Post Office Horizon IT Inquiry

On behalf of Core Participants represented by Hodge Jones & Allen: Teju Adedayo, Nichola Arch, Lee Castleton, Tracy Felstead, Parmod Kalia, Mhairi McDougall, Seema Misra, Vijay Parekh, Vipin Patel, Colin Savage, Sathyan Shiju and Janet Skinner

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Closing Statement Phase 4 - Action against Sub-postmasters and others: policy making, audits and investigations, civil and criminal proceedings, knowledge of and responsibility for failures in investigation and disclosure

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Introduction

1. The Post Office's heritage is now a thing of shame. Phase 4 has uncovered a deplorable culture of callous abuse. SPMs with shortfalls were bled under a draconian contract, where the one-sided contractual position for losses was made more intolerable by POL's ruthless pursuit of cash. This oppression mutated into an unprincipled default prosecution policy for gain. Investigators sometimes did not even believe the guilt of those they went after. Vital evidential and public interest concerns were ignored in POL's all-consuming appetite to prosecute. As Mr Duncan Atkinson KC stated:

   "rather than using civil recovery under the contract, they were using the criminal process and the levers of the criminal process, such as confiscation, such as it being a condition of the acceptance of a plea to get the money back, when they hadn't actually proved that the money had gone in the first place."[1]

2. Underlying all of this, was something profoundly more sinister: a symbiotic covenant of secrecy between POL and Fujitsu. The Inquiry has seen a Fortress Horizon mentality upon which reasonable requests for disclosure were dashed, and from which no disclosure willingly emanated. The Inquiry has witnessed the wholesale disapplication of the CPIA, and The Attorney General's Guidelines on Disclosure, the manipulation and re-writing of expert evidence, the destruction of documents, and the suppression of the truth that could have averted each wrongful conviction it has been tasked to investigate. Civil and Criminal justice was pitilessly subverted to serve POL's commercial interests. Collectively, a nadir has been reached and yet there is worse to come, for the culture (set from the top) that fostered such abuses, allowed no supervisory oversight to ensure best practice and so restrain arbitrary misuse of power or wrongdoing.

3. The reputation of British justice has, quite literally, been shredded. To restore confidence, and to uphold standards across this dismal scene, the Inquiry might consider it appropriate to indicate where it considers further investigation is merited where offences may have been committed, or where serious professional misconduct may have occurred.

[1] Evidence of Duncan Atkinson KC, 18 December 2023 p.44/ Line 25 to p.46/ line 5

This is not to impute liability, whether civil or criminal, but to recognise the obvious, inevitable and inescapable consequences of the evidence it has heard. The Inquiry has such powers, and the Core Participants we represent have confidence that such indications, if not formal recommendations, will follow in due course.

The relevant law: Disclosure; Conspiracy to pervert the course of public justice

4. The law in relation to Disclosure is taken from the reports and the evidence of Duncan Atkinson KC, summarised below at §§ 154-159.
5. We rely on the law of conspiracy to pervert the course of justice, as set out in our Phase 3 Closing Statement, and on imputed knowledge, as set out in our Phase 2 Closing Statement.[2]

The POL v Castleton conspiracies

6. Mr Castleton's life, reputation, livelihood, and the wellbeing of his family was sacrificed to protect the infallibility of Horizon. By the time of his trial it was known from the Cleveley's case, which preceded it, that there were problems with system errors. These were suppressed and withheld by an NDA and were never disclosed. Mr Castleton was destined to become a victim in POL's ruthless determination to acquire a precedent. We, therefore, submit that there is evidence to support the following allegations:
   a. Keith Baines, Mandy Talbot, Tony Utting, Graham Ward, Rod Ismay and others (the POL group) conspired together, and with others to pervert the course of justice by pursuing a debt claim on behalf of POL against Lee Castleton[3]
   b. Naomi Elliott and Brian Pinder (the Fujitsu group) conspired together, and with others, to pervert the course of justice by distorting and concealing evidence relevant to the claim being brought by POL against Lee Castleton
   c. Anne Chambers committed perjury when testifying in POL v Castleton, by agreeing not to mention the Known Error Log, and obscuring the potential for there to have been errors in the Marine Drive cash accounts.

The POL group conspiracy

7. Given the evidence from the Bates litigation and Phase 1 of the Inquiry that Horizon could and did produce unreliable cash accounts, POL's reliance upon the Marine Drive cash accounts during the Castleton litigation, knowing there was expert evidence as to its unreliability[4], was a course of conduct which had a tendency to pervert the course of justice. It allowed POL to obtain judgment for a debt, and the consequent costs order, without producing reliable evidence that the debt was owed.
8. There is evidence that this course of conduct was also maliciously intended to pervert the course of justice, because the POL group either knew that the Marine Drive cash accounts may not have been reliable, or they closed their eyes to that knowledge. The motive for the course of conduct may have been to protect POL, or their own jobs, and the natural consequence of the course of conduct may not have been desired as such, but that does not mean it was not intended. Mr Castleton's destruction may have been seen as unfortunate collateral damage in order to protect Horizon at all costs.

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[2] SUBS0000018 §2; SUBS0000022 §§9-13

[3] The rationalisation to resist a counterclaim by Mr Castleton is a distinction without a difference, as his claim was predicated on the injustice inflicted upon him by Horizon. The importance of his counterclaim dwindled during the run up to trial.

[4] Jason Coyne's joint expert report in Cleveley's

Keith Baines's knowledge

9. The late Keith Baines, Contract Manager, was intimately involved with Acceptance Incident 376 (unreliable cash accounts). Documents show that he managed the negotiations around the consequent suspension of the rollout, and the Second Supplemental Agreement.[5] Under Schedule 4 Part B (i) of that Agreement, ongoing problems with the cash accounts were settled by instituting a monitoring period of six weeks in late 1999. If, during that period, cash accounts with discrepancies did not exceed 0.6%, AI 376 would be resolved.[6] That meant that a small number of discrepancies would not be a bar to Horizon rolling out, so some unfortunate branches in the network would be highly likely to experience discrepancies in their accounts.
10. Then in mid-2001, Mr Baines managed the contractual resolution of a significant problem with ARQ data. Jan Holmes, of Fujitsu, notified the Post Office that from 8 to 14 August 2000 there was a break in the available ARQ data, due to corruption of both tapes which should have been storing it.[7] This put Fujitsu into a position of straightforward contractual non-compliance until 15 February 2002, due to the provision which required retention of audit data for a period of 18 months. However, on 7 August 2001, on behalf of Fujitsu, Colin Lenton-Smith informed Keith Baines that "measures to remove altogether the risk of future tape corruption can be achieved only by a complete re-design of the current solution".[8] That led in due course, after a little back-and forth, to Keith Baines settling for a "goodwill" payment from Fujitsu of £150,000.[9] So again, Mr Baines accepted a resolution which left open the possibility of future problems, this time compromising the accuracy of ARQ data, which was supposed to demonstrate the reliability of Horizon cash accounts.
11. These failures by Mr Baines may have left him feeling exposed when on 20 January 2004 Jason Coyne reported on the Cleveleys case, and found that:

    > From the 31st of October… there seems to be a numberof [helpdesk call] logs which talk of "large discrepancies" in stock figures, trial balances with "all sorts of figures showing minus figures". From a computer system installation perspective it is myopinion that the technology installed at the Cleveleys sub-post office was clearly defective in elements of its hardware, software or interfaces. The majority of the errors as noted in the fault logs could not be attributed to being of Mrs Wolstenholme's making or operation of the system. [10]

12. Mrs Wolstenholme difficulties in November 2000 came very soon after Mr Baines had agreed that AI 376 could be resolved, despite the potential for some cash accounts to have discrepancies. Yet on 14 October 2003, he signed a witness statement, saying this:

    > Any faults that occurred in the Horizon computer system were eliminated once they were identified. Whilst it is possible for mistakes to occur, this is usually through incorrect inputting to the computer system in the office affected by the mistake.All sub-postmasters were fully trained in the use of the Horizon equipment.The system was fully tested before it was used by the Post Office and it is fit for its purpose.The system itself does not create losses as is claimed by Mrs Wolstenholme.[11]

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[5] POL00028548, POL00093313, POL00028509
[6] FUJ00118149
[7] FUJ00171959
[8] FUJ00176280 p2
[9] FUJ00176298; FUJ00176299; FUJ00176300; FUJ00176301; FUJO0176303
[10] WITN09020115
[11] POL00118250, §5.

13. Mr Baines knew that every sentence of this paragraph 5 was either untrue or misleading by omission. On 26 July 2004, Counsel in the Cleveleys case made an explicit note that POL was concerned to ensure that Mr Coyne's Report did not receive publicity,[12] no doubt because it gave the lie to the false statement Mr Baines had made the previous year.
14. On 3 August 2004, a note of a conference call with counsel indicates that Mr Baines was, to some extent, jockeyed into providing a second witness statement.[13] The note also makes clear that Mr Baines was to draft the statement himself, and the fact that he faxed it to the solicitor Susanne Helliwell, rather than the other way around, suggests that is exactly what happened. In it he admits to "significant" problems at acceptance, and describes some of them, but he makes no mention of AI376, which was obviously the most relevant and important, nor does he mention the Second Supplemental Agreement permitting up to 0.6% of cash accounts to have discrepancies.[14]
15. He signed his second witness statement on 11 August, but importantly, on 4 August he emailed it to Mandy Talbot, saying this:

    > This is general, rather than specific to Cleveleys, and in effect is the detail behind some of the assertions in paragraph 5 of my earlier witness statement (signed on 14/10/2003)![15]

16. At this point, Ms Talbot was holding the in-house brief in the Cleveleys litigation, but also had carriage of the Castleton litigation, having taken it over on 7 June 2004.
17. Meanwhile, Graham Ward, a key person within Security, had informed Keith Baines of another problem with ARQ data. On 1 June 2004, Ward forwarded an email from Bill Mitchell at Fujitsu, which said that incomplete data had been sent to POL in a number of cases which had gone to prosecution. On 15 June, Mr Ward forwarded his own email to Mr Baines with an update, saying that a further four branches were impacted, and making it clear that in these four and the previous two, the ARQ data had been used to underpin prosecutions.

Corporate dissemination of Mr Baines's knowledge

18. Obviously, Mr Baines was not inclined to inform others in writing when he became aware that AI376 and ARQ problems could be casting a shadow over legal proceedings in 2004. However, there is evidence from which it can be inferred that others became aware.
19. An interesting email from Rod Ismay to Mandy Talbot (amongst others) dated 26 July 2004, shows that the POL hierarchy was fully engaged with the Cleveleys litigation and settlement considerations by this stage. Ms Talbot asked Mr Ismay whether she should now be taking her instructions from Peter Corbett, the Finance Director, rather than from "Chesterfield", to which he replied that he was escalating the case to Dave Miller, the Managing Director. At the same time, he asked Tony Marsh to indicate who was leading on the case within Security, and cautioned all addressees as follows:

    > please do not circulate this any further than is necessary to support Dave[Miller] and Group Legal with this case.[16]

20. This ties in with the way POL expressed the risks associated with the Cleveleys litigation in its IT risk register:

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[12] POL00118229 p4, and see also FUJ00121637, in which Mandy Talbot is quoted as saying she wants to keep the Coyne report out of the public domain.
[13] WITN04600310
[14] POL00118224 – in citing this we observe that 0.6% seemed to be an underestimate in practice
[15] POL00118233
[16] POL00142503

> Damage to reputation of Post Office and potential future financial losses if PO loses court case relating to reliability of Horizon accounting data at Cleveleys Branch Office[17]

21. Already POL was more concerned with reputational fallout if word should get out that Horizon accounting data was unreliable, rather than recognising that Cleveleys was a red flag, requiring them to investigate whether Horizon accounting data was in fact reliable.
22. Ignoring that red flag brought its own problems. Over the course of 2005 a number of other cases, including Castleton, came to the attention of the POL group, and, no doubt, the hierarchy above them. In December 2005 Keith Baines, Mandy Talbot and Graham Ward met with others, including Marie Cockett, Rod Ismay's right hand woman in Chesterfield. The issue under discussion was "Horizon integrity", and it was noted that

> There have been several recent cases where subpostmasters have cited errors in the Horizon system as explanations for discrepancies in their accounts…
>
> Lawyers acting on behalf of a subpostmaster currently in dispute with Post Office have written stating that they are contemplating a joint action on behalf of a number of current and former subpostmasters. This would challenge the accounting integrity of t he Horizon system and Post Office's right to make transaction corrections and recover resulting debts based on Horizon data. In one past case (Cleveleys branch), Post Office settled out of court following an adverse report on Horizon's potential to cause errors from an expert appointed by the court. Fujitsu advised that the report was not well founded, but Post Office and Fujits u were not able to persuade the expert to change it.[18]

23. The meeting's purpose was set out, and sensible actions were mooted, primarily co-ordinating the POL and Fujitsu response to cases which raised the issue of Horizon's integrity, and appointing an independent expert to examine and report on Horizon data.[19] The draft note of the meeting had assigned important actions to Keith Baines, in particular "to discuss the need for and ToR of an external expert with Fujitsu", and "to brief Dave [X] Smith on the meeting's recommendations".[20]
24. However, when Graham Ward's boss, Tony Utting, was asked about the recommendations set out in the meeting he said that he could not remember any of them being put in place.[21] He said that Rod Ismay would have approached Peter Corbett, the Finance Director on "where to go with it".[22]
25. It is telling that apparently neither Keith Baines nor Rod Ismay took the actions that were expected of them to follow up on this meeting. During 2006 Rod Ismay encountered further Horizon failings. We refer to §§36 to 39 of our Phase 3 Closing Statement for a summary of the evidence he and Andrew Winn gave about the data migration problems experienced within P&BA as a result of the Impact programme, and the "feeds from branches" which were "falling into the wrong accounts".[23]
26. Meanwhile, although Ms Talbot was not asked about the documents relating to December 2005 meeting, she was asked about one of her emails sent shortly before it which may have prompted it. The email identified a putative class action from SPMs alleging that Horizon caused discrepancies in their accounts, and she made suggestions which also included coordinating the response to cases which raised the issue of Horizon's integrity

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[17] POL00158493
[18] POL00142539 p1
[19] POL00142539 p2
[20] POL00119895 pp 4-5
[21] https://www.postofficehorizoninquiry.org.uk/hearings/phase-4-17-november-2023 pp 83-95
[22] Ibid pp 95-96
[23] SUBS0000022

and appointing an independent expert to examine and report on Horizon data.[24] She too said that none of her suggestions came to fruition:

> Q. As at the end of 2005, going into 2006, 2007, was that independent report commissioned?
> A. No.
> Q. Were you concerned that it wasn't commissioned?
> A. Of the, I think, five or so recommendations that I made, I was less concerned about the commission of an independent report than I was about the creation of a team or even an individual who would gather sufficient knowledge of the system so as to be able to give proper instructions on each case to external solicitors, so that we didn't end up in another situation where proceedings were issued without all the relevant material being present.
> Q. Was that coordinating role established as at 2005/2006 and onwards?
> A. … ultimately, no such position was ever created.[25]

27. Again, it is telling that Ms Talbot did not follow up on her own recommendations.
28. Ultimately, during the course of 2006, the POL group, or those above them, must have taken a decision not to instruct an independent expert, and not to coordinate information about challenges to the integrity of Horizon accounts. This, we would submit, indicates that Mr Baines warned others of the potential pitfalls in taking these steps. Rob Wilson was less cautious when he wrote his March 2010 email,[26] in which he once again deflected colleagues from seeking a report from an independent expert, but even he did not reduce to writing what must have been the real concern: an independent expert would find out that Horizon was riddled with flaws, which would not reflect well on those who had been supressing concerns for years, and carrying on prosecuting regardless.
29. This collective refusal to undertake the obvious and proper step of obtaining an independent analysis of the Horizon system is the evidence which shows that the POL group intended to deflect the Castleton litigation from finding out the truth about Horizon; and therefore intended to pervert the course of justice.

The legal 'sleight of hand'

30. Richard Morgan KC's reliance upon the case of *Shaw v Picton*[27] was the perfect answer to POL's problems and made it easier to pursue the conspiracy against Mr Castleton[28]. (We refer to our Note re POL v Castleton, submitted on 25 September 2023, for an analysis of Mr Morgan KC's continued misunderstanding of the law applicable to "settled" accounts, as determined by Fraser J in the Bates litigation.)
31. In legal terms, POL's claim against Castleton had nothing to do with the reliability of the Marine Drive cash accounts, or the reliability of Horizon accounting data more generally. It was not a "test case" in the legal sense. The reliability of the cash accounts was solely an evidential matter, just as all evidence is tested for reliability in any trial.
32. However, Ms Talbot recognised at an early stage that from POL's point of view the only significant issue in the case was Mr Castleton's defence, which put the reliability of the Horizon cash accounts in issue. In the email referred to above, dated 24 November 2005,

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[24] POL00107426 p5
[25] https://www.postofficehorizoninquiry.org.uk/file/1837/download?token=y1lOq1ijpp125-129
[26] POL00106867
[27] 4 B. & C. 715
[28] There is no suggestion that Mr Morgan KC was a party, but his strategy concedes that Horizon was not error free. This device wrought great injustice: Mr Castleton was required to sign off accounts he disputed and yet the Court held him to have been voluntarily bound by his signature.Others, so compromised, suffered the same fate, following Morgan's disingenuous advice that they should be made to sign their (disputed) accounts

Ms Talbot said at the end of it: "If the challenge is not met the ability of POL to rely on Horizon for data will be compromised and the future prosperity of the network compromised."[29]

33. She also tied this challenge to what she saw as the need to be seen to be taking tough action against Mr Castleton. In February 2006 Talbot apparently said to POL's external solicitor, Stephen Dilley, that 'P.O must not show any weakness and even if this case will cost a lot, there are broader issues at stake other than just Castleton's claim: if the P.O are seen to compromise on Castleton, then "the whole system will come crashing down" i.e it will egg on other sub postmasters to issue speculative claims.'[30]
34. However, in March 2006, she was still approaching this problem honestly. Her email to Tony Utting, Marie Cockett, Graham Ward, David X Smith, Keith Baines and others on 1 March, began with a presumption that they would be following up the actions from the December 2005 meeting, and she sought news on when someone would be appointed to analyse Fujitsu data. She went on to say this:

> I should be obliged for your comments upon what we believe that Fujitsu should beable to provide by way of evidence and what they are obliged to provide under the contract.I would have thought that as a very minimum they should be able to say that they have run a check on the whole network between 1/12/04 and 31/3/05 and can confirm hat either there were no problems affecting the wholesystem, detail the ones which did occur, comment upon which areas they affected and whether they would belikely to cause the problems complained of by Castleton… I don't see any reason why Fujitsu coul dn't supply this information … If Fujitsu concur this can be built into the new process around investigation of these issues.
>
> I would have thought that Fujitsu should be able to check the system with particular reference to Marine Drive between the dates above and possibly afterwards to confirm whether or not they have found any evidence of the problems complained of by Castleton…I need to know whether there's any justification for this allegation.[31]

35. This email met with resounding silence from the rest of the POL group. To the extent she received replies she forwarded them to Stephen Dilley on 29 March with the comment that the response to her email had been "limited in the extreme".[32] As time went by, Ms Talbot made no attempt to follow up on the reasonable (indeed essential) requirements that she had suggested should be put to Fujitsu, reflecting an earlier consensus.
36. On 16 August, Richard Morgan told the Bond Pearce lawyers that POL should be told that it was "madness" to pursue the claim, given the costs that would be involved, and that it could be settled with "drop hands" and a "confidentiality clause".[33] Bond Pearce were considerably less straightforward when passing that advice on. They merely sought confirmation that their instructions were to pursue the claim, despite the knowledge that the costs would "significantly exceed what is at stake", and noted that therefore the purpose was not to make a "net financial recovery", but rather "to defend the Horizon system" and "take a firm line" to "deter others from raising similar allegations".[34] They did not raise the possibility of a confidentiality clause, no doubt because they knew that POL were by now too invested in the idea of pursuing the claim to deter others.

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[29] POL00107426 p5
[30] POL00070910 p1
[31] POL00071202 pp9-12
[32] POL00071202 p6
[33] POL00072741 p6
[34] POL00082537 p2

37. In the same email, and again at the behest of Mr Morgan, Bond Pearce sought confirmation that POL/RMG did not know of any issues with the Fujitsu system or Horizon integrity generally.[35] Ms Talbot was asked why this had not prompted her to pass on the Coyne Report from the Cleveleys case, and she said:

> I was of the opinion that the preliminary view by Mr Coyne was created ina unique set of circumstances, given that the original datawas no longer available. I didn't consider it to bea full report because the offer from Fujitsu for him to comeand visit their sites and look all over the data was never communicated to him. So I didn't consider that it was a full and comprehensive report.[36]

38. That answer is, we suggest, so plainly disingenuous, so plainly diversionary, that it can be fairly inferred that by August 2006 Talbot was no longer approaching the Castleton litigation honestly. She must have either drawn her own conclusions from the silence and inaction following the December 2005 meeting, or someone had spoken to her, to make it clear what was expected of her.

39. The latter possibility gains some support from the fact that whenever Ms Talbot was asked about who within the Post Office gave her instructions in the Castleton litigation, she affected complete amnesia. This may have appeared slightly more genuine if it were not maintained even in the face of her emails to people, apparently seeking instructions. For example, she was asked about an email she sent to Marie Cockett, Keith Baines, David X Smith and Rod Ismay, amongst others, in which she asked for a decision on settling the claim.[37] She was asked why she had chosen that group of people to send the email to, and she recalled that Keith Baines had given a witness statement (presumably in the Cleveleys case), but when asked whether it assisted her in recalling who gave her instructions in the Castleton case, she said that it was a whole selection of people, a moveable feast, and no one from the list of addressees stood out.[38] Her otherwise incomprehensible reluctance to recall or confirm who was giving her instructions is explicable if the instructions she received were not all in writing, and were best forgotten if she now wants to avoid an investigation which may lead to a prosecution[39].

40. That is the background against which to set the litigation strategy deployed by POL. Even before Morgan had fully developed his *Shaw v Picton* argument, he was seeking ways to avoid the need to prove that the Horizon IT system was reliable, as can be seen from the August 2006 Bond Pearce email summarising his advice:

> A further point made by Richard Morgan was that we should endeavour to move the main area of focus in the case away from the Horizon system if possible. Richard suggested a method to do that would be to prove (if possible) the physical cash losses at the M arine Drive branch by reference to all the other documentation created around the transactions, not simply by reference to what was in fact recorded on the Horizon system[40]

41. This advice from Morgan put the onus on POL to ensure that they did not run the litigation in this way unless the Horizon system was sound, because at the same time he asked them to confirm that it was. With costs already rising far above the value of the claim, it would have been justifiable to avoid instructing experts to prove that Horizon

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[35] POL00082537 pp1-2
[36] INQ00000979 p15 (internal numbering p59)
[37] POL00113909
[38] INQ00000979 p16 (internal number 62-63)
[39] It should not be forgotten that the Castleton judgment, on what is now known, might well be set aside on grounds of fraud in the Civil Courts
[40] POL00082537 p1

was sound if Post Office had reason to believe that it was, but in fact, of course, the POL group by now had every reason to believe (at the very least) that it was not.

42. This email from Bond Pearce to Mandy Talbot should have been the final warning to the POL group that they were crossing a line. If they pursued the legal strategy being advocated to them, the litigation against Mr Castleton would become an intentional sleight of hand: their lawyers would seek to deflect attention from the Horizon system in court, so its reliability would not in fact be tested, but meanwhile the litigation would be pursued aggressively so that it would appear as if they were defending the Horizon system, so as to deter other SPMs from challenging its integrity[41]. Not only should it have prompted Ms Talbot to reveal the Cleveleys Report to Bond Pearce; it should have led to senior discussions to reinvigorate the recommendations following the December 2005 meeting; and the Castleton litigation should have been halted unless and until POL could be sure that the debt they were claiming was, in fact, owed. Castleton is therefore a watershed in this history of injustice.
43. In fact the POL group pursued the sleight of hand strategy, and they did so aggressively. The emails between Talbot and the various addressees over the course of the litigation makes this perfectly clear:
    a. Initially, on 4 September, she forwarded the Bond Pearce email to Baines, Ward, Utting and others, and she asked the three of them to give her "assistance" responding to the enquiries about Fujitsu, which included the request for confirmation that there were no issues with the system.[42] Whatever assistance they gave, it did not include providing honest answers, such as informing Bond Pearce about AI376, or the problems with ARQ data.
    b. When Talbot wrote on 9 November 2006 seeking instructions on settlement, referred to above, she said POL should aim to get judgment in the full amount because "we will be able to use this to demonstrate to the network that despite his allegations about Horizon we were able to recover the full amount from him. It will be of tremendous use in convincing other postmasters to think twice about their allegations".[43] During November, when POL believed that the case would settle, they worked up wording which they wanted Mr Castleton to sign, saying that he was wrong to blame the Horizon system, and the shortfalls were due to his own mistakes.[44] Of course they had no evidence to support the statement they wanted him to extract from him.
    c. Then when judgment was handed down in POL's favour, on 21 January 2007, Talbot messaged a large group of addressees, saying "the judgement has entirely vindicated the Horizon system". She said they would be awarded costs at the indemnity rate and added, gratuitously, that "Mr Castleton appeared to be stunned by the result". Rod Ismay responded "great news" and "what can we do on a proactive comms front here?" so as to "assure branches and clients that they can rely on the integrity of Horizon".[45]
44. All this, despite what Morgan said the case was about when he opened it:

    Judge - The biggest issue in this case seems to be whether the computer is working properly, isn't it?

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[41] Although not in evidence, the authors have seen letters sent to an SPM, citing the Castleton case as being proof of the robustness of Horizon. These have been sent to CTI.
[42] POL00090437 p65
[43] POL00090437 p64
[44] Eg. POL00090437 p59
[45] POL00157980

> Mr Morgan - Well that that's how Mr Castleton would like to portray it…
> … much like a pocket calculator, a computer is only a tool that reflects the information that's entered on to it.
> … And your Lordship in fact touches the core of this question the core of this trial and that is, is this a trial about an account produced by an agent… which is verified by him or is this a trial which is a rampage through how a computer works…[46]

Misconduct by POL's lawyers

45. It is clear that Talbot intended to run the Castleton litigation for a collateral purpose, with the debt claim a side show to defending Horizon at all costs, including at the cost of ruining Mr Castleton. Given the documents which were found and shown to her, she had little choice but to admit this when giving evidence to the Inquiry.[47]
46. Stephen Dilley, on the other hand, accepted that POL wanted to defend Horizon, but claimed that this was not the main purpose, and sought to deny obvious conclusions to be drawn from the documents. He said "when the claim was first issued, it was issued to pursue what Post Office believed was a debt. However, as the case continued, I think the motivation of Post Office changed and what they wanted out of the case changed. I think it was less about making an example of Mr Castleton and more about sending a message that they were willing to defend the Fujitsu Horizon System."[48] When he was challenged with the documents which made it clear that Talbot / POL wanted to make an example of Castleton, he resorted to denying that the documents meant what they plainly said:

> Q: … it certainly seems, as far as Mandy Talbot was concerned, that the case shouldn't be settled and that Mr Castleton should effectively be sacrificed in order to prevent further challenges against the Horizon System. Do you agree with that?
> No, I don't.[49]

47. Mr Morgan KC sought to give an account which was even less in keeping with the contemporaneous documents, claiming that he did not even know that the Post Office wanted to be seen to be defending Horizon. This passage is revealing:

> Q. Was there any suggestion made to you at this time that it was important to the Post Office to vindicate the reputation of Horizon?
> A. No and, as I've just been saying, that didn't form part of my strategy nor was it communicated to me, **nor could I have run it, had it been** -- had I been told to do it on the basis of the material that I had.[50] [Emphasis added]

48. This answer identifies why Morgan did not want to remember the truth: he did not have the evidence to support the contention that Horizon was reliable, and so if proving that contention was POL's purpose in running the litigation, it was a collateral purpose, tactically unworthy, and an abuse of the process of the court.
49. Having just made it clear why he should not have allowed POL to pursue their collateral purpose, Mr Morgan KC was then taken to a telephone attendance note by Dilley, who

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[46] LCAS0000197 p14
[47] A. … it was indeed about the desire on the part of POL to have a substantial judgment dealing with allegations about the Horizon System.
Q. That's what you delivered for them, wasn't it?
A. Yes.
https://www.postofficehorizoninquiry.org.uk/file/1837/download?token=y1lOq1ijp177-178
[48] INQ00001077 p4 (internal numbering p14)
[49] INQ00001077 p6 (internal numbering p21)
[50] INQ00001078 p34 (internal numbering p134)

recorded himself as telling Morgan "the Post Office driver had been getting a judgment against Mr Castleton to show that the computer system wasn't wrong and deter other subpostmasters from bringing a claim".[51] Morgan accepted the obvious, but he went on to try and extricate himself by saying that he may not have "focused" on this aspect:

> Q. So what this note records you as having been told, a month or so out from trial, was that the driver for the Post Office had been to get a judgment against Mr Castleton to show its computer system wasn't wrong and to deter other subpostmasters from bringing a claim. That's not about recovering the money, is it?
> A. No, I agree.
> Q. It wasn't about the sums involved in either the claim or the counterclaim?
> A. Yeah, I can see that.
> Q. And you were being told, according to this note, it was to get a judgment to show the integrity of a computer system and about deterrents?
> A. Yeah, I can see that.
> …
> I didn't recall this as being information conveyed to me. I'm quite surprised to see it there now. I don't recall it at the time and had I focused on that, I think my response would have been that I couldn't -- I simply couldn't prove that the system wasn't wrong. It just wasn't an achievable objective.[52]

50. If he did not focus upon it then he should have done.
51. This was not the only time Morgan failed to focus on an important issue. He told the Inquiry that Castleton had not disputed the cash accounts in his testimony at trial. The transcripts show this to be untrue: Castleton explained at trial that he had disputed the accounts by calling the Helpline. When this was put to Morgan, he claimed that the "impression" he had received was that Castleton accepted that the accounts were a fair and true reflection of what had occurred in his branch.[53] If this was genuinely his impression, as opposed to a rosy memory to appease his conscience, he should have listened to what Mr Castleton was actually saying, as opposed to what he wanted to hear.
52. We submit that both Mr Morgan KC and Mr Dilley should be referred to their respective professional regulators for allowing POL to abuse the process of the Court by pursuing a collateral purpose in this case. Running up costs of more than £321,000 was itself a clear sign that POL was not really pursuing a debt of £24,000, and both lawyers had ample and clear evidence of POL's true intent.[54]
53. To make matters worse, Morgan drafted[55] and Dilley signed a Re-Amended Reply & Defence to Counterclaim[56] which said:

> Fujitsu Services have looked at the Claimant's computer system and have confirmed that the losses recorded by the Defendant were caused by a difference between the physical transactions that actually occurred and were recorded on the system by the Defendant or his assistant as taking place and the cash in hand that was declared by the Defendant relating to those transactions, and accordingly those losses were not caused by the Claimant's system's software or hardware.[57]

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[51] POL00069794
[52] INQ00001078 p34 (internal numbering pp135-6)
[53] INQ00001078 p40 (internal numbering pp157-9)
[54] POL00070811 "there are important broader implications at stake such as the message it will send to other subpostmasters if the [Post Office] settle or are seen to pursue it vigorously"
[55] POL00069801 is an email from Morgan to Dilley which makes it plain Morgan drafted this Statement of Case.
[56] Dated 23 October 2006. Mr Castleton was to become a litigant in person on 20 November 2006
[57] LCAS0000190 p1 §3

54. One month after this was signed, Mr Castleton become a litigant in person, and, unsurprisingly, he mounted no formal challenge to this paragraph. There are no contemporaneous documents which suggest that there was an evidential foundation for the claim made in it. When Dilley was asked about it, he suggested that it was based on the evidence of Anne Chambers or Andrew Dunks,[58] neither of whom attested to looking at the Horizon system and making the findings as drafted. Mr Morgan KC said the paragraph was based on instructions from his solicitor but was not able to identify when or how Dilley had given him that information.[59]
55. This took the legal sleight of hand one step further. The Statement of Case did not merely side-step the question of Horizon's reliability, it met it head on, with an assertion that was not supported by evidence. It nevertheless bore a signed statement of truth from Dilley, despite the fact that Morgan knew he did not have the "material" to "vindicate the reputation of Horizon"[60].
56. Given the defence Mr Castleton put forward, and the way POL was responding to it, Dilley and Morgan should have verified and documented the evidential foundation of this paragraph very carefully and extensively before settling, signing and serving the Statement of Case. The process of supporting such an assertion should, in fact, have been a memorable part of the case for both of them.
57. There is nothing to suggest that Baines shared the knowledge of Horizon's flaws with Dilley and Morgan, unlike the internal POL group behaviour in the aftermath of the December 2005 meeting. We do not, therefore, suggest that Dilley or Morgan intended to pervert the course of justice. Nonetheless, serving this amended Statement of Case, in the context of their client's clear collateral purpose, was conduct which (we say) fell very far below the standards of integrity expected of Officers of the Court.

The Fujitsu group conspiracy

58. The Inquiry is yet to hear from Pinder or Elliott, and so this section must be considered with a degree of caution. What is inescapable, we say, is that Anne Chambers gave perjured evidence in the Castleton trial. She would not have done so without higher authority. The culture and motivations of Fujitsu management indicate culpability.

Knowledge within the Customer Services Directorate

59. Litigation support sat within this Directorate. We refer to §28 of our Phase 3 Closing Statement, for a summary of the evidence of the Customer Services Director in post in 2000, Stephen Muchow. He said that he knew that the EPOSS code had too many bugs, and as a result his department was the sacrificial lamb, by which he meant that SSC and the other lines of Horizon support had to manage the fallout from the bugs.
60. The whistleblowing testimony of Richard Roll has now been accepted by every relevant Fujitsu witness, including Muchow: SSC was routinely inserting transactions into branch accounts in order to try to make them balance. This is, of course, not the sort of activity the makers of accounting software should have to resort to, and it was, in itself, very clear evidence that Horizon did not produce reliable cash accounts.

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[58] INQ00001078 p1 (internal numbering pp 3-5)
[59] INQ00001078 p28 (internal numbering pp111-2)
[60] INQ00001078 p34 (internal numbering pp135-6) as per footnote 54 above

61. We submit that subsequent Customer Services Directors, such as Naomi Elliott who was in post in 2006, must have been equally aware of the heavy load which was put on SSC and Horizon support as a result of the poor code built into Horizon at the outset.

Fujitsu's failure to understand the role of litigation support

62. We have heard from Paul Patterson that litigation support was not a service Fujitsu was equipped to deal with:

> A. I was professionally very surprised that that service even existed. We're meant to be an IT company not a prosecution support service and, for that to be designed in from the very earliest stages, I was very, very surprised at it. And in terms of the work associated with doing it, I have no view on it. I am amazed that it was even in the contract.
>
> Q. Are you saying, in effect, that this is not something that Fujitsu was set up to do and not really something that Fujitsu was skilled at or able to do properly?
>
> A. … there is no contract that I've ever signed where that obligation and extent of that obligation sits inside it. I do not understand why it was there. And, clearly, it was there for -- and is still there, actually -- for a very, very long time.
>
> Q. … we see the consequence, don't we, of that sort of exceptional, and perhaps unprepared for, contractual service because, as we know, Anne Chambers gave evidence in less than ideal circumstances in the Castleton trial.
>
> A. I agree.[61]

63. When giving these answers Patterson may have had in mind the appalling testimony of the litigation support manager in post at the time of the Castleton trial, Peter Sewell. According to Sewell's own email, he thought the purpose of litigation support was to send witnesses to court to oppose the likes of Castleton, who was "out to rubbish the FJ name".[62] When faced with that email, his patently dissembling answers further demonstrated how disastrously misplaced he was in managing a team of people who were required to provide evidence for use in court.[63]
64. He even claimed that he did not know that any SPMs had complained of problems with Horizon cash accounts. This was an obvious lie. Not only was he managing a team which responded to SPM complaints about the integrity of Horizon accounts, but there is clear documentary evidence that he was part of the Fujitsu response to Cleveleys in 2003, during which he was told that Mrs Wolstenholme was complaining of the problems she had experienced balancing.[64]
65. The fact that Sewell was in a role which should not have had the likes of him anywhere near it was not merely unfortunate. It was part of the wider Fujitsu failure to perform on the contract with POL, both in terms of the adequacy of the product, but then ultimately in the attempt to make up for that through maintenance and support. By the time the Castleton litigation was underway, there was already a very troubling history within litigation support, which we will return to below when considering criminal prosecutions.
66. The wider failure of the litigation support function is exemplified in John Simpkins' admissions that the ARQ data was not sufficient to draw conclusions about the

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[61] INQ00001117 p29 (internal numbering p115-6)
[62] FUJ00154750
[63] INQ00001116 pp32-22 (internal numbering pp126-9)
[64] He claimed to have no memory of this whenp220 of POL00118221 was put to him - INQ00001116 pp31-2 (internal numbering 124-6)

functioning of the Horizon system, because access to the full message store was needed, and further, that he and his colleagues had never been asked to advise on the kind of data that should have been supplied.[65] Even more specifically, he admitted that the Marine Drive ARQ spreadsheets he looked at for the purpose of giving evidence at the Inquiry did not provide sufficient information to assess the health of the Horizon system's performance, but that some of the information needed could be obtained in branch by the SPM running off reports.[66] We have taken instructions on this, and it was exactly these reports which Cath Oglesby removed from the Marine Drive branch, after which they were never seen again. Mr Castleton's recollection is to be preferred against hers.

67. Whether that was by accident or design, the Fujitsu litigation support function was evidently falling very far below the mark, which would have been exposed by the Castleton litigation. This may account for Pinder's initial responses when first contacted about it, which seek to deflect, and require POL to send a standard criminal prosecution request for ARQ data.[67] By that point, Fujitsu and POL had reached a mutually agreeable arrangement for the provision of inadequate data in criminal cases, so Pinder clearly hoped he would be able to do the same in the civil case.

Using Anne Chambers to avoid exposing Fujitsu's failures

68. In the event, it was Dilley who prevented the complicit ARQ arrangement from working in the Castleton litigation. Whatever his shortcomings, he was not immune to the need for some kind of evidence to support a case, unlike Rob Wilson's criminal law team.
69. Throughout the Autumn of 2005 he made a number of attempts to secure some kind of evidence from Fujitsu in response to the reports that Castleton's solicitors had sent to him.[68] Eventually in December 2005 Pinder responded more substantively, via Ward.[69] It is clear from this reply that he was dependent on Anne Chambers and Gareth Jenkins to provide him with information.
70. Thereafter, throughout 2006, these two potential witnesses were continually in the offing. There was a meeting on 6 June 2006 attended by both, as well as Elliott, Pinder, Sewell, Ward, Dilley and others. The note makes it clear that Jenkins was senior to Chambers, but she had been directly involved in one of Castleton's calls to the Helpdesk.[70]
71. This was followed by them working together on a response to Castleton's analysis of the data from Week 42. The Chambers draft[71] was "firmed up" by Jenkins,[72] which again shows that he was the more senior figure, and the one who was more comfortable providing evidence that supported Horizon.
72. Nevertheless, it was Chambers alone who ultimately gave evidence. The reason for this has not been recorded clearly in contemporaneous documents. There is a tangled email chain which does not shed much light.[73] The more illuminating evidence came from Mik Peach in Phase 3, and we refer to §§49-51 of our Phase 3 Closing Statement for a summary

[65] INQ00001115 p11 (internal numbering pp42-4)
[66] INQ00001115 p13 (internal numbering pp50-52)
[67] POL00090437 p128-30
[68] POL00090437 p101 onwards
[69] POL00090437 p94
[70] POL00071414
[71] LCAS0001306
[72] WBON0000027
[73] POL00081490_034

of the pressure that was brought to bear on Peach by Pinder and Elliott, obliging him to offer Chambers up as a witness.

73. The Fujitsu group were conscious of
    a. the unreliable Horizon cash accounts,
    b. the regular need to insert transactions into branch accounts as a result
    c. the problems that presented within litigation support, which was supposed to provide evidence that POL could rely upon to prove that cash accounts were reliable and SPMs were in charge of all the entries.
74. The initial reluctance to assist, and the later internal manoeuvres which resulted in Anne Chambers giving evidence, suggests that the Fujitsu group were panicking, but ultimately doing their utmost to prevent the High Court from hearing the truth about Horizon's frailties.

The response to Chambers' Afterthoughts

75. Against this background, guilty knowledge can be inferred from the complete lack of response from Pinder and Elliott to Anne Chambers' Afterthoughts.[74] As with the POL response to the December 2005 meeting on Horizon integrity, there is no good reason for the failure to act upon her sensible suggestions:
    a. She pointed out the blurred lines between her evidence of fact about the Castleton call and the eventual questions which led to her giving expert evidence about the system as a whole; and she made the point that in future there should be a proper technical review to support that kind of expert evidence.
    b. She noted that the message store was only disclosed as an afterthought, that the Tivoli event logs were only disclosed after she had revealed they existed when giving evidence, and that there were other types of files archived to the audit servers, as well as material attached to Peaks, all of which was potentially disclosable.
    c. She even noted that it was unfair that SPMs were continually batted back and forth between the NBSC and the Horizon Helpdesk.
76. Pinder's only known response, copied to Elliott, bears quoting in full:

    > Thanks Mik, there was no intention to have a wash up on this particular case as such but I must stress that from the outset this was 'new ground' and a particularly unusual case (1st of its kind in 10yrs) for all concerned. It involved many different variables which, at any point in time could have culminated in a totally different outcome.
    >
    > This enquiry took well over a year to conclude and routine procedures which have served us well for 10 years were suddenly being stretched to new limits, but it does highlight how (POA) can be called to account and I totally agree we must learn from this.
    >
    > Ann (many thanks for your comments) you have highlighted some interesting areas of procedure which we need to recognise, and I will discuss these with Naomi and will keep you both informed.

77. It is not merely a "pat on the head". The full subtext is "phew, we got away with it" and nothing was acted on. It appears nothing was implemented.

Anne Chambers' perjury

78. Anne Chambers is plainly an intelligent woman. She had the sense to send the Afterthoughts document, which – to some extent – covers her back. However she made

[74] FUJ00152299

one 'slip' in her evidence to the Inquiry. She said, unbidden, that she was told not to mention the Horizon Known Error Logs when preparing for the Castleton trial. When she was picked up on this and questioned closely, she said she would have received this instruction from Peach, Pinder, or Elliott. She claimed not to realise that this was strange.[75] To someone of Mrs Chambers' intelligence, it must have been obvious why Pinder and Elliott would not want the Court or Mr Castleton to know that the KELs existed - their very name was a problem for Fujitsu (although it would not have been, were the known errors nothing more than the usual run of the mill problems any system might encounter). Fraser J found that they were *essential* for analysing the reliability of Horizon accounts. It follows that hiding the KELs from Mr Castleton hobbled his ability to advance his case.

79. Being told not to mention essential evidence, and then abiding by that instruction, indicates that Mrs Chambers did not tell the whole truth when testifying at the Castleton trial. Her claim that she did not find this suspicious is not credible.[76] It is also telling that she did not mention the KELs in her Afterthoughts. She claimed that this was no more than an oversight, but she did mention PEAKs,[77] which were something of a companion document within SSC practice and procedure.

80. She also failed to mention in her trial evidence that she had conducted an investigation into Marine Drive's Week 42 data and found a missing stamp transaction.[78] As the Castleton trial proceeded, it evidently became clear to Chambers that she was being asked to give evidence about Horizon more generally, not just the investigation she carried out as a result of Castleton's call to the Helpdesk. She knew that Castleton thought that there were missing transactions in the Week 42 data, because that was why she had been asked to look at it. When he started asking her questions about problems in the Horizon system, answers which told the *whole truth* would surely have included an explanation of the missing transaction, and the "known fault" which had caused it. That in itself would have revealed the existence of the KELs, since that is where the known fault must surely have been recorded. She failed, in all respects, to do so. These omissions amount to deceit.

81. It is also notable that in her evidence to the Inquiry, although Mrs Chambers has been forthcoming, she has also been reluctant, at times, to provide a simple, true answer with no bark on it. We submit this is because if she had it would have presented a stark contrast to her testimony in the Castleton trial, and draw attention to other problem areas for Fujitsu which she chose to gloss over. It took Counsel to the Inquiry several attempts, over the four days of her evidence, to extract what was, eventually, an admission that SSC staff could and did use SPM log in details to insert transactions, such that it was not possible to be sure that the transactions which appear on the Marine Drive ARQ data actually took place in branch.[79] Again, as an intelligent woman, she must have known at the time of the Castleton trial, that this was information the Court should know.

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[75] INQ00000980 p12-13 (internal numbering pp45-49)

[76] Q. Did it not strike you even then as perhaps slightly suspicious that nobody wanted you to mention known error logs with that title being what it was?
A. I don't think I thought of it as suspicious. I thought it seemed strange but, as I said, I was in a very unfamiliar situation. https://www.postofficehorizoninquiry.org.uk/file/1824/download?token=qsAmI2y p147

[77] INQ00000980 p37 (internal numbering 145-147)

[78] WBON0000027

[79] Q. So transactions which appeared in the standard filtered ARQ data, for example, in Mr Castleton's case, with his ID user number next to them, would not necessarily mean that they were carried out by him?
A. It would have been possible, yes, for SSC to put transactions in, that--
Q. Using his ID?

82. There were repeated examples of Chambers seeking to appear even-handed before the Inquiry, when her answers were really aimed at shoring up her original testimony. The evidence was often technical, and complicated, but one example is perhaps illustrative. It was acknowledged by Chambers in the June 2006 meeting that hardware failures could cause lost transactions.[80] On 2 November 2006, Greg Booth, the second temporary SPM who came into Marine Drive after Castleton was suspended, informed POL lawyers that he had experienced lost transactions after screen freezes. Pinder told Dilley that there would be evidence of this in the ARQ data, in the form of "unusual" restarts, and he said that this was being checked.[81] However, there was no evidence that these checks were completed, and no one testified to it. Chambers said in her Inquiry testimony that she could not remember if it was her who made the checks. In the event it seems that no one followed up on this, because Pinder sought help from Jenkins to close the issue down as user error, on the basis that Booth had not followed the Horizon User Manual.[82]

83. After a tortuous passage of technical questioning, Ms Chambers tried to play down the significance of this loose end:

> Q. Well, just standing back and taking the view overall, if we may. Whatever examination there was for unusual restarts in Marine Drive we now don't really have any conclusive evidence of it; is that right?
>
> A. There's -- I haven't been able to find any evidence that it was happening but it is a possibility that there were some and no, we don't have anything that would be conclusive.
>
> Q. All right. What that could have shown is whether there were problems with screen freezes and, therefore, potentially missing data following screen freezes or it would have been easier to find the possibility, if you'd found unusual restarts; is that right?
>
> A. Yes. But, as I said, it wouldn't necessarily cause missing data, but it might –
>
> Q. But it might do.
>
> A. Potentially, there might have been sessions that didn't settle but that wouldn't necessarily cause discrepancies.
>
> Q. No, but it might do?
>
> A. Unlikely to but, yeah, it would depend on the individual circumstances. [83]

84. A genuinely even-handed witness would not have felt the need to temper every concession, but a witness who is deeply conscious that she did not tell the whole truth about problems in the Horizon system would want to suggest that any inadequacies in the Marine Drive investigation were minor, and they did not make any real difference.

85. In the same vein, her explanation for the zero-stamp declaration, offered apparently off the cuff, was a theory that sought to explain away an apparent anomaly.[84] It relied on the postulation that Mr Castleton had used "a different drawer ID". However, we are instructed that he did not have a different drawer ID, and this really goes to show how Chambers was constantly casting about for theories – even if they were totally unsupported – that would allow her to stand by her original testimony.

A. Using his ID.
Q. Without leaving a fingerprint on the standard, filtered ARQ data that that had been done?
A. Yes, I think that would have been possible.
https://www.postofficehorizoninquiry.org.uk/file/1818/download?token=RB4Y3yRdp68

[80] POL00071165 p6

[81] POL00081826_022 p7

[82] See Booth's Second Witness Statement, in which he blames himself for not following the manual: LCAS0000471

[83] INQ00000980 p35 (internal number p137)

[84] INQ00000980 p31 (internal numbering pp121-22)

86. She was even more keen to "cover off" the questions which Mr Castleton had put to her at trial about his user ID apparently switching between Nodes 1 and Node 2. She categorically rejected the suggestion that this was anomalous, despite her much more equivocal evidence at trial.[85] She explained the change on the grounds she had not had a chance to think about it at trial,[86] but the rock-solid explanation she wanted to rely on in her evidence to the Inquiry was obviously self-serving. If Mr Castleton had exposed an anomaly at the time of the trial it would undermine her assertion in her witness statement that "there was no evidence whatsoever of any system problem".[87]
87. We submit that Mrs Chambers' explanation for the Nodes switching should not be accepted without independent expert evidence[88] supporting it. An authoritative textbook on distributed systems (such as Legacy Horizon) says this:

> A node in the network cannot know anything for sure—it can only make guesses based on the messages it receives (or doesn't receive) via the network. A node can only find out what state another node is in (what data it has stored, whether it is correctly functioning, etc.) by exchanging messages with it. If a remote node doesn't respond, there is no way of knowing what state it is in, because problems in the network cannot reliably be distinguished from problems at a node. Discussions of these systems border on the philosophical: What do we know to be true or false in our system? How sure can we be of that knowledge, if the mechanisms for perception and measurement are unreliable? [89]

88. This suggests that it may be much harder to give categorical explanations for the communications between Nodes than Mrs Chambers' evidence would suggest.
89. It is unfortunate for Mrs Chambers that she was put into the firing line by Pinder and Elliott, but we submit that she was the tool that they used to pervert the course of justice, and against her own better judgement, she did not tell the whole truth in the Castleton trial.

Stephen Dilley's failures of disclosure and the drafting of Statements[90]

90. For the detail underpinning this section we refer to our Submission regarding additional questions for Stephen Dilley, dated 30 October 2023, and the earlier additional questions which we appended to it dated 22 September. In broad terms, however, we submit that Dilley should be further referred to the SRA for 1) failures to disclose and 2) drafting misleading witness statements.
91. The joint report by Chambers and Jenkins[91] referred to a missing stamp transaction in the Marine Drive ARQ data for week 42. This was prepared in response to Castleton's own analysis of the week 42 data, which asserted that there were missing transactions, so the Report undeniably dealt with an issue in dispute in the proceedings and would have assisted the defence. Dilley did not disclose it. In his Inquiry evidence he claimed to have mentioned it to Castleton's then lawyer in a phone call, but his own phone note of the call about the week 42 data did not refer to the Report, or any discussion about it.[92] It is clear

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[85] INQ00000980 pp35-6 (internal number pp138-143)
[86] INQ00000980 p32 (internal numbering p126)
[87] LCAS0001265 p5
[88] Mr Cippione, perhaps?
[89] Designing Data Intensive Applications by Martin Kleppmann (O'Reilly Media Inc, March 2017) - Chapter 8 'The Trouble With Distributed Systems', sub-heading 'Knowledge, Truth & Lies'
[90] We suggest that a potential pattern emerges in POL's civil litigation – e.g., the manner in which Elaine Cottam's (née Tagg's) statement was taken, if she is to be believed.
[91] WBON0000027
[92] POL00069604

from the note that Dilley cherry-picked the content from the Report which helped his client's case, and presented that in the phone call as neutral information, without attributing it. There is an argument that the Report was privileged, but there are arguments both ways, and there is no evidence that Dilley ever applied his mind to the question, let alone to the question of whether he waived privilege by using the helpful material in the report when talking to the defence.

92. In any event, the material referred to within the report was disclosable on any view:
    a. a complete extract of audit data for the period concerned
    b. a report which apparently would have been generated overnight when the missing transaction occurred (although that was said to be no longer available)
    c. the Reference Data in use at all branches at that time
93. Likewise, the reference to the "known fault" should have been provided, because that was clearly relevant, and would have revealed the existence of the Known Error Logs.[93]
94. His failure with regard to drafting witness statements is also set out in our 30 October Submission, but in a nutshell, it is clear from the contemporaneous email referred to therein[94] that Dilley was very alive to the content of the Exhibits to Helen Rose's Witness Statement. Under those circumstances, it should not have taken him long to realise that they undermined the content of the statement. It was at best incompetent and at worse malign to allow Rose to sign off on a grossly misleading witness statement.
95. The non-disclosure of the BDO Stoy Hayward Report falls into a different category, in our submission, because there was a much clearer argument that it was privileged. Nevertheless, it also disclosed problems, as had the Greg Booth missing transactions, as had the huge number of calls to the Helpdesk, which again, Dilley, chose not to disclose.[95] Taken together, these were red flags requiring Dilley to be much more careful with disclosure, and if he thought privilege applied to either of the reports he did not disclose, he should have been clear about that at the time. It is our submission that whilst non-disclosure of the BDO Stoy Hayward report is defensible as a commercial litigant, it raises questions as to how Quasi-Departmental Public Corporations ought to act in litigation. A higher ethical standard is required.

The criminal prosecutions conspiracy

96. Criminal prosecutions were conducted by POL in furtherance of its ruthless commercial and reputational imperatives, contrary to the Rule of Law and the interests of Justice. POL routinely failed to adhere, and disregarded guardrails prescribed by Law, such as PACE Code C and the CPIA. We submit that there is evidence to support the following allegation:

    Rob Wilson, Tony Marsh, Tony Utting, Graham Ward, John Scott, David Pardoe, David Posnett, Stephen Bradshaw, Ged Harbinson, Jan Holmes, Andy Dunks, Penny Thomas, Brian Pinder, Peter Sewell (the Security group) conspired together, and with others, to pervert the course of justice by pursuing criminal prosecutions between 2000 and 2015 which were not in the interests of justice, but which were in the interests of POL and Fujitsu.

[93] The document which was not put to Dilley on this issue was his email to Morgan- POL00069797
[94] POL00070790
[95] INQ00001077 pp23-5 (internal numbering pp91-8)

97. POL's deliberately inadequate investigations were a course of conduct which had a tendency to pervert the course of justice, because they routinely i) relied upon evidence from Fujitsu it knew to be misleading ii) failed to disclose material which met the disclosure test / failed to follow reasonable lines of enquiry, iii) over-charged without evidence and iv) prompted unreliable confessions, which allowed POL to secure convictions and subsequent Confiscation Orders on a reversed burden of proof. This not only unjustly enriched POL directly, but it also secured unjust commercial advantage for POL and Fujitsu, by supressing the truth about POL's unreliable IT systems. Disclosure was wilfully degraded, ignored or discounted.[96] This was mirrored by Fujitsu's repudiation of quality standards.[97]
98. We submit that there is evidence that this course of conduct was also intended to pervert the course of justice, because the Security group either knew that POL's IT systems were unreliable, or they closed their eyes to that knowledge, so the failures in POL's investigations were either deliberate or deliberately overlooked. Key Fujitsu figures were complicit in this. As stated above, the motive for the course of conduct may have been to protect POL/Fujitsu, or their own jobs, and the natural consequence of the course of conduct may not have been desired as such, but that does not mean it was not intended. Perverting the course of justice may have been seen as unfortunate collateral damage.

The ad hoc contractual arrangements for POL prosecutions

99. When the Benefits Agency abandoned Horizon, POL had to negotiate how the new system was going to evidence benefits fraud as well as audit shortfall prosecutions. This was problematic, because, as AI376 shows, POL knew that the Horizon cash accounts were unreliable. Cash accounts were central to the criminal investigation of benefits frauds as well as audit shortfalls, as Rob Wilson explained a few years later:

> Whilst the prosecution rely on the checks of the actual orders dispatched to Lisahally to prove the overclaims themselves, the cash accounts remain a significant piece of evidence. The fact that the overclaims are deliberate, as opposed to accidental is demonstrated by the lack of a corresponding surplus in the cash account.[98]

100. On 15 July 1999, David Miller, the Horizon Programme Director, agreed Terms of Reference for a Review of the Horizon Cash Accounts.[99] On 20 July he is recorded as telling the POL Board that he "considered the system robust, and fit for purpose", yet when he testified to the Inquiry, he said that if he made this statement it was incorrect, and he pointed out that over the page it was recorded that "members were concerned that a number of technical issues remained unresolved".[100]
101. This Review of the Horizon Cash Accounts (in an undated draft produced by Jeremy Folkes from his own record) concludes:

> There is a need to ensure that the problems relating to the audit trail for S&IE investigations and demonstrating that the system meets the requirements of the Police and Criminal Evidence Act have been impact assessed as incidents and are considered by the Acceptance and Release

[96] See Cross-examination of Pardoe by Henry KC re the culture of non-disclosure - INQ00001100 pp39-41 (internal numbering 153-163)
[97] FUJ00155476 – Guy Wilkerson advises Peter Sewell to remove the phrase "fit for purpose" in relation to a line on the admissibility of evidence in a CP (this amendment was made here: FUJ00155474)
[98] POL00104593 p7
[99] WITN05970134 p1
[100] POL00000352 p11, see also §24 of our Phase 2 Closing Statement

> Authorisation Boards if not satisfactorily resolved. In addition, it will be necessary to consider whether the current level of cash account errors will affect the accuracy of settlement with clients, when considering the rate at which the system should roll-out.[101]

102. Whatever action was taken arising from this, the problems with audit trials were inadequately impact assessed. When Horizon rolled out, arrangements to obtain evidence to support prosecutions were woefully inadequate. Even if ARQ data was obtained, it was not sufficient to assess the health of the Horizon system (see §§66-67 above).
103. Furthermore, over Phase 4 it has become clear that many of the investigators we heard from in Phase 4 were recruited in 1999/2000 as Horizon was being rolled out. This was a recruitment drive which ran alongside the negotiations around AI376. POL's senior management should have known that unless these new investigators were very well aware of the potential for cash accounts to be unreliable, as well as equipping them with the tools they needed to analyse whether they were reliable, grotesque injustices would occur. Phase 5 will need to examine who was responsible for this recruitment drive, and whether there was a deliberate policy of suppression or disinformation.

Jan Holmes' role in Cleveleys and the prosecution of Tracy Felstead

104. Jan Holmes was an influential person at this early stage. He was responsible for providing ARQ data to POL before that function moved from Audit to Customer Services. Then in 2001 Mr Holmes was involved with the ARQ missing data problem, referred to at §§17-18 above. Then in 2004 he was instrumental in the Fujitsu response to the Cleveleys Report from Jason Coyne, and was remarkably bullish in his defence of Fujitsu.[102]
105. This was despite the fact that he co-authored the 1998 Report on EPOSS PinICL Task Force[103] with David McDonnell, and then authored and owned the consequent Schedule of Corrective Actions. This troubling document stated on 17 November 1999 that "EPOSS continues to be unstable", but in the following months Mr Holmes reported the various ways which Terry Austin claimed to have dealt with the problems without following the original recommendation to re-write the EPOSS code. These claims did not bear scrutiny, as Mr Holmes himself saw, because he attempted to obtain statistical evidence of whether the fixes had worked, but he was stonewalled. On 10 May 2000, Mr Holmes recorded the decision taken by Mike Coombs to close the issue down.[104]
106. Extraordinarily, this man, who was intimately acquainted with the flaws in the Horizon system[105], and who was not a technician,[106] provided a draft Witness Statement for the Tracy Felstead prosecution which said this:

> There are no reasonable grounds for believing that the information stored on the Horizon system would be inaccurate because of improper use of computer terminal. During the Material Time the Horizon system was operating properly at the Camberwell Green Post Office Outlet or if not, any respect in which it was not operating properly or was out of operation was not such as to affect the production of audit records or accuracy of their contents.[107]

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[101] WITN05970134 p5
[102] See, for example, this section of his evidence: INQ00001073 pp18-19 (internal numbering 71-74)
[103] FUJ00121098
[104] WITN04600104 p9-10
[105] He even reviewed FUJ00121098 on 14 May 2001 but was not forthcoming as to why he did so
[106] https://www.postofficehorizoninquiry.org.uk/file/855/download?token=lqWb5Nnip107, line 23
[107] WITN04600217 p5 There is no doubt this statement was used against Miss Felstead– see §59

107. Even more extraordinarily, Fujitsu sought to charge £19,047 for providing it to POL, and POL sought to defray that by making the defence pay for it. We refer to our Note to the Inquiry relating to Jan Holmes, dated 17 August 2023, for the detail, and the remaining questions arising from this troubling evidence. The result was the burden of proof was reversed, the defence did not have the material they needed to discharge the burden wrongly placed upon them, and an innocent 19-year-old girl was sent to prison and nearly sent out of her mind.
108. We say the decisions around the significant sum of money that Fujitsu were seeking as payment for providing the Holmes statement must have been escalated within bothPOL and Fujitsu; and it is known that senior people were taking the decisions with respect to Cleveleys (see §19 above).

Symbiosis: Fujitsu (Holmes) and POL

109. While Holmes was helping POL to cover-up Horizon problems in the contested and therefore open cases of Cleveleys and Felstead, POL security was operating more covertly in "dark places",[108] as Tony Utting put it in his Inquiry testimony. In December 2005, Graham Ward said this when referring to the Holmes Witness Statement, when proferring it for the Castleton case, as an exemplar:

> I would suspect that the Jan Holmes statement is more or less exactly what you'll need should the 'Castleton' case proceed all the way (however I seem to recall that at the time, as it was out of the normal this statement did cost us 'an arm and a leg'.... but I maybe wrong).[109]

110. What that tells us is that by 2005 a great many people had been prosecuted on the back of evidence of this ilk, and these other cases were carrying on invisibly, below the radar. Cases like that of Parmod Kalia, sent to prison after he pleaded guilty at the magistrates' court on 17 January 2001.
111. The conclusion which we say can be drawn at this stage is that those in charge of POL investigations, such as Tony Marsh and Tony Utting, but more importantly the directors responsible for their activities, closed their eyes to the known problems with Horizon cash accounts, and this was despite the very obvious, visible cases of Felstead and Cleveleys which were staring them in the face.

Designing the litigation support service

112. Those cases which were not 'out of the normal' were evidenced according to the business-as-usual litigation support practices which were developed by Fujitsu, with input from POL. In February 2002 these practices were formalised for the first time. Prior to that, there had been an "informal agreement" for the provision of up to 50 ARQ extractions per annum.[110] The people involved in formalising the arrangements included Jan Holmes, and the Approval Authorities included Martin Riddell, Customer Services Director, and

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[108] He was explaining why the Security Team Monthly Report started in 2004, because it was thought their activities needed to be more visible to the top level of the business:INQ00001096 pp8-9 (internal numbering 32-35)

[109] POL00083161_009 p1 – which reveals Holmes' statement **was** deployed against a counter-clerk at Camberwell, i.e., Ms Felstead ["…please find attached the statement from Jan Holmes which was used in a prosecution of a counter clerk at Camberwell Branch Office in 2002."]

[110] FUJ00152189 p7

Graham Ward at POL.[111] The policy that was produced is notable for the fact that the number of per annum ARQ extractions leaped to 500,[112] and because it produced a flowchart for the ARQ extraction process and the litigation support process generally.[113]

113. Both of these were subject to later change. A hard copy file of printed emails marked "Audit Record Requests (Increase in Limits)" has been disclosed, which shows that from 2003 to 2008 there were numerous high-level decisions both to reduce and to increase the limits. This obsession with the quantity of ARQ requests, and the cost of them, substituted for any consideration of the quality of the prosecution support service being offered. At the most fundamental level, it was not fit for purpose, as Simpkins' made clear when saying that no one in SSC was consulted to make sure that the information provided did what it was supposed to do (see §66 above).

114. Worse than that, however, it failed to ensure that Fujitsu disclosed the material which POL was obliged to consider for disclosure to the defence. In the 2002 flowchart, it was promised that litigation support would include not only checking Helpdesk logs and non-polling reports, but also "Analysis all event and fault logs", and this was to take place before completing the witness statement to produce the ARQ data. That was further explicated at paragraph 7.2.3 as follows:

> Any relevant PinICLs identified in Powerhelp logs will be reviewed through PinICL Client to ensure that any recorded faults, would not hinder the outlets performance or otherwise affect the integrity of audit archive from which the Record Queries are extracted. ThePinICL log will detail the error relating to the site, equipment and or service in question. [114]

115. By 2007, there was a revised Policy document, which also involved Ward, but on the Fujitsu side the contributors included Penny Thomas and Dunks, with Sewell and Elliott as Approval Authorities.[115] The revised flowchart had watered down the analysis of fault logs to say merely "Check appropriate PEAK logs, if required",[116] and 7.2.3 had also been watered down to say this:

> If requested, all relevant Powerhelp calls will be reviewed to identify any recorded faults, that might affect the integrity or admissibility of the audit archive from which the ARQs are extracted.[117]

116. It was therefore very hit and miss whether PinICLs and PEAKs would even be considered by Fujitsu, let alone disclosed to POL. There was reference to the complete message store as the source of the data being extracted into the spreadsheet which was ultimately served on disc, but no consideration was given to when it would be appropriate to disclose further information from the message store to POL or the defence.

117. Neither document mentioned the Known Error Logs. This adds to the evidence that Elliott and her predecessors and successors in the role of Customer Services Director were deliberately hiding the existence of the KELs. Both documents had a section about "Additional Litigation Support" which set out the ways that expert evidence might assist, including by the provision of the Tivoli and other "system security event files", but this

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[111] FUJ00152189 p1
[112] FUJ00152189 p9
[113] FUJ00152189 p16
[114] FUJ00152189 p18
[115] FUJ00122366 p1
[116] FUJ00122366 p16
[117] FUJ00122366 p19

disclosure was expressly excluded from the standard service, and it was envisaged to be wholly exceptional.[118]

118. Worst of all, the documents hid Fujitsu's "remote access" capabilities. The draft pro forma witness statement appended to the 2002 policy had a long section explaining the way that transactions in branch were recorded to the Transaction Management Service. It contained this line:

> This creates a record of all original outlet transaction details including its origin - outlet and counter, when it happened, who caused it to happen and the outcome![119]

119. This was not true. It failed to reflect the fact that some of the transactions in ARQ data may have looked as if they were "original outlet transactions" when in fact they were inserted by Fujitsu SSC staff. A search on CP View shows that this line appeared in some 270 Witness Statements between 2 March 2001 and 11 November 2008.
120. This was a knowing lie. Both policy documents included extensive sections explaining the secure process laid down for extracting ARQ data, making it clear that Fujitsu understood the importance of maintaining complete data integrity in the context of prosecutions. Indeed, the whole thrust of the pro forma witness statement was to assert that the exhibited ARQ data was a reflection of branch transactions, without any entries added later.
121. The lie was constructed by Fujitsu, but at some point, during this period, POL came to know it was a lie. As Mr Atkinson KC has shown, the fundamental importance of third party disclosure and the Attorney General's Guidelines on Disclosure were marginalised, seemingly part of the covenant of secrecy between POL and Fujitsu to prevent this fiction being exploded before the courts.

Remote access

122. From the inception of Horizon, there was a fundamental security flaw, which allowed SSC staff to routinely tamper with branch accounts using "remote access" to take over a SPM's user ID, and then insert transactions which would look indistinguishable from branch transactions on the ARQ data[120]. Leaving aside all the other problems with Horizon, this alone undermined every single prosecution based on Horizon data. Rob Wilson conceded this, whilst denying that he knew of remote access in 2010, claiming absurdly that he thought the Receipts/Payments mismatch issue notes related to visits by Fujitsu to perform covert corrections on the physical counter at the branch.[121]
123. The fact that this information was kept secret until 2018, speaks to how significant and damaging it was, and how obvious that was to anyone who came to know about it earlier. Very concerted efforts must have been made to supress that information over such a long time. Even now, all the SSC witnesses apart from Richard Roll have sought to downplay it, by claiming that it was done infrequently, and it was done with POL's knowledge. Their motivation is clear: what they were doing was so obviously wrong they can only excuse themselves by minimising and deflecting. However, they did not know about the lie in the standard Witness Statement used to serve the ARQ data.

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[118] FUJ00152189 p22 and FUJ00122366 p22
[119] FUJ00152189 p30
[120] FUJ00088036
[121] Cross examination by Henry KC on 12 December 2023 re FUJ00081584 "This solution could have moral implications of Post Office changing branch data without informing the branch" from p 172/20 or 43/75

124. Andy Dunks was the main liaison between SSC and litigation support, but the chain of command above him led to the Customer Services Director, who was responsible for the SSC, so the various people in that role must have known about both sides of the equation.
125. Meanwhile, by October 2008 Post Office were well aware, of SSC's capabilities, as revealed in Andy Winn's email to Alan Lusher about the case against the SPM Graham Ward (as opposed to the POL employee Graham Ward).[122] In 2019 Matthew Lenton asserted that Post Office approval was sought whenever SSC inserted transactions which would have an impact on financial data, and the person approving would be a "senior Post Office manager".[123]
126. We anticipate that the next two Phases will bring forth more evidence of the senior people involved in conspiring to hide Fujitsu's "remote access" capabilities. This is likely to have its origins in the disappearing email from Lynn Hobbs to Rod Ismay in November 2010, in which she explicitly told him about SSC's capabilities. This also went around other members of the POL senior leadership team including Angela van den Bogerd. We refer to §§72-75 of our Phase 3 Closing Statement for the details.[124]
127. However, the cover-up which began with the Ismay Report and continued through to the Bates litigation was, we submit, a different nature of conspiracy. The course of conduct which formed the basis of the criminal prosecutions' conspiracy involved relying upon ARQ data served under knowingly misleading witness statements.

The 2008 ARQ problems

128. In the latter years of Legacy Horizon, Fujitsu became aware of significant problems with the ARQ data which are explained by Patterson in §§75-116 of his Third Statement.[125] In very short form, these were locking problems which occur within distributed systems like Legacy Horizon: sometimes Nodes need to lock, to prevent multiple Nodes from simultaneously recording incompatible information; but equally, when a Node locks, it can cause processes to fail. During the internal Fujitsu discussions, Gerald Barnes identified what he believes was the more fundamental problem: poor error handling. On 2 January 2008 he said:

> The fact that EPOSS code is not resilient to errors is endemic. There seems little point 'fixing it in this' one particular case because there will be many others to catch you out…
> It may be worth passing on the general message to the HNGx team that in many cases code should always try and exit gracefully after an error and not just blunder on regardless.
> This is a perfect example of why. Had the balancing code exited gracefully then if the user had tried again after CABSProcess had finished working then all would have been well![126]

129. These locking problems combined with poor error handling resulted in lengthy discussions about whether to fix, what kind of fix, what kind of checks to instigate, etc. It was another year before they finally decided to inform POL. On 7 January 2009, Wendy Warham, Operations Director, sent an email to Sue Lowther and David Gray of POL[127] in which she claimed the problem had been "resolved", and significantly downplayed what had occurred, when compared with what is now known from Patterson's Third

[122] POL00023432
[123] FUJ00211295 p3
[124] SUBS0000022
[125] WITN06650300
[126] FUJ00155366 p3
[127] POL00142363

Statement. Peter Sewell was also downplaying the problem, as can be seen from an email forwarding the Warham email within POL.[128] Both, to a degree, acted disingenuously.

130. This, however, does not excuse POL's reaction. David Posnett and Rob Wilson both took the view that the standard witness statement from Fujitsu should not be amended. Rob Wilson went on to say that there was nothing "undermining" and disclosure of the information would "only lead to fishing expeditions".[129] This was fed back to Wendy Warham and Peter Sewell by Penny Thomas, which made them complicit in POL's decision to hide the evidence of problems with the ARQ data.[130] No doubt they would claim it was not for them to decide how POL should run its prosecutions, but they were responsible for their staff members providing witness statements to support those prosecutions, and therefore the responsibility fell on them to ensure those statements were truthful. Moreover, the wording they had proposed, and which Wilson and Posnett rejected,[131] came nowhere close to revealing the whole truth as they all knew it to be.

POL Security was drenched in information about Horizon errors

131. The somnambulant response of Wilson and Posnett to the 2008 ARQ fault is also revealing. By this point they had hundreds of prosecutions which depended on ARQ data either completed or underway. If they had truly believed that Horizon was "robust" they would have been shocked and horrified to hear that there was a problem that may require an amendment to the standard Fujitsu statement exhibiting the ARQ data. The truth is that by 2008 they were determinedly closing their eyes and ears to anything they did not want to hear about Horizon problems, because in fact the evidence of the Horizon and NBSC call logs was clear enough. Across all those investigations, there was ample evidence of desperate SPMs calling in when they struggled to balance. It was even accepted by Stephen Bradshaw that they were "drenched" in information "that Horizon wasn't working" via these call records "from the very beginning."[132]
132. The attitude of the security department to those call records was expressed in black and white in April 2002 by Raymond Grant, a man who was so conditioned to that attitude that he failed to even see the problem:

> Miss Saleem indicates that the problem would appear to be " gletches in the system" she indicates that she was told this by the helpdesk. It has not been possible to identify who, from the helpdesk is giving out this information. It does however give concern to Post Office Security that the operators are being advised that the Horizon system is faulty and produces inaccurate results![133]

133. Evidently, he thought it important to try to prevent call handlers from telling SPMs the truth about "gletches", but he did not think Post Office Security would have concerns about the inaccurate results they were causing. This reflects a culture not merely of adversarial astigmatism, but myopia in respect of disclosure.
134. By the time Wilson and Posnett told Fujitsu not to disclose the 2008 ARQ problems, they were already entrenched in intentionally perverting the course of justice.

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[128] POL00142363
[129] FUJ00155400 pp2-3
[130] FUJ00155400 p1
[131] FUJ00155400 p3
[132] INQ00001112 p48 (internal numbering pp191-92)
[133] POL00093246 p1

Doctoring the Noel Thomas expert statement

135. Further evidence that Fujitsu and POL were working together to pervert the course of justice comes from an email dated 10 March 2006 from Ward to Pinder, Thomas, Neneh Lowther and copied to Sewell. It made requests for evidence in relation to Castleton and other civil cases, and began the process for obtaining evidence in the Noel Thomas prosecution. Ward said this:

> given the allegations being made by the Postmasters, I'm sureyou'll agree that it is very much in both ourselves and Fujitsu's interests to challenge the allegations and provide evidence that the system is not to blame for the losses being reported[134]

136. This is a rare example of a conspirator putting the aim of perverting the course of justice into writing. It is notable that none of the addressees, despite being in the business of litigation support, took him to task, or escalated any concerns that a POL investigator was nakedly admitting that he wanted them to provide evidence as a means of supporting POL and Fujitsu's commercial interests through litigation.

137. Small wonder that, as a result, the Jenkins statement which was served in the Thomas case had been significantly doctored by Ward, and the people in Fujitsu's litigation support team had permitted that to happen. We refer to the evidence put to Ward on 1 February 2024 for the details of this shameful episode, and his repeated requests to ask Jenkins to remove the term 'system failures', as it 'may well support postmasters.'[135] When Jenkins was no longer fit for purpose, Bradshaw, ventriloquised by Cartwright King's statement, stepped into the breach. [136]

Over-charging and extracting confessions

138. The practice of charging theft as a threat to bring forth a guilty plea to false accounting was explained by Paul Whittaker in his statement,[137] and exemplified in the case of Janet Skinner. The truly striking revelation in evidence was that Diane Matthews, the investigator, did not believe there was any evidence of theft.[138] She claims that she raised this with the lawyer, Juliet McFarlane, but the theft charge was maintained through to a Plea and Case Management Hearing at the Crown Court, at which point a guilty plea to false accounting was accepted. As a case study against a backdrop of many other prosecutions which involved this same "plea bargain" and given that many of the audit shortfall investigations involved the same essential evidence, there must be many other cases where the purpose of the theft charge was to act as a threat.

139. There was a slight variation on this theme in the case of Oyeteju Adedayo. The investigator, Natasha Bernard, did not even believe the "confession" which she had extracted, and which was used to support the false accounting charge.[139]

140. Over the course of evidence from many investigators it became obvious that the interview with the SPM was their focal point, and what they saw as the main part of their job. David Pardoe testified that there was an expression used to describe those who were not up to the job of being an investigator: "tackle shy", meaning that the person was too anxious at

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[134] FUJ00122197 p6
[135] https://www.postofficehorizoninquiry.org.uk/file/2572/download?token=lQIRlA26from p147 onwards
[136] INQ00001112 p5 (internal numbering p20)
[137] WITN05050100 at §§168-169
[138] INQ00001098 p30 (internal numbering p120)
[139] INQ00001092 p17 (internal number p66)

the thought of interviewing a suspect. Apparently, such people would be told they were not right for the role.[140]

141. Despite this focus upon interviewing, they were very bad at it. Bernard, for example, had no knowledge of the "verballing" provisions in PACE, so when it was put to her that she needed to take care over the signed "confession" that she had been given by the auditor she was at a loss. Likewise, she had no understanding of s76 of PACE, so could not recognise the sort of conditions which might make a confession unreliable.[141]
142. There were multiple examples of basing questions on lies, threats and slurs, perhaps the most extraordinary being the interview of David Blakey by Paul Whitaker, in which Whitaker suggests that if Blakey does not admit the offending his sick wife will have to be interviewed, and goes on to suggest that he took the money to spend on a mistress.[142] Tony Utting, Whitaker's manager, was asked about this interview, and – in essence – he claims to have seen nothing wrong with it.[143]
143. Aside from this bullying approach to interviewing, there are also many stories of investigators gratuitously invading the privacy of SPMs and their families, by searching personal belongings such as underwear drawers and jewellery boxes as if expecting to find incriminating evidence. Both Vijay Parekh and Vipin Patel have given us instructions on this and the intimidation felt by their family as a result. There is nothing to suggest that evidence from searches was ever served in criminal proceedings, which shows that it was a waste of time, and a practice that would have ended but for the intimidatory value it offered.
144. Over-charging, intimidation and extracting confessions howsoever possible all drove towards the same end: if the suspect could be made to provide the evidence against themselves, there was no need to worry about unreliable IT evidence, and investigators could send cases to the lawyers without further ado. As the Skinner case shows, it was sometimes the lawyers who were even more to blame.

Systematising perverting the course of justice

145. It seems that from some time before the introduction of Horizon, Post Office investigators (then under the auspices of Royal Mail) were preparing two kinds of report: an Offender Report and a Discipline Report. As described by Tony Marsh, it was always envisaged that the first of these reports would be sent to the lawyers for advice, and therefore would attract privilege. The second contained a "subset" of the information in the Offender Report, and it was envisaged that the Discipline Report would be seen by the defence, probably in the context of disciplinary proceedings.[144] This in itself was a slightly concerning approach, but at some point, around or before September 2005 the Guide to completing these reports began saying this:

> Details of failures in security, supervision, procedures and product integrity.
>
> This must be a comprehensive list of all failures in security, supervision, procedures and product integrity it must be highlighted bold in the report. Where the investigator concludes that there are no failures a statement to this effect should be made and highlighted in bold.
>
> Significant failures that may affect the successful likelihood of any criminal action and/or cause significant damage to the business must be confined, solely, to the confidential offender

[140] INQ00001100 p9 (internal numbering 35)
[141] INQ00001092 p16 (internal numbering 61-62)
[142] POL00044830 and POL00044831
[143] INQ00001096 p33-34 (internal numbering p129-133)
[144] INQ00001068 p26 (internal numbering p103)

report. Care must be exercised when including failures within the Discipline Report as obviously this is disclosed to the suspect offender and may have ramifications on both the criminal elements of the enquiry, as well as being potentially damaging to thereputation or security of the business. If you are in any doubt as to the appropriateness of inclusion or exclusion you must discuss with your ITM. (See POLTD. Investigation Circular 2005/12-20 Sep 2005)[145] [NB we have not been able to locate this Circular on CP View.]

146. The investigation team was being expressly told not to disclose material which might undermine prosecutions, and therefore meet the disclosure test, because it might damage the reputation of the business; and specifically, failures in "product integrity" would encompass failures in Horizon integrity. Even the choice of word "integrity" suggests that the authors of this document had Horizon data integrity issues in mind.
147. In 2005 the Designated Prosecution Authority was named in this document as Tony Utting,[146] and the person who drew it up was Ged Harbinson, Compliance Manager.[147] The same wording was in the Guide in 29 March 2012, when the Designated Prosecution Authority was named as Dave Pardoe. However, according to Andrew Hayward, by 2011 all cases were going to John Scott, Head of Security, for a final decision on whether to proceed.[148]
148. The Guide was circulated by David Posnett to a long list of security team members, alongside the now notorious document giving racist descriptors for ID Codes.[149] Neither Scott nor Posnett had anything to say for themselves when asked about this suite of documents. Scott pretended that he had no idea they were being circulated, even though he was perfectly capable of answering coherently when asked specific questions about the nature of Offender Reports and Discipline Reports;[150] and Posnett made the risible claim that he had not read the documents he was circulating, and that when completing the ID Code section of the forms, investigators might use google to find out what the codes meant, rather than using the Post Office's own document, which he circulated.[151]
149. This document built upon a policy that was first drafted in March 2000,[152] so written just as Horizon was rolling out. It told investigators to keep information about "security or operational procedures" confidential in the commercial interests of the business:

> Some major procedural weaknesses if they become public knowledge have the potential to assist others to commit offences against the Post Office, or to undermine the Prosecution case, or to bring Consignia into disrepute, or to harm relations with major customers such as the DSS or Girobank. Unless the Offender states that he is aware that accounting weaknesses exist and that he took advantage of them, it is important not to volunteer that option to the Offender during interview. The usual duties of disclosure under the Criminal Procedure and Investigations Act 1996 still apply.[153]

[145] POL00121569 p11
[146] POL00121569 p5
[147] POL00121569 p2
[148] WITN08160100 §47
[149] See eg POL00118104, circulated 31 August 2011
[150] INQ00001083 pp27-9 (internal numbering pp105-116)
[151] INQ00001104 pp39-42 (internal numbering pp115-167)
[152] POL00104747 p6
[153] POL00104747 p2

150. This was put to Utting[154] and Posnett[155]. Again, they had nothing to say for themselves. Utting claimed that the final sentence saved the policy, and Posnett fell back on the usual lines that he did as he was told, and, in any event, he could not remember anything.
151. We submit that all those involved in the preparation and circulation of these documents were knowingly engaged in fostering a mindset intent on supressing information which might undermine the prosecution case, and specifically, information about evidential problems relating to Post Office IT systems.

PRÉCIS OF DUNCAN ATKINSON'S KC EVIDENCE

152. 5 OCTOBER 2023

- defective practices – mischief of fundamental adverse consequences 49/ 17-24, 51/20-53/2
- lack of training 55/1-25 to 56/1-8
- lack of rigour not validating Horizon data 62/7-23
- lack of objectivity as private prosecutor – 'rubber stamp' 63/14 to 64/17, 115/18-25
- blurred delineation of functions 89/6-10, 90/3-20, 91/2-6, 162/21 to 163/4
- failure to investigate impartially and secure third-party material 42/12 to 43/11, 46/13 to 47/7, 161/18 to 163/4
- absence of duty of candour 60/10-20
- primacy of business as prosecutor 96/12 to 97/8, 100/19 to 101/line 23
- refusal to countenance system at fault – scapegoating SPMs 178/16 to 179/20

153. 6 OCTOBER 2023

- concerns re expert evidence 59/9-21
- poor CPIA training 85/24 – 87/15, 123/25 to 124/2
- failure to pursue reasonable lines of inquiry 128/15-25 to 129/1-29
- lack of nuance in prosecuting decisions 25/22-25 to 26/1-23
- duty of candour not observed 42/6 to 43/18
- inadequate PACE training 121/23 to 123/1
- practice and mischief of charging theft and false accounting 32/20 to 33/21

154. 18 DECEMBER 2023

- prioritising and protecting the business 143/15 to 144/3
- chronic failures re charging and failing to follow reasonable lines of inquiry 15/25 to 17/1, 73/8-15, 81/4-14, 82/9-25, 92/15 to 93/4
- no clear delineation of responsibility 17/8-23, 19/19 to 21/6
- PR elevated to expert evidence 38/14 to 39/8
- approach to confiscation 44/25-46/5
- muzzling and manipulating expert evidence 131/25 to 132/18, 133/35 to 134/15, 135/15 to 136/21, 165/5 to 166/12

155. 19 DECEMBER 2023

- Expert evidence – persistent and extremely serious flaws in approach 35/14 to 36/24, 36/25 to 37/16, 38/5 to 40/13, 133/17 to 134/10, 136/2-23, 165/13-25, 170/7 to 171/5

[154] INQ00001096 p7-8 (internal numbering pp27-31
[155] INQ00001103 p16-7 (internal numbering pp62-5)

- Absence of cross disclosure – serious concern 4/25-6/8
- Failure to pursue reasonable lines of inquiry 131/24 to 132/25
- Inexplicable decision to pursue Seema Misra for theft 13/1-16
- Abuse of Code for Crown Prosecutors 19/16 – 21/23
- Abuse of post-conviction disclosure 23/18 to 24/24, 102/24 to 106/6, 110/24 to 111/5

156. The findings of Mr Atkinson KC conclusively establish that POL's disclosure performance, in policy and practice, was wholly unfit for purpose: "It was looking at how to protect the system rather than to assess the reliability of the fundamental evidence in the prosecution of subpostmasters."[156]
157. Mr Atkinson expressed "great concern" as to how the approach of POL remained the same over the period 2002-2012, even though issues regarding Horizon were developing over that period. The impression, derived from his findings, is that POL battened down the hatches, or built walls to defend Horizon at all costs. [157] One document is symbolic of the culture that allowed such lawlessness to flourish.[158]
158. Likewise, one example of non-disclosure illustrates how POL investigations and prosecutions worked: when McFarlane became aware that the temporary SPM who took over after Janet Skinner had been arrested for theft, she recognised that it was disclosable information, but that information was not in fact disclosed until *after* the "plea bargain" had been accepted. This was put to Diane Matthews, who disclaimed responsibility for this flagrant breach of the CPIA, seeking to blame the lawyer entirely, even though she – as Disclosure Officer - had not entered the information on the Unused Material Schedule.[159] We refer to the refusal by Pardoe, three times, to permit a proper investigation of the Lyell facts when this was picked up by Mick Matthews at the confiscation stage[160] when Janet Skinner had an abuse of process application before the Crown Court.[161] (This failure to disclose evidence of shortfalls persisting after the suspension of an SPM is in stark contrast to the service of evidence from temporary SPMs who claimed *not* to have experienced shortfalls after the suspension of Castleton and Misra.)

The R v Seema Misra conspiracy

159. We submit that there is evidence to support the allegation that Rob Wilson, Jarnail Singh, Rod Ismay, David Y Smith, John Scott and David Posnett (the Misra group) conspired together, and with others to pervert the course of justice by prosecuting Seema Misra.
160. By the time of Seema Misra's trial in October 2010 the Misra group were deliberately shutting their eyes to the plain truth that Horizon data was not reliable. They agreed to pursue the trial without disclosing this truth, and therefore they pursued a course of conduct which had a tendency to pervert the course of justice, and which was also intended to pervert the course of justice.

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[156] In connection with POL00141396, 18 December 2023 at page 144
[157] 18 December 2023 at pages 15/25 to 17/1, see also 19/19 to 21/16 as to lack of checks and balances
[158] POL00030622
[159] INQ00001098 p32-34 (internal numbering pp 126-36). Note, too, Natasha Bernard wrongly placing undermining material on the Sensitive Schedule POL00026980 in another case in 2009.
[160] Henry KC cross-examination of Pardoe INQ00001100 re POL00064033 at pp.155-162 [pp.39-41/69]
[161] POL00048745, POL00048861. Pardoe forbade Matthews to investigate Lyell on 22 May and 27 Aug.

161. We reserve the position with respect to Gareth Jenkins[162], Andy Dunks and others at Fujitsu until they have given evidence or chosen not to do so. Likewise Jon Longman.
162. We submit that there are grounds justifying Warwick Tatford's investigation by his professional regulator for misconduct.

Stonewalling the defence requests for evidence and disclosure

163. Seema Misra only became aware of the possibility that Horizon had caused the shortfalls at her branch when Rebecca Thomson's 2009 article appeared in Computer Weekly. From that point onwards her lawyers and expert witness made continual, concerted efforts to obtain full, appropriate disclosure, including four applications to court.[163] Nevertheless, by the time of her trial they did not know about the Known Error Logs, the only bugs they had been told about were the Callendar Square bug and the ARQ duplication error, and they had only been provided with ARQ data for a short part of the Indictment period.
164. With respect to Callendar Square, the disclosure was only made because the defence asked about this bug specifically, given that it had been raised in the Castleton trial. This can be seen from the Jenkins statement finally served on 1 October 2010.[164] The underlying material was not revealed, not even the original emails which were provided to Jenkins.[165] They showed that, whether or not the bug applied in West Byfleet, the response to the bug was originally non-existent and later haphazard, at best. The emails admitted that the bug was in play across the estate for years, affecting many branches on a weekly basis. This was in stark contrast to the assertion in Jenkins' statement: "As with any large system there will be occasional faults such as the one found in Callendar Square, Falkirk. Any such faults, whether found during testing or from live user feedback would be investigated and resolved appropriately."[166]
165. Similarly, the ARQ duplication error was disclosed by way of a sanitising statement from Jenkins.[167] It was presented as if a small, one-off issue had been noticed and readily corrected. The truth was that this was only one of a series of problems with ARQ data. It followed swiftly on the heels of the long-running locking problems which are outlined at §§130-132 above. It was followed by another significant ARQ data integrity issue that arose in the Derby branch when it migrated to Horizon Online. When that issue was brought to John Scott's attention in September 2010, just before the Misra trial, he effectively closed it down.[168] Again, the issue is not just the existence of bugs, but the handling or lack of handling of them. The defence were not just kept in the dark, but misled by the assertion that all bugs were "resolved appropriately".
166. The Misra group did not even provide the basic evidential material underpinning the Indictment. The Indictment period was 30 June 2005 to 14 January 2008. Originally Longman requested ARQ data for that period, but he characterised it as a defence request,

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[162] POL00175839 reveals that Jenkins (p.2 email to Jarnail Singh, dated 1 March 2010) had gone 'native' and had no notion of being objective or independent with the first listing for trial then imminent on 15 March 2010
[163] UKGI00014994 p3 history set out: first application POL00093946 heard on 10/3/10 and second application made 7/5/10; p8 third application made on day 1 of trial ; UKGI00014845 p20 forth application made on day 6 of trial.
[164] POL00058440 p21
[165] FUJ00083722
[166] POL00058440 pp22-3
[167] POL00061056
[168] FUJ00155516

and it was taken as such by Posnett, who refused it. This was stated to be partly on grounds of cost, but also because "many cases plead guilty at the eleventh hour and/or nothing is found by 'experts' to challenge the Fujitsu data - the usual attempts of muddying the waters."[169] Tatford, via Singh, approved the refusal to supply 5 years of data, on grounds of cost, and said the defence should be required to request and justify obtaining data for specific periods.[170] Ultimately, however, at the Inquiry, Tatford accepted that this was entirely wrong-headed, because the data was prosecution evidence to support the Indictment they had framed, and it should therefore have been served as part of their case.[171]

167. As the last injury heaped upon insult, there was never any thought given to disclosing the complete message store. As Chambers said, this was recognised as necessary in the Castleton litigation, albeit by way of an afterthought, and in a manner which made it virtually impossible for him to make any use of the disclosure, but it was at least offered.

168. The stonewalling of defence disclosure requests was not even confined to IT. Tatford was taken to his passage of cross-examination in which he alleged that Mrs Misra was lying about the trainer who had witnessed her problems with balancing.[172] She was not lying, and her team had requested disclosure to support her account,[173] as it was obviously likely that the trainer would have recorded what he had witnessed. Nothing was forthcoming, but the Inquiry has now been given a document which confirms that Michael Opabeyi approved Mrs Misra putting a sum into local suspense, because he thought a transaction correction would be forthcoming to account for the inexplicable loss.[174]

Abuse of expert evidence

169. In 2010 Tatford was an experienced and competent barrister. He should have been very well aware of the rules governing expert evidence, and indeed he claims that he was.[175] Nevertheless, under Mr Beer KC's questioning, Tatford rightly accepted that he had ignored or broken almost every one of those rules, not least with his interventions on Jenkins's Witness Statement; and when it was put to him that he had been trying to "harden up" the evidence, he accepted that he had "overstepped the mark".[176] Tatford repudiated his own Witness Statement for the Inquiry, acknowledging that he had summarised his interactions with Jenkins in a way which "makes me appear better than I clearly have been".[177]

170. Grave as it was that Tatford sought to harden up Jenkins's evidence, he was at least able to see where he went wrong and make appropriate admissions. When Singh was questioned on the subject, he also conceded misconduct, but only in an attempt to maintain the obvious lie that he believed Jenkins to be a witness of fact. When he was presented with an attendance note in which he recorded Tatford describing Jenkins as "our expert", Singh claimed that this was an oversight, and he should have followed up

[169] POL00052202 p2
[170] POL00044557 pp5-6
[171] INQ00001094 p8 (internal numbering pp29-30)
[172] INQ00001094 p43 (internal numbering p172)
[173] SMIS0000188 p2, POL00058503
[174] POL00065114
[175] INQ00001094 pp15-6 (internal numbering pp60-61)
[176] INQ00001094 p42 (internal numbering 165 and 166)
[177] INQ00001094 p42 (internal numbering 167)

on it,[178] but of course the note was only one of many of his own documents which made it clear that Jenkins was giving expert evidence. His untenable lie was borne of desperation: how else to explain his real instructions to Jenkins:

> As you are our Horizon Expert you need to telephone Charles McLachlan… to arrange a meeting where you can discuss all his reports and his concerns about the Horizon so you can deal with it and rebut it which you have done in your longtelephone conversation about his various hypothesis and then write a detailed report which would goto someway of progressing and concluding this matter and importantly preserving the Horizon system.
>
> May be the simplest and practical way of dealing with this whole question is to find a shortest span of logs, analyse it, disprove or rebut what the Defence Expert is saying in his reports.
>
> Just a reminder you are an Expert for Fujitsu, you will be giving evidence in Court, the Judge and Jury will be listening to you very carefully and a lot will hang on the evidence. [179]

171. This email shows Singh's interactions with Jenkins were not the inexperienced, neutral efforts he sought to suggest they were. It does indicate blundering incompetence - a more skilful lawyer would have found a more sophisticated way to manipulate the expert evidence - but it is not in the least neutral. Plainly, by this point, Singh was engaged in shoring up Horizon whatever the cost, knowing that he and his colleagues had secured a great many convictions on the back of it. If the cost was a perversion of the course of justice by deploying a biased Fujitsu "expert" who would say whatever was necessary to "preserve" Horizon, so be it.

Wilson's intervention in the Ismay report

172. More troubling still was Wilson's approach to the question of expert evidence. As Head of the Criminal Law Team, it was his responsibility to ensure that the lawyers in his department knew the rules and were capable of instructing experts so that they would be able to provide independent opinion to assist the administration of justice. When asked about it, he seemed to suggest that he had never given it a thought:

> Q. Did you ever give any guidance of exercise any supervision over the lawyers beneath you in relation to their professional duties concerning expert evidence?
>
> A. No.
>
> Q. Why was that?
>
> A. I thought we were doing it properly. I don't think I was alive to the problems that you've pointed out to me.
>
> Q. When you say "alive to the problems", ie the difference of approach that's needed when you instruct somebody to give expert evidence as a witness in court proceedings?
>
> A. Exactly.[180]

173. The truth is that in March 2010 he had given strategic thought to the use of expert evidence. At the same time as giving many reasons why he thought it would be a mistake to instruct an independent expert to review the Horizon system generally, he said this about the use of expert testimony on a trial by trial basis:

> What we really need to do is impress on Fujitsu the importance of fully cooperating in the provision of technical expertise and witness statements to support the criminal and civil litigation now and in the future.[181]

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[178] INQ00001102 p32 (internal numbering p127)
[179] POL00054267
[180] INQ00001106 p14 (internal numbering 55-6)
[181] POL00106867 p1

174. He knew about the Misra trial, and the unprecedented challenge to Horizon evidence which it presented, having been party to emails in late 2009 about the disclosure challenges.[182] When he wrote the above sentence a few months later, the Misra case must have been front and centre in his mind, and he was not much more subtle in expressing his intent than Singh was when sending his email to Jenkins. In trying to avoid the exposure of wrongful past practice that might come with the introduction of independent expertise, he evidently thought it would be valuable to obtain "expert" evidence from Fujitsu, which he rightly expected would shore up the Horizon evidence deployed in court. If that meant allowing biased and inadequately instructed expertise to pervert the course of justice in the Misra trial, so be it. This was not only cynical but criminal.
175. We refer to §§63-71 of our Phase 3 Closing Statement for more detail on Wilson and Ismay's involvement in the Ismay whitewash and the simultaneous blocking of disclosure in the Misra proceedings. This was, again we say, not only cynical but criminal.

The Receipts & Payments Mismatch bug

176. This bug came to light shortly before the Misra trial. Jenkins wrote a report on it, dated 29 September 2010, and a document which the Inquiry has now seen many times records a subsequent meeting about it, at which Jenkins was present.[183] These documents undermined the prosecution case against Mrs Misra, and assisted her defence, partly because they revealed the presence of a bug which could not be detected by the Horizon user,[184] but also because they revealed a woefully wrong-headed approach to dealing with bugs. In his report, Jenkins said that if we "amend the data" this will need to be "carefully communicated" to branches to "avoid questions about the system integrity".[185] The fact that he expected his readership to accept this speaks volumes. By this point in 2010, people at working level in POL and Fujitsu expected there to be system integrity issues, and that SPMs should be kept in the dark about them. The note makes it plain that Fujitsu and POL expected to be able to resolve this issue covertly.[186]
177. These assumptions were further developed in the meeting, and so normalised were they, whoever took the meeting note felt able to record the three "solutions" under discussion:

> SOLUTION ONE - Alter the Horizon Branch figure at the counter to show the discrepancy. Fujitsu would have to manually write an entry value to the local branch account.
>
> IMPACT - When the branch comes to complete next Trading Period they would have a discrepancy, which they would have to bring to account.
>
> RISK- This has significant data integrity concerns and could lead to questions of "tampering" with the branch system and could generate questions around how the discrepancy was caused. This solution could have moral implications of Post Office changing branch data without informing the branch.
>
> SOLUTION TWO - P&BA will journal values from the discrepancy account into the Customer Account and recover/refund via normal processes. This will need to be supported by an approved POL communication. Unlike the branch "POLSAP" remains in balance albeit with an account (discrepancies) that should be cleared.

[182] POL00053723
[183] POL00028838
[184] POL00028838 p7
[185] POL00028838 p8
[186] "The Receipts and Payment mismatch will result in an error code being generated which will allow' Fujitsu to isolate branches affected this by this problem, although this is not seen by the branches."POL00028838 p3

IMPACT - Post Office will be required to explain the reason for a debt recovery/ refund even though there is no discrepancy at the branch.
RISK - Could potentially highlight to branches that Horizon can lose data.
SOLUTION THREE - It is decided not to correct the data in the branches (ie Post Office would prefer to write off the "lost"
IMPACT - Post office must absorb circa £20K loss
RISK — Huge moral implications to the integrity of the business, as there are agents that were potentially due a cash gain on their system.[187]

178. The meeting also noted the "Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data."[188] Sitting in this meeting in early October 2010, Jenkins knew that within days he would be giving evidence in one such legal case. He must have wondered what the lawyers would expect him to say about this bug and how it was to be rectified.[189]
179. On the 8 October, which was the Friday before the Misra trial was due to start on Monday 11 October, Alan Simpson in Security emailed the Jenkins report and meeting note to Wilson, saying "My concern is around the proposed solution/s, one or more of which may have repercussions in any future prosecution cases and on the integrity of the Horizon Online system."[190]
180. Wilson forwarded this email and the attachments to Singh (and McFarlane) at 16.29 that Friday afternoon. The footer to a print-out of the Jenkins report shows that Singh printed it from his c: drive at 16.38.[191] Singh knew that Jenkins was due to give evidence at the Misra trial, and in light of the email from Wilson he must have discussed it with him.
181. When asked about this episode, Wilson claimed that he had a meeting with Singh and McFarlane to discuss the problem of whether and how to tell the SPMs at the affected branches that their data was to be altered, but *not* to discuss the much more immediate problem of whether the bug was to be disclosed in the Misra trial, and what Jenkins was to say about it.[192] It is hard to see why lawyers in the Criminal Law Team would have anything at all to do with communicating with SPMs who were not involved in any form of legal proceedings. That was not their responsibility. On the other hand, the decision on whether to disclose the bug to those SPMs already involved in ongoing proceedings was very much their responsibility.
182. In the same passage of evidence Wilson admits that he decided that the Receipts and Payments Mismatch bug was not disclosable, and accepts that this was wrong, because the material he received from Simpson should have been disclosed to the Misra defence (and others being prosecuted). This ties to the inescapable fact that the material received from Simpson was not disclosed, and Jenkins said nothing about it, neither in discussion with the defence expert (who would surely have picked up on it if he had), nor in evidence.

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[187] POL00028838 p3
[188] POL00028838 p2
[189] "…if he was expressing an opinion that the system worked properly and he was aware of material that might suggest to the contrary, then he had a duty to disclose that in his report, even if he hadn't been asked to." Evidence of Duncan Atkinson KC, 18 December 2023 at pp.133 to 134
[190] POL00055410
[191] POL00028838 p6
[192] INQ00001106 pp29-30 (internal numbering pp116-120)

183. Although Singh has not yet answered questions on this subject, in his Witness Statement he claims not to have seen the Jenkins report on the R&PM bug,[193] and that he knew nothing of any bugs in the Horizon system.[194] This despite Wilson saying that the content of the Simpson email and attachments were "appalling", which is why he held the meeting with Singh and McFarlane. We submit there is every reason to conclude that Singh not only received the Simpson email and printed-out the attachment, but that he remembers doing so perfectly well, but has lied about it in his Witness Statement.
184. Considering the predicament Singh and Wilson were in on that Friday, there is also every reason to believe that they decided to tell Jenkins not to say anything about the bug. They knew he had attended the meeting at which the impact on ongoing legal proceedings was discussed, and he would therefore be wondering what he ought to say about it. Given that Wilson admits that he decided the bug was not disclosable, he would not have run the risk of Jenkins making the disclosure on his own initiative. We submit that Wilson and Singh conspired to supress the information not only about the bug itself but also about the implications arising from the Simpson material: 1) that Fujitsu had the power to alter data covertly in branch accounts, 2) that this meant there had been other bugs which affected the integrity of Horizon data, and 3) that there were bugs in the system which were not obvious to Horizon users. As Wilson himself conceded, covert remote access would have brought all prosecutions to a halt if that had been known. [195]

Absence of Cross-Disclosure: the Hosi case

185. This is another troubling aspect of the matter, especially given the U turn performed by counsel, who resiled from his initial view and claimed he had been persuaded by Juliet McFarlane. The chronology appears to be as follows:
    - 8 January 2010 **-** McLachlan requests access to Hosi file and related materials (**FUJ00156097**) – Juliet McFarlane asks Jane Owen to find the appropriate person at Fujitsu to deal with this. At this stage, McFarlane seems far more willing to co-operate with the defence requests.
    - There is then a flurry of emails concerned about the implications of the Hosi and Misra cases (**FUJ00152888, FUJ00122701, FUJ00154870**)
    - 2 February 2010 - Juliet McFarlane sends a letter to Warwick Tatford stating "I am a little concerned at Counsel's suggestion that Royal Mail disclose Hosi's Expert Report and more particularly the prosecution papers" (**POL00053954**)
    - 4 February 2010 -- Jarnail Singh and Warwick Tatford have a telephone conversation to discuss disclosure in Misra's case (FUJ00122794 – references this call on page 2)
    - 5 February 2010 – Jarnail Singh sends an email to the defence stating Counsel has decided it is not necessary to disclose the preliminary report in the case of Hosi as it does not pass the disclosure test (**POL00054162**).
    - 5 February 2010 – email from Juliet McFarlane to David Jones (Fujitsu lawyer) "information regarding the case of Hosi should not be supplied to Mrs Misra's (West Byfleet) Expert. Indeed Hosi's case should not be discussed with Misra's Expert in any way without reference to me." (**FUJ00122734**)

[193] WITN04750100 §204
[194] WITN04750100 §199
[195] Henry KC cross-examination of Wilson 12 December 2023 179/14 to 180/4

186. It appears from the above that Mr Singh was also implicated in the decision.

The "bandwagon" email and senior reaction to it

187. It is not necessary to quote again from the email which Singh sent at the conclusion of the Misra trial,[196] but the similarities with Talbot's crowing email (referred to at §43.c above) at the conclusion of the Castleton trial are manifest. In both cases the lawyers were keen to tell those who instructed them within the business that the challenge to Horizon's reliability had been vanquished.
188. It is worth noting that there is reason to believe that the content of the email was dictated to Singh in a phone call: a pro forma front cover sheet which appears to have been fixed to the Misra file has the text of the email jotted across the corner.[197] Singh latched on to this when asked questions about the email,[198] but gave a typically incoherent and improbable answer when asked who dictated the email to him, saying that it was a group of people, possibly including Wilson.[199]
189. In any event, the bandwagon email was sent to Rod Ismay, Mike Granville and Mandy Talbot, amongst others. That ties in to an email Talbot sent to Singh not long before he received the Simpson email about the R&PM bug, on the Friday before the trial. It told him that Granville and Ismay were interested in the trial and may give him a call for an update.[200] No doubt this pressure from above fed into the decision that he and Wilson made not to disclose the Simpson material.
190. Even more importantly, Ismay passed the bandwagon email on to the relatively new Managing Director who had commissioned the Ismay Report, David Y Smith. Ismay in turn passed back this message to the same extensive distribution list that Singh had used for the bandwagon email:

> Dave and the ET have been aware of the significance of these challenges and have been supportive of the excellent work going on in so many teams to justify the confidence that we have in Horizon and in our supporting processes. [201]

191. Evidently the Executive Team and the Managing Director had been watching the Misra trial in the aftermath of the Ismay Report. The content of the Ismay Report was so transparently self-serving, and the Wilson intervention had prevented an independent expert from feeding into it, so all who had a part in it were implicated in trying to cover-up the problems with Horizon. It appears from this email that Smith and Ismay were also actively engaged in subverting the Misra trial as part of the same endeavour. They were deliberately closing their eyes to problems with the integrity of Horizon data, and were encouraging their staff to pursue a trial as another method of shoring up the system which they knew to be deeply problematic.

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[196] POL00169170
[197] POL00045121
[198] INQ00001101 p13 (internal numbering p49)
[199] INQ00001101 p14 (internal numbering p54)
[200] POL00055418
[201] POL00169170

Preview of the cover-up conspiracy

192. Phases 3 and 4 have seen glimpses of evidence relating to a cover-up, which started with the Ismay Report, but gathered momentum in the wake of the Clarke Advice in 2013. There is much more evidence to be heard on this in Phases 5 and 6, relating to:
    a. the Rose Report,
    b. the attempted substitution of Bradshaw for Jenkins, despite his manifest inability to provide expert evidence[202],
    c. the Horizon meetings, the minuting of them, and the disappearance of Susan Crichton,
    d. the role of Cartwright King and Martin Smith in particular,
    e. the suppression of the Horizon spreadsheet of 20 cases by Bolc and others
    f. the persistent claim that "remote access" was not possible, the disappearing email from Lynne Hobbs, and the SLT briefings for Panorama and the Parliament,
    g. the commissioning of Detica alongside Second Sight, and the subsequent suppression of their finding that the Post Office IT systems were "not fit for purpose".
193. There are also many issues not yet broached: the role of the Government appointed NED on the Board, the conduct and funding of the GLO, interactions with the CCRC, reviews by senior lawyers, etc.
194. We submit that this will be evidence of the attempt to cover-up the conspiracies we have outlined in this Statement. Criminal activity compounded by further crimes against public justice.

Conclusion

195. When those supposed to uphold the Law, take the Law into their own hands, and break the Law, in the name of the Law, for their own nefarious purpose, whether for profit, or brute force of power, there is no Law, only institutionalised lawlessness. This is what Phase 4 has shown. Those named herein are among those responsible and should be investigated, fearlessly and independently, in due course. A recommendation from the Inquiry, to this effect, does not impute liability or guilt, but recognises the weight of evidence that requires further investigation, and which may require an answer from those named, in due course.

Edward Henry KC, Mountford Chambers

Flora Page, 23ES Chambers

Hodge Jones and Allen 16 February 2024

[202] Contrary to his protestations, denying technical ability, Bradshaw had developed a reputation for vetting requests for ARQ data, which must have involved him affecting some degree of expertise/overcompetence regarding that subject. POL00123286 at p.2 reveals that Project Sparrow had exhausted the ARQ quota and so investigative requests were being rationed, with Bradshaw being praised at being good at dealing with such demands for ARQ data, and seemingly to be put in charge of 'Special Requests'