FOR HEARING FRIDAY 23RD JANUARY 2026

Claim No. BL-2025-000341

IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS
BUSINESS LIST (ChD)

LEE CASTLETON

Claimant

-and-

(1) POST OFFICE LIMITED
(2) FUJITSU SERVICES LIMITED

Defendants

CLAIMANT'S SKELETON ARUGMENT

Abbreviations: D1 and D2 are referred to both as 'the Post Office' and 'Fujitsu' respectively and as D1 and D2.

Essential pre-reading: Claim Form; Particulars of Claim; Judgment of Fraser J Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [2019] EWHC Civ 3408 QB; Technical Appendix to Horizon Issues judgment and para [444] in particular (finding on 'robustness' of Horizon); Judgment of HH Judge Havery Q.C. Post Office Ltd v Castleton [2007] EWHC 5 QB; RBS v Highland Financial Partners LP [2013] EWCA Civ 328; Bank of Credit and Commerce SA (In Liquidation) v Ali (No1) [2001] UKHL 8 (speeches of Lords Bingham and Nicholls); Total Networks v Revenue & Customs [2008] UKHL 19; Saroka v Payne Hicks Beach [2025] EWHC 602 (Ch); SVM/DSM/SD0015 RECONCILIATION SERVICE: SERVICE DESCRIPTION [FUJ00079994] dated 31.8.06, (published by the Inquiry 11.12.25); WBD Memorandum [POL00043284] dated 14.11.19 (published by the Inquiry on 14.6.24); Email from Anthony de Garr Robinson K.C. [WBON0000342] dated 12.11.18 (published by the Inquiry 3.6.25); Email from Mr Ward of the Post Office to Fujitsu [FUJ00122197] dated 10.3.06 (published by the Inquiry 14.6.24); Oral Evidence of Mandy Talbot, Transcript 28 September 2023; WS1 and WS2 of Mr Sheeley for the Post Office; WS1 and WS2 of Mr Summerfield for Fujitsu; WS1 and WS2 of Mr Phillips for Mr Castleton; WS of Mr Jason Coyne; WS of Mr Ron Warmington.

t/e pre-reading: 8 hours.

Housekeeping

The circumstances of Mr Castleton's claim engage with the most extensive and enduring series of miscarriages of justice in recent English legal history. That this was possible/happened, was the result of the elaborate concealment of the truth over a period of 20 years. Accordingly, it should be no surprise that the context is complex. Mr Castleton's claims are, nonetheless, as will be seen, straightforward. The Defendants have asked for further time to file their defences. What further period of time should be granted by the Court is a matter for the Court's discretion in the light of the evidence of the requirement for further time (which is suggested is unsatisfactory/limited). That apart, as will be seen, the Inquiry has recently (mid-December 2025) published documents that are relevant to Mr Castleton's claims that have not previously been seen by him or SMB. It is possible that the Particulars of Claim should be amended to reflect that newly disclosed material. Any such amendment, if Mr Castleton is so advised, may be made by the end of February.

Preliminary

1. This is Mr Castleton's skeleton argument on:

    1.1. The hearing of the Ds' applications to further extend time for the filing of their defences.

    1.2. On the issues under the direction dated 25.11.25 ('the Directions').

2. The circumstances are unusual:

    2.1. There are no defences, to Mr Castleton's claims, so the issues in dispute are not defined by the statements of case.

    2.2. There are no applications before the Court either for determination of preliminary issues or for a split trial.

    2.3. Determination of the construction of the 2019 Settlement Deed will not be determinative.

2.4. There are no defined proposed preliminary issues, still less is there any list of facts proposed to be agreed. Given what follows, the prospect of agreeing facts is unlikely.

2.5. Given that disputed facts would likely require oral evidence and disclosure and that the facts concern concealment and non-disclosure over a long period of time, the likelihood of splitting the trial saving either time or cost seems remote.

3. As will be seen, there is no 'bright line' between issues (either as defined on the pleadings or as clearly formulated by the Defendants) and the factual circumstances are closely inter-related.

4. That apart, there is no principled basis for splitting issues in the present circumstances. These circumstances, that are considered in a little further detail below, strongly militate against preliminary issues or splitting the trial. Most obviously this is in connection with "sharp practice" by the Post Office in hurriedly settling the Group litigation before judgment was formally handed down by Fraser J. on 16.12.19, but is true of other issues also.

5. Further, there is no principled basis for placing a series of hurdles in front of Mr Castleton that he is required to overcome before the Court considers the substance of his claim, that the wrong and personal and business catastrophe visited upon him by the Post Office by its false claim against him in 2006 was intentional and that the judgment given by HH Judge Havery Q.C. dishonestly obtained. The Post Office and Fujitsu's approach (including the extraordinary sums of £700,000 in legal costs indicated by Mr Summerfield by Fujitsu considering, but not responding to, Mr Castleton's claim) exhibit all the *indicia* of the Post Office's approach to the Bates Group litigation. (Fraser J. refers to the Post Office "liberally" expending its "considerable resources".[1]) It goes without

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1 See e.g. para [251]: "... This described failed recoveries, and seemed on its face to accept that these would recur, and was very close to the experience of both Mr Tank and also Mrs Burke. I do not see how Mrs Van Den Bogerd (assisted by her team of ten, and with the benefit of **the Post Office's considerable resources**) could seek to give accurate evidence in the Horizon Issues trial without referring to this KEL, still less without even knowing about it. I am also somewhat disappointed – putting it at its very best for the Post Office – that a team of ten could have assisted Mrs Van Den Bogerd in preparing a witness statement that was so inaccurate on such important points as I have identified above." And see [938]: "...The Post Office's approach to

saying that it is in both Defendants' interests to make pursuit by Mr Castleton of his claim as difficult, time-consuming and expensive as is possible.

6. On the contested[2] second ground of appeal, in the 42 appeals referred to the CACD by the CCRC in June 2020, in April 2021 the Court upheld that second ground in 39/42 successful appeals. That ground, "second category abuse of process" (below) was that the Post Office qua prosecutor had engaged in conduct likely to undermine the integrity of the criminal justice system or to undermine public confidence in it. The successful appellants, the Court held, should not have been prosecuted and that they had been 'offended the Court's sense of propriety'.

7. Mr Castleton seeks the same public vindication that the judgment against him, that has blighted his and his family's life for 20 years, was obtained dishonestly by the Post Office by it deliberately withholding from the Court material evidence. Against that, the Post Office's position is that, while willing to consent to the judgment being set aside by order, it will do so only upon its own terms, that do not extend to acceptance that the judgment was obtained by fraud. It contends that the Settlement Deed of 2019 precludes the Court from inquiring into the circumstances and Mr Castleton from any claim in connection with them. Unless, so the Post Office contends, Mr Castleton accepts that the judgment be set aside with no other consequential orders, still less any finding, the Post Office contends that the judgment must stand, albeit it is accepted by the Post Office that the judgment is 'wrong'. (Inferentially, the Post Office accepts that the judgment is necessarily "wrong" for the purposes of an appeal under CPR 52 (by CPR 52.21(3) an appeal will only be allowed where the decision of the lower court was (a) wrong or (b) unjust because of a procedural irregularity). Mr Castleton by his claim seeks that the judgment be set aside by the High Court, not on appeal, his claim being a discrete cause of action and separate from those causes of action that were the subject of the claim

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evidence, even **despite their considerable resources which are being liberally deployed at considerable cost**, amounts to attack and disparagement of the claimants individually and collectively, together with the wholly unsatisfactory evidence of Fujitsu personnel such as Mr Parker. The Post Office evidence also includes a very high level overview of Horizon by its expert which amounts to little more than a claim that it has worked quite or very well, most of the time."

[2] Other than a handful of cases where it was conceded, as recorded by the CACD.

before Fraser J. in 2019 in the Group litigation (Takhar v Gracefield Properties [2019] UKSC 13.)H

8. The position in truth is this: the Defendant's ask the Court to direct that there be no requirement for the Defendant's to plead to Mr Castleton's claim that the judgment that was obtained against him was obtained by fraud/by an unlawful means conspiracy and should determine the other issues under a split trial. In effect, this amounts to this proposition (that includes but is not limited to):

> *'Even if Mr Castleton is correct in his contention that the judgment was obtained by fraud by the Post Office in 2006 consciously and dishonestly withholding from the Court material evidence that would have had a bearing on the decision of the Court and that the Post Office and Fujitsu conspired to injure Mr Castleton by unlawful means (perverting the course of justice (Total Networks v Revenue & Customs)), the Court is not able to adjudicate those issues because it is precluded from doing so and Mr Castleton is barred from pursuing any claim in that regard, because of the terms of the general release under the 2019 Settlement Deed.'*

9. So far as can be ascertained, there is no reported decision in which a court has held that a 'general release' under a settlement agreement, upon its true construction, extends to cover circumstances in which it has been later contended that a judgment anterior to the settlement was obtained, by a party to the settlement agreement, by fraud.

10. In the present circumstances D1 and D2 invite the court to determine this before the actual nature of the fraud in question, and whether it is made out, is itself determined.

11. As will be seen, pleading a Defence to the substantive claim presents both D1 and D2 with some difficulty, because the key issue is both narrow and simple. The contentions (by both Mr Sheeley and Mr Summerfield) to the contrary, exhibit a degree of unreality, for reasons considered below.

12. The circumstances of Mr Castleton's claim occurred between his suspension in 2004, and the giving of judgment by HH Judge Richard Havery Q.C. in January 2007. It was only in 2019 by both the 'Common Issues' and 'Horizon Issues' judgments of Fraser J.,

that it emerged that virtually every aspect of HH Judge Havery's judgment is wrong, both in law and in fact. It was only in the course of the Inquiry (19.9.23) that it has emerged that one of the Post Office's witnesses at Mr Castleton's trial, Ms Helen Rose, the 'auditor' who attended Mr Castleton's branch in 2004 that resulted in his suspension, gave misleading and simply invented (perjured) evidence to the Court at Mr Castleton's trial, for the purpose of discrediting him and his competence (see P/C para 112 and transcript of Helen Rose to the Inquiry 19.9.23[3]). It is only in the Inquiry on 27.9.23, in an unguarded moment in cross examination, that Mrs Chambers revealed that, in 2006 in preparing for Mr Castleton's trial, she was instructed by her manager that the Known Error Log was not to be disclosed. The significance of this fact is to be interpreted against the importance attached by Fraser J in his 2019 Horizon Issues judgment to disclosure of the Known Error Log in the Horizon Issues trial, which was central to his evaluation of the (preliminary) issues, and which the Post Office, he records, strenuously but ultimately unsuccessfully resisted disclosing (below).

13. By para 20 of his WS1, Alan Sheeley seeks to justify the application by the Post Office for an extension of time for service of its Defence until 31.3.26 firstly 'and perhaps most fundamentally' on the basis that Mr Castleton's claims are complex and serious ones raising allegations of fraud going back over 20 years 'which will require detailed investigation for (the Post Office) to fairly plead any Defence'. The Claim Form and P/C were served on Pinsent Masons, on 14.7.26 so the Post Office had already had 3½ months to investigate the claim by the time its extension application was issued on 31.10.25 by which it asked the Court to allow it a further 5 months to serve its Defence. (It has now had 6 months and there is still no indication what defence there is said to be to Mr Castleton's claims.) Nowhere, either in his WS1 or his WS2 of 19.12.25 does Mr Sheeley explain what *actual* steps Pinsent Masons intends to take, or has already taken, to investigate the claim. For example, in paragraph 11.3 of his WS2, Mr Sheeley lists the names of 23 potential witnesses named in Parts B and C of the P/C, but he says nothing as to how his firm intends to investigate the claim or what progress has been made in that investigation to date.

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[3] See e.g. cross examination by Jason Beer Q.C. as to the statement by Mrs Rose questioned by the Chair at p 60 and by Counsel to the Inquiry at p 126. (Mrs Rose wasn't able to explain how it was that statements without factual basis came to be included in her WS.)

14. Accordingly, it is not possible for the Court on this hearing to assess how much time might reasonably be required to complete this investigation, according to Mr Sheeley, or whether Mr Sheeley is likely to return to court before 31.3.26 with yet another application for an extension of time.

15. The extension application made on behalf of Fujitsu Services Ltd is even less revealing as to why more time is needed to draft a Defence. In paras 34 and 36 of his WS1, Benjamin Summerfield of Morrison & Foerster states that Fujitsu should be subject to the same deadline as the Post Office for the service of its Defence 'as a matter of fairness' and, by implication, without regard to the time *required* by Fujitsu to complete any investigation necessary to enable it to draft its Defence to the facts alleged made against Fujitsu in the P/C. This is not a proper (or evidentially supported) basis for seeking an extension of time for service of Fujitsu's Defence which should be based on the reasonable time required by Fujitsu to investigate matters (not already investigated for the purposes of the *Bates* action or in the *Inquiry*) and to draft its Defence based on *that* investigation. Fairness to Fujitsu does not require the court to treat each of the Defendants in the same way, because their circumstances are different.

16. No explanation is provided as to why D1 and D2 trail the possibility that their defences should not be required until after the Final Report of Sir Wyn Williams. It is not clear on what basis this possibility is canvassed – as though Sir Wyn will provide answers to the claims now made against D1 and D2 by Mr Castleton?

17. The question of the appropriateness, or otherwise, of ordering that issues raised by Part A of the P/C in relation to the December 2019 Settlement Deed should be determined as a preliminary issue is addressed later in this Skeleton Argument. It is nonetheless important to note at the outset, the warning of Lord Neuberger MR in *Rosetti Marketing Ltd v. Diamond Sofa Company Ltd* [2013] 1 All ER (Comm) 308 that *'(i) while often attractive prospectively, the siren song of agreeing or ordering preliminary issues should normally be resisted, (ii) if there are nonetheless to be preliminary issues, it is vital that the issues themselves, and the agreed facts or assumptions on which they are based, are simply, clearly and precisely formulated...'.* In this case, there is no agreement between the parties. Neither of the Defendants has so far set out what its case is in response to the allegations contained in the P/C – or indeed whether there is any substantive defence

to Mr Castelton's claims. The only relevant statement the Post Office has made is in para 5 of the WS1 of Alan Sheeley in which he records that the Post Office accepts that with the Horizon system used by the Post Office during the period relevant to Mr Castleton's case in 2006 *'it was possible for bugs, errors or defects of the nature alleged by the claimant to have the potential both (a) to cause apparent or alleged discrepancies or shortfalls relating to Subpostmasters' branch accounts or transactions, and also (b) to undermine the reliability of Horizon accurately to process and to record transactions.'* Given that this was a finding of fact in a judgment that was not appealed, the Post Office could not but make this admission. It provides no basis for a statement of agreed facts to be made by the parties. [Similarly, there is no statement of agreed facts proposed by Fujitsu: the WS2 of Benjamin Summerfield merely sets out what he regards as the issues in Part A of the P/C and in para 15 of that statement he gives a summary of Fujitsu's position on these issues but that is 'without prejudice to its full position' – whatever that might be.

18. Part 1 of this Skeleton Argument addresses Mr Castleton's comparatively simple and straightforward claim that judgment against him given by HH Judge Havery Q.C. in January 2007 was obtained by the Post Office by fraud, by it consciously and deliberately withholding material evidence from the Court that would have had a material effect on the learned Judge's decision. Part 2 is concerned with issues of construction of the 2019 Settlement Deed and the misleading and untrue statements made to the Court by the Post Office in the Horizon Issues trial:

    18.1. Explaining the absence of Mr Gareth Jenkins as a witness for the Post Office.

    18.2. That Mr Jenkins was not a "shadow expert" for the Post Office, when plainly he was (below) – as has emerged from a document published by the Inquiry in December 2025 (below).

19. Part 2 further explains how those statements are linked to a critically important document, the July 2013 Clarke Advice, that revealed to the Post Office and its lawyers, Cartwright King and Bond Dickinson, that Mr Jenkins was a witness who had misled the Court in evidence that he had given, failing to reveal his knowledge of bugs in the Horizon system, in every one of 5 sample cases reviewed by Cartwright King. That knowledge and fact was contained/managed by the Post Office and emerged in the 42

appeals referred to the CACD in November 2020 (more than a year after Fraser J gave his Horizon Issues judgment).

20. Part 2 also touches upon how Mr Jenkins's known failures and breach of duties as an expert witness gave rise to the requirement for Cartwright King, in 2013, to review several hundred Post Office prosecutions, from 2010, between 2013-2014 - not one of which resulted in an appeal, successful or otherwise.

21. Part 2 also touches upon how the foregoing relates to the fact that, from 2014, the Post Office ceased prosecuting its postmasters for "Horizon shortfalls", as explained by Paula Vennells, formerly CEO of the Post Office, in response to written questions from Darren Jones MP, chair of the BEIS Select Committee, in June 2020.

22. Further, consideration is given as to how Mr Jenkins and his knowledge of problems with Horizon can be seen to have been "managed" by the Post Office, from immediately prior to Mr Castleton's trial, in 2006, in the improper editing of evidence for the successful criminal prosecution by the Post Office of Mr Hughie Thomas, right up to the Horizon Issues trial in 2019 – exhibiting consistency/continuity in Post Office litigation strategy over time. (In short, as is now clear, the Post Office routinely simply withheld evidential material considered 'unhelpful',[4] notably, that Horizon didn't work properly, was known by both the Post Office and Fujitsu not to and was subject to widespread (below) transactional data integrity transmission failure that required routine massive manual intervention and correction (below).)

23. These matters are complex, because what happened at critical junctures, over time, is itself complex. One aspect not considered further, but is remarkable, is how the Post Office managed to shield the 2013 Clarke Advice from disclosure to the CCRC from 2015, until after the first directions hearing in the CACD in November 2020). The "management" of Mr Jenkins, the 2013 Clarke Advice and what the Post Office knew about Jenkins as a wholly discredited witness who had misled the Court that as a result

[4] Indeed, evidence of wrongdoing was not always considered relevant at all to/required for Post Office prosecutions. Miss Janet Skinner was prosecuted for theft for a Horizon shortfall, convicted and imprisoned, in circumstances where the lead investigator, Diane Matthews, gave evidence to the Inquiry that at the time of her suspension from her branch office Ms Matthews did not believe Janet Skinner had taken anything, and that there was no evidence of dishonesty or theft. Miss Skinner was nonetheless prosecuted for theft and pleaded guilty on advice that she had no explanation for the "shortfall". She received an immediate custodial sentence.

it could not call as a witness, became critical and prospectively destabilising issues for the Post Office in late 2018, approaching the Horizon Issues trial.

24. D1 and D2 invite the Court to consider these latter issues and seek to persuade the Court to try them separately from Mr Castleton's straightforward claim that the Post Office consciously and dishonestly withheld material evidence from the Court in 2006. As is elaborated below:

24.1. the only substantive issue in connection with material evidence withheld from disclosure to the Court and Mr Castleton, that would have materially affected the judgment of the Court in 2007 and the outcome of the trial **is whether there is any available explanation for the withholding of that evidence (that cannot be denied (below)) that is consistent with honesty?**

24.2. The Court should resist the invitation to consider, less order, splitting the trial, because there is no "bright line" (Saroka v Payne Hicks Beach [2025] EWHC 602 (Ch). The reasons for the Post Office withholding evidence from HH Judge Havery Q.C. in 2006 are ineluctably connected with the reason that the Post Office gave a false explanation to Fraser J for Mr Jenkins not being called as a witness at the Horizon Issues trial in 2019. As will be seen, the Post Office knew that Horizon was profoundly flawed, but for 20 years, up to the Horizon Issues trial in 2019, maintained to its postmasters and the world at large the fiction that it was "robust and reliable". The fiction was maintained because the reality was that the Post Office was unable to distinguish between apparent losses ("Horizon shortfalls") that were the result of bugs errors and defects in the Horizon system, and fraud/actual cash losses. That drove the Post Office to treat all unexplained losses as the fault of its postmasters and branch staff, with ultimately catastrophic consequences – consequences that were foreshadowed by the Post Office notifying its insurers of risks in connection with Mr Jenkins's evidence in 2013.

24.3. In 2006, the Post Office solicitor Mandy Talbot vividly expressed her fears to the Post Office's solicitors that, if Mr Castleton's claims about Horizon causing shortfalls at his branch were not contested by the Post Office, the "entire system" would, in her words come *"crashing down"*.

> *'It is Mandy's view that the Post Office must not show any weaknesses and even if this case will cost a lot, there are broader issues at stake than just the Castleton claim: if the Post Office are seen to compromise on Castleton, then the 'the whole system will come crashing down' i.e. it will egg on other subpostmasters to issue speculative claims."* (Inquiry, Oral evidence Mandy Talbot, Transcript 28.9.23 49/11).

Post Office Ltd v Castleton [2007] remains the only reported decision until Fraser J's judgments in the Bates Group litigation. (The judgment and the costs were used to deter postmasters from launching civil claims as was the Post Office's object and intention.) Things eventually came "crashing down" for the Post Office in December 2019. Immediately upon receipt of Fraser J's Horizon Issues draft judgment, its application to appeal Bates and ors. v Post Office Ltd (No.3 Common Issues) [2019] EWHC Civ 606 QB having been refused (22.11.19 Coulson LJ), and it having failed in its application that Fraser J should recuse himself from the Horizon Issues trial, it took immediate steps to settle the Group litigation – a week before Fraser handed-down his judgment on 16.12.19 (on which Herbert Smith Freehills replaced Womble Bond Dickinson).

24.4. For reasons that will become apparent, the contention that splitting issues will save either time or costs is unreal. The reverse is the case.

24.5. As before, there is no identifiable "bright line", and none can be identified before the issues are defined by the parties on the pleadings. Determination of some issues, including most obviously the third issue, 'sharp practice', of the kind identified by Lord Nicholls in Bank of Credit and Commerce SA (In Liquidation) v Ali (No1) [2001] UKHL 8 (below), will plainly require both disclosure and oral evidence and cross examination and a careful examination of the claims available to Mr Castleton that were known/apparent to the Post Office at the time of urgently settling the Group litigation in December 2019. That is an issue related to what the Post Office knew about the circumstances in which judgment was given in its favour against Mr Castleton by HH Judge Havery Q.C. in 2007 that (if not stating the obvious) is precisely what falls to be

considered under Mr Castleton's substantive claims, which the Defendants do not wish, at this stage, to answer.

25. D1's and D2's assertions that meeting Mr Castleton's claims represents an extraordinarily difficult, complex and therefore vastly expensive exercise, in which a great deal of time has been required to understand Mr Castleton's claims, and yet more will be required to address and plead to those claims, are bare assertions and fail to engage with the actual issues. Further, since 2021, Sir Wyn Williams has been conducting an Inquiry, initially informally, but since June 2021 a statutory inquiry under the Tribunals and Inquiries Act 1992, in which a core consideration by the Inquiry, in the context of Horizon from its inception before roll-out to the Post Office's then 17,000 branch offices nationwide in 1999 has been *'who knew what and when?'* Sir Wyn Williams has said that it is his intention to get to the bottom of that. Both the Post Office and Fujitsu are core participants engaged in that exercise. Further, Mr Castleton's case has been made a special subject of the Inquiry. (Reading Mr Sheeley's and Mr Summerfield's WSS one might gain the impression that the allegations made by Mr Castleton are claims of which the Defendants hitherto knew nothing.)

26. While Mr Castleton is a CP in the Inquiry, as a CP he is represented by Hodge Jones & Allen and Mr Edward Henry K.C. and Ms Flora Page K.C.. As CP he has received disclosure in the Inquiry. As Claimant in this claim, the disclosure given in the Inquiry is not available to Mr Castleton or to his solicitors SMB, other than where that evidence has been given in public or else documents have been published to the public at large by the Inquiry.

27. Accordingly, there is asymmetry in the information/material available to Mr Castleton in these proceedings, compared with information and material available to D1 and D2 (though Pinsent Masons now act for D1 – formerly represented in the Inquiry by Herbert Smith Freehills. Pinsent Masons do not represent D1 in the Inquiry. Morrison & Foerster represent Fujitsu in the Inquiry and have done from the outset. HSF were D1's solicitors at the time of agreement of the December 2019 Settlement Deed).

28. In May 2021, immediately following upon the judgment of the CACD in *Hamilton and ors. v Post Office Ltd* [2021] EWCA Crim 577, the government elevated Sir Wyn Williams's inquiry to a full statutory inquiry – a course it had hitherto resisted. It did so in response to the CACD quashing of the first tranche of successful 39 of 42 appeals on

both grounds of appeal. The second ground, that the Post Office unsuccessfully contested on almost every appeal (but conceding it, for example, in Mr Hughie Thomas's appeal (below)), was that *qua* prosecutor the Post Office had engaged in 'second category abuse of process of the court', that is to say conduct apt to undermine the integrity of the criminal justice system or public confidence in it such as to offend the Court's sense of propriety in the bringing the prosecution: *R v Maxwell* [2010] UKSC 48 per Lord Dyson MR at [13]. Material to the CACD's judgment were the July 2013 "Clarke Advice" (*Hamilton* para [82]) and the further advice given by Mr Clarke in 2013 on Post Office practices, including the instruction for the shredding of documents: *Hamilton* para [88].

PART 1

Mr Castleton's Claim

29. Mr Castleton's claim is simple. When the Post Office, supported by Fujitsu (pursuant to its contractual obligation to provide litigation support), in particular, its witness Mrs Anne Chambers, obtained judgment against him (Post Office Ltd v Castleton [2007] EWHC 5 QB) (January 2007)) it obtained that judgment by fraud. That is, it obtained judgment by consciously and dishonestly withholding material evidence from the Court that, had it been disclosed, would have materially affected the judgment of the Court: RBS v Highland Financial Partners LP [2013] EWCA Civ 328 (approved Takhar v Gracefield Properties [2019] UKSC 13). The judgment should be set aside for that reason. Having been obtained by fraud the judgment does not bind the parties (*Takhar* per Lord Sumption). A claim to set aside a judgment for fraud is a discrete free-standing cause of action, separate from any other cause of action between the parties (which is why there is neither res judicata nor issue estoppel on issues determined by the judgment to be set aside: (Takhar v Gracefield Properties, Lord Sumption [60]). Mr Castleton further claims (relatedly) that he was the victim of an unlawful means conspiracy between the Post Office and Fujitsu to injure him where the unlawful means was perverting the course of justice (Total Networks v Revenue & Customs [2008] UKHL 19) (see also, closing submissions of Edward Henry K.C. and Flora Page, Phase 3 and in particular the 'Castleton conspiracy from p. 3 ff. and Phase 7 from p 5 – the Castleton conspiracy).

30. The Post Office's position is that, while the judgment cannot stand – or strictly it would consent to the judgment being set aside – for being "wrong" within the meaning of CPR

52 (it is plainly "wrong" in virtually every finding of both law and fact, in the light of Fraser J's judgments Bates and ors. v Post Office Ltd (No.3 Common Issues) [2019] EWHC Civ 606 QB (law) and Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [2019] EWHC Civ 3408 QB (fact)) – the Court in setting aside the judgment is not allowed to consider or say *why* the judgment should be set aside, more particularly, the Court is precluded from setting the judgment aside on the ground that it was obtained by fraud on the Court. There may be a public policy consideration here which does not need to be considered further on this application, but it would appear ex facie to be contrary to principle, if it is correct that the Post Office was engaged in a conspiracy to pervert the course of justice/to obtain the 2007 judgment by fraud, that the Court is precluded from inquiring as to whether that be the case and if so holding so by judgment and making consequential orders. As both Aikens LJ in RBS v Highland Financial Partners LP [2013] EWCA Civ 328 and Lord Sumption in *Takhar* were at pains to explain, the obtaining judgment by fraud is a wrong done in connection with the processes of the Court. Parties might perhaps expressly agree that the Court be debarred from looking at the issue of whether a party obtained a judgment by fraud, but the clearest words are required: Bank of Credit and Commerce SA (In Liquidation) v Ali (No1) [2001] UKHL 8 per Lord Bingham (below). Further, in negotiating a settlement of ordinary civil claims, reflecting the general principle that parties expect honesty, it is inherently implausible that on an objective interpretation parties will have in contemplation that the other party engaged in fraud on the Court. This is considered further below.

31. The reason why the Post Office maintains that the Court, in setting aside the judgment, cannot give any reason for doing so, more particularly, cannot do so on grounds the judgment was obtained by fraud, is that it contends that Mr Castleton and the Court are prevented from considering this by the terms of the 2019 Settlement Deed.

32. That important material evidence was withheld from HH Judge Havery Q.C. at trial in December 2006 is not open to sensible dispute or argument. On 27.9.23 Mrs Anne Chambers told the Inquiry, in her cross-examination by Jason Beer K.C., Counsel to the Inquiry, that she had been instructed, in preparing her evidence for the Inquiry, that the Fujitsu Known Error Log, a record of bugs errors and defects in the Horizon system and their effects, including on branch accounts, that was maintained by Fujitsu from roll-out of the Horizon system in 2019, was not to be disclosed or referred to: P/C para 12.

33. In 2019 at the Horizon Issues trial, with scarcely veiled incredulity, Fraser J. describes the way that disclosure to the Group claimants of the Known Error Log was objected to, resisted and contested by the Post Office at the Horizon Issues trial:

33.1. The Post Office's solicitors, Womble Bond Dickinson, questioned whether any such log existed as a matter of fact.

33.2. The Post Office, by Leading Counsel, denied its relevance to the (preliminary) issues to be determined in the Group claims, going so far as to describe the KEL and the request for its disclosure by the Group claimants as a "*complete red herring*" (Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [587]).

33.3. The Post Office, contested the KEL was its document to disclose under CPR 31, contending that it was Fujitsu's document, not its. (Fraser J. observed that the Post Office had a contractual right to the KEL.)

34. By 2019 Womble Bond Dickinson had been the Post Office's solicitors for many years. Known as Bond Pearce, it was the Post Office's solicitors at the time of Mr Castleton's High Court trial in 2006 (Mr Stephen Dilley, an associate solicitor at the time of Mr Castleton's trial, had become a partner by 2019). Later, in 2013 at the time of notification of the Post Office's insurers in connection with disclosure and evidence given by Mr Gareth Jenkins, then known as Bond Dickinson, it continued to act for the Post Office.

35. The Fujitsu Known Error Log and its associated PEAK records was fundamental[5] to Fraser J's determination of the Horizon Issues: Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [613] (and elsewhere). It was a record (though necessarily not a complete record) of bugs in the Horizon system, some of which, as Fraser J explains, had a propensity to cause shortfalls at branch Post Office consistent with shortfalls experienced by hundreds of its postmasters, some 900 of whom were prosecuted and

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5 "... I consider that disclosure of the KELs to the experts – the pragmatic solution suggested by leading counsel for the Post Office - has been central in the discovery and investigation of the bugs, errors and defects that the experts agree were, or are, present in the Horizon system, and also of the bugs, errors and defects that are not agreed, but upon which both experts opine and in respect of which I make findings in the Technical Appendix." (Underlining supplied.) There was no expert evidence in Mr Caslteton's case. There was, in the earlier claim made against Mrs Julie Wolstenholme, in the form of the joint preliminary report by Mr Jason Coyne.

many more of whom had their contracts summarily terminated and as a result lost their businesses and often their homes.

36. As to the materiality of the KEL as evidence, Fraser J said:

> "*The best description of the KELs is taken from Dr Worden, who stated that they were "a rich source of evidence". The notion that they were not relevant, or did not contain relevant material, is extremely difficult to fathom, and I do not understand why, or how, Fujitsu would or could sensibly choose to inform its own customer of many years, the Post Office, directly to the contrary. If Fujitsu's description of the contents of the KELs had been taken at face value and not challenged, then the knowledge now available to the two experts and to the court about the extent of bugs, errors and defects would not have been available, with the obvious detrimental impact upon the fair resolution of the Horizon Issues."*

37. While it is not necessary for present purposes, to descend to detail, KELs included records of "phantom" transactions. Part of Mr Castleton's defence to the claim in 2006, as recorded by HH Judge Havery Q.C. was that he complained that "shortfalls" (i.e. losses) alleged against him were "illusory" (Post Office Ltd v Castleton [2007] [4]). There was no disclosure of "phantom transactions" at Mr Castleton trial. (As an example only, see Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [2019] EWHC Civ 3408 QB [212]).

38. Evidence was given to the Inquiry that, when there were problems and cash balance discrepancies reported by a postmasters that were incapable of being resolved/explained by Fujitsu's third line support or Software Support Centre by reference to identifiable bugs errors or defects in the Horizon system, the default position was that the fault (and any related loss) was attributed to the postmaster (P/C para 111 Simpkins 9.11.22 pp 91-92). (It was conceded that this didn't look good.) To put it in Rumsfeldian language, 'unknown unknowns' were posted by default to postmaster liability. Given that it is inherent in any large computer programme that there will be 'unknown unknowns' that was, neutrally, unsatisfactory (and breach of contract by the Post Office). This was not disclosed at Mr Castleton's trial and was for the first time revealed in the Inquiry.

39. The Court is entitled to infer that, had the KEL and the PEAKs been disclosed at Mr Castleton's trial in 2006, the effect would have been similar to their effect on the Post Office's contention 13 years later before Fraser J. that the Horizon system was 'robust'

– a contention he dismissed as being as unreal as "the 21st century equivalent of maintaining the earth is flat" Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [929]).

40. Fraser's express finding that "Legacy Horizon" (the version in place at the time of Mr Castleton's suspension and the termination of his contract) was not "robust"[6] (Horizon Issue 3 Horizon Issues [18]) (a word that with its cognates appears 185 times in the Horizon Issues judgment) is first found at Horizon Issues [936] and (substantively) in the Technical Appendix to that judgment. Fraser J's conclusion on Issue 18 (robustness) (paragraph 444 of the Technical Appendix) was that:

> *"Legacy Horizon: This was not remotely robust. Indeed, the issue about its robustness (or more accurately, its lack of robustness) became increasingly obvious during the Horizon Issues trial. The fact that the Post Office's final submissions were forced to concede the existence of so many bugs, with the battleground moving to the type of effect they had, rather than their existence, clearly demonstrates in my judgment that all the weight of evidence, both of fact and expert, was heavily against the proposition that Legacy Horizon was robust. It clearly was not."*

(Underling supplied.) That finding represented the rejection of a major part of the Post Office's defence to the Group claims.

41. The route to that finding remains relevant to disclosure issues. It also bears on the relevance and role of Mr Gareth Jenkins, who knew of the existence of bugs but failed to disclose that knowledge in criminal prosecutions in which he gave expert evidence attesting the reliability of Horizon.

42. The following questions arise:

QUESTION 1

[6] As to the meaning of this word in its context in the Horizon Issues: see, in particular: Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [22], [32], [36], [42]-[56].

What explanation, consistent with honesty, is there for the KEL and its associated PEAKs not having been disclosed to Mr Castleton at his High Court trial in 2006?

QUESTION 2

What explanation, consistent with honesty, is there for Mrs Chambers having been instructed by her manager in 2006 that the KEL and its associated PEAKS were not to be disclosed to Mr Castleton?

43. These are not complex or difficult questions. Given the evidence that has been given to the Inquiry, it is a certainty that both D1 and D2 will have considered the position, and that evidence, with considerable care, long before now. Some assistance in evaluating why they were not disclosed may be found in some contemporaneous correspondence between the Post Office and Fujitsu referred to below.

44. There is a further simple question that arises. This is not relevant to the issue of whether or not the judgment against Mr Castleton was obtained by fraud in 2007. It *is* relevant to issues concerning the Post Office's conduct of its defence to the Bates Group litigation and the urgent settlement of the Group claimants' claims in December 2019.

QUESTION 3

Given that KEL records and related PEAKs were fundamental to the evaluation of the performance by Fujitsu of the Horizon supply contract, that in his judgment undermined the Post Office's case that Horizon was "robust" and further, given that the Post Office had, as Fraser J. observed, a contractual right to it, why did the Post Office so strenuously object to its disclosure in the Horizon Issues trial in 2019, going to the lengths of falsely describing it by its Leading Counsel as "*a complete red herring*", when the reverse was the truth?

45. So far as Aikens LJ's formulation in RBS v Highland Financial Partners LP [2013] EWCA Civ 328 is concerned:

45.1. There is no issue (or at least to date neither D1 nor D2 say that there is) but that (highly) material evidence was withheld from disclosure/the Court because Mrs Chambers has given evidence to the Inquiry, that is a matter of public record, that it was. She was told the KEL was not to be disclosed. All large-

scale computer systems have Known Error Logs – especially those subject to FM contracts.

45.2. There is no issue, but that disclosure of that material (KEL and PEAKs) would have had a material impact on HH Judge Havery Q.C.'s judgment - unless there is some basis for suggesting that HH Judge Havery on evaluating that material (the KEL and PEAK records), would have reached a different conclusion from Fraser J..

45.3. The residual question is **whether or not the withholding of the Known Error Log from disclosure and keeping that material evidence from the Court was consciously dishonest?**

46. Mr Castleton's case is that the withholding of the KEL *was* consciously dishonest. While elaboration of dishonesty is unnecessary for present purposes, it striking that, at the time of Mr Castleton's trial in 2006, a senior Post Office investigator, Mr Graham Ward found it necessary to excise from a draft witness statement by Mr Gareth Jenkins (see further below) several references by Jenkins to Horizon "system failures" as being ordinary/routine events (below). The witness statement was used by the Post Office to secure the conviction of Mr Hughie Thomas, a miscarriage of justice. He wrote:

46.1. *"... it is more important to get it right and ensure that we are not embarrassed at court, which we certainly could be if we produced a statement accepting 'system failures are normal occurrences' ...";*

46.2. *"I think the 'system failure ... normal occurrence' line is potentially very damaging...";*

46.3. *"This is a really poor choice of words which seems to accept that failures in the system are normal and therefore may well support the postmaster's claim that the system is to blame for the losses!!!!"*

(Emphasis (including double) supplied.)

Evidence of Duncan Atkinson K.C. to the Inquiry (Transcript 19.12.24 pp 66-70). Mr Atkinson was retained by the Inquiry to advise the Inquiry on criminal investigations and procedure.

47. The words of Mr Jenkins were duly removed. Mr Atkinson Q.C. told the Inquiry he considered that to be improper in connection with evidence given by an expert witness.

48. In short, as will be seen in connection with Mr Jenkins's evidence in criminal proceedings generally (below), the Post Office's approach was to assert the reliability of the Horizon system, while withholding evidence that it considered to be unhelpful to that contention. As a result, the Post Office procured hundreds of miscarriages of justice (thought to be around 900 wrongful convictions). The volume is so great that Parliament determined it necessary to legislate to quash by legislation convictions of those who were prosecuted when Horizon evidence was relied upon and a Horizon terminal was present in a relevant branch at the material time: Post Office (Horizon System) Offences) Act 2024.

49. In relation to Mr Castleton's High Court claim (see P/C para 68(c)) within days of the foregoing, Mr Ward had written to Fujitsu (including Penny Thomas, who worked in the Fujitsu Security Team headed then by Brian Pinder and who herself was frequently used as a witness to attest the reliability of Horizon): *" .... Whilst Marine Drive* [Mr Castleton's branch office] *and Torquay Road are not criminal matters, given the allegations made by the postmasters, I'm sure you'll agree that* ***it is very much in both ourselves and Fujitsu's interests to challenge the allegations and provide evidence that the system is not to blame for losses being reported****".* The method by which Mr Ward did this in Mr Hughie Thomas's prosecution by editing out references to "system failures" is all-too-obvious.

50. The Court may consider that Mr Sheeley's and Mr Summerfield's assertions that Mr Castleton's claims are complex, difficult (REF) and will be vastly expensive to investigate may be evaluated against the foregoing straightforward questions. Given that Fujitsu by Mr Summerfield asserts that £700,000 has been expended on evaluating Mr Castleton's claims, it may be assumed that in the 6 months that have elapsed since service of the P/C, the foregoing questions, and the answers to them, have by now been considered.

Other disclosure failures in 2006 – "Reconciliation"

51. To understand this section, it is necessary to consider:

51.1. SVM/DSM/SD0015 RECONCILIATION SERVICE: SERVICE DESCRIPTION (August 2006) published by the Inquiry on 15 December 2025. (Both Fujitsu and the Post Office will be familiar with it and its contents, given that they are both parties to it. It was seen by SMB and Mr Castleton, for the first time, in late December 2025.)

51.2. Fraser J.'s rejection of the Post Office's case on the alleged "robustness" of the Horizon system (Issue 18) is in the Technical Appendix to the Horizon Issues judgment at para 444.

51.3. Fraser J's evaluation of the issue of "remote access" – that is to say the facility that Horizon provided for Fujitsu software engineers (and others) to access postmaster branch accounts and to edit transactions, including by impersonating an postmaster by using their system ID, without the knowledge or consent of a postmaster and thereby 'remotely' edit a postmasters branch account: Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [18] Issues: 7, 8, 9, 10, 11, 12 and 13 para [153] ff. (evidence of Richard Roll) and [496] (evidence of Mr Parker) [519]-[521] and [517]-[555] discussion and conclusions by Fraser J.

52. Fraser J. rejected the Post Office's contention that Horizon was robust, in doing so placing emphasis on the disclosure by Fujitsu that as many 10,000 transactions a week required manual intervention and correction ("reconciliation" F/99). Of those incomplete transactions, hundreds remained unresolved.

53. Of particular importance to what follows is Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [781] where Fraser J. refers to the importance of the KEL. At the start of [781] Fraser J. said:

> "[781] *One of the matters that Mr Coyne relied upon was what he described as "the sheer volume" of KELs and reconciliation reports (a statement, it should be noted, made prior to discovery of the 5,000 KELs disclosed by the Post Office in October 2019[7]). His evidence was that this confirmed "the wide-ranging extent of the impact of such bugs/errors/defects. This evidence demonstrates that such bugs/errors/defects would undermine the reliability of the Horizon system to*

[7] i.e. post-trial.

accurately process and record transactions". He accepted that there was the need for reconciliation reports, and that this was part of the way that a system would check whether (say) the banking records at the Post Office transactions matched the corresponding records at (say) the Bank of Ireland for the same transactions...".

54. In answer to the Post Office's Counsel, Mr Coyne gave this evidence to Fraser J. (Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [782]):

> "I have worked and designed banking systems, stock broking systems. I have never seen **the need for tens of thousands of transactions per week** to have a human intervention. That suggests that something is going wrong. It is working outside of process on a larger scale than I would have expected."

(Underlining the Judge's own, bold typeface supplied.)

55. Given the Post Office's approach to disclosure, Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [783]-[785] merit being reproduced in full:

> [783] The origin of the number of reconciliation reports is as follows. Mr Coyne had asked, in requests for information prior to the trial, what was the purpose of setting an NB102 exception to F99 by Fujitsu. The Post Office in the answer explained that this explanation would have to come from Fujitsu, and the explanation was given:
>
> "When there is an incident involving a reconciliation exception in Network Banking which has been fully processed, then the transaction needs to be set to F99 to indicate that processing is complete.
>
> Therefore, this is done for any transaction that appears in a reconciliation report, once the resolution is complete. ...".
>
> [784.] The next request was "How often has [setting an NB102 exception to F99] occurred?"
>
> [785.] Initially the Post Office would not answer this, stating inter alia that it was very unlikely that the information would have been pooled or collated. When Mr Coyne persisted, and pointed out it would be very different if

the answer was "it was an isolated incident in 2003" or "it was 10,000 transactions each day for the last ten years", an answer was provided by the Post Office through its solicitors. I shall reproduce it in full:

"Fujitsu currently "F99" 10,000+ transactions per week across all NB102 associated reports (DCP and NBS)"."

(Underlining and bold typeface supplied.) An 'exception' is a data transfer mismatch (i.e. failure).

56. At para [783], Fraser J refers to "the CCD that describes the contracted service". The reference to that document is SVM/DSM/SD0015 RECONCILIATION SERVICE: SERVICE DESCRIPTION.

57. That document provides for BIMs or "Business Incident Management" reports. As will be seen from Mr Coyne's evidence in the Horizon Issues trial, although BIMs were disclosed in the Horizon Issues trial in 2019, inexplicably, no BIMs for Legacy Horizon were disclosed – when on the face of it there would have been more under that version of Horizon than under Horizon online.

58. No date is provided for the document in the judgment. That document was published by the Inquiry on 11.12.25 with ref FUJ00079994.

59. FUJ0007994 is referred to in the following places in evidence to the Inquiry:

59.1. Second Corporate Statement of Fujitsu Services Limited dated 29.12.22 (Inquiry ref. FUJO0126035) William Paul Patterson (Fujitsu Services Limited). There is a single reference at Table, p. 69 (of 193).

59.2. Fourth Corporate Statement of Fujitsu Services Limited dated 8.8.24 (Inquiry ref. WITNO6650400) William Paul Patterson. There are 10 references: fn 119 p. 80 (of 218); fn 243 p. 118; fn 351 p. 155; fn 352 p. 156; fn 353 p. 156; fn 354 p. 156; fn 355 p. 156; Exhibit No. 198 p. 171; fn 478 p. 217; fn 483 p. 218.

60. So far as can be ascertained, no questions were asked of any witness in the Inquiry in connection with the Reconciliation Service document. It may be that its significance, appearing only in footnotes to the WS of Mr Patterson, CEO of Fujitsu Europe, was

missed, that WS being provided in August 2024 and Mr Patterson giving evidence to the Inquiry in November 2024 in connection with Phase 7 (***Current practice and procedure and recommendations for the future (September - November 2024)***, shortly before the Inquiry concluded in December 2024.

61. The date of the document is August 2006 – that is to say, 4 months before Mr Castleton's trial.

62. As Fraser J. observed, the Reconciliation Service document is a contractual document. As a result of its disclosure, and questions asked by Mr Coyne of the Post Office. Fraser J. held that:

> "[788] *This is a great number of transactions per week that require manual intervention – over 10,000, on the numbers provided by Fujitsu. I consider that Mr Coyne is correct when he says "this suggests that something is going wrong". I do not accept that on a properly functioning and robust system there should be such a high number as that every week. I accept Mr Coyne's evidence in his answer at [782] above." (Emphasis supplied.)*

63. Issue 10 of the Horizon Issues was: ***"Whether the Defendant and/or Fujitsu have had the ability/facility to (i) insert, inject, edit or delete transaction data or data in branch accounts; (ii) implement fixes in Horizon that had the potential to affect transaction data or data in branch accounts; or (iii) rebuild branch transaction data...?"***. The Judge addressed that question at Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [1001]-[1016].

64. By the time of the Horizon Issues trial, the issue of "remote access" had ceased to be an issue as result of the second WS of Mr Richard Roll, formerly a Fujitsu IT specialist and former defence programmer (Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [2019] EWHC Civ 3408 QB [153] ff.).

65. SVM/DSM/SD0015 RECONCILIATION SERVICE: SERVICE DESCRIPTION makes it explicitly clear that "remote access" was possible, because it is contractually recognised including at 2.1.4.17:

> "Amending Centrally Held Data

> **If the Reconciliation Service identifies that any Transaction data held on the 'central database' located at the Data Centre is found to be inconsistent when compared to the records of the Transaction that was completed at the Branch, e.g. a receipt, a Transaction log or a Branch accounting discrepancy, the Reconciliation Service shall obtain authorisation from Post Office prior to amending the centrally held Transaction data."**

(Later iterations of that document provide for "authorisation" 'where practicable'.)

66. Importantly, Fraser J. found that logs were maintained by Fujitsu of when 'remote access' rights were exercised, only from 2009. Even then, records were not maintained of what was done. Until then, there were no records and limited controls; it was, as it were, the 'Wild West' – as Mr Roll described it in the transcript of his 2015 conversation with Mr Warmington.

67. As Fraser J. notes, tens of millions of pounds were expended by the Post Office in (falsely) denying that 'remote access' to branch accounts for the purpose of editing these without a postmaster's knowledge was possible.

68. Plainly, had it been known at Mr Castleton's trial, that remote access to his Bridlington branch office was possible, and that Fujitsu may have had to repair or reconstruct his accounts and that it could have done so without his knowledge, including by impersonating him, and that no records were kept of such actions, the claim would have failed.

69. Further Questions accordingly arise, in connection with SVM/DSM/SD0015 RECONCILIATION SERVICE: SERVICE DESCRIPTION/ FUJ00079994:

QUESTION 4

> **Given that the August 2006 'Reconciliation Service' document is a (negotiated) contractual document, that addresses the requirement for the repair by Fujitsu of failed transactions (data transmission) that occurred, and were recognised as**

occurring, on a widespread basis, (that ultimately revealed 10,000 such defective transactions per week under the more reliable 'Horizon online' in 2019) that led Fraser J. to find that Horizon was not a robust system, why was this document and the related facts of widespread transactional failure between branch and Fujitsu accounts not disclosed at Mr Castleton's trial?

QUESTION *5*

Why did the Post Office deny the possibility of remote access to, and the unauthorised editing of, postmaster branch accounts up to 2019, when the parties expressly legislated for/recognised that facility by contractual arrangements made between them by not later than August 2006?[8]

70. Those are not rhetorical questions, though the obvious, if facile, answers are (Question 4) *'because the document, and the arrangements it evidences, are unhelpful to the Post Office'* and (Question 5) *'because acceptance by the Post Office of undocumented remote access and unauthorised editing of branch post office accounts would have prospectively rendered unsafe every conviction and exposed every contractual termination open to challenge.'*

71. It is not surprising that there was a sudden tremendous urgency in the Post Office to secure settlement of the Group claims in early December 2019, upon receipt of Fraser J's judgment, prior to judgment being handed-down on 16.12.19. Mr Godeseth was a disastrous witness whose oral evidence bore little relation to his written evidence. That oral evidence unfolded/was elicited in cross examination at trial and provided the context, during that evidence, for the Post Office to apply that Fraser J. should recuse himself for bias in connection with his conduct of the previous 'Common Issues' trial (judgment: *Bates and ors. v Post Office Ltd (No.4 Recusal)* [2019] EWHC 871. That represented for the Post Office 'the last throw of the dice'.

PART 2

8 Further it was a facility (i.e. for Fujitsu to correct/amend/edit postmaster branch accounts without postmaster knowledge or authorisation) explicitly recognised by Mr Jenkins and discussed at the September 2010 management meeting between Fujitsu and the Post Office, immediately prior to Mrs Seema Misra's trial in discussion of the 'Receipts and Payments mismatch' bug.

Preliminary Issues and splitting trials

72. In simplest terms, there is no "bright line" Saroka v Payne Hicks Beach [2025] EWHC 602 (Ch) [20]. The rest of this skeleton argument is addressed to explaining why that is so.

73. The authorities are replete with warnings of splitting trials and preliminary issues as apparent shortcuts that can have unexpected undesirable consequences, e.g.: Lord Neuberger MR in *Rossetti Marketing Ltd v Diamond Sofa Company Ltd* [2012] EWCA Civ 1021; Nicklin J *Bindel v PinkNews Media Group Ltd* [2021] EWHC 1868 (QB); [2021] 1 WLR 5497 at para [33]; Lord Scarman in *Tilling v Whiteman* [1980] AC 1 at p25.

74. Three questions arise:

QUESTION 6

Why did the Post Office give an incomplete, misleading and false (below) explanation to Fraser J for the reason Mr Gareth Jenkins was not called as a witness for the Post Office at the Horizon Issues trial in 2019 when much of the evidence given at trial emanated from him but was not attributed to him (until the cross examination of Mr Godeseth)?

QUESTION 7

Having elected to volunteer to the Court and the Group claimants the explanation for Mr Jenkins not being called as a witness, what impact would the true reason, had it been revealed, have had upon the litigation and the settlement of the Group Claimants' claims?

QUESTION 8

Why is it that, following receipt of the July 2013 Clarke Advice, Cartwright King LLP undertook a 'Sift Review' of several hundred Post Office prosecutions from 2010, including the prosecution of Mrs Misra at which Mr Jenkins had given live oral evidence

(the only occasion where he did so), not one of which gave rise to an appeal - still less successful appeal - yet on referral by the CCRC in June 2020, the Court of Appeal Criminal division allowed 39 of 42 appeals referred by the CCRC?

75. Each of these questions engage with Mr Gareth Jenkins (below) and the Post Office's knowledge.

76. The Court has the discretion, under CPR rule 3.1(2)(j), to direct a separate trial of any issue in a case. The Notes at White Book para 3.1.10 cite the guidance given by David Steele J. in *McLoughlin v. Grovers (A firm)* [2002] QB 1312 at [66]: (i) only issues which are decisive or potentially decisive should be identified; (ii) the questions should be questions of law; (iii) they should be decided on the basis of a schedule of agreed or assumed facts; (iv) they should be triable without significant delay, making full allowance for the implications of a possible appeal; (v) any order should be made by the court following a case management conference. In another case, *Steele v. Steele* [2001] CP Rep. 106, Neuberger J. gave a list of relevant factors in considering whether to order a preliminary issue including '(5) if the preliminary issue was one of law to what extent was it to be determined on agreed facts? The more the facts were disputed, the greater the risk that the law could not safely be determined until those disputes had been resolved.'

77. On the evidence before the court, the extent to which the underlying facts are disputed is unclear as between Mr Castleton and the Post Office. The Post Office has nowhere set out its case on the facts pleaded in Part A of the Particulars of Claim. As between Mr Castleton and Fujitsu, Mr Summerfield provides a summary of Fujitsu's position in para 15 of his WS2, but that suggests significant disagreement between these parties as to the underlying facts.

78. The answers to the questions above expose the truth of the entire strategy of 'containment' by the Post Office and Fujitsu over the 20 years that had elapsed since roll-out of Horizon in 1999. That was to protect from disclosure the fact that it was known that the Horizon system, because of bugs errors and defects in the software and hardware (that including, in particular, the 'Riposte' communications platform under 'Legacy Horizon to 2009) could not reliably maintain data integrity between branch transactions and Fujitsu's main servers and branch accounts. At the outset of the

'Common Issues' trial (Bates and ors. v Post Office Ltd (No.3 Common Issues) [2019] EWHC Civ 606 QB) Leading Counsel for the Post Office told Fraser J. that acceptance by the Court of the Group claimants' claims represented an existential threat for the Post Office. The truth required to be concealed, because its revelation would have been commercially catastrophic for the Post Office, as happened.

79. D1 and D2 wish to be relieved by order of the Court from being required to plead to Mr Castleton's claim that the judgment against him was obtained by dishonestly withholding evidence from the Court, and urge the Court to direct the trial of preliminary issues or else to split the trial so Mr Custleton's substantive claim be adjourned to some future date, some years from now.

80. As will be seen, the assertions by D1 and D2, that issues in connection with (1) the true construction of the December 2019 Settlement Deed and (2) the circumstances in which the December 2019 Settlement Deed were negotiated and agreed, are straightforward issues that may be conveniently disposed of separately from Mr Castleton's claim that the judgment obtained by the Post Office in its favour in 2007 was obtained by fraud (etc.) exhibit a (remarkable) degree of artificiality.

81. While the issue of construction of the December 2019 Settlement Deed may be comparatively straightforward, that is not the (or a principled) reason for it being determined as a preliminary issue (because even were the Court to conclude that against Mr Castleton, it would not dispose of/resolve the claim (below)). Further, an application for summary judgment/to strike out the claim on grounds that Mr Castleton's claims are within the terms of the Settlement Deed was open to D1. It is striking that despite the claim having been served in July 2025, no application has been made. For several months D1 (correspondence Pinsent Masons 27.8.25 and 11.9.25 in particular) contended that the claim was subject to the (written) arbitration clause and that it was minded to apply under s. 9 of the Arbitration Act for a stay/injunction on the (familiar) principles explained by the House of Lords in Fiona Trust & Holding Corp v Privalov [2007] Bus. L.R. 1719. (The Post Office abandoned its contention that Mr Castleton's claims should be arbitrated following reference to/explanation in correspondence by SMB of Lord Nicholls's speech in Bank of Credit and Commerce SA (In Liquidation) v Ali (No1) [2001] UKHL 8 (below)).

82. The considerations/principles/approach are to be found:

82.1. *Electrical Waste Recycling* [2012] EWHC 38 (Ch) Hildyard J. adopted and followed by Bryan J. in *Daimler AG v Walleniusrederierna Aktiebolog* [2020] EWHC 525 and by Peter MacDonald Eggers K.C. in *Jinxin* (below) (para [22]).

82.2. Jinxin Inc. v ASER Media Pte Ltd and ors. [2022] EWHC 2431 (Comm).

82.3. Saroka v Payne Hicks Beach [2025] EWHC 602 (Ch).

83. Plainly, the issue of splitting issues only arises should Mr Castleton be held to be wrong on the true construction of the 2019 Settlement Deed, that his claim that the judgment against him in 2007 was obtained by fraud is outside the terms of the Settlement Deed.

84. The key provision is clause 4.1 and the definition of the "*Settled Claims*". It provides for a general release and covenant not to sue. The "*Settled Claims*" are:

> "*...this Agreement is in full and final settlement of the Action, the Claimants' Claims, the Defendant's Counterclaims and any further claims which arise out of or are in any way connected to, whether directly or indirectly, the claims or counterclaims made or the facts and matters alleged by any party in the Action ("the Settled Claims")".* (Underlining supplied.)

85. "Claimants' Claims" is itself a defined term (cl. 1.1) meaning:

> "*all and any of the claims or potential claims alleged by any of the Claimants in the Action and arising as a result of the PTA Application (including those made in the Generic Particulars of Claim, the Claimants' Schedules of Information, the lead Claimants' Individual Particulars of Claim (in each case including any amendments) and/or in any correspondence between the Parties in or relating to the facts and matters referred to in the Action including, without limitation, claims in respect of the losses and causes of action set out at Schedule 2. The Claimants' Claims shall also include all claims for interest, costs and expenses (including the costs of the PTA Application) and any Like Claims."*

86. So that definition, under the definitional cascade, is not itself complete either, and "Like Claims" requires to be further considered. It is defined to mean:

> "*...any and all actual, alleged, threatened, potential or derivative claims, defences, actions, causes of action , lawsuits, counterclaims, set-offs, disputes, demands, charges, liabilities, complaints and matters of whatsoever nature (including any claims for interest, fees, expenses or costs), save for Malicious Prosecution as set out in clause 4.2, that the Claimants or the Defendant or any of their Related Parties have or may have against any other party to the Action or Related Party whether actual, contingent, in relation to past, present or future losses, whether or not presently known to the Parties or any Related Party, whether or not arising from any other change of circumstance of any sort and whether arising out of negligent, wilful or intentional conduct or otherwise. For the avoidance of doubt, the definition of Like Claims is subject always to Clause 4.2.*"

87. (Though unnecessary to consider the point in detail here further, cl. 4.2 itself supports the view that obtaining convictions of the Convicted Claimants by perverting the course of justice and an unlawful means conspiracy to that end, as a civil wrong, was not contemplated – it is scarcely to be imagined that contingent claims for the tort of malicious prosecution were expressly preserved but claims that the (66-odd) Convicted Claimants surrendered all their claims for unlawful means conspiracy for £nil value.[9] Why should a Convicted Group claimant preserve a right to claim only the lesser wrong if alive to the greater? It would be difficult for the Post Office to explain this, because contrary to commonsense.)

88. It is convenient to consider this in a little detail. For there to be any advantage in splitting trials, there must be a prospect of Mr Castleton losing on 3 issues before he gets to having his substantive claim tried:

88.1. Construction of the 2019 Settlement Deed;

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[9] Remarkably, the 'Convicted Claimants' surrendered all their claims in the Group litigation for £nil, having preserved to them merely their claim for malicious prosecution. So, they came out of the litigation, as it were, with less than when they became a Group claimant.

88.2. Fraudulent misrepresentation in connection with the explanation given by the Post Office to Fraser J and the Group claimants for Mr Jenkins not being called at the Horizon Issues trial;

88.3. 'Sharp practice' of a kind identified by Lord Nicholls in Bank of Credit and Commerce SA (In Liquidation) v Ali (No1) [2002] 1 AC 251, [2001] UKHL 8 (party **A** securing settlement under a general release when **A** knows that **B** is unaware of claims that are to be surrendered by **B** but **A** knows and is aware of such possible claims – in contrast with BCCI, where, not only did the claim not involve fraud but neither party could have contemplated the existence of such claims (stigma damages) because such claims did not exist in law at the time).

89. The judgments of Lords Bingham and Nicholls provide the framework for analysis of the construction of the 2019 Deed of Settlement and specifically the 'general release'. Importantly, BCCI was a case in which neither party were aware of the possible claim ('stigma damages'). Further, the claim allegedly covered by the general release in *BCCI* did not concern fraud, as Collins LJ observed in *Satyam Computer Services v Unpaid Systems Limited* [2008] EWCA Civ 487.

90. Lord Bingham in Bank of Credit and Commerce SA (In Liquidation) v Ali (No1) [2001] UKHL 8 identified a "cautionary principle":

> [8.] I consider first the proper construction of this release. In construing this provision, as any other contractual provision, the object of the court is to give effect to what the contracting parties intended. To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties. To ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified. The general principles summarised by Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, at 912-913 apply in a case such as this.

[9.] A party may, at any rate in a compromise agreement supported by valuable consideration, agree to release claims or rights of which he is unaware and of which he could not be aware, even claims which could not on the facts known to the parties have been imagined, if appropriate language is used to make plain that that is his intention. This proposition was asserted by Lord Keeper Henley in *Salkeld v Vernon* (1758) 1 Eden 64, 28 ER 608, in a passage quoted in paragraph 11 below. It was endorsed by the High Court of Australia in *Grant v John Grant & Sons Pty Ltd* (1954) 91 CLR 112 where Dixon CJ (speaking for himself and Fullagar, Kitto and Taylor JJ) said (at 129):

> "No doubt it is possible *a priori* that the release was framed in general terms in the hope of blotting out, so to speak, all conceivable grounds of further disputes or claims between all or any two or more parties to the deed, whether in respect of matters disclosed by a party against whom a claim might be made or undisclosed, of matters within the knowledge of a party by whom a claim might be made or outside it. If so the case would fall within the exception which, in the passage already cited, Lord Northington [Lord Keeper Henley] made from his proposition that a release *ex vi termini* imports a knowledge in the releasor of what he releases, namely the exception expressed by the words 'unless upon a particular and solemn composition for peace persons expressly agree to release uncertain demands' (*Salkeld v Vernon*)."

The proposition was roundly asserted by the Vice-Chancellor in the present case. In paragraph 11 of his judgment (at 1415) he said:

> "The law cannot possibly decline to allow parties to contract that all and any claims, whether or not known, shall be released. The question in a case such as the present is to ascertain, objectively, whether that was the parties' intention or whether, in order to correspond with their intentions, a restriction, and if so what restriction, should be placed on the scope of the release."

The Vice-Chancellor made a similar point in paragraph 19 of his judgment. This seems to me to be both good law and good sense: it is no part of the court's function to frustrate the intentions of contracting parties once those have been objectively ascertained.

[10.] But a long and in my view salutary line of authority shows that, in the absence of clear language, the court will be very slow to infer that a party intended to surrender rights and claims of which he was unaware and could not have been aware. In *Cole v Gibson* (1750) 1 VesSen. 503, 27 ER 1169, Lord Hardwicke LC said (at 507, 1171):

> "I will not say, there may not be such a confirmation or release given, as may release the remedy of the party; for it is hard to say that in a court of equity, a man having a right of action or suit to be relieved in equity, and knowing the whole of the case, may not release that, on whatever consideration it arises, so far as regards himself: but it must be applied to that particular case, doing it with his eyes open, and knowing the circumstances."

(Underlining supplied.)

91. Lord Bingham added:

> [17] ".... Some of the cases, I think, contain statements more dogmatic and unqualified than would now be acceptable, and in some of them questions of construction and relief were treated almost indistinguishably. But I think these authorities justify the proposition advanced in paragraph 10 above and provide not a rule of law but a cautionary principle which should inform the approach of the court to the construction of an instrument such as this. I accept, as my noble and learned friend Lord Hoffmann forcefully points out, that authorities must be read in the context of their peculiar facts. But the judges I have quoted expressed themselves in terms more general than was necessary for decision of the instant case, and I share their reluctance to infer that a party intended to give up something which neither he, nor the other party, knew or could know that he had." (Underlining supplied.)

92. The issue in BCCI was whether the claimants had claims for "stigma damages" for having worked for an employer later found to have been operating a dishonest business, or whether these had been surrendered under the general release between the employer and employee. It was common ground that the possibility of a "stigma" claim could not have been anticipated at the date of the release.

93. Lord Nicholls identified the question for the consideration by the House of Lords at paragraph [23]:

> "[23.] The circumstances in which this general release was given are typical. General releases are often entered into when parties are settling a dispute which has arisen between them, or when a relationship between them, such as employment or partnership, has come to an end. They want to wipe the slate clean. Likewise, the problem which has arisen in this case is typical. The problem concerns a claim which subsequently came to light but whose existence was not known or suspected by either party at the time the release was given. The emergence of this unsuspected claim gives rise to a question which has confronted the courts on many occasions. The question is whether the context in which the general release was given is apt to cut down the apparently all-embracing scope of the words of the release. (Underlining supplied - below.)

94. Lord Nicholls said that the scope of the general release was to be determined by the subject-matter of the compromise, holding that "the generality of the wording has no greater reach than the context indicates". Lord Nicholls said:

> [26.] Further, there is no room today for the application of any special 'rules' of interpretation in the case of general releases. There is no room for any special rules because there is now no occasion for them. A general release is a term in a contract. The meaning to be given to the words used in a contract is the meaning which ought reasonably to be ascribed to those words having due regard to the purpose of the contract and the circumstances in which the contract was made. This general principle is as much applicable to a general release as to any other contractual term. Why ever should it not be?

[27.] That said, the typical problem, as I have described it, which arises regarding general releases poses a particular difficulty of its own. Courts are accustomed to deciding how an agreement should be interpreted and applied when unforeseen circumstances arise, for which the agreement has made no provision. That is not the problem which typically arises regarding a general release. The wording of a general release and the context in which it was given commonly make plain that the parties intended that the release should not be confined to known claims. On the contrary, part of the object was that the release should extend to any claims which might later come to light. The parties wanted to achieve finality. When, therefore, a claim whose existence was not appreciated does come to light, on the face of the general words of the release and consistently with the purpose for which the release was given the release is applicable. The mere fact that the parties were unaware of the particular claim is not a reason for excluding it from the scope of the release. The risk that further claims might later emerge was a risk the person giving the release took upon himself. It was against this very risk that the release was intended to protect the person in whose favour the release was made. For instance, a mutual general release on a settlement of final partnership accounts might well preclude an erstwhile partner from bringing a claim if it subsequently came to light that inadvertently his share of profits had been understated in the agreed accounts.

[28.] This approach, however, should not be pressed too far. It does not mean that once the possibility of further claims has been foreseen, a newly emergent claim will always be regarded as caught by a general release, whatever the circumstances in which it arises and whatever its subject matter may be. However widely drawn the language, the circumstances in which the release was given may suggest, and frequently they do suggest, that the parties intended or, more precisely, the parties are reasonably to be taken to have intended, that the release should apply only to claims, known or unknown, relating to a particular subject matter. The court has to consider, therefore, what was the type of claims at which the release was directed. For instance, depending on the circumstances, a mutual general release on a settlement of final partnership accounts

might properly be interpreted as confined to claims arising in connection with the partnership business. It could not reasonably be taken to preclude a claim if it later came to light that encroaching tree roots from one partner's property had undermined the foundations of his neighbouring partner's house. Echoing judicial language used in the past, that would be regarded as outside the 'contemplation' of the parties at the time the release was entered into, not because it was an unknown claim, but because it related to a subject matter which was not 'under consideration'.

29. This approach, which is an orthodox application of the ordinary principles of interpretation, is now well established. Over the years different judges have used different language when referring to what is now commonly described as the context, or the matrix of facts, in which a contract was made. But, although expressed in different words, the constant theme is that the scope of general words of a release depends upon the context furnished by the surrounding circumstances in which the release was given. The generality of the wording has no greater reach than this context indicates

95. To illustrate his conclusion, Lord Nicholls said [30]:

"The cases are legion. A few well known examples will suffice. As long ago as 1750 Lord Hardwicke LC said that it was common in equity to restrain a general release to 'what was under consideration at the time of giving it': see *Cole v Gibson,* 1 VesSen 503, 507. A century later, in 1839, Lord Langdale MR said that the general words of a release are to be restrained by 'the contract and the intention of the parties, that contract and intention appearing by the deed itself or from any other proper evidence that may be adduced upon the occasion': see *Lindo v Lindo,* 1 Beav 496, 506. In 1870 Lord Westbury said that the 'general words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time when the release was given': see *Directors of the London and South Western Railway Co v Blackmore,* LR 4 HL 610, 623. In 1926 Bankes LJ emphasised the 'necessity of ascertaining what the parties were contracting about before

> the court can determine the true meaning' of a release: see *Richmond v Savill* [1926] 2 KB 530, 540. In 1954 Dixon CJ, Fullagar, Kitto and Taylor JJ, in a joint judgment in the High Court of Australia, said that the general words of a release are confined to 'the true purpose of the transaction ascertained from the scope of the instrument and the external circumstances': see *Grant v John Grant & Sons Pty Ltd,* 91 CLR 112, 130."

96. The essential difference between the present circumstances and *BCCI v Ali* is that in *BCCI* it was common ground that stigma damages could not have been contemplated by the parties at the time of agreeing the settlement because they were not then available as a matter of law (and were not, until the House of Lords changed the law in *Mahmud v BCCI* [1998] AC 1).

97. Of relevance, for present purposes, is a statement (necessarily obiter but none the worse for that, given its maker) by Lord Nicholls at para [32] under the heading "*Sharp practice":*

> *"Thus far I have been considering the case where both parties were unaware of a claim which subsequently came to light. Materially different is the case where the party to whom the release was given knew that the other party had or might have a claim and knew also that the other party was ignorant of this. In some circumstances seeking and taking a general release in such a case, without disclosing the existence of the claim or possible claim, could be unacceptable sharp practice. When this is so, the law would be defective if it did not provide a remedy."*

98. It is suggested that it is wholly unreal for D1 to contend that, as a matter of objective construction, at the time of the agreement of the Settlement Deed, both parties, objectively, had in contemplation claims against the Post Office of the kind now made by Mr Castleton, that is to say, not fraud simpliciter, but fraud on the Court in consciously and dishonestly withholding material evidence from the Court in 2006 – notably the Known Error Log, so that the judgment was obtained by fraud.

99. Nowhere in any of the evidence submitted by either D1 or D2 is there any suggestion that, *objectively*, it is contended that at the time of negotiating the Settlement Deed, the

parties *are to be taken* to have had in their contemplation claims of that kind (per Lord Nicholls). That is a necessary contention for the Post Office to assert that the 'general release' under the 2019 Settlement Deed catches/covers Mr Castleton's claims.

100. Any such contention may be tested by the position of the "Convicted Claimants", a defined class under the Settlement Deed. It will be seen that the only claims preserved to Convicted Claimants were claim for malicious prosecution, in the event (contingency) that their convictions might be quashed on appeal. They surrendered all their other claims (on a literal and acontextual reading of the Settlement Deed) for £0.00.

101. The Convicted Claimants received no payment of any kind from the Post Office under the terms of the Settlement Deed and were explicitly excluded from those to whom the Settlement Sum was paid. The only thing preserved to them (colloquially "that they got out" of the Group litigation) was a contingent claim for the tort malicious prosecution.

102. On the Post Office's (apparent but un-pleaded) contention that the Settlement Deed extends to cover a claim that judgment was obtained by fraud/by an unlawful means conspiracy (to pervert the course of justice) it is necessary that it contends that the Convicted Claimants surrendered any and all such claims - on its case objectively intended to be covered by the terms of the settlement – for £0.00. That is inherently implausible and makes no commercial, or any other kind of, sense. Attributing £0.00 to a claim is impliedly to accept the claim has no prospective value, which is equivalent to acceptance that there is no claim.

103. That ought to be sufficient. But there is a more substantial problem with the approach that D1 and D2 urge upon the Court.

The problem of Mr Gareth Jenkins

104. Mr Jenkins runs as a thread through the history of Horizon and the Post Office's conduct in connection with it. The lengths to which the Post Office went to mislead Fraser J. in 2019 in relation to Mr Jenkins have only recently become clear from material published by the Inquiry in December 2025 (below).

105. As has been seen (above), in 2006, before Mr Castleton's trial, Mr Graham Ward found it necessary to edit out Mr Jenkins's intended evidence to the Court of "system failure", considered by Mr Ward/the Post Office as being unhelpful to the prosecution (and subsequent wrongful conviction) of Mr Hughie Thomas.

106. Mr Jenkins's name appears in Inquiry document FUJO0120469 dated October 2005, "On Line Services Reconciliation & Incident Management", the purpose of which was stated to be: "*This document outlines the end-to-end reconciliation and incident management procedures required to investigate, report and resolve On Line Services reconciliation and business incidents.*" The document was related to the Reconciliation document referred to by Fraser J and considered by him in connection with the issue of the robustness of Horizon (above). Mr Jenkins is listed for mandatory review of the document.

107. Linking Mr Jenkins's observations to which Mr Ward took such objection, is the provision at para 4.1.1 of the October 2005 document:

> *"Business Incidents relate to the Symptom of an underlying cause – e.g. the effect of* ***the system fault*** *on the resulting reconciliation or settlement information sent to Post Office Ltd. An On Line Services Business Incident relates to one or more of the exceptions reported within the On Line Services report set, or one or more reconciliation or settlement errors /disputed transactions raised in accordance with this document by POL Finance_ (Refer to section 6.0 for a list of those On Line Services Business Incident incomplete or exception states currently known and for which appropriate On Line Services Business Incident reporting processes are set out in this document)."* (Underlining/emphasis supplied.)

108. Under the heading: "The absence of Mr Gareth Jenkins" from para [508], Fraser J in Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) said this. (The text of the judgment is reproduced because of its additional importance concerning Mr Jenkins's role for the Post Office as a "shadow expert" a role that the Post Office explicitly denied that he had):

[508.] *It is entirely a decision of the parties which witnesses they choose to call in any proceedings in respect of any evidence. The position of one person, however, who did not appear in the Horizon Issues trial, must be considered in more detail than would be usual, as the claimants make considerable complaint about this. The person in question is Gareth Jenkins, a senior Fujitsu employee who, although he retired recently, was obviously widely available to the Post Office and the source of a great amount of information both to the Post Office's witnesses of fact, and also to Dr Worden (although he was not separately identified in Dr Worden's "sources of information" paragraphs in his 1st Report). The fact that he provided information to Dr Worden emerged during the latter's cross-examination. Mr Jenkins had previously given expert evidence for the Post Office in some of the criminal prosecutions of SPMs, in particular that of Ms Misra, to whom I have referred above, who was convicted of criminal offences in Guildford Crown Court in 2010.*

[509.] *When the Post Office served its evidence of fact, there was no witness statement from Mr Jenkins, although many of their witnesses relied upon him as their source of information, he was referred to very often, and he obviously knew a great deal about Horizon. The extent and way in which Mr Jenkins had been closely involved was explained by Mr Godeseth in his cross-examination. Mr Godeseth had, in respect of the receipts and payments mismatch, originally stated in paragraph 42 of his 2nd witness statement that 60 branches were affected. He had corrected this to 62, a factual correction that was specifically made by him. The following passage of evidence is relevant to Mr Jenkins' involvement in this.*

[Omitted text]

[511.] *When the Post Office served their evidence of fact, the claimants had asked the Post Office why there was no statement from Jenkins, whether Mr Jenkins was available to give evidence, and also whether he was involved as one of a team of what the claimants referred to as the "shadow experts". This description was challenged by the Post*

Office, and the question of shadow experts is addressed further at [556] below. ***No explanation was given for Mr Jenkins' absence in response to these requests, or in evidence in the trial, although it was confirmed that Mr Jenkins was not one of the team of so-called "shadow experts".***

[512.] *There the matter might have rested. However, in the Post Office's written closing submissions, an explanation of sorts was for the first time provided. This was in the context of two matters: firstly, by way of explanation of Mr Godeseth's evidence, and potentially to downplay its impact; secondly, in relation to the claimants' complaints about the second hand nature of some of the Post Office's factual evidence because in large part this had emanated from Mr Jenkins. This explanation by the Post Office included the following passages in its written submissions:*

> *"144. [The claimants] understandably complain that Mr Jenkins and the other source of Mr Godeseth's information could have given some of this evidence first hand. However:*
>
> *144.1 Taking into account that Mr McLachlan's evidence specifically addressed things said or done by Mr Jenkins in relation to the Misra trial, Post Office was concerned that the Horizon Issues trial could become an investigation of his role in this and other criminal cases.*
>
> *144.2 Moreover, Post Office was conscious that if it only adduced first hand evidence in the trial, it would end up having to call more witnesses than could be accommodated within the trial timetable.*
>
> *144.2 Furthermore, so far as Post Office was aware, the relevant parts of Godeseth 2 were most unlikely to be controversial. For example, the Misra trial was a matter of public record, the four bugs were covered by contemporaneous*

documentation and Post Office had no reason to doubt Fujitsu's account of the documents it held."

(Emphasis supplied.)

109. That explanation was grossly misleading and untrue. The true reason for Mr Jenkins not being called as a witness is revealed in 3 documents:

109.1. First, the written opinion of Mr Simon Clarke of July 2013.

109.2. Second, the Womble Bond Dickinson memorandum of 14.11.19 (post-the Horizon Issues trial, prior to judgment) P/C Appendix 2.

109.3. Third, on 18.11.18 Anthony de Garr Robinson K.C. wrote to Simon Henderson, Jonathan Cribben and cc'd Andrew Parsons (Inquiry ref: WBON0000342 (published 25 June 2025) stating:

> "Second, I see that Gareth Jenkins is part of the team doing the analysis. **We all know the reasons why we have decided not to have Jenkins as a witness.** They are also reasons for not having him as a source of evidence – i.e. as a source of information for our witnesses and/or as a person providing analyses on which our witnesses will rely. Where he is acting as a source the Claimants will know this and they will waste no time in arguing (1) the fact that we have not called such a natural witness demonstrates that he is not a reliable witness, (2) we recognise this fact and want to protect him from any cross examination and (3) **if he is not a reliable witness, he can't be a reliable source of evidence, either and (4) as the claimants are being prevented from cross examining him the information he provides to other witnesses is even less reliable than a witness statement from him would be. This argument will undermine the evidential value of any witness statements that are based on information that Jenkins has provided.**" (Emphasis supplied.)

110. Spencer Bower & Handley Actionable Misrepresentation, (Hon Justice Handley Ed. 5th Ed., para 4.17 under the heading "Omission of Essential Qualifying Facts":

> 'A representor must not add anything which makes false what would otherwise have been true; or omit anything required to render true what

would otherwise be false. A half truth may be a misrepresentation. To state a thing that is true only with qualifications known to, but withheld by the representor, is to say something which is false. Such a statement is a lie, in a most dangerous and insidious form. 'If a man, said Chambre J, 'professing to answer a question, selects those facts only which are likely to give credit to the person of whom he speaks, and keep back the rest, he is a more artful knave than he who tells a direct falsehood (*Tapp v Lee* (1803) 3 Bos & P 367, 372). Christopher Clarke J said this on this topic: "In evaluating the effect of what was said a helpful test is whether a reasonable representee would naturally assume that the true state of facts did not exist and that, had it existed, he would in all the circumstances necessarily have been informed of it": (*Raiffeisen Zentralbank Osterreich AG v RBS* [2011] 1 Lloyd's Rep 123, 142, [2010] EWHC 1392)...".

111. The issue of inducement in connection with a misrepresentation must be judged by reference to the meaning and alleged falsity of the representations. For this purpose, Miles J. in *European Real Estate Debt Fund (Cayman) Ltd v Treon* [2021] EWHC 2866 Ch held it legitimate to consider what the representee would have done had the truth been known (para [373]):

> "Further, if the making of the representation in fact influenced the claimant, it is not open to the defendant to argue that the claimant might have acted in the same way had the claimant been told the truth. However, the claimant can adduce evidence as to what they would have done if they had been told the truth in order to establish inducement: *Parabola Investments Ltd v Browallia Cal Ltd* [2009] EWHC 901 (Comm), at [105]-[106], where Flaux J said that Hobhouse LJ in *Downs v Chappell* [1997] 1 WLR 426 was seeking "to protect the victim of the fraud from the argument by the fraudster that the fraud had not induced the victim, because he would have done the same thing even without the fraud. Hobhouse LJ was in effect saying the fraudster cannot be heard to say, even if I had told you the truth, you would still have acted as you did. What he was not saying was that, if the claimant demonstrates, by cogent evidence, that it would not have acted as it did

if it had known the true position, that evidence cannot be relied upon by the claimant as demonstrating inducement by the fraudulent misrepresentations"."

112. It has very recently emerged that the Post Office's dishonesty and the lengths that it went to mislead the Court and the Claimants in connection with Mr Jenkins was greater than hitherto known. The Inquiry, on 12.12.25 published the Post Office's disclosed copy of the first report of Mr Jason Coyne in the Horizon Issues trial dated 18 October 2018: Inquiry ref: POL00029050 that document may be compared with the Fujitsu disclosed document published by the Inquiry on 12.12.25 with reference FUJ000183797. The document runs to some 400 pp. To put it in context, it is necessary to consider what the Post Office told Fraser J about Mr Jenkins (not) being a "shadow expert". Fraser J said that:

> "[556] *I return to the issue of so-called "shadow experts." The parties in this case agreed that costs management would apply, and the Post Office in its costs budget for the Horizon Issues trial included, for the costs management hearing on 5 June 2018, an item for incurred expert costs in its costs budget in the sizeable amount of approximately £800,000. This was in addition to the amount incurred by that point in terms of the fees of Dr Worden. His costs at that stage were only £58,000. The sum of £800,000 broke down to about £300,000 paid to Fujitsu, and £500,000 paid to other experts, who were not being instructed to give expert evidence. Dr Worden was the expert who would be giving evidence to the court, which meant he would owe the relevant duties of independence to the court under the CPR. The description of these other experts was given in a skeleton argument for the Post Office in the following terms: "The Defendant has spent around £500,000 on investigations by internally appointed experts for the purposes of determining its litigation strategy.*[10] *The resulting material - which is privileged - has not been provided to the Defendant's expert for the purposes of this litigation."*

10 See the observations under fn. 1 above for similarities.

[557.] *The claimants adopted the term "shadow experts" for these, a term with which the Post Office did not agree. At the cost management hearings, the claimants pointed out that by "internally instructed" this meant these experts were not instructed by the Post Office's solicitors. It was also pointed out that there was no corresponding entry in the budget for any conference with any of their counsel, and this meant that this was "an entirely ring-fenced operation". The Post Office did, however, reserve the right to recover their costs as costs in the litigation, and therefore this item was included in its costs budget. All of the material produced by these other experts was said to be privileged.*

[558.] *It is a highly unusual situation that entirely separate experts, instructed directly by a party, without the involvement either of that party's solicitors or their counsel (all the more so when those experts are not even identified), are instructed on such a task, whatever that task might actually be. I recorded an adverse comment in the costs management order of 23 July 2018 stating that the Post Office's incurred costs for experts were extraordinarily high, unreasonable and disproportionate; and that Fujitsu's costs of assisting with the litigation, and the costs of these internally appointed experts did not, on the face of it, appear to be properly recoverable sums in the litigation. I should clarify that this adverse comment should not be taken as applying to Dr Worden's costs that had been incurred at that stage, which were modest. It is not necessary to deal with this matter any further to resolve the Horizon Issues."*

(Underlining supplied.)

113. Consideration of the *Fujitsu* copy of Mr Coyne's report, published in December 2025 by the Inquiry, reveals multiple embedded annotations of the report by Mr Jenkins. These include the following, at the start of the document, on 22.10.18 (i.e. within a few days of the date of the report), Mr Jenkins wrote: "*Number. 1 Author. Gareth Jenkins Date: 22/10/2018 16:23:00 To aid my review of this, I have converted the document to Word and am adding in comments using the Word "comments" feature. This may well*

have an Impact on the pagination of the original, but will hopefully not impact the actual text".

114. Mr Jenkins's annotations of Mr Coyne's report include: p. 93 *"No. We don't have Peaks for CPs. ..."*; p. 110 *"What evidence?..."*; p. 110 *"WE certainly had controls ... Kevin to address?"*; p. 142 *"We do NOT Modify Data."*; p. 154 *"This needs to be addressed..."*; p. 188 *"We need to look at this"*; p. 196 ***"We have to challenge that"***; p. 298 *"We need to address this"*; p. 302 *"We have to address this!"* p. 302 *"As stated above, I disagree".* (Bold typeface supplied.)

115. It is difficult to understand how the Post Office can have said that Mr Jenkins was not a "shadow expert", given those comments and his close involvement in reviewing Mr Coyne's report immediately upon its receipt by the Post Office.

116. Mr Brian Altman K.C. was intimately involved in advising the Post Office in the period immediately following receipt of the "Clarke Advice" in 2013, in which Mr Clarke advised that Mr Jenkins could no longer be used as a witness for the Post Office, that his credibility was undermined, and that he had put the Post Office in breach of its duty to the Court in failing to disclose his knowledge of bugs in the Horizon system.

117. Following receipt of the Clarke Advice, the Post Office almost entirely ceased prosecuting its postmasters for offences of dishonesty in connection with shortfalls. That was explained Paula Vennells (formerly CEO of the Post Office) to Darren Jones MP, then Chair of the then BEIS Select Committee, in answer to questions from the Committee, in June 2020. By that time, it had prosecuted, it is understood, some 900 of its postmasters for offences of dishonesty in reliance upon data from the Horizon system.

118. Mr Altman K.C. on 8.5.24, gave evidence to the Inquiry. Taken by Counsel to the Inquiry to the explanation that Fraser records for Mr Jenkins's absence as witness from the Horizon Issues trial, including Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [511]. (Mr Altman K.C. was on early receipt of the draft (or part of) judgment in the Horizon Issues.) He was asked by Counsel to the Inquiry (Transcript 8.5.24 71/17-72):

Mr Beer K.C. *"Did the fact that the Post Office explained the absence of Mr Jenkins in this trial as a witness in these terms in any way concern you or surprise you?*

Mr Altman K.C. *"I'm not sure which part of the judgment this is and whether these are the parts of the judgment that were sent to me. But what surprises me is, I suppose if that's the question you're asking me, is -- and I'm being careful here because this is the commercial litigation but -- of which others had conducted -- but, using him in the background as a shadow expert to inform their case, I suppose, is the key issue".* (Underlining supplied.)

119. The reason that Mr Jenkins could not be called was that he was a wholly discredited witness for reasons known to the Post Office *qua* prosecuting authority, but that remained withheld and unknown to those it had prosecuted and, more particularly, he was a witness who knew about bugs in the Horizon system and had not revealed that knowledge to the Court. These facts were known both to the Post Office and to its lawyers. By 2010, for many years Jenkins had been the Post Office's preferred witness on Horizon issues. He was the Post Office's expert witness at the trial of Mrs Seema Misra in 2010, the first and only criminal trial in which there had been 'head-to-head' trial of expert evidence in connection with the reliability of the Horizon system. (Mrs Misra's conviction for theft, on evidence given by Mr Jenkins, generated a fanfare in emails circulated within the Post Office, anticipating that it would be a deterrent to others seeking to challenge the reliability of the Horizon system.)

120. Accordingly, not only did the Post Office give a false reason to the Court and the GLO claimants for Mr Jenkins not being called as a witness at the Horizon Issues trial, the Post Office, additionally, misled the Court and the GLO claimants in denying his role as a "shadow expert".

121. Mr Jenkins was vital for the Post Office in the Horizon Issues trial. The difficulty confronting the Post Office was that his knowledge, about flaws/bugs in Horizon and which he had withheld from the Court in every sampled prosecution that Mr Clarke had

reviewed in 2013, represented a threat to the Post Office's case at the Horizon Issues trial, namely that Horizon worked well and was robust and reliable.

122. The Post Office's case before Fraser J. was a case that was an analogue of the Post Office's case before HH Judge Havery Q.C. 13 years previously, in 2006. In 2019 the defence, that Horizon was "robust" fell apart as a result of disclosure of the Known Error Log that had been withheld from HH Judge Havery Q.C. in 2006. The evidence given by Mr Godeseth in his cross examination was found by Fraser J to be helpful, albeit he considered that it bore little relation to Mr Godeseth's written statements served before trial (that included denial of the possibility of 'remote access' – that became untenable in the face of Mr Richard Roll's WS2 (January 2019)).

Post Office 'sharp practice' and the negotiation of the December 2019 Settlement Deed

123. In August 2013, the Post Office had notified its insurers of risk associated with disclosure it had given and Mr Jenkins's evidence.

124. The reason for that was that in July 2013, Mr Simon Clarke, a barrister employed by the solicitors firm Cartwright King, advised the Post Office, it having been alerted by Second Sight that Mr Jenkins had referred to a 'receipts and payments' mismatch bug (that Fraser J. in his judgment describes the Post Office as having kept "secret", – and that he considered to be the most important of the bugs he considered), that in each of 5 criminal prosecutions sampled in which Mr Jenkins had given evidence by written statements to the Court, Mr Jenkins had failed to disclose to the Court his knowledge of bugs in Horizon, thereby giving the false and misleading impression that he had no knowledge of bugs in Horizon or their possible effects – and that by implication there were no known bugs in the system. Mr Clarke advised that as a result, among other things:

124.1. Mr Jenkins had put the Post Office in breach of its duties to the Court as prosecutor.

124.2. Mr Jenkins was wholly discredited as a witness and shouldn't be used in future prosecutions.

125. Some members of the Post Office board were concerned about contingent potential personal liability.

126. Cartwright King carried out a review of several hundred Post Office prosecutions from 2010, called the "Sift Review". As a result of the (plainly flawed) terms of that review, not a single appeal followed, let alone any successful appeal.

127. In notifying its insurers, the Post Office was concerned about its prospective liability for having prosecuted postmasters on a potentially false and misleading basis.

128. In November 2019, at a conference with Leading Counsel and the Post Office's solicitors, in the light of the facts and information contained in Mr Clarke's 2013 Advice about Mr Jenkins, it was decided that Mr Jenkins could not be called as a witness because of what was revealed in the 2013 Clarke Advice.

129. Mr Godeseth, Mr Jenkins's substitute, gave evidence in the Horizon Issues trial and in cross examination (though not his written WS) that essentially supported the conclusions of Mr Jason Coyne, the Group claimants' expert witness.

130. The result and impact of Mr Godeseth's evidence was that the Post Office would have recognised, upon receipt of the judgment and the Judge's findings, the exposure of the Post Office to claims by those who had been wrongfully prosecuted on the basis that the Post Office *qua* prosecutor had prosecuted on evidence that Horizon was reliable, when it was known by the Post Office (and Fujitsu) not to be **and that had been a known contingent risk to the Post Office from 2013** – the fact of which only emerged in 2020 in the Hamilton appeals to the CACD.

131. The claims of those prosecuted by the Post Office had been stayed in the Group litigation, (it appears on grounds that a civil claim for damages while a conviction subsisted, represented a collateral attack on the decision of the jury (etc)).

132. What was not known to the Group claimants, in 2019, but was known to the Post Office, is that, as revealed by both the 2013 Clarke Advice and the Post Office's notification of insurers in 2013, Mr Jenkins had withheld his knowledge of bugs in Horizon from the Court and that had made it necessary for the Post Office to review hundreds of its prosecutions. The known facts in 2013 had contingently exposed the Post Office to substantial claims, but the Post Office had succeeded in containing and managing that risk/exposure.

133. In effect, the Post Office's defence to the claims at the Horizon Issues trial, in the light of the Clarke Advice of July 2013, is exposed as having been a false basis, known to be false from 2013.

134. As noted above, Lord Nicholls in Bank of Credit and Commerce SA (In Liquidation) v Ali (No1) [2001] UKHL 8 said that "*Materially different is the case where the party to whom the release was given knew that the other party had or might have a claim and knew also that the other party was ignorant of this. In some circumstances seeking and taking a general release in such a case, without disclosing the existence of the claim or possible claim, could be unacceptable sharp practice. When this is so, the law would be defective if it did not provide a remedy."*

135. The timing of the Settlement of the Group litigation in December 2019 is striking. The litigation was settled before Fraser J. handed-down his Horizon Issues judgment on 16.12.19. Relevant to that fact are:

135.1. the consequences of Mr Gareth Jenkins not being called as a witness by the Post Office at the Horizon Issues trial and Mr Godeseth 'not coming up to proof'; and

135.2. the Post Office's consciousness and knowledge of the reasons why Mr Jenkins was not called and the associated risk of Mr Godeseth giving second-hand evidence – evidence that emerged, as Fraser J. notes, as having emanated from Mr Jenkins.

136. The November 2018 email from Mr Anthony de Garr Robinson K.C. provided "... *We all know the reasons why we have decided not to have Jenkins as a witness. They are also reasons for not having him as a source of evidence – i.e. as a source of information for our witnesses and/or as a person providing analyses on which our witnesses will rely."* and the later WBD Memorandum of 14.11.19 after trial - but before the draft judgment was circulated, written by Womble Bond Dickinson are closely related documents.

137. The Post Office knew that Mr Jenkins was a witness who could not be called and exposed to cross-examination, it nonetheless adduced a great deal of evidence from him despite it having been advised by its Leading Counsel that the reasons for him not being called were reasons for him not being a source of evidence at all.

138. At para 5.8 of the Memorandum, WBD recorded "*During the HIT, Mr Godeseth was subject to extensive cross-examination and performed very poorly. The Claimants also made submissions about Dr. Jenkins not being called as a witness and the adverse inferences that should be drawn from this, but not as strongly as they could have done. It is anticipated that Mr Godeseth's evidence will be heavily criticised by the Judge and likely rejected in full. It also expected that he will comment on Dr. Jenkins not giving evidence despite him being a key person at Fujitsu.*"

139. The reason that it was recorded that submissions by the GLO claimants on adverse inferences to be drawn of Mr Jenkins not being called, were made "*... not as strongly as they could have done*" was because:

139.1. the Post Office had given a seriously misleading and materially incomplete (and for that reason false) explanation to the Court and to the Group claimants of the reason for Mr Jenkins not being called as a witness that was plainly intended to provide a plausible and seemingly bona fide justification and to conceal the truth;

139.2. the Post Office knew that the true reason was that Mr Jenkins could not be called as a witness was because he was wholly discredited and could not be exposed to cross-examination. Most particularly, as long ago in 2013 it had emerged that he was witness who had repeatedly given misleading and incomplete in every prosecution in which he had given evidence and had put the Post Office in breach of its duty to the Court.

140. WBD in the November 2019 Memorandum recorded (para 4.5) that: "*As far as we are aware, nobody outside of Post Office has alighted on the significance of this document [the "Lepton report"] in relation to Mr Jenkins' historic evidence.*"

141. The Lepton report by Helen Rose, then a fraud investigator for the Post Office, was written in 2013. In connection with it, Helen Rose had written to Mr Jenkins an email: "***I know you are aware of all of the Horizon integrity issues*** *and I want to ensure that the ARQ logs are used and understood fully by our operational staff that have to work with this data both in interviews and in court.*" (Emphasis supplied): Oral evidence of Helen Rose to the Inquiry 19.9.23 Transcript p 93. (When asked by Counsel to the

Inquiry what Horizon Integrity Issues Mr Jenkins was aware of, Mrs Rose somewhat unconvincingly replied: "*I didn't know that he knew of any*" (Transcript 100/19).)

142. So in November 2019 the Post Office and its legal team were aware of the significance of the 'Lepton report' and, on the face of it alive to its connection with Mr Jenkins's 'historic evidence'. It was a fundamentally important document in the 2013-2014 Cartwright King 'Sift Review' – that resulted in not a single appeal.

143. As will be seen from the foregoing, the 'Reconciliation' procedure, consideration of which by Mr Coyne elicited (with some effort) disclosure of the fact that there were some 10,000 'exceptions' per week in the Horizon system requiring manual intervention by Fujitsu, evidence that led directly to Fraser J's conclusion that Horizon was not 'robust', was concerned with "Horizon integrity issues". The contractual arrangement for this between the Post Office and Fujitsu, was in August 2006, prior to Mr Castleton's trial. As noted, the working document for the Reconciliation process is dated 2005 and is marked for 'mandatory review' by Mr Jenkins. So Mr Jenkins, and known Horizon integrity issues, are a seamless web, linking events from before Mr Castleton's trial in December 2006, through 2013 and the Post Office's abrupt change in strategy to (not) prosecuting its postmasters for 'Horizon shortfalls' from 2014, to the conduct of the Horizon Issues trial by the Post Office in 2019.

144. Though necessarily a matter of inference, it seems likely that it became apparent to the Post Office that the Horizon Issues judgment, and Fraser J.'s conclusion from the Known Error Log about bugs in Horizon, how long they had subsisted, and their known effects, would quickly provoke questions as to how it was that the Post Office had for so long been consistently successful in prosecuting its postmasters on the basis that the Horizon system was not at fault (as Mr Graham Ward had urged in connection with Mr Castleton's trial in 2006) – but *that* was not an issue in the High Court proceedings.

145. The WBD memorandum records that "On 7 February 2019, TRQC briefed Jane MacLeod ahead of the HIT. He explained the risk of hearsay evidence from FJ and the reasons why Dr. Jenkins had not been called." Jane MacLeod was then General Counsel for the Post Office.

146. Jane MacLeod declined the request from the Inquiry to attend the Inquiry to give oral evidence.

147. Assuming that the draft judgment was materially similar to judgment handed down by the Court on 16.12.19, it will have been immediately apparent that the "risks" identified by Mr de Garr Robinson K.C. to the Post Office's GC on 7.2.19 had eventuated:

147.1. At Bates and ors. v Post Office Ltd (No. 6 Horizon Issues) [927] Fraser J said: *"The factual evidence of specific instances was of assistance in coming to conclusions on the Horizon Issues. Indeed, I found some of the factual evidence to be of great assistance. That of Mr Roll and Mr Godeseth was extremely useful. The latter, one of the Post Office's main witnesses and the Chief Architect of Horizon, was sufficiently damaging to the Post Office's case on the Horizon Issues that they were, essentially, forced almost to disavow him, and the Post Office's closing submissions were highly critical of the accuracy of his evidence."*

147.2. At [933] Fraser J said: *"Mr Godeseth's evidence alone is enough to support and corroborate Mr Coyne's conclusions. When that is put together with the evidence of Mr Roll, and the concessions that were obtained from the Fujitsu witnesses (in the circumstances of their performance as witnesses, to which I have already referred) it is clear to me that the correct conclusions to be drawn on the Horizon Issues are those drawn by Mr Coyne, save and to the extent that I have modified them in any specific respect."*

148. It must have been apparent to the Post Office, to the Post Office's lawyers and to the Post Office's GC (assuming that the reason given to Jane MacLeod for Mr Jenkins not having been called was the real reason), that Fraser J's recording of the reason given by the Post Office for not having called Mr Jenkins as a witness was seriously and materially incomplete and misleading.

149. On any view, the 2013 'Clarke Advice' was and remains a fundamentally important document. It was disclosed for the first time only in November 2020, in the 42 appeals referred to the Court of Appeal CD by the CCRC. It is legitimate to consider what the consequence would have been the Post Office, having elected to give to Fraser J an explanation for Mr Jenkins not having been called by it as a witness, had given the true reason. The Settlement Deed would not have been agreed upon the terms that it was.

150. In the negotiations for settlement of the Group litigation, Herbert Smith Freehills replaced Womble Bond Dickinson as the Post Office's solicitors. Whether or not HSF were aware of the WBD November 2019 Memorandum, having unsuccessfully attempted to support its defence to the Group claims by evidence from Mr Godeseth, in place of Mr Jenkins, whom it could not call as a witness, the Post Office was driven to speedily settling the claims made against it on the best terms that it could secure.

151. The "system" problems with Horizon that Mr Jenkins had long ago identified and referred to in his draft witness statement for the prosecution by the Post Office of Mr Hughie Thomas in 2006, that Mr Graham Ward had been so astute to remove from Mr Jenkins's evidence, which resulted in Mr Thomas's conviction, had ultimately, albeit with the utmost difficulty, been revealed. The cat was out of the bag.

152. In breach of its duty as prosecutor identified by the Supreme Court (restating the law) in (connection with basic fairness) in Nunn v Chief Constable of Suffolk Police [2014] UKSC 37, [2015] AC 225, the Post Office had failed, in 2013, to communicate to any of those whom it had prosecuted the consequences of the revelation that Mr Jenkins was known to have given unreliable and misleading evidence to the Court in all the cases that had been reviewed by Cartwright King in 2013-2014. The most striking instance is that the Post Office had failed to communicate to Mrs Seema Misra or her lawyers that information. Mrs Misra's prosecution in October 2010 was the *only* criminal trial in which Mr Jenkins gave live oral evidence and had been cross-examined. How and *why* the known unreliability of Mr Jenkins as an expert witness who had given evidence against her was not disclosed to Mrs Misra following the Post Office's receipt of the 2013 Clarke Advice remains unexplained. It was the first case in which the Post Office had been confronted with a direct challenge to the reliability of Horizon and a prosecution for theft went to a full trial. The Post Office afterwards was strikingly triumphant.

153. The disaster that was unfolding for the Post Office in December 2019 that is recorded by Fraser J. at paragraph [933]: "*Mr Godeseth's evidence alone is enough to support and corroborate Mr Coyne's conclusions. When that is put together with the evidence of Mr Roll, and the concessions that were obtained from the Fujitsu witnesses (in the circumstances of their performance as witnesses, to which I have already referred) it is clear to me that the correct conclusions to be drawn on the Horizon Issues are those*

drawn by Mr Coyne..." was apparent to the Post Office in the course of Mr Godeseth's cross-examination.

154. About 30 minutes from the end of Mr Godeseth's cross-examination in the Horizon Issues trial, the Post Office launched, without notice, its application that Fraser J should recuse himself for alleged bias in connection with his conduct of the Common Issues trial.

155. In summary, the Post Office on receipt of the Horizon Issues judgment in December 2019 had arrived at a position that it had anticipated 6 years previously, in August 2013, in notifying its insurers. The financial risk associated with having prosecuted hundreds of postmasters on the flawed and misleading basis that, as Mr Clarke in his July 2013 advice had identified, there were no known problems with the Horizon system, that had effectively been contained by the flawed Cartwright King "Sift Review" of several hundred prosecutions from 2010, had resurfaced. The dimensions of that risk are now all too apparent. The eventual bill for compensation claims by the Post Office's victims is likely to run to several billion pounds.

156. The merit of Mr Summerfield's statement at para 11 of his WS2: "*the advantages of ordering a split trial are self-evident. As FSL has advocated since it was first served with the proceedings, a preliminary trial on whether the claims have been settled is the only course which is in accordance with the overriding objective*" may be evaluated against the foregoing (apart from his appearing to conflate a split-trial with determination of a preliminary issue).

SUBMISSIONS

(1) Mr Castleton's claim is of the utmost simplicity. He contends that the judgment against him should be set aside by Order of the Court because the Post Office, assisted by Fujitsu, consciously and dishonestly withheld material evidence from the Court at his trial in 2006. That evidence would have materially affected HH Judge Havery Q.C.'s judgment. It is not open to sensible dispute that material evidence was withheld. The Known Error Log was not disclosed and Mrs Chambers's evidence to the Inquiry was that she was explicitly instructed that it and its associated PEAKs were not to be disclosed, an instruction that she found

odd (as well she might – her being familiar with both the purpose and content of the KEL). It is similarly not open to sensible argument that the withholding of the Known Error Log was evidence that would materially have affected the judgment of HH Judge Havery Q.C.. Fraser J said that success in contesting the relevance of the KEL before him would have had a material and adverse bearing on his evaluation of the Horizon Issues. Thus, the central and simple issue is, *what explanation is available for the withholding of the KEL that is consistent with honesty on the part of the Post Office and Fujitsu*? D1 and D2 offer no indication of what their defences are or may be to Mr Castleton's claims, still less what the answer to *that question* is to be given. It is not a complex or difficult question and answering it should not require thousands of documents to be reviewed nor great expense to be incurred. Mr Castleton's case, like Mrs Misra's case, has been the subject of a special study by the Inquiry. This is not new.

(2) There should be no preliminary issue and no splitting of the trial. There is no 'bright line' (below), there is scant prospect of there being agreed facts, there would likely be a requirement for split disclosure, there would be a requirement for cross examination of witnesses, there would be delay, there would be additional cost, and Mr Castleton would be delayed and prejudiced in obtaining judgment from the Court – in relation to an injury he sustained in 2004 and the consequences of which have blighted his and his family's lives for 20 years.

(3) The preferred course of D1 and D2 is to place obstacles in the path of Mr Castleton, before he be permitted to invite the Court to consider the issue of evidence withheld from the Court at his trial in 2006. There is no principled justification for such an approach. It is 'out of the norm' (a fortiori before pleadings are closed) and there is no justification, consistent with established principle, for adopting such a back-to-front approach.

(4) Morrison & Foerster give evidence on this hearing that £700,000 has to date been incurred in evaluating Mr Castleton's claims. In the application for permission to appeal against the Common Issues judgment (one of which grounds was a challenge to Fraser J's finding in connection with the contention that signed cash balance statements by postmasters were not "an account" as that expression is understood in law (so as to reverse the burden of proof) – that was material (indeed central to HH Judge Havery Q.C.'s judgment (para 1) – because

it placed upon Mr Castleton the evidential burden of showing his branch accounts were wrong, a burden that Fraser J. notes, a postmaster could not discharge) Coulson LJ, in a lengthy written statement refusing permission, noted that the Group claimants protested that Post Office was simply seeking to 'outspend' them. Coulson LJ, without making a finding, said that he could understand why the Group claimants held that perception. The Court should be astute in these proceedings, that what is presaged, by both Defendants' positions on this hearing, and more generally, is history repeating itself. The contention that splitting issues/the trial will save either time, still less expense, is simply wrong and there is no evidential basis, beyond bare assertion, for either contention.

(5) The contention that the December 2019 Settlement Deed extends to cover Mr Castleton's claim, that the judgment in 2006 was obtained by the Post Office by fraud, is ex facie implausible. Looking beyond Mr Castleton's claims to claims of those who were convicted, as noted, the only claims for Convicted Claimants that were preserved under the Settlement Deed were contingent claims for malicious prosecution. All their other claims were surrendered for the value of £0.00. It is impossible to conclude that the parties, objectively contemplating that there were or might be claims that the Post Office, in prosecuting the Convicted Claimants, had engaged in a conspiracy to pervert the course of justice (*Total Network*), surrendered such claims for £0.00. As noted, surrendering a claim for £0.00 is equivalent to acknowledging there was no value in any such claim. The self-same reasoning adopted by Collins LJ in *Satyam Computer Services v Unpaid Systems Limited* [2008] EWCA Civ 487 at [84]-[85] applies, Lord Bingham's "... salutary line of authority shows that, in the absence of clear language, the court will be very slow to infer that a party intended to surrender rights and claims of which he was unaware and could not have been aware." Collins LJ said ([84]) "... the same principles must apply to fraud-based claims. **If a party seeking a release asked the other party to confirm it would apply to claims based on fraud, it would not, in most cases, be difficult to anticipate the answer.**" In the present context, the point is that, unknown to Mr Castleton, but necessarily known to both the Post Office and Fujitsu, the Known Error Log had been deliberately withheld from disclosure to him and to the Court in 2006. The

Post Office attempted to do the same before Fraser J. in 2019, this time, unsuccessfully.

(6) There is, in Master Kaye's formulation in Saroka v Payne Hicks Beach [2025] EWHC 602 (Ch) [20], no "sufficiently bright line". The wholly misleading and seriously incomplete explanation for Mr Gareth Jenkins not being called as a witness for the Post Office in 2019 at the Horizon Issues trial, when much of the evidence emanated, as Fraser J. found, from Mr Jenkins, is inextricably bound up/intertwined with the way in which the Post Office put its case in the Horizon Issues trial and its entire strategy of concealment of problems with Horizon over time. The way in which the Post Office put its case in 2019 concealed from the Court and the Claimants the reality of the true position, understood by the Post Office in 2013. It had been advised by Mr Clarke and Cartwright King that Mr Jenkins had misled the Court in all of the cases (criminal prosecutions) sampled in which he had attested the reliability of the Horizon system, by his withholding knowledge of bugs and problems with the system. There is interconnectedness, at every level and over time, in how the Post Office defended the Horizon Issues in 2019 and the way it had prosecuted hundreds of its postmasters and brought the claim against Mr Castleton. As Mandy Talbot presciently put it, if the Post Office did not (successfully) contest Mr Castleton's claims (that the losses he experienced at his Bridlington branch office were caused by Horizon) the entire system was at risk of coming, in her words, "crashing down". As with denial of "remote access", the Post Office was driven to denying reality. The risk perceived by Mrs Talbot in 2006 eventuated in 2019. Mr Castleton could not then have known that the Known Error Log, in meeting the risk to "the system" then identified by Mandy Talbot, had been deliberately withheld from disclosure to him and to the Court in 2006.

(7) The Court is invited to direct D1 and D2 to serve and file their defences (if any) to Mr Castleton's claims. For reasons touched on above, those defences should be directed to be served within a comparatively short period of time (should it be necessary, after any amendment to the P/C). Given the detail of issues considered by the Inquiry and the issues traversed by it, including the special study made by the Inquiry of Mr Castleton's case, D1 and D2 should be required

to explain now and in detail why more than 6 months is required to meet Mr Castleton's simple claim that, in the High Court proceedings in 2006:

a. Material evidence was withheld from disclosure, including, notably but not only (above – 'Reconciliation' and the requirement for it) the fundamentally important Fujitsu Known Error Log.

b. That evidence, had it been disclosed, would have materially affected the judgment of HH Judge Havery Q.C..

c. That evidence was consciously and dishonestly withheld from disclosure.

(8) Plainly, it is open to D1 to defend Mr Castleton's claim on grounds that, even were he to succeed in establishing that it deliberately and dishonestly withheld from disclosure material evidence from the Court at trial in 2006, any such claim is barred under the terms of the 2019 Settlement Deed because, objectively [it might hypothetically contended by D1] the parties in negotiating the Settlement Deed had within their contemplation, claims that the Post Office had or might have engaged in consciously and dishonestly withholding material evidence from the Court for the purpose of obtaining judgment and by unlawful means conspiring to injure the Group claimants. Evidence to support of any such contention, and defence, remains yet to be identified. It would entail the Post Office having to contend that Mr Castleton knew or is to be taken (objectively) to have known, what was in fact only revealed, for the first time, by Mrs Chambers in the course of her cross examination in the Inquiry. Mr Castleton submits that clear words would be required for the Settlement Deed of 2019 to extend to cover his claim.

(9) The issue of "sharp practice" only arises if on the true construction of the Settlement Deed it extends to cover Mr Castleton's claim. Were the Court to conclude, contrary to Mr Castleton's case, that it does so extend, the issue of "sharp practice" of a kind identified by Lord Nicholls in BCCI will entail detailed consideration of the circumstances and what was known to D1 at the time of agreeing the Settlement Deed. That will result in an examination of what the Post Office knew about Mr Jenkins and what it knew about flaws in Horizon and what it knew, but did not reveal to Mr Castleton, in 2006.

(10) As to the notification of other Group claimants of this claim, there can be no objection in principle to this being done, but, uniquely, the setting aside of the 2019 Settlement Agreement, were it to be held to be binding, if set aside for having been obtained by fraudulent misrepresentation, that would have no material effect/bearing on any Group claimant, because, as Sir Wyn Williams has observed, both the government and the Post Office have repeatedly stated that it is the intention of both the compensation schemes that all victims of the Post Office should be fairly compensated as to the full extent of their loss. The limited Settlement Sum under the Settlement Deed is therefore no longer of any relevance; any credit that would be required for rescission if restitution was demanded by the Post Office/given would be restored/made up by the compensatory payment. Given that the government owns the Post Office and is paying the compensation, there would be a certain arid sterility in such an arrangement.

(11) The Post Office and Fujitsu have set the issues of a preliminary issue/split trial running, they should bear the costs of Mr Castleton having had to respond to them.

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20th January 2026

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