

# **An introduction to the Judgments of the Common Issues and the Horizon Issues trials**

This document merely touches on the findings of the Common Issues and Horizon Trials which were brought against Post Office by a group of mainly ex Subpostmasters. In most instances the document contains the actual wording from the Judgments, although for brevity, some summaries of other of the findings of the Court have been used.

The Common Issues Judgment contains 1122 paragraphs; Horizon Issues 1030 plus a Technical Appendix of a further 452 paragraphs. However, this introduction offers the reader some insight into what the Court found to be the real truth about Post Office's Horizon system which ruined the lives of hundreds of Subpostmasters and their families.

## **A brief history, in timeline;**

Circa **2000-2002** - Horizon system rolled out to all post offices. Extracts from a Post Office press release at that time stated:-

- One of the biggest IT projects ever implemented in Europe and the largest non-military ISDN network in Europe.
- A total investment of £1 billion for the installation of touch-screen technology in some 18,000 Post Office Branches with, on average, Horizon terminals being installed every 5 minutes.
- The Horizon system has over 3.5 million lines of software code.
- 63,000 Post Office employees were trained to operate the Horizon system. The youngest being 17 the oldest 87.

From the outset of the introduction of the Horizon system into post offices, individual Subpostmasters were having problems, which over the years led to the termination of many Subpostmasters for numerous reasons with Post Office using its 114 page Subpostmaster contract to do so. It is this document, the Subpostmaster Contract 1994, which many of the Subpostmasters involved with the case against Post Office never saw until the time of their termination, that is central to the Common Issues trial.

**2009** - Despite individuals continuing to protest about the injustices that Post Office had wrought on them, it was not until 2009, after articles appeared in Computer Weekly and a S4C/BBC Wales documentary programme, that an action group was formed. The Justice For Subpostmaster Alliance (JFSA) began with 30 people, and following support from a firm of solicitors, Shoosmiths, grew to 90 shortly afterwards. At that time there were legal hurdles that could not be overcome to enable a legal action to be initiated. Yet, the information that had been compiled from the group was enough to engage the assistance of a number of MPs.

**2011** – Following the support from the MPs, Post Office agreed to the external forensic accountants Second Sight being engaged to investigate a number of the claims being made by those in the JFSA

group. This eventually turned into a scheme known as the Initial Complaint Review and Mediation Scheme that ran from January 2012 until March 2015 when Post Office terminated the Scheme without notice. During the Scheme, which 150 ex and serving Subpostmasters signed up for, a number of areas of concern were highlighted by the investigators and these were documented in what became known as the Second Sight Part Two report.

**2015** – Using the Second Sight Part Two report and a number of the individual case reports that had been produced as part of the failed Scheme, the JFSA secured the assistance of Freeths, a firm of solicitors, to take the issue forward in order to try to secure a Group Litigation legal action against Post Office.

**2016** – An application for a Group Litigation Order (GLO) was submitted to the Queen’s Bench Division of the High Court.

**2017** – Following a hearing in January 2017 a GLO was agreed and ordered; subsequently 555 ex and serving Subpostmasters names were attached to that order.

**2017** – A four week Common Issues trial was held during November in the High Court under HH Mr Justice Fraser. The Common Issues mainly being the terms of the Post Office contracts with Subpostmasters.

**2018** – March, Judgment of the Common Issues trial was handed down. – An outstanding victory for the Claimant Group as the Court had overturned much of the terms of the Post Office contracts.

**2019** – March, A further four week Horizon Issues trial began. Just two weeks into this trial, it was abruptly brought to a halt when Post Office submitted an application to recuse the Judge on ground of bias. Following a hearing in April, the application was refused. That having failed, Post Office made application to the Court of Appeal to recuse the Judge. Lord Justice Coulson of the Court of Appeal dismissed the application during May and the Horizon Issues trial recommenced in June, ending during the first week of July.

**2019** – June, Post Office makes an Application for permission to appeal the Common Issues Judgment to the Court of Appeal. The Application was heard by Lord Justice Coulson in early November, and was refused on all of its 26 grounds before the end of that month.

**2019** – Under the terms of the GLO, a window for Alternative Dispute Resolution (ADR) was included. This began during November 2019 at which time, and only due to the economic restrictions of continuing legal action, a Settlement Agreement was entered into with Post Office, and further legal action was halted. Post Office had in reality outspent the Claimant Group in Court in order to stop it continuing its legal action.

**2019** – December, the Judgment of the Horizon Issues Trial was handed down. The findings by the Court determined that bugs, errors and defects did in fact exist in the Horizon system and on numerous occasions had caused financial discrepancies in Subpostmasters branch accounts; it also found that there had been third party access to a Subpostmasters accounts – all these issues had been vigorously denied by Post Office ever since the Horizon system had been introduced.

## The Findings of the Court - The Common Issues Judgment

(Key: [ ] – contains Judgment paragraph number, if preceded by C - Common Issues Judgment, H - Horizon Issues Judgment, T - Technical Appendix of H)

The Court found that a “*relational contract*” exists between Post Office and Subpostmasters, and as a result, the Post Office was now bound by obligations to Subpostmasters which it had failed to recognise in the past;

*“In all the circumstances therefore, and in the context of the commercial relationship between each SPM [Subpostmaster] and the Post Office, I find that these were relational contracts. I find that this means the contracts included an implied obligation of good faith. This means that both the parties must refrain from conduct which in the relevant context would be regarded as commercially unacceptable by reasonable and honest people. Transparency, co-operation, and trust and confidence are, in my judgment, implicit within the implied obligation of good faith.” [C 738]*

Judge Fraser found there was a “*culture of secrecy and excessive confidentiality generally in the Post Office, but particularly around the Horizon.*” [C 36]

The Judge’s criticisms of the Post Office included that it had engaged in “*oppressive behaviour*” when demanding sums of money that could not be accounted for by Subpostmasters, demanding sums in a way that suggested there was no option other than to pay them;

*“There can be no excuse, in my judgment, for an entity such as the Post Office to mis-state, in such clearly expressed terms, in letters that threaten legal action, the extent of the contractual obligation upon a subpostmaster for losses. The only reason for doing so, in my judgment, must have been to lead the recipients to believe that they had absolutely no option but to pay the sums demanded. It is oppressive behaviour.” [C 222]*

The Court found that Post Office cannot automatically treat shortfalls as a debt, and that the Post Office cannot treat any branch discrepancy as a debt if the Subpostmaster has contacted Post Office and logged the fact that they are having problems;

*“The issue of a Subpostmaster as an agent deliberately rendering a false account to his or her principal, in relation to any such Branch Trading Statement for such a period therefore simply does not, in my judgment, arise.” [C 821]*

*“This principle applies where an agent “deliberately renders a false account to his or her principal”. However, I do not consider that it can be said to apply where the account in question is a Branch Trading Statement, for a branch trading period when the SPM in question has notified the Helpline of a dispute. Such a SPM would not be “deliberately rendering” a false account. They would be rendering an account in the form in which they were contractually required to render it, due to the express terms in their contracts.” [C 828]*

*“For the avoidance of doubt, I do not consider that the Post Office can hold the SPMs to their Branch Trading Statements as though they were settled accounts in the way the Post Office contends.” [C 842]*

*“I find that the Post Office is not therefore entitled to rely upon the Branch Trading Statements, for any period in respect of which a SPM notified a dispute to the Helpline, as a settled account between agent and principal. Nor do SPMs bear the burden of demonstrating that the Branch Trading Statement is wrong for such a period.” [C 1116]*

The Court found that a Subpostmaster should be compensated for the loss of their office. (This is still an outstanding issue that did, as such, not form part of the recent Settlement Agreement);

*“In 2011, and after Horizon had been used for over ten years, a different form of contract for SPMs was introduced by the Post Office, called the NTC [Network Transformation Contract]. In that contract the extent of contractual liability of a SPM was sought to be increased by the Post Office very substantially, and to entitle the Post Office to recover losses from SPMs regardless of any fault on their part. I find that this clause fails the test of reasonableness in the Unfair Contract Terms Act 1977, which governs these contracts, and the Post Office is not entitled to rely upon it. Other clauses dealing with how the Post Office seeks to remunerate (or more accurately, seeks to avoid remunerating) suspended SPMs, even when reinstated, and avoid compensation for loss of office, also fail the reasonableness test.” [C 1119]*

One of the key clauses of the Subpostmasters Contract 1994 heavily relied on by Post Office is Section 12, Clause 12: *“The Subpostmaster is responsible for losses caused through his own negligence, carelessness or error, and also for all losses of all kinds caused by his Assistants. Deficiencies due to such losses must be made good without delay”*. Yet the Judge found;

*“In my judgment, the meaning of Section 12 Clause 12, so far as the responsibility of the SPM is concerned, is clear on the natural meaning of the words, and it is the Claimant’s construction that I consider to be the correct one. It is not for a SPM to demonstrate that there was no negligence, carelessness or error on his or her part. It is for the Post Office to demonstrate that there is. It is only if the Post Office can demonstrate that there is a loss which falls within the scope of the clause, that it is entitled to rely upon the clause to establish liability on the part of the SPM for that loss. This means that the wording of the clause imposes a contractual burden upon the Post Office to do that.” [C 653]*

*“I consider there is a contractual burden upon the Post Office to demonstrate that the loss for which it seeks to hold a SPM responsible was caused by the negligence, carelessness or error of the SPM.” [C 654]*

The Court found that Post Office is under an obligation to investigate unexplained shortfalls properly and has a duty to prove such shortfall;

*“I consider that the correct meaning of Section 12 Clause 12 is that the SPM is responsible for losses that are caused by his own negligence, careless or error, and that it is for the Post Office to prove that any particular loss falls within that category. I consider that this is clear on the natural meaning of the words [C 646]*

Many parts of the Subpostmaster Contract 1994 [SPMC] and its successor, the Network Transformation Contract [NTC] were ruled to be so onerous, unusual or unfair that they were and are unenforceable. For example;

- The clauses in the NTC contract which hold the Subpostmaster strictly liable for any negative discrepancies in their branch accounts for any reason (save a robbery), or any negative discrepancy discovered in the Subpostmasters absence.
- The clause in both contracts which allows the Post Office to suspend Subpostmasters without pay without giving good reason.
- The clause which allows the Post Office to "terminate" (i.e. sack) a Subpostmaster for any breach of contract, no matter how small.
- The clause in the SPMC which allows the Post Office to terminate a contract with three months notice, without giving a reason.
- Clauses in both contracts which do not entitle a Subpostmaster to any compensation in the event they are terminated.

#### **Post Office Senior Management approach to Horizon problems**

*"These internal Post Office entries make it clear that, notwithstanding the tenor of the Post Office evidence before me, behind the scenes there were at least a number of people within the Post Office who realised that there were difficulties with the Horizon system." [C 543]*

*"The problem with the Post Office witnesses generally is they have become so entrenched over the years, that they appear absolutely convinced that there is simply nothing wrong with the Horizon system at all, and the explanation for all of the many problems experienced by the different Claimants is either the dishonesty or wholesale incompetence of the SPMs. This entrenchment is particularly telling in the Post Office witnesses who occupy the more senior posts. When even a Post Office auditor, Mr Longbottom, attempts to go beneath this veneer, properly to investigate an unexplained shortfall, and finds that he is not provided with the documents he considers necessary, very considerable doubts arise about the approach adopted at the Post Office to its overall control of information." [C 545]*

*"Mrs Van den Bogerd [Business Development Director - most senior Post Office witness] is, in my judgment, a particularly stark example of how a witness had to force their evidence of fact to fit with a pre-ordained thesis. She remains, apparently genuinely, of the view that none of the different claims by the 589 Claimants have common issues or themes between them, and every single case is simply factually different, with no connection between them. This is despite the approval of a Group Litigation Order by the President of the Queen's Bench Division." [C 546]*

*"These Post Office factual witnesses appear to maintain this view, notwithstanding the weight of material put to them, and in the face of internal Post Office documents – obtained in disclosure for this litigation - that suggest the view may not be correct. Whether that view is in law and fact justified can only finally be resolved after subsequent trials. But they remain steadfastly committed, in their collective psyche, to the Post Office party view, despite such steps having been taken as amendments to the Camelot software using the Ping fix, and the contents of some of their own internal documents that suggest to the contrary. They give me the impression that they simply cannot allow themselves to consider the possibility that the*

*Post Office may be wrong, as the consequences of doing so are too significant to contemplate.” [C 547]*

**Most Important** - In the Judgment to the Common Issues trial, in brief, the Court found *“that the contractual relationship between the Post Office and the SPMs was a relational contract. This imposes an implied duty of good faith on both parties.”* As such, this meant that there were a number of *“implied terms” “the first two for reasons of business efficacy and the remainder as incidents of my finding that the terms are relational ones.”* These include;

- *“To provide adequate training and support (particularly if and when the Defendant imposed new working practices or systems or required the provision of new services)”*
- *“To provide a system which was reasonably fit for purpose, including any or adequate error repellency”*
- *“Properly and accurately to effect, record, maintain and keep records of all transactions effected using Horizon”*
- *“Properly and accurately to produce all relevant records and/or to explain all relevant transactions and/or any alleged or apparent shortfalls attributed to Claimants”*
- *“To co-operate in seeking to identify the possible or likely causes of any apparent or alleged shortfalls and/or whether or not there was indeed any shortfall at all”*
- *“To seek to identify such causes itself, in any event”*
- *“To disclose possible causes of apparent or alleged shortfalls (and the cause thereof) to Claimants candidly, fully and frankly”*
- *“To make reasonable enquiry, undertake reasonable analysis and even-handed investigation, and give fair consideration to the facts and information available as to the possible causes of the appearance of alleged or apparent shortfalls (and the cause thereof)”*
- *“To communicate, alternatively, not to conceal known problems, bugs or errors in or generated by Horizon that might have financial (and other resulting) implications for Claimants”*
- *“To communicate, alternatively, not to conceal the extent to which other Subpostmasters were experiencing relating to Horizon and the generation of discrepancies and alleged shortfalls”*
- *“Not to conceal from Claimants the Defendant's ability to alter remotely data or transactions upon which the calculation of the branch accounts (and any discrepancy, or alleged shortfalls) depended”*
- *“Properly, fully and fairly to investigate any alleged or apparent shortfalls”*
- *“Not to seek recovery from Claimants unless and until: (i) the Defendant had complied with its duties above (or some of them); (ii) the Defendant has established that the alleged shortfall represented a genuine loss to the Defendant; and (iii) the Defendant had carried out a reasonable and fair investigation as to the cause and reason for the alleged shortfall and whether it was properly attributed to the Claimant under the terms of the Subpostmaster contract (construed as aforesaid)” [C 1122 & C 45]*

### **The National Federation of Subpostmasters - the so-called representative of the Subpostmaster**

The Judge found;

*“The NFSP is not an organisation independent of the Post Office, in the sense that the word “independent” is usually understood in the English language. It is not only dependent upon the Post Office for its funding, but that funding is subject to stringent and detailed conditions that enable the Post Office to restrict the activities of the NFSP. The Post Office effectively*

*controls the NFSP. The agreement also enables the Post Office to seek repayment of funds already paid to the NFSP. The NFSP is a company limited by guarantee and there was no evidence that it had any other source of funding. It is not likely to be able to repay any funds "clawed back" by the Post Office and therefore its very existence depends upon it not giving the Post Office grounds to challenge its activities. There is also evidence before the court that the NFSP has, in the past, put its own interests and the funding of its future above the interests of its members, in the e mail to which I have referred. In those circumstances, the fact that the NFSP does not support the Claimants in this litigation is entirely to be expected."* [C 596]

#### **Judge clarified Government Ownership of Post Office**

*"I would also add that Post Office Ltd, the corporate Defendant in these proceedings, is ultimately owned by the Government, admittedly through a corporate chain and a Government Department. It therefore either is, or shares a large number of features with, a public body. That is not to say that its decisions are subject (for example) to judicial review (and that point was not argued at all, so I am not expressing any view) but it cannot be seen as entirely private and wholly commercial."* [C 730]

## **The Findings of the Court - The Horizon Issues Judgment**

#### **Horizon system could cause shortfalls in a Subpostmaster's accounts**

*"It was possible for bugs, errors or defects of the nature alleged by the claimants 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 as alleged by the claimants."*[H 968]

*"Further, all the evidence in the Horizon Issues trial shows not only was there the potential for this to occur, but it actually has happened, and on numerous occasions. This applies both to Legacy Horizon and also Horizon Online."* [H 969]

#### **Horizon not remotely robust**

*"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. [T 444]*

*"In summary terms only, Legacy Horizon was not remotely robust. The number, extent and type of impact of the numerous bugs, errors and defects that I have found in Legacy Horizon makes this clear."* [H 975]

### **Fujitsu could access a Subpostmaster's accounts without his knowledge**

*"I consider this to be extremely important evidence, both in resolving the Horizon Issues, and indeed in the whole group litigation. Its import is obvious. It means that Fujitsu could remotely insert a transaction into the accounts of a branch using a counter number which was the same as a counter number actually in use by the SPM (or an assistant). This would appear to the SPM from the records that they could see (and anyone else looking at those records) as though the inserted transaction had been performed in the branch itself. This information was only disclosed by Fujitsu (and therefore the Post Office) in this group litigation in January and February 2019. Even Mr Godeseth, [Fujitsu Chief Architect, Post Office account] a very senior person in Fujitsu so far as Horizon is concerned, said that he did not know this before." [H 321]*

### **Post Office's expert was not independent or impartial**

*"This can therefore clearly be seen as his [Dr Worden - Post Office IT Expert Witness] accepting the Post Office/Fujitsu evidence as true, particularly that of Mr Jenkins (not even a witness, and in respect of whom no witness statement was served); and also failing to base his opinions upon, or take account of, any of the individual evidence of claimant SPMs served by the claimants" [H 836]*

### **Gaps in the data**

*"The reference to "gold standard" was the expression that had been used by Dr Worden in his report to describe the quality of the audit data that was held by Fujitsu. It should be a very great concern to anyone tasked with extracting audit data, should that data prove to have gaps and duplicates in it. This is because gaps and duplicates in the data affects the accuracy of that data. I consider that such a cavalier approach to whether audit data has gaps and duplicates, as evidenced by Mr Dunks' [IT Security Analyst at Fujitsu] saying that such things were not part of his concern, to be entirely contradictory to a statement verifying the accuracy of such audit data." [H 293]*

### **Followed the party line**

*"Mr Dunks expressly sought to mislead me by stating that there was no "Fujitsu party line" when it came to the contents of drafting witness statements about audit records for legal proceedings. There plainly is; it was used in the Fujitsu statements in 2010 and it was used by him in his statement for the Horizon Issues trial." [H 294]*

### **Misleading evidence**

*"I found Mr Dunks very unsatisfactory as a witness. He was both plainly aware of the Fujitsu "party line", or corporate position, regarding the words asserting accuracy of audit data, and he was very anxious to keep to it, whilst initially denying that there was one. He sought to mislead me about both his paragraph 8 wording, and the way he had compiled his list of controls. The degree to which the evidence of fact affects my conclusions on the expert evidence will be dealt with in Part L, Overall Conclusions". [H 296]*

### **Fujitsu did not keep records**

*"However, when the claimants had sought to obtain reports that would be expected to exist, which included or demonstrated the reporting against these bullet points which Fujitsu's own*



document stated were required, and which were supposed to be prepared every month, Fujitsu stated (through the Post Office's solicitors) that "Fujitsu believes that it does not record problems in such a way that would allow this to be determined without retrospectively carrying out detailed analyses" and that it would require "a disproportionate effort and cost" to provide these. Mr Godeseth also gave written evidence that the reporting system identified in Fujitsu's own document had not been implemented and that the records did not even exist." [H 325]

#### **Truth only because of litigation**

"In my judgment, however, there are sufficient entries in the contemporaneous documents to demonstrate not only that Fujitsu has been less than forthcoming in identifying the problems that have been experienced over the years, but rather the opposite. The majority of problems and defects which counsel put to Mr Godeseth, and which were effectively admitted by him, simply would not have seen the light of day without this group litigation." [H 459]

#### **Fujitsu failures**

"Fujitsu do not, on the face of these documents shown to Mr Parker [Fujitsu, Head of Post Office Application Support], appear to me to have properly and fully investigated these myriad problems, nor did Fujitsu categorise such incidents correctly. They also seem to have moved away, in their investigations, from concluding that there were any issues with the software wherever it was possible for them to do so, regardless of evidence to the contrary, an approach that has been carried into the Fujitsu evidence for the Horizon Issues trial." [H 494]

#### **Others could access Subpostmasters accounts**

"I find as a fact that Fujitsu do have the ability to insert transactions into branch accounts on a remote basis (in other words, remote access as the Post Office defined it in opening submissions existed) and this could be done without these being visible to the SPM in that branch in question, either at the time or subsequently. It also follows that this could be done without an SPM in this position having knowledge of this, and therefore without consenting to it. Someone who does not know something is happening cannot give permission for it to happen. Mr Godeseth also gave important evidence about how such transactions would appear. It is not possible to say, in blanket terms, that permission was not sought and/or given in some cases. Indeed, Dr Worden accepted that the APPSUP permissions meant that – as he put it – Fujitsu personnel could do "pretty much anything." [H 540]

#### **Fujitsu statement omitted important facts**

"The truth concerning remote access has now emerged in 2019, in group litigation that started in 2017. I find it notable that the truth did not emerge in the first Fujitsu witness statements that were originally served for the Horizon Issues trial. Such statements stand as the evidence in chief of witnesses of fact. They are supposed to be accurate. Minor corrections are not unusual and indeed are almost expected, as a trial approaches, as witnesses either research further or remember (when preparing for trial) other minor details. This topic, however, did not undergo that type of correction, and is a subject far more central and important than that. The truth only finally emerged in later statements, which were required to correct what I find were directly inaccurate statements in the first witness

*statements of Mr Godeseth and Mr Parker. There has been no adequate explanation for the contents of those first statements, which not only omitted this important fact, but contained evidence directly to the contrary. Those first witness statements were misleading. The statement in the Defence was misleading too.” [H 545]*

#### **Contractual right**

*“In my judgment the Post Office clearly has, and had, a contractual right to be provided with the Known Error Log [KEL] by Fujitsu, given these are civil proceedings for (inter alia) damages sought by the claimants for breach of contract, and also fraud being alleged against the claimants by the Post Office by way of counterclaim. I do not accept that the KEL is a type of document covered by the authority cited by the Post Office at paragraph 11 of its submissions on this point, namely working papers prepared by professionals for their own assistance in carrying out expert work for their clients;” [H 604]*

#### **Post Office didn’t keep error log**

*“I consider it verging on entirely unarguable, given the express terms of the Fujitsu contract which is now available to the court, that the Known Error Log was not in the control of the Post Office.” [H 605]*

#### **Fujitsu inaccurate**

*“Similarly unsustainable is the submission that was made to the court in 2017 that its contents were not relevant to the Horizon Issues, and that it did not contain references to bugs and errors having an impact on branch accounts. On that latter point, the Post Office’s submissions were based upon what the Post Office had been told by Fujitsu. Fujitsu were, again, being clearly inaccurate about what they had told the Post Office was actually contained in the Known Error Log” [H 609]*

#### **Post Office obstructive attitude to disclosure**

*“I have commented upon the approach of the Post Office to disclosure in this litigation before, and not in favourable terms. At the first CMC [Case Management Conference] in October 2017, I said in a short ruling on disclosure that the Post Office had been “obstructive” in its pre-action behaviour in this respect, and that its attitude to disclosure up to that point had been somewhat less than ideal. In Judgment (No.3) I made some further criticisms, which it is not necessary to repeat. It is regrettable that the Post Office’s approach to disclosure, admittedly this time in conjunction with Fujitsu, has continued in different respects to fall short of what is required. However, it does seem to be improving and it is to be hoped that such improvement will continue. Particularly in litigation such as this, with enormous distrust and suspicion on both sides, it is simply counter-productive to have that atmosphere added to by an unnecessarily combative stance on disclosure” [H 623]*

#### **Serious deficiency controlling Horizon**

*“What this amounts to, in my judgment, is a serious deficiency both in the required level of controls in Horizon, in the recording of what privileged users were actually doing (other than that they were simply logged on) and also a corresponding absence of recording and auditing of those activities.” [H 694]*

### **Confusing, contradictory management information**

*“The evidence in both this trial, and the Common Issues trial, where the Post Office cross-examined a number of SPMs on events in their branch accounts by using a variety of management information, other than the audit data, makes clear to me just how important it is to use the audit data, rather than other sources including management information. The management information is confusing, contradictory, has been shown to be wrong and requires numerous assumptions or a “take it from me” type of approach on the part of a questioner. It is rarely agreed what that management data shows. The audit data, by its very nature, will be far superior and the best evidence available of what has occurred on Horizon. It should be consulted in circumstances where there is a dispute between the Post Office and a SPM” [H 911/5]*

### **Purpose of audit data**

*“However, where there is a dispute between the Post Office and a SPM about branch accounts, with the arguments on both sides about what or who is to blame, the audit data should be consulted. That is one of the purposes of having it in the first place. I can think of no sensible reason not to consult the audit data in such a scenario.” [H 911/3]*

### **Failure to consult audit data**

*“Doing so is not equivalent to “cracking open” a “sealed store”. The audit store is sealed in the sense that data, once in the store, should not be capable of being changed, or written to again. However, reading that data is not “cracking open” the store. It is consulting or reading the audit data, one of the main (if not the only) purposes of having such audit data in the first place” [H 911/4]*

### **Common sense missing**

*“Finally on this point, I am surprised that the desirability - if not the actual and basic need - to consult the audit data is a controversial point. In my judgment it is not only good practice to consult the audit data, given the very purpose of audit data within a complex IT system such as this one, but it is also obvious common sense. There is little point in having audit data if it is not consulted in the circumstances that I have identified above. I appreciate that the audit data itself will not be immediately comprehensible to some SPMs. There may also be charges raised by Fujitsu in respect of such requests. However, neither of these are reasons for the failure to consult it” [H 924]*

### **Institutional obstinacy**

*“The approach by the Post Office to the evidence of someone such as Mr Latif [Claimant] demonstrates a simple institutional obstinacy or refusal to consider any possible alternatives to their view of Horizon, which was maintained regardless of the weight of factual evidence to the contrary. That approach by the Post Office was continued, even though now there is also considerable expert evidence to the contrary as well (and much of it agreed expert evidence on the existence of numerous bugs)” [H 928]*

### **Post Office = Flat Earth Society**

*“This approach by the Post Office has amounted, in reality, to bare assertions and denials that ignore what has actually occurred, at least so far as the witnesses called before me in*

*the Horizon Issues trial are concerned. It amounts to the 21st century equivalent of maintaining that the earth is flat.” [H 929]*

#### **Lack of transparency and accuracy**

*“I consider that the evidence of the Fujitsu witnesses in particular, both former and current, has been of considerable assistance to me in resolving the Horizon Issues. Mr Roll [ex Fujitsu employee], Mr Godeseth, and even in his own way Mr Parker (though not in the way that Mr Parker himself would have intended) have all provided clear evidence of the problems with the Horizon system, the bugs, errors and defects within both Legacy Horizon and Horizon Online in its HNG-X form, the way that these problems were (or were not) dealt with, and the way that Fujitsu had powers which, until shortly before the trial started, Fujitsu sought to keep from the court, and may not even have fully disclosed to the Post Office. Because the extent of these powers was kept secret in this way, the Post Office finds itself now having made misleading public statements previously. If one looks back to an earlier case management hearing and reconsiders how Fujitsu, through the Post Office, sought to portray the contents and lack of importance and relevance of PEAKs and KELs [Error Records], then it can be seen that there has been a pattern of considerable defensiveness over the Horizon System. There has certainly been a lack of transparency, and a lack of accuracy in description.” [H 934]*

#### **Horizon not robust**

*“I consider, as explained in the Technical Appendix, that Legacy Horizon was not robust, and that although Horizon Online in its HNG-X form was better than Legacy Horizon (not least, I consider, because Riposte was no longer part of Horizon) its robustness was questionable, and did not justify the confidence placed in it by the Post Office in terms of its accuracy.” [H 936]*

#### **Disparagement of claimants**

*“The Post Office’s approach to 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.” [H 938]*

#### **Numerous PEAKs and KELs**

*“Here, [the Horizon trial] the categories of documents that are most illuminating in terms of specific incidents with Horizon over the years are the very numerous PEAKs and KELs. These emanate from, and are created within, Fujitsu. They are, in my judgment, a very good means of getting at the truth in this case. They show what was going on and the type of unexplained problems that numerous SPMs were experiencing in practice over the years, as they were reported to the SSC. They contain statements made when Fujitsu personnel’s “guard is down and their true thoughts are plain to see”. Some of them also record that Romec engineers, or the Post Office’s own auditors, have seen what has occurred and ruled out user error. Notwithstanding this, Fujitsu attribute user error to what has occurred.” [H 940]*

### **Horizon not fit for purpose**

*“The IT Strategy, which is referred to in this Update Decision Paper, and outlined that “the IT [Horizon] was not fit for purpose” and which was approved in July 2016 by the Post Office Board is, in my judgment, entirely consistent with my conclusions on the evidence. It is not, however, consistent with the Post Office’s response to the claimants’ pre-action letter, or the Defence in the group litigation, or the evidence adduced by the Post Office in the Horizon Issues trial. The Post Office’s solicitors’ response to the pre-action letter is dated 28 July 2016, very lengthy, and states that “the investigations to date have consistently pointed towards human error or dishonest conduct in branches as the most likely cause of shortfalls.” [H 954]*

### **Post Office did not investigate**

*“Further, certain matters that have emerged in the Horizon Issues trial – such as discussions within Fujitsu itself as to whether the Post Office should be told certain detrimental information about the Horizon system, and the Post Office’s own decision at the highest level not to investigate certain matters as recently as 2016 – are of great concern. The Post Office has gone to great lengths over the years, and spent a great deal of time and a huge amount of public money, in defending the performance of Horizon” [H 960]*

**Fujitsu** - At the time of handing down the Judgment of the Horizon Issue trial on 16th December 2019, HH Judge Fraser made the following comment;

*“Based on the knowledge that I have gained both from conducting the trial and writing the Horizon Issues judgment, I have very grave concerns regarding the voracity of evidence given by Fujitsu employees to other courts in previous proceedings about the known existence of bugs, errors and defects in the Horizon system. These previous proceedings include the High Court in at least one civil case brought by the Post Office against a subpostmaster and the Crown Court in a greater number of criminal cases, also brought by the Post Office against sub-postmasters and sub-postmistresses.” “After very careful consideration, I have therefore decided, in the interests of justice, to send the papers in the case to the Director of Public Prosecutions, Mr Max Hill QC, so he may consider whether the matter to which I have referred should be the subject of any prosecution.”*

### **Years of ‘assurances’**

The Claimant Group has achieved a great deal (except what it is financially owed) from a start where it had nothing, other than years of denial after denial from Post Office that there was anything wrong with its Horizon system, as was so often quoted publicly in statement. Just a few examples;

- Ed Davey, Minister for Postal Affairs, December 2010 - *“However POL continues to express full confidence in the integrity and robustness of the Horizon system and also categorically states that there is no remote access to the system or to individual branch terminals which would allow accounting records to be manipulated in any way”*
- Alan Cook, MD Post Office, October 2009 –*“The Horizon system was fully tested at the time of the nationwide implementation and all new software releases are also subject to rigorous testing prior to going live in order to assure the accuracy of the accounting processes. Additionally, our ongoing monitoring and control processes ensure that any performance issues in the ‘live’ operation are quickly identified and resolved at no detriment to individual subpostmasters”.....“I am satisfied that there is no evidence to doubt the integrity*

*of the Horizon system and that it is robust and fit for purpose” ..... “The system has proved to be very robust since its introduction some ten years ago.”*

- Paula Vennells, MD Post Office, - *“The Horizon computer system has been a major factor enabling the efficient operation of the Post Office network to the benefit of customers, subpostmasters and staff, it is a robust system which operates with full integrity and is fully fit for purpose”*

### **Claimants had to pay for failure of Government**

The Claimant Group, at currently great cost to itself, has proved beyond any shadow of doubt that Post Office has been allowed by successive governments to, as the Court has now shown, wrongly inflict numerous injustices on Subpostmasters whilst governments ignored cries for help.

Yet a letter sent to the Minister of Postal Affairs on behalf of the Claimant Group by the JFSA in January 2020 pointed out that Ministers have always had a statutory duty to proactively manage Post Office, as it would seem;

- Post Office Limited (POL) is a Public Corporation, identified by the National Audit Office as an Arm’s Length Body (ALB) of the Department of Business, Energy and Industrial Strategy (BEIS).
- HM Treasury owns United Kingdom Government Investments (UKGI). The Secretary of State for BEIS owns POL’s shares and the UKGI is charged with managing POL on behalf of BEIS.
- The Permanent Secretary for BEIS also acts as its Accounting Officer (AO).
- The Secretary of State for BEIS is ultimately accountable to Parliament for the overall effectiveness and efficiency of POL as an ALB and is charged to exercise meaningful and commensurate oversight of that ALB’s strategy, financial management, performance and risk management, but may delegate such duties to the AO.
- BEIS is expected to play an active role in the governance, financial management, risk management and performance monitoring of POL and is responsible for managing the relationship with POL on behalf of the Minister, as Parliament has a duty to hold the Minister accountable for all the policies, decisions and actions of POL.

It is because of the findings of the Court and the statutory duty of Government that the JFSA is continuing to campaign to initially recover the costs of providing Government with this evidence and to demand a Judge led Public Inquiry into this whole matter.

As you are aware, the financial terms of the Mediation Settlement Agreement were meant to be kept confidential despite Post Office contacting the media the day after the document had been signed, to inform them that it had agreed to pay £57.75m to the Claimant Group. What Post Office failed to mention at that time, which the Claimant Group are now aware of, is the bulk of that money went to pay for the funding to finance the case, the legal fees and associated insurances. However, there have been reports in the media that after costs the Group will only be left with £10m, but at present this can neither be confirmed nor denied. And now, the Claimant Group has to recover those costs.

The very readable full Judgments can be downloaded from [www.jfsa.org.uk/documentation.html](http://www.jfsa.org.uk/documentation.html)