

IN THE POST OFFICE HORIZON IT INQUIRY

PHASE FOUR CLOSING SUBMISSIONS ON BEHALF OF FUJITSU SERVICES LIMITED

1. Fujitsu Services Limited (“**Fujitsu**”) is grateful to the Inquiry for the opportunity to make these written submissions at the close of Phase 4 (‘Action against sub-postmasters and others’).
2. Fujitsu wishes to reiterate its sincere apology to subpostmasters (“**SPMs**”) and their families for Fujitsu’s role in the appalling miscarriages of justice, revealed in the evidence during Phases 1 and 4 of this Inquiry. Fujitsu deeply regrets having provided support to Post Office Limited (“**Post Office**”) in connection with the wrongful prosecutions and civil proceedings which Post Office pursued against SPMs and staff. Fujitsu recognises that, by that provision of support to Post Office, Fujitsu fell considerably short of its corporate values and high ethical, oversight and governance standards.
3. As in Fujitsu’s closing submissions for Phases 2 and 3 of the Inquiry, Fujitsu has focussed these written submissions on those Phase 4 issues in relation to which Fujitsu can most assist the Inquiry at this stage. Therefore, not every issue raised in Phase 4 will be addressed.
4. It is important to note that the evidence for Phase 4 is not yet closed. Indeed, the Inquiry is due to hear further evidence from a number of important witnesses, whose evidence is likely to bear directly upon both the nature of the support provided by Fujitsu in relation to Post Office prosecutions and civil proceedings (e.g. Mr Gareth Jenkins), and the monitoring and conduct of those prosecutions within Post Office (e.g. the further evidence of Mr Jarnail Singh). It also appears that there may still be additional disclosure from Core Participants, and Post Office in particular, which will relate to the themes within Phase 4. Fujitsu will, in any event, revisit these issues in its final closing submissions to the Inquiry.
5. These Phase 4 closing submissions on behalf of Fujitsu are structured around six topics:
 - 5.1. **Topic 1:** Post Office’s compliance with its role and duties as a private prosecutor
 - 5.2. **Topic 2:** Fujitsu’s contractual prosecution support obligations
 - 5.3. **Topic 3:** Post Office criminal investigations
 - 5.4. **Topic 4:** Failings in disclosure by Post Office
 - 5.5. **Topic 5:** Failings in relation to ARQ data
 - 5.6. **Topic 6:** Failings in relation to the instruction of expert witnesses

Topic 1: Post Office’s compliance with its role and duties as a private prosecutor

6. It is necessary to set out, by way of context, the important duties which apply (and applied throughout the Inquiry’s relevant period) to a private prosecutor. Most fundamentally, a prosecutor (including a private prosecutor) is required to act as a ‘minister of justice’.¹ Further to that core general duty, a number of specific duties are imposed upon a prosecutor, principally with a view to safeguarding the fairness of criminal investigations and proceedings. Those duties are summarised by Mr Duncan Atkinson KC in his Expert Report, Volume 1. Relevantly:

6.1. **First**, in conducting an investigation, the investigator is required to pursue all reasonable lines of inquiry, whether these point towards or away from the suspect.² The prosecutor is required to supervise, and to advise upon, the pursuit of all reasonable lines of inquiry.³ In short, the obligation upon the prosecutor is to “*inform the investigator if, in their view, reasonable and relevant lines of further inquiry exist*”.⁴

6.2. **Secondly**, a prosecutor is under a duty to conduct an “*independent and objective*” analysis of the evidence, prior to commencing proceedings (which analysis should be undertaken with the “*utmost care*” and in an “*even-handed*” manner) – including an analysis “*not only of what evidence exists, but also of whether it is reliable and credible*”.⁵ That includes, where computer data is relied upon in the prosecution case, consideration of the operation of, and reliability of, that computer system.⁶

6.3. **Thirdly**, a prosecutor is under a duty to disclose to the accused any prosecution material which has not previously been disclosed, and which reasonably could be considered capable of undermining the case for the prosecution against the accused, or assisting the case for the accused.⁷ Fairness requires that “*full disclosure*” of such material should be

¹ Farquharson Committee on the Role of Prosecution Counsel; see also *Zinga* [2014] 1 WLR 2228, §61 (Lord Thomas CJ); *R (Kay) v Leeds Magistrates’ Court* [2018] EWHC 1233 (Admin), §23 (Sweeney J).

² Criminal Procedure and Investigations Act Code of Practice (1997 ed), §3.4; see also (2015 ed), §3.5. EXPG0000002, Expert Report of Duncan Atkinson KC, Volume 1, §98.

³ Attorney General’s Guidelines on Disclosure (2000 ed), §§13-17, 20-21; see also (2005 ed), §§32-40 EXPG0000002, Expert Report of Duncan Atkinson KC, Volume 1, §§260, 272.

⁴ Attorney General’s Guidelines on Disclosure (2000 ed), §17.

⁵ Code for Crown Prosecutors, §§2.4, 2.7-2.8, 4.4-4.8; *R (Holloway) v Harrow Crown Court* [2019] EWHC 1731 (Admin) at §§19-20 (Mailes J). See EXPG0000002, Expert Report of Duncan Atkinson KC, Volume 1, §§140-146.

⁶ EXPG0000002, Expert Report of Duncan Atkinson KC, Volume 1, §368; Transcript, 5 October 2023, p.60, ln.21-p.62, ln.18 (Mr Duncan Atkinson KC); Transcript, 6 October 2023, p.12, ln.19-p.14, ln.16 (Mr Duncan Atkinson KC).

⁷ Criminal Procedure and Investigations Act 1996, s 3(1).

given.⁸ This is an ongoing duty, and the prosecutor is required to keep the issue under review.⁹ Those duties are considered in greater detail in **Topic 4**, below.

- 6.4. **Fourthly**, a prosecutor has a number of important duties in connection with the instruction of expert witnesses. Those duties are considered in greater detail in **Topic 6**, below.
7. Importantly, it is clear that the foregoing duties are personal to the prosecutor; and cannot be delegated or sub-contracted out to third parties.¹⁰ It is no answer to a potential failure by the prosecutor to discharge those fundamental duties, for the prosecutor to impugn the conduct of third parties, unless the prosecutor can show that (consistently with their role as a ‘minister of justice’) they took all reasonable steps to discharge their own duties.
8. The Inquiry may well conclude, viewing the Phase 4 evidence as a whole, that a number of Post Office lawyers responsible for the conduct of criminal prosecutions routinely acted in a manner which was impossible to reconcile with their core duty to act as a ‘minister of justice’. That included Post Office investigators and lawyers prioritising personal interests,¹¹ or Post Office business and reputational interests, over the interests of justice, as well as condoning similar conduct by Post Office investigators. By way of illustration:

- 8.1. The Inquiry has received evidence of Post Office lawyers zealously and aggressively pursuing ‘test cases’, with a view to defending the integrity of the Horizon system.¹² That

⁸ *R v H* [2004] 2 AC 134 at §14; Attorney General’s Guidelines on Disclosure (2004 ed), Foreword (Lord Goldsmith).

⁹ See, e.g., Criminal Procedure and Investigations Act 1996, s 7A. However, it is clear that the fact that the duty was an *ongoing* one was recognised well before the enactment of that provision (see, e.g., s 9 as originally enacted). Mr Atkinson KC concludes that “*the continuing duties of the prosecution as to disclosure were operative in one form or another throughout the Inquiry’s relevant period*”: EXPG0000002, Expert Report of Duncan Atkinson KC, Volume 1, §227.

¹⁰ Transcript, 6 October 2023, p.92, ln.4-p.95, ln.1 (Mr Duncan Atkinson KC); *R v R* [2016] 1 WLR 1872 at §§32, 45 (the prosecutor must be “*in the driving seat at the stage of initial disclosure*”); *Alibhai* [2004] EWCA Crim 681.

¹¹ The Inquiry will recall the evidence that the payment of *personal* bonuses was linked to the conduct of prosecutions, and the recovery of apparent shortfalls. See: Transcript, 5 December 2023, p.55, ln.1-ln.24, see also p.58, ln.4-p.59, ln.18; p.61, ln.19-p.62, ln.5 (Mr David Posnett), see, e.g., POL00126734, ‘Objectives April 2012-March 2013, Dave Posnett – Security Operations Manager, Operations’; Transcript, 7 December 2023, p.216, ln.19-p.219, ln.4 (Mr Gary Thomas) (Q. “*Did that objective influence the way in which you acted as an Investigator?*” A. “*I’d probably be lying if I said no*”).

¹² POL00069622, Attendance note of Stephen Dilley dated 11 September 2006, p.5 (“*Mandy Talbot said that the difficulty is [the Castleton case] has almost become a test case in spite of itself*”); POL00070020, Attendance note of Stephen Dilley dated 22 January 2007, p.2 (“*Richard [Morgan] also offering to supply [Mandy Talbot] with a separate note on how she could use the judgment [in Castleton]*”); POL00006650, Transcript of Womble Bond Dickinson interview with Alison Bolsover, dated 9 January 2018, p. 39 (the Castleton case “*was seen as the test case of all test cases*”); POL00114310, Email chain dated 17 June 2010 ‘Re: Fw: Old Colwyn 447614 & Conway Road 440614’ (“*In effect a “test” case is*

attitude led senior Post Office employees to, for example, regard prosecutions resulting in conviction as an opportunity to “*set a marker to dissuade other Defendants from jumping on the Horizon bashing bandwagon*”.¹³ It will be obvious to the Inquiry that such an aim is incompatible with conducting oneself as a ‘minister of justice’.

- 8.2. Further, the Inquiry has received evidence that Post Office investigators and lawyers improperly had regard to Post Office’s financial position (including in relation to the recovery of ‘missing’ funds) in connection with prosecutorial decision-making. Indeed, it would be open to the Inquiry to conclude that debt recovery, rather than the interests of justice, was a pre-eminent motivating factor in the conduct of Post Office prosecutions.¹⁴ As Mr Atkinson noted, such an approach is not one which “*instils confidence in the independence, fairness, or transparency*” of prosecutorial decision-making.¹⁵
- 8.3. A mindset and culture which was antithetical to the interests of SPMs was reflected in internal Post Office correspondence and documentation concerning prosecutions which resulted in a conviction.¹⁶

Topic 2: Fujitsu’s contractual prosecution support obligations

9. In order to contextualise Fujitsu’s role in the prosecutions and civil proceedings pursued by Post Office against SPMs and branch staff; it is necessary to have regard to Fujitsu’s contractual

being put through the course relating to this and as such other cases are being put on hold until its outcome”); Transcript, 28 September 2023, p.50, ln.24-p.51, ln.5 (Ms Mandy Talbot) (“*By February 2006, however, [the Castleton case] had sort of morphed into a test case on Horizon, despite itself. We believed that it was a pure accountancy issue, in effect, but because of publicity sought, as I say, it was becoming a test case on Horizon*”); p. 160, ln.13-14 (“*Misra ... had become the next test case on the Horizon System*”); Transcript, 16 November 2023, p.123, ln.6-p.126, ln.13 (Mr Paul Whitaker).

¹³ POL00055590, Email chain dated 21 October 2010, ‘Regina v Seema Misra – Guildford Crown Court – Trial – Attack on Horizon’. See also: POL00107869, Email chain dated 5 February 2013, ‘Mrs Christine Ann Gourlay (Scotland). In his oral evidence, Mr Jarnail Singh sought to explain that the reference to prosecution acting as “*a deterrent to others*” was something he was “*specifically asked to consider*” by Mr John Scott: Transcript, 1 December 2023, p.4, ln.15-p.5, ln.15. The Inquiry is invited to reject that evidence as obviously implausible.

¹⁴ See, for example: POL00084977, ‘Former Subpostmaster End To End Debt Review’, v.0.5, dated December 2009 (“*The objectives of this review are to reduce future debt and improve debt recovery processes*”); Transcript, 5 December 2023, p.60, ln.17-p.61, ln.4 (Mr David Posnett) (“*one element or one focus*” of Post Office’s criminal litigation strategy was “*to recover monies owed*”, which was “*a significant part*” of Post Office’s overall prosecutions policy). See also: POL00121639, ‘Financial Investigations: Partnership for Recovery’ (2007/2008), p.3; Transcript, 22 November 2023, p.54, ln.10-p.57, ln.10 (Mr Gerald Harbinson) (Q. “*Is it fair to say that recovery was a key goal for the Fraud Team*”. A. “*It was a goal for the Financial Investigation Team.*”).

¹⁵ EXPG0000002, Expert Report of Duncan Atkinson KC, Volume 1, §353.

¹⁶ POL00055590, Email chain dated 21 October 2010, ‘Regina v Seema Misra – Guildford Crown Court – Trial – Attack on Horizon’ (“*we were able to destroy to the criminal standard of proof (beyond all reasonable doubt) every single suggestion made by the Defence*”, “*It is to be hoped the case will set a marker to dissuade other Defendants from jumping on the Horizon bashing bandwagon*”).

prosecution support obligations, and the way in which those obligations developed over time. For the avoidance of doubt, these submissions do not address the contractual relationship between SPMs and Post Office (as the Inquiry is aware, Fujitsu does not have any direct contractual relationship with SPMs). By way of summary of the significant developments over time:

10. Fujitsu has, since the signing of the Codified Agreement on 28 July 1999 (the “**Codified Agreement**”), been contractually obliged to provide Post Office with some form of prosecution support services. The precise nature of that obligation was varied (and, expanded) over time. In each case, the prosecution support obligation was the product of contractual negotiations between Fujitsu and Post Office. That feature of the development of the prosecution support services is significant to the extent that several Post Office witnesses suggested that limitations inherent in the contractual arrangements between Post Office and Fujitsu affected their conduct of investigations and prosecutions. Of course, any ‘limitations’ (such as they were) were the product of express agreement by Post Office, and were liable to be renegotiated by Post Office at any time. Further, the underlying documentation suggests (unsurprisingly) that Post Office staff who were engaged in the operation of the contract were involved in the granular detail of Fujitsu’s contractual obligations, and thus were aware of the complexities thereof.¹⁷
11. Under the Codified Agreement (from 28 July 1999 to 30 December 2002) Fujitsu’s prosecution support obligations were narrow in scope. The Codified Agreement specified that Fujitsu was obliged to ensure that relevant information provided at the request of Post Office was “*evidentially admissible and capable of certification in accordance with the Police and Criminal Evidence Act (PACE) 1984, the Police and Criminal Evidence (Northern Ireland) Order 1989 and equivalent legislation covering Scotland*”. Fujitsu was also obliged to retain “[an] audit trail and other information necessary to support live investigations and prosecutions... for the duration of the investigation and prosecution”.¹⁸
12. In this early period, Fujitsu was not under any contractual obligation to provide witness statements (factual or expert), nor to make witnesses available in court proceedings.¹⁹ Any

¹⁷ See, for example, the evidence cited at fn 206, below.

¹⁸ FUJ00000071, Codified Agreement, 28 July 1999, §§4.1.8 and 4.1.9, p.97. See also, §1.133 of Schedule A15 (Requirement 829) (ibid, p.249-250).

¹⁹ See for example FUJ00079875, Operational Manual for the Customer Services Directorate, v1, 26 November 2001, p. 86 and FUJ00079888, Operational Manual for the Customer Services Directorate’, v2, 1 May 2002 which provided that “*Fujitsu Services Pathway has no current contractual obligation to provide prosecution support to POL. CS Security currently provide this support on a “without prejudice” basis pending contractual agreement*” (§3.14.25) and “*CS Security provides witnesses to attend Court if required to support statements. Whilst Fujitsu Services Pathway has no contractual obligation to do this it does so to avoid formal subpoena. CS Security personnel provide statements of fact. They are not expert*

specific support provided by Fujitsu was the result of Post Office raising an *ad hoc* Change Request. See for example the draft document titled ‘Network Banking Management of Prosecution Support’ (v0.1, dated 11 February 2002)²⁰ which records the parties’ position at the time that:

*“Provision of prosecution support for the existing [Horizon] service has not been agreed under contract Provision of the current data retrieval support service is based upon an informal agreement between the Director of Horizon Commercial and the Director of Pathway Quality. [...] The provision of litigation support (specifically the provision of witness statements) is similarly not formalised and is currently provided on a “without prejudice subject to contract” basis pending the receipt of an appropriate Change Request” (§1.1).*²¹

This document provided that record queries were to be made “*via the Record Query Form*” which was “*agreed*” between Post Office and Fujitsu (§3.3, p. 10, and Appendix 1, p. 25).

13. Broader obligations relating to prosecutorial and litigation support were first introduced in the Horizon Contract effective from 31 December 2002. Under the Horizon Contracts effective from 31 December 2002 to 15 August 2006, Fujitsu’s prosecution support and record keeping obligations were set out in the relevant part of the ‘Service Description for Security Management Service’²² CCD (the “**Security Management Service CCD**”).²³ This provided as follows:

13.1. Under the Security Management Service CCD, Post Office could raise Audit Record Queries (“**ARQs**”), which involved, *inter alia*, Fujitsu extracting records relating to transactions from the audit trail (§3.10.1).

witnesses. Where expert witness testimony is required other members of Fujitsu Services Pathway or ISD Operations may be required” (§3.14.25.4).

²⁰ FUJ00152189, Network Banking Management of Prosecution Support’, v0.1, 11 February 2002, p. 7.

²¹ The agreed version 1 of the CCD (FUJ00152205, v1, 26 November 2002) states that: “*Prior to Network Banking contract signing this provision [of prosecution support] was supported under a CR [Change Request] received to request such a facility... The provision of prosecution support (specifically the provision of witness statements of fact) was similarly not formalised and was provided on a “without prejudice subject to contract” basis pending the receipt of the aforementioned Change Request” (§2).*

²² FUJ00001743, Service Description for the Security Management Service v1, 6 January 2003; FUJ00176273, Service Description for the Security Management Service v2, 4 December 2004; FUJ00002000, Service Description for the Security Management Service v3, 6 March 2006. This CCD was referred to in Schedule 19 of the Horizon Contracts effective between 31 December 2002 to 15 August 2006, which set out the Operational Services which were to be performed by Fujitsu.

²³ In the contractual relationship between Post Office and Fujitsu, a ‘Contract Controlled Document’ or ‘CCD’ is a document providing further detail as to the parties’ respective contractual obligations. A CCD is a contractual document, agreed between the parties. FUJ00000071, the Codified Agreement, 28 July 1999 describes a CCD as “*A document which is referred to in this Codified Agreement and which the parties have agreed may only be amended through the Change Control Procedure*”, p.73.

- 13.2. At Post Office’s request, Fujitsu could also be required to, in responding to ARQs raised by Post Office, **(i)** present records of transactions extracted by that query in a format agreed between Post Office and Fujitsu, **(ii)** analyse certain records, reports and logs, including “*fault logs for the devices from which the records of Transactions were obtained*”, **(iii)** prepare witness statements of fact in relation to that query “*to the extent that such statements are reasonably required for the purpose of verifying the integrity of the records*”, and **(iv)** allow its employees to attend court to give evidence.²⁴
- 13.3. Fujitsu was required to provide the support at **(ii)** and **(iii)** above up to a maximum number of ARQs per year on a rolling year basis. Furthermore, Fujitsu was required to provide witnesses to attend court for up to a maximum number of days per year on a rolling year basis.²⁵
- 13.4. While there was no provision for a charge payable per ARQ, there was an annual charge payable for the Security Management Service (pursuant to which prosecution support services were provided by Fujitsu).²⁶ This annual charge was liable to be increased if Post Office varied the maximum number of ARQs that Fujitsu was required to carry out per year.²⁷
14. The agreements relevant to the implementation of HNG-X (effective from 31 August 2006 to present) imposed materially identical obligations as those set out in the Security Management Service CCD, subject to minor changes. These obligations were set out in the Security Management Service: Service Description CCD (§2.1.13.1) and included the provision that any information, witness statements or witness attendance beyond the limits set out in the CCD shall “*be agreed on a case by case basis and shall be dealt with in accordance with the Change Control Procedure*” (§2.1.13.3).²⁸

²⁴ FUJ00001743, Service Description for the Security Management Service v.1, 6 January 2003 (§3.10.8)

²⁵ Ibid.

²⁶ See FUJ00000074, FUJ00000087, FUJ00000079, FUJ00000080, FUJ00000081, FUJ00000082, FUJ00000083, clause 10.1.1 and Schedule 10, paragraph 2 of the Horizon Contracts effective between 31 December 2002 to 15 August 2006.

²⁷ See FUJ00000074, FUJ00000087, FUJ00000079, FUJ00000080, Schedule 10, paragraph 5.12 and FUJ00000081, FUJ00000082, FUJ00000083, Schedule 10, paragraph 5.14 of the Horizon Contracts effective between 31 December 2002 to 15 August 2006.

²⁸ FUJ00088180, Security Management Service: Service Description v1, 24 August 2006; FUJ00088337, Security Management Service: Service Description v2, 31 December 2008; FUJ00088683, Security Management Service: Service Description v3, 15 October 2010; FUJ00088869, Security Management Service: Service Description v4, 4 December 2013; FUJ00088897, Security Management Service: Service Description v5, 4 April 2014; FUJ00089152, Security Management Service: Service Description v6, 21 May 2015; FUJ00232973, Security Management Service: Service Description v8, 26 April 2023.

15. A more extensive prosecution support obligation was provided for in version 9 of the Horizon Contract which was effective from 13 January 2014. That amendment was given effect through CCN1400, which amended clause 25 of version 9 of the Horizon Contract (and all subsequent versions). Clause 25 stipulates that Fujitsu is obliged to provide “*Court Case Support Services to Post Office in relation to prosecutions and other disputes (whether civil or criminal) with any third party*” (clause 25.8).²⁹
16. The scope of the “*Court Case Support Services*” is set out at clause 25.9, and includes (i) “*the provision of data (including transaction data, event logs, helpdesk call logs, non-pollled data and remuneration data) where such data is held by or in the control of Fujitsu Services*” (clause 25.9.2); (ii) “*the provision of technical reports regarding technical aspects of any system (whether Horizon, HNG-X or otherwise)*” (clause 25.9.5); and (iii) “*live witness evidence at Court if any of the information provided... is challenged to the extent to which Fujitsu Services provided said information*” (clause 25.9.6). Further, clause 25.10 provides that, to the extent Fujitsu’s costs in providing the “*Court Case Support Services*” are not recoverable charges under the Horizon Contract, then Fujitsu “*shall be entitled to charge (and Post Office shall pay) additional reasonable and demonstrable costs provided Fujitsu Services can evidence such costs to Post Office’s reasonable satisfaction and wherever possible agree them in advance with Post Office*”.
17. That clause 25 is replicated in all subsequent versions of the Horizon Contract, including version 14 (issued on 20 December 2021).³⁰
18. Notwithstanding the apparent breadth of those contractual obligations, it is a recurrent feature of the case studies examined by the Inquiry in Phase 4 that, for a number of those case studies: (i) no ARQ data was obtained by Post Office from Fujitsu;³¹ (ii) no Fujitsu witnesses were requested to give evidence on behalf of Post Office;³² and, in many cases (iii) there is no evidence of direct contact between Post Office and Fujitsu whatsoever.³³ To some extent, this suggests that,

²⁹ FUJ00001095, CCN1400, 11 September 2013.

³⁰ FUJ00234786, Horizon Contract v14, 20 December 2021.

³¹ This appears to be true in the cases of: Ms Lisa Brennan, Mr David Yates, Mr David Blakey, Mr Tahir Mahmood, Mr Carl Page, Ms Suzanne Palmer, Ms Joan Bailey, and Ms Allison Henderson. See: Transcript, 18 December 2023, p.96, ln.1-ln.8; p.96, ln.14-p.97, ln.16; p.97, ln.17-p.99, ln.2; p.102, ln.4-p.103, ln.7; p.106, ln.3-ln.11; p.106, ln.12-ln.25; p.118, ln.7-p.119, ln.7; p.119, ln.14-p.120, ln.3 (Mr Duncan Atkinson KC).

³² This appears to be true in the cases of: Ms Lisa Brennan, Mr David Yates, Mr David Blakey, Mr Tahir Mahmood, Ms Suzanne Palmer, Ms Joan Bailey, and Ms Allison Henderson. See: Transcript, 18 December 2023, p.96, ln.1-ln.8; p.96, ln.14-p.97, ln.16; p.97, ln.17-p.99, ln.2; p.102, ln.4-p.103, ln.7; p.106, ln.12-ln.25; p.118, ln.7-p.119, ln.7; p.119, ln.8-p.120, ln.3 (Mr Duncan Atkinson KC).

³³ This appears to be true in the cases of: Ms Lisa Brennan, Mr David Yates, Mr David Blakey, Mr Tahir Mahmood, Ms Suzanne Palmer, Ms Joan Bailey, and Ms Allison Henderson. See: Transcript, 18 December 2023, p.96, ln.1-ln.8; p.96, ln.14-p.97, ln.16; p.97, ln.17-p.99, ln.2; p.102, ln.4-p.103, ln.7;

notwithstanding the apparent breadth of Fujitsu’s contractual prosecution support obligations, the extent to which those contractual obligations were *in fact* called upon in practice was more limited. In view of that evidence, where issues arise concerning the nature of the support provided by Fujitsu to Post Office in relation to criminal and civil proceedings, it is necessary to closely scrutinise the precise support which was sought in any given case. It cannot be assumed that, simply because the proceedings arose from data produced by the Horizon system, it follows necessarily that Fujitsu provided particular support in relation to those proceedings (or, even, that it was necessarily aware of the existence of the relevant proceedings). Of course, Fujitsu accepts that in some cases, although Fujitsu provided no particular support to a prosecution or civil claim (for example, by the specific extraction of ARQ data, or the provision of a witness statement), it is nonetheless clear that information derived from the Horizon system was instrumental to a number of the wrongful prosecutions and civil proceedings pursued against SPMs. Further, Fujitsu accepts that, once support was provided by Fujitsu to Post Office in a particular case (for example, in the form of witness evidence), Fujitsu lacked control, and typically lacked knowledge, as to how that evidence would be deployed by Post Office in that case, or in any subsequent cases.

19. In the course of Phase 4, the Inquiry has sought to explore whether the introduction of the Horizon system resulted in an increase in the number of prosecutions and civil claims against SPMs. It is submitted that the available evidence does not permit the Inquiry to draw any clear conclusion in that regard. That is so because, both: **(i)** the available evidence is known to be incomplete and of a poor quality;³⁴ and **(ii)** to the extent that the evidence may be relied upon, it appears to suggest a trend of increasing prosecutions between 1996 and 1999 – i.e., *prior to* the introduction of Horizon – which figures remained relatively constant thereafter.³⁵

p.106, ln.12-ln.25; p.118, ln.7-p.119, ln.7; p.119, ln.14-p.120, ln.3 (Mr Duncan Atkinson KC). Mr Atkinson further stated that the position was “*not absolutely clear*” in relation to the case of Mr Peter Holmes because, while “*a degree of Horizon material*” was obtained, the source of that material was unclear, and there was no evidence of “*the results of any such contact [with Fujitsu], or, indeed, any document that set out such contact*”: Transcript, 18 December 2023, p.110, ln.8; p.111, ln.2 (Mr Duncan Atkinson KC).

³⁴ WITN09890100, First Witness Statement of Simon Recaldin, dated 30 March 2023; WITN09890200, Second Witness Statement of Simon Recaldin, dated 13 July 2023; WITN09890208, Appendix II to the Second Witness Statement of Simon Recaldin (and, in particular, the material under the heading ‘Notes’); WITN09890300, Third Witness Statement of Simon Recaldin, dated 29 September 2023; Transcript, 29 September 2023, p.109, ln.1-ln.20 (Mr Simon Recaldin).

³⁵ WITN09890208, Appendix II to the Second Witness Statement of Simon Recaldin.

Topic 3: Post Office criminal investigations

20. A significant amount of the evidence in Phase 4 concerned the conduct of criminal investigations on behalf of Post Office. It is anticipated that other Core Participants will make more detailed submissions regarding the conduct of investigators in individual case studies. Fujitsu makes the following five over-arching observations:
21. **First**, it is clear that a significant number of individuals involved in the investigation and prosecution of SPMs were in fact aware of the existence of bugs, errors, and defects (“BEDs”) within the Horizon system and other relevant Post Office and third party accounting systems, and were further aware that such BEDs had the capacity to impact upon the integrity of branch accounts. As to that:
- 21.1. The evidence establishes that *at least* the following individuals involved in the investigation and prosecution of SPMs had contemporaneous awareness of the existence of BEDs within the Horizon system and other relevant Post Office and third party systems, and were further aware that such BEDs had the capacity to impact upon the integrity of branch accounts: Ms Alison Bolsover,³⁶ Mr Steve Bradshaw,³⁷ Mr Graham Brander,³⁸ Mr John Breeden,³⁹ Ms Marie Cockett,⁴⁰ Ms Elaine Cottam,⁴¹ Mr Jim Cruise,⁴² Mr Mark Dinsdale,⁴³ Mr Paul Inwood,⁴⁴ Mr Christopher Knight,⁴⁵ Mr John Longman,⁴⁶ Ms Jessica

³⁶ Transcript, 19 October 2023, p.113, ln.2-24 (Ms Alison Bolsover).

³⁷ POL00165450, Email chain dated 4 June 2014, ‘GY:I5665193 – Notice #4 – P2 – SERVICE/SYSTEMS DOWN OR OFFLINE – Issues with transfer acknowledgment in National Lottery system – this is causing duplicate tickets’.

³⁸ POL00044389, Post Office Ltd Investigation report for Josephine Hamilton, dated 17 May 2006, pp.5-6, 8.

³⁹ POL00095547, Email chain dated 22 March 2011-21 April 2011, ‘FW: Scope of Declarations’, pp.1, 3.

⁴⁰ Transcript, 20 October 2023, p.58, ln.24-p.60, ln.6 (Ms Marie Cockett).

⁴¹ FUJ00055145, PinICL PC0056916, opened 2 November 2000, p.3 (Ms Cottam is reported as having said that “*one of the SU’s had something added to it, whilst rolling over*”).

⁴² POL00118236, Email chain dated 17 March 2004-19 May 2004, ‘Cleveleys MSPO Mrs J. Wolstenholme’, p.2 (nb. Reference to Best Practice plc Expert Report)

⁴³ FUJ00153132, Email chain dated 30 June 2010-15 July 2010, ‘RE: Duplication of Transaction Records in ARQ Returns’.

⁴⁴ POL00114930, Email chain dated 7 May 2009-8 May 2009, ‘Fw: Re letter from BERR re challenge to Horizon integrity’, p.1 and Transcript, 13 October 2023, p.29, ln.24–p.30, ln.3; POL00114697, Email chain dated 5 September 2011, ‘Mr. Julian Wilson, Astwood Bank, FAD 346 246’, pp.1, 7.

⁴⁵ POL00021244, Transcript of interview with Ms Alison Hall, p.5 (“*I think it’s to do with discrepancy with the lottery, and I’m hoping that we can come to the bottom of this. ... But I just want all this to be looked at in detail and because Horizon system’s not 100 per cent, if I’ve got all the details here. I’d like that to, um, be taken into account, please*”).

⁴⁶ FUJ00153157, Email chain dated 22-27 July 2010, ‘RE: REGINA V SEEMA MISRA – GUILDFORD CROWN COURT – TRIAL’.

Madron,⁴⁷ Ms Diane Matthews;⁴⁸ Ms Juliet McFarlane,⁴⁹ Mr Tony Marsh,⁵⁰ Ms Jane Owen,⁵¹ Ms Catherine Oglesby,⁵² Mr David Pardoe,⁵³ Mr Thomas Pegler,⁵⁴ Mr David Posnett;⁵⁵ Mr Colin Price,⁵⁶ Ms Helen Rose,⁵⁷ Mr Kevin Ryan,⁵⁸ Mr Jarnail Singh,⁵⁹ Mr Alan Simpson,⁶⁰ Mr Martin Smith,⁶¹ Ms Mandy Talbot,⁶² Mr Warwick Tatford,⁶³ Mr Gary

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- 47 POL00114930, Email chain dated 7-8 May 2009, 'Fw: Re letter from BERR re challenge to Horizon integrity', p.1.
- 48 Transcript, 24 November 2023, p.8, ln.20-p.9, ln.21; p.11, ln.11-p.13, ln.4 (Ms Diane Matthews) ("*I was aware there was issues, yes*").
- 49 FUJ00153132, Email chain dated 30 June 2010-15 July 2010, 'RE: Duplication of Transaction Records in ARQ Returns'.
- 50 Transcript 5 July 2023, p.158, ln.1-p.159, ln.2 (Mr Tony Marsh).
- 51 FUJ00153132, Email chain dated 30 June 2010-15 July 2010, 'RE: Duplication of Transaction Records in ARQ Returns'.
- 52 Transcript, 16 November 2023, p.146, ln. 4-ln. 23 (Ms Catherine Oglesby)
- 53 POL00165450, Email chain dated 4 June 2014, 'GY:I5665193 – Notice #4 – P2 – SERVICE/SYSTEMS DOWN OR OFFLINE – Issues with transfer acknowledgment in National Lottery system – this is causing duplicate tickets'; Transcript, 29 November 2023, p.112 ln.19-23 (Mr David Pardoe) ("*Q. ... On its face, this seems to be reporting a systems issue, meaning that Camelot branches would not be able to balance; is that your understanding of it? A. It does, yes*").; POL00165493, Email chain dated 10 July 2014, 'GY:I5804252 – Notice #2 – P1 – SERVICE/SYSTEMS PERFORMANCE DEGRADED – Reference Data Integrity Not proven error in Horizon'.
- 54 Transcript, 13 October 2023, p.156, ln.12-p.157, ln.14 (Mr Thomas Pegler).
- 55 Transcript, 6 December 2023, p.29, ln.4-p.30, ln.4 (Mr David Posnett).
- 56 POL00044389, Post Office Ltd Investigation report for Josephine Hamilton, dated 17 May 2006, pp.5-6, 8.
- 57 Transcript, 19 September 2023, p.99, ln.15-p.100, ln.4 (Ms Helen Rose), referring to POL00097481, Email chain dated 7-13 February 2013, 'RE: Lepton logs', p.3 ("*I know you are aware of all the horizon integrity issues*"). See also: FUJ00086811, 'Horizon data Lepton SPSO 191320', dated 12 June 2013, p.2.
- 58 POL00165450, Email chain dated 4 June 2014, 'GY:I5665193 – Notice #4 – P2 – SERVICE/SYSTEMS DOWN OR OFFLINE – Issues with transfer acknowledgment in National Lottery system – this is causing duplicate tickets'; POL00044222, 'Area Intervention Manager Visit Log' in relation to the Fazakerley Branch, dated 6 September 2005, p.1; POL00044223, 'Area intervention manager visit log' -in relation to the Fazakerley branch dated 6 February 2006, p.1 and Transcript 13 December 2023, p.161, ln.14-p.163, ln.2 regarding GiroBank errors.
- 59 FUJ00152930, Email chain dated 5 February 2010 'RE: WEST BYFLEET ISSUES – SEEMA MISRA – Legally Privileged', p.1 ("*It is possible for there to be problems where transactions have been "lost" in particular circumstances due to locking issues.*"); Transcript, 1 December 2023, p.107, ln.19-p.108, ln.9 (Mr Jarnail Singh) (Mr Singh agreed that this was "*a huge red flag*" and that it does not "*get any more significant than that*").
- 60 POL00165450, Email chain dated 4 June 2014, 'GY:I5665193 – Notice #4 – P2 – SERVICE/SYSTEMS DOWN OR OFFLINE – Issues with transfer acknowledgment in National Lottery system – this is causing duplicate tickets'; FUJ00153132, Email chain dated 30 June 2010-15 July 2010, 'RE: Duplication of Transaction Records in ARQ Returns'; FUJ00081584, 'Receipts/Payments Mismatch issue notes', p.1.
- 61 POL00043371, POL Meeting Minutes to discuss Horizon Issues, dated 16 October 2013.
- 62 Transcript, 28 September 2023, p.75, ln.15-p.76, ln.11 (Ms Mandy Talbot) ("*we had become aware of potential glitches*").
- 63 WITN09610100, First Witness Statement of Warwick Henry Patrick Tatford, dated 25 October 2023, §11.

Thomas,⁶⁴ Mr Graham Ward,⁶⁵ Mr Paul Whitaker,⁶⁶ Ms Sarah White,⁶⁷ Mr Michael Wilcox,⁶⁸ Ms Suzanne Winter,⁶⁹ and Mr Andrew Wise.⁷⁰

21.2. The Inquiry will observe, from the foregoing list of names, that the individuals identified (i) came from a range of teams within Post Office, (ii) were of varying levels of seniority within Post Office, (iii) include Post Office's external advisors, and (iv) worked at or with Post Office throughout the Inquiry's relevant period. The Inquiry will further note that the foregoing list includes a number of individuals with particularly significant decision-making and oversight roles in connection with the commencement of civil and criminal proceedings against SPMs, including Mr Stephen Bradshaw, Mr Jarnail Singh, Mr Graham Ward, and Mr Rob Wilson.

21.3. That a significant number of individuals with different roles involved in the investigation and prosecution of SPMs had contemporaneous awareness of the existence of BEDs within the Horizon system undoubtedly reflects the fact that, as Fujitsu submitted in its Phase 3 closing submissions, knowledge of those matters was widespread within Post Office.⁷¹ Fujitsu does not propose to repeat those submissions as to the various ways in which information concerning the existence of identified BEDs was known to, and communicated by Fujitsu to, Post Office. It is also clear that the knowledge was disseminated across a number of Post Office departments (e.g., security, product and branch accounting, investigations, legal, etc.). However, that background provides important context to the conduct of criminal investigations by Post Office.

⁶⁴ POL00107562, Email from G. Thomas to G. Adderley, H. Rose and P. Southin dated 10 November 2011, '48 Hour Offender Reporting – Yetminster – POLTD'; Transcript, 7 December 2023, p.210, ln.20-p.211, ln.15 (Mr Gary Thomas).

⁶⁵ POL00119895, 'Meeting Notes – Horizon Integrity', dated 6 December 2005, p.3, §12; FUJ00152587, Email chain dated 10-28 March 2006, 'Gaerwen statement'.

⁶⁶ Transcript, 16 November 2023, p.121, ln.9-p.122, ln.12 (Mr Paul Whitaker).

⁶⁷ POL00114930, Email chain dated 7-8 May 2009, 'Fw: Re letter from BERR re challenge to Horizon Integrity', p.1.

⁶⁸ POL00172809, 'Security 4 Weekly Report', dated 12 March 2010, p.3 (*nb* heading 'Security programmes for products', and the contents thereunder). This document was sent to, *inter alia*, Mr Wilcox, see: POL00172808, Email chain dated 12 March 2010, 'Security – 4 Weekly Highlight Report 12 March 2010'.

⁶⁹ POL00165450, Email chain dated 4 June 2014, 'GY:15665193 – Notice #4 – P2 – SERVICE/SYSTEMS DOWN OR OFFLINE – Issues with transfer acknowledgment in National Lottery system – this is causing duplicate tickets'.

⁷⁰ Transcript, 20 September 2023, p.54, ln.3-ln.9, p.109, ln.10-p.110, ln.12; p.110, ln.21-p.112, ln.3 (Mr Andrew Wise); *cf* WITN09090100, First Witness Statement of Mr Andrew Wise, dated 31 May 2023 at §87.

⁷¹ SUBS0000025, Phase Three Closing Submissions on Behalf of Fujitsu Services Limited, §§3-10.

21.4. The Inquiry may consider that a striking feature of the evidence in Phase 4 was the significant number of Post Office witnesses who *initially* (i.e. in their witness statements) denied *any* knowledge whatsoever of BEDs in the Horizon system and other relevant Post Office and third party systems, but who *subsequently* (i.e. following the provision of documents, often arising from very late disclosure) were forced to concede that contemporaneous evidence established that they did, in fact, have such knowledge. Such witnesses included: Mr Andrew Bolc,⁷² Mr Stephen Bradshaw,⁷³ Mr Graham Brander,⁷⁴ Ms Marie Cockett,⁷⁵ Mr Andrew Hayward,⁷⁶ Mr Thomas Pegler,⁷⁷ Mr Gary Thomas,⁷⁸ Mr Graham Ward,⁷⁹ and Mr Andrew Wise.⁸⁰ The Inquiry will well appreciate the significance of those shifts in evidence (including because they serve to demonstrate the potential significance of ‘gaps’ in disclosed contemporaneous documentary evidence, where the witness’ current memory may be lacking).

21.5. Further, a number of the individuals involved in the investigation and prosecution of SPMs expressed the (undoubtedly correct) view that an IT system of the scale and complexity of the Horizon system was overwhelmingly likely (notwithstanding attempts at remediation) to have some level of BEDs inherent to the system – including *unknown* BEDs. See, for example, the evidence of: Mr Martin Ferlinc,⁸¹ Mr David Posnett,⁸² Mr Michael Wilcox;⁸³ Mr Graham Ward,⁸⁴ and Mr Warwick Tatford.⁸⁵ More concerning, however, is the fact that

⁷² Transcript, 15 December 2023, p.2, ln.1-ln.16 (Mr Andrew Bolc) (“*Subsequent to this statement, I received further documentation including an email I was copied into. [...] I suspect that would be counted as potentially a defect in the system*”).

⁷³ Transcript, 11 January 2024, p.57, ln.2-p.58, ln.14 (Mr Stephen Bradshaw).

⁷⁴ Transcript, 28 November 2023, p.81, ln.22-p.84, ln.19; p.92, ln.18-p.93, ln.24 (Mr Graham Brander).

⁷⁵ Transcript, 20 October 2023, p.58, ln.24-p.60, ln.6 (Ms Marie Cockett). See also: Transcript, 20 October 2023, p.49, ln.16-p.50, ln.3 (Ms Marie Cockett) (having been shown various emails regarding BEDs, Ms Cockett conceded “*I think, given the fact that I was copied in on these emails, yes, I must have been aware of but I don’t remember them now*”).

⁷⁶ Transcript, 10 October 2023, p.113, ln.4-ln.6 (Mr Andrew Hayward); *cf* Transcript, 10 October 2023, p.117, ln.1-p.118, ln.6 (Mr Andrew Hayward).

⁷⁷ Transcript, 13 October 2023, p.156, ln.12-p.157, ln.14 (Mr Thomas Pegler).

⁷⁸ Transcript, 7 December 2023, p.210, ln.7-ln.19 (Mr Gary Thomas) (Q. “*Throughout your statement, and again today, you’ve emphasised that you were not aware of any bugs, errors or defects in Horizon while you were an Investigator. But do you accept that, during your time as an Investigator, you’d been told by multiple sub-postmasters that they were having problems with Horizon?*” A. “*I wouldn’t say multiple but, yeah*” Q. “*More than one?*” A. “*More than one, yes*”).

⁷⁹ Transcript, 1 February 2024, p.112, ln.10-p.113, ln.20 (Mr Graham Ward).

⁸⁰ Transcript, 20 September 2023, p.54, ln.3-ln.9, p.109, ln.8-p.110, ln.12; p.110, ln.23-p.112, ln.3 (Mr Andrew Wise); *cf* WITN09090100, First Witness Statement of Mr Andrew Wise, dated 31 May 2023 at §87.

⁸¹ Transcript, 4 July 2023, p.84, ln.14-p.86, ln.5 (“*Okay. I mean, in terms of bugs, I suppose, from my perspective at the time and even now, would be that any software will have some bugs. That’s why we have software updates and fixes.*”).

⁸² Transcript, 5 December 2023, p.58, ln.11-p.59, ln.4 (Mr David Posnett).

⁸³ Transcript, 7 December 2023, p.60, ln.12-p.62, ln.25 (Mr Michael Wilcox).

⁸⁴ WITN10590100, First Witness Statement of Graham Ward, 4 January 2024, §112.

⁸⁵ Transcript, 15 November 2023, p.193, ln.15-p.194, ln.1 (Mr Warwick Tatford).

the *appreciation* of that obvious fact about complex IT systems rarely appeared to *impact* upon those individuals' approach to the investigation and prosecution of SPMs. The Inquiry may well conclude that, despite recognising the *fact* that there were likely BEDs inherent to the system, there was a persistent failure by Post Office investigators and lawyers to appreciate the obvious *significance* of that fact and/or to act upon it in the context of particular alleged 'shortfalls'.

21.6. Further, it is clear that a number of individuals involved in the investigation and prosecution of SPMs *acquired* significant knowledge regarding the impact of BEDs in the Horizon system over the course of the Inquiry's relevant period – not least, because a number of those involved in the investigation and prosecution of SPMs were (or became) aware of a *number* of cases in which SPMs had called into question the integrity of the system.⁸⁶

22. By way of illustration, in February/March 2010,⁸⁷ several internal meetings were held across a number of Post Office teams (including, relevantly, the security and legal teams) to address 'Horizon disputed cases'.⁸⁸ The Inquiry may well consider that several features of the contemporaneous documentation in relation to those meetings are of real significance:

22.1. **First**, it is clear that the impetus for these meetings was a recognition within Post Office that there were a number of cases in which "*the accused's defence was/is that the Horizon data is unreliable*" – and that (at that time) Post Office had no complete list of such cases.⁸⁹ Mr John Scott accepted that this ought to have been a matter of "*significant concern*" to him as Post Office Head of Security.⁹⁰

22.2. **Secondly**, the original agreed outcome of those meetings, as initially communicated by Mr Andrew Hayward, was to "*conduct full investigations into integrity issues, with conclusions / report provided*", which investigation was to receive "*external verification*

⁸⁶ See, e.g., POL00106867, Email chain dated 25 February 2010 to 3 March 2010, 'Re: Fw: Challenges to Horizon'.

⁸⁷ In fact, similar meetings had taken place since at least 2005, see: POL00119895, 'Meeting Notes – Horizon Integrity', dated 6 December 2005.

⁸⁸ POL00106867, Email chain dated 25 February 2010 to 3 March 2010, 'Re: Fw: Challenges to Horizon'. Transcript, 11 October 2023, p.142, ln.15-ln.19 (Mr John Scott) (Q. "*does it follow that, by ... February 2010, there was no central repository of issues that subpostmasters had raised with the integrity of Horizon data?*") A. "*Not that I can recall.*").

⁸⁹ POL00106867, Email chain dated 25 February 2010 to 3 March 2010, 'Horizon disputed cases', p.27.
⁹⁰ Transcript, 11 October 2023, p.153, ln.3-ln.20 (Mr John Scott). The Inquiry is invited to reject the (hindsight, self-serving) contrary evidence of Mr Tony Utting that he "*wouldn't have considered [the 2005 Horizon integrity issues] to be massively significant to me*": Transcript, 17 November 2023, p.81, ln.7-ln.11 (Mr Tony Utting). That evidence is obviously implausible.

to give a level of ‘external gravitas’ to the response to these challenges”.⁹¹ It is clear that the concern related to the integrity of data produced by the Horizon system (“*the veracity of Horizon*”).

22.3. **Thirdly**, that initial proposal drew strong criticism from Mr Rob Wilson, then Post Office Head of Criminal Law.⁹² Mr Wilson’s email response is plainly a document of considerable importance, which the Inquiry will wish to consider with great care. In relation to that response, Fujitsu notes the following: (i) Mr Wilson plainly recognised that issues with the integrity of the Horizon system, if well founded, threatened Post Office’s ability “*to commence or continue to proceed with any criminal proceedings*”; (ii) Mr Wilson also plainly recognised that the documented report of any investigation (whether external, or internal) into issues concerning the integrity of the Horizon system “*will be disclosable as undermining evidence*” in pending and concluded criminal investigations; (iii) Mr Wilson also appeared to recognise, by implication, that the *fact* of any investigation into issues concerning the integrity of the Horizon system may be disclosable in pending cases (“*If we were to secure convictions in the knowledge that there was an investigation, where the investigation established a difficulty with the system we would be open to criticism and appeal to the Court of Appeal*”); **but** (iv) Mr Wilson appeared to regard the foregoing as a reason not to proceed with “*full investigations into integrity issues*”, as proposed by Mr Hayward. Fujitsu notes that Mr Wilson denied that the latter point reflected his intention in sending this email.⁹³ However, the Inquiry may well consider that there is sufficient evidence to reject Mr Wilson’s (hindsight, self-serving) explanation, and to conclude that *in fact* his intention was to dissuade those involved from proceeding with “*full investigations into integrity issues*”. That is, certainly, a more natural reading of Mr Wilson’s email, and is consistent with how that email was understood by its recipients, both at the time (as below), and in their evidence before the Inquiry.⁹⁴

22.4. **Fourthly**, and apparently in response to Mr Wilson’s email, Ms Sue Lowther, a member of the Post Office Information Security team, confirmed that the intention was to conduct “*a ‘general’ due diligence exercise on the integrity of Horizon*”, designed “*to confirm our [that is, Post Office’s] belief in the robustness of the system and thus rebutt [sic] any*

⁹¹ POL00106867, Email chain dated 25 February 2010 to 3 March 2010, ‘Re: Fw: Challenges to Horizon’, p.3.

⁹² POL00106867, Email chain dated 25 February 2010 to 3 March 2010, ‘Re: Fw: Challenges to Horizon’, p.1.

⁹³ Transcript, 12 October 2023, p.162, ln.1-p.164, ln.11 (Mr Rob Wilson).

⁹⁴ Transcript, 11 October 2023, p.158, ln.4-ln.11 (Mr John Scott) (Mr Scott agreed that the email read as Mr Wilson saying “*If we get on and investigate, we’ll be in serious trouble if we do*”).

challenges”.⁹⁵ As Ms Lowther clarified, the intention was “to examine that the Security controls that we have specified for Horizon and those systems with which it interfaces are indeed in place and working correctly”.⁹⁶ That is, plainly, a considerably more limited inquiry than the “full investigations into integrity issues” (with external input) previously proposed.

23. Notwithstanding the foregoing, the Inquiry may well consider that there is significant evidence of the ‘siloiing’ of information within Post Office – and, in particular, a systemic failure to share information known about particular BEDs. The extent to which that ‘siloiing’ of information may have impacted upon Post Office’s fulfilment of its disclosure obligations is addressed in Topic 4, below. For present purposes, it is sufficient to note that the *fact* of ‘siloiing’ of relevant information within Post Office is evident from, at least, the following:⁹⁷

- 23.1. A number of Post Office witnesses gave evidence that they believe that they *ought* to have been told about significant information known elsewhere within Post Office concerning BEDs.⁹⁸ By way of illustration, when, in the course of her evidence to the Inquiry, Ms Deborah Stapel was shown a note of a joint meeting between Post Office and Fujitsu concerning ‘Receipts/Payments Mismatch issue’,⁹⁹ Ms Stapel described the document as “*dynamite*”, and noted that the information set out in that meeting note “*should have been relayed both to the Criminal Law Team and Civil, and it would look as if this was being hidden*”.¹⁰⁰ Ms Stapel candidly (and, correctly) accepted that the note ought to have been disclosed to the defence.

⁹⁵ POL00106867, Email chain dated 25 February 2010 to 8 March 2010, ‘Re: Fw: Horizon disputed cases’, p.23.

⁹⁶ POL00106867, Email chain dated 25 February 2010 to 8 March 2010, ‘Re: Fw: Horizon disputed cases’, p.7.

⁹⁷ See, further: SUBS0000025, Phase Three Closing Submissions on Behalf of Fujitsu Services Limited at §10, and the evidence cited therein.

⁹⁸ Indeed, most (if not all) witnesses who were asked agreed that they ought to have been informed about BEDs. See, for example: Transcript, 18 October 2023, p.10, ln.21-ln.25 (Mr Alan Lusher) (In relation to the Callendar Square bug: “*I’ve never heard of that bug or defect before and, yes, it would have been helpful to be aware*”); Transcript, 14 November 2023, p.72-ln.1-ln.21 (Ms Deborah Stapel) (“*I think it defies belief what happened. I think it’s unbelievable that, even at the rollout stage, people were aware that there were technical issues and they were kept hidden*”); Transcript, 28 November 2023, p.80, ln.21-p.81, ln.21 (Mr Graham Brander) (“*I’m not aware of anyone that knew any bugs, errors, or defects and you would have thought that we would have been advised of that.*”); Transcript, 7 December 2023, p.16, ln.24-p.17, ln.16 (Mr Michael Wilcox) (“*At no stage did anybody sit me down or call a team meeting and say, “We may have a problem here, this is what’s happening, and this is how we’re going to handle it.”*”); Transcript, 13 October 2023, p.47, ln.21-ln.24 (Mr Paul Inwood); Transcript, 8 November 2023, p.20, ln.8-ln.21 (Ms Teresa Williamson).

⁹⁹ FUJ00081584, ‘Receipts/Payments Mismatch issue notes’.

¹⁰⁰ Transcript, 14 November 2023, p.77, ln.18-p.78, ln.15 (Ms Deborah Stapel).

- 23.2. There was apparently no sharing of ‘common issues’ between staff performing similar functions, such as contract managers,¹⁰¹ investigators,¹⁰² and lawyers¹⁰³.
- 23.3. In the course of the ordinary operation of the Horizon system, various teams within Post Office received regular information from Fujitsu concerning BEDs, major incidents, and issues affecting the integrity of Horizon data. Those teams included: (i) the Business Service Management Team;¹⁰⁴ (ii) the Commercial Team;¹⁰⁵ (iii) the IT Team;¹⁰⁶ (iv) the Operations Team;¹⁰⁷ (v) the Automation Team;¹⁰⁸ (vi) the Network Support Team;¹⁰⁹ (vii) the Problem Management Team;¹¹⁰ and (viii) the Release Management Team.¹¹¹ Notwithstanding that source of information, there appears to have been no system or processes in place for the dissemination of such information to the Security, Contracts, and Criminal Law Teams. On the evidence in Phase 4, very few investigators appeared to have recourse to, or indeed awareness of, the relevant functions of other Post Office departments.
24. **Secondly**, and notwithstanding the evidence of awareness of BEDs, there was consistent evidence from present and former Post Office employees in Phase 4 of a ‘message from the top’ that the Horizon system was robust. As to that:

¹⁰¹ Transcript, 6 December 2023, p.175, ln.21-p.176, ln.13 (Mr David Posnett).

¹⁰² Transcript, 22 November 2023, p.29, ln.22-p.30, ln.1 (Mr Gerald Harbinson); Transcript, 28 November 2023, p.80, ln.21-p.81, ln.21 (Mr Graham Brander) (though, *cf* p.88, ln.10-ln.21, wherein Mr Brander suggests, without any specific recollection that “*if there would have been any concerns, collective concerns, no doubt they would have been discussed but I don’t recall anything*”); Transcript, 7 December 2023, p.14, ln.23-p.16, ln.23 (Mr Michael Wilcox).

¹⁰³ WITN08680100, First Witness Statement of Teresa Williamson, 15 August 2023, §18; Transcript, 8 November 2023, p.14, ln.17-p.15, ln.6; p.82, ln.4-ln.20 (Ms Teresa Williamson) (“*with our own team, it just wasn’t something that happened. We didn’t sit down and have discussions on cases and general issues.*”).

¹⁰⁴ The Business Service Management Team received, *inter alia*, the agendas and/or minutes of the Service Review Forum, see, e.g.: FUJ00119973, FUJ00119979, FUJ00232496, FUJ00232552; FUJ00233523; FUJ00233565.

¹⁰⁵ The Commercial Team received, *inter alia*, the agendas and/or minutes of the Service Review Forum, see, e.g.: FUJ00119973, FUJ00119979, FUJ00232496.

¹⁰⁶ The IT Team received, *inter alia*, Major Incident Reports and/or minutes regarding the same, see, e.g.: POL00001074, POL00002031, POL00092649, POL00092219, POL00002717.

¹⁰⁷ The Operations Team received, *inter alia*, Major Incident Reports, see, e.g.: POL00001074, POL00002031, POL00092649, POL00092219, POL00002717.

¹⁰⁸ The Automation Team received, *inter alia*, the minutes of the Service Review Forum, see, e.g.: FUJ00232496. Members of the Automation Team also attended the Contract Administration Meeting, at which BEDs were discussed: see, e.g., FUJ00176551. Further, members of the Automation Team received Release Notes, which detailed outstanding PinICLs, and their impact upon the system, see, e.g.: FUJ00079422, FUJ00086385.

¹⁰⁹ The Network Support Team received, *inter alia*, the minutes of the Service Review Forum, see, e.g.: FUJ00232496.

¹¹⁰ The Problem Management Team received, *inter alia*, the Service Review Books, see, e.g.: POL00093344, POL00093350, POL00093352.

¹¹¹ The Release Management Team received, *inter alia*, Release Notes, which detailed outstanding PinICLs, and their impact upon the system, see, e.g.: FUJ00079422, FUJ00086385, FUJ00083662.

24.1. In the course of the evidence in Phase 4, various witnesses identified a number of different potential *sources* of that ‘message from the top’, including “*Post Office Limited*”,¹¹² “*the business*”;¹¹³ “*the organisation*”,¹¹⁴ “*senior management*”,¹¹⁵ “*the top*”,¹¹⁶ “*above*”,¹¹⁷ “[f]airly senior levels in the company”,¹¹⁸ “*Senior Managers*”,¹¹⁹ “*the board*”,¹²⁰ the Post Office “*Head of Security*”,¹²¹ Mr John Scott,¹²² Mr Rob Wilson,¹²³ Mr David Smith,¹²⁴ Mr Rod Ismay,¹²⁵ Ms Julie Thomas,¹²⁶ the Post Office “*Communications Team*”,¹²⁷ and persons responsible for staff training.¹²⁸

24.2. The evidence of Mr Alan Lusher was that Post Office Contracts Advisers were given a “*statement to read out at application interviews*”, prepared by “*the legal team*”, in order “*to assure people that the Horizon system was sound*”.¹²⁹ That evidence is consistent with the evidence of Mr Andrew Wise to the effect that Post Office gave investigators “*tools to*

¹¹² Transcript, 18 October 2023, p.6, ln.12-p.7, ln.8 (Mr Alan Lusher) (“*We were – “we” being the team of Contracts Advisers – were repeatedly advised by Post Office Limited that there was nothing to be concerned about with the Horizon system and the integrity was complete*”); Transcript, 28 September 2023, p.52, ln.2-ln.20 (Ms Mandy Talbot) (“*I think it was coming from Post Office Limited*”).

¹¹³ Transcript, 5 December 2023, p. 58, ln.5-ln.9 (Mr David Posnett) (“*the business were constantly saying “There’s nothing wrong with it, there’s nothing wrong with it”.*”); Transcript, 11 October 2023, p.130, ln.14-ln.25 (Mr John Scott) (“*I think the feedback from the business and from people like Dave Smith was that the Horizon system was robust and reliable*”).

¹¹⁴ Transcript, 17 October 2023, p.84, ln.16-p.85, ln.2) (Mr John Breeden) (“*The organisation told us it was robust.*”).

¹¹⁵ Transcript, 18 October 2023, p.8, ln.18-p.9, ln.5 (Mr Alan Lusher).

¹¹⁶ Transcript, 5 December 2023, p.41, ln.8-p.42, ln.17 (Mr David Posnett); Transcript, 13 October 2023, p.156, ln.12-p.157, ln.14 (Mr Thomas Pegler) (“*So my understanding is that came from the top, that came from the board.*”).

¹¹⁷ Transcript, 28 November 2023, p.97, ln.24-p.99, ln.5 (Mr Graham Brander).

¹¹⁸ Transcript, 13 October 2023, p.16, ln.17-p.17, ln.17 (Mr Paul Inwood).

¹¹⁹ WITN10400100, First Witness Statement of Suzanne Winter, dated 2 January 2024 at §29.

¹²⁰ Transcript, 13 October 2023, p. 156, ln.20-p.157, ln.4 (Mr Thomas Pegler).

¹²¹ Transcript, 20 September 2023, p.112, ln.4-p.113, ln.16 (Mr Andrew Wise). The Head of Security at the relevant time was Mr John Scott and, later, Mr Mark Raymond, see p.121, ln.7-p.122, ln.7.

¹²² Transcript, 28 November 2023, p.203, ln.24-p.204, ln.14 (Mr Graham Brander); Transcript, 13 December 2023, p.66, ln.20-ln.23 (Mr Christopher Knight); Transcript, 26 January 2024, p. 48, ln.18-ln.21 (Ms Suzanne Winter); Transcript, 13 December 2023, p.66, ln.13-p.67, ln.20 (Mr Kevin Ryan).

¹²³ Transcript, 14 November 2023, p.73, ln.13-ln.23 (Ms Deborah Stapel).

¹²⁴ Transcript, 11 October 2023, p.130, ln.14-ln.25 (Mr John Scott) (“*I think the feedback from the business and from people like Dave Smith [from context: the Head of Change & IS] was that the Horizon system was robust and reliable*”).

¹²⁵ Transcript, 28 September 2023, p.13, ln.10-p.14, ln.12 (Ms Mandy Talbot).

¹²⁶ WITN08350100, First Witness Statement of Paul Southin, dated 9 January 2024 at §109 (“*I recall I attended a meeting in February 2019 at which the system was described as “robust” by Julie Thomas, who was a senior manager within POL*”).

¹²⁷ Transcript, 24 November 2023, p.116, ln.3-p.118, ln.16 (Ms Diane Matthews) (“*That was the Communications Team. It’s like a media team where, I don’t know, the press, et cetera, would go to them for comment, and that’s what I was told to put [...] I don’t know what the reasons were at the time but I know now, and I probably knew when I was leaving, that there was some lengths that were being gone to to try and protect the system, let’s say*”).

¹²⁸ Transcript, 30 November 2023, p.208, ln.11-p.208, ln.23 (Mr Jarnail Singh); Transcript, 26 January 2024, p.9, ln.12-p.10, ln.4 (Ms Suzanne Winter).

¹²⁹ Transcript, 18 October 2023, p.7, ln.20-ln.24 (Mr Alan Lusher).

*get round those messages [i.e. complaints regarding the integrity of Horizon] from postmasters. So to be able to challenge them”.*¹³⁰

25. Further, it is clear this ‘message from the top’ that the Horizon system was robust was communicated to Post Office’s external legal advisors. The Inquiry heard evidence from a number of Post Office’s external legal advisors, who suggested that they had been provided assurances by Post Office that the Horizon system was robust. Those witnesses included: Mr Stephen Dilley,¹³¹ Mr Richard Morgan KC,¹³² Mr Martin Smith,¹³³ and Mr Warwick Tatford.¹³⁴
26. To the extent that some Post Office employees sought to suggest that the ‘message from the top’ originated with *Fujitsu*,¹³⁵ that evidence is of doubtful reliability. That is because:
- 26.1. The consistent evidence from Post Office employees involved in criminal investigations and prosecutions was that they had only very limited personal or direct interactions with Fujitsu staff.¹³⁶ Indeed, a curious feature of the evidence on this issue is that a number of Post Office witnesses who sought to cast blame upon Fujitsu for the ‘message from the top’, *also* gave evidence that they had limited (if any) personal or direct interactions with Fujitsu staff: see, for example, the evidence of Ms Catherine Oglesby;¹³⁷ Ms Suzanne Winter,¹³⁸ and Mr Kevin Ryan.¹³⁹
- 26.2. A number of the Post Office employees who suggested that such a message had come from ‘Fujitsu’ were entirely vague in their recollection as to the circumstances of such an

¹³⁰ Transcript, 20 September 2023, p.119, ln.20-p.121, ln.6 (Mr Andrew Wise).

¹³¹ Transcript, 22 September 2023, p.7, ln.6-ln.12 (Mr Stephen Dilley).

¹³² Transcript, 22 September 2023, p.110, ln.8-p.113, ln.25 (Mr Richard Morgan KC).

¹³³ WITN09680100, First Witness Statement of Martin John Smith, dated 21 November 2023 at §105.

¹³⁴ Transcript, 15 November 2023, p. 194, ln.2-ln.8 (Mr Warwick Tatford).

¹³⁵ See, for example: Transcript, 19 October 2023, p.138, ln.2-ln.22 (Ms Alison Bolsover); Transcript, 28 September 2023, p.13, ln.5-p.14, ln.12 (Ms Mandy Talbot).

¹³⁶ Transcript, 18 October 2023, p.92, ln.23-p.93, ln.2 (Mr Alan Lusher) (“*I would never refer to Fujitsu for Information ... I didn’t have the avenue through which to do that*”); Transcript, 11 October 2023, p.123, ln.5-ln.6 (Mr John Scott) (“*The team didn’t access directly to Fujitsu; they made requests for records*”).

¹³⁷ Transcript, 16 November 2023, p.159, ln.18-p.160, ln.5 (Ms Catherine Oglesby) (Ms Oglesby states that she did not have a “*direct contact to Fujitsu*”). However, when asked from where she received the message that the Horizon system was “*robust and working properly*”, she suggested that she was “*getting messages back from Fujitsu and from the Business Support Centre and the Horizon System Helpdesk*”: Transcript, 16 November 2023, p.140, ln.7-ln.16 (Ms Catherine Oglesby).

¹³⁸ Transcript, 26 January 2024, p.19, ln.16-p.19, ln.18 (Ms Suzanne Winter) (“*I never had direct contact with Fujitsu*”).

¹³⁹ Transcript, 13 December 2023, p.167, ln.8-ln.17 (Mr Kevin Ryan) (Q. “*Who from Fujitsu assured you that Horizon was robust?*” A. “*I had no contact direct from Fujitsu.*”).

assurance, or the terms on which it was given.¹⁴⁰ There is, moreover, no contemporaneous documentation of which Fujitsu is aware to support those suggestions.

26.3. Indeed, where there *is* available evidence of the information being provided by Fujitsu directly to those engaged in the investigation and criminal investigation of SPMs, the suggestion that Fujitsu was providing fulsome assurances as to the integrity of the system did not bear scrutiny. By way of illustration, although Mr Jarnail Singh sought to suggest that relevant assurances had been provided by Mr Gareth Jenkins, there are contemporaneous email records of Mr Singh being aware that Mr Jenkins had explained that he was “*not currently in a position to make a clear statement*” that the system was functioning properly, because “[*i*]t is possible for there to be problems where transactions have been ‘lost’ in particular circumstances”.¹⁴¹

27. **Thirdly**, it is clear that a number of Post Office employees and agents involved in the investigation and prosecution of SPMs were aware that technology made it possible for employees of Fujitsu to remotely access, and amend, branch accounts. By way of illustration:

27.1. A 23 October 2008 email from Mr Alan Lusher to Mr Andrew Winn concerning the investigation into SPM Mr Graham Ward noted that: “*Fujitsu have the ability to impact branch records via the message store but have extremely rigorous procedures in place to prevent adjustments being made without prior authorisation – within POL and Fujitsu*”.¹⁴² Mr Lusher’s evidence to the Inquiry was that he did not consider it important to ascertain whether such remote access may be relevant to any particular discrepancy, because he “*assumed*” (it must be said, on no evidence whatsoever) that the access controls “*were being upheld*”.¹⁴³

27.2. A September 2010 note of a meeting between Fujitsu and Post Office on the ‘Receipts/Payments Mismatch issue’,¹⁴⁴ which was circulated to a number of Post Office employees involved in the investigation and prosecution of SPMs (including, for example,

¹⁴⁰ Transcript, 6 December 2023, p.94, ln.5-ln.21 (Mr David Posnett); Transcript, 28 September 2023, p. 11, ln.23-ln.24; p.191, ln.11-ln.19 (Ms Mandy Talbot) (“*I would be lying if I tried to put a name to it after this period of time. I’m very sorry.*”); Transcript, 20 October 2023, p.52, ln.5-ln.9 (Ms Marie Cockett) (“*I would guess it would be coming from the IT guys*”); Transcript, 26 January 2024, p.48, ln.21-p.48, ln.23 (Ms Suzanne Winter).

¹⁴¹ FUJ00152930, Email chain dated 5 February 2010 ‘West Byfleet Issues – Seema Misra – Legally Privileged’, p.1.

¹⁴² POL00117650, Email chain dated 15-23 October 2008, ‘Rivenhall’, p.1.

¹⁴³ Transcript, 18 October 2023, p.15, ln.13-p.16, ln.8 (Mr Alan Lusher).

¹⁴⁴ POL00028838, Receipts/Payments Mismatch issue note, September 2010.

Mr Rob Wilson¹⁴⁵ and Mr Alan Simpson¹⁴⁶) proposed a solution of “*changing branch data without informing branch*”.

27.3. In a series of email exchanges concerning the case of Ms Kim Wylie in November 2012, Mr Gareth Jenkins explained to Ms Rachael Panter of Cartwright King that it was “*possible to remotely access the system*”.¹⁴⁷ Those exchanges led to the production of a witness statement on behalf of Mr Jenkins which acknowledged the possibility of remote access.¹⁴⁸

28. **Fourthly**, and notwithstanding the foregoing, it is clear that there was a routine and systemic failure by Post Office investigators, throughout the Inquiry’s relevant period, to pursue relevant lines of inquiry relating to the integrity of the Horizon system, and other relevant Post Office and third party accounting systems. Instead, a number of witnesses admitted to operating under an *assumption* that SPMs were necessarily to blame for any apparent ‘shortfall’.¹⁴⁹ As to that:

28.1. A number of witnesses involved in the conduct of Post Office investigations and prosecutions admitted that ‘reasonable lines of inquiry’ would have included – *in each and every case* – an investigation of the Horizon system, together with other relevant Post Office accounting systems and business processes. See, for example, the evidence of Mr Andrew Hayward,¹⁵⁰ Ms Lisa Allen,¹⁵¹ and Mr Gary Thomas.¹⁵²

28.2. Notwithstanding those concessions, a number of Post Office investigators gave evidence to the effect that they would not routinely even *consider* issues concerning the integrity of data produced by the Horizon system as part of their investigations. Mr David Posnett gave evidence that he did not consider it to be a “*necessary element of the investigation*” to consider whether the Horizon system was functioning properly, because of an “*assumption*” that it was so functioning.¹⁵³ Mr Gerald Harbinson gave evidence that, even as at the date of his evidence to the Inquiry, that he was “*not sure how, as an Investigator, [he] would have checked the reliability of the system*”, and that he cannot remember – *in any case* – having made enquiries as to the operation, reliability, and accuracy of Horizon

¹⁴⁵ Transcript, 12 December 2023, p.101, ln.19-p.104, ln.9 (Mr Rob Wilson).

¹⁴⁶ POL00028838, Receipts/Payments Mismatch issue note, September 2010.

¹⁴⁷ POL00097214, Email chain dated 27 November 2012, ‘Fujitsu expert report – URGENT’, p.1.

¹⁴⁸ POL00002151, Witness Statement of Gareth Jenkins, dated 27 November 2012, p.3.

¹⁴⁹ See, for example: Transcript, 20 September 2023, p.76, ln.13-ln.22 (Mr Andrew Wise) (“*the assumption was that it was a mistake. So we’re looking for where that mistake has been made*”).

¹⁵⁰ Transcript, 10 October 2023, p.77, ln.18-p.78, ln.13 (Mr Andrew Hayward).

¹⁵¹ Transcript, 20 December 2023, p.29, ln.18-p.31, ln.20 (Ms Lisa Allen).

¹⁵² Transcript, 7 December 2023, p.163, ln.10-ln.18 (Mr Gary Thomas).

¹⁵³ Transcript, 5 December 2023, p.96, ln.12-ln.20 (Mr David Posnett).

data.¹⁵⁴ Mr Tony Utting stated that because investigators made the assumption that the data produced by the Horizon system was accurate (“*we worked in a world where Horizon was 100 per cent infallible*”), investigators failed to investigate the accuracy and reliability of that data (“*it wasn't our role to investigate the Horizon system*”).¹⁵⁵ In the course of the investigation of Ms Seema Misra, Mr John Longman is recorded as having noted that “*it was Post Office policy that investigating officers should never consider systems problems as relevant to their enquiry*”.¹⁵⁶

28.3. Further, in many cases, it would appear that obvious lines of further inquiry within Post Office were simply not pursued. Those lines of inquiry included: (i) an analysis of calls made by a SPM to the Horizon System Helpdesk or Network Business Support Centre (which was sought in some, but by no means all, cases); (ii) Post Office records regarding system developments and updates (for example, Service Review Books, Release Management Notes, ‘Business Incident Management Service’ (“**BIMS**”) reports, etc.); and (iii) Post Office departments involved with liaising with both SPMs and Fujitsu regarding errors generating misbalances (for example, the Post Office Product & Branch Accounting Team, the Post Office IT Team, and the Post Office Business Service Management Team).

28.4. The Inquiry may also conclude that there was a persistent and serious failure by the Post Office employees purporting to apply the Full Code Test under the Code for Crown Prosecutors – which undoubtedly does require consideration of any outstanding reasonable lines of inquiry¹⁵⁷ – to provide adequate advice regarding reasonable lines of inquiry. For the period when Mr Tony Utting was the designated prosecution authority, his evidence was that he did not consider it his role to “*raise questions about obtaining additional evidence*”, because that was “*very much a matter between the lawyer and the investigator and counsel*”.¹⁵⁸

28.5. Indeed, in some cases, the evidence goes further – and suggests that Post Office employees took deliberate and considered decisions *not* to obtain further information from Fujitsu relating to the integrity of the Horizon system, or internally in relation to other relevant Post Office and third party accounting systems. That is, this was not a problem of mere negligence or omission. Rather, in some cases, this was a conscious decision to limit the

¹⁵⁴ Transcript, 22 November 2023, p.21, ln.15-p.23, ln.10 (Mr Gerald Harbinson).

¹⁵⁵ Transcript, 17 November 2023, p. 57, ln.4-p.58, ln.5 and p.68, ln.23-p.69, ln.21 (Mr Tony Utting).

¹⁵⁶ POL00058503, Email chain dated 28-29 November 2009, ‘Misra’, attaching Further Request for Disclosure (*nb*, p.3, §9).

¹⁵⁷ Transcript, 18 December 2023, p.174, ln.120-p.175, ln.15 (Mr Duncan Atkinson KC).

¹⁵⁸ Transcript, 17 November 2023, p.115, ln.5-ln.12 (Mr Tony Utting).

available evidence. For example: In June 2012, a possible issue with a Wincor ATM, which may have caused loss to a SPM was discussed in an email chain between Mr David Pardoe, Mr Hugh Flemington, Ms Susan Crichton (General Counsel) and Ms Alwen Lyons (Company Secretary). Ms Lyons commented: “*This isn’t the only ATM [issue] though so we need to be careful we don’t make that the next computer system they want a forensic review of!*”¹⁵⁹ A further example of this attitude within Post Office was the decision, in a number of cases, not to request that Fujitsu carry out a full analysis of ARQ records (discussed further in Topic 6, below).

29. **Fifthly**, the Inquiry may wish to consider the extent to which the evidence in Phase 4 revealed organisational and/or cultural problems within the Post Office teams responsible for the investigation and prosecution of SPMs; and the extent to which such problems may have contributed to the issues considered by the Inquiry. Fujitsu understands that issues of organisational culture will be addressed in later phases, including with the assistance of relevant expert evidence. Insofar as those issues were raised in Phase 4, it may be noted that:

29.1. The Inquiry heard evidence that, at times, due to reduction in staffing levels within the Post Office Investigations Division, the team was “*swamped*” with the number of active cases.¹⁶⁰ Mr David Posnett expressed the view that, at times, teams had “*an overstretched capacity to investigate*”.¹⁶¹

29.2. Further, the Inquiry will recall that Mr Andrew Hayward gave evidence as to a “*testing, toxic environment*” within the security team during the latter part of his career,¹⁶² and that Mr David Posnett (apparently referring to the same period) suggested that there was a “*culture of fear*” within the team.¹⁶³ The Inquiry will wish to consider the extent to which such an environment affected the approach to prosecutions.

Topic 4: Failings in disclosure by Post Office

30. The duty of the prosecution in criminal proceedings to give proper disclosure to the defence of material which may undermine the prosecution case, or which may assist the case of the defence, is of paramount importance to the fairness of the proceedings as a whole. As Lord Bingham observed in *R v H* [2004] 2 AC 134 at §14, “[b]itter experience has shown that miscarriages of

¹⁵⁹ POL00180773, Email chain dated 20 June 2012, ‘Wincor ATM Log Fault – Shoosmiths’, p.1.

¹⁶⁰ Transcript, 5 December 2023, p.47, ln.12-p.48, ln.21 (Mr David Posnett); Transcript, 17 November 2023, p.7, ln.6-p.8, ln.8; p.10, ln.3-p.12, ln.17 (Mr Tony Utting).

¹⁶¹ Transcript, 5 December 2023, p.49, ln.6-ln.15 (Mr David Posnett).

¹⁶² Transcript, 10 October 2023, p.118, ln.20-p.120, ln.13 (Mr Andrew Hayward).

¹⁶³ Transcript, 6 December 2023, p.177, ln.1-ln.21 (Mr David Posnett).

justice may occur where such material is withheld from disclosure". The appalling miscarriage of justice at the centre of this Inquiry is a vivid illustration of this.

31. In that connection, Fujitsu makes four submissions in relation to disclosure at this stage:
32. **First**, and most fundamentally, the evidence in Phase 4 suggests that Post Office failed to disclose information within its own knowledge, as to the existence of BEDs in the Horizon system and in other relevant Post Office and third party systems, and as to the capacity of those BEDs to impact upon branch accounts. The state of Post Office's knowledge as to the existence of BEDs is addressed in Topic 3, above. Further, Mr Atkinson acknowledged in his evidence that the concept of 'corporate knowledge' operates in respect of material which may meet the test for disclosure and is "*within the knowledge of any arm of the prosecution authority*".¹⁶⁴ That is, Post Office was under a duty to disclose information regarding BEDs in the Horizon system, *regardless* of which department within Post Office held that relevant knowledge. The evidence received by the Inquiry in Phase 3 demonstrated clearly that extensive information concerning the existence of identified BEDs, and their potential impacts upon branch accounts, was widely known within the Post Office (as noted above, particularly in internal IT teams, and teams involved in liaising with SPMs and Fujitsu regarding errors affecting branch accounts, such as Product & Branch Accounting).¹⁶⁵ That information provided a rich store of material which could, and should, have been disclosed in connection with criminal prosecutions.
33. Fujitsu accepts, as it has done throughout this Inquiry, that there were a number of BEDs in the Horizon system, which BEDs had the ability to (and did in fact) impact upon branch accounts.¹⁶⁶ In addition to the possibility of errors in *Horizon* to generate apparent 'shortfalls' in branch accounts, the evidence in Phase 4 of the Inquiry identified a number of *additional* Post Office and third party systems and business processes which also introduced the possibility of shortfalls and/or of data integrity issues.¹⁶⁷ Those additional systems and business processes included: (i)

¹⁶⁴ Transcript, 6 October 2023, p.89, ln.8-ln.24 (Mr Duncan Atkinson KC).

¹⁶⁵ SUBS0000025, Phase Three Closing Submissions on Behalf of Fujitsu Services Limited at §§4-8.

¹⁶⁶ See, for example: SUBS0000002, Opening Statement on Behalf of Fujitsu Services Limited, 4 October 2022 at §21; SUBS0000020, Phase Two Closing Submissions on Behalf of Fujitsu Services Limited at §17; SUBS0000025, Phase Three Closing Submissions on Behalf of Fujitsu Services Limited at §3.

¹⁶⁷ Some witnesses gave evidence *generally* about the availability of information on other systems within Post Office. For example: Transcript, 10 October 2023, p.77, ln.18-p.78, ln.13 (Mr Andrew Hayward) (Mr Hayward suggested that Post Office investigators would have regard to data held on "*Horizon and/or other systems within the Post Office because there were other systems that held data. I'm not au fait, at this current moment in time, with what those systems were but it would be computer systems held by Post Office.*").

Credence;¹⁶⁸ (ii) POLFS;¹⁶⁹ (iii) ONCH data;¹⁷⁰ (iv) systems and procedures associated with Camelot / lottery / scratchcards;¹⁷¹ (v) systems and procedures associated with ATMs;¹⁷² (vi) Error Notices / Transaction Corrections;¹⁷³ and (vii) other third party software.¹⁷⁴ To be clear: Fujitsu unreservedly accepts that, in a number of cases considered by the Inquiry, information derived from the Horizon system was instrumental to the wrongful prosecutions and civil proceedings pursued against SPMs. Nonetheless, the Inquiry may well be of the view that a full consideration of the Phase 4 evidence leads inevitably to the conclusion that: (i) there were numerous *potential* sources of BEDs impacting upon branch accounts (of course including, but not limited to, BEDs in the Horizon system); and (ii) it would appear that Post Office failed to give disclosure to each and every SPM (properly, or at all) of known errors in Post Office’s own systems and business processes which introduced the possibility of shortfalls and/or data integrity issues, quite apart from the separate failure to disclose BEDs in the Horizon system. That is an important part of the picture which emerged on the Phase 4 evidence.

34. **Secondly**, it is also clear that Post Office failed (properly or, in some cases, *at all*) to obtain material held by relevant third parties – including Fujitsu – which may have met the test for disclosure. As Mr Atkinson noted, Post Office was under a duty to consider whether third parties, including Fujitsu were “*in possession or likely to be in possession of disclosable material*”, and to request that information.¹⁷⁵ The evidence supports the conclusion that Post Office failed in that duty:

¹⁶⁸ Transcript, 20 September 2023, p. 138, ln.17-ln.20 (Mr Andrew Wise). The evidence of Ms Helen Rose was that Credence was “*relied [upon] quite heavily*” by Post Office: Transcript, 19 September 2023, p.20, ln.17-p.21, ln.13 (Ms Helen Rose).

¹⁶⁹ Transcript, 26 September 2023, p.18, ln19-p.20, ln.14 (Mrs Anne Chambers).

¹⁷⁰ POL00046706, Investigation Report for Lynette Hutchings, prepared by Graham Brander, dated 5 May 2011.

¹⁷¹ POL00136717, Email dated 10 June 2013, ‘SR021 and 022’, p.2; Transcript 13 December 2023, p.89, ln.12–p.90, ln.16 (Mr Christopher Knight); Transcript 18 October 2023, p.61, ln.11–p.62, ln.7 (Mr Alan Lusher).

¹⁷² POL00044222, ‘Area Intervention Manager Visit Log’ in relation to the Fazakerley Branch, dated 6 September 2005, p.1; POL00029677, Draft Report by Detica NetReveal, ‘Fraud and Non-conformance in the Post Office; Challenges and Recommendations’, dated 1 October 2013, §3.3.1 (pp.11-12); POL00113320, Post Office presentation ‘Possible Postmaster Detriment: Overview for understanding’, working draft dated 8 October 2021, p.3.

¹⁷³ POL00108436, Initial Complaint Review and Mediation Scheme, Post Office Preliminary Investigation Report (Mr Chirag Patel), pp.1-2; Transcript 19 October 2023, p.30, ln.20-p.31, ln.23 (Ms Alison Bolsover).

¹⁷⁴ POL00165450, Email chain dated 4 June 2014, ‘GY:I5665193 – Notice #4 – P2 – SERVICE/SYSTEMS DOWN OR OFFLINE – Issues with transfer acknowledgment in National Lottery system – this is causing duplication tickets’, pp.1-2; Transcript 29 November 2023, p.112, ln.9-ln.23 (Mr David Pardoe).

¹⁷⁵ Transcript, 6 October 2023, p.94, ln.14-20 (Mr Duncan Atkinson KC).

- 34.1. As noted above, in respect of a number of the case studies examined by the Inquiry in Phase 4: (i) no ARQ data was obtained by Post Office from Fujitsu;¹⁷⁶ and, in many cases (ii) there is no evidence of direct contact between Post Office and Fujitsu whatsoever.¹⁷⁷
- 34.2. Further, the evidence of Mr Atkinson was that Mr Atkinson did not identify any occasion on which Post Office: (i) made clear to Fujitsu the nature and scope of Post Office’s disclosure obligations in criminal proceedings;¹⁷⁸ (ii) set out to Fujitsu the categories of material held by Fujitsu which were potentially relevant for disclosure in connection with criminal proceedings;¹⁷⁹ and (iii) sought to put Fujitsu on notice as to the need to retain relevant documentation, on the basis that it may have been required for disclosure in criminal proceedings.¹⁸⁰ To that end, Mr Atkinson concluded in his Volume 2 report that “*there was no real discussion that [he had] seen ... of the relationship between the Post Office and Fujitsu, in relation to obtaining and disclosure of material held by Fujitsu that was potentially relevant to the Post Office’s prosecutions*”.¹⁸¹ The Inquiry is respectfully invited to accept Mr Atkinson’s evidence in that regard which, in Fujitsu’s submission, accurately reflects the available contemporaneous documentary evidence.
35. **Thirdly**, it is a fundamental principle of criminal disclosure that, when the prosecutor considers the scope of the defence case for the purpose of considering the disclosure test, the defence case “*should not be restrictively analysed*”: *R v H* [2004] 2 AC 134 at §35. As Mr Atkinson explained in his evidence, that is a fundamental principle of fairness, but it also has important practical consequences: “*not least because the defence may not identify as something that will assist them something that they don’t know anything about*”.¹⁸² It would be open to the Inquiry to conclude, on the balance of the evidence heard in Phase 4, that Post Office routinely failed to comply with

¹⁷⁶ This appears to be true in the cases of: Ms Lisa Brennan, Mr David Yates, Mr David Blakey, Mr Tahir Mahmood, Mr Carl Page, Ms Suzanne Palmer, Ms Joan Bailey, and Ms Allison Henderson. See: Transcript, 18 December 2023, p.96, ln.1-ln.8; p.96, ln.14-p.97, ln.16; p.97, ln.17-p.99, ln.2; p.102, ln.4-p.103, ln.7; p.106, ln.3-ln.11; p.106, ln.12-ln.25; p.118, ln.7-p.119, ln.7; p.119, ln.14-p.120, ln.3 (Mr Duncan Atkinson KC).

¹⁷⁷ This appears to be true in the cases of: Ms Lisa Brennan, Mr David Yates, Mr David Blakey, Mr Tahir Mahmood, Ms Suzanne Palmer, Ms Joan Bailey, and Ms Allison Henderson. See: Transcript, 18 December 2023, p.96, ln.1-ln.8; p.96, ln.14-p.97, ln.16; p.97, ln.17-p.99, ln.2; p.102, ln.4-p.103, ln.7; p.106, ln.12-ln.25; p.118, ln.7-p.119, ln.7; p.119, ln.14-p.120, ln.3 (Mr Duncan Atkinson KC). Mr Atkinson further stated that the position was “*not absolutely clear*” in relation to the case of Mr Peter Holmes because, while “*a degree of Horizon material*” was obtained, the source of that material was unclear, and there was no evidence of “*the results of any such contact [with Fujitsu], or, indeed, any document that set out such contact*”: Transcript, 18 December 2023, p.110, ln.8-p.111, ln.2 (Mr Duncan Atkinson KC).

¹⁷⁸ Transcript, 18 December 2023, p.172, ln.7-11 (Mr Duncan Atkinson KC).

¹⁷⁹ Transcript, 18 December 2023, p.172, ln.16-20 (Mr Duncan Atkinson KC).

¹⁸⁰ Transcript, 18 December 2023, p.172, ln.20-p.173, ln.7 (Mr Duncan Atkinson KC).

¹⁸¹ EXPG0000004, Expert Report of Duncan Atkinson KC, Volume 2, §666.

¹⁸² Transcript, 6 October 2023, p.87, ln.16-p.89, ln.5 (Mr Duncan Atkinson KC).

this important obligation, and did *in fact* adopt an overly restrictive analysis of the defence case for the purposes of the disclosure test:

35.1. Often, the burden of identifying particular BEDs, or potential evidence of BEDs, was placed upon the SPM. That is, in many cases Post Office adopted a posture whereby *no* disclosure of BEDs would be given, *unless* a SPM could identify some basis for suggesting that their particular branch accounts had been affected by a BED.¹⁸³ Of course, on the information available to SPMs, to do so would have been difficult, if not impossible. Further, as noted above, the evidence supports the conclusion that, even where issues *were* raised by SPMs in the course of a criminal investigation, including on the basis of available records, those issues were not adequately investigated.

35.2. As Mr Atkinson identified in his Volume 2 report, this trend continued late into the prosecutions pursued by Post Office. Thus, in the case of Mr Khayyam Ishaq, Ms Rachel Panter of Cartwright King (in November 2012) adopted the position that only a *generic statement* of Mr Jenkins should be served “*so that the issue of Horizon is addressed, That will then place the onus on the defence to specify what if anything is wrong with the Horizon system*”.¹⁸⁴

36. **Fourthly**, it is also clear that there were serious failures in the *cross-disclosure* of issues concerning BEDs in the Horizon system. That is, in circumstances in which Post Office, in the context of one of its criminal cases, became aware of issues affecting the integrity of the data produced by the Horizon system, Post Office routinely failed to disclose those issues in *each and every other* criminal prosecution pursued. That is a further clear breach of Post Office’s disclosure obligations.¹⁸⁵ As to that:

36.1. Mr Atkinson concluded that “*there is no evidence of routine cross-disclosure where Horizon evidence was relied on*”.¹⁸⁶ That is so, despite there being evidence of “*discussions of the need to disclose issues raised in one case in others where similar issues had arisen*”.¹⁸⁷ Mr Atkinson confirmed that, despite those “*discussions*” they did not, in fact,

¹⁸³ See, for example: Transcript, 8 November 2023, p.67, ln.3-p.68, ln.3 (Ms Teresa Williamson); Transcript, 28 September 2023, p.102, ln.8-p.103, ln.2 (Ms Mandy Talbot); Transcript, 11 January 2024, p.103, ln.4-p.106, ln.10 (Mr Stephen Bradshaw).

¹⁸⁴ POL00059404, Email chain dated 16 November 2012, ‘POL cases raising Horizon’, p.2; EXPG00000004, Expert Report of Duncan Atkinson KC, Volume 2, §§662-663.

¹⁸⁵ See, e.g., Transcript, 19 December 2023, p.5, ln.3-p.6, ln.8 (Mr Duncan Atkinson KC).

¹⁸⁶ EXPG00000004, Expert Report of Duncan Atkinson KC, Volume 2, §670.

¹⁸⁷ EXPG00000004, Expert Report of Duncan Atkinson KC, Volume 2, §19.

appear to result in cross-disclosure being given – even in cases (like that of Mr Julian Wilson) where issues of cross-disclosure were expressly raised.¹⁸⁸

36.2. Indeed, one of the outcomes of the February/March 2010 Post Office meetings to address ‘Horizon disputed cases’¹⁸⁹ was that there ought to be clarity as to the number of civil and criminal cases raising issues concerning the integrity of the data produced by the Horizon system. Such a suggestion, if implemented, would plainly have facilitated cross-disclosure of those issues. However, the evidence in Phase 4 appears to suggest that the suggestion was never formally implemented.

36.3. In fact, Post Office policies sought to *limit* the extent of cross-disclosure of issues. The Post Office policy ‘Guide to the Preparation and Layout of Investigation Red Label Case Files: Offender reports & Discipline Reports’ positively suggested that “*failures in security, supervision, procedures and product integrity*” which “*may affect the successful likelihood of any criminal action and/or cause significant damage to the business*” should “*be confined, solely, to the confidential offender report*”.¹⁹⁰ That is – *not* disclosed to SPMs who were the subject of criminal investigation. Mr Andrew Hayward and Ms Helen Rose confirmed this to be the effect of the relevant policy.¹⁹¹ Ms Diane Matthews confirmed that she understood that information which could “*bring the company into question*”, including “*an issue about Horizon*” should not be disclosed.¹⁹² The approach set out in this policy is impossible to reconcile with the duties of a criminal investigator or prosecutor. However, it *does* reflect an acute concern regarding information relating to issues with the integrity of Horizon entering the public domain.¹⁹³

Topic 5: Failings in relation to ARQ data

37. The Inquiry has heard a considerable body of evidence concerning the provision to Post Office, by Fujitsu, of ARQ data; and as to the reliability of the ARQ data produced. As to that evidence:

¹⁸⁸ Transcript, 19 December 2023, p.3, ln.3-p.7, ln.9 (Mr Duncan Atkinson KC).

¹⁸⁹ POL00106867, Email chain dated 25 February 2010 to 3 March 2010, ‘Horizon disputed cases’. Transcript, 11 October 2023, p.142, ln.15-ln.19 (Mr John Scott) (Q. “*does it follow that, by ... February 2010, there was no central repository of issues that subpostmasters had raised with the integrity of Horizon data?*” A. “*Not that I can recall.*”).

¹⁹⁰ POL00038452, Guide to the Preparation and Layout of Investigation Red Label Case Files: Offender reports & Discipline Reports, undated, §2.15.

¹⁹¹ Transcript, 10 October 2023, p.97, ln.16-p.99, ln.4 (Mr Andrew Hayward); Transcript, 19 September 2023, p. 29, ln.16-p.30, ln.18 (Ms Helen Rose).

¹⁹² Transcript, 24 November 2023, p.42, ln.2-p.43, ln.19 (Ms Diane Matthews).

¹⁹³ See, further: POL00053954, Letter from Ms Juliet McFarlane to Mr Warwick Tatford, 2 February 2010 (“*I am a little concerned at Counsel’s suggestion that Royal Mail disclose Hosi’s Expert Report... I am raising this as at the moment a number of Defendants are taking this line simply because they have seen the article in the computer press rather than because Horizon has thrown up a problem*”).

38. **First**, the evidence makes clear that, in a substantial number of the case studies examined by the Inquiry in Phase 4, ARQ data was never obtained by Post Office at any stage of the investigation or prosecution.¹⁹⁴ That conclusion is consistent with the findings of the Court of Appeal in, *inter alia*, *Hamilton & Others v Post Office Limited* [2021] EWCA Crim 577. As to that:

38.1. A concerning number of Post Office employees involved in the investigation and prosecution of SPMs were not even aware of the *possibility* of obtaining ARQ data from Fujitsu.¹⁹⁵ In an email exchange with Mr Gareth Jenkins of Fujitsu in February 2013, Ms Helen Rose expressed the concern that Post Office staff may not know “*what extra reports to ask for*” by way of ARQ requests, such that “*in some circumstances we would not be giving a true picture*”.¹⁹⁶

38.2. In some cases, Post Office witnesses suggested that ARQ data would not have been requested, unless there was some case-specific reason for doing so – i.e., that the SPM had challenged the integrity of the Horizon data.¹⁹⁷

38.3. In some cases, there were considerable delays in obtaining ARQ data.¹⁹⁸ The Inquiry may well consider the *timing* of requests for ARQ data to be a significant issue. The evidence supports the conclusion that requests for ARQ data were rarely, if ever, made until a ‘not guilty’ plea was indicated, and the matter committed for trial in the Crown Court.¹⁹⁹ However, as Mr Atkinson confirmed in his evidence, it is difficult to see how any prosecutor could comply with the requirement, as part of the application of the Full Code Test in the Code for Crown Prosecutors, to consider whether all reasonable lines of inquiry have been completed, if they have not been provided with a schedule of unused material,

¹⁹⁴ This appears to be true in the cases of: Ms Lisa Brennan, Mr David Yates, Mr David Blakey, Mr Tahir Mahmood, Mr Carl Page, Ms Suzanne Palmer, Ms Joan Bailey, and Ms Allison Henderson. See: Transcript, 18 December 2023, p.96, ln.1-ln.8; p.96, ln.14-p.97, ln.16; p.97, ln.17-p.99, ln.2; p.102, ln.4-p.103, ln.7; p.106, ln.3-ln.11; p.106, ln.12-ln.25; p.118, ln.7-p.119, ln.7; p.119, ln.14-p.120, ln.3 (Mr Duncan Atkinson KC).

¹⁹⁵ Transcript, 18 October 2023, p.29, ln.5-23 (Mr Alan Lusher) (“*As far as I can recall, I haven’t heard of ARQ data before*”); Transcript, 22 November 2023, p.27, ln.10-p.28, ln.17 (Mr Gerald Harbinson); Transcript, 29 September 2023, p.37, ln.15-p.38, ln.22 (Mr John Jones) (Q. “*In 2004 [you] were unaware of what Fujitsu generated Horizon reports were available*”. A. “*That is correct.*”); Transcript, 8 November 2023, p.44, ln.3-ln.19 (Ms Teresa Williamson).

¹⁹⁶ POL00097481, Email chain dated 7-13 February 2013, ‘Lepton logs’, p.3.

¹⁹⁷ Transcript, 24 November 2023, p.29, ln.14-ln.22 (Ms Diane Matthews).

¹⁹⁸ Transcript, 30 November 2023, p.213, ln.8-p.220, ln.22 (Mr Jarnail Singh).

¹⁹⁹ Transcript, 5 December 2023, p.86, ln.11-p.87, ln.14 (Mr David Posnett).

or a copy of the material itself.²⁰⁰ The position must be *a fortiori* when the relevant material has not even been requested to be obtained by the investigator.²⁰¹

38.4. In some cases, the suggestion that relevant ARQ data was required to be obtained and analysed came from *Fujitsu* employees.²⁰² By way of illustration, in the proceedings against Ms Seema Misra, it is clear that the suggestion that Post Office should seek “*transaction data for West Byfleet for the period and transactions in question*” was made by Mr Jenkins and Mr David Jones (Fujitsu Head of Legal).²⁰³ Mr Jenkins’ comments as to the need to obtain ARQ data were directly conveyed to Mr Jarnail Singh of Post Office: “[*t*]he simple answer is that without retrieving the logs everybody is speculating and as discussed this morning nobody has bothered to ask us for any logs. At this stage it is not at all clear what transactions are thought to be missing at what time or even in what time period”.²⁰⁴ Following those exchanges on 5 February 2010, it would appear that the ARQ data was only provided to the defence a month later on 5 March 2010, and then only for data in the period 1 December 2006 to 31 December 2007.²⁰⁵

39. **Secondly**, the Inquiry explored with a number of Post Office witnesses the impact (if any) of contractual limits upon the provision of ARQ data.²⁰⁶ In relation to that evidence, Fujitsu submits that:

39.1. Ultimately, the evidence in Phase 4 does not enable the Inquiry safely to conclude that the contractual limits upon the provision of ARQ data did, in fact, cause difficulties in the investigation of any particular case. For the most part, that evidence was expressed at a

²⁰⁰ Transcript, 18 December 2023, p.175, ln.5-ln.15 (Mr Duncan Atkinson KC).

²⁰¹ A point made by Mr Atkinson as well: Transcript, 18 December 2023, p.182, ln.8-p.183, ln.2 (Mr Duncan Atkinson KC) (“[*I*nvestigators] would not include reference to ARQ data on the unused schedule because they hadn’t asked for the ARQ data, and so they didn’t have the ARQ data, as unused material, but, clearly, they should have followed that reasonable line of inquiry, therefore they should have the data, therefore they should have included it on the unused schedule”).

²⁰² For example, see: Transcript, 15 December 2023, p.95, ln.8-p.96, ln.8 (Mr Andrew Bole).

²⁰³ FUJ00122713, Email chain dated 5 February 2010, ‘West Byfleet Issues – Seema Misra – Legally Privileged’.

²⁰⁴ FUJ00122735, Email chain dated 5 February 2010, ‘Regina v Seema Misra Guildford Crown Court Trial – 15th March 2010’, p.1.

²⁰⁵ POL00054310, Letter from Robert Wilson to Coomber Rich, 5 March 2010.

²⁰⁶ See, for example: Transcript, 19 October 2023, p.100, ln.25-p.101, ln.16 (Ms Alison Bolsover); Transcript, 5 December 2023, p.77, ln.3-ln.4, p.101, ln.3-ln.9 (Mr David Posnett) (Q. “*Was some data not sought because of cost?*” A. “*In part, I would say yes.*”); Transcript, 24 November 2023, p.23, ln.15-p.24, ln.11 (Ms Diane Matthews) (“*It didn’t have an impact on the number of occasions I requested it; it may have had an impact on the number of disks that I received*”); Transcript, 28 November 2023, p.69, ln.7-p.71, ln.4 (Mr Graham Brander) (“*it restricted the amount that I would have requested*”); Transcript, 28 September 2023, p.170, ln.14-ln.22 (Ms Mandy Talbot); Transcript, 7 December 2023, p.54, ln.14-p.55, ln.13 (Mr Michael Wilcox); Transcript, 17 November 2023, p.158, ln.25-p.159, ln.9 (Mr Tony Utting).

general level. Further, and in any event, the evidence cut both ways: while *some* witnesses expressed the view that the contractual limits *did* impact upon the lines of inquiry pursued;²⁰⁷ others suggested that it made no, or minimal, difference to their conduct of investigations as opposed to affecting timing of a request.²⁰⁸

39.2. Given the number of witnesses who suggested that the contractual limits upon the provision of ARQ data may have impacted upon the conduct of investigations, it is a curious feature of the evidence that there is no contemporaneous evidence of complaints or concerns being raised with Fujitsu in that regard.²⁰⁹

39.3. In any event, and as noted above, the limitations upon the provision of ARQ data were the product of contractual negotiations between Post Office and Fujitsu. If, and to the extent that, those limits impacted adversely upon the conduct of investigations by Post Office, it was of course open to Post Office to seek to renegotiate those limits. Post Office did so on only very few occasions.²¹⁰ Further, to the extent that Post Office was ever truly in the position where it was unwilling or unable to obtain ARQ data, which data was necessary for a prosecution to proceed fairly in accordance with its disclosure obligations, Mr Atkinson KC's evidence was that Post Office should have ceased that prosecution.²¹¹

40. **Thirdly**, the evidence further establishes that, even in those case studies where ARQ data *was* obtained by Post Office, that which was obtained was insufficient to enable Post Office to interrogate (properly, or at all) whether the alleged 'shortfall' at issue was, or may have been, the result of BEDs in the Horizon system, and other relevant Post Office accounting systems and business processes for Post Office prosecutions. That is so, because:

²⁰⁷ See, for example: Transcript, 5 December 2023, p.77, ln.3-ln.4, p.101, ln.3-ln.9 (Mr David Posnett) (Q. "*Was some data not sought because of cost?*" A. "*In part, I would say yes.*").

²⁰⁸ See, for example: Transcript, 7 December 2023, p.54, ln.14-p.55, ln.13 (Mr Michael Wilcox) (The contractual limit "*wasn't a major problem but it just slowed you down a bit*").

²⁰⁹ Fujitsu has not, at the time of these closing submissions, identified any evidence of Post Office having raised a complaint *with Fujitsu* regarding the limits upon the provision of ARQ data (and only very limited evidence of such complaints being raised internally within Post Office).

²¹⁰ For example, there is evidence of Fujitsu agreeing to increase the limits upon the provision of ARQ data in June/July 2004: POL00114566, Letter from Mr Colin Lenton-Smith to Mr Keith Baines dated 9 June 2004, p.55; POL00114566, Letter from Mr Keith Baines to Mr Colin Lenton-Smith dated 26 July 2014, p.28

²¹¹ Transcript 6 October 2023, ln.2 p.95-p.96, ln.2 (Mr Duncan Atkinson KC).

- 40.1. Post Office Investigations Department lacked the relevant technical expertise to scrutinise ARQ data and other relevant system information.²¹²
- 40.2. Post Office Investigations Department systemically failed to engage the support of those technical experts within Post Office who may have had the technical expertise to scrutinise ARQ data.²¹³
- 40.3. Indeed, the evidence of Mr David Posnett (who, for some time, was responsible for making ARQ requests of Fujitsu) was that he did not recall “*reading many of the [ARQ] witness statements anyway*” – they were simply “*transferred on to the Investigator*” (without more).²¹⁴ Much of Mr Posnett’s evidence concerning the content of ARQ requests appeared to be based on assumption, rather than (as one might have expected, given his professional role) actual understanding as to the work performed by Fujitsu in response to such a request.²¹⁵
- 40.4. In general terms, the nature of the information sought in an ARQ request was inadequate to enable Post Office to interrogate (properly, or at all) whether the alleged ‘shortfall’ at issue was, or may have been, the result of BEDs in the Horizon system, and other relevant Post Office accounting systems and business processes for Post Office prosecutions. That is, *of itself*, the ARQ data would not have been sufficient for any person (with the requisite technical competence) to identify relevant integrity issues. Indeed, given that Horizon was one (albeit, particularly significant) component of the wider Post Office IT estate (which included various other Post Office systems, together with third party systems necessary to execute particular Post Office functions such as lottery and banking), as a matter of logic

²¹² Transcript, 6 December 2023, p.7, ln.20-ln.24 (Mr David Posnett) (“*I don’t recall what analysis was done [by Fujitsu in relation to ARQ data] and I probably wouldn’t have understood it anyway*”); Transcript, 20 September 2023, p.20, ln.21-p.21, ln.14 (Ms Davlyn Cumberland), see also p.5, ln.6-ln.9 (“*I’m not – no expert with computing. I’m not – in fact, I’m not good with technology at all*”); Transcript, 24 November 2023, p.72, ln.11-p.73, ln.4 (Ms Diane Matthews) (Q. “*What qualifications did you have to analyse Horizon ARQ data?*” A. “*I had no qualifications as such to do it.*” [...] Q. “*Did you have any training?*” A. “*I can’t remember any specific training, no.*”); Transcript, 7 November 2023, p.44, ln.23-p.45, ln.1; see also p.45, ln.21-p.46, ln.6; p.66, ln.19-p.67, ln.11 (Ms Elaine Cottam) (“*I wouldn’t understand the call logs*”); Transcript, 13 December 2023, p.132, ln.10-p.133, ln.25 (Mr Kevin Ryan) (Q. “*Do you believe you had the necessary expertise to interpret the ARQ data?*” A. “*Probably not, if I’m being honest ... I’d never had any training in going through ARQ data at all.*”). A striking feature of the evidence of Ms Diane Matthews was that she did in fact purport to provide an analysis of ARQ data, despite having no expertise or qualifications to do so: Transcript, 24 November 2023, p.72, ln.11-p.73, ln.4 (Ms Diane Matthews).

²¹³ Transcript, 26 January 2024, p.57, ln.19-p.58, ln.22 (Ms Suzanne Winter); Transcript, 13 December 2023, p.132, ln.22-p.133, ln. 25 (Mr Kevin Ryan); Transcript, 7 December 2023, p.173, ln.10-ln.18 (Mr Gary Thomas).

²¹⁴ Transcript, 6 December 2023, p.6, ln.22-p.7, ln.11 (Mr David Posnett).

²¹⁵ Transcript, 5 December 2023, p.90, ln.2-ln.24 (Mr David Posnett).

it is inconceivable that ARQ data *alone* was ever likely to have been sufficient to properly investigate an apparent shortfall. The inherent limitations of ARQ data were recognised by at least *some* of those engaged in criminal investigations on behalf of Post Office.²¹⁶

41. Fujitsu has also made clear to the Inquiry that it cannot confirm that ARQ data was *on its own* sufficient to enable any SPM against whom civil proceedings or a criminal prosecution was pursued to understand whether the Horizon system was operating correctly at their relevant branch.²¹⁷
42. **Fourthly**, Fujitsu has identified a number of errors, defects, and inadequacies in the system for the production of ARQ data which cast fundamental doubt upon the reliability of that data. Fujitsu acknowledges that those problems appear to have beset the system for the production of ARQ data since its inception. Fujitsu's present understanding of the extent and impact of those issues is set out in detail in its Third Corporate Statement,²¹⁸ and the witness statements of Mr Gerald Barnes²¹⁹ and Mr John Simpkins.²²⁰ That information is not repeated in these submissions.
43. Fujitsu readily accepts that Post Office ought to have been told about those errors, defects, and inadequacies in the system for the production of ARQ data. The evidence available to the Inquiry does support the conclusion that Post Office *were* informed about those issues which Fujitsu has identified to date. Certainly, it is clear beyond argument that Post Office were aware of sufficient information to raise substantial doubts as to the reliability of ARQ data. By way of illustration:
- 43.1. In May 2001, it was identified that there was data loss in the audit trail for a six-day period in August 2000, caused by a coincidental 'Digital Linear Tape' failure at both datacentres which contained the main Horizon servers.²²¹ That 'broken audit trail' issue was identified in the course of the completion of an ARQ request.²²² That issue was promptly notified to

²¹⁶ Transcript, 7 December 2023, p.52, ln.15-p.53, ln.15; p.78, ln.20-p.79, ln.9 (Mr Michael Wilcox).

²¹⁷ WITN06650300, Third Corporate Statement of Fujitsu Services Limited, dated 14 September 2023, §19.

²¹⁸ WITN06650300, Third Corporate Statement of Fujitsu Services Limited, dated 14 September 2023, §§26-161. See also (although not related to a BED in the production of ARQ data, but in relation to remote access): Transcript, 26 September 2023, p.67, ln.15-p.68, ln.19 (Mrs Anne Chambers).

²¹⁹ WITN09870100, First Witness Statement of Gerald Barnes, dated 30 August 2023; WITN09870200, Second Witness Statement of Gerald Barnes, dated 19 December 2023.

²²⁰ WITN04110200, Second Witness Statement of John Graeme Simpkins, dated 30 August 2023; WITN04110300, Third Witness Statement of John Graeme Simpkins, dated 19 December 2023.

²²¹ FUJ00172093, PinICL PC0066318, opened 24 May 2001.

²²² FUJ00176297, Letter from Mr Colin Lenton-Smith to Mr Keith Baines, dated 15 August 2002.

Post Office in correspondence dated 9 May 2001,²²³ 23 May 2001,²²⁴ and in a ‘Contract Administration Meeting’ on 23 May 2001.²²⁵

43.2. On 21 June 2010, Ms Penny Thomas of Fujitsu identified duplicate transaction records in the course of producing an ARQ return.²²⁶ On 23 June 2010, the source of that problem was identified to be a difference in the treatment of duplicate transactions between Legacy Horizon and HNG-X.²²⁷ A report prepared by Ms Thomas noted various actions arising from the identification of the error, including communication with Post Office regarding the scale of the problem, investigation of related problems, and investigation of cases which had progressed to prosecution in which duplicate records may have been included within an ARQ return.²²⁸ Fujitsu acknowledges that, in a 24 June 2010 email, Mr Guy Wilkerson (Fujitsu Commercial Director) advised Fujitsu staff to “*hold off*” reporting the issue to Post Office “*until [they] get a chance to speak to the HNG-X team tomorrow*”.²²⁹ Mr Jenkins acknowledged in an email that, given the potential impact of this issue upon pending prosecutions, there was a need for Fujitsu to “*tell POL about it asap*”.²³⁰ However, and in any event, on 30 June 2010 (that is, six days after Mr Wilkerson’s email), Ms Thomas contacted Ms Sue Lowther of the Post Office concerning the detail of the issue.²³¹ Ultimately, on 7 July 2010, the ‘standard’ Fujitsu witness statement was updated with information concerning the duplicate transactions issue.²³²

Topic 6: Failings in relation to the instruction of expert witnesses

44. A matter of particular significance to the Inquiry’s Terms of Reference is the conduct of Post Office in relation to the instruction of ‘expert’ witnesses in civil and criminal proceedings. For the most part, that relates to the reliance by Post Office upon ‘expert’ witnesses who were, at the relevant time, employees of Fujitsu (including Mr Gareth Jenkins, and Mrs Anne Chambers). Fujitsu is conscious that, in addressing this issue, the Inquiry is yet to hear evidence from Mr

²²³ FUJ00172093, PinICLPC0066318, opened 24 May 2001.

²²⁴ FUJ00171959, Letter from Mr Jan Holmes to Ms Sue Kinghorn, dated 23 May 2001.

²²⁵ FUJ00176285, Minutes of the Contract Administration Meeting, dated 23 May 2001.

²²⁶ FUJ00097058, Report by Ms Penny Thomas, ‘Duplication of Transaction Records Contained in ARQ Returns’, dated 22 June 2010.

²²⁷ FUJ00097038, Email chain dated 23-24 June 2010, ‘PC0200468 – Duplication of Transaction Records’.

²²⁸ FUJ00097058, Report by Ms Penny Thomas, ‘Duplication of Transaction Records Contained in ARQ Returns’, dated 22 June 2010.

²²⁹ FUJ00097039, Email chain dated 24 June 2010, ‘Duplication of Transaction Records on ARQ Returns’.

²³⁰ FUJ00097071, Email chain dated 25 June 2010, ‘ARQs’, p.1.

²³¹ FUJ00121097, Email chain dated 30 June-2 July 2010, ‘Duplication [sic] of Transaction Records Contained in ARQ Returns’, pp.2-3 (email dated 30 June 2010 at 13:33).

²³² See, for example: FUJ00121097, Email chain dated 30 June-2 July 2010, ‘Duplication [sic] of Transaction Records Contained in ARQ Returns’, pp.2-3 (email dated 30 June 2010 at 13:33); FUJ00176311, Email chain dated 24 June 2010, ‘Duplicate Messages in ARQ (updated)’; FUJ00122907, Email chain dated 8 July 2010, ‘Duplicate Records – Witness Statement’.

Jenkins himself (and has not yet disclosed to Core Participants Mr Jenkins' witness statement concerning Phase 4 issues). Therefore, the submissions which follow are necessarily preliminary in nature.

45. Mr Duncan Atkinson KC gave evidence as to a number of important duties owed by a prosecutor, who was seeking to rely upon expert evidence. Those duties included:
- 45.1. A duty for the prosecutor to satisfy themselves of the expert's relevant qualifications and expertise;²³³
- 45.2. A duty for the prosecutor to satisfy themselves that the expert has been appropriately instructed, including by the provision of a relevant and detailed letter of instruction;²³⁴
- 45.3. A duty for the prosecutor to inform the expert as to their relevant duties to the court; and to satisfy themselves that the expert has understood and complied with those duties;²³⁵
- 45.4. A duty for the prosecutor to satisfy themselves that any literature or material, of which the expert is aware, which undermines the expert's conclusions have been: (i) reviewed by the prosecution; and (where appropriate) (ii) disclosed to the defence;²³⁶ and
- 45.5. A duty for the prosecutor to bring to the attention of the defence and the Court any material of which the prosecutor is aware which is reasonably capable of undermining the expert's opinion, including matters relevant to: (i) the expert's relevant qualifications and expertise; (ii) the factual basis of the expert's opinions; and (iii) the expert's credibility (whether or not a specific request for disclosure is made²³⁷).²³⁸
46. The evidence received by the Inquiry in Phase 4 clearly supports the conclusion that there was a repeated, and serious, failure to discharge those important duties:
47. **First**, it is clear that Post Office consistently failed properly to instruct 'expert' witnesses. That included a failure to: (i) set out the expert's instructions in a proper letter of instruction; (ii) provide to the expert all information relevant to their instructions; and (iii) inform the expert of

²³³ Transcript, 6 October 2023, p.45, ln.20-p.46, ln.1 (Mr Duncan Atkinson KC).

²³⁴ Transcript, 6 October 2023, p.45, ln.1-p.46, ln.22 (Mr Duncan Atkinson KC).

²³⁵ Transcript, 6 October 2023, p.46, ln.23-p.47, ln.9 (Mr Duncan Atkinson KC).

²³⁶ Transcript, 6 October 2023, p.47, ln.22-p.48, ln.4 (Mr Duncan Atkinson KC).

²³⁷ *R v Ward* [1993] 1 WLR 619.

²³⁸ Transcript, 6 October 2023, p.48, ln.5-ln.23 (Mr Duncan Atkinson KC).

the scope and nature of their relevant duties to the Court. As Mr Atkinson summarises the position in relation to Mr Jenkins: “*Communication with him in writing appears to have been informal and brief, and at no point made any reference to the duties of either Mr Jenkins as expert or the Post Office as prosecutor in relation to material underlying or undermining his opinions*”.²³⁹ As to that:

47.1. A number of Post Office witnesses gave evidence to the effect that they were wholly ignorant of the important duties which applied in relation to the instruction of an expert witness on behalf of the prosecution.²⁴⁰

47.2. Ms Deborah Stapel gave candid evidence in accepting that she had failed to comply with the duties of a prosecutor in instructing an expert witness because she “*relied on the Investigator to satisfy themselves that the expert was appropriately informed and appropriately instructed*”.²⁴¹ Further, Ms Stapel’s evidence was that, in particular, she had “*assumed*” that Mr Jenkins was aware of the relevant duties, rather than satisfying herself of that matter.²⁴² To similar effect, Mr Jarnail Singh accepted that he failed to discharge the duties of a prosecutor in connection with the instruction of Mr Jenkins – indeed, Mr Singh accepted that his conduct in relation to Mr Jenkins was “*a serious dereliction of [his] duties as a prosecutor*”.²⁴³

47.3. Another contributing factor appears to have been genuine confusion, within Post Office, over the status of witnesses like Mr Jenkins – and whether he was, in fact, to be treated as an expert witness.²⁴⁴ It is unclear that such confusion ever truly resolved itself.

47.4. Indeed, the Inquiry may well take the view that a number of witnesses who gave evidence in Phase 4, and who were involved in the investigations into, and prosecutions of, SPMs *even now* demonstrated doubtful understanding as to the distinction between witnesses of fact, and expert witnesses.²⁴⁵

²³⁹ EXPG0000004, Expert Report of Duncan Atkinson KC, Volume 2, §674.

²⁴⁰ Transcript, 24 November 2023, p.43, ln.25-p.44, ln.17 (Ms Diane Matthews).

²⁴¹ Transcript, 14 November 2023, p.28, ln.9-p.29, ln.20; p.29, ln.21-p.30, ln.1; p.32, ln.23-p.33, ln.13 (Ms Deborah Stapel).

²⁴² Transcript, 14 November 2023, p.32, ln.23-p.33, ln.13 (Ms Deborah Stapel).

²⁴³ Transcript, 1 December 2023, p.124, ln.22-p.129, ln.8 (Mr Jarnail Singh) (Q. “*Do you agree that that’s a serious dereliction of your duties as a prosecutor?*” A. “*Yes, yes it is*”).

²⁴⁴ Transcript, 24 November 2023, p.108, ln.25-p.109, ln.12 (Ms Diane Matthews).

²⁴⁵ Transcript, 5 December 2023, p.108, ln.5-p.109, ln.7 (Mr David Posnett); Transcript, 22 November 2023, p.31, ln.1-ln.15 (Mr Gerald Harbinson); Transcript, 28 November 2023, p.195, ln.14-p.196, ln.5 (Mr Graham Brander); Transcript, 1 December 2023, p.58, ln.10-p.61, ln.18 (Mr Jarnail Singh).

47.5. Post Office’s failure properly to instruct Fujitsu employees as expert witnesses had important practical consequences. By way of illustration, Mrs Anne Chambers’ evidence in relation to the Castleton case was that, *because* she was not aware that she was initially being instructed as a witness in court proceedings at all (much less as an expert witness) she did not keep an ongoing record of the work that she had initially undertaken in relation to the case.²⁴⁶

48. **Secondly**, in addition to the repeated and serious failures of *omission* in relation to the instruction of expert witnesses; it is also clear that, on a number of occasions, Post Office investigators and lawyers sought to influence or amend the content of expert witness statements, in a manner which was seriously inappropriate, and wholly inconsistent with their duties. By way of example:

48.1. In March 2006, the interactions between various Post Office staff and Mr Jenkins in relation to the case of Mr Hughie Thomas are particularly instructive. The relevant sequence of events is as follows: (i) On 22 March 2006, Mr Graham Ward expressed concern about a draft report which had been prepared by Fujitsu (“*I’m concerned at the words ‘system failure’ which is also in an earlier line ... What does this mean exactly and is there any indication of a system failure at this office during the period in question?*”);²⁴⁷ (ii) On 23 March 2006, a further draft statement was provided by Mr Jenkins, which described, *inter alia*, “*System Failure*” as being “*normal occurrences*”, and which requested the deletion of a paragraph which certified that “*There is no reason to believe that the information in this statement is inaccurate because of the improper use of the computer. To the best of my knowledge and belief at all material times the computer was operating properly, or if not, any respect in which it was not operating properly, or was out of operation was not such as to effect the information held on it*”;²⁴⁸ (iii) On 24 March 2006, Mr Ward expressed concern that the draft statement “*needs more work*”, and specifically identified the references to “*system failure*” as being “*potentially very damaging*”;²⁴⁹ (iv) Also on 24 March 2006, Mr Ward prepared a further draft of the witness statement for Mr Jenkins, which deleted references to “*system failure*”;²⁵⁰ (v) On 28 March 2006, Mr Jenkins provided a further draft statement, including responses to Mr Ward’s various queries, including an invitation to Mr Ward to “*suggest something better*”, in

²⁴⁶ Transcript, 26 September 2023, p.121, ln.5-p.122, ln.7 (Mrs Anne Chambers).

²⁴⁷ FUJ00152587, Email chain, ‘RE: Gaerwen’, p.4 (email dated 22 March 2006 at 14:11).

²⁴⁸ FUJ00122204, Draft witness statement of Mr Gareth Jenkins, dated 23 March 2006, pp.1, 3.

²⁴⁹ FUJ00122210, Email chain, ‘FW: Gaerwen’, p.1 (email dated 24 March 2006 at 11.37).

²⁵⁰ POL00047895, draft witness statement of Gareth Jenkins dated 24 March 2006, p.2.

relation to “*system failure*”, providing an explanation as to the nature of relevant failures;²⁵¹ (vi) Also on 28 March 2006, Mr Ward sent a further email, noting that Mr Jenkins’ “*annotations do not take us forward at all*”, and suggesting that the statement “*needs to include a paragraph which states that there is no evidence of a system error at Gaerwen (assuming this is the case) in relation to the ‘Nil’ transactions at the office. We do not need to mention “system failures being normal occurrences” if there is no evidence of such a problem at this office. As I’ve already indicated on an earlier e mail, it may now be best if the Investigator dealing with this case arranges to meet with Gareth to take the statement in person... but can you confirm that you fully understand our requirements to ensure Gareth... is in a position to ‘tie up’ all these requirements in one statement*”;²⁵² and (vii) Subsequently, Mr Brian Pinder arranged for Ms Diane Matthews to meet with Mr Jenkins to finalise the statement. Although Ms Matthews could not recall meeting with Mr Jenkins,²⁵³ the contemporaneous documentation leads inevitably to the conclusion that she did do so.²⁵⁴ The statement was eventually finalised *without* the caveats that Mr Jenkins had sought to introduce into earlier drafts. Ms Matthews accepted that the contemporaneous documents show Post Office staff going into “*self-preservation mode*”.²⁵⁵ Mr Atkinson’s evidence was that the approach taken by Post Office in relation to this statement was inappropriate.²⁵⁶ The Inquiry is respectfully invited to accept that evidence.

48.2. In August 2006, in connection with the civil claim against Mr Lee Castleton, Mr Jenkins raised a number of significant queries with Post Office, which suggested that further analysis of underlying records was required, in order to confirm the accuracy of Post Office’s case against Mr Castleton.²⁵⁷ It would appear that, in the event, Fujitsu were never requested to carry out those analyses suggested by Mr Jenkins, and Mr Jenkins’ draft statement was never finalised.

48.3. In January 2009, Mr David Posnett of Post Office (following a discussion with Mr Robert Wilson, the Head of Criminal Law) required amendments to a template witness statement

²⁵¹ FUJ00122217, Email chain, ‘RE Gaerwen’, p.1 (email dated 28 March 2006), attaching FUJ00122218, Draft Witness Statement of Gareth Jenkins dated 24 March 2006, nb. p.2.

²⁵² FUJ00152587, Email chain, ‘Gaerwen Statement’, 28 March 2006, p.1.

²⁵³ Transcript, 24 November 2023, p.95, ln.20-p.96, ln.15 (Ms Diane Matthews).

²⁵⁴ FUJ00155721, Email chain dated 29 March 2006-1 April 2006, ‘Investigations’, p.1 (“*I have arranged for Diane to meet with Gareth at 1100 hrs on Thursday ... to record the statement*”).

²⁵⁵ Transcript, 24 November 2023, p.98, ln.4-p.99, ln.12 (Ms Diane Matthews).

²⁵⁶ Transcript, 19 December 2023, p.69, ln.20-p.70, ln.8 (Mr Duncan Atkinson KC).

²⁵⁷ FUJ00122284, Draft witness statement of Gareth Jenkins, dated 2 August 2006.

prepared by Ms Penny Thomas of Fujitsu.²⁵⁸ The effect of those amendments was to remove from the witness statement several paragraphs addressing potential audit issues (“POL clearly do not want the specific details of this incident included in the witness statement”).

48.4. In October 2010, counsel instructed by Post Office in the prosecution of Ms Seema Misra, Mr Warwick Tatford, made a number of substantive amendments to a further witness statement of Mr Jenkins.²⁵⁹ Most significantly, in a draft witness statement Mr Jenkins had stated “*While I can’t 100% rule out such issues as causing some issues. However I can’t see how this could account for anything like the full extent of the losses*”. However, Mr Tatford requested that statement be rephrased: “*Please rephrase. This will be taken as a damaging concession*”.

48.5. In March 2012 an email between Post Office solicitors in relation to a prosecution recorded that “*Counsel would, bluntly, like Fujitsu to pour as much cold water as possible on the defence report*”. This request was passed by Mr Andrew Bolc and Mr Graham Brander to Fujitsu.²⁶⁰

48.6. In December 2012, Mr Andrew Bolc instructed Mr Jenkins to “*discount*” or “*discredit*” specific claims made by SPMs in relation to the Horizon system.²⁶¹ In his evidence, Mr Bolc (rightly) conceded that these were inappropriate terms in which to instruct an expert witness.²⁶²

49. **Thirdly**, Fujitsu accepts its own share of responsibility for the failure properly to oversee and manage the instruction of Fujitsu staff as both witnesses of fact and ‘expert’ witnesses in Post Office civil and criminal proceedings. Fujitsu accepts that the Fujitsu legal team failed to provide the appropriate oversight of, and support to, its employees who gave evidence in proceedings on behalf of Post Office. In particular, given that the Fujitsu staff who appeared as ‘expert’ witnesses were generally *technical* staff with little (or no) familiarity with the procedures for, and duties associated with, the provision of witness evidence in court proceedings, Fujitsu recognises that

²⁵⁸ FUJ00155400, Email chain dated 7-8 January 2009, ‘Fw: Security Incident’, pp.1-2.

²⁵⁹ FUJ00123006, Draft witness statement of Mr Gareth Jenkins, dated 6 October 2010. See, for example, p.8 “*This is rubbish.*”, “*Isn’t theft rather more likely?*”.

²⁶⁰ FUJ00156530, Email chain dated 13-14 March 2012, ‘RM v Bramwell’, pp.2-4.

²⁶¹ POL00089394, Email chain dated 30 November-5 December 2012, ‘RE: Sefton & Nield and Grant Allen’, p.1; FUJ00153881, Email chain dated 4-5 December 2012, ‘Post Office Limited v Grant Allen’, p.3.

²⁶² Transcript, 15 December 2023, p.97, ln. 17-p.98 ln. 7; p. 115, ln. 24-p. 116, ln. 20 (Mr Andrew Bolc).

there was a missed opportunity for Fujitsu to intervene to ensure that witnesses were properly prepared, and conducted themselves in accordance with their duties.

50. On 29 January 2007, following the trial in the Castleton case, Mrs Anne Chambers prepared an ‘Afterthoughts’ memo, which identified a number of shortcomings in respect of her instruction as a witness in that case.²⁶³ Those shortcomings included: (i) Mrs Chambers was asked to liaise directly with solicitors to the Post Office, rather than such conduct being ‘mediated’ by Fujitsu’s own legal team; (ii) Mrs Chambers was repeatedly assured that a court attendance would not be necessary, which assurances “*proved to be unfounded*”; (iii) the initial analysis which Mrs Chambers performed involved no “*technical review of the Horizon evidence*”; (iv) Mrs Chambers was surprised that she “*found [herself] being treated as an expert witness and answering a wide variety of questions about the system, although nominally I was a witness of fact*”; (v) not all of the relevant evidence (e.g. Tivoli event logs) was disclosed, and Mrs Chambers found herself “*not sure whether they had been disclosed or not*”²⁶⁴. Fujitsu accepts that Mrs Chambers’ identification of the shortcomings in her instruction in the Castleton case involve properly justified criticisms of the conduct of the case by Fujitsu. Fujitsu also accepts that following Mrs Chambers’ identification of those shortcomings, Fujitsu failed to implement sufficiently robust mechanisms to monitor and support its employees in the provision of (expert or non-expert) witness evidence in Post Office cases.²⁶⁵ Fujitsu deeply regrets that missed opportunity.

Conclusion

51. Fujitsu reiterates its gratitude to the Inquiry for the opportunity to make these closing submissions on Phase 4 and confirms its commitment to render every assistance to the Inquiry.

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TIM JAMES-MATTHEWS
ROSALIND COMYN
Matrix Chambers

16 February 2024

²⁶³ FUJ00152299, ‘Afterthoughts on the Castleton case’, dated 29 January 2007.

²⁶⁴ Ibid., p.1.

²⁶⁵ Transcript, 27 September 2023, p.90, ln.8-ln.16 (Mrs Anne Chambers).