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IN THE POST OFFICE HORIZON IT INQUIRY

CLOSING SUBMISSIONS ON BEHALF OF CORE PARTICIPANTS

REPRESENTED BY HOWE + CO

INTRODUCTION

1. As the Chair will be aware, Howe + Co acts for 157 former and current subpostmasters, assistants and family members of deceased SPMs and assistants. We also act for Dr. Kay Linnell, a forensic accountant who was closely involved in the Group Litigation.

2. This was not a computer problem this was a people problem. It was people who suffered. It was people who caused the scandal through cruelty, callousness, and connivance. Right from the start of the implementation of the Horizon system, SPMs were doomed; the Post Office imported policies that were designed to apply to paper-based accounting into a system that was designed to bring a post office branch into the digital age.

3. In 2024 the Phase 7 YouGov survey showed that many PO Branches still operated with contracts that required SPMs to make good shortfalls.

4. It might have been expected that by the time this Inquiry had reached Phase 7 that it would have been 'all change' at the Post Office. Instead, we have seen that policies current at least until October 2024 still referred to the conduct of 'old style' investigations:

> *"When conducting interviews, [investigating officers] must comply with the seven College of Policing investigative interview principles. These principles apply to all interviews, whether part of a criminal investigation or any other form of investigation."* Investigators Manual, approved June 2023 [POL00448014]

5. The Standard Postmasters' Contract [POL00000254] states at page 71 (at point 12) in reference to the "Investigation Division" and "Enquiries by Officers of the Post Office Investigation Division":

> *"… the Investigation Division does NOT enquire into matters where crime is not suspected."*

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6. The evidence has demonstrated a continuing link between POL prosecuting and using the criminal justice system to seek financial restitution; The Group Executive report of 6 July 2022 [POL00448354] states:

"Post Office has no appetite to pursue private prosecutions. However, it is proposed that Post Office Investigators conduct investigations into suspected criminality and to report what has been evidenced to law enforcement and prosecutors in all four nations of the UK. The rationale being to act as a deterrent and to seek financial restitution through the independent and external criminal justice system."

7. The Inquiry has seen in Phases 5-7 a tendency for POL to gloss over the gaps. A report for the Senior Executive Group [POL00448345] written by Mr Bartlett is astonishing evidence of POL's continuing attempts to re-write history (26th June 2024). It states:

"From 31 December 2019, all post offices have worked on a version of Horizon that the High Court case of Bates & Others has been considered by the High Court to be 'relatively robust'. In 2020, Horizon was tested for the known errors and bugs identified in the Horizon Issues Judgement and found not to be prevalent."

8. On the 17th June 2024 Mr Bartlett was asked questions by Mr Stein KC on behalf of the Howe + Co clients:

> ***Mr Stein**: ……..You said in your evidence that "because Fujitsu haven't said that it's unreliable, we are therefore prepared to assume it is reliable"?*
>
> ***John Bartlett**: Mm-hm.*
>
> ***Mr Stein**: You've also said in your evidence that "because the POL Senior Executive and Directors Board haven't said it's unreliable, we will assume it's reliable". So you're working on the basis of two negative assumptions, aren't you, Mr Bartlett?*
>
> ***John Bartlett**: And then the next step is that the police, to an evidential standard, test those transactions in the system*.

9. Phases 5-7 have shown very little more than superficial change at the Post Office, and an astonishing failure to learn any lessons from the past. In our submission, but for this Inquiry, the Post Office would have returned to type and have reverted to using the civil and criminal justice system to unfairly prosecute SPMs using a fundamentally unreliable and obsolete Horizon system.

10. Turning to the issue of compensation, we also say that but for Sir Wynn and this Inquiry, financial restitution and compensation would have remained in the doldrums, with no hope of producing any type of fair or equitable results for SPMs and their families.

11. The impact of the Inquiry's oversight of redress cannot be overstated, and means everything to the SPMs who have no trust in POL and little trust in Government to deliver. The SPMs

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represented by Howe + Co know, to their core, that if the Inquiry removes itself from its position of guardian of the financial schemes, then those schemes will fail to deliver.

KEY REQUESTS

12. (i) That the Chair retains oversight of the compensation schemes and exercises a power provided under section 14 of the Inquiries Act 2005 for this purpose.

(ii) That in the meantime the Chair requires, every two months, that the Remediation Unit and DBT report back to the Inquiry and Select Committee on compensation. We ask that there is also an avenue for SPMs to comment on progress.

(iii) That, consistent with section 14 of the Inquiries Act 2005, the Inquiry reconvenes for one or more update hearing(s) prior to the publication of the Chair's report.

(iv) That the Inquiry allows for further submissions until such time as POL and Government has agreed the way forward for the future of SPMs and the Post Office and SPMs core participants have been provided with an opportunity to comment upon it.

(v) That the Inquiry does not conclude until it has received and considered POL's and Fujitsu's proposals on restorative justice and SPM core participants have been provided with an opportunity to respond to those proposals.

KEY RECOMMENDATIONS

(vi) That, due to potential non-availability of evidence in compensation claims due to the passage of time and failures to retain data, the appropriate standard of proof in consideration of compensation claims should equate to that applied in asylum cases – a reasonable degree of likelihood, incorporated into Section 32 (4) of the Nationality and Borders Act 2022.

(vii) That the government introduces a cost capping order regime for private litigation against public bodies which contains a public interest element and where equality of arms issues will arise.

(viii) That the HSS is amended to allow assistants/employees who were subjected to ill treatment at the hands of POL, so as to bring HSS into line with the other schemes.

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(ix) That DBT liaises with MOJ to ensure the provision of more detailed and transparent data in relation to quashed convictions and that the matter is scrutinised by the relevant parliamentary select committee.

(x) That, in line with the recommendations made in the Infected Blood Inquiry, the Government should introduce in respect of Arms Length Bodies (hereafter ALBs): a statutory duty of candour and accountability on senior civil servants in respect of advice given to Permanent Secretaries and Ministers, and the completeness of their response to concerns raised by members of the public and staff.

(xi) That an eighth Nolan principle of 'candour' should be applicable generally to those working in public or quasi-public bodies such as POL, UKGI and ALBs.

(xii) The role of General Counsel within ALBs should be regulated, such that all General Counsel should be bound by professional obligations and answerable to a regulatory body. Lawyers working in government owned ALBs should not be beholden to their employer and their employer's mission.

(xiii) General Counsel should be afforded enhanced employment protection, to enable them to impart advice that executives or board members may not wish to hear without fear of adverse repercussions.

(xiv) In relation to the conduct of lawyers:

(a) ALBs are to ensure that lawyers are appropriately qualified to undertake the roles to which they were appointed.

(b) The Law Society and Bar codes of conduct should carry separate sections to cover the duties of solicitors and barristers acting within government owned organisations and in relation to the duty of candour within litigation.

(c) POL and other ALBs are to publish guidance for legal teams on the use of privilege, that is to be ratified by the Law Society and Bar Council.

(d) POL and other ALBs are to publish guidance for legal teams in relation to documenting correspondence and meetings. Our clients deplore POL's apparent failure to take and keep minutes of meetings in an attempt to evade accountability. Such guidance is to be ratified by the Law Society and Bar Council.

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REQUEST THAT THE CHAIR RETAINS OVERSIGHT OF COMPENSATION MATTERS IN THE INQUIRY

13. We commence our submissions by repeating a request which has been canvassed by our counsel during the Inquiry hearings: that the Inquiry retains oversight of the conduct of the compensation schemes. We make this request because our clients do not trust that DBT will not revert to a litigious approach when the Inquiry process concludes.

14. It is important to note that such an approach would be consistent with that taken by Sir Brian Langstaff in the Infected Blood Inquiry. In that Inquiry the Chair has retained a degree of oversight. This approach is entirely consistent with the Inquiries Act 2005. Section 14 of the 2005 Act states:

> ***14 End of inquiry***
>
> *(1)For the purposes of this Act an inquiry comes to an end—*
> *(a)on the date, after the delivery of the report of the inquiry, on which the chairman notifies the Minister that the inquiry has fulfilled its terms of reference, or*
> *(b)on any earlier date specified in a notice given to the chairman by the Minister.*

15. It follows from the wording of Section 14 that an Inquiry does not end with the delivery of the report, but with the Chair's notification to the Minister.

16. Furthermore, there is a precedent, to show that the report of the Inquiry is not necessarily the last word. On 14 June 2004 when Sir Michael Bichard presented his report to the Home Secretary into the deaths of two children in Soham he wrote in a covering letter "*I look forward to the Government's response to my findings and to the recommendations which I make. As you know, I aim to reconvene my Inquiry in six months' time to assess progress on those recommendations which the Government chooses to accept. I am confident, as I acknowledge in my report, of the spirit in which my recommendations will be received and taken forward.*"

17. We submit that in addition to the Inquiry adopting the approach taken in the Soham and Infected Blood Inquiries, this Inquiry should continue to scrutinise matters relating to compensation through requiring that every two months the remediation unit and DBT must report back to the Inquiry and Select Committee on compensation. We ask that there is also an avenue for SPMs to comment on progress.

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CONCERNS RELATING TO AN OVER LITIGIOUS APPROACH BY DBT

18. SPMs remain concerned that DBT's solicitors will apply an overly litigious approach in resolving any disputes within the GLO scheme. We are able to point to two examples where such approaches have already been taken.

Bharat and Anna Dalal

19. Firstly, and by way of example, in the case of our clients Bharat and Anna Dalal DBT seeks to exclude our clients from access to the substantive heads of loss in the GLO compensation scheme because, after experiencing Horizon shortfalls our clients diversified their business to make ends meet. In doing so they used the Post Office brand name in a manner that was not permitted by the contract. POL terminated the contract as a result of this breach. However, neither of our clients had ever received a copy of their contract from POL. This was a matter that was dealt with by Lord Justice Fraser in the Common Issues judgment.

20. Solicitors acting for DBT maintain that our clients should not be entitled to full compensation under the scheme because they say that the contract termination did not arise from the Horizon issue or from matters dealt with in the judgments of Lord Justice Fraser. Accordingly, our clients must argue their position at a preliminary issue hearing, at which DBT will have the full benefit of legal advice and representation, bur for which DBT will not provide funding for representation to Mr and Mrs Dalal.

21. Our clients are rightly incensed that they must engage in quasi litigation. They believe that DBT has become emboldened because of a belief that the Inquiry process is coming to an end and so DBT will be able to evade scrutiny public criticism.

The case of Peter Worsfold

22. The litigious approach that is being taken by DBT to the administration of the compensation schemes is similarly highlighted through the experiences of our client, Peter Worsfold. Mr Worsfold is an applicant in the GLO scheme. He was very disappointed in the handling by DBT of his claim. In particular, multiple heads of claim within Mr Worsfold's application (supported by an expert forensic accountant's report) have been reduced by 30% ', *…to account for evidential uncertainty as a result of gaps within the supporting evidence provided*'. Mr Worsfold is outraged and tells us that he was under the impression that former SPMs would be given the benefit of the doubt when there was a (purported) lack of evidence on a particular issue. Mr Worsfold's case is not an isolated one.

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23. POL Witnesses have agreed in their oral evidence that the scheme must operate with a 'spirit of generosity' of POL's culpability and because SPMs have not retained their records from up to two decades ago – not least because in very many cases their records were taken by POL when their branches were closed on account of alleged Horizon shortfalls. There is a concern that assurances given when under public scrutiny will be watered down when the Inquiry is no longer sitting.

CONTINUED MONITORING OF POL REFORMS.

24. A number of our core participant clients have died since the start of this Inquiry, many are in poor health and some might not live long enough to receive full redress unless matters are dealt with as a matter of relative urgency. They are anxious that the issue of redress remains in the public eye or is otherwise subject to scrutiny, such as from the public inquiry. We therefore respectfully request that the Inquiry should retain a scrutinising role over the issue after the hearings come to an end in December 2024 and retain the ability to convene a compensation/ redress hearing, should any problems with the various schemes arise.

25. The improvements of the culture within POL remain a work in progress. At paragraph 76 of his witness statement WITN10770400 Charles Donald, the current CEO of UKGI stated:

> *"However, it is important to appreciate that organisational culture is not something that can be imposed externally. In my view, it remains a key responsibility of a Portfolio Asset's Board. It is also not something that can be transformed overnight. In relation to POL, it is self-evident that addressing the problems with its culture is, and will continue be, a large and long-term undertaking, in respect of which I am aware that a significant amount of work has already been done. However, I believe that further work remains to be done."*

26. Our clients are concerned that POL demonstrates that this further work on cultural change is undertaken and would ask that the Inquiry reconvenes for an update hearing prior to the publication of the Chair's report.

STRATEGIC REVIEW

27. Post Office's interim Chair, Mr Nigel Railton, gave evidence before the Inquiry on 8 October 2024 and confirmed to the Chair that he would update the Inquiry on POL's strategic plan or review [INQ00001192:page 181, line 16]. We request that the Inquiry remains open until POL's strategic review is agreed and the way forward for the Post Office and SPMs has concluded. We suggest that it is essential that SPM core participants are provided with an opportunity to comment upon it.

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28. POL's Strategic Review – Strategic Transformation Plan DBT/UKGI' [POL00462532] was available to CP teams on Relativity from (as far as we are aware) 7th December 2024. This review seems to turn on a *"£1.8bn investment requirement over the next five years"* [page 9]. Whilst the review refers to "significant increase in PM remuneration" and the creating a *"sustainable, fair and attractive proposition for Postmasters, that reflects their vital role in delivering Post Office services"* [page 13] it falls far short of a strategy which 'reverses the polarity' of POL.

29. In view of the timing of its publication, we request further time to consider the content of the Strategic Review and to take instructions from our clients on the proposals. We propose that we make further written submissions on the document in due course. We would wish to make clear at this stage that, as a minimum, we ask that the Inquiry recommends the following should be in place to protect Postmasters in the future:

    i. A guarantee of a living wage
    ii. Whistleblowing rights established through legislation
    iii. An open and welcoming culture to promote discussion, and an institution which listens and investigates
    iv. A Chief Inspector of the Post Office and other ALBs to consider their operation; the welfare of all SPMs, employees and workers and the maintenance of their social purposes and intent.

MONITORING OF RESPONSES TO INQUIRY RECOMMENDATIONS.

30. A major concern held by our clients is, whether the government will implement (properly or at all) the recommendations that this Inquiry makes. Of course, the Inquiry is unable to take steps to ensure that the recommendations are followed. However, we submit that there should be a facility for core participants and members of the public to know whether any particular recommendation has been or will be implemented.

31. It is a general matter of concern that there appears to be no system *for recording recommendations made by public bodies or keeping track of response to them.* We note that requests have been made in other Inquiries for such a mechanism and we repeat that request herein. Over many years, POL kept our clients in the dark on matters that were crucially important to them. We submit that the disposal by government of the Inquiry's recommendations should be clear and transparent to all core participants and those interested in the outcome of the Inquiry's work.

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32. In the circumstances we ask that the Inquiry recommends that it be made a legal requirement for the government to maintain a publicly accessible record of recommendations made by select committees, coroners and public inquiries together with a description of the steps taken in response. If the government decides not to accept a recommendation, it should record its reasons for doing so. Scrutiny of its actions should be a matter for Parliament, to which it should be required to report annually.

THE INHERENT IMPROBABILITY OF POL'S POSITION

33. One of the most extraordinary aspects of the evidence before the Inquiry has been that POL's cases against SPMs in relation to the Horizon shortfalls issue required an absurd leap of faith.

34. Our clients consider that the evidence of the POL witnesses should be considered in light of the inherent implausibility of POL's position. It is simply inconceivable that POL was not aware of the key issues (the improbability of endemic SPM theft and the potential for flaws in Horizon), raised in the evidence of Sir Anthony Hooper and Lord Arbuthnot. These issues ought to have been readily obvious, not least from the time that the issue entered the public domain from the date of the Computer Weekly article in 2009 until Lord Justice Fraser handed down his judgment in the Common Issues trial in 2019.

35. Sir Anthony Hooper made the point at paragraph 6 of his statement WITN00430100:

> *"Most if not all the SPMs were of excellent character. The fact of a loss would be known to POL within days or weeks. No sensible person would steal from POL, knowing that POL would identify the loss so quickly leading to the SPM being prosecuted/dismissed."*

36. On 10 April 2024 Sir Anthony Hooper gave evidence before the Inquiry. He elaborated on this issue as follows: [INQ00001127: transcript – page 134, line 21]

> *"As I say in my witness statement, I tried to make it clear to Paula Vennells and to the Chairman that the Post Office case didn't make sense, and I felt that throughout, and no doubt Second Sight did. It didn't make sense that reputable SPMs appointed by the Post Office, after an examination of their characters, would be stealing these sums of money. It didn't make sense, in particular because within a matter of days of any quote "alleged theft", they had to balance the books. It just never made sense. I made that point over and over again."*

37. Lord Arbuthnot similarly stated at paragraph 29 of his statement WITN00020100:

> *"The subpostmasters I had met seemed to me to be transparently honest. I do not remember anyone suggesting to me that the introduction of a new computerised*

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accounting system had uncovered previously hidden fraudsters. If they did I would have given it little credence, both because of the self-evident honesty of the subpostmasters I had met and because of the sudden rash of similar allegations appearing shortly after the installation of a new computer system, an exercise which inevitably will have teething problems"

38. At paragraph 63 of her witness statement WITN10200100, Baroness Neville Rolfe states:

"More generally I was from the start surprised that so many people from normally reliable sections of the community were being convicted of dishonesty. This was troubling."

39. The Inquiry is asked to commence its considerations from the standpoint that POL's position, that SPMS were inherently dishonest, was logically absurd. The Inquiry is urged to have this point at the forefront of its consideration when assessing the credibility of the excuses provided by POL and Fujitsu witnesses in their oral evidence.

40. Those witnesses were involved in a toxic culture, which perpetuated a myth that SPMs were 'all crooks' [see POL00176521] or that they had '*lifestyle issues*' which lent them a propensity towards crime. Paula Vennells told a group of 12 MPs at a meeting on 12 or 13 March 2012 that '*temptation is an issue*' [JARB0000001].[1] Alice Perkins told that same group that: *"There is the issue of trying not to put temptation in people's way, but in any retail business this is not possible"* [also JARB0000001].

41. These mantras suited the agendas of POL, with which Fujitsu were happy to assist. It is entirely due to the efforts of Sir Alan Bates and Kay Linnell and others that the convenient myth of '*Thieving Sub Postmasters*' was exposed for the despicable lie that it was.

THE REVIEW OF ALISDAIR CAMERON

42. We submit that Alistair Cameron's review of 19 November 2020 is an important document. On 17 May 2024 the Inquiry heard evidence from Alisdair Cameron. He referred to a review of Post Office's mistakes, which he wrote for the purpose of explaining internally and externally what had gone wrong around the historical postmaster litigation [POL00175235]. He noted that POL expects the total cost of managing and settling the claims to be between £1 – 1.5 billion.

43. The document summarises the criticism that POL has faced:

[1] Paula Vennells also said: 'It appears that some SubPostmasters have been borrowing money from the Post Office account / till in the same way they might do in a retail business, but this is not how the Post Office works. Post Office cash is public money and the Post office must recover it if any goes missing.' This was a gross misrepresentation of the problems that SPMs had faced and were facing.

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1. *We have maintained an unacceptable relationship with Postmasters that was self-serving, based on an imbalance of power and information and a skewed contract.*
2. *We were over-reliant on Horizon when we knew its weaknesses.*
3. *The original prosecutions were a deliberate miscarriage of justice.*
4. *We should have settled the claims apologised and moved on years ago. We have defended ourselves to avoid the consequences. A waste of public money and a postponement of justice.*

POST OFFICE'S 'ORIGINAL SIN'.

44. Mr Cameron candidly acknowledges that at the heart of everything is the '*original sin of post office'*. This original sin is Post Office's culture which he describes as "*self-absorbed and defensive*" and which stopped POL from "*dealing with Postmasters in a straightforward and acceptable way*". It is this issue that was at the heart of Lord Justice Fraser's criticism of POL. Post Office was fixated with money and always held the view that when money was missing it must have been lost, stolen by someone else or stolen by the postmaster; whatever the cause, the postmaster was responsible.

45. Post Office considered that whatever had happened the postmaster still owed Post Office the money that was alleged to be missing. It is this fundamental belief the postmasters were accountable and the sub postmaster contract enabled POL to enforce any alleged losses against postmasters which is at the heart of the culture within Post Office, and which our clients say has yet to satisfactorily change.

FAILINGS BY THE POST OFFICE BOARD, EXECUTIVE AND LEGAL TEAMS.

46. The following failings by POL, as identified and candidly acknowledged by Mr Cameron and confirmed by evidence in the Inquiry, have resonated with the postmasters we represent.

47. The Post Office Board, its executive and legal teams are properly to be criticised for the following failures and misconduct:

48. **First**, Post Office never deflected from its unacceptable cultural position towards sub postmasters. The fundamental belief that sub postmasters were accountable meant that POL thought it could justify leaving the problem with the postmasters. This culture was embedded in the attitudes of individual executive towards campaigning sub postmasters such as Sir Alan Bates and Tim McCormack. It is relevant to note that Paula Vennells refused to talk to Mr McCormack and had been advised by Mark Davies, her communications director, never to

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talk to him because he couldn't be trusted [POL00175235]. It is this level of disdain which has featured so prominently in the evidence.

49. POL was culturally and institutionally incapable of understanding that by forcing SPMs to be accountable for all branch outcomes, SPMs were more likely to pay for a Horizon generated shortfall themselves.

50. This problem persists today. As the Chair will be aware, the Inquiry has commissioned a YouGov survey, which shows that 92% of the c1000 SPMs who responded have experienced Horizon related issues in the last 12 months [EXPG0000007]. 69% experienced unexplained discrepancies since 2020, 98% of which were shortfalls - which were generally resolved by the SPMs using branch money to repay.

51. When Second Sight challenged POL's orthodox approach towards its SPMs, instead of fully and properly considering the matters raised, POL dismissed the points that Second Sight had made and then proceeded to dismiss Second Sight.

52. Our clients have been offended that much of the evidence demonstrated that POL viewed its subpostmasters with distrust and disdain. They were seen as people who made 'noise' or sought to use allegations of Horizon deficiencies in some way to further their own dishonest activities.

53. Our clients have listened to the evidence of Saf Ismail, Elliot Jacobs and the former chair of POL, Henry Staunton. It is clear from the evidence of these important witnesses that individuals who were involved in the scandal remain in the employ of POL. It was revealed in the Inquiry in January 2024 that Stephen Bradshaw is still working in the investigations/ security section of POL. He says at paragraph 1(g) of his first witness statement [WITN04450100] that he has been in the role of '*Post Office Investigations 2000 to date*'. It is unfathomable to our clients, for example, that Stephen Bradshaw retains a role in what is effectively still the Post Office security team. Chris Knight, Simon Talbot and Robert Daily also remain in roles within POL.

54. In his evidence on 17 October 2024, John Bartlett, the current Head of the Security Team (albeit with the new job title: 'Director of Assurance and Complex Investigations') acknowledged that it was not appropriate for these individuals to be involved with SPMs

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'*given the behaviour of the past'*[2]. Sir Alan Bates referred to the Security Team in a letter to Ed Davey MP as '*thugs in suits'*[UKGI00016099*]*. The behaviour of members of the security team towards our clients was thuggish and deplorable. POL cannot change its culture unless and until it breaks the structure of the Security Team. The relevant document containing the names of those currently employed by POL in security roles is at POL00447931.

55. **Second,** POL did not disclose Horizon issues to the defence when prosecuting postmasters.

56. **Third**, Mr Cameron acknowledges that Post Office should never have conducted their own prosecutions. The Inquiry has noted the unusual position of POL, which wore many hats when exercising its prosecutorial functions, acting as victim, investigator, decision maker on whether to prosecute, prosecutor and debt recovery agency. As Mr Cameron acknowledges, such processes lack challenge and independence.

57. We ask that the Inquiry recommends that all private prosecutions should be conducted via CPS where the prosecutor is a victim. The courts should never have to deal with a victim/ investigator/ prosecutor private prosecution. The potential conflicts and disclosure issues within such proceedings has been borne out by the experiences of the post office prosecutions, render the continuation of such proceedings unacceptable.

58. **Fourth**, Post Office did not reassess their behaviour as prosecutors between 2014 and 2020. When POL stopped prosecuting SPMs they failed to conduct a review of earlier prosecutions. They chose to bury their heads in the sand when it came to the issue of whether there had been significant miscarriages of justice from the inception of the Horizon system. This attitude of wilful self-deception since the miscarriages of justice emerged has been a feature of the evidence of many POL witnesses.

59. It is extraordinary that the recommendations of the Swift review were kept from the Board by Tim Parker, who had been advised not to disclose the review. Had those recommendations been implemented, matters would have come to light considerably sooner.

60. **Fifth**, Post Office relied on anecdotal evidence that Horizon and their surrounding processes were working properly without ever fully investigating concerns on a proactive basis. Post Office did not properly challenge and test what Fujitsu told them. Mr Cameron states that this seems in part to still be the case.

[2] INQ00001198: Transcript page 12, line 6 - "think the work of the Inquiry and from what I know from Project Phoenix would strongly suggest that it's not appropriate for those individuals to be interacting with postmasters, given the behaviour of the past."

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61. **Sixth,** POL was too focused on its tactical battles. Other priorities took second place. POL was in considerable financial difficulty after separation from Royal Mail Group in 2012. Mr Cameron states that the business was losing £115m annually from trading. Our clients take the view that restoring POL to profit was the only priority of the Executive and that POL were either cynical as to, or wilfully blind to, the financially motivation of prosecutions and civil recovery of alleged shortfalls, which were part of the means of restoring POL to profitability.

62. **Seventh**, Post Office did not sufficiently challenge and test its legal advice until it was too late. Mr Cameron acknowledges that POL's legal advice was inadequate on the ongoing duties of prosecutors. Mr Cameron further states that because the deficiencies in the prosecutions had not been identified by POL, POL did not believe that there had been a miscarriage of justice.

63. We submit that POL did not identify the miscarriages because it was in wilful denial of the deficiencies in the Horizon system and institutionally and culturally unable to move from a defensive and attritional stance towards its subpostmasters.

THE STATE OF KNOWLEDGE OF SENIOR EXECUTIVES AND 'CORPORATE AMNESIA' OF WITNESSES IN PHASES 5/6.

64. The Inquiry has received much evidence where witnesses have sought to deflect responsibility by saying that they were not properly informed about the facts which gave rise to the Scandal. For example, it has been established that many POL investigators were thuggish and unprofessional. It has also been established that the in-house lawyers, such as Jarnail Singh, had lost all touch with their professional responsibilities, and were brand driven.

65. There has been something of an accountability merry-go-round. Senior executives have said that they were not informed about the problems by middle ranking managers and the Board members have said that they were not informed about matters by senior executives. ShEx members have claimed that POL failed to appraise them of the true situation.

66. We ask that the Inquiry finds that bad faith permeated from the top of the organisation. Our clients have frequently attended the hearings and have followed the proceedings remotely. They have been angered by the evidence of POL witnesses in Phases 5 and 6, who have sought to claim corporate amnesia and pursued unedifying attempts to deny knowledge of relevant facts.

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67. All of our clients are utterly unconvinced by the shambolic attempts by POL and witnesses to deny and deflect blame. The evidence of certain witnesses, such as Jarnail Singh, Gary Thomas, Stephen Bradshaw and George Thompson has been truly appalling and lacking in credibility. Core Participant, Shazia Saddiq says: that she is *utterly appalled at the shoulder shrugging attitude of the Teflon executives*. All of our clients consider that these individuals need to be brought to account. Our clients ask that the report of the Chair notes and endorses their condemnation of the deplorable behaviour of these individuals.

Actions of POL were driven by those at the top of the organisation

68. However, our clients are keen to impress on the Chair that the distasteful conduct of Singh, Thomas, Bradshaw, Thompson and others should not detract from the central theme in the evidence to the effect that the dishonesty, bad faith and covering-up that was perpetrated by POL was deliberate and driven by those at the top of the organisation – and that ultimately the CEO should be held accountable.

The 'big lie'

69. There can be no excuses for POL's insistence of a rigid (and in many cases incorrect) interpretation of its unfair and unenforceable contract[3] was effectively a longstanding misrepresentation to SPMs as to their contractual liability, a 'big lie' that enabled POL to oppress, suspend, terminate, sue and prosecute SPMs until the matter was eventually clarified by Lord Justice Fraser upon the handing down of the Common Issues Judgment in March 2019 [UKGI00009458]. The Inquiry has heard evidence to the effect that from April 2013 – June 2018, 626 SPMs were suspended during this period (equivalent to 10 per month)

70. Neither can there be any excuses for the oppressive and abusive prosecutions that were conducted over two decades for financial gain, to enable POL to bring POCA actions to confiscate assets and bankrupt subpostmasters. The Inquiry has heard evidence to the effect

[3] POL00004133, page 48: Section 12, clause 12: "*The Subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay.*" UKGI00009458 – Appendix 1

POL00004133 page 135*: Part 2, paragraph 4.1 of the NTC "The Operator shall be fully liable for any loss of or damage to, any Post Office Cash and Stock (however this occurs and whether it occurs as a result of any negligence by the Operator, its Personnel or otherwise, or as a result of any breach of the Agreement by the Operator) except for losses arising from the criminal act of a third party (other than Personnel) which the Operator could not have prevented or mitigated by following [the Defendant's] security procedures or by taking reasonable care. Any deficiencies in stocks of Products and/or any resulting shortfall in the money payable to [the Defendant] must be made good by the Operator without delay so that, in the case of any shortfall, [the Defendant] is paid the full amount when due in accordance with the Manual*"

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that between 2000 – 2015, POL brought a total of 844 prosecutions, resulting in 705 convictions.

71. There was always an appropriate and reasonable approach open to POL. This approach was articulated by Anthony Oppenheim – [1st WITN03770100, 2nd WITN03770200] – Former Commercial and Finance Director, ICL Pathway, who gave evidence before the Inquiry on the 26 October 2022 and materially stated:

> *"…….I had assumed …… where there was a mismatch in the system, as referred to here, and in the third supplemental agreement, in particular, and the subsequent operational processes, that there was an acknowledgement that there would be occasional mismatches. I mean, everybody knew that and the scale of the system was such any remote system will have mismatches occasionally. So the question then was, well, what happens when there is such an event?* ***And my presumption was, wrongly, that the Post Office would look into those and, certainly at the outset, as I say somewhere else, give the postmaster the benefit of the doubt****. We needed feedback when these things occurred, in order to the errors in the system and then fix them."* [INQ00001009*: Phase 2 – Transcript- Page 48 line 11 – page 49 line 1]*

72. Where there was doubt, the benefit of it was never given to postmasters.

73. POL was simply unable or unwilling to act in a reasonable and logical manner in relation to SPMs, POL was callous throughout and refused to accept that SPMs were anything other than thieves or dishonest opportunists who were seeking to hide their criminality by criticising the Horizon system.

74. Mark Davies was a communications director at POL from July 2012. He responded to the tragic death of Martin Griffiths by writing '*given the potential media element please can we line up a specialist media lawyer in case we need urgent advicethis evening'* [POL00162068].

75. Mr Davies was involved in discussions in July 2013 with Rodric Williams concerning the potential instruction of defamation solicitors to consider whether to apply for an injunction to stop the publication of the Second Sight Interim Report [POL00190361] and he stated in the media that SPMs had been proceeded against because of their 'lifestyle choices'. This was the true face of POL throughout the matters with which the Inquiry is concerned.

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Wilful deception – *'The Story'*

76. POL pursued a media strategy to downplay and deceive, which even extended to lawyers that it instructed. The Inquiry will recall that at POL00058155 the chain of emails from July 2012 concerning POL's '*story*' in relation to the Second Sight review. On 31 July 2012 Jarnail Singh asked Hugh Flemington, Susan Crichton and Alwen Lyons to approve *"the final draft of 'our story"* for release to agents and counsel *'for consistent approach and submissions when there is challenges (sic) to Horizon'*.

77. The text of 'the story' includes the following statement: '*when the system has been challenged in criminal courts, it has been successfully defended*'. We know from the experiences of Core Participants Suzanne Palmer, Maureen McKelvey (who were acquitted by juries in the early 2000s) and Nichola Arch that this line, which was repeatedly used by Ms Vennells and others, was a downright lie.

78. It should be noted that not only were these postmistress' acquittals airbrushed out of history by POL, but they were bankrupted and their lives and reputations were blighted by POL, notwithstanding that they had all been formally acquitted by a jury.

Brand protection and controlling the narrative

79. The media strategy was ramped up in POL's disingenuous response to the Second Sight 'report' of August 2014. On 22 August 2014 Belinda Crowe suggested that POL write to applicants and advisors and say that POL considered the report to be flawed [POL00148870]. POL sought to follow up with POL's own analysis, which sought to rebut the report. [4]

80. POL even resorted to Orwellian methods of controlling the use of language to control the narrative. In an email dated 28 June 2013 to Mark Davies, Hugh Flemington, Lesley Sewell, Rodric Williams and Jarnail Singh, Alwyn Lyons asked: "*Can we call bugs incidents from now on please*". [POL00296821]

[4] In a subsequent thematic report of April 2015, Second Sight made the following findings, which POL also sought to rebut: the Horizon system was not fit for purpose as demonstrated by the cases reviewed by second sight • investigators failed to identify causes of shortfalls • Fujitsu had an ability to access the system remotely • Post Office prosecutions were financially motivated • plea agreements contained provisions that sub postmasters were not to criticise Horizon • prosecutions were not carried out in accordance with the Code for Crown Prosecutors

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81. There has been no shortage of evidence to demonstrate that POL was only ever interested in brand protection and covering up after Computer Weekly Article brought matters into the public domain in 2009. The Inquiry is urged to reject the self-serving statements to the contrary of the former executives who gave evidence in phase 5.

What POL knew about and concealed

82. There was an abundance of red flags during the period which the Inquiry was investigating, none of which were ever considered by POL's risk and compliance committee. These red flags included: the Clarke advices generally, the 2010 Mismatch document, remote access, Gareth Jenkins' evidence having found to be tainted by Brian Altman KC, shredding instructions. It beggars belief that the senior executive and the Chair of the Board were unaware of these issues.

83. The issues which POL knew about and concealed are *inter alia* as follows:
    - That POL had known about the Falkirk bug since 2006.
    - That POL had known about the receipts and payments mismatch bug since at least September/October 2010.
    - That the Jason Coyne report prepared in the case involving Julie Wolstenholme in 2004 had challenged the proposition that Horizon was robust – leading to a settlement in that case – rather than the court resolving the issue about whether Horizon was robust.
    - The BDO report in the Lee Castleton case in 2006.
    - The previous acquittals of subpostmasters, each of whom had raised, as part of their defence, the faulty operation of the Horizon system: Suzanne Palmer, Maureen McKelvey and Nichola Arch.
    - The capability of Fujitsu to access SPM's terminals without the knowledge or consent of the SPM, which, if disclosed to defendants in criminal cases would have afforded a defence that Horizon data upon which POL relied might not have emanated from the SPM.
    - The Simon Clarke advice in relation to the tainted credibility of POL's expert, Gareth Jenkins, in at least 15 prosecutions.

84. The Inquiry heard evidence from Sir Anthony Hooper and Lord Arbuthnot at the beginning of Phase 5. The evidence of these witnesses is important because they were both independent and authoritative. Both quickly ceased upon the obvious flaws in the narrative presented by the Post Office. We submit that their insights accurately portray the reality of the conduct of the senior executives at POL towards the Horizon issue.

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Sir Anthony Hooper

85. Sir Anthony Hooper stated at paragraph 10 of his witness statement as follows:

> *"The evidence from the subsequent litigation, civil and criminal, would suggest to me that the management over many years deliberately failed fully and properly to investigate the cause of the losses notwithstanding the obvious unlikelihood that SPMs were stealing from POL. That failure ruined the lives of countless SPMs and must never be forgotten or forgiven.*" [WITN00430100]

Lord Arbuthnot

86. Lord Arbuthnot [WITN00020100] stated at paragraphs 238-239:

> *Paula Vennells said: "If there had been any miscarriages of justice, it would have been really important to me and the Post Office that we surfaced those. As the investigations have gone through, so far we have no evidence of that."*
>
> *…If I had been aware of the existence of the Clarke Advice I would have thought she was lying, because it would have been inconceivable to me that so important a matter would have been kept from the CEO. If she had not been aware of it, it could only in my view be because she had decided, despite all the concerns raised directly with her over a period of years about possible miscarriages of justice, deliberately to remain in ignorance of what was going on in the organisation of which she was CEO.*

87. Lord Arbuthnot went on to say at paragraph 246 of his statement that he formed the impression that one of Paula Vennells' motivations was to string subpostmasters along until the SPMs were time barred.

THE ORGANISATION WAS CORRUPT FROM THE TOP – CULPABILITY OF PAULA VENNELLS

88. We invite the Inquiry to reject the self-serving protestations of Ms Vennells.[5] Ultimately the evidence has demonstrated that the organisation was corrupt from the top and the CEO must bear responsibility for its actions and the toxic culture that pervaded its actions. The fish rots

[5] Ms Vennells states repeatedly at paragraphs 129,133,154 and 388 of her witness statement that she was not aware of any issues with Horizon as "they did not inform me" and (para 232) that she had never been told about BEDs in Horizon and (para 233) that what she had been told about the robustness of the Horizon system "was wrong", Mike Young in particular is referred to as POLs most senior IT manager. Remarkably, she failed to conduct any serious enquiry of POL executives or Fujitsu upon learning about the Mismatch and Callendar Sq. bugs and into matters generally as they arose. Ms Vennells acknowledges at para 562 that she was told by Susan Crichton that the expert witness used by POL had failed to mention bugs in Horizon in the Seema Misra case. [WITN01020100].

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from the head down. It is simply not credible that Ms Vennells to have uncritically adopted the mantra that she put forward in a letter to Lord Arbuthnot on 9 January 2012: *There has been no evidence to support any of the allegations and we have no reason to doubt the integrity of the system which we remain confident is robust and fit for purpose*.[POL00107698]

89. That statement was misleading and our clients maintain that POL intended to mislead. Similarly, on 18 June 2012 Paula Vennells attended a meeting with six MPs, including James Arbuthnot. The minutes of that meeting are at JARB000001. Paula Vennells is recorded as saying: '*Every case taken to prosecution that involves the Horizon System has thus far found in favour of the Post Office*.'

90. Ms Vennells statement to the MPs was untrue. As stated above, Core Participant, Suzanne Palmer, had been acquitted by a jury in Southend Crown Court in January 2007 and had asserted in her defence that the Horizon system had prevented her from challenging any Horizon figures with which she had not agreed. At the trial there had been a jury question directed at the Post Office to the effect of "*What is Mrs Palmer supposed to do if she didn't agree the figure that Horizon had produced",* which the Post Office had been unable or unwilling to answer.

91. Furthermore, in 2006 in Northern Ireland Core Participant Maureen McKelvey was acquitted by a jury in Dungannon, and that in her trial it came to light that an area manager had experienced problems with balancing on the Horizon system at Ms McKelvey's branch terminal on days when Mrs McKelvey was not present in the post office. Ms Vennells was either lying to the MPs or was reckless as to whether the statement was true. [6]

92. Our clients do not accept that Ms Vennells was as badly informed and gullible, as she sought to present in oral testimony. Neither do they accept that she was manipulated by more

[6] It is relevant to note that Ms Vennells failed to apply any curiosity into the Horizon issue. The First Expert Report "Expected and Best Practice in respect of the standards of Governance, Management and Leadership in companies such as the Post Office" Dame Sandra Dawson and Dr. Katy Steward examines the role of the CEO [EXPG0000006] and materially states at paragraph 4.2.8 : "*The effectiveness of risk identification and analysis in hindsight or foresight is not simply a matter of technical excellence in the construction and use of risk registers. It depends to a large part on the Executives' curiosity, openness to learn from signals inside and outside the company, and to challenge assumptions. Without this openness, looming problems may not make the register until `unexpectedly' they hit the organisation; or they may stay down in the 'low impact' and/or 'low probability of crystallisation', when they are becoming increasingly likely to occur and /or have major impact. Executives' approach to risk is in part, both the creature, and the creator, of the company's culture (see Section 8.4, and Power et al 2013)".*

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cynical individuals around her, such as Chris Aujard and Angela Van den Bogerd[7]. Our clients have watched the evidence closely and instruct that they do not accept at all Ms Vennells' protestations of ignorance and lack of culpability.

93. The Inquiry will recall that on 24 May 2024 Mr Stein KC put questions to Ms Vennells to the effect that in her evidence was centred around denial and deflection of blame. Ms Vennells approach to the scandal was that she would ' *always keep a distance between any knowledge you've got and application of that knowledge, and you say there were all these other people around, this entire group of people within POL, they keep an eye on this, that's their thing. It's their fault for not bringing stuff to you, it's their fault for not telling you the truth.*' [INQ00001153 page 73, line 15].

94. Mr Stein put to her another point: that *"a reasonable, caring CEO would have said, "I want answers. I want to know what's going on. I want to find out about what's happening to these people, the subpostmasters, who are the lifeblood of the system and I want to know that answer with me now", not set up some distant review. Ms Vennells, you didn't do that, did you?"*. Ms Vennells did not answer either question satisfactorily. We suggest that this is because the points raised by counsel were correctly summed up her current approach and her failure to at appropriately during the course of the scandal.

THE EXCLUSION OF SUSAN CRICHTON FROM THE JULY 2013 BOARD MEETING – CULPABILITY OF ALICE PERKINS

95. Regrettably it appears that the Board was tainted by the toxic culture within the organisation. There can be no possible explanation for the exclusion by Alice Perkins of Susan Crichton from a crucial Board meeting after the publication of the Second Sight Interim report, other than to water down the legal implications and interim nature of that report through its being presented to the Board by a non-lawyer.

96. Furthermore, Ms Crichton was aware of the content of the Simon Clarke advice and may indeed have wished to provide advice to the Board on that matter. Had Ms Crichton been permitted entry into the July 2013 Board meeting, the Board might have become aware of the relevance of the BEDS that Second Sight had uncovered and the possibility that there had been miscarriages of justice.

[7] At paragraph 199 of Lord Arbuthnot's statement he states: "*Paula Vennells seemed almost cowed by their stronger personalities and said little. I told her she was breaking her word. I sensed, rightly or wrongly that she felt ashamed. The meeting broke up in acrimony.*" WITN00020100

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97. An appropriate and contemporaneous response by a lawyer to the Second Sight Interim Report is that of Harry Bowyer of Cartwright King, who states at paragraph 24 of his witness statement WITN10990100 as follows:

> *"One of the more seminal moments was the publication of the Second Sight Interim Report. This sticks out as we heard rumours immediately before publication that the report was going to say that they had found bugs in Horizon. Up until that stage we had been assured from all sides that the system was robust and that there was nothing that could undermine the integrity of the system."*

98. It is readily apparent that Ms Vennells did not convey the same legal implications of the Second Sight Report to the Board in the same way that Ms Crichton would have done, had she not been excluded from the meeting by Ms Perkins.

99. The exclusion of Ms Crichton from the meeting was all the more egregious because the Board was required to act to maintain the reputation of POL. The January 2013 Terms of Reference, which were established for the Board [WITN00220103] provided specific guidance as to the matters the Board was responsible for and how those responsibilities should be discharged.C1 – bullet point 5 confirms that in addition to its legal duties, the Board has a specific responsibility to maintain the reputation of POL including consideration of any activities which may attract public interest or have an impact on the value of the Post Office Brand.

100. Alice Perkins, as the Chair, was responsible for the exclusion of Ms Crichton from the meeting and the consequences that flowed from the Board not receiving appropriate legal advice at that time. It is relevant to note that Alice Perkins stated that she was '*astonished*' that Susan Crichton placed her professional obligations over the interests of the business [POL00381455]. It is not merely an unhappy coincidence that the disregard and humiliation of Ms Crichton coincides with a period when POL's attitude towards the mediation scheme hardened.

101. Dr Linnell stated in her evidence that POL's approach to the mediation scheme and the working group changed when Chris Aujard replaced Susan Crichton in 2013.

102. Neither can it be said to be yet another unhappy coincidence that the person who was to address the Board, and who knew about the Clarke advice, was expressly excluded from the meeting by the Chair of the Board.

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103. Tim Parker has told the Inquiry in his evidence that the earliest mention of the Clarke Advice before the POL Board was in November 2020. It is a matter of considerable concern to our clients that the matter should have been communicated to the Board some 7 years earlier. Our clients consider that the Inquiry should find that Alice Perkins manipulated POL's General Counsel to suppress information that Ms Crichton felt professionally obliged to disclose to the Board[8].

104. Ms Perkins' protestations of ignorance should be treated with considerable caution. It is clear from the evidence that Alice Perkins and Paula Vennells enjoyed a close working relationship[9]. The Inquiry should reject any suggestion that there was no conduit between the company and the Board. Aside from the relationship between Ms Perkins and Ms Vennells, we know from the evidence of Alwyn Lyons at paragraph 29a of her witness statement [WITN00580100] that the role of Company Secretary provided that conduit.

105. The exclusion of Ms Crichton from the Board meeting in July 2013 is a stark example of why the POL Board needs a legal member. That member should be bound by either the Law Society or Bar Council code of conduct.

106. Furthermore, we ask that the Inquiry recommends that all General Counsel should have enhanced employment protection – that is the only way that they would be able to give unfettered advice without enduring the sort of treatment that was experienced by Ms Crichton. Our clients maintain that lawyers working in government owned ALBs should not be required to place corporate loyalty above professional obligations.

107. It is also relevant to note that Susan Crichton stated in her witness evidence that the POL Board preferred input from General Counsel to be restricted. She stated at paragraph 59 of her witness statement [WITN00220100[:

"…….Regarding my sense that the POL Board preferred input from the Legal function to be restricted, my understanding was that Ms Perkins as Chair wanted to manage the number of attendees at Board Meetings in order to encourage debate and to create an environment where challenges could be raised by Board Members, particularly while the Board was in its infancy, in the post separation period. I understood Ms Perkins' approach to be that she and Ms Vennells could talk through the agenda items in their preparation and, only where further

[8] Susan Crichton indicated in her evidence that she told Paula Vennells before the meeting to say that in her view there would be many successful claims against POL, arising from past prosecutions.

[9] Susan Crichton states at paragraph 59 of her witness statement: *"I understood Ms Perkins' approach to be that she and Ms Vennells could talk through the agenda items in their preparation and, only where further input was required in relation to certain points, would other Executives (who were not Board members) be invited to attend Meetings, in order to expand upon particular points as required."* [WITN00220100]

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input was required in relation to certain points, would other Executives (who were not Board members) be invited to attend Meetings, in order to expand upon particular points as required."

Lawyers and IT Specialists to be present on ALB Boards/ Regulation of General Counsel

108. We ask that the Inquiry recommends that ALB Boards should not restrict the involvement of legal and IT specialists in the same way and should incorporate lawyers and IT specialists (where appropriate) as full time Board members. We note that POL witnesses have told the Inquiry that steps in this direction are currently being taken.

109. Currently the Bar Standards Board and the Solicitors Regulation Authority allow[10] unregistered barristers and solicitors to supply some legal services and this includes the work of GC. We ask that the POL recommend that the legal service regulators consider this area of practice and in the future include the work of General Counsel ('GC') within reserved activities which would import into all GC's practice standard regulatory oversight. Currently the moment the work of GC within POL is only regulated by one of the Professions' regulators if the individual GC maintains a practising certificate.

110. We also ask that the Inquiry recommends fundamental changes to the way that GC is utilised within POL[11] and other similar organisations, we ask the Inquiry recommends:

i. GC must hold, at all times, a current practising certificate.
ii. GC qualifications should be standardised and kitemarked.
iii. GC should be board appointed.
iv. GC responsibilities within a company – must be settled and described ('baked') into the employment contract, board appointment and termination.
v. Tools to raise issues and support for doing so.
vi. The outcome should be that the gold standard for GCs should be set within the public sector bodies.

[10]BSB guidance p.7: "Why do special rules apply to unregistered barristers who supply legal services? Legal services, other than reserved legal activities, can be supplied by anyone and are not subject to any special statutory regulation.

[11] Terms of Reference F

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SABOTAGE OF INITIAL COMPLAINT REVIEW AND MEDIATION SCHEME

111. POL was substantially preoccupied with a cover up at the time of the July 2013 Board meeting. POL's sabotage of its own mediation scheme through the restricting the access of Second Sight to documents (having previously undertaken that it would permit unrestricted access) and through the sacking of Second Sight is demonstrative of such an approach.

112. It is remarkable that POL was permitted to control the activity of Second Sight in this way. A fundamental mistake that the government made was referred to in the evidence of Ron Warmington, who stated that Andrew Bridgen MP was concerned that the subject of Second Sight's investigation was also to be the paymaster [WITN01050100, para 20]. POL was permitted to control the narrative. This enabled POL to falsely represent to ShEx that Second Sight were expensive, incompetent and a cause of considerable frustration [UKGI00002502: October 2014 quarterly update[.

POL's conduct of mediations

113. Furthermore, POL's conduct of the mediations that were permitted to proceed was profoundly dishonest. A recurring theme is that POL representatives attended without authorisation to make any offer and that any offers made were wholly derisory and on the basis that acceptances were in full and final settlement of any future claims and were not to be disclosed. We have spoken to Louise Dar, Katherine McAlerney, Peter Holloway, Jennifer O'Dell, Denise Latreille and Darren King, amongst other CP clients.

114. Peter Holloway's experiences were put to Andrew Parsons. Mr Holloway attended a mediation and provided evidence as to his losses. He presented his case to Post Office representatives with the mediator present and the mediator told him that there was a good chance of settlement for a significant sum. The mediator went away as did the Post Office representatives and at around 3:00 PM the mediator returned to Mr Holloway and said (words to the effect of) '*I don't know what to say. They are refusing to even make you an offer*'. The mediator told Mr Holloway that the Post Office representatives had told to him that they had been sent to the mediation with instructions not to settle at all. The mediator asked the Post Office representatives to phone senior officers in order to obtain authorisation to make Mr Holloway an offer.

115. The mediator came back later and said that the offer that the Post Office had agreed to make was in a derisory sum which amounted to Less than 2% of the amount that Mr Holloway had

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understood his claim was worth. This meeting took place on the 17th of November 2015. Not surprisingly, Mr Holloway left the process feeling very disappointed.

116. In early 2015 Jennifer O'Dell attended a mediation at which Angela van den Bogerd told her that she would have to sign a settlement agreement with Post Office otherwise POL would take Ms O'Dell to court. Ms Van den Bogerd told Jennifer O'Dell words to the effect of '*we will ask for costs, you will lose your home, you will lose everything*'

117. Our clients have told us that POL wasted their time and used the mediation to tell them that there was nothing wrong with Horizon and that the SPMs were to blame for the losses. Essentially, the mediations that took place were largely a sham and POL acted in bad faith. Many of the mediators expressed surprise at the conduct of POL attending without any desire to mediate or compromise in any way.

118. The sham formed part of a deliberate strategy. At paragraph 86 of his witness statement Andrew Parsons refers to an email that he sent to Susan Crichton, Rodric Williams, Hugh Flemington, Alwen Lyons, Gavin Matthews and others on 12 July 2013[WBON0000767] . He stated: "*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."*

119. Ultimately POL sought to close down the mediation process when it became clear that Second Sight had taken a critical view of POL actions towards SPMs. An email from Andrew Parsons dated 9 February 2015 confirms POL's approach towards Second Sight [POL00021908]:

> *"POL would be better keeping SS under direct contract and then, without the WG, POL could more easily dictate SS' work (i.e stopping Part 2 and focus on cases).This has the advantage of narrowing SS' role whilst maintaining more direct control."*

120. We invite the Inquiry to find that POL acted in bad faith in dismissing Second Sight because Second Sight had actually conducted a truly independent investigation which yielded results which were uncomfortable and unpalatable for Post Office.

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COVERING UP

'Driving home the message in a compelling way'

121. Our clients take the view that there were two scandals in play. The first scandal is the use of prosecutions and the SPM contract to pursue SPMs for fictitious Horizon shortfalls and ruin them. The second, perhaps bigger, scandal was the cover up.

122. The evidence has demonstrated that POL actively sought to cover up the failings of the Horizon system. On 2 April 2013 Simon Baker of POL wrote an email to Gareth Jenkins and Andy Winn [POL00097917[. He stated: "*our responses don't … drive home the message in a compelling way – that would persuade MPs or the media or members of the public that there are no issues (and it looks like there aren't)*"

Misrepresentation of Second Sight findings

123. POL misrepresented the findings of Interim report of Second Sight in July 2013 and failure to disclose the concern raised in the Simon Clarke advices [POL00040000] about the probity and integrity of one of the principals (if not the main) system architect.

Helen Rose report

124. Additionally, POL failed to act on the conclusions of the Helen Rose report in June 2013 [POL00022598]; that ARQ data that had been relied upon by POL in criminal prosecutions did not present a complete picture and was capable of misleading the court. By this time POL was fully aware that Fujitsu had a remote access capability and was using it to access the Horizon system (see email from Lynn Hobbs to Rod Ismay November/ December 2010 at POL00088956: *My reply to Mike and Rod*' confirms that the Angela Van den Bogerd and others within POL knew in 2010 that remote access capability was in use and that Fujitsu were remotely accessing the Horizon system).

125. It is illustrative that Paula Vennells was emphatic in her letter to Baroness Neville Rolfe dated 10 July 2015 [UKGI00000026] that she should not meet with Second Sight. It is likely that Ms Vennells (who had declined to meet with Baroness Neville Rolfe did not wish the Minister to meet with Second Sight because Messrs Warmington and Henderson had, by July 2015, uncovered significant detail concerning the BEDS within the Horizon system.

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REMOTE ACCESS

POL knew about remote access facility in 2010

126. In relation to POL's knowledge of remote access the Inquiry has been referred on numerous occasions to the September 2010 meeting between POL and Fujitsu, where remote access to SPMs' terminals was put forward as a means of concealing the Receipts and Payment mismatch bug [FUJ00083406].

> *"SOLUTION ONE – **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**.*
> *IMPACT – When the branch comes to complete next Trading Period they would have a discrepancy, which they would have to bring to account.*
> *RISK - This has significant data integrity concerns and could lead to questions of "tampering" with the branch Horizon 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."*

127. On 3 December 2010 Lynn Hobbs at POL wrote to John Breeden and informed him that she had written to Rod Ismay and Mike Granville and stated [POL00088956]:

> *"I found out this week that Fujitsu can actually put an entry into a branch account remotely. It came up when we were exploring solutions around a problem generated by the system following migration to HNGX. This issue was quickly identified and a fix put in place but it impacted around 60 branches and meant a loss/gain incurred in a particular week in effect disappeared from the system. One solution, quickly discounted because of the implications around integrity, was for Fujitsu to remotely enter a value into a branch account to reintroduce the missing/gain. So POL can't do this but Fujitsu can."*

128. Furthermore, Gareth Jenkins expressly confirmed the ability of Fujitsu to remotely access the system to Ian Henderson of Second Sight in September 2012. Mr Henderson states in his witness statement [WITN00420100] as follows:

> *"43. In September 2012 I met with Gareth Jenkins, the lead engineer for Post Office Horizon, at the head office of Fujitsu in Bracknell. He told me that approximately 10 members of staff from Post Office were permanently based in Bracknell, dealing with various issues including bugs, errors and defects.*
>
> *44. Gareth Jenkins told me that Fujitsu routinely used remote access to branch terminals for various purposes. This was often without the knowledge or specific consent of individual subpostmasters. He also told me that members of his team could connect remotely to branch terminals and generate keystrokes that were indistinguishable from a sub-*

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postmaster accessing the terminal directly. They did this for various purposes, including collecting log files directly from branch terminals. [12]

45. In my opinion, this facility (if confirmed) had major implications for the safety of criminal convictions, as it meant that the sub-postmaster was no longer in sole charge of data entries being input on his terminal.

46. I subsequently shared this information with Alwen Lyons (POL Company Secretary) and Lesley Sewell (POL Head of Information Technology) and was told quite firmly, that I was mistaken and that POL had received assurances about this in various audit reports. This point was made very firmly to me, and I recall telling Ron Warmington shortly afterwards, that I felt that if I made an 8 issue of it there was a significant risk of Second Sight being sacked."

129. The evidence of Lesley Sewell demonstrated that POL knew about remote access in 2013 and that Fujitsu occasionally made updates directly to the branch database. [POL00141531].

Howe + Co emails – suppression of remote access issue

130. Furthermore, it was clear that SPMs were also aware of the position. On 8 April 2014 (10 1/2 years ago) Howe + Co's Steve Darlington wrote to Ron Warmington and stated that the Helen Rose report and emails with Andy Winn / Alan Lusher in the case of Graham Ward explicitly states that Fujitsu can remotely change the figures in the branches without the SPMs knowledge or authority [POL00029707]. This email was considered by Rodric William and Andrew Parsons on 14 April 2014 [POL00302716].

131. On 17 June 2014 Andrew Parsons advised POL in the following terms:

'The point of concern is that the MO60 CQR is starting to make the link between (1)the fact that the HR report makes clear that GJ knew of issues with Horizon and (2) the fact that GJ never mentioned these issues in his prosecution evidence… this line of inquiry draws into question the credibility of GJ's evidence…. **Our preferred approach is to try to down play the importance of the HR report in any POL Investigation Reports. We recommend minimalizing or ignoring entirely the HR report when responding to CQRs**.' [POL00129392]

132. Had the Post Office acted with candour and honesty during the mediation, over 10 years ago, much of the harm caused by this scandal could have been avoided.

[12] Duncan Tait made a similar point in his witness statement at para 102 WITN03570100: *"During my time at Fujitsu, I had a general understanding that a small team of Fujitsu employees had privileged access rights which enabled them to access the Horizon system. I knew that such rights were necessary to maintain the system; for instance, to amend the HNG-X code to implement changes to the system or resolve system issues. I did not know precisely what these rights involved."*

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Continuing suppression of remote access issue

133. The existence of the remote access facility was confirmed further in the draft Deloitte report [POL00174691]. However, no admission was made on the important question of remote access until the Claimants called Richard Roll, a whistleblower from Fujitsu to give evidence in the Horizon issues trial in 2019.

134. We suggest that it was important to POL to suppress disclosure of the facility of remote access because if a SPM facing prosecution knew about the possibility of remote access they would be in a position to say that there is scope for doubt that the alleged shortfalls in the system emanated from the system and not from them. Furthermore, any such disclosure would have called into question the safety of previous convictions.

135. The evidence of Alice Perkins at paragraph 225 of her statement [WITN00740100] that she was not aware that the question of remote access was an issue that could threaten the integrity of prosecutions is either lacking in credibility or demonstrates that the Chair of the Board was so lacking in curiosity as to be reckless on the issue. The Inquiry has been right to place significant emphasis on the remote access issue because it goes to the heart of the covering up of miscarriages of justice.

136. The Inquiry has had sight of transcripts of covert recordings which show that POL knew about Fujitsu's remote access capability and ability to access terminals without the consent or knowledge of an SPM and lied about it for years. These transcripts are at INQ00002021, (page 54) which is transcript of the conversations dated 22 May 2013.

137. The audio recordings on the news item reveal that on 22 May 2013 Ian Henderson and Ron Warmington of Second Sight spoke to Simon Baker (of POL), who said that there were emails talking about the Bracknell function accessing data and making changes to the system. Fujitsu were saying "*it will be done in the overnight run tonight. We will change the balances or whatever*". Simon Baker told Henderson and Warmington, in effect, that Fujitsu had 'come clean'.

138. Simon Baker posed the question of whether SPMs were informed and Ian Henderson said that based on the email traffic that he had seen, there was no evidence that SPMs were informed. Simon Baker then told Ian Henderson and Ron Warmington that he had passed this information to Susan Crichton and to Alwen Lyons. Gareth Jenkins had told Simon Baker on 21 May 2013.

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139. In the circumstances, it is submitted that it is highly unlikely that Paula Vennells was not informed about this issue. Her email to Mark Davies and Lesley Sewell dated 30 January 2015 demonstrates that she was aware of the issue, but wanted to find a way of denying it. : "*Is it possible to access the system remotely? We are told it is …. I need to say no it is not possible and that we are sure of this because of xxx and that we know this because we have the system assured…*". [POL00162285].

140. What possible alternative reason could there be for Ms Vennells to say, "*I need to say*" that remote access "*is not possible*", other than she knew that it was but wished to deceive others. Furthermore, on 13 July 2016 Andrew Parsons wrote to Jane MacLeod, Rodric Williams, Patrick Bourke and others and confirmed to them that the Deloitte preliminary report had confirmed that remote access was possible and used by super users [POL00029990].

141. Yet, notwithstanding these conclusions, POL sought to deny in the group litigation that remote access was possible. POL did not accept the true position until 2019. Fraser LJ rejected POL's submissions in the Horizon Issues trial to the effect that the remote access issue did not affect a significant number of branches:

> *"538. That submission misses the point, in my judgment. It elides two matters, namely whether something is technically possible, and the number of times that it has in fact been done. The former, whether it was possible, had been expressly denied, and that denial is now shown to be wrong. The latter, the number of times it was done and with what effect, is a different matter. There is also very little, if any, evidence that is relied upon by the Post Office to justify the assertion that it was a "tiny percentage" of times. That is a subjective assertion of very limited weight."*

142. It is also relevant to note that POL chose not to seek advice from Brian Altman KC on whether there had been miscarriages of justice. Mr Altman recorded in writing that he was asked to advise on the 'efficacy' rather than the 'safety' of convictions. (See footnote 4 of his Observations on Terms of Reference dated 2 August 2013 - POL00021981)

POL WAS ALWAYS 'ON NOTICE AS TO THE EXISTENCE OF Bugs Errors and Defects (BEDS) – YET PURSUED SPMs NONETHELESS

The Known Error Log

143. Ultimately POL, as an organisation, was always on notice that BEDs existed within the system. The Application Support Service (Fourth Line) Service Description document describes the service support "in terms of software fixes" (para 1.1(a) & (b)) and the "Known Error Log

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(KEL)" system is described (para 2.1.1(b)) on pages 6 and 7 with more details set out at (c) – FUJ00002037

144. The Inquiry will recall that Angela van den Bogerd claimed at paragraph 199 of her witness statement [WITN0990100] that she had never heard of the KEL until the Group Litigation Order. Our clients consider that the problems with Horizon were always staring POL in the face. They deplore the wilful ignorance and failure to investigate the complaints with Fujitsu, which has become a feature of the evidence of POL witnesses in the Inquiry.[13]

The Callendar Square Bug

145. Furthermore, the Callendar Square Bug was said to have been around for years [POL00081928] and the Mismatch Bug was discussed within POL in September 2010]POL00028838]. The Ismay report [POL00026572] states at page 20, para 4(c):

> *"It is also important to be crystal clear about any review if one were commissioned — any investigation would need to be disclosed in court. Although we would be doing the reviewto comfort others, any perception that POL doubts its own systems would mean that all criminal prosecutions would have to be stayed. It would also beg a question for the Court of Appeal over past prosecutions and imprisonments."*[14]

POL's response to Horizon concerns was not to investigate BEDs but to attack SPMs

146. Yet instead of responding to the self-evident problems with Horizon (concerns raised by Computer Weekly and others, and criminal acquittals such as those of Suzanne Palmer and Maureen McKelvey) POL sought to hold SMPs responsible under their contract (which many SPMs never saw) for any shortfalls that were generated by the inherently flawed Horizon system. The IMPACT programme was a measure that was deliberately undertaken to prevent SPMs from defending themselves against allegations arising from the flawed computer system. POL used prosecutions as a means of recovering alleged losses.

147. It is relevant to note that at paragraph 51 of his first witness statement, Gareth Jenkins refers to the impression he had that POL preferred to blame SPMs for issues with the Horizon system as against investigating them. [WITN00460100].

[13] It is notable that the KEL and the Peak database was not disclosed to the Working Group.
[14] It is relevant to note that Mr Ismay accepted in his evidence on 12 May 2023 that he had failed to amend his report after learning about the Mismatch Bug within Horizon (INQ00001064: pages 67, line 8)

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Financial control of NFSP

148. Furthermore, POL paid a subsidy to NFSP, which compromised its independence, objectivity and ability to represent SPMs who were accused of fraud, false accounting or whose contracts were terminated on account of Horizon shortfalls, effectively using George Thompson as a tool to further its oppression of SPMs. The Inquiry will be aware of the finding of Lord Justice Fraser in the Common Issues judgment (para 1120) in this regard: '*The Post Office also has a highly detailed funding agreement with the NFSP that would entitle the Post Office to "claw back" funds already paid to the NFSP if it does anything that would damage the Post Office's reputation, including supporting the SPMS in this litigation."*

George Thompson– betrayal of SPMs

149. In relation to NFSP POL was assisted by its President, George Thompson, whose lack of understanding and demeanour whilst giving evidence on 21 June 2024 was appalling. It is relevant to note that Mr Thompson lied to his membership in a letter dated around August 2015 POL00152986, when he stated: *"Put simply, the NFSP has not received calls from sub postmasters querying Horizon and alleging systematic failings. If there were a widespread problem, our sub postmasters would have made us aware of it. As a result, we have no choice but to conclude that Horizon is a fundamentally sound and safe system."*[15]

150. Crucially Mr Thompson had to accept that he knew that SPMs were being told by the Helpline that they had to pay up for shortfalls; Mr Stein KC raised this and Sir Wynn was keen to make sure that Mr Thompson answered. [16]

151. In all Mr Thompson's attitude can be summed as sacrificing SPMs to ensure the continuance of POL. Mr Thompson's evidence should stand as a lesson to anyone looking to work within the Trade Union sector as a demonstration of complete corporate capture. Mr Thompson evidence demonstrated a betrayal of the long and fine history of the Trade Union Movement and must never happen again.

[15] See also: *"our reply will be consistent, Horizon is robust, last nights programme was bullshit. George"*
[16] SIR WYN WILLIAMS: Well, I don't think that's what Mr Stein is saying but the question is simply this: were you aware, Mr Thomson, that, generally speaking, if a postmaster rang up the helpline and said, "I've got this problem and the result is I've got a shortage of £6,000", the stock answer from the helpline would be "Well it's your responsibility to make that good"? A. Myself or some of the team would be aware of that without a doubt, yeah. Transcript – page 157.

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Different approach taken to Crown Offices

152. It is relevant to note that the attitude of POL towards SPMs was in direct contrast to the approach taken towards shortfalls in Crown Offices, where a manager was not required to make good any losses.

Oppression of SPMs through policies

153. POL's oppression of SPMs was sanctioned through its policies, which applied a presumption that SPMs were dishonest and seeking to steal from POL. Within the Policy document "Casework Management" (page 2) dated October 2002 [POL00104777] the following is set out:

> "*The issue of dealing with information concerning procedural failures is a difficult one. Some major procedural weakness, if they become public knowledge, may have an adverse effect on our Business. They may assist others to commit offences against our Business, undermine a prosecution case, bring our Business into disrepute or harm relations with major customers. Unless the offender states he is aware that accounting weaknesses exist and that he took advantage of them, it is important not to volunteer that option to the offender during interview. The usual duties of disclosure under the Criminal Procedure and Investigations Act 1996 apply*"

154. The Security Policy dated January 2003 states at page 6 [POL00104779] :

> "*If an agent feels that an error has occurred via the Horizon system, it is essential that this be reported to the HSH, The HSH will only consider the incident for further investigation if the branch has a system fault. If no evidence is available, the case will not be investigated and the agent will be held responsible for making good the loss*"

155. These policies and actions enabled POL to bring a total of 844 prosecutions from 2000-2015, resulting in 705 convictions, which enabled POL to bring POCA claims against those convicted, allowing it to seize their assets and bankrupt them. The Inquiry has received evidence to the effect that the prosecutions were financially motivated.

The 'debt trap'.

156. The same policies enabled POL to enforce 'the debt trap', which is described at paragraph 564 of the Common Issues judgment of Lord Justice Fraser:

> "*These problems led to what Mr Green described as a "debt trap". The sequence would go as follows. The Horizon system would show that there was a discrepancy at the branch,*

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which so far as the SPM was concerned would have arisen through unexplained shortfalls and discrepancies. These were challenged through the Helpline. That SPM disputed that the sums were due. Because of the way that the Post Office approached such disputed items, these were treated as due and owing by the SPM to the Post Office in any event, in other words as non-disputed debts. The most that a SPM could expect from the Post Office was time to pay off the amount, over 12 months, deducted from their future remuneration. The only alternative the SPM would have would be giving notice themselves, which would bring to an end their appointment as a SPM, and they would in any event (so far as the Post Office was concerned) still owe the disputed sum. Accordingly, the SPM effectively had no option but to accept the offer of time to pay – it was their only real alternative."

HELPLINE, SUSPENSE ACCOUNT AND SHORTFALL ISSUES.

157. As the Inquiry will be aware, SPMs were told by helplines that they were required under their contracts to make good the shortfall. 49 of our clients were told by the Helpline that they were the only ones who had experienced problems with the Horizon system.[17]

158. Our clients remain very concerned that the Helpline Scripts, which are stated to have existed, have never been produced – notwithstanding the repeated requests on behalf of Core Participants since the first hearing of the Inquiry in November 2021.

159. This advice of the Helpline resulted in SPMs using their own money to pay for shortfalls. If they ran out of money they would borrow from members of their family and friends. Some went to loan sharks who lent them money at extortionate interest rates.

Where did the money that the SPMs paid go?

160. There should be little doubt that the actions of POL have concealed the extent of the shortfalls which were paid by SPMs. Throughout the Inquiry we have pressed the issue of the suspense account in questions of witnesses. Nick Read confirmed in answers to questions from Mr Stein KC that the sum that was taken from SPMs and paid into POL accounts has been identified as *a figure somewhere in the region of £36 million between 1999 and 2015.* [18]

161. Kay Linnell told the Inquiry [WITN00550100 – paragraph 106] that Sir Anthony Hooper repeatedly asked POL for details of the suspense account because he wanted to know where

[17] See questions from Christopher Jacobs to Stephen Bradshaw 11 January 2024 :INQ00001112: page 102, line 8.
[18] INQ00001195 Transcript 11 October 2024, page 32 from line 14.

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the SPMs' money had gone. This is confirmed by Sir Anthony Hooper, who states at paragraph 6 of his witness statement [WITN00430100]:

> *"My concerns about POL were heightened by the seeming unwillingness of POL (as the Minutes show) to provide the Working Group and particularly SS with explanations about surpluses, other than an acceptance that after 3 years, surpluses were taken into the general accounts. Given the value of the losses sustained by SPMs and on the assumption that the losses were not caused by theft, where had the money gone? My concerns increased when I learnt that SPMs did not have to disclose (un) explained (sic) gains."*

162. There has never been a satisfactory answer to the questions raised by Kay Linnell and others as to '*where the money has gone*'. Horizon was meant to be an accounting system - a digital book-keeper which replicates the traditional double entry accounting system recording money in and money out. Instead it appears that system operated so as to invent money in and money out.

Concealment of missing money issue

163. The Inquiry has received evidence that POL sought to conceal this information. POL00040805 contains an email dated 16 January 2015 from Chris Aujard to Alisdair Cameron. Mr Aujard states: "*as you will see I really need someone from your team who is technically switched on re suspense accounts and can handle themselves in front of an adversarial audience****.... As you can imagine I am concerned that we give Second Sight no more information than is necessary to address the narrow proposition that money is "missing" from an SPMR account is somehow taken into our suspense account and then appropriated to our P&L."***

164. It is clear that there was never any acknowledgment before the Working Group, or otherwise that POL may have taken money from SPMs on a false or erroneous basis and that this money ought to be returned.

SPMs are still paying for Horizon shortfalls

165. This problem persists today. As the Chair will be aware, the Inquiry has commissioned a YouGov survey, which shows that 92% of the c1000 SPMs who responded have experienced Horizon related issues in the last 12 months [EXPG0000007]. 69% experienced unexplained discrepancies since 2020, 98% of which were shortfalls - which were generally resolved by the SPMs using branch money to repay them/paying out of their own money.

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166. From the start up of Horizon to today's date if an SPM experiences a shortfall and puts their own money in to 'balance' the system, then no record of the shortfall will be registered by either POL or Fujitsu.

167. We ask the Inquiry to find that we will never know the real extent of SPM losses and SPM's experiences of Shortfalls. POL presides over a Post Office which has used a faulty Horizon system for decades and which has taken many more millions of pounds from SPMs than will ever be capable of calculation.

THE ROLE OF LAWYERS IN GOVERNMENT OWNED COMPANIES

168. The Inquiry has quite properly focused on the role of lawyers in the scandal. The following matters have arisen in the evidence:

Inappropriate use of privilege

169. During Horizon related criminal and civil proceedings against SPMs, POL sought to avoid having to disclose matters which would have assisted SPMs by marking correspondence private and confidential and inappropriately claiming privilege. The Inquiry has seen an email dated 20 October 2011, which was sent by Emily Springford of the RMG Civil Litigation team to a number of other recipients – POL00176465. In that email, Ms Springford stated inter alia: *"if the dominant purpose of the communication is not to obtain legal advice, try to structure the document in such a way that its dominant purpose can be said to be evidence gathering for use in the litigation. Mark every such communication legally privileged and confidential'".*

Lawyers becoming too close to their client

170. Commercial lawyers acting in civil proceedings became too close to POL and failed to provide appropriately objective advice. This was demonstrated generally within the evidence of Andrew Parsons. For instance On 2 September 2013 Mr Parsons advised POL that if they conducted a 'lessons learned' review after the Second Sight interim report it would expose POL to having to disclose concerns about Horizon or branch accounting processes. He was concerned that the review would not be legally privileged [POL00146243].

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171. Mr Parsons was concerned in 2014 that Howe + Co might be starting to grasp the truth about the Horizon issue and advised POL in June 2014 in the following terms: [POL00129392]:

> *I've just spoken with CK about a new CQR from Howe + Co that references the Helen Rose report …… **The point of concern is that M060 CQR is starting to make the link between (1) the fact that the HR report makes it clear that GJ knew of issues with Horizon and (2) the fact that GJ never mentioned these issues in his prosecution evidence**…… This line of enquiry draws into question the credibility of GJ's evidence.*
>
> *The sharing of the HR report between Applicants is potentially a breach of solicitors ethics / contempt of court. However, CK and I don't believe attacking the solicitors on this point would be of benefit – if anything it may draw more attention to the HR Report.*
>
> ***Instead, our preferred approach is to try to down play the importance of the HR report in any POL Investigation Reports. We recommend minimalizing or ignoring entirely the HR report when responding to CQRs."***

172. Perhaps the most stark example of a lawyer becoming too close to his client is Mr Parsons' email to Rodric Williams dated 18 August 2015 [POL00021865], in which he stated:

> *'POL could however start attacking the postmasters' credibility by calling out Thomas, Misra and Hamilton as the liars and criminals that they are. They all admitted to FA and all admitted to it again last night on Panorama. POL's language to date has been constrained (last night it was 'deliberate dishonest conduct' which is a gentle way to put it). Perhaps some much punchy language, combined with more specific details of the FA (e.g falsified accounts over xx period covering up £xx pounds, admitted doing this on XX occasions) might help re-balance public perception'*

173. Essentially, rather than providing objective and balanced advice to a lay client, which was behaving badly, solicitors entered the arena and adopted the behaviours of their client.

Failure to apply duty of candour when acting for a publicly owned body.

174. Commercial lawyers acting for POL appeared to disregard or to be unaware that, as a publicly owned company, a duty of candour attached to POL's dealings with the court and in litigation generally. Internal lawyers and individuals such as John Scott within POL sought to restrict disclosure of information that might assist SPMs in litigation through instructing POL staff not to take notes of meetings (see para 44 of Martin Smith's witness statement [WITN09680200]).

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175. Martin Smith refers at paragraph 31 of his witness statement [WITN09680200] to Andrew Parsons expressing a concern in relation to circulation of minutes at a Horizon Weekly call which took place on 19 July 2013. "*Mr. Parsons expressed concern with regards to the difficulties which could arise following the circulation of minutes. He was particularly concerned that they could be further disseminated and attract opinion which might well be incorrect and also result in information being stored elsewhere without it being relayed back to the call. He explained that he had previous experience of such issues. It was evident that he was concerned about pre-action discovery in civil cases*"

176. This is relevant to POL today because there is currently a 'rabbit in the headlights' risk averse culture. Kemi Badenoch spoke about 'vanilla' briefings because officials are afraid to commit anything potentially problematic to writing [INQ00001205].

177. We submit that the Inquiry should recommend that a duty of candour applies to all senior staff members, executive and directors of Arms Length Bodies, in recognition that they are publicly owned bodies, and therefore have a public law duty to the citizens who, in fact, own them.

178. We note that a similar recommendation to that which we request was made in the Infected Blood Inquiry (see below). In particular, the *Infected Blood Inquiry report [page 287 Vol 1] states "…it should nonetheless introduce a statutory duty of accountability on senior civil servants for the candour and completeness of advice given to Permanent Secretaries and Ministers, and the completeness of their response to concerns raised by members of the public and staff."* It is submitted that the Inquiry should adopt the same approach as the Infected Blood Inquiry.

Inappropriate approaches to disclosure

179. POL sought to frustrate disclosure during the GLO proceedings. On 10 May 2016 Amy Prime, a solicitor at Bond Dickinson wrote to Rodric Williams and stated: *"Although we may face some criticism later on, we are proposing to try and suppress the guidelines for as long as possible on the grounds that the most recent version is not relevant since it post-dates the investigations complained of and it would require a full disclosure exercise to piece together all historic revisions of the guidelines…… For now, we'll do what we can to avoid disclosure of these guidelines and try to do it in a way that looks legitimate. However, we are ultimately withholding a key document and this may attract some criticism from Freeths. If you disagree with this approach do let me know. Otherwise we'll adopt this approach until such time as we sense the criticism is becoming serious*." [POL00038852]

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180. It is relevant to note that Baroness Neville Rolfe was critical in her evidence of POL's failure to disclose the content of the Swift Review in any proceedings: *"169. I was surprised and disappointed to discover, years later, that Mr Swift's findings were not disclosed as part of any criminal or civil proceedings. I do think this is nothing short of scandalous."* [WITN10200100]

POL strategy of trying to outspend GLO litigants – The war of attrition

181. Sir Alan Bates stated at paragraph 168 of his witness statement that POL adopted a cynical approach in the GLO litigation of trying to outspend the Claimants [WITN00050100]. No POL witness admitted that this was the case – it was clearly an option that POL considered in briefings from solicitors – see POL00006380:

> *4.3 We believe the better solution is to try to focus the Claimants into a collective position where they will either abandon the claims or seek a reasonable settlement. It should be remembered that the claims that are financially supported by Freeths (whose fees are at least partially conditional on winning), a third party funder and insurers. Without this support these proceedings would not have been possible. All three entities will likely have the power to pull their support if the merits of the case drop below a certain level. Our targets audience is therefore Freeths, the funder and 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 principles regardless of merit.*

182. See also POL00006379 is a WBD paper for steering group meeting litigation strategy options dated 11th September 2017. The fifth strategy option (contained within the document) materially states:

> ***"5 Attrition***
> *Stretch out the litigation process so to increase the costs in the hope that the Claimants, and more particularly the 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."*

183. Furthermore, a Post Office Group litigation steering group meeting dated 6 December 2017 considered the question of settlement proposals [POL00006647]. Some of the comments set out as follows:

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"4.4 Burden on Freeths: Freeths will be obliged to communicate which with each Claimant who is offered a settlement, thereby giving them further work to do and putting them under further pressure.

4.8 Criminal cases: Opening up a settlement dialogue allows Post Office to make clear that it will never settle with Claimants who have been convicted. This will drive a wedge into the Group, which we believe will make Freeths' job very difficult in holding the group together."

184. Howe + Co act for a large number of the 555 group litigation order claimants. It is the firm view of these clients that the attrition strategy was considered and pursued throughout the litigation.

185. There is some evidence of the deployment of this strategy. At POL00041509 Andrew Parsons wrote the following to Rodric Williams on 17 October 2017:

"Another funny letter from Freeths attached. My witness statement has really annoyed them. This is good – the more time they waste on side correspondence the less time they are spending on important matters!"

186. At paragraph 544 in the Common Issues Judgment Lord Justice Fraser stated:

"The Post Office has appeared determined to make this litigation, and therefore resolution of this intractable dispute, as difficult and expensive as it can."

187. We submit that, as Sir Alan Bates and Kay Linnell have maintained in their evidence, it is quite clear that POL did adopt an aggressive strategy of trying to outspend the GLO litigants in the proceedings before Lord Justice Fraser.

188. POL lawyers put forward reasons for not calling Gareth Jenkins as a witness in the Horizon issues trial, which were arguably misleading because no mention was made of Mr Jenkins having given tainted evidence in earlier criminal proceedings. Mr Jenkins did not give evidence in the Horizon issues trial because he was an unreliable witness – yet much of the POL evidence came from him. The Court was not made aware of the true reason for his not having been called. (See Horizon Issues judgment at [77] [511-516] [UKGI00018137])

POL's destruction of documents during mediation scheme

189. Sir Alan Bates stated at paragraph 141 of his witness statement that disclosure of documentation was a major issue in the mediation scheme and the working group [WITN00050100]. Rather than working to achieve a just outcome in the working group and

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mediation schemes, POL lawyers (primarily Mr Aujard) adopted a defensive and entrenched approach of concealment and disinformation in their dealings with JFSA and throughout the mediation scheme.

190. Kay Linnell referred in her evidence to POL's destruction of documents and failure to provide relevant disclosure. The Second Sight Interim Report refers to POL's 7 year retention policy at paragraph 2.6 [POL00099063]. The report states: *"In several instances, POL's seven-year Document Retention Policy has meant that little or no documentation was available for Second Sight to examine. The same retention policy applies to the underlying Horizon computer data. In a number of cases we were provided with POL created documents by SPMRs, where POL have been unable to supply the same document, even though it was within the 7 year retention period."*

Failure to supervise lawyers

191. It was clear from Mr Parsons' evidence that POL sent representatives into mediations with instructions not to settle. This is a matter which would ordinarily carry costs sanctions as the conclusion of any proceedings. However POL were able to exploit the confidential nature of mediations to hide their actions.

192. The evidence of Jarnail Singh was a matter of some concern. It was clear that Mr Singh had little understanding of the prosecutor's code, disclosure obligations or duties of candour in criminal proceedings. He made a number of statements in correspondence which demonstrated disdain for subpostmasters. [See POL00055590]. He routinely failed to assess the public interest in bringing prosecutions, preferring POL's view that prosecutions provided an effective means of recovering alleged Horizon losses through subsequent confiscation proceedings.

193. Remarkably, Mr Singh's supervisor was Hugh Flemington, who confirms at paragraph 9 of his statement that he was lacking in criminal experience [WITN08620100]. Mr Flemington recalls a conversation with Mr Singh at paragraph 86 of his witness statement, in which Mr Singh conveyed a misleading impression to him: *I understood from a conversation with Jarnail Singh, at some point in time shortly after separation, that Gareth Jenkins was the Fujitsu Horizon guru involved in the cases. Jarnail Singh also said that in 99.9% of cases there was other evidence of theft, and so it was not apparent that many cases solely relied on Horizon data."*

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Failure to employ appropriately qualified lawyers

194. POL failed to employ the right lawyers for the issues it faced. At paragraph 14 of his witness statement Rodric Williams stated that prior to the establishment of the Historical matters/Remediation Unit in mid-2020 he believes that he was the only POL employed lawyer with dispute resolution experience [WITN08420100].

195. We request that the Inquiry makes findings which condemn the conduct of lawyers acting for POL. We submit that the following recommendations should be put forward to reduce the scope for erroneous or misleading conduct in relation to future legal action taken by ALB companies against their staff, employees or sub-contracting agents:

(i) All such companies are to ensure that lawyers are appropriately qualified to undertake the roles to which they were appointed.

(ii) The Law Society and Bar Council codes of conduct should carry separate sections to cover the duties of solicitors and barristers acting within government owned organisations and in relation to the duty of candour within litigation.

(iii) POL and other ALBs are to publish guidance for legal teams on the definition and use of privilege that is to be agreed by the SRA and the BSB.

(iv) POL and other ALBs are to publish guidance for legal teams in relation to documenting correspondence and meetings. Our clients deprecate POL's discouragement of the taking of minutes was discouraged in an attempt to evade accountability. Such guidance is to be ratified by the Law Society and Bar Council.

THE CONDUCT OF CRIMINAL LAWYERS WHO ADVISED POST OFFICE LIMITED

196. We have referred to the conduct of civil lawyers above. However phase 5 of the Inquiry also considered the conduct of criminal lawyers.

Issues surrounding the Clarke Advice and Gareth Jenkins

197. There are two facets to the Jenkins advice of July 2013 [POL00006357]:

(a) That bugs existed within the Horizon system and this was known to the chief architect of the system.

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(b) That Mr Jenkins (a chief architect of the Horizon system and expert witness in POL cases) knew about bugs in the Horizon system but gave statements and gave evidence in past and current criminal cases that the system is robust.

198. Simon Clarke stated in his advice dated 15 July 2013 that Gareth Jenkins evidence had been 'fatally undermined' – see para 38 of POL00006357. In his general review of 15 October 2013, Brian Altman KC had said at paragraph 5 (x) of POL00006581 that he agreed that Gareth Jenkins was tainted and that his position as an expert witness was untenable.

199. Startlingly, nothing was done to inform the past defendants and those in ongoing cases where (according to Simon Clarke's advice) *"Dr. Jenkins has provided many expert statements in support of POL (& RMG) prosecutions; he has negotiated with and arrived at joint conclusions and joint-reports with defence experts and has attended court so as to evidence on oath in criminal trials*" POL00006357 at para 15 that Mr Jenkins had on the facts known to Simon Clarke deliberately withheld knowledge about bugs in the Horizon system.

200. Furthermore, the part of the information in the Simon Clarke's advice and the agreed assessment by BAKC that Jenkins "*has not complied with his duties to the court, the prosecution and defence*" (para 37 Jenkins advice), and "*he is in plain breach of his duty as an expert witness*" (para 38 Jenkins advice) and *"….Jenkins credibility as an expert witness is fatally undermined*" (para 38 Jenkins advice/para 147 BAKC advice) was never disclosed to past and current defendants before the Criminal Court of Appeal.

201. The DPP issues 'Ethical Principles for the Public prosecutor' in 2009. Paragraph 3.6 of the Ethical Guidelines states:

> "*Public prosecutors who exercise rights of audience in the higher courts are entitled ultimately to consult the Attorney General as guardian of the public interest if they have reason to doubt the propriety of any action or proposed action in a case proceeding in the higher courts for which they have responsibility. If an employed prosecutor considers that they are involved in such a matter, they must first discuss their concerns with their line managers before contacting the Attorney General.*"

202. The interests of justice will mean that where material comes to light after the conclusion of the proceedings that might cast doubt upon the safety of the conviction, there is a duty to consider disclosure. Any such material should be escalated in accordance with local arrangements. The principle was considered and the importance of finality in criminal

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proceedings was reaffirmed in *Nunn v the Chief Constable of Suffolk Constabulary and the Crown Prosecution Service (Interested Party)* [2012] EWHC 1186 Admin.

The blurring of the roles between those exercising separate functions within the prosecution process.

203. The Criminal Justice system is a system, the effective operation of which depends on a structure that is integrated and where individuals ensure that they do their job and fulfil the functions required of them by the system.

204. The issues which occurred through the Post Office Scandal in so far as they relate to the Criminal Lawyers, investigators and the expert advice/statements occurred because the functions of those individuals became blurred over time.

205. An aspect of this blurring of roles can be attributed to the fact that the criminal lawyers (solicitors and barristers) at Cartwright King had a background in criminal defence and not in prosecution. Prosecutors working for or engaged by the state have a built-in system of investigators, disclosure officers and prosecutors. Furthermore, the 'CPS' has strongly regulated hierarchical structures which provide management oversight of the CPS to make sure that each part of the system operates separately and fulfils its functions.

206. The consequences of the lack of adherence to a standard system meant that prosecuting lawyers were all:

I. Investigators
II. Witnesses
III. Disclosure officers

207. Prior to the Clarke advice it was clear that the lines had already been blurred between the Investigators and Mr Jenkins. The evidence has shown that the contents of Mr Jenkins statements was a matter for discussion, without oversight and without limits. This closeness of the 'expert' and the 'investigators' meant that Mr Jenkins' work was as a part of the POL and thereby to POL's thoughts, belief and culture, whether he knew it or not.

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The blurring of the functions between prosecutors and those who provided advice to POL

208. It seems likely that the failure by Mr Altman to recognise that Mr Clarke and others should play no further part in matters relating to Mr Jenkins goes hand in hand with the failure by him and Cartwright King to make sure that the Jenkins concerns were disclosed to Seema Misra and her legal team. That initial failure was probably engendered by instructions to advise the Post Office and not an engagement as a lead prosecutor to take on the responsibilities of prosecuting cases where SPMs had been convicted.

209. It should be noted that the enduring effect of the blurring of roles and the failure to have lead responsibility as a prosecutor as opposed to a POL advisor, carried on to the Court of Appeal where Mr Altman KC, by that time representing POL in the Court, put forward POL's responsibility for its failures in the disclosure process whilst being a witness to and bearing responsibility for those disclosure failures himself. For lawyers of the seniority of Mr Clarke and Mr Altman KC to have made such serious mistakes in the absence of any possible allegation of bad faith or corruption demonstrates that the effect of the systemic failures combined with a lack of direction were profound.

210. The structure for CPS prosecutions is fixed and settled by the combined interlocking operation of:

i. Legislation, subordinate legislation, including the CPR and Attorney General's guidance.

ii. Police officer training generally, which includes the roles of officers as investigators, retention of information, storage and listing of information and disclosure.

iii. CPS guidance, managerial oversight, disclosure principles and day to day experienced work within the system.

iv. Lawyers' training and experience, CPD and Codes of Practice.

211. The Expert Report [EXPG0000002] submitted to the Inquiry by Mr Atkinson KC discusses the interlocking criminal justice system and its impact on charging:

"12. I consider that the policy landscape for a significant period was not sufficient to ensure consistent and comprehensive compliance with a number of important aspects of the PACE and CPIA regimes, and in particular in relation to independent decisions as to charge, disclosure of material that might undermine the reliability of data systems and third party disclosure."

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212. By the time that the Gareth Jenkins issues were obvious and concerning the damage had been done; the confusion of role and the question of how compliance with proper standards was to be achieved or monitored had reached its nadir.

213. Years of investigators operating outside of a system of training, support or oversight had compromised the investigators' ability to be independent. The embedded anti- SPM culture guaranteed at least nonchalance and at worst hostile presentations towards SPMs which affected the way that Investigators came across to SPMs and contributed to a cultural bias against SPMs.

The evidence of Simon Clarke

214. An example of problems with Policy management and content was considered by Mr Clarke in his evidence before the Inquiry [INQ00001144 page 114, line 14]:

"***Mr Blake**: Was it surprising to you, in mid-2013, that Cartwright King didn't hold a copy of the Post Office's prosecution policy?*

***Simon Clarke**: Yes, this was part of my ongoing learning process, early on in my involvement in the whole of the Post Office work, if you like. And at some point it occurred to me, I need to see what their prosecution policy was. I asked for one and was told that there wasn't one with Cartwright King. So I said "Well, Post Office must have one", and I asked Martin Smith to obtain one from Post Office.*

***Mr Blake**: As a firm that had, by then, been prosecuting Post Office cases for a few years, was it surprising that the firm didn't hold a copy?*

***Simon Clarke**: Yes."*

215. Mr Clarke was asked by Mr Stein KC about his own reaction to learning of the Jenkins issues and his own duties as a barrister and why he did not seek to correct the position before the court [INQ00001144 page 185, line 15]:

*" **Mr Stein**: So those courts are in an ongoing situation, whereby they have not been given the right evidence by Mr Jenkins by the time you've realised that; do you agree?*

***Simon Clarke**: I do.*

***Mr Stein**: Right. Now, if that was you when you'd made those errors, you'd immediately have corrected it, yes?*

***Simon Clarke**: I would.*

***Mr Stein**: Right. You're now prosecuting on behalf of the Post Office, yes?*

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***Simon Clarke**: ……, I was not a prosecuting barrister for the Post Office. I was never a prosecuting barrister for the Post Office. I was instructed to prosecute one case, the case of Samra. That case got to trial on 1 July and I stopped it and I then stopped every other case from being prosecuted thereafter. So I was not a prosecuting barrister; I was the barrister who stopped the prosecutions.*

***Mr Stein**: ……. Were you operating under the duties that characterise an advocate working on behalf of the CPS, in other words someone with the higher duties in relation to prosecution, the minister of justice duties?*

***Simon Clarke**: No.*

***Mr Stein**: Right. So when you were providing the advice to the Post Office in relation to Mr Jenkins, "Look, there is this massive problem, really it's a real problem", was that to a private client?*

***Simon Clarke**: Yes."*

216. The question of whether Mr Clarke's sense of where he was positioned as regards the Post Office was further explained in his evidence:

***Simon Clarke**: "My function as a barrister in front of the court is not to mislead the court. There is no circumstance in this Post Office saga in which I had misled a court, therefore I had no duty to go back to the court and correct anything I had or had not done. This was an entirely different situation. This was a situation where I had discovered, as I say, a witness in prosecutions in which I was not involved in had misled the court. It was therefore not my function to go back to the court that he had misled and tell the court, "Oh, by the way, court, that witness you heard from six years ago had misled you".*

My function was to advise Post Office as to what they ought and ought not to do in the circumstances that I had identified."

The evidence of Brian Altman KC

217. Mr Altman KC was asked about what he did or did not do to support proper disclosure of relevant information by Mr Beer KC[INQ00001143: page 52, line 8]::

"Can we see, firstly, your general advice, please, your general review. POL00006803. Remembering this is your general review of 15 October 2013. Can we look at page 6, please, and scroll down to paragraph (x) and this is essentially an executive summary of the review and, in relation to Mr Jenkins, you say:

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

***Mr Beer**: Were you basing that view principally upon what you had read in Simon Clarke's Advice of 15 July 2013?*

***Brian Altman**: Yes, I think that must be the case.*

***Mr Beer**: What was done to inform past defendants and those in ongoing cases that Mr Jenkins had wrongly withheld knowledge about bugs in the Horizon system?*

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***Mr Beer**: Is the answer, then, that nothing was done to inform convicted defendants or those in ongoing cases that Mr Jenkins had wrongly withheld his own knowledge of bugs in the Horizon system?*

***Brian Altman**: I think, unhappily, that has to be the case. I mean, with – again, with the benefit of hindsight and having thought an awful lot about this, it's something that should have been considered for disclosure and disclosed in appropriate cases, no question.*

***Mr Beer**: And should have been considered for disclosure by you, Mr Altman?*

***Brian Altman**: Yeah, I'm accepting that."*

218. The issue of privilege was a matter explored with Mr Altman [INQ00001143: page 57, line 2]:

"Was any consideration given by you or, to your knowledge, by others as to whether the agreed position, that we've just seen reached by you and Mr Clarke, was not privileged?

***Brian Altman**: I don't believe we ever had that discussion.*

***Mr Beer**: Do you think there ought to have been a discussion as to whether this meeting of minds between prosecutors was not a privileged – was not privileged information and ought to have been revealed?*

***Brian Altman**: I've already agreed with you about the latter and, if the latter had been the decision I'd arrived at or the advice I gave, then I don't think privilege would have come into it.*

***Mr Beer**: So is it, on your understanding, a failure to think about the issue –*

***Brian Altman**: Yes –*

***Mr Beer**: – rather than thought being given but privilege cloaking the answer?*

***Brian Altman**: I don't think privilege would have – if I had applied my mind to the fact that Gareth Jenkins' credibility was in issue and his assessment as an expert was in issue, I think I would ultimately have advised that that ought to be disclosed in appropriate cases. I clearly didn't. I can't think now why I didn't. I'd like to say it was a misjudgement but I'm not even sure there was a judgement. I don't know why, I think we were – if I have to think back and speculate, I think the focus was so geared towards these two new bugs that that just slipped thorough, as it were."*

219. The issue of role and instructions was also revealed when Mr Altman was asked by Mr Beer about whether he or the solicitors at Cartwright King had stopped to consider whether Mr Jenkins may have committed a criminal offence [INQ00001143: page 62, line 16]:

*"**Mr Beer**: Why was the question of possible perjury or possibly perverting the course of justice never addressed?*

***Brian Altman**: Because I think at that early stage – and, in fact with all witnesses who give evidence to civil or criminal courts or, indeed, in public inquiries – simply because a witness hasn't complied with their duty, in this particular case, as an expert does not lead inexorably to the conclusion that somebody has committed any of those offences and, again, it would never have crossed my mind that that required a police investigation.*

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***Mr Beer**: You're ahead of me, Mr Altman, a little bit, but I'm asking at the moment why we see no consideration of it?*

***Brian Altman**: For that reason: it wouldn't have crossed my mind that any police investigation or any consideration of whether he had committed offences was anything (a) I was asked to do or (b) I would have volunteered."*

220. It is inconceivable that two experienced criminal lawyers, Simon Clarke a senior criminal barrister and Brian Altman KC, at least one of the most senior criminal prosecutors in the UK at that time, outside of their work to advise the Post Office could have missed the issue of whether Jenkins may have committed a criminal offence. If at this juncture the police had been called in to investigate the history of the Post Office Scandal may have looked very different.

221. So how can these failures be explained? None of the lawyers involved were bought off or blackmailed or subject to any type of malign influence. Mr Altman had operated at the highest levels of criminal casework for years, had advised government investigations and had been instructed to review allegations of serious offending.

222. During the course of questioning by Sam Stein KC Mr Altman was pressed as to why these serious errors occurred and the only answer from Mr Altman was '*I am human, like the rest of us*' [INQ00001143: page 174, line 13]. Mr Altman was it seems unable to articulate how these perplexing and utterly uncharacteristic mistakes came about – the only reasonable answer lies in the difference between being instructed to advise the Post Office versus being instructed to prosecute.

223. By September 2013 Mr Altman was in conference with POL regarding disclosure and they discussed Ms Misra's case. Attendees included Rodric Williams and Susan Crichton. Notes of that meeting were referred to by Mr Beer in his questions [INQ00001143: page 84 line 20]:

*" **Mr Beer**: I'll try and help you on this. Let's look at POL00006485. This is one of two notes of the conference on 9 September 2013. … You are recorded as opening the conference by confirming that you had read through all five of the ring binders delivered by Bond Dickinson.*

Then if we go to page 3, please, and the second paragraph, you're recorded as saying that you required a full transcript of Day 6 of Seema Misra's case, the copying had only copied every other page……

***Mr Beer**: – and that was going to be sent on to you. So, by this time, you had got into the detail of Seema Misra's case?*

***Brian Altman**: I had certainly read it, yes.*

***Mr Beer**: Yes. Can we see, according to the other version of the minutes, what you said or were recorded as having said about Seema Misra's case. POL00139866. Notes of the meeting with you on 9 September and you'll see who was present.*

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***Brian Altman**: I have only seen this note in the past few days.*

***Mr Beer**: I'll take it slowly, then. Again, a similar start:*

"QC [that's you] said he had read all of the papers."

Then if we go to page 6, please, and about a third to a half of the way down where it says, "QC", if that can be highlighted.

"QC [this is you]: Misra concerned: pre-Horizon Online case – issues were detailed as I've seen. She went to prison. Jenkins gave evidence – training and Horizon issues: Professor McLachlan – much of it hypothesis – that is a case slipping through the net."

Susan commented that she had applied for mediation. You say:

"How are we going to deal with it if she comes forward and says similar …"

Susan Crichton says:

"Either review all pre-2010 cases – or we do nothing and wait for them to come forwards."

You say: "Next problem: what disclose?"

Rod [Rodric Williams]: "We will always have people who want to go back and if we do, trying to prove a negative."

You're recorded as saying: "Can't avoid the question.

"Provisional view: sensible date to adopt. But can't avoid possibility Misras may crawl out of the woodwork: deal with on a case-by-case basis unless someone states cut off [is] unreasonable."

Does this record of this conference fairly reflect your view that the cut-off date of 1 January 2010 was sensible to adopt but that there was a possibility that "Misras might crawl out of the woodwork"?

***Brian Altman**: As I say, I have seen this conference note for the first time in the last seven days and I didn't have an opportunity to look at it all those years ago but I have no reason to think it's inaccurate."*

224. These notes and the language being used are useful in demonstrating what happens when the relationship between lawyers and their clients starts to impinge on the professional duties and obligations owed by a lawyer externally to that relationship. We can see in this quote that despite Mr Altman's seniority and experience his language identifies himself with the client, POL.

Martin Smith

225. The evidence of another Cartwright King lawyer also revealed issues with ethics and their application; this from the evidence of Martin Smith on the 2nd of May 2024 [INQ00001140 page 156, line 4]:

*" **Mr Stein**: Did you consider, did you think about it, Mr Smith, that, "I must, when prosecuting these cases, act in a way that is bringing the highest ethical standards to apply to prosecution cases"? Did that cross your mind or not?*

***Martin Smith**: I don't think I gave it a huge amount of thought."*

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Confused professional obligations

226. The problem with the failures of lawyers to act in accordance with professional obligations when involved in corporate matter prevailed during the course of the scandal. Jarnail Singh, POL in-house criminal solicitor, repeatedly denied knowing about Horizon bugs until 2013, but a particularly nasty Horizon bug was shared with him in 2010 not long before Seema Misra's trail. The trial went ahead without this disclosure and Mrs Misra was jailed for more than a year, Mr Singh denied that he ever saw the email. This was described by Mr Beer as a "*big fat lie'*.

227. The horrors continued. POL Head of Security and oversight of the Prosecutions and Investigations Department John Scott had advised that typed minutes of weekly meetings be scrapped and shredded. *'I do recall being quite horrified' (by what he had heard),* Martin Smith a lawyer at Cartwright King explained (INQ00001140 page 60) This advice was dealt with by Mr Clarke in what became known as the Shredding Advice, where Mr Clarke had to advise that these suggested actions were wrong and unlawful; he advised in writing that the duty to record and return material '*cannot be abrogated'* [POL00006799]. The belief was that this advice would be populated across POL but Mr Scott remained in post for another 5 years.

228. The confusion of professional obligations is clear. Jarnail Singh's email is one example where he stated that prosecutions should continue "to protect POL brand and reputation and in the interest of the business". Simon Clarke fell prey to the same issue and advised regarding the disclosure of a forensic accountant's report: "to permit this information to enter the public domain at such an early stage would have been to encourage extremely unhealthy and likely virulent speculation as to the content of any report".

Issues with disclosure in the Court of Appeal

229. The issues with disclosure continued into the Criminal Court of Appeal where we can see how matters were dealt when replying to disclosure request from Edward Fail Bradshaw and Waterman solicitors on behalf of SPM Appellants [WITN10350111 at paragraph 17]:

> *"In relation to the request for the "General Review" dated 15 October 2013 by Brian Altman QC, the document has been considered for disclosure, including its terms of reference and documentation provided to be considered within the review, and it does not fall to be disclosed."*

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230. EFBW will be aware that, unlike the prosecutorial disclosure duty in criminal proceedings, disclosure obligations in civil litigation do not override LPP and so the Clarke Advice and other such privileged documents would not have been disclosable in the civil litigation. More importantly, any such decisions taken as to conduct of civil litigation many years after the conclusion of any prosecution are not disclosable in these proceedings in relation to the safety of convictions.

231 At the time of the Appeals Mr Altman KC was co leading Counsel for the Post Office having been retained by POL because of his previous knowledge of matters (Mr Foat's evidence). POL had put in place a system to manage conflict but Mr Altman KC did not raise his own issue of contributing to the failure to ensure disclosure of the Clarke Advices and the view he shared that Mr Jenkins had misled courts.

232 Mr Altman KC was not asked the question of when did he recognise that he had contributed to the disclosure failures, but surely when he was arguing the question of the Post Office's culpability for abuse of process due to disclosure failures he ought to have considered his role.

233 To conclude on this issue, the professional failures are astounding:

i. It was believed that Mr Jenkins had misled courts, and not one of the criminal lawyers considered that this required speaking to the courts, the AG and/or the Police.
ii. None of the lawyers decided to 'action' the disclosure of what was believed regarding Mr Jenkins to previously convicted SPMs and staff members or their solicitors.
iii. None of the lawyers considered privilege and to what extent it did or did not apply.
iv. The witness Mr Jenkins had been a mainstay of prosecutions and Horizon for 13+ years; his evidence and the reliability of the Horizon system was now in doubt for all of those years. Yet the advice from the criminal lawyers was to review matters only going back to 2010.
v. The Cartwright King lawyers were all hopelessly conflicted as involved in past prosecutions and a number of them were direct witness to fact as regards the 'investigation' of Mr Jenkins.
vi. None of the lawyers appear to have acted as prosecutors within a prosecution authority.
vii. Whilst recognizing that the evidence regarding Mr Jenkins was tainted, none brought this to the attention of other Prosecution authorities such as the Procurator Fiscal of the PPS in Northern Island.

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234. The Legal Regulators, the BSB and the SRA need to consider the evidence in relation to the criminal lawyers and consider together how such matters can be prevented in the future. We recommend that a joint report be issued by the Regulators assessing the failures demonstrated by the evidence and consider the recommendations made by this Inquiry.

235. We ask that the Inquiry recommends that the professional regulators conduct a reconsideration of the following:

i. Privilege: its meaning and extent to which it can be maintained.

ii. Instructions: Seeking instructions, maintaining a clear line of sight as to the client and conflicts with other overriding duties.

iii. Prosecution: Duties of a solicitor or a barrister when instructed by a prosecution authority, defined as any individual or corporate body or institution which instigates a prosecution before the criminal courts.

THE USE OF PRIVATE PROSECUTIONS

236. On 26 July 2016 Brian Altman KC advised POL that it had been abusing the process of the court through undertaking financially motivated prosecutions. [POL00006394]

> *"208 … More substantive criticism, albeit beyond the remit of this review, involves the risk of challenge not that Pol has been charging theft where there was no proper basis to do so only to encourage or influence pleas of guilty to false accounting charges, 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. It might be argued that as sub postmasters are contractually bound to replace to repay losses, POL is using (and abusing) the criminal justice process rather than civil litigation to recover from offenders."*

237. Chris Aujard accepted at paragraph 366 of his witness statement [WITN00030100] that there were 'office rumours' within POL to the effect that *"it was believed that criminal proceedings were a quicker way of recovering alleged losses and therefore were to be considered advantageous."* He refers in the same paragraph to *ARC's meeting minutes from 19 November 2013* (at paragraph(C) on page 4 of [POL00038678]) *that members of that committee asked "whether the business would still be able to recover branch losses through the Civil Courts" to which I answered yes albeit it might be slower and recover less."*

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238. Furthermore, as a private prosecutor. POL was hampered in complying with its disclosure duties because of its contractual relationship with Fujitsu. In an email to Mr Flemington also dated 16 July 2012 Jarnail Singh stated that the costs of complying with disclosure requests were prohibitively expensive because of charges that Fujitsu would raise for such requests. "*It is expensive to obtain this material because expense simply results from post offices contractual obligations to fujitsu. for example to obtain 6 months data would cost £20,000 and mountain of information covering more than 5 years would cost ???*" [POL00143379]

239. SPMs have told the Inquiry that POL refused to comply with requests for disclosure on the basis of disproportionate cost. It is submitted that a defendant is far less able to obtain a fair trial where prosecuted by a private prosecutor, which might be hampered by contractual difficulties when obtaining disclosure from a third party.

240. At paragraph 64 of his witness statement [WITN10990100], Harry Bowyer of Cartwright King stated that the implications of the Gareth Jenkins' revelations in the Second Sight Interim Report were *'plainly enormous'* and he advised that prosecutions should cease. However, it does appear that POL or those advising POL considered that the matter should be reported to CCRC or that there was a potential that large numbers of cases could have been miscarriages of justice, given Mr Jenkins' role as a senior architect of the Horizon system. Mr Bowyer states at paragraph 66 of his witness statement that POL were merely philosophical about the Jenkins revelations and believed that once a new expert was instructed they could prosecute again.

241. It is also relevant to note that a private prosecutor is less likely to be aware of post-conviction disclosure obligations in criminal proceedings. Indeed, POL were not prepared to investigate whether there had been any miscarriages of justice in relation to legacy cases [POL00148714]. In July 2015 Martin Smith of Cartwright King wrote to Andrew Parsons and stated: "*I would not advise that the experts be instructed to look at the old horizon system. If the experts were to consider the old system, depending on their findings, disclosure issues could arise in historic cases. In any event cases now being investigated and considered for prosecution will involve horizon online, which was rolled out during 2010.*" [POL00148714]

242. The failures by POL to prosecute in accordance with the Prosecutor's Code and DPP Ethical Practice guidance stem from the position of POL as victim, investigator as well as prosecutor. The fact that POL prosecuted its own subpostmasters amounted to a wholly unique system that should have required the most clear and transparent oversight. It is relevant to note that some senior directors within POL, such as Alan Cook, were unaware of

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POL's prosecutorial function. Many within POL thought that it had a special statutory authority to prosecute, which it never had.

243. POL acted properly in ceasing to conduct prosecutions after 2013. We submit that this Inquiry has brought into sharp focus the flaws and pitfalls in the continued use of private prosecutions, where the prosecutor is a 'victim'. Our clients ask that the Inquiry recommends that such prosecutions should be conducted by the Crown Prosecution Service.

244. We further ask that the Inquiry recommends that CPS should act in any prosecutions brought by ALBs. This is because the government shareholder will always have concerns about the executive interfering in the function of the judiciary and will therefore lack the will to oversee the prosecutorial functions of these companies.

THE GLO LITIGATION – POL'S LAST-DITCH ATTEMPT TO COVER UP THE SCANDAL

Dr Kay Linnell - The covering up by POL extended into the group litigation and at the expense of the taxpayer.

245. Kay Linnell played a fundamental role in the working group as advisor to JFSA. Her evidence is also illustrative of the bad faith with which POL conducted itself, particularly in relation to the group litigation. She raises an issue in her witness statement [WITN00550100] that the Group Litigation was used by POL as a last-ditch attempt to cover up its wrongdoing, at substantial expense to the tax-payer:

> *"148. JFSA and the GLO legal team incurred approximately £15,000,000.00 in legal costs as claimants in the High Court litigation and I had expected that POL as defendants would have spent 2/3 of this at, say £10 million. I was shocked to learn from the POL published accounts that apparently nearly £140 million has been spent on legal fees, which appears to have been a complete waste of public money in defending the POL brand. It seems to me that POL senior staff have perpetrated a cover up apparently at any cost to the to hide their criminal theft of funds from SPMs, possibly orchestrating a conspiracy to pervert the course of justice and endorse or commit perjury in the Court by themselves or others.*
>
> *149 ……. Dishonesty, cover-ups and incompetence created a perfect storm sacrificing SPMs in the wake of POL executives' brand protection strategies, for which conduct many of POL were rewarded with honours and very large bonuses."*

246. It should be noted that the findings of Lord Justice Fraser and the Court of Appeal were made in the context of a final and ultimately unsuccessful effort by the POL to prevent the facts of this scandal from coming to light.

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247. Accordingly, we submit that the protestations of the POL witnesses before this Inquiry as to lack of knowledge of the matters which gave rise to the scandal should be rejected by the Chair.

RESPONSES BY POL TO THE GLO JUDGMENTS

248. Many of our Core Participant clients consider that the culture at POL has not changed. In response to the Horizon Issues judgment, POL prepared a Horizon Issues Judgment Communications Plan [POL00091452]. That plan contained an upbeat message to the effect that:

> *Bugs exist in any large and complex IT system, and the management of any system like Horizon involves a programme of continuous counter-measures and improvement. We have confidence in the system and independent experts on both sides of the litigation confirmed during the trial that Horizon is robust and compares well with IT systems used by other retail and financial services companies*

249. The entire document seems to be about sending a message which says 'all good here' when clearly bugs, hostility to SPMs and process issues had been identified.

Evidence of Jane MacLeod

250. At paragraph 368 of Jane MacLeod's witness statement, she states:

> *368. In relation to the conduct of the Group Litigation, ….. POL has been criticised for its `aggressive' defence of the Group Litigation. The Group Litigation was brought in a judicial framework that is, by definition, adversarial and as Defendant, POL's role was to respond to allegations made by the Claimants. While the Claimants clearly wanted financial recompense for the losses they believe they had suffered, litigation is not necessarily the best way to get to the truth of what happened in the case of each individual Claimant. POL saw the Common Issues and Horizon trials as the starting point to (a) understand the concerns about the contractual construct between POL and each SPM, and (b) answer the question as to whether Horizon was robust and if it was the likely cause of losses in branch However, the Group Litigation plainly did not answer all the questions that the Claimant community, and others, were asking, and did not result in the outcomes that the Claimant community hoped for.* [WITN10010100]

251. Ms MacLeod appears to be blaming the aggressive attitude of POL on the fact of adversarial proceedings. It is illustrative that she does not appear to acknowledge any fault

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in POL's conduct. We submit that Ms MacLeod failed to understand that POL's conduct throughout the litigation raises serious concerns.

252. Given the nature of POLs public facing work, the fact that it is embedded in the community and the fact of state ownership, POL should have held itself to a higher standard than a corporate entity protecting itself in the marketplace.

253. It is a matter of regret to our clients that Ms MacLeod refused to co-operate with the Inquiry by attending to give evidence and taking advantage of her residence in a foreign jurisdiction to prevent the Inquiry from compelling her attendance. Our clients have noted the adverse comments made by Lord Justice Fraser concerning the conduct of the litigation and would have wished to put questions to Ms MacLeod on these and other issues had she attended. The Inquiry is invited to draw adverse inferences from this lack of co-operation by a material witness.

FAILURES IN GOVERNANCE - PHASES 5 AND 6

" when an incomplete curiosity, if I can put it that way, meets a toxic culture, bad things happen." - Robert Swannell [INQ00001171 page 138, row 11***]***

254. Phases 5 and 6 have examined the various failures of POL conducting prosecutions of SPMs and enforcing the SPM contract in an oppressive manner, when the Executive knew that the Horizon system was not robust, a crucial matter that the Board ought also to have reasonably known. Furthermore, the Inquiry has examined the actions of POL in responding to the scandal, whereby it sought to cover up what it knew – effectively generating another scandal.

255. These phases have also considered questions of redress and governance. Witnesses have acknowledged that there were failures. In particular, as Mark Russell told the Inquiry, that there was a failure of governance and the blame lies with the Board [INQ00001171]. The evidence has demonstrated that the Board failed to exercise proper oversight over the activities of the senior executives.

256. Furthermore, the Shareholder was unable to exercise effective oversight because the Arms Length Model was not suited to a company where senior members conduct themselves dishonestly and with bad faith. Absurdly, whenever a Minister wished to investigate a

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complaint about the conduct of POL, civil servants would ask POL for its view of allegations. POL's responses to ministerial enquiries were always emphatic. [19] .

257. A key negative effect of Arms Length Bodies is to distance Government and Departments from accountability.

258. There is an inherent weakness in the ALB model in that ministers are (in the words of Pat McFadden) unwilling to 'act as shadow chief executives' or intervene in any judicial processes. A common theme of the evidence is that Ministers were told by ShEx / UKGI that all matters relating to POL were contractual and operational concerns for POL to deal with. Vince Cable told the Inquiry that new ministers are not permitted to view details of matters conducted by ministers from previous administrations. This convention is contrary to all logic and proper oversight, and operated as a hindrance to effective ministerial scrutiny. [INQ00001181] transcript (25/07/24) page 109 line 22 - "*a completely blank sheet of paper*"

259. The governance problems were summarised aptly by Robert Swannell, a former Shareholder Executive / UKGI official, who stated: ""*I'm afraid that when an incomplete curiosity, if I can put it that way, meets a toxic culture, bad things happen.*"

260. The Inquiry's governance experts, Dame Sandra Dawson and Dr Katy Steward summarised the internal governance within POL vis a vis the Board and Executive in their second report [EXPG0000010] (page 41) as follows:

"145. So deep were the assumptions embedded in the culture of the organisation, so corrosive was the company ethos that the Board did not call the Executive to account to face up to POL's role in perpetuating the miscarriages of justice which were increasingly evident to others. Failure to uncover and correct the darks spots in the culture is a failure of management and governance."

261. Phase 7 concerns current practice at POL and recommendations for the future.

[19] Pat McFadden told the Inquiry. (INQ00001177: transcript 18th July 2024, page 68, line 14: *"of course I wish I had asked more about this. But do believe, given the emphatic nature of the replies and Post Office's use of court judgments as a proof point for the robustness of the system, at this stage in the process,I'm not sure it would have got any further.")*

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LACK OF EFFECTIVE GOVERNMENT OVERSIGHT

262. The Government was under a duty to intervene and interrogate further when the matters surrounding the Horizon system entered the public domain.

263. It was accepted a number of witnesses including Mark Russell, a former acting CEO of ShEx, that the failure by the Government to detect act on the miscarriages of justice and the abusive use by POL of the SPM contract amounted to a failure of governance. The government and ShEx displayed a remarkable lack of curiosity into what was self-evidently a toxic culture at POL.

264. Many ministers and officials believed that this lack of curiosity was justified by the ALB structure itself. Lord Arbuthnot referred at paragraphs 14 and 15 of his witness statement to correspondence which makes this point : [WITN00020100]

> *" On 5th December 2009 Pat McFadden MP, Minister of State for Business, Innovation and Skills, replied to my letter of 3rd November 2009 saying that the Government had assumed an arms' length role in Post Office Ltd and that the issues I had raised were operational and contractual matters for POL and not for Government"*
> *In the years since then I have come to believe that in effect it left the British public with no redress against a Government owned organisation which the Government was deliberately refusing to oversee. The only shareholder was repudiating the responsibilities of ownership."*

265. At paragraph 24 of his witness statement [WITN00800100] Mark Russell, a ShEx official described the governance model under which POL was overseen and operated:

> *"Public Corporations such as POL are designed to operate at a distance from Ministers and Departments, with responsibility for day-to-day operations delegated to the Executive Team, overseen by the Board, the members of which are appointed based on their relevant expertise and specialisms. The POL Board is accountable to the Shareholder, i.e., the Secretary of State. This devolved governance model is intended to enable more efficient delivery of public services. A core tenet of the classification is the ability of the Public Corporation to have "appropriate levels of freedom to exercise commercial judgements, with appropriate delegated authority arrangements that protect Departments (UKGI00043214, p.133)."*

266. At paragraph 14 of his witness statement WITN11000100 Sir Patrick O'Sullivan states:

> *".....it is not for central Government to micro-manage the operation of large commercial entities such as POL and there are good and obvious reasons why ALBs should be given the*

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autonomy, subject to the oversight of their boards, to take decisions in the best commercial interests of the business."

267. We submit that the ALB model, which was in place for POL, and the Articles of Association at UKGI00043216 failed to provide protection against the following scenarios:

1. Senior executives acting in bad faith in contractual matters concerning employees or sub-contractions.

2. The bringing of prosecutions without conducting proper investigations (through the use of substandard investigating officers).

3. Failures to investigate legitimate concerns adequately through the production of self-serving and inadequate internal reviews (for example, the Ismay report).

4. Attempting to suppress and frustrate the work of independent investigators, when eventually instructed (Second Sight).

5. The pursuit of a defence in the group litigation, which was based on denials of what the POL executives knew concerning BEDS and remote access without the knowledge of an SPM.

268. However, Ministers do have powers to intervene. Mark Russell stated in his evidence as follows (para 216): "*had we had more scepticism and curiosity on our own part, such that we interrogated further, we might have concluded that a much fuller investigation of the system should have taken place sooner. The fact that POL was a relatively autonomous ALB would not have stopped us recommending a comprehensive, independent investigation if we had felt this to be necessary albeit that this would have signalled a loss of confidence in the POL management and Board.*" [WITN00800100]

269. The Arms Length Model should operate in a way to promote a degree of independence in commercial decision making. It should not operate to keep effective oversight and accountably also at arm's length.

THE CURRENT POSITION IN RELATION TO SHAREHOLDER OVERSIGHT

270. As matters currently stand, there are a range of powers and means by which UKGI may exercise oversight of POL, in varying degrees. Section 12 of the (Post Office Limited: Shareholder Relationship Framework Document [POL00362299 page 18, line29] concerns the shareholder's right to information.

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271. Furthermore, there is also a 'nuclear option' under the Articles of Association to dismiss the Chair of the POL Board and POL Directors (including the Executive Directors) (Articles of Association of Post Office Limited) [UKGI00044318, Article 42(A)) 2012]. It appears from the evidence that Greg Clark was prepared to exercise that option.

272. Lorna Gratton, the current Shareholder NED gave evidence on 7 November 2024. She referred in her witness statement [WITN11310100] to the Memorandum of Understanding between DBT and POL [UKGI00013078], which makes clear at paragraph 3.4 that *DBT "will have responsibility for developing or formulating policy."* She further states that as per section 3 of the MOU, UKGI will provide independent advice to DBT and its Ministers in a manner consistent with the Civil Service Code and will engage formally with POL as an agent of DBT.

273. Ms Gratton also referred to the (UKGI Portfolio Operating Principles with Guidance March 2024 v4.4) [UKGI00049040]. Under these principles *"UKGI's value as a shareholder comes most readily from our ability to provide meaningful advice to Departments concerning our Assets, and our greatest risk comes from not having our input, challenge, and advice being sufficiently delivered and acted upon."*

274. Page 8 of the POPs contains a heading: 'Escalating Shareholder Concerns and Further Intervention'. It refers to 'red flag issues' which 'may require further escalation or intervention beyond our BAU policies and the normal parameters of the shareholder role'.

275. Page 11 of the POPs concerns 'Activities Outside of UKGI's Target Operating Model'. One of those activities is 'Holding the Board to account as principal'. Ms Gratton stated that the revised Articles of Association also allow the Secretary of State to give directions to POL, which require POL to "*take all steps within its power to do what those directions require to be done*" [UKGI00044318, Article 7(F)]. However, she confirmed in her evidence that this is an option of last resort.

276. At paragraph 40 of her witness statement Ms Gratton states: "*Ultimately, should my team or I become aware of an issue that we do not consider the Department has been fully sighted on, or has not fully considered, it may be appropriate to provide a submission directly to the departmental Minister or Permanent Secretary."*

277. The impression left by Mr Gratton's evidence and that of Charles Donald, the current CEO of UKGI, who gave evidence on 8 November 2024, is that the government would usually apply 'soft levers' and only directly intervene as a last resort.

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278. At paragraph 31 of his witness statement [WITN10770400] that his *"conviction in the usefulness of the POPs, and the importance of maintaining and promoting them, has increased during my tenure as CEO, both as a result of the matters being addressed by the Inquiry, and also as a result of the rapid (and continuing) development of corporate governance requirements and standards over the past decade or so."*

279. However, it remains unclear whether the checks (set out above) under the POPs would enable UKGI to detect rogue elements within the senior executive of a government owned company today.

FAILURE OF OVERSIGHT FROM THE PERSPECTIVE OF OUR CLIENTS - SHEX ADVICE TO ADOPT 'DEFENSIVE LINES' WHEN RESPONDING TO SPMS

280. Howe + co acted for Carol Riddell, who very sadly died recently. Alan and Carol Riddell paid over £28,000 through remuneration deductions on account of Horizon generated shortfalls, having been told by the Helpline that the problem would 'sort itself out'. They were also told that no-one else was experiencing problems. They lost their business and home, were threatened with prosecution, and financially ruined by POL. They also suffered health difficulties and were subject to accusations in the local community of being thieves.

281. At **UKGI00001407** there is an email (which in referred to at paragraph 36.3 of the witness statement of Tom Cooper [WITN11000100]), dated 12 March 2012 from Martin Humphreys to Mike Whitehead of ShEx, confirming that Mrs Riddell and her husband had been required to dismiss *'2 staff involved in falsifying figures'* after ongoing Horizon related problems.

282. At UKGI00001408 (Mr O'Sullivan's witness statement, at para 36.4) there is a letter from Mrs Riddell's MP to Ed Davey dated 24 February 2012 which states that Mrs Riddell '*strongly maintains that it is not possible, when using the Horizon system, to establish the reason for any discrepancy and believes that the system may be to blame for the discrepancies that have occurred.*' The email also confirms that Mrs Riddell and other SPMs are pursuing POL for breach of contract.

283. At UKGI00001424 (Mr O'Sullivan's witness statement at para 36.5) Mike Whitehead at ShEx advised colleagues on 21 June 2012 to respond to complaints on behalf of SPMs (in relation to a BBC Arbuthnot piece with 'defensive lines', confirming that Horizon is robust

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and stating '*ultimately though this is an operational and contractual matter for POL which Government continues monitor.*'

284. This is around the same time as Mrs Riddell's legitimately raised issue. It is clear that ShEx was advising ministers to adopt defensive line when receiving complaints raised by SPMs. The case of Carol Riddell demonstrates that ShEx were proactive in preventing involvement of ministers in matters with which the Inquiry is concerned.

THE ROLE OF SHEX

285. The ALB model is designed to safeguard against central government micromanagement (see Mark Russell's statement at paragraph 25). Yet the shareholder spectacularly failed to exercise proper oversight of POL. It is relevant to note that the Horizon issue was not appropriately flagged up on any ShEx Risk and Assurance Committee risk register – (see for example UKGI00021408).[20]

286. It appears, perhaps unsurprisingly, that the Shareholder Executive was not kept appraised of the matters that were kept away from the Board. At paragraph 202 of Mark Russell's witness statement [WITN00800100], he states:

"…it is clear that UKGI, as an organisation, failed to appreciate the scale and significance of the Horizon problem ….

Critically, I was not aware (and to the best of my knowledge nor were the ShEx/UKGI Board or ExCo) of the cumulative number of prosecutions and convictions until well into the GLO. ….

Neither I nor the ShEx/UKGI Board and ExCo were aware of the many and fundamental failings of the way in which POL conducted its prosecutions."

287. However, the most significant failure of ShEx was that it was unable to report back to ministers in a balanced way. At paragraph 225 of Mark Russell's statement [WITN00800100] he accepts the shortcomings of the Shareholder Executive in this regard:

*"225. The ShEx/UKGI reporting of issues to Ministers and to the Department could have been more balanced and, to the extent that competing evidence to support a view of Horizon that was contrary to POL's**, we should have been clear on this point — and clear that what we were presenting was the POL view**. As I have mentioned earlier, my experience is that*

[20] Robert Swannell states at paragraph 107 of his statement that the first reference to the GLO within the risk register was in January 2019 UKGI00016800 at page 61. Furthermore the Dashboard indicated as anitem for information in the Board pack the potential risk of an adverse judgment in the GLO (UKGI00016800).

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Ministers will ultimately make their own minds up, regardless of what the official advice might be especially if they are directly engaged on an issue. My observation is that, on Horizon, Ministers were very engaged but they deserved better from the advice that we provided."

ShEx responses to Baroness Neville Rolfe

288. Perhaps the most stark example of ShEx' failure to oversee the actions of POL is its responses to the concerns raised by Baroness Neville Rolfe.

289. UKGI00004448 is a briefing document dated 2 June 2015 from Laura Thompson of ShEx to Baroness Neville-Rolfe. It shows that the Minister was advised in the following terms: (a) That the vast majority of SPMs were using the Horizon system effectively every day (para 3) (b) That no evidence of systemic flaws in Horizon had been found (para 4) (c) That the main reason for losses was user error and dishonesty (para 5) (d) That JFSA were not satisfied with POL's interpretation of Second Sight's findings (para 6) (e) That POL's position is that Second Sight had been 'captured by JFSA' and had broken the terms of its contract (para 6).

290. The recommendation to the Minister was set out at paragraph 7:

"Despite JFSA's complaints and calls for a new investigation, it is our strong recommendation that Government should maintain the position that this is not a matter for Government and increase our distance in this matter. We consider that attempts to prolong this matter do damage to POL's brand and cost POL significant amounts of money in funding Second Sight and operating the mediation scheme. We also recommend that Government should resist any calls for further investigation – the matter has been comprehensively investigated over several years and the complaints of JFSA have borne no fruit. Reinvestigation would be neither value for money nor in the public interest.

- *There is no evidence of systemic flaws in Horizon; any issues that individual subpostmasters have faced are contractual disputes between two independent businesses (POL and agent) …..*

- *There is no evidence that any of POL's prosecutions against subpostmasters for either false accounting or theft are unsafe. POL has a duty to disclose any new material that comes to light that could support a subpostmaster's defence, and none has emerged ……*

- *It is important to note that the National Federation of Subpostmasters (NFSP) which is the recognised representative organisation for subpostmasters does not support JFSA's arguments. The NFSP general Secretary, George Thomson, has said publicly that he considers JFSA members to the 'trying it on' and that their complaints are doing damage to the subpostmasters business.*

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> • *We understand that many subpostmasters who entered the mediation scheme did so with the (unrealistic) expectation of large compensation payouts from Post office at the end. It is possible that JFSA are attempting to find a 'smoking gun' to claim large payouts from Post Office. ……..*
>
> *BBC Panorama and next steps*
>
> *12. We will need to be prepared for media interest directed at Government …. If a line is called for, we recommend a reactive only BIS spokesperson quote (which we will provide nearer the time).*
>
> *13. We recommend that correspondence from JFSA is handled at official level, on the basis that they are not a recognised organisation and that continued direct engagement with ministers will serve to prolong their campaign. ……..*
>
> *14. There may be Parliamentary interest in this matter …… It is possible that the Panorama programme in particular will prompt questions or debates, and Mr Jones may seek a meeting with you."*

291. It is clear that the Shareholder Executive was providing advice to Baroness Neville Rolfe which entirely reflected POL's stance. As such the Minister was not being provided with the sort of independent overview that would have enabled the Shareholder to respond to the points of concern that had been raised. The effect of the advice was that the government should not engage with the issues that JFSA had raised notwithstanding that serious allegations were being made as to the safety of convictions.

292. It is relevant to note that Baroness Neville Rolfe did not trust the advice that she was receiving from ShEx in relation to the Horizon issue and she insisted on further investigations, which led to the Swift review. At paragraph 102 of her witness statement Baroness Neville Rolfe states: *"I am sadly driven to the conclusion that ShEx and POL, perhaps inadvertently were in effect working together to try to deflect me, and that ShEx were not giving me the independent and impartial advice that I needed."* [WITN10200100][21]

293. At paragraph 124 of her statement Baroness Neville Rolfe stated:

> *"By this time, I had lost confidence in the quality of ShEx's advice. We were going round in circles, and they were unwilling to engage with the issues in the way I felt they needed to. In my view ShEx had lost objectivity, and its officials were unable or unwilling to scrutinise POL properly — even though that was an essential part of their role. The advice they gave seemed closed minded, deaf to the issues and constantly repeating the same mantra. As time went by*

[21] See also UKGI00005261

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I felt as though they were trying to obstruct, or shut down, my efforts to get to grips with the issues. This may have been connected in some way to a dogmatic belief that ALBs should be entirely free of Government interference; and certainly I was repeatedly advised that POL should be left alone. I do recall feeling the pressure of the consistent advice from ShEx that these were not matters for Government and to hold that official line, but based on what I now knew that was no longer a tenable position." [WITN10200100]

294. Furthermore Baroness Neville Rolfe states:

"244 In retrospect, ShEx did not effectively fulfil their scrutiny and oversight responsibilities. Their role was to look critically at POL and to provide independent advice. As described above, I began to lose confidence in ShEx's advice and requested senior official support from outside ShEx, though this was not provided to me.

245. I should add that I am now aware from the evidence heard by the Inquiry, but was not at the time, that Mark Davies and his communications team at POL regularly worked together with ShEx to produce briefings sent to me and other ministers. This could have had implications for objectivity." [WITN10200100]

295. There appears to have been a divergence between ministers as to the appropriate responses to ShEx during this period. The traditional approach such as that of Pat McFadden MP was that government could not operate effectively if ministers did not accept the advice that they received from civil servants. In that scenario the Shareholder Executive did not perform any function in relation to exercising oversight over post office. The Inquiry is invited to find that the Shareholder Executive and the Shareholder Non-Executive Directors simply took at face value what Post Office was telling them.

296. It was only through the actions of other ministers who did not hold to the traditional view such as Greg Clark and bonus Neville Ralph that the advice given by the shareholder executive was able to be challenged.

297. The inability of the Shareholder Executive to enable the government as a shareholder to maintain effective oversight over Post Office amounted to a failure of governance.

298. The shareholder NEDs were additionally lacking in that they did not transmit what ought to have been obvious concerns about the Horizon system to the shareholder. Our clients having listened to the evidence believe that the arms length body, whilst entirely appropriate for government owned companies, was not effective to ensure oversight in relation to a company whose senior executives had gone rogue and were acting dishonestly.

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299. The ShEx Handbook at UKGI00044314 at section 2.1 states that *Businesses should seek an honest, open and ongoing dialogue with the government as shareholder businesses* and should operate a '*no surprises policy ensuring that the government as shareholder is informed well in advance of anything potentially contentious in the public arena.*' To the extent that POL was not prepared to share information with the shareholder in relation to the Horizon issue, ShEx was unable to properly carry out its function.

300. Mr O'Sullivan, a former ShEx official, accepted in his witness statement [WITN11000100] that criminal prosecutions are such a serious issue that the ShEx board should have been aware of this. It is clear that POL did not seek an honest, open and ongoing dialogue with the government in relation to its conduct of criminal prosecutions.[22]

THE ROLE OF THE SHAREHOLDER NED

301. The following individuals acted as Shareholder NED during the periods which the Inquiry is considering:

Susannah Storey 2012-2014

Richard Callard 2014 -2018

Tom Cooper 2018-2023

302. The position of the Shareholder NED ought to have operated as a safeguard in an ALB, where concerns had been raised. It is noted that POL executives did not notify the Board about key matters such as the evidence of Gareth Jenkins and the remote access issue. However, notwithstanding the secrecy with which executives acted, the Shareholder NEDs were lacking in curiosity and were too readily prepared to accept the POL narrative rather than hold the business to account on behalf of the shareholder.

303. This is demonstrated in the evidence concerning the stance taken by Richard Callard. On 10 May 2016 Richard Callard wrote to Mark Russell [UKGI00006727] and stated:

[22] Patrick O'Sullivan has said in his witness statement [WITN11000100] at paragraph 31.2 that Alice Perkins referred the Horizon issue to him "as a passing comment" that there was a small segment of difficult SPMs and ongoing difficulties with the union. He says that she provided no more detail and that he cannot say whether she was referring to Horizon issues.

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"As you know there has been a long running campaign about the integrity of the Horizon system which POL has investigated, and which Tim Parker is separately investigating at the behest of Baroness Neville Rolfe. ……..

***Our view is that this is a fishing / sabre rattling exercise to see if POL blinks (which they won't) and to lodge a case before the statute of limitations kicks in for some claimants**. However, it has been in the news raising the profile of this issue once again. ……..*

In a strange way it does however make handling easier – we can simply now say that this is in the hands of the courts, which is where this should always have been."

304. We submit that the Shareholder NEDs held the same view that prevailed within ShEx: that the Horizon issues were always matters between POL and the SPMs (in which the Government should not intervene); and that the dispute should be resolved ultimately by the courts and not through any intervention by the government.

305. It also appears in Mr Callard's case that he became too close to POL[23]. The Inquiry has been referred to an email dated 20 February 2014, in which Mr Callard made *inter alia* the following comments to 4 colleagues UKGI00002191:

*(Of Second Sight) **My suspicion is that they've hit the motherload and are milking this cash cow to the fullest extent possible**.*

Chair - seems to be going native but all is not lost

There is a MPs meeting set up by our friend Mr Arbuthnot set for 24th March, which we will be ready for …

I am not sure how POL managed to get themselves in to this situation!

….. ditching of Second Sight. POL seemed happy with that, but we just need to deploy it at the right time.

306. The position changed after the handing down of the Common Issues judgment. Robert Swannell confirmed in his witness statement at paragraph 120 that: "***..the role of the shareholder changes when the underlying company has effectively betrayed the trust that its shareholder has put in it**; any company in such a position can expect a completely different relationship with the shareholder, and this explains the change in cadence*" [WITN10800100].

[23] See also UKGI00019720, where Mr Callard wrote to Laura Thompson of ShEx on 12th March 2015 and said that say that 'aside from giving Jo Hamilton 'wads of cash' and a full apology which this doesn't warrant then this won't go away in the nice way that Jo wants it to.'

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THE CURRENT HORIZON SYSTEM

Concerns relating to the existing Horizon system - The YouGov Survey

307. The Inquiry has commissioned a survey from YouGov in which nearly 1000 current SPMs participated [EXPG0000007]. The Executive Summary materially states:

Nearly half of subpostmasters surveyed were dissatisfied with how the Horizon IT system currently operates compared to 25% who are satisfied. 25% are very dissatisfied

42% are dissatisfied with the training they have received for the Horizon system compared to 25% who are satisfied.

92% reported experiencing an issue with the Horizon system in the last 12 months

98% of the SPMs who experienced a discrepancy reported shortfalls. The majority of those who reported shortfalls used the branch money or resolved it themselves.

70% suffered from screen freezes.

68% suffered from loss of connection.

57% say they have experienced unexplained discrepancies

19% record unexplained transactions.

14% experienced missing transactions.

10% confirm double entry of transactions.

65% of subpostmasters surveyed experienced these issues at least once a month.

Only 15% say that they have received a full copy of their contract from Post Office since the common issues judgement in March 2019.

55% believe that the terms of their contract are unfair. 32% feel that the terms of their contract are very unfair.

48% of subpostmasters feel dissatisfied with their role whereas 31% feel satisfied.

72% report feeling undervalued by Post Office compared to 14% who feel valued

60% disagreed that the Post Office board listens to their views.

74% disagreed that the Post Office understands the concerns of subpostmasters.

68% do not agree that Post Office is professionally managed.

65% do not consider that the Post Office is trustworthy.

55% do not think the Post Office has learned lessons from the past.

52% do not think that the Post Office is a good place to work.

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308. It is a matter of some concern that SPMs are still paying for Horizon shortfalls themselves. Our clients have little faith that POL will be able to resolve the issues within the Horizon system prior to the introduction of NBIT in 2028 (WITN03680300 - Simon Oldnall, para 90).

309. Elliot Jacobs, one of the two SPM NEDs states in his witness statement [WITN11180100] that the Horizon IT system in its current form would not be selected for use in the present day:

> *"It is not an intuitive system, and it takes a significant amount of time to become competent in its use. It does not enable postmasters to export and easily analyse data effectively. The ability to interrogate and locate transaction errors remains incredibly challenging even for skilled operators and postmasters (although this has been improved recently with the addition of Branch Hub reporting tools).*
>
> *POL's tolerance to errors at postmaster/branch level is £0.00, which does not reflect that c.520 million transactions are being recorded on an outdated system which statistically may result in untraceable errors. Postmasters face an additional burden of manually monitoring and verifying transactions recorded electronically on a system that has a margin of error which is higher that the tolerance permitted and for many different reasons is difficult to use."*

310. Elliot Jacobs further states at paragraph 18 of his statement that he has implemented daily manual reports at all your branches "*due to our fear of the reliability and the risk of significant ramifications if errors are identified too late to be traced easily*".

THE CURRENT CULTURE AT POL – retained investigators

311. It is matter of considerable concern to both SPM NEDs that a significant number of former investigators remain in post at POL. The SPM NEDs consider that POL is not acting swiftly enough through Project Pineapple to remove these individuals. Henry Staunton, who was supportive of the SPM NEDs, before his dismissal at the Chair of the Board, recorded a conversation [at POL00448302] with Elliot Jacobs and Saf Ismail in which the SPM NEDs made the points that there were 40 investigators who were involved in the oppression of SPMs, including Stephen Bradshaw, had acted inappropriately towards Mr Ismail in the past – coming into Mr Ismail's branch and saying he would close it down.

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312. As previously stated many, if not all, of our clients are appalled that those who investigators remain in the employ of POL and see the retention of those individuals as a sign that POL has not changed its culture. This was also a matter of concern to Henry Staunton, who supported the SPM NEDs in raising this issue.

313. Elliot Jacobs has referred at paragraphs 46-51 of his witness statement [WITN11180100] to Past Roles and Project Phoenix. He says at paragraph 47: *"I considered it unusual that the employees identified in the projects had not been suspended, when in contrast postmasters and subpostmasters would be suspended on a regular basis when investigations were ongoing."*

CONCERNS RELATING TO NBIT

314. Elliot Jacobs raises a concern in his witness statement that the Horizon replacement. NBIT might not be designed so as to make it more accessible to SPMs. He states at paragraph 79 WITN11180100 that the requests of both SPM NEDs have been largely ignored:

> *"Whilst as a "replacement' it is beginning to show signs of capability, the key elements that Mr. Ismail and I have repeatedly called for have been ignored. For example, we have requested front facing screens to ensure compliance and enable the effective and faster selling of our services to customers, as well as self-serve and automation capabilities to reduce postmaster operating costs and to create a system fit for 2030 and beyond, rather than simply a copy of the existing Horizon processes. The current programme is late, overbudget and has had a series of governance and external reviews rating it poorly. I am concerned that the real extent to which the programme is proving challenging is being understated to the Board and the Investment Committee and we do not have sufficient visibility of the challenges in replacing the Horizon system."*

315. It is relevant to note that there is a concern that the mistakes of the past might be repeated. Saf Ismail states at paragraph 57 of his witness statement that "*At the July 2024 board meeting, it was disclosed that there are still a substantial number of bugs to be fixed on the new system and the safety and security aspects of the system still need development.*" It is important that POL does not cut corners in the development of NBIT, in the way that it did with the original Horizon system.

316. At paragraphs 185-189 of his statement, Mr Ismail expresses concerns about the lack of the following functionality in the proposed NBIT terminals.

a. Lack of customer facing terminals

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b. Dual terminal log ins

c. Incorporation of a separate retail function

d. Lack of customer touchscreen stamp purchase facility

e. Introduction of digital platforms to assist SPMs in rural areas

f. Inappropriate tone and lack of effective guidance for retail path clearing and retail transformation programme[24]

317. Lorna Gratton expressed concerns relating to NBIT at paragraph 101 of her witness statement:

"During 2023, the Shareholder Team, the Board and I developed increasing concerns about the NBIT programme and the leadership of the NBIT team. Some of these related to the inherent expense and complexity of the project, some to the concerns about the risk of delay and the consequent need to continue the Horizon system beyond its contractual end date, and some to complaints about the culture within the NBIT team."

318. The evidence raises concerns that the problems which beset the early development of Horizon might repeat themselves in relation to its successor. The findings that this Inquiry makes will be highly relevant should POL or any partner in a mutualisation programme seek to blame SPMs for defects in any future system.

THE POSITION OF SUBPOSTMASTERS TODAY

319. Aside from ongoing problems with the Horizon system, many SPMs are remunerated very badly. We have spoken to one of our clients who is a current SPM (NB – this client does not wish to be named – as POL's reputation for vindictiveness subsists in the eyes of our client group). We are informed by our client that the SPM's remuneration is less than the minimum wage.

320. Current serving SPMs say, even today, POL does not communicate well with SPMs. Many pre-existing services at counters have been transferred to an online facility by POL without consulting SPMs.

[24] See also a whistleblower complaint at POL00448689

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321. It appears from the evidence that there is very much a continuing role for post office branches. They are seen by many as a vital banking service at a time where bank branches are closing. They remain a vital support network for the elderly and vulnerable and continue to serve as community focal points in rural areas.

322. Our clients have mixed feelings about whether the Post Office brand should continue, given the appalling conduct by POL from the inception of Horizon until the exposure of the scandal through the findings of Lord Justice Fraser. However, they do consider that the future of POL, in whatever form it takes, must be focused on SPMs. They agree with the approach taken by Henry Staunton that POL must drive change and put the postmasters at the centre of the organisation. We submit that the Inquiry should make a recommendation to this effect.

323. Another issue that our clients have raised concerns the damage that POL has inflicted on the value and 'goodwill' of individual businesses. We also understand from our clients that one of the consequences of the Post Office Scandal has been that SPMs would struggle to sell their business because POL's actions have devalued the brand. Most SPMs would not want to pass on their business to their children. This is because POL's scandalous conduct has debased the brand and affected the goodwill value of branches.

324. This is a matter which POL must address either through improving the brand through significantly increasing the involvement of SPMs or through taking steps to improve the viability of existing businesses as a going concern. We ask that the Inquiry makes a recommendation in this regard.

NETWORK TRANSFORMATION PROGRAMME

325. There remain high levels of dissatisfaction with the Network Transformation Programme. This national programme promised SPMs that they would enjoy an increase in Government and other work, in return for major changes to their contracts and reduced remuneration. Not only did that new work not materialise, but government work continued to reduce. There are grave concerns as to how the Network Transformation Programme was implemented and such concerns were echoed by POL SPM NED, Saif Ismail. [25]

326. The impact of the Network Transformation Programme continues to be a matter of grave concern to postmasters. It is imperative, in order to "reset" the relationship with

[25] See witness statement of Saf Ismail at paragraphs 189-192. WITN11170100

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postmasters, that this issue is addressed as part of the Governments review and POL's reforming to become more SPM oriented.

THE EXISTING CULTURE AT POL

327. It appears that the culture at POL has not changed significantly. At paragraph 15 of Henry Staunton's witness statement [WITN11410100] he refers to the position, as he saw it when he joined POL at the end of 2022:

"It became apparent that there was a widespread view internally that those convicted who had not come forward to appeal were "guilty as charged". For example, 39 former postmasters had their convictions overturned by the Court of Appeal in April 2021. But when I joined the Post Office, the attitude of senior management was not that those individuals should never have been prosecuted in the first place. Rather, the view was that the majority of convictions should still stand…"

328. Mr Staunton goes on to say that the dam broke after the airing of the ITV drama: Mr Bates v Post Office, but the Inquiry should be cautious to find that the culture within POL has changes completely.

329. Saf Ismail refers to ongoing disdain of SPMs within the organisation at paragraph 168 of his statement [WITN11170100]:

"168. There is a considerable amount of distrust from PMs to POL. Sitting on the POL board has opened my eyes to why this is the case and I have seen a level of disdain within POL towards PMs. My perception of the structures of the Post Office is that it is like a caste system with PMs at the bottom of the pile, many of my PM colleagues critical and have a term for this: "Postmaster discrimination"."

330. Furthermore, Mr Ismail has given evidence to the effect that there remain problems concerning the provision of information from the executive to the Board: [WITN11170100][26]

"94. The Board are very disconnected with the POL senior leadership and are not sufficiently engaged with operational detail. The Board are not provided with the information that they need to understand the real issues affecting POL such as executive salary costs, exceptional cost spending, compliance, cultural issues, substantial central cost reduction and, critically, PM specific issue."

[26] This issue is also considered at page 36 of the Grant Thornton report - POL00446477

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Post-scandal risk averse culture

331. A further concern arises from the evidence in Phase 7 that POL has become increasingly risk averse to the point where it struggles to make decisions. Elliot Jacobs states at paragraph 84:

"POL and its Senior Leadership have consistently struggled to make critical decisions over my time on the board. POL lacks the ability to think proactively and often fails to make tough decisions that have consequences (Project Phoenix and Past Roles for example). This inability to make the hard and right decisions has been its failing in the past and it risks remaining an organisation unwilling to learn that making tough but necessary decisions is a key part of leadership. The organisation does not seem to act effectively without a clear checklist to follow. When clearly tasked with a set of actions it is capable of meeting them, given the appropriate challenge, guidance, support and funding."

332. The same issue was raised in a Board Meeting CEO report in June 2023:

*A fragile and brittle business is creaking. Morale is being severely tested. A culture of fear is developing. It is this final point that we should be especially concerned about. Colleagues are fearful of putting their heads above the parapet, of taking risks and soon, of admitting mistakes. Risk aversion and paralysis is setting in, which will not help our commitment to transparency". (*POL Board Meeting, CEO Report, 6 June 2023, [POL00448712 p.37])

333. At paragraph 33(g) of Rachael Scarrabelotti's statement [WITN11120600], she states:

"As detailed elsewhere in my statement, current POL employees are acutely aware of the failings of the past. This appears to have resulted in an apparent reluctance to take decisions for fear of getting it wrong and therefore being liable to future criticism. This reluctance in turn results in decisions either stagnating or being pushed to more senior decision-making forums. Ultimately, more POL Board time is taken up with matters of less strategic importance, and there is diminished accountability on the part of less senior forums and individuals."

334. Lorna Gratton, the current Shareholder NED states at paragraph 77 of her witness statement [WITN11310100]:

"POL has been, and remains, under intense scrutiny, including from the Inquiry and the media. This is not a cause for complaint as it is an inevitable consequence of its past failures and the harm that POL caused. The combination of this scrutiny, the knowledge of the past failures and their consequences, and the destabilisation described above, means that a risk averse culture has developed in POL where decisions are escalated upwards and legal advice and

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other assurance is sought on relatively minor matters. A similar culture exists in HMG's decision-making on Post Office. This has created bottlenecks, has made decision-making very slow and has disrupted the usual lines of accountability. This culture hasbeen identified in the Grant Thornton Governance Review, in my view correctly (POL00446477)."

335. It is submitted that the paralysis which witnesses described could be cured by the recruitment by POL of greater numbers of SPM NEDs, who should be co-opted onto relevant committees where fear of repeating mistakes of the past is causing stagnation in decision making. Consideration should also be given to appoint more serving SPM representatives within the Executive structure of POL, as suggested by Ms Scarrabelotti at paragraph 80(v) of her statement.

LOSS OF CORPORATE MEMORY

336. Another issue raised by the SPM NEDs is that the relatively high turnover of senior executives at POL carries a risk that corporate memory might be lost with an attendant risk that POL will revert fully to its former culture.

337. We submit that it is important that corporate memory is preserved at POL. In the Infected Blood Inquiry report (vol 1, page 209) Sir Brian Levison stated: *"Corporate memory" should be valued. – Forward planning involves taking care not to repeat the mistakes of the past. It is apparent there has been no mechanism to ensure that there is a sufficient corporate memory in the Civil Service of why previous decisions were, or were not taken, and the facts that informed those decisions so the reasons could be understood."*

CONDUCT OF INVESTIGATIONS

338. Mr Ismail has raised a concern about the conduct of investigations. At paragraph 221 of his witness statement [WITN11170100] he states:

"221. When it is considered appropriate to investigate a PM, POL continues to be the body that determines the terms of reference of those investigations. Often, PMs will be suspended prior to those interviews taking place without understanding the reasons for that suspension. PMs are still not shown evidence relating to investigations into their branches prior to investigation interviews being conducted by POL investigators and no legal representatives are permitted by POL at those PM interviews."

339. He refers to an ongoing culture of fear in the organisation:

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"230. There remains a culture of fear in the organisation. I have become concerned myself upon being asked to provide evidence to this Inquiry and to the parliamentary select committee having previously been declined applications to operate Post Office branches at several locations."

THE GRANT THORNTON REPORT

340. POL is in the process of conducting a strategic review and, as part of that process, will take into account the findings of the Grant Thornton Report dated 25 June 2024 [POL00446477]. That report found that there are five areas which must be addressed:

(i) Lack of unifying purpose between the Board and it shareholder
(ii) Conflict around the role of the shareholder versus the Board
(iii) Leadership capacity – board rotations and a lack of detailed succession planning
(iv) Issues concerning decision making
(v) Culture – a lack of trust, accountability and performance management.

341. In particular, Grant Thornton found that there is paralysis within the organisation (see Witness Statement of Amanda Burton [WITN11330100] (at para 68).

342. As noted above, Nigel Railton, the interim Chair of POL has stated that he will report to the Inquiry prior in relation to POL's strategic review. We submit that the findings of the Grant Thornton report should be addressed in the strategic review and, as stated above, we request that core participants have an opportunity to comment on the outcome of that review.

REDRESS

343. Our clients have endured considerable delays in obtaining suitable redress since the conclusion of the GLO proceedings in 2019. The Chair will recall that at the first hearing of the Inquiry in November 2021 a substantial majority of our clients were living in impoverished conditions. Some were struggling to buy food. Many of our clients had not recovered from the stigma and reputational damage that POL inflicted on them and were either ostracised within their communities or by their own families. Many were afraid to venture outdoors through fear of being recognised. Many of our clients suffer from trauma related illnesses and the Inquiry will be aware that some have died since the Inquiry

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commenced. The Chair has made announcements during the course of the hearings in relation to the deaths of many victims including Isabella Wall, Thomas Brown, Mrs Maye and, most recently, Carol Riddell, amongst others, all dying without receiving final compensation.

344. Since 2021 the Inquiry has overseen the progress of the HSS and the Overturned Convictions and GLO compensation schemes. Our clients have all received interim payments and most have submitted claims supported by appropriate evidence from forensic accountants and psychiatrists. They are all grateful for the work of the Chair and the Inquiry legal team for holding the feet of POL and DBT to the fire on matters of compensation and redress.

345. In particular, the Chair's First Interim Report of 17 July 2023 addressed what was a troubling issue in that DBT's arrangements for payment of compensation under the GLO scheme were hampered by a fixed and artificial time limit of 7 August 2024. The Inquiry's focus led to funding for compensation to be put on a proper statutory footing (Post Office (Horizon System) Compensation Act 2024). It is also noted that the Inquiry has pushed DBT on ensuring that the GLO and HSS Schemes will be exempt from inheritance and other taxes.

346. Furthermore, the Inquiry has assisted in bringing about resolution of issues around eligibility of late applications to HSS, the problems arising from bankruptcies and IVAs through obtaining the opinion of Ms Addy KC. The Inquiry has also ensured that DBT's actions have been appropriately monitored by the Horizon Compensatory Advisory Board.

347. Our clients also consider that the scrutiny and influence of the Inquiry was material to ensuring that the previous government enacted the Post Office (Horizon System) Offences Act 2024, which provides for the quashing of convictions in England and Wales and Northern Ireland for certain offences alleged to have been committed while the Horizon system was in use by the Post Office. Importantly, the Act also makes provision about the deletion of cautions given in England and Wales or Northern Ireland for such offences.

348. Notwithstanding the life-changing progress on redress which the Inquiry has brought about, expedited or facilitated, our clients are concerned that progress will stall in 2025 once the sharp focus of Inquiry hearings had started to fade. It is clear that a number of problems remain.

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No provision in schemes for family members

349. In particular, the evidence of Simon Recaldin on 4 November 2024 [INQ00001200] demonstrated that there is no provision is any scheme for family members, many of whom would have suffered from intimidation, harassment, bullying and educational disruption as a result of action taken by POL against their parents or spouses. It is all the more important that wide ranging restorative justice proposals are implemented to cater for gaps in the various compensation schemes.

350. Fujitsu's Mr Patterson appears to accept that Fujitsu may have a wider role in supporting schemes which would assist family members of those impacted by the Scandal but conspicuously Fujitsu has failed to take any steps towards implementing any scheme. For a multi-national company of the size and value of Fujitsu a failure to do nothing more than reimburse Government of its payouts with the compensation schemes is shameful and its failure to act so far is to its discredit.

No provision in schemes for assistant SPMs

351. Furthermore, it has been noted that there is no provision within the HSS for redress for assistants, who in many cases (such as the case of the late Peter Holmes) suffered in equal measure to SPMs. This is inconsistent with the operation of the GLO scheme and is an anomaly that should be addressed by DBT. We submit that the HSS scheme should be amended to ensure consistency.

Lowering of evidential burden – 'Reasonable Degree of Likelihood'

352. We ask the Inquiry recommends that those administering the compensation schemes should not seek unduly to place evidential burdens on victims of a scandal akin to contested civil litigation, and where such burdens are necessary a low standard should be applied - particularly where, contemporaneous records may be unavailable through no fault of a SPM.

353. It is suggested that the appropriate standard of proof should equate to that applied in asylum cases – a reasonable degree of likelihood. In such cases an applicant asylum seeker is often (for legitimate reasons) unable to provide documentary corroboration of claims that are asserted. In such cases the courts have long applied a standard of proof that is recognised to be lower than the ordinary civil standard. This standard of proof has been incorporated into Section 32 (4) of the Nationality and Borders Act 2022.

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Lack of information and transparency in relation to quashed convictions

354. There are also problems concerning the operation of the Post Office (Horizon System) Offences Act as detailed in the evidence of Carl Creswell on 6 November 2024. As at 4 November 2024 [27] the Ministry of Justice has identified 1491 convictions which have been quashed by the Act. It has identified 467 individuals who have had at least one conviction quashed by the Act, and has written to those individuals. A further 116 individuals have been sent a letter requesting information as to assist the department in determining whether their convictions fall within the scope of the Act and 149 individuals have been identified as having no convictions quashed by the Act.

355. It is a matter of concern that the published information does not set out how many individuals have **responded** to the letters that have been sent out. Neither has there been any clarity in relation to whether the individuals who have been sent letters were in a position to respond. It is not known whether those correct and up-to date addresses were used, or whether some individuals were too traumatised to respond or otherwise fearful of communicating with the Ministry of Justice.

356. The reality of the situation is that the government does not know how many SPMs or assistants are affected by the legislation. It is relevant to note that MOJ states that 'there are currently 949 individual cases that have been or are being considered. As of 1 November we have assessed 77% of these cases". The published information is also silent on whether any cautions were deleted. It is further noted that there is an absence of published data for Scotland.

357. We therefore ask that the Inquiry recommends that DBT liaises with MOJ to ensure the provision of more detailed and transparent data and that the matter be scrutinised by the relevant parliamentary select committee. Our clients remain concerned that once the scrutiny of the Inquiry subsides, that the issue might 'go to sleep' and that large numbers of individuals who are entitled to register and access at least £600,000 in compensation might be overlooked or disregarded.

RESTORATIVE JUSTICE

358. Financial compensation is limited in what it can achieve, rarely addresses the wider harms caused, and cannot restore lost dignify. It has been accepted by Simon Recaldin and DBT witnesses that redress goes beyond financial compensation and that a programme of

[27] Quashed convictions management information: 4 November 2024 - GOV.UK

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restorative justice should be in place. The Inquiry is referred to the assurance that Mr Recaldin gave on 4 and 5 November 2024. He stated on 5 November 2024 [INQ00001201] in response to questions from ourselves that he will commit to providing a report in relation to proposals and progress in relation to restorative justice before the final report of the Inquiry.

359. We have no reason not to take Mr Recaldin at his word, but ask that the Inquiry remains open for sufficient time for POL restorative justice proposals to be received and for SPM core participants to have an opportunity to respond to those proposals.

360. It is relevant to note that Mr Recaldin accepted in his evidence that the measures proposed by Howe +Co in submissions to the Inquiry dated 8 December 2022.

361. These measures include the following:

- *ongoing psychiatric and counselling support for subpostmasters and their families;*
- *bursaries to assist with the retraining of subpostmasters and for the education of their children whose education was disrupted by this scandal;*
- *a tangible memorial scheme to mark this largest miscarriage of justice in British legal history; that sympathetically records the experiences of subpostmasters and how profoundly they and their communities were failed by this scandal;* It is suggested that the Post Office Museum in London might be an appropriate venue for such a memorial;
- *restitution and restoration of reputation: In many cases subpostmasters' reputations were traduced in their local communities and regionally. Subpostmasters' reputations must also be restored within their own local communities through engagement with those communities and the local press; and*
- *an entrepreneurial fund;*
- *A fund for affected family members.*[28]

362. The Inquiry is aware from the recently published report by 'In your own words', the Inquiry's listening project that 65% of people affected by the Horizon scandal have said that their family and relationships were affected. Furthermore, it was a striking feature of the

[28] This proposal was not included in the letter of 8 December 2022, but was put to Mr Recaldin by counsel for Howe + Co CPs.

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Human Impact hearings that the stigma which SPMs faced as a consequence of POL's actions endures in a significant number of cases.

363. We submit that restorative justice must also be tangible and ongoing. Such measures are essential for the re-establishment of trust between (a) POL and SPMs and (b) between the public at large and POL. We ask that the Inquiry incorporates the above recommendations in its report.

364. Our clients have noted that Fujitsu continued to operate the Horizon system and receive significant remuneration for doing so, yet do not appear to wish to contribute within the lifetime of the Inquiry to compensation, redress or restorative justice. [29]

WHISTLEBLOWING

365. Whistleblowing forms part of section F of the Inquiry's terms of reference. The original whistleblowing policy in operation did not apply to non-employees such as SPM (agents). Employee Disclosure (Whistleblowing) (G7) RMG00000317 provides:

> *"This statement sets out Royal Mail Group policy for enabling employees to disclose information ("whistleblowing") about breaches of its policies and standards of conduct. This policy will be supported by each of the Royal Mail Group businesses, which will maintain arrangements for giving confidential and fair consideration to such disclosures, and for taking appropriate and effective remedial action." (Page 1)* Effective from: 28/07/2006.

366. It was only after POL started to address its internal polices in the face of the growing scandal that SPM whistleblowers were brought within the POL whistleblowing policy.

367. Group Policies 'Whistleblowing Policy' [2018] v.1.5 POL00030969 states:

> *"In this Policy "individuals" means Postmasters, Agent Assistants, members of the public and employees (permanent staff, temporary including agency staff, contractors, consultants and anyone else working for or on behalf of Post Office). The statutory protections offered under the Public Interest Disclosure Act 1998 only apply to employees, however Post Office Limited will consider extending these protections to other individuals where they have acted in good faith in raising concerns."*

[29] The Inquiry is referred to the evidence of Paul Patterson on 11 November 2024 at page 160 of the transcript [INQ00001205]..

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368. Whistleblowing was considered in the evidence of the governance experts on 13 November 2024. We maintain it is about more than just the need to have an outlet to 'blow the whistle' to the media or a regulator it is also about the need to listen and investigate. Sam Stein KC referred to two passages from Christopher Hodges' book, Law and Corporate Behaviour, the 2015 edition when asking questions of the governance experts on 13 November 2024.

"There is a symbiotic relationship between whistleblowing and an organisation's culture. Effective internal whistleblowing arrangements are an important part of a healthy corporate culture, but it is also crucial to have the right organisational culture, which encourages people to speak out without fear."

369. Dame Sandra Dawson replied:

"If it works well, people don't fear for their livelihood or their job or their prospects, if they see something which they believe is in the public interest for them to reveal. It mustn't be a personal grievance, if I feel very aggrieved by something I must take that through a grievance procedure, as an individual, but if I feel there is a wider public interest and people should know about any element of wrongdoing or behaviour or, even nowadays, spoken harassment, which of course is against the law, that there should be a right to do that. And, increasingly, although it's been there since 1996, that right to protection, of course, anyone could speak up since the year dot but they might not have had that protection, so the protection of the Public Interest Act is important."

370. Mr Stein again quoted from Professor Hodges:

"Accordingly, official recommendations stress the need for best practice in policies, accountability, governance, multiple routes for information, including the line management, leapfrogging Human Resources audit, audit committees, directors, external routes, feedback on publication after reporting, providing reassurance, briefing managers, checking awareness of staff."

371. Dr Steward replied:

"I mean, nobody would contest with that, I don't think at all. I think the difficulty is that you can have a formal process, but people will not use it, unless they believe that there is – that it will work for them. So of the two words that come to mind when people talk about whistleblowing is "fear" and "futility"; "If I speak up, will I be penalised? If I speak up, will anything happen?"

372. We submit that the law surrounding whistleblowing law has not caught up with the variety of ways that individuals work. We ask that the Inquiry recommends that legislative

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changes are brought about to ensure that SPMs, NEDs and others working outside the traditional employment contract are protected. Under similar regimes and without classic employment rights (which can include NEDs, part time judicial post holders and others) need to be protected. We submit that whistleblowing protections should be extended to all those in the workplace who may see wrongdoing and may suffer as a result of raising public interest concerns. The definition of "worker" in Section 43K of the Employment Rights Act 1996 is already different for whistleblowers than other areas of employment law and there are sound public policy reasons to extend it further.

373. We ask the Inquiry to recommend the Employment Rights Act 1996 is amended to include subpostmasters and non-executive directors within the categories of worker that are protected under the Act in relation to whistleblowing rights. This would require the amendment of the ERA 1996 as follows[30]:

> *Insert (4) After 43K (1), D of the Employment Rights Act 1996:*
> *E) works or worked as a self-employed contractor, including sub postmasters,*
> *F) office holders, including members of the judiciary) non-executive director and trustees including pension trustees,*
> *H) trade union representatives,*
> *J) job applicants and those who acquire information during a recruitment process.*

RECOMMENDATIONS

374. Aside from the recommendations sought in the previous paragraphs, we submit that the Inquiry should make the following recommendations:

INTRODUCTION OF COST CAPPING ORDER REGIME IN PUBLIC INTEREST LITIGATION IN NON JUDICIAL REVIEW CASES.

375. The GLO litigation was fundamental to the exposure of the public scandal, which has led to this Public Inquiry. However, the 555 claimants faced substantial difficulties in funding the litigation, notwithstanding that it was clear that the case was in the public interest, or ought to have been reasonably clear. The GLO claimants constantly had the sword of costs hanging over their attempt to seek justice.

376. As stated above, many of our clients were GLO litigants. Had they been engaged in judicial review proceedings in the High Court or Court of Appeal, the costs capping regime of

[30] We understand that this proposal is currently being put forward by 'Protect', a whistleblowing charity.

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sections 88 – 90 of the Criminal Justice and Courts Act 2015 would have been available to the Claimants.

377. However, there are no cost capping provisions in private law proceedings and legal aid is generally unavailable in such matters. The 555 litigants were therefore required to engage litigation funders which was exploited by POL during the course of the proceedings in the High Court.

378. We ask that the Inquiry recommends that costs capping orders are made available in private litigation taken against public bodies, where there is a public interest element in the case and where equality of arms issues arise. This would enhance the ability of private citizens to hold public bodies to account without the almost insurmountable financial restraints that the bringing of such cases would normally entail.

REQUIREMENT FOR ALBS TO RETAIN INFORMATION APPROPRIATELY - GENERAL FILE

379. All ALBs should keep a general file to deal with allegations of criminality and disposal of those allegations. Ron Warmington expressed concern at the lack of a POL general file at paragraphs 25 and 26 of his witness statement [WITN01050100]:

"25. I had therefore asked Susan Crichton, as I recall at our first or second meeting, whether I could examine POL's `General File' containing notes about already-reported Horizon-related events. By General File', I am referring to a compendium of letters, reports, court judgments and other material relating to criticisms not just of the Horizon system but also remote access any criticisms of any human or computer-based processes underpinning the business. This compendium would necessarily also include any suspicions or allegations of spurious system-generated or POL-generated discrepancies, and so on. I would have expected every assertion of a material discrepancy to have been properly investigated such that either: (i) the assertion was dispensed with based on solid factual evidence; or (ii) it was found to be justified (in which case a system fix would have been initiated such that the event would not be repeated); or (iii) a few cases would inevitably remain unsolved. Those few cases would need to be clearly identified and reported upwards. All of this is standard investigative practice and allows investigators to see, and to follow, linkages between events and cases.

26. I was shocked to hear from Susan that she knew of no such file. I was told POL had, as far as she was aware, never gathered into one place all reports about experience that investigators would normally create and maintain a case database in order to help them notice patterns, find links between cases, and so on. It is almost unthinkable that a competent investigation team would fail to have such a file or Case Database. Normally, the `General File' or Case Database would also be fully searchable. An important benefit of such a file or Case Management System would be to facilitate disclosure in civil and criminal cases. POL not only seemed to have no such system, but also no desire to have one."

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380. We take the view that has POL retained records properly or effectively, patterns would have been manifestly clear in relation to the scale of the problem that had arisen for the functioning of the Horizon system. Other issues would have become readily apparent, for example the advice that SPMs routinely received to the effect that they were the 'only ones' who experienced problems with the Horizon system.

THE ALB MODEL SHOULD BE AMENDED TO INCORPORATE AN INDEPENDENT BODY TO DETERMINE WHETHER AN INQUIRY SHOULD BE CONDUCTED WHEN COMPLAINTS HAVE REACHED A CERTAIN LEVEL.

381. Sir Martin Donnelly has made the point at paragraphs 88 and 89 of his witness statement that, "*No system of governance can be set up to deal with an organisation which refuses to tell the truth about what it knows, and I have struggled to imagine a different oversight system which would have been certain to produce a better outcome faced withthe incomplete and erroneous information provided by the Post Office over a long period.*" [WITN11250100].

382. We submit that an extra layer of checks and balances are required within the ALB model to guard against a government owned company 'going rogue'. Accordingly, the Inquiry should recommend that the ALB model should be amended to incorporate an independent body to determine whether an Inquiry should be conducted when complaints have reached a certain level. There should be a dedicated and independent oversight investigation arm of UKGI (possibly a Chief Inspector type function) that can and should be employed to engage and investigate serious issues.

RISK REGISTER GUIDELINES FOR ALBS

383. We submit that the government or responsible Department should set mandatory guidelines for what should be included on risk registers – to include matters such as prosecutions; contractual issues with IT providers and contractual terminations.

384. Furthermore, we agree with the recommendation of Saf Ismail that a PM Advisory Committee should be established within POL to "*educate and guide senior POL members on the impact of proposals and strategies, ensuring a PM-centric approach in all our activities*". – See POL00448394.

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NOLAN PRINCIPLES

385. We would ask that the Inquiry adopts the suggestion put forward by Sir Martin Donnelly [WITN11250100] in relation to adoption of the Nolan principles: selflessness, objectivity, integrity, accountability, openness, honesty and leadership. At paragraph 60 of his witness statement Sir Martin made the following point:

"60. I have been surprised to learn that some at least in POL appear to have seen the group litigation by sub-postmasters as ordinary commercial litigation without it making any difference that POL was Government-owned. I would have expected everyone within the Post Office, as elsewhere in the public sector, to have seen a duty of care towards their staff including sub-postmasters as a core part of their work. The Inquiry may wish to consider whether it should be made explicit, if it is not already, that the senior management and Board of public corporations such as POL are expected to abide by public sector values, by for example requiring them to sign up to the Nolan Principles."

Eighth Nolan Principle – Duty of Candour

386. We would suggest that an eighth Nolan principle of 'candour' should be applicable to government own or controlled bodies such as POL and ALBs. As stated previously: Given the nature of POL's public facing work, the fact that it is embedded in the community and the fact of state ownership, POL should have held itself to a higher standard than a corporate entity protecting itself in the marketplace. At their heart, these bodies are publicly owned and ought to serve members of the public and act fairly towards them.

INCREASED ROLE FOR SPM NEDS

387. It is further submitted that the role of SPM NEDs should be increased within POL. The Inquiry is asked to recommend that there should be a postmaster non-executive director membership on all Board committees. We note that Nigel Railton, the interim Chairman of the Board has stated in his witness statement [WITN11390100] (para 46) that: "*Postmaster representation on the board is both essential in principle to an organisation like Post Office.*"

TRAINING FOR SPM NEDS

388. Furthermore, all SPM NEDs should be provided with a programme of further training on being a board member to further enhance their work as nonexecutive directors – see witness statement of Nigel Railton at paragraph 46 – WITN11390100.

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REMOVAL OF 'TOXIC' EMPLOYEES

389. Our clients have expressed surprised that whilst many senior POL staff and executives appear to have engaged in or been wilfully blind to criminal enterprises, no arrests have been made and no individual has been held to account through the criminal process. Whilst the question of whether to prosecute those who were involved in the scandal remains a question for the police authorities; POL retains the ability to suspend or remove those members of staff, who POL still retains, and who have been the subject of criticism in this Inquiry.

390. Furthermore, our clients strongly believe that POL can never move forward whilst those who were directly involved in the scandal remain within POL. Notwithstanding the constrains that might arise from any unfair dismissal claims that might arise, our clients all consider that those individuals should no longer remain in the employ of the company. The point was articulated very well in a letter that Saf Ismail and Elliot Jacobs wrote to the Post Office Board on 26 April 2024. [POL00448298]

"It is unacceptable that individuals within our business who are clearly implicated by Justice Fraser as untrustworthy continue to hold positions of influence and have also been highlighted again in the ongoing inquiry. These individuals are working in critical areas such as the development of the NBIT system, postmaster engagement, remediation and BAU. Their involvement in shaping the future of our business is not only reckless but deeply damaging to our credibility and integrity."

391. POL has commenced investigations into these individuals through the Pineapple and Past Roles Projects. Yet it appears from the evidence of the SPM NEDs that matters are not progressing. We submit that the investigations into these toxic individuals should be expedited with a view to removing them.

RETENTION OF POL'S SOCIETAL FUNCTION AND PURPOSE

392. Our clients are concerned that any attempts to streamline or make POL more efficient must take account of POL's key function and role in the fabric of the nation, including the fact that there will always be some branches in rural or disadvantaged areas which may not make a profit. It is requested that the Inquiry recommends that the social function of the company is reflected in any strategic reassessment or plans for mutualisation.

393. The "Entrustment" Requirements from Government are set out in the letter from Richard Callard, UKGI, dated 16th April 2018 [POL00027887].The requirements refer to POL's "public service obligation". The purpose of this requirement is to ensure that the services

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that the Post Office provides are available throughout the UK and, in particular in more remote areas:

"That network meet the following minimum access requirements:

• Nationally, 99% of the UK population to be within 3 miles and 90% of the population to be within I mile of their nearest post office outlet.

• 99% of the total population in deprived urban areas across the UK to be within I mile of their nearest post office outlet.

• 95% of the total urban population across the UK to be within I mile of their nearest post office outlet.

• 95% of the total rural population across the UK to be within 3 miles of their nearest post office outlet. In addition, the following criterion will apply at the level of each and every individual postcode district, establishing a minimum level of coverage at a very local level.

• 95% of the population of the postcode district to be within 6 miles of their nearest post office outlet.

Post Office Limited is required to provide this network of post office branches to make available the services of general economic interest detailed in Annex A ("Product SG1") on the basis set out in the Funding Agreement."

AMENDMENT OF ENFORCEMENT POLICIES

394. Our clients have also noted that POL's policies surrounding enforcement of the contract in relation to shortfalls do not reflect POL's stated position that it no longer penalises SPMs for shortfalls.

395. The Postmaster support policy 'postmaster account support' states at page 8 that POL can recover losses from SPMs [POL00448000]. The Postmaster support policy 'contract termination' page 18 provides for immediate termination for discrepancies of a significant value [POL00448206].

396. They have not been amended and it is understood that this will be dealt with in the forthcoming strategic review. However, it is requested that a recommendation is made to the effect that such policies should be amended.

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THAT THE LAW COMMISSION REVIEWS THE CURRENT POSITION IN RELATION TO THE PRESUMPTION OF REGULARITY OF 'MECHANICAL INSTRUMENTS' AND THAT COURTS HAVE REGARD TO THE PROBLEM THAT THE ABSENCE OF EVIDENCE THAT THERE IS A SOFTWARE BUG IS NOT EVIDENCE OF THE ABSENCE OF SOFTWARE BUGS THROUGH THE PROVISION OF DETAILED PRESCRIBED INFORMATION IN PROCEEDINGS

397. As the Inquiry will be aware POL responded to a Law Commission consultation in October 1995 [RLIT0000062] and supported the proposals to repeal section 69 of PACE 1984. Section 69 had required as follows:

> ***69 Evidence from computer records***
>
> *(1)In any proceedings, a statement in a document produced by a computer* ***shall not be admissible as evidence of any fact stated therein unless it is shown*** *—*
>
> *(a)that there are* ***no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer****;*
>
> *(b)****that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents***

398. The Law Commission concluded that the section should be repealed and observed at paragraph 14.17 as follows:

> *"We believe that a major problem with computer evidence also arises where incorrect data have been fed into the computer, as opposed to there being a defect in the software."*

399. It was further observed (at para.14.20):

> *"The complexity of modern systems makes it relatively easy to establish a 'reasonable doubt in a juror's mind as to whether the computer was operating properly. Bearing in mind the very technical nature of computers, the chances of this happening with greater frequency in future are fairly high. We are concerned about smoke-screens being raised by cross-examination which focuses in general terms on the fallibility of computers rather than on the reliability of the particular evidence. The absence of a presumption that the computer is working means that it is relatively easy to raise such a smoke-screen."*[31]

[31] This section refers to Mr. Atkinson KC's report EXPG0000002

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400. Section 69 of PACE 1984 was repealed by the Youth Justice and Criminal Evidence Act 1999. Consequently the law provided the presumption that the Law Commission identified and recommended.

401. We maintain that the Post Office inquiry has shone a light on the issues which relate to the complex systems which include software bugs, hardware problems, training issues and effectiveness of disclosure and expert evidence. The evidence before Lord Justice Fraser and before the Inquiry has demonstrated that bugs do exist in these systems and that some of the bugs and defects are not readily observable and can remain hidden for years. Paragraph [973] of the Horizon Issues judgment reads: *" the experts … were also agreed that there are types of bugs which would not be detected by such checks. Indeed, the evidence showed that some bugs lay undiscovered in the Horizon system for years".*

402. In April 2005 section 32, Criminal Justice Act 2003 was enacted so that the duty under section 3(1) now read *"The prosecutor must— (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused…"* It is important to recognise, therefore, that this was the "golden rule" as it was described by Lord Goldsmith in the forward to his 2005 revision of the AG's Guidelines, namely *"…that fairness requires full disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of the defence."*

403. Prosecution material is defined by section 3(2) (and has been so defined since the enactment of the CPIA) as material "*which is in the prosecutor's possession, and came into his possession in connection with the case for the prosecution against the accused, or which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused".* The same definition was employed in the CPIA as originally enacted (section 7), and as amended (section 7A) for subsequent disclosure. It follows, however, that the prosecutor's duty arises from material in his or her possession, rather than material in the possession of a third party.

404. But the disclosure exercise problem is compounded by the fact that IT systems are extremely complex. The Horizon system itself whilst controlled and 'run' by Fujitsu is actually a jigsaw puzzle of software which is often protected from examination in detail by the companies who have written and developed the coding for the software.

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405. Mr Patterson the European Director of Fujitsu was keen to explain (11th November 2024) about the nature of the linked together complexity of the Horizon system[INQ00001205]:

> *" Yes, and, as I mentioned a moment ago, the Horizon application is one of many applications which are all interconnected inside the Post Office's supply chain. When you change one part, you need to make sure that it connects with Credence, with POLSAP, with all the other systems that the Post Office uses directly, and with other third parties. When something is this old, and you make that change, it has consequential impacts on all of those other systems, which you need to be super careful about."*

406. There are all sorts of software bugs that need to be considered within IT systems, and they have a lot of different names security bugs, out of bounds bugs, Heartbleed bugs, performance bugs and many others. Bugs appear through bad coding, software not communicating with other software, patches and updates that have unintended consequences. Professor Thimbleby describes some of the issues he has encountered in matters he has dealt with concerning hospital systems[32] which have led to deaths and in one case the prosecution of health care professionals which was eventually shown to have been due to an IT systems error.

407. Within the Inquiry there has been much discussion of the Mismatch Bug. Sam Stein KC described it as a submarine bug as it made changes to the SPM data that was undetectable to the SPM leaving POL and Fujitsu the opportunity of considering not telling SPMs about it at all because they feared that the myth of Horizon invulnerability might be destroyed. But the Mismatch Bug is also an example of bugs that we can't readily see, that can lurk behind the scenes of any IT system and make changes to the data that may affect users and could appear to cast blame on people who have done nothing wrong.

408. To compound the problem there are the following issues:

i. Users without knowing they have done so make innocent mistakes;

ii. Training can be inadequate or wrong;

iii. Helplines don't understand the issue or get the answer wrong;

[32] Patient Safety 'Stories for a digital world' [RLIT0000482]

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iv. Contracts and duties may impose an unfair burden directly or culturally on the users to prove that the system is in error.

409. It will be very rare that in any criminal or civil case that any of the IT system's various owners and software contributors will be parties to the case, this then brings into question the problem of third-party disclosure.

410. Paras. 51-54 of the 2005 AG's Guidelines addressed material held by third parties other than other government departments. In so far as is relevant, they stated:

> *"There may be cases where the investigator, disclosure officer or prosecutor believes that a third party (for example, a local authority, a social services department, a hospital, a doctor, a school, a provider of forensic services) has material or information which might be relevant to the prosecution case. In such cases, if the material or information might reasonably be considered capable of undermining the prosecution case or of assisting the case for the accused prosecutors should take what steps they regard as appropriate in the particular case to obtain it."*

411. In Criminal cases, the Defence provide a Defence Statement setting out a general description of their case and the issues that arise. The Defence Statement system provides the prosecution with an opportunity to consider what material it has and what material it should consider within its duties as described above. There is the ongoing duty to investigate which may mean that the Prosecution will decide that the police should take further steps to consider obtain material which might undermine the prosecution case or support the defence case.

412. But affecting both the disclosure principles, third party disclosure issues and defence statements at present - the presumption is that the 'mechanical instrument' or IT systems which may underpin aspects of the case are working properly. So even if a Defendant states that s/he cannot explain why DNA analysis indicates that his/her blood is at the scene of the crime and suggest that 'the computer' has got it wrong then the Prosecution will be under no general duty to investigate the operating system; and the same issues apply to cell-site analysis or financial records from banks.

413. On 17 May 2022, James Cartlidge, Parliamentary Under Secretary of State (Ministry of Justice) stated that the government had 'no plans to review the

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presumption, as it has wide application and is rebuttable if there is evidence to the contrary'.

414. The Post Office inquiry has shone a light on the issues which relate to the complex systems which include software bugs, hardware problems, training issues and effectiveness of disclosure and expert evidence. The fact is that the evidence tells us that whilst we know that bugs do exist in these systems but that some of the bugs and defects are not readily observable and can remain hidden for years.

415. The challenge to ensure that courts now and in the future do not fall into the 'Horizon trap' is real; the ability of courts and experts to question IT systems is and will be hampered by issues of corporate confidentiality and concerns about proprietorial interests in software and codes. These matters are far from simple and will be the subject of discussion for years to come.

416. The current position of the application the presumption of regularity of 'mechanical instruments' is not fit for purpose and needs urgent review by the Law Commission. We propose two recommendations[33]:

417. **First,** the courts need to have regard to the problem that the absence of evidence that there is a software bug is not evidence of the absence of software bugs. The court should consider how to direct itself (or a jury) as to what degree of doubt remains in the context of all the other available evidence. In this context the other available evidence needs to include training issues, hardware connectivity issues, keyboard issues

418. **Second**, that in all legal cases where the product of IT systems is used as part of the evidence then there needs to be access to:

(i) Known bugs in the system that have been reported, and the actions taken in response. This should include the disclosure of known error logs, release notices, change logs and similar documents. Plus, records of the errors that have been reported in a system and what action was taken which should include evidence of testing after each system change to ensure that the same error has not been reintroduced.

[33] These recommendations have been drawn, with thanks, from 'Recommendations for the probity of computer evidence' By Paul Marshall, James Christie, Peter Bernard Ladkin, Bev Littlewood, Stephen Mason, Martin Newby, Jonathan Rogers, Professor Harold Thimbleby and Martyn Thomas CBE - RLIT0000482

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(ii) The party's information security standards and processes. This should extend to cover logical access controls (including emergency access), security vulnerability notifications and security patches.

(iii) Relevant audits of systems and the management of the installation to provide assurance that suitable standards and processes have been implemented and complied with.

(iv) Evidence of reliably managed records of error reports and system changes, including evidence to demonstrate that basic precautions such as digital signatures have been implemented to detect and limit accidental or deliberate corruption.

(v) The disclosure set out above should be provided by a person authorised to do so by the party subject to the disclosure obligation. The party with the duty to prove functional reliability should be required to undertake a reasonable and proportionate search for the documents and records in question. Disclosure should be supported by evidence confirming that a reasonable and proportionate search has been undertaken by a person with appropriate authority and knowledge, and that:

(a) The records disclosed are believed to be the records of the relevant standards, processes and audits, and of the known defects, security vulnerabilities, fixes and changes in the system.

(b) That reasonable steps have been taken to ensure that access to the system is controlled in such a way that unauthorised and undetected amendment of system data, in a way that might affect the evidence in question, is prevented.

(c) It should not be required that the party challenging the reliability of the data relied upon should identify the particular issue to which the disclosure required to be given is alleged to go.

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ISSUES ARISING FROM THE STATEMENT BY THE CHAIR DATED 13 NOVEMBER 2024 RELATING TO WRITTEN CLOSING SUBMISSIONS.

419. We have read the statement of the Chair dated 13 November 2024 and can answer the 3 questions for Core Participants set out in that statement as follows:

(i) **As to whether there was a duty of post-conviction disclosure from January 2000:** The Criminal Procedure and Investigations Act 1996 s.3 brought in the duty to "disclose to the accused any prosecution material which has not previously been disclosed to the accused and which in the prosecutor's opinion might undermine the case for the prosecution against the accused". Despite the apparent limitation in section 5 it would be unconscionable and unthinkable for any prosecutor at any time to withhold material which might undermine a past prosecution. The withholding of information in these circumstances would have been contrary to their duties as Barristers/Solicitors, their duty to the court and/or as Officers of the Court

(ii) **As to whether the advice contained in Simon Clarke's advice dated 15 July 2013 should have been disclosed:** The entirety of the Clarke advice dated the 15th of July 2013 should have been disclosed to all those who had been convicted of offences which included the use of evidence from Horizon. Statements from Mr Clarke and his colleague who investigated the Jenkins issues should have been made and the recording of the call with Mr Jenkins should have also been disclosed. The police should have been called to investigate what was believed to have been perjury and/or an attempt to pervert the course of justice by Jenkins. Jenkins had been the main 'go to' Fujitsu witness who was used by POLs lawyers as an expert (despite the failing in expert instruction).

Gareth Jenkins was also a principal architect of the Horizon system; in other words had been a designer and bug investigator and bug resolution engineer from inception of Horizon (this can be seen in the Mismatch bug discussions in 2010). The facts were that Cartwright King, Brian Altman KC and POL executives and General Counsel all knew that Mr Jenkins was believed to have committed serious criminal acts and that he was also a mainstay of the Horizon system from its start up. This puts into doubt his evidence at any time as well as the reliability and digital integrity of the Legacy Horizon and Horizon online. The bugs that emerged in 2013 included bugs in Legacy and Online systems. This also means that the question of the timeline for consideration of appeals before and after 2010 should have included all Horizon cases and not just Horizon online.

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(iii) **Mr Atkinson KC** - We agree with the written and oral evidence of Mr Atkinson KC.

CONCLUSIONS

420. We ask that the Inquiry makes factual findings on the matters that we have raised in these submissions and makes the recommendations that we have set out within this document.

421. Our clients have asked us to convey their gratitude to the Chair and his legal team for the thorough approach taken to the evidence in Phases 5, 6 and 7 and for keeping the questions of redress and compensation at the forefront of the Inquiry's considerations.

422. Our clients recognise that this Inquiry has been a major undertaking for the Chair and his team, and applaud the progress that has been made as a result of the work and scrutiny of the Inquiry. However, our clients tell us that the job is not yet completed. Compensation has not been resolved, not one person has been held accountable for the greatest miscarriage of justice in British legal history.

423. Neither has meaningful cultural change been effected and embedded within Post Office Ltd. It is further relevant to note that the restorative justice proposals put forward on behalf of SPMs and seemingly accepted by POL have yet to see the light of day.

424. Whilst the Inquiry hearings will shortly come to an end,our clients will continue to live with the consequences of how POL treated them. Yet they will derive considerable reassurance from knowing that the Inquiry will continue to exercise a degree of oversight of POL and DBT - particularly in relation to the issue of compensation.

425. We have asked our clients for their thoughts on this matter. Suzanne Palmer says as follows:

> *"20 years ago, I went from being a respected postmistress and business owner, with my own detached four bedroomed house, with a happy family, and a good life, to standing in the dock of the court charged with false accounting. I was acquitted by a jury after a 3 day trial. Despite this, I lost my post office, my livelihood and my standing in the community. My husband and I sold everything we owned to avoid bankruptcy, but it was not enough. Just two months ago, when applying for car insurance, I was asked if I had been bankrupted, and I had to say yes, So 20 years on this still hangs over me. We lost our home of 22 years, and I have lived ever since in a one bedroom flat above a drug dealer's den. What happened broke my relationship with my son. My*

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mother and my father died before I was compensated, in fact I have still received only 80% of the compensation I have been offered. That compensation can never give me back the 20 years I have lost, and I know that I am not alone in this. I am sure, that without Sir Wyn Williams nothing would have changed, and I thank him from the bottom of my heart for what he has done. However, if Sir Wyn stops supervising compensation and the Post Office, things will go back to the way they were."

426. We would therefore urge the Chair to apply section 14 of the Inquiries Act 2005 in such a way as to continue to monitor the development and implementation of matters that fall within the terms of reference. It is important to subpostmasters that the Inquiry is in a position to stay the course until the job is done.

9 December 2024

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