

OPUS 2

INTERNATIONAL

Horizons Issues - Alan Bates & Others v Post Office Limited

Day 21

July 1, 2019

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1 Monday, 1 July 2019
 2 (10.35 am)
 3 Closing submissions by MR GREEN
 4 MR JUSTICE FRASER: Good morning.
 5 MR GREEN: My Lord, I think it is me.
 6 The focus of the claimants' submissions will be to
 7 identify particular aspects of the way that Post Office
 8 seeks to invite the court to determine the issues
 9 against the background of what we hope is sort of
 10 reasonably detailed treatment in our closing submissions
 11 and to identify why we find ourselves in respectful
 12 disagreement with the way Post Office seeks to do that.
 13 And in particular, to identify to the court various
 14 facets of the sort of overarching theme of the way
 15 Post Office puts its case, which is, we respectfully
 16 submit, a variant of the rather one-way approach that
 17 was urged on the court in the Common Issues trial in
 18 three particular respects.
 19 First --
 20 MR JUSTICE FRASER: Just pause. I'm afraid I have been
 21 given a broken chair which does sometimes happen, but we
 22 have a spare. Thank you.
 23 MR GREEN: In three particular respects. Firstly,
 24 Post Office effectively seeks to reframe the issues as
 25 they have been agreed and ordered by the court. We

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1 respectfully say that is the wrong approach. Secondly,
 2 on analysis, the way Post Office has sought to adduce
 3 its own evidence is effectively the same one-way
 4 ratchet, for reasons that I will explain. And thirdly,
 5 the way Post Office invites the court to treat the
 6 evidence in the documents is also, we respectfully say,
 7 oddly one-way.
 8 And the short point, if I may, on point 2, which is
 9 how they called their evidence, is simply this: that as
 10 the court will have seen from our written closing
 11 submissions and our written openings, effectively,
 12 a common feature of much of Post Office's evidence is to
 13 call Ms A to talk about what Mr B either knows or has
 14 heard from Mr X, Ms Y and Ms Z, who are often not even
 15 identified.
 16 There has been six weeks of almost Where's Wally in
 17 relation to Mr Gareth Jenkins who persistently pops up
 18 in the source material for Post Office's evidence and
 19 yet has not been called.
 20 We respectfully say that the explanation for that is
 21 unsatisfactory, which we will come to. But it is the
 22 effect, it is the one-way effect of the way the evidence
 23 has been presented to the court which is the focus of
 24 this submission, and that one-way effect is essentially
 25 this. If you call people who stand up and put their

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1 name to an account of what generally the position is and
 2 sign a statement of truth but they happen not to know
 3 anything about the subject or not to know anything
 4 reliable about it, the court on Post Office's approach
 5 is presented with the following choice: (1) accept their
 6 evidence; (2) if they are challenged on it, they get to
 7 say "Well, I'm very sorry, I don't know about it". So
 8 effectively Post Office seeks to be in a neutral
 9 position if their evidence is rejected and a positive
 10 position if their evidence is accepted.
 11 We say that is the wrong approach. We also say that
 12 the explanations for the way this is done are
 13 underwhelming at best, and that goes to both the weight
 14 to be attributed to Post Office's evidence throughout
 15 and invites the court carefully to consider
 16 Post Office's approach to adducing evidence in this
 17 trial.
 18 Briefly by way of introduction on point 3, which is
 19 the way the Post Office invites the court to treat the
 20 evidence and the documents, as the court will see as we
 21 go through the material in a minute, there are some
 22 frankly astonishing invitations to the court to construe
 23 contemporaneous documents against what they say on their
 24 face and to disavow witnesses where their evidence goes
 25 badly. So Mr Godeseth, yes, we shouldn't have called

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1 him and some of his evidence did require clarification
 2 or correction, which then comes in correspondence after
 3 he has given evidence. We say that is an unusual
 4 approach at best.
 5 Furthermore, a narrative of what happened in the
 6 fact evidence that is very difficult to reconcile with
 7 the view of someone who was actually present during the
 8 trial. I appreciate that is a fairly strong pitch to
 9 put it at, my Lord, and I propose to make that
 10 submission good in a moment.
 11 Can I just draw your Lordship's attention to
 12 something else I'm going to come onto a bit later, but
 13 just by way of example if your Lordship turns to
 14 Post Office's closing submissions at page 134 at
 15 paragraph 369.1 (A/6/134), your Lordship will see:
 16 "The Post Office documents were not drafted with the
 17 benefit of the vast amount of work that has been carried
 18 out by the experts for this trial. If the authors
 19 considered that Horizon was not a good system, they were
 20 wrong (although that is not even a fair summary of what
 21 the documents say)."
 22 Now, firstly there is the astonishing submission
 23 that Post Office's own internal admissions as to the
 24 shortcomings of the system by their own internal
 25 employees and officers and directors should be ignored

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1 and treated as wrong. Secondly, there's the premise in
2 that that those documents were not drafted with the
3 benefit of the vast amount of the work that has been
4 carried out by the experts for the trial.
5 Let's throw that back to the cross-examination of
6 Dr Worden who, when he was shown those documents about
7 Post Office's internal concerns, hadn't even read them.
8 So not only is that submission fatally flawed, but it
9 actually draws to the court's attention the documents
10 which Dr Worden did and did not take into account in
11 forming the views that he did. And the court will
12 remember his answers in cross-examination, "Do you
13 accept that that cannot be reconciled with the view that
14 you formed?", and him saying "Yes".

15 My Lord, I give that as just one example -- I was
16 going to come to it later -- of the approach that
17 Post Office invites the court to take in relation to
18 even Post Office's own documents, and we will see that
19 writ large.

20 Before I turn to this fact and evidence and
21 documents piece which is essentially those layers, 2 and
22 3, can I just invite the court to consider for a moment
23 the way in which the reframing of the issues has been
24 done by Post Office.

25 MR JUSTICE FRASER: This is your point 1, is it?

5

1 MR GREEN: Point 1.

2 MR JUSTICE FRASER: Yes.

3 MR GREEN: If I could just take the court back to the
4 Horizon Issues at {C1/1/1} and just take, by way of
5 totemic example, issue 1. And the issue itself says:
6 "To what extent was it possible or likely for bugs,
7 errors or defects of the nature alleged at [paras] 23
8 ... [in the pleadings] ... to have the potential to ...
9 cause apparent or alleged discrepancies or shortfalls
10 relating to 'Subpostmasters branch accounts or
11 transactions, or (b) undermine the reliability of
12 Horizon accurately to process and to record transactions
13 ..."

14 Now, pausing there, there are probably three layers
15 to the way in which certainly Dr Worden reframed them
16 and the Post Office off the back of that seeks to
17 reframe issue 1.

18 The first is that Dr Worden confined his analysis on
19 issue 1 by ignoring potential. Secondly, he added
20 a gloss to actual by saying that those should be
21 lasting, not transient, and when your Lordship asked him
22 about that, anything that was corrected ever, no matter
23 how long that took, is transient on his approach. We
24 respectfully submit it is a wrong approach.

25 The third wrong part of the approach adopted on

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1 Post Office's behalf and reflected in their closing
2 submissions is the word "relating", three lines down,
3 about two-thirds of the way across:

4 "... discrepancies or shortfalls relating to
5 Subpostmasters' branch accounts or transactions ..."

6 Because what Post Office seeks to do is to say that
7 it has to be in the subpostmasters' branch account. So,
8 therefore, that discounts a situation if one follows
9 that to its logical conclusion where the initial figure
10 on Horizon is correct but the bug causes a different
11 figure in POLSAP or one of Post Office's other systems
12 from which a TC might subsequently be issued. We also
13 say that's the wrong approach.

14 We flagged this up in opening and we have followed
15 it up -- I think it is probably quicker to go to our
16 closings -- and we have identified at page {A/5/173} at
17 paragraph 500 -- in relation to the contrasting expert
18 approaches we submit that Mr Coyne correctly focused on
19 the issues as defined in his reports and was careful not
20 to draw conclusions about actual consequences where
21 there was no actual evidence about them but merely to
22 identify the potential for the effect that crystallised
23 where the evidence lay. Whereas, by contrast, we made
24 these points, my Lord, in relation to the lasting and
25 permanent matters already identified here.

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1 Those are expanded and treated together in the
2 appendix at -- actually, while we are here can we go
3 forward to 562, which is at {A/5/198}.

4 This is the reframing by Dr Worden of Issue 2 which
5 he formulates as:

6 "Issue 2 appears to be asking - could Post Office
7 have given its Subpostmasters automated support in
8 Horizon, in the place of human support?"

9 To which he answers no. That isn't even
10 an available reading of Issue 2), let alone one which
11 ought to have been adopted by Dr Worden in that respect.
12 Issue 2 is perfectly clear on its face.

13 The gloss there of "in place of human support", for
14 example, speaks to a theme in Dr Worden's approach which
15 is then ultimately reflected to greater or lesser extent
16 in Post Office's submissions of changing the issues in
17 a way that favours Post Office.

18 When we go back to Issue 1, if we look at the
19 transcript at {Day18/156:2}, if we look at lines 2 to 6,
20 your Lordship will see:

21 "Question: And you describe section 8 as addressing
22 Horizon 1, yes?

23 "Answer: Yes.

24 "Question: "... the extent to which bugs in Horizon
25 may have affected the Claimants' branch accounts?"

8

1 "Answer: Yes, I've stuck in the word "claimants"
2 there."

3 So there is another feature which is not a feature
4 of the issue as the court defined it, and as had been
5 agreed by the parties for good reason, which Dr Worden
6 has feathered in. And your Lordship will also remember
7 how Mr Coyne was challenged about that and cautioned by
8 my learned friend about the suggestion that interest in
9 individual claimants had been rebuffed and we then saw
10 the RFI response to, which was to rebuff any enquiry
11 about individual claimants.

12 So there is a theme of reframing the issues in a way
13 that makes it harder for the claimants to succeed upon
14 them and comes close, the more one reframes them, to
15 a position where they are impossible for the claimants
16 to win. We see that with Dr Worden's assumptions in
17 relation to the issuing of transaction corrections,
18 which he says, he acknowledges, are outside the system,
19 he acknowledges that he doesn't know anything about
20 business processes and how they are done, and then he
21 draws inferences on two important premises.

22 The first premise is that even where documentary
23 evidence doesn't say that a transaction correction will
24 be issued and where there's no actual transaction
25 correction showing it was done, he infers that it would

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1 be done. And he does that -- we will come to this in
2 passing in relation to the documents -- by saying where
3 a KEL or a PEAK refers to a TC or error notice needing
4 to be issued, he assumes that it is issued, and where it
5 doesn't, he assumes that's because it is written by
6 people who knew that they didn't need to mention that
7 because they knew it would happen.

8 So whatever the document says, it leads him to only
9 one conclusion and precludes the possibility of any
10 conclusion that might let in any justifiable complaint
11 about that by any claimant.

12 The second premise is that the TC procedure is done
13 so close to perfectly that the opportunity for error is
14 vanishingly small, and that's the second assumption that
15 he builds in. And then he builds all of that into his
16 version of the system as defined, which conflicts with
17 the definition of the system at the top of the page of
18 the Horizon Issues, and from that goes on to reach his
19 conclusions. And we respectfully say that is not the
20 right approach, and Mr Coyne took an approach which was
21 correct in his reports in relation to the issues as
22 defined.

23 I will deal with the issue of robustness in relation
24 to Issue 3 very briefly, reasonably briefly. There is
25 first a point of principle which is that the way --

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1 robustness is the Post Office's favourite issue, that's
2 clear, something they insisted on and we agreed to and
3 was ordered. What it doesn't say is that the system is
4 robust? And then a second question: is it extremely
5 unlikely to be the cause of shortfalls in branches?

6 It was conjunctive in its formulation, it was not
7 split into subparagraphs like some of the others, and we
8 treated it as one issue. And on that basis and because
9 Post Office wants to conflate the word "robust", which
10 is in inverted commas in the issue as defined, with
11 extreme unlikelihood to be the cause of shortfalls in
12 branches, that is precisely the basis upon which the
13 claimants do not accept Post Office's analysis on that
14 issue, because they do not accept that it is robust in
15 the sense of being extremely unlikely to be the cause of
16 shortfalls in branches.

17 My Lord, there is an important point of drafting in
18 relation to Issue 3, which is Issue 3 does not say:
19 extremely unlikely to cause shortfalls in branches. So
20 it is not contemplating what proportion of 47 million
21 transactions a week would have errors caused in them.
22 What it actually contemplates is a situation where you
23 have an identified shortfall in a branch and the
24 question then is if you do have such a shortfall in
25 a branch, is it extremely unlikely that Horizon is the

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1 cause of that shortfall in the branch?

2 We respectfully say no, it is not, or not
3 functionally so for the purposes of this dispute, and
4 particularly not so where the type of shortfall and
5 discrepancy that in reality is in issue in this case is
6 the unexplainable; the one where the subpostmaster
7 doesn't go "Oh yeah, that's probably Jeff remmed in too
8 many stamps there, yes, I remember he was a bit
9 distracted this morning" or "Oh I can see from the till
10 roll something has gone wrong". We are not talking
11 about that.

12 The focus of this litigation, as reflected also in
13 the Common Issues trial, is on what is the situation
14 where there is an unexplained shortfall that the
15 subpostmaster finds it difficult to get to the
16 bottom of.

17 So that is the background to those two facets of
18 Issue 3: robustness and extremely unlikely being part of
19 one concept; and secondly, the premise is the cause of
20 the shortfall in a branch.

21 MR JUSTICE FRASER: Where do I go to to find your benchmark
22 definition of robustness?

23 MR GREEN: My Lord --

24 MR JUSTICE FRASER: The claimants' benchmark definition.

25 MR GREEN: We found it difficult to define other than by the

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1 extremely unlikely of causing shortfalls . So we
2 haven't got a definition that we advance as a meaningful
3 and satisfactory one for the purposes of this case. And
4 save insofar as it appears to be a correlation of
5 extremely unlikely to be the cause of shortfalls in
6 branches.

7 So that --

8 MR JUSTICE FRASER: So you are treating it as a summary term
9 that includes and consists of the second part of
10 Issue 3?

11 MR GREEN: That appears to be the only sensible objective
12 way of construing it, we say.

13 My Lord, it has never been the claimants' case that
14 there weren't numerous aspects in which Horizon is
15 relatively robust, and that is a point on which we
16 respectfully submit Post Office's closing rather
17 overshoots in the criticisms made of the position taken
18 by the claimants in the reply, which I would just like
19 to take your Lordship to, if I may, at paragraphs 36
20 and 37, which is {C3/4/21}.

21 So if we just start under "Operation of Horizon",
22 A.8 heading. 34:

23 "The Defendant admits that 'Horizon is not perfect'
24 ... and that 'like all other IT systems, Horizon is not
25 a perfect system which has never had any errors or bugs'

13

1 ..."

2 MR JUSTICE FRASER: Which document is this?

3 MR GREEN: So this is our reply, my Lord.

4 MR JUSTICE FRASER: Your reply?

5 MR GREEN: Yes.

6 35:

7 "It is also uncontroversial that the volume of
8 transactions effected through Horizon is very large."

9 36:

10 "Notwithstanding the various checks and controls
11 alleged (the existence and efficacy of which are not
12 admitted), the combination of Horizon's admitted
13 imperfections and the volume of transactions, is
14 entirely consistent with the levels of errors reflected
15 in the Claimants' case: the said imperfections are
16 likely to be the cause of discrepancies or apparent or
17 alleged shortfalls about which the Claimants complain."

18 37:

19 "It is therefore denied that Horizon 'is robust and
20 [...] is extremely unlikely to be the cause of losses in
21 branches' (paragraph 16). In fact, the relatively small
22 chance of errors admitted by the Defendant, would be
23 likely to produce the very picture reflected in the
24 Claimants' case."

25 Then there are observations in relation to the

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1 existence of money in suspense accounts and so forth.

2 At paragraph 38 {C3/4/22}, the change of public
3 position was then noted. Then the clarification of the
4 defendants taking to make use of the pre-action
5 correspondence then follows at 39 onwards, which is
6 where the defendants effectively tried to bank the
7 absence of a systematic flaw across the whole of
8 Horizon.

9 We weren't in a position to allege that there was
10 a systematic flaw affecting everybody as meaning that
11 there was no claim that anyone had suffered
12 a Horizon-generated shortfall, which we just wanted to
13 make absolutely clear on the pleadings was not the case.

14 Then at paragraph 41 {C3/4/23}:

15 "As to the allegedly robust controls pleaded
16 variously ..."

17 41.1:

18 "the Defendant's case that ..."

19 Then it is set out, effectively saying:

20 "... when supplemented by the various accounting
21 and cash controls applied in branches, make it very
22 unlikely indeed that an error in Horizon could affect a
23 Subpostmaster's financial position and go undetected'
24 ..."

25 We say that:

15

1 "... implicitly accepts that Horizon is likely to be
2 the cause of discrepancies or apparent or alleged
3 shortfalls in branches, unless detected by Claimants."

4 Then they failed to plead to any material variations
5 because they only pleaded on the current version of
6 Horizon as it stood at the date of defence. So we
7 didn't know what the case was there.

8 Then, the defendant was put to strict proof to
9 matters which lay within their knowledge but not ours at
10 41.3. And at 41.4, {C3/4/24}:

11 "... in respect of the alleged 'robust measures in
12 place in Horizon ... The Claimant denies that these
13 were effective, including on the basis that two of three
14 errors or bugs admitted by the Defendant (in Schedule 6
15 to the Letter of Response, referred to at paragraph 56
16 of the Defence) were not identified through Horizon's
17 own in-built checks and balances designed to identify
18 the same ..."

19 Then there is a passage about the position in
20 relation to the known error log, which we will come back
21 to. Just to give the court an indication of where we
22 were at this stage pleadings-wise, could I go, please,
23 to the generic defence at {C3/3/22}. This is
24 paragraph 50 from the previous page and it is primarily,
25 at this stage, addressing the known error log. The

16

1 second line of that paragraph says --
 2 MR JUSTICE FRASER: Which paragraph?
 3 MR GREEN: (4). I'm so sorry, I didn't say that. 50(4),
 4 which is on {C3/3/22}, the second line of that
 5 paragraph:
 6 "To the best of Post Office's information and
 7 belief, the Known Error Log is a knowledge base document
 8 used by Fujitsu which explains how to deal with, or work
 9 around, minor issues that can sometimes arise in Horizon
 10 for which (often because of their triviality)
 11 system-wide fixes have not been developed and
 12 implemented. It is not a record of software coding
 13 errors or bugs for which system-wide fixes have been
 14 developed and implemented. To the best of Post Office's
 15 knowledge and belief, there is no issue in the Known
 16 Error Log that could affect the accuracy of a branch's
 17 accounts or the secure transmission and storage of
 18 transaction data."
 19 So, my Lord, I just want your Lordship to have
 20 a stake in the ground as to where we were pleadings-wise
 21 at that point, in circumstances where Dr Worden's first
 22 approach was to confine his analysis almost entirely but
 23 not exclusively to KELs to identify where the bugs were
 24 in Horizon that may have an impact on branch accounts.
 25 So it is in that context that the reply is then pleaded

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1 in that way in relation to robustness. And seeking to
 2 make the distinction, ultimately reflected in the way
 3 the Horizon system is defined for this trial, which is
 4 slightly narrower, as the system itself. And then of
 5 course Dr Worden is the one who says the subpostmasters
 6 themselves form part of the countermeasures by manual
 7 inspection of data MID and user error correction in his
 8 analysis.
 9 MR JUSTICE FRASER: So what's the stake in the ground? I'm
 10 not --
 11 MR GREEN: The stake in the ground is what Post Office were
 12 saying about the existence or knowledge of information
 13 about bugs at that stage by way of context to us.
 14 So they are saying that the context in which we were
 15 trying to plead was basically blindfolded and
 16 Post Office was very keen for us to plead particulars of
 17 things which a striking feature of this case is that the
 18 subpostmasters did not know often about them at all and
 19 were often not told what the underlying root cause of
 20 things was even when, in Mrs Burke's case, for example,
 21 it was not her fault at all and she gets a TC that says
 22 "please take more care in the future". Totally a system
 23 fault.
 24 So at this stage we are pleading completely
 25 blindfold to this, and Post Office are positively saying

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1 that to the best of Post Office's knowledge and belief
 2 there's no issue in the known error log that could
 3 affect the accuracy of a branch's accounts or secure
 4 transmission and storage of transaction data.

5 It is easy when one has been in a trial this long,
 6 and it has been interrupted, to lose sight of the
 7 utility of the listing of this trial given where we have
 8 come from and where we are now in terms of the evidence
 9 available for the court and indeed to the claimants.

10 I just wanted to put that stake in the ground to
 11 give it at least a small indication of the distance of
 12 travel. We have obviously mentioned the distance of
 13 travel in relation to remote access in our closing
 14 submissions, which is the position is completely
 15 transformed. And it is also obviously apparent that
 16 Post Office did not disclose in their pre-action
 17 correspondence the existence of the Dalmellington bug at
 18 all, notwithstanding that it affected 88 branches and
 19 there were 112 known instances of it occurring over
 20 a period of about five years.

21 That was left for Mr Coyne to stumble upon. There
 22 was no disclosure of the APPSUP role, which the court
 23 has now seen what a huge back door it was into the
 24 system, and how the logs were not either kept or kept in
 25 such a way as to allow there to be any sensible analysis

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1 of how that privileged role had been used.

2 So it has transformed out of all recognition in
 3 terms of the claimants' and the court's understanding of
 4 remote access. None of that would have happened had the
 5 court not ordered this trial to take place and
 6 essentially the process of preparing for and undertaking
 7 the trial actually happened as it has.

8 My Lord, just briefly in relation to robustness,
 9 there is also the document at {C1/2/4}, which was our
 10 provisional outline document, which the court will
 11 remember Post Office were very keen for us to provide
 12 but less keen to be forthcoming themselves about what
 13 they knew to be the problems with the system.

14 So this provisional document was of course put
 15 together when we still didn't know about the
 16 Dalmellington bug:

17 "There's no single, authoritative definition of
 18 'robust' in the context of a system such as Horizon,
 19 which appears to be more commonly used in public
 20 relations than as an objective performance standard.
 21 Pending any clarification of its objective meaning, it
 22 appears to relate to the ability of a system to perform
 23 correctly in any scenario, including where invalid
 24 inputs are introduced, namely, to have in place
 25 effective error repelling."

20

1 {C1/2/5):
 2 "It is clear that, on a sensible construction of the
 3 term 'robust', Horizon did not meet this standard
 4 because:
 5 "(a) it contained bugs, errors and defects as set
 6 out in paragraph 1 above which created discrepancies in
 7 the branch accounts of Subpostmasters;
 8 "(b) it suffered failures of internal mechanisms
 9 which were intended to ensure integrity of data."
 10 There is a KEL in relation to recovery failures
 11 there:
 12 "(c) the system did not enable such discrepancies to
 13 be detected, accurately identified and/or recorded
 14 either reliably, consistently or at all;
 15 "(d) the system did not reliably identify
 16 'Mis-keying', which is inevitable in any system with
 17 user input, and did not reliably have in place
 18 functionality to restrict users from progressing a
 19 mis-key;
 20 "(e) ... numerous processes and workarounds ...
 21 weaknesses and risks of errors ..."
 22 And so forth.
 23 That goes all the way down to paragraph 3.3 over the
 24 page {C1/2/6):
 25 "However, as noted above, whether Horizon is

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1 'robust' plainly depends upon the definition given to
 2 that word. Even the small chance of errors, bugs and
 3 defects admitted by the Defendant and/or supplemented by
 4 those underlying the reports above, would be likely to
 5 produce the result alleged by the Claimants. Therefore,
 6 as noted above, even if the overall probability of a
 7 bugs or errors affecting Branch accounts is small, the
 8 sheer number of transactions undertaken by the Horizon
 9 system is consistent with the level of discrepancies
 10 arising from bugs and errors in issue in these
 11 proceedings."
 12 So, my Lord, that dovetails with those paragraphs in
 13 the reply to which I have already taken the court.
 14 So that is as far as we were able to go in relation
 15 to robust. But we say for functional purposes it isn't
 16 robust insofar as it does all of those things and those
 17 things create a small but real chance of discrepancies
 18 in relation to subpostmasters' branch accounts or their
 19 transactions.
 20 My Lord, for your note, just in relation to the
 21 KELs, if we may. It is right that your Lordship should
 22 know that at paragraph 29 in the Post Office's closing
 23 submissions at {A/6/16}, Post Office suggests that it
 24 has taken a co-operative approach to disclosure. For
 25 reasons which will be already largely clear to the

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1 court, we do not accept that is correct, and I will just
 2 give the court two examples.
 3 In our opening, claimants' written opening, which is
 4 at {A/1/106}.
 5 MR JUSTICE FRASER: This is your opening, is it?
 6 MR GREEN: The claimants' opening.
 7 MR JUSTICE FRASER: Yes.
 8 MR GREEN: And we devoted an appendix, which is referred to
 9 in the body, to looking at what the claimants had to go
 10 through to get the KELs, given how large they loomed in
 11 the trial. And at that appendix at page 106, just to
 12 ask the court to turn to it for a moment in the opening,
 13 the claimants first sought disclosure of the known error
 14 logs on 28th April 2016 in the letter of claim, and they
 15 said:
 16 "We understand that Fujitsu maintained a 'Known
 17 Error Log' for Horizon and that such reports will have
 18 been provided to Post Office."
 19 We thought the known error log was a proper problem
 20 management system identifying all known errors in that
 21 sense. It turns out that, in fact, the evidence of this
 22 is much more atomised across the documentary landscape,
 23 but we were expecting a log of all known errors.
 24 Post Office's letter of response says in effect they
 25 not only refused to provide the documents but denied

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1 their relevance and cast doubt over whether they even
 2 existed.
 3 So Post Office's response said -- it is all
 4 footnoted to the references; I won't take your Lordship
 5 to the underlying documents --:
 6 "In circumstances where you have not particularised
 7 any factual basis on which horizon is defective,
 8 disclosure of these documents (if they exist) is not
 9 relevant reasonable or proportionate."
 10 Leaving that matter at large for us.
 11 We didn't accept that. No good reason to refuse
 12 disclosure.
 13 Then over the page at {A/1/107}, 317:
 14 "Post Office's response on 13th October 2016 ..."
 15 They say:
 16 "The claims which you have particularised concern
 17 the Core Audit Log. Following a review of the Known
 18 Error Log, Fujitsu have confirmed that there have been
 19 no logs in respect of Core Audit Log. The remainder of
 20 the Known Error Log does not relate to the claim which
 21 you have particularised and as such disclosure of this
 22 document is not relevant."
 23 My Lord, I'm not going to take you through it, but
 24 your Lordship will see the history of this all the way
 25 through, including paragraph 324 on page {A/1/109}, the

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1 position of what the known error log was described as
2 before your Lordship at the CMC in October 2017:
3 "It contains things like there's a problem with
4 printers. There's a printer. You have to kick it on
5 the left-hand side to make the printer work. I mean
6 there's a vast range of hardware problems of that sort
7 and maybe some software problems (inaudible) but not the
8 kind of bugs, errors and defects that the claimants are
9 wishing to pursue in their particulars of claim so far
10 as Post Office is aware."

11 There was a sort of Nelsonian approach to the
12 obvious relevance of the known error log and a way of
13 presenting the known error log which we say is (a) far
14 from forthcoming, and (b) completely irreconcilable with
15 the claim that Post Office has been co-operative in
16 relation to disclosure.

17 My Lord, parenthetically they also queried the
18 relevance of OCPs and OCRs as well. I will give
19 your Lordship a reference to that later on. So for
20 those and other reasons that I will develop later on, we
21 do not accept that is the case; in fact, quite the
22 opposite. We ask the court to take note of Mr Coyne's
23 answer in re-examination that he had never encountered
24 a case like this where disclosure had come out in this
25 way in his entire career.

25

1 MR JUSTICE FRASER: Well, the Post Office's closing
2 submissions make a point in paragraph 1145 on page 377
3 that you haven't -- well, the suggestion is that
4 complaints about disclosure have emanated from the court
5 and that you haven't made any applications for specific
6 disclosure and you haven't advanced any complaint that
7 particular disclosure orders haven't been complied with.

8 MR GREEN: Well, my Lord, taking it in stages, that rather
9 sidesteps the issue that I have been making submissions
10 on. The issue that I have been making submissions on is
11 the manner in which Post Office -- we got clear examples
12 of documents that should have been disclosed; there is
13 a very recent one which they kept until May. They say
14 they intended to disclose it in March, for example. So
15 there are clear examples of things where they haven't.

16 MR JUSTICE FRASER: Did they say they intended to disclose
17 it in March or did they say they discovered it in March?

18 MR GREEN: There was one which was discovered in March which
19 they intended to disclose and erroneously forgot to.

20 MR JUSTICE FRASER: Where's that?

21 MR GREEN: I will get the reference to that in a minute, but
22 just by way of example. There is a whole pantheon of
23 disclosure issues in relation to which the claimants
24 have had to try to take a -- we simply could not have
25 issued applications on every possible complaint, not

26

1 least because the proportions approach, which the court
2 understandably took given what the court was being told
3 by Post Office, was to order focused disclosure and then
4 allow us to look at that, and then from there to then
5 ask sequentially for what we could then see would be
6 relevant.

7 On the basis of what the court was told, that was
8 plainly, on the face of it, the right way to approach
9 proportionality in disclosure. The point that I was
10 seeking to address here was the anterior point of when
11 we say the documents which were almost the sole source
12 for Dr Worden's first report, when we raised them in
13 2016, your Lordship has seen what was said about them
14 all the way through in the CMC as if they were of
15 absolutely marginal relevance.

16 If we had been given an honest answer, I say
17 "honest" carefully --

18 MR JUSTICE FRASER: I was about to pick you up on that.

19 MR GREEN: Yes. My Lord, the reason I say honest is this.

20 In a Nelsonian sense, to tell the court something where
21 you have made no enquiry to ensure that you are getting
22 a fair picture, is, we say, extremely unsatisfactory.

23 MR JUSTICE FRASER: Well, you have to be very careful about
24 making submissions that include effectively a criticism
25 of lack of honesty, don't you?

27

1 MR GREEN: My Lord, that is right. I'm trying to make it
2 clear what I'm saying and I will come back to that later
3 on. But there is a picture across the piece of --
4 I mean, perhaps I shall recede to "less than
5 forthcoming" for the moment.

6 MR JUSTICE FRASER: I think that would probably be best.

7 MR GREEN: Because it saves an argument about whether it
8 rises to that threshold or not. But there is a repeated
9 picture of the court being told things which turn out
10 not to be correct. And the explanation is, so we look
11 at Angela Van Den Bogerd's evidence which we will come
12 to in a minute, where she gives her evidence. She has
13 not looked at the underlying documents, which tends to
14 suggest it is not right, and she is specifically asked
15 by the court: did you look at those documents before you
16 made your witness statement or not? She says no.

17 So we have this constant picture of a situation in
18 which the implicit suggestion that one might expect to
19 be being made when a senior person gives evidence, for
20 example, that they have taken care to make sure what
21 they are saying is right, turns out not to be correct.

22 So my Lord, I'm happy to rest on "less than
23 forthcoming" for present purposes, and for present
24 purposes I'm going to withdraw the reference to had they
25 given an honest answer. What I shall say is had we been

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1 given a correct answer which any reasonable enquiry
2 would have revealed, had we been given a correct answer
3 which any reasonable enquiry would have revealed in
4 2016, the proper thing for Post Office to do would have
5 been to provide disclosure at that stage of relevant
6 KELs that disclosed the existence of discrepancy of
7 bugs, defects and issues in Horizon which could give
8 rise to branch discrepancies at that stage.

9 That's what should have happened. So in terms of
10 where we were and what we were able to get later on, we
11 are about two years late getting things, compared to
12 where we should have been had Post Office given correct
13 information in responding to our enquiries, and from
14 where we would have been were we able to show our expert
15 those documents at a much earlier stage and not have the
16 situation which Mr Coyne found himself in in this case
17 with thousands of documents coming in a matter of days
18 before his second report, for example. So it has been
19 extremely unsatisfactory.

20 My Lord, in our closing at page {A/5/19}.

21 MR JUSTICE FRASER: Yes.

22 MR GREEN: -- which is {A/5/19} for Opus purposes,
23 paragraph 57. The PEAK at 1848.8.2 --

24 MR JUSTICE FRASER: Yes.

25 MR GREEN: -- was disclosed and was a document:

29

1 "... adverse to Post Office and would have been
2 directly relevant to the evidence which Mrs Van Den
3 Bogerd had given in her witness statement relating to
4 Drop & Go."

5 MR JUSTICE FRASER: Yes.

6 MR GREEN: "[It] also contained evidence of keystrokes which
7 were plainly available to the Post Office from Fujitsu
8 ..."

9 Your Lordship will remember that document coming up
10 at the end:

11 " ... a point on which Post 'Offices witnesses had
12 given very odd evidence (addressed further below). It
13 would therefore have been an obviously relevant document
14 for the Claimants to have referred to at that stage, had
15 it been disclosed to them. As it bore directly on
16 Issue 8, it is even more surprising that it was not
17 disclosed earlier ..."

18 Because Issue 8 is about what information was
19 available to Post Office.

20 And we had the absolutely bizarre spectacle of
21 Mrs Van Den Bogerd accepting that keystrokes would be
22 provided in a Credence report, because Mr Patny, who was
23 accused of dishonesty, and your Lordship is very right
24 to point out the seriousness of alleging dishonesty,
25 Mr Aakash Patny was accused of dishonesty in

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1 circumstances where he had repeatedly chased for
2 a Credence report because he wanted to find out what had
3 happened at a stage where Post Office internally
4 appeared to think that keystrokes would be provided with
5 that.

6 We have addressed that in relation to
7 Mr Aakash Patny and the assault on his honesty in our
8 closing submissions, but that is the context in relation
9 to which this keystrokes document would have been
10 extremely relevant. And then, if your Lordship looks at
11 paragraph 58:

12 "The explanation for the timing of the disclosure of
13 this PEAK given in the 18th witness statement of
14 Mr Parsons does little to improve the position or
15 assuage any concerns; it reveals that Post Office waited
16 2 months from discovering this PEAK on 29 March 2019 ...
17 before disclosing it to the Claimants, just before the
18 resumed hearing."

19 59:

20 "Further, despite the excuse given for this 2 month
21 delay being that 'For the next couple of months my firm
22 continued to investigate these bugs and a number of
23 further documents relating to these bugs came to light',
24 in fact, on 24 June 2019 at 17.42 ..."

25 In the evening:

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1 "... [Wombles] provided yet further disclosure in
2 relation to this bug and email chain. In response to
3 a request for an explanation as to why this document had
4 not been disclosed before, [Wombles] said that the
5 document had been provided to it on 10 May 2019 was
6 intended to be disclosed on 31 May ..."

7 I think that should be March. May:

8 "... was intended to be disclosed on 31 May 2019,
9 but due to an oversight was not disclosed on that date
10 [in May]."

11 So there are examples in relation to that, but
12 there's also, my Lord, the other anterior feature of
13 Post Office's approach which is we were not able to
14 request documents which related to the Dalmellington bug
15 because the tenor of Post Office's letter of response
16 was such as to suggest that there had been three bugs,
17 which were the ones that Second Sight had identified,
18 and there obviously must be a possibility of other bugs.

19 In circumstances where, between the letter of claim
20 and the letter of response, there was the email saying
21 "stop investigating the Dalmellington bug", that is
22 a deliberate decision to stop investigating that bug at
23 that stage. And we respectfully submit that the only
24 available inference is it was a deliberate decision not
25 to mention the Dalmellington bug in the letter of

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1 response.
 2 We respectfully say that that is reaching the higher
 3 echelons of being less than forthcoming. Similarly, the
 4 death of a thousand cuts in relation to remote access.
 5 Given that we know from the Paula Vennells email that
 6 she specifically made an enquiry as to what the position
 7 was, the way that evidence emerged is extremely
 8 unsatisfactory, particularly because Mr Parker's first
 9 round was to say Mr Roll's account was misleading;
 10 positively to say that Mr Roll's account of remote
 11 access was misleading, when (a) it wasn't, and (b) he
 12 was right.

13 So, my Lord, with that general introduction can
 14 I turn now to the approach in relation to fact evidence.
 15 One of the points that the defendants/Post Office takes
 16 against the claimants is to complain about the claimants
 17 calling fact evidence from a handful of SPMs, and that
 18 begins in their closings at {A/6/299} at paragraph 918.

19 We say it is a bad point to say the least. Briefly,
 20 contrary to Post Office's approach before the Common
 21 Issues trial, Post Office did not make any application
 22 to strike out that witness evidence. Secondly, at the
 23 pre-trial review my learned friend referred to his
 24 anxiety on Post Office's part about that, which we can
 25 see. The relevant part of the transcript is

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1 {C8.14/3/13} at letter B. We see at letter B my learned
 2 friend:

3 "I can tell your Lordship that a huge amount of
 4 anxious thought went into that question. It was in the
 5 aftermath of your Lordships strike-out judgment. The
 6 reply that came from Freeths was, 'In the light of the
 7 strike-out judgment we are not changing anything, we are
 8 not changing course"

9 That's his suggestion:

10 "Given the anxiety, frankly, the fifth on this on
 11 the part of Post Office --"

12 MR DE GARR ROBINSON: My recollection is that I said
 13 "fearful".

14 MR JUSTICE FRASER: Fearful rather than what, sorry?

15 MR DE GARR ROBINSON: "... fifth on this on the part of
 16 Post Office --"

17 MR JUSTICE FRASER: It should say:

18 "Given the anxiety, frankly, the --

19 MR GREEN: The fearfulness.

20 MR JUSTICE FRASER: Right. Thank you very much.

21 MR GREEN: Then your Lordship then explained to my learned
 22 friend and the court at D:

23 "What I said ... in that judgment, I thought which
 24 was obviously reserved and drafted, I applied the test
 25 set down most usefully by Mann J about striking out

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1 evidence of fact and what approach one takes to
 2 relevance. You have 12 witnesses of fact for, 'lets
 3 call it, round two of Horizon. Mr Green has umpteen
 4 witnesses of fact. Most of the witness statements
 5 actually are relatively narrow in compass. There is
 6 obviously more fact than one would necessarily expect
 7 with the phrase 'limited evidence of fact', but I think
 8 between you, you are agreed that it can be dealt with in
 9 a reasonable number of days, and the only real issue
 10 appears to be, given you each have an expert, how
 11 Mr Henderson's evidence is to be treated if it is to be
 12 treated at all, that is really what it comes down to.
 13 You say he is an expert by the back door."

14 MR JUSTICE FRASER: The focus at the pre-trial review

15 I think originally was about Professor McLachlan and
 16 Mr Henderson.

17 MR GREEN: Originally.

18 MR JUSTICE FRASER: You said you weren't going to call
 19 Professor McLachlan and I gave a ruling on
 20 Mr Henderson's incorporation of the Second Sight report.

21 MR GREEN: Precisely. My Lord, the short point is that we
 22 ended up with nine of the Post Office's witnesses of
 23 fact giving evidence.

24 MR JUSTICE FRASER: Is that including Mr Membery?

25 MR GREEN: Excluding Mr Membery.

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1 MR JUSTICE FRASER: It is really ten, then.

2 MR GREEN: It is really ten, but nine actually giving live
 3 evidence, plus Mr Membery. And then Mr Roll and
 4 Mr Henderson giving evidence, which was much narrower in
 5 compass than he would have liked to have given, as must
 6 have been apparent to the court. Plus five SPMs.

7 So Post Office sought to rely on ten witnesses of
 8 fact and the claimants sought to rely on seven plus
 9 Mr Singh, in respect of whom there was a notice to
 10 admit, which I will just show your Lordship later. So
 11 less.

12 MR JUSTICE FRASER: But the question about evidence is not
 13 a question of counting up how many witnesses are on each
 14 side.

15 MR GREEN: Your Lordship is quite right, but I just wanted
 16 to clarify. It is not a counting exercise, but those
 17 are the numbers. I will come to the substantive points.

18 In response to the complaint by Post Office about
 19 this, just imagine what the trial would have looked like
 20 if we had not had the facts of those individual SPM
 21 cases to provide factual grist to the mill of
 22 determining what the systems were and how they worked in
 23 practice.

24 So the only way ARQ data came out was through the
 25 individual cases of individual SPMs. Failed recoveries

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1 was focused upon specifically , because of SPM evidence,
2 Ms Van Den Bogerd's response in her responsive witness
3 statement. It is important to identify that Post Office
4 hadn't addressed failed recoveries outside the context
5 of specific SPM evidence.

6 The claimants then had to prove their account to
7 contradict suggestions by Post Office of user error
8 being causative of discrepancies, which was demonstrated
9 to be wrong. There was a late amendment to Mrs Van Den
10 Bogerd's second witness statement in relation to
11 Angela Burke where she had directly sought to suggest
12 that Angela Burke was at fault , which was wrong. There
13 was no amendment in relation to Mr Tank's evidence in
14 Angela Van Den Bogerd's witness statement although it
15 was ultimately accepted that there wasn't user error
16 causative of the discrepancy in relation to the receipts
17 in Mr Tank's case.

18 Then the Post Office refused the claimants' notice
19 to admit specifically on the basis of causation of
20 discrepancies when correctly following the appropriate
21 course in relation to Mr Singh.

22 So if I can just take your Lordship very briefly to
23 that. {H/187/1} is the letter enclosing a notice to
24 admit, which is mentioned at the bottom. It is
25 explained at the bottom there:

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1 "As you will see, we firstly invite an admission
2 that it is possible that a phantom transaction similar
3 to that described by Mr Setpal Singh at paragraph 6 of
4 his witness statement dated 28 September 2018 occurred
5 at the Reddish Post Office in or around the summer
6 of 2003."

7 It is a very limited admission because Ms Van Den
8 Bogerd's submission, as we see over the page, was that
9 there was insufficient documentary evidence available to
10 determine whether or not that was the case {H/187/2}.
11 And that was one admission that was sought on the basis
12 of what she herself had said in her witness statement.

13 Then at the bottom of the page, the second admission
14 that was sought was to invite Post Office to agree, to
15 admit that it was:

16 "... aware of occasions where Horizon froze or would
17 stop working or screens would go black as a result of a
18 system crash, and discrepancies in accounts did
19 sometimes arise after SPMs followed, or attempted to
20 follow the recovery process."

21 There are two alternatives there. Your Lordship
22 just briefly will see {H/188/1}. That is the actual
23 notice to admit, and paragraph 2 deals with that.

24 Then if we go to {H/200/1}:

25 "The second alleged fact is drafted in a tendentious

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1 manner and, as drafted, is not true (or even supported
2 by the evidence that you cite in your letter).

3 Specifically , there is no evidence cited that
4 discrepancies arose after system crashes where the SPM
5 did in fact follow the recovery processes properly, as
6 opposed to merely attempting to follow those processes."

7 So they refused to admit something that the court
8 can now see is true, and Angela Burke's case is
9 a perfectly good example of exactly that.

10 See also Mr Tank. So seeing in reality what event
11 logs actually looked like for specific transactions,
12 what transaction logs looked like for specific
13 transactions was necessary, and there was -- how else
14 were we going to do it?

15 Again, Post Office would have had a trial in which
16 it was able to say what would happen or could happen and
17 what it would normally do and where the claimants would
18 be unable to effectively analyse or challenge or unpick
19 those general assertions which were almost exclusively
20 if not wholly exclusively self-serving.

21 Another feature of the one-way street approach to
22 determining the outcome of this trial , my Lord, is in
23 relation to so-called unchallenged evidence, and this is
24 quite a big point in the closing submissions and quite
25 heavy reliance is placed on it , and it has quite a long

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1 history. And your Lordship has repeatedly made clear
2 that a point of that type would be given short shrift .

3 My learned friend raised it at the PTR and it was
4 made perfectly clear what the position was. It was
5 raised at the PTR, I do not think we need to go it but
6 I will give the court the references at {C8.14/3/14} at
7 D to E and {C8.14/3/15} at E to H.

8 That led to the court's observations at
9 {C8.14/3/17} --

10 MR JUSTICE FRASER: Maybe we should go there.

11 MR GREEN: Shall we go to that part. {C8.14/3/17}, top of
12 the page, 17, your Lordship to me:

13 "Mr Green, I am going to make certain observations
14 to you, which really are for the purposes of both of
15 you, and that you might find most useful now that you
16 have stood up. In a way, it is possibly, I suppose, a
17 misunderstanding as to the way time-limited trials work.
18 I know this is a QB case but it is being tried in this
19 building using many of the trial management procedures
20 that we use in this building, not only in the TCC but
21 the other specialist courts. In any time-limited trial
22 any party would get pretty short shrift if they tried to
23 make a formal point if a particular subject had not been
24 challenged within the time available. Therefore, it
25 occurs to me that at least part of the Post Office's

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1 concern arises out of a misapprehension of your
2 technical ability to do that. Are you aware of your
3 technical inability to manage such an objective?"

4 It might originally have been an objection. So it
5 was absolutely clear, and yet what we then find in the
6 defendants'/Post Office's closings at {A/6/78} -- I'm
7 only going to give your Lordship examples, but just to
8 explore the point generally. We have at paragraph 176:

9 "Nine PEAKs, limited to two categories, across
10 17 years does not suggest that the final response codes
11 were regularly applied incorrectly."

12 MR JUSTICE FRASER: Where are you looking?

13 MR GREEN: At paragraph 176, my Lord.

14 MR JUSTICE FRASER: Of the Post Office's closings?

15 MR GREEN: Indeed, at page 78.

16 MR JUSTICE FRASER: Yes.

17 MR GREEN: So that is the point in relation to the nine
18 PEAKs.

19 Then at paragraph 177, the very next paragraph
20 {A/6/79}, it says this was:

21 "... limited to only two codes used across the PEAKs
22 and categorised by Mr Parker, namely ... 70 and 68."

23 It is actually not correct. It also included 62,
24 but let's leave that by the by for a moment.

25 Not only is it generally wrong to take that

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1 approach, but there was, we respectfully say,
2 a divergence of approach between the claimants and
3 Post Office during the trial.

4 The claimants sought, where they could, not just to
5 give an example of a point but to try to approach points
6 in a way that the court could fairly regard as
7 representative. And that was the basis upon which bugs
8 1 to 10 were cross-examined on rather than cherry-picking
9 favourite bugs. It is the basis upon which later today
10 I'm going to invite your Lordship to look at 11 to 15.
11 So I'm not cherry-picking 17 or 21.

12 Similarly, in relation to the PEAKs that we dealt
13 with with Mr Parker and the closure codes, those PEAKs
14 were PEAKs that were already in play in the trial bundle
15 for the most part. I'm not aware of any that we
16 specifically uploaded to demonstrate the absurdness of
17 the closure codes. And we saw them because we were
18 looking at PEAKs that were already in play and they were
19 good examples. But not only that, my Lord, that
20 I specifically said at {Day12/53:23} in the transcript
21 that I was not going to be able to go through all of the
22 examples and specifically explained that I was going to
23 look at the big categories where there were large
24 numbers of PEAKs for which that code had been adopted in
25 the table that Mr Parker was referring to.

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1 So he showed in the table there were thousands of
2 PEAKs in some categories and we chose to look at the
3 closure codes where there were the largest number of
4 closures being affected and where he had not included
5 those closure codes as having any content in software
6 errors that Mr Roll might have been working on. That
7 piece ended at {Day12/86:13} and line 18 with
8 your Lordship saying:

9 "I don't think you are going to have time to do any
10 more of these:

11 "MR GREEN: I'm not going to do any more of those, my
12 Lord, I'm cutting it there because -- not least because
13 the witness accepts that he didn't go through them
14 before he gave his witness statement."

15 So there were two points there: (a) I went as far as
16 I could to try and give a representative impression of
17 how this had been done; and (b) because it became
18 absolutely clear that Mr Parker had not gone through
19 them himself before and also the extent to which he had
20 used the definitions in the underlying document which
21 had been put to Mr Roll was seriously in doubt, and he
22 positively said at one point in his evidence, which we
23 addressed in our closings, that he actually deliberately
24 adopted his own definition in one of the categories.

25 So for those reasons we didn't take that any further

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1 than necessary.

2 MR JUSTICE FRASER: But Mr de Garr Robinson is entitled to
3 submit, isn't he, that it wasn't a representative
4 impression? The fact it is a time limited trial doesn't
5 stop him making a submission.

6 MR GREEN: Your Lordship is absolutely right that the fact
7 that -- he can say it is not representative and put
8 forward submissions to make that point good. That's
9 always available. Your Lordship is absolutely right.

10 MR JUSTICE FRASER: But isn't that what he and his team are
11 doing in paragraph 177? {A/6/79}

12 The time limited trial point is that the party is
13 not permitted to submit that a point is accepted or has
14 not been challenged, and hence certain conclusions can
15 be drawn.

16 MR GREEN: Indeed.

17 MR JUSTICE FRASER: But that's rather different, isn't it,
18 from saying it is not a representative exercise?

19 MR GREEN: Well, my Lord, your Lordship is absolutely right.
20 But because no counter exercise is advanced to make that
21 point good, and because of the way it plays out through
22 the rest of the submissions, it appears to us that the
23 substance of the point there --

24 MR JUSTICE FRASER: I understand.

25 MR GREEN: -- is that. And if we look at {A/6/88}, the

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1 entire heading, your Lordship will see, is evidence that
2 was not challenged.

3 When we go over the page {A/6/89} to the conclusion
4 at paragraph 208, it is just a bare assertion that large
5 parts of Mr Parker's evidence was not challenged.

6 Having read all that, we revisited what the substantive
7 point seemed to be in other places.

8 MR JUSTICE FRASER: Understood.

9 MR GREEN: And that's what we wished to draw the court's
10 attention to.

11 MR JUSTICE FRASER: We are probably going to need a break at
12 some point.

13 MR GREEN: My Lord, I have two small points to finish this
14 off and give the transcript writers a break.

15 MR JUSTICE FRASER: Yes.

16 MR GREEN: The evidence said not to have been challenged
17 includes his evidence about the APPSUP role at 205.9
18 {A/6/89}:

19 "This includes his evidence that he cannot recall
20 any instance in which the APPSUP role has been used to
21 change transaction data, although he cannot state
22 unequivocally that it has not happened.

23 We didn't cross-examine further on that because his
24 evidence carries so little weight in relation to that
25 that it is effectively worthless.

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1 His paragraph 15 of his witness statement in which
2 the belated discovery of the APPSUP role is reflected,
3 which in itself is bizarre and speaks volumes, this is
4 at {E2/13/4}, reads as follows:

5 "APPSUP is used by SSC for updates to and
6 maintenance of the BRDB that would not involve changing
7 transaction data. I have not examined the privileged
8 user logs, but based on my experience my expectation is
9 that these uses of APPSUP or at least the vast majority,
10 are for support work that does not involve changes to
11 transaction data. I cannot recall any cases in which it
12 has been used to change transaction data, but I cannot
13 state unequivocally that there are no circumstances in
14 which it has ever happened."

15 Given the fact that he didn't know it had happened
16 at all, it was absolutely pointless to challenge
17 a witness of that sort in a time limited trial on the
18 point.

19 So it's not just the bare not challenged point, it's
20 ignoring the obvious context in which particular
21 evidence was not challenged.

22 My Lord, would that be a convenient moment?

23 MR JUSTICE FRASER: I think so, and we will have ten minutes
24 I think for the shorthand writers. Thank you very much.
25 (11.56 am)

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1 (A short break)

2 (12.05 pm)

3 MR GREEN: My Lord, can I now deal briefly with the approach
4 to some of the fact witnesses that Post Office called.
5 In relation to Mr Godeseth at {A/6/63}, which is page 63
6 of Post Office's written closings.

7 MR JUSTICE FRASER: Go on.

8 MR GREEN: Post Office's paragraph deals with Mr Godeseth's
9 evidence there, and what is said there is, in line 3,
10 some of his evidence was unsatisfactory:

11 "With the benefit of hindsight, Post Office would
12 not have asked Mr Godeseth to cover several matters that
13 were addressed in his first two witness statements -
14 although it is right to point out that if Post Office
15 had only called first-hand evidence, the trial would
16 have been wholly unworkable."

17 The obvious answer to that is to call Mr Jenkins,
18 who was relied on repeatedly by a number of witnesses.
19 But let's leave that aside for a moment.

20 Just analysing what is said by Post Office there.
21 The contention that with the benefit of hindsight they
22 would not have asked him to deal with several matters
23 that were addressed is amplified at paragraph 146 on
24 page {A/6/67}:

25 "In Mr Godeseth's cross-examination, some of the

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1 points he made on the basis of information provided by
2 others were shown to require correction or at least
3 clarification. This took Post Office by surprise. With
4 the benefit of hindsight, Post Office accepts that there
5 are points on which, if it wished to adduce any evidence
6 at all, it should have ensured that witness statements
7 were prepared for the individuals who were the sources
8 of the relevant information."

9 It is not clear why that is accepted in particular
10 in relation to Mr Godeseth rather than across the piece
11 on every occasion when that problem arose, but let's
12 just focus on this for the moment.

13 The Post Office didn't need hindsight to realise
14 that calling witnesses who don't actually know the
15 subject matter is wide open to error and will cause
16 difficulties for the experts, the other party and the
17 court, because the assumption when someone gives
18 a statement of truth that they believe something to be
19 true is at least likely to be that there is some
20 foundation for that belief. The difficulty for the
21 claimants was flagged at the pre-trial review in the
22 context of responding to complaints about Mr Henderson's
23 evidence. I won't take your Lordship to it but it is at
24 {C8.14/3/20}, which is me making the submission that
25 I effectively have to challenge someone who is not even

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1 there in relation to Mr Jenkins who appeared to be the
2 source of much of the evidence.

3 So the difficulty of a number of Post Office's
4 witnesses giving evidence about things they didn't know
5 about, which they got from others, was flagged up at the
6 PTR at {C8.14/3/20}.

7 Mr Coyne had himself identified difficulties with
8 Mr Godeseth's evidence in Coyne 2, which is at
9 {D2/4.1/98} at paragraphs 4.3(a) and (b). If we can get
10 that up, that will be helpful.

11 It is 4.3(a) and (b), specifically referring to
12 speaking with Mr Jenkins and so forth and not referring
13 to supportive documents. Post Office should not have
14 been surprised about the errors revealed in
15 cross-examination because those errors were errors that
16 the claimants were able to identify in relation to his
17 approach to the bugs and treatment of them, which were
18 apparent on the face of such documents as were
19 disclosed.

20 The number of errors were identified in Mr Coyne's
21 second report, but not subsequently corrected. You can
22 refer to Mr Coyne's second report; we don't need to
23 bring it up, but paragraph 3.30, {D2/4.1/21}.

24 Particularly with regard to the number of branches
25 affected in the receipts and payments mismatch which we

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1 find on page 24 of the report and the number of
2 occurrences at Callendar Square.

3 Your Lordship will remember that even in
4 January 2017 the Post Office was asserting that the
5 Callendar Square bug affected only one branch. We now
6 know that not to be the case.

7 The suggestion that Post Office were surprised is
8 resurrected further at paragraph 144.3, which is at
9 {A/6/66}:

10 " ... so far as Post Office was aware, the relevant
11 parts of Godeseth 2 were most unlikely to be
12 controversial. For example, the Misra trial was a
13 matter of public record, the four bugs were covered by
14 contemporaneous documentation and Post Office had no
15 reason to doubt Fujitsu's account of the documents it
16 held."

17 It is extremely surprising that it is said there
18 that his evidence of the bugs was most likely to be
19 uncontroversial. The impact and affect of bugs was
20 always going to be hotly contested and, indeed,
21 I actually made that submission expressly about
22 Mr Godeseth's second witness statement at the PTR at
23 {C8.14/3/18} between pages 18 and 19.

24 The second line on the right-hand side of the foot
25 of page 18:

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1 "If your Lordship then looks at what then follows,
2 there is a treatment of the individual known bugs that
3 Mr Coyne is reporting, so Callendar Square, these are
4 actually front and centre main --"

5 MR JUSTICE FRASER: Where are you? At the very bottom.

6 MR GREEN: Three lines up from the bottom. Go over the page
7 {C8.14/3/19}. Something has gone wrong there. I will
8 just read it out:

9 "... main fighting ground for the Horizon trial, so
10 Callendar Square is immediately below, and you then get
11 some of the bugs, later on, payment mismatches ...
12 dealing in this section ..."

13 There's absolutely no doubt that the evidence about
14 bugs is going to be central to the testing of the
15 evidence in this trial.

16 Mr Coyne in his second report raised multiple issues
17 with Mr Godeseth's second witness statement and whether
18 it captured the full extent of the bugs. And that was
19 paragraph 4.3(d) on page {C8.14/98} and the further
20 points that follow at 4.4 over the page. And as to the
21 language that Fujitsu's account of the documents it
22 held, which is Post Office's language in its closing
23 submissions.

24 MR JUSTICE FRASER: Which language are you talking about?

25 MR GREEN: In Post Office's explanation of having no reason

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1 to doubt Fujitsu's account of documents which it held.

2 Many of the documents were effectively created by
3 Fujitsu for Post Office, if they weren't Post Office
4 documents themselves. So, for example, the receipts and
5 PEAK payments mismatch documents is a note of a meeting
6 attended by Mr Andy Wynn of Post Office.

7 So it is not simply a matter of Fujitsu's account of
8 documents that helped. And in any event the documents
9 when taking a witness statement from anyone, the proper
10 approach is to say: what's the source of that? Is there
11 a document that supports that and, if so, should it be
12 exhibited? And that didn't happen, and that's part of
13 what went wrong, although not all of what went wrong.

14 So there are two things in combination. There is
15 calling witnesses who aren't properly placed and it
16 hasn't been made sure that they are properly placed to
17 give the evidence that they are giving. And secondly,
18 the fact that very frequently no documentary support was
19 cited for general propositions of what would or could or
20 should have been happening is why (a) it was difficult
21 for the claimants to unpick it, and we had to go through
22 the documents ourselves and find them, but (b) it must
23 have contributed to any misapprehension, if there was
24 such, by Post Office about whether Mr Godeseth was
25 properly placed to give the evidence at all.

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1 Had the witness statements been done in the usual
2 way by seeking to identify what the basis for things
3 that are being said is and exhibiting the relevant
4 documents, it would have become apparent much sooner,
5 even if it wasn't fully apparent from all the
6 observations made by Mr Coyne and others, that
7 Mr Godeseth's evidence was very unsatisfactory in that
8 respect.

9 As to Mr Jenkins, the explanation for him not being
10 called is provided at paragraph 138, and that's at
11 {A/6/64}, page 64 of the Post Office's closing.

12 Paragraph 138 says:

13 "Post Office wanted to provide a simple and
14 uncontroversial overview of Horizon and its relevant
15 features."

16 My Lord, just pausing there. That is exactly the
17 problem we faced in the Common Issues trial, that there
18 was this wish to present a general overview that seemed
19 extremely rosy and which, when unpicked, fell apart.

20 That was also the difference reflected in the
21 approach of the two experts. Dr Worden provided this
22 top down overview-based look at the Horizon system, in
23 part largely relying on Mr Godeseth, as we will come to
24 in a minute, and Mr Parker's evidence and others.
25 Whereas Mr Coyne was trying from a very early stage to

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1 actually understand how any errors were recorded, were
2 they recorded, obtain the documents and analyse them for
3 the purposes of answering the Horizon questions. In
4 that respect -- we will come to it in a bit more
5 detail -- we say the criticisms made of Mr Coyne are
6 extremely unfair.

7 Just focusing on the explanation from Mr Jenkins not
8 being called, which we find at paragraph 138, it says
9 Post Office says there that:

10 "It recognised that it was not possible for one
11 person to have a complete understanding of all the
12 corners of the Horizon system ..."

13 Pausing there, Mr Jenkins appears to have had nearly
14 a complete knowledge from what we have heard:

15 " ... but, on the basis that there would not be room
16 in the timetable for multiple witnesses, it took the
17 view that this overview should be provided by one
18 person."

19 Just pausing there. That isn't even what happened.
20 It wasn't only Mr Godeseth who referred to Mr Jenkins.
21 And Mr Jenkins could certainly have collected
22 information from other team members who other witnesses
23 collected information from. But they then go on to say:

24 "Two possible candidates were Torstein Godeseth and
25 Gareth Jenkins. Taking into account the involvement

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1 that Mr Jenkins had had in a number of criminal
2 prosecutions that are currently being looked at by the
3 criminal Cases Review Commission (eg the Misra case),
4 Post Office asked Mr Godeseth to do so."

5 Well, we respectfully say it is a slightly
6 surprising approach because we see it further amplified
7 at 144.1 on page {A/6/66}. It says:

8 "... Post Office was concerned that the Horizon
9 Issues trial could become an investigation of
10 [Mr Jenkins'] role in this and other criminal cases."

11 My Lord, two points arise on that. Firstly, those
12 cases are stayed in the GLO, the criminal cases.

13 MR JUSTICE FRASER: This court is not concerned with and has
14 no jurisdiction in respect of any of the criminal cases.

15 MR GREEN: Precisely. There is absolutely no prospect of
16 either of us seeking to do that or of your Lordship
17 allowing it. So we don't accept that is a good reason
18 at all. Mr Jenkins clearly had the firsthand knowledge
19 and the court wouldn't have allowed the sort of
20 investigation of which Post Office was fearful in this
21 respect. But it does suggest a defensiveness which is
22 not completely isolated in these proceedings.

23 MR JUSTICE FRASER: I don't have the reference immediately
24 to hand but I seem to recall one of the witnesses said
25 that Mr Jenkins had retired, hadn't he, or am I wrong

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1 about that?

2 MR GREEN: He has retired, but he had been consulted. He
3 provided comments --

4 MR JUSTICE FRASER: I know the extent to which witnesses
5 have relied on him etc, but I just wanted to check
6 I wasn't imagining that.

7 MR GREEN: Your Lordship is absolutely right. Of course,
8 that's not actually the reason relied on. And then
9 there has then been correspondence about his
10 availability, which I will very briefly touch on.
11 {H/184/1}, {H/201/1} and {H/203/1} are effectively the
12 three letters.

13 {H/184/1}, if we start with that. A very short
14 letter:

15 "We note that Mr Jenkins is the author of many
16 important contemporaneous documents, and that both of
17 Mr Godeseth's witness statements give hearsay evidence
18 on the basis of conversations he has apparently had with
19 Mr Jenkins.

20 "Is Mr Jenkins available during the trial period?"
21 {H/201/1} is the Wombles response of

22 12th February 2019, and the second line of that says:

23 "The information that you have sought regarding
24 Mr Jenkins is clearly privileged."

25 Then they say it would have been open to us to

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1 approach Mr Jenkins or apply to call him, which is
 2 correct.
 3 Then they add there if we were going to make
 4 an application out of time, we should bear in mind that:
 5 "... he acted as our clients' [Post Office's] expert
 6 witness in relation to a number of criminal prosecutions
 7 ... being looked at by the [CCRC]," as a suggestion to
 8 us that we should not seek to contact him, it appeared
 9 to be.
 10 Then at {H/203/1} the letter from Freeths:
 11 "We note your response to our letter regarding the
 12 reason for not calling Mr Jenkins and why he is not
 13 available to give evidence during the trial: you have
 14 declined to give any or even to tell us whether he is
 15 available during the trial.
 16 "You have cited that the explanation for him not
 17 himself giving evidence is privileged."
 18 So our just simple question, "Is he available?", was
 19 not: we don't know, or anything of that sort, it is that
 20 it is privileged. So we assumed that he must be part of
 21 the shadow expert team.
 22 We have now been informed apparently he is not.
 23 MR JUSTICE FRASER: He is not what?
 24 MR GREEN: Part of the shadow experts team that the
 25 Post Office is entitled to use on the case and has been

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1 using and included in their budget.
 2 So we enquired whether he was in fact part of that
 3 team and the answer is no. We hadn't appreciated that.
 4 MR JUSTICE FRASER: I don't think he -- I think the item of
 5 cost was originally included in the budget and was then
 6 withdrawn. I do not think it is correct to say it is
 7 included in the budget.
 8 MR GREEN: No, my Lord, it was originally included and then
 9 disallowed.
 10 MR JUSTICE FRASER: Well, no, it was not disallowed. It was
 11 withdrawn because it was --
 12 MR GREEN: We objected to it and it was not included in the
 13 approved budget. That's absolutely correct.
 14 My Lord, can I move on to the issue taken with
 15 cross-examining witnesses by reference to documents,
 16 because this is something in respect of which
 17 Post Office complains that it is unfair to cross-examine
 18 witnesses by taking them to documents.
 19 The criticism is levelled at us for doing this at
 20 paragraph 850, which is {A/6/277}. Paragraph 850 makes
 21 the point three lines up from the bottom on the
 22 right-hand side:
 23 "She was, however, taken in cross-examination to
 24 many documents which she had not seen before -
 25 a recurring theme of Cs' cross-examination. It is

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1 submit that such an exercise is of very limited
 2 utility."
 3 Pausing there. We say it is not an unusual way to
 4 cross-examine to put contemporaneous documents that have
 5 been disclosed as relevant to a witness whose evidence
 6 appears to suggest that they are aware of at least the
 7 general area in which those documents arise. We say
 8 that's actually common. Questions like that have been
 9 put up and down the country every second of the working
 10 day across all courts and tribunals. So it is not
 11 an unusual approach to take witnesses to contemporaneous
 12 documents.
 13 But the complaint that's made is that Ms Van Den
 14 Bogerd was taken to many documents which she had not
 15 seen before. Now, that is a prisoner to how many
 16 documents she has chosen to look at, because if
 17 a witness has not looked at, on the face of it, relevant
 18 contemporaneous documents at all then every document
 19 will fall into the category of document to which
 20 Post Office appears to complain that she was taken. And
 21 if we take an example, Mrs Van Den Bogerd's witness
 22 statement speculated about the potential cause of
 23 a spike in declared losses on the introduction of
 24 Horizon Online. Paragraph 183 at {E2/5/42}.
 25 This was effectively SPMs tidying up their accounts.

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1 That speculation was challenged in cross-examination on
 2 the footing that the claimants would expect a senior
 3 witness giving evidence on an issue of that type to
 4 review the available documentary record before
 5 speculating in that way and providing the court with
 6 a witness statement signed and verified with a statement
 7 of truth.
 8 Mrs Van Den Bogerd specifically said she had not
 9 done this in answer to one of your Lordship's questions
 10 which we find at {Day5/167:22} onwards. At 167, line 22
 11 your Lordship says:
 12 "MR JUSTICE FRASER: Understood. And then the
 13 second point is when you were preparing your witness
 14 statement and in particular the paragraphs at 180 to
 15 183 --
 16 "Answer: Yes.
 17 "MR JUSTICE FRASER: -- did you do any investigation
 18 in respect of what might have been happening that you
 19 didn't know at the time in 2000 --
 20 "Answer: Not back to 2000, no.
 21 "MR JUSTICE FRASER: -- or in 2010 when the change
 22 was from Legacy Horizon to Horizon Online?
 23 "Answer: So in 2010 I was in a different role and
 24 had broader responsibility and I knew what -- what we
 25 did, again we replicated a similar approach to make sure

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1 we supported branches at the time, but as for any detail
2 of Information, I didn't research into that, no."

3 So that was an example of one of the matters on
4 which Mrs Van Den Bogerd was challenged by reference to
5 contemporaneous documents. She hadn't seen them, but
6 that is not a proper or legitimate criticism of the
7 claimants' side, we respectfully submit, and might
8 fairly be thought to go the other way.

9 In moving on to rewriting the fact evidence in the
10 closing submissions, which is the next theme, some of
11 these aspects are quite surprising. One example is the
12 problem management procedure.

13 The defendants' closing addressed the problem
14 management procedure albeit in the context of
15 Mr Godeseth's evidence being unsatisfactory, and used
16 that as an excuse to try and rewrite the evidence which
17 the court has actually heard.

18 We see that at page 68 of the defendants' closing
19 {A/6/68} at paragraph 147.4, where it says:

20 "In paragraph 63, he [Mr Godeseth] appeared to be
21 saying that 'Fujitsu Post Office Account Customer
22 Service Problem Management Procedure document 223 was
23 not implemented following Mr Salawu's departure as
24 Horizon Head Lead Service Delivery manager, when in fact
25 it was merely section 1.4 of that document that was not

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1 implemented."

2 Well, that came as news to the claimants, my Lord,
3 not least because of the way the issue arose and because
4 of how it was cross-examined on and not re-examined on.

5 MR JUSTICE FRASER: Does that last part of the sentence come
6 from evidence or is that --

7 MR GREEN: No, that's new.

8 MR JUSTICE FRASER: All right.

9 MR GREEN: So it arose because Mr Coyne was proceeding on
10 the basis that there was a proper problem management
11 system in place, and therefore there should be documents
12 available that would collate bugs and errors and show
13 lots of information, so we could get disclosure. We
14 thought that would be very helpful, and we can see that
15 from Mr Coyne's first report at {D2/1/97} at
16 paragraph 5.158 and 5.159:

17 "... is the POL monitor that tracks the number of
18 records arising directly as a result of managed change
19 activities."

20 You can see the problem management procedure
21 footnoted at footnote 150 at the bottom of the page:

22 "No disclosed logs have been found in respect of
23 these problem records that are listed as being reported
24 monthly."

25 5.159:

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1 "Requests have been made in relation to making such
2 Management Information reports. At the time of writing,
3 these have not been made available for analysis."

4 So Mr Coyne's assumption, which is actually shared
5 by Dr Worden, was that the problem management procedure
6 document was in force and therefore there should be
7 a repository of documents, which we have not been aware
8 of at that stage, which would be very helpful because
9 they would show what was going on.

10 Then in response to that, with the looming
11 possibility of disclosure, we get Mr Godeseth's second
12 witness statement served saying in fact it was not
13 implemented, and we find that at paragraph 63,
14 {E2/7/16}. In paragraph 63 we get the conversation with
15 Mr Bansal.

16 And then four lines up from the bottom:

17 "I understand from Steve that Saheed Salawu's
18 replacement did not wish to implement the changes and
19 therefore the records referred to by Mr Coyne ... of his
20 report do not exist, as we continued to follow the
21 previous existing reporting methodology."

22 That is referring back up to the situation before
23 the new procedure, which was to achieve the same,
24 problem management seeks to establish the root cause of
25 incidents and then start actions to improve or correct

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1 the situation.

2 So your Lordship may remember the cross-examination
3 obviously that followed what we heralded in our written
4 openings at paragraph 6(4) at {A/1/6} where we made
5 clear our understanding was that this had not been
6 brought in and that Mr Godeseth suggested this followed
7 the departure of the Horizon lead service delivery
8 manager.

9 MR JUSTICE FRASER: Where are you looking now?

10 MR GREEN: This is paragraph 6(4).

11 MR JUSTICE FRASER: Yes.

12 MR GREEN: The bottom two lines, the departure, this was not
13 brought in. Three lines up from the right-hand side.
14 Mr Godeseth suggests and refers to those paragraphs.

15 No whiff of disagreement from Post Office at this
16 stage, in fact until closing submissions. Evidence at
17 trial was Mr Godeseth was cross-examined on
18 paragraph 63. I will give your Lordship the reference
19 without going there. {Day7/157:4} to line 21. We also
20 put to Mr Parker the problem management system wasn't
21 brought in. We did that at {Day12/53:4}.

22 MR JUSTICE FRASER: What did Mr Parker say?

23 MR GREEN: He didn't suggest it had been brought in either.

24 MR JUSTICE FRASER: Let's go to --

25 MR GREEN: Let's go to {Day12/53:4}, if we may.

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1 We can see it says "proper management", but we can
2 see later on it is clearly problem management:

3 "... just as an aside -- the proper", it says proper
4 on the transcript, "wasn't brought in either. We
5 covered that with Mr Godeseth, you were here for that?"

6 "Answer: Yes.

7 "Question: So there was no problem management
8 system brought in notwithstanding it was internally
9 recommended, and so all you're left with is this system
10 of looking at the codes and seeing how they have been
11 categorised on closure."

12 Absolutely no demur at all. It has been there in
13 Mr Godeseth's evidence, not a scintilla of disagreement
14 from anyone, no re-examination at that point of
15 Mr Godeseth or Mr Parker.

16 We also put it to Dr Worden on {Day19/166:15} to
17 line 16 on that footing. About halfway down the page.
18 I'm not sure that's quite right. Can we just check that
19 reference. I will come back to you on that.

20 MR JUSTICE FRASER: That doesn't appear to be the right
21 reference.

22 MR GREEN: It is not the right reference.

23 MR JUSTICE FRASER: You say you put it to Dr Worden?

24 MR GREEN: Put it to Dr Worden as well. Again, no
25 re-examination on that.

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1 So we have an unusual situation, we respectfully
2 submit, to say the least that we filed our written
3 closing submissions on the basis of the evidence that
4 was actually heard and was tested because with
5 Mr Godeseth we said "Well, how come there are all these
6 extra versions of this if it wasn't introduced?"
7 Because it looked weird to us. We challenged it,
8 apparently it was not introduced. And we filed our
9 written closing submissions, and we learn then for the
10 first time from Post Office that actually it was brought
11 in. It was only an individual paragraph that wasn't.

12 We respectfully say obviously that's completely
13 unsatisfactory, but also if it is true it is again less
14 than forthcoming and showing a striking lack of candour
15 about what documents might be available.

16 My Lord, just to give another example of a sort of
17 rewrite which sort of bleeds into the attacks on the
18 documents where they are unfavourable to Post Office.
19 So we have this strange part, which I have already shown
20 your Lordship, where they say if internal Post Office
21 documents say Horizon was problematic, the authors have
22 got it wrong. And that's part of this theme.

23 If we look at the document recording the visit to
24 Mr Bates' branch, it is at {F/99.1/1}. It was
25 a document put to both Mrs Van Den Bogerd and Dr Worden.

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1 If I can just give the references {Day5/168:14} and
2 {Day18/123:12}.

3 If we look at {F/99.1/1}, the point about that
4 document was that the visit being made, the
5 Post Office -- it should be, I think, F/99 --

6 MR JUSTICE FRASER: You said 99.1.

7 MR GREEN: That may have been my error, my Lord.

8 MR JUSTICE FRASER: Is it {F/99/1}?

9 MR GREEN: I think it may be {F/99/1}. I will just make the
10 point and we will check the reference on that.

11 It is {F/99.1/1}, I think. The short point,
12 my Lord, is this is the one where Mr Bates is visited,
13 and the officer visiting says "I couldn't get a correct
14 read on the cash account because Horizon intermittently
15 adds the cash from the previous day".

16 MR JUSTICE FRASER: This is the audit report, isn't it?

17 MR GREEN: Exactly. So the Post Office auditor -- two of my
18 Opus screens have gone down -- but at {F/99.1/1}. We
19 seem to be able to see it on our screens.

20 MR JUSTICE FRASER: Which page are you going to?

21 MR GREEN: It is {F/99.1/4}.

22 MR JUSTICE FRASER: Page 4. Yes. I have got it on my own
23 separate screen.

24 MR GREEN: I'm most grateful. The short point is that it is
25 striking that someone attending to do an audit of the

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1 correct cash totals -- thank you very much; if we could
2 slide to page 4 of that, I think -- is unable -- if we
3 go towards the bottom, "Comments", just above "National
4 Savings":

5 "A correct assessment of cash holdings could not be
6 made because the Horizon system intermittently adds the
7 previous days cash holdings to the daily declaration."

8 There was no attempt to re-examine Mrs Van Den
9 Bogerd or Dr Worden about that, but what is now said is
10 that this is actually a designed function in Horizon in
11 the closing submissions that Post Office has filed at
12 {A/6/279}, paragraph 856 about carrying forward balances
13 from a previous day. And we respectfully submit (a)
14 that's completely new, and (b) it just doesn't chime
15 with the reality of an auditor who well knows how
16 Horizon should operate encountering that difficulty in
17 Mr Bates's branch when he goes to get a cash reading.

18 The word "intermittently adding" is extremely
19 difficult to reconcile with simply carrying a value
20 forward from the day before.

21 My Lord, just to give your Lordship the correct
22 reference to the problem management being put to
23 Dr Worden, that was at {Day19/176:13} to line 17.

24 I apologise for that mistake.

25 MR JUSTICE FRASER: Yes.

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1 MR GREEN: Then moving forward to --
 2 MR JUSTICE FRASER: Just before you move on though, isn't
 3 the point it was not re-examined upon, doesn't that fall
 4 within the same basket of it is a time-limited trial,
 5 one doesn't have time to re-examine on everything?
 6 MR GREEN: My Lord, absolutely right, but if there's going
 7 to be a --
 8 MR JUSTICE FRASER: Positive explanation.
 9 MR GREEN: Positive case suddenly introduced for the first
 10 time, it is quite nice to have a passing mention in
 11 re-examination.
 12 MR JUSTICE FRASER: All right.
 13 MR GREEN: Take, for example, keystrokes where the position
 14 is absolutely bizarre because you get Mrs Van Den Bogerd
 15 accepting initially that there were keystrokes
 16 available. Then you get the sheepish re-examination
 17 that maybe they are not, and then you get the reference
 18 to Mrs Mather whose witness statement expressly said
 19 that keystrokes were available and then in chief is
 20 invited to say what she meant by the word "keystrokes".
 21 She means or transactions and sales data.
 22 Then the hammer drops later on when we get
 23 disclosure of a whole load of keystrokes which were
 24 available from Fujitsu. I mean, it is against that
 25 background that there is some concern about introducing

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1 completely new explanations without any foundation in
 2 the evidence.
 3 My Lord, can I just deal with a couple of
 4 documentary examples. First of all, the phantom
 5 transaction PEAK and the Romec engineer.
 6 That was quite surprising to say the least. What
 7 effectively was said, as your Lordship may remember, is
 8 that the Romec engineer's view of having actually
 9 observed phantom transactions happening was not
 10 reliable. That was how it was put to Mr Coyne. And
 11 that PEAK is {F/97/1}, and the reference to the Romec
 12 engineer advising that he has witnessed further phantom
 13 transactions whilst on site is on page {F/97/5} of that
 14 PEAK.
 15 It is right your Lordship should be reminded, if
 16 I may, that it wasn't only that Romec had seen it,
 17 because we know that Mr Carroll had also seen it. So
 18 when we look at page {F/97/7} of that PEAK, in the
 19 bottom yellow box:
 20 "I now have pressing evidence to suggest that
 21 unwanted peripheral input is occurring, the likely
 22 source being the screen. This has been seen at Old
 23 Iselworth (OI) and Wawne (W) with OI being the best
 24 site; when the PM has been asked to leave the screen on
 25 overnight I have observed system activity corresponding

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1 to screen presses happening with no corresponding
 2 evidence of either routine system activity or human
 3 interference, the way forward now is to correlate this
 4 with the Microtouch supplied monitoring software and to
 5 this end Wendy is arranging for installation of Kit at
 6 OI on Friday, we can then, provided the PM agrees, leave
 7 screens on over the weekend and record what happens.
 8 Once these results have been analysed I feel sure that
 9 we will be in a position to move forwards at OI. All
 10 other cases should be considered on their individual
 11 merits but you must appreciate that this is a fairly
 12 intensive analytical activity and I cannot hope to
 13 provide answers on all cases in the short term."

So it was not just Romec who had reached that view,
 but what's relied on by Post Office when they say a host
 of possible explanations at page 475 of their closing
 submissions, paragraphs 10 to 11, is Mr Carroll's view,
 effectively, that we find on page 9 of the PEAK {F/97/9}
 where, in closing this down, Mr Carroll says:

"Phantom [transactions] have not been proven in
 certifications which preclude user error. In all cases
 where these have occurred a user error related cause can
 be attributed to the phenomenon."

Three things going on. First, rather overlooking
 what Pat Carroll had previously said about it. Secondly

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1 seeking to elevate the slightly bizarre way of
 2 determining how this should be treated, as user error or
 3 not, to a finding that it was in fact user error, and
 4 Mr Coyne being challenged on the footing that he agreed
 5 he was he was not in a position to say that Mr Carroll
 6 was wrong, which Mr Coyne very fairly accepted: well,
 7 I can't say he is wrong that it couldn't preclude user
 8 error.

But we respectfully say that is a pretty astonishing
 way of dealing with the PEAK which is pretty
 unsatisfactory, to say that actually Mr Carroll and the
 Romec engineer plainly got it wrong.

The Helen Rose report goes a step further, if that's
 possible. The treatment of that is, we say, absolutely
 extraordinary. The Helen Rose report is at page 1082
 and includes --

MR JUSTICE FRASER: Of?

MR GREEN: Sorry, {F/1082/1}, and on page {F/1082/2} of that
 document under "Reviewing the data", it says:

"On looking at the credence data, it clearly
 indicates that the reversal was completed by JAR001
 (postmaster) at 10:37 ... and was reversal indicator 1
 (existing reversal) and settled to cash. An existing
 reversal is where the session number/Automated Payment
 number has to be entered to reverse the item."

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1 So the point about this was the initial view was
2 an assumption that there had been a reversal by the SPM.
3 And the Helen Rose report then, as your Lordship will
4 remember from dealing with this document on several
5 occasions, goes through to identify that that actually
6 had not been the case.

7 Mr Coyne flagged this up at {D2/4.1/113} in his
8 second report. He says:

9 "Credence data, most commonly used by Post Office
10 for their investigations, is either wrong or does not
11 provide sufficient information to complete the full
12 picture ..."

13 This is an example of one of his concerns. On what
14 was presented in the Helen Rose report, that seems to be
15 correct. But Mr Coyne's account of the Helen Rose
16 report was made subject to very extensive
17 cross-examination, pressing him to accept that
18 Helen Rose had in fact misinterpreted the underlying
19 data and put 2 and 2 together to make 5. That's what
20 was put. In fact, my learned friend said put 2 and 2
21 together to make 4 and then changed it to 5, but the
22 point is it was being suggested that she had got it
23 wrong, not right. That's at {Day15/38:15} to
24 {Day15/39:24}.

25 What's effectively being put to Mr Coyne there is

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1 that Helen Rose has got it wrong. And just pausing
2 there, Mr Coyne's interpretation of what appears on the
3 face of the report was totally reasonable and, we say,
4 right, and Post Office not only runs the, we say,
5 extraordinary misinterpretation point in their closing
6 submissions at paragraph 529 on page 194, but also used
7 that as a basis to subject Mr Coyne to very heavy
8 criticism for his evidence. There are pages and pages
9 of criticism on that footing on an extremely strained
10 interpretation of a document which appears to say the
11 opposite to what Helen Rose actually said.

12 Bear in mind, my Lord, this was a document about
13 which, for example, Angela Van Den Bogerd's evidence was
14 initially completely wrong. So it is actually the
15 Post Office's treatment of the Helen Rose report which
16 is properly the subject of criticism, and it is bizarre
17 that it is Post Office's case that it is Helen Rose's
18 fault that she misinterpreted the data, given that she
19 was a security fraud analyst who was evidently involved
20 in prosecutions.

21 My Lord, I have touched on the internet documents
22 critical of the Post Office and we identified a number
23 in opening. We put them to Dr Worden and addressed them
24 again in closing by reference to what the documents
25 actually say; for example, paragraph 614 at {A/5/213}.

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1 MR JUSTICE FRASER: This is your closing, yes?

2 MR GREEN: This is our closing. It is to that that
3 Post Office give their response. It is a section in our
4 closing that begins at paragraph 614 on page 213.

5 MR JUSTICE FRASER: Yes.

6 MR GREEN: It is that section to which Post Office are
7 responding with reference to which I took your Lordship
8 out of order to at the beginning, where they say
9 {A/6/134}:

10 "The Post Office documents were not drafted with the
11 benefit of the vast amount of work that has been carried
12 out by the experts for this trial. If the authors
13 considered that Horizon was not a good system, they were
14 wrong (although that is not even a fair summary of what
15 the documents say)."

16 We say that is an absolutely astonishing submission,
17 particularly where Dr Worden hadn't read any of them and
18 the contention is that he is in a better position, for
19 example, than Mr Rob Houghton, who is Post Office's
20 chief information officer who presented to the board on
21 Post Office's IT strategy in January 2017, which is one
22 of the documents which we see at {F/1611/87}.

23 Then, just to make the one-way street point good,
24 that is to be contrasted with the, as it turned out,
25 wholly misplaced reliance on the ISAE service audits in

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1 relation to change management and remote access, which
2 we have addressed separately why those audits (a)
3 weren't addressed to the same point as the 2011 audit,
4 and secondly, why they plainly didn't pick up what we've
5 seen about remote access in the APPSUP role in the
6 APPSUP PEAK.

7 But what they say about that, and this is part of
8 Post Office's cross-examination of Mr Coyne, was to say
9 to Mr Coyne -- we can look at it at {Day16/174:11} to
10 line 15. The tee-up is that unhelpful documents to
11 Post Office, even if drafted by Post Office, even if
12 drafted by their own IT chief information officer and
13 presented to the board, they are wrong and the experts,
14 including Dr Worden, who had never read any of them, are
15 right. Leave aside the fact that Dr Worden accepted
16 they were irreconcilable with his views.

17 Then when something is thought, albeit wrongly, to
18 be in Post Office's favour, what you get is the
19 cross-examination at page 174, lines 11 to 15:

20 "Question: Mr Coyne, would you agree with me that
21 in principle the best people to judge whether action is
22 being taken to address recommendations made by auditors
23 is the auditors themselves rather than you, would you
24 agree with that?

25 "Answer: Yes.

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1 "Question: Let's look to see what the auditors say
2 in later years."
3 So effectively where the documents are in
4 Post Office's favour you take them on their face and the
5 authors are right, even if they are the wrong documents
6 and so forth, contradicted by the PEAK at the time, well
7 known to Fujitsu. But when the documents are against
8 Post Office, the authors, even if they are Post Office's
9 own employees charged with those specific roles,
10 internal experts, they are apparently wrong. And we
11 respectfully say even by the standards of Post Office
12 conduct in this litigation, that is a bizarre approach
13 to urge upon this court to deal with the relevant
14 contemporaneous documents.

15 My Lord, that's a natural break. Would it be
16 convenient to rise a couple of minutes early?

17 MR JUSTICE FRASER: I think it would. Thank you very much.
18 2 o'clock.

19 (1.00 pm)

20 (The short adjournment)

21 (2.00 pm)

22 MR JUSTICE FRASER: Mr Green.

23 MR GREEN: My Lord, can I just pick up one brief observation
24 in relation to disclosure.

25 The Post Office made various criticisms in their

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1 closing submissions relating to claimants' disclosure,
2 and the short point is that the claimants were directed
3 to disclose the documents they relied on and any known
4 adverse documents, which is what they in fact did. And
5 that order is from the fourth CMC order, paragraph 5,
6 which is at {C7/18/2}.

7 We needn't go to it. There is correspondence where
8 Post Office has sought to press the claimants in
9 relation to those issues in the light of evidence given
10 at trial. And the relevant -- I'm not going to take
11 your Lordship to the correspondence, but just in case,
12 so your Lordship has the picture in case something is
13 made of it, they are letters of 15th March, 17th March,
14 14th May and 29th May of this year, and they are to be
15 found respectively at {H/242.6/1}, 15th March; {H/255/1}
16 is 27th March --

17 MR JUSTICE FRASER: You said 27th March?

18 MR GREEN: 27th March.

19 MR JUSTICE FRASER: I thought you said 17th March.

20 MR GREEN: If I did I misspoke, I'm sorry. 27th March.
21 {H/280/1} is 14th May and {H/303/1} is 29th May.

22 MR JUSTICE FRASER: Those are letters in both directions,
23 are they?

24 MR GREEN: Toing and froing in relation to that. It is of
25 course open to a party to make submissions in relation

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1 to how document have been disclosed, as, indeed,
2 Post Office seeks to do going back that. A bit more
3 resistant to the stream going the other way, as
4 your Lordship has already seen.

5 Just very briefly in relation to that, the adoption
6 of model C disclosure by the court, including in
7 particular the obligation to disclose known adverse
8 documents, does not make a party's explanation for the
9 emergence at a late stage of documents irrelevant or
10 immune to scrutiny from the court, nor is an approach by
11 the claimants to seek at successive hearings to improve
12 on the position in relation to documents, some of which
13 they have been seeking since 2016, an answer by way of
14 saying, well, you never sought specific disclosure.
15 Neither of those are answers in relation to a fair
16 appraisal being made of how Post Office documents have
17 come to be disclosed as late as they have.

18 That's a very brief response in relation to that
19 point, my Lord. We just don't accept that for a moment,
20 particularly when the evidence, for example the
21 mis-keying, flies in the face of the most extraordinary
22 changes of evidence before the court. Perfectly
23 legitimate for the court to want to know how that
24 document came to be disclosed when it did.

25 So with that brief footnote in relation to

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1 disclosure I just wanted to make a very few brief
2 submissions in relation to the treatment of Mr Coyne,
3 who your Lordship has obviously appreciated has been
4 heavily criticised, we respectfully say very unfairly.

5 His approach was correctly to try and see if there
6 was evidence of any relevant bugs, to try and identify
7 what remote access evidence there was, to identify
8 relevant lines of enquiry, which we see in his early
9 requests as long ago as April 2018, as we flagged up in
10 our closing submissions, and to seek documents in the
11 RFIs that they did in the summer of 2018.

12 His attempt to be careful and try and work out what
13 has happened and what there was and was not evidence of,
14 including what there was not strong evidence of, which
15 is the wording of paragraph 1.15 on which he was
16 extensively cross-examined, that was not only the right
17 approach, but a helpful approach and one that was framed
18 by reference to the Horizon Issues as they were actually
19 ordered by the court.

20 There is a criticism of him in relation to the
21 Helen Rose report to which I have already averted, but
22 we respectfully invite the court to contrast that with
23 the defendants'/Post Office's treatment of the evidence
24 of Mrs Van Den Bogerd in relation to Helen Rose, which
25 turned out to be wrong, which Post Office, at

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1 paragraph 852 [A/6/278] of their closings explained that
2 her evidence was to give early notice of Post Office's
3 case but now effectively overtaken by more detailed
4 consideration in the expert evidence.

5 That is an attempt (a) to gloss over the fact that
6 the evidence was wrong, but (b) it stands in stark
7 contrast to the pages, ten pages of criticism,
8 critiquing Mr Coyne's account of the Helen Rose report
9 that we find between paragraph 521 at [A/6/192] and 552
10 at [A/6/202].

11 The reality is that Mrs Van Den Bogerd
12 misrepresented, whether unwittingly or by not taking
13 care, what the Helen Rose report said and what her
14 evidence said was wrong, as she accepted.

15 We see that evidence at [Day5/90:1]. So, again, we
16 have got a sort of one-way street where Mr Coyne
17 actually gets the Helen Rose report right and is
18 criticised; Mrs Van Den Bogerd gets it wrong and accepts
19 it is wrong, and that's just clarification and overtaken
20 by more detailed consideration, all in circumstances
21 where the premise of the criticism of Mr Coyne is that
22 Helen Rose, Post Office's own investigator, as
23 I submitted before lunch, completely misinterpreted the
24 data before her.

25 That is one example, my Lord, of a fairly wholesale

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1 attempt to discredit Mr Coyne by suggesting, we say
2 unfairly, that his essential endeavour was to throw mud
3 at Horizon in the expectation that at least some of it
4 would stick. And those words are taken from
5 paragraph 267 at [A/6/103], bottom four lines:

6 "His essential endeavour was to throw mud at Horizon
7 in the expectation that at least some of it would stick,
8 and not to worry too much or at all about giving the
9 other side of the picture or even presenting a fair view
10 of the documents to which he referred."

11 That's both a surprising submission and an unfair
12 one. And where, for example, Mr Coyne said that the
13 position on transaction corrections might make the
14 position better or worse, that was put to Dr Worden. He
15 is being scrupulously fair there and Dr Worden accepted
16 that he was. So it flies in the face of concessions
17 made by Dr Worden and it also flies in the face of the
18 way in which Mr Coyne gave his evidence.

19 That's obviously a matter for the court, but we
20 respectfully submit that Mr Coyne was conscientiously
21 trying to answer questions that he was asked, not always
22 in circumstances where he was very comfortable with the
23 premise that he was being boxed into for those
24 questions. But he sought to try and answer them fairly,
25 and a fair reading of his evidence would have regard to

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1 the joint statements, the fact that 1.15 was necessarily
2 a compromise between two experts who differed on the
3 definition of lasting, amongst other things, who agreed,
4 as we see at joint 3, paragraph 4.1, which is [D1/4/7]
5 that Issue 4 fed back into Issue 1, and when the joint
6 statement is read as a whole rather than saying
7 an isolated paragraph and inviting an expert who has
8 taken a completely different approach to grind very
9 finely those aspects of his analysis which are
10 sufficient to show strong evidence of the type of bugs
11 that was being considered.

12 I mention that feature of 1.15 because it was
13 particularly telling for Mr Coyne who was very careful
14 in his answers to stop at the point at which there was
15 no evidence going further.

16 So when the question was put to him, where he felt
17 he couldn't go further because he didn't have the
18 evidence one way or the other, he would stop at that
19 point. He would not go on to draw what Dr Worden in
20 some places called weak inferences about various things,
21 or other inferences, or proceed on assumptions.

22 MR JUSTICE FRASER: You said 1.15 a couple of times, I
23 think.

24 MR GREEN: Yes, 1.15, my Lord, which was the bit that my
25 learned friend cross-examined him about in joint 2.

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1 MR JUSTICE FRASER: In joint 2. I thought you said joint 4.
2 MR GREEN: I'm sorry. The Issue 4 point is paragraph 4.1 of
3 joint 3.

4 MR JUSTICE FRASER: Of joint 3.

5 MR GREEN: I should have made clear that the 1.15 point is
6 the one that my learned friend cross-examined on fairly
7 extensively, which is in --

8 MR JUSTICE FRASER: Joint 2.

9 MR GREEN: Joint 2. That's at page 29.

10 MR JUSTICE FRASER: Yes.

11 MR GREEN: Your Lordship will remember that the 1.9 on the
12 previous page is the experts' differing view on branch
13 impact.

14 MR JUSTICE FRASER: Yes.

15 MR GREEN: So we respectfully say it is a little artificial
16 and unfair where the experts try to reach a bracket
17 where there is more than one variable in their
18 difference of view and reach that compromise at 1.15, to
19 subject it to the sort of drafting scrutiny that
20 Parliamentary statute might bear, and that the fair way
21 to approach it is in the light of the joint statement
22 read as a whole in the context of the approaches of the
23 two experts.

24 Parenthetically, my Lord, when my learned friend
25 revisited the 40 bugs analysis with Mr Coyne on

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1 {Day15/165:17}, our submission about the layered
2 assumptions and confinements on the basis of which he
3 was cross-examined on 1.15 become clear when you look at
4 his answer at 165.17. He makes clear that he still
5 regards the position he described in his report as
6 correct.

7 Turning to Dr Worden. Your Lordship has our
8 submissions on the statistical analysis and so forth.
9 And we are obviously not going to repeat those, but
10 there are a couple of points we would like briefly to
11 pick up on.

12 The Post Office submits at {A/6/99} at paragraph 249
13 of their closing that Dr Worden did not confine his
14 efforts to looking only for problems or only for
15 evidence of Horizon working well.

16 We respectfully say that's not correct. Not only
17 was there no consideration of documents pointing in the
18 other direction to any significant extent, but if we
19 look at joint 1 at {D1/1/10}, Dr Worden, in the top box,
20 penultimate paragraph, explains what he is going to do.

21 He says:

22 "In my report I shall survey the evidence I have
23 found that Fujitsu paid sufficient attention to the
24 dimensions of robustness, and that they did so
25 successfully. I shall also address evidence from

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1 Mr Coyne implying that Horizon fell short of its
2 robustness objectives."

3 What's missing from that summary is an enquiry by
4 him in the same vein as Mr Coyne. So not only was that
5 his approach, but he actually telegraphed it in that
6 description of what he proposed to do. And that's
7 vividly found in the approach in his report.

8 Secondly, at paragraph 251 the Post Office goes on
9 to say he did not inappropriately prefer the evidence of
10 the Post Office witnesses. {A/6/99}

11 That's just not right. He did so. It was put to
12 him, and we have got {Day18/56:5} to line 7. He was
13 cross-examined specifically about where he had said in
14 his report he had established that something had
15 happened based on the evidence of Post Office witnesses,
16 and he accepted at that place in the transcript,
17 {Day18/56:5} to 7 -- I think that piece begins at
18 page 53, line 3 -- that he shouldn't have done that.

19 So this is not even an available submission, let
20 alone one which, in our respectful submission, should be
21 referred by the court. The fact that his report is
22 replete with references to on the basis that the
23 defendants' evidence is right, underscores that that was
24 a running theme. And the fact that when Mr Parker was
25 saying Mr Roll was wrong, Dr Worden was happy to rely on

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1 that, but when Mr Parker in his second witness statement
2 then agreed with Mr Roll, Dr Worden said he was confused
3 and that's why he couldn't agree with it but took
4 absolutely no steps whatsoever to seek any clarification
5 that would have alleviated any genuine confusion.

6 So we respectfully say that that is not correct to
7 say he did not inappropriately prefer the evidence of
8 Post Office witnesses. He did and he admitted doing so.

9 Finally, in relation to Dr Worden, at paragraph 316
10 of the Post Office's closings, which is {A/6/120}, the
11 Post Office says:

12 "Dr Worden stated in cross-examination that he had
13 been 'told' to send his report direct to the Court ..."

14 Pausing there. It was actually in a question from
15 your Lordship that he explained that. Then Post Office
16 says:

17 "... but that word could give the wrong impression."

18 Pausing there. Post Office's closing submissions
19 are replete with footnotes everywhere, but that word
20 "told" is not footnoted. So it is worth your Lordship
21 having a reference to the relevant part of the
22 transcript, which is {Day20/189:12}.

23 If we look at line 12, your Lordship asked:

24 "Have you ever served one of your expert reports
25 directly on the court before?"

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1 "Answer: I have never done that myself before.
2 I had it done to me."

3 Your Lordship says:

4 "But you have never done it before?"

5 Then Dr Worden then volunteers:

6 "Answer: A kind of late report, no. I mean the
7 issue of serving direct on the court rather than through
8 lawyers, I don't recall how that happened in the past.
9 I suspect it was all done through lawyers."

10 Then your Lordship at line 21:

11 "But in this case everyone knows you sent an email
12 to my clerk?"

13 Then line 23 Dr Worden then says:

14 "Answer: I did, yes."

15 Then he volunteers:

16 "That's what I was advised to do, that was how I was
17 advised to do it."

18 Your Lordship:

19 "You were advised to do it?"

20 "Answer: By Post Office lawyers, yes."

21 So the word that is quoted, "told", is not the word
22 that was used. The word that was used was "advised" and
23 it was volunteered by Dr Worden. Your Lordship didn't
24 ask who told him to do it; he volunteered that answer.
25 And at the end of that exchange your Lordship turned to

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1 both counsel and said: are there any follow-up questions
2 from that exchange?" And there were none from either me
3 or my learned friend.

4 Now, that account is not identical to the accounts
5 given to the court by Post Office lawyers, especially in
6 Mr Parsons' 17th witness statement at {C11/22/1}, which
7 made no mention of any advice given to Dr Worden and at
8 least --

9 MR JUSTICE FRASER: Where are we going now?

10 MR GREEN: {C11/22/1}.

11 MR JUSTICE FRASER: Page?

12 MR GREEN: If we go forward to page {C11/22/6} and if we
13 look at paragraph 22:

14 "His covering email to the court provided that:

15 "The further work ... was done at his own
16 instigation and not prompted by Post Office or its
17 lawyers."

18 22.2:

19 "In Dr Worden's opinion, this work led to a material
20 change in his opinions and that he believed he was
21 obliged to inform the Court ..."

22 22.3:

23 "A draft version of the report was provided to
24 Mr Coyne ..."

25 And so forth.

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1 Then it deals with Dr Worden's email to the court.
2 That does not make clear what we find in the transcript
3 at 190, lines 9 to 10, which is where he tells
4 your Lordship that he had been given advice on the
5 content of the email that was going to be sent as
6 a covering email.

7 So we are now faced with a situation in which
8 Post Office's closing submissions at 316 say that the
9 word "told" could give the wrong impression {A/6/120}.
10 And in our submission, if Post Office are saying that
11 Dr Worden's evidence is misleading, they should disclose
12 all communications with Dr Worden on that issue, which,
13 in the circumstances, either are not privileged, or if
14 they are privileged, that privilege has been waived by
15 saying that it could give a misleading impression.

16 And if Post Office has any resistance to that
17 course, they should be put to their election to withdraw
18 the suggestion in that paragraph that Dr Worden's
19 evidence gives a misleading impression, or waive any
20 privilege there might be in relation to their dealings
21 with Dr Worden on those two points.

22 My Lord, I'm now turning to a new topic which is
23 bugs, and I mentioned this morning that we obviously
24 covered the ground with Dr Worden on bugs 1 to 10 in
25 cross-examination to try and give a sufficient number of

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1 bugs and a grouping of bugs that was not arbitrary or
2 cherry-picked to try and give the court a reasonably
3 representative sample by which to judge the reliability
4 of the analysis urged on the court by Dr Worden.

5 We explained those in our closing submissions at
6 paragraph 535 onwards. However, in Post Office's
7 closing submissions, notwithstanding that there are
8 really only three bugs touched on in cross-examination
9 where they had four days, there is now an analysis,
10 detailed submissions on every one of the 29 bugs in the
11 bugs table, and that's in their closing submissions at
12 appendix 2 and it runs from page 400 to page 537.

13 {A/6/400}

14 Given the time since receiving that document and the
15 time available today, I hope your Lordship will forgive
16 me for taking the next five bugs, 11 to 15, and
17 identifying whether or not Post Office submissions in
18 this new insight are reliable at all.

19 I respectfully invite your Lordship to note as we go
20 through two features. The submission that is made where
21 there is a document I will show your Lordship frequently
22 is simply not borne out, particularly where a gloss is
23 put onto things to suggest user error when, as we saw
24 with the Romec PEAK before Pat Carroll's final sign-off,
25 cannot preclude user error. It is very different from

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1 reaching a conclusion that it was.

2 We will show your Lordship why that's also
3 a particularly unreliable conclusion for other reasons.
4 So what use they make when there are documents, and the
5 second point is where we just have assertions not
6 footnoted and not tethered to evidence the court
7 actually has before it. And those are the two
8 particular features.

9 Now, in Post Office's treatment of the bugs, they
10 are sorted out into different categories, and I will
11 just get your Lordship's eye on it, if I may. {A/6/400}
12 is the beginning of this 137-page appendix of the 29
13 bugs.

14 Where they break down is that the submission now is
15 that eight are not bugs at all. That's paragraph 3.1 on
16 page 400. So eight are said to be not bugs at all.
17 Three had no branch impact. Nine had, or potentially
18 had only transient impact, and nine caused or had the
19 potential to cause lasting impact but were resolved by
20 Post Office and Fujitsu.

21 They then list: paragraph 4 are the ones that are
22 not bugs at all; paragraph 5, no impact; paragraph 6,
23 transient impact; paragraph 7, lasting. {A/6/401}

24 My Lord, can I just identify even at that stage that
25 Post Office has listed nine bugs having a transient

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1 impact.
 2 MR JUSTICE FRASER: They are the ones in paragraph 6,
 3 I think.
 4 MR GREEN: Exactly. And nine bugs in paragraph 7.
 5 So pausing there, on a correct construction of
 6 Issue 1 there are 18 bugs meeting the definition of
 7 Issue 1 even on the Post Office analysis in its closing
 8 submissions here.
 9 I'm going to take your Lordship, if I may, just
 10 briefly through bugs 11 to 15. I have to deal with bugs
 11 11 to 12. Bugs 13 and 14 were accepted by Dr Worden,
 12 but bug 13 Post Office has changed its mind on. So I'm
 13 going to have to deal briefly with 13.
 14 MR JUSTICE FRASER: Which ones are you dealing with?
 15 MR GREEN: So 11 and 12 weren't agreed by Dr Worden anyway.
 16 MR JUSTICE FRASER: Yes.
 17 MR GREEN: 13 I still have to deal with because although it
 18 was agreed by Dr Worden, it is not anymore by
 19 Post Office.
 20 MR JUSTICE FRASER: 13?
 21 MR GREEN: Then 14 was accepted by Dr Worden and is still
 22 accepted, so I won't trouble your Lordship with that,
 23 but 15 is still in dispute. So it is 11, 12, 13,
 24 because of the change of position, and 15.
 25 So on number 11, so this is one said to have no

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1 branch impact, we see that at {A/6/401}, paragraph 6.
 2 And Post Office describe the relevant PEAK --
 3 MR JUSTICE FRASER: This is Girobank, yes?
 4 MR GREEN: Sorry?
 5 MR JUSTICE FRASER: Girobank?
 6 MR GREEN: My Lord, yes. Girobank discrepancies, exactly.
 7 MR JUSTICE FRASER: Okay.
 8 MR GREEN: At page 452, paragraph 9, {A/6/452} your Lordship
 9 will see the Issue 1 heading under which Post Office
 10 analyses what happens as follows.
 11 Paragraph 10 identifies the main PEAK for Girobank
 12 noticing there was a £505.72 discrepancy, and says at
 13 (1):
 14 "This was a known issue dealt with by KEL
 15 MWright531p. This KEL is now deleted and irretrievable,
 16 but details about it can be gleaned from its associated
 17 Peaks."
 18 Then 10(2):
 19 "The issue arose when a giro transaction was entered
 20 and then reversed, with the reversal being entered after
 21 the report cut-off time."
 22 So reversal was not included in the following day's
 23 report.
 24 Paragraph 10(3), rather importantly:
 25 "This led to an error notice being issued on the

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1 mistaken basis that the branch had a discrepancy."
 2 So pausing there, Post Office actually themselves
 3 set this out that the way this arose was because
 4 an error notice was issued on a mistaken basis in
 5 relation to the original 505.72 because of the fact that
 6 the post-cut-off time problem meant the following day's
 7 report didn't capture the reversal.
 8 Paragraph 10(4) says:
 9 "The fact that the reversal, performed after the
 10 daily cut-off, did not show on that day's report
 11 reflects the intended operation of Horizon.
 12 Subpostmasters were instructed that if a reversal is
 13 carried out to giro transactions after cut-off, a manual
 14 summary will need to be produced for Girobank. Issue 1
 15 is therefore not a 'bug'."
 16 Now, obviously how well they were instructed to do
 17 that and all that sort of thing, whether they were at
 18 all and in what terms, is at large. But the suggestion
 19 there is the way that the system worked in this respect,
 20 creating this mistaken footing for an error notice, is
 21 not a bug, a defect or error in the data because that's
 22 the full definition in Issue 1. And we respectfully
 23 disagree with that. But that's what's said. So not
 24 a bug, conflating all three into one.
 25 Then paragraph 10(5):

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1 "Rather, Issue 1 relates to reporting. The
 2 underlying data is correct and the branch's accounts
 3 would have been correct at the end of the trading
 4 period, once the reversal had been recognised (at the
 5 time of this Peak, the trading period was weekly).
 6 Mr Coyne appeared to accept this in cross-examination.
 7 In this particular case, the only possible impact would
 8 be if the branch had accepted the error notice received
 9 because of the reporting issue."
 10 Now, if we just move forward if we may now to
 11 Issue 2, which is at paragraph 17 on {A/6/455}. This is
 12 what's described as the secondary problem initially by
 13 Mr Coyne.
 14 At paragraph 17 your Lordship will see:
 15 "Issue 2 was that an £81 giro deposit was included
 16 on two consecutive daily reports. This is because the
 17 transaction was entered onto Horizon in a precise (and
 18 very small) window of time between two system calls
 19 being undertaken, resulting in a duplication. The
 20 overall branch position would still have been correct,
 21 but the daily reports to Girobank may have been wrong.
 22 If they were (ie if the same transaction was included on
 23 two consecutive daily reports), it is expected that this
 24 would have been spotted and a TC would not have been
 25 issued to the branch."

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1 So pausing there, that is a pretty astonishing
2 example of the one-way street.
3 So we have got the fact of an error notice being
4 mistakenly issued as the premise upon which the £81
5 problem is discovered. You have got the assertion that
6 this whole thing is not a bug when that plainly is
7 a bug. In fact, we say both are bugs or defects or
8 errors in the data, and obviously so. Post Office says
9 neither of them are and does it effectively on opposite
10 footings for 1 and 2.
11 We say that is strikingly a one-way approach to
12 resolving that issue. It is then helpful to look at the
13 underlying PEAK, which is at {F/25/1}.
14 If we begin on page 1. In the top light green box
15 there is a reference:
16 "04/05/00, 13:44 system error - giro bank said there
17 is a discrepancy on the giro figures."
18 Come down a bit, username "1ha001":
19 "Girobank have been in touch to say that there is
20 software problem as the figures are not correct. Daily
21 figures when totalled are more than the cash account
22 giro figures."
23 Then if we go down to the words just below the
24 "daily figures 85990.88."
25 MR JUSTICE FRASER: Sorry, where are you now?

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1 MR GREEN: Halfway down the box, my Lord.
2 MR JUSTICE FRASER: The same box?
3 MR GREEN: Yes.
4 MR JUSTICE FRASER: "Daily figures 85990.88."
5 MR GREEN: Exactly, and if we come down below that:
6 "The pm has checked all dockets and all reversals
7 that may have been done and cannot find anything.
8 Therefore he would like this investigated further as an
9 error notice has now been provided and he does not want
10 this to happen again."
11 So this is the postmaster or postmistress
12 challenging the error notice having tried to check
13 everything and not being able to find any justification
14 for the error notice.
15 Then if we go to the bottom box, just underneath "F)
16 Response":
17 "This difference (£505.72) between the Cash Account
18 and the Daily reports is explained [in the MWright KEL].
19 There was a giro for this amount that was entered on the
20 13th Apr then reversed AFTER cutoff then re-entered
21 again and reversed again. The Daily report would have
22 shown the original £505.72 but the daily reports never
23 show reversals.
24 "It would be nice to close the call as known error,
25 however while investigating the message store I have

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1 identified another problem ... there is a Giro Deposit
2 for £81 (1-17240) that is being calculated in TWO
3 consecutive cutoffs (18th AND 19th April). I have
4 attached the full message store as evidence, however the
5 error happens in message ..."
6 Then there is a typed number.
7 If we go over the page, please, {F/25/2}, in the top
8 box, in the second paragraph, three lines down on the
9 right:
10 "There are two separate calls --"
11 MR JUSTICE FRASER: Where are you looking now?
12 MR GREEN: The top box, my Lord. In the second paragraph in
13 the top box which begins "after further investigation".
14 MR JUSTICE FRASER: Yes, I have that.
15 MR GREEN: On the right-hand side, three lines down.
16 MR JUSTICE FRASER: I see, yes.
17 MR GREEN: "There are two separate calls to find the latest
18 messages, and this gives a very small window of
19 opportunity for another transaction to have been
20 registered (The £81 giro was entered at EXACTLY the same
21 time as the TideMark was generated). The chance of
22 having a transaction entered at the same time... "
23 MR JUSTICE FRASER: No, not entered at the same time,
24 entered at the time.
25 MR GREEN: I'm sorry:

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1 "... entered at the time between the two calls AND
2 causes the SEQ number to be greater than the tidemark is
3 very small but real."
4 We then see in the next box it is passed to EPOS FP
5 to correct the problem caused.
6 MR JUSTICE FRASER: By the difference between the mark and
7 sequence attribute.
8 MR GREEN: Exactly, and there is a fix that should address
9 all cut-off reporting, not just Girobank reports.
10 So we can see there that at times it requires a code
11 fix.
12 It is not limited to Girobank, the problem, and it
13 is a small but real problem which has been uncovered
14 effectively by accident.
15 If one looks back at Post Office's closing at
16 paragraph 17 on page {A/6/455}, it effectively
17 acknowledges that there is a discrepancy caused. It
18 says it is expected that it be spotted before TC is
19 issued. But there's actually no evidential foundation
20 for this, particularly in circumstances where what we do
21 learn from the PEAK is that an error notice had been
22 issued by mistake in relation to the sum of over £500
23 through which the £81 mistake was discovered.
24 So it doesn't say it, and what evidence it does
25 provide tends to be, if anything, pointing in the

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1 opposite direction to the assumption the court is
2 invited to make about a process which falls outside the
3 system as defined in the Horizon Issues.

4 Post Office's submissions in relation to this at
5 paragraph 39 {A/6/460} in their conclusion on page 460
6 effectively involve a criticism of Mr Coyne in this
7 respect.

8 They say:

9 "That analysis is incorrect. None of the Peaks
10 referred to by Mr Coyne demonstrate a direct financial
11 impact on branches; in most cases this is because the
12 issue affects reporting whilst the underlying data
13 remains unaffected."

14 And so what they are doing is they are confining
15 their data for the purpose of Issue 1 to what's actually
16 in the branch count on the face of Horizon without
17 really grappling with the word discrepancy of course, or
18 shortfall, which implies a comparison between one thing
19 and something else.

20 So it is wrong as a matter of principle and, we say,
21 and characterisation and fact.

22 My Lord, can I turn now to bug 12, please. That
23 starts at page {A/6/461}. It is the counter replacement
24 causing one-sided transaction and this is said to be
25 a bug with transient but not lasting impact.

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1 Your Lordship has our submissions that that's more
2 than sufficient for Issue 1 and that Dr Worden's
3 approach to permanence is wrong. Post Office's closing
4 submissions at paragraph 3 under the nature of the issue
5 refer to the PEAK PC0058528, which is a replacement of
6 a counter's hard drive, and that replacement caused two
7 messages relating to an OBCS transaction to be
8 overwritten, resulting in a receipts and payments
9 mismatch. A transaction with a value of 167.12 was not
10 added to the cash account. So there is a discrepancy of
11 £167.12 on Post Office's own description.

12 Then paragraphs 4 to 10 set out technical detail
13 which is not referred to {A/6/462}. There is no
14 reference to where that's found in the evidence. And
15 paragraph 11 confirms the discrepancy of £167 and says
16 it would have been flagged to the SPM. So this is
17 rather like the would have evidence we had in Common
18 Issues. It invites an assumption of a uniform
19 favourable practice in Post Office's favour performed
20 faultlessly.

21 Then at paragraph 13 {F/6/463}:

22 "Information of the overwritten messages was passed
23 to MSU who created a BIMS report for Post Office and an
24 error notice would have been issued to hold the branch
25 harmless thereafter."

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1 Against that background it is worth looking at the
2 PEAK at {F/77.1/1}, Mr Miletic rightly reminds me.
3 That's the reference to the discrepancy of £167.12 we
4 see on page 1. If we go over to page {F/77.1/2},
5 please, in the third box down underneath "F" Response",
6 halfway down in the third box:

7 "This is a single counter outlet, and the counter
8 was replaced on 22nd and two messages were overwritten.
9 KEL JBallantyne5328R. The messages retrieved from the
10 mirror disc show that a transaction for product number
11 184 value £167.12 was overwritten. I have attached the
12 two sets of messages as evidence."

13 Then if we go over the page {F/77.1/3} we can see at
14 the top of that KEL, top of the page, the PEAK:

15 "Like the other cases this is a single counter
16 office which had its hard drive replaced due to problems
17 with it."

18 So we can tell there are other cases of this type.
19 Then if we go to the KEL that's mentioned there, which
20 is the Ballantyne 5328R KEL, which is at {F/421/1}, what
21 we actually find in the KEL is underneath "Solution -
22 ATOS" towards the bottom:

23 "To find the overwritten transactions for
24 reconciliation we need to look at the Ripostemirror
25 messagestore."

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1 And we can see the number attribute prior to the
2 rogue data in the third line. So that is being done
3 there, as we can see on the right-hand side. Halfway
4 down is to tidy up the counter and analyse the content
5 of the messagestore:

6 "For a multi-counter outlet (MCO) need to retrieve
7 the messagestore from another counter, as well as the
8 affected counter ... transaction numbers for the
9 RiposteVersionString messages should reveal the original
10 transactions. When you have identified any missing
11 transactions attach the details to the PinICL and route
12 to MSU."

13 So what is not there is a reference to the BIMS
14 report there or error notices, or TC or an instruction
15 to do that in the KEL itself.

16 MR JUSTICE FRASER: And where are you comparing that with?

17 MR GREEN: What is suggested at the closing submissions is
18 paragraph 13 where they say:

19 "An error notice would have been issued to hold the
20 branch harmless thereafter."

21 MR JUSTICE FRASER: So your point is that hasn't come from
22 the KEL?

23 MR GREEN: No. If it is somewhere that our attention has
24 not been directed to by the way it has been presented,
25 there are plenty of other examples of points without

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1 foundations in the underlying documents.
 2 MR JUSTICE FRASER: For example, in paragraph 14, the final
 3 line:
 4 "A further change was made to stop Riposte writing
 5 messages as it came online."
 6 MR GREEN: I'm not quite sure where that is. We haven't had
 7 a chance to search randomly. It may be in one of the
 8 documents, but given the pressure of responding to
 9 545 pages.
 10 MR JUSTICE FRASER: All right.
 11 MR GREEN: In that case, my Lord, it is right that the PEAK
 12 says a final BIMS should be issued, but a KEL which is
 13 passed across says pass to MSU.
 14 MR DE GARR ROBINSON: Sorry, is my learned friend suggesting
 15 that those things two are inconsistent with each other?
 16 MR GREEN: Well, they are different and whether or not the
 17 transaction corrections are actually issued is at large.
 18 What is suggested to Mr Coyne on {Day17/98:9}, if we
 19 have a look there -- if we look at line 9 on page 98.
 20 MR JUSTICE FRASER: Where?
 21 MR GREEN: You will see:
 22 "Question: Here's what interests me, Mr Coyne.
 23 What you are saying is -- let me do it this way.
 24 I would suggest to you that on any fair and reasonable
 25 reading what this PEAK demonstrates is, first of all,

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1 that Fujitsu spotted that there was a failed recovery
 2 situation?
 3 "Answer: Yes.
 4 "Question: Very reliably. One can reliably assume
 5 that's going to happen, yes?
 6 "Answer: Yes.
 7 "Question: Looked into the underlying circumstances
 8 at the branch at the time of the recovery. Again one
 9 can reliably assume that's going to happen?
 10 "Answer: Yes.
 11 "Question: Then formed the view it was necessary to
 12 work out what had happened on the ground in order to
 13 know whether any discrepancy had been created or not,
 14 yes?
 15 "Answer: Yes.
 16 "Question: Then sent through a BIMS to Post Office
 17 to tell Post Office to reach out to the postmaster and
 18 ask what actually happened on the ground?
 19 "Answer: Yes.
 20 "Question: And I further suggest to you, Mr Coyne,
 21 that the reason why Fujitsu sent that BIMS and the
 22 reason why Post Office received that BIMS, they don't
 23 receive these documents in order to put them in a pile
 24 in some warehouse and never look at them, they receive
 25 them so that they can be acted upon?

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1 "Answer: Yes.
 2 "Question: And on any fair reading of the evidence,
 3 it would be extraordinary in this case to assume that
 4 having received that BIMS, Post Office would not have
 5 reached out to the postmaster, ascertain what had
 6 happened and sent a TC or not depending on the
 7 postmaster's answer."
 8 So that is the footing on which it is put to
 9 Mr Coyne.
 10 His answer at line 17:
 11 "Answer: Yes, but this is quite clear, when you
 12 read the heading "Recovery Failures", that it is seeking
 13 to address Horizon Issue 4: to what extent has there
 14 been the potential for errors in the data recorded in
 15 Horizon?"
 16 So the point Mr Coyne is also making in relation to
 17 that is the need for a transaction correction creating
 18 the discrepancy in the first place.
 19 So where we end up in relation to this is the
 20 financial impact is admitted by Post Office and so it is
 21 sufficient in any event. But it is clear the court can
 22 have no confidence in this not being a lasting
 23 discrepancy because although there is a reference to
 24 a BIMS being sent through, there is no evidence it was,
 25 and there is no evidence about what action Post Office

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1 took in relation to it. And that all falls outside the
 2 system as defined in Horizon Issues, which is the reason
 3 that there wasn't disclosure in relation to the TCs
 4 beyond the overall numbers and so forth which we had.
 5 So, my Lord, I would now like to move to bug 13
 6 which is the one that is now said not to be a bug at
 7 all. This is addressed at Post Office's closing
 8 submissions at {A/6/466}.
 9 Post Office dispute this is relevant to Issue 1
 10 because, as they set out at paragraph 2, it is not a bug
 11 at all, and it is curious for two reasons. Firstly, it
 12 is in Dr Worden's list of 12 bugs which had a financial
 13 impact in joint 2 at paragraph 112, the reference for
 14 which -- we needn't go to it -- is {D1/2/27}.
 15 The second reason becomes apparent when we look at
 16 it more closely. Post Office's submissions at
 17 paragraphs 528 on page 467 describe the initial issue in
 18 the PEAK, and essentially what happens is Post Office
 19 withdraws stock, namely a £5 saving stamp. The SPM
 20 returns the stamp as required but does not rem them out.
 21 This leads to a £685 discrepancy which paragraph 6
 22 describes -- and this is rather important -- as "pure
 23 user error" {A/6/467}.
 24 It is said at paragraph 8 that:
 25 "The [SPM] elected to make good the shortfall and

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1 a credit transaction correction was subsequently issued
 2 for .£685 to rectify the issue.”
 3 Then at paragraph 9:
 4 “However, a bug in Horizon ...”
 5 Bearing in mind that this is not a bug apparently:
 6 ” ... caused the £685 of stamps to be subsequently
 7 reintroduced into the 'branches accounts on two
 8 occasions. By this point, Horizon was showing that the
 9 branch was holding £1,370 of the stamps.”
 10 So there's, at the very lowest, something of a
 11 tension in Post Office's analysis of whether this is a
 12 bug, error or defect as defined in Horizon Issue 1.
 13 They say not. And that's the basis upon which they
 14 departed from Dr Worden's approach.
 15 Paragraph 10 is also important because there's
 16 another unrelated trading issue that was said to have
 17 likely caused the SPM not to notice the first instance
 18 of the withdrawn stock being introduced.
 19 That's obviously unhelpful for the countermeasures
 20 that Dr Worden relies on if there are any difficulties
 21 in accounts not being able to immediately identify, as
 22 Post Office acknowledges you may not be able to, the
 23 cause of Horizon system-generated problems.
 24 If one then looks at the actual PEAK itself, which
 25 is at {F/765/1}, it doesn't actually support the

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1 submission that is made that this was pure user error.
 2 And we see that at -- we start on page 1 of 765. We can
 3 see under "user names" in that top box, go down just
 4 over halfway down:
 5 "User names - SK1001 and PCA001."
 6 It says under that:
 7 "This office physically held 137 £5 PO saving stamps
 8 ..."
 9 And this is really important:
 10 "... and did not rem them out before the date the
 11 rem out icon disappeared. The office physically
 12 returned the stamps to Transaction Processing as advised
 13 and the office then did a Trading Period balance ..."
 14 So pausing there. We do not get from the PEAK
 15 itself the fact that the SPM failed to do what they were
 16 advised to do in terms of failing to rem them out. What
 17 we do get is that they returned the stamps to
 18 transaction processing as advised.
 19 We can see towards the bottom of that box, there are
 20 two two-line paragraphs:
 21 "I have spoken to Phil Herrett in Transaction
 22 Processing who has confirmed he is aware of about
 23 8 offices with similar issues with the stamps still
 24 showing on the stock."
 25 Gives an example:

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1 "Can this be investigated to see why the stock is
 2 still showing in the office, and if this keeps giving
 3 the office a loss of £685 every time they do a Trading
 4 Period balance."
 5 Then what we then find is over the page {F/765/2}:
 6 "This is an example of the problem described in KEL
 7 PothapragadaC4913L."
 8 Underneath that:
 9 "The change to prevent the withdrawn product being
 10 put back into stock has been rolled out across the
 11 estate so there should be no further new occurrences of
 12 this problem."
 13 We can see in the rest of the PEAK, if we go over to
 14 page {F/765/4}, just over halfway down in the yellow
 15 box:
 16 "I have spoken to Gareth Jenkins ref this, he is
 17 going to find some time to go through the issue with me
 18 this week."
 19 Then Mr Charlton, the penultimate green box, halfway
 20 down that:
 21 "... also checking to see how many other offices are
 22 affected by this issue as there may be some who have not
 23 reported the problem."
 24 Which we say is realistic.
 25 Then there is a workaround over the page at the top

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1 {F/765/5}.
 2 MR JUSTICE FRASER: We are still in the PEAK, are we?
 3 MR GREEN: We are still in the PEAK, my Lord, yes. In the
 4 top yellow box:
 5 "To continue investigation into the root cause of
 6 this issue I need to request some information from the
 7 audit team ... continue monitoring the progress ..."
 8 If we go to the end, {F/765/6}, three yellow boxes
 9 down, the audit data that Mr Charlton had been supplied
 10 with was blank. So he is trying to get another disk
 11 with the required data on it, and the closure,
 12 notwithstanding that had there is a fix rolled out to
 13 cover that, is:
 14 "Development [confirms] a refdata fix will be
 15 delivered to prevent any further occurrences of this
 16 problem.
 17 "As NBSC have a circumvention for the issue, a KEL
 18 covers the scenario and a fix is pending I am closing
 19 this call.
 20 "... Category 95 ... Advice after investigation."
 21 Which does not capture the reference data error
 22 problem that was underlined in the system which was
 23 corrected by the fix.
 24 MR JUSTICE FRASER: But that KEL is the PothapragadaC4913L,
 25 is it?

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1 MR GREEN: That is the KEL being referred to, yes.
 2 MR JUSTICE FRASER: Do you have a reference for that KEL?
 3 MR GREEN: My Lord, I don't off the top of my head.
 4 MR JUSTICE FRASER: I don't expect you --
 5 MR DE GARR ROBINSON: It may be {F/678/1}. I'm just going
 6 from the appendix. If I have got that wrong let me
 7 apologise in advance.
 8 MR JUSTICE FRASER: I'm looking at the appendix, but in
 9 paragraph 12 it mentions that KEL but it doesn't have a
 10 footnote, so ...
 11 MR DE GARR ROBINSON: I'm looking at paragraph 12.1.2 on
 12 page 466 and there is a footnote to the
 13 PothapragadaC4913L.
 14 MR JUSTICE FRASER: F/678, thank you very much. Yes, thank
 15 you very much, Mr de Garr Robinson.
 16 MR GREEN: My Lord, could I take your Lordship back, with
 17 that background, to what's said about this in the
 18 closing submissions at 466 and 467.
 19 MR JUSTICE FRASER: Yes.
 20 MR GREEN: It is {A/6/466}. So we have got the contention
 21 that it is not a bug at all at paragraph 2, and over the
 22 page, {A/6/467} it says at paragraph 5:
 23 "Subpostmasters would have been instructed to rem
 24 out any excess stock ..."
 25 MR JUSTICE FRASER: Yes.

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1 MR GREEN: That appears to be the foundation for the
 2 assertion that this was pure user error in paragraph 6.
 3 Then paragraph 9 openly recites that a bug in
 4 Horizon caused £685 of stamps to be subsequently
 5 reintroduced.
 6 MR JUSTICE FRASER: Where are you looking now?
 7 MR GREEN: Paragraph 9, my Lord.
 8 MR JUSTICE FRASER: Yes.
 9 MR GREEN: A bug in Horizon caused £685 to be subsequently
 10 reintroduced, which we respectfully say is just
 11 hopelessly irreconcilable with saying "this isn't
 12 a bug".
 13 MR JUSTICE FRASER: I think I have got that point.
 14 MR GREEN: I'm grateful.
 15 MR JUSTICE FRASER: I think you did make that point a little
 16 earlier.
 17 MR GREEN: I'm grateful. Two layers --
 18 MR JUSTICE FRASER: I do generally get points first time
 19 round.
 20 MR GREEN: Noted.
 21 Bug 14 we don't need to deal with because that's
 22 agreed by Dr Worden and Post Office haven't changed
 23 their mind about it. Bug 15 is phantom transactions
 24 which is picked up at 473.
 25 MR JUSTICE FRASER: Do you want to have a break for the

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1 shorthand writers before you go on to bug 15?
 2 MR GREEN: My Lord, I think I was asked to go a bit further
 3 last week before stopping.
 4 MR JUSTICE FRASER: That's fine.
 5 MR GREEN: If that's all right.
 6 We pick it up at 473 {A/6/473}, which is phantom
 7 transactions. At paragraph 2:
 8 "Post Office submits that this is not a bug at all.
 9 Manifestations of this alleged bug are either design
 10 features of Horizon or user error."
 11 The footing for that, the key aspects of the
 12 Post Office analysis are paragraph 8 on page {A/6/474}
 13 where they criticise Mr Coyne for failing to refer to
 14 the other two PEAKs, both of which state the issues at
 15 Old Isleworth were attributable to user error.
 16 As your Lordship has already seen in relation to
 17 that PEAK that is the Romec one and Pat Carroll.
 18 MR JUSTICE FRASER: Yes.
 19 MR GREEN: That's a bold gloss to put on that PEAK and
 20 a pretty bold departure point for criticising Mr Coyne.
 21 Paragraph 11:
 22 "It is not possible from the PEAK to know what the
 23 Romec engineer saw. Indeed there are a host of possible
 24 explanations ..."
 25 Then Post Office's closing submissions:

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1 "Mr Carroll ultimately determined that there was not
 2 a fault in Horizon." {A/6/476}
 3 Which is the not so as to preclude user error point.
 4 Then 477, paragraph 16 contends that:
 5 "Mr Coyne gives a misleading impression of what the
 6 Peak actually says and ignores the later content of Peak
 7 PC0062561 and indeed the conclusions of the Peak.
 8 Mr Coyne fails to mention at all the conclusion to Peak
 9 PC0065021 that all reported cases are attributable to
 10 user error."
 11 So that is a premise for criticising Mr Coyne for
 12 not acknowledging that conclusion: that all reported
 13 cases are attributable to user error.
 14 I'm not going to take your Lordship back to the
 15 Romec/Pat Carroll PEAK, so I think we can take that
 16 reasonably hopefully as read, but that's {F/97/1}.
 17 That is where Pat Carroll on page 7 obviously has
 18 himself observed the problems overnight and Romec have
 19 separately observed the problems when visiting, and then
 20 it is closed in a way which we say is thoroughly
 21 unsatisfactory.
 22 Mrs Van Den Bogerd was cross-examined on this
 23 {Day5/40:3} to line 14. She didn't seek to suggest in
 24 her evidence that the Romec engineer was likely to have
 25 been in error in some way, notwithstanding her

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1 experience of dealing with postmasters herself,
2 subpostmasters herself in her previous roles.
3 The Post Office says the user error was the
4 conclusion in the other PEAKs, and so we need to look at
5 {F/100.1/2} which is the conclusion which is PEAK
6 0068327.

7 On page 2 there, it says:

8 "Following a significant amount of monitoring we
9 have been unable to definitively link any
10 equipment/environmental issues to any particular event.
11 There have been incidents which showed a possible
12 correlation between system activity and phantom
13 [transactions], these pointed to a touch screen problem
14 and as a result the screen was replaced with a resistive
15 model. As this produced no measurable improvement it
16 has to be assumed that the problems were user related."

17 So there's no definitive determination, and the
18 basis that Pat Carroll says it has to be assumed
19 problems were user related is the screen has been
20 changed.

21 Let's go to the other PEAK, which is at {F/88.2/2}
22 and then perhaps take a break.

23 If we look at page 2 of that PEAK we can see the
24 bottom or penultimate green box, the large green box,
25 17th August 2001, 9.13:

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1 "This outlet has reported continual phantom
2 transaction problems causing us to exhaust every
3 possible course of action in trying to solve them."

4 We have, and then there is a list of what they have
5 done. Then below "holiday":

6 "After all this the PM is still experiencing Phantom
7 transactions but they are mainly on counter position 1
8 and this is always used by Robert Parker (PM). I have
9 asked Robert if I can spend some time at the outlet with
10 him so I can be present when the phantoms occur but he
11 is not keen for this to take place as he feels the
12 outlet is too small and gets too heated as it is.

13 "I spoke with HSH this morning and she advises that
14 since power help was last archived, Mr Parker has logged
15 34 calls to the helpdesk and a vast amount are advice
16 and guidance. My personal feeling is that Mr Parker
17 could do with some further training and I feel that this
18 should be our next course of action. The only other
19 option we have open to us is to change the ISDN line
20 which is the old style, but myself and HSH feel that
21 this is an expensive option to go down when it may be
22 user error at fault."

23 Then over the page {F/88.2/3}, the yellow box, third
24 line:

25 "From RNM," the regional network manager:

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1 "I spoke to training and Dev this afternoon and
2 arranged 2 days training for next week, when I rang
3 Mr Parker he told me that he did not need the extra
4 training so I have now cancelled it. He also told me
5 that the phantom transactions have stopped.

6 "PON to RNM: There seems to be no issues at this
7 outlet if you are happy with the postmasters response.

8 "Is there anything else that needs investigating at
9 the outlet proven to be directly linked with phantom
10 [transactions] ... as there are none recorded? If not I
11 would like your agreement to close down this problem as
12 now resolved. I would like to make you aware though
13 that the postmaster does seem to be making quite a few
14 calls still to the HSH helpdesk, mainly around simple
15 things such as reversals.

16 "RNM to PON: Thanks for making aware about the
17 number of calls your still receiving, I don't think we
18 will ever stop him from making these. I see no reason
19 why this call cannot not be closed. As I said the
20 Postmaster said he is no longer getting these
21 transactions. Calls have actually reduced in September,
22 there are ... only 4. I have agreed with PON that there
23 is little else which can be done. The PM is not making
24 errors with his work and the call volume has improved.
25 I have agreed to close the problem."

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1 So what we get is it may be user error at fault and
2 the problems stopped, and that's the point at which they
3 decide to close it down.

4 If we then go forward to the KEL that relates to
5 these, which I can do in about one minute:

6 It is {F/174/1}. It is a one-page document:
7 "Symptoms.

8 "There have been several calls over the last few
9 months where postmasters have reported phantom sales.
10 Items appear by themselves for which the PM has not
11 pressed an icon. These may be individual items or
12 several of the same item. Sometimes when no one has
13 been near the screen items may appear."

14 Then under the "Problem", the last line of the
15 problem:

16 "A more recent case revealed that the cable between
17 the screen and the base unit was the root cause."

18 That rather undermines the reliability of
19 a conclusion that Pat Carroll thought was the only
20 available assumption, that once you change the screen
21 and the problems continue, you have to assume it is user
22 error. Because it turned out, as we can see from the
23 KEL, that in one of the cases it was the cable that was
24 the problem.

25 My Lord, that's the end of the piece in relation to

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1 that. We respectfully say Post Office is putting
 2 a massive gloss on the underlying documents in asserting
 3 what they are asserting, and it is a thoroughly
 4 unreliable account of that bug.
 5 MR JUSTICE FRASER: Thank you very much. We will have
 6 10 minutes.
 7 (3.21 pm)
 8 (A short break)
 9 (3.31 pm)
 10 MR GREEN: My Lord, I now propose to take a particular
 11 example issue and just trace it through, if I may.
 12 I would like to start, please, with {F/908/1} which
 13 is an internal Fujitsu/Post Office document of
 14 22nd March 2012, which is a review of various computer
 15 weekly articles. And this shows that it appears I think
 16 to have been authored by Fujitsu and this goes to the
 17 identification of issues certainly by this date which
 18 are still live in these proceedings.
 19 Your Lordship will see at the top, first paragraph:
 20 "A number of articles have been written by Computer
 21 Weekly relating to the Horizon System and the issues
 22 postmasters have had with deficits. The main article
 23 was published in May 2009 and can be found in
 24 Appendix 1."
 25 There is a summary, it highlights seven case studies

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1 where they claim faults.
 2 If we go forward to page {F/908/3}, we can see that
 3 the second case study is that of Jo Hamilton, and we can
 4 see in the key points box on the right, second bullet
 5 point:
 6 "Postmasters claim faults with the technology are
 7 generating unexplained losses."
 8 Third bullet:
 9 "Post Office denies IT fault could cause accounting
 10 system to show incorrect balances."
 11 So this is the Computer Weekly article of
 12 11th May 2009, as we can see from the top.
 13 If we go over the page to {F/908/4}, we see a brief
 14 reference to Jo Hamilton's case being ultimately:
 15 "... signing her accounts even when she knew they
 16 were wrong, because, she says, calls to the Horizon
 17 helpline didn't stop the deficits occurring and she felt
 18 backed into a corner. She was convicted of false
 19 accounting, but was spared a prison sentence after local
 20 villagers organised a collection to pay the debt."
 21 If we go forward to page {F/908/6}, the relevant
 22 case study is at the foot of page 6. Her name appears,
 23 Jo Hamilton, at the bottom of page 6 and over the page
 24 to page 7.
 25 The specific point that I just want to trace through

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1 in the evidence is the idea of problems with sums
 2 doubling, because it was one of the things that was
 3 certainly known to Post Office to be an issue.
 4 As we see in Jo Hamilton's case {F/908/7}:
 5 "One time it said I was down £2,000, so I rang the
 6 Horizon helpdesk. The supervisor told me to do various
 7 things, and three minutes later I was £4,000 down.
 8 Whatever I did after that, I couldn't get it to come up
 9 any different," she says."
 10 So that is the Computer Weekly report of what
 11 Jo Hamilton had said there. So we know that doubling
 12 had been identified certainly as an issue, although it
 13 sounds very implausible when you first hear about it
 14 perhaps.
 15 If we then go forward to {F/930/1}. I should
 16 mention that I think the correct date on that
 17 document --
 18 MR JUSTICE FRASER: By that document, you mean 930?
 19 MR GREEN: The first one is 2012 at 9.08. It is in Opus
 20 I think as 2010, but it bears clearly a date of 2012.
 21 So if we go back to 17th May 2010, this is a pack
 22 that was prepared in advance of a meeting with
 23 James Arburthnot and Oliver Letwin, both MPs who had
 24 affected constituents, and it is a plan for what was
 25 going to be said. And we can see the agenda on page

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1 {F/930/2}.
 2 There is a reference to "Review Jo Hamilton case" at
 3 6a, and over the page on page {F/930/3} "Introductions",
 4 third bullet point:
 5 "We understand you have raised some concerns, and
 6 are representing the concerns of subpostmasters in your
 7 areas.
 8 "We are open to feedback and we will provide you the
 9 information we have available, our aim is to be open and
 10 transparent."
 11 Then over the page {F/930/4} at item 3 "Horizon -
 12 background", second bullet point:
 13 "Although we recognise that Horizon is not perfect,
 14 no computer systems is, it has been audited by internal
 15 and external teams, it has also been tested in the
 16 courts and no evidence of problems found (of the nature
 17 suggested by the JFSA) ..."
 18 Third bullet point second line:
 19 "Both versions of Horizon were built on the same
 20 principles of reliability and integrity."
 21 Then if we come down to 6a {F/930/5} on the next
 22 page, there is a summary of the "Review Jo Hamilton
 23 case":
 24 "Cash holdings ...
 25 "Audit findings.

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1 "She was in personal financial difficulties .
 2 "She was provided an opportunity for an explanation.
 3 "She did plead guilty to fraud."
 4 It is described there.
 5 If we go over the page, it says {F/930/6):
 6 "What are your thoughts on the meeting? Do you have
 7 any areas of concern?
 8 "We are considering commissioning an independent
 9 audit as an assurance measure, but in light that there
 10 is no evidence that there is a problem, we need to
 11 determine if this is a good use of public money."
 12 Then if we go forward to page {F/930/8} at
 13 paragraph 2:
 14 "What is our view of Computer Weekly."
 15 They are obviously respected.
 16 Third paragraph:
 17 "As we have external and internal experts available
 18 we don't believe Computer Weekly can assist us in this
 19 specific case. Although there is no evidence of
 20 problems with Horizon ..."
 21 This is in 2010:
 22 " ... Horizon, as an assurance exercise we are
 23 considering an audit of our processes, data, and IT
 24 systems. If we do proceed with this audit, it is likely
 25 that we will use a professional audit organisation that

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1 are tried and tested in this area as we require
 2 organisation who have the reputation and the experience
 3 of defending audits against external scrutiny."
 4 Then in paragraph 3, the second paragraph:
 5 "In cases where an auditor has found evidence of
 6 fraud, the previous trial balance (which the
 7 sub-postmaster has approved) will be the baseline
 8 record."
 9 Then in paragraph 5 {F/930/9):
 10 "Why are we considering Deloitte's to perform the
 11 audit?"
 12 What's said there is:
 13 "KPMG are excluded as they are Fujitsu's auditor.
 14 "Ernst & Young are excluded as they are
 15 Post Office's auditor."
 16 So that was the view taken at the time, which gives
 17 further background to the Post Office reliance now on
 18 the ISAE service audits which conflict with the APPSUP
 19 PEAK.
 20 The audit at paragraph 6 is:
 21 "The audit envisioned is a thorough end-to-end
 22 review of processes, systems and data which not only
 23 could reveal potential improvements but could be used as
 24 an assurance for court future cases."
 25 Now, against that background there is an explanation

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1 in a little bit more detail in relation to Horizon on
 2 page {F/930/12}. There is really one key reference
 3 there which is the third bullet point down in the
 4 "Summary", which is:
 5 "Each transaction is audited and protected to
 6 prevent change or tampering."
 7 Now, your Lordship may remember that Mr Dunks was
 8 cross-examined in relation to that point. We find that
 9 cross-examination by Mr Miletic at {Day7/32:18}.
 10 Line 18 is the beginning of the section. He recites
 11 what's said at paragraph 4 of Mr Dunks' witness
 12 statement, then the question at line 24:
 13 "I just want to be precise about the language there.
 14 "When you say 'audited transaction records', you are
 15 talking about transaction records generated from the
 16 audit store; what you're not talking about -- it's not
 17 the case that those records are actually audited prior
 18 to going into the audit archive, correct?"
 19 "Answer: No, it is just the extraction data that
 20 I'm taking out."
 21 "Question: Exactly. And so ..."
 22 It goes on to page 33.
 23 We referred to that in closing at paragraph 219,
 24 my Lord, for your Lordship's note, page 92. I needn't
 25 take you there.

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1 We then get on page {F/930/16}, back in the
 2 Post Office document, Jo Hamilton's case and the
 3 timeline. And if we go on to the second page of that
 4 {F/930/17} we have the entry on 5th May, and the third
 5 bullet point:
 6 "SPM provides a pre-prepared written statement. The
 7 statement states that the SPM did not receive adequate
 8 training and that the operation manuals provided were
 9 out of date. Statement also makes reference to an error
 10 for £1,500 which is alleged to have doubled to £3,000
 11 when attempts were made to correct it."
 12 So whatever the precise amount, Post Office knew
 13 from -- it looks like 2006 but recognised and recorded
 14 it in 2010 in this document, that the issue of
 15 an apparent disputed discrepancy, having doubled when
 16 help was sought, was one that was being complained about
 17 on any view.
 18 Now, it may initially appear that that seems to be,
 19 without knowing about the case, somewhat implausible or
 20 surprising if Horizon is working as the explanation in
 21 the pack explained it should.
 22 If we go, please, now to {F/1333/1}, which is the
 23 Second Sight report. Second report. If we go, please,
 24 to page {F/1333/26} of that report, my Lord, not for the
 25 purposes of establishing the facts that are set out in

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1 it but for identifying that it is an issue that has been
2 raised, we can see that under the helpline section at
3 paragraph 12, which makes various complaints, people
4 having difficulty contacting, script-based responses,
5 instructions later countermanded and then being told
6 don't worry, it will sort itself out, people not knowing
7 how long they should wait for that to happen, how they
8 are supposed to balance the books in an intervening
9 period, and so forth.

10 We can see at 12.4:

11 "Many of the shortfalls suffered by Applicants to
12 the Scheme have, on the balance of probabilities, been
13 attributed to 'errors made at the counter' but that does
14 not, in our view always mean that more extensive initial
15 training would have eliminated all of those errors
16 although it would obviously have helped."

17 12.5:

18 "What we have observed is that, in many instances,
19 the biggest shortages seem to have arisen as a result of
20 'errors made while trying to correct earlier errors'.
21 We attribute this less to inadequate initial training
22 than to inadequate subsequent support when branch staff,
23 when they were attempting to correct errors that they
24 had previously made, just made matters worse."

25 Then if we go over the page, 12.6, {F/1333/27} we

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1 can see:

2 "There have been numerous references to shortages
3 doubling, trebling or even quadrupling as branch staff
4 tried to correct, under instruction from the Helpline,
5 errors that they had previously made."

6 Then there is a reference to improved error
7 repency at the end of 12.7 and the extent to which
8 transcripts are available, if at all, at 12.8, and so
9 forth.

10 Now, against that background it is interesting to
11 identify the trouble that SPMs had with doubles. If we
12 start, if we may, at page {F/24/1}, which is PEAK
13 0043811. My Lord, I should say this is a slimmed down
14 selection of the available doubling problems.

15 If we look page {F/24/6} of that PEAK, if we may.
16 The second green box up from the bottom, 16th May, 16.11
17 exactly, the three lines up from the bottom halfway
18 across:

19 "The RNM," the regional network manager, "put
20 £6,343.07 into the suspense account. The discrepancy
21 has now doubled and is showing as a £12,686.14 surplus."

22 Over the page on page {F/24/8} there is a suggestion
23 that this is another instance of a different PEAK where
24 the data server trees have failed to build and now have
25 been fixed hopefully.

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1 If we go forward now to {F/149/1}, we are now in
2 2003.

3 MR JUSTICE FRASER: What date was that PEAK we were just
4 looking at?

5 MR GREEN: I'm so sorry, I should have mentioned it,
6 my Lord.

7 MR JUSTICE FRASER: 2000?

8 MR GREEN: That's 2000.

9 MR JUSTICE FRASER: Where are we going now?

10 MR GREEN: 25th April 2003 at {F/149/1}. On the first page
11 of that, the first substantive paragraph there, 24/04/03
12 at 15.44:

13 "Darren from NBSC states that the BM ..."

14 I think it should be PM.

15 MR JUSTICE FRASER: I see, 24th April 2003. 15.44.

16 MR GREEN: That's it. The target date on the PEAK at the
17 top is 28th April 2003.

18 MR JUSTICE FRASER: That's rather what threw me. Yes.
19 Darren from NBSC.

20 MR GREEN: "... states that the PM," it should be, "is
21 trying to reverse a Rem, but when this has been reversed
22 it is doubling up on a balance snapshot."

23 If we go over the page to page {F/149/2} and we come
24 down to the word "contacted", about two-thirds of the
25 way down the left-hand margin just below 25/04/03,

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1 09.15:

2 "Contacted: Pm confirmed all previous information.
3 Summarise. PM was in SU 'Y' he remmed in £13910 and
4 continued to trade in that SU in error, he should have
5 been in 'I' SU, so he did reversals of all transactions
6 in 'Y' including the REMIN and expected to see a zero,
7 but his REMIN had DOUBLED to £27,820.

8 "He went through all CA checks with NBSC and Horizon
9 and a reversal was attempted but a message that a
10 'reversal CANNOT be reversed' came up which indicated
11 that a reversal WAS CORRECTLY done."

12 So the system was reacting on the basis that you
13 can't reverse something you have already reversed, but
14 the effect of it was to double the figure to £27,820
15 rather than put it back to zero.

16 If we go forward to page {F/149/4}, the second last
17 yellow box, 1st May 2003, 06.34, Walter Wright.:

18 "Notes for testers:

19 "As well as testing that the fix addresses the
20 problem described in this PinICL, it should be verified
21 that the fix for the original bug ... Has not been
22 undone. Other desktop modes should also be checked to
23 ensure that no regression has taken place."

24 It appears that there was a fix developed for the
25 original version of this bug, but nonetheless this has

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1 happened again and there is a further fix being dealt
 2 with. We can see that appears to be right because on
 3 page {F/149/5} we can see in the top green box, four
 4 lines up from the bottom:
 5 "... call type L ... Category 46 - Product Error
 6 Fixed."
 7 MR JUSTICE FRASER: That's also on 1st May, I think,
 8 isn't it?
 9 MR GREEN: 1st May 2003.
 10 MR JUSTICE FRASER: They are both on 1st May, aren't they?
 11 MR GREEN: Exactly.
 12 MR JUSTICE FRASER: Okay.
 13 MR GREEN: Then we move forward to January 2004 at
 14 {F/184/1}.
 15 MR JUSTICE FRASER: Where are we going now?
 16 MR GREEN: {F/184/1}, which is PEAK 0098230.
 17 This PEAK is opened on 13th January 2004 at
 15:54:26 18 15:48:19. If we go over the page {F/184/2}, in the top
 18 box six lines down, just under 13/01/2004 at 15.43:
 19 "Information: The RLM has been through the cash
 20 account with the PM and tried to adjust the figures but
 21 they keep doubling up."
 22 So this is not the postmaster or postmistress on
 23 their own.
 24 MR JUSTICE FRASER: Does that say RLM?

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1 MR GREEN: I think it is meant to be RNM, unless it was
 2 regional line manager at the time. I can't remember
 3 when it changed.
 4 MR JUSTICE FRASER: Yes.
 5 MR GREEN: If we go down to the penultimate green box on the
 6 same page, 14th January 2004, 17.55.56, underneath
 7 halfway down:
 8 "This results in a discrepancy between the system
 9 cheque figure and the declared figure."
 10 We get:
 11 "Something has changed in the counter code recently
 12 (I think at COUNTER_EPOSS 20_3; released end Nov) which
 13 causes the discrepancy to be recorded wrongly; so the
 14 cheque discrepancy; instead of being cleared; is
 15 doubled; and the cash is also wrongly adjusted."
 16 When we go forward to page {F/184/3},
 17 15 January 2004 at 14.32.05, which is the large green
 18 box beginning just before halfway down the page, we can
 19 see there is a response. Then just underneath where the
 20 second paragraph starts, just underneath "3rd December",
 21 does your Lordship have:
 22 "This is a nasty problem ..."?
 23 MR JUSTICE FRASER: Yes.
 24 MR GREEN: "This is a nasty problem as; if cheques continue
 25 to be declared each week on the Declare Stock screen;

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1 the numbers keep doubling. However there is a simple
 2 circumvention and; as they should not be declaring
 3 cheques in this way; it shouldn't have much impact. But
 4 I think it should be looked at and resolved (any chance
 5 for S60??) - might be instances where it really does
 6 cause problems."
 7 Then if we go to {F/207/1}, this is a different bit
 8 of double trouble. It is the Horizon KEL GC Simpson
 9 1049L. We are in April 2004 to May 2004.
 10 Symptoms:
 11 "The PM balanced on Wednesday ... and noticed that
 12 all currencies on hand had doubled up."
 13 MR JUSTICE FRASER: That is an 04 KEL, isn't it?
 14 MR GREEN: This is an 04 KEL, my Lord, yes. It is the 29th.
 15 It is raised on 29th April 2004 and updated on
 16 5th May 2004 by Mr Simpson.
 17 MR JUSTICE FRASER: It is just for some reason it has
 18 "March 19" on the top right-hand corner. That's just
 19 why I asked. All right. Yes.
 20 MR GREEN: If we go to page {F/366/1} and we come down on
 21 {F/366/1} to the penultimate yellow box. Cheryl Card.
 22 24th November 2006, 14.56.15, penultimate yellow box:
 23 "Problem appears to be related to smartpost products
 24 ... by 1pm Bulk/PrePaidBulk. Credit and Debit figures
 25 appear to have doubled - message for product 7967,

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1 SaleValue is 7.40 but Credit is 1480; message for
 2 product 8058, SaleValue is -7.40 but Debit is again
 3 1480.
 4 "Problem has occurred 3 times - see also," some
 5 related PEAKs.
 6 If we go over the page to {F/366/2}. If we come
 7 down to the third green box, 29th November 2006.
 8 MR JUSTICE FRASER: At 10.26?
 9 MR GREEN: 10.26, my Lord, yes:
 10 "In the 3 cases seen so far each riposte message has
 11 had the <Credit:> attribute written immediately before
 12 after the <Mode:SC>> with the value doubled."
 13 I'm not quite sure what that means:
 14 "Normally the credit attribute is seen at the end of
 15 the message. We have not as yet been able to reproduce
 16 the fault, but will continue to try and reproduce the
 17 fault."
 18 So what they can see is what has been in fact
 19 written and it is not as it should be written but they
 20 can't reproduce the fault.
 21 Then we see the PEAK appears to be a duplicate.
 22 This is three yellow boxes up from the bottom. It
 23 appears to be a duplicate of another PEAK. If we go on
 24 to page {F/366/3}, that PEAK is then being used to
 25 progress the fault. So there is an administrative

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1 response, closure code for that.
 2 Then if we go to {F/590/1} we are now in
 3 7th March 2010. It is raised on 4th March 2010 with
 4 a target date of the 7th. This is PEAK 0195561. If we
 5 go to page {F/590/2} and we look at the penultimate
 6 yellow box, 5th March 2010 at 16.58.10. Cheryl Card:
 7 "On 02/03/10 on counter 2 at 15.04, the clerk
 8 attempted a Transfer Out of 4,000.00 from stock unit BB
 9 to MS. Due to a system problem the Transfer Out doubled
 10 up, so when the Transfer In was done on counter 1 ... it
 11 was for 8,000.00. The branch now has a loss of
 12 4,000.00.
 13 "I phoned the PM and explained that the problem was
 14 under investigation. The PM would like to have it
 15 sorted out before she rolls into the next TP, which is
 16 due on Wed 17th March."
 17 Then {F/590/3}, the third yellow box down in the
 18 middle of the page:
 19 "Advised PM to print a balance snapshot. Ran the
 20 Transaction Correction tool."
 21 MR JUSTICE FRASER: Sorry, where are you?
 22 MR GREEN: Halfway down the page, my Lord. The yellow box,
 23 11th March 2010, 15.22.14:
 24 "Advised PM to print a balance snapshot. Ran the
 25 Transaction Correction tool."

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1 So this is the use of the transaction correction
 2 tool and it is then successfully repaired, as we can see
 3 at the bottom of page 3, penultimate box.
 4 Then there's a little bit of insight into the
 5 context in which those at SSC are working, which we find
 6 on page {F/590/5} onwards.
 7 18th March 2010, the penultimate green box. Second
 8 paragraph:
 9 "As the fix is already released, I would like to
 10 request the priority of the issue to be downgraded to C
 11 as we are trying to investigate the root cause only.
 12 Please let me know your thoughts on this."
 13 Then two boxes below:
 14 "What is missing from this PEAK is the explanation
 15 of the events in terms of the requests, how they were
 16 ordered and when any was committed. Only then can we
 17 qualify the priority. The assumption is that we have a
 18 fix. The facts are -
 19 "1: A settlement request to timed.
 20 "2: A retry of request timeout occurred.
 21 "3: According to the DB entries both later
 22 succeeded.
 23 "Now unlike other reconciliation Peaks this stands
 24 out because only one of the requests are specific to
 25 settlement. They should have worked because there would

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1 have been a unique constraint violation on the journal
 2 entry of one of them and if we are not getting this then
 3 this is still an issue!"
 4 So he says he can't reduce the priority {F/590/6}.
 5 There is further investigation. The request is failing
 6 in the large -- over the page, on page 6. So there is
 7 still an issue is at the top. Then:
 8 "We can't reduce the priority ..."
 9 Then the big yellow box says:
 10 "Yes, the second request is failing and the first
 11 request is committing ..."
 12 MR JUSTICE FRASER: Where?
 13 MR GREEN: In the large yellow box, 18th March, 14.26,
 14 my Lord.
 15 Then over the page {F/590/7}, if we look at the
 16 third yellow box down:
 17 "Timeouts were the underlying cause of the issue and
 18 that there were long delays waiting on the DB to process
 19 the 4 requests. In this case two of the requests were
 20 committed and two correctly detected that the
 21 transaction had already succeeded. There is an issue
 22 with the 2 commits because this shouldn't have
 23 happened."
 24 Then a bit further down:
 25 "We would like to find the root cause of the issue

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1 as to how the duplicate entry was committed in the db."
 2 There is further investigation, checking the
 3 relevant database tables on page {F/590/8}. Then we go
 4 to page {F/590/9}. That's the large yellow box at the
 5 bottom of the page, 22nd April 2010, 15.35.54:
 6 "I have gone through the counter logs, OSR logs and
 7 the DB dumps provided in the peak. Lets analyze this
 8 from the scratch.
 9 "Peak has been raised when a clerk attempted a
 10 Transfer Out of 4000.00 from stock unit BB to MS. Due to
 11 a system problem, the Transfer out doubled up, so when
 12 the Transfer In was done on counter 1 at 16:15, it was
 13 for 8,000.00. The branch now has a loss of 4,000.00.
 14 "I checked the counter logs and analysed the
 15 request ..."
 16 Second line:
 17 "But note that in the BAL/OSR side this request was
 18 ignored by the time out monitor and continued to execute
 19 and hence updated the table."
 20 That seems to be the problem.
 21 About halfway down that box there is a two-line
 22 paragraph:
 23 "I have requested for the journal table dump, to
 24 check where duplicate JSN entries exists in the table.
 25 But from the DB dump, I couldn't find any duplicates."

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1 Then over the page {F/590/10}, top box, halfway
 2 down:
 3 "So, we can see that the insert time stamp is
 4 different for these 2 records and hence it might have
 5 entered from 2 different requests."
 6 MR JUSTICE FRASER: Sorry, where are you looking?
 7 MR GREEN: Halfway down the top box, the yellow box at the
 8 top. Halfway down:
 9 "So, we can see that the insert time stamp is
 10 different for these 2 records and hence it might have
 11 entered from 2 different requests.
 12 "I have no doubt that one of the records was
 13 inserted by the request id ..."
 14 Then the number. It was an original request:
 15 "But I am not sure how the second report was
 16 inserted. But I have doubt on the retried request ...
 17 which didn't fail at the journal filter stage.
 18 "So, I would request you suggest on this, since
 19 there wasn't any evidence which shows that 2
 20 [transactions] has happened and updated the tables."
 21 So at the bottom of the page on page 10, Cheryl Card
 22 is not happy with the classification of duplicate call
 23 which appears to be because there was another similar
 24 PEAK which was not immediately spotted to be the same
 25 problem, and she says:

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1 "I'm sending this call back with Response Rejected.
 2 "Closing a call as 'Duplicate Call' results in
 3 a black mark against me. It basically means that I
 4 should not have sent the call over since the same
 5 problem has already been sent over in a previous call .
 6 "... (duplicate transfer of 4,000 cash) may have
 7 been caused by the same underlying fault as PC0194893
 8 (banking reconciliation), however I could not have been
 9 reasonably expected to link the 2 calls and take the
 10 decision that it was not necessary to send PC0195561
 11 over for further investigation ."
 12 So we can see from there that there was also another
 13 PEAK, the link to which was not initially appreciated,
 14 and there was some pressure on Cheryl Card not to
 15 identify as a distinct problem something that might be
 16 linked to something else.
 17 Then we look at, if we can move forward to
 18 23rd March 2010, which is at {F/596/1}.
 19 MR JUSTICE FRASER: We are going into a different PEAK?
 20 MR GREEN: A new PEAK which is PEAK 0196154.
 21 Summary:
 22 "... remmed in some currencies and the figures got
 23 doubled up."
 24 Then halfway down under the second lot of equals
 25 lines :

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1 "PM states he remmed in some currencies and the
 2 figures got doubled up on the system - previous call
 3 regarding this was closed. POL state this is a system
 4 issue ."
 5 Then over the page {F/596/2} we can see the problem
 6 with the sterling value of dollars. I think it should
 7 be \$2,000 with a value of £1,320 at the top, rather than
 8 200.
 9 MR JUSTICE FRASER: Yes.
 10 MR GREEN: Then 2,104 matches the pouch value and then there
 11 is the third paragraph. It says:
 12 "Then got another slip printed showing a different
 13 session number ...
 14 "When she went to do her report to check the bureau
 15 stock ... her system showed as having a value of
 16 £4,208.84 in the bureau stock which is exactly double
 17 the original amount she scanned ..."
 18 Then there's a further analysis suggesting that the
 19 pouch, if we look at the penultimate green box, third
 20 paragraph, suggesting that it was accepted at the
 21 branch, accepted twice at the branch:
 22 "... due to a system problem when the clerk used the
 23 Prev button several times during the Delivery acceptance
 24 ... POL may have to issue a TC."
 25 There is another PEAK currently with development in

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1 relation to that problem. So that is doubling in
 2 relation to currencies.
 3 Then at {F/630/1}, new PEAK, 019877, which is the
 4 Hucclecote fix PEAK that your Lordship may remember from
 5 the trial . We see this at {F/630/2}. This is where
 6 there is an additional office , which is the Hucclecote
 7 one which has had a problem in the yellow box at the
 8 both bottom:
 9 "NBSC has just advised that another office had
 10 a similar problem, although the discrepancy has now been
 11 sorted out. Details of the site and problem are below
 12 for information ...
 13 "Office - Hucclecote SPSO ...
 14 "Office was dealing with the discrepancy in the
 15 office following the TP rollover , and selected settle
 16 centrally. The office reports that nothing happened and
 17 they ended up doing this a further 2 times before they
 18 could proceed. This has resulted in the office settling
 19 the loss centrally 3 times. This showed as such as the
 20 total on the final balance. The Trading Statement and
 21 suspense account seemed to be correct though. On
 22 Monday, 19th April the office reported they showed a
 23 cash gain of double the original loss and after further
 24 investigation a suspense account was produced that
 25 showed 2 clear loss from local suspense entries. We

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1 have now cleared this by clearing gain from local
 2 suspense, which should clear the gain in the office .”
 3 Then it says {F/630/3} immediately under that, the
 4 first green box at the top:
 5 “The solution we thought we had for Hucclecote ...
 6 has not resolved the problem, but has actually doubled
 7 the discrepancy. The original figures in suspense were
 8 clear loss from local suspense ... of £998.81 which was
 9 the original loss in for the branch and this shows
 10 twice. We have entered a clear gain from local suspense
 11 but has doubled the discrepancy that was showing on AA
 12 su from £1,997.62 to £3,995.24.”
 13 So that’s one where they think they have fixed and
 14 what in fact happens is it has not been fixed at all .
 15 In fact , it has doubled the discrepancy.
 16 Then if we go forward to May 2017.
 17 MR JUSTICE FRASER: Different PEAK now.
 18 MR GREEN: My Lord, it is a different document entirely. It
 19 is {F/1794.1/1}, which is the agenda for the Post Office
 20 operations board of 23rd May 2018. The point 1 refers
 21 to the fact that 1794 was the redacted version and the
 22 version we are going to look at is the version with less
 23 redactions on.
 24 MR JUSTICE FRASER: Fewer redactions.
 25 MR GREEN: Fewer.

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1 If we look at page {F/1794.1/34} of that document.
 2 It says:
 3 “There has been 3 reported instances .”
 4 This is SAP, GUI Bureau Value Issues.
 5 2018.
 6 “There has been 3 reported instances this week where
 7 the sterling value of remittances of bureau to branches
 8 has doubled when the delivery has been booked into the
 9 branch, For example, Aylesbury GPO were sent a bureau
 10 rem with a total value of £6.219,81, however when they
 11 booked it into branch it populated as £12,439.62”
 12 That passage was previously redacted but we can see
 13 it in 1794.1 finally , if we go to {F/1857/1} which is
 14 hot off the press. This is a document very properly
 15 recently disclosed because it is recent and it is
 16 referring to the date of an incident on 21 June, 2019.
 17 It is surpassing the doubling problem with
 18 a tripling problem, namely the triplication of
 19 transaction acknowledgements into branches for Lottery
 20 transactions in the order of 2 and a half million
 21 pounds.
 22 “TAs for lottery TAs (Transaction Acknowledgements)
 23 for Lottery transactions taken on 20/6/2019 have been
 24 triplicated in branch causing discrepancies.
 25 “Accenture loaded the file 2 times in error, once

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1 correctly .”
 2 That appears to be, my Lord, three times in total
 3 because we get a triplication of the sums involved.
 4 MR JUSTICE FRASER: Two times an error, once correctly .
 5 MR GREEN: Exactly. It is believe this is due to the
 6 introduction of new RPOS system into pilot.
 7 MR JUSTICE FRASER: What’s RPOS?
 8 MR GREEN: I think it is a new bit of script but I am not
 9 sure.
 10 MR JUSTICE FRASER: All right.
 11 MR GREEN: “All Lottery branches are unable to reconcile
 12 their stock and cash. GL accounts in the Finance systems
 13 have triplicated data. If a technical fix is not in
 14 place then FSC will need to issue Transaction
 15 Corrections (TCs) to enable branches to balance.
 16 “If a technical fix is not in place and FSC do not
 17 issue TCs, then emergency suspense accounting will cause
 18 significant issues operationally for FSC to manage.
 19 “Communication sent to branches for the issues and
 20 timeframe to resolve:
 21 “ATOS/FUJITSU/ACCENTURE is engaged in finding the
 22 root cause and developing a fix . Conference call
 23 arranged to discuss and if a fix is not in place TCs
 24 will be issued from 25/06/19.”
 25 Then there is a note which we have asked in

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1 correspondence for an explanation of because we only got
 2 this very recently. Which says:
 3 “Please note:
 4 “Materiality - the threshold would be anything with
 5 a financial impact of over £50,000 and/or a major
 6 adverse reputational or regulatory reaction; the ‘Daily
 7 Mail test’. At this stage, it is more helpful to
 8 overreport than to miss the opportunity.”
 9 We have enquired where that materiality filter is
 10 applied, whether it is prior to this report being made
 11 or whether it is who that gets sent onto. But the short
 12 point, my Lord, is that there we have a picture of what
 13 Post Office explained it knew in both 2010 and 2012,
 14 where doubling was in issue in a very serious case,
 15 Jo Hamilton’s case --
 16 MR DE GARR ROBINSON: My Lord, is my learned friend seeking
 17 to -- inviting your Lordship to make findings about
 18 a criminal case that’s before the CCRC?
 19 MR GREEN: I’m not.
 20 MR DE GARR ROBINSON: Then why does my learned friend keep
 21 talking about Jo Hamilton? I do find it striking that
 22 sometimes he appears to be addressing a jury rather than
 23 a judge.
 24 MR GREEN: My Lord, it may be uncomfortable for the
 25 Post Office to be faced with documents that show they

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1 well knew that there was an issue about doubling, but it
 2 doesn't matter whose cases they arise in --
 3 MR JUSTICE FRASER: What you have been doing in the last
 4 however many minutes, and I didn't stop you with the
 5 references to Jo Hamilton at the beginning, you used
 6 that as a springboard to take me chronologically through
 7 the sequence.
 8 MR GREEN: Indeed.
 9 MR JUSTICE FRASER: I have already made clear I think on at
 10 least three or four occasions this court's position on
 11 the criminal cases.
 12 MR GREEN: Of course my Lord. My Lord, I'm absolutely not
 13 trying to invite your Lordship to make any finding
 14 whatsoever about merits one way or the other. The only
 15 point I'm making is that this is a matter which
 16 Second Sight had identified had been raised by multiple
 17 SPOs in the Second Sight report and on any view was
 18 known to be an issue by Post Office from the documents
 19 we have seen. That's the only point and it is not right
 20 for my learned friend to try to seek to distract from
 21 the stinging nature of the underlying documents by
 22 objecting.
 23 MR DE GARR ROBINSON: My Lord, there are rules about the
 24 conduct of commercial litigation.
 25 MR JUSTICE FRASER: There are.

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1 MR DE GARR ROBINSON: One of those rules is that one doesn't
 2 say things incautiously that might have an impact on
 3 evaluations being done in another place in relation to
 4 different proceedings.
 5 Another one of those rules is not to conflate a
 6 whole series of issues, all of which are very different,
 7 bureau rems in, we have got other kinds of rems, we have
 8 got transfers between stock units, all sorts of
 9 different issues which my learned friend picks up
 10 randomly over a period of 20 years and seeks to promote
 11 them to your Lordship as a single problem which
 12 Post Office has known about for all that time.
 13 Your Lordship will have seen from the PEAKs that
 14 that's not the case. There were individual instances of
 15 individual problems, as far as I can tell, some of these
 16 documents I have not seen before of course, which itself
 17 is extraordinary given the nature of this trial and that
 18 we are at the end of it.
 19 But my Lord what's happened is my learned friend is
 20 seeking to jumble things up and then create
 21 an impression. If I may say so, he has given the game
 22 away in this particular exercise over the last 45
 23 minutes and I would invite him to stop.
 24 MR GREEN: My Lord, doubtless my learned friend can amplify
 25 tomorrow. What I was about to say was specifically to

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1 identify the fact that, on any view, Second Sight had
 2 known and we have seen the other documents. This was
 3 an issue and what we see in the PEAKs is not only the
 4 situation where there is an attempted correction, where
 5 there's doubling, but we see a variety of different
 6 causes other. I was not going to conflate them at all.
 7 I wanted the court to see we have found a wide range
 8 of strands of causes of doubling issues in the accounts
 9 of SPMs. We don't want to conflate them. We want to
 10 identify that, not only are there cases where a SPM --
 11 for example, the regional line manager puts it into
 12 suspense and it doubles, Hucclecote -- your Lordship has
 13 got the point.
 14 MR JUSTICE FRASER: I have been following your analysis of
 15 the PEAKs very carefully.
 16 MR GREEN: I'm most grateful, my Lord.
 17 MR JUSTICE FRASER: I think Mr de Garr Robinson's point is
 18 that you are going rather wider than the confines of
 19 this trial by referencing, firstly, criminal cases over
 20 which I have made it clear I have no coverage and
 21 jurisdiction and they are not part of the Horizon trial.
 22 MR GREEN: My Lord, I agree.
 23 MR JUSTICE FRASER: And he has also suggested that you are
 24 giving a misleading impression by conflating different
 25 technical issues all into one single issue as though it

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1 started in 2000 and has run uninterrupted or unbroken
 2 through to 2019.
 3 MR GREEN: Yes and I'm not seeking to do that. What I'm
 4 seeking to do is identify by way of one problem which
 5 might be faced by SPMs without the insight that you get
 6 from the PEAKs, as to: they have a problem where
 7 a figure doubles in their accounts and they don't
 8 understand why.
 9 Not only is it correct that one of the problems
 10 Second Sight reported about the number of people
 11 complaining, which is when you seek help it doubles, not
 12 only do we find that, we also find a whole load of other
 13 reasons why figures might be doubling in their accounts.
 14 MR JUSTICE FRASER: Understood.
 15 MR GREEN: I don't want to conflate them at all. The short
 16 point is, stepping well back from this, what we see as
 17 an overall picture in relation to the documents the
 18 court has was fairly reflected by Mr Coyne when he
 19 identified that of course the documents we have got are
 20 the ones that successfully got through, made it through
 21 to the third layer, a PEAK was created and is then
 22 ultimately followed through and so we have more
 23 documentation where more investigation was done, less in
 24 documentation where less investigation was done and we
 25 can also see examples in the documents where

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1 subpostmasters, even in the cases that do ultimately
 2 reach a PEAK, subpostmasters either at their or at
 3 intervention logs can be seen to be being bounced back
 4 to NBSC.
 5 My Lord, against that background we have answered
 6 the Horizon Issues as we have sought to do in a matter
 7 of a few words in our closing submissions. We have done
 8 so, we respectfully submit, on a correct formulation of
 9 those issues without any glosses which would distract
 10 from the issues as they were properly formulated by the
 11 court and the way in which those issues fall to be
 12 answered by this court are totally unrecognisable from
 13 the positions that Post Office has taken in relation to
 14 them in a number of material respects, including into
 15 the course of this very trial.
 16 My Lord unless I have anything on which I can assist
 17 you further, those are my submissions.
 18 MR JUSTICE FRASER: Well, I have some questions. Just give
 19 me a second.
 20 Some of them are just minor sweep up points. There
 21 have been various references to a figure for the
 22 claimants' accounting losses generally as about
 23 £18 million.
 24 MR GREEN: My Lord, yes.
 25 MR JUSTICE FRASER: And that is mentioned in one of the

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1 expert statements. I don't know what the origin of that
 2 figure is.
 3 MR GREEN: My Lord it is totted up from the SOCIs, the
 4 schedules of claimant information, that were identified.
 5 MR JUSTICE FRASER: All right. If it is the arithmetic
 6 total of that then I don't need any references.
 7 You mentioned Mr Singh.
 8 MR GREEN: Yes.
 9 MR JUSTICE FRASER: What's your position on Mr Singh?
 10 MR GREEN: The position that we didn't call Mr Singh --
 11 MR JUSTICE FRASER: I am aware of that that is rather why
 12 I'm asking you.
 13 MR GREEN: The position on the evidence is that he said he
 14 had this bizarre huge sum on a phantom transaction.
 15 Mrs Van Den Bogerd says this could have happened,
 16 I can't say it is possible or not possible.
 17 MR JUSTICE FRASER: No, but you haven't called him as
 18 a witness?
 19 MR GREEN: We have not called him as a witness.
 20 MR JUSTICE FRASER: His evidence is not admitted?
 21 MR GREEN: His evidence is not admitted?
 22 MR JUSTICE FRASER: And you showed me the notice to admit.
 23 MR GREEN: And we showed the notice to submit and the basis
 24 upon which it was refused.
 25 MR JUSTICE FRASER: That was my understanding that you did

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1 not call him.
 2 MR GREEN: We did not call him and his evidence is not
 3 before your Lordship.
 4 MR JUSTICE FRASER: That's rather why I was asking the
 5 question.
 6 At the end of the oral evidence when I think the
 7 question of disclosure was being discussed, you stood up
 8 and from memory referred to a solicitor's letter which
 9 you said you thought was 5th August of last year. But
 10 you weren't sure. Now often when counsel says that they
 11 know jolly well it is 5th August and they are
 12 demonstrating their memory recall.
 13 MR GREEN: I'm not sure I was on that occasion.
 14 MR JUSTICE FRASER: But when I go to the H bundle and look
 15 for a letter of 5th August I can't find it. I'm not
 16 saying you have to give me a reference for it, but if
 17 there is a reference for the document that you were
 18 referring to, I would just like to know what it is
 19 because it will save me some time. The authorities
 20 bundle is an agreed bundle I think, yes?
 21 MR GREEN: To which we haven't contributed.
 22 MR JUSTICE FRASER: It is an agreed bundle of authorities?
 23 MR GREEN: It is an agreed bundle.
 24 MR JUSTICE FRASER: You have made various submissions about
 25 Mr Jenkins.

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1 MR GREEN: Indeed.
 2 MR JUSTICE FRASER: And you have repeated them today or
 3 expanded on them today.
 4 MR GREEN: Indeed.
 5 MR JUSTICE FRASER: I'm not inviting you to do this, I'm
 6 just drawing your attention, there is a lot of law or
 7 there's some law on how the court approaches matters if
 8 it is being invited to draw an adverse inference from
 9 someone's absence. I'm proceeding on the basis I'm not
 10 invited to draw an adverse inference because none of the
 11 law relating to it is in the agreed authorities bundle.
 12 MR GREEN: My Lord, the position in relations to that is
 13 reasonably well known but the only -- the way we have
 14 put it is that it is unhelpful not to have called
 15 Mr Jenkins and the reason for it doesn't seem
 16 satisfactory.
 17 MR JUSTICE FRASER: I understand that.
 18 MR GREEN: We have said throughout to Post Office and
 19 I think also to the court, that therefore the weight to
 20 be attached to what's been passed down is very low
 21 indeed.
 22 MR JUSTICE FRASER: I understand that too. That is a rather
 23 different point.
 24 MR GREEN: We also respectfully submit that it feeds into
 25 the impression of Post Office being less than

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1 forthcoming about the true position in relation to --
 2 MR JUSTICE FRASER: I understand that too.
 3 MR GREEN: Beyond that we don't go further.
 4 MR JUSTICE FRASER: That's also a different point.
 5 The next two points really are practical, pragmatic
 6 points, or the next one certainly is, for me which I am
 7 going to raise now because they also affect
 8 Mr de Garr Robinson's and his team's closing.
 9 I happen to take the view that appendix 2 is very,
 10 very useful.
 11 MR DE GARR ROBINSON: Of?
 12 MR JUSTICE FRASER: Of your closing submissions. It
 13 collates a large amount of information in one place. It
 14 is effectively a very useful narrative. You have,
 15 however, made certain submissions this afternoon that
 16 some passages of it, you say, aren't reflected in the
 17 evidence.
 18 MR GREEN: Indeed.
 19 MR JUSTICE FRASER: Now, that may or may not be right and
 20 I have no position on it one way or the other. But in
 21 view of the number of bugs, the length of the appendix
 22 and the quantity of the documents, it is a nettle I have
 23 to grasp now about how it is going to be dealt with.
 24 MR GREEN: Indeed.
 25 MR JUSTICE FRASER: Just to put Mr de Garr Robinson's mind

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1 at rest, I'm not going to ask for any sort of exercise
 2 that has to be done before tomorrow and I'm not going to
 3 ask for any exercise at all other than a purely
 4 referencing one; but it seems to me that for my purposes
 5 in writing the judgment I have to know which passages in
 6 there you say are effectively submission rather than
 7 evidence, so that the Post Office has an opportunity to
 8 direct my attention to wherever it is in the evidence if
 9 it is in the evidence or it might be a submission or it
 10 might be a point of basic computing knowledge which one
 11 is expected to have.
 12 So I would like the two of you, please, just to
 13 address your minds as to how you are going to go about
 14 that. I envisage notification of paragraph numbers from
 15 you to the Post Office where you say that, for example,
 16 paragraph X on page Y, which isn't footnoted, is not
 17 anywhere in the evidence and that then gives the
 18 Post Office the opportunity simply to say the reference
 19 is here or it is a submission.
 20 MR GREEN: My Lord, our approach, given that where there is
 21 a document it appears to be footnoted, where insertions
 22 are made for which no reference is given, we have not
 23 been able quickly to identify what the foundation for
 24 that is.
 25 MR JUSTICE FRASER: Mr Green, I'm not requesting or ordering

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1 anything to be done particularly quickly.
 2 MR GREEN: I'm grateful.
 3 MR JUSTICE FRASER: It is simply -- and I want to make two
 4 points absolutely crystal clear; this judgment is not
 5 going to be out at any time in the next couple of weeks
 6 for obvious reasons and we are going to address
 7 housekeeping tomorrow.
 8 MR GREEN: Indeed.
 9 MR JUSTICE FRASER: When I say housekeeping I mean in terms
 10 of the shape of the rest of 2019; not to conduct a CMC,
 11 just to discuss the point I mentioned to both of you two
 12 weeks ago, what are we going to do about the CMC in July
 13 and the one in September, is it sensible to have either
 14 and/or one of them, etc?
 15 But, as you were taking me through the bugs which
 16 you chose to address this afternoon, there were a number
 17 of paragraphs which you said in relation to those issues
 18 they are not in the evidence or we don't know where that
 19 information is from.
 20 If that, in respect of any particular paragraph, is
 21 the case, then it is very unsatisfactory for me to be
 22 left in a grey area where I don't know has it come from
 23 the evidence or is it a submission? I just need to
 24 know. It is very simple. It is a mechanical task. It
 25 won't be very complicated and it doesn't need doing any

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1 time in the next 7 days, but it does need doing.
 2 MR GREEN: My Lord, yes. I mean, I understand. The basis
 3 on which we have approached --
 4 MR JUSTICE FRASER: I know you have explained that.
 5 MR GREEN: So we should identify --
 6 MR JUSTICE FRASER: I think as a matter of fairness to both
 7 of you, you have to identify a paragraph that you say is
 8 not taken from the evidence if you say it is not taken
 9 from evidence and then the Post Office has to have the
 10 opportunity simply to give me a reference or say it is
 11 a submission. It is not massively complicated.
 12 MR GREEN: If they have got sources in mind for things --
 13 MR JUSTICE FRASER: Mr Green, I'm not saying --
 14 MR GREEN: But anyway I appreciate your Lordship says it is
 15 a task that has to be done.
 16 MR JUSTICE FRASER: It is a task that has to be done, it is
 17 not designed to impose an enormously expensive or
 18 onerous burden on the legal advisers and it doesn't
 19 necessarily have to be done, if I can put it this way,
 20 to the nth degree for every separate sentence in
 21 a paragraph that might have ten sentences. But it does
 22 have to be done. Because the only other way I'm going
 23 to be in a position to know: is that paragraph based on
 24 any evidence? is by going through the whole of the
 25 evidence myself, which I will be doing but I won't be

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1 doing separately in respect of each paragraph in
 2 appendix 2.
 3 MR GREEN: I see.
 4 MR JUSTICE FRASER: It is fairly straightforward.
 5 MR GREEN: I understand.
 6 MR JUSTICE FRASER: I don't imagine -- when you have had
 7 time to look at it, it might be more obvious that either
 8 there are a list of however long it is or a much shorter
 9 list, but it is not going to be -- and if the answer
 10 from the Post Office is: well, yes you need to look at
 11 this paragraph of Dr Worden 2 or you need to look at
 12 this witness statement of Mr X or Ms Y, that's the only
 13 response I need.

14 I'm not asking for extra submissions. I would just
 15 like to know because at the moment you are saying it is
 16 not based on the evidence. So just have a talk between
 17 yourselves about the mechanics of that.

18 MR GREEN: I'm grateful.

19 MR JUSTICE FRASER: I think that's everything save for one
 20 point. Mr de Garr Robinson, at the end of the afternoon
 21 when there was the exchange between counsel about what
 22 Mr Green was and wasn't doing in mentioning the criminal
 23 cases, you said that one of the rules in commercial
 24 litigation is that one doesn't say things incautiously
 25 that might have an impact on evaluations being done in

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1 proceedings elsewhere.

2 By that do I take it to mean in relation to
 3 proceedings before the CCRC or are you talking about
 4 something else?

5 MR DE GARR ROBINSON: I had the CCRC in mind my Lord but
 6 I made the point advisedly as a wider application but my
 7 objection that I made to your Lordship was with respect
 8 to the CCRC.

9 MR JUSTICE FRASER: Because there are two issues and it is
 10 something that I just need to address now with you
 11 because of the way in which it has arisen in the last
 12 half an hour.

13 Firstly, if there are any criminal proceedings
 14 currently underway as of today, then, obviously, there
 15 are potential jury issues in terms of any sort of
 16 publication of today's proceedings. So that is a point
 17 which seems to me does have some potential concern
 18 because those sorts of proceedings could be influenced
 19 by anything that was reported about this case.

20 I'm not sure the CCRC could because that's not
 21 a jury environment and I am sure they would be
 22 sufficiently trained to exclude from their
 23 considerations anything that was reported about this
 24 case rather than looking at the actual judgment itself.
 25 But because of the fact the point has been raised

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1 I wanted to raise it full square with you now.

2 MR DE GARR ROBINSON: I'm very much obliged to
 3 your Lordship, could I take instructions very briefly?

4 MR JUSTICE FRASER: I think so.

5 (Pause).

6 MR DE GARR ROBINSON: I'm obliged to your Lordship for
 7 giving me that moment. My Lord, there are no
 8 prosecutions being brought by Post Office as we speak.
 9 Post Office understands that there are
 10 investigations being made by the police and possibly
 11 other authorities which may lead to criminal
 12 prosecutions but my instructing solicitors and indeed
 13 a legal officer from the Post Office is not aware that
 14 those investigations have actually materialised into
 15 a prosecution yet. That's not to say that they are
 16 certain there isn't one, but they are not aware of one.

17 MR JUSTICE FRASER: That is entirely understood. My
 18 potential concern was, obviously, if there were
 19 a criminal trial underway this week, then we may well
 20 have to or would have needed to address whether or not
 21 it was necessary to take any sort of measures to prevent
 22 those Crown Court proceedings being potentially derailed
 23 and having to be started again as a result of anything
 24 that's happened in the last 40 minutes. But on the
 25 basis of what you have said, I'm perfectly content and

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1 unless either of you have anything to say about that?
 2 No? Thank you very much.

3 Final point. When I say we are going to address the
 4 shape of 2019 at the end of tomorrow, that's not
 5 intended to be an enormous exercise. It is just a very
 6 straightforward pragmatic analysis of how long this
 7 judgment might take and the sequence of the litigation
 8 following on from that and it may be that it is a short
 9 point and it is decided we don't need the CMC in July,
 10 we just have the one in September or something like that
 11 but we can address that tomorrow when you have finished.

12 MR DE GARR ROBINSON: My Lord, yes.

13 MR JUSTICE FRASER: Anything else?

14 MR GREEN: My Lord, no.

15 MR JUSTICE FRASER: Thank you very much. 10.30 tomorrow.
 16 (4.42 pm)

17 (The court adjourned until 10.30 am on Tuesday,
 18 2nd July 2019)

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