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IN THE POST OFFICE HORIZON IT INQUIRY

CLOSING SUBMISSIONS ON BEHALF OF GARETH JENKINS

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1. INTRODUCTION

1. These closing submissions are the first to be filed on behalf of Gareth Jenkins in this Inquiry. At its end, his position, perhaps more so than any other individual, can finally be put in context. Opening statements in the Inquiry portrayed him as a central figure.[1] He has been characterised as largely responsible for the miscarriages of justice inflicted on sub-postmasters ("**SPMs**")[2] over the course of many years.[3] This reflected the Post Office narrative (since 2013) that Mr Jenkins was to blame for not disclosing bugs in some criminal cases (bugs which it is now clear Post Office was well aware of). This has distracted the focus away from the fact that over the course of years, the Royal Mail Group and Post Office Limited (together "**POL**") conducted investigations and prosecutions, at scale, in violation of fundamental laws and ethical principles. As a private prosecutor, POL was required to observe the highest standards of integrity, to have regard to the public interest and to abide by the duty to act as a Minister for Justice in preference to its own interests. All of these obligations served the overriding duty to ensure that the proceedings POL brought were fair.[4] The Inquiry has demonstrated how far POL fell from this standard. It has also demonstrated the extent to which individual investigators and prosecutors, both internal and external to POL, knew almost nothing about (or ignored) the fundamental laws and ethical principles which govern the conduct of criminal proceedings. These are not failings of perfection nor of platonic ideals, but failures to discharge basic obligations.

2. This introduction draws together the most important factual and thematic issues that POL's use of Mr Jenkins as a witness demonstrates. Section 2 of this submission sets out the broader landscape of prosecutorial failure within which POL's use of Mr Jenkins must be situated. Section 3 considers the evidence relating to POL's failure to instruct Mr Jenkins as an expert. Section 4 sets Mr Jenkins and the evidence he gave in POL's prosecutions in its proper, contemporaneous context. Section 5 sets out the principles related to hindsight and memory that apply in relation to Mr Jenkins' evidence to the Inquiry about those prosecutions. Sections 6(a)-(f) are a forensic analysis of each of the case studies involving Mr Jenkins. They address suggestions put to him, or criticisms implied of him, over the course of his four days of evidence to the Inquiry. Section 7 examines the discrete issue of remote access. Finally, section 8 sets out the main conclusions that the Inquiry is invited to draw from this evidence both as it relates to Mr Jenkins and more broadly.

3. The primary theme of these submissions is that the role Mr Jenkins played in POL's prosecutions cannot be analysed in isolation from POL's numerous and systemic failings as an investigator and prosecutor. To seek to analyse Mr Jenkins' position shorn of these failings is to maintain a false narrative. This narrative proceeds by suggesting that POL's failings can be treated as irrelevant by honing in on what Mr Jenkins ought to have gleaned about the application of expert duties to him (and what they required); by artificially cherry-picking aspects of the evidence he gave; or by wrongly eliding the elevated duties of an expert witness with the duties of an ordinary witness of fact. It is also an agenda that seeks to make Mr Jenkins responsible for failures which were those of POL alone and which extended well beyond the relatively small number of cases that he was involved in.

4. This agenda also obscures how basic POL's failings were in relation to Mr Jenkins. POL's investigators and prosecutors may have referred to him as an 'expert', but the evidence demonstrates a lack of understanding or critical thought on their part as to what sort of witness

[1] *"He was heavily involved in many of the issues to which this Inquiry relates"* (Transcript, 12 October 2022, p. 46, ln. 12-14 (CTI)).
[2] In these closing submissions, we use the term "SPMs" to refer to any branch staff investigated and/or prosecuted by POL across the period the Inquiry is examining, including branch staff who were not sub-postmasters.
[3] *"Possibly more than any single individual, Gareth Jenkins is responsible for this protracted and grotesque infliction of injustice upon the innocent SPMs"* (HJA submissions on Mr Jenkins' second immunity application dated 12 September 2023, § 9); *"[POL] had relied on a liar and a perjurer to convict innocent people"* (Transcript, 19 April 2024, p. 78, ln. 8-9 (Mr Henry KC questioning Rodric Williams)).
[4] *Regina (Kay and another) v Leeds Magistrates' Court* [2018] 4 W.L.R. 91 at 23; Transcript, 5 October 2023, p. 28, ln. 1-25 (Duncan Atkinson KC confirming the historic application of these principles).

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he was and the legal implications of his status. They either did not know basic law that applies where a party relies upon expert evidence, or they ignored it. They either had no knowledge of the provisions in the Criminal Procedure Rules which govern expert evidence, or they ignored them. They either lacked any knowledge of the disclosure obligations to which they were subject under the Criminal Procedure and Investigations Act 1996 ("**CPIA**") (and its Code of Practice), or they ignored them.

5. POL's violation of all of these legal obligations had the effect that in no prosecution did any investigator or prosecutor:

   a) Provide Mr Jenkins with any instructions recognisable as, or approximating to, an expert instruction (still less explicit guidance as to what it was he being asked to do and what material he was being asked to consider in so doing).
   b) Provide him with instructions that set out expert duties and explained that they applied to him.
   c) Discuss the content and meaning of expert duties with him.
   d) Provide him with guidance or discuss with him how he was to fulfil the role of an expert; how, for example, he ought to provide evidence based upon work others had done, or disclose material generated in the course of his preparing statements, or disclose underlying material that he had referred to in his statements.
   e) Provide him with any explanation or instructions about joint expert reports.

6. These failures led to an unsurprising (but still astonishing) consequence: that not a single statement prepared by Mr Jenkins upon which POL relied, in any of its prosecutions, constituted admissible expert evidence. Instead, every statement was prepared under section 9 of the Criminal Justice Act 1967 (the legal format for adducing witness evidence of fact) and omitted the necessary declarations required for it to be admitted as expert evidence. None contained an explanation of what his instructions were; none contained an explanation of the material provided to him; none contained the expert declaration; none confirmed that Mr Jenkins knew and understood expert duties that might apply to him (or that he had prepared his evidence in accordance with those duties). In R v Misra, which was the only case in which Mr Jenkins gave oral evidence, he was not taken through any of these duties in court. No one asked a single question of him as to why these duties were not set out in his statements; whether he understood they applied to him; or whether he had done his preparatory work and written his statements in accordance with those duties. No one asked a single question as to why his statements omitted this necessary, formal and substantive content, despite that it was required in order to make his statements admissible as expert evidence.

7. Yet POL's failures in respect of Mr Jenkins were not simply failures of *omission.* POL consistently and actively *misrepresented* to Mr Jenkins the role he was required to discharge. Almost every POL investigator or prosecutor communicated with him in terms that were, at best, inappropriate. At worst, POL's communications with him were positively misleading about his role and the duties to which experts are subject.[5] Mr Atkinson KC's opinion was that POL's interaction with Mr Jenkins in 2012 was the "*antithesis"* of how a prosecutor, acting lawfully, should have instructed an expert witness.[6]

8. POL compounded all of these matters by failing to understand the significance (or again simply ignoring) that Mr Jenkins was both a Fujitsu employee and a computer engineer. He was a man who for almost a lifetime was embedded in developing and designing specialist aspects of a massive and complex computer system and who solved highly technical problems related to it. That Mr Jenkins' mind-set was that of a technician is revealed by many of the things he said

[5] See, for example, the communications referred to in §§ 255 and 261 of these submissions.
[6] Transcript, 18 December 2023, p. 150, ln. 17-20.

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about himself in his written and oral evidence to the Inquiry.[7] He was used to writing technical papers, for discussion with technical colleagues. He thought in terms of logic rather than legal tests. He was not and his perspective was not that of a lawyer. This gave rise to *"scope for a lack of common understanding or disconnect between my understanding of what was being asked of me and theirs*".[8]

9. If Mr Jenkins was going to be asked to transition from his decades-long experience of being a computer engineer at Fujitsu to becoming an expert witness in criminal proceedings, then (aside the basics like actually being instructed as an expert), it was critical that: (a) he received training and the support necessary to ensure that he understood the position he was being placed in, and (b) he had access to all potentially relevant material held by POL and Fujitsu. It is to be expected, and it is natural, that any individual whose professional life has been immersed in computer systems, translating their requirements into designs and documents from which code could be produced, solving complex problems and using a language specific to that context, will apply that approach and that language in other contexts. There is nothing surprising about this. The conditioning of decades of thinking logically and systematically and using language in a specific way would self-evidently require not just conscious thought to adapt to the requirements of being an expert in criminal proceedings, but a different approach entirely.

10. It is imperative in an Inquiry which operates in a calm, analytical and forensic context, considering the conduct of other lawyers and judging how past *legal* proceedings were conducted, that it sees events from the perspective of the *lay* people involved. People without prior exposure to criminal or civil proceedings; people without legal training; people un-versed in legal language; people ignorant of matters that might seem to lawyers obvious; people entirely lacking the legal framework or perspective that might have prompted questions about unknown unknowns. It may seem obvious to lawyers in this Inquiry that those conducting prosecutions were incompetent, sometimes shockingly so. But to the layperson, these were people they were entitled to assume knew how to do their job and were competent. The risk that the perspective of the layperson, at the time, becomes distorted, is all the greater in this Inquiry. In part, this is because of the risk that past events will be viewed through the prism of the GLO civil proceedings or through the bird's eye view that all of the Inquiry's disclosure affords. But these retrospective assessments, based upon a global analysis of everything now known of how Horizon operated, do not demonstrate what individuals who worked on Horizon thought or knew at particular points in the past, viewing it from their personal vantage points.

11. In relation to Mr Jenkins, over the course of the four days of his examination in the Inquiry, he was challenged as to why he had not comprehended that expert duties applied to him. Putting to one side the fundamental point that Mr Jenkins was never actually instructed as an expert, his response was a natural one: that he was a Fujitsu employee who worked on Horizon and not an independent person, and that the way he was treated by POL (essentially as though he was *its* witness) meant that he did not understand himself to be like the defence experts.[9] But this line of questioning was also premised upon the lay person gleaning the content of expert duties, understanding their meaning, appreciating when those duties might apply and the implications in relation to any evidence they might give. This is to negate the positive obligations on the prosecutor instructing an expert, which mean that the prosecutor is *duty bound* to ensure that the individual understands the substance of the rules and obligations applicable to experts.[10]

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[7] "*I tend to think in terms of systems and logic"* (Third witness statement of Gareth Jenkins dated 21 March 2024 (WITN00460300), §16)); *"I deal better with systems and things than people"* (Transcript, 28 June 2024, p. 53, ln. 13).
[8] Third witness statement of Gareth Jenkins dated 21 March 2024 (WITN00460300), §16.
[9] *"A. I was clearly in a – at least, I certainly felt I was in a different position because I was not independent in the same way that he [Professor Charles MacLachlan, the defence expert in R v Misra] was, in that I was an employee of Fujitsu and, therefore, was effectively part of the POL prosecution team. Q. Did you think you were part of the POL prosecution team? A. Yeah, I think I probably did, because that's how the POL lawyers were treating me"* (Transcript, 25 June 2024, p. 132, ln. 8-15).
[10] As confirmed by Duncan Atkinson KC (Transcript, 6 October 2023, p. 50, ln. 20-25; p. 51, ln. 1-20).

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12. These obligations exist for a reason and the prosecutor cannot derogate from them. Their rationale is amplified when it comes to the use of a layperson as an expert. And it is difficult to conceive of a lay witness more in need of such guidance than Mr Jenkins: a computer engineer who had spent a significant part of his working life on the very subject that he was being asked to give his 'expert' opinion on.

13. Mr Jenkins was also asked questions in the Inquiry about his use of the term 'expert' to refer to himself and whether this connoted an understanding that he was an expert to whom the panoply of legal duties applied. That he should self-refer as an expert is hardly surprising. The term expert was used glibly in relation to him by POL's investigators and prosecutors (who had evidently not addressed clearly or critically whether that was the capacity they were calling him in); by the Fujitsu Litigation Support Service (who clearly did not understand anything about the legal duties this might entail); and by his technical colleagues in Fujitsu, who saw him as a subject matter expert (an *Horizon expert*).[11] The reality, borne out by the contemporaneous evidence, is that whilst POL's investigators and prosecutors referred to Mr Jenkins as an expert, *they themselves* did not address the distinction between his being an expert and an expert witness. They had no concept that if he was an expert witness, this might entail his being subject to the same duties that the defence experts had set out in their reports. There is not a hint in a single underlying document that any POL investigator or prosecutor ever considered this.[12]

14. Despite all of this, questions put to Mr Jenkins in this Inquiry implied that he should somehow have realised that he was an expert (or even that he knew he was an expert) who had to discharge certain duties. However, these questions are impossible to maintain in the face of the clear picture which has now emerged that prosecutors did not regard themselves as using Mr Jenkins as an expert in the legal sense of that term. Mr Tatford conceded that there was *"muddled thinking"* on the prosecution's part as to what sort of witness Mr Jenkins was in R v Misra from the outset and that this persisted throughout the prosecution[13]; Mr Wilson, the most senior criminal lawyer in POL between 2002 and 2012, viewed Mr Jenkins "*as a person with expertise in an issue or discipline, who happened to be giving evidence in court*", and not as someone who was *"formally […] an expert witness in court"*[14]; Mr Singh's evidence to the Inquiry appeared to be that he treated Mr Jenkins in R v Misra as a witness of fact but the Court treated him as an expert witness.[15]

15. Any suggestion that POL's failure to instruct Mr Jenkins as an expert can be treated as irrelevant, and that Mr Jenkins can be judged in isolation from this failure, is a false approach. It ignores that Mr Jenkins was not asked to provide a factual account and he was not used as though he was a witness of fact. He was used as though he was an expert, to respond to defence reports and to provide opinions. It is these opinions (and the basis for them) which have been criticised. To ignore that he was not instructed as an expert and that expert duties were not explained to him, but to effectively hold him to the standards and duties of an expert, would be deeply unfair.

16. Mr Singh, who might be regarded as emblematic of all that was wrong with POL as a private prosecutor, looms large in the case studies, in that he 'instructed' Mr Jenkins in R v Misra in 2010 and was then part of the commission of the generic statement in 2012, which was used as

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[11] Mik Peach: "*Until this morning, I had always thought of Gareth as being a technical expert on one part of the system*" (Transcript, 16 May 2023, p. 93, ln. 5-7) and Anne Chambers: *"No, I don't think I ever discussed his specific status. I think perhaps I assumed, because he knew so much about everything, he was an expert witness. But that's -- in the legal sense, I wouldn't have known precisely what was meant by that"* (Transcript, 27 September 2023, p. 70, ln. 16-21).

[12] Axiomatically, the words, *"I understand that my role is to assist the court"* (understood to have been drafted by Mr Bowyer of Cartwright King and then inserted into Mr Jenkins' generic witness statement in 2012) *"were insufficient to satisfy the requirements arising on an expert report, either at common law or under the Criminal Procedure Rules"* (Duncan Atkinson KC, Transcript, 18 December 2023, p. 161, ln. 20; p. 162, ln.13). Indeed, the inadequacy of these words simply reinforces that POL's prosecutors neither knew nor understood the duties of an expert in criminal proceedings or their potential application to Mr Jenkins.

[13] Transcript, 15 November 2023, p. 64, ln. 4, 6, 16-17 and 19.

[14] Transcript, 12 December 2023, p. 36, ln. 17-22.

[15] "*… he was treated as a witness of fact all the way, up to including the trial"* (Transcript, 1 December 2023, p. 41, ln. 9-11).

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the basis for Mr Jenkins' witness statements in R v Allen, R v Sefton & Nield and R v Ishaq. Given what the Inquiry has revealed of Mr Singh's competence, his involvement in these cases ought to weigh heavily in the Inquiry's considerations of what went wrong in them.

17. It was not until this Inquiry that POL admitted that it had not instructed Mr Jenkins as an expert. Yet the evidence demonstrates that POL grasped this point shortly after Mr Clarke delivered his advice of 15 July 2013. This was only revealed to the Inquiry because the advice prompted one of the very few manuscript notes that has survived.[16] That note, written by Mr Williams (an in-house litigation lawyer at POL) and recording or reflecting a conversation he had had with Mr Smith (a criminal lawyer at Cartwright King), asked the questions: *"what were we doing to instruct GJ"* and *"don't think he's ever been advised of his duties."*

18. Yet these questions did not prompt a single person to ask what responsibility POL might bear for any of the disclosure failings identified in Mr Clarke's advice (instead, POL blamed these failings on Mr Jenkins). Nor does Mr Clarke's advice appear to have prompted POL to ask what information it held about Horizon bugs, errors and defects ("**BEDs**") that it ought to have disclosed. Nor did these questions prompt a single person to ask, more broadly, what any failure to instruct Mr Jenkins as an expert might indicate about the competence of POL's investigators and prosecutors, especially in relation to disclosure. The reason for this may be inherent in the "*stark"* conflict which existed in Mr Singh and lawyers from Cartwright King being part of POL's response to Mr Clarke's advice.[17] But in any event, the result was that POL's failure to instruct Mr Jenkins as an expert (and POL's knowledge of its failure to instruct him as an expert) was not revealed to the Criminal Cases Review Commission ("**CCRC**") or the Court of Appeal. Were it not for this Inquiry, there is a real risk that the position, as set out in Mr Clarke's advice and perpetuated by POL – that what had gone wrong was largely the fault of a single individual – would have endured.

19. The case studies provide ample ground for the Inquiry to be sceptical about claims in this Inquiry that the problem was that Mr Jenkins did not disclose BEDs or other issues with Horizon, and that POL's investigators and prosecutors were therefore prevented from knowing about material which was potentially relevant to their disclosure duties. Contrary to such claims, the evidence demonstrates that POL *did* have this material in its possession (both at an organisational level and at the level of individual investigators and prosecutors in particular cases). Despite this, POL did not understand (or simply ignored) its legal obligations to record, retain and reveal this material, to prepare unused schedules detailing this material, and then to disclose to the defence those parts of the material that met the disclosure test. Instead of complying with these basic obligations, POL appears to have proceeded on the basis that it could delegate some of them to Mr Jenkins, a course of action that Mr Atkinson KC agreed was not permitted.

20. Moreover, it is clear that Mr Jenkins was someone who advocated for openness with POL when issues arose. In April 2010, when an issue was raised by Mr Allen of Fujitsu as to how POL knew about a specific issue related to recovery (and the need to ensure that there was orderly communication about it), Mr Jenkins informed him that it was probably because he had spoken to Mr Trundell at POL and that *"I probably said more than I should, but I'm used to working openly with POL and not keeping them in the dark."*[18] In relation to communications about the duplication of ARQ data, again it was Mr Jenkins (in his email of 25 June 2010) who pressed the point that POL needed to be told (despite Mr Wilkerson from Fujitsu arguing to the contrary), noting: "*We need to be careful, since this does relate to evidence used for prosecutions, so I feel*

[16] POL00155555.
[17] Expert evidence of Dame Sandra Dawson and Dr Katy Steward, Transcript, 12 November 2024, p. 131, ln. 15-22: *"Can we go over the page to 491, please. Here you're dealing with external conflicts. Is the summary of it this: that, in respect of Cartwright King, the potential conflict was stark. They were reviewing cases that they had previously had conduct of? DAME SANDRA: Indeed. MR BEER: Is that the long and short of it? DAME SANDRA: That is the long and the short of it…"*
[18] FUJ00095095.

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that now we know there is an issue we do need to tell POL about it asap."[19] Equally, when the Receipts and Payments Mismatch bug came to light, it was Mr Jenkins (in his email of 28 September 2010) who said that POL needed to be informed of the issue: *"We probably need to formally raise this as a problem with POL. I'm not sure how this is done, but presumably you can initiate that."*[20] These are all examples which demonstrate that it is a fiction to suggest that Mr Jenkins was somehow seeking to withhold from POL problems about Horizon or that his mind-set was one of protecting Fujitsu at the expense of candid communication.

21. Consistent with this, Mr Jenkins referred to problems with Horizon (or systems that interacted with Horizon) in his communications with POL's investigators and prosecutors, or pointed to where they could find material that evidenced these problems. For example, he used the term *"system failure"* in R v Thomas (it was Mr Ward, a POL investigator, who objected to its inclusion in Mr Jenkins' witness statement).[21] In the same case, Mr Jenkins saw no sensitivity about explaining in his witness statement that Fujitsu had a *"fault management system*" called PEAK used for *"tracking faults"* in Horizon.[22] In R v Misra, he explained to POL's investigators and prosecutors that it was possible for Horizon transactions to be *"lost"* due to *"locking issues"*, and repeatedly insisted that he needed to consider the data from Mrs Misra's branch to assess what may have happened.[23] He, without any apparent concern, informed the defence expert in the same case that there were *"200,000 testing and live faults in Horizon"* and that Fujitsu maintained a Known Error Log that recorded Horizon errors.[24] In relation to the 2012-2013 cases, he pointed out the availability of ARQ data to POL's investigators and prosecutors, and explained that analysis of it would assist with understanding what had happened at the branches.[25] In the case of R v Allen, his witness statement was explicit that he had been unable to undertake any analysis of this data.[26] In the case of R v Wylie, his witness statement confirmed the use of remote access.[27] He similarly saw no sensitivity about discussing bugs in Horizon and remote access with Second Sight.[28]

22. These are some of the examples of what Mr Jenkins said and did that demonstrate that, far from suppressing problems with Horizon, he was willing to volunteer such information to POL and its investigators and prosecutors. It is significant that Mr Jenkins referred to these problems despite: (a) not being instructed as an expert (and it not being explained to him how the duty on an expert to disclose material tending to detract from or undermine their opinion operates), and (b) knowing that mentioning these problems might be adverse to Horizon. These communications are important because they undermine any suggestion that Mr Jenkins was, by design, omitting to mention or to disclose problems with Horizon. There were a number of conduits of information between Fujitsu and POL about Horizon. The Inquiry has clearly demonstrated that a significant part of the problem was not the provision of information to POL but rather what POL did with it.

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[19] FUJ00097070.
[20] FUJ00082443.
[21] See Mr Ward's track changed comments on Mr Jenkins' draft statement at FUJ00122211: *"This is a really poor choice of words which seems to accept that failures in the system are normal and therefore may well support the postmasters claim that the system is to blame for the losses !!!!"*
[22] FUJ00122237.
[23] FUJ00152930 (*"I am aware of one problem where transactions have been lost in particular circumstances due to locking issues"*) and FUJ00122735 *("The simple answer is that without retrieving the logs everybody is speculating and as discussed this morning nobody has bothered to ask us for the logs.")*
[24] FUJ00153159 *("I suggested that as we kept all testing and Live faults in the same system and that there were around 200,000 of them…"*) and POL00055059 *("as a result of the meeting that took place between Charles MacLachlan and Gareth Jenkins […] we now need to have […] access to the system change requests, known error log and new release documentation to understand what problems have had to be fixed.")*
[25] FUJ00153881 ("*"I think it might be helpful to have a dig as to exactly what went on in the branch at the time of the initial loss [...] Is it worth asking Post Office Ltd to request such data for me to examine before putting together a specific statement for this, or is a simple generic one sufficient?")*
[26] POL00089077 ("*I have not had an opportunity to examine the detailed logs from this period to see whether there were any issues…")*
[27] POL00133644 (*"I also note a comment made about it being possible to remotely access the system. It is true that such access is possible…"*)
[28] POL00091426 (witness statement of Ian Henderson dated 28 September 2018 at § 2.2: *"Gareth Jenkins confirmed to me that this capability existed and was occasionally used to troubleshoot problems in branch."*)

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23. POL arrogated to itself the power to prosecute; it did not have to. Overarchingly, the evidence in this Inquiry demonstrates the fundamental failure on POL's part to understand that with the exercise of the power to prosecute came concomitant duties of the highest order. There was no board-level or executive understanding or oversight of these duties. There was no corporate sponsorship of a prosecutorial culture that reinforced the requirement that prosecutors act as Ministers of Justice and the requirement that they privilege their duty to the Court over the interests of POL itself.[29] There was no recognition that this was all the more important in circumstances where unusually POL was victim, investigator, prosecutor, authority as to whether to prosecute, beneficiary of financial orders and prosecuting people on the basis of its own computer system. There was, in turn, on the part of individual investigators and prosecutors (both internal and external to POL), a failure to abide by the fundamental laws and ethical principles to which they were subject.

24. This extended to POL's dealings with Mr Jenkins across all of the case studies in which he features. Every alleged failing on the part of Mr Jenkins went to a matter which would not have arisen had POL's investigators and prosecutors complied with the law. Put another way, it is no accident that every issue examined in this Inquiry in relation to Mr Jenkins was the subject of an applicable law that foresaw the very problem which eventuated when POL failed to abide by it. To the extent that it is said in this Inquiry that Mr Jenkins' evidence in POL's prosecutions was incomplete or inaccurate, it is submitted that it is POL alone that bears responsibility for this. These submissions demonstrate why.

2. THE BROADER LANDSCAPE OF PROSECUTORIAL FAILURES

25. POL's failures in respect of expert evidence generally (and Mr Jenkins in particular) did not occur in isolation, against a backdrop of investigations and prosecutions which were otherwise properly and professionally conducted. They occurred against and because of a much broader canvas of dysfunction and a wholesale failure by POL to conduct prosecutions lawfully having regard to the common law, statute, codes of practice and binding guidance. This broader landscape was detailed in Mr Atkinson KC's reports and oral evidence. The failures identified by Mr Atkinson KC occurred, in many different ways, across all 19 of the criminal case studies selected by this Inquiry. In the five criminal case studies in which Mr Jenkins features, POL's failings occurred in many areas of the investigation and prosecution which were completely unrelated to him.

26. Because Mr Jenkins was in no way involved in any POL case at a pre-charge stage, some of the criticisms made by Mr Atkinson KC are of only indirect relevance to Mr Jenkins and are not repeated here.[30] But clearly a significant number of the findings and highly critical conclusions that Mr Atkinson KC reached, in the course of the Inquiry, are directly relevant to explaining where POL went wrong in the case studies that relate to Mr Jenkins and in its use of him purportedly as an expert witness. These findings relate to:

a) The obligations on POL (as investigator) to record, retain and reveal relevant information.
b) The obligations on POL (as investigator and prosecutor) to obtain relevant material from third parties.

[29] See, for example, the evidence of expert Dr Katy Steward: "*I mean, we heard numerous times during the testimony that people weren't aware that POL -- that RMG did prosecutions. So I think that's the basis of the finding that it was deep in the culture, that POL wasn't, if you like -- had a clear sense of ownership, if you like, over the prosecutions*" (Transcript, 12 November 2024, p. 67, ln. 2-7).
[30] To take only some examples, Duncan Atkinson KC's opinions that, in the majority of cases, *"there was an apparent failure of prosecutorial supervision as to the identification and pursuit of reasonable lines of enquiry"*; the fact that *"the Code for Crown Prosecutors was […] not applied with any degree of depth, analysis or consistency"*; and his *"very serious concern"* about *"the circumstances in which […] a plea occurred"* (EXPG000004R, Expert report of Duncan Atkinson KC dated 13 December 2023, Volume 2 (revised), §§ 12-15).

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c) The obligations on POL (as a prosecutor) to review unused schedules and disclose material to the defence recorded in these schedules which might reasonably be considered capable of undermining the prosecution case or assisting the defence.

27. A clear thread can be traced in this Inquiry in respect of failings in these three core areas. The thread begins with defects and omissions in POL's policies and training materials, the manifestation of these deficiencies in the complete lack of knowledge shown, and in the errors made, by POL's investigators and prosecutors in the conduct of cases. It can then be traced through into identifiable failings in POL's use of Mr Jenkins in the case studies.

a) The obligations on POL to record, retain and reveal relevant information

28. The CPIA and its Code of Practice impose obligations on investigators to *record* and *retain* information and material which is relevant to a criminal investigation, so that it can be *revealed* to the prosecutor, and so that the prosecutor can then comply with their separate disclosure obligations. In his evidence to the Inquiry, Mr Atkinson KC noted that he had seen *"some acknowledgments of the 3 Rs"* in the POL policies he had considered but these were *"limited and far from comprehensive",* and gave no practical guidance as to how the obligations should be implemented.[31] For example, in respect of the 'Post Office Conduct of Criminal Investigations Policy' dated August 2013, Mr Atkinson KC noted that, *"in relation to Horizon related investigations, there was no reference to consideration of, or either investigation of or disclosure of, anything that might suggest a failure in the operation of the system, as opposed to failure by the subject in its operation."*[32] Even as late as 2013, POL's policies did not inform their investigators that they should be recording, retaining and revealing information about possible problems in Horizon.

29. The significance of this omission was laid bare in Mr Atkinson KC's oral evidence to the Inquiry, when he confirmed that the obligations to record, retain and reveal applied to information held *"not just to one department that happened to be conducting the prosecutions"* but across *"all departments or divisions in the Post Office."*[33] In other words, where Horizon issues were relied upon in a legal case, POL's investigators ought to have been in a position to, and should have sought relevant information about possible problems in Horizon from all departments or divisions within POL, including the technical departments that routinely liaised with Fujitsu about such problems. This was a critical failure when the evidence demonstrates that there were banks of knowledge within POL, at both a corporate and individual level, concerning BEDs in Horizon.[34] It was a fundamental, organisational failing on POL's part not to centralise all of that knowledge so that POL's investigators could record, retain and reveal it to POL's prosecutors, and so that those prosecutors could then make informed decisions as to whether they should disclose such material to the defence. POL understood as early as 2005 that it needed to take a more systematised approach to cases in which the integrity of accounting information produced by Horizon might become an issue.[35] It did not do so.

30. Unsurprisingly, these failures in policy and training were reflected in the lack of understanding demonstrated by investigators who gave evidence before the Inquiry. Mr Pardoe (who worked within POL throughout his whole career, largely as an investigator in its Security team) was asked in terms what POL did to ensure it discharged its obligations to record, retain and reveal information held by POL. It was, he explained, *"[…] seen as an administrative case preparation*

[31] EXPG0000002, Expert report of Duncan Atkinson KC dated 26 May 2023, volume 1, § 111.
[32] Ibid, § 114(b).
[33] As to that duty, see Transcript, 6 October 2023, p. 104, ln. 21-25; p. 105, ln. 1-8.
[34] Specific examples include the Callendar Square bug (FUJ00083721), the remming out bug (FUJ00121071), the Craigpark bug (FUJ00155252), the Receipts and Payments Mismatch bug (FUJ00081137) and the Suspense Account bug (FUJ00083375).
[35] POL00119895 .

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function, as opposed to forming a pivotal component of the criminal investigation."[36] As to whether there was any collation of information held by POL going to the operation of Horizon, *"[…] the relevance of the information was simply just not considered."*[37] The lack of basic understanding on the part of other investigators as to their statutory role in disclosure was exemplified by the evidence of Ms Matthews (who was the investigator in R v Thomas). She was asked whether there were, "*[…] for example, a series of data stores that the Post Office had set up that could be accessed by you, where the information you obtained from them had been recorded in an evidentially secure fashion?"* Her answer was simply, *"I don't remember storing any evidence."*[38]

31. The fact that POL as an organisation and its investigators had no understanding as to their obligations to record, retain and reveal relevant information held by POL, is plainly a serious, systemic failing in their exercise of the powers of private prosecution. In the case studies involving Mr Jenkins, it was consistently the case that relevant information about Horizon held by POL (including information about BEDs in Horizon) was neither recorded nor retained by POL's investigators. This had the effect that it was not revealed to POL's prosecutors. This, in turn, had the effect that it was not recorded in the unused schedules nor otherwise disclosed to the defence.

32. The victims of this unfairness were the SPM defendants. But it also matters to Mr Jenkins. As set out below, POL's investigators approached Fujitsu and/or Mr Jenkins as though they were the only source of information available about Horizon. In circumstances where POL itself held information about BEDs in Horizon, the effect of this approach was to delegate to Fujitsu and/or Mr Jenkins the CPIA obligations which POL owed. This was not permitted by the CPIA or its Code of Practice. Had POL's investigators complied with their basic obligations to record, retain and reveal relevant material about Horizon in POL's possession, POL's prosecutors (had they complied with their separate disclosure obligations) would have been equipped to consider disclosure of material to the defence. The result of this is that POL failed in its statutory duties to disclose material it held (and which it went on to blame Mr Jenkins for not disclosing).

b) The obligations on POL to obtain relevant material from third parties

33. The CPIA and its Code of Practice impose an obligation on investigators to pursue all reasonable lines of enquiry. One aspect of this obligation is the requirement set out in the Code of Practice to investigate whether a third party has relevant material. The Attorney General's Guidelines on Disclosure[39] expand upon this requirement; they require that investigators (and then prosecutors) should take steps to obtain material held by third parties if this material might be relevant to the prosecution case and if the material might reasonably be considered capable of undermining the prosecution case or assisting the defence case.[40]

34. In his evidence to the Inquiry, Mr Atkinson KC noted that, bar a general reference to the Attorney General's Guidelines on Disclosure in the May 2001 POL policy entitled 'Disclosure of Unused Material – Criminal Procedures and Investigations Act 1996 Code of Practice', he had found no policy, guidance or training document which set out the obligations on POL to obtain material

[36] Transcript, 29 November 2023, p. 122, ln. 4-6.
[37] Transcript, 29 November 2023, p. 122, ln. 12-13. See also *"Q: Were investigators informed or kept updated about significant changes to Horizon or about any problems, bugs, errors or defects, that the Post Office was aware of? A: I suspect from documentation that's been produced as part of the Inquiry that that was not always the case. Q: Was there, as far as you were aware, any formal coherent approach across prosecutions as to what the investigative approach should be when a subpostmaster sought to rely on Horizon as explaining losses which formed the basis of a prosecution? A: No, there wasn't"* (Transcript, 29 November 2023, p. 123, ln. 16-25; p. 124, ln. 1-4).
[38] Transcript, 24 November 2023, p. 20, ln. 23-25; p. 21, ln. 1-3.
[39] The Attorney General's Guidelines on Disclosure were first published in November 2000; updated versions were promulgated in April 2005 and July 2011.
[40] Mr Atkinson KC made it clear that the process of obtaining material from third parties should be done by the investigator but that the *"prosecutor's role is both to check that it's been done and, either where it's not been done at all or properly, or they identify a wider pool of potential material for them to do it as well"* (Transcript, 2 November 2023, p. 92, ln. 20-25).

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from third parties.[41] He noted that this could have *"fundamental consequences"* and was of "*great importance.*"[42] Similarly, he saw nothing that addressed the question of how investigators or prosecutors might seek material within POL's control but not within its physical possession.[43]

35. Again, these omissions in policy and training led to a complete absence of knowledge on the part of POL's investigators and prosecutors as to their duties in relation to material held by a third party. When he was asked whether he was aware at the time of POL's duties in respect of third-party disclosure, Mr Singh said, *"I don't – at the moment, I can't tell you what the duties were. Maybe at that time, certainly I would have been but, I mean, to look at it in that much depth and detail now, I – I don't know."*[44]

36. Mr Atkinson KC concluded that, in bringing prosecutions of SPMs, POL was *"required to consider whether Fujitsu was in possession or likely to be in possession of disclosable material and request that material from Fujitsu."*[45] There is no evidence that POL ever made (or even contemplated) a third party disclosure request to Fujitsu, in that there is no evidence that it ever made a request which: **first**, explained the nature and scope of POL's disclosure obligations under the CPIA; **second**, explained how those obligations applied in respect of material held by third parties; **third**, considered the categories of material that Fujitsu held and which were potentially relevant for consideration for disclosure in a prosecution; or **fourth**, asked Fujitsu to retain relevant material and provide it to POL.[46]

37. Rather, the evidence suggests that POL actively sought to resist seeking disclosure from Fujitsu (for example, by not seeking ARQ data or by limiting the periods of the ARQ data it sought). Again, the victims of this unfairness were the SPMs. But it is also relevant to Mr Jenkins. For example, in the case of Mrs Misra, POL asked a question of Mr Jenkins as to Fujitsu's awareness of problems in Horizon, but without any reference to POL's own disclosure obligations, how those obligations applied to material held by Fujitsu or how material held by Fujitsu might be assessed for relevance. As confirmed by Mr Atkinson KC, POL could not *"subcontract out"* its disclosure obligations to Fujitsu, still less one employee of Fujitsu.[47]

38. There are other examples (considered below), where POL impermissibly sought to delegate to Mr Jenkins statutory responsibilities which only POL could discharge. This included sending him the defence case statement in R v Ishaq and asking him to comment on disclosure. This should not have happened.

39. Had POL understood and complied with its third party disclosure obligations, POL would have made formal and properly explained requests to Fujitsu which would have set out the statutory framework, the material sought and its relevance to particular cases. POL's investigators would then have recorded, retained and revealed this information to POL's prosecutors. Had this happened (as it ought to have done), the information would have been recorded in an unused schedule and, if it met the disclosure test, disclosed to the defence.

c) The obligations on POL to disclose material to the defence which might reasonably be considered capable of undermining the prosecution case or assisting the defence

40. The CPIA (together with its Code of Practice and the Attorney General's Guidelines) impose an obligation to disclose material to the defence if it might reasonably be considered capable of

[41] We note that Mr Pardoe in his evidence (Transcript, 29 November 2023, p. 121, ln. 6-11) suggested that he would have *"expected"* third party disclosure to be covered in training, but the reality is that no such training material has been identified by the Inquiry.
[42] Transcript, 6 October 2023, p. 85, ln. 11-23; p. 144, ln. 21-25; p. 145, ln. 1-25.
[43] Ibid, p. 91, ln. 10-22.
[44] Transcript, 1 December 2023, p. 85, ln. 23-25; p. 86, ln. 1-2.
[45] Transcript, 6 October 2023, p. 94, ln. 14-20.
[46] Transcript, 18 December 2023, p. 172, ln. 7-25.
[47] Transcript, 6 October 2023, p. 93, ln. 2-8.

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undermining the prosecution case or assisting the defence. Mr Atkinson KC noted references within POL's 2001 and 2010 'Disclosure of Unused Material' policies to *"prosecutor's guidelines"* (in the half page of bullet points which reflected aspects of disclosure). However, he found no separate guidance as to how prosecutors were to undertake their disclosure responsibilities, their responsibilities for the supervision of the investigation and ensuring that disclosure was undertaken appropriately and fairly.[48] Consistently with the absence of policies on disclosure, he saw no training material in relation to the CPIA.[49] The absence of both policies and training materials on disclosure was "*a very serious concern*"; it produced a *"very real risk"* that things would go wrong.[50] He saw no substantive consideration of the Attorney General's Guidelines, in either their original or updated versions.[51] He regarded this as *"a very significant omission"*, because *"if there's no reference to the Attorney General's Guidelines in your policy, it's difficult to see how you can be satisfied that they will be applied, nonetheless, and they have to be, because they are fundamental to getting the disclosure right."* [52] Mr Atkinson KC noted that this had the potential to result in fundamental failures of disclosure. Indeed, it was not until November 2013 that POL addressed the CPIA or disclosure in relation to the integrity and reliability of data systems.[53] If anything, on Mr Atkinson KC's interpretation, these policies provided reasons why it would *not* be desirable to disclose problems in data systems.[54] The absence (until 2013) of guidance in relation to the integrity and reliability of data systems was a matter of *"real concern."*[55]

41. The obligation to disclose material to the defence only applies to material in the prosecutor's possession. However, because POL had not complied with either: (a) its obligations to record, retain and reveal all relevant material in its possession, and (b) its obligations to request relevant material from third parties such as Fujitsu, the material in POL's possession (or considered by POL to be in its possession) for the purposes of disclosure was far less than it should have been. POL then compounded these two failures by consistently omitting to record important material it had gathered during the investigation on the non-sensitive unused schedule.[56] Mr Atkinson KC noted that these unused schedules were *"often inadequate in terms of their content and description".*[57] This had the effect that relevant material which could have been reviewed by the lawyer for onward disclosure to the defence – because the material might reasonably be considered capable of undermining the prosecution case or assisting the defence – was not reviewed. It would also have had the effect of inhibiting the ability of the defence to make applications under section 8 of the CPIA.

42. The evidence before the Inquiry as to how (or more accurately whether) POL applied this disclosure test was remarkable. POL investigator Mr Pardoe was asked whether he was *"aware that material which might reasonably be considered capable of undermining the case for the prosecution against an accused or of assisting the case for the accused, ought to be disclosed?"* He responded that, *"I think there was a view being taken around the relevance of that and that it simply -- as astounding as it sounds to sit here today, that it simply was not relevant."*[58] This concession was at least consistent with Mr Atkinson KC's conclusions, namely that *"there is*

[48] Transcript, 5 October 2023, p. 34, ln. 19-25; p. 35, ln. 1-25; p. 36, ln. 21-25; p. 37, ln. 6. See also Transcript, 6 October 2023, p. 83, ln. 19-25; p. 84, ln. 1-12.
[49] Transcript, 5 October 2023, p. 39, ln. 16-25.
[50] Ibid, p. 40, ln. 15-25.
[51] POL's 'Disclosure of Unused Material, CPIA 1996 Code of Practice' policy issued in May 2001 only alluded to the original version of the Attorney General's Guidelines. There was no POL policy which updated the position in relation to the updated Attorney General's Guidelines. The 2010 version of the same policy document referred to the CPIA 2005 Code of Practice but not to the Attorney General's Guidelines.
[52] Transcript, 5 October 2023, p. 47, ln. 1-7.
[53] Ibid, p. 184, ln. 6-12.
[54] Transcript, 6 October 2023, p. 133, ln. 1-20.
[55] Ibid, p. 135, ln. 10-15.
[56] See the criticisms in relation to the unused schedule prepared by POL in R v Allen: EXPG000004R, Expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), §§ 537-539.
[57] Ibid, § 17.
[58] Transcript, 29 November 2023, p. 154, ln. 10-20.

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little evidence that they [unused schedules] were reviewed, as the CPIA Code and Attorney General's Guidelines on Disclosure required, by the prosecutor" and that *"decisions as to disclosure from the schedules were flawed or overly restrictive."*[59]

43. Once again, the SPMs were the victims of these failures to discharge basic disclosure obligations. But yet it matters to Mr Jenkins. As the case studies demonstrate, there was a wholesale failure by POL to record on the unused schedules, and then consider for disclosure to the defence, important interactions between POL and Mr Jenkins. These included early drafts of witness statements he prepared which were different from the later or final versions (R v Thomas); drafts of witness statements which contained comments made by him and POL (R v Thomas and R v Misra); communications in which Mr Jenkins told POL or the defence experts about problems with Horizon or how information about problems could be gathered (R v Misra); and communications in which Mr Jenkins told POL (or Cartwright King) about the relevance of ARQ data for ascertaining whether Horizon problems had occurred in branches (R v Allen, R v Sefton & Nield and R v Ishaq). There is no evidence that any of this material was recorded on the unused schedules. It was not therefore revealed to the defence (so that an application under section 8 of the CPIA could be made). None of it was considered for disclosure to the defence, still less actually disclosed after a proper application of the disclosure test. Had POL understood and complied with these obligations, defence lawyers would have received material that they could have used to undermine POL's case or assist their clients' defences. And they would have understood that the source of this helpful material was Mr Jenkins.

3. EXPERT EVIDENCE AND EXPERT DUTIES

44. The three categories of broader investigative and prosecutorial failure identified in section 2 of these submissions are all directly relevant to explaining a series of errors POL investigators and prosecutors made in their interaction with Mr Jenkins, and how problems with Horizon were not identified, not investigated and not disclosed to the defence. But the most serious failing of all in respect of Mr Jenkins was POL's wholesale breach of its obligations to instruct him properly (or at all) as an expert witness.

45. Mr Atkinson KC gave evidence to the Inquiry as to what the duties of an expert witness comprise.[60] These duties are long-established and clear.

46. **First**, the common law obligations of an expert witness had been set out in *National Justice Cia Naviera SA v Prudential Assurance Co Ltd (Ikarian Reefer)* [1993] 2 Lloyds Rep. 68 (per Creswell J at p 81).

47. **Second**, in *R v Harris* [2006] 1 Cr. App. R. 5, the Court of Appeal *reminded* judges, practitioners and experts of the obligations of an expert witness as summarised in *Ikarian Reefer*. The Court of Appeal summarised again the *Ikarian Reefer* principles [per Gage LJ at 271].[61]

48. **Third**, in the case of *B(T)* [2006] 2 Cr. App. R. 3 (at 177), the Court of Appeal (again in a Judgment given by Gage LJ) articulated a set of *additional* requirements all of which were said to be *"necessary inclusions in an expert report":*

[59] EXPG000004R, Expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), § 17.
[60] The extracts from his oral testimony set out in section 3 of these closing submissions are a combination of direct evidence from Mr Atkinson KC and propositions put to him by CTI which were accepted in full.
[61] A. Expert evidence presented to the court should be and seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation. B. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness in the High Court should never assume the role of advocate. C. An expert witness should state the facts or assumptions on which his opinion is based. He should not omit to consider material facts which detract from his concluded opinions. D. An expert should make it clear when a particular question or issue falls outside his expertise. E. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. F. If after exchange of reports, an expert witness changes his view on material matters, such change of view should be communicated to the other side without delay and when appropriate to the court.

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a) Details of the expert's academic and professional qualifications, experience and accreditation relevant to the opinions expressed in the report and the range and extent of the expertise and any limitations upon the expertise.
b) A statement setting out the substance of all the instructions received (whether written or oral), questions upon which an opinion is sought, the materials provided and considered, and the documents, statements, evidence, information or assumptions which are material to the opinions expressed or upon which those opinions are based.
c) Information relating to who has carried measurements, examinations, tests etc and the methodology used, and whether or not such measurements etc were carried out under the expert's supervision.
d) Where there is a range of opinion in the matters dealt with in the report a summary of the range of opinion and the reasons for the opinion given. In this connection any material facts or matters which detract from the expert's opinions and any points which should fairly be made against any opinions expressed should be set out.
e) Relevant extracts of literature or any other material which might assist the court.
f) A statement to the effect that the expert has complied with his/her duty to the court to provide independent assistance by way of objective unbiased opinion in relation to matters within his or her expertise and an acknowledgement that the expert will inform all parties and where appropriate the court in the event that his/her opinion changes on any material issues.
g) Where on an exchange of experts' reports matters arise which require a further or supplemental report the above guidelines should, of course, be complied with.

49. **Fourth**, the Criminal Procedure Rules 2005 were amended and supplemented by the Criminal Procedure (Amendment No. 2) Rules 2006 to codify these requirements as part of the Rules.[62] These *inter alia* made it mandatory that the expert report contained a statement that the expert understood his duty to the court, and had complied and would continue to comply with that duty.

50. Thus, during the period 2005-2006, there was a clear and intense focus in the criminal law on the specific duties owed by expert witnesses and the required content of expert evidence. As Mr Atkinson KC confirmed, the necessary inclusions for an expert report go to the *substance* of the evidence (and demonstrates that the evidence conforms to the fundamental requirements of an expert evidence). A failure to include the necessary inclusions renders the evidence inadmissible as expert evidence.[63]

51. Despite this focus, Mr Atkinson KC was unable to identify any POL policy or training documents (from any period the Inquiry is considering) which addressed the law on expert duties and expert evidence: *"I have not identified in any Post Office policy documents with which I have been provided any analysis of these obligations [the obligations on a prosecutor intending to call expert evidence], or their implications for Post Office investigations [...] there's very little reference to expert evidence at all in the material that I've seen.*"[64] Nor was he able to identify any *"POL policy guidance or training"* which referred to (a) the fact that an expert is duty bound to disclose material of which they are aware which would undermine their own expert opinion (or the premise, as communicated to them in their instructions, of the prosecution), or (b) the prosecution duty to make full and proper enquiries of prosecution expert witnesses, in order to ascertain whether there is any disclosable material.[65] Mr Atkinson KC's conclusions on this point were consistent with the evidence to the Inquiry of Mr Wilson, the Head of POL's Criminal Law Team between 2002 and 2012, who conceded that there was a *"complete absence"* of any *"POL*

[62] See Schedule 1 of the Criminal Procedure (Amendment (No. 2)) Rules 2006. Mr Atkinson KC was in error in his suggestion that these requirements were introduced into the Criminal Procedure Rules in 2010; they were introduced on 6 November 2006 (see Regulation 1 of the Criminal Procedure (Amendment (No. 2)) Rules 2006.
[63] Transcript, 6 October 2023, p. 59, ln. 14-25; p.60, ln 1-18.
[64] Ibid, p. 50, ln. 10-17.
[65] Ibid, p. 57, ln. 6-15.

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policy guidance or protocol giving instructions either to investigators or prosecutors as to how to handle expert evidence."[66]

52. Given this sheer absence of policy and training material, it is unsurprising that the law on expert evidence did not permeate the consciousness of POL's investigators or prosecutors. Their evidence to the Inquiry illuminates how even senior criminal lawyers in POL lacked a basic understanding of the law on expert evidence. Mr Wilson's written evidence conceded that the *"guidance"* given to expert witnesses called on behalf of POL was no more than the "guidance" given to non-expert witnesses.[67] In his oral evidence Mr Wilson agreed with every proposition put to him by CTI as to the duties of a prosecutor who seeks to rely upon expert evidence to ensure the expert witness understands their obligations. He conceded that POL did not discharge any of these duties in relation to any experts called on its behalf.[68] When Mr Wilson gave oral evidence for the second time and was asked, in terms, whether he was aware of Mr Jenkins ever being *"[...] instructed by a solicitor or an investigator formally to give expert evidence by way of written instruction",* the answer was no.[69]

53. The reason for this is that Mr Wilson did not regard Mr Jenkins as an expert. He categorised Mr Jenkins as a *"person with expertise in an issue or discipline, who happened to be giving evidence in court",* and not as *"formally [...] an expert witness in court."*[70] He conceded that *"it didn't strike me at the time that – through lack of understanding, that the expert was to be treated in a completely different way"*[71] and he was not alive to the "*difference of approach that's needed when you instruct somebody to give expert evidence as a witness in court proceedings.*"[72]

54. There were many other examples in this Inquiry of POL's investigators and prosecutors not understanding whether Mr Jenkins was an expert (in the legal sense of the term) and, if he was, the legal implications of that status, and how that differentiated him from a witness of fact:

    a) Mr Longman (POL investigator and disclosure officer in R v Misra) said that he *"[...] was not aware of any specific rules governing independent expert advice..."*[73], noting that if Mr Jenkins was *"[...] referred to by others as an expert then I would have considered him to be one. I am unaware of what the difference would have been between an expert or lay witness. I do not recall any information that was given to him by me in relation to the role of an expert witness and the duties he owed to the court if he was an expert witness. I don't think it would have been my role to give him this information. I am not sure who would have had that role."*[74]
    b) Ms Stapel (Senior Lawyer in POL's Criminal Law Team) conceded that she had "*no concept of the duties that a prosecutor bears towards an expert*"[75].
    c) Mr Bradshaw (POL investigator in R v Misra and R v Allen) said that his *"understanding, and I still stick by it"* was that an expert witness was *"a person who knows more in that particular field than the ordinary man."*[76]
    d) Mr Posnett (POL investigator in R v Misra and R v Ishaq) said he believed that Mr Jenkins was an "*expert with a small 'e' because he knew about Horizon*"[77], and he was not aware that *"instructing an expert gave rise to some quite specific disclosure obligations on a prosecutor."*[78]

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[66] Transcript, 12 October 2023, p. 112, ln. 23-25; p. 113, ln. 1.
[67] WITN04210100, first witness statement of Robert Wilson dated 11 May 2023, § 51.
[68] Transcript, 12 October 2023, p. 110, ln. 13-22.
[69] Transcript, 12 December 2023, p. 36, ln. 10-16.
[70] Ibid, p. 17, ln. 22.
[71] Ibid, p. 33, ln. 2-5.
[72] Ibid, p. 56, ln. 7-10.
[73] WITN04670100, first witness statement of Jonathan Longman dated 8 November 2023, § 56.
[74] Ibid, § 77.
[75] Transcript, 14 November 2023, p. 65, ln. 15-16.
[76] Transcript, 11 January 2024, p. 187, ln. 16-19.
[77] Transcript, 6 December 2023, p. 76, ln. 10-11.
[78] Ibid, p. 77, ln. 18-23.

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e) Mr Singh (POL prosecutor in R v Misra, R v Allen, R v Sefton & Nield and R v Ishaq) claimed to have knowledge of the contents of expert evidence *"in general terms"*, but that in R v Misra he treated Mr Jenkins as a witness of fact because *"he didn't come in as an expert, in the sense of an expert; he was an expert who was experienced in the system in itself […]."*[79]
f) Mr Smith (prosecutor at Cartwright King in R v Allen, R v Sefton & Nield and R v Ishaq) could not understand, "*quite why Cartwright King thought it was appropriate to take on this prosecution work, I really, with hindsight, have no idea because we certainly didn't have the training for it, and I was unaware of the duties on a prosecutor in relation to the instruction of an expert witness."*[80]
g) Mr Bolc (prosecutor at Cartwright King in R v Allen, R v Sefton & Nield and R v Ishaq) had not "*seen any formal instructions to an expert at all*" and could not *"recall any conversations that [he] had with Mr Jenkins or others within [his] team about the duties of an expert."*[81]

55. These failures across the board were neatly encapsulated by the following exchange between CTI and Mr Atkinson KC, *"Q: Did you see any evidence that such prosecutors themselves were themselves cognisant of the existence of any of [the expert] duties? A: No. Q: Did you see any evidence that they complied with any of these obligations in their dealings with Mr Jenkins? A: No."*[82]

56. Similarly, CTI asked Mr Atkinson KC, "Q: *did you identify […] any instructions in any case to Mr Jenkins, which instructions identified to him the duties of an expert witness*? *A: No, none at all and I should say, in relation to that, I'm not, in that sense, relying on the 'Gareth Jenkins Chronology' document. I have been fortified since 4.00 on Friday, when I received them, by two lever-arch files of correspondence between the Post Office and Gareth Jenkins, which shows a lot of contact between them, in not a single one of which were his duties as an expert hinted at."*[83]

57. There was thus no prospect that POL would discharge the duties incumbent upon them as a prosecutor who seeks to rely upon expert evidence. Mr Atkinson KC synthesised the obligations as follows:

a) *"the prosecutor must provide the expert with instructions upon what it is that his or her opinion is sought"*[84];
b) *"and should set out issues or questions that the expert is expected to answer"*[85];
c) *"and should set out the material upon which reliance has been placed in the prosecution, concerning that particular issue or issues, and which may be relevant to the questions which the expert is expected to answer…so they should describe the material, or list it, and provide it"*[86];
d) *"satisfy themselves as to the expert's relevant qualifications and expertise"*[87];
e) *"satisfy themselves that the expert has been appropriately instructed, including by the provision of a relevant and detailed letter of instruction or terms of reference…the instruction needs to provide the expert with explicit guidance as to what it is they're being asked to do and what material they're being asked to consider in doing it, and that clearly is detailed. It would be in the form of a letter of instruction. It wouldn't have to necessarily be in a conventional letter. It could be done in an email format but it would need to be done in a*

[79] Transcript, 1 December 2023, p.25, ln. 18; p. 26, ln. 22-24.
[80] Transcript, 2 May 2024, p. 95, ln. 15-20.
[81] Transcript, 15 December 2023, p. 50, ln. 25; p. 51, ln. 1-5.
[82] Transcript, 19 December 2023, p. 28, ln. 19-25; p. 29, ln. 1.
[83] Transcript, 18 December 2023, p. 135, ln. 10-23. Later Mr Atkinson KC indicated that in relation to the communications between POL and Mr Jenkins, *"that which I had seen before was a cause for concern. That which I have seen since heightened those concerns considerably"* (Transcript, 19 December 2023, p. 36, ln. 2-4).
[84] Transcript, 6 October 2023, p. 45, ln. 3-7.
[85] Ibid, p. 45, ln. 8-10.
[86] Ibid, p. 45, ln. 11-19.
[87] Ibid, p. 45 ln. 20-25; p. 46, ln. 1.

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written format, because the expert, in due course, would have a duty to make clear what their instruction had been"[88];

f) *"inform the expert as to their, ie. the expert's, relevant duties to the court… it is unquestionably part of the prosecutor's duty to ensure that that is done by the expert that they rely on"*[89];

g) *"satisfy themselves that the expert had, firstly, understood and, secondly, complied with their relevant duties to the court"*[90];

h) *"if a prosecutor wishes to rely on an expert, the prosecutor is bound to ensure that the individual concerned actually understands that they are to give evidence in the capacity of an expert…and that that carries with it special duties…the prosecutor is therefore duty-bound to inform them of their duties…because, otherwise, there's a risk that the expert may not know what their duties entail…and the bedrock of that is - so it is understood – is that the expert is an independent voice. They are there to bring their expertise, independent of who is instructing them, to bear on the issue they're instructed to give their expertise about. And they owe their duty not to the person who has instructed them but to the court in which they're giving evidence. And it is a particular position that carries with it particular responsibilities, and they are of such importance that it's essential that they understand them"*[91];

i) *"satisfy themselves that any material or literature, of which they are aware and which may undermine the expert's conclusions, has been reviewed by the prosecution and, if appropriate, disclose [sic] to the defence and the expert…and that might be matters concerning the expert's qualifications and experience…the factual basis on which the expert had reached his or her opinion…and, more generally, the expert's credibility"*[92];

j) *"any investigative or prosecutorial authority should have been aware that any expert instructed owed their primary duty to the court, and that they were required to meet a series of requirements as to the content of their report, their underlying material and their conclusions. This was supplemented, following the introduction of the 2010 Criminal Procedure Rules, by the duties of experts"*[93]; and

k) *"the prosecution has a duty to make full and proper enquires of prosecution expert witnesses, in order to ascertain whether there is any discoverable material"*[94].

58. Mr Atkinson KC's overall conclusion emerged from the following exchange with CTI: *"Q: If it's right that the Post Office or its agents, Cartwright King, later, did not provide Mr Jenkins with written instructions that conform to the requirements that we've mentioned, didn't provide Mr Jenkins with instructions as to his duties as an expert and none of the statements included the necessary elements that we've identified,* ***would you be able to draw an overall conclusion that there was a fundamental failure to instruct Mr Jenkins as an expert? A: Clearly, that's ultimately a conclusion for others than me but, certainly, it is not a conclusion from which I would dissent at all. Q: With the limitation you've just included, was that a persistent failure? A: Yes.*** *"*[95]

59. In relation to a number of the communications between POL and Mr Jenkins (the specifics of which are considered in the case studies in section 6 of these submissions), Mr Atkinson KC's opinion was that they were the *"antithesis"*[96] of how an expert ought to have been instructed; or that they demonstrated *"a lack of formality"*[97], "*inadequate"* guidance[98]; *"inappropriate"*

[88] Ibid, p. 46, ln. 2-19.
[89] Ibid, p. 46, ln. 24-25; p. 47, ln. 1-9.
[90] Ibid, p. 47, ln. 10-13.
[91] Ibid, p. 50, ln. 19-25; p. 51, ln. 1-20.
[92] Ibid, p. 47, ln. 23-25; p. 48, ln. 1-18.
[93] Ibid, p. 49, ln. 24-25; p. 50, ln. 1-8.
[94] Ibid, p. 57, ln. 6-11.
[95] Transcript, 19 December 2023, p. 36, ln. 25; p. 37, ln. 16 (our emphasis).
[96] Transcript, 18 December 2023, p. 150, ln. 17 and Transcript, 19 December 2023, p. 36, ln. 22.
[97] Transcript, 19 December 2023, p. 36, ln. 6.
[98] Ibid, p. 36, ln. 9.

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language[99]; and that their *"intent"* was *"the service of the Post Office's interests, rather than the provision of an independent opinion."*[100] For example, Mr Atkinson KC described the email from Mr Singh commissioning the 'generic statement' from Mr Jenkins in 2012 as "*woefully inadequate*"[101]: "*the email, on any view, omitted any instructions or guidance to Mr Jenkins as to his duties as an expert […] it also omitted reference to any specific prosecution, any specific defendant, any specific branch, nor did it refer to any Horizon data that might be analysed in order to reach conclusions […] as an email as a whole, it was far from an appropriate way to instruct an expert. It didn't set out what Mr Jenkins' responsibilities and duties as an expert were […] it didn't remind him of his duty of independence, that he owed his duty to the court and not to those who were instructing him.*"[102]

60. Mr Jenkins was a non-professional witness employed by Fujitsu, completely removed from the type of conventional expert who routinely gives evidence in criminal proceedings. Mr Atkinson KC was clear that, in these circumstances, *"[…] the requirement to make sure they understand the role that they were being instructed in and the role that they would be performing in the proceedings was all the more important, because their independence in such circumstances needed properly to be understood by them. They were not helping their employer; they were giving independent evidence to a court […] that they owed a duty to.*"[103]

61. Furthermore, even in relation to an experienced professional expert witness, Mr Atkinson KC was clear that *"[…] it would be proper practice with that latter category of person to make sure, even if you were preaching to the choir, to make sure they understood what their duties and obligations were, even if that's what they did for a living and they knew them already. You were duty-bound to make sure they did, by telling them. And where there was a risk that they may not appreciate that that is the capacity in which they are being asked to give an opinion, then it's all the more reason to make it absolutely crystal clear to them that that is the capacity in which they're being asked for their opinion and that they have duties, as a result of that. Q: Might that risk be triggered, especially where the person involved, their day job is not being an expert witness, they weren't a conventional expert in the sense that they were completely independent of the subject matter that they were going to speak about – A: No, that's right. Q: - and, indeed, that they were going to speak about some of their own work? A: Yes."*[104]

62. Thus, even with an experienced professional expert, the criminal lawyer must take care to ensure that the expert has understood and complied with their expert duties. It is never sufficient simply to give an expert a page of text that recites their duties. That is particularly so in relation to an expert's duties of disclosure.[105] Lawyers are capable of misunderstanding disclosure; it is a complex area and decisions are often a matter of judgment based upon a clear understanding of the facts and issues. A layperson, even a professional expert witness, may struggle to navigate

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[99] Ibid, p. 36, ln. 12.
[100] Ibid, p. 36, ln. 15-17.
[101] Transcript, 18 December 2023, p. 156, ln. 9-10.
[102] Ibid, p. 151, ln. 12-25; p. 152, ln. 1-7.
[103] Transcript, 6 October 2023, p. 51, ln. 25; p. 52, ln. 9
[104] Ibid, p. 53, ln. 6-25; p. 54, ln. 1-5.
[105] As Fraser J (as then) identified in *Bates v Post Office Ltd (No. 6 Horizon Issues)* [2019] EWHC 3408 (QB) at §748: *"In Imperial Chemicals Ltd v Merit Merrell Technology Ltd [2018] EWHC 1577 (TCC) …at [237] the following was stated: "The principles that govern expert evidence must be carefully adhered to, both by the experts themselves, and the legal advisers who instruct them.* ***If experts are unaware of these principles, they must have them explained to them by their instructing solicitors****. This applies regardless of the amounts at stake in any particular case, and is the foundation stone of expert evidence"* (our emphasis). See also *Medimmune Limited v Novartis Pharmaceuticals UK Limited, Medical Research Council* [2011] EWHC 1669 at §107: "*CPR rule 35.3 Practice Direction 35 and the Protocol emphasise the responsibilities of expert witnesses, but the parts of the Protocol that I have emphasised above make it clear that the lawyers who instruct expert witnesses have important responsibilities too. In short, it is the responsibility of the lawyers to ensure that the expert is properly instructed. A cardinal aspect of properly instructing the expert is to ensure that the expert is put in a position to express an independent and impartial opinion. This may involve* ***more than simply telling the expert that that is his or her duty and providing the expert with copies of the Practice Direction and the Protocol****"* (our emphasis).

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those requirements (and plainly in most cases where professional expert evidence is relied upon, the scope for disclosure will be of a relatively confined nature).[106]

63. There is a yardstick as to the type of guidance that POL ought to have provided to Mr Jenkins.[107] The 'CPS Disclosure: Experts' Evidence and Unused Material Guidance Booklet for Experts' was issued in March 2006.[108] Its timing would appear to reflect the intense focus which there had been in 2005 and 2006 in relation to expert evidence (reflected in the Court of Appeal guidance and the 2006 Criminal Procedure Rules). It is concise (consisting of 12 pages of actual guidance). It is simply stated but explains a number of the basic concepts governing the interplay between expert evidence and disclosure, including that: (i) the expert's obligations were to assist in ensuring that the *Prosecution Team* could comply fully with their statutory disclosure obligations; (ii) these obligations could be summarised by the key actions of retain, record and reveal; (iii) these duties applied to unused material and what unused evidence was; (iv) it was not for the expert to determine whether the material generated in the course of an investigation was relevant to the investigation material; (v) the expert should retain *everything*, including physical, written and electronically captured material, until otherwise instructed; (vi) they should retain records of verbal and other communications including records of all emails and other electronic transmissions sent or received, explanations that they had been provided with, or any other information received; (vii) the expert was required to reveal *everything* they had recorded; (viii) it was *"a necessary and important part"* of the disclosure obligations to make the Prosecution Team aware of all the material the expert had in their possession in relation to the investigation; (ix) when compiling their report / statement they should ensure that due regard was given to any information that pointed away from, as well as towards, the defendant(s); (x) the requirement for the expert to produce an index of unused materials; and (xi) the expert should not attempt to make judgements on the significance of material when producing the index of unused material. The CPS discharged its obligations to ensure that the expert understood their disclosure obligations by requiring the expert to sign a declaration of understanding.[109]

64. This guidance was published at precisely the same point in time that POL involved Mr Jenkins in Mr Thomas' case. It suffices to say that many of the problems that arose from POL's use of Mr Jenkins in the case studies selected by the Inquiry would not have arisen had POL adopted similar guidance to the CPS, provided it to Mr Jenkins, and ensured that he understood it and was complying with it. This would have gone a long way to enabling POL to abide by its obligations in respect of expert evidence.

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[106] Because, ordinarily, it will relate to the generation of the report; for example, information or a finding found in the course of its preparation, or because of a test result or literature providing a different view, or because there are experts in the same field who take a different view.

[107] There is also the 2011 Health and Safety Executive guidance in relation to the instruction of experts referred to in EXPG0000003, expert report of Duncan Mr Atkinson KC dated 21 July 2023, volume 1A. Mr Atkinson KC noted [at §§ 52-53 of this report] that this guidance stated, "*When an expert witness is instructed, it is important that s/he understand what is required of him/her. The expert should be referred to this chapter of the Enforcement Guide and also the section on disclosure mentioned above. The expert must fully understand that s/he has an overriding duty to assist the court and should not feel prevented from providing information that might prove detrimental to the prosecution case. In order to meet that overriding duty, s/he is under an obligation to assist the prosecution with the statutory requirements relating to disclosure. The expert should be reminded of this obligation, which takes precedence over any internal codes of practice or other standards set by professional organisations […] In respect of the investigator / prosecutor's role in ensuring that the expert witness was aware of their duties, the guidance continued, "experts should be reminded that a failure to comply with their duties or a direction of the court could have a number of adverse consequences, including the delay or halting of the prosecution case, exclusion of the expert evidence, the overturning of any conviction and criticism of the expert by the judge, which might result in referral of the expert to any relevant professional body. Such consequences might prevent him/her from acting as an expert in future."*

[108] This March 2006 version of the CPS guidance booklet can be found at https://webarchive.nationalarchives.gov.uk/ukgwa/20090116183804mp_/http://www.cps.gov.uk/publications/docs/experts_guidance_booklet.pdf

[109] This declaration read as follows (Ibid, Appendix B): *"I am an expert in [field of expertise] and I have been requested to provide a statement. I confirm that I have read guidance contained in a booklet known as Disclosure: Experts' evidence and unused material which details my role and documents my responsibilities, in relation to revelation as an expert witness. I have followed the guidance and recognise the continuing nature of my responsibilities of revelation. In accordance with my duties of revelation, as documented in the guidance booklet, I (a) confirm that I have complied with my duties to record, retain and reveal material in accordance with the Criminal Procedure and Investigations Act 1996, as amended; (b) have compiled an Index of all material. I will ensure that the Index is updated in the event I am provided with or generate additional material; (c) that in the event my opinion changes on any material issue, I will inform the investigating officer, as soon as reasonably practicable and give reasons."*

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4. MR JENKINS IN CONTEXT

65. During the Inquiry, Mr Jenkins was erroneously described as *"the mainstay of many of its [POL's] prosecutions"*.[110] He was wrongly attributed the role of *"Chief Architect"* of the Horizon system.[111] It was incorrectly suggested that he was responsible for Horizon's EPOSS counter system.[112] He was consistently misdescribed as *"Dr Jenkins"*[113]; sometimes as a *"Professor"*[114]; even as a *"God"*.[115]

66. For an individual whose profile has assumed such proportions, context is critical. The evidence is that Mr Jenkins provided written (unsworn) evidence in 14 out of the over 700 prosecutions POL brought against SPMs between 1999 and 2015.[116] Not all of these 14 cases resulted in convictions; some did not proceed to trial. In some of these 14 cases, it is unclear whether Mr Jenkins signed a witness statement or whether POL served it (or relied upon it).[117] Mr Jenkins provided (sworn) oral evidence only once, in R v Misra.

67. Across the five criminal case studies selected by the Inquiry that feature Mr Jenkins, it is clear that the nature and extent of his involvement varied considerably. Despite that variation, there are a number of common observations which may made about POL's dealings with him:

a) **First**, as already noted in section 3 of these closing submissions, POL did not instruct him properly (or at all) as an expert witness.
b) **Second**, POL only asked for his assistance after the charging decision, and only then gave him a piecemeal and partial view of the prosecution case.
c) **Third**, POL did not analyse the prosecution case and the defence, in order to consider and identify the issues upon which Mr Jenkins could give expert evidence to assist the court. Rather, POL often asked him simply to "*comment"* on evidence and pleadings.[118]
d) **Fourth**, the tone and nature of POL's communications with him were inappropriately informal or inconsistent with how a prosecutor should communicate with an expert witness.
e) **Fifth**, POL sought to unlawfully delegate its disclosure obligations to Fujitsu and/or Mr Jenkins personally.

68. These observations underscore the aberrant and dysfunctional way in which POL conducted these prosecutions. Prosecutors do not simply send expert witnesses (or indeed any witness) pleadings like defence case statements and ask them to *"comment"* on them; they do not inform expert witnesses that, *"counsel would, bluntly, like Fujitsu to pour as much cold water as possible on the defence report."*[119] These sorts of examples, evident in all five case studies involving Mr Jenkins, demonstrate how far removed POL was from the norms of prosecuting.

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[110] Transcript, 11 October 2022, p. 12, ln. 19-20 (opening submissions).
[111] Transcript, 16 November 2022, p. 55, ln. 23 (David McDonnell).
[112] Ibid, p. 55, ln. 21-23.
[113] Transcript, 14 November 2023, p. 28, ln. 2 (Debbie Stapel).
[114] Transcript, 12 October 2023, p. 113, ln. 14-15 (Robert Wilson).
[115] Transcript, 11 June 2024, p. 109, ln. 10-11 (Anthony de Garr Robinson KC).
[116] Those cases were R v Teja (2005), R v Thomas (2006), R v Hardman (2006), R v Powell (2008), R v Misra (2010), R v Humphrey (2010), R v N Patel (2012), R v Wylie (2012), R v Allen (2012), R v Sefton & Nield (2012), R v Ishaq (2013), R v J Patel (2013), R v Dixon (2013) and R v Brown (2013). Although POL approached Mr Jenkins for assistance in the additional cases of R v Hosi (2010-11), R v McQue (2010-11) and R v Bramwell (2011-12), no witness statement appears to have been prepared in any of those three cases.
[117] For example, no signed witness statement in the case of Thomas has been disclosed. The Court of Appeal in quashing the conviction of Dixon commented that "*it is no longer clear"* whether the statement of Mr Jenkins was served on the defence (*Allen & Others v Post Office Limited* [2021] EWCA Crim 1874 at [57]).
[118] This reached its nadir in R v Ishaq, when POL sent him the defence expert report under cover of a completely blank email on the first day of the trial (FUJ00156747).
[119] FUJ00156530. It is to be noted that, far from acquiescing to Mr Bolc's weighted instructions, Mr Jenkins agreed with the conclusions of the defence report (POL00104153).

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69. The proposition that, despite these multiple failures within POL, a non-lawyer like Mr Jenkins should have understood that POL investigators and prosecutors, with whom he came into contact, were in breach of their duties or seeking evidence from him in terms which were inappropriate, is not realistic. It is reiterated that every POL investigator and prosecutor (including Cartwright King lawyers) with whom Mr Jenkins dealt, in every case study, acted in breach of their professional duties. Put shortly, Mr Jenkins had no yardstick by which to judge the competence of any POL investigator or prosecutor, whether internal or external to POL: they were all incompetent. It is scarcely surprising that he thought the *POL* way of prosecuting was the norm when that was all he was exposed to.

70. In any litigation conducted by competent lawyers, the instruction of an expert is a significant step. It takes place after analysis of the competing issues in the case and the identification of what opinion evidence might assist the court. In litigation, instructions to an expert will generally set out the competing issues in the case relevant to their opinion (in an objective way) and clearly set out the questions that the expert is asked to address (in a neutral fashion). Generally speaking, it is in the interests of the party calling the expert to instruct them in this way so as to ensure that their evidence is not susceptible to being undermined.

71. The legal requirements that the expert identifies the substance of all the instructions received and the questions upon which their opinion is sought are, *inter alia*, critical to understanding the ambit of the expert's evidence. When these requirements are breached, there is the obvious risk that the parties to the litigation (and the court itself) will fail to understand, or misunderstand, the premise upon which the opinions are given and whether the instructions omitted questions that the expert ought to have addressed. In the case studies of R v Allen, R v Sefton & Nield and R v Ishaq, POL's failure to ensure that Mr Jenkins' statements contained the questions which POL had asked him to address was of real consequence.

72. These failures go to a wider point. Prosecutors cannot use experts they have appointed as a vehicle for discharging *their own* disclosure obligations. Fundamentally, lawyers use experts to obtain an opinion that will assist the court on a matter which is outside the breadth of ordinary experience.

73. Mr Tatford explained in his oral evidence to the Inquiry that in R v Misra, there was a lack of clarity on the part of the prosecution as to what Mr Jenkins' role actually was. He was used variously by the prosecution to *"assist"* the defence expert, to reply to the defence expert's reports, but also to deal with the disclosure requests being made of POL under the CPIA (but without telling Mr Jenkins that). Clearly, if POL wanted to seek from Fujitsu (at a given point in time) details of issues which had affected Horizon, that ought to have been the subject of a properly drafted disclosure request addressed to Fujitsu. Such a request might have taken into account the time frames relevant to the disclosure sought; whether disclosure should focus on a given branch; whether disclosure should relate to the operation of Horizon more broadly; what types of issue in Horizon might be regarded as relevant; whether issues in Legacy Horizon were relevant to Horizon Online cases; whether bugs which were fixed were relevant (this list could go on). These were the sorts of considerations relevant to disclosure that POL was obliged to consider.

The position of Fujitsu

74. The issue of disclosure *by Fujitsu* requires separate consideration. That its employees might be exposed (on a number of fronts) if called to give evidence by POL, was foreshadowed in Ms Chambers' 'Afterthoughts' note of 29 January 2007.[120] This note (as its contents demonstrate) was informed by her experience of having to deal with disclosure, before the High Court, in the

[120] FUJ00152299.

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civil proceedings between POL and Mr Castleton. This issue arose when it became apparent that the Tivoli logs had not been disclosed.[121] Ms Chambers had been exposed, personally, to a disclosure problem related to her evidence (and to legal rules which she had been given no notice of).

75. Ms Chambers' note anticipated many of the issues that eventuated in the case studies involving Mr Jenkins. This included the blurring of lines between expert and factual evidence and the question of who bore responsibility for disclosure of Horizon related issues.[122] It highlighted the need for a systemic approach to disclosure on Fujitsu's part and noted that different departments or divisions within Fujitsu might hold relevant material (for example, she highlighted that there might be certain material held only by the SSC).

76. Ms Chambers confirmed in her evidence to the Inquiry that she had no recollection of sharing her note with Mr Jenkins, nor of discussing with Mr Jenkins the issues she raised in it.[123] In particular, she was asked whether she discussed with Mr Jenkins the question of creating a list of available data about Horizon for provision to Fujitsu's Security team, so that disclosure obligations might be complied with. Aside that she did not recall discussing this, she stated: "*I don't think he'd have been in a position to have made that list anyway.*"[124] This underscores the point that if POL was going to ask an individual from Fujitsu to respond to a request of a very general nature about the operation of Horizon, that such a request ought to have been directed at Fujitsu or responded to by Fujitsu.

77. The production of the 'Afterthoughts' note in January 2007 was an opportunity for Fujitsu to review how litigation support should be provided to POL in the future. It posed serious questions as to whether Fujitsu employees were equipped to assist in court proceedings without a more systematic approach. Despite the risks that Ms Chambers highlighted, it did not give rise to any review or change in approach. No one considered, in light of her note, the risks that Mr Jenkins and others (and Fujitsu itself) might be exposed to absent training, guidance and a framework for the provision of expert evidence, including the disclosure obligations incumbent upon experts. As events have proved, these risks were amplified enormously by the incompetence of POL's investigators and prosecutors.

78. The answer to why Ms Chambers' note did not prompt serious consideration of the role of Fujitsu employees in providing evidence is that her experience in the Castleton litigation appears to have been regarded as a one-off exception to Fujitsu's general role in POL's prosecutions. Having read Ms Chambers' note, Mr Pinder in Fujitsu's Security team expressed the view that *"[…] I must stress from the outset that this was 'new ground' and a particularly unusual case (1st of its kind in 10yrs) for all concerned […] this enquiry took well over a year to conclude and routine procedures which have served us well for 10 years were suddenly being stretched to new limits […]"*[125] These *"routine procedures"* were a reference to the general role that Fujitsu's Litigation Support Service had performed until early 2007, which was to respond to ARQ requests made by POL, and to mechanistically produce the ARQ data sought by these requests, under cover of a standard witness statement.

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[121] Ms Chambers indicated in her evidence to the Inquiry that she had been given no guidance (still less any training) from Fujitsu or POL about the differences between evidence given by a witness of fact and an expert witness: *"just this sort of basic statement that I was just talking about what I had done and not about the overall system…I don't recall anybody spelling out any specific responsibilities"* (Transcript, 27 September 2023, p.40, ln. 2-11).

[122] It is to be noted that this very same blurring of lines between factual and expert evidence was accepted by Mr Bolc as having occurred in the case of R v Bramwell in respect of Steve Brander (Transcript, 15 December 2023, p. 50, ln. 101-13).

[123] Transcript, 27 September 2023, p. 69, ln. 24-25; p. 70, ln. 1-2.

[124] Ibid, p. 94, ln. 2-4.

[125] FUJ00152300.

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79. That Fujitsu's role in providing litigation support to POL was internally regarded as mechanistic is apparent from Fujitsu's own litigation support manuals.[126] These manuals were largely concerned with a process-driven approach to obtaining ARQ data from the audit server in response to ARQ requests submitted by POL (and appended the template standard witness statement which was to be used to exhibit this ARQ data). The manuals did not contemplate or provide guidance about the giving of factual evidence that went beyond this scenario (save in limited circumstances). The manuals did refer to expert evidence, but only to say that this would *"rarely"* be required and that it would comprise "*additional granular detail about the technical working and integrity of various systems that constitute the Horizon system*".[127] The manuals contained no reference to the legal duties incumbent on an expert witness, what an expert report was required to include or any of the wider legal framework which governs expert evidence.

80. It is clear that the incremental shift from the mechanistic production of ARQ data to the giving of evidence on substantive issues and to the provision of expert evidence, occurred without any reassessment of whether this was a role which Fujitsu ought to assume and, if it was, what frameworks needed to be in existence to support it. Mr Patterson expressed surprise that Fujitsu offered a litigation support service at all: "*I was professionally very surprised that that service even existed. We're meant to be an IT company not a prosecution support service [...] I am amazed that it was even in the contract.*"[128] Mr Christou expressed surprise at Mr Jenkins being used as an expert witness ("*it's not something that I would have expected Fujitsu to do"*) but took the more nuanced position that this was a matter that should *"definitely"* have gone to the Board, and that Mr Jenkins ought to have been *"properly advised by an independent solicitor."*[129]

81. All of this is relevant context to understanding the position Mr Jenkins was placed in, and how exposed he was, by giving evidence in POL's cases. That he was badly let down by POL is beyond argument. Fujitsu was not responsible for POL's failures as an investigator or prosecutor. However, Mr Jenkins came to give evidence, on behalf of POL, at the request of the Fujitsu Litigation Support Service. It appears that there was only sporadic legal involvement within Fujitsu in the provision of this service and that no lawyer was charged with oversight of how Fujitsu employees were being used to provide evidence on behalf of POL.

82. No one in Fujitsu appeared to understand that the way POL was approaching the provision of evidence from Mr Jenkins was wholly inappropriate or that he was being asked questions which ought to have been directed at Fujitsu, *as an organisation,* to answer. Fujitsu's Litigation Support Service and its in-house lawyers did not appear to understand that if Mr Jenkins was providing opinion evidence, then he was subject to a distinct set of legal duties (and that this might require support and input from across Fujitsu). No one within Fujitsu appears to have understood that there were separate issues at stake: (a) POL's disclosure obligations as an investigator and prosecutor; (b) whether Fujitsu might be a third party holder of relevant evidence; or (c) what duties Mr Jenkins might be personally subject to if POL was using him to provide expert evidence. Doubtless this lack of understanding arose because POL did not inform Fujitsu or Mr Jenkins of these issues and how they should be regarded as distinct from each other. POL did not inform Fujitsu or Mr Jenkins that it was using *them* to discharge *its* disclosure obligations. That said, security staff and qualified lawyers within Fujitsu failed to understand that the sort of evidence that Mr Jenkins was being asked to give (particularly in R v Misra) was a step change from that ordinarily given by Fujitsu employees; they failed to give (or arrange for Mr Jenkins to be given) informed legal advice about the role that POL was asking him to discharge and appear not to have exercised vigilance over the way that POL was using Mr Jenkins.

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[126] See, for example, FUJ00152209, which is a Fujitsu policy manual entitled 'Network Banking Management of Prosecution Support v2.0', dated 29 February 2005.
[127] Ibid, section 8.2.
[128] Transcript, 19 January 2024, p. 115, ln. 14-20.
[129] Transcript, 19 June 2024, p. 80, ln. 17-25.

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Mr Jenkins' technical background and his role within Fujitsu

83. *His* perspective was not that of a lawyer. He started work for ICL in September 1973.[130] From then until his retirement in 2015, he worked on the design and development of computer software. This was his expertise.[131] He had worked for ICL/Fujitsu for 37 years as a computer engineer before giving evidence to the court in R v Misra. He did so without training or guidance about the law; without training or guidance about giving expert evidence; and without training or guidance about being an expert witness. This alone is a matter of enormous concern, even before any of the communications with him are considered.

84. His experience was overwhelmingly technical rather than supervisory or managerial.[132] He did not want to be a manager because he did not view himself as a 'people person'.[133] 'Distinguished Engineer' was an honorific title bestowed on approximately 100 employees across the company. It indicated the esteem in which he was held by colleagues.[134] He was not the Chief Architect (as repeatedly and erroneously reported), but one of many architects working on the Horizon system for a substantial period of time, from the early days of Legacy Horizon in 1996.[135]

85. His initial role was as chief designer in developing an 'agent layer' (which Professor Cipione described as the *"universal translator"*[136]) between the Riposte-based software used by the POL branch counters and the Oracle-based software on which back-office functions and third party agencies relied. This meant that he was centrally located, with good (but not total) visibility of how the two ends of Horizon integrated and communicated. It also gave him an interface with Escher, the designers of Riposte.[137] In the early 2000s, he was involved in the introduction of network banking capability into Legacy Horizon and continued to be involved throughout that decade with key changes and improvements to Legacy Horizon, including Project Impact, bureau de change and the acceptance of credit cards. This was the nuts and bolts of Legacy Horizon.[138] From 2008 onwards he was part of the team responsible for delivering on and testing the required functionality for Horizon Online. He continued to be involved in the technical enhancement of Horizon Online until his retirement.[139]

86. Mr Jenkins' role in Fujitsu's fourth line support was an adjunct to his main responsibilities. Given that his role was not within the SSC and that only some bugs were referred to fourth line support, Mr Jenkins did not personally have a bird's eye view of all BEDs which affected accounts. He had sight of those which were assigned to his 'stack'. The underlying evidence bears this out; he did not, for example, have contemporaneous awareness of the Callendar Square bug. But balanced against this, and as Mr Jenkins explained in his second witness statement to the Inquiry[140], fourth line support took ownership of the most complex problems, those that required a code fix and those which the SSC could not resolve. As part of that function, Mr Jenkins had insight into how a number of BEDs were dealt with. As the Inquiry has seen, Mr Jenkins was the author of many technical papers concerning aspects of the Horizon system. His deep technical understanding of both Legacy Horizon and Horizon Online was accumulated over many years and acquired through extensive collaborative work with his technical colleagues.

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[130] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, § 12.
[131] Ibid, § 12.
[132] Ibid, § 16 and WITN00460200, § 4.
[133] Transcript, 28 June 2024, p. 53, ln. 12-16: *"Do you regard yourself as being an uncaring person? A. No, but I deal better with systems and things than people."*
[134] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, § 13.
[135] Ibid, §§ 17-18.
[136] Transcript, 18 October 2022, p. 117, ln. 9.
[137] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, § 18.
[138] Ibid, §§ 19-20.
[139] Ibid, §§ 21-22.
[140] WITN00460200, second witness statement of Gareth Jenkins dated 1 June 2023, § 29.

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87. He was regarded as a source of expertise within Fujitsu. For example, when Mr Simpkins gave evidence to the Inquiry, he was asked how closely he had worked with Mr Jenkins: *"So we interfaced quite a bit about -- he was the fourth line and -- so the development and architecture, and he was a specialist in the Riposte area, so if we had some issues in that area we would talk to him. He was approachable. Q. How frequent was your contact with him? A. Maybe monthly. Q. Would that be face-to-face or via emails? A. Normally emails or PinICLs. Q. Did you have meetings with him? A. I have definitely been in meetings with him."*[141] When he returned to give evidence to the Inquiry, Mr Simpkins commented that Mr Jenkins *"knows his subject extremely well."*[142] Ms Chambers told the Inquiry that "*I assumed, because he knew so much about everything, he was an expert witness."*[143] Mr Peach said that *"Until this morning, I had always thought of Gareth as being a technical expert on one part of the system. I had seen him in the office and I knew that people deferred to him for expert advice."*[144]

88. As set out above, Mr Jenkins had a deep vein of expertise in Horizon. But by virtue of his seniority, the sheer amount of time he had spent working on Horizon and his technical knowledge, he was also centrally placed within Fujitsu to draw on the collective knowledge of his colleagues. The impliedly dismissive gloss of *"informal chats"*[145] misses the practical reality of how this would have operated. Mr Jenkins was not working in isolation, as an island of expertise without the influence of others. By osmosis, collective endeavour and shared work, he would plainly, over the course of decades, have absorbed a substantial knowledge base upon which he could draw when required.

89. There was, without doubt, a reservoir of collective knowledge about Horizon within Fujitsu. The starting point was, as Mr Jenkins has explained, the inevitability of bugs, errors and defects being present in a system such as Horizon. This was uncontroversial, basic, foundational.[146] It was why structures such as third and fourth line support existed and interacted. Ms Chambers described how this process of working collaboratively across different teams and departments occurred when there was a BED. She explained that the SSC did this *"[….] by talking to each other, perhaps also via email to make sure the whole team was alerted to a new problem and knew which KEL to use if there were likely to be many service tickets for the same bug […] SSC would make sure a KEL was in place to document the symptoms and the action that was required if there were any further occurrences. SSC might also try to reproduce the problem on a test system. 4th line / Development would look for the root cause with a view to producing a fix. SSC and other teams might work out what if anything needed to be done to sort out the consequences of the bug, for example, on branch accounts or the backend systems. The Problem Management team might be involved and might liaise with Post Office. If the bug was in newly released software, the software might be regressed*."[147]

90. Mr Jenkins' peers included individuals within the SSC and fourth line support who were trusted and experienced colleagues like Mr Simpkins, Ms Chambers and Mr Barnes, on whose technical experience he could draw. When they gave evidence to the Inquiry, each of them acknowledged problems in Horizon. The contemporaneous emails demonstrate that each of them was sincere in their attempts to identify and fix these problems. As explained by Mr Jenkins, and as confirmed by Mr Simpkins, their professional relationships were conducted by emails, phone calls and meetings. It is clear that decisions were made and papers drafted on a collaborative basis of

[141] Transcript, 9 November 2022, p. 38, ln. 15-25.
[142] Transcript, 17 January 2024, p. 97, ln. 9.
[143] Transcript, 27 September 2023, p. 70, ln. 17-19.
[144] Transcript, 16 May 2023, p. 93, ln. 5-8.
[145] For example, Transcript, 28 June 2024, p. 10, ln. 21.
[146] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 19: *"And again, although this might be an obvious point, any system like Horizon would have bugs, errors and defects. To me as a software engineer, that was simply inevitable. Because of this, to my mind, the correct approach was to look at the data and information available about a branch and then to ascertain what might have caused a problem or discrepancy at the branch."*
[147] WITN00170100, first witness statement of Anne Chambers dated 15 November 2022, §§ 44 and 52.

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mutual input and reciprocal review. This is not the stuff of 'water-cooler' chats but the working life of people forged over years (or decades). For example:

a) Mr Jenkins worked as part of a *team* of architects for well over a decade on Legacy Horizon and Horizon Online (initially 10-20, later only 3-4).[148] Whilst this will naturally have drawn on the specific expertise of its members and each will have had their own focus, the practical reality of that environment is communication, collaboration and discussion about how Horizon was to be engineered, operated and developed.
b) Similarly, when he was working on the enablement of network banking in the early 2000s, this would have involved *teams* of individuals, sharing knowledge and troubleshooting problems collaboratively.[149]
c) In the delivery of Horizon Online, he worked with POL analysts and the Fujitsu counter development team in delivering the system.[150]
d) Fourth line support consisted of anywhere between 20 to 100 software designers and developers.[151] This was a significant repository of knowledge and experience upon which Mr Jenkins was able to draw.
e) The SSC constituted a huge bank of knowledge about Horizon, what could and had gone wrong with the system, and how it had and could be fixed. Again, the Inquiry can judge their technical insight into Horizon but these were people who spent years (over a decade on the part of Ms Chambers and Mr Simpkins) responding to a wide range of Horizon problems.
f) There are everyday examples within the evidence as to how Mr Jenkins interacted with individuals from the SSC about these sorts of issues. For example, when on 6 May 2010, Mr Jenkins himself noticed NT counter events which looked like receipts and payments mismatches, he contacted Ms Chambers in the SSC to check whether a PEAK had been raised. He inquired whether calls had been raised about it. As it turned out there was a KEL.[152]
g) Issues like the Craigpark bug demonstrated a collective response from across Fujitsu's audit, development and SSC departments. Mr Jenkins was part of this collective response.[153]
h) Additionally, as part of the response to the Craigpark bug, Mr Jenkins and Ms Chambers were the two people within Fujitsu who investigated the NT events to determine if they could cause an account discrepancy.[154]
i) In relation to some BEDs, such as the Receipts and Payments Mismatch bug, Mr Jenkins was directly involved in communications to POL because of his ability to explain problems.
j) In terms of collaboration, Mr Jenkins' documentary output was subject to peer review and comment. For example, his note on the Receipts and Payments Mismatch bug was circulated as an initial draft for discussion with the development team, before a final version (which had been updated following feedback) was circulated more widely to the SSC.[155] Similarly, his note on the Local Suspense Account bug was premised on work that had been conducted by Ms Chambers and others in the SSC and, on its face, referred to input from the FSC.[156]

91. Mr Jenkins did not have visibility of all BEDs but he *was* working in an environment of general high-level knowledge about the state of Horizon and he was knowledgeable about how most significant issues affecting branch accounts had been dealt with. The PinICL and PEAK systems, the Known Error Log, the Release Management Forum ("**RMF**") and the customer services team are all further examples of an infrastructure designed to identify and resolve Horizon issues (which were expected and catered for). Fujitsu gathered vast amounts of data on a daily basis,

[148] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, § 17.
[149] Ibid, § 19.
[150] Ibid, § 19.
[151] Ibid, § 23.
[152] FUJ00081062 (note that this was not the Receipts and Payments Mismatch bug).
[153] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, §§ 141-191.
[154] Ibid, § 176.
[155] FUJ00083353.
[156] FUJ00083375; see also WITN00460200, second witness statement of Gareth Jenkins dated 1 June 2023, § 126.

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including about software and hardware failures. It identified and prioritised fixes through the RMF and discussed those fixes with POL.

92. Equally, there were systems in place to alert Fujitsu to issues which arose in branch accounts:

a) The automatic cross-checks made and reported on the TPS, APS and banking reconciliation reports highlighted inconsistencies which might indicate a bug.[157]
b) Automatic alerts about account discrepancies were relayed to the Systems Management Centre ("**SMC**"), as part of the automatically generated reports concerning significant technical events affecting Horizon.[158]
c) These automatic alerts included the checking of the NT events. As Ms Chambers explained, *"When the counter application would check at various points at the end of the balancing process to make sure that receipts and payments were equal and, if they weren't, it would flag that in various ways. One of the ways it flagged it was by creating an NT counter event, which would be written to the application event log, which was one of the files we were talking about yesterday […] And these events would have gone from the counter through the Tivoli stream to be -- hopefully to be monitored for and checked by the SMC, whose job was to look for these sort of events or any other unexpected events."*[159]
d) Additionally, there was, following the identification of the Craigpark issue in 2008, a process of NT events checking conducted by the SSC whenever ARQ data was requested by POL. This not only comprised a check of the reliability of the specific data in a specific case, but contributed to the repository of knowledge within the SSC about the frequency and nature of the issues occurring:
    - Ms Chambers, in her evidence to the Inquiry, said that: *"as part of the audit retrieval process after 2008 sometime, the Security team would also extract the Tivoli events for the branch over the relevant period, and SSC staff would look at those events to see if there was anything of concern. In particular, we were looking for the Riposte local events which might indicate some silent failure that might not have been noticed at the time."*[160]
    - Mr Simpkins, in his evidence to the Inquiry, said that: "*We used to get Excel spreadsheets passed to the SSC with events that had been harvested in a date range and asked would these events be of any -- have any impact upon a counter? And, because it was from the data centre as well as the counter, it was a lot of events could have happened during that period…they were using the SSC as people who may be able to say whether an event may have been an important one impacting a counter…"*[161] He agreed with CTI that the SSC were being asked to *"vouchsafe the data"* provided to POL to see whether it included any events that would affect its reliability, i.e. whether any BEDs had affected it.[162]
    - This process of events checking, which had started in late 2008, was ongoing throughout R v Misra and was one of Mr Jenkins' stated reasons for insisting on obtaining the ARQ data for West Byfleet in February 2010 (he noted in emails sent to

[157] WITN00170100, first witness statement of Anne Chambers dated 15 November 2023, §10. See also Transcript, 2 May 2023, p.126, ln. 9-14: "Q. *How complete was the coverage of that automated system? A. Certainly anything that showed up -- I mean, yes, all entries on the major reconciliation reports would have calls raising for them and SSC would have looked at each one."* See also Transcript, 2 May 2023, p. 129, ln. 6-10: "*What about if it was for a smaller sum of money, for £100, and the subpostmaster was told before it got to the SSC, 'You just need to make that up, that £100'? A. No, anything like that, because -- as well as it being reported by the branch, it would also have been on the reconciliation reports, and we looked at those regardless of the amount of money…"* See also Transcript, 2 May 2023, p. 133, ln. 21-25; p. 134, ln. 1-4*: "But this bug appears to have been picked up by reason of a call from the subpostmaster -- A. Yes. Q. -- not by Fujitsu's reconciliation process? A. Oh, there would have been separate calls for those as well but they haven't been linked on here. But it does say further up in the call that the branches appeared on I think at least three of the reports."* See also Transcript, 3 May 2023, p. 57, ln. 1-6: *"We had all the reconciliation reports that ran overnight, so that was the main way of finding financial inconsistencies on the system. Q. So there was the reconciliation reporting system? A. Yes."*
[158] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, §23.
[159] Transcript, 3 May 2023, p. 74, ln. 3-20.
[160] Transcript, 26 September 2023, p. 34, ln. 13-21.
[161] Transcript, 17 January 2024, p. 53, ln. 14-23.
[162] Transcript, 17 January 2024, p. 54, ln. 24-25; p. 55, ln. 1-2.

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POL that the *"events in the eventing logs"* were checked *"to indicate if there was an issue"*).[163]

- There are many PEAKs and 'problem reports' on Relativity in the period 2008 onwards that demonstrate that Fujitsu's Litigation Support Service forwarded ARQ data sought by POL to the SSC for checking, with an instruction along the lines of *"please check events for financial implications."*[164]
- There are PEAKs continuing to request such events checking in June 2014[165] and indeed reference to the process by Mr Simpkins as late as 14 November 2019: *"any ARQ containing financial data sent to the Post Office must have an accompanying check of any events raised."*[166] It appears, therefore, that events checking remained an important check and balance on the accuracy of the ARQ data being provided to POL throughout the majority of the period that Mr Jenkins was assisting with its prosecutions.

93. In summary, there were numerous banks of knowledge and channels of communication within Fujitsu to which Mr Jenkins was party and through which, over many years, he accumulated an understanding about different aspects of Horizon. As outlined above, many of these were structured in nature, including the process for checking of events associated with the ARQ data supplied to POL for use in legal proceedings. Others were formalised through their recording in technical papers. Some channels of communication were informal and undocumented. Naturally and unsurprisingly, Mr Jenkins would draw upon this accumulated knowledge and understanding when giving evidence. Nor was it irresponsible for Mr Jenkins to draw on informal conversations in seeking to widen his understanding of those aspects of Horizon of which he had no personal, first-hand knowledge. Indeed, as set out below in the context of R v Misra, experts are entitled to give evidence based upon the collective knowledge of those with whom they work. It is no answer to say to this that Mr Jenkins was not instructed as an expert. It was inherent in the type of evidence he was being asked to give that he would draw upon his first-hand knowledge, the general accumulated knowledge he had built up over years and that which he understood from colleagues. Ordinary witnesses of fact are also entitled to give evidence as to their knowledge and belief. To the extent that Mr Jenkins' statements ought to have identified sources of information upon which he based his opinions, had any POL lawyer understood the necessary inclusions for expert evidence and informed Mr Jenkins of these, then his statements (or expert report) would have set out any documents, statements, evidence, information or assumptions which were material to the opinions he expressed or upon which his opinions were based.

94. Mr Jenkins did not seek to suggest – in any legal case or technical paper – that Horizon was flawless or bug-free. The proposition that POL or Fujitsu *"imposed a dogma of infallibility"*[167] about Horizon is not something for which Mr Jenkins bears responsibility. He had general confidence in the operation of Horizon but, as demonstrated in these submissions, he was entirely prepared to volunteer problems with Horizon and to tell POL how evidence for those problems could be checked.

5. HINDSIGHT AND MEMORY

95. Hindsight is the only perfect science and there are obvious reasons why the retroactive understanding that hindsight provides is particularly acute in Mr Jenkins' case. Mr Jenkins volunteered on a number of occasions in his oral evidence to the Inquiry that he now understood there were things he ought to have done in POL's prosecutions, and that there were things that

[163] FUJ00083721: we explore these emails in more detail in section 6(c) of these submissions.
[164] A typical example is FUJ00228786.
[165] FUJ00155180, p. 3.
[166] FUJ00173193.
[167] SUBS0000022, phase 3 closing submissions of HJA, 26 May 2023, § 1. It is of note that in R v Misra, Mr Tatford expressly stated that the case was not being prosecuted on the basis that the system was infallible.

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he would do differently now. That Mr Jenkins should have reflected upon past events in this way is not surprising. He is in the extraordinary position of having learned, years after the event, that he was being held responsible for things it is suggested that he ought to have said and done as an expert witness in POL's prosecutions. It would be impossible for him to view matters from where he stands now, in 2024, without being conditioned by an understanding of how a properly instructed expert might have approached giving evidence.

96. The *Horizon Issues No.6* Judgment was handed down on 16 December 2019 and was critical of Mr Jenkins. Until this point, Mr Jenkins had no inkling that his historic role in POL's prosecutions would become the subject of any criticism. POL did not inform Mr Jenkins about Mr Clarke's advice of 15 July 2013. At the time, he was only told that he would no longer be asked to assist in prosecutions because of the *"rules of evidence"*.[168] He was used by POL to assist in the preparation of the GLO civil proceedings without ever being told that he was not being used as a witness because of Mr Clarke's advice. Mr Parsons of POL's solicitors Womble Bond Dickinson saw no issue in putting Mr Jenkins in this position.[169] Mr Jenkins was then exposed to criticism and referred to the Director of Public Prosecutions. As the Inquiry is aware, the focus of Mr Clarke's advice was on Mr Jenkins' failures of disclosure as an expert witness. Mr Jenkins learned of this advice for the first time when it was referred to by the Court of Appeal in 2021. The Judgments of the Court of Appeal relied extensively upon this advice (and its criticisms of Mr Jenkins). For the past four years, Mr Jenkins has been subject to criminal investigation by the police. He has read a huge amount of material in preparation for giving evidence at this Inquiry. He has endured intense public scrutiny and listened to others, both inside and outside the Inquiry, argue that he bears a heavy responsibility for multiple miscarriages of justice and point out what they consider he ought to have said or done. Given that he is under criminal investigation for things he said or did not say over a decade ago, that he is sensitive to how he might have done things differently is unsurprising.

97. Mr Jenkins gave evidence to the Inquiry about events which are (to a large degree) historic, given he started work on Legacy Horizon in 1996.[170] His "*memory of them is far from perfect*".[171] This was demonstrated by his work on his second statement to the Inquiry ("*That I had forgotten certain issues or events has been borne out by my consideration of the new documents*" and "*given the passage of time, this statement cannot be definitive as to my state of knowledge*").[172] He is "*not certain what I knew or understood at particular points in time"* and many events *"will have assumed a greater importance as time has passed and events have unfolded, than they did at the time.*"[173] As a result, he was "*relying to a large degree upon the documents to assist my recall*" and *"... would not have recalled my involvement in, or communications about, a number of these issues and am only able to comment on them having seen the underlying material provided to me by the Inquiry.*"[174] This was particularly important in his third witness statement to the Inquiry: "*I have had to rely upon the documentary material in order to recall or reconstruct these events. This is particularly important in relation to phase 4 because the underlying communications have assisted me in explaining my approach to the giving of evidence in the case studies*".[175]

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[168] FUJ00156923.
[169] Transcript, 14 June 2024, p. 106, ln. 19-25: "*Q. You don't see a difficulty in using someone in litigation, in making a decision not to call them as a witness, in deciding that you need to be very cautious and careful about how you're using them, and yet not tell that person that that's the position they're in; you don't see a problem with that? A. There's several difficulties but they're mainly for Post Office to manage in the litigation process but I – that idea did not cross my mind whilst we were in the litigation."*
[170] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, § 18.
[171] Ibid, § 9.
[172] WITN00460200, second witness statement of Gareth Jenkins dated 1 June 2023, §§ 7 and 194.
[173] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, § 9. The emerging significance of Fujitsu's remote access capabilities, and Mr Jenkins ' evolving familiarity with and understanding of this capacity, is a good example of this.
[174] WITN00460200, second witness statement of Gareth Jenkins dated 1 June 2023, § 194.
[175] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 7.

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98. That contemporaneous material has proved critical, in particular to Mr Jenkins' ability to prove the negative that POL did not instruct him as an expert in any of its cases. As is also clear, there are matters about which he has retained no memory and where the contemporaneous material has proved important and helpful. These include, for example, the evidence that it was Mr Ward, an investigator at POL, who deleted parts of his witness statement in R v Thomas and that another POL investigator, Ms Matthews, *did* in fact come to take the final draft witness statement from him in that case.[176] There are plainly gaps though and whilst the documentary evidence hints at what these might be, they remain unfilled.

99. Unlike many witnesses to the Inquiry, Mr Jenkins did not simply assert that he had no memory of any of the relevant events. But to the extent that Mr Jenkins sought to answer questions by memory alone, this carries obvious risks. The Judgment of Leggatt J (as then) in *Blue v Ashley* [2017] EWHC 1928 (Comm), reaffirming his observations in *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm), about the problematic nature of evidence based on recollection are not repeated.[177] His observations as to the fluidity and malleableness of memory, and the capacity for external information, thoughts and beliefs to affect recall, and therefore to intrude into a witness's oral evidence, are relevant. So too are his observations about the capacity for new information or suggestions about an event to affect memory, in circumstances where memory of it is already weak due to the passage of time.

100. There was a startlingly clear example of this before the Inquiry. POL lawyer Ms Stapel provided a witness statement which referred to "*Dr Jenkins"* and how his statement *"would have asserted"* that Horizon was *"a robust and reliable system."*[178] She referred throughout her evidence to what Dr Jenkins *"would have"* said in his statement. She said that this statement contained the words "*I understand that my role is to assist the court rather than to represent the views of my employers or Post Office Ltd.*"[179] As the Inquiry is aware, this form of words only appeared in Mr Jenkins' statement from October 2012 onwards, six years after Ms Stapel ceased to work on 'counter' prosecutions.[180] In oral evidence, Ms Stapel confirmed to CTI that she was 100% certain that Mr Jenkins had been a witness in R v Page.[181] She gave this evidence despite the fact that there was no reference whatsoever to Mr Jenkins in any of the documents related to the trial (like the opening note, the defence case statement, the lengthy witness list, any of the witness statements or the defence expert evidence). Mr Tatford, who was POL's counsel in R v Page, confirmed that Mr Jenkins had nothing whatsoever to do with this case.[182] It is self-evident that Ms Stapel read Mr Clarke's advice of 15 July 2013 which referred erroneously to *"Dr Jenkins"*; that it infected her memory of R v Page; and that she effectively created a false (but seemingly genuinely held) memory that POL had used Mr Jenkins as a witness in it. Her evidence is a real illustration of the problem identified in *Blue v Ashley*.[183]

101. The problem of reconstructing an accurate memory of events is also complicated by the incomplete documentary record of those events. Mr Jenkins is being asked to explain certain things he did (which he has forgotten about) where those things can be evidenced by the surviving material. But where there is no surviving material which might demonstrate that he did other things (which he has also forgotten about), it is suggested that he did not do them. Such reasoning is faulty. There are no doubt important matters which would be revealed by a complete

[176] FUJ00155721, referred to at § 139 of these closing submissions.
[177] See §§ 66-69 of *Blue v Ashley* for these observations in full.
[178] WITN08900100, witness statement of Deborah Stapel dated 15 October 2023, § 43.
[179] Ibid, § 49.
[180] Transcript, 14 November 2023, p. 63, ln. 12-17.
[181] Ibid, p. 55, ln. 15-22.
[182] Transcript, 23 November 2023, p. 196, ln. 11-20: "*I understand that Debbie Stapel – I knew her as Debbie Helszajn – that she suggested Gareth Jenkins gave evidence at the Dudley trial and that's simply incorrect. It's simply misremembering. I was at the trial for six weeks. I called a number of witnesses. I took notes of all the evidence – I wish I had the notes still, they're long gone on an old computer – but I heard all the evidence. Gareth Jenkins was not a witness in that case."*
[183] Transcript, 14 November 2023, p. 68, ln. 1-8: *"Q. Can I ask whether or not you have seen a document called the Clarke Advice? A. I have, yes. Q. Is it from the Clarke Advice that you're getting information -- A. It -- Q. -- like this? A. It may be."*

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documentary record and which would enable Mr Jenkins to answer with more accuracy and confidence about what he did and did not do. In particular, there is an absence of material from within POL comprising internal attendance notes of meetings or phone calls involving Mr Jenkins, or personal notebooks of investigators and prosecutors he dealt with. The manuscript note of Mr Williams (referred to in section 1 of these submissions) is a notable exception that serves to highlight the potential importance of such material.[184]

102. Finally, there are significant gaps in the witness evidence. For example, Ms Thomas, the key figure within the Fujitsu Litigation Support Service, was not called in the Inquiry. She wrote a number of the litigation support manuals; she was the principal person with whom POL communicated about cases; she was the individual who routinely provided the witness statement producing ARQ data, which contained the 'boilerplate' paragraphs about the functioning of the computer; she liaised internally within Fujitsu with individuals whose work was relevant to litigation support or who could advise her (including lawyers); she communicated with managers in Fujitsu about litigation support; she is the person who it seems most likely could have explained the different checks which were made when POL made an ARQ request. Moreover, she was the person who, in a number of cases including R v Misra, communicated with Mr Jenkins as to what he was to do in a given case, who gave him advice about his role and who put his words into a witness statement form. There is an absence of documentary evidence about Mr Jenkins' conversations with Ms Thomas and Ms Lowther of the Fujitsu Litigation Support Service (and which must have occurred). She was a significant witness not to hear from. Her evidence would have had an important bearing on a number of the case studies.

Hindsight judgment

103. Mr Jenkins is self-evidently in a unique position in this Inquiry in being asked questions about technical issues in relation to Horizon that arose over the course of two decades; their interrelationship with POL's prosecutions; and specific things he did (or specific things he did not do) in those prosecutions. Here too, there is scope for artifice. It is not unusual for events which were not particularly noteworthy at the time, or which were significant at the time but were nonetheless subsumed within day to day work and other demands, to come under the telescopic lens of a public inquiry years later. There is an obvious risk in treating issues which have assumed great prominence years later as though they must have been regarded in the same way at the time.[185]

104. This problem of judging events between 2006 and 2013, by reference to what is known now, was revealed early in Mr Jenkins' oral evidence to the Inquiry, when he was challenged as to whether he agreed with Fraser J's overall assessments in his *Horizon Issues No.6* Judgment of the lack of robustness of Legacy Horizon and Horizon Online. The exchange between CTI and Mr Jenkins repays consideration:

> *"Q. You don't accept his [Fraser J]'s findings that bugs, errors and defects could result in, i.e. cause, discrepancies or shortfalls in branch accounts?*
> *A. They could cause discrepancies in branch accounts but not at the sort of levels that are being talked about and, in general, the systems, I believe, were operating as they should.*
> *Q. Robustly? A. It depends exactly what you mean by "robust" but as long as you're not saying "infallibly" then, yes, because I think "robust" meant that there were mechanisms in place that would monitor what was going on, detect problems, and that they were then investigated and resolved correctly.*
> *Q. Horizon, both Legacy and Online, were working well in your view?*

[184] POL00155555.
[185] See, for example, the fact that Mr Jenkins, during the course of the proceedings between POL and Mr Castleton, received a letter setting out an expert's duties in civil proceedings: see §§ 112-122 of these submissions.

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A. Most of the time, there were clearly problems during the pilots in both cases and there were clearly individual problems that affected individual branches, and I'm sure we'll come on to those at some time but, in general, then I felt that the systems were working well.
Q. The judge got it wrong?
A. I wouldn't like to say that but I think there's a difference in emphasis between -- there were clearly problems and he identified a number of problems and I won't dispute those problems happened but, on the whole, I felt that the systems were working well."[186]

105. As this exchange reveals, it is not right to reduce Mr Jenkins' evidence to a simple statement that Fraser J had *"got it wrong."* His answers up to that point had been considerably more nuanced. He agreed that the BEDs identified by Fraser J existed and could cause discrepancies in the branch accounts of particular branches, both in the pilot and the live periods, but that he had a different view about their actual impact *("not at the levels being talked about"*). He recognised the scope for misunderstanding that arises from the use of a qualitative judgment such as *"robust"* (which plainly can mean different things to a lawyer and a software engineer, depending on the context). He made it clear that he never thought that Horizon was infallible.

106. But more fundamentally, Mr Jenkins was responding to CTI's questions by reference to his contemporaneous day to day experience of working on Horizon and comparing *that* to the overall conclusions drawn by Fraser J in 2019. That is not taking issue with or disagreeing with Fraser J. It is an explanation as to how Mr Jenkins perceived Horizon at the time, working in fourth line support, without the hindsight and bird's eye view afforded to Fraser J (or indeed this Inquiry).

107. Mr Jenkins' colleagues in Fujitsu held similar views at the time. Mr Peach rejected the characterisation that Horizon had been *"riddled with faults."*[187] Mr Simpkins said that *"in relation to the accuracy and integrity of the data recorded and processed on the Horizon system, I believed that the software worked well on the whole."*[188] Ms Chambers confirmed that cases in which there was a discrepancy were a "*very small proportion*" of the calls that the SSC dealt with.[189] She said that *"[…] I was not aware of any bugs, errors and defects that were causing money to be lost without them leaving any sign that a problem had occurred. In general, although, yes, of course there were bugs, errors and defects, they were not causing continual ongoing losses. […] There obviously were bugs, errors and defects that, in some cases, were causing money to be lost but my view at that time was that Horizon was robust in general. There would have been specific cases when it was not."*[190] Mr Barnes explained to the Inquiry that when he wrote in 2008 that *"the fact that the EPOSS code is not resilient to errors is endemic"*, he was actually referring to deficiencies in *"error handling"*, not errors in the EPOSS code itself, which he regarded as *"quite clever"*.[191]

108. The fact that Mr Jenkins' contemporaneous views on Horizon accord with other highly experienced engineers within Fujitsu is important. It is not a denial of the overall picture as it currently stands nor a denial of the experience of SPMs; it is a reflection of what the experience of engineers working in third and fourth line support was at the time. It is a reminder that Mr Jenkins must be judged against what he knew and thought at the time, rather than what he knows

[186] Transcript, 25 June 2024, p. 17, ln. 2-25; p. 18, ln. 1-3.
[187] Transcript, 16 May 2023, p.27, ln. 17.
[188] WITN04110100, first witness statement of John Simpkins, 4 August 2022, § 47.
[189] Transcript, 2 May 2023, p. 75, ln. 21-25; p. 76, ln. 1-4.
[190] Transcript, 26 September 2023, p. 31, ln. 4-8.
[191] Transcript, 17 January 2024, p. 127, ln. 14-19. Mr Barnes noted at another point in his evidence that *"you could never get every single bug from a system. That's just – you do your best but it's just impossible. There's always bound to be some bugs […]"* (Transcript, 27 January 2024, p. 121, ln. 23-25). Second Sight reached conclusions about the core Horizon software which were to similar effect, that it worked well most of the time. When Mr Henderson gave evidence before a Department of Business Innovation and Skills Select Committee on 3 February 2015 (see the transcript of this evidence available at https://committees.parliament.uk/oralevidence/4526/html/), he noted that, *"[…] in general Horizon has robust recovery mechanisms to cope with failures […] most of the time Horizon works well […] but in unusual combinations of circumstances (e.g. broadband access, loss of power mid-transaction) it fails […] the core software works well most of the time."* Similarly, his colleague Mr Warmington, when he gave evidence to the Inquiry, said that *"[…] what we found was that the – whether it was bugs or other forms of error and defect that were manifesting themselves were unusual, were rare, but had life-changing impact on those that the bugs hit, but were inconsequential in the context of the entirety of the system"* (Transcript, 18 June 2024, p. 131, ln. 11-16).

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and thinks now. And his perspective at the time was inexorably that of a software engineer. He had none of the knowledge, training, guidance or explanation which might have equipped him to view matters through the entirely different lens of an expert witness.

6. THE CASE STUDIES

a) The civil proceedings between POL and Mr Castleton

109. Mr Jenkins' involvement in the civil proceedings between POL and Mr Castleton was limited. He did not provide any evidence. He responded to a small number of technical questions asked by POL's solicitors (Bond Pearce). He also assisted Ms Chambers with the analysis of the cash account. It has not been suggested to him, in the course of the Inquiry, that any of this input was inaccurate or incomplete.[192] He was plainly not privy to whatever legal or commercial strategy drove POL to conduct the proceedings as they did.

110. Mr Dilley of Bond Pearce prepared a draft witness statement for Mr Jenkins in May 2006. In his comments on the draft, Mr Jenkins stated that he was unwilling to say a number of the things Mr Dilley had suggested, or that he wanted to review the data from Mr Castleton's branch before agreeing with them. In particular, the conclusion Mr Dilley had drafted was as follows: *"There are no grounds for believing that the problems Mr Castleton says he experienced with his computer would have caused either theoretical or real losses."* In response, Mr Jenkins commented that: *"Not sure that I can agree to this without looking more closely at what has gone on."*[193]

111. These comments are illuminating. They reflect two aspects of the same approach Mr Jenkins adopted in POL's prosecutions. First, it reveals that Mr Jenkins was willing to push back on what POL's lawyers were suggesting he could (or should) say in evidence. Second, it reveals the significance that Mr Jenkins attached to examining the branch data in order to understand what may have caused a problem. Mr Jenkins made the same points to different sets of POL's investigators and prosecutors in R v Thomas, R v Misra and R v Allen.[194] This is revelatory of his mind-set; that of a software engineer who thought that his role was to look at the data and to see what that demonstrated about the specific branch in issue.

112. When Mr Jenkins gave evidence before the Inquiry, the main focus of the questioning about Mr Castleton's case was a letter dated 18 November 2005 from Bond Pearce to Fujitsu. This letter asked Fujitsu to review Mr Castleton's experts' reports and listed six questions relating to the case. It referred to the Civil Procedure Rules Part 35 Practice Direction (dealing with expert evidence) and set out the duties to the court owed by an expert witness in civil proceedings.

113. A version of this letter had been uploaded to the Inquiry's database many months before Mr Jenkins gave evidence at the Inquiry but not as part of a family of documents sent to Mr Jenkins.[195] CTI asked Mr Jenkins questions about this version of the letter on the morning of the first day of his evidence (25 June 2024), including whether he had seen it at the time. Mr Jenkins' responses varied in terms of how certain he was that he had seen it: *"I've no recollection of that"*; *"I think I would have remembered if it had been sent to me because I can see there that it's clearly set out what the duties are and I wasn't aware of any of those duties until…the end of 2020"*; *"[if I'd received this letter] I would certainly have skimmed through all of it"*; *"I don't recognise any of it"*; *"I'm sure that [the letter] couldn't have [come through to me] because I would have done things differently, not necessarily in this case but certainly in later cases, if I'd*

[192] This input is described in detail at WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, §§ 251-284.
[193] FUJ00122284.
[194] See, for example, the communications described in §§ 133, 299 and 430 of these closing submissions.
[195] FUJ00152573.

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been aware of those responsibilities"; *"I'm pretty sure [the guidance in the letter] hadn't [come through to me]. I can't say definitively because it's so long ago but, as I say, I think I would have known if I had seen it."*[196]

114. It is understood that, an hour or so after this evidence, the Inquiry realised that the letter had been one of two attachments to an email dated 5 June 2006 from Mr Pinder (in Fujitsu's security team) to Mr Jenkins.[197] This realisation prompted the Inquiry to upload the letter to its database overnight in a new version that made it clear that it was an attachment to Mr Pinder's email.[198] On the morning of the second day of his evidence (26 June 2024), CTI returned to the letter and asked Mr Jenkins further questions about it. The line of questioning was to the effect that the letter had put Mr Jenkins on notice of the responsibilities of an expert witness (and carried the implication that he must upon reading this letter have understood the content of these duties). It was suggested in the questions that its significance was broader because the letter did not refer to the recipient being an expert (although this was mistaken). In putting these questions, CTI's summarised Mr Jenkins' evidence from the previous day (in somewhat firmer terms than he had expressed it) as follows: *"when I asked you about the letter and if it was sent to you, you said no"; "you said yesterday that, if the letter had been sent to you, then you would have remembered it because it clearly sets out what duties there are, and you weren't aware of them until the end of 2020"*;*"you said that you would have clearly remembered it because it sets out the duties of an expert and you weren't aware of them until the end of 2020"*; *"you said yesterday that you did not see the letter because, if you had seen it, then you would have learned about the existence of an expert witness's duties"; "you said that you were sure that the letter never made its way to you because you would 'have done things differently, not necessarily in this case […] but certainly in later cases'".*[199]

115. It is respectfully submitted that it is clear that this letter did not put Mr Jenkins on notice about expert duties from June 2006 onwards; that it did not put him on notice that these duties applied to him; and that it did not translate into any understanding on his part as to what the content of these duties were (or how they might be discharged in any later case in which he was involved).

116. **First**, on 26 June 2024, when CTI summarised what Mr Jenkins had said the previous day, it did not capture those parts of the previous day's evidence in which Mr Jenkins had put his evidence in rather less emphatic terms as to whether he had seen the letter at the time (*"I think I would have remembered"* and *"I can't say definitively"*).

117. **Second**, Mr Jenkins' answers on 25 June 2024 that, had he been aware of the contents of the letter in 2006, he would have conducted himself differently in later cases, were premised upon: (a) his lack of recollection of reading the letter at the time, and (b) his belief that, had he read the letter, it would have struck him as sufficiently significant that it would have lodged itself in his mind during the next seven years. There are, for the reasons set out below, good reasons to doubt that it was significant.

118. **Third**, coming into this Inquiry, Mr Jenkins had (and still has) very few recollections of Mr Castleton's case. As he explained in his third witness statement to the Inquiry: "*Until I saw the documents provided to me by the Inquiry, I had virtually no memory of being involved in the civil proceedings between POL and Mr Lee Castleton […] I am reliant upon these documents to help me reconstruct what happened."*[200] His lack of recall of the case is unsurprising: he was not a witness in it; he was never asked to finalise the draft statement prepared for him (indeed, prior to seeing the documents on the Inquiry's database, he had no recollection that a draft statement had

[196] Transcript, 25 June 2024, p. 71, ln. 15; p. 87, ln. 4.
[197] FUJ00152601.
[198] FUJ00152603.
[199] Transcript, 26 June 2024, pp. 2-3.
[200] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 249.

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even been prepared for him[201]); and he was unable to undertake the analysis sought of the cash account because of work pressures.[202] The fact that Mr Jenkins could not recall receiving the Bond Pearce letter from Mr Pinder in April 2006 is consistent with this wider lack of recall. It also reflects his limited involvement in Mr Castleton's case having occurred between 17 and 19 years ago.[203]

119. There is an objectively real risk that anyone in Mr Jenkins' position, reading the letter in 2024, but with no memory of reading it in 2006, will imbue it with an understanding that they did not have at the time or that it will be weighted with a significance it simply did not have at the time. This is not an example of hindsight distorting Mr Jenkins' memory of his reaction to the letter (given that he has no memory of reading it). Rather, it is the risk of hindsight distorting Mr Jenkins' belief as to (a) whether he *would have remembered* reading the letter, (b) whether he *would have understood* its contents at the time, and (c) whether he *would have subsequently retained* the contents of the letter in his memory.[204]

120. The contemporaneous, documentary, record is a far more reliable indicator as to what significance this letter in fact had at the time or the extent to which Mr Jenkins' would have read it as applying to him:

a) The letter was not addressed to Mr Jenkins.
b) The letter did not purport to apply to him.
c) The letter was over six months out of date by the time it was sent to him.
d) The letter did not attach the defence expert reports to which it referred and asked questions about.
e) Mr Pinder's covering email did not draw Mr Jenkins' attention to the letter. Instead it drew his attention to the other attachment to the email, a seven-page scanned document which set out Mr Castleton's technical *"queries with Horizon"* (a document which would have been of far more interest to Mr Jenkins).[205]
f) Prior to receiving Mr Pinder's email, there is no evidence that Mr Jenkins had had any involvement in Mr Castleton's case whatsoever for at least six months, still less that POL or Bond Pearce had suggested that he might become a witness in that case.
g) The detailed attendance note of the meeting on the following day, attended by Mr Jenkins and representatives of Fujitsu, POL and Bond Pearce, does not reveal any discussion about the Bond Pearce letter, nor about expert witness evidence or expert duties.[206]
h) By 27 June 2006, it was clear that Mr Jenkins, if he was to be a witness in the case, was considered by POL and/or Bond Pearce to be a witness of fact, not an expert witness.[207]
i) The witness statement drafted for Mr Jenkins by Mr Dilley was drafted as a statement of fact, and not as an expert report (it lacked any of the necessary inclusions to be an expert report and contained a declaration of truth appropriate for a witness of fact).[208]
j) By 6 September 2006, it was clear from an email sent by Mr Dilley and copied to Mr Jenkins that it was an *"independent IT expert"* who was going to *"deal with technical points."*[209]

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[201] Ibid, § 267.
[202] Ibid, § 274.
[203] In contrast, we suggest that it is significant, and goes to his credibility, that Mr Jenkins does have a good recall of many aspects of Mrs Misra's case, which is both more recent and where he had far greater involvement.
[204] Leggatt J's (as then) observation that at §18 of *Blue v Ashley* (our emphasis): *"Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs.* ***Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time."***
[205] FUJ00152601.
[206] POL00071427. This attendance note is consistent with what Mr Jenkins said in oral evidence to the Inquiry: *"Q: Had anyone suggested to you that the meeting was to consider whether anyone might be a witness in this case? A. Again, I have no recollection of that."* (Transcript, 28 June 2024, p. 127, ln. 17-19).
[207] POL00071138.
[208] FUJ00122280. This is consistent with Mr Dilley's evidence to the Inquiry that he did not draft an expert report for anyone: WITN04660100, first witness statement of Stephen Dilley dated 8 June 2023, § 133.
[209] FUJ00122300.

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121. Consistent with the documentary evidence and putting to one side what Mr Jenkins may think in 2024 about what he would have understood as a result of reading this letter in 2006, it is clear at the time that he had no understanding of expert evidence or expert duties. The email of 4 September 2006 in which Mr Pinder explained to Mr Jenkins that he was not going to be a witness in Mr Castleton's case makes clear that he had no understanding as to the distinctions between different types of witnesses: *"....it is for evidential reasons that you cannot be called. To do with evidence of 'opinion' 'expert' evidence and 'real' evidence etc etc."*[210] To which Mr Jenkins replied: *"Fine (I won't try and understand what this means!)"*[211]

122. In summary, there is not a hint that in 2006 the Bond Pearce letter translated into any understanding on Mr Jenkins' part that the duties it set out applied to him, still less that he understood the content of those duties.

b) R v Hughie Thomas

123. There were numerous failures in POL's investigation and prosecution of Mr Thomas which were unconnected to Mr Jenkins. For example, Mr Atkinson KC found that Mr Thomas' arrest was arguably unlawful; reasonable lines of enquiry (into Mr Thomas' finances and the calls he made to the help desk lines) were not pursued or not adequately pursued; the charging decision was not carried out in accordance with the Code for Crown Prosecutors; and there was no *"proper basis"* for the plea-bargaining that procured his guilty plea.[212] This is the context within which POL's use of Mr Jenkins in this case must be viewed. It was not an aberration in an otherwise lawfully conducted prosecution; it was but one part of a systemic dysfunction that impacted every part of the investigation and prosecution of the case.

124. There are three key issues arising from Mr Jenkins' involvement in Mr Thomas' case:

a) **First**, the timing and nature of Mr Jenkins' involvement.
b) **Second**, the communications between Mr Jenkins and POL investigator Mr Ward about the use of the term *"system failure"* in Mr Jenkins' draft witness statement.
c) **Third**, the use of the 'boilerplate paragraphs' at the end of this draft witness statement.

The timing and nature of Mr Jenkins' involvement

125. In 2006, when Mr Jenkins became involved in Mr Thomas' case, he had been a computer engineer for some 33 years. He had had no legal training. He had had only one previous experience in providing witness evidence in a prosecution. His limited involvement in the case of R v Teja in 2005 led to his providing Ms Thomas with some assistance in updating her witness statement to reflect changes made to Horizon. He pointed out where other individuals at Fujitsu (like Mr Holmes) would be better placed to assist her.[213] It appears that Ms Thomas may have sporadically asked for his assistance in answering some queries on cases but little more than this.

126. As with the other case studies, Mr Jenkins did not become involved until Mr Thomas had been charged and the prosecution was significantly advanced. For example, he was not involved in the initial investigations and dialogue between Fujitsu and POL about Mr Thomas' case in October 2005.[214] He was not sent POL's ARQ request to Fujitsu of 24 October 2005, which sought data from Mr Thomas' branch *"with a view to refuting the Postmaster's allegation that there is a fault*

[210] FUJ00154733.
[211] Ibid.
[212] EXPG000004R, expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), §§ 213-219.
[213] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, §§ 96-97.
[214] FUJ00152563; FUJ00154707.

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with the nil transactions […].”[215] He was not sent POL’s additional ARQ request to Fujitsu of 16 November 2005.[216] He did not see (and was not involved in producing) the investigation report of Ms Matthews of 12 December 2005, which concluded *inter alia* that there were *“no problems highlighted with the integrity of the data or the system”* and that *“all nil on line banking transactions examined have valid reasons for the transactions having no value attached to them.”*[217]

127. Mr Jenkins first became involved in Mr Thomas’ case in late March 2006. It was only at this point that POL investigator Mr Ward sought from Fujitsu the “*usual*” witness statement exhibiting three periods of ARQ data obtained from Gaerwen branch and requested *“an extra paragraph explaining how online transactions are processed and data downloaded and how nil transactions can occur.”*[218] It was this request for an *“extra paragraph”* that the Fujitsu Litigation Support Service (Mr Pinder) passed to Mr Jenkins on 21 March 2006.[219] This request represented and remained, throughout the duration of Mr Thomas’ case, the ambit of what POL asked Mr Jenkins to address in his witness evidence.

128. It was POL that asked Mr Jenkins to provide witness evidence about the single issue of nil transactions. It was POL that selected the three specific time periods (corresponding to the three periods of ARQ data) within which the nil transactions were to be considered.

129. POL’s ‘instruction’ to Mr Jenkins did not constitute (nor even approximated) an instruction to an expert. Rather, the ‘instruction’ stemmed from POL’s request to Fujitsu’s Litigation Support Service to add the extra paragraph to the standard witness statement routinely used when exhibiting ARQ data. Mr Ward provided no detail as to the prosecution case; no analysis as to the competing issues between the parties; and no material to Mr Jenkins about the prosecution case (such as witness statements, the transcript of the interview, the audit report and so forth). Mr Jenkins’ draft witness statement took the form of a statement under section 9 Criminal Justice Act 1967, which was the appropriate format for witness evidence of fact.

130. There is nothing to suggest that POL’s investigators regarded Mr Jenkins as providing expert evidence at all. Mr Ward told the Inquiry that he did not regard Mr Jenkins as an expert witness: *“I don’t recall, you know, seeing him as an expert witness. I saw references to him as a distinguished engineer. And the statement that, you know, we’ll come on to, it was just a case of asking somebody, or Fujitsu, to provide a more detailed statement than the basic statement. It was specific requirement and I think Fujitsu identified Mr Jenkins as somebody who could provide that statement.*”[220] According to POL investigator Ms Matthews (who met Mr Jenkins to take a statement from him in this case), “*it was never stressed to me he was an expert witness; he was just a witness in the case.*”[221] She agreed that this meant she viewed Mr Jenkins as *“essentially”* a witness of fact.[222] She conceded that she did not know that the instruction of an expert gave rise to distinct and particular disclosure obligations on the part of the prosecution.[223]

131. Ms Matthews provided Mr Jenkins with the only advice it appears he received about giving evidence. Mr Jenkins told her (on 12 July 2006): “*I’ve never been to Court in any capacity and my knowledge of such things is based on films and TV (which I am sure is inaccurate!)”*[224] Ms Matthews replied to say that *"[…] it is pretty much as you see on TV really […]”,* and that Mr

[215] FUJ00155181.
[216] POL00047749.
[217] POL00044867.
[218] FUJ00122203.
[219] FUJ00152582.
[220] Transcript, 1 February 2024, p. 123, ln. 12-19.
[221] Transcript, 24 November 2023, p.109, ln. 5-6.
[222] Ibid, p. 109, ln. 11-12.
[223] Ibid, p. 44, ln. 1-4.
[224] FUJ00152616.

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Jenkins could only be asked questions specifically about his witness statement. This was the extent of any guidance Mr Jenkins received as to how he might discharge his role as a witness. To the extent it could even be described as guidance, Mr Atkinson KC labelled it as *"positively misleading"*.[225]

Communications between Mr Jenkins and POL investigator Mr Ward about the use of the term 'system failure' in Mr Jenkins' witness statement

132. In response to Mr Ward's request, Mr Jenkins reviewed the three ARQs and emailed Mr Pinder to explain that there were three main reasons why a nil transaction could occur: (a) the transaction had no financial effect (i.e. a balance enquiry or PIN change), (b) the transaction had been declined by the bank, or (c) there had been *"some sort of System Failure"*.[226] Mr Jenkins sought Mr Pinder's guidance as to whether this provided enough detail. Mr Pinder said that he would ask Ms Lowther (of Fujitsu's Litigation Support Service) to put the information provided by Mr Jenkins into a witness statement.[227] As can be seen in later case studies, this was a pattern. Mr Jenkins often sought guidance as to whether what he provided was what was needed, and the Litigation Support Service usually put his draft text into the Fujitsu witness statement format.

133. Mr Jenkins had no hesitation is using the term 'system failure'. He used it throughout his emails and draft witness statements in Mr Thomas' case. The resistance to it was entirely that of Mr Ward's. It was Mr Ward who deleted this term upon his review of the draft witness statement, noting in track changes, *"this is a really poor choice of words which seems to accept that failures in the system are normal and therefore may well support the postmasters claim that the system is to blame for the losses !!!!"*[228] Mr Jenkins sought to explain his use of the words: *"Please can you suggest something better then? What we have here are genuine failures of the end to end system which are not part of normal operation, but are anticipated and the system is designed to cope with them."*[229]

134. Mr Jenkins' comments demonstrate that he didn't understand what objection Mr Ward could have to his terminology (in other words he did not *understand* that Mr Ward regarded those words as objectionable *per se*). He told Ms Lowther and Mr Pinder that, *"I'm not quite sure what his problem is with what I've said."*[230] His tone is consistent with his having informed Ms Lowther that system failures of the type he was describing were not *"drastic"* but *"normal occurrences."*[231] As Mr Jenkins explained to the Inquiry, these were *"normal occurrences"* because they were anticipated failures in the chain of communication between the bank and the branch (which meant that the payment had not completed). The particular codes Mr Jenkins had noted in the ARQ data for Mr Thomas' branch all indicated that these failures had occurred in the banking side of the transaction.[232] They were not system failures in Horizon (contrary to Mr Ward's understanding).

135. These are the sorts of communications (also seen in other case studies) which were not simply inappropriate on the part of an investigator but which demonstrate misunderstanding from both perspectives. Mr Jenkins was using language in a particular way; his words *"system failure"* bore a specific, technical meaning. Mr Ward misinterpreted these words, not understanding that the *"system"* that had failed was not Horizon. They were thinking and writing at cross-purposes and without common understanding.

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[225] Transcript, 19 December 2023, p. 95, ln. 5.
[226] FUJ00152582.
[227] FUJ00152582.
[228] FUJ00122211.
[229] FUJ00122218.
[230] FUJ00122203.
[231] FUJ00122203.
[232] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, §§ 297, 300 and 305.

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136. The deletion of the words in the statement, by Mr Ward, is of obvious importance. He was conducting a criminal investigation; he objected to and then deleted sentences from a draft witness statement. That Mr Ward understood (from the perspective of a criminal investigator) that what he had done was wrong is demonstrated by his denial to the Inquiry that he would ever do such a thing: *"No, I would not have typed over anything or deleted anything at all. I just know the person that I am and I wouldn't have done that."*[233]

137. However, there is no evidence that anyone from the Fujitsu Litigation Support Service or Mr Jenkins understood that a criminal investigator should not do this. Rather, the evidence conveys a lack of understanding as to *why* he was doing it. Indeed, it was not apparent to Mr Jenkins that Mr Ward had not understood his explanation: *"I now understand that he [Mr Ward] was thinking that meant that was a failure in Horizon. That is not what I meant by a system failure in this particular case."*[234]

138. Neither Mr Jenkins nor the Litigation Support Service appear to have had any understanding that Mr Ward's conduct in Mr Thomas' case was not consistent with his obligations as an investigator. Indeed, Mr Jenkins thought that Mr Ward's approach was akin to the sort of practice whereby colleagues commented on draft technical papers prepared for Fujitsu or POL.[235] In the context of an individual who had no other experience to draw upon, that he should regard Mr Ward's input as permissible is not surprising.[236] It was Mr Ward who had the experience of conducting investigations and gathering evidence, not Mr Jenkins.

139. The contemporaneous evidence suggests that Mr Ward may have lost patience when Mr Jenkins pushed back on the proposed deletion. Mr Ward tried to get Ms Thomas (instead of Mr Jenkins) to provide the evidence about nil transactions (she refused on the basis that she could not explain nil transactions).[237] It emerged over the course of the Inquiry that on the same day, Mr Ward asked an investigator (Ms Matthews) to go to Fujitsu to take the witness statement from Mr Jenkins in person.[238] The evidence demonstrates that Ms Matthews met Mr Jenkins on 6 April 2006.[239] However, there is a vacuum as to what happened at this meeting or what the result of it was. Consistent with every meeting of this nature, there is no POL record of it. The last draft of the statement on Relativity, dated 6 April 2006, is not signed.[240] There is no evidence as to how it came to be generated. There do not appear to be, for example, Fujitsu emails about it (in the way which there were about the previous draft statements). How this draft statement came to be produced and whether it was ever finalised remains wholly unclear.

140. It is understood that POL may have used this draft in its prosecution of Mr Thomas. Self-evidently it omits the explanation of system failure that Mr Ward objected to, but there is no contemporaneous evidence that it was in a final form or that assists as to why the words were omitted (such as, for example, a note of what Ms Matthews told Mr Jenkins about this issue).[241]

141. Returning to the point made in section 2 of these submissions, there is a clear line which can be drawn from the failures highlighted by Mr Atkinson KC in terms of the voids in guidance and training he identified; the failures of POL's investigators; and an outcome whereby Mr Thomas was not provided with information that some of the nil transactions at his branch had been caused by what Mr Jenkins described as system failures:

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[233] Transcript, 1 February 2024, p. 73, ln. 11-19.
[234] Transcript, 26 June 2024, p.136, ln. 15-18.
[235] Transcript, 26 June 2024, p.157, ln. 1-10.
[236] Although it was put to Mr Jenkins in examination that he had provided a statement prior to Mr Thomas's case (in the case of R v Teja), the statement in that case (as disclosed in the Inquiry) is a draft unsigned statement which bears the names of both Mr Jenkins and Ms Lowther (FUJ00122127).
[237] FUJ00155719.
[238] FUJ00152587; FUJ00155721 (sent on Saturday 1 April 2006): *"I have arranged for Diane to meet with Gareth at 1100 hrs on Thursday (4th floor Rm 2) to record the statement."* Thursday was 6 April 2006.
[239] FUJ00152592.
[240] The statement is at FUJ00122237.
[241] It is also open to question whether, as a matter of law, the contents of this draft 2006 statement constitute opinion evidence.

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a) **First**, quite simply, but for Mr Ward's objections to the term and his deletion of it, Mr Jenkins' original draft statement would have been finalised with its content intact.
b) **Second**, the 2005 edition of the CPIA Code of Practice imposed a duty on investigators to record and retain [per para 5.1]: "*final versions of witness statements (and draft versions where their content differs from the final version)"* and "*communications between the police and experts such as forensic scientists, reports of work carried out by experts and schedules of scientific material prepared by the expert for the investigator, for the purpose of the criminal proceedings."* Consequently, Mr Ward ought to have recorded and retained the drafts of Mr Jenkins' witness statement, and the associated emails between POL and Mr Jenkins, so that they could be revealed to the prosecutor.
c) **Third**, had Mr Ward complied with his obligations to record, retain and reveal, all of this material would have been recorded by the disclosure officer on the non-sensitive unused material schedule, and a copy of this schedule provided to the defence.
d) **Fourth**, had any of these steps been taken, the disclosure officer would then have reviewed this schedule periodically and considered it pursuant to the disclosure test.

142. In summary, it was POL which prevented information about system failure being disclosed to Mr Thomas, first by deleting references to it from Mr Jenkins' witness statement, and then by repeatedly breaching basic CPIA obligations.

143. Moreover, in terms of Mr Jenkins:

a) **First**, it is crystal clear that Mr Jenkins was entirely happy to use the term 'system failure'.
b) **Second**, when he used the term system failure, he was not referring to a failure within the Horizon system.
c) **Third**, and contrary to any suggestion that Mr Jenkins thought that information that was damaging to Horizon should be withheld, it appears that Mr Jenkins must have described the PEAK system to Ms Matthews. The unsigned statement of 6 April 2006 explained that *"Fujitsu have a fault management system called the PEAK system, which is used for passing faults around the team and tracking faults raised regarding the Post Office account."* Clearly this was not suggesting that Horizon was infallible, but that it suffered faults and that evidence of these faults could be found on the PEAK system.
d) **Fourth**, there is no evidence as to how the unsigned statement of 6 April 2006 came into existence, whether it was finalised or what Mr Jenkins was told about it.

The use of the 'boilerplate paragraphs'

144. Mr Jenkins' involvement in Mr Thomas' case also brings into focus the standard 'boilerplate paragraphs' which appear at the end of the template witness statement of fact annexed to a number of Fujitsu litigation support policies.[242] These boilerplate paragraphs appeared in a large number of witness statements provided by Fujitsu to POL over the course of many years.

145. The boilerplate paragraphs effectively replicated the requirements that originally appeared in Section 69 of the Police and Criminal Evidence Act 1984 ("**PACE**"), despite its repeal on 14 April 2000 (and the consequent introduction of a legal presumption that computers work). As originally enacted, section 69(1)(a) and (b) PACE provided that:

> *"69(1) In any proceedings, a statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown—*
>
> (a) *that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;*

[242] For example, the Fujitsu policy entitled 'Network Banking Support for Prosecution Support' (FUJ00152205).

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(b) *that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and […]"*

146. If there is a lack of common ground amongst witnesses to the Inquiry as to the meaning of the boilerplate paragraphs, this is not surprising. Section 69, from which these paragraphs were derived, was poorly understood when it was in force. It was concerned with the admission of a statement contained within a document, where that document had been produced by a computer (classically this would be a document like a read-out produced by an intoximeter or a receipt produced by a till). It was not concerned with whether the statement contained within the document was true or not. This distinction was made clear by the House of Lords in *Director of Public Prosecutions v McKeown* [1997] 1 WLR 295:

> "*But section 69 is not in the least concerned with the accuracy of the information supplied to the computer. If the gas analyser of the Intoximeter is not functioning properly and gives an inaccurate signal which the computer faithfully reproduces, section 69 does not affect the admissibility of the statement. The same is true if the operator keys in the wrong name. Neither of these errors is concerned with the proper operation or functioning of the computer.* ***The purpose of section 69, therefore, is a relatively modest one. It does not require the prosecution to show that the statement is likely to be true. Whether it is likely to be true or not is a question of weight for the justices or jury. All that section 69 requires as a condition of the admissibility of a computer-generated statement is positive evidence that the computer has properly processed, stored and reproduced whatever information it received.*** *It is concerned with the way in which the computer has dealt with the information to generate the statement which is being tendered as evidence of a fact which it states*" (emphasis added).

147. *McKeown* thus clarified that all that section 69 required for a computer-generated statement to be admissible was positive evidence that the computer had properly processed, stored and reproduced whatever information was received.[243]

148. This was reflected in paragraph 8 of Schedule 3 to PACE, which made provision for the production of a certificate focused upon the document which was being relied upon. This certificate had to (a) identify the document containing the statement and describe the manner in which it was produced, (b) give such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, (c) deal with any of the matters mentioned in subsection (1) of section 69; and (d) purport to be signed by a person occupying a responsible position in relation to the operation of the computer.

149. The purpose of these PACE certificates was *not* to certify that a whole computer system was at all material times operating properly. It would not, for example, have required Sainsbury's to

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[243] Section 69 was repealed pursuant to the recommendation of the Law Commission: see the report 'Evidence in Criminal Proceedings, Hearsay and Related Topics', Law Com No. 245, 19 June 1997, available at https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2016/08/No.138_-Criminal-Law-Evidence-in-Criminal-Proceedings-Hearsay-and-Related-Topics-A-Consultation-Paper-1.pdf. In recommending its repeal (with no replacement) the Law Commission concluded that it served no purpose for five reasons:

(i) That section 69 failed to address the major causes of inaccuracy in computer evidence.
(ii) Advances in computer technology made it increasingly difficult to comply with section 69: it was becoming "increasingly impractical to examine (and therefore certify) all the intricacies of computer operation". These problems existed even before networking became common.
(iii) The difficulties confronting the recipient of a computer produced document who wished to tender it in evidence.
(iv) It was illogical that section 69 applied where the document was tendered in evidence but not where it was used by an expert in arriving at his or her conclusions nor where a witness used it to refresh his or her memory.
(v) Because of the outcome of the House of Lords decision in McKeown with result that: *"only malfunctions that affect the way in which a computer processes, stores or retrieves the information used to generate the statement are relevant to section 69*."

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prove that the whole computer system which supported its till system was operating properly in order to admit a till-generated receipt into evidence. Rather, the certificate would only have needed to state that the individual till which produced the receipt was operating properly (at the material time). The purpose was to certify that the computer (i.e. the till) had properly processed, stored and reproduced the information relied upon in the statement (i.e. the till receipt). This was the *"modest"* (to borrow from the House of Lords) purpose of section 69(1) PACE and the ambit of the associated certificate required under Schedule 3 to PACE.

150. When section 69 PACE was in force, Fujitsu maintained a written policy which set out the formal steps required to produce a 'certificate' of compliance with its requirements.[244] Following its repeal, however, none of Fujitsu's litigation support manuals, which principally governed the work of those extracting and producing ARQ data, addressed section 69. Instead, the language of section 69 was largely replicated as 'boilerplate paragraphs' within the template witness statement of fact annexed to those policies. The policies contained no explanation of what the words in the boilerplate paragraphs were supposed to mean.

151. However, the policies did set out detailed steps for the extraction and production of ARQ data. The template witness statement described these steps and included a standard paragraph (paragraph L) which explained how the integrity of audit data was assured. The lack of *separate* explanation within the policies as to the section 69-derived boilerplate paragraphs and the lack of any suggestion in the policies that there were *additional* checks which these paragraphs required, suggests that the prescribed steps for the extraction and production of ARQ data provided the foundation for these paragraphs. There was certainly nothing in the policies that gave the sort of guidance necessary for a technician (still less *non-technicians* like Ms Thomas) to make a generalised statement certifying that the whole Horizon system was working properly.

152. Overall (and understanding that the authors were not lawyers), the Fujitsu manuals are consistent with an understanding that the boilerplate paragraphs relate to the extraction and production of ARQ data. Indeed, given that the process was undertaken by non-technicians, this seems a sensible reading of them. This understanding of the boilerplate paragraphs would also have been consistent with the purpose of section 69 (as set out above), which they were based upon.

153. Mr Jenkins had no knowledge of the Fujitsu manuals. The manuals were drafted by Ms Lowther and Ms Thomas from the Litigation Support Service. In Mr Thomas's case, it was Ms Lowther who put Mr Jenkins' draft words into witness statement form. Both Ms Lowther and Ms Thomas were involved when Mr Jenkins raised questions about the use of the standard paragraphs in Mr Thomas' case. Unsurprisingly, Mr Jenkins believes that he would have discussed the paragraphs with Ms Thomas and Ms Lowther (and sought their guidance).[245]

154. Neither Ms Thomas nor Ms Lowther gave evidence to their Inquiry so their understanding as to the meaning of the boilerplate paragraphs has gone unaddressed. The content of the manuals is therefore important in terms of providing an indication as to what their understanding was.

155. It is also not known what Ms Lowther or Ms Thomas told other people what these paragraphs were intended to mean. However, the evidence of Ms Munro provides an important indication as to this. She was the Security Operations Manager who managed Ms Thomas (and who Ms Munro regarded as the Subject Matter Expert on the management and carrying out of the extraction of audit data). She informed the Inquiry: "*My understanding was that the statement is in regards to the audit workstations where they retrieved the data from, rather than the integrity of the Horizon system itself […] how they pulled the data off rather than the Horizon system itself.*"[246] Mr

[244] 'ICL Pathway Evidential information, production certification and retention - PACE. Version 0.4' (FUJ00152142). The certificate was produced by ICL Outsourcing.
[245] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 321.
[246] Transcript, 18 January 2024, p 140, ln 12-15; p. 163, ln. 5-16.

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Lenton, similarly, said: "*[…] my understanding of that is that it's referring to the audit retrieval system… Q: You didn't understand it to be a generalised comment about the integrity of the Horizon system? A: No.*"[247]

156. This issue as to the meaning of the boilerplate paragraphs arose in Mr Thomas' case because the Litigation Support Service put Mr Jenkins' email (about nil transactions) into Fujitsu's witness statement template, which included those paragraphs.[248] The paragraphs read as follows:

> *"There is no reason to believe that the information in this statement is inaccurate because of the improper use of the computer. To the best of my knowledge and belief at all material times the computer was operating properly, or if not, any respect in which it was not operating properly, or was out of operation was not such as to effect the information held on it.*
>
> *Any records to which I refer in my statement form part of the records relating to the business of Fujitsu Services. These were compiled during the ordinary course of business from information supplied by persons who have or who may reasonably be supposed to have personal knowledge of the matter dealt with in the information supplied, but are unlikely to have any recollection of the information or cannot be traced. As part of my duties, I have access to these records."*

157. When Mr Jenkins commented upon the draft witness statement, he queried whether these paragraphs were true with the comment "*all I've done is interpret the data in spreadsheets that you have emailed to me*".[249] He raised a similar concern in a subsequent draft in the context of exhibiting the ARQ data spreadsheets: "*all I've done is made some statements based on what is in the spreadsheets. I assume that Neneh or Penny produced the spreadsheets, but I have no personal knowledge as to what was included within them and what was excluded. For all I know, you could have typed them up from scratch*".[250] These comments make it clear that Mr Jenkins' concern was his ability to speak to ARQ data he had not personally extracted or produced. To resolve this concern, Mr Jenkins decided to extract and produce the ARQ data himself using the PEAK system. As he contemporaneously recorded: "*I've taken the data off the Peak and carried out my own analysis of it.*")[251]

158. There is nothing in these contemporaneous exchanges to suggest that Mr Jenkins was objecting to including the boilerplate paragraphs because he thought they amounted to some form of certification or attestation as to the working of the entirety of the Horizon system. His comments focused upon *how* the specific ARQ data exhibited to the statement had been extracted and produced and *who* had done this extraction and production.

159. In his third witness statement to the Inquiry, Mr Jenkins set out, insofar as he was able, what he thought had concerned him about the boilerplate paragraphs at the time: *"[…] I think that my concern was that I could not include these because I had not extracted the ARQ spreadsheets that my draft statement was referring to. By this I mean that I could not speak to the computer which had extracted the spreadsheets as working properly."*[252] He further explained, *"I think that the first of these two paragraphs related to the proper operation of the computers involved in the production of the witness statement. I think the second of the two paragraphs related to the process by which any records referred to in the witness statement had been obtained."*[253] In his oral evidence to the Inquiry, he addressed which computers (in the plural) he thought had been

[247] Transcript, 12 June 2024, p. 182, ln. 11-17.
[248] FUJ00152582.
[249] FUJ00122204.
[250] FUJ00122216.
[251] FUJ00122230.
[252] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 107.
[253] Ibid.

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involved in the production of the witness statement: *"Q: So you're saying, by that, that the Word Processor or other computer on which the statement was being typed, or typed for you, was working properly? A: And whatever was being used for doing the analysis, and so on, yes."*[254] Shortly after this exchange, Mr Jenkins expanded upon this explanation: *"[...] it was the computers involved in the production of that, so not just the typing up but, actually, the extraction of the ARQ data as well, yes*."[255] Again, Mr Jenkins was saying that he thought the term *"computer"* in the boilerplate paragraphs referred to (and included) the computer involved in the extraction of the ARQ data, i.e. the audit workstation.

160. It is significant that these boilerplate paragraphs used the term *"computer."* They did not use the terms *"computer system", "system", "Horizon"* or *"Horizon system"*. The suggestion that Mr Jenkins would have read the word *"computer"* in these paragraphs and interpreted this to refer to Horizon is extremely unlikely. Indeed, there is a clear distinction between (a) the reference to Horizon as a *"computer system"* earlier in the draft statement, and (b) the reference to *"computer"* in the boilerplate paragraphs. As Mr Jenkins explained in his evidence to the Inquiry: "*I wouldn't have referred to the Horizon system as 'the computer'; I would have referred to it as 'the Horizon system.'"*[256]

161. Mr Jenkins also gave another important reason why he would not have thought that the word *"computer"* referred to Horizon: *"Q: ...did you understand that to refer to the Horizon system? A: No, I did not. Q: Can you just explain why you didn't think that that related to the Horizon system? A: Because this was a standard paragraph that I could see had been used by Penny [Thomas] and I knew that she was in no position to talk about how Horizon was working or not.*"[257] In other words, because non-technicians such as Ms Thomas used these standard paragraphs in their statements exhibiting ARQ data and would have been unable to speak to the functioning of Horizon, Mr Jenkins believed that these paragraphs focused on the operation of the computers involved in producing the statement. That included the audit workstation from which the ARQ data had been extracted and processed.

162. Clearly the wording of the boilerplate paragraphs was anachronistic and legalistic. It is of no surprise that different witnesses before the Inquiry thought they meant different things. Mr Atkinson KC agreed that their meaning was *"not altogether clear [...] at least open to interpretation."*[258]

163. This ambiguity explains why it is submitted that the Inquiry must be extremely careful before accepting any submission that non-lawyers like Mr Jenkins regarded those words as attesting to or certifying the integrity of Horizon. Rather, the understanding that these paragraphs were focused on the computers involved in extracting and producing the ARQ data (rather than anything broader) is consistent with:

a) **First**, that the Fujitsu litigation support manuals (written by Ms Lowther and Ms Thomas) which appended the template witness statement, and which focused almost exclusively on the processes by which Fujitsu extracted and produced ARQ data from the audit workstation, did not make any provision as to how they were to certify or attest to the integrity of Horizon.
b) **Second**, the fundamental point that whilst Ms Lowther or Ms Thomas could speak to the working of the computer from which they accessed and produced the ARQ data, they could not do so in respect of the Horizon system.
c) **Third**, the evidence given to the Inquiry by Ms Munro, in particular, that she understood these paragraphs to relate to the audit work stations.

[254] Transcript, 26 June 2024, p. 145, ln. 6-11.
[255] Ibid, p. 148, ln. 1-3.
[256] Ibid, p. 148, ln. 21-23.
[257] Transcript, 28 June 2024, p. 146, ln. 17-21.
[258] Transcript, 19 December 2023, p. 90, ln. 4-19.

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d) **Fourth,** that this is consistent with the use of the word *"computer"* in the standard paragraphs, and relatedly that the word *"computer"* was extremely unlikely to refer to something as complex as the Horizon system.
e) **Fifth,** the fact that the standard paragraphs were used in witness statements which were unrelated to the overall integrity of the system. This applies most obviously to those statements which produced the ARQ data but it also applies to many other statements including Mr Jenkins' draft statement in Mr Thomas' case (which only related to the meaning of zero transactions).

c) R v Seema Misra

Introduction

164. Prior to his involvement in Mrs Misra's case, it appears that Ms Matthews' guidance to Mr Jenkins that giving evidence was *"pretty much as you see on the TV really"* remained the height of any guidance which he had.[259]

165. At the commencement of his involvement in Mrs Misra's case in December 2009, Mr Jenkins had been a computer engineer in Fujitsu for 36 years. His involvement in Mr Castleton and Mr Thomas' cases had been limited. He had given neither a witness statement nor oral evidence in Mr Castleton's case. In Mr Thomas' case, he had not been instructed as an expert; his witness statement had focused on only one issue; and he had been given no guidance about being a witness save that offered by Ms Matthews.

166. Mr Jenkins gained little further experience of court proceedings between 2006 and 2009.[260] He had no legal training. The *ad hoc* nature of his assistance to Fujitsu's Litigation Support Service is captured in his exchange with Mr Jennings on 7 December 2009, in which he explained that he had "*questions from Penny [Thomas] a few times a month"* and that normally this took around half an hour.[261] He referred to Mr Holmes as providing advice on audit and Mr Barnes as undertaking events filtering.[262] In terms of why he provided this assistance, Mr Jenkins told the Inquiry that this was because, "*I did have a fairly good overview knowledge of the whole of Horizon because of really going back to my role in the agent team, because the whole point of the agents was to sit in the middle and see the difference between what was happening at the counter and what was happening at the back end and, obviously, with the work I did on IMPACT, I got a much more detailed knowledge of how the counter operated. So, from that point of view, I probably was one of the people who had a good overview knowledge of how the Horizon system worked. But I don't think I was necessarily the only person*."[263] This was Mr Jenkins' framework and perspective upon being asked to assist in Mrs Misra's case.

167. The paragraphs below set out a forensic analysis of how POL communicated with Mr Jenkins in Mrs Misra's case. It is necessary to reconstruct what POL asked him to do for two reasons. **First**, to demonstrate the extent to which the evidence he gave was responsive to or conditioned by what he was asked to do (and how he was asked). **Second**, to demonstrate, at key points, that there was a critical juncture in the way the case was being prosecuted. At each of these points, POL, by failing in its basic legal obligations, took the wrong turn.

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[259] FUJ00152616.
[260] Between Mr Thomas' case and Mrs Misra's case, the evidence indicates that Mr Jenkins had been involved in two POL prosecutions (R v Hardman (2006) and R v Powell (2008)). His witness statements in those cases were short and again focused on single issues.
[261] FUJ00152866.
[262] Ibid. In the same email, in response to the question "*Is there anyone else who should cover this activity as well as/instead of yourself?*", Mr Jenkins replied *"'Should', then probably Yes. 'Could', then probably No!"*.
[263] Transcript, 25 June 2024, p. 107, ln. 16-25; p. 108, ln. 1-2.

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168. This detail is all the more important in light of questions about Mrs Misra's case which were put to Mr Jenkins in his evidence before the Inquiry. These questions were premised (*inter alia*) upon the suggestion that Mr Jenkins' evidence in Mrs Misra's case presented a partial picture of issues within Horizon because he had answered the 'narrow' questions asked of him.[264] Put another way, he should have answered a 'wider' question, or a different question, or provided information beyond that which the question sought. A similar line of questioning at the Inquiry was to the effect that, when he gave evidence in Mrs Misra's case, there were 'complete answers' to certain questions asked and which Mr Jenkins ought to have given. This submission will address the premise of these questions (including the extent to which it is accurate to characterise Mr Jenkins's responses to have been narrow or incomplete). It will also address, in detail, the questions actually asked of Mr Jenkins and why they elicited the responses which they did.

169. But before embarking upon that detail, there are points (identified in section 5 of these submissions) which have specific force in relation to Mrs Misra's case. Asking Mr Jenkins whether the answers he gave 14 years ago were narrow (or incomplete) is open to an obvious risk of contamination, and to be approached with considerable caution:

a) **First**, the 'full answer' suggested in the question, is an answer premised upon both everything which is known *now* and the significance *now* attached to it, rather than what Mr Jenkins knew, and regarded as significant, in 2010.
b) **Second**, because it would be almost impossible for Mr Jenkins (or indeed anyone in his position) not to answer these questions in 2024 with the very specific form of hindsight which applies here. Again, this is the hindsight based upon Mr Jenkins' understanding of the criticisms which have been made of him as someone who gave evidence as an expert. Before the Court of Appeal Judgments were handed down, Mr Jenkins (i) had no idea that he would feature in them, (ii) knew nothing of the existence of the Clarke advice criticising him for breaching his disclosure duties as an expert, and (iii) did not know that this advice would inform the basis of those Judgments. That Mr Jenkins failed in the expert duty of disclosure has been the public narrative since (and was the basis upon which Mr Jenkins was interviewed by the Police). There was a particular and obvious risk that Mr Jenkins would answer suggestions in the Inquiry as to what he should have said or done by reference to everything that he now understands that a properly instructed expert might have said or done in his position.
c) **Third**, even if the questioner was seeking to put to one side that Mr Jenkins was not instructed as an expert, that does not address the risk that Mr Jenkins would still answer questions by reference to what a properly instructed expert would do rather than the uninformed layperson (in receipt of the sorts of communications sent by Mr Singh and looked at in light of many other contemporaneous factors set out below).

170. The forensic risks inherent in this approach can only be met by focusing upon Mr Jenkins' contemporaneous knowledge and understanding. Consistent with that, these submissions focus on what Mr Jenkins actually knew at the time; what POL actually asked Mr Jenkins to do during Mrs Misra's case; how POL told him to do it; and how this changed over time. In short, this submission reconstructs what Mr Jenkins (and the other key figures in the case) thought, said and did in 2010. To consider Mrs Misra's case otherwise would lead to distortion and unfairness.

171. Equally, Mr Jenkins' perspective in 2010 cannot be judged by retrospective assessments that Horizon was not robust or not remotely robust. This was not how Mr Jenkins, from his vantage point, assessed it at the time.[265] As noted in section 4 of these submissions, that was not the perception or understanding of his technical colleagues who were working at Fujitsu in 2010 (and who had particular expertise, within the SSC, in accounting discrepancies) and whose work

[264] For example, Transcript, 25 June 2024, p. 159, ln. 1-5.
[265] Transcript, 25 June 2024, p. 17, ln. 24-25; p. 18, ln. 1-3.

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meant that they had better visibility of a wider range of BEDs.[266] That Horizon was retrospectively judged 'not robust' in 2019 (in accordance with the definition of that term in the GLO civil proceedings) does not answer how it was viewed, at the time, by those individuals who worked on it or supported its operation.

172. In relation to POL's duties of disclosure and duties in relation to expert evidence:

a) **First**, as has been extensively demonstrated by this Inquiry, a number of divisions and departments within POL possessed knowledge about BEDs in Horizon, but POL did not institute any formal or centralised process for the recording and retention of this knowledge, as it was obliged to do under the CPIA and its Code of Practice.
b) **Second**, in any investigation which raised a question as to the reliability of Horizon, POL ought to have considered making a properly drafted third party disclosure request to Fujitsu, as envisaged by the CPIA Code and Attorney General's Guidelines.[267]
c) **Third**, the CPIA and its Code of Practice did not permit POL, as the investigator or prosecutor, to subcontract its disclosure obligations to a prosecution witness such as Mr Jenkins.[268]
d) **Fourth**, Mr Tatford confirmed to the Inquiry that the prosecution was using Mr Jenkins to do a number of different things, including using him to respond to the disclosure requests made by the defence to the prosecution. POL did not at any stage make it clear to Mr Jenkins and/or Fujitsu that it was using Mr Jenkins so as to meet *its* statutory disclosure duties.
e) **Fifth and fundamentally**, putting to one side the failure to make a third party disclosure request and POL's wholesale failure to explain to Fujitsu or Mr Jenkins that POL was seeking to discharge its disclosure obligations using Mr Jenkins, POL ought consistently with the legal obligations to which it was subject, to have instructed Mr Jenkins as an expert witness. Had they done this, POL's lawyers would have explained to Mr Jenkins that his instruction as an expert give rise to duties of disclosure on his part which related to his opinion. These duties would have been *separate to* the disclosure duties owed by POL itself. That is, the instruction of an expert *would* give rise to disclosure duties but an expert is not instructed *for the purpose of* providing disclosure on behalf of the prosecutor.
f) **Sixth**, had POL instructed Mr Jenkins properly as an expert witness, his instructions would have set out the issues or questions he was to consider, and would have assisted him in understanding what might be relevant for the purposes of his personal disclosure duties in criminal proceedings. The issue of relevance mattered in this context. For example, to a technician, a BED may not seem *technically* relevant because (for example) it was fixed prior to the period under investigation or would only affect a particular version of the software. To a lawyer, however, the question of whether a BED is nonetheless *legally* relevant is a different one. The correct instruction of an expert assists in ensuring that there is a mutual understanding between prosecutor and expert as to what is relevant according to the framework imposed by the criminal law.
g) **Seventh**, in terms of his use as an expert in Mrs Misra's case, POL was under an elevated duty to ensure that Mr Jenkins understood the position that he was being placed in (because he was not functionally independent, because of his lack of experience, because of his lack of training, because he was in no sense a conventional expert). POL should have gone out of its way to emphasise to Mr Jenkins that he was independent from the prosecution and that special duties attached to his evidence. As set out below, POL's communications and interactions with Mr Jenkins were consistently to opposite effect.
h) **Eighth,** POL's communications with Mr Jenkins ought to have been formal and documented, because they (together with the draft reports Mr Jenkins prepared) should have been noted on

[266] See, for example, the evidence given to the Inquiry by Anne Chambers: *"Q. […] Did you believe that Horizon was fundamentally robust in 2004 – A. Fundamentally, yes. Q. – and still in 2006? A. Yes."* (Transcript, 27 September 2023, p. 147, ln. 11-15).
[267] Mr Atkinson KC gave evidence that POL, in bringing prosecutions of SPMs, was *"required to consider whether Fujitsu was in possession or likely to be in possession of disclosable material and request that material from Fujitsu"* (Transcript, 6 October 2023, p. 94, ln. 14-20).
[268] See the evidence of Duncan Atkinson KC, Transcript, 6 October 2023, p. 93, ln. 2-8.

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the non-sensitive unused material schedule and potentially disclosed to the defence (i.e. because they might reasonably be considered capable of undermining the prosecution case or assisting the defence).

173. Having regard to Mrs Misra's case, that POL failed Mr Jenkins on all of these fronts is critical to understanding why it is unsustainable to judge his actions (including whether his answers could have been broader or more 'complete') shorn of context. These submissions go further. It would be grossly unfair to treat him as though these failings do not matter and as though he ought to have produced the sort of answers which might have been given had these failings not occurred. Had POL complied with the law, a completely different approach would have been taken to Mr Jenkins from the outset. This would have been reflected in the form of evidence which he gave and, in a number of respects, the content of that evidence.

174. It is a fallacy to argue that POL's failure to instruct Mr Jenkins as an expert can be treated as irrelevant, and that Mr Jenkins can be judged in isolation from this failure. This argument negates the positive legal duties on lawyers who instruct experts. It treats the layperson as subject to the elevated duties owed by a properly instructed expert (when those duties have not been explained to them). It would wholly ignore that Mr Jenkins was not being treated as an ordinary witness of fact.

175. All witnesses in criminal proceedings are under a duty to provide truthful evidence, but the rationale for an expert being subject to distinct duties (including duties of disclosure) was encapsulated by the Law Commission: *"[…] only experts are under an explicit overriding obligation set out in rules of court. Expert witnesses therefore owe a unique, elevated duty to the court, with a concomitant duty to ensure that they do not mislead the court, regardless of the impact this may have on the party for whom they have been called. There is, therefore, a further principled justification for special rules for experts and, in particular, for requiring that all experts, regardless of their client, disclose matters which may have a bearing on the reliability of their evidence*."[269]

176. Each of Mr Jenkins' written witness statements in Mrs Misra's case included the standard declaration of truth derived from section 9 of the Criminal Justice Act 1967. This declaration of truth is a necessary component of witness statements signed by witnesses of fact in criminal proceedings. It requires that the witness's statement is true to the best of their *knowledge* and *belief*. A person's knowledge and belief may be based upon different sources: it may be based upon experience; upon an acquisition of information over time; upon reading a document or being provided with information (these are everyday examples). The touchstone is that the witness *believes* their statement to be true. More fundamentally, the statement of truth does not refer to, or import, any of the distinct duties which apply to an expert witness.[270] A witness of fact is not obliged, in a witness statement, to discharge the duties of disclosure akin to those of an expert.

177. In relation to oral (sworn) evidence, similar considerations apply. The requirement that a witness recites in the oath or affirmation to tell *"the truth, the whole truth and nothing but the truth"* does not impose on a witness of fact a compendious duty of disclosure akin to the duties imposed on an expert. A witness of fact is neither expected nor obliged in their oral evidence to discharge these expert duties, still less to disclose *wider* issues than those an expert witness is obliged to disclose. To take this approach is to elide factual evidence with expert evidence; to ignore the reasons *why* expert evidence is subject to a distinct and elevated set of legal duties; and risks negating the importance attached to those duties.

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[269] Law Commission paper 'Expert Evidence in Criminal Proceedings in England and Wales' (Law Com No 325), dated 21 March 2011, § 1.22. A copy of this paper is available at https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/03/lc325_ExperEvidence_Report.pdf

[270] This is why the requirement, introduced in the Criminal Procedure Rules in 2006, that the expert's report *"contain the same declaration of truth as a witness statement"* (see CrPR 33.3(1)(j)), was separate from and in addition to all of the other necessary inclusions which are specific to expert evidence as set out in CrPR 33.3(1)(a)-(i)).

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178. Thus, when Mr Jenkins is asked now, in 2024, whether his answers in Mrs Misra's evidence in 2010 were narrow, lacked certain information, or fell short of being 'complete' answers, it is crucial that the Inquiry does not in effect hold Mr Jenkins to the standards of an expert witness. Instead, the focus must be on Mr Jenkins' state of mind in 2010: that he knew he had to tell the truth; he understood that he was able to rely on his accreted knowledge (including what others told him), provided he believed it to be true; but critically, due to POL's failures, he knew nothing about what expert duties might have required him to do.

A chronological analysis of Mrs Misra's case

179. This submission will deal chronologically with the communications which were sent to Mr Jenkins in the course of Mrs Misra's case. It is only by this form of analysis that it is possible to demonstrate what Mr Jenkins was being asked to do by POL lawyers and how this changed over time. This chronological analysis is particularly important in light of the questions asked of Mr Jenkins in his evidence to the Inquiry which focused on the request made by POL, in the early stage of his involvement in Mrs Misra's case, whether, in his statement, he could *"mention whether there are any known problems with the Horizon system that Fujitsu are aware of*".

180. There is a risk, acknowledged at this outset of this submission, that the focus on this request risks artificially elevating it as though it was a communication constituting an expert instruction; capable of being subject to forensic analysis and permitting a plausible examination as to why Mr Jenkins did not regard it as requiring an exposition of every problem that had affected the Horizon system.

181. The reality is that it was none of these things. It was one of a series of inadequate, defective, casual communications with Mr Jenkins. It was not sent to him as someone who was regarded as, or being treated as, an expert by prosecuting counsel. As considered in greater detail in the course of this submission, Mr Tatford's evidence to the Inquiry confirmed that there had never been clarity as to the capacity in which Mr Jenkins was giving evidence: "*[…] that muddled* ***beginning tarnished the thought process throughout Mr Jenkins' instruction and*** *I regret that. It was a mistake."*[271]

182. The questions put to Mr Jenkins in the Inquiry about the request seeking "*any known problems with the Horizon system that Fujitsu are aware of"* treated it as though there was clear line to be drawn between that request (on 1 February 2010) and the content of Mr Jenkins' witness statement of 9 March 2010.[272] This line of questioning missed out a number of emails that were sent to Mr Jenkins between 1 February and 9 March 2010 and which changed what Mr Jenkins was asked to do. This line of questioning did not refer to Mr Tatford's evidence that, as a result of these emails, his request about *"any known problems"* became *"lost"*. This submission corrects the premise of some of the questions put to Mr Jenkins.

183. This chronology focuses, first, on the early phase of Mr Jenkins' 'instruction' between December 2009 and March 2010, so that the initial requests made by POL can be fully considered. It then focuses on Mr Jenkins' involvement in the defence disclosure request in July 2010. It then proceeds to examine Mr Jenkins' evidence at Mrs Misra's trial in October 2010.

184. At significant points in this chronology, there is analysis of thematic issues and the evidence given to the Inquiry by important witnesses, including Mr Singh, Mr Tatford and Mr Jenkins. This is to demonstrate the concessions which were made about the prosecution's *"tarnished"* approach to Mr Jenkins and how that infected every aspect of POL's use of him. It will demonstrate that far from seeking to present Horizon as though it were infallible or without

[271] Transcript, 15 November 2023, p. 65, ln. 14-17 (our emphasis).
[272] Repeated in the later chain on 5 February 2010: FUJ001222723.

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problem, Mr Jenkins answered questions asked of him straightforwardly and honestly. He approached questions in a way that any computer engineer, not instructed as expert, would do; not understanding *POL's* duties of disclosure and wholly lacking legal training or legal understanding. It will demonstrate that, despite his being asked to respond to Professor McLachlan's reports and provide an opinion, not only was he not instructed as an expert, there was never any clarity about his role in the prosecution.

Two initial 'wrong turns'

185. In his evidence to the Inquiry, Mr Atkinson KC identified a series of failings which occurred throughout the course of POL's investigation and prosecution of Mrs Misra. A number of these occurred well before Mr Jenkins first became involved in the case in December 2009.[273] As with Mr Thomas' case, Mr Jenkins became involved in a prosecution long after the SPM had been charged and which had already been set on a wrong course by POL's investigators and prosecutors. There were two significant initial failures. These were POL's failure to obtain ARQ data for Mrs Misra's branch for the entire indictment period and POL's failure properly to consider how it was going to discharge its disclosure duties under the CPIA.

POL's failure to obtain ARQ data for Mrs Misra's branch for the entire indictment period

186. Mrs Misra's case reached its first trial listing (in June 2009) without POL obtaining any ARQ data for her branch. It was only several months later that POL began to engage with the defence requests for data. On 4 August 2009, POL investigator Mr Longman forwarded an email he had received from his colleague Mr Posnett to Mr Singh, indicating that Mr Posnett was unwilling, for costs reasons, to authorise Fujitsu to obtain such a large amount of ARQ data.[274] On 14 August 2009, Mr Taylor (a POL legal executive) wrote to Mrs Misra's solicitors, indicating that he understood "*from prosecuting counsel that on the last occasion Defence Counsel asked for Horizon data for period [sic] during which your client was subpostmistress at West Byfleet sub post office [...] the retrieval of data from Fujitsu is not a free service. It is very expensive and depends upon the amount of data which has to be retrieved, which is why you are requested to be very precise. At that stage a firm quotation can be obtained and Counsel will be asked to give further advice as to disclosure and payment for this service. The Post Office will not underwrite the cost if Counsel considers the data irrelevant*".[275] The letter referred to the money spent on obtaining this type of data as a *"complete waste of time and money"* in cases where a late guilty plea was entered. As well as wrong as an approach to disclosure, this was also factually wrong. The obtaining of data under the service, provided it was within the contractual limit, was paid for by POL in the standard contract with Fujitsu whether used or not. Costs were only incurred by POL if the contractual limit was exceeded.

187. As considered below, POL only obtained ARQ data for Mrs Misra's branch after Mr Jenkins became involved four months later, and after he repeatedly insisted that it be obtained during February and March 2010 (see for example his email of 5 February 2010: *"[...] The simple answer is that without retrieving the logs everybody is speculating."*)[276] Mr Atkinson KC was critical of this delay on POL's part.[277]

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[273] For example, Mr Atkinson KC was critical that reasonable lines of enquiry were not pursued during the investigation, such as financial enquiries to test whether Mrs Misra had in fact benefited from taking money from POL; the charging decision was *"far from thorough"* and contained no analysis of appropriation or dishonesty (which were elements of the offence of theft); and the appearance that the theft charge was introduced to encourage a plea: see EXPG000004R, expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), §§ 402-406.
[274] POL00052202.
[275] FUJ00154851.
[276] FUJ00122735.
[277] EXPG000004R, expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), § 404.

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188. When POL finally submitted an ARQ request to Fujitsu in March 2010, the data sought was limited to the period of the false accounting charge (December 2006 to December 2007), not the lengthier period of the theft charge (June 2005 to January 2008). Mr Longman informed Ms Thomas that this period had been selected on legal advice.[278] This was correct: Mr Tatford selected this period having regard to cost and the identification of a period of time which he understood was not affected by the thefts Mrs Misra had accused her staff of.[279]

189. As accepted by Mr Tatford in his evidence to the Inquiry, POL's refusal to obtain ARQ data for the entire indictment period, including the period of the theft charge, was a failure to produce the *primary evidence* to prove the theft the prosecution had elected to indict.[280] The defence was well aware that the prosecutor had made this election and Mr Jenkins referred to his having been provided with ARQ data for the 13 month period in his witness statements. However, it was POL, upon legal advice, not Mr Jenkins, who narrowed down the time frame of what was to be analysed.

POL's failure to consider how it was going to discharge its disclosure duties

190. Contemporaneously, there was another critical failure. In January 2010, there was a *"mini-conference"* within POL about Mrs Misra's case attended by Mr Collins, Mr Hayward, Mr Scott, Ms Lowther and Mr King. It appears that the conference *"[...] discussed the current situation of multiple challenges and multiple responses being dealt with by the Fraud Strand individuals and no clear definitive individual/s that can answer these types of issues. The upshot was that it is something they are working towards for the future and recognise that there isn't something in place now."*[281]

191. This mini-conference led to a proposal from Mr Hayward on 26 February 2010 that POL should collate *"information on past and present cases"* which raised *"Horizon challenges"*, conduct *"initial investigations"* and then *"full investigations"* into these *"integrity issues"*, and then gain *"external verification"* of the conclusions of those investigations (Ernst & Young was recommended as the most suitable external candidate).[282] On 3 March 2010, however, Mr Wilson (Head of Criminal Law at POL at the time) warned that the fact of the proposed *"internal investigation"* would need to be disclosed to SPM defendants. Remarkably, he wrote: *"Inevitably the defence will argue that if we are carrying out an investigation we clearly do not have confidence in Horizon and therefore to continue to prosecute will be an abuse of the criminal process. Alternatively we could be asked to stay the proceedings pending the outcome of the investigation, if this were to be adopted the resultant adverse publicity could lead to massive difficulties for POL [...] To continue prosecuting alleged offenders knowing that there is an ongoing investigation to determine the veracity of Horizon could also be detrimental to the reputation of my team. If we were to secure convictions in the knowledge that there was an investigation, where the investigation established a difficulty with the system we would be open to criticism and the Court of Appeal [...]".*[283]

192. These reasons for not conducting such a review may have been exaggerated but they nonetheless *inverted* what the position of an independent prosecutor, acting fairly, should be (in that Mr Wilson's objection was premised, in part, upon the consequences if the outcome of the proposed review was adverse).

[278] FUJ00153013.
[279] Transcript, 15 November 2023, p. 27, ln. 18-25; p. 28, ln. 1-18.
[280] Transcript, 15 November 2023, p. 29, ln. 14-25; p. 30, ln. 1-14.
[281] POL00175710.
[282] POL00106867, p. 3.
[283] Ibid, p. 1.

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193. Had such a review been conducted properly, it would have revealed that, by late 2009, POL itself, at an organisational level, was knowledgeable about BEDs in Legacy Horizon that had caused discrepancies in branch accounts (and indeed knew more than Mr Jenkins as an individual knew). For example, one of most significant BEDs (if not the most significant) to have affected Legacy Horizon, the Callendar Square bug, was known to POL in 2006 (three years before Mrs Misra was charged by POL).[284] Mr Jenkins did not know of it until early 2010.[285]

194. January 2010 marked a point at which POL could have taken the steps needed to comply with its CPIA obligations: to centralise and systematise the recording and retention of relevant information about Horizon problems held by divisions and departments across POL, including relevant information held about all previous criminal and civil cases. POL, consistent with its legal obligations, should have been doing this already. The opportunity was lost. Instead, POL lawyers adopted the impermissible approach of delegating to Mr Jenkins POL's obligations under the CPIA. This is considered below.

The early phase of POL's 'instruction' of Mr Jenkins (December 2009 to March 2010)

195. The early phase of POL's 'instruction' of Mr Jenkins in Mrs Misra's case (between December 2009 and March 2010) requires close analysis. During this period, Mr Jenkins produced three witness statements, dated 2 February 2010, 8 February 2010 and 9 March 2010. At different points during this phase, POL made three general requests:

a) **First**, to *"respond"* or *"reply"* to the defence expert reports, authored by Professor McLachlan.
b) **Second**, to provide *"information"* about or *"deal with"* the Callendar Square bug, which the defence had raised in a disclosure request.
c) **Third**, to mention *"whether they are aware of any other Horizon error that has been found at any sub-post office"* or *"whether there are any known problems with the Horizon system that Fujitsu are aware of."*

196. As will be seen, these requests were at points directed at Fujitsu's litigation support service and sometimes at Mr Jenkins. As the weeks passed, these requests overlapped, changed and became confused.

197. The emails from Mr Longman, forwarded to Ms Thomas in the Litigation Support Service on 1 December 2009, appear to have been POL's first approach to Fujitsu for a response to Professor McLachlan's 'second interim report'[286]: "*I attach a report from the defence expert where he has highlighted a number of problems with the Horizon system. Our barrister, Warwick Tatford has asked that the problems with Horizon that he has raised in his report are replied to in a witness statement form. I presume that an employee of Fujitsu would have to produce the witness statement.*"[287]

198. As is apparent from this email, POL had seemingly given no consideration as to whether the response sought from the Fujitsu employee should constitute evidence of fact, opinion evidence, or both. Nor had POL considered whether Professor McLachlan's report (by virtue of being an expert report) ought to be responded to by expert evidence. There is nothing that suggests that POL considered Professor McLachlan's report clearly or critically. It was simply sent to Fujitsu so that the *"problems with the Horizon system"* Professor McLachlan had raised could be *"replied to"*.

[284] FUJ00083721, pp. 2-6.
[285] Ibid, p. 1.
[286] There is no evidence that Professor McLachlan's first interim report was ever sent to anyone at Fujitsu for a response.
[287] FUJ00152847.

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199. The request was passed to Mr Jenkins, who provided a response. On 17 December 2009, Mr Jenkins entered his responses to each of Professor McLachlan's hypotheses as track changes.[288] The tone of his replies was informal.[289] In a number of his replies, Mr Jenkins said that he did not know the answer and that it was for POL to respond to.[290] Elsewhere, Mr Jenkins made the point that he would need to see the ARQ or audit data for Mrs Misra's branch in order to respond.[291]

200. Several weeks later, Mr Tatford advised on disclosure, thereby prompting a second request to Fujitsu. His advice to POL of 5 January 2010 advised on the disclosure sought by the defence pursuant to an application made under section 8 of the CPIA.[292] He advised that *"the only material that should be disclosed from the files that I have viewed is the Judgment in the Castleton case."*[293] Mr Tatford noted that this judgment had referred to Ms Chambers' knowledge of an issue which had arisen at the Callendar Square branch in Falkirk. Mr Tatford advised that: *"I don't know if Anne Chambers still works for Fujitsu but it should be relatively straightforward for Fujitsu to provide full information about what appears to have been a well-known problem at Callender [sic] Square."*[294]

201. In the same advice, Mr Tatford set in motion a third request to Fujitsu (emphasis added): *"I also think that our disclosure duty* ***requires us to ask Fujitsu whether they are aware of any other Horizon error that has been found at any sub-post office****. I anticipate that there will be none, but it is important that the check is made."*[295]

202. Mr Tatford's advice requested Fujitsu, as an organisation, to *"provide full information"* about the Callendar Square bug and *"any other Horizon error."* Surprisingly, neither Mr Tatford nor anyone at POL gave any consideration as to what records or knowledge POL had relating to these issues. As noted above, POL had been told about the Callendar Square problem in February 2006.[296] POL had routinely been provided with information about BEDs which had caused discrepancies in branch accounts.[297] Had POL complied with its CPIA obligations, as an investigator, to record and retain relevant material about Horizon, which was already in its possession, it would have been able to provide Mr Tatford with the type of information he sought.

203. Mr Tatford's advice of 5 January 2010 also returned to the response to Professor McLachlan's second interim report (under *"Other Matters"*). Mr Tatford agreed with Mr Longman's suggestion that the defence expert might *"meet with one or more representatives from Fujitsu to discuss technical issues and to reach as much agreement as possible."*[298] Mr Tatford then advised: "*Gareth Jenkins at Fujitsu has provided Mr Longman with a number of comments about the Defence 2nd interim report which confirmed my suspicion that the theory that Horizon cannot deal with refused credit card transactions is simply wrong. He has suggested in his comments that there are also a number of areas where POL could provide assistance. It seems that it would be relatively easy to disprove the theories of the 2nd report by witness statements from Mr Jenkins and from a suitable witness at POL. Those statements should be sought now.*

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[288] FUJ00152872.
[289] For example, *"I'm not sure what is meant here",* Ibid, p. 18.
[290] For example, *"Again for POL to respond"*, Ibid, p. 19.
[291] For example, *"This info is available in the Audit data which can be supplied as evidence"*, Ibid, p. 19.
[292] This provided at the time per section 8(2): *"If the accused has at any time reasonable cause to believe that there is prosecution material which is required by section 7A to be disclosed to him and has not been, he may apply to the court for an order requiring the prosecutor to disclose it to him."*
[293] POL00044557, § 5.
[294] Ibid, § 6.
[295] Ibid, § 7 (our emphasis).
[296] FUJ00083721.
[297] For example, the 'remming out' bug, which Fujitsu had told POL about in 2007 (see FUJ00121071) and the 'Craigpark' bug, which Fujitsu had told POL about in 2008 (see FUJ00155252).
[298] POL00044557, § 25.

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Although the Defence are likely to come up with other theories, it will hopefully save time and expense on both sides if we try to rebut false theories as and when they arise."[299]

204. Mr Tatford's advice suggests that, despite the defence evidence taking the form of an expert report, he thought it should be responded to by Mr Jenkins (and someone from POL) in the form of *"witness statements"*. As is obvious, no consideration was given to whether this response might in fact require the provision of expert evidence. No consideration was given as to the form that the proposed meeting between Professor McLachlan and the Fujitsu representatives might take.

205. On 11 January 2010, Mr Singh forwarded Mr Tatford's advice to Mr Longman, requesting that he (Mr Longman) "*deal with the outstanding matters with regard to the disclosure which the Defence are seeking."*[300] Eventually, on 27 January 2010, Mr Longman emailed Ms Thomas to say that, "*our defence [sic] barrister has asked for all Gareth's replies in relation to the defence's second interim report [...] to be produced as a witness statement. I would suggest that the question from the defence is reproduced and then Gareth's replies are recorded immediately after for clarity purposes*."[301] Ms Thomas forwarded this email to Mr Jenkins later the same day.[302]

206. Plainly these communications, from Mr Singh to Mr Longman to Ms Thomas to Mr Jenkins, in no way constituted the instruction of an expert witness. Moreover, the message that reached Mr Jenkins was limited only to the initial request made to him (in December 2009), which was to provide a response to Professor McLachlan's second interim report in a witness statement. The second and third requests set in motion by Mr Tatford's advice, which were directed towards *Fujitsu*, were not passed to Mr Jenkins.

207. Again, Mr Jenkins did as he had been requested in Mr Longman's email. He asked Ms Thomas to *"put something together for me to sign"*.[303] Ms Thomas, in turn, produced a draft witness statement under section 9 of the Criminal Justice Act 1967, which cut and pasted each hypothesis set out in Professor McLachlan's second interim report, and interspersed these with Mr Jenkins' replies.[304] The opening paragraphs of the draft statement reflected what Mr Jenkins understood POL had asked him to do: *"I have been asked to make comments on the 2nd Interim Technical expert's report to the Court prepared by Charles Alastair McLachlan [...]"* This reflected faithfully POL's request that Mr Jenkins *"make comments"* on the defence expert report. POL had provided him with no expert instructions and no understanding of the legal framework in which his witness evidence was being provided.

208. A hearing in Mrs Misra's case took place on 1 February 2010 attended by Mr Tatford and Mr Singh. Their conversation at court was recorded in an attendance note made by Mr Singh: "*We discussed the unreasonable disclosure requested by the Defence and that in what [sic] has been functioning properly and that a statement from Mr Jenkins will deal with the Horizon aspect of the case."*[305]

209. Again, there is no sense from this attendance note that Mr Tatford or Mr Singh considered that Mr Jenkins would be providing expert evidence. It is unclear what they envisaged by Mr Jenkins dealing with *"the Horizon aspect of the case*" or in what capacity he was to do so. It is an early indication of the impermissible delegation to Mr Jenkins (contrary to the CPIA) of disclosure about Horizon.

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[299] Ibid, § 26.
[300] POL00053745.
[301] FUJ00152887.
[302] FUJ00122670.
[303] FUJ00122670.
[304] The draft statement, dated 29 January 2010, is at FUJ00122669.
[305] POL00182473.

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210. Following the hearing, Mr Longman emailed Ms Thomas as follows (emphasis added): *"At a pre court hearing today the judge has ordered that all the defence requests for further information be answered by 4pm on Monday 8th February. Our solicitor in the case has asked that Gareth's statement is completed by Wednesday of this week so that he and our barrister can examine the statement. Gareth's statement needs to cover the following four points. 1) Our defence barrister* ***has asked for all of Gareth's replies in relation to the Defences 2nd Interim Report (see attachment below) to be produced as a witness statement****. I would suggest that the question from the defence is reproduced and then Gareth's replies are recorded immediately after for clarity purposes…. 2) My barrister telephoned me yesterday evening and requested that I find out any information that Fujitsu may hold in relation to an office called Callender Square [sic] in Falkirk. Apparently, Anne Chambers a Systems Specialist employed by Fujitsu was cross examined and it is said that she had full knowledge of an error in the Horizon system at this Post Office.* ***Our barrister would like Gareth to deal with this matter and expand upon whatever issue Anne Chambers raised at court within his witness statement****. 3) When Gareth completes his statement could* ***he also mention whether there are any known problems with the Horizon system that Fujitsu are aware of****. If none could this be clarified in the statement...."*[306]

211. There are a series of important points to note about this email:

a) **First**, it demonstrates the delegation of POL's disclosure duties in relation to Horizon to a third party. POL was asking Mr Jenkins to deal with disclosure about known problems in Horizon when POL already held information about this.
b) **Second**, it reinforced that Mr Tatford's first request, that Mr Jenkins respond to Professor McLachlan's second interim report, should be in the form of a *"witness statement"*, not an expert report.
c) **Third**, it reframed Mr Tatford's second request, which had previously been for *Fujitsu* to address the Callendar Square issue, into a request that *Mr Jenkins personally* should address it. That is, it sought to make Mr Jenkins responsible for the provision of information which Mr Tatford had advised that Fujitsu be asked to provide (and which it was clearly understood related to an issue that another Fujitsu employee, Ms Chambers, knew about).
d) **Fourth**, it asked Mr Jenkins to *"deal with"* and *"expand upon whatever issue"* was raised in relation to Callendar Square. This sort of missive bore no resemblance to the proper approach that should be taken to expert evidence.
e) **Fifth**, it reframed Mr Tatford's third request, which had been to ask *Fujitsu* whether it was "*aware of any other Horizon error that has been found at any sub-post office"* (as per his advice of 5 January 2010) into a request to Mr Jenkins personally to "*mention whether there are any known problems with the Horizon system that Fujitsu are aware of".* Again, it sought to make Mr Jenkins responsible for the provision of information which Mr Tatford had advised that Fujitsu provide.
f) **Sixth**, this was not, and did not purport to be, a third party disclosure request to Fujitsu as envisaged by the CPIA Code and Attorney General's Guidelines. Such a request would have needed to set out the legal framework that applied, what categories of material were being sought, and explained their relevance to Mrs Misra's case.
g) **Seventh**, and setting to one side that this was not a third party disclosure request, if POL was asking these questions of Ms Thomas at Fujitsu, so that through Mr Jenkins, POL could discharge its obligations under the CPIA, the email did not explain this. It was silent as to any legal framework within which the questions were being asked.
h) **Eighth**, it gave no guidance about what a *"known problem"* might mean. Did this mean any problem? Did it encompass historic problems that had been fixed? Did POL mean problems currently affecting the Horizon system (as the tense of the question might suggest)? These questions mattered because otherwise the question was open to interpretation. It was for *POL*

[306] FUJ00152896 (our emphasis).

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to consider and explain which types of problems were relevant for the purposes of discharging its CPIA obligations in this particular case.

i) **Ninth**, plainly, the email did not amount to the instruction of Mr Jenkins as an expert witness.

212. In the course of his evidence to the Inquiry, Mr Jenkins was asked a number of questions about Mr Longman's request that his statement include *"any known problems with the Horizon system that Fujitsu are aware of"*. The Inquiry is respectfully asked to consider carefully how Mr Jenkins responded to this request at the time and how that request changed over the subsequent weeks.

213. Ms Thomas forwarded Mr Longman's email to Mr Jenkins, who responded to it the next day (2 February 2010). Mr Jenkins' response is important because it captures precisely what he took from Mr Longman's email and what his state of mind was: *"I don't know anything at present about Falkirk. I'm not aware of issues in Horizon other than the event timeouts. Not sure how to cover that in the witness statement."*[307]

214. As is clear, Mr Jenkins replied on the basis of his personal knowledge of a recent problem (event timeouts at Craigpark branch) of which he was aware. By acknowledging this problem, he was not plainly asserting that Horizon was infallible. The fact that Mr Jenkins did not know anything about the separate issue at Falkirk branch (Callendar Square) was clearly flagged. The straightforward, natural language Mr Jenkins used in this email discussion with Ms Thomas is clear evidence that he did not interpret or understand that POL was asking him to speak to Fujitsu's institutional knowledge of all known problems in Horizon, past and present. Equally, by setting out that he knew nothing about Callendar Square, Mr Jenkins indicated that in fact there were limits to his personal knowledge of BEDs.

215. In one sense it might be thought sterile to subject this email to this level of analysis. But in circumstances where questions were put to Mr Jenkins as though he had deliberately not answered POL's request, it becomes vital. Equally if POL (or any other Core Participant) seeks to rely upon this email *now* to demonstrate some attempt by POL to meet its disclosure obligations (or to suggest that this was a clear request), then it is equally vital to show how deficient it was.

216. Moreover, in his evidence to the Inquiry, Mr Tatford agreed that it was a *"fair characterisation"* that Mr Longman had reframed his request *"from asking for a disclosure exercise to be undertaken by a third-party provider of the computer system, of any known problems or issues with Horizon, which would be a proper request to a third party, to one man mentioning in a witness statement if there are any known problems."*[308] Mr Tatford agreed that this had the effect of watering down his advice: *"A: "It's watered – well, yes, and it's unfortunate, that because, if it had remained at Fujitsu, we may have perhaps got some more answers, I don't know. Q: Unfortunate why? A: Well, it shouldn't just be for Gareth Jenkins and it's – I think I should have pressed on that requirement in paragraph 7 of the advice. I think I – it's now become – it's Gareth Jenkins is going to deal with it. It has been watered down. That's an appropriate phrase and it's not – it's watering down what I wanted, and that was wrong."*[309]

217. The email exchanges of 5 February 2010 cast further light on Mr Jenkins' state of mind. That afternoon, Mr Jones sent Mr Singh what he described as the *"first draft"* of Mr Jenkins' witness

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[307] FUJ00122683.

[308] Transcript, 15 November 2023, p. 101, ln. 14-21.

[309] Ibid, p. 101, ln. 6-13 (our emphasis). Additionally, in terms of what the prosecution thought Mr Jenkins' position was at this point, an email from Ms Misra's solicitors (of 3 February 2010) showed that it was *not* characterising Mr Jenkins as an expert: *"you have indicated that you do not propose to rely on an expert but on the employees of Fujitsu. For the first time, at the hearing on 01/02/10 you identified that witness as an employee name Jenkins."* [UKGI00014895]. Mr Tatford agreed that this characterisation was correct and Mr Jenkins was neither instructed nor regarded as an expert by the prosecution. He stated that it tied in later with the criticism made by the defence at the abuse of process argument [Transcript, 15 November 2023, p. 104, ln. 5-9]: *"that the expert hadn't been properly instructed, which is a very valid criticism. Perhaps I didn't take it on board and think it through as much as I should have done*."

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statement.[310] This was the draft which Ms Thomas had prepared the previous month. This email was forwarded to Mr Longman and Mr Tatford.[311] Mr Longman responded to Mr Singh, copying Mr Tatford, noting that Mr Jenkins' draft statement had not addressed either the Callendar Square issue or the question of whether there were *"any known problems in the Horizon system that Fujitsu are aware of."*[312] Mr Singh then emailed Mr Jones and Ms Thomas, indicating that these points had not been answered.[313]

218. Later that afternoon, Mr Jenkins emailed Mr Jones and Ms Thomas and said, in relation to the Callendar Square issue, *"I need information and time to research the background to this case before providing any response."*[314] In relation to the request for *"any known problems"*, Mr Jenkins said that he was *"reluctant"* to make a *"clear statement"* because it was possible for transactions to have been *"lost in particular circumstances due to locking issues. When this happens we have events in the eventing logs to indicate that there was an issue and whenever we provide transaction logs to POL we check for any such events. In the case of West Byfleet we have not provided any transaction logs and so have not made these checks."*[315] *"Locking issues"* in this email was a reference to the same problem Mr Jenkins had described as *"event timeouts"* several days earlier (i.e. the issue at Craigpark branch). Mr Jones subsequently forwarded Mr Jenkins' email to Mr Singh, and repeated the explanations Mr Jenkins had given.[316]

219. On the same afternoon, Mr Singh initiated a separate email chain about the third interim report of Professor McLachlan. Mr Singh emailed Mr Jones, attaching this report, and asking: "*Please also get Gareth Jenkins to comment on the enclosed report. Please note the deadline is Monday 8th February 2010 at 4pm."*[317] After Mr Jones passed the report on, Mr Jenkins replied: "*I've provided in line comments to the document as revisions. I'm happy for this to be passed to POL if you feel it is appropriate. The simple answer is that without retrieving the logs everybody is speculating and as discussed this morning nobody has bothered to ask us for any logs. At this stage it is not at all clear what transactions are thought to be missing at what time or even in what time period. Analysing logs over* a *long period (and I think this is over two or three months) is very, very time consuming. This is NOT going to happen by Monday."*[318] Mr Jones then forwarded Mr Jenkins' response to Mr Singh.[319]

220. These emails on 5 February 2010 are significant because they demonstrate Mr Jenkins' interpretation of events *from his perspective*. They demonstrate that:

a) **First**, Mr Jenkins was not asserting that Horizon was infallible, because he had identified a problem with locking issues causing transactions to be lost. He was saying, and the prosecution was informed, that he could not make a clear statement that there were no known problems (because checks needed to be made).
b) **Second**, Mr Jenkins shared POL's requests with his colleagues (including an in-house lawyer at Fujitsu) and answered POL's questions on the basis of his *personal* knowledge.
c) **Third**, Mr Jenkins continued to urge POL to request the ARQ data for Mrs Misra's branch so that he could examine it. As noted earlier, POL had previously rejected all such requests on the grounds of cost.
d) **Fourth**, Mr Jenkins explained why he wanted to examine this ARQ data, namely that, when ARQ data was provided by Fujitsu to POL, the *"events in the eventing logs"* were checked

[310] FUJ00122713.
[311] POL00029369.
[312] Ibid.
[313] FUJ00122729.
[314] FUJ00152930. Mr Jenkins had been off work GRO He came in on 5 February (before going home again and the emailing from home): WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 364. See also FUJ00154877 (5 February 2010) in which Mr Jenkins explains that he is struggling with his workload.
[315] FUJ00152930.
[316] Ibid.
[317] FUJ00122731.
[318] FUJ00122735.
[319] Ibid.

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"to indicate if there was an issue". In other words, the ARQ data request would trigger a check by Fujitsu for the existence of events which would indicate if there was a problem at Mrs Misra's branch.

e) **Fifth**, Mr Jenkins clearly thought that the correct approach was to focus on whether any problem had affected Mrs Misra's branch, rather than elsewhere.

221. From POL's perspective, these emails demonstrate that it was, in effect, seeking to make Mr Jenkins alone responsible for disclosure about problems in Horizon. By asking him to disclose issues about which Fujitsu had knowledge, it was impermissibly delegating its disclosure duties to him. Mr Jenkins neither knew nor understood this. Indeed, the approach being taken was positively discouraging any focus on the information held by POL: see Mr Tatford's email of the following day, in which he asked that *"The areas where Mr Jenkins says "for POL to respond" should be deleted from the statement. These areas will only lead to a flood of further disclosure requests and I am afraid that POL will never respond."*[320] Mr Jenkins did not delete these areas and they remained in the statement.

222. During his evidence to the Inquiry, it was repeatedly put to Mr Jenkins that his response to the request for *"any known problems with the Horizon system that Fujitsu are aware of"* was not complete. For example: *"Q. If you were going to give a complete answer to the question whether there were any known problems with the Horizon system that Fujitsu were aware of, you would need to investigate PinICLs and PEAKs, wouldn't you? A. Yes, but as I say, at this stage, I was just saying I couldn't make a clear statement and I wasn't thinking about what else I would need to do. I was just saying, 'This is my immediate response to the question I've been asked.'"*[321]

223. It is respectfully submitted that there was a degree of artificiality in the suggestion being put to Mr Jenkins. The suggestion did not reflect the clear, contemporaneous evidence that Mr Jenkins understood Mr Longman's question to be about what *he* knew. He plainly answered from the perspective of his personal knowledge of problems, not what institutional knowledge Fujitsu might have. Mr Jenkins was manifestly not asserting that there were no other problems with Horizon. He was saying that the ARQ data needed to be obtained to check for problems at Mrs Misra's branch. If that was the wrong approach, it is repeated that this was not his fault. The problem was POL's communication, which was casual, bereft of any legal framework, without guidance about what problems might be relevant to Mrs Misra's case, and therefore at risk of being misunderstood.

224. It was misunderstood. Any suggestion that this was some thought-through, sophisticated attempt by Mr Jenkins not to disclose *other* issues in Horizon is completely unsustainable. Mr Jenkins' evidence to the Inquiry, that he was giving an *"immediate response"* pending an examination of the ARQ data for Mrs Misra's branch, injects reality into how these emails should be interpreted.

225. Had POL been conscious of its obligations to record, retain and reveal material already in its possession pursuant to its CPIA obligations, it would have been able to consult information about the Craigpark bug.[322] And had Mr Singh understood anything about POL's disclosure duties, then the emails from Mr Jones would have prompted POL to ask further questions of Fujitsu about the problem that Mr Jenkins was referring to and whether, for example, there had been other such problems (or other problems that he was not aware of). These are the sort of routine discussions that would have taken place in a functioning prosecution.

226. Instead of any of this, in POL's response to the defence requests for disclosure dated 24 February 2010, Mr Singh made no mention of the Craigpark bug, and simply stated that, *"We are well*

[320] POL00054051.
[321] Transcript, 27 June 2024, p. 18, ln. 11-19.
[322] These interactions are explored in WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, §§ 141-191.

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aware of our statutory duty of disclosure as you know [sic] the prosecution have reviewed a large amount of material. The only material disclosable is Callendar Place […].”[323] In making this statement, he had plainly no regard to whether the information provided to him by Mr Jenkins about the problem that had caused transactions to become lost was disclosable. POL did not provide any direction to Mr Jones or Mr Jenkins as to how it wanted to approach *its* CPIA obligations to record, retain and reveal this information. Nor did POL record this information on the unused schedule or otherwise disclose it to the defence. For all of these reasons, the Inquiry is respectfully asked to treat with scepticism and to reject any suggestion that the problem lay in Mr Jenkins' response to the question POL asked. The problem lay in the question asked and then POL's lack of response to the information provided.

227. That this is the position was confirmed by Mr Tatford. He informed the Inquiry that, had he known that Mr Jenkins was reluctant to make a *“clear statement”* as to whether there were any *“known problems”* with Horizon, “*I would have realised that there was a problem with dealing with paragraph 7 of my advice. I'd have gone back to that and tried to sort it out and I would have started asking more questions.* ***Perhaps I should have been pressing it anyway but I'm troubled, reading this.*** *Well, this is bound to make me ask questions and I don't remember seeing this*.”[324]

228. Mr Tatford *was* sent Mr Jenkins' email of 5 February 2010.[325] There is thus no issue but that he and the prosecution team were on notice of the information which had been provided by Mr Jenkins about missing transactions, as well as the need to examine the NT events and the ARQ data.

229. Two misunderstandings intersected. The first was that Mr Tatford missed (or did not appreciate the significance of) the information provided by Mr Jenkins. The second was that Mr Jenkins did not understand Mr Longman's request to be a broad one, potentially extending to all historic problems known about by Fujitsu across the whole of POL's estate.

230. Separate issues became conflated: **first**, a response to the defence expert reports; **second**, a defence disclosure request for information about Callendar Square; **third**, the discharge of POL's CPIA obligations to disclose all known problems in Horizon; **fourth**, Mr Jenkins' personal knowledge and Fujitsu's corporate knowledge.

231. Instead of clarifying these discrete issues or requesting the ARQ data that Mr Jenkins had identified as essential, POL required that Mr Jenkins prepare a witness statement addressing both Professor McLachlan's third interim report and the Callendar Square bug. Mr Jenkins sent his draft to Mr Singh on 8 February 2010, noting that it stated, *“what I don't know about Falkirk and also the comments on the 3rd report. I doubt if they are of much use without getting the various detailed logs.”*[326] In relation to a number of Professor McLachlan's hypotheses in his third interim report, Mr Jenkins repeated that he needed to see the ARQ data before being able to respond.[327] In relation to Callendar Square, Mr Jenkins noted that, *“I have been asked if issues found at Callendar Square Post Office in Falkirk could have caused the discrepancies in the case of SEEMA MISRA. At this stage, I am not aware of the details of the problems in Callendar Square Post Office in Falkirk. However, I expect to be able to find out the details of that case and also to compare the failing scenarios with the detailed logs that are to be extracted for the SEEMA MISRA case and should then be able to make it clear if the scenario is relevant.”*[328]

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[323] POL00136478.
[324] Transcript, 15 November 2023, p. 123, ln. 3-10 (our emphasis).
[325] Mr Singh forwarded Mr Jenkins' email to Mr Tatford and Mr Longman on 8 February 2010: POL00167159.
[326] FUJ00122808.
[327] For example, *“No request has been made to Fujitsu for any data relating to this branch. The logs would show any equipment failures and replacement which might possibly relate to lost tranasctions”*, Ibid.
[328] POL00167163.

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232. The draft therefore restated in terms that POL had not made any request to Fujitsu for any data that would enable Mr Jenkins to respond to Professor McLachlan or to assess whether the Callendar Square bug had occurred at Mrs Misra's branch. It made clear that Mr Jenkins did not have personal knowledge of this issue. Consistent with his earlier emails, it was clear (and should have been clear to POL) that Mr Jenkins' focus was upon obtaining the data to consider whether there were possible problems at Mrs Misra's branch.

233. After this point, on 9 February 2010, and consistent with the lack of clarity as to what Mr Jenkins' status in the prosecution was (and the risks that this was creating), Mr Singh sent Mr Jenkins' contact details to Mrs Misra's solicitors "*in order for Professor McLachlan to discuss the matters in this case.*"[329] Mr Singh did not tell Mr Jenkins he had passed on these details until 22 February 2010.[330]

234. Neither Mr Singh nor anyone else at POL gave any indication to Mr Jenkins about how to conduct a meeting with a defence expert. In any event, such guidance would have been redundant by 22 February 2010, because Mr Jenkins and Professor McLachlan had *already* had a meeting (by telephone) on 12 February 2010.[331] Clearly no one in the prosecution had given thought (still less informed Mr Jenkins) as to what his status was in having this meeting, what grounds the meeting was to cover or what legal requirements were engaged by having this meeting.

235. Mr Jenkins' mind-set and approach is revealed in his account to Mr Singh of the meeting (and in a way which indicates his naivety):

> *"Basically what we did was to go through his two reports (actually 2nd and 3rd report I've not seen the first report!) and my comments on them. I also explained to him some of how [sic] Horizon works and why this means that some of his hypotheses were invalid. I also pointed out that in order to identify exactly what was happening, then it would be necessary to go through the detailed logs of the relevant times and that as far as I was aware, no request had been made for any such logs (though I think they may now have been requested). I told him that if we looked at the logs that we would be able to confirm whether or not the scenario in Falkirk applied, but I thought it was unlikely."*[332]

236. Again, it is clear that Mr Jenkins' focus was on *"what was happening"* at Mrs Misra's branch. It is also important to be clear that, despite Mr Jenkins meeting with the defence expert, he was not himself being treated as an expert at this point. Mr Tatford agreed that he had not, at this stage, advised POL that Mr Jenkins ought to be treated as an expert witness. In fact: *"I don't think I ever advised that he be an expert witness. I was – I don't remember how – it was essentially presented to me but I don't remember how that came about. It wasn't as a product of my advice but, as I concede, that was down to muddled thinking, for which I have to take overall responsibility*."[333]

237. In his evidence to the Inquiry, Mr Tatford reflected upon the focus on the ARQ data for Mrs Misra's branch. He noted that: "*The correspondence in this case was very demanding indeed and, essentially, in some of the disclosure requests we were being asked to look at every single post office for all manner – some of the disclosure requests were so wide we had to give disclosure of every time there's been an investigation at a Post Office. There was no focus, and that's what I was doing my best to try to get a focus.* ***I was trying to get the focus back to West Byfleet, which, in fact, Gareth Jenkins is trying to do by saying "We need the logs".*** *It was a difficult*

[329] POL00054095.
[330] POL00054220.
[331] Ibid.
[332] FUJ00152988.
[333] Transcript, 15 November 2023, p. 129, ln. 7-13.

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mess and I found it a mess and I found it very difficult and, if that's my weakness and my inability to cut through all these things, I take full responsibility for it.[334]

238. In other words, Mr Tatford thought the focus *should* be on Mrs Misra's branch. Clearly there were different ways that POL's disclosure obligations could be discharged in Mrs Misra's case. The examination of data to ascertain if there was a problem at Mrs Misra's specific branch was one course. The disclosure of problems that had occurred at other branches was another. As noted above, the latter course would have required that consideration was given to the parameters of the exercise. For example, in relation to time frames and types of problems. These were obvious considerations. But there was no discussion about them because clearly neither the information about the Callendar Square bug, nor Mr Jenkins' information about missing transactions nor his insistence that the data be obtained prompted the sort of discussions which might occur in any functioning prosecution. There was no prosecutorial consideration as to the scope of the disclosure exercise that the CPIA required. To the extent that Mr Tatford accepted in his evidence to the Inquiry that it is the *prosecutor's* responsibility to reconcile what the correct approach to disclosure should be, this is plainly correct.

239. It hardly needs to be said but Mr Jenkins, a layperson with no legal knowledge or training, cannot have been expected to form a view as what disclosure exercise ought to have been undertaken so that POL could meet its obligations under the CPIA. As is clear, from Mr Jenkins' perspective, what was important was to obtain the ARQ data for Mrs Misra's branch and to see what it showed. If POL wanted Mr Jenkins to undertake a broader exercise, because the law required it, then it was for POL to ensure that Mr Jenkins understood that. In fact, Mr Tatford considered that *"trying to get the focus back to West Byfleet"* was the correct way to proceed.[335]

240. Mr Jenkins' focus upon the branch reflected the sort of approach that he would ordinarily take to a specific problem at a branch (when as part of fourth line support he was asked to investigate the root of a problem that had been reported at a branch). Criticism of Mr Jenkins that he thought it appropriate to approach the task (as he set out in his emails) to see what was going on at the branch in question is unfair. Indeed, Mr Atkinson KC considered that this was exactly the sort of approach which ought to have occurred.[336]

241. It was not until 26 February 2010, after the defence application to stay the proceedings, that Mr Singh emailed Mr Jenkins and requested that he consider what branch data he needed to look at, how long the exercise might take, and suggesting that Mr Jenkins consider that with Professor McLachlan.[337] Mr Jenkins' response to Mr Singh again reveals his state of mind at the time: *"Although I have suggested for some time that these logs are requested, I understand that no such request has been made to Fujitsu. Trying to analyse transactions over a period of 2 or 3 years is likely to take several weeks or months of effort - especially if it is not clear what is being*

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[334] Transcript, 15 November 2023, p. 135, ln. 3-19 (our emphasis).
[335] Transcript, 15 November 2023, p. 135, ln. 12.
[336] See, for example, Mr Atkinson KC's overall analysis as to the failure on POL's part to consider reasonable lines of inquiry (Transcript, 18 December 2023, p. 92, ln. 4-25; p. 93, ln. 1-4): *"Q: If we scroll down to 628, thank you, you say: "Where a suspect described issues with the Horizon system, unexplained losses, recurrent error notices or simply asserted that they could not explain what had happened when confronted with a Horizon record of a shortfall, then a reasonable line of inquiry is to identify what the root cause of that shortfall is […] That involved firstly the obtaining underlying data, and its assessment for bugs, errors or issues." You say that: "The failure to undertake such enquiries was almost routinely identified by the Court of Appeal in Hamilton as a serious investigative deficiency […] In these, and many other cases, there was no enquiry for bugs or errors, and the ARQ data was not obtained." I think earlier in your report you say that, in some cases, the failure to pursue this reasonable line of inquiry was picked up by a prosecution lawyer but the prosecution lawyer did not wait for the outcome of the investigative steps before positively finding or advising that a prosecution should be pursued; is that right?"* It was also reflected in Mr Atkinson KC's consideration of why POL had been wrong to reject examination of the branch data in certain cases (Transcript, 18 December 2023, p. 126, ln. 24-25; p. 127, ln. 1-25; p. 28, ln. 1-2): *"And so, rather than testing the reliability of the evidence that the case was founded on, and where they had someone who could do that testing for them in the shape of Mr Jenkins, asking Mr Jenkins to test it, to understand whether the system had been working properly in this branch at this time, instead, because the postmaster couldn't give chapter and verse as to what was causing the problem, it was deemed sufficient to have a generic report that simply asserted that the system was all right."*
[337] POL00054227.

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looked for - and I certainly cannot commit that amount of time to it [...] Trawling through logs to show that nothing has happened is next to impossible what [sic] we need to be looking for is something specific and I have no idea what exactly is alleged to have happened."[338]

242. Ms Thomas emailed Mr Singh the same day (26 February 2010), noting that, *"We have been talking to you in some detail regarding the information required for us to identify what has happened in this case and, at this late stage, it will clearly not be possible to provide the depth of information we could have a few weeks ago based on analysis of transaction logs. Further, the identification of which transaction logs are required should be identified by the POL investigation team based on their knowledge of the case, as is the norm in such cases, not our expert."*[339]

243. These emails bring into focus the important fact that POL had not actually sent Fujitsu or Mr Jenkins any instructions (save for the vague and informal missives contained in the emails set out above). Nor had POL sent Fujitsu or Mr Jenkins any underlying material about the case (save for Professor McLachlan's second and third interim reports). POL had not provided any information about what was in issue in the prosecution; no material pointing to the nature of the Horizon problems Mrs Misra had experienced; no material pointing to the timing of those problems; no material pointing to when she had first noted that losses were arising; and no material pointing to whether there were specific types of transaction that were giving rise to problems in her use of Horizon. POL had done nothing to analyse the defence case or to delineate a list of specific issues or questions for Mr Jenkins to consider. POL had done none of things that might be expected where a party to litigation is instructing an expert. Indeed, these emails demonstrate that POL had given no critical thought to the defence case (save for delegating the response to Mr Jenkins).

244. Mr Tatford telephoned Mr Jenkins later on 26 February 2010. Mr Jenkins made a note of this call in an email he sent to his managers Mr Lillywhite and Mr Allen immediately afterwards: *"He is going to arrange for me to be sent details of what has been alleged and also what has been admitted so that I can identify some part of the logs to look through and discuss with the defence expert. Even if we limit the scope this sounds like a very time consuming task. I'm not sure I really want to be doing that and need some guidance as to the priority of this compared with everything else. Apparently the defence are saying it is too hard to get detailed info and therefore there can't possibly be a fair trial and POL are clearly keen to counter that argument. Trial date is in two weeks time so this is likely to be urgent! What do I do and who can sort out with POL what exactly we should and shouldn't be dong (sic) to support this?"*[340]

245. That prosecution counsel should telephone a witness in this way is a matter of concern. Regardless of what sort of witness Mr Jenkins was, this was prosecution counsel, alone, telephoning a witness to discuss how he should approach his task. The content of the conversation is only captured because Mr Jenkins set it out in his email to his managers. This again indicates a casualness towards *any* prosecution witness, still less an expert witness, but was entirely consistent with the communications thus far. When he gave evidence to the Inquiry, Mr Tatford was asked: "*Again, this form of instruction, an oral instruction from prosecution counsel to prosecution, putative expert witness, was it normal for you in Post Office cases to work in this way?"*[341] Mr Tatford's response, that he had never been involved in anything like this before, did not answer this question.

246. Equally, it is instructive that when he agreed that this specific communication was not the instruction of Mr Jenkins as an expert, Mr Tatford did so by reference to Mr Jenkins being used to deal with disclosure: "*I also suggest that this isn't a case where the – the disclosure requests*

[338] FUJ00152992.
[339] FUJ00152991.
[340] FUJ00152996.
[341] Transcript, 15 November 2023, p. 137, ln. 1-5.

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were very wide and going beyond the ordinary case where one would have one expert on each side. There'd been a lack of focus, and it caused confusion and I was obviously a victim of the confusion as well, and I – well, I've obviously made a lot of mistakes. I acknowledge that."[342]

247. Again, this *"lack of focus"* and *"confusion",* including about the status of Mr Jenkins, reflects an ongoing lack of clarity as to whether POL was using him (a) as a means to discharge POL's CPIA obligations, or (b) to provide *"assistance"* to Professor McLachlan (as Mr Tatford termed it[343]), or both. If the former, this approach was, as Mr Atkinson KC said in his evidence to the Inquiry, impermissible as a matter of criminal law. But in any event, POL failed to make it clear to Mr Jenkins or Fujitsu that this is what they were doing. If the latter, this approach failed to address that *assisting* a defence expert lacked any sort of legal framework.

248. Within a few hours of Mr Tatford's telephone call, Mr Singh emailed Mr Jenkins, attaching the case summary, indictment, a defence statement, copy of the interview with Mrs Misra and the name of the defence expert. Mr Singh informed Mr Jenkins: *"It is important that we are pro-active on this and that you contact him as soon as possible with a view to concluding this. I appreciate all the help and assistance in this case."*[344]

249. As Mr Tatford accepted in his evidence to the Inquiry, Mr Singh's email did not amount to the instruction of Mr Jenkins as an expert witness.[345] Again, this communication made no attempt whatsoever to set out the background to the prosecution; to identify what the issues were as between the defence and the prosecution; or to set out the questions upon which Mr Jenkins' opinion was sought. Again, there was nothing on the face of this email to suggest that Mr Singh was approaching Mr Jenkins on the basis that he was an expert witness. Prosecutors do not simply send prosecution witnesses (still less expert witnesses) documents and leave them to fathom the issues, determine what is relevant and formulate their own questions. Telling Mr Jenkins to *"conclude this"* provided no guidance at all.

250. Aside this, Mr Singh's email sought, unlawfully, to delegate the core functions of the prosecution to a witness. This is because, under section 7A(2) of the CPIA, the prosecutor was statutorily charged with consideration of the defence statement and had an ongoing duty to provide disclosure in light of it (that is, any material that might reasonably be considered capable of undermining the prosecution case or assisting the defence). Mr Atkinson KC was clear that the 2005 version of the Attorney General's Guidelines reflected section 7A(2) in their emphasis on the importance of the defence statement as a means of determining reasonable lines of enquiry and judging relevance in relation to disclosure.[346]

251. Mr Tatford did consider the defence statement in Mrs Misra's case but appears to have regarded it as "*ludicrously vague*".[347] If this was correct then it was incumbent on the prosecution to bring this to the attention of the defence (or if required, the Court). But Mr Singh's approach, of sending the defence statement to Mr Jenkins without any guidance at all, suggests he did not understand POL's obligations. Simply sending Mr Jenkins these materials (and no more) represented a

[342] Ibid, p. 138, ln. 2-10.
[343] Ibid, p. 71, ln. 11.
[344] POL00054213.
[345] Transcript, 15 November 2023, p. 139, ln. 7-9.
[346] EXPG0000002, expert report of Duncan Atkinson KC dated 26 May 2023, volume 1, § 272. The AG Guidelines stated at § 37: "*Prosecutors should examine the defence statement to see whether it points to other lines of enquiry. If the defence statement does point to other reasonable lines of inquiry further investigation is required and evidence obtained as a result of these enquiries may be used as part of the prosecution case or to rebut the defence.*" §40 provided that: "*If the material does not fulfil the disclosure test there is no requirement to disclose it. For this purpose, the parties' respective cases should not be restrictively analysed but must be carefully analysed to ascertain the specific facts the prosecution seek to establish and the specific grounds on which the charges are resisted. Neutral material or material damaging to the defendant need not be disclosed and must not be brought to the attention of the court. Only in truly borderline cases should the prosecution seek a judicial ruling on the disclosability of material in its hands.*"
[347] FUJ00123006 (he noted this in his comments on Mr Jenkins' draft of his final witness statement in October 2010).

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complete abrogation of what Mr Singh, on behalf of POL as the prosecutor, was statutorily obliged to do.

252. These basic mistakes mattered. The defence statement set out that Mrs Misra had relied on staff who had stolen from her (and referred to a member of staff having admitted to theft in the presence of the police).[348] Her defence was that the losses she experienced were down to theft or incompetence; that she had suffered from *"unquantifiable thefts"* by her former employees but that these had been *"compounded by operational faults in the Horizon system."*[349] Detail about the "operational faults" was not provided (and the defence expert, Professor McLachlan, appears not to have been used to provide information about Mrs Misra's experience of using Horizon).[350] Later, when Mrs Misra gave evidence at her trial, she explained she was *"making the figures up"* (as she described it) in terms of cash declarations from 2006.[351] She did not do any balancing; she would rely on *"snapshots"* generated by Horizon but did not look to see what cash the branch held.[352] None of these points is made to criticise Mrs Misra but rather to demonstrate why it would have assisted had the prosecution sought to engage with the potential breadth of her defence at this point in the prosecution.

253. A competent prosecutor, having read the defence statement, rather than simply forwarding it to a witness, would have incorporated, into properly formulated instructions to an expert witness, the potential breadth of Mrs Misra's defence. Had these instructions followed how a competent instruction to an expert might be drafted, it would probably have identified relevant passages from her interview and defence statement. It would have delineated neutrally phrased issues or questions that the expert was asked to assist the court with. A competent prosecutor might also, in a formal and documented conference, have explored with the expert which issues fell within his expertise and how the expert should best approach his task. The prosecution might have organised a conference with the expert in order to discuss the best approach to the defence. <u>These are not unrealistic nor idealistic suggestions: it is how a functioning and competent prosecution might have proceeded.</u>

254. That there should have been a conference with Fujitsu, in order to discuss the correct approach to the defence and what approach POL wanted Mr Jenkins to take, is clear. On 1 March 2010, Mr Jenkins put the question to Mr Singh: *"Surely it is down to the Post Office investigators to get to the bottom of exactly where there is anything in dispute. At that point I might be able to assist with some technical knowledge to help interpret the various logs to support such areas of dispute."*[353] This question was ignored and Mr Jenkins was left to try to work it out for himself.

255. Far from providing clarity and direction, Mr Singh (on 1 March 2010) sent Mr Jenkins copies of Professor McLachlan's fourth and fifth interim technical reports, and stated (emphasis added):

> *"**As you are our Horizon Expert** you need to telephone Charles McLachlan […] to arrange a meeting where you can discuss all his reports and his concerns about the Horizon [sic] so you can deal with it and rebut it which you have done in your long telephone conversation about his various hypothesis and then write a detailed report which would go to someway [sic] of progressing and concluding this matter and importantly preserving the Horizon system. May be the simplest and practical way [sic] of dealing with this whole question is to find a shortest span of logs, analyse it, disprove or rebut what the Defence Expert is saying in his reports. **Just a reminder you are an Expert for Fujitsu, you will be giving evidence in Court, the Judge and Jury will be listening to you very carefully and a lot will hang on the***

[348] A copy of the defence statement is at POL00054237.
[349] Ibid, § 12.
[350] His reports do not set this out and he confirmed this in his evidence at the trial.
[351] POL00277768, p. 94.
[352] Ibid, p. 62.
[353] POL00054252.

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evidence. The way forward is for you to arrange an immediate meeting with the Defence Expert and conclude this matter once and for all." [354]

256. All that need be said about this extraordinary email is that it is the closest which Mr Singh ever came to instructing Mr Jenkins as an expert. It reveals the full depth of his incompetence and the fact that he should not have prosecuted any case.

257. Mr Tatford, in his evidence to the Inquiry, regarded this email as *"completely wrong"* and *"well, disastrous, I was going to say. I'm sorry, this shouldn't have happened, and – this isn't what I intended to happen, but I – that's not an excuse because, as far as I'm concerned, I was prosecution counsel in the case, I have responsibility for the case as a whole, and this is – I have obviously failed to ensure that there's an atmosphere where an expert can be properly instructed, and wrong decisions are being taken, and I understand the evidence about Post Office not being aware of its duties in relation to expert evidence, and this is the natural result. I wasn't – I don't think I was aware of this sort of instruction. I like to think if I'd seen it, I would have done my very best to resolve this and put an end to this but it's very troubling reading."*[355]

258. To lawyers, Mr Singh's *'instruction'* is a moment of revelation as to his sheer incompetence. But it is also the continuation of an approach whereby POL played little, if any, part in seeking to analyse and delineate the issues raised by the defence (whether in Mrs Misra's interview, her defence statements, her disclosure requests or her expert reports) and instead effectively sought to delegate wholesale the prosecution response to Mr Jenkins.

259. Mr Jenkins' contemporaneous response to Mr Singh's email is captured in his email later the same day to Penny Thomas: *"Again I think we need to emphasise that it is not Fujitsu's role to put together and analyse the evidence. Our role is to provide the evidence and support POL's investigators. I don't like the implication in the email below that I should be* a *witness in this case. I don't have anything really to contribute at this point."* [356]

260. This (unsurprisingly) suggests a lack of understanding on Mr Jenkins' part as to what his actual role was in the case *("it is not Fujitsu's role to put together and analyse the evidence").* It shows that he *was* asking fundamental questions about what POL wanted him to do and how he should do it. Moreover, it shows that he was, despite the lack of any guidance from POL, instinctively asking the *right* questions as to why POL had not tried to identify the issues or investigated further what Mrs Misra was saying about Horizon and appeared to be asking *him* to do *their* job. It is emails like these which give the lie to the notion that Mr Jenkins was engaged in an attempt to withhold information about Horizon, or that he shared any common understanding or purpose with POL.

261. On 3 March 2010, Mr Singh recycled some of his earlier email of 1 March 2010 in a new email sent to Ms Thomas, which she promptly forwarded to Mr Jenkins.[357] In it, Mr Singh made the following comments:

> "*What has been requested through Mark Dinsdale is transaction log details for West Byfleet (this is the whole of the false accounting period to which Ms Misra has pleaded guilty to) from 1 December 2006 to 31 December 2007. This should then be given to Gareth Jenkins at Fujitsu to confirm by his witness statement whether there are any errors within the Horizon system for the transaction log period. Gareth Jenkins will need to study the Defence expert's reports which he has in hand and he had lengthy discussions with the Defence expert Charles McLachlan (mobile number [GRO]) on 12 February 2010. There is a need for an urgent meeting where these two experts can meet where the Defence expert reports and his*

[354] POL00054267.
[355] Transcript, 15 November 2023, p. 141, ln. 24-25; p. 142, ln. 1-6.
[356] FUJ00153006.
[357] FUJ00153027.

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concerns about the Horizon system can be discussed. Gareth Jenkins can then use his expertise to rebut or answer his various hypotheses or theories. He has done that to a certain extent in his telephone discussion with him on 12 February 2010. It may be the practical approach for Gareth Jenkins to find the shortest period span of transaction log data for West Byfleet, analyse it, disprove or rebut what the Defence expert is saying in his reports. Mr Gareth Jenkins is an expert for Fujitsu. He will give evidence in Court. The Judge and Jury will be listening to his every word very carefully and a lot will hang on his evidence."

262. This email is important for two reasons. First, it confirms POL's election (upon Mr Tatford's advice) to obtain the ARQ data for the period of the false accounting charge (rather than the totality of the theft charge). Second, it marked the point at which Mr Tatford's initial, broader request for disclosure of *"all known problems with Horizon of which Fujitsu are aware"* was 'lost' and was replaced by a narrower request for disclosure of specific problems apparent from the ARQ data for Mrs Misra's branch.[358]

263. Mr Tatford confirmed in his evidence to the Inquiry that this is what had occurred:

a) Insofar as Mr Singh's email could be said to constitute some form of instruction, he agreed that it was limited to the examination of logs for a specific period to determine whether there was evidence of a problem within that period relating to West Byfleet branch.[359]
b) He agreed that this focus on Mrs Misra's branch (as opposed to the wider estate) was also consistent with the remit of what he had told Mr Jenkins to do in the telephone call on 22 February 2010 (see above).[360]
c) He agreed that the request to Fujitsu he had originally set out at paragraph 7 of his advice of 5 January 2010 (and subsequently reframed by Mr Longman as a request to Mr Jenkins personally to disclose *"all known problems with the Horizon system that Fujitsu are aware of"*) had become *"**completely lost**"*: *"– it does seem to have been completely lost, and we go from an expert I understood to be – that I wanted to look at the logs with an open mind, to be being given the instructions we can see here that are so one sided and unfair. **I'm afraid it betrays a complete lack of understanding of what an expert is for and that's obviously very wrong and, actually, very unhelpful to Mr Jenkins as well.**"*[361]

264. It was in response to this email of 3 March 2010 from Mr Singh that Mr Jenkins prepared his statement dated 9 March 2010.[362] This was another witness statement which conformed to section 9 of the Criminal Justice Act 1967 (the format for evidence of fact). It omitted any of the content necessary to make it admissible as expert evidence. Mr Tatford's evidence as to why this was the position is important (emphasis added): *"A. That was – I think, follows from my advice that his responses to the expert, which **were meant to assist, rather than being a formal report** – Q: These*

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[358] See also Mr Tatford's skeleton argument of 7 March 2020 setting out the prosecution approach (POL00054346): *"7. One of the main sticking points in the disclosure process has been the cost of obtaining Horizon data. Transaction logs can be obtained from Fujitsu that show the details of every single transaction at a post office. The Defence's request has been for logs from 6 months prior to the Defendant's tenure to the present day. This request is far too wide and the cost of obtaining that data would frankly be astronomical (see below at para 8 for the cost of providing limited data). The Crown has explained on numerous occasions how expensive it is to obtain this material. The expense simply results from Royal Mail's contractual obligations to Fujitsu. We have asked the Defence repeatedly to consider a narrow time span for their request or a narrow field of types of transactions. The reason for this suggestion was that the Defendant's false inflations increased consistently over a long period of time. They indicate some kind of continuing problem, rather than a few one-off events. If there really was an innocent reason for the Defendant's false figures it could be searched for rather more easily in a short, representative cross-section of data than in a mountain of information covering more than 5 years. The Crown has made it clear that if significant problems/errors were found in an analysis of a narrow span of data it would review its case on count 1. 8. The Defence has made no proposal as to an appropriate span of data, even though it has the potential advantage of the Defendant's insider knowledge. This failure by the Defence has been rather frustrating but it may have been in part because the Defence put its request on hold while it asked for justification of the cost of obtaining this data. The Crown has chosen therefore, at a cost of over £20,000, to obtain logs for the period December 2006-December 2007. The logs consist of 431,490 separate transactions. The chosen time period covers the full extent of the Defendant's admitted false accounting. It also post-dates the time when the Defendant claims to have put a stop to thefts by employees […]"*
[359] Transcript, 15 November 2023, p. 144, ln. 12-18.
[360] Ibid, p. 144, ln. 19-23.
[361] Transcript, 15 November 2023, p. 145, ln. 2-11 (our emphasis).
[362] A copy of the signed statement is at POL00001643.

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*are served evidence in the case? A: Well, they are served evidence and I suggested putting in a witness statement. What I should have done was to say "**Oh, actually, the time has clearly come where it needs to be set out more clearly as an expert's report". But my advice was given in order to speed matters along. It clearly wasn't the right advice.**"*[363] In other words, at the time Mr Tatford did not regard Mr Jenkins' witness statement of 9 March 2010 as expert evidence, but he now concedes that he ought to have done.

265. The communications set out above provide necessary context for the questions that Mr Jenkins was asked in the Inquiry about whether he had given 'narrow' or 'incomplete' evidence in his witness statement of 9 March 2010. These questions were premised upon the existence of a clear and consistent thread between POL's requests in January and February 2010 and Mr Jenkins' witness statement of 9 March 2010. The analysis set out above demonstrates that there was no such thread. Instead, over this period, the requests made by POL changed and become confused.

266. What can be seen from the emails are a series of missed opportunities for POL to adhere to its disclosure obligations. Mr Jenkins explained clearly to POL that he was aware of a problem in Horizon whereby transactions went missing and noted that these sorts of issues were checked for when ARQ data was obtained. For all of the reasons set out above, he cannot be blamed for having interpreted the question in this way. He was not an expert discharging expert duties; he was responding to informal email requests. He is entitled to point to the fact that he answered the question, whether there any problems, in the affirmative. His response was missed; prosecuting counsel has accepted that. No one asked him any questions about the problem he had identified or about the check Fujitsu did in relation to the events. No one picked up that Mr Jenkins answered on the basis of what he personally knew. When, following the abuse of process argument, the prosecution obtained the ARQ data, what Mr Jenkins was asked to do changed. In circumstances where prosecuting counsel accepted that the original request (to mention *"known problems in the Horizon system that Fujitsu are aware of"*) was lost, it is not sustainable to accuse Mr Jenkins of having deliberately not answered it. This is, in any event, patently not the case. Mr Jenkins' immediate responses to his colleagues demonstrate his understanding that what was needed was to obtain and consider the data for Mrs Misra's branch (and provide it to Professor McLachlan). That was also what prosecuting counsel agreed should be done. And none of these changing requests were made formally or in terms which even approximated an expert instruction. Indeed, at this point, it is clear that not even prosecuting counsel regarded Mr Jenkins as an expert.

267. The suggestions put to Mr Jenkins during his oral evidence about his witness statement of 9 March 2010 statement omitted the detail of what happened between the emails in January and February and the production of that statement. Through CTI, Mr Jenkins was asked a question about the last paragraph of this witness statement. This paragraph reads (emphasis added): *"As with any large system, there will be **occasional failures**, **such as the one found** in Callendar Square, Falkirk. **Any such faults**, whether during testing or from live user feedback would be investigated and resolved appropriately. I am not aware of any such faults that have been raised by West Byfleet. If specific transactions can be identified where the user feels the system has caused losses then further investigation can be made."*[364]

268. The question put was: "*Was that last paragraph as close as you ever came to answering the broad question that originated from Mr Tatford, namely whether there were any known problems with the Horizon system that Fujitsu are aware of?*"[365] This was apt to mislead, absent reference to the emails between 2 February and 9 March 2010 and in particular the email from Mr Singh of 3 March 2010 that changed what Mr Jenkins was asked to do. The question implied that Mr Jenkins had not given a complete answer to a question asked of him, when in fact, that question had been 'lost'

[363] Transcript, 15 November 2023, p. 148, ln. 22-25; p. 149, ln. 1-7.
[364] POL00001643.
[365] Transcript, 27 June 2024, p. 39, ln. 7-10.

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because it had changed by the time he prepared his witness statement. Mr Jenkins agreed with the question but without having been reminded of the intervening emails.

269. CTI put to Mr Jenkins that this last paragraph of his witness statement of 9 March 2010 *"[...] suggests to the reader that there weren't any [problems] which Fujitsu actually knew about, other than Callendar Square*".[366] Again, this question appears to be premised upon the mistaken assumption that this paragraph was responding to the request for *"known problems"*. It was not. To the extent that it is seriously suggested that this paragraph conveyed to POL that there were no other problems that Fujitsu knew about, this would be little short of extraordinary. Putting to one side all that POL knew (and had statutory duties to disclose), Mr Jenkins had explained to POL in clear terms that there was a locking issue that needed to checked for. Mr Jenkins' acknowledgement that *"there will be occasional failures"* (plural) cannot sensibly or logically imply that there was only ever one failure in Horizon of which Fujitsu was aware. Similarly, his words *"any such faults"* (plural) signalled that there had been a number of faults, not just the single fault that had occurred at Callendar Square.

270. It is also clear that Mr Jenkins misunderstood CTI's question and answered by reference to what he had done: "*And I believed I was confident of that because, by this time, I had actually looked at the NT event logs at the time and I would have expected, if there had been faults, for there to be evidence in the NT event logs to reflect those*."[367] By this answer, Mr Jenkins focused on what he had actually been asked to address in his statement of 9 March 2010 (i.e. to examine the data for Mrs Misra's branch).

271. In terms of further suggestions put to Mr Jenkins through CTI about this paragraph, one was that *"a complete answer"* would have been: *"There are many known problems with Horizon. Fujitsu keeps records of them in documents called PinICLs, PEAKs and KELs."*[368] Again, this question was advanced on the premise of the request originally made by POL in February 2010, which had become lost by 9 March 2010. If this line of questioning was to imply a deliberate effort by Mr Jenkins not to disclose PinICLs, PEAKs and KELs to POL and the defence, this is wholly undermined by Mr Jenkins' reference to KELs in his communications with Professor McLachlan several months later (see below) and the disclosure of the PEAK in Callendar Square (reflected in Mr Jenkins' evidence when he gave evidence to the court in October 2010).[369]

272. For all of these reasons, it is respectfully submitted that it would be entirely wrong to criticise or stigmatise as deliberately narrow or incomplete the content of Mr Jenkins' statement of 9 March 2010. Any attempt to generalise or gloss over the detail of what POL actually asked Mr Jenkins to do in the month beforehand and to address in this statement would be deeply unfair. It would equally be unconscionable to ignore the fact that despite what was asked of him, as Mr Tatford conceded, the prosecution did not regard Mr Jenkins as an expert and was not treating him as one.

273. In relation to what Mr Jenkins said about faults such as the one found at Callendar Square being investigated and resolved appropriately, this reflected his knowledge and understanding that issues which caused discrepancies in branch accounts were taken seriously, investigated and resolved. As he explained it to the Inquiry: *"There were some discrete bugs that caused problems to the accounts but they were very discrete and I believe they were well controlled and managed at the time."*[370] This reflects what Mr Jenkins knew at the time. It is accepted that Mr Jenkins was not aware of every BED that had affected Legacy Horizon.[371] But in terms of those BEDs he did know about,

[366] Transcript, 27 June 2024, p. 39, ln. 16-18.
[367] Ibid, p. 39, ln. 19-23.
[368] Ibid, p. 40, ln. 4-7.
[369] FUJ00153157.
[370] Transcript, 25 June 2024, p. 16, ln. 24-25; p. 17, ln. 1.
[371] For example, there is no evidence that suggests that Mr Jenkins was aware of the first issue caused by "Data Tree Build Failure Discrepancies".

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none had caused discrepancies across the entire estate and most were known to have occurred on a limited number of occasions in a limited number of branches.[372] Some of the BEDs that Mr Jenkins was aware of did not cause any discrepancies in branch accounts (as accepted by Fraser J).[373] Some of the BEDs that Mr Jenkins was aware of had caused discrepancies in test rigs, not live branch accounts produced and relied upon by SPMs (again as accepted by Fraser J).[374] Some of the BEDs would have had no impact on the accuracy of the data which was stored in the audit trail (as opposed, for example, to the accuracy of a report).[375] Most BEDs that Mr Jenkins was aware of were fixed promptly without any symptoms of reoccurrence.[376] In relation to the Callendar Square bug, Mr Jenkins was not aware of it until Mrs Misra's case and understood from the information provided to him, by Ms Chambers, that it had been fixed in 2006.[377] In his second witness statement to the Inquiry, Mr Jenkins agreed with Ms Chambers that it should not have taken to 2006 to fix this bug.[378] However, as set out in detail elsewhere in this statement, the more general lock errors which he had investigated in the early 2000s did not impact branch accounts.[379] In summary, of the known BEDs in Legacy Horizon identified in the *Horizon Issues No. 6* Judgment and explored in this Inquiry, those that actually caused discrepancies in live branch accounts of which Mr Jenkins was aware (as at January 2010) were rare.

274. Mr Jenkins' overall assessment was similar to that of Ms Chambers, who emphasised throughout her evidence that counter balancing was a small proportion of the problems the SSC dealt with.[380] Cases in which there was a discrepancy were a "*very small proportion*" of the calls that the SSC dealt with.[381] She also told the Inquiry *"I considered that during my time in SSC, the system was relatively robust, which is not to suggest […] that there were no bugs: it was our job in SSC and our expectation that we would investigate and discover bugs that required fixes"*[382] and *"in general, although, yes, of course there were bugs, errors and defects, they were not causing continual ongoing losses."*[383] Her evidence carefully calibrated the actual impact of BEDs such as the Callendar Square bug: *"I am asked but cannot recall how many sites were affected each week. I stress that the transfer problem seen at Callendar Square was just one possible outcome of the underlying Riposte bug. This outcome was not happening at several sites per week […] I am asked whether this problem had the potential to cause discrepancies in branch accounts or otherwise to affect the integrity of the Horizon IT System. It had the potential to do so but would leave evidence that something had gone wrong which would have been obvious to me and normally to the user as well […] It did not have the potential to cause unexplained discrepancies across multiple weeks."*[384]

275. The unrelenting focus of the questions put to Mr Jenkins in the Inquiry was on things he did <u>not</u> address in his witness statement of 9 March 2010. There was no focus upon many of the points that

[372] For example, the "Craigpark" bug only caused discrepancies in branch accounts on two occasions in two branches.
[373] For example, the first two issues caused by the "Transaction Corrections" bug.
[374] For example, the second issue caused by the "Data Tree Build Failure" discrepancies, which only arose in the test environment: FUJ00086363.
[375] For example, the issues caused by the "Data Tree Build Failure" discrepancies, which as Mr Jenkins explained to the Inquiry, would have *"no effect on the accuracy of ARQ data"* because "*the ARQ data was a record of the transactions as recorded in the message store, not how they were built up into a report"* (Transcript, 25 June 2024, p. 209, ln. 16-22).
[376] For example, the second issue caused by the "Remming Out" bug in February 2007.
[377] See WITN00460200, second witness statement of Gareth Jenkins dated 1 June 2023, § 78: *"I also understood in 2010 that Escher had developed a fix for the underlying software problem causing the specific event storms seen at Callendar Square which was rolled out by Fujitsu in the S90 release, which went live in March 2006. As can be seen in the email at [FUJ00083721] (E20), Anne told me that: 'Anyway it stopped happening once S90 was installed (around 4th March 2006 [….]'"*
[378] Ibid, § 78.
[379] Ibid, §§ 59-70.
[380] Transcript, 3 May 2023, p. 57, ln. 20-22.
[381] Transcript, 2 May 2023, p. 75, ln. 21-25; p. 76, ln. 1-4.
[382] WITN00170100, first witness statement of Anne Chambers dated 15 November 2022, § 107.
[383] Transcript, 26 September 2023, p. 30, ln. 22-24.
[384] WITN00170100, first witness statement of Anne Chambers dated 15 November 2022, §§ 80 and 87.

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Mr Jenkins did address, the work which went into these responses and the caveats he introduced. In summary:[385]

a) **First**, the statement reflected his analysis of the ARQ data for the 13-month period selected by Mr Tatford, which amounted to 431,490 lines of transactional data to consider potential sources of losses. For example, Mr Jenkins searched through the logs looking for all examples of Debit Card transactions. He compared the Cash movements in terms of the Transactions and also in terms of differences in Declarations. He noted that there was very little correlation.
b) **Second**, the NT event log data for the whole of the indictment period had been considered. The NT events were considered by Ms Chambers and also by Mr Jenkins.[386] As Mr Jenkins' emails in February 2010 (as forwarded to POL) had explained, when an ARQ was obtained, the events were considered to check for missing transactions. Mr Jenkins' witness statement of 9 March 2010 explained that the system events for West Byfleet from 30 June 2005 to 31 December 2009 had been checked and events such as those seen in Callendar Square had not been found.[387] As Mr Jenkins said in his evidence to the Inquiry, *"there was no trace in the NT event logs for West Byfleet for the event storms characteristic of the Callendar Square bug, or indeed anything else that looked like a BED."*[388] At Mrs Misra's trial Mr Jenkins explained: *"We've looked - I've looked at the event logs or the events that happened and there is no indication of any problems from - from those and the accounts certainly appear to balance up each time though there are clearly a lot of financial discrepancies within them."*[389]
c) **Third**, Mr Jenkins caveated his conclusions by pointing out that he could not say either way whether anything was missing from the ARQ data.[390]
d) **Fourth**, Mr Jenkins used his analysis of the ARQ data and NT event log data, as well as his knowledge of Horizon generally, to respond to most of the hypotheses advanced by Professor McLachlan. For example, in relation to the hypothesis that the 'Fast Cash' button could result in rejected card payments being treated as over the counter cash or that the use of cards could result in other discrepancies, Mr Jenkins stated that he had checked all cases of rejected card payments (over a certain value) in the data and that these did not explain the discrepancies.[391]
e) **Fifth**, Mr Jenkins was careful not to respond to any hypotheses which fell outside his knowledge and experience. For example, he stated that he could not comment about the hypothesis that a lack of training had given rise to problems in operating Horizon.[392]
f) **Sixth**, Mr Jenkins indicated some further possible areas which could be pursued and set these out.[393]

276. In all, these were the parameters of what POL actually asked Mr Jenkins to address in his witness statement of 9 March 2010. Mr Jenkins cannot fairly be criticised for following them.

The disclosure requests in July 2010

277. It appears that after the pressure to respond to the disclosure requests abated in March 2010, the prosecutors undertook little further work. Mr Jenkins met Professor McLachlan at Fujitsu's offices on 20 July 2010. Two days later, Mrs Misra's solicitors made a disclosure request to Mr Singh which it is important to set out in full: *"As a result of the meeting that took place between Charles McLachlan and Gareth Jenkins as directed by the judge, we now need to have: - access*

[385] In terms of the material provided to the defence, this included the audit data for the branch (encompassing raw audit data (see Item 4 referred to in FUJ00153084) and the over 400,000 lines of transactional ARQ data. The filtered NT event logs, the unfiltered NT event logs and the Callendar Square PEAK were provided by Mr Jenkins at Court (FUJ00156267).
[386] See also the handwritten record: "*Gareth Jenkins reviewed all txn data & events when providing txn analysis*" (FUJ00154689).
[387] POL00001643.
[388] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 428.
[389] POL00029406, p. 9.
[390] *"Clearly I cannot prove that nothing is missing from the logs"*, POL00001643, p. 5.
[391] Ibid, p. 2.
[392] Ibid, p. 4.
[393] Ibid, p. 11.

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to the system in the Midlands where it appears there are live, reproducible errors. - access to the operations at Chesterfield to understand how reconciliation and transaction corrections are dealt with. - ***access to the system change requests, known error log and new release documentation to understand what problems have had to be fixed****."*[394]

278. This disclosure request was read by Mr Singh, who sought *"urgent instructions"* from Mr Longman and Mr Tatford *"as to the access and information she is requesting in respect of the system in the Midlands and the operation at Chesterfield* ***and the error logs****."*[395] The disclosure request was shared more widely within POL. Mr Longman told Mr Singh that, "*Jarnail, I have spoken to a few people regarding the three points raised by Izzy Hogg."*[396] Mr Longman also sought clarification from Fujitsu as to how the defence had come to ask for this material: he contacted Ms Thomas and asked: *"Could you ask Gareth to explain in more detail as to how the three points raised by Izzy Hogg below came about."*[397] In response, Mr Jenkins explained that, "*Basically, he [Professor McLachlan] was asking to look at all system faults. I suggested that as we kept all testing and Live faults in the same system and that there were around 200,000 of them, then this wasn't going to get him far. He then suggested looking at the system changes and would like to see all changes that have happened to the system. Again, I don't think this will help and I don't know how practical it is for Fujitsu's Release Management to provide that. I think all we can do is ask the question.*"[398]

279. Mr Tatford advised POL on 28 July 2010 that the disclosure request should be refused and that the defence ought to make an application under section 8 CPIA.[399] This was reflected in an email sent by Mr Singh to Mrs Misra's solicitors later that day, which asserted that, *"these have been previously requested by you and our view is consistent. The prosecution do not have obligation to grant you access you require or are not prepared to disclose this material. However you are perfectly entitled to make a Section 8 application to the Court."*[400]

280. A number of important points arise from this episode:

a) **First**, the defence made this disclosure request *because* of information provided by Mr Jenkins. *He* provided information to the defence expert Professor McLachlan about system change requests, the known error log and new release documentation.
b) **Second**, Mr Jenkins explained clearly to POL that Professor McLachlan wanted to look *"at all system faults"*, that testing and live faults were kept on "*the same system"* and that there were *"around 200,000"* of these faults. This made it abundantly clear to POL that Fujitsu had a system for logging large numbers of live and test faults in Horizon. Mr Jenkins had evidently explained these matters to Professor McLachlan too. Mr Atkinson KC agreed that by conveying this information, Mr Jenkins had put it within the knowledge of the prosecutor.[401]
c) **Third**, this communication undermines any suggestion that Mr Jenkins was attempting, in Mrs Misra's case, to give the misleading impression that Callendar Square was the only known error that had affected Horizon. On the contrary, he was explicitly pointing the prosecution to the existence of a repository of information about other errors.
d) **Fourth**, to the extent that POL or Fujitsu did not want, as has been submitted at points in the Inquiry, to disclose in legal proceedings the existence of the Known Error Log (or even to deny that it existed[402]), it is clear that Mr Jenkins had no hesitation at all about referring to it to Professor McLachlan and to POL.

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[394] POL00055059 (our emphasis).
[395] POL00044999 (our emphasis).
[396] POL00055100.
[397] FUJ00153157.
[398] Ibid.
[399] POL00055118.
[400] POL00055126.
[401] Transcript, 19 December 2023, p. 138, ln. 1-5.
[402] See § 577 of the *Horizon Issues no. 6* Judgment.

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e) **Fifth**, at the time, the disclosure request, and Mr Jenkins' response to it, elicited little or no interest on the part of POL's prosecution team. The attendance note recording Mr Tatford's advice not to give the material stated that the defence was "*seeking exactly what they were seeking before.*"[403] The significance of the Known Error Log – and its potential relevance to POL's CPIA obligations – was ignored.

f) **Sixth**, when shown the material now, Mr Tatford told the Inquiry that, "*Well, I haven't – I obviously haven't considered this properly [...] I haven't thought this through [...].*"[404] He further conceded that the reference to the Known Error Log *"should have leaped out at me*".[405]

g) **Seventh**, by tracing the email correspondence, it becomes clear that Mr Jenkins informed POL that Fujitsu might be able to provide Professor McLachlan with the information about system changes sought in the disclosure request.[406] Indeed, by 18 August 2010, Mr Jenkins had spoken to his colleagues within Fujitsu and told them what he thought this exercise would involve, including the collation of PEAKs and Change Proposals ("**CPs**").[407] In other words, although Mr Jenkins did not think that this exercise would take things further in respect of Mrs Misra's case, there is no suggestion that he had concerns or was reticent about the possibility of providing PEAKs or CPs to POL if that was legally required.

h) **Eighth**, the only reason the exercise contemplated by Mr Jenkins in mid-August 2010 was not undertaken was that POL had already refused the defence disclosure request on Mr Tatford's advice.

i) **Ninth**, Mr Jenkins volunteered all of this information to Professor McLachlan, and then to POL. He did so without anyone from POL having explained to him what POL's CPIA obligations were, or whether Mr Jenkins personally had to discharge any cognate obligations. It is clear that Mr Jenkins volunteered this information without any legal framework having been explained to him.

j) **Tenth**, and this final point can hardly be overstated, it was POL, and POL alone, that had the burden of discharging its CPIA obligations. POL ought to have understood these obligations. POL lawyers should have considered the information provided by Mr Jenkins in light of *POL's* obligations before refusing the defence requests. POL should have asked Mr Jenkins or Fujitsu for further details in order to ascertain if this was a reasonable line of enquiry. This was an opportunity for POL to discuss or to make a properly formulated third party disclosure request to Fujitsu as envisaged by the CPIA Code of Practice and the Attorney General's Guidelines. At the very least, POL should have recorded, retained and revealed the information provided to them by Mr Jenkins since it was self-evidently relevant to Mrs Misra's case (and any future case which relied on Horizon data). POL ought to have recorded this information on the non-sensitive unused schedule and provided this schedule to the defence. POL should also have reviewed this schedule and disclosed to the defence what Mr Jenkins had said because it was plainly material which might reasonably be considered to undermine the prosecution case or assist the defence. POL failed to comply with the law in all of these ways. Mr Jenkins cannot be blamed for these failings. Mr Tatford, in his evidence to the Inquiry, accepted that important parts of the defence disclosure requests had been overlooked: "*I'd agree with that. Well, I certainly agree with it now. The problem that I faced throughout this case was that there were so many disclosure requests and I've obviously made mistakes, but that's the context. That's all I'm trying to say. As I said earlier, you've just shown that I failed my own test.*"[408]

Mr Singh, Mr Tatford and the approach to Mr Jenkins

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[403] POL00055118.
[404] Transcript, 15 November 2023, p. 153, ln. 18-19; p. 154, ln. 2.
[405] Ibid, p. 151, ln. 5.
[406] POL00175988.
[407] See FUJ00156216, which was an email sent by Mr Budworth to Mr Jenkins and others on this day, noting that "*Having spoken with Gareth on this matter I believe the requirement is to identify every counter release applied to live in the last 7 years and provide a spreadsheet that details the Tivoli Product name, the date live rollout commenced and a list of PEAKs and or CPs that the change addressed.*"
[408] Transcript, 15 November 2023, p. 158, ln. 6-12.

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281. At this point in the prosecution, despite what Mr Jenkins was being asked to do, there is no objective evidence in the communications that Mr Jenkins was regarded by either Mr Singh or Mr Tatford as an expert. There was no reference to the drafting of any letter of instruction or to Mr Jenkins being subject to expert duties. Rather, as set out above, there was a series of communications wholly at odds with any concept of Mr Jenkins being treated as though he were independent of the prosecution. In their evidence to the Inquiry, it became clear and was ultimately confirmed that neither Mr Tatford nor Mr Singh regarded Mr Jenkins as being an expert witness.

282. Any argument that despite not being considered or instructed as an expert in Mrs Misra's case (and not being informed as to the content of expert duties), that Mr Jenkins ought nonetheless to have independently understood the content of expert duties and applied them to the case, is unsustainable. The concessions by Mr Tatford that Mr Jenkins was not regarded as an expert when he became involved in the prosecution and that this was the position until his final statement, are conclusive as to this. As set out below, the evidence overwhelmingly demonstrates that at the point of his final statement in October 2010, Mr Jenkins was *still* not being treated, and interacted with, as though he were an expert. The fact that he gave evidence in Mrs Misra's trial without the prosecutor taking him through the preliminaries of establishing that he was giving evidence as an expert (for example, not taking Mr Jenkins through expert duties), *a fortiori* when his final statement lacked the required content of expert evidence, suggests that his ambiguous position (in the mind of the prosecutors) persisted even at the point at which Mr Jenkins was giving evidence.

283. As is clear, Mr Singh had no concept of what expert evidence was, still less the law which governs expert evidence. He suggested that he never regarded Mr Jenkins as an expert witness:

- "*No, well, at that stage, he wasn't considered as an expert. He was just more or less responding to the expert's report or enquiries, or their questions, if you like, because he was the only – he was put forward as the person who could deal with them. So he was – you know, he was like any other witness.*"[409]
- "[…] *he didn't come in as an expert, in the sense of an expert; he was an expert who was experienced in the system in itself because it's such a specialist system and he – assisting the prosecution, the defence and the court, into understanding how the system worked or the operation of the system. I think that's why and how he came into advising, he came in as somebody who knew the system well.*"[410]
- *"[I was] confused as to whether he came as an expert or as fact, because he was basically, literally assisting and assisting the defence expert, because the defence expert was not an expert on the Horizon system, if I can put it that way.*"[411]

284. Mr Singh's conduct of Mrs Misra's case provides the clearest evidence as to his incompetence. It raises questions as to how he came to be a senior lawyer and then the head of criminal law at POL and what this says about POL. Any suggestion that Mr Jenkins' evidence in Mrs Misra's case could be examined stripped of context and absent consideration of his communications with Mr Singh is not sustainable. Mr Singh was a grossly incompetent lawyer. If the question prior to this Inquiry was, *how was it possible* that so much could have gone wrong in Mrs Misra's case, then the answer was laid bare by Mr Singh's appearance before the Inquiry.

285. Mr Tatford made the following concessions in his evidence to the Inquiry, in respect of the prosecution approach to Mr Jenkins in Mrs Misra's case:

[409] Transcript, 1 December 2023, p. 31, ln. 11-17.
[410] Ibid, p. 26, ln. 22-25; p. 27, ln. 1-6.
[411] Ibid, p. 35, ln. 12-16.

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- "*He [Mr Jenkins] became involved, initially, in the case simply as a way of responding to the disclosure requests because the officer in the case was unable to deal with that. So a person at Fujitsu needed to be identified who could help with that and then he – by a process that is unclear to me, he was then presented to me as our expert. Now, I think I assumed that letters of instruction, and so forth, had been sent and that doesn't appear to be the case. But there was muddled thinking to do with the demanding exercise of complying with the disclosure requests, and that led to muddled thinking and a failure to follow the rules. I tried to follow the substance but I accept that the rules are there not just for form but also for substance, and the efforts I made were not adequate and the rules should simply have been followed. That would have been the proper way. But it started off in an unusual way, and that was the original cause of the problem.*"[412]
- *"I don't think I ever advised that he be an expert witness. I was – I don't remember how – it was essentially presented to me but I don't remember how that came about. It wasn't as a product of my advice but, as I concede, that was down to muddled thinking, for which I have to take overall responsibility.*"[413]
- *"But it started off in an unusual way, and that was the original cause of the problem. For instance, Mr Jenkins, on my advice, was providing a series of witness statements, which essentially were responses to interim reports by Professor McLachlan to try to assist him, because we had a flurry of these reports and I thought it important that it was set down in writing so that Mr Jenkins could be cross-examined on it in due course, if necessary, what his position was, so that there was in effect an audit trail, and it was clear what he was saying.* ***But that muddled beginning tarnished the thought process throughout Mr Jenkins' instruction and I regret that. It was a mistake****."*[414]

286. These concessions that the prosecution approach to Mr Jenkins at the outset was *"muddled"* and *"tarnished"* and that this remained the position "*throughout"* are evidently true and vitally important to understanding events from Mr Jenkins' lay perspective.

287. They also served to *further* demonstrate why Mr Tatford's suggestion in his written witness statement that he had made it clear to Mr Jenkins that he was under a duty to provide frank disclosure of Horizon problems to the defence expert, and that he took *"great pains"* in his conversations with Mr Jenkins to make sure he understood the duties of an expert witness, could not possibly be correct.[415]

288. It is clear on the barest of facts that Mr Tatford's suggestion that he had spoken to Mr Jenkins about expert duties, could not have been correct given the wholesale lack of *any* evidence that Mr Tatford and Mr Singh thought Mr Jenkins was an expert witness. There was not a hint of a letter of instruction having been prepared. The fact alone, that none of Mr Jenkins' five witness statements contained any of the necessary inclusions to constitute expert evidence, demonstrate the overwhelming likelihood that neither Mr Tatford nor Mr Singh had given any consideration to Mr Jenkins being subject to expert duties.

289. When confronted with the complete absence of evidence to suggest that anyone had considered expert duties in relation to Mr Jenkins, and the series of communications with Mr Jenkins which were inimical to how an expert should have been instructed, Mr Tatford resiled from his witness statement. He agreed that Mr Jenkins was *"never provided with a written document which met any of the requirements"* of an expert instruction.[416] He agreed that *"there's no documentary record which can be pointed to that confirms that Mr Jenkins understood any relevant expert*

[412] Transcript, 15 November 2023, p. 64, ln. 6-25; p. 65, ln. 1-2.
[413] Ibid, p. 129, ln. 7-13.
[414] Ibid, p. 65, ln. 1-17 (our emphasis).
[415] WITN09610100, first witness statement of Warwick Tatford dated 25 October 2023, § 90.
[416] Transcript, 15 November 2023, p. 56, ln. 20-25; p. 57, ln. 1-2.

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duties of which he was subject."[417] He also agreed that there is *"no documentary record which confirms that any prosecutor themselves, any part of the prosecution team, was satisfied that Mr Jenkins understood any of the relevant expert duties to which he was subject"*[418] And he agreed that, in relation to the 'necessary inclusions' for an expert report, he "*quite clearly didn't consider them properly, I can't give an explanation for that but clearly, I failed in that and […] that's a clear failing."*[419]

290. These concessions mirrored the findings made by Mr Atkinson KC, who concluded that *"[…] I have not seen in the material in this case [Mrs Misra's case] any letter of instruction, or comparable communication, by the Post Office to Mr Jenkins. Communications with him in writing appear to have been informal and brief, and at no point made any reference to the duties of either Mr Jenkins as expert or the Post Office as prosecutor in relation to material underlying or undermining his opinion. In the context of what appears to have transpired here, that is concerning."*[420]

291. It was ultimately clear from Mr Tatford's evidence that Mr Jenkins' witness statements did not contain the necessary inclusions to constitute admissible expert evidence because he was not, at the time, regarded as an expert witness providing expert evidence (despite being relied upon to respond to Professor McLachlan and to provide evidence of opinion).

292. Rather, Mr Tatford claimed that it was only in October 2010, when Mr Jenkins prepared his fifth and final witness statement, that he finally regarded Mr Jenkins as providing expert evidence: "*Because most of - until the last statement, all of those were responses to Professor McLachlan. It is important to bear in mind that there had been an abuse of process argument that had been dependent entirely on submissions made about responses and what the defence were saying were inadequate responses. I had undertaken, at that hearing, to ensure that the experts would work together. That's why we did it. I was essentially trying to ensure that the undertakings I gave in the abuse of process argument were fulfilled.* Q. *How does that explain the absence of any of the required content in any of the witness statements?* A. *Well, it should have -- they should have been in all of the witnesses and I thought of this point particularly when the final statement was forthcoming because, as I've said, the earlier ones were meant to assist. They were essentially answers to questions posed. And the idea, or my idea, was to have the final statement setting out all matters. That final statement should have complied properly with the Criminal Procedure Rules. It didn't, but that statement wasn't available until about two days before the trial and […]"*[421]

293. In other words, Mr Tatford sought to explain the absence of the expert declaration and the other necessary inclusions from any of Mr Jenkins' witness statements on the basis that it was only at the point of his final statement, dated 8 October 2010, that it became clear in his mind that Mr Jenkins was fulfilling the role of an expert or that this statement constituted expert evidence.

294. On this, Mr Tatford conceded that he had no actual memory of instructing Mr Jenkins as to the duties that apply to experts. In relation to the conference that took place at his Chambers on 5 October 2010 (and which Mr Jenkins, Mr Singh and Mr Longman attended), Mr Tatford was able only to say that: *"I **imagine** I did [instruct Mr Jenkins as to expert duties], because that's the sort of thing I would have done at that time in my practice […] but I don't have a recollection of that conference […] I have no specific recollection of that."*[422]

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[417] Ibid, p. 57, ln. 3-9.
[418] Ibid, p. 57, ln. 10-16.
[419] Ibid, p. 61, ln. 7-10.
[420] EXPG000004R, expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), § 413.
[421] Transcript, 15 November 2023, p. 70, ln. 4-25; p. 71, ln. 1-5.
[422] Ibid, p. 73, ln. 9-19 (our emphasis). This is an important, but only one, example of where there is a startling absence of internal POL attendance notes recording their interaction with Mr Jenkins across the case studies.

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295. Mr Tatford's evidence that he imagined that he explained expert duties to Mr Jenkins at the conference on 5 October 2010 was hopeful rather than credible. Quite simply, if Mr Tatford had gone through expert duties at the conference (because it had crystallised in his mind that Mr Jenkins' final statement now needed to be constituted as admissible expert evidence), it is inconceivable that he would not have noticed that the draft statement, sent to him the very next day, omitted any reference to expert duties, any of the other required content for expert evidence, and was in the form of a statement conforming to section 9 of the Criminal Justice Act 1967. Mr Tatford made no reference to any of these omissions and problems in the extensive comments he made on the draft statement. If Mr Tatford had time to add these comments to the body of the draft statement because there were points that he wanted Mr Jenkins to make in stronger terms, he had time to deal with the fact that the statement lacked the required content to make it admissible as expert evidence.

296. Furthermore, Mr Tatford accepted before the Inquiry that his attempts to get Mr Jenkins to change what he said in the statement were inconsistent with his belief that he may have told Mr Jenkins that he was subject to expert duties.[423] It is difficult to see how Mr Tatford could have explained expert duties (of which independence is central) to Mr Jenkins on 5 October 2010 and then acted entirely contrary to those duties the next day. More than that, Mr Tatford's attempts to change what Mr Jenkins had written were entirely in keeping with the way that he had treated Mr Jenkins until this point: not an expert in the legal sense and not someone to be treated as though he were independent of the prosecution.

297. In short, the evidence overwhelmingly suggests that there was never a point during Mrs Misra's case when it crystallised in Mr Tatford's mind that Mr Jenkins was giving opinion evidence about Horizon, and that this necessitated, as a matter of law, a profound change in how POL should approach him. The fact that Mr Jenkins gave oral evidence in Mrs Misra's trial several days later, without Mr Tatford taking him through the preliminaries of establishing that he was giving evidence as an expert (for example, by taking him through the expert duties imposed by the common law and reflected in the Criminal Procedure Rules), reinforces that there was an ongoing lack of clarity as to what sort of witness he was. This failure to go through the preliminaries is all the more conspicuous given that Mr Jenkins' statements did not conform to the requirements of expert evidence.

298. Mr Tatford ultimately accepted in relation to whether Mr Jenkins had been instructed as an expert that: "*I actually feel worse because it's become quite clear in the way that the evidence has properly been put before me that there are many failings that I had ignored on my part – and I perhaps created a rosier version in my memory that wasn't really there.*"[424]

299. Mr Jenkins did not acquiesce to many of Mr Tatford's suggestions as to how his final witness statement could be made stronger. For example, Mr Jenkins was unwilling to amend his statement to say that it looked as though Mrs Misra had stolen money rather than the losses being caused by incompetence.[425] At the time, Mr Tatford acknowledged that Mr Jenkins had been "*quite right to rebuff me when I have been asking too much.*"[426] Mr Tatford acknowledged in his evidence to the Inquiry that these examples of pushback by Mr Jenkins were *"to his credit"*.[427]

300. Mr Jenkins' willingness to push back on Mr Tatford's comments in 2010 is similar to the approach which he took to Mr Dilley's draft witness statement in Mr Castleton's case in 2006.[428] He refused to acquiesce to suggestions that changed points he regarded as important or which added things he would not say.

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[423] Transcript, 15 November 2023, p. 167, ln. 2; p. 168; ln. 7.
[424] Transcript, 15 November 2023, p. 202, ln. 13-18.
[425] Mr Jenkins pushed back by noting that *"[…] surely that is something for Post Office to show",* FUJ00123013, p. 17.
[426] FUJ00123042.
[427] Transcript, 15 November 2023, p 171, ln. 14.
[428] See § 110 of these closing submissions.

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301. Regardless of why Mr Tatford and Mr Singh did not address, head on, Mr Jenkins' status as a witness in Mrs Misra's case, the result was that it left Mr Jenkins exposed. If the Inquiry takes as read that Mr Jenkins was not instructed as an expert nor communicated with as an expert but nonetheless seeks to *carve out* his evidence in Mrs Misra's case and analyse it (as though (presumably) he were a witness of fact), then the objections to that course and the unfairness of it are plain. The paragraphs above demonstrate the extent to which Mr Jenkins was not being treated like a witness of fact by prosecuting counsel. As such, he cannot now be treated as though he was a witness of fact when what he was being asked to do, *inter alia*, was to respond to Professor McLachlan's reports and provide opinion evidence. He cannot be treated as a witness of fact in light of Mr Tatford's concessions that all of his statements ought to have been in the form of admissible expert evidence. In summary, it would be wrong and unfair, if the Inquiry accepts that Mr Jenkins was not instructed as an expert but then holds him to the standards and duties which experts are obliged to adhere to.

302. Finally, a basic legal point which POL completely ignored at the time is reiterated. The drafts of Mr Jenkins' statement of 8 October 2010, including the comments made by Mr Tatford within them and Mr Jenkins' responses, should have been recorded, retained and revealed. The CPIA Code of Practice (2005 version) stated in terms that the duty to retain relevant material extended to *"communications between the police and experts such as forensic scientists."*[429] That POL was not treating Mr Jenkins as an expert is no answer, because the Code also stated that *"final versions of witness statements (and draft versions where their content differs from the final version) should be recorded and retained."*[430] POL ought to have ensured that the drafts of Mr Jenkins' witness statement were recorded on the non-sensitive unused schedule and this schedule should have been disclosed to the defence. POL should have considered whether these drafts were material which might reasonably be considered capable of undermining the prosecution case or the defence. Had POL complied with these obligations, it is likely that the defence would have been provided with insight into Mr Jenkins' position and state of mind, just several days before their client's trial.

The trial

303. When he appeared before the Inquiry, Mr Jenkins was asked many questions about his oral (sworn) evidence at Mrs Misra's trial. These questions proceeded by suggesting that Mr Jenkins should have given different answers in this evidence from those he in fact gave, and that these different answers would have been "*complete answers.*" There is, as set out above, good, forensic reason to question this sort of retrospective, lawyerly reconstruction (in 2024) of what a complete answer might have been (in 2010).

304. The lawyerly exercise in 2024, informed by hindsight, legal knowledge and the bird's eye view that the Inquiry's disclosure affords, to posit answers encompassing issues *now* thought to be relevant or important to the question, contains a number of pitfalls:

a) **First**, the focus must be on what Mr Jenkins actually knew and believed at the time, in 2010, rather than everything he has learned in the subsequent 14 years.
b) **Second**, the focus must be on the actual question Mr Jenkins was asked at court in 2010, not a wider question (or an implied question) which was not in fact asked, or a different question which was not asked but which might have elicited a different response.
c) **Third**, an additional but necessary consideration is that questions may be open to interpretation. The focus must be on what Mr Jenkins thought he was answering at the time (and again not through the lawyerly interpretation of the question in 2024).

[429] § 5.4.
[430] Ibid.

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d) **Fourth**, Mr Jenkins had not been instructed as an expert. No one had discussed or explained to him how, in particular, the expert duty of disclosure might apply to him. His answers cannot (for all of the reasons set out above) be held to the standards which experts are obliged to adhere to, including *inter alia* the duty to disclose material which might reasonably be thought capable of undermining the reliability of an opinion, the duty to state where there exists a range of opinion, or the duty to give qualifications to an opinion.
e) **Fifth**, the oath that Mr Jenkins took at the start of his evidence was to tell *"the truth, the whole truth and nothing but the truth"*, but this requirement to tell *"the whole truth"* does not spell out, or import, the duties which experts are obliged to adhere to. Indeed, nobody at court ever took Mr Jenkins through any of these duties.
f) **Sixth**, the oath does not dilute the fact that Mr Jenkins was entitled to give evidence as to what he believed to be true (including that based upon his accumulated knowledge and/or what others in Fujitsu had told him). This is all the more important when his evidence was traversing matters of opinion and fact.

305. Furthermore, each 'complete answer' put to Mr Jenkins at the Inquiry proceeded from a false premise, because the information posited in the 'complete answer' was either already a matter of common ground between the prosecution and the defence in 2010, or was something which Mr Jenkins had already said in one of his five witness statements (or was something said elsewhere in his oral evidence).

306. There were three examples put to Mr Jenkins of 'complete answers' he should have given. The first relates to the analysis performed by Mr Dunks of the call logs from Mrs Misra's branch. The question actually asked at trial was: *"Did any of what you have read or of what you heard yesterday from Mr Dunks, did that cause you any concern as to your view that there is no evidence of any computer fault?"* Mr Jenkins' actual answer at trial was: *"No, I – I've not – I haven't got Mr Dunks' experience in examining call logs and things like that but I was quite happy with his comment that the level of calls from the branch were typical for other branches."* The 'complete answer' put to Mr Jenkins at the Inquiry was: *"I know that hardware faults can lead to accounting regularities, one needs to go through the Helpdesk call records very carefully to look for those hardware irregularities and then cross-compare them to the ARQ data, using that as a key to look for errors. I haven't done that and, in any event, I've only got 13 months' of data which is about half the relevant period."*[431]

307. This 'complete answer' does not correspond logically to the question Mr Jenkins was actually asked. Mr Jenkins was entitled to say *"no"* (i.e. *"I have no such concern"*), because there is nothing to suggest that Mr Jenkins believed that Mr Dunks' analysis of the call logs was wrong. Equally his answer was about Mr Dunks' view that call levels were *"typical"*. And even on this, Mr Jenkins' actual answer was a qualified *"no"*, because he made it clear that he did not have Mr Dunks' experience in analysing call logs.[432] In terms of the suggestion that a 'complete answer' would have volunteered additional information about how hardware irregularities can manifest themselves as errors in the ARQ data, Mr Jenkins had made this point in his exhibit to his statement of 9 March 2010 (his 2 October 2009 report about Horizon data integrity). Section 3.1.2 of this report had explained that equipment failures can leave traces in the NT event logs and that where a counter is physically replaced, *"there is a possibility that not all data has been successfully replicated to another system prior to this failure."*[433] As for the suggestion that a 'complete answer' should have volunteered that he had only analysed 13 months of ARQ data, this was not just common ground and well understood as between the defence and prosecution, but Mr Jenkins had made that point crystal clear throughout his written and oral evidence.

[431] Transcript, 27 June 2024, p. 142, ln. 14-21.
[432] Equally, the implication in questions to Mr Jenkins that the value of Mr Dunks' evidence was inherently questionable is misplaced. It was part of Mr Dunks' employment that he *routinely* gave this evidence.
[433] POL00401039.

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308. There is also a clear issue as to whether at the time this would have been regarded as significant in Mrs Misra's case. Mrs Misra's case was that she experienced *ongoing* losses caused by staff thefts and faults in Horizon. She was not suggesting that she had experienced one-off types of loss (still less the sorts of loss caused by a hardware failure). Additionally, as noted above, the NT events for the entire period were available, had been checked and were available to the defence.[434]

309. The second example of a 'complete answer' relates to the information provided to Professor McLachlan. The question actually asked at trial was: *"Have you been given any information from Professor McLachlan [about a particular fault]?"* Mr Jenkins' actual answer at trial was: *"Other than [Callendar Square], no."* The 'complete answer' put to Mr Jenkins at the Inquiry was that he should have included the following caveats: *"however, Professor McLachlan hasn't been provided with all of the records that are available to me",* and *"He has asked for, but has not been given, Fujitsu's records of known errors."*[435]

310. This 'complete answer' ignores that it was Mr Jenkins who, in July 2010, first told POL and Professor McLachlan about the Known Error Log and the existence of 200,000 recorded faults (in live and testing) on the Horizon system. It ignores that it was this information provided by Mr Jenkins which prompted Mrs Misra's lawyers to make the disclosure request referred to in the 'complete answer'. It ignores that it was POL which refused this disclosure request on the advice of Mr Tatford. Simply put, Mr Jenkins was not under any obligation to say that the defence had asked for and POL had refused disclosure of Fujitsu's records of known errors when all of this was already well known to the prosecution, defence and the Judge. Indeed, the fact that the defence did not have access to the same records was very much part and parcel of the defence at the trial. The 'complete answer' is detached from the reality that this was not just common ground but one of the grounds upon which the trial was being contested.

311. The third example of a 'complete answer' relates to how Horizon problems would manifest themselves to branch staff. The question actually asked at trial was: *"And if a computer problem led with [sic] the actual figures on the accounts ... would that problem manifest itself to the staff at the post office?"* Mr Jenkins' actual answer at trial was: *"Clearly, if there's a problem in the accounts then – and there were losses and things like that showing, I would expect the staff to be complaining to the Helpdesk to investigate what's gone on and that could – that might trigger an investigation by ourselves."* The 'complete answer' put to Mr Jenkins at the Inquiry was: *"Mrs Misra, I understand, did call the Helpdesk about shortfalls in her accounts. I've investigated an investigation by a member of the SSC staff and she, Anne Chambers, decided there was no sign of a system problem and so the call wasn't taken any further at that stage [...] Professor McLachlan and I haven't been able to check whether that investigation by Anne Chambers was adequate because the Horizon data that we've got begins in December 2006 and, therefore, it doesn't cover the period of those calls in February 2006. I haven't examined the call logs themselves but, even on what I know from Andrew Dunks' evidence, there were numerous calls regarding hardware failures, which I know from my experience can lead to accounting irregularities [...] I've given, a couple of days ago, Professor McLachlan the NT event log which might help about this possibility but he's only had it since the first day of the trial, I've not looked myself at it for any other signs other than the Callendar Square bug."*[436]

312. To say that this 'complete answer' is not an answer to the question actually asked is perhaps a statement of the obvious. The actual question was couched at a purely general level and made no reference to anything that had happened at Mrs Misra's branch. Yet the 'complete answer' inverts

[434] Mr Jenkins made this point clear in his paper on data integrity in Legacy Horizon, which stated that any "corruptions" in the data (for example caused by terminal failure) *"[...] will result in failures being recorded in the event logs which are held on the local hard disk for a few days for immediate diagnosis and also immediately sent through to the data centre where they are held for 7 years"* (POL00401039, p. 7).
[435] Transcript, 27 June 2024, p. 146, ln. 9-11, ln. 16-17.
[436] Transcript, 27 June 2024, pp. 147-149.

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this premise and presupposes that Mr Jenkins should have answered, at length and in careful detail, a different question which was not asked; a question about specific calls made by Mrs Misra and the details of the investigations that Fujitsu had undertaken in response.

313. But putting that important point to one side, the 'complete answer' (as crafted by counsel) ignores that all of the calls made by Mrs Misra and the details of the corresponding Fujitsu investigations (including the investigation by Ms Chambers) were already in evidence or in the hands of the defence. The detailed breakdown of calls had been produced by Mr Dunks in his witness statement of 30 March 2010.[437] Ms Chambers had concluded on 27 February 2006 that there was no evidence of a system error at Mrs Misra's branch: "*I have checked very carefully and can see no indication that the continuing discrepancies are due to a system problem. I have not been able to pin down discrepancies to individual's days or stock units because this branch does not seem to be operating in a particularly organised manner.*"[438] The defence therefore had the material upon which to ask questions (whether to Mr Jenkins or Mr Dunks) about Mrs Misra's telephone calls and the adequacy of Fujitsu's investigations.

314. Defence counsel did challenge Mr Jenkins that he had *not* looked into Anne Chambers' investigation ("*and have you bothered getting the information from them* [the SSC] *with regard to what was the problem?"*).[439] Mr Jenkins stated that he had looked the previous day to see what the problem was (because POL had not asked him to look at them before then).[440] However, counsel's follow up questions were about Mr Jenkins having looked the previous day rather than what he had or had not been able to find out.

315. As for the suggestion that a 'complete answer' would have included an acknowledgment that *"hardware failures"* can lead to *"accounting irregularities"*, the point is repeated that this was already in evidence because it was referred to in the report on data integrity in Legacy Horizon (annexed to Mr Jenkins' witness statement of 9 March 2010).

316. In terms of the submission that a 'complete answer' would have volunteered that the NT event logs had only been given to Professor McLachlan a couple of days earlier, and that Mr Jenkins had not looked at these logs for any BEDs other than Callendar Square, this is misconceived. As noted above, Mr Jenkins' statement of 9 March 2010 stated in terms that the Callendar Square bug was *"visible when looking at system events associated with the branch. The system events from 30/06/2005 to 31/12/2009 for West Byfleet have been checked and no such events have been found."*[441] The defence (including Professor McLachlan) were thus aware from that early point that the NT events had been obtained and checked.[442] They did not ask for them prior to trial. If the defence needed more time for Professor McLachlan to consider the NT events, that was matter for the defence to raise with the Judge prior to Professor McLachlan giving evidence. And stepping back, none of this would have arisen had POL instructed Mr Jenkins properly as an expert, because in those circumstances, all of the material that Mr Jenkins had consulted in the course of preparing an expert report would have been listed and disclosed.[443]

317. Moreover, Mr Jenkins confirmed to the Inquiry, after this 'complete answer' was put to him, that the NT events *had* been considered for BEDs other than Callendar Square in February 2010: *"A. I think I had looked at the events for anything else that was unusual back in February. Q. Okay. What do you mean, "unusual"? A. There are some events that you get sort of on a fairly regular*

[437] The witness statement is at FUJ00122854. The call logs exhibited to this statement are at POL00061793.
[438] POL00061793, p. 16.
[439] POL00029406, p. 66B.
[440] *"I've not been asked to look into those"*, Ibid, p. 66D.
[441] POL00001643.
[442] Mr Jenkins also mentioned the NT event logs in his email to Professor McLachlan on 8 March 2010: POL00054345.
[443] Had POL provided Mr Jenkins with a disclosure schedule (per the contemporaneous CPS practice relating to expert evidence), then all material which he had consulted would have been documented.

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basis, so I was looking for ones that I could see that would have caused a problem."[444] As noted above, this is consistent with the contemporaneous evidence that Mr Jenkins checked the entire four year period of NT events and had already referred to them in his oral evidence in Mrs Misra's case; they did not indicate any system problems.

318. This links to separate questions put to Mr Jenkins at the Inquiry that he ought to have used PinICLs, PEAKs and KELs in Mrs Misra's case in order to obtain some information that may have assisted in tracking down if a BED might have been causing her branch to lose money.[445] That said, Mrs Misra's case was that she had consistently lost money over a lengthy period of time. She did not indicate any symptoms of what she was seeing when using Horizon over this period and, in her own words, was *"making the figures up"* in terms of cash declarations from 2006.[446] She did not do any balancing and is understood not to have looked to see what cash the branch held.[447] The evidence before the Inquiry is that there was no known bug which caused money to be lost like this and which did not leave traces in the branch data.[448] The checks of the NT events for the branch had not revealed any system problem. In these circumstances, there is a question as to what going through PEAKs and KELs relating to other branches would demonstrate and what (in terms of the facts of Mrs Misra's case) this exercise would identify. As Ms Chambers explained in relation to Mr Castleton's branch: "*I am asked whether I considered whether any known bugs, errors or defects ("BEDs") might be causing the discrepancies. I did not work my way through a list of known errors. That was not my method of working, nor that of my colleagues. Once I had examined the available evidence and found something wrong, then I would consider whether it might be caused by a known system error, a user error or whether it was a new system problem."*[449]

319. These three examples of 'complete answers' illustrate the risks of isolating one answer or a part of it from a lengthy transcript, without considering the witness statements, all of the other oral evidence given at trial, or the decisions made by the prosecution about which the defence were fully aware. The contextualisation of the answers that Mr Jenkins gave demonstrates them to have been entirely proper (and complete) responses to the actual questions asked.

320. Instead of this approach, the Inquiry is respectfully invited to consider the overall balance of the evidence which Mr Jenkins *did* give in Mrs Misra's trial.[450] It is submitted that the things Mr Jenkins *did* say give to the lie to any suggestion that he was seeking to withhold problems, or to provide narrow answers, about Horizon. Rather the transcript demonstrates that, on a number of occasions, he was careful to limit what he could say in favour of the defence. For example:

a) He agreed that a computer system could not be perfect.[451]
b) He acknowledged the possibility of system failures in technology such as Horizon.[452]
c) He acknowledged that *"various problems"* with a complicated computer system are to be expected.[453]
d) He described Horizon failures described as *"corrupt storage"* and *"fatal error"* as *"routine."*[454]

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[444] Transcript, 27 June 2024, p. 149, ln. 5-10.
[445] Mr Jenkins explained in evidence that at the time, what he needed to do was a thorough review of the NT events "*which is what I did*" (Transcript, 27 June 2024, p. 27, ln. 14-15). He had not thought at the time of using PEAKs, PinICLS, KELs in this way but reflected these could have been used (Transcript, 27 June 2024, p. 27, ln. 6-20).
[446] POL00277768, p. 94.
[447] Ibid, p. 62.
[448] See, for example, Ms Chambers: *"I was not aware of any bugs, errors and defects that were causing money to be lost without them leaving any sign that a problem had occurred. In general, although, yes, of course there were bugs, errors and defects, they were not causing continual ongoing losses"* (Transcript, 26 September 2023, p. 30, ln. 19-24).
[449] WITN00170200, second witness statement of Anne Chambers dated 11 July 2023, § 52.
[450] The full transcript of Mr Jenkins' evidence is at POL00029406.
[451] Ibid, p. 8C.
[452] Ibid, p. 26H.
[453] Ibid, p. 48H.
[454] Ibid, p. 68F.

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e) He was careful not to overstate the weight that could be placed upon his evidence; for example, he caveated his conclusions as to whether there was even the *"slightest symptom of a computer fault"* at West Byfleet by confirming that "*I've been doing very sort of high level rough analysis on the stuff.*"[455]
f) He was clear that there were problems with Horizon that he would not have been made aware of at the time they arose, as indicated by the Callendar Square issue, which was then unknown to him.[456]
g) He accepted that his knowledge of what had happened at Callendar Square was derived from others and that he had not himself drawn down the data from that post office.[457]
h) He agreed that the Callendar Square issue was a *"quite serious problem"*[458], a *"failure of the Horizon system"*[459], a "*problem which has been created by the computer system itself*"[460], and an example of a *"failing by your computer… it is not incompetence by the desk clerk or postmistress, it is a failing by your computer system which has no human impact whatsoever."*[461]
i) He acknowledged that the Callendar Square issue had re-occurred in the same branch[462], that *"it could have been pre-existing long before"* September 2005, even by *"many, many years."*[463]
j) He acknowledged that he did not know whether errors in the Horizon system such as Callendar Square could have persisted undiscovered because a branch had not complained vociferously enough.[464]
k) He was taken to the relevant PEAK for Callendar Square[465], which stated that "*a few of these errors seem to occur every week at different sites."*
l) He agreed that in certain circumstances (such as the use of the fast cash button) it could be *"easy to make mistakes"* when using Horizon, *"very, very expensive mistakes."*[466]
m) Similarly, he agreed that his analysis of the data for West Byfleet revealed "*mismanagement of the financial running of this post office*" and *"financial mismanagement",* despite this being contrary to the prosecution case theory.[467]
n) He agreed that the information sought by Professor McLachlan was in the possession of Fujitsu or POL and with the proposition *"you have the lot, he has a little."*[468]
o) He agreed that what Professor McLachlan wanted to do was to carry out an independent investigation into the integrity of the Horizon system and that he was not aware of this ever having been done before.[469]
p) He explained that he had analysed the ARQ transaction data for Mrs Misra's branch between December 2006 and December 2007, some 430,000 lines of transactions, filtering them to follow the *"various hypotheses that Professor McLachlan has come up with."*[470]
q) He explained that he had checked the system events logs (NT events) for Mrs Misra's branch between 30 June 2005 and 31 December 2009[471], looking for the *"underlying root cause [of Callendar Square]…a host of time out waiting for lock events in the NT event log…there would be tens or hundreds or thousands of them all occurring in fairly close proximity."*[472]

[455] Ibid, p. 58E.
[456] Ibid, p. 90G.
[457] Ibid, p. 106B, 114A.
[458] Ibid, p. 95D.
[459] Ibid, p. 88G.
[460] Ibid, p. 106H.
[461] Ibid, p. 91B.
[462] Ibid, p. 96E.
[463] Ibid, p. 97G.
[464] Ibid, p. 98A.
[465] Ibid, p. 106G.
[466] Ibid, p. 78H.
[467] Ibid, p. 115B.
[468] Ibid, p. 61D.
[469] Ibid, p. 61A.
[470] Ibid, p. 4H.
[471] Ibid, p. 51B.
[472] Ibid, p. 51F.

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r) He referred to and was candid about Fujitsu's PEAK system for tracking and monitoring faults; that it was used by third and fourth lines of support; and in response to the question *"It is not just engineers, we are talking about fairly high up the investigation in regards to failings of the computer?",* his response clearly indicated that Horizon encountered complex, non-routine problems: *"The – these are things that aren't just scheduling engineers and repeat problems, yes."*[473]
s) Having disclosed the existence of the known error log to Professor McLachlan and in his emails to POL, he mentioned it again in his oral evidence.[474]
t) He referred to the *"detailed trace logs"* from the counters that are available to *"enable the things to be investigated."*[475]
u) He accepted that there could be other problems with Horizon (beyond Callendar Square) that he was unaware of.[476]
v) With conspicuous candour, he stated *"I've no way of knowing whether the money loss was due to theft. I don't even know that money was lost."*[477]

321. Viewed overall, the transcript of Mr Jenkins' evidence demonstrates that he was cautious about the limits of the evidence he could give; that he was willing to give evidence inconsistent with the prosecution case theory; and that he would not say (when invited to by the prosecution) that he could rule out a computer problem as having caused the discrepancies experienced by Mrs Misra. He went so far as to say that he did not even know if money was lost. Mr Tatford acknowledged in his evidence to the Inquiry that this *particular* observation by Mr Jenkins was *"scrupulously fair."*[478] Standing back, Mr Jenkins' evidence was in several respects not helpful to the Crown's case.

322. The issue of Mr Jenkins' relationship with POL was also explored in his evidence. The jury knew that he was employed by Fujitsu and that Fujitsu was in a contractual relationship with POL.[479] The jury knew that there were commercial considerations that meant Mr Jenkins' time had to be paid for.[480] They knew that Mr Jenkins *"[relied] upon what I've been asked to do by the Post Office in support of this."*[481] They knew that Fujitsu had a reputational interest in Horizon (*"we definitely do not want to give the Post Office a dodgy system. It is part of our reputation that the system is sound"*).[482]

323. After the close of the prosecution case, and before Mrs Misra gave evidence, the defence renewed its application to stay the proceedings. This, again, was on the basis of material which POL had not disclosed. The grounds included that the information which underpinned the Callendar Square PEAK had not been disclosed and that Mr Jenkins' evidence was premised upon the PEAK, not the underlying information, and that there could be other problems in Horizon which had not been investigated. It is therefore clear that Mrs Misra's own lawyers understood clearly, at the time, the limits of Mr Jenkins' evidence. The Judge, however, ruled that these were matters the relevance of which the jury was *"eminently well suited"* to form a judgment about.[483]

324. That these matters were clear to the defence and the Judge is important. It was suggested to Mr Jenkins when he appeared before the Inquiry that Mrs Misra was convicted on the strength of his evidence (*"she was convicted on the strength of your evidence"*[484]*; "her fate would turn on what*

[473] Ibid, p. 94D.
[474] Ibid, p. 96C.
[475] Ibid, p. 104B.
[476] Ibid, p. 123B.
[477] Ibid, p. 124E.
[478] WITN09610100 first witness statement of Warwick Tatford dated 25 October 2023, § 93.
[479] POL00029406, p. 60B.
[480] Ibid, p. 64B.
[481] Ibid, p. 66F.
[482] Ibid, p. 133F.
[483] Ibid, p. 27D-E.
[484] Transcript, 28 June 2024, p. 36, ln. 13-14.

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you said"[485]). Attempting to personify in Mr Jenkins everything which went wrong in Mrs Misra's trial is unfair and inaccurate. It obviates the errors made by POL during her investigation, prosecution and trial. In fact, consideration of all of the transcripts in her case suggests that there were different strands to the prosecution case (including, for example, the evidence from her successor that he had not encountered the sorts of problems Mrs Misra said that she had and that it was inconceivable that she would have continued to run the business with the losses she said she was accruing). This is also borne out in the prosecution closing speech which dealt with the three bases upon which Mrs Misra explained the losses, including those alleged to have been sustained by theft and incompetence. Mr Jenkins in fact featured relatively little in the prosecution speech.

Disclosure of the Receipts and Payments Mismatch bug

325. Much has been made of Mr Jenkins not mentioning the Receipts and Payments Mismatch bug ("**RPM bug**") in the course of Mrs Misra's trial. In his evidence to the Inquiry, Mr Jenkins was emphatic that, to him as a software engineer, it was not "*logical"* to connect a bug which occurred in Horizon Online in 2010 to a case about losses which had occurred a number of years earlier when the operating system was Legacy Horizon.

326. In his written evidence, Mr Jenkins said: "*The Receipts and Payments bug was a Horizon Online bug and could only have affected data produced after Horizon Online was in use at a branch. It was a completely different software system to Legacy Horizon. This distinction between the two systems was fundamental*."[486] In his oral evidence, Mr Jenkins reiterated the point: *"Q: [...] so it didn't occur to you to reveal it [the RPM bug] but it didn't occur to you to ask whether you should reveal it? A. No, it just seemed so totally illogical to me. Q. You didn't know how the legal system worked -- A. I -- Q. -- you tell us -- A. I assume the legal system had some sort of logic to it. I still don't understand why the legal system would think that I should be revealing problems to do with Horizon Online in Legacy Horizon. Okay, I understand now, having been told that I should have considered it but it just doesn't actually make an awful lot of sense to me as a technician."*[487]

327. Mr Jenkins' answers demonstrate that, in 2010, he was (unsurprisingly) looking at the RPM bug through a technical lens which rendered it (to the technician) irrelevant to Mrs Misra's case. That is, there was no cause and effect; the RPM bug could not be a cause of Mrs Misra's problems, so it did not occur to him to mention it. Questions were put to Mr Jenkins as to why he had not sought advice as to the disclosure of the RPM bug, but it was clear that seeking advice never occurred to him, since in his mind, there was not the slightest possibility, on first technical principles, that it could explain the losses Mrs Misra had experienced.

328. The fact that Mr Jenkins was looking at these issues through a purely technical lens is an unsurprising product of POL's approach. POL had not provided him with any help or assistance about the legal lens he should apply (to opposite effect he had only been misinformed as to his role). It reflects who he was. It reflects his decades-long professional career. It is also a product of the absence of expert instructions which meant there was no mutual understanding as between POL and Mr Jenkins as to what might be legally relevant.

329. If Mr Jenkins' perspective was the technical one, the legal perspective on the disclosure of the RPM bug can be tested by reference to POL's lawyers, Mr Wilson, Mr Singh and Ms McFarlane. Mr Wilson was sent Mr Jenkins' note about the RPM bug dated 29 September 2010 entitled 'Correcting Accounts for "lost" Discrepancies' and the undated note entitled 'Receipts/Payments Mismatch issue note'.[488] Mr Wilson was sent these by Mr Simpson (on 8 October 2010), who

[485] Ibid, p. 3, ln. 8-9
[486] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 458.
[487] Transcript, 27 June 2024, p. 48, ln. 20-25; p. 49, ln 1-8.
[488] Both of these notes are at POL00028838.

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worked in POL's security team, because of Mr Simpson's concern around the solutions in the latter note: *"....one or more of which may have repercussions in any future prosecution cases and on the integrity of the Horizon Online system."*[489]

330. Mr Wilson forwarded the two notes to both Mr Singh and Ms McFarlane the same afternoon.[490] In his evidence to the Inquiry, Mr Wilson said that he was *"pretty sure"* that he would have *"discussed"* it with them.[491] However, Mr Wilson confirmed that he took the decision at the time that the RPM bug was not disclosable in Mrs Misra's case, and he accepted that this was the wrong decision.[492]

331. Mr Jenkins' note of 29 October 2010 set out a proposal for the correction of the data for each branch affected by the RPM bug, by adjusting the appropriate opening figures and BTS data. This would require the checking of proposed changes on a test system. Thereafter, Mr Jenkins noted that Fujitsu would "*need to agree a timetable with Post Office Ltd to correct the other branches and ensure that this is communicated with the Branches to ensure that everyone involved is happy*".[493] That is, Mr Jenkins plainly foresaw the process of correcting the effect of the RPM bug as one which entailed the consent of both POL and the affected SPMs (and this was not the solution which was opted for). His note did not refer to any ongoing prosecutions.

332. The undated 'Receipts/Payments Mismatch issue note' appears to have been written from the internal POL perspective.[494] It was clearly not a verbatim minute of a meeting between POL and Fujitsu. As Mr Jenkins confirmed, and as is evident from the contemporaneous records, there was not in fact a single face to face meeting at which everyone attended, but rather a series of calls about the RPM bug.[495] There is no evidence that Mr Jenkins was ever sent the 'Receipts/Payments Mismatch issue note' at the time.

333. Mr Wilson, in his evidence to the Inquiry, suggested that POL's criminal lawyers would have been *"pretty shocked"* at the three proposed solutions set out in the 'Receipts/Payments Mismatch issue note.'[496] Despite that purported shock, there is no suggestion that POL recorded or retained any material relating to the RPM bug pursuant to its CPIA obligations. There is no suggestion that POL revealed this material to Mr Tatford as POL's prosecuting counsel. None of this material was recorded in the unused schedule and it was not therefore disclosed to the defence. Indeed, there is no evidence that any of this material was disclosed in any subsequent POL prosecution which indicted conduct during a period when an SPM defendant was using Horizon Online.

334. Despite (a) this catalogue of breaches of the law, (b) that POL's Head of Criminal Law was, in October 2010, aware of the RPM bug and decided that it was not disclosable, (c) Mr Singh, POL's future Head of Criminal Law, being aware of the RPM bug in October 2010 (and having seemingly saved and printed Mr Jenkins' paper about it[497]), (d) numerous senior POL technical and legal staff being aware of the RPM bug, across every department relevant to POL's investigations and prosecutions, it was Mr Jenkins, a non-lawyer who had not been told anything about expert duties or the legal framework for disclosure in criminal proceedings, whom Mr

[489] POL00055410.
[490] Ibid.
[491] Transcript, 12 December 2023, p. 108, ln. 19; p. 109, ln. 2-3.
[492] Transcript, 12 December 2023, p. 113, ln. 15-16.
[493] FUJ00154231.
[494] For example: *"We have asked Fujitsu why it has taken so long to react to and escalate an issue which began in May. They will provide feedback in due course."*
[495] See POL00169845 (4 October 2010); POL00169848 (6 October 2010); POL00169851 (8 October 2010). Whilst the calendar invites for these calls attached different documents they did not attach the 'Receipts/Payments Mismatch issue note'.
[496] Transcript, 12 December 2023, p. 109, ln. 7-8.
[497] POL00028838 .

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Clarke (in his advice of 15 July 2013), and then POL, effectively blamed for the RPM bug not having been disclosed in Mrs Misra's trial.

335. The blame attached to Mr Jenkins (from 2013 onwards) is brought into even sharper relief by events after October 2010. The three options set out in the 'Receipts/Payments Mismatch issue note' were circulated widely within POL. On 15 November 2010, for example, the options were emailed as part of an invitation to a meeting; the *"required attendees"* included Mr Hulbert, Mr Burley, Mr Ismay, Mr Trundell and Mr Russell. These individuals and others were being involved because "*we are looking for you as senior stakeholders to agree this approach as a way forward."*[498] On 4 March 2011, an email to Ms Sewell entitled 'Receipts and Payments issue' referred to POL's response to the RPM bug, the letters being sent out to affected branches, and the fact that *"Mike G, Mike Y and Andy M"* had been taken *"through the detail"* the week before. From this email, it can be inferred that two successive Chief Information Officers at POL (Mr Young and Ms Sewell) were briefed about the RPM bug in early 2011. And in June 2013, when Second Sight asked the question of who in POL knew about the RPM bug, Ms Sewell was able to state: "*I don't know if it went higher than Mike, Andy Mc also managed the service at the time and if I remember correctly Mark Burley was also involved. I can't say whether we said anything to the press.*"[499]

336. Despite knowledge of the RPM bug reaching those in senior and executive team positions (across legal and technical teams) in 2010 and 2011, Mr Singh, in his email of 8 January 2015, sent to a number of people within POL, denied knowing about it.[500] This is considered in greater detail below.

337. As noted in section 2 of these submissions, POL's duties under the CPIA were indivisible across all of POL's divisions and departments. The organisation as a whole had a duty to record, retain and reveal relevant information in its possession, regardless of which arm of POL possessed it.[501] POL was regularly in receipt of information from Fujitsu about BEDs which caused discrepancies in branch accounts, and not just the RPM bug.[502] POL was required to sign off each new software release of fixes and functionality for both versions of Horizon.[503] Indeed, when Mrs Misra's lawyers made the disclosure request in July 2010, Fujitsu noted that POL already had, in its possession, *"detail on all system changes"* because POL *"have to sign off all the changes."*[504] POL's failure to comply with its CPIA obligations in respect of the RPM bug in Mrs Misra's case was therefore consistent with their wholesale failure (for more than a decade) to comply with its CPIA obligations in respect of the mine of information about Horizon problems that Fujitsu regularly shared.

The failure to disclose 'body parts'

338. In addition to the alleged failure to disclose information about the RPM bug, it was put to Mr Jenkins in his evidence to the Inquiry that, during Mrs Misra's trial, he *"threw mud in the jury's eyes"* by failing to tell them about certain *"body parts that were stitched into Horizon",* which together comprised a so-called *"Frankenstein's monster"*.[505] These five "body parts" were said to be (a) cash accounts, (b) remote access, and (c) bad error handling in the EPOSS Code, (d) the EPOSS code itself, and (e) hardware failure. Each is addressed in turn in the paragraphs that follow.

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[498] POL00294684.
[499] POL00029618.
[500] POL00169386. This was in the context of the BBC Inside Out request for an interview.
[501] Transcript, 6 October 2023, p. 104 ln. 15-25; p. 105, ln. 1-8.
[502] Specific examples include the Callendar Square bug (FUJ00083721), the remming out bug (FUJ00121071), the Craigpark bug (FUJ00155252), the RPM bug (FUJ00081137) and the suspense account bug (FUJ00083375).
[503] WITN00460100, first witness statement of Gareth Jenkins dated 6 February 2023, § 39.
[504] FUJ00153170.
[505] Transcript, 28 June 2024, p. 4, ln. 10-18.

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Cash accounts

339. The first body part was said to be cash accounts. Questions put to Mr Jenkins about problems in Horizon's cash accounts relied entirely on the review of PinICLs, PEAKs and KELs in the expert report of Professor Cipione and the tolerance of cash account error in Acceptance Incident 376 ("**AI 376**"). Yet the technical relevance of this material to the issues in Mrs Misra's case is opaque and unexplained. Asides the general point, that these questions presupposed that Mr Jenkins knew about or attached the importance to these matters which it is *now* suggested they bear:

a) **First**, it was suggested to Mr Jenkins that page 132 of Professor Cipione's report demonstrates in relation to BEDs apparent from PinICLs and PEAKS that *"we're not just talking about rollout, we're talking about going into the early 2000s here."*[506] This was incorrect: Professor Cipione stated in his report that his analysis was concerned only with the roll-out period, and not beyond that.[507] Indeed, Professor Cipione's review in fact stopped midway through the roll-out in December 2000, nearly five years before the start of the indictment period in Mrs Misra's case. No suggestion has been made as to any issue identified by him that might account for ongoing losses such as those Mrs Misra says she experienced a number of years down the line.
b) **Second**, AI 376 occurred in 2000, so again provides no technical assistance in explaining the ongoing losses from 2005 onwards for which Mrs Misra was prosecuted.
c) **Third**, AI 376 only affected the accuracy of POL's back-end accounts, not the accuracy of Horizon branch accounts (the technical documentation about AI 376 noted that *"transactions with missing attributes are correctly recorded on the cash account"*). [508] The data Mr Jenkins examined in Mrs Misra's case was extracted from Fujitsu's audit server, not POL's back-end accounts, and so would have been unaffected by AI 376.
d) **Fourth**, in any event, as Mr Jenkins explained in his evidence, he had no involvement in the detail of AI 376 in 2000 (or at any point thereafter): *"I was aware that there were a number of problems but I wasn't involved in the detail of the problems that were actually occurring. My role at that point was with the agent's side of things."*[509]
e) **Fifth,** as a part of the changes made by the Impact project**,** the Branch Trading Report replaced the Cash Account Report by late 2005.[510] This involved simplification of EPOSS Reconciliation by removal of the cash account. It was indicated that this was a complex area but was now simplified.[511] Because the cash account had been removed by late 2005, it provides no technical assistance in explaining the losses for which Mrs Misra was prosecuted.

Remote access

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[506] Ibid, p. 9, ln. 5-6.
[507] See EXPG0000001, expert report of Professor Charles Cipione dated 14 September 2022, § 2.4.7: *"The information I have been provided with are primarily contemporaneous documentation and data that were created in the period 07 July 1996 to 31 December 2000"* and § 2.7.2: *"As the documents provided only relate to the period 1996 to 2000 my review solely concerns the roll-out of the Legacy Horizon IT System, not that of subsequent iterations of the system (e.g., Horizon Online)."*
[508] See POL00030391 and the summary of AI 376 in § 1.1, which states (our emphasis): "*the TIP derived cash account does not equal the electronic cash account created by Pathway and transmitted to TIP due to a data integrity fault created at the outlet which prevents the transmission of the detailed transactions affected by the fault."* §1.2 (our emphasis): "*In certain circumstances transactions are recorded at the outlet with a missing attribute, i.e. start time and mode. At the end of each day, Pathway's TPS harvester polls the transactions from the outlets and validates them before they are passed to TIP. Any transactions which have missing data attributes will fail this validation and will not be passed to TIP in the individual transaction file. Pathway also compiles a cash account locally on the outlet system which is then polled from each outlet and passed to TIP along with the individual transaction file.* ***Transactions with missing attributes are correctly recorded on the cash account*** *and are passed from the outlet, via the TPS harvester into TIP. One of the processes currently performed by TIP is to derive a cash account from the daily transaction files and compare this with the cash account received from Pathway. This process - which cannot be sustained by POCL once roll out commences- has revealed differences as a result of the above incident."* See also the evidence of Mr Oppenheim, Transcript, 26 October 2022, p. 124, ln. 10-19, which is that the response to AI 376 was about ensuring that TIP reconciliation controls meant that *"the transactions and data recorded at the counter, matched the data in POL back end systems".*
[509] Transcript, 28 June 2024, p. 7, ln. 23-25; p. 8, ln. 1.
[510] POL00038916, p. 70, § 2.5.1.4.2.
[511] Ibid, p. 73, § 2.5.1.5.5.

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340. The second body part was said to be remote access. It was put to Mr Jenkins that *"the truth is that you knew that injecting [transactions] at the counter was tampering with branch accounts and you knew that, if you admitted to that, it would not help your position, because you had been providing witness statements and giving evidence against Seema Misra, and yet you knew that your Fujitsu colleagues not only could but did tamper with branch accounts, didn't you?"*[512] It was put that: *"You knew, Mr Jenkins, as any sensible person would, that it was essential for the safety of prosecutions to have a tamper-proof evidential chain when presenting ARQ data in court [...] you knew, as everyone in the SSC did, that the practice of injecting transactions at the counter was wholly contrary to being able to rely on Horizon as a source of truth."*[513] It was also put that: *"Failing to tell the court that you knew SSC were injecting transactions at the counter was failing to tell the whole truth, wasn't it, Mr Jenkins?"*[514]

341. This is a paradigm of the sort of question asked of Mr Jenkins replete with hindsight and based upon an issue which has only assumed great significance long after 2010. The assumption that he (or any non-lawyer) untrained in evidence would have known it is essential to have a 'tamper-proof' chain of evidence (or that remote access might be regarded as a form of tampering in relation to evidence) is highly questionable.[515] Any insinuation that Mr Jenkins was part of some considered, broader effort to keep remote access in Legacy Horizon (whether at the counter or correspondence server) a secret, either at Mrs Misra's trial or any other time, is without foundation. In fact, he appears to have been the only person (prior to the GLO proceedings) to have openly confirmed its existence (to the public at large) when he did so in his statement in the case of R v Wylie.

342. The issue of remote access is dealt with in greater detail in section 7 of these submissions. In summary, Mr Jenkins did not have rights of remote access.[516] He did not use it as part of his own work and did not have first-hand knowledge of the procedures which accompanied its use[517]. There is almost no evidence in the vast amount of material provided by the Inquiry which suggests that he had any involvement in the operational use of remote access. Indeed, there is a single email that predates Mrs Misra's trial which links Mr Jenkins to remote access. Mr Jenkins referred to this email in his fourth witness statement to the Inquiry.[518] In this email, which dates from 2007, Ms Chambers refers to a possible case for *"writing a corrective message at the counter"* in relation to a particular problem she was dealing with.[519] As Mr Jenkins noted, there is no reply to this email and the associated PEAK does not mention him.[520] It is unsurprising that Mr Jenkins cannot recall now what he would have understood Ms Chambers was proposing in 2007, or whether he would have taken her email as distinguishing between remote access at the counter or replication through the correspondence server to the counter.[521] Nor is it surprising

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[512] Transcript, 28 June 2024, p. 16, ln. 20-25; p. 17, ln. 1.
[513] Transcript, 28 June 2024, p. 17, ln. 8-16.
[514] Transcript, 28 June 2024, p. 17, ln. 23-25.
[515] It is not clear what legal test or legal principle it is actually being suggested applies here. Asides that, the mere fact of remote access being possible would not render evidence from a computer system inadmissible.
[516] The use the term "remote access" in these submissions refers to what has sometimes been called substantive remote access, i.e. Fujitsu's ability to inject transactions and data which had an impact on branch accounts (as opposed, for example, to read-only remote access).
[517] The solution proposed in relation to the Receipts and Payments Mismatch bug was not like the sort of remote access used under Legacy Horizon to insert data. See Transcript, 27 June 2024, p. 105, ln. 19-25: Gareth Jenkins: *"[....] what we would have had to do is we would have had to develop a specific bit of code to actually make those sort of changes to those affected branches and* ***so it wouldn't have been using any of the regular remote access type facilities that we had. So it would have been a special bit of code that would have been developed and tested specifically for that purpose. But, again, that wasn't the way that we went.***"
[518] WITN00460400, fourth witness statement of Gareth Jenkins dated 29 April 2024, § 106.
[519] FUJ00142197.
[520] This PEAK (PC0152014) is at POL00023765.
[521] Indeed, it is of note that before this Inquiry, the phraseology relating to access at the counter has been used to denote remote access at the counter or the correspondence servers (or to access at the correspondence server affecting the branch account in the same way). See Mr Oppenheim's evidence: *"Q: Thank you. Can we look at – that can come down, thank you – something which is the reverse of – to some extent the reverse or the obverse of what we have just been looking at, namely remote access by ICL Pathway to systems to make changes to them at a counter level, without the relevant subpostmasters' knowledge and without the relevant subpostmasters' permission. To your knowledge, did Pathway have the ability to obtain such remote access without the relevant subpostmasters' knowledge or permission? A: No. Let me give you a little bit of – perhaps a longer explanation than you want. [...] Now, there was no ability to get access into a branch PC, but what there was was a possibility to get into the correspondence server, make an entry in the correspondence server, which would*

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that, over three years later, when he gave evidence in Mrs Misra's case, he did not volunteer evidence about this email or about remote access.

343. As Mr Jenkins said, *"the concept of injecting messages was not something that occurred to me when I was doing that [giving evidence]."*[522] It is difficult to see why what Ms Chambers told him in 2007 would or should have occurred to Mr Jenkins in 2010, in relation to Mrs Misra's case. This line of questioning is also premised, in part, upon the idea that *ongoing losses* in accounts could in some (unexplained) way be linked to remote access. There is no evidence of this. As Mr Jenkins stated (in relation to 2010): "*I understood then that remote access by Fujitsu was an exceptional and regulated course. There was nothing in Mrs Misra's case to have suggested that a need for remote access had ever arisen or that it could in any way explain ongoing losses in the region of £70,000. It was just not something that I had considered*."[523] As he indicated in his evidence to the Inquiry, it is also Mr Jenkins' recollection that he asked for any PinICLs/PEAKs associated with the West Byfleet branch. There is nothing to suggest that remote access had ever featured in any such records.[524]

344. Furthermore, the premise of the question that Mr Jenkins had engaged in a cover-up because he knew that he had been making statements and would know *"that it was essential for the safety of prosecutions to have a tamper-proof evidential chain when presenting ARQ data"*[525] is far-fetched in the context of a case where there was nothing to indicate to Mr Jenkins that remote access was at all relevant. Equally, there is no evidence (as developed in section 7 of these submissions) that Mr Jenkins knew that the SSC used remote access without leaving evidence of their doing so in the audit data.

Bad error handling in the EPOSS code

345. The third body part alleged was that of bad error handling in the EPOSS code. The allegation appeared to be that Mr Jenkins should, in his evidence in Mrs Misra's case, have mentioned bad error handling in the EPOSS code. Mr Barnes of Fujitsu was asked to address this issue in his evidence to the Inquiry and explained that it could lead to *"unintended consequences"* or *"silent failures"* which were difficult to detect, and which *"may create potentially incorrect results."*[526]

346. To address this allegation, it is necessary to set out (rather than summarise) the technical evidence that Mr Barnes in fact gave to the Inquiry. He said: *"[...] we just spotted cases where the error handling was not as good as it could have been, which we tried to eliminate over the years. So sometimes calls to write out a message would fail silently, though as I mentioned before, though silently to the code, you always get a red event written into the Windows event log, so you can -- so the postmaster wouldn't be directly aware of the failure but analysis of the logs after the event would show the problem. In my opinion, it would be far better if, when something like this went wrong, immediately the software should abort and the postmaster should just be told "An error has occurred, please contact the Helpdesk", or something like that. So the error handling wasn't as good as it could have been if designed properly from the start, but that's not to say that the*

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then propagate back to the branch, so the effect would be the same" (Transcript, 26 October 2022, p. 37, ln. 1-2; p. 38, ln. 1-19). Mr Simpkins in his evidence to the Inquiry: *"Also, the counter node 1 was also called the Gateway Counter. That had a remote access up to the data centre. So that was the – Q. To the correspondence server? A. Correct. So, in the data centre, we had correspondence servers that that counter also replicated the messages to"* (Transcript, 17 January 2024, p. 10, ln. 9-16).

[522] Transcript, 28 June 2024, p. 21, ln. 2-3.

[523] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 473. Equally when Mr Jenkins (in his witness statement in Mrs Misra's case of 8 October 20210) addressed Professor McLachlan's hypothesis about external systems across the wider Post Office Limited Operating Environment providing incorrect externally entered information to the Horizon accounts through system or operator error outside Horizon, he noted that Professor McLachlan had clarified this by adding: *"For example, incorrect transaction corrections are submitted from the central systems for acceptance by the sub post master."* In other words, the focus was on transaction corrections (which were the most common means by which POL could, externally, impact the accounts of a branch).

[524] Transcript 27 June 2024, p. 131, ln. 17-21.

[525] Transcript, 28 June 2024, p. 17, ln. 8-11.

[526] Transcript, 28 June 2024, p. 21, ln. 25; p. 22, ln. 1-25.

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evidence wasn't there to spot the problem after the event because we get information in the Windows event log, et cetera. So what I'm saying is the error handling, in an ideal world, could have been done much better but, nevertheless, it's not to say that you can't detect the problem, because you can […]"[527] Later in his evidence, Mr Barnes reiterated that these kinds of failures would be *"silent to the postmaster. As I say, information is available in the event log. It would be available to a diagnostician, looking at it, but silent to the postmaster."*[528]

347. As noted above, the system events logs (i.e. NT events) for West Byfleet branch for the whole of the indictment period were examined prior to trial. Mr Barnes was clear that it was exactly this analysis that would reveal any 'silent failure' *("analysis of the logs after the event would show the problem", "information is available in the event log"*). No evidence of any such failure was identified by Mr Jenkins or Professor McLachlan.

The EPOSS code

348. The fourth body part was said to be the EPOSS code itself. It was suggested that Mr Jenkins should have disclosed to the court in Mrs Misra's case problems with the EPOSS Code. Yet the only examples of such problems that were put to him all derived from Professor Cipione's expert report. For the reasons set out above, Professor Cipione's analysis, which stops in late 2000, does not assist in understanding the ongoing losses Mrs Misra experienced.

349. No foundation was put to Mr Jenkins to demonstrate what he knew about these early problems in the EPOSS code or to demonstrate why they might have been relevant to Mrs Misra's case. Mr Jenkins was not directed to any contemporaneous material suggesting that he had knowledge at the time, nor that he acquired this knowledge subsequently. From 1996 to 2003, Mr Jenkins' role involved in the technical operation of the message store, not the desktop counter application which was the basis of EPOSS. He did not become involved in the technical operation of the desktop counter application until the commencement of Project Impact in 2003. Until then, he was involved in discussions about the counter application, but only when it affected his work on the agent layer. It is clear from the contemporaneous records that Mr Ward and Mr Warwick were the main EPOSS experts within Fujitsu. Neither Mr Oppenheim, Mr Austin nor Mr Holmes suggested in the course of their evidence to the Inquiry that Mr Jenkins had any role in the discussions in 1999-2001 as to whether EPOSS should be rewritten, the audit of EPOSS or the activities of the EPOSS taskforce. Mr Austin explained that membership of the EPOSS taskforce comprised Mr Ward (the chief architect), Mr Hunt, Mr Warwick and Mr Jeram. It did not include Mr Jenkins. Mr Austin could not even recall who Mr Jenkins was.[529]

350. Equally, engineers from within the SSC like Ms Chambers (who started to work in the SSC in October 2000) confirmed that: *"… some calls were coming in and some of them were EPOSS, we certainly weren't being swamped with the number of calls that you would expect if the system was thoroughly rotten […] Q. So these fears that had been expressed, just months before you joined, that there needed to be a total redesign and total rewrite of EPOSS, when the system was working, they just didn't come to pass? A. Well, it may well be -- I don't know, you gave the date on the front of this as being - Q. 10 May. A. Yes, but that was the final edition of that document rather than when it was initially written? Q. Correct.* ***A. So it's quite possible that bug fixes and other changes would have been made to the system in that period. So, you know, the system wasn't static, things were being fixed and enhanced, all the way through its life."***[530] Again, this evidence that Horizon evolved and that BEDs were fixed, mirrors the evidence given by Mr Jenkins.

[527] Transcript, 17 January 2024, p. 126, ln. 9-25; p. 127, ln. 1-5.
[528] Transcript, 17 January 2024, p. 129, ln. 23-25; p. 130, ln. 1-2.
[529] Transcript, 27 October 2022, p. 104, ln. 18-19.
[530] Transcript, 2 May 2023, p. 50, ln. 20-24; p. 51, ln.18-25; p. 52, ln. 1-9 (emphasis added).

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351. Mr Simpkins also confirmed that the SSC was not overly busy following the roll-out of Legacy Horizon: "*Q. Looking at that period as a whole, ie Initial Go Live and then national rollout, what would your summary be of the nature and extent of the problems with EPOSS? A. There were problems with EPOSS definitely. It was a new system, then -- I don't recall there being that many, mainly because of the amount of staff the SSC had. During -- Q. Just to interrupt you there, you mean so that the problems would be spread amongst that number of staff? A. Yes and no. Sorry, what I meant was, initially, there weren't that many staff in the SSC and we weren't overrun with defects. Then, you're correct,* ***as the SSC grew, the defects were spread out but we did have specialists in the team that concentrated on different areas. Again, we weren't overrun. However, during rollout itself there were a lot more calls than post-rollout.***"[531]

Hardware failure

352. The fifth and final body part was said to be hardware failure. It was alleged that, by exhibiting his Legacy Horizon data integrity paper to his witness statement of 8 March 2010, Mr Jenkins had intended to send a *"message"*, which was that *"you, Professor McLachlan, you can rule out the idea that hardware failures might have caused discrepancies"*.[532] Exhibiting this report was said to be an *"attempt [...] to answer an implied question which flowed from all of his hypotheses. That implied question might have been something like 'Could any system failures have affected Mrs Misra's branch accounts?'"*[533] Moreover, exhibiting the report was said to be conveying the message that *"the system couldn't have caused the discrepancies"*, and as such was a *"deliberately and knowingly deceptive reassuring report to exhibit to this statement in this context."*[534]

353. This elaborate allegation is misconceived:

a) The Legacy Horizon data integrity paper was clear that hardware failures can and did occur and that they could lead to accounting discrepancies.[535] Section 3.1.2 of this paper, for example, explained that equipment failures can leave traces in the NT event logs and that where a counter is physically replaced, *"there is a possibility that not all data has been successfully replicated to another system prior to this failure."*[536] The paragraph of the witness statement which referred to this report stated that *"within this report are details about transactions (sometimes called EPOSS transactions) and various scenarios that could occur following system failures."*[537] This was hardly providing a *"reassurance"* that the system was infallible at Mrs Misra's branch, still less reassurance of a "*deliberately and knowingly deceptive"* kind.
b) The allegation is constructed on a fiction of an implied question, rather than the reality of the actual questions Mr Jenkins was asked to address.
c) But even if this implied question was one which could be detected amongst Professor McLachlan's hypotheses (which is not the case), and even if it is right that Mr Jenkins should have been answering implied questions he was not asked (which is not the case), the allegation is contradicted by the evidence Mr Jenkins in fact gave to the court, which was that he could

[531] Transcript,17 January 2024, p. 6, ln. 1-17 (emphasis added).
[532] Transcript, 28 June 2024, p. 31, ln. 12-15.
[533] Ibid, p. 33, ln. 3-8.
[534] Ibid, p. 34, ln. 18-20.
[535] The report was commissioned because David Smith of POL wanted a paper which considered issues like hardware failures. See the email from Suzie Kirkham sent on 6 October 2009 (consistent with Mr Smith's evidence before the Inquiry), noting that *"**POL requested from Fujitsu a short paper to describe how Horizon maintains the integrity of branch accounts when certain issues affect the branch, eg blue screen, hardware failure**"* (FUJ00174184). A number of people within POL and Fujitsu were designated as reviewers of this document (as named in the report). Additionally, Mr Jenkins shared a draft with Allan Hodgkinson, Jeremy Worrell (the Chief Technology Officer for Fujitsu's Post Office Account), Anne Chambers, Jim Sweeting and Chris Bailey (FUJ00155493). Mr Jenkins did not know (and there is no evidence that suggests he did know) that this report would form part of the Ismay report of 2 August 2010: see Transcript, 26 June 2024, p. 94, ln. 4-17.
[536] POL00401039.
[537] POL00001643.

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not rule out a computer problem as having caused the discrepancies experienced by Mrs Misra.

d) The allegation ignores the fact that there was detailed material in evidence about the actual hardware failures that Mrs Misra had experienced at her branch, her calls to report those failures and Fujitsu's responses. All of this material was produced by Mr Dunks who gave evidence about it. As noted above, Mrs Misra's defence counsel in 2010 declined to ask Mr Jenkins any substantive questions about it.

Reliance on technical colleagues in Fujitsu

354. In the course of his examination before the Inquiry, Mr Jenkins referred to his having relied upon information provided to him by his technical colleagues in Fujitsu. Mr Jenkins explained that this reliance sometimes took the form of what he termed *"informal conversations"*[538], which, when questions were put to him, was rephrased as *"informal chats"*.[539]

355. At points, the examination of Mr Jenkins implied that his reliance upon technical colleagues as a source of information to Mr Jenkins or the fact that he obtained information through informal conversations with them, was unacceptable. This is to ignore: (a) what the law says about the basis upon which evidence can be provided in criminal proceedings, and (b) the reality of working collaboratively with technical colleagues over very many years whereby there will be a constant osmosis of information and technical knowledge. These points are addressed above in section 4.

356. In addition to those points, the Supreme Court has recognised that experts (in the legal sense of that term) may give evidence based on *"his or her knowledge and experience of a subject matter, drawing on the work of others, such as the findings of published research or the pooled knowledge of a team of people with whom he or she works."*[540] It is inherent in the nature of expert evidence that it may require recourse to pooled knowledge. The sorts of questions that Mr Jenkins was being asked in Mrs Misra's case, by their nature, required recourse to Mr Jenkins' accumulated knowledge over years and including that knowledge and understanding which he obtained from colleagues at Fujitsu with whom he worked. As explained in section 4 of these submissions, Mr Jenkins did not have (and no one person could have had) detailed knowledge of every aspect of a vast, multi-layered computer system such as Horizon. Mr Jenkins had made clear the limits of his knowledge (for example, indicating as he did that he did not know about the Callendar Square bug).

357. If Mr Jenkins had been instructed as an expert, then it would have been made apparent to him how an expert incorporates into their report (or records in a schedule) how their opinion has been informed by information that has been provided by other people; or is based upon work carried by other people; or is part of a pool of knowledge accumulated and shared amongst a wider team. Indeed, these were amongst the necessary inclusions in an expert report that POL failed to ensure were included in his report. It would not be fair in circumstances where Mr Jenkins was not instructed properly (or at all) as an expert witness to criticise him for not having appreciated the legal requirements to record sources for his opinions.

358. Even if Mr Jenkins is to be treated (somehow) as a witness of fact (because he was not told about expert duties and his evidence did not conform to the requirements of admissible expert evidence), he was entitled to give evidence based on his *knowledge and belief,* where that knowledge and belief was based on information he had accumulated over the years, obtained from conversations with his technical colleagues, or documents and records prepared by them. The touchstone requirement is that he believed that this information was true.

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[538] For example, Transcript, 26 June 2024, p. 42, ln. 4; p. 68, ln. 20.
[539] For example, Transcript, 26 June 2024, p. 68, ln. 68; p. 78, ln. 12.
[540] *Kennedy v Cordia (Services) LLP* [2016] UKSC 6, § 41. It is acknowledged that this case is concerned with 'skilled witnesses' under Scottish law but the principles are clearly equally applicable to English law expert witnesses.

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The role of Fujitsu in Mrs Misra's case

359. As noted in section 4 of these submissions, Mr Jenkins' involvement with the Litigation Support Service seems to have evolved over time. At no point did this crystallise into an understanding, on the part of anyone at Fujitsu, that his involvement in any single case might amount to the provision of expert evidence (to which legal obligations applied) or that POL was seeking to discharge its CPIA obligations through Mr Jenkins and/or Fujitsu. In our submission, Mrs Misra's case should have been this moment.

360. Mr Jenkins was not a part of the Litigation Support Service, nor did he sign any of the standard witness statements of fact exhibiting ARQ data, which seem mostly to have been provided by Ms Thomas and (to a lesser extent) Ms Lowther over the course of more than a decade. As already noted in section 4 of these submissions, none of Fujitsu's Litigation Support Manuals contemplated in any detail, or set out any legal requirements for, the provision of expert evidence by anyone at Fujitsu.

361. In short, there appears to have been no legal guidance available within Fujitsu to assist Ms Thomas (indeed she wrote the Litigation Support manuals). Yet Ms Thomas was the person within Fujitsu who was principally responsible for liaising with POL in relation to Mr Jenkins's role in Mrs Misra's case. As noted earlier, Mr Jenkins sought assistance from her throughout December 2009 to March 2010 (for example in terms of understanding what he was to do or putting his statements into the Fujitsu template).

362. Equally, there appears to have been little to no legal guidance available within Fujitsu to assist Mr Jenkins. Whilst David Jones of Fujitsu Legal interceded briefly in early February 2010 in Mrs Misra's case, he quickly indicated that he did need not need to remain involved, telling Mr Singh that *"I am very happy for you to correspond direct with Penny and Gareth on what you need in terms of information etc. There is no requirement for me to be the conduit so long as I am aware of what is going on or need to resolve issues of 'principle'"*.[541]

363. This absence of legal guidance mattered. Whilst it was the responsibility of POL, and POL alone, to comply with its CPIA obligations and to adhere to the law on expert evidence, Fujitsu exercised little legal oversight over the evolving role that Mr Jenkins had in Mrs Misra's case. As a result, it failed to spot POL's improper use of Mr Jenkins. Returning to the point that Mr Atkinson KC emphasised about the need for prosecutors to ensure that someone like Mr Jenkins, who was not functionally independent from POL, understood what the provision of expert evidence entailed (given the *de facto* duality of their role), this simply did not happen. It is accepted on all hands that no prosecutor within POL ever had a discussion with Mr Jenkins as to what being an expert meant having regard to his position as a Fujitsu employee. This was, at the very least, the sort of guidance that Mr Jenkins was entitled to. And it was guidance that Fujitsu (as well as POL) should have offered. It was this type of guidance that Mr Christou contemplated when he told the Inquiry that, with hindsight, he thought Mr Jenkins should have received independent legal advice about his role.[542]

364. In the void that arose, precisely because POL failed to instruct Mr Jenkins as an expert, it is not surprising that Ms Thomas and Mr Jenkins should ask questions of Fujitsu management when asked to respond to reports raising issues that seemed 'political' to them. To be in this position at all, for any employee, was self-evidently out of the ordinary. Mr Jenkins' email to Ms Thomas of 27 January 2010 in the case of R v Hosi, in which he stated *"We don't really want to be seen to be undermining a POL prosecution!"* is a simple and clear indication of how little he understood about the first principles of prosecuting.[543] Again, the point is repeated, that this is a

[541] FUJ00156108.
[542] Transcript, 19 June 2024, p. 80, ln. 22-25.
[543] FUJ00152888.

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lack of understanding on the part of a layperson, not in receipt of instructions as an expert. As Mr Jenkins explained in evidence, he and Ms Thomas did speak to Mr Jones for guidance: "*I just wanted to get some sort of guidance from senior management as to any communication I had in this area with Post Office and the guidance I got was to just tell the truth, whichis what I would like to have done anyway.*"[544]

365. This was turned around in questions put to Mr Jenkins as amounting to a need for *"top cover for telling the truth."*[545] This is not what Mr Jenkins said. In the hands of competent prosecutors, there would have been clarity as to Mr Jenkins' position; he would have had written instructions; steps would have been taken to ensure that he understood his status in the case despite being an employee of Fujitsu. When, absent any such guidance, he found himself having to deal with the reports sent to him in Mrs Misra's case (and in Mr Hosi's case), it was natural and unsurprising that he should ask questions. And whilst he may not have received any legal guidance as to expert duties, Mr Jones' advice to him (to tell the truth) accorded with what he would have done anyway.

366. In the course of his examination at the Inquiry, Mr Jenkins was asked questions about what other guidance he sought within Fujitsu during Mrs Misra's case. In fact, analysis of the emails suggests that, at the time, Mr Jenkins *was* asking basic questions about the nature of his role.[546] However, it was suggested to him that he should have been asking questions to his managers such as *"I'm being dragged into court proceedings here, please help me as to what is required of me."*[547] It may well be apparent to lawyers, fourteen years after Mrs Misra's trial, that the conduct of POL's lawyers was unprofessional, inconsistent with the principles of prosecuting and contrary to the law *they* were obliged to apply, but it would be grossly unfair to turn that around and suggest that the layperson might have realised that or that they understood, at the time, that they were being badly used.

367. Mrs Misra's trial was prosecuted by an external barrister and an in-house solicitor at POL. Mr Jenkins was entitled to proceed on the basis that they knew what they were doing. He was entitled to think, *"[...] I was being told what was required of me by Post Office, so I didn't really understand that I wasn't being told the right things. So I just trusted what I was being asked by Post Office and didn't see the need to involve my management. They were clearly aware I was spending my time doing these things but I didn't feel I needed any further guidance from them, in that I thought what I am looking for is guidance about legal things, therefore I'll probably get it better from the lawyers that I'm talking to in Post Office than managers in Fujitsu who know no more about the law than I do. Q. But you got no guidance from the Post Office? A. Well, I realise that now. I thought I was getting some sort of guidance but it probably wasn't really very good guidance."*[548]

368. Furthermore, Mr Jenkins' attempts (and those of Fujitsu) to try and instil some order into the process by which POL sought evidence from him, cannot be put to one side as though these were not important and relevant concerns. As is now clear, many of the problems in Mrs Misra's case originated in POL's failures to abide by the law; their failures to constitute formal processes based on the law; their failures to communicate formally with prosecution witnesses such as Mr Jenkins; and by their casual and unprofessional approach to prosecuting. It is not as though this improved when Cartwright King took over POL's prosecutions in 2012. But it is also an illustration of how phlegmatic Mr Jenkins was. It demonstrates that he was the sort of person *to get on with things* and not make a fuss. Again, that he withstood this objectively incompetent prosecuting and did so uncomplainingly, is not a point against him.

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[544] Transcript, 27 June 2024, p. 77, ln. 13-17.
[545] Transcript, 27 June 2024, p. 77, ln. 25
[546] For example, Mr Jenkins' plea in his email dated 26 February 2010 which he sent to his commercial managers Mr Lillywhite and Mr Allen (FUJ00152996): *"What do I do and who can sort out with POL what exactly we should and shouldn't be dong (sic) to support this?"*
[547] Transcript, 25 June 2024, p. 124, ln. 6-9
[548] Transcript, 25 June 2024, p. 124, ln. 10-24

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The 2012/2013 case studies: (d) Mr Grant Allen, (e) Ms Angela Sefton/Ms Anne Nield, and (f) Mr Khayam Ishaq

Introduction

369. The three remaining criminal case studies in which Mr Jenkins was involved are those of Mr Allen, Ms Sefton/Ms Nield and Mr Ishaq. Mr Jenkins' involvement in these three cases commenced in October 2012. By that point, two years had elapsed since he gave evidence in Mrs Misra's case. In that period, he had received no legal training, had not given oral evidence again, and had prepared only one further witness statement for POL.[549]

370. By October 2012, Mr Singh was POL's head of criminal law, and the decision had been taken to contract out its prosecution work to Cartwright King. As has previously been observed, Mr Smith, a solicitor at the firm, told the Inquiry that he could not understand "*Quite why Cartwright King thought it was appropriate to take on this prosecution work, I really, with hindsight, have no idea because we certainly didn't have the training for it, and I was unaware of the duties on a prosecutor in relation to the instruction of an expert witness.*"[550]

371. Mr Bowyer, in-house Counsel at Cartwright King, told the Inquiry that the bulk of the firm's prosecution work for POL was done by Mr Smith in Derby and Mr Bolc in Leicester, but that he did not realise, at the time, that both lacked any prosecution experience: *"I don't think they had any experience of preparing prosecution cases until they were given this role at Cartwright King."*[551] He conceded that this *"plainly wasn't a safe state of things."*[552] The cases of Ms Nield and Ms Sefton were the first private prosecutions that Mr Bolc had undertaken. He had no background in prosecuting.[553] In his statement to the Inquiry, Mr Bolc said that he was acting as an *"agent"* in their cases. [554] In his evidence before the Inquiry, Mr Bolc said that it wasn't clear where Cartwright King's duties started and ended in prosecutions.[555] In his evidence before the Inquiry, Mr Smith emphasised the distinction between acting as an agent and being asked to advise on cases (*"... that is an entirely different situation. That is requiring a lot more knowledge in terms of the role of a prosecutor than just simply attending court to present a case at a hearing."*[556]) Mr Smith thought that the situation was "*very nebulous"* in terms of who was making decisions in prosecutions (as between POL and Cartwright King). Cartwright King did not even know what POL's "*prosecution policy*" was when they became prosecutors.[557]

372. Whilst Mr Jenkins dealt with Mr Smith and Mr Bolc in late 2012 and early 2013 (because they were the solicitors with the conduct of the cases), the principal person with whom he dealt at Cartwright King, in relation to the use of the so-called 'generic statement' (considered below), was Ms Panter.[558] Despite the fact that she was very involved in running these cases and making important decisions about them, she was a paralegal.[559] Mr Bowyer thought she had passed her Bar exams but was *"a comparative baby to the role that she appears to have been conducting."*[560]

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[549] This witness statement was produced in the case of R v Humphrey (2010-11). Although POL approached Mr Jenkins for assistance in a small number of other cases, no witness statement appears to have been prepared for any of them.
[550] Transcript, 2 May 2024, p. 95, ln. 15-20.
[551] Transcript, 30 April 2024, p. 127, ln. 8-10.
[552] Ibid, p. 126, ln. 23-24.
[553] Transcript, 15 December 2023, p. 55 ln. 2-25; p.5 6, ln. 1-2. He stated that he was *"not supplied by way of introduction with any policy documents in relation to the conduct of prosecutions by [the Post Office], disclosure or anything else. I* was not s*upplied with any information in relation to the Horizon system, the details of any data it generated, issues relating to its reliability, any relevant cases, or details regarding any civil actions or otherwise* (WITN09670100, witness statement of Andrew Bolc dated 28 November 2023 § 11).
[554] WITN09670100, witness statement of Andrew Bolc dated 28 November 2023, §11.
[555] Transcript, 15 December 2023, p. 7, ln. 8-11.
[556] Transcript, 1 May 2024, p. 63, ln. 3-9.
[557] Ibid, p. 63, ln. 13-23.
[558] There is no witness statement from Rachael Panter in the Inquiry.
[559] See WITN11150100, witness statement of Matthew Shiels dated 27 March 2024, § 42.
[560] Transcript, 30 April 2024, p. 131, ln. 14-16.

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373. As will be seen, this lack of prosecutorial experience had serious ramifications for how Cartwright King conducted POL's cases and how they used Mr Jenkins. Mr Singh was the only remaining in-house criminal lawyer at POL but did not constitute any sort of check on Cartwright King's conduct of prosecutions.[561] As set out in the expert reports of Mr Atkinson KC (and as further revealed in the course of his oral evidence to the Inquiry), Cartwright King were causative of a number of breaches of legal obligations during the investigation and prosecution of a number of cases. In common with the cases of Mr Thomas and Mrs Misra, a number of these breaches occurred before Mr Jenkins first became involved in them.[562] In short, these were prosecutions which had already been set in a wrong direction by POL and Cartwright King prior to their use of Mr Jenkins in them.

374. These breaches included the non-disclosure of the work being done by POL (through Ms Rose) which was intended to create a record of all cases in which Horizon had been mentioned.[563] Contemporaneous with this, and wholly separate, was the crafting by POL of "*our story*" by the Media and Communications Department (with input from Mr Singh, Mr Flemington, Ms Crichton and Ms Lyons) to provide to agents and counsel for submissions when there were challenges to Horizon (in light of Second Sight having been commissioned).[564] The use of this narrative in witness statement form was, as Mr Atkinson KC noted, "*profoundly disturbing*".[565] This narrative was in turn used in cases prosecuted by Cartwright King. [566]

375. This point is important because (self-evidently) it provides the Inquiry with a clear insight into the strategic aims of the lawyers involved. And, again, it enables the Inquiry to assess the extent to which POL and Cartwright King lawyers were deviating from the norms of prosecuting in these cases. It forms part of the broader context within which Mr Jenkins was being used to provide the 'generic statement' by POL's internal and external lawyers. It also demonstrates that the introduction of external lawyers to conduct POL's private prosecutions did not result in higher standards of prosecutorial practice or compliance with the CPIA or with the law in relation to the use of experts.

The generic statement

376. Mr Jenkins' witness statements in the three 2012/2013 case studies selected by the Inquiry were all based on what has become known as the 'generic statement'. The generic statement was ill-conceived from the outset. Its origins can be traced to the written advice given by Mr Bowyer on 11 July 2012.[567] This advice was responsive to the commission of the Second Sight investigation. Mr Bowyer advised that *"an expert should be identified and instructed to prepare a generic statement which confirms the integrity of the system and why the attacks so far have been unfounded. This expert should be deployed in all cases where the Horizon system is challenged and he should be prepared to be called to reply to defence experts on a case by case basis".* Mr Bowyer considered that such a generic statement was necessary in light of POL's decision to instruct Second Sight to conduct an independent review of Horizon. Mr Bowyer compared this decision to a *"bell"* that *"cannot be unrung"*, and made the following observations as to what he thought was at stake: *"The first consequence is that we have now given ammunition to those*

[561] Transcript, 30 November 2023, p. 152, ln. 12-14: *"Q: Post-separation, you're the only criminal lawyer in Post Office Limited. Cartwright King, you say, take over responsibility and you acted as a point of contact between the Post Office and Cartwright King and I'm asking what level of supervision and oversight of Cartwright King's work did you undertake? A. I didn't. I don't – I think you're right, probably was more of a – I can't remember, to be honest. It was – it just – I don't know, I mean, is the answer to that."*
[562] For example, in th e cases of Ms Sefton and Ms Nield, Mr Bolc provided the charging advice: POL00057495 .
[563] POL00141416. This was clearly relevant material in POL's possession which fell to be recorded, retained and revealed in any investigation or prosecution in which issues with Horizon were raised.
[564] POL00058155.
[565] Transcript, 18 December 2023, p. 41, ln. 9-18.
[566] In statement form in R v Wylie [POL00120723]. Its use in the cases of Ms Sefton and Ms Nield is considered in these submissions.
[567] POL00026567.

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attempting to discredit the Horizon system […] the extra evidence which we will be obliged to gather will be as nothing in comparison to the potential disclosure problems that we may face […] I assume that we still contend that the system is fool proof in which case should defend it aggressively […] if the integrity of the system is compromised then the consequences will be catastrophic for all of us including them […] they [POL] should be made to understand that this is a firefighting situation and its [sic] not just our house that would be burned down if the system were compromised."

377. In a subsequent email to Mr Singh[568], Mr Bowyer formulated four issues which he advised that the expert should address in the generic statement:

> *"1) A description of the horizon system (In laymens' terms so that a jury can understand what it is and what it does)*
> *2) A declaration that it has yet to be attacked successfully.*
> *3) A summary of the basic attacks made on the system concentrating on any expert reports served in past cases. If there are none then state that no expert has yet been found by any defence team civil or criminal to attack the system. (at the moment there seems to be little more than griping by defendants that the system must be at fault without saying how)*
> *4) Plainly, like all accounting systems, there is room for human error (Keying in wrong amounts etc) but the expert should be able to state that innocent human error is unlikley [sic] to produce the types of dicrepencies [sic] of many thousands of pounds over many months."*

378. Mr Atkinson KC criticised Mr Bowyer's advice insofar as it sought a generic statement to confirm the integrity of the system, rather than asking an expert to examine the integrity of the system.[569] He observed that the advice was not *"[…] meeting the prosecution's obligations, both in relation to the reliability of their evidence or disclosure in relation to their case of material that might undermine that, or at least to look whether it was reliable or not, on a case-by-case basis."*[570] He agreed that the adoption of the advice was inconsistent with the approach to disclosure required by the CPIA and its Code of Practice.[571]

379. At the point of providing his advice, Mr Bowyer foresaw the instruction of an expert who was yet to be identified. It was Mr Singh who suggested that they use Mr Jenkins. Both Mr Singh and Mr Bowyer gave active consideration to the fact that Mr Jenkins was not functionally independent but concluded that *"this is such a specialist area that we would be hard pushed to get the report in the timescale that we require - we might open our expert up to allegations of partiality but his expertise will be unlikely to be challenged. We need to get this report off the skids as soon as possible as we have PCMHs and trials galloping up on us."*[572] As is plain, their consideration of Mr Jenkins being a Fujitsu employee was superficial and limited. They did not consider, in light of his position (and the importance that they appeared to attach to this report), that it was vitally important that he understood that he was providing this evidence in an independent capacity and that his provision of this evidence was subject to a number of duties (including the duty of disclosure). In fact, this exchange is consistent with the overall picture that neither knew *anything* about expert duties.

380. Mr Atkinson KC confirmed that it was all the more important, in light of this basic recognition that Mr Jenkins was not functionally independent, that Mr Jenkins *"should be made to understand that he was subject to a wide range of duties […] in particular a requirement that he be independent […] it was essential that he understood that he was being asked to give his*

[568] POL00141416.
[569] Transcript, 18 December 2023, p. 141, ln. 19-24.
[570] Ibid, p. 142, ln. 2-8.
[571] Ibid, p. 144, ln. 11.
[572] POL00020489.

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independent opinion about these things, rather than to provide evidence that was mapped out for him or to give an opinion that he was being told to give, in effect."[573]

381. That Mr Singh continued to have no concept of what an expert was or of the distinct position that POL was placing Mr Jenkins in, is manifestly clear. His translation of Mr Bowyer's advice into an email to Mr Jenkins on 1 October 2010 (*"HORIZON FUJITSU REPORT VERY URGENT"),* marking Mr Jenkins' first involvement in the three case studies, is another communication which is, to any lawyerly eye, shockingly incompetent.[574] It is of note that this email was copied to POL's (then) Head of Legal Mr Flemington (there is no suggestion that he had any concerns about it or sought to correct it).[575] It is necessary to set out its terms in full:

> "*Welcome from your annual leave and your assistance advice [sic] in the past prosecution cases and I understand you are assisting my colleagues at present. I need your urgent assist [sic] judge has this morning ordered the prosecution to have the following report ready to be served within Seven days. On advise [sic] Post Office Limited have appointed one of their investigators, Helen Rose as disclosure officer dealing with Horizon challenges. She has prepared a document/ spread sheet detailing all such cases, past and present, approximately 20 in total, although none thus far successfully argued in court. Post Office Limited have been advised to obtain an experts report from Fujitsu UK, the Horizon system developers, confirming the system is robust. Post Office Limited maintain the system is robust, but in light of adverse publicity, from legal viewpoint is that defence [sic] should be given opportunity to test the system, should they still wish to do so, on consideration of our report.*
> *You will need to consider the Disclosure officers document/spread sheet (see attachments) and need to address in your report the following issues:*
>
> 1) *A description of the horizon system (In laymen's terms so that a jury can understand what it is and what it does)*
> 2) *A declaration that it has yet to be attacked successfully*
> 3) *A summary of the basic attacks made on the system concentrating on any expert reports served in past cases. If there are none then state that no expert has yet been found by any defence team civil or criminal to attack the system (at the moment there seems to be little more than griping by defendants that the system must be at fault without saying how).*
> 4) *Plainly, like all accounting systems, there is room for human error (Keying in Wrong amounts etc) are you able to state that innocent human error is unlikely to produce the types of discrepancies of many thousands of pounds over many months.*
>
> *If you require any further information or wish to discuss please do not hesitate to contact me."*

382. Axiomatically this (barely comprehensible) email did not in any way constitute the proper instruction of an expert witness. In particular, the email:

a) **First**, omitted any reference to any expert duties (such as independence) or the required content of expert evidence.
b) **Second**, omitted any reference to any specific prosecution, any specific defendant or any specific branch.
c) **Third**, was consistent with all communications sent to Mr Jenkins by or on behalf of POL in being wholly casual in its content and tone.

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[573] Transcript, 18 December 2023, p. 149, ln. 3-17.
[574] POL00096978.
[575] Mr Flemington had line management of Mr Singh from 2012. He stated that he agreed with Susan Crichton that, because he had no knowledge of criminal law, he felt unable to supervise Jarnail Singh on criminal matters. He could not explain why she would agree to supervise Mr Singh's work given that she had no criminal law experience (Transcript, 30 April 2024, p. 34, ln. 24-25; p. 35, ln. 1-11; p. 37, ln. 8-14).

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383. Mr Atkinson KC agreed that, as a document of instruction, Mr Singh's email was *"**woefully inadequate**"*[576] and the *"**antithesis**"*[577] of how an expert should have been instructed. Apart from the first issue identified in the email (a description of the Horizon system), Mr Atkinson KC observed that the email was *"telling him what to say […] almost a script for him of what to say […] telling him what his opinion was on a series of areas and, effectively, telling him that he was being instructed to defend the system and to assert that it didn't have issues*."[578]

384. In addition to this, Mr Singh's email demonstrates other fundamental misunderstandings about expert evidence and prosecuting:

a) **First**, the concept that POL should gather information about its *own* prosecutions but then ask Mr Jenkins to summarise the attacks made in these cases (when he had nothing to do with most of them) is highly questionable *per se*.
b) **Second**, this entire approach controverted POL's statutory disclosure obligations. The information which POL was gathering (through Ms Rose) was not being gathered for the purposes of discharging POL's CPIA obligations but rather for the purposes of showing that there had been no successful challenge in Court (per Mr Singh's email).[579] This negated (once more) that POL was in possession of, and had knowledge of, a significant body of other information potentially relevant to discharging these obligations. As set out above, this was material which POL was obliged under the CPIA, its Code of Practice and the Attorney General's Guidelines to record, retain and reveal. Equally, Mr Singh already had personal knowledge of a number of matters which had been considered in Mrs Misra's case (including the Callendar Square bug, the locking issue which Mr Jenkins had explained at the outset of his involvement in that case, the information that Mr Jenkins had provided about the 200,000 faults on the test and live systems, the existence of the Known Error Log, and the Receipts and Payments Mismatch bug). He was also well aware that the prosecution approach in Mrs Misra's case had not been to suggest that the Horizon system was infallible and that a year's worth of data had been considered in it.
c) **Third**, the email repeated the same mistakes made in Mrs Misra's case, in that it sought to use Mr Jenkins, in part, impermissibly as a mechanism for the discharge of POL's statutory disclosure obligations. The point is repeated that it was not open to POL to delegate any of these obligations to Mr Jenkins.

385. The following day, on 2 October 2012, Mr Jenkins produced a draft report and sent it to Mr Singh.[580] Unsurprisingly, given that Mr Singh's email did not refer to any legal framework (whether by reference to the CPIA, the Attorney General's Guidelines or the legal requirements of expert evidence), Mr Jenkins' draft took the form of a Fujitsu *technical* report, similar to those he routinely produced in his day to day work. Typical of those reports, it listed those people Mr Jenkins thought should authorise and review it before it was finalised: Mr Davidson (the Delivery Executive for the POL account) was named as the approval authority and the reviewers included Mr Apte (Chief Technology Officer for the POL account) and Mr Philips (Senior Legal Counsel at Fujitsu). Again, this is relevant to understanding Mr Jenkins' mind-set, that he saw this as a Fujitsu technical document which would be provided to colleagues for their peer consideration.

386. On receipt of the draft report, Mr Smith circulated it to others at Cartwright King.[581] Mr Bowyer's response to the draft makes clear the *lawyerly* perception of the purpose of Mr Jenkins' generic statement and what legal form he thought it should take. This matters in terms of demonstrating the *legal* and *strategic* lens through which it was seen:

[576] Transcript, 18 December 2023, p. 156, ln. 11.
[577] Ibid, p. 150, ln. 20.
[578] Ibid, p. 152, ln. 14-15; p. 153, ln. 3-4, 8-12.
[579] Although despite even that being its purpose it was still not disclosed.
[580] FUJ00123914.
[581] POL00096997.

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> *"At first sight this/these look like a good base upon which our reports can be based. (As most are fishing expeditions they will do in their current form)**. I have edited the last report (last paragraph) because as it currently stands it is an invitation for further disclosure. (See attachment). Can you put this past Mr Jenkins. Can you draft generic s9 statements for the witness to produce the report(s). This must set out his expertise to comment on the system both the old and the new – we have to establish his right to speak as an expert.** *I am in favour of the descriptive words being added to the diagram (but in simple language please) as these may have to be explained to a jury (and prosecution counsel).* **Beyond that keep it simple – the secret here will be to respond to the defence expert report rather than try to anticipate every rock to be thrown at us – unless they be obvious from the defence statement/interviews. If there is a specific challenge in a case** *then the statement and the report can be tweaked to cover the eventuality. My view is that most challenges to the Horizon system should now vanish away before the trial."*[582]

387. The premise of Mr Bowyer's advice was therefore that defence cases or disclosure requests were *"fishing expeditions"*. It contemplated that Mr Jenkins' generic statement would be used to discourage unmeritorious disclosure requests or challenges. Its purpose was not to pre-empt specific issues about how Horizon had operated at a particular defendant's branch. Rather it was a general statement which could be adapted where a specific challenge was made. At that point, Mr Bowyer does not appear to have had a specific case in mind that it would be used in.

388. That Mr Jenkins understood that this was a general, high-level report (not specific to any case) was reflected in the draft report he produced.[583] It is clear that, per the intentions and direction of the lawyers involved, Mr Jenkins saw this high-level report as something that could be adapted to specific cases in the future: *"The purpose of this report is to provide some further background information and relate this to current cases."*[584]

389. After Mr Jenkins provided the draft technical report, it went through a process of being repurposed as a witness statement. It was turned into a witness statement by POL (specifically Ms Jennings who was a security manager in POL) and Cartwright King lawyers.[585] Mr Jenkins' original draft report was therefore subject to a process of amendment and then put into a section 9 format. This process of *lawyerly* repurposing deleted some of the detail that Mr Jenkins had provided. For example, Mr Jenkins had identified the cases which he had been involved in by name. He expressly referred to having been provided with the Helen Rose spreadsheet and the Helen Rose Report. He stated in terms that he did not recall having any involvement in 21 of the cases that Ms Rose referred to in her schedule. This detail was deleted by Mr Bowyer's editing.[586] Clearly, it was not for Mr Jenkins to comment upon these cases which POL had conducted and about which he had no knowledge. This was material which POL was responsible for recording on the non-sensitive unused schedule pursuant to the CPIA.

390. The generic statement was signed by Mr Jenkins on 5 October 2010.[587] It included the words "*I understand that my role is to assist the court rather than represent the views of my employers or Post Office Ltd.*" It is now apparent that Mr Bowyer added this sentence to the draft on 2 October 2012.[588]

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[582] Ibid (emphasis added).
[583] We note that, by 19 October 2010, information provided to Mr Jenkins by Ms Panter of Cartwright King led him to question whether he had understood how POL intended to use the generic statement he had signed: see §§ 417-419 of these closing submissions.
[584] FUJ00123914, p. 5.
[585] See, for example, the email chain at POL00096997 between Mr Bowyer and Mr Smith about the preparation of a section 9 statement; see also POL00096999.
[586] POL00058369.
[587] The signed version is at FUJ00124013.
[588] This sentence first appeared in the version of the draft entitled 'ARCGENREPxxxx HorizonIntegrity (HB)', which was attached to the email chain at POL00096997 and which originated from Mr Bowyer on 2 October 2012. The version of the report sent by Mr Jenkins to Mr Singh earlier that day omitted '(HB)' in the file name.

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391. There is no evidence that anyone explained to Mr Jenkins what this sentence was supposed to mean. Mr Bowyer confirmed in his oral evidence that he had never taken any steps to ensure that Mr Jenkins had been properly instructed as an expert; had taken no steps to ensure that Mr Jenkins was aware of expert duties; and that he did not raise any issue as to the fact that the generic statement contained none of the necessary inclusions so as to constitute admissible expert evidence.[589] If this sentence was some form of belated recognition that an expert report ought to bear a form of distinct declaration, then it simply *reinforces* that Mr Bowyer had no understanding of expert duties. As noted by Mr Atkinson KC: "*You might find a sentence rather more like that in the statement of a witness who is making clear that they're speaking for themselves, rather than for their employer, for example if they were giving not expert evidence but factual evidence about a situation that occurred at work, they might make clear they were speaking for themselves rather than for anybody else.*"[590]

392. Plainly, none of the lawyers involved in producing this statement understood or even considered that if they were relying on Mr Jenkins as an expert (as they were purporting to), that this made his evidence subject to specific duties. Once again, his statement contained none of the inclusions needed in order for it to constitute expert evidence. The way that this statement was produced is entirely consistent with Mr Atkinson KC's conclusion that he had seen no evidence, in any of the three case studies in which the generic statement was used, that POL had informed or instructed Mr Jenkins about the duties of an expert.[591]

393. The absence of any expert instruction had significant consequences above and beyond Mr Jenkins' understanding of expert duties. Had POL instructed Mr Jenkins as an expert and had the lawyers involved known anything about the necessary content of expert evidence, then the report would have included *"a statement setting out the substance of all the instructions received (whether written or oral)"* and the *"questions upon which an opinion is sought."*[592] Even if they did not know about the necessary inclusions for expert evidence, the lawyers might have thought it important that the generic statement explain the parameters of what they had asked Mr Jenkins. As is clear, the draft statement did not set out the four questions posed by POL and which it was responsive to. It would not therefore have been clear to the reader what the ambit of the statement was. This included Mr Bolc, who went on to serve versions of the generic statement in the cases of Mr Allen and Ms Sefton and Ms Nield. He agreed that those statements ought to have included the questions asked of Mr Jenkins: *"Q. So, in other words, that these questions ought to have formed part of the statements that you served in those cases, correct? A. They should have done, yes. Q. But you didn't know about them? A. That's correct. Q. Again, had that happened, then anyone who was reading that statement would have understood that, in fact, it was responsive to four quite narrow questions, correct. A. Indeed they would."*[593]

394. This failure and its consequences would have been averted if, at any stage, POL or Cartwright King had abided by the most fundamental of their disclosure duties. Indeed, any defence lawyer who received the generic statement ought to have been alerted to the existence of Mr Singh's email seeking it. POL ought to have recorded (a) each of the drafts of the report as it evolved between 2 and 5 October 2012, (b) Mr Jenkins' witness statement of 8 October 2010 in Mrs Misra's case (which he had re-sent to Mr Singh on 2 October 2012 together with his draft generic statement), (c) the Rose material which he had been provided with, and (d) the email correspondence with him about the generic statement, on the unused schedule in every case in which the generic statement was used. The point is repeated that *POL* was subject to this duty and <u>required</u> under the CPIA and its Code of Practice to ensure that the existence of this material

[589] Transcript, 30 April 2024, p. 178, ln. 21-25; p. 179, ln 1- 8.
[590] Transcript, 19 December 2023, p. 182, ln. 16-24.
[591] Transcript, 18 December 2023, p. 28, ln. 12-18.
[592] Per *B(T)* [2006] 2 Cr. App. R. 3 (at § 177).
[593] Transcript, 15 December 2023, p. 149, ln. 6-16.

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was recorded, the schedule disclosed to the defence and disclosure made of any material recorded on the schedule which might reasonably be considered capable of undermining the prosecution case or assisting the defence.[594] None of this happened despite the involvement of Cartwright King, from the outset, in obtaining the generic statement.

Criticism of the generic statement

395. It was suggested, in the course of the Inquiry, that Mr Jenkins should have disclosed in the generic statement his knowledge of BEDs in Horizon[595]; that he should have sought guidance as to whether he should be disclosing his knowledge of these BEDs[596]; or that he should have questioned the utility of a generic statement (or even refused to provide it) and insisted on reviewing the data for individual branches instead.[597]

396. There are a number of reasons why each of these criticisms is misplaced. Before setting these out, the broad observation is made again, that it is one thing to examine Mr Singh's email from a lawyerly perspective in 2024, with the benefit of everything that is known or regarded as significant now and point to how Mr Jenkins *might* have replied differently or answered different questions to those he was asked at the time. It is another to look at this email through the eyes of Mr Jenkins in 2012 in light of what he *actually* knew; what he was *actually* being asked to do; and what he perceived he was being asked to do at the time and (crucially) by whom. In terms of what he was being asked to do, Mr Bowyer, who settled the four issues which Mr Jenkins was asked to cover in the generic statement, agreed he was not asking *"[…] whether a problem with the system could cause illusory shortfalls in branch".*[598] Instead, Mr Bowyer thought the *"best angle"* was for the generic statement to address *"the attacks that had been made in previous cases."*[599]

397. The point is also repeated that it is simply not possible to analyse the generic statement in isolation from the fact that Mr Jenkins was not instructed as an expert; that no lawyer sought to ensure that he understood that his evidence would be treated as expert evidence and was subject to the duties on experts. Again, it would neither be right nor consistent with the distinct, legal position that applies to experts to, in effect, hold Mr Jenkins as subject to the expert's duty of disclosure when:

a) **First,** he was not approached nor communicated with as an expert (rather he was communicated with *antithetically* to how an expert should be communicated with).
b) **Second**, he was not informed that his provision of a generic report made him subject to expert duties and that no lawyer explained expert duties to him and how they might apply in relation to this report.
c) **Third**, he was being asked to provide evidence which was regarded as expert evidence (that is, opinion evidence which was not simply a matter of conveying facts).
d) **Fourth**, insofar as he was in fact asked to provide factual evidence (for example to explain the components of the Horizon system), that which he provided was accurate.

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[594] The Criminal Procedure and Investigations Act 1996, Code of Practice 2005 Edition) provided that there was a particular duty to retain (and record) [per para 5.1]: "*Final versions of witness statements (and draft versions where their content differs from the final version)"* and *"Communications between the police and experts such as forensic scientists, reports of work carried out by experts and schedules of scientific material prepared by the expert for the investigator, for the purpose of the criminal proceedings."*
[595] *"What this doesn't do is look at the other side of the coin and look at instances where Horizon doesn't accurately record all data because of bugs, errors and defects in the system, does it?"* (Transcript, 27 June 2024, p. 170, ln. 16-19).
[596] *"If you're being asked to put together a report that would go to court and which you would potentially have to answer to, in court, you would be asking for guidance as to what, if anything, you needed to say about X that you were aware of, that was an issue with the system […]"* (Transcript, 18 December 2023, p. 154, ln. 7-13).
[597] *"Confused as Mr Singh's request might have been, why didn't you write back and say, "No, I can't just provide a generic witness statement that's to be used in support of a prosecution. I can only look at branch-specific data to examine whether there's evidence of a specific problem at a specific branch"?* (Transcript, 27 June 2024, p. 156, ln. 1-14).
[598] Transcript, 30 April 2024, p. 169, ln. 15-25.
[599] Ibid, p. 169, ln. 11-13.

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398. Indeed, the difficulty in trying to disaggregate the fact that Mr Jenkins was *not* instructed as an expert was demonstrated by Mr Atkinson KC's analysis of the generic statement (our emphasis): *"Q. I think you're nonetheless critical of the failure to make reference within the generic statement of material directly relevant to Horizon reliability that Mr Jenkins was aware of at the time that he made the October 2012 generic statement? A. Yes, because, as an expert, and bound by the rules in relation to what was required of expert evidence, he was required to identify that which was relevant to and potentially undermining of any opinion he expressed and, if he was expressing an opinion that the system worked properly and he was aware of material that might suggest to the contrary, then he had a duty to disclose that in his report, even if he hadn't been asked to. Q. You began that sentence with the words "As an expert"? A. Yes."*[600]

399. Overarchingly, analysis of the generic statement requires the Inquiry to adopt the perspective of Mr Jenkins receiving Mr Singh's email as a layperson; without understanding the legal framework within which the questions were being asked (and not being informed of one); but knowing that he was being asked these questions by lawyers, whom he was entitled to rely upon and assume understood legal procedure and how properly to conduct their prosecutions.

400. The six specific reasons why criticisms of Mr Jenkins in relation to the eventual content of the generic statement are misplaced are as follows.

401. **First**, in terms of the four issues he was <u>actually</u> asked to address, Mr Jenkins could answer these (having made clear he couldn't speak to the cases in the Rose material). These were the issues that Mr Bowyer intended should be answered by the questions. Mr Jenkins was *not* being asked to provide an overview of any bugs which had affected the Horizon system – that would have been an entirely different question. Had that question been asked, it would have resulted in an entirely different statement. The point is reiterated that Mr Singh, as a result of being the solicitor in Mrs Misra's case, knew of a number of issues about the operation of Horizon, in respect of which POL had statutory disclosure duties. He was plainly not asking Mr Jenkins to set these out. There was no information at Mr Jenkins' disposal to suggest that he should be answering questions not asked of him. He had no reason to think that these were not valid questions per se.

402. **Second**, as regards any criticism that Mr Jenkins did not, upon receipt of Mr Singh's email, seek guidance as to whether he should disclose BEDs in his report, Mr Jenkins *did* indicate to his managers, several hours after receiving the email, that he was not clear as to what Mr Singh wanted: "*I've had a look through the attachments on Jarnail's email* ***and it isn't at all clear exactly what he wants***. "[601] This email cannot be stigmatised as Mr Jenkins just seeking guidance about his workload; he was not certain what was being asked of him. He was not alone in this. Ms Thomas of Fujitsu's Litigation Support Service (who was also not a lawyer) was copied on Mr Singh's email and forwarded it internally within Fujitsu, noting that *"guidance will be required"*.[602] As a result, Mr Singh's email was forwarded to Mr Philips, an in-house lawyer at Fujitsu, who forwarded it to Mr Jones, the Fujitsu in-house lawyer who had been briefly involved in Mrs Misra's case.[603] Mr Philips described Mr Singh's email as *"fairly unintelligible"*. Regardless of the lack of clarity about what it was that Mr Jenkins was being asked to do, Mr Philips and Mr Jones reviewed the draft report that Mr Jenkins produced. Mr Philips gave Mr Jenkins some comments upon it.[604] Equally, when he sent the draft report to Mr Singh (copying Mr Flemington, Mr Smith, Mr Davidson, Ms Thomas and Mr Phillips), Mr Jenkins remarked: *"If you think there are areas that need expanding/ changing then please let me know [...]. "*[605] It is an important point that a number of people from both POL and Fujitsu saw Mr Singh's email

[600] Transcript, 18 December 2023, p. 133, ln. 25; p. 134, ln. 1-18.
[601] FUJ00156645 (emphasis added).
[602] FUJ00155090.
[603] FUJ00156650.
[604] FUJ00225310.
[605] POL00096986.

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seeking the report and considered the content of Mr Jenkins' report. Mr Jenkins was clearly not alone in understanding what the report was to address. It was reviewed by Fujitsu lawyers but no one from Fujitsu suggested that it needed to provide disclosure of BEDs. No one from POL (including Mr Singh, who knew about the various issues considered in the Misra case) suggested that it needed to provide a survey or disclose issues which had affected Horizon. Again, that would have entailed asking a completely different set of questions.

403. **Third**, Mr Jenkins can hardly be criticised for not understanding that a generic statement might be *legally inappropriate*. A lawyer had specifically instructed that such a statement be obtained in the first place. A number of lawyers were involved in turning Mr Jenkins' high level technical report into a section 9 generic statement. In any event, the entirety of the content of the statement was a broad technical explanation of how Horizon worked. The other sections of it were inherently limited (this is considered below).

404. **Fourth**, as for any suggestion that Mr Jenkins ought to have said that he would only provide a statement in a specific case, then at the point at which the statement was drafted it was being sought on the basis that it would be made specific to the challenges in a given case. This was what Mr Bowyer had said in his email (*"At first sight this/these look like a good base upon which our reports can be based […] If there is a specific challenge in a case then the statement and the report can be tweaked to cover the eventuality"*[606]). In any event, there is evidence (considered below) that Mr Jenkins was *not* clear that the statement would be used in any case at the point at which he drafted it. Clearly, as matters progressed and POL sought to use it in specific cases, *Mr Jenkins* then pressed the point that, for example, the data in each case was available.[607]

405. **Fifth**, the information which was set out in the technical report and then reflected in the generic statement was at a high level of generality and this was made clear in the statement. As Mr Jenkins put it when he gave evidence to the Inquiry, "*I thought I was just providing a high level overview of how Horizon was working in general.*"[608] This is consistent with how others at POL recorded their perception of what Mr Jenkins was being asked to do ("*I don't think Jarnail is looking for something too detailed, maybe 2-3 pages"*).[609] In other words, there appears to have been a common understanding as between Fujitsu and POL, at the time, that the generic statement would provide an overview of the system and the previous challenges that Mr Jenkins could speak to. Mr Jenkins is entitled to point to this broad understanding on the part of all involved to demonstrate that his understanding was consistent with everyone else's.

406. **Sixth**, Mr Singh's reference, in his covering email of 1 October 2012, to the system being *"robust"*, was not part of the questions that Mr Jenkins was asked to address in his generic statement. Mr Jenkins' immediate response to what Mr Singh was interested in and asking him about is preserved in his email to his managers later that day: *"I've had a look through the attachments on Jarnail's email and it isn't at all clear exactly what he wants. I suspect he wants a further report explaining why Horizon Integrity is OK. I had hoped that somebody would have sent him the report I produced on this for Dave Smith 3 years ago (ARCIGENIREP/0004) while I was on leave*."[610] In other words, what Mr Jenkins took from Mr Singh's email was that he needed to provide a general explanation as to how data was stored within Horizon, or as he explained it to the Inquiry, *"how the components of Horizon […] ensured that the writing and storage of data had integrity."*[611] As set out below, the generic statement did precisely this: it

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[606] POL00096997.
[607] Indeed, as will be seen, Mr Jenkins suggested to POL/Cartwright King that ARQ data for individual branches could be obtained, or pointed to the absence of ARQ data, when he was asked to adapt his generic statement to particular prosecutions: see the communications explored at §§ 430, 436 and 454 of these closing submissions.
[608] Transcript, 27 June 2024, p. 156, ln. 15-17.
[609] FUJ00156639.
[610] FUJ00156645: Mr Jenkins thought that the data integrity papers (sent to Mr Singh on 1 October 2012) "*were a good starting point for the purposes of describing Legacy Horizon and Horizon Online and the mechanics of their respective audit trails"* [see also WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 541].
[611] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 545.

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explained how the system processed, stored and retrieved data (and how this could reveal bugs). The point is repeated that because of the casual way that POL communicated with Mr Jenkins, there was considerable scope for misunderstanding what terms like 'robust' meant or what Mr Jenkins was actually being asked to do. Mr Singh was not using the term 'robust' to mean that there had never been any bugs in Horizon (because he was aware that there had been bugs – something which Mr Jenkins knew). The scope for misunderstanding the generic statement (absent its setting out the questions it was answering) was demonstrated by Mr Clarke's interpretation of it in July 2013.

Mr Clarke's interpretation of the generic statement

407. When Mr Clarke read the generic statement (or case specific variations of it) for the purposes of drafting his advice of 15 July 2013, he immediately assumed it to be expert evidence which attested to the *"robustness and integrity of Horizon in express terms",* that the "*inevitable conclusion to which the reader is driven"* was that *"there must be no bugs"*, and that there is *"nothing wrong with the system."*[612] There is nothing to suggest that Mr Clarke knew about the questions which Mr Bowyer had drafted and which the report was responding to.

408. Equally apparent is Mr Clarke's assumption that POL had instructed Mr Jenkins as an expert and that his witness statements therefore constituted expert evidence. Indeed, the entire premise of his advice was that Mr Jenkins had failed in the expert duties of disclosure. As considered below, Mr Clarke did not inquire into how this had happened or ask his colleagues about their use of Mr Jenkins as an expert witness.

409. The generic statement was almost entirely concerned with responding to Mr Singh's first request (i.e. that Mr Jenkins *"set out a description of the horizon system (In laymen's terms so that a jury can understand what it is and what it does)"*). It dealt with the other three requests much more briefly.

410. So, for example, in relation to Legacy Horizon, the statement referred:

a) To the transaction log having a unique incrementing sequence number making it possible to detect if any transaction records had been lost.[613]
b) To the checksum being read to ensure that it has not been corrupted.[614]
c) To individual transactions having their CRCs checked, upon retrieval, to ensure that they had not been corrupted.[615]
d) To a check being made, upon retrieval, that no records were missing (referring to the check that there were no gaps in the sequencing).[616]

411. In relation to Horizon Online, the statement referred:

a) To a check being made that there were no missing or duplicate JSNs for any counter and that should any be found an alert is raised (indeed the statement noted that *"**this could only happen as a result of a bug in the code or by somebody tampering with the data in the BRDB and this check is included specifically to check for any such bugs / tampering**"*).[617]

[612] POL00066790.
[613] FUJ00124013, p. 6.
[614] Ibid, p. 7.
[615] Ibid, p. 7.
[616] Ibid, p. 8.
[617] Ibid, p. 9 (emphasis added).

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b) To the fact that the JSN would always increase by one for each successive audit record and that *"[...] **this enables a check to be made that there are no records missing from the audit trail when they are retrieved**."*[618]

c) To the fact that when the content of a basket was written to the BRDB the net value of accounting lines ought to be zero (and again it was noted *"**that this could only happen as a result of a bug in the code and this check is included to specifically to check for any such bugs**."*[619]

412. This detail was provided from a technical perspective and reflected Mr Jenkins' understanding of the purpose of the generic statement, which, as he described it to the Inquiry, was *"primarily about describing how the audit trail worked and how it was actually recording the data that had been input into the system and how it was stored into the audit servers and retrieved for ARQ data."*[620]

413. Mr Jenkins was describing the general processes by which Horizon processed and stored data and how it was checked (and checked upon each retrieval). He was explicit that those checks would ascertain whether the data had been corrupted by BEDs or if transactions were missing. This cannot be read as a statement that there were no BEDs in Horizon. On the contrary, Mr Jenkins, by explaining the checks which were done (and each time data was retrieved), was clearly indicating the possibility that data could be corrupted or affected by BEDs.

414. In any prosecution in which this generic statement was served, the defence would have been put on notice that these checks were done upon retrieval of the branch data. Correspondingly, if POL had not obtained this data, the defence would know these checks had not been carried out.

415. Clearly, the technicality of the language and the processes being described, risked misunderstanding, especially where there was no shared understanding, nor common language, between POL and Mr Jenkins as to what he was explaining. This scope for misunderstanding was greatly magnified by the informality and inadequacy of POL's communications with Mr Jenkins. And this scope for misunderstanding included the meaning of terms such as *"integrity"* and *"robust"*. Mr Jenkins' use of the term *"integrity"* in the generic statement was in the context of Horizon's storage and retrieval of data. Mr Jenkins did not use the term *"robust"* in his statement (this was Mr Singh's word), but in Mr Jenkins' mind, as he told the Inquiry, the term *"robust"* did not equate to infallibility.[621]

416. A careful reading of the generic statement bears out this distinction. Contrary to Mr Clarke's interpretation, it was not asserting that Horizon was bug-free or that there was *"nothing wrong"* with it.

Use of the generic statement

417. That Mr Jenkins did not understand that the generic statement was going to be used in a specific case is apparent from the email chain of 19 October 2012, in which Ms Jennings of POL informed Mr Jenkins that his statement was being used in a prosecution at Peterborough Crown Court. He replied, *"[...] I thought that was a general statement. If I am required to go to court for that, I think I need to have some more background on the specific case and exactly what is being alleged.*

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[618] Ibid, p. 10 (emphasis added).
[619] Ibid, p. 10 (emphasis added).
[620] Transcript, 27 June 2024, p. 170, ln. 10-15.
[621] This is not the only example of integrity potentially meaning different things to Fujitsu and POL. It was an issue in 2014, as demonstrated by an email between Mr Underwood and Mr Wechsler on 20 November 2014 (POL00149578): *"Whenever we have spoken to FJ about this issue, they seem puzzled as to why we are so concerned citing 'data integrity'. However I think we are now of the opinion it is a semantics issue. By 'data integrity' FJ are, I think, referring to 'audit trail' – in that, whatever is done leaves a clear and identifiable audit trail behind it."*

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I appreciate that is not covered by my statement, but if I need to be an expert witness, I need to understand what is happening." [622]

418. Ms Jennings had evidently spoken to Mr Jenkins because she explained: "*Gareth was asked to supply an expert report on Horizon Integrity by the legal team and I was asked to input this onto a s.9 witness statement in order to produce it in court.* ***Gareth was not aware that this related to a specific case and was also not aware that he would be required in court.*** *I have spoken to Gareth ...* "[623]

419. Again, this speaks very clearly to Mr Jenkins' lack of understanding as to why he had been asked to provide this statement and the use to which it was being put. Mr Atkinson KC agreed that this was a matter of concern.[624]

420. In his evidence to the Inquiry, Mr Jenkins was asked whether his self-reference to being an *"expert witness"* (in his email of 19 October 2012) meant that he had realised that he was performing the function of an expert witness. Putting to one side that the statement which had been drafted for him omitted any reference to being an expert report or expert duties and did not conform to the requirements of expert evidence, it was Ms Jennings' email (to which Mr Jenkins was replying) that introduced the word expert. Mr Jenkins' response hardly connotes any familiarity with expert duties or any understanding of them. His response is consistent with his understanding from his experience in Mrs Misra's case that going to court as an expert (as he understood it, an expert in Horizon) would require him to know something about the case because he would be subject to cross-examination. It also demonstrates his understanding that he would not be providing a statement unless he was told something about a case.

421. After this point, it was Ms Panter of Cartwright King who contacted Mr Jenkins about using his generic statement. She became the person at that firm who appears to have had charge of how the statement would be used. On 16 November 2012, she informed Mr Jenkins that his generic statement had been served in a number of prosecutions (although it appears common ground that this had not happened) and that she wanted to serve it in six listed cases.[625] With no concept of prosecutorial duties, she attached a case summary of each case (which she invited Mr Jenkins to read) and then asked that he sign his generic statement six times, once for each of the six cases. Her rationale (as explained in her email to Mr Jenkins and others at Fujitsu) exposes (again) how far from the norms of prosecuting the Cartwright King approach was. The communication with Mr Jenkins is set out here in full given that it encapsulates everything which was wrong about POL's use of the generic statement (emphasis added):[626]

> *"[...] I do intend to use the report that you have already provided.* ***It doesn't matter that you have not mentioned a specific case in your report, as there has [sic] not been any specific criticisms raised by any of the defendants provided in my list of cases****. It would be a different scenario if there had been specific criticisms made, as your report would have to respond to that particular issue.*
>
> ***What I propose to do is serve your statement on each defence solicitor so that the issue of Horizon is addressed. That will then place the onus on the Defence*** *to specify what if anything, they say, is wrong with the Horizon system.*

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[622] POL00097061.
[623] Ibid (emphasis added).
[624] Transcript, 18 December 2023, p. 165, ln. 5-16: *"Q. Putting aside for the moment the parts of the emails that concern the extent of the BAU arrangements and the provision of extra costs and time, do you agree that this is a concerning exchange of emails involving Mr Jenkins? A: In the sense of his apparently not having understood what he was providing the generic statement for, yes, it is. Q: He, would you agree, appears to be under a state of some confusion as to the role that he is performing? A: Yes. Q: He says: "I thought this was a general statement. If I'm going to come back to court for a specific case, I need more background on the specific case and what is being alleged in that case." A: Yes."*
[625] POL00097137. There is no evidence that it had been served in a number of cases. Equally, it had not been resigned and Ms Panter was asking for it to be signed so that it could be used.
[626] None of this is to criticise Ms Panter, who as a paralegal clearly ought not to have had conduct of these cases.

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> ***That is why it is important for you to consider the case summaries*** *that I have provided so that you are familiar with each case."*

422. Axiomatically, this bore no resemblance to the instruction of an expert, nor indeed to the use to which an expert report should be put. It demonstrates that the cases in which POL used Mr Jenkins' witness statements (based on the generic statement) were not being considered on their facts by POL or Cartwright King. Consistent with the approach which was taken by POL in Mrs Misra's case, Cartwright King were simply telling Mr Jenkins to read the case summaries to familiarise himself with the cases. Neither they nor POL sought to distil the issues as between prosecution and defence, or identify any issues or questions upon which Mr Jenkins could assist the court.

423. Equally, Mr Jenkins was being told to read these case summaries whilst simultaneously being told that his generic statement did not need to be supplemented by reference to specific prosecutions, because the defendants in these cases had not raised any specific criticisms of Horizon. In short, it was an approach which was inimical to a prosecutor's duties *and,* just as fundamentally, made little sense.

424. In relation to the use to which POL put the generic statement and its failure to obtain underlying data for the branches in question, Mr Atkinson was clear as to where the blame lay:

> "Q: *Did you form a view who was controlling this exercise, the extent to which specific enquiries were made; on the one hand, the Post Office, and, on the other, Fujitsu, including Mr Jenkins?*
> *A: Insofar as I could see from what I had, there was this instance here [Allen] of Mr Jenkins volunteering that something further could be done in relation to the ARQ data and, in this instance, it was the investigator and the lawyer who said that that wasn't required. In other instances, it was lawyers such as Ms Panter, who were saying a generic statement will do, and so, insofar as I could judge from what I could see, it was the Post Office side of things saying 'This is enough', rather than their expert or the company that he worked for telling them that it didn't need to be done.*"[627]

425. Mr Atkinson KC agreed that Ms Panter's email had the effect of *"restricting the analysis which Mr Jenkins might undertake"* such that *"Fujitsu were never asked to analyse the transaction data at all."*[628] Having made the fundamental legal error of failing to instruct Mr Jenkins as an expert, POL and Cartwright King compounded that error by restricting further what they asked Mr Jenkins to do.

426. Despite Ms Panter's involvement, it was Mr Bolc of Cartwright King who had responsibility for the prosecutions of Mr Allen, Ms Sefton and Ms Nield. When Mr Bolc gave evidence to the Inquiry, he accepted, in terms, what was fundamentally wrong with this approach:[629]

    a) That each case ought to have been dealt with individually (*"They should have all been addressed specifically, not just in a generic way"*[630])
    b) That there was a lack of any formality and that it did not constitute the instruction of Mr Jenkins as an expert.[631]

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[627] Transcript, 18 December 2023, p. 133, ln. 7-24.
[628] Ibid, p. 128, ln. 12-18.
[629] Mr Bolc erroneously suggested in the course of his evidence that Ms Panter was an assistant solicitor: *"I believe she was an assistant solicitor at the time. She helped with the evidence provided by Gareth Jenkins, primarily, I believe, and some casework assistance."* (Ibid, p. 5, ln. 5-8).
[630] Ibid, p. 165, ln 9-12.
[631] Ibid, p. 165, ln 15-19.

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c) That Ms Panter was telling Mr Jenkins that it did not matter that his report did not address any of the facts of the cases.[632]
d) That Ms Panter was proposing this approach but providing Mr Jenkins with only the barest amount of information about each case.[633]
e) That Ms Panter appeared to have thought it proper for the prosecution, by this route, to put the onus on the defence (but also appeared to think that Mr Jenkins might have to give evidence at court).[634]
f) That it was not an approach that made much sense.[635]
g) It was wrong to tell Mr Jenkins that he didn't need to consider the facts of any individual case.[636]
h) It was wrong because it was the responsibility of the prosecutor to consider each case on its facts and merits.[637]
i) That Ms Panter was essentially abrogating that responsibility through this approach.[638]

Mr Allen's case

427. Having received Ms Panter's email, on 3 December 2012, Mr Jenkins sought clarity and suggested some potential lines of enquiry he could explore, despite the indication that these cases did not give rise to specific Horizon issues ("*I thought I should try and clarify exactly what you want from me*").[639] In relation to Mr Allen's case, Mr Jenkins informed Mr Bolc that he had not been provided with the audit data relating to his branch.

428. Again, it is of note that this is another example of Mr Jenkins seeking clarity from lawyers as to what it was they wanted from him. Mr Bolc accepted this: *"Q. Yes. He's saying to you, "Well, here are things that could be explored in these cases", correct? A. He is, yes.*[640]

429. On 4 December 2012, Mr Bolc of Cartwright King emailed Mr Jenkins, attaching an extract from Mr Allen's interview, noting that: *"As in the case summary I sent you he is trying to suggest that an initial loss of £3000 is attributable to lost data which has not reached head office because of installation problems. Are you able to comment on this scenario at all?* ***Ultimately we would need to discredit this as an explanation that holds any water****. He denies stealing the subsequent losses and therefore by implication may be seeking to blame the system for these losses as well".*[641] Axiomatically, this was not an instruction to an expert but yet another opaque invitation to *"comment"* on the defence. It was an invitation based upon the defendant's interview (not branch data) and, inappropriately, sought an outcome (the *"need to discredit"* the defence explanation) rather than asking Mr Jenkins to examine the issue to ascertain what had happened. Mr Bolc accepted the inappropriateness of this communication. He was asked why *"[…] this was happening over and over again? A. I think it was an approach that had been adopted that I'd seen in other documentation and used the same approach, and it wasn't right. Q. Was it a particular culture at Cartwright King or was it something else? A. I can't say."*[642]

430. Again, despite this, Mr Jenkins informed Mr Bolc that *"it might be helpful to have a dig as to exactly what went on in the Branch at the time of the initial loss […] I could just make a general statement relating to [communications problems and missing data] or if we retrieved the data*

[632] Ibid, p. 165, ln. 20-23.
[633] Ibid, p. 165, ln. 24-25; p. 166, ln. 1-2.
[634] Ibid, p. 166, ln 3-6.
[635] Ibid, p. 166, ln 15-20.
[636] Ibid, p. 166, ln 21-24.
[637] Ibid, p. 167, ln 2-5.
[638] Ibid, p. 167, ln. 6-8.
[639] FUJ00124105.
[640] Transcript, 15 December 2023, p. 172, ln. 10-22.
[641] FUJ00153881 (emphasis added).
[642] Transcript, 15 December 2023, p. 116, ln. 11-23.

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from the time I could check out exactly what happened in this case".[643] Mr Jenkins repeated that there had been no request for audit data or helpdesk calls. Yet despite this indication by Mr Jenkins that he could ascertain what had happened at Mr Allen's branch by reference to the data, this was rejected. It was rejected despite the fact that Mr Bolc understood and communicated to Mr Bradshaw what Mr Jenkins was saying he could do ("*Gareth tells me that it is in fact possible for him to retrieve the actual data from this time to see what actually occurred at this branch … I have told him that at present we do not wish to pursue this option unless it became unavoidable. Can you let me know your thoughts before I get him to sign it off*?")[644]

431. It was not Mr Jenkins' role to suggest reasonable lines of enquiry that POL, as investigator and prosecutor, were obliged by the CPIA to undertake. However, he clearly flagged what could be investigated to the prosecutor (who then told the investigator) and both the investigator and prosecutor clearly understood what Mr Jenkins was proposing. As Mr Atkinson KC told the Inquiry, what Mr Jenkins was offering to undertake *"would have been more in line with the Post Office's duties as a prosecutor, both in terms of reasonable lines of enquiry and disclosure"*[645], and that POL's refusal to do this was *"clearly a missed opportunity for which little justification was advanced."*[646] Again, the simple fact that Mr Jenkins was pressing the point that he could investigate what had happened is entirely contrary to any suggestion that he was trying to present Horizon as though it had no issues or problems.

432. The communications between Cartwright King and Mr Jenkins in Mr Allen's case ought to have been recorded, retained and revealed[647], noted in the unused schedule and then considered for disclosure to the defence. This would have demonstrated to Mr Allen's lawyers the sort of analysis of their client's data that could be undertaken, and that this analysis could assist in ascertaining whether there was a Horizon problem at their client's branch. There is no evidence that this was done.[648]

433. Before he signed his witness statement in Mr Allen's case, Mr Jenkins also informed colleagues at Fujitsu (including Mr Philips, a Fujitsu in-house lawyer), that he had not examined the data in Mr Allen's case and indicated that he would hold off sending his statement lest he was advised not to.[649] Again, this speaks to Mr Jenkins' seeking guidance and sharing information about these cases. The fact that Mr Jenkins did sign the statement suggests that his colleagues did review the draft. In any event, Mr Jenkins' signed witness statement in Mr Allen's case made it clear that he had not been provided with any data to examine: "*I have not had an opportunity to examine the detailed logs from this period to see whether there were any issues, and any justification in the claim that this resulted in apparent system losses of £3,000 as claimed.'*[650]

434. Finally, when he gave evidence at the Inquiry, Mr Jenkins was asked why he had questioned Ms Panter (after Mr Allen's case had concluded but before he knew its outcome) as to what had been said at court about *"problems caused due to refurbishment and comms issues being the reason for some of his losses."*[651] It was reasonable for Fujitsu to be concerned about whether this would set a precedent. It plainly would have been important if a defendant had been acquitted on these grounds. It is of note that Mr Jenkins only asked this question when informed the trial was over, and without knowing whether Mr Allen had been found guilty or not guilty. This indicates that neither Mr Jenkins nor Fujitsu were pressing or were overly concerned as to the outcome.

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[643] FUJ00153881.
[644] Ibid.
[645] Transcript, 18 December 2023, p. 130, ln. 19-24; p. 132, ln. 17-18.
[646] EXPG000004R, expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), § 545.
[647] Pursuant to § 5 of the CPIA Code of Practice (the 2011 version of which was in force at the time of Mr Allen's prosecution), which provides that the duty of retain material extends to *"communications between the police and experts such as forensic scientists".*
[648] See the conclusions in EXPG000004R, expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), §§ 536-537.
[649] FUJ00124171.
[650] POL00089077.
[651] POL00059597.

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Ms Sefton and Ms Nield's case

435. The cases of Ms Sefton and Ms Nield were the first cases that Mr Bolc had prosecuted and the charging advice the first he had written. He was uncertain as to what the charging threshold was that POL applied.[652] Prior to Cartwright King seeking to use Mr Jenkins' generic statement, Mr Bolc had objected to the defence disclosure requests (on the basis that the case was unrelated to Horizon). Mr Bolc wrote to the defence on 18 September 2009 confirming that a review of cases would take place (and attaching the details).[653] The details attached were the "Our story" passages that included a description of the Second Sight investigation as an external review of "*these few individual cases"*.

436. Mr Jenkins' email of 3 December 2012 seeking clarity as to what Cartwright King wanted from him in relation to Mr Allen's case was also written in relation to Ms Sefton and Ms Nield's case.[654] This email shows that Mr Jenkins was again suggesting inquiries that POL might wish to undertake in an attempt to be helpful. In his usual polite terms, Mr Jenkins said *"perhaps you want me to cover some further things"*, observing that *"in the case of Nield & Sefton, it is stated losses started in 2005 and this is linked to the installation of Horizon […] 2005 doesn't seem to tie in with Horizon being installed. NB I have no records as to when exactly Horizon was installed in any Branch and I don't know if Post Office Ltd have any such records. Similarly I have no idea if this mismatch of dates is material."* He went on to note that *"I have not been presented with any audit data relating to any of these cases to examine."*

437. Again, Mr Bolc's response was to reject obtaining the audit data.[655] Mr Bolc informed Mr Jenkins that *"The only clarification I think I need at the moment relates to the timeline, 2005 removal of cash account. Could you clarify what this means and discount it as a possible explanation for the losses beginning to occur at that time in the sefton and neild [sic] case. The audit reports will simply show the money missing, so will not take things further."*

438. This language was akin to that used in Mr Allen's case (and about which Mr Bolc was questioned as to the culture within Cartwright King (*supra*)). Mr Atkinson KC agreed that Mr Bolc was using *"loaded language"* by asking Mr Jenkins to *"discount"* the 2005 removal of the cash account as a *"possible explanation"*.[656] Mr Atkinson KC also agreed that Mr Bolc's rejection of obtaining the ARQ data was *"inconsistent with the approach of an open-minded prosecutor"*, since this was a *"reasonable line of enquiry […] allied almost inevitably to duties of disclosure"*.[657] It was put to Mr Bolc that his communication read like he was asking Mr Jenkins to narrow his report or to keep it within narrow confines. Mr Bolc responded: "*not sure that's what I was attempting to do but, yes, it can be read like that*".[658]

439. Upon Mr Bolc's refusal to obtain the data, Mr Jenkins replied to him on 5 December 2012 to say that he had expanded his generic statement to address, as requested, the 2005 removal of the cash account.[659] Mr Jenkins asked whether this draft statement provided *"sufficient detail"*.[660] Later that day, Mr Bolc confirmed that *"I believe this should do for now"* and asked Mr Jenkins to sign it.[661]

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[652] Transcript, 15 December 2023, p. 60, ln. 1-7.
[653] POL00058306.
[654] FUJ00124105.
[655] POL00089394.
[656] Transcript, 19 December 2023, p. 143, ln. 20-24.
[657] Ibid, p. 144, ln. 1-7.
[658] Transcript, 15 December 2023, p. 98, ln. 2-7.
[659] POL00089394.
[660] FUJ00153872.
[661] Ibid.

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440. The signed version demonstrates that Mr Jenkins inserted an additional paragraph into the generic statement which noted the significant change to Horizon brought about by the removal of the weekly cash account report and the move to the monthly branch trading report.[662] The evidence makes it clear that this was the only amendment to the generic statement that POL asked him to make, despite Mr Jenkins suggesting other lines of inquiry.

441. After this point (on 7 January 2013), Ms Panter emailed Mr Jenkins notifying him that the trial had been vacated to allow the defence to procure an expert report and that the case had been re-listed for 15 April 2013.[663] Despite this indication, Mr Jenkins was not sent such a report.[664]

442. None of the unused schedules reviewed by Mr Atkinson KC (including the unused schedule dated 18 February 2013[665]) contained any reference to any of POL's communications with Mr Jenkins about the case.[666] Ms Sefton and Ms Nield's lawyers were therefore unlawfully deprived of the means by which they could have discovered the restrictive approach that POL had adopted to Mr Jenkins' evidence, as well as the information that Mr Jenkins had himself volunteered to POL as to how analysis of the branch data might shed light on whether there was a Horizon problem.

443. That POL and Cartwright King rejected obtaining ARQ data in Ms Sefton and Ms Nield's case in November and December 2012 may also be explained by the view formed very early in the prosecution (that this was not a Horizon case at all) becoming cemented. In rejecting the defence application for disclosure, Mr Bolc had written to the defence solicitors (on 28 August 2012) noting that: *"your client is charged with false accounting by failing to make entries onto the Horizon system regarding the deposit slips found, and thus the offence* ***has occurred outside of the system***. ***Material relating to the Horizon system is therefore not deemed disclosable at this time****".*[667] This may make sense of the clear decision not to obtain the data in their cases.

Mr Ishaq's case

444. In the series of chaotically and incompetently conducted cases in 2012-2013, Mr Ishaq's stands out. Mr Jenkins' involvement in it started on 16 November 2012. It was one of the cases in relation to which Ms Panter asked him to sign his generic statement.[668] As noted earlier, this approach was predicated on the belief that Mr Ishaq had *"not [...] raised a specific issue with the Horizon system itself".*[669]

445. Mr Smith of Cartwright King had much of the responsibility for the conduct of Mr Ishaq's case. He was not aware of the requirements that applied when he, as a prosecutor, sought to rely upon expert evidence: *"A. I have to accept that I wasn't. Like I said yesterday, we had essentially been a defence firm of solicitors. We had presented cases in court on an agency basis and, as I pointed out yesterday, there is a world of difference between doing that and actually progressing prosecution files. Quite why Cartwright King thought it was appropriate to take on this prosecution work, I really, with hindsight, have no idea because we certainly didn't have the training for it, and I was unaware of the duties on a prosecutor in relation to the instruction of an expert witness."*[670] Two points may be made about this. **First**, many of the special duties that apply to lawyers, when they seek to rely upon expert evidence, and the required contents of an expert report, are the same regardless of whether a lawyer is a defence lawyer or prosecutor. **Second**, prosecutors are subject to a distinct set of duties in relation to experts which arise under

[662] The signed version is at POL00059424.
[663] POL00059481.
[664] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, § 687.
[665] POL00059750.
[666] See EXPG000004R, expert report of Duncan Atkinson KC dated 13 December 2023, volume 2 (revised), §§ 559 and 562.
[667] POL00136497 (our emphasis).
[668] POL00097138.
[669] POL00097137.
[670] Transcript, 2 May 2024, p. 95, ln. 10-20.

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the CPIA. It appears that no one at Cartwright King understood either set of duties.

446. Mr Smith described Mr Ishaq's case as having become a *"mess"* (because nothing much happened on it) and because it was being worked on by Ms Panter in Nottingham and by him in Derby. However, he accepted that he was significantly involved in running the prosecution.[671] Prior to Mr Jenkins being asked to provide a statement, Mr Smith had taken the view (expressed on 3 September 2012) that the defence requests for disclosure about Horizon were a *"fishing expedition."*[672] Mr Smith also accepted that the position set out by counsel at a hearing on 4 September 2012, that Horizon worked but was "*irrelevant"* in Mr Ishaq's case because he accepted making the reversals, would have come from him.[673] Mr Smith accepted that he had been sent the Rose database and the Rose note at the time but denied that he had opened either document: "*When I opened the spreadsheet, when I was preparing for this public Inquiry, I was actually quite horrified with what I read on it because, whereas I had understood that it was a list of unsuccessful challenges, I think the title, actually, would have been more appropriate to be list of unsuccessful challenges in cases which the Post Office dare not prosecute. I was quite horrified to see, for example, on -- and it's not on the screen in front of me now but on the spreadsheet -- there is a case where a subpostmaster or mistress was able to demonstrate losses and, therefore, no further action was taken. So it wasn't exactly as I had understood it to be, literally a list of unsuccessful challenges"*.[674]

447. It was Ms Panter with whom Mr Jenkins continued to have contact in relation to the use of his generic statement in Mr Ishaq's case. On 30 November 2012, Ms Panter sent Mr Jenkins the indictment and case summary in Mr Ishaq's case (together with documents and information about five other cases) and asked him to provide a report which *"deals with"* the case.[675] Nothing appears to have happened in relation to this missive until 7 January 2013, when Mr Jenkins emailed Ms Panter to *"ensure that we are aligned with an understanding of what is expected of me."*[676] In response, Ms Panter attached a copy of the defence case statement, summary of facts and indictment in Mr Ishaq's case together with the following request: *"please could you prepare a report for this case […] essentially the defence are saying that Ishaq was not dishonest, and that he had to make reversals in order to balance, as there had been 'a malfunction' with the Horizon system. This is fairly urgent as the trial date is at the end of Feb."*[677] Plainly this was not an expert instruction; it provided no analysis of the case (save in the cursory terms set out above); and did not delineate any questions the prosecution wanted him to address. Specifically, Ms Panter did not indicate that the prosecution considered this case to require a different form of statement than the generic statement.

448. On the following day, Mr Jenkins replied to Ms Panter, noting that he had read the material but *"I don't think there is anything there for me to comment on specifically."*[678] He asked Ms Panter to confirm whether the generic statement was *"all you need in this case"*. On 15 January 2013, Ms Panter replied to say *"there is nothing that you need to add, it covers everything"*.[679] Upon receiving this confirmation from Ms Panter that the generic statement was all that was needed, Mr Jenkins provided a signed copy of his statement.

449. On 31 January 2013, Ms Panter emailed Mr Jenkins again, asking that he *"[…] read the defence case statement attached and make a list of your initial thoughts on the assertions that he is making. We may need you to add a few of those comments into your report so that each issue is*

[671] Transcript, 1 May 2024, p. 80, ln. 20-25; p. 81, ln. 1-6.
[672] POL00046242.
[673] Transcript, 1 May 2024, p. 91, ln. 13-17.
[674] Ibid, p. 97, ln. 11- 24.
[675] FUJ00156677.
[676] POL00089405.
[677] FUJ00153919.
[678] POL00059481.
[679] POL00059481

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addressed."[680]

450. The point made above in relation to Mrs Misra's case is repeated here. This was the clear, unlawful delegation, to a witness, of the statutory function of the prosecutor to keep disclosure under review (and, in particular, following the giving of a defence statement).[681] It was for the prosecutor to examine the defence statement to see whether it pointed to other lines of enquiry, to identify those lines of enquiry, and to seek expert evidence on matters relevant to those lines of enquiry if that evidence would assist the court.

451. As Mr Atkinson KC stated, this request was *"unusual, certainly, in relation to an expert"* and he agreed that it was particularly inappropriate in circumstances where Mr Jenkins had never been properly instructed as an expert witness, nor provided with all of the material relevant to the issues in the case.[682] He agreed that *"what should have been done"* was that *"the lawyers and the Investigator should have looked at the defence statement and seen what disclosure obligations it gave rise to*"; that they should have "*looked for what issues […] it raised and which questions, therefore, [were] required to be answered and whether they were to be answered by expert or lay evidence*"; and that *"if expert evidence, properly to have instructed an expert with written instructions."* Mr Atkinson KC further agreed that the shift in Cartwright King's approach from *"the generic will do"* to *"we're delving into the specifics of a case"* was *"a moment for the lawyers to grasp the instruction of an expert with both hands and do it properly."*[683]

452. Criticisms put to Mr Jenkins about the responses he noted on Mr Ishaq's defence statement do not take account of any of Mr Atkinson KC's points, nor do they address the fundamental issue that he should not have been doing this at all. It was impermissible for POL to delegate its duties under the CPIA to Mr Jenkins by asking him whether there was material that fell to be disclosed in response to the requests made in the defence statement. It was not just legally impermissible, plainly the reasons why a prosecutor would not ask a witness to comment on a defence case statement or disclosure requests is that they lack understanding of the legal obligations which apply to the prosecutor's task. Mr Jenkins had no understanding of the legal framework that governs disclosure, including the application of the disclosure test or the determination of relevance. There was obvious scope for lack of understanding as to what the language used in the request might encompass as well as a lack of understanding as to what legally might be regarded as relevant. As is clear from his responses and is unsurprising, Mr Jenkins did not understand the defence disclosure requests to relate to information that he had.[684]

453. This submission refers throughout to what would happen in a *functioning* prosecution. In a functioning prosecution, if the lawyer with responsibility for the case considered that there might be material in the hands of Fujitsu, then formal steps would be taken in relation to a third party disclosure request. Separate to that, there might be a proper dialogue with the third party as to the relevance of material held by it.

454. Unsurprisingly, Mr Jenkins approached the defence statement from his perspective as a *technician*. He noted at the outset that *"much of it relates to requiring further data for analysis"* and reiterated this with the caveat that *"without examining the logs it is difficult to be any more specific."*[685] As Mr Atkinson KC noted, Cartwright King was "*being told by their expert that an analysis of the data would assist"* in relation to assessing Mr Ishaq's claims that Horizon had malfunctioned.[686] Yet they did nothing to implement Mr Jenkins' suggestion and request data for Mr Ishaq's branch so that it could be analysed.

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[680] POL00089427.
[681] Per section 7A(2) CPIA.
[682] Transcript, 19 December 2023, p. 153, ln. 20-25; p. 154, ln. 3.
[683] Ibid, p. 153, ln. 20; p. 156, ln. 8.
[684] Indeed, this is revealed by his failure to understand some of the legal references in the defence statement (see for example his comment in response to disclosure request 10).
[685] POL00059602.
[686] Transcript, 19 December 2023, p. 158, ln. 1-3.

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455. The point is reiterated that Mr Jenkins was not even formally instructed as an expert in Mr Ishaq's case. Ms Panter provided Mr Jenkins with no information or guidance whatsoever as to *POL's* disclosure obligations. Mr Jenkins' comments on the defence statement were sent to three lawyers (Mr Singh, Mr Bolc and Mr Smith) and Ms Panter. Despite the fact that it must have been clear that Mr Jenkins did not understand some of the legal references in the defence statement, it did not prompt any of them to question how POL should be complying with its CPIA obligations. Nor did it prompt any conversation with Mr Jenkins. Nor did it prompt any of them to question whether Mr Jenkins knew anything about expert duties including those of disclosure or about disclosure in general.

456. When he gave evidence at the Inquiry, Mr Jenkins was asked questions as to why he did not identify the Known Error Log as disclosable material responsive to the request in Mr Ishaq's defence statement (at request 11(v)) for *"internal memoranda and/or guidance notes and/or other material dealing with the correct or incorrect functioning of the Post Office hardware/software system."*[687] These questions were misplaced. Mr Jenkins was, purportedly, an expert witness (albeit not instructed as one), *not* the investigator, prosecutor or disclosure officer. This implied criticism of his performance of a *disclosure* function is both misconceived and particularly unfair when criticism was simultaneously being made of Mr Jenkins for trespassing on the functions of a lawyer and investigator.[688]

457. Mr Jenkins explained in his evidence to the Inquiry that he had <u>not</u> interpreted the defence request as relating to the Known Error Log (in fact his annotation on the defence case statement suggests he thought this applied to items within his possession: ("*<u>I</u> don't believe that <u>I</u> have anything"*).[689] He also explained to the Inquiry that, more generally, *"I didn't know I was expected to tell anybody about it [the Known Error Log]. I thought Post Office had that information and they could tell people about it."*[690] This was correct: he had previously informed prosecutors about the KEL; it *was* POL's duty under the CPIA to record, retain and reveal relevant material in its possession. It *was* POL's duty to make a formal third party disclosure request to Fujitsu for any other relevant material which Fujitsu might hold. Equally, the point put to Mr Jenkins, that his comments would have enabled prosecutors to say at a disclosure hearing that there was nothing to disclose (asides being speculative)[691] ignore that these comments (a) would manifestly *not* have entitled POL to say it had discharged it statutory disclosure duties, (b) would not have absolved POL of disclosing the material it held and was aware of (like the Rose report and spreadsheet), and (c) did not absolve POL of its broader disclosure duties to record, retain and reveal all information held by it potentially relevant to its disclosure duties in cases like Mr Ishaq's.

458. Cartwright King's conduct of the case reached its nadir in relation to its use of Mr Jenkins to respond to the defence expert. Despite the fact that the prospect of a defence report had been in contemplation for some time[692], Mr Jenkins was not informed about the existence of a defence expert until 14 February 2013, when Ms Panter asked him to "*attend court on Monday morning before the start of the trial to allow you discuss the case with the defence 'expert'. I think the rationale behind this is to narrow any issues that we may have with the defence from the outset so as to try and reduce the amount of time that you are required to attend."*[693] The trial was listed to start on 25 February 2013.

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[687] Transcript, 28 June 2024, p. 100, ln. 15.
[688] Ibid, p. 106, ln. 6; p. 108, ln. 1.
[689] Ibid, p. 100, ln. 15.
[690] Ibid, p. 102, ln. 25; p. 103, ln. 2.
[691] Ibid, p. 101, ln. 11-20.
[692] POL00119433 suggests that the prospect of a defence expert was first raised at court on 4 September 2012.
[693] POL00059808.

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459. In short, Mr Jenkins was now, entirely unexpectedly, being asked to attend the first day of the trial to meet the defence expert, not having been informed of any defence expert before then; not having received any defence expert report; not knowing what information the defence expert was giving evidence about; and not knowing what material the defence expert had examined.[694] As noted by Mr Atkinson KC: "*Well, it's moderately remarkable. To expect any witness, but certainly an expert witness, to deal with complex issues and to try and narrow those complex issues with another expert, not knowing what that expert said, not knowing what material they had seen, not being able to check, either, anything that they had said or that they have seen; I can't quite think how anyone thought that was a good idea*."[695]

460. On 22 February 2012 (which was the Friday before the Monday on which the trial was due to start), Ms Panter emailed an addendum defence statement to Mr Jenkins. She stated: *"please could you have a look at the comments that they have made and try to address as many of the points as you can, in order that we can email that to our counsel Mark Ford ahead of Monday's trial".*[696] For the second time, Cartwright King delegated to Mr Jenkins statutory functions which the prosecution was obliged to discharge.

461. Mr Jenkins informed Ms Panter that he had now had confirmation that Fujitsu had not supplied details of any helpdesk calls to POL regarding the branch[697], noting in his comments on the addendum defence statement (*inter alia*): *"I don't have anything to examine that enables me to comment on [sic] detail on any of these more specific points […] I have no easy visibility of these reports [ie. the helpdesk calls]. It is possible to retrieve them from the system and examine them, but I am not aware of them having been provided in evidence**. I have certainly not been asked to examine them but am happy to do so** […] I am checking to see if these reports have been retrieved and submitted as evidence. If so I'll try and get hold of them."*[698] This demonstrates Mr Jenkins to have pointed Cartwright King towards information that he had not been provided with but which could be obtained (by POL) in order to consider the points being raised by Mr Ishaq in his defence.

462. On 25 February 2013 (the first day of the trial), at 9.37am, Mr Smith of Cartwright King emailed Mr Jenkins a blank email with the attachment entitled 'Ishaq defence report'.[699] This was the defence expert report from Ms Ibbotson. As Mr Jenkins explained to the Inquiry, *"I was just given the report and said, 'Have a look at this, what do you think about it?', or words to that effect."*[700] Later that day, *Ms Ibbotson* provided Mr Jenkins with the appendices to her report (which Mr Smith had not).[701] Ms Ibbotson's report was concerned overall with how the loss figure (of £21,168.64) had been arrived at. She had been asked to consider (*inter alia*) accounting questions such as whether the factual contentions raised by the prosecution were correct; whether there had been double or multiple accounting; to prepare a report taking into account, for example, the defendant's business documents.[702]

463. The net result of this was that:

    a) Mr Jenkins had to deal overnight with a detailed forensic accountancy expert report (with numerous appendices) which he had only seen for the first time on the first day of the trial.
    b) This was despite his not being a forensic accountant.

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[694] Ms Ibbotson had been provided with audit data for Mr Ishaq's branch. Mr Jenkins had not.
[695] Transcript, 19 December 2023, p. 165, ln. 17-25.
[696] FUJ00153990.
[697] FUJ00153997.
[698] POL00059874 (emphasis added).
[699] FUJ00156747.
[700] Transcript, 28 June 2024, p. 91, ln. 1-3.
[701] FUJ00154006.
[702] POL00059927.

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c) He did so without being provided with formal written expert instructions, nor with any broader factual background to the case.
d) He did so without having been provided with the data which underpinned Ms Ibbotson's report until that day.

464. The suggestion put to Mr Jenkins in the Inquiry that, *"having seen what Mr Ishaq was getting at in this case, meeting with the expert, did you not feel that it might be appropriate to tell her about what was going on with Horizon at this time, when she was essentially raising accountancy related problems in relation to Horizon?"*[703] assumes a number of points. First, it assumes that Ms Ibbotson was raising technical problems. In fact, Ms Ibbotson's report was a forensic accountancy exercise assessing how the loss figure had been worked out. Over the first night of the trial, and clearly working under very considerable pressure in his hotel room, Mr Jenkins prepared a written response to Ms Ibbotson's report, in which he agreed almost entirely with the figures she had produced. Second, it assumes that there were things *going on* with Horizon Online which ought to have been to the fore of Mr Jenkins' mind. As he has explained in his third witness statement to the Inquiry, Mr Jenkins knew about the bugs which had arisen during the pilot but Mr Ishaq's branch had migrated to Horizon Online in July 2010, after the pilot period had ended (and before the beginning of the indictment period in Mr lshaq's case, which was 14 September 2010).[704] Additionally, having examined the data (for the purposes of producing his own document overnight), Mr Jenkins noted that he could see *"in the logs what actually happened"* and that he had found *"no issue with the system."*[705]

465. Following discussion between them the following morning, Mr Jenkins and Ms Ibbotson agreed a document. This was described during the Inquiry as a joint report; it was entitled 'Expert Report of Beverley Ibbotson [& Joint Statement of Beverley Ibbotson & Gareth Jenkins]'.[706] The contents reveal that it was not a joint report. Rather, it is Ms Ibbotson's report to which she had added Mr Jenkins's comments in bold italics, based on the analysis he had performed the previous night.[707]

466. The expert declaration was specific to Ms Ibbotson and was signed only by her.[708] The suggestion that by her adding his comments to her report in this way, Mr Jenkins had assumed (knowingly) the role of an expert in the sense of an independent expert like Ms Ibbotson (or now understood himself to be in the same position as her), or understood the duties of an expert to apply to him (or understood their content) is without foundation. It remained the position that no lawyer had explained expert duties to Mr Jenkins. There is no evidence that it had crystallised in his mind that these duties applied to him.[709]

Conclusions on 2012-2013 case studies

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[703] Transcript, 28 June 2024, p. 99, ln. 24-25; p. 100, ln. 1-3.
[704] WITN00460300, third witness statement of Gareth Jenkins dated 21 March 2024, §§ 649-650. In addition, the extent of the Receipts and Payments Mismatch bug had been ascertained quickly upon it coming to light. It was fixed swiftly and the precise number of branches affected by it ascertained. Knowledge of it was shared widely within POL (see §§ 329-335 of these closing submissions). The issues which arose at Warwick, Coton and Derby had arisen in the pilot and at a point when a very small number of branches were in the pilot. These issues were noted at the time and were well known about by POL; they led to the setting up of the counter review and they were all resolved (FUJ00094393). As Mr Jenkins made clear in his oral evidence, the imperative was to fix these pilot bugs precisely because they affected branch accounts (see Transcript, 27 June 2024, p. 54, ln. 25; p. 44, ln. 1-4): "*I was aware of that, and my approach was: we've got to fix this problem. We certainly could not leave that problem unfixed for Horizon Online to move forward and be rolled out, and so, therefore, it was important that the problem did get fixed, which it did."* Equally Mr Jenkins made it clear that later, upon the extraction of data related to one of the branches in the pilot, that Fujitsu would need to be wary about making a statement (FUJ00156217). In that case, the check which brought the concern to light was the check which was made on the NT events. That information was provided to John Scott at POL (FUJ00155516).
[705] FUJ00124338.
[706] POL00059927.
[707] For example, the first paragraph states it is Ms Ibbotson's report; what her instructions are (and so forth).
[708] POL00059927, pp. 19-20.
[709] Equally, his annotation of 'standard stuff' (in relation to the duties set out in the expert report in R v Wylie in 2013 [FUJ00124313]) is equally if not more consistent with a view that this '*stuff*' was not relevant to Mr Jenkins.

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467. What emerges clearly from the three 2012-2013 cases studies involving Mr Jenkins, apart from the incompetence of Mr Singh and Cartwright King, is that Mr Jenkins was not shutting down the defence requests or investigations into what might have gone wrong at their clients' branches. Instead, he was asking the right questions and indicating to the prosecutors what investigations could be undertaken in each case. As Mr Atkinson KC acknowledged, the *"course of action that Mr Jenkins was offering to undertake [would] have been more in line with the Post Office's duties as a prosecutor, both in terms of reasonable lines of inquiry and disclosure."*[710] He offered this course of action despite and not because of what POL had instructed him to do (i.e. that these were not cases that required individual consideration) and absent any knowledge of expert duties. It was Mr Jenkins, not POL or Cartwright King, who tried to deal with the specifics of each case. Mr Jenkins clearly did not share any common design with POL or Cartwright King in these three cases. His approach in these three cases was consistent with the approach that he thought was correct in Mrs Misra's case; that the data ought to be examined to see if it showed a problem at the branch. Again, the basic point is made that this approach was not remotely consistent with someone seeking to conceal problems. On the contrary, Mr Jenkins was pressing the point that data could be examined in each case to ascertain whether there was a problem or what was going on at a branch. Again, this was a reflection of his inherently honest, helpful and technical approach to these cases and to the role he was being asked to undertake.

7. REMOTE ACCESS

468. Section 6(c) of these submissions addressed the specific allegation about remote access put to Mr Jenkins in the context of Mrs Misra's case. This section widens the analysis of remote access. It argues that any insinuation that Mr Jenkins was part of some broader effort to keep remote access a secret, whether in the case studies or more generally, is contrary to the evidence. Indeed, the evidence suggests that he referred to remote access to different audiences, without any apparent concern that this might be regarded as sensitive or confidential.

469. For example:

a) When Mr Jenkins wrote his paper on the RPM bug in September 2010, he proposed a special form of remote access (the reinsertion of the "lost discrepancies" into the BRDB, using a script, with the consent of POL and affected branches) as a possible solution for fixing the live data. This paper was shared with POL.[711]

[710] Transcript, 18 December 2023, p. 130, ln. 19-24.
[711] A copy of this paper is at FUJ00085804. Ultimately, this solution was not used to fix the RPM bug. See Transcript, 27 June 2024, p. 105, ln. 19-25: Gareth Jenkins: *"[….] what we would have had to do is we would have had to develop a specific bit of code to actually make those sort of changes to those affected branches and so it wouldn't have been using any of the regular remote access type facilities that we had. So it would have been a special bit of code that would have been developed and tested specifically for that purpose. But, again, that wasn't the way that we went."*

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b) When Mr Jenkins met Mr Henderson of Second Sight in September 2012, he referred to the fact that Fujitsu had the capacity of remote access and used it.[712] Mr Henderson told the Inquiry that he felt Mr Jenkins was being *"very open"* about this.[713]
c) In November 2012, when Mr Jenkins signed a witness statement in R v Wylie, he referred to the fact of remote access.[714] As noted above, this was the first confirmation, in a public document, that Fujitsu had this capacity. POL regarded this statement as significant in the context of the Second Sight investigation. In discussion with Mr Williams, Mr Parsons stated that what Mr Jenkins had written would be a "*red rag to Second Sight.*" In response to Mr Williams' question whether it was consistent with what POL had previously said about remote access, Mr Parsons replied: "*Not quite — we say that transactions entered by SPMRs cannot be edited but we don't go on to say that FJ can input new transactions in exceptional circumstances. This information would therefore be entirely new news to SS.*" [715]

470. As has been set out above in relation to Mrs Misra's case, Mr Jenkins did not have rights of remote access. He did not use it as part of his own work and did not have first-hand knowledge of following the procedures which accompanied its use.[716] In respect of the single email from 2007, in which Ms Chambers raised making a corrective entry at the counter, there is no recorded reply from Mr Jenkins and the subsequent PEAK does not mention Mr Jenkins. [717] [718] At this distance of time, it is difficult to say what significance Mr Jenkins would have taken to the reference to the counter. As noted above, the phrase 'at the counter' has been used to denote remote access generally, rather than the specific distinction between access at the counter and at the correspondence server (both of which were forms of remote access). Given that remote access at the correspondence server resulted in messages being inserted at the counter (by the process of replication), this is not surprising.[719]

471. Mr Jenkins' understanding that remote access in Legacy Horizon was done via the correspondence server was shared by other senior technicians who were not within the SSC. For example, Mr Oppenheim, when asked (about his understanding of the use of remote access): "*To your knowledge, did Pathway have the ability to obtain such remote access without the relevant subpostmasters' knowledge or permission?",* answered: "*A. No. Let me give you a little bit of -- perhaps a longer explanation than you want. The way the architecture worked was that all transactions, all messages, so-called, were exchanged between counters within a branch and then from the branch to so-called correspondence servers. So they were all supposed to be in*

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[712] Some questions were put to Mr Jenkins on the basis of what Ian Henderson said in his (Mr Henderson's) statement to the Inquiry about his meeting with Mr Jenkins on 13 September 2012 (WITN00420100, first witness statement of Ian Henderson dated 20 May 2024, §§ 13-14). Mr Henderson made this statement in 2024 on the basis of what he recalled of the meeting in 2012. The Inquiry is invited to consider the statement that Mr Henderson made in 2018 in the GLO civil proceedings (POL00091426, witness statement of Ian Henderson dated 28 September 2018, § 2.2): *"I met with senior representatives of Fujitsu at their Bracknell office. One of the people who attended was Gareth Jenkins, who I believe was the Fujitsu lead engineer on the POL contract. He subsequently provided me with a number of technical reports describing the Horizon system and architecture and, as would be expected, he was obviously knowledgeable about its operation.* ***At the meeting on 13 September 2012, one of the matters discussed in the meeting on 13 September was remote access to terminals located in branches. Gareth Jenkins confirmed to me that this capability existed and was occasionally used to troubleshoot problems in branch."*** Mr Henderson's recollection of exactly what Mr Jenkins said about remote access at this meeting appears to have changed over time, but in his evidence to the Inquiry, Mr Henderson said that *"[…] on reflection, I realised that Gareth Jenkins was talking about a number of different things. At one level, he was talking about direct access to physical sort of terminals, using things like remote desktop protocol, where he was troubleshooting, it might be hardware failures, connecting to a terminal in a subpostmaster's branch. But I'm also now aware that remote access also extended to include back-end databases, and so on […] If there was any sort of deficiency in our discussions, it was my failure to ask further questions"* (Transcript, 18 June 2024, p. 69, ln. 14-22; p. 71, ln. 15-17).
[713] Transcript, 18 June 2024, p. 71, ln. 15.
[714] POL00133644.
[715] POL00312743.
[716] Unsurprisingly given that he was not a member of the SSC, he was not a reviewer of the SSC document 'Fujitsu Services: Secure Support System Outline Design v1.0' (FUJ00088036).
[717] FUJ00142197.
[718] POL00023765.
[719] See the explanation given by Mr Oppenheim (discussed below): *"[…] what there was was a possibility to get into the correspondence server, make an entry in the correspondence server, which would then propagate back to the branch, so the effect would be the same"* (Transcript, 26 October 2022, p. 38, ln. 16-19). Similarly, John Simpkins told the Inquiry that "*Yes, because, once you've inserted the message into the correspondence server, it will be replicated down to the counter" (*Transcript, 17 January 2024, p. 103, ln. 9-11).

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sync. Now, there was no ability to get access into a branch PC, but what there was was a possibility to get into the correspondence server, make an entry in the correspondence server, which would then propagate back to the branch, so the effect would be the same: "*The point though is that it would be clear – should have been clear, I had understood – that any entries made in the correspondence server would show up as entries made on the correspondence server, in other words they would appear as a different counter or some such. There would be a marker in the audit trail that showed that those entries had been made centrally as opposed to within the branch, so if there's an argument later, the audit trail would have shown where an additional message would have been inserted".*[720]

472. Mr Jenkins has explained his understanding of how remote access was used in his fourth statement to the Inquiry. In particular, he made it clear that his understanding (when Legacy Horizon was in use) was that remote access to the counter was obtained through the correspondence server and that the injected data would, in the audit trail, bear a counter number that indicated the insertion of data at the correspondence server.[721]

473. There is no evidence that Mr Jenkins had contemporaneous knowledge about the use, in practice, of remote access directly at the counter as opposed to access through the correspondence server or that this would involve the SSC *not* leaving an artefact of this access in the audit trail. This doubtless reflects the fact that the use of remote access (in any form) to make a financial correction was rare, and that the use of remote access directly at the counter for this purpose was rarer still.

474. As Ms Chambers told the Inquiry: "*So the number of changes where we were actually making a financial correction were very few and far between*"[722]; *"As to whether it was common practice, this, you know, the whole process of making counter corrections was pretty unusual. It was not something that was happening every week, every month. They were very, very few and far between"*[723]; *"All that we could do was to insert extra corrective transactions in the very few cases where that was seen to be the best thing to do to resolve a system problem that had already happen (sic)."* [724] Also*: "I would say that these changes were extremely unusual. It was certainly not something that was being done with any regularity at all but probably a few times a year, over all 18,000 branches.*[725] Mr Simpkins also emphasised how rarely remote access had been used at all: "*I agree that we didn't make frequent changes. I went through the OCPs and OCRs that we used to record such things and I think in 10 years I've found evidence of 28 financial remote changes, and I also disagree that we didn't tell the subpostmasters. I've only ever seen one PEAK where I think that that was mentioned."*[726] Similarly, Mr Parker told the Inquiry that: *"[…] a limited, very limited number had to be entered as if they had originated at the branch. Most would be able to be executed at the correspondence server […]."*[727] Mr Peach told the Inquiry that the use of Open SSH created a record of keystrokes on every SSC workstation, which Mr Simpkins confirmed would be recorded on an auditable file.[728]

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[720] Transcript, 26 October 2022, page 38, ln. 6-22.
[721] WITN00460400, fourth witness statement of Gareth Jenkins dated 29 April 2024, §§ 105-122.
[722] Transcript, 2 May 2023, p. 206, ln. 4-7.
[723] Transcript, 3 May 2023, p. 43, ln. 15-22.
[724] Ibid, p. 26, ln. 16- 21.
[725] Transcript, 27 September 2023, p. 141 ln 21-25.
[726] Transcript, 17 January 2024, p. 100, ln. 10-15.
[727] Transcript, 10 May 2023, p. 124, ln. 18-21.
[728] Mr Peach: Transcript, 16 May 2023, p. 52; ln. 11-20; Mr Simpkins: Transcript, 17 January 2024, p. 82, ln. 11-25: "*So the new system used something called OpenSSH and it allowed us to log every single key press that the third line support person made when connecting down to the counter. Q. When you say it allowed you to -- A. Sorry, it* was. *Q. It was. A. The software was recording every single key press to an auditable file. Q. So that was in place from at least July 2003? A. Yeah, I'm sure you could probably find out the -- once you know what release package that went under, you should be able to find out the exact date. But, as I say, I found that PEAK and so I know it was working from July 2003*."

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475. In terms of what processes were used in order to regulate remote access, the Inquiry has heard the evidence of Ms Chambers, who confirmed that if a change was made that had any financial implication, then the change control system at the time was used in order to obtain POL approval.[729] She confirmed that the use of remote access to make a financial change would be recorded within the PEAK.[730] She also confirmed that in Legacy Horizon, messages inserted at the counter were visible in the message store and that they would be created using a non-existent counter number and the username SSC, and include a comment field.[731] She also explained: *"Q: Did you always use SSC or did you use other fictitious usernames that did not identify the SSC as having made the change? A: It would always have been something that was very clear that it – I – as I say, I can't remember without an example if it would have been something like SSC999, which would have been a valid username, or something else, but it wouldn't have "Fred12" or something. It would have been something to draw attention to it, not to try to hide it."*[732]

476. Put shortly, the evidence which the Inquiry has heard supports the understanding that Mr Jenkins had in 2012 (which he expressed in his witness statement in R v Wylie) that when remote access was used, this could be identified by an analysis of data audited by the system; that any changes to data were very rare; and that any such changes would be authorised by POL.[733]

477. In late 2018, Mr Jenkins realised, for the first time, that the SSC had occasionally injected messages directly at the counter in Legacy Horizon, rather than always going through the correspondence server. This realisation is captured in the contemporaneous internal notes and emails in the GLO civil proceedings. As Mr Jenkins explained in his fourth statement to the Inquiry, he had inadvertently given incorrect information to Mr Godeseth on 21 September 2018 when the latter was drafting his first witness statement in the GLO civil proceedings.[734] The extent of this incorrect information was that he had commented that any transactions or data remotely inserted by the SSC into Legacy Horizon had been done at the correspondence server (rather than at the counter) and would therefore have generated a Node ID of 32 or higher.

478. Between 21 September 2018 and 13 October 2018, Mr Jenkins spoke to individuals from the SSC about Richard Roll's witness statement in the GLO civil proceedings and realised that the possibility of the use of a Node ID of less than 32 arose. Upon realising his error (and it should be noted that he did not see the final version of Mr Godeseth's statement before it was served), Mr Jenkins quickly corrected what he had previously told Mr Godeseth, in a note dated 13 October 2018.[735]

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[729] Transcript, 3 May 2023, p. 27, ln. 1-25; p. 28, ln. 1-8. See also WITN04510100, first witness statement of Mik Peach dated 3 March 2023, § 123: *"If a postmaster made a mistake, a transaction could be "reversed" (by inserting a "reversal" or "corrective" transaction) but it could not be deleted. There were processes by which SSC staff could, under instruction or approval from POL and with assistance from the postmaster, insert corrective transactions, and I recall that there were processes in place to control this rare occurrence, involving dual-person sign-off on the Peak and approved OCP requests for the SSC to do the work, which I believe had to be approved by POL as well as Customer Service […] My recollection is that the process was technically complex and could only be done in agreement with the postmaster and was extremely rare."*

[730] Transcript, 3 May 2023, p. 45, ln. 9-21.

[731] WITN00170100, first witness statement of Anne Chambers dated 15 November 2022, § 200. See also Mr Peach's evidence to the Inquiry at Transcript, 16 May 2023, p. 51, ln. 9-16.

[732] Transcript, 3 May 2023, p. 46, ln. 22-25; p. 47, ln. 1-7.

[733] POL00133644.

[734] See the draft witness statement of Mr Godeseth and Mr Jenkins' comment on it at FUJ00159545. Mr Jenkins explained his mistake at WITN00460400, fourth witness statement of Gareth Jenkins dated 29 April 2024, § 171.

[735] FUJ00181504, § 9 (commenting on § 58.10 of Mr Godeseth's witness statement): *"It would appear that this is incorrect. I have come to understand that in some circumstances the SSC needed to inject data at the counter. I am not clear as to exactly why this was necessary (other than for EOD Markers - which are not transactional data), and it is likely that any transactions that were injected would have been done at the CSs. Perhaps SSC can clarify this point as it is important in relation to Richard Roll's witness statement."* See also FUJ00181529, which demonstrates that Mr Jenkins sent this note to Mr Ibbett and Mr Parker on 13 October 2018 (noting that it might be worth asking *"Steve"* [Mr Parker] to comment before passing to *"Jonny"* [Mr Gribben]. This indicates that Mr Jenkins clearly expected/intended his note to be passed to POL's lawyers Womble Bond Dickinson.

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479. There were a number of people who were involved in the civil litigation who had first-hand knowledge of remote access. Mr Jenkins accepts that his comment on Mr Godeseth's draft first witness statement was erroneous. However, it was *Mr Jenkins* who checked the position after the service of Mr Roll's statement and who confirmed that access could be directly at the counter (and that he had erred in suggesting a Node ID greater than 32 would be apparent in the audit trail). This is, once more, consistent with Mr Jenkins' openness and his wish to ensure that the correct information was conveyed.

8. CONCLUSIONS

480. At the outset of this Inquiry, the proposition that POL had relied upon Mr Jenkins in a number of cases as an expert witness, but had in fact never actually instructed him as one, may have sounded astonishing or impossible to contemplate. Over three years later and with over 270,000 documents uploaded to Relativity, the evidence demonstrates its truth. The Inquiry has revealed that POL and Cartwright King were aware, from 2013, that they had not instructed Mr Jenkins properly (or at all) as an expert.[736] This knowledge was never disclosed. It was not disclosed to Mr Altman KC, the CCRC, Second Sight, Sir Anthony Hooper or the Court of Appeal.

481. Mr Clarke assumed, incorrectly, that POL and Cartwright King had briefed Mr Jenkins about his expert duties. His advice of 15 July 2013 (citing R v Ward) concluded: "*In short, it means that Dr. Jennings [sic] has not complied with his duties to the court, the prosecution or the defence. It is pertinent to recall the test under which a prosecution expert labours: '....an expert witness possessed of material which casts doubt upon his opinion is under a duty to disclose the fact to the solicitor instructing him, who in turn has a duty to disclose that material to the defence. The duty extends to anything which might arguably assist the defence. Moreover, it is a positive duty*.'"[737]

482. Mr Jenkins, of course, did not know about the Judgment in R v Ward. He had no legal training or experience. By 2013, when Mr Clarke wrote his advice, Mr Jenkins had never received any instructions as an expert from any investigator or prosecutor, whether internal or external to POL. No lawyer had discussed expert duties with him, sought to ensure that he understood the content of expert duties, or explained how expert duties applied to his evidence.

483. Mr Clarke had initially contemplated speaking to Mr Jenkins in person to understand why he had seemingly not disclosed BEDs in POL's prosecutions.[738] He never did so. His subsequent advice simply stated that *"the reasons as to why Dr. Jenkins [sic] failed to comply with this duty are beyond the scope of this review*."[739] Although this appears to have foreclosed further inquiries, Mr Clarke did note that it might become an issue in the future: "*In an appropriate case the Court*

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[736] If it was not for the single surviving handwritten note made by Mr Williams, recording his conversation with Mr Smith (available at POL00155555), there would be no contemporaneous evidence that POL and Cartwright King knew about the failure to instruct Mr Jenkins as an expert in 2013. Mr Smith's evidence confirmed that it was realised from this point that Mr Jenkins had not been instructed as an expert. See Transcript, 2 May 2024, p. 181, ln. 3-15: "*A. I took the view that it became apparent to me, following the provision of Mr Clarke's Advice, that we had not been compliant in terms of instructing Mr Jenkins. Mr Singh, who had followed Mr Bowyer's advice, had not been compliant in instructing Mr Jenkins and, of course, Mr Singh was Head of Criminal Law at Post Office and, in the circumstances, I was quickly coming to the view that, actually, when the Post Office was part of the Royal Mail Group, it was highly unlikely that he had ever been advised of his duties then either. Otherwise, even though there was a requirement to advise him on each occasion, which I was unaware of, it occurred to me that he probably had never been advised at all."* See also Transcript, 2 May 2024, p. 180, ln. 1-16: *"Q. -- you also candidly acknowledged that Cartwright King never instructed Mr Jenkins in a compliant manner and never told him about the expert duties to which he was subject? A. That's also correct, yes. Q. Thank you. The way you deal with that in your second witness statement -- I don't think we need to go to it, it's paragraph 21 of that statement -- is that you state: "Mr Jenkins should have been given detailed written instructions in relation to each individual case which enclosed a full set of papers, asked specific questions and set out the duties of an expert instructed by the prosecution. Mr Jenkins had not been so instructed." Is that correct? A. Yes, that's right."*

[737] POL00066790, § 37.

[738] See Mr Clarke's written advice in R v Samra dated 2 July 2013: POL00172804, § 22. Of course, the correct position was that Mrs Jenkins had disclosed BEDs in his evidence in Mrs Misra's case.

[739] POL00066790, § 38.

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of Appeal will consider whether or not any conviction is unsafe. In so doing they may well inquire into the reasons for Dr. Jenkins' [sic] failure to refer to the existence of bugs in his expert witness statements and evidence."[740]

484. It is respectfully submitted that in circumstances where an expert witness is being accused of non-disclosure, it is surprising that those who instructed him would not *want* to ascertain if there was a problem on the prosecution side. An obvious and straightforward check might be to consider the letters of instruction and what the expert had been asked to do in each case *before* concluding that the expert had failed to comply with his duties. This was, at the very least, a missed opportunity for Mr Clarke to give informed advice to POL about the full implications of the 'Jenkins problem'; to consider the causes of the problem as well as the effects of it. Mr Clarke's advice set in motion the false narrative (perpetuated by POL) that sought to blame Mr Jenkins for POL's failures.

485. The principal person who could have provided answers as to the circumstances of Mr Jenkins' instruction – and who could have corrected this narrative – was Mr Singh. However, Mr Clarke's advice noted that: "*Jarnil [sic] Singh, head of Criminal Litigation had been unaware and did not know how long POL had known of the existence of the bugs nor indeed who at POL had known."*[741] This was, of course, incorrect. Mr Singh had known (for example) about the existence of the RPM bug in October 2010.

486. A document summarising the Cartwright King review in December 2013 encapsulates the impression that they had been given that *"...the Second Sight Interim Report* ***revealed*** *that there had been two known defects in the Horizon system since the rolling out of the Horizon on Line [sic] System from January 2010 [...] As a result of the Second Sight Interim Report* ***it became apparent*** *that some of the matters raised in the Report might have been disclosable in Criminal Prosecutions mounted by Royal Mail Group Ltd and Post Office Ltd,* ***had these been known about by those considering disclosure in such cases****."*

487. On 8 January 2015, Mr Singh wrote an email to a number of people within POL in the context of the BBC Inside Out request for an interview.[742] In this email he stated:

> *"Not only have second sights [sic] use of terminology give raised [sic] to potential argument in relation to terms [sic] used by second sight. It also raises questions as to whether POL knew of the existence of those bugs. if so, to whom at POL Fujitsu communicated them.* ***Those were certainly not known to me at POL legal until day or so prior to the publication of the second sight interim report […] Of course it would be highly embarrassing for POL were it to be suggested that fujitsu [sic] had informed some part of POL and that information never reached the security team. Equally it is embarrassing were it to be suggested POL were kept in the dark by such an important supplier such as fujitsu.*** *It follows these are very difficult topics from a criminal law perspective."*

488. After Mr Clarke gave his advice, the failure to ascertain the circumstances in which Mr Jenkins had been instructed had a number of direct consequences:

a. **First**, it meant that there was no form of investigation which might have revealed that the failure to instruct Mr Jenkins was only one aspect of broader and deeper systemic failures.
b. **Second**, it concealed the extent of *POL's* disclosure failures.
c. **Third**, Cartwright King's conflict of interest was not revealed. In essence, Cartwright King had been actively involved in commissioning Mr Jenkins' generic statement in 2012. Its

[740] Ibid, § 39.
[741] Ibid, § 29.
[742] POL00169386.

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lawyers had formulated the questions he was to answer; edited his draft report; and given directions as to how it was to be used.

489. This approach effectively made Mr Jenkins responsible for all that had gone wrong. Overarchingly, it concealed that POL knew about the matters it was accusing Mr Jenkins of not having disclosed. It concealed that decisions had been made by POL's investigators and prosecutors, in certain cases, not to disclose the information that Mr Jenkins was accused of not disclosing. It concealed that POL had made decisions in a number of cases in 2012-2013 not to obtain ARQ data when Mr Jenkins informed them it was available and could be used to diagnose Horizon problems. It concealed that POL had not recorded, retained and revealed relevant information about Horizon which Mr Jenkins had provided it with. Finally, it concealed that POL had systematically, over many years, fundamentally breached its obligations under the CPIA.

490. There were a number of opportunities provided to POL, from 2013, to investigate the circumstances in which Mr Jenkins had been used by it and to confront the deeper systemic issues these revealed about how POL prosecuted SPMs. They weren't taken. The focus remained on Mr Jenkins. Mr Williams' evidence before the Inquiry bore this out: *"Q. But you're the company lawyer, aren't you? You're the Post Office lawyer, and your external lawyer is telling you "We don't think this expert, who Simon Clarke has written a very powerful advice about, with very concerning and difficult conclusions in, was ever advised by the Post Office or anyone of his duties"; what did you do with that information? A. I do recall but I cannot say as in the context of this, I remember in the various discussions I may have had with Martin over the time that, if there was action we needed to take, they --Q. So what action was taken? A. None but it was saying, you know, if you tell us we need to do something, I genuinely think Post Office would have been doing it. Q. Well, did you say back "That's an important point. We, after all, are the prosecutors here. It's Post Office Limited on the charge sheet. We owe duties to the court. There needs to be some investigation here of what we, the Post Office, have done wrong, if anything. Can you look that, please, Martin", rather than lumping it all on Mr Jenkins? A. I don't know if we were doing that. This was a discussion on how to take something forward with Fujitsu with the criminal lawyer and I would have expected through this, given I'm not a criminal lawyer, for the advice on what's appropriate or not to be taken to be coming in that -- or from the expert."*[743]

491. After July 2013, and despite an approach which did put the blame squarely on Mr Jenkins, POL told him nothing about Mr Clarke's advice or Cartwright King's reviews of cases in which he had given evidence. Mr Jenkins was simply told that he was not needed in future prosecutions because legal advice given to POL concerning the *"rules of evidence"* meant that POL now needed to consult an *"external expert."*[744] There was not a hint in this explanation of the gravity of what Mr Jenkins had been accused of. And yet, five years later, POL turned to Mr Jenkins again, for the purposes of the civil proceedings brought by SPMs. POL used him for information but, once more, completely failed to tell him that the reason he was not being relied upon as a witness was because of Mr Clarke's advice.

492. As set out in detail in his fourth witness statement to the Inquiry, Mr Jenkins was one of a large number of people from Fujitsu who assisted in the civil proceedings.[745] He was criticised in the *Horizon Issues No.6* Judgment and an issue made of the fact that he had not given evidence in those proceedings. Prior to the Judgment being handed down, Mr Jenkins had had no opportunity to explain to Fraser J (as then) that these criticisms were misplaced or based upon only part of

[743] Transcript, 18 April 2024, p.166, ln. 4-25; p. 167, ln. 1-11.
[744] FUJ00156923.
[745] This included John Simpkins, Steve Parker and Torstein Godeseth (as well as others on occasion such as Alan Holmes, Mark Wright and Gareth Seemungal) to provide technical information to POL and its lawyers.

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the factual picture.[746] By not telling him the truth of his position, POL left him vulnerable to personal and public criticism for which he had no warning and no opportunity to correct.

493. Mr Jenkins was completely exposed by the way that POL treated him in prosecutions. This was both by omission and commission. The proposition that Mr Jenkins was relied upon as an expert in a number of cases but not instructed as one remains shocking. However, the Inquiry's work has revealed gross incompetence in POL's use of him beyond even this. Mr Singh, and other investigators and prosecutors, both in-house at POL and at Cartwright King, did not just fail to instruct Mr Jenkins as an expert, but *actively misled* him as to what his role was. These failures are apparent in all of the case studies involving Mr Jenkins which this Inquiry has considered. On the basis of the evidence in these case studies, and the opinions of Mr Atkinson KC, we invite the Inquiry to draw the following conclusions:

a) **First**, POL consistently failed to discharge any of its obligations to instruct Mr Jenkins properly (or at all) as an expert witness.
b) **Second**, this failure applied across the span of the case studies. It resulted in every investigator and prosecutor who dealt with Mr Jenkins communicating with him in terms which were inconsistent with, or antithetical to, how an expert should be approached.
c) **Third**, POL investigators and prosecutors had no understanding of the law on expert evidence.
d) **Fourth,** investigators and prosecutors did not think clearly or critically about the capacity in which they were seeking to rely upon Mr Jenkins or the legal implications of his status.
e) **Fifth**, POL's failures were not just failures of omission. There were a number of occasions when investigators or lawyers positively misrepresented to Mr Jenkins what his role was; what format his evidence should take; and what his approach should be.
f) **Sixth**, POL's failures led Mr Jenkins to provide written witness statements, none of which contained the necessary inclusions to make it admissible as expert evidence.
g) **Seventh**, these failures were egregious because (*inter alia*) Mr Jenkins had no legal training to be an expert witness; he was an employee of Fujitsu; he was at a complete remove from the sort of professional expert witness who often gives evidence in criminal prosecutions; and he was being asked to give evidence and opinions about a system he had worked on for years.

494. These failures did not arise in isolation. They were symptomatic of every prosecution in which Mr Jenkins gave evidence being dysfunctional. Every case was investigated and prosecuted badly and by individuals who ignored basic laws which applied to their functions. What transpired demonstrates why expert evidence is so highly regulated and why the courts have, over the course of years (particularly in criminal proceedings), gone to such lengths to emphasise why compliance with the common law and Criminal Procedure Rules is essential.

495. Mr Jenkins did not know that POL's use of him transgressed established laws and procedures. It was acknowledged at the very outset of these submissions that they may risk too forensic a lens on Mr Jenkins' involvement in the case studies when the reality is straightforward. The reality is that he was a computer engineer, through and through, wholly untrained in law.

496. There was nothing strategic about Mr Jenkins' approach. Indeed, it is noteworthy that of the issues in this Inquiry, said to have been the subject of a sustained effort to keep secret, Mr Jenkins disclosed many of them to POL's investigators and prosecutors. These included the use of

[746] A key example of this was the criticism that was made of Mr Jenkins about the provision of information to Mr Godeseth about remote access being done at the correspondence server and thus carrying a counter number of over 32 (see WITN00460400, fourth witness statement of Gareth Jenkins dated 29 April 2024, §§ 221-236). Mr Jenkins was not able to explain that this had been said in a comment on a draft statement that he and others were commenting on; that his understanding had been shared by others including Mr Godeseth, Mr Seemungal and Mr Holmes; that it was Mr Jenkins who investigated the position when he read Richard Roll's statement; and that it was Mr Jenkins who asked the SSC for information and then confirmed in communications intended for POL's lawyers [see FUJ00181529] that remote access could be done via the counter. For all of the reasons set out in this submission, what Mr Jenkins did not know (but what he corrected once he realised his mistake) was that a small proportion of remote access was done directly at the counter. It has been confirmed in the Inquiry that doing this so as to create a financial effect was rare and that the SSC made their insertion apparent in the data.

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substantive remote access, the existence of the PEAK system and the existence of KELs. The views that individuals outside POL formed about Mr Jenkins' openness are revealing. Mr Henderson of Second Sight contemporaneously described him as having been "*straight as a die".*[747] When asked what led to this observation, Mr Henderson explained to the Inquiry: "*He was not being evasive; he was happy to help; he was answering my questions; he provided promptly with follow-up material that I requested; I mean, there was no hesitation in his willingness to answer our questions and to provide assistance. Q. So he was willing to discuss remote access when the Post Office was not? A. Yes."*[748]

497. Whilst recollections of the September 2012 meeting between Mr Jenkins and Mr Henderson might differ in terms of the detail, it is clear they discussed remote access and Mr Henderson regarded Mr Jenkins as being *"very open"* about it.[749] Mr Henderson was asked the outright question in the Inquiry as to whether it appeared to him *"[…] that Mr Jenkins understood the implications of the facility remotely to access branch accounts for criminal investigations and criminal proceedings*? Mr Henderson stated: *A. I think I probably felt at the stage, at that time, that he did not appreciate that. As far as I was aware, he'd never been trained in expert witness evidence, and evidence generally: he was a lead technical architect, that was his area of expertise."*[750] Mr Henderson was also asked to explain the contemporaneous recording of a meeting that he had with Ms Vennells in which he described Mr Jenkins as *"[…] superb and he's sufficiently sort of mature to actually almost be independent, you know, even though he is a Fujitsu"* [sic]).[751] Mr Henderson explained to the Inquiry: "*I saw him as a technical expert and that he approached things from a technology perspective almost exclusively. He didn't strike me as a company person or feeling that he had to stick to a particular party line, in terms of supporting Fujitsu. He was dealing with things at a technical level, as a technical expert, and I found that rather refreshing. Q. Was he taking the defensive position that the Post Office was, which you describe in your witness statement? A. No […]"*[752]

498. Mr Henderson was also asked what discussions he had had with Mr Jenkins about bugs. Mr Henderson stated that they didn't explore bugs in great detail but that Mr Jenkins offered to provide him with reports subsequently, which he did do. According to Mr Henderson, when he raised this with Ms Lyons and Ms Sewell, they denied there being any such problems.[753]

499. Mr Tatford also considered Mr Jenkins to have been impartial and able to provide unbiased, objective evidence. He described Mr Jenkins's concession in oral evidence in Mrs Misra's case (that he could find no evidence of theft) to be *"scrupulously fair."*[754] Mr Tatford's wider assessment of Mr Jenkins was that: "*he struck me, throughout all my dealings with him and from what I saw of him in court, as straightforward, modest, open-minded and impartial*".[755]

500. There is a clear thread which runs through each case study, demonstrating that Mr Jenkins approached cases with an honest and technical mind-set, consistent with an engineer in fourth line support whose day job was to ascertain the root causes of problems. It is the mind-set of

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[747] SSL0000103.
[748] Transcript, 18 June 2024, p. 80, l. 24-25; p. 81, ln. 1-5. We note that what Mr Henderson told the Inquiry is also consistent with how he described Mr Jenkins when he spoke to the journalist Nick Wallis: *"He [Mr Jenkins] was very open and very willing to go on the record. I didn't regard him as hiding anything.* ***For us, he was the turning point in getting to the truth****."* (Wallis, N. 'The Great Post Office Scandal', p. 190)
[749] Ibid, p. 71, ln. 15.
[750] Ibid, p. 71, ln. 20-25.
[751] SSL0000108.
[752] Transcript, 18 June 2024, p. 72, l. 4-11.
[753] Ibid, p. 72, ln. 16-21: Mr Henderson: *"[…] was told in very clear terms that I was mistaken, I must have misunderstood what Gareth Jenkins had told me and that they had third-party independent reports confirming the reliable of Horizon, and that I was quite wrong in what I'd reported to them."*
[754] WITN09610100, first witness statement of Warwick Tatford dated 25 October 2023, § 93.
[755] Ibid, § 91.

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someone who, in his own words, was used to thinking in terms of technical systems, and working openly with POL and not keeping them in the dark. Drawing this together:

a) It is demonstrated in March 2006 with Mr Jenkins being entirely happy to use the language of "*system error"* in his statement in Mr Thomas' case (the opposition to it being entirely that of Mr Ward). It is evident in his genuine lack of understanding as to why Mr Ward had a problem with the use of these words.
b) It is demonstrated by his providing an explanation of the PEAK system in his draft statement of 6 April 2006 in Mr Thomas' case, which stated that "*Fujitsu have a fault management system called the PEAK system, which is used for passing faults around the team and tracking faults raised regarding the Post Office account."*[756]
c) It is demonstrated in May 2006 by his unwillingness to agree the conclusion that Mr Dilley had drafted for him in Mr Castleton's case ("*There are no grounds for believing that the problems Mr Castleton says he experienced with his computer would have caused either theoretical or real losses*") without examining the branch data.[757]
d) It is demonstrated in February 2010 by his absolute insistence in Mrs Misra's case that the branch data be obtained so that he and Professor McLachlan could examine it. This was in the face of POL resistance which had been ongoing for months.
e) It is demonstrated again in February 2010 by his immediate answer in Mrs Misra's case (when asked about *"known problems in the Horizon system"*), that he could not make a *"clear statement"* because transactions could be *"lost"* due to *"locking issues"* (and that POL had not sought the data which would enable checks to be made for this).[758]
f) It is demonstrated in March 2010 by his suggesting, at the end of his witness statement of 9 March 2010, other aspects of the data which could be looked at in Mrs Misra's case.[759]
g) It is demonstrated in July 2010 by the information which Mr Jenkins gave to the defence expert Professor McLachlan and which led directly to the defence requests for disclosure of Horizon material.[760] Critically, this included Mr Jenkins informing Professor McLachlan of the existence of:
   - The Known Error Log
   - 200,000 faults in the live and test systems
   - System change requests
   - New release documentation
h) It is demonstrated in August 2010 by the fact that Mr Jenkins was willing to undertake (and proceeded to set in motion) an assessment of what he thought should be provided to the defence expert, being (a) every counter release applied to the live estate in the last 7 years, (b) a spreadsheet detailing the Tivoli Product names in order to be able to cross-reference the data, (c) the date live rollout commenced, and (d) a list of PEAKs and/or CPs that the change addressed (it was POL that refused to provide this material).[761]
i) It is demonstrated in October 2010 by his provision of the PEAK in Callendar Square to Professor McLachlan.[762]
j) It is demonstrated again in October 2010 by Mr Jenkins' objections to the changes that Mr Tatford proposed to his witness statement, including that he refused to give an opinion to the effect that it was more likely Mrs Misra had stolen money than the loss being explained by computer error.[763]
k) It is demonstrated again in October 2010 by the evidence Mr Jenkins gave in Mrs Misra's trial, which was modest and made clear its limits. This included Mr Jenkins' acceptance that

[756] FUJ00122237.
[757] FUJ00122284.
[758] FUJ00152930.
[759] POL00001643.
[760] POL00055059.
[761] FUJ00156216.
[762] It should be noted that the fact that the prosecution served this late was not Mr Jenkins' fault. It was clear from his statement of 9 March 2010 that he had relied upon Fujitsu records and the prosecution had not asked for these records to be provided.
[763] FUJ00123013.

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there could be Horizon issues he did not know about that could have affected Mrs Misra's branch (given he had not known about Callendar Square)[764]; his caveated response to the question of whether there was even the *"slightest symptom of a computer fault"* at West Byfleet: *"I've been doing very sort of high level rough analysis on the stuff"*[765]*;* his concession that he had no way of knowing whether the money lost was due to theft and that he could not say that money was lost.[766]

l) It is demonstrated in September 2012 by his approach and mind-set towards Second Sight in openly discussing bugs in Horizon and remote access with them.[767]

m) It is demonstrated between October 2012 and February 2013 by his attempts to explain that there was ARQ data which he was willing to examine and which could show what had happened at the branches in question (in the face of Cartwright King's position that this series of cases fell within the category which had not raised a specific Horizon issue).[768]

n) It is demonstrated in November 2012 by his publicly confirming the existence of remote access in his witness statement in R v Wylie.[769]

501. Whether taken singularly or cumulatively, this conduct illustrates a complete lack of reticence on Mr Jenkins' part to reveal the existence of significant information which could be damaging to Horizon. It reveals the lack of any design or considered thought process that information damaging to Horizon should be concealed. It demonstrates the mind-set of a software engineer who applied his decades-long experience of examining the data from particular branches to ascertain what the problems affecting them might be. It is now clear that there *were* opportunities in Mrs Misra's case for the prosecution to consider the disclosure to the defence of the Known Error Log or seven years of PEAKs and/or CPs related to the counter. It is now clear that there were multiple opportunities in the 2012-2013 cases for the defence to be provided with the branch data and for this to be subjected to analysis to determine whether Horizon had malfunctioned. Mr Jenkins provided these opportunities. POL declined all of them.

502. Turning to this Inquiry, it would have been open to Mr Jenkins, particularly in the absence of an undertaking as to the use of his evidence in subsequent criminal proceedings, to seek to rely on the privilege against self-incrimination and at the very least limit the scope of the evidence he gave before the Inquiry. To the contrary, Mr Jenkins has provided extremely full witness statements as to his involvement in the relevant events. He gave oral testimony across four consecutive days, opening himself up to the forensic scrutiny of CTI and other Core Participants. The Chair will have been able to assess the manner in which Mr Jenkins gave that evidence but it is submitted that he was an honest and candid witness; someone who did not seek to evade the questions, blame others or repeatedly assert a lack of memory; and someone who, by his very nature, was incapable of putting a self-serving gloss on his answers.

503. It is submitted that Mr Jenkins' credibility can also be illustrated by the fact that he highlighted the absence of expert instructions to him in his police interview on 21 July 2021.[770] This was the first opportunity Mr Jenkins had had to respond to any of the allegations made against him. At that stage, he had not seen (and had no access to) any of the case files held by POL in any of the prosecutions he had assisted with. That his account has been borne out (after the disclosure of 270,000 documents) speaks to his credibility.

504. Mr Jenkins steered a course through these prosecutions which was technical and honest. He did so despite the dysfunction of every prosecution in which he was a witness and despite the gross

[764] POL00029406, p. 123B.
[765] Ibid, p. 58E.
[766] Ibid, p. 124E. These are just some of the answers which he gave which were not helpful to the prosecution and helpful to the defence: see § 320 of these closing submissions for further examples.
[767] See §§ 496-498 of these closing submissions.
[768] To take only one example, FUJ00153881 (in Grant Allen's case).
[769] POL00133644.
[770] We do not provide a URN for this interview transcript since it was only disclosed to CPs subject to confidentiality undertakings (and not uploaded to Relativity).

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incompetence of the investigators and prosecutors he dealt with. He did so despite being used as an expert but not instructed as one. He did so despite the disastrous way in which he was communicated with. Had POL introduced analogous guidance to the CPS guidance for expert witnesses in March 2006, or had any of POL's investigators or prosecutors understood the law on expert evidence or POL's obligations under the CPIA, then none of the issues which have brought Mr Jenkins before this Inquiry would have arisen. These were not failures of ideals but of basic and fundamental laws which underpin the administration of criminal justice.

CLAIR DOBBIN KC **CORKER BINNING**

HEATHER OLIVER

3 RAYMOND BUILDINGS

9 DECEMBER 2024