

The Post Office Horizon IT Inquiry

13 October 2022

1 Thursday, 13 October 2022

2 (10.00 am)

3 **MR STEIN:** Sir, good morning. We are about to start the
4 day's proceedings, are you receiving us loud and clear?5 **SIR WYN WILLIAMS:** I am receiving you but not exactly loud
6 and clear, Mr Stein. Could you go a little near your
7 microphone?8 **MR STEIN:** I can. Sir, if I may begin.9 **SIR WYN WILLIAMS:** Of course. Can I say that if at any
10 appropriate moment during your submissions you wish to
11 take a break, please do so.12 **Opening statement by MR STEIN**13 **MR STEIN:** Thank you, sir.14 Sir, as we know, the actions of the Post Office,
15 Fujitsu, and the Department of Business, has brought
16 shame and disgrace into the long and previously
17 respectable history of the Post Office. It seems that
18 people within the Post Office did everything possible to
19 protect the reputation of the Post Office and, whilst
20 doing so, did everything possible to destroy the
21 reputation of their own staff.22 The Post Office broke people. They broke good,
23 honest, people. Some did not survive.24 It's almost impossible to believe that here we are,
25 in a public inquiry, speaking about the Post Office, the

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1 was finally exposed in 2019 in the High Court
2 litigation. That was only as a result of our clients
3 taking a stand against what was then described as the
4 nation's most trusted brand.5 Not only did this scandal last for a generation it
6 touched all four corners of the United Kingdom. In
7 Northern Ireland, Deirdre Connolly was a subpostmistress
8 from the town of Strabane in that part of Ireland just
9 south of Londonderry, on the banks of the River Foyle.
10 She said it was her "forever job".11 In 2009, the Post Office area manager asked her if
12 she would take on two outreach offices in rural
13 communities. The people who had been running these
14 outreach post offices were too afraid to continue due to
15 the threat of so-called "tiger" kidnappings, and that's
16 where paramilitaries kidnap the family member of
17 a subpostmaster to compel them to hand over Post Office
18 money.19 Despite that risk, Deirdre agreed to take on these
20 rural post offices. She experienced shortfalls in the
21 Horizon system. She was interviewed under caution by
22 the Post Office and, during that interview, she was
23 accused by the Post Office interrogators of giving money
24 to paramilitaries.

25 Deirdre says that "The allegation about giving money

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1 staple of the community, the focus of where people live
2 near their homes. It's like finding out your
3 grandmother's a criminal.4 Now whilst, of course, this Inquiry will be looking
5 at the Horizon computer system, it's procurement, it's
6 failures and faults, in truth, this Inquiry is about
7 human decisions, human fault and human culpability.8 Chair, last week we sent our written opening
9 submissions to the Inquiry.10 I don't propose to repeat the detail which we
11 already set out before you in some 65 pages.12 Our clients gave evidence before you in the human
13 impact hearings earlier this year. Those who felt
14 unable to relive their traumatic experiences through
15 giving live evidence had key passages read from their
16 statement read into the record by Mr Enright and myself.17 The human impact evidence which the Inquiry has
18 received has been powerful and moving and we wish to
19 acknowledge the bravery of those who have relived their
20 experiences through the preparation of witness
21 statements and, in many cases, telling you in person
22 about what has happened to them and their families.23 It is clear from the Phase 1 evidence that this was
24 a scandal which went on for 20 years. It started with
25 the rollout of Horizon in 1999 and continued until it

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1 to paramilitaries terrified us. We felt like we had to
2 pay the Post Office or risk death".3 In Scotland, Chris Dawson was a subpostmaster of
4 Pitlochry sub post office, that's just south of the
5 Cairngorms National Park. Post Office auditors accused
6 him of a shortfall of £17,500. Post Office bully boys
7 interviewed him under caution in his own living room
8 whilst his wife and child were cowering upstairs.9 He was suspended without pay for six months before
10 being forced to resign. Chris says:11 "I lost my livelihood, my business, my marriage, my
12 home and my reputation. I was a young man of 36 when
13 this happened, I had my whole life ahead of me. I was
14 ambitious, I was driven, and all this was taken from me
15 through no fault of my own."16 Mr Dawson's mother went into hospital on the day he
17 gave his human impact statement but passed away before
18 she could see his evidence before you and this Inquiry.19 In England, Sue Palmer was the post mistress of the
20 Grange Post Office in Rayleigh, Essex. She was
21 prosecuted by the Post Office for theft and fraud. She
22 fought the charges and, after a three-day trial, she was
23 acquitted. Despite this, she lost her position, her
24 business and her home and her plight continues.

25 Sir, in your update report of 15 August, you

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1 recommended that subpostmasters, mistresses and
2 managers -- and I will use the same term my learned
3 friend, Mr Beer, did to describe everybody, whether
4 they're a postmaster or mistress or manager, as
5 a "subpostmaster". On 15 August, you recommended that
6 subpostmasters, such as Ms Palmer, who were prosecuted
7 and acquitted, be provided with an enhanced interim
8 compensation payment.

9 Sir, as you will know from our correspondence, thus
10 far, Ms Palmer has received nothing and, thus far, the
11 Department of Business has refused to confirm it will
12 give effect to your recommendation.

13 In Wales, Pamela Lock operated a post office in
14 Swansea for 26 years without incident, before the
15 introduction of the Horizon IT System. Within
16 six months of the introduction of Horizon, she was
17 accused of theft and fraud of £31,000. She was
18 convicted within a year. Her face and name were
19 plastered across the front page of the South Wales
20 Evening News. She waited 20 years to have her good name
21 vindicated finally in the Court of Appeal.

22 These are not historic cases. The mental health
23 impacts on the victims of this scandal are ongoing.

24 Sir, as you're aware, last week my instructing
25 solicitors, Howe+Co, received a study which has been

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1 sent to this Inquiry, undertaken by Professor Richard
2 Moorhead and his team at Exeter University and you will
3 recall the submissions that Professor Moorhead made
4 before the Inquiry at the first hearing in November last
5 year.

6 The Exeter University team surveyed
7 101 subpostmasters and subpostmistresses and concluded
8 that victims of the Post Office scandal experienced
9 mental health illness symptoms at worryingly high
10 levels. That's against the general population. They
11 found that the majority of respondents, that's 67.3, met
12 the clinical cut-off for post-traumatic stress symptoms
13 and depressive symptoms, and also reported high levels
14 of post-traumatic negative cognitions. For example,
15 views such as "People can't be trusted" or "I have no
16 future".

17 What is particularly relevant is that the levels of
18 post-traumatic stress and depressive symptoms found in
19 subpostmasters are significantly higher than members of
20 the UK forces personnel, at 4.8 per cent and
21 3.7 per cent for PTSD and major depressive order
22 respectively.

23 The corresponding figures for frontline workers in
24 the UK during the Covid pandemic are 2 per cent and
25 27 per cent. This shows that the damage that Post

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1 Office has inflicted on our clients is very substantial.

2 The Post Office, we suggest, must bear this in mind
3 when apologising personally and locally to each and
4 every one of their victims, which is something we say
5 they must do.

6 Let me turn briefly to the issue of compensation.

7 The issue of the severity of damage inflicted feeds
8 into the important issue of compensation for
9 subpostmasters. Perhaps, with this knowledge of
10 heightened mental health impacts on our clients, BEIS
11 and the Post Office will start to treat the
12 implementation of the GLO -- that's the High Court
13 compensation scheme -- with the urgency that the matter
14 clearly deserves.

15 Our clients, sir, firmly believe that it was through
16 the intervention of the Inquiry and pressure brought to
17 bear, that BEIS and the Post Office have finally
18 conceded that the litigants at the High Court were sold
19 short in a settlement process and should be properly and
20 fairly compensated.

21 We wish to place on record the gratitude of my
22 clients to the Inquiry for bringing this issue forward
23 and holding the hearings in July of this year. They are
24 also grateful to you, sir, for the announcement that the
25 Inquiry will sit again on 8 December this year to

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1 resolve some of the problems that BEIS appears to be
2 having in giving effect to the recommendations that you
3 made in August of this year in your update report on
4 compensation.

5 Keeping pressure on BEIS and the Post Office must be
6 done. I read from an email from Deirdre Connolly, dated
7 only a couple of days ago on 11 October, sent to
8 Mr Enright, my instructing solicitor at Howe+Co:

9 "Hi David. The last three weeks have been truly
10 heartbreaking and frustrating for myself and my family.
11 After finally hearing the Government telling us we're
12 getting a payment, albeit only an interim payment, we
13 saw a light at the end of the tunnel, a tunnel I've been
14 in for 12 years now. We had, as is natural, thought of
15 the difference this could make to our lives, especially
16 now when the cost of living is going through the roof.
17 To then be told completely out of the blue, not by the
18 Government but through the JFSA [that's Justice for
19 Subpostmasters Alliance] that because someone has now
20 12 years later deemed my case complex, I am now not
21 getting any interim payment.

22 "Then the Government told me that BEIS is in talks
23 with the Insolvency Department [the same thing, she
24 thinks] about getting my bankruptcy annulled. Having
25 been given a date of last Friday, 7 October, that I'd

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1 get an answer for my bankruptcy to be sorted, then
2 getting zero correspondence and another weekend of pure
3 anguish, to finally then be let down once more.

4 "This is just sapping my mental health. Again and
5 again, just when I think I'm getting out of this
6 nightmare it just draws me in deeper. I'm really at my
7 wits' end. I can't begin to tell you how much I need
8 this to be over."

9 We know, sir, that the issue of compensation is
10 going to be monitored carefully by the Inquiry, by you,
11 sir, and scrutinised as this Inquiry progresses and we
12 will endeavour to keep the Inquiry updated on the
13 further obstacles, unreasonable delays or obfuscation by
14 BEIS.

15 Nobody, as yet, has been held accountable. Aside
16 from the issue of compensation, our clients' greatest
17 wish is for the Inquiry to uncover who was responsible
18 for the abuse and suffering that was inflicted on them,
19 and to have them exposed and brought before the criminal
20 courts, where, with true irony, they will receive better
21 treatment than our clients ever did when they were
22 unfairly prosecuted.

23 It remains the case that, notwithstanding the
24 enormity of the scandal, not one individual within the
25 Post Office has been held accountable, responsible or

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1 otherwise censured. Our clients' lives and reputations
2 have been ruined by this scandal. They need to know
3 that those who are responsible for these tragedies will
4 be held to account for their actions. That is one of
5 the ways that this Public Inquiry will be able to afford
6 a degree of closure to them.

7 Let me turn to the High Court findings by
8 Mr Justice Fraser.

9 They are the starting point. The terms of reference
10 of this Inquiry state that the Inquiry will draw on the
11 findings made by Mr Justice Fraser from the *Bates and*
12 *Others v Post Office Limited* Group Litigation and, in
13 particular, no doubt we pay particular care and
14 attention to the judgment number 3, Common Issues and
15 judgment number 6, Horizon Issues. You will also be
16 considering, as we all will, the judgment of the Court
17 of Appeal Criminal Division in *Hamilton and Others*.

18 For example, the judgments of Mr Justice Fraser
19 refer to the Post Office and its continual efforts over
20 time to bury or avoid the truth. Briefly, I'll read
21 from judgment number 6, on 16 December 2019,
22 paragraphs 217, 218, 219.

23 These paragraphs relate to a subpostmaster who asked
24 for an issue, in fact not causing a loss, to be looked
25 at, believing it to be a Horizon flaw in July 2013:

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1 "The question was posed internally at the Post
2 Office. Given the current media and in particular the
3 BBC's attention on Horizon, do you think it's worthwhile
4 looking into this alleged flaw with Horizon that this
5 subpostmaster has highlighted to pre-empt any enquiries
6 from his MP?"

7 Paragraph 218, Mr Justice Fraser went on to say:

8 "The ultimate response from Andrew Winn of the Post
9 Office was that the claim could not be investigated
10 without further details and Fujitsu involvement, that
11 Mr Winn did not understand the purpose of the call by
12 the subpostmaster and also stated: 'My instinct is that
13 we have enough on without people asking us to look at
14 things'."

15 Paragraph 219, Mr Justice Fraser continued:

16 "Mrs van den Bogerd agreed in her evidence before
17 the High Court that this was an inadequate response.
18 She said it would have been very easy for Mr Winn to
19 have contacted the branch and obtain further details and
20 he should have done so."

21 Mr Justice Fraser commented as follows:

22 "In my judgment, the stance taken by the Post Office
23 at the time in 2013 demonstrates the most dreadful
24 complacency and total lack of interest in investigating
25 these serious issues, bordering on fearfulness of what

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1 might be found if they were properly investigated."

2 Mr Justice Fraser was there talking about events
3 that relate to the evidence of, and concerning matters
4 that touched, the Post Office and a subpostmaster in
5 2013. But that is not all.

6 In judgment number 3 on 15 March 2019,
7 Mr Justice Fraser confirmed the attitude of the Post
8 Office even at that time in 2019: paragraph 8. The
9 different claimants all had different experiences with
10 Horizon over different periods of time, however there is
11 at least one common theme: at the time, these accounting
12 shortfalls that came to the notice of the Post Office
13 were pursued, yes, as exactly that: shortfalls, with the
14 relevant claimants.

15 The Post Office's stance, both then and now, was and
16 is that the claimants were responsible for these
17 shortfalls and that the shortfalls represented actual
18 amounts of money missing from the claimants' accounting.

19 Mr Justice Fraser continued and said:

20 "An alternative way of putting what may amount to
21 the same point but using the approach of the pleadings,
22 is that the Post Office maintains it is for individual
23 subpostmasters to prove that the shortfalls were not
24 their individual responsibility and, failing proof of
25 that by an individual subpostmaster, then the shortfalls

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1 were their individual responsibility and the
2 subpostmaster in question would have to pay the relevant
3 sum to the Post Office and face the consequences."

4 We are not talking about historical examination of
5 evidence. As the litigation in the High Court only
6 couple of years ago tells us, the attitude of the Post
7 Office continued right the way through.

8 Now, the settlement in the Group Litigation
9 prevented Mr Justice Fraser from ultimately resolving
10 the degree to which either or both Fujitsu and the Post
11 Office expressly or constructively knew exactly where
12 and when. This Inquiry will be considering the
13 settlement in the later stages of its investigations and
14 looking at whether the Post Office and BEIS deliberately
15 and cynically used the prolonged litigation to break the
16 will of the 555 litigants and therefore empty the
17 pockets of their investigation funders in an effort to
18 limit the damage to the Post Office.

19 The findings of Mr Justice Fraser are vital to this
20 Inquiry.

21 It is important that the institutional Core
22 Participants understand that a line has been drawn. The
23 findings made by Mr Justice Fraser are detailed and
24 comprehensive. They have not been appealed and they
25 stand as a basis upon which this Inquiry was set up and

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1 on which it proceeds. Fujitsu and the Post Office must
2 understand that any attempt to seek to go behind the
3 judgments cannot be permitted.

4 Let me deal with some matters that relate to
5 witnesses to be called before this Inquiry.

6 We ask that the Inquiry calls evidence from those
7 who appeared before Mr Justice Fraser, including
8 Mr Godeseth of Fujitsu, Mr Henderson of Second Sight,
9 and Ms Angela van den Bogerd, who was the subject of
10 much criticism at the High Court.

11 There are a number of other potential witnesses for
12 this Inquiry who did not give evidence in the High Court
13 but who played a significant role in the scandal. Our
14 clients would wish to have questions put to Ms Vennells,
15 who must bear significant responsibility, we say, for
16 allowing the scandal to continue and for engaging in
17 what can only be described as a cover-up.

18 Our clients wish to hear evidence, oral evidence,
19 from Dr Gareth Jenkins, whose evidence played
20 a significant role in the prosecution of subpostmasters,
21 and whose absence from the list of witnesses called by
22 the Post Office was commented upon by the High Court
23 judge in the Horizon Issues judgment.

24 Sir, as you're aware, we have also asked that the
25 Inquiry hears evidence from Susan Crichton, Chris

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1 Aujard, in relation to the Mediation Scheme and, when
2 considering the issues in Phase 5 we consider that
3 Lord Arbuthnot will be well placed as a witness to
4 communicate the views of MPs at the time of that scheme,
5 as well as what they were being told. Sir Anthony
6 Hooper would also provide helpful evidence to the
7 Inquiry on such issues.

8 We also respectfully invite the Inquiry to consider
9 calling Ms Kay Linnell, the mainstay of the JFSA and who
10 has worked tirelessly behind the scenes on behalf of
11 subpostmasters, and we suggest that she would provide
12 useful evidence in regard to Phase 5.

13 From the point of view of the litigants we suggest
14 the Inquiry considers calling our clients Pamela Stubbs,
15 Elizabeth Stockdale and Louise Dar, all of whom gave
16 evidence as lead claimants in the Common Issues trial.
17 Their accounts and the evidence adduced in support of
18 those accounts were considered in much detail by
19 Mr Justice Fraser. We suggest that, in calling them,
20 the Inquiry will be able to build on the findings made
21 in that evidence with respect to the issues which the
22 Inquiry must deal with and address but which were
23 outside the remit of the matters considered by
24 Mr Justice Fraser.

25 Let me turn now to deal with three aspects of this

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1 scandal which are truly remarkable: the abuse of power;
2 criminalisation of subpostmasters; and the position
3 taken in the litigation.

4 Firstly, abuse of power: the abuse of power and
5 bullying behaviour employed by the Post Office with the
6 support of BEIS towards subpostmasters and many like
7 them. The Inquiry has heard in the Phase 1 hearings
8 that the Post Office deliberately set out to destroy
9 good reputations, I remind you of Peter Holmes, a hard
10 working and honest former policeman. They told -- given
11 by his wife, Marion Holmes; of course he died.

12 They told subpostmasters who had been selected by
13 the Post Office as people of good character that unless
14 they paid monies which the Post Office knew they were
15 not owed, they would be prosecuted and imprisoned.

16 You've also heard evidence in the human impact
17 hearings that Post Office auditors conducted raids of
18 branches in full view of customers and how the Post
19 Office spread rumours in the local press. There was the
20 divide and conquer strategy, this appears as
21 an overriding theme in the evidence from the human
22 impact hearings. This is where subpostmasters were
23 deliberately lied to and told that they were the only
24 ones experiencing problems with the Horizon System. We
25 say the divide and conquer strategy was key to the Post

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1 Office's campaign against subpostmasters, otherwise it
2 would have been necessary for the Post Office to justify
3 its actions on the outrageous basis that hundreds of
4 subpostmasters who were all persons of good character,
5 and had been selected by the Post Office on that basis,
6 had suddenly decided to turn to crime.

7 The criminalisation of subpostmasters. The second
8 remarkable aspect of this scandal is the use of the
9 criminal justice system by the Post Office to
10 criminalise hardworking people dedicated to serving
11 their local communities. I represented some of the many
12 appellants in the Court of Appeal whose convictions were
13 overturned. Those appeals arose, as you well know, sir,
14 as a result of a CCRC referral, following the findings
15 made by Mr Justice Fraser in the Group Litigation.

16 The judgment of the Court of Appeal is dated
17 23 April 2021, three of the appellants, including
18 Mr Holmes who I've just mentioned, did not live to see
19 the outcome of his appeal and died before their names
20 and reputations were cleared.

21 Chair, we know that you followed and indeed attended
22 that appeal. You will recall that the Post Office
23 conceded that it had failed to disclose to
24 subpostmasters the existence of 30 bugs, errors and
25 defects on the Horizon System and had inadequately

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1 bugs and errors encountered in the system were common.
2 Their evidence tells us that because those bugs and
3 errors were so prevalent, the subpostmasters had to
4 routinely cope with them by adding their own money to
5 make the system balance. You will recall the evidence
6 that this meant that many had to borrow money from
7 friends, family or loan sharks.

8 The evidence from our clients also tells us that the
9 helpline was useless, often knowing less than the
10 subpostmasters. Our clients were told that the Horizon
11 System was fine and, if there was missing money, it was
12 their fault and their responsibility to make up for the
13 loss and make it balance.

14 Subpostmasters, who had worked at their branches
15 before the installation of the Horizon System, said that
16 these errors and balancing issues did not happen before
17 Horizon.

18 So where were all these errors and bugs coming from?
19 What within the Horizon System was going wrong? The
20 High Court never had the chance to establish all of the
21 bugs and didn't hear from all of the witnesses as the
22 matter never went to a final resolution. But our
23 clients have given evidence before you and they provided
24 solid evidence of multiple bugs and errors. Is it
25 really the case that Fujitsu are saying they weren't

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1 investigated its own data.

2 Post Office conceded that convictions were unsafe
3 because the trial process had been unfair.
4 Significantly, the matter did not end there. The Court
5 of Appeal also found that the evidence, together with
6 Mr Justice Fraser's findings, showed that it was
7 an affront to the public conscience for the appellants
8 to face prosecution. This category of abuse of process
9 forms an exceptional class of case and findings of this
10 highly serious type of abuse are so rare as to make
11 hens' teeth near commonplace in comparison.

12 So it is absolutely right to say that the
13 convictions of subpostmasters and many others, such as
14 Mr Holmes, Mr Darlington, Ms Lock, Ms White, so many
15 others, are part of the worst miscarriage of justice in
16 British legal history.

17 Sir, as you know, I have some experience working in
18 public inquiries. There's a tendency, I suggest, with
19 public inquiries, to sympathise with accounts given by
20 victims, to feel very sorry for what has happened to
21 them and what has been brought to their door. That
22 sympathy, on occasions, can sometimes cloud the
23 consideration of their evidence. We need to remember
24 the evidence from our clients tells us collectively and
25 over the time of the Horizon System's operation that

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1 aware of it and that they truly did not know about them?
2 Did they get worse after the Horizon System was in
3 operation for some time?

4 It seems possible that part of the answer to these
5 questions might be that the postmasters did report them
6 but not all of them because the helpdesk was designed to
7 put them off and told them it was their fault and they
8 must pay up. Once you're told that repeatedly, imagine
9 the effect.

10 Other questions arise from our clients' evidence in
11 the earlier phase's hearings. Why would some
12 subpostmasters have big errors and some have small
13 errors? Well, the Horizon System doesn't make
14 decisions. It doesn't decide to make the error high for
15 one person and not another. It's a machine. For some,
16 sometimes the error will be small enough but would mount
17 up into thousands and, for other subpostmasters, the
18 error would be thousands in one time.

19 Let me now turn to the Simon Clarke Advices and I'll
20 also be mentioning the advices and reviews conducted by
21 Mr Altman, King's Counsel.

22 As a result of the Simon Clarke Advice or Advices,
23 the Post Office did stop prosecuting and, because there
24 was then no police involvement and no CPS oversight,
25 there was no formal investigation, in that sense, into

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1 what happened next.
2 Now, this is part of the effect of what happens when
3 the Post Office is its own prosecutor. The Post Office
4 prosecutors, the Post Office experts, had been aware
5 that subpostmasters said the system was in error. I am
6 going to take you, sir, to some quotes from the Simon
7 Clarke Advice of 15 July and hopefully we can have it on
8 our screen, POL00006798 at page 2, paragraphs a to d.

9 Mr Clarke in this advice on 15 July set out -- this
10 is his description of the generality of what was being
11 encountered by the Post Office prosecutors, by the Post
12 Office expert witnesses, working at Fujitsu. What he
13 said was this:

14 "The defendant will raise issues attacking Horizon,
15 suggesting in general and often ill-defined terms" --

16 Sir, do you have this on the screen?

17 **THE CHAIRMAN:** Yes, I do. Sorry about the delay but I keep
18 myself mute in case there's some background noise. But,
19 yes, I do.

20 **MR STEIN:** I'm grateful. Mr Clarke described what was known
21 by the prosecution, by Fujitsu and the Post Office.
22 He's talking about what has happened in the currency of
23 previous prosecutions and what has been raised in the
24 past. This is set out on that page at paragraphs
25 a to d:

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1 issue when trying to balance, that postmasters,
2 postmistresses and managers could not explain. The
3 issue -- so very well described by my learned friend
4 Mr Beer, King's Counsel, yesterday -- of training is
5 writ large upon this matter as well: the inadequacy of
6 training, the inadequacy of the helpline.

7 Although Dr Jenkins, and others, was in a position
8 to consider what so many of the people who were being
9 prosecuted were saying, fatally, he was Fujitsu to the
10 core. He was not even remotely an independent expert
11 witness. Again, from the Simon Clarke Advice from
12 15 July, so same reference, please, ending in 6798,
13 page 14, paragraph 14.

14 I can't see on my page, is that page 14,
15 paragraph 14? I'll read the quote instead, sir.

16 Mr Clarke set it out this way:

17 "For many years, both RMG and latterly the Post
18 Office has relied upon Dr Gareth Jenkins for the
19 provision of expert evidence as to the operation and
20 integrity of Horizon. Dr Jenkins describes himself as
21 an employee of Fujitsu Services Limited and its
22 predecessor company, ICL, since 1973. He holds a number
23 of distinguished qualifications in relevant areas. He
24 has worked on the Horizon project since 1996. He is
25 accordingly a leading expert on the operation and

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1 "The defendant will raise issues attacking Horizon,
2 suggesting in general and often ill-defined terms that
3 the shortfalls giving rise to prosecution are
4 inexplicable and thus must rest with Horizon. Here the
5 defendant does not specify the Horizon failing, he or
6 she merely asserts that because they did as they should,
7 the system itself must be at fault;

8 "b. An express assertion that Horizon has failed in
9 some way;

10 "c. In admitting Fraud or False Accounting (but NOT
11 theft), that either a or b above is true, their
12 culpability being limited to the covering-up of
13 otherwise inexplicable losses rather than revealing what
14 is a genuine (on their account) problem to [the Post
15 Office]. Here the issue is that of sentence, Judges
16 being required to consider the quantum of losses when
17 determining the appropriate punishment.

18 "d. In all three of the scenarios noted above,
19 a defendant often complains of a lack of training on
20 Horizon and/or inadequate customer support."

21 The Post Office, the Post Office prosecution team,
22 Fujitsu, Fujitsu's experts, all had consistently, from
23 people that were being prosecuted, the ingredients of
24 things that were going wrong, inexplicable losses from
25 a Horizon system that was riven with bugs, that caused

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1 integrity of Horizon."

2 Dr Jenkins is a true Fujitsu, Pathway, Horizon
3 insider, not even remotely independent.

4 Sir, you heard from my learned friend, Mr Beer,
5 yesterday in reference to two points that he detailed
6 and indeed showed on the screen. I'll give you the
7 reference but read you the quotes. The same advice from
8 Mr Clarke, ending with the number 6798, page 13,
9 paragraph 38, and I'll only read the top two bullet
10 points.

11 Mr Clarke set out the fact that Dr Jenkins failed to
12 disclose material known to him but which undermines his
13 expert opinion. This failure is in plain breach of his
14 duty as an expert witness. "Accordingly", Mr Clarke
15 went on to say:
16 "Accordingly, Dr Jenkins's credibility as an expert
17 witness is fatally undermined. He should not be asked
18 to provide expert evidence in any current or future
19 prosecution."

20 But, sir, as you are aware, this is not all that has
21 been written about the position left after the Post
22 Office had been made aware by Mr Clarke about the
23 serious issues concerning Dr Jenkins. Mr Altman, King's
24 Counsel, advised the Post Office from 2013 and he also
25 represented the Post Office in the Court of Appeal as

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1 regards the criminal appeals.
2 Now, he set out his conclusions in the review dated
3 31 October 2013. I'll read the reference and ask for it
4 to go on the screen please. It's POL00006358, page 39,
5 paragraphs 105 and 106. I'm grateful.
6 Just as a reminder, this is October 2013, Mr Altman,
7 King's Counsel:
8 "It may be thought that POL's prosecution role is
9 anachronistic, and highly problematic in light of recent
10 events. Its prosecution role today is certainly based
11 upon the historical protection afforded to the mail,
12 which I assume was itself founded upon the historical
13 importance of protecting an important means of
14 communication and commerce. The role today is couched
15 in terms of guardianship, and the protection of assets,
16 integrity and reputation."
17 We may want to remember those words:
18 "However, the recent events have to be seen in their
19 proper context. The serial non-disclosure of relevant
20 material occurred in circumstances in which POL asserts
21 that it and its advisers were wholly unaware that there
22 might be disclosable material or information, and so,
23 whatever the reason, were not placed in a position
24 whereby they knew of its existence and could deal with
25 it appropriately."

25

1 Office, who haven't set out their position on such
2 matters.
3 What we do know is that the Fujitsu experts and
4 staff members were uniquely placed to consider and
5 investigate what was wrong with the system. The Post
6 Office investigators, the Post Office prosecutors, they
7 also knew, and the Post Office knew, from repeated
8 information from the subpostmasters, that the system did
9 not work properly but no one listened.
10 The subpostmasters were saying, the people who were
11 prosecuted were saying, "This system is buggy, we can't
12 explain it". This a cohort of people saying that they
13 don't know what's going on, that there's a problem with
14 the Horizon System; no one listened.
15 For years and years after Mr Clarke and Mr Altman,
16 King's Counsel, had set out their views about Mr Jenkins
17 and bugs within the system, the Post Office preferred to
18 pretend that the Horizon System was fine and fought the
19 High Court case on that basis.
20 That's despite the advice from Mr Clarke, underlined
21 by Mr Altman, King's Counsel, that Dr Jenkins's
22 evidence, Dr Jenkins's credibility as an expert witness,
23 is fatally undermined, and, as Mr Clarke went on to say,
24 he, Dr Jenkins:
25 "... should not be asked to provide expert evidence

27

1 2013, Mr Clarke and Mr Altman, King's Counsel, were
2 warning about the dangers of any possible reliance upon
3 Dr Jenkins. They were making sure that the Post Office
4 understood the nature of this calamity.
5 What should the Post Office have been done at this
6 stage? What should have been the advice to the Post
7 Office at this particular point? Do any of us think
8 that the answer from the Post Office at this stage is to
9 carry on denying that there is anything wrong with the
10 Horizon System, as they did at the High Court? Or
11 should the Post Office have done what anyone else should
12 have done, let alone a respected, public institution,
13 which is called the police?
14 We also wonder whether the paragraph, paragraph 106,
15 where Mr Altman is setting out, no doubt from his
16 instructions, that serial non-disclosure of relevant
17 material occurred in circumstances in which the Post
18 Office asserts that it and its advisers were wholly
19 unaware that there was disclosable information. Does
20 that set up what we are going to hear through this
21 Inquiry: the Post Office casting blame upon Fujitsu and
22 no doubt an internecine war backwards from Fujitsu to
23 the Post Office saying "Yes, they did, they knew all
24 about it, it was their decisions?" Well, we are not
25 helped by the written submissions made by the Post

26

1 in any current or future prosecution."
2 Well, that's pretty clear, isn't it? That should
3 put paid to any input that Dr Jenkins should have in any
4 proceedings in the future. But no. The Post Office
5 chose to use his evidence as a source of evidence before
6 the High Court. Let's just pause to remind ourselves.
7 Mr Justice Fraser was not in a position to know,
8 understand, think about, take into account, what was
9 being said by Mr Clarke or indeed Mr Altman. That was
10 not before him.
11 Judgment number 6, paragraph 509, the judgment of
12 Mr Justice Fraser:
13 "When the Post Office served its evidence of fact
14 there was no witness statement from Mr Jenkins, although
15 many of their witnesses relied upon him as their source
16 of information. He was referred to very often, and he
17 obviously knew a great deal about Horizon."
18 It is clear, we suggest, Mr Clarke and Mr Altman,
19 must be called before this Inquiry. We need to hear
20 from them what they were told, what instructions they
21 had, what material they were provided with over the time
22 of their involvement with the Post Office and their
23 reviews and advices as regards evidence. We need to
24 know why it was, at the Court of Criminal Appeals, there
25 had been disclosure of the Clarke Advices but, as far as

28

1 we are aware at that stage, not disclosure of the
2 reviews or advice from Mr Altman, King's Counsel, who of
3 course was prosecuting or responding on behalf of the
4 Post Office at the Criminal Court of Appeals.

5 So what does this mean? Well, no one, not Second
6 Sight, not Mr Justice Fraser, no police investigation,
7 no one before this Inquiry has ever heard of the extent
8 of the complaints about the Horizon System that you have
9 heard. Fujitsu: did they want to know? Did they want
10 to listen? Has this been in part the effect of the
11 PFI -- the private financial initiative model -- putting
12 all design, installation and running of the system upon
13 Fujitsu, also upon Fujitsu to bare any costs arising?

14 For the Post Office, is this all about the fact that
15 it cared about only one thing, which is protecting its
16 own image? The effect during the time of the worst
17 parts of the Horizon System's operation was not only
18 were people prosecuted through the criminal and civil
19 courts but that the bugs were allowed to continue,
20 unresolved, leading to more and more subpostmasters
21 being put through the same wash cycle time and time and
22 time again.

23 We also need to know and we need to discover, not
24 just that people within the Post Office deliberately
25 concealed the truth from their own staff and the courts

29

1 should have led to a thorough nook and cranny search
2 through every box and every available amount of
3 information that could possibly bear upon these issues.

4 That is why the reaction from our clients to the
5 failures in disclosure that have been discussed earlier
6 this week does not surprise a single subpostmaster. But
7 it requires analysis and the obtaining of all of the
8 missing material because it has the capacity to show
9 that the Post Office is simply continuing on with its
10 contemptuous behaviour. In other words, we ask this
11 Inquiry to consider these failures and recent failures
12 in disclosure not only to find out and establish what
13 the material is, but to consider evidentially what it
14 tells us about the Post Office in 2022.

15 Touching upon one matter that appears in the opening
16 statement on behalf of the Post Office, and I'll read
17 its Relativity reference, SUBS0000005, I don't ask for
18 this to go on the screen. Reference is made in this
19 document on behalf of the Post Office, dated 4 October,
20 paragraphs 11 and 12:

21 "In addition to action points relating to
22 allegations against specific individuals, POL has
23 carried out, or is in the process of carrying out,
24 internal investigations and reviews of contemporaneous
25 documents to verify other broader points raised by Human

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1 for many years but what did BEIS know about this, what
2 did UKGI know about their investment in the Post Office
3 and how it was operating? What were ministers told,
4 what were the MPs told? What information was being
5 released?

6 Yesterday we heard from Mr Beer, King's Counsel, in
7 reference to various points of advice being given from
8 eminent jurists, Lord Neuberger was mentioned.

9 Perhaps the Post Office needs to learn, as so many
10 people do in the police station, that advice is only
11 advice. If you know what you're doing is hurting
12 people, the people that trust you, that think that you
13 might be there to look after them, if you know that
14 that's what you're doing, you think very carefully about
15 taking legal advice. You may think, therefore, sir,
16 that it is incredible important to know what the lawyers
17 were told, what information they had on which they could
18 base their advice and, if they got it wrong, then they
19 need to come to this Inquiry and accept that fault also
20 lies at their door.

21 So, of course, you'll have appreciated earlier this
22 week, we do take exception on behalf of our clients to
23 the fact that the Post Office has yet again, we suggest,
24 been seeking to keep back evidence, that they must have
25 appreciated, since the very first Clarke Advice, that

30

1 Impact witnesses. These include, for example, alleged
2 conduct by Fujitsu.

3 "POL anticipates that the outcome of a number of
4 these investigations will be relevant to forthcoming
5 phases of the Inquiry and it will, of course, be
6 disclosing all relevant information and outcomes in that
7 context."

8 Sir, the Post Office is saying that it is genuinely
9 going to investigate and be carrying on investigation
10 alongside this Inquiry. We respectfully ask this
11 Inquiry to ensure that it maintains a careful overview
12 of what is going on with the Post Office's
13 investigations. We respectfully ask this Inquiry to
14 establish what investigations are currently ongoing,
15 against whom, about what and when will be the delivery
16 time.

17 We ask, sir, that you take this step because we can
18 see, we respectfully submit, what is going to happen
19 otherwise. Witnesses may be called that are subject to
20 investigations that we don't know about, reports or
21 investigations information provided late and too late
22 for this Inquiry to see such material and consider it
23 properly.

24 Sir, as you know and as I've already said,
25 Dr Jenkins and other members of his team at Fujitsu

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1 should be called, statements taken from counsel,
2 solicitors who acted in the High Court matter, as well
3 as Mr Altman, who gave advice and reported internally to
4 the Post Office.

5 We probably don't need to underline this point any
6 more but let's just turn, for a moment, to paragraph 512
7 of the Horizon Issues Judgment. It's always worthwhile
8 remembering the dates of these judgments. This is not
9 long ago. Mr Justice Fraser said this -- this about the
10 failure to call Dr Jenkins, paragraph 512:

11 "This explanation by the Post Office included the
12 following passages in its written submissions [internal
13 references, page 144, the claimants]. The claimants
14 understandably complained that Mr Jenkins and the other
15 source of Mr Godeseth's information could have given
16 some of this evidence firsthand. However [and refers to
17 a paragraph 114.1], taking into account that
18 Mr McLachlan's evidence specifically addressed things
19 said or done by Mr Jenkins in relation to the Misra
20 trial, Post Office was concerned that the Horizon Issues
21 trial could become an investigation of his role in this
22 and other criminal cases."

23 What was being put forward by the Post Office was
24 an excuse as to the reasons why Dr Jenkins was not
25 called in the High Court case. They were not saying

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1 phantom sales which emerged as early as 2000 and which
2 Royal Mail engineers had tried to rectify. Yet the Post
3 Office, apparently unquestionably, accepted Fujitsu's
4 views there was no fault in Horizon and the explanation
5 lay in operator error.

6 Mr Justice Fraser also found that there had been
7 problems with Horizon from the outset and that there
8 were 22 bugs which had caused lasting impact, in
9 particular the RPM bugs, receipts and payments mismatch
10 bug was the subject of a 2010 note produced from a
11 meeting attended by both Fujitsu and the Post Office, in
12 which it was accepted that it could potentially
13 highlight to branches that Horizon can lose data.

14 Mr Justice Fraser went on to say this:

15 "In reference to the material in that note, the
16 identified risk was that there were huge moral
17 implications to the integrity of the system, as there
18 are agents that were potentially due a cash gain on
19 their system."

20 That's from the Horizon Issues judgment at
21 paragraph 49; "huge moral implications to the integrity
22 of the business", 2010.

23 It is absolutely clear that the Post Office was
24 aware of the failings in the Horizon System and
25 approached the civil litigation in the same matter as it

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1 that they had every good reason to distrust him. They
2 are not saying that they believe his credibility is
3 damaged and dented by revelations made to Mr Clarke.
4 They are not saying that Mr Altman has advised that
5 there are real issues with Dr Jenkins, his credibility
6 and the POL investigation team. That's 2019.

7 What instructions were given to which lawyers, to
8 which parts of the counsel team, so that these matters
9 were put forward? It seems entirely possible that
10 individuals within the Post Office conspired to pervert
11 the course of justice by giving factually incorrect
12 instructions to their lawyers. This is an extremely
13 serious issue which the Inquiry should consider.

14 The position taken in the Group Litigation.

15 The third aspect of this scandal which sets it apart
16 from all others is the conduct of the Post Office in
17 the Group Litigation. Mr Justice Fraser described the
18 litigation as "bitterly contested". Throughout the
19 litigation, Post Office maintained that the Horizon
20 System was robust and that none of the 555 claimants had
21 experienced shortfalls or discrepancies in their
22 accounts as a consequence of Horizon.

23 However, the findings in the Horizon Issues judgment
24 show that the Post Office's position before the court
25 was untenable. For example, there were reports of

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1 approached complaints by subpostmasters concerning
2 Horizon, with the primary objective of defending a lie.

3 The conduct of the Post Office is all the more
4 reprehensible because these were the actions of
5 a publicly owned body using public money to defend the
6 indefensible and maintained that it was entitled to
7 inflict the most appalling harm to innocent hard working
8 subpostmasters and their families. So why was the Post
9 Office so fixated on maintaining the lie in the Group
10 Litigation and denying entirely justified claims for
11 compensation?

12 Who within the Post Office has made the decision to
13 spend, reportedly, over 70 million, a figure we draw
14 from the Post Office annual and consolidated financial
15 statements of 2020/21, that money being used to fight
16 the High Court litigants with so much energy?

17 **SIR WYN WILLIAMS:** Sorry, Mr Stein in the written
18 submissions, which I have before me, I think you use
19 a figure of 20 million.

20 **MR STEIN:** We did, sir. We have looked at this and we
21 checked it and this is why we went to the Post Office
22 annual reporting consolidated financial statements. In
23 fact, I'm grateful for you drawing our attention to that
24 again because we would like to correct that to that
25 figure.

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1 **SIR WYN WILLIAMS:** That's fine. Thank you.
 2 **MR STEIN:** I'm grateful, sir, for you raising it.
 3 Who within the Post Office decided that it was
 4 a good idea to make an application to the Court of
 5 Appeal to recuse Mr Justice Fraser on grounds of
 6 apparent bias? Well, we heard something yesterday from
 7 Mr Beer about that: an application that Lord Justice
 8 Coulson described as "absurd". We will need to consider
 9 the circumstances of the advice from Lord Neuberger and
 10 what he had been told or not been told.
 11 Sir, we have made detailed representations in on the
 12 upcoming Phases 2 to 7 in our written submissions. Now
 13 clearly, at the moment, such detail as we would like to
 14 get to is limited, as this Inquiry is disclosing
 15 matters, to an extent, in phases and we cannot get yet
 16 to the extent of detail we would like. But what we do
 17 so, overall, is that subpostmasters' lives have been
 18 very badly affected, as you know, and the public are
 19 entitled to know who knew what and when.
 20 We note that under paragraphs 12 to 14 of the Post
 21 Office shareholder relationship framework, the Post
 22 Office were required to provide quarterly updates to
 23 BEIS's representative on any active litigation and any
 24 threatened or reasonably anticipated litigation. So
 25 BEIS should have been aware of these issues. Currently,

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1 **SIR WYN WILLIAMS:** Fine.
 2 **MR STEIN:** The Phase 2 evidence demonstrates that the
 3 Horizon project was blighted from the outset. It was
 4 over ambitious in terms of the technology available at
 5 the time and poorly thought out.
 6 A Parliamentary Select Committee found in 1999 that
 7 the project had effectively been a financial quagmire
 8 and, after the withdrawal from the Benefits Agency that
 9 year, regarding the restoration of the scheme, they said
 10 the impression was of an essentially political deal to
 11 ensure that ICL has a substantial contract with the Post
 12 Office at a price which seems to have been largely
 13 determined in advance of contractual negotiations or
 14 renegotiations, as a means, however, inadequate of
 15 making up some of the £180 million written off by ICL in
 16 their '98/'99 accounts. That's the House of Commons
 17 Trade and Industry 11th Report.
 18 You will listen with interest, we suspect, to the
 19 evidence of Mr Roberts and other witnesses. Mr Roberts
 20 was a CE, chief executive, of the Post Office. I'll
 21 give his statement reference and paragraph reference,
 22 but don't ask for it to go on the screen. WITN03390100,
 23 and the reference is at paragraph 17.
 24 He refers at that point to the fact that, in his
 25 view of what he could see, the Benefits Agency did not

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1 we note there are a number of directors who are still in
 2 place who were appointed well before the High Court
 3 action.
 4 Now, putting aside the question of whether the Post
 5 Office should still have directors in place who are
 6 party to decisions made within the High Court action,
 7 the Inquiry should discover what those directors had
 8 been told, what decisions were they party to and what
 9 did they know or not know?
 10 The past directors of the Post Office should be
 11 asked these and many other questions.
 12 Now, sir, I'm going to turn to some points we make
 13 regarding the individual phases. I note the time is
 14 11 o'clock. Sir, if we can have a short break now, I'll
 15 be very grateful.
 16 **SIR WYN WILLIAMS:** Yes, certainly. Is ten minutes enough,
 17 Mr Stein?
 18 **MR STEIN:** Yes, thank you, sir.
 19 **SIR WYN WILLIAMS:** All right then, 11.10, everyone. Thank
 20 you very much.
 21 **MR STEIN:** Grateful.
 22 (11.01 am)
 23 (A short break)
 24 (11.10 am)
 25 **MR STEIN:** Sir, if you're ready I'll restart.

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1 want Horizon and they instead wanted to move to ACT,
 2 Automated Credit Transfer, instead.
 3 What had happened to the position in relation to the
 4 negotiations to advance Horizon when, in fact, the
 5 Benefits Agency is said to have long wanted to move to
 6 a different type of system entirely?
 7 The Horizon scheme was never robust. It should have
 8 been abandoned after the Benefits Agency withdrew. It
 9 is, we suggest, no accident that a pared down system,
 10 with the financial burden resting upon Fujitsu Pathway,
 11 meant that the system was going to lose functionality.
 12 It is no accident that there was no dispute button or
 13 function for subpostmasters built into the Horizon
 14 System.
 15 What did the auditors, who were charged with
 16 investigating shortfalls in subpostmasters branches,
 17 often and too often doing so in a thuggish manner -- did
 18 they have anything near the requisite levels of
 19 technical knowledge to make informed decisions about the
 20 system?
 21 Mr Cipione, who is going to be the first witness in
 22 Phase 2, will no doubt confirm what he says in his
 23 report. I'll give the reference, I again don't ask it
 24 to go on the screen: EXPG0000001. Mr Cipione states in
 25 his report that there were conflicting intentions of the

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1 Post Office and Pathway and that led to disruptions at
2 management levels and that affected the implementation
3 of the Horizon IT System.

4 Importantly for our clients, Mr Cipione refers to
5 poor training and lack of support from the helpdesk as
6 self-inflicted wounds, that's at paragraph 1.1.9 at
7 page 5 of his report.

8 He says that recurrent balancing problems
9 experienced by subpostmasters directly degraded the
10 accounting integrity of the Horizon IT System,
11 paragraph 1.1.9, again at page 5.

12 We, of course, note that his report looks at issues
13 primarily up to the year 2000 but not beyond that year.
14 It's significant, therefore, to remind ourselves that
15 you have heard the evidence in statement form and
16 evidence lies before you of so many subpostmasters who
17 explained their experience with Horizon after the year
18 2000.

19 Sir, the problems manifested themselves from the
20 pilot scheme from the very outset. In summary, we
21 suggest that Horizon was always deeply flawed. It was
22 procured as the cheapest option to the Government within
23 the overly-ambitious Pathway programme.

24 After the withdrawal of the Benefits Agency and
25 after the scheme was left to limp onwards, it was rolled

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1 she should contact the helpline for any help or advice
2 on any issues experienced at the branch.

3 Let me turn to the helpline. The helpline was
4 unable to assist subpostmasters when they reported
5 shortfalls. Mr Abdulla, another lead claimant who gave
6 evidence in the common issues trial, gave evidence on
7 this point before that court, and said that he would
8 contact the helpline about six or seven times a month,
9 and was shocked at the inadequate support.

10 He would often experience shortfalls on the days
11 when he would perform balances but could rarely get
12 through to the helpline on these occasions. He thought
13 the advisers were ill-informed, and would often give the
14 impression of reading off a script. Even his area
15 manager could not help and he was told by his area
16 manager that he should just pay the shortfalls and wait
17 to see if a transaction correction was issued in his
18 favour.

19 You will be interested, sir, we respectfully
20 suggest, in the question of whether there was a script
21 for the helpline advisers. Did they have standard
22 answers? What did those answers contain? What was the
23 motivation behind them?

24 Those scripts if they exist, or directions or
25 guidance in whatever form should be considered, if they

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1 out to unsuspecting subpostmasters, after a number of
2 errors and defects had been identified in the pilot
3 period.

4 Quite simply, we say the evidence shows, as a whole,
5 that Horizon was not fit for purpose when it was rolled
6 out. You've heard the evidence from what happened from
7 the subpostmasters' perspective and the way that the
8 system worked thereafter.

9 Witnesses from Fujitsu may seek to maintain
10 otherwise but that position, in the words of Mr Justice
11 Fraser, would be the 21st century equivalent of
12 maintaining that the earth is flat.

13 In Phase 3, the Inquiry will consider the issue of
14 training. Sir, you have hearing very many accounts of
15 subpostmasters in the hearings to the effect that the
16 training that was given on Horizon was woeful.

17 One example arises from the Group Litigation.
18 Pamela Stubbs, whom we represent, gave evidence in the
19 High Court on the extent of training that she and her
20 assistants had received. She had one day of training in
21 a pub, about two weeks before Horizon was installed in
22 her branch. Her assistants each had half a day. The
23 training did include balancing for her but did not
24 include shortfalls or how to get to the root cause of
25 them or how they could be disputed. She was simply told

42

1 can be found, and evidence taken from helpline advisers
2 as to what it was that they would say and how they would
3 deal with matters, what training they had.

4 It emerged in the Common Issues trial that the only
5 way a subpostmaster could dispute a discrepancy was via
6 the helpline. Importantly, it came out in the Group
7 Litigation that if a subpostmaster decided to settle
8 centrally -- and sir, you will recall hearing about that
9 matter from Mr Beer yesterday -- if a subpostmaster
10 decided to settle centrally, the disputed sum was
11 treated by Post Office as a debt owed to Post Office by
12 the subpostmaster. It would then be subject to debt
13 recovery procedures.

14 So the only route to challenge Horizon was through
15 the helpline but the helpline did not offer advice in
16 a way that enabled dispute to be resolved. Elizabeth
17 Stockdale and Pam Stubbs gave evidence before Mr Justice
18 Fraser on the failure of the helpline to investigate
19 disputed shortfalls.

20 The procedure adopted by the helpline was simply to
21 do nothing, and Mr Justice Fraser said this at
22 paragraph 558 in the Common Issues judgment:

23 "It is therefore the case that on the evidence
24 before me the helpline did not operate for the lead
25 claimants in the manner that the Post Office contended

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1 for."

2 What was presented to the court by the Post Office,

3 in respect of disputes notified to the helpline, show

4 that, for the first part, initially the subpostmaster in

5 these individual cases was told they would have to pay

6 the shortfall. Even when persistent, all that would

7 happen is the sum would be settled centrally and, after

8 a period of weeks, the subpostmaster would be chased by

9 the Post Office for that sum as though it were a debt.

10 There is a pattern, we suggest, in the evidence that

11 shows that the helpline may have been deliberately

12 obstructive.

13 Now, Mr Cipione states in his report, that the

14 support system theoretically had three levels through

15 which help could be provided to a subpostmaster but the

16 evidence from the subpostmasters is that they only got

17 to the first level and they weren't aware, except in

18 very rare occasions, that there were other levels on

19 which matters could be pursued.

20 A stark feature of the human impact hearings was

21 evidence of the seemingly routine practice of telling

22 subpostmasters that they were the only ones who had

23 experienced shortfalls. This seems to have been

24 a centrally coordinated approach. Immediately after the

25 judgments had been handed down in the criminal appeals,

1 Our clients hope that there is some sort of

2 explanation to account for what appears to be a union

3 who is dancing to the employer's tune.

4 If I can turn to the knowledge and rectification of

5 errors in the system.

6 The Inquiry will consider the issue of knowledge and

7 rectification in relation to the errors in the system,

8 and this arose, of course, in the Group Litigation,

9 where the court considered a large number of PEAK

10 reports. Sir, as you know, PEAK reports, the previous

11 version of those were PiniCLs, and PEAK reports and

12 PiniCLs were then put into KELs, discussed by my learned

13 friend, Mr Beer, yesterday.

14 Now, these are reports within the system, within the

15 Horizon System, of technical and error issues.

16 The evidence in the Group Litigation demonstrated

17 that Fujitsu and the Post Office knew that

18 subpostmasters were not responsible for shortfalls.

19 Mr Justice Fraser noted number of unguarded comments

20 including from Anne Chambers, a Fujitsu employee, who in

21 February 2006 stated "This problem had been around for

22 years and affects a number of sites for most weeks.

23 This appears to be a genuine loss".

24 Our clients' position is that the Post Office and

25 Fujitsu knew the true position all along but had failed

1 I recall very well speaking to an appellant who, in

2 tears, was repeatedly saying, "I thought I was the only

3 one".

4 If I can turn to the position of the NFSP, the

5 National Federation of SubPostmasters.

6 Of course, another way that subpostmasters could

7 have challenged the alleged shortfalls and discrepancies

8 was through the support of their union. However, in

9 this case, perhaps uniquely, the union sided with the

10 employers rather than its own membership. At

11 paragraph 368, Mr Justice Fraser said:

12 "It is obvious in my judgment that the NFSP is not

13 remotely independent of the Post Office nor does it

14 appear to put its members' interests above its own

15 separate commercial interests."

16 This is an appalling state of affairs for any

17 representative body.

18 You will recall that our client, Wendy Martin, has

19 stated she received enormous help from the Communication

20 Workers Union, of which she wasn't even a member.

21 Ms Martin's evidence of the support provided from the

22 CWU, the Communications Workers Union, and that of other

23 witnesses, brings out the contrast between a genuine

24 union and an organisation who appears to be in the

25 pocket of the employer.

1 to act and that is what the High Court findings show.

2 Another issue that arose in the Group Litigation

3 concerns audit data. It has always been possible for

4 the Post Office to check what a subpostmaster had done

5 because Fujitsu held complete and accurate record of all

6 key strokes made by a subpostmaster or assistant when

7 using Horizon. This is known as an audit or ARQ data.

8 Yet it was established in the evidence in the Group

9 Litigation that the Post Office did not consult ARQ data

10 and we need to consider that within these hearings. Is

11 that right?

12 The ARQ data, the very evidence that would have

13 satisfactorily have resolved disputes potentially when

14 deciding how to deal with discrepancies and issue

15 transaction corrections, TCs, and when responding to any

16 complaints about Horizon System.

17 Is it possible that the Post Office failed to use

18 audit data because of charges raised by Fujitsu for

19 access to such information? We say that the Post Office

20 were happy to require subpostmasters to make good

21 apparent shortfalls in the knowledge that the

22 discrepancies were caused by the Horizon System because

23 the Post Office had an incentive, it seems, to avoid

24 paying Fujitsu to investigate or rectify errors causing

25 shortfalls.

1 Sir, you're also aware that, in the Group Litigation
2 it became very clear, as decided by Mr Justice Fraser,
3 that Fujitsu could remotely insert a transaction into
4 the accounts of a branch using a counter number which
5 was the same as the counter number actually in use by
6 the subpostmaster or an assistant. This would appear to
7 the subpostmaster from the records that they could
8 see -- and anyone looking at those records -- as though
9 the inserted transaction had been performed in the
10 branch itself.

11 This is another matter which we ask the Inquiry to
12 investigate thoroughly. Was this evidence disclosed
13 within the criminal proceedings? What would have been
14 the effect upon advice given to a subpostmaster if it
15 had been known and understood within criminal
16 proceedings or civil litigation that, actually, the data
17 could be changed in a way that made it look like the
18 branch did it?

19 Phase 4, we'll be considering the actions against
20 subpostmasters and others. The conduct of POL, the Post
21 Office, in taking actions against subpostmasters, was
22 oppressive. The Post Office was unrelenting in pursuing
23 subpostmasters for shortfalls which it knew were caused
24 by Horizon. In the period from April 2013 to June 2018,
25 the number of subpostmasters who were suspended was 626.

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1 Stockdale's documents after she had been suspended and
2 it even refused to give any documents to one of their
3 auditors who was investigating a shortfall claimed by
4 Mrs Stockdale.

5 In addition to the rate of suspensions and
6 terminations, the Post Office prosecuted subpostmasters
7 at an alarming rate. Mr Beer, King's Counsel, told the
8 Inquiry in February that between 2000 and 2015, the Post
9 Office brought a total of 844 prosecutions, resulting in
10 705 convictions. Sometimes, the Post Office brought
11 POCR proceedings, going after what they are suggesting
12 is the money lost, claims against those convicted,
13 allowed to seize assets and bankrupt people.

14 As to civil proceedings, many subpostmasters were
15 made bankrupt through the Post Office taking actions for
16 recovery of the apparent shortfalls. Many
17 subpostmasters remain bankrupt today as a consequence of
18 these actions and enforcement taken through civil
19 judgments by the Post Office.

20 Were these actions taken as part of a cohesive
21 policy against subpostmasters by the Post Office?
22 Certainly it seems that those actions were applied on
23 a uniform basis throughout the Post Office. Some of the
24 procedures described emanated from the modified
25 subpostmaster contract.

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1 This equates to about ten subpostmasters being suspended
2 per month. Mr Justice Fraser found, amongst other
3 things, the Post Office frequently misrepresented the
4 subpostmasters' liability for losses when demanding for
5 apparent shortfalls.

6 There is also the question of whether subpostmasters
7 were permitted legal representation by the Post Office
8 when they were interviewed in connection with alleged
9 shortfalls. Were they denied legal representation at
10 that time because that's what it appears? They were
11 certainly not permitted access to information concerning
12 the allegations that had been made against them. They
13 were allowed to take friends with them but if that
14 friend, I quote, "interrupted in any way, by word or
15 signal, they would be required to leave". Bizarrely,
16 the Post Office justified these procedures by relying on
17 the Official Secrets Act.

18 The Post Office appears to have sought to cover up
19 its actions even at the point of suspending
20 a subpostmaster. For example, Mr Justice Fraser
21 accepted the evidence of Pamela Stubbs that the
22 temporary subpostmaster who replaced her was told to
23 destroy all documentation in the branch that related to
24 her appointment. Mr Justice Fraser also found that the
25 Post Office had deliberately destroyed all of Elizabeth

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1 Is it possible that Post Office had a policy or
2 policies which directed these actions being taken
3 against subpostmasters? We ask that we keenly consider
4 the question of whether policies exist and their
5 disclosure, if they do exist, within the Phase 4
6 hearings, and who is responsible for creating such
7 policies, guidance or documents that relate to the way
8 that matters are taken against subpostmasters.

9 Of course, we anticipate that the culprits might not
10 be forthcoming in disclosing material, which might be
11 considered reputationally damaging. That, again, is one
12 of the reasons why we are more than keen that this
13 Inquiry is rigorous, as you have said you will be, in
14 ensuring that the Post Office, BEIS and Fujitsu comply
15 with any request made of them.

16 I turn now to Phase 5. Our clients were involved in
17 the Mediation Scheme and believe that the breakdown of
18 this process marked at least one part of the Post
19 Office's cover-up. It is possible to consider that the
20 cover-up might be seen as the greater scandal than the
21 IT failure. The Post Office realised that they have
22 known about the defects in Horizon for years and tried
23 desperately to prevent that knowledge from ever becoming
24 public.

25 In July 2012, the Post Office came under renewed

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1 press interest and pressure from a group of MPs led by
2 James, now Lord Arbuthnot. Consequently, the Post
3 Office met with group of MPs and agreed that
4 an independent firm of forensic accountants should be
5 appointed by the members of Parliament to conduct
6 an independent assessment of Horizon, and the Post
7 Office agreed to fund the process. This led to the
8 instruction of Second Sight.
9 The partners in Second Sight specialised in banking
10 fraud and IT systems so, in fact, were a good fit for
11 the problems they were being asked to investigate.
12 It is important to understand that Second Sight
13 were, at all times, answerable to the MPs who had
14 commissioned them and not to the Post Office, who funded
15 the project.
16 You will recall, sir, hearing oral submissions from
17 Mr Henderson of Second Sight in relation to the
18 independent assessments that they were instructed to
19 carry out by the group of MPs, he told the Inquiry that
20 their work started in the summer of 2012, and that,
21 initially, Post Office were cooperative and appeared
22 committed to the agreed goal to seek the truth,
23 irrespective of the consequences. However, as their
24 work progressed, the attitude of the Post Office
25 changed. Was this the result of legal advice? Was it

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1 general counsel and we are advised that he adopted
2 an obstructive and litigious attitude. He sought to
3 rely on limitation periods and removed subpostmasters
4 from the scheme.
5 The situation deteriorated further in 2014. We say
6 this is because the Post Office had become aware that
7 Second Sight were getting closer to the truth and you
8 will need to consider, as we will, that issue.
9 Second Sight were due to deliver a report in April
10 2015. However, on 10 March 2015 the Post Office bought
11 the Mediation Scheme to an end and gave Second Sight
12 a month's notice. We're not sure to what extent the
13 Post Office was entitled to act in this way, given that
14 Second Sight were answerable to the MP group and not to
15 the Post Office.
16 These events appear to be part of the lamentable
17 concerted attempt by the Post Office to cover up
18 wrongdoing. We ask that the Inquiry focuses on this
19 cover-up over time, what happened in relation to Second
20 Sight and identifies those Post Office individuals, the
21 officials -- Fujitsu officials and individuals -- who
22 were involved, and any knowledge by BEIS or involvement.
23 Phase 6, regarding the monitoring of Horizon and
24 internal and external audit. We know from the evidence
25 before Mr Justice Fraser and before this Inquiry that

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1 a change of view? Who was responsible?
2 In August 2013 the Post Office set up the initial
3 Complaint Review and Mediation Scheme, which was
4 intended to operate as a formal mediation between
5 aggrieved subpostmasters, managers and assistants, who
6 had complained to their MPs, and the Post Office. The
7 Mediation Scheme was overseen by a working group which
8 comprised the Justice for Subpostmasters Alliance, the
9 JFSA, headed by Mr Bates and Ms Linnell, Second Sight
10 and Post Office. The independent chair of the working
11 group was Sir Anthony Hooper, a retired Court of Appeal
12 judge.
13 Unfortunately, the scheme floundered in November
14 2013 when Susan Crichton left the Post Office. She was
15 the internal legal adviser who had instigated the
16 process. Ms Linnell, who we represent, met her by
17 chance once in Birmingham and was impressed by what she
18 heard from Ms Crichton as to her wish to collaborative
19 and her problem-solving approach to the process.
20 Susan Crichton was replaced by Chris Aujard. We
21 don't know why Ms Crichton left -- she should be
22 called -- but it is probably not a coincidence that her
23 departure took place around the same time that the Post
24 Office realised its position had become difficult.
25 Ms Crichton was replaced by Mr Aujard as Post Office

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1 Fujitsu monitored Horizon from the outset and liaised
2 with the Post Office throughout. We know about the
3 year 2000 Fujitsu reporting phantom sales on the system.
4 Mr Justice Fraser found that the Post Office sent over
5 100,000 transaction corrections to subpostmasters each
6 year since 2006, which amounts to more than 2,000 per
7 week. An unusual feature of the Horizon Issues trial
8 was that Fujitsu had provided and disclosed 5,000 KELs
9 but only in September 2019, months after the trial had
10 ended.
11 However, whilst the system was being monitored, the
12 findings in the Horizon Issues judgment demonstrate that
13 the Post Office refused to monitor and investigate
14 Horizon when its systemic problems threatened to enter
15 into the public domain.
16 We maintain that the Post Office did monitor
17 Horizon, did receive information, but did not want to
18 actively investigate the defects.
19 Can I turn briefly to whistleblowers. There must
20 have been hundreds of helpline workers, contract
21 managers, auditors, internal lawyers and Post Office
22 officials who would have been aware of the defects and
23 the bugs within the system, aware of the cover-up and
24 scandal that surrounded the Horizon System. BEIS and
25 Fujitsu must also have been aware of the unfolding

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1 scandal. Yet there appears to be only one whistleblower
2 of any note, Richard Roll of Fujitsu. It is important
3 that the Inquiry ascertains why so many others knew and
4 kept silent. What were the whistleblowing procedures?
5 What guidance was there? What had been set up or not
6 set up by the Post Office or Fujitsu to allow
7 whistleblowers to come forward? Were people afraid to
8 disclose what was unfolding?
9 Is there a more sinister reason? Was there
10 a culture at the Post Office which prevented
11 whistleblowing?
12 There was indeed a procedure of excessive secrecy at
13 the Post Office, extraordinarily the evidence in the
14 Common Issues trial demonstrated that the Post Office
15 sought to use the official secrets act to justify
16 seizure of documents and equipment when suspending
17 a subpostmaster.
18 Furthermore the modified subpostmaster contracts,
19 section 15, clause 19, prevents any communication
20 concerning interviews by Post Office investigators, as
21 such communication might constitute a breach of the
22 Official Secrets Act.
23 Mr Justice Fraser found, at paragraph 723, that it
24 was somewhat unusual and potentially oppressive that the
25 Post Office could seek to use the Official Secrets Act

1 This, of course, gives rise to potential issues for
2 the future. We suggest that it is not inconceivable
3 that another set of circumstances could arise in the
4 future where powerful institutions will make false or
5 mistaken allegations of systemic robustness of an IT
6 system at the expense of livelihoods and reputations of
7 individuals who are affected by such IT systems. Anyone
8 knowing even the remotest part of what has happened in
9 relation to Horizon would be at this time wondering
10 whether IT systems could be trusted at all.
11 Can I deal with some procedural matters.
12 Firstly, I'm instructed to request and ask that, on
13 behalf of our clients, we are permitted to make brief
14 closing submissions at the conclusion of the hearings of
15 each phase of the Inquiry. If permitted, it might be
16 that we would consider the position and not require or
17 not ask that we'd make such submissions. But the
18 reasons for leaving this as a request that we may ask
19 that this Inquiry allow us to do so, is that we can only
20 address you on the written and oral evidence that is
21 before us at any given time. This Inquiry is going to
22 be dealing with disclosure as we go onwards. We don't
23 have it all at this stage because the Inquiry, for very
24 good reason, wants to make good progress.
25 As matters stand, we will not be able to give voice

1 in that way.
2 We ask the Inquiry to examine whether the Post
3 Office sought to apply that same legislation in respect
4 of any disclosures made by employees. Is that part of
5 the reason why we have not heard from whistleblowers?
6 Phase 7, current practice and procedure
7 recommendations for the future.
8 In reality, this Inquiry is not about the Horizon
9 System, with all of its faults and problems, but about
10 a sickness which lay at the core of the Post Office.
11 The Post Office was employer, victim, investigator and
12 civil and criminal prosecutor and it is now the arbiter
13 of which of its victims should receive compensation and
14 how much. It held extraordinary power over each and
15 every one of its subpostmasters and wielded that power
16 with impunity and, we suggest, in bad faith.
17 The Terms of Reference for this Inquiry say that we
18 will be assessing whether the Post Office has learned
19 the lessons from criticisms made by Mr Justice Fraser in
20 his judgments. Our clients are very concerned that all
21 that has changed within the Post Office is that Paula
22 Vennells, Angela van den Bogerd and others, have been
23 found out. It is important that the Inquiry delves into
24 the issue of whether there has been real cultural
25 change.

1 to our clients' instructions on the evidence or comments
2 as that evidence emerges, until the very end of the
3 Inquiry, much later next year. By allowing us the
4 potential opportunity to make such submissions at the
5 close of the phases, we suggest that is helpful for you,
6 sir, in keeping the subpostmasters at the centre of this
7 Inquiry.
8 Our clients are, frankly, expecting to be taken by
9 surprise and outraged by some of what they hear from
10 institutional witnesses. They do not want to have to
11 sit on their hands and, after having been kept silent
12 for so long, they wish to instruct their own legal team
13 to convey their instructions or responses at the close
14 of phases if it is appropriate, rather than just in
15 final closing submissions. For clarity, we don't ask to
16 make written submissions at such stages, simply
17 an opportunity to make short closing, oral submissions.
18 Second procedural matters relates to the issue of
19 compensation. As you know, this issue impacts very
20 greatly on our clients. We saw that in July of this
21 year how quickly BEIS were able to act when the Inquiry
22 held their feet to the fire through holding specific
23 hearings on the question of compensation.
24 None of our clients have any doubt that it is only
25 through the resolve of you, sir, and through this

1 Inquiry process that a new compensation scheme for the
2 High Court litigants is under way and that some of the
3 fundamental problems relating to the HSS and historic
4 conviction schemes have also been addressed.

5 However, sadly, very little has been achieved since
6 the July hearings. Following letters written by
7 Howe+Co, my instructing solicitors, and possibly others
8 we will have another compensation hearing on the
9 8 December 2022.

10 What we can tell from our experiences earlier this
11 year is that, if that is anything to go by, we can
12 expect a flurry of activity and announcements in the
13 first week of December this year. These points will
14 demonstrate, as were demonstrated in the July hearings,
15 that the scrutiny by this Inquiry process is essential
16 to make any movements forward on the vital issue of
17 compensation.

18 We cannot state, we cannot overstate, how concerned
19 our clients are that, if this Inquiry is no longer able
20 to monitor BEIS in August or later next year, after
21 which BEIS will have no access to funds in this matter,
22 they will be forced to relive their experiences a third
23 time through further litigation in the courts.

24 It is essential that the matter of compensation be
25 kept in sight and under review at all times and, if that

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1 time.

2 The process, therefore, is one that we ask you to
3 consider, and the progress of this Inquiry, with great
4 care. If there needs to be gaps, there needs to be time
5 out so that we make sure we have the material that we
6 need for the particular phases, then we ask you to take
7 that time and trouble.

8 Sir, I come therefore to conclusions and requested
9 outcomes. What can our clients expect? Well, firstly,
10 they wish that this Inquiry continues to exercise
11 oversight of the compensation schemes. Secondly,
12 restorative justice, that each and every subpostmaster
13 who is affected by the Horizon System has the
14 opportunity to meet face-to-face with a senior Post
15 Office official, to have the full opportunity to recount
16 their experiences and the impact that they have had on
17 them, and their family, to have those experiences
18 genuinely acknowledged and to receive a genuine apology.

19 We have experience in other public inquiries of how
20 important personal apologies are to victims and
21 survivors of institutional abuse. Ministerial
22 announcements and press releases from the Post Office
23 are not cathartic and do not provide closure. Our
24 clients wish to see senior Post Office officials come to
25 them, see the localities where their reputations were

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1 means, sir, that we ask at a later stage for further
2 hearings on compensation as we go through, we hope you
3 look kindly on such a request.

4 The third procedural matter relates to the pace of
5 the Inquiry process. Now, we recently learnt and
6 discussed the question of disclosure from Post Office.
7 That undoubtedly, in some ways, is going to lead to the
8 delay in the process of the Inquiry. We do not wish the
9 Inquiry to proceed to continue very important matters
10 without being able to take into account all of the
11 relevant material and, sir, you have already indicated
12 this week that you regard the process of an Inquiry to
13 be much more flexible than litigation and, indeed, said
14 that that is one of the advantages of a statutory
15 Inquiry.

16 We ask that great care is given to consider the
17 timing and the pace of process of this Inquiry. We all
18 know from long experience before the courts that the
19 danger of allowing the witness to give evidence and then
20 to allow the possible re-call means, that there will be
21 discussion between the parties, "Do we really need that
22 witness? Should that witness come back?" always leading
23 to the position whereby, if the witness doesn't come
24 back, someone is going to be dissatisfied because the
25 evidence should have been put before them the first

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1 attacked and understand the real suffering that was
2 caused. We cannot impress upon the Inquiry how
3 important that process is.

4 Thirdly and lastly, our clients ask that those who
5 are responsible for this tragedy are identified and
6 publicly named. We suggest that they should never hold
7 or wield power and responsibility again. Not only would
8 that provide a measure of justice to our clients but it
9 will enable the public to move on from this scandal with
10 confidence that the institutional culture which gave
11 rise to this scandal has been addressed and that
12 mistakes of the past will not be repeated.

13 Sir, that brings me to the close of my submissions.
14 I'm very grateful for being allowed the time to make
15 those submissions and I now cede my place to my learned
16 friends.

17 **SIR WYN WILLIAMS:** I'm very grateful to you for your
18 submissions, Mr Stein, and, insofar as the first of your
19 procedural points is concerned, you didn't invite me to
20 make any kind of even provisional decision about that.
21 What I will say is that I will clearly keep that under
22 review throughout the phase, and if I think it important
23 that you should have some short time to make
24 submissions, I'll give it to you, but I'll keep it under
25 review.

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1 **MR STEIN:** Very grateful, sir. Thank you.
 2 **SIR WYN WILLIAMS:** So is it Mr Moloney next?
 3 **MR MOLONEY:** It is, sir, yes. I'm content to make a start
 4 or take a short break, whichever you would prefer, sir.
 5 **SIR WYN WILLIAMS:** I don't mind. I think perhaps a short
 6 break because I'm going to retrieve your opening
 7 statement, so that, as I was doing with Mr Stein, I can
 8 follow both your oral and written submissions at the
 9 same time.
 10 **MR MOLONEY:** I'm obliged, sir.
 11 **SIR WYN WILLIAMS:** Just five minutes will be enough? Yes.
 12 **MR MOLONEY:** I think if we start at 12.00, sir, I should
 13 finish at 1.00.
 14 **SIR WYN WILLIAMS:** That's fine.
 15 (11.53 am)
 16 (A short break)
 17 (12.00 pm)
 18 **MR BEER:** Sir, good afternoon, you didn't expect to hear
 19 from me. The reason for the short delay and why we
 20 didn't start at 12.00 was a problem with the live time
 21 transcription. I have been told that that is going to
 22 take about another 15 minutes to cure, and we wondered
 23 therefore, whether you would give us 15 minutes to allow
 24 that to happen, in order that the transcript can be
 25 broadcast live but also to ensure that the transcription

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1 is actually working, ie a note is being taken of what is
 2 being said.
 3 **SIR WYN WILLIAMS:** Yes, well I think that seems inevitable,
 4 if I may say so Mr Beer, so yes, keep me posted.
 5 **MR BEER:** The only reason for coming on the camera now is so
 6 that other people who are watching know what's going on,
 7 even though you did.
 8 **SIR WYN WILLIAMS:** That's important. You're quite right to
 9 make it public in that way. So perhaps, so that I can
 10 just know what's going on, and so forth, if in
 11 15 minutes' time, you only need another minute or two,
 12 that's fine, but if there's going to be any kind of
 13 further substantial delay, maybe we should come back on
 14 camera again at that point, so you can explain it.
 15 **MR BEER:** Thank you, sir. In the meantime, we will maintain
 16 email contact with you.
 17 **SIR WYN WILLIAMS:** Yes, and I won't go far from the screen
 18 so that if, happily, things work out quickly, I shall be
 19 ready to resume.
 20 **MR BEER:** Thank you, sir.
 21 (12.08 pm)
 22 (A short break)
 23 (12.17 pm)
 24 **MR BEER:** Sir, we are ready to resume, so over to
 25 Mr Moloney.

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1 **SIR WYN WILLIAMS:** Thank you.
 2 **Opening statement by MR MOLONEY**
 3 **MR MOLONEY:** Thank you, sir. These submissions in opening,
 4 as you know, sir, are made on behalf of 64 Core
 5 Participants represented by Hudgells Solicitors, each of
 6 whom was convicted following prosecution by the Post
 7 Office on the basis of Horizon evidence and each of whom
 8 has since had their conviction quashed.
 9 Sir, the Inquiry heard a powerful summary of the
 10 unprecedented miscarriage of justice suffered by our
 11 clients and the events which led to it in Counsel to the
 12 Inquiry's opening in Phase 1, starting on 14 February of
 13 this year, and Counsel to the Inquiry, Mr Beer, King's
 14 Counsel, has provided over the last two days a further
 15 comprehensive introduction to the events of the last
 16 two decades and the evidence the Inquiry will hear.
 17 We noted, and continue to note, sir, your guidance
 18 that openings by Core Participants are not expected to
 19 cover every phase and we do not attempt to do so at this
 20 stage. We don't repeat, moreover, the entirety of our
 21 written submissions, not least because a number of the
 22 issues we highlight therein have been raised by Mr Beer
 23 in what we, if we may say, was an excellent opening to
 24 these proceedings.
 25 However, we gratefully take the opportunity to

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1 underline matters of considerable importance for our
 2 clients, and we well try to focus, sir, essentially, on
 3 what is to come, the opportunities this Inquiry presents
 4 to our clients, in fully investigating and addressing
 5 the injustice they have endured.
 6 Briefly, sir, our submission follows, in the same
 7 way that our written submissions did, four themes: the
 8 significance of the Inquiry; the priorities for Phase 2,
 9 the questions for Phase 3 and beyond; and, finally,
 10 redress and responsibility.
 11 May I commence with the significance of the Inquiry,
 12 sir, and that significance is obvious. Mr Beer said on
 13 14 February that the Inquiry may, in due course,
 14 conclude that the prosecution and conviction of our
 15 clients is the worst miscarriage of justice in recent
 16 British legal history.
 17 We agree, sir, and say that the Inquiry may well
 18 conclude that what happened after the introduction of
 19 Horizon was the worst miscarriage of justice in modern
 20 legal history and, while it may have taken decades for
 21 the Post Office and the Government to accept that
 22 Horizon was not remotely robust, the Post Office has
 23 since accepted that it secured a great many convictions
 24 based on Horizon data. The Inquiry, sir, we say, has
 25 admirably encouraged those who may have been affected to

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1 come forward.
2 For example, you, sir, noted on 15 February that the
3 number of people who have had their convictions quashed
4 is considerably less than those who were convicted and
5 in Phase 1 of the Inquiry, sir, you encouraged witnesses
6 who gave evidence to share how it was that they came to
7 speak out.

8 We also say, sir, that the role of the Criminal
9 Cases Review Commission must not be forgotten in all of
10 this. It similarly has taken significant steps to try
11 to secure justice for those who continue to live with
12 a wrongful conviction.

13 As I've said, we represent subpostmasters whose
14 convictions have been quashed. We recognise that the
15 80 convictions quashed so far represent only a fraction
16 of the total number of lives destroyed -- and they were
17 destroyed -- by the Post Office's approach to Horizon.

18 The opening of this next stage of the Inquiry's work
19 presents a further opportunity to encourage others to
20 come forward to be heard to tell their stories and clear
21 their names. But, sir, we, and those we represent,
22 appreciate that many may not have had the resilience to
23 reopen a now decades old trauma. Our experience is that
24 our clients have great difficulty speaking about the
25 things that happened to them and, as our clients have

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1 It would be disproportionate, and so we don't do it,
2 to underline all of the facts relevant to Horizon
3 already established. But there are several critical
4 facts which are worth clear emphasis from the outset, in
5 terms of providing the basis upon which this Inquiry
6 builds.

7 Firstly, the Post Office can no longer deny the
8 existence of a great many bugs in Horizon. Legacy
9 Horizon was not remotely robust and Horizon Online still
10 had a significant number of bugs, errors and defects,
11 and its robustness was questionable, and did not justify
12 the confidence routinely stated by the Post Office was
13 how it was summed up in the Horizon Issues judgment.

14 There were numerous bugs, errors or defects in
15 Horizon capable of causing, and which did, in fact,
16 cause, shortfalls in Post Office branches. There were
17 problems experienced with Horizon almost from the
18 outset, as was observed in paragraph 39 of the judgment
19 in *Hamilton and Others* from the Court of Appeal Criminal
20 Division.

21 The Post Office knew that there were problems with
22 Horizon and Post Office knew that different bugs,
23 defects and errors had been detected well beyond
24 anything which might be regarded as a period of initial
25 teething problems. In short, they knew that there were

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1 been, others may be mentally and physically broken by
2 the impact of their conviction and what followed.

3 So our clients ask the Inquiry to remember that, for
4 those who may never come forward, the Inquiry will be
5 a genuinely important public statement, capable of
6 reiterating the truth, and that the scale of the scandal
7 and its wider impact beyond the Core Participants
8 represented in these hearings should not be forgotten.

9 The Inquiry is to build on what we now know. The
10 Inquiry does not start with a blank page and, as Mr Beer
11 said and indeed Mr Stein said, we welcome -- and we
12 welcome Mr Beers acknowledgement that the judgments of
13 Mr Justice Fraser and the Criminal Appeal Courts form
14 the building blocks for this Inquiry's work.

15 The Inquiry's terms of reference provide that to
16 establish a clear account of the implementation and
17 failings of Horizon and the Post Office's actions in
18 respect of alleged shortfalls, it must build upon the
19 findings in the civil and criminal courts. What we know
20 already is substantial from the Common Issues judgment,
21 the Horizon Issues judgment and the judgment in
22 *Hamilton*. Since then, more information even has come to
23 light, both in the extensive disclosure to this Inquiry
24 and through research and Freedom of Information Act
25 requests by others.

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1 serious issues about the reliability of Horizon.

2 Perhaps the question for you, sir, is who knew, when.

3 The persistence of reports also made it impossible
4 to assume that all the initial problems and any
5 subsequent teething problems had been resolved and
6 Horizon itself did not alert subpostmasters to the
7 existence of any such bugs.

8 Fujitsu had the ability, as has been mentioned
9 a number of times already during these openings to you,
10 sir, and facility to inject, insert, edit or delete
11 transaction data or data in branch accounts.

12 Those concerned with the prosecution of
13 subpostmasters clearly wished to be able to maintain the
14 assertion that Horizon data was accurate and effectively
15 steamrolled, said the Court of Appeal, over any
16 subpostmaster who sought to challenge its accuracy,
17 astonishingly using the number of convictions that were
18 secured to demonstrate how reliable Horizon was and how
19 there should be no concerns.

20 The human impact aspect of this Inquiry is very
21 important. The Core Participants we represent
22 appreciate the Chair's message, your message, sir, of
23 30 September 2022, which acknowledged both the
24 significance of Phase 1 and its deep impression.

25 Our clients were genuinely grateful, sir, for the

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1 opportunity to speak about their experiences and to be
2 heard. The human pain and suffering which was laid bear
3 for the Inquiry by their testimony is the true tragedy
4 of the last two decades of the Post Office's conduct in
5 respect of Horizon.

6 Many lives were destroyed -- were destroyed for no
7 good reason -- and this pain and suffering, despite the
8 question of the convictions, despite whatever
9 compensation might come, continues for many
10 subpostmasters and their families.

11 Things have happened which can't just go away and
12 the evidence as to human impact, we say, sir, must
13 remain at the heart of each phase of this Inquiry. We
14 ask that it sit behind the exploration of every issue,
15 and it's that continuing human impact which must inform
16 the Inquiry's work to ensure that every avenue to secure
17 true transparency and accountability is now explored.

18 That's the opportunity we wish to take on behalf of
19 our Core Participants during the course of this Inquiry,
20 sir.

21 Some of these convictions of the people that we
22 represent were decades old when they were overturned.
23 Horizon had been the subject of controversy for many
24 years and yet the Post Office continued to publicly and
25 vocally defend its integrity, often at the expense of

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1 evidence poor judgment or was there another explanation
2 for them?

3 Sir, just to reiterate the attacks that had been
4 made on the Core Participants that we represent, the
5 Inquiry will recall that the Post Office expressly made
6 submissions to Mr Justice Fraser on the credibility of
7 subpostmasters, alleging at least one had lied
8 frequently and brazenly. You, sir, will have in mind
9 the remarks of Mr Justice Fraser in terms of the
10 attitude that was taken by Post Office through the GLO.

11 On the wider impact of the Inquiry, sir, while the
12 detailed and forensic judgments of Mr Justice Fraser in
13 the GLO marked a departure from the past, those
14 judgments were based necessarily on evidence which was
15 limited. They could not consider of necessity material
16 later disclosed to the criminal appeals, and now
17 available to this Inquiry, so that, for example,
18 Mr Justice Fraser was unaware of the Clarke Advices
19 explained by Mr Beer during the course of his opening
20 and the consideration of our clients' criminal appeals
21 was limited to the evidence addressing the safety of
22 their convictions.

23 So in both the GLO litigation and the criminal
24 appeals, there was limited opportunity to look at all of
25 the relevant parties in play, or the relevant evidence

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1 the Core Participants that we represent. It was not
2 before December 2019 that the course of the litigation
3 in *Bates and Others* forced the Post Office to face
4 reality. But that didn't happen without the most heroic
5 of struggles. Time and again, the Post Office took
6 steps to repeatedly reiterate their indefensible
7 position that Horizon was robust, our clients'
8 convictions were safe: they were dishonest, they were
9 criminals.

10 This was the stance which had been taken
11 consistently by the Post Office over many years, as
12 recognised by Mr Justice Fraser and by the Court of
13 Appeal. We don't repeat the examples here, sir, the
14 Inquiry will hear them all repeatedly as we come to the
15 later phases. But the Post Office's defence of Horizon
16 extended to statements to the press and to Parliament.

17 Perhaps the important work for the Inquiry now is to
18 consider that position, the statements made and the
19 motivation behind those statements, when and how and why
20 did the preserving of the integrity of the Horizon
21 System become more important than the Post Office's
22 integrity as a prosecutor and its commitment to its
23 subpostmasters?

24 Were the statements that were made to Parliament, to
25 the press, were they made in good faith and did they

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1 they might hold. There was essentially no role for
2 Fujitsu, other than to either be praised in the GLO by
3 Post Office Limited or blamed in the criminal appeal
4 process by Post Office Limited, or for Central
5 Government, despite the key roles that both played.

6 But, as has been made abundantly clear in the
7 introduction by Mr Beer, there are no such limits placed
8 on this Inquiry and our Core Participants genuinely
9 welcome that.

10 The wider public significance of this Inquiry,
11 therefore, cannot be understated. The full financial
12 and human cost of this public scandal is as yet unknown
13 and, importantly, no individual or institution has been
14 truly been held accountable for what happened to those
15 we represent or the damage which resulted to them and
16 their families -- who must not be forgotten at any point
17 during the course of this Inquiry -- or for the harm to
18 the Post Office as an institution or for the cost to the
19 public purse.

20 The key commercial players in Horizon continue to
21 play an important and, on one view, expensive role in
22 public life in the UK. In recent months, the Government
23 has reportedly concluded new multimillion-pound
24 commitments to Fujitsu in respect of a range of crucial
25 public services. On 24 September, the Daily Mirror

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1 reported that the Home Office has concluded a four-year,
2 £48 million contract for the police national computer.
3 His Majesty's Revenue and Customs, HMRC, has reportedly
4 concluded a five-year deal worth £500 million and the
5 Foreign and Commonwealth Office has reportedly awarded
6 a £44 million telecommunications project to Fujitsu.

7 Those deals follow on the heels of a £6.1 million
8 bill for services provided during the Commonwealth
9 Games, a deal has also reportedly been reach with
10 Northern Irish Libraries, reportedly worth £27 million,
11 and, in the last 5 years, Computer Weekly reports that
12 Fujitsu has signed deals worth £673 million with HMRC,
13 £456 million with the Home Office and £572 million with
14 the Ministry of Defence.

15 So, whilst it may be entirely justified, sir --
16 that's for your Inquiry to establish -- the
17 understanding that Horizon was not remotely robust has
18 so far seemingly had little or no impact on the
19 commercial relationship between the Government and
20 architects of that program.

21 The true impact of these events on the Post Office
22 can only be determined after the conclusion of this
23 Inquiry and the full and fair compensation of all
24 affected. The Post Office, whatever it may have done,
25 continues to provide a vital public service in

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1 we represent welcome the commitment of all Core
2 Participants to the Inquiry. We have welcomed the
3 decision by the Post Office to waive legal privilege,
4 a taster of the importance of which was provided
5 yesterday afternoon during the opening by Mr Beer,
6 King's Counsel and we note the commitment to now bring
7 to light the full history of the scandal.

8 After decades of apparent obfuscation and denial,
9 our clients remain understandably cautious and would
10 resist any attempt on the part of any Core Participants
11 to undermine the ability of the Inquiry to finally
12 uncover the truth by becoming defensive in their
13 approach to this Inquiry.

14 Sir, that's our overall submissions as to the scope
15 of the Inquiry. In the time that remains to me, may
16 I just spend a short time on identifying priorities for
17 Phase 2, as that is what is to come over the next few
18 weeks, as well as then move on to some important
19 questions for the remainder of the Inquiry before
20 turning to redress.

21 So turning to what are our priorities for Phase 2,
22 sir, which is the development, rollout and the early
23 days of the Horizon System. As has been recognised,
24 this necessarily begins with technical evidence from the
25 Inquiry expert, Mr Cipione, designed to support public

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1 communities across the United Kingdom, important to
2 people of all ages, of all occupations, of all classes,
3 of all races, supported by the energies and commitment
4 of a network of branches operated by subpostmasters. It
5 remains an entity essentially owned by the public and
6 so, as citizens and taxpayers, we all have an interest
7 in the outcome of this Inquiry, sir.

8 Sir, we also, in considering the overall direction
9 of the Inquiry, we note, sir, the overriding duty you've
10 referred to. You recently made a statement that you
11 hoped to complete the evidence gathering in 2023 but our
12 clients welcome your recognition, sir, that any desire
13 to provide answers quickly must be tempered by
14 an overriding duty to lay bare who knew what, when did
15 they know it and what did they do with the knowledge
16 they acquired.

17 Sir, those we represent appreciate fully that there
18 must be a balance to be struck between speed and
19 efficiency, on the one hand, and effective searching
20 scrutiny, on the other.

21 They appreciate that your task, sir, is considerable
22 and would not favour speed over a full and fearless
23 examination of the events of the last two decades.

24 In that vein, sir, that's one of full and fearless
25 examination of the events in the last two decades, those

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1 understanding of the operation of Horizon and later
2 evidence yet to come.

3 We now briefly focus on two themes which go beyond
4 the technology. Firstly, why was it that Horizon became
5 a reality?

6 Mr Cipione includes in his written statement
7 a reminder of how very different the world was in the
8 mid-1990s, something Mr Beer alighted upon yesterday
9 and, in order to appreciate and effectively scrutinise
10 the evidence in Phase 2, we will all have to be reminded
11 of the state of the world almost two decades ago.

12 We're not going to repeat the detailed introduction
13 by Mr Beer to the inception of Horizon, but it's well
14 known that Horizon did not start its life only as
15 an accounting system for the Post Office but that is
16 what it ended up as. After all you've heard in opening,
17 and it may be that you'll hear more, sir, an obviously
18 important question for the Inquiry may be why the
19 decision was taken to proceed with Horizon at all.

20 Also of great importance in this phase of the
21 Inquiry, sir, is what was known when and by whom,
22 because we say, sir, that that then colours decisions
23 that were taken later that directly affected the Core
24 Participants that we represent.

25 It's clear from the early stage that concerns were

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1 expressed over the technical aspects of the ICL bid.
 2 The National Audit Office noted, reflecting the
 3 documents referred to by Mr Beer in opening over the
 4 last two days, that:
 5 "Pathway submitted, narrowly, the cheapest of the
 6 three bid but the purchasers ranked their proposal third
 7 on 8 of 11 technical and management criteria."
 8 Then the Inquiry may wish to consider whether there
 9 were adequate systems in place throughout the life of
 10 the project to ensure that the technical performance of
 11 Horizon was adequately and consistently scrutinised,
 12 both by the Post Office Counters Limited and by
 13 Government.
 14 The Inquiry, as an important part of that, may also
 15 wish to consider whether there is evidence to support
 16 the proposition that the highest levels of Post Office
 17 Counters Limited were well aware of bugs, errors or
 18 defects, even in the late development of Horizon, and
 19 that these were bugs and flaws which were capable of
 20 affecting accounting integrity, and which did directly
 21 impact upon the integrity of branch accounts.
 22 The Inquiry might consider whether there's evidence
 23 that these were apparent before the decision taken on
 24 24 May 1999 that Post Office Counters Limited would
 25 continue its work on the Horizon contract with ICL and

1 what action was taken by ICL or POCL to address those
 2 continuing incidents, indicative of bugs, errors and
 3 defects and whether or not there were systems in place
 4 which could effectively address those issues.
 5 In that context, we'd ask the Inquiry to consider
 6 whether there was ever any evidential basis for the
 7 mantra of POL that Horizon could be considered robust.
 8 If the Inquiry is satisfied that there was evidence
 9 of bugs, errors and defects from the outset, what reason
 10 or motivation there might be for Horizon to be viewed
 11 with such confidence by the key players.
 12 The Inquiry is likely to hear, and we hope it will
 13 hear, pertinent evidence on the commercial motivation
 14 for the original Horizon project. It may hear evidence
 15 from ministers and officials and from Fujitsu on why the
 16 project was continued in the summer of 1999, rather than
 17 terminated. In particular, the impact of the withdrawal
 18 of the Benefits Agency and the termination of plans for
 19 the Benefit Payment Card is something that the Inquiry,
 20 we hope, will consider for the business strategy and
 21 future plans of POCL.
 22 The Inquiry is likely to hear that POCL had
 23 estimated that if all Benefits Agency income were lost,
 24 up to half of the then current network of 19,000 offices
 25 could close and the remaining offices would need

1 whether, indeed, those were apparent after the decision
 2 taken on 24 May 1999 and things were continued with.
 3 The Inquiry may want to pay particular attention to
 4 what was being communicated to decision-makers in Post
 5 Office Counters Limited, at ICL and within Government.
 6 If we could just alight on one aspect of there is,
 7 sir: the question of acceptance issues, of which POCL
 8 and ICL were aware before contractual acceptance of
 9 Horizon, and the start of the national rollout. As
 10 Mr Beer explained, these included concerns both about
 11 the support available to subpostmasters and the
 12 operation of the helpdesk, as well as specific concerns
 13 about the integrity of accounting data, including
 14 incidents arising as a result of receipts and payments
 15 failing to balance on the cash account, fundamental to
 16 the prosecution of our Core Participants in the years
 17 that followed, in the decades that followed.
 18 As the Horizon Issues judgment found, these bugs,
 19 errors and defects went beyond teething problems.
 20 Obviously, the Inquiry will wish to consider the extent
 21 to which these Acceptance Incidents were known to POCL,
 22 in particular those incidents relating to accounting
 23 integrity, and will wish to consider whether they were
 24 ever resolved satisfactorily before or during rollout.
 25 After rollout, we would ask the Inquiry to consider

1 a subsidy to stay open, and we give the reference to
 2 that, without turning it up at this stage, which is
 3 HMT00000034 at page 5, and at bullet point 1.5.
 4 At the same time that those concerns were being
 5 expressed in 1999, the Government was consulting on the
 6 future of the Post Office, a White Paper "Post Office
 7 Reform: A World Class Service for the 21st century", was
 8 published by the Blair Government in July 1999. That's
 9 two months, sir, after Post Office Counters Limited had
 10 agreed to continue its relationship with ICL. In the
 11 introduction, the responsible manager, Mr Stephen Byers,
 12 focused squarely on a Post Office building its future in
 13 technology.
 14 Then in March 1999, the Government published its
 15 White Paper "Modernising Government", which focused on
 16 the Government's commitment to deliver just that,
 17 including a commitment to Information Age Government, or
 18 the digitisation of Government services. It read:
 19 "We must modernise the business of government
 20 itself, achieving joined-up working between different
 21 parts of government and providing new, efficient and
 22 convenient ways for citizens and businesses to
 23 communicate with government and to receive services."
 24 That White Paper expressly included a commitment to:
 25 "... Information Age services for Post Office

1 customers: the Post Office will be equipped with
2 a modern, online, IT platform to facilitate electronic
3 provision of government services across Post Office
4 counters."
5 That is in March 1999.
6 The Inquiry hopefully will hear evidence as well
7 that Post Office Counters Limited and ICL had been
8 exploring commercial opportunities which could be built
9 on the back of a successful Horizon rollout from
10 an early stage. For example, disclosure to the Inquiry
11 refers to work done preparatory to participation in
12 tenders for Government gateway work or work in
13 partnership, what came to be known as Golden Cloud work,
14 sir. For example, an ICL document includes a Post
15 Office client director's monthly report, prepared in
16 December 1998 which provides:
17 "Work has started with government division on
18 planning, how Gateway/Golden Cloud should fit with ICL's
19 Government market plans."
20 The reference for that is FUJ00058198, page 47.
21 It appears from the disclosure received, sir, that
22 there may be at least some evidence that this intention
23 for further commercial partnership formed part of the
24 negotiations in spring of 1999, which led to the
25 continuation of the ICL and POCL relationship.

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1 Was Horizon considered simply too important to the
2 Post Office and others to accept that it continued to be
3 plagued by bugs, errors and defects? The Inquiry may
4 wish to consider the relevance of this bigger picture to
5 decisions which were taken on the rollout of Horizon,
6 and the seriousness attributed to continuing technical
7 problems with Horizon.
8 We ask whether or not Post Office Board members and
9 ministers were appropriately informed of risks, and were
10 known and continuing technical difficulties overlooked
11 or were they obfuscated?
12 Finally, sir, the extent to which knowledge of those
13 flaws and errors in the development of Horizon did or
14 ought to have informed the later actions of Post Office
15 prosecutors, and the actions of the sponsoring
16 department should be a question for further exploration
17 with witnesses, both in Phase 2 and beyond, because we
18 know that people were sued and prosecuted; an utterly
19 central question is: with what knowledge?
20 Briefly, sir, questions for Phase 3 and beyond
21 before going briefly to redress. We don't propose to
22 rehearse in full the crucial issues for the Inquiry.
23 Instead, we provisionally highlight just a few matters
24 which the Inquiry may wish to explore in the evidence
25 yet to come. Those are matters, just to highlight the

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1 In April '99, that's just before the Prime Minister,
2 Mr Blair, met with Fujitsu, sir, the director of posts
3 commented on good progress in negotiations, including
4 the revised version of the Golden Cloud.
5 Indeed, the Inquiry will also hear that, at the time
6 that Post Office Counters Limited was being asked to
7 scrutinise whether known faults in Horizon had been
8 successful resolved, POCL and the Post Office Board were
9 invested in the development of options for the further
10 commercial exploitation of the Horizon platform.
11 They were considering network banking and the
12 further exploitation of Horizon for potential government
13 Gateway contracts. The Inquiry may wish to consider
14 whether, on all the evidence, this kind of expansive
15 consideration was premature and the Inquiry may wish to
16 explore the knowledge, understanding and motivation of
17 the key players.
18 We ask a number of questions arising out of this,
19 sir. Firstly, whether the Post Office Board was on
20 notice of problems with accounting integrity and whether
21 it took any adequate steps to satisfy itself as to the
22 future management and integrity of Horizon, and whether
23 or not commercial considerations, dependent on the
24 success of Horizon, had an impact on decision making by
25 the key parties.

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1 importance of Phase 2, sir, which we say will
2 necessarily be informed by the evidence heard in
3 Phase 2.
4 Firstly, reliance on professional reports advice and
5 reviews.
6 The reliance on such reports and advice and reviews
7 will be a repeated theme for consideration by the
8 Inquiry and the engagement of Second Sight to the role
9 of legal advice from legal practitioners, who have been
10 named already a number of times during the course of the
11 openings.
12 The core Participants we represent consider that
13 there will be repeated questions for the Inquiry to
14 consider over the role of professional advisers and
15 reviewers engaged by the Post Office or others to inform
16 their position on Horizon.
17 In the consideration of expert or independent input,
18 the Inquiry may wish to subject the substance of any
19 advice given to close scrutiny, such as what were the
20 instructions given and the scope of any adviser's role?
21 Were they given a full and accurate picture by those
22 instructing them and were they constrained in their
23 task, whether by resources, time, access, skill? If so,
24 were those constraints due to the actions of Post
25 Office, Fujitsu or any other actor?

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1 What happened to their reports when they were
2 completed? To whom were they communicated or
3 circulated? Were they secret? By whom were they read,
4 for example, ministers? Were advisers able to operate
5 in a way which was truly independent, and did they
6 exercise apparent and de facto independence from the
7 parties? Were there any conflicts of interest, and did
8 they have the relevant skills?

9 The Inquiry may ultimately wish to consider whether
10 advice supportive of Horizon was too heavily or readily
11 relied upon, and the advice critical of Horizon ignored
12 or diminished.

13 Secondly, sir, why there was such delay in Post
14 Office Limited and Fujitsu accepting the irresistible
15 truth about Horizon. It should be without a doubt that
16 this is one of the most significant concerns for our
17 clients: the missed opportunity for the Post Office to
18 accept, at an earlier stage, that the treatment of our
19 clients was wrong.

20 The Inquiry will of course revisit these issues in
21 later stages, including the work of Second Sight and the
22 Mediation Scheme led by Sir Anthony Hooper, as well as
23 the Post Office's conduct of the GLO litigation. It
24 will be a repeated theme for the Core Participants we
25 represent.

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1 sir, and the Inquiry team, to the question of
2 compensation for all -- including, importantly, those
3 whose convictions have been quashed but have not yet
4 received an interim payment, members of the GLO, and
5 those who have applied the Historical Shortfall Scheme.

6 Again, we welcome on their behalf, sir, the decision
7 to revisit the matter of compensation in a further
8 hearing on 8 December this year. We are able to say at
9 this stage, sir -- perhaps as some encouragement -- that
10 whilst matters are ongoing and confidential, we have
11 made progress in relation to issues affecting our
12 clients in the months since you first heard submissions
13 in relation to compensation, sir.

14 Now while full and fair compensation for every
15 person affected remains an urgent priority for our
16 clients, it's by no means the only priority. This
17 Inquiry serves an undeniable public service in seeking
18 answers to questions our clients have relentlessly
19 pursued for decades in the face of defensiveness,
20 dismissiveness, aggression and personal condemnation.
21 Every review for report which previously failed to look
22 behind the fiction that Horizon was robust, compounded
23 the trauma of our clients and their families. Failures
24 in accountability and transparency cemented in the
25 public record and in the public eye that they'd been

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1 There were many occasions when the Post Office
2 refused to accept that the bugs, errors and defects in
3 Horizon were known and relevant to its treatment of our
4 clients. We hope it will be an important exercise for
5 the Inquiry to consider the reasons why the Post Office
6 took the actions it did, and who took them, against the
7 background of what was known about Horizon.

8 The importance of Phase 2 again. For those we
9 represent, this may be one of the most critical
10 exercises for this Inquiry. As the Inquiry has heard,
11 each of the years that they had to wait were
12 exceptionally hard years, financially and emotionally,
13 for them and their families. Many did lose loved ones
14 during that time. They died without knowing that the
15 subpostmaster in question would be vindicated. As the
16 Inquiry knows, not all subpostmasters have been able to
17 survive to see the all-important decisions of 2019, or
18 the apparent sea change in approach by the Post Office.
19 So the question of why it took so long has many
20 implications.

21 Finally, sir, recovery, redress and responsibility.
22 The Inquiry has, from the outset, recognised the
23 importance of prompt and tangible compensation for
24 affected subpostmasters. Those we represent, sir, have
25 repeatedly welcomed the proactive approach taken by you,

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1 judged both dishonest and criminal. That they were
2 offenders, not only against the public good, but against
3 the most trusted and respected public institution, the
4 Post Office. Yet they were not criminals, and they were
5 not dishonest. And together, they were mothers,
6 fathers, sons, daughters and grandparents. They were
7 former policemen, bankers, and accountants, and many
8 others of good character committed to building a strong
9 business serving their local communities. They were
10 community volunteers and local counsellors. They were
11 parents starting out in life, building on hope for their
12 young families, and those preparing for an enjoyable and
13 well-planned retirement. Retirements that have, in many
14 cases, have been awfully denied them. They were first
15 and second-generation immigrant families. They were
16 first and second-generation Post Office families
17 committed to public service in the institution over
18 a number of generations. They were all committed to the
19 Post Office and what they thought it stood for. They
20 all trusted the Post Office. They were all broken by
21 their experience. And ultimately, they and their
22 families all want to know why the Post Office,
23 ministers, and so many others, appeared to have failed
24 them.

25 In considering how this most unprecedented of

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1 miscarriages of justice came to pass, there may be, sir,
2 in a broader sense, important learning on the role of
3 trust, good faith and candour in the provision of public
4 services. And it's only in seeking now to understand
5 why these prosecutions were allowed to happen, and why
6 it took over two decades for the Post Office to
7 acknowledge it was wrong, that lessons might be learned.
8 It is only in gaining an understanding of why they were
9 made to suffer as they did, that many of our clients
10 will genuinely be able to start to truly recover and
11 start to rebuild their lives; and it is only in finding
12 those answers that damage done to the public trust might
13 begin to be repaired.

14 Our clients are fully involved in this Inquiry, sir.
15 They will be represented in the hearing room, and they
16 will be online watching the proceedings, as well as here
17 in the room at various points.

18 They hope that lessons will be learned, and that
19 individuals and organisations accept accountability and
20 responsibility where such is due. They hope that no
21 other person or family is failed again, nor indeed
22 jailed again, like they were absolutely failed, and in
23 some cases jailed, by publicly-owned systems, public
24 agencies, and public officials. And they do place their
25 trust in you, sir, and in the Inquiry team. They are

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1 committed to this Inquiry. They intend to work with the
2 Inquiry team and other Core Participants to ensure that
3 the full story of Horizon and its key players is finally
4 told.

5 Thank you, sir.

6 **SIR WYN WILLIAMS:** Thank you, Mr Moloney. If I may say so,
7 that is a masterful compression of your opening
8 statement, between the time you started and lunchtime.
9 So well done.

10 **MR MOLONEY:** Thank you, sir.

11 **SIR WYN WILLIAMS:** Thanks again for your submissions. And
12 we will be ready to start again at, say, 2.05. Is that
13 all right with everyone?

14 **MR HENRY:** Yes, thank you very much, sir.

15 Sir, would you mind if I addressed you sitting down,
16 or would that compromise the visuals?

17 **SIR WYN WILLIAMS:** Mr Henry, I'm very happy for you to do
18 that, because I'm conscious, from having seen you both
19 on Tuesday, that you may be slightly taller than
20 Mr Stein, and he was having difficulty directing himself
21 into the microphone. And so I'd be very grateful to
22 hear you from a sitting position.

23 **MR HENRY:** Well, I'm very, very grateful to you, sir. Thank
24 you.

25 **SIR WYN WILLIAMS:** Right. See you all at 2.05.

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1 (1.03 pm)

2 (Luncheon Adjournment)

3 (2.05 pm)

4 **MR BEER:** I see that you're on the screen but I'm not sure
5 that Mr Henry has noticed.

6 **MR HENRY:** Good afternoon sir, can you hear me?

7 **SIR WYN WILLIAMS:** I can.

8 **MR HENRY:** May I begin?

9 **SIR WYN WILLIAMS:** I was about to tell you that you weren't
10 yet on my screen but now you are.

11 **MR HENRY:** Ah.

12 **SIR WYN WILLIAMS:** But before you begin, can I just say,
13 Mr Henry, that it is possible that this afternoon's
14 session won't take until 4.30. I would just like to
15 reassure those who are scheduled for tomorrow that
16 I will stick to the timetable so that if we do finish
17 earlier than 4.30, so be it.

18 **Opening statement by MR HENRY**

19 **MR HENRY:** Thank you, sir.

20 Sir, can I outline from the very beginning that I'm
21 going to be, as it were, responding not in any legal
22 sense, but reflecting upon the magisterial opening that
23 Mr Beer, King's Counsel, delivered. I'd like to thank
24 him for the immense care, detail and effort he and his
25 team have so obviously demonstrated in that opening as

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1 Counsel to the Inquiry.

2 It was rendered more powerful by Mr Beer's
3 restrained and sober delivery and yet, in spite of that,
4 sir, the more one listened, ever and ever more
5 disquieting became the matters he addressed.

6 The United Kingdom is a nation of laws. The quality
7 before the law, indeed in our very conception of
8 ourselves as a just society, is founded upon that
9 premise. But as Mr Beer's told his tale, it almost
10 began to seem as if he'd made it up.

11 It was if we'd become a Ruritania dukedom or
12 principality, where undue respect for hierarchy and
13 judicial deference towards an institution had reduced
14 people to serfdom and economic servitude, in which that
15 trusted institution, the Post Office, had taken every
16 advantage, just and unjust, when exercising almost
17 totalitarian control over those it pursued to custody
18 and beyond, destined, as Tracy Felstead was, to be sent
19 to an adult women's prison even though she was but
20 19 years old or, as Seema Misra and Janet Skinner were,
21 to incarceration in adult prisons where Seema was only
22 kept alive by the knowledge that she was pregnant and
23 where Janet refused to see her children because she
24 could not bear to let them have a memory, that indelible
25 image of seeing her across a formica-topped table

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1 wearing prison scrubs.
2 But the injustice did not end there. It went beyond
3 that, reducing its victims to destitution by bankruptcy
4 or criminal confiscation.
5 For those in the dock and also for society itself,
6 the depressing truth which, sir, you will not find
7 difficult to establish, was that the Post Office
8 strictly controlled the flow of information and denied
9 exculpatory material to those it had accused. In civil
10 matters, it deprived those it pursued of the means to
11 bring counterclaims or defend unmeritorious claims that
12 had been brought against them. That it was enabled to
13 do so, lay in part in the naive belief that computer
14 evidence is reliable and that the Post Office could
15 itself be trusted, that a multinational household name,
16 Fujitsu, was also acting with integrity.
17 How wrong those assumptions were. The Post Office
18 scandal reveals that, notwithstanding the legal burden
19 of proof that lay upon it, again and again, it
20 successfully shifted the evidential or tactical burden
21 upon its innocent victims, that they were to establish,
22 as it were, that the computer was not working reliably
23 at the relevant time. A defendant is utterly unable to
24 discharge that burden unless they coalesce and act as
25 a concerted group. I refer, of course, to the Horizon

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1 alleged by Mr Castleton in 2006 and Mrs Misra in 2010.
2 You'll be familiar, I'm sure, sir, with that extract
3 from Mr Marshall's statement.
4 One never expected or imagined that POL could act in
5 this way. One had a right to expect far more, much,
6 much more from a state institution. If its brutal
7 policy of raw claw civil litigation wasn't bad enough,
8 how on earth had an agent of the state, a government
9 dominion, as it were, decide to prosecute hundreds of
10 subpostmasters after it had realised -- indeed knew --
11 that Horizon wasn't safe? Why, apparently not content
12 with aggressive, old school civil litigation tactics,
13 had it deliberately chosen to harrow, indeed terrorise,
14 loyal subpostmasters, criminalising hundreds of innocent
15 people? How could it have countenanced exposing so many
16 of these loyal, blameless, already broken victims to the
17 risk of being put behind bars?
18 Such callousness reveals a corporate mentality that
19 branded subpostmasters as a liability rather than POL's
20 biggest asset. The subpostmasters were no more than
21 a number, equivalent to the phantom balance they
22 supposedly owed: a disposable commodity, a debt to be
23 pursued, an example to be made of.
24 So it is, sir, and you know this already, but it is
25 your imperative duty to examine POL's conduct of

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1 litigation before Mr Justice Fraser.
2 But in criminal courts up and down the country,
3 there was a huge disparity of resources and obviously
4 a disparity of information. This is starkly revealed by
5 the cases of Lee Castleton -- one of the Core
6 Participants that together with Ms Page, I am honoured
7 to represent -- and Mrs Misra.
8 In both cases, as Paul Marshall has said in his
9 evidence to the House of Commons back in July 2020,
10 civil and criminal respectively, both Mr Castleton and
11 Mrs Misra positively averred that they believed the
12 problems they had experienced, accounting shortfalls at
13 their Horizon terminals, might lie with the computer
14 system. In neither case was the Post Office required by
15 Judge Havery Queen's Counsel, as was, or Judge Stewart,
16 to prove affirmatively that the Horizon System was
17 working properly, reliably, at the relevant time.
18 Had the Post Office, in either case, been required
19 to prove that the Horizon System was working reliably,
20 it could not have done so. That is so, as a necessary
21 consequence of the factual findings of Mr Justice
22 Fraser. He found that from its introduction, the
23 Horizon System was: (a) unreliable; and (b) apt to
24 generate accounting errors and shortfalls of the kind
25 alleged in the Bates Group Litigation, and as had been

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1 litigation from the County Court to the High Court, and
2 the Magistrates Court to the Court of Appeal Criminal
3 Division.
4 This requires the investigation to discern not
5 simply the unjustified faith in Horizon and the origin
6 of that false belief but to establish when that hardened
7 into brutal realpolitik, the ends justifying the means,
8 that that crumbling, corrupt IT system had to be
9 defended at all costs.
10 The question of the Post Office as a private
11 prosecutor will no doubt, of course, be central to your
12 considerations. The Post Office failed, except in one
13 instance, in all its responsibilities as a private
14 prosecutor. First, as an investigator, it failed to
15 investigate. It boorishly and oppressively went all out
16 for a confession. Witness how it treated, sir, Nichola
17 Arch, Tracy Felstead, Seema Misra and Janet Skinner.
18 Each one was hectorred, bullied, stigmatised as a thief.
19 This wasn't investigative and impartial interviewing but
20 an interrogation and when it couldn't brow beat
21 a confession it then, from the very beginning,
22 negligently failed, indeed refused, to investigate the
23 defence raised by those subpostmasters that Horizon was
24 to blame.
25 But negligence, at some point, went further into

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1 active, unforgivable misfeasance and in this it was
2 aided and enabled by Fujitsu. Witness the shameful
3 conduct, as related by Ms Felstead in her evidence
4 before you, sir, and Mr Turner, her then expert, who was
5 told at court that it required a payment of £20,000 in
6 order for the disclosure to be produced. You will
7 remember Counsel to the Inquiry, Mr Beer, King's
8 Counsel, asking her those questions earlier, I think it
9 was, in February this year or March, when that was
10 revealed.

11 Subsequently, we had tried to contact Mr Turner but
12 unfortunately we believe that he has died but he did
13 submit a note when he became aware of this and he was
14 struck at the time at the injustice she suffered. It
15 remains a mystery why he was not called at her trial but
16 we shall endeavour to ensure that you have
17 an appropriate answer where that is concerned.

18 But it brings me now to the second role that POL
19 had, as a litigator and, as a litigator, it behaved
20 atrociously. It did not simply fail to discharge its
21 duty of disclosure but deliberately disregarded it and
22 suppressed it, playing hazard with the lives of those it
23 prosecuted.

24 It therefore connived at securing wrongful
25 convictions. Worse than that, it adhered to a practice

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1 Well, as stated, sir, of course, that is obiter, and
2 thus the reference to adding an account to redress
3 a temporary gain is likewise obiter. But, in this case,
4 there was no temporary gain. In this case, this was the
5 subpostmasters being tormented by false results provided
6 by a defective system, Horizon, and subpostmasters
7 accepting balances, simply in order to continue to
8 trade.

9 In those circumstances, sir, which prosecuting
10 authority would really wish to proceed against them?
11 Would it really be necessary if evidentially, as we now
12 know, the evidential test was clearly suspect with this
13 nascent and evolving system subject to so many bugs,
14 errors and defects. In any event, these people having
15 candidly explained their difficulties, and had sometimes
16 been advised, as you learnt from my learned friend's
17 opening statement as Counsel to the Inquiry, to just
18 balance the books, advice given by the helpline: how
19 could it possibly be right to prosecute them?

20 The Post Office, however, was not looking at this as
21 an independent prosecutor. That brings me to the third
22 point: the Post Office as witness, aided by Fujitsu. It
23 was guilty of the most egregious wrongdoing, aided and
24 abetted by Fujitsu, of course, in relation to expert
25 evidence.

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1 that the Court of Appeal deprecated as long ago as 1971,
2 when the Court of Appeal had obdured the Post Office to
3 abandon charging both theft and false accounting. Even
4 though that guidance was obiter, it was plainly not
5 followed and, sir, you will no doubt recall the case of
6 *R v Eden*, 55 Criminal Appeal Reports, 193, (1971), in
7 which the practice of the Post Office charging both
8 theft and false accounting received the following
9 "observations", if I can put that in inverted commas, by
10 Lord Justice Sachs. He stated:

11 "It seems to this court to be rather odd that two
12 counts, theft and false accounting, should be put in
13 parallel setting if it is the object of the prosecution
14 to secure a conviction on the first, only if the second
15 is proved, or on the second, only if the first is
16 proved. There would seem, in those circumstances, but
17 little point in putting two separate counts. It would
18 be better in future that the prosecution should make up
19 its mind as to whether or not it really wants
20 a conviction on account for false accounting, only if
21 theft is proved. If so, reliance should be placed on
22 one count only. On the other hand there may be cases
23 when it is wise to have account for false accounting
24 where, for instance, a temporary gain could be the
25 object of the dishonest act."

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1 You, sir, will remember the decision of Mr Justice
2 Cresswell in *The Ikarian Reefer*, the concerns over
3 abuses in both civil and criminal courts as to expert
4 evidence, the civil and criminal procedure rules which
5 were drafted in response to that and, in particular, so
6 far as the criminal domain is concerned, formerly
7 Part 33 but now Criminal Procedure Rule 19.

8 It's a very serious business. In the late
9 1980s/early 1990s, in a series of landmark appeals, the
10 case of Judith Ward, the Birmingham Six, the disgraceful
11 misconduct of experts came to light. The idea that the
12 expert was somehow independent and impartial was, in
13 fact, shown to be a lie, hence the necessity of the
14 Royal Commission and hence the very real importance that
15 our system of justice is not corrupted by false
16 evidence.

17 But, unfortunately, sir, because of the desire to
18 defend Horizon at whatever cost, with the raw material
19 for that being human misery, expert evidence was abused,
20 time and again, and you will see that in Lee Castleton
21 in the evidence of Ms Hobbs, and you will see that in
22 the case of Mrs Misra in the evidence of Dr Jenkins,
23 which brings me to the fourth point.

24 POL as a minister of justice. It could not be
25 trusted to act in accordance with those duties that fell

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1 upon it, as a minister of justice. In particular,
2 objectivity, impartiality, and restraint, as opposed to
3 what Mr Justice Avery described in the case of *Banks* as
4 "acting as an avenging angel".

5 So, ultimately, POL only excelled in its role as
6 a querulous, slightly paranoid and vengeful victim. But
7 that was entirely performative. It was never a victim,
8 just as its prey were never criminals.

9 Inquiry, sir, however must consider more than POL's
10 role as a private prosecutor. Professor Richard
11 Moorhead, who gave evidence before you on
12 8 November 2021 as an interested party, cogently
13 described the manner in which the law in whatever
14 jurisdiction, was abused as central, indeed fundamental,
15 to this Inquiry, he argued, even more important than the
16 software itself. This was because the law created,
17 indeed sanitised, these myriad injustices. He stated
18 and I quote:

19 "We don't think that there can be any argument that
20 Horizon harms directly arose from the way legal work was
21 managed and conducted. People were threatened, sued,
22 fired and prosecuted via partly or wholly legal work.
23 When Post Office and Horizon in particular came under
24 scrutiny, denials, non-disclosure and harm visited on
25 the subpostmasters and the legal work supported" --

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1 oppression and unconscionable approaches were put in
2 place. I said, in essence, Horizon is not solely or
3 even mainly a computing scandal; it is also a lawyering
4 scandal but it is, above all, a corporate governance
5 scandal."

6 I return to the individual cases now. The Core
7 Participants we represent are paradigms of the evil that
8 was done. Tracy Felstead and Nichola Arch, right at the
9 beginning of this disastrous era in criminal justice,
10 right at the beginning.

11 Lee Castleton, the civil case heard in December 2006
12 and January 2007. The precedent, the illustrious scalp
13 that was brandished before anybody else who wanted to
14 challenge the Post Office. They took him to the High
15 Court in London, having failed to appear at the
16 Scarborough County Court and then having had the matter
17 successfully transferred from the High Court Registry in
18 Leeds to the Royal Courts of Justice, pursuing a £25,000
19 claim, and the costs in connection with it came to
20 £321,000.

21 It is staggering. They bankrupted him. They very
22 nearly destroyed him. He told you, sir, that if he had
23 been a braver man, he would have killed himself.

24 Seema Misra: her case demonstrates every conceivable
25 mischief of non-disclosure, perjury and oppression.

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1 Forgive me, sir, I'm going to start that again.

2 "People were threatened, sued, fired and prosecuted
3 via partly or wholly legal work. When Post Office and
4 Horizon in particular came under scrutiny, denials,
5 non-disclosure and harm visited on the subpostmasters
6 and the legal work supported or failed to challenge the
7 corporate governance failures that marked this scandal
8 so profoundly."

9 You will be aware that we say some of that work was
10 probably done incompetently or unethically, in our view.
11 Certainly, there are serious questions that need to be
12 looked at.

13 Professor Moorhead opined and was correct in
14 submitting to you, we submit, that you could not get at
15 the truth without analysis, sir, of the individual
16 cases. We pay tribute to the fact that you have heard
17 and encouraged so many of the victims to come before you
18 and speak, where they are able to, as to the profound
19 suffering they experienced.

20 But Professor Moorhead continued:

21 "We know from the *Hamilton* and *Bates* judgments that
22 shortfalls were pursued oppressively, prosecutions were
23 pursued unconscionably and the safety of those
24 convictions was considered or reviewed, it seems,
25 inadequately. But we do not know how and by whom

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1 Then, finally, Janet Skinner, a paradigm case of
2 an honest woman broken by this discreditable charging
3 practice, particularly since they could not under any
4 circumstances have proven theft, owing to the defects in
5 the system. She enters a plea, an unequivocal,
6 I suppose, but false plea, because she had been crushed.

7 There must be and there are, sir, hundreds just like
8 her. So therefore, she is vitally important as well,
9 her story, to the issues that you are required to
10 determine.

11 Serious criminal charges emerged from this scandal,
12 we submit. Perjury is one; perverting the course of
13 justice, the vital administration of justice is another;
14 contempt of Parliament, quite possibly even another. So
15 far as legal professional privilege being vitiated,
16 Professor Moorhead stated that "Evidence of iniquity was
17 in abundance": evidence of the iniquity in abundance.

18 What and how brought POL to this? What motivated
19 POL? Was it arrogance, hubris, paranoia that
20 an epidemic or endemic theft and false accounting had
21 suddenly, like a wildfire, burst out at branches up and
22 down the country?

23 Or was it far more sinister than that: the
24 narrative, the narrative of a computer-driven Utopia and
25 so, to serve its own ends, corporate, commercial,

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1 political and reputational, it had to subjugate all
2 those who might challenge it together with Fujitsu, and
3 thus condemn those innocent people into a never-ending,
4 dystopian nightmare.

5 Does it come to that?

6 I mentioned Fujitsu. What about its sidekick? The
7 naked triumph of Fujitsu's commercial interests
8 trampling over the innocent, seemed, and still does
9 seem, utterly incredible.

10 As Mr Beer's opening continued, it was delivered
11 with appropriate pathos for the victims of this tragedy,
12 pathos which never compromises independence or
13 dispassionate objectivity, and yet a staggeringly
14 surreal element began to emerge at times, sir, from his
15 almost prosaic exposition of the facts. There is no
16 need now to name the great and the good who Mr Beer
17 mentioned, the "Don't you know who I am", who then
18 populated the Central Criminal Court in the east and
19 formerly the Supreme Court in the west with One Essex
20 Court almost plum in the middle? But it seems that the
21 establishment writ large with all its weight was brought
22 to bear on the little people.

23 Among the putrid story that emerges, are these
24 questions which we now pose for your consideration. How
25 had this country, the oldest democracy in the world,

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1 In doing so, in reaching your conclusions, the
2 accountability of each branch of Government that allowed
3 this to happen, indeed, perhaps doomed it from its
4 inception, must also be determined.

5 So I come to that aspect, a common theme of failed
6 public sector IT projects -- and, of course, this was
7 a public PFI IT project -- is the lack of proper
8 governance and oversight by government, and Horizon was
9 no exception. But what took the troubled history of
10 Horizon's procurement out of the commonplace, such as
11 the viability of the project itself, was diplomatic
12 pressure, expedient responses to threats of litigation,
13 and continuing internecine struggles between government
14 departments.

15 It now seems clear that the project had objectively
16 failed before it was inflicted on Post Office branches
17 and Crown Offices nationwide. We submit that because,
18 of course, it did not meet the standards agreed and the
19 functions specified were subject to inherent
20 vulnerabilities. The writing was on the wall and,
21 predictable by the burgeoning costs, repeated delays,
22 and failures to meet completion deadlines.

23 It is understood, and this is a matter, no doubt,
24 upon which Mr Page will be able to assist you, and also
25 other evidence that you will hear, that projects with

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1 failed so many, approaching somewhere between 800 and
2 1,000? How had its institutions not merely failed but
3 had become complicit in tearing up the lives of these
4 decent, law abiding, entirely innocent victims? Those
5 isolated individuals -- because they thought they were
6 isolated -- dare I say ordinary people who suffered so
7 much and still suffer to this day. They can be counted
8 in their hundreds.

9 They may be the so-called "ordinary people" but
10 their lives as you recognise, sir, are precious and have
11 value. They're not ennobled. No accolades, letters or
12 chivalric insignia follow their names but extraordinary
13 wrongs were done to them and those wrongs still
14 continue.

15 The causes of their suffering must be arrived at by
16 you, sir, root and branch. Your root cause analysis
17 will be multi-systemic and multifactorial and you will
18 only overcome the many obstacles you face if, in
19 accordance with the hope fervently expressed -- and
20 "fervent" was the actual word you used -- that you might
21 receive cooperation from all parties. You expressed
22 that wish on 8 November 2021, but only by adherence to
23 candour and transparency by all the Core Participants
24 acting in good faith and with goodwill, shall you be
25 enabled to arrive at a sound conclusion.

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1 long development time frames have a very high
2 probability of failure and, in fairness to Fujitsu,
3 repeated alterations to the specification by government,
4 exacerbated the problem of delivering this mammoth, so
5 oftentimes repurposed project, on time.

6 There were undoubtedly system failures, the bugs,
7 errors and defects that meant that Horizon did not
8 perform as expected and was subject to unpredictable, at
9 times unknown, in other words latent and entirely
10 unforeseen, so far as the subpostmasters were concerned,
11 errors. In blunt terms, it didn't work properly.

12 As Hulme said, the fact that 19 matches ignite is no
13 proof that the 20th shall, David Hulme.

14 As Mr Justice Fraser outlined, so clearly in his
15 judgment, the fact that it works most of the time does
16 not mean to say that it works all of the time.

17 Then, of course, from the very beginning, there was
18 a failure to ensure that the needs and expectations of
19 the subpostmasters were met, considered or even taken
20 into account. The arrogance is breathtaking. The
21 subpostmasters, the end users, were not front and centre
22 of the development process. How could they? If they
23 were to find out that they were to lose control of
24 balancing out their accounts, that they would have to
25 bow before the computer and surrender their control, no

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1 doubt there would have been uproar.
2 How can a programme, we ask, which requires a user
3 manual of more than 800 pages, be remotely practicable?
4 Doesn't that speak for itself? What budget was
5 allocated for training? How likely was the rollout
6 going to be fit for purpose, given the lack of staff to
7 implement so-called user awareness sessions that were
8 brief and inadequate? Was this euphemism for training
9 another ominous sign? Was it destined to fail? How
10 convenient; blame it all on the subpostmasters, as user
11 error.

12 We submit that rolling Horizon out in such
13 circumstances was the height of folly. It was an act of
14 political and reputational expedience, instead of
15 listening to its frontline staff and subpostmasters, POL
16 and Fujitsu decided, we suggest, at some point, sir, to
17 enter into a pact by which subpostmasters were to blame.
18 They were to be sued or prosecuted on the grounds that
19 Horizon was infallible. It was a policy founded on
20 a ruthless disregard for the facts, motivated by mutual
21 self-interest and political expediency.

22 It was easier to blame the subpostmasters than to
23 give the most remote credence to their concerns. The
24 alternative was devastating. They would have had to
25 have gone back to the drawing board, ripped it all up,

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1 Now, sir, prophecy, however honest, is generally
2 a poor substitute for experience. Ms Page and
3 I nevertheless predict that the corporates in this case,
4 and perhaps their former directors and officers, may
5 well follow a studied and studiously well rehearsed
6 routine that you, given your very considerable
7 experience, will be astute to.

8 Leaving aside equivocation and casuistry, because
9 one mustn't pre-judge, but one can easily see a line
10 taken upon reliance on the faults of others,
11 rationalisations concerning almost Byzantine lines of
12 command, lack of co-ordination and communication between
13 divisions, departments and the like, "If only we'd
14 known, if only we'd been told". We trust, sir, that you
15 will see this for what it is, because this is the
16 governance issue that Professor Moorhead powerfully
17 alluded to.

18 It was incumbent upon the board and senior
19 management of Fujitsu and POL, indeed government, to
20 take ownership of this burgeoning crisis to embrace
21 accountability, to ask the difficult questions.

22 Had they asked those very necessary questions, then
23 there would have been no need for this Inquiry to do so.
24 But now, sir, you must ask and answer those difficult
25 questions in their stead because of the appalling

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1 and started again.

2 So POL's corporate governance and how it came to
3 weaponise civil and criminal litigation must be examined
4 by you, sir, in the context of who knew what and when.

5 There are clues, however. Clues can be discerned
6 from, of course, evidence that still exists, evidence
7 that was destroyed, and matters that never ever existed,
8 because nobody put their minds to it. But, generically,
9 an effective business must have robust internal controls
10 to identify deficiencies in the IT system that it had to
11 work with. These management systems would necessarily
12 involve ensuring that problems, if unresolved, would be
13 escalated to the senior management committees and
14 ultimately the board, and senior management committees,
15 with the board's oversight, would then properly engage
16 in order to rectify these defects, supervising those
17 delegated to resolve such issues.

18 Senior management committees with the board's
19 oversight would also engage with the corresponding
20 management of the third-party IT provider, in other
21 words Fujitsu.

22 Had such structures existed -- and surely they ought
23 to have been in place -- it is difficult to imagine how
24 anyone at POL and Fujitsu could have been unaware of the
25 crisis engulfing the innocent.

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1 consequences of their failure to do so, because of the
2 catastrophic impact upon those that were scapegoated.

3 Those who constituted the directing mind and will of
4 the corporates may rest the blame on middle management
5 or seek to pass responsibility to their internal legal
6 department and, ultimately, given what Mr Beer, King's
7 Counsel, has already alluded to, point the finger at
8 each other and government, in a sort of three-way "The
9 good, the bad and the ugly" Mexican stand-off.

10 We suggest to you, sir, however, that this is
11 a self-defeating strategy. They had a fiduciary duty.
12 They had a duty to enquire and, of course, they had
13 a duty of care towards the subpostmasters. How POL
14 blithely accepted and regarded as truth that well over
15 700 staff had turned base after years of loyal and
16 honest service, founded largely or mainly upon
17 a defective computer system, Horizon, ought to have been
18 documented and explained. It ought, sir, to have been
19 a red flag.

20 Were any concerns or warnings expressed at any
21 stage, citing the manifest improbability of all these
22 worthy individuals becoming criminal? What about the
23 helpdesk? Then, returning to head legal office, why was
24 there no central file of those who had maintained that
25 Horizon was the cause of the shortfall or deficiency?

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1 Would that not have been assiduously kept,
 2 a register of each dispute with the litany of complaints
 3 against Horizon? But apparently not so. Again, one has
 4 to ask whether this may have been a deliberate policy so
 5 that the picture emerging, the mosaic we allude to in
 6 our opening statement, with each little shard or
 7 fragment being a broken life wrongly prosecuted or sued,
 8 that they didn't want that; they simply wanted chaos,
 9 without an index.
 10 It all comes to their own management of data and, if
 11 you do not wish to be briefed and if you do not ensure
 12 that there are systems in place that you can be properly
 13 briefed, then you have to wonder whether that is by
 14 accident or design.
 15 What we submit to you, sir, is that the more these
 16 responsibilities or duties of accountability are evaded,
 17 the more untenable POL's and Fujitsu's position will
 18 become. If there were hermetically sealed boxes, if
 19 left did know what right was doing, if a need-to-know,
 20 divide-and-conquer culture existed in those
 21 institutions, this is no excuse. The tone and
 22 structure, the apparatus of governance and
 23 accountability is set by the senior management and comes
 24 from the top not the bottom.
 25 If there were rigidly hierarchical or labyrinthine
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1 utmost sincerity, the advice they had once received,
 2 whether to strictly control information being provided
 3 to Mrs Seema Misra, removing her eligibility, along with
 4 Ms Felstead, from the mediation process, with the
 5 intention of depriving her of information which was
 6 critical not only to her appeal but everyone else's, or,
 7 in the civil proceedings, so absurd as the effrontery
 8 now seems, to seek to recuse the one judge who seemed
 9 determined to demand answers from their counsel, trial
 10 counsel, who himself, it appears, seemed to be oblivious
 11 of the recusal application that was about to take place,
 12 sir, when Lord Grabiner entered the court.
 13 So it could be this position, and again, this has
 14 been alluded to by Professor Moorhead, that the
 15 executives will blame the lawyers and, no doubt, the
 16 lawyers will blame the executives. So you are
 17 confronted, I respectfully submit, with that classic
 18 problem that was identified so long ago by the then
 19 Mr Justice Leggatt in *Gestmin v Credit Suisse*, which is
 20 that legal proceedings -- and although this not a legal
 21 proceeding, the same inherent biases will exist -- tend
 22 to distort the memory and so, therefore, you're forced
 23 to go to the contemporaneous documents.
 24 But beware, because you will have already noted from
 25 what was put up on the screen yesterday, that some of
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1 structures impeding communications that, being left
 2 uncorrected, may reveal a desire to exploit the ulterior
 3 advantages that always come with such overcomplex and
 4 ineffective corporate architecture, the means by which
 5 those in authority are enabled to say, "We did not
 6 know", to make plausible denials. Ultimately, however,
 7 the buck should stop with those at the top.
 8 To the cynical, however, the best form of
 9 reassurance is to retain the service of the most eminent
 10 silks, even a retired justice of the Supreme Court.
 11 Their once privileged position, pun intended, may become
 12 distinctly uncomfortable given the tight corner in which
 13 POL now finds itself, together with its former senior
 14 management. The legal advice POL happily once received
 15 may now fall within the crosshairs.
 16 One cannot say for sure, especially after so many
 17 years have passed and especially with the expression of
 18 contrition at the beginning of POL's opening statement,
 19 that POL might now choose to blame those who were
 20 prepared professionally to stand on their heads and
 21 perform cartwheels for them, ranging from panel firms
 22 who prosecuted, to those august persons Mr Beer, King's
 23 Counsel, mentioned.
 24 The Post Office, of course, may double down but it
 25 would not be surprising were they to repudiate, with the
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1 those contemporaneous documents are Janus faced. They
 2 make a statement of principle and then derogate from the
 3 statement of principle thereafter.
 4 So, as libel lawyers or defamation specialists
 5 frequently say: don't just look at the headline. The
 6 headline may sound the right tone, whereas the rest of
 7 the advice or review may not. And that brings me, sir,
 8 to three matters before I will very briefly go through
 9 the submissions that we have submitted already.
 10 Disclosure. Your disclosure protocol of
 11 28 July 2021 is, I respectfully submit, inextricably
 12 bound up with the fervent hope you expressed in November
 13 of last year. The disclosure protocol, which you're
 14 very familiar with, sir, stated:
 15 "Wherever possible the chair intends to rely on
 16 voluntary cooperation for production to the Inquiry of
 17 the documents he considers necessary to fulfil his terms
 18 of reference. The Chair will normally make a request
 19 for voluntary production of documents by means of
 20 a letter [et cetera, et cetera]. The chair expects that
 21 all parties to whom a request of this kind is addressed
 22 will cooperate with the Inquiry and will provide all
 23 relevant material without the need for him to exercise
 24 his powers of compulsion of documents or evidence."
 25 Then I omit words:
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1 "... providers of documents including legal
2 representatives should provide documents requested by
3 the chair together with any other documents they
4 consider to be relevant to the Inquiry's terms of
5 reference without delay and within the time limits
6 specified by the Inquiry in any relevant request. PODs
7 are expected to undertake comprehensive, thorough and
8 rigorous searches in response to the request of
9 documents", and I need not say anything further.

10 Well, unfortunately, sir, that was a bit of a dead
11 letter, and we respect the decision you made on Tuesday
12 of this week and I don't seek in any way to go behind
13 it. I fully understand the fact that you did not wish
14 to lose momentum. But the fact of the matter is,
15 without disclosure, justice is smothered and, when there
16 is non-disclosure, injustice flourishes.

17 Now, none of Mr Altman's documents, advices or
18 reviews were disclosed in the criminal appeals. The
19 existence of his 2013 review was known, but not
20 disclosed. It is jaw dropping, when one considers
21 POL00006485 -- and I will not ask for any document to be
22 put up on screen, sir -- Mr Altman's consultation which
23 took place on 9 September 2013. Jaw dropping.

24 That is, I regret to submit, one of those
25 Janus-faced documents. Six years later, his advice on

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1 27 September 2022, because we -- perhaps out of
2 an abundance of caution, and perhaps unnecessarily, for
3 which I ask your forgiveness -- had written to the
4 solicitor of the Inquiry expressing concerns about the
5 terms of reference. The solicitor to the Inquiry wrote
6 back in these terms, and it states:

7 "In relation to the matters set out in paragraphs
8 1(a) and 1(b) of your submissions, 'Was evidence as to
9 the unreliability of Horizon hidden from public scrutiny
10 and, if so, who was responsible for doing so?' I would
11 draw your attention to the following issues:

12 "Issue 49 ..."

13 Your issue 49, sir:

14 "What information and knowledge did Post Office
15 Limited, Royal Mail Group Limited, Fujitsu Services
16 Limited, the National Federation of SubPostmasters, the
17 Communication Workers Union, UK Government Investments
18 and the Government have about the following facts and
19 matters during the relevant period? Read with (a) the
20 existence and extent of bugs, errors and defects in the
21 Horizon IT System; (b) the ability of such bugs, errors
22 and defects to cause apparent discrepancies or
23 shortfalls in branch accounts; (c) the ability of such
24 bugs, errors and defects to undermine the reliability of
25 the Horizon IT System accurately to process and to

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1 settlement, POL00006401. Again, hair raising,
2 paragraphs 19 to 22, 25, 27, paragraph 31, 17 June 2019.
3 Utterly inimical to the very grave and onerous
4 responsibility on the Post Office as prosecutor that, by
5 that time it knew, or at the very, very least suspected,
6 that innocent people had either gone to prison or had
7 been criminalised for nothing.

8 In fact, really, that ought to have been clear as
9 far as back the Clarke Advice and the shredding advice.
10 It ought to have been clear. What the Post Office ought
11 to have done was to have self-reported to the CCRC and,
12 for good measure, it probably ought to have written to
13 every court in which it had brought a prosecution, and
14 it ought to have perhaps even self-referred to the DPP.
15 But it did not. There was raw claw litigation in both
16 the civil and the criminal litigation, at appellate
17 level.

18 The ineluctable conclusion, we submit, is it was
19 because they were wanted to suppress. They wanted to
20 smother the truth from ever getting out; they wanted to
21 manage things.

22 Now, we have to return to the issue of knowledge,
23 and I would now be very grateful, sir, if you could just
24 note that the solicitor for the Inquiry wrote to those
25 who instruct Ms Page and myself on the

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1 record transactions; (d) the extent to which apparent
2 discrepancies or shortfalls arose in branch accounts as
3 a result of bugs, errors and defects in the Horizon IT
4 System."

5 Then continuing with our point:

6 "... the non-disclosure by Royal Mail Group Limited
7 and Post Office Limited of the existence of problems
8 with and/or concerns about the reliability of Horizon
9 when bringing criminal proceedings against persons
10 alleged to be responsible for those shortfalls."

11 We were then directed to issues 50, 51, 52 and 59,
12 namely at what level within the organisations named at
13 question 49 and the Government, were these known? When
14 and in what circumstances had they first become aware of
15 these matters? How did their knowledge develop over
16 time? What, if any, steps were taken by the
17 organisations named at question 49 and the Government to
18 bring these matters to the attention of subpostmasters,
19 managers and assistants?

20 Well, we submit that knowledge, of course, is
21 central. We can start out, of course, with the obvious
22 statement that Fujitsu knew. They knew. They must have
23 known and if those in senior management did not, there
24 must have been an active policy of Nelsonian blindness,
25 which is, of course, dishonest.

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1 We submit from the very beginning the Post Office
2 knew enough at the outset, to exercise caution and
3 restraint and not proceed as it did against the innocent
4 Nichola Arch and Tracy Felstead. Whilst they may not
5 have known the full picture at the start, they knew
6 enough that it wasn't working.

7 Why do we say that? Because of the difficulties in
8 procurement, delivery, rollout and training.

9 The rollout, as we submit, was a premature rollout.
10 The defective advice that Mr Beer took you to, where
11 subpostmasters were advised to proceed to balance,
12 a sort of *force majeure* forced upon them by the inherent
13 instability of the system, the advice to sign off
14 an inaccurate account from the helpline beggars belief.

15 What about the training? The training. How on
16 earth, on top of everything else, to get on top of the
17 819-page training manual and also the fact that there
18 was no continuity in the training? We know again and
19 again that somebody comes and trains, a glitch, a defect
20 is noticed and then they never come back. It's almost
21 as if they're not sent back so that there is no
22 continuity of care and, if anybody did take up arms on
23 behalf of a subpostmaster, they would seem to have been
24 moved on.

25 Sir, we respectfully submit that the helpline, as

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1 concentrate carefully on two matters, sir: the first is
2 the removal of the suspense account and the second is
3 the pitiless destruction of Lee Castleton and his
4 witness statement is, of course, WITN03730100. These
5 matters arose, of course, long before the Computer
6 Weekly document in 2009.

7 Let us deal first of all with the removal of the
8 suspense account, the way in which subpostmasters could
9 park the discrepancy and, as it were, be allowed to
10 continue to trade so they wouldn't have to accept the
11 balance and it could remain, as it were, in abeyance.

12 The document upon which we rely for this is POL
13 000 -- and if I'm wrong about that, forgive me; it might
14 be 000 -- but 38870.

15 We know from the properties that it was composed on
16 16 September 2003. Mr Nick Wallis, in his book on this
17 scandal, addresses the terrible dilemma that confronted
18 subpostmasters when it was withdrawn, where they would
19 have to accept Horizon, accept the balances, the
20 shortfalls or be dismissed.

21 We respectfully submit that that was a result of the
22 fact that Horizon was unfit for purpose, that debts were
23 building up and that cupidity, rapacity, call it what
24 you like, on behalf of the Post Office, triumphed over
25 justice to its loyal subpostmasters.

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1 well, all of this must have been fed back. So the Post
2 Office must have realised, at a relatively early stage,
3 that the innocent were being put in jeopardy, that the
4 innocent were being potentially broken on a wheel just
5 so that they could pursue what they believed to be
6 a debt.

7 But the Post Office knew subsequently, and we
8 respectfully submit they knew at a deep level, that
9 Horizon was subject to these bugs, errors and defects.
10 But did they reverse their policy of prosecution? No.
11 Did they remediate this appalling injustice? No.

12 They stopped at the beginning of 2014 because they
13 received an advice from Mr Altman, King's Counsel, which
14 reveals that Mr Altman cannot have been in the know,
15 because he was advising them that they had to have
16 proper protocols in relation to prosecution and also the
17 reliability of Horizon and, as we put in our opening,
18 that could not be done without blowing the lid off what
19 they already knew. So it was far easier for them, far,
20 far easier for them, to simply stop prosecuting, because
21 the terms upon which Mr Altman said they could only
22 continue to prosecute satisfactorily and in safety, were
23 obviously toxic, so far as they were concerned.

24 But that, of course, is far down the line. When did
25 the Post Office know? We will submit that you must

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1 The second thing, of course, is Mr Lee Castleton.
2 Mr Lee Castleton: his story is unutterably tragic.

3 This is far more than a legal injustice. This
4 destroys people's mental, physical health; takes away
5 their good name; they're branded as a thief; their
6 daughter gets gobbled at in the street: mucus, phlegm,
7 saliva. Mr Castleton told me she had beautiful long
8 hair and she would come back, having been abused that
9 her father was a thief, with spit and phlegm in her
10 hair.

11 The Post Office needed a precedent and, as I've
12 said, they brandished his story, his fate, before
13 others, to deter. He was, as I've already submitted,
14 an illustrious scalp.

15 A witness called in the case to give evidence of the
16 Horizon System was Ms Anne Chambers, a system specialist
17 employed by Fujitsu. Her evidence was that she found no
18 evidence of any problem. Judge Havery, Queen's Counsel,
19 was impressed by her; he described her as "clear,
20 knowledgeable and a reliable witness". That was not,
21 however, Mr Justice Fraser's conclusion. This is what
22 Mr Justice Fraser stated:

23 "At least Anne Chambers, in early 2006, and all
24 those with whom she was corresponding, knew that this
25 problem, now admitted to be a software bug, had been

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1 around 'for years'. Horizon support were telling the
2 subpostmasters, whose branch accounts were affected by
3 discrepancies, that they cannot find any problem. The
4 SMC, the part within Fujitsu responsible for providing
5 corrective action for event storms, would not always
6 notice these had occurred in time, and by then, the
7 damage may have been done. I find by 'the damage' that
8 this can only mean impact upon branch accounts."

9 Well, none of that, of course, was before His Honour
10 Judge Havery. They pursued Mr Castleton and they
11 pursued him as a precedent. It is absolutely clear that
12 the expenditure of 321,000 to pursue a debt of about
13 25,000 is utterly ludicrous, as a commercial case. It
14 ought to have been dealt with by financial controls. It
15 ought to, we suggest, have been escalated. It is a mark
16 of the oppressive culture and it is unconscionable that
17 such costs were generated.

18 Mr Castleton, a litigant in person, did not even
19 know that he could require their bill to be taxed and
20 so, therefore, he was saddled with that and remained
21 saddled by that in bankruptcy. He did not even know --
22 nobody informed him -- that the bill could be assessed.
23 It is an appalling, a most discreditable episode and it
24 ought never to have been countenanced.

25 I now come, if I may, to compensation. I want to
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1 sits in school and, you know, he hears people talking.
2 He sees stuff in his school. They have TVs that project
3 the news. He's happy that he doesn't have the same
4 surname as me. I'd like for somebody to be held
5 accountable. It's not just one person. There's not
6 just one person that knew what was going on here.
7 Somebody needs to be held accountable. I want them to
8 sit here and feel what we feel. We're having to do this
9 again, we're having to tell our stories over and over.
10 We just need answers so that we can move on with our
11 lives."

12 You know, sir, that she is now, as she has
13 expressed, unable to take any further part in the
14 provision of evidence.

15 Mrs Misra:

16 "The Post Office scandal made me feel this is a land
17 of two law. There is a separate law for the rich and in
18 authority and then there's a separate law for people
19 in -- the common people. And another thing, you know,
20 like I'm really thankful for the Inquiry, you know, so
21 we can put a point forward but, at the same time,
22 I don't want Post Office to hide behind the Inquiry and
23 saying that 'Okay, we'll make a decision when the
24 Inquiry is done'. Inquiry are going to find out who
25 know what, and what punishment they like, but they

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1 briefly deal, if I may, sir, with some of the thoughts
2 that have been expressed and given in evidence before
3 you about this. I will not refer to Mr Castleton's
4 evidence. He was nearly destroyed but with tremendous
5 courage he now tells you that he is happy, but he is
6 only happy because he is a person of profound faith and
7 stoicism, and it is humbling that a man who has been
8 subjected to so much, together with his wife and
9 children, can reach that level of acceptance.
10 I suppose, basically, it was submission. He was
11 powerless to do anything in front of this juggernaut
12 that crushed him.

13 Nichola Arch, mentally, physically, emotionally
14 broken, unending pain. She and her husband even
15 considered committing suicide together. They now have
16 a child but, after their child was born, she had
17 a massive operative procedure and she is beset with
18 health problems, emotional and physical.

19 Ms Felstead, who had to go somewhere else out of the
20 bosom of her close-knit family, leaving the area in
21 which she'd grown up because of the shame, she asked in
22 front of you:

23 "Do they have children? What if it was their
24 daughter? My 15-year old son said to me last week that
25 he's glad he doesn't have the same surname as me. He

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1 don't -- for whatever decision they need to, whatever
2 caution they need to answer, they should still carry on.
3 Every time we go to court, we find a new evidence where
4 there'll be a Clarke Advice shredding document and there
5 will probably, like, some more coming up as well."

6 Well, I've already referred this afternoon to the
7 Altman documents.

8 "Can they be sincere for once", Mrs Misra said, "and
9 say the truth, and accept it and to be honest? I say it
10 for myself and probably the same for everybody: not just
11 physically. We are mentally tired. We are mentally
12 tired. We want to enjoy life, whatever we got left.
13 Can't just like -- it's not easy thing but that doesn't
14 mean we're going to give up. We do want the answer.
15 I just say please get this sorted."

16 Mrs Skinner, Janet Skinner:

17 "There's too many people involved in what's gone
18 wrong. Either it'll be within the Government, the
19 Royal Mail, the Post Office, the legal system, the
20 defences, the legal teams. So many people that have
21 wronged all these people and destroyed so many people's
22 lives. We need answers from it. People think that
23 we're here because of money, and people automatically
24 think that all we're bothered about is compensation.
25 The only thing that compensation will ever change is our

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1 financial stability. We've got a life sentence for
2 what's been done. We will never erase the memories of
3 what's happened over these past 20 years, and it won't.
4 We've got to live with that, but yet you get the people
5 at the top who just basically say 'I'm sorry, we made
6 a mistake'. You made a mistake by destroying people.
7 Do you know, Seema was right in what she said. There's
8 a split between them and us. So why is it that the
9 people at the top think they have more power? What
10 makes them above the law, above anybody else? If we
11 break the law, we get penalised. They're breaking the
12 law, and nothing comes of it."

13 So, sir, I'm going to ask you to take the opening
14 statement as read.

15 **SIR WYN WILLIAMS:** I should tell you that it has been read.

16 **MR HENRY:** Yes. Well, thank you. There is no point
17 repeating that which has been so ably addressed by all
18 counsel who preceded me. You have our opening
19 statement. But, sir, you know your august
20 responsibility. You know it well.

21 The best expression of sorrow or contrition is not
22 a legally rehearsed and trite expression. It is not the
23 tight body language of somebody sitting by their lawyer.
24 It actually comes from acts, from deeds, from actually
25 complying with disclosure deadlines so that we do not

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1 have -- it would be trivial to call it a rigmarole,
2 given the destruction it has caused, but the same
3 monotonous, repetitive, non-compliance, wrongdoing, that
4 has dogged this appalling episode in British history,
5 British legal history, from the outset.

6 These broken people trust in you, but they confide
7 in you, that you will go thorough, and root out the
8 truth. That you will not entertain any further excuses
9 or rationalisations that were advanced before you on
10 Tuesday of this week. And we respectfully submit, sir,
11 that you are more than able, and very well able, to
12 achieve justice for those we collectively -- Mr Stein,
13 Mr Moloney and myself -- represent.

14 **SIR WYN WILLIAMS:** Thank you very much, Mr Henry.

15 We will now have our afternoon break, and then
16 I think we will hear the opening submission on behalf of
17 the Federation. So I will see you all in 15 minutes.

18 (3.22 pm)

(A short break)

19 (3.37 pm)

Opening statement by MS WATT

22 **MS WATT:** Good afternoon, sir.23 **SIR WYN WILLIAMS:** Good afternoon.24 **MS WATT:** I'm Catriona Watt and I appear on behalf of the
25 National Federation of SubPostmasters this afternoon.

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1 **SIR WYN WILLIAMS:** Thank you.

2 **MS WATT:** Thank you very much for allowing us to make this
3 opening statement which has been provided to you, sir,
4 in advance and I intend to substantially read from it
5 and comment and add as I go along. I also may call up
6 some documents.

7 **SIR WYN WILLIAMS:** Certainly.

8 **MS WATT:** First of all, in making the opening statement the
9 National Federation of SubPostmasters welcomes the
10 opportunity to assist the Inquiry and its chair in any
11 way it can in order that the failings of the Horizon IT
12 System at the Post Office and the miscarriages of
13 justice in the prosecutions of postmasters and other
14 Post Office staff which followed can be fully addressed.
15 I would just want to acknowledge, as counsel who spoke
16 before me did, the detailed and sometimes shocking
17 information provided in the opening statement of Counsel
18 to the Inquiry, so clearly given.

19 The NFSP appreciates that the chair has had the
20 benefit of already having its Core Participant status
21 submission, also its statement on issues and evidence of
22 the hearing on that in November 2021, when Calum
23 Greenhow appeared before you. But, notwithstanding
24 this, the NFSP seeks to encompass the key issues for it
25 by making this opening statement. The NFSP recognises

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1 the scale and importance of the work of the Inquiry and,
2 in particular, the care and time taken by it to give
3 voice to those affected through the human impact
4 testimony sessions and, of course, here, with the
5 statements that have been given by counsel on behalf of
6 those Core Participants.

7 The devastating effect on those individuals and
8 their families of what happened to them as a result of
9 the Horizon IT System and the operation of it by Post
10 Office Limited, was laid bare in those sessions.

11 While the NFSP has no direct involvement in the
12 setting up or delivery in respect of the compensation
13 scheme, in its written contribution to the Inquiry's
14 compensation hearings, the NFSP urged the Government and
15 the Post Office to make interim payments to those
16 affected without further delay. In this regard, it is
17 the strongest possible hope of the NFSP that all of
18 those who suffered as a result of Horizon and were
19 wrongfully prosecuted and/or dismissed will have their
20 reputations restored -- although, as we've heard, how
21 difficult, if at all possible, that may be -- and all of
22 their financial losses including consequential losses,
23 refunded.

24 In applying for and being granted Core Participant
25 status, the NFSP is able to participate in and hopefully

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1 contribute to the proceedings in a way in which they
2 could not, for instance, in the litigations which gave
3 rise to the issued judgments of Mr Justice Fraser. In
4 particular, *Bates and Others v Post Office Limited*
5 [2019] EWHC 606 (QB) judgment number 3 (Common Issues)
6 which discussed and commented on the role of the NFSP,
7 and I will say a little bit more on that later. But
8 this was because neither the NFSP nor any of its
9 officers were asked by any of the parties to give
10 evidence to the court, leaving Mr Justice Fraser without
11 the benefit of direct evidence on matters involving the
12 NFSP and on which he went on to comment, such as those
13 discussed by him in part F of his judgment number 3.

14 The NFSP recognises it is one of only a number of
15 representative organisations, such as trade bodies --
16 which the NFSP is -- unions and others, whose members
17 were affected by the Horizon IT System and the actions
18 of Post Office Limited in relation to it.

19 Now I think what I go on to say next is important
20 because we have heard, of course, about many victims but
21 there are also a number of organisations of which they
22 may have been members.

23 Only postmasters can be members of the NFSP. As
24 a result of information obtained from a Freedom of
25 Information request -- and I understand that was from

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1 this period.

2 This is because what happened as a result of the
3 introduction and consequences of the Horizon IT System
4 is not a postmasters-only issue; it is one which
5 affected a wider set of employees of the Post Office.

6 In addition, it is understood by the NFSP that many
7 of those prosecuted were likely to have been members of
8 other unions or trade bodies, such as the Communication
9 Workers Union, the CWU. The NFSP understands and
10 appreciates that the Inquiry is aware of these different
11 representative bodies and will be considering the roles,
12 opportunities, actions in respect of involvement, for
13 instance in the working group, highlighting issues with
14 Horizon and supporting their members.

15 As well as assisting with giving evidence at the
16 forthcoming Phase 2 of the Inquiry's work, where two
17 former senior officers of the NFSP will be giving
18 evidence before you, sir, the Phase 2 of the Inquiry's
19 work on the Horizon IT System itself, the procurement,
20 design, pilot rollout and modifications, the NFSP
21 sincerely hopes to contribute by way of giving evidence
22 at the following phases.

23 While the NFSP's role in the area covered by Phase 2
24 was more limited, it is true to say that it had more
25 involvement in the areas covered by Phases 3 and 4, as

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1 the journalist, Nick Wallis, who has shone a light on so
2 much that has gone wrong here -- it is understood by the
3 NFSP that of the 766 who were prosecuted, approximately
4 56 per cent were postmasters leaving the other
5 44 per cent of those prosecuted as assistants and Post
6 Office employees.

7 This means a sizeable number of prosecutions were
8 bought against people who were not postmasters and
9 therefore did not come within the ambit of membership of
10 the NFSP or another trade body, such as the National
11 Federation of Retail Newsagents, the NFRN. I understand
12 that at least one of the Core Participants discussed in
13 earlier submissions, for instance, was a member of that
14 organisation.

15 This, of course, actually makes it even more
16 difficult, as I'll go on to say, to put the whole
17 picture together by these organisations. There are
18 several different representative bodies whose members
19 were affected here.

20 The NFSP considers it is important for the Inquiry
21 to encompass this wider group within its work and its
22 ultimate findings. In order to ensure that the public
23 understands the reality of the risk which was faced and,
24 in many cases, one which came to pass, for anyone, not
25 only postmasters, who worked in a post office during

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1 well as also 5 and 6, and more will be said by the
2 officers of the NFSP should they be called to give
3 evidence in those phases before you, sir.

4 As a representative body representing postmasters
5 across the UK -- and just to be clear, in terms of
6 comments made this morning in submissions by counsel,
7 postmasters are self-employed. They are not employees
8 of the Post Office and, therefore, it's incorrect, as
9 I'll go on to say, that the NFSP was on the side of or
10 sided with the employer; postmasters were
11 self-employed -- are self-employed.

12 The NFSP considers it has a genuine contribution to
13 make to the Inquiry also in terms of Phase 7 on current
14 practice, procedure and recommendations for the future.
15 In particular, the NFSP remains concerned about the
16 extent to which Post Office Limited is open to dealing
17 with change which the NFSP believes is required. That
18 includes governance issues, such as, for instance,
19 whistleblowing, the concerns of postmasters and dealings
20 with the NFSP itself.

21 I'll say a little bit more about that later on.

22 In other words, as said by Calum Greenhow, the
23 current chief executive of the NFSP, when he appeared at
24 the hearing on issues on the 8 November 2021:

25 "Can a leopard change its spots?"

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1 As he said on that day, if any of those responsible
2 for the GLO strategy remain in post, is it possible for
3 the relationship between those who own and operate (and
4 work in) the Post Office Network to be reset? Through
5 the work and ultimate reporting of the Inquiry, the NFSP
6 wants to finally understand what went wrong and why.

7 Although, as mentioned in the opening of Counsel to
8 the Inquiry, that has already now been laid bare in its
9 detail.

10 The NFSP both hopes and believes the fullness of the
11 present Inquiry and the commitment of the Chair to it
12 will have a significant impact on the change which is
13 necessary for all those in charge, from government
14 departments to Post Office Limited. This will include
15 action to right the wrongs of the past and
16 recommendations to ensure such a devastating scandal
17 cannot happen again.

18 In dealing with the various chapters for the NFSP,
19 these will firstly set out the history and the
20 relationship of the NFSP with the Post Office because,
21 if nothing else, some comment has been made, sir, in
22 these last few days about that, and the NFSP wants to
23 make it clear to you, sir, that it is, in fact,
24 independent of the Post Office.

25 Thereafter, the opening statement will consider the
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1 known it, we could have done something".

2 Much of what took place for the NFSP was done at
3 local level, and as with other organisations, it's
4 really only when it moves up the way and becomes
5 collective that it's clear what the picture is, but that
6 wasn't possible here and we say that's because of how
7 the Post Office was conducting itself.

8 But the NFSP sincerely regrets that its belief in
9 the Post Office Limited, the Government, Fujitsu and the
10 justice system, was so misplaced, and we've heard
11 comment on that from others as well today. The current
12 chief executive and board of the NFSP have expressed and
13 continue to express considerable regret that more
14 assertive action was not taken by its past leadership to
15 challenge the Post Office in a way which may have
16 prevented some postmasters from falling victim to
17 miscarriages of justice.

18 It continues to be a source of regret to the current
19 leadership of the NFSP that for some of those
20 postmasters who came to them for help in the past, they
21 have had to wait many years to successfully defend their
22 names through the general litigation. In participating
23 fully in this Inquiry, and in seeking answers to
24 pertinent questions from the Post Office, IT businesses
25 and contractors, government departments and the criminal
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1 involvement and position of the NFSP in relation to the
2 Horizon IT System, what it could do and what it did do
3 in relation to it. That's in the earlier days with
4 which Phase 2 is concerned.

5 There will also be reference to the issues and the
6 evidence it can give on the further phases of the
7 Inquiry and, it's hoped, to provide recommendations to
8 the Inquiry which will create trust in the systems of
9 working and the relationships between postmaster,
10 employees, Government and the Post Office, for the
11 future.

12 In closing these introductory remarks, the NFSP
13 wants to make it clear that, while it has supported many
14 members over the years in disputes with the Post Office,
15 and noting some of what was said by counsel who spoke
16 this morning, where there were any of the NFSP members
17 who did not receive the help that they considered
18 necessary, that will always be a matter of regret for
19 the NFSP.

20 But as I will go on to say, without the knowledge
21 that, it turns out, Post Office and Fujitsu had, the
22 NFSP was limited in what it could do and it is, of
23 course, with hindsight, with all of the information that
24 is now available to it, that the NFSP and others can
25 look and say "Well, why did we not know this? If we'd
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1 justice system, the NFSP can represent the interests of
2 subpostmasters to full effect.

3 Looking at the NFSP as an organisation in order to
4 understand what it is and where it comes from, it is
5 an independent, professional, not for profit trade
6 association representing Post Office operators,
7 postmasters. The board of the NFSP is made up of
8 serving postmasters who are nominated by their peers,
9 bringing with them the understanding of the operation
10 and running of Post Offices with all that entails.

11 The history of the NFSP shows that it is
12 a long-established body, established on Easter Monday
13 1897 by a group of around 90 subpostmasters who wanted
14 to improve the conditions for all subpostmasters in the
15 UK. This was perhaps indicative of a historically
16 strained relationship with the Post Office and one might
17 ask how much has, in fact, changed since then.

18 The letter of invitation to subpostmasters read:

19 "The importance of forming a national association is
20 evident from the fact that, whilst our conditions of
21 labour have so little improved, the head postmasters,
22 the clerks and the postmen have each obtained important
23 concessions through their respective associations."

24 The new Federation secured official recognition in
25 1906 and, in its early years, the Federation was able to
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1 achieve some minor successes for subpostmasters. It
2 started organising an annual conference and the
3 production of a monthly newspaper called
4 The SubPostmaster.

5 It is from there that today's NFSP represent
6 members -- that's postmasters, self-employed
7 postmasters -- who own and operate around 8,500 post
8 offices across the UK, from inner cities to the remotest
9 corners of the countryside. Notwithstanding this
10 though, the NFSP is actually a small organisation with
11 just 26 employees.

12 The current objects of the NFSP include but are not
13 limited to, regulating relations between subpostmasters
14 and the Post Office, by negotiating rates of pay and
15 conditions of service, variations to subpostmaster
16 contracts; participating in any form of consultation or
17 negotiation relating to conditions of service for
18 subpostmasters; and endeavouring to settle collective or
19 individual disputes between members and Post Office
20 Limited, promoting such settlement through joint
21 participation, conciliation or arbitration.

22 Now, the status of the NFSP and its funding
23 arrangements have changed over time. We say this is
24 relevant in respect of both the litigation that followed
25 and how the organisation developed. Until January 2014,

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1 Mr Justice Fraser was considering the evidence of the
2 Post Office in support of its position in the
3 litigations. In particular, the evidence of Mr Nicholas
4 Beal, that the NFSP allegedly did not support the
5 litigation. No evidence was offered for that.

6 In this passage of his judgment, apparently on the
7 basis of Mr Beal's evidence, Mr Justice Fraser described
8 the NFSP as "not remotely independent of the Post
9 Office", and then went on to focus on the GFA and the
10 funding arrangements.

11 Within the litigation itself and what was provided
12 to him by the Post Office -- or not provided, as the
13 case may be -- he was concerned by the failure of Post
14 Office Limited to make the GFA available in full to the
15 court.

16 In addition, Mr Justice Fraser also discussed
17 changes to the NFSP's website during the course of the
18 court hearings, finding this to be suspicious because he
19 had received no evidence from the Post Office as to why
20 this had happened.

21 As already mentioned, the NFSP were not party to any
22 of this, and it must be said that Post Office Limited
23 has no control over at all, or say in, the NFSP's
24 website. All that had happened during this period was
25 that the NFSP's communication officer was updating the

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1 the NFSP was a trade union but this status was removed
2 when the trade union certification officer advised that
3 the organisation did not meet the legal requirements
4 necessary to be a designated trade union.

5 In 2015 the change of status meant member
6 subscriptions had to come to an end and, instead, the
7 Federation then received its funding from Post Office
8 Limited, which consisted of a 15-year Grant Framework
9 Agreement, known as the GFA, paid annually, which is
10 currently being renegotiated to ensure it is clear and
11 that the NFSP can challenge the Post Office and that the
12 GFA is made open and transparent and, of course, that
13 all arises from what I'm going on to say next.

14 As a result of all of this, it was in October 2016
15 that the NFSP changed to trade association status
16 following a membership vote.

17 Just before I go on to look at the Common Issue
18 judgment, I want to be clear that the NFSP is not
19 beholden to the Post Office nor is it afraid to speak
20 out about the Post Office and, as I will show, the NFSP
21 has at times, in its review, been misrepresented by the
22 Post Office, and perhaps therefore others have come to
23 the view that it is somehow siding with the Post Office
24 on matters.

25 In 2021 Judgment Number 3, Common Issues,
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1 website as to tone of voice, colour and location of
2 content and it had been decided that the GFA should be
3 moved from the "About Us" section to another section
4 where it appeared to fit better.

5 The NFSP was entirely unaware of the way in which
6 this would end up being interpreted in the ongoing court
7 action, as it did not know this was an issue.

8 As already mentioned, the NFSP was not a party to or
9 called to give evidence in this case.

10 It had no opportunity to correct the record, or the
11 way in which the Post Office put forward its position on
12 the litigation or the GFA, or how some of these other
13 comments that were made about it ended up being
14 interpreted.

15 As can be seen from the explanation of the
16 development of the NFSP from trade union to trade
17 association, it was funded by its members until 2015
18 when its trade union status was withdrawn. The Freedom
19 of Information request I mentioned earlier showed that
20 around 80 per cent of the prosecutions with which this
21 Inquiry is concerned took place between 1999 and 2010,
22 with around 20 per cent from then until 2015 and, as we
23 have heard this afternoon, with none after 2015, and
24 counsel who spoke before me set out why that was.

25 The GFA was therefore not in place during the time
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1 of those prosecutions with which that litigation was
2 concerned. There was no evidence produced by Post
3 Office Limited about the position of the NFSP on the
4 litigations.

5 The NFSP has been, and remains, concerned about the
6 reputational damage done to it by the way in which this
7 was presented to the court by Post Office Limited and,
8 as a consequence, discussed in the judgment without
9 evidence from it. The NFSP seeks to correct this at the
10 Inquiry, in particular in evidence at Phase 4.

11 All of that being said, the NFSP wishes to make
12 clear that it otherwise fully supports the judgment and
13 the outcome from these cases and the way in which
14 Mr Justice Fraser dealt with those.

15 It is concerned at the way in which certain evidence
16 and material about it were presented to the court by
17 Post Office Limited without an opportunity to correct
18 the record, which resulted in the comments about it.

19 Turning to Horizon, in the period with which this
20 Inquiry is concerned, there was a combination of a
21 decline in footfall and income, changes to technology,
22 changes in the way customers dealt with their money. In
23 summary, this saw several cost cutting exercises
24 resulting in Post Office closures through what's called,
25 or is termed "network reinvention" in 2003, "network

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1 So this really concentrates on Phase 2.
2 In 1995 the NFSP's records show the number of system
3 providers, as we heard earlier from Counsel to the
4 Inquiry, down to three companies, one of which was
5 ICL Pathway, which that then goes on to become Fujitsu,
6 in due course.

7 Each of those attended an NFSP exhibition in
8 Manchester where members were able to see the potential
9 options available.

10 So the NFSP were taking an active role on behalf of
11 their members to find out about what was going to be
12 coming forward.

13 In February 1996, in a letter to the Executive
14 Committee, the negotiating committee of the NFSP met
15 with three companies and asked questions about certain
16 matters: the ease of use of equipment; the impact on
17 transaction times; acceptability to customers; the
18 extent to which the design will help postmasters to
19 prevent fraud; the extent to which suppliers' proposals
20 guide the postmasters through transactions; proposals
21 for training; the timescale for rollout; the extent to
22 which the design is foolproof; what plans do they have
23 for ongoing marketing; what plans for distant office
24 transactions; agent encashment; and change of office
25 procedure.

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1 change" in 2007, and "network transformation" from 2012.
2 But before all of this came, the need to introduce
3 a network-wide IT system was clear and the NFSP
4 supported this, recognising it was necessary to secure
5 the future of the Post Office businesses in the digital
6 age.

7 Can I add, the NFSP wanted to ensure a proper and
8 fully functioning network of post offices was kept open
9 across the UK. That was a major issue for the NFSP.

10 As part of the research into Phase 2 of the Inquiry,
11 what has struck the current NFSP personnel is the number
12 of prominent MPs from the last 25 years of British
13 politics who, it transpires, were involved in the
14 procurement, rollout and working group in relation to
15 Horizon. The NFSP considers it is therefore important
16 that the Inquiry is able to establish their roles and
17 responsibilities in how this whole affair led to so many
18 postmasters, assistants and employees of the Post Office
19 Limited, having their reputations destroyed, suffer such
20 financial hardship and, in some cases, endure
21 a custodial sentence.

22 In setting out some of the information which
23 follows, the NFSP refers to events, meetings and, in
24 some cases, documents which are recordings of meetings
25 and issues arising from the procurement and rollout.

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1 The NFSP did not express any preference in which
2 systems should be chosen and, indeed, it was not
3 technically equipped to do so. But it did have
4 an interest in how such a system would work for their
5 members.

6 In May 1999, the NFSP were made aware that the DSS
7 and the Treasury were considering pulling out of the
8 Horizon project. Again, we heard about that in some
9 detail from Counsel to the Inquiry in his opening.

10 It's understood the DTI wanted the project to
11 continue and, after intervention by Stephen Byers, the
12 then Secretary of State for Trade and Industry, it
13 remained on the table.

14 The NFSP asks the Inquiry if this suggests that
15 there was discord between government departments which
16 led to mismanagement of the project, and/or a lack of
17 oversight, or that some departments may not have been
18 working together.

19 Can I add that, in light of all that has been said
20 by Counsel to the Inquiry over these last couple of
21 days, what is clear now is that from the outset, there
22 were doubts and difficulties, and the NFSP has listened
23 with concern to all of that.

24 On 14 June 1999 the DTI report on the Horizon
25 project stated:

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1 "We understand that the Benefits Agency failed to
2 prepare itself and its system sufficiently in order to
3 be compatible with Horizon."
4 The NFSP asks the Inquiry if incompetence at
5 Government and departmental level contributed to the
6 failure in procurement from the start.
7 In June 1999 the DTI Horizon project report says --
8 and I should say, sir, that some of these documents have
9 been provided recently to the Inquiry by the NFSP and
10 therefore do not, as yet, have Relativity reference
11 numbers and that may come in due course. I simply wish
12 to let you know that.
13 **SIR WYN WILLIAMS:** Yes, thank you very much.
14 **MS WATT:** It says:
15 "While it makes evident sense for ICL to continue
16 with the work it has already begun, the impression
17 remains of an essentially political deal to ensure that
18 ICL has a substantial contract with the Post Office at
19 a price which seems to have been largely determined in
20 advance of contractual renegotiations as a means,
21 however inadequate, of making up some of the 180 million
22 written off by ICL in their 1998/1999 accounts."
23 Notwithstanding the documents referred to and
24 available to the Inquiry for the procurement exercise,
25 the NFSP has found little to no evidence of its direct
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1 Union, while others were independent offices under the
2 responsibility of the NFSP.
3 On 29 April 1999, 113 post offices completed their
4 first cash account via Horizon, and these offices were
5 split into two groups: those who were supported during
6 the balance and those who were not. Of those who were
7 supported, 47 completed their cash accounts while 23 did
8 not, a figure that the NFSP found concerning.
9 The NFSP was watching this pilot carefully in order
10 to challenge the Post Office Limited, where ongoing
11 results of the pilot showed that issues needed to be
12 challenged and also to support its members where needed.
13 On 30 April 1999 Pam Jervis, the late executive
14 officer for the Midlands region, raised concerns about
15 training and installation of Horizon. Now, this I'm
16 going to, sir, at least attempt to call up document
17 NFSP0000340 on the screen.
18 We move to the second page of this document, beyond
19 the fax cover. Thank you.
20 It's noted at section 1:
21 "The first day of training is okay but the second
22 day is bad because it is rushed. They are not finishing
23 on time, but they are rushing to finish before 3.30 pm
24 because otherwise they have to buy lunch. Why did they
25 use the most expensive hotels?"
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1 involvement in the procurement of Horizon.
2 In terms of the rollout, the NFSP understands that
3 the automation project can be traced back to around
4 1992, when the DSS began a trial of a new benefit
5 entitled claim form, which omitted the use of post
6 offices.
7 Following extensive campaigning by the NFSP at that
8 time, the claim forms were withdrawn.
9 The concern from Government was around the drawbacks
10 of the paper-based methods of payment, namely cost,
11 fraud, liability and lack of customer level accounting
12 information.
13 According to the September 1999 DTI committee
14 report, slippage of the rollout programme began to occur
15 and it was delayed. Similarly, the Montague report
16 suggested that in 1997, a formal default letter was sent
17 to ICL Pathway, who rejected it. That report went on to
18 highlight that the rollout was unlikely to begin by the
19 end of 2001 without improved management and uncertain
20 costs.
21 What happened next was the pilot scheme and the
22 pilot began on 12 April 1999 with 200 offices in the
23 northeast and southwest of England being involved.
24 These offices were a mixture of both Crown Offices,
25 under the responsibility of the Communication Workers
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1 It goes on to say:
2 "Many subpostmasters have not received assessment or
3 certificates on completion of the course.
4 "In every training session, nobody had done a main
5 balance. Nobody had been trained to do a full balance.
6 The trainers are people who have only received the same
7 training that they are giving out. It's too narrow
8 a field and no one can answer questions."
9 Continue on to the page that follows, scrolling down
10 the way, and the paragraph just below the bullet points,
11 she reports:
12 "In general, subpostmasters are extremely happy.
13 They think it's a great, sophisticated system, but it is
14 being pushed out too quickly and the people doing the
15 training know no more than the subpostmasters. There is
16 no managerial back-up, no definitive answers are given
17 what is needed is a system helpline."
18 So that's back in 1999, with the comments coming as
19 part of this initial pilot. So things are being picked
20 up and commented on and then being fed back by the NFSP
21 to the Post Office.
22 You can take that document down now, thank you.
23 In June 1999 the NFSP prepared questions for Stephen
24 Byers, the Secretary of State for the Department of
25 Trade and Industry, and Stuart Sweetman, the managing
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1 director of Post Office at that time, about training
2 modification, migration, operations, balancing, the
3 helpdesk and bar coding, all due to the issues that had
4 been raised from the pilot, some of which were
5 highlighted in the document just shown there.

6 On 14 June the NFSP appeared before the DTI Select
7 Committee. The Chair asked if the NFSP was being
8 alarmist in suggesting that thousands of post offices
9 were threatened by closure. At question 6, Colin Baker,
10 then General Secretary of the NFSP -- and I appreciate,
11 sir, that you'll be hearing from him later in this
12 phase -- was asked: "Do you really think that there had
13 been anything more than lip service being paid to the
14 concept of sustenance to the network of sub post offices
15 being kept going by the Horizon project?"

16 Mr Baker replied:

17 "I think it is easy for successive governments to
18 make a commitment to a nationwide network of post
19 offices and yet not be in any way specific about what is
20 meant by that."

21 The NFSP says that is as true today as it was in
22 1999.

23 At this DTI Select Committee, the Communication
24 Workers Union and the CMA explained they had a valuable
25 role to play, not only in protecting members' incomes

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1 put in place as a result of the NFSP's points to him.

2 There's a set of bullet points there setting out the
3 system changes that are going to be made, major changes
4 in the managers' training course, major work being
5 undertaken to ensure that all documents are at the same
6 level as the system, and the taskforce in place to
7 identify the specific nature of the printing problems.

8 Now, from the NFSP's perspective, what is happening
9 in theory is that the points that it is putting to those
10 in charge of Horizon from its members are being taken on
11 board. That's what it thinks is happening.

12 We go on to the next page, please. Mr Foley then
13 goes on to tell Colin Baker:

14 "You may be interested in some specific feedback
15 from one of the offices visited last week. The
16 postmistress commented that this was the second week in
17 succession we had balanced more quickly than we would
18 have done using the old method, even allowing for the
19 minor glitches. Whilst they were commenting openly on
20 how difficult they had found balancing and that they had
21 raised many objections, they freely admitted that it
22 might be easier for them if they had followed the quick
23 guides and manuals. They now have little fear of the
24 system and are standing thing to better appreciate its
25 benefits."

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1 and security but also in protecting public interest.
2 They highlighted that the Crown network represents
3 15 per cent of the total volume of the transactions in
4 the network. They emphasise that the Post Office could
5 deliver the project but raised concerns about the
6 commitment of the Government to the network. They
7 explained that without commitment from the Government,
8 the business would be in a downward spiral.

9 On 30 June 1999, there is a briefing to Colin Baker
10 of the NFSP, and I'll call up another document, sir:
11 NFSP00000027. I hope I've got that correct. Again,
12 we'll go beyond the fax cover page to the next page.

13 Now this is a personal briefing to Colin Baker of
14 the NFSP and it is from Liam Foley who was the business
15 development director and you see that at the top of the
16 page, ICL Pathway.

17 Now, that's third paragraph down. It begins
18 "Officers":

19 "Officers have experienced problems with the
20 balancing process both in stock unit balancing and the
21 cash account. There have also been printing problems.
22 We have taken these problems very seriously and are
23 making significant effort to improve the situation for
24 the subpostmaster."

25 Then he goes on to talk about what actions he has

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1 He then goes on further down the page, in the final
2 paragraph:

3 "I believe it is very important that a positive,
4 constructive perspective is maintained by us all.
5 I know I can count on your support to achieve that.
6 I will, as ever, be happy to listen to any specific
7 feedback from the executive council."

8 Thank you, you can take that document down now.

9 As I said, what the NFSP was thinking was that
10 Pathway and others were taking on its feedback, hearing
11 that changes were being made and that the system was
12 being improved and would be fit for purpose.

13 On 10 August 1999, the NFSP held a special Horizon
14 meeting in Newcastle with over 150 postmasters in
15 attendance. This is all part of the early days of the
16 introduction, the pilot of Horizon.

17 David Miller of the Post Office was in attendance
18 along with Jean Kendall, the national president, and
19 Colin Baker of the NFSP.

20 David Miller and Colin Baker highlighted that
21 automation was the future for postmasters. The concerns
22 from colleagues who were part of the pilot were
23 highlighted and these included the stress on the
24 workforce, the strain on people's lives and marriages,
25 there was enforced cancellation of planned holidays,

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1 there was low additional income provided by the Post
2 Office to postmasters who were on the trial.

3 On this point, these rates had not been agreed with
4 the NFSP but brought in by the Post Office and the NFSP
5 were able to ensure that those payments were doubled.
6 Those on the pilot also raised concerns that the
7 installation project lacked management at every stage
8 and highlighted the number of reboots of the system that
9 was required, especially on balance day.

10 Now, here I'll call up NFSP00000237, please. If we
11 can scroll down just to the bottom half of that page,
12 please, you'll see the general points that I have just
13 mentioned were being made, agreed by all on the trial:
14 the stress on the workforce; strain on people's lives
15 and marriages; lost holidays; the small amounts paid by
16 Post Office Counters Limited, as it was:

17 "Of the 44 Horizon officers present, in a vote
18 30 officers said they suffered stress."

19 If we can go on past the next two pages, to the
20 final page. If we scroll down -- I'm sorry, that's me.
21 If we can scroll back up to the bottom part of the
22 previous page, the last two paragraphs of that page.

23 At the end of the questions, David Miller summed up
24 the evening and asked one question: should he authorise
25 the national rollout?

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1 of areas during the rollout. That's prior to the full
2 implementation and all that happened subsequently.

3 The NFSP would ask the Inquiry to consider where the
4 losses occurred in the cases, and the figures that I go
5 on to give are a breakdown of examples as submitted by
6 the NFSP to the Inquiry. I simply have them there for
7 illustrative purposes.

8 But what those figures show is that where members
9 were contacting the NFSP at a national level for help,
10 internally, the Post Office was being challenged.
11 However, that does not mean that in every case, the
12 outcome that the postmaster wanted was achieved. It
13 also shows that not all issues were software or branch
14 accounts related. For example, the 200 cases of REMs,
15 counterfeit and fraud, in the main, focused on a number
16 of fraudulent giro cheques that were being cashed at
17 post offices in the mid-2000s.

18 This resulted in many transaction corrections being
19 issued to postmasters by the Post Office, which were
20 subsequently overturned after intervention by the NFSP.

21 Others involved hardware such as computer screens,
22 printers or base units not working.

23 Moving on to touch on the working group, the NFSP
24 considers that it is important to note that the working
25 group which had been set up by the Government to seek to

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1 "All officers agreed there was nothing fundamentally
2 wrong with the system however they did not want to
3 rollout until further improvements had been made."

4 On the final page, I don't need to turn to it, its
5 there, simply that there was a request for urgent
6 training, "urgent provision must be made for training
7 reliefs", that's relief workers, because without
8 training for those relief workers, the postmasters
9 themselves could never be away from the Post Office.

10 Now, I highlight all of that to show simply that in
11 the pilot and the rollout phase, there were points
12 regularly being made by the NFSP to Post Office and to
13 ICL. Of course, it could not have been known at that
14 time what was to come.

15 From the NFSP's perspective, what is clear is that
16 throughout the rollout of the Horizon programme, the
17 NFSP supported colleagues where they could and
18 challenged the Post Office on behalf of the network to
19 improve. In June 1999, after concerns were raised by
20 the NFSP over the quality of training, the Post Office
21 invested a further £8 million to improve the training
22 programme. These improvements arose from the points
23 raised by the NFSP, as outlined in my earlier paragraph.

24 For the NFSP, this all provides clear evidence of
25 their headquarters helping colleagues across a multitude

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1 involve interested parties on the decision-making
2 process consisted of the Government, the Post Office,
3 the CMA, the CWU and the NFSP. The NFSP considers,
4 therefore, it will be important for the Inquiry -- which
5 you already just heard from counsel who spoke before me
6 regarding the terms of reference -- what the involvement
7 of each of the three representative bodies did on the
8 working group.

9 Throughout June 1999 there were issues arising with
10 Horizon which the NFSP were aware of. For instance,
11 a fax from Fujitsu to NFSP outlined software changes due
12 to postmasters finding the balancing process difficult
13 to follow, unnecessarily restrictive, and time
14 consuming. This was discussed at a balancing workshop
15 between the Post Office and Fujitsu on 11 May 1999.

16 One particular issue was data entry errors during
17 migration. There was a recognition that incorrect
18 figures were used at migration to Horizon, resulting in
19 a mismatch between payments and receipts. As a result,
20 a change in the MiMan software was proposed at migration
21 to ensure the correct figures were transferred over.
22 Any mismatch would be highlighted with a warning at
23 migration.

24 On 8 June 1999 the first working group meeting
25 between Government, the Post Office, CWU, CMA and NFSP

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1 was chaired by Ian McCartney MP, Minister of State at
2 the DTI. At this meeting, terms of reference were
3 circulated, and these included -- and I set that out --
4 overseeing negotiations between Post Office and ICL,
5 facilitating solutions to the development stage of the
6 Horizon project, maximising the commercial potential of
7 Horizon, concerns by the group the Government did not
8 come out of recent developments in a good light.
9 Payment for Horizon would be about 550 million, paid
10 with an initial 68 million and then four payments of
11 120 million, and 480 million would come from the Post
12 Office liquidated assets, with the remaining coming from
13 its working budget. And there would be potentially
14 a further 400 million of costs to ICL Pathway, which
15 would be part of the Post Office's future commercial
16 challenge.
17 There's then a second meeting of the working group
18 on 22 June, and we can see, from that, that there is
19 attendance from Ian McCartney, the Minister of State, as
20 mentioned; representatives from the Post Office; Derek
21 Hodgson of the CWU; Tony Kearns, CWU; Terry Deegan, CMA;
22 Tony Harris, CMA; and Colin Baker and John Peberdy of
23 the NFSP, and others.
24 As can be seen from the minutes of that meeting,
25 there was discussion around the removal of the benefits

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1 pace and tone, and I wonder if I'm correct in that
2 assumption. It's 4.30 now, and I interject to give you
3 the opportunity to give some direction as to the way
4 forwards.
5 **SIR WYN WILLIAMS:** Well, I've been following the
6 submissions, and unless there is to be substantial
7 additions to the written statement, in fact we are about
8 three or four paragraphs from the end. But maybe
9 I could be enlightened.
10 **MS WATT:** That's correct, sir. I am literally almost at the
11 end. I do apologise for the overrun. I'm grateful.
12 **MR BEER:** An unnecessary intervention, then. I'm sorry.
13 **SIR WYN WILLIAMS:** No, that's fine, Mr Beer. It's always
14 good to be rigorous about these things, but I did
15 presume that you were reaching the end.
16 **MS WATT:** That is correct, sir.
17 Just by way of going slightly off script, I do want
18 to touch on comments made by Counsel to the Inquiry
19 yesterday, where he picked out comments of George
20 Thompson of the NFSP at the BEIS Select Committee of
21 2015, regarding the system being robust, and simply
22 wanted to add, although I don't have the document
23 reference for the BEIS 2015 Select Committee with me to
24 hand, but simply to note that elsewhere at that same
25 Select Committee, the CWU's representative had said that

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1 card from the process, and from the NFSP's perspective,
2 it appeared that ICL were preventing the Post Office
3 from seeing exactly what they were buying.

4 The NFSP notes from the time was that there was
5 a general discussion from all parties in relation to
6 costs, around 80 million per year, and the Post Office's
7 ability to afford the system. With the loss of the
8 Benefit Payment Card was a question if there was
9 sufficient business to make the whole system financially
10 viable, with negotiations between the Post Office and
11 the Benefits Agency apparently not going well, as it
12 appeared there was a financial gap of around
13 £400 million.

14 On 11 October 1999 the fifth meeting of the working
15 group took place, and this had representatives from the
16 DSS, the DTI, the NFSP, the CMA, and the CWU. And at
17 that meeting, the NFSP was raising concerns about the
18 Benefits Agency trying to encourage benefit claimants to
19 move to the bank, despite the NFSP having understood
20 there was a commitment not to do that before 2003.

21 **MR BEER:** I hesitate to interrupt whilst Ms Watt takes
22 a pause in her submissions. The Federation submitted a
23 time estimate of 30 minutes for their submissions, and
24 we've been going for just under an hour. It didn't feel
25 as if we were reaching a point of winding up from the

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1 the Horizon System had served the community and the
2 wider electorate well.

3 "By definition, there will always be bad apples in
4 the barrel, and it's a robust system."

5 I simply wanted to draw that to your attention, sir.

6 In conclusion, on the forthcoming Phase 2, the NFSP
7 has reviewed a series of meeting minutes and DTI
8 reports, and has concluded that at the early stages
9 there were concerns about the finances of the project,
10 the rollout, and the issues identified throughout the
11 pilot, and matters underpinning the whole operation, for
12 instance the changes in relation to benefits payments.

13 The NFSP recognises that it is for the Inquiry to
14 review documents, hear evidence, and reach its own
15 conclusions. However, the NFSP considers that from the
16 outset, from the procurement stage to the rollout, there
17 were identifiable issues. It had a role in raising
18 these issues and seeking resolution of them, and did
19 achieve extra funding for training and other changes, as
20 outlined.

21 All of that said, it is clear that what is known now
22 is that there were significant issues and failings, and
23 ultimately of the Post Office chose to prosecute
24 postmasters and others, rather than face what was
25 clearly a problem following the actual introduction of

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1 Horizon throughout the network.
 2 In closing, the NFSP repeats something said at the
 3 beginning: that it regrets sincerely that its trust in
 4 Government, the Post Office, IT businesses and the
 5 Criminal Justice System was so misplaced. The NFSP
 6 sincerely hopes that the Inquiry can illuminate in full
 7 all that happened, what went wrong, how and why it
 8 happened, and to ensure that it can never happen again.

9 Thank you, sir, for your time this afternoon.
 10 **SIR WYN WILLIAMS:** And thank you for your submissions.

11 So Mr Beer, can I just check with you that we're due
 12 to start again at 10.00 tomorrow morning, and that
 13 unless I am very liberal in my approach to overrunning,
 14 we are due to finish at about lunchtime?

15 **MR BEER:** Both of those things are correct, sir, yes.

16 **SIR WYN WILLIAMS:** All right, then we'll meet again at 10.00
 17 tomorrow morning, and thank you all very much.

18 **MR BEER:** Thank you very much indeed.

19 (4.37 pm)
 20 (The hearing adjourned until 10.00 am the following day)

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