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Horizons Issues - Alan Bates & Others v Post Office Limited

Day 1

March 11, 2019

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1   Monday, 11 March 2019
2   (10.30 am)
3   MR JUSTICE FRASER: Mr Green.
4   Housekeeping
5   MR GREEN: May it please your Lordship. One of the matters
6   your Lordship was going to deal with first thing today
7   I think was the question of when the common issues
8   judgment might formally be handed down and whether the
9   claimants may have permission in the event that they
10   receive a draft to disclose the draft to the steering
11   committee of the claimants.
12   MR JUSTICE FRASER: Yes. I think Mr Warwick's email said
13   two members of the steering committee. I don't know how
14   many people are on the steering committee.
15   MR GREEN: Yes.
16   MR JUSTICE FRASER: This is the draft which is currently
17   embargoed.
18   MR GREEN: Indeed.
19   MR JUSTICE FRASER: Right and my position on this is as
20   follows. I have no difficulty with two members of the
21   steering committee seeing the draft, subject to
22   conditions. One is the names of those two people have
23   to be notified to my clerk in an email and that email
24   should come from one of the claimants' legal advisors.
25   It should identify who they are by name and the fact

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1   that they have been specifically told the terms of the
2   embargo and that to breach the terms is a contempt and
3   what the possible consequences of the contempt are.
4   MR GREEN: My Lord, I'm grateful.
5   MR JUSTICE FRASER: If those three elements are satisfied
6   then they can be shown the draft --
7   MR GREEN: I'm most grateful.
8   MR JUSTICE FRASER: -- under terms of the embargo.
9   MR GREEN: I'm most grateful, my Lord.
10   MR JUSTICE FRASER: Now, handing it down, that ball is
11   rather in your court and when I saw "your" court I mean
12   the Post Office's court, although I know it is not
13   Mr De Garr Robinson's side of it.
14   MR GREEN: Side of it yes.
15   MR JUSTICE FRASER: I was expecting or had invited typos to
16   be provided by Wednesday.
17   MR GREEN: Indeed.
18   MR JUSTICE FRASER: Depending on the extent and scope of
19   those I intend to hand the judgment down on Friday, but
20   if there are an enormous quantity and it was a judgment
21   that was sent out more in draft than I would ordinarily
22   hope for, on Thursday morning I might say to you it's
23   not going to be Friday, it's going to be the beginning
24   of next week so I can use the weekend just to deal with
25   the typos.

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1   MR GREEN: Most grateful, my Lord. Would it be possible for
2   us to deal with any consequential matters the following
3   Friday rather than this Friday?
4   MR JUSTICE FRASER: No, you can have longer than that.
5   MR GREEN: I'm most grateful.
6   MR JUSTICE FRASER: The important thing on consequential
7   matters is that when I hand it down I make the order in
8   the relevant terms for the parties to give them the
9   necessary extension of time so that time doesn't run.
10   I don't intend to put the parties in the position that
11   time is running for the purposes of any consequential
12   applications during this trial.
13   MR GREEN: My Lord, I'm most grateful.
14   MR JUSTICE FRASER: So you don't even necessarily need to
15   come when it is formally handed down, depending on when
16   that is.
17   MR GREEN: I'm most grateful.
18   MR JUSTICE FRASER: Is that clear? Yes, good.
19   MR GREEN: My Lord, in terms of use of the time for
20   claimants' oral opening, what I propose to do -- because
21   I know your Lordship has obviously had sight of the
22   expert reports and joint reports already.
23   MR JUSTICE FRASER: Yes.
24   MR GREEN: I propose to highlight a few key areas of
25   agreement at a fairly high level, highlight a few key

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1   areas which we will say at this stage are likely to be
2   important battle grounds for the trial, highlight the
3   importance of the difference of approach of the two
4   experts and the approach we're going to respectfully
5   invite the court to adopt and then, which we hope will
6   be useful for the court, take your Lordship through one
7   worked example of a bug.
8   MR JUSTICE FRASER: One worked example of ..?
9   MR GREEN: Of a particular bug, so that your Lordship can
10   see practically how a KEL works and practically how it
11   relates to a PEAK -- or one or most PEAKs or one or more
12   KELs because your Lordship will have probably
13   appreciated that you can have multiple KELs referring to
14   one or more PEAKs and vice versa -- the practical
15   realities of the information flow between Post Office
16   and Fujitsu in their system and the extent of the impact
17   that one bug can have, the limitations on the sources of
18   information available to the experts.
19   MR JUSTICE FRASER: You seem to be counting on your figures
20   but I don't know what number you've got to.
21   MR GREEN: I'm sorry. I will give your Lordship just
22   a narrative overview to start with.
23   The limitations of the sources of information
24   available to the experts and what knowledge Post Office
25   had of that bug and when, to inform the court as to its

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1   approach to these bugs and that will hopefully give
2   the court at least at the outset of the trial both
3   a practical understanding, in addition to what the court
4   has already gleaned from the experts' reports, of how it
5   actually worked, upon which we are going to place
6   I think greater emphasis possibly than the defendant,
7   and to provide a sort of microcosm illustration of what
8   we, the parties and the court, now have, what those
9   documents do and do not do, what the claimants have had
10   to do, what Post Office doesn't do and what Post Office
11   has known in relation to that bug all along.
12   So with that brief introduction --
13   MR JUSTICE FRASER: We also at some point, and I would like
14   to do it before lunch if possible because I don't want
15   to cut into Mr De Garr Robinson's time, need to address
16   in outline terms whether either or each of you want an
17   adjustment to part 2 of the timetable to deal with
18   experts' cross-examination, which was an email I sent
19   out about two weeks ago.
20   MR GREEN: My Lord, yes.
21   MR JUSTICE FRASER: So we just mustn't forget that.
22   MR GREEN: At the moment I think our position is we are not
23   seeking one and we are content to deal with it in that
24   way.
25   MR JUSTICE FRASER: "We" being you?

5

1   MR GREEN: The claimants. But there may be a different
2   view.
3   MR JUSTICE FRASER: Well, I'm in a much more developed
4   position than I was at the pre-trial review and I'm
5   obviously raising the point for a reason but we can deal
6   with it in outline terms at about 5 to 1, and please
7   don't forget that the shorthand writers need a short
8   break between about quarter to 12 and 10 past.
9   MR DE GARR ROBINSON: My Lord, I wonder whether now would be
10   a good time to discuss that question. It has been
11   something that's been bearing on my mind.
12   MR JUSTICE FRASER: All right.
13   MR DE GARR ROBINSON: Your Lordship will be aware from the
14   PTR that my judgment is four days is needed with
15   Mr Coyne. That remains my judgment. Now that
16   your Lordship may have had an even greater opportunity
17   to read the expert reports and their length and assess
18   the complexity of their contents and their length,
19   your Lordship may have a different reaction to that
20   submission than the one that you had during the PTR.
21   MR JUSTICE FRASER: Well, my position -- I will tell you
22   what the situation is and then we can revisit at the end
23   of the day if necessary, although because today is silks
24   day there is a ceremony for the new silks at quarter to
25   5 which means we will have to stop bang on half past 4.

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1   My position at the pre-trial review was fairly
2   clearly based on anticipation of future expert
3   agreements because I knew that they were still
4   continuing to meet. I knew what your position was about
5   four days and I was fairly robust about that.
6   MR DE GARR ROBINSON: Yes.
7   MR JUSTICE FRASER: Robustness being the word of the moment.
8   Given what has happened since then, I am now more
9   open minded to you having longer than two and a half
10   days if you consider you need longer than two and a half
11   days. I know originally Mr Green said he wanted I think
12   three but he seems broadly content with two and a half.
13   There's also something of a difficulty brewing in the
14   wings in respect of other litigation on Friday 5 April
15   because as you know this court sits usually on Fridays
16   on other business, so part 2 of the trial, by which
17   I mean the expert evidence onwards, seems to me,
18   Mr De Garr Robinson, if you tell me you need four days,
19   I am going entirely to rejig the second half of this
20   trial so you can have your four days.
21   MR DE GARR ROBINSON: I'm much obliged to your Lordship.
22   MR JUSTICE FRASER: So if you just want to mull that over
23   and we obviously need to set the timetable in more
24   outline terms, though nothing is set in stone, either
25   today or tomorrow and that might mean we need to

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1   readdress when the closing arguments are going to be.
2   MR DE GARR ROBINSON: Yes. My Lord, I was thinking more
3   time with the experts and then perhaps oral closing
4   arguments at the beginning of next term, but I have
5   heard what your Lordship said and I'm grateful for the
6   indication.
7   MR JUSTICE FRASER: And that's not impossible either, that
8   way forward. It would break those two weeks, which are
9   currently the first week after the break, expert
10   cross-examination, and the second week, closings; it
11   would break them into a week for the claimants' expert
12   to be cross-examined by you, however many days of the
13   next period Mr Green would want to cross-examine
14   Dr Worden and whether that's two and a half or three,
15   there's not really much difference, and then whatever we
16   do about closings. That's to give you my outline
17   thinking.
18   MR DE GARR ROBINSON: I'm grateful.
19   MR JUSTICE FRASER: All right, Mr Green.
20   Opening submissions by MR GREEN
21   MR GREEN: Most grateful, my Lord.
22   My Lord, there is, as your Lordship has seen, some
23   fairly high level agreement. Obviously the Horizon
24   architecture is broadly uncontroversial and Horizon
25   support, at least the outline of it, how it was provided

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1   is uncontroversial.

2   MR JUSTICE FRASER: Are there four statements now?

3   MR GREEN: There are four joint statements. I think the

4   fourth doesn't take it that much further.

5   MR JUSTICE FRASER: But there are four?

6   MR GREEN: There are four.

7   And the experts agree that the PEAKs and KELs, the

8   known error logs KELs and the PEAKs, which are the

9   higher level record created in relation to a KEL, it

10   goes up the support line; the experts agree that the

11   PEAKs and KELs together form a useful source of

12   information about bugs in Horizon, but while they are

13   the best available resource to the experts, they provide

14   a limited and incomplete window on what happened and so

15   cannot paint a comprehensive picture and that's the

16   agreed view of the experts, just to give your Lordship

17   a brief outline of the landscape of the evidence they

18   predominantly relied upon.

19   It is also true that there are a number of other

20   documents they have had reference to, as your Lordship

21   would expect, I think various emails, Fujitsu

22   presentations and other things which we will come to,

23   how they provide greater insight.

24   The PEAKs are created by Fujitsu's third and fourth

25   line support teams. So your Lordship has in mind how it

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1   works, the first line support seeks to identify whether

2   there is an existing known error log entry that might

3   relate to a support call. If not, the second line

4   support will create a new KEL, a new known error log

5   record, and then it is the third and fourth line of

6   support teams that create and investigate PEAKs. And if

7   your Lordship wants a reference just as a description of

8   PEAKs there's a helpful one in joint 2 at 0.5, the

9   reference of which is {D1/2/27} which is where the

10   experts agreed:

11   "PEAKs record a timeline of activities to fix a bug

12   or problem. They sometimes contain information not

13   found in KELs about specific impact on branches or root

14   causes - what needs to be fixed."

15   Then there is some agreement about bugs and errors,

16   robustness and potential for errors and measures and

17   controls. It is agreed that there were multiple bugs

18   with the potential to have a financial impact on branch

19   accounts and your Lordship will probably have seen from

20   joint 2, paragraph 1.15 {D1/2/29} the range of views is

21   between 12 and 29 bugs that the experts have identified

22   as distinct for which they have seen strong evidence of

23   the bug causing a lasting discrepancy in branch

24   accounts. So that's the range of opinion at the moment

25   and for your Lordship's reference the table where

<center>10</center>

1   Mr Coyne refers to those is {D2/4/16}, which is in

2   Mr Coyne's supplemental report, which if we can just

3   bring that up on Magnum, your Lordship will see there is

4   an "Evidence of branch impact" column and where it says

5   "Yes", that's where the relevant bugs that he has

6   counted up to 29 are said to have strong evidence of

7   potential impact on branch accounts.

8   The areas of robustness where there is at least

9   outline agreement, the experts agree that overall the

10   system is relatively robust. They agree that computer

11   systems are considered more robust if access to the

12   back-end database is restricted tightly and they agree

13   that in 2012 Post Office's auditors observed that there

14   were inappropriate system privileges in this regard and

15   that's found at paragraphs 3.2 to 3.3 of joint 3, which

16   is at {D1/4/3}. And the source -- so that's

17   paragraphs 3.2 to 3.3, your Lordship will see at the top

18   there. And the source for that is the Ernst & Young

19   management letter which is at {F/869/32}, which over the

20   page at 33 {F/869/33} identifies:

21   "There are inappropriate system privileges assigned

22   to the APPSUP role and SYSTEM_MANAGER role at the Oracle

23   database level on the branch database server ...

24   inappropriate privileged access ..."

25   And so forth. On page 34 over the page {F/869/34}

<center>11</center>

1   they say:

2   "Unrestricted access to privileged IT functions

3   increases the risk of unauthorised/inappropriate access

4   which may lead to the processing of unauthorised or

5   erroneous transactions."

6   And then at the bottom they say:

7   "We noted that there is currently no process to

8   review POLSAP user accounts or HNGX back-end user

9   accounts on a periodic basis to determine that user

10   access is appropriately granted given the job

11   responsibilities. As a result, our review revealed the

12   following ..."

13   And over the page they set out examples of what they

14   have found and the bottom entry:

15   "Whilst we noted that there was a monitoring control

16   in place for privileged access to POLSAP whereby

17   accounts associated to the SAP_ALL profile are reviewed

18   and monitoring of failed and successful login attempts

19   for SAP*, DDIC and BASISADMIN accounts is performed,

20   this control does not include accounts associated to the

21   SAP_NEW privileged profile."

22   And so forth. So that was a document which the

23   experts identified in relation to that point.

24   Then at the level of undetected errors, in joint 3,

25   paragraph 3.6, which is {D1/4/3}, the experts agree

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that:

"PEAKs show that some defects have lain undetected
in Horizon for extended periods without being diagnosed
and fixed."

And your Lordship will anticipate we will look at
that carefully through the prism of Dr Worden's
countermeasures which he relies on for robustness and
detection of errors and correcting them in a timely way.

Then as to the effectiveness of the countermeasures
themselves, the experts agree that the effectiveness of
various countermeasures has changed throughout the life
of Horizon. The existence of the countermeasures has
changed as well and your Lordship finds that at joint 3,
paragraph 3.11 and 3.20; that's {D1/4/4}. Your Lordship
will see there 3.11:

"The effectiveness of various countermeasures
changed throughout the life of Horizon."

And if we go over the page {D1/4/5}, at 3.20:

"As Horizon has changed throughout its lifetime, the
existence and effectiveness of any countermeasures has
too. To have considered the time dependence of all
robustness countermeasures over 20 years would have made
the expert reports impossibility lengthy. There was not
the time to do so."

There is a final point on this page, while I'm

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there, which is also we say highly pertinent to one of
the difficulties which is at the core of this
litigation, which is that the experts are agreed at 3.22
that:

"Many software bugs can have the same effects as
a user error (as illustrated, for instance, by the
Dalmellington bug, which produced a remming error)."

Your Lordship will anticipate how that will feed
into an analysis of attribution of fault when
a subpostmaster raises something and the experts now
agree that many software errors will look like user
errors.

Then moving on, as to reconciliation and transaction
corrections, about which the court has heard quite a lot
of evidence already in the common issues trial, the
experts agree on the mechanics at least of
reconciliation and TCs and just briefly as to that, it
is clear that the process of data comparison between
third party client data and Post Office held data, much
of that appears to be automated to identify where there
are discrepancies and some of those comparisons are
carried out within Horizon itself, as defined, while
others may not be, so there's a difference I think in
terms of system about exactly where the automated
comparison of external third party client data and

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Post Office held data is carried out and we can see that
at {D2/4/22} which is Mr Coyne's second report at 3.37
to 3.38 which is essentially agreeing with Dr Worden's
comments about reconciliation.

Then in relation to the manual allocation of
responsibility and TCs, essentially the experts agree
that there is a human or manual process which is
inevitably subject to errors and in a sense to some
extent that is as far as Dr Worden goes, subject to
a point which I will return to as to the role that
transaction corrections play in this trial.

In relation to other quick topics where there is
broad agreement, issues 2 and 14, which is Horizon
alerting and reporting facilities, there are two big
agreements about that. One is that Horizon doesn't
alert SPMs to bugs and errors itself and that's joint 2,
paragraph 2.1 at {D1/2/38}. And then in relation to
functionality for SPMs obviously it's agreed that
Horizon's functionality allowed subpostmasters to check
cash and stock by counting the same and inputting those
figures. The experts generally agree on the steps and
processes in dealing with discrepancies and they agree
that it was not possible to record a dispute on Horizon
itself and that's joint 2, paragraphs 14.1 to 14.3 at
{D1/2/40}.

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And the two last areas of high level agreement are
Horizon shortfalls data and reporting for
subpostmasters, which is 8 and 9. There is fairly high
level agreement about available data and reporting.
They agree factually about what transaction data and
reporting functions were available to subpostmasters and
Post Office respectively and that's joint 3 at 8.2
{D1/4/10}. And they agree, importantly -- although
your Lordship has already heard some evidence about this
in the common issues trial -- that Post Office had
access to several sources of information to which
subpostmasters were not privy, which is joint 3 at 8.1,
which is {D1/4/10}.

MR JUSTICE FRASER: Right. I'm a bit puzzled at some of
your references although you were going quite quickly so
it might be that I missed some of them. You said
joint 2, paragraph 14.1 to 14.3. I'm not sure if you
actually turned that up, did you? Was that turned up on
the common screen?

MR GREEN: {D1/2/40} is 14.1 to 14.3, my Lord, at the bottom
of page 40.

MR JUSTICE FRASER: Yes.

MR GREEN: So that's where the expert agreement is and the
reference is -- they haven't set out.

MR JUSTICE FRASER: No, I was looking for a different --

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1   I was looking for subparagraphs of the earlier number 14
2   which was euro discrepancies which was on page 12, which
3   is also a paragraph 14 but it doesn't have
4   subparagraphs.
5 MR GREEN: Indeed.
6 MR JUSTICE FRASER: Yes, so ...
7 MR GREEN: I'm sorry if I'm going too fast but this is
8   just --
9 MR JUSTICE FRASER: Well, I don't know -- when you refer me
10   to these I don't know whether you are expecting me
11   hurriedly to look at them on here before you go on to
12   the next one or not.
13 MR GREEN: I will perhaps indicate if I invite your Lordship
14   to look carefully at it.
15   In relation to remote access and editing of
16   transactions, your Lordship will appreciate this is
17   going to be something of a hot potato during the trial.
18   There is a measure of agreement that certain categories
19   of access or tool have been available at various times
20   and at the moment I don't want to go into that in too
21   much detail save to identify what the types are, if
22   I may.
23   So there is Post Office remote access which was at
24   a minimum read only access to all branch transaction
25   data, which is referred to at joint 3, paragraph 7.2

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1   which is {D1/4/10}. I'm not asking your Lordship to
2   look at it particularly.
3   There is the Fujitsu ability to insert transactions,
4   one such tool being the balancing transaction tool used
5   by Fujitsu's SSC, system support centre, third line
6   support, which has been used on at least one admitted
7   occasion {D1/5/5}, which is joint 4 at 10.3.
8   There is privileged users with the capability to
9   edit or delete transaction data and there are some logs
10   relating to this access but what's recorded in those
11   logs has changed significantly over time. That's
12   joint 4 at 11.3 {D1/5/10}.
13   There is accounts altered without consent which is
14   changes to an SPM's branch transaction data made without
15   a subpostmaster's consent which your Lordship will find
16   for example at Dr Worden's first report, paragraph 1136
17   which is {D3/1/248}.
18   And there is also reference there to the rebuilding
19   of branch transaction data --
20 MR DE GARR ROBINSON: I'm sorry, I don't understand
21   my learned friend's reference to paragraph 1136. It may
22   not be helpful but I wonder if he could explain what he
23   means about Dr Worden agreeing.
24 MR GREEN: So if your Lordship sees, there is a table at
25   1136 where Dr Worden sets out what he says can be done

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1   and it has got "Data amendment" as the first column and
2   he says:
3   "Whether Post Office has had the ability to:
4   "Inject/inject: yes, global users have had that
5   ability.
6   "Edit/delete: no."
7   And then "without the knowledge of subpostmaster:
8   no"; "without the consent of subpostmaster: yes".
9   So I'm just trying to summarise the effect of what's
10   in that column.
11 MR JUSTICE FRASER: That's how I read it.
12 MR GREEN: I hope that's helpful to my learned friend.
13 MR DE GARR ROBINSON: I'm grateful.
14 MR GREEN: Then the final one is the transaction repair tool
15   which is referred to at {D1/5/3-4}. It is at the bottom
16   of that page:
17   "The earlier transaction repair tool affects only
18   [this is Dr Worden] back-end copies ..."
19   And then he lists some of the others.
20 MR JUSTICE FRASER: Sorry, where were you just looking at?
21 MR GREEN: Sorry, the bottom bullet point on that internal
22   page 3, which is actually --
23 MR JUSTICE FRASER: The one that begins "The earlier
24   transaction repair tool ..."
25 MR GREEN: Exactly:

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1   "... affects only back-end copies of transaction
2   data [this is Dr Worden's view] and so does not enable
3   remote access."
4   And then he refers to other things. On that,
5   my Lord, I just invite your Lordship to note on page 7
6   {D1/5/7}, at 10.11, the experts agree:
7   "We have not been provided with logs or audits from
8   the transaction repair tool (TRT)."
9   So just trying to pick out the broad landscape,
10   where the big disputes will be, one of the big areas of
11   difference between the parties is as to robustness and
12   has a couple of facets to it: one is its utility in
13   terms of determining the individual other issues in the
14   trial and we have referred to that on page 9 of our
15   written opening {A/1/9} including at, for example,
16   paragraph 17.1.
17   The issue of robustness has been a fairly focal
18   point of the defendant's case throughout. They first
19   raised the contention that the Horizon computer system
20   is robust in their response to the Panorama documentary,
21   which is at {F/1422/1}. Your Lordship will probably
22   remember this document from it before, but the
23   Post Office was responding to the Panorama programme on
24   17 August 2015 and it says that the allegations are
25   based on partial, selective and misleading information:

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1   "The Post Office does not prosecute people for
2   making innocent mistakes and never has.
3   "There is no evidence that faults with the computer
4   system caused money to go missing at these Post Office
5   branches.
6   "There is evidence that user actions, including
7   dishonest conduct, were responsible for missing money."
8   And so forth and then it refers to the allegations
9   and then the last paragraph before "Background facts" is
10   where they say:
11   "The Horizon computer system is robust and effective
12   in dealing with the six million transactions put through
13   the system every day by our postmasters and
14   employees ..."
15   And so forth:
16   "It is independently audited and meets or exceeds
17   industry accreditations."
18   Then the letter of response makes four references to
19   "robust". I won't take your Lordship to them. The
20   generic defence then reflects that language at
21   paragraph 16, paragraph 50 and paragraph 153, which are
22   respectively -- we don't need to turn them up, but are
23   respectively for reference at {C3/3/5}, {C3/3/21} and
24   {C3/3/61}.
25   And then the third CMC, Post Office themselves

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1   particularly proposed issue number one, "Is Horizon
2   robust and extremely unlikely to be the cause of
3   shortfalls" and for reference -- we don't need to turn
4   it up -- that's the skeleton argument at {C8.4/2/25}
5   and then that becomes the focal point of Dr Worden's
6   report and we respectfully say feeds into his approach
7   to the evidence as a whole. So what he does, in
8   contra-distinction to Mr Coyne, is Dr Worden looks at
9   the idea of robustness in a particular way, which I will
10   break down in a moment, and then through the prism of
11   robustness then looks at the other issues and we
12   respectfully will invite the court to adopt an approach
13   more consistent with Mr Coyne's approach which is to
14   look at what actually happened with particular examples
15   and trace them through to a reasoned and careful
16   conclusion and then from the ground up, as it were, draw
17   inferences upwards rather than from an overarching
18   hypothesis downwards.
19   Your Lordship has probably seen that in addition to
20   that we have questioned the extent to which something
21   being said to be robust provides any solace to an
22   individual postmaster and that's at page 10 in -- it is
23   {A/1/10}
24   MR JUSTICE FRASER: Page 10 of?
25   MR GREEN: In our written submissions. And the short point

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1   there, my Lord, is what's different about this is this
2   is not a provider of an IT system and the customer and
3   the customer being able to aggregate and deal with
4   things in the round with the provider. We're looking
5   one hop over and it is no solace to an individual SPM
6   who faces an unexplained shortfall which might be a lot
7   of money for them, even though a small amount of money
8   relatively for Post Office, to be told "But don't worry,
9   it's a rare occurrence", and so we respectfully say that
10   the entire universe of transactions is not the right
11   comparator for answering at least the other questions
12   and possibly the question of robustness in this trial.
13   We have made clear from the latest our generic reply
14   that we respectfully say that a low chance multiplied by
15   a high number of transactions is totally consistent with
16   the levels of claims being advanced by the claimants in
17   this case. My Lord, if I can just very briefly take
18   your Lordship to that, {C3/4/21}. It's at paragraphs 36
19   and 37 of the reply.
20   MR JUSTICE FRASER: Which paragraphs?
21   MR GREEN: It is paragraphs 36 to 37:
22   "Notwithstanding the various checks and
23   controls ..."
24   MR JUSTICE FRASER: It is really 35 to 37, isn't it?
25   MR GREEN: It really is, my Lord, your Lordship is right.

23

1   Then in 37, second line:
2   "In fact, the relatively small chance of errors
3   admitted by the defendant, would be likely to produce
4   the very picture reflected in the claimants' case. The
5   existence of money in the defendant's
6   suspense account(s) ... shows that errors generate
7   financial consequences by which the defendant receives
8   money to which it does not believe it is entitled, and
9   credits those sums to its profits."
10   That's a reflection of the suspense accounts being
11   credited profits after three years which we will turn to
12   when we get to Dr Worden's evidence.
13   "This too is consistent with the claimants'
14   case ..."
15   And if we go over the page {C3/4/22}, it identifies
16   the publicly maintained position and if we can go
17   forward to page 29 of that document which is {C3/4/29},
18   we look at paragraph 52:
19   "... the claimants repeat its primary case pleaded
20   in GPOC and aver that the terms identified are onerous,
21   oppressive ..."
22   Et cetera and that relates back -- that's the
23   position on the common issues reflecting the 52.5, the
24   identification of some errors and so forth. So that's
25   how that fed back into the trial your Lordship has

24

1 already heard.

2   In relation to robustness there's the sort of second

3 big area, but it's absolutely dovetailed with

4 Dr Worden's definition of robustness, which is his

5   definition of countermeasures which your Lordship will

6 have seen. He has identified these countermeasures and

7 he has drawn inference about their effectiveness and as

8 a result of those inferences concluded that the Horizon

9 system is robust and the most extraordinary of these is

10 the treatment of transaction corrections as

11 a countermeasure, because Post Office's position, we

12   respectfully say, is illogical and effectively a one-way

13 ratchet in Post Office's favour. So the approach is to

14 say that the process of making transaction corrections

15 is relevant as a countermeasure but not within this

16   trial, that's effectively the position adopted, and it

17 is we respectfully say an unusual position.

18   If we look at {A/2/44}, this is Post Office's

19 written opening for the Horizon issues trial, and we can

20 see at paragraph 114 the opening line of that:

21   "Post Office's reconciliation processes are outside

22 the scope of the Horizon issues."

23   So that's the prism through which the Post Office

24 invites your Lordship to be constrained for the purposes

25 of this trial.

25

1   Now, we compare that to what Dr Worden refers to at

2 {D3/1/71} and we see at paragraph 257 that Dr Worden

3 says:

4   "In my opinion, the countermeasure of UEC was so

5   essential in Horizon, and it was effectively

6 implemented. Because of this, many software errors

7 resembling user errors were also corrected."

8   Now, there what he is talking about is user error

9 correction, which is not the correction of user errors,

10 it's subpostmasters spotting software errors and drawing

11 them to the attention of Post Office and that feeding

12 through to Fujitsu. And we will look carefully at what

13 the information flow in real life looks like, but UEC is

14 not just an important countermeasure, in it Dr Worden's

15 opinion UEC, which is SPMs spotting system errors and

16 pointing them out successfully, UEC was "so essential in

17 Horizon".

18   If we then go to page 78 in that document {D3/1/78},

19 I would invite your Lordship to look carefully at

20 paragraph 294, flatly contrary to Post Office's position

21 in its written opening:

22   "The processes of reconciliation, TAs and TCs are

23 a very important part of the robustness countermeasures

24 built into Horizon - particularly for UEC."

25   So, my Lord, that ties back to that paragraph we

26

1 have just looked at.

2   Then just as an extra point, when Dr Worden is

3 presented with KELs in which it appears there might have

4 been a financial impact on branch accounts, he

5 frequently infers that TCs would have been issued to

6 correct the position and therefore it's robust. We will

7 explore some examples of that with Dr Worden in due

8 course. And therefore it would be certainly helpful if

9 my learned friend could clarify what Post Office's

10 position is about the relevance of TCs. If they do not

11 form part of the Horizon system, robustness of which

12 they have insisted is in issue in issue 1, then to the

13 extent that that robustness is dependent on transaction

14 corrections, the system is not robust. If it is in then

15 it is dependent on that process of transaction

16 corrections and your Lordship will obviously appreciate

17 from the previous trial what that involved in practical

18 terms.

19   So ultimately, the approach of Dr Worden more

20   globally we respectfully say has an element of

21   circularity about it because what we find is that where

22 bugs are detected -- so where we have been able to find

23 evidence of bugs -- Dr Worden prays that in aid to show

24 that "Well, they can be detected, so the system is

25 working, so it is robust", where bugs have not been

27

1 detected by the system that's prayed in aid as the

2 absence of bugs and where bugs have been found that have

3 gone undetected for a long time, but are finally found

4 several years later, that is still said to be evidence

5 that the system and controls are all robust. So in fact

6 the position is that it is not possible to identify any

7 evidence which could ever lead to the conclusion the

8 system is not that robust on that basis and we

9   respectfully invite the court to scrutinise that

10 approach with some care.

11   The big difference which I have already indicated

12 between the approach of Mr Coyne and the approach of

13 Dr Worden is Mr Coyne has started with the primary

14 source material and the PEAKs and KELs -- and we will

15   illustrate this in a moment in relation to

16 Dalmellington -- and has tried to build up the picture

17 from those, whereas Dr Worden has looked at everything

18 through the prism of the robustness countermeasures that

19 I have just been describing.

20   The third big area of dispute is remote access.

21 Your Lordship will appreciate that the position on

22 remote access has developed somewhat to say the least.

23 It is worth just briefly recapping how that position has

24 developed. Your Lordship will remember that Post Office

25   originally made its public statement in response to the

28

1   Panorama programme which denied any ability remotely to
2   alter branch data.   That's at {F/1422/2} and you see
3   there halfway down the page:
4   "There is also no evidence of transactions recorded
5   by branches being altered through 'remote access' to the
6   system.   Transactions as they are recorded by branches
7   cannot be edited and the Panorama programme did not show
8   anything that contradicts this."
9   Your Lordship will remember Mr Roll appeared on the
10   Panorama programme.
11   We have set this section out at page 22 of our
12   written opening {A/1/22} and we have traced through the
13   development of the position.   It is clear that what
14   Post Office told the public in response to the Panorama
15   programme was not true.
16   At paragraph 65:
17   Following the claimants' letter of claim ...
18   Post Office admitted (in their 28 July 2016 letter of
19   response) that in fact Post Office and/or Fujitsu did
20   have some limited capacity remotely to access and edit
21   transactions ..."
22   Then at the GLO hearing my learned friend said to
23   the master -- wanted to deal with the remote access
24   point upfront and explained that the people who gave
25   that response thought it was correct.   He said:

29

1   "... Horizon system is a very complicated system.
2   It involves lots of departments in ... both in Fujitsu
3   and in the Post Office.   And the people who are
4   responsible for the correspondence didn't know that in
5   fact there were these two other routes.   Very few people
6   at Post Office knew that there were these two other
7   routes.   They were ... they were routes that are
8   under ... essentially under the control of Fujitsu who
9   is the expert independent contractor ..."
10   And then at the bottom:
11   "... the point having been discovered, the
12   Post Office wasted no time in ... in bringing the
13   truth ... the accurate ... and accurate set of facts to
14   the knowledge of the claimants."
15   And at the end of that section:
16   "... the fact that there is a possibility to alter
17   remotely itself is ... not in issue, it now having been
18   discovered and the fact that there are these clever
19   routes by which they can be done."
20 MR JUSTICE FRASER: I think you have gone over the page
21   to 23.
22 MR GREEN: I have indeed, my Lord, yes.
23   So that was what the court was told at the GLO
24   hearing, that it shouldn't be in issue because it had
25   now been admitted, and then the generic defence, we

30

1   identified what was admitted at that point paragraph 57
2   of the generic defence which is {C3/3/25}.   In fact can
3   we just go back one page to 24 {C3/3/24}.   There's an
4   admission at the bottom there:
5   "... bugs or errors ... have resulted in
6   discrepancies and shortfalls or net gains ..."
7   Go over the page and then that deals with those bugs
8   and errors.   You come down to the "Remote editing of
9   branch transaction data" heading at 57 and then
10   subparagraph 1 says:
11   "Neither Post Office nor Fujitsu has the ability to
12   log on remotely to a Horizon terminal in a branch so as
13   to conduct transactions."
14 MR JUSTICE FRASER: What's the name of the Post Office or
15   the person who signed the statement of truth on the
16   generic defence?   There is just a signature on it but
17   I can't see what the name is.   {C3/3/75}.
18 MR DE GARR ROBINSON: My Lord, it is Jane MacLeod.
19 MR JUSTICE FRASER: Jane MacLeod, right.   Thank you.
20 MR GREEN: Your Lordship will see that the case is then set
21   out in the subsequent subparagraphs:
22   "A Post Office employee with 'global user'
23   authorisation can, when physically present at a branch,
24   use a terminal ..."
25   And then:

31

1   "Any transactions effected by a global user are
2   recorded against a global user ID and are readily
3   identifiable ..."
4   Then 3 {C3/3/26}:
5   "Fujitsu (and not Post Office) has the ability to
6   inject transactions into branch accounts (since the
7   introduction of Horizon Online in 2010, transactions of
8   this sort have been called 'balancing transactions')."
9   Then halfway down 3:
10   "They may be conducted only by a small number of
11   specialists at Fujitsu and only in accordance with
12   specific authorisation requirements.   They are rarely
13   used.   To the best of Post Office's information and
14   belief, only one balancing transaction has ever been
15   made so as to affect a branch's transaction data, and
16   this was not in a branch operated by a claimant.
17   A balancing transaction is readily identifiable as
18   such."
19   And so that's the account that we get which appears
20   on its face to conclude the allegation which had been
21   originally made by Mr Roll in Panorama, subject to --
22 MR DE GARR ROBINSON: My Lord, just to be clear -- I'm sorry
23   to interrupt, but just to be clear, your Lordship may
24   recall an argument in the pleadings, this is talking
25   about Horizon Online, paragraph 57 is principally about

32

1   Horizon Online not about Legacy Horizon and it is
2   important not to swerve between the two different forms
3   of Horizon in relation to which different forms of
4   remote access were possible.
5 MR GREEN: My Lord, I agree it is important not to swerve
6   between them.
7   The development of the case in terms of evidence
8   essentially followed the service of Mr Roll's witness
9   statement, Mr Roll's first witness statement {E1/7/3}.
10   Now, in fact that statement was dated 11 July 2016 --
11   your Lordship will understand why a witness statement
12   was taken at that stage before a pleading of this
13   type -- and it was served on 28 September 2018 and at
14   paragraph 18 of that witness statement, for example,
15   Mr Roll says:
16   "The ability to remotely access the Horizon system
17   at branch level was extensive, in that we were able to
18   change not only data and transaction information, but we
19   also had the ability to insert transactions and transfer
20   money remotely without the subpostmaster knowing.
21   Obviously this was not done by me, however I can recall
22   thinking that a third party may have been able to do
23   that if they could have remotely accessed the system in
24   the way that we could (which may or may not have been
25   possible)."

33

1   So he is being qualified there about him not having
2   done it himself.
3   We then on the same day are served the witness
4   statements of Mr Godeseth and Mr Parker, Mr Godeseth
5   first witness statement on 28 September 2018. He says
6   that any remotely injected transaction would be easily
7   identifiable as such because it would have a counter
8   number greater than 32 and the reference to that is
9   {E2/1/17}, 58.10. And it is right to distinguish
10   between Legacy Horizon and Horizon Online:
11   "In Legacy Horizon any transactions injected by SSC
12   would have used the computer server address as the
13   counter position which would be a number greater than
14   32, so it would be clear that a transaction had been
15   injected in this way."
16   So that's served on the same day as Mr Roll's first
17   statement.
18   Then we get the 16 November 2018 statement of
19   Mr Parker, Parker 1, {E2/11/5}, at paragraph 22. He
20   says -- notwithstanding that he is responding to
21   Mr Roll, he says:
22   "It is correct that the 'remote access' described
23   above could have been carried out without the permission
24   of a subpostmaster. However, any additional
25   transactions inserted remotely would be identifiable as

34

1   such from the transaction logs that are available to
2   subpostmasters from Horizon."
3   So the effect of those two witness statements, one
4   at the same time as Mr Roll and one responding to
5   Mr Roll, is to preclude a transaction appearing as if it
6   has in fact been done by a subpostmaster when actually
7   it hasn't and to do so clearly.
8   Then Dr Worden says that Post Office's evidence
9   accords with his experience with support staff more
10   generally and we see at {D3/1/244}, paragraph 1114, he
11   effectively takes a view on the conflict of evidence
12   between Mr Roll and Mr Godeseth and sides with
13   Mr Godeseth saying that it accords with his experiences:
14   "... that support staff should have a facility like
15   this, so that branch accounts could be corrected in
16   exceptional circumstances - without resorting to DBAs."
17   And if we go forward to page {D3/1/245},
18   paragraph 1119, he said:
19   "Mr Roll worked in the SSC and I established
20   above ... certain SSC users had the ability to transact
21   injections ..."
22   I think it might be the other way round, inject
23   transactions:
24   "... although these would have become visible to
25   subpostmasters. So in my opinion Mr Roll could not have

35

1   made these changes to branch accounts 'without the
2   subpostmaster knowing'."
3   So that's Dr Worden's conclusion on that, that's
4   7 December and then if we -- your Lordship will remember
5   that Mr Roll's second statement explained how those were
6   to be made and in response to that Mr Parker serves
7   a witness statement confirming that Mr Roll is right and
8   we see that at {E2/12/9} which is paragraph 27, where he
9   says:
10   "In paragraph 20 of Roll 2 [which we will look at in
11   a second] Mr Roll describes a process by which
12   transactions could be inserted via individual branch
13   counters by using the correspondence server to
14   piggy-back through the gateway. He has not previously
15   made this point clear. Now that he has, following
16   a discussion with colleagues who performed such actions
17   I can confirm that this was possible. I did not mention
18   this in my first witness statement because, when faced
19   with a less clear account in Mr Roll's first statement,
20   my recollection was that if it was necessary for the SSC
21   to inject a transaction data into a branch's accounts,
22   it would have been injected into the correspondence
23   server (injecting via the server was the default option
24   which was followed in the vast majority of cases)."
25 MR JUSTICE FRASER: So apparently it is all Mr Roll's fault.

36

1 MR GREEN: Apparently.

2 MR JUSTICE FRASER: Well, I dare say that will be pursued in

3   due course.

4 MR GREEN: Indeed. And the final reference, just so

5   your Lordship has a reasonably complete picture about

6   this, is {D3/6/21} which is Dr Worden's second report,

7   which postdates Mr Parker's second statement, at

8   paragraphs 83 to 85. If we go to {D3/6/21} and if we

9   look at 83 to 85:

10   "It seems to me that I require further factual

11 information before I can comment on this evidence.

12 Which 'specific person'? Under what circumstances? How

13 frequently? Until I have that information, it remains

14 possible in my view that any transaction which 'would

15 appear to the subpostmaster as though it had been

16 carried out through the counter in branch' might only be

17 a transaction that he had given his consent for, as the

18 'specific person' - and which had in effect been made on

19 his behalf.

20   "Therefore, Mr Roll's new evidence does not cause me

21 to alter the opinion expressed at paragraph 1119 of my

22 first report, when commenting on Mr Roll's first witness

23 statement, that he could not alter branch accounts

24 without the subpostmaster knowing."

25   85:

37

1   "In paragraphs 27-34, Mr Parker provides detailed

2 and specific commentary on Mr Roll's paragraph 20, using

3 his knowledge and the appropriate contemporary

4 documents, where they have been found. Here he

5 acknowledges that Fujitsu could insert transactions into

6 branches by a piggy-back process. I am not yet able to

7 comment on Mr Parker's evidence or the documents he

8 cites."

9   So that's the manner in which Dr Worden engaged with

10 the picture that emerged in that way through those

11 witness statements.

12   So, my Lord, that's the background to those big

13 issues and the sort of key features of them. I don't

14 know whether it is worth taking a very slightly earlier

15 break.

16 MR JUSTICE FRASER: I would maybe go on a bit.

17 MR GREEN: Shall I push on a bit?

18 MR JUSTICE FRASER: Yes.

19 MR GREEN: Because I'm about to begin just tracing through

20   the Dalmellington bug to see how that arises.

21   The Dalmellington bug is a shorthand name for

22 a particular bug and it takes its name from an iteration

23 of the bug which occurred in October 2015 and it is in

24 the Horizon Online system, particularly, but probably

25 not exclusively, affecting transfers of cash between

38

1 core branches and outreach branches, which are small

2 part-time branches that use mobile equipment. Cash is

3 sent from Post Office to a core branch and then it is

4 transferred from the core branch to an outreach branch.

5 When the barcode for the cash was scanned at the

6 outreach branch, the number of remittances would

7 multiply so that Horizon showed far more cash on the

8 system than was physically present. And just so

9 your Lordship knows, or has an idea of how it seemed to

10 the postmistress Ann Ireland who was affected in

11 Dalmellington, what in fact appears to have happened is

12 that at the remming in stage the post mistress was

13 presented with the "Enter" button, she presses it, that

14 should take her on to a new screen, but it stays there

15 and it is pressed again and again, and it appears that

16 there is a reasonable inference that the multiple of

17 cash reflects the number of times -- that looks to be

18 how it works. So she ends up with trying to rem in

19 an £8,000 cash remittance into the outreach branch and

20 actually the Horizon system recording her account as

21 having remmed in 32,000. So four enters effectively, so

22 she is over by £24,000.

23   My Lord, we say that this is quite an interesting

24 bug to look at because of the precise way in which it

25 arose because unusually, in a lot of other cases the

39

1 postmistress or postmaster is trying to work out what's

2 happened, without knowing, but in this case they are on

3 both ends of the transaction because they see a receipt

4 that they have printed out going out and they are at the

5 outreach branch and they see what they get at the

6 outreach branch and they can literally hold them up and

7 go "That cannot possibly be right". So this is a good

8 example of a very particular bug which was at literally

9 one end of the spectrum of visibility to subpostmasters,

10 in contrast to a number of others, and we will see that

11 in the documents that we go through.

12   My Lord, can I begin by taking your Lordship to

13 {F/1389} which is the PEAK. I say "the PEAK" and I will

14 explain in a little more detail in a minute. So this is

15 PEAK PC0246949 which for convenience I will refer to as

16 the 949 PEAK. And just to show your Lordship how the

17 PEAK document works -- it may be absolutely apparent

18 already -- "Call type", "Live incidents/defects" and

19 then there's a "Priority", priority C, "Non-critical".

20 And then there's a summary "Horizon -- transaction

21 discrepancies", as we come down, and then "All

22 references" your Lordship will see as a heading, "Type"

23 and "Value" and there under SSCKEL, that is system

24 support centre known error log, your Lordship can see

25 the acha621P KEL. Just as a practical matter, in terms

40

1   of knowing what a KEL is about, the way the KEL system
2   was set up, the KELs are named after the person who does
3   them, not the issue. So you can't tell anything about
4   the KEL from the name.
5   Then your Lordship then sees "Clone call", PC0246997
6   which for convenience I will refer to as the 997 PEAK.
7   So that's an associated PEAK.
8   Then just following this document through, the
9   progress narrative has a very brief summary of the
10   fuller data above, so you can see "Call type: L", means
11   "Live", "Call priority: C", cross-references to
12   non-critical and so forth. And we then come down. The
13   date of the record in the sort of yellowy-beige section
14   is 13 October at 2.46 in the afternoon, 14.46.
15   MR JUSTICE FRASER: Where are you looking?
16   MR GREEN: Just halfway down the page, my Lord, when it goes
17   from a duck egg blue colour to a yellowy colour.
18   MR JUSTICE FRASER: I see, but date time is the day before
19   at 5.10.
20   MR GREEN: Exactly.
21   So the record there in yellow is 13 October and the
22   transfer note begins:
23   "Please can PEAK investigate this discrepancy issue.
24   NBSC has confirmed that following discussions and checks
25   with the user that this is not a user error issue ..."

41

1   So confirmed not a user error issue, which in this
2   particular case was very easy for reasons I will show.
3   "... but an issue within the system requiring
4   Fujitsu investigation."
5   And then there's the message:
6   "Hi Eden, need to raise an incident for below issue
7   and ... provide Fujitsu re ... it's been confirmed with
8   SM."
9   Then you get the same text effectively again about
10   confirming that it is not a user error. And if
11   your Lordship comes down to just under
12   "Problem/request":
13   "User has discrepancies when transferring cash from
14   one branch to another (specifically between their main
15   branch to their outreach branch); OUTREACH BRANCH ISSUE.
16   "User said instead of the system logging it as
17   £8,000 transaction, it recognises it as £32,000
18   transaction.
19   "User already contacted NBSC and was rightaway
20   directed to us ..."
21   And the amounts are logged at the bottom: star
22   £8,000 over £32,000. I think the amount should be
23   actually over 24,000 but I think they are recording what
24   it actually did is 32,000.
25   MR JUSTICE FRASER: Well, it says it should have been £8,000

42

1   but it has been recorded as 32,000.
2   MR GREEN: Exactly.
3   And the subsequent pages of the PEAK record the
4   dealings with the PEAK in a bit more detail. I will
5   come back to some more specific aspects of that. If we
6   can just go back to the first page for a second
7   {F/1389/1} and we look at "Clone call" and the 997 PEAK,
8   if we go to {F/1389.1} this is the 997 PEAK, which
9   appears to be a PEAK cloned from the other one. So
10   "Release PEAK", there's a reference to another PEAK
11   there and the clone master is the 949 PEAK that we have
12   just looked at. So this is a clone of the master PEAK
13   and it refers to another release PEAK and it also refers
14   to the KEL, the acha621P KEL which is the same KEL
15   referred to in the previous one. And your Lordship will
16   see under "Progress narrative", this 997 PEAK is opened
17   on 14 October by someone called Anne Chambers who we see
18   quite a bit and then it appears to paste in what's
19   happened on the 13th below it, so it's not actually in
20   chronological order going downwards.
21   And we get a bit more information there in the
22   middle set out quite helpfully:
23   "Branch has a discrepancy of £24,000. 4 other
24   branches have had a similar problem in the last
25   2 months."

43

1   And your Lordship will see in a minute that she is
2   unable to go back more than two months at that stage to
3   see what else has happened.
4   "3 of these resolved by remming out the excess.
5   Since these were all branch to branch rems and there is
6   no cross-branch accounting within Horizon this removes
7   the discrepancy."
8   And then if we can then go to {F/1393}, this is
9   PEAK 207, which is just for your Lordship's note not the
10   other release PEAK that was mentioned in the previous
11   document, because that ends 024, it is a third one. And
12   here we can see halfway down that the date is 21 October
13   we're in now and there is email correspondence involving
14   Mr Parker as the originator -- your Lordship will see
15   "Originator" about halfway down the page, just below
16   where it goes from sort of green to duck egg green or
17   duck egg blue, 21 October 2015, 13.35.01. Four lines
18   down:
19   "Originator: Parker Steve ..."
20   Which we understand to be Mr Stephen Parker who is
21   giving evidence in this trial. And we can see that
22   there is correspondence from Tony Wicks to Anne Chambers
23   about Anne Chambers having done most of the
24   investigation into this. If we look at the bottom we
25   see Tony Wicks on 20 October 2015 at 15.25 to

44

1   Sandie Bothick saying:

2   "Hi Sandy,

3   "Looking at PEAK [949] ..."

4   Which --

5   MR JUSTICE FRASER: That's the one we started with.

6   MR GREEN: Exactly, so that's effectively the master -- it

7   is treated as the clone master PEAK:

8   "Looking at PEAK [949] it appears to be derived from

9   I7991774 and I found TfS incident ..."

10   And there is a number there:

11   "There is no problem record raised for this, however

12   PEAK [997] was used by development to investigate this.

13   A code fix has been developed, but requires official

14   testing and releasing. I've made enquiries and

15   unfortunately LST are unable to take the fix for testing

16   and release 12.88 without significantly impacted that

17   release to live.

18   "As the condition can be avoided by postmasters,

19   ie by making them aware of the condition and advising

20   them not to press enter multiple times, I propose that

21   this is KELed and included in the counter release

22   13.05."

23   And just a bit further down {F/1393/2},

24   Sandie Bothick is replying. She is saying:

25   "Hi POA DM ..."

<center>45</center>

1   Duty Manager:

2   "Have PEAK make you aware of this issue?

3   "Do you have a PR open ..."

4   And so forth. And then below is what she sent to

5   Atos earlier:

6   "Hi Katie, I'm coming in blind on this. Looking at

7   the incident this is our update from PEAK TfS

8   connector ..."

9   And so forth. Then there are further references to

10   the 997 PEAK:

11   "We are continuing to investigate the problem ..."

12   Just over halfway down:

13   "... but any fix will not retrospectively change the

14   branch accounts."

15   MR JUSTICE FRASER: Yes.

16   MR GREEN: "So we are aware of the issue and are continuing

17   to investigate but NBSC should be able to sort the

18   discrepancy out in the meantime."

19   MR JUSTICE FRASER: I think if you are going to move on to

20   another document I think we should take a break.

21   MR GREEN: Shall we take a break there?

22   MR JUSTICE FRASER: Yes. Come back again at 12.

23   (11.54 am)

24   (Short Break)

25   (12.00 pm)

<center>46</center>

1   MR GREEN: My Lord, can I just highlight a couple of

2   remaining points in this PEAK. If we can begin at

3   {F/1393/4} please.

4   MR JUSTICE FRASER: This is still in PEAK 207, is it?

5   MR GREEN: It is still in PEAK 207, exactly.

6   Now, your Lordship will see at the bottom of that

7   page, Monday October 19th, 2015 at 5.33 pm.

8   MR JUSTICE FRASER: Yes.

9   MR GREEN: "IT-Solutions R SPM Post Office incident

10   management".

11   "Hi Ibrahim, as this incident is not getting

12   resolved can we have a concall set up between NBSC &

13   Fujitsu.

14   "The site had transaction discrepancy. As per

15   Fujitsu, they have found 4 other instances (outreach

16   branches ..."

17   It gives the name:

18   "... and all but the last removed the discrepancy by

19   completing a rem out for the excess ..."

20   Then if we go back to the previous page {F/1393/4},

21   there is an email which is on 20 October 2015 at 9.53 at

22   the top of the page, part of it, and if we come down

23   four paragraphs -- well, let's maybe take it from the

24   second line:

25   "She was concerned as she had never seen this

<center>47</center>

1   before. She balanced core and it was correct, but

2   outreach was £24,000 short.

3   "Although the core had sent only one lot of £8,000,

4   the outreach had accepted 4 lots of £8,000 in one

5   transaction!

6   "She has spoken to NBSC ref 1358666 who told her it

7   was a technical issue.

8   "She then phoned the IT help desk ref I7972295. She

9   was unconvinced they understood the problem although

10   they said they could probably 'rectify remotely'. After

11   waiting till the end of day she called back and

12   escalated to option 7 and spoke to Rich who told her to

13   phone NBSC.

14   "I don't think the helpline understood what's

15   happened. I can understand that as you would think it

16   is not possible. But incredibly Anne's outreach Horizon

17   now shows £24,000 short and it does not exist. As you

18   can imagine, Anne is concerned and I have told her not

19   to touch the outreach unit until this is resolved for

20   her.

21   "The incident was passed to Fujitsu who have advised

22   that in order to resolve the issue the branch/NBSC must

23   'complete a rem out for the excess to correct the cash

24   holding' which Fujitsu are unable to do. The NBSC has

25   subsequently advised that they cannot assist as this is

<center>48</center>

1   an IT issue, however Fujitsu are also advising that they
2   cannot assist. As a result, the issue has been passed
3   back and forward for over a week."
4   Then if we go back a page {F/1393/3} to 20 October
5   at 10.42, Kendra Dickinson at the Post Office says:
6   "Could I enlist your help and support on the below
7   issue please?"
8 MR JUSTICE FRASER: This is underneath "Hi Rod/Dawn"?
9 MR GREEN: Exactly.
10   "Whilst I am happy for NBSC to try and support where
11   they can, the concern I have with the below is that we
12   have no process for managing this type of issue and we
13   are unable to see any of the back-end accounting for
14   this branch. Therefore, any advice that we try and
15   provide could end up making matters worse - this is
16   already showing a 24K loss. I am not happy for NBSC to
17   give advice on something that is not a process that
18   exists within the knowledge base.
19   "Similar to a disconnected session, NBSC would have
20   no understanding as to the implications on branch
21   accounting if they were to advise the branch as
22   suggested below."
23   And then if we go up there, there is more about the
24   difficulty of NBSC giving help and advice with
25   insufficient information, top of that page, which is

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1   under Tuesday 20 October at 11.57:
2   "... an explanation of the root cause to be supplied
3   by Fujitsu via Atos so that both our Finance Service
4   Centre and NBSC colleagues can be assured that the right
5   advice is given, there is no impact to the branch
6   account and a full audit trail is available. It does
7   not feel right for Atos and Fujitsu to be giving
8   instruction to NBSC to speak to branches with advice
9   with insufficient information.
10   "If this has happened in this case it would be
11   useful to see that in this email trail.
12   Then if we go back a page to {F/1393/2}, halfway
13   down the page -- this is in the Sandie Bothick email
14   that appears to start at the top and appears to include
15   what she sent to Katie, who I think I referred
16   your Lordship to already. If we come halfway down does
17   your Lordship see "POA-Horizon".
18 MR JUSTICE FRASER: No. Oh yes, I see it.
19 MR GREEN: Just there and then you have "Provider ref" and
20   a reference to the 949 PEAK.
21 MR JUSTICE FRASER: This is the one we have seen already.
22 MR GREEN: Indeed. It says:
23   "Resolution details: update by Anne Chambers:
24   category 70 - final - avoidance action supplied: we have
25   found that if there is a log-out before a user has fully

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1   logged on, then subsequently a pouch is remmed in
2   manually (most likely at an outreach branch), then after
3   the rem in slip has been printed, the same screen is
4   redisplayed and the user is likely to press enter again
5   and duplicate the remittance, possibly several times.
6   A different screen should be displayed which would
7   prevent this happening.
8   "A rem in slip is printed each time, showing the
9   same details but different session numbers, and
10   a transaction log search confirms the repeated rems."
11   And then importantly, we would respectfully say, she
12   says:
13   "This is not an area that has changed for several
14   years so it is likely to have happened before but we
15   have no record of it having been reported to us. I can
16   only check back two months; I've found 4 other instances
17   [of the outreach branches] ... and all but the last
18   removed the discrepancy by completing a rem out for the
19   excess ..."
20 MR JUSTICE FRASER: Those four must be in the last two
21   months, mustn't they?
22 MR GREEN: Precisely. So pausing there --
23 MR JUSTICE FRASER: On the face of the document they must be
24   the last two months.
25 MR GREEN: Exactly. So pausing there, your Lordship will be

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1   beginning to get a feel for the fact that it is quite
2   difficult to identify with confidence from a particular
3   KEL that you have necessarily found any related KELs, or
4   from a particular PEAK that you have necessarily
5   identified all of the PEAKs that relate to that problem
6   and there is obviously some information flow
7   practicalities, both in relation to what information
8   flows to the affected subpostmaster and whether there's
9   a clear process for that, and also internally about the
10   reporting of these issues by Post Office through its
11   processes back to Fujitsu because the reporting of those
12   issues is obviously essential to one of Dr Worden's
13   countermeasures in terms of fixes being applied to
14   correct the system errors.
15   From there can I invite your Lordship just to see
16   {F/1389} and {F/1389} is -- that's 949 that we have
17   identified as the PEAK we have looked at and then when
18   we look at the reference to the additional receipts
19   being produced we need to look at a couple of
20   documents --
21 MR JUSTICE FRASER: Do you mean on the same PEAK?
22 MR GREEN: Yes, this is still -- this is all cross-referring
23   to the same ones. We've got {F/1386}, and, my Lord,
24   this makes good the advantage to a subpostmaster --
25   "advantage" is a relative term, but compared to some

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1 other software issues. By being on both ends of the
2 transaction she is able to produce what has gone out and
3 in. So we've got the remming in money which should be
4 £8,000 and you've got on the right-hand side four
5 separate remming ins of £8,000, all effectively in the
6 same -- within one minute of each other, those four
7 separate receipts coming down the right-hand side and
8 one slightly on the left, numbered 1 to 4.
9   If we then go to 1392 we've got the events log which
10 the subpostmistress was able to see showing rem out slip
11 on the left-hand side where she has written "Rem out"
12 and then on the right-hand side she has identified
13 multiple receipts being printed which are the four
14 receipts we have just looked at. So on this particular
15 bug this subpostmistress at Dalmellington had both ends
16 of the data, as it were, and was able to say "Look, this
17 cannot possibly be right."
18 MR JUSTICE FRASER: Yes.
19 MR GREEN: And that is obviously reflected in the
20 recognition internally within Post Office of what's then
21 happened.
22   Then if we just briefly go back, your Lordship will
23 notice that the date of the event itself is 8 October
24 and then we get the record created at 12th and notes at
25 13th and then the later ones where they are arguing

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1 about the fact it has been bounced back between helpline
2 and Fujitsu are dated the 20th, just to get the timeline
3 clear in that respect.
4   Can I take your Lordship now to the underlying KEL
5 which is at {F/1426}. So this was a KEL raised by
6 Anne Chambers on 15 October 2015, so on the face of it
7 looks like prior to that date the acha6 -- it is
8 difficult to see, prior to that date of 15 October 2015,
9 to what extent there was an existing KEL identifying
10 this on the face of the documents.
11 MR JUSTICE FRASER: Yes.
12 MR GREEN: And the symptoms are described:
13   "A cash pouch was received at an outreach branch and
14 scanned into Horizon. The manual process was followed
15 and 2 Delivery Receipts printed. Then the clerk pressed
16 Enter to complete the process, and a Rem In slip was
17 printed. They were then able to press Enter again and
18 another Rem In slip was printed - and the same amount of
19 cash was recorded a second time. They may have repeated
20 several times before using Cancel to escape, resulting
21 in much more cash being recorded on the system than they
22 actually have."
23   And "Solution - ATOS" at the bottom -- they refer to
24 the problem they have identified which is a problem
25 your Lordship has already seen. "Solution":

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1   "Known problem should now be fixed so any further
2 occurrences need to be investigated - send call to PEAK.
3   "Outreach branches can avoid the problem by making
4 sure that they do not press Enter again after they have
5 printed both Delivery Receipts and the Rem In slip - if
6 they find the Rem In screen is still displayed they
7 should press Cancel to get out of it, ignoring the
8 message that not everything has been printed."
9   So actually what's reflected there, my Lord, just
10 pausing, is that what's shown on the screen is actually
11 positively misleading and that is in fairness to some
12 extent reflected in the next sentence on {F/1426/2},
13 where they say:
14   "However, they are unlikely to notice immediately
15 that they are on the wrong screen, and will probably
16 have duplicated the rem in before realising something is
17 wrong."
18   Because if you successfully press the enter button
19 it's meant to move on to the next screen, so when it
20 doesn't go away they just keep pressing it.
21 MR JUSTICE FRASER: That says in the third paragraph:
22   "The cause of the problem is being investigated ..."
23 MR GREEN: Indeed.
24 MR JUSTICE FRASER: And can we go back to the previous page,
25   page 1 {F/1426/1}:

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1   "Known problem should now be fixed ..."
2   What does "known problem" mean?
3 MR GREEN: My Lord, this is one of the points -- there are
4 two tasks I'm trying to do, which is to try to
5 interrogate the documents as helpfully as I can for
6 the court, but at the same time try to identify to
7 the court the difficulties that one is -- anyone is
8 faced with when looking at the incomplete picture that
9 the experts have referred to.
10 MR JUSTICE FRASER: All right, understood. Let's go on to
11   page 2 again please {F/1426/2}.
12 MR GREEN: And your Lordship will see again there:
13   "... but it will not retrospectively correct the
14 accounts at affected branches."
15   So that's noted again there.
16   Now, what in fact happened was there was external
17 third party interest in this problem and that resulted
18 in a Fujitsu presentation on 10 December 2015. To be
19 fair to Post Office, Post Office wanted answers but
20 wanted an identification of root cause and there's also
21 some pressure from a blogger at the time which we will
22 see later, and at {F/1415}, there is a Fujitsu
23 presentation on 10 December 2015 on the branch outreach
24 issue. "Initial findings", the first page confirms it
25 is for Post Office's internal purposes only as

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1   confidential. If we go over the page {F/1415/2} it
2   confirms there are potentially two separate issues at
3   play. It:
4   "Doesn't correctly close down on the post log on
5   script. This leaves the script on the 'stack' of
6   incomplete processes."
7   And also:
8   "The pouch delivery script thinks it has completed
9   doesn't explicitly finish".
10   And there's some consideration of that.
11   If we look at page 3 {F/1415/3}, as
12   at December 2015, the date of this presentation,
13   Post Office knew from Fujitsu that there had been 112
14   occurrences that Fujitsu had identified of duplicate
15   pouch IDs over the past five years, three issues with
16   duplicate pouches, 47 outreach cases, 19 using the
17   "Previous" button after a pouch scan, which was said to
18   have been fixed March 2010, 46 remitted at multiple
19   counters, fixed January 2011, 108 items corrected at the
20   time either by transaction correction or subpostmaster
21   referral, four items still to be confirmed, no items
22   related to the period where the mediation scheme --
23   MR JUSTICE FRASER: What does BLE stand for at the top?
24   MR GREEN: I'm not --
25   MR JUSTICE FRASER: If you don't know it doesn't matter.

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1   MR GREEN: I'm not sure I know, my Lord. I was going to
2   hazard a guess but I'm not sure I'm right. Maybe we can
3   check that.
4   And if we go forward to page 7 {F/1415/7} of that
5   document please, in 2010/2011 there were 65 incidents of
6   a slightly different iteration where the "Previous"
7   button -- if you used the "Previous" key during or just
8   after the pouch barcode scans you get a multiple remming
9   in problem and:
10   "No more occurrences found post fix."
11   And then 46 remittances at two counters, that's the
12   same pouch being remitted at the same branch at more
13   than one counter. 46TCs reviewed and applied by
14   Post Office and then a fix applied in January 2011, "No
15   more occurrences found post fix", fully aware of both at
16   the time.
17   MR JUSTICE FRASER: And are these -- I think you said
18   previous iterations?
19   MR GREEN: Previous iterations of related but not identical
20   code issues that led to multiple remming in.
21   MR JUSTICE FRASER: Because they are not all under the same
22   PEAK number, are they?
23   MR GREEN: They're not. So tracing exactly where it is
24   found is not absolutely straightforward.
25   MR JUSTICE FRASER: Because part of the document you showed

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1   me before was the people involved trying to find out if
2   it there was an existing PEAK number to which it
3   related.
4   MR GREEN: Precisely.
5   Then if we go over to page 8 {F/1415/8}, this goes
6   to the flow of information from Post Office to Fujitsu
7   in order to ensure timely corrections of the software.
8   One transaction correction completed by Post Office,
9   five remittance transactions completed by PMs, zero
10   calls raised with Fujitsu. Nine incidents in 2012, zero
11   calls with Fujitsu. Seven incidents in 2013, zero calls
12   with Fujitsu. Two unknown outcomes noted in 2013,
13   £25,000 and 2,500. And those, until I think it was
14   yesterday or the day before, we didn't have clarity on
15   what had happened on those. There is now greater
16   clarity as a result of some additional documents that
17   we've got from Post Office.
18   The further "Detailed preliminary findings" on
19   page 9 {F/1415/9}, identify 2014, nine incidents, no
20   calls and then 2015 to 2016, one call raised with
21   Fujitsu, which is effectively the call which I think is
22   Ann Ireland's call which I think ultimately goes
23   through. Then "January 2016 fix to be applied".
24   So that gives your Lordship a feel for how in this
25   particular example the information flow appears to have

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1   worked. There had been a five-year period over which
2   double remming system errors had been detected, there
3   had been some fixes of aspects of that, but it's
4   uncertain -- it's difficult to analyse precisely the
5   genesis of all of those incidents.
6   If we now go to {F/1399}, we can see that
7   Computer Weekly was running an article about the problem
8   that the CWU was looking into and if we look on page 3
9   of that document {F/1399/3}, we can see at the top of
10   the page:
11   "The alleged problem investigated by the CWU
12   involves the process where subpostmasters transfer money
13   from a core Post Office branch to a remote branch
14   created to serve rural areas, known as an outreach,
15   which is basically a branch on a laptop. These
16   processes are known as remittances."
17   And so forth. So "Post Office department recognises
18   duplication problem" at the bottom:
19   "Following a post on a web forum, another postmaster
20   recognised the problem as something she had experienced
21   in the past, and the financial department of the
22   Post Office in Chesterfield was contacted on her advice.
23   "According to the postmasters' branch of the CWU,
24   the financial department recognised the issue and told
25   the postmaster they would need to send a positive

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1   monetary change to the Horizon branch accounts ..."
2   So that was following a post on a web forum. So
3   although it is clear that there are cases that have been
4   identified and have been corrected, precisely how that
5   has happened may vary from case to case.
6   At the bottom:
7   "The alleged fault, if proved, would question the
8   Post Office's continued claims that there are no
9   systemic faults in Horizon."
10   So that was what was happening in November. There
11   is a follow-up article at {F/1405} which is
12   a Computer Weekly article, on 18 November 2015.
13   MR JUSTICE FRASER: I'm not sure we are there yet. Where do
14   you want to go now?
15   MR GREEN: I'm not going to take you to the detail of it.
16   Just so your Lordship knows, there is a follow-up to the
17   point --
18   MR JUSTICE FRASER: Which is at F/1405?
19   MR GREEN: This is at F/1405.
20   So just stepping back from this, this bug is
21   significant in the sense that not only was it one that
22   was at the top end of the visibility for proof for the
23   subpostmaster, who actually got both ends of the
24   receipts, but there is also public pressure being
25   applied in the media specifically on the issue

1   in November and then we have actually got the Fujitsu
2   presentation about it, so there's an unusually rich
3   source of information available to the claimants and
4   the court in respect of that.
5   There are then internal Post Office emails at
6   {F/1495.1/5} and the first four pages of this are
7   redacted but it is an email from Paula Vennells, the
8   chief executive, citing a blog post by Mr McCormack, who
9   was a fairly energetic blogger on this topic and
10   I haven't taken your Lordship to his blogs but they were
11   happening in parallel, and she says:
12   "Dear both,
13   "This needs looking into please ... can I have
14   a report that takes the points in order and explains
15   them.
16   "Tim McCormack is campaigning against PO and
17   Horizon. I had another note from him this am which Tom
18   will forward, so you are both in the loop.
19   "We must take him seriously and professionally.
20   "This particular blog is independent of Sparrow but
21   clearly related in that it appears to present similar
22   challenges that were raised in the course of the scheme.
23   "I'm most concerned that we/our suppliers appear to
24   be very lax at handling 24k."
25   Pausing there, that appears to be a reference to the

1   triple sum rather than to any of the outstanding cases
2   they haven't traced because they were 2,500 and 25,000.
3   And response on the same day at {F/1495.2/1} from
4   a Rob Houghton who was head of IT at Post Office, so we
5   there get:
6   "I need an urgent review and mini <taskforce> on
7   this one."
8   MR JUSTICE FRASER: Where are you reading?
9   MR GREEN: Sorry, immediately under Rob Houghton's response
10   at the top, third of the way down, copied in to Angela
11   van den Bogerd, "The Dalmellington error in
12   Horizon/problems with POL" which was the news article.
13   "I need an urgent review and mini <taskforce> on
14   this one. It probably needs to link up heavily with
15   Angela's work as FSC are mentioned extensively ..."
16   This is 1 July 2016, my Lord:
17   "... - Angela cfi."
18   Copied for information presumably:
19   "I don't know how we respond to this but can we
20   section a few inside people to get all over it and give
21   me/Al/Paula evidence and understanding."
22   And then at the top of the page the response at
23   11.59, which is difficult to fit into the chronology,
24   appears to be on the same day, Friday 1 July:
25   "Can you stand down on this please?"

1   Redacted:
2   "Any specific actions and I will revert.
3   "My apologies."
4   Pausing there, the claimants' letter of claim was
5   sent on 28 April 2016 and the Post Office sent its
6   letter of response on 28 July 2016 so nearly four weeks
7   after the decision to stand down on the investigation of
8   that bug. So as at the date that the Post Office was
9   responding in its letter of response, it had front and
10   centre in its mind the existence of this bug.
11   Now, that bug was not disclosed in the letter of
12   response. The bugs that were disclosed in the letter of
13   response were the three that Second Sight had already
14   found and Post Office letter of response, if we can just
15   turn to {H/2/95}, stated --
16   MR JUSTICE FRASER: That's the letter of response, is that
17   right?
18   MR GREEN: Yes.
19   MR JUSTICE FRASER: This is the schedule 6 rebuttal, is that
20   right?
21   MR GREEN: Precisely.
22   This is where the Post Office obviously rebuts the
23   allegations that have been made in the letter of claim
24   and at 1.5:
25   "Second Sight only reported on a number of already

1   resolved defects in Horizon (which they called 'bugs').
2   Second Sight did not discover these defects through its
3   investigations. These were issues already known to and
4   remedied by Post Office. It was Post Office that
5   disclosed them to Second Sight."
6   So those are the three. Then 1.6 deals with the
7   lack of attribution of any shortfall in the scheme to
8   Horizon. Then 1.7:
9   "The letter of claim also presents no evidence that
10   a defect in Horizon has caused a postmaster to be held
11   wrongfully liable for any shortfall in their branch.
12   "Nevertheless, you make repeated references to the
13   existence of historic defects in Horizon in order to
14   give a false impression that Horizon deeply suffers from
15   major defects, that Post Office does nothing about them
16   and that these errors have caused postmasters losses
17   which have gone unremedied. In order to dispel any
18   myths around the defects reported on by Second Sight and
19   cited by other sources, we have set out below in detail
20   what happened in these instances. To be clear -
21   Post Office does not claim that these have been the only
22   defects in Horizon."
23   So what they do do is they respond to the three that
24   were known about, but they don't give any account of the
25   Dalmellington bug or of its true extent which they well

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1   knew about from the Fujitsu presentation -- sorry,
2   Dalmellington related issue on multiple remmings,
3   because there are a number of different PEAKs and
4   different software code problems that relate to multiple
5   remming.
6   So if we just look over the page, just
7   parenthetically, my Lord, if we may, at {H/2/96}. In
8   relation to the Callendar Square, Falkirk issue, that is
9   said to be an issue that only affects one branch and it
10   is ruled out in the -- at the bottom:
11   "... also raised as part of a defence in a civil
12   action by Post Office against a former postmaster,
13   Lee Castleton ... The Court accepted the evidence from
14   'Fujitsus witness, Anne Chambers, and found 'no
15   evidence' of the Falkirk bug in Mr 'Castletons branch."
16   We now know from Mr Godeseth's witness statement of
17   16 November that this bug affected 30 branches and
18   resulted in mismatches at 20 branches.
19   So it's not just in the letter of response that they
20   don't deal with Dalmellington, but it's not a full
21   account perhaps of what was being said.
22 MR JUSTICE FRASER: The Callendar Square one affected
23   30 branches.
24 MR GREEN: Indeed.
25 MR JUSTICE FRASER: That's different to the Dalmellington

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1   one.
2 MR GREEN: Completely separate.
3 MR JUSTICE FRASER: Is there a list of those 30 branches
4   somewhere?
5 MR GREEN: I think we've got -- I will trace where it is.
6 MR JUSTICE FRASER: Just give me the reference in due
7   course.
8 MR GREEN: Of course.
9   Coming back to Dalmellington, so what in fact
10   happens is it is not disclosed in the letter of response
11   and then the experts are then provided essentially with
12   8,000 KELs and about 220,000 PEAKs. My Lord, just for
13   your Lordship's note, in the appendix we have dealt with
14   how we obtained the KELs and the genesis of that
15   disclosure at {A/1/12-14} and then we have set it out in
16   greater detail in the appendix.
17 MR JUSTICE FRASER: Which is at 106 I think.
18 MR GREEN: Indeed.
19   So what in fact happens is there is the --
20   eventually we get the KELs.
21 MR JUSTICE FRASER: I made an order I think, didn't I?
22 MR GREEN: Your Lordship made an order, exactly. And they
23   had first been -- the KELs had been requested in the
24   letter of claim and your Lordship made observations
25   about the response to that earlier.

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1   What in fact happens is Mr Coyne is the person who
2   discovers the existence of the Dalmellington bug in his
3   first report. If we look at that, it's {D2/1/58}. And
4   he actually locates it -- it is paragraph 5.16 -- and
5   your Lordship will see at paragraph 5.16 he explains
6   what's happened and footnote 46 is the email thread and
7   then he also finds the duplicated branch receipts and
8   then if we can just go to page 60 of that document --
9 MR JUSTICE FRASER: Page 60 of which document?
10 MR GREEN: Of Mr Coyne's first report {D2/1/60}.
11   Your Lordship will see that although he does refer to
12   a KEL at 5.23:
13   "... evidence of cash declaration discrepancies
14   arising from clerks duplicating remittance in
15   transactions ... because of wrong messages being
16   presented on the Horizon counter screen ..."
17 MR JUSTICE FRASER: Yes.
18 MR GREEN: He has not at that stage worked out that this is
19   the Dalmellington bug. So it just gives your Lordship
20   an insight into how we had to discover what was done.
21   Then Mr Parker and Mr Godeseth's evidence is
22   significant because the bug was not dealt with in the
23   first round of the Post Office's evidence at all and
24   only after it was referenced by Mr Coyne was it dealt
25   with in the first statement of Mr Parker and the second

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1   of Mr Godeseth and Mr Parker confirmed the link between

2   the KEL and Dalmellington and says temporary financial

3   impact which was rectified by a transaction correction

4   being issued. Mr Godeseth then discloses the 112

5   instances of duplicate bar codes and then appends the

6   analysis that I have already mentioned to the court.

7   Then Dr Worden's initial analysis, which is

8   7 December 2018, does not reference Dalmellington, so

9   Post Office appear not to have told him about it, or he

10   has not dealt with it, we don't know which it is, and

11   despite the fact that it had actually been referenced by

12   Mr Coyne in Coyne 1 and he is responding to it, and

13   referenced in Godeseth 2 and Parker 1, which are

14   statements which Dr Worden -- I'm sorry, I was corrected

15   by my learned friend earlier, I have forgotten to say

16   that: my Lord, Dr Worden pronounces his name Dr Worden,

17   I have been pronouncing it wrongly.

18   Despite the fact that Dr Worden has referred to the

19   defendant's witness statements on other matters. He did

20   mention the KEL and he regarded it as having --

21 MR JUSTICE FRASER: Are you talking about Worden 2 now or

22   Worden 1?

23 MR GREEN: This is Worden 1. Then Mr Coyne, in Coyne 2,

24   identifies further PEAKs on his own without any

25   assistance from Post Office and sets those out -- no

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1   need to turn it up, I will just give the references

2   {D2/4/105} and the PEAKs concerned are the 207 PEAK

3   which we have looked at which is {F/1393}, and 949 PEAK,

4   {F/1389}.

5 MR JUSTICE FRASER: Sorry, can you give me the first one

6   again?

7 MR GREEN: Sorry, the 207 PEAK is {F/1393} and the 949 PEAK

8   is {F/1389}. Then Mr Coyne then attempts to look for

9   PEAKs with FAD codes of those branches whose situations

10   are unresolved and can't find anything. There are four

11   unresolved of which two are a significant sum and he

12   mentions that at Coyne 2, paragraph 4.53, we don't need

13   to go there but it is {D2/4/107}.

14   Then in Dr Worden's second report he does refer to

15   Dalmellington, explaining he didn't realise that the KEL

16   he was looking at related to Dalmellington and he

17   concludes that there was no permanent error due to the

18   branch account because it was resolved by a TC, a PEAK

19   and KEL were created, so the system worked well and it

20   was fixed, and his opinion is re-enforced by the small

21   maximum financial impact that he has estimated of

22   incorrect TCs. He doesn't actually expressly mention

23   the 112 occurrences, the 87 other branches affected or

24   there that it lay undetected for five years, at least

25   for some parts of that aspects of it appear to have been

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1   corrected by various fixes, the lack of calls put into

2   Fujitsu or actually directly address the four branches

3   where there is no outcome confirmed.

4   So stepping back, your Lordship will now have

5   a picture of the task and the information available, why

6   the experts are agreed that the KELs and PEAKs have

7   relevant information in them but not a complete picture,

8   and how this particular bug was addressed.

9   Now, the postscript to this is that four hours and

10   45 minutes after our written opening had been filed with

11   the court, so at 4.45 on 4 March, PO disclosed for the

12   first time 36 additional documents.

13   If we look at {H/232} --

14 MR JUSTICE FRASER: Are these documents other than the ones

15   you mention in one of your paragraphs as being

16   outstanding that Mr Coyne had asked for?

17 MR GREEN: My Lord, they are -- well, I think they overlap

18   because they relate to the Dalmellington bug, some of

19   them.

20 MR JUSTICE FRASER: So 36 new documents. Where are we going

21   now?

22 MR GREEN: This is {H/232}, so this is the letter on

23   4 March, 4.45 in the afternoon, so after written

24   openings had been filed with the court and it says:

25   "During preparation for trial a number of further

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1   documents which relate to the Horizon issues trial have

2   come to Post Office's attention.

3   "Disclosure of these documents is being provided by

4   way of enclosed disclosure list. The enclosed list also

5   contains those documents which have been provided to the

6   claimants but not yet formally disclosed."

7   My Lord, I'm not going to deal with the contents of

8   those documents now, but I am going to have to take

9   Dr Worden to them and some of the witnesses to them, but

10   in fact what seems to have happened, there's some sort

11   of investigation that has been done in relation to the

12   two outstanding branches that we said were unremedied in

13   our opening and a conclusion is reached that it is

14   probably all fine, if I can put it in fairly neutral

15   terms at the moment.

16   There are other bugs which we are obviously

17   concerned about whether we got the full picture on but

18   that will emerge in the evidence.

19   The background, my Lord, if I can just very quickly

20   take your Lordship through it. There is correspondence

21   which covers the disclosed documents here and the

22   Dalmellington bug, which starts on 2 October 2018 at

23   {H/122} in which we refer to the bug or error, we refer

24   to bugs which are in addition to those acknowledged in

25   the letter of response and ask for all documents

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1   relating to these bugs and errors.
2   MR JUSTICE FRASER: Yes.
3   MR GREEN: So that's when it starts. My Lord, I'm not going
4   to take your Lordship through all the correspondence.
5   Can I just give you the references.
6   MR JUSTICE FRASER: Go on.
7   MR GREEN: There's a chaser on 13 December 2018 {H/147},
8   there's the 11 January 2018 letter from Wombles at
9   {H/165} offering voluntary disclosure of documents,
10   providing 162 documents for Dalmellington; there's the
11   22 January 2019 letter at {H/173/6} referring to the
12   four unknown branches that I have just been talking
13   about.
14   MR JUSTICE FRASER: That's a letter from your solicitors?
15   MR GREEN: From my solicitors.
16   1 February, we've got Mr Coyne's second witness
17   statement at 4.51 to 4.53 {D2/106}, 11 February, some
18   disclosure, but 4 March these actual documents relating
19   to those outstanding branches.
20   MR JUSTICE FRASER: Thank you very much.
21   MR GREEN: My Lord, that's hopefully a helpful introduction
22   to what the micro texture of the facts looks like,
23   trying to build up and answer the question.
24   Can I just very briefly take your Lordship to
25   a couple of documents which give an overview from the

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1   internal perspective of Post Office and your Lordship
2   will have in mind that if we just quickly turn to
3   {F/1325/145}, Post Office's public position in its
4   response to Second Sight of 11 March 2015, paragraphs 18
5   and 19:
6   "Questions were raised about Post Office's plans to
7   change to a new system when the Post Office's current
8   contract with Fujitsu in respect of Horizon comes to an
9   end in March 2017.
10   "Post Office's intention to move to a new system
11   does not reflect any dissatisfaction or lack of
12   confidence in Horizon. It is simply that the current
13   contractual arrangements are due to expire."
14   So that's the public position. And there are
15   a number of documents -- given the time I will just take
16   your Lordship to a couple of them -- which suggest that
17   there were concerns with both the overall IT system and
18   also the back office aspects of that and the ability
19   properly to control and understand the sorts of issues
20   that would be required in reconciling data.
21   If we can go very briefly to {F/1557}, this is
22   22 October 2016, paragraph 3:
23   "Our back office also struggles with the
24   complications of dealing differently with each of our
25   many clients, heavily manual processes, reconciling

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1   disparate sources of data, retrospective financial
2   controls and a lack of flexibility. This backlog of
3   challenges, poor support contracts and a lack of skills
4   have led to a prohibitive cost of change, preventing the
5   about improvements that should occur as part of
6   a business as usual."
7   And if we go then forward please to {F/1587/1}.
8   This is a draft document dated 28 November 2016, so
9   I qualify it with the fact that it is a draft, and
10   "Context" it says:
11   "This document forms an update to the IT strategy
12   approved in July by the POL board. In July we outlined
13   that IT was not fit for purpose, expensive and hard to
14   change."
15   If we go to page 3 of that document {F/1587/3},
16   paragraph 1:
17   "The IT strategy outlined a view of the current
18   state of technology within POL as failing to meet POL
19   aspirations on any assessment lens (cost, risk, delivery
20   or service)."
21   And paragraph 5:
22   "Our greatest 'run the business' risk areas where we
23   are outside of appetite are age and state of the legacy
24   environment (eg Horizon availability, back office
25   estate, lack of resiliance and [disaster recovery] of

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1   core platforms ...) ..."
2   Then Mick 24.11.16 appears to be repeatedly
3   referenced throughout this document. One of the main
4   risk drivers over the page at {F/1587/4} is lack of
5   a robust IT and controls environment in the table at
6   paragraph 7, that's one of the main risk drivers
7   identified in this document in November 2017. Then if
8   we can just briefly go to the final version of that
9   document at {F/1610}, that's dated 30 January 2017 and
10   your Lordship will note from that page that in context
11   again the line that was in the draft has survived the
12   considered review that doubtless took place before it
13   was finalised:
14   "In July we outlined that IT was not fit for
15   purpose, expensive and difficult to change."
16   And the conclusion refers to reporting on the IT
17   strategy in July. And at page 2 {F/1610/2}, the first
18   indented bullet point:
19   "We need to quickly rationalise and resolve
20   misaligned contracts enacted to support legacy IT,
21   obsolescence, a lack of PO technical competence,
22   particular focus on Fujitsu and Accenture."
23   And on page 3 of that document {F/1610/3} at bullet
24   point 1:
25   "The IT strategy outlined a view of the current

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1   state of technology within PO as failing to meet PO
2   aspirations on any assessment lens …"
3   Which is the quote I have already identified to
4   your Lordship. And quite a lot more of the same. The
5   only last page I would refer your Lordship to just very
6   briefly -- we will have to go to these in more detail
7   with other witnesses, but at page 8 of that document
8   {F/1610/8} there's a diagram on page 8 and it is
9   introduced by the bullet point just above it :
10   "The following highlights the current operational
11   risk areas referred to earlier in the document and the
12   initiatives   underway or proposed … to migrate these
13   into risk appetite - purple - severe risk, red -
14   high risk, amber - within appetite but attention
15   required …"
16   And your Lordship will note that the Horizon branch
17   systems box is in red in the Post Office 's own internal
18   document.
19   MR JUSTICE FRASER: Which means it is high risk .
20   MR GREEN: It means it is high risk .
21   MR JUSTICE FRASER: Yes.
22   MR GREEN: My Lord, in overview then, your Lordship will be
23   hearing some important factual evidence which we
24   respectfully say is going to be an absolutely essential
25   bedrock for the experts then to give their considered

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1   opinions on, after the factual evidence that Post Office
2   has put forward has been properly tested, because I 'm
3   afraid we've got some aspirational "would have" evidence
4   and conclusions feeding through into the expert reports.
5   The three key points are the parties radically
6   differ on their approach to working out the answers. We
7   are going to commend the approach of what actually
8   happened rather than the hypotheses. The second is that
9   we are confident that the factual enquiry that will be
10   undertaken will enable your Lordship to have a more
11   robust basis for drawing any inferences as to the
12   answers than without it .   And the final point is that
13   the question of robustness we respectfully say, while
14   relevant , is not going to be the determinative prism
15   through which those issues fall to be answered.
16   MR JUSTICE FRASER: Final question. Trial management, we
17   are starting with Mr Latif tomorrow.
18   MR GREEN: My Lord, yes.
19   MR JUSTICE FRASER: He is on the video, is that right?
20   MR GREEN: He is. He is travelling specially to Islamabad
21   to get a better connection.
22   MR JUSTICE FRASER: In view of time difference do you want
23   to start at 10 rather than 10.30?
24   MR GREEN: My Lord I think it is all teed up for 10.30.
25   MR JUSTICE FRASER: That's fine.   I need not interfere any

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1   more.
2   Okay, so 2 o'clock .
3   (1.00 pm)
4   (The luncheon adjournment)
5   (2.00 pm)
6   Opening submissions by MR DE GARR ROBINSON
7   MR DE GARR ROBINSON: My Lord, good afternoon. I will just
8   say something briefly first of all about the claimants'
9   history , Mr Green's history , of how we got here. He
10   devotes 25 pages of his opening submissions to those
11   questions. My submission is that those questions are
12   mostly a distraction from the important questions in
13   this case , which is the Horizon issues.   Many of the
14   points that he makes are unfair and some of them we say
15   are downright wrong, but I will not take up time I don't
16   have in addressing them in this opening. Instead,
17   subject to your Lordship, I propose to deal with them in
18   writing in our written closings .   If I have time at the
19   end of these submissions I may say a few brief things
20   about some of them, but I suspect I won't have time.
21   Laying those points to one side , the Horizon issue
22   consists of 15 questions and, as your Lordship will have
23   seen from our submissions, we say they can be
24   conveniently divided into three groups. In descending
25   order of importance, the first question is is Horizon

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1   robust or does it cause branch shortfalls ?   The second
2   group of questions can be summarised as was Fujitsu --
3   because we are talking about Fujitsu here -- secretly
4   manipulating Horizon data? And then thirdly there 's
5   a miscellany of factual questions about the function and
6   operation of the system.
7   Your Lordship has already heard from Mr Green
8   indicating that the operational/functional issues are
9   largely agreed. Despite the apparent differences
10   between the experts on proper analysis we say there is
11   no material disagreement between them. They are agreed,
12   for example, that subpostmasters could run over 100
13   different types of report covering transactions
14   conducted at the branch. In the ordinary course these
15   reports would show enough information for
16   a subpostmaster to be able to balance his or her
17   accounts.
18   My Lord, these reports can be used to identify the
19   causes of some types of discrepancies but not others
20   because to do more would require knowledge of complex
21   back-end systems which subpostmasters cannot be expected
22   to have and for your Lordship's note that 's in the
23   second joint statement at paragraph 9.3 {D1/2/39}.
24   It is important to note that it is not suggested by
25   the claimants that the -- or at least by Mr Coyne at any

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1   rate -- that subpostmasters should be given direct
2   access to information of a back-end kind and indeed in
3   his second report your Lordship will note that Mr Coyne
4   positively disclaims any suggestion of that sort. He
5   deals with that at paragraph 5.380 which is at
6   {D2/4/225}.
7   So why are those issues here? They are here because
8   it is the claimants' pleaded case that there was
9   something wrong with the way in which Horizon was
10 designed and operated for subpostmasters. For example,
11 they say there was an asymmetry of information which was
12 inappropriate. Horizon did not give them the
13 information that they should have done. Amongst other
14 things, the suggestion seems to be that it should have
15 notified them of bugs, it should have given them far
16 more information than it did to enable them to dispute
17 shortfalls.
18   Your Lordship will see that from paragraph 19.3 of
19 the generic particulars of claim. I won't take
20 your Lordship to it but for your note the reference is
21 {C3/1/7}, where there is a reference to limitations on
22 subpostmasters' ability to access, identify and
23 reconcile transactions recorded on Horizon and the lack
24 of any or any adequate report writing features as
25 repeatedly raised by Mr Bates.

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1   Now, that is what is noted by Dr Worden in his first
2   report and he discerns an assumption, he says, in the
3   claimants' case that there is something wrong with the
4   level of information that's provided to subpostmasters
5   and your Lordship will see that, for example, in
6   paragraph 954 of his first report, the reference to
7   which is {D3/1/213}.
8   My Lord, in my submission he correctly discerned
9   that allegation in the claimants' case, but in
10 Mr Coyne's second report, paragraph 5.380, that's
11 {D2/4/226}, Mr Coyne has now firmly disassociated
12 himself from that suggestion. So that's good news, it
13 means we can put that aspect of the claimants' case to
14 one side.
15   But the claimants' opening does go further. It
16 spends a great deal of time addressing the effectiveness
17 of the information that was provided to subpostmasters,
18 the reports that are covered in the functional and
19 operational issues. In my respectful submission, that
20 is unnecessary and inappropriate for the purposes of
21 this trial. It is not a Horizon issue -- the
22 effectiveness of those reports, what can be done with
23 them is not a Horizon issue. Whether in any given case
24 a report is sufficient to enable a subpostmaster to
25 identify the root cause of a discrepancy depends on the

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1   nature of the discrepancy that he or she is faced with.
2   It is essentially a breach issue and it is not something
3   that should take any time up in this trial. There is
4   already quite enough to be arguing about.
5   So we can put the operational issues largely to one
6   side. We say, as your Lordship will be well aware, that
7   the critical issue is one of robustness. The claimants
8   seem to think that this is the wrong question. Indeed,
9   they criticise Post Office for seeking to include it in
10 the Horizon issues, even though all that Post Office did
11 was seek to formulate issues that reflected the
12 pleadings.
13   Now, why is robustness critical? It is explained in
14 our opening at paragraphs 23 to 26. When the court
15 decides individual claims an important question will be
16 whether Post Office can generally rely on accounting
17 data from Horizon as evidence of what the postmaster or
18 his staff keyed in at the relevant time, or whether the
19 relevant claimant can say the court should infer or
20 presume that the shortfall shown by the accounting data
21 was caused by a bug. The question of robustness is not
22 dispositive of that question. What the court decides in
23 any breach trial will depend on the evidence of that
24 particular case. For example, it could be shown that
25 the shortfall was caused by a particular bug operating

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1   in a particular way at a particular time, or it could be
2   shown that the shortfall was caused by a particular
3   transaction correction and that that transaction
4   correction was erroneous, but these are individual
5   breach issues which will turn on the facts of the
6   individual breach trials. This trial is to decide the
7   generic issues. Hence the wording of the Horizon issues
8   themselves. I don't know whether your Lordship has
9   a copy of --
10 MR JUSTICE FRASER: Well, the ones I'm using are at your
11   annex.
12 MR DE GARR ROBINSON: Well, I'm grateful.
13 MR JUSTICE FRASER: They are in a few places but it seemed
14   the most useful.
15 MR DE GARR ROBINSON: Yes, we hoped that would be helpful to
16   your Lordship.
17   Issue 1:
18   "To what extent was it possible or likely for bugs,
19 errors or defects of the nature alleged to the
20 effects ..."
21   Set out there. Your Lordship will note that the
22 issue did not stop at the word "possible". It is common
23 ground that it's possible. No one is claiming that
24 Horizon is perfect, no one has ever claimed that Horizon
25 is perfect. The interesting question is not whether

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1   it's possible; we know it has happened. The interesting
2   question is whether it is likely.
3   Similarly with issue 3:
4   "To what extent and in what respects is the Horizon
5   system robust and extremely unlikely to be the cause of
6   shortfalls in branches?"
7   That asks an extent question. It asks a likelihood
8   question. Why? Because as I have sought to explain to
9   your Lordship, that's a useful issue which will then
10   have a bearing on the conduct of breach trials to be
11   conducted in the future.
12   Similarly with issue 4:
13   "To what extent has there been potential for errors
14   in data recorded within Horizon to arise in data entry
15   and so on?"
16   Again, it is another extent question. And, my Lord,
17   in paragraph 6, Horizon issue 6:
18   "To what extent did measures and/or controls that
19   existed in Horizon prevent, detect, identify, report, or
20   reduce to an extremely low level the risk of the
21   following ..."
22   That's a risk question, an extent of risk question.
23   So, as I say, my Lord, the critical question that's
24   raised by the Horizon issues, the relevant Horizon
25   issues here is not whether it's possible that bugs have

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1   occurred in Horizon which have caused branch shortfalls;
2   we know it's possible, it's actually happened. That's
3   not even an issue on the pleadings, my Lord. The
4   critical issue is the issue that's raised in
5   paragraph 16 of the generic defence and perhaps I could
6   ask your Lordship to look at that. It's at bundle
7   {C3/3/5}. Paragraph 16 reads:
8   "Highly generalised and speculative allegations are
9   made that Horizon ... is unreliable or vulnerable to
10   manipulation and thus may have been the root cause of
11   some of the losses in branches. Like any IT system,
12   Horizon is not perfect, but Post Office maintains that
13   it is robust and that it is extremely unlikely to be the
14   cause of losses in branches."
15   My Lord, that means it is extremely unlikely -- in
16   any given case, when you see a loss in a branch, it is
17   extremely unlikely that that loss is going to be caused
18   by a bug.
19   So, as I say, my Lord, the question is not whether
20   it's possible for Horizon to create shortfalls, the
21   question is whether in relation to any given shortfall
22   Horizon is likely or unlikely, or extremely unlikely, to
23   have caused those shortfalls. In my submission that's
24   the essential question at the heart of this trial. It
25   will allow the parties to know whether at any breach

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1   trial the accounting information on Horizon for the
2   relevant branch and the relevant month is a valid
3   generally reliable starting point.
4   MR JUSTICE FRASER: I'm not in any way being difficult,
5   I think we may as well just deal with it upfront at the
6   beginning. Am I to read "robust" as meaning "extremely
7   unlikely to be the cause", or is there more meaning to
8   "robust" than that? Because I think whatever it is, we
9   all have to make sure we are using the word the correct
10   way, or the same way.
11   MR DE GARR ROBINSON: The concept of robustness is a concept
12   which involves reducing to an appropriate low level of
13   risk, the risk of problems in Horizon causing shortfalls
14   which have a more than transient effect on branches. So
15   it involves both measures to prevent bugs arising in the
16   first place but those measures are never going to be
17   perfect and it includes measures which operate once
18   a bug has actually occurred and triggered a result. It
19   is both aspects of the equation.
20   I don't say that the word "robust" necessarily means
21   "extremely low level of risk", but what we say is that
22   if you have a robust system it produces a result in
23   which the system works well in the overwhelming majority
24   of cases and when it doesn't work well there are
25   measures and controls in place to reduce to a very small

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1   level the risk of bugs causing non-transient lasting
2   shortfalls in any given set of branch accounts.
3   MR JUSTICE FRASER: All right, thank you very much.
4   MR DE GARR ROBINSON: So it is not necessary or indeed in my
5   submission appropriate to investigate all the bugs or
6   errors that have ever been found in Horizon if those
7   bugs have no real impact on branch accounts. There
8   simply isn't the time for that.
9   The important thing is to focus on bugs which have
10   a financial impact on the branch accounts. And, as
11   I have already sought to explain to your Lordship, one
12   needs to bear in mind that robustness does not mean bugs
13   can't occur, or will almost never occur; it includes the
14   controls and measures which have the effect that when
15   they do occur they are likely, very likely, to be picked
16   up and remedied.
17   One consequence of that is that some bugs may have
18   an effect on branch accounts which is only going to be
19   transient because the system supporting Horizon will
20   pick up the impact and correct it as night follows day
21   in the ordinary course of the business.
22   Let me give your Lordship an example. The example
23   of remming in and remming out. My learned friend spent
24   some time this morning explaining the Dalmellington bug
25   and what he described as linked bugs, some other linked

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1   bugs that were also dealt with in the report that
2   your Lordship saw. Actually those other bugs were
3   separate bugs -- they had a similar symptom but they
4   were separate bugs.
5   In remming it is an easy case. It is particularly
6   easy when it is an internal rem, as it were, from the
7   branch to an outreach branch. There are a very small
8   number of outreach branches. But also more generally
9   when you are remming in cash that has been provided by
10   Post Office and is sent to the branch, the Post Office
11   will have its own record of how much money was sent out
12   and the branch will have its own record of how much
13   money was received. If those two numbers don't
14   reconcile that is going to be picked up as night follows
15   day and that is going to be the result of some process
16   which will result in the problem being resolved.
17   Your Lordship will have seen from the Dalmellington bug
18   report itself that you saw this morning that a large
19   number of the impacts that were discussed in the course
20   of that report were sorted out by transaction
21   corrections without the need for any intervention by
22   Fujitsu or anybody else.
23   In fact, Fujitsu still fixed those bugs,
24   your Lordship will note, so Fujitsu picked up on the
25   bugs even though they weren't the result of reports from

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1   subpostmasters to Fujitsu. So Fujitsu itself -- it's
2   quite a good example of how problems in the system, in
3   reconciliation, will result in Fujitsu becoming aware of
4   things because of its own automatic systems and sorting
5   them out. But the important point is that it will be
6   extraordinarily rare for a remming in or a remming out
7   problem ever to produce a result that would have
8   a lasting effect that will cause a branch to suffer
9   a shortfall which leaves it powerless to resist. That's
10   simply not in the nature of the remming process and the
11   reconciliation processes that are associated with it.
12   While dealing with reconciliation, my learned friend
13   I noticed tried to kick me in the heels by inviting me
14   to state what my case is on reconciliation generally and
15   transaction corrections --
16   MR JUSTICE FRASER: I always ignore those sorts of comments.
17   MR DE GARR ROBINSON: My Lord, it is a tempting thing for
18   him to do, I understand why he did it, perhaps I would
19   have done it if I was in his position, but the important
20   thing to note is that the reconciliation process, we all
21   know how it works, it is essentially automated and
22   discrepancies are picked up between the system and when
23   discrepancies are picked up they are then investigated.
24   There isn't enough time in this trial to investigate
25   the processes -- and there are many of them -- by which

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1   discrepancies are investigated. It simply wouldn't be
2   possible and that's why those issues were positively
3   excluded from the Horizon issues. There was a debate
4   about it and that part of the process was excluded and
5   that's why your Lordship will see from Horizon issues 5
6   and 15 which deal with reconciliation and TCs,
7   your Lordship will see that those questions are
8   essentially factual.
9   So to the extent that my learned friend is
10   suggesting that one can only have a Horizon trial if one
11   had disclosure of every single reconciliation process
12   that has been operating in Post Office or Horizon for
13   the last 20 years and every single transaction
14   correction that's ever been sent in the last 20 years,
15   my learned friend is in my respectful submission
16   obviously wrong.
17   Now, does that mean, as my learned friend would like
18   to pretend, that it is therefore not possible to have
19   a trial of the robustness question? And the answer
20   is: obviously not. We all know that the process by
21   which reconciliation happens means that where there are
22   irreconcilable figures, where there are discrepancies
23   between figures that should be the same, they will be
24   looked at and in the vast majority of cases they will
25   result in conversations, they will result in enquiries,

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1   which will cause the problem to be resolved in
2   a satisfactory way.
3   My learned friend wants to say "Well, sometimes" --
4   it being a human process -- "sometimes the corrective
5   process will come to the wrong conclusion." Well,
6   my Lord, that doesn't alter the fact that the process
7   itself is a corrective process, it's a process that will
8   tend to improve the reliability of the ultimate figures
9   rather than take away from the reliability of the
10   ultimate figures.
11   So, my Lord, that's the very short answer to
12   my learned friend's question. If he wants a longer one,
13   or if your Lordship wants a longer one, we can of course
14   discuss it later.
15   My Lord, another example of measures which prevent
16   problems from arising is in relation to recoverable
17   transactions. Your Lordship will have seen some
18   discussion of recoverable transaction in the expert
19   reports and also in some of the witness statements. So,
20   for example, when the system crashes, there's a power
21   failure or something similar, it is always possible that
22   a transaction being undertaken at the branch will not at
23   that point have reached the Horizon system, for example
24   because the outage occurs before the basket for the
25   relevant transaction is closed. It is when the basket

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1   is closed that the transaction gets added to the
2   branch's Horizon accounts.
3   Now, in that situation the accounts will not show
4   the transaction that has been done and it might be that
5   that transaction has already resulted in cash having
6   changed hands. My Lord, does that mean there's
7   a problem in Horizon? Is that the result of a bug which
8   is a matter of some criticism? My Lord, the answer is
9   no because what Horizon does have is a system which
10   enables the transaction that hasn't been recovered to be
11   identified and your Lordship will see from the witnesses
12   who are addressing this issue, Mrs Burke for example,
13   that the unrecovered transaction was actually
14   specifically identified to her and your Lordship will
15   also see that Post Office, because of its own
16   reconciliation processes, was aware of it and was able
17   to deal with it and Mrs Burke's -- or rather Mr Burke's
18   branch did not suffer a lasting loss as a result of what
19   happened on that day.
20   So, my lord, those are just two very broad examples
21   of mechanisms in place that have a tendency to reduce to
22   an even smaller level the risk of lasting discrepancies,
23   lasting shortfalls being inflicted on branch accounts as
24   a result of bugs.
25   But to take a step back, the critical point I would

1   defendant is whether Horizon is 'robust' and 'extremely
2   unlikely' to cause shortfalls. This reflects language
3   pleaded in [the defence], and indeed 'robustness' has
4   been one of Post Office's 'narrative boxes' and
5   a favoured term in Post Office's public relations
6   pronouncements ... Coincidentally or otherwise, it has
7   also featured in the NFSP's defence of Post Office
8   relied upon by Mrs Van den Bogerd. However, as the
9   claimants made clear in their [reply], whereas the
10   claimants' is that it is relatively robust and has
11   become more robust over time - but not so as to be an
12   answer to the Claim (and in so far as 'robustness' has,
13   in this case, a sufficiently clear meaning – addressed
14   further herein). The combination of Horizon's admitted
15   imperfections (and discovered bugs and remote access)
16   and the volume of many millions of transactions, 14 is
17   entirely consistent with the levels of errors reflected
18   in the Claimants' case."
19   My Lord, two points are being made in that
20   paragraph. The first one I can deal with quickly. It's
21   that the claimants' own case is that Horizon is
22   relatively robust.
23   The second point is that the combination of admitted
24   imperfections -- and I apprehend my learned friend would
25   now say the impressions that have been shown as a result

1   like to address your Lordship on is that it is not
2   helpful simply to ask the question whether it is
3   possible that there are bugs out there which affect
4   branch accounts. We know it is possible. The question
5   is, the interesting question for your Lordship is
6   whether bugs are likely or unlikely to affect a given
7   set of branch accounts in a given month in a given
8   breach trial and, my lord, on that question possibility
9   is not the same as probability. You can't simply say
10   "Well, it's possible it happened", that's not enough.
11   Now, in their submissions the claimants at times
12   appear to recognise this, but neither they nor their
13   expert Mr Coyne acts on it. My learned friend took
14   your Lordship to paragraph 17 of the claimants' opening
15   submissions this morning. Perhaps we could have another
16   look at that. It is at {A/1/9}. The claimants say:
17   "As to the precise wording of the issues, the
18   claimants previously made clear that they consider the
19   wording of some of the issues insisted upon by
20   Post Office to be unhelpful, but their inclusion was
21   ultimately agreed by the claimants in order to reach
22   agreement with Post Office. Post Office had very clear
23   views on two particular points.
24   "First, on issue 1 (Robustness): Post Office was
25   insistent on including this issue, formulated by the

1   of Mr Coyne's analysis -- and the volume of the many
2   millions of transactions that are done through Horizon,
3   is consistent with the level of shortfalls in relation
4   to which the claimants make their claims in this
5   litigation.
6   My Lord, as to the first point, it is simply wrong.
7   Mr Green has shown you paragraph 37 of his reply, that's
8   at bundle {C3/4/21}, where it is specifically denied
9   that Horizon is robust. So on the pleadings at least it
10   is not the claimants' case that Horizon is relatively
11   robust, the claimants obviously don't like that, but
12   after seeing the expert evidence the claimants, as
13   I apprehend Mr Green, are now admitting the central
14   issue which was previously denied. In my submission
15   that's a major achievement from having this trial. In
16   my further submission it is the opposite of unhelpful to
17   have raised it as an issue in this trial.
18   My Lord, the second point -- perhaps we could look
19   at paragraph 37 -- well, we can pick it up in
20   paragraph 17.2. What the claimants are saying is that
21   the relatively small chance of bugs in Horizon, because
22   of the volume of transactions undertaken in Horizon, is
23   likely they say to produce the very picture that's
24   reflected in the claimants' case.
25   Now, what's important to understand about that is

1   that the claimants are relying on the concept of
2   likelihood to support their case, so, as in my
3   submission they have to, they are groping towards
4   a numbers argument, the very kind of numbers argument
5   that Dr Worden makes in his reports and about which they
6   have so many critical things to say in their
7   submissions. They say that the level of bugs in Horizon
8   is likely to reflect the fact of the claimants' case.
9   But what's entirely unstated in their evidence is how
10   the level of bugs encountered in Horizon is likely to
11   produce anything like the £18.7 million of shortfalls
12   that the claimants say should not have been included in
13   their accounts. My Lord, and it is unsupported by their
14   expert who refuses point blank to engage in any
15   numerical analysis at all and yet at the same time they
16   criticise Dr Worden for trying.
17   So in my submission, my Lord, the claimants are in
18   an awkward position. In making the case which I have
19   just referred to in paragraph 17.1 they are engaging in
20   an intellectual process which their own expert refuses
21   to engage in and which when Dr Worden tries to engage in
22   it they then criticise him.
23   The best that they can say is that having found 29
24   bugs it is possible that other bugs have arisen, but
25   they won't say anything about how likely it is other

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1   bugs have arisen, how big the effects of those bugs are
2   likely to be, they won't engage in any kind of questions
3   of that sort at all.
4   Now, in their submissions the claimants say that
5   they will challenge Dr Worden's numerical analyses.
6   That is to be welcomed. It will assist your Lordship to
7   assist the soundness of his calculations. At the moment
8   there is no engagement really by Mr Coyne with any
9   questions of likelihood or extent, there are just some
10   criticisms made of some of the assumptions that
11   Dr Worden makes in his report.
12   Now, it is worth noting that Dr Worden has a number
13   of different calculations, some of which are more
14   complicated and some of which involve more assumptions
15   than others. Let me just deal with one very simple
16   calculation. This requires no understanding of
17   statistics or mathematics. It is set out in section 8.5
18   of Dr Worden's first report which starts at {D3/1/148}
19   and it has changed a little bit in Dr Worden's second
20   report but we don't need to address that in any detail
21   at this stage.
22   MR JUSTICE FRASER: I should just tell you for interest I do
23   understand mathematics and statistics. I'm not being
24   funny, but I do.
25   MR DE GARR ROBINSON: No, that's very helpful, my Lord.

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1   I thought I did, my Lord, I have several maths A-levels,
2   but I realised that my own sense of my own mathematical
3   abilities was rather greater than it turned out to be.
4   MR JUSTICE FRASER: I mean this one is just a simple
5   multiplication, isn't it?
6   MR DE GARR ROBINSON: Exactly.
7   MR JUSTICE FRASER: I think most school children would
8   probably follow this one.
9   MR DE GARR ROBINSON: Exactly. It is one I understand:
10   Over the period 2000 to 2018 the Post Office has had
11   on average 13,650 branches. That means that over that
12   period it has had more than 3 million sets of monthly
13   branch accounts. It is nearly 3.1 million but let's
14   call it 3 million and let's ignore the fact for the
15   first few years branch accounts were weekly. That
16   doesn't matter for the purposes of this analysis.
17   Against that background let's take a substantial bug
18   like the Suspense Account bug which affected 16 branches
19   and had a mean financial impact per branch of £1,000.
20   The chances of that bug affecting any branch is tiny.
21   It is 16 in 3 million, or 1 in 190,000-odd. The chances
22   of affecting a claimant branch are even tinier because
23   the claimant branches tended to be smaller than ordinary
24   branches. One could engage in all sorts of
25   calculations, but your Lordship may recall from

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1   Dr Worden's second report that he ends up with
2   a calculation of a chance of about 1 in 427,000-odd. So
3   for there to be a 1 in 10 chance for a bug of this scale
4   to affect one set of monthly account for a claimant
5   branch, one would need something like 42,000 such bugs.
6   Of course there's a much simpler way of doing it
7   which really is just a straight calculation. There have
8   been 3 million sets of monthly accounts so the chances
9   of the Suspense Account bug affecting any given set of
10   monthly accounts is 60 in 3 million or about 5 in
11   a million, so to get a one in 10 chance of such a bug
12   you would need to have 50,000 bugs like it.
13   But, my Lord, all the roads lead to the same basic
14   result which is that even for a significant bug of that
15   sort, the number of bugs that would need to exist in
16   order to have any chance of generating even a portion of
17   the losses that are claimed by the claimants would be
18   a wild number that's beyond the dreams of avarice. It
19   is untenable to suggest that there are 40,000 or 50,000
20   bugs of that scale going undetected in Horizon for
21   20 years.
22   Dr Worden explains that in paragraphs 643 and 644 of
23   his first report and the reference to that is
24   {D3/1/152}. And it is interesting, my Lord, that the
25   claimants very sensibly do not suggest that there will

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1   have been bugs of that scale in that number operating --
2   lurking secretly in Horizon for the last 20 years and
3   they don't suggest it because they can't. It's a matter
4   of common sense. And in my respectful submission just
5   that calculation demonstrates that the claim made at the
6   end of paragraph 17.1 of the claimants' submissions is
7   untenable. A combination of Horizon's impressions with
8   the volume of transactions done in Horizon is not
9   entirely consistent with the errors reflected in the
10   claimants' case. In my respectful submission it is
11   obviously inconsistent with that.
12   Just to be clear, that's not to say that a claimant
13   could not have been hit by a bug. As I hope I have made
14   clear to your Lordship, Horizon is not perfect. It
15   remains a possibility, but the important point is how
16   unlikely it is. But of course the question of whether
17   an individual claimant has suffered an impact as
18   a result of a bug is not a point for this trial. That
19   is a breach issue to be dealt with in an individual
20   case. This trial is about setting a baseline for
21   Horizon's reliability, not a final conclusion that will
22   govern every single breach case that comes before
23   your Lordship.
24   Now, before addressing the expert reports on
25   robustness it is worth noting the large measure of

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1   agreement that now exists between the experts. There is
2   no dispute about the architecture or capabilities of
3   Horizon. There's no suggestion that Horizon lacks
4   important capabilities or that it doesn't generally
5   perform satisfactorily. There is no suggestion of any
6   systemic problem lurking in Horizon.
7   In short, it is accepted that Horizon works well for
8   the overwhelming majority of cases and consistently with
9   that it is now common ground between the experts that
10   Horizon is robust and that its robustness has improved
11   over time and your Lordship already has the reference,
12   it is the joint statement, the third joint statement,
13   page 2, {D1/4/2}.
14   Now, what does relatively robust mean? It means
15   robust as compared with comparable systems -- big
16   systems, systems that keep aircraft in the air, that run
17   power stations and that run banks.
18   My Lord, by the same token it is common ground that
19   the Horizon is not infallible. It has and will continue
20   to suffer faults every now and then. Sometimes, in
21   a really small number of cases, those faults will have
22   an effect on branch accounts, but it should be
23   remembered that robustness is not just about preventing
24   bugs from appearing in the first place, it is also about
25   limiting the lasting detrimental effects when they do

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1   appear.
2   Your Lordship will hear evidence that bugs affecting
3   branch accounts are given a high priority when they are
4   addressed by Fujitsu. They are not ignored. And,
5   my Lord, the evidence also shows that bugs which have an
6   effect on branch accounts occur only very rarely indeed.
7   There is a dispute between the experts as to precisely
8   how rarely, but in the context of a huge system that's
9   been in continuous operation for 20 years, that dispute
10   in my submission does not have a material bearing on the
11   outcome of this trial. In the overwhelming majority of
12   cases, branch accounts will not contain a shortfall
13   caused by a bug and the scale of bugs that would be
14   needed to undermine that simple fact would be enormous.
15   Putting the point another way, the difference now
16   being played out between the experts is at the margins.
17   They accept that there are imperfections in the Horizon
18   system with the result that in some rare cases bugs
19   affecting branch accounts occur and will not be
20   immediately fixed. The issue between them is how slight
21   are the relevant imperfections.
22   The scale of this difference is magnified by the
23   adversarial process but in the scheme of things, in my
24   submission, it is in fact tiny and to plagarise
25   Lord Justice Lewison in section 1 of his first chapter

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1   in the interpretation of contracts, the lazy reader can
2   stop here.
3   My Lord, we say that what is already common ground
4   between the parties means that the claimants must fail
5   in their primary endeavour to persuade the court to draw
6   the inference or make the presumption that they want
7   the court to make or to draw or make, to the effect that
8   when faced with a shortfall in a set of branch accounts
9   the shortfall was caused by a bug in Horizon.
10   Now, against that background let me say a few words
11   about the experts. The claimants submissions are most
12   unfair to Dr Worden. Your Lordship will see those at
13   {A/1/33}. First of all, it is quite wrong to accuse him
14   of bias. He is an independent expert whose views are
15   his own. He is not a mouthpiece for Post Office's case
16   and the claimants should not be suggesting that he is,
17   as I see that they appear to do in their submissions.
18   Secondly, the submissions give the impression that
19   Dr Worden's analysis is limited to the three admitted
20   bugs that -- the three bugs that were discussed with
21   Second Sight and that were then the subject of the
22   pre-action correspondence and your Lordship gets that
23   from paragraph 156 of their submissions {A/1/54} where
24   they say:
25   "Dr Worden's analysis extrapolates from only three

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bugs which happen to be those previously acknowledged by
Post Office .   It appears that Post Office had not
disclosed to him the existence of other bugs, which he
could not have taken into account."
     My Lord, that is an unfair and incorrect account of
the evidence that's given by -- or will be given by
Dr Worden.
     If your Lordship would go to Dr Worden's first
report, annex D -- and, my Lord, it starts at
{D3/2/95} -- your Lordship will see a very lengthy
appendix which describes itself as containing:
      "... some tables of KELs which are referred to in
the report.   The tables are:
     " First a sample of 30 randomly selected KELs
(selection of every 100th KEL in alphabetically sorted
 list), with commentary on the robustness countermeasures
which acted in the case of each KEL, as well as its
potential financial impact."
     Then secondly:
     "62 KELs mentioned in Mr Coyne's report, for which
I have also analysed which robustness countermeasures
applied and analysed the possible impact on branch
accounts."
     Third:
     "A further sample of 50 randomly selected KELs (also

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every 100th KEL in an alphabetically sorted list) which
I have analysed for possible financial impact, but
I have not tabulated my analysis for robustness
countermeasures."
     And fourth:
     "A sample of 50 KELs which each include the symbol
'£' in their text - because in my opinion, this makes
them more likely to be concerned with possible financial
impact on branch accounts."
     So your Lordship will see that Dr Worden was not
simply looking at the three admitted bugs and then
performing all sorts of mind games on the basis of those
bugs, nor did he overlook and ignore the Dalmellington
bug which Mr Green addressed your Lordship on this
morning; he looked at all of them. He looked at more
than just the bugs that were identified by Mr Coyne, he
took random selections and he tried to use a form of
searching which would disclose bugs that were more
 likely to have a financial impact on branch accounts.
     So, my Lord, that's a first point I should make to
your Lordship.   It would be quite wrong to proceed, as
I apprehend my learned friend would have you proceed, on
the basis that Mr Coyne has done an in-depth analysis of
the problems in Horizon, whereas Dr Worden has just
looked at some pretty pictures about three admitted

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bugs.   That isn't what Dr Worden did at all .
     My Lord, the second point I should note is that in
his second report Dr Worden increased the number of KELs
and PEAKs that -- I should say he looked at the
associated PEAKs as well, he didn't just look at KELs --
he increased the number of samples that he reviewed to
200.
     And thirdly I need to make it clear to your Lordship
that the review that he conducted was thorough, we say
much more thorough than Mr Coyne's review. What
Mr Coyne intended to do -- this will be obviously
investigated with the witnesses -- is Mr Coyne tended to
find phrases in particular documents that indicated
a problem and he would stop there.   He didn't,
for example, seek to ascertain in JC1, in his first
report, he didn't seek to ascertain whether any
particular bugs would actually have a branch effect at
all . That's not the exercise that he did.   What he did
in his first report was just find as many problems as he
could.   But what Dr Worden did was he considered both
potential branch impact and he considered the operation
of the countermeasures in practice .
     Your Lordship will apprehend that Dr Worden is
criticised for engaging in some kind of armchair
analysis of countermeasures on the basis of design

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aspirations . My Lord, that characterisation is quite
unfair , we would say.   But more importantly what
Dr Worden did is that he looked at the operation of the
system, the PEAKs and the KELs relating to particular
problems, and he looked to see how the countermeasures
he had identified he had seen built into the system, how
those countermeasures worked in any particular case.
My Lord, that's an important function to perform if one
is engaged in the process of seeking to obtain
a balanced view of the robustness or otherwise of an IT
system and it is important to note that it is not
something that Mr Coyne did at all , certainly not in his
first report.   Even in his second report he goes no
further than saying "Well, there are some bugs which
were missed by the countermeasures." Well, my Lord, so
there are , of course there are going to be bugs that get
missed by all countermeasures. It is not suggested that
it is impossible for bugs to arise which have a lasting
impact on branch accounts. The critical question is how
 likely it is that such bugs will lurk in the system and
be undetected in the way that the claimants would have
you find .
     It is in that respect worth noting that Dr Worden
found more bugs with non-transient branch impacts than
Mr Coyne did in his report and your Lordship will see

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1   that from our opening submissions at paragraph 219.3 and
2   for your Lordship's note the reference is {A/2/76}.
3   Your Lordship will be aware that of the 29 bugs that
4   are now listed in JS2, Dr Worden thinks there is
5   evidence to suggest there may be up to 12 bugs that had
6   a non-transient financial effect on branch accounts. Of
7   those 12 it is worth noting that Dr Worden identified
8   five of them.
9   So this is not a case, my Lord, where some kind of
10   blindfold -- the picture that my learned friend seeks to
11   paint of the process that Post Office went through and
12   the process that Dr Worden undertook in arriving at his
13   report was one in which he was blindfolded by
14   Post Office and somehow stumbled into providing
15   a positive report which just considered the three bugs
16   that Post Office had already identified. My Lord,
17   that's simply a travesty of the true facts.
18   On the basis of the documents he reviewed, Dr Worden
19   took a balanced view of the design of Horizon and its
20   countermeasures and of the operation in practice of its
21   countermeasures as evidenced by PEAKs and KELs and
22   associated documents. My Lord, and he also took
23   a balanced view of the service history of Horizon, the
24   support function provided by Fujitsu and its efficiency.
25   Now, that will be a battleground in the rest of this

1   trial, I know, but even the documents that your Lordship
2   saw this morning with the Dalmellington bug,
3   your Lordship will see the rigour that's applied.
4   There's concern that postmasters aren't given advice
5   that might be incorrect. The rigour associated with
6   that process and the determination of Fujitsu and the
7   other people involved, the other stakeholders, to get to
8   the bottom of what happened is quite striking in my
9   submission.
10   In relation to the Dalmellington bug they did get to
11   the bottom of what had happened. They identified 112
12   potential branches with financial impact, 108 of which
13   had been fixed or made good. Of the other four only two
14   had a significant problem and, my Lord, of those two
15   further research showed that those two branches were not
16   actually affected by the Dalmellington bug at all, they
17   just had similar symptoms that were the result of an
18   entirely separate cause and that were fixed entirely
19   separately and my learned friend gave you I think the
20   reference to the document which shows that.
21   So by January 2016 the Dalmellington bug had been
22   fully investigated and it was quite clear what the
23   results of that bug were and my learned friend seeks to
24   suggest that there was more investigation to be done and
25   that Post Office somehow stopped that further

1   investigation being done. That's not right at all.
2   By January 2016 Dalmellington had been fully analysed
3   and its consequences bottomed out and my learned friends
4   took your Lordship to a number of emails from
5   Post Office, they were from July 2016, six months later.
6   So, my Lord, Dr Worden's conclusion is that Horizon
7   is well designed and well supported by a team of people
8   who have been working on it from the start and who are
9   very thorough when investigating possible bugs and
10   your Lordship will I'm sure bear in mind Mr Parker's
11   witness statement where he says that they would keep
12   going until they spotted the problem. My Lord, that's
13   Mr Parker's second witness statement at paragraphs 20 to
14   23 and for the transcript it is at {E2/12/7}.
15   Now, contrast the work that Dr Worden did with the
16   work that Mr Coyne did. In the first joint report
17   before the experts even did their work on -- produced
18   their reports, he said that he was going to look for
19   bugs. And the reference is {D1/1/3-4}. Now, of course
20   both parties were looking for bugs, but Dr Worden, as
21   I say, found more branch-affecting bugs than Mr Coyne
22   did with lasting effects. But, my Lord, Dr Worden tried
23   to do more than that. He tried to take a balanced view
24   of how Horizon operated in practice and how well its
25   countermeasures operated in fact and that is something

1   that Mr Coyne didn't do and as a result it shows a want
2   of quality of his analysis, we would submit.
3   Now, let's look at the bugs in issue. Could I ask
4   your Lordship to go to bundle {D1/2/3} which is the
5   joint statement, the second joint statement. If we
6   could pick it up at page 3, my Lord. Now, it is a long
7   table. It looks as if the experts are moving away from
8   each other, but in fact it's a very useful list. This
9   represents the first opportunity the experts have had to
10   identify where they agree and where they disagree on
11   these bugs and to explain what they say about them. I'm
12   not sure how we would have managed if a document like
13   this hadn't been produced.
14   It is worth bearing in mind how we arrived at this
15   list of 29. Your Lordship will see the heading "Table
16   of bugs/errors/defects with acknowledged or disagreed
17   evidence of financial impact". Mr Coyne's first report
18   didn't specifically look at branch-affecting bugs. His
19   report was more a catalogue of bugs of all sorts and all
20   shapes and sizes. It was a scattergun analysis. A few
21   of the bugs that he identified at great length were
22   branch-affecting.
23   Now, it was Dr Worden who looked for
24   branch-affecting bugs and in his first report he noted
25   what Mr Coyne had done and what he had not done. The

1   result was that Mr Coyne responded in his second report,
2   which starts at {D2/4/1} and in his second report -- and
3   my learned friend took you to it this morning -- at
4   paragraph 3.21 of that report he set out a table
5   consisting of 22 bugs, of which 21 were said to be
6   branch-affecting and, my Lord, the reference is
7   {D2/4/15}.
8   Several of those bugs had not been seen before, had
9   not been mentioned before. So in JR2, this was the
10   first opportunity that Dr Worden had to comment on and
11   address those bugs and through discussion between the
12   experts, seven additional bugs were added to the list.
13   Bugs 23 to 26 are bugs that are referred to in
14   paragraph 742 of Dr Worden's first report, the reference
15   to which is {D3/1/170} and these are identified as
16   potentially branch-affecting bugs and those were added,
17   they were not already part of Mr Coyne's 22 bugs.
18   Bugs 27 to 29 were added as a result of discussions
19   between the experts.
20   So if we look at the heading of the table, bugs with
21   acknowledged or disagreed evidence of lasting financial
22   impact {D1/2/3}. So I think we are intended to take it
23   that this is a table consisting of 29 bugs which
24   Mr Coyne says all have financial impact.
25   It is acknowledged that there is evidence in 12

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1   cases for lasting financial impact and the ones where
2   they are acknowledged, my Lord, just for your note, it
3   is bug 1, which is a receipts and payments mismatch and
4   your Lordship will see from Dr Worden's comments that
5   a subpostmaster report wasn't necessary for that bug.
6   Bug number 2, that's the Callendar Square bug. Bug
7   number 3, that's the Suspense Account bug. And,
8   my Lord, not Dalmellington because that would have been
9   picked up as a normal remming reconciliation as night
10   follows day.
11   By the way, contrary to the suggestion that the
12   claimants at points make in their submissions, Dr Worden
13   did analyse that bug in his first report.
14   Next is bug number 10 which is a Data Tree build bug
15   which occurred very early in 1999, right at the
16   beginning of Horizon. It was very noticeable, says
17   Dr Worden, and very quickly fixed.
18   Bug number 13, "Withdrawn stock discrepancies" and
19   it may be worth noting that Dr Worden's opinion that it
20   wouldn't have lasted very long.
21   Bug number 14, bureau discrepancies. Bug number 18,
22   concurrent log-ins. Again that's a very early one in
23   1999, 1999/2000. Bug number 23, bureau de change. Bug
24   number 24, wrong branch customer change. Bug number 25,
25   like a top-up. Bug number 27, TPS. And bug number 28,

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1   drop and go.
2   My Lord, it is worth noting that there is a link to
3   JR2. I would invite your Lordship to look at that link
4   in due course. It is a link in which Dr Worden includes
5   an assessment of the financial impact of those 12 bugs
6   with his own base estimate and then a more generous,
7   a more conservative estimate -- he describes it as
8   conservative anyway -- favouring the claimants.
9   In fact could we look at that. It is the link to
10   JR2 which is {D1/2/1}. It might not be possible,
11   perhaps not. Your Lordship can do it on Magnum anyway,
12   your Lordship will see there is a link --
13 MR JUSTICE FRASER: Is that the one-page document?
14 MR DE GARR ROBINSON: It is two pages.
15 MR JUSTICE FRASER: Is it? I thought it was one page.
16 MR DE GARR ROBINSON: My Magnum seems to be disappeared. In
17   any event --
18 MR JUSTICE FRASER: The mean impact spreadsheet?
19 MR DE GARR ROBINSON: Yes and then there is a second page
20   which is his comments on it. So if your Lordship looks
21   at the comments he says:
22   "This is an estimate of the mean financial impact on
23   all branches across the Post Office network ..."
24 MR JUSTICE FRASER: The link is just coming up with the
25   spreadsheet.

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1 MR DE GARR ROBINSON: I see. There should be a second tab
2   to the spreadsheet. Is that not there?
3 MR JUSTICE FRASER: I'm not sure that's loaded on, because
4   I did have a look for this. I have seen this and
5   I haven't seen any text that goes with it.
6 MR DE GARR ROBINSON: I downloaded it from Magnum yesterday
7   but it may be that it hadn't quite got --
8 MR GREEN: There is an "Explanation" tab, if you mean the
9   one on there.
10 MR JUSTICE FRASER: I see. You can't see it at the bottom
11   of the screen.
12 MR DE GARR ROBINSON: I see. Does it go on forever?
13 MR GREEN: No, the "Explanation" tab.
14 MR JUSTICE FRASER: I've got it now. Is that the one -- it
15   has 13 cells with text in and the first says "This is an
16   estimate".
17 MR DE GARR ROBINSON: Yes. Can one click on the explanation
18   of calculations on the second sheet?
19 MR JUSTICE FRASER: I think on Magnum the tab has dropped
20   off the bottom of the common screen but there is
21   a second page -- well, I've got mine up anyway,
22   Mr De Garr Robinson.
23 MR DE GARR ROBINSON: I'm very grateful to your Lordship.
24   Your Lordship will see the first paragraph Dr Worden
25   explains that he has estimated the mean financial impact

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and he has given his central estimate in relation to 12
bugs. Second paragraph he says:

"For each of these bugs the table contains a very
approximate estimate of the financial impact of the bug
if that impact had not been corrected by Post Office in
some way ..."

And your Lordship will appreciate I say that's a big
" if ":

"... and my estimate of the probability that any
financial impact would have been corrected. My central
estimate of impact on the SPM reflects that probability
whereas my conservative estimate does not."

Then he says:

"As can be seen from the table, my opinion is that
the larger financial impacts would have been corrected
with high probability. Smaller financial impacts might
not have been corrected."

If your Lordship goes back to the table
your Lordship will see there is a column -- the 12 bugs
are identified that I have listed to your Lordship with
the associated KELs where there is one. There's an
estimate of financial impact column. Then there's
a probability that the postmaster was compensated column
and then there's Dr Worden's estimate of loss to
postmasters and then on the final column there's a loss

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to postmasters assuming that none of them were made good
during reconciliation or other processes. So
your Lordship sees --

MR JUSTICE FRASER: When you say "made good" though I think
you need to be clear what you mean because "made good"
has a technical meaning in terms of the accounting.
I think you mean remedied.

MR DE GARR ROBINSON: I mean where there is a financial
discrepancy caused in the accounts that discrepancy is
corrected by some kind of financial transaction.

MR JUSTICE FRASER: Yes. Because making good under the
accounting system meant the SPM paying it in.

MR DE GARR ROBINSON: I'm so sorry. You are ahead of me.

MR JUSTICE FRASER: That's why I'm just checking.

MR DE GARR ROBINSON: It is the common issues trial
nomenclature that I have to be careful of.

MR JUSTICE FRASER: But that's what you meant when you
explained how you did just then. I understand.

MR DE GARR ROBINSON: Yes.

Your Lordship will see that Dr Worden's previous
estimate had been £1,000. He increased that to £2,029.
That's per SPM. But in the other column your Lordship
will see "Total impact" of all these bugs was £165,000,
mean impact per SPM who was affected, £13,800 and that
compared with his previous estimate of £6,000. So the

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figures have gone up a bit and as he explains in his
commentary it is mainly because of the Data Tree build
bug, the 1999 bug, of £105,000.

Your Lordship will see it is those sort of figures
that then lead one to the calculation I explained to
your Lordship before which leads one to a requirement of
tens of thousands of these bugs in order to have any
hope of being responsible for even a relatively small
portion of the £18.7 million claims made by the
claimants.

So that's the agreed bugs.

As regards the disagreed bugs, a number of short
observations that I would like to advance to
your Lordship.

First of all, Mr Coyne refers to bugs where there
was no bug at all in the PEAK he has cited. This is
something we will explore with him. For example, bug
number 17 relates to branch customer discrepancies in
Legacy Horizon. This was not caused by a bug in
Horizon. The system crashed part way through
a transaction for an unknown reason and then it was
successfully detected and the missing transaction was
recovered. I explained to your Lordship before how the
recovery system works to identify transactions that may
have been missed. That's not an example of a bug,

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that's an example of Horizon working. And it is worth
noting, my Lord, that this issue was spotted not as
a result of any human intervention by a subpostmaster,
it was spotted as a result of an automated report that
was available to Fujitsu.

My Lord, secondly, Mr Coyne includes bugs, we say,
which were only found in testing and didn't make it into
the live system. An example of that is bug number 21,
dealing with transaction corrections issues. He makes
a reference to one particular bug referring to a PEAK at
{F/314/1}.

The important point to note about this bug is that
it was eradicated before the relevant software even
reached the live system. It was spotted in testing.
That's what testing is for.

My Lord, a third point observation to make is that
Mr Coyne includes bugs which have automatic fixes which
Mr Coyne himself acknowledges. I have referred to
remming in my opening already. Just one example would
be bug 5. It was a remming in issue. Mr Coyne's own
analysis correctly records that this could cause
a duplicate pouch of cash to be remmed in by the user
causing a shortfall, but what he doesn't say is that
Post Office's reconciliation processes check the pouches
sent out by Post Office and pouches received by the

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1   relevant branches, an automatic report is run which
2   defects all sort of remittance discrepancies whether
3   caused by user error, bugs or otherwise and then
4   transaction corrections are generated to correct the
5   problem. So it may be a bug, but, my Lord, it's a bug
6   which in the ordinary course of things is almost never,
7   if ever, going to result in a lasting loss to any
8   subpostmaster.
9   Finally, there are some bugs which both experts
10   agree had no financial impact, or at least one bug.
11   My Lord, that's bug 21. So perhaps the heading to the
12   table in the joint statement should be corrected. It's
13   not 29 bugs that are said to have financial impact, it
14   is 28.
15   But whether it is 12 or 28, my Lord, does not
16   matter. In a system handling the volumes of transaction
17   that Horizon handled, which was used by the number of
18   branches that used it, over a period of 20 years, bugs
19   of this number and scale can have no material impact on
20   the overall robustness of Horizon, or putting the point
21   more pertinently, the chances of one of these bugs
22   affecting a given set of accounts is vanishingly small.
23   Even if you sum them all up, the chances of any one of
24   these bugs affecting a given set of accounts is
25   vanishingly small.

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1   So what are we left with? We are left with
2   a suggestion that it is possible that there are other
3   undetected bugs in the system which may have an effect
4   on branch accounts but, my Lord, as I have said
5   possibility is not the same as probability. Mr Coyne
6   does not say anything about probability. He makes no --
7   in fact he disclaims any ability to make any inferences
8   about how many bugs there are, what their scale is
9   likely to be and what their impact is likely to be.
10   Now, in my respectful submission that is the
11   approach which is not helpful. Mr Green and Mr Coyne
12   describe it, in my submission rather curiously, as
13   a bottom-up approach. It might be more accurate to
14   refer to it as a bottom-down approach. Mr Coyne stays
15   at the bottom, sticks just with the bugs that he has
16   found and says nothing more, nothing about the
17   implications of those bugs on the overall robustness of
18   the Horizon system. He refuses to say anything on that
19   question, so we are left with his agreement that the
20   Horizon system is robust.
21   So he doesn't grapple with the critical question
22   whether the court should infer or presume that the
23   shortfall is shown in any given branch accounts was
24   caused by a bug, my Lord, and it is not a realistic
25   approach either. My Lord, it is common ground that if

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1   you have a bug it may well have a range of impacts, some
2   may be smaller, some may be larger, some may affect more
3   than one branch, but in the scheme of things where you
4   have a bug which has different effects on different
5   people, one has to ask oneself what are the chances of
6   that bug evading any detection by anyone as a result of
7   any of its impacts at any time? That's always going to
8   be relatively low. And if one were to postulate a tiny
9   bug which had an impact of a few pence, my Lord, there
10   would need to be millions of those bugs in order to
11   begin to be significant, to have a significant bearing
12   on the robustness of Horizon.
13   In the real world we are concerned with bigger bugs,
14   with a wider range of impacts, such as the
15   Suspense Account bug and I ask forensically or
16   rhetorically: how likely is it that there are tens and
17   tens of thousands of such bugs lurking in the system,
18   escaping detection for year after year? In my
19   submission the answer is obvious.
20   My Lord, before -- I perhaps have a few minutes just
21   to address one point that has a bearing on robustness
22   before moving on. Your Lordship will see both in the
23   claimants' submissions and in Mr Coyne's report
24   frequently repeated assertions that Post Office operated
25   in accordance with the cost-benefit analysis. I think

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1   the impression is sought to be achieved that because
2   Post Office addressed some problems by adopting
3   a cost-benefit analysis, this means that the procedures
4   in place for dealing with or identifying bugs and fixing
5   them and so on were not robust, that there was some kind
6   of threat to the system because Post Office was cutting
7   corners or something like that. But, my Lord, one needs
8   to be careful with the evidence that is cited in support
9   of these claims. Many of the claims of this sort rely
10   on two or three pieces of paper, no more than that.
11   It is worth looking at one example of the evidence
12   that's relied on in this case. My Lord, it is the claim
13   in paragraph 144.1 of the claimants' submissions
14   {A/1/50}. I don't know if your Lordship has a hard copy
15   of it there.
16   MR JUSTICE FRASER: I do.
17   MR DE GARR ROBINSON: Your Lordship will see the claim made
18   in 144.1:
19   "It has been identified that known issues/bugs were
20   often deferred and dealt with on a cost-benefit basis."
21   So your Lordship will see the point and
22   your Lordship will see exactly what they are trying to
23   make of the point.
24   Footnote 105 refers to a paragraph in Mr Coyne's
25   first report, paragraph 5.161. That paragraph refers to

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1   a document which is at {F/11/40}. This is minutes of
2   a risk and compliance committee on 16 September 2013 and
3   your Lordship will see the attendees. If I could ask
4   your Lordship to go forward --
5   MR JUSTICE FRASER: Were any of those attendees legally
6   qualified?
7   MR DE GARR ROBINSON: I'm so sorry?
8   MR JUSTICE FRASER: Are any of those attendees legally
9   qualified?
10   MR DE GARR ROBINSON: My Lord, I'm not in a position to
11   answer that question.
12   MR JUSTICE FRASER: Maybe you could just find out because
13   that might affect what I do in terms of ordering
14   a review of the redactions, that's all.
15   MR DE GARR ROBINSON: My Lord, I should tell your Lordship
16   that questions have been raised about redactions and
17   a further review has been undertaken by my instructing
18   solicitors and also by junior counsel --
19   MR JUSTICE FRASER: It has been done already, has it?
20   MR DE GARR ROBINSON: Yes.
21   MR JUSTICE FRASER: All right. I assume the result of that
22   review was that they were properly redacted?
23   MR DE GARR ROBINSON: The result of the review is that there
24   are a relatively small number of cases where a different
25   judgment call has been made, usually where one can see

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1   why a different decision was made, but in the main the
2   redactions have remained.
3   My Lord, I can tell your Lordship that
4   Susan Crichton was general counsel.
5   MR JUSTICE FRASER: Susan Crichton.
6   MR DE GARR ROBINSON: Who is the first attendee. In fact
7   the chair.
8   MR JUSTICE FRASER: Can you just -- not now, because I don't
9   want to know now, but can you just identify for me on
10   how many separate occasions the review led to disclosure
11   being made where they had previously been redacted,
12   following the review you have just told me about. Not
13   now.
14   MR DE GARR ROBINSON: I will find out.
15   If we could go forward to page 3 {F/1140/3} the
16   document says:
17   "It was reported that following the recent Ernst &
18   Young external audit four risks [have] been identified.
19   Three of the risks raised had been addressed, however
20   the final risk, relating to the communication by Fujitsu
21   of changes made to the Horizon system, was still
22   outstanding.
23   "It was identified that it would cost over
24   £1 million to implement the mitigation being suggested
25   by the audit and that this was not proportionate to the

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1   risk being managed."
2   And the decision made was that:
3   "The committee agreed that the risk be accepted with
4   Dave Hulbert as the owner and Lesley Sewell being
5   ultimately responsible."
6   My Lord, this is evidence that is asserted by
7   Mr Coyne and adopted by the claimants as evidence that
8   known issues/bugs were often deferred and dealt with on
9   a cost-benefit basis. So you will see how high the
10   claim is put, but it is worth looking at the Ernst &
11   Young report that's referred to. My Lord, that's at
12   bundle {F/1127}, or rather a committee meeting which
13   considers the Ernst & Young recommendations. This is
14   a risk and compliance committee meeting relating to the
15   acceptance of risk following Ernst & Young audit of
16   2012/2013. "Purpose":
17   "The purpose of this paper is to:
18   "Update the risk and compliance committee to a risk
19   that IT&C have 'accepted' following the 2012/13 Ernst &
20   Young IT audit.
21   "Background.
22   "2.1. The 2012/13 Ernst & Young IT audit found no
23   significant exceptions but did identify a small number
24   of improvement opportunities. Four high level
25   improvement opportunities were recorded. Three have

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1   progressed and are either complete or in the process of
2   completing. For one, IT&C believe we have sufficient
3   process and mitigation in place to accept this risk.
4   This paper is to highlight this decision to the Risk &
5   Compliance Committee."
6   And paragraph 2.2 reads:
7   "The specific observation was with regard to change
8   management monitoring control. The actual observation
9   read 'management should make use of a system-generated
10   list of changes in performing the monitoring control to
11   further enhance its effectiveness'."
12   2.3:
13   "The risk being that changes may be made to the
14   system that are not approved and not found through
15   monitoring."
16   So it's a process suggestion, my Lord, it's not
17   something that has any bearing on the quality of any
18   changes to the system.
19   3:
20   "The Post Office service management team currently
21   monitor IT system changes on a monthly basis by
22   cross-referencing known and approved changes against
23   a list produced by Fujitsu. E&Y observed that this
24   could be enhanced if the list was generated by the IT
25   system rather than by change records.

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1   "IT service management engaged with Fujitsu to
2   understand how this could be achieved and it was
3   concluded a very difficult and potentially expensive
4   approach to adopt this as all changes are recorded as
5   'events' within the IT system of which there are
6   multiple thousands per day with changes only being
7   a small percentage. The cost and difficulty in
8   extracting these specific change events on a regular
9   basis would outweigh the value in monitoring the
10   change."
11   So the options considered were:
12   "1. Continue with the existing approach of using
13   a list generated by the change records."
14   Or:
15   "2. Develop an approach with Fujitsu to generate
16   a list from the IT system of events."
17   And then over the page, my Lord {F/1127/2} the
18   proposal at paragraph 5:
19   "To continue with the existing process of monitoring
20   but to additionally raise this as a risk within IT&C and
21   to monitor any exceptions found through the existing
22   process. If exceptions are found then reconsider the
23   proposal from E&Y and assess the impact of the change
24   versus the benefit."
25   And, my Lord, if we then go down to paragraph 7 "Key

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1   risks/mitigation":
2   "There is a risk that some changes may not be
3   monitored using the existing process. In mitigation of
4   this, the current process has never uncovered any
5   changes that have not been monitored and that is
6   supported by the annual IT audits by Ernst & Young."
7   So, my Lord, that's the decision. That explains
8   what the proposal was, how carefully it was considered
9   and what the conclusion was. That is not evidence for
10   the proposition that when a bug arises, quite often what
11   Post Office and Fujitsu would do was do nothing because
12   it costs them money. Your Lordship will bear in mind
13   Mr Parker's witness evidence in which he said that bugs
14   with a branch impact were always treated as high
15   priority.
16   So, my Lord, obviously I have not made my case just
17   simply by referring to one document, but I would invite
18   your Lordship to be cautious when dealing with
19   submissions of that sort from the claimants and indeed
20   from Mr Coyne.
21   MR JUSTICE FRASER: We are probably going to have to have
22   a break.
23   MR DE GARR ROBINSON: We are.
24   MR JUSTICE FRASER: Is now a good time?
25   MR DE GARR ROBINSON: It is a perfect time, my Lord.

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1   MR JUSTICE FRASER: We will come back in at 25 past and
2   don't forget at the very end we just have to deal with
3   that timetable point.
4   (3.15 pm)
5   (Short Break)
6   (3.27 pm)
7   MR DE GARR ROBINSON: My Lord, having dealt with the
8   operational issues and robustness I was now going to
9   move as quickly as I could to remote access. To save
10   time I'm proposing to take your Lordship to some
11   relevant paragraphs in our opening submissions and for
12   that purpose I would invite your Lordship to go please
13   to paragraph 40 of those submissions, which is at
14   {A/2/17}. This is a context point. It's a really
15   really important context point. It's a point that
16   applies to transaction corrections as well, but for
17   present purposes I'm making it in relation to remote
18   access. It is the second order issue that your Lordship
19   I'm sure will be familiar with now. At paragraph 40 we
20   say:
21   "On a number of issues on which Mr Coyne places
22   considerable emphasis in questioning Horizon's
23   robustness, Mr Coyne overlooks that they are second
24   order issues that can only have minimal effect. At best
25   they represent a very small fraction of a very small

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1   fraction of any cases. Remote access is one such issue.
2   Transaction corrections are another."
3   Paragraph 41 reads:
4   "Taking remote access as an example, the need for
5   remote intervention affecting branch accounts will
6   obviously be rare. On any view, the occasions on which
7   privileged users at Fujitsu have exercised their ability
8   to remotely inject, edit or delete branch transactions
9   or accounting entries will represent a tiny percentage
10   of the relevant transactions/accounting entries. And
11   the occasions on which they have done so negligently or
12   dishonestly will, in turn, represent a very small
13   percentage of those occasions. So, compared with the
14   volume of business recorded in branch accounts, the
15   number of cases in which false data will have been
16   remotely introduced will be extremely small (multiplying
17   a small chance by a small chance). This is a 'second
18   order effect' ... which is, by definition, extremely
19   unlikely to have any significant impact on the
20   robustness of Horizon."
21   My Lord, if we take a step back and think again
22   about the 3 million sets of monthly branch accounts that
23   have occurred over the last 20 years, I ask rhetorically
24   how many interventions, insertions, deletions, editing
25   would one need into branch accounts -- and I emphasise

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into branch accounts, not other kinds of remote access,
we're talking about interventions which have an impact
on branch accounts, transactions done in the branch or
stock or cash held at the branch, those kind of things,
how many of those interventions would one need in order
to generate a material risk that any given branch's
accounts are likely to be wrong? You would need
hundreds of thousands because the chances of any
intervention actually being wrong -- all human
intervention is subject to error so there will be an
error rate, or there might be an error rate, but it's
going to be a relatively low error rate on any view, so
one would need hundreds of thousands of those even to
produce the number of interventions that could have even
a small impact on the general body of branch accounts.
The numbers would have to be unimaginably huge for this
to have any material impact on the issues with which
your Lordship will be wrestling in the Horizon issues
trial.

     It is hard to overstate the importance of this
point, my Lord. These remote access issues are here
because of concern expressed that Fujitsu -- and we are
only talking about Fujitsu, who are professionals -- was
using its administrator rights in such a way and on such
a scale as to undermine the reliability of the

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claimants' branch accounts. And it is vital to
understand, in my submission, that in the real world
this is not going to be an answer to that question, this
is not going to have a bearing on the robustness of the
system and on the reliability of any given branch
accounts in any given month.

     So, my Lord, that is a first and in my respectful
submission critical point of context that should always
be borne in mind. There's a sense of unreality. It is
quite understandable, the issues here are quite
eye-catching, my learned friend quite understandably has
developed his submissions as to how the history of this
issue has arisen and how matters have been revealed in
the course of time, one quite understands why he has
done that, but when looking at the history of the case
and when looking at the witnesses and what they say
about remote access it's really important to bear in
mind in my submission that even if the claimants' case
succeeds at its highest, it's never actually going to
have a material impact on the reliability of branch
accounts. That's just not what this activity is about.
MR JUSTICE FRASER: Now, this is the same point I think, is
     it not, that where the dispute used to be this couldn't
     be done, now the dispute is in theory it can be done but
     in practice it never would have been; is that a fair

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summary?
MR DE GARR ROBINSON: No, my Lord, I would put it as
     follows. If your Lordship would like me to address on
     what --
MR JUSTICE FRASER: No, it is just so that I understand
     firstly that it's the same point that Mr Green developed
     along those lines and secondly if it is the point which
     I accurately understand the way you are putting it, it
     is that Fujitsu did have the ability to do that but in
     practice never would.
MR DE GARR ROBINSON: No, my Lord, I'm going to take you to
     this in a few minutes, but let me -- first of all one
     has to distinguish between Legacy Horizon and
     Horizon Online.
MR JUSTICE FRASER: Correct.
MR DE GARR ROBINSON: Horizon Online, there has been one
     occasion when a transaction was inserted into one
     branch's accounts at the BRDB, one occasion, and
     my learned friend wants it to be more, so does Mr Coyne
     and there will be evidence given on that question.
     In relation to Legacy Horizon it is different.
There's a complication because whereas with
Horizon Online access was made to a central database, or
server I should say; with Legacy Horizon the data in the
first instance was maintained on server's held at the

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branch, or what were called counters. So there there
was an element -- there was a greater complication
because counters held data and counters could go wrong
and they would need backups. Transactions could
sometimes be inserted into branch accounts when there
had been problems. It's a very different process from
the position in relation to Horizon Online and I'm not
seeking to give you a full account of Legacy Horizon,
that's in the evidence and I don't want to be taken to
be summarising it.
     There were transactions insertions made into
counters on occasion. There were also occasions when
counters broke and their data had to be basically backed
up from another source. It was called replicating from
another source. And there were variants of those two
processes. My Lord, those were occasions therefore when
it could be said that what we mean by remote access took
place.
     So I don't say remote access never took place but
what I say is, take the claimants' case at its highest,
how many occasions of remote access of that sort in
Legacy Horizon would there have to be in order to
generate a material risk to the reliability of any given
set of branch accounts?
MR JUSTICE FRASER: I understand that point and I understand

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1   that's your case and in a way that is central to the
2   different way in which the two parties are approaching
3   it and I'm not in any way suggesting that one of those
4   ways is preferred at the moment. All I was doing was
5   seeking to establish -- all it comes down to really,
6   Mr De Garr Robinson, is are you and Mr Green using the
7   term, or using your broad categorisation in the same
8   way, that's all.
9 MR DE GARR ROBINSON: No we're not and that's one of the
10   difficulties.
11 MR JUSTICE FRASER: That then brings me on to my next point.
12   You don't appear to be using the terms in the same way.
13 MR DE GARR ROBINSON: That is one of the problems.
14   My learned friend -- and I think Mr Coyne also -- adopts
15   a construction of the phrase "remote access" which is
16   unimaginably wide. It includes, for example,
17   transaction corrections, because transaction corrections
18   are a process by which Post Office presses a button in
19   some office somewhere and something pops up on the
20   screen and then a postmaster has to decide whether or
21   not to allow that change, which is specifically notified
22   to the postmaster to allow that change into his or her
23   accounts. My learned friend treats that as an example
24   of remote access. That's not how I understand it at all
25   and indeed it is not how I understand the pleadings.

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1   But it shows your Lordship the width of -- I would say
2   the lack of utility of the definition that he is seeking
3   to propose.
4   I on the other hand have a more practical approach
5   which is what's this question about? It's about whether
6   or not people remotely could make changes to branch data
7   such that their branch accounts would be wrong. There
8   are all sorts of things that could be done remotely that
9   would have no impact on branch accounts. You might have
10   a counter for example in Legacy Horizon that was locked,
11   there was a binary bit that was on a zero instead of a 1
12   and it needed to be turned to a 1. There was a process
13   by which Fujitsu could unlock the locked counters,
14   locked items of that sort. That had no conceivable
15   impact on branch accounts. Now, one could call that
16   remote access if one wanted to, but it's not a relevant
17   form of remote access.
18   When I talk about remote access I'm talking about
19   action taken remotely to either inject new transactions
20   or to edit existing transactions or to delete existing
21   transactions in a way that could change the accounting
22   position of the relevant branch.
23 MR JUSTICE FRASER: And by Fujitsu only? Because I think
24   you started this passage by saying only Fujitsu.
25 MR DE GARR ROBINSON: Yes, only Fujitsu.

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1 MR JUSTICE FRASER: That's very helpful because that defines
2   for me the way you are using the term.
3 MR DE GARR ROBINSON: I'm grateful.
4 MR JUSTICE FRASER: All right, thank you very much.
5 MR DE GARR ROBINSON: So your Lordship has the second order
6   issue.
7 MR JUSTICE FRASER: Yes.
8 MR DE GARR ROBINSON: As I say, in my submission it
9   overwhelms everything else. It makes the next
10   40 minutes really rather -- I don't want to say
11   irrelevant, that's disrespectful, but of marginal
12   importance.
13   My Lord, further points of context I would ask
14   your Lordship to note. If I could move on in the
15   submissions to page 83, paragraph 243 {A/2/83},
16   paragraph 243, headline point, my Lord, irrelevance of
17   or immateriality -- is that a word, I'm not sure -- of
18   the suggestion of some master criminal sitting in
19   Fujitsu's offices manipulating branch data for his
20   personal benefit:
21   "Although claimants will probably draw attention to
22   a dramatic, but only theoretical, possibility of the
23   malicious alteration of transaction data by a rogue
24   employee of Fujitsu, there's no evidence that this ever
25   took place, nor any allegation to that effect. It is

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1   unlikely to assist the court for the parties to engage
2   in speculation as to what might have happened, in
3   theory, if there had been some rogue employee who had
4   abused his or her access rights. If there is any
5   reason, in a specific case, to think that it might have
6   happened, that can of course be explored ... but there
7   is no generic issue as to any malicious alteration of
8   transaction data."
9   So again this is a real world point, my Lord.
10   Your Lordship will see speculation -- well, a discussion
11   in Mr Roll's witness statements about speculation as to
12   whether it might be possible to pay a gas bill or make
13   a bank transfer using the transaction insertion facility
14   that was available in Legacy Horizon, but that is all it
15   is, it's just a theoretical possibility that need not
16   detain the court for five minutes.
17   And in paragraph 244 we continue:
18   "The real thrust of claimants' case is that, in the
19   course of using their abilities to insert, edit or
20   delete data to correct problems arising in the operation
21   of Horizon, Fujitsu personnel might accidently have
22   introduced a further or different error into transaction
23   data. This is a clear example of what Dr Worden calls
24   a second order issue ..."
25   And I have addressed your Lordship on that. As we

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1   say at the end of that paragraph:
2   "Such second order issues are, for this reason
3   alone, not viable candidates to explain any significant
4   proportion of disputed shortfalls ."
5   So having got rid of the master criminal theory and
6   having made it clear of how peripheral this issue really
7   is , let 's then move on to the position and let 's move on
8   to paragraph 246 {A/2/83}:
9   "... the picture is complex. There are different
10 Fujitsu methods for altering different kinds of data
11 remotely, and Fujitsu 's current methods are themselves
12   different from the tools and methods that are available
13 under Legacy Horizon. The Fujitsu witnesses have done
14   their best to recollect , investigate and to some extent
15 hypothesise as to what may have been possible in the
16   fairly distant past.
17   "The picture is also complicated by the fact that
18 the parties do not agree on what counts as remote
19   alteration of data ."
20   My Lord, this addresses the question your Lordship
21 has just asked.
22   For example, Mr Coyne includes transaction
23 corrections . Curiously, my Lord, it is worth noting
24 that although Mr Coyne includes transaction corrections
25 as a form of remote access, he excludes the predecessor

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1   that applied until 2005, namely error notices . So error
2   notices weren't, TCs were and the reason he gives for
3   that is because TCs are electronic , that they were
4   communicated to the branch through the system rather
5   than being sent by post. This to him is a major
6   difference . I say it is a distinction without
7   a difference .
8   Then, my Lord, paragraph 248, another red herring to
9   do with global users. I say red herring, that 's perhaps
10 unfair to my learned friend . There is an issue between
11 the parties as to whether global user rights could be
12 exercised outside the branch. It is quite clear that
13 there were some people who did have the privileges
14 needed to go into a branch and make changes to the
15 branch, to use the branch machines if that 's what they
16 wanted to do. That's common ground. There's an issue
17 as to whether it was possible to use those rights
18 remotely, go to somewhere else from some kind of central
19   office at Fujitsu and use your global user rights to
20 make changes to the branch. My Lord, Fujitsu 's evidence
21 is that that is not possible , but it is challenged by
22 Mr Coyne and the claimants, so that 's an issue that
23 your Lordship will have to decide.
24   Then, my Lord, another important contextual point is
25 in paragraph 249 {A/2/84}. There are complications of

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1   terminology and this is to do with different kinds of
2   data:
3   "Mr Coyne discusses the deletion of session data and
4   the deletion of transaction data as though these were in
5   essence the same thing. That is misleading. Horizon
6   holds more than just transaction data; it stores and
7   tracks a lot of other forms of data that are needed to
8   make the system operate properly, including data that
9   does not relate to customer transaction and which does
10 not affect a branch's accounting position . Session data
11 is a good example of this : it may well not include
12 transaction data at all ; it can consist entirely of
13 other types of data associated with a counter session
14 (such as the data 'flag ' that determines whether a stock
15 unit is locked or unlocked and available for use). The
16 deletion of data of that kind does not affect branch
17 accounts and cannot create a discrepancy. It merely
18   affects the availability of the system to a [postmaster]
19 or an assistant wishing to perform transactions or
20 conduct other branch business."
21   So again it is very important to be clear about what
22 kind of data we are talking about, when we are talking
23 about editing , deleting or inserting data, what kind of
24 data are we talking about, because there are all sorts
25 of irrelevant data the ability to change which is

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1   utterly benign and indeed is important, an important
2   part of the system and the system wouldn't work without
3   it . So that 's an important distinction as well.
4   Having made those contextual points clear , my Lord,
5   let me just say a very few things . Most of these points
6   will be clear to you already.
7   First of all , we are not really concerned about the
8   reading of data, we are concerned about the addition ,
9   editing or deletion of data, obviously.
10   Secondly, the position is very different now from
11 what it was when Legacy Horizon was in operation about
12 nine or ten years ago. Horizon Online's data, all the
13 data is written directly to the BRDB, the central
14 databases maintained I think at Fujitsu 's offices , but
15 with Legacy Horizon data was held on counters before
16 being downloaded to the central data services , I think
17 as I recall , at the end of the day. So where remote
18 access is concerned it was possible that access could be
19 obtained to counters until 2010, but it 's different now.
20 It 's important to understand that.
21 MR JUSTICE FRASER: Well, I can understand why you make that
22   submission and it is important, but I have to consider
23   Legacy Horizon and Horizon Online.
24 MR DE GARR ROBINSON: Oh, of course. I'm not suggesting any
25   different .

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1   Thirdly, I should mention the way in which the
2   evidence has developed in relation to Legacy Horizon.
3   I will be absolutely frank with your Lordship, I wish it
4   hadn't developed in quite the way that it has, but we
5   are talking about the state of affairs that persisted
6   during 2000 and 2010, it's a long time ago. The
7   system -- there is no Legacy Horizon system still in
8   operation that people can go and check, that people are
9   still operating. People are working off their
10   recollections and off design documents that are now very
11   elderly and that problem has been compounded by the fact
12   that when Mr Roll made his witness statement in 2016 --
13   it was provided in September last year -- the things
14   that he said in that witness statement were quite hard
15   to follow and we will see how hard they were to follow
16   when he gives evidence later on this week. The result
17   is that the responsive evidence by Fujitsu witnesses
18   wasn't as focused as it should have been and wasn't as
19   clear as it should have been and wasn't as accurate in
20   certain respects as one would like it to have been and
21   I must face up to that completely, but what I do suggest
22   to your Lordship is that it wouldn't be right to draw
23   any great inferences as a result of the way in which
24   this the evidential position has developed.
25   I make no criticism of Mr Roll for giving his

1   evidence in the way that he did, he is not being blamed
2   for this process, it is simply a fact of the matter,
3   it's simply what happened and it is only right that
4   your Lordship should be aware of that.
5   Against that background, my Lord, it may be helpful
6   to have a summary of what I would include as remote
7   access in this case and, my Lord, that's in
8   Mr Godeseth's third witness statement, which is {E2/14}.
9   I would like to pick it up at page 4 of that witness
10   statement {E2/14/4}. He says at paragraph 14:
11   "Having further explained that global users and the
12   TIP repair tool cannot insert, inject, edit or delete
13   transaction data remotely, to the best of my knowledge,
14   the following types of remote access as defined in
15   paragraph 3 above, are or have been possible:
16   "14.1. Privileged users could, theoretically,
17   inject, edit or delete transaction data in
18   Legacy Horizon ..."
19   "As far as I am aware", he says, "this has never
20   happened."
21   14.2:
22   "Members of the SSC could inject transaction data
23   into a branch's accounts in Legacy Horizon."
24   And then, my Lord, when we are still talking about
25   Legacy Horizon it may help to jump forward to

1   paragraph 14.5:
2   "In Legacy Horizon ..."
3   And Legacy Horizon alone:
4   "... Fujitsu could cause data to be rebuilt from
5   copies of the same data as described ..."
6   In Mr Parker's second witness statement.
7   So this is a simplified summary. There are
8   complications particularly in relation to the rebuilding
9   of data referred to in 14.5, but your Lordship has
10   a sense of the three basic categories of remote access
11   that we say was possible in Legacy Horizon and, my Lord,
12   as regards remote access in Horizon Online, at
13   paragraph 14.3:
14   "Privileged users can, theoretically, inject, edit
15   or delete transaction data in Horizon Online. As far as
16   I am aware, this has never happened."
17   And 14.4:
18   "Members of the SSC can inject additional
19   transactions into a branch's accounts in Horizon Online
20   using a designed piece of functionality called
21   a balancing transaction (BT). Audit records show that
22   this has happened once."
23   So your Lordship will see the scope of the dispute.
24   It is disputed by the claimants that there's only ever
25   been one balancing transaction in Horizon Online.

1   I believe it is not accepted by the claimants that
2   privileged users didn't use their privilege user rights
3   to muck about with branch accounts, if I can put it that
4   way, but I'm not sure about that. I'm not sure what
5   their positive case is. I think their case may be just
6   that it was possible, not that it actually happened.
7   And then in Legacy Horizon it was possible to inject
8   transactions and that happened more frequently than has
9   happened with balancing transactions and it is possible
10   to rebuild data from machines which had problems.
11   So is that a helpful summary of what I say --
12   MR JUSTICE FRASER: Yes.
13   MR DE GARR ROBINSON: I'm grateful.
14   MR JUSTICE FRASER: Thank you.
15   MR DE GARR ROBINSON: Now, Mr Roll deals with the
16   Legacy Horizon position. He worked in third line
17   support in the software support centre at Fujitsu. In
18   that capacity he could make transaction insertions and
19   he could rebuild data. But his evidence is quite
20   unclear about this, or at least his evidence in his
21   first witness statement is not very clear and it will
22   need to be unpicked as to what data he is talking about.
23   Your Lordship will have seen in paragraph 14 there's
24   a reference to the TIP repair tool, the transaction
25   information processing repair tool. My learned friend

1 addressed your Lordship on that this morning. That's
2 addressed by Mr Godeseth at paragraph 10. I say it is
3 a red herring. Paragraph 10 {E2/14/3} he explains how
4 Mr Coyne is confusing balancing transactions with
5 exercises of the TIP repair tool and then he explains
6 why the TIP repair tool doesn't have an impact on branch
7 accounts:
8 ""The TIP repair tool (which was available in
9 Legacy Horizon and is available in Horizon Online) is
10 used on data that has failed validation on the transfer
11 between the BRDB and the TPS system on Horizon Online
12 and is therefore quarantined within TPS. I understand
13 from speaking with colleagues that it served a similar
14 role in Legacy Horizon in relation to data moving
15 between the Riposte Message store and the TPS system."
16 And, my Lord, this is important:
17 "The TPS system is used to transfer data out of
18 Horizon and on to other external systems. The TPS
19 system (in either Horizon Online or Legacy Horizon) does
20 not hold or generate data that is used to produce
21 a branch's accounts from a subpostmaster's perspective.
22 Accordingly, an error or change in TPS data will not
23 affect a branch's accounting position.
24 "The TIP repair tool is used where the format or
25 content of the data output from Horizon is incompatible

1 with the systems to which it is being delivered. For
2 example, a system may require that certain data fields
3 are populated. If these criteria are not met, the
4 receiving system may reject the data. The TIP repair
5 tool is used to correct these incorrect or missing
6 attributes. The correction does not change the core
7 information about the transaction."
8 And then there is a reference to a PEAK which shows
9 mandatory fields were omitted from four messages and the
10 TIP repair tool was used to insert suitable values:
11 "These are all time stamps so have no impact on
12 accounts, but the receiving system expects the fields to
13 be there. In practice, there are multiple time stamps
14 in messages, so other, appropriate time stamps would
15 have been used (which may differ by a few seconds from
16 the missing one)."
17 My Lord, here is an important point:
18 "The changes are made to the data in the TPS system
19 not in the BRDB (or the Riposte Message store in
20 Legacy Horizon)."
21 Your Lordship has already heard submissions about
22 front of the system and the back-end of the system.
23 Branch accounts are in the front end of the system, they
24 are within Horizon, Horizon generates accounts for the
25 branch. The data that is in the Horizon system then has

1 to be extracted from the Horizon system into the
2 back-end systems, so Post Office and Fujitsu -- mainly
3 Post Office -- so that it can be used by Post Office for
4 its accounting functions. The most important accounting
5 system that Post Office currently uses is called POLSAP.
6 It deals with all its internal financial matters from
7 paying rent on buildings to salaries and also movements
8 resulting from Horizon transactions. POLSAP draws data
9 down from the front end. The important thing is that
10 the TIP repair tool changes the data that is taken from
11 Horizon and put into POLSAP, but changing data in POLSAP
12 would not change anything in the branch accounts. It's
13 just -- they're just different things. My Lord, the
14 accounting systems are separate. The only way in which
15 POLSAP could be used in such a way as to result in
16 a change to branch accounts would be if Post Office used
17 POLSAP to decide to issue a transaction correction,
18 Post Office then issued a transaction correction to the
19 branch and the postmaster accepted that transaction
20 correction. That's the only way it could happen.
21 So it is really important to understand the
22 fundamental difference between facilities which enable
23 changes to be made to back-end systems and facilities
24 which enable changes to be made to branch accounts.
25 And, my Lord, that is overlooked in the claimants'

1 submissions. A good example of that is at paragraph 273
2 and perhaps we could look at that. For the record it is
3 {A/1/94}. Paragraph 273, my Lord.
4 MR JUSTICE FRASER: Yes, I've got it on the common screen.
5 MR DE GARR ROBINSON: "Mr Coyne's view is that the above
6 tools have the potential to affect transaction data and
7 potentially branch account data by way of incorrectly
8 altering the transactions prior to entering the
9 recipient systems such as POLSAP and external clients
10 (after processing by the counter). The end result may
11 be the issuing of a flawed TC by Post Office who may not
12 be aware of the error."
13 My Lord, actually the point is well made there and
14 I apologise because I was suggesting this was
15 a paragraph which showed that the point wasn't
16 understood. The point is that when we're talking about
17 changes to back-end systems like this we're not talking
18 about second order issues, we're talking about third
19 order issues. We're talking about a change to the
20 POLSAP figure as a result of some intervention which is
21 wrong, which results in a mistake being made by
22 Post Office in deciding to issue a transaction
23 correction, which then results in a mistake being made
24 because the postmaster accepts the transaction and it is
25 loaded into his accounts.

1   One is not going to find an answer to the question
2 whether Horizon is robust by referring to tools which
3 can affect the data that goes into POLSAP.
4   My Lord, I note that the claimants and Mr Coyne
5 place emphasis on what they say is a failure to follow
6 proper permission controls by Fujitsu and there is
7 a reliance on an audit recommendation by Ernst & Young
8 in 2011. That is referred to again and again and again
9 in Mr Coyne's report and again and again and again in
10 the claimants' submissions. My learned friend took
11 your Lordship to it. It's at {F/869} and it is referred
12 to -- well, it is referred to in many many paragraphs,
13 but including paragraphs 5.161 and 5.196 in Mr Coyne's
14 first report, the references to which are {D2/1/97} and
15 {D2/1/107}. And it is also referred to in paragraph 282
16 of the claimants' opening submissions, for the
17 proposition that Fujitsu had weak user management
18 controls.
19   My Lord, could we go to that document please. It is
20 {F/869}. You have already seen it once. My Lord, but
21 your Lordship hasn't seen the first page, or rather --
22 if it your Lordship goes to --
23 MR JUSTICE FRASER: I think you mean the second page.
24 MR DE GARR ROBINSON: It is the second page {F/869/3}.
25   Paragraph 1 "Executive summary":

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1   "The finance leadership team at Post Office Limited
2 has implemented and process improvements throughout the
3 organisation during the past financial year.
4   "In particular, focussed management action has
5 addressed many of the issues raised in our prior year
6 management letter and led to significant improvement in
7 the overall payroll control environment. The
8 recommendations we have made in this report should be
9 seen as refinements rather than fundamental control
10 deficiencies in comparison."
11   My Lord, they are put forward in the evidence as
12 fundamental control deficiencies. Again this doesn't
13 win me the case but I do invite your Lordship -- when
14 your Lordship sees frequent references to documents, it
15 can sometimes be very beneficial to read the whole
16 document carefully. My Lord, that's my first submission
17 about that document.
18   The second submission I would make about the
19 document is that although Mr Coyne refers to it several
20 times and indeed there's a suggestion that Ernst &
21 Young's recommendations aren't being carried into
22 effect, he doesn't refer to a later document, Ernst &
23 Young control themes and observations 2013, which is at
24 {F/1138}. If I could ask your Lordship to go to page 2
25 of that document {F/1138/2} and again it is the letter

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1 which introduces this document, second paragraph down:
2   "As part of our audit of the financial statements,
3 we obtained an understanding of internal controls
4 sufficient to plan our audit and determine the nature,
5 timing and extent of testing performed. Although the
6 purpose of our audit was to express an opinion on the
7 financial and not to express an opinion on the
8 effectiveness of internal control, discover weaknesses,
9 detect fraud or other irregularities (other than those
10 which would influence us in forming that opinion) and
11 should not, therefore, be relied upon to show that no
12 other weaknesses exist ..."
13   I'm so sorry, my Lord, I'm actually reading the
14 wrong text.
15 MR JUSTICE FRASER: "... to show that no other weaknesses
16 exist or areas require attention."
17   In other words we have identified some of them but
18 don't reply on that as saying there aren't any others.
19 MR DE GARR ROBINSON: Exactly. If your Lordship goes on to
20 page 4 {F/1138/4}
21 MR JUSTICE FRASER: Page 4? "Overview". Is that the one?
22 MR DE GARR ROBINSON: Third paragraph down:
23   "Focused management action in the past few years has
24 addressed many of the issues raised in prior year
25 management letters. Whilst there continue to be

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1 challenges in areas including POL's IT environment,
2 management have taken steps to ensure these challenges
3 are and continue to be addressed."
4   So, my Lord, what your Lordship gets from a reading
5 of the documents as a whole that the audit processes
6 which were regularly undertaken by Ernst & Young of
7 Fujitsu and of its permission controls and operating
8 controls, regulations, the picture actually to be
9 derived from those documents is not that Fujitsu was not
10 doing the right thing, the picture to be derived was
11 that Fujitsu was being monitored for proper conduct and
12 although there could on occasion be improvements, they
13 were essentially acting in the right direction.
14   My Lord, unless I can assist your Lordship further,
15 that summarises my overview of remote access.
16 MR JUSTICE FRASER: That's very helpful. I have read
17 everything that I have been asked to -- I haven't read
18 everything obviously in terms of the database, but
19 I have read all of the documents that both of the
20 parties asked me to read, and that's very, very useful,
21 thank you very much.
22 MR DE GARR ROBINSON: My Lord, I was going to address
23 your Lordship -- your Lordship may not want to be
24 addressed on this -- on two points which I apprehend are
25 included by way of prejudice. One is on the process of

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1   disclosure that's been followed in this case and the
2   other is the so-called shadow expert allegation.
3   I don't know whether your Lordship would feel the need
4   to hear any submissions about any of those things.
5   MR JUSTICE FRASER: Well, I would have thought the best
6   place to do that is probably in closing because actually
7   at the moment whatever the situation is suggested to be
8   vis-à-vis shadow experts, or so-called shadow experts,
9   it will become a lot clearer after the
10   cross-examination, I would have thought, but I'm not
11   shutting you out from addressing me on it if you want
12   to.
13   MR DE GARR ROBINSON: No, my anxiety is to help
14   your Lordship not to set hares running.
15   MR JUSTICE FRASER: I would have thought closing.
16   MR DE GARR ROBINSON: Very well. My Lord, all I would say
17   about shadow experts is two things. First of all, dark
18   inferences are drawn as if having an advisor advising
19   you before you have actually appointed an expert is
20   something that is somehow untoward or inappropriate.
21   My Lord, in cases of this scale it is commonplace in my
22   experience.
23   MR JUSTICE FRASER: Well, it depends on what they have been
24   doing, which is why it is probably best left until after
25   the cross-examination I would have thought.

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1   MR DE GARR ROBINSON: My Lord, that brings me to my second
2   point. There appears to be if not a suggestion then an
3   implication sought to be achieved that the technical
4   advisor has in some way been used in order to shield the
5   experts and the parties from adverse documents.
6   My Lord, if that is the suggestion being made, it is
7   wrong and it should not be made. I can tell
8   your Lordship that all the documents reviewed by the
9   advisor were reviewed with a view to ascertaining
10   whether any of them constituted adverse documents and
11   any adverse documents that were revealed as a result of
12   that review have been disclosed and it is important that
13   your Lordship should not allow yourself to be -- it's so
14   easy in cases of this kind to be drawn into the sort of
15   painting of pictures. My learned friend is actually
16   creating something out of nothing and it is --
17   MR JUSTICE FRASER: I don't think you need concern yourself
18   that I am easily drawn into painting pictures.
19   MR DE GARR ROBINSON: I'm very glad to hear it, my Lord.
20   So, my Lord, assuming your Lordship doesn't wish to
21   hear me on disclosure and the procedure that was adopted
22   and your Lordship has submissions in the annex to our
23   opening -- written opening submissions, all that remains
24   is for me to talk about timings, the trial timetable.
25   MR JUSTICE FRASER: Yes.

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1   Housekeeping
2   MR DE GARR ROBINSON: Since the PTR I have been giving
3   anxious thought as to the extent to which I can properly
4   cross-examine Mr Coyne within the compass of two and
5   a half days and were I required to do that then I would
6   do that.
7   MR JUSTICE FRASER: Of course.
8   MR DE GARR ROBINSON: It is my view, having thought about it
9   quite carefully, that it would be very, very difficult
10   to get it under three days and three and a half days
11   would be doable but under three would be very hard
12   indeed, but if your Lordship were to say it should be
13   two and a half days then it can be done in two and
14   a half days.
15   MR JUSTICE FRASER: Mr De Garr Robinson, I will -- and just
16   for the purpose of everyone in court because obviously
17   counsel know this but not everybody will. I separately
18   raised this point of my own volition --
19   MR DE GARR ROBINSON: You did.
20   MR JUSTICE FRASER: -- about three weeks ago after I read
21   the first joint statement which emerged from the meeting
22   which I think was taking place the very day of the PTR
23   or possibly a couple of working days later, so the trial
24   timetable that was set down for the PTR was not chiseled
25   into granite and I expressly invited this debate on

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1   Day 1.
2   If you are going to have longer, and on current
3   understanding of the different expert issues it seems to
4   me that that's sensible, we just have to grasp the
5   nettle now about how that's going to impact the second
6   half of the trial. I mentioned this morning
7   difficulties in respect of another case on Friday the
8   5th anyway. It seems to me that the best way forward is
9   to keep the shape of the first half the same, that the
10   week commencing 1 April you should be given your four
11   days to cross-examine Mr Coyne. We then won't sit on
12   the 5th and on Monday the 8th we will start with
13   Dr Worden, which if Mr Green wants three days he can
14   have them, if he wants four days he can have them but
15   I know he said at the pre-trial review he would only
16   want three but what's sauce for you is sauce for him,
17   which means we are going to have to address closings.
18   Now, I know from time to time I have come across as
19   somewhat more robust about counsels' availability but
20   obviously in this case that's slightly different now
21   because we are starting the trial and this is an
22   alteration and I know at the pre-trial review Mr Green
23   had some observations about going into the week after
24   that and you said this morning that the beginning of the
25   next term might be a better time for them.

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1   So I'm open to suggestions and debate about that,
2   but the primary decision is when do we do the evidence
3   and it seems to me you want your four days and I'm
4   prepared to give you your four days.
5   MR DE GARR ROBINSON: Well, my Lord, I certainly want three
6   to three and a half days.
7   MR JUSTICE FRASER: All right, if you go three and a half
8   days what we will do is do a hard start with Mr Coyne on
9   the Monday morning, because apart from anything else
10   people need to plan or organise their diaries and it's
11   bad practice to start an expert just before the weekend
12   and then he is in purdah and Mr Green can't speak to
13   him, or vice versa.
14   MR DE GARR ROBINSON: Yes.
15   MR JUSTICE FRASER: So that's my current thinking.
16   MR DE GARR ROBINSON: I'm grateful. Shall I discuss it with
17   Mr Green and then we can come back to your Lordship with
18   hopefully an agreed approach.
19   MR JUSTICE FRASER: Mr Green, two things. Longer for
20   cross-examination, I have made that clear.
21   MR GREEN: My Lord, I'm anticipating within three days.
22   MR JUSTICE FRASER: All right, that's fine. You will have
23   to discuss it with Mr De Garr Robinson about when you
24   might do your closings.
25   MR GREEN: Indeed.

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1   MR JUSTICE FRASER: The beginning of the term afterwards at
2   the moment I'm supposed to be on TCC business but that
3   can and will be rearranged to fit around you. I think
4   term starts on 1 May which is a Wednesday, so you could
5   have 1 and 2 May, or you could have two days the week
6   after. I think any longer than that it's beginning to
7   get difficult in terms of the timetable for the whole
8   year and actually the difficulties in the timetabling
9   are probably more my difficulties than yours because I'm
10   the one that has to write the judgment.
11   So do you want to have a chat about that, about
12   closings, but for the moment as far as cross-examination
13   of the experts, Mr Coyne will be called on Monday,
14   1 April and you, Mr De Garr Robinson, can have as much
15   of the four days that week up to and including Thursday
16   the 4th as you want and the same the other way round:
17   Dr Worden will be called on Monday the 8th and you can
18   have as much of the three into three and a half days
19   that week to cross-examine him as you want.
20   MR GREEN: My Lord, I think the Thursday is Maundy Thursday,
21   I don't know whether that --
22   MR JUSTICE FRASER: No, I think that's a week out, isn't it?
23   I think Maundy Thursday is the following week because
24   Easter is so late.
25   MR GREEN: Yes exactly. It is so late.

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1   MR JUSTICE FRASER: So that whole week we don't have any
2   Easter issues at all that week.
3   MR GREEN: That's excellent.
4   MR JUSTICE FRASER: All right? Is that helpful?
5   MR DE GARR ROBINSON: My Lord, it is extremely helpful,
6   thank you.
7   MR JUSTICE FRASER: Couple of other admin points. I have
8   obviously been working on hard -- well, I have actually
9   been working on the system but I've got three screens
10   already and if I bring my laptop down I'm going to end
11   up with four screens so I would like a file please from
12   you of your witness statements that actually have the
13   trial bundle pages printed on them. I don't need the
14   exhibits. And the same for you, Mr De Garr Robinson,
15   just a file of your evidence of fact at the moment with
16   the trial bundle pages printed on them.
17   Obviously I would like yours for tomorrow morning.
18   MR GREEN: My Lord, yes.
19   MR JUSTICE FRASER: Yours can come at some stage during the
20   week and at some point I would like a hard copy file of
21   your two experts' reports in the same file, no
22   appendices, again with the trial bundle pages on them
23   and the same for your expert as well.
24   MR DE GARR ROBINSON: Your Lordship may prefer to have the
25   appendices as well because there is quite a lot of work

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1   done in the appendices of the --
2   MR JUSTICE FRASER: I've got the appendices -- actually if
3   you think -- you are right, it is probably sensible to
4   have those with the trial bundle references on. The
5   reason I said no appendices was simply to try and reduce
6   the amount of work you have to do, that's all. Is that
7   quite clear?
8   MR GREEN: It is easy to do.
9   MR JUSTICE FRASER: And obviously the witnesses will need to
10   have, as they did in the common issues trial, a bundle.
11   MR GREEN: Indeed.
12   MR JUSTICE FRASER: And I think there have been some recent
13   statements, haven't there, just making corrections
14   et cetera.
15   MR GREEN: My Lord, yes, there are some small changes.
16   MR JUSTICE FRASER: So I imagine examination-in-chief will
17   be quite straightforward.
18   MR GREEN: Yes.
19   MR JUSTICE FRASER: Is that everything? Thank you both very
20   much and tomorrow morning.
21   MR DE GARR ROBINSON: My Lord, actually having nodded when
22   your Lordship said "Is that everything" I should mention
23   that Mr Henderson and Mr Draper will be doing some
24   cross-examining --
25   MR JUSTICE FRASER: I had guessed that.

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1   MR DE GARR ROBINSON: So in proper reflection of my real

2   role in this case I will be allowing them to take pole

3   position.

4   MR JUSTICE FRASER: Just so that you know, because I think I

5   did say this at the beginning of the common issues trial

6   but I will just say it to you, as far as counsel are

7   concerned I don't mind where you sit, where they sit.

8   They can sit up front -- there's actually a practice

9   direction about this for the Rolls Building

10   specifically. So please don't think that if you would

11   rather have Mr Henderson next to you or Mr Draper next

12   to you all the time, that as junior counsel they have to

13   sit behind you, because as far as we are concerned we

14   don't do that. But I anticipated they would be doing

15   some of the cross-examination and I'm sure that might be

16   the case for the other side as well.

17   Is that everything?

18   MR DE GARR ROBINSON: Yes.

19   MR JUSTICE FRASER: Thank you all very much. Tomorrow

20   morning.

21   (4.15 pm)

22   (The court adjourned until 10.30 am on Tuesday,

23   12 March 2019)

24

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