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Dear Mr Jones,

THE POST OFFICE – A FLAWED AND CORRUPT CORPORATION?

I am a barrister in private practice. I am writing to you in connection with 'the Post Office scandal' and because I know your Committee is considering the Post Office.

I write this letter to you out of a sense of public duty. I believe that what I have to say is important. So far as I can ascertain, what I have to say is neither widely appreciated nor understood.

I am writing to you because recent public statements by the government suggest that little is understood about the gravity of the Post Office Limited's¹ conduct towards its sub postmasters and sub postmistresses over a period of almost 20 years. That conduct, as I shall show, was not a matter of oversight or error, but rather deliberate and intentional wrongdoing. This includes, most concerningly, systematic and sustained intentional wrongdoing by the Post Office in its engagement with the courts. This has given rise to what is arguably the most extensive miscarriage of justice in English legal history.

That the Post Office's conduct was intentional is not widely understood and may explain why the government's response, to date, has been so plainly inadequate.

There is a real risk that the government will be seen to be aligning itself with the Post Office, that it owns, and with the Post Office's interests. Given the nature of the conduct in question, that would be unfortunate, as you will understand from what I explain in this letter.

As you know, prosecution by the Post Office frequently resulted in sub-postmasters losing their livelihoods, and, in many instances, resulted in their

¹ Formerly, so far as branch post offices are concerned, Royal Mail. Both, for convenience, 'the Post Office'.

imprisonment. It appears that some sub postmasters took their own lives by suicide as a result of serious unfounded allegations made against them and their treatment at the hands of the Post Office. Mr Martin Griffiths is one example. Mr Griffiths walked under a bus at a time when he was being pursued by the Post Office for alleged shortfalls at his branch of tens of thousands of pounds. Other sub postmasters were subject to civil claims and were made bankrupt. For one former sub postmistress the Post Office's conduct has resulted in her being made homeless. The scale of the human suffering contained in the words 'Post Office scandal' is immense. That suffering was the consequence of what appears to have been intentional wrongdoing by the Post Office over a period of 19 years. This is not generally appreciated.

A POLICY OF DELIBERATE AND SYSTEMATIC DECEPTION BY THE POST OFFICE

My primary purpose in writing to you is to explain that the Post Office carried out its policy of prosecuting its sub postmasters and others and making civil claims *knowing* of failures and weaknesses in its computer system but withholding that knowledge and information – including from the courts. That information provided an available explanation for shortfalls at branch post offices that were the occasion for prosecutions and civil claims. Put another way, the Post Office over two decades set out to deceive, and did deceive, both its sub postmasters and the courts. Until 2019 it succeeded in that deceit with calamitous consequences for its victims. It is not lightly that the Criminal Cases Review Commission, a noticeably (and understandably) cautious and restrained public institution, says of applicants whose convictions it has referred to the Court of Appeal that "*it is an affront to the public conscience*" that the sub postmasters and postmistresses concerned were ever prosecuted - never mind convicted. This is the single largest group referral by the CCRC to the Court of Appeal in history.

Had information and documents evidencing those *known* flaws and failures in the Post Office's Horizon computer system been disclosed at the material time, as in law they were required to be, these would almost certainly, in *every* prosecution and claim, have undermined the prosecution and exonerated the sub postmaster or Post Office employee concerned. In short, the issue is not about *mistakes* having been made by the Post Office in the past, it is about a *policy of systematic deception* by the Post Office over a period of two decades. The questions that require to be addressed include how this was allowed to happen:

- (i) by the Post Office's board of directors?

- (ii) By the government that had oversight of the Post Office and that wholly owned it?

It is not clear to me how the latter can be satisfactorily addressed by the government or any government-led inquiry or review. Any attempt to do so, that appears to be the approach presently adopted by the Department for BEIS, is open to the obvious criticism that the government acts as judge in its own cause.

The fact that the Post Office's wrongdoing was on the face of it deliberate and intentional (below) and not merely 'mistaken' is a matter of the utmost seriousness and is insufficiently recognised, including by government (below). This fact has received virtually no attention – the reason, I apprehend, is that the point and the (admittedly complex) legal and factual underpinning are not well understood. In my experience at the Bar, a single instance of obtaining a judgment by fraud is both extraordinary (in the sense of exceptional) and of the utmost gravity. The Post Office scandal, on the face of it, suggests many hundreds of such instances.

GOVERNMENT MISUNDERSTANDING AND UNDERPLAYING THE ISSUE

By way of illustration of how poorly understood the real issues are, in a recent written parliamentary answer to a question by Chi Onwurah MP on 13th July 2020 the Under Secretary of State for BEIS, Mr Alex Chalk MP, stated: "*Post Office Limited (POL) has accepted that it got things wrong in the past in its dealings with a number of postmasters and has apologised*". That formulation (if not intentionally euphemistic) is scarcely adequate to the circumstances and might, to those whose lives have been destroyed by the conduct of the Post Office, appear offensive. To suggest that the Post Office 'got things wrong' isn't adequate to the freight the expression is required to carry. It would be odd to say that the *Third Reich* officials present at the *Wannsee Conference* 'got things wrong' with regard to their racial policies towards the Jews – such a statement would suggest a conspicuous lack of understanding or worse. Mr Chalk's formulation is both misleading and also exhibits conspicuous lack of understanding. Both erode public confidence.

Further, Mr Chalk's statement suggests an inability or unwillingness on the part of the government to engage and deal with reality. This is unfortunate. The routine and systematic prosecution and imprisonment of citizens on flawed and misleading evidence, known to the prosecuting authority to be false and misleading, is not 'getting things wrong' as that expression is ordinarily understood, that is to say as in some way 'mistaken'. This is the sort of thing that in the public imagination happens under despotic and oppressive regimes,

it should not happen and must not be allowed to happen in a liberal democracy under 'the rule of law'. That it has happened at all is of the utmost concern. That it was caused by a wholly government-owned corporation is very troubling.

It is a matter of detail that Mr Chalk's stated justification to Ms Onwurah for not taking action on the legal evidential presumption that Ms Onwurah had raised and about which she asked (which was a major contributory factor in the wrongful convictions of many sub postmasters) *viz.* "*We do not intend to review the presumption as it has wide application*" exhibits a complete failure by him to understand the issue in point; it is because the presumption has 'wide application' that the evidential 'presumption' (urgently) requires to be reviewed. It is a separate subject of its own.

Given that the Post Office is a public institution, is wholly owned by the government and is financially supported by it, the Post Office's concealment of its knowledge and the consequence of concealment is necessarily a matter of serious public concern. The government's role and its support for the Post Office is understandably a matter of some sensitivity for the government. Nevertheless, the temptation to underplay the seriousness of what has happened runs the risk of the government becoming complicit in the Post Office's wrongdoing, after the fact. Such an outcome will be very damaging to the government, given the seriousness and extraordinary scale of wrongdoing by the Post Office. It is likely to be more damaging in the long run than bold and transparent engagement with the issues by the government now.

In the interests of brevity I will explain the factual basis for my stating that the Post Office deliberately engaged in conduct that was intentionally wrongful, I shall give three examples. The material facts are all a matter of public record, being set out in two judgments of Mr Justice Fraser in *Bates and ors v Post Office* [2019] EWHC, 606 and 3408 QB (the '*Common Issues*' and '*Horizon Issues*' judgments). The examples are illustrative, not exhaustive.

- 1. Apparent agreement or understanding between the Post Office and Fujitsu to withhold important material evidence from the court.**
- 2. Withholding disclosure of Known Error Logs from the defendants and the court.**
- 3. Mrs Stockdale's treatment as a claimant in the Bates litigation at the hands of the Post Office.**

In this letter I have confined myself to a summary description of these points. For your assistance I have attached as Appendices the relevant sections of Mr Justice Fraser's judgments that set out the detail. In connection with the

issue of disclosure of the Known Error Logs and Mrs Stockdale's treatment at the hands of the Post Office, these are extensive. The importance that the judge himself attached to the issues, given the meticulous care, detail and length with which he addressed them, is apparent. These should be read.

Having read the material I have sent to you, I am confident that you will agree that Mr Chalk's recent characterisation of the Post Office's conduct as '*getting things wrong*' is both wholly inadequate and also seriously misleading, albeit presumably inadvertently so.

AN UNDERSTANDING BETWEEN FUJITSU AND THE POST OFFICE ON OR ABOUT 29th SEPTEMBER 2010 TO WITHHOLD IMPORTANT EVIDENCE FROM THE COURTS

Appendix 1

The account of this meeting is provided by Mr Justice Fraser at paragraphs [428]-[430] of his judgment on the Horizon Issues (16 December 2019). What happened is set out in the judge's description at paragraph [428]. There was a meeting on or about 29th September 2010 attended by 10 representatives of the Post Office and Fujitsu (see paragraph [430] – it was important enough for Mr Winn of the Finance Department of the Post Office to be present). The judge describes this meeting, the document that records it, and what happened as "*most disturbing in the context of this group litigation*" and he refers to the Post Office's decision to keep the material "secret" and the circumstances that they disclose "wholly wrong" and "very concerning".

The circumstances that Fraser J is addressing is the discussion of what in the litigation was described as "the Receipts and Payments mismatch bug" in the Horizon system. This was discovered in the upgraded 'Horizon Online' system introduced from 2010. It was supposed to resolve problems that had been experienced with what was called 'Legacy Horizon' (that was originally incepted as an offline system and was prone to serious failure, not least caused by a communication interface called 'Riposte').

It may be stating the obvious to observe that the prosecutions of the Post Office's sub postmasters invariably concerned unexplained and unaccounted for 'shortfalls' at branch accounts. Because of the accounting system and contractual arrangements such shortfalls were frequently alleged by the Post Office to be the result of theft by the sub postmaster concerned.

The effect of the Receipts and Payments Mismatch bug was recorded in a document referred to by Fraser J in his Horizon Issues judgment at paragraph [428]. The document provided as follows:

“ What is the issue?

Discrepancies showing at the Horizon counter disappear when the branch follows certain process steps, but will still show within the back end branch account. This is currently impacting circa 40 Branches since migration onto Horizon Online, with an overall cash value of circa £20k loss. This issue will only occur if a branch cancels the completion of the trading period, but within the same session continues to roll into a new balance period.

At this time we have not communicated with branches affected and we do not believe they are exploiting this bug intentionally. (emphasis added)

The problem occurs as part of the process when moving discrepancies on the Horizon System into Local Suspense.

When Discrepancies are found during Stock Unit rollover into a new Transaction Period, then the User is asked if the discrepancy should be moved to Local Suspense. If the branch presses cancel at this point the Discrepancy is zeroed on the Horizon System.

Note at this point nothing into feeds (*sic*) POLSAP and Credence, so in effect the POLSAP and Credence shows the discrepancy whereas the Horizon system in the branch doesn't. So the branch will then believe they have balanced.

If at the next screen the rollover is completely cancelled, then no harm is done. However if the Rollover is re-attempted at this point, the rollover will continue without any discrepancy meaning Horizon doesn't match POLSAP or Credence.

This has the following consequences:

- There will be a Receipts and Payment mismatch corresponding to the value of Discrepancies that were "lost"

Note the Branch will not get a prompt from the system to say there is Receipts and Payment mismatch, therefore the branch will believe they have balanced correctly.

- When the Branch begins the new Branch Trading period the discrepancies will show at Zero, however the Receipts and Payment mismatch will carry over into the next period.

Impact

- The branch has appeared to have balanced, whereas in fact they could have a loss or a gain.
- Our accounting systems will be out of sync with what is recorded at the branch
- If widely known could cause a loss of confident [*sic*] in the Horizon System by branches
- Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data
- It could provide branches ammunition to blame Horizon for future discrepancies.

Identifying the issue and forward resolution

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. We have asked Fujitsu why it has taken so long to react to and escalate an issue which began in May. They will provide feedback in due course.

Fujitsu are writing a code fix which stop the discrepancy disappearing from Horizon in the future. They are aiming to deliver this into test week commencing 4th October. With live proving at the model office week commencing 11th October. With full roll out to the network completed by the 21st of October. We have explored moving this forward and this is the earliest it can be released into live.

The code fix will on stop the issue occurring in the future, but it will not fix any current mismatch at branch.

Proposal for affected Branches

There are three potential solutions to apply to the impacted branches, the groups recommendation is that solution two should be progressed.

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.

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."

(bold present in original)

Mr Justice Fraser said of this document:

"[429] I find this to be a most disturbing document in the context of this group litigation. It is a 2010 document and issues between the Post Office and many SPMs concerning the accuracy of Horizon had, for Legacy Horizon, gone on for a decade (2000 to 2010) and these continued under Horizon Online (introduced in 2010). Under "Impact", some of the bullet points incorporate a summary of these issues.

- The branch has appeared to have balanced, whereas in fact they could have a loss or a gain.
- Our accounting systems [ie Horizon or the Post Office's] will be out of sync with what is recorded at the branch
- If widely known could cause a loss of confident [*sic*] in the Horizon System by branches

- Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data
- It could provide branches ammunition to blame Horizon for future discrepancies.”

(Judge’s own underlining)

“[430] The attendees at this meeting included at least one member of Post Office (rather than Fujitsu) personnel, Andrew Winn of POL Finance. There were obviously legal cases going on at the time, hence the reference in the underlined bullet point to “ongoing legal cases”. If these were criminal cases, the Post Office would be the prosecuting authority, with certain important duties. If these were civil cases, the Post Office would be a party with disclosure obligations. An affected branch would believe it had balanced its accounts correctly; it would not have done so. There is an evident concern amongst those at the meeting which is recorded in this document that this issue should not become “widely known” in order to avoid causing “a loss of confidence in the Horizon System”.”

Mr Justice Fraser commented (Horizon paragraph [457]) that:

“... To see a concern expressed that if a software bug in Horizon were to become widely known about it might have a potential impact upon “ongoing legal cases” where the integrity of Horizon Data was a central issue, is a very concerning entry to read in a contemporaneous document. Whether these were legal cases concerning civil claims, or criminal cases, there are obligations upon parties in terms of disclosure. So far as criminal cases are concerned, these concern the liberty of the person, and disclosure duties are rightly high. I do not understand the motivation in keeping this type of matter, recorded in these documents, hidden from view; regardless of the motivation, doing so was wholly wrong. There can be no proper explanation for keeping the existence of a software bug in Horizon secret in these circumstances. [458] The degree to which either, or both of, Fujitsu and/or the Post Office, expressly or constructively, knew exactly what and when, is for future trials in this litigation”

The word used by the judge – keeping the existence of the Receipts and Payments mismatch bug “secret” is devastating in its wider implications.

The wider implications of this were not addressed by the judge in his judgment because these were not before him on the technical issues that were to be determined by the (technical) Horizon Issues trial.

It is acutely concerning that within a few weeks of that meeting Mrs Seema Misra was prosecuted in Guildford Crown Court for theft of some £74,000. (I have agreed to represent Mrs Misra, *pro bono*, in her appeal to the Court of Appeal.) Her criminal trial commenced on Monday 11th October 2010. The Post Office's case was that the Horizon computer system was robust and reliable. Further, it was the Post Office's explicit case that any error in the computer system would necessarily be observable to the operator at the branch terminal. Mr Jenkins, who had been the most senior Fujitsu employee present at the 29th September 2010 meeting, gave evidence for the Prosecution against Mrs Misra as to the reliability of Horizon and that a failure of the Horizon system would be observable to the sub postmaster.

The contrast with the meeting on 29th September 2010 and the prosecution's opening at Mrs Misra's trial on Monday 11th October 2010 (for example) could not be more striking. Prosecution counsel said this:

"So it has got to be a pretty robust system and you will hear some evidence from an expert in the field as to the quality of the system. Nobody is saying it is perfect and you will no doubt hear about a particular problem that was found, but the Crown say it is a robust system and that if there really was a computer problem the defendant would have been aware of it.

That is the whole point because when you use a computer system you realise there is something wrong if not from the screen itself but from the printouts you are getting when you are doing the stock take." (Transcript Day 1 Monday 11 October 2010, 21A-C, 23H-24A).

No reference was made at her trial to the recently discussed Receipts and Payments mismatch bug, the effects of which were recognised by the Post Office and Fujitsu to be not identifiable to a sub-postmaster at a branch Post Office. Mrs Misra was convicted and sentenced to 15 months imprisonment. She was eight weeks' pregnant.

Mr Jenkins has been referred to the Director of Public Prosecutions by Mr Justice Fraser. Whilst entirely understandable, that fact does not detract from, nor is it relevant to, the wider issue that from the record of the September meeting there appears to have been agreement or understanding between Fujitsu and the Post Office that information about the Receipts and Payments mismatch bug should not be disclosed, either to the Post Office's sub postmasters or to the courts.

It was explicitly recognised by both the Post Office and Fujitsu that knowledge of this bug would potentially impact upon legal cases where the issue for the court (including, obviously, juries) was the integrity of the Horizon data. The implications are, as the judge noted, very serious indeed.

Any such agreement or understanding where it was appreciated that disclosing information about the Receipts and Payments mismatch bug might foreseeably impact upon and harm a defendant's defence (as appears to have been recognised) would disclose, on the face of it, a conspiracy to pervert the course of justice.

There is nothing to suggest that the Post Office disclosed information about the Receipts and Payments mismatch bug in any legal proceedings after 29th September 2010 until the Horizon Issues trial before Mr Justice Fraser in 2019.

This is not merely historic and an issue within the *Bates* litigation. On 10th October 2017 Mr Chirag Sidhpura was subject to a Post Office audit at which a shortfall of £57,000 was alleged against him by Post Office auditors. Mr Sidhpura was so surprised that he collapsed with shock. Despite his paying that sum to the Post Office, his contract was terminated and he lost his investment. On 18th June 2018 when the Post Office was re-opened under new management, and the branch had not been trading since Mr Sidhpura had had his contract terminated, the Horizon branch terminal showed a further shortfall of £5,050 when the safe seals were broken by the Post Office. In August 2018 the Post Office invoiced the incoming sub postmaster for this amount.

POST OFFICE WITHHOLDING FROM DISCLOSURE THE HORIZON KNOWN ERROR LOG 'KEL' - DENIAL OF A FAIR TRIAL

Appendix 2

The foregoing documented sensitivity of the Post Office to disclosure of information about the Receipts and Payments mismatch bug as (i) having the potential to impact upon “ongoing [Post Office] legal cases” and (ii) that might, if widely known cause “loss of confidence” in the Horizon system and the Post Office’s decision to withhold that information from a defendant such as Mrs Misra in her criminal trial, *that occurred within a fortnight of the September 2010 meeting*, is revealing of the Post Office’s general approach to withholding information about known errors in the Horizon system. The role played by Womble Bond Dickinson LLP, the Post Office’s solicitors for most of the period

including the Bates trials in 2018-2019 is concerning for reasons that are apparent from the judge's comments to which I make reference.

To avoid overmuch detail, I have annexed the section from Mr Justice Fraser's judgment that deals with the 'Known Error Log' (KEL). That the judge went to so great lengths to set out in narrative form the misleading nature of the Post Office's (changing) position on the KEL is instructive.

As will be apparent from Fraser J's judgment, the Post Office objected to giving disclosure of the Known Error Log. It did so on the basis that (i) (bizarrely) the KEL might not exist at all, (ii) the KEL was 'not relevant' and (iii) that the KEL was not, in any event, a document 'in its control' so that it could disclose it even if it wished to do so. Each contention was wholly wrong and seriously misleading.

At a hearing on 19th October 2017 the Post Office's leading counsel, Mr Antony de Garr Robinson QC told Mr Justice Fraser that the request by the claimants in the Group Litigation for disclosure to them of the Known Error Log was "*a complete red herring*" (Transcript p 86E).

To make the point clear, at paragraph [559] of his Horizon Issues judgment Mr Justice Fraser said:

"There are certain categories or descriptions of classes of documents that have featured heavily in the evidence at the Horizon Issues trial. The path to disclosing them has not always been smooth. The majority, if not all, of the technical documents that relate to how Horizon was actually operating in fact in IT terms are in the possession of either the Post Office or (more usually) Fujitsu. The two most important categories, in my judgment, are Known Error Logs (also known as "KELs") and PEAKs. The first of these records or logs known errors, which means errors with the Horizon system. The latter is a browser-based software incident and problem management system used by Fujitsu for the Post Office account, in other words for incidents and problems associated with Horizon that occur." (My underlining.)

At paragraph [940] of that judgment Fraser J said this:

"Here, the categories of documents that are most illuminating in terms of specific incidents with Horizon over the years are the very numerous PEAKs and KELs. These emanate from, and are created within, Fujitsu. They are, in my judgment, a very good means of getting at the truth in this case. They show what was going on and the type of unexplained problems that numerous SPMs were experiencing in practice over the years, as they were reported to the SSC. They contain statements made when Fujitsu personnel's

“guard is down and their true thoughts are plain to see”. Some of them also record that Romec engineers, or the Post Office’s own auditors, have seen what has occurred and ruled out user error. Notwithstanding this, Fujitsu attribute user error to what has occurred.” (My underlining.)

The Post Office, until directed to do so by Mr Justice Fraser, objected to it disclosing Known Error Logs – that is to say, logs of errors with the Horizon system.

As is clear, it is from these KEL records, together with narrative PEAKs, that the judge was able to determine the full and true extent of the known unreliability of the Horizon system.

At Mrs Misra’s trial in October 2010, there is only one reference in the entire trial, that lasted more than a week to “Known Error Log” (a full transcript of her (unsatisfactory) trial is publicly available²). Professor McLaughlin for Mrs Misra had asked to see the detailed Horizon records. This was refused by the trial judge, His Honour Judge Stewart. Three separate applications by the defence in connection with inadequate disclosure by the Post Office were dismissed by three different judges, none of whom thought that the Post Office’s approach to its disclosure obligations was objectionable and considered these could otherwise be left to the jury to evaluate. Neither Judge Stewart, nor defence counsel appear to have appreciated the KEL’s full importance and significance. Mr Jenkins, the senior engineer and architect of the Horizon system employed by Fujitsu, who gave evidence for the Post Office, disavowed *even having looked at the PEAK records*. This, in a trial where the prosecution’s case against Mrs Misra depended fundamentally upon the Horizon data being both accurate and reliable and the Horizon system being similarly reliable.

After the Bates Horizon Issues trial had concluded, the Post Office disclosed an additional 5,000 KEL records.

The reliability of the Horizon system was the central issue and evidential premise in many prosecutions and claims. For example in Mr Castleton’s case in 2007 His Honour Judge Havery QC, sitting as a judge of the High Court, by his judgment *Post Office v Castleton* [2007] EWHC 5 (QB) dismissed Mr Castleton’s contention that there appeared to him to be something wrong with the Horizon system. Ms Anne Chambers, a senior employee of Fujitsu, who worked closely with Mr Jenkins, gave evidence for the Post Office. Judge Havery recorded that Mr Castleton’s defence was that the shortfall in his branch accounts of some £26,000 that he experienced “... was that the losses apparently shown by the

² *R. v Seema Misra*, T20090070, in the Crown Court at Guilford before His Honour Judge N. A. Stewart and jury, 12 *Digital Evidence and Electronic Signature Law Review* (2015) Introduction, 44 – 55; Documents Supplement, <https://journals.sas.ac.uk/deeslr/article/view/2217>

Balance Lists and Cash Accounts (Final) were illusory not real. It was entirely the product of problems with the Horizon computer and accounting system used by the claimant. The apparent shortfalls were nothing more than accounting errors arising from the operation of the Horizon system". (Mr Castleton had repeatedly been telephoning the helpline to report balancing shortfalls he was experiencing.)

Judge Havery rejected Mr Castleton's defence. The only evidence disclosed by the Post Office of errors in Mr Castleton's branch was of three error notices. On that exiguous and misleading evidence the judge reached his (erroneous) conclusion that: "*The paucity of their number is consistent with the proper working of the Horizon system*". The Post Office was awarded its costs against Mr Castleton that its solicitors Bond Pearce LLP (later Womble Bond Dickinson LLP) claimed in the sum of £321,000.

The Post Office did not disclose to Mr Castleton or to the court the Known Error Log nor did it disclose PEAK records.

I refer to Mr Castleton's case because it illustrates the devastating effect on individual postmasters of the Post Office's decision, over the entire period to 2019, as would appear, to withhold and not disclose the Known Error Log – a log and record that Mr Justice Fraser found to be of fundamental importance.

The Post Office's approach to this issue is of immense, but not widely understood, importance. Its importance is reflected in the meticulous care and detail in which the judge records the evolution of the Post Office's opposition to disclosing these fundamentally important documents. I have set out the judge's full account in the Appendix, that you should read, but for present purposes I highlight the following points.

In April 2016 the claimants' lawyers asked for disclosure of the KEL. The Post Office's response was that: "In circumstances where **you have not particularised any factual basis on which Horizon is defective, disclosure of these documents (if they exist) is not relevant, reasonable or proportionate.**"³

This is of importance in connection with Mr Chalk's written answer to Chi Onwurah MP that I have referred to above. Under the law as it is at present it is for a person who objects to a computer from which information in documents is derived being treated as reliable to show why the computer should not be 'presumed' to be reliable. Commonly, as will appear, sub postmasters were unable to do this. The reason was that the information necessary to do so was contained in the KEL – that the Post Office objected to disclosing without a clear explanation for why it should do so. *Catch-22*. I suspect that the Under Secretary of State, Mr Chalk MP, doesn't understand this.

³ My emphasis in bold text, here and below.

Be that as it may, of the Post Office's position on disclosure of the KEL – that can be assumed to have been its position up until that date (*viz* it objected to disclosing these documents), Fraser J said this:

- (a) **“ The suggestion in that letter that the Known Error Log was not relevant, is simply wrong, and in my judgment, entirely without any rational basis.** The further suggestion, viewed with the hindsight now available, that the “known error log” may not exist, is **disturbing**. The claimants’ request used the precise title – “known error log” – and this clearly did exist. To suggest in an answer “if they exist” is somewhat **misleading**.”
- (b) [578] “Item 23 in the same list of documents sought was “Internal memoranda from Fujitsu and POL referred to by Second Sight as identifying a ‘Horizon bug’ within Horizon Online.” [579] The answer against that item was: “We do not recognise the document to which you refer. Please provide further details.” [580] In my judgment, the documents sought in that entry must clearly include any PEAKs that identified a bug within Horizon Online. “Internal memoranda” is a plural reference, yet it was interpreted by the Post Office’s solicitors as though it were singular, and the request was for a single document, or a document with the title “internal memoranda”. This is, in my judgment, **obstructive**.”
- (c) [581] “The claimants were not to be dissuaded, and sought the Known Error Log or KELs again. A reply from the Post Office’s solicitors on 13 October 2016 is relied upon by the claimants as showing that the Post Office was denying the relevance of the Known Error Log. This reply stated: “The claims which you have particularised concern errors with the Core Audit Log. Following a review of the Known Error Log, Fujitsu have confirmed that there have been no logs in respect of Core Audit Log. The remainder of the Known Error Log does not relate to the claim which you have particularised and as such disclosure of this document is not relevant.” [Judge’s own emphasis]. [582] **Existence of the Known Error Log was at that stage accepted, but its relevance to the proceedings was now challenged.** The Post Office’s solicitors stated that its contents “did not relate to the claim” and that “disclosure of this document is not relevant”. **Disclosure of it was plainly resisted.** The claimants did not therefore have it when the Generic Particulars of Claim was pleaded on 6 July 2017. In the Generic Defence, which is dated 18 July 2017, **the Post Office changed its position, and now pleaded that the Known Error Log was not in its control.** At paragraph 50(4) of the Generic Defence, the Post Office stated: “It is admitted that Fujitsu maintain a “Known Error Log”. This is not used by Post Office and nor is it in Post Office’s control. To the best of Post Office’s information and belief, the Known Eor (*sic*) Log is a knowledge base document used by Fujitsu which explains how to deal with, or work around, minor issues that can sometimes arise in Horizon for which (often because of their triviality) system-wide fixes have not

been developed and implemented. It is not a record of software coding errors or bugs for which system-wide fixes have been developed and implemented. To the best of Post Office's knowledge and belief, there is no issue in the Known Error Log that could affect the accuracy of a branch's accounts or the secure transmission and storage of transaction data.”. (Underlining, the judge's).

- (d) [589]: “So far as the content of the Known Error Log is concerned, when asked by the court “does it contain any errors at all?” **the following answer was given by the Post Office's leading counsel** [Mr ee Garr Robinson QC]: **“It contains things like there's a problem with printers. There's a printer. You have to kick it on the left-hand side to make the printer work. I mean there's a vast range of hardware problems of that sort and maybe some software problems ... but not the kind of bugs, errors and defects that the claimants are wishing to pursue in their particulars of claim so far as Post Office is aware.”** [590] This exchange with the court then continued. “Mr Justice Fraser: Well, that's the rider which slightly might concern--- A [Mr De Garr Robinson QC]: Well, my Lord, unfortunately, that's all that Post Office can say because it's not Post Office's document. It's Fujitsu's document. Fujitsu are the experts.”
- (e) “... The explanation of what the Known Error Log was, what it contained, and its lack of relevance, was **not remotely accurate.**”
- (f) [605] “I consider it verging on entirely unarguable, given the express terms of the Fujitsu contract which is now available to the court, that the Known Error Log was not in the control of the Post Office. Mr Parson's witness statement had merely stated “it was not within Post Office's control” and **I simply cannot understand the basis for that statement, given the express terms of the contract that the Post Office had with Fujitsu. It plainly *is* in the Post Office's control...** The fact that the Post Office has submitted that in July 2017, on its understanding then, the KEL was not a “record” that “related to the performance” of the Fujitsu services **demonstrates a worrying lack of knowledge on the part of the Post Office, about both Horizon, and Fujitsu's record keeping.** It also means, when this is put together with what **the Post Office, by its leading counsel** [Mr de Garr Robinson QC], **submitted to the court at the 1st case management conference, that Fujitsu were extraordinarily inaccurate about the information it provided to the Post Office at that stage of these proceedings. As at 2017, the Horizon system (both Legacy Horizon and Horizon Online) had been in use for about 17 years. ...”.**

On the issue of the KELs the judge said that “The KELs provided to the experts prior to their reports featured centrally not only in Mr Coyne's two reports, but those of Dr Worden too. They were also the subject of a great deal of cross-examination by both sides. I consider **that disclosure of the KELs** to the experts ... **has been central in the discovery and investigation of the bugs, errors**

and defects that the experts agree were, or are, present in the Horizon system, and also of the bugs, errors and defects that are not agreed, but upon which both experts opine and in respect of which I make findings in the Technical Appendix. ...The notion that they were not relevant, or did not contain relevant material, is extremely difficult to fathom, ...”.

Disclosure of the Known Error Log was central to determination by Mr Justice Fraser of the *unreliability* of the Horizon system in 2019.

The point is that, so far as is known, in no previous proceedings or prosecution prior to the *Bates* litigation did the Post Office give disclosure of these plainly important documents. Without them, *the Post Office’s sub postmasters were disarmed* in defending the claims and criminal charges against them. It is to be noted that in those trials Fujitsu witnesses gave evidence for the Post Office against the sub postmasters. In many cases, of course, having no knowledge of these matters many sub postmasters simply decided (often on legal advice as in Mrs Janet Skinner’s case) that it was best to plead guilty to false accounting in the hope (often vain, as in Mrs Skinner’s case) of avoiding imprisonment.

It is a matter of serious concern that the Known Error Log was not disclosed in previous proceedings brought by the Post Office. It should be a matter of concern that the Post Office adopted and maintained its objection to disclosing those critically important documents, a position variously described by Fraser J “*without any rational basis*”, “*misleading*”, “*obstructive*”, and on statements of fact made to the court that were “*extraordinarily inaccurate*” and exhibited a “*worrying lack of knowledge*” on the part of the Post Office and its legal advisers. That was litigation in which 550-odd claimants were involved and reflected a position adopted by a government-owned institution that had been routinely prosecuting its sub postmasters and making claims against them since about 2000. It made those claims and brought prosecutions on the express basis that its Horizon computer system was “*reliable*” and “*robust*” while at the same time denying to defendants to those claims and criminal charges the critical documents and information *known to it* that would have shown otherwise.

In short, the Post Office by withholding from disclosure the Known Error Log, it denied to defendants to its prosecutions a fair trial (as the Criminal Cases Review Commission has observed in its Statement of Reasons to the Court of Appeal). For the same reason the Post Office’s conduct over the entire period infringed the Article 6 rights of sub-postmasters under the *European Convention on Human Rights*.

It stretches the meaning of a phrase past breaking point, and is simply misleading, to describe the Post Office’s failure to disclose, over the entire period of its prosecutions, critically important documents evidencing the unreliability of its Horizon system as ‘*getting things wrong*’.

THE POST OFFICE'S TREATMENT OF MRS STOCKDALE

Appendix 3

The third matter that I draw to your attention is the treatment of Mrs Stockdale by the Post Office and its solicitors Womble Bond Dickinson LLP.

Mrs Stockdale was the sub postmistress of the Sandsacre Post Office, a branch in Bridlington, East Yorkshire from 8 May 2014 to 16 September 2016. Mr Justice Fraser devotes no less than 53 paragraphs of the Common Issues judgment ([275] – [328]) to her evidence and the treatment she received at the hands of the Post Office. Mrs Stockdale had previously managed a clothes shop and also had responsibility as the administration manager for 13 other stores. She wanted to run her own business, and she also wanted to become a sub postmistress.

On 16 September 2016 Mrs Stockdale's appointment as an SPM was immediately terminated on the grounds of falsification of accounts and failure to make good losses. Part of that letter, which was from Mr Carpenter (see Appendix 3 paragraph [506]ff), states:

"By falsifying the Branch accounts you have failed to maintain an accounting system in accordance with the Manual. In doing this since December 2015 we consider this to be a failure to act honestly in your operation of the Branch, which is a material breach of the Agreement which is not capable of remedy. In reaching this conclusion we have taken into account that you did not call the NBSC reporting the Losses and did not request assistance in respect of these Losses."

Mr Justice Fraser observed:

"[324] Another part states:

"As noted above, your failure to act honestly by falsifying the Branch accounts is a material breach of the Agreement that cannot be remedied and which gives Post Office Ltd the right to terminate immediately under clause 16.2.1."

(Judge's own emphasis)

[325] Mrs Stockdale said that her confidence in the Horizon system was so low that she had never signed the statement which went with the Branch accounts saying they were accurate. This passage of her evidence was as follows:

“Q. So would it be right that when, during that period, you certified under the following words:

“I certify the content of this balancing and trading statement is an accurate reflection of the cash and stock at this branch.”

That when you signed that in fact it was untrue?

A. I never signed it.

Q. Who did sign it?

A. No one.”

No signed copy was produced or put to her, although she accepted that the Branch Trading Statement was “presented” to the Post Office who would treat it as though it were accurate.

[326] It is therefore the case that she was accused in the letter of 16 September 2016 of committing a criminal offence, which is punishable by imprisonment.”

As Mr Justice Fraser notes, at the time at which her appointment was terminated by the Post Office, Mrs Stockdale was already a claimant in the Bates litigation.

At paragraph [516] Fraser J said this:

“... Shortly after proceedings were issued, the Post Office acted as it did with Mrs Stockdale, shutting her branch and stating she was considered to have committed a criminal offence. It also expressly stated to her factually untrue statements, namely that she had not contacted the NSBC or asked the Post Office for assistance. I find that she had.

... Whether the Post Office was guilty of acting in the ways complained of by the Claimants can only be resolved later in these proceedings after other trials. However, even putting it at its best for the Post Office, ***such conduct towards Mrs Stockdale during this early stage of the litigation could potentially be construed as threatening, oppressive, and potentially discouraging to other potential Claimants to become involved in the litigation, whether by accident or design. I can think of no reason why such an approach was taken unilaterally by the Post Office in such a way, without the Post Office's solicitors giving advance notice to her solicitors, so that a less confrontational and aggressive path was adopted, given her role as a claimant in the litigation. However, even once it was done***

and she was suspended, the Post Office continued to act in a highly regrettable fashion.⁴

Similarly importantly, you should read the following paragraphs of Mr Justice Fraser's judgment under his general observation concerning Mrs Stockdale's treatment at paragraph [519] where he said: "**I am troubled by the way that the Post Office has acted in relation to Mrs Stockdale since April 2016.**" (Text in bold is my emphasis.)

*"[520] That concern is amplified by the approach of the Post Office to specific disclosure requests made by the Claimants' solicitors in this litigation in the period following the audit. On 26 May 2016 Freeths asked for disclosure of different categories of documents relating to Mrs Stockdale. These were precisely drafted categories, and included (for example) Helpline printouts, audit reports, and internal Post Office correspondence including that relating to the basis for, and making of, the decision to audit her branch and suspend her. **The answer to that from the Post Office's solicitors Womble Bond Dickinson was in a letter dated 2 June 2016 and said "In circumstances where you have not set out any basis on which you believe that our client's actions have been unlawful or otherwise affect Mrs Stockdale's ability to participate in the Bates High Court litigation, we are not currently minded to engage in ad hoc piecemeal disclosure connected to a live investigation."** All that the Post Office was prepared to do was preserve the documentation, which it should be noted, it would be required to do as a bare minimum to comply with a litigant's obligations of disclosure generally. I am surprised that it even occurred to the Post Office otherwise that it might not preserve such documents. Offering to preserve potentially important documents in High Court litigation, rather than destroy them, is not a concession.*

*[521] On 13 June 2016 Freeths tried again, and again sought disclosure concerning Mrs Stockdale. That included a signed letter from Mrs Stockdale expressly asking for the same information. The response from Womble Bond Dickinson on 22 June 2016 was "**...we find it difficult to see how provision of certain of the information you have sought will progress matters (in the absence of any input from your client as to the cause of the losses, it looks like a fishing expedition)**". Yet again, the central thrust of the Post Office was that there was an initial requirement upon a SPM to demonstrate cause of the losses, in order for the Post Office to engage. **This was wholly illogical. The subject matter of the litigation, which by then was well underway, included complaint that SPMs specifically could not themselves identify cause.** The claim form itself stated that Horizon "severely limited their ability to access, identify, obtain and reconcile transaction records and themselves investigate any alleged shortfalls."*

[522] Some documents were provided by the Post Office on an encrypted CD-ROM, but not all, and on 29 July 2016 Freeths wrote again,

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Bold text my emphasis, here and below.

*seeking in particular, internal correspondence dealing with the decision to audit and suspend her; correspondence and notes relating to visits to the branch and contact with her; and documents identifying the root cause of previous shortfalls in 2015. **Again, this was refused.** The letter of refusal of 5 August 2016 from Womble Bond Dickinson stated that **"we have given you all requested information that could reasonably be said to assist your client in identifying the cause of the shortfall" and "the relevance of these further documents is not understood in relation to the current issues"**. The current issues must, on any sensible construction of that phrase, at that time have included those on the claim form. In August 2016 no orders had been made by me about future conduct of the litigation. Indeed, the GLO itself was not made until 21 March 2017, and my Directions Order No.1 was not made until 26 April 2017. **This statement by the Post Office's solicitors in August 2016 that the relevance of the documents "is not understood" is simply unsupportable. It is also the case that all litigants have continuing disclosure obligations. Once Mrs Stockdale was chosen as a Lead Claimant for the Common Issues trial, and at the very latest when the Post Office decided (as at some point it must have done, given the way she was cross-examined as to her credit) to accuse her formally of false accounting, the documents underlying the audit (the result of which formed the basis of the accusations) became highly relevant and clearly disclosable."***

*[523] For the reasons I have expressed above, I have considerable misgivings about the Post Office's motivation for the treatment of Mrs Stockdale during this litigation, and for the treatment itself in terms of refusal to provide obviously relevant documents. The evidence by Mr Carpenter, far from satisfying these concerns, actually increases them. **The Post Office appears, at least at times, to conduct itself as though it is answerable only to itself.** The statement that it is prepared to preserve documents - as though that were a concession - and **the obdurate to accept the relevance of plainly important documents, and to refuse to produce them, is extremely worrying.** This would be a worrying position were it to be adopted by any litigant; the Post Office is an organisation responsible for providing a public service, which in my judgment makes it even worse."*

In short, the judge is expressing concern that Mrs Stockdale was 'targeted' by the Post Office *because* she was a claimant in the litigation – and having targeted her and made allegations against her of dishonesty, the Post Office thereafter refused to disclose to her solicitors documents that were relevant to the allegations it had made, and more importantly, that were, and in the Horizon Issues trial were demonstrated as being, highly relevant to exonerating her from blame (see the judge's evaluation of Mrs Stockdale both as a sub postmistress and as a witness in Appendix 3).

CONCLUSION

The matters to which I have referred are, I suggest, of considerable gravity and far-reaching importance. Each of them is concerned with a

technical legal issue, namely the obligation on a party and prosecuting authority in law to give disclosure of documents that may assist the other party and adversely affect its own case and the treatment by the Post Office of its sub postmasters and sub postmistresses.

These matters reveal that the Post Office and Fujitsu in 2010, at an important meeting, discussed a bug that had the propensity to cause shortfalls between receipts and payments at branch Post Offices that would not be apparent to a sub postmaster or at a branch Post Office. All the prosecutions and claims by the Post Office against its sub postmasters concerned shortfalls identified in branch accounts. Further, the Post Office and Fujitsu expressly recognised and recorded that that issue and bug might impact upon Post Office “ongoing legal cases”. As I have observed, Mrs Misra’s criminal trial took place less than two weeks’ later, on Monday 11th October 2010. Mr Jenkins, who was present at the 29th September 2010 meeting, gave evidence for the Post Office against Mrs Misra. No mention of the Receipts and Payments mismatch bug was made and disclosure of important relevant documents was withheld by the Post Office. The prosecution’s general response to requests by the defence was to require Mrs Misra to identify a particular issue or concern, which she was unable to do. Disclosure had been sought by Mrs Misra’s counsel on three separate occasions. Mrs Misra’s counsel sought to have the trial stopped as an abuse of process. The Criminal Cases Review Commission has now concluded, 10 years later, that it was an abuse of process.

Knowledge of the bug was recognised at the 29th September 2010 meeting as foreseeably affecting confidence in the Horizon system and ongoing legal cases. It is not difficult to speculate (*as the Post Office and Fujitsu did*) as to the impact that disclosure of such a bug might have had upon a jury in any trial where the fundamental issue was the reliability of the data derived from the Horizon system.

So far as there was an *understanding* between the Post Office and Fujitsu that the Receipts and Payments mismatch bug should not be disclosed, including disclosed to defendants to proceedings and to the court while recognising the potential impact that such disclosure might have on prosecutions, and that understanding was acted upon, *prima facie* that discloses a conspiracy to pervert the course of justice.

Second, the critical documents for understanding the errors to which the Horizon system was prone were the contained in the Known Error Log. The Post Office’s objection to disclosure of these documents in the *Bates* litigation and the grounds upon which it objected to their production are very concerning. These were the key source documents for recording failures and bugs and for evidencing the (un)reliability of Horizon and yet had been withheld from both defendants and from the courts by the Post Office, its legal department and its external lawyers, for 19 years.

Third, Mr Justice Fraser was concerned that the conduct of the Post Office towards Mrs Stockdale as a lead claimant in the Bates litigation *during* that litigation caused him “misgivings” as to its motivation and that its conduct could be construed as “*threatening*”.

I am confident that you will understand that government statements about the Post Office having ‘*got things wrong*’ in its conduct towards its sub postmasters suggests that the government has failed to grasp the issues. If the issues to which I have referred *are* understood by government, the statement is both wholly inadequate and by its inadequacy seriously misleading.

Many would conclude from what I have explained in this letter, that wrongdoing of the kind I have described is only properly capable of being investigated by a tribunal that is demonstrably independent and appropriately qualified and, more particularly, by a tribunal that has power to compel evidence. Otherwise the clear impression will be left of the government washing its own soiled linen and the very serious matters to which I have referred will not be properly considered and addressed. Given that the government owns the Post Office and is - and was - responsible for oversight of it, a responsibility in which it appears to have signally failed, that would do little for public confidence and will serve merely to erode such confidence as presently exists.

I am copying this letter to the Secretary of State Mr Alok Sharma MP and to Sir Bob Neill MP as Chair of the Justice Select Committee for information. I am also copying it to Ms Chi Onwurah MP given that it is the inadequate response of Mr Chalk MP to her written question that has prompted me to write to you in detail and at length. I make no apology for the length of this letter. I believe it to be necessary.

Yours faithfully,

GRO

GRO
clerks **GRO**

Mr Darren Jones MP
Chair
Business, Energy and Industrial
Strategy Select Committee
House of Commons

London SW1A 0AA

Encls. Appendices 1, 2, 3 Extracts from the judgments of Mr Justice Fraser from the *Common Issues* and *Horizon Issues* judgments (*loc. cit.*).

c.c. (by email only)

The Rt. Hon. Mr Alok Sharma MP Secretary of State for Business, Energy and Industrial Strategy

The Rt. Hon. Lord Arbuthnot of Edrom

Sir Bob Neill MP Chair, Justice Select Committee

Mr Kevin Hollinrake MP Chair, All Party Parliamentary Group on Fair Banking

Ms Chi Onwurah MP