

IN THE POST OFFICE HORIZON IT INQUIRY

OPENING SUBMISSIONS ON BEHALF OF CORE PARTICIPANTS REPRESENTED BY HOWE & CO

Introduction

1. Howe & Co acts for 153 Core Participants in this Public Inquiry. Our clients are SPMs, Post Office managers and employees, whose lives have been devastated by the actions of Post Office Limited, Fujitsu and BEIS.
2. At the first hearing of this Inquiry in November 2021 Sam Stein KC said that our clients were falsely accused by the Post Office of Theft, Fraud and False Accounting. They were suspended from positions of trust in the communities where many of them grew up and threatened with dismissal unless they paid so-called 'shortfalls' that had been identified in the Horizon IT System, which was deeply flawed and which, staggeringly, the Post Office knew to be deeply flawed.

Human Impact hearings

3. Most of our clients gave evidence before the Inquiry in the Human Impact hearings earlier this year. Those who felt unable to re-live their traumatic experiences through giving live evidence had key passages from their statements read into the record by Mr Enright. The Human Impact evidence which the Inquiry has received has been powerful and moving and we wish to acknowledge the bravery of those who have been forced to re-live their traumatic experiences through preparing witness statements and in many cases telling the Chair in person about their experiences.

Progress made on compensation

4. Many of our clients were initially sceptical about the Public Inquiry process. As claimants in the Group Litigation they had played a major role in exposing the Post Office Horizon scandal. Yet, although they succeeded in the High Court, the settlement agreement made no proper provision for the recovery of their legal and funding costs and in many cases the compensation that GLO litigants received did not even cover the sums that they had paid to POL on account of alleged shortfalls, let alone other losses and harms.
5. At the time of the first preliminary hearing in November last year the outlook for many of our clients was bleak because BEIS and POL were clinging on to the 'full and final' terms of the settlement agreement to deny fair and just outcomes.
6. However, we are pleased to state that our clients' initial scepticism was misplaced. This is because it is through this Inquiry process that POL and BEIS have now conceded that our clients should be properly and fairly compensated.
7. Directly as a result of the intervention of the Chair, a new compensation scheme for the GLO litigants is underway and some of the fundamental problems relating to the HSS and Historic Convictions Schemes have also been addressed.
8. Our clients are grateful for what has been achieved so far and will follow the remaining phases of the Inquiry with much interest in the hope the rigorous approach that the Inquiry has demonstrated thus far will continue. Our clients note with appreciation that the Inquiry will sit again on 8 December 2022 to resolve some of the problems that BEIS appear to be having in giving effect to the recommendations of the Chair's August 2022 Update report on compensation issues.

9. Of course, compensation, whilst crucial to our clients, is not the only issue that requires resolution. We say that no stone should be left unturned in determining who was responsible for the life changing harm inflicted upon our clients. They are entitled to know and understand why this happened to them, who knew about it, and who failed to act.

Nobody held accountable yet

10. Extraordinarily, notwithstanding the enormity of this scandal, not one individual within POL has been held responsible or otherwise censured. Our clients' lives and reputations have been ruined by this scandal. It is their sincere hope that this Public Inquiry will be able to bring a degree of closure for them.

11. It is also their sincere hope that this Inquiry will restore public confidence in the civil justice and the criminal justice systems.

Findings of Fraser J as the starting point

12. The Terms of Reference in this Inquiry state that the Inquiry will draw on the findings made by Mr Justice Fraser from the Bates and others v Post Office Limited Group Litigation (in particular Judgment (No3) 'Common Issues'¹ and Judgment (No 6) 'Horizon issues')², and the judgment of the Court of Appeal (Criminal Division) in R v Hamilton and others³.

13. We say that those judgments form the starting point and that, in particular, the Inquiry must investigate further to reach conclusions that were beyond the remit of the High Court.

14. Unfortunately for our clients, the settlement in the Group Litigation prevented Fraser J from ultimately resolving the degree to which either of

¹ [2019] EWHC 606 (QB)

² [2019] EWHC 3408 (QB)

³ [2021] Crim LR 684

both Fujitsu and/or the Post Office, expressly or constructively, knew exactly of the scandal and when.

15. We hope that the Inquiry will call evidence from those who appeared before Fraser J, including Mr Godeseth of Fujitsu, Mr Henderson of Second Sight and Angela Van den Bogerd of POL, who was the subject of much criticism.

16. Additionally, there are a number of witnesses who did not give evidence in the High Court, but who played a significant role in this scandal. In particular, our clients would wish to put questions to Paula Vennells and Gareth Jenkins, whose absence from the list of witnesses called by POL was commented upon by the Judge in the Horizon issues judgment⁴.

17. We also hope that the Inquiry will call and recall a number of our clients, whose evidence will be pertinent to the remaining six phases. For example and in particular, Kay Linnell has detailed knowledge of the matters which the Inquiry will consider within Phase 5.

18. Howe & Co acts for Pamela Stubbs, Elizabeth Stockdale and Louise Dar, who gave evidence as lead claimants before Fraser J in the Common issues trial. Their evidence was considered in much detail by Fraser J and we would urge the Inquiry to give consideration to calling them in the remaining phases in order to build on the findings made on their evidence with respect to the issues which the Inquiry must address, but were outside the remit of the matters considered by Mr Justice Fraser.

19. In these opening submissions, we will begin by highlighting three aspects of this scandal, which are truly remarkable.

⁴ Horizon Judgement No. 6 at 512 "This explanation by the Post Office included the following passages in its written submissions:"144. [The claimants] understandably complain that Mr Jenkins and the other source of Mr Godeseth's information could have given some of this evidence first hand. However:144.1 Taking into account that Mr McLachlan's evidence specifically addressed things said or done by Mr Jenkins in relation to the Misra trial, Post Office was concerned that the Horizon Issues trial could become an investigation of his role in this and other criminal cases."

Abuse of Power

20. **First**, we wish to highlight the bullying behaviour (with the support of BEIS) employed by POL towards our clients and many others like them. The evidence shows that POL quite deliberately set out to destroy the good reputations of people like Peter Holmes, a hard-working and thoroughly honest former policemen. They told SPMs, who had been selected by POL as people of good character, that unless they paid monies which POL knew were not owed, they would be prosecuted and imprisoned.

21. The Inquiry has heard evidence in the Human Impact hearings that POL auditors conducted raids of branches in full view of customers and that POL spread rumours in the local press in their communities to intimidate SPMs.

22. There was also the ‘Divide and Conquer’ strategy – an overriding theme in the evidence from the Human Impact hearings – where SPMs were deliberately lied to and told that they were the only ones experiencing problems with the Horizon System⁵. Of course, the huge inequality of arms which existed between POL and the SPMs meant that the SPMs were utterly vulnerable and exposed to the overwhelming power of a National Institution.

23. We say that this ‘Divide and Conquer strategy’ was key to POL’s campaign against SPMs. Otherwise, it would have been necessary for POL to justify its actions on the outrageous basis that hundreds of SPMs, who were all persons of good character and who had been selected by POL on that basis, had suddenly turned to crime at more or less the same time.

Criminalisation of SPMs

The findings in the Court of Appeal

24. **The second** remarkable aspect of this scandal is the use of the criminal justice system by POL to criminalise hardworking people, who were

⁵ See Phase 1 evidence generally and Fraser J Common Issues judgment at [20]

dedicated to serving their local communities. Our clients' leading Counsel, Sam Stein KC, represented many Appellants in the Court of Appeal whose convictions were overturned. The Chair will be aware that these appeals arose as a result a CCRC referral following the findings made by Mr Justice Fraser in the group litigation.

25. The judgment of the Court of Appeal is dated 23 April 2021. Very sadly, 3 of the Appellants, including our client, Peter Holmes, did not live to see the outcome of their appeals and died before their names and reputations were cleared.

26. We understand that the Chair followed the posthumous appeal of Mr Holmes. The Chair will recall that POL conceded that it had failed to disclose to SPMs the existence of 30 bugs, errors and defects in the Horizon system and had inadequately investigated its own audit data. POL also conceded that the convictions in the 39 cases were unsafe because the trial process had been unfair.

27. Significantly, the matter did not end there. The Court of Appeal also found that the evidence, together with Fraser J's findings, shows that it was an affront to the public conscience for the appellants to have faced prosecution. This Category 2 abuse forms an exceptional class of case. We do not recall any other finding of this highly serious type of abuse of process. So it is absolutely right to say that the convictions of SPMs, such as Peter Holmes, Scott Darlington, Pamela Lock and Margaret White (for whom we act) and others are part of the worst miscarriage of justice in recent British legal history.

Simon Clarke advices

28. We draw the Inquiry's attention to the very important issue of the Simon Clarke advices. Mr Clarke is an employed barrister who advised POL in July and August 2013 that Gareth Jenkins of Fujitsu had failed to comply with his duty as an expert in the criminal proceedings and that many convictions might be unsafe as a consequence. Yet this matter was not disclosed to any Defendant and only came out in November 2020. This is

a matter that was not before Fraser J and it is a matter which we ask the Inquiry to pursue.

29. This is an important matter for the Inquiry because there is a very real concern that POL was engaged directly in a cover up. It would not have been possible for Counsel and Solicitors then acting for POL to have relied in any way on the evidence of Gareth Jenkins, including as a source, at the Common Issues trial had they seen the Simon Clarke advices. Neither would it have been possible for Counsel nor Solicitors for POL to have provided the explanations that they did (on instructions from POL) had they seen those advices. We consider that POL must have concealed these advices from their own legal team.

30. It is our view that individuals within POL conspired to pervert the course of justice by giving factually incorrect instructions to their lawyers. This is an extremely serious issue and one which the Inquiry should investigate thoroughly.

Position taken in the Group Litigation.

Defending a lie

31. **The third aspect** of this scandal which sets it apart from all others is the conduct of POL in the Group Litigation. Fraser J described the litigation as '*bitterly contested*'. Throughout the litigation POL maintained that the Horizon system was robust and that none of the 555 Claimants had experienced shortfalls or discrepancies in their accounts as a consequence of Horizon.⁶

32. However, the findings in the 'Horizon issues' judgment show that POL's position before the court was untenable. For example, there were reports of 'Phantom sales', which emerged as early as 2000 and which Royal Mail engineers had tried to rectify. Yet POL unquestioningly accepted Fujitsu's view that there was no fault in Horizon and the explanation lay in operator error.⁷

⁶ Common Issues judgment of Fraser J at [1115].

⁷ Horizon issues judgment at [209] – [213]

33. Fraser J also found that there had been problems with Horizon from the outset and that there were 22 bugs which had caused lasting impact. In particular, the RPM bug was the subject of a 2010 note produced from a meeting attended by both Fujitsu and POL, in which it was accepted that it 'could potentially highlight to branches that Horizon can lose data'. The identified risk was that there were 'huge moral implications to the integrity of the business, as there are agents that were potentially due a cash gain on their system.'⁸

34. So, it is now absolutely clear that POL was aware of the failings in the Horizon system and approached the civil litigation in the same manner as it had approached complaints made by SPMs concerning Horizon - with the primary objective of defending a lie.

35. The position of current directors who were in post before and during the High Court case must be considered; at the time of the High Court case what did the directors of POL know? A number of directors appointed in or after 2015 are still in place and a number have resigned.⁹ We suggest that these individuals will need to be contacted and statements taken from them in anticipation of their evidence being given to the Inquiry.

Why were POL so fixated on defending Horizon?

36. Many in the legal profession would say, with justification, that there is nothing objectionable about putting a claimant to proof. But POL acted throughout in bad faith, burying material that it was under a duty to disclose and wilfully misled the Court in a desperate and pathetic attempt to cover up what it knew and what was recorded in numerous documents before the Court. These were the actions of a publicly owned body using public money to defend the indefensible and maintain that it was entitled to inflict the most appalling harm on innocent hardworking SPMs and their families.

⁸ Horizon issues judgment at [429]

⁹ <https://find-and-update.company-information.service.gov.uk/company/02154540/officers>

37. So, why were POL so fixated on maintaining the lie in the group litigation and denying entirely justified claims for compensation? Who within POL made the decision to spend reportedly £20m (arguably public funds) to fight the 555 with so much energy and attrition?
38. And who within POL decided that it was a good idea to make an application to the Court of Appeal to recuse Fraser J on grounds of apparent bias? -- an application that Coulson LJ described as 'absurd'. Did the same person or group of people also instruct their counsel to confirm acceptance of Fraser J's findings when facing abuse of process arguments in the Court of Appeal?

Lord Coulson

39. In the Court of Appeal Mr Stein KC quoted a passage from Lord Justice Coulson, who refused POL's application to appeal the Common Issues judgment of Fraser J. That passage was apt to those proceedings and is equally apt in relation to the Inquiry hearings :

"The PO describes itself as 'the nation's most trusted brand'. Yet this application is founded on the premise that the nation's most trusted brand was not obliged to treat their SPMs with good faith, and instead entitled to treat them in capricious or arbitrary ways which would not be unfamiliar to a mid-Victorian factory owner (the PO's right to terminate contracts arbitrarily, and the SPMs alleged strict liability to the PO for errors made by the PO's own computer system, being just two of many examples). Given the unique relationship that the PO has with its SPMs, that position is a startling starting point for any consideration of these grounds of appeal."

40. Chair, we hope that we have set out some of the startling starting points for phases 2-7 of this Public Inquiry. We will now go on to make submissions on the upcoming phases.

Phase 2. Horizon IT system: procurement, design, pilot, roll out and modifications.

Procurement

Earlier IT disaster involving Fujitsu - Pathway

41. The Horizon project was hugely controversial in the mid to late 1990s. Originally known as Pathway, it was commissioned by the Major Government as an ambitious project, to computerise the Post Office network and automate the payment of benefits, financed under the Private Finance Initiative (PFI).

42. Pathway was designed to give all benefit claimants a magnetic strip benefit payment card, for presentation at a specified post office, where it would be swiped by a clerk and cash paid out. The system was intended to produce substantial savings over the then system of payment books, and be less open to fraud, as well as providing the Benefits Agency (BA) with the means to account fully for their expenditure.

43. The contract was awarded to ICL (now owned by Fujitsu) in May 1996, with the intention that systems would be installed by the end of 1998 and that all benefit recipients would be in receipt of cards by mid-1999. Charles Cipione has stated at para 4.5.3 of his expert report to the Inquiry that Fujitsu publicly stated when they were awarded the contract that Horizon was 'Europe's largest non-military IT contract'.

44. There is evidence to show that ICL Pathway was not the best product on offer. It came last in 8 of 11 scoring criteria, but was the cheapest option that was available to the government.¹⁰

¹⁰ The Great Post Office Scandal, Nick Wallis p8.

45. In addition, ICL/Fujitsu had recently been involved in Libra – another IT disaster involving a government department, which had failed spectacularly.¹¹

46. It is also relevant to note that in terms of the technology at the time, the design, build and roll out of Horizon was very ambitious. Charles Cipione makes this observation in his report and provides the following reasons:

- (i) IT technology was relatively new at the time. Only one in three adults had a PC. Mr Cipione highlights that in the late 1990s the best-selling mobile phone was the Nokia 3210 – a monochrome device with no internet connectivity or touch screen.
- (ii) There were substantial challenges arising from need to design a system that connected all Post Office branches, but could withstand a loss of connectivity without impairing need of SPMs to serve customers and re-synchronise once connectivity to central server had been re-established.
- (iii) The scheme required the integration of a variety of software. It also needed to accommodate hardware failures at a time when hardware components were not as reliable as they are today.
- (iv) Post Office and Fujitsu needed to train some 63,000 staff members aged between 16-87 who naturally possessed varying skills levels. This was at a time when many SPMs had little or no prior experience in the use of computers.
- (v) There was a need for the system to be secure – as it dealt with transfers of money as well as holding personal details about Post Office customers.

¹¹ See **FUJ00003704**

Select Committee Report 1999

47. The Pathway project was blighted from the start. It suffered from delays and was reported to be running two years behind schedule. In May 1999 the Benefits Agency withdrew from the project.

48. The Summary of Conclusions and Recommendations of the Eleventh Report of the Select Committee on Trade and Industry ¹²dated 21 September 1999 deals with this event and states:

“Everything we have heard and read confirms us in the view that the programme was blighted from the outset by the desire, justifiable or not, of the Benefits Agency to move as soon as permitted to compulsory Automated Credit Transfer; and that it finally foundered because of the reluctance of the Treasury and ICL's parent company Fujitsu to find the additional funds required once the business case of all those involved deteriorated in the face of delays

49. As a result of the failure of the project and in an attempt to salvage some kind of scheme, the Government entered into a Revised Post Office - ICL contract. The matter was not put out to re-tender. This was damage limitation. The Select Committee Report states: (emphasis added)

(e) While it makes evident sense for ICL to continue with the work it has already begun, the impression remains of an essentially political deal to ensure that ICL has a substantial contract with the Post Office, at a price which seems to have been largely determined in advance of contractual renegotiations, as a means, however inadequate, of making up some of the £180 million written off by ICL in their 1998-99 accounts. The principal concern in this new or revised contract is how it is to be financed: a matter on which the Government statements were curiously silent. The

¹² [House of Commons - Trade and Industry - Eleventh Report \(parliament.uk\)](http://parliament.uk)

Post Office is in effect being obliged to use its resources to pay half the price of the automation deemed necessary for preservation of the national network of sub-post offices, with a real risk that it may find it difficult to recover the costs by generating new business.

50. So this scandal has its origins in an earlier failed scheme. It was built on the quicksand of failure. The fallout from the failure of Pathway was sufficiently serious that the National Audit Office was commissioned to conduct an inquiry into lessons to be learned. On 12 April 2000 the Prime Minister, Tony Blair told the House of Commons that when his Government came to office, there was probably no greater shambles than the Horizon project.

51. It will be seen that the start of the Horizon system was not greeted with any enthusiasm by those in charge; the ICL Pathway Report for January 2000 entry referred to by Mr Cipione at page 127 of his report states:

“The main forward move is a joint team meeting with the Post Office Network on the 8th February. The principal aims of this event are to lay the ghosts of the past to rest and to develop a more positive approach to the future, specifically we want to establish an MD level Steering Board. We have been warned by PO to expect a difficult meeting¹³”

Design and roll out

52. The design was to provide a computerised system of accounting within branch post offices, and between the branches and POL. It was initially operated via a telephone line, but in 2010 that system (Legacy Horizon) was superseded by an online version, the first iteration of which was known as HNG-X. Neither system was robust or free from bugs, errors and defects. In February 2017 HNG-X was replaced by an online version called HNA-X. It is said that this iteration is an improvement on what went before. No doubt this will be investigated in Phase 7 of the hearings of this Inquiry.

¹³ FUJ00058189

How SPMs were affected by the roll out

53. It is important that the Inquiry understands how pre-existing SPMs were affected by the roll out of Horizon. The new system represented a seismic change to how the SPMs ran their branches. The key concern, as maintained by many witnesses in Phase 1, is that SPMs lost the ability to analyse transactions.

The experience of Pam Stubbs when Horizon was rolled out

54. In the 'Common Issues' judgment Fraser J described the effect of the introduction of Horizon in 2001 in Pamela Stubbs' branch at Barkham, Wokingham in Berkshire: (emphasis added)

141. When Horizon was introduced to her branch in 2001, it represented a fundamental change to the information that she had available to her in the branch. Information that fed into the balance of her branch accounts was inputted by the Post Office (she does not know whether automatically or manually) and to use her expression, "she could not see data relating to back office processes, such as changes to local suspense accounts and other transactions or entries put in by the Post Office". She lost the ability to go back and check transactions to see if or where any mistakes had occurred. Cash remittances were accounted for somewhere at the Post Office by entries that she would not have seen. Other changes were the trading period became 4 weekly rather than weekly, and the trading statement (which is the Branch Trading Statement referred to in the Common Issues) simply had totals and not itemised information, so that it was not possible to identify any underlying mistakes in the figures that may have arisen.

Re-hashed system was not fit for purpose when it was rolled out

55. We have been paying close attention to the documents which the Inquiry has disclosed in recent months. Aside from the material that was already in the public domain, the disclosed material shows that the re-hashed system was not fit for purpose when it was rolled out.

56. Mr Cipione notes at section 12 of his expert report that even before the Benefits Agency withdrew, ICL considered that Post Office would not be able to achieve automation. An extracted text from a Pathway monthly report dated March 1997 states:

“ As we survey the first 200 offices the extent of this problem is becoming clearer and worse. We have formally lodged with PDA that the Post Office network is not fit for the purpose of automation and that this responsibility clearly lies with the sponsor. Difficult negotiations must be anticipated.” (see Table 12.1 from Mr Cipione’s report)

The Board knew about the problems in 1999

57. Various reports disclosed in this Inquiry from 1999 show that cash accounts were still misbalancing. One such report, a ICL Pathway testing report dated 6 April 1999, states: *“There are many bugs still within the system, but these appear to be of low business impact.”*¹⁴

58. POL and its Board knew when the system was rolled out that it was defective and riddled with technical problems. This much was apparent from the minutes of the POL Board, which were disclosed shortly before the appeals were heard in the Court of Appeal¹⁵. We ask that the Inquiry scrutinises the POL Board minutes from 1999-2000 and calls evidence from Board members from that time to establish why the Board permitted the roll out of a system that was clearly flawed.

Focus on recovery of lost funds when Horizon rolled out

59. In light of the findings of the Select Committee Report we say that the focus was on rolling out a system as soon as reasonably practicable and to recoup the substantial losses that had already been incurred from the previous incarnation of Horizon.

¹⁴ FUJ00078727 – see page 14.

¹⁵ Judgment of Holroyde LJ at paragraph 96 in relation to Mr Moloney’s submissions.

Lack of a dispute button on Horizon

60. Furthermore, POL had no interest in safeguarding the interests of the SPMs (those who would be using the system) from flaws which it knew to be present within Horizon. Quite remarkably, there was a specific Post Office decision not to have any dispute button/function for SPMs built into the Horizon system. This was confirmed by Mr Godeseth, a Fujitsu witness, in the Horizon Issues trial, whose candid evidence was accepted in the main (see Horizon Issues Judgment at paragraph 300).

Incompetence – Investigators knew very little about the system.

61. But alongside abuse and damage limitation there was also incompetence. Post Office officials and investigators were not even aware that there was no facility on Horizon for SPMs to dispute claimed shortfalls.

62. POL's Security Team Leader, Mrs Helen Dickinson was unaware of these facts when she gave evidence at the Common Issues trial before Fraser J:

460. Mrs Dickinson did not know that there was no "dispute" button on the Horizon system and that even disputed items by the SPMs had to be "accepted", so far as the Horizon system is concerned. This is a surprising omission in the knowledge of someone whose field includes dealing with potentially dishonest SPMs. She had only limited knowledge of the Horizon system, although she had been given some initial training (on a course with SPMs) and said she had picked things up since. She said that the number of days' training was: "A. Three. And then basically you pick things up as you go along. But ultimately I wouldn't work on the Horizon system because then that could cause a conflict with me investigating a matter."

461. It is not clear why having more detailed knowledge of Horizon, or even having worked on Horizon, would cause her a conflict in the way she explained. Logic would suggest that an investigator might be assisted by having more – or even some - detailed knowledge of how Horizon worked; at the very least, I would expect her to know

the options available to a SPM if they were faced with (say) a TC that would affect their branch accounts with which they disagreed. In my judgment, an investigator such as Mrs Dickinson ought to have a detailed knowledge of how Horizon works, certainly in terms of the options available to a SPM at the end of a trading period, as otherwise she would not know if a SPM she was investigating was telling her the truth or not.

63. So those who were charged with investigating SPMs, in many cases knew even less about the workings of Horizon than the SPMs themselves. A case of the wilfully blind leading the blind.

The Pilot scheme

64. The problems with Horizon manifested themselves during the Pilot Scheme. The problems are summarised in some detail by Fraser J at paragraph 455 of the Horizon Issues judgment: (emphasis added)

*455. Legacy Horizon had, as has been explained, started life originally as something rather different to what it became, having initially been intended as a tri-partite project involving payment of benefits. It did not unfold in this way and became rather different. **Horizon Online also did not have a happy birth. The pilot for it had to be stopped, and Fujitsu put it on what was called “red alert”.** Mr Godeseth described this as “very serious”. **The biggest issue was with Oracle,** which was what Mr Godeseth was working on and hence knew the most about, but he explained that there were other problems going on at the same time. Some of these problems were put to him – and it must be remembered that this was a pilot scheme, with some problems to be expected – and they included **cash being short on one day by £1,000 because a transaction for £1,000 did not show up on the online report facility; cash withdrawals being authorised on screen yet the printed receipt being declined** (the customer very honestly brought the cash back next day having noticed the receipt wording); **a similar problem with a cash deposit; and remming in figures all being doubled up.** These are all somewhat – and indeed markedly - similar to some of the problems alleged by the different claimants’ witnesses in this litigation. **These all occurred during the pilot scheme.***

The Expert Report of Charles Cipione¹⁶

65. We have read with much interest the expert report dated 14 September 2022 of Charles Cipione, who has considered substantial disclosed documentation and concluded *inter alia*:

- (i) SPM training experienced difficulties during the National Rollout, which led to ICL believing that POCL would pursue commercial remedies.
- (ii) There were significant hardware issues during the national rollout.
- (iii) Many Post Office branches were disconnected from the central system during the national rollout.
- (iv) Financial concerns were weighed against the resource allocations to deliver the horizon IT system. In Mr Cipione's opinion the financial aspects of delivering the Horizon IT system affected the decision making process.
- (v) At several points in time, the parties' individual goals and expectations were at odds with each other. This diversion of focus could not have benefited the implementation of the Horizon IT system.
- (vi) POCL was responsible for reference data management (pricing information for the different types of stock sold at branches. It also contained behind the scenes information that was needed by the Horizon IT system to map accounting transactions properly), but persistently failed to perform this role, leading to errors in the Horizon IT system.
- (vii) The inadequacy of the Helpdesk (the first line of support) during the rollout period led to a Red Alert designation and a deterioration of the relationship between POCL and ICL.
- (viii) The System Management Centre (the second line of support) failed to properly filter issues to the System Support Centre (third line of support), which led to delays in attempts to resolve technical problems. This issue persisted during the national rollout.
- (ix) Payment and receipt imbalances were common symptoms with various causes.

¹⁶ FUJ00078727

66. Mr Cipione will be the first witness in phase 2, and will no doubt confirm what he says in his report that the conflicting intentions of POCL and ICL Pathway led to disruptions at management levels, which affected the implementation of the Horizon IT system.
67. Importantly for our clients Mr Cipione refers to poor training and lack of support from the Helpdesk as *'self inflicted wounds'*. He says that recurrent balancing problems experienced by SPMs *'directly degraded the accounting integrity of the Horizon IT system'*.
68. So the Inquiry's expert confirms that Horizon was never "robust". The problems manifested themselves from the pilot scheme – from the very outset.
69. We note that Mr Cipione's report is limited ("primarily") to consideration of "contemporaneous documentation and data that were created in the period 07 July 1996 to 31 December 2000"¹⁷. We anticipate and look forward to the further reports from Mr Cipione who will, we hope, be tasked by the Inquiry to continue to examine and report on material which post-dates 2000.
70. Horizon was always deeply flawed. It was procured as the cheapest option for the Government within the overly ambitious Pathway programme. After that scheme failed, it was rolled out to unsuspecting SPMs after a number of errors and defects had been identified in the pilot period.
71. Quite simply, the evidence shows that Horizon was not fit for purpose when it was rolled out in 1999. That position did not change at least until the HNG-A form of the system in 2017.

Witness statements from Fujitsu witnesses

72. We have recently seen the statements of a number of Fujitsu witnesses who will give evidence in Phase 2. We will have a number of questions to put to these witnesses in due course. For now we wish to express our

¹⁷ Cipione report p.9 at 2.4.7

astonishment that the witnesses all provide details of a significantly flawed system, yet go on to conclude that they did not have any concerns in respect of robustness.

73. Our clients deprecate any attempt by institutional core participants to go behind the findings that were made in the High Court and the concessions POL made in the Court of Appeal.

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

Operation

74. The operation of the Horizon system is described in detail at paragraphs 11 to 15 of the judgment of Fraser J in the 'Horizon Issues' judgment. The Court of Appeal summarised the system in the following way:

“10. The Horizon system provided a computerised system of accounting within branch post offices, and between the branches and POL. It was initially operated via a telephone line, but in 2010 that system was superseded by an online version, the first iteration of which was known as HNG-X. We shall refer to the earlier version as “Legacy Horizon”, to the later version as “Horizon Online” or “HNG-X”, and to the system generally as “Horizon”.

11. By recording all transactions at a branch, Horizon calculated how much cash and stock should be held in the branch. SPMs were required to make a daily declaration of the amount of cash held at the branch. At the end of a trading period (initially one week, latterly a four- to five-week period), the SPM was required to complete a Branch Trading Statement: the branch could not enter (or “roll over” into) a new trading period without the SPM declaring to POL the completion of that statement.

Training

75. The Inquiry has heard numerous accounts from SMPs in the Phase 1 stage of the hearings to the effect that the training that they were given on Horizon was woeful.

76. The evidence that the Inquiry has heard echoes that which was before Mr Justice Fraser in the Common issues trial in November and December 2018. As you will be aware there were six 'lead claimants' who gave evidence before Fraser J. Three of them gave evidence in respect of the level of training that they received.

77. The evidence of Alan Bates, which was accepted by Fraser J, is set out at [104]: (emphasis added)

*104..... There was **a day of training for all SPMs and assistants** (he estimates 150 people were present) and **thereafter ½ a day for the SPMs alone. There was no explanation for how to identify the cause of any shortfalls or discrepancies or how to dispute them.** His evidence is that the trainers did not explain he would have liability for all shortfalls on the system, but even if they had, I do not consider the trainers would have had the ability to impose such contractual liability upon Mr Bates in any event. **He was given a 500¹⁸ page reference guide to take back to the branch.***

78. Mr Bates requested more training, but was told he could not have any as 2 days was the maximum permitted - Common issues at [105]

79. Pamela Stubbs, who we represent, also gave evidence on the extent of training that she and her assistants received. Ms Stubbs had been an Assistant to her husband for 12 years and took over as SPM when her husband sadly died in August 1999. Fraser J, who accepted Ms Stubbs' evidence, stated:

¹⁸ Mr Cipione refers to the Horizon System User Guide (HSUG) as running to 819 pages, see report p.21 at 4.1.4

142. Her training on Horizon took place about two weeks before its installation in her branch, and was one day in duration. It took place in a pub in Sonning, Berkshire. She had two assistants at the time and they each had half a day's training. There were about 12 to 15 other SPMs at the training, which comprised how to work through example customer transactions. The training did include balancing, but did not include shortfalls, how to get to the root cause of them, or how they should be disputed. She was told she should contact the Helpline for any help or advice on any issues experienced at the branch. She was disappointed with the quality of the training and did not request any more. It was not explained to her that she was responsible for training her assistants, although she did so in an "on the job" manner.

80. We submit that the Horizon training followed this pattern for the majority of SPMs. The features of the evidence in the Phase 1 hearings are that the training was poorly conducted and made no reference to shortfalls or what to do when a transaction is disputed. In many cases those who conducted the training were unable to balance the system and could not remedy the system when shortfalls arose during the training sessions themselves (see, for example, the evidence of Louise Dar before Fraser J). Another feature which has recurred in the evidence is that those who conducted the training told SPMs to consult the manual or the Helpline in the event of any difficulty.

The Helpline

81. Not only was the training for Horizon inadequate, but the Helpline was unable to assist SPMs when they reported apparent shortfalls. Mr Abdulla (another lead claimant who gave evidence in the Common Issues trial), gave evidence on this point, which is set out at paragraph [248]:

248 He (Mr Abdulla) would contact the Helpline about 6 or 7 times a month, and was shocked at the inadequate support. He would often experience apparent shortfalls on the days when he would perform balances, but could rarely get through to the Helpline on these occasions. He thought the advisers were ill informed and would often give the impression of reading off a script. Even his area manager

could not help, and he was told by his area manager that he should just pay the shortfalls and wait to see if a Transaction Correction was issued in his favour.

82. This evidence is strikingly similar to much of the evidence given in this Inquiry earlier this year at the Phase 1 'Human Impact' stage.

The Helpline as the means of resolving disputes

83. It emerged in the Common Issues trial that the only way that an SPM could dispute a discrepancy of shortfall was via the helpline. Fraser J found the Post Office recognised from around 2007 that SPMs were forced to accept debts they did not agree with at the end of the branch trading period. [551]

84. Importantly, it came out in the group litigation that if a SPM decided to 'settle centrally' the disputed sum was treated by POL as a debt owed to POL by the SPM. It would be subject to debt recovery procedures (See Common Issues Judgment at [553])

85. So, the only route to challenge Horizon was through the Helpline. But the Helpline did not operate in a way that enabled disputes to be resolved. Fraser J made the following findings: (emphasis added)

555. It is therefore the case that the only route for any SPM to challenge specific items with which they did not agree (such as TCs) or discrepancies or shortfalls in the figures generated by Horizon was the Helpline.

556. However, the Helpline does not seem to have operated in that way, and on the evidence before me for the issues in this trial, the matters in dispute reported to the Helpline were not treated differently even when they were reported. The Lead Claimants' evidence made it clear that just getting through to the Helpline was

an achievement in itself, and when this was finally accomplished, the experience would be variable at best, and does not seem to have come close to resolving any of the disputes.

Elizabeth Stockdale's experiences of the Helpline

86. Elizabeth Stockdale's evidence in the High Court provides a further example of the Helpline failing to investigate complaints by SPMs. Fraser J stated at [557] of the Common Issues judgment as follows:

557. Mrs Stockdale telephoned the Helpline. She then assumed the debt recovery letter she received meant an investigation had been done and resolved against her. That assumption was not correct. Mrs Stubbs has been pressing for many years to find out the outcome of whatever "investigation" was in fact performed in her case. In both cases, the Helpline had been notified by each of these Lead Claimants. In neither case could the Post Office produce and put to each of these Lead Claimants, or show the court, the end product of any such investigation.

*558. It is therefore the case that, on the evidence before me, the Helpline did not operate for the Lead Claimants in the manner that the Post Office contended for. **What was presented to the court by the Post Office in respect of disputes notified to the Helpline show that, for the most part, initially the SPM in these individual cases was told they would have to pay the shortfall. Even when persistent, all that would happen is the sum would be "settled centrally" and after a period of a few weeks the SPM would be chased for the Post Office for that sum as though it were a debt.***

Was Helpline instructed not to help?

87. There are examples of other cases in which the Helpline has proved obstructive. An example might be where (as countless of our clients have confirmed) SPMs were told incorrectly that they were the only ones who

had experienced shortfalls. This seems to have been a coordinated approach and we ask that the Inquiry focuses on ascertaining what instructions and what wording were provided as 'stock' answers to Helpline advisors.

88. Fraser J dealt with the issue of the Helpline's 'obstructive approach' in the Horizon Issues trial and stated that it was a matter which could potentially be considered in further trials in the group litigation. However, due to the settlement in the group litigation the matter could not be pursued. We ask that this issue is picked up by the Inquiry in the Phase 3 hearings.

89. The relevant passage from the Horizon Issues judgment on the obstructiveness of the Helpline is at [116] (emphasis added)

*116. Mr Tank also gave evidence, which I accept – and this is made out in the contemporaneous documents – that he had some difficulty in advancing this matter through the correct channels. The helpline operator with whom he was dealing initially refused to “pass up” the matter to a more senior person. **Whether this was an isolated instance of unhelpfulness in this single case, or a more generally obstructive approach across the helpline, will have to wait for future trials in this litigation***

Resolution of Disputes

The position of NFSP

90. As we have seen, the mechanism for resolving disputes within the Horizon system was the Helpline, which failed to perform this function.

91. Another way that the SPMs could have challenged the alleged shortfalls and discrepancies was through their union, the National Federation of

Sub-Postmasters (NFSP). However in this case, perhaps uniquely, the Union sided with the employers rather than with its own membership.

92. In particular, on 21 July 2016 POL and NFSP entered into a Grant Framework Agreement, by which POL provided funding to NFSP and exerted a measure of control. Many SPMs gave evidence in the Phase 1 hearings to the effect that they attended meetings with NFSP representatives who failed to support them and in some cases told them that they were guilty of a criminal offence and that they should pay the sums demanded by POL to avoid prosecution.

93. Mr Justice Fraser heard evidence in the Common Issues Trial and made findings on the relationship between POL and NFSP. At [368] Fraser J said:

“ It is obvious, in my judgment, that the NFSP is not remotely independent of the Post Office, nor does it appear to put its members’ interests above its own separate commercial interests.”
Indeed, POL relied on NFSP to support its untenable position in the group litigation: [575] Mrs Van Den Bogerd also gave evidence that the NFSP has publicly supported the Post Office’s view that Horizon is robust. The Post Office therefore relies upon this support by the NFSP to support its stance in this litigation.
[emphasis added]

94. Fraser J was strongly critical of the stance taken by Pol and NFSP in his judgment:

371. Mr Beal (POL witness before Fraser J) also gave evidence that is hard to reconcile with the actual documents themselves. He said that it was always the intention of the Post Office and the NFSP that the contents of the Grant Framework Agreement (“GFA”) made with the NFSP would be made public. I reject that evidence, which is contrary to the detailed confidentiality provisions within the GFA itself.

95. He concluded:

[596]The NFSP is not an organisation independent of the Post Office, in the sense that the word “independent” is usually understood in the English language. It is not only dependent upon

the Post Office for its funding, but that funding is subject to stringent and detailed conditions that enable the Post Office to restrict the activities of the NFSP. The Post Office effectively controls the NFSP.There is also evidence before the court that the NFSP has, in the past, put its own interests and the funding of its future above the interests of its members, in the e mail to which I have referred. In those circumstances, the fact that the NFSP does not support the Claimants in this litigation is entirely to be expected.

96. Effectively POL had the SPM's union 'in its pocket' and had kept confidential its funding arrangements with that union. The system was completely unconscionable.

97. Many of our clients relied on NFSP officials for support and were told by their own union to accede to POL's demands. We ask that the Inquiry investigates this matter fully and considers the calling of relevant officers from the NFSP when looking into the issue of the resolution of disputes within Phase 3.

Resolution of Disputes – The 'Debt trap'.

No effective means for SPMs to resolve disputes

98. Many thousands of SPMs were driven to financial and reputational ruin because POL arranged matters so that there was simply no effective means for SPMs to resolve disputes which had arisen out of the Horizon system. The Post Office required Claimants to accept changes to records of branch transactions, ("Transaction Corrections" or "TCs" issued by the Post Office), unless the Claimant was effectively able to prove that the Transaction Correction was not correct.

99. It is clear when one looks carefully at the judgments in the group litigation that the Post Office was operating a detailed scam. The POL effectively set for the SPMs what Fraser J described as a 'debt trap'. The pattern is

strikingly similar to the evidence given by a large number of SPMs at the Phase 1 hearings:

*564. These problems led to what Mr Green described as a “debt trap”. The sequence would go as follows. The Horizon system would show that there was a discrepancy at the branch, which so far as the SPM was concerned would have arisen through unexplained shortfalls and discrepancies. **These were challenged through the Helpline.** That SPM disputed that the sums were due. **Because of the way that the Post Office approached such disputed items, these were treated as due and owing by the SPM to the Post Office in any event, in other words as non-disputed debts. The most that a SPM could expect from the Post Office was time to pay off the amount, over 12 months, deducted from their future remuneration.** The only alternative the SPM would have would be giving notice themselves, which would bring to an end their appointment as a SPM, and they would in any event (so far as the Post Office was concerned) still owe the disputed sum. **Accordingly, the SPM effectively had no option but to accept the offer of time to pay – it was their only real alternative. This scenario is amply demonstrated by the position in which Mrs Stockdale found herself. She was told matters were being investigated, but then sums said to be due were demanded from her in any event. The most she could obtain was time to pay.***

*565. Their position would then, in financial terms, simply become increasingly worse for any subsequent unexplained discrepancies and shortfalls. **The amount owed would simply increase in size. This downward spiral would continue until, at some point, the amount would be too large for the Post Office to deal with in instalments; or the Post Office would perform another audit; or the Post Office’s patience would come to an end. Suspension would then follow. Throughout the entire sequence the Post Office would treat the sums as undisputed debts.***

.....

*567. **Given the amount of information available to a SPM on Horizon, it is difficult to see how an SPM in this position could ever satisfy the Post Office by providing exact details of the fault, or product, that had led to the unexplained shortfall or discrepancy.***

100. This passage perfectly describes the *modus operandii* employed by POL towards SPMs throughout this scandal. It was a clever system and cannot have been accidental. It is important that the Inquiry uncovers who designed this particular scam, who approved it and who knew about it.

Knowledge and rectification of errors in the system

Written admissions

101. The Group Litigation considered a large number of PEAK reports (which are reports by Fujitsu into technical issues).
102. The court considered PEAK number PC0065021, dated 17 April 2001, which records the involvement of ROMEK, the Royal Mail's own engineering personnel and states that ***"ROMEK have been to site and state that they have actually seen the phantom transactions, so it is not just the PM's word now."*** At [211] Fraser J stated that 'The significance of this entry is obvious, and notable. Mrs Van Den Bogerd agreed in her evidence (no doubt through gritted teeth) that this was "independent site visit corroboration of the problem by Royal Mail's own engineers at the branch", and she also agreed that this was "clearly not user error any more".'
103. Yet, remarkably the conclusion reached by Fujitsu and recorded in the PEAK was as follows: *"Phantom transactions have not been proven in circumstances which preclude user error. In all cases where these have occurred a user error related cause can be attributed to the phenomenon"* The PEAK also concludes "No fault in product". (See Judgment at [212])
104. At paragraph [213] in the Horizon Issues judgment Fraser J made the following comment:

"This conclusion by Fujitsu is only not made out on the factual evidence, including the contemporaneous entries in the PEAK itself, but it is, in my judgment, simply and entirely unsupportable."

105. This evidence is but one of multiple examples of Fujitsu and POL knowing that SPMs were not responsible for shortfalls, recording that knowledge and yet somehow perversely concluding otherwise. All the while POL maintained (dishonestly) that Horizon was robust and that SPM user error was to blame for the shortfalls.
106. There were other sources of evidence in the High Court proceedings that led Fraser J to conclude that POL knew about the problems in the Horizon system, yet took no steps to rectify them. At Para [941] of the Horizon Issues judgment, Fraser J referred to examples, such as **unguarded comments by Anne Chambers** (a Fujitsu employee who had also given evidence in the Lee Castleton case) **in February 2006 stating that “this problem has been around for years and affects a number of sites most weeks” and “this appears to be a genuine loss” on another occasion.**

Refusal to conduct investigations into complaints in 2013

107. Not only did POL and Fujitsu know about the errors from an early stage and refuse to rectify them, but they also refused to investigate complaints by SPMs.
108. A particularly stark example of these failings is set out at paragraphs [216] to [219] of the Horizon Issues judgment. Fraser J records:

216 Mrs Van Den Bogerd was taken through a number of examples of real-world situations, recorded in a variety of contemporaneous documents, where a wide variety of SPMs reported a very wide range of problems. In one an internal Post Office email reported that a SPM had “found sensitive issue with Horizon when the system put a phantom cheque on the cheque line in July 2013. Claims to have evidence to support his claim. Although he himself did not suffer a loss, thinks that Horizon is flawed. Did not ask to be contacted about this. Just wanted to say that he had this information and threatened to go to MP as a result.”

217. The question was posed internally at the Post Office: “Given the current media and in particular the BBC’s attention on

Horizon, do you think it is worthwhile looking into this 'alleged flaw' with Horizon that this SPMR has highlighted to pre-empt any enquiries from his MP?"

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

219. Mrs Van Den Bogerd agreed that this was an inadequate response. She said it would have been very easy for Mr Winn to have contacted the branch and obtained further details, and he should have done so. In my judgment, the stance taken by the Post Office at the time in 2013 demonstrates the most dreadful complacency, and total lack of interest in investigating these serious issues, bordering on fearfulness of what might be found if they were properly investigated. This SPM, whose branch was known to the Post Office, should obviously have been asked for further details (if further details were required for an investigation), and the Post Office and/or Fujitsu should plainly have investigated the matter as a matter of some importance. By 2013 Horizon was an extraordinarily controversial subject; there can simply be no sensible excuse for the Post Office's failure to try and understand this particular subject.

109. We ask that the Inquiry collates further examples from internal correspondence disclosed by the Post Office. It is our view that these examples are not isolated incidents, but formed part of a systemic campaign of denial and dishonesty.

Fujitsu did not collate or report problems.

110. Another problem which contributed to this scandal was the conduct of Fujitsu in failing to collate and report problems concerning software bugs, errors and defects, against the metrics contained in the Customer service

problem management procedure document, or very similar ones.¹⁹ It was apparent from the evidence of Mr Godeseth in the Horizon Issues trial that Fujitsu knew about the defects in the system, but took no steps to rectify them.

111. Fujitsu were not a party in the group litigation, so the court was not able to make findings about Fujitsu's knowledge. The matter should nevertheless be investigated further in this public inquiry, particularly in light of the comments of Fraser J at [336]

*336. The total number of software bugs, defects and errors in both versions of Horizon is very important information. **Why Fujitsu chose not to collate and report these in the manner that even a Fujitsu internal document stated would (or should) be done, is wholly unclear***

Knowledge and rectification of errors in the system. – AUDIT DATA

112. Another issue which relates directly to the knowledge and rectification of errors in the system concerns Audit data.
113. It had always been possible for POL to check whether a SPM had acted with dishonestly because Fujitsu held complete and accurate records of all keystrokes made by an SPM or assistant when using Horizon (known as audit or ARQ data).
114. Yet, it was established in the evidence in the group litigation that POL did not consult ARQ data, the very evidence that would have satisfactorily resolved disputes, when deciding how to deal with discrepancies and issue Transaction Corrections ('TCs') and when responding to any complaints about the Horizon system.
115. It is possible that POL believed wrongly that these issues could be resolved through consulting management data, such as a system called Credence,

¹⁹ Fraser J found at [329] in the Horizon issues judgment that Fujitsu failed in this regard

which was in use. Indeed, Mrs Van den Bogerd, when she gave evidence in the Horizon Issues trial wrongly believed that Credence would record keystrokes in branch. Fraser J noted at [912], that it was not clear to him whether the lack of understanding on the part of Mrs Van Den Bogerd was widespread or not within the Post Office. This is a matter which we say should be investigated within Phase 3 of the Inquiry.

116. The Inquiry should look into why it was that Post Office failed to consult the audit data in cases of serious dispute with SPMs and in relation to internal Post Office proceedings that lead to the suspension or termination of SPMs' contracts or civil actions and prosecutions.
117. It is possible that POL failed to use Audit data because of the charges that were raised by Fujitsu for access to such information. At para [920] of the Horizon Issues judgment Fraser J referred to some contemporaneous references within Post Office documents suggesting this may have been a disincentive in some cases to raising ARQ requests of Fujitsu, were said in one document to see the contract with the Post Office as a "cash cow".
118. It is therefore quite probable that POL were happy to require SPMs to make good apparent shortfalls in the knowledge that the discrepancies were caused by the Horizon system because Post Office had no wish to pay Fujitsu to investigate or rectify the errors which were causing the shortfalls.

POL lacking in technical competence

119. Another relevant matter to the question of knowledge of errors in the system is that, notwithstanding POL's undoubted knowledge of the problems surrounding the Horizon system, POL lacked the technical competence to take any action to rectify the system. The POL Board was aware of both these issues in July 2016. An internal Technology Strategy Update Decision Paper of 30 January 2017 records:

*“This document forms an update to the IT Strategy approved in July 2016 by the PO Board. **In July we outlined that IT was not fit for purpose, expensive and difficult to change.**”*

*The same document also states that **“We need to quickly rationalise and resolve misaligned contracts enacted to support legacy IT, obsolescence, a lack of PO technical competence, particular focus on Fujitsu and Accenture”**. (emphasis added)²⁰*

120. If the PO Board was aware of these issues in July 2016, why did it authorise POL to fight the group litigation on the basis that Horizon had always been robust and that any shortfalls were the responsibility of user error? And why did key officials such as Angela van Den Bogerd attend to give evidence in support of a position that was demonstrably false. We ask that members of the PO Board are called by the Inquiry to provide answers to these important questions.

Knowledge and rectification of errors in the system. – Remote access

121. Richard Roll, a former Fujitsu IT expert, who worked for Fujitsu from 2001 to 2004, gave evidence at the Horizon Issues trial to the effect that Fujitsu could access branch Horizon terminals remotely without the knowledge of the SPM. This fact emerged for the first time at the Horizon Issues trial.
122. Mr Roll told the Court that remote access to the Horizon system at Branch level was extensive, as was the ability to change data and change transaction information, even while the postmaster was working, without the postmaster being aware of this. He also said that *“during the course of resolving the software issues, we would frequently access a Post Office counter IT system remotely”*
123. Our clients ask that the Inquiry investigates the level and extent of the use of remote access and whether this impacted on apparent shortfalls, which SPMs were required to pay to POL. This evidence is important because as Fraser J stated at [321] Fujitsu could remotely insert a transaction into the

²⁰ See Horizon Issues judgment at [953]

accounts of a branch using a counter number which was the same as a counter number actually in use by the SPM (or an assistant). This would appear to the SPM from the records that they could see (and anyone else looking at those records) as though the inserted transaction had been performed in the branch itself.

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

Actions against Sub-Postmasters and others

124. The Post Office was unrelenting in pursuing SPMs for shortfalls which it knew had been caused by Horizon. In the period from April 2013 to June 2018 the number of SPMs who were suspended was 626. This equates to about 10 SPMs being suspended per month.

Misrepresentation of contractual liability

125. One of the many disturbing findings that emerged from the group litigation was that POL routinely misstated the SPM's liability for losses when demanding payment of apparent shortfalls. The SPMC contract, which was in place from 1994 to 2011 required repayments by SPMs only in cases where they had been negligent or at fault for any losses. However, when making demands of SPMs in relation to alleged Horizon shortfalls, POL represented that SPMs were strictly liable for any losses, regardless of whether they had been negligent or at fault for those losses.

²¹

126. Fraser J stated at paragraph 222 of his 'Common Issues' judgment as follows:

"There can be no excuse, in my judgment, for an entity such as the Post Office to misstate, in such clearly express terms, in letters that

²¹ See Common Issues judgment at [723]

threaten legal action, the extent of the contractual obligation upon a SPM for losses. The only reason for doing so, in my judgment, must have been to lead the recipients to believe that they had absolutely no option but to pay the sums demanded. It is oppressive behaviour.”²²

127. We would ask the Inquiry to investigate this matter and determine what advice was given to POL in respect of liability of SPMs for Horizon shortfalls and by whom.

SMPs not permitted legal representation during investigations

128. Furthermore, SPMs were not permitted legal representation by the Post office when they were interviewed in connection with alleged shortfalls. Neither were SPMs permitted access to information concerning the allegations that had been made against them. They were allowed to take friends with them, but if that friend ‘interrupted in any way, by word or signal’ they would be ‘required to leave at once’. Bizarrely the Post Office justified these procedures by relying on the Official Secrets Acts.²³
129. It also appears that the Post Office interviewers did not have the necessary information before them either to carry out a fair interview/investigation. Mr Abdulla (one of the lead claimants in the group litigation) gave evidence to the effect that he tried to explain the situation regarding Transaction Corrections and the Lottery at his interview, but was disbelieved. It transpired that he was right all along, but neither interviewer nor interviewee had the relevant information available to them at the time.²⁴

²² Common Issues judgment at [222].

²³ Common Issues judgment at [723]

²⁴ Common Issues judgment at [723]

Temporary SPMs

130. The Inquiry has heard evidence to the effect that Post Office Limited frequently sought to put a Temporary SPM in place during a suspension. This measure required the agreement of the suspended SPM (as they controlled their own premises). If the suspended SPM did not agree, the Post Office would be closed. If he or she did agree, it was usually the case that the Temporary SPM would insist on receiving all the remuneration that would be paid by the Post Office for the running of that branch.²⁵

Pamela Stubbs – Temporary SPM told to destroy all her documents.

131. We represent Pamela Stubbs, who gave evidence before Mr Justice Fraser in the common issues trial. The Judge accepted Mrs Stubbs' evidence that the Temporary SPM who replaced her was told to destroy all documentation in the branch that related to her appointment.

132. Fraser J commented at [723] that there can never be any sensible rationale for such destruction of important documents, and he could not understand why the Post Office would wish to behave in such a way. We submit that POL knew that they had suspended Mrs Stubbs on the basis of a false accusation and they wished to destroy any evidence, which might have been capable of exposing their wrongdoing.

Elizabeth Stockdale – deliberate destruction of documents

133. The same issue arose from the evidence in the Common Issues trial of another one of our clients, Elizabeth Stockdale. Fraser J found in the Common Issues judgment that POL had deliberately destroyed all of her documents after she was suspended [560]. They even refused to give any documents to one of their auditors, who was investigating a shortfall claimed by Mrs Stockdale [561].

²⁵ See Common Issues judgment at [404]

134. Again, this is an example of POL trying to cover its tracks in respect of its dishonesty. Fraser J referred in the common issues judgment at [561] to a culture of excessive secrecy at the Post Office, which was without a sensible or rational explanation.
135. Fortunately, the Inquiry is in a position to unravel that secrecy and uncover the reasons for it.

Catch 22 situation after suspension.

136. Once suspended an SPM was placed in a Catch-22 situation whereby he or she would face termination of their contract unless they were willing to accept that they were liable for shortfalls and agree to repay the disputed sums to the Post Office.²⁶ In 2014 the Post Office introduced a Suspended Termination Procedure whereby SPMs were allowed to resume in their branches as long as the disputed shortfall was repaid and on condition that no other shortfalls occurred.²⁷

Use of prosecutions

Use of POCA and civil litigation to bankrupt SPMs

137. In addition to the rate of suspensions and terminations, POL prosecuted SPMs at an alarming rate. Mr Beer QC told the Inquiry in February that between 2000 and 2015 POL brought a total of 844 prosecutions, resulting in 705 convictions. POL sometimes brought POCA claims against those convicted, allowing it to seize their assets and bankrupt them.
138. As to civil proceedings, very many SMPs were made bankrupt through the POL taking actions for recovery of the apparent shortfalls. The case of Lee Castleton and other witnesses provide stark examples of POL using the civil courts in a misleading manner and in failing to disclose as required under the Civil Procedure Rules. Many SPMs remain bankrupt today as a

²⁶ Common issues judgment at [405]

²⁷ Common issues judgment at [359]

consequence of POCA applications and enforcement of civil judgments by POL.

Whether there were policies dictating actions against SPMs

139. These actions were all applied on a uniform basis throughout POL. Some of the procedures described above emanated from the Modified SPMC. We can only assume that POL also had a policy or policies which directed these actions that were taken against SPMs.

140. We ask that these policies are disclosed in advance of the Phase 4 hearings and that those responsible for creating, implementing and approving them are called to give evidence within that phase.

Audits and Investigations

141. The evidence which emerged in the Phase 1 hearings painted a picture of thuggish and unprofessional auditors or investigators, who had no interest in getting to the truth, but instead were committed to accusing SPMs of stealing and threatening them with prosecution or imprisonment if they refused or were unable to meet POL's financial demands.

142. It would also appear that auditors and investigators were not particularly interested in the workings of the Horizon system. We have referred already to the evidence of Ms Dickenson before Mr Justice Fraser, who stated that as a fraud investigator for POL she considered that a detailed knowledge of the Horizon system might place her in a conflict of interest.

Louise Dar – Pursued for Auditor's mistake

143. The evidence of Louise Dar, who was one of the lead claimants in the Common Issues trial, shows a similar lack of attention in the Audit

process.²⁸ Mrs Dar received training in 2014 from a Post Office auditor called Margaret Guthrie. Before Mrs Dar's branch had even opened there was a shortfall of £977, which arose due to mistakes made by Mrs Guthrie in inputting the stock into Horizon. Mrs Guthrie spent some of her time trying to fix problems with Horizon rather than doing the induction training that Mrs Dar was expecting.

144. Mrs Guthrie did not attend on Mrs Dar's first balance day, as she was supposed to. She said that she would come back to Mrs Dar's branch to give further training and support. In fact she did not, at least not until some months later on 15 July 2015 when she came back to carry out an audit.
145. Remarkably, when conducting that audit, Mrs Guthrie claimed that the very same £977 was owed by Mrs Dar to POL as a shortfall which had arisen from Mrs Dar's dishonesty or error.

Louise Dar - Forced to sack members of staff

146. The audit revealed an apparent shortfall of £10,000. Mrs Dar was accused of dishonesty. She was told that there had been deliberate falsification and inflation of accounts and she should dismiss her assistant, who had worked for the Post Office for 12 years.
147. Mrs Dar dismissed her assistant for gross misconduct, as she felt she had no choice. Mrs Dar was suspended. A large amount of the shortfall related to cheques which were said to be missing. These cheques later turned up and were credited by the Post Office, reducing the shortfall. Another alleged shortfall related to £2660 in coins, which POL subsequently accepted could not have been in Mrs Dar's branch.

²⁸ See Common issues judgment at [329] to [364]

Louise Dar - POL lied about investigation having taken place.

148. Mrs Dar's appointment was terminated on 27 March 2017. The letter of termination runs to 4 pages. The majority of it simply recites clause after clause of the contract terms. The entirety of the text relating to any investigation by the Post Office in respect of Mrs Dar's numerous issues and experiences (including with the Helpline, the way that she was told to report disputes) is the single sentence "Post Office Limited's investigations have now concluded". It is not said what those investigations consisted of; what issues were investigated; how they were investigated; over what period of time; how long that took; or any other basic information.

149. We say there was no investigation because POL knew only too well that there were bugs and defects in the system and that any investigation would have exonerated our client and compromised POL's position.

The Case of Pamela Stubbs - Failure to investigate²⁹

150. Pamela Stubbs pressed for an investigation of the circumstances surrounding her suspension and termination. Her MP intervened on her behalf and was promised by POL that it would conduct "a full investigation" by the Post Office. However, no results of any investigation were provided. Fraser J accepted Mrs Stubbs' evidence and stated:

*The "investigation" appears, on the material deployed in this Common Issues trial, to have **consisted of nothing more than Fujitsu asserting that there was "nothing wrong with the kit"**. That is not, in my judgment, an investigation under any normal understanding or meaning of that word in society generally. The Post Office's way of dealing with this wholly ignores the provision in the SPMC and a SPM's liability for losses in that document (which on the Post Office's case is what applied). **There was simply a blanket assertion by the Post Office that she had to pay these sums. The suggestion that there was***

²⁹ See Common Issues judgment at [125] to [172]

any investigation is not made out on the documents produced and put to her during her evidence.

151. Mrs Stubbs' case was found by Fraser J (at [169]) to be illustrative of the *non-sensical attitude* that POL took to auditing and investigating SPMs.

Mrs Stubbs operated her branch with her husband for 12 years, during which time and discrepancies were measured in single pounds or even pennies. After the death of her husband she operated the branch for 10 years and the only discrepancies of any significance were due to electrical power issues in 2000. On that occasion a Post Office investigator concluded that the shortfalls were Horizon related, but nobody told Mrs Stubbs and she made up the shortfall herself.

She then operated her branch without incident for 9 years before moving her office into portacabin while renovations were conducted. From this point in November 2009 losses accumulated up to £9000. Some of the shortfalls occurred over the Christmas and New Year period, when the branch had been closed, so Mrs Stubbs knew that the amount of cash unaccounted for simply could not be possible.

She obtained all the information she could, including from Horizon, and prepared hand written accounts to investigate. She could not get to the bottom of it, and in the period during 2010 until she resigned (having been told she had to do so in order to market her branch) these losses climbed higher and higher.

Any responsible and conscientious investigation would have concluded that the shortfalls were nothing to do with Mrs Stubbs. Yet POL failed to investigate, no doubt knowing that Horizon and not Mrs Stubbs was responsible for the shortfalls.

152. It is also worth saying that Mrs Stubbs' case is another example where POL secured payment from an SPM through misrepresenting the terms of the SPMC in threatening correspondence.

Failures in disclosure

153. In Hamilton v Post Office, the Court of Appeal considered systemic failure by POL to disclose relevant documents in criminal and civil cases. At paragraph 18 of the judgment in Hamilton, Holroyde LJ stated:

... “Fraser J heard no evidence to suggest that either PEAKs or KELs had been disclosed by POL in any civil litigation or any criminal prosecution before the High Court proceedings. This court is in the same position. In the prosecutions of these 42 appellants, so far as we are aware, there was no disclosure of any such document.”

The Ismay report – No review of Horizon so as to avoid having to disclose

154. The Post Office was very aware of its duties of candour and disclosure in court proceedings and took active decisions not to investigate Horizon because any such investigation might be disclosable in future proceedings.
155. This is demonstrated by POL’s responses to the problems concerning Horizon having been brought into the public domain in a report by Computer Weekly in 2009. In that year 2 members of Parliament also raised concerns on behalf of their constituents.
156. POL responded to these concerns in August 2010 through a report entitled *“Horizon – Response to Challenges Regarding Systems Integrity”*. This report was prepared by Rod Ismay, POL’s Head of Product and Branch Accounting. The report stated that Horizon was robust and that the record of prosecutions supported the assertion that the SPMs had been guilty rather than Horizon being at fault.

157. Significantly, in a passage to which the Court of Appeal referred (at [24]) Mr Ismay warned that if any review were to be commissioned, it would need to be disclosed in court proceedings with the effect that prosecutions might be stayed.
158. So POL's internal response to apparently genuine concerns about the Horizon system was not to investigate those concerns because that might undermine its prosecutions of SPMs. This is clearly evidence of a cover up. We would ask that Mr Ismay is called to give evidence by this Inquiry to explain these decisions.
159. Fraser J noted at [234] of the Horizon Issues judgment that POL senior officials fully acknowledged that they were covering up the scandal. In an "Extracts from Lessons Learned Log" document of 11 November 2015, authored by Mrs Van Den Bogerd , one entry under "issues identified" was as follows regarding the Post Office:

"Failure to be open and honest when issues arise eg roll out of Horizon, HNGx migration issues/issues affecting few branches not seemingly publicised." (emphasis added)

160. There can be little doubt that failures in disclosure by POL were endemic throughout the scandal. In the Horizon Issues trial Fraser J noted that Fujitsu and POL failed to disclose material in court proceedings. At [457] Fraser J stated:

*457. The second unsatisfactory aspect which arose is the approach of Fujitsu as demonstrated in various documents, including the PEAKs and KELs, but also in particular in the Receipts/Payments Mismatch issue notes. **To see a concern expressed that if a software bug in Horizon were to become widely known about it might have a potential impact upon "ongoing legal cases" where the integrity of Horizon Data was a central issue, is a very concerning entry to read in a contemporaneous document.** Whether these were legal cases concerning civil claims, or criminal cases, there are obligations upon parties in terms of*

*disclosure. So far as criminal cases are concerned, these concern the liberty of the person, and disclosure duties are rightly high. **I do not understand the motivation in keeping this type of matter, recorded in these documents, hidden from view; regardless of the motivation, doing so was wholly wrong. There can be no proper explanation for keeping the existence of a software bug in Horizon secret in these circumstances.***

161. We ask that the Inquiry calls Mrs Van den Bogerd to explain her position in seeking to cover up the Horizon scandal and also that the relevant officers in Fujitsu be required to attend to account for their failure to disclose the thousands of PEAK and KEL reports, which made abundantly clear the SPMs' position that Horizon was never robust as POL continued to maintain until the Horizon Issues judgment was handed down at the end of 2019.

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

Second Sight

162. In July 2012 POL came under renewed press interest and pressure from a group of MPs led by James (now Lord) Arbuthnot. Consequently, POL met with a group of MPs and agreed that a firm of independent forensic accountants should be appointed by the Members of Parliament, to conduct an independent assessment of Horizon.
163. The MPs had no budget and so POL agreed to fund the process and Second Sight were duly appointed. The partners in Second Sight specialised in banking fraud and IT systems and so were a good fit for the problems that they were asked to investigate. It is important to

understand that Second Sight were at all times answerable to the MPs who had commissioned them and not to POL, who funded the project.

164. Second Sight were given the names of thirteen Subpostmasters, which were drawn from a pool of SPMs who had complained to their MPs, as test cases. These cases were to be reviewed and considered to ascertain whether there were any systemic issues and/or concerns with the Horizon system.
165. The Inquiry will recall hearing from Mr Henderson of Second Sight at the first preliminary hearing in November 2021. Mr Henderson said:

“Our terms of appointment were quite clear. They included unrestricted access to documents held by Post Office, including documents subject to confidentiality and legal professional privilege, and no limitation in the scope of work deemed necessary by Second Sight. Our work started in the summer of 2012. Initially Post Office were co-operative and appeared committed to the agreed goal to seek the truth irrespective of the consequences. As our work progressed, the attitude of Post Office changed -- we understand, largely based on legal advice.”

166. Second Sight published their interim report on 8 July 2013. They concluded that there were 2 software bugs in Horizon and that POL had failed to conduct adequate investigations into complaints raised by SPMs. There were 4 or 5 case studies identified by Second Sight which showed systemic failures in the Horizon system. There was an indication in the interim report that it was possible to have remote access to the system (which POL sought to mischaracterise to MPs as something that was only done on the dead system to upload errors as and when needed).
167. We understand that POL were concerned that Horizon might be criticised in the interim report. It is understood that prior to its publication the Post Office held a number of Board meetings. Our clients are interested to know whether the Post Office Board were made aware that Second Sight had identified bugs and defects in the system. We ask that the Inquiry

considers the unredacted minutes of those meetings and potentially receives oral evidence in relation to the activity of the PO Board during this period.

Complaint Review and Mediation Scheme

168. In August 2013 the Post Office set up the 'Initial Complaint Review and Mediation Scheme', which was intended to operate as a formal mediation between aggrieved SPMs, managers and assistants (who had complained to their MPs) and POL. The mediation scheme was overseen by a Working Group, which comprised JFSA (Alan Bates and Kay Linnell), Second Sight and POL. The Independent Chair of the Working Group was Sir Anthony Hooper, a retired Court of Appeal judge.³⁰
169. The Working Group met once a month and a secretariat was provided by POL. We understand that on practically every occasion Sir Anthony Hooper asked the same question of the Post Office: where has the money gone? He never received an adequate answer to that question.
170. The process adopted under the scheme was that an SPM would submit an application on a form, known as a SOCI³¹. POL would reply to the application and the applicant would then respond. This led to POL conducting an investigation and writing a report to decide whether the case was fit to mediate or not.
171. The Mediation Scheme enabled Second Sight to continue its investigation into the integrity of Horizon with reference to the evidence of those SPMs, assistants and managers who participated in the scheme and the documents that were disclosed in relation to their complaints.
172. Unfortunately, the Scheme floundered in November 2013 when Susan Crichton left POL. She was the internal legal advisor who had instigated

³⁰ Nick Wallis. The Great Post Office Scandal.

³¹ Schedule of Claimant Information

the process. Our client Kay Linnell, who was involved in the working group met with her in Birmingham and was impressed with Ms Crichton's collaborative and problem-solving approach to the process.

Susan Crichton replaced by Chris Aujard

173. We do not know why Ms Crichton left, but it is probably not a coincidence that her departure took place at around the same time that POL realised that its position had become difficult. Ms Crichton was replaced by Chris Aujard as Post Office General Counsel. Our client will say that Mr Aujard adopted an obstructive and litigious attitude. He sought to rely on limitation points and the removal of SPMs from the scheme.

174. We have taken instructions from Ms Linnell, who believes that it was at or around this point that POL's cover-up started. She says that the cover up was in many ways a greater scandal than the IT failure. POL realised that they had known about the defects in Horizon for at least 12 years and tried desperately to prevent that information from ever becoming public.

175. The situation deteriorated further in 2014. We say that this is because POL had become aware that Second Sight were getting closer to the truth. In August 2014 Second Sight produced its second Briefing Report, which was critical of POL in relation to the failure to provide SPMs with their contracts, Horizon training, the Helpline and the denial of access of SPMs to information and their own records after suspension (to which we say POL were not entitled). The report went on to criticise POL for failing to conduct proper investigations into IT issues.

POL response to issue raised by Second Sight re confiscation of records

176. The Post Office rejected the Briefing Report and issued a lengthy reply, effectively seeking to undermine the work of Second Sight.

177. Fraser J dealt with this point at para 439 of the Common Issues Judgment:

439. Another example of the circularity of reasoning generally adopted by the Post Office can be seen further in its Response to the Second Sight Report, in which Mrs Van Den Bogerd was involved. One passage deals with complaints by SPMs that their own records were removed by the Post Office and they were not allowed to have them. The Post Office's response was: "Whilst Post Office are aware that some applicants have raised the issue that their own records were removed and not returned to them, there is no evidence produced or referenced by the report to support the position that data being withheld has prejudiced an applicant in any way."

440. I find that sort of logic more akin to that in a nonsense rhyme by Lewis Carroll, than a serious response to a number of similar (if not identical) complaints by many SPMs that the Post Office took their records. The Post Office accepted that it had removed documents – indeed, it attempted to take Mrs Stockdale's, but she would not provide them – but said that there was "no evidence" that the withholding of data had "prejudiced an applicant". Given the "prejudice" would be a SPM demonstrating that with the records they could provide an explanation for a shortfall, whereas without them they could not, such evidence of prejudice could only be provided by having the records that were being withheld. The Post Office's response to this can, in my judgment, be seen to be lacking in any common sense whatsoever.

House of Commons Select Committee

178. The change of attitude by POL towards Second Sight, to which Mr Henderson alluded when he addressed the Inquiry in February, is crystallised in an extraordinary exchange between Nadim Zahawi and Paula Vennells at a House of Commons Select Committee hearing in February 2015. Mr Henderson, sitting next to Ms Vennells told the committee that Second Sight had been refused access by POL to a number of prosecution files.

179. Ms Vennells then told the committee that she would not say whether POL would provide the files *'because I do not know the details of the situation'*. Ms van dan Bogerd went on to tell the Committee that she had been providing the information that had been requested (albeit referring to the wrong year). Mr Henderson was asked if this was right and replied: *'No, it is not, I am sorry to say.'*

POL termination of Second Sight's contract

180. Second Sight were due to deliver a report in April 2015. However, on 10 March 2015 POL brought the mediation scheme to an end and gave Second Sight a month's notice. We are not sure to what extent POL was entitled to act in this way given that Second Sight was answerable to the MP group and not POL. This is a matter which should be investigated further.

181. We say that these events mark the beginning of a concerted attempt by POL to cover up its wrongdoing and would ask that the Inquiry focuses on this 'cover up' and identifies those POL officials and Fujitsu officials who were involved and any BEIS knowledge or involvement.

182. Second Sight delivered its final report on 9 April 2015. This report was highly critical of POL's failures to identify the root causes of shortfalls prior to commencing civil claims or prosecutions against SPMs. Second Sight maintained that criminal charges had been brought primarily to recover losses and without sufficient evidence to secure convictions.

183. Second Sight also reported on the practices by POL of acceptance of guilty pleas to a lesser charge – usually false accounting – upon agreement to repay the sums claimed. Agreements were also made between parties whereby SPMs were prevented from criticising POL. The Inquiry may recall that evidence of this nature featured in the Human Impact hearings earlier this year.³²

³² Nick Wallis. The Great Post Office Scandal.

184. It would appear from the evidence that POL took a deliberate decision to cover its tracks and cease co-operation with Second Sight after the publication of its interim report in July 2013 and in anticipation of Second Sight's further and final reports. Essentially, they had been 'found out' and realised that their attempts over 12 years to hide what they knew might now enter the public domain.

Witness requests

185. We ask that the Inquiry asks Susan Crichton and Chris Aujard to give evidence on the Mediation Scheme. We also consider that Lord Arbuthnot would be well placed as a witness to communicate the views of MPs at the time and Sir Anthony Hooper would also provide helpful evidence to the Inquiry on these issues. As previously stated, Kay Linnell may provide useful evidence in relation to Phase 5.

Destroyed documents retained by Fujitsu

186. We understand that although Post Office may have destroyed a number of documents, those same documents would have been retained at Fujitsu and will demonstrate knowledge that the system did not work and would fail.

187. Our clients are particularly interested to know what the PO Board knew of the cover up and whether BEIS, as owner of POL and with a presence on its Board, was aware of the position. We ask that the Inquiry scrutinises the minutes of the PO Board Meetings from this time. We also ask that the Inquiry calls Ms Vennells and Ms Van den Bogerd to ascertain, amongst other things, whether they misled the Select Committee and, if so what were their reasons for such conduct.

Conduct of the Group Litigation.

188. Our clients are grateful that this subject has been included in the list of the matters which the Inquiry will consider. POL were the subject of a

number of specific criticisms by Fraser J in both the Common issues and Horizon issues judgments.

189. The Post Office's general position before the Court was that if Horizon shows a shortfall of X pounds, that shortfall of X pounds must have been caused by the sub-postmaster, either through mistake or dishonesty. (Common Issues judgment at [10])

190. POL also maintained that while it was not quite that it is impossible for Horizon ever to generate any errors, but rather that the system is what it called "robust" and can be relied upon. (Common Issues judgment at [10])

POL sought to argue that it was in the national interest that it succeeded in the group litigation.

191. Remarkably POL sought to argue that it was somehow in the public interest that the Court find for POL because of the potential consequences to a 'trusted brand' and 'national service' of losing the case. Fraser J dealt with this point at para 30 of the Common Issues judgment:

*30.The rule of law means that all individuals and legal entities are subject to the same laws as everyone else. There is no special exemption available for the Post Office because it has a lot of branches, or for sub-postmasters either. The balance of bargaining power can be a relevant feature in the law of contract, and this is well known, and commercial common sense is also relevant. **However, a party (here the Post Office) threatening dire consequences to national business should their case not be preferred is not helpful, and this seemed to me to be an attempt to put the court in terrorem.***

192. The Post Office appears to have forgotten about its duties of candour to the court and took an approach to the evidence which did not fall far short of trying to mislead. Fraser J was critical of this approach at paragraph 34 of the Common Issues judgment:

[34] *The Post Office seemed to adopt an extraordinarily narrow approach to relevance, generally along the lines that any evidence that is unfavourable to the Post Office is not relevant. The Post Office adduced a significant quantity of evidence of its own to demonstrate (as it saw it) that (for example) Horizon training was perfectly well designed and adequate; on the other hand, it sought to keep out specific evidence by Lead Claimants of their own individual experiences of the training they had received.*

'House Post Office style' – PR driven evidence

193. Neither did the witnesses who gave evidence on behalf of the Post Office do so in a way that could have assisted the court. Fraser J referred at [375] to the 'house Post Office style' which he described as : *certainly for the more senior of its management personnel who gave evidence. This was to glide away from pertinent questions, or questions to which the witness realised a frank answer would not be helpful to the Post Office's cause.*
194. At [397] Fraser J described this type of evidence as 'PR driven'. He noted the same tendency in the evidence of Ms Van Den Bogerd at [441]: (emphasis added)

441. Mrs Van Den Bogerd would, on some occasions, give clear and cogent evidence, and one important example is in respect of the way the Post Office treated sums that had been settled centrally. However, for the most part, she was extraordinarily conscious of the need to protect the Post Office's position in the case generally, which given her very close involvement in the Horizon problems with SPMs over the years, effectively meant protecting her own position too, which led to a disregard for factual accuracy. I find that it is necessary to scrutinise everything she said as a witness, both in her witness statement and in cross-examination, and treat it with the very greatest of caution in all respects.

21st century equivalent of maintaining that the earth is flat.

195. Fraser J found that some witnesses, in particular, Mr Parker of Fujitsu, had been quite deliberate in attempting to paint a false picture in relation to the ability of Fujitsu to inject transactions into the counter at branches.

196. The particular difficulty with POL's position was that it flew in the face of the evidence. Fraser J described POL's position as follows:

929. This approach by the Post Office has amounted, in reality, to bare assertions and denials that ignore what has actually occurred, at least so far as the witnesses called before me in the Horizon Issues trial are concerned. It amounts to the 21st century equivalent of maintaining that the earth is flat.

Mr Godeseth

197. A remarkable feature of the Horizon Issues trial was the way that Fujitsu tried to cover up the truth. Mr Godeseth's evidence provides a good example. He was a main Fujitsu witness who was commended by the Judge for the candid nature of his oral evidence, which departed from the witness statement that had been drafted for him by POL or Fujitsu lawyers.

198. Fraser J noted at [934] of the Horizon issues judgment that Fujitsu had sought to keep from the court the evidence that Mr Godeseth and Mr Roll had given.

199. It is also correct that POL's approach to disclosure was obstructive. The lack of co-operation was criticised by Fraser J at paragraph [625] of the Horizon Issues judgment:

929. This approach by the Post Office has amounted, in reality, to bare assertions and denials that ignore what has actually occurred, at least so far as the witnesses called before me in the Horizon

Issues trial are concerned. It amounts to the 21st century equivalent of maintaining that the earth is flat.

Attempts to 'outspend' claimants

200. Many of our clients consider that POL were aware of the third party funding arrangement by which they were able to participate in the litigation. They have told us that they believe that POL actively sought to drive up the costs of the litigation in an attempt to 'outspend' the Claimants and compromise their position with the funders.
201. Some of our clients have told us that the misguided attempt by POL to bring about the recusal of Fraser J, which resulted in a 4-5 month delay of the Horizon Issues trial, was a means of wasting time and driving up costs. This is entirely likely when viewed in the context of POL's conduct as a whole.
202. We ask that the relevant officials in POL who were responsible for the conduct of the litigation are called to give evidence so that the Inquiry can make findings on whether the reprehensible conduct of POL in the litigation went beyond seeking to mislead the court, but involved abuses of public funds to obstruct the progress of the cases, which POL must have known they would lose.

Effect of settlement of the claim on group litigants

Louise Dar

203. Ultimately the group litigants were required to settle the action because their funders were unable to continue their support for the case. We have taken instructions from Louise Dar, who was one of the lead claimants in the Common Issues trial. Her case was clear and compelling and was accepted as credible by the court.

204. Mrs Dar is one of the few SPMs who has been able to retain documents which related to her case. Her witness statement before the High Court contained over 600 pages of exhibited evidence and she instructs us that she passed 7 file boxes of evidence to Freeths.
205. Mrs Dar was in an excellent position to achieve justice had the group litigation properly run its course. She described the settlement as a 'burst bubble moment'. She says that she felt totally deflated when the matter settled. The monies that she received, in her words, didn't even scratch the surface. She recalls being told at the time that the funds for the litigation had run low because Post Office had slowed down the progress of the case.
206. It is a matter of concern that so called 'sharp' litigation practices seem to have been employed by a publicly owned national institution spending public funds with government approval and oversight. We submit that the inappropriate conduct of the litigation and the circumstances by which the Group Litigants were forced to settle are important parts of this scandal and should be investigated thoroughly.

Further attempts to deny justice to claimants

207. Not only did POL seek to settle the litigation on terms that could never have adequately compensated SPMs, but POL subsequently sought to rely on the 'full and final settlement' provisions of the agreement to block access to fair compensation.
208. Many of our clients have stated that had POL negotiated in good faith, it would not have been necessary to remedy the situation in 2022 and many SPMs, whose lives have been blighted by dire financial circumstances would have spared 3+ years of misery and uncertainty.

Responding to the scandal and compensation schemes.

209. Our clients are particularly grateful to the Chair for bringing forward the issue of the compensation issue and holding hearings out of sequence on 6 and 13 July 2022. We have read the Chair's Progress Update on issues relating to compensation dated 15 August 2022 and note that the Chair has reserved a number of matters for phase 5 of the Inquiry.
210. We say that it was the Inquiry process and the evidence of our clients (such as Baljit Sethi) that led to POL abandoning what were fundamentally unfair components of HSS.
211. The HSS related compensation issues which arise for consideration at the Phase 5 hearing include the following:
- (i) Should POL be involved in determining whether a late HSS application is accepted or rejected? We say that POL cannot be seen as independent in this matter and should not play a part in this process.
 - (ii) Is the HSS process (in which POL is the final arbiter of awards made) capable of delivering full and fair offers to applicants? We say that Phase 5 of the Inquiry should require the attendances of witnesses from BEIS/POL, who are in a position to provide evidence on the offers that have been made. It was apparent in the July hearings that offers were noticeably low. It is possible that the Schemes are not genuine attempts at reparation, but are being put forward as a damage limitation exercise.
 - (iii) Phase 5 should seek to resolve the issue that we raised at the July hearings as to how Q24 on the HSS application form would have been understood in the absence of guidance as to its meaning. Q24 stated:

"Have you experienced any other losses that are directly related to the alleged shortfall(s) in respect of which you would like to claim?"

It is quite likely that HSS applicants failed to make full claims because the heads of damages were not made available to them in any guidance. This is a matter that we ask the Inquiry to re-open and explore.

- (iv) Whether the absence of funding for legal representation for HSS applications has caused any injustice.
- (v) Whether POL has acted on the Chair's recommendation that urgent interim payments are made to HSS applicants who are struggling financially.

212. In relation to the Overturned Historic Convictions Scheme the Chair has stated in the Compensation Update that POL should not be the final arbiter for interim payments if a claim is rejected and that an independent person or panel should be appointed to determine such claims. We will seek assurances from POL that this recommendation has been implemented.

213. It is also important that Inquiry takes steps in Phase 5 to ensure that those who were prosecuted and acquitted, such as Sue Palmer and Maureen McKelvey, receive interim payments within the Overturned Historic Convictions Scheme. At the present time it is wholly unclear as to whether BEIS will follow the Chair's recommendation in his update report of 15 August on this issue.

214. The position of those who received cautions, such as Susan Hazzleton, is another matter which we ask the Inquiry to address within Phase five.

The Group Litigation Scheme

215. It is only through this Inquiry that the Post Office and BEIS have decided to compensate those who brought the scandal to public attention by bringing the Group Litigation. However, this new scheme is still in its infancy and its implementation has been beset with delays. Mr Enright and Mr Howe of Howe & Co have been in discussions with BEIS and we

understand that funding for the scheme has been made available under the Appropriations Act, and for reasons that BEIS will no doubt explain to the Inquiry, no funding at all will be available after 7 August 2024.

216. It is regrettable that the GLO scheme has not proceeded as swiftly as our clients had hoped. We are grateful to the Chair for his statement dated 22 September 2022 (in response to correspondence from Howe & Co) to the effect that there will be a further hearing on 8 December 2022, when all parties will be called upon to provide a detailed update on issues relating to compensation.
217. Phase 5 is scheduled to be heard between February and March 2023. If by that time the Scheme has not made significant progress, we ask that Phase 5 is kept open until after August 2024.
218. Our clients have been let down over compensation issues repeatedly and fear that if there is no longer any Inquiry process to hold BEIS's feet to the fire, the Group Litigation Scheme may stall and may ultimately fail to deliver the compensation that has been promised.
219. Our clients do not wish to be mired in further litigation on this issue. They have well founded reasons for not trusting POL and BEIS and would wish that the Inquiry continues to monitor this issue, which is highly important to them.

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

Monitoring of Horizon and internal and external audit.

220. We know from the evidence before Fraser J and before the Inquiry that Fujitsu monitored Horizon from the outset and liaised with POL throughout. As early as 2000 Fujitsu reported phantom sales and there is no evidence that the system was not monitored thereafter. Fraser J found POL sent over 100,000 Transaction Corrections to SPMs each year since

2006, which amounted to more than 2000 per week³³. An unusual feature of the Horizon Issues trial was that Fujitsu provided and disclosed 5000 KELs, but only in September 2019, months after the trial had ended.³⁴

221. However, whilst the system was being monitored privately POL refused to monitor and investigate Horizon when its systemic problems threatened to enter into the public domain. This complacency was based on a fear of what any such further investigations might uncover. The issue is demonstrated by way of an example, which was put to Angela van Den Bogerd when she gave evidence in the Horizon Issues trial.

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

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

222. So, POL did monitor Horizon, but also was reluctant to investigate the defects that were revealed by that monitoring.

Contractual arrangements and stakeholder arrangements.

223. It is important that the Inquiry scrutinises the contractual arrangements between POL and Fujitsu. These arrangements and the structure of the relationship between POL and BEIS will assist the Inquiry to ascertain which individuals within these organisations bore responsibility for the scandal.

³³ Horizon Issues judgment at [1027]

³⁴ Horizon Issues judgment at [941]

Contractual arrangements between POL and Fujitsu and failure to consult Audit Data

224. One of the significant failings of POL was its failure to consult Audit Data in cases where SPMs disputed shortfalls. This information would have resolved the issue in the majority of cases. However, it is possible that the contractual arrangements between POL and Fujitsu operated as a disincentive to POL accessing it. In the Horizon Issues judgment Fraser J held as follows:

920. That charges are raised by Fujitsu to the Post Office is not an adequate answer, in my judgment, to the Post Office's failure to consult or provide the audit data There are some contemporaneous references within Post Office documents suggesting this may have been a disincentive in some cases to raising ARQ requests of Fujitsu. Further, there are numerous references within Post Office documents (at a high level) of the very great cost to the Post Office of the Horizon system generally, that cost being paid to Fujitsu. Fujitsu were said in one document to see the contract with the Post Office as a "cash cow".

225. We understand that the IT development side of POL was run by Fujitsu, but that this aspect of Horizon was not in regular communication with the Operational side of POL. However, Fujitsu communicated to POL via liaison reports.

226. The POL Board has an audit committee, on which two nominees from BEIS sit. Clearly BEIS must have known about what was happening in the Post Office regarding Horizon. We ask that the Inquiry disclose the audit committee and Fujitsu liaison reports from the relevant periods in addition to all POL Board Minutes in unredacted form.

Technical competence

POL lacking in technical competence

227. It is a matter of some concern that POL IT staff lacked the capacity to understand the operation of the Horizon system and its failings. This lack of competence fed into the actions/inactions of Helpline staff, who clearly did not understand many of the matters on which their assistance was being sought by SPMs. It also fed into the attitude of the contract managers and 'so-called' auditors, who could conceive of no explanation for the shortfalls that they found, other than theft by SPMs.
228. There is evidence that POL lacked the technical competence to take any action to rectify the system. We have referred to this issue in relation to Phase 3 above. The POL Board was aware that there were concerns surrounding technical competence in July 2016. An internal Technology Strategy Update Decision Paper of 30 January 2017 records:

*"This document forms an update to the IT Strategy approved in July 2016 by the PO Board. **In July we outlined that IT was not fit for purpose, expensive and difficult to change.**"*

*The same document also states that **"We need to quickly rationalise and resolve misaligned contracts enacted to support legacy IT, obsolescence, a lack of PO technical competence, particular focus on Fujitsu and Accenture"**. (emphasis added)³⁵*

Whistleblowers

229. Our clients maintain that there must have been hundreds of Helpline workers, contracts managers, auditors, internal lawyers and POL officials who would have been aware of the unfair and oppressive treatment of SPMs which surrounded the Horizon system. BEIS and Fujitsu must also have been aware of the unfolding scandal.
230. Yet, there appears to have been only one significant whistleblower-Richard Roll of Fujitsu. It is important that the Inquiry ascertains why so many others knew and kept silent. Were they afraid to disclose what was

³⁵ See Horizon Issues judgment at [953]

unfolding? Or was there a culture within POL, which prevented whistleblowing?

231. Extraordinarily the evidence in the Common Issues trial demonstrated that POL sought to use the Official Secrets Act to justify seizure of documents and equipment when suspending a SPM. Furthermore, the Modified SPMC section 15, clause 19 prevents any communication concerning interviews by POL investigators as such communication ‘*might constitute a breach of the Official Secrets Act.*’³⁶
232. Fraser J found (at [723]) that it was somewhat unusual and potentially oppressive that the Post Office could seek to use the Official Secrets Act in this way. We would like the Inquiry to examine whether POL sought to apply that same legislation in respect of any disclosures made by employees. If so, this might explain why nobody within this huge organisation felt sufficiently brave to raise their heads above the parapet.

Phase 7 – Current practice and procedure and recommendations for the future

233. It was agreed by the experts in the Horizon Issues trial that the Horizon System in its HNG-A form is now relatively robust. This will be of no comfort to our clients and the hundreds maybe thousands of SPMs, Managers, Assistants and their family members whose lives and reputations have been devastated by POL and who will never be able to regain the time that they have lost to misery and oppression.
234. In reality, this Inquiry is not about the Horizon System, but about a sickness which lies at the core of the Post Office. POL was victim, investigator, enforcer and civil and criminal prosecutor, Judge, jury and executioner. It is now the arbiter of which of its victims should receive compensation and how much. It held extraordinary power over every one of its SPMs and wielded that power with impunity and in bad faith.

³⁶ See Common Issues judgment at [723]

235. The Terms of Reference rightly say that the Inquiry must assess whether Post Office Ltd has learned the lessons from the criticisms made by Mr Justice Fraser in his judgments following the 'Common Issues' and 'Horizon Issues' trials and those identified by affected postmasters and has delivered or made good progress on the organisational and cultural changes necessary to ensure a similar case does not happen in the future.
236. Our clients are very concerned that all that has changed within POL is that Paula Vennels, Angela Van den Bogerd and others who attempted to cover up the scandal have been found out, to an extent. It is important that the Inquiry delves into the issue of whether there has been real cultural change at POL.
237. The recommendations that this Inquiry makes for the future will doubtless be determined by the evidence which will be read and heard over the next nine or ten months.
238. Our clients instruct that it is not inconceivable that another set of circumstances could arise in the future where powerful institutions will make false or mistaken allegations of systemic robustness of an IT system at the expense of the livelihoods and reputations of individuals who are affected by such IT systems.

Conclusions and requested outcomes

239. As matters stand our clients ask for three outcomes:
240. First, that the Inquiry continues to exercise oversight of the compensation schemes, as there is a danger that as soon as public scrutiny subsides, so will any perceived good intentions fade away.
241. Secondly, that each and every SPM who was affected by the Horizon system receives a personal face to face apology from a suitably senior Post Office Official.

242. And thirdly, that those who are responsible for this tragedy are identified, publicly named and prevented from ever wielding positions of power and responsibility again.

Sam Stein KC
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3 October 2022