

Tuesday, 19 December 2023

(10.08 am)

MR BEER: Good morning, sir, can you see and hear us?

SIR WYN WILLIAMS: I can, thank you.

MR BEER: Before we start, two things. I understand the live link for those with log-in details is working, hence we can see and hear you, and other people who have those log-in details will be able to access this live feed, but the YouTube link is not working at the present time. It's been your practice in the past, I think, to continue to sit because either the YouTube link will be restored and a recording of now will be available, or people can read the transcript.

SIR WYN WILLIAMS: Yeah.

MR BEER: Then, secondly, can I say thank you to David Enright, who gave me a lift to the station this morning. As you know, he's a partner at Howe+Co and represents many subpostmasters here and happens to catch the same train as me and he has enabled us to start nearly on time this morning.

SIR WYN WILLIAMS: Well, I'm very glad to hear that

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right?

A. Yes.

Q. Back in paragraph 19 of your report, no need to turn it up, you'd noted that you had seen discussions of the need to disclose in one case, in others where similar issues had arisen. Beyond the form of words that we discussed yesterday, was any such cross-disclosure in fact provided in any of the cases that you reviewed?

A. Not that I saw. No.

Q. In your Volume 2A report, if we can just turn that up, please, EXPG0000005, at page 25, at paragraphs 71 and 72, you're dealing here with the case of Mr Julian Wilson. You say:

"Despite this issue having been raised before and at the time of Mr Wilson's plea ..."

That's looking at Horizon issues in other cases, being this:

"... and at the time of Mr Wilson's plea, there is no evidence of cross-disclosure of other cases where complaints about Horizon, even though the reviewing lawyers had personal knowledge of a number", at least by reference to the cases you've considered above.

Then you say:

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all participants in the Inquiry are cooperating at all levels, Mr Beer.

MR BEER: Thank you very much, sir.

RICHARD DUNCAN ATKINSON (continued)

Questioned by MR BEER (continued)

MR BEER: Good morning, Mr Atkinson.

A. Good morning.

Q. Can we pick up topic 8, please, which is the topic we were about to move to which is cross-disclosure of Horizon issues.

Can we turn please to page 239 of your second report. I'll just wait for that to come up on the screen. At paragraph 668, you say:

"As time passed, the number of cases where Horizon issues were being raised proliferated and the need for cross-disclosure between them should have become all too obvious. It is far from obvious that this was carried out, however."

Then further down the page, at paragraph 670, you conclude that cross-disclosure between cases where Horizon had arisen was not being undertaken and that there is "no evidence of routine cross disclosure where Horizon evidence was relied on"; is that

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"The relevance of such cross-case issues was highlighted in Mr Wilson's case by a letter from his then MP, the Right Honourable Jacqui Smith MP. In her letter to the [Chief Executive Officer] of the Post Office in December 2009, she referred to issues with the operation of Horizon that had arisen in the case of Mr Wilson, and similar issues that had arisen in the cases of Hughie Thomas, Seema Misra and also referring to the Falkirk post office ..."

You say:

"It is pertinent to observe that if such cross-case issues were obvious to Mr Wilson's MP, they should have been all the more obvious to those concerned in the cases who played a role in that of Mr Wilson.

"... there is no evidence that cross-case disclosure was considered."

So are you there making the point that cross-disclosure was considered to be obvious to a layperson, in that case Mr Wilson's MP?

A. To someone who had knowledge of that -- of the fact that such issues had arisen in more than one case, yes.

Q. Overall, how serious a failure did you regard

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1 the absence of cross-disclosure in the Horizon
2 cases that you looked at?
3 **A.** Well, the case of Mr Wilson highlights it, in my
4 view, but in that case, counsel instructed for
5 the Post Office to prosecute the case, both the
6 person originally instructed when the case was
7 charged and then the person who prosecuted it
8 once it had reached court, both raised the
9 question of whether the kind of issues that
10 Mr Wilson was describing with Horizon had come
11 up before because it's clear that neither of
12 them were aware that they had, but that they
13 recognised, if they had, that was potentially
14 disclosable.

15 And so the position appears, therefore, to
16 be that the -- those being instructed in these
17 cases recognised that the fact that an issue
18 with Horizon had come up before was potentially
19 disclosable, and yet those who were responsible
20 for the superintendence of disclosure in those
21 cases, the in-house lawyers in the Criminal Law
22 Division, who knew that they had come up before
23 because they were dealing with these cases again
24 and again, had not identified that this was
25 an issue even to be investigated for disclosure

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1 Horizon, in the same way that the cases of
2 Blakey and Mahmood had raised issues. And yet
3 I didn't see in their correspondence with the
4 Investigators anywhere them saying "It's
5 interesting that this person is saying they'd
6 had a problem with Horizon because we had this,
7 didn't we, last time and should we have
8 a conversation about that?" That would have
9 been a step forward.

10 **Q.** That document can come down, thank you.

11 Does the point that you made in 667 of your
12 second report remain, that this was a small pool
13 of lawyers?

14 **A.** Yes.

15 **Q.** What was the point that you were making on the
16 back of it being a small pool of lawyers?

17 **A.** The fact that it was a small pool of lawyers
18 meant that issues that were coming up in one
19 case would resonate if they had come up before
20 because there was only a few of them dealing
21 with those cases, and so the -- in one sense,
22 they didn't need to be told by anyone that this
23 was something that needed to be looked at
24 because they knew from their earlier experience
25 in cases that it was an issue to be dealt with.

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1 beyond the very limited discussions that I saw.

2 And I consider that to be a serious issue
3 because they should have been considering
4 whether there was disclosure to be made in
5 relation to the operation of Horizon anyway, but
6 for them still not to be addressing it when they
7 knew that these issues were coming up and had
8 come up before, is a serious concern.

9 **Q.** Did you see any evidence of consideration of the
10 issue and a reasoned decision to not give
11 disclosure?

12 **A.** No, and so, for example -- and I spotted
13 an error in my report, for which I must
14 apologise, in paragraph 667 I suggested that the
15 same lawyer had dealt with the cases of David
16 Blakey and Tahir Mahmood at the charge stage.
17 I was wrong about that: it was Mr Singh in the
18 case of Mr Blakey and Ms McFarlane in the case
19 of Mr Mahmood. But each of them then went on to
20 deal, in rapid succession, with a series of
21 further cases.

22 For example Mr Singh dealt with the cases of
23 Ms Palmer, Mrs Rudkin and Mrs Misra,
24 Ms McFarlane dealt with the cases of Ms Thomas
25 and Ms Hall, each of which raised issues with

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1 To give a parallel, one of the virtues of
2 the Treasury Counsel system is that, because
3 there is a small team who deal with these
4 difficult cases, where one person has an issue
5 in a case, someone else will have dealt with
6 that issue before and that -- and where there's
7 an issue that does arise in one case, they can
8 alert the others to watch out for it in other
9 cases.

10 This was a small team in much the same way
11 and the need for inevitability, perhaps, of
12 sharing of experiences ought to have alerted
13 them to the fact that this was a problem that
14 went beyond one case.

15 **Q.** Thank you. Can we move to topic 9, which is the
16 acceptance of pleas and, to start with, look at
17 something that you say in relation to Mr Singh,
18 and it's a point that arises in a number of
19 cases. The point is whether the acceptance of
20 a plea to false accounting is a concession or
21 arguably a concession of the absence of
22 sufficient evidence to theft. You address this
23 on page 127 of your report. It's paragraphs 351
24 and 352. At the end of 351, you say that:

25 "Mr Singh observed that 'if Mrs Misra

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1 pleaded guilty to the false accounting [charges]
2 then it is recommended that the prosecution in
3 respect of theft is not proceeded with'."

4 Then 352:

5 "This was arguably a concession to the
6 absence of actual evidence of theft and
7 consistent with an approach whereby theft was
8 charged to encourage pleas to false accounting."

9 Now, I think on the last occasion you
10 confirmed that the judgment of the Court of
11 Appeal in *Eden* made it clear that it could be
12 appropriate to charge both theft and false
13 accounting where they are either put as
14 alternatives to each other or where they are
15 both advanced to cover different forms or
16 species of criminality?

17 A. Yes.

18 Q. Would you agree that that means that the mere
19 fact that theft and false accounting are charged
20 in the same indictment is not, of itself,
21 improper, so long as there's sufficient evidence
22 and a public interest to charge both of the
23 counts --

24 A. Yes.

25 Q. -- and the two charges are either put as

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1 alternatives to each other or are referring to
2 or addressing different species of criminality?

3 A. Yes.

4 Q. You have also, I think, given evidence on the
5 last occasion that evidential sufficiency and
6 public interest must be kept under review
7 throughout the life of a case?

8 A. Yes.

9 Q. Does it follow from that that a change in
10 circumstances may affect whether continuing
11 a prosecution is in the public interest?

12 A. Very much so.

13 Q. In a prosecution pursued by the CPS, for
14 example, if a defendant was willing to plead
15 guilty to one count but not another, would the
16 CPS have to consider whether it remains in the
17 public interest to go to trial on the
18 outstanding count?

19 A. Yes.

20 Q. I think the -- at least the 2010 edition of the
21 Code, dealing with pleas and the acceptance of
22 pleas includes, amongst the factors to be
23 considered, the following: whether the court
24 will have sufficient sentencing powers to match
25 the seriousness of the offending behaviour --

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1 A. Yes.

2 Q. -- and the wishes and interests of the victim?

3 A. Yes.

4 Q. In a private prosecution, where there isn't
5 an obligation to prosecute, even if the
6 evidential and public interest tests are
7 satisfied, is a prosecutor entitled to consider
8 whether, in the light of a plea or a proposed
9 plea, pursuit of the remaining count or counts
10 on the indictment is a proportionate use of the
11 private prosecutor's resources?

12 A. Yes.

13 Q. Given those things, why is it that you consider
14 that Mr Singh's observation must necessarily --
15 in fact, I don't think you say "necessarily",
16 you say "arguably" -- arguably amounts to
17 a concession that there was insufficient
18 evidence of theft?

19 A. Yes, and I don't say necessarily that was --
20 does reflect Mr Singh's position but, taking it
21 as a starting point, Mr Singh had reached
22 a charging decision without setting out in any
23 way the evidential basis for his conclusions,
24 which means it is not clear to me where there
25 was, on the face of it, no evidence of financial

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1 benefit to Mrs Misra, that he had concluded that
2 there was a realistic prospect of a conviction
3 for theft of £74,609.84 when there was no
4 evidence that Mrs Misra had received £74,609.84.

5 So he had charged that, and false
6 accounting, with no reference to the case of
7 *Eden*, no reference to why both charges were
8 there, how one was an alternative to the other
9 or how one reflected different criminality to
10 the other, but had then said that he considered
11 there was a realistic prospect of a conviction
12 for theft but, if she pleaded guilty to false
13 accounting, then that would be sufficient.

14 And where there was no explanation as to how
15 he had reached a conclusion as to theft and
16 where on the face of the investigation report
17 there was a limit to the evidence that there had
18 been theft, it struck me in those circumstances
19 that it was arguable, rather than necessarily
20 the case, that there was a recognition in his
21 mind that the case for theft was not strong and
22 therefore false accounting was sufficient and,
23 if that was his mindset, given the lack of
24 evidence, I queried why he was charging theft in
25 the first place.

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1 Q. Thank you very much. So it might be that, even
2 if there was sufficient evidence of theft, and
3 there was a public interest in prosecuting
4 theft, it may not have been in the public
5 interest or the Post Office's private interests
6 to proceed to trial with the theft account, if
7 there was a plea to false accounting, but you
8 saw no reasoning to that effect --
9 A. Yes.
10 Q. -- on the face of the papers?
11 A. Yes, and I'll be corrected if I'm wrong but
12 I think Mrs Misra did then plead to false
13 accounting and was still prosecuted for theft.
14 Q. Yes. That's exactly right.
15 A. And I saw no analysis to explain that either.
16 Q. Thank you. That can come down.
17 Can we turn to considerations of
18 confiscation. I think it's right that the 2010
19 iteration of the Code did not state that the
20 availability of the court's powers to make
21 confiscation orders was a consideration that had
22 to be taken into account as part of the public
23 interest test. I think that came in a later
24 edition of the Code. That notwithstanding,
25 would it have been a proper consideration for

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1 reasoning, that we've just explored, ever
2 brought into account in Mrs Misra's case?
3 A. No.
4 Q. Can we look more generally about the issue of
5 accepting pleas to false accounting instead of
6 theft, and you address this on page 227 of your
7 report. If that can be shown, please. 227, at
8 paragraph 640. In 640 you say:
9 "The approach to charging as between theft
10 on the one hand and factoring on the other
11 lacked consistency ... In a number of cases
12 there was also a lack of [consistency] in the
13 charging decision exhibited by the willingness
14 to accept a plea to false accounting instead [of
15 theft]."
16 Are those comments limited to the particular
17 facts of one or more of the cases that you
18 examined or are they a general point?
19 A. I think more of a general point.
20 Q. Can you help us then: why would a willingness to
21 accept a plea to false accounting necessarily
22 imply a lack of confidence in the evidential
23 merits of the theft charge?
24 A. Again, it doesn't necessarily reflect one but
25 where, in case after case after case, a charge

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1 a prosecutor when considering whether to accept
2 a guilty plea to some counts but not others, or
3 to a lesser or a different offence, to consider
4 the impact on the court's confiscation powers?
5 A. It would be reasonable to consider that, yes.
6 Q. So, in Mrs Misra's case, when the Post Office
7 was considering whether to accept a plea to
8 false accounting or whether to proceed with the
9 theft count, would the impact on confiscation
10 have been a legitimate factor for the Post
11 Office to consider as part of the balancing
12 exercise?
13 A. In the sense that, if the theft count reflected
14 the actual benefit to Mrs Misra of the money and
15 an appropriation by her of the money, which
16 could lead then to confiscation, if she were
17 convicted of taking the money, through
18 a conviction for theft, on the one hand, and
19 false accounting reflecting putting off the
20 "evil day", to use the words in *Eden*, to avoid
21 identification that there were errors that had
22 not involved her taking money on the other
23 through false accounting, the latter route
24 arguably not leading to confiscation.
25 Q. Was there any evidence that that was the kind of

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1 of theft was selected without any explanation as
2 to the evidential basis for it, particularly in
3 relation to an evidential basis for
4 appropriation and/or dishonesty. And then there
5 was a willingness to accept a plea to false
6 accounting which carried with it a recognition
7 that there was not sufficient evidence of those
8 elements of theft. It did raise the question as
9 to whether theft was being charged without
10 sufficient consideration of those elements.
11 And also because the charging decisions were
12 such models of brevity, it was very difficult to
13 see how the thought process had been gone
14 through as to why theft was there as well as
15 false accounting, in these cases.
16 Q. Thank you. Can we turn to page 229, please and
17 paragraph 644. You say:
18 "However, the greater concern in a number of
19 the cases [that] I have considered was that
20 evidence that the theft charge was used as
21 a means to pressure a defendant into pleading
22 guilty to false accounting, with conditions
23 attached to the acceptance of that plea ..."
24 I think you give three examples: Hughie
25 Thomas, between paragraphs 645 and 647;

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1 Josephine Hamilton, 648; and then Alison Hall,
2 649 to 651.
3 **A.** Yes.
4 **Q.** Three examples.
5 **A.** Yes, and one -- if one wanted a fourth,
6 Mrs Henderson would be in the same category.
7 **Q.** Allison Henderson too, thank you. If we can
8 just look at those, the three you've given in
9 the report, starting with Hughie Thomas, Noel
10 Thomas. If we look at what you say at
11 paragraph 645 onwards, he pleaded guilty to
12 false accounting in September 2006, the theft
13 charge not pursued.
14 The memorandum of the hearing noted:
15 "This was pursuant to a basis of plea which
16 makes it clear that no blame was attributed to
17 the Horizon ... system. The defendant accepted
18 that there was a shortage but he could not
19 explain how it came about. He accepted that as
20 a subpostmaster he is contractually obliged to
21 make good the shortage."
22 You say:
23 "In other words, the acceptance of this plea
24 was made conditional on the repayment of monies
25 which, consistent with the plea, had not been

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1 "... as an offence usually attracting
2 an immediate custodial sentence even in a case
3 with strong personal mitigation ... a defendant,
4 confronted by the evidence of loss deriving from
5 the Horizon system and a lack of possible
6 questions as to its reliability, would
7 understand that a plea to an alternative offence
8 would increase the chances of them retaining
9 their liberty, and it is reasonable to
10 anticipate that they would receive legal advice
11 to that effect."
12 Does that include, for example,
13 an anticipation or at least a hope of
14 a suspended sentence?
15 **A.** Yes.
16 **Q.** At 647:
17 "The Post Office submitted in the context of
18 the Second Sight Review ... that the decision to
19 accept the plea was reached in accordance with
20 the Code ... However, as was acknowledged, there
21 is no evidence of such a review ... which in the
22 first instance did not follow the Code test.
23 Rather than a review of the evidence, the
24 prospects of conviction or the public interest,
25 the only matters raised in the material that

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1 shown to have been taken, and to an undertaking
2 not to criticise the Horizon system."
3 This appears, from the material you'd seen,
4 to have:
5 "... followed from a discussion between the
6 principal Post Office lawyer, [Juliet] McFarlane
7 and the Post Office agents in the prosecution in
8 which [Juliet McFarlane] said, '... we would
9 proceed with false accounting providing the
10 Defendant accepts that the Horizon system was
11 working perfectly ... Further instructions are
12 that the money should be repaid'. "
13 You say that:
14 "Mr Thomas ... reported to the Second Sight
15 Review that the approach taken was 'aggressive
16 and inappropriate'. "
17 You say that, from the perspective of
18 a defendant, it should not be forgotten that
19 there is a very significant difference between
20 theft and false accounting as outcome:
21 "Theft by an employee in breach of trust, in
22 the period with which the Inquiry is concerned,
23 was recognised ... "
24 You cite two cases, *Barrick and Clark*, from
25 the 1980s, establishing that:

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1 [you] have seen ... are the recovery of money
2 and the protection of the reputation of the
3 Horizon system."
4 On a scale of concern about the conduct of
5 prosecutions, where does what you identified
6 there sit?
7 **A.** I recognise that it is always open to the
8 prosecution to consider whether, on a review of
9 the evidence and a review of the public
10 interest, in fact a plea to an alternative count
11 meets the justice of the case. I also recognise
12 that it is always open to the prosecution to
13 consider a proffered basis of plea and identify
14 whether that basis of plea is acceptable and, if
15 it is not acceptable, to make that clear to
16 those acting on behalf of a defendant.
17 What concerned me here was that the
18 discussions that I saw in the communication
19 involving Mrs McFarlane were investigating
20 internally their view as to whether a plea to
21 false accounting would be acceptable in a case
22 where she had identified, at the charging stage,
23 there was a medium prospect of success and
24 identifying, in that context, the concerns being
25 recovery of the money and no criticism of

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1 Horizon.
2 It's -- putting those factors together, it
3 seemed to me a reasonable reading of what
4 occurred was that those involved from the Post
5 Office side were identifying their conditions
6 for a plea being accepted, which were conditions
7 of the recovery of money, where there was no
8 acceptance by the plea that money had been
9 taken, and a lack of any criticism of the
10 system, which was something that Mr Thomas had
11 identified from interview on as being a concern
12 on his part and would have been mitigation for
13 him.

14 And so that's a very long way of answering
15 your question, though I think it's a very real
16 concern that, on the face of those facts, this
17 was a plea that was being tailored to address
18 concerns that the Post Office had, in terms of
19 getting the money and protecting their
20 reputation of their computer system, rather than
21 an assessment of the factors in the Code by
22 reference to evidential sufficiency or the
23 public interest.

24 **Q.** Thank you. Cutting it shortly, do the same
25 issues arise in paragraph 648, concerning the

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1 not 'making any explicit criticism of Horizon'."

2 You say that it was improper of the Post
3 Office but who within the Post Office had
4 engaged in that improper conduct?

5 **A.** Well, in each of those cases there were
6 documents that I saw that involved discussions
7 between those in-house -- so the lawyers and
8 Investigators -- about, effectively again, the
9 preconditions or the necessary conditions for
10 there to be a plea accepted by reference to
11 money and by reference to the reputation of
12 Horizon.

13 **Q.** Thank you. So it's the lawyers on each
14 occasion?

15 **A.** Those are the persons whose emails I saw or
16 memos I saw that identified those being the
17 factors.

18 **Q.** Thank you. Then the last sentence of that
19 paragraph, I think this is something that you've
20 mentioned a moment ago:

21 "It would ... have been a relevant, and
22 likely a strong mitigating factor ... that the
23 falsification of records was to cover
24 a shortfall for which the defendant was not
25 responsible and may [instead] have been

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1 case of Josephine Hamilton, and 649 and
2 following, in the case of Alison Hall?

3 **A.** Yes.

4 **Q.** Thank you.

5 **A.** I should just add, in relation to that, those
6 cases, those of Mrs Hamilton and Mrs Hall, were
7 considered by the Court of Appeal and the Court
8 of Appeal took a very clear view of what they
9 considered had occurred there, and the material
10 that I saw did not, in any way, lead me to take
11 a different view from Lord Justice Holroyde and
12 others.

13 **Q.** That's paragraph 650 of your report, you're
14 referring to there --

15 **A.** Yes.

16 **Q.** -- if we can turn to that on page 231. If we
17 scroll down -- thank you -- you say:

18 "Adopting the language ..."

19 That's you adopting the language of the
20 Court of Appeal?

21 **A.** Yes.

22 **Q.** "... when it considered these cases, it was
23 'improper' of the Post Office to have made their
24 acceptance of a plea to a lesser alternative
25 offence to theft conditional on the defendant

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1 a computer error. To deny the defendant that
2 mitigation was 'wrong'."

3 Can you just say what you mean there,
4 please?

5 **A.** It's, on the one hand, someone who has
6 dishonestly and deliberately manipulated the
7 system and, on the other hand, someone who has
8 been confronted by an error in the system that
9 they cannot understand but which they do
10 understand they will be held accountable for and
11 made to pay for and, in panic, has adjusted the
12 system to stave off the day when they know that
13 will be found out, on the other.

14 It is a significant potential difference as
15 to how a judge will view their offending if they
16 are -- if it is a one-off result of panic
17 through something beyond their control. A judge
18 is much more likely to view that sympathetically
19 and much more likely to consider that
20 a custodial sentence is not required and, if
21 they are prevented from advancing that
22 mitigation, then they are being prevented from
23 putting forward a strong argument for them not
24 going to prison.

25 **Q.** Thank you. Lastly, over the page at

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1 paragraph 651, the Court of Appeal, in
2 *Hamilton* -- it's their paragraphs 113 and 147 --
3 said that it was 'irrational and unjust' for the
4 Post Office to have required that they 'had the
5 money short of theft' and the Court of Appeal
6 observed that:

7 "[The Post Office's] conduct gives a firm
8 impression that the condition of repayment in
9 return for [the Post Office] dropping the charge
10 of theft placed undue pressure on Mrs Hamilton.
11 It gives the impression that [the Post Office]
12 was using the prosecution to enforce repayment."

13 Did you find any material that undermined
14 the impression that the Court of Appeal formed?

15 **A.** No, and the words that her plea would be
16 accepted on her recognition that she had the
17 money short of theft were words from the lawyer
18 in the Criminal Law Department at the Post
19 Office and, again -- and that was a discussion
20 in advance of Mrs Hamilton pleading to false
21 accounting.

22 And so, on the one hand, you have
23 an acceptance of a plea to adjusting records
24 that revealed a loss, rather than causing the
25 loss, in the sense of taking the money, through

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1 or email or terms of reference to provide the
2 expert with instructions upon what it is that
3 his or her opinion is sought, setting out the
4 issues or questions that the expert is expected
5 to address or to answer; to provide explicit
6 guidance as to what it is the expert is being
7 asked to do and the material they are being
8 asked to consider in order to do it; to set out
9 the material upon which reliance has been placed
10 in the prosecution and which may be relevant to
11 the questions that the expert is expected to
12 answer; to inform the expert of their duties
13 under the common law and the Criminal Procedure
14 Rules; to make sure that the expert not only
15 understands their duties, but that they had
16 complied with the duties in order to ensure that
17 the expert's evidence was admissible; and,
18 lastly, to satisfy themselves that any material
19 or any literature of which the prosecutor was
20 aware, and which might undermine the expert's
21 opinion, was reviewed by the prosecution and
22 disclosed to both the expert and to the defence.

23 **A.** Yes. Those -- the duties on the expert were
24 well established before the Inquiry's period
25 started, the responsibility of the person

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1 the acceptance of false accounting, rather than
2 theft, and yet it being a condition of that that
3 the individual in the criminal proceedings be
4 made liable for paying back money that you are
5 accepting they have not taken.

6 There may be a separate, civil discussion as
7 to whether, under the postmaster's contract they
8 were required to make good a loss that they had
9 not caused but this is in the criminal
10 proceedings, making it a condition or pursuing
11 criminal mechanisms in order to get money that
12 you are accepting they have not taken.

13 **Q.** Thank you. Can we turn to topic 10 -- that can
14 come down, thank you. The last topic is expert
15 evidence.

16 Can we start by way of a recap of your
17 previous evidence to the Inquiry. You said that
18 a prosecutor intending to rely on expert
19 evidence in criminal proceedings was, during the
20 relevant period, subject to the following
21 obligations -- and this is just by way of brief
22 recap to the questions I am going to ask -- to
23 satisfy themselves that the expert had been
24 appropriately instructed, including by the
25 provision of a detailed letter of instructions

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1 instructing an expert, the lawyers instructing
2 an expert, to communicate those duties to the
3 expert to make sure the expert understood them
4 evolved over the period of the Inquiry but, from
5 quite early in the period, it was again clear
6 that that was what was required of them.

7 **Q.** Yes. In the five case studies in which the Post
8 Office obtained evidence from Mr Gareth
9 Jenkins -- that's Thomas, Misra, Allen, Sefton
10 and Nield and Ishaq --

11 **A.** Yes.

12 **Q.** -- forgive the use of the surnames -- did you
13 identify any document or evidence that
14 demonstrates that Post Office prosecutors or,
15 later, those acting on their behalf from
16 Cartwright King, informed or instructed
17 Mr Jenkins about the duties of an expert?

18 **A.** No.

19 **Q.** Did you see any evidence that such prosecutors
20 were themselves cognisant of the existence of
21 any of these duties?

22 **A.** No.

23 **Q.** Did you see any evidence that they complied with
24 any of these obligations in their dealings with
25 Mr Jenkins?

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1 A. No.
2 Q. Did you see any instructions to Mr Jenkins which
3 might conform in any way with a written form of
4 instruction that a prosecutor ought to provide
5 to a person whom it is proposed to give expert
6 witness evidence?
7 A. No.
8 Q. In relation to the evidence that Mr Jenkins
9 himself gave, you told us previously about
10 a case in 2006, and then the Criminal Procedure
11 Rules Rule 33, which came into force in November
12 2006, that there were a number of necessary
13 inclusions in a report?
14 A. Yes.
15 Q. We've looked just now at duties on a prosecutor;
16 we're now turning to duties on an expert
17 themselves. Did they include -- I'm going to
18 summarise them all -- detail of the expert's
19 academic and professional qualifications,
20 experience and accreditation insofar as they are
21 relevant to the opinions expressed?
22 A. Yes.
23 Q. A statement setting out the substance of all the
24 instructions received, the questions upon which
25 an opinion is sought, the materials that have

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1 those matters that I've mentioned, that are
2 necessary inclusions for an expert report or
3 an expert statement?
4 A. In most of his statements he did set out his
5 qualifications, in some instances, or at least
6 in one instance, those who were receiving the
7 statement from him, the lawyers at the Post
8 Office, did ask him to do that. To an extent,
9 he set out the questions that he'd been asked,
10 in that he would identify what he was making the
11 statement about, but he would not set out the
12 details of what had been asked of him.
13 He did not, I think, usually set out what
14 materials he had been provided with or what
15 sources of information he was relying upon.
16 Insofar as that was the work of others beyond
17 himself, that was not identified by him.
18 Insofar as there was a range of opinions and/or
19 contrary views or material that was capable of
20 undermining his opinions, that was not set out
21 at all.
22 In terms of literature, which would include
23 expert reports that he had seen in earlier cases
24 in relation to Horizon and which would include
25 his own expert reports in earlier proceedings,

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1 been provided and considered, assumptions which
2 are material to the opinions expressed?
3 Information relating to who carried out any
4 examinations or the methodology used and, if
5 they weren't carried out by the expert
6 themselves, the extent to which there was
7 supervision?
8 Whether there was a range of opinion in the
9 matters dealt with in the report, a summary of
10 that range of opinion and reasons for the
11 opinion given?
12 Relevant extracts of any literature or other
13 material that might assist the court?
14 Then, finally, a statement from the expert
15 that they had understood and complied with their
16 duty to the court to provide independent
17 assistance by way of an objective and unbiased
18 opinion.
19 A. Yes.
20 Q. Were they the necessary inclusions in the report
21 itself?
22 A. Yes.
23 Q. In the five case studies that you have
24 considered, did you find that the witness
25 statements served by Mr Jenkins set out any of

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1 those were not normally set out and there was
2 never a statement identifying that he recognised
3 the duties that were imposed upon him.
4 Q. Thank you. Did you see any evidence that the
5 Post Office informed Mr Jenkins that the printed
6 statements should contain those necessary
7 matters?
8 A. No.
9 Q. Did you see any evidence that the Post Office
10 and, later, lawyers at Cartwright King, were
11 aware that an expert report or an expert
12 statement should contain those necessary
13 inclusions?
14 A. I never saw any material that I can think of
15 that involved the discussion of that to tell me
16 whether they appreciated that or not. They
17 certainly didn't say they did.
18 Q. When you gave evidence on the last occasion, you
19 told us that, even with those experts who were
20 trained, accustomed and made their living, or at
21 least in part made their living, from giving
22 expert evidence, ie even if you were preaching
23 to the choir, a prosecutor had to make sure that
24 the expert understood what their duties and
25 obligations were; is that right?

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1 A. Yes.
2 Q. You emphasised that, in relation to an expert
3 who was not functionally independent of the
4 prosecutor, that it was all the more important
5 that they understood the nature of the role that
6 an expert performs and that they properly
7 understood what the requirement of independence
8 actually entailed?
9 A. Yes, and not least because the expert would need
10 to demonstrate that independence and so they
11 needed to be reminded to set out the basis upon
12 which it was so demonstrated.
13 Q. Was Mr Jenkins one of those witnesses in respect
14 of whom there was that heightened duty to ensure
15 that they understood the nature of their expert
16 duties and, in particular, what the requirement
17 of independence entailed?
18 A. Yes.
19 Q. Was that because he was not a professional
20 expert witness?
21 A. It was -- yes, it was because he was giving
22 evidence of something outwith the knowledge of
23 the jury, because it was something about which
24 he had knowledge because he worked with the
25 people whose software it was.

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1 and demonstrating independence?
2 A. They understood the -- how it might look, in the
3 sense that in the conversations that we looked
4 at in emails leading up to the generic statement
5 in 2012, there was discussion about whether it
6 was -- it might be better to have someone
7 independent of Fujitsu, rather than working for
8 Fujitsu, delivering that statement. That was as
9 far as it went.
10 Q. So recognising the lack of independence but then
11 not taking the next step: what do we do to
12 address it?
13 A. Yes.
14 Q. Before we look at any of the communications
15 lawyers had with Mr Jenkins, did you observe
16 that some of them -- and this is communications
17 between lawyers and Investigators, on the one
18 hand, and Mr Jenkins, on the other -- were
19 inconsistent with how a prosecutor ought to
20 address and to communicate with an expert?
21 A. Yes, I should say that I have seen a lot more in
22 terms of communications between those at the
23 Post Office, on the one hand, and Mr Jenkins, on
24 the other, within the last week than I had
25 before.

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1 Q. So his day-to-day work was as a software
2 engineer or a computer engineer, rather than
3 a professional witness?
4 A. Yes.
5 Q. He wasn't, I think you know, a member of any
6 expert witness institute or similar?
7 A. I certainly don't recall him listing any such
8 membership.
9 Q. Would you agree that the heightened duty applied
10 in particular because he was not independent of
11 the subject matter of his evidence --
12 A. Absolutely.
13 Q. -- he was, in part, speaking about his own work?
14 A. Yes. His own work and the work of his employer.
15 Q. He wasn't, would you agree, functionally
16 independent of the prosecutor?
17 A. No, because of the interrelation between the
18 product that he was talking about and the
19 application of that product by the prosecutor.
20 Q. Have you seen anything in the material to
21 suggest that the Post Office or, later,
22 Cartwright King lawyers understood the
23 heightened need to ensure that Mr Jenkins
24 understood his duties as an expert, in
25 particular the especial need for independence

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1 Q. Yes.
2 A. That which I had seen before was a cause for
3 concern. That which I have seen since
4 heightened those concerns considerably.
5 Q. Can I summarise them: did you find that there
6 was a lack of formality in the communications?
7 A. Yes.
8 Q. Did you find the guidance given to him to be
9 adequate or inadequate?
10 A. Inadequate.
11 Q. Did you find some of the language used to be
12 appropriate or inappropriate?
13 A. Inappropriate.
14 Q. Did you find that, whether any of the
15 instructions given had, as their intent, the
16 service of the Post Office's interests, rather
17 than the provision of an independent opinion?
18 A. Yes.
19 Q. As well as some of the communications being
20 inconsistent with the way a prosecutor ought to
21 approach an expert, did you find any of them to
22 be the opposite of that, ie the antithesis to
23 it?
24 A. Yes.
25 Q. If it's right that the Post Office or its

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1 agents, Cartwright King, later, did not provide
2 Mr Jenkins with written instructions that
3 conform to the requirements that we've
4 mentioned, didn't provide Mr Jenkins with
5 instructions as to his duties as an expert and
6 none of the statements included the necessary
7 elements that we've identified, would you be
8 able to draw an overall conclusion that there
9 was a fundamental failure by the Post Office
10 properly to instruct Mr Jenkins as an expert?
11 **A.** Clearly, that's ultimately a conclusion for
12 others than me but, certainly, it is not
13 a conclusion from which I would dissent at all.
14 **Q.** With the limitation you've just included, was
15 that a persistent failure?
16 **A.** Yes.
17 **Q.** You told us back in your first report -- it was
18 paragraph 67, no need to turn it up -- that
19 there was "no prosecution document that I have
20 seen that gave guidance as to what an expert
21 being instructed needed to address".
22 **A.** No, Post Office document.
23 **Q.** Yes, no Post Office document.
24 **A.** Yes.
25 **Q.** Was that absence of a framework within

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1 Mr Jenkins was being advanced to perform and,
2 whilst it is entirely right and proper for
3 an Investigator or a prosecutor dealing with
4 an expert to say, "I don't understand that
5 paragraph, can you elucidate it?" or "Can you
6 think about this section in the light of this or
7 that that you haven't seen, or this or that that
8 you say further down", that is different from
9 saying, "That bit is going to give rise to
10 disclosure issues" or "That bit is going to
11 cause us problems, can you take it out", or just
12 deleting it, in the way they did, from the
13 drafts.
14 **Q.** Yes, sometimes they wrote "Can you do X", "Can
15 you delete", "Can you add", "Can you rephrase",
16 and sometimes they simply cut it out?
17 **A.** Yes.
18 **Q.** The issues that you identified where the
19 evidence was amended, deleted or tailored in
20 that way, did they go to Horizon integrity
21 issues?
22 **A.** Absolutely.
23 **Q.** How serious, in your view, was this conduct?
24 **A.** Extremely.
25 **Q.** Did any of the issues that we've identified so

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1 prosecution policy reflected in the Post
2 Office's practice, as you saw it, in the case of
3 Mr Jenkins?
4 **A.** Yes.
5 **Q.** The things we've spoken about, so far, were
6 failures of omission, things that the Post
7 Office didn't do or its lawyers did not do. Did
8 you identify any material in the five case
9 studies, that prosecutors and Investigators
10 communicated with Mr Jenkins, that were
11 inconsistent with the approach that a prosecutor
12 ought to take: so worse than mere failure?
13 **A.** Some of the emails that we considered yesterday,
14 where, on the face of them, they were telling
15 the expert what to say and telling him what not
16 to say, that, I think, goes beyond an omission.
17 In material that I've seen, again, since the
18 end of last week, there are examples of
19 Mr Jenkins' statements being rewritten by
20 Investigators and lawyers at the Post Office, in
21 the sense of them saying, "Can you take that bit
22 out, please?" or "That bit doesn't sound good;
23 can you say something else?"
24 This is in relation to the evidence of
25 an independent expert, that is the role that

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1 far go to the admissibility of Mr Jenkins'
2 evidence?
3 **A.** They -- by, for example, removing aspects of his
4 statements, which were parts that qualified his
5 opinion or identified contrary views to his
6 opinion, they resulted in those -- the final
7 versions of the statements, no longer complying
8 with the requirements for an admissible expert
9 statement. And they also, in various respects,
10 removed the independence of its contents and so,
11 yes, it clearly affected its admissibility, had
12 any of that been appreciated by anyone who that
13 the opportunity to question its admissibility.
14 **Q.** In order to put that person in a position to do
15 so, disclosure of the communications would have
16 been necessary?
17 **A.** Yes.
18 **Q.** Did you see any evidence at all that such
19 communications between Investigator and lawyer,
20 on the one hand, and Mr Jenkins, on the other,
21 were disclosed in any of the five cases?
22 **A.** No.
23 **Q.** Did you see any evidence of any formal request
24 from the Post Office to Fujitsu for third-party
25 disclosure about the matters that Mr Jenkins was

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1 referring to? So, to take an example, the
2 locking issue, which caused transactions to be
3 lost, or the record of system errors, the Known
4 Error Log: did you see any communications at
5 that level?
6 **A.** No.
7 **Q.** Did you see anything to suggest that the Post
8 Office pursued such issues with the Fujitsu Head
9 of Legal, despite, on occasions, that channel of
10 communication being used?
11 **A.** I can't think of any, no.
12 **Q.** Thank you. Can I turn, then -- that's the ten
13 topics over -- to the case studies.
14 Your reports address 22 case studies and
15 your evidence speaks for itself. It's been
16 disclosed to all Core Participants and is
17 available on the Inquiry's website. I'm not
18 going to go through each of the 22 case studies
19 and, instead, only cover those where one of the
20 Core Participants has asked me to ask questions
21 of you by way of challenge to what you say --
22 **A.** Yes.
23 **Q.** -- or where one of the Core Participants has
24 asked for additional context to be given to what
25 you do say in either of your reports.

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1 bank account, that would be quite good evidence.
2 **Q.** Yes, so you'd want to do it as a prosecutor
3 trying to prove your case?
4 **A.** Absolutely.
5 **Q.** But you ought to do it, I think you told us
6 yesterday, as a reasonable line of inquiry
7 because it might assist the defendant too?
8 **A.** Yes.
9 **Q.** Because an active and healthy financial
10 investigation which produced nil returns, it
11 might be powerful evidence for a defendant to be
12 able to deploy?
13 **A.** Yes, especially if they have, in interview, said
14 in terms "I didn't take the money", that raises
15 the reasonable line of inquiry of, well, did
16 they? And the obvious place to look as to see
17 whether they've got it and whether that be a new
18 speed boat or the money in the bank, you have
19 a look.
20 **Q.** Was it usual in that period, 2000 to 2013, for
21 charging decisions to be made in cases
22 prosecuted by the CPS, whilst financial
23 inquiries were outstanding, if it was
24 nonetheless the case that there was sufficient
25 evidence to provide a realistic prospect of

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1 Can I start, then, with Lisa Brennan. This
2 is paragraph 46 of your Volume 2 report, which
3 is on page 24. There is no need to turn it up
4 for the moment.
5 In general terms, you there are critical of
6 the failure to conduct a fuller financial
7 investigation as to any financial benefit to
8 Ms Brennan of the conduct that was alleged
9 against her, yes?
10 **A.** Yes.
11 **Q.** As you said yesterday, investigating a suspect's
12 financial records was a reasonable line of
13 inquiry?
14 **A.** Yes.
15 **Q.** During the period 2000 to 2013 would ordinary
16 theft and fraud cases be prosecuted in the
17 public sector, eg by the police and the CPS,
18 without any enquiry of this sort having taken
19 place?
20 **A.** I'm sure there well have been some but,
21 certainly, my experience is that "follow the
22 money" is a mantra for those dealing with any
23 form of financial crime and so they would
24 normally look because, if they found evidence of
25 the money, for example, going into someone's

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1 conviction?
2 **A.** That would be a fact-specific assessment in
3 terms of where the financial inquiry was and
4 what material had thus far been generated by it.
5 But, clearly, if there was -- if a prosecutor
6 was satisfied, despite the fact that the
7 financial inquiry was ongoing, that there was
8 a realistic prospect of conviction, then they
9 would be entitled to reach an assessment,
10 providing they were also satisfied that what was
11 outstanding didn't have a bearing in the public
12 interest assessment.
13 **Q.** I think you would agree that, in a charge of
14 theft, it's sufficient to prove the fact of the
15 theft, whether by direct evidence or
16 circumstantial evidence, without also, in fact,
17 being able to show where the money went?
18 **A.** Yes.
19 **Q.** Was your experience in looking at these papers
20 that such financial enquiries that were made had
21 as their focus not proving or disproving theft
22 but recovery of proceeds for the benefit of the
23 Post Office?
24 **A.** Yes, in some cases it wasn't very clear what
25 they had made the financial enquiries that they

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1 did make for, because there would be a reference
2 in an investigation report to the fact that
3 they'd asked the postmaster for consent to
4 access their bank account, they'd obtained that
5 consent, they may have obtained some bank
6 statements and then there'd be no further
7 reference to them, and so it wasn't quite clear
8 what they'd done with them.

9 But where there was more intensive
10 examination of the finances, it did appear to be
11 by Financial Investigators preparing for
12 confiscation, rather than Investigators
13 preparing for prosecution.

14 **Q.** Would you agree that, in the context of a fraud
15 involving the alleged theft of cash of the type
16 alleged in Lisa Brennan's case, that the absence
17 of evidence of her having the missing money
18 could not exclude the possibility that she did,
19 in fact, take the cash?

20 **A.** It couldn't exclude it, no.

21 **Q.** Given that the case was left to the jury on the
22 basis that there was no evidence of her having
23 the money, how, in your view, could
24 an investigation of her finances by the Post
25 Office have placed her in a more advantageous

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1 prosecution had changed its case between the
2 first and second trial.
3 **A.** Yes.
4 **Q.** The Inquiry has heard some evidence since the
5 Court of Appeal's decision from Warwick Tatford,
6 the prosecution junior to Mr Stephen John at the
7 first trial and sole prosecuting counsel at the
8 second trial. He has told the Inquiry that
9 there were two counts in trial 1, the first
10 count was an alleged conspiracy to defraud
11 between Mr Page and Mr Whitehouse in relation to
12 foreign currency, involving the use of a Forde
13 Moneychanger and not Horizon --

14 **A.** Yes.

15 **Q.** -- and a second count of theft of £282,000,
16 alleged against Mr Page alone, based on an audit
17 shortfall and, therefore, based on Horizon.

18 Both defendants were acquitted on Count 1 at
19 the first trial, jury unable to reach a verdict
20 on Count 1 at the first trial, therefore there
21 was a retrial on Count 2 alone against Mr Page.

22 **A.** Yes.

23 **Q.** As such, the second trial was a retrial and did
24 not involve a change of case. Was your
25 conclusion that there had been a change of case,

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1 position than she was, either at the point of
2 the charging decision or before the jury?
3 **A.** Only if it could have confirmed that they had
4 looked and not found any evidence that she had
5 benefited financially and/or confirmed that she,
6 if this were the case, had made, attempted to
7 make, repayments at an earlier stage of losses,
8 and/or if it confirmed that she was not in
9 a position where she needed to steal the money,
10 those things would have further supported her
11 case, not least because they were coming from
12 the prosecution, rather than, for example, just
13 from her.

14 **Q.** Thank you. That's all I ask in relation to Lisa
15 Brennan's case.

16 I am going to move over the cases of David
17 Yates, David Blakey and Tahir Mahmood and turn
18 to the case of Carl Page and, in particular,
19 your consideration of his case at page 58,
20 paragraph 146 to 148 of your report.

21 Page 58, please, paragraph 146.

22 Between paragraphs 146 and 148, you raise
23 some criticisms based on your understanding,
24 I think, from the Court of Appeal Criminal
25 Division's judgment in *Hamilton*, that the

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1 based on what the Court of Appeal Criminal
2 Division had said in *Hamilton*?

3 **A.** In part, also based on the assessment in the
4 Second Sight review, which was to the same
5 effect.

6 **Q.** That's paragraph 147 that you're referring to
7 there?

8 **A.** It is, yes.

9 **Q.** Other than those tertiary sources -- or
10 secondary sources -- did you see anything in the
11 contemporaneous papers to suggest that there had
12 been a material change of case between the two
13 trials?

14 **A.** I saw a transcript of the evidence or, more
15 particularly, cross-examination of Mr Page at
16 the first trial, which was very much to the
17 effect that he had stolen foreign currency and
18 that that was the basis upon which the theft
19 charge appeared to be presented there, which was
20 how Second Sight characterised it in their
21 review.

22 So there was that material, contemporaneous
23 material, that accorded with what they were
24 saying had been the prosecution's case at the
25 first trial, which was not its case at the

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1 second trial. I can't, off the top of my head,
2 remember anything else but I didn't see
3 anything, equally, that would positively say
4 that the case had not changed in the sense of
5 a review between trial 1 and trial 2, as to how
6 the case would now be put in the light of the
7 acquittal on Count 1, first time round.
8 **Q.** Does anything that I have said in relation to
9 what Mr Tatford has told the Chair change your
10 view in relation to this aspect of the case
11 against Carl Page?
12 **A.** Clearly, I haven't considered what Mr Tatford
13 had to say. All I can say is that the material
14 that I saw -- and I can only speak to that --
15 didn't cause me to take a different view to
16 either Second Sight or, more pertinently, the
17 Court of Appeal, as to the fact that there had
18 been a change of case.
19 **Q.** Thank you. Can I turn to Oyeteju Adedayo's case
20 please. You pick this up at page 66 of your
21 report --
22 **A.** Yes.
23 **Q.** -- paragraph 169 and following. I think,
24 amongst the material that you've seen since the
25 preparation of your original report and this

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1 Investigator but, yes, I'd have thought so.
2 **Q.** Did you read the transcript of the interview of
3 Mrs Adedayo?
4 **A.** Yes.
5 **Q.** I wonder whether we can do this without turning
6 it up. Would you agree or disagree with the
7 suggestion that, when asked open questions,
8 Ms Adedayo appeared incoherent in some of her
9 answers?
10 **A.** They weren't easy to follow.
11 **Q.** Did you find that the account that was
12 ultimately attributed to her in the
13 Investigating Officer's report was one that had
14 been extracted through closed questions to her?
15 **A.** Yes, I think that's a fair characterisation.
16 There was -- when open questions were asked
17 initially, the account she gave was not clear
18 and more -- more closed questions were then
19 asked, from which a clearer account was derived.
20 But, clearly, it was a clearer account based on
21 what she was agreeing with.
22 **Q.** Would you agree or disagree with the suggestion
23 that the account overall was internally
24 inconsistent and confusing?
25 **A.** I can certainly understand why that would be

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1 revised report, included the CCRC referral
2 document?
3 **A.** Yes.
4 **Q.** The reference to which -- we needn't display it
5 -- is POL00121224. Did your view remain that
6 the case was poorly investigated?
7 **A.** Yes.
8 **Q.** Did your view remain that, in particular,
9 Mrs Adedayo's account was not explored or
10 examined by the Investigators or the
11 prosecutors?
12 **A.** Yes, and, in that regard, I focus on the account
13 that she gave at the time. I've seen what she
14 has said about that since, but I focus purely on
15 what she gave as an explanation to the
16 Investigators at the time, which was an account
17 that required investigating.
18 **Q.** Was it incumbent upon the Investigator,
19 Ms Bernard, to have investigated that account to
20 see, for example, whether there had been any
21 payments to third parties by Ms Adedayo?
22 **A.** Yes.
23 **Q.** Would that have been a relatively
24 straightforward exercise?
25 **A.** I would have thought so. I'm not a Financial

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1 suggested, yes.
2 **Q.** When she gave evidence to us, the Investigator,
3 Natasha Bernard, said that she viewed it as
4 inconsistent and confusing, and she said that
5 it's quite clear from her report that she didn't
6 believe what Mrs Adedayo was telling her.
7 **A.** In certain respects, yes, I agree with that.
8 **Q.** Given the equivocal nature of what was being
9 said, would you agree that that added an impetus
10 for the case to be properly investigated?
11 **A.** Yes.
12 **Q.** There wasn't any clear evidence of a theft and
13 a contradictory or internally inconsistent, in
14 some respects, baffling confession.
15 **A.** Yes.
16 **Q.** Would that have been a questionable basis to
17 prosecute?
18 **A.** Without that being resolved, yes.
19 **Q.** If we look at paragraph 181 of your report,
20 please, which is on page 70. Last sentence, in
21 the light of what you said earlier in
22 paragraph 181:
23 "In Mrs Adedayo's case, that reliability was
24 not an issue, and non-disclosure relating to the
25 operation of Horizon potentially less of

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1 an issue as a result."
2 Are you there essentially adopting the same
3 approach as the Court of Appeal Criminal
4 Division.
5 **A.** Yes, I hope so.
6 **Q.** Thank you very much. Can we turn to Mr Thomas'
7 case next, please.
8 **SIR WYN WILLIAMS:** Before you do, Mr Beer, can
9 I just understand what went on in Mrs Adedayo's
10 case. Her conviction was quashed by Southwark
11 Crown Court; that's correct, isn't it?
12 **A.** Yes.
13 **SIR WYN WILLIAMS:** So this is purely technical but
14 where you write that she pleaded guilty at the
15 Crown Court, I don't think can be right, can it?
16 Presumably what happened, she pleaded guilty at
17 the Magistrates Court but was then committed for
18 sentence?
19 **A.** That must be right, yes, sir.
20 **SIR WYN WILLIAMS:** That's just a mere technicality.
21 But what's of more interest in her case is
22 that there's no real rationale, is there, in how
23 her conviction was quashed or why it was
24 quashed, because we haven't got a formal
25 judgment of the Southwark Crown Court; is that

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1 described to me and the judge didn't determine
2 the issue between them?
3 **A.** No, that's right, sir.
4 **SIR WYN WILLIAMS:** So am I right in thinking that
5 the only objective -- by which I mean
6 independent of Mrs Adedayo or the Post Office --
7 assessment is that which we currently have, is
8 that which is contained in the reference by the
9 Criminal Review Commission?
10 **A.** Yes.
11 **SIR WYN WILLIAMS:** Yes, fine. Thank you.
12 Sorry, Mr Beer, I wanted to be clear in my
13 mind about this case.
14 **MR BEER:** Yes, thank you.
15 I think the document that you saw was
16 a transcript of the hearing at Southwark Crown
17 Court in front of Her Honour Judge Taylor --
18 **A.** Yes.
19 **Q.** -- of 14 May 2021. That ends -- the hearing
20 starts at 10.47. Do you want to just have
21 a look at it? I'm not sure we're going to be
22 able to display this.
23 I think it's Volume 1 of the Rule 10
24 material at tab D32.
25 **A.** Thank you very much. Yes, thank you.

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1 correct?
2 **A.** We have a transcript of the hearing at which it
3 was indicated by counsel acting for the Post
4 Office that, although they didn't accept the
5 reasons that had been advanced on Mrs Adedayo's
6 behalf for why her conviction should be quashed
7 they nevertheless considered that it would be
8 contrary to the public interest to seek to
9 uphold her conviction and so they didn't oppose
10 her appeal.
11 There was no judgment given, and I'll be
12 corrected if I'm wrong about it, no judgment
13 given by the Recorder of Westminster who
14 presided over that hearing, separate from that,
15 but -- and so the transcript is less than
16 helpful as to exactly why it came about that
17 Mrs Adedayo's conviction was quashed.
18 Certainly the Post Office made clear they
19 didn't accept a good deal of what Mrs Adedayo's
20 case, as considered by the Criminal Cases Review
21 Commission, had been.
22 **SIR WYN WILLIAMS:** So, in effect, at court, there
23 was an issue which was unresolved by the judge.
24 Mrs Adedayo's case was presented in a particular
25 way, the Post Office said what you've just

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1 **Q.** Is that the relevant transcript?
2 **A.** It is, yes.
3 **Q.** The hearing starts, we can see on page 2, at
4 10.47. Ms Carey, I think that's Jacqueline
5 Carey, appears on behalf of the prosecution, and
6 speaks over pages 2, 3 and 4, and then
7 Mr Moloney, who appeared for both appellants,
8 says a few words, ten words or so.
9 **A.** Yes, he was largely inaudible, apparently.
10 **Q.** Yes, which is no doubt due to the recording,
11 rather than Mr Moloney.
12 **A.** Sure.
13 **Q.** There's then a discussion or something that Her
14 Honour Judge Taylor said, which concerns
15 jurisdiction.
16 **A.** Yes, because Mrs Adedayo had pleaded guilty in
17 the -- and so you're entirely right, she pleaded
18 guilty in the Medway Magistrates Court to the
19 offences and was then sent to the Crown Court,
20 to Maidstone Crown Court for sentence. So,
21 procedurally, her guilty pleas had to be set
22 aside before her conviction could be quashed and
23 so that's the discussion at the end.
24 **Q.** Then the hearing concludes with this, Judge
25 Taylor saying:

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1 "Thank you. In these appeals of Mr Kalia
2 and Ms Adedayo, the Court finds that the effect
3 of Section 11.2.4 of the Criminal Appeal Act
4 1985 are such that they do not have to apply to
5 set aside their guilty pleas. We adopt the
6 background (inaudible) to these cases, which is
7 set out in *Hamilton v Post Office* [and the
8 citation given]. Whilst it is not conceded by
9 the performance that these are (inaudible)
10 cases, in terms of judgment the appeals are not
11 opposed (inaudible), will not be contested and,
12 in the public interest (inaudible). Their
13 sentences have been served and we hope that
14 (inaudible) they can put this behind them and
15 continue with their lives without the shadow of
16 a conviction. Any other applications ..."

17 It says "Mr Carey".

18 A. Yes.

19 Q. It should be Ms Carey.

20 A. Yes.

21 Q. She says, "No thank you".

22 Is that the extent of a judgment determining
23 the appeal?

24 A. Yes, it is.

25 MR BEER: Sir, I hope that helps.

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1 10 March 2006. This appears to be the original
2 or originating form of instruction from Mr Ward
3 of the Post Office to Fujitsu. If we just
4 scroll down, please, and go on to page 7, he
5 says:

6 "On a separate matter, I also require
7 a witness statement in respect of the following
8 ARQs ... all of which relate to the Gaerwen
9 SPSO."

10 That's Mr Thomas' branch on Anglesey.

11 A. Yes, that's right.

12 Q. "We need the usual (leave out paragraphs H(b)
13 and J, but we do need paragraph K (call logs)
14 covering an analysis over the period 01/11/04 to
15 30/11/05. Penny -- you may recall this one
16 which relates to nil transactions ... Can you
17 had an extra paragraph in your statement
18 explaining how online banking transactions are
19 processed and the data downloaded and how nil
20 transactions can occur."

21 If we go forwards, so that's 10 May (sic),
22 Post Office, Ward, to Fujitsu.

23 A. Yes.

24 Q. If we go forwards, please, to the 21 March,
25 FUJ00152582, and look at page 2, please. If we

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1 SIR WYN WILLIAMS: Thank you, yes.

2 MR BEER: Can we turn on to Mr Thomas' case then,
3 please. This is paragraph 198 and following of
4 your report on page 76. In fact, we needn't
5 turn this up, I can deal with this without
6 looking at this material. In paragraphs 193,
7 198 and 213 of your report, in the context of
8 Mr Thomas' case, you examine the preparation of
9 a witness statement by Gareth Jenkins.

10 A. Yes, I think the first witness statement he
11 made.

12 Q. Exactly. You say at paragraph 198 that
13 consideration of the reference material,
14 ie material that was referenced in the "Gareth
15 Jenkins Chronology", is necessary. We mentioned
16 the nature and status of that document
17 yesterday.

18 A. Yes, that's right.

19 Q. So can we look at the reference material and,
20 indeed, some other underlying material in
21 chronological order. Can we start, please, with
22 FUJ00122203. Can we look at page 6, please. If
23 we scroll down, please, we should see
24 an email -- we can -- from Graham Ward -- and
25 it's a generic email account -- to Fujitsu of

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1 scroll down -- thank you -- we should see
2 an email from Mr Pinder to Mr Jenkins, with
3 a heading "Fujitsu Statements Gaerwen":
4 "As discussed please see extract from
5 a recent email below in italics from Graham Ward
6 ..."

7 We've just looked at that email.

8 A. Yes.

9 Q. "... regarding provision of a statement about
10 nil transactions and online banking. If you are
11 able to put something together for us I would be
12 very grateful. If you send it back I will
13 arrange for Neneh or Penny to write into
14 a statement for your signature."

15 Then you will see the relevant part of
16 Mr Ward's email cut in to this email and the
17 part in italics:

18 "Can you add an extra paragraph in your
19 statement explaining how online banking
20 transactions are processed and the data
21 downloaded and how nil transactions can occur."

22 Having looked at this material, do you agree
23 that it was the Post Office, via Mr Ward, routed
24 through Mr Pinder, who had asked Mr Jenkins to
25 focus on the issue of nil transactions in the

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1 witness statement --
2 **A.** Yes.
3 **Q.** -- rather than a request to consider any broader
4 issues affecting the operation and reliability
5 of Horizon?
6 **A.** Yes.
7 **Q.** Would you agree -- you'll see the reference to
8 the three ARQs in the first line of the cut-in
9 email, I'm not going to read the numbers out --
10 that it was the Post Office which had selected
11 the three specific time periods for the
12 examination of nil transactions, and that it had
13 done so by enclosing ARQs for time periods that
14 it had selected?
15 **A.** Yes.
16 **Q.** Would you agree that this instruction to
17 Mr Jenkins didn't constitute or indeed come
18 close to being a proper instruction to
19 an expert?
20 **A.** Yes.
21 **Q.** Instead, it's a request coming from the Post
22 Office to the Fujitsu Litigation Support Team
23 asking them to add a paragraph to their standard
24 statement, which was then rerouted to
25 Mr Jenkins?

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1 **MR BEER:** Thank you.
2 **(11.32 am)**
3 **(A short break)**
4 **(11.45 am)**
5 **MR BEER:** Sir, good morning. Can you continue to
6 see and hear us?
7 **SIR WYN WILLIAMS:** Yes, thank you.
8 **MR BEER:** Before I continue with the chronology in
9 Mr Thomas' case, can we just return to
10 Ms Adedayo's case and just clarify couple of
11 points, in the light of the questions you asked
12 and the evidence that Mr Atkinson gave.
13 Can we start, please, Mr Atkinson, just by
14 explaining the different nature of appeals from
15 the Crown Court to the Court of Appeal Criminal
16 Division and from a Magistrates Court to a Crown
17 Court in CCRC reference cases.
18 Is it right that an appeal from the Crown
19 Court to the CCAD (*sic*) is, essentially,
20 a review of the safety of the conviction?
21 **A.** Yes.
22 **Q.** Whereas, if a person has pleaded guilty in the
23 Magistrates Court, there is no power to appeal,
24 unless the CCRC make a reference?
25 **A.** Yes.

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1 **A.** That was how I read it, yes.
2 **Q.** Quite aside from the format of the instruction,
3 is it right that you saw no material in which
4 the Post Office provided to Mr Jenkins detail as
5 to what the prosecution case was against
6 Mr Thomas?
7 **A.** That's right.
8 **Q.** No material setting out what Mr Thomas had said,
9 for example, in interview --
10 **A.** Correct.
11 **Q.** -- or in the audit, and in the audit report?
12 **A.** Yes.
13 **Q.** There was no analysis for him of the competing
14 issues between the parties?
15 **A.** No, that's right.
16 **Q.** Would you agree, on these materials, that
17 Mr Jenkins wasn't, in fact, instructed to
18 undertake an examination of the scheme --
19 **A.** Yes, I agree.
20 **Q.** -- of the system?
21 **A.** Yes.
22 **Q.** Thank you very much.
23 Sir, it's just gone 11.30 now, I wonder if
24 we could break until 11.45.
25 **SIR WYN WILLIAMS:** Certainly, yes.

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1 **Q.** If the CCRC make a reference, the test that the
2 CCRC apply is not whether the conviction is
3 unsafe but whether it's arguable that it might
4 be?
5 **A.** Yes.
6 **Q.** If the CCRC do make a reference to the Crown
7 Court on a case involving a plea in the
8 a Magistrates Court, that results in a hearing
9 *de novo*?
10 **A.** Yes, so a rehearing of the case.
11 **Q.** Yes, so, essentially, a retrial?
12 **A.** Yes.
13 **Q.** A rehearing of the case?
14 **A.** Yes.
15 **Q.** Upon such rehearing of the case, the prosecutor
16 must, or ought to, consider both limbs of the
17 Code test at that point in time?
18 **A.** Yes.
19 **Q.** What happened in Ms Adedayo's case was that the
20 Post Office made a concession on the public
21 interest limb of the test, as complained by
22 Ms Carey in the transcript, that that limb was
23 not at that point satisfied?
24 **A.** That's right.
25 **Q.** That approach by the Post Office meant that

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1 Mrs Adedayo did not have the opportunity to
2 argue by reference to the evidence and to make
3 submissions whether the evidential threshold was
4 met -- that wouldn't be for the court anyway --
5 but to argue in court, by reference to evidence,
6 as to whether her case was an Horizon case or
7 not?

8 A. No, that's right.

9 Q. Is that why we don't see a judgment from Her
10 Honour Judge Taylor resolving whether
11 Mrs Adedayo's case was or was not an Horizon
12 case because, essentially, the Post Office
13 offered no evidence against her and there was
14 nothing for her then to do?

15 A. And there had been no submissions before Judge
16 Taylor on that issue which would have allowed
17 her to come to a view.

18 Q. No, save that I think in the inaudible part of
19 the transcript, it's agreed between the Post
20 Office and Mr Moloney that what was said was
21 that the Post Office analysis that this was not
22 a Horizon case was not accepted, and he was
23 essentially preserving his position and her
24 position for the future?

25 A. Yes.

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1 Then the page above, please, page 4.
2 A reply from Mr Ward later that day, the 22nd.
3 In the third paragraph, second line:

4 "... I'm concerned at the words 'system
5 failure' which is also in an earlier line ...
6 'There has been some sort of system failure' --
7 What does this mean exactly and is there any
8 indication of a system failure at this office
9 during the period in question?"

10 Can we go forwards, please, to FUJ00122203,
11 and page 3, please. On that day, 22 March,
12 Ms Lowther forwards Graham Ward's email to
13 Mr Jenkins:

14 "Hi Gareth,

15 "Please see reply from Graham below
16 regarding your statement.

17 "... ignore the first bit ..."

18 Then:

19 "Could you please look at his second
20 [paragraph] and advise with your comments again.

21 "I have attached a copy of your draft
22 statement ..."

23 If we go up to page 1, please. Reply later
24 the next day, the 23rd. Mr Jenkins sending
25 a revised witness statement saying:

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1 Q. Thank you. Can we go back to Mr Thomas' case,
2 please.

3 A. Yes.

4 Q. Can we look in the next step of the chronology,
5 at FUJ00152587, and page 5, please. We'd
6 previously been looking at 10 March and
7 21 March. We're now looking at 22 March.

8 If we scroll down a little bit, please, we
9 see Mr Ward emailing the Fujitsu employees that
10 we see set out, confirming, in the second
11 paragraph, that the Post Office required
12 a witness statement producing ARQ extracts in
13 spreadsheet form, relating to Mr Thomas' post
14 office, and a statement explaining the headings
15 and under what circumstances nil transactions
16 can occur. Can you see that in the second
17 paragraph?

18 A. Yes.

19 Q. Then, if we scroll up, please, to the top of
20 page 5., we see Ms Lowther providing Mr Ward
21 with a draft witness statement later that day on
22 22 March:

23 "Please see the draft [witness statement]
24 for the above re 'Nil Transactions'.

25 "[Does this meet] your requirements."

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1 "In particular, I don't feel I can include
2 the last two [paragraphs], which may make the
3 statement useless."

4 Can we look at what that attachment was.
5 FUJ00122204. 23 March, draft statement. Scroll
6 down, please. You'll see the introduction and
7 then the part of the text in single line
8 spacing:

9 "There are three main reasons why a zero ...
10 transaction may be generated as part of the
11 banking system ..."

12 1 and 2, and then 3:

13 "There has been some sort of System Failure.
14 Such failures are normal occurrences."

15 So the point remains in Mr Jenkins'
16 statement in this draft, despite Mr Ward's
17 questions expressed to Ms Lowther and passed on
18 to Mr Jenkins: why is that there, what does it
19 mean?

20 A. Yes.

21 Q. So he's maintaining that the reasons why a zero
22 transaction may be generated include some sort
23 of system failure and that they are normal
24 occurrences.

25 Can we go to FUJ00122203 --

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1 I'm so sorry. If we can go to the third
2 page of the witness statement, please. If we
3 scroll down, just a little bit, you'll remember
4 that in his covering email, Mr Jenkins said
5 that: I don't think I can say the part in the
6 last two paragraphs, and these are the last two
7 paragraphs in the statement.

8 "... no reason to believe that the
9 information in the statement is inaccurate ...
10 To the best of my knowledge and belief at all
11 ... times the computer was operating properly
12 ..."

13 Then a records declaration.

14 Then Mr Jenkins said, as well as in his
15 email, at the foot of the page:

16 "I'm not sure that the yellow bit is true.
17 Can this be deleted? All I've done is interpret
18 the data in spreadsheets that you have emailed
19 to me."

20 Just pausing here for the moment, in
21 relation to the page 1 point, system failures
22 being a reason for nil transactions and being
23 normal occurrences in the system, would you
24 agree that it wasn't appropriate for the Post
25 Office as an Investigator or as a prosecutor to

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1 **Q.** Do you agree that Mr Jenkins' request that the
2 last paragraphs, the two that we're looking at,
3 be removed from the draft witness statement
4 ought to have been disclosed in this
5 prosecution?
6 **A.** If the two paragraphs remained in the statement
7 as ultimately served, then the fact that he
8 didn't agree with them clearly needed to be made
9 clear.
10 **Q.** That's what happened. Despite his request for
11 their removal, we'll see that eventually, in the
12 statement of 6 April 2006, those paragraphs
13 remained.
14 **A.** Without qualification.
15 **Q.** Yes.
16 **A.** Yes.
17 **Q.** Therefore, his unhappiness at including those
18 two paragraphs in a witness statement ought
19 properly to have been disclosed in this
20 prosecution?
21 **A.** Yes.
22 **Q.** And in other prosecutions?
23 **A.** In any prosecution where this statement was
24 served and/or disclosed or those paragraphs were
25 included in any further statements that were

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1 insist upon the removal of any references to
2 system failures from Mr Jenkins' witness
3 statements?

4 **A.** Yes. The emails that we've just seen, I don't
5 think there was anything inappropriate about
6 them asking what he meant by that or asking him
7 to explain that further, but asking him to
8 remove it is a different matter.

9 **Q.** To the extent that it was removed subsequently,
10 do you agree that Mr Jenkins' recognition in
11 this draft of his witness statement, that system
12 failures are normal occurrences in the system,
13 ought properly to have been disclosed in this
14 prosecution --

15 **A.** Yes.

16 **Q.** -- and in others?

17 **A.** Yes, with more information as to what he meant
18 by that.

19 **Q.** No matter what went on subsequently, in terms of
20 the deletion of that line from his witness
21 statement, should that have been material
22 disclosed by Mr Jenkins himself?

23 **A.** It should, if it was his view. If it was part
24 of his expert assessment, it should have stayed
25 there and formed a part of what he produced.

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1 served or disclosed, then his disagreement with
2 them needed to be disclosed as well.

3 **Q.** Can we go, please, to FUJ00122210. Just look at
4 the bottom of page 1, please, from Ms Lowther to
5 Mr Ward:

6 "Hi Graham,

7 "[Please see attached] second draft for the
8 above with further explanation regarding the
9 issues you raised."

10 That second draft is the one that we've just
11 looked at:

12 "Please let me know of any amendments [as
13 soon as possible] as we need to put this in the
14 post", et cetera.

15 Then, further up on page 1, later the same
16 day, on the 24th, Mr Ward replies at 11.37:

17 "Neneh,

18 "This statement needs more work ... I have
19 attached a suggested draft with a number of
20 comments (as mentioned previously [I think
21 that's the previous email we just looked at]
22 I think the 'system failure ... normal
23 occurrence' line is potentially very damaging).
24 It may be worth considering someone from our
25 team taking a statement directly from Gareth

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1 (where is he based?).
 2 "Whilst there is some urgency with this, it
 3 is more important to get it right and ensure
 4 that we are not embarrassed at court, which we
 5 certainly could be if we produced a statement
 6 accepting 'system failures are normal
 7 occurrences' ...
 8 "Let me know what you think of the draft."
 9 Then if we see at the top of that page there
 10 later in the day, that's passed, that email,
 11 directly by Ms Lowther to Gareth Jenkins:
 12 "[Please] see the mail below and the new
 13 draft statement."
 14 So let's look at Mr Ward's drafting efforts.
 15 POL00047895. If we scroll down, please, so this
 16 is the relevant paragraph at the top of the page
 17 here:
 18 "There are three [then Mr Ward has inserted]
 19 (if these are the main reasons what are the
 20 rest?) reasons why a zero value transaction may
 21 be generated as part of the banking system ..."
 22 Then I think 1 and 2 remain the same. The
 23 third reason, system failure, has been
 24 deleted -- can you see that --
 25 A. Yes.

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1 an Investigator or a Manager of Investigators
 2 had made deletions or proposed deletions to
 3 a witness statement and had given as a reason
 4 that the evidence that the expert was proposing
 5 to give might well support the defendant and,
 6 therefore, the words should be deleted, ought to
 7 have been disclosed in the prosecution?
 8 A. It shouldn't have happened and, if it did
 9 happen, it should have been disclosed.
 10 Q. Can we go to page 3, please. Can we see that
 11 the two paragraphs in relation to the operation
 12 of the computer -- and we'll come back in
 13 a moment to exactly what they may have meant,
 14 what their focus may have been in a moment, but
 15 they have been removed by Mr Ward --
 16 A. Yes.
 17 Q. -- in this draft. Again, was that proper
 18 conduct by a member of the prosecuting
 19 authority?
 20 A. It would depend on why it was done and what else
 21 was done in relation to it. Clearly, if the
 22 person whose statement this was said that they
 23 were -- that they wanted those paragraphs to be
 24 deleted because they were wrong, then it was not
 25 wrong to delete those paragraphs.

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1 Q. -- and replaced by Mr Ward typing:
 2 "(This is a really poor choice of words
 3 which seems to accept that failures in the
 4 system are normal and therefore may well support
 5 the postmaster's claim that the system is to
 6 blame for the losses!!!!)"
 7 Do you consider this type of intervention in
 8 relation to the content of Mr Jenkins' evidence
 9 to be appropriate conduct by a member of
 10 a prosecuting authority?
 11 A. No.
 12 Q. Do you consider the degree of input into the
 13 drafting of Mr Jenkins' witness statement to be
 14 appropriate, if it was the case that Mr Jenkins
 15 was being treated as an expert witness?
 16 A. No. As I said before, there was no issue with
 17 Mr Ward, as he had in earlier emails, asking
 18 what system failures meant and having a better
 19 understanding of that, but to take it out
 20 because it was embarrassing or damaging, or
 21 would help the postmaster --
 22 Q. The defendant.
 23 A. -- help the defendant is very much the opposite
 24 of what they should have been doing.
 25 Q. Do you agree that, to the extent that

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1 But it should have generated discussion as
 2 to why they were wrong or what the issue was
 3 and, if the issue was, as I read Mr Jenkins'
 4 email to suggest that, for him to attest as to
 5 the operation of the system, he needed more
 6 material than he had been given, then the
 7 discussion needs to be about that, rather than
 8 just deleting the paragraphs and moving on as if
 9 nothing had happened.
 10 Q. Thank you.
 11 Can we move on, please, to POL00122217 --
 12 FUJ00122217. My mistake, I said POL rather than
 13 FUJ.
 14 FUJ00122217. Can we start with page 2,
 15 please. We can see that Mr Ward's amendments to
 16 the second draft of the statement are sent back
 17 to Mr Jenkins. Then, if we go up, please,
 18 Mr Jenkins emails Mr Ward directly, copying
 19 Ms Lowther in, an updated draft statement,
 20 saying:
 21 "I've added some further annotations to your
 22 annotations. Does this move us forward?"
 23 So shall we see what the attachment said?
 24 FUJ00122218. This is the attachment to that
 25 email. Although it was being sent on 28 March,

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1 the statement remained dated 24 March. If we
2 scroll down, please, you'll see the third
3 reason, system failures, remains deleted.
4 You will see Mr Ward's annotations on
5 "really poor choice of words", and you'll see
6 Mr Jenkins reply:
7 "Please can you suggest something better
8 then? What we have here are genuine failures of
9 the end-to-end system which are not part of
10 normal operation, but are anticipated and the
11 system is designed to cope with them. Some such
12 failures could be engineered as part of
13 a malicious attack (but that doesn't apply to
14 those failures that appear in the evidence
15 presented). In all cases the system is designed
16 to identify such failures and handle them in
17 such a way that the Customer, the Postmaster,
18 Post Office and [Financial Investigators] are
19 all clear as to the status of the transaction
20 and any necessary financial reconciliation takes
21 place. I guess one option is to delete the
22 paragraph since it is purely an introduction to
23 the following more detailed description."
24 So Mr Jenkins has asked Mr Ward to suggest
25 something better and raised the possibility of

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1 **Q.** Can we go forward to FUJ00152587. Mr Ward
2 emails Mr Pinder, copying Ms Lowther and
3 Mr Jenkins in, saying:
4 "I do not understand why this statement ...
5 is taking so long to be put together.
6 I appreciate it is slightly unusual, but I do
7 not understand the confusion as I thought I'd
8 made our requirements clear."
9 Remember the word "requirements", if you
10 may:
11 "Unfortunately, Gareth's annotations do not
12 take us forward at all (and I'm sure this is not
13 Gareth's fault). Gareth has indicated in the
14 attachment below that the 3 spreadsheets
15 produced by your team ... were not produced by
16 him, therefore as he quite rightly points out,
17 he is not in a position to produce them in his
18 statement."
19 That's a side point. Then scroll down,
20 please:
21 "As already stated, we urgently need
22 a statement producing these 3 additional
23 spreadsheets, explaining in general terms, under
24 what circumstances 'nil' transactions occur and
25 in particular how the 'nil' transactions at

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1 deleting the paragraph.
2 In the light of the fact that Mr Jenkins
3 recognised, in this further draft or the
4 response to the proposed amendment, that system
5 failures were anticipated, was it appropriate
6 for the Post Office, as an Investigator or
7 prosecutor, to insist upon the removal of the
8 reference to "system failures" from the witness
9 statement?
10 **A.** No. What was necessary was for them to provide
11 a proper explanation of what that meant.
12 **Q.** The recognition in the text that he added that
13 such system failures were anticipated, do you
14 agree ought properly to have been disclosed in
15 the prosecution?
16 **A.** Yes.
17 **Q.** If we go over the page, please. Scroll down.
18 You'll see that the system operation paragraphs,
19 those two paragraphs at the end that were in the
20 original coloured yellow, remain removed.
21 **A.** Yes.
22 **Q.** Do you agree that this draft of the witness
23 statement ought properly to have been disclosed
24 in the prosecution?
25 **A.** Yes.

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1 Gaerwen occurred ... The same statement needs to
2 include a paragraph which states that there is
3 no evidence of a system error at Gaerwen
4 (assuming this is the case) in relation to 'Nil'
5 transactions at the office. We do not need to
6 mention 'system failures being normal
7 occurrences' if there is no evidence of such
8 a problem at this office.
9 "... it may now be best if the Investigator
10 ... arranges to meet with Gareth to take the
11 statement in person ..."
12 Do you consider this intervention by Mr Ward
13 to be appropriate conduct by a member of
14 a prosecuting authority?
15 **A.** No.
16 **Q.** Do you consider the degree of input into the
17 drafting of this witness statement to be
18 appropriate?
19 **A.** No.
20 **Q.** Ought this exchange to have been disclosed in
21 the prosecution?
22 **A.** Yes, especially if the statement was being
23 relied upon.
24 **Q.** No need to turn them up but some evidence the
25 Inquiry has got, FUJ00155721 and FUJ00152592,

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1 suggests that Mr Pinder of Fujitsu then spoke
2 with Ms Matthews, the Investigator, and arranged
3 for her to meet Mr Jenkins in person on the
4 6 April 2006 to "record the statement".

5 It appears, as a result of that meeting,
6 an updated draft witness statement was prepared,
7 dated 6 April 2006, if we can look at that,
8 please, FUJ00122237. If we scroll down,
9 please -- and again, and again -- you'll see,
10 I think, that the three main reasons for nil
11 transactions occurring, including system
12 generated occurrences, do not appear in this
13 final witness statement nor any reference to
14 system failures at all.

15 A. That's right.

16 Q. But in the last draft, the final draft, the
17 signed version, the two paragraphs about the
18 operation of the computer system reappear. Can
19 you see that? There's one on the page there.
20 Then, if we scroll to the next page, yes:

21 "... no reason to believe the information in
22 this statement is inaccurate because of the
23 improper use of the computer."

24 I think they have had been combined into --

25 A. They have.

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1 disclosed, in particular because, from 2005
2 onwards, the CPIA Code at paragraph 5.1 required
3 drafts of statements to have been recorded on
4 the Unused Schedule, if they differed materially
5 what the final version?

6 A. Yes, and because applying the disclosure test,
7 for reasons that Mr Ward had identified, this
8 was material that undermined the prosecution
9 case and fell to be disclosed anyway.

10 Q. So the failure to reveal, by recording on the
11 schedule the existence of these drafts, may be
12 a breach of Section 7 of the CPIA, in that the
13 reference to "system failure" in the drafts
14 meant that they might reasonably be considered
15 to be capable of undermining the prosecution or
16 assisting the defence?

17 A. Yes.

18 Q. So, gathering all of that information together,
19 had the Post Office adhered to the law in
20 relation to disclosure here, then the fact that
21 the witness statement had evolved over time and
22 at whose insistence it had evolved over time
23 would have been revealed to the defence?

24 A. Yes.

25 Q. That can come down. Thank you. You tell us in

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1 Q. -- a compressed version of both statements.

2 A. Yes.

3 Q. So standing back, at the moment, from this run
4 of correspondence, would you agree that
5 Mr Jenkins openly referred to system failure in
6 his original draft of the statement?

7 A. Yes.

8 Q. It was Mr Ward who objected, on behalf of the
9 Post Office, to the reference to system
10 failures?

11 A. Yes.

12 Q. Mr Ward inserted his criticisms of the inclusion
13 of those words into a text of the statement --

14 A. Yes.

15 Q. -- "This is a really poor choice of words" --

16 A. Yes.

17 Q. -- and it appears to be Mr Ward who was pressing
18 for the amendment of the statement, because
19 Mr Ward was worried about how "system failure"
20 might be interpreted and that it might actually
21 help a defendant?

22 A. Yes.

23 Q. Putting aside whether that approach was
24 acceptable, I think you said that each of the
25 versions of the statement ought to have been

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1 paragraph 213 of your report, which is on
2 page 82, that the snapshot of data that
3 Mr Jenkins examined in his witness statement was
4 a very restricted one --

5 A. Yes.

6 Q. -- and that the examination which was undertaken
7 does not appear to have been disclosed, so it's
8 limitations were unlikely to have been
9 appreciated by the defence.

10 Having seen now the underlying material, and
11 putting aside the fact that the work done
12 reflected, I think, what Mr Jenkins had been
13 asked to do, do you agree that Mr Jenkins sought
14 guidance as to whether what he was doing was the
15 correct approach?

16 A. I'm not sure I entirely follow that.

17 Q. Let's look at some other material, then.

18 FUJ00122230. If we scroll down, please, I think
19 this is an email of 30 March between Mr Jenkins
20 and Mr Pinder saying:

21 "I've taken the data from the PEAK ..."

22 Do you recall what PEAKs were?

23 A. No.

24 Q. You don't, okay:

25 "... and carried out my own analysis of it

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1 and presented the results in the attached Word
2 Document.
3 "Hopefully this is the sort of thing that
4 [the Post Office] want. If you want to pass it
5 through to them before Thursday then fine."
6 So PEAK was an incident management system
7 maintained and operated by Fujitsu that recorded
8 the reporting investigation and possible
9 escalation of system issues within a certain
10 level of service helpdesk within Fujitsu.
11 **A.** Yes.
12 **Q.** Mr Jenkins says, he's taken the data off the
13 PEAK, so from that system.
14 **A.** Yes.
15 **Q.** If we can look, please, at FUJ00122229. This is
16 the attachment to that email that we've just
17 looked at. This note sits under Mr Jenkins'
18 hand:
19 "This note is provided as input to a Witness
20 Statement regarding Gaerwen ...
21 "Penny Thomas provided me with extracts ...
22 for 3 [periods from audited data].
23 "I have taken this data and extracted
24 details of all banking transactions and analysed
25 the zero value transactions. The following

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1 of which is referred to in this document?
2 **A.** No.
3 **Q.** Is that the type of material that should be
4 retained by an expert witness and made available
5 for disclosure?
6 **A.** Yes.
7 **Q.** Thank you very much.
8 If we go back to paragraph 213 of your
9 report, which is on page 82, in paragraph 213,
10 in the middle of the paragraph, can you see
11 a line which says:
12 "Mr Jenkins of Fujitsu does not appear to
13 have been asked to review the underlying data
14 more generally ..."
15 Then this:
16 "... but does appear to have provided
17 reassurance as to the integrity of the system
18 despite that underlying data not being
19 analysed."
20 **A.** Yes.
21 **Q.** Are you there referring to that line at the end
22 or that paragraph at the end of Mr Jenkins'
23 witness statement?
24 **A.** Yes.
25 **Q.** Can we look at that, please. FUJ00122237. If

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1 table provides a summary ..."
2 Then the three ARQ periods are set out by
3 reference to the three ARQ numbers: 401, 459,
4 and 460. Then scroll down:
5 "I have produced a separate spreadsheet ..."
6 Then he goes on and explains what he's done.
7 **A.** Yes.
8 **Q.** So my question, and I cut to the chase too
9 quickly with you, Mr Atkinson, was that what
10 Mr Jenkins did was tell Mr Pinder "This is what
11 I've done, attaching this Word document", and
12 essentially asking: is this correct, is this
13 what the Post Office want, by saying in his
14 covering email "Hopefully this is what the Post
15 Office want"?
16 **A.** Yes.
17 **Q.** Can you recall any reply to that coming back to
18 him and saying, "No, you've done the wrong
19 thing"?
20 **A.** I can't recall one no and this material does
21 reflect what is in the statement of the 6 April.
22 **Q.** 6 April, yes, exactly. Did you see any
23 instruction or guidance to Mr Jenkins about the
24 retention of working materials such as this or
25 the disclosure of underlying analysis, the type

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1 we just look at the end of the witness
2 statement, please. It's that paragraph:
3 "There is no reason to believe the
4 information in the statement is inaccurate
5 because of the improper use of the computer. To
6 the best of my knowledge and belief at all
7 material times the computer was operating
8 properly, or if not, any respect in which it was
9 not operating properly, or was out of operation
10 was not such as to affect the information held
11 on it."
12 **A.** Yes.
13 **Q.** This is the abridged version of those two
14 computer operation paragraphs --
15 **A.** Absolutely.
16 **Q.** -- that we saw earlier.
17 **A.** Yes.
18 **Q.** Is it the line "To the best of my knowledge and
19 belief at all material times the computer was
20 operating properly", that you're referring to?
21 **A.** Yes.
22 **Q.** If we go back to the beginning of the statement,
23 please, and if we scroll down, you'll see in the
24 second paragraph Mr Jenkins refers to the
25 Fujitsu PEAK system:

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1 "Fujitsu have a fault management system
2 called the PEAK system, which is used for
3 passing faults around the team and tracking
4 faults raised regarding the Post Office
5 Account."
6 Then, subsequently, Mr Jenkins records that
7 he extracted data from the PEAK system:
8 "I extracted data from this system regarding
9 the Gaerwen Post Office."
10 Then he says:
11 "From this data, I then extracted all the
12 banking transactions which showed a zero value."
13 That's ARQ data.
14 A. Yes.
15 Q. He then produces spreadsheets analysing the
16 existence of or the reasons for the zero values.
17 The statement at the end, if we go to it at
18 the foot of the next page, please, page 3 at the
19 bottom:
20 "There is no reason to believe that the
21 information in this statement is inaccurate
22 because of improper use of the computer."
23 Was your understanding that the computer
24 that was being referred to was the PEAK system
25 or the Horizon system on which the ARQ data was
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1 by a computer?
2 A. Yes.
3 Q. There was, I think you will remember, concern
4 that the ambit and effect of Section 69 of the
5 Police and Criminal Evidence Act had been
6 fundamentally misunderstood? Do you remember
7 a case of *Miners* --
8 A. Yes.
9 Q. -- which you cite in your second report. Was
10 Section 69, in fact, only concerned with
11 admission of facts into evidence rather than
12 whether the facts were true?
13 A. Yes, it was to do with the operation of the
14 system, rather than the truth of the content.
15 Q. I don't suppose you can assist us on whether --
16 you've explained how you understood that
17 statement as referring to Horizon more
18 generally?
19 A. Yes.
20 Q. You can't assist us as to what Mr Jenkins',
21 obviously, intention was on the basis of the
22 materials that you've seen?
23 A. No, although that perhaps underlines why the
24 iterations and evolution of this statement was
25 so important and why its disclosure was so
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1 stored and from which it was obtained or could
2 you not tell?
3 A. My reading was the latter, that it related to
4 the -- relating to the Horizon system, but it's
5 not altogether clear.
6 Q. So I think you read this paragraph, the abridged
7 version of what is a standard paragraph in other
8 witness statements, as equating to an opinion
9 that Horizon was working properly, insofar as it
10 affected the Gaerwen branch at all relevant
11 times --
12 A. Yes.
13 Q. -- rather than that the information in the
14 witness statement refers to information
15 extracted from the PEAK system?
16 A. Rather than that that paragraph related just to
17 the PEAK system, yes.
18 Q. Thank you. Can you see that this statement is
19 at least open to interpretation?
20 A. Yes.
21 Q. That can come down. Thank you.
22 Before repeal, would you agree that
23 Section 69 of PACE permitted the admission into
24 evidence of a statement contained within
25 a document where that document had been produced
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1 important because it was that underlying
2 material that would help someone, particularly
3 someone acting on behalf of the defendant, to
4 approach what he meant by this and what his
5 intention was.
6 Q. So, in circumstances where an Investigator, as
7 we've seen the material suggest, took a witness
8 statement from Mr Jenkins, would you agree that,
9 if the witness was asked to include a form of
10 words such as this at the end of their witness
11 statement, it was important that it was made
12 clear to the witness what the words were
13 supposed to indicate?
14 A. Yes. Particularly where they had expressed
15 reasons as to why its relation to the operation
16 of the Horizon system would not be something
17 they would sign up to.
18 Q. Because the witness was saying, "I've looked at
19 one computer system, the PEAK system, I've
20 identified from that some data that I need to
21 look at, three lots of ARQ data" --
22 A. Yes.
23 Q. -- "I've extracted three lots of ARQ data from
24 Horizon, the computer system was working", I'm
25 summarising it?
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1 **A.** Yes, and what I'm not saying is that the Horizon
2 system was operating correctly. That's -- so
3 that it was clear what this assertion as to
4 correct operation related and to what it,
5 equally importantly, didn't relate to.
6 **Q.** So you would you agree, I think, that it was
7 important that it should be made clear to the
8 witness what the words were supposed to mean,
9 and to which system they were intended to
10 relate?
11 **A.** Yes.
12 **Q.** Can we move forwards, please, to FUJ00152616.
13 Can we look at page 3 to start with, please.
14 We've moved on from March and April into the
15 summer. If we scroll down, please. Yes, this
16 is an email to Diane Matthews, the Investigator
17 of this case, from Mr Jenkins. At the bottom of
18 the next page, you will see it is dated 12 July,
19 and Mr Jenkins says:
20 "I understand also that this trial is at
21 Caernarfon. Do you have any idea as to how much
22 time will be involved and exactly what is
23 required? I've never been to court in any
24 capacity and my knowledge of such things is
25 based on films and TV (which I'm sure are
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1 already in their witness statement, and I don't
2 know where that comes from, even in America.
3 **Q.** Would you agree that that part is positively
4 misleading?
5 **A.** Yes.
6 **Q.** Because it's wrong?
7 **A.** Yes.
8 **Q.** Would it carry any special relevance in
9 circumstances where a witness had already been
10 asked to delete aspects of their witness
11 statement and was now being told by the
12 prosecutor "You can't be asked questions about
13 things outside your witness statement, you'll
14 only be asked questions specifically about your
15 statement"?
16 **A.** Yes, I suppose it might have a different message
17 to someone if they understood that the various
18 drafts of their statement had also been
19 disclosed and, therefore, questions about their
20 statement might include that but, subject to
21 that, it would tell them that the final draft is
22 all that you're going to be asked about.
23 **Q.** Thank you. That can come down.
24 Having reviewed the emails, correspondence,
25 and draft statements that we've seen, would you
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1 inaccurate!)"
2 Then if we go to page 2, please, and scroll
3 up, we can see the reply from Ms Matthews. Just
4 scroll down to her second paragraph -- her third
5 paragraph, rather, which is a reply to the
6 request for help from Mr Jenkins:
7 "All witnesses will have to be present on
8 the 1st day unless the defence has agreed
9 [their] statement and don't wish to ask any
10 questions about that evidence."
11 Then this:
12 "It is pretty much as you see on the TV
13 really but remember that you will have sight of
14 your statement prior to taking the stand and can
15 only be asked questions specifically about your
16 statement."
17 Was that guidance appropriate?
18 **A.** I'm not altogether sure what it means but,
19 insofar as I understand it, no.
20 **Q.** What do you understand it to mean?
21 **A.** Well, I understand it to be saying that the
22 criminal process is like a TV programme,
23 presumably an American TV programme, by
24 reference to "the stand" and that the witness
25 can only be asked questions about what is
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1 agree with the suggestion that, overall, the
2 Post Office appeared to seek to harden up
3 Mr Jenkins' witness statement?
4 **A.** Yes.
5 **Q.** Looking at that series of communications and
6 drafts, do you agree that it succeeded in that
7 objective?
8 **A.** Yes.
9 **Q.** Do you agree that Mr Jenkins participated in
10 that enterprise?
11 **A.** Yes.
12 **Q.** I think you've agreed that all of the drafts
13 that we've seen, including observations within
14 the drafts and the communications themselves,
15 ought to have been disclosed?
16 **A.** Yes.
17 **Q.** Thank you. Can we turn to the case of
18 Suzanne Palmer, please. You address this in
19 paragraph 229 of your report. In fact, you
20 start at 220 but the bit I want to ask about is
21 229, which is on page 87.
22 In paragraph 229 on page 87, you comment
23 that prosecuting counsel, Stephen John, provided
24 an advice on evidence, which identified a number
25 of lines of inquiry or investigation that he
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1 thought should be pursued but that, other than
2 commenting on the particulars of the indictment,
3 he didn't advise on the sufficiency of evidence
4 and say this was another opportunity to review
5 whether there was a proper evidential basis to
6 assert dishonesty was lost.
7 **A.** Yes.
8 **Q.** Would you agree that dishonesty, as an element
9 of many offences, is one which, more often than
10 not, is proved by inference from the
11 circumstances, rather than by direct evidence?
12 **A.** Yes.
13 **Q.** Would you agree that, if Mr John, as prosecuting
14 counsel, had taken the view that there was not
15 sufficient evidence to satisfy the first limb of
16 the Full Code Test, he could not have properly
17 continued to prosecute the case?
18 **A.** I'm not sure I altogether follow that. Clearly,
19 if he identified that the -- there was
20 insufficient evidence to prove dishonesty for
21 the purposes of theft, he should have said so.
22 Whether he would have been professionally
23 embarrassed so he would have to have withdrawn
24 from the case if that advice was not acted on,
25 is a separate question, I think, not a very

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1 be circumstances where a prosecutor would not
2 understand that's what they're being asked,
3 although I have to say I think they would still
4 be duty bound to do so but it may also be that
5 those who instruct them were not expecting them
6 to do that and, therefore, their failure to do
7 it wouldn't necessarily tell them very much one
8 way or the other.
9 **Q.** In fact, we've heard from the lawyers so far
10 that the request to advise on evidence was meant
11 to encompass, was intended to encompass
12 a request to advise on evidential sufficiency,
13 not just further lines of inquiry, and the
14 counsel that we've heard from, the only one,
15 Mr Tatford, has said that he understood the
16 request to advise on evidence to include
17 a requirement to advise on evidential
18 sufficiency but the vagaries of life at the
19 criminal bar was such that there was often not
20 time to do so.
21 **A.** Certainly, my experience would be that, if you
22 were instructed to prosecute a case, you would
23 not just be looking at whether there was
24 a statement from the plan drawer, you would be
25 looking to see whether the case was sustainable

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1 clear-cut one.
2 **Q.** Put it another way, then: given he advised on
3 further lines of inquiry, is it implicit or can
4 we draw an inference reasonably that he had read
5 all of the papers, he'd considered the evidence
6 in the case and decided that there was
7 a reasonable prospect of conviction, even if he
8 never said so?
9 **A.** That would be one interpretation and that might
10 be the right interpretation. It would perhaps,
11 to an extent, depend on what his instructions
12 asked him to do. Certainly, the standard
13 instructions, such as I have seen them in --
14 across these 22 cases, do ask counsel instructed
15 to draft the indictment and to advise on
16 evidence. And where I've seen them, I have seen
17 advices from counsel that firstly say, "I attach
18 the indictment", and why it does or does not
19 include what it does or doesn't include and
20 a list of further things that are required.
21 The instructions to counsel didn't
22 specifically ask them to advise as to the
23 sufficiency of evidence and whether they agreed
24 that this was a proper case to prosecute or not,
25 so I could see that there would be -- there may

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1 or not.
2 **Q.** Thank you.
3 Can we turn to the case of Susan Rudkin,
4 please. I've skipped over Josephine Hamilton.
5 If we can look, please, at paragraph 306 of
6 your report, which is on page 113. In this
7 paragraph -- and it's an observation that you
8 make elsewhere in your report too -- you say
9 that, although the Post Office may have had
10 evidence of theft or fraud by way of admissions,
11 it did not have sufficient evidence or at least
12 there had been insufficient consideration of the
13 adequacy of the evidence to prove the level of
14 the loss. This is a point that you make
15 a number of times in the report.
16 **A.** Yes.
17 **Q.** Would you agree that the amount of
18 particularised loss in a charge can be relevant
19 to an assessment of whether a prosecution is in
20 the public interest --
21 **A.** Yes.
22 **Q.** -- any sentencing exercise --
23 **A.** Absolutely.
24 **Q.** -- and confiscation or other ancillary orders?
25 **A.** Yes, both as to whether it's appropriate to do

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1 it and certainly as to how much you're asking
2 for.
3 **Q.** Would you agree that although there's
4 a requirement to prove that there was a loss for
5 offences of theft, the courts do not generally
6 consider the amount of loss to be a material
7 averment in a count on an indictment?
8 **A.** No, that's right.
9 **Q.** Because the amount of loss is not a relevant
10 consideration in assessing whether a defendant
11 is guilty or not?
12 **A.** It's not a necessary requirement to establish
13 that, that's right.
14 **Q.** So what's the force of your criticism here,
15 then, in the light of those points?
16 **A.** That in this case and in such cases where there
17 were questions as to whether there was theft, it
18 was clearly relevant for the investigation to do
19 what it could to identify what it was being said
20 had been taken. And it was necessary for
21 a prosecutor in deciding whether to prosecute to
22 have a sense and an understanding of what had
23 been taken, because it was relevant to the
24 assessment of whether there was a realistic
25 prospect of conviction.

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1 We can see that this is the case of
2 Mr Rudkin, Mrs Rudkin's husband. If we scroll
3 down, please, "Analysis". This is written by
4 Harry Bowyer --
5 **A.** Yes.
6 **Q.** -- an in-house barrister at Cartwright King:
7 "It is Post Office's firm belief that the
8 major losses suffered by the Applicant were
9 caused by theft by his wife. Other very minor
10 losses were likely to have been caused by simple
11 human error ... There is no evidence to support
12 the Applicant's assertions that there were
13 failings with Horizon which contributed to
14 losses at the branch.
15 "Unless this position is resiled from this
16 case should not cause any problems with any
17 [Post Office] prosecutions past or pending."
18 Then over the page, please, "Dangers to Post
19 Office", second paragraph:
20 "If concessions are made that *might* render
21 this conviction unsafe then the Applicant's wife
22 may well be put in a position whereby she is
23 able to appeal that conviction.
24 "Were an appeal to succeed, then [the Post
25 Office] would be open to a claim for damages

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1 But it was also relevant to the assessment
2 of the public interest and where there was
3 a lack of evidence as to that, it is difficult
4 to see how, without further enquiry, one could
5 go from the beginning to the end of the charging
6 process without, at any stage, raising that as
7 a concern.
8 **Q.** Thank you.
9 Ms Rudkin's case raises issues of
10 post-conviction disclosure as well, which you
11 address in your report on the previous page at
12 page 305, at the foot of the page. You say:
13 "In the subsequent 2014 review by Cartwright
14 King, the Post Office retained the view that
15 there was no evidence of Horizon failings
16 contributed to the loss, and was clearly aware
17 of potential issues with cross-disclosure to
18 other cases. That advice took a concerning
19 approach to post-conviction disclosure focusing
20 on the consequences of disclosure rather than
21 whether it was required."
22 Can we just look at that, please --
23 **A.** Yes.
24 **Q.** -- this concerning approach to post-conviction
25 disclosure. It's POL00046579.

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1 and/or restitution of monies paid by this
2 appellant under any confiscation order.
3 "Such concessions would have to be disclosed
4 to those with similar convictions. This may
5 well necessitate a review of many hundreds of
6 cases to establish who else may be entitled to
7 such disclosure.
8 "If concessions are made that might render
9 the sentence imposed ... manifestly excessive
10 then the Applicant might well be put in
11 a position whereby she might be able to appeal
12 that sentence, with similar consequences for
13 [Post Office].
14 "... again, those concessions would have to
15 be disclosed ..."
16 Then, finally:
17 "This is not a case where any concessions
18 can or should be made; to do so has the
19 potential to render her conviction by guilty
20 plea unsafe, or her sentence as manifestly
21 excessive; and accordingly to invite
22 an application to the Court of Appeal."
23 Are they the paragraphs which you thought
24 indicated a concerning approach to
25 post-conviction disclosure?

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1 A. Yes.
2 Q. Can you just explain why, please?
3 A. Well, if the position was that there was no
4 material that -- and that material had been
5 reviewed -- that there was no material following
6 a review that identified any Horizon issues in
7 relation to Mrs Rudkin's case, then there would
8 be no material that needed to be disclosed and
9 no concession that there were Horizon issues
10 needed to be made and that would be on a proper
11 assessment of the material.
12 If the reason not to make such a concession
13 was that it might allow a proper appeal against
14 conviction or it might show that the figure of
15 loss was not as had been contended, such that
16 the sentence that was imposed was excessive,
17 then that would not be a proper reason to
18 disclose. Indeed, if a concession properly
19 would allow for an appeal to be advanced, then
20 that would be a reason to disclose it, rather
21 than not. If the reason for not making
22 a concession in one case was its impact on
23 others, where that was a concession that was
24 rightly to be made, then that's right not
25 a reason not to make it.

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1 the jury would have been entitled to accept what
2 she said and acquit her; or to reject the
3 account and convict her. Thus the opportunity
4 was there to seek an acquittal."
5 Over the page. There's a discussion about
6 *Eden* in paragraphs 11 and 12; 13 addresses the
7 defence statement; and then 14 addresses
8 conviction. Mr Clarke says:
9 "It is not the purpose of this review, nor
10 of the review process overall, to determine
11 whether or not any particular conviction is
12 unsafe: that decision is reserved to the Court
13 of Appeal only. The purpose of this process is
14 to identify those cases where the material
15 contained in the Second Sight Interim Report
16 would have met the test for disclosure as
17 provided by the [CPIA], the Code of Practice
18 enacted thereunder and the [AG's] Guidelines on
19 Disclosure, had that material been known to Post
20 Office Limited during the currency of the
21 prosecution and accordingly would or ought to
22 have been disclosed to the defence."
23 Then over the page:
24 "In this case I advise that, given the
25 chronology and circumstances of the guilty plea,

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1 So my concern was, looking at this document
2 overall, it was not clear to me, as the final
3 assessment, whether it was being assessed here
4 that there was nothing that needed to be
5 conceded or that there were reasons of impact
6 why they didn't want to concede it.
7 Q. Can we look, please, at another example -- this
8 involves Lynette Hutchings -- whilst we're
9 looking at post-conviction disclosure.
10 POL00060715. This is addressed at 435 to 436 in
11 your report, Mr Atkinson.
12 A. Thank you.
13 Q. So POL00060715. This is an advice written by
14 Simon Clarke of Cartwright King. If we just
15 scroll through it, please. The offence is set
16 out, the case history is described. If we carry
17 on through the case history, and over the page,
18 it sets out the prosecution case. If we
19 continue, please. Then "Discussion":
20 "The defendant has unequivocally admitted
21 making false entries into Horizon in the belief
22 that the balances would be corrected in the
23 fullness of time ... she stated in her prepared
24 statement that she did not do so dishonestly.
25 Had she chosen to advance that account at trial

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1 and the reference in the Basis of Plea to the
2 leading case on the topic ... the Second Sight
3 ... Report and the Helen Rose report would not
4 have been disclosable during the currency of the
5 prosecution and accordingly do not now fall to
6 be disclosed.
7 "... had we [possessed] the material at the
8 relevant time, we would not have disclosed [it]
9 to the defence ..."
10 Why do you say that this misunderstands the
11 disclosure test?
12 A. It proceeds on the basis that there was a guilty
13 plea and she, Ms Hutchings, could have contested
14 this matter at trial, she chose not to, she had
15 legal advice, so that's down to her.
16 It doesn't recognise that there was a stage
17 before Ms Hutchings was arraigned and it was at
18 that stage that the question should have been
19 asked as to whether there was material that was
20 capable of undermining the prosecution case or
21 assisting hers that ought to have been
22 disclosed.
23 And this is all concerning, as I read it,
24 that the Second Sight review and the issues that
25 it gave rise to, as to whether the operation of

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1 Horizon and material relating to the operation
2 of Horizon had been properly appreciated and/or
3 disclosed.

4 And to say "We don't need to worry about
5 this because she pleaded", is to ignore the fact
6 that there should have been disclosure before
7 she had the opportunity to. To say "There's
8 a reference in her basis of plea to *Eden*,
9 therefore, she was clearly advised by counsel",
10 ignores the fact that counsel had not had this
11 material disclosed to them either and a failure
12 to recognise that it was at least possible that
13 counsel, told that the basis for the prosecution
14 case was susceptible to challenge, may have
15 given different advice to his client to one who
16 was not told that.

17 And also, that in relation to any appeal
18 against sentence that was potentially available,
19 and/or to submissions that could be made to
20 a judge before sentence, issues as to the
21 operation of the system and confirmation of
22 those issues by the prosecution, would have been
23 of assistance to the defendant. It is
24 a different thing for a judge to consider a case
25 where the explanation is given that this was

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1 disclosure as being, in the one case, concerning
2 and, in the other case, involving a fundamental
3 misunderstanding of the test to apply, are you
4 saying that the approach that was being taken
5 was inconsistent with the law?

6 **A.** Yes.

7 **MR BEER:** Thank you.

8 Sir, we're about to move to another case
9 study, that of Peter Holmes. It's 1.00, might
10 we break until 2.00, please.

11 **SIR WYN WILLIAMS:** Of course.

12 (1.00 pm)

13 (The Short Adjournment)

14 (1.59 pm)

15 **MR BEER:** Good afternoon, sir. Can you see and hear
16 us?

17 **SIR WYN WILLIAMS:** Yes, thank you.

18 **MR BEER:** Good afternoon, Mr Atkinson. Can we turn
19 to Peter Holmes please?

20 **A.** Yes.

21 **Q.** In paragraphs 309 to 333 of your report -- no
22 need to display them, but they're on page 114
23 and following -- you deal with the prosecution
24 of Peter Holmes. One of the things that
25 happened was that interview, Mr Holmes said

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1 inadvertent rather than anything deliberately by
2 the defendant, on the one hand, and to be -- to
3 have had confirmed by the prosecution, on the
4 other.

5 **Q.** At that time and indeed today, the leading
6 decision -- in fact the operative decision -- on
7 post-conviction disclosure obligations was that
8 of the Supreme Court in *Nunn*?

9 **A.** Yes.

10 **Q.** The decision was reflected in the then Attorney
11 General's Guidelines on Disclosure at
12 paragraphs 59 and 60, the acid test being
13 whether there presently existed information
14 which might cast doubt upon the safety of the
15 conviction?

16 **A.** Yes.

17 **Q.** That test is to be applied, have I got this
18 right, irrespective of whether there was a plea
19 or not, it's material that might cast doubt on
20 the safety of the conviction --

21 **A.** Yes.

22 **Q.** -- however the conviction was obtained?

23 **A.** Yes.

24 **Q.** Overall, then, in these two cases, when you
25 describe the approach to post-conviction

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1 "It's the Horizon system that has let us down".

2 **A.** (*The witness nodded*)

3 **Q.** That was an interview taking place in September
4 2008. That was after a civil claim involving
5 the Cleveleys branch and Mrs Julie Wolstenholme
6 had been settled, after she raised Horizon
7 integrity issues, after the formation in
8 December 2005 of a group to examine Horizon
9 integrity issues, after the trial involving Lee
10 Castleton in 2007, in which he had directly
11 challenged the Horizon system, and after a jury
12 had acquitted Suzanne Palmer in less than ten
13 minutes in 2007, her having raised issues with
14 the integrity of the Horizon system.

15 Was there, to your understanding, any
16 investigation of Horizon integrity or the
17 figures produced by Horizon?

18 **A.** No.

19 **Q.** The investigation report recorded that Mr Holmes
20 had spent many years in the police service, and
21 that he had been a subpostmaster at the
22 Monkseaton branch office for six or seven years.
23 He was of good character. Should such good
24 character have been brought into account when
25 considering the investigation of an offence or

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1 the merits of prosecution?
 2 **A.** It should certainly have been a factor in the
 3 public interest test. It would not have been
 4 the only factor or necessarily the decisive
 5 factor but it was a factor. I'm afraid I can't
 6 speak to as whether it was taken into account in
 7 the charging decision because the public
 8 interest didn't get a mention.

9 It was a factor relevant to the assessment
 10 of Mr Holmes' credibility. He -- as with any
 11 person of good character, their good character
 12 is a factor in their favour in the assessment of
 13 their credibility, again not decisively so, but
 14 a relevant factor in that regard as well.

15 **Q.** In fact, it was used against him in the
 16 investigation report --

17 **A.** Yes.

18 **Q.** -- because he said that he hadn't reported the
 19 accruing shortfalls showing on Horizon for some
 20 11 months and the Investigator said that it was
 21 incredulous that he should not have done so,
 22 having spent many years in the police service
 23 and having been the subpostmaster for six or
 24 seven years at Monkseaton, so it was used
 25 against him.

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1 **A.** Yes.

2 **Q.** That's a theme that you returned to in 649,
 3 which we looked at earlier --

4 **A.** Yes.

5 **Q.** -- when you're making your general points.

6 Would you accept that there is a difference
 7 between acceptance of a plea, on the one hand,
 8 and acceptance of a basis of plea, on the other?

9 **A.** Yes.

10 **Q.** You cite in 506, that's page 179, if we just go
 11 to that, you say:

12 "On 16 November, the day on which it appears
 13 the second defence statement was served, Dianne
 14 Chan, prosecution counsel, reported 'have spoken
 15 to a defence solicitor who indicated the
 16 defendant may be willing to [plead] to false
 17 accounting and pay money back. Taken
 18 instructions from Chris [a reference to
 19 Christopher Knight, the Investigator, we think]
 20 who has confirmed that he would be happy to
 21 proceed on that basis.'"

22 You say that:

23 "[Mr Bowyer's] 2014 review also recorded
 24 that the defence had told the Investigator by
 25 phone that the defendant might plead guilty to

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1 Ought his previous position and the
 2 longevity of his service to be a factor in
 3 deciding whether to take seriously concerns
 4 raised by him in interview about the reliability
 5 of the Horizon system?

6 **A.** Certainly not as a reason not to take those
 7 matters seriously.

8 **Q.** Yes. In reality, does it matter who you are if
 9 you raise issues such as this in an interview,
 10 whether you've got good character or not, as to
 11 the pursuit of a reasonable line of inquiry?

12 **A.** No, but, as I said, the fact that you are of
 13 good character may support your credibility in
 14 raising an issue and perhaps give an extra
 15 underlining to why it needs to be investigated.

16 **Q.** Thank you very much. I'm going to move over the
 17 cases of Seema Misra, Lynette Hutchings, Joan
 18 Bailey and Alison Hall, and turn to Allison
 19 Henderson. That's paragraph 515 of your report
 20 to 519 -- I'm so sorry.

21 Yes, in paragraph 515 of your report, when
 22 you're dealing with Mrs Henderson's case, you
 23 say that her case was one where acceptance of
 24 her plea was dependent upon repayment and a lack
 25 of criticism of Horizon?

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1 false accounting."

2 Then Mr Wilson's response to Dianne Chan's
 3 email said:

4 "Clearly if there were to be a plea to false
 5 accounting but on the basis that the Horizon
 6 system was at fault then that would not be
 7 an acceptable basis of plea with the
 8 prosecution."

9 Do you agree that what was being said by
 10 Mr Wilson was not about acceptability of plea
 11 but rather acceptability of a potential basis of
 12 plea?

13 **A.** That's certainly an interpretation of that.

14 It's not, I have to say, the interpretation the
 15 Court of Appeal reached but it is
 16 an interpretation of it.

17 **Q.** Was the potential for a guilty plea to false
 18 accounting accompanied by repayment of shortfall
 19 an issue first raised by the defence?

20 **A.** That's not altogether clear because it's not
 21 clear who, in the conversation between Dianne
 22 Chan, who was prosecuting counsel, and defence
 23 counsel, who it was who first raised repayment.
 24 Certainly, it was part of what was communicated
 25 by her to those who instructed her.

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1 Q. So it's not clear who was tethering repayment to
2 the plea?
3 A. No.
4 Q. What's the basis for your view that the Post
5 Office made acceptance of the plea to false
6 accounting conditional upon repayment?
7 A. In part, I confess I was influenced by that
8 being the finding of the Court of Appeal in that
9 case, and I quote that at paragraph 511, and the
10 fact that the -- I was influenced, I suspect,
11 also, by the time I dealt with the case of
12 Mrs Henderson, I had already dealt with other
13 cases where there had been that connection,
14 those, for example, of Mrs Hall.
15 Q. Thank you. Can we move to the case of Grant
16 Allen, please, which you address from your
17 paragraph 516 onwards on page 182. Can we look
18 at some of the underlying material here, please.
19 Can we start please with POL00097138.
20 Again, this principally involves a series of
21 questions about liaison between Post Office,
22 Fujitsu and Mr Jenkins --
23 A. Yes.
24 Q. -- in the preparation of evidence, whether
25 witness statements or reports, for the

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1 "I would like to serve your report in the
2 remaining cases and have attached a case summary
3 of each listed above so you may familiarise
4 yourself with the facts of each case."
5 Then, if we go over the page -- sorry, it
6 was at the foot of the previous page, actually:
7 "In order for me to serve your report in
8 time, please could you either send copies of
9 your report via Special Delivery and/or as
10 an email attachment."
11 The paragraph above, the request was:
12 "... to read the case summaries ... send 5
13 original signed and dated copies of your report
14 to [her]."
15 A. Yes.
16 Q. Can we see what happened next, please,
17 FUJ00153856. Then scroll down, please.
18 Mr Jenkins replies by saying:
19 "Can't you use the report I have already
20 sent you? There is no mention of the case on
21 the report", ie no mention of any of the cases
22 that you have listed.
23 "You should really be addressing such
24 requests through Post Office Limited rather than
25 directly to myself.

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1 prosecution of Mr Allen.
2 If we scroll down, please, an email from
3 Rachael Panter -- if we just scroll up we'll see
4 that it's on 16 November, thank you. Rachael
5 Panter, she is a lawyer at Cartwright King, to
6 Gareth Jenkins:
7 "As you may already be aware, your expert
8 report detailing the reliability of the Horizon
9 system has been served as evidence in a number
10 of cases ..."
11 We've seen a similar email to this, I think,
12 twice, yesterday.
13 A. Yes.
14 Q. "... to date, most, if not all cases raising the
15 Horizon system as an issue have been unable/not
16 willing to particularise what specific issues
17 they may have with the system and how that
18 shapes the nature of their defence.
19 "... I would like to serve [your report] in
20 each case listed below."
21 We can see that one of them is Mr Allen,
22 number 6, at Chester Crown Court.
23 A. Yes.
24 Q. If we scroll down, please. Just under the
25 "Grant Allen" highlighted yellow part it says:

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1 "... there is no commercial cover ..."
2 Then up the page, please, "concerned about
3 the approach taken", we saw that yesterday.
4 Then up the page, again. Keep going to
5 Ms Panter's email. She says:
6 "As I provided a list of cases rather than
7 approach each individual Investigator for each
8 case, to then [re-pose] the same question ...
9 I thought it would save ... time and duplication
10 ...
11 "In response to your email Gareth, I do
12 intend to use the report that you have already
13 provided. It doesn't matter that you have not
14 mentioned a specific case in your report, as
15 there has not been any specific criticisms
16 raised by any of the defendants provided by the
17 defendants in my list of cases."
18 Reading on:
19 "What I propose to do is serve your
20 statement on each defence solicitor so that the
21 issue of Horizon is then addressed. That will
22 then place the onus on the Defence to specify
23 what if anything, they say is wrong with the
24 Horizon system ...
25 "That is why it is important for you to

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1 consider the case summaries that I have provided
2 so that you are familiar with each case."

3 Looking at that exchange, as it stands at
4 that point in time, were there problems with the
5 approach that was being taken?

6 **A.** Yes, we considered yesterday the issues
7 potentially with the generic statement and what
8 it did or did not do, and here we have further
9 communication in relation to that generic
10 statement and the decision that was taken to
11 rely on, effectively, bald assertion that there
12 was "nothing to see here" in relation to the
13 operation of the Horizon system, rather than to
14 look at the data on a case-by-case basis, on
15 a branch-by-branch basis, to identify whether
16 there was something to see or not and, if so,
17 what.

18 **Q.** So the Post Office wasn't itself considering
19 each case on its merits and was not instructing
20 Mr Jenkins as an expert in each case?

21 **A.** No, that's right. It was effectively
22 a one-size-fits-all answer to any suggestion
23 from any postmaster that there may be an issue
24 with Horizon, without actually looking to see
25 whether there was, in their case.

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1 matter that he had not referred to a specific
2 case in his report and yet it was telling him to
3 read the case summary --

4 **A.** Yes.

5 **Q.** -- for each case?

6 **A.** Yes.

7 **Q.** Was that approach made better or worse by the
8 fact that the statement, on its face, did not
9 explain that it was itself responsive to the
10 four questions that we saw earlier?

11 **A.** It made it worse, in the sense that no one
12 coming to a particular case from the defence
13 perspective, for example, or a court's
14 perspective, would know -- would properly
15 understand what this statement was or where it
16 had come from.

17 **Q.** And the genesis of it?

18 **A.** Absolutely.

19 **Q.** And, if it's right that it contained
20 limitations, what those limitations were?

21 **A.** No.

22 **Q.** Can we go forwards to FUJ00153865. We've moved
23 forward now to the end of November and an email
24 from a different solicitor at Cartwright King,
25 in the case of Allen, and also in the case of

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1 **Q.** It, the Post Office, was not providing

2 Mr Jenkins with any instructions specific to the
3 case in question?

4 **A.** Or data, no.

5 **Q.** It was proposing to give or did give Mr Jenkins
6 nothing more than a bare case summary in each
7 case?

8 **A.** Quite.

9 **Q.** That's aside from the limitations of the
10 statement, the generic statement, itself?

11 **A.** Yes.

12 **Q.** What did you understand the provision of a case
13 summary to be for; what was its purpose?

14 **A.** Again, it wasn't altogether clear to me what its
15 intended purpose was, other than so that
16 Mr Jenkins would know perhaps which post office
17 it was, the name of the defendant, the amount of
18 the shortfall. It perhaps would have given him
19 some indication as to what the postmaster had
20 said in interview about it but it wasn't asking
21 him to do anything with that information --

22 **Q.** Because --

23 **A.** -- other than to know it.

24 **Q.** I'm sorry. As we see here, the Post Office was,
25 via its agent, telling Mr Jenkins it didn't

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1 Sefton and Nield, Andrew Bolc, copied to
2 Ms Panter, to Mr Jenkins:

3 "Please find enclosed outlines of the two
4 cases which involve me.

5 "Of the two ... Sefton and Nield is the more
6 urgent ... concentrate on that one first. The
7 Allen case is only for plea and case management
8 on 10 December. In an ideal world I would like
9 to serve a report before the 10th if possible
10 ..."

11 That doesn't improve the extent of the
12 instructions that Mr Jenkins is being given,
13 does it?

14 **A.** No.

15 **Q.** If we look, please, at FUJ00124105, Mr Jenkins
16 replies on 3 December, adding, I think, Penny
17 Thomas to the chain, saying to Mr Bolc:

18 "Thanks for the info you have supplied me
19 with on these two cases. I thought I should try
20 and clarify exactly what you want from me.

21 "My understanding from Rachael was that all
22 that is required is a signed version of
23 a standard report I produced a couple of months
24 ago ... If that is the case I can get that
25 produced, scanned and emailed to you in a couple

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1 of days.
2 "However having read through the info you've
3 given me, perhaps you want me to cover some
4 further things. Some observations ..."

5 Then Mr Jenkins sets out some further lines
6 of inquiry --

7 **A.** Yes.

8 **Q.** -- number 1, in the Sefton and Nield case and,
9 number 2, contrasting the Allen case to the
10 Sefton and Nield case. Would you agree that at
11 this point Mr Jenkins appears to be seeking
12 clarification as to exactly what it was that
13 lawyers wanted him to do, given that they wanted
14 a standard statement because these cases, they
15 said, didn't give rise to specific Horizon
16 systems?

17 **A.** It's a combination of seeking clarification,
18 because he does say that he's trying to clarify,
19 but also an offer of the further help that he
20 could give on particular issues that he's
21 spotted from the case summaries, I presume, that
22 he had seen.

23 **Q.** Can we move forward to FUJ00153881. If we
24 scroll down, please, and again, if we just
25 scroll up to catch the date it should be

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1 here, the tenor of the message is rather
2 different, and the use of the word "we",
3 "Ultimately we would need to discredit this as
4 an explanation that holds any water", and the
5 approach being to discredit this as
6 an explanation that holds any water, neither of
7 those things really fit -- well, not "really
8 fit" -- neither of those things fit with the
9 instruction of an independent expert by someone
10 acting as a minister of justice.

11 **Q.** So rather than doing what it should do, which
12 was, if it hadn't been done before, to state the
13 expert's duties of independence, it actively
14 sought to suggest the outcome?

15 **A.** Yes, and that they were working as a team to get
16 there.

17 **Q.** Can we look, please, at FUJ00153881 -- that's in
18 fact this document and the reply further up the
19 page, please. If we carry on to see Mr Jenkins'
20 reply, if we keep going. So it's the next day
21 5 December:

22 "I've had a look at the statement here and
23 I think it might be helpful to have a dig as to
24 exactly what went on in the Branch at the time
25 of the loss. I think I understand what he is

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1 4 December from Mr Bolc to Mr Jenkins, in the
2 case of Allen:

3 "I have just spoken to the solicitor for
4 Grant Allen."

5 Then skipping a paragraph:

6 "I attach an extract from Mr Allen's
7 interview. As in the case summary I sent you he
8 is trying to suggest that an initial loss of
9 £3,000 is attributable to lost data which has
10 not reached Head Office because of installation
11 problems. Are you able to comment on this
12 scenario at all? Ultimately we would need to
13 discredit this as an explanation that holds any
14 water. He denies stealing the subsequent losses
15 and therefore by implication may be seeking to
16 blame the system for these losses as well."

17 Is the email from Mr Bolc, the lawyer,
18 consistent or inconsistent with the proper
19 instruction of an expert, in that it appears
20 informally to ask Mr Jenkins if he can comment
21 at all on a defence explanation?

22 **A.** It's inconsistent but not just for that reason.
23 There's potentially no issue, depending on how
24 it is done, with putting a scenario to an expert
25 and asking for their assessment of it. But

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1 claiming. However, where there are comms
2 problems it is normal to recover any missing
3 data once the comms are sorted out (provided it
4 is within 35 days), so this shouldn't be
5 a reason for a loss. Also there are processes
6 in place to retrieve outstanding data where
7 there are extended comms issues lasting more
8 than 7 days, so as to meet contractual
9 obligations regarding ...

10 "I could just make a general statement
11 relating to that or if we retrieve data from the
12 time I could check out exactly what [is
13 happening]."

14 Skip the next paragraph. We should note:
15 "[Post Office] have not requested any audit
16 data ... nor been asked about Helpdesk calls ...

17 "Is it worth asking Post Office to request
18 such data for me to examine before putting
19 together a specific statement ... or is a simple
20 generic one sufficient?"

21 Then some cost issues.

22 So Mr Jenkins highlighting no requests for
23 audit data or Helpdesk call records and that
24 there are two ways of going about this, and
25 asking for instruction as to which the

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1 prosecutor required.
2 **A.** Yes.
3 **Q.** If we go further up the page, please. Second
4 line, Mr Bolc's reply:
5 "I would appreciate if you could add your
6 general comments at this stage regarding the
7 safeguards in place for comms problems to your
8 statement, and send this to me as before and
9 I will refer back to the Post Office to consider
10 whether we go on to request the retrieval of
11 data for your further analysis."
12 So this exchange, I think you'll agree,
13 shows that Mr Jenkins informed the Post Office
14 lawyers that he could examine the data to work
15 out "exactly what had happened at the branch"?
16 **A.** Yes.
17 **Q.** The Post Office said that they didn't want this
18 to occur in response --
19 **A.** Yes.
20 **Q.** -- in the first instance. If we look, please,
21 at POL00089380, we should be able to see
22 an email between Mr Bolc and the Investigator:
23 "Please see [Mr Jenkins' report]. I had
24 asked him to look at non-polling issue raised in
25 [the] interview and I believe that he had dealt
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1 scroll up a moment, he says:
2 "I have been asked to provide a statement in
3 the case of Grant Allen. I understand the
4 integrity of the system has been questioned and
5 this report provides some general information
6 regarding the integrity of Horizon."
7 Then if we scroll down. There is then, in
8 the paragraph underneath, the explanation of
9 Mr Jenkins' evidence on the non-polling issue.
10 Then over the page, at the end of that paragraph
11 that's at the top of the page, Mr Jenkins says:
12 "I have not had an opportunity to examine
13 the detailed logs from this period to see
14 whether there were any issues, and any
15 justification in the claim that this resulted in
16 apparent system losses of £3,000 as claimed."
17 **A.** Yes.
18 **Q.** So he has provided the generic explanation
19 beforehand?
20 **A.** Yes.
21 **Q.** But made it clear, is this right, that he's not
22 actually looked at the data?
23 **A.** Yes.
24 **Q.** You tell us in your report that this was
25 an unfortunate failure in the evidence, given
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1 with it adequately ... Gareth tells me that it
2 is in fact possible for him to retrieve the
3 actual data from this time to see what actually
4 occurred at this branch, and that the retrieval
5 of the data is free to POL ... it will take
6 approximately two and a half days for him to
7 look at it and analyse what it means and this
8 will be chargeable to POL at £2,500. I have
9 told him at present that we do not wish to
10 pursue this option unless it becomes
11 unavoidable."
12 Then some instructions.
13 Mr Jenkins then signed a witness statement
14 in Mr Allen's case on 17 December. This was
15 identical to the general statement, the generic
16 statement that had been signed back earlier in
17 the year, except for the additional paragraph
18 that had been included addressing the
19 non-polling data. Can we look, please, at that,
20 POL00089077. Thank you.
21 This is the statement dated 17 December,
22 it's quite hard to read. I'm not going to go
23 through it because we're familiar with it as the
24 generic statement but just look at the addition
25 which is on page 2, if we scroll down. Just
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1 that he, Mr Jenkins, was aware of the specific
2 issue raised by Mr Allen and didn't follow
3 through in the investigation of it, but this
4 appears, however, to have been a Post Office
5 decision?
6 **A.** Yes.
7 **Q.** Looking at that underlying material that we've
8 examined, rather than it appears to have been
9 a Post Office decision not to obtain this data,
10 the evidence suggests that it was a Post Office
11 decision not to obtain the data?
12 **A.** Yes, the material that you've just gone through
13 is more than I had seen when I wrote my report.
14 **Q.** So would you agree that it's clear that, in the
15 face of Mr Jenkins saying that the obtaining of
16 that data would resolve the question of what had
17 happened in branch, the Post Office took the
18 decision not to obtain the data?
19 **A.** Yes.
20 **Q.** Was that consistent or inconsistent with its
21 duty to pursue reasonable lines of inquiry?
22 **A.** Inconsistent.
23 **Q.** And consistent or inconsistent with its duties
24 of disclosure more generally?
25 **A.** Inconsistent.
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1 Q. In paragraph 545 of your report, which is on
2 page 192, you say:
3 "The greatest concern in this case is the
4 instruction of and reliance on expert evidence
5 from Mr Jenkins to rebut any question as to the
6 integrity and reliability of Horizon. First
7 this is because his offer to examine the data
8 relating to Mr Allen's branch and his complaints
9 was rejected in favour of a generic statement."
10 We've seen that in the underlying material.
11 A. Yes.
12 Q. "This was clearly a missed opportunity for which
13 little justification was advanced."
14 Do you stand by that comment in the light of
15 the underlying material?
16 A. Yes.
17 Q. "Secondly, given that his generic statement was
18 relied on, it is of note that Mr Jenkins was in
19 possession of material directly relevant to that
20 question, which is nowhere referred to. His
21 duty of disclosure ought to have at least
22 required consideration of this, and I have seen
23 no communication to suggest this."
24 Again, do you stand by that comment in the
25 light of the material we've looked at?

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1 statement, was flawed in relation to the
2 limitations of the analysis of the actual data
3 that would have confirmed whether or not Horizon
4 was operating correctly. Given that Mr Jenkins
5 had indicated to Mr Bolc that the data would
6 show what had happened at the branch, given that
7 Mr Bolc, in conjunction with the Investigator
8 Mr Bradshaw, had decided that Mr Jenkins
9 shouldn't review the data and, given that
10 Mr Jenkins stated in his witness statement, in
11 that paragraph I showed you, that he hadn't
12 examined the data, would you agree that it was
13 the Post Office that was responsible for that
14 flawed approach?
15 A. Ultimately, yes.
16 Q. As to disclosure, which is the second and third
17 sentences of that passage I've just read you
18 there, who was responsible for the very real
19 disclosure failings that you identify?
20 A. Well, the answer is both the Post Office as the
21 prosecutor and Mr Jenkins as the expert, because
22 both had disclosure responsibilities, and it was
23 for the expert to comply with his
24 responsibilities as an expert as to disclosure
25 and it was certainly for the Post Office as the

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1 A. Yes, and I also have in mind there the material
2 I'd seen in context of the case of Mrs Misra and
3 the discussions back, in memory, from 2010 about
4 bugs in the system, and it is for others, not
5 me, to opine as to whether those bugs had any
6 potential relevance to the issues of Mr Allen's
7 case. The generic statement didn't leave any
8 room for there being any apparent bugs at all in
9 the system and that, I think, was the concern
10 I was also addressing there.
11 Q. You continue:
12 "A generic report was served, which was
13 flawed both in relation to the issue and also in
14 relation to the limitations of the analysis of
15 actual data that would have confirmed whether
16 the Horizon system was operating correctly or
17 not. Whilst there was discussion of this with
18 Mr Jenkins, there does not appear to have been
19 any disclosure of these important limitations.
20 These represented very real disclosure failings
21 in relation to expert evidence that the
22 prosecution was relying on."
23 Dealing with the two things that you address
24 there, content of the report first, then
25 disclosure second, you say the report, the

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1 prosecutor to comply with theirs.
2 Q. Thank you. Back in paragraph 528 of your report
3 which is on page 186, you refer to Mr Jenkins'
4 September 2010 witness statement -- or report,
5 rather -- concerning the receipts and payments
6 mismatch bug --
7 A. Yes.
8 Q. -- and state that he did not disclose those
9 issues in Mr Allen's case?
10 A. No.
11 Q. I think that's one of the things you were
12 cross-referring back to there --
13 A. Yes, yes.
14 Q. -- the cross-reference back to the *Misra* case.
15 Then forward to paragraph 540 you say that
16 omission is of particular concern.
17 A. Yes, insofar as I understood Mr Jenkins' report
18 from September 2010 and put that against
19 questions of the integrity and reliability of
20 the system that his generic statement sought to
21 address, it seemed to me that there was
22 a disjunct between what was known by him and
23 what was set out by him.
24 Q. As we've seen in paragraph 545, you said that
25 Mr Jenkins' own duty of disclosure ought to have

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1 at least required consideration of disclosure of
2 that issue and you have seen no communication to
3 suggest that occurred?
4 **A.** That's right and because, again -- and I may
5 just have completely misunderstood the technical
6 nature of all of this -- but, on the face of it,
7 the September 2010 report represented material
8 that was inconsistent with or potentially
9 inconsistent with conclusions that he was
10 asserting in the generic statement and, as such,
11 he had a duty to draw attention to that,
12 irrespective of the prosecution's own
13 unquestionable obligation to do so.
14 **Q.** Do you agree, however, that in the material that
15 you have seen, there's nothing to suggest that
16 the Post Office informed Mr Jenkins of any
17 disclosure duties that he owed personally and,
18 in particular, at the time of the provision of
19 the generic statement as an expert?
20 **A.** No, that's right.
21 **Q.** I think it's right that your knowledge of the
22 *Misra* case would indicate to you that the Post
23 Office lawyer in that case, Jarnail Singh, was
24 aware of the Callendar Square bug, the locking
25 issue that had caused transactions to be lost,

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1 been asked to address four questions and whether
2 he had understood that he was being asked to
3 answer only those questions and nothing else?
4 **A.** Yes.
5 **Q.** Have you seen any evidence that in Mr Allen's
6 case the Post Office gave any formalised or
7 reasoned consideration to obtaining, recording
8 and then disclosing information about Horizon
9 hardware or software faults held by other
10 departments within the Post Office?
11 **A.** No.
12 **Q.** A duty of disclosure doesn't start with the
13 prosecutor going to third parties; is that
14 right? It must look at which material it itself
15 possesses?
16 **A.** Yes, I mean, it can think about both things at
17 the same time but it has to think about what
18 it's got itself, absolutely.
19 **Q.** What would you have expected for a prosecutor of
20 this nature, ie a repeat player of many year's
21 vintage -- it had been in the business of
22 prosecuting people for hundreds of years -- to
23 have had by way of systems for retaining, then
24 obtaining by a prosecution division, analysing,
25 recording and then disclosing?

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1 Mr Jenkins' email to him saying that there had
2 been 200,000 faults recorded on the system, and
3 the provision of the receipts and payments
4 mismatch bug report to Jarnail Singh?
5 **A.** Yes.
6 **Q.** Is there anything in the papers to suggest that,
7 in the *Allen* case, Mr Singh considered that
8 these needed to be explained or disclosed when
9 the generic statement was being sought?
10 **A.** I'm afraid not.
11 **Q.** More generally, is there anything to suggest
12 that Mr Singh gave consideration to whether any
13 of those issues needed to be referred to or
14 explained when the generic statement was being
15 sought, ie not just in the context of the Grant
16 Allen case?
17 **A.** Not that I've seen.
18 **Q.** Ought the drafts of Mr Jenkins' original witness
19 statements, in this case Grant Allen, to have
20 been recorded on the schedule of unused
21 material?
22 **A.** As in drafts of the generic statements as it
23 evolved in this case? Yes, they should.
24 **Q.** In particular, would you agree that that may
25 have revealed the extent to which Mr Jenkins had

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1 **A.** Gosh. As a prosecutor, they should have
2 recognised that they had duties under statute to
3 complete the three Rs in relation to material.
4 They needed to recognise that they were relying
5 on the operation of a computer system as the
6 basis for a whole series of prosecutions and
7 that the reliability of that system was
8 a potential issue in those cases, and that
9 material that was relevant to the question or
10 potentially relevant to the question of
11 reliability had to be retained, had to be
12 reviewed and had, ultimately, to be disclosed.
13 And they had to recognise that, if they were
14 in the Criminal Law Department and that the
15 material as to the operation of the Horizon
16 system was kept in a department down the
17 corridor, they needed to go down the corridor.
18 They couldn't just look at what was in their own
19 office.
20 **Q.** Did you see any appreciation by either the
21 Investigators or the lawyers that there were
22 lots of other departments down the corridor,
23 including departments that had, as a function
24 liaising with the manufacturer and operator of
25 the system, Fujitsu, over faults with it?

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1 A. No, I think the only departments that would get
2 mentioned in, for example, investigators'
3 reports, other than the Criminal Law Department
4 that they would be sending their report to, were
5 the Contract Managers and the Auditors. And
6 that's because it was the Auditors that were
7 identifying the shortfall on the system in the
8 first place and the Contract Manager who would
9 be making a decision about whether to sack the
10 postmaster or not. I think that was it.
11 Q. So no recognition that, down the corridor, as
12 you put it, elsewhere within the business, there
13 were whole teams of people, most of whom were
14 called managers, whose job it was to liaise on
15 a daily basis with the Post Office or between
16 the Post Office and Fujitsu, over Horizon
17 faults?
18 A. Whether they appreciated that or not, the
19 material I've seen doesn't say, because it
20 doesn't mention them.
21 Q. No. Instead, was the vista that was looked at
22 by Investigators and prosecutors, what is within
23 the Investigation Team and what is within the
24 prosecution team, sometimes extending to what
25 happened at audit?

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1 A. Yes.
2 Q. He makes the point in the email that he hadn't
3 been presented with any audit data relating to
4 any of these cases, including Sefton and Nield
5 to examine --
6 A. Yes.
7 Q. -- and he makes suggestions about what might be
8 done?
9 A. Yes.
10 Q. If we go to POL00089394, and go down to
11 3 December, reply from Mr Bolc:
12 "The only clarification I think I need at
13 the moment relates to the timeline, 2005 removal
14 of cash ... Could you clarify what this means
15 and discount it as a possible explanation for
16 the losses beginning to occur at that time in
17 the Sefton and Nield case.
18 "The audit reports will simply show the
19 money missing so will not take things further."
20 Again, does that contain the loaded language
21 about which you were critical before?
22 A. Yes.
23 Q. Because it's an instruction as to what to do:
24 discount something as a possible explanation?
25 A. Yes.

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1 A. Yes, and so by way of example of that, they
2 might, because they had it from the audit, look
3 at transaction logs which are derived from -- as
4 I understand it, from the Horizon system, but
5 were things they had because the auditor had got
6 to them. They wouldn't look at anything that
7 they hadn't got, as a result of that process or
8 ask for it.
9 Q. Thank you. Can we turn to the case of Angela
10 Sefton and Anne Nield.
11 A. Yes.
12 Q. I think you've noted that these cases were being
13 dealt with in an overlapping way, including, in
14 an overlapping way, with Allen; is that right?
15 A. Yes, and the email from Ms Panter we looked at
16 earlier had a little list of cases, including
17 that of Mr Allen, including that of these two,
18 and Mr Ishaq, as well.
19 Q. Therefore similarly, if we turn up FUJ00124105,
20 in the case of Sefton and Nield too on
21 3 December 2012, Mr Jenkins is making the point
22 back to Mr Bolc:
23 "Please tell me exactly what you want from
24 me, also in relation to the Sefton and Nield
25 case."

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1 Q. Would you say that Mr Bolc's rejection of
2 obtaining the ARQ records in these cases was
3 consistent or inconsistent with the approach of
4 an open minded prosecutor?
5 A. Inconsistent. It was a reasonable line of
6 inquiry, it was allied almost inevitably to
7 duties of disclosure.
8 Q. Mr Jenkins signed a witness statement in this
9 case on 5 December 2012, that's POL00059424.
10 I think this is 5 December, maybe 6 December
11 2012, identical to the generic statement that
12 had been signed back in October 2012, except for
13 an additional paragraph addressing an aspect of
14 Ms Sefton and Ms Nield's case. If we scroll
15 down, we can see that. It begins, in substance:
16 "I have been asked to provide a statement in
17 the case of Angela Sefton ... I understand that
18 the integrity of the system has been questioned
19 and this report provides some general
20 information regarding the integrity of Horizon."
21 Then if we go over the page, please,
22 a generic statement that we're all familiar
23 with. If we carry on, please. If we scroll
24 through, just to see that this is the generic
25 statement that we're familiar with --

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1 A. Yes.
2 Q. -- and keep going. Then just over the page,
3 please, we can see the line at the conclusion,
4 where Mr Jenkins says:
5 "... I would conclude by saying I fully
6 believe [the Horizon system] will accurately
7 record all data that is submitted to it and
8 correctly account for it ... it cannot
9 compensate for any data that is incorrectly
10 input into it as a result of human error, lack
11 of training or fraud (and nor can any other
12 system)."
13 I think I skipped over -- I think it was
14 page 2, if we can just go back to page 2.
15 A. Yes, there's a reference to the defence
16 statements on page 2.
17 Q. Yes. If we scroll down, please. Yes, there:
18 Losses started in 2005, and that Horizon was
19 installed at that time. Horizon was rolled out
20 in 1999 and 2002, so I am surprised at the
21 reference to 2005. There was a change
22 implemented in late 2005, the removal of the
23 weekly cash report. They were thoroughly tested
24 at the time. There's been no indication of
25 there being any issues regarding this change and

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1 Q. He wasn't in any case, fourthly, provided any
2 instructions, proper instructions, as an expert
3 in these cases?
4 A. No.
5 Q. Less still instructions that were specific to
6 the issues that arose in any of these cases?
7 A. Quite.
8 Q. In paragraph 566 of your report, which is on
9 page 199, you say that Mr Jenkins' statement in
10 the Sefton and Nield case is generic in its
11 content. It mirrors that served in the case of
12 Allen, in which Mr Jenkins' statement reviewed
13 data specific to that defendant and said he had
14 also run through hypothetical issues with
15 integrity, and concluded there was no evidence
16 of any issues?
17 A. Yes, in fact, it's clearer to me now from the
18 material I've further seen that he hadn't
19 reviewed data specific to that defendant in the
20 way that I thought he had.
21 Q. Thank you very much. You tell us in
22 paragraph 565, which is on page 198, that
23 there's no reference by Mr Jenkins in his
24 statement to his own 2010 report addressing
25 a fix for an identified bug.

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1 the change has no impact on the overall
2 integrity of the system as outlined in the
3 statement.
4 You've seen now how the generic statement
5 came about and the emails involving Ms Panter
6 and Mr Bolc, on the one hand, and Mr Jenkins, on
7 the other, in November 2012, insofar as that
8 statement was adapted to deal with the Sefton
9 and Nield case.
10 A. Yes.
11 Q. Would you agree that those underlying
12 communications demonstrate that it was the Post
13 Office's idea and intention that the statement
14 should be a generic one?
15 A. Yes.
16 Q. That it was represented to Mr Jenkins, secondly,
17 that the cases in which his generic statement
18 was being provided were not cases which raised
19 specific Horizon issues?
20 A. Specific issues, no.
21 Q. That when he sought clarity on what that meant
22 and what could be done, the Post Office, through
23 its lawyers, declined suggestions that further
24 investigations be carried out?
25 A. Yes.

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1 A. Yes, the same point I made in relation to
2 Mr Allen and that case.
3 Q. We should read that across?
4 A. Yes.
5 MR BEER: Thank you very much.
6 Sir, it's 2.55 now. I wonder if we could
7 take the afternoon break now and return at 3.10.
8 SIR WYN WILLIAMS: Can you just give me a clue about
9 how much longer you will be and whether or not
10 there are likely to be questions from Core
11 Participants' representatives?
12 MR BEER: Sir, yes, I'm intending to pick up at 3.10
13 and finish by 4.00. I think there will be some
14 questions from two or three CP representatives,
15 each of which is five minutes, or so.
16 SIR WYN WILLIAMS: Right. Fine. Thank you.
17 (2.56 pm)
18 (A short break)
19 (3.10 pm)
20 MR BEER: Good afternoon, sir, can you see and hear
21 us?
22 SIR WYN WILLIAMS: Yes, thank you.
23 MR BEER: Thank you very much, sir.
24 Can we turn to the case study, Mr Atkinson,
25 lastly, of Khayyam Ishaq. Can we dive straight

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1 in with the material, please, by looking at
2 POL00059481. Again, this about the genesis of
3 Mr Gareth Jenkins' statements.
4 If we scroll down, please, email from
5 Mr Jenkins to Ms Panter of 8 January. Copied to
6 Penny Thomas:
7 "Rachael,
8 "I've taken my previous statement and
9 amended it to refer to the Ishaq case."
10 That's the generic statement that he's
11 saying he's taken.
12 **A.** Yes.
13 **Q.** "Reading through the Prosecution and Defence
14 Summaries, I don't think there is anything for
15 me to comment on specifically.
16 "Please can you confirm this is all you need
17 in this case, and if so I'll get a signed copy
18 together with the related exhibits to you."
19 Then if we scroll up, please.
20 "Morning Gareth
21 "Thank you for your statement which I have
22 had an opportunity to read. There is nothing
23 that you need to add, it covers everything."
24 Then forwarded by Ms Panter to Martin Smith,
25 if we scroll up:

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1 and indicating what, in some instances, she is
2 sending him.
3 **Q.** If we scroll down a little further.
4 **A.** Point number 5, in relation to the case of
5 Mr Ishaq, she provided him with a number of
6 documents for his consideration, having asked
7 him to prepare a report in that case and
8 essentially setting out what Mr Ishaq was
9 saying. And so it is not absolutely clear what
10 it is she was asking him to do, other than to
11 prepare a report, but she was not, on the face
12 of that paragraph, telling him not to properly
13 examine the issues in relation to Mr Ishaq.
14 I can understand, given the context and the
15 history that we have gone through, why he may
16 have considered she was just asking him to sign
17 a copy of his generic statement for Mr Ishaq's
18 use but, equally, it was open to him to have, as
19 he did in other cases that we've looked at
20 earlier, flag up things that had occurred to
21 him, having looked at those materials.
22 **Q.** Indeed, when he did provide a generic statement,
23 strictly generic statement, she, Ms Panter,
24 regard it as "perfect"?
25 **A.** Yes.

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1 "Please see below. I have read the expert's
2 report and it is perfect."
3 In your report, it's paragraph 611, on
4 page 215 -- no need to display it at the
5 moment -- you characterise generally Mr Jenkins'
6 statement of 15 January 2013, which is the one
7 being referred to in these emails, as a generic
8 one.
9 **A.** Yes.
10 **Q.** In the light of the emails that we've just
11 looked at, would you agree that this was a case
12 in which the Post Office sought a generic
13 statement from Mr Jenkins?
14 **A.** In the main, yes, although the email chain that
15 we're looking at here, the email that we started
16 at was a response from Mr Jenkins to an email
17 from Ms Panter on --
18 **Q.** Yes, if we scroll down in this chain. Sorry to
19 speak over you, Mr Atkinson.
20 **A.** No, not at all. The email header is at the
21 bottom of page 3 but the content is on page 4.
22 So the bottom of that page.
23 **Q.** Keep going.
24 **A.** And so Ms Panter is sending Mr Jenkins and
25 copying a cast of thousands into a list of cases

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1 **Q.** Here --
2 **A.** I don't share her view as to its perfection.
3 **Q.** Here she's providing him with a copy of the
4 indictment, the summary of facts, and the
5 defence case statement --
6 **A.** Yes.
7 **Q.** -- and identifying a claim by Mr Ishaq that he
8 was not dishonest, he had to make reversals in
9 order to balance and that there had been
10 a malfunction with the Horizon system?
11 **A.** Yes.
12 **Q.** Can we go forwards, then, a couple of weeks,
13 until after this statement had been signed off,
14 to the 31 January 2013, POL00089427. If we
15 scroll down, please, to 31 January. There we
16 are, thank you. Rachael Panter to Gareth
17 Jenkins and lots of other people:
18 "The week of 11th ... will be fine ..."
19 Sorry, if we can scroll down a little
20 further, and again:
21 "Ishaq -- Having served your report, the
22 defence have queried it and are claiming that
23 Ishaq had to make false entries in order for the
24 figures to reconcile, as the Horizon system kept
25 malfunctioning."

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1 That is something that he'd originally said?

2 **A.** Yes.

3 **Q.** "Please could you make a note in your diary as

4 you will be needed to clarify our position with

5 Horizon."

6 Then can I just check there's nothing

7 underneath this email. Yes, if we just scroll

8 up, please:

9 "Our barrister has asked if you could read

10 the Defence case statement attached and make

11 a list of your initial thoughts on the

12 assertions he is making. We may need you to add

13 a few of these comments into your report so that

14 each issue is addressed."

15 Do you consider it an appropriate or

16 inappropriate approach to send a defence

17 statement to a prosecution witness, whether

18 an expert or not, for generalised thoughts or

19 comments?

20 **A.** It's unusual, certainly, in relation to

21 an expert, and I can't imagine it happening in

22 relation to a non-expert witness.

23 **Q.** In particular, was it appropriate, given the

24 context, that the Post Office had not given

25 Mr Jenkins the kind of instructions which ought

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1 case was risky?

2 **A.** I suppose it would depend on what they planned

3 to do with what he came back with but,

4 certainly, if they were then going to comply

5 with their obligations properly, yes, it was.

6 **Q.** I mean, previously, the instructions had been

7 "Don't look at the specifics of any case, your

8 generalised generic statement will do". They

9 were now saying, "We've got a defence statement

10 here, can you provide comments on it?" and

11 you're saying that the risk that arose or the

12 caution that needed to be applied was dependent

13 on what was intended to be done with the reply?

14 **A.** Yes, and I suppose the issues might arise if

15 Mr Jenkins identified something in an aspect of

16 the defence statement that was nothing actually

17 to do with him, and expressed his view, for

18 example, on the honesty or dishonesty of

19 someone. That would give rise to issues in and

20 of itself. But, assuming that he focused on

21 those aspects that had a technical element to

22 them, then clearly his answers to them were,

23 potentially at least, disclosable and, given the

24 lack of focus as to what they were asking of

25 him, it could give rise to all kinds of

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1 to have been provided to an expert, nor provided

2 him with all of the material relevant to the

3 issues in the case, nor giving him instructions

4 as to what material himself to obtain?

5 **A.** No, quite.

6 **Q.** Looking at what should have been done, would

7 this be right: the lawyers and the Investigator

8 should have looked at the defence statement and

9 seen what disclosure obligations it gave rise

10 to?

11 **A.** Yes.

12 **Q.** Looked for what issues that it raised and which

13 questions, therefore, required to be answered,

14 and whether they were to be answered by expert

15 or lay evidence?

16 **A.** Yes.

17 **Q.** If expert evidence, properly to have instructed

18 an expert with written instructions complying

19 with the obligations I mentioned earlier?

20 **A.** Yes.

21 **Q.** Do you agree that, in addition to being provided

22 with relatively scant information --

23 an indictment, a case summary and a defence

24 statement -- asking Mr Jenkins to comment on the

25 defence case or provide comments on a defence

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1 disclosure issues because his answers were

2 rather unprepared by anything they'd given him.

3 **Q.** This shift in approach from "the generic will

4 do", to now "We're delving into the specifics of

5 a case", was that a moment for the lawyers to

6 grasp the instruction of an expert with both

7 hands and to do it properly?

8 **A.** Yes.

9 **Q.** Can we look, please, at Mr Jenkins' comments on

10 the defence case statement, POL00059602,

11 "Comments on Ishaq [defence case statement]

12 DCS", authored by Mr Jenkins on 1 February. He

13 says he's been asked to comment on the defence

14 case statement:

15 "... I have copied in the [statement] below

16 in blue font and added my comments in black

17 font.

18 "I'm not sure that the responses are of much

19 use and I don't think there is anything that can

20 really be added to my statement as a result.

21 However if you feel any of this could usefully

22 be added I'm happy to be convinced.

23 "Much of it relates to requiring further

24 data for analysis, and past experience indicates

25 that help may be required in understanding it."

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1 I think you've seen this document.

2 **A.** Yes.

3 **Q.** Mr Jenkins, in addition to suggesting that

4 further data may be required for analysis and

5 that help may be needed in order to understand

6 it, indicates, in relation to Horizon

7 malfunctions, that:

8 "If the defence can specify some examples of

9 this, I'm happy to investigate. However,

10 I would contend that the system doesn't

11 malfunction with leaving some trail to indicate

12 what has happened. Without examining the logs

13 it is difficult to be more specific."

14 In the light of that, do you agree that, at

15 the very least, there ought to have been

16 a discussion or a formal follow-up to the

17 comments made about the need for further data

18 analysis --

19 **A.** Yes.

20 **Q.** -- in order for Mr Jenkins to be able to look at

21 the system malfunctions that Mr Ishaq had

22 complained about?

23 **A.** Yes, well, it's again a two-stage matter. So

24 far as the prosecution's obligations are

25 concerned, Mr Ishaq had raised concerns from

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1 did not, in fact, ask Mr Jenkins to do so?

2 **A.** No, that's right.

3 The further observation I'd make about that,

4 though, is that Mr Jenkins was being told that

5 he was -- in the earlier emails we'd looked at

6 from Ms Panter, was being told that he was going

7 to be called at trial to give evidence as to the

8 integrity of the Horizon system. In his mind,

9 to do so needed -- in that case, and given what

10 was being said by the defendant in that case, he

11 needed to look at the underlying data. So it

12 wasn't just a matter for the Post Office, it was

13 a matter for the expert, exercising independent

14 judgment, to make clear to them that to do that

15 he would need to look at the data, rather than

16 it was just an option.

17 **Q.** Are you saying that that should have been done

18 by him because he knew that he was going to be

19 called and there would therefore come a moment

20 at which it would be crunch time?

21 **A.** Yes.

22 **Q.** He would be asked or he might be asked about

23 specifics?

24 **A.** So, at the least, he could have said in the

25 course of these exchanges in clear or more

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1 experience with the operation of Horizon. They

2 were being told by their expert that an analysis

3 of the data would assist in relation to that,

4 and that they didn't need to wait for Mr Ishaq

5 to give them further and better particulars to

6 know that that's what clearly needed to happen

7 next.

8 If there were further and better particulars

9 from Mr Ishaq, clearly that would further aid

10 the process but they weren't an essential

11 prerequisite to anything being done at all.

12 **Q.** In paragraph 611 of your report, that's

13 page 215, you say:

14 "... the default statement and exhibits of

15 Gareth Jenkins were served in this case. As has

16 been discussed before its service, the statement

17 is a generic one."

18 Do you agree that the provision and then

19 service of a generic statement reflected the

20 Post Office's intention that the statement be

21 a generic one?

22 **A.** Yes.

23 **Q.** Although Mr Jenkins explained his ability

24 further to investigate the specific malfunctions

25 of which Mr Ishaq had raised, the Post Office

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1 emphatic terms than he did here "If I'm asked

2 questions about the operation of the Horizon

3 system in relation to this particular post

4 office, I need to look at the data to do that".

5 **Q.** What about the suggestion that that was

6 a function of the instruction of him being

7 rather muddled, that he was told initially that

8 the case raised no specific Horizon issues, then

9 he was provided with some information about it.

10 He wasn't asked to analyse underlying data.

11 What was he to do?

12 **A.** That the instructions were muddled is clear.

13 That they were inadequate is clear. That he

14 could have gone back to them and said more,

15 I consider also to be clear. I can understand

16 how it came about but that doesn't mean that it

17 was not, in my view, clearly incumbent upon him

18 to at least continue that discussion before he

19 found himself in the uncomfortable position of

20 the witness box dealing with these matters,

21 having identified that there is work that he

22 could do, better prepare himself for it, and not

23 being asked to do it.

24 **Q.** By September 2012, at least Cartwright King was

25 aware that the defence had intended to instruct

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1 a forensic accountant. The cross-reference to
2 that -- we needn't look at it -- is POL00119433.
3 Then four or five months later, Mr Jenkins was
4 told about that.
5 If we look, please, at POL00059808, if we
6 scroll down to 14 February, please, thank you.
7 "An update for you [Gareth]", from Ms Panter:
8 "Our counsel Mark Ford would like you to
9 attend court on the Monday ... before the start
10 of the trial to allow you to discuss the case
11 with the defence 'expert'.
12 This seems to be the first, I should say,
13 that Mr Jenkins knows that there is an expert.
14 A. Yes.
15 Q. "I think the rationale behind this is to narrow
16 any issues we may have with the defence from the
17 outset so as to reduce the amount of time you
18 are required to attend.
19 "Our counsel is still waiting to hear from
20 defence counsel and will update us if any issues
21 arise. However your presence on the first day
22 will still be required so you can make your
23 travel arrangements."
24 Would you agree that suggesting to
25 Mr Jenkins that he should attend on the first

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1 the outcome.
2 Q. So, before this time, Mr Jenkins ought to have
3 been told at least that there existed a defence
4 expert?
5 A. Yes, and if it was contemplated that he would
6 need at any point to respond to anything in that
7 report, which was perhaps inevitable, then he
8 needed to see the document from the expert, as
9 well.
10 Q. Yes, ie the defence expert report?
11 A. Yes.
12 Q. You don't just walk into the room with your
13 hands in your pockets and say, "What have you
14 got to say?"
15 A. No, quite: "Who are you and what are you doing
16 here?"
17 Q. Yes.
18 A. Yes.
19 Q. Moreover, Mr Jenkins would not have known what
20 material the defence expert had himself or
21 herself examined?
22 A. Quite.
23 Q. It would also, would this be right, mean that it
24 would be difficult for Mr Jenkins himself to
25 revert to any underlying data in advance of such

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1 day of trial to respond to, or discuss matters
2 with, a defence expert was alarming, given that
3 Mr Jenkins had not been told about any expert
4 before then?
5 A. That counsel had asked that there be a meeting
6 between the experts to narrow the issues, in and
7 of itself, was a reasonable thing for them to
8 have done. The rules now very much envisaged
9 that there will be a meeting between experts in
10 advance of the trial, in order to narrow the
11 issues but that is in advance of the trial
12 rather than on the day it starts, in the normal
13 course of events.
14 The experts would not come upon each other
15 by chance at that meeting. They would know in
16 advance what the other one was saying, so that
17 they could have assessed the contents of those
18 reports. So it isn't a matter just of
19 Mr Jenkins' travel arrangements that needed to
20 be planned in advance; he also needed to see the
21 material in advance and arrangements needed to
22 be put in place for how the experts were to
23 meet, what they were going to address and how
24 what they discussed was going to be recorded, so
25 that others outside that meeting thereafter knew

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1 a meeting, to either decide whether to agree or
2 to disagree with suggestions made in the defence
3 expert report?
4 A. Yes. Clearly, that would be a more realistic
5 possibility if he had reviewed the underlying
6 data himself before producing his original
7 reports that Ms Ibbotson's report was a response
8 to. But yes, one of the reasons why an expert
9 should see any other expert's report in advance
10 is so that they can check it.
11 Q. Can we look, please, at FUJ00153977. We're now
12 on the Monday, Monday, the 18th, and we can see
13 that Mr Jenkins has a conversation with Penny
14 Thomas. Can you make out the conversation?
15 A. Yes.
16 Q. "Next week I'm going to Bradford for the Ishaq
17 case. I see you had some ARQs on this", and he
18 gives the string of them.
19 "Do you still have the info you can pass to
20 me easily?"
21 Then he gives the branch code.
22 "I can copy all you quote above out for you.
23 "That would be good, so at least I have the
24 info, even if I don't have time to analyse it!"
25 So it's apparent that Mr Jenkins was seeking

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1 to obtain material that might help him to answer
2 questions and liaise with the defence expert,
3 even though he had not at that stage been
4 provided with a copy of the report or known
5 which issues to address?
6 **A.** Yes, it's not clear to me where he had seen that
7 they had some ARQs, whether that was because
8 they were referred to in Ms Ibbotson's report or
9 they were referred to in something else but,
10 clearly, something had told him that there was
11 ARQ material available and he had rightly
12 recognised that he ought to see it.
13 **Q.** How concerning was it, as the prosecutor, that
14 the Post Office was asking Mr Jenkins to go to
15 court to respond to expert evidence without him
16 having seen it?
17 **A.** Well, it's moderately remarkable. To expect any
18 witness, but certainly an expert witness, to
19 deal with complex issues and to try and narrow
20 those complex issues with another expert, not
21 knowing what that expert said, not knowing what
22 material they had seen, not being able to check,
23 either, anything that they had said or that they
24 have seen; I can't quite think how anyone
25 thought that was a good idea.

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1 statement] is last minute."
2 So at this point, there hasn't been, it
3 seems, an attempt on the lawyer's part,
4 Ms Panter's part, to analyse the defence
5 statement herself and isolate from it issues
6 that Mr Jenkins would in writing be asked to
7 deal with?
8 **A.** No.
9 **Q.** It's just a forwarding and saying, "Please deal
10 with this", essentially?
11 **A.** Yes.
12 **Q.** Mr Jenkins' response to that, please,
13 FUJ00153997. If we see this reply at 1.10 the
14 same day, the Friday:
15 "I've added my comments to the [amended
16 defence case statement].
17 "I have now had confirmation that Fujitsu
18 have not supplied any details of any Helpdesk
19 calls to Post Office Ltd regarding this Branch.
20 There is nothing I can easily do to address any
21 specifics."
22 If we scroll down, please. That was the
23 response to the last-minute request.
24 Again, Mr Jenkins was pointing out to the
25 Post Office's lawyers that he hadn't been

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1 **Q.** Moving on closer to the trial, then, to
2 22 February 2013, which I think is the Friday
3 before the Monday, can we look, please, at
4 FUJ00153990. If we scroll down, please, we can
5 see some travel arrangements being referred to
6 on the 18th. Then, if we go up, please. We can
7 see Ms Panter's reply, if we keep going.
8 On the 22nd at 11.15 in the morning, there's
9 some material about the Wylie case and then
10 "Urgent". We can see there's an attachment
11 "Addendum [defence case statement]":
12 "... Please see attached.
13 "The defence solicitors in the case of Ishaq
14 have served an addendum defence case statement
15 on us this morning, which attempts to
16 particularise the problem with the Horizon
17 system.
18 "Please could you have a look at the
19 comments that they have made and try to address
20 as many of the points as you can, in order that
21 we can email that to our counsel Mark Ford ahead
22 of Monday's trial.
23 "... apologies for such a last minute
24 request, I think there is no coincidence that
25 the service of this addendum [defence case

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1 provided with information that could be obtained
2 by the Post Office, in order to consider the
3 very points raised by Mr Ishaq.
4 **A.** Yes.
5 **Q.** Can we go forward to FUJ00156747. If we see,
6 we're on the 25th now, the first day of trial,
7 at 9.37 in the morning. Martin Smith is sending
8 to Mr Jenkins the expert report --
9 **A.** Yes.
10 **Q.** -- with a blank email.
11 **A.** Yes.
12 **Q.** So just an attachment?
13 **A.** Yes.
14 **Q.** This is Beverley Ibbotson's report and, later
15 that day, if we look, please, at FUJ00154006,
16 Ms Ibbotson herself sent Mr Jenkins, just after
17 2.00, the appendices -- and there are lots of
18 them -- to her report, which Martin Smith the
19 solicitor had not done. I think we can follow
20 that up by looking at the attachment to Martin
21 Smith's email earlier in the day.
22 **A.** Yes.
23 **Q.** You will see it was just the bald report --
24 **A.** Yes.
25 **Q.** -- rather than the attachments.

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1 So was the result of that, to your
2 understanding, that Mr Jenkins had to deal
3 overnight with this rather detailed forensic
4 accountancy report, which he had seen for the
5 first time on the first day of trial?
6 **A.** Yes, that would appear to be the position.
7 **Q.** He wasn't, unlike Ms Ibbotson, a forensic
8 accountant?
9 **A.** No.
10 **Q.** He hadn't been provided with any formal written
11 instructions to be an expert in the case nor had
12 he been provided with any broader background to
13 the case?
14 **A.** Beyond as we've seen --
15 **Q.** Indictment case summary, defence case statement?
16 **A.** Yes.
17 **Q.** He had not been asked to obtain the data,
18 albeit, off his own bat, had obtained some ARQ
19 data --
20 **A.** Yes.
21 **Q.** -- from Penny Thomas. Would you agree with my
22 characterisation of this episode of this part of
23 the prosecution being run chaotically, and with
24 little or no grasp as to the significance of the
25 need properly to instruct an expert?

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1 **Q.** In this case, as in others, is it right that
2 disclosure was not made in relation to the
3 earlier bugs, errors and defects in particular,
4 which had emerged in the Seema Misra case?
5 **A.** That's right.
6 **MR BEER:** Thank you. Those are the questions that
7 I ask you. There may be some additional
8 questions from other Core Participants, I think
9 starting with Mr Stein. Thank you.
10 **Questioned by MR STEIN**
11 **MR STEIN:** Mr Atkinson, you're aware that
12 I represent a large number of subpostmasters and
13 mistresses.
14 **A.** Yes.
15 **Q.** You answered questions from Mr Beer earlier on
16 as to whether there was a system in place that
17 allowed those investigating or lawyers dealing
18 with the prosecution of subpostmasters the
19 ability to access material down the corridor?
20 **A.** Yes.
21 **Q.** Can we just take that one stage further. You're
22 aware, I believe, that there were two helplines
23 set up for subpostmasters and mistresses, one
24 set up by the Post Office itself, and the other,
25 if I can call it loosely, a Fujitsu helpline?

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1 **A.** Yes. The focus in this case appeared, from the
2 investigative and prosecutorial point of view,
3 to be that Mr Ishaq had made allegations against
4 an employee or a colleague. There was a lot of
5 focus on him and not a lot of focus on anything
6 else.
7 **Q.** If we turn up paragraph 619 of your report,
8 which is on page 218, you say, at 218, and then
9 paragraph 619:
10 "Although Mr Jenkins was engaged, he was not
11 asked to analyse the underlying data, and there
12 were serious shortcomings to the disclosure of
13 material within his knowledge relevant to the
14 operation and reliability of the system, and as
15 to cross-disclosure from ... other cases. This
16 continued to be the position even after focused
17 defence requests and the instruction of
18 a defence expert who, like other experts before
19 her, relied on the material and information
20 provided by Mr Jenkins to reach her
21 conclusions."
22 That last part, is that, in fact, in error,
23 that she wasn't reliant on what Mr Jenkins
24 provided her?
25 **A.** Yes, I think that must be right.

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1 **A.** Yes.
2 **Q.** Regarding the Fujitsu helpline, you're further
3 aware that that had four layers to it: a simple,
4 if you like, answer the telephone and, we
5 believe, driven by scripts; those answering the
6 telephone, our clients say, would basically tell
7 our clients to pay up if there was a shortfall.
8 But there were also other layers to the
9 helpline run by Fujitsu, which were resolving
10 issues if there were issues concerned with the
11 Fujitsu Horizon system; is that correct? You're
12 aware of that?
13 **A.** Not to any great extent and not least because
14 there wasn't very much discussion of the
15 different layers of the Fujitsu helpline in any
16 of the material that I saw.
17 **Q.** But outline, you're aware that there was such
18 a helpline --
19 **A.** Yes.
20 **Q.** -- and you're aware that there were individuals
21 involved in the process of and fixing issues,
22 bugs, errors, defects, within the Horizon
23 system, insofar as they could?
24 **A.** Certainly I was aware that there were people who
25 could be called at Fujitsu when there was

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1 a problem, whether it was identifying bugs or
2 not is a separate question.
3 **Q.** All right. So not only would you have, if
4 you're investigating a particular branch,
5 an inability to access a library of faults and
6 problems with the system, but also, have you
7 seen any way that Investigators and lawyers
8 would have access to the results of the
9 telephone line complaints system?
10 **A.** Well, they were clearly able to obtain records
11 and the contents of contact with the Post
12 Office's own helpline, because there are
13 references to that. They were clearly able to
14 obtain records of and the content of contacts
15 with the Fujitsu line because there were
16 occasions when -- I think it was a gentleman
17 called Mr Dunks made statements in particular
18 cases about selections from that.
19 **Q.** Did you see anything to suggest that there was
20 a joined-up type of thinking, that when one
21 subpostmaster was saying that the system won't
22 work, can't find out what it is, there are these
23 problems, and tried to explain it, that that was
24 then linked to other individuals that were
25 making similar complaints?

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1 Magistrates Court and the Crown Court, yes?
2 **A.** Yes.
3 **Q.** You've been giving evidence about the disclosure
4 system that is used by prosecutors. Can we
5 reverse the coin. So where an individual
6 defendant is seeking to make further
7 applications for disclosure, there's a system
8 for that, as well, isn't there?
9 **A.** Yes.
10 **Q.** Right. So what we have, in fact, as a picture
11 that relates to disclosure is, in theory, how it
12 should operate is that the prosecution should
13 identify relevant material that might or may
14 assist the defence case?
15 **A.** Yes.
16 **Q.** Okay. Now, there then is a system that relates
17 to the provision of a defence statement by
18 an individual, where the defence statement, it's
19 not mandatory but, essentially, it is what
20 happens in the courts. The individual will then
21 set out what their case is?
22 **A.** Yes.
23 **Q.** Okay. Now, that system has been in operation
24 now for sometime?
25 **A.** Yes.

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1 **A.** No. On the contrary, they would -- when they
2 did it at all, would look just at calls from the
3 person they were investigating to the helpline,
4 rather than, on some occasions, even other
5 people at the same branch.
6 **Q.** So we've got a lack of access to, overall, the
7 picture of what's going on and the faults within
8 the system, we've got a lack of overall access
9 to the complaints and the difficulties that are
10 being encountered by subpostmasters, mistresses;
11 do you agree?
12 **A.** Do you mean access by a defendant?
13 **Q.** Access, first of all, by Investigators and the
14 lawyers?
15 **A.** In the sense that they didn't access it, rather
16 than they couldn't access it?
17 **Q.** Yes.
18 **A.** Yes, I agree.
19 **Q.** Let's move on to the other way round. Now,
20 you've been giving evidence in relation to the
21 system of disclosure that is operated through
22 the criminal justice system in the criminal
23 courts?
24 **A.** Yes.
25 **Q.** That's a system that operates in both the

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1 **Q.** Okay. Clearly, until there is disclosure by the
2 Post Office of the bugs, errors and defects
3 within the system and the problems that the
4 system can cause, in other words create
5 shortfalls, create hidden losses, it is very
6 difficult for the defence to make applications
7 based upon that material?
8 **A.** Yes.
9 **Q.** The applications that can be made through the
10 process, Section 8 applications -- is that
11 correct --
12 **A.** Yes.
13 **Q.** -- and that would be essentially saying that "We
14 wish to have material that relates to
15 a particular aspect of a defence case"?
16 **A.** Well, it's asserting we have reason to believe
17 that you have material that will help us in
18 relation to this.
19 **Q.** Yes. The way that that can work -- and you've
20 prosecuted many cases and you well know that
21 I have defended in many cases -- the situation
22 is that a defence, once on notice of such
23 material, can then make an application for it.
24 If you're prosecuting the case, you can respond
25 with the release of material that you believe is

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1 relevant to that request; is that correct?
2 **A.** Yes.
3 **Q.** That process can continue. In fact, it can be
4 quite a continuation of a process as more and
5 more material is targeted and found for
6 disclosure purposes?
7 **A.** Yes.
8 **Q.** Eventually, a judge is brought in to sometimes
9 resolve any issues that lay between the parties?
10 **A.** Yes, and the stage that can intervene between
11 those is -- particularly after the service of
12 a defence statement, and as was the case in most
13 of these cases, there are letters from defence
14 solicitors asking for further disclosure without
15 got in the extent of waving Section 8 at the
16 prosecution, because the prosecution have
17 a continuing duty of disclosure, and so the
18 defence ask, and it is often if the prosecution
19 either responds saying no, or don't respond,
20 that a Section 8 application may follow.
21 **Q.** Yes. Where we're talking about the starting
22 point, the inability or the failure to look into
23 the questions of errors and defects within the
24 system that you've been discussing with Mr Beer,
25 when we're looking at that as a starting point,

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1 **A.** Yes.
2 **Q.** So, essentially, people were placed in
3 an invidious position, do you agree, that
4 sometimes faced with what was an unaccountable
5 loss, they would then have to try to account for
6 it, and those sorts of cases were dealt with in
7 the Criminal Court of Appeal in the case -- the
8 combined case of *Hamilton*, so that individual
9 pleas of guilty, even to false accounting, were
10 overturned; do you agree?
11 **A.** I'm not sure it's for me to express a view on
12 the nature of their position. I can confirm
13 that that is what was said in a lot of these
14 cases that I considered, and what was said in
15 a lot of other cases as well that were dealt
16 with under the blanket of the *Hamilton* decision.
17 **Q.** The burden on criminal solicitors and defending
18 solicitors and defending counsel was therefore
19 made rather -- I was about to say more
20 difficult, but made very difficult indeed,
21 stymied in relation to disclosure processes and
22 an entire system that seemed to thwart the
23 ability for subpostmasters to make good what was
24 going on at the Post Office branch; do you
25 agree?

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1 we don't, in fact, find that there's much of
2 an ability for the criminal justice system to
3 bite on these disclosure provides as you go
4 through, unless you get that starting point
5 right?
6 **A.** All that can happen is that, against a blanket
7 of silence in relation to a particular topic, is
8 the defence can ask for disclosure of material
9 that might touch on the reliability of the
10 system, as in most of these cases they did. But
11 there is a limit to how far that can go,
12 certainly in terms of any particularity, without
13 something to bite on, you're right.
14 **Q.** Now, other aspects that you've been discussing
15 with Mr Beer relate to individual subpostmasters
16 that have -- Mr Holmes is an example of this --
17 that have complained about the system, said that
18 the machine wouldn't work, essentially, is what
19 he's saying --
20 **A.** Yes.
21 **Q.** -- and that he rolled over, essentially, didn't
22 account for those losses in the way that
23 arguably the Post Office required because,
24 otherwise, he couldn't be the Post Office open.
25 You're aware of that?

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1 **A.** I think, slightly disentangling that, I think
2 from the position of those acting for
3 a defendant, where they were -- their
4 instructions were, if they were in accordance
5 with the interview, "I don't know why this
6 happened but it must be the system because
7 I can't explain it otherwise", that they would
8 be up against, particularly once generic
9 statements started floating about, a positive
10 assertion that there isn't something wrong with
11 the system.
12 So you have, on the one hand, a defendant
13 saying "It must be the system", you have the
14 prosecution's evidence saying "It is not the
15 system", and you then have to decide whether you
16 allow your client to proceed to trial against
17 that wall or whether you discuss with your
18 client the possibility that a plea to something
19 less than theft will keep them out of prison.
20 And that's a decision I wouldn't -- or
21 a conversation I wouldn't envy anybody.
22 **Q.** You've been referred by Mr Beer to a document --
23 I'll take you back to it, please -- POL00059424,
24 the statement of Mr Jenkins.
25 **A.** I've seen a few of those.

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1 **Q.** My screen is not working, so I'm just going to
 2 use Mr Jacobs', so I can see it from afar.
 3 Now, you'll see there that, in relation to
 4 Mr Jenkins' statement, that, if you look at the
 5 first page, and if you take your eyes down to
 6 the first part of the page, you'll see
 7 a sentence that says:
 8 "However I understand that my role is to
 9 assist the court rather than represent the views
 10 of my employers or Post Office Limited."
 11 **A.** Yes.
 12 **Q.** Now, in your statement, as an example at
 13 page 241, paragraph 674, you discuss there your
 14 issues that have been brought to your attention,
 15 regarding the instruction of Mr Jenkins?
 16 **A.** Yes.
 17 **Q.** Have you found anything within the material that
 18 you've examined that explains why it is in
 19 Mr Jenkins' statement -- he also refers to his
 20 own statement as a report, within the body of
 21 that document -- have you found anything that
 22 explains why it is Mr Jenkins' report/statement
 23 says, "However I understand that my role is to
 24 assist the court, rather than represent the
 25 views of my employers or POL"?

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1 boxes of the Criminal Procedure Rules in
 2 relation to what a statement from an expert
 3 should say about their role as an expert, then
 4 it doesn't do it.
 5 **Q.** But it's a curious sentence to have within such
 6 a statement, because what it appears to do, at
 7 least in part, is provide a direction of travel
 8 going towards an expert report; do you agree?
 9 **A.** It perhaps shows an awareness that he was
 10 providing evidence as an expert without really
 11 understanding what -- or at least setting out
 12 what that meant.
 13 **Q.** Yes, and, obviously, you're not privy to any
 14 discussions, oral discussions, between
 15 Mr Jenkins and solicitors or advisers on behalf
 16 of the Post Office.
 17 **A.** No, or indeed of Fujitsu.
 18 **MR STEIN:** Thank you, Mr Atkinson.
 19 **MR BEER:** I think Mr Moloney has some questions, as
 20 well, sir.

Questioned by MR MOLONEY

22 **MR MOLONEY:** Thank you, Mr Beer.
 23 Mr Atkinson, I represent a large number of
 24 postmasters, all of whom were prosecuted and
 25 convicted and all of whom have since had their

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1 **A.** No, I mean, it's not -- because they didn't
 2 discuss with Mr Jenkins or provide for
 3 Mr Jenkins instructions as to his role as
 4 an expert at all. There's nothing in the Post
 5 Office communications with him that told him at
 6 that time.
 7 **Q.** Is that a normal sentence or paragraph to find
 8 within a statement, an ordinary witness
 9 statement?
 10 **A.** It's part of a normal sentence --
 11 **Q.** Normal for who? Normal for what type of
 12 sentence?
 13 **A.** Well, you would normally expect to see a much
 14 more detailed explanation of an expert's
 15 understanding as to what their role was and who
 16 they were there for. You might find a sentence
 17 rather more like that in the statement of
 18 a witness who is making clear that they're
 19 speaking for themselves, rather than for their
 20 employer, for example if they were giving not
 21 expert evidence but factual evidence about
 22 a situation that occurred at work, they might
 23 make clear they were speaking for themselves
 24 rather than for anybody else.
 25 But, if this was seeking to be ticking the

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1 convictions overturned.
 2 **A.** Yes, thank you.
 3 **Q.** I wish to just ask you about the case of Khayyam
 4 Ishaq and if at any time you can't hear me,
 5 please say so.
 6 **A.** You're very kind!
 7 **Q.** I want to ask you about disclosure around what
 8 happened in Birkenshaw Post Office after
 9 Mr Ishaq was suspended. Now, Mr Ishaq was very
 10 clear from very early in the proceedings that
 11 the Horizon system was the cause of the apparent
 12 shortfalls he'd suffered?
 13 **A.** Yes. I think he also made reference to someone
 14 else who worked there but Horizon was part of
 15 his account from the outset.
 16 **Q.** Right. He was essentially saying that one of
 17 the people who had worked there had also done
 18 the balances --
 19 **A.** Yes.
 20 **Q.** -- and so that needed to be looked at?
 21 **A.** Yes.
 22 **Q.** Absolutely.
 23 **A.** Yes.
 24 **Q.** Indeed, you referred to that gentleman,
 25 Mr Liaquat Ali during your evidence when being

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1 asked questions by Mr Beer.
 2 **A.** Yes.
 3 **Q.** I want to show you a few documents, if I may,
 4 around this issue I've raised about disclosure
 5 after Mr Ishaq was suspended and get your views
 6 on the disclosure process around this issue,
 7 yes?
 8 **A.** Okay.
 9 **Q.** So the first document I'd like you to look at,
 10 if you would, is POL00119445. Here we are.
 11 This is an email from Martin Smith on 28 January
 12 2013, and it's to Steve Bradshaw who was the
 13 Investigator in this case?
 14 **A.** Yes.
 15 **Q.** The lead investigator, copying in Mark Ford, now
 16 Mark Ford King's Counsel, who was prosecuting
 17 counsel in the case?
 18 **A.** Yes.
 19 **Q.** Usual introductions, but the final paragraph I'd
 20 like to take you to, it's down towards the
 21 bottom of the page, and we can probably read it
 22 without having to focus in on it, but it says:
 23 "Given the stance which the defendant is
 24 still taking with regard to the malfunctioning
 25 of the Horizon system, is it possible to

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1 **A.** Yes.
 2 **Q.** We see that:
 3 "The next audit was in February 2011 when
 4 Mr Ishaq was suspended and a discrepancy in the
 5 accounts was discovered.
 6 "The cash and stock was then transferred to
 7 an interim subpostmaster in February 2011 and
 8 accepted as being correct.
 9 "The cash and stock was again transferred to
 10 a new interim subpostmaster in September 2012.
 11 During the subsequent transfer of cash and stock
 12 after Mr Ishaq's suspension in February 2011 no
 13 problems or discrepancies had been reported."
 14 We see there?
 15 **A.** Yes.
 16 **Q.** So that statement was, as we see, served in the
 17 prosecution case. It wasn't unused material, it
 18 was part of the prosecution case, designed to
 19 assist in demonstrating that there were no
 20 problems with the system?
 21 **A.** Yes.
 22 **Q.** That's pursuant to that suggestion in the email
 23 from Mr Smith to Mr Bradshaw on 28 January?
 24 **A.** Yes, so it would appear.
 25 **Q.** Yes. There was then a mention of the case of

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1 establish whether the subsequent subpostmaster
 2 had any problems with the Horizon system after
 3 all the kit in the branch would have presumably
 4 remained the same.
 5 "Many thanks.
 6 "Martin."
 7 **A.** Yes.
 8 **Q.** So what we see there is that, by 28 January,
 9 Mr Smith thought it a good idea to prove that
 10 any discrepancies could not be due to the
 11 Horizon system or its associated kit by
 12 reference to what had happened to the
 13 subpostmasters after Mr Ishaq had been
 14 suspended?
 15 **A.** Yes.
 16 **Q.** By 31 January, that email being 28 January, so
 17 some three days later, Mr Bradshaw had completed
 18 and signed the statement, which was served as
 19 part of a note of additional evidence. That
 20 statement is POL00059592. So this is three days
 21 after that email, Mr Smith, the solicitor, the
 22 reviewing lawyer, suggesting that this issue be
 23 addressed. It's over to the second page of this
 24 statement, do you see that's dated 31 January
 25 2013.

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1 Ishaq in early February 2013. If we could put
 2 up the document POL00059652, we see this again.
 3 It's an email from Martin Smith, it's dated
 4 6 February and it shows that Mr Smith had been
 5 to Bradford Crown Court on the morning of
 6 6 February for the Mention, and the defence were
 7 unable to persuade the judge to order any
 8 further disclosure.
 9 It's to Steve Bradshaw again, with Mark Ford
 10 copied in again. The important paragraph is the
 11 second one:
 12 "The [defendant's] solicitor told me that
 13 the [defendant] still operated the store in
 14 which the Post Office is situated. The
 15 [defendant] had instructed them that both
 16 subsequent [subpostmasters] had told him that
 17 they had experienced problems with the [Horizon]
 18 system. Although you have said in your final
 19 statement that 'During the subsequent transfer
 20 of cash and stock after Mr Ishaq's suspension in
 21 February 2011, no problems or discrepancies have
 22 been reported', the defence may well suggest
 23 that this does not necessarily mean that no
 24 problems were encountered by the subsequent SPM.
 25 I think it would be sensible to obtain

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1 statements from both subsequent SPMs confirming
2 that they had experienced no problems with the
3 [Horizon] system etc."

4 Yes?

5 So first of all, Mr Smith has got the
6 statement of 31 January. Now he's looking for
7 essentially corroboration of what Mr Bradshaw
8 says in that statement of the 31 January by
9 seeking statements from the subsequent
10 subpostmasters --

11 **A.** Yes.

12 **Q.** -- essentially saying, "We'd better get some
13 statements from those subpostmasters to support
14 your assertion".

15 There's then a letter dated 8 February 2013
16 from Mr Ishaq's solicitors to the Post Office.
17 That is POL00059675, please. Thank you very
18 much.

19 If we scroll down, please. So this is
20 8 February 2013. The Mention is being held on
21 6 February 2013. Two days later we see Musa
22 Patels, down at the bottom, as the solicitors
23 for Mr Ishaq, and the second paragraph reads:

24 "Further to the service of the additional
25 evidence at page 43 Stephen Bradshaw's
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1 penultimate sentence states that no problems or
2 of discrepancies have been reported since the
3 transfer to a new interim subpostmaster since
4 the suspension of Mr Ishaq in February 2011,
5 with regards to this could you please clarify
6 whether further enquiries were made ie has
7 a full audit been undertaken since February 2011
8 and if so what was the outcome of that audit.

9 "If no discrepancy has been highlighted from
10 a subsequent audit then please be on notice that
11 we will require that data to commission our own
12 audit."

13 Then they look forward to the response.

14 So the defence is essentially saying, "We
15 know that you say [and this is on the basis of
16 Mr Bradshaw's statement] that there is no
17 reported discrepancy but have you done an audit?
18 And if there is no discrepancy, we want to carry
19 out our own audit and actually you know that
20 we've got an expert in place to be looking at
21 this in any event".

22 **A.** Yes.

23 **Q.** Yes. So putting them on notice, as they say,
24 that they will carry out that audit, please.

25 There's then another email from Mr Smith,
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1 this time to trial counsel, Mark Ford, and this
2 is POL00059675.

3 I'm sorry, I've just given you the same
4 reference to the letter from Musa Patels and
5 I'll just have to check the appropriate
6 reference for the email.

7 In fact, I can read the email, rather than
8 going back to that. It's quite short. It reads
9 as follows:

10 "Hi Mark ..."

11 So it's to Mr Ford from Mr Smith, copying in
12 Mr Bradshaw:

13 "Just to keep you in the loop please find
14 attached a copy of a letter which we have
15 received from Musa Patels today."

16 So that shows that the email is 8 February
17 or thereabouts and it references to a letter
18 which you've seen from Musa Patels.

19 **A.** Right.

20 **Q.** "Steve is in the process of taking statements
21 from two subsequent subpostmasters who have not
22 experienced any problems with the Horizon
23 system. They have not had any significant
24 shortages."

25 So, essentially, following up on what is
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1 said to Mr Bradshaw about getting the
2 statements.

3 **A.** Yes.

4 **Q.** Then referring to the request from Musa Patels,
5 he says:

6 "I do not propose to ask Steve to obtain the
7 data for the period following Ishaq's removal.
8 Given that there were no problems with the
9 system and no significant shortages, it would
10 not assist the defence or undermine the Crown's
11 case."

12 So he is essentially saying to Mr Ford they
13 want the data, Mr Bradshaw is getting the
14 statements I suggested, and he tells him that
15 he's made a decision that they're not going to
16 get the data on what is essentially the
17 disclosure test. It won't assist or undermine
18 because we have the statement from Mr Patel
19 saying there were no significant shortages, and
20 he's notifying Mr Ford of the line he's going to
21 take.

22 **A.** Yes.

23 **Q.** Now, we don't have Mr Ford's reply to that but
24 we do have the letter that Mr Smith then sent to
25 the defence, and that is POL00059729. It's the
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1 first paragraph of that and it's dated
2 15 February 2013, and it reads:
3 "Thank you for your letter of 8 February
4 2013. We enclose in duplicate copies of
5 a Notice of Additional Evidence, the statements
6 of Stephen Bradshaw of 11 February 2013 and
7 Abdullah Patel of 13 February 2013 and
8 an up-to-date page count. There is no further
9 disclosure to be made in this case."
10 Now, that's one subpostmaster, Mr Patel, and
11 essentially that statement simply says, "I've
12 had no significant shortages at there's been no
13 problems with the kit", and then simply says,
14 "and no further disclosure to be made".
15 Now, the purpose of these statements was to
16 make the point that because subsequent
17 subpostmasters had experienced no significant
18 shortages, then there can have been no problems
19 with Horizon in Mr Ishaq's office at the time he
20 was involved with it.
21 **A.** Yes.
22 **Q.** It was thus a point that the prosecution relied
23 on in respect of a material issue in the case
24 and it was therefore incumbent on the
25 prosecution to prove the point.

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1 **Q.** Now, as the reviewing lawyer, could Mr Smith --
2 forgive this, it may be a rhetorical question --
3 could he know that the data would not undermine
4 the prosecution case or assist the defence case
5 without seeing the data or asking Mr Bradshaw to
6 even to get the data?
7 **A.** I suppose it's a two-stage thing. If he had --
8 and it's not clear if he had from what you've
9 shown me -- if he had the results of audits that
10 showed at points during that period that there
11 was nothing untoward, that would allow him then
12 to assess whether the underlying data took
13 matters further but, on the face of this, they
14 weren't even giving any results as to audit.
15 **Q.** Wasn't he, in essence, refusing the defence the
16 data to make its own checks on that point that
17 the prosecution wished to prove?
18 **A.** Certainly on what you were taking me through, it
19 appears that the defence were saying, in the
20 first instance, "Have you looked to see whether
21 there are any problems by looking for audits?"
22 That question, as far as I can see, was
23 never actually answered nor indeed asked by the
24 reviewing lawyer of the Investigator, and so the
25 decisions that, on the face of it, were being

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1 I couldn't hear you, then, Mr Atkinson.
2 **A.** I'm so sorry: yes.
3 **Q.** Having commenced on that strategy for proving
4 their case, it was an important part of proof of
5 the integrity of Horizon.
6 **A.** Yes.
7 **Q.** The defence, in saying that they wished to audit
8 the data for that period, was indicating that it
9 wished to put the prosecution to proof on that
10 point?
11 **A.** Yes.
12 **Q.** Now, if the data for Birkenshaw Post Office,
13 after Mr Ishaq's suspension, had shown that
14 there had been shortages, that would obviously
15 undermine the prosecution case?
16 **A.** Yes.
17 **Q.** It would mean that the prosecution couldn't
18 prove its point on that part of the case?
19 **A.** Yes, it would probably go beyond that, in terms
20 of calling the operation of the system into
21 question, as well as proving that their specific
22 point on it wasn't a valid one.
23 **Q.** As a natural corollary of that, it would assist
24 the defence case?
25 **A.** Absolutely.

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1 made, were being made in the absence of
2 knowledge, which is never the right position to
3 be making disclosure decisions about.
4 **Q.** And simply a bare assertion that there is no
5 further disclosure to be made without any
6 explanation of that?
7 **A.** Well, making the assertion there's no further
8 disclosure to be made when, on the face of it,
9 he didn't know whether there was any further
10 disclosure to be made.
11 **MR MOLONEY:** Thank you very much. That's all I ask,
12 Mr Atkinson.
13 **MR BEER:** I think, lastly, Mr Henry, sir.
14 **SIR WYN WILLIAMS:** Mr Henry, before you start,
15 I unfortunately have to rise at 4.25 today.
16 I have no choice in the matter, so I'm sorry you
17 are confined to ten minutes, but you'll have to
18 blame your colleagues who told me they'd be five
19 minutes and took about half an hour between
20 them.
21 **Questioned by MR HENRY**
22 **MR HENRY:** Yes. Thank you, sir.
23 Mrs Adedayo's overturned conviction, you
24 will agree, is a shortfall case?
25 **A.** Yes.

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1 Q. Because, of course, as an irreducible minimum,
2 the calculations that gave rise to the shortfall
3 are dependent upon data generated and provided
4 for by Horizon?
5 A. Yes.
6 Q. I don't ask you, of course, to comment on the
7 merits of this but a shortfall which she had
8 a stark choice whether to submit to them -- the
9 figures, that is -- sign off on the figures, or
10 cease trading, whilst still remaining liable for
11 the shortfall?
12 A. Yes, again, I'm not familiar with the details of
13 the contract but that is my understanding from
14 what I've seen.
15 Q. Yes. Now, you are also now aware that before
16 Mrs Bernard, the Investigator, had arrived at
17 the scene, there was the backdrop of
18 an interview conducted by an auditor in breach
19 of PACE?
20 A. Well, I'm aware that there was -- that there had
21 been a conversation between Mrs Adedayo and the
22 Auditor. The material, I have to say, that I'd
23 seen, certainly before the end of last week, as
24 to the nature of that and the extent of that
25 conversation was very unclear. The

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1 Q. No. Yet no attempt was made by Mrs Bernard to
2 investigate Mrs Adedayo's bewildering account,
3 to probe or question the overall effect, in
4 other words, as to whether there was any truth
5 in the mysterious payments to third parties to
6 whom she claims she owed and had paid money?
7 A. Certainly, I saw no evidence of such enquiries,
8 no.
9 Q. No. So, therefore, Mrs Bernard then
10 approached -- and I don't mean this
11 pejoratively -- an interrogatory approach. In
12 other words, she elicited through close-ended
13 questions or leading questions an account which
14 she proffered to her superiors?
15 A. Yes.
16 Q. Now, if there was a risk that Mrs Adedayo's
17 account was unreliable because of things said or
18 done -- notwithstanding the paucity of the
19 information that exists now but of course the
20 circumstances were very different then -- if
21 there was a risk that Mrs Adedayo's account was
22 unreliable because of things said or done, it
23 would have been all the more important, would it
24 not, to have actually investigated independently
25 of what she was telling Mrs Bernard?

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1 investigation report, for example, didn't really
2 fill in the gaps as to what had happened and
3 there was, I think, no statement from the
4 auditor.
5 Q. That's correct, but it resulted in what I'm
6 going to describe in inverted commas as
7 a "confession", did it not, although of
8 an equivocal nature?
9 A. Certainly there was reference in the
10 investigation report to admissions having been
11 made, which were then addressed in the sense
12 there were -- questions asked about them in the
13 interview. Mrs Adedayo's answers about them
14 rather less clear to follow.
15 Q. Exactly. Now, that interview that was actually
16 later conducted -- following what I'm going to
17 describe as the equivocal confession to the
18 auditor at the scene -- but the formal interview
19 conducted by Mrs Bernard was -- well, it
20 elicited contradictory, confusing and internally
21 inconsistent answers, as you have accepted --
22 A. Yes.
23 Q. -- described by Counsel to the Inquiry as
24 "baffling", and you don't disagree with that?
25 A. No, I don't.

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1 A. If the Investigator had concerns that it might
2 be unreliable, then they needed to investigate
3 it to ascertain whether it was or not.
4 Q. Yes. We know from evidence given to the Inquiry
5 what Mrs Bernard said was her state of mind at
6 the time, that she did not believe the account
7 she'd been given, but she made no attempt, as
8 she admitted to the Inquiry, no attempt, to
9 investigate whether it was true or not?
10 A. Yes, I haven't seen or heard Ms Bernard's
11 evidence but I understand that from what Mr Beer
12 said a little earlier.
13 Q. Yes, but an examination of Mrs Adedayo's bank
14 accounts conducted by a competent Investigator
15 would have established that there were no
16 unexplained transfers of money in or out, no
17 evidence of misappropriation nor any payments
18 alleged to those mysterious third parties.
19 Sir, can I just, in conclusion, ask you if
20 you would agree with this: are we not left with
21 the impression that Mrs Adedayo's case was not
22 properly investigated?
23 A. I can't say what would have been found had
24 Mrs Adedayo's bank accounts been examined but
25 then, equally, neither could the Investigator,

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1 because they didn't look.
2 **Q.** Yes. So --
3 **A.** And so, it seemed to me that that was
4 a reasonable line of inquiry, both to pursue
5 what had happened to the money, to assess
6 whether there'd been dishonesty and, as you
7 rightly say, to assess whether the account
8 Ms Adedayo had given was a reliable one or not.
9 **Q.** So we're left with the impression that it was
10 not properly investigated?
11 **A.** And so, therefore, in those circumstances, it
12 was not properly investigated.
13 **Q.** Therefore, that it was questionable to even
14 charge in such circumstances?
15 **A.** Well, it was a situation where to an extent
16 I suppose it would depend on the extent to which
17 the Investigator flagged up to the lawyer
18 that -- whether there were any concerns about
19 the account. If it was clear from -- and I just
20 don't remember, I'm afraid, whether it was clear
21 from the investigation report that Mrs Bernard
22 had those concerns about the reliability of the
23 accounts. If it was communicated in that way to
24 the lawyer, then the lawyer, in my view, ought
25 to have been asking questions, rather than

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1 at, I believe, at 10.00 am --
2 **SIR WYN WILLIAMS:** Yes.
3 **MR BEER:** -- which is the last witness for this
4 year.
5 **SIR WYN WILLIAMS:** Thank you for reminding me,
6 Mr Beer.
7 **MR BEER:** Sir.
8 **SIR WYN WILLIAMS:** See you tomorrow morning,
9 everyone.
10 **(4.24 pm)**

11 **(The hearing adjourned until 10.00 am**
12 **on the following day)**
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1 making charging decisions.
2 **Q.** Exactly, and to adopt the word you use with
3 perhaps characteristic understatement earlier,
4 "questionable to proceed in such circumstances
5 without further investigation"?
6 **A.** Yes.
7 **Q.** Because we're left, are we not, with the -- and
8 we've got one more minute left -- left with the
9 potential, are we not, that this was a false
10 confession, a bewildering, baffling, and
11 internally inconsistent account and that the
12 underlying allegations could have been merely
13 an artifact of system error?
14 **A.** Yes, I think that's right.
15 **MR HENRY:** Thank you.
16 **SIR WYN WILLIAMS:** I congratulate you, Mr Henry, on
17 the conciseness of your questions.
18 And I thank you, Mr Atkinson, very, very
19 much for all the assistance you've given me over
20 a number of days at this Inquiry. I'm extremely
21 grateful to you.
22 **THE WITNESS:** Thank you, sir.
23 **MR BEER:** Thank you very much, sir.
24 Thank you, Mr Atkinson.
25 Sir, we reconvene tomorrow with Lisa Allen

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