

Monday, 8 November 2021

(11.00 am)

**SIR WYN WILLIAMS:** Well, good morning everyone. My voice is quite good in carrying but I think there's a microphone as well, so can everyone hear me? It's extremely good to see so many people taking an interest in what is the first session, I guess, of this Inquiry. Let me begin with one or two things that I need to say.

First of all, there is no fire drill today, so that if the fire alarm goes off, it's real and you will be guided about what to do.

Second, one or two people, at least, who are accredited journalists have sought my permission to tweet and I have given it. The permission only extends to those who have asked for it. My understanding is that we're on a three-minute delay, in other words, the proceedings are three minutes in advance of the YouTube or televised version of our proceeding. So I would be grateful if those who are tweeting abide by that three-minute delay.

I will ask everyone to silence their mobile phones or turn them off, as the case may be, and I should tell you that members of the Secretariat present will answer any questions which you may have

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mechanical engineering and professional qualifications in management accountancy. He has very considerable practical experience of large projects relating to computer systems and their management, and I can tell you that his expertise has already proved invaluable to me in setting lines of enquiry and understanding concepts which were, I confess, completely alien to me before my involvement in this Inquiry.

Can I give you an update on the appointment of a further assessor. I intend to appoint one more assessor whose area of expertise can loosely be described as corporate governance. The selection process for that appointment is at an advanced stage and I hope to be able to publish the name of my proposed appointee in the coming days. Just as I did prior to confirming the appointment of Mr Page, I will allow Core Participants the opportunity to make any representations they wish about that person prior to my confirming the appointment.

In this Inquiry, I am the sole decision-maker. Although I have no doubt that I will receive a great deal of assistance from my assessors and the Inquiry legal team, ultimately I will be responsible for the conclusions and recommendations which will be laid out in my report to the Minister and which will be the

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as the day unfolds.

I am not going to try and identify all the persons present in this room, for obvious reasons, so when those who decide to speak come to that podium in order to do it, I will be very grateful if they would begin by introducing themselves and telling us who they represent, if they represent individuals or bodies, or otherwise explain why they are speaking.

You can see that I have a person sitting next to me. That is Mr David Page, who will be appointed by me as an Assessor. The role of an Assessor is set out in the Terms of Reference. It is (*unclear: audio interference*) in the summary. It's on page 5 of the bundle, under the heading "Governance". An assessor will provide:

"... advise the sources, content and interpretation of evidence received as appropriate [and a successor] may also provide independent scrutiny and challenge in relation to emerging findings and recommendations."

If you want an even fuller description of an Assessor you can find it in the protocol which we published about such matters.

Mr Page and I have been working together for many months. He has academic qualifications in

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concluding act of this Inquiry. So I had better say one or two things about me so that you know who you are dealing with.

I qualified as a barrister in 1974 and practised from chambers in Cardiff between 1975 and 1998, which spanned most of my career. In 1998, for some unaccountable reason, the lure of London finally captured me and between that date and 2004 I practised from chambers in London.

I became a full-time judge in April 2004 and I retired as a full-time judge in February 2017. You should know that I currently hold fee-paid judicial appointments as President of Welsh Tribunals and as a judge of the Courts of Appeal of Guernsey and Jersey.

I have also been known to involve myself in sports disciplinary panels and sports arbitrations but that is now on hold given the scale of the task which confronts me in this Inquiry.

I am under no illusions about its scale and importance and I have no doubt that, subject to my judicial activities, it will demand my attention full time henceforth.

Let me turn to today's hearing. It was arranged following the receipt of written submissions on the

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1 Provisional List of Issues. At that time, I had no  
 2 idea what might be said about the four themes which  
 3 were identified in the notice of hearing. I did not  
 4 know when the hearing was arranged, to what extent, if  
 5 at all, there would be a disagreement about whether  
 6 I should investigate the four themes or some of them.  
 7 I have now had written submissions from a number  
 8 of Core Participants and interested persons. It is  
 9 clear and obvious that there is a good deal of  
 10 agreement amongst those who have provided those  
 11 submissions about whether I should investigate the  
 12 four themes.  
 13 There are, however, discernible differences of  
 14 approach or at least potential differences of approach  
 15 as to how I should proceed in investigating these  
 16 themes. Accordingly, oral submissions today are still  
 17 very welcome.  
 18 There is one topic in relation to theme (B),  
 19 that is the theme headed "Reliance upon Legal Advice",  
 20 which has the potential to be particularly  
 21 problematic. My current view is that the issue of  
 22 reliance upon and/or waiver of legal professional  
 23 privilege is inextricably bound up with this theme and  
 24 the many potential issues which arise in relation to  
 25 legal professional privilege will have to be resolved

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1 convened for the specific purpose of hearing  
 2 submissions on four issues which may find their way  
 3 into my finalised List of Issues. Accordingly, it  
 4 would not be appropriate for anyone who proposes to  
 5 speak today to stray from submissions relating to the  
 6 four themes set out in the notice of hearing into  
 7 other topics. I am sure that that is generally  
 8 understood but I'm equally sure that a gentle reminder  
 9 does no harm.  
 10 Second, can I make it clear to all those present  
 11 that it is my hope, fervent hope, that all  
 12 participants in the Inquiry will do their best to  
 13 co-operate with me throughout the months to come.  
 14 This is so particularly in relation to the timely  
 15 production of evidence and documents and willingness  
 16 to give oral evidence at times and on dates which best  
 17 suits the smooth running of the Inquiry.  
 18 When I commenced the non-statutory phase of the  
 19 Inquiry, one of the first things that I did was to  
 20 hold informal preliminary meetings with very senior  
 21 representatives of the institutions most obviously  
 22 connected to the scope of my investigations. Those  
 23 institutions, and excuse the acronyms, were BEIS,  
 24 UKGI, POL, Fujitsu, NFSP and CWU. The representatives  
 25 of those institutions assured me that all the

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1 in early course.  
 2 My preference, of course, is that any Core  
 3 Participant or interested party invited by me to waive  
 4 legal professional privilege will do so. In the  
 5 absence of an agreement to waive privilege in the face  
 6 of such a request, however, I will have to determine  
 7 whether that participant is entitled to rely upon such  
 8 privilege and, if so, what consequences, if any, flow  
 9 from such reliance.  
 10 There's no purpose in being coy about this.  
 11 Post Office Limited is currently considering its  
 12 position in relation to legal professional privilege,  
 13 as is clear from its written submissions. I would  
 14 urge Post Office Limited to reach a conclusion about  
 15 legal professional privilege as soon as it can, and  
 16 certainly over the course of the next few weeks.  
 17 If a determination by me on this issue becomes  
 18 necessary, I will seek to make it over the course of  
 19 the coming weeks and I have every intention of  
 20 resolving the issue well before the end of the year.  
 21 Three further matters before I begin the process  
 22 of hearing submissions. First, I would like to  
 23 emphasise that this hearing does not constitute the  
 24 opening session of the many hearings to come at which  
 25 evidence will be taken. This is a preliminary hearing

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1 institutions for which they spoke would co-operate  
 2 fully with the Inquiry. I trust that this still holds  
 3 good and that all other participants are of the same  
 4 mind.  
 5 Third, you will be aware that last week I made  
 6 two announcements to alert participants about how  
 7 I expected today's proceedings to be managed. In my  
 8 first announcement, I said that I expected all  
 9 participants who had made written submissions to be  
 10 able to complete their oral submissions within  
 11 20 minutes and that those who had not previously made  
 12 written submissions should complete any oral  
 13 submissions within 30 minutes.  
 14 In my second announcement, I provided  
 15 a provisional batting order for those who wished to  
 16 speak. I made those directions in order to ensure  
 17 that everyone who wished to speak had a reasonably  
 18 sufficient time in which to do so.  
 19 I have had one request, that there be  
 20 an extension of time afforded to Mr Stein, Queen's  
 21 Counsel, to 30 minutes for his representations.  
 22 I have not answered that request as yet because I did  
 23 not know how others might perceive it and I wanted to  
 24 be open about what might occur. What I propose,  
 25 Mr Stein, is that I will see how the land lies by the

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1 time it's your turn to speak and, if time permits, who  
2 knows, I may be a little flexible.

3 Are there any other requests for extensions of  
4 time beyond 20 or 30 minutes? Very good.

5 Does anyone wish to raise any issue about my  
6 proposed order of speaking? Even better.

7 Well, then, let's start hearing the oral  
8 submissions. So I'm not expecting that I get  
9 a clamour in response to my first question but is  
10 there any person present who wishes to make oral  
11 submissions to the effect that the Inquiry should not  
12 investigate one or more of the four themes?

13 I should really have said that I expected  
14 a stunned silence, which is what I have.

15 So let's move on. There are two Core  
16 Participants who told me that they did not expect that  
17 they wished to make oral submissions but that, of  
18 course, might change. Those two Core Participants  
19 were UKGI and Fujitsu. Is it now the case that either  
20 wish to make oral submissions, in which case, I'll  
21 take them in the order of UKGI first and then Fujitsu?

22 No, thank you.

23 It's a long way from Cardiff, you know. So  
24 let's move to the next stage. At paragraph 3 of my  
25 provisional order, I suggested that we would take oral

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1 submissions in the following order: firstly, BEIS.

2 Are there to be any submissions on behalf of BEIS?

3 Now, I understand that -- there are not. Do

4 I understand, so that I've got this right, that

5 Mr Chapman is present or is he remote?

6 *(Off-microphone comments)*

7 The people at the back may not be able to hear  
8 this. A barrister by the name of Chapman represents  
9 BEIS. He's not presently in the room and he's not  
10 going to be in the room today. He is able to join  
11 remotely at some suitable time but, currently, you  
12 don't anticipate Mr Chapman wishes to make any  
13 submissions; is that it? Right, thank you very much.

14 The next name on the list was Post Office  
15 Limited. Ms Gallifant, are you going to break my  
16 duck? You won't be making submissions either. Thank  
17 you.

18 The next person on my list was Ms Vennells. Is  
19 she and/or her representative present?

20 *(Off-microphone comments)*

21 Thank you.

22 Metropolitan Police Service? Thank you.

23 Well, then I think we have reached Mr Stein and  
24 Mr Moloney and I invited them to agree between them  
25 who is to speak first. I am anticipating that my duck

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1 is about to be broken, so whichever one it is that is  
2 proposing to speak, would you please come forward.

### 3 Submissions by MR STEIN, QC

4 (On behalf of Subpostmasters represented by Howe & Co  
5 Solicitors)

6 **MR STEIN:** Thank you, sir. Is my 30 minutes more likely  
7 now than it was earlier?

8 **SIR WYN WILLIAMS:** Why did I wonder about whether you  
9 would start by asking me that question? I think you  
10 can safely assume that I won't cut you off until  
11 30 minutes has elapsed. But I will ask Mr Page to  
12 time you.

13 **MR STEIN:** Sir, I'm very grateful. My name is Sam Stein,  
14 I am a QC and I'm instructed with Christopher Jacobs,  
15 who is my junior, by Mr Enright and the team of  
16 lawyers at Howe & Co.

17 Together we act for 151 Core Participants.  
18 These are subpostmasters and Post Office managers and  
19 employees whose lives were ruined by the actions of  
20 Post Office Limited, Fujitsu and the Department for  
21 Business, Energy and Industrial Strategy, which we all  
22 call BEIS.

23 Sir, I will start by making a number of general  
24 points which will frame our submissions on the  
25 preliminary matters that you have asked us to address.

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1 As you are aware, it is now agreed that our clients  
2 were falsely accused by the Post Office of taking  
3 money. They were threatened with dismissal and  
4 prosecution and told to repay so-called shortfalls  
5 that had been identified by the deeply flawed Horizon  
6 system.

7 Using a divide and conquer strategy, the Post  
8 Office told sub-post masters and mistresses -- I will  
9 probably use "SPMs" as my way through subpostmasters  
10 and mistresses throughout my address. Using a divide  
11 and conquer strategy, the Post Office told SPMs that  
12 their branches were that only ones which at accounting  
13 shortfalls has been identified.

14 Sir, you know that many of our clients were  
15 coerced into paying tens of thousands of pounds to  
16 account for the so-called shortfalls.

17 Some were prosecuted. Many were sued and many  
18 more were threatened with both. Some were made  
19 bankrupt. All of our clients endured terrible stigma  
20 in their communities, which, in many cases, remains to  
21 this date.

22 In the hearings which we anticipate will start  
23 next year, you will hear heart-rending accounts of  
24 those whose children were bullied and spat at, those  
25 who died before their names could be cleared and many

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1 who contemplated or attempted suicide.  
 2 Today, and that means right now -- I've been  
 3 reminded forcefully of this by my own client group  
 4 attending today -- my written words say this ex-SPMs  
 5 face imminent financial ruin, but in fact of it is  
 6 people are in financial ruin. People will lose their  
 7 homes unless something is done urgently to assist  
 8 them. Some may not survive the lifetime of the  
 9 Inquiry due to stress-related illnesses.  
 10 This scandal has always been about money and  
 11 reputation. On the one hand, the Post Office  
 12 presented a dishonest picture of its finances and its  
 13 system and sought to preserve its reputation at all  
 14 costs. On the other, the Post Office attacked the  
 15 financial integrity of subpostmasters and destroyed  
 16 their reputations. Despite the judgments in the High  
 17 Court, Civil Court of Appeal and the Court of Criminal  
 18 Appeals, SPMs are still not in receipt of any adequate  
 19 financial redress and many suffer still under the  
 20 stigma of years of reputational loss.  
 21 Last month, my solicitors, Howe & Co, wrote to  
 22 Nick Read, the CEO of Post Office Limited, on  
 23 22 October pressing him for urgent compensation for  
 24 all and, vitally, calling on Post Office Limited and  
 25 the Government to repay the legal and funding costs

1 deducted from compensation paid in the group  
 2 litigation.  
 3 Sir, it will interest you, we believe, to learn  
 4 that solicitors Herbert Smith Freehills, instructed by  
 5 Post Office Limited, responded late last week, as  
 6 follows, stating amongst other things:  
 7 "Post Office Limited has been clear that it  
 8 understands the continuing sense of injustice amongst  
 9 the Claimants in the group litigation since it came to  
 10 light through media reports that around 46 million of  
 11 the settlement sum was applied towards the Claimants'  
 12 litigation funders and legal advisers. Post Office  
 13 Limited has been in contact with the Government in  
 14 this regard and will continue these discussions on the  
 15 group litigation settlement figures."  
 16 Now, that is some progress; at least,  
 17 discussions are taking place. We know that the  
 18 minister with responsibility, Mr Scully, has stated:  
 19 "This is something that has been going on for  
 20 20 years and we can't look to the future until what  
 21 has happened in the past is sorted out. It is  
 22 important we ensure fair compensation to those who  
 23 have been affected."  
 24 We say this, sir: Post Office Limited and BEIS  
 25 need to recognise that payment of proper and full

1 compensation, the return of legal costs, is required  
 2 now. That means immediately and not at some unknown  
 3 point in the future nor subject to continuing  
 4 discussions.  
 5 Post Office and Government has told us they are  
 6 discussing this. Do it: don't discuss it, just do it.  
 7 Now, sir, you have shown every sign,  
 8 understandably, of wanting this statutory inquiry to  
 9 proceed with all due speed and expedition to get to  
 10 the truth and establish who knew what and when. But,  
 11 frankly, we are concerned that Post Office Limited and  
 12 BEIS may use the lifetime of the Inquiry to obfuscate  
 13 and say we need to wait and see what the Inquiry says  
 14 before they act.  
 15 Sir, when you finish this Inquiry, perhaps  
 16 something like a year from now, your powers as  
 17 an inquiry chair will be extinguished. Therefore, we  
 18 suggest there is a challenge. What can this Inquiry  
 19 do about compensation now?  
 20 There has been no disagreement with our written  
 21 submission, sir, that the word "redress" in the  
 22 Provisional List of Issues means financial redress and  
 23 that, therefore, we expect that the word "financial"  
 24 will be added to the Final List of Issues for this  
 25 Inquiry wherever "redress" is mentioned.

1 The Inquiry's power to investigate financial  
 2 redress and its adequacy will rapidly expire if it  
 3 only begins to wrestle with the issues of financial  
 4 redress near its end and so -- and you will no doubt  
 5 be one of the many judges that prefers solutions  
 6 rather than problems -- we suggest that the solution  
 7 required here is active engagement on the question of  
 8 financial redress from the very start of the process.  
 9 In the light of Post Office Limited's letter,  
 10 and it and Government's recent statements, we ask you  
 11 to direct that Post Office and BEIS provide a position  
 12 statement within two weeks or whatever period of time  
 13 you think would be required, a position statement on  
 14 what they have done so far regarding compensation,  
 15 what monies have been paid, to which groups, and what  
 16 are the immediate plans for the roll out of  
 17 compensation in the future.  
 18 Sir, you know that the chair of a public inquiry  
 19 has wide power to call evidence that the inquiry  
 20 believes is relevant to its terms of reference and  
 21 issues. It is this power that we ask you to employ as  
 22 soon as possible to compel the Post Office and BEIS to  
 23 disclose to the Inquiry and all Core Participants an  
 24 up-to-date clarification on compensation. Post Office  
 25 Limited and BEIS should be requested, and if necessary

1 compelled, to inform you as to progress on  
2 compensation, with the implicit legal threat that if  
3 answers do not satisfy, the Inquiry will require  
4 clarification. The Inquiry will be able to call  
5 representatives from the Post Office and BEIS to give  
6 evidence as to progress.

7 We believe that this can work to assist you in  
8 the question of financial redress and we would also  
9 add that, if you are minded to take this course at  
10 an early stage in the Inquiry it will be of assistance  
11 if BEIS and the Post Office Limited identify a single  
12 point of contact for you and the Inquiry to use in  
13 relation to this.

14 That step is not without precedent. Within the  
15 Infected Blood Inquiry the chair has called for  
16 submissions on recommendations to be made before  
17 closing submissions more generally, so that he, the  
18 chair, Sir Brian Langstaff, can consider what evidence  
19 should be called and from whom to answer questions as  
20 to possible recommendations.

21 Further, in that Inquiry, it is accepted that,  
22 Sir Robert Francis, Queen's Counsel, who is drawing up  
23 the plans for compensation, will be called to give  
24 evidence about his proposals for a compensation  
25 framework.

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1 The Post Office, sir, has had plenty of time to  
2 sort this out with Government. They should not be  
3 permitted, sir, to add to the extent of the Post  
4 Office scandal by doing nothing, delaying payment,  
5 prolonging suffering and avoiding responsibility.  
6 Instead, we suggest that this Inquiry should demand  
7 urgent and immediate action.

8 Sir, the four issues themes. We have sent to  
9 the Inquiry our detailed submissions on the 184 points  
10 in the Provisional List of Issues. We would wish to  
11 record our appreciation for that list, which shows  
12 that the Inquiry is anxious to overturn every stone in  
13 this scandal. We have proceeded today on the basis  
14 that you, sir, have identified these four issues as  
15 the only points which required further consideration  
16 and that, generally, our submissions on the remaining  
17 issues have been accepted. Sir, obviously if that is  
18 not the case, we are happy to provide further written  
19 submissions on any other point which you, sir, would  
20 ask us to consider.

21 We would also remind you, sir, that, obviously,  
22 our submissions have been made prior to the analysis  
23 of the evidence yet to be disclosed and so that means  
24 that, as the Inquiry process continues and disclosure  
25 is made, we might have further points, if necessary,

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1 to be added to these submissions.

2 In relation to those four issues which you have  
3 identified, we note, as you have already done today,  
4 that Core Participants and other interested parties  
5 have provided written submissions largely in agreement  
6 that the Inquiry should investigate all aspects of the  
7 events surrounding Second Sight, reliance by Post  
8 Office Limited on legal advice, conduct of the group  
9 litigation and divergences across the United Kingdom.

10 Therefore, we invite you, sir, to admit these  
11 four themes or issues in their entirety. However,  
12 sir, as you already noted, points do arise from the  
13 submissions of BEIS and POL (Post Office Limited),  
14 which we need to address today.

15 Firstly, BEIS. As stated at paragraph 9, sir,  
16 of their written submissions, that it is not necessary  
17 for the Inquiry to proactively investigate legal  
18 advice received in relation to individual civil and  
19 criminal cases. We could not disagree more.

20 Our position is that it is essential that the  
21 Inquiry investigates why Post Office Limited  
22 prosecuted or brought civil claims against SPMs for  
23 shortfalls when it knew full well that the Horizon  
24 system was defective and whether it acted, in doing  
25 so, on legal advice.

19

1 The Inquiry should investigate the circumstances  
2 in which that advice was given and what the advice  
3 was. BEIS say, at paragraph 9 of their submissions,  
4 that this would be too time-consuming and could be  
5 dealt with elsewhere, referring to other fora. That  
6 submission, we suggest, must be rejected.

7 We do not, of course, ask the Inquiry to examine  
8 the detail of every individual prosecution or civil  
9 claim. Rather, we ask that the Inquiry selects  
10 a representative sample with assistance from Core  
11 Participants in submissions in relation to the cases  
12 for investigation that the Inquiry can then look at  
13 and examine and consider what went wrong, what was the  
14 legal advice, what was it based on and what disclosure  
15 was either given or not given to the lawyers. Taking  
16 this tack would not be disproportionately time  
17 consuming at all and would be consistent with the case  
18 study approach adopted in numerous other public  
19 inquiries.

20 The other fora suggestion from BEIS does not  
21 seem, we submit, to reflect any real-world analysis of  
22 what is required. BEIS seem to be saying that these  
23 other fora (in other words, other court places) --  
24 BEIS seem to be saying that these other fora are  
25 better suited, and I quote:

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1 "... to identifying and resolving specific  
 2 failings including negligent or improper legal advice  
 3 [in individual cases]."  
 4 This seems to us to be a suggestion that those  
 5 so grievously harmed by their actions and failures  
 6 should yet again resort to the courts to pursue  
 7 a claim. There is also the disturbing implication  
 8 within the submission that SPMs would have to so  
 9 resort. Is this, we enquire, a hint of some level of  
 10 discrimination about entitlement to compensation?  
 11 Well, sir, it won't surprise you to learn that  
 12 SPMs have had enough of legal systems and legal costs.  
 13 Instead, we invite you to deal with those issues as  
 14 part of the Inquiry, making a reasonable selection out  
 15 of the available cases and resolve the questions as to  
 16 legal advice within civil and criminal cases.  
 17 Within the Criminal Court of Appeal, there was  
 18 disclosure to the appellants' legal teams of  
 19 privileged material that related to individual  
 20 prosecutions. That material is currently withheld  
 21 under undertakings to the Court of Appeal, but it has  
 22 been disclosed within that fora, the Criminal Court of  
 23 Appeal and, therefore, to the extent of that appeal  
 24 process, privilege was waived within those proceedings  
 25 to the clients affected and their lawyers.

1 Having represented clients before the Criminal  
 2 Court of Appeal, I can say that material exists as to  
 3 the decisions to prosecute, investigations, acceptance  
 4 of pleas, and the knowledge or lack of knowledge of  
 5 lawyers, which is relevant to this Inquiry but,  
 6 because I am still bound by my own undertaking to the  
 7 Criminal Court of Appeal, I cannot say anything  
 8 further in any more detail. But we do say overall,  
 9 that it cannot be seriously suggested that this  
 10 Inquiry is anything other than the appropriate forum  
 11 for these investigations.  
 12 One further point is also relevant both to this  
 13 issue and the consideration of issue (D)(i), which is  
 14 the question of divergences in the policies and  
 15 practices adopted by the Royal Mail Group and POL  
 16 within the four countries of the UK.  
 17 The way that prosecutions were handled and the  
 18 possibility that we suggest exists, that there was  
 19 a lower percentage of prosecutions in the devolved  
 20 jurisdictions, appears to be a matter that this  
 21 Inquiry should investigate. It may well be that there  
 22 was a difference because Post Office Limited had to  
 23 deal with alleged criminal activity by reporting to  
 24 the Procurator Fiscal in Scotland and the Public  
 25 Prosecution Service in, Northern Ireland.

1 Obviously, within England and, sir, I am afraid  
 2 Wales, there was no such barrier and the Post Office  
 3 conducted prosecutions as a private prosecutor.  
 4 For these reasons, we ask you to reject what  
 5 BEIS have submitted in relation to (B)(i)b. The other  
 6 issue, sir, which you have addressed today is that POL  
 7 appears to be resistant to the disclosure of documents  
 8 that they consider have been subject to legal  
 9 privilege. POL submits that it will seek to reach  
 10 a view in principle on this issue as soon as it  
 11 reasonably can but it is unlikely -- and, as we have  
 12 had no update, it is unlikely, they had said, that it  
 13 would be able to do so before today's hearing and  
 14 we've heard nothing since and so it is not going to  
 15 happen today.  
 16 Sir, you have already addressed this particular  
 17 issue and you have already planned a course of  
 18 conduct, which will be, as we understand it, that  
 19 where necessary and where required and relevant, you  
 20 will invite waiver of privilege but that there may be  
 21 a need for this matter to be discussed in  
 22 a preliminary -- in submissions in future.  
 23 What we do ask, sir, is this: if we reach the  
 24 stage where there is a need to consider the question  
 25 of the extent to which or the principle of waiver at

1 all, that we ask that there is a further preliminary  
 2 hearing, an open hearing, in public, so that those we  
 3 represent, all 151, can hear and listen to either the  
 4 Post Office or BEIS explain in public what their  
 5 attitude is or not to the waiver of privilege.  
 6 Sir, we ask you to take that course, rather than  
 7 dealing with such matters in relation to privilege on  
 8 paper. The reason for that, sir, perhaps is obvious  
 9 but, given the past history of actions by the Post  
 10 Office, we suggest that the public examination of such  
 11 issues is a way to perhaps force BEIS and the Post  
 12 Office to consider their position rather more  
 13 carefully than if they have to only do that on paper.  
 14 I conclude, sir, by raising two issues that are  
 15 important to my client group. Firstly, SPMs paid  
 16 hundreds of thousands of pounds to the Post Office  
 17 Limited in relation to the Horizon-generated so-called  
 18 shortfalls. Yet POL has refused to disclose the  
 19 details of what we believe are suspense accounts which  
 20 would show where that subpostmasters' money went.  
 21 POL cannot be allowed to frustrate this process.  
 22 It is, we suggest, essential that the Inquiry  
 23 investigates what became of that money that  
 24 postmasters paid to account for the so-called  
 25 shortfalls, whether this was rolled over into the POL

1 accounts, whether POL took the money, and a direction  
2 by the Inquiry for immediate disclosure from POL will  
3 at least begin examination of that process.  
4 Lastly, may I finish with a discrete point.  
5 You, sir, will be aware that POL is wholly owned by  
6 the Department of BEIS, which is the sponsoring  
7 department of this Inquiry. At all material times,  
8 BEIS appointed and appoints the CEO and board members,  
9 and BEIS was and is the accounting officer for POL.  
10 POL is effectively the creature of BEIS.

11 We believe the evidence will show that BEIS was  
12 either aware or should have been aware of the  
13 substantial failings of Horizon before its imposition  
14 on SPMs throughout the period of time, over 20-plus  
15 years, of this scandal. Any investigation of POL must  
16 necessarily be an investigation of BEIS, its state of  
17 knowledge, its actions or inactions.

18 Therefore, this Inquiry is not solely about  
19 Horizon IT systems but about the abuses visited on  
20 SPMs and their families by a national institution,  
21 wholly owned and controlled by a Government  
22 department.

23 It's a small point, you may think, but it is an  
24 important point for our client group. Our clients  
25 submit that the Post Office Horizon IT Inquiry should

25

1 be renamed the Post Office Inquiry to properly  
2 describe the purpose and focus of this Inquiry.  
3 Sir, those are our submissions. I hope I've  
4 kept within the time limit and the buzzer hadn't yet  
5 gone off. Can I assist any further?  
6 **SIR WYN WILLIAMS:** No, that's fine, Mr Stein, and I had no  
7 indication from Mr Page that I should stop you.

8 **MR STEIN:** Thank you, sir.

9 **SIR WYN WILLIAMS:** Mr Moloney, when you're ready.

10 **Submissions by MR MOLONEY, QC**  
11 *(On behalf of Subpostmasters represented by Hudgell*  
12 *Solicitors)*

13 **MR MOLONEY:** Sir, I am sure everybody will be relieved to  
14 hear that I can be very brief in my submissions to  
15 you, sir.

16 Sir, the Core Participants represented in this  
17 Inquiry by Hudgell Solicitors are very grateful to  
18 have been allowed the opportunity to make  
19 a contribution on the four areas upon which you  
20 invited submissions.

21 The Core Participants represented by Hudgell  
22 Solicitors are unique in that each and every one of  
23 them has been prosecuted to conviction and punished as  
24 a result of the failings of Post Office Limited and  
25 the Horizon software system.

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1 Accordingly, they have all had the shame and  
2 humiliation of arrest and prosecution, all experienced  
3 the enormous psychological toll associated with that  
4 process, a large number received a custodial sentence  
5 and many immediately went to prison, with all the  
6 attendant problems created, and each and every one of  
7 them, the Core Participants represented by Hudgell  
8 Solicitors, have seen their convictions quashed.

9 They are, therefore, uniquely placed to speak to  
10 many of the issues with which this Inquiry will be  
11 concerned and will seek to assist this Inquiry at all  
12 times. To that end, we have provided comprehensive  
13 written submissions and we don't propose to rehearse  
14 them in any detail.

15 Sir, indeed, Mr Stein has mentioned many of the  
16 points made in our written submissions and so there's  
17 no need to repeat them.

18 We simply make this one observation over and  
19 above our submissions, our written submissions, sir,  
20 which is hopefully relevant to your observations on  
21 privilege this morning. The convictions of the Core  
22 Participants that we represent were quashed in April,  
23 which, is some seven months ago and no decision yet  
24 has been made in relation to privilege, and we'd ask  
25 Post Office to heed your encouragement in respect of

27

1 that decision-making that you gave this morning, sir.  
2 Those are our observations.

3 **SIR WYN WILLIAMS:** Thank you very much.

4 Now, according to my list, the next two parties  
5 who may wish to make oral submissions are  
6 representatives of the National Federation of  
7 SubPostmasters and the Communication Workers Union.  
8 So we're going to need to test our technology. So  
9 could we see if they are present remotely, please? If  
10 there's any difficulties, since we are making such  
11 rapid progress, there won't be any harm in having  
12 a few minutes' break. I can see -- it is Mr Greenhow,  
13 isn't it?

14 **MR GREENHOW:** It is. Thank you.

15 **SIR WYN WILLIAMS:** So, Mr Greenhow, we have reached you  
16 a little more quickly than I expected but are you  
17 ready to make your submissions?

18 **MR GREENHOW:** I am.

19 **SIR WYN WILLIAMS:** Thank you. Well, then would you,  
20 please.

21 **Submissions by MR GREENHOW**  
22 *(On behalf of NFSP)*

23 **MR GREENHOW:** I am Calum Greenhow and I'm the Chief  
24 Executive of the National Federation of  
25 SubPostmasters. Firstly, I would like to take the

28

1 opportunity to thank the Chair for enabling the NFSP  
 2 to put forward our view on this scandal that has  
 3 impacted so many postmaster colleagues, assistants and  
 4 employees of the Royal Mail Group since 2012, and  
 5 those of the Post Office since.

6 The NFSP represents every type of post office  
 7 across the network in the UK, from the largest city  
 8 centre post office, to the smallest outreach covering  
 9 communities in the most rural and remotest areas of  
 10 the country. In total, our members own and operate  
 11 around 9,000 post offices.

12 Mr Chairman, you need to ensure that those  
 13 impacted have their reputations restored and all their  
 14 losses, including their consequential losses,  
 15 refunded. We must then guarantee that nothing like  
 16 this can ever happen again.

17 The NFSP hopes that the Inquiry is able to  
 18 understand what went wrong in the past, how to bring  
 19 about positive action to those who were impacted by  
 20 the scandal and also to provide protection to the  
 21 current and future network.

22 I wish to highlight at this point that, from the  
 23 figures provided via a Freedom of Information request,  
 24 since 1999, 766 individuals have been prosecuted by  
 25 the Post Office either as a standalone company or as

1 part of the Royal Mail Group prior to 2012. Of those  
 2 number, 56 per cent were postmasters with the other  
 3 44 per cent being either assistants or employees of  
 4 Post Office Limited. These 44 per cent sit outside  
 5 the remit of the NFSP as we are purely a trade body  
 6 that represents interests of postmasters as we are  
 7 postmasters ourselves.

8 It would therefore be inaccurate to describe  
 9 this postmaster issue alone, as we know that employees  
 10 of Post Office Limited were charged, prosecuted,  
 11 convicted and, in some cases, sent to prison.

12 The reality is that, if you worked behind the  
 13 counter of a Post Office, you were at risk.  
 14 Therefore, we do a disservice to these colleagues if  
 15 the focus of this Inquiry is solely on postmasters.

16 As a postmaster throughout this whole period  
 17 though, this provides me with a unique perspective of  
 18 the years under consideration, not only myself and my  
 19 family and my employees were at risk from what we have  
 20 learned through the court cases of 2018 and 2019 and  
 21 it is by sheer luck that we have not been caught up in  
 22 this predicament, like so many of our colleagues over  
 23 the years.

24 During this period, the Post Office saw  
 25 a dramatic decline in both footfall and income

1 resulting in three cost-cutting exercises of urban  
 2 network reinvention in 2003, network change in 2007  
 3 and network transformation from 2012. Therefore,  
 4 I have firsthand experience of the same growing  
 5 frustration as my colleagues dealing with the Post  
 6 Office and the isolation of the continual erosion of  
 7 support which came about from these cost-cutting  
 8 exercises. To this day, I wonder if the priority was  
 9 in implementing these Government strategies to the  
 10 detriment of colleagues, resulting in them being  
 11 ignored as a result.

12 Therefore, along with thousands of serving  
 13 subpostmasters that the NFSP represents, I have  
 14 personal interest in this case and a deep desire to  
 15 ensure that the scope of the Inquiry is able to, once  
 16 and for all, discover what went wrong and how so many  
 17 people were impacted in the manner they were. We  
 18 cannot escape the reality that the Government of the  
 19 day said there wasn't anything wrong, the Royal Mail  
 20 Group and Post Office said there wasn't anything  
 21 wrong, ICL Pathway, now Fujitsu, said there wasn't  
 22 anything wrong, and the criminal justice system  
 23 convicted these people and, in some cases, sent them  
 24 to prison.

25 These four distinct groups are such behemoths

1 that this full situation has been very much likened to  
 2 David versus Goliath. On that basis, I wish to state  
 3 my gratitude to those who have steadfastly sought to  
 4 ensure justice when the odds were so stacked against  
 5 them. I am glad they are now receiving the justice  
 6 they deserve but I am sorry it has taken so long.

7 Government, as the owner of the Post Office and  
 8 *de facto* business partner of myself and my colleagues  
 9 around the country, own and operate a network of  
 10 11,500 post offices, and can no longer take  
 11 a hands-off approach to this organisation as it has in  
 12 the past. A Government minister attended the NFSP  
 13 annual conference in 2000, we had issues involving  
 14 Horizon that were discussed and debated by  
 15 postmasters.

16 Ministers were aware in 2003 of Alan Bates's  
 17 situation, in a timely quote from the Minister's  
 18 statement to the House in 2010:

19 "I have in recent months received a small number  
 20 of representations from honourable members, one direct  
 21 from the subpostmaster, about the Horizon computer  
 22 system. Issues relating to the Horizon system are  
 23 operational matters for Post Office Limited, which  
 24 investigates all concerns raised by subpostmasters  
 25 about Horizon and will continue to do so if any are



1 raised."  
 2 Each time, this arm's-length,  
 3 nothing-to-do-with-us approach comes up from  
 4 Government. It wasn't good enough then and it can't  
 5 be going forward. At this juncture, it is worth  
 6 noting that 80 per cent of the cases were between 1999  
 7 to 2010, with 20 per cent between 2010 and 2015.  
 8 There have been no cases since 2015, so why the sudden  
 9 stop in prosecutions? Was there a policy change  
 10 within the Post Office from 2015?  
 11 It is a matter of public interest that the  
 12 former ministers responsible for the Post Office  
 13 during the GLO years gave their account of what they  
 14 knew, said and did. In 2015, the BEIS Select  
 15 Committee held a hearing into the Complaints, Review  
 16 and Mediation Service, but its findings were never  
 17 published.  
 18 Given what postmasters, assistants and employees  
 19 of Post Office Limited has endured it is imperative  
 20 that the thoughts and findings of the Committee are  
 21 now published.  
 22 Turning to the points of the Inquiry seeks to  
 23 consider today. In respect of Second Sight, NFSP  
 24 seeks to understand the chronological order of events,  
 25 who the key decision-makers were and who was on the

1 *ad hoc* board that blocked the required information  
 2 from being provided to Second Sight and why.  
 3 Further, did this *ad hoc* board answer to the  
 4 full board of the Royal Mail Group and then the board  
 5 of the Post Office from 2012?  
 6 With regard to the dismissal of Second Sight and  
 7 the termination of the Complaints Review and Mediation  
 8 Service, more clarity is needed to understand why  
 9 Post Office dismissed the reports and findings made by  
 10 Second Sight. Who made this decision? But what role  
 11 the Government played in this? It is important to  
 12 note the timing of the dismissal, as from the  
 13 Second Sight report of April 2015 at 2.8:  
 14 "In light of this apparent conflict of views  
 15 between the Post Office and the independent body set  
 16 up to administer the scheme (ie, the working group) we  
 17 would normally have asked the working group to provide  
 18 guidance on this matter. Unfortunately, it has not  
 19 been possible to do this, as on 10 March the  
 20 Post Office announced that the working group had been  
 21 wound up with immediate effect."  
 22 This is the day before Second Sight were due to  
 23 circulate a draft of their report to all members of  
 24 the working group. It is also the day that the  
 25 Post Office notified Second Sight that their contract

1 to conduct an independent investigation into matters  
 2 raised by applicants was being terminated. Therefore,  
 3 at a key point the working group was disbanded and the  
 4 Post Office dismissed the report of Second Sight. It  
 5 has to be investigated as to who disbanded the working  
 6 group and why.  
 7 The question is if Second Sight had been able to  
 8 represent -- present the report, would the working  
 9 group have been able to ignore it? Would they have  
 10 been compelled to act on its findings? Would the  
 11 victims have been able to gain justice sooner? It has  
 12 been reported that Second Sight were ordered to  
 13 destroy all documentation of their investigation. If  
 14 true, we need to know who ordered this to happen and  
 15 why.  
 16 In respect of the scope and findings, although  
 17 there was some agreement in relation to what was meant  
 18 by the Horizon system (in that it covered software,  
 19 hardware, telecommunications testing and training),  
 20 what the scope of the investigation was not able to  
 21 cover was such a vital part of the whole interaction  
 22 with the postmaster, the assistant or the employee;  
 23 this was the audit and investigation process.  
 24 In its supplementary response to the 2015 BEIS  
 25 Select Committee hearing, the Post Office said:

1 "It is not seeking to frustrate the work on  
 2 Second Sight through inappropriate control of  
 3 information. As part of its investigation,  
 4 Post Office provides all the information it holds  
 5 relevant to the case and continues to work with Second  
 6 Sight to provide additional information required as  
 7 part of their investigations and in line with the  
 8 requirements agreed by the working group."  
 9 Clearly, Second Sight had a differed view. They  
 10 said at 3.1 of their report:  
 11 "The limitations scope reported above has in our  
 12 opinion significantly restricted our ability to  
 13 complete our investigation into some of the issues  
 14 commonly raised by applicants of the scheme. It is  
 15 particularly regrettable that two of the issues  
 16 raised, access to complete legal files and to the  
 17 background emails, failed to represent policy decision  
 18 taken at a senior level within the Post Office, which  
 19 is contrary to the undertakings previously provided to  
 20 Second Sight, to applicants to the JFSA and to MPs.  
 21 "In regards to the scope of the report, there  
 22 are three key areas where Post Office view is outside  
 23 the scope of Second Sight, namely the contract between  
 24 postmasters and Post Office, the transfer of risk from  
 25 Post Office to postmaster, assistants and employees,

1 plus the audit and investigation process of Horizon.  
 2 These were all areas identified as problematic by  
 3 Justice Fraser."  
 4 Turning to the Post Office reliance upon legal  
 5 advice, NFSP believes that it is essential for the  
 6 Inquiry to explore the issues raised. The NFSP has  
 7 flagged previously victims of the Horizon scandal were  
 8 failed in numerous ways by numerous organisations and  
 9 institutions, including the criminal justice system.  
 10 The Inquiry should explore these issues to determine  
 11 the extent to which the Post Office and the Royal Mail  
 12 Group acted on inadequate legal advice and have  
 13 elected to ignore legal advice or input from  
 14 whistleblowers.  
 15 In March 2015, the Post Office wrote to the then  
 16 Postal Affairs Minister stating the following:  
 17 "For those applicants who have been subject to  
 18 (*unclear: audio distortion*) rulings, two important  
 19 points need to be drawn out. Firstly, we will  
 20 continue to consider each of these cases carefully on  
 21 a case-by-case basis, even though mediation can  
 22 overturn a court's ruling.  
 23 "Secondly, as procurator, Post Office has  
 24 a continuing duty after prosecution has concluded to  
 25 disclose immediately any information that subsequently

1 comes to light which might undermine its prosecution  
 2 case or support the case of the Defendant. Having now  
 3 completed its reinvestigation of each of the cases,  
 4 Post Office has found no reason to conclude that any  
 5 of original prosecution was unsafe. Applicants remain  
 6 able pursue the normal legal avenues open to them to  
 7 appeal the court's ruling, with any further material  
 8 disclosed to them, including that produced through the  
 9 scheme."  
 10 The NFSP urges the Inquiry to explore the  
 11 documentation and conclusions of the Post Office in  
 12 this regard to find out the extent of the internal  
 13 investigation, who conducted the investigation and  
 14 what led them to conclude that the original  
 15 prosecutions were safe.  
 16 The question has to be asked in relation to  
 17 whether Post Office Corporate followed the advice of  
 18 their legal teams or whether the legal teams had to  
 19 fit with the corporate strategy. In other words, what  
 20 drove the end result? The victims need to know  
 21 whether Post Office senior management acted  
 22 independently of the board or by its instruction.  
 23 The NFSP also suggests the Inquiry explores, as  
 24 far as possible, the nature of independent legal  
 25 advice sought by individual judges involved in

1 Horizon-related cases. As a lay person, the questions  
 2 I keep asking myself is: can this happen again and can  
 3 we have confidence in the criminal justice system?  
 4 The next critical consideration is the conduct  
 5 of the Post Office during the group litigation. The  
 6 NFSP believes, an exploration of the Post Office's  
 7 behaviour in relation to the GLO *Bates v Post Office*  
 8 is fundamental to the Inquiry. There will be a  
 9 (*unclear: audio disruption*) of qualified stakeholders  
 10 responding to this question and myself. However, from  
 11 our perspective, it is that the Inquiry's Terms of  
 12 Reference do not permit an investigation of the  
 13 conduct of the GLO and this should be updated to  
 14 ensure they do permit such an investigation. The  
 15 Inquiry should explore the extent to which the Post  
 16 Office's GLO strategy was to turn the proceedings into  
 17 a war of attrition that it was better equipped to  
 18 survive than the Claimants.  
 19 If the question is whether the strategy of the  
 20 Post Office through the GLO was to ensure that the  
 21 victims remained guilty, then those responsible have  
 22 to be held to account. Therefore, it is imperative  
 23 that the Inquiry investigates the conduct of the  
 24 Post Office via the group litigation.

25 There is a pattern over the years by Post Office

1 that is sought to prevent what has now been proven  
 2 about the reliability of Horizon, such as remote  
 3 access to branch accounts. This has resulted in  
 4 a time taken to reach the current situation being  
 5 elongated to the point that the costs incurred by  
 6 those effected have escalated.  
 7 This is resulted in a significant proportion of  
 8 the agreed compensation package being taken up by  
 9 litigation costs. Therefore, the compensation that  
 10 filtered down to the Claimants was so little in many  
 11 cases it did not cover their losses and left them  
 12 further aggrieved.  
 13 One of the Terms of Reference of the Inquiry is  
 14 to assess whether Post Office Limited has learned the  
 15 lessons from the criticism by Mr Justice Fraser. In  
 16 essence, can the leopard change its spots? If those  
 17 responsible for the GLO strategy remain in post, is it  
 18 possible for the relationship with those who own and  
 19 operate the Post Office network to be reset?  
 20 As chief executive of the NFSP, my focus is very  
 21 much on this point, as my role is to serve the  
 22 interests of my colleagues who have invested so much  
 23 of who they are beyond the financial investment into  
 24 this network and their communities. Therefore, this  
 25 much-needed change of culture within the Post Office

1 is paramount to the relationship going forward. No  
 2 longer can they act in an arbitrary, irrational or  
 3 capricious manner. They must act now within the  
 4 manner of good faith. This includes dealing with the  
 5 NFSP as the official recognised representative body of  
 6 postmasters.

7 Turning to the respective divergences across the  
 8 United Kingdom, the NFSP is particularly aware of  
 9 considerations relating to the legal process in  
 10 Scotland, in that private prosecutions cannot be  
 11 brought. Therefore, we believe the Inquiry should  
 12 explore the nature of any evidence provided to the  
 13 Procurator Fiscal in Horizon-related cases. Other  
 14 than this, we are not aware of any difference in the  
 15 approach of the Post Office towards postmasters over  
 16 the GLO period in question.

17 In conclusion, there are a number of points the  
 18 NFSP would wish the Inquiry to consider. It is  
 19 estimated that the cost of the scandal to (*unclear:*  
 20 *audio interference*).

21 When I meet people socially and they ask me what  
 22 I do, once I describe my role and who I work for, the  
 23 usual response is one of empathy towards the victims  
 24 who are now receiving justice, but it is usually  
 25 followed by a statement along the lines of "these

1 scoundrels at the Post Office". If the public  
 2 perception towards the Post Office is so negative,  
 3 then whoever is responsible for the reputational  
 4 damage to the company as a result of the strategy  
 5 through GLO must be held to account.

6 I want to make it clear that there are some  
 7 lovely people who work for the Post Office and who  
 8 care passionately about what it is supposed to stand  
 9 for. It is unfair for their reputations to be  
 10 tarnished because of the past and recent actions of  
 11 others. In recent snap poll on our Facebook page,  
 12 I asked colleagues a question: the Post Office are  
 13 making a great deal of "We're Stronger Together" via  
 14 postmaster consultations but do you feel that you are  
 15 being listened to? Not a single colleague responded  
 16 outlining that they are feeling listened to today.

17 Quite simply, can postmasters around the country  
 18 ever have faith in the resetting of the relationship  
 19 between Post Office and postmasters if those who set  
 20 and those who funded the GLO strategy remain in post.

21 The Terms of reference of the Inquiry is not  
 22 only to consider the past but also to look to the  
 23 future. There are occasions in business when those  
 24 who are making decisions are so far removed from the  
 25 decisions they make that it makes their decisions null

1 and void. I doubt many people on the board have ever  
 2 sold a stamp or worked behind the counter of  
 3 a Post Office. Therefore, one aspect to improve  
 4 things is inclusion of two postmaster non-executive  
 5 directors to the board, something the NFSP campaigned  
 6 for.

7 However, to truly reset the relationship, then  
 8 the recommendation from the Inquiry could be a group  
 9 of interested parties acting as trustees. This would  
 10 include Government representative bodies, such as  
 11 Unite, who are the legitimate representative body of  
 12 management employees in Post Office, the CWU as  
 13 legitimate representative body of non-management  
 14 employees of the Post Office, and the NFSP, who are  
 15 the legitimate representative for postmasters.

16 In business, there is a simple axiom without  
 17 customers you don't have a business. Therefore,  
 18 included within this group of trustees should be  
 19 consumer representatives such as Citizens Advice,  
 20 Age UK or the REAL Services Network, et cetera.  
 21 Together we could bring a collective experience to the  
 22 decision-making of the Post Office corporate. It  
 23 would also engender far greater openness and  
 24 transparency within the business, something which is  
 25 an absolute must going forward.

1 Postmasters have invested significant funding to  
 2 this business and, quite simply, without our  
 3 businesses, there could not, indeed, could not be  
 4 a network of 11,500 Post Offices around the country.  
 5 The social value of the Post Office to the British  
 6 economy could be as high as £9.7 billion. Let me make  
 7 it clear, that social value is not in Post Office  
 8 corporate, but is what postmasters, their assistants  
 9 and employees of Post Office serving behind the  
 10 counter bring to the communities that they serve.

11 Mr Chair, the role of the criminal justice  
 12 system in this scandal simply has to be considered.  
 13 This may be outside the scope of this Inquiry but for  
 14 the victims to truly receive the justice they are so  
 15 long overdue, if this area is not looked at, then have  
 16 we really learned the lesson? This is described as  
 17 the biggest miscarriage of justice in British legal  
 18 history. If the justice system can let so many people  
 19 down over so many years, then who else could they let  
 20 down? As a lay person, I have to have confidence that  
 21 innocent people before the courts will be found  
 22 innocent, not guilty, as the case is here.

23 Finally, the most important people in this are  
 24 the victims. Once and for all, this Inquiry must  
 25 discover what cultural problems there was within the

1 Royal Mail Group and Post Office that meant their  
 2 lives were ruined in the way they were. Too much  
 3 focus has been on the Post Office after 2012 because  
 4 89 per cent of the prosecutions took place when the  
 5 board of Royal Mail were set in with the culture.  
 6 Therefore, it is imperative that the former  
 7 chairs and chief executives of the Royal Mail Group  
 8 prior to 2012 are questioned in relation to their role  
 9 of the Royal Mail Group in this scandal. As  
 10 a postmaster throughout this period, I didn't rest,  
 11 just like everyone else who served behind the  
 12 Post Office counter. I want the victims to know how  
 13 sorry I am for them and what they have endured and how  
 14 long it has taken for their names to be cleared. I  
 15 know that there are those whose names are still to be  
 16 cleared and I encourage them to remain strong.  
 17 I have been talking to the Scotland Criminal  
 18 Case Review Commission and they are aware of over  
 19 70 cases in Scotland that they may wish to consider.  
 20 At present, only eight people have come forward. If  
 21 I may, Mr Chair, use this platform to encourage any  
 22 former colleague in Scotland, whether postmaster,  
 23 assistant or an employee of the Post Office, who  
 24 believes the outcome of their case before the Scottish  
 25 courts may be unsound, to please get in touch with the

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1 Scottish Criminal Case Review Commission.  
 2 Mr Chair, I know that compensation is beyond the  
 3 remit of the Inquiry but these victims have been --  
 4 these victims have to be able to restore their  
 5 reputations, have all their losses refunded and be  
 6 able to get on with rebuilding their lives.  
 7 Therefore, to reiterate, the NFSP hopes that  
 8 today's hearing begins a process of restoring trust in  
 9 the Post Office and rebuilding the reputation of those  
 10 who were so unfortunately impacted as a result. I'd  
 11 like to thank you for the opportunity of putting  
 12 before the Inquiry the thoughts of the NFSP and I look  
 13 forward to working with the Inquiry in the future.  
 14 Thank you.  
 15 **SIR WYN WILLIAMS:** Thank you, Mr Greenhow.  
 16 Now, I think the next organisation is the  
 17 Communication Workers Union and we should have either  
 18 Mr Ward or Mr Furey, or both, remotely and I am not  
 19 quite sure which one is going to speak but let's see  
 20 where we get to.  
 21 **MR FUREY:** Can we you hear me, Sir Wyn? It's Andy Furey.  
 22 **SIR WYN WILLIAMS:** So, we have Mr Furey. Good morning.  
 23 **MR FUREY:** Good morning, everybody. Yes, it's just  
 24 myself, Sir Wyn. Dave Ward sends his apologies. He's  
 25 involved in a general conference.

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1 The CWU has nothing further to add to the  
 2 written submission that we made. We just wish to  
 3 thank you for agreeing to us being Core Participants  
 4 and we will be fully involved and engaged going  
 5 forward, so thank you very much.  
 6 **SIR WYN WILLIAMS:** Thank you. Can I just check with you  
 7 have you been able to follow what's been going on  
 8 quite easily remotely?  
 9 **MR FUREY:** Yes, it's worked very well and I listened very  
 10 intently to everybody's contributions, so thank you.  
 11 **SIR WYN WILLIAMS:** Well, I am very glad to hear it. Thank  
 12 you very much.  
 13 So on my list, at least, all the Core  
 14 Participants who indicated that they may wish to make  
 15 submissions have now done so but if there are any  
 16 other Core Participants in the room who wish to make  
 17 any oral submissions then, of course, I will hear from  
 18 them. So is there anyone else? Thank you.  
 19 So we move onto interested persons, and I was  
 20 made aware of three interested parties or persons who  
 21 may wish to speak. They were Second Sight and the  
 22 possible speakers were Mr Henderson and/or  
 23 Mr Warmington, and there were two other persons,  
 24 Professor Moorhead and Mr Marshall.  
 25 So, first of all, let me ask, are Second Sight

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1 here? I can see you're on the way forward. So  
 2 I don't need to ask the next question.  
 3 **Submissions by MR HENDERSON**  
 4 *(On behalf of Second Sight)*  
 5 **MR HENDERSON:** Chair, thank you for the opportunity to  
 6 provide oral submissions to some of the questions you  
 7 have raised. My name is Ian Henderson, I am  
 8 a director of Second Sight, the forensic accountancy  
 9 firm appointed to conduct an independent investigation  
 10 into matters of concern related to the Horizon IT  
 11 system.  
 12 I'm qualified both as a chartered accountant as  
 13 an IT auditor. Also present today is Ron Warmington,  
 14 the managing director of Second Sight. Ron is also  
 15 a chartered accountant and additionally a certified  
 16 fraud examiner.  
 17 Second Sight was appointed in July 2012 by  
 18 a small group of Members of Parliament, at the request  
 19 of the Justice for Subpostmasters Alliance, the JFSA.  
 20 Our professional fees were paid directly by  
 21 Post Office who also supported our appointment. JFSA  
 22 had been pressing for some time for some form of  
 23 independent inquiry over many years and had gained the  
 24 support of influential MPs representing constituents  
 25 who had suffered mysterious shortfalls in branch

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1 accounts. Our terms of appointment were quite clear.  
 2 They included unrestricted access to documents held by  
 3 Post Office, including documents subject to  
 4 confidentiality and legal professional privilege, and  
 5 no limitation in the scope of work deemed necessary by  
 6 Second Sight.

7 Our work started in the summer of 2012.

8 Initially Post Office were co-operative and appeared  
 9 committed to the agreed goal to seek the truth  
 10 irrespective of the consequences. As our work  
 11 progressed, the attitude of Post Office changed -- we  
 12 understand, largely based on legal advice.

13 In your opening remarks, you touched on the  
 14 question of legal professional privilege. Under the  
 15 agreement between Second Sight and the Post Office, we  
 16 are subject to a non-disclosure agreement and also  
 17 terms of confidentiality. That constrains what I can  
 18 say both today and also, sort of, going forward and  
 19 I would ask that you consider discussing with, sort  
 20 of, Post Office how Second Sight can be released from  
 21 those obligations if we are fully to support this  
 22 Inquiry.

23 We do not consider it appropriate that we  
 24 express an opinion on the scope of the Inquiry as it  
 25 pertains to Second Sight -- we think that should come

1 from others -- but, in our view, the Inquiry should be  
 2 wide-ranging and include looking at the legal advice  
 3 provided to Post Office. Irrespective of what  
 4 decisions are made about the scope of the Inquiry,  
 5 Second Sight welcomes this Inquiry and will support it  
 6 in whatever ways are considered appropriate.

7 Thank you very much.

8 **SIR WYN WILLIAMS:** Thank you very much, Mr Henderson. Can  
 9 I take it Mr Warmington isn't going to speak after you  
 10 or is that a false assumption on my part?

11 **MR HENDERSON:** No, I think we've said everything that we  
 12 think is appropriate at the moment.

13 **SIR WYN WILLIAMS:** Thank you. Thank you very much.  
 14 Is Professor Moorhead -- I think he's on his way  
 15 as well.

16 **Submissions by PROFESSOR MOORHEAD**

17 *(As an interested party)*

18 **PROFESSOR MOORHEAD:** Mr Chairman, thank you very much.

19 You asked us to say who we were, so I am  
 20 a professor at Exeter University and I lead a team who  
 21 have been looking at the Post Office Horizon scandal  
 22 from an academic perspective and particularly  
 23 a professional ethics perspective because that's the  
 24 area where I specialise.

25 I've got three points to make. Some are of

1 general application but I will try to concentrate,  
 2 given what has happened today, on BEIS's objections.  
 3 My three points are that the legal work is central to  
 4 the case, that you need to concentrate on it partly  
 5 for practical and evidential reasons, and the third  
 6 point would be that it is perfectly feasible to do  
 7 this.

8 Let me start briefly with the first argument:  
 9 centrality. As we set out in our submissions, and our  
 10 working papers, we think a detailed understanding of  
 11 the Second Sight investigations, the role of legal  
 12 advice on shortfall cases, both civil and criminal,  
 13 and the conduct of the *Bates* litigation are  
 14 fundamental, both to understanding the harms arising  
 15 from the Horizon system but also the culture of  
 16 Post Office and possibly BEIS, and possibly Fujitsu.

17 We don't think there can be any argument that  
 18 Horizon harms directly arose from the way legal work  
 19 was managed and conducted. People were threatened,  
 20 sued, fired and prosecuted via partly or wholly legal  
 21 work. When Post Office, and Horizon in particular,  
 22 came under scrutiny, denials, non-disclosure and delay  
 23 were enabled at least in part by legal work.

24 At least as much as, probably more so, than the  
 25 software errors themselves, the legal work was the

1 harm visited on the subpostmasters and the legal work  
 2 supported or failed to challenge the corporate  
 3 governance failures that mark this scandal so  
 4 profoundly.

5 You will be aware that we say that some of that  
 6 work was probably done incompetently or unethically,  
 7 in our view. Certainly, there are serious questions  
 8 that need to be looked at. That stone needs looking  
 9 at. If I can put it in very basic terms, it may be  
 10 that management asked the lawyers to make some of  
 11 these problems go away or it may be the lawyers came  
 12 to management and said we think we can help make these  
 13 problems go away, but those are not sorts of issues  
 14 that you need to look at.

15 I said I would concentrate on the shortfall  
 16 cases, the civil and criminal cases, given BEIS's  
 17 objection, and I'll turn then to my second point,  
 18 which is about practicalities and evidence. I think  
 19 the point is the Inquiry cannot accurately assess with  
 20 reliable evidence what actually happened during the  
 21 period of enforcement of debts and prosecutions, and  
 22 they can't look -- you can't look at why it happened  
 23 without looking at individual cases.

24 We know from the *Hamilton* and *Bates* judgments  
 25 that shortfalls were pursued oppressively,

1 prosecutions were pursued unconscionably and the  
2 safety of those convictions was considered or  
3 reviewed, it seems, inadequately. But we do not know  
4 how and by whom oppression and unconscionable  
5 approaches were put in place.

6 There are, of course, a range of possibilities.  
7 It may be individual bad apples providing misleading  
8 information to Post Office lawyers and others, it may  
9 be willing blindness or inappropriate group think or  
10 hubris at various levels of the organisations  
11 involved, or it may even be a more overt or conscious  
12 conspiracy.

13 I would like to emphasise that the Court of  
14 Appeal found in *Hamilton* non-disclosure was deliberate  
15 and raised the possibility -- and I think they did  
16 this deliberately and very consciously, they raised  
17 the possibility of bad faith. But we do not know who  
18 did things deliberately, how they came to do that,  
19 under what influences and whether anyone was indeed  
20 acting in bad faith, who they were, if so, why they  
21 were doing so, under what influences, and so on.

22 How can the Inquiry examine the whos, whys and  
23 how of this, sir, if not in large part through  
24 considering individual cases? I can't see how it can  
25 be done.

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1 Where there are records, individual cases are  
2 likely to be the best or one of the best sources on  
3 what actually happened on the ground. Legal advice,  
4 action and supervision, or quite often, perhaps, its  
5 absence, will be highly relevant, as will the facts  
6 and assumptions on which legal action was based. The  
7 patterns of behaviour should be evident.

8 Your alternative would be to rely on policy  
9 documents and high level or general explanations from  
10 witnesses. These are almost bound to be somewhat  
11 presentational, even without what Mr Justice Fraser,  
12 in the *Bates* cases, called a PR-driven approach to  
13 evidence.

14 It is especially hard, I think, to imagine  
15 another approach to collecting meaningful and reliable  
16 evidence, given the time period the Inquiry must cover  
17 and the fallibility of memory that faces all such  
18 investigations. How, for instance, is the Inquiry  
19 going to examine lawyers or managers on charging  
20 pleas, disclosure and post-conviction review without  
21 looking at individual cases? The Inquiry might, with  
22 very co-operative witnesses who can remember  
23 absolutely everything from that time, get somewhere  
24 but common judicial practice -- and here, sir, I'm  
25 thinking about guidance in the case of *Guessmin* --

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1 common practice seems to drive you in the direction of  
2 looking at the documentary detail. This would be so,  
3 even if the Inquiry were not looking at what looks  
4 like serious misconduct. The Inquiry simply has to be  
5 across that detail.

6 So let me turn then to my third point,  
7 feasibility. Now, I recognise the size the task that  
8 faces the Inquiry and the timescale. It does it look  
9 extremely challenging to my naive eye. But I think  
10 also getting this right is absolutely imperative.  
11 There cannot be a situation where key elements of the  
12 scandal are left out for reasons of expedience. We do  
13 not want this to be like Hillsborough, where issues  
14 fester, are unresolved and, even after multiple tries,  
15 are inadequately dealt with. There needs to be  
16 a full, comprehensive and convincing account of all  
17 the key dimensions of the case, and I repeat here,  
18 we're not talking about something peripheral, we're  
19 talking about something absolutely central.

20 Nor do I see this -- and, again, this may be my  
21 naivety -- as a particularly difficult issue in  
22 practical terms. The time this takes will depend  
23 largely on how much can be done through analysing  
24 documents in the back office, if you like, then  
25 putting emerging patterns and representative points

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1 from individual cases to those decision-makers, and  
2 lawyers and others within Post Office and other  
3 organisations who give evidence.

4 Much of this work can be done outside of but in  
5 preparation for hearings. With proper resourcing,  
6 this should be capable of being done efficiently and  
7 effectively.

8 The matter of legal professional privilege has  
9 been raised. I would say Post Office, along with  
10 almost everybody else who has spoken today, Post  
11 Office and Fujitsu should waive this, morally.  
12 I don't see how they can come to the Inquiry and claim  
13 to be co-operating without doing so. Given the  
14 problems exposed, including the conduct of legal work  
15 to date, those problems would include the abuse of  
16 privilege. I do not see how they can come and say  
17 "Well, we're not sure about privilege".

18 Also, I would certainly argue privilege has been  
19 effectively lost in large part. Their  
20 confidentiality, if you like, has been punched full of  
21 holes over recent months. Even if I am wrong about  
22 that, there's a strong *prima facie* case for saying  
23 crime fraud exception or, as it's more accurately  
24 described, iniquity is likely to vitiate privilege  
25 here. Iniquity is evident in abundance, including in

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1 the litigation and prosecution of shortfall cases, as  
 2 well as far more recently.  
 3 I would add here too the need to lift any extant  
 4 NDAs and similar agreements which will impact on the  
 5 evidence of witnesses. We heard just from Ian  
 6 Henderson but I suspect there are others to whom that  
 7 applies.  
 8 Sir, as well as being the best evidence of what  
 9 was done on shortfall cases and prosecutions, the best  
 10 evidence of the nature of instructions given, the  
 11 advice given, and its implementation, I would expect  
 12 a review of cases to yield contemporaneous evidence of  
 13 what was influencing the process. Now, we've seen  
 14 from the court papers suggestions of ideas such as  
 15 protecting public money and concerns about adverse  
 16 publicity and the impact on disclosure in legal cases  
 17 impacting on decisions in those cases. We may see  
 18 other similar things if we take a deeper look at the  
 19 cases.  
 20 Looking at these cases will tell us something  
 21 also of cases which were unsuccessfully prosecuted,  
 22 something we haven't talked about: why they were dealt  
 23 with; why they were different; how those losses were  
 24 understood within Post Office. It may be possible to  
 25 relate good and bad outcomes to particular individuals

1 in Post Office, perhaps to particular solicitors'  
 2 firms prosecuting or even to counsel advising, as well  
 3 as to the structures and policies within Post Office.  
 4 The detail and variation within individual cases  
 5 is likely to be highly illuminating as to what caused,  
 6 contributed to, exacerbated or reduced, sometimes,  
 7 poor practices. Nor should we rule out the  
 8 possibility of other influences being revealed. It  
 9 seem likely to me that Government oversight would  
 10 explicitly and directly influence specific individual  
 11 cases but it may well be seen to have an impact at  
 12 a general level and show up in some of those cases,  
 13 and the key instances when Horizon was under critical  
 14 challenge, it may have been that oversight interest  
 15 became more visible or somehow percolated down to  
 16 those individual cases.  
 17 Sir, I hope too that the evidence taken from the  
 18 subpostmasters and their colleagues explores how they  
 19 experienced threats and legal process. It seems, to  
 20 me, very important that you hear, as chair of the  
 21 Inquiry, how lawyers' tactics are experienced by  
 22 individuals. I've seen in another area where I've  
 23 worked, during Select Committee hearings on  
 24 non-disclosure agreements, how differently lawyers and  
 25 lay people experience simple things like lawyers'

1 letters. They can have a really profound impact on  
 2 individuals and I hope that's something that you will  
 3 hear something about when you hear evidence.  
 4 One further issue of practicality, I think it  
 5 was one of the early submissions, Mr Stein suggested  
 6 that it may be possible to deal with issues by way of  
 7 sampling. If the Inquiry was to go in that direction,  
 8 there are obvious cases that merit a close look, Seema  
 9 Misra's case, Jo Hamilton's case, Lee Castleton's  
 10 case, as cause célèbres, if you like, key cases that  
 11 went horribly wrong. I think it's also really  
 12 important in that sample to look at cases which did  
 13 not proceed to trial or where trials were aborted or  
 14 lost, for instance.  
 15 As I understand, there are about 130 or so of  
 16 these cases. Very little is known about them and they  
 17 are important. How, for instance, were losses --  
 18 information about losses shared within the  
 19 organisation? What was learnt from them? How did  
 20 losses affect future instructions in case handling: if  
 21 you lost a case what happened next, if you are a firm,  
 22 for instance?  
 23 Sampling should ensure a good spread of the  
 24 different solicitors firms prosecuting -- I understand  
 25 there might have been six but I may be wrong about

1 that -- and perhaps also counsel representing such  
 2 cases, as well as looking at whether who ran cases  
 3 internally impacted on outcomes or approach.  
 4 There is one small matter before I start to draw  
 5 to a close. If I can quickly but I hope not too  
 6 superficially, dismiss BEIS's suggestion that the  
 7 victims in individual cases can get this kind of  
 8 accountability through pursuing cases of negligence or  
 9 professional conduct complaints. I think that  
 10 response is unreal. They are not likely to get  
 11 evidential satisfaction through those routes but  
 12 I also think it's extraordinarily unkind, I think it  
 13 hard-hearted and a cynical person who would say to  
 14 these people "Go to the law again if you want to find  
 15 out why you were so badly wronged". I find it quite  
 16 extraordinary that they have suggested that.  
 17 So I would like to end by contextualising my  
 18 plea to look in depth at the lawyering because it not,  
 19 of course, just about that lawyering. I said in  
 20 essence Horizon is not solely or even mainly  
 21 a computing scandal, it is also a lawyering scandal,  
 22 but it is, above all, a corporate governance scandal.  
 23 You will have seen a submission from a group of  
 24 general counsel and others with great practical  
 25 knowledge of lawyering and governance. That

1 submission came about after they signed up for a whole  
2 day and one night with me talking about the  
3 Post Office case.

4 You may wonder why they took on this penance and  
5 reason why they did that was they see the same  
6 governance problems evident in the Post Office case in  
7 other board rooms around the country where they have  
8 worked or with people with whom they have worked.  
9 There is actually, I think, a critical public interest  
10 in this issue above and beyond the immediate much more  
11 serious, obviously, injustices faced by the  
12 subpostmasters, subpostmistresses and their  
13 colleagues.

14 So I would say the Inquiry needs to understand  
15 what lawyers did but also how they were led, what the  
16 incentives and relationships and culture were.  
17 Ultimately lawyers may have contributed to that  
18 culture but it is not likely they were solely or  
19 mainly responsible for it. There is, if I can give  
20 an example, one potentially telling moment where, when  
21 dealing with remote access, Paula Vennells says, and  
22 it's in the *Bates* case, in effect, she needs to be  
23 able to say that remote access is impossible.

24 The willingness within the organisation then to  
25 have facts fit preferences comes through. It doesn't

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1 actually come from lawyers there but that attitude may  
2 have come from lawyers or it may well have been, if  
3 you like, a directive of management to see things that  
4 way.

5 Let me end with another example. Mrs Vennells  
6 says in a letter to an MP, now a Government minister,  
7 as it happens, in October 2015, she says this:

8 "Through our own work and that of Second Sight,  
9 we have found nothing to suggest that in criminal  
10 cases any conviction is unsafe. We have found nothing  
11 to suggest that in criminal cases any conviction is  
12 unsafe."

13 That statement is, we can see now from *Hamilton*,  
14 when that was palpably false, whether Mrs Vennells  
15 knew it or not. It is a statement made by the senior  
16 manager of Post Office and very likely indeed made  
17 with the assistance of lawyers, directly through  
18 reviewing or drafting the letter or indirectly through  
19 previous advice being used or perhaps abused here.  
20 Lawyers and managers were involved and responsible.  
21 Lawyers and managers are mutually responsible, if you  
22 like, for this irresponsibility. You must investigate  
23 them both if the lessons are to be learnt and similar  
24 problems are not to occur again.

25 They cannot hide behind privilege while shifting

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1 blame. Both the managers and the lawyers need to be  
2 held accountable for any wrongs they have done and  
3 that requires looking at the legal advice along with  
4 everything else.

5 If I can end by putting the case metaphorically  
6 for a moment, considering the Horizon saga without  
7 considering the lawyering, without considering  
8 privileged evidence or allegedly privileged evidence  
9 would be a bit like considering Watergate without  
10 considering the White House tapes; essential, telling,  
11 perhaps vital, information will be missing. The  
12 abuses of power, the injustice, who did it and why,  
13 will not be properly understood. Sir, to discharge  
14 the Inquiry's remit, you must do the equivalent of  
15 listening to those tapes. Thank you very much.

16 **SIR WYN WILLIAMS:** Thank you very much, professor.

17 Mr Marshall? I don't think Mr Marshall is  
18 remote. He wasn't intended to be remote and he hasn't  
19 arrived as yet?

20 *(Off-microphone comments)*

21 All right. Well, I think we've reached the end  
22 of my list. So I will now ask is there any other  
23 interested person in the room who wishes to address me  
24 about the four themes? You will all appreciate that  
25 occasionally we've strayed from the four themes but,

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1 nonetheless, if anyone wishes to return to the four  
2 themes, I would be grateful if they would say now.

3 Perhaps I should turn now to Mr Beer, who has  
4 sat quietly throughout this, he is sitting to my  
5 left -- he is leading Counsel to the Inquiry -- and  
6 just ask him whether he wishes to say anything in the  
7 light of what's gone on this morning.

8 **MR BEER:** Sir, thank you very much for your invitation.

9 No, your counsel team has no submissions to make on  
10 the present issues. Thank you.

11 **SIR WYN WILLIAMS:** Right. Well, it seems to me therefore  
12 that we've reached the end of the oral submissions.  
13 I'm not going to formally close the proceedings yet  
14 because I want to give a little more clarity about how  
15 I might approach the issue of legal professional  
16 privilege, specifically in relation to Mr Stein's  
17 request that I hold a public hearing if there are any  
18 controversial issues to be determined. So I'm going  
19 to think about that for a few minutes.

20 By my computerised time, it's around about  
21 12.30. So I would ask you to have a 15-minute break,  
22 I'll think about that, and then I'll come in and say  
23 whatever it is I propose to say and, at that point, we  
24 will probably call it a day, all right.

25 So thank you for your patience with everything

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1 and I hope this morning hasn't been less exciting than  
2 you thought, shall we say.

3 (12.30 pm)

4 (A short break)

5 (12.45 pm)

6 **SIR WYN WILLIAMS:** I think we now have Mr Marshall. Would  
7 you like to come forward, please?

8 Ladies and gentlemen, I think the plan is that  
9 we will hear Mr Marshall's submissions and then we  
10 won't take a lunch break, we'll hear what he has to  
11 say and then I'll make whatever announcement I propose  
12 to make and then we'll wrap it up, all right.

13 So, over to you, Mr Marshall.

14 **Submissions by MR MARSHALL**

15 (*As an interested party*)

16 **MR MARSHALL:** First of all, thank you, sir, for hearing  
17 me. I'm slightly surprised at the speed with which  
18 matters have proceeded this morning and I can say that  
19 it's not the first time in this case that I've been  
20 surprised.

21 I'm going to take -- because I'm conscious of  
22 time and indeed the time of the morning if we can  
23 still say that, I'm going to take my submissions,  
24 I had four, and I'm going to take the third and  
25 fourth, which I believe are particularly important,

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1 first, then my third and, if possible, and there's  
2 time, the first.

3 Under the rubric of withholding material  
4 necessary for an appeal, in a witness statement made  
5 by him in October 2010, filed for Mrs Misra's criminal  
6 trial, Mr Gareth Jenkins, a very senior Fujitsu  
7 computer expert and architect of the Horizon system  
8 stated, amongst many other things, two facts. First,  
9 he stated and I quote:

10 "Any transaction that is recorded on Horizon  
11 must be authorised by a user of the Horizon system who  
12 is taking responsibility for the impact of such  
13 transaction on the branch's accounts."

14 Secondly, he said this, and I quote:

15 "There are no cases where external systems can  
16 manipulate the branch's accounts without users in the  
17 branch being aware and authorising the transactions."

18 Both those statements were, as a matter of fact,  
19 wrong. Their falsity is established by Mr Justice  
20 Fraser's *Horizon Issues* December 2019 judgment. He  
21 held that for a number of years Fujitsu and the  
22 Post Office routinely accessed branch accounts without  
23 the knowledge of postmasters, not only were records  
24 not maintained of what was done in routinely accessing  
25 branch accounts, no records were maintained of branch

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1 accounts being accessed at all. That, of course,  
2 facilitated denial.

3 The denial came unstuck when Mr Richard Roll,  
4 a former Fujitsu software engineer, gave evidence in  
5 a second witness statement shortly before the *Horizon*  
6 *Issues* trial. Mr Roll was a former defence systems  
7 software engineer and he confirmed that, from the  
8 outset, super access rights were exercised and data at  
9 branch accounts was manipulated in a way not  
10 identifiable by a postmaster.

11 The fact of remote access attracts only a single  
12 sentence in the Court of Appeal's April 2021 judgment  
13 but its importance is great. Its importance was  
14 certainly recognised by Mrs Vennells. Implications of  
15 the Post Office having before 2019 accepted that  
16 access to branch accounts was possible without  
17 postmaster authority or knowledge, and manipulation of  
18 those accounts both possible and also happened as  
19 a fact, without any record having been kept by Fujitsu  
20 or the Post Office, is too obvious to state.

21 That fact alone would have rendered every  
22 conviction over the relevant period arguably unsafe  
23 without more and, in any event, would have afforded  
24 an obvious defence both to civil claims and criminal  
25 prosecutions.

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1 Why do I refer to this? I do so for what appear  
2 to me to be two important reasons. It is  
3 supplementary to the brief written submission I made  
4 in connection with the role of Second Sight. In  
5 appendix 2 to their 2013 interim report, Second Sight  
6 refer to a postmaster in 2008 at Fujitsu's Bracknell  
7 headquarters having observed remote access to  
8 Post Office branch terminal taking place and an entry  
9 being made in the account that was then reversed.  
10 That was recorded as being contrary to the  
11 Post Office's assertions and assurances that remote  
12 access to Horizon branch accounts was not possible.

13 Second Sight further record that in  
14 December 2010, Mr Edward Davey MP, the then Minister  
15 for Postal Affairs, had stated that Post Office also  
16 categorically state that there is no remote access to  
17 the system or to any individual branch terminals which  
18 would allow accounting records to be manipulated in  
19 any way.

20 Importantly, for present purposes, Second Sight  
21 conclude appendix 2 with a statement:

22 "We are left with a conflict of evidence on this  
23 issue."

24 That is important for two reasons. The first  
25 reason is that, over the weekend, I reviewed the

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1 transcript of Mrs Misra's criminal trial. Although  
2 Mr Jenkins had made a witness statement denying the  
3 possibility of remote access, the issue of remote  
4 access appears to have formed no part of his oral  
5 evidence and he seems not to have been cross-examined  
6 on the point, at least so far as my search strings  
7 were able to pick up. This suggests that Mr Jenkins'  
8 evidence on that point was accepted. The reason,  
9 presumably, Mr Jenkins' written evidence was not  
10 challenged is that there was no material available to  
11 Mrs Misra's legal team upon which to do so.

12 Mr Simon Clarke undertook a review of  
13 Mrs Misra's criminal prosecution, I believe, in early  
14 2014. The stated purpose of his review of Mrs Misra's  
15 prosecution was very limited. It was to consider  
16 whether the Second Sight report or the Helen Rose  
17 reports should be disclosed to Mrs Misra. The  
18 extraordinary thing about Mr Clarke's review is that  
19 Mr Clarke was not provided with a Post Office's  
20 prosecution file. In his advice, he records that he  
21 was only provided with the transcripts of Mrs Misra's  
22 trial.

23 It follows from that that Mr Clarke will not  
24 have seen Mr Jenkins' witness statements, in which he  
25 denied that remote access to Horizon branch accounts

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1 was possible. He would not, therefore, have  
2 identified that, whilst Mr Jenkins is unqualified in  
3 his written evidence that remote access to branch  
4 accounts without postmaster knowledge and approval was  
5 not possible, that evidence went unchallenged in his  
6 oral evidence. But Second Sight, in their interim  
7 report in 2013, disclosure of which was the whole  
8 point of the question Mr Clarke is specifically  
9 considering, records that they are left with  
10 a conflict of evidence on the point.

11 Given the emergence of the shredding advice,  
12 shortly before the Court of Appeal hearing in March  
13 this year, one is bound to enquire as to whether  
14 Mr Clarke had intentionally withheld from him the  
15 prosecution file. I have also referred to this in the  
16 context of Second Sight's request for prosecution  
17 files that were refused, it seems, by the  
18 Post Office's general counsel, Mr Aujard and were the  
19 subject of the Select Committee hearing the following  
20 year.

21 The second reason I refer to this is that the  
22 very restrictive nature of the review of at least  
23 Mrs Misra's prosecution is not, I think, well known.

24 The Post Office has made much of having  
25 undertaken reviews of its prosecutions following the

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1 Clarke advice in 2013. In the light of what I have  
2 said, there is an obvious serious and substantial  
3 question of the thoroughness and completeness of those  
4 reviews.

5 Had the Second Sight interim report been  
6 disclosed to Mrs Misra in 2013 or 2014 it would have  
7 put any competent lawyer on energetic enquiry.

8 The only additional thing I shall say on this  
9 point is that Mr Clarke, in early 2014, advising the  
10 Post Office against disclosing the Second Sight  
11 interim report to Mrs Misra, expressly relied upon the  
12 written advice of Mr Brian Altman QC.

13 The day after I received Mr Clarke's advice in  
14 November 2020, I raised with Mr Altman the question as  
15 to whether, given an issue in the appeals with the  
16 adequacy of the disclosure given by the Post Office  
17 and that he appeared to have advised the Post Office  
18 on its disclosure obligations in 2013, there might be  
19 an issue of an apparent conflict of interest.

20 My fourth submission, but second in order now,  
21 is concerned with the presumption of the correctness  
22 of electronic computer evidence, sometimes described  
23 as the presumption of reliability. What I have to say  
24 on my fourth point is in brief amplification of my  
25 letter of 1 November 2021. What I shall say is

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1 a spokesman for the group of us who responded last  
2 year to the invitation to me by the Under Secretary of  
3 State for Justice to submit to the Ministry of Justice  
4 a paper on the issue of disclosure of evidence derived  
5 from computers.

6 Notable among the contributors for this purpose  
7 are Professor Peter Bernard Ladkin, Professor Martin  
8 Newby, Professor Harold Thimbleby and Professor Martin  
9 Thomas CBE, all expert in computer technology and  
10 software engineering. It is not necessary to repeat  
11 the point about the presumption of the reliability of  
12 evidence derived from computers that I briefly touch  
13 on in my letter.

14 We believe that it is an important issue for  
15 this Inquiry. A change in the law from 2001 is  
16 likely, we believe, to have influenced the  
17 Post Office's decision to prosecute and litigate and  
18 also the conduct of those prosecutions and civil  
19 claims. We know, and Dr Murdoch has adverted to this,  
20 that the Post Office and its solicitors were active in  
21 the law commission reports that resulted in the  
22 statutory provisions and protections under the Civil  
23 Evidence Act and the Police and Criminal Evidence Act  
24 1984 being repealed. It is perhaps unnecessary to  
25 point out that material produced from a computer is

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1 typically hearsay, conventionally hearsay evidence is  
2 treated with caution by courts for well-known reasons.

3 The way this was dealt with before the Law  
4 Commission reforms was that there was a statutory  
5 requirement for direct evidence that the source of the  
6 evidence in question, that is to say the computer, was  
7 working reliably at the material time.

8 That ceased to be a requirement in criminal  
9 trials from 2001. That date more or less coincides  
10 with the computerisation of Post Office branch  
11 accounts. It also happens to coincide with the  
12 timeline of prosecutions, notably of Tracy Felstead  
13 who was prosecuted in 2001 and convicted in 2002.

14 It is not widely understood outside the software  
15 profession that only the smallest and least complex  
16 computer program can be treated exhaustively. The  
17 limit is probably 100 lines of well designed and  
18 carefully written program. Even such a 100-line  
19 program might require very many thousands of tests to  
20 eliminate every possible error, that is to say "bug".

21 The consequence of this is that it is certain  
22 that the vast majority of software in use today  
23 contains many hundreds or thousands of errors. This  
24 is uncontroversial amongst computer scientists, though  
25 it seems surprising or incredible to the general

1 judgment observes, the effect of the presumption can  
2 make it, in practice, impossible for a defendant to  
3 challenge incorrect electronic evidence and may have  
4 the unintended consequence of appearing to reverse the  
5 burden of proof. That may result in a miscarriage of  
6 justice, even though this may not be common because  
7 much computer-derived evidence may either be not  
8 contested or may be separately corroborated. Everyday  
9 examples are breathalysers being followed up with a  
10 urine test or a speed camera radar being supported by  
11 a pair of timestamped photographs showing how the  
12 vehicle has moved are over a known period of time.

13 In our view, courts should treat electronic  
14 computer-derived evidence with considerable caution  
15 where central to a case and uncorroborated, as  
16 typically it was in the postmaster prosecutions.  
17 Disclosure should be required that shows, as  
18 a minimum, three things: firstly, that the software  
19 producing the evidence has been developed and  
20 maintained to high professional standards; secondly,  
21 that records are kept of reported errors, and also the  
22 steps taken to identify and resolve those errors;  
23 thirdly, that the staff responsible for operating,  
24 supporting and updating the software and its databases  
25 or other records could not, and in any event have not,

1 public and even to many programmers, also, no doubt,  
2 to some judges.

3 Many of these errors will be latent. They will  
4 only cause the software to malfunction under rarely  
5 occurring circumstances. One analysis by IBM reported  
6 that a large number of the errors in their systems  
7 were causing malfunctions for users much less often  
8 than once a year. Horizon was a suite of programs  
9 comprised of probably millions of lines of computer  
10 program. It undoubtedly contained thousands of  
11 errors, most of which would never cause a malfunction  
12 in the entire time Horizon was in use. That is why  
13 Horizon could process huge numbers of transactions  
14 correctly and yet still have caused apparent  
15 shortfalls at hundreds of sub post offices.

16 The presumption of reliability or, if you will,  
17 presumption of correctness of computer evidence was  
18 introduced by default in 2001 for practical reasons.  
19 Without the presumption, it was widely considered that  
20 the cost and time involved in the extensive disclosure  
21 of technical details of software and expert testimony  
22 made reliance upon electronic computer evidence in  
23 legal proceedings increasingly impractical and, it was  
24 thought, unnecessarily expensive.

25 But as the Court of Appeal in its April 2021

1 affected the evidence before the court.

2 As to the last of these, it is always the case  
3 that such support staff, for maintain systems of the  
4 kind that Horizon is, have privileged access to the  
5 systems (sometimes called "super user access rights").  
6 These rights in principle allow them to modify the  
7 systems in any way. Without such access, it would be  
8 impossible to take security backups and to restore  
9 them, to respond to cyber security problems, to  
10 recover from hardware failures, and to carry out the  
11 many other routine functions of system support.

12 For evidential material derived from computers  
13 to be reliable, two things in this regard are  
14 necessary. That's the last point. Firstly,  
15 privileged access rights must be tightly controlled  
16 and, secondly, the uses made of it must be recorded  
17 securely. Where a system has been professionally  
18 developed and managed, the evidence documenting  
19 compliance with those requirements will be readily  
20 available and can be disclosed without much cost or  
21 delay.

22 We consider that the refusal of judges to order  
23 disclosure by the Post Office appears to us to have  
24 materially contributed to the miscarriages of justice  
25 that the Inquiry is examining. It needs, I think, to

1 be said that the Post Office scandal, if that is what  
2 it may be described as, is not least the result of  
3 widespread legal and court failure.

4 A final point on this topic is that the Horizon  
5 network was not permanently connected. A feature of  
6 Horizon's design was that a postmaster's terminal was  
7 not permanently connected to the branch computer and  
8 the branch computer was not permanently connected to  
9 the Fujitsu main servers. Permanent connection would  
10 have been prohibitively expensive but a major cause of  
11 data corruption and loss was connectivity issues.

12 The point is important: there is a distinction  
13 to be drawn, as is common in system design, between  
14 a system that is good enough and one that is perfect.  
15 Horizon might, on one analysis, have been good enough  
16 even though bugs in software and connection failures  
17 caused intermittent failures and shortfalls. A few  
18 thousand pounds by way of shortfalls was marginal from  
19 the Post Office's perspective: from a postmaster's  
20 perspective, a shortfall of a few thousand pounds was  
21 not marginal. A fundamental flaw in the Post Office's  
22 business model, I suggest, was that its contract with  
23 postmasters automatically made postmasters liable for  
24 shortfalls that were, in fact, on one analysis, the  
25 inevitable by-product of Horizon being a less than

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1 perfect system; that is to say, one that was prone to  
2 error and throwing up shortfalls but otherwise good  
3 enough.

4 Like all contracts, the Post Office's contract  
5 with its postmasters was concerned with the allocation  
6 of risk. What should never have happened is that, in  
7 effect, the postmaster contract transferred the  
8 technical and commercial risk of bugs and error to  
9 postmasters. It is overwhelmingly likely that none of  
10 them recognised this at the time of contracting. It  
11 is strongly arguable that the technical risk was one  
12 that, in fairness, and if commercially sensible,  
13 should have remained distributed between Fujitsu and  
14 the Post Office itself. It will be recalled that  
15 Mr Justice Fraser found the Post Office contracts with  
16 its postmasters oppressive.

17 One is tempted to the view that somewhere at  
18 some time a lawyer engaged in drafting the postmaster  
19 contracts might have felt some satisfaction in  
20 transferring known technical risk in Horizon to an  
21 unsuspecting postmaster. In 1999, there were indeed  
22 known technical risks. The incidence of those risks  
23 was what became critical and resulted in unjustified  
24 criminal prosecutions and civil claims.

25 I turn now to what was originally my second, now

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1 my third, point. I would like to address very briefly  
2 the point about delay which engages with the  
3 Post Office's approach to both the *Bates* litigation  
4 and what I would characterise its general aggressive  
5 strategy of denial. Article 6(1) of the European  
6 Convention for Protection of Human Rights and  
7 Fundamental Freedoms provides that everyone is  
8 entitled to a fair public hearing within a reasonable  
9 time by an independent and impartial tribunal  
10 established by law. Violation of the Article 6 right  
11 is separate from the issue of whether the trial was  
12 fair or an abuse of the process.

13 In Attorney General's Reference No. 2 of 2001  
14 [2003] UKHL 68, Lord Rodger had this to say about the  
15 Article 6 and its violation. This is at paragraph 20.  
16 He refers to the irretrievable harm caused by delay.  
17 I will just read some of the paragraph. I hope I'm  
18 not taking it too much out of context:

19 "By definition, the undue delay with its harmful  
20 effects occurs by the time the hearing comes to an  
21 end. The relevant authorities cannot remedy the  
22 situation and give the defendant his due by holding  
23 a fresh hearing. That could only involve still  
24 greater delay, prolonging the disruption to the  
25 defendant's life and so exacerbating the violation of

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1 his Convention right. The fact that this particular  
2 breach of Article 6(1) cannot be cured by holding  
3 a fresh hearing is not just some quirk of the  
4 Convention that happens to put the relevant  
5 authorities in a particularly awkward position. On  
6 the contrary, it stems from the very nature of the  
7 wrong which the guarantee is designed to counteract.  
8 If the responsible authorities cannot go back and  
9 start again, neither can the defendant. For both  
10 sides time marches on. When the authorities delay  
11 unreasonably, months or years of the defendant's life  
12 are blighted. He cannot have them over again. They  
13 are gone forever.

14 "By signing up to Article 6(1), States undertake  
15 to avoid inflicting this kind of harm. Since the harm  
16 is irretrievable, the European Court of Human Rights  
17 is correct to regard this right as being of 'extreme  
18 importance' for the proper administration of justice."

19 The authority for that is *Guincho v Portugal*  
20 [1984] 7 EHR 223 at paragraph 38. Despite its  
21 importance, this violation (that is, the Article 6  
22 violation) has not yet been referred to, still less  
23 addressed.

24 The authorities confirm that the relevant period  
25 begins when a person is charged and ends with

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1 a conviction or acquittal, even if this is reached on  
 2 appeal. The authority for that is *Wemhoff v Germany*,  
 3 as applied by the House of Lords in *Dyer v Watson*  
 4 [2004] 1 AC 379.  
 5 In *Dyer*, Lord Bingham -- I think that should say  
 6 "Supreme Court". In *Dyer*, Lord Bingham said that  
 7 however complex and difficult a case, there comes a  
 8 time when the period of delay becomes excessive and  
 9 unacceptable. The European Court has stated that the  
 10 burden of coming forward with explanation for  
 11 inordinate delay is on the prosecuting authorities.  
 12 The authority for that is *Eckle v Federal Republic of*  
 13 *Germany*, 5 EHRR 1, 29, paragraph 80. Lord Bingham, in  
 14 *Dyer*, at paragraph 52 stated:  
 15 "It is necessary for the contracting States to  
 16 explain and justify any lapse of time which appears to  
 17 be excessive. The State is responsible for delays  
 18 attributable to the prosecution."  
 19 Authority for that is *Orchin v UK*, 6 EHRR 391.  
 20 Why are these things important? I suggest that  
 21 they are important for two reasons. The first is that  
 22 Tracey Felstead, Janet Skinner and Seema Misra, my  
 23 former clients, had to wait a combined total of  
 24 44 years for their convictions to be quashed. Is that  
 25 period excessive and unreasonable? It plainly is. It

1 follows that their Article 6 rights that are  
 2 guaranteed by the state have been violated.  
 3 Given that these rights are rights that are  
 4 guaranteed and that have been violated, is it not time  
 5 that this is both acknowledged and, more importantly,  
 6 explained? *Dyer* is authority for the proposition that  
 7 the State is to explain the delay. Tracy Felstead,  
 8 Janet Skinner and Seema Misra, by law, are entitled to  
 9 that acknowledgement and an explanation.  
 10 In principle, the Court of Appeal should have  
 11 addressed this issue. What I have referred to just  
 12 now was cited in my written submissions for the court  
 13 filed in December 2020. It seems that the Court of  
 14 Appeal may not have allocated sufficient time to deal  
 15 with this and it seems to have been concerned to  
 16 restrict the scope of its judgment.  
 17 As to the question of why the appeals took so  
 18 long to be heard and the convictions quashed (that is  
 19 to say the unreasonable delay, inordinate and  
 20 unreasonable delay), I believe the reason is very  
 21 simple. Delay is attributable to the Post Office's  
 22 strategy of what can be called aggressive delay. It  
 23 had two elements: the first was denial that there was  
 24 a problem with Horizon; the second was denial to those  
 25 the Post Office had prosecuted, or otherwise made

1 claims against, of material that might have enabled an  
 2 appeal long before 2021.  
 3 If you want an example of aggressive denial,  
 4 there perhaps is no better illustration of that than  
 5 the Post Office's response to the request for  
 6 disclosure of the Known Error Log in the Horizon  
 7 Issues trial, which Mr Justice Fraser treats at some  
 8 length. He notes that in correspondence the  
 9 Post Office's solicitors initially denied the  
 10 possibility of the existence of the Known Error Log.  
 11 When it was found to exist, it was described as being  
 12 irrelevant, in quotes, "a red herring", and when that  
 13 failed and it was found to be likely to be relevant,  
 14 the Post Office's position was that it was not in  
 15 their possession and power to disclose, it was  
 16 Fujitsu's. Mr Justice Fraser of course pointed out  
 17 that Post Office was contractually entitled to it.  
 18 But one has to say that that position and what became  
 19 the Horizon Issues trial, the fundamental and most  
 20 important sequence of documents founding Mr Justice  
 21 Fraser's judgment was, it's fair to say,  
 22 extraordinary.  
 23 The last thing I would say --  
 24 **SIR WYN WILLIAMS:** Mr Marshall, can I say that you  
 25 reasonably exceeded the 20 minutes allowed to you, so

1 would you just take five minutes to deal with the last  
 2 point, please.  
 3 **MR MARSHALL:** I will try and deal with it in less time  
 4 than that, and I am sorry for overrunning.  
 5 I wanted to pay tribute to my clients and their  
 6 fortitude and resilience. You've probably heard  
 7 already about the human impact of what happened. This  
 8 is not really ultimately about a failure of a computer  
 9 system, the Horizon computer system, it is the  
 10 consequence of prosecutions and civil claims brought  
 11 against people who were innocent of wrongdoing or,  
 12 indeed, breach of contract.  
 13 Seema Misra was convicted of theft at the age of  
 14 19 in 2002. Her conviction was quashed in 2021.  
 15 Immediately before the Court of Appeal hearing in  
 16 November, she suffered a complete neurological  
 17 collapse and was admitted to hospital with a suspected  
 18 stroke. In fact, it was the cumulative consequence of  
 19 20 years of anxiety and depression.  
 20 Janet Skinner was convicted in 2007 of theft.  
 21 She had pleaded guilty to false accounting in the  
 22 assurance, or expectation at least, that she would be  
 23 spared a custodial sentence. She was not. A year  
 24 after she was -- I think a year after she was released  
 25 from prison, she was subject to a further demand from

1 the Post Office for £11,000. She was again arraigned  
 2 before the court. She, in fact, was exonerated on  
 3 that occasion, but she suffered a complete  
 4 physiological collapse, was admitted to hospital with  
 5 apparent paralysis. She was in hospital for several  
 6 months.  
 7 When I spoke to her about 18 months ago, I could  
 8 hear a child playing in the background and she told me  
 9 that it was her grandchild. I asked her whether she  
 10 was playing with her grandchild. She said no, because  
 11 her mobility still remained so severely impaired.  
 12 Seema Misra, as is well known, was prosecuted  
 13 and convicted and sentenced to 15 months' imprisonment  
 14 when eight weeks pregnant in 2010. It was her son's  
 15 10th birthday on [redacted]. He's about to be 21.  
 16 She has for the first time in ten years been able to  
 17 celebrate Diwali last week without the burden of  
 18 a conviction for theft.  
 19 I could go on. I'll just mention Mr Lee  
 20 Castleton. He was subject to a civil claim of  
 21 £26,000. The claim against him was upheld. The  
 22 Post Office claimed costs of £321,000 against him. He  
 23 was bankrupted. He still has a trustee. The  
 24 consequences on him and his family of that experience  
 25 were devastating. He was reduced to penury. More

1 importantly, his daughter suffered a very, very  
 2 serious nervous illness from which she hasn't  
 3 recovered.  
 4 Thank you.  
 5 **SIR WYN WILLIAMS:** Thank you, Mr Marshall. Then I think  
 6 that does bring to an end the oral submissions. Thank  
 7 you all very much for attending. I have reflected  
 8 upon what has been said about the issue of legal  
 9 professional privilege and in the course of the next  
 10 day or so, I will publish a written statement in which  
 11 I set out what steps may need to be taken in the  
 12 absence of agreement in order to determine it.  
 13 I also say now that if I consider it to be  
 14 necessary, I will hold a further preliminary hearing.  
 15 I will consider it necessary if in my opinion there  
 16 are properly arguable issues which would benefit from  
 17 an oral hearing. That oral hearing will take place on  
 18 a date or dates between 6 December and 17 December so  
 19 all those who are likely to be involved in any such  
 20 oral hearing should bear that very much in mind as  
 21 happened with this hearing, we will try to accommodate  
 22 the people who wish to be here but obviously there are  
 23 many potential parties and inevitably those dates may  
 24 be more difficult for some than others.  
 25 But it is crucial, in my opinion, as I said at

1 the start, that this issue is determined one way or  
 2 the other this year and therefore we have to proceed  
 3 with that timetable.  
 4 So thank you very much and I have no doubt that  
 5 I will see many of you very frequently over the course  
 6 of the next year.

7 (1.21 pm)

(The hearing adjourned)

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