

OPUS 2

INTERNATIONAL

Horizons Issues - Alan Bates & Others v Post Office Limited

Day 12

April 11, 2019

Opus 2 International - Official Court Reporters

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1 Thursday, 11 April 2019
 2 (10.30 am)
 3 HOUSEKEEPING
 4 MR JUSTICE FRASER: Good morning. Just before we start,
 5 a very minor admin point, the various hearings that have
 6 been taking place since 21 March on the transcript seem
 7 for some reason to adopt a different sort of numbering
 8 and start again at 1A. They should just be numbered Day
 9 10, Day 11, etc, continuing on from the 21st, so I just
 10 thought I would make that point so as to avoid any
 11 confusion.
 12 MR DE GARR ROBINSON: Is your Lordship indicating that the
 13 recusal application should be treated as part of this
 14 trial?
 15 MR JUSTICE FRASER: I think it should, actually. I think it
 16 should. It's just a question of numbering really that's
 17 all. Opus sent me an email about it, I answered it, and
 18 then they seemed to adopt a different sort of numbering
 19 so I just thought I would mention it first thing.
 20 MR DE GARR ROBINSON: Your Lordship will be aware that there
 21 is two-and-a-quarter hours left on the claimant's clock.
 22 The Post Office's intention would be to call two
 23 witnesses, namely Mr Parker and Mr Membery.
 24 Your Lordship will be aware of Mr Membery's illness.
 25 MR JUSTICE FRASER: And I think I said in the recusal

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1 judgment that it wasn't necessarily expected he would be
 2 available immediately.
 3 MR DE GARR ROBINSON: Well, I can tell your Lordship that he
 4 is not well enough to give evidence here today.
 5 My Lord, in those circumstances, and I have to say I
 6 hadn't picked up what your Lordship had said in
 7 your Lordship's judgment, my instructing solicitors have
 8 given notice of their intention to rely on Mr Membery's
 9 witness statement as hearsay evidence.
 10 MR JUSTICE FRASER: Understood.
 11 MR DE GARR ROBINSON: And my learned friend's team have, if
 12 I may say so, very sensibly and kindly indicated that
 13 they are willing to extend time for that to have been
 14 done, for notice to have been given under CPR33.2.
 15 MR JUSTICE FRASER: Well, he was in a particular situation
 16 which requires a degree of sympathy.
 17 MR DE GARR ROBINSON: Yes. So, my Lord, for the purposes of
 18 today, I will just be calling Mr Parker.
 19 MR JUSTICE FRASER: Understood. Thank you very much.
 20 MR DE GARR ROBINSON: And I do call Mr Parker.
 21 MR JUSTICE FRASER: Have a seat, Mr Parker.
 22 STEPHEN PAUL PARKER (Sworn)
 23 Direct Examination by MR DE GARR ROBINSON
 24 MR DE GARR ROBINSON: Thank you. Mr Parker, there should be
 25 a bundle of documents in front of you there.

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1 A Yes?
 2 Q Could I ask you to go to tab 11 of that bundle?
 3 A Yes?
 4 Q Is that your first witness statement?
 5 A The first page is a correction to, but the following
 6 page is, yes.
 7 Q If you turn to the second page is that your name and
 8 address at the top?
 9 A It is.
 10 Q If you go to the last page, is that your signature?
 11 A It is.
 12 Q So is that your first witness statement?
 13 A Yes.
 14 Q If you could look at the correction page at the front of
 15 that tab, is that a -- there is one correction here, I
 16 believe. Is that a correction you wish to make to your
 17 witness statement?
 18 A It is, yes.
 19 Q And there is a correction to a document reference. Was
 20 that a typo?
 21 A It was indeed, yes.
 22 Q If I could then ask you to go to tab 12 of the same
 23 bundle, I apprehend there is going to be a corrections
 24 document, and then over the page there will be another
 25 witness statement?

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1 A That's correct. Yes.
 2 Q There is your name and address and at the back of that
 3 witness statement, is that your signature again?
 4 A It is.
 5 Q There is a corrections page. Do you see that?
 6 A I do.
 7 Q Two corrections there. Are those two corrections you
 8 wish to make?
 9 A They are.
 10 Q And for the reference it's -- for the Magnum reference
 11 of the corrections, it's {E2/17/1}.
 12 The first correction, there is a change to paragraph
 13 29, a reference to a phrase, "In Legacy Horizon". If we
 14 could go to page 10 of your witness statement,
 15 {E2/12/10} you will see what the change is from. Do you
 16 see that?
 17 A I do.
 18 Q It is a change from, "While Mr Roll was employed by
 19 Fujitsu". Do you see that?
 20 A That's correct. Yes.
 21 Q Now, why is that change needed?
 22 A That change was actually needed because I applied the
 23 wrong name to the wrong timescale to the document.
 24 MR JUSTICE FRASER: Just before you move on, so the
 25 correction on 29 is that -- does that paragraph end

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1 after, "Legacy Horizon", full stop?
 2 A Yes it does.
 3 MR JUSTICE FRASER: It does, so I need to delete the --
 4 MR DE GARR ROBINSON: "While Mr Roll was employed by
 5 Fujitsu ". My Lord, yes.
 6 MR JUSTICE FRASER: Thank you.
 7 MR DE GARR ROBINSON: At the bottom of the same page you
 8 will see there is a footnote, a list of Peaks. If you
 9 go back to the corrections page you will see that there
 10 is {E2/17/1}, to one of the Peaks in the footnote.
 11 Could you explain why that change is needed?
 12 A When it was transcribed one of the Peak references was
 13 doubled up and one was missed as a result of that.
 14 Q Thank you. Then if we could go forward to tab 13,
 15 again, is there a corrections page?
 16 A Yes there is.
 17 Q If you go past that page you will see, is this your
 18 third witness statement?
 19 A Yes it is.
 20 Q And is it your signature at the end of that witness
 21 statement? {E2/13/1}?
 22 A Yes it is.
 23 Q And then if you could look at the corrections page
 24 {E2/13/16} there are two corrections indicated on the
 25 page. Are these the corrections you wish to make?

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1 {E2/171}.
 2 A They are.
 3 Q The first one is to paragraph 18. The original text
 4 reads, "The wording of PC0146096 implies", and that is
 5 changed to, "The wording of PC0146066 of which PC0146094
 6 was a clone implies".
 7 A Yes.
 8 Q Could you explain what the purpose of that change is?
 9 A The original reference in there referenced the clone
 10 Peak which is not the useful one. It's the Peak it was
 11 being cloned from, which contains the -- needed the
 12 information we actually need.
 13 Q And then paragraph 19, if we could -- you will see
 14 that -- paragraph 19 of the corrections document -- it
 15 sets out -- I think the first sentence of paragraph 19,
 16 and then it suggests two changes to that sentence. You
 17 will see there is text added and there is text deleted.
 18 First of all, perhaps you could explain what the purpose
 19 of the deletion is.
 20 A Again, it's a timescale thing.
 21 Q Is it the same -- is it reflecting the correction that
 22 you made to your previous witness statement?
 23 A Yes it is.
 24 Q And then the additional text, could you explain what the
 25 additional text is therefore?

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1 A The additional text -- yes -- because it makes it
 2 clearer, that the information presented there was
 3 a result of the searches which wasn't actually made
 4 clear in the first wording.
 5 Q Thank you, Mr Parker.
 6 Subject to those corrections, and to some
 7 corrections made in your later statements to your
 8 earlier statements, do you confirm that these statements
 9 are true to the best of your knowledge, recollection and
 10 belief?
 11 A I do, yes.
 12 MR DE GARR ROBINSON: Thank you. If you could wait there?
 13 MR JUSTICE FRASER: Mr de Garr Robinson, I don't have
 14 a sheet and you don't have to give me one now, but
 15 I don't have the corrections to the third witness
 16 statement.
 17 MR DE GARR ROBINSON: My Lord, yes, I do have a copy. I can
 18 hand that up now.
 19 MR JUSTICE FRASER: And can I just check, I will check
 20 directly with Mr Parker -- the last correction to
 21 paragraph 19 which is still on the screen which is to
 22 your paragraph 19 of your third statement --
 23 A Yes?
 24 MR JUSTICE FRASER: Can you go to the actual paragraph of
 25 your statement? I understand the strike-through because

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1 that is shown on the correction. Have you got paragraph
 2 19?
 3 A I have now, yes.
 4 MR JUSTICE FRASER: Yes? If you go over the page, "While
 5 Richard Roll was employed by Post Office", is struck
 6 through. Is that last sentence, should that still be
 7 there {E2/11/4} or is that -- you don't deal with that
 8 in your correction.
 9 A The sentence saying, "Of the six circumstances listed"?
 10 MR JUSTICE FRASER: Yes.
 11 A That should still be there.
 12 MR JUSTICE FRASER: That should remain. I thought it
 13 should. I just wanted to check.
 14 MR DE GARR ROBINSON: I notice that Mr Parker doesn't have
 15 a screen. I have only just noticed.
 16 MR GREEN: We have only just noticed as well.
 17 MR JUSTICE FRASER: Yes. Now that you mention it, I have
 18 only just noticed and it's rather important. Just bear
 19 with me just one second. He obviously has to have
 20 a screen.
 21 (Discussion regarding screen)
 22 I will rise for five minutes. It's going to be
 23 exactly five minutes. It's not going to be any longer
 24 than that. All right. Mr Parker, I'm sorry about this,
 25 one of those things that happens, because you started

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1 giving your evidence you are not allowed to talk to
 2 anyone about the case. Obviously your evidence is going
 3 to be over this morning, so that's not going to apply
 4 for any lengthy period of time but we are going to need
 5 five minutes to get you a screen.
 6 (10.40 am)
 7 (A short break)
 8 (10.45 am)
 9 MR JUSTICE FRASER: Right. Do you have a screen?
 10 A I have got a screen.
 11 MR JUSTICE FRASER: Does it have anything on it?
 12 A It does.
 13 MR JUSTICE FRASER: Excellent. Right. Mr Green?
 14 MR GREEN: Mine has gone away a bit.
 15 MR JUSTICE FRASER: It might be safer to move your lectern
 16 towards the screen rather than moving the screen towards
 17 you.
 18 Cross-examination by MR GREEN
 19 MR GREEN: Mr Parker, just to clarify, we have got your
 20 first witness statement which is 16 November 2018, at
 21 {E2/11/1}. Then we have got your second witness
 22 statement of 29 January 2019 {E2/12/1}; yes.
 23 A Yes.
 24 Q Then we have got your third witness statement of 28
 25 February 2019 {E2/13/1}, and both the second and the

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1 third witness statements were making some amendments to
 2 prior witness statements; yes?
 3 A Yes. Indeed.
 4 Q Then we have got the list of corrections at {E2/16/1},
 5 if we go down, I think it's page 4 {E2/16/4} which are
 6 the corrections that were produced prior to the
 7 beginning of the week where you were supposed to give
 8 evidence.
 9 A Yes.
 10 Q And then yesterday we got {E2/17/1} which are the
 11 corrections that you were assisting his Lordship with
 12 a moment ago.
 13 Was one of the reasons why there was a need for
 14 a number of corrections that you have had to rely quite
 15 heavily on some of your colleagues to help you with
 16 information you have been providing to the court? Is
 17 that fair?
 18 A That was only one of the reasons.
 19 Q What were the other reasons?
 20 A Are -- my understanding -- my first statement, my
 21 understanding of some of the information Mr Roll put on
 22 his statement was imperfect because some of it was
 23 a little bit vague and it is a result, sometimes, of
 24 refining our knowledge based on looking further into
 25 things which happened fifteen years ago.

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1 Q And which there was no clear available knowledge on
 2 prior to you looking into?
 3 A Correct.
 4 Q Can I just try to trace through an example of how these
 5 witness statements hang together by reference -- let's
 6 take the thing that his Lordship was asking you about
 7 a moment ago. Let's look at paragraph 19 of your third
 8 witness statement {E2/13/4} please. At the moment I'm
 9 just trying to understand how these hang together.
 10 Paragraph 19 of your third witness statement you
 11 say:
 12 "The vast majority of server injections would not
 13 have been to inject transaction data. In paragraph 29
 14 of my second witness statement I listed the
 15 circumstances in which data was injected into a counter
 16 in Legacy Horizon ..."
 17 Just pause there for a moment. So you are actually
 18 referring back to paragraph 29 in that paragraph, aren't
 19 you?
 20 A I am, yes.
 21 Q So let's go back to paragraph 29, and we have got that
 22 in your second witness statement at page {E2/12/10}.
 23 There you talk about one of your colleagues having done
 24 some searches.
 25 A Yes.

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1 Q Pick search terms that were used in that particular
 2 search.
 3 A Yes.
 4 Q And then --
 5 MR JUSTICE FRASER: Hold on just one second. Which page
 6 should we be on?
 7 MR GREEN: Page 10 my Lord, paragraph 29.
 8 MR JUSTICE FRASER: Yes. Thank you very much.
 9 MR GREEN: You say:
 10 "At my request, my colleague John Simpkins (Senior
 11 Consultant), carried out a search of the incident
 12 management system for incidents which required injecting
 13 data into the counter ...", etc, giving examples of the
 14 search terms that were used on that occasion?
 15 A Yes.
 16 Q Then you say:
 17 "From the results I can determine that this was only
 18 carried out in the following circumstances ..."
 19 And then the words that we have to remember to
 20 forget, as it were, are, " ... while Mr Roll was
 21 employed by Fujitsu".
 22 A That's correct. Yes.
 23 Q Now, if we -- it might be helpful for you to look at the
 24 paper ones, because it is difficult to do it on the
 25 screen, but if we can look at the correction, please, at

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1 {E2/16/4} on the screen, and then -- so what you are
 2 doing to paragraph 29 in the corrections is you are
 3 expanding the period that you are talking about.
 4 A That's right. I am. Yes.
 5 Q From Mr Roll's employment you are going much wider to
 6 say the whole of Legacy Horizon?
 7 A That's correct. Yes.
 8 Q And then if we look at paragraph 19, and we look at
 9 {E2/17/1} please, you are actually -- you appear to be
 10 saying that you are confining what's being said in that
 11 paragraph to what was found as a result of the searches
 12 in that paragraph, not, "These are all the ones that
 13 happened in the whole of Legacy Horizon".
 14 A That's correct. Yes.
 15 Q So one is -- so the paragraph 29 is expanding it to the
 16 whole of Legacy Horizon?
 17 A That's correct, yes.
 18 Q But paragraph 29 is confining this to only the searches
 19 described in paragraph 29.
 20 A Correct. Yes.
 21 Q And what's the real reason for that change?
 22 A Because, again, the timescale that I put on it in the
 23 statement was incorrect. Yes.
 24 Q Okay, well, pausing there, there are two points. Let's
 25 ignore the change in timescale from Richard Roll to the

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1 whole of Legacy Horizon. You explained to the court
 2 this morning, in relation to this change here, where you
 3 say -- you add the words, "Found as a result of the
 4 searches described in that paragraph" --
 5 A Yes?
 6 Q -- you said that was just to make it clearer,
 7 effectively, what you were referring to.
 8 A Correct. Yes.
 9 Q Now, do you know the real reason why that's been changed
 10 to say that?
 11 MR DE GARR ROBINSON: My Lord, is that a fair question?
 12 MR GREEN: Well, I'm just going to ask it and see what
 13 answer --
 14 MR JUSTICE FRASER: Well, let's just hold on one second.
 15 Asking him what the real reason is a fair question, so
 16 you can put it again. Well, so far as he knows.
 17 MR GREEN: Do you know what the real reason for making that
 18 change is?
 19 A This is the change where we strike out, "Whilst Richard
 20 Roll was employed" --
 21 MR GREEN: No. Sorry?
 22 MR JUSTICE FRASER: Both of you, if you speak over each
 23 other it doesn't go on the transcript, all right?
 24 Mr Green?
 25 MR GREEN: No, the change I'm asking about is the addition

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1 of the words, "Found as a result of the searches",
 2 described in that paragraph. Why is that being changed
 3 now?
 4 A Because I felt that made it clearer that the information
 5 presented there was a result of the searches and not --
 6 and the exact search terms used, because it was an
 7 expansion of the previous search terms used. Does
 8 that ...
 9 Q Can you explain that again very carefully?
 10 A So when the -- the first time that we sought to gather
 11 this information, a certain set of search terms were
 12 used when searching the incident management system. My
 13 colleague, who is very, very diligent, decided upon some
 14 additional search terms afterwards, and that's what this
 15 second bit reflects, that he found extra search terms
 16 and some extra incidents relevant to the court and what
 17 we are trying to say there.
 18 Q And, well, as we are on the point, let's just quickly
 19 bring up {H253} please?
 20 MR JUSTICE FRASER: Can I just ask, when you are giving your
 21 evidence generally, if you could try and firstly explain
 22 what you yourself did and then if you need to go on and
 23 explain -- because you have used the word, "We",
 24 a couple of times and it just makes it confusing to know
 25 what's your direct evidence and what's been done by

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1 somebody else.
 2 A Yes, my Lord.
 3 MR JUSTICE FRASER: I'm not saying don't tell us what other
 4 people did but just make it clear which was you
 5 individually and which was other people.
 6 A Okay my Lord. Thank you.
 7 MR JUSTICE FRASER: Mr Green?
 8 MR GREEN: Now, this is {H/253/1}. This is a letter from
 9 Womble's dated 20 March 2019. That is the day before
 10 you are due to give evidence, so we are in the middle of
 11 cross-examining, and this letter is sent while we are in
 12 court. It says:
 13 "We understand from Fujitsu that the SSC has been
 14 carrying out further work to identify any Peaks that
 15 show transactions being injected into the counter in
 16 Legacy Horizon in addition to those referred to in
 17 paragraphs 29 and 30 of Mr Parker's second statement.
 18 On Monday ..."
 19 So this is Wednesday:
 20 "On Monday we learned that an SSC technician has:
 21 Searched for all KELs that mentioned RiposteMessageFile,
 22 Ripostempport and RiposteMessage"; correct?
 23 A Correct, yes.
 24 Q "Collated the responsive KEL references ... re-searched
 25 the Peak system for any Peaks which contained those KEL

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1 references; and identified ..."
 2 Some further Peaks.
 3 A That's correct. Yes.
 4 Q You haven't amended paragraph 29 of your second witness
 5 statement and corrected it to include those Peaks or an
 6 explanation in paragraph 29 of that search having been
 7 undertaken, have you?
 8 A Can I refer to that? So in my second statement ...
 9 Q Yes. Look at {E2/12/10}.
 10 A I can do that on paper, but yes, okay. So paragraph 29
 11 of that one?
 12 Q Yes.
 13 A Yes?
 14 MR JUSTICE FRASER: Are you looking at the paper copy?
 15 A I'm looking at the paper copy.
 16 MR JUSTICE FRASER: Can we retain on the common screen the
 17 document at {H/253/1} please? Right.
 18 Mr Green?
 19 MR GREEN: There are a number of points which arise in
 20 relation to that letter. The first is that different
 21 search terms have been used.
 22 A That's correct. Yes.
 23 Q For example.
 24 In this search the RiposteImport command has been
 25 searched for, which is the directly applicable one for

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1 injecting data; yes?
 2 A RiposteImport is one of the ways of injecting data, yes.
 3 Q And if we look at your paragraph 29, that was not one of
 4 the search terms that was used when that search was
 5 undertaken.
 6 A That's correct. Yes.
 7 Q So the real reason that the amendment that was made to
 8 paragraph 19 to somehow cater for the fact, without
 9 actually saying it out loud that additional searches had
 10 been done, and additional results had been done that you
 11 hadn't dealt with in your statement?
 12 A These are additional to the searches from my original
 13 statement, yes.
 14 Q We all know that. We know that they are not in there
 15 and we know that they are additional because they were
 16 provided the night before you were due to be
 17 cross-examined, or the day before you were due to be
 18 cross-examined?
 19 A Yes.
 20 Q The question I'm asking you is the fact that those
 21 searches had been done, that's the real reason for the
 22 change in your third statement, isn't it? I think you
 23 have effectively accepted that already.
 24 A I must admit I'm not clear on your point, but --
 25 Q Well, let's have a look one last time.

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1 A -- I accept that we have added in extra search items to
 2 give us more information.
 3 MR JUSTICE FRASER: I wonder if we could do two things.
 4 Mr Green, when you are saying, "The real reason",
 5 I think you need to specify or particularise what, in
 6 fact, the witness either did or didn't do or what the
 7 witness either understands or doesn't is the real
 8 reason, because that phrase is open to --
 9 MR GREEN: I understand my Lord.
 10 MR JUSTICE FRASER: -- a little bit of misinterpretation,
 11 potentially.
 12 MR GREEN: My Lord.
 13 MR JUSTICE FRASER: And, Mr Parker, in that last answer you
 14 used the first person plural again and said, "We".
 15 A Yes.
 16 MR JUSTICE FRASER: I wonder if you could just remember what
 17 I said earlier on.
 18 A Apologies. Yes, my Lord.
 19 MR JUSTICE FRASER: You don't need to apologise, it is
 20 understandable if you work in a corporate environment,
 21 you are used to doing that.
 22 A Yes. Indeed.
 23 MR JUSTICE FRASER: But it's your evidence and you are the
 24 person being cross-examined, so ...
 25 Right. Mr Green?

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1 MR GREEN: Was it your idea to make the corrections in the
 2 statement? Your third witness statement.
 3 A I notified the legal team that Mr Simpkins had done some
 4 more work and as a result of that we changed -- we --
 5 this letter was actually generated.
 6 Q And you didn't think it was important to correct
 7 paragraph 29 of your second witness statement accurately
 8 to reflect the situation as it would have been on the
 9 day you were due to give evidence, or indeed today?
 10 A That wasn't a choice I made personally. I was advised
 11 that we generated this letter.
 12 Q Can I ask on a different point, just so we understand
 13 what the effect of the combination of these statements
 14 is?
 15 If we look, please, at {E2/11/3}?
 16 Now, you will see there paragraph 11. This is your
 17 first witness statement and this is where you were --
 18 your witness statement was commenting on Mr Roll's
 19 statement; yes?
 20 A That's correct. Yes.
 21 Q And Mr Roll had given evidence about what Fujitsu was
 22 able to do if terms of its powers; yes?
 23 A Yes.
 24 Q And what could be done?
 25 A Yes.

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1 Q And you have subsequently accepted, I think, that you
 2 needed to modify your first witness statement in respect
 3 of that?
 4 A Yes.
 5 Q So let's look at paragraph 11, because we don't have one
 6 consolidated witness statement explaining what your
 7 evidence is now. We have to infer it from five
 8 different documents, don't we.
 9 A Yes. We do, yes.
 10 Q Okay, so let's look at paragraph 11 and look at the end
 11 of paragraph 11. You say there:
 12 "As I explain below, those suggestions are incorrect
 13 and Mr Roll's account of Fujitsu's actions and powers is
 14 inaccurate and misleading".
 15 A Yes.
 16 Q Now, when you took the oath and then said you believed
 17 your witness statements to be true --
 18 A Yes?
 19 Q -- what were you saying to the court about that
 20 sentence? Could you just explain it please?
 21 A In that paragraph I am trying to make the point that the
 22 suggestion that we frequently changed branch transaction
 23 data without informing the branches that such actions
 24 were being actually taken is not correct. "Frequently",
 25 is a subjective term but I would not have described the

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1 rate at which we were changing branch transaction data
 2 as, "Frequently".
 3 Q Well, pausing there, your position in your first witness
 4 statement was, at least in one material respect that you
 5 have now changed your position on, that Fujitsu couldn't
 6 do it at all, and you have accepted that in the light of
 7 Mr Roll's, as you say, clarification, you would now
 8 accept that Fujitsu did have powers which, in your first
 9 statement, you didn't accept that it did have. That's
 10 fair, isn't it?
 11 A I'm not aware of where I have said that we never changed
 12 branch transaction data.
 13 Q Well, you have said -- you have answered about the part
 14 of the paragraph I specifically didn't ask you about,
 15 and the part of the paragraph I did specifically ask you
 16 about is the last line where you say:
 17 "As I explain below, those suggestions are incorrect
 18 and Mr Roll's account of Fujitsu's actions and powers is
 19 inaccurate and misleading".
 20 A Yes.
 21 Q Now, given the change of your evidence in your later
 22 statements about the ability remotely to access and
 23 inject transaction data, can you explain to the court
 24 what you were saying you believed about that sentence?
 25 What should the court now read for those words in the

22

1 light of the three statements that it has before it?
 2 A If I take the last sentence in isolation, which is what
 3 I think you are asking me to do, then I don't understand
 4 how I apply it, because I am -- I have been simply
 5 trying to say there that the frequency was not high, and
 6 that we would always involve the SubPostmaster wherever
 7 possible if that sort of action was actually being
 8 taken. That's what I'm trying to say by that.
 9 Q Well, pausing there, can you focus on the word,
 10 "Powers", in that line? Do you see that?
 11 A Sorry, for the word, "Powers"? Yes. Okay.
 12 Q Yes? Let's not talk about actions, how frequently it
 13 was done or not?
 14 A Okay. Yes?
 15 Q Because what you said about Mr Roll was his evidence
 16 about Fujitsu's actions which could be the frequency,
 17 but powers was also misleading. If we just go
 18 through -- just for a moment we will go forward, I'm
 19 only going to ask you this one more time, but to give
 20 you context, let's have a look at {E2/12/9} please. By
 21 way of example you say at paragraph 27:
 22 "In paragraph 20 of Roll 2, Mr Roll describes
 23 a process by which transactions could be inserted via
 24 individual branch counters by using the correspondence
 25 server to piggy back through the gateway. He has not

23

1 previously made this point clear. Now that he has,
 2 following a discussion with colleagues who performed
 3 such actions I can confirm that this was possible".
 4 So you weren't in a position to say that this was
 5 possible before, and you didn't say it was possible
 6 before.
 7 A That's correct. Yes.
 8 Q You didn't say that Fujitsu had that power before, did
 9 you, in your first witness statement? And you accept
 10 that it does now?
 11 A I accept that Fujitsu has always had that power.
 12 I think it was a case of the phrasing of my original
 13 statements in relation to the point I was trying to get
 14 over there.
 15 MR JUSTICE FRASER: Did you know that Fujitsu had that
 16 power --
 17 A Yes.
 18 MR JUSTICE FRASER: -- just wait for the question.
 19 A Sorry.
 20 MR JUSTICE FRASER: When you signed your first witness
 21 statement?
 22 A Yes.
 23 MR JUSTICE FRASER: You did.
 24 A I did, yes.
 25 MR GREEN: Let's step back for a moment and just look at

24

1 your role. You say in paragraph 7 of your first witness
 2 statement at {E2/11/2}, paragraph 7, you say, at the end
 3 of that statement:
 4 "Although I didn't have the formal title, I acted as
 5 the Deputy Manager to the SSC as a whole".
 6 A That's correct. Yes.
 7 Q Now, Mr Roll didn't remember it exactly that way. How
 8 could people tell that you were acting as the Deputy
 9 Manager of -- to the SSC?
 10 A They could tell by the fact that I would stand in for
 11 the manager in his absence. I would also make decisions
 12 on approving actions for him and other operational
 13 decisions in general.
 14 Q You say at paragraph 7.1 you were responsible for the
 15 management of incidents between December 2009 and 2010?
 16 A That's correct. Yes.
 17 Q Through the whole support process?
 18 A That's correct.
 19 Q So a detailed knowledge of that?
 20 A Yes.
 21 Q And 7.2 in March 2010 you became the manager of SSC and
 22 was responsible for the provision of third line
 23 application support to the Post Office account,
 24 including the management of the staff working on the
 25 account, so you well understand what third line support

25

1 does.
 2 A I do, yes.
 3 Q Is that fair?
 4 A I do, yes.
 5 Q Would you agree with the description that Mr de Garr
 6 Robinson gave to Mr Roll of you being part of the super
 7 elite and Mr Roll being part of the elite? Would you
 8 regard yourself as being part of the super elite in that
 9 way?
 10 A I wouldn't have used that wording but in any support
 11 group there are people of varying skills.
 12 Q Because the impression -- I mean I understand the answer
 13 you have just given to his Lordship is that you knew
 14 when you did your first witness statement that it was
 15 possible to piggy back in the way that we have seen
 16 Mr Roll suggesting, but you didn't mention it. I'm
 17 going to suggest to you that you gave your evidence from
 18 the position of not being terribly well informed about
 19 what could or could not be done. Is that right or
 20 wrong?
 21 A That would be wrong. It can be difficult to remember
 22 exactly what was being done 15 years ago in detail, but
 23 in general terms I am confident of the information I
 24 gave.
 25 Q Apart from not mentioning something that you knew about

26

1 when you did your first witness statement.
 2 A Yes.
 3 Q Now, just in terms of the role of third line support,
 4 there are -- the support function of third line support
 5 has got the -- there is the software support centre
 6 which is SSC, isn't there?
 7 A That's correct, yes.
 8 Q And then there is Management System Support which is
 9 a separate group?
 10 A Yes. That is also correct, yes.
 11 Q And you were in SSC and so was Mr Roll?
 12 A That's correct, yes.
 13 Q So the evidence you are giving is about SSC?
 14 A It is, yes.
 15 Q You would expect third line support staff to undertake
 16 in-depth investigations into incidents, wouldn't you?
 17 A I would expect staff within the SSC to be covering both
 18 second line and third line roles and having varying
 19 skills. Some of those staff would undertake in-depth
 20 investigations.
 21 Q Let's just clarify. Mr Roll's evidence was consistent
 22 with an expectation that third line support would
 23 undertake in-depth investigation into incidents. Do you
 24 agree with that?
 25 A I agree that that is one of the roles of the third line

27

1 group, yes.
 2 Q And they would have detailed knowledge of the system
 3 based on documentation and source code inspection,
 4 wouldn't they?
 5 A The detail of the knowledge would vary person to the
 6 person.
 7 Q But the third line support role, they would be expected
 8 to have detailed knowledge of the system, based on both
 9 documentation and the inspection of source code.
 10 A For some members of staff that would be true, yes.
 11 Q I'm suggesting for all members.
 12 A No. I couldn't -- could not agree with that.
 13 Q And I'm suggesting that definitely for Mr Roll.
 14 A I couldn't agree with that either.
 15 Q Okay.
 16 They would also be trained on not only the operating
 17 systems but also the commercial off-the-shelf packages
 18 that underlie the application?
 19 A That is correct. Yes.
 20 Q And the coding languages used within the application?
 21 A Some of them, yes.
 22 Q No, all of them.
 23 A No, some of them.
 24 Q Okay, and they were also expected, weren't they, to
 25 train themselves by examining support guides, design

28

1 documentation and so forth for the components of the end
 2 user application?
 3 A That is correct, yes.
 4 Q And they would also have access to development and
 5 package management tools to allow the production of
 6 specialised diagnostic code, scripts and support tools.
 7 A That is correct, yes.
 8 Q Are you beginning to recognise this? Let's have a look
 9 at {F/823/19}. This is Fujitsu's own document, and look
 10 at page {F/823/19} please. Paragraph 5, and it spells
 11 out what third line support are supposed to do?
 12 A It does indeed.
 13 Q I have basically just been reading this out to you.
 14 A Yes indeed.
 15 Q Some of it you agreed with and some of it you disagreed
 16 with and some of it you partially disagreed with?
 17 A That is correct in the context of individual people
 18 within the group, yes.
 19 Q So you would expect them, I think you would accept, to
 20 undertake in-depth investigation into incidents; yes?
 21 A I would expect that of certain members of staff. The
 22 skill level varied amongst the members of staff and the
 23 skills of each staff member on individual subjects it
 24 varied.
 25 Q Well, Mr Roll was conscientious.

29

1 A Yes he is. I would agree with that.
 2 Q Skilled?
 3 A He is scaled, yes.
 4 Q Experienced?
 5 A He is, yes.
 6 Q And you gave him a personal reference?
 7 A That's correct, yes.
 8 Q Your witness statement slightly tends to underplay his
 9 involvement and skill level, doesn't it?
 10 A My witness statement was an accurate reflection of my
 11 view of Mr Roll's skills.
 12 Q And the answers you were giving until you began to
 13 recognised what was being read to you, were slightly
 14 underplaying what third line support did, weren't they?
 15 A No. What -- there is a varying degree of skills and
 16 actual knowledge within the group. Not everybody cannot
 17 know everything about all aspects of the actual system.
 18 Skills would actually vary, knowledge would vary. We
 19 would have, and do have, specialists in different areas.
 20 Q Let's move forward if we may, please.
 21 Now, Mr Roll's recollection of what he was doing was
 22 challenged in cross-examination. Were you here for
 23 that?
 24 A Yes I was, yes.
 25 Q And it was challenged on the basis of the spreadsheet

30

1 which you exhibited to your witness statement. Yes?
 2 A That was part of it, yes, indeed.
 3 Q Because it's in your witness statement, first witness
 4 statement, paragraph 28, which is at {E2/11/8}. You
 5 say:
 6 "Between 1 January 2001 and 31 December 2004 ... the
 7 SSC received a total of 27,005 calls, meaning that on
 8 average 563 calls per month were dealt with over this 4
 9 year period. This is shown by a spreadsheet prepared by
 10 a team in the SSC which appears at ... SPP 1".
 11 Now, let's pause there. Who was in the team?
 12 A To produce that information there were at least two
 13 other people within my team who helped me to produce the
 14 basic stats. I analysed the stats into the summary that
 15 you see there.
 16 Q Well, let's take it in stages.
 17 A Yes, by all means.
 18 Q Who were the people that you are referring to that did
 19 that exercise?
 20 A Two of my colleagues, John Simpkins and Mark Wright.
 21 Q And they are organised and work as a team?
 22 A They are part of my team.
 23 Q Would they normally work together as a team?
 24 A They would two of the senior people within the group so
 25 yes, they often do.

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1 Q Okay. Let's look, please, if we may, at {F/1839/1}.
 2 Was there any reason why you didn't say who they were?
 3 A No particular reason, no. I mean, I produced the
 4 summary and the pivot tables in that document. I just
 5 didn't do the searches to produce the raw data.
 6 Q Well, let's have a look, if we may. So we have got
 7 {F1/839/1} and we are going to look at the tab at the
 8 bottom which is called, "RR Peak Live by Category".
 9 It's just across there. Could we make that a little bit
 10 bigger please? Could you scroll up to the top? If you
 11 could hold down the control button on the keyboard and
 12 roll the mouse forward it will just expand a little bit.
 13 We can just see what the categories are.
 14 A I do, yes.
 15 Q So your evidence about what Mr Roll was doing was based
 16 largely on this spreadsheet, wasn't it?
 17 A It was based largely on this spreadsheet but also my
 18 recollection of the work that Mr Roll completed.
 19 Q I mean, you sounded a little bit hazy earlier on about
 20 things that had happened a long time ago. This
 21 spreadsheet you regard as important to get done, so that
 22 it would refresh your memory. Is that right?
 23 A I thought it was important to get this done to give the
 24 court accurate -- more like accurate information to
 25 support my recollection.

32

1 Q Because the accuracy of the information is very
2 important, isn't it.
3 A The accuracy is important, yes.
4 Q It is very important.
5 A It is very important. Yes.
6 Q That wasn't intended to be a controversial question,
7 Mr Parker.
8 Now, in paragraph 36 of your witness statement, if
9 we can just give this context, it's at {E2/11/9}, you
10 say:
11 "I disagree with Mr Roll's suggestion that much of
12 the work being carried out by the SSC while he was
13 employed could be described as firefighting coding
14 problems in the Horizon system. There were times when
15 the SSC was very busy, for example networking problems
16 causing application issues across the whole estate and
17 data centre outages. But there were only rare
18 circumstances where a coding issue had an estate wide
19 impact and, in those instances, Mr Roll would have been
20 involved in executing avoidance actions to mitigate
21 impact to the estate ..."
22 There was still a need, wasn't there, as we have
23 seen in the description of third line support, to
24 address coding issues even if they are not having an
25 estate wide impact?

33

1 A That is true, yes.
2 Q And if we look at paragraph 40 {E2/11/10} you say:
3 "With that in mind, the final response codes that
4 were allocated to incidents (ie Peaks) reported to SSC
5 between 1 January 2010 and 31 December 2004 were as
6 follows ..."
7 And you set them out, and you got those from the
8 spreadsheet that we have just been looking at?
9 A I did, yes.
10 Q And this was the basis upon which Mr Roll's evidence was
11 directly challenged, and this was put to him, and he
12 accepted that the figures that he was being shown didn't
13 reflect his recollection as he remembered it.
14 A Sorry, did you say, "Did", or, "Didn't"?
15 Q Did not. Sorry, I may have misspoken there. He
16 accepted very fairly that the figures that he was being
17 shown didn't reflect the situation as he remembered it?
18 A As he remembered it, indeed, yes.
19 Q Yes. So let's go back to {F/1839/1} please? It's the
20 one we had open. That's very helpful. Thank you. Can
21 we go back to that tab? That's it.
22 So what you have done in your -- in the spreadsheet
23 is the closure categories, which is a code given by the
24 operators when a Peak is closed by number --
25 A That's correct. Yes.

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1 Q -- have been recorded in column A?
2 A Yes.
3 Q The associated description has been recorded in column
4 B?
5 A That's correct.
6 Q And the overall count recorded in column C.
7 A That's correct. Yes.
8 Q Yes? And then Mr Roll's count where he is expressly
9 mentioned --
10 A Yes.
11 Q -- as having been involved is in column D; yes?
12 A I would describe it not as expressly mentioned. Richard
13 Roll would have been the person who put the final
14 response on, not necessarily mentioned in.
15 Q So it's only where he put a final response on?
16 A Correct. Yes.
17 Q So lots of other ones where he may have done that?
18 A Generally no. The person who puts the final response on
19 is the technician who has been most involved in
20 completing that work.
21 Q But you could be involved in lots of Peaks where you are
22 not the person looking into them trying to help, where
23 you are not the person who is the final person who signs
24 off.
25 A That would be a much -- a very small incidence.

35

1 Q Well, we will have a look at that in a minute, but let's
2 have a look at what you have chosen to put at column E.
3 Now, is that your heading at column E?
4 A It is, yes.
5 Q So who did columns A and B and C?
6 A A, B and C were just established as a pivot of the main
7 data. I'm fairly sure I did that myself.
8 Q Okay. So you did a pivot table of the main underlying
9 data?
10 A Yes.
11 Q Fine, and then column D. Who did that? Who went
12 through and decided whether it was an RR count or not?
13 A The RR count, as I remember it, was based on the
14 original extract from the database and it would be
15 whether or not Mr Roll put the final response on that
16 Peak.
17 Q I understand that --
18 A So the original database --
19 Q Who did it?
20 A -- I see, so the original database extract was done by
21 John Simpkins as an sql search on the database.
22 Q And then potential software error. Who decided --
23 A That was me.
24 Q That's you, and then you have done the columns all the
25 way off to the right have you?

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1 A I have, yes.
 2 Q And so, "Potential software", is your description?
 3 A That's right. Yes.
 4 Q And you have only included four categories of those?
 5 A I have, yes.
 6 Q 59, 60 and 61?
 7 A Yes.
 8 Q And 74?
 9 A Yes.
 10 Q So as an example of one of the ones you have excluded,
 11 70, you have excluded that one?
 12 A Avoidance action, I have.
 13 Q And you have excluded, "Administrative Response"?
 14 A I have, yes.
 15 Q And, "Solicited Known Error"?
 16 A That's correct.
 17 Q Yes. Okay. That's your decision, not Mr Simpkin's or
 18 anyone else?
 19 A It was mine, yes.
 20 Q Because you wanted to give an accurate impression to the
 21 court.
 22 A That's what I was actually seeking to do, yes.
 23 Q And you are very familiar with these codes and what they
 24 involve.
 25 A "Very", would be a bit strong. I am familiar with them,

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1 yes.
 2 Q If you wanted to give an accurate impression to the
 3 court did you check with anyone before you decided on
 4 those categories or did you just have a little bit of
 5 a go yourself?
 6 A I did those based on my own experience.
 7 Q Did you check with anyone?
 8 A No I didn't.
 9 Q Okay. In fact, in your statement you actually go a sort
 10 of step further and say that the potential software
 11 error we have in column E, even that doesn't mean there
 12 actually was one, because it could be something as
 13 trivial as the use of, "KG", or something like that.
 14 A It could be a trivial problem indeed, yes.
 15 Q Yes, so even where you have plucked out, I think, four
 16 times in his entire career where he was involved in
 17 a potential software error on that analysis, even those
 18 might not actually be one? That's your point?
 19 A That is possible. It was actually 29 showing there, not
 20 four. I think you just said, "Four".
 21 Q Sorry, the four we see there, you are right, the total,
 22 if we go all the way up --
 23 A Sorry, you mean the four different categories?
 24 Q Yes.
 25 A Apologies. Yes.

38

1 Q I could have made it clearer. That's my fault.
 2 You would accept, wouldn't you, that some software
 3 errors may look like user errors.
 4 A At first analysis I think that is possible. Generally
 5 though, when you see a pattern of repeating user errors
 6 you then immediately think, well, there must be more to
 7 this.
 8 Q Yes.
 9 A But yes, some could, yes. Agreed.
 10 Q It's unlikely that people will suddenly be careless in
 11 the same way --
 12 A Correct.
 13 Q -- from out of nowhere.
 14 A Correct.
 15 Q Now, let's have a look, if we may, please, at category
 16 68 please. You have got that in that line there. Could
 17 you just tell the court what you understand that
 18 encompasses?
 19 A "Administrative Response", was used when -- in a number
 20 of situations when there was no work to be done, you
 21 would use, "Admin Response". When there was no
 22 technical work to be done you would use it. It would
 23 also be used when no other closure category was
 24 appropriate.
 25 Q Okay. Well, it was specifically not to be used as

39

1 a catch-all for, "Unable to decide which category to
 2 use".
 3 A That would be fair.
 4 Q The reason it's fair, I think, is because if we look at
 5 F -- we will keep that available as it is if we may --
 6 but if we look briefly at {F/823/24}, albeit a 2011
 7 document, we can see there, "Administrative Response",
 8 at 9.1.9:
 9 "Only to be used for closing calls which cannot be
 10 closed in a legitimate category for 'administrative'
 11 reasons -- eg incident incorrect changed by the
 12 system ... test calls; mis-routes; double escalates;
 13 unintended escalates, etc".
 14 So it is an Administrative Response, isn't it?
 15 A I would agree with those, yes.
 16 Q What it is not to be used for, as we see there
 17 expressly, it is not to be used as a catch-all for,
 18 "Unable to decide which category to use".
 19 A It does say that indeed, yes.
 20 Q Now, let's have a look, if we may, at {F/16/1} please?
 21 We need to look at the second page of this because
 22 that's where it actually begins, the text begins on
 23 {F/16/2}. It's Peak 0027887 and it's given a category
 24 B, "Business restricted". That is a serious category,
 25 isn't it?

40

1 A It's one of the more serious categories, yes.
 2 Q Because it only goes up to A.
 3 A A through E, yes.
 4 Q So this is the second-highest category?
 5 A It is.
 6 Q We have seen this one before during the trial, you have
 7 probably been in court when it has been mentioned, it is
 8 the one where there is a balance bought forward on week
 9 12 of £1 million, over £1 million -- £1,082,544.32 --
 10 that subsequent doubles; yes?
 11 A Yes.
 12 Q It's very serious. It is described in the summary as,
 13 "Receipts and payments mis-balance"; yes?
 14 A It is indeed, yes.
 15 Q And then if we look on page {F/16/3} of that please, you
 16 can see the doubling in the bottom box, the bottom
 17 yellow box.
 18 A Yes.
 19 Q To £2.279 million?
 20 A Yes.
 21 Q Then it says:
 22 "The discrepancy was therefore 1,082,540.28. This
 23 was due a known software error which has no been
 24 resolved".
 25 A That's correct.

41

1 Q Now let's assume in your favour that that was, "Has now
 2 been resolved"; yes?
 3 A I don't know but --
 4 Q Or, "Not been resolved". We don't know.
 5 A It must be either, "Now", or, "Not", I would think, yes.
 6 Q If we go to page 8 please {F/16/8} we can see in the
 7 bottom box of 13 October a number of different
 8 investigations into different periods, periods 9, 10 and
 9 11 and 12 and 13.
 10 A Yes.
 11 Q And at the bottom we can see that there is an agreement
 12 at least with Mike Crowshaw's explanation of the
 13 imbalances in periods 10 and 11 which were due to
 14 a stock transfer of £12,000 which was not settled
 15 correctly to the presence of a corrupt DLL file on the
 16 PC involved.
 17 A That's what the notes say, indeed.
 18 Q And there are various different aspects they are also
 19 investigating. They are concerned they may not have
 20 sufficient evidence; yes?
 21 A Yes.
 22 Q Over the page, if we see at {F/16/9}, insufficient
 23 evidence at the top, then further data provided, yellow
 24 box at the bottom, halfway down:
 25 "I have obtained new evidence ..."

42

1 There are ten different people working on this Peak.
 2 That's not uncommon, is it?
 3 A Those extra people working on the Peak are in the
 4 Development group and not the SSC but I would agree
 5 there were multiple people working on this Peak, yes.
 6 Q And if we go to page {F/16/11} there is a target release
 7 halfway down, set to M1 to reflect the categorisation.
 8 A Reflecting the release when this might be fixed at, yes.
 9 MR JUSTICE FRASER: Where are you looking?
 10 MR GREEN: Sorry, halfway down my Lord.
 11 MR JUSTICE FRASER: Which colour?
 12 MR GREEN: In the yellow box, July 2000, 11.03.
 13 MR JUSTICE FRASER: Yes.
 14 MR GREEN: If we go over the page {F/16/12}, some surprise
 15 being expressed at the bottom of the page that it only
 16 had six counter 32 transactions. Counter 32
 17 transactions are transactions that had not been done by
 18 the SubPostmaster or assistants, aren't they?
 19 A Without looking at the original data I cannot be sure
 20 what that notation means. I could assume that 32 was
 21 the identifier used for central correspondence servers
 22 and not the counters.
 23 Q Yes.
 24 A That's all I can sensibly say without looking at the
 25 original data and not actually knowing why that

43

1 particular note has been made.
 2 Q Well, that was what the significance of 32 was, wasn't
 3 it?
 4 A I don't know --
 5 Q Normally.
 6 A -- in this case. 32 is the identifier used for
 7 correspondence server main data centre server messages.
 8 Whether that's what was meant here I don't know.
 9 Q Okay. Then you will see on {F/16/13}, a third of the
 10 way down:
 11 "I see this is a very old problem ..."
 12 July '99:
 13 " ... there have been many ... updates ... may I
 14 suggest we discontinue investigation of this particular
 15 problem ..."
 16 Just underneath that you will see the defect cause,
 17 three lines up from the bottom, updated to
 18 development -- code?
 19 A Sorry, where are you? Three lines up from the bottom?
 20 Sorry, of the top box?
 21 Q Of the top box. You see that?
 22 A Yes. Got that.
 23 Q You have got, "Code", and then in the box below:
 24 "Closing call on the basis of insufficient evidence.
 25 As this is such an old call I have not contacted the

44

1 call originator. I suggest that this call remains
 2 closed!"

3 Do you see why there is an exclamation mark there?

4 A I don't know.

5 Q And then we see it is categorised as Category 68,
 6 Administrative Response?

7 A It has been closed that way, indeed.

8 Q And it's right, isn't it, that that would have involved
 9 people looking into code and trying to find out what had
 10 gone wrong and trying to trace the underlying cause of
 11 the incident.

12 A In the example that we see there, the Development group
 13 were doing that work, yes.

14 Q Yes, and the person in SSC would have been looking into
 15 it too?

16 A I don't know to what extent Microsure was involved in
 17 looking into code on this particular incident.

18 Q You don't know that, but that's quite likely to have
 19 been done, isn't it?

20 A I cannot say.

21 Q Okay. Let's have a look at another one?

22 MR JUSTICE FRASER: Well, before you go on, categorising
 23 that in your spreadsheet you took from the category that
 24 had been identified in the Peak. Is that right?
 25 "Administrative Response".

45

1 A The spreadsheet reflects the final response used in each
 2 Peak, yes.

3 MR JUSTICE FRASER: Yes. Right.

4 MR GREEN: Let's look, please, at {F/1326/1}. You will see
 5 in the -- halfway down you will see:
 6 "Up to 10 unnecessary reconciliation errors each
 7 week, requiring calls to be raised and checks made.
 8 Could obscure genuine issues"; yes?

9 A That's -- yes. Got that, yes.

10 Q It is a description of what we are dealing with?

11 A Yes.

12 Q It is assigned category C, non-critical?

13 A It is indeed, yes.

14 Q Just look in the yellow box --

15 A The first yellow box?

16 Q Yes.

17 A Yes?

18 Q 11 March:
 19 "Please note (in capitals) this call has an 8 hour
 20 SLA".

21 A That's correct, yes.

22 Q Service Level Agreement?

23 A Yes.

24 Q So it had to be closed within that time; yes, to comply
 25 with the SLA?

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1 A The MSU had to respond to it within that time, yes.

2 Q Okay.

3 If we go over the page, {F/1326/2}, if we look in
 4 the -- Anne-Chambers gets involved. She is involved, it
 5 seems -- appears in a lot of these. Does she still work
 6 at Fujitsu?

7 A No she doesn't, no.

8 Q When did she leave?

9 A I cannot be very accurate -- three, four years ago she
 10 retired.

11 Q Okay. Looking at the top of page 2:
 12 "After investigating the specific incidence I will
 13 use this call to investigate the sudden increase in
 14 zero-value state 4 reconciliation calls -- something
 15 must have changed somewhere. DRS data currently goes
 16 back to 11 December".

17 So that's rather the point you were making about
 18 when you get a pattern it's important to investigate it
 19 seriously?

20 A It is indeed, yes.

21 Q If we go to page {F/1326/3} please, and we look at the
 22 bottom box of that, Anne-Chambers, she is in SSC?

23 A That's right, she is.

24 Q And she is investigating this?

25 A That's right.

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1 Q She says:
 2 "I finally have a theory as to what is happening,
 3 and I think it must be connected to a BAL change ...
 4 That's the Branch Access Layer?"

5 A It is.

6 Q "... made in release 11.7 which went live on 8
 7 February".

8 See that?

9 A I do.

10 Q And if we go down to the penultimate paragraph:
 11 "It is these unsettled transactions, where the CO
 12 has reached TES prior to settlement, which are giving
 13 the reconciliation errors ... I have made various checks
 14 of TES timestamps before and after the upgrade which
 15 support the scenario. Please can development check what
 16 went into R11.47 which has changed the behaviour.
 17 Related to failure to read recovery data?"

18 You can see there, "PC0234448 was fixed to change
 19 the behaviour but I think it went live at an earlier
 20 release?"; yes?

21 A Indeed that's what it says, yes.

22 Q So there are ten people working on this Peak as well --
 23 over ten actually?

24 A Where are the -- I will have to take your word for that.

25 Q There are more than ten different names people dealing

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1 with it?
 2 A That is a slightly dangerous assumption because some of
 3 those people will have been admin people transferring
 4 things round, but --
 5 Q Okay.
 6 A -- that would only account for one or two.
 7 Q Okay.
 8 Let's look at page {F/1326/4} please. To be fair,
 9 Anne-Chambers is driving this?
 10 A From the SSC perspective, indeed, yes.
 11 Q And halfway down:
 12 "A new business impact has been added: Up to 10
 13 unnecessary reconciliation errors each week, requiring
 14 calls to be raised and checks made. Could obscure
 15 genuine issues".
 16 That appears to be the source of what we saw at the
 17 beginning?
 18 A It does.
 19 Q And if we look at the bottom of the page in the yellow
 20 box, Anilkumar Malipatil is Anilkumar in SSC or this
 21 development?
 22 A No, that would be a member of the Development Team.
 23 Q Okay. He says:
 24 "This Peak is the regression of the Peak PC0234448";
 25 yes?

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1 A Indeed he does, yes.
 2 Q And underneath he has put:
 3 "Category 41 -- product error diagnosed"?
 4 A He does indeed, yes.
 5 Q The reason he does that is because there has been
 6 a regression to a problem that had previously happened
 7 as a result of a subsequent software release not having
 8 caught a fix?
 9 A That's the note that the developer has made, yes.
 10 Q And if we look on page {F/1326/5} please, towards the
 11 bottom of the first blue box, penultimate paragraph:
 12 "Risks (of releasing and of not releasing proposed
 13 fix): Without this fix, there will be possibilities of
 14 system errors at counter and while doing reversal
 15 transaction"; yes?
 16 A That's what it says indeed.
 17 Q So that would go into the decision to do the fix or not,
 18 and then if we go forward to page {F/1326/9} please, we
 19 look at the very bottom there, so we have got
 20 Mr Boston -- who is he, three up from the bottom?
 21 A I'm trying to -- John Boston had various roles that were
 22 mainly administrative. I don't know what role he held
 23 in September '16.
 24 Q Because up to that point we can see it is being
 25 categorised as category 60; yes?

50

1 A Yes.
 2 Q And final -- and there is a fix that has been released
 3 to live because we can see that above in the yellow box,
 4 just over halfway down.
 5 A Yes?
 6 Q It says:
 7 "Fix been released. SW fix available to call
 8 logger".
 9 Then let's have a look at how it's closed out by
 10 Jason Muir:
 11 "Now seeing minimal if any zero state 4
 12 transactions. Closing Peak is complete ..."
 13 Oh. It has become 68 suddenly.
 14 A That's how Jason who has closed it -- Jason is a member
 15 of the management support unit.
 16 Q Mm-hmm, so that is one where everyone has been working
 17 on the code trying to develop a fix, been released into
 18 live, and it is closed Administrative Response?
 19 A That is what has happened in this case, yes.
 20 Q If it wasn't so serious to challenge Mr Roll's
 21 recollection on the basis of this -- all these
 22 categories, some of these categorisations are almost
 23 comical, aren't they, Mr Parker?
 24 A I wouldn't describe them as such. I think I do say in
 25 my witness statement that they are the subjective view

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1 of the person doing the closure. I would go on to say
 2 that they were not -- I accept they were not always
 3 right, but in the most cases they were right.
 4 Q Well, that's not accepted, for the avoidance of any
 5 doubt.
 6 You also say that there was no review -- after you
 7 said in your statement that they were subjective, you
 8 also say there was no review undertaken to ensure
 9 consistency or appropriate categorisation?
 10 A That's correct, yes.
 11 Q It's not very robust, is it?
 12 A The codes are used to generally assess the workload. As
 13 long as they are mainly correct they support that
 14 function.
 15 Q But there is no way of checking whether they are mainly
 16 correct, as you have fairly pointed out in your witness
 17 statement?
 18 A That's correct. Yes.
 19 Q Rebut the question: not very robust, is it?
 20 A Depends on the purpose. I would -- the purpose they
 21 were used for was to actually assess the workloads.
 22 They were not expected to be 100 per cent accurate.
 23 Q But accuracy is important for you to have any fair view
 24 of what's actually being thrown up by the system, isn't
 25 it?

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1 A Accuracy is important, yes. These were used to assess
2 the workload, not for any forensic purpose.
3 Q And we also know that the proper management -- just as
4 an aside -- the proper management system wasn't brought
5 in either. We covered that with Mr Godeseth, you were
6 here for that?
7 A Yes.
8 Q So there was no problem management system brought in,
9 notwithstanding it was internally recommended, and so
10 all you're left with is this system of looking at the
11 codes and seeing how they have been categorised on
12 closure.
13 A I'm sorry, I don't understand the correlation between
14 response codes and the problem management system.
15 Q Because the problem management system was going to track
16 what sort of problems were being encountered into
17 a structured way so that an overall monitoring of the
18 system could be done, and give an idea and feedback of
19 where the problems lay, and that was not brought in and
20 that appears to have been a deliberate decision. We
21 covered it with Mr Godeseth and you were here. So I'm
22 saying in the absence of that, all we are left with,
23 data-wise, are these codes, and I have got an entire
24 file -- I'm not going to be able to go through all of
25 them with you -- but I'm going to keep going through

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1 them and I'm going to show you how all of these have
2 been closed, including all the big categories that
3 Mr Roll did, so I'm going to ask you now; do you accept
4 that it was unsatisfactory not to have a proper system
5 in place to ensure these codes were accurately
6 allocated?
7 A For the purpose for which I was using them I cannot
8 accept that. They were used as a general guide to the
9 workload.
10 MR JUSTICE FRASER: When you say, "Purpose", you mean the
11 purpose when you were doing your job at the time, not
12 the purpose in compiling your spreadsheet for the
13 witness statement?
14 A Yes. Correct. Yes.
15 MR JUSTICE FRASER: Because you have used them -- I think
16 you have been quite fair, you have used them for your
17 spreadsheet but you have taken the way that the person
18 categorised them, you haven't made a separate
19 categorisation of your own.
20 A That's correct.
21 MR JUSTICE FRASER: If you are going to start going through
22 your file we will need a five-minute break for the --
23 MR GREEN: My Lord, shall we take that now? We have got
24 quite a lot to cover, so ...
25 MR JUSTICE FRASER: Yes. Now, you do only have two hours.

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1 MR GREEN: I understand that, my Lord, that's why I'm going
2 at some pace.
3 MR JUSTICE FRASER: And some of it, if I may, with
4 respect --
5 MR GREEN: Was a bit long?
6 MR JUSTICE FRASER: Well, it also verged quite a long way
7 into prior submission before you actually put the
8 question. It's really about evidence, not arguing the
9 case. So shall we have the five-minute break now?
10 MR GREEN: By all means.
11 MR JUSTICE FRASER: Right. Mr Parker you get a five-minute
12 break, I encourage you to leave the witness box, move
13 around, stretch your legs, we will come back in at two
14 minutes to twelve.
15 (11.55 am)
16 (A short break)
17 (12.02 pm)
18 MR GREEN: Mr Parker, on the basis that you haven't reviewed
19 any of these Peaks to look at their content, and you
20 have merely relied on the codes that have been
21 allocated -- yes? Is that right?
22 A Indeed that's correct, yes.
23 Q So I'm just going to put some example ones to you to
24 save time.
25 A Thank you.

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1 Q Let's look at Code 62 which is, "No Fault in Product".
2 A Yes.
3 Q We will take an example at -- well, first of all can you
4 just tell the court what you think that means? What
5 does, "No Fault in Product", mean?
6 A I would probably be better to refer to the document,
7 but, "No Fault in Product", would generally be used
8 where we cannot identify a software fault in the
9 particular piece of the application being looked at.
10 Q Did you go back to the document before you allocated the
11 figures in the table on F/1839 to the ones that had
12 potential software error?
13 A I did. I reviewed it.
14 Q Did you? You actually went back to this document?
15 A I reviewed the content of it, yes.
16 Q When you say, "Reviewed" --
17 A I read through it once more. Some of those category
18 codes are not ones that I -- when I was a technician --
19 would have used on a regular basis because they were
20 development codes, so it was necessary for me to refresh
21 my memory.
22 Q Okay. Well, let's be fair to you. Let's go to
23 {F/823/23}. We are going to look at Code 62 which is
24 9.1.3, "No fault in product".
25 A Yes.

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1 Q It indicates that:
 2 "The product is working to specification . No
 3 changes are required in software code, scripts ,
 4 hardware, documentation, work instructions or training
 5 plans. Really indicates that the previous lines of
 6 support have completely miss-diagnosed the problem".
 7 Yes?
 8 A That's what it says indeed, yes.
 9 Q Is that -- did you read that one?
 10 A Yes. I would have read that one.
 11 Q Well, "Would have", and, "Did", are different , aren't
 12 they?
 13 A I did read that one, yes.
 14 Q Okay. Let's look, if we may, now, please, at {F/97/1}.
 15 This is a phantom transaction one. We have also seen
 16 this one before. You can see in the, "Call status", at
 17 the top, "Closed -- no fault in product". Do you see
 18 that?
 19 A I do.
 20 Q We can see that -- if you come down just below -- it is
 21 about the fifth line down, 14.04.01 at 12.55:
 22 "Information: PM ... wishing to complaint about
 23 ongoing system problems. PM had previous complaint open.
 24 That PM was under impression correctly that it would
 25 only be closed with his permission".

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1 Now, pausing there, the Postmaster was right about
 2 that. They should be closed to the SubPostmaster's
 3 permission, shouldn't they?
 4 A That would be a Help Desk process, so I would think so,
 5 yes.
 6 Q Is that something you actually know about or are you
 7 guessing?
 8 A That is something I do not have personal experience of.
 9 I would expect that to be part of the Help Desk process.
 10 Q Okay:
 11 "PM very unhappy about this".
 12 Now, if we go down to about three-quarters of the
 13 way down that page you will see 17.0 4.01, 9.48, and the
 14 word, "Contacted".
 15 A I have got that, yes.
 16 Q "I have left a message on Ki Barnes' voicemail as the PM
 17 is now complaining about her. I was speaking to her
 18 about the last complaint call and we both feel that this
 19 PM is complaining unjustly. She has been in contact
 20 with him and I feel he is complaining because the
 21 feedback has been advising it is user error whereas the
 22 PM thinks it's software".
 23 Yes?
 24 A That's the notes, indeed.
 25 Q So that's sort of suggesting that they have given the

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1 feedback to the SPM that it is user error and the SPM is
 2 a bit distressed and cross about it?
 3 A Suggest that, yes.
 4 Q Okay, and there are a number of further entries . I will
 5 give you an example of one if we go to page {F/97/2}.
 6 You can see at the bottom of that page in the yellow
 7 box, half way down:
 8 "The system is still playing up in that the screen
 9 is hanging in the middle of transactions -- PM did
 10 transaction ... but left office for 1 hour -- when he
 11 came back the monitor had 141 first - class stamps on
 12 screen totalling £38.07", see that?
 13 A Yes. I see that.
 14 Q You would accept that that is not how the system is
 15 supposed to work. Is that fair?
 16 A That's fair .
 17 Q If we go over the page, please, to page {F/97/3}. At
 18 the top:
 19 "I have advised that problem may be due to
 20 environmental issue. May be investigated as such" --
 21 MR JUSTICE FRASER: Where are you reading?
 22 MR GREEN: Sorry, the top yellow box.
 23 MR JUSTICE FRASER: You mean the top yellow box?
 24 MR GREEN: I'm so sorry, top yellow box. Do you see that,
 25 " Possibility of hand-held radios or x-ray machinery, or

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1 is it more likely a software problem", and then {F/97/4}
 2 over the page, halfway down, just a bit less than
 3 halfway down, the letters , "PM would like to add current
 4 complaint"?
 5 A Just below the bold text, isn't it . Yes.
 6 Q "PM would like to add to the current complaint that
 7 transactions are currently appearing and disappearing on
 8 screen and also the PM's counter printer has not been
 9 working either. PM had a message on screen stating to
 10 abort transaction, then the screen froze and timed out.
 11 When logged back in, the transaction was not on screen.
 12 PM re-booted the printer, and a receipt for this
 13 transaction was printed. Now the printer won't print
 14 any receipts whatsoever for any transaction. This is an
 15 ongoing problem".
 16 That's not how the system is supposed to work, is
 17 it?
 18 A It's not, no.
 19 Q And if you look a little bit below that it says:
 20 "Information: PM feels that the system is
 21 unreliable. PM cannot trust this system".
 22 A That's what's said, yes, indeed.
 23 Q And if the PM's experience was as recorded, which you
 24 don't know about, that's not an unfair reaction, is it?
 25 A No. It's not.

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1 Q And if we go to page {F/97/5} --
 2 MR JUSTICE FRASER: Just before you do, go back to {F/97/4}.
 3 You see towards the bottom there is an entry, 1 May
 4 10.56? It's been 20 lines up.
 5 A Yes.
 6 MR JUSTICE FRASER: Do you see that one? Underneath it
 7 says, "Information: ROMEC". Do you see what ROMEC do?
 8 A Engineering. They were the hardware engineering team.
 9 They also did Environmental Surveys.
 10 MR JUSTICE FRASER: Mr Green?
 11 MR GREEN: If we go over the page to page {F/97/5} and look
 12 at the bottom, we have got -- there is -- just -- 3 May
 13 2001, 15.34:
 14 "Information: ROMEC have been to the site and done
 15 all that they can do. There is no more UK SS2 can do
 16 for this site"; yes?
 17 A Indeed.
 18 Q And just below that:
 19 "Ki Barnes has called in. I am unsure as to what to
 20 do with this call now. ROMEC have been to site and
 21 state that they have actually seen the phantom
 22 transactions, so it is not just the PM's word now".
 23 A That's what it says, indeed.
 24 Q "They've fitted suppressors to the kit but the PM is
 25 still having problems. As yet there's been no recurrence

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1 to the phantom transactions but there still may be
 2 problems". Do you see that?
 3 A I do, yes.
 4 Q So there we have got third party witnessing of the
 5 problem by ROMEC, haven't we?
 6 A We have, yes.
 7 Q If we go to page {F/97/7} please:
 8 "I now have pressing evidence to suggest that
 9 unwanted peripheral input is occurring, the likely
 10 source being the screen. This has been seen at old
 11 Isleworth ..."
 12 This is in the yellow box at the bottom.
 13 A Yes, I have got it.
 14 Q Do you have that:
 15 "And warn with OI being the best site. When the PM
 16 has been asked to leave the screen on overnight I have
 17 observed system activity corresponding to screen presses
 18 happening with no corresponding evidence of either
 19 routine system activity or human interference. The way
 20 forward now is to correlate this with Microtouch
 21 complied monitoring software and to this ends Wendy is
 22 arranging for installation of the kit on Friday ..."
 23 And so forth. Do you see that?
 24 A I do.
 25 Q So that's further evidence there, and then if we go to

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1 page {F/97/9} please, the bottom of page 9 --
 2 A Yes?
 3 Q "Phantom transactions have not been proven in
 4 circumstances which preclude user error".
 5 A Indeed.
 6 Q "In all cases where these have occurred a user error
 7 related cause can be attributed to the phenomenon?"
 8 A That is what it says, indeed.
 9 Q So the -- go over the page if we may {F/97/10}:
 10 "I'm therefore closing this call as no fault in
 11 product?"
 12 A That's correct.
 13 Q Is that no fault in the system as a whole or no fault in
 14 the Fujitsu software or no fault in either? What does
 15 that mean?
 16 A I would interpret that as being no fault in the
 17 application software.
 18 Q But it is something that people would have been trying
 19 to work out and investigate from all perspectives.
 20 A There was a lot of work going on there, indeed.
 21 Q Yes, and those perspectives would also have included
 22 trying to see if there was any underlying software
 23 cause, as well as hardware.
 24 A Yes.
 25 Q And if we go, please, to {F/100.1/1}, that is Peak

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1 006832?
 2 A This is a different one I assume from the previous one;
 3 yes?
 4 Q Yes, and this is priority status B, and that is
 5 a relatively high status, as we have established?
 6 A That's right.
 7 Q And it's closed, "No Fault in Product", and it looks as
 8 if -- it says here:
 9 "PM reports he has been having phantom transactions
 10 continually for months ..."
 11 MR JUSTICE FRASER: You have really got to tell us where you
 12 are on the page.
 13 MR GREEN: I'm so sorry -- at the top my Lord.
 14 MR JUSTICE FRASER: At the very top? Yes.
 15 MR GREEN: Very top. Still persisting, and then, "Advice",
 16 just a little bit further down:
 17 "Advice: PM reports that 2 resistance monitors were
 18 sent out but only 1 was replaced as 1 was faulty. The
 19 resistance monitor that was replaced is causing the
 20 problems".
 21 Then if we go down towards the bottom of that blue
 22 box you will see, "Information", in the left-hand
 23 Marcher under 25 July '01, 10.35:
 24 "This office has been identified as a problem office
 25 and as such is being monitored. Wendy Kerrigan has

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1 asked SSC/Development for Performance Monitoring at this
 2 outlet. I suggest this goes to SSC possibly for the
 3 attention of Pat Carroll as he is dealing with phantom
 4 transactions".
 5 Who was Pat Carroll?
 6 A Pat Carroll was one of the senior technicians within the
 7 SSC.
 8 MR GREEN: Was he elite or super elite in my learned
 9 friend's jargon?
 10 MR JUSTICE FRASER: Well, that's not really -- the witness
 11 has already said he didn't agree with, "Super elite",
 12 and, "Elite", and he doesn't know what Mr de Garr
 13 Robinson is doing when he is categorising people.
 14 MR GREEN: Was he at your level of seniority or close to it
 15 or was he similar to Mr Roll? Where was he.
 16 A He was above Mr Roll, a similar level to myself at that
 17 time.
 18 Q So it was quite a serious issue, having phantom
 19 transactions, wasn't it?
 20 A It would be, yes.
 21 Q And thence the category B priority?
 22 A That -- yes. That's true, yes.
 23 Q And if we look at page 2 of that {F/100.1/2} we have got
 24 5 September 2001 in the yellow box, the lower yellow
 25 box:

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1 "Following a significant amount of monitoring we
 2 have been unable to definitively link any
 3 equipment/environmental issues to any particular event.
 4 There have been incidents which showed a possible
 5 correlation between system activity and phantom
 6 transactions. These pointed to a touch screen problem
 7 and as a result the screen was replaced with a resistive
 8 model. As this produced no measurable improvement it
 9 has to be assumed that the problems were user related".
 10 That's closed, "No Fault in Product"?
 11 A It is indeed, yes.
 12 Q And if we go, please, to {F/174/1} this is a KEL which
 13 2000-2004 we can see. Do you see that?
 14 A I do.
 15 Q And it is items appearing on stack without being
 16 selected. That is essentially phantom transactions. An
 17 example of phantom transactions?
 18 A It could be indeed, yes.
 19 Q Symptoms:
 20 "There have been several calls over the last few
 21 months where Postmasters have reported phantom sales.
 22 Items appear by themselves for which the PM has not
 23 pressed an Icon. These may be individual items or
 24 several of the same item. Sometimes when no one has
 25 been near the screen items may appear".

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1 Now, pausing there, your point earlier is when you
 2 get a pattern of these things happening you have to take
 3 notice that it might be system issue?
 4 A We would do, yes.
 5 Q Problem: Since the system cannot put items on the stack
 6 without being told to, the desktop must be receiving
 7 specific requests to sell the items in question. In the
 8 cases I have looked at I could only conclude that either
 9 the screen or the keyboard has been generating key
 10 sequences. A more recent case revealed that the cable
 11 between the screen and the base unit was the root
 12 cause".
 13 Then we see, "Solution -- ATOS":
 14 "In the first instance send an engineer with
 15 a recommendation to replace both the keyboard and the
 16 screen. (Also check whether there is a problem with the
 17 screen cable)".
 18 There are detailed instructions then in terms of
 19 evidence for Pat Carroll to deal with environmental
 20 issues, so would your answer to the previous -- on the
 21 previous Peak be the same that where it is No Fault in
 22 Product what has been recorded is the conclusion is it
 23 doesn't appear to be a software issue, whatever else it
 24 may be?
 25 A It would, yes.

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1 Q And if we now have a look, please, at {F/718/1} --
 2 sorry, yes, F/718 -- now, we are turning here to
 3 Code~70, "Avoidance action supplied". Could you tell
 4 the court what you understand that to be?
 5 A It could be classified as an actual work round we have
 6 advised on some action to be taken to avoid the symptoms
 7 that have been described.
 8 Q Well, let's pause there. Do you accept it is to be used
 9 where there is a fault in the product?
 10 A Not necessarily.
 11 Q Well, let's have a look at {F/823/24} to see what the
 12 document that you recently considered says. What we are
 13 looking for here is avoidance action supplied, and
 14 the -- it's actually over the page, if you have got page
 15 24 there, it's 9.1.10, and the word, "Is", which I
 16 emphasised in my intonation, is in capitals?
 17 A It is indeed.
 18 Q So the correct answer to that question would have been,
 19 "Yes"?
 20 A It would indeed.
 21 Q And you now accept that?
 22 A I do.
 23 Q Okay. So having done that, can we go back to {F/718/1}
 24 please? And this has only been given a priority of C.
 25 Do you see that?

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1 A Yes I do.
 2 Q It is non-critical?
 3 A Yes. Yes I do.
 4 Q And the Service Level Agreements treat priority Level A
 5 and B to the other priorities, don't they?
 6 A We don't have SLAs we have OLAs but yes, there are
 7 different operational timescales to them, yes.
 8 Q And it is also stricter for compliance with priority A
 9 and B than it is for --
 10 A It is, yes.
 11 Q -- the consequences are different, aren't they?
 12 A The consequences are different. The actual operational
 13 timescale which we are expected to respond to is lower
 14 as you go up the priorities from E to A.
 15 Q Yes, and there are liquidated damages thresholds for the
 16 engineer's service and resolution of calls at the Help
 17 Desk for priority A calls and priority B calls, but
 18 there aren't for priority C calls in the same way.
 19 That's fair, isn't it?
 20 A I believe that was the case.
 21 Q Okay.
 22 So as soon as something is priority A or B it means
 23 that those liquidated damages provisions are in play,
 24 but if it's C they are not in play.
 25 A They would be in play for the hardware side but not if

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1 it's a software fault.
 2 Q Okay. Let's have a look. {F/718/1}. This we can see
 3 has Avoidance Action Supplied at the top; yes?
 4 A Yes indeed, yes.
 5 Q Which we have seen is to be used where there is a fault
 6 in the product.
 7 A Yes.
 8 Q And if we go down to the yellow becomes and under the
 9 double tram lines you will see:
 10 "PM states that he has rolled over but the system is
 11 telling him that he hasn't -- PM states that he is in
 12 balance period 7 and he states he is getting the message
 13 'wrong trading period MSG 31318 office balancing
 14 error'.
 15 Yes?
 16 A Yes.
 17 Q You will see in the log line below:
 18 "Non-zero trading position ... on rollover of branch
 19 by user WMC002 to trading period 8".
 20 Do you see the problem?
 21 A I do.
 22 Q So this is a type of payments mismatch issue, isn't it.
 23 A I would be hesitant to classify it as that. All I can
 24 say is it's an office balancing error. That's all I can
 25 see there.

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1 Q Well, just give me a second. (Pause)
 2 Let's go forward, if we may, to page {F/718/2}. If
 3 we look at the bottom yellow box please, Cheryl Card.
 4 Who is she?
 5 A She is a member of the SSC.
 6 Q And who is Lorraine Elliott?
 7 A She was the SSC administrator at that time.
 8 Q And Sheryl card in the bottom yellow box, 27 September
 9 2010, 15: 16:
 10 "The problem occurred on 15/09/20 when stock unit
 11 02 rolled over. This was originally reported, as per
 12 KEL, BALLANTJL759Q, in call PC0204537 ... but for some
 13 reason the call was closed without being investigated.
 14 There is a known problem with the use of the Cancel
 15 button during the stock unit rollover. This is fully
 16 described in KEL WRIGHTM33145J".
 17 Do you recognise that KEL number?
 18 A I don't, no.
 19 Q But that is the payments mismatch number, isn't it?
 20 A I did not recognise it as such. Without seeing it ...
 21 Q Okay, because you didn't look at any of these before you
 22 gave your evidence and compiled the spreadsheet?
 23 A No I didn't, no.
 24 Q And if we go to page {F/718/3}, top of the page --
 25 I think someone may want to say something?

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1 MR JUSTICE FRASER: No.
 2 MR GREEN: Apparently not.
 3 MR JUSTICE FRASER: Or not yet.
 4 MR GREEN: Top of the page on page 3:
 5 "As agreed routing to Gareth Jenkins as at bus apps
 6 desk for advice on how to correct the differences?"
 7 A That's right. Yes.
 8 Q Next yellow box down:
 9 "The branch accounts will need be corrected ..."
 10 A Yes.
 11 Q And advice about how to do that, and if we just go to
 12 page {F/718/7} please, if we look at the severity in the
 13 blue box at the top of the page, it says, "Critical",
 14 doesn't it?
 15 A Yes it does.
 16 Q Yes. "Severity: Critical", but we saw that the Peak
 17 incident management system records it as non-critical?
 18 A It recorded it as C I believe, didn't it?
 19 Q C is non-critical. The definition of C is,
 20 "Non-critical".
 21 A Yes. Correct.
 22 Q Then at the bottom of that page in the yellow box:
 23 "The software issue that caused the discrepancy is
 24 being monitored and all instances are being reported
 25 directly to POL duty manager with all the relevant

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1 figures and reports. I have confirmed that this issue
 2 at this office has already been reported through. P O L
 3 will get in touch with PM regarding any remedial
 4 actions. Closing call ... Call type category 70 ...
 5 avoidance action supplied?"
 6 A Indeed.
 7 Q So there has been pretty detailed investigation of
 8 what's going on and what's gone wrong and it's closed as
 9 Avoidance Action Supplied because that's where there is,
 10 by definition a fault with the system?
 11 A Indeed.
 12 Q So it would be fair to say that a fair categorisation,
 13 if you had read the definition of, "Avoidance Action",
 14 as you say, a fair categorisation on your spreadsheet
 15 would have included that code, wouldn't it, for
 16 potential software errors?
 17 A That code, in my experience, has not always been used
 18 purely for potential software errors, and that's why I
 19 categorised it in a different way from that in the
 20 document. That's the best I can -- you know. Avoidance
 21 Action Supplied has not always been used purely for
 22 a software fault.
 23 Q Well, there are two layers of chaos. One is the way
 24 that categories are assigned. Do you agree with that?
 25 A I agree that they are not checked after use.

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1 Q And that they are highly subjective?
 2 A And that they are very subjective, yes.
 3 Q And the second point is that when you were compiling
 4 your witness statement you went a bit off piste and
 5 departed from the definition that you say you read. Is
 6 that fair?
 7 A It's fair to say that I used the definition my
 8 experience dictated rather than that in the document.
 9 Q You didn't think that was important it make clear to the
 10 court?
 11 A I forgot that that was exactly what I had done in that
 12 circumstance when I prepared that a few months ago.
 13 Q Mr Parker, I will give you an opportunity to consider
 14 this. Is the truth of the matter that when you
 15 looked -- well, is the truth of the matter that you had
 16 not specifically looked at the words of the Avoidance
 17 Action Supplied definition and you went with
 18 recollection without considering the tension between the
 19 definition and your recollection?
 20 A I read the details in that document to refresh my memory
 21 and allocated the codes based on my experience and the
 22 document.
 23 Q Well, in that case, it appears you have taken
 24 a deliberate decision to exclude a category which you
 25 knew included a fault with the product from Potential

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1 Software Error column. Is that what you did?
 2 A What I did was I used my experience to put that in what
 3 I believed to be the right category heading for it.
 4 Q So it was a deliberate decision to depart from the
 5 definition in the documentation we have looked at and
 6 record it as not having even the potential for
 7 a software error? Is that your evidence?
 8 A My evidence is that my experience is that it is used
 9 more times when it is outside a software fault than
 10 inside.
 11 MR JUSTICE FRASER: I wonder if you could put the question
 12 a third time.
 13 MR GREEN: Was it a deliberate decision to depart from the
 14 express words that you had looked at carefully -- or
 15 looked at?
 16 A Yes. It was.
 17 Q Why did you think that was an appropriate thing to do
 18 when giving your witness statement knowing that you were
 19 challenging Mr Roll's recollection by doing so?
 20 A Because my -- that was the value and the way it was used
 21 based on my own experience, so I felt that was a fair
 22 way to define it.
 23 Q Let's look and consider your experience.
 24 What we have seen so far on this example is that
 25 your experience conflicts not only with the content of

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1 this example, but with the definition in the policy
 2 document.
 3 A It conflicts with the definition, certainly, yes, and
 4 this particular example.
 5 Q I suggest to you that Mr Roll's recollection of what he
 6 was doing is correct in the light of what we have seen
 7 so far, isn't it?
 8 A I stand by the original use of that spreadsheet. It is
 9 used to classify, in general, the workload that the
 10 support units do, and that's the way I used it when
 11 I was trying to classify Mr Roll's work.
 12 Q Okay. Well, let's have a look at {F/93/1} then please.
 13 Again, this is actually priority B, business restricted;
 14 yes?
 15 A Indeed, yes.
 16 Q And it is closed for Avoidance Action Supplied?
 17 A Yes.
 18 Q "PM reports she had a discrepancy of a gain ..."
 19 And then it runs out. If we look at the top of the
 20 blue box, please, 15 March 2001:
 21 "PM reports she had a discrepancy of a gain, so she
 22 rolled everything over, and then redeclared her cash,
 23 and adjusted her stock then tried to roll over again by
 24 going to Balance report F6".
 25 If we go down a little bit further in relation to

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1 further advice:
 2 "PM reports that after she had rolled over stock
 3 unit and office she redeclared her cash".
 4 Then underneath that:
 5 "When it got to the print, preview and exit screen
 6 she chose preview like she always does but then it
 7 printed off final balance instead of the trial balance
 8 like the PM wanted. Now she is in CAPO1, period O1,
 9 instead of CAP52 of the previous year. Business period
 10 2. Period 2. PM believes this is a software issue.
 11 Search KEL couldn't find a reference." Yes?
 12 A Indeed it does, yes.
 13 Q Now if what the PM was saying was happening the system
 14 was not working as it should, was it?
 15 A That's true, yes.
 16 Q If we go down a little bit further you can see that just
 17 to rule out a calibration error on the screen they
 18 checked calibration .
 19 A Yes.
 20 Q And the PM says calibration is fine, not out of
 21 alignment, because that was an issue that sometimes
 22 happened, wasn't it?
 23 A There were screen calibration issues, yes.
 24 Q And if we go over the page, please {F/93/2}, in the blue
 25 box, if you come down underneath 1, 2, 3, 4, 5, 6, it

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1 says:
 2 "I believe and also PM confirmed that the 'preview'
 3 button had been pressed for the second time which may
 4 have resulted in final balance printout and SU roll to
 5 CAP1".
 6 So that's your point about when there is a pattern
 7 you have to take it seriously?
 8 A Mm-hmm.
 9 Q And then it refers to two other Peaks. Do you see
 10 those?
 11 A I do.
 12 Q And a KEL, PSTIED34T?
 13 A That's right, yes.
 14 Q "I've advised PM not to press preview or print button
 15 which may cause this type of problem again. PO now have
 16 stock unit 1 CAP ahead of office and therefore PM need
 17 to contact NBSC and seek help on what to do on Wednesday
 18 before rollover"; yes?
 19 A Yes indeed.
 20 Q So the Postmaster has been left to deal with the
 21 consequence for rollover with the help of the NBSC?
 22 A Indeed that's what those notes say, yes.
 23 Q Then at the bottom of page 2, "Have looked at ..."
 24 In the blue box, Martin McConnell. Who is he?
 25 A Martin McConnell was a developer I believe.

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1 Q In the penultimate yellow box he tried to reproduce the
 2 scenario, putting the system under load and so forth?
 3 A Yes.
 4 Q And found he couldn't.
 5 A Yes.
 6 Q Not sure what to suggest. He says:
 7 "Have looked at the PS log, also this does not
 8 reveal any unexpected impulses from other applications.
 9 Spent a few days on this as has Alex Kaiser (in previous
 10 incarnations of this problem)".
 11 There had previously been examples of it. Who is
 12 Alex Kaiser?
 13 A I don't know.
 14 Q "I have no choice but to pass back as insufficient
 15 evidence but would ask that EDSC keeps an eye out to see
 16 if any patterns arise or any sign of the problem
 17 actually being reproduced at will".
 18 Insufficient evidence there and then if we go to
 19 page {F/93/3}:
 20 "Have looked at the PS log".
 21 Got the same message again and then it's actually
 22 categorised as Avoidance Action Supplied.
 23 A It is.
 24 Q Yes? Which is correct where there is a fault in the
 25 system, as we have seen.

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1 A According to the documentation, that's correct.
 2 Q And if we look at the two Peaks that it refers to --
 3 MR JUSTICE FRASER: Just before you do that, on {F/93/3},
 4 Mr Parker, where it says:
 5 "Clearly we need to keep an eye on this type of
 6 situation, the systems we have tried to reproduce on
 7 contains adding all bug fixes ..."
 8 Do you read that as meaning the systems on which
 9 they are trying to replicate the problem?
 10 A Yes I do.
 11 MR JUSTICE FRASER: Is that the same as the expression,
 12 "Test rig", that has been used in other areas?
 13 A Not necessarily. I would think so. I mean, all I read
 14 that to mean was that they weren't sure because the
 15 version of software on the systems they were trying it
 16 on were not the same as what's out in the --
 17 MR JUSTICE FRASER: In the field?
 18 A -- in the field, yes. That's how I would read it.
 19 MR JUSTICE FRASER: Mr Green, back to you.
 20 MR GREEN: I'm most grateful.
 21 If we just look briefly at the -- there are two
 22 other Peaks, I'm not sure I have got time to deal with
 23 them.
 24 MR JUSTICE FRASER: Remember you need to leave time for
 25 re-examination.

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1 MR GREEN: My Lord yes.
 2 Can we just briefly , please, look at {F/589/1}? You
 3 will see this is non- critical and closed with Solicited
 4 Known Error. Do you see that?
 5 A I do.
 6 Q That is a problem of duplicated pouches, as you see
 7 underneath the two tram lines .
 8 A Yes.
 9 Q And the amount that was renned in twice was £25,000.
 10 A That's what the notes says, yes.
 11 Q It's pretty serious for the SubPostmaster?
 12 A I would think so, yes.
 13 Q But category priority is C, non- critical ?
 14 A That's correct.
 15 Q And at {F/589/3} if you look down the penultimate blue
 16 box, 5 March 2010, 12.33:
 17 "POL have been informed of the error. Hopefully
 18 they'll issue a TC to correct loss at the branch. The
 19 underlying problem caused by using previous button
 20 during or just after scanning pouch barcodes, is still
 21 under investigation ".
 22 It is closed as Solicited Known Error?
 23 A That's correct.
 24 Q If we look, just going forward for a moment to
 25 {F/1156/1} we can see there again C, non- critical ,

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1 closed, No Fault in Product, P doing cash declarations
 2 every now and again has a major loss, and you can see in
 3 the yellow box towards the bottom underneath, "Log",
 4 about three-quarters of the way down:
 5 "PM has had cash declaration problem throughout the
 6 year and it losing a lot every now and again".
 7 Do you see that?
 8 A I do.
 9 Q "He 'phoned up helpline told him can't of declared
 10 properly. He states that he losses £2,000 then jumps
 11 suddenly to £4,000, one point they lost £8,000 and is
 12 always losing money. PM stated that he has three post
 13 offices , only happens on this site ", and then about
 14 five , six lines up from the bottom:
 15 "Done a declaration this morning and had a £6,000
 16 also. It shows no error message when doing it. No
 17 report prints out only print-out of cash declarations ".
 18 Pausing there, if the PM is correctly reporting
 19 that, then that would be very serious for the
 20 Postmistress or Postmaster, wouldn't it?
 21 A If it is being correctly reported, yes.
 22 Q And it would not be the system working as it should.
 23 A If we attribute it as a system fault, yes.
 24 Q Let's go forward, please, just to {F/66/1}, this is Peak
 25 0055964. It is a receipt and payments mismatch. Do you

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1 see that? The summary?
 2 A Yes I do.
 3 Q Classified as non- critical , and you can see that in the
 4 top of the blue box at -- on 13 October 2000, "PM is
 5 doing a trial cash account and it is saying receipts and
 6 payments don't match". Do you see that?
 7 A I do.
 8 Q And at the bottom of that blue box, if you go up a few
 9 lines in that last big paragraph you will see on the
 10 right -hand side:
 11 "PM appears to have dealt with her losses and gains
 12 correctly for week 28 by putting into susp account
 13 unable to trace mismatch"; yes?
 14 A Yes.
 15 Q If we go over the page to page 2 please {F/66/2} in the
 16 blue box we can see that the Regional Network Manager is
 17 still not happy, the second blue box down, halfway down:
 18 "RNM still not happy. His PO is closed and PM wants
 19 to balance".
 20 A Yes.
 21 Q Now, this is still only being given a non- critical
 22 priority . Why is that? Category C?
 23 A I can only assume that whoever was looking at it didn't
 24 see fit to actually change it .
 25 Q What should it have been? A B?

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1 A I would probably have classified that as B, yes.
 2 Q And if we read on in that box you will see:
 3 "STA advised me to call EDSC to find out how long it
 4 would take to action and resolve a call . EDSC said they
 5 were dealing with it now and they will speak to me asap.
 6 Spoke to SMC. They said PM was informed incorrectly. He
 7 was told the problem would be resolved by the end of
 8 today but it is only C priority and is only just being
 9 looked into ".
 10 So classifying it as a C priority rather than a B
 11 will have an impact on how speedily it 's looked into ,
 12 won't it .
 13 A Certainly B priorities would be looked into before Cs.
 14 It does not imply that we would deliberately wait
 15 a period of time before looking at a C.
 16 Q Okay. Let's look at the bottom of page 2, penultimate
 17 box which is a yellow one, 18 October 2000. Last line
 18 of that:
 19 "Advised PM that third line are investigating the
 20 mismatch problem".
 21 See that?
 22 A Sorry, you have lost me.
 23 Q In the yellow box at the bottom?
 24 A The 14.52 one?
 25 Q Yes. That's it?

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1 A Yes?
 2 Q Last sentence, so second-last line on the right.
 3 A "Advised PM that third line" -- yes. Got you. Yes.
 4 Q "Third line are investigating the mismatch problem".
 5 That's the sort of thing that third line support
 6 would look into, isn't it?
 7 A Well, generally no. If we are describing a discrepancy
 8 here, discrepancies are a part of the operational
 9 running of the Post Office, and it would be the NBSC who
 10 would normally deal with that kind of thing. It would
 11 only come to the third line support group if there was
 12 a reason to believe it was a software fault.
 13 Q Let's have a look -- help you out on that.
 14 A Okay.
 15 Q Look at page {F/66/3}. Bottom blue -- penultimate blue
 16 box. Se what's going on, just before halfway down:
 17 "I'm not sure how much of this is down to invalid
 18 measures and counter measures but clearly what should
 19 NOT have happened no matter how much the user tries, is
 20 the system resulting in a cash account mis-balance?"
 21 A Yes.
 22 Q So it does appear to be a software issue, doesn't it.
 23 A It does indeed. That is a developer putting in that
 24 update as well. Yes.
 25 Q So that's pretty helpful, and then if we look over the

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1 page on page {F/66/4} and they say, in the yellow box:
 2 "We have done the necessary paperwork for this.
 3 Development have already corrected this particular
 4 fault, with the opening figures and it will be fixed at
 5 CI4".
 6 What is CI4?
 7 A CI4 is a release of the system.
 8 Q Okay, great, and that is closed as, "Reconciliation
 9 Resolved"?
 10 A That's correct, yes.
 11 Q Category 90?
 12 A That's correct. Yes.
 13 MR JUSTICE FRASER: I don't think you are going to have time
 14 to do any more of these.
 15 MR GREEN: I'm not going to do any more of those, my Lord,
 16 I'm cutting it there because -- not least because the
 17 witness accepts that he didn't go through them before he
 18 gave his witness statement.
 19 Just briefly, if I may, Mr Parker, in relation to --
 20 just go back for a moment in relation to the injection
 21 of transaction data, in your witness statement at
 22 paragraph 22 on page 5, that's {E2/11/5} I will just be
 23 very brief on this if I may, but your evidence to the
 24 court was that you knew about the ability to access
 25 remotely when you gave this witness statement.

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1 A Yes.
 2 Q And you knew about the ability to do so by piggy backing
 3 rather than using the correspondence server. That's
 4 what you told the court.
 5 A Yes. Go on. Yes.
 6 Q Well, is that true or not?
 7 A It is true, yes.
 8 Q So you did know about that when you gave your January
 9 statement?
 10 A I knew that we could insert transactions at the
 11 correspondence servers, and it was my belief that that
 12 is what we did.
 13 Q Did you or did you not know when you made your January
 14 statement that you could insert by piggy backing rather
 15 than through the correspondence server?
 16 A If by, "Piggy backing", we mean going on to the counter
 17 and doing it from there, no, I wasn't aware at that
 18 stage. It was only when we started to investigate in
 19 order to provide the evidence that colleagues told me,
 20 well, yes, we did it occasionally at the counter, and we
 21 then investigated more to classify that.
 22 Q Who were the colleagues who told you that?
 23 A I think it was John Simpkins, I think.
 24 Q Any others? Because that's only one and you said,
 25 "Colleagues", and you say, "Colleagues", in your witness

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1 statement as well.
 2 A I checked it again with another one who I believe was a
 3 gentleman named Dave Seddon and he said, "Yes, I do
 4 remember doing that".
 5 Q Did you check with anyone else?
 6 A By that stage we were starting to look into classifying
 7 it so I didn't need to check further because we were
 8 actually producing Peak references where I could see it
 9 being done.
 10 Q Okay, well, the last topic, if I may, very briefly, just
 11 to look at the back of your witness statement where you
 12 did a table, it's at {E2/11/23}. There are three
 13 particular things I want to ask you about. First of
 14 all, who put this together?
 15 A We were given a list of references and various members
 16 of the team would analyse them and give back the
 17 comments.
 18 Q Who gave you the list of references?
 19 A I think it was the legal team.
 20 Q Okay, and who in the team analysed them and gave the
 21 comments?
 22 A I had a spreadsheet reflecting it but I can't remember
 23 all the names for you. It will be --
 24 Q Can you remember anyone?
 25 A I remember John Simpkins, Mark Wright, Dave Seddon. I

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1 believe there was at least one other.
 2 Q Was there any reason why you didn't put the names in the
 3 witness statement?
 4 A Didn't see it as being relevant. They were all members
 5 of my team and I rely on my team to do the technical
 6 details.
 7 Q Okay, and do you know where -- was it your understanding
 8 that the comments that they put in were their own
 9 comments or were they provided for them by someone else?
 10 Do you know? What was your understanding?
 11 A They were their own comments.
 12 Q And did you check them at all or did you just accept
 13 them on trust from them?
 14 A I read through them but I do trust my team to get the
 15 technical detail right.
 16 Q Just very briefly, they comment on the issue of
 17 transaction corrections in various places. Is that
 18 something you know about the system for or not?
 19 A Is that something I know about the system for? Sorry,
 20 I don't ...
 21 Q Did you understand how Post Office decides to issue
 22 a TC, who does it and ...
 23 A No, I don't.
 24 Q Are your team familiar with that, or ...
 25 A We are only familiar with the processing of them, not

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1 how they are actually generated.
 2 Q If we look -- I was going to take you through the first
 3 few and then have a look at another one by example
 4 because we're short of time, if we look, please, at
 5 {E2/11/38}, now looking at that example, do you know --
 6 you are suggesting there that a -- do you see the
 7 response to Mr Coyne there? In the, "Response to
 8 Mr Coyne", column?
 9 A Got you, in the Fujitsu's comments, the first column of
 10 those two, yes.
 11 Q Yes. You see a REN in reversal not particularly common
 12 transaction, prohibited later on.
 13 A Yes.
 14 Q Do you see that?
 15 A I do.
 16 Q Where has that come from? Is that a member of your
 17 team?
 18 A Of my team, yes.
 19 MR JUSTICE FRASER: But you don't know, I imagine, on the
 20 face of this, which of those gentlemen.
 21 A I don't my Lord, no.
 22 MR GREEN: And if we look at -- would you give them any
 23 guidance as to how to do this or not?
 24 A Other than getting them to read the context that the
 25 problems were described in, no.

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1 Q Do you know if anyone gave them any guidance?
 2 A Not aware of it, no.
 3 Q And was it your idea to produce the table?
 4 A What -- in this format?
 5 Q Yes?
 6 A I will be honest, I can't remember. It seems like
 7 a logical format to do things in. I'm not sure whether
 8 I generated it or not now.
 9 Q Is there any reason -- well, did you -- do you know
 10 whether the team had a draft of Dr Worden's report in
 11 front of them before they filled in these comments?
 12 A I don't know. I don't think they did. I think we just
 13 gave them Coyne's report for them to get the context.
 14 MR JUSTICE FRASER: You said, "We", again.
 15 A Sorry, I gave them it, yes.
 16 MR GREEN: My Lord, in the circumstances I will deal with
 17 everything else by way of submissions.
 18 MR JUSTICE FRASER: Yes. Mr de Garr Robinson?
 19 Re-examination by MR DE GARR ROBINSON
 20 MR DE GARR ROBINSON: Mr Parker, there were just a few
 21 questions. At the beginning of your cross-examination
 22 some time was taken on the letter at {H/253/1}. Perhaps
 23 we could look at that letter again. You will recall
 24 that this is a letter written by WBD to Freeth's on 20
 25 March.

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1 A Yes.
 2 Q Which starts by saying:
 3 "We understand from Fujitsu that the SSC has been
 4 carrying out further work to identify any Peaks that
 5 show transactions being injected at the counter ..."
 6 A That's correct. Yes.
 7 Q You have seen that letter before, earlier on.
 8 Could I ask, who is it who provided this
 9 intelligence to Post Office?
 10 A I provided the intelligence. It was provided to me by
 11 a member of my team.
 12 Q I see, and were you aware or not aware or were you
 13 involved in the process by which this further work was
 14 done?
 15 A I wasn't involved in it, no. A member of my team -- the
 16 thought occurred to him that he could add some other
 17 search terms into the work that he had done previously.
 18 Q And so what happened? Did you then become aware --
 19 A I did become aware. He came to me with the new data.
 20 Q And what did you then do?
 21 A I then informed the legal team.
 22 Q Now -- and that then resulted in this letter. You were
 23 asked a large number of questions which appeared to me
 24 at least to carry with it the implication that there was
 25 some attempt on your part to conceal the fact that this

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1 extra work had been done. Would you care to comment on
2 that suggestion?

3 A That suggestion would be wrong. When I was aware of it
4 and I had a chance to actually read it I sent it on to
5 the legal team so that appropriate action could be
6 taken. I was actually quite pleased that a member of
7 the team had taken it upon himself to get even more
8 accurate data.

9 Q You were also asked a number of questions which I think
10 were based upon the implication that in amending your
11 witness statement, your third witness statement as you
12 did, again, there was an attempt to conceal from someone
13 the fact that this extra work had been done. Would you
14 care to comment on that? I'm making what was implicit
15 explicit. Would you care to comment on that suggestion?

16 A I have, at no time, attempted to conceal anything. I'm
17 just trying to get the right data for the court which
18 can be difficult sometimes when you are going back
19 fifteen years.

20 Q Thank you, Mr Parker. Just another few questions, if
21 you will give me a moment.

22 The majority of the time that was spent
23 cross-examining you was spent in an effort to suggest
24 that the spreadsheet that you put together analysing the
25 output of the SSC during Mr Roll's involvement and the

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1 output of Mr Roll's during his employment by Fujitsu was
2 misleading or unreliable or unrepresentative. I would
3 just like to raise that point squarely with you to give
4 you an opportunity actually squarely to address the
5 suggestion that that is the case.

6 A It's not unrepresentative. We use -- although response
7 codes can be subjective, they are our only reasonable
8 way of judging our workload, and we use it for that
9 purpose. Since I was attempting to compare Mr Roll's
10 workload with the workload of the unit as a whole, I
11 felt that was a reasonable way of doing it.

12 Q It was put to you that accuracy was important. Could I
13 ask you to comment on the question whether you think
14 there has been any lack of accuracy or any particular
15 accuracy in the process that you attempted to do?

16 A I have been accurate with the data I have. I accept
17 that you may find a few Peaks where the response code
18 does not tally with the document, but when you are
19 talking about 220,000 Peaks I think human beings will
20 make those errors.

21 Q In relation to particular Peaks you say you could point
22 to a few Peaks, you were taken to a number of Peaks in
23 which it was suggested that the categorisation was
24 wrong, or the closure category was wrong.

25 A Yes.

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1 Q It was suggested to you that -- I think with the
2 implication that you should have looked at these Peaks
3 before you gave your evidence. Now, by my tally, most
4 of the Peaks that Mr Green took you to were Peaks that
5 related to a period during which Mr Roll was not
6 employed. Do you feel it would have been appropriate
7 for you to look at Peaks outside that period for the
8 purposes of analysing -- doing the analysis that you did
9 in your spreadsheet?

10 A For the purposes of that analysis, no, and trying to --
11 even for that analysis period, which was 27,000 Peaks, I
12 couldn't possibly read all of them.

13 MR DE GARR ROBINSON: My Lord, I have no further questions.
14 Thank you Mr Parker.

15 MR JUSTICE FRASER: Thank you very much. Just give me one
16 second. I have a couple of questions.

17 Now, in answering these questions, if you could
18 avoid the first person plural --

19 A I understand my Lord.

20 MR JUSTICE FRASER: -- and also the expression, "My team",
21 because I find it easier if we can deal with names. You
22 have got on the screen {H/253/1} --

23 A Yes?

24 MR JUSTICE FRASER: -- which Mr de Garr Robinson has just
25 been asking you about now. Am I right that the extra

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1 work that was being done was being done by Mr Simpkins?

2 A That's correct.

3 MR JUSTICE FRASER: Is that correct?

4 A That is.

5 MR JUSTICE FRASER: Is it the case you asked him to do that
6 work or you just found out he was doing that work.

7 A I did not ask him to. He did the original work and then
8 came back to me some period afterwards and said, "I have
9 just thought of this".

10 MR JUSTICE FRASER: Right. Now, when did he do that?

11 A I cannot be exact. It was shortly before I gave it to
12 the actual legal team because I would have looked at it,
13 read it, and then passed it on.

14 MR JUSTICE FRASER: Well, if we could avoid, "I would have",
15 I would like to know what you can remember doing and if
16 you can't, that's, of course, understandable. Are we
17 talking in the last couple of weeks or earlier than
18 that?

19 A Last couple of weeks prior to 20 March when this was
20 generated?

21 MR JUSTICE FRASER: Yes.

22 A Yes, it would have been in that time period.

23 MR JUSTICE FRASER: So it's some time -- and why want to put
24 words into your mouth so if you can't remember --

25 A Understand.

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1 MR JUSTICE FRASER: -- it's some time in 2019?
 2 A Oh yes. Certainly.
 3 MR JUSTICE FRASER: After or before the start of the trial
 4 so far as you know?
 5 A It was after the start.
 6 MR JUSTICE FRASER: After the start of the trial. And when
 7 did you decide that you wanted to make corrections to
 8 your third witness statement.
 9 A I can't remember exactly.
 10 MR JUSTICE FRASER: Well, after or before the start of the
 11 trial?
 12 A After.
 13 MR JUSTICE FRASER: After the start of the trial?
 14 A Yes.
 15 MR JUSTICE FRASER: Before this week.
 16 A Yes.
 17 MR JUSTICE FRASER: A couple of weeks ago? Last Friday? Or
 18 can't you remember?
 19 A I'm sorry I can't.
 20 MR JUSTICE FRASER: All right. Any questions arising out of
 21 any of that? No? All right. Thank you very much
 22 Mr Parker. You can leave the witness box.
 23 A Thank you.
 24 MR JUSTICE FRASER: Now, I think Mr de Garr Robinson, on the
 25 basis of Mr Membery, that's your evidence of fact

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1 finished. Is that right?
 2 Now, we have to address the situation in respect of
 3 the remaining tranche of the Horizon trial, and I do
 4 recall that in the order that was produced the day
 5 before yesterday I said that we would do that at
 6 2 o'clock. Is that likely to take very long and/or can
 7 it usefully be done now or would you like to come back?
 8 MR GREEN: My Lord I think we might need to come back
 9 because there are quite a few consequential pathways to
 10 consider how they intermesh.
 11 MR JUSTICE FRASER: All right. Would it be inconvenient to
 12 come back at ten to two?
 13 MR DE GARR ROBINSON: My Lord no.
 14 MR JUSTICE FRASER: The reason for that is, and it is wholly
 15 unconnected with this case, there is a meeting I'm
 16 supposed to be at at the Ministry of Justice this
 17 afternoon. It is a long meeting, it goes on for three
 18 hours, I can say wholly neutrally they are expecting me
 19 to be slightly late, but obviously if I could be less
 20 late than staggeringly late then that would be useful,
 21 so if we come back at ten to two and we will deal with
 22 the second -- and the features, I think, are any
 23 housekeeping, predominantly the dates for the experts
 24 and also there is the two days of closings.
 25 MR DE GARR ROBINSON: My Lord yes.

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1 MR JUSTICE FRASER: Is there anything else on that --
 2 MR DE GARR ROBINSON: My Lord there is one more point to
 3 raise with your Lordship which is that Dr Worden has --
 4 it has occurred to Dr Worden there is a new way of
 5 looking at the Peaks and the OCPs, OCRs and MSCs in this
 6 case which, in his view shed considerable light on
 7 certain of the Horizon issues. He feels it is his duty
 8 to inform your Lordship of that. He has already
 9 informed Mr Coyne of that fact and it is only right that
 10 I should bring it to your Lordship's attention.
 11 MR JUSTICE FRASER: Thank you. I think on the same subject,
 12 then, and given that the expert evidence isn't going to
 13 start until the 20th, I'm also minded, unless each of
 14 you seek to persuade me otherwise, to order another
 15 expert's meeting anyway.
 16 MR DE GARR ROBINSON: Yes.
 17 MR JUSTICE FRASER: Simply in terms of the date.
 18 MR GREEN: My Lord, that would be convenient. What we did
 19 was we -- solicitors and counsel and experts liaised to
 20 find the window that everybody can do, and that is in
 21 the -- towards the end of June.
 22 MR JUSTICE FRASER: Well, we are going to deal with all of
 23 that at ten to two. I have said it is starting -- are
 24 you talking about the evidence in general?
 25 MR GREEN: The expert evidence. Two experts.

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1 MR JUSTICE FRASER: I have ordered that that is happening on
 2 20 May. It's starting on 20 May. We will revisit it if
 3 you are going to try to seek to persuade me to move that
 4 date at ten to two but you are going to find it very
 5 difficult. We will address that at ten to two.
 6 (1.09 pm)
 7 (Luncheon adjournment)
 8 (1.50 pm)
 9 HOUSEKEEPING
 10 MR GREEN: My Lord, it may be the source of some confusion
 11 last time might be because we misunderstood
 12 your Lordship's order in the light of what your Lordship
 13 said orally at the recusal application hearing, because
 14 your Lordship --
 15 MR JUSTICE FRASER: Which bit of the order?
 16 MR GREEN: Well, there are two provisions, paragraph 9
 17 and -- setting the dates for the expert evidence, and
 18 paragraph 3. We had understood paragraph 3 to reflect
 19 the fact that your Lordship had graciously accepted that
 20 my commitments in the week prior to that would mean we
 21 wouldn't be able to resume before that, and when we
 22 looked at dates afterwards --
 23 MR JUSTICE FRASER: Well, you told me that you were in the
 24 Court of Appeal the week before that.
 25 MR GREEN: Correct.

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1 MR JUSTICE FRASER: So my original intention in this order
 2 was to order that the expert evidence commenced on 13
 3 May and that couldn't happen for the reasons you
 4 explained on Tuesday.
 5 MR GREEN: Precisely, we had understood that, and then
 6 your Lordship mentioned us coming back to deal with the
 7 relevant dates. We don't need to look at the transcript
 8 but the -- paragraph 9, we understood as reflecting what
 9 your Lordship had said orally to us.
 10 MR JUSTICE FRASER: Well, you, I think -- well, two points,
 11 Mr Green. Firstly, the Post Office Horizon issues team
 12 weren't here at all.
 13 MR GREEN: Precisely.
 14 MR JUSTICE FRASER: And the recusal team had no instructions
 15 in respect of experts' availability, etc.
 16 MR GREEN: Exactly.
 17 MR JUSTICE FRASER: Secondly, you sought to give me
 18 submissions in an understandably fragmented way about
 19 what Mr Coyne's plans were.
 20 MR GREEN: Indeed.
 21 MR JUSTICE FRASER: So I said, which is reflected in the
 22 order, we will start on the 20th, I don't want to
 23 supervise a one-sided tennis match in terms of diary, we
 24 will deal with that when we have finished the evidence
 25 of fact.

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1 MR GREEN: Exactly, and so that's what --
 2 MR JUSTICE FRASER: And you interpreted that as meaning we
 3 are not going to have any experts until June, did you?
 4 MR GREEN: We didn't interpret that as meaning that. We
 5 interpreted that as the parties should go off,
 6 conscientiously consider who is available when and come
 7 back to the court with an informed answer which was what
 8 I was trying to return to the court with.
 9 MR JUSTICE FRASER: Well, bearing in mind the overriding
 10 point which I also made on Tuesday, which is this is
 11 a part heard trial --
 12 MR GREEN: My Lord, yes.
 13 MR JUSTICE FRASER: The Court of Appeal takes priority,
 14 Supreme Court takes priority. Other than that it's part
 15 heard, we are getting on with it.
 16 MR GREEN: But it's difficult to do without the experts
 17 present, so we have got --
 18 MR JUSTICE FRASER: What do you mean, without the experts
 19 present now or at any point after Tuesday?
 20 MR GREEN: No, no. What we sought to do, my Lord, is find
 21 dates the experts can attend, are able to attend,
 22 because, for example, you know, by way of example,
 23 Mr Coyne's in a three-week hearing at the moment on
 24 a three-week trial.
 25 MR JUSTICE FRASER: Well, Mr Coyne would have been giving

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1 evidence in this trial at the moment. If the recusal
 2 application --
 3 MR GREEN: Going forward from the 1st --
 4 MR JUSTICE FRASER: Can we just start from some basic
 5 principles, all right? If the recusal application had
 6 not been issued, Mr Coyne's evidence would have been
 7 last week.
 8 MR GREEN: Exactly.
 9 MR JUSTICE FRASER: And this week Dr Worden would have been
 10 giving evidence and I assume Mr Coyne would have been in
 11 court to listen to his cross-examination.
 12 MR GREEN: Exactly.
 13 MR JUSTICE FRASER: So the fact he is in a three-week
 14 trial --
 15 MR GREEN: Sorry, I was looking ahead at the diary for the
 16 period we have identified.
 17 MR JUSTICE FRASER: But we are part heard. This is a part
 18 heard trial.
 19 MR GREEN: My Lord yes. I agree, and not of our making.
 20 MR JUSTICE FRASER: No, no, I know that.
 21 MR GREEN: That's the difficulty, because we have
 22 obviously --
 23 MR JUSTICE FRASER: But this trial is not now going to
 24 embark on a jigsaw puzzle to fit around things that
 25 other people are intending to do in the future. It is

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1 a part heard trial.
 2 MR GREEN: It is, and we have got some immovable problems.
 3 MR JUSTICE FRASER: Well that is a different issue, but none
 4 of them, I assume, can relate to 20 May.
 5 MR GREEN: Well they do my Lord.
 6 MR JUSTICE FRASER: You didn't mention them to me on
 7 Tuesday.
 8 MR GREEN: What I understood had happened, it may be my --
 9 I'm sure it's my fault, what I understood had happened
 10 was your Lordship had announced a date when it was going
 11 to resume and I noticed immediately that I was in the
 12 Court of Appeal and your Lordship then very fairly
 13 observed, well, actually, rather than have a tennis
 14 match about dates, we will deal with that today.
 15 MR JUSTICE FRASER: With one of the players not here.
 16 MR GREEN: Exactly. So that was -- and so we thought to
 17 help the court we must go off, carefully, find out when
 18 the experts are and are not available, and identify any
 19 Supreme Court or Court of Appeal cases that we have and
 20 also one member of my team has got four weeks of
 21 adoption leave which is not --
 22 MR JUSTICE FRASER: I know, but both -- right, Mr Green, I'm
 23 sorry, there has to be a balance struck between this.
 24 You have a team with more than one counsel and so does
 25 Mr de Garr Robinson. It might be entirely

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1 understandably that on some of the days not all the
 2 counsel can be available for all the days. What we need
 3 is the cross-examining counsel, the main counsel for the
 4 other side and the experts. That's what we need in
 5 order to deal with the expert evidence. If we start
 6 trying to fit together a matrix that includes the
 7 entirety of both full teams plus all the experts'
 8 commitments, we will still be dealing with this at the
 9 end of 2019. That's not going to happen.
 10 MR GREEN: My Lord, we have found a window that is possible
 11 for everyone in June.
 12 MR JUSTICE FRASER: Well --
 13 MR GREEN: At the end of June, as I understand it. There
 14 may be some difficulty with my learned friend possibly
 15 having a holiday commitment at the end, but we have
 16 found a window when everyone can do it, because
 17 Ms Donnelly, for example, is the senior junior on my
 18 team and she has got four weeks of adoption leave in May
 19 which is --
 20 MR JUSTICE FRASER: You don't have to go into those sorts of
 21 details.
 22 MR GREEN: My Lord, we are hesitant to be prejudiced on the
 23 claimant's side by something that is not of our making.
 24 MR JUSTICE FRASER: Well, all right.
 25 MR GREEN: If there's no -- we will let your Lordship look

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1 at the dates --
 2 MR JUSTICE FRASER: I'm not going to look at the dates in
 3 this form I'm going to come on to the dates in a moment
 4 but that's our outline situation, is you are saying
 5 revisit paragraph 3 and the debate that was had in front
 6 of me by Mr Cavender and you, don't have the experts on
 7 20 May, put it off a month and approach it that way.
 8 That's the nub of it.
 9 MR GREEN: Under paragraph 9 that's the --
 10 MR JUSTICE FRASER: I'm not saying that because it's in
 11 paragraph 3 rather than paragraph 9 I'm not going to do
 12 it, I'm just identifying what it is you are telling me.
 13 MR GREEN: My Lord, yes, because of difficulties with expert
 14 availability, counsel's availability.
 15 MR JUSTICE FRASER: In other words, treat it as if it is not
 16 a part trial is what it comes down to.
 17 MR GREEN: No my Lord because we are excluding things that
 18 are not in the Supreme Court or the Court of Appeal, so
 19 with respect, I'm trying to comply with what
 20 your Lordship has said, and so we are just looking only
 21 at experts' availability and trials to which we are
 22 committed in the Court of Appeal or above, so that is
 23 the only -- I'm not trying to treat it as if it is not
 24 a part heard trial at all.
 25 MR JUSTICE FRASER: All I think that that can be interpreted

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1 as is as follows; approaching it as though it is expert
 2 availability not taking account that it's part heard.
 3 Because the fact an expert is doing X, Y or Z, if he is
 4 in a part heard trial he should be dealing with his
 5 evidence in the part heard trial, should he not, as
 6 a higher priority? Neither of them can be in the Court
 7 of Appeal or the Supreme Court because those courts
 8 adopt hear evidence.
 9 MR GREEN: No. I mean, Mr Coyne is on his son's 21st
 10 birthday holiday abroad between 22 May and 29 May.
 11 MR JUSTICE FRASER: Right. Well, okay. Those are your
 12 outlines. I'm going to hear from Mr de Garr Robinson.
 13 MR GREEN: I've got various Supreme Court issues later.
 14 MR JUSTICE FRASER: Right. Mr de Garr Robinson? Admittedly
 15 you weren't here on Tuesday but I imagine --
 16 MR DE GARR ROBINSON: I've read the transcript and in
 17 fairness to my learned friend I did read the transcript
 18 as containing an indication by your Lordship that the
 19 commencement date would be -- you indicated 20 May, but
 20 my understanding from the transcript was there would
 21 then be a full debate about that today, but that is
 22 a welcome piece of agreement between my learned friend
 23 and myself.
 24 My Lord, my concern -- I do not protest that my
 25 expert is unavailable on 20 May. One of my juniors is

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1 briefed on something else, but I don't complain about
 2 that either, it's not the Court of Appeal or the Supreme
 3 Court. My Lord, one issue I do pray in aid, however, is
 4 that if Mr Coyne is cross-examined on 20 May there will
 5 then be something like ten days' gap between the
 6 completion of his evidence, in fact more than ten days,
 7 and the commencement of Dr Worden's cross-examination.
 8 My Lord, that gives my learned friend a material
 9 advantage because -- particularly in a complicated case
 10 of this sort, it will be a real advantage to have ten or
 11 twelve days to meticulously plan a cross-examination
 12 based on answers given in cross-examination the week
 13 before. My Lord, I'm anxious about that, and I would
 14 invite your Lordship not to split up the experts in that
 15 way, but as a matter of simple fairness, to have the two
 16 experts giving evidence back-to-back, and I would
 17 therefore suggest, respectfully, and of course it is
 18 a matter entirely for your Lordship, I do entirely
 19 acknowledge that we are part heard in a trial, but I
 20 would respectfully suggest that the cross-examination
 21 should start at the beginning of the following term.
 22 MR JUSTICE FRASER: Well, what Mr Green has told me means
 23 that Mr Coyne's examination -- cross-examination --
 24 couldn't be done in the week of the 20th because it
 25 sounds from what he told me as if there is only two days

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1 that week available before Mr Coyne is going off to do
 2 whatever it is he is doing, and you are entitled to four
 3 days.
 4 MR DE GARR ROBINSON: Yes.
 5 MR JUSTICE FRASER: So he would not have access to his
 6 expert at all.
 7 MR DE GARR ROBINSON: That's when I'm supposed to be
 8 cross-examining him. I'm not making my learned friend's
 9 submissions. If your Lordship directs that the hearing
 10 resume on 20 May I apprehend that Mr Coyne will attend
 11 for cross-examination. I might be wrong about that, but
 12 my simple submission to your Lordship is, as a matter of
 13 simple fairness to both parties, your Lordship should
 14 arrive at a period where the experts are giving evidence
 15 back-to-back.
 16 MR JUSTICE FRASER: And that period, so far as you are
 17 concerned --
 18 MR DE GARR ROBINSON: My Lord, I would suggest that it
 19 starts -- Mr Coyne's cross-examination starts on
 20 Tuesday, 4 June. That would involve your Lordship
 21 sitting for four days, that would involve your Lordship
 22 sitting on the Friday of that week.
 23 MR JUSTICE FRASER: Well, that's not an issue.
 24 MR DE GARR ROBINSON: And then Dr Worden giving evidence on
 25 the --

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1 MR JUSTICE FRASER: So that is a four-day week because it is
 2 vacation on the Monday.
 3 MR DE GARR ROBINSON: Because term starts on the Tuesday.
 4 My Lord, Dr Worden giving evidence on 10 June for,
 5 I think, three days, I apprehend.
 6 MR JUSTICE FRASER: Well, it was three with a possibility of
 7 four because I proffered parity on number of days and
 8 Mr Green hadn't decided.
 9 MR DE GARR ROBINSON: And then, my Lord, I would
 10 respectfully suggest that it makes sense from bitter
 11 experience, it makes sense to have a week off to allow
 12 the closing submissions to be properly formulated, and
 13 then have oral submissions the week following, the
 14 week -- that would be the week beginning 24 June.
 15 MR JUSTICE FRASER: Just remind me -- that was going to be
 16 a day each?
 17 MR DE GARR ROBINSON: Yes.
 18 MR JUSTICE FRASER: So that is your projected suggested
 19 timetable.
 20 MR DE GARR ROBINSON: My Lord yes. It may accommodate
 21 Mr Coyne's problems as well, but as I say that is
 22 a matter for my learned friend, not for me.
 23 MR JUSTICE FRASER: All right. Just give me a second.
 24 Yes. All right. Mr Green?
 25 MR GREEN: My Lord, the only difficulty with that, there are

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1 two points, Mr Coyne's in a trial on 11 June for three
 2 days which will try and have to get adjourned or --
 3 MR JUSTICE FRASER: Well, in terms of --
 4 MR GREEN: -- because it is a part heard trial.
 5 MR JUSTICE FRASER: In a way I don't want to sound grand
 6 about this, but those sorts of problems are issues in
 7 that other trial. They can't be issues for us.
 8 MR GREEN: I understand my Lord.
 9 MR JUSTICE FRASER: Or for me. It's not because I'm trying
 10 to throw my toys out of the pram and assume some
 11 superior position, but -- is that a High Court trial?
 12 MR GREEN: I don't know. It is in Newcastle so --
 13 MR JUSTICE FRASER: Well, so it can't -- well, district
 14 registry maximum. Okay.
 15 MR GREEN: My Lord, I'm in the Supreme Court in the middle
 16 week that my learned friend wants us to be preparing our
 17 submissions.
 18 MR JUSTICE FRASER: Well, I have got something to say about
 19 submissions anyway in a minute but you're in the Supreme
 20 Court the week of the 17th?
 21 MR GREEN: Exactly, and so if we were able to have a time
 22 when I could devote time to the case that would be
 23 fairer.
 24 MR JUSTICE FRASER: How many days are you in the Supreme
 25 Court?

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1 MR GREEN: I am in the Supreme Court on the Wednesday and
 2 Thursday.
 3 MR JUSTICE FRASER: Wednesday the 19th and Thursday the
 4 20th?
 5 MR GREEN: Correct. I have got one day after that.
 6 A Friday.
 7 MR JUSTICE FRASER: Yes. I understand. All right. But
 8 other than Mr Coyne's appointment in Newcastle, so far
 9 as the evidence is concerned, Mr de Garr Robinson's
 10 suggestion will work?
 11 MR GREEN: My Lord yes.
 12 MR JUSTICE FRASER: Well, let's put closing submissions to
 13 one side. The important thing -- well, there is a range
 14 of important things, but in order; the first most
 15 important thing is to complete the evidence.
 16 MR GREEN: Indeed.
 17 MR JUSTICE FRASER: Are you going to require or want four
 18 days or are you still three possibly four?
 19 MR GREEN: Well my Lord, given that on this plan we are
 20 going to sit on the Friday --
 21 MR JUSTICE FRASER: Yes?
 22 MR GREEN: -- if we were able to sit on the Tuesday,
 23 Wednesday, Thursday I would complete it in three.
 24 MR JUSTICE FRASER: Right.
 25 MR GREEN: Just because that extra time may allow us to

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1 narrow what we have to challenge.
 2 MR JUSTICE FRASER: That is understood. Right. Well, I'm
 3 going to deal with evidence first and then I'm going to
 4 come on to closing submissions.
 5 Paragraph -- can someone remind me of today's date?
 6 Is it the 11th? Okay. So unlike the order of the other
 7 day I would like some one of the counsel to draw this up
 8 and agree the wording. Paragraph 3 of my order of 9
 9 April is varied so that the expert evidence is to
 10 commence on 4 June 2019 with Mr Coyne's evidence to be
 11 between 4 and 7 June inclusive and Dr Worden to be
 12 called on 11 June and his evidence to be between 11 and
 13 13 June inclusive. Does that deal with the actual
 14 dates?
 15 So that's expert evidence.
 16 Then the next issue is really closing submissions.
 17 Now, Mr de Garr Robinson, you suggested a week which is
 18 sensible. You have heard what Mr Green is doing that
 19 week. It seems to me closing submissions could be
 20 a little bit later than that. I don't know if you have
 21 anything that you want to say about that.
 22 MR GREEN: My Lord, I would have no objections to having
 23 more time for written closings. The closings might be
 24 shorter as a result.
 25 MR JUSTICE FRASER: Yes. Well, that would be beneficial.

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1 So then if we move your suggestion a week and we could
 2 have closings on 1 and 2 July. One day each.
 3 Mr Green, is that -- so that's moved it a week to
 4 reflect your Supreme Court activity.
 5 MR GREEN: I'm grateful my Lord. Very grateful for that.
 6 MR JUSTICE FRASER: Right. So are those dates all now quite
 7 clear? Good. Right. So that's evidence.
 8 MR GREEN: Would your Lordship want the closing submissions
 9 in on the Thursday before? Or the Friday.
 10 MR JUSTICE FRASER: No, I think the Thursday. Thank you
 11 very much for mentioning that. In fact, let's say in
 12 view of how long you will have had them, let's say noon
 13 on the Thursday. Noon on Thursday the 22nd.
 14 MR GREEN: My Lord, would it be possible to have the
 15 following week because we are coming back on the 1st
 16 and --
 17 MR JUSTICE FRASER: Oh I'm sorry, did I say 22nd? I meant
 18 27th. All right?
 19 So that deals with evidence, that deals with
 20 closings.
 21 MR DE GARR ROBINSON: My Lord yes.
 22 MR JUSTICE FRASER: Mr de Garr Robinson?
 23 MR DE GARR ROBINSON: My Lord, I need to address
 24 your Lordship on -- it is a matter of some awkwardness
 25 actually. Dr Worden has recently realised that there is

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1 a new way of looking at the evidence in this case which,
 2 in his view, could greatly assist your Lordship, assist
 3 the court, in deciding Horizon issues 1, 12 and 13.
 4 This approach involves focusing on those Peaks OCRs,
 5 OCPs and MSCs which actually mention the FAD codes of
 6 one or more of the claimant branches.
 7 Just to explain, when Fujitsu did any authorised
 8 remote handling of data, to put it neutrally, which
 9 might affect branch accounts, they raised an OCP, OCR or
 10 MSC whose text was likely to include the six digit FAD
 11 code of the relevant branch. So it's therefore possible
 12 to search all the OCPs, OCRs and MFCs with a view to
 13 finding all of those which mention the claimant branches
 14 during the relevant claimant's period of tenure. This
 15 search yields a limited number of OCPs, OCRs and MSCs,
 16 and it's therefore possible to assess expert issues 12
 17 and 13, which is how often was remote access facility
 18 exercised and what effect did it have. It is possible
 19 to assess those questions as they affect the claimants
 20 by examining that much smaller document set. My Lord,
 21 that is the first exercise that he would like to
 22 undertake, and indeed he has embarked work on -- I think
 23 this week he has embarked work on that.
 24 Second, if a detected bug affected the accounts of
 25 any branch the Peak relating to that bug was likely to

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1 mention that branch's FAD code. Typically, it will
 2 also -- it may also mention a sum of money. It's
 3 therefore possible to search all the Peaks in the same
 4 way that I have just outlined, looking for Peaks which
 5 mention any claimant's FAD code during the relevant
 6 claimant's period of tenure, and again, this document
 7 could shed some light on Horizon Issue 1 to which extend
 8 is it likely that bugs have affected the relevant
 9 branches.
 10 Now, Dr Worden has specifically asked me to offer
 11 his apologies to the parties and to the court that he
 12 didn't think of this before. In fact, frankly, he is
 13 kicking himself that he didn't do so. He believes that
 14 he and Mr Coyne would only need a short time to consider
 15 the relevant documents and to consider how it affects
 16 their views on those issues. He wishes to discuss the
 17 documents with Mr Coyne with a view to agreeing what
 18 they do or do not show.
 19 My Lord, in the days since the recusal application
 20 was issued he started to consider how the new approach
 21 affects his views. He believes on Issue 1 it allows the
 22 parties to make a much simpler analysis of the point,
 23 and he takes a similar view in relation to the remote
 24 access issues. It makes, in his view, it possible for
 25 the experts to form a view as to how often remote access

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1 was exercised and what its likely effect was.
 2 It is Dr Worden's view that it is his duty under CPR
 3 Part 35 to inform the court of this change of view and
 4 to allow the court to consider whether or not it wishes
 5 to see it considered. That belief is based, as
 6 your Lordship will be aware, on CPR35.3 which imposes
 7 a duty on experts to help the court on the matters
 8 within their expertise, whether or not they are
 9 instructed so to do. My Lord, it's also based on
 10 CPR35 -- I should say the practice direction CPR35,
 11 paragraph 2.5, which requires experts to inform the
 12 court of any change of views.

13 I should emphasise this -- none of this comes at the
 14 request or instigation of my client. This has come from
 15 Dr Worden. This is his idea. My Lord, he wishes to
 16 discuss it with Mr Coyne in a further meeting between
 17 the experts, but of course it's -- it's only right that
 18 your Lordship should be aware of that. I'm not making
 19 any application for permission to put in supplemental
 20 expert reports --

21 MR JUSTICE FRASER: I don't think you have any supplemental
 22 experts' reports to apply for permission for, are you?

23 MR DE GARR ROBINSON: I'm not making any kind of
 24 application, I'm simply sharing with your Lordship the
 25 view that has been expressed to me by Dr Worden.

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1 MR JUSTICE FRASER: But in order to -- I'm grateful for that
 2 and that's noted, but in order to make an application to
 3 put in supplementary expert evidence from Dr Worden you
 4 would need to have a supplementary expert report from
 5 Dr Worden, wouldn't you. You can't apply for permission
 6 in the abstract.

7 MR DE GARR ROBINSON: Well my Lord I'm conscious of
 8 your Lordship's own judgment in the Imperial Chemical
 9 Industries case against Merrill Technology and
 10 your Lordship will have a much clearer recollection than
 11 I do of the criticisms you levelled at one of the
 12 experts for going off and doing an exercise on the basis
 13 of documents that he had, and for not engaging in
 14 a collaborative process with the other expert with
 15 a view to them jointly coming to a view as to whether it
 16 was beneficial and what it did or did not show. I have
 17 brought a copy of that case here, but I apprehend
 18 your Lordship doesn't need to be reminded of it.

19 My Lord, in those circumstances your Lordship may
 20 think it appropriate for that procedure, the procedure
 21 that your Lordship described in paragraph 158 of that
 22 judgment to be followed in this case, but as I say I'm
 23 not making any application to your Lordship.

24 MR JUSTICE FRASER: No, no. I understand entirely the
 25 difference between a collaborative exercise explored by

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1 experts either jointly or singly, and a supplementary
 2 expert's report but I go back to the point that I have
 3 just mentioned. In order to apply for permission to
 4 adduce extra expert evidence you would have to have
 5 a draft of the report for which you would be seeking
 6 permission, wouldn't you?

7 MR DE GARR ROBINSON: My Lord not necessarily.

8 MR JUSTICE FRASER: You don't think so?

9 MR DE GARR ROBINSON: My Lord, I would submit not. It would
 10 depend on the circumstances. Often one would have such
 11 a report. I'm conscious that in the ICI case
 12 your Lordship cited as a reason for not giving the
 13 relevant party permission to put in a report which they
 14 had prepared, that the experts hadn't gone through that
 15 collaborative process and I'm quite anxious to ensure
 16 that my expert doesn't fall into the same trap, if I can
 17 put it that way.

18 MR JUSTICE FRASER: Well, depending on whichever point one
 19 reaches in terms of you actually make an application to
 20 put in a supplementary expert's report, that application
 21 will be dealt with as and when it's made, so I'm not
 22 dealing with that either positively or negatively at the
 23 moment.

24 MR DE GARR ROBINSON: Thank you.

25 MR JUSTICE FRASER: What I am going to do, which I think I

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1 explained to you just before the short adjournment, I am
 2 going to make an order for the experts to meet again. I
 3 am not in any way going to proscribe or insist on the
 4 content or agenda of that meeting. It's just an order
 5 for a further meeting. What they explore, wish to
 6 explore, how it's done, etc, is solely a matter for
 7 them, but I'm going to make a direction in respect of
 8 a further meeting.

9 Before I do that though, Mr de Garr Robinson, is
 10 there anything you want to add on this particular point?

11 MR DE GARR ROBINSON: My Lord, I don't have an application.
 12 I simply feel it is my duty to inform your Lordship
 13 of --

14 MR JUSTICE FRASER: I understand. I will just seek
 15 observations from Mr Green.

16 MR GREEN: My Lord --

17 MR JUSTICE FRASER: If any.

18 MR GREEN: It's probably of the, "In any", variety. The
 19 only observation is we are slightly concerned that this
 20 is a -- what is proposed is a slightly different
 21 iteration of what Dr Worden was already doing. We were
 22 concerned he appeared to be doing in his existing
 23 reports, which is rather than giving evidence about the
 24 Horizon issues as formulated at CE1/1, which was
 25 generally and not by reference to all the individual

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1 claimants, how were these questions to be answered,
 2 instead, to invite your Lordship basically to enter into
 3 the sort of {C1/1/1} exercise to which such great
 4 exception was taken, we say albeit on a flawed premise,
 5 on the recusal application, namely to start going
 6 through individual SubPostmasters and invite
 7 your Lordship because FAD codes have not been included
 8 in Peaks, to conclude, without any disclosure from the
 9 claimant's cohort, other than the few people we have
 10 got, that they haven't actually happened and bounce us,
 11 and it's difficult to resist the temptation to think
 12 that if the factual premise upon which Dr Worden's
 13 report is based starts to fall away in factual evidence
 14 and you suddenly get, "I have come up with a completely
 15 new idea".
 16 MR JUSTICE FRASER: Well, that is a different point.
 17 MR GREEN: It is a different point but it's not one which we
 18 welcome.
 19 MR JUSTICE FRASER: Well, all I intend to do so far as the
 20 experts -- and I will just tell you what the proposed
 21 direction is in terms so you can seek to -- well, make
 22 any observation before I actually make the order, I
 23 intend to order that at least one further meeting be
 24 held between the experts to seek further agreement on
 25 the Horizon issues by 4 o'clock on 3 May, so that gives

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1 them quite a long time to do it. That's not saying they
 2 can only have one meeting, they might decide -- I
 3 suppose it ought to say, and if such agreement can be
 4 reached the production of a fifth agreed joint
 5 statement. Do either of you have any observations on
 6 that order? No? It seems perfectly non-controversial.
 7 The only thing is it imposes a date but it's not a date
 8 on the imminent horizon.
 9 Right. So that's the experts. Anything else in
 10 terms of directions?
 11 MR GREEN: My Lord is there any cut-off date by which any
 12 application for a supplemental statement should be made?
 13 MR JUSTICE FRASER: No.
 14 MR GREEN: No, so we will leave it open and deal with it if
 15 it comes?
 16 MR JUSTICE FRASER: I'm not generally persuaded cut-off
 17 dates are a good idea. Any application will be -- any
 18 application will be made by either side for any further
 19 material and will be dealt with if or when they are
 20 issued in accordance with all the principles that are
 21 set down in the CPR.
 22 Right. So as far as directions for resumption then,
 23 is that everything?
 24 MR DE GARR ROBINSON: My Lord I believe so.
 25 MR JUSTICE FRASER: Right. There is some minor assorted

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1 miscellany of housekeeping. Mr de Garr Robinson, you
 2 were part of the way through a redactions review.
 3 MR DE GARR ROBINSON: My Lord I was, and this is a matter of
 4 great embarrassment to myself. Coming back here today
 5 I have done -- I have gone through all of the documents
 6 except one, and there is still one outstanding and if
 7 I had known we were coming back today then that document
 8 would have been gone through already and I can't
 9 apologise enough.
 10 MR JUSTICE FRASER: And the results of the ones that you
 11 have gone through absent that one?
 12 MR DE GARR ROBINSON: My Lord, your Lordship will recall --
 13 MR JUSTICE FRASER: I think you had done three.
 14 MR DE GARR ROBINSON: One has already been released.
 15 MR JUSTICE FRASER: Yes.
 16 MR DE GARR ROBINSON: Two documents involving claims to
 17 legal privilege, my Lord, in my judgment they are
 18 legally privileged.
 19 MR JUSTICE FRASER: Yes.
 20 MR DE GARR ROBINSON: My Lord, there is then a series of
 21 documents which have been redacted for confidence and
 22 irrelevance. My Lord, in relation to those, the
 23 approach I'm adopting will involve the unredaction, as
 24 it were, of a number of extra passages, and in order to
 25 make things easier for everyone to see that there isn't

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1 any great concealment going on, what I'm currently
 2 minded to do is to unredact most of the headings, so one
 3 can see what is being dealt with in the parts that are
 4 still redacted.
 5 MR JUSTICE FRASER: Right.
 6 MR DE GARR ROBINSON: So whether that's strictly in
 7 accordance with the rules, I don't know, but that seems
 8 to me to be a helpful way of shedding light on what
 9 might otherwise be a matter for suspicion.
 10 MR JUSTICE FRASER: All right. I tell you what I'm going to
 11 do about this. I'm going to order, and it will go in
 12 today's order, please, that the results of the review of
 13 redactions exercise undertaken by leading counsel for
 14 the Post Office in the Horizon issues trial to be
 15 identified in a letter from WBD to Freeth by ... and
 16 then you are going to suggest a date.
 17 MR DE GARR ROBINSON: My Lord, seven days is ample time.
 18 MR JUSTICE FRASER: So by noon on the 18th. That's seven
 19 days.
 20 MR DE GARR ROBINSON: Yes.
 21 MR JUSTICE FRASER: And then together with --
 22 MR DE GARR ROBINSON: The relevant documents, insofar as --
 23 MR JUSTICE FRASER: -- open brackets, if any, close
 24 brackets, and then if there is any further actions or
 25 anything that is necessary to be taken they will flow

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1 after that.
 2 MR DE GARR ROBINSON: My Lord yes.
 3 MR JUSTICE FRASER: So today's order is going to have
 4 a provision in, and it's to be a letter. All right?
 5 MR DE GARR ROBINSON: Thank you my Lord.
 6 MR JUSTICE FRASER: So that's an outstanding housekeeping
 7 matter which I had on my list. Have you got any on your
 8 list?
 9 MR DE GARR ROBINSON: My Lord no.
 10 MR GREEN: My Lord, there are a couple of dates which are at
 11 large, or potentially to be fixed. Your Lordship may or
 12 may not want to deal with them today. One is the costs
 13 of the common issues judgment which we had suggested 8
 14 May which was a date upon which we were going to be
 15 coming back for this trial, and your Lordship did have
 16 a window for it then.
 17 MR JUSTICE FRASER: Yes. Well, because I was supposed to be
 18 hearing closing submissions.
 19 MR GREEN: Precisely, so we're going to suggest common
 20 issues costs and the adjourned costs of the recusal
 21 application, namely as to basis and payment, whether it
 22 be summarily assessed or put off to assessment with
 23 a payment on account. Those two costs issues --
 24 MR JUSTICE FRASER: They need to be fixed. You want them on
 25 the 8th?

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1 MR GREEN: On the 8th.
 2 MR JUSTICE FRASER: I'm minded to do it some time the week
 3 of the 20th, to be honest.
 4 MR GREEN: 20th of?
 5 MR JUSTICE FRASER: May, like the 23rd. That will be time
 6 estimate half a day, I imagine.
 7 MR GREEN: Half a day.
 8 MR JUSTICE FRASER: Half a day. Yes.
 9 MR GREEN: My Lord, we can make ourselves available for
 10 that.
 11 MR JUSTICE FRASER: Mr de Garr Robinson? I imagine it won't
 12 be you, it will be the other team.
 13 MR DE GARR ROBINSON: My Lord, it won't be me and so I'm
 14 speaking on instructions. My Lord, my primary
 15 submission is your Lordship -- I would invite
 16 your Lordship not to make any listing of any matters of
 17 that sort until the appeal that will today be being
 18 issued in relation to recusal is dealt with.
 19 MR JUSTICE FRASER: Well, there is an application for --
 20 permission will be known about before then, won't it.
 21 MR DE GARR ROBINSON: I apprehended your Lordship would say
 22 that, hence the directions you have made in relation to
 23 the Horizon trial, and there I would simply submit that
 24 it makes a great deal of sense to fix a time by which
 25 point the Court of Appeal --

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1 MR JUSTICE FRASER: Well, that's why I chose the week of the
 2 20th. I tell you what I'm going to do. I'm going to put
 3 liberty to apply in today's order, so that if and when
 4 there is any developments on the front you have just
 5 identified you can always come back.
 6 MR DE GARR ROBINSON: Yes.
 7 MR JUSTICE FRASER: The common issues costs won't be
 8 affected by the recusal application, prospects in the
 9 Court of Appeal, because that involves submissions that
 10 I think were lodged in writing on 29 March by both sides
 11 and the position of the Post Office was it was premature
 12 to make any order for costs because one wouldn't know
 13 who had won and that the Post Office had been partially
 14 successful in any event, both of which were identified
 15 by me in my recusal judgment as being correct, so that
 16 position won't change, whether I'm recused or not, and
 17 I will still have to deal with common issues costs
 18 because they wouldn't be dealt with by a new managing
 19 judge, they would have to be dealt with by me, but with
 20 liberty to apply if and when the recusal application
 21 were to have any life breathed into it by a grant of
 22 permission to appeal, well then that date can be readily
 23 refixed without anyone having to come back.
 24 MR DE GARR ROBINSON: My Lord I hear what your Lordship
 25 says. Your Lordship will understand that's not my

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1 submission, but --
 2 MR JUSTICE FRASER: No, no, I understand. All right. So
 3 today's order will be that the hearing of the
 4 application by the claimants for their costs on the
 5 common issues, together with associated matters -- well,
 6 actually forget, "Associated matters" -- application by
 7 the claimants for their costs on the common issues trial
 8 and the further order necessary on the costs recusal
 9 application under paragraph 8 of the order of 9 April
 10 will be dealt with on 23 May 2019, time estimate half
 11 a day, but at the bottom of the order, please, it will
 12 say, "Liberty to apply".
 13 MR GREEN: My Lord then --
 14 MR JUSTICE FRASER: Is that everything?
 15 MR GREEN: No it isn't everything. I'm sorry.
 16 MR JUSTICE FRASER: Is that everything on the costs?
 17 MR GREEN: Everything on the costs, yes it is.
 18 MR JUSTICE FRASER: Next point?
 19 MR GREEN: And my Lord then the -- we have been obviously
 20 slightly thrown by the intervention and what's happened,
 21 and --
 22 MR JUSTICE FRASER: The intervention?
 23 MR GREEN: The recusal application.
 24 MR JUSTICE FRASER: Oh well ...
 25 MR GREEN: It's because we are one team responding to the

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1 different streams coming at us, but there are directions
 2 for round 3 --
 3 MR JUSTICE FRASER: Yes there are.
 4 MR GREEN: -- which start at any moment.
 5 MR JUSTICE FRASER: Yes they do.
 6 MR GREEN: And we are going --
 7 MR JUSTICE FRASER: And which was set on the understanding
 8 that this trial would be over.
 9 MR GREEN: Precisely, and we would invite your Lordship to
 10 vary the dates for those.
 11 MR JUSTICE FRASER: Right. Do you want to call them up on
 12 the common screen?
 13 MR GREEN: Yes. It's in the -- I can tell your Lordship
 14 what they are. {C7/39/1}. It's in the seventh CMC
 15 order, and in terms of sort of sequential progress we
 16 have got the -- at paragraph 4.1 {C7/39/2} we have got
 17 the IPOCs being pleaded on 15 May and we have thereafter
 18 got the individual defences, 17 June, 8 July.
 19 MR JUSTICE FRASER: And you are asking for extensions to all
 20 those dates?
 21 MR GREEN: My Lord yes and there is a sort of slight wrinkle
 22 in that where the round 3 issues relate to breach and/or
 23 the deliberate concealment --
 24 MR JUSTICE FRASER: By, "Round 3", you mean further issues I
 25 think. We're called them, "Further issues".

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1 MR GREEN: Sorry, further issues, relate to breach, that's
 2 dependent on the findings your Lordship has made in the
 3 common issues judgment, which the defendant has said
 4 it's going to appeal.
 5 MR JUSTICE FRASER: Yes.
 6 MR GREEN: And there is an asymmetry of impact of costs
 7 which are expended for the claimants. We have
 8 a category of impact that the defendant doesn't have
 9 which, although we don't think that appeal will be
 10 successful, we have to be prudent in trying to manage
 11 the --
 12 MR JUSTICE FRASER: Understood. So what is it you are
 13 asking?
 14 MR GREEN: So my Lord, we would invite your Lordship to stay
 15 the directions pending the determination --
 16 MR JUSTICE FRASER: On the further issues trial?
 17 MR GREEN: -- on the further issues trial, pending the
 18 determination of permission on their common issues
 19 appeal.
 20 MR JUSTICE FRASER: Which has been mentioned by Lord
 21 Gribner but hasn't actually been issued?
 22 MR GREEN: No, and the date for that was meant to be 16 May
 23 and we wondered whether your Lordship might consider
 24 bringing that forward because of the impact only --
 25 MR JUSTICE FRASER: No, I think what I will do is I will --

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1 how many directions are there following on from
 2 paragraph 4 of this order?
 3 MR GREEN: Quite a lot. The ones that are immediately
 4 important to cover the period when permission will be
 5 considered are effectively, I think, contained in
 6 paragraph 4 and there is a provision for budgets on 1
 7 July.
 8 MR JUSTICE FRASER: Right. So what you need, really, is
 9 that the directions in the seventh CMC order relating to
 10 the further issues trial from paragraph 4 onwards to be
 11 stayed --
 12 MR GREEN: To be stayed pending the --
 13 MR JUSTICE FRASER: -- well, to be stayed, comma, that stay
 14 to be lifted upon seven days' notice in writing by
 15 either party.
 16 MR GREEN: Indeed.
 17 MR JUSTICE FRASER: When that stay is lifted, whenever it
 18 might be, then the court will revisit those directions.
 19 MR GREEN: I'm most grateful my Lord.
 20 MR JUSTICE FRASER: Because it depends when the stay --
 21 MR GREEN: Exactly.
 22 MR JUSTICE FRASER: There is no point me going through now
 23 and giving a whole bunch of dates which are overtaken,
 24 and things might happen very quickly they might not, so
 25 I think that's what I will do.

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1 The thing I'm not going to do at the moment, or
 2 indeed at all but I haven't prejudged it, is change the
 3 dates for the further issues trial.
 4 MR GREEN: My Lord we don't --
 5 MR JUSTICE FRASER: At the moment.
 6 MR GREEN: Exactly. Well, we will have to see.
 7 MR JUSTICE FRASER: But that depends what happens. It's
 8 something of a moveable feast. Mr de Garr Robinson?
 9 MR DE GARR ROBINSON: My Lord, the application made by my
 10 learned friend takes me somewhat by surprise. It hasn't
 11 been shared with my instructing solicitors before that.
 12 MR JUSTICE FRASER: Yes.
 13 MR DE GARR ROBINSON: So what I can say is inevitably rather
 14 limited but my Lord I have been glancing over
 15 frantically while my learned friend was speaking.
 16 My Lord, in principle, the Post Office has no objection
 17 to a stay of the sort that has been proposed. I would
 18 only refer your Lordship to the fact that the stay ought
 19 to include paragraph 3.4 of the order that I see on the
 20 screen.
 21 MR JUSTICE FRASER: Is that disclosure?
 22 MR DE GARR ROBINSON: Yes. My Lord, that's all I can tell
 23 your Lordship now.
 24 MR JUSTICE FRASER: It seems to me, whatever form of words
 25 the two of you settle, or the two groups of you settle

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1 on in the next hour or two, the principle is that dates
 2 that are looming upon the immediate horizon or the --
 3 I didn't mean a pun -- dates that are looming
 4 immediately for the further issues trial should not be
 5 seen as having to be complied with at the moment because
 6 they have been overtaken by events, so disclosure on
 7 further issues, IPOCs, any of the other directions that
 8 are supposed to be happening in May and early June
 9 sensibly have to be relieved in some way, either by
 10 moving them later or me just imposing a stay.
 11 I mean, I assume that that principle seems --
 12 MR DE GARR ROBINSON: My Lord, I entirely see the force of
 13 that principle. As I say, my instructions are not to
 14 oppose a direction of that sort.
 15 MR JUSTICE FRASER: All right. So that's what I will do
 16 then, and if it can as well -- I did say in my order say
 17 paragraph 4, Mr de Garr Robinson has pointed out it
 18 needs to include paragraph 3.4 which it obviously does.
 19 If there are any other paragraphs, I think the seventh
 20 CMC order is one of those specials that goes on for some
 21 pages, and if there are any others in there that I have
 22 missed, then doubtless you will sweep them up when you
 23 have a look at it.
 24 Right. So is that all your housekeeping?
 25 MR GREEN: My Lord that's all our housekeeping.

1 MR JUSTICE FRASER: Mr de Garr Robinson, I don't think you
 2 had anything?
 3 MR DE GARR ROBINSON: I have nothing.
 4 MR JUSTICE FRASER: I don't have any more.
 5 There is a point I have to draw to your attention.
 6 This court is no longer our court, as of now. It will,
 7 I hope, become our court again when we come back in
 8 June, but that can't be guaranteed. Obviously I will do
 9 my best, and thank you all very much and thank you, in
 10 particular, to Opus and I will see you all in June if
 11 not before.
 12 (2.34 pm)
 13 (Hearing adjourned to a date to be fixed)
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