draft of Mr Parker's third statement for review ("**Parker 3**"). I responded with an email setting out my comments on that draft. These included a comment on paragraph 20, which explained the true position in relation to Giro payments. I said that the paragraph was confusing and "frankly evasive". I explained that we had discussed this before and that, if my understanding of the position was correct, paragraph 20 should clearly state that the SSC could use remote access powers to make payments in normal bank accounts.

(4) In his reply, Jonny Gribben simply said that the footnote to para 35 was incorrect and paragraph 20 explained why. He added that Andy Parsons was going to speak to me about this.

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(5) I do not have any recollection of this incident or of what Andy Parsons would have said when he spoke to me. But I see that, in Parker 3 (POL00000689), paragraph 20 was not altered.

113. In these emails, I discern exasperation on my part. This is consistent with my recollection. At this time, we (counsel) had a great many things to do. I would not say that fire-fighting issues of this kind was a distraction, since the preparation of witness evidence is important. But the trial was looming and, in order to get ready for it, we needed to master a vast number of contemporaneous documents and substantial expert evidence, to draft our opening submissions and to prepare for cross examination. Particularly in January and February 2019, the need to deal with numerous issues arising in the preparation of yet more witness evidence took me away from these tasks.

114. The fact that witnesses needed to correct statements that they had previously made was particularly troubling. I see from an internal Fujitsu email that the day before Mr Parker gave evidence, Simon Henderson, I and WBD met with him with a view to checking that that he was comfortable with everything that was said in his three statements (FUJ00205178). I do not recall this meeting, but it is worth noting that it is not my practice to meet witnesses for reasons of this sort. It would have reflected a concern on my part that further points might need to be corrected and a determination to ensure that, if there were such points, they could be corrected by Mr Parker when giving evidence in chief. I see that some points did need to be corrected, and I imagine that these are the points set out in the corrections document at POL00000698.

115. For completeness, I note that Simon Henderson and I attended a site visit at Fujitsu's offices in Bracknell on 4 February 2019. I believe that the purpose of the visit was for Fujitsu to provide us with a technical briefing on the Horizon

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documents and how to use them. We may also have used the opportunity to discuss questions arising on the Coyne 2 expert report that had just been served. I do not have a clear recollection of the meeting, but I am sure that it was not to discuss the form or content of any evidence to be given by any Fujitsu witnesses.

HORIZON ISSUES EXPERT EVIDENCE

116. As for my role in the preparation of POL's expert evidence, I believe that I first met Dr Worden on 27 April 2018. This was at an early stage of his investigations, and at this stage the primary focus was on procedural matters such as requests for further information, protocols governing how the experts should interact with each other and so on.
117. On 13 June 2018 (WITN10500106 to WITN10500108), Andy Parsons sent Simon Henderson and me two documents produced by Dr Worden: a "Foundations Report" containing the basic elements which he proposed to build out into a full report and also a document entitled "Quantitative Approach to Horizon Bugs", in which he explained some ideas he had about how to arrive at estimates, for each error identified in Horizon, of the possible net impact on the claimants' branch accounts and, for all possible errors in Horizon, of their largest aggregate impact on those branch accounts.
118. The Quantitative Approach document consisted of a proposal as to how to estimate these numbers from the sort of evidence that was available. Dr Worden indicated that he would appreciate feedback on this proposal.
119. We had a meeting to discuss the Foundation Report and the Quantitative approach document. I do not have a clear recollection of this meeting, but we would have had questions to ask and comments to make about various aspects

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of these documents and about Horizon. I recall being intrigued by Dr Worden's proposed Quantitative Approach, but also a little anxious. Dr Worden was enthusiastic about the idea of approaching the case as engineer would, using statistical techniques. My anxiety was based on the fact that this approach was not what the parties or the Judge had in mind when giving directions for expert evidence. What they had in mind was a qualitative analysis of the sort indicated in the Foundation Report, in which explanations and analyses were given of the functionality, use and architecture of the Horizon system, the checks built into the system, and so on. I was doubtful whether the Judge would pay any regard to Dr Worden's proposed quantitative approach. But on the basis that the qualitative analysis remained the primary focus of Dr Worden's work, I had no objection to his including the quantitative analysis as a helpful back up to his qualitative analysis.

120. The extent to which and way in which Dr Worden should rely on the quantitative approach became a matter of debate between counsel and Dr Worden. As I recall, he was enthusiastic about his approach, and seemed to think that it should be put at the forefront of his analysis because it provided a direct way of demonstrating that the claimants' claims about the losses they had suffered through Horizon could not be right. On the other hand, we (counsel) took the view that this was not one of the questions for which permission to give expert had been given. We thought that, if it was to be included, it should be included as a back-up, in the way I describe above.

121. On 15 July 2018 (WITN10500109 and WITN10500110), Andy Parsons sent us a summary which Dr Worden had prepared of the opinions that he had by then been able to form. During July and August, we had two meetings with Dr Worden in which we discussed how his views were developing and our queries

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and also various procedural questions arising such as information requests and whether the Horizon issues should be amended.

122. My recollection is that the reliance which Dr Worden wanted to place on his quantitative analysis was a running issue between us, at these and subsequent meetings. Our discussions on this issue are alluded to in a document which has been provided to me (POL00006471). I do not recall seeing this document before, but I see that it is described as a "Noting Paper" to POL's Steering Group Meeting and that it is dated 28 November 2018 (9 days before Worden 1 was ultimately served). As to this paper:

(1) Paragraph 1.4 refers to "lengthy debates" between Dr Worden and the legal team about how best to communicate his central conclusion to the Judge. The only lengthy debate I recall concerned the nature and extent of Dr Worden's reliance on his quantitative analysis. I see from Section 3 of the paper that this was the debate that the paper was alluding to.

(2) Section 3 refers to numerous calls and conferences and to over 20 hours of debate We did have a number of meetings with Dr Worden and we would probably have had some calls also: as his work progressed, Dr Worden's report became quite long and complicated. There was a lot of detail for us to digest and discuss.

(3) Section 5 reminds me that we had other anxieties in relation to Dr Worden's quantitative approach. However, Dr Worden stuck to his guns. He is a strong-minded individual who has faith in his own judgment and is determined to take his own way. This is a commendable attitude in an expert, although it caused POL's legal team some anguish when, in the second half of the Horizon trial, he insisted on producing to the Court a third report ("**Worden 3**"). He did this in the knowledge that I and the rest

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of POL's legal team would have preferred him not to do this and in spite of the fact that, on our advice, POL did not seek the Judge's permission to rely on the report.

123. In the event, our anxieties about Dr Worden's reliance on the quantitative approach were vindicated: as I recall, Mr Coyne refrained from engaging with the quantitative analysis and, in the Horizon Issues judgment, the Judge did not accept the relevant parts of Dr Worden's reports or find them helpful.

124. I see from POL00142397 that, on 7 September 2018, Andy Parsons sent us an outline of the report that he intended to produce and that, on 12 September 2018, I responded in an email which set out my and Simon Henderson's combined thoughts on this outline. I note the comments made about the quantitative approach in paragraphs 5.e. and 5.f. of the email.

125. I also note that paragraph 8 of the email asks how and where remote access would be addressed. My recollection is that Dr Worden thought that the claimants' case on remote access was unreal. I do not wish to put words into his mouth but my perception of his view was that, in the real world, there was no possibility of Fujitsu privileged users engaging in a scheme to evade Fujitsu's controls so as to create false shortfalls in SPM accounts. I sympathised with that view, but my recollection is that I would have preferred him to have provided a fuller analysis of the theoretical possibility of such rights being abused in that way, of the controls guarding against such abuse, and of the records that would be created if it had been done.

126. We had a further meeting with Dr Worden on 21 September 2016 and I see that, on 20 September 2018, Lucy Bremner sent us an agenda for that meeting (WITN10500111). The email included a document containing Dr Worden's responses to our comments (WITN10500112). These were helpful in enabling

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us to understand his approach and to ensure that he would cover all the points that we thought relevant, if and to the extent that he also thought them relevant.

127. Thereafter, Dr Worden would have been busy drafting his report. My diary suggests that we had two further meetings with him before he finalised Worden 1 in early December 2018. In the meantime, he provided drafts of sections of his report for Simon Henderson and me to comment on. Andy Parsons' Noting paper at POL00006471 reminds me that he provided us with sections 6 and 7 of his report first.

128. Turning to Worden 2, this was served on 1 February 2019. I have had not have time to skim through my many emails during this period with a view to reminding myself of the role that Simon Henderson and I played in relation to that report. We would have commented on drafts provided by Dr Worden, and may have met with him, either in person or on the telephone. My diary suggests that we had a meeting with him on 19 December 2018.

129. My diary also suggests that we (counsel) had the following meetings with Dr Worden and WBD during 2019: 7 February 2019, 11 February 2019, 28 March 2019, 4 April 2019, 16 April 2019 and 24 April 2019. As to these meetings:

    (1) The February meetings took place after Worden 2 had been served but before the trial started. I suspect that the meetings would have been to help us understand the significance of and deal with Coyne 2, which had been served on 1 February. But there may have been other issues to discuss, such as a request for further information by Mr Coyne.

    (2) I suspect that the primary purpose of the March and April meetings was to help me prepare for my cross examination of Mr Coyne. There would also have been discussions about Dr Worden's proposed Worden 3 (see paragraph 122(3) above).

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In addition to these meetings, my diary indicates that, on 1 May 2019, I had a "call with HSF and Rodric re discuss Worden @ HSF Offices". I have no recollection of that call.

HORIZON ISSUES DISCLOSURE

130. Regarding my role in advising and representing POL in respect of Horizon Issues disclosure, I had to respond to numerous problems that blew up in relation to this disclosure. These included more than one occasion when, on the basis of instructions which I had been given, I made factual submissions to the Court which I subsequently discovered to be false. Fraser J's Horizon Issues judgment has a section dealing with disclosure. I have looked at that section with a view to refreshing my memory about these problems. I refer to Section F of his judgment (paragraph 559 to 653) for a summary of the underlying facts.

131. As is usually the case in litigation of this sort, the disclosure process in the GLO Proceedings was managed on POL's behalf by WBD. This would have entailed a substantial level of cooperation, not only between WBD and POL but also between WBD, POL and Fujitsu. Counsel was not involved in these arrangements. However, we did become involved once problems had arisen. In these situations, we would help WBD draft letters to Freeths in which problems would be revealed and solutions proposed. This would sometimes include making suggestions as to the sort of solutions to propose. In providing help of this sort, we proceeded on the basis of the facts as we understood them. Our understanding would have been based on our instructions

132. Request 22.2 asks in particular about the disclosure of the PinICL, Peak and KEL databases in particular. I discuss the disclosure of KELs and Peaks below. I have no recollection specifically in relation to PinICLs.

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KELs

133. The story of POL's disclosure of KELs is summarised in paragraphs 573 to 614 of the judgment. It is an extraordinary story.

134. My original instructions were that the KEL database (the "**Known Error Log**") was irrelevant and not within POL's control. Its irrelevance was asserted more than once in WBD's correspondence with Freeths. And in the Generic Defence and Counterclaim, we (Owain Draper and I) pleaded both that it was irrelevant and that it was not in POL's control. These were my instructions at the first CMC, which is discussed in paragraphs 585 to 591 of the judgment. I see from paragraph 586 that Andy Parsons had made a witness statement for the CMC which maintained both of these points. That reflected my understanding of the position at that time.

135. I see from paragraph 591 that, at the CMC, I suggested that the parties' experts be permitted to inspect the Known Error Log so that they could determine whether it was relevant. I do not recall making that suggestion, but I do remember the outcome: the experts determined that the Known Error Log was definitely relevant.

136. I remember being very surprised when I learned about this. My previous instructions would have been based on what Fujitsu had told POL. It was hard to understand how Fujitsu came to give such a misleading account on such a fundamental point.

137. Once it was established that the Known Error Log was relevant, arrangements were made to ensure that it was disclosed to the claimants.

138. From that point, I do not recall any objection to disclosure being suggested on the basis that it was not within POL's control. I do not remember what was said about control around this time, either within POL's legal team or to Freeths. But

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POL and its legal team clearly took the view that, if it was relevant to the Horizon Issues, it would be wrong to resist its disclosure. Fujitsu did not object.

139. I see from the judgment that POL's previous claim that the Known Error Log was not in POL's control were raised at the trial and that, after the trial, the Judge invited the parties to lodge further written submissions on whether, when POL initially took that point, it had been entitled to do so. By that stage, the governing contract between Fujitsu was available to the parties and the Court. This provided for POL to have quite wide rights of inspection of Fujitsu documents. However, we (counsel) took the view that there was a respectable argument that those rights did not extend to the sort of trivial and irrelevant document that POL had believed the Known Error Log to be at the relevant time (i.e. during the period leading up to and including the first CMC). The Judge was not impressed by that argument. But in any event, this was long after the event. As I explain above, at my suggestion, the Known Error Log had been inspected by the experts in the previous year and, as a result, many thousands of KELs had been disclosed.

140. I see from paragraphs 612 of the judgment that further KELs were disclosed in respect of specific bugs in November 2018, and that further KELs were disclosed during 2019. Subject to what I say below, I have no recollection as to why the November KELs were disclosed then, or as to why further KELs were disclosed during the trial (although I see a reference to deleted (meaning archived) KELs being disclosed in January 2019).

141. When documents were disclosed late, it was usually because POL/WBD only became aware of their existence late. When this happened, WBD would inform Freeths of their discovery in correspondence and arrangements would be agreed for their disclosure. Counsel was generally asked to comment on the

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drafting of the relevant correspondence. In relation to matters of this sort, our role was largely reactive.

142. After the trial, it became necessary to give disclosure of further documents that had been discovered. Some 5,000 KELs were disclosed after the trial. The circumstances surrounding this disclosure is described in paragraphs 627 to 630 of the judgment. It is another extraordinary story.

143. As can be seen from those paragraphs, these were previous versions of KELs which had been superseded by later versions. The later versions had been disclosed but Fujitsu had informed POL/WBD that it did not retain the earlier iterations. Only after the trial did POL/WBD discover from Fujitsu that it did retain the earlier versions after all.

144. This was obviously a serious matter. Prompt steps were taken by POL to inform the claimants about what had happened, to inform the Judge, and to ensure that earlier iterations of relevant KELs were disclosed as quickly as possible. POL Counsel would have advised on the steps to be taken and the letter that was sent to Freeths and the email that was sent to the Judge. I see that, in paragraph 631 of the judgment, the Judge explains that POL essentially left it to the claimants to decide whether there should be any further submissions or evidence. I also see that he described this approach as pragmatic and sensible.

145. I see from POL00043141 that, soon after it discovered the existence of these additional KELs, POL was considering whether to commission Deloitte to audit the completeness and accuracy of all the documents which had been provided by Fujitsu. Simon Henderson and I were asked to advise on the merits and risks of doing so and on the question whether litigation privilege would apply to Deloitte's audit work. In a note, we indicated what we saw as the benefits and

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the risks of undertaking any audit. We also advised that we saw the question whether the audit would be privileged as being of little practical importance.

Peaks

146. The judgment discuss Peaks in paragraphs 615 to 626. I see from paragraphs 615 and 616 that the claimants requested these documents in July 2018, that 218,0000 Peaks were disclosed on 27 September 2018, that a further 3,866 were disclosed on 25 October 2018 and that other Peaks were disclosed in May 2019.

147. I do not recall much about the Peaks that were disclosed late. There were many occasions when additional Fujitsu documents were found after the relevant documents should have been disclosed. To say that these problems were frustrating would be an understatement, but this was not something that was within counsel's control. As I explain above, we became involved after the documents were found.

148. I see from paragraph 616 that, when the May 2019 Peaks were disclosed, the Judge was told in submissions that Fujitsu had discovered an old database that had been copied more than ten years previously, and that POL had speedily provided the contents of this database to the claimants. I would have made those submissions. They would have been based on instructions from WBD. I would have believed my instructions.

149. Paragraph 617 indicates that, soon after these Peaks were disclosed, it was revealed that one of them was dated 21 August 2019. It was thus clear that, on instructions, I had unintentionally misled the court. As will be clear from the rest this statement, this was not the first occasion on which such a thing happened, and nor was it the last. It is a horrifying experience.

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150. Subsequently, Andy Parsons made a witness statement explaining what had happened. In the time available, I have not had an opportunity to read that statement.

Other Documents

151. Paragraphs 616 and 617 of the judgment discusses the disclosure of certain OCPs in January 2019 and certain OCPs in April 2019. I have no recollection of the disclosure of these documents.

152. Paragraph 622 of the judgment criticises POL's approach to Release Notes. I do not have a recollection as to what (if any) directions were given in relation to Release Notes, or of what documents were available to POL or of what was said or done in this regard.

153. Two matters that are within my recollection are the matter of redactions and the disclosure of Royal Mail audit documents. These are dealt with in paragraph 565 of the judgment.

154. When conducting disclosure WBD applied redactions to documents for reasons such as privilege. At the trial, it appeared that similar documents had been redacted in different ways. When one compared documents which had been redacted more heavily with those which had been redacted less heavily, it seemed that some redactions were not justified. My recollection is that, when this issue became apparent, junior counsel reviewed the relevant documents to ensure that they were properly redacted. After that, I was asked to perform a review, and I duly did so, also providing a short note which explained to the judge and to the claimants the approach that I had adopted.

155. During the trial, a question arose as to POL's failure to disclose some Royal Mail audit reports that the claimants wanted. On instructions, I informed the court that the Royal Mail had refused to produce these reports to POL for

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onward disclosure to the claimants. I then discovered that the Royal Mail had not even been asked to provide them. When I discovered this, I made haste to correct the position and to apologise. Not surprisingly, POL was ordered to provide a witness statement explaining how this had come about.

POL'S DECISION MAKERS

156. As I explain in paragraph 24 above, during the GLO Proceedings, it was my impression that the importance of this claim meant that decisions on significant issues were considered by senior management, rather than just by POL's in-house lawyers. As the Horizon trial approached, I attended some conferences with members of the board. I discuss these below.

CONFERENCES WITH POL'S LEGAL DEPARTMENT OR THE BOARD ON THE HORIZON ISSUES

157. In Request 31, I am asked to describe any conferences or significant discussions I had with POL's legal department or the board or POL's decision makers on the issues set out in Request 22. According to my diary, I had the following conferences on the following dates:

(1) On 7 February 2019, Owain Draper, Simon Henderson and I attended a conference in my chambers with several WBD people, Jane MacLeod, Rod Williams, Angela Ven den Bogerd and Mark Underwood. I do not recall this conference, but presume that we would have been discussing things such as how we saw the merits now that supplemental expert reports had been exchanged, how our preparations for trial were going, and what further steps could be taken in order to be ready for the forthcoming PTR on 14 February 2019.

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(2) On 21 February 2019, I had a conference with the "Board GLO Sub Committee". This is the meeting for which I have been provided with a minute (POL00006753). My diary states that it was a call but the minute suggests that I was physically present and this is consistent with my recollection. I do not have a detailed recollection of the meeting but such recollection as I do have is consistent with the minute. I provided a high level briefing. It was my view that, on the question of Horizon's reliability, POL had good arguments and, although some aspects of the system would probably be criticised, I still felt cautiously optimistic. As I recall, the committee members were concerned about the impact of an adverse judgment on its ability to operate its business and were anxious to do what they could to mitigate the risks to the business if such a judgment was given.

158. My diary does not identify any further meetings with POL but I recall attending a meeting with the same committee after the trial had finished and I see from POL00006752 that this meeting took place on 20 June 2019. My recollection is that I provided another high level briefing: I explained that POL's witnesses had not performed well but that, in my view, Mr Coyne had accepted important parts of POL's case in cross examination. My belief was that the evidence showed that Horizon was a robust system, but I was concerned about the view that the Judge appeared to take. My briefing was short. Indeed, I recall feeling that it was cut short by the chair before I had finished discussing my impression of the Judge's attitude.

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THE ADEQUACY OF MY INSTRUCTIONS

159. By this time, I had a negative view of the adequacy of my instructions. I summarise the reasons for this in the following paragraphs.

160. First, as I explain in paragraphs 93 to 114 above, I found the process by which the witness statements were produced unsatisfactory. Quite apart from the problems I discuss in those paragraphs, the draft witness statements with which counsel were provided often failed to grapple with the issues properly, or even to do so in a way which was clear. WBD and counsel were both acting under considerable time pressure, and we did our best to provide WBD with comments on the drafts produced as quickly as possible. However, our comments were sometimes not addressed in the way one might have hoped. I remember being particularly irritated by the response to my desire to ensure that, where the witnesses relied on information provided by other persons, the sources of that information were properly identified. At times, it seemed almost as if WBD had forgotten the need to identify such sources. And several of the statements that were ultimately served contained evidence that was difficult to reconcile with other evidence, appeared contradictory and/or begged significant questions. Examples of such problems are given in my emails to WBD of 18 November 2018 (POL00363851) and 17 March 2019 (POL00268606).

161. Furthermore, my recollection is that, when several of POL's witnesses gave evidence (including Mr Godeseth), in cross examination they quickly accepted propositions which were inconsistent with the witness statements which they had signed. In view of the time that has elapsed since the trial, I cannot now give specific examples. But I have a strong memory of being astonished by some of the things that they said. I found it hard to understand how witness

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statements could have been prepared which appeared not to reflect the evidence they gave at trial.

162. It should be recognised that POL's evidence was drafted under a tight timetable and what was being sought was clear evidence on a large number of quite narrow and in some cases very technical questions whose full significance may not always have been appreciated. This made the task of producing witness statements very difficult. With the benefit of hindsight, I think that the WBT team dealing with witness statements would have benefitted from having some more experienced people on the team. But for me, the experiences I describe above were unprecedented.

163. So were my experiences in relation to disclosure. Again, the task of undertaking disclosure was a very difficult one. It covered a wide array of documents over a long period of time and I believe that, over that time, the relevant documents had been stored in different places and different ways, which made them hard to find. These difficulties were compounded by the fact that large numbers of important documents were held by Fujitsu. POL was dependent on Fujitsu to know what documents were relevant, whether they existed and where they could be found and, as the case progressed, it appeared that Fujitsu had let POL down in all these categories.

164. In these circumstances, my suspicion is that POL would have found it difficult to avoid many of the problems with disclosure that are identified in the Horizon Issues judgment. But that is by no means true of all of them.

MATTERS WHICH POL APPEARED TO CONSIDER IMPORTANT

165. In Request 33, I am asked to set out my views on what matters POL's board and its legal department appeared to consider important when determining its

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strategy, and to describe any divergence of views between legal representatives and/or member of the board.

166. To the best of my recollection, a matter which was of concern to POL in the early days of my involvement was the fact that it had made a number of false statements about the impossibility of remote access. As I was instructed, the relevant individuals at POL had made those statements on the basis of information provided by Fujitsu, and they only discovered the true position later. This had been discussed at my initial meeting with POL in May 2016. My advice was that POL should be open about the fact that, despite its previous statements to the contrary, remote access by Fujitsu was possible. WBD agreed with this approach and, as far as I recall, so did Jane MacLeod. But as I explain above, when it came to approve the letter of response, it appeared that POL's senior management was reluctant to be as overt on this point as its lawyers suggested.

167. I do not believe that this divergence in views between POL and its lawyers was one of substance or that it had any impact on POL's litigation strategy. The point was more fully ventilated in subsequent correspondence. Moreover, the GLO Proceedings proceeded on the basis that remote access was possible and that POL's previous statements to the contrary were wrong.

168. I do not recall other occasions in which POL failed or refused to take the advice of its legal representatives. In saying this, I am not suggesting that there were no such occasions over the whole period of my involvement in the GLO Proceedings. It would not surprise me if there were some occasions, even if only on small points. But on the limited number of documents that I have been able to review in the time available, I cannot bring any such occasions to mind.

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169. As to other matters which POL appeared to consider important, I recall a general concern that, if the claimants' case on the true effect of the SPM contracts and on the reliability of Horizon was correct, this could make it very difficult for POL to operate its business, to deal effectively with any shortfalls arising in any SPM accounts and to exercise its rights of termination and suspension when it felt that it needed to do so. From my perspective, this concern was not surprising. However, I am not sure what impact this concern had on POL's strategy in the GLO Proceedings. As far as I could tell, POL believed in its case as to the true effect of the SPM contracts, it believed that Horizon was reliable and it believed that, although remote access was possible, there was no realistic possibility of Fujitsu's privileged users having manipulated it so as to create false shortfalls in SPM accounts.

MY REFLECTIONS

170. In Request 34, I am asked to set out in detail my reflections regarding the advice I gave to POL and my involvement in this matter. And I am also asked whether, with the benefit of hindsight, I would have done anything differently.

171. Regarding the first question, I advised POL on innumerable points during the course of the GOL Proceedings and, given the limited time I have had to prepare this statement and the limited documents I have been able to review in this time, it is not possible for me to review all the advice I gave or the circumstances in which it was given.

172. At the times I gave any advice, I would have believed it to be the right advice. For example, as set out in the joint opinions at POL00103462 and POL00022669, the advice that I and my colleagues gave as to the proper meaning and effect of the SPM contracts represented my considered view. And

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at the end of the Horizon trial, I believed that the evidence showed that the Horizon system was robust and that there was no realistic possibility of Fujitsu privileged users abusing their access rights so as to create false shortfalls in SPM accounts: the counsel team drafted lengthy closing submissions on these points and I believed that those submissions were justified by the evidence. In his Common Issues and the Horizon Issues judgments, the Judge took a very different view. But that was not my view.

173. Turning to the second question, it is important to be clear about what hindsight is being referred to. I now know the outcome of the Common Issues trial and of the Horizon trial. Had I had the benefit of this knowledge when I was first instructed, I would have advised POL to settle the claims on a generous basis and to provide a full apology. However, I doubt that is what the question is aimed at.

174. I have the following reflections about the advice I gave and my involvement more generally.

(1) First, in relation to the early advice I gave on whether POL should continue implementing the recommendations of the Swift review:

(a) I remain of the view expressed in my emails to Andy Parsons of 8 June 2016 (POL00242402) that, as a defendant in substantial litigation, POL should protect its interests by ensuring that any investigations which were relevant to the litigation were undertaken pursuant to the litigation and under the protection of litigation privilege.

(b) However, I see that, in his letter to POL of 21 June 2016 (POL00006601), Andy Parsons indicates that my advice was that Mr Swift's recommendations numbered 4, 5, 6 and 8 should be

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implemented as part of the litigation. It might be thought that my advice was that the recommendations numbered 1, 2, 3 and 7 should not be implemented. As I have said, I do not recall giving any advice on this subject. But on the material now available to me, if I took the view that the recommended advice should not be obtained (recommendation 1), and the recommended reviews and analyses should not be undertaken (recommendations 2, 3 and 7), it is not obvious to me why I would have done so. However, it may be that some or all of this work had already been done (as Andy Parker's letter suggested on the first page), or it may be that I took the view that they should be done at a later stage, or it may be that the letter does not give a complete account of my advice.

(2) Second, if I had known how unreliable Fujitsu's information would be about the Known Error Log and about the retention of previous iterations of KELs, and if I had known how unreliable Fujitsu's efforts would be in locating and providing relevant documents in a timely fashion, at the earliest possible stage I would have advised POL to instruct a firm such as Deloitte to undertake a detailed review of the documents held by Fujitsu which were relevant to the litigation, of their significance and of the locations at which and form in which they were held. Had that been done, some of the problems I describe in paragraphs 133 to 152 above might have been avoided. But these problems did not become apparent to me until much later.

(3) Third, although Deloitte were instructed to investigate various matters, including remote access, they were not instructed to undertake a full scale, in depth review of Fujitsu's relevant documents with a view to ascertaining

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what relevant bugs had arisen in Horizon during its life and how those bugs were dealt with. Had that been done, POL would not have had to rely on Fujitsu's assurances in relation to these matters (as I think it did) in pleading its case in the Generic Defence and Counterclaim. Moreover, as the Horizon Issues trial approached, it would have been in a much better position to determine what factual witnesses should be called and what points they could address. However, this would have been an extremely expensive undertaking and, as I recall, Freeths were already complaining that POL was using a "shadow expert". And in any event, on the information that I had in 2016, I was not in a position to justify advice that it should instruct Deloitte to do a job of this magnitude, which would duplicate the work that would be done by POL's litigation expert when he was appointed.

(4) Fourth, in relation to the advice I gave on the meaning and effect of POL's SPM contracts, a significant part of my analysis was based on the view that the SPM contracts represented the true agreement between the parties and that they were business to business contracts and should be interpreted accordingly. I have reflected on the question whether I should have taken a different view on these issues. However, it was how I saw the matter. I was very surprised when I discovered that, in his Common Issues judgment, the Judge had found that the contracts did not represent the true agreement and that it was necessary to imply numerous terms, even including a term constraining the way in which POL could exercise its right to give notice of termination.

(5) Fifth, had I anticipated the problems that I describe in relation to POL's witness statements, I would have advised that the team of people which

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was responsible for identifying the witnesses to interview and on what points, and for undertaking those interviews and drafting the relevant statements, should include some more senior solicitors and possibly one or more experienced junior barristers as well. In relation to the first round of evidence, I would also have advised that, if possible, POL's witnesses be identified and interviewed and draft statements produced much earlier than they were.

(6) Sixth, as I explain above, I think that I should have ensured that Parker 1 indicated that Mr Jenkins had contributed in some way to the information contained in the table that was exhibited. And there may have been other points in relation to which Mr Parker's statements were not sufficiently clear about the sources of his information. I regret that I did not take a stronger stand on this.

(7) Seventh, this brings me to Mr Jenkins himself. Given what I had been told about his reliability, not relying on him as a witness seemed the obvious thing to do. However, as matters transpired, it turned out that Mr Godeseth was not as well placed as I had thought to give relevant evidence. Had I known that sooner, I would have advised that another witness or witnesses be called instead. As I recall, I was informed that there was a distinct lack of witnesses at Fujitsu who were willing and able to speak to the relevant issues, but by the time the problem became apparent, witness statements were about to be served and it would have been very difficult to change tack.

(8) I see that, in an email to Andy Parsons on 18 November 2018 (POL00363851), I wondered in the light of this problem whether the

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decision not to call Mr Jenkins should be reviewed. I find myself wondering the same thing now.

ANYTHING FURTHER

175. In Request 35, I am asked whether there is anything further of which I think the Chair ought to be aware. In this witness statement, I have done my best to answer the many questions I have been asked in the time available to me. In relation to the matters covered by those questions, I cannot think of anything to add of which the Chair ought to be aware. But I wish to take the opportunity to say how much I sympathise with those SPMs who have suffered as a result of flaws in Horizon. During the period in which that I acted for POL, my instructions were that the Horizon system was reliable. As I saw it, POL's case was advanced on substantial grounds. It was supported by an independent expert. It was my duty to present that case to the best of my ability, and that is what I sought to do.

I believe the content of this statement to be true.

GRO

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Index to First Witness Statement of Anthony John de Garr Robinson

No	URN	Document description	Date	Control Number
1	P140216	Email chain from Andrew Parsons to Anthony de Garr Robinson Cc Paul Loraine Tom Porter and Others RE Bates v POL - Commentary on Counsels Bundles [BD-4A.FID26859284]	01/06/2016	POL-BSFF-0195824
2	POL00242402	Email chain from Andrew Parsons to Anthony de Garr Robinson and others re Jonathan Swift	08/06/2016	POL-BSFF-0080465
3	POL00006601	Letter to PO from Bond Dickinson re group litigation	21/06/2016	POL-0017859
4	POL00110507	Letter from Andrew Parsons to James Hartley (Freeths LLP) Re Bates & Others v Post Office Limited	28/07/2016	POL-0108242
5	POL00003340	Letter from Andrew Parsons to James Hartley, re: Bates & Others -v- Post Office LImited - Generic Defence and Counterclaim	18/07/2017	VIS00004354
6	POL00031502	'Bramble' – Draft Report	31/10/2016	POL-0028404
7	WITN10500101	Email from Andrew Parsons to Anthony de Garr Robinson, Owain Draper and CC Amy Prime re. Draft Executive Summary	19/06/2017	WITN10500101
8	WITN10500102	Alan Bates & Others v Post Office Limited Privileged Users – Draft Executive Summary	19/06/2017	WITN10500102
9	POL00041491	Deloitte - Bramble - Draft Report.	01/09/2017	POL-0037973
10	POL00028928	Deloitte "Bramble" - Draft Report	19/01/2018	POL-0025410
11	POL00103462	Alan Bates & Others and Post Office Limited - Opinion on the Common Issues	10/05/2018	POL-0103045
12	WITN10500103	Email from Andrew Parsons to Anthony de Garr Robinson	27/07/2017	WITN10500103

WITN10500100

		ccing Amy Prime re: Remote Access Wording		
13	WITN10500104	Letter from Andrew Parsons to Mr K Hartley re Bates & Others -v- Post Office Limited - Claim Number: HQ16X01238.	30/11/2016	WITN10500104
14	POL00337340	Email from Amy Prime to Anthony de Garr Robinson, Owain Draper, Jonathan Gribben and others re Deloitte Report [BD-4A.FID26896945	14/11/2016	POL-BSFF-0163551
15	POL00024971	Meeting of 14/11/2016 - Agenda - Group Litigation Strategy	14/11/2016	POL-0021450
16	POL00364016	Email from Jonathan Gribben to Anthony de Garr Robinson, Andrew Parsons and others re: draft third Witness Statement of Stephen Parker	22/02/2019	POL-BSFF-0195824
17	POL00022669	Post Office Group Litigation between Alan Bates & Others -and- Post Office Limited - Update to the opinion on the common issues	28/09/2018	POL-0019148
18	POL00006754	Meeting Minutes of the Postmaster Litigation Subcommittee of POL	15/05/2018	POL-0018012
19	FUJ00155196	Alan Bates and others v Post Office Limited Coyne 2 Report- Remote Access Paragraphs 3.221- 3.287	21/05/2019	POINQ0161391F
20	POL00140306	Email from Johnathan Gribben to Anthony de Garr Robinson Cc Andrew Parsons & Others RE Remote Access queries	06/03/2019	POL-0141542
21	FUJ00155195	Email from Katie Simmonds to Anthony de Garr Robinson and ParkerSP Re: Telephone conference with Leading Counsel	22/05/2019	POINQ0161390F
22	FUJ00165648	Email from Katie Simmonds to Anthony de Garr Robinson and SP Parker re: Cancelled: Telephone conference with Leading Counsel	22/05/2019	POINQ0171826F

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23	WITN10500105	Email from Andrew Parsons to Anthony de Garr Robinson, Simon Henderson, Gavin Matthews and others re: Scope of Horizon [WBDUK-AC.FID26896945].	07/09/2018	WITN10500105
24	POL00134909	Attendance notes for The Post Office Group Litigation	04/10/2019	POL-0139362
25	POL00000692	Witness Statement of Stephen Paul Parker	16/11/2018	VIS00001706
26	POL00363816	Email from Jonathan Gribben To: Anthony de Garr Robinson, Simon Henderson cc Andrew Parsons and others re Steve Parker [WBDUKAC.FID27032497]	15/11/2018	POL-BSFF-0195624
27	POL00363851	Email from Anthony de Garr Robinson To: Andrew Parsons CC: Simon Henderson and Jonathan Gribben Re: Robert conclusions [WBDUK-AC.FID26896945]	18/11/2018	POL-BSFF-0195659
28	POL00000682	Witness Statement of Torstein Olav Godeseth	27/09/2018	VIS00001696
29	POL00367005	Email from Anthony de Garr Robinson to Andrew Parsons, RE: Data Deletion	23/02/2019	POL-BSFF-0198826
30	POL00364020	Email from Anthony De Garr Robinson to Andrew Parsons, RE: Data Deletion	23/02/2019	POL-BSFF-0195828
31	POL00000686	Alan Bates & Others v POL - Third Witness Statement of Torstein Olav Godeseth for The Post Office Group Litigation	28/02/2019	VIS00001700
32	POL00363955	Email from Andrew de Garr Robinson to Andrew Parsons, Jonathan Gribben and others re: Further comments from FJ - TG paragraphs requiring correction or consideration attached	18/02/2019	POL-BSFF-0195763
33	POL00363956	Torstein Olav Godeseth Witness Statement 1 - paragraphs requiring correction	18/02/2019	POL-BSFF-0195764
34	POL00364056	Email from Jonathan Gribben to Anthony de Garr	28/02/2019	POL-BSFF-0195864

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		Robinson: Godeseth 3 and Parker 3		
35	POL00000689	Alan Bates and Others and Post Office Limited, Third Witness Statement of Stephen Paul Parker	28/02/2019	VIS00001703
36	POL00363775	Email from Jonathan Gribben to Anthony De Garr, RE: Catherine Hamilton	14/11/2018	POL-BSFF-0195583
37	POL00366967	Email from Simon Henderson to Jonathan Gribben, RE: Parker 2	30/01/2019	POL-BSFF-0198788
38	POL00366968	Email from Anthony De Garr Robinson to Simon Henderson, RE: Parker 2	30/01/2019	POL-BSFF-0198789
39	POL00133074	Email chain from Jonathan Gribben to Anthony de Garr Robinson and cc'd Simon Henderson re: Parker 2 [WBDUK-AC.FID27032497]	30/01/2019	POL-0136446
40	POL00000687	Second witness statement of Stephen Paul Parker	29/01/2019	VIS00001701
41	POL00364052	Email from Jonathan Gribben to Anthony de Garr Robinson: Parker 3	27/02/2019	POL-BSFF-0195860
42	FUJ00205178	Email from Beth Durkin to Rachel Roberts cc David Barker RE: Tentative: Call - Project Bramble - legally privileged and confidential [PM-AC.FID3854255]	10/04/2019	POINQ0210899F
43	POL00000698	Alan Bates and Others and Post Office Limited, Corrections to the Third Witness Statement of Stephen Paul Parker	01/01/2019	VIS00001712
44	WITN10500106	Email from Andrew Parsons to Anthony De Garr Robinson, Simon Henderson and others Re: Expert Report	13/06/2019	WITN10500106
45	WITN10500107	Note on Quantitative Approaches to Horizon Bugs	19/09/2018	WITN10500107
46	WITN10500108	Foundation Report - Alan Bates and others v Post Office Limited Dr Robert Worden and Chris Emery	31/05/2018	WITN10500108
47	WITN10500109	Email from Andrew Parsons to Anthony de Garr Robinson, Simon Henderson ccing Jonathan Gribben and	15/07/2018	WITN10500109

WITN10500100

		others re: Expert Requests for Information		
48	WITN10500110	Report on general issues and summary of opinions.	01/01/1900	WITN10500110
49	POL00006471	Steering Group Noting Paper - Expert Report of Dr Robert Worden	28/11/2018	POL-0017776
50	POL00142397	Email from Anthony De Garr Robinson to Andrew Parsons: Structure for expert report	12/09/2018	POL-0141681
51	WITN10500111	Email from Lucy Bremner to Anthony de Garr Robinson, Simon Henderson, Andrew Parsons and others re: Agenda for call 21 Sept 10-11am [WBDUK-AC.FID27032497].	20/09/2018	WITN10500111
52	WITN10500112	Document headed 'Counsels Comments on Report Plan'	01/01/1900	WITN10500112
53	POL00043141	Note on Potential Audit of Fujitsu Disclosure	17/10/2019	POL-0039623
54	POL00006753	Meeting Minutes of the Group Litigation Subcommittee of POL	21/02/2019	POL-0018011
55	POL00006752	Draft Meeting Minutes of the Postmaster Litigation Subcommittee of POL	20/06/2019	POL-0018010
56	POL00268606	Email from Angela Van-Den-Bogerd to Andrew Parsons cc Jonathan Gribben	18/03/2019	POL-BSFF-0106669