

Post Office Horizon IT Inquiry

On behalf of Core Participants:

Nichola Arch, Lee Castleton, Tracy Felstead, Seema Misra, and Janet Skinner

Opening Statement

*NOTE TO THE CHAIR & ALL PARTICIPANTS – THESE WRITTEN SUBMISSIONS
MAY BE AMPLIFIED & DEVELOPED ORALLY*

Introduction

1. This inquiry must examine a shameful epoch in British life, in which harrowing injustice was regularly meted out to decent, honourable, and innocent people by POL, facilitated by the Criminal Courts. A computer system, Horizon, portrayed as infallible, was known by its creator, Fujitsu, and its ultimate procurer, POL to be flawed, far from perfect and prone to unpredictable, even (at times) undetectable error. Rather than acknowledging such unpalatable and expensive facts, both Fujitsu and POL, defended its integrity, not merely sacrificing their own in the process, but wrecking the lives of hundreds of SPMs and counter staff, all over the UK. These individuals, the isolated, confused, and broken, became the victims of a potent lie – a heresy, if you like, dependent upon a wilfully blind, closed and secretive corporate mind – that Horizon (in all its iterations) was ‘robust’, ‘resilient’ and always ‘right.’
2. The Criminal Justice System was enlisted to buttress this deceit. Prosecuting the victims of the lie, rather than investigating the root cause of their complaint,

became the default position adopted by POL to recover imaginary losses, and to intimidate those critical of Horizon into silence. POL acted with vengeful, arrogant disdain towards its blameless staff. In doing so, it reduced the victims of Horizon to the status of serfdom, before criminalising them, whenever it could. This shameful policy lay undetected, even unquestioned, for years. How could so many trustworthy people, loyal and dedicated servants of their community, all of them vetted, and so many of truly exceptional character, turn base after years and years of unquestionable conduct? It mattered not. No-one was looking out for them. The policy of prosecution defied long established norms, Laws, Codes of Practice and Conduct to which all prosecutors are subject, because it existed to protect the corporate structure, reputation, and commercial interests of both POL, and Fujitsu at the expense of hundreds of tortured lives, shattered reputations, whilst undermining the Rule of Law.

3. The default position, legally enshrined and exploited by POL and Fujitsu, meant the criminal courts gave little or no protection to those victims who were fortunate to be acquitted, and to those who pleaded guilty, despite their innocence, or were wrongly convicted, the penalties suffered were harsh. Judges, some no doubt influenced by the reputation of the POL, often denied those in the dock the remedy of a stay, based on flagrant, incontrovertible non-disclosure, which was irremediable by the trial process.
4. POL, having suppressed a long litany of errors, failures, and faults within Horizon, whether by deliberate deceit, or grotesque incompetence, had thereby suborned the Crown Court into doing its bidding, and act as its enforcer to crush criticism of Horizon, whether by wrongly entered pleas, or falsely obtained convictions. For those who came before it, the legal system did not uphold their rights and secure their deliverance as grossly wronged victims. Instead, it seems to have been deployed to suppress any dissenting voices, oppressing the innocent to an almost unprecedented degree, in what may well

amount to the most grave, protracted, and monstrous example of a continuing miscarriage of justice, not seen since the 18th or 19th century. It is no exaggeration to state that in a hundred years' time, legal historians will focus on this period injustice, in which the inception of a lie was allowed to propagate, infest, and ensnare the criminal justice system to such devastating effect.

5. These iniquitous miscarriages of justice were inflicted by an agent of the state, abusing its power, privileges, and reputation in both the civil and criminal courts. We have all read, with amazement and disbelief, of show trials which have taken place in other jurisdictions, historically, and in the more recent past, but one of the myths we live by in our society, is that British Justice is not for sale, and that all are equal before the Law. This scandal has shattered that once glad, confident belief. It is because of this, that the grave responsibility imposed upon this Inquiry is both obvious and stark: it embodies the conscience of the nation, and its imperative duty is to find the truth. Public Inquiries have come and gone, and some have been regrettable studies in futility. Under your Chairmanship, Sir, whatever obstacles, duplicity, and studied denials you encounter, this Public Inquiry must not fail. This Inquiry must expose, without fear or favour, how a once proud institution, renowned for its dependability, acted with such callous mendacity, and cruelty towards its victims - ultimately, being allowed to do so through the acquiescence of Government. Your Inquiry must focus on the root causes of how a fallible computer network was imposed upon POL, and the cavalier, haphazard way in which that plainly defective computer network was thereafter foisted on POL's agents and employees. The dreadful, even tragic consequences of such unthinking expediency were no doubt never intended, but from an early stage (we suggest) the dangers were there for all to see – except for those who were needlessly put in jeopardy. Fujitsu and POL were aware, and maybe Government, too. Unforgivably,

however, those who were most at risk, those who depended on the system, for their livelihoods, homes, and reputations were kept in the dark.

6. Unintended consequences, become intentional, going beyond the negligent infliction of harm, when an institution places its reputation, its present and future commercial prospects above the truth, and the rights of the individual. In this, incremental misjudgements, mistakes, and misstatements, harden into an orthodoxy, which is almost totalitarian in its contempt for the individual, the wronged individual who is placed at odds with the conventional wisdom, or (as a hapless victim of circumstance) comes into conflict with the corporate creed. This scandal began, and has its origins in a conundrum that still remains: is it possible to make Post Offices commercially viable even though technology is making their traditional services increasingly redundant? Government required, even demanded, profits and modernity, but Government, in an act of expediency, had foisted Horizon on POL. POL, in turn, could not allow Horizon to fail. Almost a siege mentality, it seems, began to develop, with those SPMs questioning its efficacy or accuracy, becoming the problem, either to be ignored or (if not compliant) extirpated, rather than taking their criticisms on board. Had their complaints been individually examined, with POL conducting an open, exacting, and unbiased investigation to resolve them (in conjunction with Fujitsu) then this scandal may never have happened. Such an approach requires an almost unfashionable adherence to accountability, critical scrutiny of one's corporate culture, and the courage to follow a principled path, whatever the cost, to ensure that an optimal solution can be found, or failing that resolution by other means. Regrettably, these qualities were in short supply, it seems at POL, Fujitsu, and in Government.
7. With the benefit of hindsight, Horizon, was doomed with an unacceptable level of structural vulnerability – although largely workable, and largely reliable,

the anomalies and errors revealed in both the civil and criminal appellate litigation, together with the high-handed, imperious bureaucracy that imposed it, and regarded it as infallible, created a climate in which injustice and oppression flourished, encompassing these core participants in an unending human tragedy.

8. From the 1990s to date, in spite of this, powerful people may have been tempted to pretend this wider “modernity” problem could be solved by an all-powerful computer system. We can see how this would allow the problem to be shunted along:
 - a. The Government passed the problem to Fujitsu – solve this by making an all-powerful computer system to make POL profitable;
 - b. Fujitsu passed it to POL – we’ve made an all-powerful computer system, now you just need to implement it to make POL profitable;
 - c. POL passed it to the SPMs – we’ve given you an all-powerful computer system, now you need to operate it properly to make POL profitable
9. The problem, of course, was that Horizon was not an omnipotent system, but a vast, complex, and much compromised network, that evolved ad hoc, to be re-purposed, again and again, during an almost unending series of iterations concerning its specifications during the procurement process with Government. Government, therefore, was or should have been on notice, that Horizon was not robust, nor reliable, nor secure. When it offloaded it onto POL, averting litigation, it knew it had dodged a bullet. POL, once drawn into its line of fire, used its staff, and SPMs as the proverbial human shield.
10. For the first time in the history of the Post Office, because of Horizon, SPMs had lost the right to control the reconciliation, or balancing out of their own accounts. This unprecedented development, taken with SPMs being subject to a draconian contract of service, meant that the unfortunate victims, the Core

Participants in this inquiry, were left liable for all and any discrepancies, Horizon generated, whilst being denied the means to investigate shortfalls, or obtain back-office evidence to challenge them. Once suspended or dismissed, their predicament became intolerable: further deprived of the means to defend themselves, contractually, the Criminal Justice System was then marshalled against them. Under the CPIA 1996, anything that might undermine the prosecution case, or might assist the defence, ought to have been disclosed to those facing the might of the state, which had been invoked in POL's name. This fundamental legal right, the bedrock of a fair trial, was perversely misinterpreted, suppressed, and denied, hundreds of times.

11. It might be said that Horizon's vulnerabilities were only obvious in retrospect: another craven stratagem, we suggest, that is deserving of contempt. Such denials can be exploded by the shameful history of these criminal prosecutions, in which Fujitsu acted in accordance with its own reputational and commercial interests, and POL, with or without Fujitsu's assistance, monstrously abused its power. It is submitted that the chronology of misinformation, when contrasted with the contemporaneous documentary evidence, should leave this Inquiry in no doubt where the fault lies.
12. Once Horizon was rolled out, whenever Post Office accounts went awry, it was the SPM's problem, and they paid for it with their lives. The fiction, the lie, that put our CPs in prison, subjected them bankruptcy, penury, and suffering which continues to this day was this: the Post Office is a national institution you can trust, not simply because of its illustrious history, but because it has a reliable management, an able board, intent on embracing modernity with dependable, fully functional IT systems to better serve the public.
13. Anyone who confidently dared question this illusion, when confronted by the reality on their rogue terminal screen, or pleaded in despondent confusion because they could not balance their books, perhaps having signed them off in

despair, was portrayed as a “bad apple,” or a ‘lone wolf’ preying on POL. The reality was precisely the opposite. Even after repeated reading, POL’s wilful misunderstanding of its duty of disclosure, and deliberate misconduct in not merely abdicating its responsibilities, but perverting them, has the capacity to shock. The determination to maintain the lie in the face of mounting evidence to the contrary, to suppress material that would have stayed each prosecution it mounted at the outset, assuming it had even decided to prosecute at all, reveals a corporate culture that had long lost its way. A culture, going way beyond misjudgement, into malicious deceit, so far as to defy belief. The heart-breaking events that inevitably followed, involving the wilful infliction of pain on innocent scapegoats, so vividly told in the impact statements, reveals a level of corruption, and cowardice in a public institution that must never be allowed to be repeated.

14. The lie that Horizon was infallible, was potentiated by being integral to an even more fundamental fiction, that the commercial viability of POL could be assured by Horizon, because Horizon brought with it “modernity”, capacity, and resilience to meet any commercial or entrepreneurial endeavour it was presented with. In this way, POL could expand upon existing markets. The plight of these core participants revealed that the converse was true – any dispute as to its reliability was perceived as a potential threat to POL’s reputation, profitability, and future. Any vulnerabilities exposed in Horizon gave rise to an almost paranoid fear that theft would become rife at branch level, and endemic fraud would burgeon with impunity. Horizon would then become POL’s biggest liability. Not only would senior management find it impossible to report positive commercial prospects, but they would be required to disclose that POL’s IT systems were, although largely reliable, dysfunctional to an unacceptable degree, and quite unsuitable as proof of theft or fraud in any criminal, or even civil court. So it was, and there is evidence to suggest this,

that the fiction that Horizon was infallible adopted an almost totemic article of faith within POL, and so to question it was not merely taboo, but a sign of active disloyalty.

15. This may explain why POL appears to have had little interest in challenging Fujitsu over problems with Horizon. It seems to have been more important to work with Fujitsu to keep that fictional edifice, which became the lie, intact. This alliance of symbiotic self-interest was evident in criminal prosecutions in which Fujitsu witnesses were called by POL as “independent experts” to advance evidence to prop up Horizon that was patently false. As an adjunct to the criminal convictions, there was a calculated strategy of using the County Court, or even the High Court (such as the victory over Lee Castleton) to extract the maximum amount of cash POL could from SPMs. This was, it seems, a ‘hardball’ campaign of attack as the best form of defence – without care or consideration for the loyal record of its staff – with an investigative branch determined to secure confessions wherever possible, badgering suspects of hitherto unblemished character in interview, and conspicuously failing to investigate any concerns in connection with Horizon that had been raised.
16. It is not an excuse, and far from a justification, but in the early days of Horizon this strategy may have been founded on poor communications within POL, and poor oversight of its prosecution arm, by its legal department (including Corporate Counsel) and management at the highest level. As time went on, with more reason for caution, ‘wishful thinking’, and taking the path of least resistance, may have contributed to injustices, but eventually adversarial astigmatism, akin to wilful blindness of Horizon’s errors, must have become the animating spirit – an all pervading culture of secrecy, and deceit. As for Fujitsu, as the evidence of Horizon’s faults mounted through the Helpline, Fujitsu’s leaders cannot have been ignorant of the scale of the problem. And if

they knew, POL leaders ought to have known too. And if POL leaders should have known, Government leaders should have known.

17. This, we suggest, will be one of the most crucial aspects of the Inquiry – who knew what when? Who conned whom? Remote access, covert or secret remote access at that, to Horizon, without SPMs knowledge is a matter that must be explored to a certain conclusion. Fujitsu, to escape penalties, may have secreted a proportion of system errors and remedied them without disclosing them to POL – leaving SPMs at the mercy of glitches that had already caused chaos, only to disappear, leaving no history. Fujitsu had a powerful financial incentive to act in that way, and evidence suggests they did so repeatedly. POL, conversely, was reluctant to investigate on behalf of SPMs, and had a powerful financial disincentive to mount additional laborious inquiries into coding errors on their behalf. The contract with Fujitsu, may have engendered a mindset of unthinking indifference by POL towards the plight of these Core Participants, and a lack of candour by Fujitsu, with POL's tacit encouragement if not active connivance.
18. Self-interest, as opposed to public service also plays its part. It is a matter of common sense to point out that leaders in Fujitsu, POL and Government were personally invested in solving the “modernity” problem. Careers, political and corporate, rested on it and commercial bonuses depended upon it. And the next best thing to *solving a problem* is *appearing to solve it*. As the all-powerful computer system *inevitably* failed to solve a multi-faceted, multi-systemic, social and economic problem (indeed, it didn't even succeed as a good computer programme) is it really plausible that none of these people - who were personally invested in either overseeing the problem, or solving the problem itself - were aware of what was going wrong?
19. What chain of internal communications, within POL, and as between Fujitsu and POL, allowed error (or worse) to cascade so freely to the detriment of those

who were prosecuted? How did it come about that POL investigators consistently informed SPMs (even their solicitors) that they were the only one experiencing problems with Horizon? Why were so many SPMs told this lie, and how was it allowed to harden into 'truth'? After prosecutions were quietly stopped at the end of 2013, why did it take another 7 years for the problems with all those prosecutions to be revealed? Why did POL expend so much public money and sheer effort trying to prevent and frustrate those who were asking questions or seeking justice, from getting the truth? Closing, even barricading, lines of inquiry, in both civil and criminal appellate litigation? All of this echoing, and perhaps designed to suppress, the indefensible decisions taken throughout these prosecutions, such as structural problems in Horizon being miscategorised as non-disclosable sensitive PII. It seems that those required to discharge their onerous responsibilities under the CPIA were intent on preventing 'band wagoning' by defence solicitors, defending palpably dishonest SPMs and counter staff. The idea that any of these defendants, who became POL's innocent victims, had not merely a viable, but a just defence was unthinkable.

20. The questions we pose here point to the possibility that this human tragedy was caused by more than bad management, more than poor internal communications, more than a failure of whistleblowing procedures, or even poor governance at the highest level. We ask, no more than rhetorically, whether the CPs we represent have paid the price for the exalted and the powerful wilfully ignoring the warning signs, and then deliberately covering up anything that would undermine the seamless narrative of the Post Office's move into modernity. It seems entirely possible that the precious lives of those we are honoured to represent, were set as nought in comparison with this desire to appease Government, burnish reputations, and foster the delusion that POL was viable. It seems, we submit, that those we represent were

deliberately sacrificed in the name of saving POL, saving the careers, reputations and even (distasteful as it may be) the bonuses of those at the top.

21. Such an allegation conjures a horrible picture, which is hideous to contemplate.

Faith in human nature gives rise to a certain incredulity, questioning the validity of such an accusation. The mosaic begins, as it always must, with little pieces, each shard or fragment representing one broken piece of humanity, but inevitably, with each incremental addition a compelling image, an indelible picture of injustice is clearly discernible. That resulting image, made up of hundreds of shattered lives, depicts, as we will suggest, a conspiracy to pervert the course of justice, and the CPs we represent want that question to be directly addressed and answered by this Inquiry.

22. We therefore request that the Inquiry, consistent with its august responsibility, directly address the following questions, and root out the answers to them:

- a. Did officials within the Post Office, Fujitsu and/or Government deliberately hide the unreliability of Horizon “evidence” from public scrutiny?
- b. If so, who within Post Office, Fujitsu and/or Government were responsible for suppressing, or failing to disclose the unreliability of Horizon “evidence” from public scrutiny, including the judicial process?
- c. Based upon (a) and (b) above, which we submit to be most grave and aggravating features, when will the Horizon victims receive full and fair compensation? A candid acknowledgment of the wicked misconduct they were subjected to, and from which they have suffered? Misconduct so destructive, so undermining of how a just and civil society should operate, that it is hard to imagine.

23. These submissions will approach these questions in greater detail in relation to Phases 2 to 7 of the Inquiry, and the havoc wrought upon the lives of the CPs we represent

Phases 2 and 6 – Nichola Arch and Tracy Felstead

Phase 2 - Horizon IT System: procurement, design, pilot, roll out and modification

Phase 6 - Governance: monitoring of Horizon, contractual arrangements, internal and external audit, technical competence, stakeholder engagement, oversight and whistleblowing

24. We treat these Phases together for the purpose of this exercise because we suggest that problems with Governance were implanted, or “baked in,” during procurement, design, and rollout. As is already clear from the 1999 Trade and Industry Select Committee Report, the initial Horizon project had been misconceived from its inception in 1996, and the re-configuration in 1999 was built on very problematic foundations. It was unlikely that those foundations could ever be satisfactorily re-engineered to support a stable structure, and it now seems clear that they were not.
25. On 24 May 1999 the Government announced the new plan to solve the Post Office “modernisation” conundrum. Under a new bilateral agreement between ICL Pathway and the Post Office, Horizon would be rolled out “by 2001”¹.
26. This new ambitious timetable must be set against the history of three years of technical failures and delay since 1996. Furthermore, by the time the Trade & Industry Select Committee reported in September 1999, the pattern was already starting again:

Post Office told us that the first key milestone, of acceptance of the system had not been achieved by the due date of 16 August [1999] and that it was now hoped to achieve it by the end of September, with formal

¹ DWP00000026

acceptance due by 15 November [1999]. While those concerned expressed general confidence that the roll-out of automation would proceed smoothly, and that the apparently ambitious target of converting 300 post offices a week in 2000 was achievable, the failure to meet the first milestone cannot but cause concern in a project with such a chequered history.²

27. It is important to note that the deal hammered out in 1999 was an alternative to litigation, which would have involved all three of the parties to the 1996 agreement. The glee felt at the Benefits Agency when they managed to ease out of the new deal, and thereby the Horizon project, is manifest from their internal documents,³ and small wonder. They had, as alluded to earlier, dodged a bullet. ICL Pathway (now owned by Fujitsu) had been seeking £180million, which they claimed was frittered away on the aborted payment swipecard scheme, and it appears that the Government expected Post Office to absorb those losses as part of the new bilateral deal.⁴

28. When the delayed project acceptance did take place on 24 September 1999, a few days after the Select Committee reported, this is what the Pathway Managing Director [Bennett] said about it in his monthly progress report:

Acceptance was achieved on 24 September and the resultant invoice for £68m delivered on 27 September for payment within 30 days.

... we would still get the full £90m in December if we were to achieve 1800 [branches in the rollout] ...

[However] The Acceptance Resolution Timetable contains some 300 activities and events that are pacing items... Amongst these are performance measures relating to Acceptance Incident 298 (System

² <https://publications.parliament.uk/pa/cm199899/cmselect/cmtrdind/530/53011.htm>

³ See for example p6 and p10 of DWP00000018

⁴ See p2 of DWP00000359

Stability), 376 (Accounting Integrity) and 408 (Help Desk) which will be monitored during October and the first half of November and reviewed to see if the criteria have been achieved on 24 November.⁵

29. We know from ICL Board minutes that the £180m wasted on the payment swipecard project had made a serious hole in their accounts, so they needed to get those invoices submitted. But perhaps more importantly, the technical concerns which were to be monitored included 376 “Accounting integrity” and 408 “helpdesk”. These are the very problems which lurked beneath Post Office Horizon prosecutions from the rollout in 2000 through to 2014, when the prosecutions were brought to a halt.

30. It is therefore important to track what happened to those concerns, and on an initial view it appears that they may have been allowed to drift. Correspondence suggests that in the early months of 2000 the Post Office decided *not* to exercise their contractual right to suspend the rollout as a result of the ongoing concerns about discrepancies in accounts and the helpdesk.⁶ This is also reflected in the minutes of the Post Office’s January Board meeting, where those same concerns were mentioned, but with the suggestion that they would *not* prevent rollout.⁷ By the March Board there was no mention of these issues, and by April the first drafts of a new Agreement were being developed.

31. This new Agreement was intended to usher in the next phase of the deal which had been hammered out in 1999. Instead of the payment swipecard system, benefits would be paid into bank accounts, but the Post Office’s technology would enable relationships with banks, and the plan was to allow customers to continue to collect their benefits in cash should they choose to do so.

⁵ FUJ00058186

⁶ POL00043680

⁷ POL00000336

32. This new Agreement was the inducement to prevent litigation on the old Agreement, and the fact that the parties were moving swiftly towards it despite the technical concerns begs a question: were both parties unduly motivated to paper over the technical problems with Horizon for reasons of commercial and political expediency?
33. What we do know is that during those early months of 2000, Horizon was being rolled out into thousands of branches, and whatever happened regarding the technical concerns, by Autumn 2000 it was installed in Chalford Hill. This was the branch managed by Nichola Arch.
34. Mrs Arch has provided Human Impact evidence.⁸ In it she explains how she was “chuffed” that her branch would be an early adopter.⁹ However, transactions started doubling up right from the start, and within 6 weeks she was being interviewed by a Post Office auditor who told her that he knew she had stolen the money, and she should stop lying.¹⁰ She was sacked, she lost her business and her home, and the following year she was prosecuted. She felt shunned in her community, and the wedding she had been planning turned into something she could not face. She married her husband with one witness, and at one stage the two of them planned a joint suicide. Like so many others, her life was almost destroyed, her future blighted. Unusually, she was acquitted by the jury at her trial, but the question remains as to how she ever came to be prosecuted at all?
35. Given the fact that Horizon had only just been rolled out, and a few months earlier the Post Office was considering whether to halt the rollout because of concerns over accounting integrity, why did its auditors and prosecutors assume that Nichola Arch was a thief? They were dealing with a woman who

⁸ WITN01220100

⁹ Para 7

¹⁰ Para 18

had worked for the Post Office for seven years with not a stain on her record. Despite this, not only did they assume she was at fault rather than the brand new IT system, they also told Mrs Arch that she was “the only one” experiencing difficulties with it.¹¹ Where did this assertion come from? Like so many others, Mrs Arch had called the Helpdesk throughout the weeks she was struggling with Horizon. Why were those records not made available, especially in light of the fact that concerns about the Helpdesk was another issue which had potentially prevented the rollout?

36. We know that Mrs Arch was not the only one of course, and indeed we know that within a few short months Tracy Felstead was suffering the same appalling injustice. She was accused of stealing between December 2000 and February 2001. Rollout apparently carried on apace throughout 2000, and that was Ms Felstead’s first year in her job at a Crown Office in South London. She was a school leaver, the baby of the team, and when discrepancies first appeared on her till everyone was friendly and easy going about it. That all changed once the Post Office investigators got involved, and during her interview she was asked “can you demonstrate how you did not steal the money”.¹² This was a clear reversal of the burden of proof, something that remained a feature of Post Office prosecutions for the next fourteen years, and only identified for what it was in the *Hamilton* judgement, twenty years later.

37. Ms Felstead was prosecuted and convicted after a trial, in which the disclosure regime, that ought to have prevented her being prosecuted in the first place, utterly failed. She was sent to HMP Holloway. Her entire adult life has, from the age of 19 to 39 years old, been cast in shadow by these deplorable, unforgivable events. The toll on her mental and physical health has been devastating, not only because of the horrors she saw in prison, but because she

¹¹ WITN01220102 p2

¹² WITN03190100 para 7

began to exist without hope that this injustice would ever be reversed. Those doubts, that despair and sense of hopelessness persists even to this day. It is a corrosive wound that will never heal. Years cast in shadow, she described exclusion from the mediation process (which we submit was conducted in bad faith by POL) to Nick Wallis as the 'like being stabbed...again and they've twisted the knife.' Because she is a woman of such integrity, she expected the same of others, and 'messed up'. Years before, in something which is almost reminiscent of Arthur Miller's 'The Crucible,' she was asked to recant and admit her guilt at her sentencing hearing, but she refused to apologise for something she had not done when the sentencing judge demanded it of her, which no doubt (wrongly) aggravated her sentence. Likewise, her family had hoped to prevent an immediate sentence of imprisonment by giving the Post Office the money she was alleged to have stolen. This made her distraught, so she insisted on paying them back. The Post Office still have that money to this day, and have only now, on 29 September 2022, agreed to pay it back with interest. Injustice, and inevitable injury, has been exacerbated by insulting indifference. The grotesque delay, post the quashing of her conviction, is inexcusable.

38. There is a very important point to note from Ms Felstead's case: an expert witness, Michael Turner, was instructed on behalf of the defence. It is no longer clear why he did not give evidence at her trial, but on 11 September 2020 he provided an account of his involvement, some of which appears to come from memory and some from his notes. He states that he was unable to provide a Report because he did not receive disclosure of the information he needed. He recalls a meeting of some 6 to 10 people, which included people from Fujitsu and the Post Office, and that representatives from Fujitsu quoted a figure in the region of £20,000 as the cost for providing the disclosure he had requested, which he thought was excessive and punitive. He recalls a dispute about who

would bear that cost: Post Office, Fujitsu, the Court or the defence. That dispute was unresolved at the meeting, but he subsequently discovered that Ms Felstead's trial proceeded regardless.¹³ This, we submit, raises another vitally important question, as to how defence expert evidence was 'spiked' or stultified by non-disclosure, deliberate obstruction, and financial considerations, which is also a part of the injustice done to Mrs Misra.

39. Proper disclosure, available at the time of the prosecutions against Mrs Arch and Ms Felstead, which would have resulted in their not being charged by any objective prosecutor, was not disclosed. The relevant findings of fact from the Horizon Issues Trial are illuminating and deeply disturbing.

40. Richard Roll, a whistleblower, worked for Fujitsu from 2000 to 2004, so he spoke to the period of time when Mrs Arch and Ms Felstead were held liable for Horizon shortfalls. Fraser J cited his evidence as follows:

"errors made by SPMs were relatively easy to pick up at 1st and 2nd line support level [he was at 3rd line support]; that most errors he dealt with were coding errors or data corruption; that issues were identified that required software "fixes" to be written by Development; and – importantly in my judgment – that the type of issues that were routinely encountered at SCC could and did cause financial discrepancies to branch accounts.... 'If we were unable to find the cause of the discrepancy then this was reported up the chain and it was assumed that the postmaster was to blame.' He said that even if software fixes were developed the problem would sometimes reappear several weeks later... remote access to branch systems was possible; the ability was extensive; that this was done with the SPM being aware; that data and

¹³ This account will be provided to the Inquiry. Unfortunately, the email address which he used when communicating in 2020 no longer elicits any response, so we have not yet been able to make renewed contact with Michael J L Turner.

transactions information could be changed by Fujitsu; and that sometimes SSC would log into a branch system whilst it was switched on but not in use... 'the issues with coding in the Horizon system were extensive [and they] impacted on transaction data and caused financial discrepancies on the Horizon system at the Branch level. It was those issues that I, and other colleagues at Fujitsu, were routinely working on daily...'"¹⁴ Fraser J accepted this evidence, and said that it was supported by the contemporaneous documents, including the PEAKs which bore out his testimony that if Fujitsu could not track down the cause then it was assumed the SPM was responsible.¹⁵

41. In his conclusions, Fraser J states that Fujitsu frequently concluded that there was SPM error, only to later find the technical cause of the problem; they were not reliably reporting problems to the Post Office or the SPMs concerned; and it could not be described as a thorough, professional or conscientious organisation.¹⁶ Ultimately he concluded that "Legacy Horizon" was not remotely robust.¹⁷

42. Questions therefore arise as to what was communicated between Fujitsu and the Post Office when the latter, with the assistance of the former, sought to prosecute Mrs Arch and Ms Felstead: what were the contractual provisions for Fujitsu providing evidence to support the Post Office's prosecutions? Why was it so expensive to produce the data which was expected and requested by the expert witness in Ms Felstead's trial? Clearly by the time Mrs Misra faced trial in 2010, the disclosure process for such evidence was still catastrophically inadequate, but the rot set in early. What is less apparent is whether the Post Office merely took the path of least resistance by allowing Fujitsu to avoid

¹⁴ Paras 173-175

¹⁵ Paras 177 and 179

¹⁶ Para 935

¹⁷ Para 936

providing this evidence, or whether something more sinister was at play – it may have suited both parties not to have to dig too deep into the workings of Horizon, for fear of what they might find, or because that what they knew already would be revealed to the world at large. Thus, a culture of disinformation and secrecy fermented. There was, after all, a strong incentive to keep moving forward to the new Agreement, and the modernised Post Office. Quite clearly, if the facts described by Mr Roll been known contemporaneously, not only would it have impacted upon the trials of Mrs Arch and Ms Felstead, but progress towards the modernised Post Office and the new Agreement would have stalled dramatically.

43. In this way flawed prosecutions became a bolt-on to the Horizon system from the very first year it was in use. A counter-factual illustrates why: if the Post Office had not secured convictions against subpostmasters when Horizon accounts indicated money was missing, questions would have been asked about the Horizon system. Doubts as to its integrity and reliability would have multiplied. Therefore, if it was not possible to answer those questions effectively, it was necessary to secure convictions to ensure the future of Horizon, suffocating scrutiny.

44. We therefore ask the Inquiry to focus upon the issues with accounting integrity and the helpdesk, which were known and documented at the time, and investigate whether those problems were ever effectively followed up. If they were not, as the findings of Fraser J suggest, we ask the Inquiry to find out who was responsible for solving those problems, and what the motivation was for ignoring them. We submit establishing accountability is essential, because it appears that the answer to that question is in all probability connected to the conduct of the prosecutions that were initiated in the early years. Why was it that auditors and investigators treated Horizon as infallible, its findings unimpeachable, even when the system was in its infancy? Why did they fail to

investigate Helpdesk records, even while claiming (falsely) that those under suspicion were “the only one”? Why did the Post Office and Fujitsu fail to initiate a proper process for the service and disclosure of electronic evidence? Was this part of the failure to resolve concerns about accounting integrity in a proper, unbiased fashion, deliberate or the product of inexcusable incompetence? When Fujitsu failed to find the solution to a technical fault and therefore assumed the subpostmaster was to blame, was that communicated to the Post Office? Did that feed into the investigations and prosecutions? When Fujitsu covertly remedied faults, without informing POL, did that lead to SPM’s being prosecuted, unaware that the fault lay with Horizon, and not with themselves? Although it may be impossible to find out who met with Michael Turner and others in the run-up to *R v Felstead*, we ask that efforts are made, given the importance of this meeting, which Mr Turner believes took place at the Crown Court in Kingston-Upon-Thames on 21 February 2002.

Phases 3 and 4 – Lee Castleton, Janet Skinner and Seema Misra

Phase 3 - Operation: training, assistance, resolution of disputes, knowledge and rectification of errors in the system

Phase 4 - Action against Sub-postmasters and others: policy making, audits and investigations, civil and criminal proceedings, knowledge of and responsibility for failures in investigation and disclosure

45. We take these two Phases together because, as far as the Core Participants we represent are concerned, there was no distinction between resolution of disputes on the one hand and taking action against them on the other. Training and assistance was inadequate or non-existent, and there was no real attempt made to understand or rectify errors in the system.

46. The shattering life stories of Mr Castleton, Ms Skinner and Mrs Misra are well known, but it is important to draw out what we – and they – ask the Inquiry to investigate during these Phases as a result.
47. Mr Castleton, who had previously served his country, then worked successfully as a stockbroker before deciding to invest £299,000 in a Post Office in Bridlington in July 2003. The shortfalls started in January 2004. On 23 March 2004 an audit took place at his request, and one of the auditors was Helen Rose. (Years later she wrote an important Report, which is referred to below.) His agreement with the Post Office was also terminated on this date, and that was the end of his time as a subpostmaster.
48. On 9 June 2005, the Post Office issued civil proceedings against Mr Castleton. Initially he instructed a solicitor, but he ran out of funds and had to defend himself at the trial. This was initially going to take place in Leeds, but the Post Office successfully applied to have the case transferred to the High Court in London, and on 27 January 2007 HHJ Richard Havery QC found in favour of the Post Office. Not only did he award them damages of more than £25,000, he also made Mr Castleton liable to pay the Post Office's costs of £321,000.
49. That means, of course, during the course of the litigation the Post Office paid out costs in the region of 13 times the value of the damages it was seeking. Very evidently Mr Castleton could not afford to pay them, given that he was representing himself. Inevitably he was made bankrupt as a result, so the costs award was a weapon, not a way to balance the books. Thus, it was that Mr Castleton and his family were condemned to live in penury.
50. Paul Marshall has argued that the Post Office's motivation for pursuing this claim, no matter the cost, must have been its worth to them as a precedent.¹⁸ It would have struck fear into the heart of other subpostmasters experiencing

¹⁸ The Harm That Judges Do – misunderstanding computer evidence: Mr Castleton's Story, by Paul Marshall - <https://journals.sas.ac.uk/deeslr/article/view/5172>

discrepancies, and would likely have led to many lucrative settlements based on erroneous Horizon evidence. Executing a legal strategy of this nature launched a missile into the Castleton family's lives. To this day Mr Castleton has received no interim payment. The reason given for that is the complexities introduced by his bankruptcy, but he has no debtors in his bankruptcy. The £321,000 costs order made all those years ago is the only reason he is currently outwith any of the interim compensation schemes.

51. We ask that the Inquiry find out who was responsible for hounding Mr Castleton through the civil courts, because it seems likely to have been a strategic decision taken at a high level. The expenditure of such exorbitant and disproportionate costs, out of synch with commercial reality, must have been sanctioned by senior management, with approval at board level. The issue ought to have been appropriately minuted, and the motivation may have lain in the Audit and Risk Committee Minutes, i.e., the risk register, in which threats to the commercial viability of an organisation ought to be found, and ought to have been recorded, so that the board was at all times sighted. Furthermore, it seems likely that the costs of taking Mr Castleton to the cleaners in the High Court, led to some discourse (a cost benefit/opportunity cost analysis, in effect) as to whether POL should be proceeding against its intended victims in the county courts, when monitored and weighed up against, and contrasted with post-conviction financial orders in the criminal courts.

52. On 19 November 2013, it is recorded that members of the Post Office Board were discussing whether to continue with bringing Horizon prosecutions and they asked Chris Aujard, General Counsel, whether the Post Office "would still be able to recover branch losses through the civil courts". He advised them that it would but said "it may be slower and not recover as much".¹⁹ Not only does this reveal an ugly degree of business interest in the question of whether the

¹⁹ POL00021427 p4

Post Office should continue to bring criminal prosecutions, it also begs the question of Mr Aujard's evidence base for his response. Apparently, according to Mr Aujard, hounding Mr Castleton was not even a successful strategy on its own terms, because the criminal prosecutions secured more money more quickly than the county court judgements which followed *Post Office v Castleton*.

53. Later, on 26 July 2016, Brian Altman KC provided advice to the Post Office which touched on the question of whether the Post Office was "using (and abusing) the criminal justice process rather than civil litigation to recover from offenders". He brought this up as a side issue while reviewing a number of prosecution files for other reasons (which we will come to below) and concluded "that where offences were indicted with an eye to the making of applications for confiscation and/or compensation orders on conviction, there was, in each case, a proper legal and evidential basis for so doing".²⁰

54. Mr Altman KC, therefore, placed his seal of approval on this Post Office practice, because he put the activity into the context of the Code for Crown Prosecutors, which permits prosecutors to consider financial orders, so long as the case is otherwise justifiable. However, Crown Prosecutors do not have the option of pursuing financial orders by way of private civil claim. Mr Altman KC therefore avoided the vital question which he really ought to have posed: where a private prosecutor can seek financial recompense in both jurisdictions, electing to proceed via the civil *or* the criminal courts, is it abusive to pursue the criminal prosecution in preference to a civil claim? Is it, arguably, even more abusive if General Council admits the reason for doing so is the advantage of quicker results and a higher reward when compared to county court settlements? Those quicker results and higher rewards would theoretically have been a product of proof beyond reasonable doubt that the

²⁰ POL00006394 para 209

defendant was dishonest, which is obviously a far higher standard of proof than that required in the civil courts, but that hurdle had been overcome by the Post Office and Fujitsu institutionalising the reversed burden of proof (the fruit of withholding Horizon technical evidence from the defence), and embodying an impenetrable wall of silence so far as disclosure of Horizon's unreliability in material aspects.

55. Returning to the Board discussion in November 2013, this was a meeting of the Audit and Risk Committee (which seems to have been made up of NEDs, but most of the main Board's key office holders were in attendance) and it led to a further discussion in February 2014, the result of which was to draw a halt to Horizon prosecutions.²¹ These discussions took place under the auspices of "Project Sparrow", which appears to be the Post Office's code name for the work of dealing with complaints about Horizon prosecutions, which in 2013 were coming thick and fast from the media and Members of Parliament. A major bone of contention was what Mr Aujard called "the perception that subpostmasters had of the Post Office bringing prosecutions for false accounting rather than theft, which was easier to establish".²² Mr Aujard appears to have presented this to the Committee as one of the reasons for halting prosecutions altogether, which could be seen as a tacit acceptance that the practice of charging both offences had been wrong. It is striking that members of the Committee pushed back against the idea of halting prosecutions, not only because of the possible loss of revenue mentioned above, but also because they believed that the prosecutions acted as a deterrent. This was Paula Vennells' response and the Committee's response to her:

The CEO thanked the Committee for the helpful challenge. She stressed that the Business was not saying that it would never bring prosecutions,

²¹ POL00021424

²² POL00021427 p4

but that it would be more circumspect in the cases it chose to take. She agreed that the current approach was a deterrent but explained that there were other deterrents such as suspension or termination of contract.

The Committee noted that it expected that the number of prosecutions would reduce over time regardless, as a result of the Business' improvements in the overall control framework around the branch network and the provision of support to sub-postmasters.²³

56. The idea that this discussion presented any kind of challenge to the "Business" is ludicrous. Parliamentarians and the press were raising concerns about the devastating effect these prosecutions were having on people's lives. Even Mr Aujard was tacitly accepting that the reason they may need to call a halt to the prosecutions was because an unsavoury practice had become embedded. Yet no one asked whether the prosecutions had been at fault. No one asked if people may have been wrongfully convicted. Instead, it was accepted that the crime wave which had spread amongst subpostmasters over the preceding 13 years could be contained in the future by a combination of the threat of suspension or termination, and better control and support.

57. The real concern on everyone's mind is only too apparent: the Committee was concerned that "the timing might influence the mediation process by raising questions on previous prosecutions".²⁴ The Committee and all the Board Members in attendance were obviously trying to put a lid on the whole "Project Sparrow" problem. They hoped that the mediation process would proceed to a comfortable conclusion, and that in the meantime they could quietly stop prosecuting. Whatever they did they wanted to do it quietly, to maximise the

²³ POL00021427 p4

²⁴ As above

chances of the mediation continuing on a steady course towards the desired goal of minor pay-outs in a handful of cases (we will return to this issue below).

58. We can see how important it was to the Post Office to stay quiet on this issue, from an analysis of the advice they were given by Mr Altman KC (we will return to his 2016 advice, but he also advised a number of times in 2013). On 19 December 2013 he provided a Review of Post Office Ltd Prosecution Role, in which he robustly defended the Post Office's prosecutorial role, stating "I have seen no evidence to suggest that Post Office Ltd exercises its investigations and prosecution function in anything other than a well-organised, structured and efficient manner." He acknowledges a disclosure failing in respect of Horizon Online (which was rolled out in 2010) but opines that it was "an exceptional instance of Post Office prosecutorial failure". He concludes that "there is no good reason to recommend that Post Office Ltd should discontinue its prosecution role, and seek to assign it to another public prosecution authority; indeed, there are many good reasons to retain it."²⁵

59. We now know that the ringing endorsement of the Post Office's prosecutorial function was wholly misplaced, but it is interesting that it was not enough for the "Business" to feel able to brazen out the situation they found themselves in. It is also interesting that their desire to halt prosecutions may have been discussed with Mr Altman KC before he finalised his Review, given that he presaged his advice with this caveat: "I must emphasise that it is no part of this review or my function to make recommendations about commercial, reputational or other non-legal strategic factors in favour of, or militating against, the retention of POL's investigative or prosecutorial role."²⁶

²⁵ POL00006802 para 5

²⁶ POL00006802 para 4

60. So what were the reasons for the Board's decision to halt prosecutions? Some clues may lie in Mr Altman's KC Review, because they may not have wanted to follow the recommendations he went on to make. He advised that all prosecution policies needed to be reviewed and given to the Board for approval, after which they should be published on the intranet, as well as be considered for publication on the Post Office website. That in itself may have caused too much of a furore, and too many questions about past policies. In this respect, aside from Mr Altman's KC opinion, the transparency he advocated may well have touched a nerve. In this, we submit the Inquiry ought to conduct a historic review to establish by exacting examination to what extent prosecutorial and disclosure policies even existed at POL, or how they were amended and adapted during the tenure of those who acted in the role of General Corporate Counsel during this disastrous period.

61. Now, returning to Mr Altman KC, more importantly he said this:

To the extent this is not already in hand (*which I understand may be the case*), Post Office Ltd should consider drawing up a protocol or a memorandum of understanding between it and any third party supplier of its IT system (presently Fujitsu Services Ltd) setting out the duties and obligations... and the nature and scope of the data that Post Office Ltd necessarily relies upon for the prosecution of its cases, and seeking the third party's understanding and agreement to revealing any and all material and information that might undermine the integrity of the system, and to the requirement for the disclosure of such material or information in the course of criminal proceedings, as may be required.²⁷

62. If members of the Board **were aware** of the inadequacy of the data provision arrangements that had persisted throughout the preceding thirteen years, with

²⁷ POL00006802 para 5

its consequential impact on disclosure (as seen in Ms Felstead's and Mrs Misra's cases) and the section in brackets, which we have *italicised* above, suggests that they were, then Mr Altman's KC recommendation was one that would inevitably lead to the long suppressed issues with Horizon being blown wide open by a competent expert assisted defence team. Therefore, Mr Altman's KC suggestion, to get this particular house in order, would have been highly unwelcome and raises an issue as to how much he had been told, upon being instructed. Easier by far to simply stop prosecuting.

63. Easier, but nevertheless shocking in its heartlessness. Janet Skinner was one of those who suffered from what Mr Aujard characterised as "a perception" that the Post Office was using theft charges to secure guilty pleas to false accounting. Whenever she is asked about her job at the Post Office, she says how much she loved it. She started in 1994 and over the next ten years she worked her way up to being an employed manager of a busy Post Office on a council estate in her home city of Hull. She was a single mother of two teenage children, and she owned her home. However, between January 2004 and January 2005 she made 115 calls to the Helpdesk, averaging more than two per week, and yet she never received the answer to why shortfalls kept appearing in her accounts. On 30 May 2006, auditors came into the branch and she was immediately suspended. In her interview she accepted that the branch was carrying huge losses, and she had signed off on accounts knowing the figures were false, simply because there had been no alternative if she wanted to carry on trading. She suspected that losses were caused by staff but had no proof other than the fact that she knew she was not stealing, and yet the losses kept coming. When she was charged with theft and false accounting, she was represented by Karl Turner MP (formerly a practising lawyer) who described the situation thus: "She's insisting she's innocent of the offences on the summons. She would have said that she has never stolen so much as a penny,

and isn't a dishonest person. I, of course, explained the weight of the evidence and the implications of a conviction for those offences after trial, so there was little wonder when the prosecutor offered a lesser offence of false accounting, my client accepted that as an alternative to an inevitable prison sentence."²⁸

64. Mr Turner neatly encapsulates the terrible pressure that was put on subpostmasters by the policy of charging both offences, which took place up and down the country, across the breadth of the UK for years and years. This deplorable injustice was sustained and made worse by the fact that he and others (understandably given what they were told) took the Post Office at face value when it claimed it had reliable IT evidence to support the case, but the offer to drop the more serious charge in the hope of avoiding prison was a powerful inducement to desperate defendants, when it seemed that justice had deserted them.

65. In Ms Skinner's case she was incarcerated anyway. She would not let her children come to visit her, because she did not want them to have a memory of seeing her there. Once she was released, she had to face the trauma all over again. She had already lost her house, yet the Post Office was sending correspondence about confiscating it to that address. She was therefore unaware of confiscation hearings that had been set down, and a warrant was issued for her arrest. After surrendering herself to the cells at Court, she had the few thousand left to her confiscated. Only this year, through the intervention of the Court Service, has the Post Office repaid the money it wrongly confiscated from her. Of course, that does not begin to repay her for the years of pain she has suffered, that some in her community shunned her, and her almost total mental and physical collapse, since she was hospitalised during this period of unbearable stress, and trauma.

²⁸ <https://www.yorkshirepost.co.uk/news/opinion/columnists/janet-skinner-and-her-fellow-wrongly-convicted-subpostmasters-are-starting-to-get-justice-now-they-need-the-truth-karl-turner-3238592>

66. It is against that backdrop that we return to Mr Altman's KC 2016 advice, in which he touched on the question of whether private prosecutions were a valid alternative to civil claims, but the main purpose of which was to follow up on the Swift Review. He was the QC (now KC) selected to review the practice of charging both theft and false accounting. It is interesting that he was selected, given that he had already provided an Advice on Theft and False Accounting, dated 8 March 2015. That document was part of the tussle going on between the Post Office and Second Sight, which culminated in their services being dispensed with. Second Sight had continued to express concerns about the practice of charging both offences, and it appears that Cartwright King had written to Second Sight to defend the practice, asserting that false accounting was not a less serious offence than theft. Mr Altman's KC Advice corrects Cartwright King by saying, in effect, the relative seriousness of these two charges will always be fact specific.²⁹ This logic followed through to 2016. His stated that he could not opine on whether prosecutors had wrongly pressured defendants into pleading guilty to a lesser charge by accompanying it with an unsubstantiated charge of theft unless he reviewed the cases themselves. He was therefore provided with eight case files.³⁰ The reality, however, was that hundreds of people had been prosecuted in this way, and it is reasonable to suppose that in each case the evidence was much the same: Horizon showed shortfalls and in order to continue trading the subpostmaster signed off on false accounts. There was an argument that having been abandoned by POL, (who provided no assistance) or wrongly encouraged by the Helpline (as some SPMs were) that it would all balance out in the end, POL should have exercised its discretion not to proceed against these SPMs, whose predicament had been

²⁹ POL00006588

³⁰ POL00006394, paras 10 and 18

further exacerbated when POL unilaterally removed their ability to challenge the disputed balances.

67. Inevitably, this will have been a fact specific issue. There will have been differences in the amounts, the time periods, whether the SPM had called in the problems or not, what they said about it in their interviews, and in some cases there may have been other evidence to support a charge of theft. Nevertheless, it is hard to see the value in advising on whether the Post Office systematically overcharged without considering how many times and over what period the prosecutors accepted a guilty plea to false accounting as part of an offer to drop the theft charge, particularly in the context of a draconian and one-sided contract that had not been amended to reflect the new reality, that by the introduction of Horizon, SPMs were caught in a vice not of their own making, having lost control to balance their accounts, and challenge the infallibility of the IT system.
68. The question therefore remains very much alive: did the Post Office have a deliberate policy of charging both offences in Horizon cases, having (with Fujitsu) engineered a state of affairs that reduced SPMs to despair, so that they might accept patently false balances in order to continue to trade? And if so, was this to enable the practice of offering to drop the theft charge to secure a guilty plea to false accounting, thus preventing unwelcome scrutiny, thereby protecting Horizon's invincibility?
69. That question ties in with the possible abuse arising from seeking financial remedies in the criminal courts instead of the civil courts, because of what we know about Seema Misra's prosecution. Unusually, the Post Office did not drop the theft charges when she pleaded guilty to false accounting, and the explicit reason for continuing with the theft charge was set out in correspondence:

- a. On 22 May 2009 a Mr Taylor at the Post Office wrote to prosecuting counsel Mr Warwick Tatford explaining that a Mr Longman was “fairly happy to accept” the Appellant’s plea to false accounting but pointing out that “However we are some 70 odd thousand pounds light at the moment as I understand it and if we just accept the false accountings it is very difficult for us later to obtain a Confiscation Order and subsequently compensation out of the Confiscation. Could you let me have your views on this...”.
- b. Mr Tatford responded by an email dated 22 May 2009 stating that he had spoken to Mr Longman and “The case for theft is strong and we should not accept the pleas. Confiscation would also be a *non-starter* if we did...”. (Italics supplied.)³¹

70. It is unclear why in this case it was thought the theft charge was necessary to pursue Mrs Misra for confiscation, given that in the case of Ms Skinner and many others it followed from false accounting charges, but that is perhaps beside the wider point made above in the context of the Audit and Risk Committee Minutes: there was an ugly business interest running alongside all of these prosecutions. The lawfulness or otherwise of this approach to confiscation is also beside the wider point: irrespective of their legal rights, was it acceptable for the Post Office’s prosecution arm to be affected by ulterior business considerations? An example email from Jarnail Singh, the prosecutor who had conduct of Mrs Misra’s case, shows how much business interests did

³¹ This exchange was pleaded in Mrs Misra’s Grounds of Appeal in *Hamilton and others*. We no longer have access to all the disclosure made available during those proceedings, but anticipate that this exchange will reach Relativity in due course via Peters and Peters. Mr Tatford was provided with a copy of the correspondence by Aria Grace Solicitors and he responded. Ms Page can provide the Inquiry with the exchange of correspondence with Mr Tatford.

affect their thinking. In this email he is dealing with the decision to drop a prosecution:

“it is not in the Business or public interest to proceed with the prosecution ... could you write to the Defence and court of the business decision... Counsel should be instructed that this agreed action must say to the defence and court is not connected with the Horizon system integrity...”³² [10 December 2012]

71. Note also the reference to Horizon system integrity. It became clear in the *Hamilton* appeals that defendants who accepted the offer to plead guilty to false accounting in exchange for dropping theft were often required to withdraw any questions they had previously raised over Horizon’s reliability. This was, again, an oppressive tool, consistent with the culture of secrecy, and utterly unscrupulous, when viewed in the context of POL’s knowledge, the inevitable knowledge, that is, of Horizon’s weaknesses and unreliability.
72. We reiterate, therefore, that the Horizon prosecutions were a “bolt-on” to shore up the perceived integrity of the Horizon system not just at the start, but throughout the years from 2000 through to 2013. It remained essential to take action against subpostmasters when Horizon shortfalls arose, because otherwise questions would be raised over the integrity of Horizon. The decision to take action in the criminal courts as opposed to the civil courts may have been a business decision as well, and indeed part of the reason it was easier to use the criminal courts may have been the effectiveness of charging both offences: it brought proceedings speedily to a head when people like Janet Skinner took the desperate decision to plead guilty, which she was advised to do to avoid prison, and her conviction enabled the Post Office, thereafter, to

³² This is another document which was disclosed during the *Hamilton* appeals, so will presumably reach Relativity via Peters and Peters in due course.

confiscate any assets she, and other unfortunate victims of this malign regime, had left.

73. The travesty at the heart of this goes back to Mr Altman's KC opinion that there was nothing wrong with the Post Office's prosecutorial arm, and the one identified disclosure failure was "exceptional". It would, perhaps, be forgivable to allow business considerations to affect the way that an organisation takes legal action against its trusted but far less powerful business partners and employees, but only if it maintains scrupulously high standards in the quality, fairness and integrity of its legal work. Unfortunately, that is the opposite of what happened with Post Office prosecutions. Mrs Misra's case is a horrifying example of how disclosure decisions were made.

74. The Misras came to the UK from India prepared to work hard and contribute to society. They took jobs where they could, and over time they were able to get together enough money to buy a flat in London and a shop near Luton. The business did well, and they wanted to take the next step. On 30 June 2005 they bought a Costcutter shop which had the West Byfleet Post Office within it. They invested £200,000, taking on a mortgage and using the proceeds of selling their shop near Luton. They had not worked for the Post Office before, but Mrs Misra applied to be the SPM, and she was approved. She had problems with Horizon from Day 1. On 5 October 2005 she had her first audit, which arose because she had contacted her area manager in desperation. The trouble was the audit left her feeling even more alone with the problems. She was warned in no uncertain terms that if the shortfalls continued her position would be terminated. Like many others, Mrs Misra spiralled down into the cycle of signing off on false accounts so she could carry on trading, finding and borrowing money from anywhere she could to make up shortfalls, and eventually losing control of the situation altogether. On 14 January 2008 auditors came again, and she was suspended the same day. Like Ms Skinner, she originally suspected that staff

were taking the money, but shortly before her first trial date she was alerted to an article in Computer Weekly, and the possibility that Horizon was at fault.

75. From that point onwards, she and those representing her made every effort to secure the disclosure they needed to try to get to the bottom of the Horizon problems. Defence counsel made no less than four ultimately unsuccessful disclosure applications, two of which were accompanied by unsuccessful applications to stay the prosecution. They were determined to discharge the burden of proof that had been wrongly placed on her, and yet without disclosure, it was impossible for her to prove that she was not guilty of theft.

76. Meanwhile, alongside resisting the applications for disclosure, the Post Office's lawyers, and the Fujitsu expert witness they relied upon, were keeping secret evidence of a bug that could cause apparent shortfalls. On 29 September 2010, not long before Mrs Misra's trial began on the 11 October 2010, Gareth Jenkins, the Fujitsu expert, authored a report on the "receipts and payments mismatch bug".³³ It was followed up with a meeting, at which he was present, and during which it was noted that the bug had "potential impact upon ongoing legal cases where branches are disputing the integrity of the Horizon data".³⁴ It is inconceivable that Mr Jenkins did not have Mrs Misra's case in mind while in that meeting, given that he was due to give evidence against her in a few days' time.

77. Even more shocking is the fact that on 8 October 2010, the Friday before the Monday of Mrs Misra's trial, one of those in attendance at the meeting sent these two documents to Rob Wilson, Head of Criminal Law, copying the email and attachments to Jarnail Singh (and Juliet Mcfarlane). It is apparent from the footer of the Jenkins note that Mr Singh printed it out on the 8th at 16.38. It is safe to conclude, therefore, that he had seen the email and attachments before

³³ POL00028740

³⁴ POL00028838

he attended the first day of Mrs Misra's trial on the 11th. Neither he nor Gareth Jenkins revealed to the court or the defence that during the preceding week a directly relevant bug had been discovered.

78. It does not end there. That is only the most case specific disclosure failure to illustrate what went wrong specifically in Mrs Misra's trial, but we will return to the more widespread disclosure failures which affected her and others when considering Phase 5 below.

79. The tragic consequences for the Misras of these egregious disclosure failures are well known: when Mrs Misra was sent to prison she was pregnant with their second son. She has told this Inquiry in her oral human impact evidence of how her husband had to cope alone with their older son, while in dire financial straits. She described the abuse they sustained, and how Mr Misra was beaten up. She said she would have killed herself if not for her unborn son, and she gave thanks that he kept her alive while their older son kept her husband alive. She described the shattering of her faith in the British justice system, and how she had always believed that somehow, it would be alright in the end, and how that all changed the moment she was sent to jail. Once that faith was gone she could no longer trust anything. She even delayed going into hospital when she was in labour, because she was still on a tagged curfew, and she feared she would be arrested for breaching her curfew. She spoke devastatingly of the land of two laws she now believes exists: one law for ordinary people and another for those in power.

80. She and all the CPs that we represent engage with this Inquiry in the hope against experience that Britain is a land of one law for all. Those who are responsible for prioritising the Post Office and Fujitsu's business needs - and thereby their own careers and financial security - ahead of the need for justice in the criminal courts must be held accountable.

Phase 5 – the reaction

Phase 5 - Redress: access to justice, Second Sight, Complaint Review and Mediation Scheme, conduct of the group litigation, responding to the scandal and compensation schemes

81. There is reason to suppose that in 2012 the leadership of the Post Office was not aware of the deep rot that had set in to Horizon prosecutions. Paula Vennells took up her post that year. In March of that year Detica was commissioned to conduct a genuinely thorough review of Post Office systems for dealing with fraud and non-compliance. That was part of a widespread and ambitious plan to progress the modernisation programme (which Horizon was supposed to be such a key part of) and make the Post Office profitable in spite of the withdrawal of significant Government funding. Meanwhile Second Sight had already been appointed, and both they and Lord Arbuthnot reported early signs of open and helpful communication. No doubt the hope and expectation was that some unfortunate but not disastrous past practice would be revealed, and the aggrieved subpostmasters could be compensated without “breaking the bank”.

82. In July of 2013, in forthright terms, the Post Office was advised otherwise. When Second Sight issued their Interim Report on 8 July 2013, it prompted prompt action, because it revealed the existence of bugs. Cartwright King were evidently instructed to consider the legal effects. During the course of this Simon Clarke had a conversation with Gareth Jenkins, in which he revealed that it was he who had told Second Sight of the existence of two bugs affecting Horizon Online. Mr Clarke was aware that Mr Jenkins had provided many witness statements to support Post Office prosecutions, so evidently this caused him to re-visit them. His assertions therein that Horizon Online was effectively bug-free were plainly at odds with what he had told Second Sight. On 15 July, Mr Clarke advised as follows:

“Notwithstanding that the failure is that of [Mr Jenkins] and, arguably, of Fujitsu Services Ltd, being his employer, this failure has a profound effect upon [the Post Office] and [the Post Office] prosecutions, not least because by reason of [Mr Jenkins’s] failure, material which should have been disclosed to defendants was not disclosed, thereby placing [the Post Office] in breach of their duty as a prosecutor. By reason of that failure to disclose, there are a number of now convicted defendants to whom the existence of bugs should have been disclosed but was not. Those defendants remain entitled to have disclosure of that material notwithstanding their now convicted status. (I have already advised on the need to conduct a review of all [the Post Office] prosecutions so as to identify those who ought to have had the material disclosed to them. That review is presently underway.)”³⁵

83. Quite clearly, as Mr Clarke advised, Mr Jenkins’ “credibility as an expert witness [was] fatally undermined.”³⁶

84. This must have made for disturbing reading. Mr Jenkins had not only provided witness statements in relation to Horizon Online. He had provided them for Legacy Horizon too, and he had given evidence at Seema Misra’s trial in 2010. He had asserted throughout his evidence that Horizon was “robust” and claimed that the one acknowledged bug (Callendar Square/Falkirk) had been cured in 2006. Both of these assertions were no longer reliable.

85. The implications were obvious, albeit far-reaching: In all cases where his evidence was an important plank of the prosecution case, the defendants should have been immediately informed a) that Mr Jenkins was no longer to be relied upon as a witness in future prosecutions, and 2) that the reason for this decision was the fact that he had informed Second Sight of bugs in Horizon

³⁵ POL00006357 para 38

³⁶ POL00006357 para 38

Online, the existence of which he had denied in his statements about Horizon Online. The nature of the two revealed bugs, and whether they could have impacted in any particular case, was obviously immaterial: the reason Mr Jenkins could no longer be relied upon was that he could no longer be believed. Likewise, the fact that he had apparently lied about Horizon Online rather than Legacy Horizon would not limit who should have received this disclosure. Whenever the prosecution has evidence which damages the credibility of one of its witnesses, that evidence will meet the disclosure test.

86. Furthermore, the fact that Mr Jenkins could no longer be believed should have forced the Post Office and Fujitsu to engage in a complete review of the “robustness” of Legacy Horizon and Horizon Online, so as to assess whether that assertion repeatedly made by Jenkins could be sustained. If he had been lying about that, the safety of all the Horizon convictions was in doubt. The fact that Second Sight were already engaged in such an exercise because of the subpostmasters’ complaints should have made the need for it even more obvious.

87. In fact, the panic and desire to cover-up can be gauged from the “Shredding Advice” which Mr Clarke felt compelled to write on 2 August 2013. He had advised the Post Office to establish a weekly disclosure forum, but he had been informed:

“(i) The minutes of a previous call had been typed and emailed to a number of persons. An instruction was then given that those emails and minutes should be, and have been, destroyed: the word ‘shredded’ was conveyed to me.

(ii) Handwritten minutes were not to be typed and should be forwarded to POL Head of Security.

(iii) Advice had been given to POL which I report as relayed to me verbatim:

'If it's not minuted it's not in the public domain and therefore not disclosable.'

'If it's produced it's available for disclosure - if not minuted then technically

it's not.'

(iv) Some at POL do not wish to minute the weekly conference calls... Regardless of the position in civil law, any advice to the effect that, if material is not minuted or otherwise written down, it does not fall to be disclosed is, in the field of criminal law, wrong. It is wrong in law and principle and such a view represents a failing to fully appreciate the duties of fairness and integrity placed upon a prosecutor's shoulders"

88. Mr Clarke advised further, therein, that "a decision based failure to record and retain material...where it is taken partly or wholly in order to avoid future disclosure obligations, may well amount to a conspiracy to pervert the course of justice.' The intense discomfort of the professionals having to give this Advice can be sensed from the covering letter to Susan Crichton, General Counsel at the Post Office: "I enclose for your urgent attention an advice... I am sure you will appreciate that the advice is sent as part of our brief to advise on the impact of Horizon issues and to protect the reputation of POLtd. It is fully appreciated that you may wish to take a second opinion."³⁷ Her reply is equally revealing: "I am therefore deeply concerned at the suggestion... that there may have been an attempt to destroy documentary material generated in connection with the Horizon Calls... Post Office Limited is committed to conducting its business in an open, transparent and lawful matter. Any suggestion to the contrary would not reflect Post Office Limited policy... Accordingly, the purported statements referred to in Simon's note do not reflect or represent Post Office Limited's position."³⁸

89. It appears that Ms Crichton left her position within months, and we suggest that it will be worth trying to find out why she did so, as we suggested earlier. It seems very unlikely that she kept this Advice to herself. What she may have discovered about the apparent attempts to destroy evidence, and who she may

³⁷ POL00006577

³⁸ POL00006797

have discussed it with, may shed considerable light on who within the Post Office was inclined towards covering up misdeeds. We note also, at this juncture, that Detica's findings were not disclosed to any defendant, suspect, Second Sight, MP or campaigning group.

90. This uncomfortable exchange was not by any means an adequate challenge to the Post Office, either from its internal or external counsel. The considered, legal reaction to the Clarke Advice and the Second Sight Interim Report was to limit the disclosure exercise, so as to avoid the main issue of credibility. Cartwright King began a review of prosecution files to see whether any defendants should receive two specific items of disclosure: 1) a June 2013 report by Helen Rose, a Post Office investigator, in which she had questioned the reliability of Horizon data, and 2) the Second Sight Interim Report. Even the fact that Mr Jenkins had informed Second Sight of the bugs he had previously denied was not considered for disclosure, not even to those who had been prosecuted on the back of "evidence" from Horizon Online.

91. Meanwhile, Brian Altman KC was asked to conduct a "General Review" of the Cartwright King review, and he reported on 15 October 2013. It should be noted that this Report is stated to be for the benefit of the Board,³⁹ so it is safe to assume that it was seen by them. Despite accepting Mr Clarke's view that Mr Jenkins was "tainted" and that his position as an expert witness was "untenable"⁴⁰, he nevertheless relies upon his account of the Horizon system as set out in a 2013 witness statement as "reasonably adequate and almost certainly accurate".⁴¹ He does not explain why he makes that judgment. He therefore takes as read highly controversial statements such as "the data in the audit trail is "sealed" with a secure checksum (CRC) that is held separately to

³⁹ POL00038538 p2

⁴⁰ Para 5(x)

⁴¹ Para 16

ensure that it has not been tampered with or corrupted.”⁴² The overall description of Horizon Online given by Mr Jenkins as cited by Mr Altman KC is that it is reliable, and the evidence to be garnered from it can be depended upon. By October 2013 it was obvious, of course, that this was not accepted by the Subpostmasters making complaints via their MPs and the media, and it is therefore very hard to understand why Mr Altman KC decided to rely upon this account of it from a “tainted” witness. The effect, however, was to reassure that there was no need for any greater probe into the “robustness” of Horizon as a result of his and Mr Clarke’s advice that Mr Jenkins could not be relied upon in future.

92. More specifically, it had a very detrimental effect on his approach to Mrs Misra’s trial. Mr Jenkins had given evidence that the Callendar Square/Falkirk bug had been cured in 2006, and Prosecution counsel relied upon this assertion in his closing speech. It was important to their case.⁴³ Mr Altman KC was aware that Mr Jenkins gave evidence about the “curing” of this bug, but he seemed not question whether it was reliable, despite knowing that Mr Jenkins’ evidence was not reliable on in relation to two other bugs. Instead, he dismissed the issue of the Callendar Square/Falkirk bug as only relevant to any mediation case which may centre upon pre-2006 Horizon evidence.⁴⁴

93. In fact, during the Horizon Issues trial, Fraser J examined the evidence on the Callendar Square/Falkirk bug closely and held that it persisted until 2010.⁴⁵ Had the jury in Mrs Misra’s case known that, they may have reached a different conclusion, and this demonstrates clearly why she and many others should have been informed that Mr Jenkins was a tainted witness.

⁴² Para 19

⁴³ Day 7, 26B

⁴⁴ Para 130

⁴⁵ Para 150

94. The approach of relying upon Fujitsu evidence to narrow down disclosure persisted through and into the *Hamilton* appeals, during which the Post Office sought to argue that because the Receipts and Payments Mismatch Bug had arisen in Horizon Online in 2010 it could not have been of “direct application” to cases such as Mrs Misra’s, when the system in use was Legacy Horizon. It was conceded that the prosecution should have disclosed the Jenkins note on this bug, and the meeting note and emails which had circulated the week before her trial, but it was submitted that the failure to disclose was not indicative of a wider problem. It was said to be only relevant to whether Mrs Misra received a fair trial and did not support the Category 2 abuse contention.⁴⁶ First, we fail to see how this appalling failure to disclose was not indicative of a wider problem; but second, this demonstrated a continuing willingness to accept and repeat claims from Fujitsu that particular bugs had limited applicability. The fact that this was put forward in the *Hamilton* appeals is particularly disturbing, given that – again – Fraser J had found that it was not true that the Receipts and Payments Mismatch Bug had only arisen in 2010. On the contrary, Fujitsu knew about it far earlier.⁴⁷

95. Returning to 2013, Mr Altman’s KC Review proceeded to give the seal of approval to the CK review. He did not question its scope, in the sense that he did not suggest anything more than the Rose report and the Second Sight report might need to be disclosed. He did not question whether it was appropriate for Cartwright King to carry out the review, given they were the firm instructed to undertake the prosecutions, advising only that individuals should not review their own cases. He was aware that the Criminal Cases Review Commission had written to the Post Office, and he endorsed the response, but did not suggest that the CCRC ought to be made aware of the fact that many past

⁴⁶ Submissions by the Respondent in Relation to the Application by Seema Misra, Tracy Felstead and Janet Skinner to Argue Second Category Abuse of Process, para 38.

⁴⁷ Para 443

prosecutions relied upon the testimony of a “tainted” witness. He was also aware of the “shredding Advice”, but he described the events described therein as “early teething and cultural problems”.⁴⁸ When considering the implications of Mr Jenkins’ unreliable testimony he gives no thought to the question of whether disclosure should now be made of the facts giving rise to his unreliability, but he does say this: “How much real capital may be made of the fact that Mr Jenkins will always be a background figure in the Horizon story is impossible to predict. But what I think I can predict with a degree of confidence is that in the hands of capable counsel, more is bound to be made of the non-disclosure issue than the mere instruction of a new expert will resolve for future trials.”⁴⁹ This makes it perfectly plain that Mr Altman KC could see how damaging it was to Horizon prosecutions that Mr Jenkins was “tainted”, and yet this fact was not disclosed until the Clarke Advice brought it to light in the course of the *Hamilton* appeals. It is obvious that both the Clarke Advice and the Altman Review were prima facie privileged, but without even considering the issue of when it would have been appropriate to waive privilege, the facts which came to light as a result of the legal advice were immediately disclosable.

96. It is therefore plain that the legal response to those facts was catastrophically inadequate. The response of the Business, or the Post Office “C-Suite”, is not yet as clearly apparent. There are, however, two further important events in 2013:

97. First, it appears that in August, presumably as a reaction to the revelations of July and August they notified their insurers of a risk. That may reflect a fundamental acknowledgement that the past prosecutions were now presenting a serious risk of major legal and financial fallout.

⁴⁸ Para 112

⁴⁹ Para 149

98. Second, in October 2013 Detica reported, after 6 months of carefully analysing Post Office systems.⁵⁰ The version on Relativity is in draft, but it sets out detailed and devastating findings. They are wide-ranging, touching upon all the systems and controls (or lack of controls) a modern business needs to rely upon. Evidently the past 13 years of using Horizon had abjectly failed to solve the “modernisation” conundrum.
99. The report advised that urgent and extensive changes needed to happen in what they acknowledged were very challenging circumstances: strikes, withdrawal of Government block funding, Parliamentary and press scrutiny on the Horizon system, and the fact that “Post Office systems are not fit for purpose in a modern retail and financial environment.” This would have made for very discouraging reading for Paula Vennells. A FOI request has revealed that this report was made available to the Post Office’s General Counsel, its Chief Financial Officer, Chief Information Officer, Chief Technical Officer, and to others whose identity has been withheld. Given the money and time that was invested in producing it, it would be reasonable to conclude she saw it.
100. Combined with what was known about Gareth Jenkins through the Altman General Review, which was addressed to the Board, Post Office Senior Management were clearly on notice that Horizon was unreliable. It is revealing how they managed this? Were they open? Straightforward? Candid and contrite? Interestingly, Lord Arbuthnot has said that there was a turning point in 2013, when Post Office senior management went from being co-operative to obstructive. We know that by the end of the year the Post Office Senior Management had decided they wanted to stop instigating Horizon prosecutions (see above). And it is also clear that during the course of the following year, Second Sight were marginalised, and ultimately prevented from completing their work. In January of 2015, in the run up to the Select

⁵⁰ POL00029677

Committee hearing when Ms Vennells effectively refused to provide Second Sight with prosecution files, she also sent the infamous internal message in which she said “I need to say no [remote access] is not possible”.

101. The issue of remote access is a scandal in itself, but for these purposes it suffices to note that the way Ms Vennells referred to it in that email defies belief. On 6 April 2014 Deloitte prepared a Board Briefing which stated “It is possible for Fujitsu staff with suitably authorised privileged access to delete data from the Audit Store.”⁵¹ This came on top of many documents over the years which made it apparent to the Post Office that Fujitsu had that capability. It seems that by January of 2015 Ms Vennells was simply not prepared to countenance any challenge to the Post Office position that Horizon was reliable and the prosecutions founded upon it were safe, not even from Sir Anthony Hooper. When the Post Office withdrew from the mediation process, and effectively sacked Second Sight in March 2015 he was subject to a Non-Disclosure Agreement. However, by June 2020 he gave an interview to Nick Wallis in which he said he told “Post Office Senior Management” that he did not think the SPMs were stealing, and that the problems were most likely being caused by Horizon.⁵²

102. It took the almighty effort and vast expense of the *Bates* litigation to breach the ramparts put up by the Post Office during the years 2013 to 2015. The determination to pursue “modernity” for the Post Office, and career progression as a result, seems likely to have been the reason for erecting these walls to hide the truth. There is a very real possibility that the conduct of those in power amounted to a conspiracy to pervert the course of justice, alluded to (in a different context) in the Clarke “Shredding Advice” of 2013. POL’s stultifying culture of blame and secrecy was to ensure that unsafe criminal

⁵¹ POL00030159

⁵² <https://www.bbc.co.uk/sounds/play/m000jp2m> (around 3 mins in)

convictions stood for up to 18 years, and hundreds of people's lives were destroyed.

103. The failure to self-report to the CCRC, and the 'tooth and claw', or 'scorched earth' litigation tactics deployed in the civil litigation and criminal appeals, meant that justice was long delayed, and has still not been delivered in any meaningful sense. Ms Felstead, Ms Skinner and Mrs Misra acted with immense fortitude in pursuing limb two abuse, which was very nearly frustrated by the respondent's indefatigably adversarial approach. Those three exceptional women, Ms Page and I are honoured to represent, had the courage to advance that argument, unpromising as it once appeared, against concerted and determined opposition, because they knew it was the truth. They succeeded. Their example is heroic. They would not be silenced, Sir, and neither shall you. We end as we begin: this Public Inquiry, under your Chairmanship must not fail. We trust your determination to succeed, and your pledge to expose the truth. It will be ugly, and many will try to bar your path. A monstrous series of injustices were inflicted on wholly innocent people. It was perpetrated, systematically, cruelly, without conscience or compunction, over many years. That this lie was allowed to take root, and flourish, destroying innocent lives and undermining the integrity of the Civil and Criminal Courts, calls into question everything one trusted, was taught, and believed about British justice. It is too prosaic to state that 'lessons must be learnt'. This outrage must never be forgotten or repeated. It must never happen again. There must be no end of a reckoning for those who allowed this to happen. Justice, disgraced, betrayed and so long denied, must now be restored, not just for these core participants but for society itself.