WITN10390200

Witness Name: Andrew Paul Parsons

Statement No: WITN10390200

Exhibits: See Annex 1

Dated: 17th April 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF ANDREW PARSONS

I, Andrew Parsons, of Oceana House, 39-49 Commercial Road, Southampton SO15 1GA, will say as follows:

A. INTRODUCTION

1. I am a Solicitor and Partner in the Commercial Litigation Practice of Womble Bond Dickinson (UK) LLP ("**WBD**" or the "**firm**"). I make this statement to assist the Post Office Horizon IT Inquiry (the "**Inquiry**") with the matters set out in its Rule 9 Request dated 12 December 2023 (the "**Request**"), relating to Phase 5 of the Inquiry's work.

2. As the Inquiry will be aware, the subject matter of the Request relates to work which I undertook on behalf of Post Office Limited ("**POL**") as an external commercial litigation solicitor over a period of approximately seven years beginning (now) more than 10 years ago. As I set out further below, that work (in very broad overview) comprised: assisting POL in preparing its responses to

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"Spot Reviews" conducted by Second Sight Support Services Limited ("**Second Sight**") in Spring to Summer 2013; later in 2013, advising POL on the establishment of the Initial Complaint Review and Mediation Scheme (the "**Mediation Scheme**"); representing POL during the period of operation of the Mediation Scheme through to the closure of the Mediation Scheme Working Group (the "**Working Group**") in 2015; and, from early 2016 onwards, conducting POL's defence to the claims brought against it by a group of sub-postmasters and sub-postmistresses ("**SPMs**") in the litigation known as *Alan Bates & Others v Post Office Limited* (the "**group litigation**"), which ultimately settled in December 2019.

3. For convenience, I refer to this work compendiously as the "**Horizon-related matters**", however this is not intended to imply that these were POL's only matters in which the Horizon IT system was or may have been relevant; or that these were the only such matters in which I or WBD were involved; or that the above brief summary is an exhaustive description of all the work which I undertook for POL between 2013 and 2019. Nor is the use of this shorthand intended to suggest that the work I carried out for POL in this period formed part of a single overarching or continuous brief. Although I had an ongoing relationship with POL throughout this period, it would be more accurate to characterise the Horizon-related matters as an evolving series of instructions, the scope and nature of which varied. I address this further below.

4. The range, scale and duration of the Horizon-related matters, and the passage of time since much of this work was done, means that my recollection of the specifics of many of the events and documents referred to in the Request is very limited. In some instances I have a general, high-level recollection of the matters

referred to, but on the whole I have been heavily reliant on reviewing contemporaneous documents in order to answer the Inquiry's questions – and, indeed, I have often found that I can do no more than review the relevant documents and set out what is or appears to be recorded therein. In each case where I rely on documents in order to answer a question, I have considered them against what I am able to remember in order to ensure that the meaning I have ascribed to them represents my best and honest evidence. Equally, where I am able to independently recall a particular event or document, I draw this to the Inquiry's attention below. Accordingly, I have broadly adopted the following protocol when setting out my evidence:

4.1. Where I have a memory that stands out independently of the documents, I say, "*I remember*";

4.2. Where I have a recollection that has been aided or refreshed by reference to the documents, I say "*I recall*" or "*my recollection is*";

4.3. Where I say something like "*I believe*", I generally mean that I am drawing an inference from the documents and that I believe that inference to be accurate based on all that I can, to the best of my ability, remember;

4.4. Otherwise, the matters set out in this statement are based solely on the documentation available to me (unless they are drawn from some other source, in which case I say so).

5. I also wish to highlight that my firm has a very large amount of documentation on file concerning the Horizon-related matters. Indeed, I understand that my firm holds over 900,000 documents comprising the contents of POL files that we believe may have some link to Horizon-related matters. In addition, my email

account holds a large amount of relevant material. For the avoidance of doubt these figures do not describe unique documents – there are a significant number of duplicates within them, including between my email account and our files – and my email account will contain documents not relevant to POL. It was impossible for me to review them all in order to prepare this statement, so I have focused on the questions and documents which have been put to me in the Request. Targeted searches for further documents directly relevant to the Inquiry's questions have been conducted by myself and my legal advisors.[1] Where I have identified documents pertinent to the Inquiry's questions that are not referred to in the Request I have endeavoured to draw them to the Inquiry's attention, however I wish to stress that there will be a significant number of other relevant documents which it has not been practicable for me to review or refer to (including, inevitably, documents which I had sight of at the time of the events under consideration but have since forgotten). Through a combination of my limited memory, the breadth of the events involved, the number of documents and the limited time available for the preparation of this statement, there is a real possibility that material points may have been missed, but I have done my best to present the Inquiry with a complete and accurate picture.

6. The remainder of this statement is structured as follows:

6.1. **Section B** (§§9-14) addresses various preliminary matters, including the process by which this statement has been prepared and my approach to privileged documents.

[1] Below, where I refer to a search 'I have carried out' I mean a search carried out either by me personally or by one of my legal advisers acting on my behalf.

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6.2. **Section C** (§§15-30) briefly sets out my professional background, gives an overview of my work for POL prior to the Horizon-related matters, and sets out the proportion of my time that was spent on these matters whilst they were underway. Broadly speaking this section addresses **Q1** and **Q3 to Q5** of the Request.

6.3. Thereafter I attempt to deal with the matters raised in the Request in chronological order, whilst also adhering, so far as practicable, to the structure of the topics set out therein. As the Inquiry will appreciate, this is not straightforward as a number of topics concern similar or overlapping periods, and because some of the questions asked are thematic rather than chronological.

6.4. **Section D** (§§31-50) concerns the assistance I provided to POL during the period when POL was preparing its responses to the Spot Reviews and Interim Report produced by Second Sight in Spring to Summer 2013. This section addresses **Q2** and **Q10 to Q15** of the Request.

6.5. **Section E** (§§51-77) concerns POL's response to Second Sight's interim report dated 8 July 2013 (the "**Second Sight Interim Report**" or the "**Interim Report**"), and the advice and assistance I provided to POL in establishing the Mediation Scheme following publication of the report. The scheme opened to new applications on 27 August 2013 and closed on 18 November 2013. This section responds to **Q16 to Q19** of the Request.

6.6. The period covered by **Section F** (§§78-137) overlaps with the periods covered by Sections D and E. In broad terms, this section concerns various matters relevant to the work which POL was carrying out at that

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time to review historic prosecutions of former SPMs which had relied at least in part on Horizon data. This section addresses:

(i) ***First***, and in overview, the nature of my role as a civil lawyer acting for POL and the extent to which I was sighted on these matters (§§78-81);

(ii) ***Second***, my receipt in early July 2013 of a report in respect of the Lepton SPSO by Helen Rose, a fraud analyst at POL (the "**Helen Rose Report**"), and the review of criminal cases which the report triggered (§§82-89; **Q20** of the Request);

(iii) ***Third***, POL's response to correspondence sent by the Criminal Cases Review Commission ("**CCRC**") in July 2013 following the publication of Second Sight's Interim Report, and its ensuing decision to appoint Brian Altman QC to supervise the review of criminal convictions and advise on strategy in relation to the CCRC (§§90-97; **Q29** and **Q31** of the Request);

(iv) ***Fourth***, my participation in what I refer to as the "**Horizon Regular Calls**" during the second half of 2013 and at the beginning of 2014 (the last such call I attended being, to the best of my knowledge, the one on 19 February 2014) (§§98-122; **Q21 to Q28** of the Request);

(v) ***Fifth***, the conference with Brian Altman QC which I attended on 9 September 20 (§§123-136; **Q30** of the Request).[2]

6.7. **Section G** (§§138-259) deals with the period during which the Mediation Scheme had closed to new applications and was underway (i.e. November

[2] For convenience, I also deal with **Q33** of the Request at this juncture.

2013 until mid-2015). Mediations in fact continued after mid-2015 but my work on the scheme was substantially complete by then.

(i) ***First***, at §§139-155, I give an overview of my (and more broadly WBD's) role in relation to the Mediation Scheme during its period of operation, including: my role in attending meetings of the Mediation Scheme Working Group on behalf of POL (**Q34 to Q35** of the Request); WBD's role in preparing the "Horizon Factfile" document (**Q36** of the Request); and the nature and extent of WBD's role in relation to POL's investigations into individual cases within the Mediation Scheme (**Q38** of the Request).

(ii) ***Second***, I address various questions about the process POL followed when investigating applicants' complaints, namely: **Q37**, **Q39 to Q40**, and **Q42.1** (§§156-162).

(iii) ***Third***, I answer various questions raised by the Inquiry in **Q41** and **Q42.2 to Q44** of the Request about my developing views on the work carried out by Second Sight during the Mediation Scheme (§§163-175).

(iv) ***Fourth***, I address various questions the Inquiry has asked about the provision of certain documents or other kinds of information during the Mediation Scheme – including the Helen Rose Report (cf. **Q32** and **Q49**; §§176-184); reports of investigations into suspected criminality by POL investigators ("**Officer's Reports**", cf. **Q46**; §§185-201); and

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information about a form of remote access in Horizon Online known as the "**Balancing Transaction**" functionality (cf. **Q45**; §§202-232).[3]

(v) ***Fifth***, at §§233-250, I set out my (and WBD's) role in advising POL on the merits of applicants' cases and whether or not to take a case to mediation. This answers **Q38**, as well as **Q47 to Q48**.

(vi) ***Sixth***, at §§251-259, I set out my response to **Q35.6** and **Q50 to Q52** of the Request, concerning POL's approach to deciding whether or not to take a case to mediation, and the ultimate decision to mediate cases and close down the Working Group.

6.8. Against this background **Section H** (§§260-282) summarises the extent of my knowledge, during the periods covered by the preceding sections, of: (i) bugs, errors and defects in Old Horizon and Horizon Online; and (ii) remote access in Old Horizon and Horizon Online. In order words, this section distils my response to **Q6 to Q9** of the Request relative to the period up until my work on the Mediation Scheme largely ended in mid-2015 and prior to the instigation of the group litigation in early 2016.

6.9. **Section I** deals with **Q53 to Q54** of the Request (§§283-289).

6.10. **Section J** (§§290-308) sets out the extent of my awareness of and involvement in the "**Swift Review**" which was carried out by Jonathan Swift QC (as he then was) and Christopher Knight between late 2015 and February 2016 (**Q55 to Q57** of the Request).

[3] This subsection also partly addresses **Q88** of the Request, insofar as it describes my awareness of and involvement in "Project Zebra" at the time it was carried out in c.2014.

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6.11. **Section K** (§§309-393) sets out, in overview, what my role was in relation to the group litigation; how the group litigation was managed; from whom I received instructions; and my relationships with key personnel at POL, the Counsel team, and those representing the Claimants. It also summarises the advice I gave POL in relation to its general litigation strategy and tactics. These are broadly speaking the matters raised at **Q58 to Q63**, **Q67** and **Q70** of the Request.

6.12. **Section L** (§§394-451) deals with various questions raised by the Inquiry in relation to the early work which I/WBD carried out on the group litigation (mostly prior to service of POL's Generic Defence in July 2017). These questions are centred around the related themes of preservation of documents, early requests for disclosure, and other forms of information-sharing, as follows:

(i) Advice given advice in relation to the preservation of documents (**Q64**).

(ii) POL's response to a Data Subject Access Request ("**DSAR**") in April 2016 by one of the Claimants (**Q65**).

(iii) POL's response to the Claimants' request (made in their Letter of Claim dated 28 April 2016, or "**LOC**") for early disclosure of its internal investigation guidelines (**Q68**).

(iv) Information given to Leading Counsel, Tony Robinson QC, in the course of instructing him in May 2016 (**Q69**).

(v) Advice given by Tony Robinson QC in conference on 9 June 2016, in particular in connection with preserving privilege in the implementation of the Swift Review (**Q72**).

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(vi) Advice given to POL about sharing information on the group litigation with UK Government Investments ("**UKGI**") and the Department for Business, Energy and Industrial Strategy ("**BEIS**"): **Q71**. This largely arose later in the litigation but is dealt with in Section L for convenience.

6.13. The matters covered in **Section M** (§§452-520) overlap in time with Section L, but relate to early investigative and preparatory work rather than work on documents and information-sharing. Section M therefore covers:

(i) ***First***, the work undertaken to prepare POL's Letter of Response dated 28 July 2016 (the "**LOR**") to the LOC, including early investigative work by Deloitte into the issue of remote access as part of "**Project Bramble**": **Q73 to Q74** (§§454-478).

(ii) ***Second***, the work undertaken to prepare POL's Generic Defence served around a year later on 18 July 2017, including further investigative work by Deloitte into remote access as part of "**Project Bramble**": **Q75** (§§479-509).

(iii) ***Third***, the advice I gave POL upon receipt of Deloitte's draft report for Project Bramble in September 2017: **Q89** (§§510-520).

6.14. **Section N** (§§521-694) concerns disclosure. It covers a range of topics related to the management of the disclosure process on behalf of POL, in particular the disclosure orders made at the CMCs from October 2017 to June 2018, and the approach to disclosure thereafter. In summary, the topics addressed are:

(i) General advice on disclosure (**Q58.4**; §§523-551);

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(ii) Disclosure of the Known Error Log ("**KEL**") database (**Q76 to Q82**; §§552-598);

(iii) Disclosure of the 'Peak' database (**Q81.2** and **83 to Q87**; §§599-647);

(iv) Disclosure of the reports generated by Project Zebra (**Q88.3**; §§648-650);

(v) The approach taken to redacting evidence, including that deployed in the Common Issues Trial and Horizon Issues Trial (**Q90.1, Q91 and Q95.1**; §§651-671); and

(vi) Events surrounding the obtaining of certain audit documents held by Royal Mail for the purposes of the Horizon Issues Trial (**Q99**; §§672-694).

6.15. **Section O** (§§695-768) answers the Inquiry's questions about POL's preparation for the Common Issues Trial which took place over 15 non-consecutive days in November and December 2018. These questions are broadly **Q90** and **Q92 to Q94** of the Request (**Q90.1** and **Q91** being dealt with in the preceding section on disclosure).

6.16. **Section P** (§§769-912) answers **Q95 to Q102** of the Request (save for **Q95.1** and **Q99**, which is dealt with in the previous section on disclosure). These questions concern POL's preparation for the Horizon Issues Trial, which took place over 21 non-consecutive days between 11 March and 2 July 2019, including: the preparation of the witness statements of certain employees of Fujitsu; my/WBD's involvement in the preparation of POL's expert evidence; and the basis for POL's continued belief, going into to that trial, that the Horizon system was 'robust' (and to this extent, this

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section summarises my response to **Q6 to Q9** of the Request as regards the period covered by the group litigation).

6.17. **Section Q** (§§913-989) deals with POL's response to Mr Justice Fraser's judgment [2019] EWHC 606 (QB) (the "**Common Issues Judgment**"), handed down on 15 March 2019 shortly after the start of the Horizon Issues Trial, including: (i) POL's decision to seek leave to appeal that judgment; and (ii) the application made by POL on 21 March 2019, seeking the recusal of Mr Justice Fraser as the Managing Judge in the group litigation and the adjournment of the HIT which was then underway (the "**Recusal Application**"). In broad terms, therefore, this section addresses **Q103 to Q118** of the Request.

6.18. **Section R** (§§990-1006) summarises events after the conclusion of the Horizon Issues Trial, and also briefly deals with the matters raised at **Q119 to Q120** of the Request.

6.19. Finally, in **Section S** (§§1007-1016) I make some observations by way of overview and conclusion. I do so in an effort to assist the Inquiry and to answer the questions posed at **Q121 to Q122** of the Request.

7. Before I turn to the matters outlined above, I should say something about my approach to the work I did for POL. As a solicitor acting for a client involved in civil disputes, it was my role to advance POL's interests to the best of my ability and in line with my professional ethics. That inherently meant advancing positions that were sometimes adverse to the interests of SPMs. I was and am acutely aware of the consequences of doing that, but as a solicitor that was my duty. Over the years of our acting for POL, my firm and I did make a few mistakes

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as I set out in this statement. They were genuine errors and at all times I believe that my firm and I acted appropriately. I apologised for them at the time and apologise for them now. A great deal of information about the Horizon system has come to light over the years and, like everyone, I now know that there have been miscarriages of justice. Although, I was not myself involved in advising POL on prosecutions, I am concerned to help the Inquiry so far as I can in its important work to understand how this happened.

8. In this statement, I shall provide an account and answer the Inquiry's questions to the best of my ability. Of course, I can only give answers about matters that were and are within my knowledge (as explained at §4 above). In that regard, I should note that there were many other lawyers in my firm who played a role at particular stages (which at its peak exceeded 20 qualified lawyers, plus paralegals) and so I was not involved first-hand in all events. I give some details below where their work is relevant. I should also observe that POL had in-house lawyers and used other firms, so WBD and I were not always aware of work being done and advice being received from others.

B. PRELIMINARY MATTERS

9. I address some preliminary matters before turning to the substance of the questions set out in the Request in the sections that follow.

(i) Process by which this statement was prepared:

10. In preparing this statement I have been assisted by my legal team, which is made up of lawyers and paralegals within WBD as well as external Counsel. As the

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Inquiry will appreciate, the preparation of this statement has involved, of necessity, reviewing a significant amount of material. In large part, I was reliant upon input from my legal team to access documents and to carry out searches for documents. The evidence contained within this statement, as a result of that review process, is mine and mine alone.

(ii) People and documents referred to in this statement:

11. Documents referred to in this statement which were provided to me by the Inquiry along with the Request are listed in **Annex 1** in the order in which they are referenced.

12. Documents referred to which did not form part of the Request, but which I have identified from my firm's systems in the course of preparing this statement, are also listed in **Annex 1** and have been provided to the Inquiry. These documents are also listed in the order in which they are referenced.

13. A large number of people are referred to in this statement, including (but not limited to) employees of POL, Fujitsu and WBD. Where I do so, I refer to them by the names, titles and job titles they held at the material time (for example, "Mr Justice Fraser" instead of "Lord Justice Fraser", and "QC" instead of "KC").

(iii) Privilege:

14. I am aware that POL has waived legal professional privilege in respect of certain matters and documents ("**POL's waiver**"). As a result, a number of documents which would otherwise be privileged have been produced to me along with the Request (including some documents from my firm's systems which were

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previously provided to POL for onward disclosure to the Inquiry). I am aware of the terms of POL's waiver and have done my best to apply it in answering the Inquiry's questions and providing documents from my firm's records along with this statement. As will be seen below, there are only a limited number of areas where the ambit of POL's waiver is relevant to my responses, principally Section C and my answer to **Q120**.

C. BACKGROUND INFORMATION (Q1, Q3 to Q5)

(i) Professional background

15. I studied law at the University of Warwick, graduating in 2005. After graduating I took the Legal Practice Course ("**LPC**") and joined the firm (which was then Bond Pearce) as a trainee in September 2006. Bond Pearce subsequently merged with Dickinson Dees in May 2013 to become Bond Dickinson, and later (with effect from October 2017) combined with a US-based law firm, Womble Carlyle Sandridge & Rice LLP, to form Womble Bond Dickinson. For convenience, throughout this statement I refer to WBD and its predecessors compendiously as "**WBD**" or the "**firm**".

16. I completed my training contract and qualified in September 2008, joining the firm's Commercial Litigation Practice as a solicitor in its Southampton office. As a junior solicitor I undertook a range of general commercial litigation work but within a few years I became increasingly focused on IT, digital and technology issues, including dealing with data protection and privacy matters, disputes arising out of the provision of IT services, and disputes arising out of hacking and

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other security breaches. I was promoted to Senior Associate[4] by 2012 before becoming a Partner in May 2016.

17. I have specialised in commercial litigation for the whole of my career and have never specialised in criminal law. Whilst my work has occasionally had some crossover with criminal law aspects (for example, where an alleged misuse of personal data may amount to a criminal offence, in addition to giving rise to civil liability), I do not regard myself as a criminal lawyer and I do not have any experience of bringing or defending criminal prosecutions. Nor, prior to 2013 when I was first instructed by POL in relation to the matters under consideration by the Inquiry, did I have any knowledge or experience of the rules governing disclosure (including post-conviction disclosure) in criminal proceedings – save to the extent that this may have been covered in the compulsory criminal law module that I studied during the LPC. As I set out further below, over time I gained some exposure to these topics through my work for POL and hearing advice from POL's criminal lawyers, but I still do not regard criminal disclosure as being within my field of expertise. Those instructing me at POL were aware of this at all times.

18. My work has always mainly consisted of commercial dispute resolution for private clients, such as large corporate clients. Other than my work for POL I have not undertaken a significant amount of work for public authorities or state-owned companies; my experience has predominantly been acting for private entities in commercial disputes. I may have advised other public bodies or state-owned companies from time to time (I do not recall any specific examples but my firm does generally act for such organisations), including prior to 2013 when I was

[4] At some point Senior Associates in the firm were renamed Managing Associates.

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first instructed in relation to the matters referred to in the Request, but this would have been a very small part of my work and did not concern anything substantial.

19. I am asked whether I had "*experience of group litigation concerning a major IT project*" when I was first instructed by POL in relation to the matters under consideration by the Inquiry (Request, **Q3.3**). I did not have any prior experience of group actions, either in respect of major IT projects or otherwise. However, to my knowledge *Bates* was the first group action focused on a major IT system in English legal history. I therefore had no prior experience in this specific type of case either at the time of my initial instruction by POL, or indeed subsequently when the group litigation was initiated, because it was the first case of its kind.

(ii) POL as a client prior to the Horizon-related matters

20. I am asked to what extent, if at all, POL was seen within WBD as "*either (a) an important client or (b) a good source of future work*" (Request, **Q4**). I interpret this as referring to WBD's perception of POL as a client prior to the Horizon-related matters.

21. As I set out further below in Section D, I first became instructed in relation to Horizon-related matters in around April 2013, when I was asked to assist POL in preparing its responses to Spot Reviews then being conducted by Second Sight.

22. Prior to this I recall that I had acted on certain small matters for POL (which here also refers to Royal Mail Group or "**RMG**" prior to their separation on 1 April 2012). When I joined WBD in 2006, POL was already a client of the firm and when I qualified in 2008, the firm was engaged in bringing claims against SPMs for shortfalls in branch accounts. Claims were dealt with by a team of paralegals

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in the firm's Plymouth office unless they were either contested or of a higher value, in which case they were dealt with by lawyers in the commercial litigation team, who were generally below partner level due to their (still) comparatively low value.

23. Between 2008 and approximately 2011, I was engaged by POL to act in a handful of these shortfall claims. My recollection is that my instructions on these matters largely came from Mandy Talbot (a solicitor in RMG's legal services team). I do not recall these matters involving challenges to the integrity of the Horizon software by the SPMs concerned, and to the best of my recollection none of them resulted in proceedings being issued (but I have not reviewed those case files for the purpose of preparing this statement).

24. I was not involved in POL's claim against Lee Castleton which was tried in December 2006 (at which point I would have been a couple of months into my training contract). I read the High Court's judgment in the course of my engagement on shortfall claims because the Court's decision that SPMs could be pursued in debt on the basis that they had submitted a "settled account" was relevant to these claims. I was aware it was a case handled by WBD.

25. I recall that I also acted, in 2011 and 2012, in a couple of matters which involved working with Susan Crichton and Hugh Flemington, General Counsel and Deputy General Counsel for POL, respectively. I do not believe POL has waived privilege in relation to these matters so I say no more about them here.

26. I may have done some other work for POL prior to 2013, but these are the matters which I can recall. Over the early years of my practice, I worked for POL on and off and they were not a key client of mine. I was aware that that they were a key

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client of the firm, but I do not recall ever being involved in client relationship management nor that there was anyone from POL who would call me directly for advice or seek to instruct me directly.

27. At the start of 2012, POL and RMG combined were the largest client of Bond Pearce (as it then was). On 1 April 2012, POL and RMG separated, and subsequently the firm principally worked for POL; our work for RMG reduced substantially after that point. Additionally, and as set out above, in 2013 Bond Pearce and Dickinson Dees merged. Thus, through a combination of POL and RMG being separate entities and the firm growing in size, POL was a relatively smaller, but still major, client of the firm from 2012-2013. It continued to be seen within the firm – including by me – as an important client, in the same way that all other clients of the firm are considered important. Similarly, POL was considered to be a good source of future work in the same way that the firm aims to retain all of its clients for future business.

(iii) Proportion of my work devoted to the Horizon-related matters

28. **Q5** of the Request asks "*what proportion of [my] work related to acting for POL in matters concerning the Horizon IT System from [my] initial instruction to … ceasing to act on the matter*". There are three initial points to make in relation to this. ***First***, as I have explained, I identify the beginning point of my work on the Horizon-related matters as being around April 2013, when I was engaged to assist POL in preparing its responses to Spot Reviews. ***Second***, as mentioned at §3 above, the nature and scope of my engagement for POL varied thereafter, and it is not accurate to characterise the Horizon-related matters as a single or continuous "*matter*". ***Third***, it is difficult to identify an end point with precision but

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for present purposes I adopt the end of 2019 shortly after the group litigation settled (and in any event I note that POL has not waived privilege in relation to matters after 26 February 2020).

29. Subject to those caveats, for the purpose of answering **Q5** I consider it to be useful to break down my involvement in the Horizon-related matters into three broad phases:

29.1. **Phase 1** (April to July 2013): during this period I, along with other colleagues at WBD, assisted in the drafting of POL's formal responses to Spot Reviews. I had day-to-day conduct of this matter, supervising the work of more junior solicitors as well as assisting with some drafting myself. Overall, and in broad terms, I estimate that this work represented about 10 per cent of my total workload.

29.2. **Phase 2** (July 2013 to early 2016): during this period, I, along with other colleagues at WBD: assisted POL in preparing for and responding to Second Sight's Interim Report; advised POL on the establishment and running of the Mediation Scheme; assisted POL with drafting investigation reports during the Mediation Scheme; and represented POL at mediations. Again, I was the solicitor at WBD with day-to-day conduct of this instruction. I would estimate that work on Horizon-related matters during this represented around 50 per cent of my workload on average. From around mid 2015 there was a substantial reduction in work as the Mediation Scheme was running down and work on the group litigation did not begin in earnest until early 2016; during this time I estimate that my work for POL on Horizon-related matters ultimately reduced to around 10 per cent of my total workload.

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29.3. **Phase 3** (early 2016 until the end of 2019): during this period, the group litigation was in full swing. I became a Partner in May 2016, and was the lead Partner with conduct of the litigation on behalf of POL. Typically around 70 per cent of my time related to this instruction but there were discrete periods where 100 per cent of my time was devoted to it.

30. It should be noted that the foregoing estimates are based on my general impression of the relative amount of time I spent working on the Horizon-related matters, and not (for example) on a detailed examination of historic timesheets.

D. SECOND SIGHT SPOT REVIEWS (Q2, Q10 to Q15)

(i) Instructions to assist with Spot Reviews

31. As mentioned above, I first became instructed in the Horizon-related matters in around April 2013 when I was a Senior Associate. As I later learned through discussions with people at POL, in around June 2012, POL had appointed Second Sight to conduct an independent investigation into whether there were systemic problems with the Horizon system (including training and support processes) pursuant to terms of reference which were (I believe) agreed between POL, the Justice for Sub-postmasters Alliance ("**JFSA**") and Second Sight. It follows from the timing of my instruction in April 2013 that I had no role in advising POL as to how to respond to the May 2009 *Computer Weekly* article or allegations by MPs. Nor did I advise on the decision to appoint Second Sight, their terms of reference, or the process by which they would carry out their investigation (including the provisions of the terms of reference determining the extent of the documentation and information which they would be permitted to

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access). I cannot comment on whether other individuals in my firm may have done so, but I am not aware of anyone having played any significant role in this regard.

32. The part of Second Sight's investigation in which I was initially involved was conducted by way of what it called "Spot Reviews". Although Second Sight's investigation was not a mediation or arbitration process and was not intended to resolve specific disputes, individual SPMs could raise concerns about the Horizon system with JFSA (or by approaching Second Sight directly). Second Sight would then conduct a "fast track" review of the information provided by SPMs to identify what the key issues raised were. The key issues that Second Sight felt merited further investigation were then separated into individual "Spot Reviews", meaning that where an individual SPM submitted information which raised multiple key issues, this could give rise to multiple Spot Reviews.[5] The idea was that Second Sight's investigations into these Spot Reviews would inform its ultimate conclusions as to whether there were systemic problems with Horizon, training and/or support. I recall there were around 50 SPMs who came forward with concerns which fell within the scope of Second Sight's review. Some of them approached the JFSA and some were referred to the investigation by their local MPs.

33. Second Sight would send the Spot Reviews to POL to review and respond to, to assist it with its investigation. By the time I was instructed, POL had been asked to comment on (I believe) 10 Spot Reviews. This is what prompted POL's engagement of WBD to assist with the process of preparing its responses.

[5] This is set out in Second Sight's Interim Report, **POL00099063**.

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Specifically, around the beginning of April 2013 POL had invited Gavin Matthews (then a Partner at WBD) to attend a meeting at POL's offices in Old Street to discuss the Spot Review process.[6] As far as I can recall, I ended up attending on my own as Gavin could not go (though whether the original intention was for us both to attend, or whether I stood in for Gavin, I cannot now remember). My recollection (though I may have this confused with another meeting on this topic) is that there were approximately ten attendees including Susan Crichton, Rodric Williams (a litigation lawyer in POL's legal team), Stephen Baker (POL's Head of Business Change), Angela Van Den Bogerd (Head of Partnerships at POL), Gareth Jenkins (Distinguished Engineer, Business Applications Architect at Fujitsu and the principal architect of the Horizon software). I cannot recall whether there were other representatives of Fujitsu present.

34. I recall the outcome of the meeting was that POL and Fujitsu agreed that POL would provide the Spot Reviews submitted by Second Sight to Fujitsu. Where the Spot Review raised technical issues, Fujitsu would prepare a written note in response. Where the Spot Review raised issues which were less technical, Fujitsu would prepare a less detailed note or the response would be prepared by POL alone.

35. WBD was instructed to assist with this process. Initially my role was to assist in writing up POL's formal response to each Spot Review to be provided to Second Sight. After Fujitsu and/or POL had produced their note (or notes) in response to the relevant Spot Review, POL then provided this material to me, and my job was to turn it into a formal response which POL could then circulate to Second Sight.[7]

[6] As is reflected in this email dated 8 April 2013: WBON0000726.
[7] See for example POL00098035.

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Further information and comments on draft formal responses would sometimes be provided via email or in calls / meetings attended by representatives of POL and (at least some of the time) Fujitsu. I do not recall having direct, unsupervised (i.e. unsupervised by POL) access to Gareth Jenkins or other Fujitsu employees in the course of this work. With reference to the Inquiry's **Q13** and **Q14.3 to Q14.4**, it was not part of my role to provide POL with strategic advice in relation to the Spot Review process, nor do I recall having any particular views on the investigative process or the quality of the work that Second Sight were carrying out at this stage. I did not have any direct contact with Second Sight at this point and had little visibility of communications between them and POL (essentially, this was limited to seeing emails between the two relating to particular Spot Reviews when these happened to be forwarded to me). I did not advise on what disclosures should be made (or not made) to Second Sight at this stage.

36. I do recall having the impression that POL were taking their responsibility to consider and respond to the Spot Reviews seriously. It appeared to me that care was being taken to investigate the matters raised by each Spot Review internally and with Fujitsu, and on their face the Spot Review responses appeared to be thorough and considered.[8] Similarly, the Fujitsu papers with which I was provided so as to draft the formal responses seemed to me to be detailed and carefully put together, and it appeared from Gareth Jenkins' comments and answers to queries that he was interested in ensuring that the Spot Review responses were accurate, thorough, and supported by technical analyses. That said, it was not

[8] A view which appeared to me to have been shared by Second Sight at the time. Its feedback on the first batch of Spot Review responses (forwarded to me by Simon Baker on 17 May 2013) included comments that they were "*well-written*" and "*thorough*" (POL00098294); Second Sight also remarked on the "*thoroughness*" of POL's investigations in relation to the Spot Reviews submitted to it in its Interim Report at e.g. paragraph 7.3: **POL00099063**.

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part of my role to probe the information provided by POL and Fujitsu which fed into the responses. Further, the responses themselves were complex and I did not have a firm grasp of their substance (nor was it part of my instructions to do so). To the best of my knowledge, I did not receive a detailed written briefing from POL on the operation of Horizon or the background to the Second Sight investigation prior to (or following) the meeting on 10 April 2013. I remember having to pick up what was being discussed at the meeting as it went along, and I recall the basic differences between Old Horizon and Horizon Online being explained to me at some point, as well as the role and significance of the Core Audit Process. But by and large I acquired knowledge about the Horizon system and the nature of the issues being raised by SPMs progressively over time.

37. In short, my initial instructions in relation to the Spot Review process were a typical, associate-level, drafting job of a routine 'hold the pen' nature. I was supervised in this work by Gavin and my instructions predominantly came from Rodric Williams (although I was also in contact with others at POL, for example Simon Baker and Steve Allchorn, who acted as conduits for the information from POL and Fujitsu which fed into the Spot Review responses; as well as others who provided comments on the draft responses). In due course I had some limited assistance from one or two more junior solicitors in the firm, whose work I then supervised.[9]

(ii) Additional work in relation to Spot Review 5

[9] WBON0000736.

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38. Work over and above that outlined above was occasionally required during this phase in order for POL to provide a fulsome response to the Spot Reviews. In particular, in relation to Spot Review 5 (which concerned an allegation that a former SPM, Michael Rudkin, had observed a POL employee based in Fujitsu's Bracknell office demonstrate an ability to pass transactions directly into Horizon), further investigation was undertaken by POL following the submission of its initial response to Second Sight. This culminated in (i) a reworked response being provided and (ii) the taking of a witness statement from the employee who was the subject of the allegation.

39. POL's initial response to Spot Review 5 had been handled by POL in-house and sent to Second Sight on 6 June 2013.[10] The response noted the allegation made by Michael Rudkin and went on to answer the questions raised by Second Sight in the Spot Review as follows:

> *"Question 1: What capabilities did the POL Bracknell team have? (As far as TC or Rem Out type transactions or Journal adjustments are concerned).*
>
> *Response: The POL Bracknell Team have no access to the live system so can conduct none of these transactions.*
>
> *Question 2: What were the PHYSICAL or LOGICAL controls over their use of the systems available to them?*
>
> *Response: There is no Physical or Logical connection to the live system from the areas in Bracknell being discussed/ investigated. Detailed documentation has been supplied of the testing processes and procedures recently audited and the design documents to support this position.*

[10] WBON0000343.

Question 3: What audit trail is available to show the extent that they posted TC or Rem Out type transactions, or Journal adjustments?

Response: When any transactions are posted to the database they are contained in the audit trail. As both the original Horizon and replacement HNGx test systems were available to the test teams in that period the test area and the test data is often refreshed and changed it would not be possible to identify any transactions from this period in the test system. Specifically we do not keep audits of test systems, only the Live system. As stated in response to question 1, the teams in the area of Bracknell concerned would have no access to the live system.

Question 4: Can we reply on the COMPLETENESS of the audit trail? i.e. does it record all transactions or just transactions meeting certain criteria? Is it protected from user manipulation?

Response: The detailed answer to this is included in two papers Horizon Data Integrity *and* Horizon Online Data Integrity for Post Office Ltd *which have been presented as evidence in a number of previous court cases.*

Question 5: What USER ID was used if TC type transactions or journal adjustments were posted?

Response: On the old Horizon System (which was Live in 2008) and [sic] *Data introduced to the system in the Data Centre would not be marked with any user ID.*

Question 6: Could the POL Bracknell team log on with either super user or SMPR credentials?

Response: Not in the live system, see test user policy. See the Horizon Data Integrity *and* Horizon Online Data Integrity *documents for details.*

Question 7: How would TC, Rem Out or Journal Adjustment type transactions executed by the POL Bracknell team be seen by SPMR of Branches affected by those actions?

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> *Response: For the PO Bracknell team the SPMR would never see any changes as they are in the test not live systems."*[11]

40. Upon receipt of this response Second Sight asked follow-up questions,[12] which were then put by POL to Fujitsu.[13] Fujitsu provided information in response which was then forwarded to me together with information sourced internally from within POL.

41. For example, Steve Allchorn (who was my main point of contact in connection with POL's further investigations into Spot Review 5) sent me the following unattributed information (in bold) on 19 June 2013, which I infer had been obtained from Fujitsu:

> *"One of the further challenges asked was despite there not being a capability to interact with the live Horizon from the test area in the basement at Bracknell, could it take place if someone had a criminal intent to hack the system from the basement. The response is:*
>
> ***"There is no network connectivity between the test environment in Bracknell to the live data centre in Belfast (or in 2008, in Wigan/Bootle). So even if you were an IT wiz, you wouldn't be able to connect to the production service as there is no network to allow it. Security and penetration testing against both Horizon and HNG has been performed against the production environment to ensure this is the case".***"[14]

42. In addition, in relation to a query about the import of an old Horizon Operating Manual which apparently contained the statement "*finance teams can no longer*

[11] WBON0000344.
[12] POL00130311; POL00188299; POL00098619. I was also provided with the questions asked by Second Sight which had 'driven the initial [Spot Review 5] submission': WBON0000739.
[13] POL00098619.
[14] POL00031348.

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adjust client accounts on site", Gareth Jenkins provided the following response which was forwarded to me on 20 June 2013:

> *"There was never any capability for POL Staff to manipulate the Branch accounts through Horizon. I think the Ops Manual is badly written.*
>
> *I do remember the introduction of TCs in 2006 (I was the Architect responsible for this as part of the IMPACT programme). What used to happen before that is that the Branch was sent a piece of paper called an Error Notice. This would then instruct them to carry out some specific transaction at the Branch. These were often ignored. The whole point of TCs was to simplify and speed up the process and enforce conformance.*
>
> *There may also have been a mechanism by which POL could manipulate the branch accounts in their old accounting system (CBDB – owned and operated by POL or CSC on their behalf), but I never had any real understanding of that system.*
>
> *Therefore I think this is yet another red herring!"*[15]

43. This was subsequently confirmed in the same email chain by a POL employee, Rod Ismay, as follows: "*As regards the words "…finance teams can no longer adjust client accounts on site..." – "On site" meant "on site in Chesterfield P&BA" not "on site in branch".*"[16]

44. Rod Ismay's email also answered (in bold) various other questions posed by Second Sight, as follows:

> *"1. whether, before December 2006, any POL employees were able to input transactions directly into branch accounts... and if so,,,*
>
> ***No – not into a branches accounts. See next email***

[15] POL00098619.
[16] POL00098619.

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2. whether - and when and how - SPMRs/Branch staff were informed whenever such interventions occurred

N/A - See next email

3. where POL staff having that capability were based

No such capability

4. what transaction types were involved and, lastly...

No such capability

5. what User IDs were applied to the transactions so executed.

No such capability"[17]

45. From my emails it appears that Steve Allchorn prepared a first draft of POL's revised response to Spot Review 5,[18] which I then reviewed and made minor comments on.[19] The final version of the reworked response was sent to Second Sight on 21 June 2013[20] and included the following information additional to that provided in the original version:

> *"**Summary***
>
> *An assertion has been made by Mr Michael Rudkin that during a visit to the Fujitsu Bracknell site on Tuesday 19th August 2008, he observed an individual based in the basement of the building who demonstrated the ability to access 'live' branch data and directly adjust transactions on the Horizon system.*
>
> *Given the amount of time that has passed, neither POL nor Fujitsu have any record of Mr Rudkin attending the Bracknell site.*
>
> *It has however been determined that the basement of Fujistu's building contained a Horizon test environment. This environment was not*

[17] POL00098619. The further email to which Rod Ismay refers was an email to Second Sight, which was subsequently forwarded to me by Steve Allchorn: POL00031350.
[18] WBON0000737.
[19] WBON0000361; WBON0000363.
[20] WBON0000389.

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physically connected to the live Horizon environment. It was therefore impossible for anyone in this room to have adjusted any live transaction records though they may have shown Mr Rudkin some form of adjustment to the test environment.

…

Test environment only

The key point here is the phrase 'test environment'. In August 2008, the live Horizon Data Centre was dual-located in Wigan and Bootle. Access to the live site was strictly controlled and one could not interfere with the live transaction databases from the test environments at Bracknell.

To create the test environment at Bracknell, POL/Fujitsu physically built a completely separate set of servers that reflected the live configuration in Wigan/Bootle. These servers were hosted in the basement in Bracknell, along with test counters to connect to them. Access to the test environments then (and which remains the case now) was controlled via secure rooms and user logon authentication.

Critically, there was no physical connection between the live and test environments. The test environments at Bracknell could not access nor manipulate any data in the live environment.

However, as a test environment, there would have been terminals where interrogation of the test copies of the live databases would have been possible. To a lay person, this may look like activity in the live environment. But, to be clear, this would have been interrogation of the test databases only, as there was complete physical and technological separation between the test and live systems."[21]

46. The response then answered Second Sight's seven original questions in substantially the same terms as previously with only minor tweaks (as POL's further investigations had not changed the substance of these answers), and

[21] POL00243412.

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continued (under the heading "***What access was historically available to live Horizon data?***"):

> ***"****As referenced in the Spot Review, the Horizon Operating Manual from 2006 notes that the introduction of a new system meant that POL could "no longer adjust client accounts on site". POL has been asked to clarify whether this meant that POL could access and change live Horizon data.*
>
> *In parallel to Horizon, POL operates a finance IT system. This finance system manages the relationships between POL and its product suppliers. These relationships are the "client accounts" referred to in the Operating Manual.*
>
> *In 2006, POL upgraded its finance system to a new SAP finance system. Before this upgrade, transaction records were sent from Horizon to the old finance system. When certain types of error were made in recording transactions in branch, POL's Product and Branch Accounting (P&BA) team based in Chesterfield could make manual adjustments to the finance system records so that the client accounts would be corrected. This is what the Operations Manual meant by an adjustment being "on site" – the site being the Chestefield site of the P&BA team.*
>
> *For clarity, the manual adjustments to the finance system did not change the Horizon records and therefore did not change the branch's local accounting position.*
>
> *Post 2006 and the introduction of the SAP system, POL changed this process. The errors that would historically have been corrected by manual adjustment are now corrected by way of a transaction correction being issued to the branch. On the SPMR accepting the transaction correction, the Horizon data is updated and this flows through to the SAP finance system.*
>
> *It was this change of process that led to the above entry in the Operations Manual. This change, and the ability to access the old*

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financial system, is also entirely unrelated to the test environment at Bracknell."[22]

47. The assistance I provided in preparing this updated response was – as with the conventional responses to Spot Reviews – fundamentally a drafting exercise involving the collation of information which had been gathered from within POL and from Fujitsu.

48. At the time the reworked response was provided to Second Sight, the POL employee with whom Michael Rudkin had allegedly met had still not been identified. On 1 July 2013, Rodric Williams forwarded an email from Second Sight identifying Martin Rolfe (a Senior Test Analyst in POL's Bracknell-based IT team) as the individual in question. Second Sight had asked POL "*to get Martin's side of the story straight away*", so Rodric Williams instructed WBD to obtain a witness statement from him.[23] I cannot remember precisely how the decision was made to take a witness statement (as opposed to capturing the information in some other form); I recall thinking that a witness statement would be the appropriate vehicle to capture Martin Rolfe's account, and that this would have more weight than merely providing a written update on behalf of POL based on the information he provided.

49. I tasked Andrew Pheasant, an associate in the firm, to carry out this work and had little involvement personally. I cannot recall whether I reviewed and commented on the statement once drafted, but I am aware that Martin Rolfe confirmed that the test environment in the basement of the Bracknell office had no ability to connect to the live Horizon system – in other words, the information

[22] POL00243412.
[23] WBON0000743; POL00296872.

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he provided was consistent with the response to Spot Review 5 that had been provided to Second Sight. I can see from my emails that I supplied the final version of Martin Rolfe's statement to Simon Baker on 1 August 2013, who forwarded it to Second Sight the same day.[24]

50. For completeness, I note that following receipt of the reworked response to Spot Review 5, Second Sight continued to query the assertion that "*[t]he POL Bracknell Team had no access to the live system*", on the basis of certain emails supplied by POL which stated that "*although it is rarely done it is possible to journal from branch cash accounts. There are possible P&BA concerns about how this would be perceived and how disputes would be resolved*".[25] Second Sight ultimately reported that it was told by POL that this comment "*describes a method of altering cash balances in the back-office accounting system, not Horizon*" and that "*none of the POL employees working in Bracknell in 2008 had access to the back-office accounting system*".[26] I do not believe I had any involvement in the provision of this follow-up information, which would have been a matter between POL and Second Sight following submission of the Spot Review response.

E. SECOND SIGHT INTERIM REPORT AND ESTABLISHMENT OF THE MEDIATION SCHEME (Q16 to Q19)

(i) POL's preparation for receipt of the Interim Report (Q16 and Q18)

[24] WBON0000919.
[25] WBON0000389, forwarded to me by Rosie Gaisford on 5 July 2013: WBON0000366.
[26] Interim Report, §§1.12-1.13: **POL00099063**.

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51. On or around 27 June 2013 I received a call from Rodric Williams. The background was the investigation into Horizon being conducted for POL by forensic accountants from the firm Second Sight. I do not recall what we discussed on this call, but Rodric Williams followed up with an email on the same date which explained that (i) Second Sight would shortly be presenting its Interim Report to MPs and (ii) POL wanted to ensure that "*all concerned [were] aware of the responses [POL had given] to the issues raised*" during Second Sight's investigations.[27] He asked me to provide a summary of POL's responses to four specific Spot Reviews (which were those that would ultimately be discussed in the Interim Report), and to prepare a document setting out Second Sight's obligations to consider the evidence submitted to it by POL in the course of its investigation.

52. To assist me in this task, Rodric Williams provided a document entitled 'Raising Concerns with Horizon',[28] which I understood had been agreed between POL, JFSA and Second Sight the previous year (prior to my involvement), and which set out (i) the process by which SPMs could raise concerns for consideration by Second Sight, and (ii) the terms of reference for Second Sight's investigation into those matters.

53. As requested, later that same day I sent Rodric Williams a table setting out the key issues raised by the 10 Spot Reviews which POL had asked us to assist with their responses to, and a one-line summary of POL's position on each.[29]

[27] **POL00021822**.
[28] **POL00021823**; **POL00021824**.
[29] WBON0000741.

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Separately, I provided the precis of Second Sight's obligations with respect to considering POL's responses and supporting evidence.[30]

54. I surmise (though am speculating based on reviewing the above emails now) that this request was part of wider activity by POL to draw together relevant information so as to be in a position to consider and respond to Second Sight's Interim Report when it came in. For example, on 28 June 2013 I was asked by Rodric Williams to pull together a summary of the effect of the so-called "**Suspense Account bug**"[31] and the steps POL had taken in relation to it.[32] As directed by Rodric Williams I liaised with Andrew Winn (a Relationship Manager in POL's Financial Service Centre) to prepare a summary[33] and provided the text of this to Rodric Williams later the same day.[34] I can see references to a 'briefing paper' in these emails, which the Suspense Account bug summary was apparently fed into. My knowledge of the Suspense Account bug at this time is dealt with further below at §268.

55. As another example, on 30 June 2013 Rodric Williams emailed Gavin Matthews asking WBD to establish "*whether bugs [in] the Horizon system [had] ever been specifically discussed in any proceedings*", including in shortfall claims.[35] On 1 July 2013 I reverted to Rodric Williams in the following terms:

> *"Other than Castleton and Misra, we are not aware of any litigation that has involved an allegation of an actual bug in Horizon.*

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[30] WBON0000364; WBON0000365.
[31] This is what it came to be termed in the group litigation and I adopt that nomenclature here. At this point in time in 2013, it was sometimes referred to colloquially within POL as the "14 bug" or similar, because it was understood to have impacted 14 branches.
[32] WBON0000742.
[33] POL00341337.
[34] POL00407493.
[35] WBON0000131.

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> *However, this is based on anecdotal discussions inside Bond Dickinson. Please bear in mind that we have handled 100s of cases over the last 5-10 years for POL so (absent a case by case review) it's impossible to say for certain that no SPMR alleged a Horizon bug.*
>
> *We are however confident that no case in the last 2 years has involved an allegation that there is a specific flaw in Horizon. There are a number of cases handled by our paralegal team that have been put on hold because an SPMR has alleged problems with Horizon. These cases are suspended pending the Second Sight report. It may be that on closer inspection these cases reveal a specific complaint about an error in Horizon however we would need to undertake a deeper review of each case to determine this."*[36]

56. WBD had acted for POL in the civil proceedings with Mr Castleton and I was aware from discussions with Rodric Williams that Mrs Misra had been prosecuted by POL and that the reliability of Horizon had been considered during the trial (WBD was not involved in that case). As part of the investigations required to respond to the email, I had spoken to the lawyer (I do not recall this conversation but suspect this was Stephen Dilley) who handled the Castleton case. I explained that Mr Castleton had been unrepresented by the time the case got to trial, so there had not been a sustained analysis of alleged defects in Horizon in his case. However, brief reference had been made to a known bug in Old Horizon, the "**Callendar Square bug**" (also sometimes called the "Falkirk bug", so-named because it had affected the Callendar Square branch in Falkirk), in the following way: in his cross-examination of Anne Chambers, the Fujitsu employee who gave evidence about Horizon in the case, Mr Castleton had described "*complaints from another branch, which he did not identify [but which Ms Chambers]*

[36] POL00407496.

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immediately recognized … with confidence as being a branch at Callender Square in Falkirk" (this part of my email is an excerpt from the High Court's judgment). Ms Chambers had acknowledged the Callendar Square bug but stated that there was nothing to suggest it had affected Mr Castleton's branch, and the Court accepted this evidence. I stated that I was still making enquiries about the *Misra* case and would report back in due course.[37]

57. Shortly afterwards I emailed Rodric Williams again identifying that *Misra* had been a criminal case. WBD had therefore not been involved in these proceedings but had subsequently "*reviewed the transcripts … to identify anything relevant to Horizon*". I do not believe that I myself read the transcripts, but I did review notes on them which were made by others. In *Misra* there had been a sustained examination of Horizon, but on reviewing WBD's notes on the transcripts "*I [couldn't] see anything that look[ed] like*" the Suspense Account bug, the Callendar Square bug or the "**Receipts and Payments Mismatch bug**"[38] (being the other bug that was at that time known to have occurred within Horizon).[39] In fact, the Callendar Square bug was referred to in the *Misra* case, although it was not thought to have affected Ms Misra's branch. I would have read WBD's notes of the transcripts only briefly before sending this email, and it seems I simply did not pick up on this reference at the time. As with the Suspense Account bug, I deal with my knowledge of the Receipts and Payments Mismatch bug and the Callendar Square bug at this point in time further below, at §267 and §269. Suffice it to say for present purposes that these three bugs were the only ones I

[37] POL00407496.
[38] WBON0000746.
[39] This is what it came to be termed in the group litigation and I adopt that nomenclature in this statement. As my email to Rodric Williams shows, at this point in 2013, this bug was also referred to colloquially as the "62 bug" or similar, because it had affected 62 branches.

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was aware of at this time (and for a considerable period thereafter, until during the group litigation). They all featured in Second Sight's Interim Report because details of them had been disclosed by POL to Second Sight (though I had no involvement in this process).

58. Other work I undertook around this time, when POL was anticipating receipt of the Interim Report, included reviewing a draft letter which was ultimately sent to James Arbuthnot MP. My emails indicate that I was simply asked (by Rodric Williams, on 3 July 2013) to check whether a section on "*access to live data*" was consistent with POL's response to Spot Review 5; I am not sure I was even made aware who the letter was to be from.[40] I provided minor suggested amendments on 4 July 2013.[41]

59. In other words, in the period leading up to receipt of the Interim Report my work for POL was in the nature of pulling together small pockets of information in response to specific requests from POL, reviewing documents, and carrying out drafting work. I was not engaged to provide advice on POL's general strategy for preparing for and responding to the Interim Report. The nature and level of my involvement did increase substantially following the release of the report, as I explain in the subsections that follow.

(ii) Views upon receiving the Interim Report (Q17)

60. On 4 July 2013, Rodric Williams emailed me to forewarn me that the report was expected to arrive in draft at 10:30 the following morning, and asking me to be in

[40] WBON0000757; POL00190547.
[41] WBON0000135; WBON0000136.

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a position to quickly turn around comments.[42] I do not recall this email but my understanding of it is that POL wanted me to highlight any key deficiencies in the report and to identify any errors (particularly with respect to the Spot Reviews and POL's responses to them) so that these could be corrected prior to publication. POL was only afforded a limited amount of time to provide comments, so it was a case of quickly recording my initial reactions and spotting obvious errors.

61. On 5 July 2013, Rodric Williams sent me the draft Interim Report.[43] Shortly afterwards, he sent me an older version of the draft report and asked me to produce a compare version for him to review.[44] To the best of my recollection and based on the correspondence I have reviewed for the purpose of preparing this statement, this is the first time that I received both documents. It is apparent that I provided the compare version as requested on 5 July 2013,[45] although I have not been able to locate the original email in which I did this (or the comparison document itself).

62. I provided my comments on the draft report on the same date.[46] I have limited independent recollection of what I thought about the report when I first read it, but the comments I provided to Rodric Williams would have accurately reflected my initial reactions. My headline views were that:

    62.1. Second Sight had identified "*no evidence of system wide (systemic) problems with the Horizon software*" (§12.2(a) of the draft report).[47]

[42] WBON0000759
[43] POL00021745.
[44] WBON0000760.
[45] WBON0000762.
[46] WBON0000134.
[47] Later paragraph 8.2(a) of the Interim Report: **POL00099063**.

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62.2. They had identified no gaps in POL's responses to the Spot Reviews.

62.3. They had failed to undertake any real analysis or evaluation of SPMs' complaints and POL's responses, by and large just reciting what each side had said. Against that background, they had expressed views and conclusions without providing supporting evidence or even any real reasoning. My comments reflect (and I recall thinking) that I found this concerning, because: (i) Second Sight had been appointed for the express purpose of providing a reasoned expert opinion which was supported by evidence; and (ii) they had by this point been conducting their investigation for just over a year.

63. Rodric Williams subsequently informed me that he had relayed my comments to Second Sight (though I do not know to what extent he did so, or in what form they were provided).[48] On 7 July 2013, he sent me the finalised Interim Report (**POL00099063**).[49]

(iii) Establishment of the Mediation Scheme (Q19)

64. After the Interim Report was published, I recall that POL was concerned to find a way to progress the remainder of the Second Sight investigation. I recall that POL was dissatisfied with how little progress had been made by Second Sight and the limited number of reasoned and evidenced conclusions which the Interim Report was able to draw. I recall that Susan Crichton and Rodric Williams were of the view that a general investigation into the Horizon system, including the training and support provided by POL, was simply too big a task for Second Sight

[48] WBON0000762.
[49] WBON0000763.

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to manage. POL therefore wanted to shift the focus to something more manageable and that could be completed within a reasonable time frame.

65. I understood that there was also an element of political pressure to conclude the investigation (and Second Sight's apparent lack of progress was adding to this) but I was not involved in the discussions with MPs and so gained this understanding only second or third-hand from the POL legal team. I vaguely recall that some form of Ministerial commitment or commitment to MPs was given by POL that the remainder of the investigation would be conducted quickly, but I cannot remember the details of this or may not have even been told the details.

66. My perception was that there was a genuine desire on the part of POL to get to the bottom of the issues that had been identified by Second Sight, to find closure for the SPMs who had raised concerns so far as possible, and to make improvements to its processes if necessary.

67. In view of these factors (and, I dimly recall, because key members of POL's in-house legal team were either on annual leave or due to go on leave), within a few days after publication of the Interim Report Susan Crichton turned to WBD (including me) for advice and support in developing proposals for a way forward. My emails suggest that we spoke by telephone on 11 July 2013 (though I have no recollection of this conversation) and the following day she emailed me floating the idea of an arbitration or mediation process as the means by which POL could seek to directly resolve at least some of the individual SPMs' cases: "*I have been giving some thought to how we might 'sort' what JFSA calls the*

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'toxic' cases.[50] *So a couple of things firstly given that this is about reaching a conclusion I wondered if we could use either an arbitrator or a mediator - both would be independent tho [sic] paid by POL, they could even sit between POL and SS?*".[51]

68. I responded later that day with a brief explanation of the pros and cons of mediation versus arbitration in this context:

> *"Had a quick chat with Gavin.*
>
> *Arbitration will probably end up as formal and long winded as court proceedings. We'd also lose a degree control - the process and timing would be controlled by the arbitrator. I'm not attracted to this.*
>
> *Mediation is a definite possibility. I could envisage a mediation between POL and each SPMR (with also SS in the room - and perhaps Shoosmiths?). This gives each SPMR the opportunity to voice their views and discuss SS' findings. Having a mediator in the room would help equalise the imbalance of power. Mediation would not commit POL to any outcome (unless one was agreed by both parties) and could be conducted on our timetable. If the mediations were run after SS's final report, this may help ensure that the report focuses on general themes whilst leaving specific cases to be heard in the subsequent mediation process.*
>
> *The risk is that mediation is usually set up with a view to reaching an [sic] resolution. As discussed yesterday I doubt we will ever reach closure on these cases. POL's comms team would therefore need a robust media strategy to explain why the mediations will, in the majority of cases, fail to reach a consensus between POL and the SPMR. Otherwise, this may be spun as a failure to close out this matter.*

[50] "Toxic cases" was a term sometimes used by those involved (and I believe coined by the JFSA) to refer to those cases which were (or were likely to be) particularly difficult to resolve as they were particularly long-running or had attracted an unusually high level of media attention.
[51] WBON0000766.

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> *Cost: for a decent mediator (ie. corporate background / someone who isn't going to roll over on hearing a sob story), we'd be looking at around £1,000 - £3,000 per half day, though we should get a "bulk buy" discount! I know a number of mediators who would be suitable for this project."*[52]

69. In this email, I was trying to give succinct advice to set up a realistic mediation scheme, recognising the practical reality (as I understood it) that many cases would not resolve through mediation. I wanted the process to be genuinely fair and accessible, thus my concern that SPMs should have a forum which gave them a 'voice' and that steps should be taken (including potentially sourcing independent legal representation for them) in order to 'equalise the imbalance of power' between them and POL. I thought it important that if the mediation route was adopted, a high-quality mediator should be sourced who would deal with SPMs' cases in a way that was robust, even-handed, and fair to both parties.

70. From my emails, over the next 10 days or so I, others at WBD, and employees of POL discussed different options for attempting to resolve individual SPMs' cases by email, telephone and in meetings. For example:

    70.1. On 12 July 2013, Susan Crichton forwarded me a proposal that had apparently been made by JFSA to Paula Vennells (POL CEO).[53] My response indicates that I thought that the proposal was not dissimilar to whatever option we had discussed by telephone the previous day (see above, §67), albeit with some important (and potentially problematic) differences. For instance, it appeared to: assume there would be a cash settlement in all cases; imply Second Sight should have a role in

[52] WBON0000767. Rodric Williams' response to Susan Crichton's email, to which he refers, is: POL00230639.
[53] POL00407537.

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quantifying claims; and suggest that criminal convictions could be addressed through the scheme.[54] Mr Flemington similarly expressed concern about the suggested inclusion of convicted SPMs in JFSA's proposed scheme, pointing out the potential for inconsistencies between the outcome of the scheme and decisions of the criminal courts.[55]

70.2. On 17 July 2013, Susan Crichton emailed Gavin Matthews (with me in copy) querying the possibility of independent adjudication. Gavin responded setting out how an adjudication process might work, its positives and negatives, ultimately recommending mediation as a more appropriate model for attempting to reach resolution in individual SPMs' cases in the short-term.[56]

70.3. On 19 July 2013, Mark Davies (Communications Director at POL) mooted a proposal which would involve POL creating an independent panel chaired by a QC, former MP or perhaps a Peer to hear evidence in individual cases, and allocating funding to compensate SPMs in cases where it was found that POL had failed to provide adequate training and support.[57] Susan Crichton emailed me the same day providing some further background to this suggestion and seeking my views.[58]

71. The foregoing is necessarily just a flavour of the relevant discussions that were going on at the time. As they demonstrate, there were a range of complex and

[54] WBON0000768. As Susan Crichton's reply at the top of the chain shows, at the time I appear to have mistakenly thought that this proposal emanated from Second Sight rather than JFSA, and my comments should be read subject to that. Notwithstanding this, I believe I would have still considered that the substance of the concerns highlighted in my email were valid.
[55] WBON0000769.
[56] POL00407548.
[57] WBON0000775.
[58] WBON0000776.

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competing considerations in play, including (but not limited to): the commitments POL had given publicly following publication of the Interim Report; the preferences of the POL Board; the relative cost and speed of the dispute resolution model chosen; the design of that process and the need to ensure fairness to both sides; the need to manage SPMs' and the JFSA's expectations (for example, because it was unlikely that it would be appropriate to offer a cash settlement in all cases); the different circumstances of different cases; whether and how to accommodate SPMs with criminal convictions; and how Second Sight should fit into the overall structure of the process, given that (unusually) the process would be intended to progress the resolution of cases that Second Sight had started to investigate, in circumstances where Second Sight was to remain engaged but there were legitimate concerns about the speed and efficacy of its review to date.

72. I and my colleagues at WBD favoured mediation. A compensation scheme pre-supposed that all complaints were well-founded (and this was not accepted by POL), and an adjudication or arbitration scheme would take too much time to set up and was therefore not apt to achieve swift resolution of the SPM cases which were the intended object of the process. I also believed that an adjudication or arbitration scheme would not be satisfactory because not all of the SPMs who had come forward were expected to want (only) compensation. For example, I anticipated that some would want reinstatement if they had lost their positions, and others may have wanted an explanation or an apology, or a commitment that POL would improve its performance in the future. I thought that mediation was a more flexible process which would accommodate a wider range of possible

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outcomes, whilst ensuring an appropriate degree of formality and fairness to both parties.

73. Against this background, I prepared a note (**POL00117035**) setting out some of the advantages of mediation in the present context and outlining a possible process. I provided this to Susan Crichton and others on 19 July 2013 together with a breakdown of the estimated costs of mediation (see **POL00117034**). In summary, the process envisaged was that there would be an investigation involving Second Sight preceding any formal mediation (tying in with its ongoing role to produce a report into the common themes it had identified as arising out of the cases it was and would continue to review). The original intent set out in the note was that, once Second Sight had produced its thematic report (which at that time I understood to be due in October 2013),[59] the product of the investigative process would be used in any subsequent mediations together with any findings by Second Sight. This was to ensure that (i) cases were investigated prior to the mediation and (ii) POL would have sufficient information to be able to address the relevant SPM's complaints during the mediation. I anticipated that mediations would generally be focused on breach of contract claims for civil compensation with loss of earnings and/or repayment of monies received by POL as the two main heads of loss (as well as being able to accommodate SPMs who were looking for an apology or other non-monetary remedy).[60]

74. It appears from **POL00117034** that Susan Crichton discussed this proposal with Paula Vennells and they felt that mediation should be available once Second Sight had produced a case review, as opposed to waiting for Second Sight's

[59] POL00192226.
[60] Cf. POL00099445.

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thematic report. This was (at least in part) because Second Sight had objected to producing a thematic report by October 2013. Second Sight were apparently broadly in favour of this way forward, so Susan Crichton asked me to consider the implications of the proposed change to the process I had previously outlined, and for a discussion about possible terms of reference for a mediator.

75. At this time, the JSFA was being supported and advised by Kay Linnell who was an accredited arbitrator and mediator. I recall meeting with JFSA, Second Sight and POL to discuss the mediation proposal on several occasions over the Summer of 2013 and I recall that Ms Linnell was broadly in favour. As such, it appeared to me that a mediation scheme was also preferred by the JSFA. Discussions continued within POL, and between POL, JFSA and Second Sight in the course of July and August 2013 (some of which I would have been sighted on and others not). The terms of the Mediation Scheme were in due course agreed with the scheme opening to applications on 27 August 2013, and closing on 18 November 2013.[61]

76. For completeness, I note that during this period I also advised POL on the structure of the Working Group to oversee the Mediation Scheme (which organically grew out of the meetings between POL, JFSA and Second Sight over the Summer of 2013) and the appointment of an independent third party to chair the Working Group. These aspects of the scheme arose in part out of the JFSA's concerns that the investigative process and mediation stage should have independent oversight. This led to (i) the creation of a Working Group comprising POL, Second Sight and JSFA pursuant to agreed terms of reference,[62] and (ii)

[61] WBON0000778; WBON0000784; WBON0000787; WBON0000790.
[62] WBON0000817.

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the appointment of Sir Anthony Hooper, a retired High Court Judge, as the independent chair pursuant to agreed terms of reference.[63] Sir Anthony took up his appointment as Chairman with effect from 29 October 2013.

77. I deal with the Inquiry's questions concerning the operation of the Mediation Scheme from this time until my work on this aspect reduced in mid-2015 below, in Section G.

F. REVIEW OF CRIMINAL CONVICTIONS AND RELATED MATTERS (Q20 to Q31)

(i) Overview and nature of my role

78. In the course of 2013, whilst the work described above was ongoing, POL was separately considering and taking advice from its criminal lawyers on what steps it ought to take in respect of criminal proceedings against SPMs suspected of theft, false accounting, and similar offences (where it had been the prosecutor). I later became aware that POL was specifically considering what if any disclosures needed to be made to SPMs who had previously been convicted of such offences, in circumstances where the prosecution had relied (at least in part) on Horizon data. This was because of advice it had received from its criminal solicitors (not WBD) about a deficiency in Gareth Jenkins' evidence which consisted of his failure to reveal the existence of bugs in cases where the integrity of Horizon Online had been in issue.

[63] WBON0000789.

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79. As I explain further below, I had limited visibility of this work because it was principally managed by POL's external criminal solicitors, Cartwright King Solicitors) "**Cartwright King**", who had conducted recent prosecutions of SPMs on POL's behalf, together with POL's in-house legal team (especially Jarnail Singh who was then POL's internal criminal law specialist). I had never – and have never – had conduct of criminal proceedings against an SPM or indeed in any criminal prosecution. The fact that I was involved at all is explained by the following matters:

    79.1. The civil (Mediation Scheme and later the group litigation) and criminal workstreams were running at the same time and concerned some overlapping issues (particularly as to Horizon) and, in some respects, the same SPMs.

    79.2. Cartwright King had been and continued to be POL's criminal law advisers, but as such they were involved with POL's historic private prosecutions. POL therefore wished to obtain separate criminal law advice at arm's length from Cartwright King and (as I explain further below) WBD played a role in facilitating that.

80. In view of these matters, the role I played in relation to the criminal law workstream was a supporting one (for example, my firm acting as Brian Altman QC's instructing solicitors); or it was incidental to my position in respect of the civil matters which was my primary remit.[64]

[64] For example, POL sought a new expert to replace Gareth Jenkins. Cartwright King led on the search for that expert and it was their role to advise POL on the suitability of prospective experts to give evidence in criminal proceedings. However, since POL thought that the new expert may be able in due course to give evidence in any civil proceedings involving a challenge to Horizon, I was sighted on the conduct of the search and in one or two instances sought proposals from prospective experts on POL's behalf: see for example WBON0000795. The proposal received

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81. In order to maintain the chronology of this statement, in this section I primarily focus on answering **Q20 to Q31** of the Request insofar as those questions relate to the work which I undertook in 2013 and early 2014. Subsequently, in early 2015, the CCRC opened a formal investigation into the convictions of certain SPMs (and the scope of that investigation later expanded to consider other SPMs' cases); and Brian Altman QC undertook a further review in 2016. I will deal with my limited involvement in those matters below (see especially §§229-232, §§296-297, §§458-465, §§596-598, and fn. 250).

(ii) The Helen Rose Report (Q20) and review of criminal convictions

82. Based on my email records, I first received the Helen Rose Report concerning the Lepton SPSO (**POL00022598**) from Rodric Williams on 3 July 2013.[65] Rodric Williams forwarded me an email from Dave Posnett of POL (dated 14 June 2013) which had the report attached and asked that I take a look at it so that I could give him an overview on the phone at some point that day. Dave Posnett's email recorded that the report had been produced by Helen Rose, and that it "*concern[ed] a 'system reversal' of a transaction following a system failure*". For context, this was a reference to the automatic transaction reversal process, which was a safeguard in Horizon Online that activated if a terminal in a branch lost power or the telecoms line was disconnected. The automatic reversal of transactions in these circumstances was (as Dave Posnett's email put it) "*normal practice*", but Dave Posnett appears to have been concerned that the relevant data logs gave a misleading impression that such automated reversals had been

from Deloitte for this work is at WBON0000773; ultimately, nothing flowed from this proposal and it was unconnected with Deloitte's later work (addressed later).

[65] WBON0000751.

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entered manually by the SPM. Dave Posnett appears to have had in mind that, if the SPM did not appreciate that a reversal had taken place and did not take steps to match this physically in the branch (e.g. by handing back any money that had been taken from the customer), a discrepancy could result, and that it may not be apparent from the data logs what had happened.

83. I do not recall Rodric Williams' email of 3 July 2013 asking me to give him an overview of the Helen Rose Report or what I did in response to his request. Nor can I find any emails that shed further light on this. I cannot recall what my initial views on the contents of the report were, nor what impression of its contents I gave to Rodric Williams (if I did in fact call him to provide an overview, which I cannot now remember).

84. However, and on the basis of my present knowledge, I make the following observations as to what my initial views of the Helen Rose Report's contents might have been:

    84.1. ***First***, the only aspect of the report that I would have considered relevant to my role would have been the criticisms of the automatic transaction reversal process. At the date I received the report, I would likely have appreciated that WBD had already considered the mechanics of the transaction reversal process by reference to what had taken place on 4 October 2012 at the Lepton SPSO, as this was the subject of Spot Review 1.[66]

[66] In this regard, I note that Dave Posnett's email of 14 June 2013 was incorrect in stating that the Lepton SPSO did not "*feature as part of [the] 2nd Sight Spot Reviews*": WBON0001725.

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84.2. ***Second***, I would have recognised this as Spot Review 1 because I had personally been involved in redrafting POL's response to Spot Review 1 in April 2013.[67]

84.3. ***Third***, I would have recalled that POL's response to Spot Review 1 had concluded that (i) no failing in Horizon had been demonstrated in the sense that the system had operated as intended in accordance with its design, and (ii) the system provided adequate notification of automatic transaction reversals that occurred when it was unable to connect to the Data Centre.[68] With this in mind, I would have reviewed the criticisms of the transaction reversal process that featured in the Helen Rose Report, in order to satisfy myself that they had already been addressed as part of Spot Review 1 (and that no amendments or additions to POL's response were required).

84.4. ***Fourth***, as to point (i), I would likely have thought that POL's conclusion in its Spot Review 1 response, that no failing in Horizon was demonstrated, broadly aligned with Helen Rose's summary that "*the system ha[d] behaved as it should and [she] did not see this scenario occurring regularly and creating large losses*".

84.5. ***Fifth***, as to point (ii), I would have noted that Helen Rose made a particular criticism of the fact that the data logs readily available to POL did not clearly differentiate between an explicit transaction reversal completed by the postmaster, and an automatic transaction reversal as part of the recovery process arising from connectivity issues (i.e. the point alluded to

[67] POL00098035.
[68] POL00186743.

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by Dave Posnett). In its Spot Review 1 response, POL had acknowledged this point but concluded that it did not create a serious difficulty, as it was possible to determine what had happened from the disconnect and recovery receipts that would physically print in the branch at the relevant time. Therefore, this criticism is unlikely to have surprised or particularly concerned me at the time I received the Helen Rose Report, as the same point was raised and addressed as part of Spot Review 1.

85. Save for the matters set out above I had no insight into the background to the Helen Rose Report, and I do not believe I would have had any other views on its content. I did not know who had commissioned it or why (beyond the bare fact of the events of 4 October 2012 having happened).

86. From the advice note prepared by Cartwright King dated 15 July 2013 (the "**Clarke Advice**"),[69] I can see that at some point POL passed the Helen Rose report to Cartwright King. The report quoted an email to Gareth Jenkins which read: "*I know you are aware of all the horizon integrity issues*". Through the inquiries described in the Clarke Advice, Cartwright King established that Gareth Jenkins had been aware of two bugs in Horizon Online (the Receipts and Payments Mismatch bug and the Suspense Account bug) at a time when he gave evidence in criminal proceedings to the effect that Horizon Online was 'bug-free'. On this basis, Cartwright King advised POL that (i) Gareth Jenkins' credibility as an expert witness was called into question, and (ii) there may have been material non-disclosure of the Suspense Account and Receipts and Payments Mismatch bugs in some past and ongoing prosecutions concerning Horizon Online, which

[69] POL00193002.

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would now need to be rectified. I was not involved in providing the Helen Rose report to Cartwright King or in the seeking or preparation of the above advice.

87. The Clarke advice was sent to me (I believe) for the first time on 17 July 2013 by Susan Crichton.[70] From my emails it seems that POL may have alerted me to the substance of Cartwright King's thinking slightly before this, on or around 8 July 2013, though I do not recall this email or the conversation to which it alludes.[71] At any rate, I have identified nothing that suggests that I was appraised of the matters in the preceding paragraph when I first received the Helen Rose Report on 3 July 2013. Nor did I have the means to work them out for myself, not having been involved in any prosecutions of SPMs and not being aware of the evidence that Gareth Jenkins had given in some of them.

88. Once I was made aware of the substance of the Clarke advice, I would have understood that the points it raised meant there had been possible disclosure failures in previous prosecutions. I would have taken Cartwright King's opinion on this issue and on the issue of what POL needed to do next to discharge its duties as prosecutor at face value, this being Cartwright King's area of specialism.

89. I recall being aware of the fact that as a result of this development, Cartwright King began undertaking a review of historic prosecution files to determine what disclosures POL needed to make to comply with its prosecutorial duties. WBD did not advise on this review and disclosure process, and nor were we sighted on its progress or conduct, save that we played a limited role in arranging the instruction of Brian Altman QC as described below. As part of that disclosure,

[70] WBON0000770.
[71] WBON0000765.

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Cartwright King disclosed the Helen Rose Report to some convicted SPMs and decided to redact parts of the report. WBD did not play any role in that disclosure or the decision to redact that document before it was disclosed; I became aware of this only later, when a request for disclosure of an unredacted version of the report was made on behalf of certain SPMs who were participating in the Mediation Scheme (see below, §§176 ff).

(iii) The CCRC's July 2013 letter and the appointment of Brian Altman QC (Q29 and Q31)

90. Soon after the publication of Second Sight's Interim Report, on 12 July 2013, the CCRC wrote to POL seeking information about the number of SPMs who had been convicted (following a guilty plea or unsuccessful appeal) in circumstances "*where evidence from the Horizon computer system [was] relevant*", and asking what action POL was taking in such cases (**POL00039996**). This letter was not initially referred by Susan Crichton to me but to Cartwright King.

91. On 16 July 2013, Susan Crichton emailed me (**POL00039996**) expressing uneasiness as to advice POL had received from Cartwright King in relation to this initial letter.[72] This was the point at which I was first made aware of the CCRC's letter. Susan Crichton described Cartwright King's advice as "*odd… as if given on a take it or leave it basis*", by which I understood her to be referring to their comment at the bottom of the advice (**POL00039993**) in relation to their suggested draft response to the CCRC ("*Please feel free to use it, or any part of it, (or not) as you will...*"). Susan Crichton commented that "*somehow it feels as*

[72] POL00039996.

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if there is a conflict here [i.e. in Cartwright King's position]", which I took to be an allusion to the fact that in light of Cartwright King's prior involvement in POL's private prosecutions of SPMs, it might be inappropriate for them to direct POL's response to the CCRC in connection with a possible independent review of those same prosecutions.

92. I cannot recall what if any discussion I had with Susan Crichton on the back of this email, but I note that Gavin Matthews responded later that day saying that he had taken an "*initial look*" (so it may be there was no need for me to pick it up with her).[73] Gavin agreed that he would expect a solicitor advising on a letter of this nature to give a clearer steer as to how to respond, and offered to identify some criminal barristers to assist. He also commented, albeit from a civil practitioner's perspective, that Cartwright King's draft response was poorly phrased in that it did not reflect the fact that the Interim Report "*found there to be no systemic problems with Horizon*".

93. My emails indicate that Gavin subsequently had some discussions with Susan Crichton and other members of the POL legal team about the way forward. In short, he recommended that an independent criminal QC be instructed to oversee the review then being carried out by Cartwright King ("*to check that their tactical approach is now overseen by someone completely unbiased*").[74] This was the approach ultimately taken by POL, and Brian Altman QC was appointed to supervise Cartwright King's work. Brian Altman QC's remit also went beyond this in that POL instructed him to advise on how to deal with any review by the CCRC, and on its wider prosecution strategy going forwards.

[73] POL00407546.
[74] WBON0000133.

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94. I drafted a holding response to be sent to the CCRC whilst the practical detail of the instruction was sorted out.[75] Gavin thereafter liaised with Brian Altman QC to settle a more substantive response.[76] I note that Gavin's email providing that letter to Susan Crichton (with me in copy) anticipated that a follow-up letter would need to be sent. My emails indicate that Cartwright King and I were sent a copy of this later letter and invited to comment; though I do not believe I provided any comments given that the draft had come from Brian Altman QC via WBD.[77] For completeness, my recollection is that the CCRC did not become especially active at this stage and essentially monitored the matter in the background until early 2015 when it opened a formal review.

95. Because part of the purpose of Brian Altman QC's instruction was to independently evaluate Cartwright King's review of SPMs' convictions, bearing in mind the role they had played in the past prosecutions, it was considered prudent for his instructions to not to come from Cartwright King. POL could have instructed Brian Altman QC directly through its in-house legal team, but I recall that POL's reason for asking WBD to do this on their behalf was so that we could assist with administrative matters such as preparing bundles of documents for Counsel and organising conferences. Given WBD's parallel work on the mediation scheme arose also from Second Sight's work and reports, my firm was the obvious port of call. Gavin took the lead on this instruction rather than me. POL understood that I was not a criminal lawyer and that WBD was acting as a professional conduit for instructions to Brian Altman QC.

[75] WBON0000777.
[76] WBON0000782; POL00297983.
[77] WBON0001705.

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96. With respect to the Inquiry's **Q29**, WBD did not advise on or conduct any review of past prosecutions of SPMs. Nor did I advise on POL's duties of disclosure towards convicted SPMs, either generally or in individual cases, this being squarely within the remit and expertise of the criminal law specialists (Jarnail Singh, Cartwright King, and Brian Altman QC). As and when I advised on issues of disclosure it was solely from a civil law perspective. I was not instructed to advise on such issues in the criminal law context and POL's in-house legal team knew that I had no expertise in those matters. Where issues of criminal procedure (including disclosure) happened to be relevant to my own work, I endeavoured to establish what I needed to know from the criminal lawyers and deferred to their advice.

97. This can be seen in an email which I sent to Cartwright King on 5 August 2013 to which Harry Bowyer (in-house counsel) responded the following day. At this time, I was engaged in setting up the Mediation Scheme, which (it had been determined) would be open to SPMs with historic convictions based on Horizon data. Mr Bowyer's responses are shown in red below:[78]

> *"I'm helping POL set up a mediation scheme to address SPMRs concerns about Horizon and have a couple of quick questions with a criminal angle that I hope you may be able to help with. Apologies but we need a response relatively swiftly - close of business today if possible.*
>
> *1. Privilege*
>
> *The mediations will be confidential and subject to "without prejudice" privilege. Some will involve SPMRs who have been prosecuted.*

[78] WBON0000806.

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Essentially, we're trying to determine whether criminal procedure / disclosure duties trump privilege.

Disclosure always trumps privilege. If we are in possession of material that undermines our case or helps the case that the defence are trying to put forward then we are obliged to disclose unless there is a basis for a Public Interest Immunity application. There are ways of disclosing evidence that do not disclose the way that it was obtained e.g. Section 10 admissions or disclosure notes

Will "without prejudice" privilege prevent a SPMR from repeating matters discussed in the mediation in later criminal proceedings (ie. an appeal)?

No - once the information is out it cannot be put back in the box. If the sub postmaster discovers something that undermined our case or would have supported his then he can use that as the basis of an appeal subject to the rules of evidence, admissibility etc.

Likewise, if something is said during a mediation that may be material to a SPMR's conviction, is POL obliged to disclose that information to Defence Counsel even though it may have been obtained during without prejudice discussions?

If the material comes from the SPMR himself then the defence already have the information - we do not run the defence case - we just have to make sure that they have the material that enables them to run it - the difficulty arises if the subpostmaster refers to something that had not been canvassed by the defence which triggers further disclosure. It may be that a remark made by the SPMR might open a new area of disclosure that had not been considered by the disclosure officer because the defence had not mentioned it.

[…]

3. Disclosure duty

We've prepared a document that will be going to SPMRs to explain the mediation process. That document contains the statement below. Does this accurately capture POL's disclosure duties and the appeal process?

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> ***"What if my case involves a criminal prosecution or conviction?***
>
> *You may put your case through the Scheme even if you have already received a Police caution or have been subject to a criminal prosecution or conviction.*
>
> *However, Post Office does not have the power to reverse or overturn any criminal conviction - only the Criminal Courts have this power.*
>
> *If at any stage during the Scheme, new information comes to light that might reasonably be considered capable of undermining the case for a prosecution or of assisting the case for the defence, Post Office has a duty to notify you and your defence lawyers. You may then choose whether to use that new information to appeal your conviction or sentence."*
>
> *Accurate and succinct! - As stated above no one who's prosecution is live should be in the scheme."*[79]

(iv) Horizon Regular Calls (Q21 to Q28)

Inception of the Horizon Regular Calls

98. To my knowledge, it was Cartwright King who advised POL to set up the Horizon Regular Call in around July 2013. I do not believe anyone at WBD had a hand in this. I later understood that Cartwright King recommended this step in order to assist POL with its ongoing disclosure duties in light of the fact that Cartwright King now considered that there had been material non-disclosure, in certain criminal proceedings against SPMs, of bugs in Horizon that POL was aware of

[79] The draft Mediation Scheme pack reflecting this advice is POL00145832, circulated on 6 August 2013: WBON0000787.

(as reflected in the Clarke Advice).[80] Their idea was to have a single forum in which different departments within POL could share information about issues raised by SPMs.

99. I do not now have a good recollection of these meetings but my firm's file indicates that I attended most of the calls between 19 July 2013 and 15 January 2014 personally, with a few gaps, and that I attended one further call on 19 February 2014. I do not believe I attended any subsequent calls. I believe the reasons why I would have initially attended personally were as follows:

    99.1. The focus of discussion at the Horizon Regular Call, namely technical issues with Horizon, was of interest given the issues being considered by Second Sight. Therefore, I wanted to hear what was said on the first few Horizon Regular Calls and to see what matters were raised and how.

    99.2. I could usefully feed in anything to do with Horizon coming from the Second Sight side. During this time (namely, the second half of 2013) Second Sight was transitioning from conducting Spot Reviews to facilitating the Mediation Scheme.

    99.3. I could advise as to any civil liability issues which might arise from any risk to the past criminal prosecutions.

Horizon Regular Call on 19 July 2013

100. I am asked to specifically consider the note of the Horizon Regular Call on 19 July 2013 (**POL00083932**); that note records that I was present. I have no recollection of this call although I have no reason to doubt that I was present. My

[80] POL00193002.

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firm's records show I received an email invitation on 18 July 2013 from Ben Thorp (a WBD employee then on secondment to POL's legal team), which noted that Rosie Gaisford (another WBD solicitor) had spoken to me about the call.[81] I do not recall the conversation with Rosie. I have no recollection of POL providing me with any other briefing before the first call, but see that according to the note Rob King opened the call with an explanation of the call's purpose including that "*No minutes circulated, but we will be taking notes*".

101. There are two entries as part of this note that are attributed to me, and about which I am asked.

102. ***First***, **Q21.5** refers to the record that I "*Commented on need to limit public debate on the Horizon issue as this may have a detrimental impact on future litigation*". I do not recall making this comment or exactly what I meant by it. However, reviewing this comment now I observe that the Second Sight report had been published a little over a week previously and POL was concerned that media reporting could stir up further challenges to Horizon in circumstances where it believed that Horizon remained robust, including (potentially) in the form of unsubstantiated civil claims. I observe from the note that a significant proportion of this meeting appears to have involved discussion of these types of external communications issues, e.g. the need to keep an eye on internet forums where the Horizon system was being discussed (Rod Ismay), an article in the Telegraph (Ruth Barker), and the need to make clear to SPMs in the wider business network what steps POL were taking to address the issues in the Second Sight report

[81] WBON0000772.

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(Nick Beal). I believe the comments attributed to me would have been part of the flow of that discussion.

103. ***Second***, **Q21.6** states that I "*Spoke about emails, written comms, etc … if it's produced it's then available for disclosure, if it's not then technically it isn't*". Again, I do not recall making this comment.

104. I believe that my comment could only have been intended to make sure POL was aware of the fact that electronic documents and other forms of written communication would be caught by the rules of disclosure in civil proceedings. It was my function to advise my clients on (for example) what constitutes a document in the civil context (which includes electronic documents).

105. I do not understand the reference to 'produced' in the comment that is attributed to me. The word 'produced' is not a word I would ordinarily use in this context. I think of the word 'produced' in the context of running a 'production' of documents from a data room (which is a technical e-discovery process), which are then given to the other side in civil litigation as part of disclosure. I would not use this word when describing the creation of new documents by my client which are then potentially disclosable. The use of this word suggests to me that the note is not an accurate record of precisely what was said.

106. To be clear, I would also not have purported or attempted to comment on POL's criminal law disclosure obligations. That role fell to Cartwright King, whose were present at this meeting. If my advice was in any way unconventional or liable to cause confusion as to POL's criminal law duties, I have no doubt that Martin Smith would have said something to correct the position (and from the minutes it does not appear that he did).

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Horizon Regular Calls on 24 July, 7 August and 14 August 2013

107. I am also asked to specifically consider the notes of Horizon Regular Calls that took place on 24 July 2013 (**POL00083933**), 7 August 2013 (**POL00083931**) and 14 August 2013 (**POL00083930**). I am not listed as an attendee of the call on 7 August 2013 and I have no reason to believe that I attended it.

108. As to the other two calls, again I have no memory of the specifics of them. I therefore do not recall any discussion of the need to take or not to take minutes or notes of the Horizon Regular Calls; or of the format in which this should be taken; or of the Helen Rose Report (which is also not referred to in the notes of either call). I have however reviewed the note of the Horizon Regular call which took place on 31 July 2013, and these do mention the report.[82] I appear not to have attended that call (and cannot remember attending it) so cannot comment further on what was discussed.

Minute-taking and record-keeping in respect of the Horizon Regular Calls

109. My firm did not, at first, play a role in minute-taking at the Horizon Regular Calls. It appears to have been POL who was responsible for, and took, the notes of the four calls that took place between 19 July and 14 August 2013. These notes were not prepared by WBD: they were sent to me for the first time as a batch by Dave Posnett of POL on 16 August 2013 (**POL000139691**).[83]

110. Based on the note of the first call on 19 July 2013 (**POL00083892**), I had suggested during that meeting that all lists of cases should be sent to Rosie Gaisford. Around that time, and as a separate exercise to the weekly calls, I recall

[82] POL00193767.
[83] POL00193596.

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that Rosie had been placed on a short-term (c. 3-4 week) placement to POL with the primary task of collating a list of all the past criminal prosecutions and civil cases that POL had instigated. This was because POL did not hold a master list of these cases. Against this context, I believe my suggestion during the 19 July 2013 call was aimed at ensuring that any known cases were fed through to Rosie's master list. I do not believe this was a reference to Rosie keeping a list of Horizon issues or a minute of the calls, nor do I remember Rosie ever keeping such lists or minutes.

111. Later, in August 2013, WBD were asked to take on the role of keeping minutes for the Horizon Regular Call. The background to this was as follows:

112. On 13 August 2013, I received a call from Susan Crichton and Hugh Flemington. I have no independent recollection of this call but an email I sent to Gavin Matthews and Simon Richardson of WBD states that it was because Cartwright King had advised POL that it needed to "*track and investigate every single complaint, query or issue about Horizon in order to comply with criminal disclosure duties*", and POL was concerned that this would be "*very difficult, if not impossible, for POL to achieve*".[84] I believe therefore that they called me to discuss the practicalities of implementing the advice and to ask me to seek input from Brian Altman QC on this point[85] (note, I would not have advised on the correctness of Cartwright King's advice, nor would I have been asked to).

113. Following that call Susan Crichton sent me an email[86] attaching the written advice that Cartwright King had prepared on POL's duty to record and retain

[84] WBON0001710.
[85] See §§123 ff below regarding the conference with Brian Altman QC on 9 September 2013.
[86] WBON0000791.

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material (including information) by virtue of their role as private prosecutor (the "**Second Clarke Advice**"), saying that she thought I "*might be interested to see what had started that particular 'hare' running*".[87]

114. In the Second Clarke Advice, Cartwright King raised various concerns about the approach some within POL were allegedly taking to keeping records of the Horizon Regular Calls:

> *"At some point following the conclusion of the third conference call, which I understand to have taken place on the morning of Wednesday 31st July, it became unclear as to whether and to what extent material was either being retained centrally or disseminated. The following information has been relayed to me:*
>
> *i. The minutes of a previous conference call had been typed and emailed to a number of persons. An instruction was then given that those emails and minutes should be, and have been, destroyed: the word "shredded" was conveyed to me.*
>
> *ii. Handwritten minutes were not to be typed and should be forwarded to POL Head of Security.*
>
> *iii. Advice had been given to POL which I report as relayed to me verbatim: "If it's not minuted it's not in the public domain and therefore not disclosable." "If it's produced its available for disclosure – if not minuted then technically its not."*
>
> *iv. Some at POL do not wish to minute the weekly conference calls."*

115. I note that these events appear to have followed the third Horizon Regular Call on 31 July 2013, which I did not attend,[88] and I was not aware of these events prior to receipt of the Second Clarke Advice

[87] POL00229411.
[88] POL00193767.

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116. The Second Clarke Advice warned that if these allegations were well-founded and potentially disclosable information or material had been lost or destroyed as a result, this would amount to a serious breach of POL's duties as prosecutor, and (depending on the circumstances) could amount to conspiracy to pervert the course of justice by those involved. It concluded that the "*proper way forward is for the conference calls to be properly minuted, those minutes to be centrally retained and made available to all those who properly require access thereto*". Alternatively, it suggested that "*some other centrally-based mechanism be designed, so as to permit the collation of all Horizon-related defects, bugs, complaints, queries and Fujitsu remedies, arising from all sources, into one location. Such a mechanism would amount to proper compliance with that aspect of a prosecutor's duty relating to the recording and retention of relevant information*". It was this latter suggestion that Susan Crichton and Hugh Flemington called me to discuss.

117. On reviewing the Second Clarke Advice, I thought that the matters it dealt with were serious, and I understood the central point of Cartwright King's advice. However, as Susan Crichton and Hugh Flemington had observed, Cartwright King's advice did ask a lot of POL. It asked POL not only to record bugs, but also "*complaints and queries*", presumably even those that did not turn out to reveal bugs. It also required this to be captured "*from all sources*" which I thought was a substantial undertaking given that POL had several thousand SPMs who could contact POL through a variety of channels, let alone its customers, clients and its own staff who may also raise Horizon-related "*queries"*). I sent, in summary form, these thoughts to Susan Crichton:

> *"The bit of the advice that concerns me is:*

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> *"I would advise that either the conference calls be continued or that some other centrally based mechanism be designed, so as to permit the collation of all Horizon-related defects, bugs, complaints, queries and Fujitsu remedies, arising from all sources, into one location. Such a mechanism would amount to proper compliance with that aspect of a prosecutor's duty relating to the recording and retention of relevant information""* (emphasis as in my original).
>
> *This approach is very robust but the question is whether this is workable in practice? Perhaps CK could be asked to consider if there is an easier but still defensible way to meet the disclosure duty?*"

118. In the event the Horizon Regular Calls continued albeit with a better-defined system for recording information in place, which included WBD taking on the role of keeping minutes. The way in which this was established was as follows:

118.1. Following the above exchange with Susan Crichton, I agreed with Dave Posnett of POL that the appropriate way of keeping the minutes for the calls would be to add them to a spreadsheet that I (or WBD) was to prepare. This single spreadsheet would then comprise a complete record of all calls, and each week an updated version would be circulated to attendees before the next call. This agreement is reflected in Dave Posnett's email to me of 16 August 2013, which is shown in **POL00139691**. I cannot specifically recall the conversation referred to, but the process embodied in the email is the one I remember.[89]

118.2. Dave Posnett forwarded the notes that he and his Security Team colleagues at POL had made of the calls to date, in order for me to place

[89] For completeness, the email from Rob King to Jarnail Singh shown at the top of **POL00139691** is not one I recognise and it has not been possible to locate it on my firm's file; it appears to have been internal to POL.

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them within the first iteration of the spreadsheet. This was the first time I had received notes of these earlier instances of the Horizon Regular Call.

118.3. With reference to **Q25.1** of the Request, I received an email from Jarnail Singh on 20 August 2013 (**POL00139693**) about how information and action points from the calls was being retained. I explained that WBD was collating all the minutes prepared by POL into a single "**Weekly Report**" (which was in fact a Word document rather than a spreadsheet).[90] I also explained that the action points from each meeting were recorded in the minutes. Still, I recall being rather perplexed by Jarnail Singh's email. Its phrasing was unclear, and it seemed to be seeking substantive information even though this was a process initiated by POL and Cartwright King, and WBD had just been asked to take over essentially a secretarial function of capturing the minutes into a single place.

118.4. I then emailed Jon Scott to seek his agreement to me circulating the Weekly Report to the attendees of the call later that day. He responded agreeing to that and saying that he "*would suggest that all the issues/matters raised are also collated onto one action sheet*".

118.5. I circulated the first Weekly Report, incorporating all of the minutes from the first five Horizon Regular Calls, on 21 August 2013 shortly before that day's call.[91]

118.6. With effect from the 21 August call, WBD provided a paralegal to take the minutes. My weak recollection is that shortly before this point someone

[90] See for example POL00137427.
[91] WBON0000796.

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from POL legal asked me if WBD could provide a paralegal to keep minutes of the calls going forward and that we were asked to do this as we had the resources to ensure this was done routinely every week. So at this stage, WBD's role was to take the minutes of each call and then collate them into the Weekly Report.

118.7. On 22 August 2013, Hugh Flemington of POL asked me and Rob King of POL who was doing an "action log". I agreed that the WBD paralegal doing the minutes could also take charge of maintaining an action log to be updated each week, subject to receiving clear directions from POL as to what actions were to be recorded and how they were to be described.[92] I am asked by **Q26.2** of the Request to describe a telephone conversation I had with Jarnail Singh and the Security Team regarding the "*action point list*". I have no independent recollection of this, but the above exchange dated 22 August 2013 suggests that its purpose was to agree a format for the action log in line with John Scott's email on 21 August 2013 that there should be one "*action point sheet*".

Protocol

119. By **Q27** I am asked to consider a "**Protocol**" (**POL000139696**) circulated by email to Horizon Regular Call attendees (including me) on 9 October 2013 (**POL000139695**). I recognise this as a document drafted by Cartwright King but otherwise have no specific recollection of it.

120. Having reviewed it for the purposes preparing this statement, I note that it broadly summarises my understanding, explained above, as to why the Horizon Regular

[92] WBON0000807.

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Call was set up (namely, to aid POL to comply with its prosecutorial disclosure duties) and how it was to be managed. I do not know why it included a requirement for a solicitor representing WBD to attend "*each and every*" Horizon Regular Call, along with a note-taker (§3.3), or why it specifically required the retention of the minutes of the Horizon Regular Call for a period of 6 years (§4.5.3) – the latter was something that WBD was doing in any event in line with its usual file retention policies. Also a WBD solicitor generally attended (at this stage, often me), it being prudent to make sure that we were sighted on the calls and could feed in relevant observations from the Mediation Scheme workstream. As explained above, from mid-August 2013 a WBD paralegal took on the role of taking minutes and maintaining an action log and we would naturally retain documents arising out of the calls as part of our ordinary document retention policies. I do not think that the points in the Protocol were specifically agreed with WBD, but for the reasons given above I doubt we would have particularly objected to them if asked.

121. As to why the Protocol was created more generally, again I have limited independent recollection of this. As set out above, by early October when this document was circulated the elements principally affecting WBD – that is, the procedure for recording minutes and actions – had been settled. I do note that in WBD's note of the 9 September 2013 conference with Brian Altman QC (**POL00006485**), discussed further below at §§123 ff, Simon Clarke of Cartwright King is recorded as saying that "*he thought that it was necessary to put duties on individuals. Consequently CK are in the process of writing a protocol to explain the purpose of the weekly hub meetings, the roles and responsibilities of individuals*". I have no reason to doubt that this is a fair reflection of his motivation

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in preparing the Protocol. I note also that this comment was in the context of him saying that there were some "*cultural issues*" at the outset of the Horizon Regular Calls. I do not recall this comment but it may have been a reference to the allegations cited in the Second Clarke Advice, of which I was not aware until reading that advice. It may also, or alternatively, have been a reference to the fact that there were some difficulties in establishing a process for the Horizon Regular Call and progressing actions. To the best of my recollection these were ordinary and minor teething issues, i.e. it took a few calls to get into a proper routine as to who would regularly attend on behalf of the different departments involved, and there was not always clarity as to who would be responsible for progressing actions arising out of the meetings. I would also note that at this early stage, WBD and I had very limited visibility of the prosecution side of POL, the security team and Cartwright King's work so there may have been other issues in play that I was not sighted on.

122. Fairly early on in the life of the Horizon Regular Calls – which to my knowledge continued for several years – I stopped attending. As I have set out above, my firm's file indicates that the last call I attended was on 19 February 2014, with Claire Parmenter (a solicitor at WBD) attending some of the Horizon Regular Calls after I had stopped. By June 2014, Claire had left the firm and thereafter different people will have been the usual WBD attendee at different points in time. For example, I am aware from my firm's file that after Clare left her successor on the calls was Alva Leigh-Doyle. At some point thereafter I recall that WBD's attendance on the calls dropped from a solicitor attending to a paralegal, though I cannot remember when this happened.

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(v) Conference with Brian Altman QC on 9 September 2013 (Q30)

123. The prelude to the conference on 9 September 2013 was the delivery of Brian Altman QC's interim advice dated 2 August 2013 (the "**BAQC Interim Advice**").[93] This was a preliminary report on the propriety of the parameters that Cartwright King had set in undertaking their review of historic convictions, and on the general approach Cartwright King were taking in relation to that review. It was provided to Gavin Matthews and Simon Richardson (WBD's client relationship Partner for POL), who then forwarded it to me on 4 August 2013.[94]

124. In short, Brian Altman QC did not raise fundamental concerns about the ambit of or approach to the review, but he did identify certain areas where further thought might be required. For example: he queried whether the review should go back further than three years, Cartwright King having identified 2010 as the cut-off date for convictions which were to be the subject of their review (§15); he thought that consideration may need to be given to whether there were other issues, beyond Gareth Jenkins' non-disclosure, which could potentially give rise to grounds for appeal in cases subject to the review (particularly in light of the issues identified in Second Sight's Interim Report) (§24); and he gave some constructive feedback on Cartwright King's approach and what could be done to avoid potential pitfalls (§24).

125. In view of these points, Simon Richardson provided some brief advice to POL as to what its next steps should be. In summary he said:

[93] POL00223376.
[94] WBON0000393.

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"1.POL legal needs to disclose Brian Altman's Interim Review to CK and discuss it with them.

2. CK should be asked to respond in writing to the recommendations made at Paragraph 24 and Paragraph 15

3. Bond Dickinson (Andy Parsons) should sit down with Brian Altman to walk him through the spot review process and the SS Report so that he can understand the impact of his review on the civil side".[95]

126. Of relevance for my purposes, Simon also observed that Brian Altman QC "*raises the issue of whether the current review is too narrow … he references the list of issues in the SS report and Spot Review 22 as examples of other issues which may need to fall within the ambit of CK's review*". He commented that "*[w]hilst this should be put to CK, my own view is that it may be very difficult for CK to expand the review on issues on which SS have failed to come to any conclusion*."

127. From this I understood that Simon was concerned to ensure that Brian Altman QC had a full understanding of the Spot Review process and the challenges posed by the fact that Second Sight had only made limited progress in investigating the issues raised by these cases. Given that the Second Sight investigation was potentially material to his views on how the review should be conducted, and given that the investigation was in a complex transitional phase as the details of the Mediation Scheme were being worked out, it made sense for me to sit down with Brian Altman QC to talk him through this workstream (on which I was leading), notwithstanding that I was not especially close to his instruction.

[95] WBON0000786.

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128. I was also aware there was a degree of overlap between the civil and criminal workstreams at this point, as a number of the cases that were under consideration by Second Sight involved SPMs who had also been convicted. I was therefore concerned to understand what was happening in the criminal workstream so as to identify any possible impacts on the civil side (for example, civil claims that might flow from SPMs' convictions being found to be unsafe).

129. In addition to this, there was a need for Brian Altman QC to meet with Cartwright King around this time, in order for them to discuss the points arising out of the BAQC Interim Advice with him. From my emails, I can see that they prepared a written response to the Interim Advice, which was forwarded to me by Susan Crichton on 13 August 2013[96] (together with the Second Clarke Advice, discussed above at §§112-118). In line with the rationale for WBD rather than Cartwright King acting as Brian Altman QC's instructing solicitors for the purpose of carrying out his review, it was generally felt that WBD should be present at any meeting between the two. A conference resulted at which members of WBD, Cartwright King and POL's legal team were all present. This was the conference of 9 September 2013 (the "**Conference**").

130. I have been asked to set out on my recollection of this conference. Other than the fact that I helped to arrange it, that it took place at Mr Altman KC's chambers, and the broad reasons for my attendance as set out above, I cannot recall the specifics of what was discussed. I can therefore only comment by reference to the two notes of it which the Inquiry has provided – **POL00006485** and **POL00139866**.

[96] WBON0000791; POL00223376.

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131. The first of those notes (the "**WBD Note**") is headed with the name of the firm, and the metadata that my firm has managed to obtain from our electronic filing system suggests that it was typed up by a secretary on Gavin's behalf. My firm's records show that Gavin circulated the WBD Note with me in copy following the 9 September Conference on 23 September 2013.[97] The "**Second Note**" does not appear to me to be a WBD document. That assessment is supported by the absence of the Second Note in WBD's records. Therefore, I have no reason to believe that I have seen the Second Note prior to preparing this statement and I do not know who prepared it. I do not specifically recall what was discussed at the Conference but I have no reason to doubt the accuracy of either Note, which appear broadly consistent in terms of the topics discussed and order of play.

132. I am asked, ***first***, to comment on the references to 'cultural' issues at the outset of the Horizon Regular Calls. I have dealt with this above at §121 in the context of the Protocol which was later drafted by Cartwright King to govern those calls. I am unable to say what was meant by the comment in **POL00139866** attributed to Susan Crichton ("*People then dump…*"), which occurs at this part of the Conference.

133. ***Second***, I am asked to set out my recollection of the part of the discussion relating to Gareth Jenkins. I cannot recall this discussion and can only comment that, as I have already set out, Cartwright King had by this time come to the view that Gareth Jenkins could not be relied upon as an expert witness as he had failed to disclose material information about problems in the operation of Horizon Online when giving evidence in previous criminal prosecutions. I recall that Mr

[97] POL00333840.

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Altman QC had reached a similar view in his (then) recent Interim Advice, so this part of the conference was probably about that.

134. ***Third***, I am asked to expand on Brian Altman QC's advice, recorded in **POL00006485**, that POL had "*no positive duty to seek out individuals pre 1 January 2010 but if [it] was approached it would need to make case-specific decisions on disclosure*". I recall in general terms that Brian Altman QC approved Cartwright King's decision not to proactively review cases where the SPM's conviction had been imposed prior to 2010 (having previously raised this as a discussion point in his Interim Advice). However, I cannot recall the specific rationale for his view that it was sufficient for POL not to proactively investigate this category of case to see if there had been a failure of disclosure. I do not know the source for the statement in the WBD Note that "*[p]rior to the HOL rollout there was a cash audit done so that all POL branches balanced*"; and I do not understand how this bore on Brian Altman QC's reasoning.

135. ***Fourth***, as to whether the Callendar Square bug was discussed in this context, I cannot see from the two notes of the Conference that it was (nor can I recall this). However, in the course of preparing this statement I have located a handwritten note (written by me) of a conference which appears to have taken place on 4 October 2013 with Brian Altman QC, me, Gavin, Cartwright King and members of the POL legal team present. It is a short note and the conference it records appears to be in the nature of a brief follow-up call to discuss a discrete point. That point was (it seems) whether 12 cases involving convicted SPMs who had applied to the Mediation Scheme should be reviewed by Cartwright King, i.e. notwithstanding that they were outside the current scope of that review. I have no memory of this conference and was likely there because it concerned a

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specific issue about Mediation Scheme applicants (it not being any part my role to advise on the proper scope of Cartwright King's review). I can therefore do no more than draw the Inquiry's attention to what the note records:

> "*GM: … These cases were not in CK full review.*
>
> *Q: Should they be reviewed?*
>
> *Current answer: No cases before 1 Jan 2010 (Horizon Online).*
>
> *Also, Falkirk bug which was before 1 Jan 2010.*
>
> *MS: Q is whether Falkirk bug affected other cases and whether further disc needed?*
>
> *BAQC: Letter G p46 GJ says the problem was at Callendar Square.*
>
> *Affected in 2005.*
>
> *Fix rolled out in March 2006 – network wide.*
>
> *1 Jan 2010 – logical and proportionate.*
>
> *If D's say prob with Old H, then can review cases on an ad hoc basis.*
>
> *SS were not limited to HOL or Old Horizon.*
>
> *And no bugs found by SS in Old H.*
>
> *So on solid ground to stop review at 1 Jan 2010.*"[98]

136. ***Fifth***, I do not specifically recall Brian Altman QC's statement, recorded in **POL00006485**, which identified the concern that "*lawyers acting for [convicted individuals] may be using the [mediation] scheme to obtain information which they would not normally be entitled to in order to pursue an appeal*". Having reviewed this record in context, I surmise that his apprehensiveness centred on SPMs getting hold of information through the Mediation Scheme before the criminal legal team had an opportunity to review and formally disclose it through

[98] WBON0000725.

the conventional prosecution channels. More generally (though I cannot recall to what extent this point was discussed at the 9 September Conference), I recall that both Cartwright King and Mr Altman QC were of the view that the Mediation Scheme should not be open to SPMs whose convictions had not been quashed, as they thought that POL mediating these cases sat uncomfortably with the fact that the status quo was that these convictions were sound.

(v) Susan Crichton's departure (Q33)

137. Lastly in this section, I deal with the Inquiry's **Q33** (which asks what I thought the reasons were for Susan Crichton's departure from POL). I do so for convenience for the simple reason that this happened at around this point in time (i.e. in or around September 2013). In short, I was not aware of the reasons for this and still am not. I would not expect to have been given any details (and I do not believe I would have asked), as I had only been working closely with her for a few weeks and was still comparatively junior. I simply knew that Susan Crichton had left and that later Chris Aujard was appointed to replace her as POL's interim General Counsel.

G. MEDIATION SCHEME (Q32, Q35 to Q52)

138. This section addresses the Mediation Scheme, the background to the establishment of which I have explained above. When considering the Inquiry's questions about the scheme (which are, broadly speaking, **Q35 to Q52** of the

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Request),[99] I have found it helpful to think of matters in terms of six broad topics. These topics do not always follow the order in which the Inquiry's questions are set out, so for convenience I set out the structure I have adopted here:

138.1. In subsection (i), I give an overview of the Mediation Scheme and the nature of the work my firm and I were instructed to carry out in relation to it. This answers **Q35**, as well as **Q36** and (in part) **Q38**.

138.2. Next, the Inquiry has asked various questions about the process that was followed by POL during investigations into complaints submitted by SPMs – in particular, the Inquiry has queried POL's reasons for issuing a civil claim against an SPM whilst the investigation into his case was ongoing – and I am asked about concerns which were raised during the early stages of the scheme in relation to the timeliness and quality of POL's POIRs. These questions are **Q37** and **Q39 to Q40**, and **Q42.1**, which I answer in subsection (ii) below.

138.3. In subsection (iii), I answer various questions raised by the Inquiry in **Q41** and **Q42.2 to Q44** of the Request, concerning my views on the work carried out by Second Sight during the Mediation Scheme.

138.4. The Inquiry has also asked about the provision of information to SPMs and Second Sight during the Mediation Scheme, and specifically, POL's approach to providing: the Helen Rose Report; 'Officer's Reports'; and information about a form of remote access known as the 'Balancing

[99] Additionally, **Q34** refers me to a series of minutes and action logs arising out of meetings of the Working Group, which I have reviewed; and I answer **Q32** of the Request in this section as explained further below.

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Transaction' functionality (**Q32** and **Q49**, **Q46**, and **Q45** of the Request, respectively). I answer these points in subsections (iv)-(vi) below.

138.5. In subsection (vii), I set out my (and WBD's) role in advising POL on the merits of applicants' cases and whether or not to take a case to mediation. This answers **Q38**, as well as **Q47 to Q48**.

138.6. Finally, I address POL's decision to close the Working Group in March 2015 (**Q35.6** and **Q50 to Q52**).

(i) Overview of the Mediation Scheme and my / WBD's role in relation to it (Q35 to Q36, Q38)

The Mediation Scheme and Working Group

139. As set out above, the Mediation Scheme opened on 27 August 2013 and closed to new applications on 18 November 2013. I recall that approximately 150 applications were received in that window, which was more than POL had been anticipating – although a handful of these were not ultimately accepted onto the scheme by the Working Group.

140. The scheme had a two-part structure (investigation followed in some cases by mediation), which reflected that its dual purpose was (i) to offer a mechanism for investigating eligible complaints by SPMs (which was hoped sufficient of itself to dispose of some complaints by giving the SPM greater insight into POL's decision-making in their case), and (ii) to provide for the mediation of cases deemed suitable following this initial investigation. In line with this structure, the essential steps in the scheme were as follows:

140.1. The SPM would apply to the scheme and the Working Group (whose role I describe further below) would decide whether or not they should be accepted onto the scheme for further investigation in line with the scheme's eligibility criteria.

140.2. Second Sight would send the SPM a case questionnaire.

140.3. The SPM prepared a Case Questionnaire Response ("**CQR**"). POL would pay for a professional advisor, usually a lawyer or accountant, to assist in the preparation of the CQR. This was because sometimes SPMs' concerns and criticisms were not articulated clearly, which was understandable given the complexity and length of time that had passed in some cases. POL believed that providing SPMs with professional advice would help them explain their concerns, which in turn would help Second Sight and POL investigate them.

140.4. The CQR was returned to Second Sight. POL did not have full visibility of this part of the process, but I was aware that Second Sight would sometimes send the CQR back to the SPM asking them to provide more information. In due course it appeared to me that Second Sight was getting increasingly involved in helping SPMs to draft their CQRs (something they called "*hardening*" the CQRs), and I deal with the upshot of this further below.

140.5. The CQR was sent to POL to investigate and prepare a response in the form of a POL Investigation Report ("**POIR**"). Although there was no formal or legal requirement for disclosure in the context of the Mediation Scheme (as it was a voluntary process and not a form of civil proceedings), POL

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provided a pack of relevant evidence from its own files together with the POIR. POL put together a team of investigators for this purpose, who investigated each issue raised by the CQR, collated relevant evidence, and produced the draft POIR. The in-house investigative team was led by Kathryn Alexander and Shirley Hailstones under the management of Angela Van Den Bogerd. Kathryn Alexander and Shirley Hailstones had deep experience of working in branches, and Angela Van Den Bogerd also had very detailed knowledge of how SPMs operated and was thought by POL to be someone who could communicate well with SPMs).[100]

140.6. The POIR would be passed to Second Sight by POL, who were to review the input from both the SPM and POL and produce their own report as to the merits of the case and whether it should proceed to mediation.

140.7. Second Sight prepared a Case Review Report ("**CRR**") in draft form which was sent to POL and the SPM for comment. The comments were then reviewed by Second Sight and a final report was produced.

140.8. The report was reviewed by the Working Group which considered whether a case should be recommended for mediation.

140.9. Where it was agreed that a case would proceed to mediation, a case file was prepared and sent to the Centre for Effective Dispute Resolution ("**CEDR**") which was engaged to conduct the mediations. Mediations took

[100] In Second Sight's Part 2 Briefing Report they recorded that "we *wish to place on record our appreciation for the hard work and professionalism of Post Office's in-house team of investigators, working for Angela Van Den Bogerd, Post Office's Head of Partnerships. Our work would have been much harder and taken much longer without the high quality work carried out by this team. We have also received excellent support from the administrative team set up by Post Office to support the Working Group*" (paragraph 26.5).

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place face-to-face between POL and SPMs, and the SPM was entitled to be accompanied by their professional advisor who was funded by POL.

141. The Working Group's role was to consider whether a case was suitable to proceed to mediation, taking into account (though it was not bound by) Second Sight's recommendation in its CRR. As I explain further below, during the course of the scheme it was decided that in cases where POL and JFSA did not agree on the suitability of a case for mediation, the Working Group's consideration of this issue would be formalised in a vote. The Working Group's voting structure (for this and other decisions that fell to the group) was that POL and the JFSA each had one vote and Sir Anthony Hooper had the casting vote in the event of a tie. It was not part of the Working Group's function, however, to render any opinion on the substantive merits of SPMs' cases.

142. More broadly, the Working Group's role was to oversee the administration and operation of the Mediation Scheme, and in particular to: (i) ensure the timely progression of SPMs' complaints through the investigative phase of the scheme, including deciding requests for extensions of time by participants to prepare CQRs, POIRs and CRRs (as applicable); (ii) consider requests from SPMs for extra financial assistance (i.e. over and above the baseline level provided by POL), which POL would meet if approved; and (iii) deal with any other 'process' issues which arose. The workings of the Working Group and the content of its discussions were subject to confidentiality and without prejudice privilege.

143. Second Sight's role within this process was to investigate SPMs' complaints independently and impartially, reviewing the information and evidence provided by both sides (and pursuing follow-up enquiries if necessary) in order to give a logical and fully evidenced opinion on the merits of the SPM's complaint and a

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view on whether the case was suitable for mediation. If it went to mediation, Second Sight's case-specific findings would form part of the case file for use by the parties and mediator. Second Sight were also commissioned by the Working Group to prepare two general (as opposed to case-specific) reports: the first of which was to be a neutral, objective overview of the key elements of the Horizon system and associated processes, including training and support processes (this came to be known as the "**Part 1 Briefing Report**"); and the second was to be a 'thematic' report dealing with commonalities that Second Sight had identified between different SPMs' cases in the course of their investigations (the "**Part 2 Briefing Report**"). Both reports were conceived as briefing reports for use by the mediators to help them understand the background context to individual cases, and in that sense differed from the report which Second Sight had originally been commissioned in 2012 to produce to identify whether there was a system-wide problem with the Horizon software.

144. I recall that it was originally envisaged that Second Sight would also handle the administrative aspects of the Mediation Scheme, e.g. writing letters to SPMs to notify them of deadlines and case updates. However, given that a larger than expected number of applications were received during the application window, it was decided that the administrative aspects of the scheme should be run by POL. POL in turn brought in a team of external consultants to help administer the scheme alongside their own staff. The Mediation Scheme came to be known as Project Sparrow within POL and POL's participation in the scheme was managed by the newly created in-house team at POL, which Belinda Crowe was appointed to lead. This was the team (alongside POL's in-house legal team) that I interacted with and took instructions from. I had limited visibility of the governance structure

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and decision making above this team. I do not recall attending any Board or Board Subcommittee meetings about the scheme.

145. The Working Group met formally roughly every four to six weeks, with additional shorter conferences (usually by telephone) in between. It consisted of Sir Anthony Hooper, POL and JFSA (who could bring multiple attendees, though organisationally only had one vote), and Second Sight (who sat in a non-voting capacity). The Working Group's regular attendees were: Sir Anthony Hooper; Alan Bates and Kay Linnell from the JFSA; Ron Warmington and Ian Henderson (and later, also Chris Holyoak) from Second Sight; POL's General Counsel; Belinda Crowe and Angela Van Den Bogerd; and me. Others from POL occasionally attended too. Susan Crichton attended the first few meetings between the above individuals as General Counsel, but I cannot recall if these were formally constituted as the Working Group at that point. When she left, Chris Aujard took over as General Counsel and then at the beginning of 2015 he was replaced by Jane MacLeod.

146. The Working Group oversaw the Scheme until March 2015, when POL decided to disband the group and mediate all cases within the scheme which had not yet been the subject of a decision by the Working Group, save for those where the SPM had an extant criminal conviction. I deal with this decision in more detail below. Thereafter there was a run-off period during which Second Sight continued to produce CRRs in relation to individual cases and the outstanding cases were mediated. The records held on my firm's file suggest that the last mediation in which WBD was directly involved took place in 2016 (although my involvement was largely complete by mid-2015 or thereabouts).

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147. It should be noted that the above brief narrative is provided by way of overview only, so to contextualise my explanation below of the nature of my (and my firm's) instructions in relation to the Mediation Scheme. It by no means provides a comprehensive account of how the scheme and Working Group functioned at every stage throughout their lifetime, which I address (so far as relevant to the Inquiry's questions) in the sections that follow.

My / WBD's role

148. When the Mediation Scheme was running, I was a Senior Associate. I had day-to-day conduct of the Mediation Scheme instruction on behalf of WBD, working under the supervision of Gavin Matthews.

149. My role (and where applicable that of the wider firm) was as follows:

149.1. I attended Working Group meetings on POL's behalf. This meant that, on occasion, I would present POL's position on a particular agenda item. From time to time I would provide assistance to the Working Group itself, for example, drafting letters to be sent out by the Working Group or in Sir Anthony's name, or redrafting aspects of the Working Group's terms of reference.

149.2. I managed the team of WBD lawyers and paralegals who were supporting POL's work investigating and advising on complaints that were submitted to the Mediation Scheme. The team's work broadly comprised the following:

(i) They reviewed each CQR and for most of them prepared a list of issues to help guide POL's investigations and they reviewed draft POIRs and redrafted them where necessary to ready them for submission to

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Second Sight. The WBD team's work did not include carrying out any investigative work in relation to SPMs' cases. This was done by POL's in-house investigative team. WBD's role was focused on ensuring that the POIR was clearly written, did not contain any obvious errors, and addressed each of the issues raised by the CQR. As set out further below, early on there were some concerns about the quality of POL's POIRs and at that stage WBD dedicated extra time to reviewing draft POIRs (in particular, by preparing executive summaries and reviewing the underlying evidence relied on by the POL investigative team to ensure that the conclusions in the POIR were more clearly and closely tied to the evidential output of POL's investigation). I personally reviewed most (if not all) of the POIRs prior to submission to Second Sight. My recollection is that all the POIRs were sent to Cartwright King for review. Final review and sign-off of all POIRs was done by Angela Van Den Bogerd and POL's in-house legal team. Initially this fell to Rodric Williams but this led to a backlog due to constraints on his capacity, so in due course Jonny Gribben (a WBD solicitor who was then on secondment at POL) took on this role.

(ii) The WBD team advised on the merits of each claim once Second Sight had produced its CRR. That is, the team would provide concise written advice on whether POL should agree to mediate the claim, and if so, what the settlement parameters were. These advice notes were based on, and applied: (i) advice given to POL by Linklaters on 20 March 2014 to the effect that, absent proof that Horizon was not working as it should, POL was contractually entitled to recover losses which the

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Horizon system recorded as due and owing (I address this advice further below at §248); (ii) advice given by POL's criminal lawyers that it should not mediate with any SPM who had an extant criminal conviction (I address this further below at §§246-247); and (iii) a document setting out POL's general settlement criteria and approach to valuing claims which I prepared. I believe I reviewed each advice note produced by the team before it was provided to POL.[101]

(iii) If a case went to mediation, a lawyer from WBD would attend in person to represent POL. I recall attending two or three mediations personally, but generally this was done by the members of the WBD team whom I supervised.

149.3. The WBD team also assisted POL in preparing written material of a generic (as opposed to case-specific) nature to assist Second Sight in carrying out its work. As I recall this had three main components: first, WBD helped to draft the "**Horizon Factfile**" document (which I come back to below); second, we helped to draft notes about particular aspects of the Horizon system, associated processes, and POL's business practices, in response to queries from Second Sight and based on information provided by POL and/or Fujitsu;[102] and third, WBD helped POL to prepare a long-form paper responding to questions posed by Second Sight about the

[101] WBON0001702

[102] See POL00201950. I refer to an example of such an advice note (about the 'Balancing Transactions' functionality) below at §§208 ff, albeit that this particular note was never ultimately finalised.

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'thematic' issues it had identified in the course of its investigations, to assist it in finalising its Part 2 Briefing Report.[103]

149.4. From time to time, when requested by the POL legal team, I also fed in my views on wider issues. For example, I reviewed and commented on Second Sight's generic or 'thematic' reports. Towards the end of the scheme, by which time WBD had assumed a greater role, I commented on a paper on the closure of the Working Group that was to be put before the Project Sparrow Subcommittee (see below, §§255-259). As mentioned above (§149.2(ii)), I also produced, with WBD colleagues, a document setting out POL's general criteria for settling SPM's claims and guidance on quantum. This approach was broadly adopted by POL, subject to and in light of the advice it received from Linklaters and its criminal law advisers to which I have referred above.

150. I was formally instructed by POL's General Counsel, which during this period was mainly Chris Aujard. However, on a day-to-day basis my instructions would typically come from Rodric Williams, Belinda Crowe and Angela Van Den Bogerd in relation to matters which were within their spheres of responsibility.

The Horizon Factfile

151. **Q36** asks me about my/WBD's role in the Horizon Factfile document. To the best of my recollection, the genesis of the Horizon Factfile was that the Working Group agreed that POL would provide a neutral, objective document describing the key features of the Horizon system and its associated processes, in order to (i) help cut down the amount of drafting time required to prepare reports on individual

[103] Appended to Second Sight's Part 2 Briefing Report.

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cases, and (ii) assist Second Sight in preparing its Part 1 Briefing Report. However, I cannot remember the exact sequence of events and it may be that POL was already preparing such a document for its internal use when it offered it to Second Sight to draw on in preparing its Part 1 report.[104]

152. As I have mentioned above, WBD assisted POL in drafting this document. Claire Parmenter (then a solicitor at WBD) took day-to-day responsibility for this work under my supervision, collating information from various departments and teams within POL to include in the Factfile.[105] Needless to say, the information contained within the Horizon Factfile was included on instruction given by POL to WBD. Having reviewed Rodric Williams' email of 20 December 2013 to which I am referred by **Q36** (**POL00021860**), I believe that this email was intended to outline the factual areas Rodric Williams initially identified as needing to go into the Factfile, and to name the individuals within POL who would be likely to be best suited to contribute the relevant information. I note that one of the areas identified was "*Branch Settlement*" (and within that, "*how resolved*"), which was allocated to Rod Ismay (Head of Finance Service Centre, POL). I further note that in the draft of the Factfile at **POL00040066**, the title of the section in which §41.3 appears refers to Rod Ismay. I would therefore presume that Rod Ismay (or his team) supplied the information contained in §41.3 of that draft, although I cannot say for certain whether he, someone else at POL, or a WBD lawyer held the pen on that specific paragraph.

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[104] Cf. **POL00021860** and **POL00026656**. See also WBON0000824 (minutes of Working Group meeting on 1 April 2014 where handover of the Horizon Factfile to Second Sight was discussed).

[105] **POL00021860**; see also this email from Claire to me dated 10 January 2013, which outlines the general approach she took to compiling the 8 January 2013 draft (i.e. **POL00040066**): WBON0000396.

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153. This inference appears to be supported by an email chain I have identified from my firm's file, which Claire Parmenter sent to me on 11 February 2014.[106] That chain shows that on 30 January 2014, Claire had sent Rod Ismay a draft Factfile, asking him to "*review the section [he] helped to complete*" and to "*confirm whether [he is] happy with the wording (and let [her] have any amendments)*". I have compared the draft Factfile Claire to Rod Ismay for approval and the content of the relevant paragraph is largely identical to that in **POL0004066**.[107] She recorded that the section Rod Ismay had assisted with was "*Branch Settlement - pages 12-15*".[108]

154. For completeness, I note from this chain that her email was then circulated within Rod Ismay's team and Andy Winn responded with the following comment:

> *"41.4 Settle centrally (>£150) and dispute the shortage - if the subpostmaster believes that the shortage was not his/her fault or could be resolved through other means (see below), then the debt will be suspended to allow time for the shortage to investigated and remedied. The subpostmaster disputes a shortage by contacting the Network Business Service centre (NBSC), Cash Centre (remittance disputes) or Finance Service Centre ("FSC") for transaction corrections at Post Office."*

155. Andy Winn's comments were then forwarded to Claire by Rod Ismay on 11 February 2014. I have identified that, subsequently, an updated draft of the Horizon Factfile was circulated by me to Belinda Crowe and another on 21 February 2014.[109] The version of the relevant paragraph which appears in that draft (at §47.3) is in substantially the same terms as Andy Winn's text quoted

[106] WBON0000398.
[107] See: WBON0000401. The main difference appears to be that the comments are not on **POL0004066**.
[108] WBON0000402.
[109] WBON0000812.

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above.[110] In a later email in the same chain, Claire confirmed that Rod Ismay had reviewed the relevant text, i.e. the text contained in the section titled "*Branch Reporting & Management (pages 13 to 17)*".[111]

(ii) Process issues during POL's investigations into complaints (Q37, Q39 to Q40, Q42.1)

Proceedings issued against Terence Walters

156. **POL00026666** (an actions list arising from the Working Group meeting on 12 December 2013) refers to a claim issued by POL against Terence Walters, who was applicant M006 in the Mediation Scheme. In answer to **Q37** of the Request, these proceedings were issued on 28 November 2013 in order to protect POL's limitation position, as limitation was due to expire the following day.[112] A letter was sent to Mr Walters explaining this to him and offering to immediately stay the proceedings in light of his application to the Mediation Scheme, "*so to assure [him] that no further action will be taken at this time*".[113] I emailed the Working Group on 13 December to explain the steps POL had taken and that it proposed to stay the proceedings.[114]

157. The claim was stayed by consent for 6 months on 29 January 2014 to allow the mediation process to complete,[115] and on 9 September 2014 the stay was further extended.[116] Ultimately the claim remained stayed until it was dismissed by

[110] WBON0000813.
[111] WBON0000814.
[112] WBON0000808. The Notice of Issue is: WBON0000951.
[113] WBON0000809.
[114] WBON0001670.
[115] Consent Order: WBON0000950.
[116] See WBON0000890; the Consent Order is: WBON0000949.

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consent on 13 October 2020, Mr Walters having been one of the claimants in the group litigation.[117]

Issues with POL's early POIRs

158. **Q39** of the Request asks me to set out my recollection of the discussion at the Working Group meeting on 13 March 2014 as to the number of extensions of time that POL was seeking to prepare its POIRs (**POL00026643**). I have no specific memory of this meeting or of the discussion triggered by Alan Bates' remarks, but I do recall that around the beginning of 2014 there were generally delays in progressing SPMs' cases through the scheme – including delays in preparing POIRs which led to POL seeking extensions of time from the Working Group. There were a number of reasons for this.

159. First, as I have already mentioned, there were more applications to the scheme than had originally been anticipated and an increasing number of CQRs started to make their way to POL for investigation from around the turn of the year. Second, and perhaps unsurprisingly, it took some time for POL's in-house investigative team to get into a rhythm of identifying what steps were needed to investigate a complaint, carrying out those steps, and preparing the resulting POIRs. This was particularly apparent in cases where the issues were complex or there was a lack of evidence due to a case being very old. Third, and in a similar vein, it took longer at first for the POIRs to be reviewed and cleared for release to SPMs and Second Sight. This was a new process for POL, and I recall that at this stage in 2014 Rodric Williams was endeavouring to read each draft POIR prior to release alongside his other work.

[117] Consent Order: WBON0001667

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160. The speed at which complaints progressed through the Mediation Scheme was a significant issue generally (not just for POL, and not just at the 13 March 2014 meeting), and I recall that delays in completing CQRs, POIRs and CRRs was a regular topic of discussion at Working Group meetings. For example, this is reflected at §6.3 of **POL00026672** (minutes of the Working Group meeting on 10 July 2014) about which I am asked at **Q42.1** of the Request. Whilst I do not recall that particular discussion, §§6.3-6.4 accord with my recollection, which is that: the depth and standard of POL's investigations into SPMs complaints was considered by the Working Group to be good; there was nothing in the suggestion that some SPMs apparently made that POL was deliberately holding up the progression of cases through the system; and there were various reasons for delays, not all of which lay at POL's door. Nevertheless, the issue of delays and backlogs on all sides persisted throughout the scheme and I have no doubt that it caused frustration for all concerned, and particularly SPMs.

161. I am asked (by **Q40**) to set out my recollection of Second Sight's criticism of the quality of POL's POIRs at the Working Group meeting on 17 April 2014 (**POL00026652**). Whilst I don't recall the specifics of the discussion at that meeting, I do recall that (i) Second Sight's complaint came as something of a surprise to POL, as they had previously been positive about the form and content of POL's early POIRs, and (ii) it was not obvious to POL at first why Second Sight thought the POIRs were deficient as Second Sight did not clearly articulate their concerns.[118]

[118] WBON0000821, attaching WBON0000822.

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162. For my part, I felt there was some merit in the suspicion expressed by Rodric Williams that Second Sight's complaint about POL's POIRs stemmed, at least in part, from the fact that they were struggling to keep up with their own caseload at that time.[119] However, I could also see that there was room for improvement in some of the early POIRs. A number of them did not reach clear conclusions (the original format for the POIR did not have an executive summary which Sir Anthony Hooper later asked to be added to each report) and did not tie POL's conclusions closely enough to the underlying evidence. To help POL overcome this, POL asked the WBD team to step up its involvement in drafting the POIRs (especially the executive summaries), so as to make them clearer, more strictly focused on the issues raised by the SPMs, and with tighter referencing to the evidence underpinning them. I recall that this was in line with feedback from Sir Anthony Hooper.[120]

(iii) Emerging concerns about Second Sight (Q35, Q41, Q42.2 to Q44)

163. The documents to which the Inquiry refers at **Q41**, **Q42.2** and **Q43** broadly relate to concerns which I expressed about Second Sight in early 2014. To contextualise those matters, I explain here that I developed a number of concerns about Second Sight's role and the work they were carrying out as the Mediation Scheme progressed. These concerns were to some extent interconnected, and they were (so far as I was aware) shared by POL and other of professional advisers to POL including Linklaters, who had been engaged to advise POL on the terms of the Subpostmaster Contract (the "**SPMC**") and the prospect of POL

[119] WBON0000821.
[120] See for example my email to the team of 21 May 2014, providing feedback on the approach that was now being taken to drafting POIRs: WBON0000404.

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having any contractual liability to SPMs by reason of the matters advanced by them in their complaints. I summarise my concerns as follows:

164. ***First***, and most significantly, I was concerned that Second Sight were insufficiently rigorous in their approach. They frequently appeared unwilling or unable to drill down into the detail of SPMs' complaints or POL's processes in order to get to the root cause of the accounting shortfalls about which SPMs were complaining. This was reflected in a lack of cited evidence and analysis in their reports, and I was concerned that this approach would create unrealistic expectations on the part of SPMs and ultimately make it difficult to reach settlements or even achieve some sort of closure in scheme cases, which, after all, was the whole point of the Mediation Scheme.

165. This problem also manifested in Second Sight being frequently unwilling to engage with POL in order to obtain further factual detail relevant to their investigations. For example, it proved difficult to get Second Sight to engage constructively with POL about the content of the Horizon Factfile with a view to refining and adding to it to assist them in preparing their Part 1 Briefing Report.[121] To provide another example, I recall an occasion on which over a dozen subject matter experts from different teams at POL were brought together for an in-person meeting at which Second Sight were invited to ask any questions. I believe that this was while Second Sight were working on their Part 2 Briefing Report and that the meeting was designed to enable them to ask any questions

[121] See for example WBON0000820; see also WBON0000847 where I outline my emerging concerns in relation to Second Sight's work (including their lack of interaction with POL at point 7).

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they wanted of POL.[122] My recollection is that Second Sight refused to engage and closed the meeting without asking any questions.

166. ***Second***, I was concerned that Second Sight were not able to keep up with their workload or produce properly considered CRRs in a timely way. As I have explained above this issue was by no means confined to them, but it appeared to me that they found it particularly difficult to get on top of their workload even after POL funded a third forensic accountant, Chris Holyoak, to join their investigation team. By the time POL decided to close the Working Group in 2015 (which was shortly after it had produced the last of its POIRs), Second Sight still had around half of their CRRs to produce with the result that the Working Group had not yet voted on the suitability for mediation of these cases.[123]

167. ***Third***, I became concerned that Second Sight were acting beyond the proper scope of their instructions, seeking to investigate and opine on matters in which they had no expertise. It is important to bear in mind that their expertise was as a firm of forensic accountants, and I (and those instructing me at POL) felt that they should have stayed within the bounds of their expertise and remained focused on seeking to identify what had been the root cause of a particular accounting shortfall in a given case. By way of example, in their draft Part 2 Briefing Report they commented extensively on the 'fairness' of the SPMC. I, those instructing me at POL, and Linklaters, all considered that this was beyond the scope of their expertise.[124]

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[122] POL00220159.

[123] The approximate number of CRRs which had not been provided by the beginning of March 2015 can be seen from this document (updated in May 2015), column AI of which shows the date on which each CRR was received by WBD (from POL), with blanks where the CRR had not yet been provided: WBON0000413.

[124] POL00021814; POL00207175.

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168. ***Fourth,*** I became increasingly concerned that Second Sight's investigations and reports were one-sided. This manifested in a number of ways. For example, and with reference to **Q42.2**, although I have no specific memory of the meeting which **POL00026672** records, I am able to say that the phrase "*hardening of CQRs*" referred to a process by which Second Sight were assisting SPMs to refine CQRs so as to better articulate their complaint. I recall that it emerged that Second Sight had been speaking to some of the SPMs before and/or shortly after they submitted their CQR, in order to help the SPM clarify (or "*harden*") their CQRs and to suggest further information which the SPM should put into it. In some respects, this was helpful, as the clearer the issues the easier it was for POL to properly investigate the complaint and produce a clearer and more definitive POIR. However, I was also concerned that in adopting this approach, Second Sight were helping the SPMs formulate their complaints and so were losing their impartiality, and that they were starting to investigate complaints before POL had had an opportunity to comment.

169. To provide another example, on reviewing many of Second Sight's CRRs, and their generic or 'thematic' reports, I formed the view that they were frequently ignoring or marginalising the evidence that POL had provided in response to the concerns raised. With reference to **Q41**, this is why I expressed the concern in my email dated 6 March 2014 that Second Sight appeared to be "*inherently biased*" against POL (**POL00074462**). The respects in which I felt that Second Sight had ignored information provided by POL or had otherwise failed to evidence their report in case M001 are summarised in that email.[125] I recognise now that the expression "*inherently biased*" may have been a bit too strong, but

[125] As another example, see WBON0000853.

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I did feel that there was a prevalent lack of balance in the CRRs. I should add that at the time I expressed that view in March 2014, my views were only preliminary, though I continued to be concerned about the quality of Second Sight's work as time went on.

Early draft thematic report

170. By **Q43** of the Request, I am asked to explain various comments which I made on an early draft 'thematic' report which Second Sight provided to the Working Group in March 2014. I reviewed it as I expected that it would give an early insight into Second Sight's approach and thinking, and I wanted to understand whether they had identified criticisms or areas of concern which had substance.

171. Many of my comments were written with this in mind, i.e. they were aimed at highlighting gaps in Second Sight's reasoning or in the evidence underpinning their (draft) conclusions. They were largely written as questions that could be put back to Second Sight (rather than questions to POL). So, for example:

171.1. §2.6 of the draft report appeared to be suggesting that SPMs were impeded in their ability to investigate accounting shortfalls because POL had control of certain unspecified "*back-office accounting functions*". My comments on that paragraph were intended to draw out the fact that Second Sight had not explained which "*back-office accounting functions*" they had in mind, or why that meant SPMs were therefore unable to adequately investigate shortfalls (cf. **Q43.4**). Equally, to the extent that SPMs were sometimes reliant on POL to provide information to enable shortfalls to be investigated, Second Sight had not identified from where they had obtained the information that "*requests for investigative support*

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or extracts of Horizon data are often refused". I felt that the source of this information should be identified by Second Sight in their report and flagged this in my comments.

171.2. With reference to **Q43.7**, my comment above Section 5 reflects that I thought this section was incomplete and unbalanced. I was not saying that an SPM would *only* request transaction data where they had made a mistake. Rather, my comment was intended to convey that since in some cases it would have been an error by the SPM that caused the loss, the SPM's knowledge of what had happened on the ground (who they had served, when, what steps they had taken, etc) was likely going to be an important part of the picture. I felt that the draft report did not reflect on the relevance of this to the points that were being made in Section 5.

171.3. With reference to **Q43.8**, my comment above Section 6 should be read in the context that, at that stage, I was not aware of any functionality by which transactions could be entered into branch accounts other than by the SPM themselves (as I explain further below at §§202 ff). I therefore thought that this section referred the automatic transaction reversal process which was the subject of Spot Review 1 and which I have discussed above at §§82-84); see §6.2. My view at the time was that POL had adequately explained that process – and in particular, why it need not result in any loss to an SPM if it was correctly followed – in the context of Spot Review 1. Hence my comment above Section 6, that Second Sight needed to do more to explain why such 'reversed' transactions could be regarded as a root cause of SPM losses.

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171.4. The same point applies to **Q43.10** and my comment on §7.3. That comment reflects that in Spot Review 1, it had been acknowledged by POL that the readily available Horizon data logs did not clearly differentiate between system-generated reversals and manually inputted transactions. However, Spot Review 1 went on to conclude that the system made it possible for SPMs to avoid any difficulties that might arise out of this, because the fact that a transaction had been automatically reversed should be revealed by the disconnect and recovery receipts that would be printed physically in branch. It seemed to me that §7.3 of the draft report did not take account of this aspect and my comment reflects this.

171.5. Similarly, in relation to **Q43.11**, my comment (*"Need to explain the relevance of the quote [sic] passage below to this issue"*) reflected that I thought Second Sight needed to explain why they quoted the passage of the Helen Rose Report that appeared at §7.5. The quote (which made the above point, that certain Horizon data logs did not clearly distinguish automated reversals from SPM-input transactions) appeared immediately below a sentence that read "*[the] misuse of User IDs for system generated transaction reversals appears to be inconsistent with various assurances and evidence provided by Post Office*". That concerned me, because it appeared to link the subject matter of the Helen Rose Report to the issue of transactions being manually entered into branch accounts using SPMs' IDs and so suggested that the automatic transaction reversal process was somehow evidence of remote access. As far as I was concerned and knew at the time, any such suggestion was misconceived because (i) the automatic transaction reversal process had nothing to do with remote

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access, and (ii) POL had acknowledged the point made about the presentation of data relating to system-generated transaction reversals.

172. Whilst I was critical of Second Sight's analysis of the points referred to above, there were points in the draft report which I thought POL needed to consider further (cf. **Q43.2**). For example:

172.1. My comments on Section 4 of the report indicate that I felt that POL needed to confirm / clarify whether some of the factual statements made by Second Sight were correct. For example, the description at §4.2 of the process which SPMs were apparently required to follow in order to 'Rem in' National Lottery to Horizon and the statement at §4.6 that POL failed to advise SPMs (through either the Helpline or training) that they needed to reconcile their stock figures for National Lottery products on their Camelot and Horizon terminals on Thursday mornings instead of at 17:30 on Wednesday evenings.

172.2. There were factual assertions in §§5.3-5.4 which were new to me and which I flagged for POL to look into (namely, the assertion that Horizon only produced a daily record of the aggregate number of value of debit and credit card transactions without providing a breakdown of those transactions).

172.3. Where there were points which Second Sight raised which I thought might have a bearing on criminal prosecutions, I highlighted in my comments that POL should obtain Cartwright King's views. For example, and with reference to **Q43.6**, at §3.16 of the draft report Second Sight appeared to be alluding to the idea that the Helpline had advised SPMs to intentionally

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submit false accounts (or had given advice which caused them to do so). My (lay) view was that it could be relevant to a prosecution if an SPM were to say that they were told to submit false accounts, so I flagged that POL needed Cartwright King's input. I do not know whether POL obtained advice from Cartwright King on this point.

173. With reference to **Q43.3** and **Q43.5**, these were matters which went to the contractual relationship between POL and SPMs. I did not consider that these were matters that merited a wider-ranging investigation by POL at that stage, because (i) they were well outside the scope of Second Sight's expertise to comment on, and (ii) they were outside the scope of the issues then being considered, namely whether the Horizon system and associated processes were responsible for the shortfalls about which individual SPMs within the scheme were complaining.

174. Finally, in relation to **Q43.9** of the Request, my comment on §7.2 reflects the fact that I considered the language of "*ghost*" transactions to be rather sensationalist and in that sense, "*dangerous*". Taken in isolation, the sentence "*In some instances these 'ghost' transactions appear to have contributed to shortfalls for which the relevant Subpostmaster was later held accountable*" suggested that SPMs had wrongly been held liable for improperly inputted transactions, which were not initiated or approved by them, and which they had no way of discovering. In fact, Second Sight went on in the following paragraphs to rely only on the automatic transaction reversal process in support of this sentence. As I have already explained, this process did not enter transactions 'improperly' (but rather did so in accordance with the intended design of the system) and it did not enter transactions without the SPM having the means to discover this. Given that

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this was a draft of a report which could ultimately end up in the public domain, I was concerned by the language used and thought that POL should obtain Cartwright King's advice on the implications of this paragraph remaining, unamended and unedited, in any final report. Similar points applied in relation to the statement in §7.4, that POL had "*misuse[d] User IDs for system generated transaction reversals*".

Discussion on Second Sight's draft Part 1 Briefing Report

175. In answer to **Q44** of the Request, I regret that I am unable to recall the discussion referred to in **POL00026662**, concerning Second Sight's draft Part 1 Briefing Report.

(iv) Redactions to / provision of the Helen Rose Report (Q32, Q49)

176. I deal here with **Q32** and **Q49** of the Request, which raise related questions arising out of attempts made by Mediation Scheme applicants to obtain disclosure of an unredacted copy of the Helen Rose Report in the context of the scheme. This began with the email dated 7 April 2014 at the start of the chain in **POL00116487** (cf. **Q32**), by which an applicant's solicitor sought disclosure of a "*full, final and unredacted*" copy of the report of behalf of her client, the applicant in question having already received a redacted version by way of post-conviction disclosure from POL (on the advice of Cartwright King). As time went on, an increasing number of applicants (including applicants who had not received the redacted version by way of post-conviction disclosure) made similar requests for unredacted copies of the Helen Rose Report in their CQRs; this was the background to my email of 17 June 2014 contained in **POL00129392** (cf. **Q49**).

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177. In order to understand these requests and POL's response to them it is necessary to appreciate that the significance of the Helen Rose Report was dependent on the context. ***First***, and as I have identified above at §§86-89, the report was undoubtedly important in the context of historic prosecutions where Cartwright King had advised that Gareth Jenkins had given misleading testimony. I was aware that for this reason, post-conviction disclosure of the report had been given in a number of cases (such as that of the applicant referred to in **POL00116487**). However, whether POL was required to disclose the report to a convicted SPM was not a Mediation Scheme matter, but rather something to be managed outside of that process by Cartwright King as POL's criminal solicitors.

178. ***Second***, and quite apart from the issues relating to Gareth Jenkins' evidence in criminal cases against SPMs, the Helen Rose Report contained criticisms of the automatic transaction reversal process in Horizon Online. Specifically, as explained above at §84, the report criticised the way in which Horizon presented data relating to automatically reversed transactions, in that it failed to make clear that they were system-generated as opposed to having been manually undertaken by the SPM. These criticisms may have been relevant in a case where the applicant complained that the automated transaction reversal process had caused them to suffer a particular loss. However, my recollection is that there were few Mediation Scheme cases where the applicant *did* make such a complaint. Applicants who sought disclosure of the Helen Rose Report in their CQRs therefore tended to do so in generalised terms, speculating that the unredacted report provided evidence (i) of some form of remote access capability that POL was said to have, or (ii) that the system could generate transactions which were entered into the branch accounts with the SPM's own User ID

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attached *other* than in the narrow context of the automatic transaction reversal protocol, without pointing to any particular transactions that they disputed as a result. In these circumstances and as I understood matters then, the Helen Rose Report had little if any bearing on the actual the facts of these applicants' cases, and I felt – and POL agreed – that routinely providing copies of the report risked being an irrelevant distraction from investigating the actual issues raised by each applicant.

179. The reference to "*downplaying*" / "*minimalizing*" the importance of the report in **POL00129392** (cf. **Q49**) should be understood in that light. It was not a comment about the importance of that document to the issues surrounding Gareth Jenkins' evidence and which were being separately addressed by Cartwright King. From my (civil lawyer) perspective, it was intended to convey that in the context of the Mediation Scheme the report was believed to be something of a red herring and that POL would not usually need to enter into debate about the report or its contents in Mediation Scheme cases (an email dated 31 July 2014 from Andy Pheasant, a WBD solicitor working under my supervision, provides an example of what I regarded as the right approach[126]). Cartwright King, separately and for their own reasons connected with the criminal process, were concerned about POL routinely providing the Helen Rose Report to Mediation Scheme applicants who were not entitled to a copy by way of post-conviction disclosure. As such, my email in **POL00129392** is drafted in terms which reflect their advice, and it should be read against that context.

[126] WBON0000888; see also the attachment: WBON0000889.

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180. I add that the sentence which recommends that POIRs should, so far as possible, 'minimalise' or 'ignore' the Helen Rose Report should be taken together with the next sentence: "*If the investigation team need guidance on how to address any HR Report related questions, I suggest that they (or the lawyer here at BD) addresses these directly with CK*". I recall that it was part of the criminal lawyers' remit to keep under review the question of whether the report needed to be disclosed to individual applicants who had convictions (albeit that if this happened, it would take place through prosecution rather than Mediation Scheme channels). The latter sentence reflects this.

181. As regards **Q32** and POL's approach to redacting the Helen Rose Report, on receiving Priti Maru-Singh's email dated 7 April 2014 I sought Cartwright King's input. This was because it was a query relating to disclosure that had been given post-conviction in a criminal case: **POL00116487**. I do not specifically recall the conversation I had with Simon Clarke about Priti Maru-Singh's request for an unredacted copy of the report, but it is evident that he advised that the rationale for the redactions which Cartwright King had applied was that they were necessary to comply with data protection legislation (and in one case, to remove an assertion of LPP which Cartwright King believed was wrong and could have been confusing). His position was that the redactions should be maintained.

182. Leaving aside the incorrect reference to privilege in the header, I could see that all the other redactions related to (i) the SPSO's location and branch code, (ii) the SPM's user ID, and (iii) the names of individuals, namely Gareth Jenkins (the Fujitsu employee) and Helen Rose (the Report's author). I agreed with Simon Clarke that this data constituted personal data such that the *prima facie* position was that it should be redacted. For the avoidance of doubt, I had no view on (and

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it was not my role to advise on) how POL's criminal law disclosure duties interacted with the requirements of data protection law; this was for Cartwright King to advise on and I took at face value their assessment that the redactions did not put POL in breach of its prosecutorial duties. I therefore recorded the sum total of my and Cartwright King's views (together with those of Rodric Williams, to whom I also appear to have spoken though I have no specific memory of this) in my email to Belinda Crowe dated 8 April 2014, to which I am referred by **Q32**.

183. For completeness, on 9 April 2014 I spotted that the redacted version of the report sent to Priti Maru-Singh's client by POL / Cartwright King did not appear to include the appendix found in the original version sent to me in 2013. I emailed Simon Clarke to ask whether Cartwright King had disclosed the appendix (which contained the relevant credence data, Fujitsu transaction logs and other information relevant to the transaction reversal process) as part of post-conviction disclosure and if not, why it had been omitted.[127] He responded that day that he had not seen the appendix prior to my bringing it to his attention, but in any event in his view the appendix was not disclosable in the 'criminal arena'. He explained that the reason for disclosing the Helen Rose Report was its potential to impugn Gareth Jenkins' credibility as a witness, and the appendix did not speak to that issue.[128]

184. I proceeded to review the appendix and concluded that it should be provided to Priti Maru-Singh and her client together with Spot Review 1, notwithstanding Simon Clarke's view that it was not relevant from the criminal law perspective. In particular, I thought that it might be beneficial in helping Priti Maru-Singh and her

[127] WBON0000828.
[128] WBON0000834.

client (i) to understand the subject matter of the Helen Rose Report, and (ii) to reassure them that there was not extensive additional or supplemental material that POL was withholding (as Priti Maru-Singh appeared to believe). I sent Belinda Crowe an email to this effect on 14 April 2014, attaching the appendix and Spot Review 1 (which I redacted to remove personal data in line with the approach taken to the main body of the report).[129]

(v) Provision of Officers' Reports (Q46)

185. At around the same time (i.e. in early 2014 when the process of investigating SPMs' complaints and producing POIRs was getting going) an issue arose as to the extent to which POIRs could refer to, and attach, reports that had previously been compiled by POL investigation officers in the course of investigating suspected criminality in a branch ("**Officers' Reports**", also sometimes called "**Offender Reports**"). Such reports often contained information about what had happened in a branch, which was useful in understanding and responding to the complaints of convicted SPMs who were within the Mediation Scheme. This was particularly true in some of the older cases where few other contemporaneous records remained.

186. From a purely civil perspective, I thought that if an Officer's Report contained useful contemporaneous material which informed POL's response to an applicant's complaint in its POIR, then the report could be provided to the applicant and Second Sight as supporting evidence. Although there was no duty of disclosure in the context of the Mediation Scheme, my general view was that

[129] WBON0000838.

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providing documentary evidence in support of POIRs where possible would make for a more credible response than simply responding by way of assertion in the POIR itself. In turn, I thought this would help applicants to better understand POL's position and would be more likely to bring about closure in Mediation Scheme cases.

187. However, these were not the only considerations, because POL's criminal lawyers raised concerns that, from their (criminal law) perspective, provision of the Officers' Reports could cause difficulties. From reviewing my emails, the criminal lawyers' concerns first came to my attention on or around 7 April 2014 when Jarnail Singh (POL's internal criminal lawyer) forwarded an email from Andrew Bolc of Cartwright King to me and Rodric Williams.[130] Andrew Bolc's email referred to case M006, in which (it seemed) the draft POIR had proposed to attach the Officer's Report from the original criminal investigation into the applicant. Andrew Bolc stated that Harry (Bowyer, in-house counsel at Cartwright King) had "*worries about these documents being disclosed let alone without being redacted*" because they were "*prosecution working document[s]*" and because of data protection concerns. Cartwright King sought a decision from POL as to whether Officers' Reports (i) should not be disclosed in any circumstances, (ii) should be disclosed subject to redactions, or (iii) should be disclosed in full "*accepting any consequences that follow*".[131]

188. I did not think that Officers' Reports (being a record of an internal investigation) would ordinarily meet the test for legal professional privilege in civil proceedings, but I did not know what the position was in the criminal sphere; in particular, I did

[130] WBON0000825.
[131] WBON0000825.

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not know what was meant by "*prosecution working document[s]*". I therefore responded to Andrew Bolc asking "*[f]rom a criminal law perspective, what [the consequences are] of disclosing a document that had previously been withheld in a prosecution on the grounds that it is a prosecution working document*".[132]

189. Harry Bowyer (rather than Andrew Bolc) responded on 8 April 2014 and it is worth setting out his advice in full:

> *"If we are to be serving these documents then it should be an informed decision of our mutual client to do so as there may well be consequences.*
>
> *Please forgive me if I appear to be teaching my grandmother to suck eggs in the following paragraphs but I will be grateful for the same when you teach me civil disclosure!*
>
> *The documents that we are concerned with are the officers' reports. These are prepared at a very early stage of a prosecution and are intended to set out the facts and background of a case in order that a decision to prosecute might be made. This is necessarily at a stage when the investigation is far from complete and will often contain conjecture and opinion that will subsequently be proved wrong or inflammatory. I was reviewing a case yesterday where the officer was wondering whether the suspect was taking the fall for her daughter when the daughter was, in his view, more than likely to be involved.*
>
> *They will contain criticism by the officer of POL procedures and suggestions for putting them right – whether these are acted upon history seldom relates.*
>
> *They also contain, in many cases, operational material that shows how these cases are detected and the investigational resources that are available to POL. This is not something that should be released into the public domain lightly – especially where the audit is intelligence led.*
>
> *There are certain of these documents where information is revealed, no [sic] relevant to the case, which may be commercially sensitive or embarrassing to our client. The case of Walters M006 has an example where the officer raises the concern that there were no checks made on spoiled postage slips to see if they were bogus or not. We do not know whether this has been fixed or even applies today.*

[132] WBON0000825.

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> *The final area of concern is that a substantial minority of these applications contain complaints about the behaviour of our investigators. These documents give the telephone numbers and other contact details of the officers who compile the reports which presumably may well find their way into the hands of those who have a long held animus against them. In a world governed by the Data Protection Act we should think extremely carefully before sending documents out unredacted even to this extent.*
>
> *These documents are seldom, if ever disclosed to the defence as they are not the primary evidence and are a prosecution working tool. If they contain information that the defence should have we usually serve it in some other way – either by statement, documentary exhibit or a disclosure note which will say that, "Post Office Limited are aware that……"*
>
> *This information is and documentation is, in the main, POL's. Where it is POL's documentation and POL's information there is nothing to prevent its disclosure by POL (subject to the above) even where we have made the decision not to disclose the document in the criminal proceedings. This is why we have asked for clarification as to what POL wishes to do and the options are: 1) Disclose unredacted, 2) Disclose redacted copies or 3) Do not disclose.*
>
> *We need a consistent approach or people will notice that we are serving them in some cases and not in others."*[133]

190. Jarnail Singh responded on the chain expressing the clear view that: "*Having read Counsel Bowyers advice on disclosure of the investigation officers report In my view the business need to take the view not disclose to such documents at all*".[134]

191. It was not immediately clear to me why Jarnail Singh thought there should be an absolute prohibition on disclosure of these documents. My understanding of Harry Bowyer's email was that whilst Officers' Reports were generally not disclosed in criminal proceedings, he did not think there was any inherent reason

[133] WBON0000825.
[134] WBON0000825.

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why they could not now be disclosed, at least in part, if it was thought appropriate to do so. They did not, for example, contain legal advice, and he had appeared to confirm that their disclosure would not automatically have consequences in the criminal proceedings in which they had originally been withheld. At the same time, however, Harry Bowyer identified a range of material which might appear in such reports which should not be disclosed, e.g. sensitive information about POL's operational and investigative techniques. Since the main reason for disclosing such reports was in order to evidence specific points made in POL's POIRs, I tentatively thought that the way forwards was to allow disclosure, on a case by case basis, of those parts of the reports which were germane to the point that POL was making (and which did not reveal the type of sensitive information about e.g. investigative techniques which Harry Bowyer had in mind).

192. I relayed the understanding I had derived from Harry Bowyer's email, and my advice, in **POL00061369** (my email to Belinda Crowe and Rodric Williams of 17 April 2014). For the avoidance of doubt, and with reference to **Q46.2**, my statement that "*I cannot see that this document would attract legal privilege as it is an investigation document and not a document prepared for the purposes of litigation*" is reference to my view that Officers' Reports would not be privileged from disclosure in civil proceedings (i.e. so this was not a material consideration in deciding whether such documents should generally be withheld). I also relayed my understanding of the advice from Cartwright King that "*This document is typically not disclosed through the prosecution process as it is part of the prosecution working papers and therefore, I understand, it is usually exempt from disclosure*". Jarnail Singh (POL's in house criminal lawyer) was copied to the email and I asked him to correct me if I had got this wrong. My reference later

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on in that email to "*prosecution privilege*" is a reference to what I had understood from Harry Bowyer, namely, that Officers' Reports were usually exempt from disclosure in <u>criminal</u> proceedings. As I have explained, I thought that the net effect of all this was that there should not be a blanket ban on providing relevant parts of POL's Officers' Reports to SPMs, but that rather they should be provided if and to the extent that they contained relevant information that was not privileged or sensitive (such as information which revealed details of POL investigative techniques).[135]

193. Angela Van Den Bogerd agreed with the approach I suggested and gave instructions to that effect on 22 April 2014:

> *"We do refer to the officer's report in case MO54 and in this instance using this report does in my view make for a more conclusive case. <u>Therefore my view is that this needs to be addressed on a case by case basis as you suggest but with a presumption against disclosure unless absolutely necessary</u>.*
>
> ***Kath, Shirley** — please ensure that: if you wish to use an investigation officer's report as a supporting document that you flag this to BD When you send them the report so that they can advise accordingly."*[136]

194. Jarnail Singh continued to advocate for a blanket ban on the basis that Officers' Reports were "*a prosecution working tool*" and that relevant information contained in such a report would normally be disclosed (in criminal proceedings) by some other means such as a witness statement.[137] That proposal was of no help in the present context (i.e. of a mediation process) so I asked Jarnail Singh

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[135] For completeness, as an email exchange with Brian Altman QC in July 2016 shows, it was only some years later that I learned that documents which revealed information about investigative practices are *not* in fact privileged from disclosure in the criminal law context, unless and to the extent that that information attracts Public Interest Immunity: WBON0000443. See further below, §408.
[136] **POL00061369**.
[137] **POL00061369**.

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to clarify whether there was any particular reason why, as a matter of criminal law, Officers' Reports could not be disclosed *per se*.[138] I found his response dated 23 April 2014 very difficult to follow (and I am not at all sure what he meant by "*I am less concerned with the fact that investigation report is not signed statement but more concerned with the potential content of the report which may be potentially damaging to the POLS interest*").[139] Ultimately, it did not change the views I had expressed in my earlier email, and I did not understand it to change Angela Van Den Bogerd's instructions since she did not respond further to this chain altering the directions she had given.

195. I can see from reviewing my email records that the approach I had outlined, and which was seemingly approved by Angela Van Den Bogerd, was adopted at first. For example, on 27 April 2014, Angela Van Den Bogerd reviewed the draft POIR for case M019 and asked: "*surely we can use some of the information we gathered in the Security led investigation to crystallise our conclusion in respect of what happened in this case?*" In the event, in the particular circumstances of the case I did not consider that the Officer's Report added anything to the material already relied on, so I recommended that the report did not need to be referenced.[140]

196. Matters subsequently came to a head, and POL's instructions on how to approach the issue of disclosure of Officers' Reports changed, when a case arose where I felt that the report *did* need to be referred to (along with another document from the prosecution file). This was case M029. I raised this case with

[138] **POL00061369**.
[139] **POL00061369**.
[140] WBON0000848.

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Rodric Williams on 6 May 2014, explaining that I felt we needed to disclose the documents. Rodric Williams responded the same day saying that the decision needed to be run past Cartwright King.[141]

197. I therefore emailed Martin Smith of Cartwright King to seek his views (Jarnail Singh in copy), identifying that the reason for the proposed disclosure was that the documents were "*important to prove the conclusions reached in the POL report as there are no alternative documents on which to rely*" (**POL00046216**). Martin Smith responded on 7 May 2014, acknowledging that whilst Cartwright King had "*advised that as a matter of principle investigation and offender type reports should not be disclosed … there will be cases in which it is felt that there is no alternative other than to disclose these*". He advised that in such cases Officers' Reports should be "*appropriately redacted*" and it was agreed that he would identify the redactions for case M029 (**POL00046219**). This was in line with what I understood to be the approach following the exchange in **POL00061369**, i.e. of considering disclosure subject to redactions on a case-by-case basis.

198. At this point (on 8 May 2014) Jarnail Singh intervened, escalating the matter to Chris Aujard (then POL's General Counsel) in the following terms:

> *"As I understand it, POL has been advised by senior counsel that investigation and offender report should not be disclosed. It is of course matter for POL to make a decision whether [sic]*
>
> *to accept this advice or not and of course it would be open for POL to decide to discourse such documents. I personally would be unhappy for such documents to be disclosure for reasons set out in counsel Harry Bowyers advice note.*

[141] WBON0000849.

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> *Given the email correspondence between Bond Dickinson and cartwright King, I would be grateful if I could be informed whether POL has made a decision or Bond Dickinson are proceeding along the disclosure route without POL having made a decision."*[142]

199. Also on 8 May 2014, Martin Smith emailed me proposed redactions in case M029 (**POL00046219**). I cannot recall whether I considered the specifics of those redactions, as POL was by then reconsidering the approach to disclosure of Officers' Reports. Later that day, Rodric Williams emailed the following (revised) instructions on how such reports should be dealt with in POIRs:

> *"Having discussed this with Chris and Jessica, the protocol for the use of 'Officer Reports' (or as otherwise described) by Project Sparrow investigators when responding to individual complaints is:*
>
> *1. The report is NOT to be exhibited OR expressly referenced in Post Office's formal response to a complaint.*
>
> *2. It can be used by the investigator to help them understand what happened in a particular case, and to identify other documents relevant to the case (e.g. transcripts of interviews, branch account records etc).*
>
> *3. If the report is the ONLY source document still available, the investigator can repeat material from the report (provided it is not legally privileged), but CANNOT cite the report as a reference.*
>
> *4. Any challenge received about the source of a Post Office statement made from the report must be referred to Chris."*[143]

200. Accordingly, the issue of Martin Smith's proposed redactions to the prosecution documents in case M029 fell away.

201. I forwarded POL's revised instructions to Angela Van Den Bogerd and the POL investigating team on 9 May 2014, acknowledging that the approach "*may cause a few headaches as the officer's reports are key doc*", but that it "*represent[ed]*

[142] WBON0000850.
[143] WBON0000403.

the firm view for Chris on the way to proceed".[144] On 21 May 2014 I sent the following update to the WBD team working on the Mediation Scheme, which reflected my understanding of the instructions to which we were now required to work:

> "*Officer's reports:*
>
> - *Post Office has taken a decision that it will not be disclosing 'officer's reports' or other similar reports from the Post Office security team – sample attached.*
> - *This is because of various criminal law / prosecution issues.*
> - *We can use information in the officer's report in Post Office's investigation report (indeed you may copy the information word-for-word) but cannot refer to the officer's report or disclose them to Second Sight.*
> - *In some places, that will mean making un-evidenced statements which are not supported by any document however POL is happy with that risk.*
> - *If, further down the line, we receive a complaint from SS/the Applicant that the officer's report has not be disclosed, please escalate to me.*
> - *Note: sometimes these are also called offender's reports or investigation reports. If you are unsure, speak to me."*[145]

(vi) Provision of information concerning the Balancing Transactions functionality (Q45)

202. **Q45.1 and Q45.2** of the Request ask me to set out my beliefs as to (i) the extent to which Fujitsu had inserted additional data into branch accounts without the

[144] WBON0000851.
[145] WBON0000404.

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knowledge of SPMs in Old Horizon, and (ii) my understanding of the security measures Fujitsu had in place regarding the use of remote access, at the time of the email chain in **FU00087119**.[146] This chain refers to enquiries arising out of the emergence of an email dated 23 October 2008 between Andrew Winn (a Relationship Manager in POL's Financial Service Centre) and Alan Lusher (a Contracts Adviser in POL's Network Support Team) ("**the Winn/Lusher email**"; **POL00117650**).

203. The Winn/Lusher email came to my attention because it was referred to in an email by Steve Darlington (Howe+Co's Finance Director), which was forwarded to Belinda Crowe by Second Sight (and by Belinda Crowe to me) on 8 April 2014.[147] I was not aware of the email before this point.[148] Angela Van Den Bogerd managed to obtain a copy of the email and on 14 April 2014 she circulated the chain, though I do not know from where she obtained it.[149]

204. The Winn/Lusher email stated:

> "*The only way POL can impact branch accounts remotely is via the transaction correction process. These have to be accepted by the branch in the same way that in/out remittances are i guess. If we were able to do this, the integrity of the system would be flawed. Fujitsu have the ability to impact branch records via the message store but have extremely rigorous procedures in place to prevent adjustments being made without prior authorisation - within POL and Fujitsu*" (emphasis added).[150]

[146] For the avoidance of doubt, I was not copied into the email from Sean Hodgkinson (Deloitte) or Pete Newsome (Fujitsu) of 19 May 2014 and do not believe I have seen them prior to receiving the Request. The absence of these emails from my firm's file supports this view.
[147] WBON0000826.
[148] Nor, it seems, were others in the chain including Belinda Crowe and Angela Van Den Bogerd: WBON0000827.
[149] WBON0000835.
[150] **POL00117650**.

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205. I was not aware of the functionality referred to in underline above before I received the Winn/Lusher email on 14 April 2014, and so I was not cognisant of the fact that Fujitsu could inject transactions into branch accounting records in either Old Horizon or Horizon Online (in Horizon Online this was via the "**Balancing Transaction**" functionality, however in the early stages of investigating remote access this phrase was sometimes used to describe injected transactions in both Old Horizon and Horizon Online because those instructing me at POL and I were not aware of the technical differences between the two systems). In order to give the Inquiry a full picture as to how my understanding of injected transactions developed thereafter, and to contextualise the advice I gave concerning the provision of this information to Second Sight and SPMs (cf. **Q45.3**), it is necessary to set out the enquiries made by POL of which I was aware as to what changes to branch data the Winn/Lusher email referred to. I highlight at the outset that these enquiries were complex and protracted, running in parallel with a significant volume of other work during the Mediation Scheme. I do not remember the sequence of events well and do not attempt to be exhaustive, but I have done my best to piece together the key elements of what happened from my firm's records.

Initial enquiries

206. Following receipt of the Winn/Lusher email I prepared a set of questions for Fujitsu.[151] Rodric Williams sent questions to James Davidson (Post Office Account Delivery Executive at Fujitsu) on 17 April 2014 (as shown in **FUJ00087119**). James Davidson responded with the following overview,

[151] WBON0000837.

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together with more granular responses to the questions raised. This information was forwarded to me by Rodric Williams on 22 April 2014 (**FUJ00087119**):

"Summary:

- *There is no ability to delete or change records branch creates in either old Horizon or Horizon online. Transactions in both systems are created in a secure and auditable way to assure integrity, and have either a checksum (Old Horizon) or a digital signature (Horizon Online), are time stamped, have a unique sequential number and are securely stored via the core audit process in the audit vault*
- *Whilst a facility exists to 'inject' additional transactions in the event of a system error, these transactions would have a signature that is unique, sub-postmaster id's are not used and the audit log would house a record of these. As above, this does not delete or amend original transactions but creates a new and additional transactions*
- *This facility is built into the system to enable corrections to be made if a system error / bug is identified and the master database needs updating as a result, this is not a unique feature of Horizon*
- *Approvals to 'inject' new transactions are governed by the change process, 2 factor authentications and a 'four eyes' process. A unique identifier is created and can be audited for this type of transaction within HNGX, Horizon would require more extensive work to investigate as explained below.*

1. Can Post Office change branch transaction data without a subpostmaster being aware of the change? ***No***

2. Can Fujitsu change branch transaction data without a subpostmaster being aware of the change? ***Once created, branch transaction data cannot be changed, only additional data can be inserted. If this is required, the additional transactions would be visible on the trading statements but would not require acknowledgement / approval by a sub-postmaster, the approval is given by Post Office via the change process. In response to a previous query Fujitsu checked last year when this was done on Horizon Online and we found only one occurrence in March 2010 which was early in the pilot for Horizon Online and was covered by an appropriate change request from***

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Post Office and an auditable log. For Old Horizon, a detailed examination of archived data would have to be undertaken to look into this across the lifetime of use. This would be a significant and complex exercise to undertake and discussed previously with Post Office but discounted as too costly and impractical.

3. If not, where is the evidence for this conclusion? ***See Answer 2***

4. If so:

a) How does this happen? ***See above***

b) Why was this functionality built into the system design? ***To allow for data to be corrected if there were any defects found in the system***

c) Why would Fujitsu need to use this functionality? ***As above and under instructions from Post Office Ltd.***

d) What controls are in place to prevent the unauthorised use of this method of access? ***This is achieved through a number of industry standard controls (RBAC, 2 factor authentication etc) which are robustly audited under ISO 27001 / IAS 3402, Link, PCI.***

e) When has branch data been accessed in this way in the past? ***See above***

5. In relation to the Winn/Lusher email:

a) What is "message store"? ***This is the repository (or database) where all transactions were written to in the old Horizon system***

b) Can this be used to access and change branch records? ***It can be used to access the records. Data cannot be changed, but new data could be inserted into it. Any such inserted data would be tightly controlled by operational processes explained above.***

c) What is the "impact" of this change on branch records? ***The impact would depend on exactly what records were inserted.***

d) Would the subpostmaster be aware of this change? ***Yes, via the trading statement but spm's are not required to approve the change, this is provided by Post Office.***

e) Why would this method of access be used? ***To correct errors if a software defect is identified****.*

f) What controls are in place to prevent misuse of this method of access? ***As above.****"*

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207. My understanding of the explanation given by James Davidson was that:

207.1. ***First***, Fujitsu had no ability to *edit or delete (i.e. change)* transaction data and indeed, any attempt to manipulate or delete such data would be evident due to the way in which it was held in the audit log.

207.2. ***Second***, Fujitsu could *insert* a new transaction, but:

(i) This would only occur in exceptional circumstances to correct data.

(ii) It was only with the express approval of POL.

(iii) The insertion would be visible to an SPM as it would show in their branch accounts under a unique ID which was not that of the SPM or any of their staff.

(iv) The process had only been used once in the lifetime of Horizon Online. There was a substantially similar functionality in Old Horizon, but it would be difficult and expensive (though not impossible) to ascertain on how many occasions it had been used.[152]

(v) The existence of a functionality of this type was not unusual in a system such as Horizon.

208. That this was my understanding is reflected in a draft note (the "**April note**") which I prepared for Rodric Williams and I recommended should be shared with Second Sight once it had been bottomed out and approved by Fujitsu.[153]

[152] I therefore did not know whether this functionality had been used to insert a transaction in Old Horizon (and if so, how many times), because Fujitsu themselves did not know.
[153] WBON0000845; POL00204068.

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209. Second Sight were seeking POL's response on the Winn/Lusher email point, so on 9 May 2014 I recommended that a holding response be sent: (i) confirming that there was no functionality to edit or delete transaction data; (ii) advising that "*it is possible to input additional transactions into a branch's accounts (e.g. by way of say a transaction correction), [but that] a SPMR will always have visibility of these extra transactions as they are shown separately in the branch's accounts*"; and (iii) informing Second Sight that the latter point was being pursued with Fujitsu and a more detailed note would follow.[154] This was, in my view, the appropriate course; it was prudent for POL to obtain further information about injected transactions by Fujitsu before attempting to describe them in detail to Second Sight.[155]

210. In the event, the process of finalising the April note with Fujitsu drifted.[156] I do not now recall the reason why that happened, and I may not have known at the time, because I believe that I was not sighted on all of the relevant correspondence with Second Sight and Fujitsu. I later knew (but did not know at the time) that POL were simultaneously engaging Deloitte to look into similar questions.

211. At around this time, POL needed to consider how to respond to cases within the Mediation Scheme where the applicant had raised concerns about remote access in their CQR. By summer 2014, substantial numbers of CQRs were starting to make their way through to POL and POL needed to investigate them and produce POIRs in a timely way (as set out above). What information should

[154] WBON0000852.
[155] See for example WBON0000854, where I expressed the view to Rodric Williams that POL needed to understand more about the one occasion the Balancing Transaction tool was said to have been used in Horizon Online, as well as how difficult it would be to identify whether a transaction had ever been injected into Old Horizon.
[156] See for example WBON0000854; WBON0000860.

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be provided was ultimately decided on a case by case basis, but as a matter of principle it was decided that the potential for injected transactions did not need to be specifically identified and explained where there was no allegation that particular transactions did not originate in branch[157] or there was a clear explanation for the SPM's allegations (for example, in case M056 the applicant had alleged that there was a 'phantom log-in' to her account, but on investigation it was concluded that the issue was caused by her inadvertently leaving a branch terminal logged on for over a week).[158]

Inquiries following the Project Zebra Desktop Report

212. On 22 August 2014, I received, for the first time, a copy of the Project Zebra Desktop Report dated 23 May 2014 (**POL00028062**).[159] For context, I am now aware that Project Zebra had been commissioned by POL in early 2014, following advice it had received from Linklaters about POL's potential liability to SPMs (which advice is addressed further below at §248). However, my involvement in that project at the time was very limited, and indeed I was not even aware it had been commissioned at first. I gained some limited awareness of it around May 2014, when POL was engaging Deloitte to produce a report and Rodric Williams asked me to comment on some proposed wording to be included in its instructions to Deloitte (specifically, five questions which it was proposed Deloitte should answer, none of which specifically related to injected

[157] Often these were in the nature of vague references to the Helen Rose Report which was by then in circulation within the SPM community (and which did not concern any form of remote access but rather related to the transaction reversal process), or, as in the case of Mr Rudkin – which was number M051 in the Mediation Scheme – the allegation was that POL employees had the ability to pass transaction data into the live Horizon system from the test centre in Fujitsu's Bracknell office (which was considered to be unfounded for the reasons given above).
[158] POL00307712.
[159] WBON0000891.

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transactions).[160] After this, I do not believe that I or any of my colleagues at WBD had any involvement until the Project Zebra Desktop Report was sent to me on 22 August 2014. Even at that stage, my visibility of Project Zebra was limited. I did not, for example, appreciate that there were any reports beyond the Desktop Report, and only became aware that there was a further report in February 2016.[161] I also did not know that the project had generated any other reports beyond these two, until they were put to me in **Q88** of the Request.[162]

213. The Project Zebra Desktop Report was a 73-page document produced in response to instructions from the POL litigation team that "*POL is responding to allegations from Sub-postmasters that the "Horizon" IT system used to record transactions in POL branches is defective and that the processes associated with it are inadequate (e.g. that it may be the source and / or cause of branch losses)*". The purpose of those instructions was for Deloitte to investigate whether project documentation, operating policies, and previously undertaken assurance work appropriately covered key 'risks' relating to the integrity of the Horizon processing environment, including identification of the 'Horizon Features' that ensured that SPMs had full ownership and visibility of movements in their branch accounts. One of the 'Risk Areas' flagged by Deloitte as one of the 'Key Matters for Consideration' was Balancing Transactions (item 4(g) on page 31).:

> *"**g. Branch Database**: We observed the following in relation to the Branch Database being:*
>
> *A method for posting 'Balancing Transactions' was observed from technical documentation which allows for posting of additional*

[160] WBON0000856.
[161] As is illustrated by my email of 10 February 2016 to Rodric Williams, which stated "*I don't have a copy of the Deloitte board report - do you have it?*" WBON0000960. I refer to my receipt of this report further below, at §§299-300.
[162] Namely, **POL00105635**, **POL00031384**, **POL00031391**, and **POL00029726**.

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> *transactions centrally without the requirement for these transactions to be accepted by Sub-postmasters (as 'Transaction Acknowledgements' and 'Transaction Corrections' require). Whilst an audit trail is asserted to be in place over these functions, evidence of testing of these features is not available;*
>
> *[…]*
>
> *For 'Balancing Transactions', 'Transaction Acknowledgments', and 'Transaction Corrections' we did not identify controls to routinely monitor all centrally initiated transactions to verify that they are all initiated and actioned through known and governed processes, or controls to reconcile and check data sources which underpin current period transactional reporting for Subpostmasters to the Audit Store record of such activity;*
>
> *Security of the Branch Database around the 'Messaging Journal table' is a key area of risk due to the branch transactional data being held on this table for up to a day before being written to the Audit Store. It was unclear from the documentation reviewed whether specific assurance work had been carried out in this area; and*
>
> *Controls that would detect when a person with authorised privileged access used such access to send a 'fake' basket into the digital signing process could not be evidenced to exist".*[163]

214. I read the report with an eye on that issue, as I had been provided with it for the purpose of advising POL on how it should describe Balancing Transactions to Second Sight (who were by then working on finalising its Part 2 Briefing Report, the first version of that report having been released on 21 August 2014).[164]

215. From my perspective at the time, I did not read the Desktop Report as altering the understanding of Balancing Transactions I had gained earlier in the year from the email I had received from James Davidson of Fujitsu (above, §§206-208). Consequently, on 21 October 2014, I recirculated the note I had previously

[163] **POL00028062**.
[164] POL00226961.

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prepared, flagging to POL that its content needed to be confirmed with both Fujitsu and Deloitte before sharing with Second Sight.[165]

216. In the Desktop Report, there are long tables of "Horizon features" in Appendix 2 including three rows (on pages 53 and 54) that reference the possibility that database access privileges could enable a person to delete or amend a basket of transactions. This was not flagged in the body of the report by Deloitte as risk area or a key matter and I did not identify the relevance of these rows when I reviewed the report. However, I can now see that they contradicted James Davidson's early statement that "*There is no ability to delete or change records branch creates in either old Horizon or Horizon online"*. I only appreciated later, in early 2016, that Fujitsu may have the ability to edit and delete transaction data, and I address this further below at §§299-302.

217. Having received the Desktop Report on 22 August 2014 I then spoke with Mark Westbrook (Deloitte) on 3 November 2014 to discuss Deloitte's findings. My firm's telephone attendance note records that Mark Westbrook identified that: (i) Balancing Transactions were "*to be used in exceptional circumstances*"; (ii) the functionality of the tool and controls around its use were "*best summed up in an email from John Simkins (JS) at Fujitsu*"; (iii) SPMs "*probably did have visibility*" of injected Balancing Transactions, and indeed would "*he imagine be initiated by [them] as per the example found by Deloitte*"; and (iv) establishing whether the Balancing Transaction tool had been used in Old Horizon "*would require a detailed interrogation exercise on the old system which was not trivial*".[166]

[165] WBON0000908; POL00211255.
[166] WBON0000916.

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218. My firm's attendance note indicates that I felt that various follow-up enquiries were needed, including obtaining a copy of John Simpkins' email (which I did on 10 November 2014),[167] and asking Fujitsu to confirm that Balancing Transactions were visible in branch accounts. I circulated an updated note on 10 November, which would have reflected my understanding of the situation at the time, and noted that this needed to be sent to Fujitsu for their review.[168] I can see from the draft note that I raised detailed further questions with Fujitsu regarding the effect of Balancing Transactions and their visibility in branch accounts.

219. At this point, carriage of the note and responsibility for liaising with Fujitsu appears to have passed to Mark Underwood (then an independent contractor engaged to work on the Mediation Scheme).[169] An update from him dated 20 November 2014 states:

> *"Whenever we have spoken to FJ about this issue, they seem puzzled as to why we are so concerned citing 'data integrity' However I think we are now of the opinion it is a semantics issue. By 'data integrity' FJ are, I think, referring to 'audit trail' – in that, whatever is done leaves a clear and identifiable audit trail behind it and thus – if there is no 'remote access car' in the branch's data – it simply did not happen. This therefore allows us to prove the negative.*
>
> *On a call – FJ confirmed they already had downloaded all the branch data available for the 150 scheme cases and performed searches for any such 'scars'."*[170]

220. This indicated that the branch data for each of the branches under consideration in the Mediation Scheme (i.e. including those operating under Old Horizon,

[167] WBON0000910; WBON0000911.
[168] WBON0000912; POL00212054. My covering email indicates that I also had a call with Fujitsu around this time, though I have no recollection of this call and have not been able to identify confirmed meeting arrangements in my email records.
[169] WBON0000914.
[170] WBON0000479.

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subject to the limitation that the audit data only went back to around 2008) had now been checked, and no evidence had been found of "remote access" e.g. an injected transaction. This would seem to have been confirmation of what I had previously understood to be overwhelmingly likely, namely that injected transactions were extremely rare and not relevant to the cases within the Mediation Scheme.

221. After this, Mark Underwood appears to have struggled to obtain useful further information from Fujitsu.[171] The version of the note that was eventually returned on 10 December 2015[172] confirmed some important points (e.g. that "*it is not possible to edit existing transaction / basket data*" and that Balancing Transactions are "*new transactions with unique jsn's and identifiers*"), but otherwise failed to provide meaningful answers to a number of questions (e.g. failing to answer a direct question about the visibility of Balancing Transactions in branch accounts, and simply saying "*See incident in March 2010*" in answer to the questions "*When are SPMRs made aware that an injection is to occur?*" and "*please describe the process and controls in place*").[173] It appears from my email records that the note to Second Sight was never ultimately finalised.[174]

Finalisation of Second Sight's Part 2 Briefing Report

222. On 7 April 2015, Second Sight notified POL that they had finalised their (updated) Part 2 Briefing Report. They sought POL's comments by close of business the

[171] WBON0000917; WBON0000327.
[172] Containing comments from James Davidson and Torstein Godeseth of Fujitsu.
[173] WBON0000327.
[174] POL00408247.

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following day on a substantially revised Section 14 of the report, which dealt with remote access, together with two documents which they intended to cite.[175]

223. Both of the supporting documents referred to the Receipts and Payments Mismatch bug, which had arisen in 2010 during the pilot of Horizon Online and resulted in discrepancies being lost from the counter but retained on the back-end system if a specific sequence of steps was followed by an SPM at the end of a trading period. In particular:

223.1. The first document was an internal Fujitsu memo authored by Gareth Jenkins, which set out the cause and effects of the bug, what information needed (in his view) to be established before the matter was raised with POL, and (subject to POL's decision as to how to proceed) what steps would be required to fix the data for each affected branch. It noted that "*[t]he data can be corrected by adjusting the appropriate Opening Figures and BTS Data that relates to the current TP. This will result in the Discrepancy needing to be processed when rolling over to the next TP*". The memo recorded that "*if we do amend the data to re-introduce the Discrepancy, this will need to be carefully communicated to the Branches to avoid questions about the system integrity*".[176]

223.2. The second document was a note of a meeting between POL and Fujitsu to decide how to proceed. One of the solutions discussed was to "*Alter the Horizon Branch figure at the counter to show the discrepancy. Fujitsu would have to manually write an entry value to the local branch account*". This would (as Gareth Jenkins' note described) result in the branch having

[175] POL00021845; POL00225912; POL00225913.
[176] POL00225914.

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> the discrepancy reintroduced, in effect realigning the counter and back-end systems at the point of rolling over to the next trading period. It was identified that this would have "*significant data integrity concerns and could lead to questions of 'tampering' with the branch system and could generate questions around how the discrepancy was caused. This solution could have moral implications of Post Office changing branch data without informing the branch*".[177]

224. The draft version of Section 14 of Second Sight's report observed that these documents appeared to suggest that POL and/or Fujitsu *did* have the ability (at least in 2010) to "*alter*" or "*directly amend*" branch data, and that this was inconsistent with POL's previous statements that no such facility existed. The draft also referred to the Winn/Lusher email and commented that POL had not explained whether or not it was accurate.

225. On 7 April 2015, POL put these matters to Fujitsu, who were asked to explain: what was meant by the references to "*adjusting*" and "*altering*" data in the documents; how such an alteration would be made; whether it would be visible to the affected SPM; and what decision had in fact been taken in relation to the Receipts and Payments Mismatch bug.[178] Fujitsu were also provided with a clean version of the draft note on remote access which had last been updated in December 2014 (which stated my understanding at that time that neither POL nor Fujitsu could edit, manipulate or delete transactions).[179] Pete Newsome of Fujitsu confirmed that the note appeared to correctly describe the process

[177] POL00225913.
[178] WBON0000924.
[179] POL00243542.

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referred to in the two documents supplied by Second Sight.[180] However, POL recognised internally that it should not be complacent about the answers being provided by Fujitsu,[181] and on further probing Pete Newsome confirmed:

> *"There is only one process Fujitsu can use which is the insertion of auditable additional transactions described in the document so the words below must have been a loose business description for a meeting with nontechnical attendees."*[182]

226. I took the above as further confirmation from Fujitsu that it was not possible to edit or delete transactions from branch accounts; the only route was for Fujitsu to inject new ones. Fujitsu provided further information following a call on 8 April 2015 (which I cannot recall). In their follow-up email, they: (i) described the process for making a Balancing Transaction in substantially the same terms as John Simpkins' earlier email to Deloitte; (ii) confirmed that "*Any change would be a new transaction in the audit log and can be identified under a separate identifiable login in the branch audit record. All existing transactions are unchanged*"; (iii) reiterated that "*this type of transaction will appear in the branch printout*"; and (iv) made the point that "*[i]t is Post Office's responsibility to explain the need for the change and the change that took place with the Sub Postmaster*".[183]

227. On this basis, and with the deadline for commenting on the draft of Section 14 approaching, I (with others) prepared the following response to be sent by Patrick Bourke to Second Sight:

[180] WBON0000927.
[181] WBON0000928.
[182] WBON0000929.
[183] POL00041040.

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> *"As we have always stated, Horizon does not have functionality that allows Post Office or Fujitsu to edit or delete the transactions recorded by branches …*
>
> *It has however always been possible for Post Office to correct errors in and/or update a branch's accounts. Most commonly this is done by way of a transaction correction however it could also be by way of a balancing transaction or transaction acknowledgement …*
>
> *[I] can confirm that most of the branches affected by the Receipts / Payments issue were resolved by Post Office writing off the discrepancies … In one branch, a balancing transaction was used to correct the discrepancy in the branch's accounts (being 'Solution 1' in the documents).*
>
> *All of the above processes for correcting / updating a branch's accounts have similar features. They are only used with a Subpostmaster's consent, all of them involve inputting a new transaction into the branch's records (not editing or removing any previous transactions) and all are shown transparently in the branch transaction records available to Subpostmasters (as well as in the master ARQ data).*
>
> *Unfortunately, the language used in the documents produced by Post Office / Fujitsu is colloquial shorthand that was only intended for internal use by those who understood the Horizon system. I can understand why these documents could be read to suggest that Post Office was 'altering' branch data but I hope the above explains why this is not the case."*[184]

228. On 9 and 10 April 2015, and after the final Part 2 Briefing Report had been released, Fujitsu provided responses to certain outstanding questions that had been raised with them, including how a Balancing Transaction would be identified in branch accounts and the Audit data. In short, Mike Harvey stated that a Balancing Transaction would appear in the branch accounts as a separate transaction, but that "*the Post Masters reporting does not go down to the level of granularity to show that the transaction was an insertion [at the data centre]. However, the effect would be clearly visible … [and] within the associated audit log the use of the transaction correction tool would be clearly apparent and it*

[184] POL00041040; POL00226089. The final version sent is at: POL00021785.

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would therefore be obvious that the transaction had not originated from the Post Master or his/her team".[185]

Review by criminal lawyers

229. At around this time, i.e. in early 2015, Cartwright King were considering the Project Zebra Desktop Report and specifically whether the existence of the Balancing Transaction functionality needed to be disclosed to convicted SPMs. They provided POL with a note dated 27 March seeking further information about the nature and use of the tool.[186] Reviewing my email records now, for the purpose of preparing this statement, I believe that the original intent was for Cartwright King's questions to be forwarded to Fujitsu for comment,[187] but that POL's correspondence with Fujitsu on the same subject shortly afterwards rendered this unnecessary, and that I therefore collated the information which had been provided by Fujitsu on the subject of Balancing Transactions in order to answer Cartwright King's queries.[188] Self-evidently this was not advice (and I was not asked to advise) on the substantive question of whether the Balancing Transaction process should be disclosed to convicted SPMs, but rather it was an exercise in gathering factual information to which I had ready access in order to assist Cartwright King.

230. It is apparent from references within my emails that conferences were then held with Brian Altman QC and Cartwright King to obtain their advice on how to proceed. I understand from later emails that POL was advised to ascertain how difficult and costly it would be to interrogate Old Horizon data to establish whether

[185] WBON0000930.
[186] WBON0000922; POL00228075.
[187] WBON0000340.
[188] WBON0000931.

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the Balancing Transactions function had been used pre-2010, after which it could be decided if this exercise needed to be commissioned in order for POL to comply with its duties as prosecutor.[189] I therefore contacted Fujitsu for information on this point and was provided with a note authored by Gareth Jenkins setting out how such data could be accessed and examined.[190] In short, Fujitsu advised that "*searching for BTs would in fact be an enormous task, taking several months of work*", and my resulting instructions from POL were that it was "*not prepared to commission this exercise unless it is considered absolutely vital and there is no credible alternative*".[191] I communicated this by email to Cartwright King on 15 July 2015, and to Brian Altman QC on 20 July 2015.[192]

231. Gavin Matthews and I attended a further conference with Brian Altman QC on 21 July 2015, who gave clear and unequivocal advice that "*[t]here is currently no need to give any further disclosure to SPMRs about BTs*". He considered that:

231.1. In relation to New Horizon, "*the only BT was in a branch not touched by any prosecution so there is no disclosure to give in this regard*".

231.2. In relation to Old Horizon, "*POL does not have an obligation to go on a fishing expedition, particularly one that would be extremely onerous and costly*".

231.3. However, "*[i]f POL knew that a prosecuted branch operating Old Horizon had been subject to a BT, that specific fact may trigger a disclosure in that specific case*".[193]

[189] See for example WBON0000944; WBON0000946.
[190] WBON0000942; POL00238791.
[191] See for example WBON0000944.
[192] WBON0000944; WBON0000946.
[193] POL00021775.

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232. I conveyed this advice to Rodric Williams later the same day, together with the fact that Cartwright King had been consulted but chose to defer to Brian Altman QC.[194] Rodric Williams subsequently asked me to obtain confirmation in writing from Brian Altman QC that he agreed that my note accurately reflected his advice (which I did).[195] For the avoidance of doubt, and with reference to **Q45.3** of the Request, the principal reason for my involvement in these matters was that WBD were Brian Altman QC's instructing solicitors (see above at §§95-96) and it was part of my role to obtain and act as a conduit for his substantive advice when called upon to do so.

(vii) POL's approach to deciding whether to mediate cases (Q38, Q47 to Q48)

233. The foregoing subsections set out my answers to the Inquiry's questions about how the process of investigating SPMs' complaints unfolded. In this subsection I turn to **Q47 to Q48** of the Request, as well as aspects of **Q38** (insofar as not already answered above). These questions broadly concern my involvement in "*the decision-making process to determine whether to take cases to mediation*", and (relatedly) my/WBD's role in advising POL on the merits of individual cases, including whether to mediate them.

234. There are three aspects which I address below. ***First***, I set out the advice I gave to POL concerning the role of the Working Group in deciding whether cases should proceed to mediation, and the test which it ought to apply. ***Second***, I address the advice which POL received (much of which I did not give myself) to guide its high-level decision-making in relation to which cases should proceed to

[194] POL00021775.
[195] POL00021777.

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mediation, and if so, what settlement criteria it should apply. ***Third***, I summarise WBD's role (which I have already touched upon at §149.2(ii) above) in relation to the application of these high-level criteria by POL to each case based on its individual facts.

The role of the Working Group

235. The Working Group had to start considering the suitability of individual cases for mediation around the middle of 2014, as this was when Second Sight started to produce its first CRRs.[196]

236. The Working Group meeting on 16 June 2014 involved the first contentious discussion about whether to put a case through to mediation. This was case M054. This case did not involve a convicted SPM, but it was a case where POL (on WBD's advice) did not believe that a mediation was warranted. POL's and Second Sight's reports had both concluded that the applicant had admitted to removing £9,500 out of an £11,900 shortfall from the branch immediately before she was audited and was responsible for that part of the shortfall. POL believed that the SPM was responsible for remaining shortfall (of c. £2,500) with Second Sight unable to reach a conclusion on that point.[197] On WBD's advice, POL did not consider that it would be proportionate to mediate in respect of the remaining (less than £2,500) shortfall, although it was prepared to enter into an informal discussion with her about that aspect.[198] POL therefore proposed to (and did) vote against mediation, whereas JFSA (supported by Second Sight) voted in

[196] Cf. **POL00026662**; **POL00026668**.
[197] POIR: WBON0000132; CRR: POL00306593.
[198] WBON0000859.

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favour.[199] Sir Anthony Hooper was therefore called upon to exercise his casting vote.

237. There was a discussion as to what test Sir Anthony (and indeed the Working Group as a whole) should apply in deciding whether or not a case was "*suitable*" for mediation in accordance with the terms of reference, and it was decided that the test should be:

> *"On the assumption that both parties approach mediation in a genuine attempt to reconcile their differences [is] it reasonably likely that the parties will reach an agreed resolution of their issues"?*[200]

238. This was formulated by Sir Anthony at the meeting, and I thought it was a sensible test which accorded with the nature and objectives of mediation.

239. Sir Anthony retired to consider his decision on the suitability of case M054 for mediation and on 24 June 2014 gave a written decision to the effect that: (i) POL was reasonably entitled to conclude that a large part of the shortfall had been removed from the branch by the applicant; (ii) POL would therefore be acting reasonably in not agreeing to pay any part of that sum; and (iii) it was not reasonably likely that mediation would lead to a resolution of the dispute.[201]

240. JFSA was dissatisfied with this decision, and in July 2014 Alan Bates circulated two separate proposals. First, that the test for "*suitability*" should be reformulated as "*cases should proceed to mediation where mediation would allow the Applicant an opportunity to express their concerns to Post Office*"; and second,

[199] **POL00026664**.
[200] **POL00026673**.
[201] WBON0000864.

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that this test should be applied by Second Sight alone, without any oversight by the Working Group.[202]

241. I (and those instructing me at POL) believed this represented the wrong approach. It was a key part of the architecture of the scheme that the Working Group, not Second Sight, should be responsible for considering the suitability of individual cases for mediation. Further, we thought that Sir Anthony's original formulation of the test was the right one. There had never been any guarantee, when the scheme was set up, that all cases would proceed to mediation and it was clear that they would only do so if they were deemed "*suitable*" by the Working Group. The test adopted on 16 June 2014 struck the right balance between the interests of applicants and POL; to put any case through to mediation regardless of merit on the basis that it would enable the applicant to be heard would inevitably give many applicants false hope, at significant cost and without any obvious benefit (particularly given that alternatives were available to give applicants in this position a 'voice', such as a direct discussion between them and POL). I prepared submissions to this effect on POL's behalf for Sir Anthony to consider.[203]

242. On 26 August 2014, Sir Anthony determined that the Working Group was the proper entity to make decisions on suitability, but that the test to be applied was that proposed by JFSA.[204] In reaching this decision, Sir Anthony considered that the guide to the Mediation Scheme gave the impression that most cases would

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[202] Concerning the first proposal, see: **POL00026671**; WBON0000876 and attachments: WBON0000877, POL00206822, and POL00206823. JFSA's proposed new suitability test is captured here: WBON0000874. Concerning the second proposal, see **POL00026672**; POL00207229.
[203] WBON0000885; WBON0000886; and POL00207393; POL00207394.
[204] WBON0000893; POL00210134.

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be mediated, because it had said "*If your case is suitable and you provide accurate, detailed information to Second Sight, then this [mediation] is likely in most circumstances*".

243. I did not consider that this was the right reading of the guide, which (to my mind) stated that mediation would be likely "*in most circumstances*" *if* the case was deemed suitable and the applicant had provided sufficient information.[205] Although POL had to do its best to work to Sir Anthony's decision in good faith, it posed real difficulties as it effectively meant that cases would be routinely approved for mediation by the Working Group, even though a case may have little hope of reaching a settlement or the SPM had an extant criminal conviction (and as explained below, POL had received firm advice from its criminal lawyers that it could not countenance mediating such cases). Whilst Sir Anthony's decision did not mean that POL would be forced to mediate cases when it deemed this inappropriate (the Working Group having no power to compel this), it did mean that POL was put on a course where it would have to refuse to mediate cases despite that being the Working Group's recommendation. This situation meant that the Working Group was no longer collaboratively filtering out unsuitable cases (or was much less likely to do so), which was important if disappointed applicants were to understand and accept the decision that their case should not be mediated.[206]

244. POL was sufficiently concerned about the position in which it found itself that it obtained specialist public law advice (from DAC Beachcroft) about the risk of a

[205] WBON0000895.
[206] See for example the considerations outlined in POL's internal briefing notes for the Working Group meetings on 2 and 17 October 2014: POL00210056; POL00211024.

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judicial review claim being brought if it declined to mediate cases which the Working Group had approved.[207] This advice confirmed that the public law risk was low.

Advice on mediating criminal cases

245. As I mentioned earlier (§136), POL's criminal lawyers had in September 2013 expressed misgivings about the decision to allow SPMs with a relevant criminal conviction (that is, for theft, fraud or false accounting) to apply to the Mediation Scheme. By that stage, though, the decision to entertain applications from such SPMs had been taken. For my part, I could see that there might be some practical value in allowing these cases to be considered as part of the investigative phase of the scheme, since this might turn up relevant information or even simply enable the applicant to better understand the decisions POL had taken in their case.

246. However, once the Working Group started to make decisions on suitability in summer 2014, POL had to determine how it should approach the question of mediating such cases. It sought advice from Cartwright King, who on 8 July 2014 strongly advised against mediating such cases.[208] I understood that they were concerned that the mere fact of entering into mediation with a convicted SPM could be seen to cast doubt on a conviction which might be otherwise safe. This was discussed at a Working Group meeting and JFSA objected in strong terms to POL's suggestion that it could not mediate with convicted SPMs.[209]

[207] WBON0000900; WBON0000902.
[208] WBON0000867; POL00305248; see also WBON0000869.
[209] WBON0000870.

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247. Sir Anthony Hooper developed a proposal whereby, instead of mediating with a view to settlement, the parties would mediate with a view to POL deciding whether it would, or would not, support an appeal against the SPM's conviction. A conference was sought with Brian Altman QC,[210] and on 15 September 2014 he provided a formal written advice on the approach POL should take in such cases.[211] In short, he advised in clear terms that Sir Anthony's proposal was unworkable since POL could not be seen to take a position on the safety of a conviction before the matter had been considered by the Court of Appeal. Further, he advised strongly against POL mediating in false accounting cases with a view to identifying the cause of the loss that led to the rendering of the false accounts, which he saw as fraught with difficulty. The only thing POL could do in relation to criminal cases, in his view, was to disclose any material identified during the investigative phase which cast doubt on the safety of the conviction, but it should not countenance mediating such cases. POL accepted this advice though it led to serious difficulties within the Working Group for the reasons I have outlined above.[212]

Linklaters advice and generic settlement criteria

248. In addition to the advice obtained from the criminal lawyers, POL obtained advice from Linklaters about its potential contractual liability based on the types of complaints that were being raised by SPMs through the Mediation Scheme. That advice was provided on 20 March 2014, and, in relation to complaints alleging that the Horizon system was responsible for the SPM's shortfalls, it stated that

[210] WBON0000871; WBON0000406.
[211] WBON0000900; POL00214992.
[212] See, for example, in relation to case M030: WBON0000906; WBON0000903; WBON0000905; WBON0000907; WBON0000407.

POL should not consider settling in the absence of clear proof that Horizon was not operating as it should.[213] It did however outline certain limited categories of case where POL might consider making some concessions. I (together with WBD colleagues) had earlier prepared a draft settlement policy outlining generic settlement parameters in the types of cases being considered under the scheme,[214] and on 26 March 2014 I provided a supplemental advice giving guidance on valuing claims for harm caused to the value of an SPM's retail business following the allegedly wrongful summary termination of their contract.[215]

Case-specific decisions

249. I have already explained above (at §149.2(ii)) that once Second Sight produced its CRR, the WBD team would review the case and produce a short written note of advice setting out whether a case should be mediated and if so what the settlement parameters would be. This would inform POL's decision as to how to vote at Working Group meetings, as well as POL's settlement parameters for that case if it proceeded to mediation.

250. These advice notes were based on, and applied (i) Brian Altman QC's advice in relation to mediating conviction cases; (ii) Linklaters' advice; and (iii) the guidance on settlement criteria provided by WBD, read subject to and in light of the other advices. I exhibit hereto a selection of these advice notes to illustrate their form and content.[216]

[213] POL00202008.
[214] POL00202008.
[215] WBON0001707; POL00278283.
[216] I have been advised that POL consider the documents I had referenced here to be privileged and that it is not willing for such privilege to be waived.

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(vi) Closure of the Working Group (Q35.6 and Q50 to Q52)

JFSA's objections

251. With reference to **Q50**, the nature of the concerns JFSA expressed in its letter to Sir Anthony Hooper dated 10 November 2014 (i.e. the letter that was the subject of the discussion at the Working Group meeting on 14 November 2014, the minutes of which are **POL00043630**) were in brief summary as follows:[217]

251.1. JFSA maintained that it was not the Working Group's place to decide whether cases were unsuitable for mediation; they believed that SPMs had been promised, when the Mediation Scheme was established, that *all* cases would proceed to mediation as long as the applicant provided sufficient information about their complaint at the outset. Their belief was that the only issue for the Working Group was whether or not an applicant had provided enough information to be admitted onto the Scheme in the first place.

251.2. They were particularly aggrieved by POL's position that it could not generally mediate with SPMs who had extant criminal convictions. They were also upset by the fact that POL considered that mediation was not the appropriate route in cases that lacked merit, but the real crux of the issue (in my view) was the impasse between POL and JFSA on criminal cases.

[217] POL00216273.

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251.3. JFSA also expressed the view that where mediations were entered into, POL's conduct was not sufficiently conciliatory and that mediations were not leading to resolutions.

252. These factors – which were interconnected – led the JFSA to the belief that the Mediation Scheme was a "sham" which POL was not engaging with in good faith. They ultimately disengaged from the Working Group – see the minutes of the 8 December 2014 meeting at **POL000043631** – which caused decisions on borderline or contentious cases to not be made or to be deferred.

253. I have no recollection of the discussion on 14 November 2014, referred to in **POL00043630**, but I recall that in general terms, I did not think that JFSA's criticisms were fair or well-founded:

253.1. To my mind, it had always been clear that some cases might not be mediated (and that these were not confined to cases where the applicant failed to provide enough detail to progress an investigation into their case).[218] As I have explained above, §§241-243, the guide to Mediation Scheme said, at p.8:

> *"**Will my case definitely be referred to mediation?***
>
> *If your case is suitable and you provide accurate, detailed information to Second Sight, then this is likely in most circumstances.*
>
> *However, the Working Group may consider that some cases are not suitable for mediation. For example, if there is insufficient information about a case or the case is not one requiring resolution.*

[218] See an email I sent setting out my thoughts at the time: WBON0000915.

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> *Also, once Second Sight has submitted its findings, Post Office may contact you to discuss your case and to seek a resolution without needing to attend mediation.*
>
> *If your case is not referred to mediation, then you may still pursue other methods of resolution such as by bringing a claim through the Courts."*[219]

253.2. I cannot recall whether POL was explicit with JFSA, when setting up the Scheme in Autumn 2013, that this might mean that convicted SPMs' cases might not be mediated. I recall that there was a discussion around available remedies, i.e. POL made clear that the Mediation Scheme could not result in any convictions being overturned. To the extent that POL did not go further and explain that criminal cases would not be mediated at all, I do not believe I saw any evidence that this was the product of bad faith on POL's part. Rather, (i) it had not yet obtained formal advice from its criminal lawyers on this point, and (ii) in any event, allowing such cases into the Scheme might produce benefits because the investigation might surface documents or information that could assist in an appeal against conviction.

253.3. It is worth adding that it is something of an oversimplification to say that POL's position was that it could not mediate with convicted SPMs at all. There were a couple of conviction cases which POL *did* agree to mediate, because the factual basis of the SPM's complaint was not directly related to the conviction.[220] This was reflected in an internal WBD briefing note which gave guidance to the team on the conduct of mediations, and

[219] WBON0000805.
[220] See: POL00218712, p.3.

> explained that POL's position was that it "*will not mediate any cases involving a criminal offence save in exceptional circumstance*".[221]

I was not of the view that POL were refusing to engage properly in the mediation process. From my perspective, WBD's instructions (as reflected in the abovementioned briefing note) were to engage in mediations in good faith with a view to achieving resolution, or if that was not possible, to "*[t]ry to bring closure*" or at least "*make sure the Applicant has had a fair chance to put their position to POL and to ensure that POL has constructively responded*". Unfortunately, I did get the impression that there was something of a disconnect between JFSA's and SPMs' expectations, and what POL were willing to offer. POL were not prepared to offer financial settlements in cases where it considered it had little risk of legal liability (since ADR processes such as mediation were, at bottom, a way of achieving an out of court settlement of a legal dispute). By contrast, JFSA and SPMs seemed to think that the fact that a mediation was happening meant that a financial offer would definitely be made. I can't remember whether I had already formed this view at the time of JFSA's letter as, in my recollection, only a few cases had proceeded to mediation by this stage. But it was certainly a view I formed as more mediations took place, and the review of the mediation process prepared by CEDR at the end of the scheme confirmed their view that applicants often approached mediations as though they were actually in a compensation scheme.[222]

Decision to close the Working Group

[221] POL00407979.
[222] POL00232900.

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254. **Q51** asks me to set out the nature and extent of my involvement in POL's decision to terminate the Working Group and mediate all cases, save those involving an SPM with a relevant criminal conviction. This was a policy decision; I did not advise on that aspect of the decision and had no involvement in POL's wider political and strategic decision-making in relation to the Scheme (for example, whether to continue it at all, whether to close it but offer a financial settlement to some or all applicants in lieu of mediation, and so on). Searches of my email records indicate that the Project Sparrow Subcommittee made a recommendation that was then adopted by the Board.[223]

255. To the best of my knowledge, my involvement in these matters consisted of:

255.1. Providing brief advice on the proposal to terminate the Working Group, prior to the Project Sparrow Subcommittee's consideration of that issue in early February 2015 (this is the advice shown in **POL00021908**);

255.2. Providing POL with formal written advice on the "*manner of implementation and consequences*" of its related proposal to terminate Second Sight's contract for services, also in early February 2015.[224] I exhibit that advice hereto.[225]

256. In relation to my advice on the decision to terminate the Working Group, and with reference to **Q52.1** of the Request, I confirm consider the advice contained in my email to Belinda Crowe dated 9 February 2015 (**POL00021908**) to have been legal advice. I was instructed to comment on the proposal contained in the

[223] WBON0000408; WBON0000409.
[224] POL00021728. From my emails, Victoria Brooks picked up the drafting of the advice itself, under my supervision: WBON0000921.
[225] POL00221480.

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Project Sparrow Subcommittee paper attached to that email,[226] and in so doing would have been concerned with whether the proposal would meet POL's stated objective, and what the attendant legal risks were. The objective was that specified at paragraph 2.12 of the paper, namely that POL should continue to "*meet [its] obligations to applicants but also seeking to regain control of the process and bring it to a conclusion as soon as possible*".

257. As my email to Belinda Crowe at **POL00021908** shows, I agreed with the proposal to terminate the Working Group as an effective means of achieving this objective, because:

257.1. ***First***, against the background set out above, the Working Group had become fractious and largely inoperable, with JFSA refusing to participate in discussions or votes. Further, the procedures for progressing cases through the Scheme were by now well-established – thanks to the efforts of the Working Group – meaning that this aspect of its role had significantly reduce by February 2015. Taken together, these factors meant that in my view, the Working Group *"offer[ed] no real value"* any longer (cf. **Q52.2**).

257.2. ***Second***, closing the Working Group by taking a decision to mediate all cases (save for non-criminal cases) would accelerate the conclusion of the Scheme by eliminating the intermediate step of the Working Group considering and voting on those cases. Incidentally, and with reference to **Q35.6** of the Request, I thought that the Working Group had fulfilled its purpose at this stage (notwithstanding the fact that it largely broke down towards the end) because of this combination of factors. Its twin purposes

[226] POL00221561.

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were (i) to establish the process for progressing cases through the Scheme to the point of deciding on their suitability for mediation, and (ii) considering their suitability for mediation. As I have explained above, it had achieved (i), and the proposal in the Subcommittee paper would relieve the need for (ii).

257.3. ***Third***, the fact that the breakdown of the Working Group was "*the source of much criticism*" was a material consideration (cf. **Q52.2**). On the one hand, it was leading to POL being perceived as the obstructive party, and as failing in its obligations to Scheme applicants. This was not just a matter of reputational concern; it undermined confidence in the Scheme itself and therefore reduced the likelihood of mediations achieving resolution. On the other, it was exacerbating delays which again was contrary to the objectives of the Scheme.

258. As to **Q52.3**, again, I was commenting on the efficacy of the proposal in the Project Sparrow Subcommittee paper. That proposal was for POL to "*meet its commitment to any applicant wishing to avail themselves of a review by Second Sight of their case by providing the necessary funding to do so on an individual basis*" (p.4). As my email to Belinda Crowe makes clear, my concern was that "*[i]f SS are independently contracted [i.e. paid] by Applicants*" then their independence would be lost. I anticipated that if Second Sight were dependent on applicants for their funding, they would increasingly become advocates for those applicants (and that this would likely involve them straying further beyond the bounds of their expertise even than they had done to date).

259. As to **Q52.4**, Second Sight had in their possession a large number of documents about applicants containing private and sensitive data – including criminal

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convictions data. As my email to Belinda Crowe shows, I was concerned that Second Sight might not hold that data securely or might release it to third parties. This could have serious implications for POL (as well as for the SPMs concerned) because (i) POL was the controller of that data and therefore ultimately responsible for it, and (ii) POL owed Mediation Scheme applicants strict obligations of confidentiality.

H. KNOWLEDGE OF BUGS, ERRORS, DEFECTS, AND REMOTE ACCESS, 2013 to 2015 (Q6 to Q9)

260. The preceding sections set out my answers to the Inquiry's questions in respect of the period from when I was first instructed in relation to the Horizon-related matters in April 2013, to mid-2015 when my work on the Mediation Scheme was substantially complete. In the course of answering those questions I have where relevant addressed my knowledge of bugs, errors and defects within Horizon, and of remote access to the Horizon system, at the time in question.

261. In this section I summarise how my knowledge and understanding of these matters evolved during this period, as well as what I then thought of the 'robustness' of Old Horizon and Horizon Online, in order to answer to **Q6 to Q9** of the Request. Given the extent of my involvement over the period in question (which continued for several more years thereafter), and the lapse in time, I cannot recall every bug, suspected bug, or remote access issue that was addressed. The below paragraphs are therefore only a summary and are not exhaustive of all my knowledge, but I have done my best to capture all the

material points I can recall and which informed my understanding of the likely robustness of the Horizon system.

262. It is important to highlight a few matters at the outset which are material to my state of knowledge during this period (and indeed more generally). I have touched on some of these matters above, but they bear repeating in order to contextualise what follows:

262.1. ***First***, I was at all times acting as an external solicitor. Accordingly, my knowledge derived entirely from the information and instructions which POL provided, and information obtained from Fujitsu (and to a lesser extent, Deloitte) where relevant.

262.2. ***Second***, I was reliant on subject matter experts to understand the technical detail as well as the practical significance of the factual information I received in relation to the Horizon system. In this regard, it was apparent to me from early on that the relevant expertise was drawn almost entirely from Fujitsu. Although there were many people within POL who understood Horizon well from a user's perspective (e.g. trainers, support teams, branch accounting people, etc), including the POL IT team, I did not come across anyone at POL who had a detailed understanding of the technical workings of Horizon. The main consequence of this, as I understood at the time, was that POL was not in a position to itself interrogate (still less verify) the factual information and technical advice which emanated from Fujitsu. Whilst I and others at WBD could (and did) seek to ask probing questions – as employees of POL also often did, from my observations – this dynamic served to accentuate POL's dependence on Fujitsu as a reliable source of information.

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262.3. ***Third***, as I have explained above, my starting point when I was first instructed was that I had little if any familiarity with the Horizon system, and from there I learned about how the system worked progressively over time. I was not, for example, given a formal or detailed briefing on the functionalities or technical operation of the Horizon system (though as explained above, I recall the basic differences between Old Horizon and Horizon Online being explained to me at some point, as well as the role and significance of the Core Audit Process). This is not intended as a criticism, as it would have been a massive and complex endeavour and not necessary or proportionate to my role as an external solicitor dealing with the instructions I have described above. But it did, on reflection, mean that it was not always straightforward to identify errors or subtle inconsistencies in the instructions and information I received, given (for example) the volume of the information passed to me over a long period and the highly technical language in which much of that information was expressed.

(i) Bugs, errors and defects (Q6)

263. I understand "*bugs, errors or defects in Horizon*" (which I shall generally refer to as "**bugs**") to mean faults in the software which caused or contributed to shortfalls or gains in branch accounts. I do not include here faults in Horizon that did not have an impact on the accuracy of branch accounts because the centre of all these matters is shortfalls in branches and whether SPMs or POL were responsible for them.

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264. It is important to bear in mind that during my involvement there were different investigations by different individuals and/or entities into various alleged issues with Horizon. Some of these were directly linked to Horizon (e.g. a known bug), but the majority were circumstantially suggesting a potential problem with Horizon (e.g. an SPM would say that their accounts were wrong because they suspected a problem with Horizon, but could not be more specific than that), or concerned matters ancillary to the Horizon software (e.g. problems with printers, or issues with the training and support services provided by POL).

265. In relation to the large majority of the accounting discrepancies which were investigated over the course of my engagement, it was believed by POL that those issues were not in fact caused by bugs, but rather it was able to present a clear, or at least credible, alternative explanation for the issue. By way of example, the transaction reversal process (which was the subject of Spot Review 1) was not considered by Second Sight to be an instance of a fault in Horizon. Rather, Second Sight concluded in relation to this process that "*the Horizon system did operate in accordance with its design*",[227] albeit that that design was complex and difficult for SPMs to satisfactorily operate. I referred to the transaction reversal process above at §§82-84, §171 and §174.

266. The only confirmed bugs of which I was aware during the period I am currently considering, namely April 2013 to mid-2015, were:

266.1. The Callendar Square bug;

266.2. The Receipts and Payments Mismatch bug; and

[227] Interim Report, §1.13: **POL00099063**.

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266.3. The Suspense Account bug.

267. I learned about each of these early on in my engagement. Indeed, I would have had some awareness of the Callendar Square bug prior to my engagement because it was referenced by the High Court in the *Castleton* judgment; as mentioned above (§24) when I read this case early in my career. However, at that stage I would have been I focused on the legal conclusion the Court reached that SPMs could be pursued in debt on the basis that they had submitted a 'settled account' to POL, rather than on its treatment of the Callendar Square bug.

268. I became aware of the Suspense Account bug when I was asked by Rodric Williams to prepare a summary of the effect of the Suspense Account bug and the steps POL had taken in relation to it.[228] From my emails, it appears that I also assisted in preparing letters to SPMs who had been affected by the bug.[229]

269. In relation to the Receipts and Payments Mismatch bug, the earliest reference I have identified in my email records is my email to Rodric Williams of 1 July 2013 giving an overview of the *Misra* case (see above, §57).[230] From that email it is evident that I was aware of the bug at the time of writing; I cannot say exactly when I learned of it but I am confident that it would have been not long before this, and in the same context i.e. assisting POL to prepare for receipt of the Interim Report. It would not have been via a Spot Review, as the Spot Review process did not reveal any bugs. It was not part of my instructions from POL

[228] POL00407496.
[229] POL00407493; POL00407494.
[230] WBON0000746.

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(which at this time were primarily focused on the Spot Reviews) to investigate this bug any further.

270. I did not learn of any other bugs known to have affected the operation of Horizon during the period covered by the sections above. To my knowledge, none were identified in the course of the rest of Second Sight's investigation or during the Mediation Scheme. As explained above at §§98 ff, the Horizon Regular Call was established as a forum for departments within POL to share and investigate information about issues reported with Horizon, and so far as I was aware this forum did not confirm any new bugs in the system that were known to impact on branch accounts (although I did not personally attend any calls after February 2014).

(ii) Remote access and suspicions about Fujitsu (Q7 to Q8)

271. I understand 'remote access' to relate, in particular, to the ability that Fujitsu employees had to add to, edit, delete or otherwise influence transaction and branch accounting data, including their ability to do so without the knowledge or consent of the SPM concerned. It is my awareness of those capabilities that I focus on here, rather than (for example): any read-only capabilities that POL and Fujitsu had; POL's ability to submit Transaction Corrections and Transaction Acknowledgments to SPMs; or the ability of certain POL employees to conduct transactions whilst physically in branch (thus, not remotely) using a "Global User" account.

272. In the period from April 2013 to mid-2015, in summary, there were two main issues around which my knowledge of the question of remote access coalesced:

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272.1. ***First***, the allegation by Michael Rudkin that he had witnessed a POL employee in Fujitsu's Bracknell office demonstrate an ability to pass transactions directly into Horizon in August 2008, which was the subject of Spot Review 5 (and later, case M051 within the Mediation Scheme). I have explained WBD's involvement in this at §§38-50 above; suffice it for present purposes to say that my instructions, and my belief, were that Mr Rudkin was mistaken and that my understanding was that there was no remote access functionality of the kind he had described.

272.2. ***Second***, Fujitsu's ability to inject transactions into branch accounts (but not, as I was informed at the time, to delete or edit existing data). At §§202-232 above, I have described in detail the extent of my awareness of these investigations, and the impact that they had on my knowledge.

273. By mid-2015 I was under the impression that:

273.1. Robust controls existed to ensure that data was accurately recorded and stored in the Core Audit Log.

273.2. Neither POL not Fujitsu had any ability to *edit or delete* transaction data.

273.3. The only method by which POL could push *new* transactions into branch accounts from outside the branch itself was via the Transaction Correction or Transaction Acknowledgment process.

273.4. I was aware that Fujitsu could inject a transaction without the consent of the SPM concerned, but I was reassured that this was not unconventional or surprising in the context of a system like Horizon, and that written protocols were in place to ensure that the use of the tool was strictly controlled (for example, POL's permission was required, it was required to

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be carried out under supervision of a witness, and there would be a clear audit trail associated with any use of the tool).

273.5. There was some uncertainty as to how *obvious* it would be to an SPM if a transaction was injected into their accounts, but I was reassured that: it would be *visible* (in the sense of appearing as a separate transaction); it was clearly marked as an injected transaction in the master audit data; and injected transactions were a measure of last resort that would only be used in exceptionally rare circumstances, such that my understanding was that an SPM would be proactively consulted first.

273.6. The exceptional nature of injected transactions was demonstrated by the fact that only one Balancing Transaction had been entered in the lifetime of Horizon Online (i.e. once in approximately 4 years). Fujitsu was absolutely clear on this point, and Deloitte had likewise found only one use of a Balancing Transaction.

273.7. Fujitsu had conducted a review of the audit data for the branches of applicants to the Mediation Scheme and confirmed there were no signs of remote access (subject to the limitation that the audit data only went back to around 2008).

274. Against this background, I did not at this stage suspect that Fujitsu's ability to manipulate transaction data was more extensive than set out above, or that they had made more extensive use of this capability than they had indicated. In April 2015, in response to a direct question about references in a Fujitsu document to 'adjusting' and 'amending' branch accounting data, a senior Fujitsu employee had said in terms that "*[t]here is only one process Fujitsu can use which is the*

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insertion of auditable additional transactions".[231] Moreover, my experience of Fujitsu in general was that they appeared to investigate POL's queries about Horizon thoroughly and in detail. Whilst there were some difficulties in getting clear and timely answers from them about the Balancing Transaction tool (albeit that I was not involved in all of those interactions), I had the impression that this was largely because they thought of the issue as something of a red herring, not because they had anything to hide.

(iii) Views on 'robustness' (Q9)

275. There are different ways of understanding and expressing what is meant by the 'robustness' of the Horizon system. In considering this issue during the period from April 2013 to mid-2015, my focus was on whether SPMs were being held responsible for discrepancies and shortfalls in branch accounts due to problems in the Horizon software. Based on my involvement to this point, I did not believe that this was a likely explanation, and accordingly I believed Horizon to be a robust system. I identify the following as the key reasons for this.

276. ***First***, these were my instructions from POL. That view was also supported by Fujitsu. I appreciated that I could not simply rely on Fujitsu, but they knew the system best and were a highly-respected IT company.

277. ***Second***, the number of complaints from SPMs about Horizon was small. POL had around 11,000 branches and thousands of SPMs at any one time. Added to that would be hundreds or thousands of leavers and joiners over the course of the 15 or so years that Horizon had (by 2015) been in place. Despite that, only

[231] WBON0000929; and see above, §225.

around 50 SPMs joined the Spot Review process, and around 150 applied to join the Mediation Scheme. Against this context, it did not seem to me that a significant proportion of SPMs considered that Horizon was unreliable. To the contrary, the fact that only a small proportion of SPMs had come forward with any complaints at all suggested to me that, for the vast majority of the time, Horizon was working well in branches.

278. ***Third***, Second Sight concluded in their July 2013 Interim Report that "*We have so far found no evidence of system wide (systemic) problems with the Horizon software*". They did not resile from this central conclusion in any of their later reports and I do not recall any case in the Mediation Scheme where they concluded that a shortfall was caused by a bug or other malfunction in Horizon. Whilst I had reservations about the quality of some of Second Sight's work, after nearly three years of working consistently on Horizon and studying individual SPMs' complaints, my expectation was that they would have found some evidence of system-wide software problems causing accounting discrepancies, if any existed.

279. ***Fourth***, a large proportion of the complaints which I had seen during both the Spot Review process and the Mediation Scheme were not focused on Horizon, but rather were about POL's training and support processes, or the user-friendliness of specific accounting processes. Whilst I had sympathy with some of the criticisms that SPMs and Second Sight made about the usability of the system, these matters were not fundamentally about bugs in Horizon and so did not, in my view, call into question that Horizon was robust.

280. ***Fifth***, to the extent that complaints made during the Spot Review process and Mediation Scheme were directly concerned with the Horizon system, my overall

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impression was that POL and Fujitsu took them seriously, investigated them conscientiously, and were able to produce credible answers explaining why the issues raised were not the result of bugs which indicated that Horizon was not operating as intended.

281. ***Sixth***, although by Summer 2013 three bugs in Horizon had been identified of which I was aware, to my mind these did not lead to a conclusion that the system was not robust having regard to the number of branches affected, the fact that the errors had been corrected, and the overall scale of the Horizon system (which was such that I thought it unsurprising that bugs would occasionally occur). Indeed, Second Sight was aware of these bugs at the time of producing their Interim Report, yet still considered that there was no evidence of system-wide defects. The fact that no further bugs were (to my knowledge) identified in the two years thereafter reinforced my impression that Horizon did not suffer systemically from bugs so as to be the root cause of the discrepancies and shortfalls which were the subject of SPMs' complaints in the Spot Reviews and during the Mediation Scheme.

282. I only add that, whilst I note that the Request asks about the extent to which I 'believed' in the robustness of the Horizon system (and I have endeavoured to answer that point above), it should be borne in mind that, at the time of my engagement, it was incumbent on me to consider whether, overall, POL had a properly arguable case that Horizon was a robust system. As a solicitor acting for a corporate client, I had a duty to follow my client's instructions and act in its best interests within the scope of my retainer and professional duties. The work which I carried out for POL throughout the period considered above was necessarily guided by these considerations. Up to mid-2015 my role had

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involved, in summary, looking at specific points in the Spot Reviews, supporting the Mediation Scheme which was examining the events in individual SPM cases to see if Horizon was at fault in those cases, and assisting POL in responding to ad hoc technical questions raised by Second Sight as part of their ongoing investigations. Beyond this, I was not instructed to investigate bugs in Horizon. In any event, I believed that these activities by POL were a reasonable way to surface the existence of bugs and, ultimately, to identify whether problems in Horizon were the cause of SPMs being held liable for shortfalls.

I. ADVICE ON POL'S EXTERNAL COMMUNCATIONS STRATEGY (Q53 to Q54)

283. My involvement with POL's external communications strategy was ad-hoc. On occasion, POL would ask me for specific pieces of information that would feed into communications statements, or to review documents or proposed statements for accuracy and to ensure they did not create legal risk from a civil litigation perspective. I would also flag issues that I believed could cause reputational harm. POL was a brand-focused organisation, however I did not consider this to be unusual for a retail business like POL and overall my approach to highlighting reputational risk was, I believe, typical of a commercial solicitor advising a corporate retail client.

284. I did not set the communications strategy; this was beyond the scope of my instructions and expertise. POL had an in-house communications team and engaged specialist solicitors (generally CMS Cameron McKenna) to advise it on media-related issues.

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285. Towards the end of 2014 and during 2015, POL publicly defended its position that Horizon worked. This was in connection with coverage by the media (and especially the BBC) of, among other matters, SPMs' claims that errors in the Horizon system had been the cause of shortfalls they suffered, and that they had been wrongly and unfairly prosecuted for theft and/or false accounting as a result of these shortfalls. It appeared to me to be reasonable that POL should take steps to defend its position because, according to my instructions and based on the information of which I was aware at the time, Horizon was highly unlikely to be the cause of the SPMs' shortfalls. I have been asked to comment on an email which I sent to Rodric Williams on 18 August 2015 (**POL00021865**). My vague recollection of this line of correspondence is that the BBC Panorama documentary had aired the day before, and POL wanted to understand to what extent (i) it was bound by any legal obligations of confidentiality to SPMs and others when responding to the allegations made in that documentary, and (ii) those who had commented in the documentary, and particularly Second Sight, had breached any duties of confidence they owed POL. Second Sight's terms of engagement in relation to the Mediation Scheme contained provisions relating to confidentiality, and, as I explained above (§142), Working Group discussions, investigations into SPMs' cases during the scheme, and mediations between POL and SPMs were all intended to be confidential and subject to without prejudice privilege. I was therefore the natural person to advise in the first instance given my proximity to the scheme.

286. My advice was that POL was permitted under the confidentiality obligations to comment on individual SPM cases, but my view was that POL should issue nothing more than a denial of the allegations and wait for the CCRC investigation

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to conclude. This was because POL's *"arguments are technical, rely on the intricacies of the prosecution process and are based on a range of evidence rather than a single smoking gun. The man in the street will simply say: "where is the evidence of the SPMR putting the money in her pocket?". I don't believe we can win this battle in the media*", I felt that there was a general public perception that in order for an SPM to be morally culpable for false accounting they would also need to have physically taken money out of a branch, and thus that there would have been some evidence (e.g. CCTV or personal bank account statements) of them taking the money. In many of the cases I was aware of, it was not this straightforward. The evidence of false accounting was often in the patterns of accounting that had the effect of obscuring the true accounting position. I thought it would be hard to convey this complexity in a soundbite to the media.

287. Thus, the phrase "*intricacies of the prosecution process*" was intended as a shorthand for my understanding of what amounted to false accounting versus the public perception of what that might be. I also had in mind a concept which I had been told by Cartwright King was the basis for the theft charge in some of the criminal cases, namely that, if there was direct evidence of false accounting and no other explanation was provided by the SPM for the missing money, it could be inferred that there had been fraud or theft of the money by the SPM. I always thought that this argument involved an intricate analysis because it meant that SPMs could be prosecuted for fraud or theft even though there was no direct evidence of this (e.g. CCTV footage on money being moved).

288. The "*range of evidence*" to which I was intending to refer was the SPMs' accounts, including their falsification of the same, plus sometimes I had seen

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cases which included supporting paperwork from within a branch, interviews with customers and assistants, and/or admissions by the SPM. I was intending to convey the point that there may not be a single, easily explicable piece of evidence that was conclusive of an offence.

289. As I explain above, I did not believe that POL could *"win this battle in the media"* because the public perception was that theft would have involved something like a physical act of removing money from the counter, yet the legal position and evidence was (as I understood it) more complex than this. I was concerned that POL appeared to be on the back foot in this respect, because I felt that if the media attention on this issue continued it could result in someone being prepared to fund litigation against POL, as eventually happened.

J. THE SWIFT REVIEW (Q55 to Q57)

(i) Involvement prior to the group litigation

290. The "**Swift Review**" was commissioned by POL in-house and was conducted on behalf of POL's then chair, Tim Parker. I was aware of POL's intention to commission a review and briefly discussed it with Patrick Bourke and Rodric Williams at POL; I recall that I had one or two concerns about the proposed review which I expressed to Patrick Bourke and Rodric Williams (for example, that it could lead to a loss of privilege in documents considered by the review, and that it could lead to difficulties for the POL legal team if a conflict arose between Tim Parker and POL). WBD was not instructed in relation to the commissioning of the Swift Review, its extent, nor how it was to be conducted.

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From my emails, I was asked on a couple of occasions to provide information relating to the Mediation Scheme to feed into the review.[232]

291. The outcome of the Swift Review was a lengthy report (**POL00006355**). Though that report was dated 8 February 2016, I do not believe I received a copy of the full report until 15 April 2016.[233] On receiving it, I do not recall any specific thoughts that I had about it other than that its overview and assessment of the Mediation Scheme broadly aligned with my own views of the position at that time, and that I thought it was a measured document which reached sensible conclusions. As I have touched upon above (at §216) and explain further below (at §§299-302), there were one or two factual matters referenced in the report which I had not become aware of whilst working on the Mediation Scheme, including the fact that Deloitte had identified that certain "***privileged users***" at Fujitsu may have the ability to edit or delete transaction data. I do not recall having any conversations as to who the Swift Review should be provided to, and I did not see a copy of Jonathan Swift QC's instructions until 5 May 2016.[234]

292. Though I did not receive a full copy of the report until a couple of months after it had been finalised, on 26 January 2016 POL contacted me to request my input in implementing one of the (then draft) report's recommendations. This was that POL should:

> *"cross-reference specific complaints about misleading advice from NBSC [(Network Business Support Centre, the helpline for operational issues arising in branch)] call-handlers with the possible employees who provided that advice and consider their personnel files, where available,*

[232] See for example WBON0000948.
[233] WBON0000962.
[234] POL00174470.

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> *for evidence as to the likelihood that the complaint may be well-founded."*[235]

293. I was asked if my team of paralegals could analyse the 107 SPM cases that made complaints about the Helpline during the Mediation Scheme with a view to identifying those who had made particularised, rather than merely generic, complaints. For context, it was not unusual for POL to make ad hoc or isolated requests for assistance without explaining why or providing detailed background (although in this instance, I was aware in general terms that the Swift Review was underway and that a draft report had been delivered containing a number of recommendations, of which this was one).

294. I responded that I could allocate three paralegals to the task, with the aim of completing it that week.[236] I liaised with a trainee solicitor in my team to collate the necessary information to do with the relevant cases.[237] I reverted with the results of that initial analysis on 1 February 2016.[238] I expressed the view that 16 of the cases provided sufficiently detailed information that could be directly cross-referenced with the NBSC call logs. 11 further cases alluded to a call happening in a particular week or month (from which one could probably attempt to find the details of the call from the call logs), though I took the view that this would require a great deal of extra work (some of which would inevitably be guesswork) and therefore I advised that we focus our efforts on the 16. I offered further paralegal support to assist, in respect of these 16 cases, with (i) reviewing the NBSC call logs to try to identify any relevant NBSC call reference ID numbers, and (ii) for each identified call, reviewing the relevant POIR and CRR to determine what had

[235] WBON0000952.
[236] WBON0000954.
[237] WBON0000414.
[238] WBON0000955.

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been said about these calls and the issues raised. Patrick Bourke took me up on that offer.[239] Again, I asked a trainee to pull together those documents.[240]

295. I sent that second stage of the analysis to Patrick Bourke on 10 February 2016.[241] The next step was to identify the call handlers by name, which I suspected would have to be pulled from the call logging system in NBSC (and so, was an internal job for POL). Mark Underwood responded on 17 February 2016 advising that I should speak with Kendra Williams at NBSC to obtain the requisite information, and raising a few points in relation to other cases within the NBSC complaints analysis produced by WBD.[242] I asked Paul Loraine (a solicitor in my team) to help with this.[243] He liaised with Kendra Williams to secure the case handler information for every instance where we had a call reference number.[244] My firm's email records disclose that this involved a considerable amount of back and forth between Paul and Kendra. Paul produced a final report on 5 May 2016.[245] Looking at that report's conclusions, it appears that there were either no performance complaints and/or concerns raised in relation to the call handlers in the cases under consideration, or (in a small number of cases where a complaint was made at the time) the data was insufficient for us to identify who the call handler was. This closed off the recommendation, which was ultimately Recommendation (7) in Jonathan Swift QC's finalised report.

296. In addition, I can see from my email records that in February 2016, my firm assisted POL in instructing Brian Altman QC to advise on the Swift Review's

[239] WBON0000957.
[240] WBON0000415.
[241] WBON0000958.
[242] POL00239502.
[243] WBON0000417.
[244] WBON0000419.
[245] WBON0000990; POL00241260.

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recommendations which related to POL's historic prosecutions (in particular, Recommendations (1) and (2), which involved a review of the safety of false accounting convictions that were procured by the dropping of theft charges backed by insufficient evidence).[246] The nature of that assistance was limited; Brian Altman QC was instructed by POL's in-house legal team to carry out the recommended review, and we simply prepared the bundle of documents to accompany the instructions which POL had prepared. Paul Loraine helped in completing that task.[247]

297. I do not believe that I had any further involvement in the implementation of the Swift Review recommendations until the group litigation. Separately, Deloitte was engaged by POL in respect of the review's IT-related recommendations, but I do not recall being involved in this at this initial stage. I discuss Deloitte's role during the group litigation further below (in particular, at §§466-472, §§483-490, and §§510-520). For completeness, I do not recall that I had any particular involvement in the implementation of Recommendations (1) and (2), but Brian Altman QC's review was quickly subsumed within the group litigation and adopted as a workstream therein (and again, I discuss this further below at §§458-465).

(ii) The start of the group litigation

298. In order to contextualise the position going into the group litigation (which I deal with in the sections that follow), I briefly address two matters relating to my receipt of the Swift Review on 15 April 2016.

[246] WBON0000420.
[247] WBON0000420.

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299. The first was that I became aware of certain findings that had been made by Deloitte about Fujitsu's remote access capabilities, which led Jonathan Swift QC to recommend that further investigative work be undertaken by POL. The background to this was that shortly before I was sent the Swift Review, I received a copy of a summary report that Deloitte had produced for the POL Board in May 2014 (**POL00028069**) as part of its work on Project Zebra (the "**Board Summary**"). I had not received the Board Summary previously despite being provided with the Desktop Report on which it was based in August 2014, and indeed I was not aware of its existence until early 2016.[248] I became aware of it in the context of helping POL with certain administrative aspects of its response to a "section 17 request" by the CCRC,[249] namely, readying the documents sought by the CCRC for submission and preparing a cover letter to go with them.[250] One of the documents mentioned in the request was the Board Summary, so I sought it from Rodric Williams and he provided it on 8 March 2016.[251]

300. I cannot recall whether I read the Board Summary at that time or later when I received the Swift Review. In any event, the combined effect of these two documents was to make me aware of the concept of privileged users at Fujitsu who had the ability to delete transaction data in the Core Audit Log, and

[248] See above, §212.
[249] I.e. a request under section 17 of the Criminal Appeal Act 1995.
[250] Cartwright King was principally responsible for considering section 17 requests made by the CCRC to POL and identifying the relevant documents or information. However, the actual provision of documents to the CCRC was done by WBD through a data room hosted for that purpose. The reason for this arrangement was that WBD had experience of operating data rooms through an external eDiscovery provider (now known as Consilio), and so was better placed than Cartwright King to establish the structure of the data room and operate it on a day-to-day basis. As part of this work we kept a tracker of section 17 requests sent by the CCRC and POL's progress in complying with them.
[251] See my email of 10 February 2016 which stated, "*I don't have a copy of the Deloitte board report - do you have it?*" WBON0000960.

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potentially had the ability to do so in an undetectable manner. The Board Summary highlighted in the executive summary (p.3) that "*[i]t is possible for Fujitsu staff with suitably authorised privileged access to delete data from the Audit Store*". It went on to explain (at p.6) that:

> "***Matter 3: Baskets of transactions recorded to the Audit Store are complete and 'digitally sealed', to protect their integrity and make it evident if they have been tampered with***
>
> *[…]*
>
> *Key Horizon Features … are:*
>
> - *Transactional data received into the central database is copied to the Audit Store during an overnight process …*
> - *As part of this copying process, a 'digital seal' is applied to groups of baskets … The digital seal … does not use cryptographic keys, relying instead on the physical hardware control described below to maintain the integrity of the digital seal itself.*
> - *The Audit Store physically runs on … specialist IT hardware which protects data once it is written, preventing alteration of data in the Audit Store. The digital seal codes are also written to the Audit Store, thus providing a source for integrity checking that they cannot be altered. If any data components within the relevant group of baskets were to be altered, go missing or get added to, then the digital seal for that group would be 'breached' and thus the tampering could be detected. The configuration of the physical hardware does however permit administrators to delete data from the Audit Store during the seven year period, which was a matter found to be possible and contrary to POL's understanding of this physical protection Feature. This could allow suitably authorised privileged staff in Fujitsu to delete a sealed set of baskets and replace them with properly sealed baskets, although they would have to fake the digital signatures* [in an earlier section of the Board Summary, it was noted that no documented controls had been identified which were designed to "*[p]revent a person with authorised privileged access to the digital signing process from sending a 'fake' basket into [the] digital signing process*"].

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- *Database access privileges that would enable a person to delete Audit Store data are restricted to authorised administrators at Fujitsu.*
- *Database access privileges that would enable a person to create new entries, re-sealing it with a valid, (publically available) 'hash' are restricted to authorised administrators at Fujitsu.*

We have not identified any documented controls designed to:

[…]

- *Prevent a person with authorised privileged access from deleting a digitally sealed group of data and replacing it with a 'fake' group within the Audit Store (which could still have a valid digital signature, if they have access to keys, and a valid digital seal created using a publicly available formula)."*[252]

301. The Swift Review commented that the Board Summary described this form of remote access "*more clearly … than in any other document we have seen on this subject*" (paragraph 139). It was reported that Deloitte "*described this functionality as resulting, in essence, from the level of security contained in Horizon being a level down from the maximum*" (paragraph 140), and that Fujitsu "*appear[ed] to accept that Deloitte's interpretation is technically correct, but emphasise[d] the wide range of security measures in the software, hardware and environment which reduce the risk of interference*" (paragraph 141).

302. As a result of reading the Board Summary and Swift Review, I came to understand that certain authorised personnel at Fujitsu had the ability to delete existing transaction data and replace it with new data, in effect changing the transaction data recorded by branches. This was in direct contradiction to what

[252] As explained above at §216, in the Project Zebra Desktop Report these matters were referenced in Appendix 2, but I did not pick up on these references or appreciate their significance at the time I read it in 2014.

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Fujitsu had told me at various points through 2014 and 2015 as explained above.[253]

303. The Swift Review concluded that in the light of the "*consistent impression given*" by POL's public statements that there was no ability to edit or delete Horizon transaction data, "*it [was] now incumbent on POL to commission work to confirm … insofar as possible*" how this capability was controlled and whether it had in fact been used (paragraph 146). It was acknowledged that Fujitsu "*properly, stress that there is no evidence that any such action has occurred and that likelihood of all the security measures being overcome is so small that it does not represent a credible line of further enquiry*" (paragraph 141), and that the recommended investigation into privileged user access was "*most likely to be wild goose chase*" (paragraph 146). The recommendation to carry out an investigation into privileged user access was Recommendation (5) of the finalised report:

> *"(5) POL instruct a suitably qualified party to carry out a full review of the controls over and use of the capability of authorised Fujitsu personnel to create, amend or delete baskets within the sealed audit store throughout the lifetime of the Horizon system, insofar as possible."*

304. There were a number of other IT-related recommendations which the report made and which later became relevant to my own work. These were:

> *"(3) POL consider instructing a suitably qualified party to carry out an analysis of the relevant transaction logs for branches within the Scheme to confirm, insofar as possible, whether any bugs in the Horizon system are revealed by the dataset which caused discrepancies in the accounting position of any of those branches."*

[253] See paragraphs §§202 ff.

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And:

> *"(4) POL instruct a suitably qualified party to carry out a full review of the use of Balancing Transactions throughout the lifetime of the Horizon system, insofar as possible, to independently confirm from Horizon system records the number and circumstances of their use."*

And:

> "*(8) POL commission forensic accountants to review the unmatched balances on POL's general suspense account to explain the relationship (or lack thereof) with branch discrepancies and the extent to which those balances can be attributed to and repaid to specific branches.*

305. As noted above, at the time I received the Swift Review in April 2016 I was made aware that POL was in the processing of commissioning Deloitte to carry out Jonathan Swift QC's IT-related recommendations. Specifically, Tim Parker was doing this as part of his wider "Chairman's Review" into POL's handling of SPMs' complaints. Indeed, the reason why I was sent the Swift Review at this time was so that I could advise on whether POL was likely to be able to assert legal professional privilege over Deloitte's work; this is the second matter to which I referred at §298 above.

306. This is reflected in an email which Rodric Williams sent to me and Gavin Matthews on 15 April 2015, which refers to a telephone conversation he and I had had (although I do not now remember that call), and continues:

> *"[b]efore Deloitte takes any further steps on its current engagement* ***could you please consider and advise as to whether anything further can be done to strengthen Post-Office's claim to privilege over the work product which Deloitte will shortly be producing, e.g.***

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by Bond Dickinson formally instructing the preparation of the work product as POL's external solicitors".[254]

307. By this point, we were aware of the threatened group litigation (see below, §309), and the matters to be considered by Deloitte in response to the Swift Review overlapped with the issues we anticipated were likely to arise in the group litigation. I responded by email dated 19 April 2016 recommending that to maximise POL's prospects of asserting privilege, Deloitte should be instructed solely on the grounds of the upcoming litigation.[255]

308. WBD were therefore instructed to write to Deloitte explaining that the group litigation had begun, that they were engaged by POL to provide expert advice in connection with the litigation, and that WBD may therefore now provide instructions to them.[256] We wrote this letter on 26 April 2016, which represented the point where WBD began to take over the management of Deloitte's work. I address my involvement in the Deloitte's work thereafter further below.

K. THE GROUP LITIGATION – GENERAL

(i) Introduction

309. I became aware in late 2015 that a claim against POL was likely to be forthcoming. Proceedings were issued by 91 Claimants on 11 April 2016, although the Claim Form was not served until August 2016 whilst the pre-action

[254] WBON0000965. To this end, I was sent a copy of Deloitte's "Change Note" to its previous letter of engagement at the same time as Jonathan Swift QC's report: WBON0000962; POL00240675. The Change Note was the document that Deloitte used to set out the scope of the proposed new work.
[255] WBON0000339.
[256] WBON0000984; WBON0000985; POL00242882.

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correspondence ran its course. WBD was engaged to represent POL in the litigation, and I was the Partner in the firm with principal responsibility for the conduct of POL's defence (as mentioned towards the beginning of this statement, I became a Partner in May 2016).

310. The group litigation was an enormous endeavour, occupying the majority of my time from Spring 2016 until the beginning of 2020, and spanning multiple hearings including two lengthy trials. At its peak, I was managing a team of 15 lawyers plus a substantial team of paralegals that varied in size as the volume of work fluctuated.

311. In answering the Inquiry's questions about these matters below, I have endeavoured to maintain a chronological order so far as possible. This has not been possible in every respect given that some of the topics identified in this part of the Request are cross-cutting or relate to the same stages of the litigation as others. Bearing this in mind, and in view of the ground that I have already covered, I set out below a brief reminder of the structure I adopt in the sections that follow:

311.1. This section (**Section K**) gives an overview of the group litigation and answers the Inquiry's **Q58 to Q63**, **Q67** and **Q70**, broadly concerning my relationships with key actors involved in the litigation, POL's management of the litigation, and WBD's advice on strategy and tactics.

311.2. **Section L** (§§394-451) deals with the Inquiry's **Q64 to Q65**, **Q68 to Q69**, and **Q71 to Q72**, which broadly concern my/WBD's early work (in particular, during the course of 2016) in relation to preservation of documents, early disclosure, and other forms of information-sharing.

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311.3. **Section M** (§§452-520) addresses the Inquiry's **Q73 to Q75** and **Q89**, covering the investigative and preparatory work undertaken to enable POL to prepare its Letter of Response to the Claimants' Letter of Claim (in July 2016) and its Generic Defence (in July 2017), as well as the report Deloitte produced shortly after the Generic Defence was served, in September 2017.

311.4. **Section N** (§§521-694) covers the topic of disclosure (save for early disclosure which is dealt with in Section L). In particular, in particular it deals with the disclosure orders made at the CMCs from October 2017 to June 2018 and the approach to disclosure thereafter, answering the Inquiry's **Q58.4**, **Q76 to Q88**, **Q90.1**, **Q91**, **Q95.1** and **Q99**.

311.5. **Section O** (§§695-768) answers the Inquiry's **Q90** and **Q92 to Q94** of the Request, concerning POL's preparation for the Common Issues Trial which took place over 15 days in November and December 2018 (**Q90.1** and **Q91** being dealt with in the preceding section on disclosure).

311.6. **Section P** (§§769-912) answers the Inquiry's **Q95 to Q102** of the Request, concerning POL's preparation for the Horizon Issues Trial which took place over 21 days between 11 March and 2 July 2019 (albeit that **Q95.1** and **Q99** are dealt with in Section N on disclosure).

311.7. **Section Q** (§§913-989) answers the Inquiry's **Q103 to Q118**, concerning POL's response to the Common Issues Judgment including, in particular, the Recusal Application.

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311.8. **Section R** (§§990-1006) summarises events after the conclusion of the Horizon Issues Trial, and therefore briefly deals with the Inquiry's **Q119 to Q120**.

(ii) Overview of the group litigation

312. It would not be practical for this statement to cover the whole history of the group litigation. I am also conscious that the Inquiry will be familiar with much of the history of the litigation. However, I do believe that it is helpful to consider the Inquiry's questions and my responses with the following overview of the key events in mind.

313. Having issued the Claim Form on 11 April 2016, the Claimants set out a summary of their allegations in a Letter of Claim ("**LOC**") sent on 28 April 2016. POL's Letter of Response ("**LOR**") was sent on 28 July 2016. The Claimants' LOC invited POL to accede to the making of a GLO, and the parties corresponded about this whilst the LOR was being prepared (which included me discussing the matter directly with James Hartley, the Partner at Freeths who had conduct of the Claimants' case).[257] An unusual feature of the group litigation was that each Claimant's circumstances and the nature of their complaints against POL were in many respects quite different, such that it was not always easy to identify (at least with precision) the common issues between them. Despite this, POL agreed in principle to the making of a GLO and this was communicated to the Claimants, including in POL's LOR dated 28 July 2016.

[257] WBON0000336.

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314. Just before the LOR was sent, on 26 July 2016, 107 Claimants were added to the Claim Form by way of pre-service amendment, and on 29 July 2016 the Claimants formally applied for a GLO. Following that letter the parties continued to correspond with a view to agreeing the detail of the proposed order. There was a fairly lengthy wait for a GLO hearing to be listed and that was ultimately scheduled for 26 January 2017 (the "**GLO Hearing**"), with the Claimants providing draft Generic Particulars of Claim ("**GPOC**") in December 2016.

315. The GLO was made at the GLO Hearing before Senior Master Fontaine, and the approved order sent to the parties on 21 March 2017.[258] At that stage, a Managing Judge for the litigation was yet to be appointed but a first CMC was listed for the first available date after 18 October 2017 (and ultimately took place on 19 October).[259]

316. Between the GLO Hearing and the first CMC, the Claimants served their Generic Particulars of Claim on 23 March 2017 and their Amended Generic Particulars of Claim on 6 July 2017. POL then filed its Generic Defence and Counterclaim on 18 July 2017. Producing POL's defence required an intensive period of work but there were few other directions for POL to comply with at this time. The original cut-off date for new Claimants to join the litigation was set as 26 July 2017 by Senior Master Fontaine, and by a second Claim Form issued on 24 July 2017 324 additional Claimants joined the action. The Claimants were also required by Senior Master Fontaine's directions to produce Schedules of Information

[258] WBON0001674.

[259] This hearing was briefly resumed on 25 October 2019 to address Counsel's availability for the Common Issues Trial, which led to Mr Justice Fraser's judgment [2017] EWHC 2844 (QB), addressed further below at §§385 ff.

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("**SOIs**") (which were to take the place of individual pleadings in their case), and they began serving these in tranches from June 2017 until December 2017.

317. The shape and pace of the litigation then changed significantly at the first CMC on 19 October 2017. Mr Justice Fraser decided that a first trial would be listed for a 20-day period commencing on 5 November 2018, the purpose of which was to determine 23 Common Issues relating to the legal relationship between POL and its SPMs, both where this was governed by the SPMC and where the later Network Transformation Contracts ("**NTC**") applied. This trial became known as the Common Issues Trial or "**CIT**". Mr Justice Fraser also decided that a further trial would be held in March 2019, the issues for which were not set at this time.

318. Other key directions given by Mr Justice Fraser at this stage included:

318.1. The cut-off date for the GLO was extended to 24 November 2017. Taking into account additional Claimants who joined the litigation by this point and discontinuances by some Claimants, the total number was around 550.

318.2. The parties had to exchange Electronic Disclosure Questionnaires ("**EDQs**") by 6 December 2017.

318.3. Lead Claimants for the CIT had to be agreed by 23 February 2018 with subsequent directions for them to plead their cases in more detail.

318.4. POL was to provide some initial tranches of disclosure in relation to prospective Lead Claimants for the CIT in January 2018.

318.5. The parties were to prepare a statement of agreed facts in relation to the Common Issues by 29 June 2018.

318.6. Witness statements for the CIT were to be filed by 11 August 2018.

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318.7. The Court also gave permission, at this stage, for each party to rely on an IT expert "*in relation to the operation and accuracy of the Horizon system*"; The Claimants' IT expert was Jason Coyne and POL's was Dr Robert Worden. POL agreed to use reasonable endeavours to facilitate a visit by Mr Coyne to Fujitsu's Bracknell Office to inspect the KEL.[260]

319. This began an intense period of activity because we had just one year to prepare for a significant trial, with another to follow quickly thereafter. We had to expand the size of the WBD team to meet the Court's deadlines and the work became more intensive and time pressured. Tony Robinson QC (who had been retained shortly after receipt of the LOC as POL's Leading Counsel) was not available for the CIT, so David Cavender QC was engaged to lead on the Common Issues with Tony Robinson QC being held to deal with the second trial.

320. Further directions in relation to CIT disclosure were made at a CMC on 2 February 2018.

321. At a CMC on 22 February 2018:

321.1. Further directions relating to generic disclosure for the CIT were made, requiring substantial disclosure to take place by 18 May 2018.

321.2. Mr Justice Fraser decided that the second trial in March 2019 would deal with issues relating to the Horizon system (and consequently this trial became known as the Horizon Issues Trial or "**HIT**"). The effect of this was that the GLO issues were determined in stages by a series of thematic

[260] WBON0001685.

trials as opposed to, for example, a lead or test claimant approach (being the approach that POL had proposed).

321.3. Disclosure orders were made in relation to the HIT, to be complied with by 13 April and 18 May 2018 respectively.

321.4. Mr Justice Fraser gave directions in relation to expert evidence for the HIT, including for the Claimants to provide an outline of their allegations in relation to the Horizon system; for Mr Coyne to provide his first expert report ("**Coyne 1**") by 14 September 2018 (subsequently varied to 12 October 2018); for Dr Worden's first report ("**Worden 1**") to be served by 2 November (subsequently varied to 7 December 2018); and for the experts to exchange supplemental reports ("**Coyne 2**" and "**Worden 2**", respectively) in January 2019.[261]

322. A further CMC took place on 5 June 2018. At this hearing:

322.1. POL expressed concern about the scope of the factual matrix that would be in issue at the CIT, in light of indications from the Claimants that they intended to rely on a wide range of evidence going to contractual performance and breach of duty by POL, in support of their case on the questions of construction, incorporation and implication of contractual terms that made up the Common Issues. Mr Justice Fraser did not make any directions in relation to this but gave the Claimants an oral warning about adducing inadmissible evidence and noted that POL might apply to strike out such evidence if it was served.

[261] POL00117925.

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322.2. Mr Justice Fraser made further orders for disclosure in relation to the HIT, to be complied with by 17 July 2018.

322.3. The parties were ordered to file factual witness statements for the HIT by 14 September 2018 (subsequently amended to 28 September 2018).

322.4. POL was ordered to file supplementary witness statements by 16 October 2018 (subsequently amended to 16 November 2018), and the Claimants by 14 December 2018 (subsequently amended to 17 January 2019), respectively.[262]

323. In the event, when the Claimants' factual evidence for the CIT was served in August 2018, we took the view that it contained large amounts of material which was inadmissible, being irrelevant to the issues which the Court had to decide at the CIT (though it would have been relevant and admissible at future trials on breach and causation). POL therefore applied on 5 September 2018 to strike out parts of this evidence, which application was refused on 17 October 2018.

324. The CIT took place across 15 non-consecutive days in November and December 2018, with the resulting Common Issues Judgment being circulated in draft on 8 March 2019 (one working day before the start of the HIT) and formally handed down on 15 March 2019.

325. The HIT then took place across 21 non-consecutive days between 11 March and 2 July 2019, with an adjournment during that time whilst the Recusal Application issued by POL on 21 March 2019 was dealt with. Mr Justice Fraser's judgment on the Horizon Issues (the "**Horizon Issues Judgment**") was handed down on

[262] POL00120352.

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16 December 2019, by which time the parties had just settled the litigation following a nine-day mediation.

326. For completeness, on 31 January 2019 there was a further CMC at which Mr Justice Fraser fixed a Further Issues Trial to commence on 4 November 2019 (although that was subsequently postponed and never held because the litigation was settled).[263] Although it never reached this point, I anticipated that there would likely have been at least a fourth, and maybe a fifth, trial before the Court had addressed all the key issues in dispute. There would then likely have been some exercise of applying those findings to the c.550 individual cases because there was no one issue in the group litigation that was dispositive of all the claims. At the time group litigation settled, it was in my opinion less than halfway through its total course.

327. The impact of the above was that, from early 2018, we were preparing for two significant trials simultaneously, which concerned wide-ranging issues, the latter of which (the Horizon Issues) was still taking shape. We relied on a large team of Counsel and expanded the WBD team to ensure we had adequate resource. However, there were occasions where my time had to be focussed on one or other of the trials. Particular pinch points included:

327.1. The deadline for the initial tranche of factual witness statements for the HIT (28 September 2018) fell during a period of intense preparations for the CIT which was due to commence on 5 November 2018.

327.2. The deadline for POL's supplementary witness statements for the HIT fell in the middle of the CIT.

[263] WBON0001669.

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327.3. Work on Worden 1 was ongoing during the CIT, being served on 7 December 2018.

327.4. The Common Issues Judgment was circulated in draft immediately before (and was formally handed down during) the HIT, meaning that we needed to make decisions on POL's response to that judgment whilst I was in trial.

328. A further impact of the approach taken was that it allowed less time for reflection and settlement discussions than might otherwise have been the case. For example, POL was keen to hold a mediation in February 2019 (having expected the Common Issues Judgment by then) but the Claimants ultimately wanted to wait until after the HIT. It was difficult to find a window for a mediation and it is possible that a more conventional lead or test claimant approach, entailing all of the issues in relation to those cases being ventilated, might have enabled settlement discussions to take place at an earlier stage.

(iii) Instructions and relationships (Q58 to Q59)

329. In answer to **Q58.1** of the Request, I received instructions on a day-to-day basis from Rodric Williams and Jane MacLeod (until Jane McLeod was effectively replaced by Herbert Smith Freehills, "**HSF**", in April 2019). The Postmaster Litigation Steering Group (the "**Steering Group**") was set up by POL early on in the process to make key strategic decisions in the litigation and to sign off important correspondence and documents. I describe the Steering Group further below (§§336 ff), but in short it included representatives from all relevant areas of POL (legal, branch network, IT, finance, communications, etc). For most of the group litigation, significant pieces of advice which WBD gave were mainly submitted to the Steering Group in the form of Steering Group papers. The

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Steering Group generally met monthly and sometimes it met more often than this. I did not have any reporting line beyond the Steering Group. Any such reporting line from the Steering Group to senior management was managed by Jane MacLeod and the Chair of the Steering Group (Tom Moran, and later Jane MacLeod, when Tom Moran left).

330. In around early 2018, POL set up a Board Subcommittee of the POL Board to oversee the litigation (the "**Board Subcommittee**"). This was when I started to have direct contact with POL Board members as I was invited to attend some of their meetings (save for a few other occasions set out below at §345 and §347). The Steering Group was still operational at this time, but more important decisions were put to the Board Subcommittee.

331. By **Q59** I am asked to comment on my relationship with POL's representatives during the litigation. My experience was that POL's senior management was actively involved in overseeing the conduct of the litigation through the Steering Group and later the Board Subcommittee, and that they asked appropriately challenging questions. Where senior management disagreed with a particular piece of advice, they said so (see, for example, the minutes of the Steering Group meeting on 6 December 2017 which record members of the Steering Committee's views on WBD's advice on settlement).[264] When the Board Subcommittee was established, I found that the Board Subcommittee was similarly engaged and actively involved in setting the strategy.

332. In my view, POL had a reasonable sized in-house legal team for the purposes of the group litigation, because it chose to outsource the day to day running of the

[264] POL00251998.

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litigation. My impression was that Rodric Williams worked on this case nearly full time, although I was aware that his capacity was stretched. About halfway through the group litigation, WBD hired and placed on fulltime secondment to POL a senior in-house litigation lawyer (Ben Beabey); my understanding was that Ben covered all non-group litigation work so that Rodric Williams could focus his efforts on the group litigation. Rodric Williams was an experienced civil litigation lawyer with, I believe, limited criminal law experience.

333. As mentioned above, we instructed Tony Robinson QC as POL's Leading Counsel for the group litigation in late May 2016 and I worked closely with him throughout the litigation. Later we also instructed David Cavender QC to represent POL in the CIT because Tony Robinson was unavailable. My relationship with POL's Counsel was the same kind of relationship that I have with all Counsel that I work with, viz. regular interaction and discussion about most issues, where Counsel and I both suggest ideas and challenge each other's thinking. We worked well together as a team and had a good rapport. A substantial part of my role was ensuring that all the various workstreams and action points were running on time and coming together. I would leave Counsel to address points of detail that were properly their remit (for example, pleadings, submissions at hearings, preparation for cross-examination at trial, etc.)

334. In terms of my reliance on the advice of Counsel as to (a) general litigation strategy (b) POL's approach to disclosure (c) the preparation of witness evidence and (d) the recusal application:

334.1. As to (a), I discussed the general litigation strategy with Counsel frequently. Counsel fed in on all aspects of the litigation strategy at each stage, and their advice was reflected in papers submitted to the Steering

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Group and was regularly fed to POL orally and by email. Counsel regularly met with members of the POL in-house legal team, and also provided formal advice directly to senior management on a number of occasions. On 29 September 2017 (shortly before the first CMC), Tony Robinson QC met with Paula Vennells and Alisdair Cameron at POL to discuss the overall strategy (see further below, §349). When David Cavender QC was first instructed, WBD asked him to review the entire litigation strategy and critique our approach to the case (see §391 below).[265] On 15 May 2018, the full Counsel team at that stage (David Cavender QC, Tony Robinson QC, Owain Draper and Gideon Cohen) provided an advice on the prospects of success at the CIT.[266] In May 2018, at a meeting of the Board Subcommittee, David Cavender QC and Tony Robinson QC gave a detailed presentation on the overall merits of POL's case, as well as advice on the general strategy and prospects of settlement.[267]

334.2. As to (b), Counsel were involved in advising on POL's approach to disclosure both in terms of the scope of disclosure orders that were made during the course of three CMCs in early 2018 (see §318 and §§320-321 above) and inputting on key disclosure points. However, advice on preservation of documents and day-to-day advice on disclosure was given by WBD without reference to Counsel.

334.3. As to (c), Counsel were involved in all material decisions relating to witness evidence including decisions about who to call, who not to call and what

[265] POL00251957. He also prepared a brief advice in January 2018, seeking to identify the points which he considered were the Claimants' strongest: POL00252996.
[266] POL00270841.
[267] WBON0001688.

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evidence should be given by a particular witness. To the best of my recollection, I believe that the majority of draft witness statements, if not all of them, were also reviewed by Counsel. At §§730-737, §747 and §749, and §§789-790 of this statement, I address in more detail the Counsel team's role in relation to the aspects of the witness evidence about which the Inquiry has asked more specific questions.

334.4. As to (d), I address the Recusal Application below in Section Q, but in summary the advice on the merits of this application was primarily provided by Counsel. In the first instance, David Cavender QC advised that large parts of the Common Issues Judgment made findings which were outside the ambit of the issues which fell to be determined. In so doing, Counsel thought Mr Justice Fraser had made findings that prejudged matters that were properly within the scope of later trials. This was the essential genesis of the recusal application, and (as I explain further below) POL subsequently instructed Lord Neuberger to advise on the application and Lord Grabiner QC to advise on and present it. I agreed with the idea of making the Recusal Application, but I had no experience of such applications so the strategy, and advice on its merits, was led by the heavyweight Counsel team that had been brought in for that purpose.

335. In terms of my relationship with Freeths and the Claimants' Counsel, I always felt able to phone James Hartley, the Partner at Freeths. We also held a meeting with Freeths to discuss the scope of disclosure on 22 December 2017 (see below, §538) and a further meeting with Freeths and the IT experts on 11 April 2018 to help shape the approach to the Horizon Issues (§544). My conversations with James Hartley were always cordial, thought we often had different views on

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various issues. Generally, I felt those conversations helped find some common ground. However, I always had the feeling that Mr Hartley was reluctant to make decisions without first getting sign off from his Counsel team which did inhibit the progress of our discussions. I had no direct contact with the Claimants' Counsel save in the margins of hearings and trials.

(iv) POL's management of the litigation (Q60 to Q63)

The Steering Group and Board Subcommittee

336. As noted above, the Steering Group was formed early on to oversee the litigation and make strategic decisions on behalf of POL. My experience of POL is that it often formed committees to oversee material activities in its business. I do not recall specifically how the Steering Group came to be formed, but when it was, I was not surprised. I recall discussing with Jane MacLeod and Rodric Williams at a very early stage how important it was for representatives from across the business to be directly involved in giving instructions, and for this not to become a purely 'legal' issue whereby the in-house legal team was solely responsible for directing the external lawyers. Jane MacLeod and Rodric Williams agreed; they generally held the view that the in-house legal team's function was to advise and it was for the business to make decisions. I do not know to what extent this conversation was fed back to POL's senior management or whether this was the genesis for the formation of the Steering Group.

337. Members of the Steering Group who regularly attended meetings were: Tom Moran, Angela van den Bogerd, Patrick Bourke, Mark Davies (and after Mark left, Mel Corfield), Rob Houghton or Catherine Hamilton (from the IT department), Nick Beal, Tom Wechsler, a representative from the finance team which changed

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over time, Jane MacLeod, Rodric Williams, Mark Underwood and myself. The Chair of the Steering Group was Tom Moran (until he left and Jane MacLeod took over). Over time other attendees from around POL's business joined various meetings.

338. The principal purpose of the Steering Group was to provide POL's instructions as to the conduct of the litigation. In practice, Mark Underwood was responsible for organising the Steering Group.[268] There were typically monthly meetings and fortnightly calls, in advance of which an agenda would be circulated by Mark Underwood.[269] Briefing papers would also be provided in various formats (including 'Decision Papers', 'Discussion Papers', and 'General Updates'), depending on the particular subject which the Steering Group needed to be briefed on. By way of further explanation, the purpose of Decision Papers was to advise on different decisions which needed to be made by POL, to enable POL to give instructions (for example see: "*Should Post Office undertake further work to preserve relevant documents*";[270] *"Should Post Office change the way it deals with Active Claimants?*";[271] "*Should Post Office pay Fujitsu to employ additional staff to extract transaction data*");[272] whereas Discussion Papers were to set out points for discussion in relation to particular issues (for example, see: "*Next 12 months*").[273] The purpose of the 'General Updates' papers is self-explanatory.[274] Other papers provided included factual briefing notes on the relevant aspects of the litigation process.[275] After the initial few meetings, a list of actions was

[268] WBON0000511.
[269] POL00139298; POL00243195.
[270] POL00139297.
[271] POL00139479
[272] POL00251593.
[273] POL00251596.
[274] POL00261175.
[275] POL00261176; POL00261172; POL00259673.

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captured and circulated to attendees which would then be considered at subsequent meetings to monitor progress but this process stopped at some point during the litigation – I do not recall why. From reviewing my firm's files, I can see that WBD submitted over 100 Steering Group papers during the course of the group litigation.

339. The relationships between Steering Group members were as one would expect, professional and cordial. I was not aware of any tension between members of the Steering Group. Some members were better prepared for meetings than others. In terms of the nature and extent of the discussions that the Steering Group had on issues such as general litigation strategy, disclosure, and the preparation of lay and expert witness evidence, that varied depending upon the issue. I would routinely provide a verbal synopsis of each paper provided to the Steering Group. Sometimes Decision Papers were presented which contained recommendations from WBD that could be agreed with little debate and others gave rise to substantial debate. In general terms I found that the level of debate and engagement was appropriate to the nature and complexity of the issues at stake and as I have said, I found that the Steering Group generally asked appropriate and probing questions.

340. WBD did not take minutes of the Steering Group meetings and I cannot say whether POL did; I recall that there was an action list produced following the early meetings. For the purposes of preparing this statement, searches have been conducted for copies of such minutes and none have been identified. Typically, I would relay by email or telephone the decisions of the Steering Group to the relevant person in my team following each meeting so they could then take the matter forward as instructed. The above paragraph (and my evidence elsewhere

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in this statement as to what views were expressed at Steering Group meetings) therefore reflects the best of my recollection, assisted by reviewing the relevant Steering Group papers where available, and my email records. By way of illustration of how discussions among the Steering Group generally proceeded, I have identified a Decision Paper setting out a proposal for the March 2019 trial and a long-term strategy for the group litigation.[276] Given that the decision was urgent, there was no meeting, and members provided their views in writing by email. The comments provided by the various Steering Group members are indicative of the approach that was taken at the meetings themselves, see for example the comments from Tom Moran,[277] Mark Ellis,[278] Patrick Bourke[279] and Nick Beal.[280]

341. Later, in or around March 2018, the Board Subcommittee was set up to take the major strategic decisions in the litigation. I do not know why this was, but at this stage WBD were moving into the phase of preparing for the CIT and HIT in earnest. I attended a handful of these meetings. From this point, it felt to me as if the Board Subcommittee was more directly making decisions on the overall strategic direction of the litigation (with the Steering Group still taking the material tactical decisions on a regular basis). However, this may have only been my perspective as I only infrequently met with General Executive or Board members (other than Jane MacLeod who sat on the General Executive). It may have been that they were much more actively involved from the outset in directing the litigation in ways that were not visible to me.

[276] POL00024436; POL00252205.
[277] POL00024281; POL00252201; WBON0000188.
[278] WBON0000328.
[279] WBON0000171.
[280] POL00024278.

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Meetings with POL Board members

342. Generally, I had limited contact with members of the POL Board, which I set out below based on a review of my emails and Outlook calendar.

343. Save for a meeting on 30 October 2018, I do not believe that I attended any full Board meetings. My firm's records indicate that I attended the 30 October meeting for around half an hour with David Cavender QC, for the purpose of providing the Board with a general update ahead of the CIT (which was due to start the following week).[281] I do not recall this meeting. I did on a few occasions input into POL Board papers. On 18 September 2017, I gave views on a POL Board paper about litigation options.[282] This paper was, in essence, a covering note to the litigation options table WBD had already produced for the Steering Group. On 25 July 2018, I provided some input into a Board paper on contingency planning.[283]

344. As stated above, I attended a handful of Board Subcommittee meetings. In April 2019, HSF were appointed and my attendance at Board Subcommittee meetings reduced from that point. I was asked to provide comments on Board Subcommittee papers dated 11 November 2019[284] and 9 December 2019.[285]

345. I occasionally (from memory, it may have only been one or two times) attended General Executive meetings, of which Paula Vennells was a standing member (as well as being a member of the Board). For example, from my emails I can

[281] WBON0001341.
[282] POL00024633 and POL00117761.
[283] POL00024235 and POL00358137.
[284] WBON0001658 and POL00288584.
[285] WBON0001663 and POL00289960.

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see that on 7 November 2017, I was scheduled to speak for 10 minutes at a General Executive meeting.[286]

346. To the best of my recollection and based on document searches, I prepared a paper on the Generic Defence for the General Executive on 7 July 2017,[287] and on 8 January 2020 I inputted into a possible General Executive paper on operational issues in light of the Common Issues Judgment (that paper has not been included with this statement as I am unsure whether it falls within POL's privilege waiver).

347. I can also see from my calendar that I attended other meetings and calls with POL Board members outside of formal General Executive and Board Subcommittee meetings (some in person and others by conference call) on the following occasions:

347.1. On 7 March 2017 I had a meeting with Alisdair Cameron, Deloitte and others titled 'Allegations Made in the Group Litigation re POL's Operation of Suspense Accounts'.

347.2. On 17 July 2017, I had a meeting Alisdair Cameron, Deloitte and others titled 'POL's Defence: Suspense Account Wording' .

347.3. On 18 September 2017, I had a meeting with Paula Vennells, Jane MacLeod, Alisdair Cameron, and others titled 'GE Briefing PSLG CMC'.

347.4. On 22 September 2017, I had a meeting with Paula Vennells, Alisdair Cameron, Jane MacLeod and others, titled 'PSLG Decision Meeting'.

[286] WBON0000510.
[287] POL00249671 and POL00249674.

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347.5. On 20 October 2017, I had a meeting with Paula Vennells, Jane MacLeod, and others titled 'Postmaster Litigation briefing call'.

347.6. On 25 April 2018, I had a meeting with Tom Cooper, Jane MacLeod, and others titled 'Sparrow'. I recall this was a background briefing on the litigation for Tom Cooper who had recently joined the POL Board.

347.7. On 5 October 2018, I had a meeting with Paula Vennells, Jane MacLeod, Alisdair Cameron, and others titled 'GLO Contingency Planning'.

347.8. On 29 October 2018, I had a meeting with Paula Vennells, David Cavender QC and others titled 'Call re POL Litigation case'. This was in preparation for the Board meeting the following day to which I have referred above at §343.[288]

347.9. On 11 April 2019, I had a meeting with Tom Cooper, Alisdair Cameron, Jane MacLeod, Norton Rose and others, called 'Postmaster Litigation Briefing'.

347.10. On 13 May 2019, I had a meeting with Alisdair Cameron, Ben Foat, HSF and others titled 'Group Litigation – Implications of Recusal Judgment'.

347.11. On 17 July 2019, 24 July 2019 and 30 July 2019, I had meetings with Ben Foat, Tom Cooper, HSF and others variously titled 'Group Litigation Call' and 'GLO – Led Claimant Case Summaries'. I recall that these were calls to brief Tom Cooper on the facts of the lead cases selected in the group litigation.

[288] WBON0001341.

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348. Other than set out above, I do not have any recollection of the specifics of any these meetings. There is also one return for a search of my Outlook calendar for Alisdair Cameron, which refers to a 'Call – Al Cameron/Andy Parson' on 17 April 2019. I recall that Alisdair Cameron phoned me to say that Jane MacLeod was leaving and that HSF was being brought in.

349. **Q63** refers me to an email which Amy Prime sent me on 28 September 2017 (**POL00006384**) and an email which I sent to Jane Macleod on the same date (**POL00006499**). Both of these emails relate to a meeting that occurred between Tony Robinson QC and Paula Vennells on 29 September 2017. I could not attend this meeting due to a family matter.

(v) Advice on strategy and tactics (Q58.2, Q58.7, Q66 to Q67, Q70)

General advice on litigation strategy

350. The first strategic question in the litigation was whether POL would oppose the making of a Group Litigation Order. Tony Robinson QC's advice at a conference held on 9 June 2016 was that POL should agree to a GLO, but he had some concerns about its scope and the terms that would need to be negotiated with the Claimants or decided on by the Court (see below, §§426-427). The GLO application was heard on 26 January 2017. After that, no further Court hearings took place until October 2017, during which time the parties produced generic statements of case, the group litigation was open to new Claimants to join, and each Claimant also had to serve an SOI containing partial details of their claim. More than 320 Claimants joined the action in July 2017 and by the time the GLO closed in December 2017 there were around 550 Claimants, with the SOIs being served in tranches between 20 June and 15 December 2017. It was therefore

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not until mid to late 2017 that number of Claimants and the shape of their claims came into focus and a strategy for the rest of the litigation could be properly considered.

351. The first CMC was listed for 19 October 2017, and this prompted focus on the future course of the litigation. With reference to **Q58.2** and **Q66**, in terms of general litigation strategy, Tony Robinson QC and I considered that there were several broad strategies which POL could potentially pursue in relation to the group litigation, which we had previously discussed on numerous occasions over the course of the preceding months. These were outlined in a paper for a Steering Group meeting dated 11 September 2017 (**POL00006380)**, and were then drawn into an Options Paper which was prepared for a meeting of the General Executive on 18 September 2017 (see above, §347.3). Those options, and the recommendations in relation to each of them as of September 2017, were presented in the Option Paper as follows:[289]

> ***"1. Focus on Horizon***
>
> *Push the Court to address at an early stage whether Horizon is robust and accurately records branch transactions.*
>
> *Recommendation: We do not believe it is possible to address this issue without first establishing Post Office's legal obligations in relation to Horizon (see Option 2)*
>
> ***2. Focus on contractual issues***
>
> *Push the Court to address at an early stage whether the postmaster contract is fair and whether it supports Post Office's current operating practices.*
>
> *Recommendation: This is our recommended approach in conjunction with Option 3.*

[289] POL00250513.

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3. Focus on weak claims

Ask the Court to strike out Claimants who are facing legal and procedural problems, such as their claims being out of time, having previously signed settlement agreements or generally having very weak claims on their own facts.

Recommendation: We do not believe that a Court would focus on these satellite issues in insolation as this would not tackle the major issues at the heart of litigation. They could however be addressed in conjunction with Option 2.

4. Settle now

Try to agree a settlement now that closes down the litigation at an early stage.

Recommendation: This option is not recommended as it would result in Post Office having to pay significantly over the odds.

5. Attrition

Stretch out the litigation process so to increase costs in the hope that the Claimants, and more particularly their litigation funder, decide that it is too costly to pursue the litigation and give up.

Recommendation: This option is not recommended as we believe the pressure on, and cost to, Post Office would become unbearable before the Claimants gave up".

352. Consistently with my duty as a litigator both to the Court and to my client to act in their best interests, we presented a full range of options covering a wide spectrum of possible strategies. Our recommended approach, as the above excerpt makes clear, was to pursue Options 2 and 3 in tandem.

353. As for the recommendations on Options 1 and 2 (suggesting an emphasis on resolving contractual as opposed to Horizon issues), the essence of POL's legal case was that if an SPM submitted their accounts without contemporaneously raising any concern about them, they were bound by those accounts and liable to pay to POL the sums of cash shown in them. I considered the contractual

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issues to be a priority because the Court's findings on the relationship between SPMs and POL would underpin who bore the burden of proving the root cause of a shortfall in a branch. The contractual issues would also set the basis for assessing other points, for example, they would determine the extent and content of POL's contractual obligation to provide training and support as well as POL's obligations in terms of providing Horizon and the wider branch accounting processes. The issues around Horizon could not, in my opinion, be meaningfully framed or determined until the contractual position was established. This is why WBD and Counsel advised POL to push for a trial on the contractual issues to be held before moving onto other matters in dispute.

354. I recall that the Steering Group was not initially predisposed to putting the contractual issues at the heart of the case because they felt that POL had a stronger case on Horizon and they did not want to be seen to be running away from that issue. However, the legal team explained and advised that the logical way to proceed was to address the contractual issues first because this was the foundation for the other issues, including in relation to Horizon.

355. As for the Option 3 recommendation, to seek to strike out weak claims (in conjunction with Option 2), there were various types of Claimants whose claims were liable to be struck out because (i) they were dissolved companies, (ii) they were companies incorporated after they were said to have been engaged as SPMs, (iii) they were bankrupt, and/or deceased, and/or had entered into settlement agreements with POL, or (vi) the claims were time-barred. As the paper cited above explained, it was "*quite proper*" that the potential weaknesses and/or deficiencies with these claims be addressed early on, "*as would be the case in any other piece of litigation*". The paper also highlighted that the risk

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associated with this approach was that it would require satellite issues to be run in parallel to the main claim, which could be seen by the Court to be too burdensome for it to manage. Further, it would have limited effect on the overall dynamic of the case.[290]

356. Regarding Option 4, I explained that I expected a settlement without having progressed any matter to trial would likely cost in excess of £40m. This was based on my expectation that the Claimants litigation funder would want a significant return on its investment before any compensation would reach the SPMs. I give an overview of the approach taken to settlement throughout the litigation below, at §§361-372.

357. As for Option 5, as the paper makes clear, this was not a strategy I recommended because the cost to POL would be too high before the Claimants would feel the impact of this approach. Insofar as it is to be suggested that this approach – or indeed any approach which had the effect of applying pressure to the Claimants – would have been inappropriate (or that any individual steps POL took that put pressure on the Claimants were inappropriate), I highlight that applying a reasonable degree of pressure to one's opponent, and/or pursuing strategies which have the effect of applying pressure to one's opponent, are part and parcel of an adversarial system of litigation. It was proper to include this so POL could see the full range of options. However, at no stage did I recommend that POL adopt this strategy and at no stage did POL instruct me to adopt such a strategy.

358. More generally, as explained above, where it was consistent with my duties to the Court, my client, and my professional obligations for WBD to advise on

[290] POL00250466.

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approaches which had the effect of applying pressure on Freeths and the Claimants' litigation funder, these approaches would be explained to POL as advantages of a particular step or action. However, at no stage did I advocate taking a step purely for this effect. Where this factor infrequently arose, there was always an overarching meritorious reason for recommending a particular course of action, a by-product of which may have been to place pressure on the opposing legal team. This is expected in adversarial litigation of any nature and especially litigation of this scale.

359. The sentence, "*Our target audience is therefore Freeths, the funder and the insurers who will adopt a cold, logical assessment of whether they will get a pay-out, rather than the Claimants who may wish to fight on principle regardless of merit*" did not encapsulate WBD's advice on how POL should approach the group litigation (cf. **Q66.3**). WBD's advice was to focus on the contractual issues, win on those issues, and then to settle the balance of the case (the broad approach to which I discuss below). The above sentence in **POL00006503** described just one consideration as to the range of interests which ought to be borne in mind as these strategies were developed. The Claimants were being funded by Therium, a large litigation funder, and I presumed that their solicitors were acting under a conditional fee agreement (as is ordinarily the case when a litigation funder is involved). Naturally, the legal risks of the claim and the value of any settlement pay out were highly important to them. These were legitimate considerations to take into account. This was adversarial litigation with risks and costs issues on both sides, and understanding the interests and aims of one's opponent is a very important aspect of litigation strategy. All this statement did was identify what certain of these interests and aims were.

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360. At the October 2017 CMC, the Court adopted the approach that WBD/Counsel had recommended to POL – namely to focus the first trial in the litigation on the relationship between POL and its SPMs. A further CMC was listed for early 2018 to consider the scope of future trials. On advice from David Cavender QC,[291] POL proposed that there be a Lead Cases trial to follow the CIT, the idea being that the parties would identify 5-10 lead cases and have all the issues in those cases determined in one trial. This would then create findings on issues such as the reliability of Horizon, POL's accounting practices and POL's training and support, which could be applied by analogy to the other Claimants. I recall that the Claimants initially supported this idea,[292] but Mr Justice Fraser preferred a series of staged trials and ordered that the next trial be focused on the Horizon system.

Advice regarding settlement strategy

361. We considered and advised on the question of settlement early on, and it was revisited on various occasions throughout the proceedings.

362. On 8 July 2016, as part of our work on POL's response to the Claimants' LOC, WBD produced a paper on whether POL should engage in further mediation.[293] That paper drew out both the advantages and disadvantages of mediation. The disadvantages included that the claims were poorly particularised and that mediation was therefore unlikely to lead to a settlement. I was also concerned that the claims had not yet been valued by the Claimants and that made it difficult to advise on a potential settlement. Our main recommendation was that POL

[291] POL00251957. See further below, §391.
[292] POL00252386; WBON0001377; WBON0001378.
[293] POL00006360.

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should politely refuse mediation at this stage but say they would keep the position under review.

363. Settlement was revisited in a Steering Group paper dated 14 February 2017, but for the same reasons WBD advised that settlement could not be considered until the claim was valued and the group was closed to new Claimants. WBD therefore recommended aiming for mediation in November 2017 after the first CMC (in October 2017).[294]

364. In November 2017, a Steering Group paper advised that "*Post Office should consider again whether there is merit in trying to settle this litigation. In particular, there is an obvious window for a mediation in September / October 2018 to explore the possibility of settlement before Trial 1 and in light of any risks flagged by Counsel's advice*".[295] The October 2017 CMC Order required POL and the Claimants to explore the possibility of settlement. By a Steering Group paper dated 6 December 2017, WBD identified two groups of Claimants with whom early settlement might be possible and advised that settlement discussions be commenced with Freeths in respect of these two groups.[296] The notes (in blue and red) of the views which different members expressed indicate in broad terms that the Steering Group's view was that settlement discussions should not be commenced at this stage without more considered discussion. Rodric Williams' view was that settlement at this stage on the terms that WBD proposed ran the risk of increasing the number of claims in the long term, consuming resources, and weakening POL's overall position with questionable return.[297]

[294] POL00247209.
[295] POL00139476
[296] POL00251998.
[297] POL00251998.

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365. The second CMC Order dated 8 February 2018 directed the parties to "*use their reasonable endeavours to attend mediation as soon as practicable after receipt and consideration of the Judgment on the Common Issues to attempt to resolve (or at least narrow) the dispute by way of mediation".*[298] At a meeting of the Board Subcommittee on 15 May 2018, David Cavender QC and Tony Robinson QC advised that "*We should always keep the possibility of settlement under review. But at the moment we do not see any other realistic option than to go ahead with the Common Issues trial. There is then a mediation ordered to seek to settle the matter and/or reduce the issues in light of the Common Issues judgement. There is a very short time between that mediation and the Horizon trial*."[299] WBD advised on concrete plans for mediation by a Steering Group paper dated 28 November 2018. This paper advised that settlement was the most likely outcome and advised that POL write to Freeths on a without prejudice basis suggesting that the parties start working on arranging mediation.[300]

366. We wrote to Freeths on 7 December 2018[301] with our proposals on a mediation. In light of the fact that we believed the Common Issues Judgment might be handed down around the end of January 2019, we suggested a mediation in mid-February 2019 might be viable.

367. We invited their response by 14 December 2018 but they had not responded by then; we therefore chased for a response on 19 December 2018. Freeths then responded on 21 December 2018. Their view was that a mediation after Judgment had been handed down in the Horizon Issues Trial was more likely to

[298] WBON0001230.
[299] POL00006382.
[300] POL00259669.
[301] POL00265780.

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result in resolution or a significant narrowing of the issues than a mediation in mid-February. They suggested a mediation mid to end June 2019.[302]

368. I remained of the view that it would be possible, and preferable, to hold a mediation sooner rather than later. WBD therefore replied on 9 January 2019, referencing the Order of 8 February 2018 and stating that in our view it was "*quite possible for the parties using their reasonable endeavours to hold a mediation before the Horizon Issues Trial*". We explained that we believed a mediation in February 2019 would set a foundation for future mediations and, at the least, allow the parties to understand each other's position with more clarity. In view of the Claimants reservations and with a view to engaging constructively with them, we also suggested that the parties may want to appoint a mediator and seek their views on when a mediation would most usefully be held.[303]

369. Freeths replied on 17 January 2019 to say that they did not believe the Court's Order required the parties to mediate prior to the HIT. Their view was mediation should take place after we had both the Common Issues and Horizon Issues Judgments.[304] In subsequent correspondence, the parties mutually selected Charles Flint QC as a mediator but did not settle on a mediation date.

370. Ultimately, due to the Claimants being unwilling to mediate until after the HIT and the Common Issues Judgment not being handed down until the HIT had already started, there was no opportunity to mediate until later in 2019.

371. A briefing on settlement was provided to Ben Foat, Rodric Williams and others in May 2019.[305] As set out in the briefing paper, the consistent view of the Steering

[302] POL00260751.
[303] POL00265783.
[304] POL00262338.
[305] POL00023690 and POL00275113.

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Group and the Board Subcommittee to date had been that settlement could result in a flood of claims and for this reason, POL's preference had been to secure a positive judgment on the Common Issues before opening up settlement discussions in the expectation that this judgment (if positive) would deter future potential claimants. Another obstacle to settlement continued to be that the Claimants had not provided sufficient clarity as to the value of their claims. Further, there remained some difficulty in respect of convicted Claimants. On the advice of Cartwright King and Brian Altman QC, POL's position from as early as the Mediation Scheme was not to mediate or settle with convicted Claimants. In this settlement briefing paper, WBD advised that fresh advice should be taken from Cartwright King or Brian Altman QC on this issue.

372. Following this, POL took further steps to stand up a mediation with the Claimants. HSF had been engaged by POL by this point, and from here onward took over the lead in preparing for and conducting mediation. As explained above, a nine-day mediation ultimately took place in December 2019, as a result of which the proceedings were settled.

Relevance of the merits of defending the group litigation to POL's review of criminal convictions

373. With reference to **Q58.7**, I cannot give an informed view of whether the merits of defending the group litigation affected POL's review of criminal convictions or informed its approach to post-conviction disclosure to convicted SPMs. I did not advise POL on these matters, as my remit was limited to the civil litigation. As I have highlighted in other parts of this statement, POL's criminal law solicitors, Cartwright King, supplemented from time to time with advice from Brian Altman

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QC, advised on criminal law matters including the safety of convictions and the conduct of POL's criminal law disclosure duties.

The Claimants' Schedules of Information

374. **Q70** of the Request asks me to specifically consider three documents:

374.1. ***First***, my fourth witness statement in the group litigation, dated 9 October 2017 (**POL00000444**).

374.2. ***Second***, a letter from Freeths to WBD dated 16 October 2017 (**POL00041510**), which responded to particular points in my fourth witness statement.

374.3. ***Third***, an email I wrote to Rodric Williams on 16 October 2017 (**POL00041509**).

375. With reference to **Q70.1**, **Q70.3** and **Q70.4**, paragraph 26 of my fourth witness statement commented on the poor quality of the SOIs that had been prepared on behalf of each Claimant, and observed that they appeared to have received minimal input from Freeths. By way of context, the SOIs were served in lieu of individual particulars of claim and were, in effect, a summary of each Claimant's claim. They were the only documents produced setting out the nature of each individual Claimant's claim, and thus they were the sole source of information within the proceedings as to precisely what each Claimant was seeking. They were important because in their absence POL would not know (i) what each Claimant was alleging, (ii) which claims were sufficiently similar so that lead cases could be selected, and (iii) the amounts that were being claimed. Further, a level of detail was required because the Claimants were alleging deceit against POL, and their deceit claims were at this point unparticularised (i.e. the Claimants

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had not set out what they alleged POL had said, to whom, why it was false, and with what consequences). The deceit/concealment point was critical, as it would bear on whether the Claimants would be able to extend the otherwise applicable limitation periods and many of the Claimants' claims would be time-barred without an extension. Reflecting all these considerations, the SOIs were required to be signed by a statement of truth.

376. Freeths had opposed providing meaningful SOIs. At the GLO Hearing, Senior Master Fontaine ruled against them on this point and ordered the Claimants to provide much more detailed SOIs than Freeths had wanted to do (although, not containing quite as much detail as POL had sought).

377. I was therefore disappointed when we eventually received SOIs which were, in my view, of a very poor quality. We sent a letter to Freeths dated 1 September 2017 in which we highlighted the extensive deficiencies in the SOIs.[306] By way of example:

377.1. Information pertaining to the Claimants' allegations of deceit was largely missing.

377.2. Several heads of loss claimed in the SOIs seemed to have no actionable basis and/or did not follow established legal principles. By way of example, a high proportion of the Claimants (at least 65%) had claimed personal injury. However, distress alone does not normally surpass the threshold for bringing a personal injury claim; for that there needs to be a recognised medical condition.

[306] WBON0001194.

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377.3. There was little or no information about the nature of the problems each Claimant claimed to have experienced with Horizon, for example allegations of unusual behaviour or unexplained transactions and accounting entries.

378. It was in part by reason of this second point that I referred to the Solicitor's Code of Conduct: Indicative Behaviour in paragraph 26 of my fourth witness statement, which (so far as relevant) provided at the time that:

> *"demanding anything for yourself or on behalf of your client, that is not legally recoverable, such as when you are instructed to collect a simple debt, demanding from the debtor the cost of the letter of claim since it cannot be said at that stage that such a cost is legally recoverable."*

379. I considered at the time that Freeths were close to this line; there were so many inconsistencies in the SOIs that it was hard to imagine that they had verified that all of the claims contained therein were in fact recoverable as a matter of law. That being said, I stopped short of accusing Freeths of misconduct in my fourth witness statement as we could not be certain what work they had done on the SOIs. That is why the statement is framed in terms of what I anticipated or expected, rather than an accusation of misconduct. I wished to make the point that the quality of the SOIs was far below what one would ordinarily expect to be produced as a quasi-pleading in civil litigation, with the aim of trying to secure improved SOIs. I considered that it was proper to highlight relevant professional standards which I believed should have been complied with in the preparation of these documents, but I judged that it would not be right in the circumstances to go further than this.

380. I therefore do not believe that I or WBD made an allegation of professional misconduct against Freeths. We raised the serious deficiencies in the Claimants'

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SOIs in firm terms to achieve a legitimate purpose, i.e. to obtain critical details pertaining to the claims that had been made. I would not describe this as a 'litigation tactic' in a pejorative sense; it was a fair and proper response to Freeths' inadequate preparation of a key document in the proceedings.

381. At the CMC in October 2017, Mr Justice Fraser ordered that certain Claimants amend parts of their SOIs in relation to quantum.[307] Further, he required the Claimants to obtain their medical records in support of their personal injury claims, which was done due to doubts as to the credibility of those claims.[308]

382. With reference to **POL00041509** (my email to Mr Williams of 16 October 2017), the remarks quoted in **Q70.2** of the Request were a flippant comment on Freeths' letter of the same date (**POL00041510**), which I attached to that email. The context behind this comment was that at the time, I felt that Freeths were taking small points for no substantive purpose. Freeths' letter followed an earlier one in which they had complained that my fourth witness statement was filed 6 minutes after the deadline.[309] After that earlier letter, I had sent an email to the Counsel Team (Tony Robinson QC and Owain Draper), saying:

> *"Another grumpy letter from Freeths about Parsons 4. I can't understand this line of correspondence – it doesn't take them anywhere."*[310]

383. In fact, the response that I drafted to **POL00041510** had the aim of minimising wasted time on all sides by shutting this line of correspondence down, the proper forum for the matters raised in my witness statement, and by Freeths, being the CMC.[311] This was the appropriate and proportionate approach.

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[307] WBON0001685, paragraph 21.
[308] Ibid, paragraph 19; see also my fourth witness statement at paragraph 148.
[309] WBON0001216.
[310] WBON0001215.
[311] WBON0000191.

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384. For the avoidance of doubt, it was never my aim, nor (from what I observed) that of POL's legal team more broadly, to cause or encourage Freeths to waste time on *inter partes* correspondence so that they spent less time on important matters.

Judgment No.1 [2017] EWHC 2844 (QB)

385. **Q67** of the Request asks me to comment on the following statement of Mr Justice Fraser in *Bates & Others v Post Office Limited* [2017] EWHC 2844 (QB) ("**Judgment No. 1**"), which was handed down in November 2017 following the first CMC on 19 October 2017 (plus a short further hearing on 25 October to deal with Tony Robinson QC's availability for the CIT the following year):

> "*A fundamental change of attitude by the legal advisers involved in this group litigation is required. A failure to heed this warning will result in draconian costs orders*".

386. It is worth setting out the relevant paragraph in which this sentence is found in full:

> *"Finally, litigation of any type, but particularly of this type, can only be conducted in a cost-effective and efficient way if the parties co-operate between themselves, are constructive, and conduct the case efficiently. The parties have a duty to help the court to further the overriding objective in CPR Part 1.3. The following have all occurred so far in this group litigation: failing to respond to proposed directions for two months; failing even to consider e-disclosure questionnaires; failing to lodge required documents with the court; failing to lodge documents in good time; refusing to disclose obviously relevant documents; resisting any extension to the "cut-off" date for entries of new claimants on the Group Register; and threatening pointless interlocutory skirmishes. On the material before me, this has been more or less equally on both sides. Such behaviour simply does not begin to qualify as either cost-effective, efficient, or being in accordance with the over-riding objective. A fundamental change of attitude by the legal advisers involved in this group litigation is required. A failure to heed this warning will result in draconian costs orders."*

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387. My immediate thoughts on reading Judgment No. 1 (then in draft) were reflected in an email to Tony Robinson QC dated 8 November 2017. I explained that I thought Mr Justice Fraser had got "*the wrong end of the stick on many points*" (for example, the notion that we had opposed the GLO, see e.g. §350 above) and that his "*willingness to characterise points of disagreement [between the parties] as unreasonable*" made me nervous.[312] Tony Robinson QC responded: "*I agree with all the wider points you make below. It is worrying that Fraser almost seems to be one of those people who likes to think the worst of others, which (entirely coincidentally) allows him to feel better about himself for sorting out their deficiencies. I would like to comfort myself with the thought that his judgment goes out of its way to lay equal blame on the claimants, but at this stage it would, wouldn't it?*"[313]

388. Tony Robinson QC went on to make the point that "*Notwithstanding [Mr Justice Fraser's] reference to pointless interlocutory skirmishes, if we have sensible applications to make, we should make them, and make them promptly*".[314] I agreed with this observation and informed him that we now had instructions from POL to make an application for security for costs. This was, in my view, a proper application for POL to make, and I indicated that I would take certain (constructive) steps first, namely (i) "*call[ing] Freeths to try to resolve this*", (ii) writing direct to the litigation funder, and (iii) providing a draft application for Freeths to comment on before issuing it.

[312] WBON0001217.
[313] WBON0001217.
[314] WBON0001217.

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389. As for the wider Steering Group's discussion of Judgment No. 1, I cannot speak to what conversations members of the group may have had among themselves, but on 9 November 2017 Rodric Williams sent an email to Jane MacLeod, Melanie Corfield, Mark Underwood, Mark Davies and Thomas Moran, making the following points about the judgment:[315]

> *"Mr Justice Fraser has used the judgment to reiterate the comments he made at the 19 October 2017 CMC that the litigation needs to be progressed in a more timely, cost-effective and proportionate manner than it has to date, and that this will require greater cooperation between the parties. He considers the failure of the parties to do so to date lies "more or less equally on both sides" (see para. 20)*
>
> *[…]*
>
> ***Main Message***
>
> *The tight timetable set for trial in November 2018 will not be departed from, and the parties (through their legal advisors) will need to cooperate to achieve this. Failure to do so "will result in draconian costs orders" (i.e. the Court will order payment of substantial costs to the other side).*
>
> *[…]*
>
> ***What this Means – Longer Term***
>
> *We must ensure that we not only cooperate with Freeths to promote the expeditious resolution of the case (which we have been trying to do), but that we are also seen to be doing so. Doing otherwise will irritate and alienate Mr Justice Fraser, who will be presiding over the trial(s) in this case. This must be kept firmly in mind as we plan and resource the next 12 months of this case."*

390. Following the judgment, on 12 December 2017, I sent an email to Freeths calling for a reset in the correspondence and a "*a better way of working between [the] two firms*". As to correspondence, I outlined that since the CMC WBD had "*sought more than ever to avoid point-scoring in our letters*" and adopt a constructive

[315] POL00041527.

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tone. I set out a few points that would help me to run the litigation from the POL side, i.e. fuller explanations/proposals from Freeths and as much information as possible about the claims that were being advanced. I emphasised the need to adopt a flexible, creative and bespoke approach to the group litigation, which required "*a good deal more collaboration than ordinary litigation if good progress and efficiency [were] to be maintained*."[316]

391. As mentioned above (§333), David Cavender QC was instructed at this time to lead on the Common Issues. At the outset, WBD asked him to take stock of the litigation to date and to identify five things POL had 'done well', five things that 'could have been done better', and five things for us to 'think about going forwards' (the "**Five Things Document**").[317] In his Five Things Document, David Cavender QC endorsed POL's decision to accede to the making of a GLO, our approach to the contractual issues and the setting up of the CIT as the first trial, and our overall approach to the *inter partes* correspondence to date. In terms of things we could have done better, he felt that POL "*could have done more to prevent the Claimants painting [it] as a party who was not co-operating properly in the spirit of group litigation*", but he noted that (i) he did not feel this was a true reflection of how POL had in fact engaged in the litigation to date, and (ii) we had recently sent the above email to Freeths in the hope of 'resetting' the relationship between the parties and paving the way for a more cooperative approach going forwards. He said that we should now be looking to suggest "*positive ways in which the core of the bulk of the claims can be determined – rather than merely seeking to respond/shoot down inappropriate ideas put forward by the*

[316] WBON0000329; see also above, §334.1.
[317] POL00251957.

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Claimants", and recommended (as I have already mentioned, at §360) that we should adopt a strategy of seeking to have a Lead Cases trial listed to follow the CIT.

392. We therefore outlined our ideas for the future case management of the litigation in a letter to Freeths dated 18 December 2017; we set out the Lead Cases approach as recommended by David Cavender QC and stated, "*We would therefore welcome the opportunity to discuss the long term plan for this litigation with you…. We are prepared to discuss all of the above at our meeting on 22 December 2017 but appreciate that there is a lot to consider in this letter… Our client is not wedded to the proposals in this letter: they are just initial ideas to hopefully encourage a constructive dialogue. We would welcome other ideas from your clients*".[318] I explained the reasoning behind the Lead Cases proposal (as opposed to an approach of resolving issues on a topic-by-topic basis) as well as the tone of this correspondence to Mark Underwood of POL on 17 December 2017, as follows:

> *"The letter will have a tone suggesting ways forward rather than making a firm proposal and will ask Freeths for their ideas. We do not intend to explain why the alternatives do not work (which was one of your questions Tom) because we do not want to set a negative tone that suggests we are blocking ideas or being difficult. If Freeths present an idea that has merit, we should consider that in good faith. Our letter will not therefore commit Post Office to a course of action, and will leave scope to change direction if a better route opens up or we encounter major resistance.*
>
> *[…]*
>
> *I hope this helps explain why we don't believe that there is an obvious way for dealing with this litigation on a topic by topic basis. As said above, if Freeths do come up with a solution to this, then we should give*

[318] POL00252386.

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it due consideration and our letter will be designed to draw them out on this."[319]

393. Thus in answer to **Q67**, and as the above points demonstrate, I and (to the best of my knowledge) POL, considered the judgment carefully and took on board the points Mr Justice Fraser made in an appropriate and measured way. We took advice on our overall litigation strategy, which was broadly endorsed by Counsel, and took positive steps to ensure a collaborative and constructive approach with the Claimants going forwards.

L. THE GROUP LITIGATION – EARLY WORK

PART I – PRESERVATION OF DOCUMENTS, PRE-ACTION PROTOCOL DISCLOSURE, PRIVILEGE AND SHARING OF INFORMATION (Q64 to Q65, Q68 to Q69, Q71 to Q72)

394. I return now to the start of the group litigation, and in this section answer a series of questions the Inquiry has asked about particular aspects of the advice that I/WBD provided POL in its early stages. These questions are loosely centred around the related themes of preservation of documents (**Q64**), early requests for disclosure (**Q68**), advice on legal professional privilege (**Q65**, **Q71** to **Q72**), and other forms of information-sharing (**Q65**, **Q67**, **Q71**).

395. Broadly speaking, the events to which these questions relate all took place between April 2016 (around the time when the Claimants' Letter of Claim was sent) and prior to the Claimants providing their draft GPOC in December of that year. These events therefore overlap chronologically with those discussed in Section M below, (concerning the early factual investigations undertaken by POL

[319] WBON0000171.

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in the preparation of its LOR). In addition, it should be noted that in some respects this section extends beyond 2016. For example, my answer to **Q64** refers to advice on preservation which WBD gave after 2016, and **Q71** largely focuses on matters that arose later in the litigation. I deal with that question here for convenience, since it concerns advice I gave POL in connection with the sharing of information about the group litigation with UK Government Investments ("**UKGI**") and the then Department for Business, Energy and Industrial Strategy ("**BEIS**").

396. For the avoidance of doubt, this section does not deal with the Inquiry's questions about my/WBD's advice on disclosure generally, including its specific questions about disclosure of the KEL, the Peaks database, and various reports produced by Deloitte. These issues are dealt with in Section N below on disclosure.

(i) Document preservation (Q64)

397. I am asked to consider **POL00041136**, which is an email I sent to Rodric Williams dated 20 April 2016. It contains an action list following a meeting attended by Gavin Matthews and Elisa Lukas (WBD), Mr Williams and Mark Underwood (POL), and myself on the subject of the group litigation. I have no recollection of this meeting. Looking at when it took place, it must have been shortly after the issue of the Claimants' first Claim Form and in anticipation of receiving the LOC.

398. WBD undertook a considerable amount of work in the early stages of the group litigation to assist POL to preserve relevant documents, and indeed throughout. It was certainly, to my recollection, a long process that ran continuously during the litigation, and one that evolved and expanded as the litigation took shape. I believe that we had over 10,000,000 documents preserved in a data room by the

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end of the litigation. I note by way of background that there was some uncertainty as to what needed to be preserved, especially in the early phases. Prior to our receipt of the LOC, the claim had not yet been articulated for the purposes of document preservation. Further, we did not have a full list of Claimants until the GLO closed to new entrants in December 2017. Nevertheless, the overall tenor of our advice to POL was that in the circumstances of the case and in light of the issues raised, a robust approach needed to be taken to document preservation.

399. As I was supervising the firm's work on document preservation and not directly responsible for carrying it out, and given the volume and complexity of the work required in this regard, I outline the main steps which WBD took in high-level terms only:

399.1. ***First***, WBD reiterated POL's duty to preserve documents at the outset of the litigation. Following the meeting referred to in **POL00041136**, Mr Williams sent a litigation hold email on 20 April 2016 to all relevant staff at POL outlining three document rules that must be followed, in these terms:

> *"In short, the three crucial document rules that must be followed are:*
>
> *(1) You must not destroy or delete any documents which may be relevant to the claim. In particular, make sure that any automatic deleting/archiving systems are suspended now until further notice. If you have any question about whether a document is relevant, please contact Legal Services and preserve the document in the meantime;*
>
> *(2) You must not amend any existing documents which may be relevant to the claim. For example, do not make handwritten notes on existing documents or try to change the content of a document; and*
>
> *(3) You must recognise that any documents that you create from now on may have to be disclosed to the other side in the case. If*

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> *in any doubt, think about whether you would be happy for the email or document to be read out loud in court."*[320]

He attached a more detailed note on the subject dated December 2014, which had been prepared by WBD at that time in response to a mooted class action that never in fact materialised, together with a schedule of the 91 Claimants who were then listed on the Claim Form.[321]

399.2. ***Second***, WBD undertook extensive fact-finding exercises with relevant people at POL in order to find out how and where POL was holding relevant documents. This included sending out questionnaires to document custodians, carrying out interviews and follow-up exercises, and engaging in discussions with the Company Secretary (regarding retention policies), the IT team (regarding document creation, migration, storage, extraction and deletion), and the Issues Resolutions, Support Services, Agency Contracts and Contracts Advisors teams (regarding potentially relevant documents and document sources).[322] See, by way of example, an email that Tom Porter (an Associate in my team) sent Dave King at POL (who had assisted with the Mediation Scheme investigations) on 31 May 2016, which asked him and others to help WBD work out:

> *"What potentially relevant documents exist;*
>
> *Where they are stored (and whether they are periodically backed up);*
>
> *Who is the stakeholder/controller for those documents;*
>
> *Is there a retention policy that affects those documents (that may result in them being lost unless otherwise preserved); and*

[320] WBON0000987.
[321] WBON0000987; WBON0000988; POL00241034.
[322] WBON0000151.

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> *What would we need to do to now protect and/or take copies of those documents."*[323]

My impression was that POL had very little understanding of how it held documents; therefore, we were seeking to build up this picture essentially from scratch. This culminated in the August 2016 Steering Group paper outlining document preservation options to which I refer below.

399.3. ***Third***, in August 2016 WBD prepared a paper for the Steering Group setting out: POL's duties to preserve documents; what steps had been taken so far to identify relevant documents and repositories of documents; what techniques were available to preserve material; the likely cost; and our recommendations in view of all of these matters; and what was understood about the claim to date. The paper advised:

> *"Post Office has a Court duty to take reasonable steps to preserve any documents that may need to be later disclosed in the litigation. "Document" means practically anything holding information, including electronic documents like emails. What will satisfy the duty to preserve documents will depend upon the likelihood of documents being lost, how they may be lost and the consequence on the litigation of losing a document.*
>
> *[…]*
>
> *Steps to date*
>
> *At the outset of the Group Action, Post Office Legal sent "litigation hold notices" to key parts of the business asking them not to destroy relevant documents. Since then BD has liaised with various teams at Post Office regarding potentially relevant documents and document sources. Through these investigations, we have developed an understanding of document storage, retention and deletion across the business, as well as better understanding the current IT projects that may impact on document preservation. Please see the Document Locations Table attached to this paper for details of the locations in which*

[323] WBON0001002; see further WBON0001015.

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> *documents are held. These investigations have led to the development of the "Preservation Options" attached to this paper.*
>
> *[…]*
>
> *Our view is that some form of limited forensic imaging of information is required – either of documents held by key custodians (Option 3) or by undertaking a deeper review to identify more relevant locations of documents (Option 4).”*[324]

The paper highlighted the advantages of taking robust as opposed to minimal steps to preserve documents, including that: “*The nature of the claims in this matter, particularly the fraud and concealment issues, means that preservation is a relatively high risk issue in this case. Losing key documents where there are allegations of concealment would weigh against Post Office in Court and would be presented by Freeths as yet another form of concealment. This militates towards Post Office taking a more stringent approach to document preservation*”. And that: “*Doing nothing risks falling foul of the Court duty to preserve relevant documents. Aside from the legal consequences, this would present very badly through a public / media lens*”. The Steering Group’s decision was in line with our recommended approach, adopting our Option 4 as POL’s preferred approach to document preservation.[325]

399.4. ***Fourth***, we advised POL on the importance of ensuring that third parties (notably Fujitsu) also took steps to preserve relevant documents. **POL00041136** refers to a “*letter to FJ re document preservation*”. I believe that this was drafted by WBD and provided to Mr Williams at an early

[324] POL00139297.
[325] POL00139309 (action from 22 August 2016 meeting).

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stage, on 26 April 2016.[326] An email sent by Tom Porter on 6 May 2016 recorded our understanding that Mr Williams was "*writing to Fujitsu to put them on notice of the claim, and ask them to ensure that potentially relevant documents are now retained*" and advising that "*We should [also] give some thought to whether we need to send similar notices to other third party providers at this stage*".[327] It appears from subsequent emails in November 2016 that the letter to Fujitsu may not ultimately have been sent. On 15 November 2016, Elisa Lukas reported to me that Mr Williams had told her that he had "*not informed [Royal Mail] or Fujitsu of the need to preserve documents as he does not consider their documents to be in his possession or control and it will be costly to [POL]*".[328] I noted the need to look into the control issue but thought that POL needed to send litigation hold notices to POL and Royal Mail regardless. WBD then drafted an email to Fujitsu and Royal Mail advising them as follows:[329]

> *"As you may be aware, a group of former and current postmasters, branch assistants and Crown Office employees have brought a legal claim against Post Office in relation to Horizon. Their claim is very broad, alleging failings in Horizon as well as Post Office's training and support (the* ***Action****). A copy of the Claim Form is attached.*
>
> *In light of this proposed litigation, please can you ensure that all documents that you hold on behalf of Post Office and which are, or may be, relevant to the Action are preserved. Please ensure that this includes any electronic documents (and associated metadata) which would otherwise be deleted in accordance with your document retention policy or in the ordinary course of business."*

[326] WBON0000982; WBON0000981.
[327] WBON0000992.
[328] WBON0000154.
[329] POL00041378.

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399.5. ***Fifth***, in August 2017, WBD prepared a further paper for the Steering Group on the subject of document preservation. This was triggered by the fact that a considerable number of additional Claimants had by then joined the litigation. The paper outlined the approach taken to date as follows:[330]

> ***"1. BACKGROUND***
>
> *1.1 Post Office has a Court duty to take reasonable steps to preserve any documents that may need to be later disclosed in the litigation. At the Steering Group meeting on 22 August 2016, Post Office decided to take a proportionate approach to this duty. …*
>
> *1.2 It was decided that a list of key individuals across the business who might hold relevant documents would be produced, and then establish what documents they held and how. Forensic copies would be taken of relevant electronic documents and scanned copies taken of hard copy files. Although not all relevant documents would be preserved because of the targeted nature of the exercise, it would demonstrate a genuine attempt to preserve documents.*
>
> *1.3 It was recognised that that the preservation exercise would need to be refreshed if/when further Claimants issued a claim against Post Office … and as the litigation progressed.*
>
> ***2. DOCUMENTS ALREADY PRESERVED***
>
> *2.1 The preservation exercise had a dual purpose: it was to preserve documents and also to provide information to support the Case Review exercise. Within the original 198 Claimants, 88 were part of the mediation scheme and so the Case Review was limited to the other 110 cases.*
>
> *2.2 This has led to a tiered capture of documents:*
>
> *2.2.1 Litigation hold notices have been sent to key parts of the business. This covers a wide range of documents but only provides a low level of assurance that documents will not be destroyed.*
>
> *2.2.2 For some categories of documents, we have extracted all Post Office data in relation to all subpostmasters (not just Claimants).*

[330] POL00006436.

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2.2.3 For some categories of documents, we have only captured information relating to the 198 original cases.

2.2.4 For some categories of documents, we have only captured information relating to the 110 cases subject to the Case Review.

2.3 In general, we have narrowed the capture of documents when dealing with paper records as these require significantly more time and cost to locate and scan into a data room.

2.4 The preserved documents are being hosted in a data room that currently holds 599,004 documents. Further information on the documents that have been preserved already can be found in Schedules 2 and 3.

2.5 The focus of work so far has been around preserving documents relevant to individual Claimants. We have not yet preserved documents relevant to generic issues. For example, we have captured the debt team files on individual Claimants, but we have not scoped and preserved general documents and policies about debt collection practices. This is because "generic" documents are much more difficult to identify, locate and retrieve in a cost effective way."

The paper went on to note that, in light of there now being 324 additional Claimants, a decision needed to be made as to the extension of the document preservation exercise. We identified that consideration should now be given to extending the exercise to: (i) documents relating to the new 324 Claimants;[331] and (ii) certain areas of generic documentation. We recommended:[332]

"As a minimum, Post Office should extend the document preservation exercise that has already been carried out to the 324 new Claimants.

We would strongly recommend preserving the entirety of POL SAP when it is taken offline later this year. Currently, only certain

[331] POL00006436.
[332] I.e. by the issue of the Claimants' second Claim Form on 26 July 2017.

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reports have been run from it and it contains a vast amount of potentially key financial information on the Claimants and their branches.

We would also recommend beginning to capture key generic documents that are likely to be sought in disclosure by the Claimants, to the extent that this could be done cost-effectively."

The paper noted that "*In the Decision Paper of 22 August 2016, [WBD] set out the advantages of preserving documents. We continue to believe that these advantages justify the above costs*". I do not specifically recall whether the Steering Group adopted the recommended course, but I recall that POL generally accepted the advice given on issues of this kind.

399.6. ***Sixth***, as issues for disclosure and classes of document to be disclosed were ordered during the CMCs from October 2017 to June 2018, the scope of the preservation exercise was revisited, and where needed expanded, to ensure that those issues and classes were covered.

399.7. ***Seventh***, at various stages WBD provided targeted advice about specific document preservation issues. For example, by a Steering Group paper dated 24 May 2017, WBD "*strongly recommended*" that POL continue to pay for a hold on data which Fujitsu was preserving to prevent it from being deleted.[333] Formal advice to the Steering Group on other strategic issues relating to document preservation was given in January 2017,[334] May

[333] POL00139383.
[334] WBON0001686.

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2017,[335] September 2017,[336] March 2019,[337] July 2019,[338] and November 2019.[339]

399.8. ***Eighth,*** beyond the formal Steering Group papers, I recall my team regularly discussing discrete document preservation issues with POL. I cannot now recall or cite all the issues that came up, but as a few examples, I recall: discussions about copying and preserving laptops of members of staff who were leaving POL; members of my team having to visit POL's Chesterfield office in order to determine whether physical files in that office needed to be preserved; and many discussions about preserving and accessing records held at the Postal Museum, which POL used as a repository for hardcopy documents.

(ii) Data Subject Access Request (Q65)

400. By **Q65**, I am asked to comment on **POL00041163**, which is an email chain relating to a Data Subject Access Request ("**DSAR**") by Katherine McAlerney dated 27 April 2016. I am in copy from the second email. This email chain shows that in relation to Ms McAlerney, the POL team responsible for dealing with DSARs (Kerry Moodie and Kim Thomson) had previously provided the information she had requested and which they could locate. The POL Security Team located some (very limited) further information, which Kerry forwarded to me for comment on 1 June 2016. That information was a single row extracted from a spreadsheet that no one from the POL Security Team (past or present)

[335] POL00006405.
[336] POL00006470.
[337] POL00269447.
[338] POL00278526; POL00139652; POL00139650.
[339] POL00288913.

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could recall preparing (nor the reasons for preparing it).[340] Prior to this, Paul Loraine and Rodric Williams had produced a draft response to Ms McAlerney's DSAR that explained POL did not propose to take any further action because this was an improper use of the subject access regime to obtain documents outside of the disclosure process in the group litigation.[341]

401. I responded to Kerry Moodie in the following terms the same day:

> *"The new information found by POL security makes reference to this case being handled by "legal". On that basis, we can treat the information (which is in any event very limited and inconsequential) as being privileged and therefore not disclosable.*
>
> *The current draft of the letter is therefore good to go.*
>
> *If anyone objects to this approach, please can you let Kerry know by 3pm tomorrow otherwise – Kerry please can you send the letter in tomorrow's post."*

402. By way of context, it is important to understand that a DSAR operates quite differently from a disclosure exercise. In particular:

402.1. A DSAR is a request for personal data; it is not a request for documentation. Much of the information contained within this spreadsheet row was personal data that was already known to Ms McAlerney (such as her branch name, FAD code, her name, the loss amount, and that her solicitor had responded to an intimated civil claim by POL). The only new information was the part of one sentence that said that POL had "*escalated to Legal to pursue*".

[340] WBON0001013.
[341] WBON0001001.

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402.2. The data controller is only obliged to take reasonable steps to find personal data and need not go to a disproportionate effort. The case law at this time spoke in terms of a reasonable and proportionate search, such that where there were face value grounds to assert privilege, there was no obligation to extensively examine the basis for asserting privilege.[342]

403. I do not recall this particular email or this issue. As indicated by the brevity of my email, I would have made this type of judgment call rapidly, given that in the DSAR context granular analysis of whether privilege applied was not required. I do not believe that I was referring to the whole document as privileged, but rather the particular sentence highlighted above, that the matter was being "*escalated to Legal to pursue*". Bearing in mind the lack of available background information to contextualise to this document, and the references to 'civil charges' and the fact that Ms McAlerney had appointed a solicitor, I would likely have considered that there was a fair argument that the sentence was either privileged information itself or a reference to other privileged material, namely POL's confidential decision to consider pursuing a legal claim and to seek legal advice thereon.

(iii) Pre-action disclosure of POL's internal investigation guidelines (Q68)

404. I am asked to specifically consider **POL00038852**, which is an email from Amy Prime to Rodric Williams (I am in copy) dated 5 October 2016.[343] I do not recall this email, but I have reviewed it along with other relevant emails from the time in order to answer **Q68** of the Inquiry's Request.

[342] See, by way of example, *Dawson-Damer* [2015] EWHC 2366 (Ch) at [34]-[37]. This decision was overturned on appeal in 2017, but represented the law as I understood it in June 2016.
[343] Incorrectly dated 10 May 2016 at **Q68** of the Request.

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405. Amy's email concerns a request Freeth's had made in its LOC dated 28 April 2016 for POL to disclose its "*Investigation guidelines since 1998, including any revisions to date*."[344] By way of context, this was one of 32 requests for disclosure made in the LOC.

406. In our LOR dated 28 July 2016, we said the following in response to Freeth's request:

> *"We are currently reviewing this request and will update you in due course. We understand that these guidelines will have evolved during the period in dispute. Further, providing historic documents would require a full disclosure exercise. This is neither reasonable nor proportionate at this time."*[345]

407. It appears that the "investigation guidelines" that we had available at this time were a document relating the conduct of criminal investigations, being the version in force from August 2013.[346] These guidelines were unlikely to be relevant to the Claimants' prosecutions given that POL had largely stopped prosecuting SPMs for accounting shortfalls around that time. The likelihood therefore was that only earlier versions of those guidelines would have been in force at the times of the Claimants' prosecutions. Consequently, in order to comply with Freeths' request, we would have had to conduct further searches to piece together all historic versions of these documents dating back to 1998. We would also have had to search for other forms of investigation guidelines because Freeths' request was not just limited to criminal investigations. I was aware by this time that POL undertook several different forms of investigation through different departments (e.g. the teams that investigated disputed transactions

[344] POL00241140.
[345] **POL00110507**.
[346] WBON0000466.

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corrections) and so any search for investigation guidelines would have been a substantial exercise.

408. From my emails, in the immediate run-up to serving the LOR I had liaised with Brian Altman QC on the subject of the criminal investigation guidelines, and he told me that documents of this kind were not normally privileged from disclosure in criminal proceedings[347] (as I had mistakenly come to think based on earlier advice given in a different context by Cartwright King).[348] As my exchange with Brian Altman QC shows, I did not have any particular concerns about disclosing the 2013 investigation guidelines, bar the possibility that doing so might lead to the loss of some form of privilege. Indeed, I explicitly said that I considered their content "*pretty benign*".[349]

409. Nonetheless, it was not necessary for POL to disclose the 2013 investigation guidelines when sending the LOR, nor was POL required to conduct a wider search for all previous versions of the guidance that might possibly have applied at the time of the Claimants' prosecutions. At this early stage, disclosure had not been ordered and the parties were operating within the framework of the Practice Direction on Pre-Action Conduct, which only required a party to take reasonable and proportionate steps to identify, narrow or resolve issues in dispute and to disclose key documents. The 2013 guidelines we had were not likely to be relevant to the Claimants and were not necessary in order for the Claimants to formulate their case, and it would not have been reasonable nor proportionate to search for earlier versions at the pre-action stage.

[347] WBON0000443.
[348] See above, §192.
[349] WBON0000443.

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410. It appears that WBD returned to the issue of the investigation guidelines in September and October 2016. I highlight that at that stage, the scope of POL's duty of disclosure was no greater than it had been in July. My email records indicate that Amy Prime obtained updated versions of the guidelines from POL in September 2016 (i.e. the 2016 guidelines, which had replaced the 2013 iteration earlier that year) but was instructed by Jane MacLeod that POL did not wish to allow them to be disclosed given that they could not, almost by definition, be relevant to any of the Claimants' prosecutions.[350]

411. Against that background, reviewing **POL00038852** I surmise that Amy considered that POL ought to maintain its position that the 2013 guidelines should not be disclosed at this stage and that she similarly considered that the 2016 guidelines should not be disclosed. I cannot recall what if any discussions I had with her about this at the time and cannot expand upon her reasoning, whether as expressed in **POL00038852** or otherwise. However, reviewing that email now, I do not think that anything in it alters the fact that there were legitimate reasons for declining to disclose the guidelines at that stage. As Jane MacLeod had pointed out, the 2016 guidelines could not have had any bearing on the convicted Claimants' claims and the 2013 guidelines were very unlikely to do so (even allowing for the fact that a number of Claimants had been added to the Claim Form by way of pre-service amendment in July 2016).

412. With the foregoing in mind, I refer to the email at **POL00038852** and in particular the final paragraph of that email, which I am asked to consider.

[350] WBON0000464.

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413. Regrettably, this email is worded very poorly. Whilst, as I have said, I do not recall this email, my firm's records show that Amy had sent a draft for my approval earlier that day which did not contain this final paragraph.[351] I responded to her adding it into her draft, though my purpose in doing so appears to have simply been to make clear what action we required from POL on this point, rather than to consider or build upon the substance of her email.[352] Though ill-expressed, having reviewed the relevant emails from around this time I consider that **POL00038852** and the final paragraph in particular does not reflect the true position, as there were in fact substantive legitimate reasons for resisting disclosure of the investigation guidelines at this early stage. My email should have been better expressed to make that clear at the time.

414. My firm's searches suggest that POL were never later ordered to disclose the 2013 or 2016 investigation guidelines.

(iv) Reference to bugs in briefing note to Leading Counsel (Q69)

415. I am also asked to specifically consider **POL00022636**, which is an email I sent Rodric Williams and Jane MacLeod on 18 May 2016, attaching a briefing note (**POL00156685**). The background to that email and the production of the briefing note was because POL was in the course of selecting its Leading Counsel and was due to interview Jeffrey Onions QC and Tony Robinson QC. The briefing note was to introduce them both to the background of the matter before the interviews were held. The purpose of the briefing note is set out in paragraph 4:

[351] WBON0000465.
[352] WBON0000467.

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> *"This [sic] purpose of this briefing note is to summarise the legal and factual context of this dispute by way of a high-level briefing ahead of a meeting between POL and prospective Counsel.* ***This note has been prepared from a compilation of other documents and any views expressed below will need to be tested and verified once Counsel is properly instructed and full documentation made available****."* (emphasis added)

416. The note lifted heavily from the Swift Review as this already set out a good description of the background facts and the issues under consideration, and there was no need to re-invent the wheel for the briefing to Counsel.[353] Large parts of the content of the Swift Review were copied, word-for-word, into it. The sentence that is quoted at paragraph 95 ("*There is nothing to suggest that these specific bugs identified have been the cause of wider loss to SPMRs in the Scheme cases or otherwise* …") features word-for-word in the Swift Review (see paragraph 120 thereof).

(v) Conference with Tony Robinson QC on 9 June 2016 and advice on preserving privilege in the implementation of the Swift Review (Q72)

The Swift Review

417. Tony Robinson QC was instructed on behalf of POL and on 9 June 2016. I attended an initial conference with him at POL's offices at Finsbury Dials, together with POL's in-house legal team. Prior to that, I had attended a pre-conference meeting with him on the morning of 7 June 2016 (accompanied by Tom Porter, an associate in my team) to address any initial questions that he had arising from his instructions.[354]

[353] WBON0000993 and WBON0000179.
[354] WBON0000157.

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418. As I have mentioned previously, at this time there was a live issue as to whether documents generated by Tim Parker's proposals to implement the Swift Review recommendations would attract legal professional privilege (see above, §§305-308). In particular, POL was concerned that Deloitte's work product would not be privileged if they were instructed directly by Tim Parker to carry out the investigations contemplated by Jonathan Swift QC's IT-related recommendations (being Recommendations (3), (4), (5) and (8)).

419. I do not recall the specifics of the discussion about the implementation of the Swift Review at the conference on 9 June 2016. However, the documents I have reviewed for the purposes of drafting this statement (including but not limited to **POL00006601**) confirm that we sought Tony Robinson QC's view on how POL should proceed. The notes of the pre-conference meeting I had with Tony Robinson QC on 7 June 2016 include a bullet point: "*[d]o all the Swift actions now and thoroughly*" beneath the heading 'key thoughts' (presumably, those of Tony Robinson QC).[355]

420. My email records show that I had a more detailed exchange with Tony Robinson QC about this issue on 8 June 2016, prior to our conference the following day. During that exchange I made the following points:[356]

    420.1. ***First***, the Steering Group had expressed concern about Tim Parker continuing with his proposed implementation of the Swift Review recommendations, however Mr Parker felt that he had "*made a commitment to Baroness Neville Rolfe (Minister at BIS) to follow through*

[355] WBON0000157.
[356] POL00242402.

on the JSQC's recommendations unless he [was] presented with a persuasive case not to do so".

420.2. ***Second***, the principal outstanding recommendations were that: (i) POL should carry out an investigation into the issue of remote access to Horizon data (which Tim Parker intended would be done by Deloitte); (ii) POL should carry out an investigation into unmatched balances on POL's general suspense account (which it was again intended would be done by Deloitte); and (iii) POL should review those cases where theft and false accounting were charged simultaneously to establish whether there was sufficient evidence to mount the theft charge (which review was already being undertaken by Brian Altman QC).

420.3. ***Third***, all three recommendations overlapped with issues in the group litigation, and there were therefore three obvious reasons why Mr Parker should not commission the relevant reviews to be conducted on his behalf:

(i) It would be necessary for the three points raised by Jonathan Swift QC to be investigated in the course of the litigation. Running two parallel sets of investigations would be costly and could cause difficulties if they reached differing conclusions. Further, carrying out the investigations in the context of the litigation would likely have the advantage of speed and the conclusions reached being robustly tested in court.

(ii) If the investigations were conducted by Tim Parker there was a greater risk that this work would not be privileged (since the investigations would arguably not be conducted for the purposes of litigation but for some other purpose).

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(iii) The risk identified at (ii) above was likely to be compounded by the fact that Mr Parker would wish to provide the outcome of the investigations to the Government, which I thought might lead to the loss of any privilege that might otherwise have been asserted.

420.4. ***Fourth***, therefore, whilst there was an element of "*political background*" (in that I was informed that Tim Parker had made a political commitment to see the Swift Review recommendations through), POL's interests in defending itself in the litigation meant that a different approach was appropriate and justified.

420.5. ***Fifth***, if Tim Parker's review was to cease, POL would have to reckon with the risk that the Swift Review recommendations might not ultimately be achieved (or be fully achieved) through the litigation: "*the work is either required for the litigation or it is not. We can't artificially squeeze work under the litigation umbrella just to cover off a political issue (or at least that is my view anyway)*".

420.6. ***Sixth***, however, in all likelihood the investigations which would be needed to aid the litigation would be "*largely duplicat[ive of] what TP would have been doing*". As such the proposal was to complete substantially the same work but for the purposes of contesting the litigation.

420.7. ***Seventh***, assuming Deloitte were instructed to proceed with one or both of the remote access and suspense account investigations, my preference would be to instruct a different expert as our witness in the litigation. This was because Deloitte's previous close involvement might result in their earlier instructions (which I had not seen) becoming disclosable. It might

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also call into question their independence for the purposes of CPR 35; in this regard, Tony Robinson QC had commented that if Deloitte were to be instructed as our expert witness, this could impact upon how closely we were able to work with them.

421. The views Tony Robinson QC expressed in the course of this email exchange were substantially the same as mine.[357] He agreed that he was "*concerned that the client should protect its interests as a defendant to this substantial piece of litigation*", in relation to which he thought the "*overriding [consideration was] the privilege point*". At the same time, he strongly agreed with the approach of subsuming the investigations recommended by Jonathan Swift QC into the group litigation workstreams: "*From a pure litigation perspective, these investigations are highly desirable – the less evidence we have to rebut the suggestion that remote data tampering at our/Fujitsu's end could be responsible for inflicting any false losses on any claimants, the more awkward our position is on this difficult point*" (emphasis in original).

422. Although, as I have said, I cannot recall the specifics of the discussion about the Swift Review at the conference the following day, it is evident from the letter which WBD subsequently provided to POL that: (i) "*Mr Robinson was asked to advise on, amongst other matters, whether Mr Parker should continue his review and/or implement Mr Swift's recommendations*"; (ii) his "*very strong advice*" was that the review should "*cease immediately*" (with earlier drafts of the letter speaking to the "*material risk that Mr Parker's review, and particularly the implementation of Mr Swift's recommendations by Mr Parker, would not be*

[357] POL00242402.

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covered by privilege");[358] though (iii) he recommended that POL should still implement the relevant recommendations of the Swift Review, albeit with that work being "*instructed and overseen exclusively by POL's legal team (or others instructed by POL's legal team) so as to maximise POL's prospect of asserting privilege*" (**POL00006601**).

423. Gavin Matthews took the lead on drafting this letter with some input from Rodric Williams, but he did circulate it to me for my approval, as is shown by **POL00041242**.

424. I believe the email exchange of 8 June 2016 fairly reflects my views at the time on the question as to whether Mr Parker should proceed with his planned method of implementing the Swift Review recommendations (i.e. under the auspices of the Chairman's Review). Like Tony Robinson QC, I thought it highly desirable that the investigations suggested by Jonathan Swift QC should still be carried out, but as part of the ongoing work on the group litigation so as not to lead to duplication of work, potential inconsistency of results, and (crucially) loss of privilege in the product of those investigations.

425. I do not recall giving advice directly to Tim Parker or any other representative of POL on whether to provide the Swift Review to the Board, UKGI and/or the Government. As I set out below, my (limited) involvement in advising POL on what information to share with UKGI and BEIS came later and was concerned with the provision of privileged documents arising out of the group litigation to those bodies. The searches my firm has carried out in this regard support my recollection.

[358] See Gavin Matthews' first draft of the letter, dated 16 June 2016: POL00242578.

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Advice on merits and strategy

426. I briefly summarise here the other advice that Tony Robinson QC gave during the conference on 9 June 2016 (cf. **Q72.1**). As my email of 24 May 2016 instructing him shows, and as I have explained above, the primary concern at this early stage of the litigation was whether POL should consent to the making of a GLO. POL also wanted to understand which (if any) of the terms which Claimants sought to the imply into the SPM contract should be admitted by POL.[359] I recall that these were the focal points of the conference on 9 June 2016, although I think POL was only looking for Tony Robinson QC to give his high-level thoughts on these matters to get a sense of our general direction of travel; there was no expectation that he would express any definitive views on the merits at this stage.

427. I have some limited recollection of the views Tony Robinson QC expressed about these points. In sum, I recall that he thought:

427.1. POL should accede to the making of a GLO in principle.

427.2. POL should not admit any of the Claimants' implied terms, but should admit two other implied terms (namely, reasonable or necessary cooperation and '*Stirling v Maitland*' terms).

427.3. Remote access was, in his view, a major issue. That was because (i) POL's previous misstatements on that topic damaged its credibility, and (ii) it ran the risk of extending the normal six-year limitation period.

[359] WBON0000995.

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428. It is this final point that substantially increased the importance of the remote access issue once the litigation began. Up to this time, there had been no substantiated example of remote access being the cause of shortfalls in branch accounts. With the focus of the Mediation Scheme being on establishing the cause of shortfalls, there were many more lines of inquiry (other than remote access) being raised by SPMs and Second Sight that were more likely to be probative of what had happened in branches (e.g. accounting for scratch cards, cash remittance processes, etc.). Also, limitation had not been in issue in the Mediation Scheme because POL had elected to open the scheme up to SPMs whose claims might otherwise be time-barred. Once the litigation began, it was expected that many (perhaps even a majority of) cases would be outside the ordinary limitation periods and limitation defences would be raised by POL for the first time. So, the issue of remote access was, in my mind, of much greater significance once the litigation began because of its role in potentially extending limitation periods.

429. Beyond this, I do not recall that Tony Robinson QC provided much further advice on general litigation strategy at the 9 June 2016 conference. At this time, he was still getting up to speed with the case (he had only been instructed approximately two weeks' prior),[360] and we were still working our way through the lengthy LOC. He therefore only proposed to express his preliminary views.

(vi) Information-sharing with UKGI and BEIS (Q71)

Overview

[360] See by way of further background to Tony Robinson QC's early reading in: POL00140216.

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430. **Q71** asks me to consider **POL00041770**, and to describe any advice I gave "*on the issue of POL sharing information with UKGI/BEIS and any ways in which the same could be limited*". Other than one insubstantial occasion I do not recall having any direct interaction with UKGI or BEIS about the group litigation.[361] These relationships were managed in-house by POL, and it was not part of my role to advise POL on its strategy for dealing with UKGI and BEIS or its wider relationship with those bodies. My overall impression was that I was only aware of a fraction of communications between POL and UKGI / BEIS.

431. The nature of my involvement was that I advised, from time to time, on specific issues concerning the provision of information or documents relating to the group litigation to UKGI and BEIS. Invariably, this constituted advice on whether the sharing of a document, or of information, would result in a loss of privilege or confidentiality in the same. My focus was therefore not on *limiting* what POL exchanged with UKGI and BEIS, but on ensuring that proper controls were in place to prevent privilege being waived and to protect confidential and sensitive information. In my view, this was a fair concern on POL's part.

432. To the best of my recollection (and searches of my firm's file appear to confirm this), my involvement covered the following matters:

433. ***First***, I advised on an information-sharing protocol between UKGI, the Secretary of State for Business, Energy and Industrial Strategy and POL (the "**UKGI/BEIS**

[361] In early 2018, after Tom Cooper was appointed to the POL Board, he was briefed on the litigation by Jane MacLeod. I attended that meeting and there was a junior person from UKGI in attendance. I can also see from my calendar that Richard Watson of UKGI was listed as an attendee for a meeting on 11 April 2019 – I do not recall whether he attended that meeting or not. Searches of my email records show that in May 2019 I sent case summaries relating to the six Lead Claimants in the CIT to Tom Cooper, with UKGI staff in copy. This is the only email I have been able to locate directly between me and UKGI: WBON0000160.

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Protocol") that was drafted by POL, as I set out further below. This is the topic to which the email chain at **POL00041770** relates. The essential purpose of the protocol was to regulate the provision of information about the group litigation by POL to UKGI and the Secretary of State; to set out what would be shared, how, what UKGI and the Secretary of State could do with that material; and to ensure that documents provided under the protocol which were privileged remained so by establishing unequivocally that POL, UKGI and the Secretary of State shared a common interest in the litigation.

434. ***Second***, I was sometimes asked to advise on the day-to-day application of the UKGI/BEIS Protocol. For example, I confirmed to Rodric Williams that copies of the expert reports for the Horizon Issues Trial could be shared with UKGI pursuant to the protocol.[362] In another instance, I made changes to a briefing note which POL proposed to send to UKGI on the impacts of the Common Issues Judgment – reformatting it as a note of advice to POL – to ensure that it would attract privilege and retain it under the UKGI/BEIS Protocol (and this meant that POL could be freer in what information was included in the note).[363] More generally, I was occasionally made aware of briefings to be given to UKGI and the Secretary of State under the Protocol and was sometimes asked for my comments,[364] but was not normally involved in drafting them.[365] In particular instances where WBD had the best handle on the underlying facts and matters, POL would occasionally ask WBD to draft material that POL intended to provide

[362] WBON0000648.
[363] WBON0000662; cf. POL00023809 which concerned a similar briefing to BEIS, albeit one prepared by a non-lawyer which would therefore not attract legal advice privilege.
[364] See, by way of example, in relation to one of those briefings, which was forwarded to me for comment on 8 June 2018, I recommended that additional technical controls were put in place to avoid some of the risks of inappropriate onward use, e.g. conversion to PDF, the addition of password protection, and so on: POL00024241.
[365] See, by way of example, POL00041825.

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to UKGI under the Protocol. For example, I prepared a draft email to UKGI providing an update on POL's application for security for costs[366] and WBD also worked on a draft paper for a litigation briefing that UKGI attended on the topic of the appeal of the CITJ on 11 April 2019 (though it is not clear from my firm's records who in fact sent the final version to Jane MacLeod).[367]

435. ***Third***, POL would also sometimes seek WBD's input on factual matters to be relayed to UKGI or BEIS where we were closest to the material – for example, information on timetabling[368] and the costs of the litigation.[369]

436. ***Fourth***, we occasionally advised on the sharing of other information or documents not covered by the UKGI/BEIS Protocol. For example, I advised that the draft Common Issues Judgment could not be sent to UKGI whilst under embargo (notwithstanding the Protocol).[370] This was later also applied to the Horizon Issues Judgment.[371]

437. ***Fifth***, matters would sometimes come to my attention that I would (on rare occasions) flag with POL's in-house legal team as being of possible interest to various stakeholders, including UKGI and BEIS. For example, I queried on 31 May 2018 whether UKGI should be informed of the Claimants' first aggregated claim valuation of £80 to £90 million, which featured in their skeleton for the CMC on 5 June 2018. Jane MacLeod responded in the affirmative and prepared a draft note to that end.[372]

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[366] WBON0001306.
[367] WBON0000705.
[368] WBON0001249, WBON0001417, WBON0000691 and POL00023301.
[369] WBON0001643.
[370] WBON0000641 and WBON0000647.
[371] WBON0000719.
[372] WBON0001248.

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Drafting of the UKGI/BEIS Protocol

438. **POL00041770** is an email chain dated March to May 2018 which records (in part) the negotiation of the UKGI/BEIS Protocol. I note that I am not an addressee nor am I copied into a number of the opening emails, which are external communications between UKGI and POL. I have no independent recollection of this specific email chain or of the details of how the UKGI/BEIS Protocol came to be drafted, but I have a general recollection of the protocol itself and have reviewed my email records in order to answer **Q71**.

439. To situate **POL00041770** in the context of what I knew and had advised upon at the relevant time, the background to the UKGI/BEIS Protocol was that, prior to 2018, there were some concerns on POL's side that sharing certain information with UKGI and/or BEIS could lead to the loss of legal professional privilege, or otherwise to the uncontrolled dissemination of sensitive information. As to my direct involvement in advising on such matters (which was limited):

439.1. On 8 January 2017, Mark Underwood of POL emailed me asking me whether he could share with UKGI a few short paragraphs which I had drafted in December 2016 to go to POL's Board by way of update ahead of the GLO Hearing, which was listed for 27 January 2017. I advised against that course of action as "*that email contain[ed] privileged information and sharing it [might] well waive that privilege*". I copied in Rodric Williams in case he had a different opinion to my own. Rodric Williams' response indicated that he fully shared my concerns:[373]

> *"To protect privilege we must not share any comms from our lawyers (internal or external), or any other documents prepared*

[373] WBON0001068.

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> *in connection with this litigation, beyond those in Post Office with a "need to know". This includes our shareholder or its representatives in government, and applies even where the comms/documents appear benign."*

However, Rodric Williams said he was happy to set up a call with UKGI covering any specific enquiries they might have. I was not part of that call (if it happened, which I cannot speak to).

439.2. Later, on 17 July 2017, Melanie Corfield (POL Communications Team) sent me two draft speaking notes for Tom Moran (Chair of the Steering Group) for calls he was due to have with NFSP and BEIS the following day. I advised the deletion of certain part of those speaking notes, in particular relating to POL's future expectations or intentions, because it was "*unclear whether th[o]se meetings would be covered by legal privilege*".[374]

440. It appears from **POL00041770** that on 23 February 2018 Patrick Bourke of POL emailed Elizabeth O'Neill (UKGI), referring to a prior meeting between them in which they had discussed the need for an appropriately structured flow of information to UKGI in respect of the group litigation. This is the first email in the chain. I did not attend that meeting, nor was I copied into Patrick Bourke's email. I can see that in response on 1 March 2018, Elizabeth O'Neill attached a standard form protocol that she says she would be happy to amend and make bespoke (again, I am not in copy).

441. The next email in the chain is by Rodric Williams on 27 March 2018, suggesting that the information flow should primarily be conducted through (i) UKGI's

[374] WBON0001179.

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representative on the POL Board and Board Subcommittee, and (ii) regular meetings, with provision of other documents to be considered on a case-by-case basis, and attaching a revised protocol reflecting this.

442. In the interim, i.e. between 1 and 27 March 2018, my advice had been sought in relation to this topic as follows:

442.1. On 21 March 2018, Jane MacLeod emailed me and Rodric Williams seeking our views on standard form protocol circulated by Elizabeth O'Neill on 1 March.[375] Rodric Williams initially picked up looking at that document.[376]

442.2. I followed up with Rodric Williams on 22 March 2018 asking if he needed any input from WBD on it. I reiterated that I was primarily concerned to avoid privilege being waived in POL's documents.[377]

442.3. It appears from my email records that some at least two calls took place on 22 and 23 March 2018 between Amy Prime and Rodric Williams on this subject; it is possible that I attended the latter, but I cannot be sure.[378]

442.4. On 24 March 2018, Rodric Williams shared a revised proposed protocol with me, Amy, Jane MacLeod and others at POL.[379] He asked Amy and me to consider in particular the background section and Appendix B ('Obligations in relation to confidential information'), to "*see if [this went] far enough for privilege purposes in establishing a common interest in both the litigation and the need to maintain confidentiality in the material we*

[375] POL00041684.
[376] WBON0000524.
[377] POL00041687.
[378] WBON0000525 and WBON0000528.
[379] POL00041695; POL00254174.

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[might] be sharing…". My response was broadly that it "*[l]ook[ed] good*", though I advised that the background section ought to capture other issues covering the same subject-matter as the group litigation.[380]

443. As above, on the **POL00041770** email chain, Rodric Williams circulated his revised proposed protocol to UKGI, observing that information about the litigation (including legal advice) would principally be received by Tom Cooper on UKGI's and BEIS' behalf, with POL to provide UKGI's and BEIS' lawyers with regular updates in meetings, and provision of documents otherwise to be considered on a case-by-case basis.

444. Helen Lambert (UKGI) responded with a counterproposal, expressing the view that it would be disproportionate and inexpedient to assess whether to share information other than to Tom Cooper and via legal meetings on a case by case basis. Although I was still not in copy at this point, Jane MacLeod forwarded me Helen Lambert's emails on 20 April 2018.[381]

445. On 21 April 2018, I responded to Jane MacLeod with some comments on the UKGI Protocol in the following terms:

> *"The amended protocol gives UKGI unfettered access to information about the Group Litigation. From a privilege perspective, that could still be workable – privilege should still apply to the information. The risk is a practical one – the more information that is allowed to flow to UKGI, the greater the risk of an accidental release of privileged material.*
>
> *UKGI have also significantly expanded POL's reporting requirements, in terms of frequency and level of detail. They also want much of this in writing rather than verbally. This could be done but it would very be burdensome. This litigation changes shape frequently and this could lead to weekly / fortnightly written reports. If we could water down one*

[380] POL00041697.
[381] WBON0001236.

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> *aspect, I would go for the need to report in writing – that takes up the most time and presents the greatest risk of a leak."*[382]

446. Thereafter Jane MacLeod, Rodric Williams and I worked on a further revised Protocol.[383] The three principal changes I recommended were: (i) the principle that provision of privileged information should be dealt with on a case by case basis should be reintroduced; (ii) the Secretary of State should be a party to Appendix B, so that he would be bound by the requirements of that appendix in respect of any confidential information received under the Protocol; and (iii) adding a provision to clarify that privileged information would not be disclosed in response to any FOI request.[384]

447. The revised Protocol was sent to UKGI on 2 May 2018 (**POL00041770**). Elizabeth O'Neill of UKGI responded on 11 May 2018, stating that in her view the parties were "*still a long way apart*" (**POL00041770**).

448. **POL00041770** shows that at this point, the chain was forwarded to me and a call was set up between me, Rodric Williams and Patrick Bourke. With reference to **Q71.2** of the Request, I have no recollection of that call, however I have an email from Patrick Bourke to Jane MacLeod summarising what we had discussed and agreed. I have no reason to doubt that his summary is a fair reflection of what passed:

> *"We're all in the same place - ours is not an objection on principle, but is borne of understandable concerns about how information is/would be handled by UKGI/BEIS.*
>
> *On that basis, the 4 of us discussed what it would take to give us greater confidence, and some obvious suggestions include named people at*

[382] POL00041760.
[383] WBON0001240; WBON0001241.
[384] WBON0001241.

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> *UKGI/BEIS, restricted channels etc. Rod, I think with Andy's help, is working something up as a starting point …"*[385]

449. Thereafter, on 14 May 2018, I sent Rodric Williams some proposed wording to feed into the draft protocol on which he was working: "*On reasonable request from the Secretary of State/UKGI, POL shall provide, within a reasonable period of time, the information necessary to allow them to comply with their statutory or legal duties.*"[386]

450. On 17 May 2018, Rodric Williams sent me his latest draft, which sought to reflect a call he had had with UKGI and incorporated a requirement for UKGI and the Secretary of State to maintain records of recipients of confidential information (as discussed at the call of 11 May, according to Patrick Bourke's note of that call). Rodric Williams asked for my comments;[387] I have not identified any email which shows I commented, so I surmise that I either did not do so or I telephoned him.

451. After this, my firm's records do not reveal any further advice by me on the draft protocol, which appears to have been finalised between POL and UKGI without any further input from me.[388]

M. THE GROUP LITIGATION – EARLY WORK

PART II – EARLY INVESTIGATIONS; PREPARATION OF THE LETTER OF RESPONSE AND GENERIC DEFENCE (Q73 to Q75, Q89)

[385] POL00041772.
[386] WBON0001244.
[387] WBON0001245.
[388] WBON0001251; WBON0001648.

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452. This section addresses the work which my team and I undertook in order to prepare:

452.1. POL's LOR pursuant to the Practice Direction on Pre-Action Conduct, served on 28 July 2016; **POL00110507** (**Q74**).

452.2. The Generic Defence, served a year later on 18 July 2017 (**Q75**). However, this section does not address the Inquiry's **Q78** concerning POL's pleadings in relation to the KELs database (which is instead addressed below in Section N).

453. In order to set the LOR and Generic Defence in their proper context it is necessary to describe some of the investigations which were undertaken beforehand. As such, the subsections below on the LOR and Generic Defence also include my response to **Q73**, as well as information on the investigative work undertaken be Deloitte prior to service of the Defence. Lastly this section addresses the Inquiry's **Q89**, concerning the report Deloitte produced in September 2017, shortly after service of the Generic Defence.

(i) The Letter of Response (Q73 to Q74)

Overall approach – division of labour and sign-off process

454. The **LOR** (**POL00110507**) was the product of around three months of dedicated work on the part of myself and my team, with input from Counsel, POL and relevant external parties (such as Deloitte and Fujitsu). For that reason, it is impractical to attempt to exhaustively set out my involvement in its drafting and any advice I gave to POL as to its response. I summarise what I believe are the key points below.

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455. The drafting of the LOR was broken up into sections that were assigned to particular members of my team at WBD to investigate and/or draft;[389] save where Counsel drafted sections of the LOR, it was WBD (led by myself) that held the pen. I was assisted by Tom Porter, Amy Prime, Paul Loraine, Andrew Pheasant, and Jonny Gribben.

456. In essence, my role was to coordinate the whole process of drafting the LOR. In particular:

456.1. I managed the programme of work involved in preparing the LOR to ensure that drafting and review deadlines were met by the WBD team and others.[390] By way of example, a first draft of the LOR was produced and sent to Rodric Williams for his review on 27 June 2016.[391]

456.2. Where my team had queries or required advice as to strategy in relation to their assigned sections, I was the main point of contact. Where appropriate I made decisions on how to respond to parts of the LOC.[392] I oversaw legal research conducted by my team and provided comments on their research notes.[393] Where I came across any information that I felt was relevant to the drafting of the LOR I fed that to the relevant members of my team.[394]

456.3. I took instructions from the POL legal team throughout, and, for decisions that needed to be made by the Steering Group, WBD prepared papers

[389] POL00242335.
[390] See for example: POL00242335 (workplan as at 6 June 2016); POL00243124 (workplan as at 8 July 2016).
[391] WBON0001019.
[392] WBON0000431.
[393] WBON0000427.
[394] For example, in relation to the Suspense Account bug, see WBON0000424.

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which outlined the decisions that had to be made and our recommendations.[395] I oversaw these papers which reflected my recommendations for the best course of action (as well as seeking the input of the Counsel Team),[396] particularly for handling trickier points in the LOR from a commercial or tactical standpoint.

456.4. I liaised with Counsel where their input was required to draft or review sections of the LOR. Throughout the process I worked closely with our Counsel Team, Tony Robinson QC and Owain Draper, to discuss the developing draft and our factual and legal analysis.[397] Counsel held the pen on specific sections of the LOR which involved more complex legal points, namely Section 4 (legal duties) and Section 6 (heads of claim).[398] I also liaised with Brian Altman QC in relation to his review of historic charging decisions by POL as this was relevant to the misfeasance and malicious prosecution claims intimated in the LOC and he looked over the relevant sections of the LOR in draft.[399] I deal further with Brian Altman QC's review below at §§458-465 in the context of **Q73**.

456.5. My team and I also obtained input from Fujitsu and Deloitte on parts of Section 5 (concerning Horizon defects, and data integrity and remote access), Deloitte having by now been instructed to prepare an interim report on the remote access point in advance of the deadline for the LOR.[400] I deal with (i) Deloitte's preliminary investigation, and (ii) the

[395] See for example: POL00243114.
[396] WBON0001025; POL00025373.
[397] See for example WBON0000426; WBON0001021; WBON0001024; WBON0000432; WBON0001031; and WBON0000434.
[398] WBON0001025.
[399] WBON0001023; WBON0001033; WBON0001047.
[400] WBON0000423, POL00041238.

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drafting of the data integrity and remote access section further below at §§466-472 and §§473-478, respectively. Similarly, we consulted extensively with individuals within POL and other organisations who had previously been involved (for example, CMS Cameron McKenna) in order to gather relevant factual information. That input was largely obtained by the individuals within my team who were responsible for the relevant sections.[401]

457. The process for POL to review and approve the LOR was carefully coordinated. At the Steering Group meeting on 20 July 2016 (where the first draft of the LOR that was ready for the Steering Group's review was discussed), it was agreed that: "*Where a statement of fact is made in the LoR, BD are to ascertain its provenance*".[402] Input was therefore sought from key subject matter experts at POL, together with the in-house legal team and the members of the Steering Group (who themselves had extensive knowledge of the underlying subject matter relevant to their parts of the business). The process of review and sign-off by POL proceeded, in short, as follows:

457.1. An initial draft of the LOR was produced and sent to Rodric Williams for review on 27 June 2016.[403] Thereafter the draft underwent further revision by the WBD and counsel teams, and the first working draft that was ready for the Steering Group's review was circulated to POL on 16 July 2016.[404] That draft was substantially complete but for two sections, namely (i) data integrity and remote access (as enquiries with Deloitte and Fujitsu were

[401] See, by way of example, WBON0001028.
[402] POL00243355.
[403] WBON0001019.
[404] WBON0000435.

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ongoing at this point, as explained further below); and (ii) the GLO, as this remained the subject of ongoing correspondence with Freeths.

457.2. Separately and in parallel, on 18 July 2016 I circulated the draft LOR to Kathryn Alexander and Shirley Hailstones, who had led POL's in-house investigation team under the management of Angela Van Den Bogerd during the Mediation Scheme (see §140.5 above), and had deep experience of working in branches and operating Horizon. Their involvement was sought in response to the perceived need to validate even basic facts relied upon in the LOR, as is reflected in my covering email to them: "*[p]lease err on the side of caution – if you're not sure if something is correct, please flag it*."[405]

457.3. On 19 July 2016, I sent the draft LOR to Jessica Madron (Head of Legal at POL), drawing her attention to particular sections of the LOR concerning contractual issues, in particular the terms we accepted were implied into the SPM-POL relationship.[406]

457.4. Each member of the Steering Group was to review the sections marked for their attention in a spreadsheet I attached to my covering email (which allocations correlated with the sections of the business each member was responsible for).[407]

457.5. The above individuals responded with their comments which I collated with the assistance of the WBD team.

[405] WBON0001038.
[406] WBON0001036; see further our follow-up exchanges at WBON0001048 and WBON0001054.
[407] WBON0000436.

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457.6. The GLO section, as approved by Tony Robinson QC, was circulated to the Steering group for comment on 25 July 2016,[408] and subsequently fed into the draft. I discuss the process by which the data integrity and remote access section was drafted below, but in short it was finalised on 27 July 2016 and approved by Tony Robinson QC on 28 July 2016.

457.7. The complete, finalised draft of the LOR was circulated to the Steering Group for on 27 July 2016 (**POL00041259**), and Jane MacLeod gave instructions on behalf of POL to send it the following day.[409]

Investigations undertaken – Brian Altman QC's Review

458. By July 2016 POL had either completed Tim Parker's implementation of the Swift Review recommendations or migrated them to be done within the group litigation preparation work (see above, §§417-423). Brian Altman QC's review (which was commissioned to implement Recommendations (1) and (2) of the Swift Review) was ongoing at that time, and his work was therefore carried on and completed in the context of the group litigation to help POL to understand the risks around any possible malicious prosecution claims that the Claimants may bring.

459. The form of his review was to examine the prosecutions of a number of individual SPMs who had been charged with theft and false accounting simultaneously, in order to identify (i) whether there had been insufficient evidence to charge theft such that the relevant individuals had been improperly pressured to plead guilty to false accounting, and (ii) whether there was a pattern of behaviour on POL's part in this respect.

[408] WBON0001050.
[409] WBON0001061

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460. In order to inform our response to parts of the Claimants' LOC alleging malicious prosecution and misfeasance in public office, Brian Altman QC was asked to complete his review if possible in advance of the LOR and failing that, to cast his eye over the relevant sections of the draft LOR (which he did).[410]

461. My email records indicate that Brian Altman QC sent his advice initially on 25 July 2016.[411] I have no specific memory of this, but it is evident that I reviewed it at the time, as I responded the following day with one query on the substance of his advice that overlapped with one of the civil claims advanced in the group litigation, and a request regarding its form (namely, that he reflect within it that he had originally been commissioned by Tim Parker but was now instructed to continue his review for the purpose of assisting POL's defence in the group litigation). My query on the substance was whether POL could properly maintain that it was not bound by the Code for Crown Prosecutors in the LOR, without opening itself up to an argument in the criminal sphere that proceedings brought by it were abusive.[412] Brian Altman QC responded in the affirmative, provided that "*there was no wholesale policy to disapply the Code as and when it suited POL's own ends*" (which in his view, there was not).[413] He provided me with a finalised version of his advice an hour or so later.[414]

462. Upon receiving the finalised version on 26 July 2016, I circulated it to Rodric Williams, Jane MacLeod, Patrick Bourke and Mark Underwood at POL, summarising his conclusions (**POL00022754**; **POL00112884**).[415] By **Q73**, I am

[410] See above, §456.4.
[411] POL00408673.
[412] WBON0000444.
[413] POL00408673..
[414] WBON0000445; WBON0000446.
[415] I do not understand the reference in **Q73.1** to the advice being redacted. I do not recall there being a redacted version of this advice and according to my records, the version that I reviewed

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asked to comment on those documents. I do not now specifically recall reviewing the advice, though I broadly remember Brian Altman QC doing this work, preparing the report, and concluding that he had not seen any evidence of malicious prosecutions. I recall that my general view was that the conclusions emerging from his review – namely that the primary and secondary allegations against POL (as recorded in **POL00022754**) were misplaced – aligned with and supported the approach we had taken when drafting the LOR. Beyond this my thoughts on Brian Altman QC's advice at the time would have been as set out in **POL00022754**.

463. Specifically, I am asked to comment on a quote taken from paragraph 208 of the advice which reads: "*but that POL has been using the criminal justice system as a means of enforcing repayment from offenders by charging and pursuing offences that will result in confiscation and compensation orders*". I recall that occasionally people within POL would talk about using private prosecutions as a means to recover debts owed, but POL's legal team (in particular, Rodric Williams) repeatedly pushed back on this, and were adamant that prosecutions could not be used in this way and that each one needed to be brought on its own merits.

464. Reading paragraphs 208 to 211 of the advice, in my view the above quotation in the Request has been truncated and the effect of that is to take it out of context. My reading of paragraph 208 is that Brian Altman QC was laying out the background that other persons had criticised POL for using the criminal process

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and circulated was unredacted. Further, with reference to **Q73.4**, I do not recall briefing anyone else on the advice beyond the email in **POL00022754**. My firm's records show that I sent the advice to Paul Loraine, an associate in my team who had assisted with drafting Brian Altman QC's instructions (WBON0000470); and that I also asked Amy Prime to add it to our internal file (WBON0000450).

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to recover monies owed to it. I note that his footnote 25 cites the Claimants' LOC as a source for this. I did not read this paragraph as saying that these were Brian Altman QC's thoughts, and that he was criticising POL for this. My reading of paragraph 208 is then consistent with the following paragraphs where Brian Altman QC observed that (i) it is appropriate to consider the orders that might follow conviction (including confiscation orders) when indicting offences, and (ii) in each of the 8 cases he reviewed, there was a proper legal and evidential basis for seeking confiscation orders. In my opinion, my email accurately reflected the advice on this point as I understood it (i.e. in the paragraph "*The secondary allegation (that offences… follow conviction)*").

465. In my assessment, therefore, the part of Brian Altman QC's advice to which I am referred (and indeed the advice as a whole) did not mandate further action from the perspective of defending threatened malicious prosecution claims in the group litigation. That this was my view at the time is reflected in the final paragraph of my email. The approach we were taking in the LOR was already consistent with Brian Altman QC's findings in his review, so no changes to relevant sections of the LOR were needed.

Investigations undertaken – remote access

466. Following Tony Robinson QC's advice in conference on 9 June 2016, WBD instructed Deloitte on a privileged basis to investigate the remote access point – in the short term, with a view to assisting POL in formulating its response to the Claimants' LOC. To this end, Deloitte was to produce a preliminary report by 28

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June 2016, with further testing to be conducted thereafter to provide reassurance and inform the conduct of POL's defence to the litigation thereafter.[416]

467. The background in terms of what was then understood to be the case (at least by me) in relation to remote access is set out above at §§202 ff taken together with §§299-302.

468. Deloitte provided a draft of their preliminary report on 8 July 2016.[417] Deloitte prepared this report having met with people at POL and Fujitsu, reviewed documentation about Horizon and undertaken various testing on the system (as more particularly detailed in the report itself). WBD did not set the scope of those enquiries or oversee them; for example, WBD did not attend the meetings between Deloitte and Fujitsu. In my view, these were enquiries into the deep technical details of Horizon, and Deloitte had been engaged because they had the technical expertise to critically challenge the information being provided by POL and Fujitsu.

469. In relation to Balancing Transactions, the report identified (inter alia) that:

469.1. Balancing Transactions are "*exceptional processes used by Fujitsu support staff to correct exceptional errors in system processing/fix issues or bugs in the recording of data*" the use of which "*is very rare*".

469.2. Writes by Fujitsu support staff to the BRDB to implement a Balancing Transaction flow to the Audit Store and such staff "*cannot amend the related audit files*". They can only insert Balancing Transactions and "*will not have any privileges to update or delete records in the database*".

[416] WBON0001016.
[417] WBON0001644; POL00243100.

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469.3. The known lifecycle of the system is "*predominantly limited to HNG-X due to previous Audit Store retention limitations*".

469.4. In Horizon Online "*there have been several hundred instances of Balancing Transactions*", but only one (the previously identified use of a Balancing Transaction in 2010) was to address a discrepancy caused by a bug, with the others all being to unlock stock units.

470. In relation to privileged user access, the draft preliminary report confirmed that: "*[a]t various layers of the Horizon infrastructure there exist accounts with privileged access rights which could be used to modify or insert data relevant to transactions at branches should they not be adequately controlled*". This could include the unauthorised use of the Balancing Transaction process, for example by "*a superuser account*" on the Oracle DB (this being "*the nucleus of the [BRDB]*" and Balancing Transactions inserted in the way outlined above effectively being "*a specialised 'legitimised' way of using such Oracle access*" by Fujitsu Support). Further work was required to identify and assess the capabilities of privileged users to create, edit or delete branch accounting data in this and other ways (for example, within the Audit Store itself as identified previously).[418]

471. Whilst Deloitte's account of the conventional use of the Balancing Transaction process was similar to what we had previously understood (albeit that it was not clear whether this or a similar functionality had existed in Legacy Horizon), its report crystallised that privileged users at Fujitsu with access to the BRDB could delete and modify existing transaction data. This was problematic for POL as it

[418] POL00243100.

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meant that its "*historic statements about not being able to edit or delete transactions appear[ed], at least on face value, to have been materially incorrect*" and this placed POL's limitation defences at risk and created a basis for unwinding previously settled cases.[419]

472. I conveyed these findings to POL, noting that privileged access to the BRDB "*is subject to strict controls and Deloitte's current understanding is that it would not be possible to delete or edit transactions without leaving a footprint in the audit trail*", as well as Deloitte's view that "*(i) this type of access is not unusual and (ii) the likelihood of someone actually making such changes is extremely low*". I advised that it was not yet clear what impact, if any, there could be or had been on branch accounts (including those of the Claimants) as a result of these types of access rights, and that further investigative work by Deloitte would be required.[420]

Drafting and sign-off of the remote access section

473. By **Q74.3** of the Request, I am asked to explain the basis on which paragraph 5.16 of the LOR (**POL00110507**) was drafted and approved.

474. Paragraph 5.16 sets out the four ways in which (it was then thought) POL or Fujitsu could influence branch accounting data. In the LOR as sent, it reads:

> *"5.16 Transactions which make up the branch accounts are generally generated in branch. There are however four ways in which Post Office (or Fujitsu on Post Office's instruction) can influence those accounts:*

[419] WBON0000430. In addition to cases being settled through the mediation scheme, POL's Network Transformation programme required SPMs moving to the new contract structure to release historic claims against POL. It was therefore expected that many Claimants in the litigation would be subject to settlement agreements and would be looking for a way to unwind those agreements.
[420] WBON0001030.

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5.16.1 ***Transactions originating at Post Office***. *A number of "transactions" are generated by Post Office and sent to branches, namely transaction corrections, transaction acknowledgements and remittances of cash / stock into a branch.[53] A key feature of these transactions is that they must be approved in branch (by the postmaster or his assistants) before they form part of the branch accounts.*

5.16.2 ***Global Users***. *Global Users are setup by default on Horizon in every branch. These are user accounts for Post Office staff to use when undertaking activity in a branch, such as training or audits. It is possible for these Global Users to conduct transactions within a branch's accounts. However, this access is only possible if the user is physically in the branch using a local terminal and the transactions are recorded against the Global User ID.[54]*

5.16.3 ***Balancing transactions***. *Fujitsu (not Post Office) has the capability to inject a new "transaction" into a branch's accounts. This is called a balancing transaction.[55] The balancing transaction was principally designed to allow errors caused by a technical issue in Horizon to be corrected: an accounting or operational error would typically be corrected by way of a transaction correction. A balancing transaction can add a transaction to the branch's accounts but it cannot edit or delete other data in those accounts. Balancing transactions only exist within Horizon Online (not the old version of Horizon) and so have only been in use since around 2010.[56] Their use is logged within the system and is extremely rare. As far as Post Office is currently aware a balancing transaction has only been used once[57] to correct a single branch's accounts (not being a branch operated by one of the Claimants).[58]*

5.16.4 ***Administrator access to databases***. *Database and server access and edit permission is provided, within strict controls (including logging user access), to a small, controlled number of specialist Fujitsu (not Post Office) administrators. As far as we are currently aware, privileged administrator access has not been used to alter branch transaction data. We are seeking further assurance from Fujitsu on this point.*

[53] See paragraph 7.16 onward in Second Sight's Part One Report for a more detailed explanation of these processes.

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> *[54] Strictly speaking, the Global User ID should be used to generate a new unique ID for the Post Office staff member and the new ID would then be used for training, audits, etc.*
>
> *[55] The use of balancing transactions was explained to Second Sight and is referenced in its Part Two Report at paragraph 14.16.*
>
> *[56] Post Office is making enquiries as to whether something akin to a balancing transaction existed in Horizon before the upgrade in 2010.*
>
> *[57] This was in relation to one of the branches affected by the "Payments Mismatch" error described in Schedule 6.*
>
> *[58] Several hundred other balancing transactions have been used but not in a manner that would affect branch accounting. These were generally used to "unlock" a Stock Unit within a branch."*

475. This text was approved by me and Tony Robinson QC, and was signed off by the Steering Group, POL senior executives, and Jane MacLeod. As I explain further below, Tony Robinson QC and I would have preferred a clearer and more direct statement that administrator or 'privileged user' access could potentially be used to change branch accounting data (and the Steering Group was aware of this). Nevertheless, we were satisfied that the above text (together with the footnotes) reflected the factual position as we understood it to be following receipt of Deloitte's preliminary report whilst allowing for the fact that there were a number of respects in which the picture was not settled and further investigations by Deloitte were required (for example, as to whether there was an equivalent of the Balancing Transaction tool in Legacy Horizon and if so, whether this had ever been used; and likewise, whether administrator access to the BRDB had ever been used in practice to influence branch accounts).

476. In order to give the Inquiry a full picture of how paragraph 5.16 came to be drafted (including who contributed to the wording and what considerations were in play during the review and sign-off process), I have reviewed relevant documents in my firm's file and can comment as follows:

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476.1. Based on my firm's records, after receipt of Deloitte's interim report I worked up a preliminary draft which was structured around the various forms of remote access SPMs had alleged during the Mediation Scheme, identifying what was and was not possible by reference to those allegations.[421] I sent this to Tony Robinson QC on 20 July 2016[422] and he gave a clear steer that we needed to plainly and separately identify the different types of remote access that we now understood to be possible (i.e. as opposed to responding by reference to the various allegations that SPMs had previously made about remote access).[423]

476.2. I accepted Tony Robinson QC 's advice and produced a restructured and more detailed draft on 21 July 2016.[424] This ended up forming the basis of what ultimately became paragraph 5.16 in the LOR; indeed, regarding 'transactions originating at Post Office', 'Global Users', and 'Balancing Transactions', there is little difference between my 21 July 2016 draft and the eventual LOR.[425] I focus therefore on the description of administrator access. As to this, my draft of 21 July 2016 read:

> *"**Access to databases**. There are a small number of persons at Fujitsu (not Post Office) who have special permissions to access and edit, within strict controls, the core databases that sit behind Horizon. Use of these permissions is logged and so it is believed that there would be an audit trail of any activity undertaken using these permissions. Enquiries are continuing as to whether this*

[421] WBON0001041.
[422] WBON0001040.
[423] WBON0000438.
[424] WBON0001042; WBON0001044.
[425] The main differences being that, in relation to 'transactions originating at Post Office', a sentence to the effect that Transaction Corrections etc are an everyday occurrence was removed; and in relation to 'Balancing Transactions', the underlined words were added to "*[t]heir use is logged within the system and is extremely rare*", and a footnote was added to reflect that enquiries were being made to confirm whether or not a similar functionality existed within Legacy Horizon. These minor edits were all suggested by Tony Robinson QC on 21 July 2016: see his draft at POL00029997, and his covering email at POL00408665.

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> *access could be used to affect a branch's accounts but we currently understand that, even if this is possible, it would be a difficult and time consuming process. Moreover, given the above methods open to Post Office to deal with errors in a branch's accounts, the use of this access to amend a branch's accounts would be extremely rare – indeed, Post Office is making enquiries as to whether it has ever happened."*[426]

476.3. Tony Robinson QC agreed this wording with only minor linguistic tweaks[427] (which, based on my emails, we discussed by telephone on 21 July 2016 although I do not remember the call).[428]

476.4. I circulated our agreed draft to the Steering Group the same day in advance of a call that evening to discuss the draft LOR.[429] In my covering email, I asked the Steering Group to bear the following in mind when reviewing the wording:

> *"1. In light of comments yesterday, we've provided a slightly longer explanation so to hopefully present this issue in a better light.*
>
> *2. Tony agrees with the current wording but has* ***reiterated the importance of dealing with this point candidly, even if that does cause some short-term pain****.*
>
> *3.* ***We do not yet have a 100% clear picture on some of the technical and operation issues on this topic. We therefore need to be careful not to overstate our case.*** *This draft wording will also need to be run past Deloitte / FJ"* (emphasis added).[430]

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[426] WBON0001044.
[427] Compare my 21 July 2016 draft (WBON0001044) with our agreed draft of the same date which I subsequently circulated to the Steering Group (POL00243366). Prior to our call on 21 July, Tony Robinson QC suggested that we could specify that POL had only recently become aware of privileged user access (cf. his draft at POL00029997). It is clear however that we ultimately decided against that addition.
[428] WBON0000439.
[429] POL00243366.
[430] POL00024801.

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476.5. When the Steering Group met on the evening of 21 July, I recall there being a lot of discussion about how POL should frame the 'privileged user' access point above. I remember there being disquiet on POL's part at the prospect of contradicting their previous public statements on this point (POL having previously denied it was possible to edit or delete transaction data).[431]

476.6. Following the call, Rodric Williams circulated the wording that the Steering Group landed on:

> "*Database and server access and edit permission can be provided, within strict controls, to a small, controlled number of specialist Fujitsu personnel. Use of these permissions is logged but rare. Enquiries are continuing as to whether this [particular form of] access could be used to affect a branch's accounts, and if so, whether this has happened*".[432]

476.7. I tweaked this by replacing "*can be provided*" with "***is*** *provided*" (emphasis added) in the first sentence, as by this point, Deloitte had confirmed the existence of privileged users at Fujitsu with this type of access. This reflected the strong advice I had received from Tony Robinson QC (and communicated to the Steering Group) that it was important to be as transparent as possible.[433]

476.8. I circulated an updated version of the data integrity and remote access section incorporating this revised wording to Fujitsu and Deloitte on the evening of 21 July 2016.[434] Given the approaching deadline for the

[431] As is also reflected in the Steering Group's email discussion preceding the meeting: WBON0000441. This chain also contains various alternative formulations suggested by different members of the group in the run-up to the meeting.
[432] POL00024876; words in square brackets added after the meeting by Mark Davies (POL's Communications Director), see: WBON0000440.
[433] POL00024876.
[434] WBON0001045 (Fujitsu) and POL00408671 (Deloitte).

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submission of the LOR, I asked both to revert with any comments by close of business the following day.

476.9. Mark Westbrook of Deloitte responded that the draft it "*[s]eems to reflect our understanding, although I'm not sure we got to the bottom of whether balancing transactions were available pre-Horizon online*".[435] By contrast, Fujitsu did not respond until 27 July 2016, the day before the LOR was due.[436] When they did so, they expressed the "*interim view*" that:

> *"we don't believe the key element regarding the sanctity of the Core Audit Process comes through in your proposed response and this remains the cornerstone of our inputs to date and the presentations we've done on this point in the past to Post Office and Bond Dickinson. … the Core Audit Process captures every submitted "basket" accurately and without error and cannot subsequently be changed but only added to (all such additions include details as to what created the addition etc. to create a full audit log)."*[437]

476.10. This was a frustrating response to receive, given it was raised shortly before the LOR was due to be sent and it was inconsistent with Deloitte's findings that privileged users at Fujitsu could delete and modify transaction data. I communicated to Jane MacLeod that I did not think that the "*disconnect in understanding*" between Fujitsu and Deloitte could be resolved before the deadline for the LOR had passed, and that (erring on the side of caution) we ought to prefer Deloitte's view and seek Fujitsu's sign-off only on other parts of the LOR.[438]

[435] POL00243580.
[436] WBON0000442; WBON0000447.
[437] WBON0000449.
[438] POL00023428.

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476.11. Meanwhile, those at POL continued to deliberate the proposed wording. There was continued unease (including among the General Executive) about contradicting POL's previously stated position, and about acknowledging that "*enquiries [were] continuing as to whether [privileged user] access could be used to affect a branch's accounts, and if so, whether this has happened*".[439] My advice was that POL would not have a complete picture of the situation before the deadline for the LOR but that I "*[had] in mind Tony's strong advice about being transparent on this point as far as possible*".[440]

476.12. A call was arranged for 27 July 2016 for the Steering Group to give me clear instructions on the wording for the LOR.[441] The finalised wording approved by the Steering Group was as follows (tracked against the earlier version circulated to Deloitte and Fujitsu):

> "***Administrator*** ~~*A*~~***ccess to databases***. *Database and server access and edit permission is provided, within strict controls (including logging user access), to a small, controlled number of specialist Fujitsu (not Post Office)* ~~*personnel*~~*administrators.* ~~*Use of these permissions is logged but rare. Enquiries are continuing as to whether this particular form of access could be used to affect a branch's accounts, and if so, whether this has happened.*~~ *As far as we are currently aware, privileged administrator access has not been used to alter branch transaction data. We are seeking further assurance from Fujitsu on this point.*"[442]

[439] See for example: POL00025320; WBON0000448; POL00024824.
[440] POL00024794.
[441] POL00024828.
[442] POL00357378. See emails from Steering Group members signing off: WBON0000452 (and my response WBON0000453); WBON0000454; WBON0000455; WBON0000456; WBON0001057. WBON0000456

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476.13. This revised formulation was then circulated to both Fujitsu and Deloitte after the Steering Group call.[443] Mark Westbrook responded that he was "*absolutely fine*" with these amendments.[444] Fujitsu responded later that day on the LOR but did not respond substantively on the draft wording around remote access.[445]

476.14. I forwarded the finalised wording to Tony Robinson QC, indicating that I had advised the Steering Group on the importance of transparency on the privileged user access point, and that I had indicated a strong preference for "*a more direct statement that the permissions could potentially be used to change branch accounts*" (as our previously agreed wording had been). Nevertheless, I felt that we could "*live with*" the client's preferred wording as it was sufficiently accurate and make clear that enquiries were continuing.[446]

477. In terms of final sign-off on the LOR, including paragraph 5.16 as approved by the Steering Group, I circulated a final draft on the evening of 27 July 2016 (**POL00041259**).

478. **POL00022663** is an email sent by Jane MacLeod to Paula Vennells and Alisdair Cameron on 28 July 2016 which I do not believe I have seen before (and similarly

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[443] POL00408686; WBON0001672 (Fujitsu) and WBON0000457 (Deloitte).

[444] WBON0000458. He added: added, "*I don't know if you could strengthen your position further in relation to 1.3.4 with wording to the effect of 'such database access being a necessary requirement of IT administration and support any IT system'. Or similar – to (correctly) normalise it.*" I responded that "*We toyed with that extra sentence but then thought that if it was very "normal" the question might be… Well why didn't POL/FJ know about it sooner? So we kept our powder dry on that one*" (POL00408699). This reflected my earlier advice to POL that all historic statements on remote access should be investigated, but that there was insufficient time to do that before the LOR was submitted: POL00024794.

[445] WBON0001055.

[446] POL00408688.

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its attachment **POL00022664** is an internal POL email chain which does not feature within my firm's files). I can see from **POL00022664** that Alisdair Cameron and Jane MacLeod had some reservations about the second and third sentences of the sub-paragraph on privileged user access, but that Jane MacLeod sought to reassure Alisdair Cameron and Paula Vennells that the proposed wording had been agreed by the Steering Group as necessary from a "*transparency*" perspective, otherwise POL might be "*challenged for under-stating a potential risk*". I do not have access to the rationale she attaches to that email, so I cannot comment on whether it coheres with my recollection of events. In **POL00022663**, Jane MacLeod refers to the description of privileged user access as having been arrived at by the Steering Group after "*much discussion*" (which I would agree with), and comments that the letter is ready for service subject to Paula Vennells' and Alisdair Cameron's comments. I infer that they approved the LOR since, as noted above, I received Jane McLeod's authorisation to serve the LOR later that day.[447]

(ii) The Generic Defence (Q75)

Overall approach – division of labour and sign-off process

479. POL's Generic Defence was served on 18 July 2017, around a year after the LOR. The Claimants had served their GPOC on 23 March 2017, although I was aware of its substance before then as they provided a draft GPOC in December 2016. As with the LOR, the drafting of the Generic Defence was a lengthy and involved process, supported by further detailed factual investigations. On 6 July

[447] WBON0001061.

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2017, the Claimants provided a draft Amended GPOC which was taken into account in the Generic Defence, meaning that there was no need for POL to make an amendment to the Defence when the Claimants' Amended GPOC[448] was formally served.

480. As is usual in significant civil litigation, the Generic Defence was settled by the Counsel Team (Tony Robinson QC and Owain Draper) with the WBD team playing a supporting role. It was therefore Counsel who ultimately determined the structure of the Generic Defence and made decisions as to the granularity of pleading.[449] I was involved in those discussions but was not drafting the document, and I followed Counsels' steers in this respect.[450]

481. In terms of the process by which the Defence was prepared and my involvement in that process (**Q75.1**), as with the LOR it is only feasible to set out the headline points in this statement. I believe these are as follows:

481.1. As noted above, in July 2016 Deloitte produced a preliminary report on remote access to assist with our response to the LOC. Thereafter they were instructed to continue with these investigations. Jonny Gribben led on this work, liaising with Deloitte, Fujitsu and POL as required. These investigations are, so far as relevant, described below at §§483-490.

481.2. On 14 February 2017, a Steering Group paper prepared by WBD collated a list of issues on which evidence was still required as they had "*so far garnered little attention or on which the position remain[ed] unclear*".[451] This was further refined when the Claimants' GPOC was formally served

[448] POL00250455.
[449] WBON0001081.
[450] WBON0001071.
[451] WBON0001677.

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on 23 March 2017. Work to investigate these matters was led by members of my team, who liaised with POL and external parties as necessary.[452] Kathryn Alexander and Shirley Hailstones at POL, in particular, worked with my team to investigate matters on which POL's input was required, since they had deep knowledge of POL's internal processes and the way branches operated (see above, §140.5 and §457.2).[453]

481.3. I largely supervised my team's work in this regard, but led (with Jonny Gribben) on progressing the investigation into the issue of unmatched balances on POL's general suspense account and the extent to which these could be linked with SPM shortfalls (this was the subject of Jonathan Swift QC's Recommendation (8)). A list of questions was prepared for Deloitte to consider and they were instructed in March 2017.[454] Their initial findings were produced on 16 May 2017;[455] I understood that there was some connection between POL's suspense accounts and branch accounts, and so an error in the suspense accounts could possibly cause an error to flow through to the branch accounts – although Deloitte's work had so far not reached that conclusion. They were instructed to continue with their work, the progress of which we kept under review.

481.4. The bulk of the drafting work was done in May and June 2017. Owain Draper produced a draft Opinion on the burden of proof (which was of central importance to the question of who was legally responsible for shortfalls in branches), which formed an important starting point for the

[452] WBON0000474.
[453] WBON0000478.
[454] POL00023448; POL00023449;
[455] WBON0001079; WBON0001080.

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Generic Defence. The Counsel Team sent me various outlines and drafts during this period which I reviewed and commented on. In support of their drafting work:

(i) The WBD team sent briefing notes to Counsel on the factual investigations that had been undertaken to date and carried out legal research as required.[456] Counsel were also provided with Freeths' response to a Request for Further Information we had made on 27 April 2017 when it arrived (in May 2017).

(ii) On 7 June 2017, a meeting took place between me, Counsel, and Elisa Lukas (WBD), and Kathryn Alexander and Huw Williams (who worked in Kathryn Alexander's team and who, I recall, was also a former SPM) at POL, so that Tony Robinson QC could speak with them directly about POL's branch operating practices.[457]

(iii) A meeting took place between me, Fujitsu, Counsel, and Elisa on 22 June 2017, for the purposes of understanding more about Horizon in relation to pleading certain points of the Generic Defence.[458] My expectation was that Gareth Jenkins would attend for Fujitsu along with Torstein Godeseth and Pete Newsome, but I was informed on 20 June 2017 that Pete Newsome had not invited him to attend. I asked Rodric Williams to communicate to Fujitsu that if Gareth Jenkins did not attend, they ought to "*be sure that Torstein w[ould] be able to answer the questions*."[459]

[456] See for example: WBON0001085; POL00249406; WBON0001116.
[457] WBON0000481.
[458] WBON0001112.
[459] WBON0001115.

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(iv) I, my team, and Counsel would regularly have calls to discuss the developing draft and exchanged comments by email.[460] Rodric Williams was kept abreast of developments and was sent partial drafts to review and comment on.[461]

481.5. A complete first draft was produced by Tony Robinson QC on 4 July 2017, which he sent to me for review.[462] In the week following that:

(i) I reviewed the points that Tony Robinson QC had left to be checked in that draft, some of which I asked Amy Prime and Elisa Lukas in my team to resolve, others I managed myself.[463] I also attempted a first draft of the executive summary section.

(ii) The draft was provided to Rodric Williams who returned his comments on 7 July 2017.[464]

(iii) Additionally, on 4 July 2017 Fujitsu[465] and Deloitte[466] were sent relevant extracts from the Defence dealing with Horizon for their review. I joined a call with Pete Newsome and Torstein Godeseth of Fujitsu on 7 July following which my team made some amendments to the draft which Fujitsu were then asked to further consider.[467] Deloitte and Fujitsu's input is (so far as relevant) considered further below at §§483-490, §§493-494, and §499.

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[460] See for example: WBON0000484; WBON0001126.
[461] WBON0001083; WBON0001121.
[462] WBON0000485.
[463] WBON0000487 and WBON0000489.
[464] WBON0001145; POL00249670.
[465] WBON0000491; WBON0000492.
[466] WBON0001128.
[467] WBON0001147.

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(iv) Relevant parts of the draft were circulated to subject-matter experts at POL to confirm their accuracy, including: Kathryn Alexander and Shirley Hailstones, who, as explained above, had assisted my team with various investigations in connection with the LOR (they were sent the description of the parties, POL's processes, and the NSBC Helpline);[468] and Gayle Peacock, POL's Head of Branch Support (who was sent the section concerning the NSBC Helpline).[469] After they approved these sections, Angela Van Den Bogerd was then sent them for a second-line review.[470] Kathryn Alexander's, Shirley Hailstones' and Angela Van Den Bogerd's input is considered further below in the context of paragraph 43 of the Generic Defence (§§500-509).

(v) My team fed in comments to a Master draft which I kept under review. Those comments that were received by 9 July 2017 were reflected in the draft. The updated version of the draft was provided to Counsel the following morning.[471]

481.6. On 12 July 2017, Tony Robinson QC circulated a complete draft which was ready for review and approval by POL.[472] This process was slightly complicated by the fact that we were still awaiting Deloitte's report on POL's general suspense account (which was relevant to our response to paragraph 38 of the Amended GPOC), as I set out further below. The review and sign-off process at this stage was:

[468] WBON0001130; WBON0001132.
[469] WBON0001138; WBON0001140.
[470] WBON0000493; WBON0000492.
[471] WBON0000496. See also: WBON0000497.
[472] WBON0001156; WBON0001157; WBON0001683.

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(i) The topic of the Generic Defence was discussed at a meeting of the Steering Group on 12 July 2017 and later that day I circulated the draft Generic Defence to them for comment on.[473]

(ii) Outstanding comments from subject matter experts at POL (in particular, Angela Van Den Bogerd)[474] and Deloitte[475] were fed in.[476] Fujitsu were asked to review the section relevant to them as updated following the call on 7 July 2017; as set out below at §§493-494 and §499, they confirmed their agreement on 12 July 2017 subject to minor comments.[477]

(iii) I believe the draft Generic Defence was discussed at a meeting of the General Executive on 13 July 2017 (which I believe I attended but I do not recall the meeting).[478]

(iv) On 13 July 2017, Mark Underwood informed me that Deloitte's suspense account report was not going to be ready before the deadline.[479] I therefore drafted some wording to respond to paragraph 38 of the Amended GPOC in the absence of the final report (since this had not been finalised pending receipt of Deloitte's report), which I sent to Tony for consideration.[480] That wording was based on discussions I had had with Deloitte.

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[473] After which various members of the Steering Group reviewed the draft and provided comments, which I responded substantively to where necessary, see for example WBON0001158; WBON0000498; WBON0000500.
[474] WBON0001150; WBON0001153.
[475] WBON0001154; POL00110670.
[476] WBON0000498; WBON0000499.
[477] WBON0001147; WBON0001161; POL00249903.
[478] POL00249671; POL00249674; POL00249919.
[479] WBON0001163.
[480] WBON0001164; WBON0001165.

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(v) I emailed Tony Robinson QC again on 13 July 2017, setting out what I had briefed the Steering Group and General Executive about and outlining some key points that were discussed at the meetings.[481] Subsequently Jane MacLeod emailed me the proposed minutes of the General Executive meeting for my approval and confirmed that she had read the draft (as it then stood) and approved.[482]

(vi) Owain Draper proposed his final edits on 14 July 2017.[483] Tony Robinson QC responded with some changes of his own including (most significantly) a revised set of paragraphs responding to paragraph 38 of the Amended GPOC, and an amendment to the 'necessary cooperation' term admitted at paragraph 105 of the Generic Defence. He also sent an amended version of the suspense account rider.[484] Additionally, Amy Prime sent Owain Draper and Tony Robinson QC an updated version of the Defence building in the comments we had received from POL, Deloitte and Fujitsu.[485] Given the substance of the changes Tony Robinson QC had proposed I emailed Jane MacLeod and Mark Underwood highlighting them and explaining the rationale.[486] Mark Underwood signalled his approval the same day[487] (and Jane MacLeod reviewed and signed off on 18 July as set out below).

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[481] POL00249919.
[482] POL00024627.
[483] WBON0000501.
[484] WBON0001166; WBON0001167.
[485] WBON0001168
[486] WBON0001171.
[487] POL00024771.

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(vii) Later on 14 July 2017, I re-circulated the draft of the Generic Defence sent to the Steering Group and invited any last comments or suggestions by 17 July.[488] Additionally, that afternoon Tony Robinson QC provided an updated version of the Defence building on the version Amy Prime had sent to him[489].

(viii) Most of the Steering Group had no further comments on the Defence,[490] save for Rob Houghton (POL's Chief Information Officer) who queried two aspects of paragraphs 50(1) and 59. First, he expressed a preference for the statement, "*For a system of Horizon's scale, Post Office would characterise the number of errors or bugs in Horizon requiring fixes as relatively low*" to be removed. He felt that the attribution to POL was risky given that this was Fujitsu's, rather than POL's, language.[491] I therefore deleted this sentence. Second, he felt that administrator access should not be described as a 'functionality' of Horizon, and that the Defence should instead make the point that all IT systems have this type of access. I explained that whilst he was technically correct we had deliberately avoided the approach he suggested, as it was likely to be regarded as overly technical and semantic. I slightly tweaked the wording of paragraph 59 to better reflect Rob Houghton's concern ("*it is admitted that, although ~~Horizon was not designed to have this functionality~~this would not usually be*

[488] WBON0001173.
[489] WBON0001176.
[490] A few emailed to endorse it: WBON0001178; POL00024489.
[491] WBON0000502.

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classified as 'functionality' in an IT system, there ~~was~~is a highly theoretical …"), and ran both changes past Tony Robinson QC.[492]

(ix) With reference to **Q75.6**, the contents of the Generic Defence were derived from a combination of sources on whom it was necessary to rely – principally POL, but also in some instances third parties such as Fujitsu. The detailed factual investigations together with the review and sign-off process described above were therefore designed to gather, test and review the facts obtained from these sources. I relied upon this process in order to be satisfied (and so to enable POL to satisfy itself) that the contents of the Generic Defence were true. I sent the finalised version of the Generic Defence to Jane MacLeod to review and sign off on.[493] She signed the Statement of Truth on 18 July 2017 and the Generic Defence was returned to me for filing and service the same day.[494]

482. Against the background of this overall process, I turn to the specific paragraphs of the Generic Defence about which the Inquiry has asked and the factual investigations undertaken that led to those paragraphs.

Investigations undertaken – remote access

483. After the preliminary report in July 2016, the focus for Deloitte was not on whether remote access functionality was possible (which was established by that point), but what controls were in place to minimise associated risks. This reflected Mark Westbrook's view that it was normal for an IT system like Horizon to have users

[492] POL00024253; WBON0001180.
[493] WBON0001183.
[494] WBON0001185.

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with administrator access,[495] the question being what controls were in place to regulate this. The investigations which resulted from Deloitte's findings about privileged user access focused on better understanding of these controls, and, prior to service of the Defence, were broadly as set out below. At the outset I note that Jonny Gribben principally led on this work for WBD. I monitored progress and was sometimes copied into emails, so although I was aware of the main developments I was not especially close to the detail.

484. Deloitte continued their investigations into remote access and produced a report titled 'Bramble Draft Report: Draft for Discussion' dated 7 October 2016 (the "**Project Bramble October 2016 Report**" or the "**October 2016 Report**").[496]

485. The October 2016 Report found:

485.1. In relation to the Balancing Transaction functionality, "*Any writes by the [SSC] to the [BRDB] must be audited*". The default position was that "*SSC will have privileges of only inserting balancing / correcting transactions to relevant tables in the database*".

485.2. However, the report also stated that there was an exception in relation to the latter point, in that "*[a] small number of users are granted extended privileges which enable them to update / delete records*".

485.3. In other words, the October 2016 Report confirmed the point that had earlier been flagged in Deloitte's July 2016 preliminary report, namely that SSC users with privileged access could edit and delete transactions (i.e. not just make insertions) to the BRDB. However, the October 2016 Report

[495] POL00408699.
[496] WBON0000468; WBON0000469.

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went on to say that "*the control is operating in line with management's expectations. Access to the privileged role is restricted to users explicitly authorised for this access. User actions are audit logged, and not proactively reviewed*".

485.4. Jonny Gribben followed up on this, asking "*what does 'in line with management's expectations' mean?*" And "*what does not 'proactively reviewed' mean and would you expect this access to be proactively reviewed?*".[497]

486. From the discussions that followed it appeared that: (i) it would be extremely difficult for a superuser at Fujitsu to manipulate transaction data in the BRDB without detection, as they would have to 'fake' the digital signature associated with the altered transaction within a narrow temporal window (of a maximum of 15 minutes) before the relevant data was 'collected' and recorded to the Audit Store; (ii) the superuser would need to write a bespoke and sophisticated computer programme to achieve this; (iii) otherwise, there would be readily identifiable differences between the data recorded in the Audit Store and the (altered) data on the BRDB. Aside from it not being practically feasible for superusers to edit or delete transaction data in the BRDB in such a way that this would 'track' through to the Audit Store, there were separate audit logs recording superuser access.

487. As to the later point, on 8 November 2016 Mark Westbrook (Deloitte) said, first: "*If you can't fake a digital signature then for counter initiated transactions you are unable to disguise the fact you have tampered with the data even if you edit audit*

[497] WBON0001064; POL00408731.

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logs etc". And second: "*As articulated earlier we haven't really affirmed either way whether [superusers] can amend activity / audit logs FJ attest they can't however*".[498]

488. Investigations into this aspect in particular continued into 2017. On 11 May 2017, Jonny Gribben copied me into an email following up on a call between him, Mark Underwood, Deloitte and Fujitsu. He asked Mark Westbrook to (i) "*produce a full description of what a Super-User would need to do in order to amend a branch's accounts in a way that could would [sic] not leave behind a footprint of their activity (noting that they would never be able to completely cover their tracks because the deletion of Super-User audit files would also leave a footprint)*".[499]

489. As I understood the position at that time, it was not possible for a privileged user to tamper with data in any way without leaving a trace because it was not possible to switch off the privileged user audit log without breaking the Horizon system. This was a point on which Mark Underwood sought further information from Fujitsu on in June 2017.[500] Torstein Godeseth responded that, because of the way in which the BRDB was configured at that time, in order for a superuser to tamper with data without leaving an audit trail leading back to them, "*it would be necessary to take the database down and then bring it up again for the configuration change to take effect*". Prior to the reconfiguration, it would have been possible to switch off the privileged user audit log and switch it back on again without needing to take the database down, but this would still leave a record of the audit trail having been turned off and back on again, which meant

[498] WBON0000472, commenting on a draft summary of the Project Bramble October 2016 Report prepared by Jonny Gribben: POL00029104.
[499] WBON0001078.
[500] WBON0000483.

(in effect) that there would still be an audit trail. Torstein Godeseth closed by "*reiterat[ing his] view that there is no evidence that anyone has ever actually manipulated any audit records*." [501]

490. Whilst our exchanges with Deloitte in November 2016 and thereafter had reassured us that it would be extremely difficult for a superuser to manipulate transaction data in the BRDB without detection, as it was not practically possible to 'fake' the digital signature associated with the altered transaction without this being picked up in the audit data, they also informed us that non-counter transactions (e.g. Transaction Acknowledgments posted by POL) were less well-protected within the BRDB. Jonny Gribben and I wanted to ensure that non-counter transactions were tested to see whether there was protection against tampering and whether those controls were actually used in practice. Consequently, in January 2017, Deloitte were commissioned to perform an additional piece of work to investigate the vulnerability of non-counter transactions to tampering.[502] Subsequently (in June 2017), Deloitte provided WBD with a draft memo on their investigations in relation to non-counter transactions.[503] In short, this work reassured us that there were mechanisms in place that would reveal when BRDB data in relation to a non-counter transaction was interfered with (albeit that these controls were not precisely the same as those that applied to transactions on the BRDB that were input at the counter).

Paragraphs 57(4) of the Generic Defence

[501] WBON0000483.
[502] WBON0001070.
[503] WBON0001109; POL00031516.

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491. **Q75.5** asks me to explain the basis on which POL pleaded the following, at paragraph 57(4) of the Generic Defence: *"To have abused those rights so as to alter branch transaction data and conceal that this has happened would be an extraordinarily difficult thing to do, involving complex steps (including the writing of sophisticated computer programmes and circumvention of sophisticated control measures) which would require months of planning and an exceptional level of technical expertise. Post Office has never consented to the use of privileged user rights to alter branch data and, to the best of its information and belief, these rights have never been used for this purpose'.*"

492. I have dealt with the investigations by Deloitte into privileged user access, together with the enquiries made of Fujitsu in the course of those investigations, above at §§483-490. Although I did not settle the wording of paragraph 57(4) of the Generic Defence, my view is that that paragraph substantively reflected what we understood at the time (and communicated to the Counsel team).[504]

493. Further, when the first full draft of the Generic Defence was produced by the Counsel team on 4 July 2017, the sections on Horizon were (as noted above) sent to both Fujitsu[505] and Deloitte[506] for review. These extracts included what became paragraph 57(4), with Counsel's comments in yellow highlight:

> *"There are a small number of Fujitsu specialists who have certain privileged user access rights which they could in theory use to amend or delete the transaction data for a branch. The intended purpose of privileged user rights is system support, not the alteration of branch transaction data. To have abused those rights so as to alter branch transaction data and conceal that this has happened would be an extraordinarily difficult thing to do, involving complex steps (including the*

[504] See the executive summary provided to Counsel (inclusive of Deloitte's comments thereon) on 19 June 2017: WBON0001113; POL00174660.
[505] WBON0000491; WBON0000492.
[506] WBON0001128.

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> *writing of sophisticated computer programmes and circumvention of sophisticated control measures) which would require months of planning and an exceptional level of technical expertise. [WERE FORMAL PROCEDURES IN PLACE FORBIDDING THE USE OF PRIVILEGED USER RIGHTS (OR PRIVILEGED USER RIGHTS TO CHANGE BRANCH DATA) WITHOUT SPECIFIC AUTHORISATION, FROM SPECIFIED PEOPLE AT FUJITSU AND/OR AT POST OFFICE (AND IF SO, WHO WERE THOSE PEOPLE?)]. Post Office has never consented to the use of privileged user rights to alter branch data and, to the best of its information and belief, these rights have never been used for this purpose."*

494. As noted above, Deloitte responded with comments on various paragraphs of the pleading, but suggested no amendments to this paragraph.[507] In Fujitsu's case, there was a call with Pete Newsome and Torstein Godeseth on 7 July 2017 which resulted in some amendments to the text (but not to this paragraph) which Fujitsu were asked to consider further.[508] At no point did Fujitsu suggest any changes to this paragraph, and indeed in their final response they commented: "*all fine*", subject to a couple of minor tweaks to different paragraphs of the text.[509] The only amendment in the final version of the Generic Defence was that the highlighted drafting comment was removed.

Paragraphs 48(3)(b) and (c) of the Generic Defence

495. **Q75.3** and **Q75.4** ask me to explain: (i) the "*basis on which POL denied that Fujitsu 'edited or deleted specific items of transaction data'*", at paragraph 48(3)(b) of the Generic Defence; and (ii) the "*basis on which POL pleaded that Fujitsu had not implemented fixes that had affected the reliability of accounting balances, statements or reports*", at paragraph 48(3)(c).

[507] WBON0001154; POL00110670.
[508] WBON0001137.
[509] WBON0001161; POL00249903.

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496. It should be borne in mind, first, that paragraphs 47 to 48 of the Generic Defence responded to paragraphs 20 to 21 of the Amended GPOC. As I understand it, these paragraphs referred to the contractual arrangements between POL and Fujitsu for the supply of IT services related to the Horizon system (the "**POL-Fujitsu contract**") and sought to define the scope of Fujitsu's role pursuant to those arrangements. Thus, paragraphs 20 to 21 of the Amended GPOC relevantly pleaded:

> *"20. The Defendant entered into a contract with Fujitsu Service Limited on 28 July 1999 for the provision of IT services relating to Horizon.* [The Claimants then referred to the fact that only a redacted version of the contract in force since 31 March 2016 had been provided.]
>
> *21. Pending full disclosure, the Claimants understand that Fujitsu's role included:*
>
> *21.1. providing the data transfer service by which transactional data was transferred between branches and the central data centres;*
>
> *21.2. providing a data transfer service between the central data centres and clients of the Defendant …*
>
> *21.3. managing coding errors, bugs, and fixes so as to prevent, manage or seek to correct apparent discrepancies in the data (including between the said systems), in a manner which would potentially affect the reliability of accounting balances, statements or other reports produced by Horizon; and*
>
> *21.4. providing a telephone advice service, for and on behalf of the Defendant …"*

497. Paragraph 21.3 of the Amended GPOC, in the wider context of paragraphs 20 and 21, was (and is) not easy to understand. Read literally, it appears to allege that the POL-Fujitsu contract contemplated that it would be part of Fujitsu's "*role*" to implement fixes "*in a manner which would potentially affect the reliability of accounting balances*". POL certainly did not accept that Fujitsu was contractually entitled (still less obliged) to take action which would "*affect the reliability*" of

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accounting data in this way. At the same time, unlike the rest of paragraph 21, paragraph 21.3 appears to allude to what the Claimants believed Fujitsu to be doing *in practice*, i.e. regardless of what the POL-Fujitsu contract said.

498. Whilst I did not settle the wording of paragraph 48(3) (this being Counsel's job), when that paragraph is viewed in the above context it seems to me that its purpose is to concisely identify the boundaries of Fujitsu's legitimate role under the POL-Fujitsu contract, albeit against the backdrop of the Claimants' wider factual allegations. Understood in this way, paragraph 48(3)(a) accepts that it was part of Fujitsu's "*role*" to identify and remedy bugs in Horizon, but subparagraphs (b) and (c) deny that this extended to remedying errors by "*edit[ing] or delet[ing]*" transaction data, or by implementing fixes which compromised the "*reliability*" of accounting data:

> *"48(3) Paragraph 21.3 bundles together several different concepts and uses language that is open to different meanings and/or misleading. However:*
>
> *(a) Fujitsu's role included identifying and remedying coding errors and bugs in Horizon.*
>
> *(b) To the extent that the phrase 'correct apparent discrepancies in the data' is intended to mean that Fujitsu implemented fixes that edited or deleted specific items of transaction data, that is denied.*
>
> *(c) It is denied that Fujitsu has implemented fixes that have affected the reliability of accounting balances, statements or reports."*

499. In any event, and to the extent that paragraphs 48(3)(a) and (b) are read as a denial *in fact* that Fujitsu had ever (i) edited or deleted transaction data in order to implement a fix or (ii) implemented a fix that impacted the reliability of branch accounting data, it is important to stress that this wording was submitted to

Fujitsu for approval on 11 July 2017. Fujitsu responded suggesting no amendments to this wording, saying "*all fine apart from a couple of minor amendments*" which they made to different paragraphs in the draft.[510] How Fujitsu had used their capabilities in practice was, of course, a matter peculiarly within their knowledge (and Deloitte had not so far found any evidence that Fujtisu had actually edited or deleted transaction data (as distinct from the one then-known injection of a Balancing Transaction)).

Paragraphs 43(1) to (3) of the Generic Defence

500. **Q75.2** refers me to paragraphs 43(1) to (3) of the Generic Defence, and asks me to explain the "*basis on which POL pleaded that 'The blocked value is not (and is not treated as) a debt due to Post Office'*".

501. Having reviewed my firm's file it appears that Amy Prime was principally tasked with liaising with POL to obtain background information relevant to this pleading.[511] Amy liaised directly with POL and I was generally not copied into these emails. However, I did attend a meeting with Tony Robinson QC, Owain Draper, Kathryn Alexander and Huw Williams on 7 June 2017 (see above, §481.4(ii)) at which "*the processes of … end of trading period*" was on the agenda, although I have no recollection of the specifics of what was discussed at this meeting other than that it was a long discussion about accounting practices at POL that largely took the form of a question and answer session between Counsel and the POL attendees.[512]

[510] WBON0001161; POL00249903.
[511] WBON0000474.
[512] WBON0000481; WBON0001094.

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502. I was then copied into a short briefing note which Amy sent to Counsel on 26 June 2017, in which she explained the that: "*Where an item has been settled centrally and disputed, the agent accounting team apply a dunning block to the open item on the account. This prevents any further requests for payment being sent to the agent … The effect of placing these blocks on the system is to prevent a dunning letter (chaser letter) being produced and/or preventing the item from falling on a processors worklist for further action*".[513]

503. Tony responded to Amy the same day (again, with me in copy) with various follow-up questions largely about how this translated visually on the SPM's account.[514]

504. On 27 June 2017, before Amy resolved these queries, Tony Robinson QC sent me a partial first draft of the Generic Defence containing the following paragraph which was a forerunner to paragraph 43(3):[515]

> *"Where this process discloses a shortfall and the Subpostmaster disputes liability for the shortfall, he or she is required to raise this a dispute by calling the Helpline referred to in paragraph [XX] below. If the shortfall is for less than £150, he or she is required to make it good by adding cash or a cheque to the branch pending resolution of the dispute (on the basis that it will be repaid to the Subpostmaster if it is ultimately determined that he or she is not liable for the shortfall). If the Shortfall was for £150 or more, [the SPM] could settle it centrally pending resolution of the dispute. In that situation, Post Office would put a block or hold on the relevant debit created in his or her account with Post Office (i.e. the amount settled centrally) until the resolution of the dispute.* ***Unless and until it was ultimately determined that the Subpostmaster was liable for the Shortfall, that debit was not (and was not treated as) a debt due to Post Office****"* (emphasis added).[516]

[513] WBON0001098.
[514] WBON0000482.
[515] WBON0001119.
[516] POL00249555.

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505. On 3 July 2017, Amy Prime responded to Tony Robinson QC's queries by email (again, with me in copy).[517] Around the same time, I appear to have had a call with Angela Van Den Bogerd to discuss "*the processes for SPMRs to dispute TCs / Shortfalls*", but I cannot remember this call or if it related to this particular paragraph.[518]

506. Later on 3 July 2017, I sent Tony Robinson QC my comments on the partial draft.[519] I can see that I substantially cut the above paragraph down, including removing the final sentence, as shown here:

> *"Where ~~this process discloses a shortfall and~~ the Subpostmaster disputes liability for the shortfall, he or she is required to settle centrally the shortfall (thereby bringing the branch accounts into balance) and then raise ~~this~~ a dispute by calling the Helpline. Raising a dispute suspends the payment of the shortfall that has been transferred to the Subpostmaster's personal account pending resolution of that dispute. ~~referred to in paragraph [XX] below. If the shortfall is for less than £150, he or she is required to make it good by adding cash or a cheque to the branch pending resolution of the dispute (on the basis that it will be repaid to the Subpostmaster if it is ultimately determined that he or she is not liable for the shortfall). If the shortfall is for £150 or more, he or she can settle it centrally pending resolution of the dispute. In that situation, Post Office puts a block on the relevant debit created in his or her account with Post Office (i.e. the amount settled centrally) until the resolution of the dispute. That debit is not (and is not treated as) a debt due to Post Office.~~"*

507. My suggested edits therefore specifically omitted the reference to a blocked value not being treated as a debt due to POL, although I cannot now recall the reasons why I did this at the time.

[517] WBON0001125.
[518] WBON0001124; WBON0000334.
[519] WBON0001126.

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508. Tony Robinson QC sent a complete and revised first draft of the Generic Defence to myself and Owain Draper the following day, 4 July 2017.[520] He had accepted my revisions, save adding back in a version of the final sentence that I had deleted ("*The blocked value is not (and is not treated as) a debt due to Post Office*"). The relevant paragraph therefore now read as it does in the final version of the Generic Defence.[521]

509. Extracts of the draft Generic Defence containing this paragraph were sent to Kathryn Alexander and Shirley Hailstones for review on 5 July 2017.[522] They both returned the draft without raising any issues with this paragraph.[523] The relevant sections were then sent to Angela Van Den Bogerd for a second-line review on 10 July 2017.[524] Again, she returned her comments without raising any issue with the characterisation in this paragraph.[525]

(iii) The Project Bramble Report (Q89)

510. I have referred above to the investigations by Deloitte which were fed into the LOR and Generic Defence (§§466-472; §§483-490). These were largely complete by the time the Defence was served, and on 1 September 2017 Deloitte produced a draft report which represented the culmination of their work (the "**draft Project Bramble Report**"). I was sent this draft report the same day;[526] this document is **POL00041491** to which I am referred by **Q89** of the Request.

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[520] WBON0000485.
[521] WBON0000486.
[522] WBON0001130; WBON0001132.
[523] WBON0001141; WBON0001142; WBON0001143; WBON0001144.
[524] WBON0000493; WBON0000492.
[525] WBON0001150; WBON0001153.
[526] WBON0001192.

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511. I do not describe the detailed content of the draft Project Bramble Report here save to note that it did not contain any findings (for example, with respect to the nature and extent of Fujitsu's remote access capabilities) that substantially changed my understanding of the matters Deloitte had been investigating, compared with what I had understood to be the case at the time the Generic Defence was finalised. That was not surprising: we had been working closely with Deloitte for more than a year by this point so were aware of the investigations they were pursuing and their emerging findings.

512. However, and with reference to **Q89.1** and **Q89.3**, I considered that the language Deloitte used in the draft report was more heavily caveated than I was expecting based on our prior interactions and the wording they had approved in the Generic Defence (see above, §481.5 and §§493-494). In verbal conversations they had been clear and confident that Horizon was reliable, and I felt that this was not properly reflected in the draft report. My understanding was that the substance of their views had not changed, but that the draft report understated their real level of confidence in Horizon. My impression was that this was a function of the fact that Deloitte were, as organisation, concerned about putting down their views in writing in case it created a risk for Deloitte; everything in writing had to go through several levels of checks before it could be approved for release. The other challenge we had was that Deloitte struggled to articulate their views in language that was easy to understand and not excessively technical. The draft Executive Summary at **POL00041492** reflects what I understood to be Deloitte's true views, based on our work with Deloitte to date including verbal interactions with them.

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513. With reference to **Q89.2**, I vaguely recall that I had a call with Andy Whitton of Deloitte about this. I shared my frustrations with him but I also recall making it clear (as I had on several calls with Mark Westbrook) that I was not looking to push for a particular conclusion and that Deloitte should only give views they believed. Since the Project Bramble report was intended for POL's internal use and was not going to be relied on as evidence, I saw no reason why Deloitte should not produce a report that candidly and plainly stated their views (nor would there have been any benefit for POL in having a report that did anything else). The issue was that I understood Deloitte to believe that Horizon was reliable, but they were unwilling or unable to reflect this fully in their draft report due to what I perceived as institutional aversiveness to committing themselves in writing.

514. I conveyed these views to Rodric Williams in my dated 27 September 2017 (**POL00041490**) and explained that I did not feel that Deloitte could be stood up as POL's IT expert in the group litigation. To be clear, this was my view from the outset of the litigation (as made clear for example in an email I sent to Tony Robinson QC on 8 June 2016, see above at §420.7), because to use Deloitte as our expert witness would risk waiving privilege over their instructions and work product to date, and due to their historic engagements by POL, they lacked the necessary independence to be a testifying expert in Court. The draft Project Bramble Report therefore did not change this view, but Deloitte's unwillingness to reflect their real views in writing (together with their impenetrable writing style) did underline my existing views as to why it would be unwise to instruct them as our expert witness in the litigation. My recollection is that these same views were shared by the Counsel team.

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515. With reference to **Q89.4**, the sentence which the Inquiry cites had already appeared in Deloitte's earlier preliminary report dated July 2016. Detailed investigations into Fujitsu's remote access capabilities were undertaken as a result, as I have set out; the draft Project Bramble report represented the culmination of these investigations by Deloitte rather than the beginning of them.

516. For completeness, in October 2017 a near final draft of the Project Bramble Report was provided, in which Deloitte maintained that its testing supported the view that neither POL or Fujitsu had the ability to log on remotely to a Horizon terminal in a branch so as to conduct transactions nor to push transactions without an SPMR's knowledge or consent, with the exception that "*a small group of Fujitsu privileged users … may do so via Balancing Transactions*".[527]

517. Several rounds of comments were exchanged between POL, WBD and Deloitte about the drafting of the report over the next couple of months, but the essence of the conclusions did not change. The final version of the Project Bramble Report was produced and circulated by Deloitte on 2 February 2018.[528] It concluded:

> *"A limited number of authorised Fujitsu personnel (19 at the Operating System layer and 26 at the database layer at the time of testing - May 2016) have sufficient privileges to theoretically add / delete / change data in the BRDB ("Privileged Users"). However, see paragraph 1.4.2.10 below regarding the segregation of access conditions. These users may also have access to other systems, such as the Audit Store, however in relation to the allegations, access to the BRDB is the most important as it is the BRDB that generates the branch accounts and is the source of the data ultimately used by Post Office to investigate shortfalls."*

[527] WBON0001209; POL00139454.
[528] WBON0001223; POL00139537. Although still marked as 'draft', this was the final version to the best of my belief.

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518. Deloitte also concluded that it was likely that any changes made by privileged users would be likely to be identified and resolved. It would be such a complex exercise for a privileged user to cover up any changes they had made that it was unlikely in practice that they would be able to do so:

> *"While we have identified an exception in the cryptographic controls (paragraph 1.4.2.10 and 1.4.2.11) which would theoretically allow a malicious actor to undermine them and potentially change data, it is limited to a third party (Fujitsu) and would be technically very challenging to achieve. It would require significant motivation for one of the limited set of Fujitsu staff members to exploit this vulnerability given the technical challenges and risks of tripping monitoring controls and, although we have not performed procedures in this area, it would almost certainly require collusion with Post Office staff or Postmasters. Although our investigations have not been exhaustive, they have been extensive and we have seen no such evidence of malicious misuse of the system."*

519. Further, Deloitte said that, in relation to the flow of core data within Horizon Online from counters in branch to the Audit Store, the controls in Horizon "*represent the most reliable control type possible over data integrity*". These controls, in Deloitte's view, made it "*it extremely unlikely that the record of transactions contained within the Audit Store is not representative of the transactions input by staff in branch. As with all large scale computer systems whilst it is theoretically possible that glitches and coding errors in the system could have resulted in errors in the recording of transactions to occur, the likelihood of such errors occurring in a manner which has adversely affected only certain branches materially whilst not affecting other branches at all / minimally is in our view remote given the controls in place. The testing we have performed over these controls was designed and executed to assess their operation in responding to these fundamental risks. Noting the assumptions and limitations detailed in section 1.5, this testing has not resulted in any matters being identified that would*

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call into question the integrity of the core data flow within Horizon Online from the Counter in branch to the Audit Store. I am clear that the views expressed above and in the final version of the Project Bramble report were entirely Deloitte's own.

520. Again for completeness, although Deloitte's work on Project Bramble was substantially complete by the end of 2017, in 2018 WBD instructed Deloitte to review two batches of technical documents provided by Fujitsu to identify whether there was anything that undermined or contradicted the Project Bramble report. My understanding was that they did not identify anything of significant concern.[529]

N. DISCLOSURE (Q58.4, Q76 to Q87, Q88.3, Q90.1, Q91, Q95.1, Q99)

(i) Introduction

521. This section addresses the Inquiry's main questions about the advice I/WBD gave POL in relation to the disclosure and redaction of documents, namely:

521.1. **Q58.4** (general advice on disclosure);

521.2. **Q76 to Q82** (disclosure of the KEL database);

521.3. **Q81.2** and **83 to Q87** (disclosure of the 'Peak' database);

521.4. **Q88.3** (disclosure of the reports generated by Project Zebra);

521.5. **Q90.1, Q91** and **Q95.1** (approach to redacting evidence deployed in the CIT and HIT); and

[529] WBON0001248; POL00028982.

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521.6. **Q99** (obtaining documents held by Royal Mail).

522. There are other questions related to the broad theme of disclosure which I address elsewhere as appropriate. For example, the Inquiry's questions relating to preservation of documents and POL's response to particular early requests for documents by the Claimants are dealt with above in Section L. I address the discovery of back-versions of KELs in October 2019 in Section R below, since it relates to events post-dating the HIT.

(ii) General advice on disclosure

Factors relevant to disclosure generally

523. The disclosure exercise – or more accurately exercises – in this case were an enormous undertaking. Thought was given to how disclosure ought to be managed from an early stage, and it is difficult to overstate the range and complexity of the factors in play. By way of brief summary only:

523.1. Given the size of POL's business and the scale of the Horizon system, the pool of potentially relevant documents was vast.

523.2. The claims in the litigation spanned a period of almost two decades.

523.3. Many potentially relevant documents were of a highly technical nature.

523.4. Some of those documents were in the hands of other parties such as Royal Mail, Fujitsu and ATOS.

523.5. There were a wide range of different formats in which potentially relevant documents existed, including more difficult to disclose formats such as databases.

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523.6. POL's IT systems on which they stored those documents were particularly complex. They had also changed substantially over the years, including notably when it separated from Royal Mail.

523.7. Different parts of POL stored documents in different ways, subject to different retention policies, and there was very little top-down understanding within POL of what the potentially relevant documents were or where they were. Many classes of potentially relevant document – for example, documents relating to branch audits and investigations – were held by multiple teams.

523.8. In the LOC and indeed the Claimants' generic pleadings (served a year later), I believe it is fair to say that the claims were very wide and not clearly articulated. This presented a real challenge in terms of understanding the issues and what documents were necessary and proportionate to disclose, and when.

523.9. There was a sizeable and growing number of Claimants until the eventual GLO cut-off date in December 2017. At that stage there were around 550 Claimants, some of whose claims dated back many years.

523.10. Other than the limited information in the SOIs and information that some Claimants had provided during the Mediation Scheme, POL had little detail on the specific facts and matters disputed by the vast majority of the Claimants (setting aside the six Lead Claimants for the CIT, in respect of whom individual particulars of claim were produced).

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523.11. Since the subject matter of the group litigation was still live (including that some Claimants were still in-post as SPMs), there was the possibility that new potentially relevant documents were being generated all the time.

524. Given the above challenges POL was understandably concerned by the prospective costs of the disclosure exercises in the group litigation and was anxious that they remain proportionate. But this in turn was difficult to assess because there was much uncertainty around the true value of the Claimants' claims.

525. At the same time, this was a case in which the Claimants were alleging systematic concealment and deceit and POL, on our advice, recognised that it had made incorrect statements in relation to remote access. Accordingly, Counsel and I had advised, and POL understood, that failure to disclose documents would feed the Claimants' narrative around concealment (which as explained above was of central importance to the key issues of limitation and past settlements).

The process and sequencing of disclosure in the group litigation

526. As noted above, Mr Justice Fraser ordered a multi-stage trial process, with disclosure being ordered in tranches that mirrored the case management directions and trial sequence; i.e. disclosure for the CIT started to be given first, then disclosure for the HIT (with an overlap between the relevant disclosure exercises), and so on. Further, the parties and the Court agreed to follow the newly developed Disclosure Pilot under the CPR (which has since been fully adopted). The core objective of the pilot was to reduce the cost of disclosure by reducing the scale of disclosure exercises. It actively discouraged the old model

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of 'standard disclosure' and promoted disclosure orders that targeted narrower classes of document. This was the approach adopted by Mr Justice Fraser and, accordingly, at no stage was POL subject to a general order to disclose all relevant documents.

527. The combination of staged trials and the approach adopted under the Disclosure Pilot rules had a number of consequences for the disclosure process in this case:

527.1. ***First***, it led to disclosure being ordered at different CMCs as the litigation progressed, with the relevant directions being split across several different Orders starting from October 2017. The Orders were typically prescriptive as to the disclosure to be given, often including carefully worded schedules of classes of documents that were either negotiated between the parties or determined by the Court.

527.2. ***Second***, the fact that the first two key trials – the CIT and the HIT – were listed to follow each other in quick succession made for a challenging process with disclosure being given on a rolling (and sometimes simultaneous) basis in preparation for each of the trials.

527.3. ***Third***, with each of the trials being intended to resolve groups or 'buckets' of cross-cutting issues (as opposed to, for example, a more traditional unitary test case trial), there were difficult questions of whether disclosure was inside the scope of a disclosure order or not.

527.4. ***Fourth***, since the issues in dispute relative to different trials were ventilated at different points in time, the relevance of different documents to those issues only became known at different times. Most important in my mind was that the Claimant's case in relation to Horizon was sparsely

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explained in the LOC and Amended GPOC, and did not start to be revealed until mid-2018 (when the Claimants were, for example, required to produce an outline document setting out their allegations in relation to the Horizon system; see above, §321.4).

528. Reflecting back now, I can see how this approach contributed to some of the problems with POL's disclosure. Disclosure by way of narrow classes of documents meant that sometimes material documents were disclosed later than was ideal because they fell outside the scope of the disclosure ordered. To give one example – the Court never ordered, and the Claimants never sought, disclosure of the Peak database and so it did not form part of the disclosure for the HIT. It was later voluntarily disclosed by POL on 27 September 2018 after the experts indicated in July / August 2018 that they thought that the documents contained within the Peak database were important.

Overview of disclosure advice

529. I and my colleagues at WBD were conscious of the above considerations. I would describe our overall approach as balanced and striving for proportionality – bearing in mind the risk of high disclosure costs and not being able to complete disclosure within the timescales set by the case management Orders in the group litigation – whilst erring on the side of recommending that access to documents be given where reasonably possible. Whilst, as I shall presently explain, there were certainly challenges in relation to the disclosure process, we acted at all times in good faith – and in my view, we not infrequently recommended disclosure above and beyond what was required under the formal disclosure orders. I would add that Counsel's advice was taken on important aspects of

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disclosure and so the advice given to POL on these questions was very much a team effort.

530. With reference to **Q58.4**, it is difficult to be much more specific than this in the present context. The sheer volume of emails and other documents which my firm has on file relating to these matters (and the number of those that are likely to relate to points of detail on disclosure) is such that it has not been possible in the time available to sensibly search and review all of this material for the purposes of preparing this statement. I have however reviewed the Decision Papers which WBD presented to the Steering Group over the course of the group litigation, and I set out below a summary of some of the main decision points and recommendations, in chronological order and in the context of the Orders made at the CMCs, to give a flavour of the overall advice we gave. The Decision Papers referenced below should be read together with those concerning preservation of documents, which I have summarised above at §399.

531. By a Steering Group paper dated **5 October 2016** (after service of the first Claim Form but before the Group Litigation Order was made), WBD advised that POL should allow Freeths access to Second Sight to discuss the Claimants' cases pursuant to a protocol to be agreed between the parties so to protect POL's privileged material that Second Sight had historically had access to.[530]

532. By a Steering Group Paper dated **14 February 2017** (after the Group Litigation Order was made but before any disclosure was ordered), WBD advised that POL give further voluntary disclosure to Freeths:

> *"**Disclosure**:*

[530] POL00139321.

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> *Further disclosure should be voluntarily given to Freeths for the following reasons:*
>
> *a. Giving disclosure on the above Target Issues should make it easier for a Court to select those issues at the CMC.*
>
> *b. Freeths are hiding behind the lack of disclosure to avoid explaining weak points in their case. The lack of clarity allows them to keep unmeritorious claims alive.*
>
> *c. We believe that Freeths are struggling to cope with the volume of work and extra disclosure makes their job more difficult. Work pressure drives a greater prospect of a good settlement. The areas where further disclosure could be given are set out in Schedule 1."* [531]

533. Accordingly, we were advising in favour of voluntary disclosure for three reasons. First and foremost, it would be helpful to the Court to identify the key issues (point (a)). Secondly, it would assist our efforts to press the Claimants to particularise their cases better and so identify cases which lacked merit (point (b)). Thirdly, we saw a benefit in terms of litigation tactics, in that disclosure would increase the burden of work on Freeths, which might in turn make them more amenable to consider settlement (point (c)). I acknowledge that the third of those reasons was a matter of tactics, but in adversarial litigation it is sometimes necessary to give such advice to clients. It will also be clear from the paper that we considered the disclosure proposal to be procedurally right as well as having potential tactical benefits.

534. The issue of allowing Freeths access to Second Sight was returned to in a paper dated **12 July 2017**, a protocol by now having been negotiated between WBD, Freeths and Second Sight. We advised that POL should now allow Freeths access to Second Sight pursuant to that protocol, noting that not to do so would

[531] POL00247209.

likely be regarded as unreasonable by the Court.[532] The protocol permitted Second Sight to discuss a range of key topics with Freeths, including (but not limited to): the architecture of the Horizon system; the installation and implementation of Old Horizon and Horizon Online; the differences between and capabilities of the two; updates and software versions since installation; Transaction Corrections; the NSBC Helpline and the technical helpline operated by Fujitsu; problems with hardware; errors, bugs, fixes, issues and 'Peaks'; the KEL; the "*extent of error repellency in the Horizon system*"; and POL's access to transaction data and its agreement with Fujitsu in respect of provision of such information.[533]

535. The formulation of orders for disclosure came into focus in advance of the first CMC on 19 October 2017 through exchanges of correspondence between the parties. In **October 2017**, WBD explained by way of update to the Steering Group that:[534]

535.1. Freeths were seeking a very substantial disclosure exercise in advance of any trial, the first of which should deal with only a narrower range of contractual issues than POL thought should be considered (with Freeths' proposed issues excluding, for example, any issues concerning the NTC). Freeths' essential position was that POL had been obstructive in the past and held most of the relevant information, and that that imbalance should therefore be rectified in advance of any trial.

[532] POL00139406.
[533] POL00250171.
[534] **POL00006431**.

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535.2. WBD did not agree with that assessment. The disclosure sought by Freeths was massive, untargeted, and could cost up to £7m more than staging disclosure by reference to each trial – without any obvious benefit. It would also likely make it impossible for the first trial to be held before late 2019 or early 2020.

535.3. In relation to disclosure of the KEL, POL had offered the Claimants' IT expert direct access to the KEL at Fujitsu's Bracknell office, but Freeths maintained that disclosure of the whole KEL database should be given. WBD proposed to maintain POL's position at the CMC; I explain the reasons for this further below at §§553-554 and §594.

536. As noted above (§§317-318), at the first CMC in October 2017 the Court set the Common Issues down for trial and in summary made the following orders in relation to disclosure:

536.1. The parties were required to give disclosure of prescribed classes of document in relation to each of the Lead Claimants which they selected for the CIT.

536.2. POL was to disclose a small number of technical documents in relation to Horizon and documents originally held by Second Sight.

536.3. The parties were to each produce an EDQ so that further orders for disclosure could be made at a subsequent CMC.

537. In **December 2017**, WBD provided the Steering Group with an update on the EDQ process. WBD advised that:

> *"Relevant individuals and teams filled out questionnaires in relation to the matters covered by the EDQ … Since then, we have covered this*

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> *ground again with the business, holding calls with each business area, Fujitsu and Post Office IT teams. This has been to double check our understanding and to make sure we pick up less important locations of documents that were not needed for the CMC witness statement … This process has enabled us to provide a generous amount of information within the EDQ in order to assist (and be seen to be assisting) the Court in making further directions as to disclosure … it is important that Post Office is seen to be assisting the Court in understanding the vast extent of the documents it holds".*[535]

We further advised that there was a "*wider strategic question about the purpose for which disclosure is being given*", on which advice was being sought from Counsel. In short, we anticipated that Freeths would make wide-ranging requests for disclosure based on the detailed information provided in the EDQ, and that in order to keep the scope of disclosure within manageable and proportionate bounds, it would be necessary to provide the court with a reasonable alternative scope of disclosure.

538. A Steering Group paper dated **4 January 2018**[536] recorded that the parties' lawyers had had a "*cordial and constructive*" meeting ahead of the CMC listed for 2 February 2018 to discuss the future direction of the litigation and, in particular, disclosure.[537] However, we had formed the impression from the meeting that "*Freeths have done little forward planning beyond November 2018 [when the CIT was listed to take place] and they do not really understand how to undertake a major disclosure exercise.*" They were maintaining, in effect, that wide-ranging disclosure should be given on all issues ahead of the first trial, which we considered to be wholly unfeasible and could derail the litigation timetable. Our position therefore (which we recommended be maintained) was

[535] POL00357949.
[536] NB the date 4 January 2017 is incorrectly given on the document.
[537] POL00252428.

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that we should seek staged disclosure on a trial-by-trial basis, which would still give the Claimants access to the documents needed to resolve the issues at each given trial. Given the differences between the parties we considered it "*likely that we will be going into the 2 February 2018 hearing without any agreement on disclosure*". We also anticipated that at some stage POL would need to disclose documents from a system it used called SharePoint. We recommended that steps be taken to extract the whole of SharePoint immediately so that (i) the disclosure arising out of SharePoint could be scoped; (ii) early disclosure of relevant documents could start to be given to the Claimants; and (iii) inadvertent deletion could be avoided. We made this recommendation notwithstanding that extracting the whole of SharePoint was likely to be a costly exercise (in the region of £145,000 with monthly hosting costs of around £15,000).[538]

539. On **31 January 2018**, Amy Prime sent Mark Underwood a Noting Paper titled 'Update on strategy for the Court hearing on 2 February 2018' (being the second CMC).[539] In the Noting Paper, WBD advised the Steering Group that the parties had narrowed their differences on disclosure, with the Claimants now accepting that the disclosure should be staged by trial. However, there remained a dispute as to the Disclosure Pilot 'Model' to be adopted in relation to generic (as opposed to Claimant-specific) documents required for the CIT, with the Claimants seeking Model D search-based disclosure which would result in (we felt) the disclosure of an excessively wide range of documents which did not go to the contractual relations between the parties. We advised that POL should seek Model C narrow

[538] Over the following months we conducted reviews of POL's c.500 SharePoint sites to identify which should be extracted in full. We kept Freeths informed of our decision-making in relation to which sites should, and which need not, be extracted, but received no response. This was set out in an update provided to the Steering Group on 11 April 2018: POL00254458.
[539] POL00253188; POL00139539.

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class-based disclosure, by reference to around 30 classes of documents. The reason for our advice was that it was an important consideration that the costs of the document review exercise be kept proportionate and that the trial timetable be maintained; we were concerned that the Claimants' approach would result in millions (as opposed to hundreds of thousands) of documents being disclosed, which would be difficult to achieve before the end of 2018.

540. At the second CMC on 2 February 2018 (referred to at §320 above), the Court made the following orders[540] relevant to disclosure:

540.1. The Court agreed with POL's general approach that disclosure should be given in stages, broadly aligned to the scope of each trial. I recall there being a discussion before Mr Justice Fraser about the scope of the disclosure orders for the CIT needing to be limited to the admissible factual matrix for the SPMC and NTC.

540.2. Disclosure would be in accordance with Model C (narrow classes of documents), being POL's preferred approach as opposed to the wider issues-based approach to disclosure advocated by the Claimants.

540.3. It was directed that the parties were only required to undertake a reasonable and proportionate (not exhaustive) search for documents within any class.

540.4. There would be disclosure of documents in relation to each Lead Claimant for the CIT in line with the search and keyword criteria set out in the

[540] WBON0001230.

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schedules to the Court's Order ("**Stage 1 Disclosure**") by 28 February 2018.

540.5. There would be further disclosure of generic documents for the CIT ("**Stage 2 Disclosure**") by 18 May 2018. This was subject to the parties agreeing narrow classes of documents and a list of custodians of documents at POL against whom searches would be run to locate those classes of documents.

541. The Court having set down the principles and structure for disclosure in the litigation, a third CMC was then listed for 22 February 2018 to determine the exact narrow classes of documents to be disclosed as part of Stage 2 Disclosure. I emailed Rodric Williams and Mark Underwood on 12 February 2018 setting out our advice on the approach to take at the next CMC.

> *"We have reviewed the Claimants' requests for Model C disclosure. They are, in effect, still seeking massively wide disclosure that goes far beyond the Common Issues for November and far beyond admissible factual matrix. The attached Model C table includes our comments on each request (which has a few points in yellow that need finalising tomorrow).*
>
> *We recommend that Post Office opposes nearly all these requests, save for those that are sufficiently narrowly defined that giving them would be easy. We believe that it is important that Post Office adopts a consistent approach. If we oppose certain categories of documents on the grounds that they are inadmissible, then we need to oppose all similar documents save where there is an obvious reason not to do so – which leads to a large number of requests being opposed. We should also keep in mind that Post Office's original Model C proposal was drafted very generously and in places went beyond admissible factual matrix, so the Cs are already getting more than they are strictly entitled to.*

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> *Counsel and I have a fair degree of confidence that the Court will be with us on this approach so long as we continue to constructively engage with Freeths."*[541]

542. As this was a continuation of the same issues that had been raised with the Steering Group on 31 January 2018, I did not believe that this approach needed a formal Steering Group Decision Paper. Mark Underwood agreed with that assessment[542] and I believe that I verbally briefed the Steering Group about this approach on **14 February 2018** (though I do not recall this meeting).[543] Before the 22 February 2018 CMC the parties were able to agree a list of 51 custodians at POL whose accounts would be searched for disclosable material, and although some progress was made in agreeing the classes of documents many were still in dispute – largely on the grounds that the Claimants were either seeking inadmissible material or the request did not amount to a narrow class.[544]

543. At the third CMC on 22 February 2018, the following relevant directions were given (see §321 above):[545]

    543.1. The classes of document for Stage 2 Disclosure for the CIT were ordered. My recollection is that the Court agreed more with POL's proposed disclosure orders than the Claimants' proposals.

    543.2. By 19 April 2018 the parties and their experts were to meet and attempt to agree (i) the scope of any further information or documents relating to Horizon that the experts required, and (ii) a process for the experts to inspect the Horizon system.

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[541] POL00253355.
[542] WBON0001226.
[543] POL00253363.
[544] WBON0001229; POL00408810; POL00253516.
[545] WBON0001232.

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544. The parties' solicitors and their experts met as ordered on 11 April 2018. Following that meeting Freeths made requests for (i) further inspection of Fujitsu's systems, (ii) further information about Horizon, and (iii) further disclosure of documents. I emailed Jane MacLeod, Tom Moran, Rodric Williams and Mark Underwood for instructions ahead of a CMC to consider these matters that was scheduled for 19 April 2018 (although in the event this was vacated).[546] I set out the broad range of options as follows:

> *POL's options are:*
>
> *1. Refuse all requests for documents / information. Not recommended – its overwhelming clear that further information on Horizon is needed, it's a question of how much and how to deliver it.*
>
> *2. Seek to adjourn the CMC – Not recommended – our judge does not like delay and this will look obstructive.*
>
> *3. Provide what is reasonable – Recommended – POL provides what it considers reasonable in the circumstances and stands it [sic] grounds on the unreasonable requests.*

545. Specifically in relation to disclosure, I noted that the Claimants had made a "*Wide requests for lots of documents*" and recommended to POL that it should "*Re-draft the requests so that they are narrower following the strategy adopted at previous CMCs and then agree to give those narrower classes of document. Only oppose requests that are plainly unreasonable*." POL approved this approach[547] and WBD wrote to Freeths as instructed.[548]

546. Through negotiation and agreement between the parties, some classes of documents were agreed for disclosure. However, others remained in dispute and

[546] POL00022706. This email refers to an imminent CMC in April, which was then adjourned to 5 June 2018.
[547] WBON0000177 and POL00022705.
[548] POL00254578.

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were determined by the Court at a further CMC on 5 June 2018 (referred to at §322 above). The final list of classes of documents to be disclosed by 17 July 2018 were recorded as "**Stage 3 Disclosure"** in the schedule to the Order following this CMC.[549] This Order also provided for inspection of Fujitsu's Peak and TFS systems by the parties' IT experts to be facilitated, and for the experts to submit any requests for further information (not documents) about Horizon by 26 July 2018.

547. From this point onwards, there were no more disclosure orders made by the Court in relation to either CIT or the HIT (putting aside issues relating to particular documents that arose during the course of either trial).[550] Further requests were made through correspondence, each of which WBD reviewed on its merits. In relation to such further requests by the Claimants, WBD advised POL to agree to requests where it was reasonable and proportionate to do so.

548. An example of this is the Steering Group paper dated **26 September 2018**, by which WBD advised POL to disclose the Peak system following requests by the Claimants' expert for certain categories of Peak (as to which see further below, §§621 ff). The reasons for our advice were: (i) providing disclosure of this scale voluntarily would be viewed favourably by the Managing Judge; (ii) it reflected and continued POL's intent to provide assistance to the Claimants where it was reasonable and proportionate to do so; (iii) it should neutralise some of the Claimants' expert's requests; (iv) it would assist POL's own IT expert, who could

[549] POL00120352.

[550] We also sent detailed letters to Freeths explaining the approach we had taken to give the ordered disclosure so that they might challenge that approach if they disagreed with it, see for example POL00285777; WBON0001690; POL00285778. In my view, this provided a level of information about disclosure that went above and beyond what would normally be required in civil litigation.

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not be provided with the Peaks unless they were also made available to the Claimants' expert; and (v) it is likely that certain of the Peaks were adverse and would be required to be disclosed at some stage in any event.[551]

549. Beyond this there were around 12 further tranches of documents disclosed between August 2018 and the start of the HIT in response to requests that were made by the Claimants as the litigation progressed or as WBD identified adverse documents that POL was required to disclose in the course of preparing evidence and for trial.

550. I believe it is important to note three points from the above approach to disclosure that had a bearing on the HIT.

550.1. ***First***, the overall scope of disclosure ordered in relation to the Horizon Issues was, in several respects, quite narrow. But this had the effect of meaning that some relevant material was not surfaced through the Court-ordered disclosure, with the result that documents sometimes only came to light late in the day as the Claimants made more requests or POL prepared for the HIT.

550.2. ***Second***, it was apparent to me that the Claimants' requests for disclosure in relation to the Horizon system evolved over time as Mr Coyne developed his evidence during Summer 2018 and into early 2019. I do not criticise the Claimants for this but note that it meant that the requests for, and subsequent disclosure of, documents relating to Horizon (such as documents from the Peak database) came out gradually, and sometimes close to the HIT. It also meant that these requests and the corresponding

[551] POL00006442.

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disclosure of documents continued during Autumn 2018 when I and my team were heavily engaged in the CIT and with preparing POL's own evidence for the HIT. This was far from ideal and not the planned timeframe for HIT disclosure (which as set out above was intended to be completed in July 2018).

550.3. ***Third***, at no stage before the HIT began did the Claimants make an application for a further disclosure order, from which I inferred that they were broadly content with the documents that POL was voluntarily providing.

551. For completeness:

551.1. The Court ordered a Further Issues Trial to take place after the HIT. The relevant Order (as amended)[552] required disclosure of documents for that trial to be given on a request basis – whereby the Claimants would request a narrow class of documents and POL would provide the documents where it considered the request reasonable ("**Stage 4 Disclosure**"). This disclosure was given on 30 August 2019.[553]

551.2. In or around September 2019, POL implemented various operational changes in order to bring its practices and procedures into compliance with the Common Issues Judgment. This included providing frontline Helpline staff with information on live issues with Horizon which affected the system. This operational change resulted in new documents about bugs in the system being produced. By a Steering Group paper dated **26**

[552] WBON0001566, WBON0001596 and POL00023115.
[553] POL00285761.

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September 2019, WBD advised that these documents must be disclosed by POL to the Claimants "*as soon as possible*".[554]

551.3. By a paper dated **10 October 2019**, the Steering Group was informed that WBD had discovered that Fujitsu had not provided a number of back-versions of KELs that were potentially of direct relevance to the HIT. As a result, the Court and Claimants had been notified, a review was underway, and an audit of Fujitsu's disclosure was being scoped.[555] I deal with this further below in Section R, at §§993-1003.

(i) The Known Error Log (Q76 to Q82)

552. By **Q76 to Q82** of the Request, the Inquiry has asked me about the enquiries I made about the "Known Error Log" database (the "**KEL**"), and the advice I gave POL in relation to disclosure of the same prior to the CMC in October 2017, as well as to the CCRC.

553. I stress at the outset that the position which I advised POL to take prior to the Autumn of 2017 was not motivated by a concern to avoid disclosure of relevant material or to obstruct the Claimants. Based on the information provided to me by POL and Fujitsu during 2016 and 2017 (as explained below), I did not believe that the KEL contained material capable of calling into question the integrity of branch accounting data. I also understood the KEL to have several thousand entries, or "**KELs**", and that they were held in a live database. This made me believe that providing a full copy of the KEL would be a difficult and potentially expensive exercise, and one not justified during the pre-action phase of the

[554] POL00112568.
[555] POL00286050.

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litigation. This is why POL resisted disclosure of the KEL when responding to the LOC and GPOC.

554. My beliefs did not change in the Autumn of 2017 in the lead-up to the first CMC on 19 October 2017 when it was expected that the Court would consider making disclosure orders. I advised POL to seek Fujitsu's agreement that the Claimants' IT expert could be given access to the KEL. At the time, I thought inspection would be a more proportionate, cost-effective way of reassuring the Claimants that the KEL was immaterial than acceding to their request for a full copy of the database. Based on what I had been told to that point, I expected Mr Coyne to conclude that the KEL would yield nothing of particular use or value. However, if my understanding was wrong and Mr Coyne believed the KEL was relevant, then allowing inspection of the KEL would flush that out early and allow the parties to discuss how the KEL (or parts of it) might be extracted and provided to the Claimants. I thought this a pragmatic way forward. Much later it became clear that the KEL did, in fact, contain important information, but I do not believe that my approach prior to October 2017 was unreasonable based on what I understood and had been told at the time.

Enquiries and advice prior to the Generic Defence

555. With reference to **Q76 to Q78** of the Request, I deal first with the period prior to service of POL's Generic Defence.

556. In their LOC dated 28 April 2016, the Claimants referred to a "*known error log*" which they understood was maintained by Fujitsu. They further believed that

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reports relating to it were sent to POL.[556] To the best of my knowledge, this was the first time that I had come across the term 'KEL' or 'Known Error Log'.

557. In the course of preparing the LOR, WBD made enquiries of POL about the KEL. Tom Porter (WBD) was tasked with gathering information from POL to help us decide how to respond to the (32) requests for pre-action protocol disclosure made by the Claimants in their LOC. He sent Andy Garner and Mark Underwood of POL an email on 4 July 2016, asking whether POL "*kn[ew] of a 'known error log' and if so are you able to provide us with a copy?*"[557]

558. Unfortunately, despite a series of chasers, we did not receive a response until 27 July 2016 (the day before the deadline for POL's LOR). Andy Garner instructed us that:

> *"With regards to the software upgrades/architecture documents and error logs requirements, these may be with Atos however most likely Fujitsu being their internal records/MI* [i.e. Management Information]".

559. Since POL held little or no information internally about the KEL (and did not seem to receive reports relating to it, contrary to what the Claimants believed), thereafter we made enquiries directly of Fujitsu. On 19 September 2016 I sent the following enquiry to Fujitsu:

> *"The solicitors for the postmasters have asked us to provide them with a copy of the 'known error logs' kept by Fujitsu and all correspondence between Fujitsu and POL relating to the same. So we can respond to this request it would be appreciated if you could confirm whether a Horizon 'known error log' or a similar documents exist. We've not decided yet on whether to provide this information (and so don't need any documents from you at this stage) – we're just trying to scope out what might be covered by the request. We would appreciate if you could help with the following:*

[556] POL00241140.
[557] POL00408698.

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1. What format do these logs take and where are they held?

2. What level of detail is included within the logs (i.e. are they generic logs for all Horizon errors or linked to specific branches, do the logs explain the consequences of the error and the fix which was applied, etc)?

3. When did Fujitsu begin to maintain these logs and are they still maintained?

4. Are the logs capable of being extracted and provided to us?

5. Have Post Office previously been provided with a copy of these and, if so, to whom and when?

6. Has there been any correspondence between Post Office and Fujitsu concerning these logs? I suspect loads – but it would be good to just understand in high level terms how they are used."[558]

560. Pete Newsome responded on 21 September 2016 as follows:

"We would … like to first point out our concern regarding the underlying, erroneous, theme that these questions … seem to be driving at. At the risk of sounding like a "broken record", the key premise of the HNG-X (and Horizon) system is the Core Audit Log. This comprises the only source of the "truth". And to our knowledge there has been no identified issues with the Core Audit Log and there are no KELs in respect of this log. To this end, the questions regarding the existence or otherwise of issues with other elements of the system are, in our opinion, a distraction to the key premise and could be used to create an erroneous view of HNG-X / Horizon. …

1. What format do these logs take and where are they held? *The logs (referred to as the Known Error Log or "KEL") are held on a server and contain information advising to accessor of the error condition, priority, resolver group to handle and process to follow. Access to the log is controlled by the accessor having to logon to the server. KELs created as a result of an issue arising from an enterprise management event or the result of a post incident action. KEL's are often fixed as part of a maintenance release and then closed. However, in some instances KELs are not closed and remain on the system on the basis it is easier to follow the tactical workaround procedure defined in the individual record.*

[558] WBON0000460.

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> ***2. What level of detail is included within the logs (i.e. are they generic logs for all Horizon errors or linked to specific branches, do the logs explain the consequences of the error and the fix which was applied, etc.)?*** *KELs are individual articles associated to individual events. They explain the issue and any workaround for to be followed if the issue is reported. They are logged against a priority/impact and which capability the call should be passed onto in our service management tool to record and resolve at the time.*
>
> ***3. When did Fujitsu begin to maintain these logs and are they still maintained?*** *The log was implemented from day 1 of the service and is reviewed periodically. The KEL solution is currently being reviewed as part of a service improvement activity with service managers talking with product owners on relevance and quality of all KELs in the system,*
>
> ***4. Are the logs capable of being extracted and provided to us?*** *Yes via excel data extract*
>
> ***5. Have POL previously been provided with a copy of these and, if so, to whom and when?*** *We don't believe POL has ever asked for this before but it is available if required.*
>
> ***6. Has there been any correspondence between POL and Fujitsu concerning these logs? I suspect loads – but it would be good to just understand in high level terms how they are used.*** *To our recollection, this has not been raised in any service meetings and as such we are not aware of any correspondence regarding the KELs themselves though clearly there will be numerous correspondence regarding any issues that may have given rise to a KEL"*[559] (emphasis added).

561. There are three points to make in relation to this email. ***First***, the message we repeatedly and unequivocally received from Fujitsu was that if there were no bugs or errors affecting the operation of the 'core audit process' (being the process by which transaction data flows from branch to the Audit Store containing the master record of transaction data), then there could be no possible basis on which to impugn the integrity of the accounting data held on the Horizon system. ***Second***, therefore, the fact that there were no entries in the KEL relating to the

[559] WBON0000461.

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core audit process meant that it could not logically be relevant to the intimated claim (which, although unparticularised at that stage, could only be based on a contention that this process was affected by bugs). ***Third***, my main aim at this stage was to understand the potential relevance of the KEL with a view to determining whether it met the threshold for early disclosure in accordance with the Practice Direction on Pre-action Conduct. I was not at that stage focused on questions such as control of the KEL (which Pete Newsome was not qualified to determine in any event), or the form in which disclosure might be given to the Claimants. My main takeaways from Pete Newsome's email were that (i) the KEL appeared very unlikely to have any bearing on the Claimants' claims, and (ii) POL did not itself have copies of (or extracts from) the KEL.

562. Out of an abundance of caution so as to be clear on the first point, I responded to Pete Newsome the same day, asking "*are you 100% sure that there are no KELs in respect of the Core Audit Log? If so, we may say this to Freeths so to try to avoid having to disclose the KELs*".[560] He emailed two days later to say that Fujitsu had "*checked all the KELs (takes time as they have free text included) and have found there are no KELs that directly affect the normal operation of the Core Audit Process*".[561]

563. WBD therefore informed Freeths that POL was not going to disclose the KEL at this stage since the claim "*concern[ed] errors with the Core Audit Log [and] Following a review of the KEL FJ have confirmed that there have been no logs in respect of Core Audit Log*".[562]

[560] WBON0000462.
[561] WBON0000463.
[562] WBON0001062.

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564. From my emails, on 31 October 2016 I was copied into a request which Paul Loraine made for a sample of five or so KEL entries from Fujitsu.[563] I believe this was in connection with a request by the CCRC for information about the KEL which Rodric Williams was then dealing with; since WBD already had lines of communication with Fujitsu about the KEL because of the group action, Paul Loraine was tasked with requesting a set of KELs for the CCRC to review.[564] I was not involved in carrying out this task and have no recollection of it, but based on my emails I was aware that the sample KELs were provided.[565] For completeness, in January 2017 I was copied into an email by Paul to Rodric Williams in which he had formatted various follow-up questions posed by the CCRC into a draft email to be sent to Fujitsu.[566] **POL00025358**, which incorporates this email chain, shows that I suggested that Paul should lead on gathering the necessary information from Fujitsu to answer the CCRC's queries. I was later copied into further emails indicating that there had been delays in Rodric Williams sending (or authorising Paul to send) those queries to Fujitsu,[567] and I believe they were ultimately 'parked' until after the CCRC had considered the Generic Defence.[568]

565. Back in November 2016, in a different context, the question of whether POL had control of documents held by Fujitsu arose. As I have mentioned above (§399.4), on 15 November 2016 I received an Email from Elisa Lukas (a solicitor in my team) informing me that Rodric Williams had not sent a litigation hold notice to

[563] WBON0001069.
[564] POL00249030.
[565] WBON0001069.
[566] WBON0000473.
[567] WBON0000476; POL00024817.
[568] WBON0001187.

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Fujitsu (despite us earlier advising him to do so) because "*he does not consider their documents to be in his possession or control and it will be costly to PO*".[569] Elisa observed (correctly) that a document will be within a party's control if they have a right to obtain it, she went on to say that POL appeared to be entitled to documents from Fujitsu albeit at a cost. I thought there was something in this albeit the position was likely to be a little more nuanced, so I asked her to "*back this up with specific analysis i.e. what are those exact contractual rights.*" Since we had the current POL-Fujitsu contract in our possession (this having been disclosed to the Claimants in October 2016), I asked her to arrange for the relevant provisions to be analysed. I return to this point below, at §568.

566. On 17 March 2017, Freeths again raised the subject of the KEL in correspondence. They contended that the draft GPOC (sent on 1 December 2016) did not confine the Claimants to an allegation that there were bugs and errors affecting the core audit process. On that basis Freeths reiterated their request for disclosure of the KEL, but did not explain what the Claimants' allegations were or why this meant that disclosure of the KEL was required.[570] It struck me that disclosure of an entire database of seemingly irrelevant material prior to any pleadings being formally served was not required under the CPR, and that the Claimants were seeking to effectively re-order the ordinary litigation process in seeking extensive disclosure before pleadings. If the Claimants could explain why the KEL was relevant to some or all of their claims notwithstanding this, then disclosure might have been given at that point. We therefore responded on 21 March 2017, pointing out that Freeths had "*not explained the need at this*

[569] WBON0000154.
[570] WBON0001679.

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stage for the disclosure of this document [the KEL] *or how it will assist with finalising the GPOC. If this document is instead required to identify issues in individual branches then these claims should be set out before disclosure is sought*." We stressed that POL was "*being prudent about incurring substantial costs for arguably negligible benefit and [would] therefore continue to weigh carefully any requests for information and documents*".[571]

567. My email records indicate that the subject of the KEL was not revisited with Fujitsu until June 2017 when we were in the process of readying POL's Generic Defence. As I have mentioned above (§481.4(iii)), a meeting took place between me, Fujitsu, Counsel, and Elisa Lukas (WBD) on 22 June 2017, to assist Counsel in pleading certain points of the Generic Defence.[572] A number of action points for Fujitsu arose from this meeting. One was the requirement for Fujitsu to confirm that the KEL was "*not material to … Branch Accounting*" (being a more widely framed question than just focused on the core audit process).[573]

568. A further action point was for Fujitsu to confirm that it did not act as POL's agent in relation to Horizon. I believe that this was because by this time, we had in mind the question of whether POL was entitled to access the KEL at all. At some point, which I believe was in the period between November 2016 and June 2017, someone in my team (probably Elisa Lukas) told me that they had not been able to find anything in the POL-Fujitsu contract and ancillary documents that gave POL the right to access or take copies of the KEL. I recall that I then double checked this myself. I was aware that contracts for the supply of IT services

[571] POL00247918
[572] WBON0001112.
[573] POL00249567.

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frequently require IT companies to prepare and maintain prescribed documents, and I wanted to be sure that we understood how the contract operated. I therefore located and reviewed the relevant provisions in the main contract and spent one or two hours tracing them through the various defined terms and schedules of services to check if that gave rise to any right for POL to access or take copies of the KEL. I recall that my conclusion was that POL did not have a general right of access to Fujitsu documents relating to Horizon. Rather, POL's rights of access were limited to specific documents or categories of documents associated with specified services provided by Fujitsu. Based on my understanding at the time (which was that the KEL comprised Fujitsu's internal notes on workarounds for minor technical issues which could not affect the operation of the core audit process), I did not believe that the KEL fell within POL's access rights. However, if Fujitsu acted as POL's agent in connection with the supply of the Horizon IT software, that might afford a different basis on which it could be said to be entitled to the KEL. At the conference on 22 June, therefore, we asked Fujitsu to consider this point.

569. Chris Jay (Fujitsu's in-house Counsel) followed up on 30 June 2017. He confirmed that there was no relationship of agency between POL and Fujitsu. In relation to our other question on the KEL, he attached an internal Fujitsu email which recorded the question as: "*whether we currently (understanding this is a 'living' document set) have any KELs on the audit store or that are related to errors or bugs in the system that could cause imbalance in sub postmasters accounts*". Chris Jay gave the answer:

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> *"As of 25th of June 2017 there were no Known Errors in the Knowledge database relating to either the Core Audit Process or issues with branch accounts".*[574]

570. Paragraph 50(4) of the Generic Defence was drafted on the basis of that information provided by Fujitsu. I have described the process by which it was drafted and signed off in detail above (at §§479-482), but in summary in relation to this paragraph:

570.1. A first draft of the Generic Defence including this paragraph was produced by Tony Robinson QC on 4 July 2017 and sent to me for review.[575] An extract containing what became paragraph 50(4) was sent to Fujitsu to review later the same day. My covering email said "*I should be grateful if your team could review this extract and provide any comments they may have. In particular, if they could flag and explain any points that they believe not to be correct that would be much appreciated*" (emphasis added).[576]

570.2. In that draft, the relevant paragraph read:

> *"It is admitted that Fujitsu maintain a "Known Error Log". This is not used by POL and nor is it in POL's control. To the best of POL's information and belief, the Known Error Log is a knowledge base document used by Fujitsu which explains how to deal with, or work around, minor issues that can sometimes arise in Horizon for which (often because of their triviality) system-wide fixes have not been developed and implemented. It is not a record of software coding errors or bugs for which system-wide fixes have been developed and implemented. To the best of POL's knowledge and belief, there is no issues in the Known Error Log that could affect the accuracy of a branch's accounts or the secure transmission and storage of transaction data. [THIS PARA*

[574] WBON0001134.
[575] WBON0000485.
[576] WBON0000491; WBON0000492.

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SHOULD BE CHECKED CAREFULLY BY FUJITSU AND CORRECTED/REWORDED AS APPROPRIATE.]"

570.3. I joined a call with Pete Newsome and Torstein Godeseth on 7 July 2017 to discuss the draft. My team then made some amendments to the text based on what was discussed on that call (but there were no amendments to the above paragraph) and Fujitsu were asked to consider that further draft.[577] They did not suggest any changes to the above paragraph, and indeed in his email approving the draft Chris Jay commented, "*all fine*", subject to a couple of minor suggestions in relation to different paragraphs of the text.[578] The only amendment to this paragraph in the final version of the Generic Defence (save for minor typographical amendments) was that the highlighted drafting comment was removed.

570.4. I have set out above at §§481.5-481.6 the process by which the Generic Defence was considered internally and approved by POL and I refer the Inquiry to those paragraphs.

571. As such, on the basis of my knowledge and instructions at the time, I understood the KEL to be a database of internal 'know-how' held by Fujitsu which was not in POL's control and which did not bear on the issues in the proceedings. It was on this basis that paragraph 50(4) of the Generic Defence was drafted.

Further enquiries and advice prior to the first CMC on 19 October 2017

572. Following service of the Generic Defence on 18 July 2017, matters were picked up again with the CCRC. I note that **POL00041458** shows that on 26 July 2017, Rodric Williams sent the Generic Defence to the CCRC, who responded with a

[577] WBON0001147.
[578] WBON0001161; POL00249903.

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further set of questions relating to the KEL (posed by Grant Thornton, the CCRC's instructed expert). Paul Loraine took carriage of POL's response, which I then commented on.[579] I set out below the CCRC's questions in black, Paul's suggested answers in red, and my comments on them in yellow highlight:

> *"Paragraph 50(4) of the defence refers to the KEL as a "document" in the singular, am I right in thinking it exists as a single document rather than multiple different logs? YES IT IS A SINGLE DOCUMENT [IS THAT CORRECT? - I THINK IT IS A DATABASE RATHER THAN A DOCUMENT - NEED TO CHECK WITH FJ]*
>
> *In terms of scale, in your email of 13/11/2016 you referred to "thousands of entries" and "voluminous entries" in the KEL, is it possible to say how many pages the document runs to? ANDY - PRESUMABLY ONLY FJ COULD ANSWER THIS? DOES THIS QUERY HAVE TO GO THROUGH THE USUAL PROCESS OF BEING PUT IN A QUEUE OF QUESTIONS FOR FJ OR ARE YOU HAPPY FOR ME TO ASK PETE NEWSOME (MY PREVIOUS FJ CONTACT ON THE KEL DIRECT? ASK PETE (BUT NEED TO CC CHRIS JAY, MIKE HARVEY AND RODRIC]*
>
> *"In your email of 13/11/2016 you stated: "we have asked Fujitsu for some random examples of these entries, and will provide these to you in due course". I don't think we have received any examples to date. I would be grateful if we could see some sample pages, as this would give us a clearer idea of the kind of information the Kel contains, and whether further analysis of the document is likely to be of any relevance to our review. WE HAVE THE EXAMPLES BELOW FROM FJ. I WILL SUGGEST ROD PROVIDES THESE WITH HIS NEXT UPDATE EMAIL TO THE CCRC. AGREED.*

573. These queries were passed onto Pete Newsome of Fujitsu who responded by email on 17 August 2017 as follows (Pete Newsome's answers in red):[580]

> *"Is it more accurate to call the KEL a database rather than a document? Yes it is a database which changes with new KELs being added, changed, and removed on a regular basis.*

[579] WBON0000503
[580] WBON0000504

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> *Is it right to say that the KEL exists as one single database/document rather than multiple different logs? It is one database.*
>
> *I understand the KEL runs to thousands of entries. Is it possible to say how many pages the KEL would run to? Stats below. The KEL DB Knowledge Overview lists the following i.e. 3973 KEL's".*

574. On 18 August 2017, Paul Loraine forwarded Pete Newsome's answers to Rodric Williams for them to be forwarded on to the CCRC (with me in copy).[581]

575. The Claimants continued to raise the matter of the KEL in correspondence (and by way of a CPR 18 request) in July and August 2017. At around this time we were turning our minds to the first CMC. It was appropriate at this stage to start to consider what disclosure orders ought to be made at that hearing (albeit that the pleadings had not yet closed as the Claimants' Reply was not yet due), and I have outlined the general advice that WBD gave in relation to what disclosure orders to propose above at §§523 ff, especially §§536-537. I have also identified the reasons why I formed the view around this time that POL should attempt to facilitate access to the KEL (above, §554). In short, it was apparent that the matter was not going to go away and I thought at the time that it would be preferable to seek to put it to bed by affording access if possible. There was a real question, however, as to whether disclosure could be managed in a sensible and cost-effective way, given what I understood about the nature, size, and technical content of the KEL database.

576. It was against this background that on 1 September 2017 WBD wrote to the Claimants about the KEL in the following terms:

> *"Access to the Known Error Log (KEL) can also be considered as part of these wider disclosure issues. The KEL is a not a document, but a live and proprietary database with approximately 4,000 entries. Since the*

[581] WBON0001188.

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> *KEL is a constantly rolling document, the current version in use has evolved over time and may not reflect the version in place at time which is relevant to the Claimants' claims. Providing "disclosure" of it is therefore not easy to do and prone to being a disproportionately expensive exercise if not handled carefully."*[582]

577. For the avoidance of doubt, by my statement that "*The KEL is not a document*", I was referring to the non-legal understanding of the word 'document', as a way of expressing the practical difficulties associated with producing the KEL in the same way that one would (for example) an email or a hard copy document. I was not suggesting that the KEL was not disclosable – this is precisely why we made the proposal to grant "*access*" to the KEL. As to the "*wider disclosure issues*" to which this passage makes reference, we repeated the concern that we had already raised in correspondence about the scope of disclosure sought by the Claimants, having regard to both the generality of the Claimants' Amended GPOC and the fact that they had not yet valued their claims, which made it very difficult to assess the proportionality of their requests.

578. On 14 September 2017, Tony Robinson QC emailed me asking to see a copy of our 1 September letter, stating: "*I would like to understand why we seem to have claimed that the KEL is not a document*". He suggested that it was. In relation to this query, Amy Prime identified (rightly) the point made in the last paragraph.[583]

579. Tony Robinson QC also asked why WBD had not made the point that the KEL was not in POL's control in our letter. As to this, he felt that we needed to be clear that POL did not have a right to inspect or take copies of the KEL either under the POL-Fujitsu contract or the law of agency, or as a matter of established

[582] WBON0001196.
[583] WBON0001195.

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practice.[584] In relation to this second query, there followed some debate about whether there might be some analysis by which POL could be said to have control of the KEL. As I understood it, Tony Robinson QC's query was concerned with discussing within the legal team – and satisfying himself – that POL did not in fact have control of the KEL. As noted below, I believe he was ultimately so satisfied, because he maintained at the CMC on 19 October 2017 that POL did not have a right to the KEL. This was also my view at the time, based on my understanding of the contractual arrangements and the fact that POL had never had access to the KEL (historically it had not had any access to the KEL, and more recently it had only been provided with the odd example entry in order to answer its and the CCRC's queries about the format of the database). But in any event, in practical terms I thought this point would assume less significance from this point as long as Fujitsu agreed to allow the Claimants access. Accordingly, I wrote in response to Tony Robinson QC that, "*in principle we are happy to give [the Claimants] access to the KEL, it's just a question of when and how – as we have always said to them*".[585]

580. WBD then wrote on 15 September 2017 to Freeths advising them that POL were "*currently discussing with Fujitsu how to enable access to the Known Error Log. We are hopeful that we shall be in a position to provide a constructive proposal which would be acceptable to the Claimants by Wednesday, 20 September 2017*".[586]

[584] WBON0000505.
[585] WBON0001197.
[586] WBON0001199.

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581. On 18 September 2017, I emailed Fujitsu's legal team explaining that the Claimants "*are pressing hard for access to the KEL and are threatening to get a Court Order. We like to discuss whether, and if so how, we could give Freeths' IT expert access to the KEL*". I spoke on the phone about this with Pete Newsome on 19 September 2017 and followed this up by email dated 20 September 2017 with actions (i) for him to "*speak to FJ support team about the practicalities of doing this*", and (ii) for WBD to "*circulate draft letter to Freeths with proposal for accessing the KEL*" (which I did the following day).[587]

582. On 21 September 2017 we received a letter from Freeths which stated that, as we had not made a proposal concerning the KEL by our self-imposed deadline of 20 September, they were now drafting an application under CPR 31.14 (i.e. on the basis that the KEL was referred to in POL's Generic Defence). I chased Fujitsu with an urgent request for them to approve the draft letter to the Claimants offering their expert access to the KEL.[588]

583. Pete Newsome responded on 21 September 2017 as follows:

> *"Fujitsu suggests that once Freeth's have appointed a suitable IT expert who has signed NDA's to preserve Fujitsu's commercial position we could make the system available in our Bracknell offices for supervised inspection. Any questions can be answered on the day or submitted in written form after the visit. Depending on the length of visit and the follow up questions this could be a chargeable activity if not contained."*[589]

584. By letter to Freeths dated 22 September 2017, WBD explained that, whilst we did not agree that the Claimants were entitled to inspect the KEL under CPR 31.14 and we did not believe the KEL to be relevant, POL had discussed with

[587] POL00041483.
[588] POL00041483.
[589] WBON0000506.

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Fujitsu the methods by which access could be provided to Mr Coyne at Fujitsu's premises.[590] We asked for Mr Coyne's availability in the next two weeks to attend Fujitsu's Bracknell site. The letter also stated that Fujitsu had asked for Mr Coyne to sign a routine non-disclosure agreement ("**NDA**") due to the confidential or commercially sensitive nature of the information contained in the KEL.

585. A draft NDA was prepared which provided that: "*Freeths has requested access by yourself …of the Fujitsu proprietary technology utilised in the supply of the services […] known as the "Known Error Log" and of any Peak entries referenced in the Known Error Log*". The fact that Fujitsu were insisting that the Claimants' expert sign an NDA before he could access the KEL reinforced, to my mind, what I had already understood to be the case, namely that the KEL was not in POL's control because it was a proprietary database of Fujitsu's internal know-how on how to manage IT systems. This was also consistent with the concern (shared by me and Rodric Williams) that, if an order for disclosure of the KEL was made directly against POL, its ability to comply with that order would be dependent on Fujitsu's willingness and ability to extract the KEL. (As I recall, this is why the Order dated 27 October 2017 following the first CMC was made on a "reasonable endeavours" basis.)

586. By letter dated 27 September 2017, Freeths agreed in principle to WBD's proposal for Mr Coyne to inspect the KEL.[591]

[590] WBON0001200; WBON0001201.
[591] WBON0001203.

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587. Over the next two weeks, the parties liaised over logistics and Mr Coyne's NDA.[592] We wanted to make sure that Fujitsu were aware that the purpose of this visit was strictly limited to inspecting the KEL. In this regard, Fujitsu continued to have concerns about ensuring that the confidentiality of the KEL was protected. Chris Jay wrote to Rodric Williams and me on 4 October 2017 stating:

> *"I note that Mr Coyne is employed by IT Group Ltd. He may of course be a self-employed contractor (or is it "worker"!?). I think that we need to establish which. As you know, as an employee under a contract of employment, conventionally this would mean that FJ enters into an NDA with IT Group Ltd under which IT Group Ltd covenants that it has in place legally enforceable confidentiality provisions given by him. If self-employed it could be that he is contracted through a limited company or even via an agency. These relationships may be more opaque from a an enforceability of confidential obligations point of view·*
>
> *Either way I would request that he enters into an individual confidentiality undertaking*
>
> *I understand that the scope is for Mr Coyne to review and inspect the Known Error Log on a screen only and so as he can understand the contents with no right to ask questions. [Pete has mentioned that he would be entitled to take notes- is this correct?]*
>
> *Disclosure – for disclosure only to Freeth's for the sole purpose of Freeth's being able to understand the contents and thereby to conduct its Group Litigation against Post Office?*
>
> *IF entitled to take notes – the notes should be destroyed or handed back to FJ on completion of the litigation?!"*[593]

588. Both the tone and substance of this email further reinforced my belief that the KEL was not in POL's control because it was an internal proprietary database over which Fujitsu had a right to assert commercial confidence.

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[592] In the interests of cooperation, and with a view to narrowing the issues between the parties, we also proposed to offer Mr Coyne access to 4,000 technical documents that described the Horizon IT architecture, in addition to the KEL: WBON0001400.
[593] POL00250828.

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589. Following up on the NDA point, on 5 October 2017 Chris Jay sent Rodric Williams and me an individual confidentiality undertaking for Mr Coyne and a corporate NDA to be signed by his employer (IT Group Ltd) to be forwarded to Freeths. Chris Jay stated that he had "*taken the view that both an individual and corporate NDA is necessary […] We would certainly wish an individual NDA be signed and are more relaxed about the need for a corporate NDA… I suspect that both will be required*".[594]

590. On 6 October 2017 we wrote to Freeths to set out the specifics of the proposal that had been agreed with Fujitsu.[595]

591. My fourth witness statement was prepared against this background. At paragraph 35, I referred to the "*irrelevance*" of the KEL and the fact that it was "*not within [POL's] control*" for the reasons I have identified above. This evidence was accurate on the instructions and information that we had received at that time. This was further underscored by Counsel's sign-off on the statement. In addition, and as noted above, Leading Counsel submitted at the CMC that the KEL was not relevant and was not within POL's control, based on the same information from Fujitsu that Counsel and I had received.

592. Based on these same instructions, which I have outlined above, I went on to describe the KEL in the following terms at paragraphs 38 to 40:

> *"I understand from Fujitsu that the Known Error Log cannot be easily downloaded as it comprises data that is stored on a database, rather than being a document in a conventional form. Unless one has the necessary database software, reading the data in the Known Error Log is very difficult. The alternative is to manually copy or print each entry, but this would produce poorly formatted material and would take*

[594] POL00250841.
[595] WBON0001213.

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> *significant time and work. Fujitsu believe that the best solution is for a person with appropriate expertise to read the Known Error Log on a screen at its offices where the information can be presented in a user-friendly format.*
>
> *To avoid incurring needless time and costs arguing about this, Post Office wrote to Freeths on 22 September 2017 offering to arrange in the first instance for an opportunity for the Claimants' IT expert to inspect the Known Error Log at Fujitsu's premises. This offer was subject to Fujitsu's requirement that the Claimants' IT expert signs a standard form Non-Disclosure Agreement in order to project Fujitsu's commercially sensitive know-how that might be revealed in the Known Error Log.*
>
> *However, if having seen the Known Error Log the expert believes that disclosure of some sort is needed, the inspection process offered by Post Office should enable Freeths to indicate precisely what is needed and to explain why, as my firm proposed in its letter dated 29 September 2017".*

593. This evidence was accurate on the information we had at that time. Further, in my view, the proposal we had made for the Claimants to inspect the KEL (but not have it extracted and provided to them) was reasonable and proportionate based on what we understood at the time – particularly given that no trial in relation to Horizon had even been ordered at this stage, the focus being on shaping the first trial, of the Common Issues.

594. At a Steering Group meeting on 16 October 2017, just prior to the CMC, I provided an update on the litigation, including the following update in relation to the KEL: "*[The Claimants] are insisting on full disclosure of the Known Error catalogue despite our offer to allow to inspect it at Fujitsu. We will be pushing back on this point and this can be expected to be the main point of discussion at the CMC*". I regarded our decision to push back on this point was reasonable and proportionate on the basis of the circumstances as we then knew them and the factors which I have outlined above.

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595. As noted above (§318), at the first CMC the Court made an order that aligned with our proposal, namely that Mr Coyne's access to the KEL should be facilitated by him visiting Fujitsu's Bracknell site (subject to providing an NDA), leaving it open that this could give rise to later requests for production of specific entries from the KEL.

Disclosure to the CCRC

596. With reference to **Q79.1**, as I have mentioned above at §564, the CCRC asked various questions about the KEL in late 2016 which were, so far as I am aware having reviewed my email records, 'parked' in early 2017 pending POL's Generic Defence. I do not know whether this was agreed with the CCRC or not. Once the Generic Defence was served, paragraph 50(4) was drawn to the CCRC's attention by Rodric Williams on 27 July 2017 (**POL00041458**, cf. §§572-574 above). Although I was copied into the emails to which I have referred, I do not believe I advised Rodric Williams on the decision either to 'park' the CCRC's queries or to draw paragraph 50(4) to the CCRC's attention. I was copied in because these emails related to matters which were live in the group litigation and other members of WBD were assisting (i.e. by gathering information for the CCRC about the KEL), and latterly because they involved the provision of POL's core pleading to the CCRC. As set out above at §572, when the CCRC asked follow-up questions about the KEL based on the Generic Defence, I provided Paul Loraine with one or two points of clarification and a steer on how to get the other information he needed.

597. With reference to **Q79.2**, I did not have any other meaningful involvement in the disclosure of the KEL to the CCRC. I continued to be copied into emails from time to time which related to the CCRC's questions about the KEL, and

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subsequently into emails which related to arrangements which were being made for the CCRC to inspect the KEL at Fujitsu's Bracknell Office. I cannot see that I responded to any of these emails (which as above, I believe I was sent largely for information purposes), save for one on 13 March 2018 which related to the CCRC's planned visit to the Bracknell office the following day.[596] In this email, I simply flagged to Paul Loraine that Fujitsu were currently working on a way of extracting all the KELs (something which was not thought to be achievable in a cost-effective way at the time of the October 2017 CMC). Following the 14 March 2018 visit POL sent Paul Loraine an update email (to which I was copied) setting out the progress made by the CCRC so far, which referred to the visit and commented that the CCRC had quickly established that the KEL was unlikely to contain information which could easily be linked to a particular branch.[597]

598. For the avoidance of doubt, so far as I am aware WBD's only involvement in these matters consisted of compiling answers to the CCRC's questions about the KEL, and subsequently assisting in making arrangements for the CCRC's visit to Fujitsu. This was because we had been conducting our own inquiries about the KEL for the purposes of the group litigation and therefore had relevant lines of communication with Fujitsu on this issue. As a result, I understand that we were much better placed to assist POL to obtain and prepare answers than Cartwright King, who were generally responsible for gathering material for the CCRC and handled all of the aspects of advice and strategy in relation to POL prosecutions. WBD did not advise POL on any strategy for handling the CCRC, either in relation to the KEL or more broadly.

[596] WBON0000523
[597] WBON0001687.

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(iii) The Peak Database (Q81.2, Q83 to Q87)

599. **Q81.2** and **Q83 to Q87** of the Request ask me about my involvement in the disclosure of the Peak system, in particular (i) when I became aware of the Peak system and what steps I took to investigate its content (**Q84, Q85**); (ii) what advice I gave POL about disclosing that system to the Claimants, and why my fourth witness statement did not make reference to it (**Q83, Q81.2**); (iii) the background to the disclosure of some 220,000 'Peaks' to the Claimants in September 2018 (**Q86**); and (iv) my involvement in the disclosure of Peaks thereafter.

Early knowledge of the Peak system

600. Broadly, my understanding (being from five years ago during the HIT) is that a "**Peak**" is the term used to describe Fujitsu's internal record of an investigation into, and (where applicable) the development of a fix for, an issue that has arisen in the Horizon system. Whereas a KEL records (in effect) the way in which an issue is resolved, a Peak is the record of an investigation into an issue. A Peak is not a comprehensive record of all material generated by an investigation, since some material may be held elsewhere (for example, in internal Fujitsu emails). Where a Peak is generated, it is logged in a database known as the "**Peak system**".

601. With reference to **Q85.1**, in the course of preparing this statement I have identified that the first time I was sent a document containing the term 'Peak' was in early April 2015, when Second Sight asked POL to comment on two documents which discussed the possibility of using the Balancing Transaction tool to address discrepancies which had arisen as a result of the Receipts and

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Payments Mismatch bug in 2010 (see above, §§222-223). One of these documents stated that it related to two 'Peaks'.[598] Based on searches conducted of my email inbox for the term 'Peak', I have identified that the first time it appeared in correspondence to me (or to which I was copied) was around the same time, on 8 April 2015, when Pete Newsome of Fujitsu provided POL with information about the Balancing Transaction process to help POL respond to Second Sight's queries, which was then forwarded to me (§226 above).[599] I am sure that the appearance of the term 'Peak' in the 2010 memo and 8 April 2015 email would have meant nothing to me at that point in time.

602. The search of my email records has also shown that, when corresponding with Deloitte on 16 August 2016 (this would have been shortly after receipt of their preliminary report on remote access in July of that year, see above §468), I asked Mark Westbrook: "*Have you come across something called 'Peak Incident Reports'? I think these are some form of reporting tool used by FJ to flag major issues. Do you know what they are and how they're used?*"[600] However, I do not know what prompted this query and I cannot see that I received a response to it.

603. There may well have been other references to Peaks (which is not surprising given the sheer scale of documents moving between WBD and POL whilst the Horizon-related matters were ongoing) but in the context of the group litigation the first time they were raised *inter partes* was by the Claimants in March 2017. At that time, the parties were in the process of negotiating a protocol to partially

[598] POL00225914.
[599] POL00041040. That email said that the first steps towards a Balancing Transaction being used would be (i) that the "*[i]ssue is described on a Peak incident (the incident reporting system)*"; (ii) that a "*[r]equirement for financial correction [is] identified by Post Office and discussed with Sub Postmaster*"; and (iii) thereafter the "*Peak [is] transferred from SSC to Development team to write required correction as a script*".
[600] WBON0000459.

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release Second Sight from their contractual obligations of confidentiality, to enable the Claimants to discuss their cases with Second Sight (see above at §531 for WBD's advice to the Steering Group in October 2016 that POL should agree to grant Freeths access to Second Sight).[601] On 17 March 2017, in a letter to WBD, Freeths wrote that one of the topics they wished to be able to discuss with Second Sight was the Peak System (as well as the KEL).[602] It was therefore evident that the Claimants were aware of the Peak system by at least this time. POL acceded to the request and the protocol ultimately entered into between the parties on 27 July 2017 expressly provided, at clause 3.1.3, that the Claimants and Second Sight could discuss 'peaks':

> *"Subject to paragraph 3.1.5, the topics for initial discussion with Second Sight … pursuant to this protocol … shall be as follows … Errors, bugs, fixes, issues and 'peaks'…".*[603]

Investigations and approach to disclosure leading up to the CMC

604. In the course of preparing for the first CMC, Elisa Lukas of WBD emailed Pete Newsome (Fujitsu) on 6 September 2017 explaining that she was preparing a witness statement regarding the documents and data relevant to the group litigation. In relation to Horizon, she asked: "*What records are kept about bugs, how they are kept and whether these are searchable by branch affected*".[604] This was in the context that the parties were still considering how to structure the litigation (e.g. whether there should be staged trials and what they should be about) and Freeths had proposed that early disclosure be given by reference to broadly defined generic issues, one of which was: "*bugs, errors or defects in the*

[601] See also: WBON0001063.
[602] WBON0001679.
[603] POL00250437.
[604] WBON0000178.

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system which were or may have been the cause of discrepancies or alleged shortfalls".[605] We were investigating what records Fujitsu held, and how they were held, in order to respond to the Claimants' proposals.

605. Pete Newsome responded to Elisa on 8 September 2017. His email included the following:[606]

> "*Whenever an issue is reported by a branch to the Post Office Call Centre (NBSC) and it is deemed to be a technical issue it is passed via the AtoS Service desk to the Fujitsu SSC Support Team. Once the call has been passed to the Fujitsu SSC support team it is logged in the TfS support system against a the individual branch and updated at every stage of investigation and to its conclusion. These records are kept for at least 7 years and recoverable by branch.*
>
> *If on investigation an issue is identified which the team member deems to need further investigation and cannot be solved either by following the instructions in the Knowledge base or by the experience of the Service Staff then it is logged with the 4th line support team. If an the issue is identified that requires a programmatic fix the it is logged in a separate system (the Peak System) and given the generic term a 'Peak'. If it is deemed to need new code to fix the issue (a bug) then this is produced and fully regression tested before release into the estate via the process outlined below. If an issue is identified which affects a number of branches a master call record is created to consolidate any fixes or workarounds need to be issued."*

606. He went on to explain that any proposals for system-wide software updates arising out of Peaks are considered by Fujitsu's Business Impact Forum ("**BIF**"), and he summarised the process followed by the BIF.[607] To the best of my knowledge, this is the first time that the "Peak system" is mentioned in any correspondence between WBD and Fujitsu relating to the litigation.

[605] POL00250090.
[606] WBON0000174.
[607] WBON0000174.

607. Around this time, as noted above at §§580-590, we were working on ways of facilitating Mr Coyne's access to the KEL, an offer to that effect having been extended to the Claimants on 22 September 2017.[608] Having reviewed my firm's records for the purposes of drafting this witness statement, it appears that we were also contemplating voluntarily offering access to the Peak system (which the Claimants already knew about) at the same time. An early draft of that statement, prepared by WBD on or before 4 October 2017, said (page 45):

> *"In addition, Fujitsu is prepared to allow the Claimants' IT expert to inspect the Peak System [TO BE CONFIRMED BY FJ]. With the benefit of this information and decisions on preliminary issues, I believe that the parties and the Court will be much better placed to make informed decisions about the expert evidence, if any, that may be needed in the future"* (highlighting in original).[609]

608. However, that proposal was merely under consideration as we were still investigating what was contained in the Peak system and how access could be enabled in practice. On 4 October 2017, Elisa Lukas sent Pete Newsome a further list of questions about the Peak system (as well as the KEL). Pete Newsome answered these questions on 6 October 2017 (his answers in blue text below):[610]

> "***Peaks***
>
> *How many peaks are there in the Peaks system?* *Open 859*
>
> *Is it possible to export information from Peaks and what format would this be in?* *No this is not possible without losing all the key context*
>
> *Did I note correctly that many of the Peaks have no impact on branch accounting and can relate to entirely separate parts of Horizon?* *Fujitsu use the Peak system to report actions and changes required in all of the*

[608] WBON0001200.
[609] WBON0001207; WBON0001208.
[610] WBON0000507.

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> *systems required to support the Post Office HNGX solution. This includes not just the live system but also testing and other support systems and include all areas of the system including infrastructure and the request of any data extracts by Post Office. The vast majority will have no bearing on the branch accounting system*
>
> *We discussed previously the possibility of giving the Claimants' access to inspect the Peaks System as well as the KEL. Would you be happy with us offering this? Due to the nature of the Peak system Fujitsu believe the best course of action is to make available the Peak system for any references that are quoted in the KEL system. The system is not designed for running searches or clarifying Peaks for a particular functional purpose. It also has information within it which is both proprietary to Fujitsu and release to a wider audience could cause security issues".*[611]

609. Pete Newsome's answers indicated that, as with the KEL, it would be very difficult to extract and disclose the content of the Peak database. In relation to the question of whether Mr Coyne could be given access to the Peak system at the same time as the KEL, Fujitsu advised that the "*best course of action*" would be to make the Peak system available for Mr Coyne to inspect any Peaks which were referred to in entries in the KEL.

610. Accordingly, when on 6 October 2017 WBD sent Freeths the details of the arrangements agreed with Fujitsu for Mr Coyne to attend the Bracknell site to inspect the KEL, the draft NDA provided for Mr Coyne to sign stated as follows:

> "*In connection with the Post Office Group Litigation, Freeths has requested the inspection by Mr Jason Coyne [an employee of][independent contractor to] [delete appropriately] IT Group Ltd (herein ["Employee"]["Independent Contractor"] [delete appropriately] of aspects of the Fujitsu proprietary technology utilised in the supply of the services under the Contract and known as the "Known Error Log" and of*

[611] WBON0001684.

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any Peak entries referenced in the Known Error log (collectively "KEL")" (emphasis added).[612]

611. With reference to **Q81.2**, the Peak system was not ultimately referred to in my fourth witness statement for the following reasons:

611.1. ***First***, the purpose of Parsons 4 was to set the context for the Court (especially because this was the first hearing before the newly appointed Managing Judge) to make the first set of trial directions in the proceedings, including major strategic questions around whether there would be a staged trial process, the directions timetable for those trials and then disclosure in relation thereto. One part of that statement was to provide some context around the scale and nature of the documents that might be involved in the litigation. It sought to explain (i) the disagreements that had arisen between the Claimants and POL regarding orders for early disclosure, and (ii) why POL was concerned that the early disclosure orders sought by the Claimants would require huge effort, disproportionate costs, and be likely to produce vast numbers of irrelevant documents, in requiring disclosure by reference to generic issues of very broad scope (cf. paragraph 4). Its purpose was expressly not to identify the locations of all potentially relevant documents. Thus, paragraph 57 said: "*In order to give a sense of the difficulties involved* [in identifying and recovering relevant documents]*, in the following paragraphs I describe some of the principal IT systems that Post Office has in place and which might be*

[612] WBON0001213; POL00250836. Freeths returned a draft of the NDA on 13 October 2017 with this section substantially unchanged. This wording was in substantially the same terms in the final agreed NDA.

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relevant to this litigation" (emphasis added). This was not intended or expressed to be an exhaustive list.

611.2. ***Second***, and as I have mentioned, the Claimants were well aware of the Peak system and had not made a request for disclosure or inspection of it (but were permitted to discuss it with Second Sight as a result of the protocol the parties had put in place).

611.3. ***Third***, there was no need to refer separately refer to the Peak system when setting out POL's offer to facilitate Mr Coyne's access to the KEL, since it was inherently part of that offer and not a separate inspection.[613]

612. The approach we adopted in relation to the Peak system was therefore:

612.1. To arrange with Fujitsu that Mr Coyne would be able to access the Peak system to inspect any Peak he identified from the KEL, and to include the Peak system in our EDQ which was served on 6 December 2017. This recorded that: *"If Fujitsu identifies an issue in Horizon that requires a programmatic fix then it is logged in its database, the Peak System, and labelled as a 'Peak'"*.[614]

612.2. Otherwise, to leave it to Mr Coyne to inspect individual Peaks as he saw fit during his visit to Fujitsu in November 2017, and/or to the Claimants to seek further access to, or disclosure from, the Peak system if they wished.

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[613] On 7 October 2017, when commenting on the statement Tony Robinson QC queried offering the Claimants inspection of the whole Peak system. As set out above, the day before we had offered a narrower form of access to the Peak system as recommended by Fujitsu (namely, access to Peaks Mr Coyne wanted to inspect which he identified from KEL entries). I therefore advised Tony Robinson QC that the proposal had now been dropped and was a redundant hangover from an earlier version of the statement, although I expected the Claimants to seek inspection along these lines in due course: WBON0000190.

[614] POL00252048.

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613. This was, in my view, a reasonable approach based on the information and understanding I had about Peaks at the time (as set out above).

Background to September 2018 disclosure

614. In the event, and notwithstanding that Mr Coyne could have requested access to any entries in the Peak system he identified from the KEL during his November 2017 visit, the Claimants did not raise again the issue of the Peak system until 11 April 2018, when it was discussed at a joint meeting between the parties and their respective IT experts (referred to above at §544).[615] The purpose of that meeting was to agree (i) the scope of any further information or documents relating to Horizon that the experts required, and (ii) a process for the experts to inspect the Horizon system. The Peak database was identified by the experts (as was the KEL) as a potentially useful source of information from which bugs could be identified, although the parties had different ideas about how that information should be mined. At the risk of oversimplification, the Claimants appeared to prefer a top-down approach involving searching for key words and flags associated with bugs generally, in order to capture potentially relevant information which could then be examined; POL believed that the Claimants ought to identify suspected problems they had encountered with Horizon (e.g. anomalous transactions, unexplained behaviours of the system, etc.) which could then be the focus of more targeted enquiry to see if those problems were caused by bugs. I was surprised to learn at this meeting that Mr Coyne did not appear to have been provided by the Claimants with any specific details of their allegations, or examples of problems they had encountered.

[615] WBON0001235.

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615. Following that meeting, Freeths requested access to the Peak system and I recommended that POL should seek to agree this with Fujitsu.[616] POL agreed and by a letter to Freeths dated 17 April 2018, confirmed that it would facilitate access to the Peak system if Mr Coyne wished to inspect it.[617] No response was received to that offer and WBD chased Freeths on 14 May 2018.[618] They responded on 18 May 2018, confirming that Mr Coyne sought a session at Fujitsu to inspect the Peak system as well as a separate system known as the TFS.[619] The draft Order attached to Freeths' letter contemplated that Mr Coyne's inspection would take place over two days

616. On 21 May 2018, Jonny Gribben (who was leading on work relating to the preparation of the experts' reports) emailed Pete Newsome of Fujitsu with me in copy, seeking to make arrangements for the experts to attend Bracknell to inspect the Peak system and the TFS. I note that Jonny asked Pete Newsome whether both systems could be inspected "*in a day*", to which Pete Newsome responded yes.[620]

617. On 7 June 2018, Freeths informed us that Mr Coyne was available on 14 and 15 June 2018 for the inspection.[621] However, Dr Worden was not available then, but was available on 21 June 2018 or any day during the week commencing 25 June 2018.[622] Jonny therefore replied to Freeths on 12 June 2018 offering these

[616] POL00022706; cf. §§544-545 above.
[617] POL00254578.
[618] POL00254961
[619] POL00254995; POL00254996
[620] WBON0001247
[621] WBON0000529.
[622] WBON0000530

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dates instead.[623] Freeths then responded to say that Mr Coyne was available on 27, 28 or 29 June 2018.[624]

618. With this Jonny enquired after Fujitsu's availability to accommodate an inspection, and Pete Newsome advised that 28 June 2018 was feasible and reiterated that he believed the Peaks and KELs could both be inspected in one day.[625] Jonny informed Freeths and they replied saying that Mr Coyne thought that two days were necessary, so would want to return for a second day. However, they said 28 June 2018 was in his diary and the inspection went ahead on that day.[626]

619. In the meantime, at the CMC on 5 June 2018, Mr Justice Fraser had ordered that the experts be given two days for inspection.[627] Ultimately, on 26 June 2018 when the experts formally submitted their joint Requests for Information ("**RFI**") pursuant to the CMC Order, Mr Coyne's request for inspection was in the following terms: "*[o]ne day agreed at present, second day to be arranged*" (Request 1.9).[628] So far as I am aware based on searches carried out of my email records, Mr Coyne did not in fact request a second session to be arranged after this. I also note that an email sent to me and Jonny Gribben the day after the inspection by Chris Emery (Dr Worden's assistant) recorded Chris' view that "*[o]verall yesterday went well. We achieved all of our objectives and learned a*

[623] WBON0000531.
[624] WBON0000532.
[625] WBON0000533.
[626] WBON0000534
[627] POL00120352.
[628] POL00110998

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great deal about Peak and TfS. We can consider those systems well and truly inspected!".[629]

620. With reference to **Q86.1**, I therefore believe that that the account in Freeths' letter of 2 October 2018 (**POL00003386**), which characterised POL as only being prepared to agree a one-day visit, is not a full and fair description of the approach taken by POL or WBD to facilitating access to the Peak database. The reality of the situation, so far as I can tell based on the records available to me, was that an initial day was pragmatically agreed with the experts and Fujitsu, and in the end Mr Coyne did not require a second day in which to inspect the Peak system.

621. Following the inspection on 28 June 2018, on 20 July 2018 Mr Coyne submitted requests for disclosure of a selection of records from the Peak and TFS systems, which included requests for POL/Fujitsu to identify "*(v) PEAK and/or TfS records where the error or issue resulted in financial impact to either Post Office or a Subpostmaster*", and "*(vi) PEAK and/or TfS records for any Claimant who has a record including any audit data for the period (at least a month) of the PEAK/TfS record"*.[630] In our view these requests were not consistent with Model C disclosure. The first was not a class of document but required POL to self-determine which Peaks and TFS records recorded bugs by reference to undefined criteria. The second, whilst unclear, did not appear to correlate with any of the Horizon Issues. Our expert, Dr Worden, who had by that time inspected the Peak system, had similar views. In his view:[631]

> "*Request (v) - Coyne is basically asking WBD to do his job for him. <u>There are a large number of PEAK and TfS records, and the job of filtering</u>*

[629] WBON0001256.
[630] WBON0000559.
[631] WBON0001273.

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> *them all to see which ones have financial impact is what the experts need to do - it would be disproportionate to ask FJ to do such a large complex manual job.*
>
> *I am tempted to suggest - ship Coyne a dump of the entire PEAK database, which he can run up on SQL server or the appropriate DBMS. Or grant him read-only access to the PEAK system, if that is possible. Then he can search it himself. A database dump can't be that big - I bet it fits on a disc of a few TB. (If WBD did that, we might be given the same thing but I don't know that we'd do much with it. Rather than set up a database, we'd prefer to access the PEAK system remotely)*
>
> *Request (vi). This does not make sense - or more politely, the request is not clear. PEAK and TfS records are not 'for claimants' or 'for individual subpostmasters'. He apparently wants all PEAKs and TfS which span certain periods. If Coyne sends a list of months of interest to him, it might then be possible to do an automatic filter of PEAK and TFS records covering those months. But given there are 250,000 PEAK records for 216 months, if Coyne selects even 20 months this will give him about 20,000 PEAKs to look at. You might as well send him the lot, as suggested above."*

622. Thereafter, during August 2018, Jonny Gribben liaised with Fujitsu to establish what could be provided. As I understand it, these enquiries essentially confirmed that Mr Coyne's requests were not practically possible to comply with on their terms, but that a summary of all of the Peak entries (which numbered approximately 220,000) could be extracted if Fujitsu developed a bespoke application for this purpose. These could then be searched by the experts using their own software (as Dr Worden suggested) and more focused requests could then be for the full entries for any Peaks which they identified as being of interest.[632]

623. The deadline for POL to either comply with Mr Coyne's request dated 20 July 2018, or notify the Claimants that it was objected to, was 8 August 2018 (i.e. whilst these enquiries were ongoing): see Mr Justice Fraser's Order of 25 July

[632] WBON0001277; WBON0001278; WBON0001279; WBON0001280; WBON0001294.

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2018.[633] Consequently, on 8 August 2018 WBD informed the Claimants that Mr Coyne's fifth and sixth requests were objected to, adding:[634]

> "*You will see in our client's responses that it is working with Fujitsu to establish whether a mechanism could be created to export or provide Mr Coyne with direct access to the 220,000 Peak entries or at least some / part of them. We believe that this may assist Mr Coyne but there are serious technical barriers to doing this which are currently not possible to overcome. We will revert when we are able to do so, but in the meantime we remind you that there is an open offer for the experts to inspect the Peak system at Fujitsu's offices for a second day*".

624. Incidentally, with reference to §620 and my answer to **Q86.1** above, I note that WBD here reminded the Claimants that it was open to Mr Coyne to spend a second day inspecting the Peak system. To my knowledge, he did not do so.

625. Fujitsu confirmed that it could effect the extraction (and what the parameters for doing so would be) on 20 August 2018 and Jonny asked them to arrange this as soon as possible.[635] They were extracted and provided to WBD on 31 August 2018, after which they were ingested onto Relativity (which we were using to run electronic disclosure exercises in the group litigation).

626. On 26 September 2018, WBD prepared the Steering Group Decision Paper referred to above at §548, advising on the issue of whether the entire (now-extracted) content of the Peak system should be disclosed voluntarily, i.e. in the absence of a valid Model C request from the Claimants and/or an order for specific disclosure.[636] The briefing paper contained the following advice:

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[633] WBON0001326.
[634] WBON0001668; POL00256155
[635] WBON0001294.
[636] The meeting on 26 September 2018 being the first available opportunity to obtain a decision from the Steering Group. There were two meetings earlier in September but there appears not to have been time in the agenda to discuss the Peaks issue, as they were concerned with the pressing issue of POL's application to strike out parts of the Claimants' witness evidence for the CIT: see POL00256731and POL00257086.

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> *"Whilst Post Office has not been ordered by the Court to provide disclosure of the Peak System, there are a number of reasons why Post Office should consider providing these documents to the Claimants now:*
>
> *Providing voluntary disclosure on this scale (c.220,000, documents) will be viewed favourably by the Managing Judge and continues Post Office's approach of providing assistance to the Claimants where it is reasonable and proportionate to do so.*
>
> *It neutralises some of the Claimants' Expert's requests for information, because the answers can be found in the Peaks.*
>
> *These documents will be of assistance to Post Office's expert who cannot be provided with them unless they are also available to the Claimants' Expert.*
>
> *Providing disclosure of these documents now will enable the Claimants' Expert to take these into account when producing his expert report (due on 16 October 2018). Post Office will therefore have visibility of the Claimants' Expert's position at an earlier stage in the proceedings.*
>
> *Post Office has an ongoing duty to disclose adverse documents. Given the nature of the documents contained in the Peak System, it is likely that it will contain adverse documents and therefore, disclosure of these will be needed to be given at some stage.*
>
> […]
>
> *It should be noted that providing disclosure of the Peak System three weeks in advance of the Claimants' Expert's report may trigger criticism that this volume of documents were not disclosed at an earlier stage. These risks can be neutralised to a certain extent through reminding Freeths that there has been an open invitation for the Claimants' Expert to inspect the Peak system, an opportunity which they have not taken up, and that Fujitsu have had to develop a unique programme to enable documents to be extracted, which is taking time. Further, due to the lack of crystallised allegations against Horizon we cannot determine relevancy and therefore it is necessary to disclose all c.220,000 documents".*

627. The Steering Group accepted WBD's advice and instructed us to disclose the extracted Peaks, which we did the following day (27 September 2018). Our rationale for disclosing them was as we advised in the briefing paper cited above,

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and the timing is explained by the background set out above and reflected in the Steering Paper. In answer to **Q86.3**, the timing of disclosure was absolutely not calculated to disrupt. The facts speak for themselves:

627.1. The Claimants were aware of the Peak system from the outset of the litigation. Mr Coyne had the option of viewing some Peaks when he inspected the KEL on 28 November 2017.

627.2. The Claimants did not seek a copy of the Peak system as part of the disclosure ordered on 5 June 2018 (or at any time before that) although they were well aware of the system and their expert was given access to it, as set above.

627.3. The first request for disclosure relating to the Peak system was Mr Coyne's request on 20 July 2018, and that was not a request for the whole system but for an unidentifiable subset of peaks (and in any event the Court's Order permitted the experts to make requests for information about the Horizon system, not to seek disclosure of documents).

627.4. We entered into discussions with Fujitsu about extracting and disclosing the Peak system on 1 August 2018, having concluded that Mr Coyne's requests of 20 July could not sensibly be complied with, and having established that our expert was of a similar view.

627.5. In line with the Court-ordered deadline for doing so, we notified the Claimants of POL's objections to Mr Coyne's request on 8 August 2018. We also informed them of the objective to extract the entire database of 220,000 Peaks, noting the uncertainties around this given the technological barriers in place at the time. They could not therefore have

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been surprised when the Peaks were disclosed and nor did they ask for that disclosure to be given by a particular date.

627.6. The Peaks were disclosed to Freeths as soon as practicable thereafter, as explained above.

627.7. The Steering Group paper records that we believed disclosure of the Peak entries was a helpful step, and explicitly not a litigation tactic designed to disrupt the Claimants.

628. As to **Q86.4**, an integral part of any disclosure exercise is to review documents for privilege. Each document must be reviewed manually by someone competent to do so to identify whether it is privileged. Any privileged material within the document must then be redacted; and those redactions are typically then reviewed by another member of the document review team. It would have taken months for the WBD team to manually review all 220,000 Peaks for privilege, and we were concerned to ensure that the Claimants had access to the Peaks as soon as was reasonably and practically possible. We therefore decided that the most prudent approach would be to apply appropriate search terms relating to the word “privilege” to the 220,000 Peaks and hold the responsive documents back to manually review them. This ran the risk that certain Peaks which contained privileged material but which did not respond to the search terms would be disclosed, but we considered that the imperative of disclosing the Peaks promptly overrode this concern. 3,866 documents responded to our search terms and we therefore disclosed the remainder (approximately 218,000) on 27 September. We conducted a manual review of the responsive documents, as a result of which we identified that only four redactions needed to be applied.

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The balance of the 3,866 documents were disclosed with these redactions applied on 25 October 2018.[637]

629. It follows that we did not assert privilege over 3,866 documents. We temporarily held back 3,866 documents to manually review them for privilege because they were responsive to relevant search terms. As soon as we finished that manual review, we disclosed the 3,866 documents with four redactions applied for genuinely privileged material. In adopting this approach we prioritised the swift disclosure of the majority of the Peaks to the Claimants, even if this ran the risk of disclosing documents which, on a manual review, would have been determined to have been privileged.

Subsequent disclosure of Peaks

630. With respect to **Q87** of the Request, I do not believe that there were any further substantive tranches of Peaks disclosed during the litigation. Nor do I recall the Claimants seeking disclosure of further tranches of Peaks (but I have not been able to review all the *inter partes* correspondence in the time available to confirm this). There were no further orders made by the Court directing disclosure of more Peaks. I can see from my emails that my team identified that Mr Coyne referred to seven Peaks in his expert report that he said had not been disclosed. This triggered us to make inquiries about these Peaks with Fujitsu,[638] and we were able to determine that these Peaks were not in the Peak system, but it was possible to retrieve some information about them from a back-up archive. That information was provided to the Claimants.[639] Other than the disclosure of Peak

[637] WBON0001340.
[638] WBON0001431.
[639] WBON0001429.

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PC0273234 which I address below, I do not believe that there were any more disclosures of one-off Peaks but I have not had time to review all the disclosure lists to confirm this.

631. As to Peak PC0273234: on 25 February 2019, the IT experts filed their second joint statement. Page 25 of the statement contained a reference to a "**Drop and Go Bug**" (also termed Bug 28), the effect of which was recorded in Peak PC0260269. Fujitsu provided WBD with comments on this bug in a note dated 25 March 2019:[640]

> *"Fujitsu are not aware of the Drop & Go business process so are unable to comment on whether this was a user error or fault with the ATOS APADC script so call PC0260269 was routed for ATOS investigation. Fujitsu are unaware of any further updates against this call, however, subsequent call PC0237234 raised August 2018 with the same symptoms would suggest that the issue may still remain unresolved"* (emphasis added).

632. On 29 March 2019, Katie Simmonds of WBD informed Fujitsu that WBD had been unable to locate Peak PC0273234 on Relativity. In response, Matthew Lenton of Fujitsu stated:[641]

> *"It looks like PC0273234 may have been raised at around the time the Peak extract was created in August 2018, so may not have been included. A copy is attached."*

633. On receipt of the Peak, on 29 March 2019, Katie wrote to Atos in order to obtain more information about the Drop and Go Bug. On the same date she also emailed Peak PC0273234 to WBD's Amy Prime and Charlie Temperley asking for confirmation of whether the document had been disclosed and if not, for it to be added to our internal disclosure tracker.[642] She notified me of having done so

[640] WBON0000217.
[641] WBON0000211.
[642] WBON0000203.

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on the same day.[643] On 1 April 2019, Amy Prime emailed Charlie Temperley asking him to add these three documents to the disclosure tracker.[644]

634. The purpose of the disclosure tracker was to ensure that any potentially adverse documents which came to light and therefore needed to be disclosed were logged and actioned. Such documents tended to be provided to WBD in a piecemeal way from a variety of sources. As documents were received, they were gathered together, reviewed, and the disclosable documents were then disclosed at intervals as a pack of documents. We considered this to be a more manageable and reasonable approach than drip-feeding documents to Freeths.

635. Meanwhile, Katie sought an explanation from Fujitsu about why this Peak was not identified sooner.[645] From 2 April 2019, she also began making enquiries with Atos in order to ascertain whether this was a further incidence of the Drop and Go bug.[646]

636. Katie then made enquiries to satisfy herself that Fujitsu's explanation for the late production of Peak PC0273234 made sense. She wrote to Charlie Temperley on 5 April 2019: "*This is the explanation from FJ below RE the Peak. Does this align with the extraction time we have?*" Charlie responded on 5 April 2019: "…*I think so yes. Sorted by document date, the last Peak on Relativity is PC0273139 dated 17/08/2018 12:45*."[647]

637. Following this, my team continued work on investigating issues arising from Peaks, related expert evidence and the (then) adjourned Horizon Issues trial.

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[643] WBON0000218.
[644] WBON0000276
[645] WBON0000275.
[646] WBON0001537; WBON0001535.
[647] WBON0000250

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Katie Simmonds raised specific queries with Atos in May 2019 in relation to Peak PC0273234 and pursued those with follow up enquiries.[648] Also during the course of May 2019, Katie was in regular contact with Counsel in relation their ongoing work on the bugs which were the subject of the Horizon Issues Trial. My understanding is that she would likely have discussed both Peak PC0273234 and her investigations into whether it was further evidence of the Drop and Go Bug with Counsel.

638. On 22 May 2019, Katie emailed Counsel with seven additional "bug reports" (being summaries in respect of the bugs in issue in the proceedings which WBD prepared to assist Counsel).[649] One of these bug reports related to the Drop and Go Bug.[650] Within the report, WBD stated that Peak PC0273234 was being disclosed. Katie explained that she had:

> *"… included our queries regarding disclosure and the addition of documents to the trial bundle in the below table … In terms of timings for adding documents to the trial bundle, we propose to keep a record of any and add these to the list Tony [Robinson QC] sends through before trial so that everything can be added in one go, unless you need the trial bundle references sooner".*

639. The table in Katie's email explained in relation to the Drop and Go Bug that "*There are several new documents that we are in the process of disclosing …*". She asked for confirmation of which documents should be added into the trial bundle. On 22 May 2019, she also emailed Charlie Temperley asking him to confirm that all new documents referred to in the bug reports were on the disclosure tracker.[651]

[648] WBON0000225; WBON0000273; WBON0001581; WBON0001603.
[649] WBON0001608.
[650] POL00132736
[651] WBON0000227.

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640. On 23 May 2019, Counsel (Simon Henderson) replied to Katie Simmonds' email of 22 May 2019 providing general guidance as to the further documents to be disclosed in relation to the bugs:[652]

> *"… we should not be providing further disclosure unless we are under an obligation to do so (adverse doc or should have been previously disclosed etc) … some of the docs may not be seen as helpful to PO's case. However, if, as seems to be the case, they are part of the story of that bug, I think it is artificial to omit them. I think the intention is to upload a big batch of docs: these should form part of that batch"* (emphasis added).

641. On 28 May 2019, Charlie Temperley confirmed that the documents to be disclosed had been added to the disclosure tracker.[653] Also on 28 May 2019, Charlie emailed me (copying Katie Simmonds and Jonathan Gribben), stating:[654]

> *"In the absence of Amy and Lucy, I'm monitoring disclosure tasks this week. After we spoke about this earlier I sorted out my disclosure tracker (to separate out the trial 3 stuff which is not a problem for this week). The outstanding HIT documents for disclosure this week are set out in the table below FYI."*

642. Charlie set out a table of outstanding documents for disclosure, which included Peak PC0273234.This email reflected the fact that I had asked Charlie to check on the status of documents on the disclosure tracker that might need to be disclosed. Charlie emailed me again on 29 May 2019 to confirm that he had received another adverse document from Rodric Williams of Post Office that we had been waiting for. Peak PC0273234 and various other documents were then disclosed on 31 May 2019.[655]

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[652] WBON0000290.
[653] WBON0000251
[654] WBON0000159.
[655] WBON0000149.

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643. On 17 June 2019, Tony Robinson QC reviewed a draft of my eighteenth witness statement (which Mr Justice Fraser had directed to be produced to explain, *inter alia*, the late disclosure of Peak PC0273234) and raised two queries. Amy Prime wrote to me and others in the WBD team on 17 June 2019 setting out Tony Robinson QC's queries (in capitals) and then her responses and her additional queries alongside them as follows:[656]

> *"[CAN WE ADD A SENTENCE EXPLAINING WHY IT TOOK FROM 3 APRIL TO 31 MAY FOR THE DOCUMENT TO BE DISCLOSED, TO FORESTALL A DEMAND FROM THE JUDGE FOR A FURTHER WITNESS STATEMENT EXPLAINING THIS?] The Peak was provided to Katie by Matthew on 29 March 2019 (email attached), the documents were processed into [Relativity] on 4 April, but my understanding is that we waited until the bug investigations were substantially complete and we had what we believed to be all of the new documents which we thought would come out of these investigations and then disclosure was given all in one go. Does this match your understanding? This comes partially from Katie's email to Charlie on 22 May 2019 (attached) which just predates the disclosure of this peak."*

644. On 18 June 2019, Katie Simmonds wrote: "*This aligns with my understanding – I'm not aware of any further additional Peaks which have been disclosed/ provided by FJ separately.*"[657]

645. With respect to Tony Robinson QC's second question, Katie wrote:

> *"As per our call, this isn't something that we discussed with Counsel and documents were simply being sent and added to the disclosure tracker to be disclosed as and when the next list was run but appreciate this is something that was discussed between you and Charlie in terms of waiting for a series of adverse documents to be disclosed in one go, as opposed to simply drip feeding these."* (emphasis added)

[656] WBON0000293.
[657] WBON0000138.

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646. Amy Prime then emailed Counsel on 18 June 2019 with the following summary:[658]

> *"…On the timing of the disclosure, PC0273234 was disclosed due to it being a known adverse document. WBD waited until the investigations into the Coyne bugs were substantially completed and therefore the likelihood of further disclosure being uncovered was thought to be low. Once we had this batch of documents that had come to light as part of the investigations into the bugs, disclosure of them was provided all together. With hindsight, yes the document could have been disclosed sooner but we were seeking to not drip-feed documents to the Cs on a daily basis"* (emphasis added).

647. With hindsight, I accept it would have been preferable if this Peak had been disclosed more quickly:

647.1. Our approach was that (i) new potential documents to be disclosed were assembled on the disclosure tracker, (ii) the documents were reviewed and investigations undertaken into whether they were disclosable and (iii) then disclosure was given of disclosable documents in batches rather than on a drip-feed basis. The same approach was adopted in relation to this Peak. In context, at the time, this Peak did not appear to be of particular importance. Indeed, it is worth noting that when dealing with the Drop and Go Bug in his Technical Appendix, the Mr Justice Fraser did not refer to Peak PC0273234 (see paragraphs 402 to 410).

647.2. At this stage, a lot of activity was going on in parallel: we were in the middle of the Recusal Application which had been issued on 21 March 2019 and was heard and dismissed on 9 April 2019, then resulting in urgent attempts to appeal that decision, leading to the Court of Appeal's

[658] WBON0000139.

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refusal of permission to appeal in early May 2019. Alongside this, the HIT had been adjourned on 21 March 2019, before resuming briefly on 11 April 2019 and then being adjourned to 4 June 2019.

647.3. Peak PC0273234 was not held back as part of some deliberate attempt to gain a tactical advantage, nor was there a failure to observe professional standards of behaviour on either my part or that of my team, who were working extremely hard at this point. The time taken simply reflected (i) the extreme pressure that we were all under at that stage and (ii) the general approach that we had adopted of seeking to investigate and understand what this Peak related to and then making disclosure in one batch rather than on a piecemeal basis.

(iv) Disclosure of reports generated by Project Zebra (Q88.3)

648. I have dealt with my (very limited) involvement in the instruction of Deloitte in relation to Project Zebra and my awareness of the six reports referred to in **Q88** (only two of which I received prior to receipt of the Request, one in August 2014 and the other in March 2016): see above, §212 and §299. Here I deal with the question posed at **Q88.3** of the Request, namely, whether I considered that the issues raised in the reports I read should be disclosed to (i) the Claimants in the GLO, or (ii) convicted SPMs.

649. In sum, the reports of which I was aware (being the Project Zebra Desktop Report, **POL00028062**, and the Board Summary, **POL00028069**) were not disclosed to the claimants in the GLO proceedings because they were privileged. Project Zebra was commissioned following advice from Linklaters in connection with the risk of civil proceedings being brought against POL. Thus, the dominant

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purpose of the Project Zebra reports was to obtain advice in respect of litigation which was in reasonable contemplation, and they were not therefore required to be disclosed to the claimants in the GLO. As for whether the "*issues*" revealed by these two reports were disclosed, the material issues which they raised concerned the Balancing Transaction functionality and (the potential implications of) privileged user access which certain Fujitsu personnel had. These findings – which were less far reaching than later investigations revealed Fujitsu's remote access capabilities to be – were the subject of admissions in POL's Generic Defence, and to this extent were 'disclosed' to the Claimants in the GLO.

650. As for whether these issues ought to have been disclosed to convicted SPMs, this was not a matter on which I was instructed or competent to advise. I am aware that consideration was given to these matters by Cartwright King and Brian Altman QC in 2015, and that they were subsequently revisited by Brian Altman QC in 2016 following advice by Jonathan Swift QC. I have set out the extent of my involvement in those instructions elsewhere in this statement: see in particular §§229 ff, §§296-297, and §§458 ff.

(v) Redaction of documents (Q90.1, Q91 and Q95.1)

General methodology

651. As the Partner in charge of the litigation, I approved the approach to be adopted in respect of redactions and I was the highest point of escalation within the WBD team for more difficult issues that could not be resolved by more junior solicitors. This was the extent of my direct involvement with redactions. In a disclosure exercise of this scale involving millions of documents, some 537,040 of which

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were disclosed, it would not have been practicable for me to have had more involvement than this.

652. As to the approach which I approved, it was typically as follows.

652.1. ***Stage 1:*** Our paralegal team undertook a first level review for relevance and privilege. Prior to embarking on each review exercise, the team would attend a briefing call and be provided with a briefing note which explained privilege.[659]

652.2. ***Stage 2:*** Qualified lawyers at WBD undertook a second level review of all documents which were tagged for disclosure or tagged as relevant but privileged, as well as a spot check of approximately 10% of documents which had been tagged as not needing to be disclosed because they were irrelevant. Where a document had been flagged as relevant but part-privileged, therefore requiring redactions to be applied, these redactions would be determined by the qualified lawyer (although the first level reviewer may have left a comment on the document explaining where the privileged material was located).

652.3. ***Stage 3:*** If a second level reviewer was unsure about the approach to be taken in relation to a particular document, the document would initially be flagged to Amy Prime for review and then, if a further review was required, escalated to me.

652.4. ***Counsel:*** There was also an escalation process whereby Counsel was asked to review redactions which were applied to a small number of documents prior to their disclosure, where the application of redactions to

[659] For example: WBON0000141, which annexed WBON0000145.

privileged material referred to in non-privileged documents was not clear-cut.

653. This approach was applied in most circumstances, but as disclosure was given in tranches it may have been adapted, for example the first stage was not applied in every instance so the first level review for some documents was undertaken by qualified lawyers instead of paralegals. Further, we adopted a slightly different approach in respect of disclosable documents which were to be redacted to remove material which was irrelevant and confidential. I deal with this separately below (at §§666-671).

654. I note that only a tiny proportion of documents were redacted (fewer than 500 out of over 530,000 disclosed, i.e. less than 0.1%). Of those, only a fraction were deployed in Court.

Redactions to the Project Zebra Action Summary

655. I can only specifically recall one document that was escalated to me by my team as part of the process outlined above, in the course of my team's preparation for the Common Issues and Horizon Issues Trials (putting aside redactions that Freeths or the Court asked POL to revisit – addressed further below). However, I do not now recall all redaction issues that might have been raised with me given the passage of time, and I would have given my team informal guidance and reminders about the nature of privilege and the approach to be applied throughout.

656. The document which I recall being escalated to me was the Project Zebra Action Summary referred to at **Q91** (the "**Action Summary**"), of which **POL00027054** is the unredacted version and **POL00002356** is the redacted version. The Action

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Summary contained references to the "*Deloitte report*" (being the privileged Project Zebra Desktop Report) and the substance of the recommendations in it. I discussed the Project Zebra Desktop Report above at §§212 ff, and at §649, I outlined why I considered that this report was privileged.

657. During the disclosure exercise for the CIT, my team came across the Action Summary, which was an internal operational document that had been produced as part of POL's workstream to implement the recommendations contained in the Project Zebra Desktop Report. It fell within one of the classes for Stage 3 Disclosure and was therefore *prima facie* disclosable, but upon reviewing it my team felt unsure whether it was wholly or partially privileged by reason of the repeated references to the "*Deloitte report*" and that report's recommendations. This was escalated to me and I too had my doubts, so we sought Counsel's opinion.[660]

658. Tony Robinson QC responded on 26 July 2018, expressing his and Simon Henderson's preliminary view that: "*privilege c[ould not] be claimed over the whole of the Zebra Action Summary but the parts which repeat or summarise the contents of the Deloitte report c[ould] be redacted*."[661] He identified a number of further questions that he required answers to before he could reach a final conclusion, as follows:

> *"1. Is it definitely the case that the dominant purpose for which the Deloitte report was obtaining legal advice about or obtaining information in connection with the conduct of anticipated litigation? […] What we are hoping to receive is factual instructions allowing us to be clear that the Deloitte report was not created for two equal purposes, one of which was anticipated litigation and the other was making Horizon more robust…*

[660] WBON0001264.
[661] WBON0000567.

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> *2. Who produced the Zebra Action Summary, who was it produced for and for what purpose was it produced? To whom was it disseminated and what actions were taken as a result of it?*
>
> *3. What was the source and purpose of the "recommended remediations" set out in the Zebra Action Summary For example, were they recommendations produced by management of changes to be made in the systems around Horizon with a view to giving effect to recommendations of a more general nature made in the Deloitte report?*
>
> *4. Were these "recommended remediations" actually implemented?*
>
> *5. Who were the parties to the email you attached (Julie George, Lesley Sewell, Rod Ismay, David Mason, Malcolm Zack and Gina Gould) and why was the Zebra Action Summary sent to them? Were they part of the Post Office litigation team concerned with subpostmaster claims, for example, or were they management people responsible for deciding what improvements to make to the Horizon systems, or what?"*

659. Amy forwarded Counsel's queries to Rodric Williams (with me in copy),[662] and we had a call with Rodric Williams and Mark Underwood on 27 July 2018 to discuss those questions.[663] Amy and I relayed POL's instructions to Counsel in a call on 31 July 2018.[664] Counsel did not change their preliminary view that the Action Summary was not a wholly privileged document. However, they confirmed that the Project Zebra Desktop Report itself was covered by legal advice and/or litigation privilege. That was the basis on which we redacted references in the Action Summary to the Desktop Report (including the word "*Zebra*" in the document title) and to Deloitte's findings and recommendations. Those words had the capacity to reveal privileged information and so redactions were applied to them.

660. Following the disclosure of the redacted Action Summary and preparation of the CIT e-bundle, Freeths wrote to WBD on 22 October 2018 raising concerns as to

[662] POL00408730.
[663] POL00255961.
[664] WBON0001270.

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whether too wide an approach had been adopted in the redaction of POL's documents.[665] By way of specific example, they referred to the redactions to document G/40 in the e-bundle (which was the redacted copy of the Action Summary) and invited us to reconsider them. They sought confirmation that our trial Counsel and I (as the person within WBD with overall responsibility for the disclosure process) had reviewed the redactions and the reasons given for them. A call was arranged on 23 October 2018 with Owain Draper and Gideon Cohen (Junior Counsel for the CIT) to discuss this point, who then briefed David Cavender QC (who was leading them).[666] The Counsel team confirmed that the redactions were correctly made on the basis that Project Zebra was protected by legal advice and/or litigation privilege.

661. On 14 November 2018, in the course of the CIT, Patrick Green QC expressed doubt that the heading of the Action Summary had been properly redacted. He referred to the fact that the document title within the e-bundle showed that the word redacted from the title was "*Zebra*" (this was an inadvertent consequence of the e-bundle software pulling the title from the document's metadata). We wrote to Freeths that evening requesting that G/40 was renamed in the trial bundle to remove the reference to "*Zebra*".[667] Freeths rejected that proposal.[668]

662. Angela Van den Bogerd was in due course cross-examined on the Action Summary. In the course of that cross-examination, on 21 November 2018, Patrick Green QC embarked on a line of questioning that strayed into the

[665] WBON0001339.
[666] WBON0000626.
[667] WBON0001362.
[668] WBON0001364.

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outstanding dispute between the parties as to whether "*Zebra*" in the document title was correctly redacted:

> *"Q. I am going to ask you a couple of questions very carefully because there is a dispute about whether the title of this document is privileged. So I am not going to ask you what it is. But you know what the title is don't you, of this document? The redacted word?*
>
> *A. No. I don't recall seeing this document, so I can't—*
>
> *Q. Are you aware of a project group, named after an animal, which has been working in relation to issues raised by Second Sight or similar?"*

663. David Cavender QC raised an objection to this line of questioning. Mr Justice Fraser asked Angela Van den Bogerd to step outside the courtroom whilst he discussed this point with Counsel. Mr Justice Fraser and David Cavender QC had a brief exchange as to whether the redaction of the single word "*Zebra*" was appropriate, during which he requested that David Cavender QC review the basis for the redactions to the Action Summary:

> *"MR JUSTICE FRASER: … I actually made a note to myself, which I was going to deal with at the end of the witness's evidence, about this document because it seems to me the basis of the redactions is going to have to be reviewed by counsel, not least because it appeared to me, which now I think is common ground, that the single word is said to be privileged, and I am struggling with that but—*
>
> *MR CAVENDER: It depends where you go with it, and as soon as you unravel a privilege then you get a difficulty.*
>
> *MR JUSTICE FRASER: I am not sure that is necessarily right but that is why I am going to invite review by you anyway. It is difficult to grasp how a single word could be subject to litigation professional privilege or any of the other types of privilege, so I am going to invite you I think to review that."*

664. Mr Justice Fraser disallowed this line of questioning on the part of Patrick Green QC but urged that David Cavender QC review the document and the redaction of this word afresh. David Cavender QC did so and expressed the view in court

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on 22 November 2018 that he was satisfied that the Project Zebra Report was privileged and therefore that the redactions to the Zebra Action Report (including the title of Project Zebra) were properly made.

665. As mentioned above, this was the only document that I specifically recall having been escalated to me by my team for me to consider redactions. I remain of the view that the redactions were appropriately applied in order to preserve the privilege attaching to the Project Zebra Desktop Report and the other documents produced by Deloitte as part of that investigation. That view was supported by Counsel and it was further considered and then maintained orally by David Cavender QC at the Common Issues Trial.

Redactions on grounds of irrelevance and confidentiality

666. A small number of the documents disclosed in the group litigation were redacted not on grounds of privilege, but on the basis of irrelevance and confidentiality. Redactions on this basis were in the main applied to documents which were commercially sensitive, typically papers which were submitted to the POL Board, its General Executive or other committees which operated at that level, and minutes of the meetings of such bodies. Often these types of documents would cover a range of different issues affecting POL and which were on the agenda for a meeting of that body. Of those agenda items, only some were relevant to the group litigation.

667. Paralegal first level reviewers were not tasked with flagging documents for potential redaction on grounds of irrelevance and confidentiality (as they were with documents that were partly privileged or potentially partially privileged). It was for the qualified lawyers tasked with reviewing documents marked for

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disclosure at the second stage to identify whether redactions ought to be made on this basis, where the document to be disclosed fell within the abovementioned category of senior executive documents.

668. The background to this approach being adopted in relation to papers submitted to the POL Board was that on 14 May 2018, Amy Prime e-mailed me asking "*can we redact the non-disclosable pages [of such documents] – they are littered with privilege and commercially sensitive*".[669] A later e-mail from Amy records that I agreed to that approach.[670] Amy later emailed Michael Wharton in my team to inform him that the process to follow in relation to POL Board papers was to: "… *adopt the same approach as the previous board minutes (ie. redact everything which is not relevant)*".[671] This was the process which the WBD team then adopted to POL Board papers. I believe that this was a reasonable approach to adopt to this category of document because of the heightened confidentiality and/or commercial sensitivity of the matters contained in them. I also stress that the approach was to only apply redactions where the information was irrelevant to the issues in dispute.

669. With reference to **Q95.1** of the Request, on 5 March 2019 Freeths wrote to WBD about redactions applied to documents in the HIT e-bundle and suggested that 31 documents should be reviewed by our trial Counsel.[672] We agreed. As a result of that review, some redactions were removed and some were maintained. In relation to those cases where redactions were maintained, Junior Counsel (Owain Draper) advised that "*I am satisfied that the remaining redactions are*

[669] WBON0000155.
[670] WBON0000181.
[671] WBON0000176.
[672] POL00266947.

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appropriate. I do not say that they could not be challenged, but they are legitimately made".[673] Where redactions had been removed, we explained that this was "*for the sake of pragmatic co-operation and to reduce the scope of any disputes between the parties over the redaction of the documents*"; we maintained our view that the un-redacted material was irrelevant (or at best only peripherally relevant) to the issues in dispute.[674]

670. During the HIT, Mr Justice Fraser asked Tony Robinson QC to conduct a review of nine redacted documents. WBD also conducted a review of these documents and independently decided that, in relation to one of them, the redaction "*seems to have been done on the basis of irrelevance and confidential[ity], but this seems questionable*".[675] This document was de-redacted, and a clean version was provided to the Claimants. As to the remaining eight documents, Tony Robinson QC identified that (i) two documents were redacted for privilege and the claim to privilege was maintained, and (ii) the remaining six documents were redacted due to irrelevance and confidentiality. In relation to these latter six documents, Tony Robinson QC deliberately and expressly adopted a broad and generous approach to what was considered 'relevant'. On this basis, some of the redactions were disapplied.

671. In a document review exercise of this scale, different lawyers may fairly form different views on a document and whether it should or should not be redacted. It is also inevitably the case that mistakes can happen or misjudgments can be made, as was the case with the one document where we, on re-review,

[673] WBON0001465.
[674] WBON0001449.
[675] WBON0001574.

considered a redaction to be 'questionable' and Tony Robinson QC agreed. However, at all material times, my team and I worked very hard to ensure that disclosure was undertaken properly, efficiently, and proportionately, as is illustrated by the small number of total redactions which were applied to a large pool of disclosed documents. Fewer than 500 documents were redacted, of which 17 had those redactions changed. In a number of these instances this was driven by my firm's desire to reduce disputes and by Tony Robinson QC's deliberately broad approach to the assessment of relevance than anything else.

(v) Documents held by Royal Mail (Q99)

672. By a letter dated 27 February 2019 (**POL00003635**), WBD informed Freeths that POL had sought to obtain from Royal Mail pre-2011 audit reports on Horizon ("**the E&Y Reports**"), produced by Ernst & Young Global Limited Liability Partnership ("**E&Y**"), but that Royal Mail had expressed concerns about providing those reports without a court order. By a later letter dated 15 March 2019 (**POL00003570**), we informed Freeths that this was incorrect and apologised for the error. I am asked by **Q99** what the basis for making the original (erroneous) statement was, and how I discovered the mistake.

673. The background to these matters is as follows.

674. Audit reports on Horizon produced by E&Y from 2011 onwards were disclosed by Post Office to the Claimants in August 2018. On 19 September 2018, Freeths wrote to WBD requesting disclosure of all audit reports on Horizon that had been produced since the introduction of Horizon (whether produced by E&Y or

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others).[676] On 3 October 2018, we responded to Freeths stating that we were taking steps to locate and disclose the reports referred to.[677]

675. There was then a separate line of enquiry, beginning in October 2018. Lucy Bremner of WBD emailed Mark Hotson of POL on 24 October 2018. She informed him that WBD was in the process of drafting witness statements for the HIT, and explained that the Claimants' IT expert, Jason Coyne, had referred to an audit report produced by E&Y in 2011 which identified problems with the Horizon Credence application. She explained that WBD needed to understand if the comments made by Mr Coyne were correct and whether any changes were made thereafter.[678]

676. On 26 October 2018, POL's Head of Internal Audit, Johann Appel, wrote to Angela Van-Den-Bogerd (copying Lucy), informing her that he was planning on contacting the company secretarial administrative department of POL ("**Co-Sec**") to see if the papers and minutes of the Audit Risk and Compliance Committee ("**ARC Committee**") provided more information.[679] I was not copied into this email.

677. On 31 October 2018, Rebecca Reay (a company secretarial administrator at POL) wrote to Royal Mail to seek access to the minutes from the Royal Mail Group Audit, Risk and Compliance meetings from 2010 and 2011.[680] No-one from WBD was initially copied into this email.

[676] POL00257537.
[677] POL00285759.
[678] WBON0000198.
[679] WBON0000283
[680] WBON0001492.

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678. Johann Appel provided Lucy with an update on 2 November 2018. I was copied into this email thread, which included Johann Appel's email of 26 October 2018 (where he wrote that he was searching for the ARC Committee papers and minutes). In his update of 2 November 2018, Johann Appel wrote that POL: "*were unable to locate the relevant documents prior to 2011 at Post Office*" and had therefore asked Royal Mail to look for the documents in their archives. He said that POL were chasing daily for a response.[681]

679. On 6 November 2018, Johann Appel reported (to Angela Van-Den-Bogerd and Lucy Bremner) that POL was still waiting for Royal Mail to search their archives for "*documents related to the FY2010 ARC and EY report*". He noted that the 2011 E&Y Report referred to the Credence issue only as part of an update on findings from an earlier 2010 audit. He said that he would therefore continue to chase Royal Mail to find the "*original 2010 EY report*" and the "*2010 ARC minutes*".[682]

680. On 9 November 2018, Johann Appel reported back to Lucy to update her on POL's lack of progress on this issue. He explained that whilst Royal Mail's archive personnel had initially appeared willing to assist, the matter was then referred Royal Mail's legal department, who were unwilling to release any documents to POL.[683]

681. Later on 9 November 2018, Rodric Williams emailed Lucy Bremner and Johann Appel, copying me. Rodric Williams wrote that he had spoken to the legal

[681] WBON0000282.
[682] WBON0001487
[683] POL00042127.

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department of Royal Mail and asked Lucy to call him.[684] I cannot recall whether that call was made by Lucy.

682. On 12 November 2018, Rodric Williams then emailed the Royal Mail legal department in accordance with a request made by Lucy Bremner. He explained that POL were seeking to locate a "*2010 Ernst & Young Management Letter*" and "*a Royal Mail Group Audit Committee or Audit, Risk & Compliance Committee (ARC) minutes for 2010/2011*".[685] I was not copied into this email itself, though I was copied into an email setting out a draft of it[686] and the email as sent was forwarded to me on the same day.

683. It appeared from an internal POL email sent by Johann Appel to Rodric Williams on 14 November 2018 that Royal Mail proposed that, whilst extracts from the documents in question could be read to POL, Royal Mail was unwilling to release copies of the documents without a request through legal channels.[687]

684. On 8 February 2019, Freeths asked WBD to confirm that all audit reports on Horizon had been disclosed.[688] In response, on 11 February 2019, we informed Freeths that a search for audit reports had been undertaken and the results would be disclosed. Further, we explained that enquiries were being made to understand who was appointed as auditor of Horizon prior to 2011.[689] On 12 February 2019, we wrote to Freeths and listed a number of audit reports which were being disclosed.[690]

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[684] WBON0001359.
[685] WBON0001360.
[686] WBON0001693.
[687] WBON0001485.
[688] WBON0001412.
[689] POL00263874.
[690] WBON0001416.

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685. On 12 February 2019, Johann Appel confirmed to Lucy Bremner (in an email copied to me and Amy Prime) that E&Y were the Horizon auditors prior to 2011.[691]

686. On 13 February 2019, Lucy responded to Johann Appel's email and asked him to confirm that "*all audit reports pre-2011 are in Royal Mail's possession and not yours*" (emphasis added).[692]

687. Johann Appel responded the same day (again, copied to me and Amy Prime) stating: *"The solution that Rod[ric Williams] agreed with Royal Mail's lawyer was that they would verbally share any relevant extract from those audit reports and if Rod thinks it is applicable, then he would have to subpoena them to release the reports to Post Office"* (emphasis added).[693] I did not consider this approach to be surprising because the voluntary release of documents can raise confidentiality and data protection issues. As such, it was understandably safer for Royal Mail to be ordered to disclose the documents, because then they would be protected in the event that such documents did raise confidentiality and data protection issues.

688. On the basis of this email, I understood that the arrangement which had been made as between Royal Mail and POL (which required a subpoena to be made) related to the pre-2011 audit reports that we had been requesting. In turn, I understood that the pre-2011 audit reports had been requested from Royal Mail.

689. That this was my (mis)understanding at the time was reflected in the steps which we took after receiving this email:

[691] WBON0000170.
[692] WBON0000173.
[693] WBON0000167.

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689.1. On the basis of these instructions, WBD then wrote the letter dated 27 February 2019 (i.e. **POL00003635**), and informed Freeths that POL had requested the pre-2011 audit reports from Royal Mail but that Royal Mail had expressed concerns about providing the reports without a formal order for third-party disclosure.

689.2. On 13 March 2019, following receipt of a letter that day from Freeths,[694] Amy Prime emailed me to say that her plan was for POL to call Royal Mail's legal team to confirm that Royal Mail were refusing to disclose the E&Y Reports and to warn them that WBD would seek a third-party disclosure order. Amy suggested that once this had been done, a letter could be sent to Freeths to confirm.[695] The draft letter stated that the pre-2011 reports were not within POL's control, and it may be necessary to seek an order from the court for disclosure of the documents.[696]

689.3. Then, on 14 March 2019 (which was Day 4 of the HIT), Patrick Green QC informed Mr Justice Fraser that WBD had said that Royal Mail were concerned about providing the pre-2011 E&Y Reports without a court order. Tony Robinson QC informed Mr Justice Fraser that the previous year, POL had asked Royal Mail for the "*documents*" and that Royal Mail had said that they would not provide them voluntarily and a court order would be required. The statement made by Tony Robinson QC reflected my understanding of the matter at that time (as WBD had set out in its letter to Freeths dated 27 February 2019).

[694] WBON0001472.
[695] WBON0000320.
[696] WBON0000322.

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689.4. Mr Justice Fraser therefore directed the Claimants to issue an application against Royal Mail for third-party disclosure in respect of the E&Y Reports.

689.5. That same day, Amy Prime sent POL a draft email to send on to Royal Mail, asking Royal Mail to reconsider its position that it would not be prepared to provide copies of the pre-2011 E&Y Reports without a Court order.[697] This draft email reflected what we continued to understand was the position, namely, that in 2018 POL had sought copies of the pre-2011 E&Y Reports but that Royal Mail refused to provide those documents without a formal court order. The draft email asked Royal Mail to reconsider its position.

689.6. That day, 14 March 2019, Rodric Williams sent an email to Luke Ryan of Royal Mail along the lines of the draft provided to him by Amy.[698] WBD also wrote to Royal Mail to ask them to provide copies of the pre-2011 audit reports.[699]

689.7. On 15 March 2019, in a telephone call, Luke Ryan of Royal Mail informed me that POL had never previously requested the pre-2011 audit reports. This was the first time that I became aware of the misunderstanding that had arisen.

690. A series of emails (evidencing the original request for documents made by POL to Royal Mail) were then forwarded to me on 15 March 2019.[700] What had actually happened, I could now see, was that POL had previously only requested

[697] WBON0001483.
[698] WBON0000201.
[699] POL00022691
[700] WBON0001488; WBON0001492; POL00042127; WBON0001491; WBON0001487.

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the "*2010 E&Y Management Letter … and/or the ARC minutes*".[701] However, in light of Johann Appel's email of 13 February 2019 and the thread which preceded it, we had mistakenly understood that POL had actually requested the pre-2011 audit reports.

691. I immediately telephoned James Hartley of Freeths to inform him following my discovery of the mistake. I promised to confirm what had happened in writing, and at around 12:30 on 15 March 2019, we wrote to Freeths to correct the position with respect to the pre-2011 E&Y Reports. I made plain that the error was ours and that we sincerely apologised for it.[702]

692. On 18 March 2019, Royal Mail provided Freeths with the audit reports from 2008, 2010 and 2011.[703]

693. That same day, Mr Justice Fraser ordered that POL to file a witness statement by 21 March 2019, setting out steps it had taken to obtain the pre-2011 E&Y Reports, details of the requests made prior to 18 March 2019 to obtain the reports from Royal Mail and E&Y and, if no requests were made, to explain why this was the case. I filed my thirteenth witness statement on 21 March 2019 setting out the history of what had happened (insofar as that could be done without a waiver of privilege).[704]

694. As the contemporaneous documents demonstrate, this was a misunderstanding whereby I and others at WBD thought, in light of our instructions, that Royal Mail had been asked for the pre-2011 EY Reports and had responded that a "*subpoena*" would be required to provide them, when in fact Royal Mail had been

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[702] POL00269022
[703] WBON0001510
[704] POL00269053

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asked for closely connected but different audit-related documents. As soon as I became aware of the misunderstanding, I contacted James Hartley at Freeths to explain the position. I immediately confirmed the position in writing and apologised for it. I was also at pains to ensure that our Leading Counsel apologised to the Court.

O. PREPARATION FOR THE COMMON ISSUES TRIAL (Q90, Q92 to Q94)

695. In this section I respond to the Inquiry's questions about my involvement in the preparatory work for the Common Issues Trial or CIT. These are set out at **Q90 to Q94** of the Request, although **Q90.1** and **Q91** are addressed above in Section N on disclosure, at §§521 ff.

696. Before turning to those questions, there is an overarching topic that I consider relevant both to POL's preparation for the CIT, and also to its response to the resulting Common Issues Judgment including the appeal against that judgment and the Recusal Application (which I deal with below in Section Q). That topic relates to the scope of the evidence submitted by the Claimants for the CIT and the consequences of this for how POL prepared its case.

(i) The scope of the evidence for the CIT

697. In broad terms, the CIT was intended to resolve 23 preliminary issues relating to POL's relationship with its SPMs, the effect of which was heavily contested between the parties. This included construing the express terms of the SPMC and NTC, deciding whether any terms should be implied (and, if so, what terms and on what basis), and determining issues of incorporation of allegedly onerous

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terms as well as the application of the Unfair Contract Terms Act 1977. The CIT expressly did not extend to consideration of whether POL had breached of the terms of its agreements with the Claimants or indeed any other duties (for instance, in tort) which it may owe SPMs. Thus, for example, whether POL was subject to an implied term requiring it to ensure that the Horizon IT system was reasonably fit for purpose with within the scope of the CIT; but whether there were in fact any problems with Horizon was not. Similarly, whether POL owed a duty to provide adequate training was with the scope of the CIT, but the quality of the training actually provided to the Claimants was not.

698. Without wishing to oversimplify these matters, my view at the time of the group litigation was that such questions of construction, incorporation and implication fell to be determined against the background of the objective facts that were known to both parties at the time of entering the contract. This 'factual matrix', as I understood it, generally excluded (for example) the parties' subjective intentions in agreeing to the contract; what each of them said in the course of pre-contractual negotiations; and matters that became known to them only after entering into the contract, such as how each of them performed in practice. Since matters which did not form part of the legitimate factual matrix were irrelevant for the purposes of identifying and interpreting the contractual relationship between two parties, my expectation was that evidence of such matters would not be admissible at the CIT (which was a trial to determine the contractual framework in place between POL and SPMs).

699. As I have indicated, these matters were not straightforward. First, there were a limited number of issues where there could be narrow exceptions to the position outlined above; and second, the precise boundaries of the legitimate factual

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matrix were not always clear-cut. For example, where the Claimants alleged that the suspension and termination provisions were a sham, evidence of those provisions being used in practice (consistently or not with the express written terms) may be relevant to ascertaining the 'true' agreement in in relation to those terms. Further, the Claimants were advancing a case that the extent and application of common law agency principles turned on the facts of the SPM-POL relationship and were also asserting that, contrary to the express contractual terms, POL was acting as an agent for SPMs.

700. My understanding was shared by the Counsel team on this matter. We became concerned at an early stage in the litigation that the factual matrix on which the Claimants were seeking to rely was far wider than would be admissible on any conventional understanding of the law, even allowing for exceptions of the kind referred to above. The GPOC served on 23 March 2017 contained a section headed 'factual matrix', with a few brief paragraphs (41 to 45) which referred in general terms to there being an imbalance of power between POL and SPMs, and the relationship between them being akin to an employment relationship, and with a further paragraph (46) which simply read:

> *"The Claimants will rely on these and other aspects of the factual matrix as particularised elsewhere in these [GPOC] and as may further be established as relevant in individual cases".*

701. That did not assist us in understanding the facts the Claimants considered were relevant to determining the relationship between the parties. Accordingly, on 27 April 2017, POL made a CPR 18 request in respect of paragraph 46 of the GPOC, asking the Claimants to clarify the aspects of the factual matrix they were relying on for the purposes of construing the pleaded agreements. Their response dated 16 May 2017 was as follows:

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> *"8. Not entitled, since the Claimants' case overall is sufficiently pleaded. Without prejudice to that:*
>
> *8.1. As to (a), all facts pleaded, including those at paragraphs 9, 12-39, 41-45 and 81.*
>
> *8.2. As to (b), as pleaded, namely, all facts as may further be established as relevant in individual cases (following SOIs, disclosure and individual Particulars of Claim in test cases). The Defendant is reminded that these proceedings are managed under a GLO."*[705]

702. My view, and that of the Counsel team, was that this did not help us to understand the Claimants' intended approach, but that it was apparent that they wanted to rely on matters which would never normally be considered admissible factual matrix. For example, paragraphs 12-39 of the GPOC contained substantially the whole of the Claimants' case on the reliability of the Horizon system, remote access, the adequacy of the training with which they had been provided, and the sufficiency of POL's investigations into shortfalls in their accounts. In other words, these were clearly matters that went to the adequacy of POL's performance of its contractual duties, breach, and causation of loss.

703. Therefore, at the first CMC in October 2017 POL sought and obtained an order that there should be an agreed statement of factual matrix before witness statements for the CIT were exchanged (the "**factual matrix document**"). The intention was that this would give the parties the ability to resolve any issues on what evidence would be admissible prior to witness evidence being served. The date set for the factual matrix document was 29 June 2018; as I mentioned above (§318), witness statements for the CIT were to be filed and served on 11 August 2018.

[705] WBON0001682.

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704. Following the CMC, we set out our concerns about the Claimants' response to our CPR 18 request in a letter dated 1 November 2017.[706] Our letter set out our view that the approach the Claimants seemingly intended to adopt was wrong in law, and also highlighted that any attempt to rely on large amounts of inadmissible evidence would likely cause significant cost and disruption to the CIT timetable. As part of this exchange, we encouraged Freeths to engage at an early stage in order to agree the factual matrix document.

705. Freeths responded on 9 November 2017 and it was clear from their letter that the Claimants did indeed intend to rely, as part of the factual matrix for the Common Issues, on post-contractual matters relating to performance and breach (including the "*existence of software coding bugs and errors*" in Horizon, and the "*factual circumstances in which [Lead Claimants] signed Branch Trading Statements*"). Although Freeths acknowledged that the CIT was not to determine whether POL had breached its contractual duties, they said that "*the Court may well have to consider what the consequences of a breach might have been and in what circumstances [SPMs] might have found themselves in breach on the parties' various constructions of the contracts*".[707]

706. We did not agree with this analysis; if correct, it would mean that evidence going to performance, breach, and the impact thereof on individual contract parties would always be admissible factual matrix, which was not the state of the law as we understood it. There were then CMCs on 2 February 2018 and 22 February 2018 where this issue was discussed at length with Mr Justice Fraser in the context of the scope of disclosure orders for the CIT. My overall impression from

[706] WBON0001220
[707] WBON0001219

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those hearings was that the Mr Justice Fraser broadly agreed with POL's narrower view of the admissibility of evidence at the CIT.[708]

707. We continued to correspond with Freeths on this issue and on 2 March 2018 the Claimants provided their draft proposed factual matrix document.[709] This confirmed rather than allayed our concerns. Examples of the factual matters on which the Claimants proposed to rely as relevant to the Common Issues included the adequacy of the advice provided by the NBSC Helpline, evidence of errors in Horizon, and the fact that POL had pursued individual Claimants for shortfalls. We wrote to the Claimants setting out our concerns on 20 March 2018.[710]

708. The Claimants' apparent determination to rely on matters going beyond what we believed was relevant to the Common Issues put POL in a difficult position. It seemed unlikely that the parties would be able to arrive at an agreed factual matrix document by the end of June 2018 as directed. Seeking directions designed to keep all of the Claimant's proposed inadmissible material out before the service of witness statements could give Mr Justice Fraser the wrong impression that the merits of the Common Issues lay with the Claimants. In any event, this approach was unlikely to fully succeed. We were therefore likely to be faced with a situation where the Claimants would be serving at least some evidence the Counsel team and I considered inadmissible and irrelevant (but potentially prejudicial), and POL would either have to address those contentious matters in its own evidence notwithstanding our principled position that they were

[708] WBON0001337. See for example page 9, Line H, where Mr Justice Fraser said to the Claimants' Counsel, "*I have your point about the orthodox factual matrix. Mr. Cavender, to be fair to him, explained this very clearly on the last occasion. We did not go into the authorities but I thought I made it clear that his approach on construction was indeed correct.*"
[709] POL00110872
[710] POL00363651

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irrelevant, or POL could ignore them in its own witness evidence but in doing so would risk leaving those points unanswered.

709. On 28 March 2018, we produced a briefing paper for the Steering Group forewarning of this issue.[711] The paper highlighted that we could not predict the extent to which Mr Justice Fraser would allow the Claimants to serve evidence we believed to be inadmissible, and recommended that POL should "*not … address the inadmissible evidence in the witness statements we are currently preparing*".

710. David Cavender QC further raised our concerns at the CMC which took place on 5 June 2018. For example, the following discussions took place (I have underlined what I believe are the key points):[712]

> *"MR. JUSTICE FRASER: No, let me deal with it on that basis. Whatever the factual evidence upon which you seek to rely it has to be relevant to the Common Issues.*
>
> *MR. GREEN: Correct.*
>
> *MR. JUSTICE FRASER: If it is not relevant to the Common Issues it is not admissible.*
>
> *MR. GREEN: Absolutely right, there is no dispute, to [sic] uncertainty about that.*
>
> *MR. JUSTICE FRASER: In those circumstances it is difficult based on reading the authorities to see for example, to use Mr. Cavender's example, how evidence of breach could remotely be relevant to the Common Issues Trial.*
>
> *MR. GREEN: We have at some length sought to explain that in correspondence.*
>
> *MR. JUSTICE FRASER: Would you like to explain it to me?*
>
> *MR. GREEN: Certainly.*

[711] POL00006408.
[712] POL00041899.

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MR. JUSTICE FRASER: Perhaps not at some length but just relatively succinctly.

MR. GREEN: The characterization of matters being matters that go to breach is the defendant's characterisation of those matters.

MR. JUSTICE FRASER: I do not understand that submission for a moment I am afraid simply as a matter of English.

MR. GREEN: Someone says, "I was provided with this training which I found inadequate and it did not help me do X", let us assume that is going to be the evidence. Now, my learned friend says that is evidence that goes to breach, but that is wrong analytically.

MR. JUSTICE FRASER: Show me which Common Issues it would go to.

MR. GREEN: May I take it in stages?

MR. JUSTICE FRASER: Yes.

MR. GREEN: The first point is that on Common Issues number 1, relational contract the court has to decide that by looking at the nature of the contract.

MR. JUSTICE FRASER: Correct.

MR. GREEN: As in fact it worked in practice to see whether or not it was a contract which requires the parties ----

MR. JUSTICE FRASER: I do not think one looks at the nature of the contract as it worked in practice. One looks at the nature of the relationship between the parties to the contract to see if the necessary ingredients, or if there are any new ones which have not yet been subject to authority. Whatever the necessary ingredients are for a relational contract are, print [sic] or not.

MR. GREEN: Correct. Then we reformulate it to say, was the contract one which in practice required the fair dealing and good faith requirement et cetera in the ----

MR. JUSTICE FRASER: That does not require breach.

MR. GREEN: No, but, my Lord, my learned friend has captured the language, we say, quite wrongly. There are two points, contractual orthodoxy from which we do not depart at all. The first point is that when you are looking at the construction of a contract you look only at the evidence as it was when the parties contracted. We are not going to invite your Lordship to look at any evidence after the parties contracted to construe the agreement that they entered into on that date.

MR. JUSTICE FRASER: Good, because that would be inadmissible.

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MR. GREEN: Of course. I am trying to clear the ground where the dispute is.

MR. JUSTICE FRASER: By definition the breach must happen after the contract ----

MR. GREEN: Of course, we are not talking about ----

MR. JUSTICE FRASER: My question to you was predicated specifically by reference to breach.

MR. GREEN: Breach assumes one has identified what the legal obligation is first which we have not even done, that is what the Common Issues Trial is about. My learned friend's characterisation is speculative.

MR. JUSTICE FRASER: I will tell what you I am going to do about this because I am have grave difficulty in following it, but it is also undoubtedly the case that there are bear traps left, right and centre in my attempting to identify in advance ----

MR. GREEN: Precisely.

MR. JUSTICE FRASER: ---- when you can and cannot do in your evidence. So this is what I am going to do. I am going to express myself very clearly. If you serve evidence of fact which includes passages which are plainly not relevant and, hence, not admissible, Mr. Cavender is going to have a choice. He can either simply say, "I am not going to be cross-examining at all" or he is going to issue an application to have it struck out. If he does issue an application to have it struck out and that application is effective, it will involve the court going through it and simply striking out large amounts. The court will make time to do that but cringing costs consequences will follow.

…

MR. JUSTICE FRASER: It is an exercise which will be very tedious and expensive and it will take a day or two but it can be done.

MR. GREEN: Yes. My Lord, we expect all of that. That is what we expect but we also note that my learned friend having initially opposed this point conceded it before you in the transcript, we can find a reference if you want, that each time Post Office exercises its entitlement to vary the contractual relationship or the contractual obligations of Subpostmasters, that falls to be construed as the position is known to the parties at that time.

MR. JUSTICE FRASER: Of course, that is contractual orthodoxy.

MR. GREEN: Precisely, that is all ----

MR. JUSTICE FRASER: But it does not open the door and it might be that this is all a concern without any real substance. It does not open the

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> *door to wide-ranging evidence of fact which appears to be Post Office's concern, that cannot possibly form part of the factual matrix.*
>
> *MR. GREEN: Precisely. We have taken that on board, I hope.*
>
> *MR. JUSTICE FRASER: I know, you always do say you take it on board and you all say that you are following contractual orthodoxy. It might be that you are.*
>
> *MR. GREEN: I am grateful.*
>
> *MR. JUSTICE FRASER: At the moment, without the documents in front of you to be able to look at it with any sort of concrete analysis, it is difficult for me to do any more. To continue the quasi military analogies from earlier this afternoon, a very powerful shot has now been fired across your bows on two occasions and I do not mean by Mr. Cavender or Mr. De Garr Robinson; I mean by me."*

711. My view following that hearing was that Mr Justice Fraser continued to broadly agree with POL's position on what evidence would and would not be admissible in relation to the Common Issues. However, given that he had indicated that these matters fell to be dealt with after service of the evidence, I remained concerned that the Claimants were going to submit evidence that went beyond the matters known to the parties at the point of contracting.

712. On 17 July 2018, I presented a Decision Paper to the Steering Group on whether or not POL's witness evidence should deal with matters which we anticipated the Claimants would rely on, but which we considered to be irrelevant and inadmissible.[713] This paper drew on discussions I had had with Counsel on this point and reflected their views as well as my own. Looking at that paper again now I note that:

712.1. We said that "*(with a high degree of confidence)… the orthodox legal position is that the only admissible evidence is that which was known to*

[713] POL00358103

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the parties at the time of entering into the contract." That reflects my understanding of the legal position, as I have outlined above.

712.2. We believed "*that the Judge [was] with us given comments he made at previous hearings*". That is demonstrated by the parts of the transcripts I have excerpted above.

712.3. We also outlined a number of exceptions of the kind I have alluded to above, including (but not limited to): (i) where a contract was varied, knowledge at the time of variation could be taken into account for the purpose of construing the varied terms; (ii) we wanted Mr Justice Fraser to have a basic understanding of how POL operated, which would involve describing some aspects of how branches were run; (iii) countering some of the Claimants' implied terms arguments might require evidence on the practical consequences of those terms; and (iv) POL might need to present some real-world evidence on the fairness of the terms that the Claimants alleged were unfair.

713. The Decision Paper outlined three options on how POL should deal with the Claimants' allegations ranging from responding to all of them to not responding to any allegations that we said were inadmissible whatsoever. The paper concluded that both extremes carried too much risk and that POL should go with a middle ground of responding selectively but with a strong bias towards not responding to anything thought to be inadmissible. In particular, rather than responding to allegations relating specifically to Lead Claimants, Counsel and I recommended that POL should put forward some high-level generic evidence on how its business worked and performed in practice. In practice, I recall that the final statements produced by POL took an even tighter line on admissibility and

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were very largely constrained to pre-contractual matters. See below, §§979, where I provide further observations on this.

714. On 19 July 2018, the parties' exchanged further letters setting out their respective positions.[714] In our letter, we "*[put] down again the following marker: anything that was not known (or at least knowable) to a person in the position(s) of the parties at the time of contracting cannot be admissible matrix of fact … It follows that nothing which happened after entry into the relevant contracts can be admissible evidence for the purposes of the Common Issues trial*". We identified three narrow possible exceptions to the rule, as follows:

715. "*a. Your clients' case is that the parties' 'true agreement as to termination was made manifest after the relevant contracts were entered into. In principle, evidence going to this could be admissible — although it remains unclear … what that evidence could be.*

716. *b. Insofar as any contract term was varied, the factual matrix relevant to construing that term, as varied, will be that obtaining at the time of variation. That is the proposition set out, for example, at paragraph 4.4 of Mr Bates' Reply. Post Office agrees. However, for this exception to be relevant the Claimants (or any of them) would have had to (a) plead a relevant variation, (b) set out the respects in which the factual matrix existing at the time that the variation was made was different from that existing at the time of entry into the contract, and (c) set out the way in which those differences in factual matrix are said to have a bearing on construction of the varied term. They have not done so.*

717. *c. Some, very limited, evidence of post-contractual behaviour may be relevant to the question of agency. It is, however, difficult to see how individual evidence from particular claimants (as opposed to general evidence of practices persisting over time) could assist*."

718. Since it was apparent that the Claimants' continued intention was to serve evidence going beyond the scope even of the exceptions outlined above, we

[714] POL00255849; POL00255848

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notified them that we intended to invite Mr Justice Fraser to set aside time in September, to enable him to (if necessary) go through the Claimants' evidence and strike out those parts which were inadmissible and/or irrelevant. We reminded Freeths that "*this was the course of action mooted by the Learned Judge at the hearing on 5 June 2018*". I believe we then wrote to Mr Justice Fraser advising him of the likelihood that an application would be forthcoming.[715]

719. When the parties exchanged their witness evidence on 24 August 2018, the Claimants' evidence contained lengthy sections dealing with what we considered to be inadmissible matters, including: complaints in relation to the Lead Claimants' training; the operation of the Helpline; problems the Lead Claimants said they encountered with Horizon; POL's audits of their branches; investigations into shortfalls; and events surrounding the Lead Claimants' suspension and termination. My opinion was that these were properly matters for a future breach trial and not the CIT.

720. Having reviewed the Claimants' evidence, we wrote to Freeths on 31 August 2018[716] to see if this issue could be resolved between the parties but, unfortunately, it was not possible to do so. As the next case management hearing was listed for 19 September 2018 (with the CIT due to start on 7 November 2018), it was necessary to act promptly and so on 5 September 2018, POL issued the application to which Mr Justice Fraser had alluded at the 5 June 2018 CMC, namely, to strike out inadmissible parts of the Claimants' witness evidence (the "**strike out application**"). The application did not seek to strike out all of the

[715] I have not been able to locate a copy of the relevant correspondence, but it is referred to in the transcript of the hearing on 11 September 2018 (referred to at §722 below, at p.356F-G. It is also referred to at paragraph 1.1 of the 13 September 2018 Steering Group Decision Paper, referred to below at §722: POL00006455.

[716] WBON0001313

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evidence which we considered to be inadmissible, but those parts we identified as clearly and obviously crossing the line.

721. Ahead of this application, we had submitted a Decision Paper to the Steering Group reflecting WBD's and Counsel's joint view that the application should be made, together with, *inter alia*: (i) a note of advice the Counsel team had previously prepared on what evidence would be admissible at the CIT, (ii) a copy of my draft ninth witness statement in support of the proposed strike out application, and (iii) marked up copies of the Lead Claimants' witness statements highlighting the passages targeted by the proposed application.[717] The Decision Paper explained that:

721.1. It was unusual to seek to strike out evidence in advance of a trial, and judges were generally reluctant to do so. Even so, the proposed application was justified in the circumstances because of (i) the proportion of the Claimants' evidence which we thought was irrelevant and inadmissible, and (ii) the extent to which that material overstepped the line. We recommended a balanced approach whereby POL would "*limit the strike out application to that material which we confidently believe to be inadmissible*". Although there was "*more material in the evidence that is arguably also inadmissible … we do not propose that Post Office attempts to strike this out before trial*".

721.2. We did not consider it advisable to attempt to deal with the admissibility issues at trial. There may not be room in the trial timetable for this, and in any event waiting until trial to raise the admissibility points would

[717] Decision Paper: POL00256731; Counsel team's advice: POL00256627; draft ninth witness statement: POL00256583.

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significantly complicate Counsel's trial preparation and would give POL no opportunity to take mitigating action (for example, by preparing further evidence) if Mr Justice Fraser positively decided that some or all of the Claimants' evidence was relevant to the Common Issues.

721.3. The Claimants' motivation appeared to be to "*prejudice the Judge's thinking into seeing them as a vulnerable group of quasi-employees who need to be protected from Post Office and thus hope that he will interpret the contract terms in a way that is favourable to the Claimants*". Seeking to strike out their evidence that went to matters of performance and breach in advance of trial would mitigate this risk. The risk of prejudice was a legitimate consideration to draw to POL's attention, however the central reason for the proposed application was that the evidence in question was, in our view, irrelevant and inadmissible. As the Decision Paper made clear, this evidence would be admissible at any future trial on liability, but we did not believe that it was ripe for consideration at this juncture.

721.4. There was a risk that POL would be seen to be acting "*oppressively*" in issuing the application, however WBD and Counsel considered this to be "*unlikely given (i) [Mr Justice Fraser's] previous comments and (ii) this is an important substantive issue*".

722. The Steering Group approved the proposed application and we initially sought to have it dealt with at the hearing on 19 September 2018. In the event, due to an administrative error by the Court, the strike out application did not come to Mr Justice Fraser's attention until around 10 September 2018; he listed a mention hearing the following day at which he gave directions for the application to be dealt with at a hearing on 10 October 2018. Since this meant the application

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being dealt with much closer to trial than we had originally envisaged, we reconsidered the approach. On 13 September 2018, a further Decision Paper was submitted to the Steering Group which set out that "*[t]he view of the legal team (including both QCs) is that the application should not be withdrawn*", but that we thought POL should seek to adjourn the application to be dealt with at the CIT.[718] This was because:

722.1. At the mention hearing on 11 September 2018, Mr Justice Fraser appeared to still be "*broadly with Post Office*" on the substance of the admissibility issues. However, he had expressed reservations about striking out evidence in advance of the trial as being the correct procedural approach. We advised that: "*In light of the Judge's comments, we believe that application will, more likely than not, fail […] – not on merit, but due to the Judge's approach to the procedural management of this litigation.*"

722.2. We advised that the application would have the best prospects of succeeding, if the application was dealt with at trial, as by then the Judge would have read all of the evidence and would be fully prepared to deal with the question of admissibility.

722.3. There was little point (from POL's perspective) in having the application heard on 10 October 2018 given the proximity of that date to the start of the trial (especially as Mr Justice Fraser's judgment on the application might not be available until after the CIT concluded).

[718] POL00006455.

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722.4. The trial timetable had now been set and Fridays were reserved for applications, so there was now some leeway within the timetable to deal with the strike out application at the CIT itself.

723. In line with that advice, at the hearing which took place on 19 September 2018 Mr Justice Fraser was invited to postpone the strike out application. He declined to do so, and the application therefore went ahead on 10 October. It was ultimately by Mr Justice Fraser in his judgment [2018] EWHC 2698 (QB), handed down on 17 October 2018 (the "**Strike Out Judgment**"). In short, Mr Justice Fraser considered that the evidence targeted by the application was potentially relevant and POL had therefore "*not satisfied the necessary test to have these passages struck out*" at the pre-trial stage: [53]. At the same time, he acknowledged that this decision did not mean he could go on to rely on matters which were outside the proper factual matrix when determining the Common Issues; as he observed at [53]: "*should I in the fullness of time make findings on the Common Issues by taking into account matters irrelevant in law (and hence inadmissible) on some of those Common Issues, there is a remedy available*". This was therefore the footing on which the parties proceeded to trial.

724. I appreciate that this section goes into detail on points that the Inquiry has not directly asked questions about. However, I believe that understanding the basis of POL's objection to the evidence served by the Claimants for the CIT, together with the chronology outlined above, is key to understanding some of the issues the Inquiry has identified. In particular, it had a critical bearing on how POL's evidence was prepared for the CIT, which I expand upon further in response to the Inquiry's **Q90.2** and **Q92.4** below. Further, the fact that the Claimants' evidence was allowed into the CIT in its totality influenced the way in which cross-

examination was approached, as I set out below in response to **Q90.3**. It also had a significant bearing on the events which followed the handing down of the Common Issues Judgment, in that that judgment dealt extensively with the factual matters relied upon by the Claimants, in a manner which I – together with the rest of POL's legal team – considered to be unfair in the circumstances and incorrect as a matter of law (and indeed, contrary to the indications that had been given in the Strike Out Judgment). These factors ultimately led to POL's appeal against the Common Issues Judgment and the Recusal Application, as I explain further in Section Q below.

725. Overall, whilst recognising that there were some narrow exceptions, I was of the view that it was reasonable for POL to adopt the stance that large parts of evidence tendered by the Claimants were not relevant to the Common Issues. Having made that general observation, I turn to the specific aspects of preparation for the CIT that the Inquiry has asked me about at **Q90** and **Q92 to Q94** of the Request. I deal first with Mr Justice Fraser's Strike Out Judgment, before turning to POL's preparation of its substantive case for the CIT.

(ii) The Strike Out Judgment (Q94)

726. By **Q94** I am asked to comment on the Strike Out Judgment, which dismissed POL's pre-trial application to strike out parts of the Claimants' evidence. I have described the background to that application in the preceding section, where I have also dealt with the legal team's advice on the merits of the application. Here, I deal with the Inquiry's questions about the criticisms of POL's conduct contained in the Strike Out Judgment.

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727. I identify the main points of criticism made by Mr Justice Fraser in relation to POL's conduct as follows:

727.1. At [6], Mr Justice Fraser said that "*the making of a GLO at all was opposed by the defendant*": [6]. He was mistaken on this point. As I have explained above (for example at §313, §350, §387), POL had in fact agreed in principle to the making of a GLO from the outset. Advice was received from Tony Robinson QC to this effect as early as 9 June 2016 (see §§426-427), and POL communicated its agreement in principle to a GLO to the Claimants in (*inter alia*) its LOR. There was some disagreement as to the terms of the GLO, and whether and to what extent the cut-off date should be extended. These points were resolved at the GLO Hearing and first CMC in October 2017, respectively, but there was never any dispute that a GLO should be made.

727.2. At [13], Mr Justice Fraser observed that there had been a total of 10 interim hearings before him in the 12 months prior to the first trial of the substantive issues. This appears to have been intended as a criticism levelled at both parties since he went on immediately to say that "*[t]he legal advisers for the parties regularly give the appearance of taking turns to outdo their opponents in terms of lack of cooperation … I made similar comments in judgment No.1. These must have fallen on deaf ears, at least for some of those involved in this case*". In relation to the strike out application specifically, Mr Justice Fraser thought that "*this counter-productive approach lurks in the background to this application*", noting that POL had first raised concerns about the scope of the Claimants' evidence around a year earlier (which he felt showed "*considerable, if not*

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almost supernatural, foresight on [POL's] part"): [14]. I make three points in relation to this:

(i) ***First***, it is correct that there were a number of interlocutory hearings before Mr Justice Fraser in 2018, however most of them did not arise out of applications made by either party. Save for the application to strike out evidence and POL's security for costs application which was heard on 19 September 2018 (which concerned only the amount and nature of the security to be provided, the Claimants having agreed to security for costs in principle), all of the other interim hearings were CMCs or costs budgeting hearings. On the whole, I do not recall these hearings being excessive in number or especially fractious; rather, my recollection is that they were a function of the staged approach to the trial structure and disclosure process.

(ii) ***Second***, as to the suggestion that the parties (including POL) continued to approach the litigation in an uncooperative manner following Mr Justice Fraser's judgment [2017] EWHC 2844 (QB), I believe that the approach that POL adopted was reasonable overall. As I have explained above, after Judgment No.1 we took proactive steps to 'reset' the relationship with Freeths (§390 and §392); we asked David Cavender QC to review and critique our whole approach to the litigation (see §391); we had constructive meetings with Freeths to discuss the future approach to case management and disclosure (see for example §538); and WBD advised POL to adopt a reasonable stance on disclosure which sometimes went beyond what was strictly

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required by the Court's Orders (see generally §§523-525 and §§537 ff above).

(iii) ***Third***, there were points on which the parties did not agree, and the parties' differing approaches to the relevant factual matrix was a prominent example of this. However, in my view there was nothing inherently wrong with the parties sometimes having opposing views, and it was fair and reasonable for POL not to simply concede its position on the factual matrix. I do not agree with the characterisation that POL displayed 'supernatural' foresight in alluding to this point in late 2017, before the Claimants' evidence for the CIT was served. As I have explained above, it was evident from the pleadings and the factual matrix document that the Claimants would seek to rely on a wider range of factual evidence than POL's legal team thought permissible. In my view, it was appropriate to ventilate this point at an early stage and not to hold it back until after service of the Claimants' witness statements. Nor do I agree (if it were to be suggested) that POL should have dropped the point and refrained from making the strike out application following receipt of the Claimants' evidence. As I have set out above, whilst POL's legal team appreciated that the application was not without risk (and we advised POL of this), in our view POL had little option but to make it given that the Claimants were seeking to rely on a large volume of inadmissible material which POL had not addressed (for the reasons I have explained) in its own evidence. In light of earlier hearings before Mr Justice Fraser, and in particular the 5 June 2018 CMC, my understanding was that he was

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sympathetic to POL's position on the scope of the factual matrix, and indeed that he had anticipated a strike out application as one possible way to resolve the matter.

727.3. At [57], Mr Justice Fraser gave a general warning that "*[a]n aggressive and dismissive approach to such major Group Litigation (or indeed any litigation) is entirely misplaced*". This was evidently directed at POL since it was prefaced by the following remarks:

> "*Some passages of the Lead Claimants' evidence relate to the circumstances in which their engagement with the defendant was terminated … The Lead Claimants complain that such terminations were abrupt, came out of the blue, accused them of falsifying accounts and made other statements that were not factually accurate, and also that the defendant's approach (and that of its solicitors) was generally heavy handed. I have read some of this correspondence … The tone of some of it is undoubtedly aggressive and, literally, dismissive*."

I did not consider that the warning in [57] was fairly made. It was not based, so far as I could see, on correspondence sent in the course of the group litigation, but rather on the underlying factual matters in dispute in the Lead Claimants' cases. In my view, conscious efforts were made to ensure that the tone of POL's correspondence in the group litigation did not come across as unduly heavy-handed or aggressive.

727.4. Mr Justice Fraser also referred to the fact that POL sought to have the application dealt with at the beginning of the CIT, instead of at the hearing that had been set down for 10 October 2018. I note that he described this stance as 'surprising' ([9] of the Strike Out Judgment). Insofar as this was intended as a criticism, I have explained the reasons why POL sought to postpone the application to trial above at §722. In my view that stance was

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not unreasonable or irrational, notwithstanding that Mr Justice Fraser preferred to case manage the application differently.

727.5. Finally, I address the suggestion that the strike out application was motivated by a desire on POL's part to 'tailor' the evidence, including in order to limit the adverse publicity that might be generated by some of the Lead Claimants' evidence (cf. [32], [54]-[56] of the Strike out Judgment). I do not believe that this suggestion was justified. I have set out the reasons why the Counsel team and I recommended that POL should make (and maintain) the strike out application above at §§720-722. As those paragraphs and the advice cited therein make clear, our advice was not based on the risk of adverse publicity to POL, but on the fact that the Claimants were (in our view) seeking to prematurely lead evidence which was irrelevant to the Common Issues. As part of that analysis, we recognised that the evidence might have a potentially prejudicial effect on the Judge's mind, but this was a legitimate consideration and wholly distinct from the wider risk of media interest in the Lead Claimants' allegations. Further, we recognised that the evidence which was targeted by the application would in due course become relevant to a future liability trial; the application was therefore not about shutting that evidence out altogether, but seeking to ensure that it was ventilated at the appropriate time in line with the approach of dealing with the GLO issues sequentially in stages.

728. With reference to **Q94.4**, I do not recall being challenged by representatives of POL (including Paula Vennells) following the Strike Out Judgment. Although by the time the application was heard the Counsel team and I had doubts as to how

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far it would succeed, the tone of the judgment came as surprise. Our expectation was that even if the Judge refused the application (by applying a high threshold for striking out evidence pre-trial), he was unlikely to regard it as being unreasonable or unfounded. Indeed, our reading of matters was that the Judge himself had anticipated that such an application might need to be made, and that he broadly agreed with us on the question of what constituted admissible factual matrix. Indeed, even after the application was refused, we understood that the Judge had left it open as to what evidence he heard should be taken into account in his decision on the Common Issues, and what evidence he should avoid making findings about on the basis that this could trespass on a future liability trial (cf. [53] of the Strike Out Judgment).[719] This is why we sought to maintain POL's pre-existing position on admissibility and relevance at the CIT, rather than adopting a different approach.

729. We did however modify our approach to the HIT evidence in light of the Strike Out Judgment. At the time the judgment was handed down, the Claimants' witness evidence for the HIT had been served around three weeks previously, on 28 September 2018. As set out further below (§782), it included evidence from individual SPMs which we considered was non-compliant with the Court's Order following the 5 June 2018 CMC (which prohibited "*Claimant-specific*" as opposed to "*generic*" evidence of fact).[720] The evidence which the Claimants served took us by surprise and we had had no opportunity to properly investigate it, so we were considering whether to apply to strike out the parts of it which were in breach of the Order. In view of the Strike Out Judgment, we decided not to do so

[719] Our understanding in this regard is evidenced by the Decision Paper in which we advised POL not to appeal the Strike Out Judgment: WBON0001700.
[720] POL00120352, paragraph 10.

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as the Judge had indicated that his intention was to address matters of evidence at trial rather than through pre-trial procedural hearings. I also considered that a second strike out application in short order would appear heavy-handed in light of Mr Justice Fraser's comments. Instead, we sought to respond to the Claimants' evidence as best we could in the time available, principally through Angela Van Den Bogerd's evidence for the HIT.

(iii) Preparation of witness evidence (Q90.2, Q92 to Q93)

Overview of my role

730. My firm's records demonstrate that it was Counsel who first drew up the plan for POL's generic witness evidence. This listed the issues that Counsel wanted to be covered and divided them by reference to six different (generically described) witnesses who might deal with them (for example, a "*mid-level executive, familiar with [the] nature and operation of PO[L's] business*").[721] Victoria Brooks, a Managing Associate in my team who supervised the day to day work on preparing the CIT witness statements, then took the lead on assigning names to the generic subjects in the evidence plan.[722]

731. Along with that generic evidence, the legal team planned to compile specific evidence from POL staff in connection with the individual Lead Claimants where it was both relevant to the Common Issues and possible to do so. As I have outlined above, the firm view that was reached in consultation with Counsel was that a great deal of the evidence proposed to be adduced by the Lead Claimants

[721] WBON0001254.
[722] WBON0000535 and WBON0000536.

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was inadmissible; as such, we proposed not to respond to that material in our own witness evidence.

732. The primary responsibility for liaising with POL's witnesses and preparing their statements was divided between members of the team working on the GLO matter: Ed Duffield, Helen Creech, Ivan Roots, Dave Panaech and Mandy Robertson.[723] Victoria Brooks supervised this task and undertook a first level review of the statements that they produced. From time to time, Victoria would check in with me as regards the progress that the team was making with the witness evidence.[724]

733. There were particular challenges in collating the witness evidence for the CIT:

733.1. ***First***, the general fallibility of memory, especially where witnesses were being asked to remember specifics of matters that dated back many years. For example, witnesses who gave evidence on how prospective SPMs were interviewed (such as Elaine Ridge and Michael Haworth) undertook dozens of interviews every year and so struggled to recall details of specific interviews with individual SPMs. For that reason, at times the best evidence those witnesses could give was as to their general practice when conducting interviews.

733.2. ***Second***, the sheer scale and complexity of POL's business and the degree to which processes changed over time. This meant getting a clear answer on the detail of how particular processes (e.g. appointment processes) worked at a specific point in time was inherently challenging.

[723] WBON0000540.
[724] See for example WBON0000568 and WBON0000609

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734. I was not involved in the initial stages of gathering the evidence and preparing first drafts. I became much more involved after first drafts were completed, conducting a detailed second level review of each statement personally and coordinating further reviews by the Counsel team and Rodric Williams.[725] All statements were at minimum reviewed by Owain Draper and/or Gideon Cohen who were junior Counsel for the CIT, as well as by Rodric Williams. At various points, members of the team approached me with ad hoc queries in relation to the preparation of witness evidence, for example as to the inclusion of particular points.[726]

735. There were three witness statements in which I was more heavily involved than others: Angela Van Den Bogerd's, because she was to provide POL's overarching and principal evidence on how it operated; and two smaller witness statements (those of Paul Williams and David Longbottom) which I picked up towards the end of the drafting process. I cannot now specifically recall the reasons for the latter two but I believe it had to do with capacity issues within the team. I summarise my involvement in preparing each of those statements further below.

736. I also dealt with overarching points of strategy, such as whether we should serve particular statements, in respect of which I liaised with Counsel. On 14 August 2018, I contacted the Counsel team in connection with the draft statements of Kendra Dickinson and Alison Bolsover, which dealt, respectively, with the operation of the NBSC Helpline and with Transaction Corrections, Transaction Acknowledgments, and POL's debt recovery processes. I expressed the view

[725] WBON0000569
[726] WBON0000582

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that we did not require the level of detail that was included in these statements, and, in any event, the material they contained was largely inadmissible because it did not go to any of the Common Issues.[727] I asked Counsel to briefly review and advise on:

> *"1. Whether we need these statements at all?*
>
> *2. If there are any sections/paragraphs in these statements that might be useful? If there are short bits, we might be able to include these in someone else's statement."*

737. In response, Gideon Cohen stated that, in his view, they were almost entirely inadmissible, and therefore "*we should not serve either statement (or take any sections for deployment in other statements)*." From that point, we ceased work on those statements. We also substantially cut down Helen Dickinson's statement to exclude material which, on reflection, we considered was not relevant to the Common Issues.[728] This reflected the approach recommended to the Steering Group that I have discussed above (§§712-713), namely, that there may be minor instances where evidence was on the borderline of inadmissibility, but where this was judged to be too extensive we either cut it out or did not serve the statement at all. Indeed, as noted above my recollection is that as the evidence was prepared, the stance on not including inadmissible evidence hardened.

Paul Williams and David Longbottom

738. My firm's records show that it was Mandy Robertson, a solicitor in my team, who was allocated the first draft of Paul Williams' witness statement.[729] Paul Williams

[727] WBON0000608
[728] I comment further on this statement at §797.3 below.
[729] WBON0001271.

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signed a finalised copy of his statement on 3 August 2018 without mine or Counsel's approval out of an abundance of caution, because he was going away at the time the witness statements were originally due (unless we secured the extension of time which I was then seeking).[730] I see from my email records that this was drawn to my attention at the time by Victoria Brooks.

739. We were subsequently granted an extension of time to 24 August, and Paul Williams was to return before the revised deadline. As I recall, at this point there was a capacity issue; Victoria was busy working on other witness statements and so I took over some of them. I reviewed Paul Williams' evidence and concluded that it did not address the "*big questions*" on Alan Bates' case, namely "… *whether POL sent out the full contract terms with the Transfer Pack or not. If not, how did [Mr] Bates get a copy of the full contract?*"[731] From that point, I took over producing a second draft of Paul Williams' statement. I had a call with Paul Williams on 14 August and amended his statement in light of that conversation. I followed up later that day with a second draft of the statement and some further questions.[732] I completed two further drafts of Paul Williams' statement, which were informed by his own revisions and additional questions that I asked him by email.[733]

740. Once I had made those revisions, I sent Paul Williams' statement to both Rodric Williams and Angela Van Den Bogerd for their comments.[734] Angela Van Den

[730] WBON0000583
[731] WBON0000606
[732] WBON0001281.
[733] WBON0001289.
[734] WBON0001287.

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Bogerd responded to confirm that Paul Williams' statement accurately reflected her understanding of how things operated.[735]

741. As to David Longbottom's witness statement, my firm's records indicate that Victoria Brooks was tasked with preparing the first draft.[736] I reviewed that draft in the usual way, and Victoria advanced it in accordance with my revisions.[737]

742. During the final stretch of the (re)drafting and review process in respect of David Longbottom's statement, on or around 21 August 2018, I took over management of the statement from Victoria.[738] As above, I believe this reflected a capacity issue at the time. By this point, Counsel had fed into the statement by way of amendments, though there remained some outstanding points to be checked with David Longbottom. I sent an updated draft to him which he approved with a few minor tweaks,[739] and dealt with Rodric Williams' comments on the draft statement.[740]

Angela Van Den Bogerd

743. Angela Van Den Bogerd's witness statement comprised generic evidence that offered an overview of how POL and SPMs operated. As I recall, and because this was POL's principal generic evidence, I was more heavily involved in its preparation than the evidence of other witnesses. Further, by this point I had spoken to Angela Van Den Bogerd dozens, if not hundreds, of times across a significant period that spanned back to near the beginning of my involvement in

[735] POL00041921.
[736] WBON0001257.
[737] WBON0000610, attaching a marked up version of the statement.
[738] WBON0000612
[739] WBON0001295 and WBON0000618.
[740] WBON0000619.

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the Horizon-related matters. As such I believed that I had a good grasp of the extent of her knowledge of POL's operating practices.

744. My firm's records show that Victoria Brooks and Mandy Robertson interviewed Angela Van Den Bogerd on 15 January 2018 for the purpose of producing a proof of evidence.[741] A proof of evidence was produced, which Angela Van Den Bogerd signed on 22 August 2018.[742] My firm's records indicate that it was Ivan Roots, working with input from Victoria Brooks, who then turned the proof of evidence into a (partial) first draft witness statement.[743] It appears from my emails that I had some discussions with Ivan around that time as to the structure of the statement,[744] though I cannot now recall the content of any discussions Ivan and I may have had, nor do I have any record of the same. It may be that I provided this initial input on structure as Ivan was new to the team working on the group litigation and relatively unfamiliar with the overall case.

745. My firm's records indicate that I had carriage of Angela Van Den Bogerd's witness statement after that partial first draft was produced by Ivan Roots and Victoria Brooks. On 24 July 2018, Victoria Brooks asked me to take over writing the section of the statement dealing with implied terms.[745]

746. At the same time, Ivan was liaising with Angela Van Den Bogerd and other POL employees, such as Kathryn Alexander, to further flesh out the factual content of the draft statement. On 1 August 2018, Ivan sent me a copy of Angela Van Den Bogerd's statement "*taken as far as [he] could take it*" for me to conduct a detailed

[741] WBON0000517 and WBON0000515.
[742] WBON0000546
[743] WBON0000556 and WBON0000560.
[744] WBON0000557.
[745] WBON0000562

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review.[746] In completing that review I restructured the statement, added in new sections (in particular, further background and context), and cut out some material in order to strip out detail and omit any material that I considered to be inadmissible.[747] Although the original proof of evidence had been prepared after the setting down of the Common Issues for trial, it captured her evidence in a broad sense but was later cut down in line with the strategy agreed with the Counsel team on excising evidence which was not of direct relevance to the Common Issues. Through this process, Angela Van Den Bogerd's evidence was substantially cut down and sharpened to focus on the matters that were known by POL and SPMs at the time of contracting (or on knowledge that would have been available to SPMs at that time).

747. I sent the revised version that I had prepared on to Angela Van Den Bogerd and Rodric Williams for comment. At the same time, I also sent the statement onto Gideon Cohen and Owain Draper.[748] I also specifically asked David Cavender QC to review the draft statement because of its centrality to POL's evidence.[749] Given both the length and importance of Angela's statement, it went through a significant number of iterations during the review process. During this time, Ivan Roots and I continued to work in tandem on the developing draft.[750]

748. I am specifically asked to consider one of those iterations of Angela Van Den Bogerd's statement, namely the version she sent to me on 20 August 2018 (**POL00041956**, attached to **POL00041955**). I am asked to consider two

[746] WBON0000580.
[747] WBON0001286.
[748] WBON0000332.
[749] POL00363477
[750] WBON0000616

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comments on that version of her statement, which are highlighted in yellow and thus are marked for Angela Van Den Bogerd's attention:

748.1. ***First***, a comment inserted at paragraph 67 of the statement, which reads: "*[Angela – are you comfortable with saying this]*" (cf. **Q92.2**). I think it is likely that I wrote this comment, but I cannot specifically recall it. My firm's records suggest I did write it. It appears that this paragraph was inserted along with the comment as part of my review of Ivan Roots' first draft of the statement. Looking at this comment now, I would consider that I likely wrote it as I was unsure as to whether I had fairly captured Angela Van Den Bogerd's understanding of the position in paragraph 67. That paragraph sketched in outline terms the communication between IT systems in branch and the IT systems of POL's clients. I sought to draw her attention to my insertion so that she would review it and check it accorded with her knowledge. Indeed, her comment in response to mine indicates that she reflected on this insertion and sought external input ("*I will be if I have a bit more info on the detail and perhaps a couple of examples of actual client requirements. Let me talk to a couple of people before I commit*").

748.2. ***Second***, a comment inserted at paragraph 115 of the statement, which reads: *"[Please feel free to amend below as appropriate]"* (cf. **Q92.3**). Again, I think that it is likely that I wrote this comment, though I cannot specifically recall writing it. Reading it now, I would consider that I wrote it as I thought that these paragraphs on Horizon fairly reflected Angela Van Den Bogerd's understanding, but I flagged the point as I wanted to draw her attention to them. I can see through running a comparison of the

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previous version (dated 1 August 2018) and this version that although I took some of the material from the Horizon section of that previous draft, much of this was new drafting that I wished Angela Van Den Bogerd to read carefully. By my edits, I sought to refocus the Horizon section of the statement (as was my overarching approach) solely on information that would have been known to a SPM at the time of their appointment. I wanted Angela Van Den Bogerd to verify that what I had drafted in relation to what a SPM would have known at this time was correct.

749. When Angela Van Den Bogerd's statement was near the point of completion, I had various further discussions with Counsel on the inclusion of specific points. In particular:

749.1. On 22 August, I contacted Junior Counsel to discuss the section of her statement which dealt with Horizon.[751] Previously, Junior Counsel had deleted a number of paragraphs from the Horizon section, which dealt with privileged user access and Angela Van Den Bogerd's confidence in the Horizon system.[752] I was of the opinion that those sections should go back into the draft statement. This was discussed on a call between Owain Draper and me. I do not recall that call, but I can see by comparing the version that was shared with Junior Counsel and the final version of the statement that the final version was much reduced; that was in line with the general approach I have outlined above.

749.2. On 23 August 2018, David Cavender QC sent his and Gideon Cohen's amendments to and comments on the draft statement. I was not

[751] POL00363491.
[752] POL00363453.

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comfortable with some of the deletions that had been suggested. In particular, I raised the deletion of footnote 23 in paragraph 88, which qualified the statement that "*the Subpostmaster has complete control over the branch accounts and transactions only enter the branch accounts with the Subpostmaster's knowledge…*" in the following way:

> *"I put to one side here the Claimant's allegations around Post Office remotely editing branch accounts without a Subpostmaster's knowledge as these issues are the subject of the Horizon Issues trial. I note however that these allegations, which are put in a variety of different ways, are spurious or only true in incredibly rare circumstances such that they are inconsequential. I any event, they would not be in the mind of a Subpostmaster when they joined the Post Office."*[753]

I explained my concerns about that deletion as follows:

> *"You've also deleted footnote 23 in para 88, regarding remote access. If we do not cover remote access, then the entire statement needs to changed, because the statement is premised on the notion that SPMRs have control over their accounts. That point is not 100% true, due to the remote access argument, but is 99.99% true so we need to explain the remote access concept otherwise AVDB won't be telling the truth.*
>
> *Given the sensitivities on this point, we need to cover it off."*[754]

749.3. When I raised this point, Counsel agreed that the footnote ought to be reinserted.[755] A revised version of that footnote features in the final draft of Angela Van Den Bogerd's statement.

750. By this point in time, we had a near final version of Angela Van Den Bogerd's statement, subject to Rodric Williams' comments and some outstanding minor pieces of information that we required from her. In Rodric Williams' email of 23

[753] POL00363501.
[754] WBON0000625
[755] WBON0001311.

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August 2018 to which he attached a version of Angela Van Den Bogerd's statement that he had commented on (**POL00041986**), he made an overarching point to the following effect (which I am asked to comment on by **Q93**):

> *"**One overarching point on the witness statements**: please make sure you are giving the witnesses the "health warning" on signing a statement of truth, i.e. they need to be confident that what they say in the statement is true to the best of their knowledge and belief, and that they don't accept something just because it's been through the lawyers"* (emphasis in original).

751. I do not know why Mr Williams made this overarching point, but looking at it now, I consider it likely that he was simply being prudent. In any event, I can confirm that I sent the following warning on signing a statement of truth to Angela Van Den Bogerd when I attached her final statement for signature:

> *"A witness statement must have a "statement of truth". This is a statement confirming that the person making it believes that the facts stated in the document are true. The penalties for signing a statement of truth without an honest belief in the truth of the facts being verified are potentially severe. A person who makes a false statement in litigation in an attempt to interfere with the course of justice will be in contempt of court, which is punishable by a prison sentence of up to two years."*[756]

752. That was a warning (with some slight variations in wording) that WBD gave to witnesses of fact in this litigation both before and after Rodric Williams sent the email in **POL00041986**. This was part of our standard practice and was not prompted by this email.[757]

753. By **Q92.4** and **Q92.5**, I am asked to comment on a particular finding which Mr Justice Fraser made at [544] of the Common Issues Judgment. As I have

[756] POL00363552

[757] See by way of example: WBON0001274 (Paul Williams); WBON0001291 (Michael Webb); WBON0001296 (Tim Dance); WBON0001299 (Helen Dickinson); WBON0000623 (Michael Shields); WBON0001301 (Michael Haworth); WBON0001307 (David Longbottom); see also the information sheet provided to witnesses: POL00154271.

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highlighted above at §§697 fff (especially §§612-613), POL took the decision on the advice of WBD and the Counsel team to confine its evidence only to those matters which we regarded as admissible and relevant to the Common Issues; as such, we did not propose to adduce witness evidence going to post-contractual knowledge and events.[758] Angela Van Den Bogerd's evidence was prepared in line with this approach, and indeed we cut out large parts of her original proof and earlier drafts of her statement for this reason.[759] That she was not giving evidence on such matters in her witness statement was made clear at paragraph 64, which read as follows:

> *"This is only a high-level overview, reflecting information which I believe that new applicants for Subpostmaster could reasonably be expected to know, or to have found out, before being appointed as a Subpostmaster."*

754. The criticism that Angela Van Den Bogerd had not offered the "*whole story*" in her witness statement, or not included matters that were unfavourable to POL, largely related to post-contractual matters and stemmed, in my view, from the fact that questions were put to her in cross-examination about matters which went beyond the factual matrix identified in paragraph 64 quoted above. In my view it was not unreasonable to advise Angela Van Den Bogerd to confine her witness statement in this way (and consequently it could not have been unreasonable for her to accept this advice and limit her witness statement accordingly), for the reasons I have explained above.

(iv) POL's case on the effect of the 'settle centrally' button (Q90.3)

[758] Save where permissible in respect of narrow exceptional areas (see above, §699, §712.3, §714). This was the case, for example, in relation to paragraph 33 of the witness statement of John Breeden, whose evidence responded to the Claimants' "*sham contract*" points.
[759] Save in one narrow respect which I comment on at §797.3 below.

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755. By way of background to this issue, much of the CIT (and indeed, the HIT) was taken up with debate about how SPMs could dispute shortfalls. This flowed from one of the Common Issues, which concerned whether the accounts produced at the end of a trading period by SPMs (the Branch Trading Statement, or "**BTS**") could amount to a 'stated account' under ordinary agency principles. POL's case at the CIT on this matter never relied on the existence of a 'dispute' button in Horizon. Indeed, POL accepted, as a fact, that there was no button in Horizon to dispute shortfalls, but it maintained that this was irrelevant because there were other means by which an SPM could raise a dispute about their accounts; in particular, by calling the NBSC helpline. On POL's case, raising a dispute through the helpline (or by any other means e.g. email, speaking to their line manager, etc.) was properly to be regarded as part of the accounting process. We argued that a BTS could therefore amount to a 'stated account' where no dispute was raised over the BTS contemporaneously with its being lodged with POL. But, whether any specific BTS lodged by any individual SPM was to be considered a 'stated account' depended on the facts of each case (namely, what the SPM said and did at the time it was lodged). POL invited Mr Justice Fraser to go no further than this during the CIT, and to leave questions around the submission and disputing of accounts, and investigations into disputed shortfalls, to a later liability trial.[760]

756. However, the Claimants focused heavily on the fact that a shortfall could not be disputed within Horizon itself, such that (they submitted) SPMs were forced to lodge BTS's containing items with which they did not agree. On that basis the Claimants argued that no BTS could ever amount to a 'stated account'. They

[760] Cf. paragraph 112 of POL's written closing submissions.

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Claimants made extensive submissions, supported by references to post-contractual evidence and cross examination of POL witnesses, around the non-existence of a 'dispute' button in Horizon. Ultimately this persuaded the Judge to explore how SPMs could dispute Transaction Corrections and end of trading period shortfalls during the CIT.

757. As the CIT advanced and Mr Justice Fraser's interest in this topic became clearer, I suggested to the Counsel team by email on 13 November 2018 that we pick this up in Angela Van Den Bogerd's examination-in-chief.[761] Gideon Cohen responded that we had the material available to deal with this point in submissions. I responded asking to see a copy of those proposed draft submissions:

> *"Please can you send me the draft submissions (or an outline) on point 2. We really need to nail this point otherwise we risk our house of cards coming down as [Patrick Green QC] will say if SPMs can't dispute losses, then PO forces them to put inaccurate things in their accounts, that justifies false accounting, it also means that they cannot be held liable for what their accounts say (because those accounts are plainly inaccurate because they can't dispute mistakes), thus the normal rules of agency cannot apply to SPMs and clauses 12.12 / 4.1 should be construed as requiring PO to prove every loss in every account."*[762]

758. Owain Draper responded outlining the shape of those submissions (which he proposed to write the following day) as follows:

> *"The key points are (1) the manuals in all relevant periods make clear that amounts settled centrally can be disputed and (2) the Lead Claimants did in fact settle centrally and dispute. Ultimately, therefore, the rules were clear and the Lead Claimants acted consistently with having known the rules. Any suggestion now that they did not know that they could dispute is self-serving and can be rejected. It is also worth noting that many (perhaps even all) the LCs in fact admit to having*

[761] WBON0000635
[762] WBON0000636

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> *known that they could dispute amounts that they settled centrally (which is unsurprising given that they in fact did it).*"[763]

759. On 6 December 2018, which was the fifteenth and final day of the CIT, Mr Justice Fraser asked the parties to devise an agreed flowchart that laid out the steps involved in the Transaction Correction and BTS processes. This was one of many tasks Mr Justice Fraser set the parties in the course of the trial. I do not recall how that document was prepared. My firm's records suggest it was Amy Prime and Dave Panaech in my team who coordinated with Junior Counsel to prepare the relevant flowcharts.[764] On 14 December 2018, following the end of the trial, Amy Prime sent our proposed flowcharts to Freeths (with me in copy).[765] My firm's email records suggest that there was some disagreement between the parties on the wording of the 'settle centrally' box in the Transaction Correction flowchart. The version of the wording that Amy had sent to Freeths read as follows:

> ""*Settle Centrally*"
>
> *(1) A credit or debit entry for value of the TC is made in the SPM's branch account; and*
>
> *(2) A corresponding debit or credit is made in the SPM's customer account with Post Office.*
>
> *SPM may phone NBSC to lodge a dispute. If this is not done, Post Office will contact the SPM to discuss payment of any shortfall.*"[766]

760. Freeths' responded on 17 December with various comments on the Transaction Correction flowchart, one of which was that they had "*[c]hanged the wording in*

[763] WBON0000637.
[764] WBON0001379.
[765] WBON0000642.
[766] WBON0000643.

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relation to "Settle Centrally" to more neutrally reflect the position".[767] Their proposed wording was as follows (I show the changes in red):

> *""Settle Centrally"*
>
> *(1) A credit or debit entry for value of the TC is made in the SPM's branch account; and*
>
> *(2) A corresponding debit or credit is made in the SPM's customer account with Post Office. If a debit, this will be treated as a debt by Post Office*
>
> *SPM may phone NBSC to lodge a dispute. ~~If this is not done, Post Office will contact the SPM to discuss payment of any shortfall.~~"*

761. Owain Draper responded that this change was not remotely neutral and indeed, it was contrary to our pleaded case (I discuss the relevant paragraph in the Generic Defence above at §§500 ff).[768] Dave Panaech offered up the suggestion that we accept Freeth's wording, with the following minor change to point (2) (shown in yellow highlighting):

> *(2) A corresponding debit or credit is made in the SPM's customer account with Post Office. If a debit, this will be treated as a debt by Post Office unless the SPM contacts NSBC to lodge a dispute."*[769]

762. Counsel approved Dave's suggested wording. He reverted to Freeths' on those terms. Freeths' reverted as follows (I have shown Freeths' proposed addition in red):

> *"We believe the position on the evidence, was that an amount settled centrally but disputed, results in collection of the debt being suspended, but factually a debit is considered by Post Office to be a debt. We propose the wording below, which we believe fairly reflects this.*
>
> *"(2) A corresponding debit or credit is made in the SPM's customer account with Post Office. If a debit, this will be treated as a debt by Post*

[767] WBON0001393.
[768] WBON0000645.
[769] WBON0000646 .

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> *Office unless the SPM contacts NBSC to lodge a dispute, which should suspend collection of the debt until the dispute is resolved."*
>
> *Otherwise we are willing to agree your position for the sake of ensuring agreed documents can be filed as was clearly the Judge's preference."*

763. Again, Counsel regarded this wording as contrary to POL's pleading, and Owain Draper suggested that the words "*of the debt*" be removed to sidestep the semantic point.[770] Freeths' version incorporating Owain Draper's suggested deletion was the wording in the final version of the Transaction Correction flowchart that was filed with the Court.

764. As already noted, I discussed the drafting of the relevant paragraph of the Generic Defence dealing with this point (paragraph 43(3)) above at §§500 ff. There is a tension between the Generic Defence and the flowchart on this point. The Generic Defence pleaded that an amount settled centrally but disputed via the NBSC helpline was not a debt at all and was not treated as such by POL, whereas by the end of the CIT (as the flowchart demonstrates) the position had changed slightly, viz. it was strictly speaking a debt, albeit one that POL would not enforce until any dispute was resolved. During the CIT, I saw this as a largely semantic point as to what was properly classified as a 'debt'. As set out above, I do not recall this fine distinction being raised by anyone (including POL) at the time of the pleading; the main point being that if a shortfall was disputed, POL would not, in practical terms, chase for payment of it (or at least, that was what POL's operating procedure provided; although POL sometimes failed to follow this and did chase disputed sums, and this was heavily emphasised by the Claimants in the CIT).

[770] WBON0001396.

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(v) Approach to cross-examination of the Claimants, including allegations of dishonesty (Q90.4)

765. The proper approach to cross-examination of the Lead Claimants fell within Counsel's remit and not my own. I cannot recall whether or not I received David Cavender QC's cross-examination notes in advance, nor does my firm have any record of my doing so. The approach that Counsel generally adopted to cross-examination was, as I understood it, a continuation of POL's wider stance on the proper scope of evidence for the CIT (which I have discussed above at §§697 ff). Following the Strike Out Judgment, POL (and in particular Counsel) had a tricky line to tread in terms of maintaining a clear and strict line on inadmissibility when it came to cross-examination, as it was maintained at trial that evidence of events which took place after the Claimants contracted with POL was generally irrelevant to the Common Issues, yet parties are entitled to challenge evidence that they dispute. Thus, had POL failed altogether to cross-examine evidence led by the Claimants on post-contractual matters which we considered to be irrelevant and inadmissible, and the Judge found otherwise, POL would have lost an opportunity to put its case on that evidence.

766. We had raised with POL the risk that this type of cross-examination could make its case appear confused – this was one of the reasons for seeking to strike out the Claimants' inadmissible evidence before the CIT began as that risk would then be avoided.[771] After the strike out application was rejected, David Cavender QC still advised that the best approach was for him to put what he described as

[771] POL00256731.

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'blocking' questions in his cross-examination of the Lead Claimants to mark POL's disagreement with the offending parts of their evidence.[772]

767. In the course of cross-examination of the Lead Claimants, David Cavender QC also put documents to some of them that went to their credibility as witnesses, and in the cases where there was evidence of false accounting (i.e. dishonesty) those points were also put. That strategic decision was properly within Counsel's remit, who had significant experience of how cross-examination was conducted, including the reasons for cross-examining on credit. There is a relevant email chain on this topic between Amy Prime and David Cavender QC (with me in copy), which concerns discussions as to the proposed contents of the Lead Claimants bundle for the CIT. Amy states in her email of 18 September 2018 that WBD has "*inserted the documents which have been disclosed and are dated prior to the contract being entered/the C entering the branch*".[773] David Cavender QC responded as follows:

> *"Whilst I can see the logic of this – I think there are some documents which are post contractual that we might want to put to witnesses for reasons of prejudice.*
>
> *By way of example: cases such as Sabir and Abdula : the documents such as audit reports revealing their deficits – how they were caused – what they said at the time etc: these will be useful in asking questions which will assist on the optics of the case and go to the credibility of the witness.*
>
> *I will try and identify as I go through the cases those documents in this category that it might be useful to include to assist you in this process."*[774]

[772] This approach was explained to the Steering Group in a Decision Paper advising on the prospects of appealing the Strike Out Judgment: WBON0001700.
[773] WBON0001328.
[774] WBON0001331.

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768. In closing submissions, Counsel were careful not to rely on matters which we considered were outside the scope of the relevant and admissible factual matrix. Further, Counsel stressed that Mr Justice Fraser should avoid making any findings (including as to credit) that risked trespassing on future trials, for example because such findings would go to issues of breach and/or causation. Accordingly, POL made very limited submissions on credibility and did not rely at all on evidence of false accounting in relation to credibility (see further below, §§981-982).

P. PREPARATION FOR THE HORIZON ISSUES TRIAL

769. In this section I deal with the preparation of POL's case for the Horizon Issues Trial, which took place over various dates between March and July 2019. This section therefore addresses **Q95 to Q102** of the Request, save that I have already dealt with **Q95.1** and **Q99** above, in Section N on Disclosure (at §§666-670 and §§672-694, respectively).

770. In particular, this section: (i) gives an overview of the preparation of the evidence, including POL's case on bugs, errors, defects and remote access (**Q95.2 to Q95.3**); (ii) addresses how and to what extent POL drew on Fujitsu in preparation for the HIT, including the decision not to call Gareth Jenkins as a witness (**Q95.4, Q98**); (iii) answer's the Inquiry's questions about specific aspects of the witness evidence, namely an email sent by Gareth Jenkins on 16 November 2018 containing information that was then reflected in Angela Van Den Bogerd's witness statement for the HIT ("**AVDB2**") (**Q97**), my involvement in the preparation of Steve Parker's evidence, and inconsistencies and inaccuracies in

the witness evidence on remote access (**Q101**); (iv) my involvement in the preparation of Dr Worden's expert evidence (**Q96, Q102**); and the merits advice POL was given in the lead-up to the HIT (**Q100**).

(i) Preparation of the evidence – overview (Q95.2 to Q95.3)

Overview of the preparation of POL's evidence

771. In the course of preparing this statement, I have refreshed my memory as to how these matters were handled with reference in particular to two Steering Group papers which were produced about the preparation of the evidence for the HIT, one dated 20 September 2018[775] and the other dated 12 October 2018.[776]

772. Due to the technical nature of the issues in dispute at the HIT, most of the Horizon Issues were a matter for expert evidence. Some of the issues however also required factual evidence, and certain other matters were purely factual. At the 22 February 2018 CMC (see §321 above), Mr Justice Fraser identified that the March 2019 trial window should be used to address issues about Horizon, and indicated that it should be based predominantly on expert evidence.

> *"I wanted the parties to agree or propose an isolated number of issues on the pleadings related to Horizon that would involve expert evidence but not evidence of individual cases … I was obviously not sufficiently clear so I am going to make it clear now. My intention is in March to resolve the Horizon Issues that observe the following three criteria. Issues regarding the Horizon system that arise on the pleadings, that is the first one; second, that can be resolved on expert evidence, third, do not require evidence of fact or if they do require the barest evidence of fact."*[777]

[775] POL00257368.
[776] POL00257886.
[777] WBON0001337.

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773. One of the difficulties that POL faced from the beginning of the litigation was that the Claimants did not detail the nature of their allegations about Horizon in their pleadings, and this made it difficult for POL to know the case that it had to meet. By early 2018, the extent of the case put forward by the Claimants in relation to Horizon was the sparsely pleaded details in the Amended GPOC and Generic Reply.[778] At some stage I expected the Claimants to put forward examples of when they had encountered unusual behaviour by Horizon or transactions / accounting entries that they could not explain and therefore suspected were the result of a bug. From there, I expected the approach would be that the experts would look at each of those examples and to give an opinion on whether there had been an error in Horizon. Indeed, I asked Mr Coyne about adopting this approach at the meeting between the parties' lawyers and experts in April 2018, but it became apparent that he had not received this information from any of the Claimants and was not in favour of approaching the Horizon Issues in this way – although he was also not able to clearly articulate the approach he wished to take (see paragraph §614 above).

774. Accordingly, at the CMC on 5 June 2018 (see §322 above), the lack of clarity in the Claimants' allegations was discussed with Mr Justice Fraser. His view was that the HIT was to be predominantly a trial of expert evidence and he did not expect to be determining the details of individual Claimants' cases. He therefore ordered that each party file "*witness statements of any witness of fact whose generic evidence (in distinction to Claimant-specific evidence) they wish to rely upon for the purposes of determining the Horizon Issues*" (emphasis added).[779]

[778] See §377.3 above about this information not being included in the SOIs.
[779] POL00120352, paragraph 10.

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775. The Court had also made other orders to help draw out the Claimants' case on Horizon. By 18 July 2018[780] (subsequently extended to 17 August 2018)[781],the Claimants were to produce an outline document "*setting out the nature of their allegations in relation to the Horizon Issues*" This document was produced as directed on 17 August 2018 but shed little light on the Claimants' allegations about Horizon, and gave no hint that the Claimants were planning to adduce evidence from individual SPMs (being the approach their expert had opposed at the meeting in April 2018 and which had then been prohibited by the Order flowing from the 5 June 2018 CMC, cited above).[782]

776. In view of these matters, the Court also ordered a sequential exchange of factual evidence and expert reports beginning from September 2018.[783] After the first round of factual evidence by both sides ("**Round 1**", exchanged on 28 September 2018), the Claimants' first expert report (Coyne 1) was filed in October 2018, then POL had the opportunity to file responsive witness statements ("**Round 2**", served on 16 November 2018) and after that, POL's expert report (Worden 1) was filed on 7 December 2018.

777. As a result of this sequencing, WBD advised POL to keep its first round of evidence limited to background information about Horizon and to then provide more evidence in the second round once we had sight of the Claimants' export report and the Claimants' own witness statements. Thus, in the Steering Group Paper dated 20 September 2018 (which I prepared), I explained that:[784]

[780] POL00117925 at paragraph 15.
[781] WBON0001269.
[782] POL00358213.
[783] POL00117925.
[784] POL00257368.

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> *"The Claimants have served a provisional outline document setting out the nature of their allegations in relation to the Horizon issues, but this is lacking in detail and the Claimants have not articulated their case on Horizon adequately. We have asked them to clarify this case and they have refused. This lack of clarity makes it difficult for us to know what evidence will be needed to respond to the Claimants' arguments until we see their expert report.*
>
> *[…]*
>
> *The lack of detail about what the Claimants will allege in their expert report combined with the opportunity to submit further evidence at the end of October, lead us to believe that Post Office should serve minimal evidence in the first round. This evidence would cover basic background information only and will provide Robert Worden with the evidence that he requires to produce his report."*

778. I was also aware of POL's unavoidable reliance on Fujitsu for its factual evidence about the Horizon system. There was no one at POL who could cover the Horizon system, the known bugs, remote access, or Horizon controls. However, POL's dependency on Fujitsu's evidence came with the risk that the accuracy of that evidence could not be fully tested. The Steering Group paper explained:

> *"Fujitsu have obvious reasons for ensuring that their evidence is accurate, and we know that their own legal team is closely monitoring the position. Nevertheless, there is a residual risk that Fujitsu could (inadvertently) put forward inaccurate evidence. Given that this evidence is of a technical nature (about Horizon) or regarding Fujitsu's internal practices, it is difficult for us to validate this evidence other than asking probing questions in the usual course of taking evidence. To be clear, we have no reason to believe the evidence will be inaccurate, but given that it is coming from a third party it is important that this risk is understood."*

779. In view of these matters, WBD strongly recommended that POL only submit minimal evidence in Round 1. All of the other options were so fraught with risk that they were not worth any real consideration:

> *"The alternatives to [the] above minimal approach are:*

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> *Submit no evidence. We believe that this would lead to criticism from the Judge who is clearly expecting Post Office to submit some evidence.*
>
> *Submit full evidence. This would require a degree of guesswork on the topics to be covered which is not attractive at all."*

780. I discussed this with Rodric Williams, and he agreed with this assessment. Therefore, rather than seek a formal decision from the Steering Group in respect of this course of action, the Steering Group paper updated them that this was the course of action that POL had instructed us to take.

781. In line with this approach, POL's Round 1 evidence for the HIT, served on 28 September 2018, was intentionally limited. For example, Torstein Godeseth's first statement ("**Godeseth 1**") described the Horizon system at a high-level only (including the ways in which Fujitsu could alter transaction data and the controls around audit data).

782. As it turned out, this was a sensible approach to have taken. The Claimants' witness evidence, served on 28 September 2018, included evidence from six SPMs about problems they had encountered in branches which they suspected were caused by Horizon (as well as an ex-Fujitsu employee, Richard Roll). In my view, the evidence of the individual Claimants largely breached the Court's Order prohibiting "*Claimant-specific evidence*". No prior warning was given by the Claimants that they would be calling these witnesses, and accordingly no disclosure orders had been made in relation to them and no investigations had been undertaken by WBD into their cases at this point.[785] Further, although the witness statements raised important issues to be investigated – especially in

[785] Indeed, this led us to consider whether POL ought to apply to strike out the Claimants' evidence to the extent that it breached the Court's Order. However, in view of Mr Justice Fraser's Strike Out Judgment (discussed above at §723 and §§726-729), we decided not to do so and to respond to the Claimants' evidence as best we could in the time available.

relation to the evidence of Richard Roll – it was still not clear how the Claimants intended to formulate their case in relation to Horizon at trial.

783. Indeed, it was not until Coyne 1 was served on 16 October 2018[786] that (i) it became clear that the Claimants were going to focus their case heavily on the contents of the KEL on the footing that it showed evidence of Horizon not working properly, and (ii) they began to identify the KELs they believed were relevant. Mr Coyne did not say that there was some fundamental design flaw in Horizon or that there was some significant bug that undermined all (or even a majority of) of transaction / accounting entries. Rather, it appeared to me that the Claimants' and Mr Coyne's approach was to say that the KEL showed there were a large number of smaller bugs, although he was ambiguous about what this meant for Horizon's robustness overall. He concluded (para 3.7) that:

> *"Whilst the present-day version of Horizon, supported by manual human support may now be considered as relatively robust in the spectrum of computer systems used in businesses today it has undergone major modifications in its history. It is likely that in 1999 when it was first commissioned, and in 2010 when it was significantly upgraded (to Horizon Online), it was less robust.*

784. He also said that "*Horizon's relative robustness does not mean that [sic] is thereby extremely unlikely to be the cause of shortfalls*" but did not go on to give an opinion that Horizon was *likely* to be the cause shortfalls in any given set of branch accounts. I inferred from the absence of an opinion on this critical point

[786] POL00258234.

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that Mr Coyne may have believed that Horizon was unlikely (albeit not extremely unlikely) to be the cause of shortfalls.[787]

785. In my mind, this was the point when we first had a true sense of the Claimants' case on Horizon and when the Horizon Issues Trial started to take shape. Whilst Coyne 1 raised numerous, troubling new points that needed investigation, it did not assert the conclusion that Horizon was not robust and so I recall that my general impression on first reading Coyne 1 was still that POL had a credible case that Horizon worked reliably.

786. For POL's Round 2 evidence (due on 16 November 2018), we were largely responding to the Claimants' evidence and expert report. We had an evidence plan that we regularly updated which set out key points of evidence which we were seeking for each witness to give.[788] This was a significant exercise to complete in the 6 weeks, given (i) the shape of the Claimants' case only started to surface in their recently served evidence, (ii) Richard Roll raised serious allegations about precise technical aspects for Horizon that had not previously been put by the Claimants, (iii) Mr Coyne's expert report cited dozens of KELs that needed to be analysed, and (iv) to respond to the evidence from the individual SPMs required an investigation of their cases from a standing start. This work was being run in parallel with supporting Dr Worden's preparation of his expert report, and preparing for and conducting the CIT.

787. The purpose of Stephen Parker's first witness statement ("**Parker 1**"), served in Round 2, included responding to the evidence of Richard Roll and to give

[787] Mr Coyne later appeared to accept this under cross examination at the HIT, where he said "*Yes, the vast majority of all the transactions that flow through the Horizon system will work successfully*": HIT Transcript, {Day 14/58:17} to {Day 14/59:15}.
[788] WBON0000632.

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evidence on the then-known bugs (the Receipts and Payments Mismatch bug, the Suspense Account bug, the Callendar Square bug, and the Dalmellington bug). The purpose of Torstein Godeseth's second statement ("**Godeseth 2**"), served in this round, was to respond to the evidence of Charles McLachlan (the defence expert in the prosecution of Seema Misra), and to also give evidence on the known bugs. Stephen Parker and Torstein Godeseth were witnesses of fact; their evidence was not to offer an opinion on the efficacy or accuracy of Horizon, this being a matter solely for the expert witnesses.

788. With that context, I turn to the Inquiry's **Q95.2 to Q95.3**, concerning the preparation of POL's witness statements and its case on bugs, errors, defects and remote access.

*Preparation of the witness evidence (**Q95.2**)*

789. The legal team's preparation of the evidence for the HIT occurred whilst we were also preparing for and conducting the CIT, so we had to split the team. Tony Robinson QC led the Horizon Issues team, whilst David Cavender QC focused on the Common Issues. Owain Draper and Gideon Cohen (Junior Counsel) stayed predominantly focused on the Common Issues, until that trial finished and then Owain assisted with the Horizon Issues. Recognising the need for more resource for the Horizon Issues team, in May 2018 we instructed Simon Henderson, who had deep experience of IT litigation, and in July 2018 we added a further specialist IT Junior Counsel in Rebecca Keating. At WBD, Jonny Gribben led on the preparation of the HIT evidence with input and advice from Counsel.[789] Different members of the WBD team were assigned different

[789] WBON0000629; WBON0000630.

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witnesses. Lucy Bremner was assigned Torstein Godeseth and Jonny was assigned Stephen Parker.[790]

790. My own involvement in preparation of evidence varied depending on the round of evidence:

790.1. ***Round 1:*** the exchange of the first round of witness evidence on 28 September 2018 was around a month before the CIT. To the best of my recollection, I reviewed all of the witness statements that POL served, but I was nonetheless heavily focused on preparation for the CIT.

790.2. ***Round 2:*** following exchange of the Round 1 statements on 28 September and then Coyne 1 in October 2018, POL's responsive evidence was served on 16 November 2018. The turnaround time for this evidence was therefore short – originally just over four weeks and then extended to seven weeks from exchange of the Round 1 evidence, and only four weeks from service of Coyne 1. My supervision of the preparation of evidence in this round was much more limited as I was in the middle of the CIT. Counsel took a significant role in reviewing the statements and generally advising on the approach to the evidence (including in some instances speaking directly to witnesses).[791] I cannot recall what exactly I did or did not look at, but I may not have reviewed everything; in some cases, I may have only seen early drafts. As I now recall from having reviewed the documents to refresh my memory in order to prepare this statement, a lot of the witness statements were being finalised at the last minute, with changes to the evidence often being made

[790] WBON0000627.
[791] For example: WBON0001694.

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on the day of service (see e.g. §§830-835 and §856 below). I would not have had the time to have reviewed every single item of correspondence with redrafts going back and forward between WBD and a witness.

790.3. ***Round 3:*** a limited number of further statements were prepared and served in January and February 2019. I reviewed the draft statements, but this was heavily driven by Counsel, who by this time were under brief for the HIT.

791. I recall reviewing several different versions of the witness statements at different points in time, but cannot say that I reviewed them all in detail primarily due to being focused on the CIT, especially the Round 2 statements served on 16 November 2018 when the CIT was underway. My best recollection is that I was not involved in interviewing Stephen Parker or Torstein Godeseth. Likewise, I was copied into lots of emails with Fujitsu about the evidence, but I would not have had time to review and comprehend such dense technical information. I do not recall whether I reviewed the email exchanges between Jonny Gribben and Stephen Parker or Lucy Bremner and Torstein Godeseth whilst those witness' evidence was being prepared, but generally speaking, unless an email was directly addressed to me or something was specifically drawn to my attention, at this point in time, I was not able to review every email which I was copied into. I was receiving dozens of emails per day at this time (often more on days where there were key deadlines such as for filing of evidence), and I was in the midst of the CIT.

*Overview of the preparation of POL's case on bugs, errors and defects (**Q95.3**)*

792. Below I give an overview of POL's case on bugs. I set out the legal team's assessment of the merits of POL's case (in particular, on the central question of

Horizon's robustness) as we headed into the HIT below at §§899 ff; these answers therefore also summarise my response to **Q6 to Q9** of the Request, as they relate to the period heading into the HIT.

793. Three bugs had been acknowledged by POL from the outset of the litigation: the Suspense Account bug, the Receipts and Payments Mismatch bug, and the Callendar Square bug. In particular, POL admitted the existence of these bugs in its LOR dated 28 July 2016 (having previously disclosed them to Second Sight during the Spot Review process). Similarly, POL's pleaded case admitted that Horizon was not a perfect system and did not seek to contend that it never had any bugs.

794. By Autumn 2018, the experts had received disclosure from the KEL and Peak databases, and lots of other disclosure from Fujitsu in particular. The review of this material for bugs was largely left to them as the experts. In Coyne 1, Mr Coyne cited lots of KELs which he described as being of "*significant interest*" but his analysis of those KELs was not clear about whether some or all of these were evidence of bugs.[792] In response, Fujitsu reviewed 58 of the KELs cited by Mr Coyne, and a further 48 selected by Dr Worden, and produced two tables (appended to Parker 1) setting out its views on whether they were evidence of bugs and, if so, whether they had an impact on branch accounts. In many cases, they concluded there was no bug or it had no impact on branch accounts. This analysis was undertaken separately from the IT experts' own reviews of KELs and searches for bugs.

[792] POL00258234, paragraph 5.114.

795. Worden 1, dated 7 December 2018,[793] involved, in my view, a much more in-depth review of KELs and Peaks than did Coyne 1. Dr Worden dismissed most of the KELs identified by Mr Coyne as either not being evidence of a bug at all or not having an impact on branch accounts (or that the impact would have been quickly corrected by safeguards already built into Horizon).[794] He did however identify 11 bugs in Horizon that had an impact on branch accounts (including the already acknowledged bugs).[795] Dr Worden's view was that this was a very small number of bugs relative to the scale of Horizon. His conclusion was that "*Horizon has been a very robust system, compared to other major systems I have worked on in sectors such as banking, retail, telecoms, government and healthcare*"[796] and that "*the robustness of Horizon made it extremely unlikely to be the cause of shortfalls in branches*".[797] My view at this time was that Dr Worden's report was more persuasive than Coyne 1, and that Mr Coyne's report was at worst (from POL's perspective) equivocal about whether Horizon was robust. Having read both reports, I continued to believe that POL had a credible case that Horizon was robust.

796. Mr Coyne's supplemental report dated 1 February 2019, Coyne 2, identified 22 bugs.[798] Coyne 2 was longer than Coyne 1, and was not in my view a 'supplemental' report. Instead, it advanced a much more detailed and structured criticism on Horizon, now centrally focussed on identifying not only KELs and Peaks of "*significant interest*", but ones that evidenced a bug in Horizon that

[793] POL00111481.
[794] Ibid, paragraph 733.
[795] Ibid, paragraph 742.
[796] Ibid, paragraph 49.
[797] Ibid, paragraph 68.
[798] POL00262929.

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impacted branch accounts. Mr Coyne's conclusion was that "*Horizon is less robust than as originally expressed in my first report*".[799] However, he did not say that Horizon was not robust or indeed provide an opinion on how reliable or accurate Horizon was. My reading of Coyne 2 was that Mr Coyne's views were still ambiguous. Saying that Horizon is "*less robust*" than he originally thought, did not in my mind mean that Mr Coyne was saying that Horizon was unreliable. I still therefore believed that POL had the better of the argument on Horizon.

797. The scale of the new bugs Mr Coyne purported to find did however cause me concern, as this was substantially more than I had known about at the start of the group litigation or was expecting might surface during the litigation. I believed that even if all 22 truly were bugs, this was still a very small number compared to the scale of Horizon based on the analysis done by Dr Worden. But the fact that they had come out late in the day, and were not pro-actively raised by POL from the outset, left an impression that POL and Fujitsu were either not being forthcoming about material facts or did not have a good understanding of their own system. Either way, this was damaging to the credibility of POL's case.

798. On 25 February 2019, the experts agreed a Second Joint Statement that produced a codified list of 29 potential bugs found by both experts.[800] By this point (just weeks before the start of the HIT), it was too late to submit more evidence on bugs, so we took the approach of preparing notes of each alleged bug that could then be used in cross-examination or closing submissions. These notes were prepared by WBD by reviewing the relevant KELs and Peaks, gathering Fujitsu's (and sometimes Atos') input, preparing what became known

[799] Ibid, paragraph 1.2.
[800] POL00266866.

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as “bug notes”, and then having Fujitsu check each note. When ready, the notes were then passed to Counsel. The notes formed the foundation to the Appendix to POL's written closing submissions on all of the identified bugs. Dr Worden also analysed the bugs identified by Mr Coyne from his own perspective.

799. Fujitsu were also asked to comment on the bugs which had been identified. There was no particular point person – WBD’s requests went to Fujitsu and were picked up by whoever at Fujitsu was best placed to assist. However, WBD kept Fujitsu’s input separate from Dr Worden in order to ensure that both experts (Worden and Coyne) had equal access to information. We did not, therefore, permit Dr Worden and Fujitsu to discuss the bugs as that would have given Dr Worden more information than Mr Coyne.

800. This analysis began before the HIT commenced and was completed during the course of the HIT. As a result of our (Dr Worden, Fujitsu and WBD’s) analysis of these 29 bugs, POL's closing submissions concluded that (i) eight were not bugs at all, (ii) three had no impact on branch accounts, (iii) nine had a transient impact and (iv) nine had the potential to cause lasting impact.[801] This analysis reassured me that the scale and impact of the 29 potential bugs was not as substantial as presented by Mr Coyne in his supplemental report.

801. On 1 March 2019, shortly before the HIT started, the experts produced their Third Joint Statement. Their central conclusion was that they agreed that "*From our experience of other computer systems, Horizon is relatively robust*".[802] In my mind, this was a significant agreement of the experts in that Mr Coyne was, it appeared to me, accepting that Horizon was a generally good IT system. I was

[801] See POL00278807, F12 to F18.
[802] POL00026918.

very surprised that Mr Coyne had agreed to this given that his supplemental report had worked hard to identify as many bugs as possible. I interpreted this as meaning that Mr Coyne must have believed that the scale of the bugs he had found was sufficiently small not to undermine the overall reliability of the system. This reinforced my view that POL had a reasonable case that the Court would find Horizon to be robust.

*Overview of the preparation of POL's case on remote access (**Q95.3**)*

802. Certain forms of remote access had been acknowledged by POL from the start of the group litigation. In particular, POL's LOR acknowledged that there were ways in which Fujitsu could influence branch accounts remotely (see §474 above). As set out above, this was approved by Deloitte. Similarly, POL's Generic Defence (approved by both Deloitte and Fujitsu, see §§493-494 above) was that:

802.1. Fujitsu could not remotely log on to a Horizon terminal in a branch so as to conduct transactions.

802.2. Fujitsu had the ability to inject a new transaction into a branch's account (called a Balancing Transaction in Horizon Online), which is logged and extremely rare, but that functionality did not extend to editing or deleting data in those accounts.

802.3. Further, POL pleaded that there was a small number of Fujitsu specialists who had privileged user access rights which in theory enabled them to amend or delete transaction data for a branch, but to do so and to conceal the steps taken thereafter was so difficult, and it involved such complex steps, that it was extremely unlikely to have occurred.

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803. POL's case on remote access had been developed based on the findings of Deloitte, who had investigated remote access functionality as part of its work on Project Zebra and was then asked in 2016 to 2017 to conduct further investigations about the robustness of Horizon, including remote access functionality, for the purpose of advising POL in its defence in the litigation (Project Bramble). I describe those investigations above at §§202 ff, §§466-472, §§483-490 and §§510-520.

804. From the date on which POL's defence was drafted up to the preparation of the evidence for the HIT, I was not aware or made aware of any substantial new findings about remote access functionality.

805. I set out further below (at §§841 ff) the evidence of Torstein Godeseth and Stephen Parker on the different means of remote access, which included the revelation of the ability of Fujitsu personnel to remotely access a branch terminal (counter) in Old Horizon so as to inject a new transaction.

806. The parties' experts also gave evidence on remote access functionality. They both agreed that remote access was possible, but there was a divergence of views about how often it had happened. I did not direct Dr Worden on how to address this issue, but did comment on drafts of his reports, including the remote access sections. I deal further with the Inquiry's **Q96**, concerning the nature and extent of my involvement in the preparation of Dr Wordens' reports, below at §§862 ff.

(ii) The extent of Fujitsu and Gareth Jenkins' assistance in preparing POL's case, and the decision not to call Gareth Jenkins (Q95.4, Q98)

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*Fujitsu's involvement (**Q95.4**)*

807. With reference to **Q95.4**, POL prepared its case on Horizon based on the advice of its legal team and the information provided to it by Fujitsu which was, in turn, tested by Deloitte, and later, Dr Worden and Mr Coyne. Neither Fujitsu nor Gareth Jenkins helped "*prepare*" the case, but they did provide factual information we needed to understand to put the case together.

808. Fujitsu's role was limited to being a source of knowledge about how the Horizon system worked. In practice, that meant that Fujitsu personnel were involved in the following ways:

808.1. Fujitsu personnel engaged directly with Deloitte to respond to queries and questions about Horizon.

808.2. Fujitsu answered questions put to it by WBD on various points as and when they arose. This was typically by email.

808.3. Fujitsu provided WBD and Deloitte with access to its technical documents.

808.4. Stephen Parker, Torstein Godeseth, Andrew Dunks and William Membery provided witness statements.

808.5. Fujitsu reviewed the "bug notes" referred to above which were prepared by WBD, and provided comments.

808.6. Fujitsu met with Mr Coyne and Dr Worden to brief them on Horizon and to facilitate inspections of the KEL and Peak systems.

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809. On 4 February 2019, WBD had an all-day meeting with Fujitsu and Counsel in order to discuss a number of technical issues in advance of the trial.[803] The purpose of this session was not to prepare the case and there were no strategy discussions at this meeting. It was limited to assisting Counsel to better understand the technical materials, particularly in respect of KELs and Peaks.

*Decision not to call Gareth Jenkins (**Q98**)*

810. As to the decision not to call Gareth Jenkins as a witness (cf. **Q98**), POL's legal team, including the Counsel team, were unanimously agreed that he should not be called.

811. I had become aware in 2013 that Gareth Jenkins had given incorrect evidence in past criminal proceedings against SPMs, in that he had asserted that Horizon Online was 'bug-free' despite being aware of two bugs which had affected that system (namely, the Receipts and Payments Mismatch bug and the Suspense Account bug): see above, §§86-88. The Clarke Advice, prepared by Simon Clarke of Cartwright King in 2013, had considered the evidence he gave in a number of past prosecutions and concluded:

> *"– Dr. Jenkins failed to disclose material known to him but which undermines his expert opinion. This failure is in plain breach of his duty as an expert witness.*
>
> *– Accordingly Dr. Jenkins credibility as an expert witness is fatally undermined; he should not be asked to provide expert evidence in any current or future prosecution.*
>
> *– Similarly, in those current and on-going cases where Dr. Jenkins has provided an expert witness statement, he should not be called upon to*

[803] We had also held a conference between Counsel and Fujitsu in advance of preparing the Generic Defence, see above at §481.4(iii).

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> *give that evidence, Rather, we should seek a different, independent expert to fulfil that role."*[804]

812. Quite apart from his awareness of the two bugs in question, I had never understood how Gareth Jenkins could have given evidence to the effect that an IT system was completely error-free (i.e. perfect). As a matter of basic common sense there was always at least a risk of there being a bug in any large IT system, and indeed this reality was reflected in the approach that POL had taken during both the Mediation Scheme and the group litigation, where its position was that Horizon was not perfect and had suffered bugs, but was nevertheless generally reliable.

813. It was clear to me that as a result of his past conduct in relation to criminal prosecutions, Gareth Jenkins' credibility as a witness was fatally compromised such that he could not be stood up as a witness in the group litigation. Counsel agreed. Tony Robinson QC had been provided with a copy of the Clarke Advice with his original instructions on 1 June 2016.[805] On 7 September 2018, I sent this advice again to Tony Robinson QC and also to Simon Henderson as we were then beginning to prepare POL's evidence of fact for the HIT.[806] On 10 September 2018, Rodric Williams, Counsel, and I held a conference with Cartwright King to enable them to share their views on Gareth Jenkins with Counsel.[807] I recall that the meeting lasted for about a couple of hours and that Cartwright King were of the strong opinion that Gareth Jenkins should not be called as a witness as his credibility was damaged. Tony Robinson QC concluded at that conference that

[804] WBON0001723.
[805] WBON0001005 and WBON0001011.
[806] WBON0001315.
[807] This was preceded by a background briefing email that I sent to Rodric Williams: POL00042010.

Gareth Jenkins should not be called and advised Rodric Williams of this, who agreed with this approach.

814. Other than this conference, the question of whether Gareth Jenkins should be called as a witness was discussed with Counsel on other occasions, and every time it was discussed, the reasons for not doing so were validated.

815. The problem that this presented for POL was that Gareth Jenkins was routinely held out by Fujitsu as being their foremost expert on Horizon. He had (as I understood it) to a large extent designed the system, and there were few people if any at Fujitsu with the same level of knowledge about Horizon's earliest days. Sometimes Fujitsu would say that Gareth Jenkins was the best, or even only, person who could answer some of the most intricate points about Horizon, especially Legacy Horizon. By the time of the group litigation, he had retired from Fujitsu but I believe he was under some form of consultancy agreement whereby Fujitsu could seek his input on an ad hoc basis, and he had provided memos or picked up enquiries by email. I do not believe that I met or spoke with him at any point during the group litigation, and his input was generally provided in written form.

816. Since Gareth Jenkins' retirement from Fujitsu, Torstein Godeseth was generally put forward by Fujitsu as the primary person who could answer technical questions about Horizon; for example, it was Torstein Godeseth that attended the conference with Counsel on 22 June 2017 prior to service of the Generic Defence (see §481.4(iii) above). My impression was that Torstein Godeseth was very knowledgeable about the system, having worked for Fujitsu on the Horizon system for many years.

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817. Consequently, at the time of the conference with Cartwright King on 10 September 2018, I believed that Torstein Godeseth would be able to cover much of the same ground as Gareth Jenkins, but I was aware that there would be some blind-spots which could be problematic, especially around the very early years of Horizon where Torstein Godeseth's knowledge did not run as deep as Gareth Jenkins'. Later in 2018, when we were preparing POL's witness evidence, I learned that Stephen Parker had also been at Fujitsu for a very long period of time and was also able to answer questions about Horizon.

818. In the event, as we drilled deeper into the evidence, particularly for Round 2 in November 2018, Torstein Godeseth and Stephen Parker began to defer more to Gareth Jenkins. This meant that more points than expected had to be based on Gareth Jenkins ' input. This had not been my expectation given that Torstein Godeseth and Stephen Parker had been held out as having deep knowledge of Horizon and had both been working with Horizon for over a decade.

819. This posed a problem for POL because we wanted to limit the reliance on Gareth Jenkins as much as possible, for the same reasons that POL had decided not to call him as a witness. Tony Robinson QC captured the point in an email dated 12 November 2018, where he explained:

> *"We all know the reasons why we have decided not to have Jenkins as a witness. They are also reasons for not having him as a source of evidence – i.e. as a source of information for our witnesses and/or as a person providing analyses on which our witnesses will rely. Where he is acting as a source the Claimants will know this and they will waste no time in arguing (1) the fact that we have not called such a natural witness demonstrates that he is not a reliable witness, (2) we recognise this fact and want to protect him from any cross examination and (3) if he is not a reliable witness, he can't be a reliable source of evidence, either and (4) as the claimants are being prevented from cross examining him the information he provides to other witnesses is even less reliable than a*

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> *witness statement from him would be. This argument will undermine the evidential value of any witness statements that are based on information that Jenkins has provided."*[808]

820. Tony Robinson QC advised that, in addition to the decision not to call Gareth Jenkins as a witness, "*we should limit Jenkins' involvement as a source of evidence as much as possible, essentially to those areas where there is no alternative source of information*".[809] The problem was, as it became clear, there were certain points on which POL needed Gareth Jenkin's input, particularly on issues relating to Old Horizon. In response to Tony Robinson QC's email, Jonny Gribben stated:

> *"We note the risk involved with using Gareth as a witness and we are limiting Gareth's involvement as much as possible, but he is Fujitsu's go-to person for many of our questions. If Torstein or Steve covered the bugs they would still need to speak to Gareth (Torstein less so)."*[810]

821. Efforts were made to minimise reliance on Gareth Jenkins by ensuring that the matters which Stephen Parker and Torstein Godeseth put in evidence were, as much as possible, based on first-hand knowledge. It was not however possible to fashion a perfect solution in this regard, however, since even Stephen Parker and Torstein Godeseth between them did not have the full range of knowledge required for the purposes of the Horizon Issues. Thus, when POL's Round 2 evidence was served on 16 November 2018, Tony Robinson QC observed after having reviewed Torstein Godeseth's second witness statement:

> *"TG's statement is peppered with references to Gareth Jenkins as a source of evidence. Given that such a large proportion of TG's evidence is not within his knowledge but is merely passing on his understanding of what Jenkins has written or told him, we can expect some uncomfortable questions as to why we have not called the organ grinder*

[808] WBON0000342.
[809] WBON0000342.
[810] WBON0000341

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> *and why the monkey's evidence should be given any weight at all. I wonder whether the claimants will have the courage to demand that we call Jenkins as a witness. As I didn't previously appreciate how every road seems to lead back to Jenkins, I also wonder whether, depending on how much of a fuss they make before the trial, should we review our prior decision not to call him."*[811]

822. By a further email dated 7 December 2018, Tony Robinson QC circulated a list of issues for the legal team to consider. Regarding witness evidence, he noted that there were Horizon Issues on which (i) no witness evidence had been given or (ii) inadequate evidence had been given and cited a "*good example*" of (ii) as being *"the evidence in which witnesses simply repeats what Gareth Jenkins has told the relevant witnesses*". He identified that, "*the fact that we have obviously decided not to call Jenkins is going to be a problem for us at trial*".[812] In reality, both the fact that Fujitsu had offered POL no witness evidence on some issues and inadequate witness evidence on others stemmed from the fact that we were not in a position to call the person at Fujitsu who knew the most about Horizon. As a result, the evidence of the witnesses who were called was incomplete, and/or reliant on information obtained from a source whom we had decided (for good reason) not to call.

823. In relation to those areas where it was necessary to obtain information from Gareth Jenkins, i.e. because the Fujitsu witnesses and other Fujitsu personnel did not have the requisite knowledge, I believe we acted reasonably in seeking Gareth Jenkins' input. Despite his damaged credibility as a witness, I still believed that he was a useful source of information. He was undoubtedly very knowledgeable about Horizon, and was able to give detailed and authoritative

[811] WBON0000189
[812] WBON0001721.

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answers about the technical workings of the system. To have not sought his input would have left holes in POL's evidence and would have been to disregard a key repository of relevant knowledge. That of course needed to be balanced against Tony Robinson QC's (and my own) concerns about the reliability of any information sourced from Gareth Jenkins and the fact that his input was effectively being voiced through Torstein Godeseth and Stephen Parker. We therefore sought to rely on him only where his input was genuinely required, and the nature of his input was to provide factual explanations about how technical processes within Horizon worked (as opposed to any views he might hold about the reliability or robustness of the system). Looking back, I accept now (and recognised then) that this was an unsatisfactory state of affairs. The unfortunate reality was that there was no alternative witness with the requisite depth of technical knowledge within Fujitsu (and there was certainly none at POL). In these highly unusual circumstances the approach taken – whilst clearly very far from ideal – was ultimately a reasonable one in my view.

(iii) Gareth Jenkins' email to Jonny Gribben of 16 November 2018 and preparation of Angela Van Den Bogerd's second witness statement (Q97)

824. **Q97** of the Request asks me to comment on the following statement that Gareth Jenkins made in an email to Jonny Gribben on 16 November 2018 at 12:28 (**POL00111371**):

> *"There is a further scenario. On Old Horizon if SSC were to insert a transaction at the counter (which although possible, was very rare), then this would have been associated with the User Id of whoever was logged on at that counter. If nobody was logged on then the User Id would be missing. Such transactions should be clearly identified in the audit trail as having been inserted by SSC."*

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825. I was not copied into this email. It set out Gareth Jenkins' answers to a series of questions asked by Jonny Gribben, and Gareth Jenkins' comment about injections via the counter was one of these answers. I was only copied into Jonny Gribben's response timed a few minutes later (12:34), in which he stated, "*in relation to the section that I've highlighted in yellow below, can you explain which reconciliation process should have picked the issue up? Is it possible that the process would have picked this up in due course, but Mrs Burke was proactive?*" The text Jonny had highlighted in yellow did not include the paragraph quoted above. The highlighted text related to a separate issue about the source of a shortfall suffered by one of the Claimants giving evidence at the HIT, Mrs Burke.

826. There was then a further exchange between Jonny and Gareth Jenkins (again solely focused on the issue relating to Mrs Burke), to which I replied, at 14:19: "*The bit I don't understand is why Mr Burke was correct to handover the £150 to the customer if the Recovery Receipt doesn't show the transaction for £150?*" Gareth Jenkins answered that point to which I replied, "*Thanks Gareth – I get it now!*"

827. I have no recollection of this email chain, but what I am sure I must have done is read Jonny's email into which I was copied, been prompted to consider the highlighted text which drew my attention (and which I would have surmised was the reason for Jonny copying me into the exchange) and responded with my comments in relation to that highlighted text. As I would have understood it at the time, and as I understand it now upon reviewing **POL00111371** for the purposes of preparing this statement, this was the only outstanding issue arising out of Jonny's original questions to Gareth Jenkins. Certainly, I would have understood it to be the only issue on which Jonny sought my input. In other words, I would

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have thought that everything else was in hand, and would have had no cause to examine the rest of the exchange.

828. Nor would it have been practicable for me to descend into the detail of the rest of the email exchange. For context, the email in **POL00111371** was sent on 16 November 2018, which was (i) the day POL's Round 2 evidence was due to be served, and (ii) was during the CIT. It was a Friday, so I was not in court, but I was extremely busy, and nearly all of my focus was on the ongoing trial. At that time, I would often spend several hours each day on the phone to Rodric Williams or Counsel, and I did not review every email to which I was copied in full unless something specific was drawn to my attention. Indeed, a search of my email records for 16 November 2018 indicates that I received around 120 emails that day alone, and so I could not realistically have read through the detail of everything that I received that day. More generally though, my role was to lead the work the firm was doing and take overall responsibility for its delivery. I would monitor progress, acknowledge in broad terms the work that was being undertaken, and address issues where my input was specifically sought by my team – but beyond this, but I would not and could not review everything I was copied into in detail.

829. In the event, as §826 above shows, Gareth Jenkins provided a satisfactory answer to my query about the issue relating to Mrs Burke's recovery receipt, so as far as I was concerned, there were no more outstanding issues arising out of the email chain that required my attention. I therefore do not believe I read Gareth Jenkins' statement elsewhere in his email of 12:28 about injections via the counter, and I certainly have no memory of doing so. For the same reasons, I do not believe I discussed this aspect with Jonny Gribben.

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830. After having reviewed the email in **POL00111371** and my firm's records for the purposes of preparing this statement, I now understand that Jonny Gribben's original email was posing questions for Gareth Jenkins in order to enable POL to finalise its Round 2 witness statements for the HIT, which were due later that day. Specifically, I now understand (although this was not apparent from the face of the chain in **POL00111371**) that one of Jonny's questions was relevant to Angela Van Den Bogerd's witness statement for the HIT, AVDB2, in that she had been asked to set out in her statement the circumstances in which a transaction might not be associated with an SPM's User ID. Jonny mentioned two scenarios to Gareth Jenkins (namely, where SPMs shared their User ID with others physically in the branch, and situations where a second user logged on after an earlier user's session had disconnected), and asked him to identify any others. It was this that prompted Gareth Jenkins' response quoted above.

831. Earlier that morning I had reviewed a draft of AVDB2 which, in relation this point, referred to the two scenarios mentioned by Jonny and then said (at paragraph 18.3):[813]

> *"I am not aware of any other reason the user ID could be affected. [Note: we are awaiting clarification from Fujitsu as to whether there are any other reasons the user ID could be affected]."*

832. Katie Simmonds subsequently sent me and Jonny Gribben an email stating that we had now received information from Gareth Jenkins and that she was going to update the draft of AVDB2 accordingly.[814] My firm's records do not indicate that I responded to that email.

[813] WBON0000196; WBON0000197.
[814] WBON0000287.

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833. Subsequently, Katie sent a revised draft of AVDB2 which contained the following paragraph (now paragraph 18.4) in place of paragraph 18.3 quoted above:

> *"There is a further very rare scenario, in relation to Legacy Horizon only, involving the insertion of a transaction at the counter by the SSC. In this instance Horizon would associate the transaction with the user ID of the individual logged on at that counter. If nobody was logged on at the time the transaction was inserted, then the user ID would be missing. These transactions would be clearly identifiable in the audit trail as having been inserted by SSC."*[815]

834. Again, my firm's records do not indicate that I commented on that draft or responded to Katie's email. I see that Katie then sent the statement to Angela Van Den Bogerd who indicated that she had reviewed the draft and was comfortable with the changes made, and signed the statement shortly afterwards.[816]

835. I cannot recall when I reviewed the version of AVDB2 which contained this paragraph, though I have no recollection of doing so (and I have not identified any emails to indicate that I did) before it was signed and served on 16 November 2018. If I did read it, I certainly did not appreciate the significance of paragraph 18.4 at the time. Nor did I appreciate that it drew on Gareth Jenkins' email in **POL00111371** (which, as I have said, I do not believe I would read on 16 November 2018 in any event). Had I have been aware of this at the time, I would have reminded my team of the need to check that Angela Van Den Bogerd was either personally aware of the information in paragraph 18.4, and if not, that this should be made clear in her statement.

[815] WBON0000285; WBON0000286.
[816] WBON0000195.

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836. Much later, on 12 February 2019, Simon Henderson informed me that it had recently been suggested to him (it is not clear by whom) that Angela Van Den Bogerd did not have personal knowledge of the matters contained in paragraph 18.4.[817] This then gave rise to enquiries about whether these matters were in fact within her knowledge or not. She subsequently confirmed that they were,[818] but in hindsight, consideration of the attribution of the statement in paragraph 18.4 should have been fully explored in the first place given the similarity of that paragraph to the email sent by Gareth Jenkins contained in **POL00111371**.

(iv) My involvement in the preparation of Stephen Parker's evidence (Q101.1)

837. I was involved in arranging for Stephen Parker to give evidence but I had limited involvement in the preparation of his evidence itself. I reviewed and commented on an early draft of Stephen Parker's first statement (Parker 1),[819] and I was later involved in advising on certain decisions that needed to be made in respect of how to address the inaccuracies in Parker 1 and his second witness statement which was served in January 2019 as part of Round 3 ("**Parker 2**"). To the best of my recollection, that was the extent of my involvement in Stephen Parker's evidence.

838. Stephen Parker became a potential witness after Richard Roll's first witness statement was served in September 2018. On 12 October 2018, Jonny Gribben met with Stephen Parker and Pete Newsome (also of Fujitsu) to discuss the

[817] WBON0000292.
[818] WBON0001432.
[819] WBON0000288.

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allegations made by Richard Roll. Jonny Gribben then turned the points discussed in that meeting into a potential statement for Stephen Parker.[820]

839. Stephen Parker was reluctant to give evidence. In an email to Jonny Gribben on 16 October 2018, he stated, "*I have seen this process previously where a colleague signed such a statement which resulted in a very stressful court appearance. I am happy to continue supporting the process and refining the information but I will not be signing a witness statement, we need to find another way to use this information.*"[821] As a result, on 30 October 2018, I prepared a briefing to Paula Vennells, asking whether she could speak to Fujitsu in order to persuade Stephen Parker to give evidence or find another witness to help. The key points of that briefing note stated:

> *"Mr Roll's evidence is that Horizon is defective and that is highly damaging to Post Office's case.*
>
> *He is a former Fujitsu employee, talking about Fujitsu internal operations and therefore only Fujitsu can put up a witness to counter these allegations.*
>
> *The ideal person is Stephen Parker of Fujitsu, but he is refusing to be a witness. Can you help persuade him to support us? Or can you find another witness to help?*
>
> *If we can't find a witness, Post Office will have to summons Steve to give evidence. That will be damaging for PO's legal case, embarrassing for Fujitsu and even more stressful for Steve.*
>
> *This needs to be fixed urgently as there is an imminent Court deadline for Post Office's evidence. Can you come back to me on this by tomorrow?*
>
> *[…]*

[820] WBON0000192; WBON0000193.
[821] WBON0000194.

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> *Stephen Parker of Fujitsu was identified as a good witness. Steve was Mr Roll's team leader in 2003 and is now head of Fujitsu support services centre. He can therefore give evidence of:*
>
> *Mr Roll's position in 2003 and why, from his relatively junior position, he is not a credible witness.*
>
> *The true scope of Fujitsu's role in supporting Horizon, both in 2003 (when Mr Roll was there) and over the next 15 years.*
>
> *Steve has been (and continues to be) very helpful in preparing responses to Mr Roll's allegations. From our interactions with Steve we believe he will come across as a measured, knowledgeable and articulate witness.*
>
> *[…]*
>
> *Stephen Parker is refusing to be a witness. He has a friend who had a very difficult experience of giving evidence in Court. We also understand that Steve does not consider himself a natural public speak [sic] (he has a slight stammer). He therefore simply does not want to do it for personal reasons.*
>
> *[…]*
>
> *Our preference therefore is for Steve to agree to be a witness, even if he does so under protest. Ultimately however this is outside of Post Office's control, and we need Fujitsu senior management to step in to make this happen".*[822]

840. Then, on 31 October 2018, Pete Newsome called me to say that Stephen Parker had agreed to be a witness, and we could therefore "*stand down Paula*".[823]

(v) Changes in Fujitsu's position on remote access (Q101.2 to Q101.4)

*The nature of the changes (**Q101.2**)*

841. In the course of describing my developing knowledge about remote access at e.g. §§202-232, §§271-274, and §§466-472 above, I explain the various changes

[822] POL00258674.
[823] WBON0000284.

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in Fujitsu's position over the years. Necessarily, my knowledge developed in line with these changes in position. The point I wish to add to this evidence which I believe will be of assistance to the Inquiry relates to the specific changes in position in Fujitsu's evidence for the HIT. In summary, up to preparing the second round of POL's evidence, I had believed, and POL had maintained in its Generic Defence (the wording of which was approved by Deloitte and Fujitsu, see §§493-494 above), that it was not possible for Fujitsu to remotely log on to a Horizon terminal in a branch in a way that would allow them to conduct transactions. What changed (in simple terms, the technical detail I have now forgotten) was that Fujitsu belatedly acknowledged that it could inject transactions via the counter (i.e. the branch terminal) and, in effect, this meant that Fujitsu could remotely conduct transactions in effectively the way that had previously been denied. Further, conducting transactions in this way could (in some circumstances) record those transactions against an SPM's or assistant's user ID, potentially making it look like they had conducted the transactions – a point which POL had previously denied.

842. Godeseth 1, which was finalised on 27 September 2018 as part of the Round 1 evidence, purported to comprehensively set out all the methods of remote access – however, whilst he explained the injection of transactions at the correspondence server, he did not mention the possibility of injection of transactions via the counter. In relation to server injections, he also stated:

> *"[I]n legacy Horizon, any transactions injected by SSC would have used the computer server address as the counter position which would be a number than 32, so it would be clear that a transaction had been injected in this way*".

843. Parker 1, meanwhile, which was dated 16 November 2018 and served as part of the Round 2 evidence also did not mention injections via the counter.

844. The above positions were then corrected in the Round 3 evidence. Paragraph 27 of Parker 2 dated 4 February 2019 corrected the omission in Parker 1 to mention the "*rare*" process whereby Fujitsu Support (also known as "SSC") would insert transactions via a counter:

> *"In paragraph 20 of Roll 2, Mr Roll describes a process by which transactions could be inserted via individual branch counters by using the correspondence server to piggy back through the gateway. He has not previously made this point clear. Now that he has, following a discussion with colleagues who performed such actions I can confirm that this was possible. I did not mention it in my first witness statement because, when faced with a less clear account in Mr Roll's first statement, my recollection was that if it was necessary for the SSC to inject a transaction data into a branch's accounts, it would have been injected into the correspondence server (injecting via the server was the default option which was followed in the vast majority of cases).*
>
> *[…]*
>
> *Transactions injected into a counter would appear on the transaction logs available on Horizon as if it had been carried out by the user that was logged into the counter at the time (if nobody was logged on, the User ID would be missing). However, when injecting such a transaction, the SSC user would ensure that it was clearly identified in the audit trail as having been inserted by SSC. Examples of such identification I am aware of are the use of a SSC user as the Clerk ID and / or details of the incident number as an additional property."*[824]

845. In his third witness statement dated 28 February 2019 ("**Godeseth 3**"), Torstein Godeseth made a correction to similar effect: "*I have read Parker 2 I am now aware that it was also possible for SSC to insert transactions with a counter*

[824] POL00266514.

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position with a number less than 32". He explained that he had not been aware of this capability at the time of making his earlier statements.[825]

846. Parker 2 contained another correction to Parker 1. At paragraph 32 Stephen Parker stated, in relation to the injections by the SSC:

> *"At paragraphs 21 and 22 Mr Roll states that both he and the "SSC team generally had the ability to inject data" and that "there was no limit on the type of transaction that we could insert". **At paragraph 20.2 of my first statement I said that "some" members of the team could do this, but this was badly stated. Everyone in the SSC team had the ability to inject data. My intention was to express the fact that only limited numbers of SSC technicians ever needed to inject financial data**".*[826]

847. His third witness statement dated 28 February 2019 ("**Parker 3**") made certain further clarifications or corrections to Parker 1 and Parker 2. The relevant sections stated:

> *"In paragraph 19 of my first witness statement, I stated that it was not possible in Legacy Horizon to edit or delete data that had been committed to the message store. I have been asked to clarify this statement.*
>
> *… In some circumstances … it would be necessary for the SSC to delete the message store file (and hence all the transaction data it held) to allow Riposte to replicate a full and complete copy of that transaction data from another source. This process does not allow any partial deletion this is an all or nothing operation; it is a similar process to recovering all your data from a backup.*
>
> *I do not consider the removal of incomplete or corrupted storage files, to allow the built in facilities of the system to recover from alternative copies, to be the deletion of transaction data" (at [20]-[22]) (added emphasis)."*

And:

> *"In paragraph 35 of my second witness statement I stated that, in theory, someone could have used a transaction injection in Legacy Horizon to*

[825] WBON0001218.
[826] POL00266514.

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carry out a transaction such as a GIRO bank transfer or a utility bill payment.

In a footnote I explained that GIRO bank transactions are automated payment (AP) transactions, like utility bill payments, and that other bank transactions go through a different path, as that was my understanding at the time.

Having discussed the issue further with colleagues, I now understand that GIRO bank transactions were EPOSS transactions (like all other manual bank transactions) rather than AP transactions. The distinction is that copies of AP transactions are sent to the Post Office client, whereas with EPOSS transactions they are not" (added emphasis)."

848. The crucial change in evidence, and the most significant inconsistency in the witness evidence, related to the injection of transactions via the counter and the question of whether this process was always visible to the SPMR:

848.1. Parker 1, paragraphs 21 and 22, stated:

"*21.1 Any transaction that was inserted would immediately cause a discrepancy to arise in the branch's accounts. For example, if a transaction were to be inserted which stated that £1,000 of stamps had been bought by a customer who paid cash, that would immediately cause a reduction in stock levels of stamps in that branch and the branch would have £1,000 less in cash than Horizon expected it to have.*

21.2 In other words, although a transaction could be inserted, it would immediately ***become apparent that this had been done and ultimately it would not benefit any member of staff to behave in this way.***

22. It is correct that the "remote access" described above could have been carried out without the permission of a Subpostmaster. ***However, any additional transactions inserted remotely would be identifiable as such from the transaction logs that are available to Subpostmasters from Horizon****."*

848.2. Parker 2 meanwhile stated:

"*transactions could be inserted via individual branch counters by using the correspondence server to piggyback through the*

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> *gateway…Transactions injected into a counter would appear on the transaction logs available on Horizon* ***as if it had been carried out by the user that was logged into the counter at the time*** *(if nobody was logged on, the User ID would be missing).*"

849. Knowing what I know now, Godeseth 1 was incorrect in that it failed to mention injections via the counter when purporting to give an exhaustive explanation of all the methods of remote access. At the time that Godeseth 1 was drafted, I did not know about this second method of injection. To the best of my belief and based on the documents that I have reviewed for the purposes of drafting this statement, I do not believe that Jonny Gribben (who assisted Torstein Godeseth with the preparation of his statement) knew either. Paragraph 25 of Godeseth 3 states that Torstein Godeseth did not know about this method of injection at the time of drafting his first witness statement, and I have no reason to believe that this statement is incorrect.

850. Parker 1, meanwhile, was incomplete in that it did not say that there was a method of injecting directly via the counter which might make it appear as though the injection had been conducted by the user logged on at the time.

851. The important point to stress is that the significance of this point (namely, whether a transaction was injected directly into the counter or from a correspondence server and or whether it bore a counter ID, the SPM's User ID, or no ID) was not understood by me, nor I believe by my team, until it became apparent in or around February 2019.

852. It is also important to note that the existence of counter injections was set out at paragraph 18.4 of AVDB2 to which I have referred above (§833) and therefore was in evidence. I have quoted that paragraph above but to reiterate, it stated:

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> *"There is a further very rare scenario, in relation to Legacy Horizon only, involving the insertion of a transaction at the counter by the SSC. In this stance Horizon would associate the transaction with the user ID of the individual logged on at that counter. If nobody was logged on at the time the transaction was inserted, then the user ID would be missing. These transactions would be clearly identifiable in the audit trail as having been inserted by SSC.*
>
> *In relation to transactions inserted by the SSC from the data centre in Horizon, again, this would have no associated user ID, however, will be clearly identified in the audit trail and will also be visible in branch reports, including the transaction log, as having originated from the data centre as opposed to a counter."*

*How the inaccuracies in the evidence came about and who bears responsibility (**Q101.2, Q101.3**):*

853. Undoubtedly, the fact that counter injections were addressed in AVBD2, omitted in Parker 1, and omitted in Godeseth 1 (in circumstances where the maker of that statement was purporting to exhaustively list all the methods of remote access), was regrettable. These were, however, points of deep technical detail regarding an IT system. With evidence of this nature, I believe that a lawyer is heavily reliant on a witness' knowledge and recollection of the details to ensure that their statement is accurate.

854. As to Godeseth 1, as I have explained above, he explained that was unaware of the existence of the counter method of injection and I have no reason to doubt that was the case.

855. As to Parker 1, Steve Parker's failure to mention counter injections was ultimately his omission, which (as I understand it) was based on his lack of recollection at that time about counter injections. Nevertheless, I would add that I can understand how he failed to remember the counter injection capacity. First, it related to Legacy Horizon, a system that had not been in operation for six years

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at the point he was working on his statement, and within that, injections via the counter were (as he appears to have late understood it) a rarely used process. Second, even for a technically proficient witness, the subject of remote access was a complex one and the above matters were on a highly technical point within that already complex subject matter.

856. Based on the documents that I have reviewed for the purposes of preparing this statement, I can see that WBD received an email from Gareth Jenkins at 12:28 on 16 November 2018, being the day Parker 1 was served, which described this method of injection: see §§824 ff above. When WBD received Gareth Jenkins' email, it would have been preferable for us to have asked Stephen Parker about his knowledge of counter injections. However, Parker 1 was due for filing on that same day, and WBD was stretched and working under significant pressure of time. Given the time pressure, the technical subject matter, and the fact that Gareth Jenkins was providing this information in relation to a different question being addressed in AVDB2, not Parker 1, I believe that it was therefore understandable in the circumstances for WBD not to have connected the dots so as to ensure that the relevant information was raised with Stephen Parker.

857. There were two inaccuracies in Parker 2 regarding remote access that I address below:

857.1. The ***first*** error, which I have alluded to above in the passage quoted at §847, is that a footnote at paragraph 35 of Parker 2 had stated Stephen Parker's understanding that a GIRO transaction was an 'automated payment' (AP) as opposed to a manual bank transaction. My best understanding (based on my heavily faded recollection of these technical matters) is that the significance of this was that "*in theory, someone could*

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have used a transaction injection in Legacy Horizon to carry out a transaction such as a GIRO bank transfer", but if so, and a GIRO transaction was an AP transaction, it would have been automatically copied to the relevant client (whereas a copy would not be sent if it was a manual or 'EPOSS' transaction). On a draft copy of Parker 2, Stephen Parker had said "*you'll need someone like Gareth to give you a definitive answer, it was his idea after all.* ***I think the answer*** *is that Giro bank is ALSO an AP transaction ...*".[827] An enquiry was sent to Gareth Jenkins and on 29 January 2019,[828] whilst waiting for Gareth Jenkins' response, Stephen Parker was asked to review his witness statement and "*if he was happy with it*", to sign it.[829] He did so. The following day, 30 January 2019, Gareth Jenkins responded to WBD's query clarifying that "*the Giro transactions are not AP*" (emphasis added).[830] On 4 February 2019, WBD emailed Stephen Parker his signed witness statement and informed him that Gareth Jenkins had explained that the footnote to paragraph 35 was incorrect and a correction would need to be made.[831] It is unfortunate that Gareth Jenkins did not respond in time for the correction to be made to Stephen Parker's second witness statement. However, the statement that a Giro transaction was an AP transaction was one which was made to the best of Stephen Parker's own knowledge as at that time, and he signed Parker 2 on the basis that he was happy with it.

[827] WBON0001401.
[828] WBON0001402.
[829] POL00363893.
[830] WBON0000168.

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857.2. ***Second***, paragraphs 29 and 30 of Parker 2 provided that 14 instances of counter injections had been identified in response to searching Peak records in accordance with the search criteria set out in the statement. The statement described these injections as happening while Richard Roll was employed at Fujitsu. While preparing for trial, the legal team (I do not know whether this was originally Counsel or WBD) identified that the identified Peaks spanned the life of legacy Horizon, rather than just the period during which Mr Roll was employed by Fujitsu. This was raised with Fujitsu on 7 March 2019[832] and on 11 March 2019 Fujitsu confirmed that this was an error.[833] Parker 2 was thereafter corrected to state, "*during the time of legacy Horizon*" as opposed to during the course of Richard Roll's employment with Fujitsu.[834]

*What more POL and WBD could have done (**Q101.4**)*

858. My principal reflection in relation to the inaccuracies in Torstein Godeseth's and Stephen Parker's witnesses' evidence which I explained above is that it would have been preferable to have started proofing the Fujitsu witnesses earlier about remote access. This would have given my team greater opportunity to bottom out some of these highly technical points over a longer period of time, which may have helped to avoid in accuracies in the evidence. I do not recall giving this specific thought at the time because I believed that we had bottomed out the position through Deloitte's work. My other reflection is that it may have been helpful had there been a further matter Partner instructed at the time to focus

[832] WBON000020200001.
[833] WBON0000210.
[834] WBON0001473.

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solely on the HIT. I do not think this was necessary for the duration of the litigation. However, the rapid litigation timetable at this point, with a significant amount of evidence for the HIT falling due during the CIT, inevitably put me and my team under pressures that were extreme even in the context of heavy commercial litigation.

859. The bigger, persistent, problem, as I have alluded to above, was the Fujitsu witnesses that did give evidence simply did not have sufficient depth of understanding of some of the highly technical IT processes that were at the heart of the trial. Whilst they all undoubtedly were technologically minded people and were generally well-versed in Horizon, the level of detail into which it was ultimately necessary to descend to resolve the Horizon issues posed a challenge even for them. The result was that despite my team's best endeavours in trying circumstances, some of the evidence of the Fujitsu witnesses was inconsistent, inaccurate, and incomplete.

860. As to the broader question of what more WBD could have done "*to ensure the position on remote access was presented accurately from the outset*", I have reflected carefully while preparing this witness statement, and, in my view, I do not consider there was much more WBD could have done:

860.1. We (including me) persistently asked Fujitsu searching questions about the information they provided on remote access. We sent detailed questions and notes in writing, and sought their employees' comments. When their employees provided comments, we did not assume that was sufficient and consistently asked for further information or more detail.

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860.2. In accordance with POL's instructions, in 2016 WBD instructed Deloitte in order to have an expert probe the information which was provided by Fujitsu on remote access. Throughout this engagement we liaised with Deloitte and we also asked them detailed questions. However, Deloitte could also only work from the information that was provided to it by Fujitsu personnel and from the Fujitsu documents.

860.3. We prepared the LOR and Generic Defence with great care based on what we then knew. Months of planning and work went into these documents and they were supported by detailed factual investigations. We went to significant efforts to ensure that they clearly and transparently POL's understanding of remote access, including by seeking Deloitte and Fujitsu's sign-off.

861. As for what more POL could have done, I consider that this is ultimately a question for POL.

(vi) Nature of WBD's involvement in Dr Worden's evidence (Q96, Q102)

*Noting paper on Worden 1 (**Q96**)*

862. In a Noting Paper to the Steering Group dated 28 November 2018 (**POL00006471**), I provided an update about Dr Worden's report, Worden 1, which was due to be served just over a week later. I explained as follows:

> *"RW's central conclusion is that Horizon is reliable and extremely unlikely to be the cause of the Claimants' shortfalls. Much of the debate between him and the legal team is how best to convey this to the Judge. The legal team prefer qualitative analysis ("Horizon is sound because...") whereas RW prefers a quantitative analysis ("The chances of there being a bug are X%'). RW says that as an engineer he would always base risk assessment in statistics and judging the "extent of bugs in Horizon" is a*

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form of risk assessment. The legal team's concerns with placing too much weight on statistical analysis are that:

(a) Some judges just do not like numbers and Mr Justice Fraser may ignore them.

(b) Calculating statistics requires making some assumptions and those assumptions can always be attacked in cross examination.

3.1.2 This topic has been the subject of numerous calls and conferences between RW and Counsel (we must have spent over 20 hours debating this point). The outcome is that:

(a) The statistics will be kept, but only after the qualitative analysis has already reached a freestanding conclusion that Horizon is sound. This is why in RW's report section 7 (qualitative) goes before section 8 (quantitative).

(b) RW has adopted extremely conservative (anti-Post Office) assumptions so that the assumptions would need to be massively wrong to move the end-result.

3.2 4 The remote access section of the report needs more work (section 11). RW's view is that it is so obvious that Fujitsu would not abuse their remote access capability, and that doing so would be so difficult, that the point warrants not much comment. We have explained the sensitivity of this topic to Post Office and the case, and he is going to do more work on this."

863. In my view, it was proper for WBD to explain to Dr Worden the risks of engaging solely in statistical analysis. The problem for the legal team, which was a legitimate one when dealing with statistical analysis, was that the force of Dr Worden's conclusions might be lost to a Court if they were presented in purely quantitative terms. As I explained in the noting paper, some judges are not persuaded by a purely numerical approach, and we were concerned that this could be the case with Mr Justice Fraser.

864. The Counsel team and I had a number of discussions with Dr Worden about the importance of conveying his conclusions in an understandable way. To the best

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of my recollection, this included one or two full days of conferences at Counsel's Chambers as well as several telephone calls with Dr Worden. As a result of these discussions, Dr Worden understood that while his reliance on an exclusively statistical analysis might be persuasive to him because of his background and the nature of this expertise, it might not persuade others. Dr Worden nevertheless wanted to maintain a heavily statistical approach, which was his right, but also included a qualitative assessment in his report.

865. The other concern which the legal team had in relation to Dr Worden's draft report was his "worst-case assumption" methodology. According to this methodology, Dr Worden concluded that at worst, there had probably been 672 bugs in Horizon over the course of its 18-year history (factoring in the risk of there being latent and undiscovered bugs). To Dr Worden, this was a tiny number, namely, 1% of the total number of bugs that he thought that the Claimants would have needed to prove in order to succeed with their case. The problem was that others (who did not have Dr Worden's statistical mind) may have felt this to be a significant number.. We explained these concerns to Dr Worden in conference and on calls. But, as I explained in this Noting Paper, Dr Worden *"has a duty to the Court to give his fair opinion and he is giving that priority – as he should – rather than only saying things that make Post-Office's position and Counsel's job easier*" (emphasis added).

866. To be clear, the legal team did not draft Dr Worden's report for him. Counsel and the WBD team provided comments on the draft report, and we discussed it with him. As the Noting Paper explains, the substantive conclusions which Dr Worden had reached were positive, entirely his, and he was very confident about them. The only concern which the legal team had was how those substantive

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conclusions could be most clearly expressed. In my view, it is proper, and usual, for the legal team to be concerned with such matters of form and expression.

867. The risks associated with Dr Worden's approach were communicated to POL through this Noting Paper. In addition to this, I recall discussing them with Rodric Williams on several occasions. My views of these risks were as set out in the noting paper, namely, that 600+ bugs to a layman sounded like a significant number and could be misreported by the media. In the event, these risks were to be managed by POL's Counsel Team (who had the task of explaining Dr Worden's assumptions and conclusions in an understandable and persuasive way), and by POL's communications team – in relation to which I had no involvement.

*Involvement in Worden 3 (**Q102**)*

868. The Horizon Issues Trial was paused for a period from 21 March 2019 due to the Recusal Application (which I deal with below in Section Q). During this adjournment, Dr Worden came up with a new idea for how to analyse the risk of bugs affecting branch accounts. On 27 March 2019, he wrote:

> *"I'd like to give you an early heads up on a type of analysis I have been doing recently, which I think is very promising.*
>
> *It can give me another independent way to estimate the 0.4% upper limit on the impact of bugs on claimants, that can be done quite quickly as follows:*
>
> *If there is a bug affecting a branch's accounts, the branch FAD code is quite likely to appear in a Peak (as is confirmed by Callendar Sq, Receipts Payments mismatch, suspense account). Say the probability is as low as 50%; it is probably higher, for any significant financial impact.*
>
> *Out of 218,000 Peaks, there are about 1,700 which mention the FAD code of one or more claimants, at a date when the claimant was in post. (I have written a program to find them) To calculate the total impact of*

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> *bugs on all claimants accounts, we just have to sum the likely financial impact for each Peak that indicates a bug, over those 1,700 Peaks.*
>
> *To get a total impact of £18.7M, the average impact on a branch per Peak has to be £10,000 (or £5000, if you allow for the 50% factor above). This is very high indeed, for an impact on one branch. PO would have been going mad about it.*
>
> *For most of the 1700 Peaks, it is pretty obvious that they had no impact at all, and were not bugs they are about ISDN or something irrelevant. It would be quite simple to examine a random sample of 100 Peaks out of the 1700, and scale up by 17.*
>
> *I have not done this, but I will bet that the resulting number is tiny - probably less than 1% of £18.7M*
>
> *This would give three very independent upper limits for the proportion of claimants' losses arising from bugs - which will probably be 8%, 0.4% and say 1%.*
>
> *These limits come respectively from the claims data, KELs, and Peaks. Three very different sources and assumptions. It will be very hard for the Cs to get away from these three independent analyses - i.e. to prove that they are all wrong."*[835]

869. On the same day, I forwarded Dr Worden's email to Tony Robinson QC, who responded as follows:

> *"My immediate reactions to this suggestion are as follows:*
>
> *1. on its own, the sheer number of peaks referring to claimant branches (1700) looks very bad for us;*
>
> *2. so far, there has been no suggestion of any evidence of a bug affecting any claimant branch, this exercise appears to give rise to such a suggestion, why would we ever want to do that;*
>
> ***3. it feels dangerous even to mention these peaks unless and until we have read them all and satisfied ourselves that they do not record any bugs affecting claimant branch accounts;***

[835] WBON0000701.

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> ***4. putting the last point the other way round, if we had read them all and satisfied ourselves of this, I would love to talk about them, but not before;***
>
> *5. RW suggests a sampling exercise, but what if a significant proportion of his sample looked as if they might be claimant-branch-affecting bugs;*
>
> ***6. we already have too much maths, too much averaging and too many assumptions about what it would take to make Post Office go mad;***
>
> ***7. I doubt that this new calculation will help much (in the sense of establishing something that might cause the judge to take a more positive view of our case) and I strongly suspect that it will do more harm than good (in the sense that the optical problems which it will create for us as discussed above will be greater than any help it might give us); and***
>
> ***8. this is the sort of exercise to be done in breach trials, not this trial;***
>
> *9. it troubles me that RW has already found 1700 peaks without discussing it with us first – thereby creating a risk that if Green gets in a lucky question, RW could be required to talk about them in cross examination; and*
>
> ***10. what the hell does RW think he is doing moving the goalposts in this dangerous way this close to the endgame".***[836] (emphasis added).

870. Junior Counsel, Owain Draper, responded:

> *"If the results are good, RW will be slaughtered for raising it so late, and the Judge would attach very little weight to it. It's almost a one-way bet against PO in that bad results would be awful.*
>
> *It's already a big problem that RW has identified the Peaks. If he now does no work on them, it will look awful if it comes out. If he does the work and we do not provide it to Cs, it will look awful if it comes out.*
>
> *I'll think further on it, though, because it seems counterintuitive that all available options are so bad!"*[837]

[836] WBON0000702.
[837] WBON0001536.

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871. I shared these concerns. As I explained in an email to Rodric Williams dated 6 April 2019, there were three major concerns with Dr Worden's proposed new methodology:

> *"It will look like a last minute ambush. [Mr Justice] Fraser has complained bitterly about this type of conduct by experts in previous judgments outside this litigation.*
>
> *If the results are good for PO, it will look like the legal team has pushed this.*
>
> *[Patrick Green QC] will ask questions about why this analysis has not been done before (to which RW will say that it only recently occurred to him to do it).*
>
> *We will necessarily need to give Coyne the right of reply.*
>
> *In our view, even if the content of Worden 3 is good for PO (and that is not guaranteed), it will backfire and lead to criticism from the Court.*
>
> *The above has been discussed at length between RW and Counsel. We have pressed RW hard not to do this work or produce Worden 3. RW is resolute that he is required under his expert duty to bring this new information to the attention of the Court. There is no prospect of persuading him not to do it and we obviously have no power to block this".*[838]

872. There were three further problems. First, there was no time to conduct the in-depth analysis required of the Peaks that Dr Worden referred to in order to be satisfied as to what evidence they actually contained. Second, it was more statistics, and the legal team were already concerned about the amount of reliance Dr Worden was placing on this kind of analysis. Third, it seemed to add little to Dr Worden's original analysis. On balance, the legal team's combined view was that this new analysis was likely to do more harm than good. I recall

[838] POL00042611

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that HSF also shared these concerns, when in due course they were instructed by POL in mid-April 2019.

873. However, Dr Worden genuinely felt that his new report was valuable; he had done additional work, and that additional work therefore fell to be part of his overall opinion. We could not tell him not to do it and, once done, the analysis would need to be shared with the Claimants and, consequently, the Court.

874. By 28 March 2019, Dr Worden had already drafted a letter to Freeths to inform them of his new analysis. I explained that my instinct was for him to complete the analysis before engaging with the Claimants or Mr Coyne.[839] In my view, it would have been inappropriate for Dr Worden to put forward his proposed additional evidence to the Claimants and the Court without even completing his analysis. However, I was always mindful of Dr Worden's duty to act independently and his duties to the Court and I respected the fact that he had done this additional work. Dr Worden remained adamant that he should finish and submit his new analysis. On 6 April 2019, he wrote to me in the following terms:

> *"As you know, I believe it is my expert duty to do this, so I am going to do it. But I am acutely aware that having done my 'independent expert' thing on you, you have to manage the fallout in all directions. You are going to have to explain it to PO on Monday, stage-manage the whole presentation, etc. I'd like to say why (in my view) even if the short-term fallout is a pain, in the longer term it will be a very good thing for PO.*
>
> *Maybe not in the best order:*
>
> *The trial is all about bugs in Horizon, and how they might have impacted the 560 claimants*

[839] POL00112051

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> *Over 20 years, Fujitsu have kept very good records - in the Peaks, OCRs, MSCs etc - of any possible bugs in Horizon, discrepancies, remote access events, etc.; and what branches they affected*
>
> *Fujitsu could never be accused of any 'corporate cover-up' of defects in Horizon. They wanted Horizon problem-free, and have done a good job of keeping it that way. They have chased down any possible bug as soon as they could, and recorded the process.*
>
> *So to find out how bugs in Horizon impacted claimants, you just need to go to those records, filter them by claimants' FAD codes, and count the possible impacts. This means 2,400 documents, rather than 500,000 .*
>
> *It's that simple, and it is a small job (why didn't I think of it before??)*
>
> *Compared to all that has gone before, this is a massive simplification of the case. Any judge would grab it with both hands , just to simplify his own job. There is no excuse for taking a complicated and obscure route - or rather, ignoring the simple route - when such a simple route exists. That is why I have to tell the court about it.*
>
> *It is also very bad for the claimants. Coyne and Green thrive on confusion; it is their only weapon. This removes confusion - or goes right round it - and cuts off the life-blood of their case".*[840]

875. On 7 April 2019, I informed Tony Robinson QC that Dr Worden's decision had "*gone down like a lead balloon at PO*".[841] Tony Robinson QC responded:

> "*I'm not surprised. I imagine that, if we serve a Worden 3, the claimants will claim that we are acting tactically – they may even link it to our recusal application (but for that application, there would not have been time for RW to wrestle with these questions etc).*
>
> *There is no problem-free way of addressing this issue.*
>
> *[…]*
>
> *It seems to me that his ever-expanding views as to the number of Horizon bugs which were branch-affecting do count as changes of view, but that could probably be addressed in the course of the expert meeting that the experts have agreed to have anyway.*"[842]

[840] POL00042614
[841] WBON0000703.
[842] WBON0000704.

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876. On 8 April 2019, Owain Draper emailed to advise that Dr Worden may not get permission to adduce another report but "*I do not think we can stop RW doing what he wants to do, even though it may well mean the court refusing permission and getting angry. We have already told him that we do not think the further analysis changes much or is even within a Horizon Issue*".[843] Owain Draper advised that Mr Coyne be informed as soon as possible about Dr Worden's position.

877. On 10 April 2019, WBD wrote to Freeths to inform them about the potential new report. The letter stated "*Please note that this came as some surprise to us and we wish to make it clear that neither our client nor its legal team requested this further work, the necessity for which we have discussed with Dr Worden, but which Dr Worden decided to undertake pursuant to his understanding of his duty to the Court*."[844]

878. Tony Robinson QC was due in court on 10 April 2019 and wanted to know his instructions on whether he should be seeking permission for supplemental reports. POL's instructions were leave it to the court to decide what to do next.[845] Mr Justice Fraser's decision was to make an Order directing that the experts should meet one more time.

879. Pursuant to Mr Justice Fraser's Order, Dr Worden sought to engage with Mr Coyne to discuss the new analysis but Mr Coyne was resistant, in part due to other commitments.[846]

[843] WBON0001539.
[844] WBON0001543.
[845] WBON0001547.
[846] POL00112145.

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880. By 25 April 2019, Worden 3 was largely finalised and sent to Mr Coyne in draft on a without prejudice basis.[847]

881. On 26 April 2019, Dr Worden sent me an email setting out a number of reasons as to why he thought POL should seek to rely on the report. Dr Worden considered that, even if permission was refused, all possible outcomes were good for POL:

> *"Now we come to the main reason to make the application - which I believe PO should consider before you and they decide.*
>
> *Judge has had Coyne's and my reports for several months. He can surely see the difference between Coyne's anecdote-based approach and my numbers-based approach. We do not yet know which approach he prefers, or why.*
>
> *Sending report 3 to him, with an application, will be a litmus test of his attitude to numbers. If - as you all suppose - he hates numbers, he will reject the 3rd report. If, as I suppose, he is a bit of a geek and fancies his techie expertise, he will not dismiss it out of hand - and may welcome a simpler route to deciding the issues."*[848]

882. I shared this email with Tony Robinson QC[849] who disagreed and advised that Mr Justice Fraser would characterise the application as an exercise in oppression by POL:

> *"In this context, our concern is not that the judge will find that Robert is a PO stooge (although that is what the judge may be hoping to find it his final judgment and it is always possible that he may rely on this exercise as one of his grounds for doing so). Our concern is that the judge will characterise our application to rely on the new report as an exercise in oppression by us."*[850]

[847] WBON0000708
[848] WBON0000710
[849] WBON0000711
[850] WBON0000712

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883. I began to prepare an advice to POL about what they should do about Worden 3. By this point the view was that the Peaks analysis in the report was broadly unhelpful to POL but the remote access analysis was helpful. Counsels' view was that seeking permission to rely on the remote access section only was the best option, followed by seeking permission to rely on it all (despite the unhelpful parts).

884. On 30 April 2019, I advised Rodric Williams of Counsels' view.[851] We suggested writing to Freeths in the first instance seeking their views so as to be in a better position to gauge the risks. I can see from my calendar that there was then a call to discuss this issue with WBD, Counsel, Rodric Williams and HSF on 1 May 2019. My recollection was that Rodric Williams and HSF also considered this a very difficult problem to solve.

885. On 3 May 2019, WBD wrote to Freeths to inform them that Dr Worden felt it was his duty to update his report and POL were considering their position on whether to apply for permission to rely on a supplemental report.[852] Freeths replied complaining about Dr Worden and POL's approach.[853] WBD then gave further advice to POL (and HSF who by that point were tasked with seeking instructions from the Board Subcomittee as and when they saw appropriate) on how to proceed on 16 May 2019.[854] We were concerned that Freeths were attacking Worden 3 on the basis that it undertook Claimant-specific analysis, but similar analysis was in Worden 1 and 2; and if Worden 3 was rejected as being out of scope for the Horizon Issues trial then we could face similar problems with

[851] WBON0001578.
[852] POL00274897
[853] POL00274899
[854] WBON0001585.

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Worden 1 and 2. Therefore, even though the remote access section was valuable, Counsel advised that POL should not apply for permission to rely on it. The end advice, therefore, was that Dr Worden should send the third report to Jason Coyne on an open basis to see if Jason Coyne engaged. If not, Worden 3 would be sent to the court the next Wednesday. HSF commented that this was a sensible plan.[855]

886. I advised POL on 22 May 2019 that Dr Worden would write to the court with the report that day.[856] We maintained our advice of 16 May 2019 that POL should not apply for permission to rely on the report, and HSF agreed.[857] We obtained instructions from POL not to apply for permission to rely on the report.[858]

887. Dr Worden emailed the court with his report[859] and Katie Simmonds (of WBD) provided him with recommendations on the drafting of his email.[860] This then resulted in Mr Justice Fraser replying to say that witnesses were not entitled to communicate directly with the Court, as reflected in Dr Worden's email to me (to which **Q102** of the Request refers, i.e. **POL00112279**).

888. Worden 3 was discussed in Court on 23 May 2019 and POL was directed to file a witness statement explaining the chronology of its development, which I did on 31 May 2019. This was my seventeenth witness statement.[861]

889. On 28 May 2019, WBD advised Freeths that POL did not intend to use Worden 3 in cross-examining Mr Coyne, or to seek permission to rely on it, but that (i)

[855] WBON0001590.
[856] WBON0001600.
[857] WBON0001600.
[858] POL00042688.
[859] WBON0000714.
[860] WBON0001607.
[861] POL00275716

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ways of analysing the evidence based on samples may be discussed with Mr Coyne and (ii) Dr Worden's answers in cross-examination may need to refer to the contents of the report if he was to comply with his obligation to tell the truth.[862] By correspondence dated 31 May 2019, the matter was drawn to a close.[863]

890. On the question of whether I 'advised' Dr Worden to contact the Court directly: as the contemporaneous documents clearly demonstrate, this was an unprecedented situation for me (and I believe for Counsel and HSF also) and it was difficult to know how best to respond to it. My view, and what I understood to be the view of Counsel, was that no matter what approach we took to the situation, it was likely to reflect badly on POL (through no fault of POL's own).

891. I do not recall whether I advised Dr Worden to contact the Court directly. However, upon my review of the contemporaneous documents for the purposes of preparing this statement, the evidence indicates that Dr Worden came to the decision that he would contact the Court directly of his own volition, and after he had made that decision and informed us of this, we then assisted him to draft his email after taking instructions from POL.

892. As to this, CPR 35.14(1) permits experts to "*file written requests for directions for the purpose of assisting them in carrying out their functions*". Dr Worden was aware of this provision (the Managing Judge had expressly raised it with the parties the previous year, had made reference to it in a CMC Order,[864] and Mr Coyne had written directly to the Court to seek directions in relation to requests for further information in relation to the Horizon system); he was aware of his

[862] WBON0001633.
[863] WBON0001640.
[864] WBON0001232 at paragraph 13.

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duty to the Court; and he was adamant that in order to comply with that duty, he needed to inform the Court about Worden 3.

893. On 30 April 2019, I received an email from Jonny Gribben which stated:

> ***"****When I spoke to Robert late yesterday afternoon* ***he mentioned that he will probably ask the Court for directions under CPR 35"***[865] (emphasis added).

894. Tony Robinson QC responded to this, stating "*That's an important part of the jigsaw which we need to know*".[866] I then responded:

> "***And it's good that RW has reached that view on his own. For the record, I've not mentioned this possibility to him*** *or anything about our plans for Worden 3. Should we ask what directions he might seek? I can do that with an open question so that we are not leading him*"[867].

895. WBD and the Counsel Team considered that Dr Worden was permitted under CPR 35.14 to take this course of action. On 23 May 2019, both parties appeared before the Court in order to address Dr Worden's email. The relevant exchange between Leading Counsel and Mr Justice Fraser states:

> *"25 My Lord, to deal with your Lordship's second point,*
> *1 in my respectful submission it is entirely proper for*
> *2 an independent expert to communicate directly with the*
> *3 judge. That underpins CPR 35.14, which your Lordship*
> *4 will also be well aware of, the provision which allows*
> *5 experts to seek the directions of the court.*

[865] WBON0000713
[866] WBON0000713.
[867] WBON0000713.

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MR JUSTICE FRASER: Well, whether that's correct or not, in the circumstances of this case, the way in which it was done and the time at which it was done -- and I went back and reread what you had said to me on 11 April - - two points arise. I' m not in any way finding or stating that it was improper for him to have done that.

MR DE GARR ROBINSON: I'm grateful for your Lordship to say that.

MR JUSTICE FRASER: However, it is highly unusual for an expert to do that without some sort of prior notification that that's happening; and secondly, it was not clear on the face of his email whether the claimants knew that was happening.

MR DE GARR ROBINSON: My Lord, there was prior notification.

MR JUSTICE FRASER: Right" (emphasis added).[868]

896. Although Mr Justice Fraser was critical in his Horizon Issues judgment (at [725]-[726]) about Dr Worden having directly emailed the Court, as the above transcript illustrates, Mr Justice Fraser's view at the material time (the day after the email was sent) was that it was not "*in any way … improper*" for Dr Worden to have emailed the Court *per se*, but rather, for him to have done so "*without some sort of prior notification*" and without the Claimants knowing what was happening. Unfortunately Dr Worden had omitted to copy the Claimants' solicitors on his email to the Court, but did separately forward it to them three minutes later, which

[868] POL00042714.

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was the source of the Court's understandable concern.[869] Leading Counsel clarified the position with the Court and explained that there had been proper notification to the Claimants.

897. Leading Counsel also invited the Court in closing to provide guidance on how to approach a similar situation in the future. Mr Justice Fraser concluded in his judgment that he did not know why "*it should be thought necessary to tell witnesses – lay or expert – that they should not unilaterally communicate with the court*" (at [728]). With respect to Mr Justice Fraser, Leading Counsel invited the Court to provide this guidance because this was a difficult, unprecedented situation, and the legal team did consider it to be clear as to how POL ought best to have dealt with it.

898. In conclusion, in relation to **Q102.2**, I do not believe that I advised Dr Worden to write to the Court before he independently came to the view that this is what he would do. When he reached that decision and informed us of this, we assisted him to do so, because we (WBD and Counsel) considered that he was entitled to do so under CPR 35.14, and, most significantly, Dr Worden considered that he was. This explanation also addresses **Q102.3**.

(vii) The Board Subcommittee meeting 21 February 2019 and advice on merits (Q100)

899. **Q100** refers me to the minutes of a meeting of the Board Subcommittee dated 21 February 2019 (**POL00006753**) record a "*brief[ing]*" by Post Office's Leading Counsel, Tony Robinson QC. Prior to this meeting, I prepared the first draft of a

[869] WBON0000714.

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speaking note for Tony Robinson QC which he then reviewed and amended.[870] Additionally, the day before the meeting, WBD circulated a risk assessment table which we had shared with Tony Robinson QC in advance.[871] Jane Macleod (then General Counsel) sent this risk assessment table to members of the POL Board, namely Tim Parker, Ken McCall, Tom Cooper, Paula Vennells and Alisdair Cameron.[872] The minutes need to be understood in the context of these two documents.

900. I do not recall who produced the minutes of the meeting and searches of my email records indicate that I did not receive them at the time (cf. **Q100.2**). I strongly suspect that the minute taker was Veronica Branton (POL), as she had been a minute taker at other meetings.

901. My recollection is that Tony Robinson QC spoke for around 30 minutes and closely followed the speaking note, before inviting questions. The points to be taken from the speaking note are as follows:

901.1. The purpose of Tony Robinson QC's briefing was to explain to the Board Subcommittee the case which POL was going to advance at trial.

901.2. Tony Robinson QC's assessment was that "*the evidence weighs in favour of Horizon being a robust system. There is little risk of the Judge saying that Horizon is bad but he may find that it is only "ok" [and]… This trial will come down to whose expert is more credible. We believe the evidence of our expert, Dr Worden, has a better methodology and is more cogently evidenced that the Cs expert, Coyne.*" Tony Robinson QC also noted that

[870] WBON0000337; WBON0001421; POL00112903.
[871] WBON0001418.
[872] POL00024150; POL00265865.

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there was some judicial risk that needed to be borne in mind "*as this Judge as [sic] acted in ways that are truly extraordinary as you will have already heard from David Cavender on the Common Issues trial*".

901.3. Tony Robinson QC summarised Post Office's core argument as follows: "*Horizon like all IT systems is not perfect but it is a very good system…This is not about proving that Horizon is perfect and that there are no bugs in Horizon…In the context of this litigation, it is about showing that Horizon accurately records transactions the vast majority of the time so that PO, SPMs and the Court can safely start from an assumption that the branch accounting information held on Horizon is sound…No-one has found a fundamental flaw in the system or its support processes. We are nowhere near a situation where this a bad or even average system. This is a decision between whether Horizon is good or very good…*"

901.4. Tony Robinson QC summarised Dr Worden's "*clear and well-explained opinion*" as follows: "*the volume of bugs Cs have found is tiny. About 20 bugs over an 18-year period, against a back drop of 30,000 active users and 50m transactions a week. Even if one assumes that the Cs case is entirely correct, Horizon would still be a robust system*."

901.5. Tony Robinson QC explained that "*the strength and formulation*" of Post Office's case "*may need to be adjusted in light of the Cs supplemental expert report served on 1 Feb this year…On 1 February, [the Claimants] served their supplemental report. It is anything but supplemental. It raises a whole new range of issues, including about 15 new alleged bugs in Horizon that have not been raised before. The legal team and FJ are now working ferociously to investigate these new points. Progress so far has*

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been good and so we are hopeful, but not certain, that we will have credible counter-points to raise to most of Coyne's new attacks".

901.6. Tony Robinson QC then summarised the key risks:

(i) POL's case that Horizon is robust and extremely unlikely to cause shortfalls has set a "*high bar*". This bar was set based on Deloitte's findings and the fact that POL's business operations were built on this basis. Although this is a high bar, it is one which "*Dr Worden … felt comfortable*" giving an opinion on, and it aligned with Deloitte's findings.

(ii) Dr Worden's evidence relied heavily on statistical models which some Judges may not be receptive to, but this risk had been mitigated by Dr Worden's inclusion of a qualitative opinion alongside his quantitative analysis.

(iii) The main factual evidence for Post Office would be given by technical personnel from Fujitsu. In a small number of cases, the evidence given was incorrect and needed to be corrected through further statements. This has given rise to the concern that further cracks may appear under cross-examination. This is not due to a lack of cooperation by Fujitsu, but rather that they were being asked to give factual evidence on issues that arose sometimes decades ago on highly technical and often obscure points. These risks had been mitigated through extensive discussions with Fujitsu, probing Fujitsu's evidence as much as it is possible for a lawyer to do, and Tony Robinson QC had met with Fujitsu on a number of occasions.

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(iv) "*Weaved into the heart of the Cs case [is] the conspiracy theory that PO and FJ are meddling with branch transaction data in secret and that this is causing the shortfalls and branches*". The difficulty Tony Robinson QC identified was that POL's and Fujitsu's case on remote access has changed over the years. While he thought it added little substance to the Claimants' case, it could prove damaging. Although there was no evidence of widespread data manipulation, and although it was difficult to imagine any rational reason why Fujitsu would maliciously or carelessly manipulate branch data, Fujitsu's changing position on remote access exposed Post Office to allegations of a cover up. This could then be used to tarnish the credibility of Fujitsu's witnesses.

902. As for whether there are any material inaccuracies in the minutes (cf. **Q100.4.2**), the phrasing of the minutes in paragraph 2, section 2 makes it sound as if Tony Robinson QC is advising on the merits. In fact, as can be seen from the speaking note, Tony Robinson QC was setting out POL's case theory for the HIT for the benefit of the Subcommittee.

903. What the minutes do not accurately reflect is the qualification which Tony Robinson QC had given, which was that the strength and formulation of POL's case would depend upon the Claimants' supplemental report (Coyne 2) which raised a number of new issues, including around 15 new alleged bugs, and POL's ability to respond to it. This point was also emphasised in the risk assessment table prepared by WBD, the relevant passage of which stated:

> *"In our view, the report of Dr Worden adopts a better methodology and is more cogently evidenced but it remains open challenge in Court. This*

> *view is subject to our introductory comments about Post Office providing adequate responses to Mr Coyne's new arguments in his Supplemental Report. Mr Coyne's new points have been reviewed by Dr Worden who is unmoved in his opinion"*.[873]

904. I do not recall Tony Robinson QC using the words "*critically robust*" (cf. **Q100.3**) and I note that these words are not contained in his speaking note.[874] However:

904.1. The speaking note states that "*the evidence weighs in favour of Horizon being a robust system*".

904.2. The speaking note summarises Dr Worden's evidence as supporting the view that, even on the Claimants' case, Horizon is a robust system.

904.3. The risk table explains that the evidence of Dr Worden was that "*Horizon has been a very robust system, compared to other major systems I have worked on in sectors such as banking, retail, telecoms, government and healthcare*" and that "*the robustness of Horizon made it extremely unlikely to be the cause of shortfalls in branches*".

904.4. The risk table concludes that "*the report of Dr Worden adopts a better methodology and is more cogently evidenced but it remains open [sic] challenge in Court*."

905. In relation to whether the sentence "*For the vast majority of the time, Horizon was a very reliable system*" was materially accurate, the speaking note states, "*Our case … The core argument we will run in Court is … that Horizon accurately records transactions the vast majority of the time so that PO, SPMs and the Court can safely start from an assumption that the branch accounting information held*

[873] POL00265865.
[874] WBON0001422.

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on Horizon is sound." Again, this sentence was not in the nature of advice about the merits of POL's case, but an explanation of the case which POL would advance at trial.

906. In relation to the sentence, "*the bar we have set ourselves was very high as we had said that the Horizon System was robust and very unlikely to cause significant losses. We had to be able to support this starting position. Not meeting that bar would have a serious impact on PO Limited's operating procedures and would open up 18 years of previous decisions*", the relevant section of the speaking note states (and it is worth setting it out in full):

- "*PO has necessarily set its case very high: that Horizon is robust and extremely unlikely to cause shortfalls. It has done this for two reasons:*
- *First, this was the finding from Deloitte's investigation into Horizon at the outset of the litigation and on which PO premised its legal position.*
- *Second, PO's operating models are built on the assumption that Horizon works.*
    - *The heart of this litigation is whether SPMs should be liable for shortfalls. The Cs main line of attack is that the shortfalls were not caused by them but by bugs in Horizon.*
    - *In its interactions with SPMs, PO's starting assumption is that Horizon works. It habitually looks first for errors in branch before looking at Horizon. Its contracts with SPMs are structured to [sic] in line with this approach.*
    - *This approach can only be sustained if Horizon is so reliable to justify a starting, but rebuttable, assumption that Horizon is accurate.*
    - *If Horizon does not meet this bar, then that may require PO to test the accuracy of Horizon in relation to every branch shortfall going forward before seeking to recover any monies.*
    - *It would also pose a risk to its decisions over the last 18 years in relation to the recovery of shortfalls and the termination of SPMs: which heightens the possibility of successful claims within the litigation.*

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- *Although this bar is high, Dr Worden has felt comfortable giving an opinion saying that Horizon is robust and extremely unlikely to cause shortfalls in branches, which aligns with Deloitte's earlier work*."

907. With reference to **Q100.4.1**, my views on the prospects of success in showing that Horizon was robust and unlikely to be the cause of unexplained losses, mirrored those of Tony Robinson QC. I also agreed with Tony Robinson QC that the "*strength*" of POL's case "*may need to be adjusted in light of the Cs supplemental expert report … and so we are hopeful, but not certain, that we will have credible counter-points to raise to most of Coyne's new attacks*." However, as I set out at §§795-800 above, Dr Worden remained firmly of the view that even 15 more bugs was a very small number, as compared with the number of bugs which he identified the Claimants would have to prove in order to demonstrate that issues with Horizon could be a cause of the SPMs' shortfalls. For these reasons, I was still fairly confident in POL's case as to the robustness of Horizon, but, as the speaking note and risk table demonstrate, I certainly did not think (or advise) that it was without risk.

908. As to the question whether Counsel or I were concerned about the safety of past convictions which relied on Horizon data (**Q100.4.2**), this did not form part of our analysis. As the minutes, speaking note and risk table make clear, we were focused exclusively on assessing risk in the group litigation.

909. I do not recall anyone at this meeting expressing any concerns to me about the safety of past convictions using Horizon data (cf. **Q100.4.3**).

910. With reference to **Q100.5**, the Subcommittee received both the risk table and heard Tony Robinson QC's briefing, which included a briefing on concerns relating to remote access. The summary of Tony Robinson QC's explanation of

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the risks relating to remote access is outlined at §§901.6(iv) above. The risk table contained the following description of the remote access issue:

> *"Post Office (via Fujitsu) has always had "remote access" capabilities and this has been admitted in earlier Court documents.*
>
> *There is a material dispute as to the extent that "remote access" was used to alter branch data and whether such access was properly controlled. Post Office's case is that "remote access" is a rare event and only used following strict protocols. The Claimants look to paint a picture of frequent unregulated use of "remote access" to change branch information in a clandestine manner.*
>
> *Both experts agree that Post Office had no ability to remotely delete or edit data within Horizon. The tools for deleting and editing branch data were held exclusively by Fujitsu. Post Office is therefore reliant on Fujitsu for evidence of its use and control of these tools.*
>
> *Fujitsu's evidence on this subject has been less than satisfactory. During the mediation scheme, Fujitsu told Post Office that it could not edit branch data (only that it could inject new transactions). Further investigations revealed this not to be the case – Fujitsu do have the ability to edit transaction data by accessing and amending the underlying database tables within Horizon.*
>
> *This shifting position has continued during the litigation and has resulted in Post Office having to file a second witness statement to correct some errors in the primary evidence of one Fujitsu witness. In light of this, there are material concerns about whether the Fujitsu witnesses will come up to proof under cross-examination.*
>
> *Further, Fujitsu's record keeping around use of its remote access tools is incomplete. Some of this is a product of time and document retention policies, particularly in relation to the old version of Horizon (pre-2010), but some is due to a lack of structured documentation around the use of these tools (including a lack of automatic access logging software within Horizon).*
>
> *Mr Coyne has placed considerable emphasis on "remote access" in his Supplemental Report and Fujitsu's answers to these points will be vital to the outcome of this issue. Investigations in this regard are continuing. This is an area where further evidence from Fujitsu, if reliable and allowed by the Court, would be useful and could affect the overall merits on this topic.*

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> *Even if remote access is possible, it is very unlikely that Fujitsu are acting maliciously or carelessly causing shortfalls in branches through remote access. They would have no motivation to do so and the reputational damage to it of doing so through poor practices would be severe. The challenge at trial will be persuading the Judge of this and avoiding him getting drawn into the Claimants' conspiracy theories.*
>
> *In terms of impact, the Claimants are seeking a finding that there is frequent uncontrolled remote access and that that undermines Horizon being reliable. They are looking for a crossover effect to Category A above. This link is not however obvious and the Claimants' expert has not explained how one issue affects the other. Given the scale of Horizon, we will argue that the level of uncontrolled access (if any) would need to be significant for one to lose confidence in the system.*
>
> *The above factors could lead to a number of different outcomes. For example, Post Office (or Fujitsu) could be found to have poor access controls but it be accepted that Fujitsu did not misuse those controls. Or, that the remote access tools were misused but on such small scale that there is no overall impact on Horizon or the litigation.*
>
> *In our view, it is likely that the Judge will make some form of adverse finding against Post Office on this topic, but it is much more difficult to assess the impact of that finding on the reliability of Horizon or the litigation.*
>
> *Regardless of the outcome, we anticipate that this issue will attract media attention and poses the greatest risk of reputational harm".*[875]

911. This section accurately reflected my understanding of the remote access issue at the time as well as my views as to the risks associated with it.

912. With reference to **Q100.5**, I do not know if the Board Subcommittee was provided with the Deloitte reports (assuming this means the Project Zebra and/or the Project Bramble reports). At the time those reports were produced, the Subcommittee did not exist (it was created in or around March 2018). Before that point, the external legal team liaised only with the Steering Group, who then reported up to the Board and POL senior management. I do not know what other

[875] POL00265865

documents, beyond the risk table, were shared with the Board Subcommittee. I did not have a direct line of communication with the Board Subcommittee and I was not aware of all of its interactions.

Q. RESPONSE TO THE COMMON ISSUES JUDGMENT AND RECUSAL APPLICATION (Q103 to Q118)

913. In this section I address the Inquiry's questions at **Q103 to Q118**, about the steps POL took in response to the Common Issues Judgment. The Common Issues Judgment was circulated in draft on 8 March 2019 (the Friday before the Horizon Issues Trial commenced on the Monday), and was formally handed down on 15 March 2019. In particular, this section addresses my involvement in the application which POL issued on 21 March 2019 seeking Mr Justice Fraser's recusal as the Managing Judge in the GLO (the "**Recusal Application**") and, where relevant, POL's wider appeal against the reading of the SPMC and NTC at which Mr Justice Fraser had arrived in the CITJ. As will appear from the below, I retained overall responsibility for the conduct of the Recusal Application as the matter Partner for the GLO, although in practice Tom Beezer (another Partner at WBD) supervised the day-to-day management of parts of this workstream whilst I was fully immersed in the HIT.

(i) Initial response to the Common Issues Judgment – Summary Note and David Cavender QC's advice on appeal and recusal (Q103, Q107 to Q108)

*Summary Note (**Q103**)*

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914. By **Q103**, I am asked to consider **POL00022940**, which is a six-page 'Initial summary of the Common Issues Judgment' dated 9 March 2019 (the "**Summary Note**"). I wrote a draft of the Summary Note at POL's direction, shortly after I received the draft Common Issues Judgment the previous morning (as I understood that POL wanted to begin mitigation planning on the Monday morning).[876]

915. Specifically, I am asked to consider a number of excerpts from the Summary Note.

916. ***First***, I am asked to summarily identify the "*large swathes of inadmissible material*" (paragraph 1.1) that was considered by the Judge in the Common Issues Judgment. The inadmissible material to which the Summary Note refers is the evidence led by the Claimants about matters which, in POL's submission, went to contractual performance and breach in the six Lead Claimants' cases, and in my view was not relevant to the 23 Common Issues which Fraser J had had to determine. This included matters such as: the adequacy of the training received by the six Lead Claimants after their appointment; the quality of the NSBC helpline; POL's alleged knowledge of problems with Horizon; the quality of POL's investigations into the causes of shortfalls; the circumstances of the Lead Claimants' suspensions and terminations; and whether POL had sent them unjustified demands for payment and/or threats of legal action. I have set out POL's position on these issues in detail above at §§697 ff.

917. ***Second***, I am asked to identify the "*clear evidence of [the Claimants'] dishonesty*" (paragraph 1.4). I do not recall what this sentence referred to, but I assume that

[876] See WBON0001446; POL00267481.

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it was a reference to evidence of false accounting by some of the Lead Claimants.

918. A significant example of this that comes to mind is the evidence Elizabeth Stockdale gave in the CIT. POL terminated Mrs Stockdale's contract because she had submitted a false account, which had the effect of hiding a discrepancy in her branch. She was asked in cross-examination about whether she had intentionally misstated her accounts so as to hide discrepancies. Having been warned by the Judge about her right not to incriminate herself, Mrs Stockdale declined to answer the question. Mr Justice Fraser decided not to make a finding on this point; to quote the Common Issues Judgment at [328]:

> *"I found Mrs Stockdale to be a careful and accurate witness, and I consider she was telling me the truth. The single question that she declined to answer was that she had been misstating the accounts to hide discrepancies. Whether she was right to act as she did at the time regarding her accounts is a matter for another trial. As with the other Lead Claimants, I am making no findings in respect of breach, causation or loss."*

919. Conversely, the paragraphs preceding this point made extensive factual findings about the shortfalls Mrs Stockdale had suffered and what steps she and POL had taken in relation to them (see from [302] onwards), including with respect to the quality of the helpline response, the adequacy of POL's investigation into the shortfalls, what options Mrs Stockdale felt were open to her, the conduct and tone of POL's correspondence with her, and matters relating to her suspension and termination in 2016. POL's case was that Mrs Stockdale's evidence on these matters was irrelevant as they did not relate to the 23 Common Issues which Mr

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Justice Fraser had to decide.[877] Upon reading the Common Issues Judgment, I found it difficult to understand why Mr Justice Fraser had made the extensive factual findings he did in respect of Mrs Stockdale's case (often in terms implicitly or explicitly critical of POL), yet had declined to make any findings about whether she had knowingly submitted inaccurate accounts which had the effect of obscuring the shortfalls about which she complained. To be clear, POL's position had been that Mr Justice Fraser should not make findings as to credit based on Mrs Stockdale's post-contractual conduct at all (including any evidence as to false accounting), since this was not relevant to the Common Issues and would impinge on future trials – see further §768 above and §981 below. However, given that he *had* considered a number of post-contractual matters, I could not immediately see why he had declined to address the evidence of false accounting in Mrs Stockdale's case, instead holding that "*[w]hether she was right to act as she did at the time regarding her accounts is a matter for another trial*".

920. ***Third***, I am asked to explain the basis for describing the Judge's approach as "*astonishing; it is unfair and unprecedented*" in paragraph 1.6 (which went on to give a preliminary recommendation that an appeal be lodged). In particular, I am asked to describe any conversations that I had with Counsel on the matter.

921. My email records show that I sent a draft of the Summary Note to David Cavender QC and Gideon Cohen (who were the Counsel team for the CIT) on the evening of 9 March 2019 for their review.[878] In that email, I described it as a "*very early and initial summary of the key findings in the Judgment*", and specifically drew their attention to paragraph 1.6. I expressed my hope that they

[877] WBON0001366.
[878] WBON0001463.

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would agree with that paragraph but asked them to "*say if [they didn't]*". Gideon Cohen responded with some non-substantive amendments.[879] David Cavender QC responded on 9 March 2019 that he had "*no hesitation in agreeing with [my] clause 1.6*."[880] As I recall, I had discussed the substance of paragraph 1.6 point with David Cavender QC on several occasions after we received the draft Common Issues Judgment (and thus, the email chain referred to above does not represent the totality of discussions we had on this matter, though it reflects their broad tenor). As I understood it, David Cavender QC was of the view that Mr Justice Fraser had gone badly wrong in making so many factual findings which went to matters of performance and breach.

922. Both Counsel and I felt that Mr Justice Fraser's approach was "*unfair*" in this regard, as (i) he had made those factual findings even though POL had not yet presented full evidence on these matters, and (ii) they were properly matters for other trials which still had to be held. We were not reassured by Mr Justice Fraser's occasional statements in the Common Issues Judgment that he was not making findings on matters of performance and breach, as it seemed to us clearly arguable that, on a fair reading of the judgment, he was. For example, at [558] he made critical observations about the quality of the NBSC helpline ("*on the evidence before me, the Helpline did not operate for the Lead Claimants in the manner that the Post Office contended for …*") and went on to temper this by saying, "*detailed findings of fact as to this must however wait for a later trial*" (emphasis added).[881] Similarly, at [955], Mr Justice Fraser described POL's system of training for incoming SPMs as "*contrary to business logic*" and found

[879] WBON0000650.
[880] WBON0000649.
[881] See to similar effect, [569(57)] of the Common Issues Judgment.

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that "*the subjective experiences of the Lead Claimants so far as training was concerned was far from ideal*". At the time, the fact that he had (at [954]) prefaced these observations by saying that they were "*non-binding*" did not seem to me or David Cavender QC to be of much comfort.

923. Further, both Counsel and I considered that the nature and range of terms which Mr Justice Fraser had implied into the contracts between POL and SPMs – either as incidents of the duty of good faith which he implied, or as freestanding terms implied on grounds of business efficacy – to be "*unprecedented*" bearing in mind the state of the law on this.

*Advice from David Cavender QC on appeal and recusal (**Q107 to Q108**)*

924. Having indicated his agreement with paragraph 1.6 of the Summary Note, David Cavender QC's email of 9 March 2019 then floated the possibility of applying for Mr Justice Fraser to recuse himself as Managing Judge, as follows:

> *"Indeed I am beginning to form the view that seeking the Judge's recusal is something that we need to actively consider. I am drafting a Note too (as requested) dealing with the appeal on a high level. As part of that I have been collating some of the Judges comments and findings and the gross procedural irregularity here. If we are right about all of those points - then how could a reasonable independent observer think that such a Judge could fairly adjudicate in the future on a dispute between the parties i.e. trial 3 and beyond? I recognise its extreme - and being so directly involved makes it difficult to be objective - but what we have been served up with is frankly so shockingly bad that we must at least consider it. I deal with this point – in brief in my Note which you will get tomorrow."*

925. With reference to **Q108** of the Request, this was (to the best of my knowledge and recollection) the first time the possibility of seeking Mr Justice Fraser's recusal was raised with me.

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926. The following day, 10 March 2019, David Cavender QC provided a note of advice setting out his preliminary views on the prospects of appealing the Common Issues Judgment.[882] In short, he recommended an appeal and suggested that it should be focused on: (i) Mr Justice Fraser's "*errors in construing the SPMC and NTC contracts, the terms to be implied into them, and the relationship that arose as a result*" by reference to "*what happened post contract*" (paragraphs 10 and 27); and (ii) the "*gross procedural unfairness exhibited by his making findings of fact on unnecessary matters based on partial information*" (paragraphs 10 and 12 ff). In that note, he elaborated on his suggestion that POL should consider applying to remove Mr Justice Fraser as the Managing Judge. He observed that:

15.1 The grounds for recusal were essentially the same as those on which the 'gross procedural unfairness' limb of the appeal would (if brought) be based (paragraphs 12-18).

15.2 There "*is a very high threshold to justify such an application. This is undoubtedly the nuclear option – but this Judgment is very bad indeed. The way [Mr Justice Fraser] has conducted himself in this matter in my view is unjudicial and is unprecedented*" (paragraph 11).

15.3 The fact that there were a number of further trials to come over which Mr Justice Fraser would preside was a "*special and odd feature*" of the case which made the problem of his possible or apparent bias more acute (paragraph 20).

[882] WBON0001466; POL00267565. This was prepared at POL's request as part of its mitigation planning for Monday 11 March 2019, see: WBON0001446; POL00267481. I sent David Cavender QC's note of advice to POL along with the Summary Note on 10 March 2019: WBON0000205.

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15.4 POL should consider "*instructing separate Counsel to consider this point on recusal – as having been so involved in this it is difficult to be truly objective*"(paragraph 23).

927. With reference to **Q107**, my best recollection is that I only first considered the possibility of recusing Mr Justice Fraser when it was raised by David Cavender QC and only appreciated that there were arguable grounds for this upon reading his advice note. I had no prior experience of recusal applications and no knowledge of the law on bias, so I was guided by Counsel's views on these matters. I recall thinking that it was a sound idea to get a second opinion from separate Counsel. I could also understand why David Cavender QC had raised the possibility of recusal given the general tenor of the Common Issues Judgment, and the fact that to my mind, Mr Justice Fraser appeared to have prejudged a number of factual matters that would be in dispute in later trials.

(ii) Strategy and criticism following the Common Issues Judgment (Q105 to Q106)

928. **Q105** of the Request asks me about my reflections on POL's litigation strategy in light of the Common Issues Judgment. Prior to the Common Issues Judgment being handed down, POL had already taken steps to modify its litigation strategy. As explained above at §§385 ff, Mr Justice Fraser had earlier criticised both parties at the October 2017 CMC for adopting what he felt was an insufficiently cooperative approach to the litigation. At that stage we had commissioned David Cavender QC's 'Five Things' review; sought to tone down correspondence with Freeths and invited them to jointly 'reset' the relationship with us; and POL sought to limit the number of applications it made. Although I sensed that the September

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2018 application to strike out parts of the Claimants' evidence was perceived by Mr Justice Fraser as an excessive step, I have explained above (at §§697 ff) the background to that application and why it was considered to be necessary.

929. At the time the draft Common Issues Judgment was circulated, the strategy for the HIT had already been set in motion and my focus was on this trial as it was due to begin the next working day. I do however recall having some discussions with Tony Robinson QC to the effect that we should somewhat soften the tone that we adopted in the HIT; in particular, we discussed the importance of treading lightly in submissions and cross-examination. We did not want to receive further criticism for being heavy-handed. That said, Counsel had to balance this against the fact that he still needed to cross-examine witnesses on some difficult points, including putting to the SPM witnesses that the problems they encountered in their branches may have been caused by their own actions, and not by Horizon.

930. Beyond this, decisions on strategy in terms of appealing the Common Issues Judgment and making the Recusal Application were strongly guided by advice from Counsel. For example, I recall that Mr Justice Fraser's approach to implying terms into POL's contracts with SPMs featured in discussions as to the approach to be taken to appealing the Common Issues Judgment, and in particular I recall that the POL Board Subcommittee were minded to adapt POL's case on appeal to make some concessions in light of that approach. I recall that Lord Neuberger and Lord Grabiner QC (whose involvement I deal with further below) advised against that course, as making those concessions would undermine the coherence and clarity of POL's position on the law. They were also of the opinion that making such concessions was a slippery slope and could lead to further

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terms being implied that could be damaging to POL's business in the long run; see further below, §§971-975.

931. As to **Q106**, I do not recall any representative of POL directly challenging me on WBD's conduct of the group litigation after the Common Issues Judgment was handed down, although there was understandable concern that POL did not appear to be faring well and about what implications this may have for the business. At this time, Paula Vennells had recently stepped down as CEO and Alisdair Cameron had assumed her role. At around this time, I became aware that POL had brought in Norton Rose Fulbright and subsequently (following Mr Justice Fraser's Recusal Judgment) HSF. Although this is speculation, at the time I considered that this move probably flowed from a loss of confidence in WBD or at least a desire to have a fresh perspective. It sometimes happens that a client changes solicitors or counsel, or both, after a setback in a piece of litigation. Norton Rose did not express the view to me that WBD's conduct of the litigation to date had been inappropriate (nor did HSF when they took over from Norton Rose). Later, in May 2019, David Cavender QC was replaced by Helen Davies QC for the appeal against the Common Issues Judgment on the advice of HSF (I was not consulted on that decision and was only told about it after the decision was made).

(iii) Further advice on recusal – instruction of Lord Neuberger and Lord Grabiner QC, POL Board meeting on 18 March 2019 (Q104, Q109 to Q112)

*Instruction of Lord Neuberger and Lord Grabiner QC (**Q109**)*

932. Returning to the chronology of the Recusal Application, on Monday 11 March 2019 there was a meeting of the POL Group Executive to consider the draft

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Common Issues Judgment. Given that I was fully occupied with the first day of the HIT, Amy Prime attended on my behalf to take a note and report back. Following the meeting she sent me and Tom Beezer a note of what was discussed.[883] It contained the following note of discussions on the subject of recusal:

> *"On the recusal decision, Al [i.e. Alisdair Cameron] was keen to press ahead with recusal now, during the Horizon Trial however Jane / David explained how bad this could go and this idea seemed to be dropped but we would get another opinion on this from a super silk."*

933. More generally POL wanted a senior silk to review the Common Issues Judgment and advise on the prospective appeal and the strategy for appealing. It was typical of POL to seek a further review by new lawyer in this sort of situation (as had happened when advice was sought from Linklaters during the Mediation Scheme, by Jonathan Swift QC after the scheme, and by David Cavender QC when he was brought in and asked to conduct his 'Black Hat Review'), so this did not come as a surprise to me. Amy made enquiries of One Essex Court and Lord Neuberger and Lord Grabiner QC were put forward by the clerks as possible options for the 'super silk'.[884] On the evening of 11 March 2019 WBD put both options to POL with a suggestion that Lord Grabiner QC be retained, since he would be able to represent POL in court (which Lord Neuberger could not, being a retired judge).[885] The following morning Jane MacLeod expressed the view that Lord Neuberger would have "*insight into the thinking of the Court of Appeal judges and their approach to current trends of contractual interpretation*" and

[883] WBON0000652.
[884] WBON0000653
[885] WBON0000654

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asked to discuss further with Tom Beezer. I cannot specifically recall what I thought of this at the time, but can see from my email records that I sent Tom a note sounding a (slight) note of caution in the following terms:[886]

> *"Remember Neuberger only around for a couple of days.*
>
> *Also, he wrote the law on interpretation of contracts – orthodox legal principles – so has skin in the game because this judgment crashes through his doctrine on contract interpretation. Will he be open minded?"*

934. I also informed Tom that David Cavender QC had initially suggested that POL instruct both Lord Neuberger and Lord Grabiner QC, but had then moved away from Lord Neuberger as he had limited availability and would not be able to be the advocate for the Recusal Application "*which should happen asap if approved / has merits*" (although I do not specifically recall this particular conversation with David Cavender QC). On a separate email chain at around the same time, Tony Robinson QC suggested Lord Pannick QC as a 'super silk' who would be interested in the recusal issues.[887] (My recollection is that Tony Robinson QC had very little input into the Recusal Application, due to being fully immersed in the HIT). I therefore contacted Blackstone Chambers to make enquiries but was informed that Lord Pannick QC was not available.[888] I do not recall, and my email records do not suggest, that I had any other correspondence with clerks or alternative counsel prior to the decision to instruct Lord Neuberger being made by POL (which it was later that morning).[889] POL's ultimate decision was (i) to instruct Lord Neuberger to advise on "*the merits of a recusal application and whether such an application should be made*" as well as the prospects of

[886] WBON0000655.
[887] WBON0000656.
[888] WBON0000657.
[889] WBON0000658.

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appealing the Common Issues Judgment, and (ii) to reserve Lord Grabiner QC: **POL00023930** (email sent by Amy Prime email to the One Essex Court clerks on 12 March 2019). The latter step was taken because Lord Neuberger could not appear in court on POL's behalf, so Lord Grabiner QC was reserved in case Lord Neuberger advised POL to go ahead with the Recusal Application. As Lord Grabiner QC's availability was limited, since he was due to go under brief from 30 April 2019, enquiries were also made of Mark Howard QC at Brick Court Chambers, although I was not directly involved in making these enquiries.[890]

935. Lord Neuberger was provided (by WBD) with five bundles of papers which included the transcripts of the CIT (cf. **Q109.4**).[891] He was also briefed orally by David Cavender QC,[892] and was provided with a note of the background to the recusal application prepared by David Cavender QC and Gideon Cohen (though I do not believe WBD had sight of this background note until it was provided along with Lord Neuberger's note of advice on 14 March 2019).[893] I did not have any direct contact with Lord Neuberger before he produced his note of advice, and no indirect contact save for the emails with his clerks that I was copied into.[894] David Cavender QC was in touch with him as I have set out above, but I was not aware of the detailed content of their conversations (cf. **Q109.1**).

*Lord Neuberger's note of advice (**Q110**)*

[890] WBON0000658; POL00023988; WBON0000660. Tom subsequently stood Mark Howard QC down in respect of the recusal aspect once POL decided to formally instruct Lord Grabiner QC (see below, §937): WBON0000665.
[891] WBON0001468; WBON0001469; cf. WBON0001470.
[892] WBON0000659.
[893] WBON0001474. The Counsel team's background note is: POL00371317.
[894] My diary indicates that I attended a meeting with David Cavender QC and Jane MacLeod on 14 March 2019 following receipt of Lord Neuberger's note of advice, though I cannot recall the specifics of that meeting and my firm's records do not suggest that Lord Neuberger was on that call.

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936. By **Q110** I am asked to explain what my views were of Lord Neuberger's note of advice on the recusal aspect dated 14 March 2019 (**POL00025910**). In summary:

936.1. ***First***, Lord Neuberger indicated that he had "*looked at the Judge's reasoning and conclusions on the interpretation issue*" albeit "*only very cursorily*" (as his fuller advice on that aspect was to follow in due course). His provisional view was that there were some "*quite significant points on which the PO has a reasonable case, and, at least on the face of it, some points on which the PO has a pretty strong case*." In his view, Mr Justice Fraser's "'*relational contract'/good faith justification for the implication of terms … is controversial in itself, but, quite apart from that, [he] appears to have extended its application in a fairly radical way*"; further, Lord Neuberger noted that "*there is often very little or no reasoning offered to justify the implication of terms on the alternative, and conventional, basis of necessity*" (paragraph 5). Overall, he commented that he was "*left with the uneasy feeling that the real justification in the Judge's mind for the implication for at least many of the terms which the Judge implied was the raft of adverse factual findings that he has made*" (paragraph 6). These outline and preliminary thoughts broadly accorded with my own view that Mr Justice Fraser had likely erred in his approach to the Common Issues.

936.2. ***Second***, Lord Neuberger observed that there was "real force" in the argument that Mr Justice Fraser had acted unfairly in "*[making] the findings about the factual evidence and the witnesses that he did*", particularly given that POL had explained why it had not led detailed evidence on many of those issues (paragraph 7). Again, this broadly

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accorded with my own views of that Mr Justice Fraser's approach in the Common Issues Judgment.

936.3. ***Third***, in relation to the recusal issue, Lord Neuberger was "*struck by the fact that … many of the paragraphs in the Judgment are given over to descriptions of evidence, and findings of fact, in relation to what happened after the contracts had been entered into, often in trenchant, even highly critical, terms. And, importantly, as I understand it, those descriptions and findings relate to witnesses who will be called at later trials and evidence which will have to be considered at later trials*" (paragraph 8). This accurately reflected my understanding of the factual basis of the proposed recusal application.

936.4. ***Fourth***, Lord Neuberger concluded that these matters gave rise to "*reasonable grounds for PO to bring an application to recuse the Judge in these proceedings*" (paragraph 19). He identified that the Court of Appeal might take the view that Mr Justice Fraser was entitled to deal with the evidence before him; that his findings would not impinge on future trials; and/or that he had "*gone out of his way to make it clear that he was not making conclusive findings*". Ultimately however he did not think that these were serious obstacles to POL's case on recusal in the circumstances (paragraphs 12 to 18). As to this, as noted above I did not have any knowledge of the law of bias at this time. I had never before had occasion to make a recusal application (which I understood to be exceptional and unusual) and so was reliant on Counsel to advise on this point. However, Lord Neuberger's advice was reasoned and logical, aligned with my understanding of the litigation and how it had developed, and overall it

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supported my view of how and where Mr Justice Fraser had overstepped the mark in the findings he had made in the Common Issues Judgment.

936.5. ***Fifth***, Lord Neuberger advised that the recusal application should be made (if it were to be made) as soon as possible after the Common Issues Judgment was formally handed down, which would likely mean making the application without notice and during the HIT: "*The fact that this course would be taken without notice and after the present trial has begun cannot be blamed on the PO: until they have the Judgment, they are not in a position to take a view on the recusal issue*" (paragraphs 20 to 22). Again, this recommendation made logical sense to me although I had no doubt (as Lord Neuberger recognised) that this would be a tricky and controversial application to bring in the midst of the HIT.

*Recusal Paper (**Q104**)*

937. Against this background, on 15 March 2019 Jane MacLeod emailed Tom Beezer and me forwarding an email she had sent to Tim Parker (POL's Chairman) and Tom Cooper (UKGI's representative on the POL Board), outlining Lord Neuberger's advice and setting out her proposed next steps (including her intention to formally brief Lord Grabiner QC so that he could start reading in).[895] She advised us that POL were setting up a Board call for 5pm on Monday 18 March 2019, for which a "*plain English paper*" would be needed addressing the following matters:

> *"Why we are considering a recusal application*
>
> *What the application (if successful) will achieve*

[895] POL00023898.

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Risks of not proceeding

Prospects of success: what advice have we received, who from (LNQC but given speed with which it was produced - is it fully considered?; Will LGQC have read in sufficiently by then to also be able to offer an opinion? 'why we should believe them?')

risks

Process & timing".

938. The paper that was ultimately prepared was **POL00023955** (the **"Recusal Paper**"). Its aim was therefore to summarise the background to the proposed Recusal Application, the relevant legal issues, and the advice received, in a way that was clear and accessible to non-lawyer Board members. I do not specifically recall the Recusal Paper, however my firm's records indicate that it was a collaborative effort between myself, Tom Beezer, Jane MacLeod and David Cavender QC; and approved by Lord Grabiner QC. At this stage, my focus was on the ongoing HIT, and therefore Tom Beezer took the lead on producing the Recusal Paper.

939. Tom produced a first draft on 15 March 2019 which he then circulated to me, David Cavender QC, Gideon Cohen, and Amy Prime for comment.[896] I redrafted the Recusal Paper later that evening; I did not include my own views on the prospects of success (since Counsel were leading on this), but recorded Lord Neuberger's key conclusions and left a placeholder for David Cavender QC to insert his views on the merits.[897] In my covering email, I queried whether Jane MacLeod had asked us to make a recommendation to the Board; Tom indicated that he would raise this with Jane MacLeod, subject to which his view was that

[896] WBON0001493; WBON0001494.
[897] WBON0001495; WBON0001496: "*DAVID TO ADD HIS VIEWS ON RECUSAL HERE IN HIS OWN WORDS*".

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we should simply set out the issues and let the Board decide.[898] I can see from my firm's records that Tom sent the draft as it stood to Jane McLeod on the morning of 16 March 2019 (on the understanding that further amendments would be made to it to that day).[899] It appears that this was because Jane MacLeod had a call with Tim Parker, Alisdair Cameron and Kelly Tolhurst MP at 12.15pm that day.

940. Shortly after Tom sent the draft on, David Cavender QC circulated a further version of the Recusal Paper with his own changes to my draft in track, including several paragraphs setting out his views on the merits.[900] He felt that, as legal advisers, we ought to be setting out a recommendation and to that end his revised draft set out that: "*Therefore, Mr Cavender's view is that it is difficult to see a realistic alternative and so a recusal application should be made*."

941. Later the same day I responded with my thoughts on David Cavender QC's revised draft, to the following effect:

> *"I agree with David about offering a recommendation and would support his recommendation.*
>
> *There is now an almost constant doubt hanging over how to conduct the Horizon litigation because we feel that we are always a whisker away from the Judge attacking us.*
>
> *I think we should add a point to the risk section that making the application may reinforce the 'arrogance' attack on PO but that attack has already been made and it may well be made again, so there is no guarantee that staying quiet will protect POs brand from repeat attacks.*
>
> *Also, I think we should add in the timing section that a recusal application might encourage the C of A to move quicker on the main appeal. These*

[898] WBON0001497
[899] POL00022960.
[900] WBON0001499; WBON0001500.

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> *issues are all interconnected and the C of A is unlikely to want to leave a recusal application hanging over the litigation. David, do you agree?*
>
> *And also that the above point on timing may limit the amount of operational change PO needs to undertake in the short term to comply with the judgment, which may be wasted cost if the judgment is overturned on appeal."*[901]

942. Amy Prime then worked up a new draft to implement David Cavender QC's and my comments.[902] *Inter alia*, the Recusal Paper now included the following concluding "*Recommendation*":

> *"**Recommendation***
>
> *Although a recusal application is difficult and comes with substantial risks, for the reasons stated above, both Mr Cavender and Womble Bond Dickinson recommend that the application is made as soon as possible."*

943. Tom sent clean and compare versions of the updated draft to Jane MacLeod later that day, i.e. 16 March 2019.[903] It was still somewhat in draft form, and contained a single comment from myself about a particular paragraph in the draft (my comment is highlighted in yellow):

> *"Aside from the above legal points, we would also note that several of Post Office's witnesses, many of whom are long serving employees, were good enough to give evidence in Court for Post Office and have now had their reputations tarnished. It is of course a matter for Post Office to determine the extent to which it now wishes to try to protect its staff from criticism. [Jane – this point may be better made verbally so we can remove it.]"*

944. My firm's email records show that it was Tom and Jane McLeod who took the Recusal Paper forward (though I remained either an addressee of these emails or in copy, and I would have spoken to Tom on the phone from time to time about it). It appears that Tom and Jane MacLeod had a call to discuss the draft paper

[901] WBON0000666.
[902] WBON0000667; WBON0000668.
[903] POL00023911; POL00268458; POL00268459.

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on 16 March 2019,[904] following which Jane McLeod made changes including restructuring the draft.[905] Further, she pulled together some of what she viewed as the more "*egregious comments*" made by Mr Justice Fraser that might demonstrate bias, to be placed in an Appendix to the Recusal Paper.[906] Tom circulated a further version of the Recusal Paper, incorporating and responding to Jane McLeod's comments, on 17 March 2019.[907] The draft still contained some highlighted comments requiring resolution; these required input from Lord Grabiner QC. Jane McLeod made a few minor suggestions, which she otherwise approved to be sent to Lord Grabiner QC.[908] Tom then finalised the Recusal Paper and sent it to Lord Grabiner QC's clerks.[909]

945. Lord Grabiner QC approved the content of the Recusal Paper on the evening of 17 March 2019 ("*Treat this as my broad 'yes that is ok'.*").[910] Tom therefore removed the highlighting which indicated that we were awaiting Lord Grabiner QC's approval and sent a clean version onto Ms McLeod (this is the final version of the Recusal Paper that the Inquiry cites, **POL00023955**).

946. My involvement in the drafting process as set out above indicates that I broadly agreed with the content of the Recusal Paper. In particular, I note that I supported the inclusion of an express recommendation to the POL Board, and expressed

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[904] POL00330036.
[905] POL00023231; POL00268479.
[906] POL00023229; POL00268503.
[907] POL00022969; POL00268516.
[908] WBON0000672.
[909] WBON0000673; WBON0001501. The version of the Recusal Paper as sent is: POL00268533. Earlier that day Tom had emailed the clerks at One Essex Court, noting that POL sought to understand whether Lord Grabiner QC agreed with the proposed Recusal Application, and if so, that Jane MacLeod wished to have a call with him the following day prior to the planned Board meeting (with Lord Neuberger to attend the meeting itself): WBON0000671. Lord Grabiner QC had responded to that email indicating that he was in "*broad agreement*" with Lord Neubeger's position (though I was not in copy and received this email as part of a later chain): WBON0001501.
[910] WBON0000675.

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my agreement with David Cavender QC in this respect, viz. that the Recusal Application should be made. As I have said, however, my view was primarily that the application should be made as a matter of strategy; my knowledge of the law on recusal was limited and I was naturally deferring to Counsel's expertise as regards the substance of the application. With reference to **Q104.2** and **Q104.3**, my "*concerns as to Fraser J in respect of bias*" at this point in time can therefore be summarised as follows:

946.1. I was concerned, ***first***, that Mr Justice Fraser had formed a negative opinion of POL based on incomplete evidence. At the CIT, POL had not led evidence on post-contractual matters[911] and had therefore not fully responded, in respect of each Lead Case, on such matters such as what training and support had been provided to each Lead Claimant; the exact chronology of their accounting records; what investigations had been undertaken and why; and so on. My view was that once complete evidential picture was available, a judge may well have formed different conclusions on the overall responsibility for losses than those to which Mr Justice Fraser had appeared to reach. This is not to say that matters would have been resolved entirely in POL's favour, but I believed that there was a good chance of a more balanced determination. I therefore felt that Mr Justice Fraser had acted prematurely in making some of the observations that he did. This was especially so given that we had made clear to him in closing that the scope of the evidence tendered by POL was limited; what

[911] Save for a few narrow areas where post-contractual evidence was required – see for example paragraph 33 of the witness statement of John Breeden, to which I referred above at fn. 758: WBON0001351.

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the reasons for this were; and that it would therefore be unfair to make factual findings on post-contractual matters at this stage.

946.2. ***Second***, and more specifically, I recall that my reading of the Common Issues Judgment at the time was that the Judge had already begun to form his view on specific issues around Horizon and POL's accounting practices. There were, as I read them, findings of fact on these points within the Common Issues Judgment. I struggled to see how the Judge could change his mind on these issues in later trials where those points would be explored in more detail. This caused me to believe that he may have (or appeared to have) closed his mind to key points that would form the focus of those later trials.

946.3. ***Third***, as I have explained above, although Mr Justice Fraser had stated within the Common Issues Judgment that he was not making findings on issues of contractual performance and breach, my reading of the judgment taken as a whole was that he had made findings of fact that were central to those issues. Lord Neuberger's advice dated 14 March 2019 had affirmed this view, in that he had explained that the fact that a judge asserts that they are not making particular findings is not determinative:

> *"In my view, the Judge's attempts to distance himself from, or to water down, his illegitimate findings, in some ways render them worse rather than better. What was he doing making findings (sometimes in trenchant, even damning terms about the PO's witnesses, and exculpatory or better about several of the Claimants), if he knew that the findings were, at best, unnecessary, indeed inappropriate?"* (paragraph 18).

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946.4. ***Fourth***, I was concerned that Mr Justice Fraser had been highly critical of POL's witnesses including Angela Van Den Bogerd. I have previously set out why I felt this criticism was unfair in response to the Inquiry's **Q92** above (§754). In brief, I felt that it was unfair to criticise Angela Van Den Bogerd for not having told the "*full story*" in her statement, when she was advised not to do so because this would have required her to give evidence on matters POL's legal team considered were irrelevant to the Common Issues. Given that Angela Van Den Bogerd was one of POL's factual witnesses in the HIT, I was concerned that Mr Justice Fraser would carry forward his view of her, which I felt was unfairly formed, into his assessment of the evidence in that trial.

946.5. ***Fifth***, however, I repeat that these were my views on the matters which formed the factual basis for the Recusal Application. As to the application of the law of bias to these matters (including the "*fair minded and informed observer*" test), I was guided by the views of Counsel and in particular, David Cavender QC, Lord Neuberger and Lord Grabiner QC, all of whom had advised that there was a sound basis for making the application.

947. As to whether representatives of POL told me of their concerns in respect of bias (cf. **Q104.2**), I recall that Jane MacLeod and Rodric Williams held similar views to the above. I do not recall having communicated directly with other representatives of POL on these matters.

*POL Board meeting on 18 March 2019 and subsequent decision-making (**Q111 to Q112**)*

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948. Prior to the Board meeting on 18 March 2019, Jane MacLeod attended a conference with Lord Grabiner QC. David Cavender QC and Gideon Cohen also attended, as did Tom Beezer for WBD (I did not attend as this was then the fifth day of the Horizon Issues Trial). WBD's file note for this conference sets out that Lord Grabiner QC's advice was as follows:

> "***Procedural Structure:*** *… Lord Grabiner commented that the Judge had "trespassed onto matters that are for later trials" and the fundamental problem that builds into the sequential trial structure is that those findings and opinions (which should not have been made or voiced) will be carried through into the later trials* ***and that is the "perceived bias" that gives rise to the need for a recusal application****. Lord Grabiner commented that the case management displayed in this matter was extremely poor. It was noted that the problems now experienced by Post Office and manifested in the CIT Judgment were predicted multiple times before this Judge at the making of the GLO and many times after. Lord Grabiner also noted that Post Office had attempted to deal with the issue by applying for the striking out of the Claimants evidence that was irrelevant to the CIT, yet the Judge had refused to do that. The Judge had sufficient warning of the risk of him taking into account evidence that was irrelevant to the CIT and taking into account post contractual matters in a trial supposed to be confined to construction issues only; however he had "not been able to restrain himself". As an aside, the number of implied terms found by the Judge was wholly extraordinary but that was to be a matter for an appeal on law – but Lord Grabiner expressed his shock that an English High Court Judge could have arrived at the CIT Judgment.*
>
> ***Urgency****: An application for recusal should be made urgently …*
>
> ***Duty to act****: … An appeal on the law may correct some of the very significant errors in the CIT Judgment but then the case will be sent back to this Judge who has demonstrable apparent bias against Post Office and hence the firm conclusion that Post Office will lose and the financial impact of that will be substantial. Recusal is therefore essential and Lord Grabiner asserted that in the face of legal advice from Lord Neuberger that recusal should be applied for and the quantum of damages that Post Office will pay out on a loss, then it was Lord Grabiner's view that there was a duty on Post Office to seek recusal. Lord Grabiner stated that in*

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> *his view the Board of Post Office had no option but to seek recusal"* (emphasis in original).[912]

949. The file note records that Lord Grabiner QC's conclusions were that: (i) "*there are strong arguments in favour of an application for recusal*"; (ii) it was his "*strong view that a recusal application was the right course of action*"; (iii) there "*[was] a 'serious prospect of success'"*; and (iv) Mr Justice Fraser had, in his view *"done 'an unbelievable nonsense and demonstrated apparent bias'"*.

950. Later that day the POL Board meeting took place, the minutes of which are **POL00021562** (to which I am referred by **Q111** of the Request). I did not attend that meeting and the minutes do not indicate that anyone else from WBD did either. I do not recognise the minutes and I believe that the first time I received them was with the Inquiry's Request. This is confirmed by the absence of the minutes from my firm's file.

951. Following the Board meeting, on 18 March 2019 Jane MacLeod sent me, Tom Beezer, and Rodric Williams an email update in the following terms:

> *"[Lord Neuberger] was very balanced in his approach, but confirmed that he thinks we have a good case on recusal. The Board asked a number of questions and my sense was that they were 'calmed' by his discussion. However they haven't yet made a decision. There is a further board call on Wednesday [20 March 2019] at 12.30 and they have requested whether Lord Grabiner would be available in person at the time – ideally at FD if that's possible? Having said that they recognise that he will almost certainly say the same things as DNQC.*

[912] POL00268834. My email records indicate that I received this file note on 20 March 2018: POL00022883. Later that day Tom Beezer send Jane MacLeod a slightly amended version of the note, together with a comment from Gideon Owen that he had "*no corrections or changes to make*": POL00330038. The amended note was not materially different from that quoted above.

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> *[…]*
>
> *There is significant pressure to be able to say how we are going to treat those claimants who establish they have a case, and all those outside the scheme who may have a similar fact pattern. So what they have asked for is a pro forma model of what the various outcomes could be – that is, what is the financial impact such that taking a step like recusal is 'worth it'.*"[913]

952. On the morning of 20 March 2019, Jane MacLeod emailed Tom Beezer (with me in copy) querying whether an alternative approach might be viable, involving: (i) applying to Mr Justice Fraser to adjourn the ongoing HIT on the basis that POL was seeking to appeal the Common Issues Judgment on procedural fairness grounds (and that if that appeal was successful, "*it would also put the fairness of the Horizon trial at risk*"); (ii) if an adjournment was refused by Mr Justice Fraser, "*[seeking an] order from a higher court to the same effect*", or alternatively seeking recusal at that stage if no such remedy 'existed in law'.[914] From the framing of Jane MacLeod's email, I infer that this query was raised by a member of the POL Board in anticipation of the call later that day.

953. This proposal was put to David Cavender QC, Gideon Cohen and Stephanie Wood (who was by then instructed to assist with the Recusal Application). I expressed the view that the proposal did not make much sense since the 'procedural unfairness' reflected in the Common Issues Judgment did not in and of itself 'infect' the HIT; rather, the 'cross-infection' occurred if Mr Justice Fraser was biased or had the appearance of being biased. In any event, I thought that Mr Justice Fraser would be very unlikely to adjourn the HIT on the basis

[913] WBON0000677. My email records indicate that I did not respond to that email, although Rodric Williams and Tom Beezer added some observations: WBON0001511.
[914] WBON0001714.

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suggested in Jane MacLeod's email.[915] David Cavender QC responded essentially agreeing with my reasoning and adding some further points as to why the proposal was misjudged:

> *"I would advise strongly* against *the proposed course. I say this for the following reasons:*
>
> *The immediate (and likely irreversible) prejudice PO are suffering is the effects of the apparent bias Fraser J showed in the CIT upon his current handling of the Horizon issues trial. There is also the future prejudice of him handling the breach trial in November 2019.*
>
> *The only way of seeking to deal with the prejudice is to seek his recusal on an urgent basis.*
>
> *Seeking to appear before him indicating that PO is going to appeal against his CIT judgment on grounds of procedural unfairness – will assuredly* not *result in him adjourning the Horizon trial. He will not do so because the unfairness in the CIT trial itself does* not *infect the Horizon trial. It is the apparent bias of Fraser J that infects the Horizon trial. The* only *remedy for that is recusal.*
>
> *If, on this proposal, Fraser J's refusal to adjourn the Horizon trial is then appealed to the Court of Appeal – they would assuredly not adjourn that trial and would not recuse him- because there would not application before them to do so.*
>
> *Furthermore, an appeal against a refusal to recuse is much more likely to come on as an urgent appeal – than an appeal against the refusal of a judge to adjourn a trial on the basis that he showed procedural unfairness in an earlier trial between the same parties. Indeed the latter appeal is very likely to come on* after *the Horizon trial is completed and the Judgment handed down. This fact would make it more unlikely the Court of Appeal would intervene.*
>
> *And, if all this comes to pass (as it most assuredly would) is the proposal that* then *PO applies to the judge to recuse himself ? And then appeal him if he does not ? This make no sense- and would all come too late to be effective to deal with the prejudice in (1). Indeed, this course of action would look very much as if PO were seeking to delay matters and behave badly- in the manner presently charged by the Judge.*
>
> *If there are good grounds for a recusal (and clearly there are) and good prospects of success (as advised) then the Court of Appeal would expect*

[915] WBON0000679.

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> *PO to apply to the Judge to recuse himself and then appeal him if he did not. There is no middle ground here"* (emphasis in original).[916]

954. Tom forwarded this advice to Jane MacLeod ahead of the Board call (which had by this time been moved to 11:45am).[917] Jane MacLeod then raised further questions on which the Board were likely to want assurance, namely (i) "*if not [the above proposal], then is there any other alternative to recusal*", and (ii) what more would be achieved by recusal, if POL succeeded in appealing Mr Justice Fraser's interpretation of its contractual relationship with SPMs. Tom forwarded these questions to the Counsel team including Lord Grabiner QC for consideration in advance of the call.[918]

955. Again, I did not attend the Board call (this being Day 7 of the HIT); Tom Beezer attended for WBD (alongside lawyers from Norton Rose) from 11:45am until 12:10pm. My firm's file note of the call records that Lord Grabiner QC outlined the following advice to the Board:

> *"Lord Grabiner explained to the Board members that in his view the Judge had been warned about admitting material into the CIT that should properly be looked at only in later trials when proper evidence and disclosure was before the Court. The Judge had rejected Post Office's quite proper Strike Out Application and had appeared to appreciate what the problem might be with inadmissible evidence from the Claimant group, but at trial (the CIT) the Judge had gone well beyond his remit for that CIT and made a range of findings on breach and the credibility of Post Office witnesses. Lord Grabiner confirmed his view that the Judge had behaved quite improperly and it was now right to ask him to stand down. Lord Grabiner explained that it is apparent that this Judge has concluded views on matters and as there are further trials to come, then those concluded views would be a significant issue for Post Office unless this Judge is asked to recuse himself.*

[916] WBON0000681.
[917] WBON0000682.
[918] WBON0000682.

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> *Lord Grabiner confirmed that the apparent concluded views of this Judge are so strong that there is no other way to deal with the issue than recusal. If Post Office does not take such a step, yet later goes to the Court of Appeal on matters of law from the CIT, the Court of Appeal will be left wondering why such a step (i.e. recusal) was not taken.*
>
> ***Advice:** … Post Office has no option but to seek the recusal of this Judge … whilst guarantees cannot be provided, Post Office does have a strong case for recusal. Lord Grabiner confirmed that his strong recommendation to the Post Office Board was to seek a recusal."*[919]

956. The file note further records that the POL Board asked a number of questions of Lord Grabiner QC, as follows:

> *"A question was posed concerning the circumstance where **recusal is sought, but fails**. … Lord Grabiner pointed out that this Judge has already formed a view of Post Office and so a failed recusal application is unlikely to make a difference to outcomes when compared to plausible outcomes from a situation where no recusal application is made.*
>
> *A question was posed as to whether there was **some "middle way" ?** Lord Grabiner explained that his firm view was that if Post Office does anything short of applying for recusal, that strategy will fail. There is no middle course which works and in that regard Lord Grabiner confirmed that he had seen and agreed with an e-mail on the point send by David Cavender QC.*
>
> *A question was posed over a scenario where **one assumes that the criticisms of Post Office in the CIT Judgment were true ?** Lord Grabiner explained that in his view many of the implied terms and 'good faith' findings were wrong in law so if there were a different Judge then the findings would be different as the assumed background and legal background would be different so it is hard to place oneself in the assumed position that all of the criticisms are correct. … Theoretically it is possible a different Judge could get to the same position – and if so "so be it".*
>
> *A question was posed as to whether Post Office could **arrive at a recusal scenario via a different route ?** Lord Grabiner explained that he could not think of any mechanism that would arrive at such an outcome for Post Office, without Post Office making the application itself. Lord Grabiner explained that if Post Office does not take the step to apply for recusal then, as a certainty, it will have this Judge for all*

[919] POL00269796.

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> *following trials. Lord Grabiner explained that if he could have found another way to proceed he would have discussed it with the Post Office Board.*
>
> *As a **concluding comment**, Lord Grabiner reminded the Post Office Board that Lord Neuberger agreed with the advice on recusal that Post Office was receiving and Lord Grabiner explained that there were few, if any, more respected QCs and ex-Judges in this country".*[920]

957. With reference to **Q112** of the Request, Jane MacLeod emailed me, Rodric Williams and others following the Board call (shortly after 2pm on 20 March 2019) instructing WBD to issue the Recusal Application, with Lord Grabiner QC to be instructed to undertake the advocacy.[921]

(iv) The Recusal Application and Judgment (Q113 to Q115)

*Preparation for the Recusal Application (**Q113**)*

958. WBD recommended, and POL agreed, that work should start on the documents necessary to support the Recusal Application on a provisional basis in advance of the Board making a decision (i.e. on or around 15 March 2019), so that there would be minimal delay in issuing the application.[922] As noted above, Lord Grabiner QC was formally instructed at the same time so that he could start reading in.[923] The overall view was that the application should be issued with minimum delay if the Board gave its approval. It was anticipated that if this was done by Friday 22 March 2019, the application itself might then be heard in the week beginning 25 March 2018, during which the HIT was not scheduled to sit in any event.[924]

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[920] POL00269796.
[921] WBON0000683.
[922] Cf. WBON0000661
[923] POL00023898.
[924] See for example: POL00167515.

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959. Substantive preparation for the Recusal Application was largely undertaken by Counsel; I recall that the Counsel team, and Lord Grabiner QC in particular, had a clear idea as to how they wished to run the application. WBD's main contribution was to the witness statement in support of the application. Work began on a witness statement on 15 March 2019 along lines which were agreed Counsel,[925] and on 18 March Gideon Cohen provided a schedule of findings in the Common Issues Judgment to be fed into the draft statement.[926] Amy Prime sent the draft statement to David Cavender QC, Gideon Cohen and Stephanie Wood on 19 March 2019 so that they could continue work on it.[927] Gideon Cohen responded indicating that, following a discussion with Lord Grabiner QC, the Counsel team were considering not putting in a witness statement at all and instead submitting only a (fuller) Application Notice.[928] WBD indicated that we would be guided by the Counsel team's views on whether the application should be accompanied by a witness statement;[929] in the end, Counsel advised that a statement should be put in, albeit only a short one which should be considerably stripped back from the version WBD had prepared.[930]

960. The Counsel team circulated near final versions of the application documents on 20 March 2019, around an hour before Jane MacLeod communicated the Board's approval to issue the application.[931] The witness statement which the

[925] WBON0000664.
[926] WBON0001503; WBON0001504.
[927] POL00364150; POL00364151.
[928] WBON0001512. The Counsel team were working on the draft Application Notice and draft Order in parallel, see for example: WBON0000674; and WBON0001512.
[929] WBON0000680.
[930] WBON0001514.
[931] WBON0001516. The witness statement circulated by the Counsel team is: WBON0001519.

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Counsel team had prepared was finalised that evening,[932] and was sent to Jane MacLeod along with the other application documents for consideration.[933]

961. The application was readied for issue and sent to the Court and Freeths, by which time the HIT was already in session for its eighth day (with Torstein Godeseth giving evidence). Anticipating that this would be the case, I recommended to Tony Robinson QC not to proactively raise the subject of the Recusal Application during the hearing.[934] I felt it was preferable for his involvement in the Recusal Application to be kept to a minimum, particularly given the possibility that the HIT might proceed (and indeed I recall him having minimal input). Further, I thought it would be more appropriate, and less awkward for Mr Justice Fraser, if he were to find out about the application in his chambers rather than in open court. The key consideration, in terms of the timing of the application, was that it should be issued as soon as it was ready – both so that there could be no suggestion that POL had not acted promptly, and so that it could be accommodated if possible during the HIT's non-sitting week the following week.

962. Mr Justice Fraser became aware of the Recusal Application during the lunchtime adjournment and, once the cross-examination of Torstein Godeseth had finished that afternoon, he listed a hearing for 3 April 2019 and directed (amongst other things) that POL were to file a further witness statement by noon on Tuesday 26 March 2019: (i) giving further details of the specific findings in the Common Issues Judgment on which POL relied as having been impermissible; (ii) identifying the examples of the "*critical invective*" to which paragraph 25 of my

[932] WBON0001520.
[933] POL00023769: see further Jane MacLeod's initial response WBON0000685), Tom Beezer's reply thereto (WBON0000686), and Jane MacLeod's further reply (WBON0000687).
[934] WBON0000684.

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fourteenth witness statement referred; and (iii) identifying the examples of the criticisms of POL's witnesses to which paragraph 25 of my statement referred.[935]

963. A first draft of that statement was prepared by Counsel and circulated on 24 March 2019,[936] and was added to by Amy Prime and Owain Draper.[937] My email records indicate that on 25 March 2019, I had a call with Gideon Cohen (though I cannot independently remember this call) in which I expressed the view that we should adopt the approach of "*includ[ing] anything [from the Common Issues Judgment] that we might rely on, unless plainly not relevant to the application. The objective being to avoid any challenge on appeal that a point in the Judgment was not put to Fraser on the application*".[938] Gideon Cohen responded to the draft which WBD had prepared in line with this approach, highlighting some passages that he felt it was better not to include as they were borderline.[939] Lord Grabiner QC endorsed Gideon Cohen's approach in the following terms:

> "*If Gideon thinks they're problematic please leave them out. We've got a lot of good material and I don't want it undermined by taking points that don't really work*".[940]

964. I accepted that advice[941] and the draft witness statement was then sent to the POL legal team on the morning of 26 March 2019.[942] Amy Prime's covering email set out that the approach had been to only focus on material from the Common Issues Judgment,[943] and "*to include in the statement as much as possible from*

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[935] WBON0000688.
[936] POL00364171; POL00364172.
[937] POL00364173; WBON0000689.
[938] POL00364175.
[939] POL00364177.
[940] WBON0000692.
[941] WBON0000693. Further amendments to the statement were suggestions by Counsel and incorporated into the statement: POL00364183; WBON0000694; WBON0001522.
[942] POL00023950.
[943] As to this, POL were keen for excerpts from the HIT transcripts to date which were arguably indicative of bias on Mr Justice Fraser's part to be included: WBON0001523. Counsel advised against this approach on the basis that "*[the] risks to us of this application sprawling into a*

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the Judgment so as no points are missed, which has been weighed against the risk of including such a large volume of material that we are accused of being unhelpful". The statement was approved by POL and filed and served that in advance of the hearing of the application on 3 April 2019.[944]

*Mr Justice Fraser's Recusal Judgment (**Q114**)*

965. By **Q114**, I am asked to consider Mr Justice Fraser's judgment dated 9 April 2019 (the "**Recusal Judgment**"). I do not recall specially when I considered this judgment, but I expect I would have considered it on the day I received it.

966. I was not surprised by the grounds upon which Mr Justice Fraser rejected the application as they were all points which Counsel had anticipated when advising on the merits of the application, and I understood from Counsel that it was to be expected that Mr Justice Fraser would refuse the application in the first instance. I address the main points Mr Justice Fraser made further below in the context of responding to **Q118**, since Lord Justice Coulson relied upon essentially similar points in rejecting POL's application for permission to appeal the Recusal Judgment.

967. I do however wish to briefly remark on [122]-[123] of the Recusal Judgment. Here Mr Justice Fraser criticised (i) the fact that my thirteenth witness statement, which

general complaint about his behaviour throughout the litigation are significant. We will have to work pretty hard not to sound like a disappointed litigant': WBON0001531.

[944] POL00023239. For completeness, I add that later on 26 March 2023, Freeths wrote a letter to WBD complaining that my fifteenth witness statement did not exhaustively list all of the passages of the Common Issues Judgment which POL considered supported its case on recusal: POL00269583. They expressed the view that this was in breach of the directions Mr Justice Fraser had given. Counsel advised that we resist this suggestion, as the statement had struck an appropriate balance and it was open to the Claimants to object at the hearing if we relied on passages that were not referenced in the statement: WBON0000695; WBON0000696; POL00269584. See further: WBON0001696; WBON0000697; WBON0000698; and my views at WBON0000699. The Claimants thereafter requested a short hearing to debate this point, which took place on 27 March 2019: WBON0000700. No further Order was made by Mr Justice Fraser at this hearing.

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was filed and served the same day as the Recusal Application, did not mention that the application was being made; (ii) the fact that the application was not foreshadowed in open court on 21 March 2019; and (iii) the fact that it was made some two weeks after POL had received the draft Common Issues Judgment. As to (i), my thirteenth witness statement was prepared separately from the Recusal Application and related to an entirely different topic (see above, §693) and so I would not have considered it necessary or appropriate to cross-refer to the application in that statement; and as to (ii), I have explained the reasons why application was not mentioned in open court above at §961. In both instances, I consider that the approach taken was reasonable; it was certainly not done to 'keep the application up one's sleeve'. As to (iii), as I have explained above and as we were advised by Lord Neuberger, there were restrictions on what could be done whilst the Common Issues Judgment was under embargo (which it was until 15 March 2019). Thereafter, it took less than a week for POL to obtain advice, for the Board to take a decision, and for the Recusal Application to be finalised and issued. The application was made the working day after POL's Board gave its approval. In the circumstances, and overall, I consider that it was made and brought to the Court's attention as soon as it reasonably could have been.

(v) Decision-making after the Recusal Judgment (Q115 to Q117)

968. **Q115 to Q117** relate to events after the Recusal Judgment was handed down.

*Email to Jane MacLeod of 14 April 2019 (**POL00023208**; **Q115**)*

969. By **Q115**, I am asked to consider **POL00023208**, which is an email I sent to Jane MacLeod on 14 April 2019, collating various emails from Lord Neuberger and

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Lord Grabiner QC concerning the approach they thought POL should take to seeking permission to appeal the Common Issues Judgment and Recusal Judgment.

970. By this time, an application for permission to appeal the Recusal Judgment had been lodged, and Counsel's view was that this application should be dealt with alongside any application for permission to appeal the Common Issues Judgment. Since POL had not yet taken a decision on whether to appeal the Common Issues Judgment, this raised a question as to whether permission should be sought directly from the Court of Appeal, and whether the Listing Office should be notified so that the application in respect of the Recusal Judgment was not progressed in the meantime. Earlier on 14 April 2019, I had asked the Counsel team to prepare draft letters to the Listing Office for POL to consider, and sought their availability for a call the following day to advise Jane MacLeod on their suggested approach.[945] I then sent Jane MacLeod the email in **POL00023208**, in which I collated some of their emails on these matters to date. Following this I received further emails from Lord Neuberger and Lord Grabiner QC laying out their recommendations. I compiled these into a further email to Jane MacLeod which I sent on the morning of 15 April 2019. Since their advice was clear and direct, I indicated to her that I no longer thought a call was necessary to obtain their advice on how to proceed.[946] I subsequently confirmed to Counsel that a call was not required.[947]

*Email to Jane MacLeod of 17 April 2019 (**POL00006513**; **Q116**)*

[945] WBON0000706.
[946] WBON0001572.
[947] WBON0000707.

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971. **Q116** asks me to consider an email I sent to Jane MacLeod on 17 April 2019 (**POL00006513**). Specifically, I am asked by **Q116.1** to explain the first bullet point in that email, in which I informed Jane MacLeod that Lord Neuberger and Lord Grabiner QC had cautioned against conceding implied terms in any appeal against the Common Issues Judgment as "*they fear[ed] that making concessions is a slippery slope, and even making a few concessions indicates to the Court of Appeal that the SPM contracts are incomplete and open to further implied terms. They therefore advise that the implied terms that DCQC suggested be conceded, should only be offered to the Court as incidents of the 'necessary cooperation' term*".

972. The background to this was that, following the hand-down of the Common Issues Judgment and whilst work on the Recusal Application was ongoing, David Cavender QC was working on draft grounds of appeal against the Common Issues Judgment. In the course of that work, David Cavender QC and I discussed the possibility of POL accepting certain of the implied terms contended for by the Claimants (or modified versions of them), on the basis that POL's case in respect of some of the terms was stronger than others; the Court of Appeal might be less likely to grant permission if POL were seen to be challenging every aspect of the Common Issues Judgment; and conceding certain terms would help to help to send the message that POL was being careful and reasonable in its approach. David Cavender QC, for example, was in favour of conceding a version of implied term (t) (to the effect that POL had a duty to take reasonable care in carrying out functions which could affect SPMs' branch accounts);[948] and I suggested conceding implied terms (a) and (b) (requiring POL to provide adequate training

[948] WBON0000158.

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and support and to ensure that the Horizon system was reasonably fit for purpose).[949] Making concessions where possible was also something that POL were keen to explore at the time.[950]

973. On 10 April 2019, David Cavender QC sent me draft grounds of appeal which proposed conceding the above terms, as well as a version of term (c) (requiring POL to properly and accurately effect transactions using Horizon and to keep records of such transaction), in each case on the basis that these terms were facets of "*necessary cooperation*".[951] This approach was also reflected in a draft paper we prepared and sent to POL the same day for discussion at a conference with Alisdair Cameron and others scheduled for 11 April 2019 (see §§3.2 to 3.3);[952] and in a draft schedule prepared following that conference, identifying which points from the Common Issues Judgment POL should and should not appeal.[953] It was an updated version of this schedule that I sent to Jane MacLeod as an attachment to my email of 17 April 2019 (**POL00006513**).[954]

974. Lord Neuberger had, at this time, been instructed to consider the scope of the appeal against the Common Issues Judgment and to that end was sent David Cavender QC's draft grounds of appeal on 10 April 2019.[955] My email records indicate that Lord Neuberger thereafter discussed the scope of the proposed appeal against the Common Issues Judgment with David Cavender QC, as did

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[949] WBON0000200.
[950] See for example: WBON0000323and POL00023941.
[951] POL00270456; POL00270457(§§30, 32, and 37). On reflection, I came to the view that this concession may need to be modified or dropped, see: WBON0001575.
[952] POL00023028; POL00270458.
[953] WBON0001576; POL00270870. This draft also suggested conceded implied term (r), namely that POL must not exercise its contractual powers in an arbitrary or capricious manner.
[954] POL00270936.
[955] WBON0001541.

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Lord Grabiner QC.[956] On 16 April 2019 (in response to some reflections I had made on the proposed acceptance of implied term (c)), David Cavender QC said that the "*approach urged by DN and AG is not to actually concede any of these implied terms – whether as narrowed by me or at all. And to seek to hold the line at Necessary Co-Operation and Stirling v. Maitland and then make warm noises about the possibility of some of these "necessary" implied terms (if sufficiently defined /narrowed as i have suggested) coming in under the umbrella of those Agreed Implied terms- in the skeleton argument*".[957] This is what appears to have informed the first bullet point in my email in **POL00006513**, i.e. noting that Lord Neuberger and Lord Grabiner QC had warned against conceding any implied terms (and advising that if any were to be conceded, this should only be on a 'necessary cooperation' basis as David Cavender QC and I had suggested).

975. I note that Lord Neuberger and Lord Grabiner QC remained of this view; when advising on POL's updated draft grounds of appeal (which no longer expressly conceded any implied terms), Lord Grabiner QC commented:

> "*David and I think the draft covers the points. We do not think that concessions should be made, eg on the implied terms, because, as previously advised, we think the co-operation and Stirling v Maitland implications are effective and would be readily implied in this case without the need to manufacture further terms which is what the Judge in his wisdom has done*".[958]

976. With reference to **Q116.2**, based on searches of my email records and calendar appointments I do not believe I had any conferences with Lord Neuberger or Lord Grabiner QC about the Recusal Application other than: (i) a meeting I attended

[956] See for example WBON0001541.
[957] WBON0001575.
[958] WBON0000291; cf. POL00284926.

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with Lord Grabiner QC on 2 April 2019 in advance of the Recusal Application hearing the following day; and (ii) the Subcommittee meeting on 24 April 2019 (discussed below). The meeting on 23 April 2019 to which **POL00006513** refers was to discuss the prospective appeal against the Common Issues Judgment. I had a number of meetings and calls with David Cavender QC during this period (including some with POL client contacts), however I cannot see from those emails or appointments that any of them were for the specific purpose of discussing the Recusal Application as opposed to wider aspects of the case in which David Cavender QC was involved (for example, the proposed appeal against the Common Issues Judgment).

*Subcommittee meeting on 24 April 2019 (**Q117**)*

977. By **Q117** I am referred to the minutes of the POL Board Subcommittee meeting on 24 April 2019 (**POL00006755**). I do not believe that I have seen these minutes before and this appears to be confirmed by their absence from my firm's file. I recall that the purpose of this meeting was to discuss the tactical approach to the appeals against the Recusal Judgment and the Common Issues Judgment, specifically whether they should be joined and run together or should proceed separately. I recall that HSF, who by this time had been brought in to advise the board, suggested keeping the appeals separate, whereas the Counsel team's view was that it was more coherent and likely to be tactically advantageous for them to be dealt with together. I do not recall any other differences of opinion, although my recollection of this meeting is impressionistic rather than detailed and I do not recall speaking at it (and for these same reasons, I have no reason to doubt the accuracy of the minutes). To the best of my recollection, there was no disagreement as to the fact that (i) the application for permission to appeal

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the Recusal Judgment (which by this time had been lodged) should be maintained; and (ii) that an application for permission to appeal the Common Issues Judgment should be made. In respect of both appeals, my recollection is that POL were primarily merits-driven and their key concern was therefore whether the prospects of success were good. As such, POL were content to accept Counsel's clear advice that both appeals were justified on the merits (though I recall the Subcommittee asking probing questions about the recusal appeal in particular). As to the Common Issues appeal, as I have explained above, the main consideration was not whether an appeal should be brought, but whether it should be linked to the recusal appeal, how wide it should go and whether any concessions should be made as to the terms to be implied into POL's contracts with SPMs.[959]

(v) Refusal of permission to appeal the Recusal Judgment (Q118)

978. By **Q118**, I am asked to consider **POL00023207**, which is Lord Justice Coulson's decision dated 9 May 2019 (the "**PTA Decision**") refusing POL's application for permission to appeal the Recusal Judgment. I am asked to set out whether, on reflection, I accept a number of criticisms that Lord Justice Coulson made therein.

979. ***First***, I address Lord Justice Coulson's criticism that POL's application misrepresented the facts in dispute during the CIT (§§21-23, **Q118.1**). I do not accept this suggestion; in particular, I do not agree that the Recusal Application

[959] Later, towards the end of May 2019 after Lord Justice Coulson had refused permission to appeal the Recusal Judgment, Helen Davies QC was instructed to lead on the Common Issues appeal. I recall that she advised that the scope of the proposed appeal should be narrowed so as to remove the procedural unfairness grounds. By this time however, HSF were primarily advising POL on the appeal strategy.

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was based on factual findings made by Mr Justice Fraser which POL itself had put in issue:

979.1. There was in my view a very significant difference between the Claimants' case and POL's case in relation to 'post-contractual' matters, namely that POL considered those matters inadmissible and that post-contractual factual findings were not needed to resolve the Common Issues (save in a couple of very narrow respects addressed for example at fn. 758); whereas the Claimants actively invited findings on these matters. This was consistent with the witness statements that POL served where it repeatedly explained that its evidence was on matters it expected an SPM to know at the time of contracting. For example, Angela Van Den Bogerd's evidence on training was expressed to be limited to the "*level of information to be known by an applicant from their own enquiries when applying to be a Subpostmaster or to be communicated to an applicant during the appointment process*".

979.2. In relation to the two examples given in the PTA Decision (§21):

(i) The PTA Decision refers to Nick Beal giving "*a good deal of evidence about the NFS[P]*". However, his witness statement only included seven paragraphs about the NFSP which explained who the NFSP were and what they did; being the type of information that a person would likely know or could have found out when applying to be an SPM.

(ii) I accept that findings were sought on Mr Abdulla's use of the NBSC helpline in POL's written closing submissions, but that was only in

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relation to credit and was later withdrawn – I address this further below at §981.4 and §982. In the end, no part of POL's case on the Common Issues relied on factual findings being made about how SPMs used the helpline in practice.

979.3. Looking back now at the witness statements that POL served, I do think the evidence of Helen Dickinson on the risks of fraud in the branch network could have been better explained to make clear that it was intended to describe the general risk of fraud in any retail-type business faces, and thus formed part of the objective background facts known to an SPM at the time of contracting. I also think, on reflection, that the last five paragraphs of Angela Van Den Bogerd's statement on the topic of responsibility for shortfalls went over the line of admissibility.

980. ***Second***, I address Lord Justice Coulson's criticism that POL itself put issues into dispute through its cross-examination of the Lead Claimants (PTA Decision, §25, **Q118.1**). As to this, there is in my mind an important difference between POL leading evidence through its own witness statements and cross-examining the SPM's evidence. All of the Lead Claimants gave extensive evidence in their witness statements on events that took place after they became SPMs. I do not believe that POL should have been criticised for cross-examining on post-contractual facts that the Claimants themselves put into evidence through their statements. POL was entitled to challenge the accuracy of the Claimants' evidence whilst also maintaining that it was inadmissible and not seeking findings on those matters. Similarly, the Claimants' Counsel elected to cross-examine POL's witnesses on post-contractual matters, but it would be wrong to characterise that as POL putting those points into dispute.

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981. ***Third***, I address Lord Justice Coulson's point that it was appropriate for Mr Justice Fraser to make findings of fact in respect of credit arising from the Post Office's cross examination (§§24-26, **Q118.2**). I have explained the approach POL took to the cross-examination of the Lead Claimants in the CIT at §§765-678 above in response to the Inquiry's **Q90.4**. In POL's written closing submissions, the key point on which POL said that the Claimants' evidence might be relevant was the question whether they had received a copy of their SPM contract (paragraph 560). POL's primary position was that much of even this evidence was irrelevant because, other than Ms Stubbs, each Lead Claimant had signed a document accepting their contract terms (paragraph 570). Its alternative position was that the Claimants had, in fact, received their contract terms and in that respect made a few limited submissions as to credit:

981.1 Of the six witnesses called by the Claimants, no findings as to credit were sought in respect of three: Ms Stubbs,[960] Ms Stockdale,[961] and Ms Dar.[962]

981.2 In relation Mr Bates, POL's submissions as to credit went to the timing of when he had received his SPM contract. Those submissions were based on pre-contractual events around the time of his appointment, save for one letter that Mr Bates sent after he was appointed as an SPM which referred to his contract as being "*very wordy*" indicating that he did have a copy of the contract.[963]

[960] POL's written closing submissions, paragraph 578.
[961] Ibid, paragraph 597.
[962] Ibid, paragraph 598.
[963] Ibid, paragraph 577(b).

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981.3 In relation to Mr Sabir, there was a single sentence that made a minor comment on credit – this entirely turned on pre-contractual events.[964]

981.4 There was a single paragraph submission as to credit in respect of Mr Abdulla, which in part referenced post-contractual events.[965] However, POL subsequently refined its position in respect of Mr Abdulla. Following the filing of its written closing submissions, Mr Justice Fraser invited a submission from POL about how it should address findings as to credit. This was filed on 17 December 2018.[966]

> *"Post Office's position is that in making those findings, and taking that view on credibility, the Court should:*
>
> *(a) Take account of evidence given by witnesses on matters within the scope of the Common Issues trial. So, for example, the Court's findings on whether Mr Bates received a copy of the SPMC will presumably take into account the evidence he gave on that issue, and on associated issues raised in cross-examination (for example, whether he is careful generally, whether he had a copy of the SPMC when writing to Post Office in August 1999, and so on).*
>
> *(b) Take account of evidence on matters which go to the witnesses' credibility, but do not risk trespassing on any future trial, because they do not go to issues of breach or causation. For example, Mr Abdulla's evidence on whether Christine Adams and Christine Stephens were the same person can be taken into account in assessing his credibility.*
>
> *(c) Not take account of evidence which, while it may go to the witness's credibility, risks trespassing on a future trial or trials. For example, the Court should not make any findings on whether Mr Abdulla falsely accounted, even though such matters might be relevant to his credibility. Nor (staying with this example) should the Court base any findings on Mr Abdulla's credibility which are*

[964] Ibid, paragraph 589: "*His evidence that he thought the 'standard' term contract in fact contained his obligations to do certain things at the branch in his first 6 months as SPM was not credible*".
[965] Ibid, paragraph 592.
[966] WBON0001717; POL00259980.

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> *necessary to decide the Common Issues on his evidence as to the allegations of false accounting made against him."*

982. I therefore do not believe that POL's submissions on credit invited Mr Justice Fraser to make findings of fact on post-contractual matters (save for the limited point set out at (b) above in respect of Mr Abdulla, which POL maintained for the reasons set out therein). I can understand why POL's approach may have appeared confusing, because POL did cross-examine on post-contractual matters and then, in respect of Mr Abdulla, did initially seek a very limited number of post-contractual factual findings that went to his credit.

983. ***Fourth***, I deal with Lord Justice Coulson's criticism that it was appropriate for Mr Justice Fraser to make the findings of fact that he did, including in respect of post-contractual matters (§§27-28, **Q118.3**). As I have explained above (e.g. §§699, §712.3, §714), and as was reflected throughout the advice WBD and Counsel provided to POL before, during and after the CIT, there were a small number of areas where it was accepted that limited evidence on post-contractual points was permissible. The basis of the Recusal Application was that Mr Justice Fraser had made factual findings on post-contractual matters that went far beyond that permitted even allowing for those areas.

984. ***Fifth***, I address Lord Justice Coulson's point that the fact a judge may make unnecessary findings of fact would not give rise to apparent bias, unless it amounted to actual or apparent pre-judgment (PTA Decision, §30, **Q118.4**). I agree with this, and indeed this point had been carefully considered in the advice on recusal that was provided to POL. For example, it was dealt with in Lord Neuberger's note of advice dated 14 March 2019, at paragraph 18. In the instant

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case, the basis of the Recusal Application was that Mr Justice Fraser's unnecessary findings of fact had amounted to pre-judgment.

985. ***Sixth***, I address the charge that POL was "*wholly unjustified*" in criticising Mr Justice Fraser's repeated declaration that he was not making findings on breach etc. (PTA Decision, §§31-36, **Q118.5**). I accept that there is some nuance here. In the Common Issues Judgment, Mr Justice Fraser did explain that he was not making any findings as to breach, causation, or loss; and I recognise that in later trials he would not have been strictly bound to the observations he did make. However, overall I felt (with the benefit of Counsel's advice) that the number and nature of the observations he made, combined with the fact that they frequently went to matters of breach and liability, indicated that he would find it difficult to approach some of those issues with an open mind later on. To be clear, to my mind this did not amount to an accusation of bad faith on Mr Justice Fraser's part (cf. **POL00023207** at §34).

986. ***Seventh***, I consider Lord Justice Coulson's point that Mr Justice Fraser was entitled to form a critical view of witnesses (PTA Decision, §§41-45, **Q118.6**). I accept that a judge is entitled to form a critical view of witnesses, including (for the avoidance of doubt) where that witness is due to appear before them in a later trial. However, I did feel (and Counsel agreed) that the language Mr Justice Fraser adopted in relation to POL and its witnesses was excessively critical and that the phrase "*critical invective*", whilst strong, fairly reflected this. That said, the reference to Mr Justice Fraser's language and "*critical invective*" was the part of the recusal application I was least enthusiastic about. I did not consider that it added any substance (and as I recall, it was covered in a single paragraph of my

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fourteenth witness statement in support of the Recusal Application).[967] To the extent that there was a point to be made about Mr Justice Fraser's treatment of POL's witnesses, I felt that the strongest aspect of the argument was that he had criticised them for not covering certain topics in their statements, when they had excluded these matters on the advice of POL's lawyers.[968]

987. ***Eighth***, I address Lord Justice Coulson's criticism that the Recusal Application had 'no substance' (PTA Decision, §50; **Q118.**). I disagree with this point. As I have set out above at §946.5, the Recusal Application was based on the advice of Lord Neuberger, Lord Grabiner QC, and David Cavender QC, each of whom advised that there were (at the very least) reasonable grounds for making the application.

988. Overall, whilst I acknowledge that Lord Justice Coulson considered that the Recusal Application was not well-founded, in my view it was not unreasonable for POL to have made the application or indeed to have sought leave to appeal its refusal. POL had the benefit of strong advice from both Lord Neuberger and Lord Grabiner QC to the effect that (i) the application *was* well-founded, and (ii) an appeal against its refusal should be brought (and by this time both Lord Neuberger and Lord Grabiner QC had been acquainted with the case for around a month).[969] This view was also held by David Cavender QC, who was trial Counsel and had a deep knowledge of the underlying factual basis for the application, as well as our supporting cast of junior Counsel. Indeed, even after Lord Justice Coulson's PTA Decision both Lord Neuberger and Lord Grabiner

[967] POL00269105, paragraph 25.
[968] Ibid, paragraph 29.
[969] On POL's prospects of appealing the Recusal Judgment, see for example WBON0000169 and WBON0000172.

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remained of the view that Mr Justice Fraser had erred in his Common Issues Judgment, and had done so in such a way as to indicate that he ought to have been recused. Having reflected on the Order, Lord Neuberger said:[970]

> *"The clients will naturally feel both disheartened by the judgment and bemused by the fact that the view taken by an appeal court judge is entirely inconsistent with that of their legal advisers.*
>
> *As to being disheartened, the main appeal (on interpretation) is unaffected by the Coulson LJ judgment, at least in any direct sense. In case the Coulson LJ judgment is thought to be relevant to the main appeal, my experience over 45 years shows that successive setbacks in litigation come in two categories: (i) those which should make you realise that you are on the wrong track, and (ii) those which should stiffen your resolve. It is of course normally easy when it is all over to identify which category you were in, but harder to do this when one is in the middle of the litigation. Having said that, on the main interpretation issues, I remain firmly of the view that we are a category (ii) case. The issues actually decided by Fraser J involve applying what I regard as well-established principles of law, and in that connection I think he has gone seriously wrong. The reasons for my view are all to be found in the recently prepared grounds of appeal and skeleton argument.*
>
> *As to being bemused, when it comes to the recusal appeal we are in a more nuanced area of judgement, and there is, I acknowledge, at least in principle, a greater risk of this being a category (i) case. That was my main reason for leaving it to stew overnight. Having done that, I remain of the opinion that Fraser J should have been recused, despite the fact that Coulson LJ and Fraser J disagree: neither their reasons nor their identity has caused me to change my view."*

989. At the same time, and notwithstanding the strong advice received from Lord Neuberger, Lord Grabiner QC and David Cavender QC, WBD and POL were alive to the sensitivities attendant on making the Recusal Application (as were Counsel). Conscious effort was therefore made to bring the application to the Court's and Claimants' attention as soon as practicable after hand-down of the Common Issues Judgment, and close attention was paid to matters which could

[970] WBON0000148.

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give rise to any accusations of heavy-handedness, such as the tone of our correspondence with Freeths and the tactical approach to the appeals.

R. SUBSEQUENT EVENTS (INCL. Q119 and Q120)

990. This section relates to the period following the end of the HIT. Specifically, it addresses: (i) the extent of my/WBD's role in respect of criminal appeals at this time (**Q119**), (ii) the discovery and disclosure in Autumn 2019 of additional KELs which had not been disclosed to the Claimants prior to the HIT, and (iii) my role following the hand-down of the Horizon Issues Judgment (**Q120**).

(i) Criminal appeals (Q119)

991. By **Q119** I am asked to what extent WBD were instructed to advise POL in relation to criminal appeals, with reference to **POL00022933** (which is an email chain in March 2019 in which Amy Prime provided instructions to Brian Altman QC to consider the Common Issues Judgment and advise on whether it undermined the safety of historic criminal convictions).

992. WBD were not instructed to advise POL on these matters. Our involvement was limited to seeking advice from Brian Altman QC as set out in **POL00022933**, in keeping with our historic role as his instructing solicitors. His advice was received on 14 April 2019 and provided to POL the same day.[971] From mid-2019 Brian Altman QC's instruction was directed by HSF, and I was aware that when the Horizon Issues Judgment was delivered he was (as with the Common Issues Judgment) asked to consider it and to provide his views on its impact on historic

[971] WBON0001697; POL00273923; POL00023115.

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criminal convictions.[972] In connection with this, WBD collated information requested by Brian Altman QC where required to do so.[973]

(ii) Late disclosure of back-versions of KELs

993. Although not arising directly out of the Inquiry's questions, there is one matter which I have touched upon above (at §522 and §551.3) which I wish to address in a little more detail. This concerns WBD's discovery, in Autumn 2019, of the fact that Fujitsu held copies of historic versions of KELs which had not been disclosed to the Claimants (although the most recent versions of the relevant KELs had).

994. In summary, this came about as follows. In September 2019, POL was putting in place a new process for monitoring issues with Horizon and as part of that process POL and WBD became aware of a number of KELs and Peaks which were potentially relevant to the Horizon Issues, but which had not been disclosed as they were recently created. These documents were disclosed to Freeths under cover of a letter dated 25 September 2019.[974]

995. Freeths' response included a question about whether KELs which we had previously disclosed in January 2019 had been updated, such that new, more recent versions of these KELs now needed to be disclosed.[975] In response, we referred Freeths to our description of the KEL in the EDQ, which had stated:

> *"[t]he KEL only contains the current database entries and is constantly updated and so the current version will not necessarily reflect the version that was in place at the relevant time. The previous entries / versions of the current entries are no longer available".*

[972] WBON0001656; WBON0001660; WBON0000721.
[973] WBON0000723; WBON0000724.
[974] WBON0001653.
[975] POL00285257.

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996. That statement was based on information provided by Fujitsu and had been approved by them prior to the EDQ being filed in December 2017. However, since that time, we had been given reason to be less confident about the reliability of Fujitsu's instructions. With this in mind, Amy Prime reviewed our draft response to Freeths and commented: "*This needs double-checking with [Fujitsu]*".[976]

997. Fujitsu were asked to confirm the wording above on 30 September 2019.[977] On 1 October 2019, Matthew Lenton of Fujitsu responded as follows:

> "*This part: "[t]he KEL only contains the current database entries"– I'm not completely clear what that is intended to mean, but it may be clarified by the following: This is correct: "is constantly updated and so the current version will not necessarily reflect the version that was in place at the relevant time" The second sentence is not correct: "The previous entries / versions of the current entries are no longer available". You may recall that there are three status categories of KEL: current, deprecated and deleted. For those that are current or deprecated, they have been updated in such a way that previous content is not permanently overwritten, but instead a new version is created, with the previous versions being retained and accessible. For those that have been deleted, only the last version at the point of deletion has been retained*" (emphasis added).[978]

998. This was a surprise to me and my team. On the face of it, the statement given in the EDQ was incorrect, and we had also not provided disclosure of historic versions of some KELs which had been relied upon by the parties and their experts at the HIT. Amy Prime spoke with Matthew Lenton on the phone that day and took a record of his explanation:

> *"When Fujitsu revise the contents of an existing KEL they would not overwrite the KEL but take a copy of the KEL, make the changes and save as a new document. The previous versions of the KELs would be kept for version control and sit underneath … The previous versions are*

[976] WBON0000324.
[977] WBON0000325.
[978] POL00043025.

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held in the same database as the latest version of the KELs. They are not actively archived off to a different location. When providing us with the documents for disclosure, Fujitsu just extracted the latest version of each KEL. Without doing some further investigations, Fujitsu do not know whether all sequential KEL versions are there.

- *Current and deprecated KELS should have previous versions but would need to double-check*
- *Deleted KELs were flattened, meaning that the previous versions which were held under the latest version were "knocked out"".*[979]

999. On 2 October 2019, Amy asked Matthew Lenton to give an estimate as to how long it would take to extract historic versions of KELs and on 4 October 2019, I followed up with asking for an estimated timeframe as a matter of urgency.[980] We also took steps to satisfy ourselves that other documents produced by WBD had not contained the same inaccurate statement as the EDQ. We took advice from Counsel who confirmed our view that the inaccuracy needed to be drawn to Freeths' and the Court's attention promptly.

1000. We therefore wrote to Freeths on 3 October 2019 in the following terms:

"In respect of your query regarding the fact that intervening changes to KELs are not captured on the face of the KELs disclosed, we have made further enquires with Fujitsu to confirm our understanding that previous versions of the KELs are no longer held. We regret to say that these enquiries have revealed that our understanding was wrong. As you will be aware, POL's EDQ stated that "[t]he KEL only contains the current database entries and is constantly updated and so the current version will not necessarily reflect the version that was in place at the relevant time. The previous entries / versions of the current entries are no longer available". This statement was based on info provided by Fujitsu. In response to our recent enquiries, however, we were informed by Fujitsu on 30 September 2019 that this is incorrect and that previous versions of KELs are available. This takes POL greatly by surprise. It relied on the information provided by Fujitsu at the time of filing its EDQ that such documents were not available. It is extremely sorry that this information

[979] WBON0000137.
[980] POL00043025.

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> *was incorrect. Regardless of whether these document may or may not be "adverse", POL has taken immediate steps towards arranging for the previous versions of these KELs to be extracted and has instructed Fujitsu to begin producing a script to extract the documents into a readable HTML format. Unless you disagree, once this script has been produced we will ask Fujitsu to extract all of these versions.*
>
> *When this has been done, again unless you disagree, we propose to take immediate steps to disclose previous versions of the KELs which were referred to by either Dr Worden or Mr Coyne in their expert reports or the joint statements or the bug table, or were for any other reason included in the trial bundle. Disclosure of the previous versions of these KELs (where there are previous versions) will be given as a matter of urgency. We invite you to tell us whether the Claimants also wish to be provided with disclosure of previous versions of the KELs which were not referred to by the experts or included in the trial bundle. Given the seriousness of this matter, we propose to notify the Managing Judge of this development immediately and will send him a copy of this letter under cover of an explanatory email".*[981]

1001. We informed the Court in similar terms on the same day,[982] and started work on what would have been my twentieth witness statement in the expectation that the Court would order POL to file a witness statement to address the misstatement in the EDQ. In the event, the Court did not seek any further explanation of this issue and so this draft witness statement was not finalised and served.

1002. Disclosure to Freeths of an additional 346 KELs (being prior versions of the KELs in the HIT Bundle) was made under cover of a letter dated 24 October 2019. That letter also set out that we estimated that there were around 5,000 previous versions of KELs in total. We offered these further KELs to Freeths if they wished, but they did not ask for them. I inferred from this that they did not consider them useful – they were only earlier versions of KELs they already had

[981] POL00285691
[982] POL00285690.

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– or Mr Coyne was already aware that back versions were available from when he inspected the KEL database at Fujitsu's offices (where I understood the back versions would have been visible on screen).

1003. My understanding at the time the EDQ was filed and served was that previous versions of existing KELs were not available. The EDQ was prepared on that basis and sent to Fujitsu for approval (who commented on our description of the KEL database but did not object to the statement that "*The previous entries / versions of the current entries are no longer available*").[983] As soon as we discovered the error, we took steps to correct the position and to provide disclosure to the Claimants of what seemed to us to be the most important category of historic KELs. For completeness, in the course of reviewing my firm's records following the end of the group litigation I have identified an email from Matthew Lenton dated 13 February 2019 in which I was in copy, which made reference to "*deprecated KELs*", identifying them as "*superseded versions of live or deactivated KELs*" and stating that Fujitsu had "*only provided the most recent versions, so we have not separately provided these superseded versions*".[984] This email was in the context of an enquiry about a different category of KELs (known as 'deleted' KELs) to which Mr Coyne had referred in Coyne 2, which Mr Coyne said had not been disclosed. Fujitsu confirmed that the KELs to which Mr Coyne referred had all been deleted and therefore were "*no longer retrievable*"; and their reference to historic versions of live and 'deprecated' or 'deactivated' KELs was incidental to this, and I am confident that it was simply not picked up by my team at the time (their focus being on dealing with Mr Coyne's query about

[983] POL00285786.
[984] WBON0001430.

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deleted). I am certain that I was not aware of the availability of back versions of KELs, or the fact that they had not been extracted and provided by Fujitsu, prior to this matter being drawn to my attention in early October 2019 (after which steps were immediately taken to rectify the position).

(iii) Work since the Horizon Issues Judgment was handed down (Q120)

1004. Following the hand-down of the Horizon Issues Judgment on 16 December 2019, my involvement largely came to an end. The GLO had by this time settled following a nine-day mediation, and HSF were the lead lawyers for Horizon-related matters (which had been the case from around mid 2019).

1005. During the period from hand-down of the Horizon Issues Judgment until 26 February 2020, the further work WBD performed for POL "*in relation to the Horizon IT system*" (which I take to include POL's related accounting and business practices) largely consisted of:

79.1 Supporting HSF, as requested, in its post-settlement work on the group litigation by providing information and offering my views where required (for example, in relation to costs issues, the discharge of the GLO, and the implementation of the settlement agreement e.g. by assisting in having Claimants' bankruptcies annulled).

79.2 Providing occasional input on POL's ongoing programme of work to modify its business practices in order to comply with the Common Issues Judgment.

79.3 Providing information and documentation to HSF and Peters & Peters (POL's new criminal lawyers) based on WBD's historic involvement in the

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Horizon-related matters. A number of the requests to which we responded during this period were in connection with dispute resolution processes and other remediation activities that (as I understand it) fall outside the terms of POL's waiver of privilege.

79.4 Other work falling outside the terms of POL's privilege waiver.

1006. Overall I would estimate that the proportion of my time spent on this work was less than 10%.

S. CONCLUSION (INCL. Q121 and Q122)

1007. I conclude my statement with some observations by way of overview and conclusion, including with reference to the Inquiry's **Q121** which asks, "*[i]n hindsight, is there anything that you would have done differently in respect of the matters raised in your statement*"?

1008. Throughout this statement I have endeavoured to acknowledge where mistakes were made by me or my firm and where misunderstandings arose, and to explain how these came about and what was done to rectify them. For example, the disclosure of E&Y's audit reports (at §§672-694), the evidence around counter injections (at §§841 ff), the late disclosure of Peak PC0273234 (at §§631-647), etc.). I believe that in each of these instances, these were genuine mistakes and that I and my team acted appropriately and in good faith. In my view it is not surprising that there were some mistakes and misunderstandings given the scale, complexity and the pace at which we were working.

1009. In this regard, and as a general point, I consider that it would have been helpful to have had a second matter Partner instructed for POL, at least during 2018

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when we were preparing simultaneously for both the CIT and the HIT. I do not think this was necessary for the duration of the group litigation; on the whole, the size and structure of the WBD team worked well, albeit that we were busy. It can be difficult to decide on the structure of a team for a large piece of litigation, and we considered the matter with care and kept it under review. However, the structure and rapidity of the trial timetable, with limited time between two major trials (both of which were dealing with significant and complex cross-cutting issues), and a significant amount of evidence for the HIT falling due during the CIT, inevitably put me and my team under pressures during the CIT and in the run-up to the HIT that were extreme even in the context of heavy commercial litigation.

1010. In relation to the Common Issues, I reflect back on the decision made to oppose all the Claimants' implied terms, including duties to act in good faith, which were at the heart of the CIT. This was done at the time in the belief that even conceding a few, apparently reasonable, implied terms would open the door to more on onerous terms. I still believe that was a reasonable strategy (and one I note that Lord Grabiner and Lord Neuberger endorsed in relation to the CITJ appeal). But, taking such a rigid legalistic approach gave an impression that POL was unyielding and perhaps unreasonable, and this may have contributed to Mr Justice Fraser's overall perception of POL and my firm's conduct of the litigation.

1011. A further consideration which I have touched upon above, relates to our preparation of the evidence of the Fujitsu witnesses. I have explained that Fujitsu was the ultimate source of all our information about the Horizon IT system. Consequently, when it came to factual evidence about the workings of the Horizon system, the relevant witnesses had to come from Fujitsu; there was no

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other option. At the same time, POL, the Counsel team and I were aware at the time of the group litigation that reliance on Fujitsu was not without challenges.

1012. The difficulty when it came to the preparation of the HIT witness evidence, however, was that there was insufficient time both (i) to probe the factual content of the draft statements in the level of detail that my team would have ideally liked, and (ii) to reconsider the approach when it became apparent that the witnesses Fujistsu had held out, even between them, could not speak to all of the Horizon Issues with level of the detail or authority POL required. This combination of factors was, in my assessment, the main reason why the factual evidence for the HIT contained inaccuracies.

1013. With the full benefit of hindsight (knowing how the evidence came out), I would probably have wanted to start proofing the Fujitsu witnesses earlier, as this may have revealed gaps and deficiencies in their knowledge at a stage when we may have still had time to reconsider the approach (for example, by calling a larger number of witnesses to cover individual topics within the Horizon Issues). Whilst I might have wanted to start proofing the witnesses earlier, we were constrained in practice because many points that Fujitsu were ultimately asked to address did not became clear (or even known) until POL received the Claimants' evidence and Mr Coyne's first report in Autumn 2018. We could therefore have started the process of interviewing potential witnesses sooner, but it is hard to say whether that would have avoided the later problems encountered with the HIT evidence.

1014. The other point on which I consider in hindsight we might have acted differently is in relation to the KEL database. I have explained above why, based on the information we received from Fujitsu, I thought in October 2017 that the KEL was not likely to contain any information of value to the Claimants' case, and was

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likely to be disproportionate to search and analyse in detail (see §§553-594 above). Subsequent experience showed that was incorrect, in that analysis of the KEL by the parties' experts *did* reveal evidence of bugs. I naturally look back and wonder whether we might have pressed Fujitsu harder or earlier for more detailed information about the KEL. It is, however, impossible for me to say whether pushing Fujitsu on this point earlier in 2017 would have made a meaningful difference, as they were clear in their conviction that the KEL could not be relevant to the Claimants' claims (and it was the experts, Mr Coyne and Dr Worden, who showed the contrary to be true). Further, in any event, I do not believe that this would ultimately have made a meaningful difference to the overall trajectory of the litigation. Mr Coyne was given access to the KEL at the time the Court first started making orders for disclosure (and nearly a year before the HIT began), and his and Dr Worden's detailed investigations into it followed quickly thereafter.

1015. Generally, I observe that the group litigation was an adversarial process and that meant sometimes advising that POL take steps that were adverse to the interests of some SPMs. Nevertheless, throughout my work for POL, I believe my firm was consistent in advising POL to accept when it had got things wrong, and throughout we advised POL to explore settlement options at appropriate junctures. I believe that our advice was reasonable and in line with my professional duties as a solicitor. As I have explained, I had no difficulty in giving firm advice to POL. I had a longstanding professional relationship with POL by the time of the group litigation. When acting on a matter for so long, it is possible that some measure of unconscious confirmation bias can influence one's thinking – that is almost inevitable – but POL never had any compunction about bringing

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in fresh advisers to give a second opinion (as they did, for example, with Linklaters during the Mediation Scheme, Deloitte, Jonathan Swift QC, David Cavender QC (part-way through the group litigation), Lord Neuberger and Lord Grabiner QC for the Recusal Application, and also Norton Rose and Herbert Smith Freehills) and so I do not believe that, if this did happen, it materially influenced the outcome.

1016. Finally, **Q122** of the Request asks me whether there are any other matters I would like to bring to the Chair's attention. As I hope is clear from this statement, I have endeavoured to provide the Inquiry with as much useful information as possible within the limits of the time available and the very large number of potentially relevant documents. To that end, I have not strictly confined myself to the questions set out in the Request but rather have sought to provide the relevant context to those questions, and my answers, wherever helpful and practicable to do so. I hope that my additional observations throughout this statement will be of assistance to the Inquiry in its important task.

Statement of truth

I believe the content of this statement to be true.

Signed: ..... GRO ..

Andrew Parsons

Date: ..... 17 April 2024 | 11:46 BST

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ANNEX 1

INDEX OF DOCUMENTS REFERENCED IN WITNESS STATEMENT OF ANDREW PAUL PARSONS

No.	Document Reference	Document
1.	**POL00099063**	Second Sight's Interim Report dated 07.07.13
2.	WBON0000726	Email chain between Ivan Swepson, Rodric Williams, Gavin Matthews and Andrew Parsons dated 05.04.13 – 08.04.13
3.	POL00098035	Email from Andrew Parsons to Simon Baker, Lin Norbury, Gareth Jenkins, Dave Posnett and Rod Ismay dated 19.04.13
4.	POL00098294	Email chain between Ron Warmington, Simon Baker, Alwen Lyons, Alan Bates, Kay Linnell, Susan Crichton, Andrew Parsons, Andrew Winn, Craig Tuthill, Dave Posnett, Gareth Jenkins, Ivan Swepson, Lin Norbury, Rod Ismay and Rodric Williams dated 11.05.13 – 17.05.13
5.	WBON0000736	Email exchange between Andrew Parsons, Rodric Williams and Simon Baker dated 22.05.13
6.	WBON0000343	Email chain between Ian Henderson, Alwen Lyons, Susan Crichton, Steve Allchorn, Ron Warmington, Rosie Gaisford and Andrew Parsons dated 24.05.13 – 10.06.13
7.	WBON0000344	Horizon Spot Review 5 Response – Centrally Input Transactions undated
8.	POL00130311	Email chain between Simon Baker, Steve Allchorn and Andrew Parsons dated 12.06.13 – 19.06.13
9.	POL00188299	Notes from Second Sight / Post Office Meeting. Attendees: Ron Warmington, Pete Newsome, Steve Allchorn, Alwen Lyons, Lesley Sewell and James Davidson dated 12.06.13
10.	POL00098619	Email chain between Alan Bates, Ron Warmington, Simon Baker, Steve Allchorn, Pete Newsome, Gareth Jenkins, Rod Ismay and Andrew Parsons dated 13.06.13 – 20.06.13
11.	WBON0000739	Email chain between Ian Henderson, Alwen Lyons, Susan Crichton, Steve Allchorn and Andrew Parsons dated 24.05.13 – 20.06.13
12.	POL00031348	Email chain between Simon Baker, Steve Allchorn and Andrew Parsons dated 12.06.13 – 19.06.13
13.	POL00031350	Email chain between Ron Warmington, Rod Ismay, Angela Van Den Bogerd, Steve Allchorn and Andrew Parsons dated 05.02.13 – 20.06.13
14.	WBON0000737	Email chain between Simon Baker, Andrew Parsons and Steve Allchorn dated 13.06.13 – 18.06.13.
15.	WBON0000361	Email from Andrew Parsons to Steve Allchorn dated 20.06.13
16.	WBON0000363	Draft Horizon Spot Review 5 – Response - undated
17.	WBON0000389	Email chain between Steve Allchorn, Ron Warmington and Ian Henderson dated 21.06.13 – 24.06.13.

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No.	Document Reference	Document
18.	POL00243412	Horizon Spot Review 5 Response – Bracknell Site & Centrally Input Transactions undated
19.	WBON0000743	Email exchange between Andrew Parsons, Rodric Williams and Andrew Pheasant dated 01.07.13
20.	POL00296872	Email chain including Michael Rudkin, Ron Warmington, Simon Baker and Rodric Williams dated 01.07.13
21.	WBON0000919	Email chain between Simon Baker, Andrew Parsons and Ron Warmington dated 01.08.13 – 05.08.13
22.	WBON0000366	Email from Rosie Gaisford to Andrew Parsons dated 05.07.13
23.	**POL00021822**	Email from Rodric Williams to Andrew Parsons and Hugh Flemington dated 27.06.13
24.	**POL00021823**	Raising Concerns with Horizon dated 17.12.12
25.	**POL00021824**	Raising Concerns with Horizon dated 17.12.12
26.	WBON0000741	Email chain between Andrew Parsons and Rodric Williams dated 27.06.13
27.	WBON0000364	Email chain between Andrew Parson and Rodric Williams dated 27.06.13
28.	WBON0000365	Draft Response to Second Sight Interim Report - undated
29.	WBON0000742	Email from Rodric Williams to Andrew Parsons dated 28.06.13
30.	POL00341337	Email chain between Rodric Williams, Andrew Parsons and Andrew Winn dated 28.06.13
31.	WBON0000131	Email chain between Simon Baker, Rodric Williams, Gavin Matthews, Andrew Parsons and Andrew Pheasant dated 28.06.13 – 01.07.13.
32.	POL00407496	Email chain between Simon Baker, Rodric Williams, Gavin Matthews and Andrew Parsons dated 28.06.13 – 01.07.13.
33.	WBON0000746	Email chain between Simon Baker, Rodric Williams, Gavin Matthews and Andrew Parsons dated 28.06.13 – 01.07.13
34.	WBON0000757	Email chain between Mark Davies, Lesley Sewell, Alwen Lyons, Susan Crichton, Rodric Williams, Hugh Flemington, Nina Arnott, Ruth Barker, Simon Baker and Andrew Parsons dated 03.07.13
35.	POL00190547	Draft Letter to James Arbuthnot MP undated.
36.	WBON0000759	Email chain between Andrew Parsons and Rodric Williams dated 04.07.13
37.	WBON0000135	Email exchange between Andrew Parsons, Rodric Williams and Hugh Flemington dated 04.07.13
38.	WBON0000136	Draft letter to James Arbuthnot MP
39.	POL00021745	Email chain between Ian Henderson, Simon Baker, Mark Davies, Martin Edwards, Lesley Sewell, Susan Crichton, Alwen Lyons, Angela Van Den Bogerd, Rodric

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No.	Document Reference	Document
		Williams, Hugh Flemington, Nina Arnott, Ruth Barker, Paula Vennells and Andrew Parsons dated 05.07.13
40.	WBON0000760	Email chain between Ian Henderson, Simon Baker, Mark Davies, Martin Edwards, Lesley Sewell, Susan Crichton, Alwen Lyons, Angela Van Den Bogerd, Rodric Williams, Hugh Flemington, Nina Arnott, Ruth Barker, Paula Vennells and Andrew Parsons dated 05.07.13
41.	WBON0000762	Email chain between Ian Henderson, Simon Baker, Mark Davies, Martin Edwards, Lesley Sewell, Susan Crichton, Alwen Lyons, Angela Van Den Bogerd, Rodric Williams, Hugh Flemington, Nina Arnott, Ruth Barker, Paula Vennells and Andrew Parsons dated 05.07.13
42.	WBON0000134	Email chain involving Andrew Parsons, Andrew Pheasant and Rodric Williams dated 05.07.13
43.	WBON0000763	Email chain between Ian Henderson, Susan Crichton, Hugh Flemington, Rodric Williams and Andrew Parsons dated 07.07.13
44.	POL00039991	Email chain between Martin Edwards, Paula Vennells, Mark Davies, Alwen Lyons, Lesley Sewell, Susan Crichton, Hugh Flemington, Rodric Williams, Ruth Barker, Nina Arnott and Andrew Parsons dated 08.07.13
45.	WBON0000766	Email from Susan Crichton to Andrew Parsons dated 12.07.13
46.	WBON0000767	Email chain between Susan Crichton, Andrew Parsons and Rodric Williams dated 12.07.13
47.	POL00230639	Email chain between Susan Crichton, Andrew Parsons and Rodric Williams dated 12.07.13
48.	POL00407537	Email chain between Susan Crichton, Rodric Williams, Andrew Parsons and Alwen Lyons dated 12.07.13
49.	WBON0000768	Email chain between Alan Bates, Paula Vennells, Alwen Lyons, Susan Crichton, Rodric Williams and Andrew Parsons dated 11.07.13 – 12.07.13
50.	WBON0000769	Email chain between Alan Bates, Paula Vennells, Alwen Lyons, Susan Crichton, Rodric Williams, Andrew Parsons and Hugh Flemington dated 11.07.13 – 12.07.13
51.	POL00407548	Email chain between Susan Crichton and Gavin Matthews dated 17.07.13 – 18.07.13
52.	WBON0000775	Email chain between Susan Crichton, Andrew Parsons and Mark Davies dated 17.07.13 – 19.07.13
53.	WBON0000776	Email chain between Simon Baker, Martin Edwards, Alwen Lyons, Mark Davies, Susan Crichton and Andrew Parsons dated 17.07.13 – 19.07.13
54.	**POL00117035**	Mediation Proposal
55.	**POL00117034**	Email chain between Andrew Parsons, Mark Davies, Susan Crichton, Alwen Lyons, Gavin Matthews, Simon Richardson, Hugh Flemington, Rodric Williams and Jarnail A Singh dated 19.07.13 – 21.07.13
56.	POL00192226	Email chain between Simon Baker and Ron Warmington dated 16.07.13 – 17.07.13

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No.	Document Reference	Document
57.	POL00099445	Email chain between Peter Batten, Susan Crichton, Martin Edwards and Andrew Parsons dated 12.08.13 – 19.08.13
58.	WBON0000778	Email between Simon Baker and Ian Henderson, Ron Warmington, Susan Crichton, Andy Holt, Alwen Lyones, Andrew Parsons, Angela Van Den Bogerd, Mark R Davies, Alan Bates and Ruth Barker dated 24.07.13
59.	WBON0000784	Email between Simon Baker, Ian Henderson, Ron Warmington, Susan Crichton, Andy Holt, Alwen Lyons, Andrew Parsons, Angela Van Den Bogerd, Mark R Davies, Alan Bates, Kay Linnell and Ruth Barker dated 29.07.13
60.	WBON0000787	Email between Simon Baker, Ian Henderson, Ron Warmington, Susan Crichton, Andy Holt, Alwen Lyons, Andrew Parsons, Angela Van Den Bogerd, Mark R Davies, Alan Bates, Kay Linnel, Rodric Williams and Sophie Bialaszewski dated 06.08.13
61.	WBON0000790	Email between Simon Baker, Andrew Parsons, Susan Crichton and Rodric Williams dated 12.08.13
62.	WBON0000817	Terms of Reference For Working Group
63.	WBON0000789	Terms of Reference for Independent Expert
64.	WBON0000795	Email chain between Louise Kelly, Andrew Parsons and Rodric Williams dated 20.08.13
65.	WBON0000773	Email from Tracy Hunter to Andrew Parsons dated 18.07.13
66.	**POL00022598**	Helen Rose Report 12 June 2013
67.	WBON0000751	Email chain between Dave Posnett, Rodric Williams and Andrew Parsons dated 14.06.13 – 03.07.13
68.	POL00186743	Horizon Spot Review Response – SR01: Debt Cards – Cash Withdrawals and GIRO Payments undated.
69.	POL00193002	Prosecutions' Expert Evidence – Advice on the Use of Expert Evidence relating to the Integrity of the Fujitsu Services Ltd Horizon System dated 15.07.13
70.	WBON0000770	Email chain between Martin Smith, Susan Crichton, Rodric Williams and Andrew Parsons dated 17.07.13
71.	WBON0000765	Email chain between Hugh Flemington, Simon Clarke, Martin Smith and Andrew Parsons dated 08.07.13
72.	**POL00039996**	Email from Susan Crichton to Andrew Parsons, Simon Richardson, Gavin Matthews, Hugh Flemington, Rodric Williams and Jarnail Singh dated 16.07.13
73.	**POL00039993**	CCRC Reviewing Criteria
74.	POL00039996	Email from Susan Crichton to Andrew Parsons dated 16.07.13
75.	POL00407546	Email chain between Susan Crichton, Andrew Parsons and Gavin Matthews dated 16.07.13
76.	WBON0000133	Email chain between Susan Crichton, Andrew Parsons and Gavin Matthews dated 16.07.13 – 17.07.13

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No.	Document Reference	Document
77.	WBON0000777	Email chain Rodric Williams, Susan Crichton, Andrew Parsons and Jarnail Singh dated 22.07.13 – 23.07.13
78.	WBON0000782	Email from Gavin Matthews to Susan Crichton, Hugh Flemington, Jarnail Singh and Rodric Williams dated 26.07.13
79.	POL00297983	Draft Letter from Susan Crichton to S Berlin (CCRC) dated 26.07.13
80.	WBON0001705	Email Jarnail Singh to Simon Clarke and Andrew Parsons dated 23.10.13
81.	WBON0000806	Email chain between Andrew Parsons, Martin Smith, Rodric Williams and Harry Bowyer dated 05.08.13 – 06.08.13
82.	POL00145832	Draft Mediation Pack undated (circulated on 06.08.13)
83.	**POL00083932**	Minutes of Horizon Regular Call dated 19.07.13
84.	WBON0000772	Email from Ben Thorp to Andrew Parsons dated 18.07.13
85.	**POL00083933**	Minutes of Horizon Regular Call dated 24.07.13
86.	**POL00083931**	Minutes of Horizon Regular Call dated 07.08.13
87.	**POL00083930**	Minutes of Horizon Regular Call dated 14.08.13
88.	POL00193767	Notes from Call regarding Horizon Issues. Attendees: Rodric Williams, Martin Smith, Jarnail Singh, Rod Ismay, Dave Posnett, Rob King, Sophie Bialaszewski, Gayle Peacock, Steve Beddoe and Kendra Dickinson dated 31.07.13
89.	**POL00139691**	Email chain between Dave Posnett, Andrew Parsons, Rob King and Jarnail Singh dated 16.08.13 – 19.08.13
90.	POL00193596	Email chain between Dave Posnett, Andrew Parsons, Rob King and Jarnail Singh dated 16.08.13 – 19.08.13
91.	WBON0001710	Email chain involving Andrew Parsons, Martin Smith, Susan Crichton, Gavin Matthews and Simon Richardson dated 13.08.13 to 15.08.13
92.	WBON0000791	Email chain between Martin Smith, Susan Crichton and Andrew Parsons dated 13.08.13
93.	POL00229411	Advice Note on Disclosure – The Duty to Record and Maintain Material dated 02.08.13
94.	**POL00139693**	Email chain between Jarnail Singh, John Scott, Rob King, Martin Smith, Andrew Parsons, Rodric Williams, Susan Crichton, Hugh Flemington, Kayleigh-Lee Harding and Gayle Peacock dated 20.08.13 – 22.08.13
95.	POL00137427	Horizon Weekly Report
96.	WBON0000796	Email from Andrew Parsons to Dave Posnett, Rodric Williams, Jarnail Singh, Martin Smith, Rod Ismay, Andrew Winn, Rob King, Sophie Bialaszewski, Ruth Barker, Nick Beal, Gayle Peacock, Steve Beddoe, Jeff Burke, Kayleigh-Lee Harding and Kendra Dickinson dated 21.08.13
97.	WBON0000807	Email chain between Hugh Flemington, Rob King and Andrew Parsons dated 22.08.13

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No.	Document Reference	Document
98.	**POL00139696**	Protocol to Horizon Regular Calls
99.	**POL00139695**	Email from Gayle Peacock to Dave Posnett, Jeff Burke, Sophie Bialaszewski, Anne Allaker, Jarnail Singh, Rod Ismay, Rodric Williams, Rob King, Andrew Winn, Nick Beal, Kendra Dickinson, Steve Beddoe, Ruth Barker, Kathryn Alexander, Shirley Hailstones, Martin Smith, Andrew Parsons, Andy Hayward and Kayleigh-Lee Harding dated 09.10.13
100.	**POL00006485**	Notes from Conference with Brian Altman QC. Attendees: Brian Altman QC, Susan Crichton, Rodric Williams, Jarnail Singh, Simon Clarke, Harry Bowyer, Martin Smith, Gavin Matthews and Andrew Pearson dated 09.09.13
101.	POL00223376	Interim Review of Cartwright King's Current Process dated 02.08.13
102.	WBON0000393	Email chain between Brian Altman, Gavin Matthews, Simon Richardson, Susan Crichton, Jarnail Singh, Rodric Williams, Piero D'Agostino and Andrew Parsons dated 02.08.13 – 04.08.13
103.	WBON0000786	Email chain between Brian Altman, Gavin Matthews, Simon Richardson, Susan Crichton, Jarnail Singh, Rodric Williams and Piero D'Agostino dated 02.08.13 – 05.08.13
104.	POL00229413	Response to the Interim Review of Cartwright King's Current Process by Brian Altman QC dated 13.08.13
105.	**POL00139866**	Notes from Conference with Brian Altman QC. Attendees: Brian Altman QC, Susan Crichton, Rodric Williams, Jarnail Singh, Simon Clarke, Harry Bowyer, Martin Smith, Gavin Matthews and Andrew Pearson dated 09.09.13
106.	POL00333840	Email chain between Brian Altman and Gavin Matthews dated 20.09.13 – 23.09.13
107.	WBON0000725	Handwritten Note of Meeting. Attendees: Martin Smith, Andrew Bolc, Simon Clarke, Andrew Parsons, Jarnail Singh, Rodric Williams, Gavin Matthews and Brian Altman dated 04.10.13
108.	WBON0001702	Draft Settlement Policy dated December 2013
109.	POL00201950	Email chain involving Andrew Parsons, Angela Van Den Bogerd, Belinda Crowe, Rodric Williams, and Ron Warmington dated 17.03.14 – 19.03.2014
110.	**POL00021860**	Email chain involving Kendra Dickinson, Claire Parmenter, Andrew Parsons, Angela Van Den Bogerd, Sue Richardson, Rod Ismay, Sophie Bialaszewski, Gayle A Peacock and Belinda Crowe dated 20.12.13 – 27.12.13
111.	**POL00026656**	Face to Face meeting of the Working Group – Initial Complaint Review and Mediation Scheme dated 7.03.14
112.	WBON0000824	Minute – Initial Complaint and Mediation Scheme Working Group dated 1.04.14
113.	**POL00040066**	Post Office Limited Initial Complaint Review and Mediation Scheme Overview of Horizon and branch trading practices
114.	WBON0000396	Email from Claire Parmenter to Andrew Parsons dated 10.01.14
115.	WBON0000398	Email from Claire Parmenter to Andrew Parsons dated 11.02.14

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No.	Document Reference	Document
116.	WBON0000401	Draft Overview of Horizon and branch trading practices
117.	WBON0000402	Email chain involving Rod Ismay, Claire Parmenter, Alison Bolsover, Andrew Winn, Lorraine Garvey and Kay Wilson dated 30.01.14 – 11.02.14
118.	WBON0000812	Email from Andrew Parson to Nicky Mal and Belinda Crowe dated 21.02.14
119.	WBON0000813	Draft - Post Office Limited - Initial Complaint Review and Mediation Scheme - Overview of Horizon and branch trading practices undated
120.	WBON0000814	Email chain involving Claire Parmenter, Nicky Mal, Andrew Parsons, and Belinda Crowe dated 21.02.14
121.	**POL00026666**	Working Group for the Initial Complaint Review and Mediation Scheme Key points and actions from the conference call at 1pm on 12 December 2013
122.	WBON0000808	Email chain involving Andrew Pheasant, Zoe Topham, Alison Bolsover, Rodric Williams, Rebecca Butler, Stacey J Beresford, Jenny Smith, Darryl Webb and Pat Davies dated 13.12.11 – 26.11.13
123.	WBON0000951	Notice of Issue dated 28.11.13
124.	WBON0000809	Letter from WBD to Mr T Walters dated 13.12.13
125.	WBON0001670	Email from Andrew Parsons to Ron Warmington, Ian Henderson, Alan Bates, Anthony Hooper, Kay Linnell, Belinda Crowe and Angela Van-Den-Bogerd dated 13.12.13
126.	WBON0000950	Consent Order dated 29.01.13
127.	WBON0000890	Letter from WBD to The Court Manager dated 06.08.14
128.	WBON0000949	General Form of Judgment or Order dated 09.09.14
129.	WBON0001667	Consent Order dated 13.10.20
130.	**POL00026643**	Working Group for the Initial Complaint Review and Case Mediation Scheme Standing Agenda for Thursday Calls dated 13.03.14
131.	**POL00026672**	Minute - Working Group for the Initial Complaint Review and Case Mediation Scheme dated 10.07.14
132.	**POL00026652**	Working Group for the Initial Complaint Review and Case Mediation Scheme – Minute dated 17.04.14
133.	WBON0000821	Email chain involving Rodric Williams, Andrew Parsons, David Oliver, Angela Van-Den-Bogerd, Ron Warmington and Chris Holyoak dated 26.03.14 – 27.03.14
134.	WBON0000822	Email chain involving Shirley Hailstones, Rodric Williams, Angela Van-Den-Bogerd, Chris Aujard, Andrew Parsons, Kathryn Alexander, Ian Henderson and Ron Warmington dated 28.11.13 – 29.11.13
135.	WBON0000404	Email from Andrew Parsons to Ben Thorp, Thomas Lillie, Paul Loraine, Alexandra Ward, Claire Parmenter, Alva Leigh-Doyle, Andrew Pheasant, Richard Pike and Matthew Harris dated 21.05.14

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No.	Document Reference	Document
136.	WBON0000820	Email chain involving Andrew Parsons, Angela Van-Den-Bogerd, David Oliver, Chris Aujard, Ron Warmington, Ian Henderson and Chris Holyoak dated 26.03.14
137.	WBON0000847	Email exchange between David Oliver, Andrew Parsons, Chris Aujard, Rodric Williams, Belinda Crowe and Angela Van-Den-Bogerd dated 28.04.14 – 29.04.14
138.	POL00220159	Complaint Review and Mediation Scheme A paper prepared by Post Office to assist Second Sight with the finalisation of their Briefing Report – Part Two Version two undated
139.	WBON0000413	Horizon Tracker Spreadsheet – 13.05.15
140.	POL00021814	Email exchange between Andrew Parsons, Belinda Crowe, Chris Aujard, Angela Van-Den-Bogerd, Jonathan Swil and Rodric Williams dated 01.08.14 – 06.08.14
141.	POL00207175	Draft Post Office Response to Second Sight's Draft Part 2 Report - undated
142.	**POL00074462**	Email from Andrew Parsons to Chris Aujard, Rodric Williams, David Oliver, Belinda Crowe, Sophie Bialaszewski and Angela Van Den Bogerd dated 6 March 2014
143.	WBON0000853	Email chain involving Belinda Crowe, Amanda A Brown, Ian Henderson and Ron Warmington dated 09.05.14 – 22.05.14
144.	**POL00026662**	Minute – Initial Complaint Review and Mediation Scheme Working Group dated 20.05.14
145.	**POL00116487**	Email chain involving Andrew Parsons, Belinda Crowe, Amanda A Brown, Priti Singh and Chris Aujard dated 07.04.14 – 08.04.14
146.	**POL00129392**	Email chain involving Allison Drake, Shirley Hailstones, Jane M Owen, Joanne Hancock, Paul J Smith, Jim Coney, Keith Scott, Peter Todd, Wayne Z Griffiths, Wendy Mahoney, Shirley Hailstones, Jarnail Singh, Andrew Parsons, Chris Aujard, Rodric Williams, Angela Van-Den-Bogerd, Belinda Crowe, David Oliver and Kathryn Alexander dated 17.06.14 – 16.07.14
147.	WBON0000888	Email chain involving Andrew Pheasant, Peter Todd, Shirley Hailstones and Matthew Harris dated 25.07.14 – 31.07.14
148.	WBON0000889	Initial Complaint Review and Mediation Scheme Issues analysis dated 24.07.17
149.	WBON0000828	Email chain involving Andrew Parsons, Simon Clarke, Rodric Williams and Dave Posnett dated 14.06.13 – 09.04.14
150.	WBON0000834	Email chain involving Simon Clarke, Andrew Parsons, Rodric Williams and Dave Posnett dated 14.06.13 – 09.04.14
151.	WBON0000838	Email chain involving Andrew Parsons, Belinda Crowe, Angela Van-Den-Bogerd, Andy Holt, Rodric Williams, Steve Darlington and Ron Warmington dated 08.04.14 – 14.04.14
152.	WBON0000825	Email chain involving Jarnail Singh, Andrew Parsons, Rodric Williams, Jonny Gribben, Harry Bowyer and Andrew Bolc dated 07.04.14 – 08.04.14
153.	**POL00061369**	Email exchange between Jarnail Singh, Andrew Parsons, Angela Van-Den-Bogerd, Rodric Williams, Kathryn Alexander, Shirley Hailstones, dated 17.04.14 – 23.04.14

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No.	Document Reference	Document
154.	WBON0000443	Email exchange between Andrew Parsons, and Brian Altman dated 18.07.16 – 22.07.16
155.	WBON0000848	Email exchange between Shirley Hailstones, Andrew Parsons and Angela Van-Den-Bogerd dated 27.04.14 – 06.05.14
156.	WBON0000849	Email chain involving Andrew Parsons, Shirley Hailstones, Angela Van-Den-Bogerd and Rodric Williams dated 27.04.14 – 06.05.14
157.	**POL00046216**	Email from Andrew Parsons to Martin Smith dated 06.05.14
158.	**POL00046219**	Email exchange between Martin Smith and Andrew Parsons dated 07.05.14 - 08.05.14
159.	WBON0000850	Email chain involving Andrew Parsons, Jarnail Singh, Chris Aujard, Jessica Madron and Martin Smith dated 07.05.14 - 08.05.14
160.	WBON0000403	Email chain involving Rodric Williams, Jarnail Singh, Andrew Parsons, Chris Aujard, Jessica Madron and Martin Smith dated 07.05.14 - 08.05.14
161.	WBON0000851	Email chain involving Andrew Parsons, Shirley Hailstones, Kathryn Alexander, Angela Van-Den-Bogerd, Rodric Williams, Jarnail Singh, Chris Aujard, Jessica Madron and Martin Smith dated 07.05.14 - 09.05.14
162.	FUJ00087119	Email chain involving Sean Hodgkinson, James Davidson, Mark Westbrook, Rod Ismay, Pete Newsome, Torstein Godeseth, Bill Membery, Rodric Williams, Andrew Parsons and Michael Harvey dated 14.04.14 - 19.05.14
163.	**POL00117650**	Email exchange between Andrew Winn and Alan Lusher dated 15.10.08 – 23.10.08
164.	WBON0000826	Email chain involving Andrew Parsons, Belinda Crowe, Angela Van-Den-Bogerd, Andy Holt, Rodric Williams, Steve Darlington and Ron Warmington dated 08.04.14
165.	WBON0000827	Email chain involving Angela Van-Den-Bogerd, Belinda Crowe, Andrew Parsons, Andy Holt, Rodric Williams, Ron Warmington and Steve Darlington dated 08.04.14 – 09.04.14
166.	WBON0000835	Email chain involving Angela Van-Den-Bogerd, Belinda Crowe, Andrew Parsons, Andy Holt, Rodric Williams, Ron Warmington and Steve Darlington dated 08.04.14 – 14.04.14
167.	WBON0000837	Email exchange between Rodric Williams and Andrew Parsons dated 14.04.14
168.	WBON0000845	Email chain involving Andrew Parsons, Rodric Williams and James Davidson dated 14.04.14 – 22.04.14
169.	POL00204068	Initial Complaint Review and Mediation Scheme Horizon Data document dated 22.04.14
170.	WBON0000852	Email chain involving Andrew Parsons, Angela Van-Den-Bogerd, Rodric Williams and James Davidson dated 14.04.14 – 09.05.14
171.	WBON0000854	Email chain involving Andrew Parsons, Rodric Williams and James Davidson dated 14.04.14 – 28.05.14
172.	WBON0000860	Email from Andrew Parsons to David Oliver dated 09.06.14

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No.	Document Reference	Document
173.	POL00307712	Initial Complaint Review and Mediation Scheme – M056 Post Office Investigation Report - undated
174.	**POL00028062**	Horizon: Desktop Review of Assurance Sources and Key Control Features Draft for discussion dated 23.05.14
175.	WBON0000891	Email exchange between Mark Westbrook, Rodric Williams, Andrew Parsons and Gareth James dated 21.07.14 – 22.08.14
176.	WBON0000856	Email chain involving Andrew Parsons, Rodric Williams, Gareth James, Chris Aujard and Julie George dated 29.05.14 – 30.05.14
177.	WBON0000960	Email exchange between Rodric Williams and Andrew Parsons dated 10.02.16 – 08.03.16
178.	**POL00105635**	Deloitte Project Zebra — Phase 1 Report - For validation in advance of Board discussion on Wednesday 30 April
179.	**POL00031384**	Deloitte HNG-X: Review of Assurance Sources – Discussion Areas re: Phase 2 - undated
180.	**POL00031391**	Deloitte HNG-X: Review of Assurance Sources Phase 1 – Board Update dated 13.05.14
181.	**POL00029726**	Deloitte HNG-X: Review of Assurance Sources – Board Update dated 16.05.14
182.	POL00226961	Initial Complaint Review and Mediation Scheme Briefing Report – Part Two Prepared by Second Sight dated 21.08.14
183.	WBON0000908	Email chain involving Andrew Parsons, Rodric Williams, Belinda Crowe, James Davidson, Tom Wechsler, Melanie Corfield, Angela Van-Den-Bogerd, Patrick Bourke, Mark Underwood and Andy Holt dated 21.10.14
184.	POL00211255	Initial Complaint Review and Mediation Scheme Horizon Data document - undated
185.	WBON0000916	Telephone attendance note between Mark Westbrook from Deloitte and Andy Parsons dated 03.11.14
186.	WBON0000910	Email exchange between Mark Westbrook, Rodric Williams and Andrew Parsons dated 04.11.14 – 10.11.14
187.	WBON0000911	Email chain involving Sean Hodgkinson, Mark Westbrook, James Davidson, Julie George, John Simpkins, Jane E Smith, Rod Ismay and Dave M King dated 13.05.14 – 15.05.14
188.	WBON0000912	Email from Andrew Parsons to Belinda Crowe, Patrick Bourke and Andy Holt dated 10.11.14
189.	POL00212054	Draft Initial Complaint Review and Mediation Scheme Horizon Data document - undated
190.	WBON0000914	Email exchange between Patrick Bourke, Andrew Parsons, Belinda Crowe and Andy Holt dated 10.11.14
191.	WBON0000479	Email chain involving Amy Prime, Andrew Parsons and Owain Draper dated 05.04.17 – 06.04.17

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No.	Document Reference	Document
192.	WBON0000917	Email exchange between Mark Underwood and Andrew Parsons dated 10.12.14 – 15.12.14
193.	WBON0000327	Draft Initial Complaint Review and Mediation Scheme Horizon Data document - undated
194.	POL00408247	Email exchange between Andrew Parsons, Belinda Crowe, Angela Van-Den-Bogerd and Rodric Williams dated 28.02.15 – 02.03.15
195.	POL00021845	Email chain involving Patrick Bourke, Andrew Parsons, Ian Henderson, Jane MacLeod, Ron Warmington and Chris Holyoak dated 02.04.15 – 07.04.15
196.	POL00225912	Document entitled Transactions not entered by the Sub-Postmaster or their staff - undated
197.	POL00225913	Receipts/Payments Mismatch issue notes - undated
198.	POL00225914	Document prepared by Gareth Jenkins entitled Correcting Accounts for "lost" Discrepancies - dated 29.09.10
199.	WBON0000924	Email from Mark Underwood to Kevin Lenihan, James Davidson and Newsome Pete dated 07.04.15
200.	POL00243542	Draft Complaint Review and Mediation Scheme Horizon Data document - undated
201.	WBON0000927	Email chain involving Pete Newsome, Mark Underwood and Andrew Parsons dated 08.04.15
202.	WBON0000928	Email chain involving Patrick Bourke, Mark Underwood, Pete Newsome and Andrew Parsons dated 08.04.15
203.	WBON0000929	Email chain involving Pete Newsome, Mark Underwood and Andrew Parsons dated 08.04.15
204.	POL00041040	Email chain involving Andrew Parsons, Partick Bourke, Mark Underwood and Pete Newsome dated 08.04.15
205.	POL00226089	Draft response to SS - undated
206.	POL00021785	Email chain involving Mark Underwood, Andrew Parsons, Partick Bourke, Ian Henderson, Jane MacLeod, Ron Warmington and Chris Holyoak dated 02.04.15 - 08.04.15
207.	WBON0000930	Email chain involving Michael Harvey, Mark Underwood and Pete Newsome dated 09.04.15 – 10.04.15
208.	WBON0000922	Email from Simon Clarke to Rodric Williams and Andrew Parsons dated 27.03.15
209.	POL00228075	Cartwright King Note: Deloitte Report – Questions for POL - undated
210.	WBON0000340	Email from Andrew Parsons to Rodric Williams dated 27.03.15
211.	WBON0000931	Email from Andrew Parsons to Simon Clarke and Martin Smith dated 05.05.15
212.	WBON0000944	Email from Andrew Parsons to Martin Smith and Simon Clarke dated 15.07.15

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No.	Document Reference	Document
213.	WBON0000946	Email from Andrew Parsons to Brian Altman dated 20.07.15
214.	WBON0000942	Email chain involving Andrew Parsons, Rodric Williams, Mark Underwood, Gavin Matthews and Pete Newsome dated 26.06.15 – 08.07.15
215.	POL00238791	Old Horizon note Prepared by Gareth Jenkins dated 08.07.15
216.	POL00021775	Email from Andrew Parsons to Rodric Williams dated 21.07.15
217.	POL00021777	Email exchange between Brian Altman and Andrew Parsons dated 27.0815 – 28.08.15
218.	**POL00026668**	Working Group for the Initial Complaint Review and Case Mediation Scheme Working Group Minute dated 05.06.14
219.	WBON0000132	Initial Complaint Review and Mediation Scheme – M054 Post Office Preliminary Investigation Report - undated
220.	POL00306593	Post Office Mediation Scheme – Second Sight – M054 Case Review Report dated 11.06.14
221.	WBON0000859	Settlement Analysis M054 – undated
222.	**POL00026664**	Working Group for the Initial Complaint Review and Case Mediation Scheme Working Group Minute dated 12.06
223.	**POL00026673**	Minute – Initial Complaint Review and Mediation Scheme Working Group dated 16.06.14
224.	WBON0000864	M054 Decision of Sir Anthony Hooper dated 24.06.14
225.	**POL00026671**	Working Group for the Initial Complaint Review and Case Mediation Scheme Minute of the Working Group Call dated 17.07.14
226.	WBON0000876	Email chain involving Andrew Parsons, Angela Van-Den-Bogerd and Belinda Crowe dated 28.07.14
227.	WBON0000877	Email chain involving Chris Aujard, Belinda Crowe, David Oliver, Andrew Parsons and Alan Bates dated 23.07.14
228.	POL00206822	Extracts From Hansard dated 09.07.13
229.	POL00206823	Overview of the Initial Complaint Review and Mediation Scheme document with comments - undated
230.	WBON0000874	Initial Complaint Review and Mediation Scheme – Test for Mediation – Post Office submission
231.	POL00207229	Letter From Sir Anthony Hooper to Chris Aujard re "The mediation test" dated 08.08.14
232.	WBON0000885	Email from Andrew Parsons to Belinda Crowe and Chris Aujard dated 29.07.14
233.	WBON0000886	Post Office Submission on the test for mediation – undated
234.	POL00207393	Email from Andrew Parsons to Belinda Crowe, David Oliver and Angela Van-Den-Bogerd dated 13.08.14

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No.	Document Reference	Document
235.	POL00207394	Post Office submission on the role of the Working Group in Mediating Cases - undated
236.	WBON0000893	Email from Belinda Crowe to Kay Linnrll, Anthony Hooper, Ian Henderson, Angela Van-Den-Bogerd, Andrew Parsons, Alan Bates, Rodric Williams, Chris Aujard, Ron Warmington and Mediation@2ndsight dated 26.08.14
237.	POL00210134	Decision of Sir Anthony Hooper on the Role of the Working Group in deciding whether cases are suitable for mediation and the test for mediation - undated
238.	WBON0000895	Email chain involving Andrew Parsons, Belinda Crowe, Rodric Williams, David Oliver, Angela Van-Den-Bogerd, Anthony Hooper, Ian Henderson, Alan Bates, Mediation@2ndsight, Chris Aujard and Ron Warmington dated 26.08.14
239.	POL00210056	Briefing Note Working Group Call dated 02.10.14
240.	POL00211024	Cases for Discussion at F2F dated 17.10.14
241.	WBON0000900	Email from Rodric Williams to Belinda Crowe, Chris Aujard, Andrew Parsons, David Oliver and Angela Van-Den-Bogerd dated 15.09.14
242.	WBON0000902	Email chain involving Stephen Hocking, Rodric Williams, Belinda Crowe and Andrew Parsons dated 09.09.14
243.	WBON0000867	Email from Martin Smith to Andrew Parsons dated 09.07.14
244.	POL00305248	Advice from Simon Clarke to Post Office Limited dated 09.07.14
245.	WBON0000869	Email chain involving Andrew Parsons, David Oliver and Martin Smith dated 09.07.14
246.	WBON0000870	Email exchange between Andrew Parsons and Martin Smith dated 09.07.14 – 14.07.14
247.	WBON0000871	Email chain involving Gavin Matthews, Bian Altman QC, Andrew Parsons, David Oliver, Rodric Williams and Martin Smith dated 09.07.14 – 15.07.14
248.	WBON0000406	Email chain involving Gavin Matthews, Jess Webb, Andrew Parsons, David Oliver, Rodric Williams and Martin Smith dated 09.07.14 – 16.07.14
249.	POL00214992	Brian Altman QC's Advice on Suggested Approach to Criminal Case Mediation dated 05.09.14
250.	WBON0000906	Document setting out Sir Anthony Hooper's exercise of casting vote on whether case M030 suitable for mediation
251.	WBON0000903	Email chain involving Rodric Williams, Andrew Parsons, Simon Clarke, Jarnail Singh, Patrick Bourke and Martin Smith dated 03.10.14 – 06.10.14
252.	WBON0000905	Email chain involving Rodric Williams, Angela Van-Den-Bogerd, Andrew Parsons, Tom Wechsler, Anthony Hooper, Belinda Crowe and Ian Henderson dated 06.10.14 – 08.10.14
253.	WBON0000907	Email chain involving Belinda Crowe, Patrick Bourke, Andrew Parsons, Anthony Hooper, Rodric Williams, Ian Henderson, Ron Warmington, Angela Van-Den-Bogerd and Tom Wechsler dated 02.10.14 – 15.10.14

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No.	Document Reference	Document
254.	WBON0000407	Email chain involving Rodric Williams, Melanie Corfield, Belinda Crowe, Angela Van-Den-Bogerd, Andrew Parsons, Patrick Bourke, Tom Wechsler, Anthony Hooper, Ian Henderson, Chris Aujard and Ron Warmington dated 02.10.14 – 15.10.14
255.	POL00202008	Linklaters' Report into Initial Complaint Review and Mediation Scheme Legal Issues dated 20.03.14
256.	POL00199738	Initial Complaint Review and Mediation Scheme – Draft Settlement Policy dated December 2013
257.	WBON0001707	Email from Andrew Parsons to Rodric Williams and David Oliver dated 26.03.14
258.	POL00278283	Advice note – Initial Complaint Review and Mediation Scheme – Harm to a retail business following summary termination dated 26.03.14
259.	**POL00043630**	Meeting Minutes - Working Group for the Initial Complaint Review and Case Mediation Scheme – 14.11.14
260.	POL00216273	Letter from JFSA to Sir Anthony Hooper dated 10.11.14
261.	**POL00043631**	Minute - Working Group for the Initial Complaint Review and Case Mediation Scheme – 08.12.14
262.	WBON0000915	Email exchange between Andrew Parsons and Tom Wechsler dated 11.11.14 – 12.11.14
263.	WBON0000805	Initial Complaint and Mediation Scheme – Draft Scheme Pack – Part 1: Application Phase - undated
264.	POL00218712	Initial Complaint Review and Mediation Scheme – Working Group Briefing dated 14.01.15
265.	POL00407979	Initial Complaint and Mediation Scheme – Mediation Briefing dated 14.10.14
266.	POL00232900	Review letter from CEDR to Patrick Bourke dated 31.07.15
267.	WBON0000408	Email from Andrew Parsons to Simon Richardson dated 03.03.15
268.	WBON0000409	Project Sparrow – Update and Options paper dated March 2015
269.	**POL00021908**	Email from Andrew Parsons to Belinda Crowe dated 09.02.15
270.	POL00021728	Email exchange between Andrew Parsons and Patrick Bourke dated 05.02.15 – 06.02.15
271.	WBON0000921	Email exchange between Andrew Parsons and Patrick Bourke dated 05.02.15
272.	POL00221480	Advice note entitled 'Termination of Second Sight' dated 06.02.15
273.	POL00221561	Project Sparrow Sub-Committee – Update and Options paper dated February 2015
274.	POL00407493	Email exchange between Andrew Parsons and Rodric Williams dated 28.06.13
275.	POL00407494	Email chain involving Rodric Williams, Andrew Parsons, Rod Ismay, Simon Baker, Lesley J Sewell, Andrew Winn and Joanna Jacobson dated 01.07.13

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No.	Document Reference	Document
276.	POL00061756	Initial Complaint Review and Mediation Scheme - Post Office Preliminary Investigation Report dated 02.09.14
277.	**POL00021865**	Email from Andrew Parsons to Rodric Williams dated 18.08.15
278.	WBON0000948	Email chain involving Mark Underwood, Andrew Parsons and Patrick Bourke dated 12.10.15
279.	**POL00006355**	A Review on Behalf of the Chairman of Post Office Limited – Concerning the Steps taken in Response to Various Complaints made by Sub-Postmasters dated 08.02.16
280.	WBON0000962	Email from Mark Underwood to Andrew Parsons dated 15.04.16
281.	POL00174470	Email chain involving Rodric Williams, Andrew Parsons, Gavin Matthews, Mark Underwood and John Davitt dated 06.10.15 – 05.05.16
282.	WBON0000952	Email from Mark Underwood to Andrew Parsons dated 26.01.16
283.	WBON0000954	Email exchange between Andrew Parsons and Mark Underwood dated 26.01.16
284.	WBON0000414	Email chain involving Andrew Parsons, Emma Kennedy and Mark Underwood dated 26.01.16
285.	WBON0000955	Email exchange between Andrew Parsons and Mark Underwood dated 26.01.16 – 01.02.16
286.	WBON0000957	Email exchange between Patrick Bourke, Andrew Parsons and Mark Underwood dated 26.01.16 – 01.02.16
287.	WBON0000415	Email exchange between Andrew Parsons, Emma Kennedy and Mark Underwood dated 26.01.16 – 02.02.16
288.	WBON0000958	Email exchange between Patrick Bourke, Andrew Parsons and Mark Underwood dated 26.01.16 – 10.02.16
289.	POL00239502	Email exchange between Patrick Bourke, Andrew Parsons and Mark Underwood dated 26.01.16 – 17.02.16
290.	WBON0000417	Email chain involving Andrew Parsons, Paul Loraine, Patrick Bourke, and Mark Underwood dated 26.01.16 – 19.02.16
291.	WBON0000419	Email chain involving Andrew Parsons, Paul Loraine, Patrick Bourke, and Mark Underwood dated 26.01.16 – 22.02.16
292.	WBON0000990	Email from Paul Loraine to Mark Underwood dated 05.05.16
293.	POL00241260	Report entitled 'Investigations conducted by Bond Dickinson LLP, on behalf of Post Office Ltd, into complaints about the advice provided by Call Handlers at the Network Business Support Centre (NBSC)' dated 04.05.16
294.	WBON0000420	Email chain involving Katie Watkins, Andrew Parsons, Olivia Moran, Gareth Pole, Rodric Williams and Elisa Lukas dated 24.02.16 – 25.02.16
295.	**POL00028069**	Deloitte Board Briefing dated 04.06.16

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No.	Document Reference	Document
296.	WBON0000960	Email exchange between Andrew Parsons and Rodric Williams dated 10.02.16 – 08.03.16
297.	WBON0000965	Email from Rodric Williams to Andrew Parsons dated 15.04.16
298.	WBON0000962	Email form Mark Underwood to Andrew Parsons dated 15.04.16
299.	POL00240675	Engagement Letter dated 09.04.16 Change Order Number 02 11.03.16
300.	WBON0000339	Email exchange between Rodric Williams and Andrew Parsons dated 15.04.16 – 19.04.16
301.	WBON0000984	Email exchange between Rodric Williams and Andrew Parsons dated 26.04.16
302.	WBON0000985	Email Andrew Parsons to Andrew Whitton and Mark Westbrook dated 26.04.16
303.	POL00242882	Letter Bond Dickinson to Deloitte dated 26.04.16
304.	WBON0000336	Email Andrew Parsons to Rodric Williams and Tony Robinson QC dated 28.06.16
305.	WBON0001674	Group Litigation Order dated 21.03.17
306.	WBON0001685	CMC Order dated 27.10.17
307.	POL00117925	CMC Order dated 22.02.18
308.	POL00120352	CMC Order dated 21.06.18
309.	WBON0001669	CMC Order dated 31.01.19
310.	POL00251998	Decision paper on settlement proposals including comments from Steering Group members dated 06.12.17
311.	POL00251957	Five Things Document prepared by David Cavender QC dated 14.12.17
312.	POL00252996	Post Office "Black Hat Review" Note prepared by David Cavender QC dated 18 January 2018
313.	POL00270841	Opinion on the Common Issues dated 10.05.18
314.	WBON0001688	David Cavender QC Speaking Note For POL Board Subcommittee
315.	WBON0000511	Email from Mark Underwood to Jane MacLeod, Angela Van-Den-Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rob Houghton, Rodric Williams, Thomas Moran, Tom Wechsler, Andrew Parsons, Mark Ellis, Melanie Corfield, Nick Beal and Amy Prime dated 04.12.17
316.	POL00139298	Agenda for Steering Group Meeting on 22.08.16
317.	POL00243195	Agenda for Steering Group Meeting on 14.07.16
318.	POL00139297	Decision Paper for Steering Group Meeting dated 22.08.16
319.	POL00139479	Discussion Paper for Steering Group Meeting on 03.11.17

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No.	Document Reference	Document
320.	POL00251593	Decision Document for Steering Group Meeting on 20.11.17
321.	POL00251596	Decision Paper: Next 12 months for Steering Group Meeting on 20.11.17
322.	POL00261175	Steering Group Paper dated 17.01.2019
323.	POL00261176	Noting Paper: Appeal process
324.	POL00261172	Noting Paper: Cost of Common Issues Trial for Steering Group Meeting on 17.01.19
325.	POL00259673	Noting Paper: Expert Report of Dr Robert Worden for Steering Group Meeting 28.11.18
326.	POL00024436	Email from Andrew Parsons to Jane MacLeod, Angela Van-Den-Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rodric Williams, Thomas Moran, Mark Ellis, Melanie Corfield, Tom Wechsler and Nick Beal dated 15.12.17
327.	POL00252205	Decision Paper: Proposal for the March 2019 Trial and a Long Term Strategy for the Group Litigation dated 15.12.17
328.	POL00024281	Email exchange between Andrew Parsons, Jane MacLeod, Angela Van-Den-Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rodric Williams, Thomas Moran, Mark Ellis, Melanie Corfield, Tom Wechsler and Nick Beal dated 15.12.17
329.	POL00252201	Decision Paper: Proposal for the March 2019 Trial and a Long Term Strategy for the Group Litigation dated 15.12.17
330.	WBON0000188	Email chain involving Andrew Parsons, Jane MacLeod, Angela Van-Den-Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rodric Williams, Thomas Moran, Mark Ellis, Melanie Corfield, Tom Wechsler and Nick Beal dated 15.12.17 – 17.12.17
331.	WBON0000328	Email chain involving Andrew Parsons, Jane MacLeod, Angela Van-Den-Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rodric Williams, Thomas Moran, Mark Ellis, Melanie Corfield, Tom Wechsler and Nick Beal dated 15.12.17 – 17.12.17
332.	WBON0000171	Email chain involving Andrew Parsons, Jane MacLeod, Angela Van-Den-Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rodric Williams, Thomas Moran, Mark Ellis, Melanie Corfield, Tom Wechsler and Nick Beal dated 15.12.17 – 17.12.17
333.	POL00024278	Email chain involving Andrew Parsons, Jane MacLeod, Angela Van-Den-Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rodric Williams, Thomas Moran, Mark Ellis, Melanie Corfield, Tom Wechsler and Nick Beal dated 15.12.17 – 17.12.17
334.	WBON0001341	Email from Andrew Parsons to David Cavender dated 28.10.18
335.	POL00024633	Email exchange between Jane MacLeod, Andrew Parsons and Thomas Moran dated 19.09.17
336.	POL00117761	Draft Litigation Options Paper dated 19.09.17
337.	POL00024235	Email chain involving Andrew Parsons, Angela Van Den Bogerd, Jane MacLeod and Rodric Williams dated 24.07.18-25.07.18
338.	POL00358137	Draft Mitigation Actions Paper dated 25.07.18

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No.	Document Reference	Document
339.	WBON0001658	Email chain involving Andrew Parsons, Emma Deas, Rodric Williams and Catherine Emanuel dated 11.11.19
340.	POL00288584	Draft Group Litigation Update Paper dated 11.11.19 (for board meeting on 13.11.19)
341.	WBON0001663	Email chain involving Andrew Parsons, Rodric Williams, Patrick Bourke, Angela Van Den Bogerd, Mark Underwood, Ben Foat and Alan Watts dated 04.12.19 to 09.12.19
342.	POL00289960	Draft Group Litigation Update Paper dated 09.12.19 (for board meeting on 10.12.19)
343.	WBON0000510	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 01.11.17 – 07.11.17
344.	POL00249671	Email from Victoria Brooks to Rodric Williams dated 07.07.17
345.	POL00249674	Draft Postmaster Litigation Paper dated 07.07.17 (for Group Executive meeting on 13.07.17)
346.	**POL00006384**	Email exchange between Amy Prime, Andrew Parsons and Anthony de Garr Robinson dated 28.09.17
347.	**POL00006499**	Email from Andrew Parsons to Jane MacLeod dated 28.09.17
348.	**POL00006380**	Paper for 11.09.17 Steering Group meeting
349.	POL00250513	Litigation Strategy Options document dated 12.09.17
350.	POL00250466	Decision Paper: Steering Group Meeting dated 11.09.17
351.	**POL00006503**	Litigation Strategy Options: Steering Group Meeting dated 11.09.17
352.	POL00252386	Letter Womble Bond Dickinson to Freeths dated 18.12.17
353.	WBON0001377	Letter Freeths to Womble Bond Dickinson dated 10.01.18
354.	WBON0001378	Letter Womble Bond Dickinson to Freeths dated 17.01.18
355.	POL00006360	Decision Paper: Does Post Office engage in further mediation? Dated 08.07.16
356.	POL00247209	Decision Paper: Steering Group Meeting dated 14.02.17
357.	POL00139476	Noting Paper : Steering Group Meeting: 3 November 2017
358.	WBON0001230	CMC Order dated 08.02.18
359.	POL00006382	Speaking Note For Sub-Committee Meeting 15.05.18
360.	POL00259669	Decision Paper: Steering Group dated 28.11.18
361.	POL00265780	Letter from Womble Bond Dickinson to Freeths dated 07.12.18
362.	POL00260751	Letter from Freeths to Womble Bond Dickinson dated 21.12.18
363.	POL00265783	Letter from Womble Bond Dickinson to Freeths dated 09.01.19

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No.	Document Reference	Document
364.	POL00262338	Letter from Freeths to Womble Bond Dickinson dated 17.01.19
365.	POL00275113	Post Office Group Litigation Settlement Briefing dated 19.05.19
366.	POL00023690	Email from Amy Prime to Mark Underwood dated 14.06.19
367.	**POL00000444**	Alan Bates & Others And Post Office Limited: Fourth Witness Statement of Andrew Paul Parsons dated 09.10.17
368.	**POL00041510**	Email from Freeths to Bond Dickinson dated 16.10.17
369.	**POL00041509**	Email from Andrew Parsons to Rodric Williams dated 16.10.17
370.	WBON0001194	Letter from Bond Dickinson to Freeths dated 01.09.17
371.	WBON0001216	Letter from Freeths to Bond Dickinson dated 13.10.17
372.	WBON0001215	Email chain involving James Hartley, Peter O'Connell, Andrew Parsons, Elisa Lukas, Amy Prime, Anthony de Garr Robinson and Owain Draper
373.	WBON0000191	Email Chain involving Imogen Randall, PETER O'Connell, Andrew Parsons, Owain Draper and Amy Prime dated 16.10.17
374.	WBON0001217	Email Chain involving Ann Harries, clerks@hendersonchambers.co.uk, Andrew Parsons, Rob Smith, Owain Draper, Anthony de Garr Robinson dated 08.11.17
375.	POL00041527	Email from Rodric Williams to Jane MacLeod, Melanie Corfield, Mark Underwood, Mark Davies and Thomas Moran dated 09.11.17
376.	WBON0000329	Email Andrew Parsons to James Hartley dated 12.12.18
377.	**POL00041136**	Email exchange between Andrew Parsons, Rodric Williams and Mark Underwood dated 20.04.16 – 21.04.16
378.	WBON0000987	Email Chain involving Rodric Williams, Alwen Lyons, Craig Tuthill, Lin Norbury, John Breeden, Joe Connor, hector Campbell, Angela Van-Den-Bogerd, Kathryn Alexander, Shirley Hailstones, Chris Broe, Andy gardner, Julie George, John M Scott, Nick Beal, Anne Allaker and Andrew Parsons dated 20.04.16 – 03.05.16
379.	WBON0000988	Disclosure of Documents in Litigation dated -12.14
380.	POL00241034	Alan Bates and Others and Post Office Limited Schedule of Claimants
381.	WBON0000151	Email From Tom Porter to Rodric Williams dated 09.08.16
382.	WBON0001002	Email Chain involving Rodric Williams , Alwen Lyons, Craig Tuthill, Lin Norbury, John Breeden, Joe Connor, Hector Campbell, Angela Van-Den-Bogerd, Kathryn Alexander, Shirley Hailstones, Chris Broe, Andy Garner, Julie George, John Scott, Nick Bea, Anne Allaker, Tom Porter and Dave King dated 20.04.16 – 31.05.16
383.	WBON0001015	Email Chain involving Rodric Williams , Alwen Lyons, Craig Tuthill, Lin Norbury, John Breeden, Joe Connor, Hector Campbell, Angela Van-Den-Bogerd, Kathryn Alexander, Shirley Hailstones, Chris Broe, Andy Garner, Julie George, John Scott, Nick Bea, Anne Allaker, Tom Porter and Dave King dated 20.04.16 – 03.06.16

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No.	Document Reference	Document
384.	POL00139309	Postmaster Litigation Steering Group Actions – undated
385.	WBON0000982	Email from Andrew Parsons to Rodric Williams dated 26.04.16
386.	WBON0000981	Letter from Bond Dickinson to Fujitsu dated 26.04.16
387.	WBON0000992	Email from Tom Porter to Rodric Williams dated 06.05.16
388.	WBON0000154	Email exchange between Elisa Lukas, Rodric Williams and Andrew Parsons dated 15.11.16 – 16.11.16
389.	POL00041378	Email exchange between Rodric Williams and Amy Prime dated 28.11.16
390.	POL00006436	Decision Paper: Steering Group Meeting dated 08.08.17
391.	POL00139383	Decision Paper: Steering Group Meeting dated 24.05.17
392.	WBON0001686	Decision Paper: Steering Group Meeting dated 04.01.17
393.	POL00006405	Decision Paper: Steering Group Meeting dated 24.05.17
394.	POL00006470	Decision Paper: Steering Group Meeting dated 11.09.17
395.	POL00269447	Decision Paper: POLSAP Data Hosted by Fujitsu dated 22.03.19
396.	POL00278526	Decision Paper: Deletion of Data Held on Brands Database dated 08.08.19
397.	POL00139652	Decision Paper: Preservation of Data Stored on Post Office's File Servers dated 17.07.19
398.	POL00139650	Decision Paper: Preservation of POLSAP dated 17.07.19
399.	POL00288913	Decision Paper: Deletion of data held on Fujitsu Telecoms dated 19.11.19
400.	WBON0001013	Email Chain involving Kerry Moodie, John Scott, Amy Quirk, Helen Dickinson and Simon Hutchinson dated 19.05.16 – 01.06.16
401.	WBON0001001	Draft Letter from Post Office Information Rights Team to Katherine McAlerney dated 27.05.16
402.	**POL00038852**	Email from Amy Prime to Rodric Williams dated 10.05.16
403.	POL00241140	Letter from Freeths to Rodric Williams dated 28.04.16
404.	**POL00110507**	Letter from Bond Dickinson to Freeths dated 28.07.16
405.	WBON0000466	Conduct of Criminal Investigations Policy
406.	WBON0000443	Email exchange between Andrew Parsons and Brian Altman dated 18.07.16 – 22.07.16
407.	WBON0000464	Email chain involving Amy Prime, Amy Quirk, Jane MacLeod and Andrew Parsons dated 19.09.16 – 29.09.16
408.	WBON0000465	Email from Amy Prime to Andrew Parsons dated 05.10.16

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No.	Document Reference	Document
409.	WBON0000467	Email exchange between Amy Prime and Andrew Parsons dated 05.10.16
410.	**POL00022636**	Email from Andrew Parsons to Rodric Williams and Jane MacLeod dated 18.05.16
411.	**POL00156685**	Briefing Note for Counsel
412.	WBON0000993	Email exchange between Andrew Parsons, Rodric Williams and Paul Loraine dated 07.05.16 – 11.05.16
413.	WBON0000179	Email from Paul Loraine to Gavin Matthews dated 10.05.16
414.	WBON0000157	Email from Tom Porter to Andrew Parsons dated 07.06.16
415.	**POL00006601**	Letter from Bond Dickinson to Post Office Limited dated 21.06.16
416.	POL00242402	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 08.06.16
417.	POL00242578	Draft Letter from Bond Dickinson to Post Office Limited dated 16.06.16
418.	**POL00041242**	Email exchange between Gavin Matthews and Rodric Williams dated 16.06.16 – 17.06.16
419.	WBON0000995	Email from Andrew Parsons to Anthony de Garr Robinson dated 24.05.16
420.	POL00140216	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 01.06.16
421.	**POL00041770**	Email chain involving Patrick Bourke, Elizabeth O'Neill, Rodric Williams, Helen Lambert, Jane MacLeod and Andrew Parsons dated 23.02.18 – 11.05.18
422.	WBON0000160	Email exchange between Andrew Parsons and Tom Cooper dated 30.04.19 to 02.05.19
423.	WBON0000648	Email exchange between Rodric Williams, Andrew Parsons and Jonathan Gribben dated 07.01.19
424.	WBON0000662	Email chain involving Jane MacLeod, Patrick Bourke, Mark Underwood, Amy Prime, Tom Beezer, Andrew Parsons dated 14.03.19
425.	POL00023809	Email chain involving Jane MacLeod, Patrick Bourke, Mark Underwood, Amy Prime and Ben Beabey dated 14.03.19 – 15.03.19
426.	POL00024241	Email exchange between Jane MacLeod, Andrew Parsons and Rodric Williams dated 08.06.18 – 11.06.18
427.	POL00041825	Email chain involving Rodric Williams, Elizabeth O'Neill, Helen Lambert, Jane MacLeod, Mark Underwood and Andrew Parsons dated 30.05.18
428.	WBON0001306	Draft Email to UKGI from Rodric Williams dated 23.05.18
429.	WBON0000705	Email exchange between Andrew Parsons, Jane MacLeod and Rodric Williams dated 10.04.19 – 11.04.19

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No.	Document Reference	Document
430.	WBON0001249	Email chain involving Andrew Parsons, James Hartley, Imogen Randall, Rodric Williams, Mark Underwood and Amy Prime dated 08.06.18 – 11.06.18
431.	WBON0001417	Email chain involving Amy Prime, Mark Underwood, Rodric Williams, Angela Van-Den-Bogerd and Andrew Parsons dated 12.02.19
432.	WBON0000691	Email chain involving Richard Watson, Jane MacLeod, Rodric Williams and Andrew Parsons dated 25.03.19
433.	POL00023301	Email chain involving Richard Watson, Jane MacLeod, Rodric Williams and Andrew Parsons dated 25.03.19 – 29.03.19
434.	WBON0001643	Email chain involving Ben Foat, Rodric Williams, Angela Van-Den-Bogerd, Andrew Parsons, Tom Beezer, Patrick Bourke and Mark Underwood dated 24.06.19
435.	WBON0000641	Email chain involving Charlie Temperley, Andrew Parsons, Dave Panaech and Amy Prime dated 07.1218 – 09.12.19
436.	WBON0000647	Email from Andrew Parsons to Charlie Temperley dated 07.01.19
437.	WBON0000719	Email chain involving Angelique Richardson, Angela Fraser, Andrew Parsons, Rodric Williams, Angela Van-Den-Bogerd, Mark Underwood and Catherine Emmanuel dated 30.09.19
438.	WBON0001248	Email exchange between Andrew Parsons, Rodric Williams, Mark Underwood, Jane MacLeod, Thomas Moran and Melanie Corfield dated 31.05.18 – 01.06.18
439.	WBON0001068	Email chain involving Laura Thompson, Patrick Bourke, Mark Underwood, Andrew Parsons and Rodric Williams dated 03.01.17 – 09.01.17
440.	WBON0001179	Email exchange between Melanie Corfield, Andrew Parsons and Mark Underwood dated 17.07.17
441.	POL00041684	Email chain involving Patrick Bourke, Elizabeth O'Neill, Jane MacLeod, Rodric Williams and Andrew Parsons dated 23.02.18 – 21.03.18
442.	WBON0000524	Email chain involving Patrick Bourke, Elizabeth O'Neill, Jane MacLeod, Rodric Williams, Andrew Parsons and Mark Underwood dated 23.02.18 – 21.03.18
443.	POL00041687	Email chain involving Patrick Bourke, Elizabeth O'Neill, Jane MacLeod, Rodric Williams and Andrew Parsons dated 23.02.18 – 22.03.18
444.	WBON0000525	Email chain involving Patrick Bourke, Elizabeth O'Neill, Jane MacLeod, Rodric Williams, Andrew Parsons, Amy Prime, Paul Stewart and Jonathan Gribben dated 23.02.18 – 22.03.18
445.	WBON0000528	Email from Amy Prime to Andrew Parsons dated 23.03.18
446.	POL00041695	Email from Rodric Williams to Jane MacLeod, Patrick Bourke, Mark Underwood, Thomas Moran, Veronica Branton, Andrew Parsons, Amy Prime and Ben Foat dated 24.03.18
447.	POL00254174	Post Office Group Litigation Information Sharing Protocol

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No.	Document Reference	Document
448.	POL00041697	Email chain involving Rodric Williams, Jane MacLeod, Patrick Bourke, Mark Underwood, Thomas Mora, Veronica Branton, Andrew Parsons, Amy Prime and Ben Foat dated 24.03.18
449.	WBON0001236	Email chain involving Patrick Bourke, Elizabeth O'Neill, Rodric Williams, Helen Lambert, Andrew Parsons and Mark Underwood dated 23.02.18 – 20.04.18
450.	POL00041760	Email chain involving Patrick Bourke, Elizabeth O'Neill, Rodric Williams, Helen Lambert, Jane MacLeod, Andrew Parsons, and Mark Underwood dated 23.02.18 – 20.04.18
451.	WBON0001240	Email chain involving Patrick Bourke, Elizabeth O'Neill, Rodric Williams, Helen Lambert, Jane MacLeod and Andrew Parsons dated 23.02.18 – 24.04.18
452.	WBON0001241	Email from Andrew Parsons to Jane Macleod and Rodric Williams dated 26.04.18
453.	POL00041772	Email chain involving Patrick Bourke, Elizabeth O'Neill, Rodric Williams, Helen Lambert, Jane MacLeod, and Andrew Parsons dated 23.02.18 – 11.05.18
454.	WBON0001244	Email from Andrew Parsons to Rodric Williams dated 14.05.18
455.	WBON0001245	Email from Rodric Williams to Andrew Parsons dated 17.05.18
456.	WBON0001251	Email chain involving Rodric Williams, Helen Lambert, Elizabeth O'Neill, Jane MacLeod, Andrew Parsons, Mark Underwood and Patrick Bourke dated 11.06.18
457.	WBON0001648	UKGI / Post Office Limited Information Sharing Protocol
458.	POL00242335	Draft Workplan – Actions and Timings (For Letter of Claim Response)
459.	POL00243124	Post Office Group Action – Bond Dickinson Workplan (For Letter of Claim Response)
460.	WBON0001019	Email exchange between Andrew Parsons and Rodric Williams dated 27.06.16
461.	WBON0000431	Email exchange between Andrew Parsons and Paul Loraine dated 10.07.16 – 14.07.16
462.	WBON0000427	Email chain involving Tom Porter, Amy Prime and Andrew Parsons dated 24.06.18 – 08.07.16
463.	WBON0000424	Email from Andrew Parsons to Paul Loraine dated 13.06.16
464.	POL00243114	Decision 1: Does Post Office Address in Detail the "Bugs" in Horizon Identified by Second Sight
465.	WBON0001025	Email from Andrew Parsons to Anthony de Garr Robinson dated 10.07.16
466.	POL00025373	Email from Andrew Parsons to Anthony de Garr Robinson dated 08.07.16
467.	WBON0000426	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 27.06.16
468.	WBON0001021	Email chain involving Imogen Randall, Andrew Parsons and Anthony de Garr Robinson dated 04.07.16 – 05.07.16

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No.	Document Reference	Document
469.	WBON0001022	Post Office: Thoughts on Draft Letter of Response – Note Prepared by Anthony de Garr Robinson QC dated 5 July 2016
470.	WBON0001024	Email exchange between Andrew Parsons Anthony de Garr Robinson and Owain Draper dated 06.07.16
471.	WBON0000432	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Tiffany Redhead, Paul Loraine and Amy Prime dated 13.07.16 – 15.07.16
472.	WBON0001031	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Tiffany Redhead, and Paul Loraine dated 13.07.16 – 16.07.16
473.	WBON0000434	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Tiffany Redhead, and Paul Loraine dated 13.07.16 – 16.07.16
474.	WBON0001023	Email exchange between Paul Loraine, Brian Altman and Andrew Parsons dated 08.06.16 – 06.07.16
475.	WBON0001033	Email from Andrew Parsons to Brian Altman dated 18.07.16
476.	WBON0001047	Email exchange between Andrew Parsons and Brian Altman dated 18.07.16 – 22.07.16
477.	WBON0000423	Email from Andrew Parsons to Jonathan Gribben dated 12.06.16
478.	POL00041238	Email exchange between Andrew Parsons, Patrick Bourke, Rodric Williams and Mark Underwood dated 14.06.16 – 17.06.16
479.	WBON0001018	Email chain involving Paul Loraine, Kathryn Alexander, Shirley Hailstones, Andrew Winn, Dave King and Mark Underwood dated 17.06.16 – 24.06.16
480.	POL00243355	Postmaster Litigation Steering Group Actions
481.	WBON0000435	Email from Andrew Parsons to Thomas Moran, Rodric Williams, Angela Van-Den-Bogerd, Patrick Bourke, Mark Davies, Rob Houghton, Tom Wechsler, Nick Sambridge, Jane MacLeod and Mark Underwood dated 16.07.16
482.	WBON0001038	Email chain involving Andrew Parsons, Kathryn Alexander, Shirley Hailstones and Angela Van-Den-Bogerd dated 18.07.16 – 19.07.16
483.	WBON0001036	Email exchange between Jessica Madron and Andrew Parsons dated 16.07.16 – 19.07.16
484.	WBON0001048	Email exchange between Jessica Madron, Andrew Parsons and Rodric Williams dated 16.07.16 – 25.07.16
485.	WBON0001054	Email exchange between Jessica Madron, Andrew Parsons and Rodric Williams dated 16.07.16 – 25.07.16
486.	WBON0000436	Steering Group Spreadsheet Relating To Reviews Of Letter of Response
487.	WBON0001050	Email from Andrew Parsons to Rodric Williams, Jane MacLeod and Thomas Moran dated 25.07.16

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No.	Document Reference	Document
488.	**POL00041259**	Email from Andrew Parsons to Jane MacLeod, Mark Underwood, Angela Van-Den-Bogerd, Rob Houghton, Patrick Bourke, Tom Wechsler, Mark Davies, Melanie Corfield, Thomas Moran and Rodric Williams dated 27.07.16
489.	WBON0001061	Email from Jane MacLeod to Andrew Parsons dated 28.07.16
490.	POL00408673	Email chain involving Andrew Parsons, Brian Altman and Gavin Matthews dated 18.07.16 – 25.07.16
491.	WBON0000444	Email chain involving Andrew Parsons, Brian Altman and Gavin Matthews dated 18.07.16 – 26.07.16
492.	WBON0000445	Email chain involving Andrew Parsons, Brian Altman and Gavin Matthews dated 18.07.16 – 26.07.16
493.	WBON0000446	Review of Post Office Limited Criminal Prosecutions Conducted by Brian Altman QC dated 26 July 2016
494.	**POL00022754**	Email from Andrew Parsons to Rodric Williams, Jane MacLeod, Patrick Bourke and Mark Underwood dated 26.07.16
495.	**POL00112884**	Review of Post Office Limited Criminal Prosecutions
496.	WBON0000470	Email chain involving Andrew Parsons, Paul Loraine, Brian Altman, Gavin Matthews and Amy Prime dated 18.07.16 – 26.07.16 and 25.10.16
497.	WBON0000450	Email chain involving Andrew Parsons, Brian Altman, Gavin Matthews and Amy Prime dated 18.07.16 – 26.07.16
498.	WBON0001016	Email from Andrew Parsons to Patrick Bourke and Rodric Williams dated 14.06.16
499.	WBON0001644	Email chain involving Mark Westbrook, Rodric Williams, Patrick Bourke, Mark Underwood, Andrew Parsons, Paul Loraine and Jonathan Gribben dated 08.07.16
500.	POL00243100	Sparrow Interim Report dated 08.07.16
501.	WBON0000430	Email chain involving Andrew Parsons, Jane MacLeod, Rodric Williams, Patrick Bourke and Jonathan Gribben dated 13.07.16– 14.07.16
502.	WBON0001030	Email from Andrew Parsons to Jane MacLeod, Rodric Williams and Patrick Bourke dated 13.07.16
503.	WBON0001041	Rider: Remote Access
504.	WBON0001040	Email from Andrew Parsons to Anthony de Garr Robinson dated 20.07.16
505.	WBON0000438	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 20.07.16
506.	WBON0001042	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 21.07.16
507.	WBON0001044	Rider: Remote Access
508.	POL00029997	Rider: Remote Access

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No.	Document Reference	Document
509.	POL00408665	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 20.07.16 – 21.07.16
510.	POL00243366	Rider: Remote Access
511.	WBON0000439	Email exchange between Andrew Parsons and Anthony de Garr Robinson dated 20.07.16 – 21.07.16
512.	POL00024801	Email from Andrew Parsons to Thomas Moran, Rodric Williams, Angela Van-Den-Bogerd, Patrick Bourke, Mark Davies, Rob Houghton, Tom Wechsler, Nick Sambridge, Jane MacLeod and Mark Underwood dated 21.07.16
513.	WBON0000441	Email chain involving Andrew Parsons, Thomas Moran, Rodric Williams, Angela Van-Den-Bogerd, Patrick Bourke, Mark Davies, Rob Houghton, Tom Wechsler, Nick Sambridge, Jane MacLeod and Mark Underwood dated 21.07.16
514.	POL00024876	Email chain involving Andrew Parsons, Thomas Moran, Rodric Williams, Angela Van-Den-Bogerd, Patrick Bourke, Mark Davies, Rob Houghton, Tom Wechsler, Nick Sambridge, Jane MacLeod and Mark Underwood dated 21.07.16
515.	WBON0000440	Email chain involving Andrew Parsons, Thomas Moran, Rodric Williams, Angela Van-Den-Bogerd, Patrick Bourke, Mark Davies, Rob Houghton, Tom Wechsler, Nick Sambridge, Jane MacLeod and Mark Underwood dated 21.07.16
516.	POL00024876	Email chain involving Andrew Parsons, Thomas Moran, Rodric Williams, Angela Van-Den-Bogerd, Patrick Bourke, Mark Davies, Rob Houghton, Tom Wechsler, Nick Sambridge, Jane MacLeod and Mark Underwood dated 21.07.16
517.	WBON0001045	Email exchange between Michael Harvey, Rodric Williams and Andrew Parsons dated 15.04.16 – 21.07.16
518.	POL00408671	Email from Andrew Parsons to Mark Westbrook and Lewis Keating dated 21.07.19
519.	POL00243580	Email exchange between Andrew Parsons to Mark Westbrook and Lewis Keating dated 21.07.19 – 22.07.19
520.	WBON0000442	Email exchange between Michael Harvey, Rodric Williams and Andrew Parsons dated 15.04.16 – 22.07.16
521.	WBON0000447	Email exchange between Michael Harvey, Rodric Williams and Andrew Parsons dated 15.04.16 – 26.07.16
522.	WBON0000449	Email exchange between Michael Harvey, Rodric Williams and Andrew Parsons dated 15.04.16 – 27.07.16
523.	POL00023428	Email exchange between Michael Harvey, Rodric Williams, Andrew Parsons, Jane MacLeod and Rob Houghton dated 15.04.16 – 27.07.16
524.	POL00025320	Email chain involving James Davidson, Rodric Williams, Mark Underwood, Patrick Bourke, Jane MacLeod and Andrew Parsons dated 14.04.14 – 26.07.16
525.	WBON0000448	Email chain involving James Davidson, Rodric Williams, Mark Underwood, Patrick Bourke, Jane MacLeod, Andrew Parsons and Rob Houghton dated 14.04.14 – 26.07.16

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No.	Document Reference	Document
526.	POL00024824	Email chain involving James Davidson, Rodric Williams, Mark Underwood, Patrick Bourke, Jane MacLeod, Andrew Parsons, Rob Houghton and Angela Van-Den-Bogerd dated 14.04.14 – 26.07.16
527.	POL00024794	Email chain involving James Davidson, Rodric Williams, Mark Underwood, Patrick Bourke, Jane MacLeod, Andrew Parsons, and Rob Houghton dated 14.04.14 – 26.07.16
528.	POL00024828	Email chain involving James Davidson, Rodric Williams, Mark Underwood, Patrick Bourke, Jane MacLeod, Andrew Parsons, Rob Houghton, Angela Van-Den-Bogerd and Thomas Moran dated 14.04.14 – 26.07.16
529.	POL00357378	Rider: Remote Access
530.	WBON0000452	Email chain involving Amy Prime, Mark underwood, Angela Van-Den-Bogerd, Rob Houghton, Jane MacLeod, Rodric Williams, Patrick Bourke, Tom Wechsler, Mark Davies, Melanie Corfield, Thomas Moran dated 27.07.16
531.	WBON0000453	Email chain involving Amy Prime, Mark underwood, Angela Van-Den-Bogerd, Rob Houghton, Jane MacLeod, Rodric Williams, Patrick Bourke, Tom Wechsler, Mark Davies, Melanie Corfield, Thomas Moran dated 27.07.16
532.	WBON0000454	Email chain involving Amy Prime, Mark underwood, Angela Van-Den-Bogerd, Rob Houghton, Jane MacLeod, Rodric Williams, Patrick Bourke, Tom Wechsler, Mark Davies, Melanie Corfield, Thomas Moran dated 27.07.16
533.	WBON0000455	Email chain involving Amy Prime, Mark underwood, Angela Van-Den-Bogerd, Rob Houghton, Jane MacLeod, Rodric Williams, Patrick Bourke, Tom Wechsler, Mark Davies, Melanie Corfield, Thomas Moran dated 27.07.16
534.	WBON0000456	Email chain involving Amy Prime, Mark Underwood, Angela Van-Den-Bogerd, Rob Houghton, Jane MacLeod, Rodric Williams, Patrick Bourke, Tom Wechsler, Mark Davies, Melanie Corfield, Thomas Moran dated 27.07.16
535.	WBON0001057	Email chain involving Amy Prime, Mark underwood, Angela Van-Den-Bogerd, Rob Houghton, Jane MacLeod, Rodric Williams, Patrick Bourke, Tom Wechsler, Mark Davies, Melanie Corfield, Thomas Moran dated 27.07.16
536.	POL00408686	Email chain involving Rodric Williams, Micheal Harvey, Andrew Parsons and Amy Prime dated 15.04.16 – 27.07.16
537.	WBON0001672	Rider: Remote Access
538.	WBON0000457	Email exchange Andrew Parsons, Mark Westbrook and Lewis Keating dated 19.07.19 – 28.07.16
539.	WBON0000458	Email exchange Andrew Parsons, Mark Westbrook and Lewis Keating dated 19.07.19 – 29.07.16
540.	POL00408699	Email exchange Andrew Parsons, Mark Westbrook and Lewis Keating dated 19.07.19 – 29.07.16
541.	WBON0001055	Email chain involving Rodric Williams, Micheal Harvey and Andrew Parsons dated 15.04.16 – 27.07.16
542.	POL00408688	Email from Andrew Parsons to Anthony de Garr Robinson dated 27.07.16

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No.	Document Reference	Document
543.	**POL00022663**	Email from Jane MacLeod to Paula Vennells and Alisdair Cameron dated 28.07.16
544.	**POL00022664**	Email chain involving Rob Houghton, Alisdair Cameron and Jane MacLeod dated 27.07.16
545.	POL00250455	Amended Generic Particulars of Claim
546.	WBON0001061	Email from Owen Draper to Andrew Parsons dated 19.05.17
547.	WBON0001081	Outline Defence dated 19.05.17
548.	WBON0001071	Email from Amy Prime to Anthony De Garr Robinson and Owain Draper dated 24.03.17
549.	WBON0001677	Decision Paper on case strategy for 14.02.17 Steering Group meeting
550.	WBON0000474	Email from Amy Prime to Andrew Parsons, Jonathan Gribben and Elisa Lukas dated 14.03.17
551.	WBON0000478	Email From Amy Prime to Kathryn Alexander and Shirley Hailstones dated 29.03.17
552.	POL00023448	Email exchange involving Mark Underwood, Andrew Parsons Jonathon Gribben, Alisdair Cameron and Amanda Radford dated 04.03.17
553.	POL00023449	Suspense Accounts Questions
554.	WBON0001079	Email exchange involving Mark Underwood, Mark Westbrook, Lewis Keating, Andrew Parsons, Jonathan Gribben and Alisdair Cameron dated 16.05.17
555.	WBON0001080	Suspense Accounts Briefing Note
556.	WBON0001085	Email From Amy Prime to Anthony de Garr Robinson and Owain Draper dated 30.05.17
557.	POL00249406	Email from Amy Prime to Anthony de Garr Robinson and Owain Draper dated 05.06.17
558.	WBON0001116	Email From Amy Prime to Anthony de Garr Robinson and Owain Draper dated 26.06.17
559.	WBON0000481	Email exchange involving Amy Prime, Shirley Hailstones and Kathryn Alexander dated 02.06.17 to 05.06.17
560.	WBON0001112	Email exchange involving Rodric Williams, Elisa Lukas and Chris Jay dated 14.06.17
561.	WBON0001115	Email exchange involving Andrew Parsons, Rodric Williams, Elisa Lukas, Amy Prime and Pete Newsome dated 20.06.17 to 21.06.17
562.	WBON0000484	Email From Amy prime to Andrew Parsons, and Kizzie Fenner dated 30.06.17
563.	WBON0001126	Email from Andrew Parsons to Anthony De Garr Robinson and Owain Draper dated 03.07.17
564.	WBON0001083	Email from Andrew Parsons to Rodric Williams dated 23.05.17

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No.	Document Reference	Document
565.	WBON0001121	Email from Andrew Parsons to Rodric Williams and Mark Underwood dated 28.06.17
566.	WBON0000485	Email from Anthony de Garr Robinson to Andrew Parsons and Owain Draper dated 04.07.17
567.	WBON0000487	Email exchange involving Andrew Parsons, Amy Prime, Elisa Lukas and Anthony De Garr Robinson dated 04.07.17
568.	WBON0000489	Email exchange involving Andrew Parsons, Amy Prime, Elisa Lukas and Anthony De Garr Robinson dated 04.07.17
569.	WBON0001145	Email from Rodric Williams to Andrew Parsons dated 07.07.17
570.	POL00249670	Draft Generic Defence– dated 07.07.17
571.	WBON0000491	Email from Andrew Parsons to Christopher Jay dated 04.07.17
572.	WBON0000492	Draft Defence – Horizon Related Sections – dated 04.07.17
573.	WBON0001128	Email exchange involving Andrew Parsons, Mark Westbrook and Christopher Jay dated 04.07.17
574.	WBON0001147	Email exchange between Andrew Parsons, Rodric Williams, Amy Prime and Christopher Jay dated 11.07.24
575.	WBON0001130	Email from Amy Prime to Kathryn Alexander, Shirley Hailstones dated 05.07.17
576.	WBON0001132	Draft Generic Defence – Rider for Kathryn Alexander and Shirley Hailstones dated 05.07.17
577.	WBON0001138	Email from Amy Prime to Gayle Peacock and Kendra Dickinson dated 06.07.17
578.	WBON0001140	Draft Generic Defence –- Rider for Gayle Peacock and Kendra Dickinson dated 06.07.17
579.	WBON0000493	Email Amy Prime to Angela Van Den Bogerd dated 10.07.17
580.	WBON0000492	Draft Defence – Horizon Related Sections – dated 11.07.17
581.	WBON0000496	Email exchange involving Anthony de Garr Robinson, Amy Prime and Owain Draper dated 10.07.17
582.	WBON0000497	Email chain between Andrew Parsons, Amy Prime and Anthony de Garr Robinson dated 11.07.17
583.	WBON0001683	Email chain between Andrew Parsons, Amy Prime and Anthony de Garr Robinson dated 11.07.17 to 12.07.17
584.	WBON0001157	Draft Defence dated 12.07.17
585.	WBON0001158	Email exchange involving Mark Underwood Jane MacLeod, Angela , Van Den Bogerd, Mark R Davies, Andrew Parsons, Mark Ellis, Melanie Corfield, Thomas Moran, Stuart Nesbit, Patrick Bourke, Rob Houghton, Rodric Williams and Tom Wechsler dated 11.07.17 – 12.07.17

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No.	Document Reference	Document
586.	WBON0000498	Email from Amy Prime to Andrew Parsons dated 12.07.17
587.	WBON0000500	Email exchange involving Mark Underwood Jane MacLeod, Angela Van Den Bogerd, Mark R Davies, Andrew Parsons, Mark Ellis, Melanie Corfield, Thomas Moran, Stuart Nesbit, Patrick Bourke, Rob Houghton, Rodric Williams and Tom Wechsler dated 11.07.17 – 13.07.17
588.	WBON0001150	Email chain between Amy Prime and Angel Van Den Bogerd dated 10.07.17 – 11.07.17
589.	WBON0001153	Draft Generic Defence – with comments from Angela Van Den Bogerd dated 11.11.17
590.	WBON0001154	Email From Mark Westbrook to Andrew Parsons dated 12.07.17
591.	POL00110670	Draft Defence Horizon Related Sections dated 04.07.17
592.	WBON0000499	Draft Generic Defence including comments from Deloitte, Fujitsu, Amy Prime and Angela Van Den Bogerd dated 12.07.17
593.	WBON0001147	Email exchange involving Amy Prime, Christopher Jay and Andrew Parsons dated 11.07.17
594.	WBON0001161	Email exchange involving Amy Prime, Christopher Jay and Andrew Parsons dated 11.07.17 – 12.07.17
595.	POL00249903	Draft Generic Defence with Fujitsu amendments dated 12.07.17
596.	POL00249919	Email from Andrew Parsons to Anthony de Garr Robinson dated 13.07.17
597.	WBON0001163	Email from Mark Underwood to Andrew Parsons and Jonathan Gribben 13.07.17
598.	WBON0001164	Email from Andrew Parsons to Anthony de Garr Robinson dated 13.07.17
599.	WBON0001165	Suspense Account rider – dated 13.07.17
600.	POL00024627	Email exchange involving Jane MacLeod, Andrew Parsons, Mark Underwood Angela Van Den Bogerd, Mark R Davies, Mark Ellis, Melanie Corfield, Thomas Moran, Stuart Nesbitt, Patrick Bourke, Rob Houghton and Rodric Williams dated 11.07.17 – 14.07.17
601.	WBON0000501	Email from Owain Draper to Andrew Parsons dated 14.07.17
602.	WBON0001166	Email exchange between Anthony de Garr Robinson, Owain Draper and Andrew Parsons dated 14.07.17
603.	WBON0001167	Draft Suspense Account rider dated 14.07.17
604.	WBON0001168	Email from Amy Prime to Owain Draper and Anthony de Garr Robinson dated 14.07.17
605.	WBON0001171	Email from Andrew Parsons to Jane MacLeod and Mark Underwood dated 14.07.17
606.	POL00024771	Email chain between Mark Underwood, Andrew Parsons and Jane MacLeod dated 14.07.17
607.	WBON0001173	Email exchange involving Andrew Parsons, Mark Underwood, Jane MacLeod, Angela Van Den Bogerd, Mark Davies, Stuart Nesbit, Patrick Bourke, Rob Houghton, Rodric

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No.	Document Reference	Document
		Williams, Thomas Moran, Tom Wechsler, Mark Ellis and Melanie Corfield dated 14.07.17
608.	WBON0001176	Email exchange involving Anthony de Garr Robinson, Amy Prime and Owain Draper dated 14.07.17
609.	WBON0001178	Email exchange involving Mark R Davies, Andrew Parsons, Jane MacLeod, Mark Underwood, Angela Van Den Bogerd, Mark Ellis, Melanie Corfield, Thomas Moran, Stuart Nesbitt, Patrick Bourke, Rob Houghton, Tom Wechsler, Kevin Morgan and Amy Prime dated 11.07.17 – 14.07.17
610.	POL00024489	Email exchange involving Thomas Moran, Andrew Parsons, Mark Underwood, Jane MacLeod, NGELA Van Den Bogerd, Mark Davis, Stuart Nesbit, Patrick Bourke, Rob Houghton, Rodric Williams, Tom Wechsler, Mark Ellis, Melanie Corfield dated 11.07.17 – 16.06.17
611.	WBON0000502	Email exchange involving Rob Houghton, Andrew Parsons, Jane MacLeod, Mark Underwood, Angela Van Den Bogerd, Mark Ellis, Mark R Davies, Melanie Corfield, Thomas Moran , Stuart Nesbitt, Patrick Bourke, Rob Houghton, Tom Wechsler, Kevin Morgan and Amy Prime dated 11.07.17 – 17.07.17
612.	POL00024253	Email exchange involving Andrew Parsons, Rob Houghton, Jane MacLeod, Mark Underwood, Angela Van Den Bogerd, Mark Ellis, Mark R Davies, Melanie Corfield, Thomas Moran , Stuart Nesbitt, Patrick Bourke, Rob Houghton, Tom Wechsler, Kevin Morgan and Amy Prime dated 11.07.17 – 17.07.17
613.	WBON0001180	Email from Andrew Parsons to Anthony de Garr Robinson and Owain Draper dated 17.07.17
614.	WBON0001183	Email from Andrew Parsons to Jane MacLeod and Kevin Morgan dated 17.07.17
615.	WBON0001185	Email Mark Underwood to Andrew Parsons dated 18.07.17
616.	WBON0000468	Email from Mark Westbrook to Andrew Parsons dated 10.10.16
617.	WBON0000469	Draft Project Bramble report dated 07.10.16
618.	WBON0001064	Email from Jonathan Gribben to Mark Westbrook and Lewis Keating dated 17.10.16
619.	POL00408731	Bond Dickinson Document: Questions on Deloitte's Bramble Draft Report Dated 7 October 2016
620.	WBON0000472	Email exchange involving Mark Westbrook, Jonathan Gribben, Lewis Keating and Andrew Parsons dated 10.10.16 – 08.11.16
621.	POL00029104	Bond Dickinson Summary of Deloitte's Bramble report – dated 03.11.16
622.	WBON0001078	Email exchange involving Jonathan Gribben, Mark Westbrook, Lewis Keating, Russell Norman, Torstein Godeseth and Pete Newsome dated 09.05.17 – 11.05.17
623.	WBON0000483	Email chain between Torstein Godeseth, Mark Westbrook and Mark Underwood dated 29.06.17
624.	WBON0001070	Email chain between Jonathan Gribben and Mark Westbrook dated 18.01.17 – 19.01.17

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No.	Document Reference	Document
625.	WBON0001109	Email from Mark Westbrook to Mark Underwood and Jonathan Gribben dated 08.06.17
626.	POL00031516	Draft Incomplete Memo outlining conclusions from procedures performed as outlined in Change Order Number 06 (Version 1) - undated
627.	WBON0001113	Email exchange involving Andrew Parsons, Anthony de Garr Robinson and Owain Draper dated 19.06.17
628.	POL00174660	Draft Executive Summary – Privileged Users – dated 18.06.17
629.	WBON0001137	Email exchange between Andrew Parsons and Chris Jay dated 04.07.17 – 05.07.17
630.	WBON0001094	Email from Amy Prime to Owain Draper, Anthony de Garr Robinson, Kathryn Alexander, Huw Williams, Andrew Parsons and Elisa Lukas 07.06.17
631.	WBON0000482	Email from Anthony de Garr Robinson to Amy Prime and Owain Draper dated 26.06.17
632.	WBON0001119	Email Anthony de Garr Robinson to Andrew Parsons dated 27.06.17
633.	POL00249555	Draft Generic Defence dated 27.06.17
634.	WBON0001125	Email chain between Amy Prime, Anthony de Garr Robinson and Owain Draper dated 03.07.17
635.	WBON0001124	Email chain between Andrew Parsons and Angela Van Den Bogerd dated 29.06.17
636.	WBON0000334	Meeting invitation sent by Andrew Parsons to Angela Van Den Bogerd dated 02.07.17
637.	WBON0001126	Email from Andrew Parsons to Anthony de Garr Robinson and Owain Draper dated 03.07.17
638.	WBON0000486	Draft Generic Defence dated 04.07.17
639.	WBON0001141	Email exchange involving Kathryn Alexander, Amy Prime and Shirley Hailstones dated 06.07.17
640.	WBON0001142	Draft Generic Defence – rider for Kathryn Alexander and Shirley Hailstones dated 06.07.17
641.	WBON0001143	Email exchange involving Shirley Hailstones, Kathryn Alexander and Amy Prime
642.	WBON0001144	Draft Generic Defence– dated 06.07.17
643.	**POL00041491**	Draft Project Bramble Report
644.	WBON0001192	Email Mark Westbrook to Mark Underwood dated 01.09.17
645.	WBON0001209	Email Mark Westbrook to Jonathan Gribben, Andrew Parsons and Mark Underwood dated 06.10.17
646.	POL00139454	Bramble Draft Report
647.	WBON0001223	Email from Mark Westbrook to Mark Underwood and Jonathan Gribben dated 02.02.18

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No.	Document Reference	Document
648.	POL00139537	Bramble Draft Report
649.	WBON0001318	Email Mark Westbrook to Mark Underwood and Jonathan Gribben dated 12.09.18
650.	POL00028982	Deloitte Memo – Suspense Document Review dated 18.12.18
651.	POL00139321	Decision Paper: Should Post Office allow Freeths access to Second Sight? for 05.10.16 PLSG meeting
652.	POL00139406	Decision Paper: Should Post Office Allow Freeths access to Second Sight? For 12.07.17 PLSG meeting
653.	POL00250171	Protocol governing Second Sight's interaction with Freeths for the purposes of the Claim signed by POL 21.08.17
654.	**POL00006431**	Noting Paper: Update on Litigation Strategy for 16.10.17 PLSG Meeting
655.	POL00357949	Briefing Paper: Electronic Documents Questionnaire for 06.12.17 PLSG Meeting
656.	POL00252428	Decision Paper: Should PO extract all documents from SharePoint for 04.01.17 PLSG Meeting
657.	POL00254458	Updating Paper – disclosure for 11.04.18 PLSG meeting
658.	POL00253188	Email Amy Prime to Mark Underwood dated 31.01.18
659.	POL00139539	Noting Paper: Update on Strategy for the Court Hearing on 02.02.18
660.	POL00253355	Email Andrew Parsons to Rodric Williams and Mark Underwood dated 12.02.18
661.	WBON0001226	Email exchange between Andrew Parsons, Rodric Williams and Mark Underwood dated 12.02.18 to 13.02.18
662.	POL00253363	Email exchange between Amy Prime, Andrew Parsons, Mark Underwood and Rodric Williams dated 12.02.18 to 13.02.18
663.	WBON0001229	Letter Womble Bond Dickinson to Freeths dated 13.02.18
664.	POL00408810	Summary of Agreed and Disputed Classes of Documents – 19.02.18
665.	POL00253516	POL's Skeleton Argument for 22.02.18 CMC
666.	WBON0001232	Third CMC Order dated 02.18
667.	POL00022706	Email chain involving Andrew Parsons, Thomas Moran, Jane MacLeod and Mark Underwood dated 16.04.18
668.	WBON0000177	Email chain involving Andrew Parsons, Thomas Moran, Jane MacLeod and Mark Underwood dated 16.04.18
669.	POL00022705	Email chain involving Andrew Parsons, Thomas Moran, Jane MacLeod and Mark Underwood dated 16.04.18
670.	POL00254578	Letter from Womble Bond Dickinson to Freeths dated 17.04.18

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No.	Document Reference	Document
671.	POL00285777	Letter Womble Bond Dickinson to Freeths dated 18.05.18
672.	WBON0001690	Letter Womble Bond Dickinson to Freeths dated 18.05.18
673.	POL00285778	Letter Womble Bond Dickinson to Freeths dated 01.08.18
674.	POL00006442	Decision Paper: Should PO disclose the Peak System for 26.09.18 PLSG meeting
675.	WBON0001566	Seventh CMC Order dated 20.02.19
676.	WBON0001596	Order dated 15.04.19
677.	POL00023115	CMC Order dated 25.07.19
678.	POL00285761	Letter Womble Bond Dickinson to Freeths dated 30.08.19
679.	POL00112568	Update Paper for 26.09.19 PLSG meeting
680.	POL00286050	Steering Group Paper: Process for Further Issues Claims for meeting on 10.10.19
681.	POL00241140	Letter Freeths to Rodric Williams dated 28.04.16
682.	POL00408698	Email exchange involving Tom Porter, Andy Garner, Andrew Parsons, Rob Houghton, Mark Underwood, Shirley Hailstones, and Babu Palathoti dated 04.07.16 – 28.07.16
683.	WBON0000460	Email from Andrew Parsons to Pete Newsome dated 19.09.16
684.	WBON0000461	Email chain between Andrew Parsons and Pete Newsome dated 19.09.16 – 21.09.16
685.	WBON0000462	Email chain between Andrew Parsons and Pete Newsome dated 19.09.16 - 21.09.16
686.	WBON0000463	Email exchange involving Andrew Parsons, Pete Newsome and Amy Prime dated 19.09.16 - 23.09.16
687.	WBON0001062	Schedule of Post Office Limited's responses to Claimants' requests for documents dated 13.10.16
688.	WBON0001069	Email exchange involving Andrew Parsons, Pete Newsome, Paul Loraine and Mark Underwood dated 19.09.16 to 09.01.17
689.	POL00249030	Email exchange involving Rodric Williams, Amanda Pearce and Paul Loraine dated 13.11.16 – 18.11.16
690.	WBON0000473	Email from Paul Loraine to Rodric Williams dated 09.01.17
691.	WBON0000476	Email exchange involving Amy Prime, Andrew Parsons, Paul Loraine and Jonathan Gribben dated 20.0317 – 21.03.17
692.	POL00024817	Email from Paul Loraine to Rodric Williams dated 05.04.17
693.	WBON0001187	Email from Paul Loraine to Rodric Williams and Mark Underwood dated 25.07.17
694.	WBON0001679	Letter Freeths to Bond Dickinson dated 17.03.17
695.	POL00247918	Letter Bond Dickinson to Freeths dated 21.03.17

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No.	Document Reference	Document
696.	POL00249567	Email chain between Christopher Jay and Rodric Williams dated 12.06.17 - 30.06.17
697.	WBON0001134	Email chain between Christopher Jay and Rodric Williams dated 12.06.17 – 30.06.17
698.	WBON0001136	Email exchange involving Andrew Parsons, Pete Newsome, Paul Loraine, Peter Thompson and Steve Bansal dated 21.09.16 – 29.06.17
699.	WBON0000503	Email from Paul Loraine to Andrew Parsons dated 15.08.17
700.	WBON0000504	Email chain between Pete Newsome and Paul Loraine dated 16.08.17 - 17.08.17
701.	WBON0001188	Email from Paul Loraine to Rodric Williams dated 18.08.17
702.	WBON0001196	Letter Bond Dickinson to Freeths dated 01.09.17
703.	WBON0001195	Email chain involving Amy Prime, Anthony de Garr Robinson, Andrew Parsons, Owain Draper, Peter O'Connell and Megan Atack dated 13.09.17
704.	WBON0000505	Email exchange involving Anthony de Garr Robinson, Andrew Parsons, Owain Draper, Amy Prime Elisa Lukas, Megan Atack and Peter O'Connell dated 13.09.17 – 14.09.17
705.	WBON0001197	Email exchange involving Andrew Parsons, Owain Draper, Anthony de Garr Robinson, Amy Prime and Megan Atack dated 13.09.17 – 14.09.17
706.	WBON0001199	Letter Bond Dickinson to Freeths dated 15.09.17
707.	POL00041483	Email exchange involving Andrew Parsons, Legal Defence email address at Fujitsu, Michael Harvey, Pete Newsome and Torstein Godeseth dated 18.09.17 to 21.09.17
708.	WBON0000506	Email exchange Andrew Parsons, Legal Defence email address at Fujitsu, Michael Harvey, Pete Newsome and Torstein Godeseth dated 18.09.17 – 21.09.17
709.	WBON0001200; WBON0001201	Letter Bond Dickinson to Freeths dated 22.09.17
710.	WBON0001203	Letter from Freeths to Bond Dickinson dated 27.09.17
711.	WBON0001400	Letter Bond Dickinson to Freeths dated 04.10.17
712.	POL00250828	Email exchange involving Amy Prime, Andrew Parsons, Legal Defence email address at Fujitsu, Michael Harvey, Pete Newsome and Torstein Godeseth dated 18.09.17 – 04.10.17
713.	POL00250841	Email exchange involving Christopher Jay, Amy Prime, Andrew Parsons, Legal Defence at Fujitsu, Michael Harvey, Pete Newsome and Torstein Godeseth dated 18.09.17 – 05.10.17
714.	WBON0001213	Letter from Bond Dickinson to Freeths dated 06.10.17
715.	**POL00041458**	Email exchange involving Paul Lorraine, Rodric Williams and Miles Trent, dated 26.07.17 – 14.08.17
716.	WBON0000523	Email chain involving Paul Loraine, Mark Underwood, Andrew Parsons and Mandy Robertson dated 13.05.18

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No.	Document Reference	Document
717.	WBON0001687	Email chain involving Mark Underwood, Paul Loraine, Rodric Williams and Jane MacLeod dated 14.03.18 and 22.03.18
718.	POL00225914	Correcting Accounts for "Lost" Discrepancies document drafted by Gareth Jenkins dated 29.09.2010
719.	POL00041040	Email chain involving Pete Newsome, Mark Underwood, Andrew Parsons and Patrick Bourke dated 08.04.15
720.	WBON0000459	Email from Andrew Parsons to Mark Westbrook dated 15.08.16
721.	WBON0001063	Letter from Bond Dickinson to Freeths dated 13.10.16
722.	WBON0001679	Letter Freeths to Bond Dickinson dated 17.03.17
723.	POL00250437	Protocol Governing Second Sight's Interaction with Freeths for the Purposes of the Claim 21.08.17 – 01.09.17
724.	WBON0000178	Email from Elisa Lukas to Pete Newsome dated 06.09.17
725.	POL00250090	Letter from Freeths to Bond Dickinson dated 06.07.17
726.	WBON0000174	Email exchange between Elisa Lukas and Pete Newsome dated 06.09.17 – 08.09.17
727.	WBON0001200	Letter Bond Dickinson to Freeths dated 22.09.18
728.	WBON0001207	Email from Anthony de Garr Robinson to Owain Draper; Andrew Parsons, and Amy Prime dated 05.10.17
729.	WBON0001208	Fourth Witness statement of Andrew Parsons - undated
730.	WBON0000507	Email from Elisa Lukas to Pete Newsome dated 03.10.17
731.	WBON0001684	Email from Pete Newsome to Elisa Lukas dated 06.10.17
732.	POL00250836	Draft Confidentiality Agreement between Fujitsu Services Limited and IT Group Ltd
733.	WBON0000190	Email chain involving Owain Draper, Anthony de Garr Robinson, Andrew Parsons, Amy Prime, and Elisa Lukas dated 05.10.17 – 07.10.17
734.	POL00252048	Electronic Documents Questionnaire dated 06.12.17
735.	WBON0001235	Notes of Meeting Between Parties and IT Experts dated 11.04.18
736.	POL00254961	Letter from Womble Bond Dickinson to Freeths dated 14.05.18
737.	POL00254995	Letter from Freeths to Womble Bond Dickinson dated 18.05.18
738.	POL00254996	Comparison Between Claimant's and Defendant's Draft Fifth CMC Order dated May 2018
739.	WBON0001247	Email exchange between Jonathan Gribben and Pete Newsome dated 21.05.18– 24.05.18
740.	WBON0000529	Email from Imogen Randall to Jonathan Gribben dated 07.06.18

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No.	Document Reference	Document
741.	WBON0000530	Email chain involving Jonathan Gribben, Lucy Bremner, Chris Emery and Andrew Parsons dated 04.06.18 to 11.06.18
742.	WBON0000531	Email exchange between Jonathan Gribben and Imogen Randall dated 12.06.18
743.	WBON0000532	Email exchange between Jonathan Gribben and Imogen Randall dated 12.06.18
744.	WBON0000533	Email exchange between Jonathan Gribben and Pete Newsome dated 13.06.18
745.	WBON0000534	Email exchange between Jonathan Gribben and Imogen Randall dated 12.06.18 to 14.06.18
746.	POL00110998	Experts Requests for Information Prepared in Accordance with Paragraph 9 of the Fifth CMC Order dated 26.06.18
747.	WBON0001256	Email exchange between Jonathan Gribben, Robert Worden, Chris Emery and Andrew Parsons dated 29.06.18 – 30.06.18
748.	**POL00003386**	Letter from Freeths to Womble Bond Dickinson dated 02.10.18
749.	WBON0000559	Email chain involving Jason Coyne, Imogen Randall, James Hartley, 1935 Post Office, Andrew Parsons, Jonathan Gribben, Robert Worden, Anthony de Garr Robinson and Simon Henderson dated 20.07.18 – 21.07.18
750.	WBON0001273	Email exchange between Robert Worden, Andrew Parsons and Jonathan Gribben dated 31.07.18 – 01.08.18
751.	WBON0001277	Email exchange between Jonathan Gribben, Pete Newsome, Dave Ibbett and Matthew Lenton dated 01.08.18 – 07.08.18
752.	WBON0001278	Draft Post Office Response to Mr Coyne's 20.07 email dated 07.08.18
753.	WBON0001279	Email exchange between Jonathan Gribben, Pete Newsome, Dave Ibbett and Matthew Lenton dated 01.08.18 – 07.08.18
754.	WBON0001280	Draft Post Office Response to Mr Coyne's 20.07 email dated 07.08.18
755.	WBON0001294	Email exchange between Jonathan Gribben and Pete Newsome dated 13.08.18 – 20.08.18
756.	WBON0001326	Fifth CMC Order dated 25.07.18
757.	WBON0001668	Letter from Womble Bond Dickinson to Freeths dated 08.08.18
758.	POL00256155	Post Office's Response to Jason Coyne's "Requests for Information" Document Sent on 12 July 2018 and dated 26 June 2018
759.	POL00256731	Decision paper for 03.09.18 PLSG meeting: Should Post Office apply to strike out the inadmissible parts of the Claimants' evidence?
760.	POL00257086	Decisions paper for 13.09.18 PLSG meeting: When should Post Office argue its strike out application?
761.	WBON0001340	Letter from Womble Bond Dickinson to Freeths dated 25.10.18

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No.	Document Reference	Document
762.	WBON0001431	Email exchange between Matthew Lenton, Amy Prime and Lucy Bremner dated 06.02.19 to 01.03.19
763.	WBON0001429	Letter Womble Bond Dickinson to Freeths dated 18.02.19
764.	WBON0000217	Fujitsu comments on Drop and Go dated 25.03.19
765.	WBON0000211	Email exchange between Katie Simmonds and Matthew Lenton dated 28.03.19 – 29.03.19
766.	WBON0000203	Email chain involving Katie Simmonds, Matthew Lenton and Amy Prime dated 28.03.19 – 29.03.19
767.	WBON0000218	Email from Katie Simmonds to Andrew Parsons dated 29.03.19
768.	WBON0000276	Email chain involving Katie Simmonds, Charlie Temperley and Amy Prime dated 29.03.19 – 01.04.19
769.	WBON0000275	Email exchange between Katie Simmonds and Matthew Lenton dated 28.03.19 – 01.04.19
770.	WBON0001537	Email chain involving Angus McDonald, David Cooke and Katie Simmonds dated 29.03.19 – 02.04.19
771.	WBON0001535	Draft Note on Drop and Go Bug dated 02.04.19
772.	WBON0000250	Email chain involving Katie Simmonds, Matthew Lenton and Charlie Temperley dated 28.03.19 – 05.04.19
773.	WBON0000225	Email exchange between Katie Simmonds, James Brett and David Cooke dated 29.03.19 to 08.05.19
774.	WBON0000274	Email exchange between Katie Simmonds, James Brett and David Cooke dated 29.03.19 to 08.05.19
775.	WBON0001581	Email exchange between Katie Simmonds, James Brett, David Cooke and Erika Smithurst dated 29.03.19 to 10.05.19
776.	WBON0001603	Email chain involving James Brett, Katie Simmonds, Akshar Vaidya, Henk Bakker and Maxwell Racher dated 01.08.18 to 10.05.19
777.	WBON0001608	Email from Katie Simmonds to Rebecca Keating and Simon Henderson dated 22.05.19
778.	POL00132736	Final Version Note on Drop and Go Bug dated 22.05.19
779.	WBON0000227	Email chain involving Katie Simmonds, Rebecca Keating, Simon Henderson and Charlie Temperley dated 22.05.19
780.	WBON0000290	Email from Simon Henderson to Katie Simmonds and Rebecca Keating dated 23.05.19
781.	WBON0000251	Email chain involving Katie Simmonds, Rebecca Keating, Simon Henderson and Charlie Temperley dated 22.05.19 – 28.05.19
782.	WBON0000159	Email from Charlie Temperley to Andrew Parsons dated 28.05.19

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No.	Document Reference	Document
783.	WBON0000149	Email from Charlie Temperley to Andrew Parsons dated 29.05.19
784.	WBON0000293	Email chain involving Amy Prime, Anthony de Garr Robinson, Katie Simmonds, Lucy Bremner and Jonathan Gribben dated 17.06.19
785.	WBON0000138	Email chain involving Amy Prime, Anthony de Garr Robinson, Katie Simmonds, Lucy Bremner and Jonathan Gribben dated 17.06.19 – 18.06.19
786.	WBON0000139	Email exchange between Amy Prime, Anthony de Garr Robinson and Owain Draper dated 17.06.19 – 18.06.19
787.	**POL00028062**	Deloitte Horizon: Desktop Review of Assurance Sources and Key Control Features: Draft for Discussion dated 23.05.14
788.	WBON0000141	Disclosure Review Briefing Note on Privilege dated 21.01.19
789.	WBON0000145	Cartwright King Advice on Disclosure Issues Arising out of the CCRC and Separate Civil Proceedings drafted by Simon Clarke dated 20.12.17
790.	**POL00027054**	Zebra Action Summary drafted by James Rees dated 12.06.14
791.	**POL00002356**	Redacted Action Summary drafted by James Rees dated 12.06.14
792.	WBON0001264	Email from Amy Prime to Anthony de Garr Robinson and Simon Henderson dated 25.07.18
793.	WBON0000567	Email chain involving Amy Prime, Anthony de Garr Robinson, Simon Henderson and Andrew Parsons dated 25.07.18 – 26.07.18
794.	POL00408730	Email from Amy Prime to Rodric Williams dated 26.07.18
795.	POL00255961	Email chain involving Amy Prime, Rodric Williams and Mark Underwood dated 26.07.18 – 27.07.18
796.	WBON0001270	Email chain involving Amy Prime, Anthony de Garr Robinson, Simon Henderson, Andrew Parsons dated 25.07.18 – 27.07.18
797.	WBON0001339	Letter from Freeths to Womble Bond Dickinson dated 22.10.18
798.	WBON0000626	Email from Owain Draper to Amy Prime dated 23.10.18
799.	WBON0001362	Letter from Womble Bond Dickinson to Freeths dated 14.11.18
800.	WBON0001364	Letter from Freeths to Womble Bond Dickinson dated 16.11.18
801.	WBON0000155	Email chain involving Michael Wharton, Veronica Branton, Kim Pretorius, Amy Prime and Andrew Parsons dated 19.03.18 – 14.05.18
802.	WBON0000181	Email chain involving Michael Wharton, Veronica Branton, Kim Pretorius, Amy Prime and Andrew Parsons dated 19.03.18 – 17.05.18
803.	WBON0000176	Email chain involving Amy Prime, Dan Cheal and Michael Wharton dated 20.06.18 – 28.06.18
804.	POL00266947	Letter Womble Bond Dickinson to Freeths dated 05.03.19

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No.	Document Reference	Document
805.	WBON0001465	Email chain involving Miranda Bond, Charlie Temperley, Andrew Parsons, Amy Prime, Emma Campbell-Danesh, Victoria Brooks, Jonathan Gribben, Michael Wharton, Anna Martin, Dave Panaech, Lucy Bremner, Beth Hooper, Katie Simmonds, Sushma MacGeoch, Rachel Lawrie, Jane Atkinson, Mandy Robertson, Simon Henderson and Owain Draper dated 05.03.19 – 10.03.19
806.	WBON0001449	Letter from Womble Bond Dickinson to Freeths dated 09.03.19
807.	WBON0001574	Redacted Document Review dated 18.03.19
808.	**POL00003635**	Letter from Womble Bond Dickinson to Freeths dated 27.02.19
809.	**POL00003570**	Letter from Womble Bond Dickinson to Freeths dated 15.03.19
810.	POL00257537	Letter from Freeths to Womble Bond Dickinson dated 19.09.18
811.	POL00285759	Letter from Womble Bond Dickinson to Freeths dated 03.10.18
812.	WBON0000198	Email from Lucy Bremner to Mark Hotson dated 24.10.18
813.	WBON0000283	Email chain involving, Lucy Bremner, Mark Hotson, Angela Van-Den-Bogerd, Catherine Hamilton and Johan Appel dated 24.10.18 – 26.10.18
814.	WBON0001492	Email chain involving Rebecca Reay, Michelle Darbyshire, Rebecca Whipley, Johann Appel and Lisa Toye dated 31.10.18 – 06.11.18
815.	WBON0000282	Email chain involving Lucy Bremner, Mark Hotson, Angela Van-Den-Bogerd, Catherine Hamilton, Johann Appel, Mark Underwood and Andrew Parsons dated 24.10.18 – 02.11.18
816.	WBON0001487	Email chain involving Lucy Bremner, Mark Hotson, Angela Van-Den-Bogerd, Catherine Hamilton, Johann Appel, Peter Stanley, Michael Austin and Ben Cooke dated 24.10.18 – 06.11.18
817.	POL00042127	Email chain involving Rebecca Reay, Michelle Darbyshire, Johann Appel and Lucy Bremner dated 31.10.18 – 09.11.18
818.	WBON0001359	Email chain involving Rebecca Reay to Michelle Darbyshire, Johann Appel, Lucy Bremner and Rodric Williams dated 31.10.18 – 09.11.18
819.	WBON0001360	Email chain involving Rodric Williams, Luke Ryan and Lucy Bremner dated 12.11.18
820.	WBON0001693	Email from Rodric Williams to Lucy Bremner dated 12.11.18
821.	WBON0001485	Email chain involving Rodric Williams, Luke Ryan, Johann Appel and Andrew Parsons dated 12.11.18 – 15.03.19
822.	WBON0001412	Letter from Freeths to Womble Bond Dickinson dated 08.02.19
823.	POL00263874	Letter from Womble Bond Dickinson to Freeths dated 11.02.19
824.	WBON0001416	Letter from Womble Bond Dickinson to Freeths dated 12.02.19
825.	WBON0000170	Email exchange between Lucy Bremner and Johann Appel dated 11.02.19– 12.02.19

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No.	Document Reference	Document
826.	WBON0000173	Email exchange between Lucy Bremner and Johann Appel dated 11.02.19 – 13.02.19
827.	WBON0000167	Email exchange between Lucy Bremner and Johann Appel dated 11.02.19 – 13.02.19
828.	WBON0001472	Letter from Freeths to Womble Bond Dickinson dated 13.03.19
829.	WBON0000320	Email chain involving Angelique Richardson, Amy Prime, Andrew Parsons, Emma Campbell-Danesh, Victoria Brooks, Jonathan Gribben, Michael Wharton, Anna Martin, Dave Panaech, Lucy Bremner, Beth Hooper, Katie Simmonds, Sushma MacGeoch, Rachel Lawrie, Jane Atkinson and Charlie Temperley dated 13.03.19
830.	WBON0000322	Draft Letter from Womble Bond Dickinson to Freeths dated 13.03.19
831.	WBON0001483	Email from Amy Prime to Andrew Parsons and Rodric Williams dated 14.03.19
832.	WBON0000201	Email from Rodric Williams to Luke Ryan dated 14.03.19
833.	POL00022691	Letter from Womble Bond Dickinson to Luke Ryan dated 14.03.19
834.	WBON0001488	Email chain involving Rodric Williams, Luke Ryan and Andrew Parsons dated 12.11.18 – 15.11.18
835.	POL00042127	Email chain involving Rebecca Reay (Whibley), Michelle Darbyshire, Johann Appel and Lucy Bremner dated 31.10.18 – 09.11.18
836.	WBON0001491	Email chain involving Rebecca Reay, Michelle Darbyshire, Johann Appel and Lisa Toye dated 31.10.18 – 13.11.18
837.	WBON0001487	Email chain involving Lucy Bremner, Mark Hotson, Angela Van-Den-Bogerd, Catherine Hamilton, Johann Appel, Peter Stanley, Michael Austin and Ben Cooke dated 24.10.18 – 06.11.18
838.	POL00269022	Letter from Womble Bond Dickinson to Freeths dated 15.03.19
839.	WBON0001510	Letter from Royal Mail Group to Freeths
840.	POL00269053	Thirteenth Witness Statement of Andrew Paul Parsons dated 21.03.19
841.	WBON0001682	Claimants' Response to the Defendant's Request For Further Information Under CPR Part 18 Dated 27 April 2017
842.	WBON0001220	Letter Womble Bond Dickinson to Freeths dated 01.11.17
843.	WBON0001219	Letter Freeths to Womble Bond Dickinson dated 09.11.17
844.	WBON0001337	Transcript of CMC on 22.02.18
845.	POL00110872	Claimants' Proposed Factual Matrix dated 02.03.18
846.	POL00363651	Letter Womble Bond Dickinson to Freeths dated 20.03.18
847.	POL00006408	Briefing Paper: Witness statements – how to deal with inadmissible evidence – for PLSG meeting 28.03.18
848.	POL00041899	Transcript of CMC on 05.06.18

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No.	Document Reference	Document
849.	POL00358103	Decision paper: Should Post Office respond to inadmissible allegations in its witness evidence? – for PLSG meeting 17.07.18
850.	POL00255849	Letter Womble Bond Dickinson to Freeths dated 19.07.18
851.	POL00255848	Letter Freeths to Womble Bond Dickinson dated 19.07.18
852.	POL00006455	Decision Paper: Should Post Office defer its strike out application to the start of trial? – for PLSG meeting 13.09.18
853.	WBON0001313	Letter Womble Bond Dickinson to Freeths dated 31.08.18
854.	POL00256731	Decision Paper: Should Post Office apply to strike out inadmissible parts of the Claimants' evidence? – for PLSG meeting 03.09.18
855.	POL00256627	Note on admissibility of evidence for the Common Issues Trial – undated
856.	POL00256583	Draft Ninth Witness Statement of Andrew Paul Parsons – undated
857.	WBON0001700	Decision paper on strike out
858.	WBON0001254	Email exchange involving Gideon Cohen, Andrew Parsons, Anthony de Garr Robinson, David Cavender, Simon Henderson, Owain Draper, Imogen Randall, Chloe Squibb and Amy Prime dated 22.06.18
859.	WBON0000535	Email exchange involving Victoria Brooks, Andrew Parsons, Gideon Cohen, Anthony de Garr Robinson, David Cavender, Simon Henderson and Owain Draper dated 22.06.18 to 23.06.18
860.	WBON0000536	Email chain involving Victoria Brooks, Mandy Robertson and Lucy Garland dated 26.06.18
861.	WBON0000540	Email from Victoria Brooks to Ed Duffield, Helen Creech, Ivan Roots, Dave Panaech and Mandy Robertson dated 03.07.18
862.	WBON0000568	Email Victoria Brooks to Andrew Parsons dated 27.07.18
863.	WBON0000609	Email Victoria Brooks to Andrew Parsons dated 15.08.18
864.	WBON0000569	Email Victoria Brooks to Andrew Parsons dated 31.07.18
865.	WBON0000582	Email exchange between Victoria Brooks. Andrew Parsons and Amy Prime dated 01.08.18 to 02.08.18
866.	WBON0000608	Email chain involving Victoria Brooks. Helen Creech, Ed Duffield, Andrew Parsons, Gideon Cohen and Owain Draper dated 14.08.18
867.	WBON0001271	Email Mandy Robertson to Paul Williams dated 27.07.18
868.	WBON0000583	Email from Victoria Brooks to Andrew Parsons dated 03.08.18
869.	WBON0000606	Email exchange between Andrew Parsons, Mandy Robertson and Victoria Brooks dated 09.08.18 to 13.08.18
870.	WBON0001281	Email Andrew Parsons to Paul Williams dated 14.08.18

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No.	Document Reference	Document
871.	WBON0001289	Email chain involving Andrew Parsons, Paul Williams and Mandy Robertson dated 14.08.18 to 16.04.18
872.	WBON0001287	Email chain involving Andrew Parsons, Angela van den Bogerd, Rodric Williams and Paul Williams dated 14.08.18 to 16.08.16
873.	POL00041921	Email chain involving Andrew Parsons, Angela van den Bogerd, Rodric Williams and Paul Williams dated 14.08.18 to 16.08.16
874.	WBON0001257	Email from Victoria Brooks to David Longbottom dated 25.07.18
875.	WBON0000610	Email from Andrew Parsons to Victoria Brooks dated 20.08.18
876.	WBON0000612	Email Victoria Brooks to Andrew Parsons dated 21.08.18
877.	WBON0001295	Email exchange between Andrew Parsons and David Longbottom dated 21.08.18
878.	WBON0000618	Email exchange between Victoria Brooks and Andrew Parsons dated 22.08.18
879.	WBON0000619	Email chain involving Andrew Parsons, Mandy Robertson and Rodric Williams dated 22.08.18
880.	WBON0000517	Notes of Meeting Between Victoria Brooks. Mandy Robertson and Angela van den Bogerd dated 15.01.18
881.	WBON0000515	Notes of Meeting Between Victoria Brooks. Mandy Robertson and Angela van den Bogerd dated 15.01.18
882.	WBON0000546	Proof of evidence of Angela van den Bogerd – 22.05.18
883.	WBON0000556	Email Ivan Roots to Angela van den Bogerd dated 06.07.18
884.	WBON0000560	Email exchange between Ivan Roots and Angela van den Bogerd dated 06.07.18 to 23.07.18
885.	WBON0000557	Email Ivan Roots to Victoria Brooks dated 12.07.18
886.	WBON0000562	Email chain involving Victoria Brooks, Andrew Parsons, Ivan Roots and Angela van den Bogerd dated 06.07.18 to 24.07.18
887.	WBON0000580	Email Ivan Roots to Andrew Parsons dated 01.08.18
888.	WBON0001286	Email Andrew Parsons to Angela van den Bogerd dated 08.08.18
889.	WBON0000332	Email chain involving Andrew Parsons, Owain Draper, Gideon Cohen, Angela van den Bogerd and Rodric Williams dated 08.08.18
890.	POL00363477	Email chain involving Andrew Parsons, David Cavender, Angela van den Bogerd and Rodric Williams dated 08.08.18 to 20.08.18
891.	WBON0000616	Email exchange between Ivan Roots and Andrew Parsons dated 22.08.18
892.	**POL00041956**	Draft Witness Statement of Angela Van Den Bogerd dated 23.07.18

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No.	Document Reference	Document
893.	**POL00041955**	Email chain involving Angela Van Den Bogerd, Andrew Parsons and Rodric Williams dated 08.08.18 – 20.08.18
894.	POL00363491	Email Andrew Parsons to Owain Draper and Gideon Cohen dated 22.08.18
895.	POL00363453	Draft witness statement of Angela van den Bogerd dated 10.08.18
896.	POL00363501	Draft witness statement of Angela van den Bogerd dated 23.08.18
897.	WBON0000625	Email chain involving Angela van den Bogerd, Rodric Williams, Andrew Parsons, David Cavender and Gideon Cohen dated 08.08.18 to 23.08.18
898.	WBON0001311	Email chain involving Angela van den Bogerd, Rodric Williams, Andrew Parsons, David Cavender, Gideon Cohen and Owain Draper dated 08.08.18 to 23.08.18
899.	POL00363552	Email Andrew Parsons to Angela van den Bogerd dated 24.08.18
900.	WBON0001274	Email exchange between Paul Williams and Mandy Robertson dated 30.07.18 to 03.08.18
901.	WBON0001291	Email exchange between Mandy Robertson and Mike Webb dated 17.08.18
902.	WBON0001296	Email James Cox to Tim Dance dated 22.08.18
903.	WBON0001299	Email Helen Creech to Helen Dickinson dated 22.08.18
904.	WBON0000623	Email Ivan Roots to Michael Shields dated 23.08.18
905.	WBON0001301	Email exchange between Mandy Robertson and Michael Haworth dated 27.07.18 to 23.08.18
906.	WBON0001307	Email Beth Hooper to David Longbottom dated 23.08.18
907.	POL00154271	Information for Witnesses document – 10.07.18
908.	WBON0000635	Email chain between Gideon Cogen, Dave Panaech, Mandy Robertson, Amy Prime, Andrew Parsons and Victoria Brooks dated 13.11.18
909.	WBON0000636	Email chain between Gideon Cogen, Dave Panaech, Mandy Robertson, Amy Prime, Andrew Parsons and Victoria Brooks dated 13.11.18
910.	WBON0000637	Email chain between Owain Draper, Gideon Cogen, Dave Panaech, Mandy Robertson, Amy Prime, Andrew Parsons and Victoria Brooks dated 13.11.18
911.	WBON0001379	Email chain between Amy Prime, Owain Draper and David Cavender dated 12.12.18
912.	WBON0000642	Email Amy Prime to Imogen Randall dated 14.12.18
913.	WBON0000643	Flowchart 1 Transaction Corrections – 13.12.18
914.	WBON0001393	Letter Freeths to Womble Bond Dickinson dated 17.12.18
915.	WBON0000645	Email chain involving Amy Prime, Owain Draper, Gideon Cohen, David Cavender, Stephanie Jameson, Andrew Parsons, Jonathan Gribben, Emma Campbell-Danesh,

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No.	Document Reference	Document
		Victoria Brooks, Michael Wharton, Anna Martin, Dave Panaech, Lucy Bremner, Beth Hooper, Katie Simmonds and Charlie Temperley dated 17.12.18
916.	WBON0000646	Email chain involving Amy Prime, Owain Draper, Gideon Cohen, David Cavender, Stephanie Jameson, Andrew Parsons, Jonathan Gribben, Emma Campbell-Danesh, Victoria Brooks, Michael Wharton, Anna Martin, Dave Panaech, Lucy Bremner, Beth Hooper, Katie Simmonds and Charlie Temperley dated 17.12.18
917.	WBON0001396	Email chain involving Amy Prime, Owain Draper, Gideon Cohen, David Cavender, Stephanie Jameson, Andrew Parsons, Jonathan Gribben, Emma Campbell-Danesh, Victoria Brooks, Michael Wharton, Anna Martin, Dave Panaech, Lucy Bremner, Beth Hooper, Katie Simmonds and Charlie Temperley dated 17.12.18
918.	WBON0001328	Emails between Amy Prime and David Cavender dated 17.09.18 to 21.09.18
919.	WBON0001331	Emails between Amy Prime and David Cavender dated 17.09.18 to 21.09.18
920.	POL00257368	Updated First round of Evidence for the Horizon Trial dated 25.09.18
921.	POL00257886	Update Paper: Supplemental Evidence for the Horizon Trial for meeting on 12.10.18
922.	WBON0001269	Fifth CMC Order dated 24.07.18
923.	POL00358213	Claimants Outline Document in relation to the Horizon issues dated 17.08.18
924.	POL00258234	Expert Report of Jason Coyne dated 16.10.18
925.	WBON0000632	Horizon Issues Trial Witness Evidence Plan
926.	WBON0000629	Email exchange between Anthony de Garr Robinson, Jonathan Gribben and Simon Henderson dated 18.10.18 – 30.10.18
927.	WBON0000630	Email exchange between Anthony de Garr Robinson, Jonathan Gribben and Simon Henderson dated 18.10.18 – 31.10.18
928.	WBON0000627	Email exchange between Jonathan Gribben and Andrew Parsons dated 30.10.18
929.	WBON0001694	Email exchange between Jonathan Gribben, Simon Henderson and Anthony de Garr Robertson dated 12.11.18 to 15.11.18
930.	POL00111481	Expert Report of Dr Robert Worden dated 07.12.18
931.	POL00262929	Supplemental Expert Report of Jason Coyne dated 01.02.19
932.	POL00266866	Second Joint Statement of Experts dated 25.02.19
933.	POL00278807	Post Office's Written closing Submissions: Horizon Issue Trial – dated 27.06.19
934.	POL00026918	Third Joint Statement of Experts dated 01.03.19
935.	WBON0001723	Simon Clarke of Cartwright King's advice on the use of expert evidence relating to the integrity of the Fujitsu Services Ltd Horizon System dated 15.07.13
936.	WBON0001005	Email from Andrew Parsons to Anthony de Garr Robinson dated 01.06.16
937.	WBON0001011	Commentary on Documents in Counsel's Bundle dated 31.05.16

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No.	Document Reference	Document
938.	WBON0001315	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Simon Henderson and Robert Worden dated 06.09.18 – 07.09.18
939.	POL00042010	Email Andrew Parsons to Rodric Williams dated 07.09.18
940.	WBON0000342	Email exchange between Anthony de Garr Robinson, Jonathan Gribben and Simon Henderson dated 12.11.18
941.	WBON0000341	Email exchange between Anthony de Garr Robinson, Jonathan Gribben and Simon Henderson dated 12.11.18
942.	WBON0000189	Email exchange between Anthony de Garr Robinson, Andrew Parsons and Simon Henderson dated 16.11.18 – 18.11.18
943.	WBON0000331	Email from Anthony de Garr Robinson to Jonathan Gribben, Andrew Parsons, Sebastian Isaac, Lucy Bremmer and Katie Simmons dated 07.12.18
944.	WBON0001721	Email from Anthony de Garr Robinson to Jonathan Gribben, Andrew Parsons, Sebastian Isaac, Lucy Bremmer and Katie Simmons dated 07.12.18
945.	**POL00111371**	Email chain involving Andrew Parsons, Gareth Jenkins, Jonathan Gribben, Matthew Lenton, Pete Newsome and Katie Simmonds dated 16.11.18
946.	WBON0000196	Email Andrew Parsons to Katie Simmonds dated 16.11.18
947.	WBON0000197	Second Witness Statement of Angela Margaret Van Den Bogerd – draft dated 16.11.18
948.	WBON0000287	Email exchange between Katie Simmonds and Andrew Parsons dated 16.11.18
949.	WBON0000285	Email exchange between Katie Simmonds and Andrew Parsons dated 16.11.18
950.	WBON0000286	Second Witness Statement of Angela Margaret Van Den Bogerd – draft dated 16.11.18
951.	WBON0000195	Email exchange between Angela van den Bogerd and Katie Simmonds dated 16.11.18
952.	WBON0000292	Email from Simon Henderson to Andrew Parsons and Jonathan Gribben dated 12.02.19
953.	WBON0001432	Email chain involving Angela Van-Den-Bogerd, Emma Campbell-Danesh, Anthony de Garr Robinson, Simon Henderson, Owain Draper, Andrew Parsons and Paul I Smith dated 11.02.19 – 04.03.19
954.	WBON0000288	Email chain involving Steve Parker, Dave Ibbett, Pete Newsome, Jonathan Gribben and Andrew Parsons dated 22.10.18 to 06.11.18
955.	WBON0000192	Email from Jonathan Gribben to Pete Newsome dated 15.10.18
956.	WBON0000193	Response to Richard Roll (To be turned into a Statement by Steve Parker) dated 15.10.18- undated
957.	WBON0000194	Email chain involving Steve Parker, Jonathan Gribben and Pete Newsome dated 15.10.18 – 16.10.18

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No.	Document Reference	Document
958.	POL00258674	Briefing for Paula Vennells – Response to Richard Roll's evidence dated 30.10.18
959.	WBON0000284	Email exchange between Andrew Parsons and Rodric Williams dated 30.10.18 – 31.10.18
960.	POL00266514	Second Witness Statement of Stephen Paul Parker dated 29.01.19
961.	WBON0001218	Third Witness Statement of Torstein Olav Godeseth dated 28.02.19
962.	WBON0001401	Email exchange between Jonathan Gribben and Steve Parker dated 29.01.19 – 29.01.19
963.	WBON0001402	Email chain involving Lucy Bremner, Steve Parker and Jonathan Gribben dated 29.01.19
964.	POL00363893	Email chain involving Lucy Bremner, Steve Parker and Jonathan Gribben dated 29.01.19
965.	WBON0000168	Email chain involving Gareth Jenkins, Pete Newson, Christopher Jay, Legal.Defence@uk.fujitsu.com, Jonathan Gribben and Steve Parker dated 29.01.19 – 30.01.19
966.	WBON0000202	Email chain involving Jonathan Gribben. Matthew Lenton, Dave Ibbett, Pete Newsome and Gareth Jenkins dated 21.01.19 to 07.03.19
967.	WBON0000210	Email chain involving Matthew Lenton, Jonathan Gribben, Steve Parker, Dave Ibbett, Pete Newsome and Gareth Jenkins dated 21.01.19 – 11.03.19
968.	WBON0001473	Corrections to the Second Witness Statement of Stephen Paul Parker dated 14.03.19
969.	**POL00006471**	Steering Group Meeting – Noting Paper Expert Report of Dr Robert Worden dated 28.11.18
970.	WBON0000701	Email from Robert Worden to Andrew Parsons and Jonathan Gribben dated 27.03.19
971.	WBON0000702	Email chain involving Anthony de Garr Robinson, Andrew Parsons, Simon Henderson, Owain Draper, Rebecca Keating, and Robert Worden dated 27.03.19 – 28.03.19
972.	WBON0001536	Email chain involving Owain Draper, Anthony de Garr Robinson, Andrew Parsons and Robert Worden dated 27.03.19 – 28.03.19
973.	POL00042611	Email from Andrew Parsons to Rodric Williams dated 06.04.19
974.	POL00112051	Email chain between Andrew Parsons, Robert Worden and Jonathan Gribben dated 28.03.19
975.	POL00042614	Email from Robert Worden to Andrew Parsons dated 06.04.19
976.	WBON0000703	Email from Andrew Parsons to Anthony de Garr Robinson dated 07.04.19
977.	WBON0000704	Email exchange between Anthony de Garr Robinson and Andrew Parsons dated 07.04.19 – 08.04.19
978.	WBON0001539	Email chain involving Owain Draper, Anthony de Garr Robinson and Andrew Parsons dated 07.04.19 – 08.04.19

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No.	Document Reference	Document
979.	WBON0001543	Letter from Womble Bond Dickinson to Freeths dated 10.04.19
980.	WBON0001547	Email chain involving Rodric Williams, Andrew Parsons and Jonathan Gribben dated 10.04.19
981.	POL00112145	Email chain involving Andrew Parsons, Robert Worden, Jonathan Gribben, Jason Coyne and Siobhan Forster dated 10.04.19 – 16.04.19
982.	WBON0000708	Email chain involving Robert Worden, Andrew Parsons, Jonathan Gribben, Jason Coyne and Siobhan Forster dated 25.04.19
983.	WBON0000710	Email from Robert Worden to Andrew Parsons dated 26.04.19
984.	WBON0000711	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Simon Henderson and Robert Worden dated 26.04.19
985.	WBON0000712	Email chain involving Anthony de Garr Robinson, Andrew Parsons, Simon Henderson and Robert Worden dated 26.04.19
986.	WBON0001578	Email from Andrew Parsons to Rodric Williams dated 30.04.19
987.	POL00274897	Letter from Womble Bond Dickinson to Freeths dated 03.05.19
988.	POL00274899	Letter from Freeths to Womble Bond Dickinson dated 07.05.19
989.	WBON0001585	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Simon Henderson Alan Watts, Rodric Williams. Kirsten Massey and Tom Henderson dated 16.05.19
990.	WBON0001590	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Simon Henderson, Alan Watts, Rodric Williams. Kirsten Massey and Tom Henderson dated 16.05.19
991.	WBON0001600	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Simon Henderson, Kirsten Massey, Alan Watts, Rodric Williams and Tom Henderson dated 16.05.19 – 22.05.19
992.	POL00042688	Email chain involving Rodric Williams, Kirsten Massey, Andrew Parsons, Alan Watts and Tom Henderson dated 16.05.19 – 22.05.19
993.	WBON0000714	Email chain involving Robert Worden, Jason Coyne, James Hartley and Angela Fraser dated 22.05.19
994.	WBON0001607	Email chain involving Andrew Parsons, Robert Worden, Katie Simmonds, Jonathan Gribben and Lucy Bremner dated 21.05.19 – 22.05.19
995.	**POL00112279**	Email chain involving Robert Worden, Andrew Parsons, Patrick Green, Angela Fraser, Angelique Richardson, Anthony de Garr Robinson and David Cavender dated 22.05.19
996.	POL00275716	Seventeenth Witness Statement of Andrew Paul Parsons dated 31.05.19
997.	WBON0001633	Letter from Womble Bond Dickinson to Freeths dated 28.05.19
998.	WBON0001640	Letter from Womble Bond Dickinson to Freeths dated 03.06.19
999.	WBON0000713	Email chain involving Andrew Parsons, Anthony de Garr Robinson, Jonathan Gribben, Simon Henderson and Rodric Williams dated 30.04.19 – 01.05.19

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No.	Document Reference	Document
1000.	POL00042714	Transcript of Horizon Issues Trial Day 13 dated 23.05.19
1001.	**POL00006753**	Minutes of Sub-Committee Meeting 21.02.19
1002.	WBON0000337	Email from Andrew Parsons to Anthony de Garr Robinson dated 15.02.19
1003.	WBON0001421	Email exchange between Anthony de Garr Robinson and Andrew Parsons dated 15.02.19 – 17.02.19
1004.	POL00112903	Speaking Note for Board Sub-Committee dated 21.02.19
1005.	WBON0001418	Email exchange between Anthony de Garr Robinson and Andrew Parsons dated 15.02.19
1006.	POL00024150	Email from Jane MacLeod to Tim Parker, Ken McCall, Tom Cooper and Alisdair Cameron dated 20.02.19
1007.	POL00265865	Horizon Issues Trial – Draft Risk Assessment table dated 18.02.19
1008.	WBON0001422	Speaking Note for Board Sub-committee dated 21.02.19
1009.	**POL00022940**	Initial Summary of the Common Issues Judgment dated 09.03.18
1010.	WBON0001446	Email exchange involving Mark Underwood, Jane MacLeod, Mark Davies, Melanie Corfield, Julie Thomas, Zoe Brauer, Ben Beabey, Andrew Parsons, David Cavender, Gideon Cohen, Dave Panaech and Amy Prime dated 08.03.19
1011.	POL00267481	Table of actions following receipt of Common Issues Judgment – 08.03.19
1012.	WBON0001366	Post Office's Written Closing Submissions Common Issues Trial – 03.12.18
1013.	WBON0001463	Email from Andrew Parsons to David Cavender and Gideon Cohen dated 09.03.19
1014.	WBON0000650	Email exchange between Gideon Cohen, Andrew Parsons and David Cavender dated 10.03.19
1015.	WBON0000649	Email exchange between David Cavender, Andrew Parsons and Gideon Cohen dated 09.03.19
1016.	WBON0001466	Email chain involving David Cavender, Andrew Parsons and Gideon Cohen dated 09.03.19 – 10.03.19
1017.	POL00267565	David Cavender QC Advice Note dated 10.03.19
1018.	WBON0000205	Email exchange involving Mark Underwood, Mark Davies, Melanie Corfield, Julie Thomas, Zoe Brauer, Ben Beabey, Rodric Williams, Jane MacLeod and Andrew Parsons dated 08.03.19 to 10.03.19
1019.	WBON0000652	Email from Amy Prime to Tom Beezer and Andrew Parsons dated 11.03.19
1020.	WBON0000653	Email exchange between Amy Prime, Tom Beezer and Andrew Parsons dated 11.03.19
1021.	WBON0000654	Email from Amy Prime to Mark Underwood, Jane MacLeod and Rodric Williams dated 11.03.19

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No.	Document Reference	Document
1022.	WBON0000655	Email chain involving Tom Beezer, Andrew Parsons, Jane MacLeod, Mark Underwood, Amy Prime and Rodric Williams dated 11.03.19 – 12.03.19
1023.	WBON0000656	Email chain involving Anthony de Garr Robinson, Andrew Parsons and David Cavender dated 11.03.19 – 12.03.19
1024.	WBON0000657	Email chain between Adam Sloane and Andrew Parsons dated 12.03.19
1025.	WBON0000658	Email from Tom Beezer to Jane MacLeod dated 12.03.19
1026.	**POL00023930**	Email from Amy Prime to Rob Smith dated 12.03.19
1027.	POL00023988	Email from Tom Beezer to Jane MacLeod dated 12.03.19
1028.	WBON0000660	Email exchange between Luke Carvalho and Tom Beezer dated 13.03.19
1029.	WBON0000665	Email exchange between Luke Carvalho and Tom Beezer dated 13.03.19 – 15.03.19
1030.	WBON0001468	Email exchange between Amy Prime and Rob Smith dated 12.03.19
1031.	WBON0001469	Index to Bundle to Instructions to Counsel for Appeal dated 12.03.19
1032.	WBON0001470	Email exchange between Amy Prime and Rob Smith dated 12.03.19
1033.	WBON0000659	Email exchange between Amy Prime and Rob Smith dated 12.03.19
1034.	WBON0001474	Email exchange between Amy Prime and Rob Smith dated 12.03.19 – 14.03.19
1035.	POL00371317	Note on background to possible recusal application dated 13.03.19
1036.	**POL00025910**	Observations on Recusal Application 14.03.19
1037.	POL00023898	Email chain involving Jane MacLeod, Tom Beezer, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19
1038.	**POL00023955**	Recusal Note - undated
1039.	WBON0001493	Email chain involving Tom Beezer, David Cavender and Andrew Parsons dated 15.03.19
1040.	WBON0001494	Draft Recusal Note – 15.03.19
1041.	WBON0001495	Email chain involving Tom Beezer, David Cavender and Andrew Parsons dated 15.03.19
1042.	WBON0001496	Draft Recusal Note – 15.03.19
1043.	WBON0001497	Email chain involving Tom Beezer, David Cavender and Andrew parsons dated 15.03.19 – 16.03.19
1044.	POL00022960	Email chain involving Tom Beezer, Jane MacLeod, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 16.03.19
1045.	WBON0001499	Email chain involving Tom Beezer, David Cavender and Andrew Parsons dated 15.03.19 – 16.03.19

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No.	Document Reference	Document
1046.	WBON0001500	Draft Recusal Note dated 16.03.16
1047.	WBON0000666	Email chain involving Tom Beezer, David Cavender and Andrew Parsons dated 15.03.19 – 16.03.19
1048.	WBON0000667	Email chain involving Amy Prime, Andrew Parsons, Tom Beezer and David Cavender dated 15.03.19 – 16.03.19
1049.	WBON0000668	Draft Recusal Note dated 16.03.16
1050.	POL00023911	Email chain involving Tom Beezer, Jane MacLeod, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 16.03.19
1051.	POL00268458	Draft Recusal Note dated 16.03.16
1052.	POL00268459	Draft Recusal Note Comparison Document dated 16.03.16
1053.	POL00330036	Email chain involving Tom Beezer, Jane MacLeod, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 16.03.19
1054.	POL00023231	Email chain involving Tom Beezer, Jane MacLeod, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 16.03.19
1055.	POL00268479	Draft Recusal Note dated 16.03.16
1056.	POL00023229	Email chain involving Jane MacLeod, Tom Beezer, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 17.03.19
1057.	POL00268503	Document prepared by Jane MacLeod: "Extracts from the Judgment that Demonstrate Bias" – 17.03.19
1058.	POL00022969	Email chain involving Tom Beezer, Jane MacLeod, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 17.03.19
1059.	POL00268516	Draft Recusal Note – 17.03.19
1060.	WBON0000672	Email chain involving Jane MacLeod, Tom Beezer, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 17.03.19
1061.	WBON0000673	Email chain involving Tom Beezer, Jane MacLeod, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 17.03.19
1062.	WBON0001501	Email chain involving Tom Beezer, Rob Smith and Anthony Grabiner dated 17.03.19
1063.	POL00268533	Draft Recusal Note – 17.03.19
1064.	WBON0000671	Email from Tom Beezer to Rob Smith dated 17.03.19
1065.	WBON0000675	Email chain involving Jane MacLeod, Tom Beezer, Andrew Parsons, Tim Parker and Thomas Cooper dated 15.03.19 – 17.03.19
1066.	WBON0001351	Witness statement of John Breeden dated 14.08.18
1067.	POL00268834	Note of Conference with Lord Grabiner QC dated 18.03.19

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No.	Document Reference	Document
1068.	POL00022883	Email chain involving Tom Beezer, Jane MacLeod, Richard Watson, Rodric Williams and Thomas Cooper dated 18.03.19 – 20.03.19
1069.	POL00330038	Email chain involving Tom Beezer, Jane MacLeod, Richard Watson, Rodric Williams and Thomas Cooper dated 18.03.19 – 20.03.19
1070.	**POL00021562**	Minutes of Board Meeting dated 18.03.19
1071.	WBON0000677	Email from Jane MacLeod to Tom Beezer, Rodric Williams and Andrew Parsons dated 18.03.19
1072.	WBON0001511	Email exchange between Jane MacLeod, Tom Beezer, Rodric Williams and Andrew Parsons dated 18.03.19 to 19.03.19
1073.	WBON0001714	Email Jane MacLeod to Tom Beezer dated 20.03.19
1074.	WBON0000679	Email chain involving Andrew Parsons, Tom Beezer, Gideon Cohen, David Cavender, Stephanie Wood and Jane MacLeod dated 20.03.19
1075.	WBON0000681	Email chain involving David Cavender, Tom Beezer, Andrew Parsons, Gideon Cohen, Stephanie Wood and Jane MacLeod dated 20.03.19
1076.	WBON0000682	Email exchange between Tom Beezer and Jane MacLeod dated 20.03.1942
1077.	WBON0001515	Email chain involving Tom Beezer, Andrew Parsons, Gideon Cohen, David Cavender, Stephanie Wood and Jane MacLeod dated 20.03.19
1078.	POL00269796	Updated Note of Post Office Board Dial-In attended by Lord Grabiner (by phone) of 20.03.19
1079.	WBON0000683	Email from Jane MacLeod to Rodric Williams and Andrew Parsons dated 20.03.19
1080.	WBON0000661	Email from Tom Beezer to Jane MacLeod, David Cavender and Gideon Cohen dated 14.03.19
1081.	POL00167515	Email exchange between Tom Beezer and Jane MacLeod dated 19.03.19 – 20.03.19
1082.	WBON0000664	Email chain involving Amy Prime, Gideon Cohen, Tom Beezer, David Cavender and Jane MacLeod dated 14.03.19 – 15.03.19
1083.	WBON0001503	Email from Gideon Cohen to Andrew Parsons, Tom Beezer, Dave Panaech, Amy Prime, David Cavender and Owain Draper dated 18.03.19
1084.	WBON0001504	Notes for recusal application – 18.03.19
1085.	POL00364150	Email chain involving Amy Prime, Gideon Cohen and Tom Beezer dated 19.03.19
1086.	POL00364151	Draft Witness Statement of Andrew Paul Parsons – 19.03.19
1087.	WBON0000678	Email chain involving Amy Prime, Gideon Cohen and Tom Beezer dated 19.03.19
1088.	WBON0000674	Email chain involving David Cavender, Gideon Cohen, Andrew Parsons, Amy Prime, Tom Beezer and Jane MacLeod dated 14.03.19 – 17.03.19
1089.	WBON0001512	Email chain involving Stephanie Wood, Gideon Cohen and Tom Beezer dated 19.03.19

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No.	Document Reference	Document
1090.	WBON0000680	Email chain involving Amy Prime, Gideon Cohen and Tom Beezer dated 19.03.19 – 20.03.19
1091.	WBON0001514	Email chain involving Amy Prime, Gideon Cohen and Tom Beezer dated 19.03.19 – 20.03.19
1092.	WBON0001516	Email from Gideon Cohen to Tom Beezer, Andrew Parsons, Dave Panaech and Amy Prime dated 20.03.19
1093.	WBON0001519	Draft Witness Statement of Andrew Paul Parsons – 20.03.19
1094.	WBON0001520	Email chain involving Andrew Parsons, Gideon Cohen, Amy Prime and Owain Draper dated 20.03.19
1095.	POL00023769	Email from Amy Prime to Jane MacLeod dated 20.03.19
1096.	WBON0000685	Email chain involving Tom Beezer, Amy Prime and Jane MacLeod dated 20.03.19 – 21.03.19
1097.	WBON0000686	Email chain involving Tom Beezer, Amy Prime and Jane MacLeod dated 20.03.19 – 21.03.19
1098.	WBON0000687	Email chain involving Tom Beezer, Amy Prime and Jane MacLeod dated 20.03.19 – 21.03.19
1099.	WBON0000684	Email exchange between Andrew Parsons to Anthony de Garr Robinson dated 20.03.19
1100.	WBON0000688	Email from Amy Prime to David Cavender, Gideon Cohen, Stephanie Wood, Anthony Grabiner and Owain Draper dated 21.03.19
1101.	POL00364171	Email chain involving Gideon Cohen, Amy Prime, Stephanie Wood, Andrew Parsons Tom Beezer and Dave Panaech dated 22.03.19 – 24.03.19
1102.	POL00364172	Fifteenth Witness Statement of Andrew Paul Parsons – draft dated 24.03.19
1103.	POL00364173	Email chain involving Gideon Cohen, Amy Prime, Stephanie Wood, Andrew Parsons Tom Beezer and Dave Panaech dated 22.03.19 – 25.03.19
1104.	WBON0000689	Email chain involving Gideon Cohen, Amy Prime, Stephanie Wood, Andrew Parsons Tom Beezer and Dave Panaech dated 22.03.19 – 25.03.19
1105.	POL00364175	Email chain involving Andrew Parsons, Gideon Cohen, Amy Prime, Stephanie Wood, Tom Beezer and Dave Panaech dated 22.03.19 – 25.03.19
1106.	POL00364177	Email chain involving Andrew Parsons, Gideon Cohen, Amy Prime, Stephanie Wood, Tom Beezer and Dave Panaech dated 22.03.19 – 25.03.19
1107.	WBON0000692	Email chain involving Amy Prime, Gideon Cohen, Stephanie Wood, Andrew Parsons, Tom Beezer, Dave Paenach, Owain Draper and Anthony Grabiner dated 22.03.19 – 25.03.19
1108.	WBON0000693	Email chain involving Amy Prime, Gideon Cohen, Stephanie Wood, Andrew Parsons, Tom Beezer, Dave Paenach, Owain Draper and Anthony Grabiner dated 22.03.19 – 26.03.19

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No.	Document Reference	Document
1109.	POL00364183	Email chain involving Amy Prime, Gideon Cohen, Stephanie Wood, Andrew Parsons, Tom Beezer, Dave Paenach, Owain Draper and Anthony Grabiner dated 22.03.19 – 26.03.19
1110.	WBON0000694	Email chain involving Amy Prime, Gideon Cohen, Stephanie Wood, Andrew Parsons, Tom Beezer, Dave Paenach, Owain Draper and Anthony Grabiner dated 22.03.19 – 26.03.19
1111.	WBON0001522	Email chain involving Amy Prime, Gideon Cohen, Stephanie Wood, Andrew Parsons, Tom Beezer, Dave Paenach, Owain Draper and Anthony Grabiner dated 22.03.19 – 26.03.19
1112.	POL00023950	Email from Amy Prime to Jane MacLeod and Rodric Williams dated 26.03.19
1113.	WBON0001523	Email from Amy Prime to Gideon Cohen and Owain Draper dated 26.03.19
1114.	WBON0001531	Email exchange between Gideon Cohen, Amy Prime and Owain Draper dated 26.03.19
1115.	POL00023239	Email chain involving Andrew Parsons, Rodric Williams, Amy Prime and Jane MacLeod dated 26.03.19
1116.	POL00269583	Letter from Freeths to Womble Bond Dickinson dated 26.03.19
1117.	WBON0000695	Email exchange between Gideon Cohen and Amy Prime dated 26.03.19
1118.	WBON0000696	Email chain involving Owain Draper, Amy Prime and Gideon Cohen dated 26.03.19
1119.	POL00269584	Letter from Womble Bond Dickinson to Freeths dated 26.03.19
1120.	WBON0001696	Letter from Freeths to Womble Bond Dickinson dated 27.03.19
1121.	WBON0000697	Email chain involving Owain Draper, Amy Prime, Gideon Cohen, David Cavender, Anthony Grabiner, Miranda Bond, Dave Panaech, Charlie Temperley, Andrew Parsons, Emma Campbell-Danesh, Victoria Brooks, Jonathan Gribben, Michael Wharton, Anna Martin, Lucy Bremner, Beth Hooper, Katie Simmonds, Sushma MacGeoch, Rachel Lawrie, Jane Atkinson and Mandy Robertson dated 27.03.19
1122.	WBON0000698	Email chain involving Owain Draper, Amy Prime, Gideon Cohen, David Cavender, Anthony Grabiner, Miranda Bond, Dave Panaech, Charlie Temperley, Andrew Parsons, Emma Campbell-Danesh, Victoria Brooks, Jonathan Gribben, Michael Wharton, Anna Martin, Lucy Bremner, Beth Hooper, Katie Simmonds, Sushma MacGeoch, Rachel Lawrie, Jane Atkinson and Mandy Robertson dated 27.03.19
1123.	WBON0000699	Email chain involving Andrew Parsons, Owain Draper, Amy Prime, Gideon Cohen, David Cavender, Anthony Grabiner, Miranda Bond, Dave Panaech, Charlie Temperley, Emma Campbell-Danesh, Victoria Brooks, Jonathan Gribben, Michael Wharton, Anna Martin, Lucy Bremner, Beth Hooper, Katie Simmonds, Sushma MacGeoch, Rachel Lawrie, Jane Atkinson and Mandy Robertson dated 27.03.19
1124.	WBON0000700	Email chain involving Owain Draper, Andrew Parsons, Angela Fraser, and Henry Warwick dated 27.03.19
1125.	**POL00023208**	Email chain involving Andrew Parsons, Jane MacLeod, David Neuberger, Gideon Cohen and Anthony Grabiner dated 12.04.19 – 14.04.19

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No.	Document Reference	Document
1126.	WBON0000706	Email chain involving Andrew Parsons, David Neuberger, Gideon Cohen and Anthony Grabiner dated 12.04.19 – 14.04.19
1127.	WBON0001572	Email chain involving Andrew Parsons, Jane MacLeod, David Neuberger and Anthony Grabiner dated 14.04.19 to 15.04.19
1128.	WBON0000707	Email chain involving Andrew Parsons, Anthony Grabiner, David Neuberger, Gideon Cohen and Owain Draper dated 12.04.19 – 15.04.19
1129.	**POL00006513**	Email exchange between Andrew Parsons and Jane MacLeod dated 17.04.19
1130.	WBON0000158	Email from David Cavender to Tom Beezer, Andrew Parsons, Gideon Cohen and Owain Draper dated 21.03.19
1131.	WBON0000200	Email chain between Andrew Parsons, Tom Beezer, David Cavender, Gideon Cohen and Owain Draper dated 21.03.19 – 22.03.19
1132.	WBON0000323	Email from Jane MacLeod to Andrew Parsons dated 05.04.19
1133.	POL00023941	Email from Jane MacLeod to Andrew Parsons dated 08.04.19
1134.	POL00270456	Email from David Cavender to Andrew Parsons and Amy Prime dated 10.04.19
1135.	POL00270457	Draft Grounds of Appeal – 10.04.19
1136.	WBON0001575	Email exchange between David Cavender and Andrew Parsons dated 16.04.19
1137.	POL00023028	Email from Andrew Parsons to Jane MacLeod and Rodric Williams dated 10.04.19
1138.	POL00270458	Draft Common Issues Judgment Appeal Advice dated 10.04.19
1139.	WBON0001576	Email from Andrew Parsons to David Cavender, Owain Draper and Gideon Cohen dated 16.04.19
1140.	POL00270870	Spreadsheet on whether POL should appeal or concede aspects of the Common Issues Judgment – 16.04.19
1141.	POL00270936	Spreadsheet on whether POL should appeal or concede aspects of the Common Issues Judgment – 17.04.19
1142.	WBON0001541	Email chain involving David Cavender, Andrew Parsons, and Rob Smith dated 09.04.19
1143.	WBON0001571	Email from Owain Draper to Andrew Parsons dated 12.04.19
1144.	WBON0000291	Email from Anthony Grabiner to Andrew Parsons dated 08.05.19
1145.	POL00284926	Draft Grounds of Appeal – 08.05.19
1146.	**POL00006755**	Minutes of the Board Subcommittee meeting dated 24.04.19
1147.	**POL00023207**	Lord Justice Coulson's Order dated 09.05.19
1148.	WBON0001717	Email Amy Prime to Madeleine Collins dated 17.12.18

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No.	Document Reference	Document
1149.	POL00259980	Post Office's proposed approach to findings of fact following the Common Issues Trial dated 17.12.18
1150.	POL00269105	Fourteenth Witness Statement of Andrew Paul Parsons dated 21.03.19
1151.	WBON0000169	Email chain involving Anthony Grabiner, Andrew Parsons and Jane Macleod dated 10.04.19
1152.	WBON0000172	Email chain involving Anthony Grabiner, Andrew Parsons, Owain Draper, David Neuberger and Gideon Cohen dated 12.04.19 – 14.04.19
1153.	WBON0000148	Email chain involving David Neuberger, Anthony Grabiner, David Cavender, Owain Draper, Ben Foat, Alan Watts, Kirsten Massey, Tom Henderson, Amy Prime, Rodric Williams, Mark Underwood and Patrick Bourke dated 11.05.19 to 12.05.19
1154.	**POL00022933**	Email exchange between John Grimmer and Amy Prime dated 18.03.19 – 19.03.19
1155.	WBON0001697	Email from Brian Altman to Amy Prime dated 14.04.19
1156.	POL00273923	Advice on the Common Issues Trial Judgment by Brian Altman dated 14.04.19
1157.	POL00023223	Email chain involving Andrew Parsons, Rodric Williams, Brain Altman and Amy Prime dated 14.04.19 – 15.04.19
1158.	WBON0001656	Email chain involving Lord William, Andrew Parson and Lee Bartlett dated 08.10.19
1159.	WBON0001660	Email chain involving Lord William, Brain Altman, Andrew Parsons, Ben Foat, Rodric Williams Charlyn Cruz, Catherin Emanual, Alan Watts, Ainsile Cranwell and Angela Fraser dated 28.11.19
1160.	WBON0000721	Email chain involving Andrew Parsons, Jonathan Gribben, Catherine Emanuel, Alan Watts, Brain Altman and Lord William dated 08.12.19 – 09.12.19
1161.	WBON0000723	Email from Jonathan Gribben to Anthony de Garr Robinson, Simon Henderson and Owain Draper dated 09.12.19
1162.	WBON0000724	Email chain involving Anthony de Garr Robinson, Simon Henderson, Jonathan Gribben and Owain Draper dated 09.12.19
1163.	WBON0001653	Letter from Womble Bond Dickinson to Freeths dated 25.09.19
1164.	POL00285257	Letter from Freeths to Womble Bond Dickinson dated 27.09.19
1165.	WBON0000324	Draft letter from Womble Bond Dickinson to Freeths dated 30.09.19
1166.	WBON0000325	Email from Lucy Bremner to Matthew Lenton dated 30.09.19
1167.	POL00043025	Email chain involving Andrew Parsons, Matthew Lenton, Amy Prime and Lucy Bremner dated 30.09.19 – 04.10.19
1168.	WBON0000137	Email chain involving Amy Prime, Andrew Parsons, Lucy Bremner, Jonathan Gribben and Matthew Lenton dated 30.09.19 – 01.10.19
1169.	POL00285691	Letter from Womble Bond Dickinson to Freeths dated 03.10.19

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No.	Document Reference	Document
1170.	POL00285690	Letter from Womble Bond Dickinson to Freeths dated 03.10.19
1171.	POL00285786	Fujitsu –comments on relevant sections of EDQ – 06.12.17
1172.	WBON0001430	Email chain involving Matthew Lenton, Amy Prime and Lucy Bremner dated 06.02.19–19.02.19