

IN THE POST OFFICE HORIZON IT INQUIRY

**PHASE THREE CLOSING SUBMISSIONS ON BEHALF OF
CORE PARTICIPANTS REPRESENTED BY HOWE & CO**

These submissions supplement the oral submissions of Mr Stein KC of 17 May 2023 and are advanced in line with correspondence received from the Inquiry dated 4 April 2023.

In line with the Chair's direction, we have sought to avoid duplication between these written submissions and the oral closing submissions of Mr Stein KC, which were delivered on 17 May 2023. We refer the Inquiry to the transcript of Mr Stein's closing submissions.

Training, lack of assistance and Impact.

Training

1. The evidence in Phase Three has confirmed that the training of SPMs on Horizon was inadequate from the outset and that it did not materially improve.
2. Mr Chris Gilding, a former POL Field Team Leader, accepted in his evidence on 13 January 2023 that training on balancing was still inadequate 11 years after POL had received feedback to that effect (transcript – page 62). Anne Allaker, formerly of Post Office Support Services, agreed on 1 March 2023 that SPM training contained gaps in relation to balancing (transcript – page 78).
3. The Inquiry should also note that Kevin Fletcher, a Fujitsu Training Operations Manager, confirmed in his evidence on 10 January 2023 that there was no guidance given to SPMs in relation to software errors or workarounds (page 164).
4. Fujitsu and POL both knew that they were not training SPMs properly. Kevin Fletcher told the Inquiry on 10 January 2023 that the decision that one and a half days' training was adequate was taken by POL (transcript – page 145).
5. Trevor Rollason, a National Horizon Training Manager from Post Office, told the Inquiry on 20 January 2023 that he reached an impasse with his opposite number in Pathway

because they wanted just a one-day course, and that they eventually agreed on one and a half days. (Transcript 20 January 2023, pages 42 and 43).

6. Mr Rollason raised concerns about the quality of training with Bruce McNiven and Douglas Craik, but was out voted. Mr Rollason also stated in his evidence that ICL were not happy to extend training due to the additional cost that would have been involved (page 45).
7. No witness sought to dispute what our clients say they experienced in relation to training when we put forward questions, which related to our clients' experiences of inadequate training.
8. Ninety-five of our clients have said in their witness statements to the Inquiry that the training they received was inadequate.
9. Nineteen of our clients have stated that a shortfall occurred during in branch training itself.
10. Some examples include the following:
 - Virendra Bajaj – Stated he received 1.5 days training. No training on discrepancies or how to deal with them if they arose (witness statement paragraph 14). *'Training rushed and quite overwhelming and confusing...I know that other SPMs at the training felt the same way... The Post office trainers told us that if there was anything we didn't understand we could call the helpline'* (witness statement paragraph 15).
 - Maureen McElvey – Stated (witness statement paragraph 9) *'The advice given was to switch on the system, the only thing we had been shown how to do, and to work it out for ourselves.'*
 - Heather Earley - Training provided over 5 days whilst I was working in the convenience shop and no instructions were given on discrepancies. Balances only carried out monthly (witness statement paragraph 10 -17) and Ms Early never completed a balance during training (witness statement paragraph 16).
 - Edward Brown – Stated that he had one day training off site, and 2 days in Post Office. Training inadequate and no instruction on balancing (witness statement paragraphs 11,12,14).

- Louise Dar - Stated that she received 3 days offsite training limited by cost cutting by PO (witness statement paragraphs 11,13). Ms Dar was told to contact helpdesk if issues with balancing arose (witness statement paragraph 16) (witness statement paragraph 19). Ms Dar's requests for additional training were ignored (witness statement paragraph 29)

11. It is relevant to note that the training inadequacies had wider implications for SPMs. Sandra McBride, a Post Office trainer, who gave evidence on 17 January 2023 agreed that failures in training might have manifested in the course of an audit (transcript -page 16). Bruce McNiven accepted on 10 January 2023 (transcript page 47) that it would have been logical for these issues relating to poor training to have been brought to the attention of auditors, investigators and prosecutors. But no such action was taken.
12. We ask that the Inquiry conclude that SPMs received training of a poor standard, and that the limited training that they did receive rendered them largely helpless in the face of POL's continuing demands and allegations in respect of alleged shortfalls which arose from the Horizon system.

Assistance

13. The inadequate training that our client SPMs received was compounded by the lack of assistance when things started to go wrong.
14. Stephen Muchow, a former Business Director at ICL Pathway told the Inquiry in his evidence on 12 January 2023 that he did not consider that the Helpdesk filled the gaps left by the poor training (Transcript, page 9).
15. Our clients' experiences of Fujitsu's Helpline were set out before the Inquiry in their evidence in Phase 1 from February to May 2022. Eighty-eight of our clients say that Helpline staff were incompetent.
16. This is perhaps explained by the evidence of Stephen Muchow, who told the Inquiry in his evidence on 12 January 2023 that Helpdesk was unable to get the right quality of staff (transcript – page 13).
17. Some of our clients have said that the only advice they ever received from the Helpline was that any shortfall must be the result of human error.

18. Eighteen of our clients say that the Helpline advisors were simply reading from scripts and did not seem to understand the advice that they were giving.
19. Forty-two of our clients say that Helpline advisors told them that they should pay the sum demanded by POCL in relation to alleged shortfalls.
20. Thirty-six of our clients say that they were advised that they were liable under their contracts for the shortfalls.
21. Perhaps the most troubling evidence concerning the Helpline is that, on very many occasions, the Helpline Staff told our clients that they were the only ones who were experiencing problems with Horizon.
22. Thirty-nine of our clients say that they were given this advice. This theme was also repeated within the criminal investigations and prosecutions.
23. A typical example of how SPMs were treated when they sought help and assistance is provided by the evidence of Kevin Palmer, to which the Chair was referred by Mr Beer KC in his opening submissions in October 2022.
24. As the Inquiry will recall, Kevin Palmer, gave evidence back on 23 February 2022. He had a career in investment banking before coming to take over his mother's, Suzanne Palmer's, Post Office branch after she had been suspended for alleged shortfalls¹, and was facing prosecution for fraud, of which she was acquitted following a trial.
25. Mr Palmer said in his evidence that he did not receive training on how to balance accounts. He also told the Inquiry that he was often faced with discrepancies which he would spend time checking against these records. He explained that at one stage, he faced a discrepancy for over £60,000, and that he rang the helpdesk operator who said:

"It was not possible for this to be as a result of system error, and simply advised me to check my figures again."
26. In summary, the evidence demonstrates that the service provided by the Fujitsu Helpdesk was appalling.

¹ She was later acquitted by a jury, but never reinstated by POL.

IMPACT

27. Prior to 2006, subpostmasters were able to post cash discrepancies in a suspense account and to roll them over into a new trading period. Through the IMPACT programme, POL removed this facility and thereafter SPMs were required either to make shortfalls good with cash on the spot or to undertake to settle centrally in order to roll over.
28. Significantly, SPMs were unable to continue trading unless they did one of those two things. They were left in an invidious position when faced with a discrepancy at the end of a trading period: either make good the difference, settle the difference centrally or to cease to trade.
29. Our clients consider that this was hugely oppressive behaviour, in circumstances where POL knew full well that there were several bugs, errors and defects in the system, which had the potential to affect the integrity of the systems that the SPMs were operating.
30. The motivation for the IMPACT programme appears dubious. Stephen Grayston, a former Post Office Change Manager gave evidence on 27 February 2023 and confirmed that POL was trading at a loss in 2003 and was in a dire financial situation. He agreed that there was a need to bring in cash (transcript – pages 17 and 18).

Susan Harding

31. Susan Harding gave evidence on 22 February 2023 in relation to IMPACT. Ms Harding describes the project in her statement as *“a new end-to-end process that would radically transform the accounting processes in branches and the back office and bring them into line with standard financial practices”*.
32. Fundamentally, the redesign included the removal of the local suspense account. Ms Harding confirms in her witness statement that:
- The redesign was based on the core principle that SPM branches were accountable for the financial integrity of their accounts.
 - The “suspense account” had historically been used to “balance” any discrepancies which cover up losses in their accounts.

- Agency branches were responsible for making good losses
- It was agreed during the design of Impact that the suspense account would be removed, as historically it was used by Sub postmasters to “hide” discrepancies in their accounts, rather than resolve them” (Ms Harding’s witness statement - para 31)
- *“In contractual terms, they were liable, contractually, for any shortfalls which had to be made good”* (para 32)
- The robustness of Horizon was not considered to be an issue and there was no evidence to suggest there were any “bugs” affecting the efficacy of the system” (para 38)

33. Ms Harding’s evidence is important because the points that she made mirror exactly what our clients have said in their evidence - that POL always assumed that any loss was the fault of the SPM and would brook no other possible reason.

34. In her oral evidence Ms Harding stated that she was aware that Horizon would be producing data that would form the basis of criminal and civil proceedings against SPMs (transcript p17), but that she had not been told that there had been any problems with the operation of Horizon (transcript pages 13/14) or that Horizon had been creating discrepancies (transcript – page 20).

35. Ms Harding confirmed at page 47 of the transcript that one of the aims of the project was to pursue losses and push SPMs harder in order to pursue debt recovery.

36. We invite the Inquiry to find that IMPACT was deliberately designed to target and oppress SPMs. Ms Harding confirmed that the Post Office Board would ‘absolutely’ have had knowledge of all of this. (Transcript - at page 71)

37. We submit that the IMPACT programme, and the removal of the ability of SPMs to effectively dispute shortfalls, was driven by a culture within POL that subpostmasters were fundamentally dishonest.

38. It is this misplaced view within POL which gave rise to much of the scandal that is before the Inquiry, as uncovered in the findings made by Fraser J in 2019.

39. The IMPACT programme must have had an impact on the policy and decision-making process as regards prosecution or not or the pursuit of civil debt. The inquiry should seek

disclosure of connections between the impact programme, its policy drivers and what that did to the burden on SPMs to prove innocence.

Knowledge by POL and Fujitsu of bugs, errors and defects.

40. Mr Muchow confirmed in his evidence on 12 January 2023 that a decision was taken not to rewrite the defective EPOSS system because that would have created a huge delay. Instead, Fujitsu chose to *'battle through the problems and cope with it'* (transcript page 70).
41. Anne Chambers of Fujitsu's Software Support Centre (SSC) was also aware of the position. She wrote in an email in February 2006 in relation to the Callendar Square bug: *This problem has been around for years and affects a number of sites most weeks* (Bates v Post Office judgment No 6, para 412)
42. Yet even despite the history of the poor design of the system and knowledge of bugs that directly affected SPM branches, Fujitsu (and its SSC) routinely chose to attribute blame for problems which they could not understand at the feet of individual SPMs – even where Post Office auditors had specifically ruled out user error.

Anne Chambers

43. In this regard we refer the Inquiry to the evidence of Anne Chambers, who appeared before the Inquiry on 2 and 3 May 2023 in connection with PEAK PC0229446, dated 17 November 2013. Her evidence demonstrates that within Fujitsu it was widely known that there were numerous bugs, errors and defects that had the potential to affect the ability of SPMs to balance the Horizon system.
44. The issue was considered by Fraser J at paragraphs 490-493 of the Horizon Issues judgment [2019] EWHC 3408 (QB) in relation to a PEAK, to which Ms Chambers was referred by Mr Beer KC in her evidence on 2 and 3 May 2023. Fraser J stated: (emphasis added)

490. One PEAK which I found most illuminating, in terms of Mr Parker's response to it when he was asked questions, is PEAK PC0229446. This is dated 17 November 2013, hence is Horizon Online, not in the period of the pilot project and sufficiently after the introduction of it, in 2010, for it not to be put

down as the sort of issue that might occur in very early days of a system whilst minor issues were ironed out. The problem was described in the PEAK as "PM doing cash declarations every now and again has major loss." **Entries in the PEAK included "PM has had cash declaration problem throughout the year and is losing a lot every now and again"; "He phoned up helpline told him can't [have] declared properly. He states that he loses £2,000 then jumps suddenly to £4,000, one point they lost £8,000 and is always losing money. PM stated that he has three post offices, only happens on this site"; and then "Done a declaration this morning and had a £6,000 also. It shows no error message when doing it. No report prints out only print- out of cash declarations".**

491.The reason that this plainly, in my judgment, does demonstrate a system fault is Fujitsu's own PEAK recorded:

"Voiced NBSC quoted ref H18174172 to see what checks they have done themselves before transferring call to Horizon.

They stated **they had trainers come into the office and ruled out user error ."**

And

"NBSC states the user error checks were carried out by Auditors at the site and not over the phone." (emphasis added)

492. This matter was assigned to Anne Chambers, whose name appears very often in many of the documents. The final part of her conclusion was (having said that "there were no known issues that would result in the variance being incorrect"):

"I can't tell why the declared cash doesn't match the expected cash figure, the branch need to make sure that what they have recorded on the system is correct, and investigate the anomalies." (emphasis added)

This is simply passing the buck back to a SPM in a branch. How an SPM could "investigate the anomalies" given they appeared to be generated by the Horizon system is not explained, nor could it sensibly be.

493. She also closed the response with the category "Final – no fault in product" and closed the call by defect cause "General – User". I consider this PEAK to be an ideal illustration of what I consider to be the most extraordinary situation at SSC, and one which on the face of it is difficult to explain, given the function of SSC was to investigate faults....

The Default Position

45. When questioned about this matter by Mr Beer KC, Anne Chambers said that she was frustrated that she could not get to the bottom of the matter, and that she could find no evidence that it was a system error. Ms Chambers accepted that she took no steps to talk to the auditor or trainer concerned. Ms Chambers agreed with Mr Beer KC that SSC were only looking for system errors and that an approach was taken whereby unless there was positive evidence of a system error, SSC would conclude that a problem with the Horizon system was the subpostmaster's fault. (See transcript pages 180-188).
46. The evidence of Mrs Chambers before the Inquiry confirms that the default position, even in the face of seemingly incontrovertible evidence to the contrary, was that anything which could not be understood must have resulted from user error.
47. Andrew Dunks, an IT Security Analyst at Fujitsu, applied the same approach. He told the Inquiry on 8 March 2023 that when he was carrying out the task of reconciliation, he never thought *'Hold on, it might be a software bug that's causing the error, we'd better look at that'* (transcript – page 76).
48. This default to 'user error' was a regular feature of the approach taken by the Horizon Helpdesk towards SPMs.
49. The same approach characterised the resolution of disputes. Mr Winn agreed when giving evidence on 3 March 2023 that he had assumed that if there was no obvious answer to the cause for a discrepancy, it was assumed to be the fault of the subpostmaster, unless they proved otherwise.
50. Further, Mr Winn conceded that a subpostmaster who was locked out of his office would be unable to prove anything (transcript – pages 126-127).
51. Mr Roll, formerly of Fujitsu's 3rd/4th line support, confirmed in his evidence on 9 March 2023 that the 'default to user error' was the position within POL and Fujitsu at the time when he was at Fujitsu (transcript – page 32).
52. Mr Coleman's evidence was illustrative of this approach. On 17 May 2023 Mr Coleman was taken by Mr Beer KC to a number of passages within PinICL which showed valid complaints of system error being made by SPMs. However, those matters were resolved with the cases being closed and concluded as having been caused by User.

53. One such example was FUJ00057524, to which Mr Beer referred Mr Coleman at page 32 of the transcript. Mr Coleman would not explain why he had reverted to a conclusion of 'User Error' when the evidence did not support that conclusion. We refer the Inquiry to the following exchanges at pages 39-40 of the transcript:

Q If we look two entries down, 16.29.45, again you have, "Responded to call type L as category 96", this time "insufficient evidence", but then two entries below that: "Defect cause updated to 40: General -- User." So, again, we have something that clearly in your mind might be a software error, it might be a counter error but it's there being attributed to user error. Does that assist you in answering the question that I asked some time ago about whether there was an approach to attributing things to users as a default?

A. I have no idea why I selected that. I mean, that I don't think -- category "96: Insufficient evidence" that's what would go back to PowerHelp to alert the SMC that, "Okay, I'm asking for more evidence, can you get the evidence and then send it back to me?" Why I would have picked "

I don't think -- category "96: Insufficient evidence" that's what would go back to PowerHelp to alert the SMC that, "Okay, I'm asking for more evidence, can you get the evidence and then send it back to me?" Why I would have picked "General -- User", I'm sorry, I don't know.

Q. One thing that we heard during the human evidence sessions in this Inquiry was postmasters being told that they were at fault, that the issue is user error not software error. Looking back at these documents, do you think there was a culture of attributing things to user error? A. No. But I can certainly see how you could come to that conclusion. Q. I mean, there are three or so PinICLs that have been attributed to user error –

A. Yes.

Q. -- rather than insufficient evidence or unknown error or -- I mean, there are multiple options available –

A. Yes, I have no idea what else I could have put but, to my mind, you know, looking at this, that's wrong. So I don't know why I would have picked user.

POL's knowledge of defects

54. Bruce McNiven, a former Post Office Deputy Director, agreed in his evidence on 10 January 2023 that there was an awareness that errors would produce liability issues (transcript – page 83).

55. Trevor Rollason told the Inquiry on 20 January 2023 that it was common knowledge at Post Office that SPMs were having problems with balancing (transcript – page 88).
56. The scale of the problem was evident from the fact that after the introduction of Horizon, monies held in suspense accounts increased from £2 million to £10 million (see evidence of Stephen Grayston, former PO Change Manager, 27 February 2023 at pages 10-11).
57. Mark Burley, an HNX Programme Manager at POL gave evidence on 22 February 2023 and said that POL decided to look for workarounds instead of taking a deep look at the whole system. Mr Burley confirmed that information concerning the operation of Horizon was not cascaded down to individual branches (transcript page 194).
58. David Smith, POL Head of Change, confirmed in his evidence on 24 February 2023 that in 2010 he was dissatisfied with Fujitsu’s insight into the nature of the problems in the Horizon system (transcript page 115).
59. Shaun Turner, a POL Network Conformance and Capacity Manager, confirmed when giving evidence on 28 February 2023 the existence of Project Sparrow, which was concerned with the identification of discrepancies within the Horizon system (transcript page 22).
60. Furthermore, Mr Turner was one of a number of POL employees who was aware of the February 2006 email from Anne Chambers concerning the Callendar Square incident and the potential impact on other branches (as was Brian Trotter, who gave evidence on 2 March 2023 – see transcript at pages 38-40).
61. Mr Turner was also aware of the receipts and payments mismatch issue (transcript page 86).

Gary Blackburn

62. The evidence of Gary Blackburn, who was a former POL National Network Business Support Centre Team Leader and Problem Manager further confirms that POL were fully aware of the bugs, errors and defects within the Horizon system and that there was an active exchange of information between senior staff and Gareth Jenkins at Fujitsu.

63. Mr Blackburn was no stranger to defects within the Horizon system. He stated, in his oral evidence on 28 February 2023, that he was aware of the ability of Horizon to create discrepancies (transcript page 218). He was involved in dealing with a significant problem relating to a bug in the riposte code in 2005 (transcript page 170). He also referred to another issue concerning reversals not getting through within time limits, which could have led to discrepancies, which would affect branches (transcript page 172).
64. Mr Blackburn was also aware of the Callendar Square bug, and the risk of other branches being impacted (transcript page 180) and was another POL employee who had sight of the email dated 23 February 2006 from Anne Chambers, concerning a Riposte problem, in which Mrs Chambers said that the problem had been around for years and affected a number of sites most weeks (transcript page 181).
65. Mr Blackburn later became aware of four or five post offices having the same problem and escalated the matter to problem management (transcript page 183).
66. Yet, despite this knowledge, POL instituted a policy under which all Contracts Managers were required to blame subpostmasters for Horizon shortfalls. The policy is the Post Office Ltd. Losses Policy- Overarching (Branches), to which Mr Ismay referred at para 59 of his witness statement. The policy states: *'in general, agents are liable for all losses, including counterfeits.'* [WITN04630100]
67. Any submission or representation made by POL that they were 'kept in the dark' by Fujitsu should be disregarded. On the evidence before the Inquiry, this was simply not the case.

Three reasons why did POL concealed the truth from SPMs

68. There are essentially three reasons why POL acted to conceal the failings of the Horizon system:
- (I) They thought that any disclosure of the defects to SPMs would encourage SPMs to commit fraud.
 - (II) They were worried about being sued by SPMs
 - (III) They were concerned that ongoing prosecutions of SPMs would have to be stayed and convictions revisited.

(i) Perception that SPM were predisposed to commit fraud

69. Anne Chambers told the Inquiry on 3 May 2023 that she was aware of minuted discussions in which POL had maintained that they did not want SPMs to know about particular bugs in the system because (absurdly) it might encourage or otherwise lead SPMs to commit offences of fraud. *'They didn't want to give opportunities for fraud, if postmasters became aware of certain issues'* (transcript 3 May 2023 at page 44)

(ii) Fear of being sued by SPMs

70. Gary Blackburn referred in his evidence to a February 2007 email chain from Gareth Jenkins (to which he was copied in) where an issue had arisen which affected a possible 570 branches (FUJ00121071). A decision was taken by POL and Fujitsu to apply a reactive approach and only inform SPMs about the problem if they reported the matter themselves.

71. Mr Blackburn agreed that SPMs would have had no idea that there was a bug in the system and might have concluded that a discrepancy on balancing had been caused by a mistake (transcript page 196).

72. In relation to the same incident an email dated 5 February 2007 (within the same chain) from Dave Hulbert, Mr Blackburn's line manager at the time, stated: (our emphasis)

*"The dilemma for Gary is approaching branches is proactive but **opens the risk of litigation in future** i.e. we're telling 570 branches that Horizon may have caused a discrepancy – low risk but a risk – being reactive doesn't feel right as we've caused the problem for branches but this may be the right option in this situation."*

(iii) Effect on ongoing prosecutions of disclosing defects of Horizon system

73. Rod Ismay gave evidence on 11th and 12th May 2023. We submit that his evidence establishes that his 2010 report was nothing less than a 'whitewash' (adopting the word used by the Chair). POL failed consciously and deliberately failed to undertake an objective assessment of the Horizon system. This episode forms an important part of POL's 'cover-up' – which is an integral part of the scandal that is before the Inquiry.

74. The gravity of the implications of the 2010 Ismay report is set out at paragraphs 23-25 of the judgment of Holroyde J in Hamilton v Post Office Limited [2021] EWCA Crin 577 [2021] Crim LR 684: (emphasis added)

23. *In 2009 a periodical, Computer Weekly, published a report referring to problems with the Horizon system. Also in 2009, two Members of Parliament reported their constituents' concerns about Horizon to the then Minister of Postal Affairs and Employment Relations, who in turn forwarded the letters to the Managing Director of POL.*

24. *In August 2010 Rod Ismay, POL's Head of Product and Branch Accounting, prepared a report entitled "Horizon – Response to Challenges Regarding Systems Integrity". **Those to whom the report was copied included POL's Head of Criminal Law. In summary, the report stated that Horizon (both Legacy and Online) was robust, and that the prosecutions which had given rise to adverse comments were cases in which "we remain satisfied that this money was missing due to theft in the branch".** It noted that the record of prosecutions supported the assertion that the SPMs had been guilty rather than Horizon being faulty, but observed that this "does not stop speculation about the system". It went on to consider the merits of an independent review, not because of any doubt about Horizon but in order to help give others "the same confidence that we have". **The decision was that, no matter what opinions might be obtained, "people will still ask 'what if?' and the defence will always ask questions that require answers beyond the report". Mr Ismay went on to give this warning:***

"It is also important to be crystal clear about any review if one were commissioned – any investigation would need to be disclosed in court. Although we would be doing the review to comfort others, any perception that POL doubts its own systems would mean that all criminal prosecutions would have to be stayed. It would also beg a question for the Court of Appeal over past prosecutions and imprisonments."

25. *In the event, several more years passed before POL did commission an independent review.*

75. Overall, the effect of POL's and Fujitsu's concealment of the truth from SPMs is that subpostmasters continued to use a system that created balancing discrepancies which they might reasonably have thought were caused by user error (as they were being told) and some errors that were so fundamental that they could not even be seen by the Branch on any examination of the system.

Remote access

76. The Inquiry will be aware that within the group litigation both POL and supporting Fujitsu witnesses initially sought to deny to the Court that remote access to SPM terminals had been possible.
77. The evidence in Phase 3 has demonstrated that POL took steps to conceal the fact of remote access from SPMs. On 2 May 2023 Mrs Chambers confirmed in her oral evidence that she knew of cases where POL did not tell an SPM that their financial data had been altered. She said: *'Yes, I think that definitely did happen'* (transcript Page 207)
78. On 9 March 2023 Richard Roll said in his oral evidence that SPMs were sometimes not advised that their data was being corrected. He said that in some cases they were simply told that an error in their data would be corrected. However, SPMs were not told the underlying reasons for the corrections. They were not told that the action had been taken due to a software bug within Horizon (transcript page 25).
79. Consequently, SPMs were deceived by POL and Fujitsu. The Phase 3 evidence has demonstrated that in the great majority of cases where remote access was used, SPMs would not have been aware that their financial data had been remotely altered.
80. Neither would they have been aware that the reason for Fujitsu having access to their systems was related to defects in the Horizon system. This probably led, in many cases, to SPMs making payments to POL under false pretences.

ARQ data

81. One of the more remarkable aspects of the evidence is that POL always knew that it was contractually entitled to request ARQ data from Fujitsu to resolve disputes. There was a fee payable for the provision of such information above a certain amount of annual requests. The ARQ data could identify all keystrokes and resolve the issue of whether there had been user error.
82. Yet POL very rarely sought such information to resolve disputes. Anne Allaker told the Inquiry on 1 March 2023 that she did not recall information being provided to SPMs about the availability of such data (transcript page 92). Andrew Dunks, a former Fujitsu IT Security Analyst, told the Inquiry in his evidence on 8 March 2023 that he was not aware of POL making any ARQ requests for the purpose of deciding whether or not to prosecute a subpostmaster (transcript page 54).

83. The issue was put to Mr Ismay on 11 May 2023. He was referred by Mr Beer KC to POL00038853, which sets out Policy guidance to auditors to conduct fair investigations to establish the truth. Mr Ismay accepted that the policy should be to establish the truth and that any evidence that is uncovered that supports the suspect's position should be recovered (transcript pages 70-72). However, he was not aware of any policy setting out circumstances when ARQ data was to be obtained. He accepted that ARQ data should have been obtained where there was a lack of clarity about when an alleged issue had happened (transcript, page 85).
84. We say (in line with Mr Beer KC's questioning of the witness at page 84) that ARQ data should have been obtained and interrogated in all cases where a subpostmaster had said a loss was not attributable to their conduct. Otherwise, POL could not confidently respond by stating that the loss was due to the SPM. Yet, POL was not concerned with the protestations of SPMs.
85. POL failed to interrogate ARQ data (which it was contractually entitled to obtain) in cases where it had made highly serious allegations against SPMs. This is a serious failing of POL, which has been established within Phase 3.

Conclusion

86. The evidence in Phase Three has confirmed that POL and Fujitsu failed to provide adequate training and assistance to SPMs and increased their vulnerability to abuses by POL through implementing the IMPACT programme in 2006, thus depriving SPMs of their ability to dispute alleged shortfalls through local suspense accounts.
87. Furthermore, the evidence has demonstrated that POL and Fujitsu had substantial knowledge of the errors, bugs and defects within the system at all material times. Yet both acted in bad faith and went to significant lengths to conceal the true nature of the Horizon product from SPMs.
88. On behalf of our clients, we invite the Inquiry to make findings in these terms.

SAM STEIN KC
CHRISTOPHER JACOBS
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25th May 2023