

## IN THE POST OFFICE HORIZON IT INQUIRY

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### PHASE TWO CLOSING SUBMISSIONS ON BEHALF OF FUJITSU SERVICES LIMITED

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1. Fujitsu Services Limited (“**Fujitsu**”) is grateful to the Post Office Horizon IT Inquiry (the “**Inquiry**”) for the opportunity to make these written submissions at the close of Phase 2 (‘Horizon IT System: procurement, design, pilot, roll out and modifications’). Fujitsu has focussed, in these written submissions, on those issues raised by Phase 2 of the Inquiry in relation to which Fujitsu believed it could most assist the Inquiry at this stage. Therefore, not every issue raised by Phase 2 will be addressed. Fujitsu will revisit these issues in its final closing statement to the Inquiry, mindful that further disclosure from Core Participants is likely to follow.
2. At the outset, Fujitsu reiterates the apology, given by Mr William Paul Patterson in Fujitsu’s Corporate Statement dated 28 September 2022 (the “**Corporate Statement**”), for Fujitsu’s role in the suffering of the subpostmasters. The evidence heard in Phase 2 of the Inquiry has reinforced Fujitsu’s view that such an apology was both necessary and appropriate.
3. Fujitsu has from the outset been, and continues to be, fully committed to supporting the work of the Inquiry, as it has done in Phase 2. That cooperation is reflected in part by the fact that a significant amount of the material disclosed by the Inquiry in Phase 2 originated from Fujitsu.<sup>1</sup> That material must be considered in its proper context. For example, much of the material evidences frank assessments of the difficulties encountered with the Horizon IT System in board minutes; internal ICL Pathway audits which, by their very nature, are designed to identify and address problems; documents relating to PinICLs and Peaks, a comprehensive system used to record and remedy issues arising with the system; and open exchanges between the contracting parties and ICL Pathway regarding identified issues during the development process.
4. These closing submissions on behalf of Fujitsu are structured around seven topics:
  - 4.1. **Topic 1:** The Horizon IT System
  - 4.2. **Topic 2:** The procurement process
  - 4.3. **Topic 3:** The Private Finance Initiative

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<sup>1</sup> By way of illustration, Mr Charles Cipione considered a considerable volume of material, predominantly originating from Fujitsu: Transcript, 17 November 2022, p.7, ln.4-ln.7 (Mr Charles Cipione).

- 4.4. **Topic 4:** The design and development process
- 4.5. **Topic 5:** Management of bugs, errors, and defects
- 4.6. **Topic 6:** Contractual agreements and negotiations
- 4.7. **Topic 7:** Testing, acceptance, and roll out

**Topic 1: The Horizon IT System**

5. As Leading Counsel to the Inquiry noted at the commencement of Phase 1, this Inquiry is not “*a dry, technical investigation into an IT project gone wrong*”.<sup>2</sup> However, the Inquiry has (with respect, rightly) devoted some of the Phase 2 hearings to an examination of the nature and complexity of the Horizon IT System itself. Fujitsu has sought, where possible, to assist the Inquiry (including through assistance rendered to the Inquiry’s expert, Mr Charles Cipione) to better understand relevant technical aspects of the system.
  
6. There can be little doubt that the Horizon IT System is a complex system. The evidence of Mr Cipione was that the Horizon IT System was a “*complex*” and “*ambitious*” software solution, involving “*a lot of moving parts*”.<sup>3</sup> In his expert report dated 14 September 2022, Mr Cipione identified seven factors which drove the complexity of the Horizon IT System and its implementation.<sup>4</sup> To similar effect, Mr David Sibbick described the Horizon IT System as “*a huge complicated project, [which] was, to a large extent, treading ground that hadn’t been trodden before*”.<sup>5</sup> That complexity provides important context within which to assess the challenges encountered during the design and development of the system.
  
7. Fujitsu accepts that it underestimated the scale of the complexity of automating the Post Office Counters Limited (“**Post Office**”) network. The complexity of that problem had also been underestimated when the previous Government gave the go-ahead for it to proceed in the mid 1990s.<sup>6</sup> In its Corporate Statement, Fujitsu acknowledged that, while ICL Pathway had recognised that “*the service solution would take significant time to design and develop*”,<sup>7</sup> the “*development of the Pathway Programme proved significantly more complex than the contracting parties had anticipated*”.<sup>8</sup> In particular, Fujitsu accepts that it would be open to the Inquiry to conclude that ICL Pathway underestimated: (a) the physical fitness for automation of the Post Office branch network in the mid-1990s (including in relation to the availability of space for physical hardware, and the

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<sup>2</sup> Transcript, 14 February 2022, p.12, ln.15-24.

<sup>3</sup> Transcript, 17 November 2022, p.136, ln.22-p.138, ln.18 (Mr Charles Cipione).

<sup>4</sup> EXPG0000001, Expert Witness Report of Mr Charles Cipione dated 14 September 2022, §4.5.6.

<sup>5</sup> Transcript, 23 November 2022, p.118, ln.9-ln.11 (Mr David Sibbick).

<sup>6</sup> WITN03500100, First Witness Statement of Mr Alan Milburn dated 25 September 2022, §10.

<sup>7</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §54.

<sup>8</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §9.

availability of stable ISDN connections);<sup>9</sup> (b) the scale of development work required to put in place the desired technical solution;<sup>10</sup> (c) the training needs of the cohort of Post Office branch staff, in order to support the transition to an automated system;<sup>11</sup> (d) the inherent complications in designing a system for two customers with diverging requirements;<sup>12</sup> and (e) the problems inherent in not having clearly specified requirements from the customers at the outset.<sup>13</sup>

8. The Inquiry has also received evidence as to both Post Office and HM Government’s wider ambitions as regards the Horizon IT System. By way of illustration, Mr Sibbick commented that he believed “*it was envisaged from quite an early stage that Horizon, as it was being developed at that point in time, needed to be a springboard, if you like, or a platform that could be developed for wider and more modern purposes*”.<sup>14</sup>

**Topic 2: The procurement process**

9. By way of overview of the procurement process:

9.1. On 30 August 1994, an opportunity to tender was announced in the Official Journal of the European Communities on behalf of Post Office and the Department for Social Security for “*computer and other services ... to support [Post Office’s] operations for its full range of clients, both at point of sale and in back office processing. ... A major function of this service will be to support the authorization, payment and accounting for [the Department of Social Security] and other Government Departments’ services*”.<sup>15</sup>

9.2. On 23 September 1994, International Computers Limited (“**ICL**”) expressed its interest to tender, together with a consortium of partners,<sup>16</sup> in a ‘Statement of Capability and

<sup>9</sup> POL000311117, ICL Pathway ‘Position Paper’, 6 March 1998, p. 10 (“*many post offices are not fit for the purpose of installing automation equipment*”); Transcript, 25 October 2022, p.71, ln.13-ln.23 (Mr Keith Todd); Transcript, 27 October 2022, p.66, ln.4-p.67, ln.3 (Mr Terence Austin); Transcript, 4 November 2022, p.25, ln.21-p.28, ln.25 (Mr Johnathan Evans).

<sup>10</sup> Transcript, 27 October 2022, p.68, ln.21-ln.24 (Mr Terence Austin); POL00028094, HM Treasury Independent Panel Report, July 1998, p.3.

<sup>11</sup> Transcript, 27 October 2022, p.68, ln.25-p.70, ln.11 (Mr Terence Austin).

<sup>12</sup> Transcript, 24 November 2022, p.5, ln.4-ln.8 (Mr Stephen Byers); Transcript, 29 November 2022, p.85, ln.3-ln.11 (Lord Alistair Darling); WITN04000100, First Witness Statement of Sir Adrian Montague dated 16 September 2022, §15(a).

<sup>13</sup> WITN03770100, First Witness Statement of Mr Anthony Oppenheim dated 7 September 2022, §§39-41.

<sup>14</sup> Transcript, 23 November 2022, p.61, ln.7-ln.11 (Mr David Sibbick). See also: CBO00100001\_057, BA/POCL Automation: A Way Forward.

<sup>15</sup> WITN03770102, Supplement to the Official Journal of the European Communities, 30 August 1994, p.3.

<sup>16</sup> De La Rue Group, Hambros, An Post, Escher Group, and Girobank.

Interest'.<sup>17</sup> There were 92 expressions of interest received at this stage,<sup>18</sup> reflecting a “*competitive international tender*”.<sup>19</sup>

- 9.3. On 19 October 1994, Post Office and the Benefits Agency issued a ‘Request for a Statement of Capability’.<sup>20</sup> On 19 November 1994, ICL, on behalf of the consortium, provided its ‘Capability Statement’ (the “**ICL Capability Statement**”).<sup>21</sup> The ICL Capability Statement set out the relevant expertise of the consortium members. For example, ICL had been involved in the delivery of the National Lottery system to over 30,000 locations across the United Kingdom.<sup>22</sup>
- 9.4. On 13 April 1995, Post Office and the Department for Social Security issued the Statement of Service Requirements (the “**SSR**”), including to ICL Pathway.<sup>23</sup> The SSR contained a description of the functional requirements behind the services to be provided following procurement.<sup>24</sup> On 8 June 1995, ICL Pathway submitted a proposal in response to the SSR.<sup>25</sup>
- 9.5. The contracting parties shortlisted three service providers: ICL Pathway, IBM, and Cardlink.<sup>26</sup> In those circumstances, it must be understood that HM Government was presented with real choice as between competitive commercial suppliers in the context of this tender. It is clear that, in the period from mid-1995 to early-1996, the contracting parties subjected the three shortlisted bids to considerable scrutiny. During the procurement and implementation stage, the contracting parties drew up risk registers based upon the technical proposals of each shortlisted bidder.<sup>27</sup>
- 9.6. On 29 February 1996, the contracting parties invited ICL Pathway to submit a formal tender.<sup>28</sup> On 21 March 1996, ICL Pathway made its tender submission. On 16 April 1996,

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<sup>17</sup> FUJ00119557, ICL Statement of Capability and Interest, 23 September 1994.

<sup>18</sup> WITN03880100, First Witness Statement of Mr Thomas Keith Todd dated 6 September 2022, §30.

<sup>19</sup> Transcript, 27 October 2022, p.109, ln.25 (Mr John Bennett).

<sup>20</sup> FUJ00098229, Request for a Statement of Capability, 19 October 1994.

<sup>21</sup> FUJ00098230, ICL Capability Statement, 19 November 1994.

<sup>22</sup> FUJ00098230, ICL Capability Statement, 19 November 1994, p.4.

<sup>23</sup> At that time known as Pathway Group Limited. In this document, Fujitsu uses “**ICL Pathway**” to refer to the entity after its formation on 19 January 1995.

<sup>24</sup> FUJ00098231, Statement of Service Requirements, March 1995.

<sup>25</sup> FUJ00098232, ICL Pathway Response to OJEC Notice 94/S 165-58937/EN, 8 June 1995.

<sup>26</sup> FUJ00077838, Minutes of Pathway Group Limited Board Meeting, 21 February 1996.

<sup>27</sup> FUJ00078024, Pathway Risk Response, 20 December 1995.

<sup>28</sup> FUJ00119559, Letter from Ms Patricia Kelsey (Head of Procurement, BA/POCL) to Mr Jim Morley, 29 February 1996.

the contracting parties issued an invitation to re-tender. On or around 22 April 1996, ICL Pathway re-submitted its tender.<sup>29</sup>

- 9.7. On 15 May 1996, ICL Pathway was awarded the service contracts.<sup>30</sup>
10. At the time of the tender, ICL was a leader in the field of major systems integration services, project management of complex projects, and the supply of world-class technology.<sup>31</sup> The clear impression from the evidence is that ICL Pathway entered the tender process for good faith commercial reasons, and that it presented a competent and competitive bid for the project.
11. In the minutes of a 30 April 1996 special meeting of the Major Projects Expenditure Committee, ICL Pathway is described as providing the “*least preferred*” technical solution of the three remaining bidders.<sup>32</sup> That assessment, however, must be viewed in its proper context:
- 11.1. The procurement process was managed professionally and competently. Certainly, the brief timeline set out at paragraph 9 above, bears out the fact that the tender was an iterative process, involving significant oversight on the part of the contracting parties. Mr Paul Rich’s evidence was that the evaluation of the bids accorded with “*good procurement practice*”.<sup>33</sup> Mr Jeremy Folkes’ evidence was that the bid evaluation process was a “*very formal exercise*” and “*intensive*”, which was “*strictly managed for fairness and compliance with procurement law*”.<sup>34</sup> The 30 April 1996 minutes of the Major Projects Expenditure Committee reflect the culmination of that extensive process.
- 11.2. The Major Projects Expenditure Committee was reviewing the bids on the basis of a range of criteria, noting that “*the overriding importance was to meet business requirements, satisfy service requirements and deliver a robust technological solution, which may not necessarily be the best financial case*”.<sup>35</sup> Plainly, there were a range of competing considerations to be weighed. One significant factor to be considered was the degree of transfer of risk, in respect of which ICL Pathway was the only supplier assessed to be

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<sup>29</sup> FUJ00117331, Agenda of Pathway Group Limited Board Meeting, 25 April 1996.

<sup>30</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §50.

<sup>31</sup> FUJ00098232, ICL Pathway Response to OJEC Notice 94/S 165-58937/EN, 8 June 1995, p.19.

<sup>32</sup> POL00028451, Minutes of a Special Meeting of the Major Projects Expenditure Committee, 30 April 1996, p.4.

<sup>33</sup> WITN04030100, First Witness Statement of Mr Paul Rich dated 21 September 2022, §36.

<sup>34</sup> WITN05970100, First Witness Statement of Mr Jeremy Folkes dated 7 September 2022, §21.

<sup>35</sup> POL00028451, Minutes of a Special Meeting of the Major Projects Expenditure Committee, 30 April 1996, p.1.

“compliant”.<sup>36</sup> Indeed, Mr Rich’s evidence was that the risk transfer aspect of the tender was “critically important” to the sponsoring parties, given their financial constraints at the time.<sup>37</sup> In those circumstances, it is important to note that ICL Pathway’s was the only bid which met all of the specified tender criteria.<sup>38</sup>

11.3. There were also clear advantages to the technical solution offered by ICL Pathway. Mr Folkes’ evidence was that the ICL Pathway solution “*had some considerable advantages for POCL over those offered by IBM and Cardlink*”, including that it “*allowed offline/disconnected operation with automated resynchronisation should communications not be available*”.<sup>39</sup> Mr David Miller’s evidence was that one advantage of the ICL Pathway solution was that it offered (via Riposte) “*distributed functionality*”, which Mr Miller recalled being “*to the [Benefits Agency] ... a significant matter*”.<sup>40</sup>

11.4. The view ultimately taken by the Major Projects Expenditure Committee was that such technical risks as had been identified in ICL Pathway’s proposed technical solution, either: (a) had been resolved by the time of the 30 April 1996 meeting,<sup>41</sup> or (b) were capable of resolution and management.<sup>42</sup> The Major Projects Expenditure Committee’s conclusion that ICL Pathway would “*imply a need for a proactive management stance by sponsors*”,<sup>43</sup> presumably would have been appropriate whichever service provider had been selected.

### **Topic 3: The Private Finance Initiative**

12. The Inquiry has heard a significant body of evidence concerning the impact of the Private Finance Initiative (“PFI”) structure upon the contract for, and design of, the Horizon IT System. It is to be recalled that PFI “*was the only basis on which Government would allow [the Benefits Agency] to proceed*”, such that a “*public sector funding option*” was not available to the contracting parties.<sup>44</sup>

<sup>36</sup> POL00028451, Minutes of a Special Meeting of the Major Projects Expenditure Committee, 30 April 1996, p.3; Transcript, 23 November 2022, p.9, ln.5-ln.9 (Mr David Sibbick).

<sup>37</sup> WITN04030100, First Witness Statement of Mr Paul Rich dated 21 September 2022, §33. However, it would be wrong to think that risk transfer was the sole basis upon which the decision was made. For example, the Major Projects Expenditure Committee described one of the other bidders (Cardlink) as “*the most expensive and least compliant*” option: POL00028451, Minutes of a Special Meeting of the Major Projects Expenditure Committee, 30 April 1996, p.3.

<sup>38</sup> POL00028451, Minutes of a Special Meeting of the Major Projects Expenditure Committee, 30 April 1996, p.3; WITN04030100, First Witness Statement of Mr Paul Rich dated 21 September 2022, §45; WITN05970100, First Witness Statement of Mr Jeremy Folkes dated 7 September 2022, §§66-67.

<sup>39</sup> WITN05970100, First Witness Statement of Mr Jeremy Folkes dated 7 September 2022, §69.

<sup>40</sup> Transcript, 28 October 2022, p.9, ln.23-p.10, ln.12 (Mr David Miller).

<sup>41</sup> POL00028451, Minutes of a Special Meeting of the Major Projects Expenditure Committee, 30 April 1996, p.4.

<sup>42</sup> Transcript, 20 October 2022, p.20, ln.17-p.22, ln.1 (Mr Anthony Roberts).

<sup>43</sup> POL00028152, Final Evaluation & Selection: Final Evaluation Team Report, 28 April 1996, §9.7.

<sup>44</sup> POL00028451, Minutes of a Special Meeting of the Major Projects Expenditure Committee, 30 April 1996, p.5.

Under PFI principles, ICL Pathway bore the risk (and, therefore, the cost) of delays to the acceptance of the contracted solution.<sup>45</sup> The evidence of Mr Rich is that “[n]either POCL nor BA had the resources or appetite to carry these risks themselves”.<sup>46</sup> However, it is clear from the evidence heard in Phase 2 of the Inquiry that the adoption of the PFI structure, in respect of an IT services project of the complexity and scale of the Horizon IT System, imposed both constraints and challenges upon each of the contracting parties. A number of witnesses gave evidence to the effect that a PFI structure was inappropriate for the Horizon IT System, and should not have been adopted.<sup>47</sup> In this context:

- 12.1. It was not common for the PFI structure to be used for the procurement of an IT services contract.<sup>48</sup> To state the obvious: a contract for the procurement of IT services is unlike a contract for the procurement of physical infrastructure (for example, the construction of a prison or a school) in a number of important respects, not least the number of specifications required to be defined by the contracting authority.<sup>49</sup>
- 12.2. Sir Adrian Montague explained that it was fundamental to the success of the PFI structure that “*the public sector needed to define its requirements specifically*”. Further, the contracting party’s “*requirements need to be very, very specific, because that way the contractor knows what he’s going to have to deliver, and you’ve got a decent chance of holding him to account. If a lot is left undefined, it’s much, much more difficult*”.<sup>50</sup> The Inquiry will recall that the absence of clear specifications from the contracting parties is *precisely* the issue identified by a number of ICL Pathway employees: Mr Anthony Oppenheim gave evidence that Post Office and the Benefits Agency failed to complete the 90-day ‘Drop Down’ of their technical requirements, designed to “*expand the detail behind the high level Requirements set out in the contract to the level necessary to define them*”

<sup>45</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §101. The key advantages (to HM Government) of the PFI scheme were identified by Post Office as being: (a) that the private sector provided the initial capital outlay, with the Post Office only paying for the system as it uses it; (b) the design, build, and operation of the system are the responsibility of the private sector, (c) risk is transferred to the private sector, and (d) private sector takes responsibility for product development and marketing: see POL00031237, Post Office Board: BA/POCL Automation, Bringing Technology to Post Offices and Benefit Payment, May 1996.

<sup>46</sup> WITN04030100, First Witness Statement of Mr Paul Rich dated 21 September 2022, §33; see also: Transcript, 20 October 2022, p.180, ln.10-14, 24-25 (Mr Paul Rich).

<sup>47</sup> See, for example: Transcript, 27 October 2022, p.120, ln.11-17 (Mr John Bennett); Transcript, 3 November 2022, p.28, ln.7-16 (Mr Jeremy Folkes).

<sup>48</sup> Transcript, 20 October 2022, p.180, ln.15-21 (Mr Paul Rich); Transcript, 27 October 2022, p.112, ln.20-25 (Mr John Bennett).

<sup>49</sup> A point made by, among others, Mr Jeremy Folkes: Transcript, 3 November 2022, p.28, ln.7-24 (Mr Jeremy Folkes).

<sup>50</sup> Transcript, 25 November 2022, p.60, ln.10-18 (Sir Adrian Montague),

fully”.<sup>51</sup> Mr Terence Austin observed that, often, Post Office employees were unable to provide meaningful technical specifications for the design of the system.<sup>52</sup> Contemporaneous Post Office documentation also recognised at an early stage of the procurement exercise that, in important respects, “our requirements process is lacking”.<sup>53</sup>

12.3. Another unique feature of *this* PFI contract was the fact that there were two contracting parties (Post Office and the Benefits Agency), with different requirements of, and expectations for, the contracted system. There is little doubt that this created additional challenges.<sup>54</sup> The evidence of ICL Pathway witnesses was that tensions between Post Office and the Benefits Agency were evident from the outset.<sup>55</sup> In its report, PA Consulting Group concluded that it was “inevitable that the different commercial objectives of [Post Office and the Benefits Agency] make it difficult for them to act in total harmony as joint Programme sponsors”.<sup>56</sup> A number of HM Government witnesses also spoke to the complications for ICL Pathway in having two customers with divergent view points.<sup>57</sup> As such, the contract from the outset was beset with difficulty.

12.4. Complaints articulated by some witnesses concerning the absence of a mechanism to require the provision of detailed technical documentation from ICL Pathway during the development phase<sup>58</sup> must be understood in the context of: (a) the respective roles of the parties to a PFI contract (and how expectations as to those roles may differ to more traditional supply contracts);<sup>59</sup> and (b) the contractual arrangements which were, in fact, in place between Post Office, the Benefits Agency, and ICL Pathway at that time.<sup>60</sup>

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<sup>51</sup> WITN03770100, First Witness Statement of Mr Anthony Oppenheim dated 7 September 2022, §§39-41.

<sup>52</sup> Transcript, 27 October 2022, p.70, ln.12-p.72, ln.1 (Mr Terence Austin).

<sup>53</sup> POL00031278, Memorandum from Mr Basil Shall to Mr Paul Rich, ‘Flash Report – Urgent!! – Supplier Requirements’, 10 January 1996.

<sup>54</sup> Transcript, 25 October 2022, p.33, ln.9-p.35, ln.6 (Mr Keith Todd); Transcript, 24 November 2022, p.33, ln.5-ln.8 (Mr Stephen Byers).

<sup>55</sup> See, for example: Transcript, 26 October 2022, p.16, ln.1-ln.11 (Mr Anthony Oppenheim).

<sup>56</sup> POL00028092, PA Consulting Group, Review of PA-POCL Programme, 1 October 1997, p.10 (‘Agendas in conflict’).

<sup>57</sup> Transcript, 24 November 2022, p.5, ln.4-ln.8 (Mr Stephen Byers); Transcript, 29 November 2022, p.85, ln.3-ln.11 (Lord Alistair Darling); WITN04000100, First Witness Statement of Sir Adrian Montague dated 16 September 2022, §15(a).

<sup>58</sup> Transcript, 21 October 2022, p.94, ln.9-ln.13 (Mr Paul Rich); Transcript, 2 November 2022, p.77, ln.22-p.78, ln.7 (Mr Jeremy Folkes).

<sup>59</sup> In that respect, the Inquiry may wish to consider the evidence of Mr Keith Todd: Transcript, 25 October 2022, p.38, ln.13-ln.25 (“*What we then did not expect was that the parties would not, in our opinion, operate it as a PFI. They wanted to be involved in nearly every decision...*”). Also, the evidence of Sir Geoffrey Mulgan: Transcript 1 December 2022, p.174, ln.6-ln.18 (Sir Geoffrey Mulgan) (“*PFI’s ... definitely didn’t work for complex IT projects where you needed ... much more direct engagement, a collaboration of the company, the user and the provider*”).

<sup>60</sup> Transcript, 1 December 2022, p.162, ln.11-ln.15 (Sir Geoffrey Mulgan) (“*...my understanding was, you know, highly proprietary and not open to audit or assess in any way.*”).

**Topic 4: The design and development process**

13. ICL Pathway was responsible, within the framework of specifications provided by Post Office and the Benefits Agency, for the design, development, integration, and establishment of the Horizon IT System.<sup>61</sup> It is clear, from all the evidence which the Inquiry heard in Phase 2, that the design and development of the Horizon IT System was far from a straightforward undertaking. In these submissions, Fujitsu touches upon some of the areas where criticism was made as regards the design and development phase of the Horizon IT System disclosed by the evidence in Phase 2.

14. First, the design of the Horizon IT System incorporated third-party software. That third-party software included the Riposte software, developed by Escher, a third-party specialist provider to post offices in other countries.<sup>62</sup> Undoubtedly, the use of third-party software generated benefits to the Horizon IT System.<sup>63</sup> However, it is equally clear from the evidence heard in Phase 2 of the Inquiry that the use of third-party software also posed particular challenges in the design and development of the system:

14.1. In the course of the development of the Horizon IT System, ICL Pathway identified a number of difficulties arising from the Riposte product. Those difficulties included malformed messages being generated within the message store, and replication issues.<sup>64</sup> In the event that deficiencies were identified in the Riposte code,<sup>65</sup> Mr Austin explained the process by which those were addressed: ICL Pathway was not itself able to review the Riposte code, but would have to make a request for modifications through Escher.<sup>66</sup>

14.2. Post Office identified ICL Pathway's reliance upon third-party developers (and Escher, in particular) as a risk area in the course of the bid phase: *'We knew that risk and we weren't shy about telling ICL Pathway about that risk and they would have to address it if they were going to go forward and, hence, why we put the mitigating stuff around the risk later on'*.<sup>67</sup> It is clear on the evidence that Post Office continued to monitor Escher / Riposte issues during the development and roll out of the Horizon IT System.<sup>68</sup> Mr Folkes'

<sup>61</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §53.

<sup>62</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §13.

<sup>63</sup> Transcript, 18 October 2022, p.42, ln.4-ln.17 (Mr Charles Cipione); Transcript, 28 October 2022, p.10, ln.7-ln.12 (Mr David Miller).

<sup>64</sup> WITN04110100, First Witness Statement of Mr John Simpkins dated 4 August 2022, §§48-50.

<sup>65</sup> Which was stored in escrow: Transcript, 27 October 2022, p.79, ln.13-17 (Mr Terence Austin).

<sup>66</sup> Transcript, 27 October 2022, p.78, ln.10-ln.25 (Mr Terence Austin).

<sup>67</sup> Transcript, 21 October 2022, p.9, ln.7-ln.10 (Mr Paul Rich). See further: p.48, ln.11-p.49, ln.13; POL00028148, Current Assessment of Service Providers, 27 November 1995, p.4 (*'Pathway have three 'A' risks currently being addressed by the Demonstrator strands, of which one is particularly significant (regarding Riposte)'*).

<sup>68</sup> See, for example: POL00029150, Service Review – Performance Statistics, April 1999, p.36, §5.4.1 (*'Invalid Transaction Reference'*).

evidence, for example, was that Post Office “*raised a number of risks regarding Escher/Riposte*”.<sup>69</sup>

15. Secondly, ICL Pathway adopted different design methodologies over the course of the design and development of the Horizon IT System. As to that:

15.1. The Horizon IT System was primarily developed using a traditional ‘Waterfall’ methodology. However, the evidence does demonstrate that, for a brief period of time, in relation to the EPOSS application, ICL Pathway sought to adopt a ‘Rapid Application Development’ (“**RAD**”) methodology.<sup>70</sup> ICL Pathway eventually reverted to a traditional ‘Waterfall’ methodology. Both of these methodologies were used in IT development at the time.

15.2. Some witnesses were critical of ICL Pathway’s attempt to adopt RAD methodology.<sup>71</sup> The Inquiry may well consider that it is not necessary to determine merits of those criticisms,<sup>72</sup> because the adoption of a RAD methodology is unlikely to have had a material impact upon the final form of the Horizon IT System. The Inquiry will recall that the evidence of Mr Austin was that the technical output from the RAD process was “*enhanced*” before being integrated into the final system, because the product was “*some way off what the functional requirement was needed to be*”.<sup>73</sup>

16. Thirdly, the Inquiry has received some evidence concerning the adequacy of design documentation related to the Horizon IT System, and has heard criticism of the sharing of design documentation by ICL Pathway with Post Office. In due course, the Inquiry will no doubt give proper consideration to the merits of those criticisms, having reviewed the totality of the evidence.<sup>74</sup> In so doing, the Inquiry will no doubt bear in mind the evidence of: (a) the existence of functional design

<sup>69</sup> WITN05970100, First Witness Statement of Mr Jeremy Folkes dated 7 September 2022, §§56-57.

<sup>70</sup> POL00038829, Project Mentors Report, p.14-15.

<sup>71</sup> Transcript, 17 November 2022, p.152, ln.23-p.153,ln.8 (Mr Charles Cipione); WITN00620100, First Witness Statement of David McDonnell, §18. However, note the contrary opinion expressed by Mr Peter Copping: Transcript, 21 October 2022, p.115, ln.9-ln.22 (Mr Peter Copping).

<sup>72</sup> With respect, it may be open to question whether either Mr Cipione or Mr McDonnell had an adequate factual basis to express an opinion about the use of a RAD methodology on the facts of this case (as opposed to its general appropriateness). Further, it would be inaccurate to suggest that ICL Pathway adopted a RAD methodology in respect of the entirety of the Horizon IT System. The contemporaneous documentation suggests that a RAD methodology was adopted for certain aspects of the solution: *cf* POL00038829, Project Mentors Report, p.14.

<sup>73</sup> Transcript, 27 October 2022, p.59, ln.5-p.60, ln.18 (Mr Terence Austin).

<sup>74</sup> Of course, in undertaking that assessment, it is necessary to bear firmly in mind that the period of the design and development of the Horizon IT System was nearly 25 years ago, and that the documentary record may well be incomplete. Further, it is unclear at present whether Post Office’s delays in disclosing documentation relevant to Phase 2 will impact this topic.

documentation dating from early in the development of the Horizon IT System (and subsequently revised), for example in relation to the EPOSS application;<sup>75</sup> and (b) the evidence of some witnesses of the sharing of technical information (for example, Mr Alan D’Alvarez said that he personally encouraged the sharing of design information with Post Office among the ICL Pathway security team, who were “quite open” with the sharing of documentation).<sup>76</sup>

**Topic 5: Management of bugs, errors, and defects**

17. The development and testing process of the Horizon IT System identified a number of bugs, errors, and defects which required rectification. Fujitsu acknowledges, as it did in its Opening Statement, that some of those bugs, errors and defects (“BEDs”) had the potential to affect, and did affect, the integrity of Post Office branch accounts.<sup>77</sup>

17.1. The evidence demonstrates that ICL Pathway worked conscientiously to address identified BEDs – including by seeking to identify, and to address, the root causes of errors.<sup>78</sup> Mr Cipione recognised that, where issues were escalated to ICL Pathway’s Software Support Centre (“SSC”), the SSC were “earnest in their efforts to resolve these issues”.<sup>79</sup>

17.2. Fujitsu recognises, as Counsel to the Inquiry has raised with a number of witnesses, that the application of numerous bug fixes can give rise to a risk of ‘code decay’.<sup>80</sup> It is clear that ICL Pathway were alive to the risk of ‘code decay’ at the time.<sup>81</sup>

17.3. The evidence also demonstrates that extensive information concerning BEDs identified during the development and testing process was shared by ICL Pathway with Post Office. There was, in particular, considerable sharing of the scale and detail of BEDs identified

<sup>75</sup> See, for example: FUJ00001247, Service Architecture Design Document, EPOSS Service – EPOSS Administration, v.4.0, 30 September 1997; FUJ00079218, EPOSS Component Catalogue v.2.0, 12 December 1997 (v.1 was first issued on 2 September 1996); FUJ00079219, EPOSS Attribute Grammar Catalogue v.6.0, 12 December 1997 (v.1 was first issued on 10 August 1996).

<sup>76</sup> Transcript, 8 November 2022, p.42, ln.15-p.45, ln.8 (Mr Alan D’Alvarez). See also: Transcript, 2 November 2022, p.90, ln.13-1n20 (Mr Jeremy Folkes) (“we found that, at a working level, if we could get contact to individual engineers or individual managers of areas, they would generally be helpful”); Transcript, 15 November 2022, p.32, ln.5-1n.14 (Mr Robert Booth).

<sup>77</sup> SUBS0000002, Opening Statement on behalf of Fujitsu Services Limited, §21.

<sup>78</sup> Transcript, 21 October 2022, p.25, ln.16-1n.21 (Mr Paul Rich) (“it wasn’t like ICL were ignoring [the problems with Riposte]. You know, they were trying to fix it and they were putting more and more people, technical people, onto it”); Transcript, 3 November 2022, p.88, ln.22-p.89, ln.6 (Mr Andrew Simpkins) (“there was a serious effort to get these things fixed”).

<sup>79</sup> EXPG0000001, Expert Witness Report of Mr Charles Cipione, 14 September 2022, §16.1.3. See further: Transcript, 17 November 2022, p.87, ln.3-p.89, ln.19.

<sup>80</sup> A risk that is referenced in FUJ00080690, EPOSS Task Force Report, pp.6-7.

<sup>81</sup> FUJ00080690, EPOSS Task Force Report, p.7; Transcript, 27 October 2022, p.7, ln.19-p.9, ln.6; p.15, ln.25-p.16, ln.15 (Mr Terence Austin)

during testing.<sup>82</sup> A number of BEDs were managed by Post Office as part of the ‘Acceptance Incident’ process (addressed in greater detail below).<sup>83</sup> The established mechanisms for this sharing of information included, *inter alia*, system release notes,<sup>84</sup> service review books,<sup>85</sup> and through the sharing of information regarding BEDs available in PinICLs / Peaks.<sup>86</sup> A number of problems relating to BEDs were managed as ‘cross-

<sup>82</sup> See, by way of illustration: Transcript, 8 November 2022, p.46, ln.18-p.49, ln.18 (Mr Alan D’Alvarez); Transcript, 15 November 2022, p.88, ln.20-p.89, ln.2 (Mr John Meagher); POL00043673, Agenda for the Automation Transformation Steering Group Meeting, 17 March 1996, p.4 (“EPOSS design” is a ‘red light programme issue’, “*There are significant weaknesses with the current EPOSS design*”); DWP00000136, Note of Meeting of the BA/POCL Programme Delivery Authority Board, 10 July 1996, §2.4.1 (“EPOSS was the main outstanding issue for POCL and work is currently underway with PDA and ICL Pathway to resolve”); POL00028421, Letter from Mr David Miller to Mr Stewart Sweetman and others, 16 November 1998 (“*there are some significant problems with the way Horizon passes information through to TIP. These relate to the provision of balanced outlet cash accounts and the processing of the ensuing information via TIP*”); POL00028466, Acceptance Proposal: Acceptance Incident 376, 4 September 1999.

<sup>83</sup> See, for e.g., AI 376, described as “*Derived cash account not equal to electronic cash account*”: POL00028355, Email from Tony Houghton to Bruce McNivern and others, ‘Acceptance Incident Hotlist @ 13/8’, 13 August 1999, p.2. See also: POL00043691, Acceptance Incident Form: AI 376, 19 July 1999, p.57 *et seq*; POL00028466, Acceptance Proposal: Acceptance Incident 376, 4 September 1999.

<sup>84</sup> See, for example: FUJ00119319, Release Note for CSR+, 24 October 2000, p.34 *et seq* (Appendix B identifies a number of PinICLs relevant to the CSR+ release, including whether they have been ‘Closed’, and any comments regarding the investigation into those issues); FUJ00119320, ICL Pathway Release Note for M1, 11 February 2001, p.7 *et seq* (summary of relevant PinICLs).

<sup>85</sup> Paragraph 6.2 of Schedule E05 to the Codified Agreement provides for ‘Service Review Meetings’ [see: POL00028231, p.7]. Requirement 870 of Schedule A15 to the Codified Agreement obliged ICL Pathway to prepare a monthly report on “[a]ctual transaction performance” (given the identifier ‘CS/PER/013’), which reports “*shall be subject to joint review by the Contractor and POCL during the monthly and quarterly Service Management Review meetings*” [see: POL00028212, p.63, §1.145.4]. The Inquiry will note that each of the ‘Service Review – Performance Statistics’ documents is marked ‘CS/PER/013’, and includes in the distribution list “Service Management Review Forum” [see, e.g.: FUJ00058209, p.1]. Fujitsu understands that each of the ‘Service Review – Performance Statistics’ documents reflects the contractual requirements referred to above, and that each such document was shared with Post Office in accordance with the Codified Agreement.

A number of those documents make express reference to BEDs: FUJ00058209, Service Review – Performance Statistics, May 1998, p.10 (‘ABED Issues – Increase in Cash Account Errors’), p.19 (“*POCL Horizon System HD calls regarding Operations has remained reasonably high due to the number of Cash Account problems reported*”); FUJ00058210, Service Review – Performance Statistics, September 1998, p.10 (“*Incomplete transactions have been causing concern for some months.*”), p.20 (“*The level of Hardware coded calls also increased during the month due to the increase in printer and monitor problems*”, “*Operations coded calls decreased significantly during August to 57 (down from July’s 85) with reported Cash Account and Daily reconciliation reported problems reduced by over 50% from July*”); POL00029155, Service Review – Performance Statistic, October 1999, p.8 (“*As expected, there was an increase in the number of cash account procedural calls, due to the new Offices and the unfamiliarity with the system*”, “*On 1<sup>st</sup> October, there was a Reference Data problem which affected ‘Rem in / Rem out’ and ‘Transfers’*”); POL00029158, Service Review – Performance Statistics, January 2000, p.26 (identifies a ‘Cross Domain Problem’ of “*Post Office unable to do Cash Account Balancing*”); POL00029183, Service Review – Performance Statistics, May 2000, p.28 (“*15 of the 17 were EPOSS related incidents such as receipts and payments, cash account or transactions that have been dropped at the TPS harvester. These incidents are complex, requiring in-depth analysis with technical investigation in many cases, in order to provide the appropriate data for reconciliation purposes.*”).

<sup>86</sup> See, for example: Transcript, 8 November 2022, p.46, ln.18-p.49, ln.11 (Mr Alan D’Alvarez) (regarding the sharing of PinICL information via Excel spreadsheets); Transcript, 15 November 2022, p.88, ln.20-p.89, ln.2 (Mr John Meagher) (regarding the sharing of the content of PinICLs, either via the PinICL database, or with printed copies of extracts of that database).

domain problems’ (being problems affecting both the Post Office and ICL Pathway ‘domains’), and therefore subject to joint management between Post Office and ICL Pathway.<sup>87</sup> The evidence also supports the view that there was considerable informal sharing of information between ICL Pathway and Post Office employees, particularly those working in shared offices.

18. The Inquiry heard a range of evidence concerning the ‘Report on EPOSS PinICL Task Force’<sup>88</sup> (the “**EPOSS Task Force Report**”) and ‘CSR+ Development Audit’<sup>89</sup>. ICL Pathway established the ‘EPOSS PinICL Task Force’, which was in place between 19 August and 18 September 1998. Its purpose was to reduce to manageable levels (and ideally to zero) the EPOSS-related PinICLs outstanding at that time. The Inquiry will want to consider carefully the range of evidence which it has heard on that subject and how ICL Pathway responded to concerns surrounding the EPOSS application. Fujitsu makes the following observations at this stage:

- 18.1. By way of context, the EPOSS Task Force Report explains that the Counter Development Team were faced with an increasing number of PinICLs related to the EPOSS product, which were being raised faster than they could be cleared.<sup>90</sup> That explanation accords with Mr Austin’s evidence that he commissioned the ‘EPOSS PinICL Task Force’ because he “*wasn’t very happy with the way the product was, so [he] felt let down by the people who had developed it*”.<sup>91</sup> Mr Jan Holmes explained the process by which the ‘EPOSS PinICL Task Force’ carried out its work: “*audit reports are by virtue of their nature snapshots in time*”, involving analysing “*the evidence as it is over that one-or-two-week period that you’re doing the work*”. The auditors and (as appropriate) technical staff (in this case, Mr Holmes and Mr David McDonnell) “*take that away, ... sit and look at it and think about it, have conversations with people, and ... draw conclusions*”.<sup>92</sup>

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<sup>87</sup> See examples at: POL00029158, Service Review – Performance Statistics, January 2000, p.26 (identifies a ‘Cross Domain Problem’ of “*Post Office unable to do Cash Account Balancing*”); POL00029159, Service Review – Performance Statistics, February 2000, p.28 (identifies ‘Cross Domain Problems’ including “*Outlets not polling information*”, “*Dungannon PO £43k discrepancy*”, “*Post Office unable to do Cash Account Balancing*”, and “*Hebburn PO cannot rollover since CAP 39*”). Several PinICLs also contain descriptions consistent with the issues identified therein being treated as a ‘cross-domain problem’ and jointly managed between Post Office and ICL Pathway, see, for example: FUJ00077638, Call Number PC0054259, PM-CSR+ (CI4) APS Reconciliation, opened 18 September 2000; FUJ00079026, Call Number PC0019130, date raised 1 December 1998.

<sup>88</sup> FUJ00080690, EPOSS Task Force Report.

<sup>89</sup> FUJ00079782, CSR+ Development Audit. “CSR+” refers to the “Core System Release +”.

<sup>90</sup> FUJ00080690, EPOSS Task Force Report, p.4.

<sup>91</sup> Transcript, 27 October 2022, p.10, ln.19-p.11, ln.9 (Mr Terence Austin).

<sup>92</sup> Transcript, 16 November 2022, p.105, ln.2-ln.17 (Mr Jan Holmes).

- 18.2. It is clear that the EPOSS Task Force Report makes a number of criticisms surrounding certain aspects of the EPOSS code.<sup>93</sup> Fujitsu acknowledges that Mr Cipione expressed similar concerns, upon considering the extracts from the code set out in the EPOSS Task Force Report.<sup>94</sup> However, it is important to recall that it has not been possible for any person (including Mr Cipione) to review the historical code from the relevant time. In his evidence, Mr Cipione was candid about the limited extent to which he could offer a view as to the quality of the underlying code of the Horizon IT System.<sup>95</sup>
- 18.3. The evidence demonstrates that the concerns raised by the ‘EPOSS PinICL Task Force’ and ‘CSR+ Development Audit’ – including the recommendation to “*consider the re-design and re-write of EPOSS, in part or in whole*”<sup>96</sup> – were given serious and conscientious consideration by ICL Pathway. Mr Austin’s evidence was that the quality of the EPOSS product was “*a massive issue for [him]*”, which he “*discussed ... with all [his] technical team in-depth*”.<sup>97</sup> Mr Michael Coombs’ evidence was that there was significant work done by ICL Pathway to determine whether the EPOSS software should be re-developed, or whether “*effort was put in to ... overcome the issues that were being seen on EPOSS by further development*”.<sup>98</sup> That is consistent with the surviving contemporaneous documentation which demonstrates that, *inter alia*, “[*d*]aily meetings had been instigated” to identify the source of errors,<sup>99</sup> and that a series of workshops were held involving ICL Pathway technical staff which considered various recommendations to improve the EPOSS product.<sup>100</sup>
- 18.4. ICL Pathway ultimately took the decision not to re-design or re-write the EPOSS product. The evidence before the Inquiry suggested that there were a variety of reasons for that decision, including: (a) the problems identified were assessed to be limited to certain parts of the EPOSS product, rather than endemic to the product as a whole;<sup>101</sup> (b) the risks inherent in a re-design, including that a re-design may unintentionally reintroduce problems, or create additional problems;<sup>102</sup> (c) an initial prioritisation of other, less

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<sup>93</sup> FUJ00080690, EPOSS Task Force Report, pp. 17 *et seq.*

<sup>94</sup> Transcript, 17 November 2022, p.154, ln.10-ln.11 (Mr Charles Cipione).

<sup>95</sup> Transcript, 18 October 2022, p.69, ln.11-ln.19 (Mr Charles Cipione).

<sup>96</sup> FUJ00079782, CSR+ Development Audit, p.20; WITN04600104, ICL Pathway Schedule of Corrective Actions, CSR+ Development Audit, p.9.

<sup>97</sup> Transcript, 27 October 2022, p.15, ln.25-p.16, ln.2 (Mr Terence Austin).

<sup>98</sup> Transcript, 1 November 2022, p.23, ln.21-p.24, ln.9 (Mr Mike Coombs).

<sup>99</sup> WITN04600104, ICL Pathway Schedule of Corrective Actions: CSR+ Development Audit, pp.9-10.

<sup>100</sup> FUJ00121099, ICL Pathway Memorandum: EPOSS Product Improvement Options, 12 March 1999.

<sup>101</sup> Transcript, 27 October 2022, p.16, ln.9-ln.15 (Mr Terence Austin); WITN04600104, ICL Pathway Schedule of Corrective Actions, CSR+ Development Audit, p.9 (“*the majority of the problems ... were to do with error and printer error handling*”).

<sup>102</sup> Transcript, 27 October 2022, p.16, ln.3-ln.8 (Mr Terence Austin).

“drastic”, solutions before committing to a wholesale re-design or re-write;<sup>103</sup> and (d) an assessment that fixes which had been implemented had addressed “*known stability issues*”.<sup>104</sup> In a 12 March 1999 memorandum from Mr Chris Humphries to various recipients, the re-writing of the cash account application was rated as low benefit, low ‘do nothing risk’, high destabilisation risk, high migration risk, and high cost.<sup>105</sup> It was, in the assessment of those attending the workshops held in early 1999, the least preferred of the various options considered.

18.5. It is clear on the evidence that Post Office were aware, in and before summer 1998, of significant concerns regarding the quality of the EPOSS product.<sup>106</sup> Such information had been communicated to Post Office in, *inter alia*,<sup>107</sup> service review books.<sup>108</sup> See also the general evidence regarding the sharing of information available in PinICLs / Peaks.<sup>109</sup>

18.5.1. For example, concerns regarding the quality of the EPOSS application code were well known within Post Office. Indeed, some within Post Office would have been aware of the existence of the ‘EPOSS PinICL Task Force’: Mr Miller accepted that he “*would have been aware at the time*” of the existence of the ‘Task Force’.<sup>110</sup>

18.5.2. While some Post Office staff who gave evidence in Phase 2 of the Inquiry were not aware at the time of the existence of the ‘EPOSS PinICL Task Force’ (which was, of course, an internal ICL Pathway audit, prepared for ICL Pathway’s own development purposes),<sup>111</sup> this does not change the fact that others at the Post Office were in fact aware.

<sup>103</sup> Transcript, 27 October 2022, p.16, ln.18-ln.21 (Mr Terence Austin).

<sup>104</sup> WITN04600104, ICL Pathway Schedule of Corrective Actions, CSR+ Development Audi, pp.9-10.

<sup>105</sup> FUJ00121099, ICL Pathway Memorandum: EPOSS Product Improvement Options, 12 March 1999, p.4.

<sup>106</sup> Transcript, 28 October 2022, p.23, ln.1-ln.3 (Mr David Miller). See further: POL00043673, Agenda for the Automation Transformation Steering Group Meeting, 17 March 1996, p.4 (“*EPOSS design*” is a ‘red light programme issue’, “*There are significant weaknesses with the current EPOSS design*”); DWP00000136, Note of Meeting of the BA/POCL Programme Delivery Authority Board, 10 July 1996, §2.4.1 (“*EPOSS was the main outstanding issue for POCL and work is currently underway with PDA and ICL Pathway to resolve*”).

<sup>107</sup> See generally: Transcript, 1 November 2022, p.65, ln.18-p.66, ln.22 (Mr Michael Coombs).

<sup>108</sup> See above, fn 85, and the documents cited therein.

<sup>109</sup> See, for example: Transcript, 8 November 2022, p.46, ln.18-p.48, ln.11 (Mr Alan D’Alvarez) (regarding the sharing of PinICL information via Excel spreadsheets); Transcript, 15 November 2022, p.88, ln.20-p.89, ln.2 (Mr John Meagher) (regarding the sharing of the content of PinICLs, either via the PinICL database, or with printed copies of extracts of that database).

<sup>110</sup> Transcript, 28 October 2022, p.22, ln.21-ln.25 (Mr David Miller).

<sup>111</sup> Mr Holmes’ evidence was that it “*would be highly unlikely for audit reports to be shared with Post Office*” because they are “*for management use purpose*”: Transcript, 16 November 2022, p.110, ln.1-ln.6 (Mr Jan Holmes).

**Topic 6: Contractual agreements and negotiations**

19. The contractual agreements relating to the Horizon IT System were, and are, complex. By way of brief summary:

- 19.1. On 15 May 1996, three related contracts were concluded for the design, development, integration and establishment of a computerised service infrastructure (which would become the Horizon IT System), and to provide certain ancillary services. Those contracts were: (a) an agreement between ICL Pathway, Post Office, and the Department of Social Security (“**the Authorities Agreement**”), (b) an agreement between ICL Pathway and the Department of Social Security (“**the DSS Agreement**”), and (c) an agreement between ICL Pathway and Post Office (“**the POCL Agreement**”). Together, these were known as the “**Related Agreements**”.<sup>112</sup> The Related Agreements governed various aspects of the design and development of the Horizon IT System, including testing (Schedule C02 of the Authorities Agreement) and acceptance procedures (Schedule A07 to the Authorities Agreement).
- 19.2. On 28 July 1999, and following the withdrawal of the Benefits Agency, Post Office and ICL Pathway entered into a “**Codified Agreement**”.<sup>113</sup> The Codified Agreement was the first Horizon Contract. The Horizon Contract has been subject to various amendments since that date. In addition to the core contractual document, the Horizon Contract also included Contract Controlled Documents (“**CCDs**”), which formed part of the contractual obligations imposed on both parties. They were, by definition, documents which were referred to in the Horizon Contract. CCDs were used, *inter alia*, to provide detailed specifications for each operational service.
- 19.3. Between August 1999 and January 2000, Post Office and ICL Pathway agreed a number of supplemental agreements: (a) the “**First Supplemental Agreement**”, dated 20 August 1999; (b) the “**Second Supplemental Agreement**”, dated 24 September 1999; and (c) the “**Third Supplemental Agreement**”, dated 19 January 2000 (together, “**the Supplemental Agreements**”). The Supplemental Agreements arose because the contractual pre-conditions to acceptance were not achieved by the target date specified in the Codified Agreement (being 16 August 1999).<sup>114</sup> Therefore, the focus of the Supplemental Agreements was to agree programmes of work to resolve outstanding Acceptance

<sup>112</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §50.

<sup>113</sup> POL00028213, The Codified Agreement, 28 July 1999.

<sup>114</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §§123-139.

Incidents. By way of illustration, the Third Supplemental Agreement imposed obligations upon ICL Pathway to “*make available to POCL promptly upon request appropriate experts to explain to POCL the Contractor’s analysis of all root causes of Cash Account Discrepancies and the measures which the Contractor shall have implemented in order to prevent the recurrence of any Cash Account Discrepancies which would not have been detected by the Accounting Integrity Control Release*”.<sup>115</sup>

20. A significant development prior to the national roll out was, of course, the period of protracted contractual negotiations and eventual withdrawal of the Benefits Agency from the project. The Inquiry heard a considerable body of evidence as to the relationship between the parties at that period of time. Fujitsu makes two (it is hoped, uncontroversial) observations as to how, it is respectfully submitted, it is right to approach the contemporaneous documentary evidence from this period:

20.1. First, the documentary record tells only part of the story in relation to the contractual negotiations. Although the contemporaneous documentary evidence has the benefit that it is not coloured by hindsight, it can also carry the deficit of omitting the ‘human’ aspects of these contractual negotiations. For example, the Inquiry will recall Mr Vincent Gaskell’s description of the relationships between the contracting parties in the Programme Delivery Authority as both “*professional*” and “*challenging*”<sup>116</sup> – an insight not, necessarily, reflected in formal legal correspondence.

20.2. Secondly, it is clear, as attested to by a number of witnesses who gave evidence in Phase 2, that this was a period of tense contractual negotiations between the parties, conducted against a backdrop of a potential breakdown in contractual relations and the prospect of litigation.<sup>117</sup> That invariably colours how one ought to approach the contemporaneous correspondence. In particular, in the correspondence passing between the parties, it is clear (and, indeed, wholly unremarkable) that each of the parties is engaging in a degree of

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<sup>115</sup> FUJ00118186, Third Supplemental Agreement, 19 January 2000, p.5, §5.3.

<sup>116</sup> Transcript, 25 November 2022, p.12, ln.23-p.13, ln.6 (Mr Vincent Gaskell). See further: Transcript, 8 November 2022, p.108, ln.1-p.109, ln.3 (Mr Graham Allen).

<sup>117</sup> Transcript, 3 November 2022, p.74, ln.17-ln.22 (Mr Andrew Simpkins) (“*this was a very fraught moment ... quite a tense situation*”); Transcript, 23 November 2022, p.6, ln.15-p.7, ln.8 (Mr David Sibbick); Transcript, 24 November 2022, p.4, ln.11-p.6, ln.1 (Mr Stephen Byers); WITN04000100, First Witness Statement of Sir Adrian Montague dated 16 September 2022, §15(a); WITN03350100, First Witness Statement of David Sibbick dated 26 August 2022, §7 (“*long-running sore between the Benefits Agency ... and Post Office Counters Limited*”).

posturing to their own advantage.<sup>118</sup> That requires some caution in taking statements in such correspondence at face value, and outside of the broader context, including commercial norms.

21. In relation to the contractual negotiations between late 1998 and early 1999, Fujitsu confines itself to brief submissions regarding its own position in those negotiations. Of course, Fujitsu acknowledges the obvious point that these were commercial negotiations, within which it had a clear financial interest. However, Fujitsu took and takes seriously its position as a contractor to the public sector, and as a frequent contract partner of HM Government. In the context of the negotiations regarding the Horizon IT System, both interests pulled in the same direction: ICL Pathway was eager to make the project viable. Further:

21.1. ICL Pathway approached the negotiations in good faith.<sup>119</sup>

21.2. The evidence heard in Phase 2 demonstrates that any suggestion (if it were made) of improper influence by Fujitsu Japan is, Fujitsu respectfully submits, untenable. It is clear that the success of the Horizon IT System was an important priority for Fujitsu Japan. That resulted in a number of interventions by senior figures within Fujitsu Japan, seeking to support ICL Pathway.<sup>120</sup> The witnesses involved in the negotiations were realistic as to the impact of those interventions: Dr Sarah Graham noted that the letter did not tell HM Government “*anything that [they] weren’t expecting to hear anyway from Fujitsu and ICL*”.<sup>121</sup> The evidence of then-Prime Minister, Sir Anthony (Tony) Blair, is that there was “*an attempt to unblock matters and agree a way forward*”, involving “*engagement between the Government and Fujitsu (including ICL) [which] extended to the highest levels*”.<sup>122</sup> Sir Stephen Robson described the meeting between Sir Anthony and Mr Naruto of Fujitsu Japan as “*fundamentally a courtesy meeting*”.<sup>123</sup> It is clear from the evidence of HM Government witnesses, that HM Government rightly considered the importance of

<sup>118</sup> See, for example: CBO00100002\_025, HM Treasury, ‘Line to Take’, 22 April 1999, p.4 *et seq*; POL00090839, Letter from Ernst & Young to Mr David Miller, 23 August 1999 (Transcript, 4 November 2022, p.86, ln. 7- p. 89, ln.25 (“... a planted question ... ”)); POL00031117, ICL Pathway Position Paper, 5 March 1998, p.3 *et seq*.

<sup>119</sup> Transcript, 23 November 2022, p.117, ln.18-ln.24 (Mr David Sibbick).

<sup>120</sup> BEIS0000336, Note by Sir David Wright of a telephone call received from Mr Michio Naruto, 4 December 1998; BEIS0000337, Letter from Mr Michio Naruto to Sir David Wright, 4 December 1998; CBO00000033, Letter from Mr Tadashi Sekizawa to Sir Anthony Blair, 7 April 1999; CBO00000044, Note of a meeting between Sir Anthony Blair and Mr Michio Naruto, 12 April 1999 (see p.1).

<sup>121</sup> Transcript, 24 November 2022, p.156, ln.3-ln.11 (Dr Sarah Graham).

<sup>122</sup> WITN06080100, First Witness Statement of Sir Anthony Blair dated 14 November 2022, §13.

<sup>123</sup> Transcript, 29 November 2022, p. 20, ln.7-ln.12 (Sir Stephen Robson).

Japan and Fujitsu Japan as major inward investors in the United Kingdom, but not as a result of undue pressure.<sup>124</sup>

22. It is important not to lose sight of the adverse impact which the tensions between contracting parties and ICL Pathway in this period had on the project, at a critical juncture in the development of the Horizon IT System. Those problems are amply evidenced in the documents and by the witnesses in Phase 2.<sup>125</sup> Mr Sibbick attributed the Benefits Agency/Post Office divergence as the major cause of failure of the original project with ICL Pathway “*stuck in the middle*”.<sup>126</sup>
23. The withdrawal of the Benefits Agency reflected a fundamental change to the Horizon IT System.<sup>127</sup> It was recognised by the contracting parties and ICL Pathway that the withdrawal of the Benefits Agency, and consequently the benefit payment card functionality, would have a significant impact upon the development of the functionality of the system as a whole — particularly given the late stage of the project.<sup>128</sup>

**Topic 7: Testing, acceptance, and roll out**

24. By way of overview in relation to the initial phases of the roll out of the Horizon IT System:

- 24.1. The ‘Initial Go Live’ facilitated the automation of the payment of child benefits, and piloted the use of benefit payment cards at 10 Post Office branches in the Stroud area.<sup>129</sup> The ‘Initial Go Live’ was subject to a lessons learned report, prepared by ICL Pathway in November 1996,<sup>130</sup> and a quality audit report, prepared by Mr David Groom, the ICL Pathway Quality Manager, in January 1997.<sup>131</sup>
- 24.2. The initial pilot phase (“**Release 1B**”) provided the Order Book Control System (“**OBCS**”), together with minimal EPOSS functionality designed to support the OBCS.

<sup>124</sup> See, for example: Transcript, 24 November 2022, p.156, ln.25-p.157, ln.2 (Dr Sarah Graham); Transcript, 24 November 2022, p.85, ln.14-p.86, ln.13 (Mr Stephen Byers); WITN03360100, First Witness Statement of Sir Stephen Robson dated 13 September 2022, §26.

<sup>125</sup> Transcript, 24 November 2022, p.5, ln.4-ln.8 (Mr Stephen Byers); Transcript, 29 November 2022, p.85, ln.3-ln.11 (Lord Alistair Darling); WITN04000100, First Witness Statement of Sir Adrian Montague dated 16 September 2022, §15(a).

<sup>126</sup> Transcript, 23 November 2022, p.92, ln.5-ln.11 (Mr David Sibbick).

<sup>127</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §10.

<sup>128</sup> See, for example: Transcript, 23 November 2022, p.9, ln.20-p.10, ln.3 (Mr David Sibbick) (“*I understood ... that ripping out the Benefit Payment Card part of the system and replacing it with something else was absolutely a non-trivial thing to have to do and would require a lot of work in a certain amount of time.*”).

<sup>129</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §64. See also: FUJ00119564, IGL 1 Software Baseline Release Notice Issue 1, 6 September 1996.

<sup>130</sup> FUJ00058278, Initial Go Live – Lessons Learnt Report, 12 November 1996.

<sup>131</sup> FUJ00058277, Delivered Quality Audit Report – IGL Post Offices, Stroud, 23 January 1997.

Release 1B was installed at approximately 190 branches from May 1997.<sup>132</sup> There were technical problems identified in Release 1B, including “*as a result of bugs in the connection between the Post Office and the HQ Data Centres*”.<sup>133</sup> ICL Pathway delayed the subsequent pilot phase in order to address those bugs.

24.3. The next pilot phase (“**Release 1C**”) was intended to introduce the Benefits Payment System functionality, including the Card Management Service, Payment Authorisation Service, and Benefit Encashment Service.<sup>134</sup> Release 1C went live at 205 Post Office Branches on or around 20 November 1997. Further issues were identified with Release 1C, and recorded in the ‘Known Problem Register at 1C’,<sup>135</sup> as well as in various ‘Weekly Progress Reports’.<sup>136</sup>

25. Between these initial pilots and the national roll out, the Horizon IT System was subjected to further testing.<sup>137</sup> That testing included:

25.1. ‘End-to-end testing’ (or “**E2E testing**”), whereby testing was conducted by the Post Office of full business processes within the Horizon IT System.<sup>138</sup>

25.2. ‘Model office testing’, whereby the Horizon IT System was deployed on a model Post Office branch, to enable the teams to trial software releases in a true Post Office environment. The model office testing was defined, run, and performed by Post Office test teams.<sup>139</sup>

26. As to the balance between, on the one hand, continued model office and end-to-end testing and, on the other hand, testing in a live trial environment

<sup>132</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §74. See also: FUJ00119569, Implementation Strategy (Release 1B), 30 May 1997.

<sup>133</sup> FUJ00058148, Minutes of ICL Pathway Board meeting, 7 May 1997.

<sup>134</sup> WITN06650100, First Corporate Statement of Fujitsu Services Limited dated 28 September 2022, §82. See further: FUJ00119593, Release 1C Contents Description, 22 September 1997.

<sup>135</sup> FUJ00078092, Known Problem Register at Release 1C, 26 August 1997.

<sup>136</sup> See, for example: FUJ00058337, Phase 1C (North East) Weekly Progress Report, 2 December 1997.

<sup>137</sup> The full range of tests are described in, for example: FUJ00078295, Revisions to the Testing & Integration Approach for Pathway Release 2.

<sup>138</sup> For explanation as to the nature of E2E testing, see: POL00028419, End to End Testing: Evaluation Report for Nile Release 2.0, 19 March 1999.

<sup>139</sup> WITN04180100, First Witness Statement of Mr Peter Jeram dated 6 August 2022, §17. See also WITN05290100, First Witness Statement of Mr David Smith dated 30 August 2022 at §37 (“*Model Office and End to End testing were POCL driven*”).

- 26.1. The evidence from Mr Andrew Simpkins that it was a “*difficult call*” as to whether to conduct a further round of model office testing, rather than to progress to a live trial. A live trial enabled the project to “*learn a lot of essential information that would help you when you subsequently came to roll out training and deployment*”.<sup>140</sup> Further, Mr Rich expressed the view that “*some testing you can’t do until you actually – you can do all the testing – It’s like playing a football match; you can do all the training but you have to actually be in a match to see if it works*”.<sup>141</sup>
- 26.2. The significant history of testing which had been conducted is summarised in part at paragraphs 24 and 25, above. Notwithstanding that there were outstanding issues to be addressed with the system, it is clear that ICL Pathway had learned significant lessons from the testing conducted by that time and that these lessons fed back into further work on the technical aspects of the system.<sup>142</sup>
27. Another significant feature of the evidence in Phase 2 was the decision-making concerning contractual acceptance, and the management of ‘Acceptance Incidents’, particularly AI 218 (‘Training’), AI 298 (‘System Stability’), and AI 376 (‘Data Integrity’). In respect of those issues, Fujitsu makes the following observations:
- 27.1. The evidence demonstrates that the ‘Acceptance Incidents’ were the subject of robust and regular monitoring by Post Office. Mr Folkes’ evidence was that the Post Office took “*as hard a line as the contract allowed*”.<sup>143</sup> That is borne out by the evidence. For example, in August 1999 Post Office delayed acceptance, on the basis that there was “*still more work needed to deal with three issues – improving training for subpostmasters; lock outs and screen freezes and the quality of some accounting data*” (i.e. the three ‘Acceptance Incidents’ identified above).<sup>144</sup>
- 27.2. The evidence also demonstrates that ICL Pathway treated ‘Acceptance Incidents’ seriously. That was plainly appropriate. Mr John Meagher gave evidence that “*Pathway ... treated acceptance very seriously. There was a lot of effort and immediate effort on*

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<sup>140</sup> Transcript, 3 November 2022, p.73, ln.2-p.75, ln.22 (Mr Andrew Simpkins).

<sup>141</sup> Transcript, 21 October 2022, p.45, ln.1-ln.10 (Mr Paul Rich).

<sup>142</sup> See, for example: POL00028593, Report from Mr Paul Rich to Mr Stuart Sweetman and others, Horizon: Lessons Learnt Review for John Roberts and Subsequent Actions, 24 July 1997.

<sup>143</sup> WITN05970100, First Witness Statement of Mr Jeremy Folkes dated 7 September 2022, §§192-194.

<sup>144</sup> WITN03390100, First Witness Statement of Mr Anthony Roberts dated 7 September 2022, §38.

*Pathway's part to bring forward rectification plans*".<sup>145</sup> That accords with the evidence of Mr Austin that ICL Pathway "took [*Acceptance Incidents*] extremely seriously".<sup>146</sup>

- 27.3. No doubt, the Inquiry will give careful consideration to the appropriateness of decision-making concerning contractual acceptance. In that connection, the Inquiry will note the evidence of Mr Miller that "*POCL considered that the all the Acceptance Criteria had been met and that all risks were known and had a mitigation plan*" at the point of acceptance.<sup>147</sup> Further, and as referred to at paragraph 19.3 above, Post Office and ICL Pathway entered into the three Supplemental Agreements to agree programmes of work to resolve outstanding Acceptance Incidents.

### **Conclusion**

28. Fujitsu reiterates its gratitude to the Inquiry for the opportunity to make these brief closing submissions on Phase 2, and confirms its commitment to render every assistance to the Inquiry.

**RICHARD WHITTAM KC**  
**SAMANTHA KNIGHTS KC**  
**TIM JAMES-MATTHEWS**  
**Matrix Chambers**

7 December 2022

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<sup>145</sup> Transcript, 15 November 2022, p.103, ln.13-ln.22 (Mr John Meagher). See also: WITN05970100, First Witness Statement of Mr Jeremy Folkes dated 7 September 2022, §§150, 194; WITN03390100, First Witness Statement of Mr Anthony Roberts dated 7 September 2022, §40.

<sup>146</sup> Transcript, 27 October 2022, p.102, ln.16-ln.23 (Mr Terence Austin). See also: Transcript, 26 October 2022, p.70, ln.23-p.71, ln.1 (Mr Anthony Oppenheim).

<sup>147</sup> WITN03470100, First Witness Statement of Mr David Miller dated 20 September 2022, §§61-62.