

Tuesday, 25 October 2022

1
2 (10.00 am)
3 **MR BEER:** Good morning, sir, can you see and hear me?
4 **SIR WYN WILLIAMS:** Yes, I can, thank you.
5 **MR BEER:** Can I call Keith Todd, please.
6 **KEITH TODD (sworn)**
7 **Questioned by MR BEER**
8 **MR BEER:** Mr Todd, can you give us your full name, please?
9 A. Thomas Keith Todd.
10 **MR BEER:** Now, sir, Mr Todd explained to me before he gave
11 evidence that he would like, with your permission, to
12 remove his jacket. Is that acceptable to you?
13 **SIR WYN WILLIAMS:** Of course it is.
14 **MR BEER:** Thank you very much, Mr Chairman.
15 Mr Todd, as you know, my name is Jason Beer and
16 I ask questions on behalf of the Inquiry. Thank you
17 very much for coming to give evidence today and thank
18 you for providing a witness statement to the Inquiry
19 previously. We're very grateful.
20 You should have in front of you a hard copy of that
21 witness statement in your name and dated
22 6 September 2022. If you turn to the last page of that
23 statement, which I think is page 60, can you see your
24 signature?
25 A. Not on the copy on my desk but --

1

1 A. Correct.
2 Q. -- on 1 January 1996, I think?
3 A. Indeed.
4 Q. Now, you resigned from all positions in ICL and related
5 companies in July 2000; is that right?
6 A. That's correct.
7 Q. On 28 July 2000, I think. By way of background, I think
8 you began your working life in 1972 as an executive
9 officer in the Royal Ordnance factories; is that right?
10 A. That's correct.
11 Q. Thinking back, that was then a state-owned weapons
12 manufacturer; is that right?
13 A. That's correct, making Chieftain tanks, amongst other
14 things.
15 Q. Sorry, say again?
16 A. Amongst other things.
17 Q. Yes. You completed accountancy training whilst there,
18 I think --
19 A. Correct.
20 Q. -- so as a civil servant and you qualified as a Fellow
21 of the Chartered Institute of Management Accountants?
22 A. Correct.
23 Q. You worked, between 1975 and 1987 for Marconi and
24 a subsidiary of it, here and in the United States.
25 A. That's correct, in the defence industry.

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1 Q. Have a look at the copy behind you in volume 1 and turn
2 up tab A1 and go to page 60 in there.
3 A. Yes.
4 Q. That is your signature?
5 A. That is my signature.
6 Q. Are the contents of that statement true to the best of
7 your knowledge and belief?
8 A. Yes, they are.
9 Q. Thank you very much. Just for the purposes of the
10 transcript, no need to display now, the URN for the
11 witness statement is WITN03880100.
12 Can I start, please, Mr Todd, with your career
13 qualifications and experience. I think you were
14 formally chief executive officer, CEO, of International
15 Computers Limited, ICL?
16 A. Correct, yes.
17 Q. Relevantly for our purposes, you were also a director of
18 ICL Pathway Limited?
19 A. That's correct.
20 Q. By way of overview, I think you joined ICL in July 1987;
21 is that right?
22 A. That's correct.
23 Q. Initially as the finance director?
24 A. That's correct.
25 Q. You became the CEO of ICL in January 1996 --

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1 Q. Again, weapons manufacturing?
2 A. Yes.
3 Q. You took up, as we have said, your role as FD at ICL in
4 1987?
5 A. That's correct.
6 Q. I think in your time before taking up that position and,
7 indeed, before the events that we're going to speak
8 about today, you plainly had no hands-on experience with
9 post offices, other than perhaps going in and buying
10 a stamp.
11 A. Merely as a customer, as it is today.
12 Q. As our first ICL witness, I'm going to ask you a series
13 of relatively basic questions, if I may, about the
14 corporate structure of the relevant entities involved --
15 A. Mm-hm.
16 Q. -- and their development across time. Do you
17 understand?
18 A. That's fine.
19 Q. ICL, is this right, was established in 1968 --
20 A. That's correct.
21 Q. -- as, or supposedly as, the UK's answer to the US giant
22 IBM; is that right?
23 A. That's right. It was bringing together a number of the
24 UK's technology assets at that date.
25 Q. It was part of a push by Tony Benn, I think, under the

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1 Wilson government, to create --
 2 A. That is correct. A technology competitor to the global
 3 technology players.
 4 Q. Thank you. In 1990, Fujitsu acquired 80 per cent of ICL
 5 shares from its parent company, STC PLC?
 6 A. Correct.
 7 Q. STC, Standard Telephones and Cables?
 8 A. And Cables.
 9 Q. I think paid about US\$ 1.29 billion, £740 million?
 10 A. I recognise that more clearly, yes.
 11 Q. In 1998, Fujitsu became ICL's sole shareholder; is that
 12 right?
 13 A. As best as I recall that was about the date.
 14 Q. Then in 2002, the ICL brand was dropped by Fujitsu?
 15 A. I couldn't particularly address that. I was aware when
 16 I left that there was an appetite to create one Fujitsu,
 17 so that date doesn't surprise me.
 18 Q. Okay, thank you. ICL Pathway Limited, when was that
 19 created and for what purpose; can you help us?
 20 A. Yes, so the Pathway company was created when we were
 21 looking at bidding for the project to build a new
 22 infrastructure for the Post Office, which we're going to
 23 be talking a lot about during the next few hours, and it
 24 was our view that forming a dedicated company, sometimes
 25 known as a special purpose vehicle, would be a benefit

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1 they, I think, were, you say in your statement, already
 2 using software that you were to propose as part of the
 3 project; is that right?
 4 A. That's correct.
 5 Q. Which software was that?
 6 A. Software that came from a company called Escher. As
 7 I recall, I think the product name may be Riposte, and
 8 that we had, as I recall, heard about the software and
 9 the success that had occurred with the Irish Post
 10 Office, as a result of which we took on board
 11 a relationship with Escher as an important subcontractor
 12 on this project and An Post's experience at dealing with
 13 the Post Office, we felt, would be very valuable to us
 14 as we navigated the proposal stage but also,
 15 potentially, subsequently, through the implementation
 16 phase.
 17 Q. So it was a part of the software that you were
 18 subsequently to use as part of your proposition to the
 19 Benefits Agency and Post Office Counters Limited --
 20 A. Yes, it was part of the -- a core part of the Post
 21 Office element and the counterpart of that and it had
 22 given us -- the fact that it had been deployed -- some
 23 confidence in the technologies.
 24 Q. What did you know about what other technology had been
 25 deployed alongside it in the Republic of Ireland?

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1 to our proposition that we were going to put forward in
 2 response to the request for proposals that were coming
 3 out.
 4 The idea behind it was -- and this may come up in
 5 your subsequent questioning -- that Pathway, when it was
 6 originally formed, had a number of shareholders. It
 7 also had an independent chairperson, Sir Michael Butler,
 8 an ex-prominent civil servant, and we felt that, by
 9 having a special purpose vehicle that would be fully
 10 supported by ICL and Fujitsu, that we would be able to
 11 focus the energies and efforts not just on the project
 12 but the subsequent success of that business.
 13 Q. So it was a special purpose vehicle, a company
 14 comprising other companies or contributions from other
 15 companies.
 16 A. Yes, and if I may just add one thing --
 17 Q. Yes.
 18 A. -- because when people say "special purpose vehicles"
 19 they may default and think Bahamas or -- this was a UK
 20 company.
 21 Q. Initially, at least, the main companies that it
 22 comprised of were ICL, Girobank, An Post and De La Rue;
 23 is that right?
 24 A. That's correct.
 25 Q. One of those companies, An Post, the Irish Post Office,

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1 A. I don't recall any specific knowledge.
 2 Q. So you didn't know the system of which it was a part, to
 3 your recollection?
 4 A. To my recollection, I didn't know the specific detail.
 5 Q. Can I turn to your role in Pathway overall, please. In
 6 your witness statement, that's -- I will ask for this to
 7 be displayed on the screen -- that's WITN03380100.
 8 No, that's not right. WITN03880100. Thank you and
 9 page 5, please.
 10 If we can highlight paragraph 20, please. You say:
 11 "As part of this renewed focus on systems and
 12 software, from early 1995 I oversaw ICL's bid for the
 13 Benefits Agency/Post Office Counters Limited ...
 14 contract to computerise the payments of benefits in the
 15 UK. I undertook this role initially as [chief financial
 16 officer] and then as [chief executive officer] from
 17 January 1996."
 18 A. Yes, that's correct.
 19 Q. So what did overseeing mean in your role as chief
 20 financial officer from early 1995 until January 1996?
 21 A. The CEO I worked with until I became CEO was Sir Peter
 22 Bonfield and I initially, as I think you may have
 23 articulated, joined the company as CFO but took on
 24 responsibility for business strategy as well, in
 25 a number of years up until I became CEO.

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1 During that period, we were involved as a founder
 2 member of the Camelot consortium and I was a founder
 3 director of Camelot that, as I'm sure people listening
 4 to this will know, won the right to run the UK lottery
 5 and, for a number of years, extremely successfully. So
 6 I had experience from specifically prior to the bid for
 7 the Post Office on overseeing major contracts.
 8 And if I may just for a moment take a reference back
 9 to my days in the defence industry, the defence industry
 10 was and is involved in very significant technology
 11 projects of all natures, from communications to weapons,
 12 to satellites, so my experiences from those days had
 13 been useful to ICL as the transition of the company from
 14 a product company, which I drove more aggressively from
 15 1996, was occurring. So my -- the oversight -- to go
 16 back specifically to your question -- was that, as
 17 I recall, Sir Peter Bonfield asked me to take oversight
 18 on the strategy, the formation of the team, the
 19 consortium, working with, at the time, Mr Bennett.
 20 Q. What does "in practice oversight" mean at this stage?
 21 So early 1995 until January 1996.
 22 A. Aware of, get reports on the RF -- requests for proposal
 23 status, discussions around potential makeup of the
 24 participants of our bid, as well as review both as
 25 oversight and as CFO of ICL of the financial proposals.

1 events that I refer to in this statement, taken from my
 2 review of the materials provided to me by the Inquiry.
 3 This covers the history of ICL and ICL's involvement in
 4 the procurement process and subsequent contract with
 5 POCL and the DSS."
 6 A. That's correct and my post submission review, I noted
 7 a couple of things which, with hindsight, I would have
 8 added, which I'm sure will come up. Peter Copping's
 9 time period of his review, Montague's involvement and
 10 the Corbett --
 11 Q. The Corbett review too?
 12 A. -- Corbett review, which, on reflection of the timeline,
 13 maybe should have been included.
 14 Q. Just picking this document up then to get a broad
 15 overview to start with, in the fourth line, in May 1994
 16 I think Peter Lilley was then the Secretary of State for
 17 Social Security, yes?
 18 A. Correct.
 19 Q. He announced an intention to automate the benefits
 20 payment system; is that right?
 21 A. That's correct.
 22 Q. Can you recall, was that an announcement about benefits
 23 payment rather than automation of the Post Office?
 24 A. I don't recall specifically but the focus of his
 25 responsibilities was the DSS.

1 Q. Did "oversight" mean lead?
 2 A. The central focal point in a large organisation -- ICL
 3 was broadly a 3 billion sterling company. This project
 4 was a very important project, no denying on that,
 5 because it was very supportive of our new strategy, but
 6 it was only one of a number of things which I was
 7 involved in and had oversight on.
 8 We had put in place, as I mentioned before, a team,
 9 as I recall, with John Bennett certainly, and there were
 10 reports that he provided monthly, I'm sure we will talk
 11 about shortly. So a team to run the project day-to-day.
 12 So I was not involved every day on the project but,
 13 certainly, from an oversight point of view had
 14 significant involvement.
 15 Q. Thank you. We will come to the more particular
 16 arrangements as to the structure of the team in
 17 a moment.
 18 Before we do that, can we establish the broad
 19 chronology of events and can we use your helpful
 20 document to do this. It's WITN03880101. Thank you.
 21 Just to be clear, this is an exhibit to your witness
 22 statement that you compiled yourself?
 23 A. That's correct.
 24 Q. You say at the top, under the rubric:
 25 "I have exhibited below a timeline of key dates and

1 Q. Yes. In any event, in August 1994, next line, the DSS
 2 published its invitation notice; is that right?
 3 A. That's correct and you kindly said it before: we are
 4 referring to events that happened up to 27 years ago.
 5 Q. Yes.
 6 A. So I hope everybody listening to this will understand
 7 I do not have perfect recall of these dates. These were
 8 dates facilitated by some documents that were shared.
 9 Q. Thank you. If there are any particular points in your
 10 evidence you wish to emphasise that point again, then
 11 please do say so --
 12 A. Yes.
 13 Q. -- that you are going from what you have read, not what
 14 you remember.
 15 A. Yes, yes.
 16 Q. In any event, in August 1994, publication of
 17 an invitation notice, so that's a notice to potential
 18 bidders to ask them to express an interest in the
 19 contract if they wish to do so.
 20 A. That's correct.
 21 Q. Yes? Again, I think, as the chronology shows, this was
 22 a DSS lead: they were leading on this.
 23 A. I don't specifically recall at what point it became the
 24 joint lead, but yes.
 25 Q. As you, I think, explain in your witness statement to

1 us, no need to turn it up, there were 92 expressions of
 2 interest at this stage.
 3 A. Yes, and again that's, you know, from research and
 4 documents provided. I would have naturally recalled --
 5 it was very competitive. I would have naturally
 6 recalled -- and you may be about to get to this -- that
 7 the final shortlist was, you know, down to three, of
 8 which, in my recollection, IBM was the number one
 9 competitor.
 10 Q. Before we get to that, there was a stopping off point in
 11 December 1994, next line. That group of 92 had been
 12 whittled down to a shortlist of five, one of which was
 13 Pathway.
 14 A. Correct.
 15 Q. By the January, January 1995, as you have just told us,
 16 ICL was formally incorporated; is that right?
 17 A. ICL Pathway.
 18 Q. Yes.
 19 A. Yes.
 20 Q. Then, as the chronology shows, if we skip on a line or
 21 two, in April 1995 a statement of service requirements
 22 was issued to shortlisted suppliers. By this time, had
 23 the number of bidders been whittled down to five?
 24 A. I don't recall the precise timing.
 25 Q. Okay. What do you understand the purpose of a statement

1 A. Again, from the documentations, the date is -- I confirm
 2 the date, but, yes, I would have recalled that we were
 3 asked to respond with the three -- the other two.
 4 Q. Then the next month those bids were received in
 5 March 1996, but is it right that they all came in over
 6 the level of price acceptable to the sponsors, so the
 7 bidders were requested to retender?
 8 A. So we were definitely requested to retender. I have to
 9 repeat again that this is a long time ago. Precisely
 10 the reasons for the retender -- it's not unusual for
 11 that to occur, but I wouldn't have recalled from memory
 12 that it was because they all exceeded "the price". We
 13 may well come on to this later on, the evaluation and
 14 why we won, but, yes, the word "price" is a specific
 15 word -- another set of words that applies, you know,
 16 value for money, and, as we will no doubt get to, risk
 17 factor.
 18 Q. In April of that year, on 22 April, your chronology
 19 shows that ICL Pathway's revised bid was submitted and
 20 on 15 May, is this right, Pathway -- ICL Pathway Limited
 21 was awarded the contract?
 22 A. Yes, that is correct, and there's a point that may or
 23 may not come up with your questioning. There was
 24 absolutely a surprise I think for all the bidders
 25 through this process that when the first tender came

1 of service requirements to be?
 2 A. A statement from the customer of what the technology is
 3 required to be able to deliver and it was a very broad
 4 base, covering both the -- as I recall, the Post Office
 5 infrastructure renewal, which we will expand on, I'm
 6 sure, in a moment, and the transformation of the way
 7 benefits would be paid to UK citizens.
 8 Q. So would a short pithy description, would you agree with
 9 this, of a statement of service requirements be:
 10 a description of the functional requirements which the
 11 sponsor or sponsors expected the project to deliver?
 12 A. Yes, I think that's fair.
 13 Q. By July 1995 had something called the evaluation board
 14 narrowed down the bidders to three: ICL Pathway, IBM and
 15 Cardlink?
 16 A. Yes, I wouldn't have naturally remembered Cardlink but
 17 when I saw it on the documentation it came back.
 18 I certainly remember IBM as being our thinking. My
 19 recollection -- I couldn't remember the name
 20 "Cardlink" -- was that the other bidder was too
 21 inexperienced in the complex world of delivering complex
 22 technology projects.
 23 Q. By February 1996, if we move on, is it right that
 24 invitations to tender were issued to those three
 25 remaining bidders?

1 out, the extensiveness of it, the number in my mind is
 2 2,000 pages. It was, you know, much more significant
 3 than had originally been discussed when it eventually
 4 arrived, so there was -- yes, it was a very significant
 5 document that all the parties responded to.
 6 Q. So a detailed invitation to tender?
 7 A. It was much more detailed than had been indicated
 8 previously.
 9 Q. Did that cause a problem?
 10 A. Time to evaluate all of the clauses and subclauses, so
 11 yes, certainly it caused a significant amount of
 12 additional work.
 13 Q. Did it affect the quality of the bid that you put in,
 14 was that the implication from saying that the ITT was --
 15 A. No, I wouldn't draw that conclusion. I'm just going to
 16 summarise and say that there was a great deal more work
 17 that the ICL Pathway team and its competitors and our
 18 subcontractors had to do at the time to get on top of
 19 it.
 20 At the time we bid, we were comfortable with our bid
 21 and that -- and our ability to deliver, albeit -- and
 22 I'm sure we will get to this -- it was always a very
 23 tight timescale.
 24 Q. In terms of timescale, is it right that at this stage
 25 your bid had two significant milestones in it and we get

1 this from paragraph 34 of your witness statement, no
 2 need to turn it up, I will just summarise it: firstly,
 3 the operational trial of Pathway would be completed by
 4 June 1997 and then, secondly, a full rollout to all
 5 19,000 post offices would be completed by end of 1999.
 6 A. That sounds correct.
 7 Q. Thank you. Now, you have mentioned today your previous
 8 work history in the defence industry and how that
 9 assisted you in this context, and you have told us about
 10 how the Camelot lottery system was designed,
 11 implemented, rolled out. It's right, isn't it, I think,
 12 additionally to that chronology that at the same time
 13 that ICL was bidding and tendering to the DSS and the
 14 Post Office for what became the Horizon contract, it was
 15 also in litigation with the DSS? Do you remember that?
 16 A. I saw reference to that in the documents but would not
 17 have recalled that.
 18 Q. I wonder whether we could just look at the documents to
 19 see whether that assists and indeed it is to do with the
 20 system called "ASSIST" in capital letters. Do you
 21 remember that system?
 22 A. I remember the project named ASSIST, yes.
 23 Q. That was, I think, a contract between ICL and the DSS,
 24 yes?
 25 A. Yes, I would probably recall that. I certainly recall

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1 Q. Recently?
 2 A. Very recently, yes.
 3 Q. Can we look please at page 7 of this document please.
 4 Now, this is part of a series -- this is not something
 5 you would have seen at the time because this is
 6 an internal communication within Benefits Agency and
 7 Post Office Counters Limited, in preparation for
 8 a Secretary of State meeting with the chairman of
 9 Fujitsu and you will see that -- from the document as
 10 a whole, that it raises a series of issues, the kind of
 11 things that a Secretary of State might be asked about.
 12 It briefs him on them and then sets out some lines to
 13 take. Do you see that?
 14 A. Yes.
 15 Q. It is just the passage at the top of the page that I'm
 16 interested in. So if we just read the first few bullet
 17 points under the heading "ASSIST":
 18 "DSS has an ongoing contractual disagreement with
 19 ICL in relation to a contract awarded in January 1993 to
 20 ICL to build and operate a statistical analysis system
 21 [called] ASSIST.
 22 "The contract for ASSIST (in consortium with
 23 Hoskyns) was terminated on 19 October 1994 and DSS
 24 issued a writ alleging misrepresentation and breach of
 25 contract on 19 May 1995. ICL served its defence and

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1 the project ASSIST.
 2 Q. I think we can see from the documents it was for ICL to
 3 build and then operate a statistical analysis system for
 4 the DSS?
 5 A. I wouldn't have recalled that.
 6 Q. Okay. I wonder whether we can look please at
 7 DWP00000375. Now, just to see what this is to start
 8 with, you will see that it's a memo circulated within
 9 the Benefits Agency and Post Office Counters Limited and
 10 it is -- the subject of it is the visit of Mr Yakamoto
 11 (sic), the chairman of Fujitsu, to the Secretary of
 12 State.
 13 A. Yes. There is actually a spelling there. It was
 14 Yamamoto, but that's on the document as you read it.
 15 Q. Yes. I think we know -- we will find in due course that
 16 Mr Yamamoto visited the Secretary of State in
 17 December 1996?
 18 A. Correct.
 19 Q. I think, as we will find out in due course, you were
 20 present at that meeting between the Secretary of State
 21 and the chairman of Fujitsu?
 22 A. Correct.
 23 Q. Now --
 24 A. Again, reminded from the document that I think I may
 25 have only received --

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1 counterclaim in December 1995.
 2 "Preliminary hearings have taken place in
 3 High Court, mainly on procedural issues. Hearings on
 4 the main issues are not scheduled to begin until
 5 April 1998 and may run to the year 2000."
 6 Can you recall this now, that the DSS had terminated
 7 their contract with ICL and issued proceedings against
 8 your company for misrepresentation and breach of
 9 contract?
 10 A. I -- up until seeing this document recently -- had no
 11 recollection of that legal action.
 12 Q. This document tells us that the contract was terminated
 13 in October 1994.
 14 A. Yes.
 15 Q. So just orientating ourselves in our Pathway chronology,
 16 that's at the time that ICL was bidding for the contract
 17 with the DSS and with Post Office Counters Limited,
 18 isn't it?
 19 A. That's correct and just for the avoidance of doubt, I am
 20 not saying I wouldn't have known about it, but I had --
 21 you know, I would not, had I not seen that document, had
 22 any recollection of that specific contractual dispute.
 23 Q. No. You would have known about it at the time --
 24 A. Yes.
 25 Q. -- because a government suing a contractor --

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1 A. Yes.
 2 Q. -- for -- and alleging misrepresentation --
 3 A. Yes and we may --
 4 Q. It's quite a big thing, isn't it?
 5 A. Yes. We may get into this a little bit later on. It's
 6 a -- for any party to sue it is -- you know, it should
 7 not be taken lightly, but it is always the right of the
 8 parties to do that if resolution of issues cannot be
 9 achieved through discussion and cooperation.
 10 Q. We will see the sinews that were stretched and strained
 11 in the ICL Pathway contract not to go down the
 12 litigation route in due course.
 13 A. That is precisely why I'm mentioning that context and
 14 again -- let me call this an opinion but one maybe many
 15 will relate to -- there are different approaches in
 16 different national jurisdictions. The US tends to be
 17 more naturally litigious, would be my opinion. Europe
 18 is less so, but the accepted practice of appropriate law
 19 is the right protection if parties can't agree. I --
 20 through -- my opinion would be that Japanese culture is
 21 even less orientated to take legal action.
 22 Q. So just in terms of --
 23 A. But that is an opinion.
 24 Q. Okay. Just in terms of the chronology though, the
 25 Government terminated its contract with ICL at precisely

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1 a IT contract with the very government department that
 2 you were seeking to negotiate another IT contract with?
 3 A. I have no recollection of that being discussed. It may
 4 well have been, but I would like to just also remind,
 5 for context purposes, where we are in 1995. The
 6 internet started actually many years earlier but the
 7 emergence of the new world really was around this
 8 period, and I will keep this succinct, but if you look
 9 at some of the names that are households today, you
 10 know, in 1994 I don't think they existed: Amazon,
 11 Facebook and these places.
 12 So we had a period through that that we're talking
 13 about -- and this is relevant for a wider context to the
 14 question -- where ICL was changing and working to adapt
 15 to the new world of the consumer centric. We were
 16 engaged with the Government across the board and it's
 17 various documents that have been presented to me in the
 18 last few days and months that reinforce this, so the ICL
 19 relationship with UK government and many of the
 20 departments was very broad, very constructive, very
 21 engaged, trying to really help the UK governmental
 22 public sector institutions move forward with what was
 23 transformational technologies at the time.
 24 Q. This ICL Pathway contract was later described as the
 25 largest non-military IT contract in Europe; do you

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1 the same time that ICL Pathway was bidding with the very
 2 same contract -- supplier, DSS, and also the Post
 3 Office?
 4 A. ICL had a very substantial business, based on history on
 5 its mainframe computing -- a word from the past -- but
 6 mainframe computing, mid-range computing and PCs.
 7 I don't recall the names of the various projects but
 8 I think you would find that we had a whole range of
 9 relationships and, again we may get to this, but these
 10 were not -- these were factors which were known at the
 11 time.
 12 Q. What do you mean by that, "These were factors that were
 13 known at the time"?
 14 A. Well, as you have just pointed out to me, or the
 15 document pointed out to me, these factors were known
 16 when the evaluation of the proposal was undertaken.
 17 Q. And just in terms of the chronology, the proceedings
 18 were issued, according to this document, in May 1995,
 19 and in terms of our Pathway chronology, that's a couple
 20 of months before ICL became one of the three selected
 21 bidders for the contract with the DSS and Post Office
 22 Counters Limited.
 23 A. That's correct.
 24 Q. Can you recall was any of this seen as an impediment by
 25 ICL to your bid, namely that you were in litigation over

22

1 remember that?
 2 A. I remember it being the largest one we had won at the
 3 time.
 4 Q. To your knowledge, did the DSS and Post Office Counters
 5 Limited bring into account, in evaluating your bid that
 6 one of them, the DSS, had terminated a IT contract with
 7 ICL and alleged misrepresentation against it?
 8 A. I have no knowledge or recollection of that.
 9 Q. You've got no recollection of any discussions about the
 10 effect of an outstanding --
 11 A. No, no, my recollections are that we were very concerned
 12 that IBM, a very credible competitor of scale in global
 13 technology, might succeed in beating us in the
 14 competition.
 15 Q. You say in your witness statement -- we need not turn
 16 them up now, but examples could be found at
 17 paragraphs 17, 42, 50 and 175, that ICL had a proven
 18 track record on delivering large national IT projects,
 19 yes?
 20 A. That's correct.
 21 Q. Would it be fair to describe this issue, the ASSIST
 22 contract, as a recent and relevant example where the DSS
 23 had taken the opposite view, that your track record was
 24 not a good one?
 25 A. I think you would probably find there are very specific

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1 disputed details about that specific contract, but I'm
 2 afraid I can't help this Inquiry with any details of
 3 exactly what that dispute was about.

4 Q. Could I turn to a separate issue then, please -- that
 5 can be taken down, thank you -- in the chronology and
 6 that's what ICL was saying at this stage about fraud
 7 prevention and detection and I wonder whether we could
 8 turn up please paragraph 25 of your witness statement.
 9 That's WITN03880100, at page 7, please.

10 At the top of the page, you say:
 11 "It was my understanding that the aims of the
 12 Horizon project were as follows ..."

13 You set out three:
 14 "... fraud prevention, Post Office modernisation and
 15 infrastructure ..."

16 Sorry, if we can just go back to 24 at the top:
 17 "... fraud prevention, Post Office modernisation and
 18 infrastructure transformation."

19 Then you say:
 20 "I will deal with each in turn ..."

21 Then in paragraph 25 you deal with the first of
 22 those, fraud prevention, and in there, in paragraph 25,
 23 is this right, you set out the aims of the government in
 24 relation to fraud prevention and you describe how ICL
 25 already had experience in this area, including with the
 25

1 up -- this was, as I recall it, one of the relatively
 2 early PFIs, private finance initiatives, where the
 3 public sector were looking at enabling the supply side
 4 to take accountability for the service delivery and
 5 provide the capital to finance the project and,
 6 therefore, take -- the risk transfer of the success of
 7 the quantity of service delivery, or other aspects of
 8 the project, would move from the customer to the
 9 supplier.

10 Q. Can we look please at what ICL were saying at
 11 a relatively early stage in relation to this. This is
 12 ICL's statement of capability of 19 November 1994, so
 13 this is part of the initial response to the invitation
 14 for bids and it is FUJ00098230.

15 I think we saw from the bottom of the page the date,
 16 19 November 1994, and so this is a part of the statement
 17 of capability of that date, so it's part of ICL's
 18 response to the initial invitation to bid.

19 A. Okay.

20 Q. Can we go to page 8 of this document, please. Can we go
 21 to the paragraph second from the bottom. I should read
 22 the paragraph above it for context. It says:
 23 "ICL has widespread experience in the security
 24 associated with payments systems in the retail sector,
 25 both in the UK and abroad. ICL has also undertaken
 27

1 DSS but not with the Post Office?

2 A. Yes, correct. ICL had an extensive business in
 3 retailing, point of sale, at the time, Marks &
 4 Spencer's, Sainsbury's, as I recall, were customers,
 5 Euromarché, Albertsons in the US, we had a number of
 6 Post Office banking customers, so we were very familiar
 7 with issues around fraud protection.

8 All of the fraud protection discussions that
 9 I recall were focused on DSS. I do not recall any
 10 related to the Post Office.

11 Q. We will have a look at that, at some documents in
 12 a moment.

13 A. Yes.

14 Q. Can you remember now that the fraud prevention risk that
 15 you describe in paragraph 25, under the joint contract
 16 that was agreed with DSS and Post Office Counters
 17 Limited, was transferred from the sponsors to ICL?

18 A. I don't recall the specific wording within the contract
 19 on the transfer but, in essence, yes. Risk transfer did
 20 take place between the customer parties and the company.

21 Q. Just for those that are not as familiar as we are with
 22 what that means, in layman's terms, what does
 23 transferring the risk from the clients to the suppliers
 24 mean?

25 A. It's all in context -- again, I'm sure this will come
 26

1 systems and service developments in anti-fraud projects
 2 within the UK [DSS] and within UK local government
 3 authorities."

4 Then this:
 5 "The current approach includes the introduction of
 6 positive authentication, full reconciliation ..."

7 Then this:
 8 "... and the provision of a full audit trail --
 9 including the ability to manage the 'statutory
 10 declaration' documents."

11 The suggestion that the system includes the
 12 provision of a full audit trail, what did you understand
 13 that to mean or what would you understand that to mean?

14 A. Well, I don't recall seeing these words specifically,
 15 previously. I do acknowledge they are in the document
 16 which we fully submitted. I would read them to mean
 17 what it says literally.

18 Q. What do you, as the CEO, read them literally to mean,
 19 a full audit trail?

20 A. That there would a record of the transactions that had
 21 been undertaken in the system.

22 Q. So a record of the transactions that had been undertaken
 23 in the system, available to who?

24 A. To the parties that were using the system.

25 Q. Ie to, at this stage, DSS and Post Office Counters
 28

1 Limited?
 2 A. Yes.
 3 Q. At this stage, there isn't any suggestion that there
 4 would be a charge levied by ICL for the provision of
 5 that audit trail?
 6 A. I have no recollection of any conversations about such
 7 matters. I don't recall any conversation specifically
 8 about audit trails.
 9 Q. To broaden it out, would this be right, you have no
 10 memory of any discussion at any time that if the
 11 customers -- at this time DSS and Post Office Counters
 12 Limited -- wanted to see the full audit trail, they
 13 would be charged for doing so, ie they would have to pay
 14 a sum of money to do so?
 15 A. I have no recollection of any conversation around that
 16 question.
 17 Q. Can we look forwards, please, to the agreement that was
 18 subsequently signed because, of course, this is at
 19 a time when there was a tripartite agreement between
 20 you -- I call it "you", your company --
 21 A. Yes.
 22 Q. -- and Post Office Counters and the DSS. Can we look
 23 forward to the bilateral agreement that was subsequently
 24 signed with just ICL and Post Office Counters Limited
 25 and it is FUJ00000071. So you can see the

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1 in order for Pathway to comply with these provisions, it
 2 would be necessary for ICL Pathway to understand what
 3 "the requirements of the law" in relation to criminal
 4 proceedings are?
 5 A. We would have had this contract reviewed not just by our
 6 internal legal team but my recollection would be
 7 probably by an external team. I would therefore think
 8 it reasonable to assume that we had an understanding of
 9 what that meant.
 10 I have no specific recollection of that clause or
 11 any discussion about that clause.
 12 Q. Presumably you give that answer because only if it knew
 13 what the requirements of the criminal law were could it
 14 ensure -- ICL could ensure that data that was captured
 15 was retained, that it enjoyed sufficient evidential
 16 integrity and reliability and could be produced to
 17 a court, so only if you knew what the requirements of
 18 the law were could you do those four things: capture,
 19 retention, ensure reliability and integrity?
 20 A. That seems to me to be a reasonable conclusion, yes.
 21 Q. To your own knowledge, did ICL Pathway seek any advice
 22 on what the requirements of the criminal law were in
 23 order to be able to achieve compliance with these
 24 contractual --
 25 A. I don't recall any --

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1 counterparties to that agreement, yes?
 2 A. Yes, yes.
 3 Q. Then I wonder whether we can look, please, at page 97 of
 4 this document. That's it, thank you. I would like to
 5 read under the cross heading "Prosecution support", "The
 6 contractor" -- that's defined elsewhere to mean ICL
 7 Pathway Limited -- so:
 8 "[ICL Pathway] shall ensure that all relevant
 9 information produced by [the Post Office Counters
 10 Limited] service infrastructure at the request of [Post
 11 Office Counters Limited] shall be evidentially
 12 admissible and capable of certification in accordance
 13 with the Police and Criminal Evidence Act (PACE) 1984,
 14 the Police and Criminal Evidence (Northern Ireland)
 15 Order 1989 and equivalent legislation covering
 16 Scotland."
 17 Then 4.1.9:
 18 "At the direction of [Post Office Counters Limited]
 19 audit trail and other information necessary to support
 20 live investigations and prosecutions shall be retained
 21 for the duration of the investigation and prosecution
 22 irrespective of the normal retention period of that
 23 information."
 24 Just reading those words, ie the contractual
 25 obligations placed on ICL there, would you agree that,

30

1 Q. Hold on for a moment.
 2 A. Apologies.
 3 Q. So the question is: to your knowledge, did ICL Pathway
 4 seek any advice on what the requirements of the criminal
 5 law were in order to be able to achieve compliance with
 6 these contractual obligations?
 7 A. I have no recollection of any conversation about the
 8 matter.
 9 Q. To your knowledge, did ICL Pathway ever ask Post Office
 10 Counters Limited what it understood the requirements of
 11 the criminal law to be, to seek guidance from it as to
 12 how these two contractual provisions were to be
 13 fulfilled by ICL Pathway in practice?
 14 A. I've got no recollection of any conversation with the
 15 Post Office about this matter.
 16 Q. Would you agree, standing back, that those are necessary
 17 things to do: getting some advice on what the criminal
 18 law requires and/or speaking to the customer as to its
 19 understanding of what the criminal law requires in order
 20 that these provisions could be complied with in
 21 practice?
 22 A. Yes.
 23 Q. Thank you. Can I move on, please.
 24 The award of the contract to ICL Pathway and the --
 25 what you have described as the unaligned objectives of

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1 the Benefits Agency and Post Office Counters Limited.
 2 Can we look please at paragraph 39 of your witness
 3 statement, that's WITN03880100 at page 11. You tell us
 4 in paragraph 39 that:

5 "An additional challenge in the procurement process
 6 was the fact that we were tendering for a contract that
 7 had two distinct clients."

8 Then:

9 "We had initially thought that the requirements of
 10 POCL [Post Office Counters Limited] and DSS were
 11 aligned. However, after the award of the contract, it
 12 became clear that the two clients had separate and
 13 distinct management ethos, business objectives and
 14 priorities ..."

15 Yes?

16 A. Yes.

17 Q. At what stage, after the award of the contract, did it
 18 become apparent that the clients had distinct management
 19 ethoses, business objectives and priorities?

20 A. I don't recall a specific date but that what I was
 21 referring to there was -- and from recollection, you
 22 know, the challenges -- and these are multifaceted --
 23 first of all -- and I will come back directly to your
 24 question -- about the fact that this was a PFI contract
 25 not a design/build. The DSS culture, from my

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1 recall it being a material factor. When one stops and
 2 thinks back to what happened and, even at the time when
 3 we got through, at that stage, the challenging period,
 4 with hindsight at that time it seemed how come we didn't
 5 anticipate that problem, continuing to be completely
 6 factual and honest, as I will be throughout this.

7 Q. Can we look at the couple of documents then. To start
 8 with, some board minutes from ICL Pathway, Fujitsu,
 9 FUJ00077832. We see the subject here is "Pathway Group
 10 board meeting" and they are the minutes for
 11 3 October 1995, and we can see that you are in the
 12 distribution list --

13 A. Yes.

14 Q. -- five or six down at the top, yes?

15 A. Correct.

16 Q. Can we turn forward to page 8 of the document, please,
 17 and look at paragraph 2 and just scroll down, please,
 18 under the heading "Timescales", and then it is about
 19 five lines from the bottom of paragraph 2 beginning with
 20 the sentence "Also":

21 "Also the 'memorandum of understanding' between BA
 22 [Benefits Agency] and POCL [Post Office Counters
 23 Limited] is causing trouble in taking forward. In
 24 short, something has to give. Either a new faster
 25 procurement with a tighter focus on [private finance

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1 recollection, was one of classic government Civil
 2 Service procurement, structured precise, with limited to
 3 no commercial flexibility, and the Post Office was
 4 emerging with a vision of it becoming a self-sustained,
 5 vibrant business.

6 What I recall and -- you know, unfortunately,
 7 I can't pin it down to specific activities, but it did
 8 become clear during that period that there had been
 9 a long-term frustration from the DSS that it continued
 10 to have to use the Post Office for the delivery of
 11 benefits so what appeared to be in alignment on
 12 a procurement, we experience dysfunctionality between
 13 the two and, as I say in my statement, since that time
 14 I have never signed a contract with two customers -- one
 15 contract with two customers.

16 Q. Can I just ask you to focus on the words "We ...
 17 initially thought that the requirements of [the pair of
 18 them] were aligned. However after the award of the
 19 contract, it became clear that", they weren't, yes?

20 A. Yes.

21 Q. Can you recall, was that the not clear to ICL before the
 22 contract was awarded to ICL Pathway?

23 A. With the benefit of hindsight, it should have been, but
 24 it was -- I don't recall it ever being a material
 25 factor, and my recollection may be poor, but I do not

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1 initiatives], or a cleaner separation between what BA
 2 and POCL want."

3 A. Can you remind me of the date of this meeting, sorry?
 4 I know you --

5 Q. October 1995, so this is six months before the award of
 6 the contract.

7 A. Yes.

8 Q. I think you have anticipated my question. Does this not
 9 suggest that it was obvious, before the award of the
 10 contract, that the two clients maybe had different
 11 objectives and priorities?

12 A. They were clearly having difficulty getting their
 13 memorandum. As I recall, I think they did -- I think
 14 they did sign --

15 Q. They did.

16 A. They did sign a memorandum of agreement, so, at the time
 17 we bid, we would have believed they were aligned. As
 18 I have said earlier, you know, with hindsight perhaps
 19 we -- well, we probably did misjudge that a document
 20 bringing people together would actually change -- and
 21 I hesitate to say these words -- sort of embedded
 22 cultural factors or long-standing challenges.

23 Q. Can we turn forwards in the same document, please, to
 24 page 10. We can see that this is a memo from Tony
 25 Oppenheim to the Pathway board and so this is a memo

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1 submitted to the board in advance of the 3 October
 2 meeting, yes?
 3 A. Mm-hm.
 4 Q. Just to help you, the way these papers are collected are
 5 that there's the covering memo that we saw, then there
 6 are the minutes and then there are, essentially, the
 7 backing papers that appear to have been submitted to the
 8 meeting and tabled, essentially, at the meeting.
 9 A. Yes, and the evidence that you have shared with me
 10 demonstrates the extensiveness of the documentation that
 11 was provided at the time.
 12 Q. To the board?
 13 A. *(The witness nodded)*
 14 Q. So this is Mr Oppenheim's, essentially, report to this
 15 board meeting. Just tell us -- we're going to hear from
 16 him tomorrow -- who Mr Oppenheim was?
 17 A. He was the commercial finance individual on the Pathway
 18 team.
 19 Q. So a director of ICL Pathway?
 20 A. I believe so.
 21 Q. He sets out his report with the good and the not so
 22 good, and can I just look at the not so good at the foot
 23 of the page, and can you see the second and third
 24 asterisk points:
 25 "Serious timescale slippage pending -- not yet

1 Q. You will see that Mr Oppenheim, after the question "Will
 2 the joint procurement survive?" has written "Risk or
 3 opportunity?"
 4 I can understand, I think, that the joint
 5 procurement failing would amount to a risk to ICL
 6 Pathway, it would lose potentially millions of pounds,
 7 either in costs already incurred or loss of
 8 profitability in the future.
 9 A. We had committed to this proposal with a total
 10 commitment. The timescales we touched briefly on and
 11 I'm sure will come up again were always tight. We
 12 couldn't wait for this delayed procurement to occur. We
 13 had to start to bring some of our team together and, to
 14 your question, yes, we were incurring significant costs
 15 because we believed that we had the most compelling bid
 16 to win the project and wanted to be able to get -- to
 17 use the phrase -- get off the ground quickly once we had
 18 won the business. So, yes, there was risk.
 19 If the procurement never happened, we would have had
 20 significant cost.
 21 Q. Sunk cost?
 22 A. Sunk cost, thank you. Yes.
 23 Q. What I can't see at the moment is why the procurement
 24 failing would be an opportunity for ICL Pathway. Can
 25 you assist on that?

1 declared."
 2 I will come back to that in a moment, and then:
 3 "Signs of dissent between [Post Office Counters
 4 Limited] and [Benefits Agency] -- will the joint
 5 procurement survive?"
 6 Just a series of questions from this. Again,
 7 looking at what we saw on page 8 and now on page 10, was
 8 it not clear to ICL Pathway, months before the contract
 9 was awarded -- this is six months before the contract
 10 was awarded -- that the two clients had different
 11 objectives and priorities, rather than something that
 12 only emerged after the contract was awarded?
 13 A. Well, as I have said, with hindsight, our judgement
 14 could have been different but, at the time when we took
 15 the contract, we believed that the parties were aligned,
 16 that they had -- and I forget the precise name of it --
 17 a memorandum of understanding, that the contract was
 18 clear that it was a PFI and that there were a series of
 19 service deliveries.
 20 What we then did not expect was that the parties
 21 would not, in our opinion, operate it as a PFI. They
 22 wanted to be involved in nearly every decision and we
 23 also experience delays in getting agreements where
 24 agreements would be preferable to us proceeding
 25 unilaterally.

1 A. I would be speculating. I don't have any recollection
 2 and, as you said and as I understand it, you are
 3 speaking to Tony tomorrow. He might have
 4 a recollection. By the way, I have not spoken to Tony
 5 since I left ICL, not because we weren't on good terms
 6 but, in appropriate consistency with the requirements of
 7 this Inquiry, I have not spoken to anybody about this
 8 project.
 9 Q. Can I get your understanding of what the opportunity
 10 might be to ICL if the procurement failed?
 11 A. Well, of course, I'm attempting to answer your question,
 12 but I just want to make the point that we made very
 13 clearly in our position paper, which I'm sure we will
 14 talk about in a moment, and the outcome, the final
 15 outcome that, actually, if there is only one customer,
 16 the Post Office, it would be a lot cleaner and simpler
 17 and, at the time when -- and I'm probably out of
 18 sequence with where your questioning is at the moment.
 19 At the time when that occurred, that DSS withdrew
 20 and it became only the Post Office, in my view, that was
 21 a lot simpler and, therefore, the opportunity to work
 22 effectively with the Post Office would be a lot simpler.
 23 That's the only thing -- going back to your question,
 24 what does it mean, that it maybe relates to that, that
 25 one customer would be easier to work with.

1 Q. I understand. Can we turn up please WITN03880100.
 2 That's the witness statement again, please, at
 3 page 25 -- 25, please.
 4 Can we just look at paragraph 72 at the top, please.
 5 You say:
 6 "I acknowledge that Pathway must take responsibility
 7 for entering into a contract with two distinct
 8 customers. With the benefit of hindsight, we should not
 9 have done this. We did not fully anticipate the
 10 diverging priorities of what we thought were two aligned
 11 government entities. Although we entered into the
 12 contract in good faith, it created complexities that we
 13 did not expect, albeit perhaps we could have had greater
 14 foresight as to the potential issues that could arise."
 15 You, in this paragraph, are making some partial
 16 admissions or partial concessions there but making them
 17 conditional on the application of hindsight, right?
 18 A. Yes, and to the points you have raised up earlier, that
 19 it was my recollection, at the time when we submitted
 20 the bid and at the time we signed the contract, we felt
 21 there was sufficient alignment. What this is saying and
 22 what I referred to earlier that, with the benefit of
 23 hindsight, it was clear that we had made a mistake.
 24 Q. You say that you could have had greater foresight as to
 25 the potential issues that could arise. We have looked
 41

1 as a three-way agreement and you were readying
 2 yourselves for that, and it turned into a two-way
 3 agreement with a different objective?
 4 A. Well, in the period up to the withdrawal of the DSS,
 5 there was, from my recollection, a -- and you are
 6 speaking to John Bennett, I believe, and you're speaking
 7 to Tony Oppenheim and you're speaking to others from the
 8 group. There was a huge amount of time, distracting
 9 time, dealing with some of the aspects of the Department
 10 of Social Security. Again this may come up later in
 11 your questioning, but the CAPS project and the delay, in
 12 our opinion on that, we were expecting a single
 13 interface from CAPS and, in the end, before they
 14 withdrew, there was to be a series of releases of CAPS.
 15 Now, I will go back to -- I will go back to your
 16 question in a moment, but I wanted to provide this piece
 17 of context and, again, you may pick this up later on.
 18 There are two consequences of the CAPS delays -- three
 19 actually. One, just the time in the discussion
 20 distracted from the programme. Two, the additional cost
 21 incurred -- if you had one release of an API, a feed,
 22 you have one set of integration and testing to do. If
 23 you have multiple releases you have to keep repeating
 24 that all the time so it's much more costly to get it in
 25 multiple stages.
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1 at a series of entries in the board minutes and
 2 a submission to the board six months before where the
 3 divergence between the customers' objectives is made
 4 relatively clear, isn't it? We just looked at the board
 5 minutes from October 1995?
 6 A. But I think we also acknowledged that there was
 7 subsequently an agreement between the parties, DSS and
 8 Post Office, which would have addressed those concerns
 9 at the time we bid.
 10 Q. So are you saying that the memorandum of understanding
 11 between the two gave you comfort?
 12 A. I don't recall specifically ever seeing the memorandum
 13 of understanding. What I'm putting to you is that, in
 14 the context of the conversations that would have been
 15 had around the board at the time we submitted the final
 16 bid, we would have been concluding that we had
 17 understood the requirements, we understood our solution
 18 and we understood how we were going to deliver it.
 19 Q. What impact did the -- speaking in very general terms to
 20 start with -- did the agreement between two entities,
 21 Post Office and the Benefits Agency, in a tripartite
 22 agreement, and then the withdrawal of one of those
 23 entities, Benefits Agency, from it have on the delivery
 24 of the contract that was agreed between ICL and Post
 25 Office Counters Limited, ie the fact that this started
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1 The third is, remember, this was a PFI contract, so
 2 the delay in having benefits coming out -- pinch
 3 benefits, one comes to mind -- by, I think, over a year,
 4 but the actual dates are in my materials so they can be
 5 seen, results in lower income under a PFI.
 6 Q. Because just to make it clear for anyone that's
 7 listening, under that arrangement -- we will come to
 8 look at the arrangement subsequently with Post Office
 9 Counters Limited -- speaking in broad terms, ICL Pathway
 10 was paid in pence per transaction and the tap wouldn't
 11 be turned on until the transactions started?
 12 A. The transactions started flowing. So as the
 13 transactions were delayed further, the ability to -- we
 14 were frustrated from our ability to be able to earn
 15 income. But if I then go back to what I recall your
 16 question was, at the point of withdrawal, it did not
 17 have a fundamental change to the core system, which was
 18 being deployed in the Post Office for infrastructure.
 19 It was going to be a different way of handling the
 20 payments to beneficiaries, and so it didn't have
 21 a fundamental impact at that particular point.
 22 Q. Any other effects on having negotiated and started to
 23 work towards the delivery of a system with two customers
 24 with different or unaligned objectives and then changing
 25 to just having POCL as the contracting partner? You
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1 said that it didn't have any fundamental effect on the
 2 technology; any other effects?
 3 A. Well, it simplified the management processes.
 4 Q. So it was a positive effect?
 5 A. At the separation it was a positive effect and that, in
 6 the end, at that particular point, was a factor that
 7 I do recall as the reason why ICL Pathway, ICL Fujitsu
 8 took the loss as part of the settlement agreement.
 9 Q. So at the moment, only positive effects from the change
 10 in contractual position and change in the nature of the
 11 service that was being offered by ICL?
 12 A. Yes.
 13 Q. So, essentially, what we're talking about now is simply
 14 interesting background, is that right, to the contract
 15 that was eventually agreed, a more straightforward
 16 design and build contract?
 17 A. Yes, the -- again, maybe you're going to bring further
 18 factors out in this conversation, but at the point at
 19 which that took place, which was I recall in 1999 --
 20 Q. Yes; May 1999?
 21 A. May 1999, I think a short period of agreement at that
 22 point it moved from PFI to a more standard design, build
 23 and operate contract.
 24 Q. Had the fact that there had been five years essentially,
 25 between August 1994, the Secretary of State's

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1 in April 1996, the new [invitation to tender] had
 2 adopted the Pathway timetable for the project."
 3 So it's right, isn't it, that at this time there
 4 wasn't any question of Pathway being forced, at the
 5 outset of the contract, to deliver to an unrealistic
 6 timetable set by the sponsors, it was Pathway's
 7 timetable that had been adopted?
 8 A. Yes. As I said earlier on, I would have had no specific
 9 recall of this. The documentation that I reviewed drew
 10 these dates and factors together, but certainly that is
 11 what the documentation would suggest and that's why
 12 I put it forward in my statement.
 13 Q. So it was Pathway's own timetable that led the way?
 14 A. That is what my statement says. It was, at the end of
 15 the day, the timetable that we had responded to. As
 16 I said in my statement, that there was some concern
 17 about not complying with the required timescale because
 18 if other parties had done at an attractive price, we may
 19 have lost, but the documentation that exists -- that is
 20 better recall -- frankly, a lot better than my memory --
 21 would suggest that actually the timetable that we bid
 22 and was accepted, was initiated by us.
 23 **MR BEER:** Thank you. Sir, might that be an appropriate
 24 moment for the morning break?
 25 **SIR WYN WILLIAMS:** Certainly. How long do you suggest,

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1 announcement, and reaching that point, agreeing in
 2 May 1999 the more straightforward design and build
 3 contract between POCL and ICL, did that have any impact,
 4 ie there had been a five-year delay, on the timescales
 5 that were then agreed to by ICL for the delivery under
 6 the design and build contract?
 7 A. I don't recall any.
 8 Q. In terms of timelines for delivery of the agreement
 9 under the tripartite agreement, can we just go back to
 10 the passage from your witness statement we were looking
 11 at in paragraph 39. This is page 11 of the document
 12 we've got on the screen. Thank you. It is five lines
 13 from the bottom -- six lines from the bottom:
 14 "By the time the bid was submitted ..."
 15 We're talking about, here, the original bid:
 16 "... we felt we had a sufficiently clear
 17 understanding of the requirements as defined at that
 18 time. It was a complicated process with a variety of
 19 players, but we felt that Pathway could deliver the
 20 project successfully ..."
 21 Then this:
 22 "... albeit on an extended timeline to that which
 23 was proposed by POCL and DSS. This was [over the page]
 24 reinforced by virtue of the fact that when Pathway was
 25 awarded the contract based on its re-tender document

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1 Mr Beer?
 2 **MR BEER:** 15 minutes from now, sir?
 3 **SIR WYN WILLIAMS:** What's the time now by you, so that
 4 I can --
 5 **MR BEER:** I have two different times. I have either 11.25
 6 or --
 7 **SIR WYN WILLIAMS:** All right, 11.40.
 8 Mr Todd, I know you're alive to this point but
 9 there's likely to be a number of breaks in your
 10 evidence, so talk about anything except your evidence,
 11 all right?
 12 A. Yes, no I understand that fully. Thank you, sir.
 13 **MR BEER:** Thank you, sir.
 14 **(11.22 am)**
 15 **(A short break)**
 16 **(11.38 am)**
 17 **MR BEER:** Sir, are you able to see and hear me now?
 18 **SIR WYN WILLIAMS:** I can, yes.
 19 **MR BEER:** We're just waiting for Mr Todd to be brought back
 20 into the Inquiry room.
 21 **SIR WYN WILLIAMS:** That's fine.
 22 **(Pause)**
 23 **MR BEER:** Mr Todd, moving the chronology on a little bit, in
 24 November 1997, the DSS and Post Office Counters Limited
 25 served on ICL Pathway a formal notice of breach of

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1 contract, that's right?
 2 A. Correct.
 3 Q. Cutting through it, your company denied such a breach
 4 and, indeed, served a reply that said, far from it being
 5 in breach of contract, the programme was now no longer
 6 commercially viable for you and that to compensate
 7 ICL Pathway it required a 30 per cent price increase, or
 8 a 5 per cent price increase and a five-year extension on
 9 the contract term; do you remember?
 10 A. I'm reminded by -- so I remember the principle, yes, but
 11 the detail from the documents provided, and I think it's
 12 even clear from documents that have been shared that the
 13 DSS did that to "protect their position".
 14 Q. What do you mean they did it to "protect their
 15 position"?
 16 A. Serve notice of breach of contract.
 17 Q. What do you mean they did it to "protect their position"
 18 though, rather than believing that you were in material
 19 breach of contract?
 20 A. Well -- so I'm not a lawyer but I have been around
 21 contracts for a long time. It is legitimate practice
 22 and we, ICL Pathway, could have filed an earlier breach
 23 of contract because -- and through this period of the
 24 challenges we faced, we were continually challenged with
 25 when do we call time on what was a very difficult period

1 a unreasonably significant number of the post offices
 2 which were not fit for purpose for deploying modern
 3 technology.
 4 Q. You mean physically?
 5 A. Physically, physically, which had not been clear
 6 earlier. So, to the Chair, there were a number of
 7 issues which I would have expected that we would have
 8 been able to resolve without it ever getting to the
 9 point of dispute and breach but we were not.
 10 And my next point is clearly opinion. I think what
 11 we found we were caught in -- "caught in", my words --
 12 was a dilemma where the Post Office was not excessively
 13 funded and its ability to take an appropriate, in my
 14 opinion, pragmatic, commercial decision on adjustments
 15 to the contract was challenged because of the ability to
 16 pay. I think we were also -- and, again, I accept this
 17 is opinion -- challenged by the executive branch of
 18 government not being prepared to, in our opinion,
 19 acknowledge their responsibilities.
 20 And, again, you may wish to take this on later on,
 21 one of the reasons why -- and it will be clear to all --
 22 we felt, in the end, we had to escalate it further to
 23 include political involvement is in order to get, in our
 24 opinion, a fair and reasonable judgement on defining
 25 a way forward. So there were a lot of, you know,

1 of time.
 2 We chose not to file for breach at that time and did
 3 subsequently submit our position paper to make clear to
 4 all parties, so there was no ambiguity of what our view
 5 was, but we were diligently trying to work forward on
 6 the project to transform the Post Office infrastructure
 7 and move the project forward.
 8 It was DSS's right to, at any time, file -- submit
 9 the breach of contract, as it would have been for us.
 10 Q. In general terms, can you assist the Chairman as to how
 11 it had come to this, that in May 1996 Pathway had been
 12 awarded the contract and in November 1997 both sides
 13 were alleging material breaches against the other?
 14 A. As a result of a number of things which we have touched
 15 on already, the difficulty in implementing the contract
 16 we signed, which was under a PFI, what in our opinion
 17 was delay in decision-making around some aspects where
 18 we were trying to be cooperative with the parties and,
 19 as mentioned before, the delay, in the DSS case, of the
 20 CAPS programme.
 21 In relation to the Post Office, as made clear in my
 22 position paper, and I believe I referred to it in my
 23 statement, it became clear through the early phase of
 24 the initial pilot, the initial Go Live in the Post
 25 Office and the subsequent work, that there was

1 factors that were frustrating the project that resulted
 2 in those delays, Chair.
 3 Q. In the answers that you have just given, in your witness
 4 statement and in your position paper, you blame the
 5 Benefits Agency and Post Office Counters Limited and do
 6 not accept any responsibility by ICL for reaching this
 7 position; is that right?
 8 A. No, I don't think that is fair. We were rightly
 9 pointing out where we think that they, the customers,
 10 had frustrated this contract. As I have acknowledged
 11 earlier on, we certainly did some things wrong and, as
 12 well reported in -- I think in some of the documentation
 13 that John Bennett acknowledged that there are certainly
 14 some things that the company did wrong.
 15 Q. The thing that you have so far referred to as the
 16 company doing wrong is not realising sufficiently in
 17 advance how unaligned the objectives of Post Office and
 18 the Benefits Agency were. Is there anything more than
 19 that, in not realising how the customers' objectives
 20 differed, that you, on behalf of ICL, looking back --
 21 A. Well, it's very difficult and I am genuinely not trying
 22 to be evasive on this but I don't recall specifics, but,
 23 you know, it would be inappropriate for me to sit here
 24 and say that there were no aspects of the project that
 25 we couldn't have done better.

1 I do refer to resources. I believe that the
2 resources were being made available. The involvement
3 not just of the Pathway team but the access to other
4 resources in ICL was -- you know, was there, did take
5 some delay, sometimes, to get resources up to speed. So
6 that might be an example of where, you know -- had we
7 resourced more heavily earlier, in anticipation of
8 problems, some of the challenges of the projects may
9 have been better addressed.

10 Q. Can we turn up, please, a document that you have
11 referred to: your position paper.

12 A. Yes.

13 Q. It is POL00031117. Thank you. I just want to see what
14 we've got here first in this little clip surrounding the
15 position paper.

16 The first page of this PDF is a copy of a letter
17 sent from you to Stuart Sweetman, who was by then the MD
18 of Post Office Counters Limited, and you say:

19 "Following John Bennett's conversation with Paul
20 Rich, I am enclosing a courtesy copy of the letter and
21 position paper that I have sent to Peter Mathison", who
22 was the chief executive of the Benefits Agency, yes?

23 A. Yes.

24 Q. That's dated 10 March.

25 A. Yes.

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1 as you pointed out in May 1999, confirmed in, I think,
2 July 1999, you know, we may have been forced to take
3 legal action. It would have been very much the last
4 resort.

5 Q. So it was without prejudice because the position paper
6 sought to find a constructive way forwards, rather than
7 relying on strict legal entitlement; is that right?

8 A. But it was also attempting to do -- so, yes to your
9 question, but the important point about the paper, which
10 I think I do refer to in my statement -- the number of
11 stakeholders in this conversation was significant, not
12 just, you know, in terms of the Post Office and the DSS,
13 but, you know, the wider government organisation. And
14 I do recall a time, discussing with my colleagues, that
15 I was concerned that Chinese whispers may be occurring,
16 that briefings were getting miscommunicated and that the
17 antidote to that was to try and write, what I believe
18 still is, a clear paper outlining the position that we
19 saw through the eyes of ICL Pathway and ICL.

20 Q. Can we go over the page please to the position paper.
21 And did you write this?

22 A. I was participant to writing it. At the time a number
23 of individuals were involved, working obviously with the
24 Pathway team, John Bennett, almost certainly Tony
25 Oppenheim, but Richard Christou, who was, at the time,

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1 Q. Then if we go over the page, please, we can see a copy
2 of that letter.

3 A. Yes.

4 Q. You say to Mr Mathison:

5 "Dear Peter

6 "I ... now enclose on a without prejudice basis
7 a position paper which sets out ICL's views in relation
8 to the Pathway Project.

9 "May I suggest that we arrange a further without
10 prejudice meeting after you have considered the enclosed
11 document so that we may continue to seek a way forward
12 in this matter."

13 We can see the letter at the top was itself headed
14 "Without Prejudice", if we just scroll up.

15 A. Yes.

16 Q. What was this sent without prejudice to: without
17 prejudice to what?

18 A. To our legal contractual rights. As I said earlier on,
19 a few minutes ago, the approach that I was taking,
20 ICL Pathway was taking, ICL and Fujitsu were taking, was
21 to find a constructive way forward to make this project
22 successful, despite the challenges we felt we were
23 facing that we discussed earlier on.

24 In the event we were unable to find a way forward in
25 the form of a compromise, which did subsequently happen,

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1 commercial and legal head and was my, sort of,
2 right-hand on commercial and legal matters, as well as
3 reviewing it with Fujitsu. So there were a number of
4 people that were parties to the preparation of this
5 paper.

6 Q. You introduce it by saying:

7 "The purpose of this summary is to inform [the
8 Benefits Agency and Post Office Counters Limited] ... of
9 Pathway's position in relation to the Pathway
10 Project ... in order to facilitate proper commercial
11 discussions to resolve the present problems and
12 differences facing the parties on the Project. The key
13 issues have been summarised under headings ..."

14 I think we see eight of those in due course:

15 "... with the aim of provision an overview of the
16 problems which Pathway has experienced in performing the
17 Project in the context of a PFI contract."

18 I just want to look at some of the headings.

19 Overall -- you have obviously looked at this more
20 recently. Do you actually, in the paper, suggest any
21 constructive way forwards or do you just set out the
22 problems?

23 A. We set out the problems. You had mentioned previously,
24 I think, prior to this paper we had made a commercial
25 proposal. I believe it was -- from recollection, it was

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1 before, but I can't guarantee that, and it was clear --
 2 if I go back to what I referred to a few moments ago --
 3 that it was, almost structurally, verging on impossible
 4 for the Post Office and the DSS executives to agree to
 5 a commercial solution.
 6 It was my recollection of our view at the time that
 7 we needed to escalate it -- as I said a moment ago -- to
 8 have, in my opinion, transparency on what the underlying
 9 issues were as we saw them.
 10 At the end of the day, where the other parties --
 11 and they probably didn't agree with our view of it --
 12 without going through the court process, a conclusion of
 13 these difficulties was arrived at, as we have said, in
 14 the May 1999 time to July 1999 timeframe, both
 15 commercially and from a project point of view.
 16 Q. Can we look at the first heading, "PFI principles"
 17 further down the page please. In this and the next
 18 paragraph you set out essentially, is this right, the
 19 theory of a PFI contract in advance of the remainder of
 20 your points which explain why these principles were, in
 21 your view, undermined by the conduct, actions, omissions
 22 and decision-making of the DSS and POCL; is that right?
 23 This is a statement --
 24 A. Yes.
 25 Q. -- of the theory of a PFI contract.
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1 system, it is not then for the Sponsor to dictate the
 2 solution, which must remain the exclusive responsibility
 3 of the Supplier."
 4 So what you were saying here was that the solution
 5 to the requirements that the customer had set out were
 6 the exclusive preserve of you, ICL. You've got to be
 7 trusted, you took the risk on of delivering those and it
 8 wasn't for the Benefits Agency or POCL to interfere?
 9 A. Not wishing to be pedantic, but ICL Pathway but -- which
 10 was a wholly owned subsidiary at this time of ICL -- but
 11 yes, that is correct and what we had seen through the
 12 period of this, from the early days, was a desire from
 13 the customers -- my recollection says specifically the
 14 DSS, but I would not exclude the Post Office -- to be
 15 involved in every decision which was challenging.
 16 Q. You say in the next paragraph:
 17 "The problems which Pathway has faced and continues
 18 to face on the Project arise from the fact that ... the
 19 Authorities [that's both BA and POCL] have breached
 20 these basic PFI principles. Moreover, [the Benefits
 21 Agency] has compounded the situation by separately
 22 misrepresentation the true position ..."
 23 So that they were making false statements, is that
 24 right, the Benefits Agency?
 25 A. Certainly, from my recollection of what was going on at
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1 A. Yes, yes, where substantial control to deliver the
 2 services is handed over to the supply side and control
 3 of the design and implementation is not with the
 4 customer.
 5 Q. So you say, in the third line:
 6 "The Supplier [that's ICL] takes the entire risk of
 7 providing a solution to meet the business requirements
 8 of the Sponsor, but, in turn, the Supplier is given the
 9 overall freedom to determine the solution to be
 10 provided. It is therefore fundamental that, having
 11 transferred the initial risk associated with the
 12 implementation phase of a project, the Supplier should
 13 not be hindered during this phase by the Sponsor. It is
 14 for the Supplier to manage the technical aspects of the
 15 project in an expeditious time frame so that the
 16 Supplier is capable of earning revenue which is
 17 commensurate with the risks of the project."
 18 Then over the page, please, second paragraph:
 19 "It follows from this overriding principle that the
 20 Sponsor has the right to monitor the ... work and the
 21 right to reject the IT solution following acceptance
 22 testing if the solution is unable to meet the acceptance
 23 criteria. However, the acceptance criteria can only be
 24 based on the Sponsor's business requirements. In other
 25 words, having defined the requirements to be met by the
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1 the time, it felt that there was a greater knowledge
 2 that the camps' programme timescales, that I referred to
 3 earlier, were changing. We never got to the bottom of
 4 any conclusion, or any insights to be able to prove that
 5 one way or another, other than what is attached to this
 6 document, which is the schedule of the timeframe for the
 7 roll-out of the benefits, how it changed from when the
 8 RFQ came out to the, sort of, final position before DSS
 9 withdrew.
 10 Q. You said that you never got to the bottom of it. You
 11 were certainly, by this stage, sufficiently sure of
 12 yourselves to allege against the government department
 13 misrepresentation?
 14 A. I would -- I'm not a lawyer. That was our opinion at
 15 the time. That document was not a formal breach
 16 document. It was our view about the position being
 17 misrepresented.
 18 Q. You don't throw allegations like that around just
 19 because they are written under cover of a without
 20 prejudice letter, do you? You must have some evidence
 21 to back them up?
 22 A. Well, the schedule at the back.
 23 Q. So it's true then that you did have evidence of
 24 misrepresentation by the Benefits Agency on the progress
 25 and timelines of the CAPS delivery programme?
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1 A. The fact we have attached to this document a schedule of
 2 when the delivery existed, or was going to be compared
 3 to the RFP, is evidence that the timescales slipped.
 4 Q. That's not evidence of misrepresentation, is it?
 5 A. That's true.
 6 Q. So why was the allegation of misrepresentation made?
 7 A. I don't recall.
 8 Q. If we just scroll through the document to look at the
 9 headings. The next is "Design Interference/Enhanced
 10 Requirements" and then, over the page, to "The
 11 Authorities and the Programme Delivery Authority", yes?
 12 A. Yes.
 13 Q. Then over the page, please -- sorry, back a page,
 14 please. Just under that, just picking up some points,
 15 at the foot of the page there, you say:
 16 "The contractual programme was based upon
 17 an aggressive implementation timetable ..."
 18 Just stopping there, that's the timetable that
 19 Pathway had proposed, yes?
 20 A. It had proposed it in response to our understanding of
 21 the times that the customers would want for the rollout
 22 of the infrastructure.
 23 Q. What does "aggressive" mean in this context?
 24 A. I don't recall.
 25 Q. So I think we had established earlier that ICL was the

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1 Q. And there was a saving to be made there?
 2 A. Yes, and so, therefore, my answer to your question is;
 3 it was in the interests of all three parties to have as
 4 short a timetable as possible. The benefits for all
 5 parties were important and, therefore, a short
 6 timeframe. It was also, to link back to something
 7 I touched on earlier, you know, we had the opportunity,
 8 going back well before the date of this position paper,
 9 to stop work and I do recall some conversation about
 10 that, you know, "Do we just stop and reset?"
 11 The view we took was what I believed to be the right
 12 one, which was a constructive one, which was to focus on
 13 the project, get the initial Go Live working and that
 14 did occur, as I recall, as required, and although albeit
 15 being limited, was "successful".
 16 Q. Successful in what sense?
 17 A. Well, as I'm re-reading the reports, that it had met the
 18 requirements for -- at that time, I think it was Child
 19 Benefit, one benefit and a limited set of post offices
 20 to be rolled out.
 21 So going back to your question on the timeframe, it
 22 was in all parties' interests to get this infrastructure
 23 in as soon as possible.
 24 Q. And, from ICL's perspective, which is the question
 25 I asked, in order that it could start earning revenue?

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1 author of the aggressive timetable; is that right?
 2 A. The timetable which ICL Pathway put into the proposal
 3 was in response to the RFQ, which was later than -- as
 4 I understand it from the documentation -- the RFQ,
 5 request for proposal, had asked for and so, therefore,
 6 yes, it was our proposed timetable.
 7 Q. In this sentence, you say that this was done partly to
 8 achieve fast business returns for the parties. Does
 9 that mean, in part, so that ICL can start to earn money
 10 by reference to the volume of transactions undertaken
 11 using the system?
 12 A. Well, again, I just need to -- you know, this is
 13 a complicated topic because there's a lot of things
 14 going on at this time. Again, from my recollection of
 15 the situation, there was a lot of challenges in the Post
 16 Office, the need for modernisation of the infrastructure
 17 and the original timeframe in the RFP had been
 18 aggressive because the Post Office wanted to roll out
 19 new technologies quickly, so we were conscious that the
 20 Post Office wanted to be able to get the benefits of
 21 a new infrastructure that was going to be the basis on
 22 which new services could be provided for their business.
 23 It was also important, as I recall understanding,
 24 the DSS wanted to, you know, address the fraud
 25 challenges, so --

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1 A. Including that.
 2 Q. There's a reference here that the programme was based on
 3 an aggressive timetable partly for political reasons.
 4 What were the political reasons that there was
 5 an aggressive timetable?
 6 A. I don't specifically recall. I believe it was related
 7 to what I touched on a moment ago about the importance
 8 of improving the Post Office footprint and reducing the
 9 number of closures of post offices, but I'm afraid
 10 I can't recall specifically.
 11 Q. Was that a political reason, as you saw it?
 12 A. I'm just suggesting it was, it was a political pressure,
 13 and, certainly, as I think about it here, yes, I mean
 14 it's -- it has -- being most of my life lived in
 15 the UK -- not all my life -- but, yes, it's been
 16 a pressure that I would have understood to be there, to
 17 have a vibrant Post Office. Without being off at
 18 a tangent, you know, I use it regularly and it's a great
 19 service in the community.
 20 Q. Can we go forward to page 11 please, which is under the
 21 heading "CAPS", and can we look at the bottom paragraph
 22 on the page, please. You say:
 23 "CAPS is so fundamental to the viability of the
 24 project programme that had Pathway known the true
 25 position it is doubtful whether Pathway would have

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1 entered into the contract. At the very least Pathway
 2 would have priced the services to reflect the deferred
 3 CAPS programme and revenue loss. Following award of the
 4 contract, if Pathway had been told of the delay to the
 5 CAPS programme, Pathway would have had the opportunity
 6 and time to mitigate the impact of such delay and
 7 respond commercially to the changing circumstances of
 8 the project. Pathway would have been relieved of the
 9 coercive effect of the aggressive timetable, which drove
 10 Pathway to minimise delay and absorb additional cost
 11 without proper recourse to the procedures laid down in
 12 the contract."

13 What was the amount of losses or absorbed losses
 14 that you're referring to there?

15 A. I don't recall the specific number.
 16 Q. You can't remember now how much money Pathway lost as
 17 a result of the delay that you attribute to CAPS?

18 A. Specifically related to CAPS, no, I don't recall.

19 Q. You say in the second line from the bottom:
 20 "Pathway would have been relieved of the coercive
 21 effect of the aggressive timetable ..."

22 What was the coercive effect that you refer to
 23 there?

24 A. It must be referring to the timetable that we
 25 anticipated receiving -- you know, that we anticipated

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1 reduce staffing?

2 A. The only area where documents have reminded me that we
 3 did was in relation to, I think, the rollout plan
 4 because, if there is not going to be a rollout plan to
 5 the same timeframe, we need less people around the
 6 country to implement, so it would have been redundant
 7 cost on the implementation teams. I don't recall at
 8 all, ever any reductions in the core team that were
 9 responsible for delivering the service.

10 As I have referred to previously, my recollection is
 11 that we had taken a line consistent with my and
 12 Fujitsu's philosophy that we wanted to succeed on this
 13 project and that we had invested significant sums of
 14 money and we wanted this to be a national success for
 15 the customers and ourselves, so, you know, we were fully
 16 vested and fully committed and, you know, the support,
 17 as the documentation shows, from Fujitsu through -- and
 18 ICL and, frankly, the team, you know, the team in
 19 Pathway that were dealing with these additional matters
 20 and just delivering the project, having to cope with the
 21 commercial discussions, the decisions on the project,
 22 you know, the team in Pathway I think should -- I think
 23 I made a statement in my statement that they take great
 24 credit for how they continued to work under challenging
 25 conditions.

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1 we needed to deliver to, to meet the requirements for
 2 the Department of Social Security's part of the
 3 contract.

4 Q. In your statement -- no need to turn it up -- at
 5 paragraph 83, which is page 29 of your statement, you
 6 refer to ICL Pathway facing "revenue losses and
 7 increased costs", which run into hundreds of millions of
 8 pounds.

9 A. Yes.

10 Q. Can you recall how many hundreds of millions of pounds
 11 you were there referring to?

12 A. Well, there were various calculations done, as I have
 13 been reminded by looking at documents. The Corbett
 14 analysis at one point, as I recall, had two numbers,
 15 a net present value number, which was 200 to
 16 300 million, and the gross value of that, as I recall
 17 from seeing recent documents, was put to my colleagues
 18 as 500 million.

19 Q. Your colleagues within ICL?

20 A. Fujitsu/ICL, I seem to recall from reviewing the
 21 documents recently. If I had not seen any of these
 22 documents I would have been saying this was a very -- it
 23 was a very substantial -- a few hundred million.

24 Q. Was the response to that, within ICL, itself to tighten
 25 its belt to try and reduce the spend on this contract,

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1 But to go back to your question, there was no
 2 recollection of mine that says there was any wholesale
 3 cutting back of costs. It was only where the costs
 4 would have been redundant.

5 Q. Does that represent your view overall that for ICL and
 6 for ICL Pathway Limited, it should take great credit for
 7 the delivery of Horizon?

8 A. No. I didn't say that.

9 Q. No. Why is that not your view, that it should take
 10 great credit for the delivery of Horizon?

11 A. We were delivering a project which we knew internally as
 12 Pathway, which was the technology infrastructure. As we
 13 have discussed today, there were some great challenges
 14 through the early stages of this project, the initial Go
 15 Live substantially happened, as I recall, on time.
 16 Subsequent challenges put delays into the project.

17 There is no doubt with what happened and the events
 18 that led in subsequent years it is -- in a sense,
 19 there's no way that any party can feel comfortable at
 20 being involved in any element of this project.

21 Q. Can we turn back to the position paper, insofar as it
 22 deals with Post Office Counters Limited, and that's in
 23 a section on page 10 of this document. As you rightly
 24 said in answers a moment ago, it was to do with the
 25 premises infrastructure that you made allegations

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1 against Post Office.
 2 A. Yes.
 3 Q. It is at the foot of the page, please, under the heading
 4 "POCL", and it is just in this paragraph, it's one
 5 paragraph that relates to the Post Office. If we can
 6 just read this first:
 7 "It became apparent during installation work for the
 8 first 200 Post Offices ..."
 9 Just stopping there, that's part of the initial Go
 10 Live, it was one, then ten in Stroud and then rolled out
 11 to, I think, 201 or 202?
 12 A. Yes, the initial Go Live was I think -- yes, the initial
 13 ten, and the subsequent phases were those up to 200,
 14 yes.
 15 Q. "... the first 200 Post Offices that many post offices
 16 are not fit for the purpose of installing automation
 17 equipment. [Post Office Counters Limited] could not
 18 reasonably have believed that the Post Office premises
 19 were fit for automation and did not give Pathway
 20 a proper opportunity to investigate the physical
 21 condition of the [Post Office Counters Limited] premises
 22 for itself before entering into the contract. If the
 23 extent of the work required to render [Post Office
 24 Counters Limited] premises fit for installation of
 25 automation equipment had been made known at the

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1 purpose ..."
 2 Isn't that the risk that the supplier takes on,
 3 rather than for the client under a PFI deal at the time
 4 that you were then operating? The client doesn't have
 5 the responsibility of assessing their own premises'
 6 readiness and fitness and suitability for automation,
 7 they simply make a requirement, how post offices need to
 8 be automated and then, as you say, it's up to you, as
 9 the supplier, to ensure that that happens.
 10 A. That would be, in our view, unreasonable and no, I would
 11 disagree with you.
 12 Q. Why?
 13 A. Because we would have been given some indication --
 14 I say "we". I was not directly involved, just to,
 15 you know, remind you. This was a very important
 16 contract in the whole of ICL so the team would have had
 17 some exposure to what a post office looked like and
 18 based on the sample of what we would have seen, a view
 19 would have been taken on the roll-out.
 20 What we're saying here was, it subsequently turned
 21 out that whatever we saw during the bidding phase, or
 22 the early phase, the actual quality of the estate was
 23 significantly worse than expected.
 24 Q. But I'm drawing you back to what you said at the outset
 25 of this position paper, which said that it's not for the

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1 pre-contract stage Pathway would have adjusted its bid
 2 price accordingly and allowed more time for this work in
 3 planning. Indeed, the full impact of this problem is
 4 still being assessed. Of greatest concern are the
 5 substantial additional costs and the possibility that
 6 the problem is so severe that it will not be possible to
 7 maintain the required 'beat rate' during national roll
 8 out. Indeed, it would appear to be impossible to
 9 automate all post offices in their current role."
 10 Just picking up on a phrase there, "Beat rate during
 11 national roll out", that was a number of post offices
 12 automated live per week?
 13 A. Yes, yes, and as I recall, reminded by the documents,
 14 that I think when I left it was getting up to 300, so
 15 there was a -- yes, a roll-out plan that increased the
 16 number of post offices that would be upgraded. The
 17 exact phasing of that I don't recall.
 18 Q. At this stage we're still dealing with a PFI contract,
 19 yes?
 20 A. We are.
 21 Q. Yes.
 22 A. Thank you.
 23 Q. You say that:
 24 "It became apparent during installation work for the
 25 first 200 ... that many post offices are not fit for the

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1 client to make arrangements for or to specify --
 2 A. Well, there would always --
 3 Q. -- hold on, let me finish the question --
 4 A. Sorry.
 5 Q. -- how the premises are to be automated. They settle
 6 a requirement that they are to be automated and then
 7 it's down to you, the supplier, to make sufficient
 8 investigations to work out how that is to be done and
 9 how much it's going to cost, no?
 10 A. I would disagree that there would be an assumption of
 11 a basic adequacy based on what had been represented at
 12 the time, but, you know, I had no participation in the
 13 direct conversations that made those assessments.
 14 Q. Before this contract with the Post Office, ICL had no
 15 experience with working with the Post Office whatsoever,
 16 had it?
 17 A. That's my recollection.
 18 Q. I think you confirmed that in paragraph 25 of your
 19 witness statement.
 20 A. Yes, that was my recollection.
 21 Q. Did they keep you locked out of post offices? Did they
 22 prevent you from going in -- or the company from going
 23 into post offices to assess their fitness, physically,
 24 for automation?
 25 A. No, that would not be the case.

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1 Q. Did ICL ask for access to post offices?
 2 A. I have no specific recollection. I believe that there
 3 had been an assessment of the post offices which we had
 4 had access to, which was the basis on which we had made
 5 an assumption, but you may get more clarity when my
 6 colleagues who were dealing with this day by day appear
 7 before this Inquiry.
 8 Q. Before the contract, can you help us with what ICL
 9 Pathway did itself to find out what the state and
 10 standards were like within post office branches?
 11 A. I'm afraid at this time I -- you know, I can't recall.
 12 This is now 27 years ago.
 13 Q. Yes. Can you therefore not recall what opportunity
 14 there had been for ICL to investigate the physical
 15 condition of post office premises?
 16 A. I can't recall anything specific. My judgement is that
 17 we would have had some access. For example, the
 18 initial ten, we must have known where they were because
 19 of the very early delivery date for the Go Live of those
 20 initial ten.
 21 Q. But that's post-contract --
 22 A. Yes, yes, that's true.
 23 Q. -- the Go Live. We're talking -- the criticism here is
 24 that you wouldn't have signed up to the contract if you
 25 had known the state of the branches, so it's no good

1 or it was our assessment of the ones we saw -- there
 2 would have been a view taken about the suitability of
 3 the post offices for the deployment of this technology.
 4 Quite clearly the team that were working every
 5 day -- and I believe some of the documents that were put
 6 in front of me more recently -- acknowledge the
 7 challenges that my team found in looking at some of the
 8 Post Office estate. I don't believe the lack of fitness
 9 for deployment of technology was challenged by the Post
 10 Office but maybe my recollection is incorrect.
 11 Q. Given that this was the late 1990s, what did ICL Pathway
 12 expect of branch post offices, some of them likely to
 13 have been in operation for 100 years or more, using
 14 paper based systems?
 15 A. I've never thought about the question as you posed.
 16 Q. Well, you say in this document that the Post Office did
 17 not give Pathway a proper opportunity. Was that proper
 18 opportunity asked for and denied to Pathway?
 19 A. I don't recall specifically the answer to that.
 20 I repeat what I said earlier on, that I had a full-time
 21 team, some of whom you're going to be interviewing, that
 22 were focused on this on a day-to-day basis.
 23 Q. Would you accept that with an estate of say 20,000
 24 post offices, the reasonable thing to do would be to
 25 inspect a sample of them and then draft a minimum

1 pointing to the Go Live phase and saying "Well, we might
 2 have -- we discovered things then." What you're saying
 3 here is that you didn't know the physical condition of
 4 the Post Office estate before entering into the
 5 contract, aren't you?
 6 A. I'm saying -- this document is saying, our position was
 7 that we had a different understanding of the state of
 8 the Post Office estate. I'm afraid I can't help you
 9 with specifics on what that was based on: 1, because it
 10 was 27 years ago; and 2, I didn't personally inspect the
 11 post offices.
 12 Q. Of course and I'm not suggesting that you did. Would
 13 you accept that Pathway had been contracted to build
 14 an end to end, automated and operational accounting
 15 system for the Post Office network and that it was down
 16 to Pathway to check that the Post Office branches could
 17 support such a system before it contracted?
 18 A. The answer to the question you're posing has a big
 19 dependency and that is that we would have had to make an
 20 assessment not by pre-bid -- to your own point, pre-bid
 21 go and visit 20,000 post offices to inspect their
 22 estate. I think that would have been unreasonable for
 23 any bidder for any contract to do.

What is likely to have been done -- now, I cannot
 attest to whether it was represented by the Post Office

1 condition guarantee?
 2 A. As you say, that is rational and reasonable.
 3 Q. Was that done?
 4 A. I don't recall.
 5 Q. What was the minimum standard of condition that Pathway
 6 expected?
 7 A. Again, my detailed knowledge/recollection of 27 years
 8 ago would not be able to give you a sufficiently --
 9 a sufficient answer.
 10 Q. Maybe if I can jog your memory, would it be that, in
 11 order to support the hardware to be installed within the
 12 premises, at least there was --
 13 A. It would need counter space and power, yes, this is --
 14 Q. Well, hold on -- a telephone line that was connected to
 15 the BT service?
 16 A. Okay, I would not have recalled that.
 17 Q. Can you recall whether there was an understanding that
 18 the telephone line connection from post office branches
 19 would be a copper line, ie an ordinary telephone line,
 20 connecting into the BT network?
 21 A. I don't recall that.
 22 Q. Can you remember now discussion over whether such copper
 23 telephone lines were subject to interference from other
 24 devices, or inclement weather, or degradation over time,
 25 and that could affect the quality of the signal being

1 transmitted across the system?
 2 A. I have no recollection of any conversation at the time
 3 about the quality of the copper lines into post offices.
 4 Q. If we just look at paragraph 74 of your witness
 5 statement, please, which is WITN03380100, at page 25.
 6 Page 25, thank you, under the heading "Post Office
 7 infrastructure", you say at 73:
 8 "There were significant issues with the Post
 9 Office's own infrastructure. During installation work,
 10 it became clear that many post office premises were not
 11 fit for hardware installation and DSS/POCL did not
 12 factor this into the timeframe for completion of the
 13 contract."
 14 I will just ask again: wasn't it your responsibility
 15 to establish whether the premises were fit for hardware
 16 installation as part of your due diligence, if you like,
 17 before entering into the contract?
 18 A. I would say, clearly, based on what we wrote at the time
 19 in this position paper, and we would have had access to
 20 other documentation and current knowledge, we did not
 21 believe that was the case.
 22 Q. In paragraph 75, if we just scroll down, you set out the
 23 position, as you say clearly, in the position paper that
 24 we have read, and then just go back up to 74, please.
 25 You say:

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1 time.
 2 Q. So breaking it down, was any work, to your knowledge,
 3 done by ICL between the position paper that we have been
 4 speaking about, which raised this issue as to the
 5 fitness of the estate and the commencement of the
 6 contract in May 1999 to put the estate into a state fit
 7 for automation?
 8 A. Well, there was no work done by ICL Pathway to make the
 9 estate fit. I have no recollection of what further
 10 research was made. My recollection is that the Post
 11 Office team did not dispute that it needed to be
 12 upgraded. The issue was a commercial one as to --
 13 Q. Who was going to pay for it?
 14 A. Yes.
 15 Q. Can you recall who was going to pay for it and who was
 16 going to do the work?
 17 A. It was our view, as put in the position paper before the
 18 revised contract, that it should be the Post Office. At
 19 the time the contract was reset in -- I repeat these two
 20 dates, between May and July -- I think it was signed in
 21 July -- July 1999, that matter must have been taken
 22 account of but I cannot sit here and recall a decision.
 23 At the time that the Treasury sponsored --
 24 an individual, I think it was Steve Robson in the
 25 Treasury -- sponsored a short period for the two

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1 "In the December 1997 monthly report, these issues
 2 were highlighted as 'critical' to resolve. The report
 3 again noted the 'difficulties within the Post Office
 4 estate' regarding 'the poor physical condition of the
 5 vast majority of the post offices' and that 'the
 6 appetite to confront this head on within POCL has yet to
 7 be seen'.
 8 Then:
 9 "By March 1998, the monthly report stated that these
 10 issues had escalated into a 'major dispute', 'the total
 11 cost for putting their estate into a fit purpose for
 12 automation is on the wrong side of £40 million'.
 13 Now, we know that national rollout began at least by
 14 the start of the year 2000, yes?
 15 A. Mm-hm, yes.
 16 Q. How were the issues that were so critical being referred
 17 to here -- "putting the estate into a state that was fit
 18 for purpose for automation" -- resolved by the
 19 year 2000?
 20 A. When the contract would have been rebaselined, which was
 21 between May and July 1999, that matter must have been
 22 taken account of. I have no specific recollection of
 23 how it was taken account of but, to state the obvious,
 24 you know, it was a known issue, it was in our position
 25 paper, a view would have had to have been taken at that

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1 parties, Post Office and ICL Pathway, to agree a new
 2 contract, which Christou and Tony Oppenheim, as
 3 I recall, and John Bennett, were the primary parties
 4 discussing and negotiating it, and the fitness of the
 5 Post Office estate was known about, so my assumption is
 6 that we took full account of that in signing up to the
 7 new contract.
 8 Q. What would you say to the suggestion that, come the new
 9 contract in July 1999, this issue was overlooked and
 10 that national rollout commenced in the year 2000 with
 11 the cracks having been papered over?
 12 A. Surprise.
 13 Q. Looking at the position paper as a whole, taking a step
 14 back, would this be right, that the entirety of the
 15 fault in ICL Pathway's mind was that of the Benefits
 16 Agency and, to a lesser extent, the Post Office and that
 17 ICL Pathway was entirely blameless?
 18 A. I mentioned and said earlier, I think it would be
 19 inappropriate for us to say that we had no faults. Our
 20 position paper was a position paper to point out the
 21 things which we felt that the other stakeholders had not
 22 appropriately handled and that had affected our ability
 23 to deliver the contract.
 24 Q. Were there any admissions in this without prejudice
 25 letter of anything that ICL had done wrong or

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1 incorrectly?
 2 A. I read it several times recently and I don't recall it
 3 and I --
 4 Q. I don't think there are, are there?
 5 A. No, no.
 6 Q. You suggested earlier that this position paper was
 7 supposed to be a constructive way forward. Why were the
 8 errors and omissions and faults of ICL Pathway not also
 9 identified in this without prejudice letter?
 10 A. I can only provide you with my view at this stage, as
 11 opposed to necessarily at the time, but, you know, we
 12 were dealing with an intense situation where it -- from
 13 recollection, it felt that we were struggling to get --
 14 and this is well reported in some of the documents that
 15 have been shared from the government's side -- that
 16 I was getting frustrated by the intransigence, the
 17 inability to move anybody forward, whilst we continued
 18 to spend a lot of money in delivering this project and,
 19 therefore, a robust position was taken in our
 20 conversations and this position paper set out not our
 21 faults, but the faults of the other stakeholders.
 22 Q. That was the constructive way forward, was it?
 23 A. Well, what papers like this fail to take account of is
 24 any of the other conversations that were going on but it
 25 was a statement of our concerns as to what had gone

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1 A. Yes.
 2 Q. Can we look at Pathway specifically, which is on page 5,
 3 and this is the part of your report -- and this goes to
 4 the board presumably, the ICL main board.
 5 A. Correct.
 6 Q. At paragraph 7.5 you say -- so this is May 1997:
 7 "The latest release of the Pathway software has gone
 8 live (release 1b) last Friday. On schedule, however
 9 a significant amount of time was required to eliminate
 10 'software bugs', which meant that resource that was
 11 working on release 1c and 1d due in July had to be
 12 diverted to resolving the software issues. This
 13 additional work has an adverse impact on the development
 14 costs.
 15 "We have advised the customer that there could be
 16 a six week delay in the next release. The customer is
 17 appreciative of the open approach. Actions are in place
 18 to mitigate the consequence of delay ie national roll
 19 out starting in January 1998, rather than November 1997.
 20 "Although this delay is disappointing we do not see
 21 any issues ahead of us that cannot be resolved. The
 22 relationship with the customer, DSS and Post Office, is
 23 good, but they are concerned about the potential delay."
 24 So this is May 1997 and, summarising this, what
 25 you're saying here is that there's been an initial live

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1 wrong from the other stakeholders.
 2 Q. Can we look at this from a different perspective,
 3 please, and --
 4 **SIR WYN WILLIAMS:** Before you do that, Mr Beer, could
 5 someone take the witness statement down from my screen,
 6 please.
 7 **MR BEER:** I'm so sorry, sir, that should have been my
 8 request.
 9 **SIR WYN WILLIAMS:** Fine, thanks. Thank you.
 10 **MR BEER:** Can we look at this from a different perspective
 11 and have on the screen FUJ00077834, please. This is
 12 a report entitled "Chief executive's report [of]
 13 May 1997". It is dated 7 May 1997 and if we just skip
 14 forwards to page 5, please, and go to the foot of the
 15 page, we can see that it is authored by you.
 16 A. Yes.
 17 Q. Just go back to page 1, please, so that you can
 18 orientate yourself in the nature of this document.
 19 There's an overview at the beginning and then you set
 20 out, in a number of headings, the position in relation
 21 to issues such as politics, the market, competitors, the
 22 financial performance of ICL Pathway and then some
 23 specific issues.
 24 A. Of ICL, yes.
 25 Q. Sorry, of ICL.

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1 release, that that has led to the identification of some
 2 software bugs, that has diverted resources and that you
 3 have, therefore, had to tell the customers that there's
 4 going to be a delay of six weeks. That was all down to
 5 ICL Pathway, wasn't it, all of those things that we
 6 mentioned?
 7 A. Those words imply that.
 8 Q. Well, "We have advised the customer", this is you
 9 telling the customer -- or the company telling the
 10 customers -- as to what has happened internally within
 11 ICL Pathway and the consequences on delivery of the
 12 project. So it's not something that they have done,
 13 you're not saying to the customers --
 14 A. No.
 15 Q. -- "You have done something wrong, this is -- it's your
 16 fault, you have had an impact on the delivery
 17 timetable"?
 18 A. Yes.
 19 Q. It's identification of issues that are the
 20 responsibility of ICL Pathway, isn't it?
 21 A. It's a statement of fact that there's going to be
 22 a delay. It's reporting -- it's not necessarily
 23 covering all of the things that were going on at that
 24 time.
 25 Q. Well, is there anything mentioned here that is anything

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1 to do other than with software bugs that are the
 2 responsibility of --
 3 A. No, there's no mention of anything else.
 4 Q. -- ICL Pathway?
 5 A. No, and that is my monthly report, as we have talked
 6 about before. There were monthly reports which you have
 7 had extensive access to, which is good, going back
 8 through Pathway and also ICL board reports that, as
 9 I recall, happened on a monthly basis and I would
 10 provide a synopsis of the main factors during that -- as
 11 part of that report.
 12 Q. And at this time, in the May 1997 CEO report, you were
 13 saying that relations between ICL Pathway and the
 14 customers were good and so you were saying that they,
 15 the customers, were concerned about the potential delay
 16 caused by ICL problems at this point.
 17 A. That's an interpretation of that.
 18 Q. Just read the three paragraphs again to yourself.
 19 A. Yes, no --
 20 Q. And --
 21 A. I'm not --
 22 Q. "That is an interpretation of it" suggests, Mr Todd,
 23 that it is an unfair interpretation of it.
 24 A. No.
 25 Q. Is it the correct interpretation of it, please?

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1 "Following the completion of the internal audit and
 2 the results of the early Release 1C tests we have
 3 declared an eight week slip. This in effect means that
 4 the 1C deliverable would be 15 weeks later than
 5 expected.
 6 "The project issues are being addressed with
 7 strengthening of the programme management ..."
 8 Just stopping there, that means within ICL Pathway?
 9 A. Yes.
 10 Q. "... technical support ..."
 11 That means within ICL Pathway, yes? Yes?
 12 A. Yes.
 13 Q. "... and increase in project resource to address the
 14 volume of test issues."
 15 That means, again, within ICL Pathway?
 16 A. Yes.
 17 Q. "The reasons for the delay are rooted in the long delay
 18 in agreeing the delivery spec, specifically the security
 19 environment was not agreed until the end of April and
 20 the multiple additional interfaces into the customer's
 21 systems.
 22 "There are clearly lessons to be learned from this
 23 project for future PFI projects and these will be shared
 24 with the customer. The priority is to ensure the
 25 project implementation goes in effectively and the

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1 A. So not from recollection, from looking at this document,
 2 it is a fair representation of it.
 3 Q. "We ICL Pathway have made some errors, we're still in
 4 good relations with our two customers, despite the
 5 delay, about which they are concerned"; fair summary?
 6 A. Yes, I ... I stand by what is written in that document
 7 because it would have been what we felt at that time.
 8 There may be other factors, but yes. Yes.
 9 Q. Would you have kept factors back from the board?
 10 A. No, no.
 11 Q. Right. Can we go to the July 1997 --
 12 A. No material factors. Small factors, yes.
 13 Q. Can we go to the July 1997 report, please, which is
 14 FUJ00077835. So you can see again, this is your report
 15 for July 1997 and if we just go to the last page, which
 16 is page 7, at the foot of the page, we can see your name
 17 against it.
 18 A. Yes.
 19 Q. There's a similar format of an overview at the
 20 beginning, an outline of the political situation, the
 21 market, competitors, other suppliers to you, the order
 22 book and then individual projects and we find the
 23 section concerning Pathway at page 6 please, and if we
 24 can just read that -- that's the entirety of it there.
 25 You say:

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1 customer confidence is restored.
 2 "I have briefed the head of DSS, Benefits Agency and
 3 Post Office Counters personally with the project team,
 4 in parallel with the project activity to deliver 1c in
 5 October and Release 2 in March. We are assessing the
 6 implications on the overall programme with the
 7 customer."
 8 So here you were suggesting that there were lessons
 9 to be learned for ICL; is that right?
 10 A. Certainly for ICL but I would have thought for -- I was
 11 implying on all parties dealing with PFIs.
 12 Q. Were you suggesting that customer confidence needed to
 13 be restored? End of the fourth paragraph.
 14 A. Yes, I'm just looking. It says that.
 15 Q. So was the customer, ie Benefits Agency and POCL, were
 16 they suffering from a drop-in confidence in ICL Pathway
 17 at this point?
 18 A. That's the implication of the statement.
 19 Q. The delays here were again, at least in significant
 20 part, due to ICL Pathway, ie the eight-week slip
 21 referred to in the first paragraph; is that right?
 22 A. We don't get into the underlying causes of the slip.
 23 What I believe it is doing is declaring that it had
 24 occurred and reading it in isolation, it does suggest
 25 what you said.

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1 Q. Yes. I mean we heard evidence from Mr Copping, last
2 week, from PA consulting who said that the problems with
3 release 1 were significant and were a product of ICL's
4 serious misjudgments.

5 In neither of these reports, the May or the
6 July 1997 report, were you saying that the company
7 needed to take a stand against the DSS or Post Office
8 Counters Limited, ie pointing out any of the things
9 that, a little while later, you were to observe in the
10 position paper; is that right?

11 A. As I have said on a couple of occasions, I think today,
12 we were trying to focus on getting the project delivered
13 and, in parallel, have discussions to resolve issues on
14 the project, but also any of the commercial issues.

15 As you referred to earlier, the situation was
16 brought to a head by the submission of a breach letter
17 to the company which required us to produce or
18 clarify -- produce the position paper which we discussed
19 a few minutes ago.

20 Q. Can I understand that answer, that you went on the
21 robust offensive by the position paper in 1998 because
22 of and as a result of a breach notice served on you; is
23 that right?

24 A. Well, I'm not familiar with these types of proceedings
25 and at the risk of you putting words in my mouth --

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1 a very difficult situation, dealing with two elements of
2 government, very professionally and very well through
3 a very difficult time. That's -- and I provided some of
4 that evidence in -- attached to my statement.

5 Q. Can we, just before the break, turn to one last piece of
6 evidence on this issue and look up POL00043645.

7 Moving forwards to September 1997 this is a record
8 of the Counter Automation Steering Group of that date
9 and we can see who is present: from the Post Office,
10 Mr Roberts, Mr Cope, Mr Close, Mr Sweetman and Mr Rich ;
11 and from ICL you, Mr Bennett and Mr Coombs?

12 A. Yes.

13 Q. It records the action in terms of who spoke. Can we
14 just look at what Mr Roberts said the purpose, ie of the
15 meeting, I think. He needed:

16 "a clear picture from ICL on how they think the
17 programme is going and their confidence in solving
18 issues around delay; and

19 "assurance about the programme for the [Post Office]
20 board."

21 Then you are reported to have given your overview
22 and can we just read through what you are recorded as
23 saying:

24 "Horizon is critically important to ICL and Fujitsu,
25 and to Post Office, and (hoped) it is for DSS;

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1 Q. I'm trying to understand your answer.

2 A. No, I accept that. I'm just trying to avoid adopting
3 your words.

4 Q. You explain it to me then. I'm looking at the moment at
5 some internal reporting by you, up to your board, that
6 doesn't identify any problems with the customers, it
7 only identifies, in the first document, a problem with
8 ICL Pathway's own performance. Then, not long later, we
9 have your position paper which points the finger in
10 eight respects at your customers and, essentially, I'm
11 asking: how did that come about?

12 A. Well, depends which part of what came about. The
13 involvement of Fujitsu, ICL Pathway, you know, there was
14 great transparency right the way through the company at
15 that time. Some of those issues that resulted in the
16 position paper were definitely appearing -- they have
17 not been reflected in these reports that you are
18 referring to.

19 Q. Why was that? Why were they not being reported back to
20 the ICL main board?

21 A. I don't specifically recall that. I do recall that all
22 matters, including Fujitsu, were aware of the underlying
23 issues and, you know, you may get to it eventually,
24 I think everybody from Fujitsu, ICL board down, the
25 independent advisors, believed that we had dealt with

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1 "his belief that the programme is doable, and that
2 ICL will commit all necessary funds to deliver its part.

3 "his view that his own macro objectives in setting
4 out on the programming had not changed, ie

5 "to put in a UK national infrastructure via
6 post offices that could be developed long-term for
7 society as part of a 'national information flow';

8 "[and secondly] to take the first serious steps,
9 through using cards for DSS fraud control, to take the
10 'information society' to technology-resistant 'mass
11 market' in the country and then build on that (eg via
12 smartcards);

13 "he [that's you] has taken a calculated gamble that
14 delivering Pathway's programme will enable ICL to become
15 the [Post Office's] main technology partner;

16 "that Horizon remains the best practicable option
17 for DSS;

18 "that Horizon is a world-class system (evidence of
19 many postal administrations wanting it)."

20 Can I pick up a couple of points that you are
21 referred to as raising there or reported to have raised.

22 What was the nature of the calculated gamble that
23 you had undertaken? Who or what were you gambling with?

24 A. I don't recall those words at all.

25 Q. Thinking back, can you remember what you might have been

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1 gambling with?
 2 A. I wouldn't have been gambling with anything, I would be
 3 taking a view about a long-term relationship with the
 4 Post Office. The Post Office with a modern
 5 infrastructure in the information society, as it was
 6 known in those days, would have provided an opportunity
 7 for increased revenue for the Post Office, as well as
 8 a subsequent -- ICL Pathway.
 9 Q. You expressed the view that Horizon was a world-class
 10 system and that many postal administrations around the
 11 world wanted it, yes?
 12 A. Yes, I did -- actually, I don't recall -- to be
 13 accurate, I don't recall, and I had read this in this
 14 document the night before, but I certainly do recall
 15 that, apart from what we have already referred to, that
 16 the Irish Post Office had adopted the system, we had
 17 seen an opportunity for many post offices around the
 18 world -- I don't recall all their locations -- that we
 19 were seeing as a future business opportunity. So
 20 success on this project would have been very beneficial
 21 to other opportunities in the post office marketplace.
 22 Q. Then just lastly, over the page, please, at paragraph 5,
 23 Mr Roberts summarised as follows, first:
 24 "The Post Office was very disappointed at the
 25 current situation;

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1 **SIR WYN WILLIAMS:** Yes, of course.
 2 **MR BEER:** Thank you very much. Can we say 2.00 then,
 3 please?
 4 **SIR WYN WILLIAMS:** Yes, of course. 2.00 everybody.
 5 **MR BEER:** Thank you.
 6 **(1.00 pm)**
 7 **(The luncheon adjournment)**
 8 **(2.00 pm)**
 9 **MR BEER:** Good afternoon, sir, can you see and hear me?
 10 **SIR WYN WILLIAMS:** Yes, I can.
 11 **MR BEER:** Good, and we can see and hear you.
 12 Hello, Mr Todd. Can we turn to the issue of bugs,
 13 errors and defects. You address this important issue in
 14 paragraph 77 to 79 of your witness statement, which is
 15 WITN03880100 at page 26. Thank you, page 26 and 27.
 16 Thank you. We see the cross heading "Bugs, defects and
 17 other issues"?
 18 A. Yes.
 19 Q. If we just look at 78, please, you say:
 20 "During the monthly board meetings we would have
 21 reviewed the total outstanding number of bugs, their
 22 priority and also a general description of what they
 23 were. We were assured through our governance and
 24 oversight processes that the fixes for these were being
 25 handled appropriately. The technical team was

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1 "The Post Office, and POCL, is still keen to do this
 2 project and make it work;
 3 "ICL's credibility is at stake and confidence in
 4 Pathway within the Post Office is still uncertain ..."
 5 Then, over the page to paragraph 6, you are recorded
 6 as replying by saying you:
 7 "... appreciated the spirit in which the meeting had
 8 been conducted, and reaffirmed ICL's commitment to make
 9 it work."
 10 And "The meeting ended".
 11 Would you agree that a fair reading of these minutes
 12 is that these are the Post Office saying that they are
 13 disappointed in ICL's performance, that your credibility
 14 was at stake, rather than the other way round: you
 15 suggesting that it was fault within the Post Office that
 16 had led to the existing delays?
 17 A. As we discussed earlier, and my recollection is, the
 18 significant challenge that we had related to the Post
 19 Office was the estate. The related item was the
 20 decision-making which they were part but much more
 21 significantly related to DSS than the Post Office as
 22 I recall it.
 23 **MR BEER:** Mr Todd, thank you very much.
 24 That's an appropriate moment for a break for lunch,
 25 sir, if it suits you.

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1 experienced in both diagnostics and resolving these
 2 issues."
 3 What was your governance and oversight process or
 4 what were your governance and oversight processes, as
 5 far as they related to fixes?
 6 A. So there was a team within ICL Pathway, focused on the
 7 management under John Bennett. It had a full management
 8 team, including a technical director, a project manager,
 9 operations director, quality assurance manager and the
 10 processes would operate within ICL Pathway and matters
 11 as shown in the board report were escalated to the board
 12 or the board was briefed on the progress of clearing the
 13 significant software issues.
 14 Q. How were any resolutions monitored and reported to you?
 15 A. Just through the board, from my recollection.
 16 Q. I'm sorry?
 17 A. Just through the board -- the board meetings, through my
 18 recollection.
 19 Q. So was there a tracking system operated by the board
 20 itself to see what had happened to past resolutions or
 21 fixes of bugs, errors or defects?
 22 A. There was a process, as I recall, within ICL Pathway
 23 that kept track of all bugs and issues raised.
 24 Q. I'm thinking more at board level, at the board meeting
 25 of ICL Pathway?

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1 A. I don't -- other than as presented through the board
 2 reports, I don't recall any other process, other than as
 3 reported by the executive team of ICL Pathway.
 4 Q. Who on the board, if anyone, had technical knowledge in
 5 terms of the issue of bugs, errors and defects?
 6 A. I am, at the moment, trying to recall who the other
 7 players were on the board.
 8 Q. Mr Bennett as the managing director?
 9 A. Well, his background was in sales and marketing, rather
 10 than technology.
 11 Q. Mr Christou, legal and commercial?
 12 A. Correct. You do remind me one minor -- well, one
 13 correction to what I recall writing, which was there was
 14 no Fujitsu director -- from reviewing a document over
 15 the weekend that I was given last Thursday, it reminded
 16 me that Kura Kawasan(?) of Fujitsu, a board member with
 17 technical knowledge, was appointed at that time but that
 18 was after the renegotiation with the Post Office.
 19 Q. So can you recall at these board meetings anyone with
 20 technical expertise being brought into the meeting to
 21 explain to you the process of clearing bugs, errors and
 22 defects or what was the cause of the bugs, errors and
 23 defects?
 24 A. So, firstly, I don't recall any specific situation, but
 25 there would have highly likely been representation from
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1 four weeks with a large number of major operational
 2 issues successfully fixed. This system is now much more
 3 operationally easy to use by the counter staff and this
 4 should help considerably ...".
 5 Was anything done to consider why there were
 6 a higher than expected number of bugs, errors and
 7 defects --
 8 A. I don't recall.
 9 Q. -- ie a moment of self reflection: "Why is this number
 10 higher than we expected?"
 11 A. I would be making a conjecture comment now, as opposed
 12 to recalling specifically something which I'm afraid was
 13 25 years ago.
 14 Q. I understand.
 15 A. Yes, and, you know, to make part of the public record,
 16 there was, at the time, good conversations. These were
 17 not five-minute board meetings.
 18 Q. Can you recall now who provided the training to the
 19 individuals who provided customer service?
 20 A. No, I'm afraid I can't.
 21 Q. Can you recall whether there was any work done at this
 22 time -- and I'm talking about 1997/1998 -- to consider,
 23 from a postmaster's perspective, the operating
 24 experience of the system?
 25 A. Well, as a result of reading 4,000 pages of documents in
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1 the Pathway team. Now, separate from the Pathway team,
 2 ICL's structure also did have a CTO, Andrew Boswell,
 3 I don't recall, it's a long --
 4 Q. CTO meaning?
 5 A. Chief technology officer. I don't recall any specific
 6 involvement but, you know, Pathway was not a walled
 7 garden. There would have been almost certainly
 8 conversations going on about the technical aspects and
 9 I am sure, when you talk to John Bennett, he will be
 10 able to provide additional information about access to
 11 other technical expertise outside of the team within
 12 Pathway.
 13 Q. In paragraph 79, you continue:
 14 "The progress of these fixes was well documented in
 15 the monthly report. By way of example, the
 16 December 1997 monthly report set out the following
 17 issues: 'live experience over the last few weeks of
 18 release 1c has as expected thrown up a list of
 19 operational, procedural and minor software errors which
 20 require careful attention. The total list is higher
 21 than expected and the pressure now falls on customer
 22 service to manage the operational introduction of the
 23 various fixes'. The January 1998 monthly report
 24 provided an update on these issues: 'substantial
 25 progress has been made with release 1c over the last
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1 the last few weeks, I do recall in that review that
 2 there had been engagement with the subpostmasters in
 3 getting feedback. I cannot give you very precise
 4 definition of exactly all -- the process that went
 5 through and the exact timing, but there was dialogue.
 6 You know, we had a very professional solid team engaged
 7 full-time on this project and including, as I have been
 8 reminded through review of these documents, feedback
 9 from subpostmasters.
 10 The board would only get a high level commentary.
 11 Q. Do you understand what I mean when I refer to the
 12 concept of reference data?
 13 A. In broad terms, yes.
 14 Q. I'm using it in this sense: data that's used to classify
 15 or categorise other data across a system. Typically
 16 they are static data or --
 17 A. Yes.
 18 Q. -- slowly changing over time, like units of measurement,
 19 fixed conversion rates --
 20 A. Yes, I understand what you're talking about.
 21 Q. -- calendar structures, that kind of thing.
 22 A. Yes.
 23 Q. We have heard in the Inquiry some expert evidence as to
 24 the importance of reference data and, in particular, if
 25 reference data are used in a data driven logic system,
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1 such as this, and such reference data are not timely or
 2 accurate and/or if they're complex, the system that they
 3 support will not operate as intended, understand?
 4 A. Yes.
 5 Q. So that's the context of these questions.
 6 Can we look please at FUJ00058166, please. This is
 7 one of the monthly progress reports.
 8 A. Yes.
 9 Q. Just to be clear, were these given to the board for its
 10 monthly board meetings, or are these a separate species
 11 of document?
 12 A. As I recall, they were provided to the board.
 13 Q. You will see this is for December 1997. Can we turn to
 14 page 15 of the document, please. Just go back a page so
 15 you can see the context, please, and look at the whole
 16 page on the previous page.
 17 So under "Current critical problem" and then under 4
 18 is "Issues" and we're looking at one of the issues. Go
 19 back to page 15, please, and it is the second bullet
 20 point from the bottom -- that's it:
 21 "Reference data ..."
 22 This is two bullet points up:
 23 "Reference data is poorly defined in the contractual
 24 requirements but is crucial for the proper control of
 25 changes to outlet/product data. POCL are only now
 101

1 So reference data is a common feature, as you are
 2 saying, for any major system.
 3 Q. Given that this bullet point records that reference data
 4 is crucial for the proper control of changes to outlet
 5 and product data, it would be important for it to be
 6 clearly defined in the initial contractual requirements?
 7 A. The requirement for reference data, without doubt. The
 8 precise definition of the format, probably.
 9 Q. Can we look a little further on into the piece, please,
 10 to March 1998 in relation to this issue. This is
 11 FUJ00058170. This is the monthly report for March 1998
 12 and can we look at page 5 of the PDF, please, and the
 13 third bullet point on the page. So it's March 1998,
 14 third bullet point:
 15 "The last month has not been an easy one for the
 16 work on new release 2 planning and progress. Severe
 17 problems with EPOSS testing within Pathway and linking
 18 through to reference data within POCL have caused
 19 a delay of between three and five weeks to the schedule.
 20 A mitigation plan has been drawn up although this has
 21 high risk and low confidence and discussions are now in
 22 hand with the sponsors to open up the debate on a better
 23 plan to get to live trial in January 1999. This area
 24 will remain extremely difficult for some time."
 25 So it appears that EPOSS and linking through to the
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1 realising its significance and we must be vigilant if we
 2 are to avoid requirements creep."
 3 Do you see that?
 4 A. Yes.
 5 Q. Given that ICL Pathway was brought in to provide the
 6 expertise to build and thereafter to operate the system,
 7 can you assist us as to why ICL Pathway had seemingly
 8 not anticipated the need carefully to describe and
 9 define the reference data and their importance in the
 10 contractual requirements?
 11 A. I'm afraid I cannot recall specific discussions around
 12 this topic. I would say that, almost certainly -- and
 13 I would have expected ICL Pathway to have anticipated
 14 reference data. As I recall -- again, reminded by these
 15 document reviews, that there was a dispute or
 16 disagreement about who was responsible for reference
 17 data. What I understand from the review of the
 18 documents, our view was -- which seems reasonable --
 19 that the Post Office was to provide that reference data
 20 of the instruments and *de facto* standard -- yes, the
 21 word is reference data -- the reference point for
 22 transactions going through the system.
 23 It's not uncommon in my today's world of trading
 24 software, because I'm still working full-time, of having
 25 contracts that are traded having a standard definition.
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1 reference data, as it is described there, was still in
 2 March 1998 a live issue.
 3 A. It does and your earlier point is totally valid,
 4 reference data is fundamental to the operation of this
 5 type of system.
 6 Q. Can we look please at FUJ00058187, please, the monthly
 7 progress report for October 1999, and can we look at
 8 page 5 in the PDF, please, and can we look at the second
 9 half of the page, three bullet points from the bottom.
 10 So this is October 1999:
 11 "Too many reference data errors are being
 12 distributed to the live estate, which has been causing
 13 major problems with reconciliation and cash [flow]
 14 production. We are pressing for a full end-to-end
 15 review across Horizon as well as Pathway such that
 16 solutions can be found and implemented prior to
 17 a roll-out restart in January 2000."
 18 So it seems that in October 1999, a mere
 19 three months or so before the planned rollout, reference
 20 data were still an issue?
 21 A. That's what it is saying.
 22 Q. Can you now recall, to your knowledge, why was the issue
 23 with reference data still a problem at this time?
 24 A. I'm afraid I have no recollection to be able to answer
 25 that question.
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1 Q. Do you, even now, remember that it was a problem up
 2 until --
 3 A. I do --
 4 Q. -- very shortly before the contract rollout?
 5 A. I do recall that reference data was a problem. I have
 6 to say that, in my today life, reference data whilst
 7 working for core systems, is often a problem even after
 8 Go Live because reference data changes and if processes
 9 to manage those change are not -- don't happen in
 10 a timely way, then problems can occur within the
 11 system -- any system, to be able to function properly.
 12 What I don't know, in terms of the timing of this, is
 13 whether we're talking about changes to reference data,
 14 new sources of reference data, or anything more
 15 fundamental and --
 16 Q. We will be picking those issues up with later witnesses.
 17 A. Yes, I'm -- yes.
 18 Q. Just rolling back a little bit and looking at a separate
 19 issue, I think you believed -- is this right -- that if
 20 the DSS withdrew from the contract, the tripartite
 21 contract that had been signed, there was a real and
 22 immediate risk to ICL's planned floatation?
 23 A. If we had ended in a legal dispute with the DSS, that
 24 would have had an impact on our credibility and
 25 floatation, so in one sense that is the case.

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1 colleagues in Fujitsu, fully supported by me, was to
 2 focus on trying to make this project a success, to
 3 deliver the programme and the potential for the Post
 4 Office as well as the DSS.
 5 Q. Presumably there would be a risk to floatation because
 6 of potentially the loss of hundreds of millions of
 7 pounds of future revenue for ICL from the benefits
 8 payment card side of the agreement?
 9 A. The -- the settlement that occurred cleared that issue
 10 up, in that the future potential of this contract for
 11 ICL Pathway and therefore ICL was understood after
 12 renewal was not dependent on PFI. So it was dealt with
 13 as part of the settlement agreement and, as I said
 14 a moment ago, as of 1999 the potential of the ICL float
 15 still continued.
 16 Q. Can we look at some documents in relation to this issue
 17 please and start with DWP00000174. This is a letter --
 18 if we just look at the next page, please -- from you.
 19 A. Yes.
 20 Q. Your signature has been redacted though. In fact, it
 21 was PPed, so somebody else's signature has been
 22 redacted?
 23 A. That's fine.
 24 Q. Then go back to the first page please and see that it is
 25 a letter dated 27 July to --

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1 In terms of the Pathway business, in the context of
 2 the whole of ICL -- as I mentioned before, a £3 billion
 3 revenue -- you know, it -- the float wasn't solely
 4 dependent on Pathway, anything but that.
 5 What I would add-on the related topic is that
 6 Pathway taking a substantial provision loss --
 7 180 million as well reported -- did at least draw a line
 8 under the difficulties of the past at that time and at
 9 the time we signed the new agreement which was, as we
 10 were saying earlier, July 1999, the potential of the ICL
 11 float still existed.
 12 Q. The suggestion I was making to you was that you believed
 13 that if the DSS withdrew from the contract, never mind
 14 litigation, there was a risk to -- a real and immediate
 15 risk in your mind to ICL's planned floatation; isn't
 16 that right?
 17 A. The way they withdrew the settlement agreement, it was
 18 not, was my answer. They do not have, just as I believe
 19 I put in my statement -- it wasn't viable for ICL or ICL
 20 Pathway to withdraw unilaterally. Parties can't
 21 unilaterally withdraw from contracts, so it would have
 22 almost certainly have led to some form of litigation,
 23 which would have damaged floatation.
 24 I repeat what I have been saying several times
 25 today, that our focal point, encouraged by our

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1 A. 1998.
 2 Q. Yes, 1998, to Frank Field MP, who was a minister of
 3 state in DSS at the time?
 4 A. Yes.
 5 Q. If we just read through, you say:
 6 "I am glad that you have had an opportunity to see
 7 the ICL Pathway system and that we have been able to
 8 discuss the importance I place personally on delivering
 9 this system on behalf of the Benefits Agency and POCL."
 10 Were you there, in that sentence or part of the
 11 paragraph, emphasising how this project was tied to you
 12 as an individual rather than you writing simply as the
 13 figurehead of the company?
 14 A. I have no idea where the word "I" was used.
 15 Q. Well "I personally"?
 16 A. "I personally", yes.
 17 Q. What were you trying to convey?
 18 A. I don't recall. Maybe, yes, my commitment to the
 19 project, that was it. I was clearly writing on behalf
 20 of the company, it was on company letterhead.
 21 Q. Yes, plainly you were writing on behalf of the company,
 22 but it seemed to suggest perhaps something more than
 23 that, that you were tying yourself personally --
 24 A. Well --
 25 Q. -- putting your personal position at stake?

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1 A. Reputation. Well, as I have said in my statement -- and
 2 maybe this is where you're going -- I at no time felt
 3 I was at personal risk on this project. We had full
 4 transparency throughout the group with what was going
 5 on. Apart from the board meetings, regular other
 6 conversations of which, you know, there obviously are no
 7 minutes and the strategy and the approach to the
 8 project, the resolution of the problem, the robust
 9 position I took were not my, "I", strategy, it was our
 10 strategy.

11 Q. You carry on:
 12 "As you have seen for yourself, the system is
 13 already eliminating encashment fraud in the 204 post
 14 offices in which it is operating and, is capable of
 15 being rolled out now to many others."

16 Is that right, by -- in the light of the documents
 17 we have just been looking at, in the monthly
 18 reports -- that as of 27 July it was now capable of
 19 being rolled out to many other post offices?

20 A. We were working through the issues that had arisen and
 21 in conjunction with the parties would, you know,
 22 continue to roll out to other post offices.

23 Q. Skipping over a paragraph, you say:
 24 "The system is technically sound. The entire
 25 project is deliverable within a relatively short
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1 programme.
 2 I have clearly been around technology for my entire
 3 career. I am not a deep technologist but I understand
 4 a lot about technologies and managing projects and the
 5 team that we had around this I felt, and frankly still
 6 feel, were more than competent to be able to give me the
 7 relevant advice, both within the Pathway team, as well
 8 as the ICL team, not to mention the broader Fujitsu team
 9 that, at times, were brought in to provide assistance.

10 Q. You continued:
 11 "The best way forward is to roll out the
 12 infrastructure as quickly as possible and to issue the
 13 payment card to all legitimate claimants. Failure to do
 14 so will significantly damage ICL and its floatation, and
 15 the project's sponsors -- the only ones to benefit will
 16 be the fraudsters."

17 So here you were tying the need to roll out the
 18 project quickly with, otherwise, the significant damage
 19 to ICL's floatation, weren't you?

20 A. I think you're -- you're taking the words in a specific
 21 context. I don't recall writing those words, or --
 22 I did sign the letter, I'm certainly not suggesting
 23 I didn't sign the letter, I don't recall those
 24 particular words, how that phraseology. I think the big
 25 point was -- we talked about earlier on -- that if we
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1 timescale (ie within the lifetime of this
 2 Parliament) ..."

3 A. Certainly my understanding as reflected in that letter
 4 at that time was that the issues that existed, that do
 5 exist in complex projects, could be addressed, resolved
 6 and therefore the programme could be delivered. It was
 7 not trying to say there were no issues at this
 8 particular time.

9 Q. You have seen -- we looked a moment ago at the monthly
 10 reports before this time, saying that there were still
 11 problems with reference data, still problems with the
 12 EPOS system. Were you being open here, in saying that
 13 the system is technically sound, it could be rolled out
 14 to many others and the entire project is deliverable
 15 within a relatively short timescale?

16 A. It was my understanding at the time and my recollection
 17 of the situation that all the problems that had been
 18 identified were resolvable problems.

19 In any complex system -- and I suggest anywhere and
 20 we all see this every day, I think even today on --
 21 excuse me -- on WhatsApp, WhatsApp was down for
 22 a while -- issues occur, they get resolved and we move
 23 forward. So I was making a statement, in the context of
 24 the architecture and the approach to the overall
 25 programme, as opposed to that particular moment on the
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1 did not move forward constructively together with DSS
 2 and Post Office, and find a solution to the way forward,
 3 then that would impact ICL's floatation.

4 It was, at no time -- the float was, at no time,
 5 an impact in terms of the resource allocation we made to
 6 this project and our extreme lengths we went to to try
 7 and bring -- what our opinion was -- sanity to this
 8 project from a -- an environment, government
 9 environment, which was very challenging to corral and
 10 get decisions in. And so -- to go back to your
 11 question: at no time did floatation have any direct
 12 impact on this project.

13 Q. Can we look please at BEIS0000278, thank you. This is
 14 quite hard to read. You have been referred --

15 A. Oh, yes, yes.

16 Q. -- by the Inquiry, a couple of months ago, to this
 17 record of a telephone conversation made --

18 A. To David Wright, the ambassador.

19 Q. Yes, the British ambassador to Japan and this is,
 20 I think, either an email or a cable from the British
 21 Embassy dated 26 January 1999. We can see that at the
 22 top.

23 A. Yes.

24 Q. If we just read it through together we can see the
 25 subject "Project Horizon: ICL/Fujitsu views", and then
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1 the summary:
 2 "ICL chief executive calls [that's you] after
 3 discussions with Fujitsu. Describes latter's [that's
 4 Fujitsu's] dismay, risk to ICL's floatation and of
 5 Fujitsu's disengagement from ICL if project Horizon
 6 fails. I believe the last risk is real."
 7 Then if we move on, please, to paragraph 2 under
 8 "Detail":
 9 "At his request, Keith Todd, chief executive of ICL,
 10 called on me on Saturday 23 January ... after talks with
 11 the Fujitsu President. He expressed Fujitsu's quote
 12 complete disbelief and lack of understanding at [her
 13 Majesty's Government's] decision-making process unquote.
 14 Fujitsu could not comprehend how [her Majesty's
 15 Government] could contemplate quote destroying ICL
 16 unquote. If the project failed, the floatation of ICL
 17 would be undermined and Fujitsu would reconsider all its
 18 options on ICL. This might, according to Todd, include
 19 sale.
 20 "Todd [that's you] pointed out that the ICL purchase
 21 and the injections of capital into it by Fujitsu had
 22 very much been the baby of Yamamoto (the previous
 23 Fujitsu chairman) and Naruto (presently vice chairman
 24 and chairman of ICL). The new Fujitsu president,
 25 Akikusa, and chairman Sekizawa, were adopted parents and
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1 knowledge of my colleagues, a robust position to try and
 2 cause something to happen. With hindsight I was
 3 probably too patient, too long, in my opinion, in
 4 relation to this particular topic, but hindsight is
 5 wonderful.
 6 What we had to do was to ensure that there was no
 7 ambiguity, that the consequences -- and I think this was
 8 even indicated by one of the Fujitsu representatives, if
 9 I recall documents I have seen recently again, that if
 10 we could not find an agreed way forward between the
 11 parties, there would be a significant impact.
 12 Floatation, quite frankly, was a byproduct, would have
 13 been a byproduct.
 14 Q. The floatation is the point that you consistently
 15 emphasise to external parties, isn't it, to Frank Field
 16 and to the British ambassador?
 17 A. I would maintain that I recall emphasising all aspects
 18 of it. I go back again to what I said earlier on. The
 19 work that ICL was doing in relation to the new
 20 information society, its impact on a whole raft of
 21 things, was extremely positive to -- yes, to this
 22 country and a number of things going on. It was
 23 important that we got clarity.
 24 If we could not have got the attention of the key
 25 principals in this then this project would have stopped
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1 their commitment to the continuation of ICL could not be
 2 taken for granted."
 3 The comment by the ambassador:
 4 "My own knowledge and experience of Sekizawa confirm
 5 this.
 6 "Todd also thought that, at a time of general
 7 Japanese corporate financial weakness (including
 8 Fujitsu), ICL had to make itself independently wealthy.
 9 The recent results had been good and the future was
 10 promising. But the danger to ICL's future in remaining
 11 a subsidiary of Fujitsu was that they might be broken up
 12 or sold. He repeated that a failure of project Horizon
 13 would undermine floatation and would result in 700-900
 14 job losses."
 15 He, that's the ambassador, undertook to pass your
 16 message on to those concerned in London. The message
 17 that you were conveying there was that, unless the
 18 project proceeded, there was a real risk to ICL's
 19 floatation.
 20 A. As I said a moment ago, that if the project did not
 21 proceed and we had ended up in litigation, then our
 22 floatation would have been severely affected.
 23 The other thing that I have said so far and, as you
 24 take the elements of your questioning and put them
 25 together, I had had to take, and did take, with full
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1 and litigation would have occurred and, as I said
 2 a moment ago, in that context, floatation would have
 3 been put off.
 4 Floatation in the end was not stopped because of
 5 this project. It was stopped, as has been stated
 6 publicly, by the fact of the market conditions at the
 7 time. It was just before the market crash, I think, in
 8 2001, but also the view of the Fujitsu team was the ICL
 9 performance -- and I would agree with this -- was not
 10 sufficient for the float to happen at that time.
 11 Q. That was the point at which you resigned; is that right?
 12 A. I did and I put in my statement one other thing which,
 13 in a sense is -- well, not in a sense, is absolutely my
 14 opinion, but was not previously stated. As happened --
 15 and you referred to it earlier -- a couple of years
 16 later, all of the Fujitsu Group became Fujitsu and not
 17 separate businesses, so it was clear to me in July 2000
 18 that an independent float of ICL was not going to happen
 19 and it seemed appropriate for me to resign.
 20 Q. Was that resignation therefore connected to the failed
 21 desire to float ICL on the stock market, which was
 22 itself caused by the loss of hundreds of millions of
 23 pounds of revenue from the loss of the benefits card --
 24 A. No.
 25 Q. -- element of Pathway?
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1 A. No.

2 Q. Was it because of your oversight of the Pathway Project

3 that Fujitsu held you accountable as the CEO?

4 A. No. No.

5 Q. I think at the point at which you departed, there was no

6 replacement for you, was there?

7 A. No. Richard Christou acted --

8 Q. On a temporary basis?

9 A. -- on a temporary basis and then, I believe,

10 subsequently took over.

11 Q. Moving the chronology on, I think you were one of the

12 people that attended a meeting with the then Prime

13 Minister, Tony Blair, on 12 April 1999. Can we look at

14 a record of what happened at that meeting, CBO00000059.

15 A. Mr Beer, can I make one additional point, just in

16 relation to your last question?

17 Q. Yes.

18 A. Is that okay? I don't know what exhibit number it is

19 but, going on the point of Mr Sekizawa's note to me

20 after the settlement, I just want to put on record here

21 that questioning -- at the time when we settled the

22 dispute, Sekizawa San sent a personal note, which I got

23 approval from Fujitsu to release, you may have been able

24 to insist upon it, because it set out his view very,

25 very clearly as to my involvement in this project, his

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1 Benefits Agency had pulled out, the DSS has pulled out

2 and an agreement has been reached with the Post Office

3 for a design and build contract, essentially:

4 "I am in line with you that I too am fiercely

5 enraged with the UK Government that you had to spend so

6 much of your time, effort and costs in vain, all because

7 of the irresponsibility of their departments, blaming it

8 on each other. Although ICL is not much to blame

9 regarding the failures of the project in the past, the

10 fact is the actual impact on our performance is

11 significant."

12 What did you understand that to mean: "the actual

13 impact on our performance is significant"?

14 A. We took a provision for £180 million as a result of this

15 project.

16 Q. The "£180 million hit", I think you describe it as?

17 A. Yes, hit, yes.

18 Q. "I am thankful to you for understanding and respecting

19 Fujitsu's decision. Instead of arguing with the

20 government now, and risking additional time, effort and

21 costs, it will be more beneficial for the Fujitsu Group

22 to tolerantly negotiate with the government, and keep

23 our chance to try [and] recover the past debt with our

24 own efforts."

On that, did you understand "keep our chance to try

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1 view about the government situation, and so anything

2 I can say that people in this room or listening outside

3 of this room can say, you could just sit back and say

4 "Oh, well he would say that, wouldn't he". But,

5 you know, I put that forward to you as the chairman of

6 Fujitsu's view to me, thanking me for my efforts to

7 bring this to a conclusion and accepting the fact that

8 Fujitsu wanted to take the position they did, which was

9 to resolve the matter so we could all move forward.

10 Q. As you have raised that and I think, in fairness to you,

11 we should look at it. It is WITN03380121.

12 WITN0330121. I will try it again, I think it is my

13 error: WITN03880121.

14 Thank you. Is this the document you were referring

15 to?

16 A. Yes, it is.

17 Q. It has disappeared.

18 A. It was.

19 Q. Thank you. You can see that it is dated 1 June 1999,

20 addressed to you "For your eyes only":

21 "Thank you for your mail dated 28 May 1999. I would

22 also like to take this opportunity to express my sincere

23 appreciation to you personally for finalising the new

24 agreement with the Post Office."

25 So just to orientate ourselves, this is after the

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1 to recover the past with our own efforts" to be under

2 the context that you did agree with Post Office Counters

3 Limited?

4 A. Post Office and the wider ICL: let us use our energy on

5 constructive things rather than fighting old battles.

6 Q. Well, the reason I ask that is in the next paragraph he

7 says:

8 "This new agreement will give us this chance."

9 He is linking with --

10 A. Yes.

11 Q. -- the chance to recover the £180 million with the

12 signing of the new agreement. He continues:

13 "However, we still have as much tasks as we did in

14 order to achieve our project goal. We must learn from

15 our experiences and thus gather all of the strengths

16 within the Fujitsu Group to overwhelm our challenges,

17 and achieve profit for ICL in the total project.

18 "As a result, this should be an outstanding

19 infrastructure for the UK Government and the Post

20 Office. I look forward to your further success.

21 "Best regards ... Sekizawa"?

22 A. Thank you, and just for completeness and you don't need

23 to show them unless you want to, but the other two

24 letters from Sir Michael Butler, the chairman of Pathway

25 are part of my evidence, as is Sir David Hancock, who

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1 was an advisor, expressing similar views.
 2 Sorry, I took you off your questions.
 3 Q. Yes, CBO00000059 we were on. Can we go forwards to
 4 page 5 of this clip, please. This should be a letter
 5 dated 12 April 1999 from the late Jeremy Heywood, then
 6 the Prime Minister's -- the then Prime Minister's then
 7 principal private secretary and it is addressed to "Dear
 8 Ros", she was a senior civil servant in Her Majesty's
 9 Treasury:
 10 "The Prime Minister was grateful for the Chief
 11 Secretary's useful minute ... the Prime Minister duly
 12 met [some people including you] ... the Prime Minister
 13 opened by thanking [Mr] Naruto for the sensitive way in
 14 which Fujitsu had handled the closure of their
 15 semi-conductor plant in his constituency."
 16 It is right, isn't it, that Fujitsu had a large
 17 footprint --
 18 A. Yes.
 19 Q. -- in the Prime Minister's very own constituency?
 20 A. Newton Aycliffe?
 21 Q. "Naruto in turn thanked the Prime Minister for the help
 22 that Fujitsu had been given by local agencies in the
 23 North East -- 479 out of 550 employees had now found new
 24 jobs."
 25 Then this:

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1 Corbett piece of work which didn't get to a conclusion,
 2 but Steve Robson, I do recall as being pragmatic --
 3 I think I referred to that word -- and enabled -- as
 4 I recall, it was in the Treasury, was able to facilitate
 5 the agreement which ended up getting signed.
 6 Q. So the "more progress in six weeks than in the previous
 7 9-12 months" is a reference to -- to what specifically?
 8 A. The contract and commercial agreement on a project and
 9 a commercial way forward.
 10 Q. Okay, not the project generally?
 11 A. No.
 12 Q. "The project now in prospect was fully deliverable."
 13 This, of course, was before the Benefits Agency had
 14 pulled out?
 15 A. It was just before, yes.
 16 Q. Yes, we're here at April 1999.
 17 A. Yes.
 18 Q. It wasn't until May 1999 that they pulled out. Was that
 19 right, that the project was fully deliverable in
 20 April 1999?
 21 A. I made that statement so yes, it must have been -- the
 22 answer is yes. The challenges were better understood,
 23 in that we had had several weeks and months of being
 24 able to brief relevant parties and as we know, the
 25 following month, I think it was in May, the proposal

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1 "Turning to the Horizon project, Naruto said that
 2 he was very grateful for the work Steve Robson had done
 3 in recent weeks. He understood that ICL were now close
 4 to agreement with the DSS and [post Office Counters
 5 Limited] on a new way forward. ICL were fully committed
 6 to supporting the UK Government. He wanted to ask the
 7 Prime Minister to give Steve Robson complete authority
 8 to bring the current discussions to a successful
 9 resolution. On 23 April the Fujitsu Board would meet to
 10 decide whether to support the new project. He
 11 personally looked forward to securing a positive
 12 outcome. But he sincerely wished to get a legally
 13 binding agreement before the 23 April meeting. Fujitsu
 14 was spending £5 to £10 million a month on the existing
 15 project. Nearly £300 million had been invested so far.
 16 Sums of this magnitude could not simply be ignored."
 17 Then your contribution is noted. You added:
 18 "... that more progress had been made in the last
 19 6 weeks than in the previous 9-12 months."
 20 Was that true, that the parties had made more
 21 progress in a six week period than they had in a year?
 22 A. My comment was in relation to coming together with
 23 a project and commercial agreement that was acceptable.
 24 Some of the preliminary work that had happened with
 25 I think his name was Adrian Montague, obviously the

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1 came forth on a restructure of the project.
 2 Q. Can you now recall that you -- that the basis on which
 3 you came to the assessment that you were confident that
 4 the project -- despite all the difficulties that had
 5 occurred -- was fully deliverable? What material were
 6 you using to reach that view expressed to the Prime
 7 Minister?
 8 A. I would have had the information at that time from
 9 the -- you know, from the project team. What we needed
 10 to do was to resolve the commercial issues around the
 11 project and we at no time expected what happened in May,
 12 which was the Benefits Agency to be withdrawn. That was
 13 a surprise to us. We were not also expecting that the
 14 contract would change from PFI.
 15 Q. Can we look please at BEIS0000275. This is, again,
 16 slightly difficult to read. It is an internal email
 17 from a Katherine Hathaway to six or so recipients at the
 18 top. Katherine Hathaway, a civil servant in the
 19 Department of Trade and Industry to a series of other
 20 civil servants, dated 11 May 1999 and we will see in due
 21 course that it refers to a meeting that she had the
 22 previous day, so 10 May 1999. If we scroll down please,
 23 it says:
 24 "I met with George Hall yesterday ..."
 25 A. George Hall was the Government affairs advisor to me and

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1 the company. He worked full-time for us.
 2 Q. Was he an ICL director?
 3 A. Not a director, no.
 4 Q. But he was an ICL employee?
 5 A. Employee, yes, yes.
 6 Q. "I met with George Hall yesterday to discuss a number of
 7 things including our forthcoming awayday, the
 8 Information Age Partnership meeting and a more general
 9 update on all things ICL.
 10 "Horizon.
 11 "We spent the first 30 minutes discussing Horizon
 12 during which George confirmed that he knew that
 13 Ministers were split between cancelling the project and
 14 option B1 (version 2) -- he also knew exactly where that
 15 split lay, ie [her Majesty's Treasury/DSS] on the one
 16 hand versus the others. When asked how the deadline of
 17 23 April had been extended he admitted it was only
 18 because ICL were fudging their financial reporting with
 19 potentially disastrous results as far as the directors
 20 were concerned.
 21 "He confirmed that Keith Todd will lose his job
 22 should Horizon go down and that Fujitsu will divest
 23 themselves of ICL which will be broken up and the
 24 Services side will probably go to Siemens along with
 25 some other Fujitsu interests on the hardware side.

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1 take an accurate note of what happened, you wouldn't
 2 know --
 3 A. I'm not --
 4 Q. -- why Mr Hall was saying to government --
 5 A. No.
 6 Q. -- that there had been any fudging of ICL's financial
 7 reporting?
 8 A. No, and I'm -- I have no idea whether this -- did it say
 9 whether it was a phone call or a casual conversation.
 10 Q. No met, "I met with George Hall yesterday".
 11 A. Yes, so I --
 12 Q. And he spent the first 30 minutes discussing Horizon.
 13 A. He certainly had no authority to use language he used as
 14 minuted here because it's inaccurate, in my opinion.
 15 Q. If you can help us, "ICL were fudging their financial
 16 reporting with potentially disastrous results, as far as
 17 the directors were concerned", that sentence. If ICL
 18 were fudging their accounts, and I know you said they
 19 weren't --
 20 A. Categorically not.
 21 Q. -- what would the disastrous results for the directors
 22 be?
 23 A. Well, it just wouldn't happen.
 24 Q. But the sentence here what would be the link?
 25 A. With respect, you need to ask Mr Hall what he was

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1 Siemens are known to be interested in acquiring
 2 a services business and are already in discussion with
 3 Fujitsu."
 4 Presumably Mr Hall would be authorised by you to
 5 have meetings like this to try and influence and
 6 persuade the Government?
 7 A. I would -- he was a senior representative that I relied
 8 on a lot, until I saw this document and was horrified by
 9 the language which he -- was used. I had not seen that.
 10 He was not authorised to say we were fudging the
 11 accounts because we never have, never will, never would.
 12 As I said in my statement, the only thing I think he
 13 could have been misinterpreting is some reference to the
 14 discussion about changing the accounting date, but
 15 that's not fudging the accounts. There was never
 16 a question of fudging the accounts. I take exception to
 17 that, so I do not -- obviously this is a minute that she
 18 has written. I have not been allowed to speak to George
 19 about it and haven't spoken to him, appropriately, but
 20 I find it ridiculous, the statement. And bold language
 21 "Keith is going to lose his job", well, you saw a note
 22 back from Sekizawa. At no time did I have any concerns
 23 about my role, my job, but we have discussed that
 24 earlier.
 25 Q. So assuming Ms Hathaway, the civil servant, is able to

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1 talking about. I do not know. I have not been allowed
 2 to speak to him to say "What were you talking about?"
 3 It's --
 4 Q. He is reported to have said --
 5 A. My apologies, it's just -- yes.
 6 Q. -- you would lose your job if Horizon went down and
 7 Fujitsu would divest itself of ICL. Now, the latter
 8 part of that, looking at the documents we have seen
 9 already, is an accurate statement, there was a risk of
 10 that happening?
 11 A. Well, it had to be acknowledged as a risk. I remind you
 12 in the context of all these individual elements of it,
 13 that we were taking on a number of significant
 14 institutions in this country to try and get some
 15 considered, rational mediation to an answer and we had
 16 had several months to years of little progress, so we
 17 were taking a robust position, as I have mentioned
 18 several times today and, undoubtedly, Mr Hall would have
 19 been taking a similar briefing but, at no time -- and
 20 there was no substance to those statements that are
 21 written down here.
 22 Q. You have said, Mr Todd, a number of times that "we took
 23 a robust position" and Mr Hall may have received such
 24 a briefing. Is that code for saying "the position may
 25 have been overstated as part of the negotiating

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1 process", ie the consequences to Fujitsu and for you may
2 have been overstated or overdramatised in order to make
3 a point?

4 A. I think all aspects needed to be laid out in terms of
5 the potential consequence. It was part of
6 a transparent, measured communication to all the parties
7 and, whilst the outcome resulted in a multi-million loss
8 for ICL on my watch, under my stewardship, settling the
9 matter to be able to move on was the right decision and
10 I have no disagreement with the action we took with my
11 colleagues in ICL and Fujitsu to settle and move on.

12 Q. You have mentioned approaching this in a measured and
13 balanced way. Can we look at HMT00000013, please. This
14 is a minute dated 13 May 1999, again circulating within
15 government, so this is not something that you would have
16 seen at the time. So just putting it in context,
17 Mr Hall met, two days before this, with Katherine
18 Hathaway on 10 May. Her minute was dated 11 May and
19 we're now on to 13 May, and this is:

20 "A brief record of our three meetings with ICL in
21 the last 24 hours -- yesterday morning and evening, and
22 this evening. ICL were represented by Keith Todd,
23 Richard Christou and (for the first meeting) George
24 Hall."

25 Then just scroll down, please. It is recorded:
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1 So you delivered the message in that paragraph 3,
2 I think; is that right?

3 A. Sorry, which paragraph?

4 Q. Just go back, so "The key points to record are as
5 follows", that's what you were saying?

6 A. Sorry, that suite of things.

7 Q. Yes, the suite of things under the sub-bullet points.
8 You say that -- or you said that provision will need to
9 be made for the sunk costs of the benefit payment card
10 and that will shift Fujitsu into the red for 1998. Is
11 that right: it would move Fujitsu itself into the red?

12 A. Yes, I wouldn't have recalled that without seeing the
13 document but I assume that is correct.

14 Q. So serious not just for ICL Pathway but for Fujitsu
15 itself?

16 A. No, there were other challenges in the world and the
17 technology world at the time. Fujitsu historically had
18 made several billion dollars a year, so, you know, it
19 would have just been for that particular year.

20 Q. Over the page, please, the passage under the second
21 bullet point, which says:

22 "Todd and Christou said that the only way to avoid
23 the provision in the accounts would be for the
24 Government to sign a legally binding agreement ..."

25 Do you think that's the reference back to what
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1 "2. By the time of the second meeting, ICL (Todd in
2 particular) were clearly quite worked up. We therefore
3 allowed them to do most of the talking.

4 "3. The key points to record are as follows:

5 "The President and Deputy Chairman of Fujitsu are
6 coming to London tomorrow to discuss the project with
7 ICL. The provision they will need to make for the sunk
8 costs of the [Benefit Payment Card] will shift Fujitsu
9 into the red for 1998;

10 "ICL's view is that Fujitsu would not respond to
11 this provision in a rational way. The response is
12 likely to be cut their losses and sue, rather than
13 pursue what has the potential for being an attractive
14 deal under [that's option B3]."

15 Then over the page please:

16 "Fujitsu have asked to see the [Prime Minister]
17 tomorrow whatever the situation -- whether we are close
18 to a deal or not;

19 "Todd and Christou said that the only way to avoid
20 the provision in the accounts would be for the
21 Government to sign a legally binding agreement ..."

22 Then moving on to the next bullet point:

23 "a clear condition from ICL is that the public
24 sector pick up the full sunk costs incurred by ICL --
25 ie as if we were terminating for convenience."
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1 Mr Hall may have been referring to about fudging the
2 accounts, ie provision had yet been made in the accounts
3 for the loss?

4 A. No, no, and I don't -- I'm not going to -- assume the
5 minutes are accurate, I have to assume the minutes are
6 accurate because I do not recall that particular
7 request. But seeing it in the document the other day,
8 it seems completely unreasonable to have something
9 signed -- I mean, it wasn't ever going to happen so
10 I don't quite understand how it was that way. There was
11 one other document that I saw that didn't -- well,
12 anyway, let me not open that up.

13 Q. Can we turn to BEIS0000317, please. This is part of
14 a briefing note to the Secretary of State. It is dated
15 3 June 1999 and it is in readiness for a meeting with
16 the President of Fujitsu and the vice chairman of
17 Fujitsu and chairman of ICL that was going to take place
18 on 13 June 1999. Can we look at the second page,
19 please. Paragraph 1 records the meeting that we have
20 just looked at:

21 "At that meeting, Mr Sekizawa stressed that unless
22 an unconditional agreement could be signed by 17 May,
23 Fujitsu would have to accept a £306 million provision in
24 their consolidated group accounts."

25 Then reading on three sentences, or three lines from
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1 the end of paragraph 2:
 2 "The damage to ICL and the prospects of its
 3 floatation next year would be substantial. You [that's
 4 the Secretary of State] undertook that the Government
 5 would convey its decision to Fujitsu within that
 6 timescale."
 7 Then paragraph 4:
 8 "In the tense negotiations over the following days
 9 we know that it was your letter to Keith Todd of
 10 21 May ..."
 11 That's the Secretary of State's letter to you:
 12 "... confirming the Government's wish to proceed
 13 with the project, and later the personal appeal to
 14 Mr Naruto by the Deputy Ambassador on your behalf that
 15 persuaded Fujitsu not to abandon the negotiations."
 16 Again, we see the link between the damage to ICL by
 17 the loss of the project, and damage to its floatation
 18 made in that second paragraph -- is that right -- as
 19 a point being made to government?
 20 A. That is what it said.
 21 Q. We have seen a number of times now a link drawn here
 22 between the successful progression of the deal and the
 23 floatation of the company, you agree?
 24 A. There have been several references to it and several
 25 other aspects, but there have been several references to

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1 earlier, with the government on a major project, that
 2 would have very directly impacted the float and could
 3 potentially have killed it, but the fact that we
 4 resolved the problem in the May-July 1999 period meant
 5 that, as we went into 2000, subject to the earlier point
 6 of market conditions and our other performance, the
 7 float was still on and you will find that in other
 8 documents, in terms of public discussions and even
 9 internal discussions, so --
 10 Q. If it's right that ICL had many other successful
 11 projects and the status of the project, Pathway, was not
 12 a critical factor in deciding whether or not to float
 13 the company, why do we see it mentioned five times in
 14 all of the documents that I have mentioned, seemingly as
 15 a lever to persuade government to take some action?
 16 A. I think the central levers were the importance of
 17 getting the Post Office infrastructure modernised before
 18 the Benefits Agency withdrew the works to improve fraud
 19 prevention in DSS. Float was one factor. You have
 20 drawn significant attention to it. In my opinion, it
 21 was -- it was a factor in our life and there are always
 22 two variables: 1, when; and the other one is if the
 23 float would take place.
 24 It was my opinion that, once we had settled, in
 25 July 1999, that we, with strong performance through 2020

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1 the float, I agree.
 2 Q. In your witness statement, if we turn that up, please,
 3 at page 52, so that's WITN03880100, page 52, and
 4 paragraph 154, you say, six or seven lines from the
 5 bottom:
 6 "Although I noted in my call to the UK Ambassador to
 7 Japan that the failure of Horizon may 'undermine' the
 8 floatation of ICL, ICL had many successful projects
 9 already and the status of the Pathway project was not
 10 a deciding factor in whether or not to float the
 11 company."
 12 Is that correct?
 13 A. In my view, that is correct. We have not mentioned in
 14 this conversation today we had struck, during this
 15 period we are talking about a strategic deal with
 16 Microsoft that was expanding this business. We had made
 17 a number of investments into the new emerging internet
 18 world that were proving to be very positive and
 19 successful. The world was transforming from the old
 20 technology world to the new. I had taken ICL to become
 21 a services company, now Fujitsu Services, all of which
 22 were, you know, significant attributes of a business
 23 with recurring revenue that would be capable of being
 24 floated.
 25 Clearly, if we had had a legal dispute, as I said

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1 (*sic*) -- float was still achievable at a significant
 2 valuation above that which Fujitsu had invested.
 3 Q. Turning to the relationship between ICL and Post Office
 4 after July 1999, you rely in your statement very
 5 significantly on the nature of the PFI contract that was
 6 initially struck to explain the difficulties between
 7 POCL and BA, on the one hand, and ICL, on the other, and
 8 the impact that those relationships had on the
 9 successful delivery of the project before July 1999.
 10 After the Benefits Agency withdrew, this contract
 11 was a more familiar contract for build and the provision
 12 of services; is that right?
 13 A. That's correct.
 14 Q. With the purchase of services by POCL from ICL as the
 15 contractor for the payment of money?
 16 A. That's correct. And -- yes, that's correct.
 17 Q. There was no PFI arrangement after May 1999 and so the
 18 PFI arrangement that previously existed, would you
 19 agree, could provide no rational for -- or explanation
 20 for anything which arose in either the direct
 21 contractual relationship between ICL and POCL, or what
 22 happened thereafter?
 23 A. There was a period of decommissioning with the DSS that
 24 I recall happening, but no major impact.
 25 Q. Can I turn to the importance and significance of

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1 Acceptance. It is fair to say, in summary, that in your
 2 statement you place a lot of stall by Acceptance, with
 3 a capital A, correct?
 4 A. Yes, there was a clear Acceptance procedure that had
 5 been agreed between the parties.
 6 Q. In summary, you say that because POCL must have been
 7 satisfied with the functionality -- or POCL must have
 8 been satisfied with the functionality and reliability of
 9 Horizon because there were detailed provisions agreed
 10 between the parties as to what constituted Acceptance
 11 and what did not, and POCL decided to proceed with the
 12 rollout of the contract?
 13 A. That's correct, there was a period of delay for
 14 reviewing the documents between, I think, August and
 15 September 19 -- yes, 1999, in which a number of issues
 16 were being addressed, but the point -- I think I make it
 17 in my statement -- is the final decision to roll out
 18 rested with POCL.
 19 Q. So, essentially, you're saying we've got the detailed
 20 provisions as to Acceptance by the customer, they did
 21 decide to roll out. In the light of the detailed
 22 provisions as to Acceptance and the decision to roll
 23 out, a decision that rested with them, they must have
 24 been satisfied with the functionality and reliability of
 25 the system?

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1 "Mr Coombs confirmed that ICL were asking for
 2 Acceptance (in terms of both cessation of termination
 3 rights related to Acceptance and start of income
 4 guarantees) after the final runs of end-to-end and model
 5 office and before live trial of NR2 child benefit."
 6 Can you see that?
 7 A. Yes, I can, but this -- can we just go back to the date.
 8 Q. Yes, 1999 -- December 1998, rather?
 9 A. 1998, so this is before the resale of the contract?
 10 Q. Yes.
 11 A. So we're all --
 12 Q. Yes, we understand where we are.
 13 A. Yes.
 14 Q. Would you agree that what is being recorded there, at
 15 this time, is a request by ICL to accept the system
 16 without any live trials?
 17 A. I don't recall that. I have seen references to that
 18 but, as I recall it, Acceptance principles for national
 19 rollout were reset as part of the contract reset in
 20 July 1999.
 21 Q. Sorry, can you say that again, please.
 22 A. So I'm saying that the Acceptance criteria that were in
 23 existence when national rollout was decided, I believe
 24 were set in the July 1999 contract reset.
 25 Q. Yes.

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1 A. They accepted the system with the view to national
 2 rollout.
 3 Q. Under the post PFI arrangement, payments received by ICL
 4 were contingent upon Acceptance, weren't they?
 5 A. There was one payment that was tied to Acceptance, as
 6 I recall.
 7 Q. £68 million?
 8 A. Yes.
 9 Q. So there was a financial incentive on ICL to ensure that
 10 the client accepted, through the Acceptance process, the
 11 rollout of Horizon?
 12 A. There was a payment due that was not in our control that
 13 was dependent on POCL, Post Office Counters Limited,
 14 accepting the project, but they had the sole right, as
 15 I recall, to decide. It's not uncommon to have, if
 16 there's long delay, a *de facto* Acceptance but I don't
 17 recall that being in this case.
 18 Q. Can we look, please, at POL00039912. You will see that
 19 these are notes, draft notes "From a meeting to discuss
 20 Acceptance" in December 1998 and those present from ICL
 21 are Mr Coombs and Mr Dicks, names that you will be
 22 familiar with?
 23 A. Yes.
 24 Q. In paragraph 1, it is recorded under the heading
 25 "Acceptance Procedures" that:

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1 A. Not in 1998.
 2 Q. You're correct. In terms of the Acceptance process, can
 3 you recall discussions in the board about decisions to
 4 lower the bar on what constituted Acceptance in a second
 5 and then third supplemental agreement?
 6 A. I have no recollection of those discussions at the time.
 7 The project team, supported by Mr Christou, as I recall
 8 it, did the -- and I think Mr Oppenheim was also key to
 9 the reset of the contract, day-to-day. I'm not
 10 distancing myself from that, I'm just saying that in
 11 terms of -- my detailed knowledge of every conversation
 12 is limited because I was only involved in a few of those
 13 conversations and obviously involved with the final sign
 14 off of that. So your question was, "was I aware of
 15 any" --
 16 Q. "Lowering of the bar", as I put it.
 17 A. I don't recall any conversations about that.
 18 Q. If you don't I won't ask you detailed questions then
 19 about the second and third supplemental agreements.
 20 Can we just then look, please, at the knowledge
 21 within Post Office Counters Limited about some of the
 22 things that they did or didn't know at the time of the
 23 acceptance decision. Can we look at FUJ00080690. This
 24 is a review of the EPOSS PinICL task force. Ignore the
 25 date in the top right-hand side, 14 May 2001. That's,

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1 I think, an artifact of either printing or some other
 2 process that's been applied to this document because one
 3 can see from the abstract that the document reports:
 4 "... on the activities of the EPOSS PinICL task
 5 force which was in place between 19 August and
 6 18 September 1998 to reduce to manageable levels the
 7 EPOSS PinICLs outstanding at that time."
 8 You can see the distribution list includes Terry
 9 Austin. Do you remember what his role was at that time,
 10 so August/September 1998?
 11 A. I don't specifically. Either operations or maybe QA.
 12 Q. And Mr Bennett, Mark Bennett, at that time?
 13 A. No.
 14 Q. And D McDonnell -- I think that is David McDonnell, Dave
 15 McDonnell?
 16 A. No.
 17 Q. You don't remember his role in September 1998?
 18 A. No, you would need to, as you are going to, talk to
 19 Mr Bennett, not -- John Bennett.
 20 Q. We can see the authors of it. Do you recognise the name
 21 that's Jan Holmes and the D McDonnell is
 22 David McDonnell?
 23 A. I don't recall, no and I don't recall seeing this
 24 specific report --
 25 Q. At the time?

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1 design, bad programming and ill-thought out bug fixes.
 2 The negative impact of these factors will continue and
 3 spread as long as the PinICL fixing culture continues.
 4 This is partly due to the nature/size of the bug-fixing
 5 task and partly due to the quality and professionalism
 6 of certain individuals within the team."
 7 And then he gives some code examples -- they give
 8 some code examples.
 9 Was information of this type, of raising serious
 10 concerns with the EPOSS code, drawn to the board's
 11 attention so far as you are aware?
 12 A. I don't have any recollection of what you just covered.
 13 Q. Would you expect, under the revised arrangements for
 14 a design and build contract, for this kind of
 15 information to be revealed to the client?
 16 A. In the contents we have just discussed, I apologise but
 17 I don't have all the individuals calibrated. I would
 18 have expected that the team would have taken a view as
 19 to what was being resolved, what was fixed, yes, by the
 20 time that we signed the new contract. But you may get
 21 more insight from my colleagues.
 22 Q. Would you, looking at this information here, expect it
 23 to be revealed to the client?
 24 A. I would want to do a thorough review of it, what its
 25 saying, what remedial actions were taken and then assess

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1 A. At the time.
 2 Q. No, I haven't got any material that suggests that it was
 3 passed to you.
 4 Can we look please at page 7 of this document please
 5 at the heading "EPOSS code" and the authors point out:
 6 "It is clear that senior members of the Task Force
 7 are extremely concerned about the quality of code in the
 8 EPOSS product. Earlier this year the EPOSS code was
 9 reengineered by Escher and the expectation is that the
 10 work carried out in Boston was to a high standard and of
 11 good quality. Since then many hundreds of PinICL fixes
 12 have been applied to the code and the fear is that code
 13 decay will, assuming it hasn't already, cause the
 14 product to become unstable. This presents a situation
 15 where there is no guarantee that a PinICL fix or
 16 additional functionality can be made without adversely
 17 [affecting] another part of the system.
 18 "However, a more worrying concern from the
 19 Programme's perspective should be the reliance on the
 20 EPOSS product in its current state as a basis for
 21 planning and delivery."
 22 Then secondly, at page 17 of the PDF please, at
 23 paragraph 7.3 at the bottom:
 24 "Although parts of the EPOSS code are well written,
 25 significant sections are a combination of poor technical

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1 the consequences of it. It clearly needs -- you know,
 2 it would need to be fixed.
 3 Q. So it would need to be fixed not necessarily revealed to
 4 the client?
 5 A. If there was any risk to the programme delivery, it
 6 should be revealed to the client.
 7 Q. You mean the timing of the programme delivery, or do you
 8 mean the quality of what was delivered, the reliability
 9 and integrity of what was delivered?
 10 A. I think if there was any doubts on the reliability and
 11 integrity of what was being delivered, it should be
 12 declared to the customer. I was just reflecting on the
 13 fact when code is written, even with good developers,
 14 it's not uncommon to find, through peer review or unit
 15 testing or systems testing, issues which then get fixed.
 16 The customer doesn't -- I think it's a poor use of the
 17 customer's time when those sort of processes are
 18 occurring but, if there was any question on the
 19 integrity of the system, then it should be declared.
 20 Q. And, in your position, I don't think you will know one
 21 way or the other whether this information was revealed
 22 to Post Office Counters Limited?
 23 A. As I said, I have no knowledge of this.
 24 Q. Thank you. In the time allowed, they are the only
 25 questions that I would ask, save for this: are there any

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1 reflections or broader statements that you would wish to
 2 make in the light of what we now know as to the
 3 consequences of the system that was designed and
 4 delivered under your watch?
 5 A. Quite clearly and in my statement -- and we have talked
 6 about it today -- signing a contract with two customers.
 7 As I reflect on the whole question, even over this last
 8 weekend, with the intense battle that went on to try and
 9 get some common sense, in my opinion -- you know,
 10 hindsight is wonderful but maybe it would be better had
 11 we not bid for the contract.
 12 Do I think that ICL Pathway, ICL Group, Fujitsu have
 13 the skills -- had the skills to implement this project?
 14 Absolutely. Was it a complex project? Yes, it was.
 15 The nature of these Inquiries are always focused on
 16 the -- and appropriately focused on the things that went
 17 wrong. What I have no understanding of is what
 18 actually, other than as a user of the Post Office, where
 19 many more services are provided, I have always liked to
 20 think that some of those came from this project.
 21 I mean, the overriding thing, and I think we
 22 referred to this earlier on, there can be no comfort but
 23 absolute complete sympathy with the victims of the
 24 events that have actually occurred over the last
 25 22 years.

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1 **MR BEER:** Thank you very much, sir.
 2 **(3.30 pm)**
 3 **(Short Break)**
 4 **(3.46 pm)**
 5 **Questioned by MR STEIN**
 6 **MR STEIN:** Sir, can you hear and see me?
 7 **SIR WYN WILLIAMS:** I can hear you and no doubt now I can see
 8 you as well.
 9 **MR STEIN:** I'm very grateful.
 10 Mr Todd, good afternoon. My name is Sam Stein.
 11 I represent a number of subpostmasters,
 12 subpostmistresses and managers before this Inquiry.
 13 I would like to ask you a question or some questions
 14 about the Fujitsu and Post Office contract and I'm going
 15 to take you directly to a document which is at
 16 FUJ00000087 and you will see there this is a particular
 17 page of the contract and the relevant part that I'm
 18 going to take you to now is under paragraph 4.1.6 and
 19 you will see there it says "Prosecution support".
 20 Now, just to familiarise yourself with this, I'm
 21 going to read it out. So this is part of the contract
 22 between Fujitsu and the Post Office, "Prosecution
 23 support":
 24 "Fujitsu services shall ensure that all relevant
 25 information produced by the Horizon Service

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1 **MR BEER:** Thank you, Mr Todd. As I say, they are the
 2 questions that I ask for the moment.
 3 Sir, could we take the afternoon break before you
 4 may hear questions from Mr Stein, Mr Henry and possibly
 5 Ms Patrick?
 6 Sir, we can't hear you, you are on mute?
 7 **SIR WYN WILLIAMS:** Certainly we will take our break. What's
 8 the time now?
 9 **MR BEER:** 3.30.
 10 **SIR WYN WILLIAMS:** It is 3.30.
 11 **MR BEER:** It is half past in England, sir.
 12 **SIR WYN WILLIAMS:** Have we got any idea how long any further
 13 questioning is to be? I say that because I want to say
 14 now that I would be reluctant to expect Mr Todd either
 15 to go much beyond 4.30 or to return tomorrow, so that
 16 people need to understand that their questioning needs
 17 to be fitted in to the remaining period this afternoon
 18 I think.
 19 **MR BEER:** Sir, I think that's understood and I see both
 20 Mr Henry and Mr Stein nodding. I'd calibrated the
 21 questions I had asked accordingly to allow a reasonable
 22 time before 4.30 for such questions to be asked.
 23 **SIR WYN WILLIAMS:** That's fine. All right then. I will see
 24 you again then at 3.45, if that's sufficient time for
 25 the others.

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1 Infrastructure at the request of Post Office shall be
 2 evidentially admissible (and, where relevant, capable of
 3 certification) in accordance with the requirements of
 4 the law in relation to criminal proceedings."
 5 Then the second part at 4.1.6 says this:
 6 "At the direction of Post Office, audit trail and
 7 other information necessary to support live
 8 investigations and prosecutions shall be retained for
 9 the duration of the investigation and prosecution
 10 irrespective of the normal retention period of that
 11 information."
 12 So the first part, at 4.1.6, is about the provision
 13 of information to the Post Office in relation to
 14 criminal proceedings.
 15 Can you help us, Mr Todd, understand what was
 16 Fujitsu's understanding of the requirements of the law
 17 in relation to criminal proceedings?
 18 A. I'm afraid I'm not going to be able to assist. I don't
 19 have a specific recall of this clause. The fact that
 20 the words here are talking about Fujitsu Services
 21 suggests that it is in a document that was post ICL
 22 Pathway -- my time at ICL Pathway. But, putting that on
 23 one side, my observation on it is that it is -- if it's
 24 part of the contractual document, it would and should be
 25 complied with by the service provider.

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1 Q. Can you recall whether there was any guidance or advice
 2 given to Fujitsu Pathway from an experienced criminal
 3 lawyer, as to what this meant by way of requirement?
 4 A. I have no recollection of that.
 5 Q. Right. Who out of the team of people involved with this
 6 contract preparation and then operation of Horizon would
 7 have been in charge of this aspect of the Horizon
 8 systems services?
 9 A. Our -- at the time I was involved, between the proposal
 10 stage and 2000 -- July 2000, the legal head and
 11 commercial head was Richard Christou. I recall but I'm
 12 not sure I could name -- I think there was some legal
 13 advice taken in relation to the contract originally, but
 14 we had an internal legal team as well, as using external
 15 counsel.
 16 Q. Are you talking about the contract itself and advice in
 17 relation to contract law, or are you talking about this
 18 particular aspect of the contract which targets criminal
 19 prosecutions and the potential for Horizon Systems to
 20 give information --
 21 A. I have no recollection --
 22 Q. Let me finish, would you, please?
 23 A. Sorry.
 24 Q. And the potential for information to be given to the
 25 Post Office regarding criminal investigations. So which

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1 other information necessary to support live
 2 investigations/prosecutions shall be retained for the
 3 duration of the investigation and prosecution
 4 irrespective of the normal retention period of that
 5 information."
 6 Can you help with what was done to make sure that
 7 information was saved for the purposes of possible
 8 prosecutions/investigations?
 9 A. The system, as I recall, had audit trail and resilience
 10 built in to ensure that the data was retained. I have
 11 no specific recollection of any direct conversation with
 12 the ICL Pathway team about the retention period that you
 13 are referring to.
 14 Q. Do you understand that, overall, these two paragraphs
 15 relate to the use of data from the Horizon System being
 16 put into the possible investigation of subpostmasters
 17 and whether or not they committed any offences? Do you
 18 understand that that's what this is about?
 19 A. I do with your assistance, yes, and seeing this clause.
 20 Q. Do you understand that, if this isn't complied with and
 21 if the information isn't being passed into the
 22 investigations properly about bugs, errors, difficulties
 23 with the systems, that innocent people could go to
 24 prison?
 25 A. Well, that clearly shouldn't happen.

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1 is it: contract law or advice in relation to criminal
 2 law?
 3 A. I don't have any recollection of a conversation with any
 4 of my colleagues about, specifically, the criminal law
 5 aspects.
 6 Q. Right, so Richard Christou was in charge of what aspect
 7 of things, that's legal?
 8 A. Legal.
 9 Q. So generally legal?
 10 A. All aspects of contract and where any expertise was not
 11 available, I would expect to -- I would have expected to
 12 get external advice on any specialist area.
 13 Q. Now, the operators of the Horizon System, do you recall
 14 whether they were ever informed of the relevant -- this
 15 particular relevant section regarding prosecution
 16 support and what they needed to do to make sure that the
 17 Post Office was provided with information about the
 18 Horizon System?
 19 A. I have no specific recollection of a conversation about
 20 this particular clause, whether it was in the original
 21 contract or this one. As I said, this refers to Fujitsu
 22 Services and it would not have done in the original
 23 contract, but --
 24 Q. The second part, if you can help us at all with this:
 25 "At the direction of Post Office, audit trail and

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1 Q. No, we all agree it shouldn't happen. It did happen,
 2 Mr Todd.
 3 A. Yes.
 4 Q. Do you understand how the importance of this paragraph ?
 5 A. I understood it when you first raised the importance of
 6 the paragraph. What I was addressing was your question
 7 about whether I knew how this was being addressed and
 8 I --
 9 Q. Was it understood -- going back, you mentioned a number
 10 of times things happened a long time ago. Was it
 11 understood how important this section was in the
 12 contract at the time the contracts were signed?
 13 A. I have to just repeat, I don't recall any specific
 14 conversation about this particular clause and any
 15 deviation from what we would do in our other
 16 environments where we are dealing with -- whether it's
 17 retail systems or banking systems.
 18 Q. Okay. Two last questions. From your particular level
 19 within the organisation, what do you recall being put in
 20 place to monitor the operation of this system?
 21 A. There was, within Pathway, monitoring of the services
 22 that were being delivered. I do not recall, if you're
 23 referring back to this particular aspect, any particular
 24 application or service which was defined to ensure this
 25 was complied with.

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1 Q. Lastly, we know that the Benefits Agency withdrew from
 2 the original tripartite contract, yes? We know that the
 3 Benefits Agency had a real interest in ensuring that
 4 their systems were not misused by way of fraud, you
 5 agree?
 6 A. Mm-hm.
 7 Q. Can you just help us in relation to this particular part
 8 of the contract: was this particular part of the
 9 contract a hangover from the time of the Benefits Agency
 10 and their involvement? In other words, was this adapted
 11 from an original discussion in relation to the fraud
 12 requirements of the Benefits Agency or not?
 13 A. I have no knowledge, I'm afraid.
 14 **MR STEIN:** Thank you very much.
 15 A. Thank you.
 16 **Questioned by MR HENRY**
 17 **MR HENRY:** Mr Todd, my name is Henry. A few questions.
 18 Could we please go up to FUJ00077834, please. This is
 19 your chief exec's report in May 1997. Now, we know that
 20 the Labour landslide was on 2 May 1997 and this is dated
 21 7 May and, by that time, you had already had a meeting
 22 with the Minister of state for Social Security.
 23 A. Yes.
 24 Q. I suppose you don't become a chief executive of a major
 25 company without being able to -- well, without being

1 requiring organisations, both business as well as
 2 government and public sector, to look at their business
 3 processes and that there was a significant opportunity
 4 for businesses like ICL and our competitors.
 5 Q. Thank you. Could we go to page 5, please, and I'm going
 6 to touch on this very briefly because Mr Beer has
 7 already taken you to this paragraph, 7.5. This is
 8 talking about delay and we notice, of course,
 9 paragraph 1, software bugs:
 10 "We have advised the customer [second paragraph]
 11 that there could be a six week delay in the next
 12 release. The customer is appreciative of the open
 13 approach. Actions are in place to mitigate the
 14 consequence of delay, ie national rollout starting in
 15 January 1998 rather than November 1997."
 16 Do you think that the customer would have been quite
 17 so sanguine if they could foresee a delay to 1999/2000?
 18 A. No. Quite clearly, with the events that unfolded, those
 19 timetables were wrong.
 20 Q. Did you have a policy under your watch of complete --
 21 and I'm not making any loaded comment against you -- but
 22 of complete candour in your subordinates so that you
 23 were going to be given, as it were, a completely
 24 accurate picture?
 25 A. Well, I believe so. I'm -- as many can attest, a very

1 able to cultivate power, would you agree?
 2 A. You have to engage with all stakeholders, political as
 3 well as business partners.
 4 Q. Absolutely. Was this a sort of mending fences, building
 5 bridges and, therefore, getting new opportunities
 6 meeting?
 7 A. I recall having a progressive programme through both
 8 political regimes. I recall -- nothing to do with this
 9 particular project -- spending a Saturday with John
 10 Major and some of his colleagues around the future of
 11 the internet, so we had an extensive programme, as most
 12 of the technology providers in the UK did, to keep
 13 engaged with current government representatives, both on
 14 the Civil Service side as well as the political side.
 15 Q. Thanks. I mean, the tone of the chief exec's report is
 16 pretty positive. For example, "The opportunity" --
 17 political -- paragraph 2:
 18 "The opportunity to accelerate our reengineering
 19 proposition for DSS is improved."
 20 You also mention other opportunities, for example
 21 with the Department of Education, correct?
 22 A. Yes. If I may just take a brief moment for you.
 23 I referred to it earlier on. The transformation that
 24 was occurring in the 1990s, albeit we are talking
 25 25 years ago, with the advent of new technologies was

1 open person. I do not shoot messengers. I embrace
 2 messengers and deal with issues. Bad things happen in
 3 life, bad things happen in business, they need to be
 4 dealt with. I have not strayed from that principle from
 5 my days running 20,000 people to my days, these days,
 6 running, you know, 300 people. So I believe that they
 7 would tell me in appropriate candour.
 8 Q. Because, obviously, that wasn't an accurate prospectus.
 9 I'm not suggesting you were being dishonest but that
 10 wasn't an accurate prospectus, was it?
 11 A. Well, the complexities -- it's almost -- this process is
 12 like fast-forwarding 20-odd years, but even five years
 13 into a few hours. You know, you would need to do it
 14 frame by frame, you know, month by month. Things were
 15 evolving and being identified throughout this project
 16 and being dealt with. I said earlier the team were
 17 under a lot of pressure on a complex project, they were
 18 resilient and, to this day, I would say they were doing
 19 all they could do to ensure the project was a success
 20 for everybody. Things happened then that resulted in
 21 delay.
 22 Q. Yes. Could we go now, please, to FUJ00075721. This is
 23 a follow-up meeting, or -- well, it's the following year
 24 as well. The minutes are on 6 July 1998, relating to
 25 a meeting on 3 July 1998 with the Minister, Frank Field.

1 Mr Field's opening remarks to you are recorded that he
 2 was keen to see you to talk about social banking. You
 3 are reported to have said -- and this is actually
 4 composed by John Bennett, one of your staff:
 5 "Keith's opening remarks was that he was here to
 6 talk about the programme in the round and the key points
 7 were that the programme is deliverable, that it is
 8 critical to ICL as well as DSS, POCL and Government and
 9 that the infrastructure being built is essential for all
 10 aspects of fraud, welfare reform, the future of the Post
 11 Office and all aspects of better government."
 12 Do you think, on reflection, that that was
 13 an oversell?
 14 A. The -- as I referred to earlier, at each stage where we
 15 bid for the contract, we believed that the proposal we
 16 put in were deliverable. At the reset, they were
 17 deliverable. It did require that we were able to bring
 18 together the constituents and with the benefit of
 19 hindsight, the statement was clearly overoptimistic in
 20 terms of our ability to bring all the parties together
 21 on the timeframe that we thought.
 22 What happened subsequently is also tragic.
 23 Q. Yes. I'm going to come now to page 2, paragraph 4.8,
 24 running immediately into paragraph 4.9. You had
 25 a conversation and Frank Field described the Post Office

1 transfer, but, you know, at the end of the day, it was
 2 the customer who had to dictate.
 3 Q. So, with that in mind, could we come please to
 4 FUJ00075723. Of course, the problem is: which customer?
 5 You have identified that already, haven't you?
 6 A. Yes, yes.
 7 Q. Now, let's go to that document. Could we go down to
 8 paragraph 5 please and we've got the following:
 9 "Stuart Sweetman pointed out that what the Minister
 10 was looking for could be provided by POCL with
 11 automation of the branches (a not very veiled reference
 12 to Horizon but well put across). Stuart was backed up
 13 by Girobank [et cetera, et cetera]. Customers want
 14 control, want cash and get it now through the post
 15 office."
 16 Again, this is another meeting with Frank Field,
 17 17 July 1998, minutes 20 July 1998. Did you regard
 18 Stuart Sweetman as an ally?
 19 A. Certainly not particularly, no. My recollection --
 20 Q. From memory -- from memory, was he on side?
 21 A. I think he was a competent businessman. I had no
 22 personal relationship with him. I knew him through
 23 business but, you know, I repeat, it's going back a long
 24 time. Listening to many conversations, which are not
 25 minuted, about what is the best way for society to pay

1 as a "dependency culture"; do you recall that?
 2 A. Not specifically.
 3 Q. You don't recall it specifically, but then this is
 4 reported:
 5 "There was no strong reaction to our key comment
 6 that the progress to ACT was inevitable but would take
 7 time and had to be managed alongside re-engineering of
 8 the post office network."
 9 Of course, that is a reference, isn't it, to
 10 retaining the BPC, retaining the benefit card system, or
 11 the Benefit Payment Card, correct?
 12 A. Yes, it was. There were --
 13 Q. Could I just ask you, were you, as it were, side by side
 14 with the Post Office, complicit with them, prolonging,
 15 for as long as possible, the BPC, making haste slowly
 16 because that was in the Post Office's best interests, as
 17 they perceived it, but also, of course, you had revenue
 18 per swipe, didn't you?
 19 A. I certainly don't recall that thought process at all.
 20 We had a customer, one of the customers, DSS, who were
 21 very keen, as we have discussed earlier, on the benefit
 22 cards basis. It made sense to us. It was the emergence
 23 of smartcards which we thought was the right way
 24 forward, but -- you know, magnetic stripe. There had
 25 been a historic desire from DSS to go to straight bank

1 Social Security. At the end of the day, a lot of
 2 society that received benefits wanted cash still. The
 3 Post Office was the right way to go. The means to get
 4 there was a decision for the wider political environment
 5 and the -- and, specifically, the Department of Social
 6 Security.
 7 Q. But, obviously, you would have -- either you directly or
 8 your representatives would have acute antennae as to who
 9 was on side and who was not?
 10 A. We would have a view and we did not -- if you go back to
 11 the beginning of this, early days, we did not have -- as
 12 far as I recall -- any influence on Peter Lilley's ideas
 13 about the benefits card. We reacted to that idea.
 14 Q. I see. Could we turn over the page, go down to
 15 paragraph 8 please, and if we could just -- yes, thank
 16 you so much.
 17 If we go from the paragraph "Overall" which is the
 18 third one down. In brief POCL gets a tick; Girobank
 19 gets a tick; DSS gets a cross, because they're now
 20 definitely anti-card; Sarah Graham, who was the
 21 secretary to Frank Field, his right arm, as it were, she
 22 gets a cross; and then at the end:
 23 "We need to keep convincing David that the payment
 24 card is GOOD."
 25 Do you see that?

1 A. Yes.
 2 Q. The payment card -- and David Sibbick, of course, wasn't
 3 he at the Treasury? I might be wrong.
 4 A. I'm not certain but could be, could be.
 5 Q. Don't worry, we can find it. But the payment card, of
 6 course, had a particular remuneration to it, did it not?
 7 A. Yes, and this -- sorry, I have forgotten the date of
 8 this particular document because the timescales are,
 9 I think, important in relation to this set of concepts.
 10 You know, we were focused on the "requirements", quote,
 11 our customers had which was for the card, and so --
 12 Q. Right. Could I -- thank you very much, Mr Todd, I'm
 13 sorry, I'm trying to be brief because I have to finish
 14 by 4.15 because I have been told by my colleague that
 15 she is going to take ten minutes.
 16 A. Okay.
 17 Q. Could we go, please, to POL00028525, please. This is
 18 13 November 1998 and, by this time, you would agree,
 19 would you not -- and obviously this is not your
 20 document, but it refers to you -- by this time there was
 21 a massive deterioration in relations between your
 22 company, you, and others, in government and departments,
 23 correct?
 24 A. 13 November which year?
 25 Q. 1998.

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1 Q. This was all in response, wasn't it, to a letter that
 2 you sent on 9 November. For that we can go to
 3 BEIS0000421, please. We have just seen that the DTI and
 4 POCL are, as it were, seemingly in your camp,
 5 notwithstanding this letter of 9 November and if we
 6 could get it up, BEIS -- yes, thank you so much.
 7 Could we go to "ICL Proposals":
 8 "No progress was made on other aspects, but at the
 9 last moment ICL came forward ... with an immensely
 10 complex and comprehensive set of proposals for
 11 restructuring almost every element of the Horizon
 12 contractual basis."
 13 Then it refers to a diagrammatic illustration.
 14 A. Yes.
 15 Q. Over the page, please, the ministers' reactions, so no
 16 doubt some of this would have fed back to you, "wholly
 17 unacceptable", line 6:
 18 "They saw the attempt to revise almost every aspect
 19 of the contract to ICL's and Fujitsu's advantage moving
 20 almost all liability and responsibility for funding the
 21 project", et cetera, et cetera, et cetera.
 22 Would you read the next few lines to yourself,
 23 please, up to "There were strong voices" --
 24 A. Sorry, from where?
 25 Q. From "They saw the attempt".

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1 A. Thank you. As I have said earlier, we took a robust
 2 position trying to get a positive answer for POCL, DSS
 3 and ICL Pathway.
 4 Q. The point is, however, that the analysis that is
 5 referred to -- and this is from the Treasury -- that
 6 DTI/POCL has put to you, "completely ignores the
 7 transfer of risk that underlines ICL's proposals", and
 8 then I omit words:
 9 "... with scant regard to the level of performance,
 10 significant price increases, payment in advance,
 11 acceptance of the project before it is fully trialed in
 12 any systematic form."
 13 And then "redrawing the project in terms of the
 14 contractual basis", et cetera, et cetera, et cetera.
 15 I mean, obviously a clear split in government, but
 16 it seems that --
 17 A. We were -- sorry to interrupt you, but if I may, the
 18 challenge was finding a single principal person that
 19 could bring this together. We were constructive
 20 throughout the years we were engaged in these
 21 discussions. As I said earlier, working on the project,
 22 trying to find solutions but, until it was finally
 23 resolved in 1999, we had found great frustration through
 24 the inability to get a single unified, if I may call it,
 25 a government position.

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1 I will read it out aloud:
 2 "They saw the attempt to revise almost every aspect
 3 of the contract to ICL's and Fujitsu's advantage, moving
 4 almost all liability and responsibility for funding the
 5 project's financial deficit onto POCL, as deeply
 6 insensitive, and as demonstrating a refusal by ICL to
 7 accept responsibility for the serious delays to the
 8 project which have cost the public sector hundreds of
 9 millions of pounds in fraud and administrative savings
 10 forgone."
 11 A. I don't -- sorry to interrupt you, but I don't recall
 12 whose minutes these are but I think they are
 13 a misreflection of the positive engagement we were
 14 trying to make to put forward some ideas. We were open
 15 to discussion, but we had been -- from my
 16 recollections -- sort of blanked with being able to move
 17 forward, so we came forth with a set of propositions in
 18 order to try and instigate some engagement with us.
 19 That's my recollection.
 20 Q. I've got only one more document to deal with but, before
 21 we leave this, please, sir, could you go to page --
 22 I think it is page 4 and this is your contemporaneous
 23 view -- forgive me, page 3. It is paragraph 9. If we
 24 keep that page up on the screen but I will read
 25 paragraph 9 to you verbatim:

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1 "At both meetings Keith Todd expressed his
2 disappointment, frustration and sense of shock that
3 ministers still appeared to fundamentally misunderstand
4 ICL's position. ICL was in fact the aggrieved party,
5 not the guilty party, yet ministers appeared determined
6 to punish them. ICL had put forward a positive and
7 helpful set of interlocking proposals designed to enable
8 the project to move forward. The company had given up
9 its 'right' to make a profit on a ten-year programme of
10 work and was carrying -- and would continue to carry --
11 a considerable element of commercial risk. ICL had
12 explained its position extensively to officials but had
13 found it difficult to gain access to the relevant
14 ministers. ICL could only conclude that officials had
15 represented badly -- or indeed had misrepresented -- the
16 company's view to ministers", et cetera, et cetera.

17 Then I'm going to omit words:

18 "The future of the project now lay between ICL and
19 POCL, but at a meeting the previous evening, John
20 Roberts had made it clear that he had been told by
21 Government that he had no authority to negotiate further
22 with ICL. Ministers should now empower John Roberts to
23 negotiate a deal."

24 So John Roberts spoke your language?

25 A. I -- John Roberts was his own man. I think you may have
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1 to get up on screen, Mr Todd.

2 Thank you so much. Could you expand it to go to the
3 bottom half of the page, please.

4 Certainly there was a meeting in April 1999. This
5 is actually undated, but whether it took place before or
6 after your meeting with the Prime Minister, in
7 connection with Mr Naruto, I don't know, but, anyway,
8 three key points:

9 "ICL want unconditional agreement today ... if they
10 and Fujitsu are to avoid a provision in their accounts
11 ... unforeseen terms and conditions [if they come
12 up] ... the public sector would have no right to
13 withdraw."

14 That is basically making POCL a hostage to fortune,
15 isn't it?

16 A. Yes, and I think it misrepresents completely what would
17 have been said. I think it's completely inappropriate
18 to expect an unconditional agreement today, so --

19 Q. So the Prime Minister is being misled?

20 A. No, no. I think that the way this has been documented
21 is inaccurate from the conversation and I don't know who
22 was at this meeting, but if this is the meeting I was at
23 that was not the way it was put across.

24 Q. I see:

25 "ICL are not prepared to allow part of the
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1 already seen John Roberts. He was his own man. He
2 represented the Post Office. This project was important
3 to the future of the Post Office. Separately, it was
4 important to DSS for the benefits programme. There was
5 no cabal. I think I refer in my own statement to the
6 fact that it did feel there was more alignment with the
7 Post Office, so when, our surprise, in May 1999 the
8 suggestion was it was just the Post Office came out, we
9 concluded that we should accept the loss and move on and
10 work with the Post Office.

11 Q. But it seems from the last document that POCL -- and
12 I suppose the DTI as well -- were prepared to put up
13 with no live testing, transfer of risk, et cetera,
14 et cetera --

15 A. That is incorrect.

16 Q. Right, well, let's go to the final document, please,
17 that I wish to put to you, HMT and then I think it's --
18 oh, dear, I think it's 0000030 and if I'm wrong it could
19 even be 00000030.

20 A. I'm happy for you to ask me the question. The document
21 can come up.

22 Q. This is a HM Treasury document and it is an update for
23 the Prime Minister and I think if we could get it up on
24 screen, it is HMT and then I think it is 00000030 but
25 I shall read it out verbatim, while we're waiting for it
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1 contractual payment to be dependent on the system
2 performing satisfactorily when fully rolled out. This
3 means that the Post Office could pay for a system which
4 did not perform as necessary."

5 True or false?

6 A. It's clearly --

7 Q. Clearly false?

8 A. Yes, it's nonsense.

9 Q. Then, finally, this:

10 "ICL are not prepared to give evidence of ownership
11 of the assets involved, or to give perpetual licences
12 for all the IPR ..."

13 I presume that's the intellectual property:

14 "This means the Post Office could find that, when
15 the system is installed and operating, the IPR is owned
16 by a third party. Such a third party would be in
17 a strong position to drive a costly settlement with the
18 Post Office."

19 Who was the third party: Escher?

20 A. No, no, no. The context of this, I think, is
21 challenging. It sounds to me that this was part of
22 a discussion/negotiation about alternatives where --
23 when the revision of the contract was put in place and
24 what would happen at the end of the contract and the
25 ownership of the infrastructure, so I think it's --
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1 Q. But surely -- I mean, Escher were the --
 2 A. Subcontractor.
 3 Q. Yes, and they owned Riposte?
 4 A. Yes.
 5 Q. I mean, is that not a reference to Escher and Riposte?
 6 A. Does it say that?
 7 Q. "ICL are not prepared to give evidence of ownership of
 8 the assets involved, or to give perpetual licences for
 9 all the IPR."
 10 A. I don't know what it's referring to. I'm sorry, I can't
 11 help.
 12 Q. All right.
 13 Mr Todd, I represent five Core Participants. Three
 14 went to prison when they should not have done, one was
 15 wrongly prosecuted and another one was sued and
 16 bankrupted on a travesty. Do you have anything to say
 17 to them?
 18 A. That is appalling and I have immense sympathy and, as
 19 I have said today and in my statement, complete support
 20 for this process to get to the bottom of what actually
 21 happened, why that miscarriage of justice shouldn't have
 22 occurred.
 23 (Pause)
 24 **Questioned by MS PATRICK**
 25 **MS PATRICK:** Mr Todd, my name is Angela Patrick. I'm
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1 negotiations and other witnesses who are to come will
 2 look at acceptance and the detail. I want to look at
 3 what came after May 1999 for some of the relationships
 4 you had with government and POCL.
 5 I think you have confirmed today -- and I think it
 6 is raised by Mr Henry just now -- that even from early
 7 on in this process, ICL had an eye on future commercial
 8 opportunities or opportunities that might arise from
 9 Horizon; is that right?
 10 A. That's correct.
 11 Q. Those included opportunities working with POCL, didn't
 12 it?
 13 A. That's correct.
 14 Q. If the Inquiry heard evidence that POCL and ICL were
 15 already looking into partnership opportunities and
 16 government tenders by the spring of 2000, would that fit
 17 with your recollection?
 18 A. As a broad statement, yes, and -- or the strategic
 19 reason the infrastructure was being put in place, which
 20 was to provide a longevity to the Post Office
 21 infrastructure within the UK.
 22 Q. Okay. Can we just be absolutely clear -- Frankie has
 23 this reference -- it's a document POL00021470, and we're
 24 going to look at page 2, halfway down the page. I'm not
 25 pausing on the first page because this isn't a document
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1 instructed, together with Mr Tim Moloney KC on behalf of
 2 64 subpostmasters who were wrongly convicted and we're
 3 instructed by Hudgells Solicitors.
 4 I have a few questions. You have heard Mr Henry say
 5 that I gave my hand away and said I would be
 6 ten minutes. I think he has actually left me seven, so
 7 I'm going to try and be as quick as I possibly can.
 8 A. And I will be succinct.
 9 Q. But if there is anything you don't understand -- I'm
 10 Glaswegian -- if I'm going too fast just tell me to stop
 11 and we will go a bit slower.
 12 So Counsel to the Inquiry, Mr Beer, has raised the
 13 issue of the float and its significance. I don't want
 14 to go back to that but I want to pick up something you
 15 said in your reply about the need for a strong
 16 performance. I'm going to read it back. You said:
 17 "With strong performance through 2020, float was
 18 still achievable a significant valuation above that
 19 which Fujitsu had invested."
 20 You would stand by that, a strong performance --
 21 A. That's what I said earlier.
 22 Q. -- was important, wasn't it?
 23 A. Yes.
 24 Q. Thank you. Others have looked at the period before
 25 May 1999 and how the relationships were affected by the
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1 I would expect you to have seen. It's the Post Office
 2 board minutes from April 2000, and if we can highlight
 3 point (vi) there, which begins "Horizon", underlined:
 4 "Horizon Roll-out continued with over 4,500 offices
 5 installed with the equipment. The Post Office was
 6 involved with ICL in a tender to provide electronic
 7 government services -- me.gov -- in which the automated
 8 Post Office network would play a leading role."
 9 So not your minutes, Mr Todd, but that would fit
 10 with your recollection that you were starting to look
 11 into new commercial opportunities arising off the back
 12 of Horizon in spring 2000?
 13 A. Yes, that's correct. I don't specifically remember
 14 me.gov but --
 15 Q. I don't think we need to go to specifics, thank you.
 16 So if we can move on, whatever had happened in 1998
 17 and 1999, ICL had not ruled out a future government
 18 business opportunity being a possibility, had they?
 19 A. No. Throughout the history of the company, the
 20 government had been a big customer and we would have
 21 been looking to continue that relationship and expand
 22 that relation in the years subsequently.
 23 Q. Indeed, if we can -- I'm going to look at a couple of
 24 examples. There are lots in the papers that are
 25 provided to the Inquiry but can we look at two. If we
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1 can look at BEIS0000263, please. I want to look at
 2 page 2, from about a third of the way down the page.
 3 This is not a document I would expect you to have seen,
 4 Mr Todd, it's a document which is essentially a briefing
 5 for a meeting between yourself, Mr Akikusa and the
 6 Secretary of State for the Department of Trade and
 7 Industry, which took place on 3 November 1999, so
 8 3 November 1999 just for chronology, going back to the
 9 really helpful chronology, that's after Acceptance but
 10 before rollout.
 11 A. Before rollout, thank you.
 12 Q. We see there in the bullets, the briefing points that
 13 are being given for that meeting. First:
 14 "Acknowledge that the Post Office has formally
 15 accepted ICL's Horizon automation system. Emphasise the
 16 importance to the commercial success of the Post Office
 17 attached to ICL and the Post Office achieving roll-out
 18 of the system by the target date of March 2001. Ask for
 19 Mr Akikusa's perspective on latest progress."
 20 Then we go on and there's a thank you for the
 21 engagement with Newton Aycliffe, again we have heard of
 22 that today, and then we have gone on:
 23 "Ask Fujitsu about their plans for developing their
 24 e-commerce capability and the impact of this in the UK."
 25 Now, despite acceptance having occurred there was

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1 at ICL, Mr Todd?
 2 A. I recall the project name and I think it was to do with
 3 the DTI infrastructure.
 4 Q. Okay. As we go on:
 5 "Keith Todd should be left with no doubts about the
 6 seriousness DTI attaches to ICL delivering on these.
 7 "We know Horizon has been difficult for all parties.
 8 (It has damaged relations with Fujitsu, the largest
 9 single Japanese inward investor to the UK).
 10 "DTI (and especially CII) as the 'focus' for the
 11 information age needs to be (and be seen as) an exemplar
 12 in its use of technology. There are alarming signs that
 13 the ELGAR project is in some continuing difficulty."
 14 Now, it's not a document you would have seen.
 15 A. No.
 16 Q. But here you were, in November, on behalf of ICL and
 17 Fujitsu, meeting with either officials or ministers and
 18 continuing to try to cultivate a continuing relationship
 19 with government; is that fair?
 20 A. With all my customers, not just government.
 21 Q. At that stage, again after acceptance and after the
 22 negotiations in 1998 to 1999, from DTI's perspective it
 23 appears the relationship with ICL is one that is going
 24 to continue; is that fair? DTI were still willing to
 25 have meetings with you and maintaining that

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1 here a continuing emphasis of the importance of the
 2 project staying on track, wasn't there?
 3 A. Yes, there was. It was in all parties' interests that
 4 the project was successful.
 5 Q. In fact, was it really crucial for ICL and for POCL that
 6 Horizon actually worked in practice?
 7 A. Yes.
 8 Q. And perhaps that it was not seen not to work?
 9 A. I'm not quite sure what you mean by that, but there was
 10 certainly in both organisations' interest, as well as
 11 the national interest, as well as the Government, that
 12 the project was successful and what happened to your
 13 clients is, as I have said, tragic and inappropriate.
 14 Q. Okay. Can we look at another document. It's another
 15 example from November 1999. It is BEIS0000260 please.
 16 Again, not a document you would have seen, Mr Todd.
 17 It's a briefing, which unfortunately we don't know if
 18 it's a briefing for a meeting with an official, or
 19 a minister, but it's a briefing prepared within the DTI
 20 and it is for a meeting with you on 8 November 1999 and
 21 I want us to look at -- if it makes it any easier to
 22 read -- bullet point 1 and it reads:
 23 "ICL's performance in major public sector IT
 24 projects - especially ELGAR and Horizon."
 25 Was ELGAR another project that you were involved in

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1 relationship.
 2 A. Yes, that is my recollection because we conducted
 3 ourselves professionally and dealt with issues to the
 4 best of our abilities, as and when they occurred.
 5 Projects, as we discussed earlier, do have challenges
 6 and issues. That is no reason for what happened to your
 7 clients.
 8 Q. Indeed, but at this stage, from that minute it seems at
 9 least fair -- and it was "Keith Todd should be left in
 10 no doubt about the seriousness DTI attaches to ICL
 11 delivering..." It was clear that those projects had to
 12 work, didn't they?
 13 A. Yes.
 14 Q. And then if we go on again -- to come back to the
 15 question I asked earlier, would any perceived failure of
 16 Horizon have impacted negatively on that commercial
 17 relationship with government?
 18 A. The failure of any major national project -- and I will
 19 just be very brief -- if you take the lottery we were
 20 involved in, it was a great success. If that had been
 21 a failure, that would have damaged the reputation. If
 22 Horizon had been a massive failure, it would damage the
 23 reputation. What happened to your clients is --
 24 Q. Let's not look at what happened next.
 25 In 1999 and 2000, if it became known that there were

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1 serious problems with Horizon, or if it was failing, 1
 2 that would have damaged your continuing commercial 2
 3 relationship with government; is that fair? 3
 4 A. If that was the case. 4
 5 **MS PATRICK:** Thank you. 5
 6 A. Yes. 6
 7 **SIR WYN WILLIAMS:** Well, I think, Ms Patrick, you have 7
 8 actually had 11 minutes now, so I think unless there's 8
 9 some truly burning point that must be made, I think 9
 10 that's it for this afternoon. 10
 11 **MS PATRICK:** Sir, I'm very grateful for your indulgence and 11
 12 I'm very happy to shut my laptop. Thank you very much. 12
 13 **SIR WYN WILLIAMS:** Fine, jolly good. 13
 14 At the beginning -- which now I have no doubt for 14
 15 you, Mr Todd, seems a long time ago -- Mr Beer thanked 15
 16 you for making a witness statement and coming to give 16
 17 evidence and I repeat those thanks on behalf of the 17
 18 Inquiry. 18
 19 A. Thank you, sir. 19
 20 **MR BEER:** Thank you very much, sir, and that brings today's 20
 21 business to an end. We're back at 10.00 am tomorrow 21
 22 with Tony Oppenheim please. 22
 23 **SIR WYN WILLIAMS:** Yes, fine. Thank you all. 23
 24 **MR BEER:** Thank you. 24
 25 (4.35 pm) 25

(The Inquiry adjourned until 10.00 am on Wednesday,
 26 October 2022)

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