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CONFIDENTIAL

***Reference to the Director of Public Prosecutions for his consideration
Evidence of employees of Fujitsu Ltd in court proceedings
Bates and others v Post Office Ltd
Case No: HQ16X01238, HQ17X02637 and HQ17X04248***

14 January 2020

Dear Mr Hill

I write in relation to what I consider to be a serious matter, which I believe merits your consideration. On the basis of information that has come to my attention as a result of the Post Office group litigation (further explained below) I consider important evidence given both to the Crown Court and the High Court on previous occasions in other cases was not true, and was known not to be the truth, the whole truth and nothing but the truth, at the time it was given.

Introduction

I have been, since 2017, the Managing Judge in High Court group litigation which has been proceeding in the Queen's Bench Division. These proceedings commenced in 2016 and were brought by a group of approximately 580 sub-postmasters and sub-postmistresses ("SPMs") against the Post Office in relation to the Horizon computer system. Horizon was introduced by the Post Office in 2000 as a computerised point of sale and accounting system, to be used by SPMs in the operation of their branch Post Offices. Horizon was developed and operated by Fujitsu Ltd on behalf of the Post Office. It became Horizon Online in 2010, but the basic functionality of the system was the same. In the litigation, Horizon between 2000 and 2010 was called Legacy Horizon, and from 2010 onwards was called Horizon Online.

From about 2001 onwards, a small number of SPMs reported discrepancies and shortfalls in their branch accounts which they considered were caused by faults in Horizon. The Post Office asserted that the shortfalls were caused by dishonesty – and sometimes carelessness – on the part of the individual SPMs. Many SPMs had their engagements with the Post Office suspended and terminated. Some were convicted of criminal offences, and others pleaded guilty to offences, such as fraud, false accounting and theft. All were pursued by the Post Office for the shortfalls in question, and the total amount of such losses by the claimants in the group litigation was approximately £18 million.

Throughout the period (and indeed until about 2019) the Post Office asserted that there was nothing wrong with the Horizon system. Prior to the group litigation, expert evidence was given to the Crown Court by Fujitsu witnesses, and also to the High Court in at least one case, that there were no widespread or any bugs, errors or defects in Horizon. The convictions of a number of SPMs are currently before the Criminal Cases Review Commission pending consideration of my judgments.

I conducted the group litigation as Managing Judge and have handed down six judgments. These are all called Alan Bates and others v Post Office Ltd. The bailii references for the relevant ones are given below. The most important ones are (No.3) Common Issues and (No.6) Horizon Issues. The Common Issues judgment deals with the contractual relationship between the parties, although in doing so it considers in detail the experiences of six different claimants. The Horizon Issues judgment deals with the technical computer issues, and makes findings in respect of the existence of approximately 30 different bugs, errors and defects within Horizon during the period 2000 to 2018.

Bates & Ors v Post Office Ltd (No.2) [2018] EWHC 2698 (QB) (17 October 2018)
Bates & Ors v Post Office Ltd (No.3) Common Issues [2019] EWHC 606 (QB) (15 March 2019)
Bates & Ors v Post Office Ltd (No 4) [2019] EWHC 871 (QB) (09 April 2019)
Bates & Ors v Post Office Ltd (No.5) [2019] EWHC 1373 (QB) (07 June 2019)
Bates & Ors v the Post Office Ltd (No 6) Horizon Issues [2019] EWHC 3408 (QB) (16 December 2019)

The draft of judgment (No.6) on the Horizon Issues was distributed by me to the parties on 28 November 2019. The group litigation was settled by the Post Office on 12 December 2019 by a payment of £58.5 million to the claimants. Judgment No.6 was handed down by me on 16 December 2019 and I made a Tomlin Order on the same occasion imposing a stay on the group litigation. I also announced that I would be referring this matter to the Director of Public Prosecutions.

The reason for the reference to you is because the documents available on disclosure and deployed in the Horizon Issues trial clearly show that Fujitsu knew about the existence of bugs, errors and defects in Horizon from a very early stage in the life of the system. Appendix 2 to Judgment (No.6) shows that the earliest bugs occurred and were known about in 1999, and these continued throughout the period every year to 2018. The total number of different bugs, errors and defects that I found to have existed over the period 2000 to 2018 is 28. The two Fujitsu personnel in respect of which I write this letter were centrally involved within Fujitsu in the Horizon system, and also in giving evidence to the court (both the High Court and the Crown Court) on previous occasions in other cases.

Documents and bugs

The most relevant types of documents used within Fujitsu for reporting, investigation and analysis of bugs, errors and defects are called PEAKs and KELs. KEL stands for Known Error Logs. They are documents at a higher level than PEAKs. If a SPM phoned the Helpline and was directed to a department within Fujitsu called the SSC (run by software specialists whose job was to investigate bugs, errors and defects) then an operator in the SSC would create a PEAK. Such a document would then record different entries over a number of days and weeks, whilst the incident was investigated and eventually resolved in some way. The

narrative in different entries would record the operator's views. Therefore a number of different PEAKs may refer to the same KEL.

There are numerous contemporaneous entries by different Fujitsu personnel during the whole life of Horizon (both Legacy, and Online) discussing the bugs, errors and defects. Both PEAKs and KELs are documents that are highly relevant to the existence of bugs, errors and defects in Horizon over the years. Fujitsu sought to keep the relevance of these different types of documents from both the claimants and the court in the group litigation, although this attempt was unsuccessful. The Known Error Log or KELs was said at an interlocutory hearing before me in October 2017 not to be relevant to the existence of bugs, errors and defects in Horizon, and the existence of PEAKs at all were only discovered by the claimants' IT expert when he inspected the KELs in late 2017. I do not believe that either PEAKs or KELs were disclosed in any prior litigation or Crown Court cases other than the group litigation.

The group litigation used an electronic trial bundle provided by a service called Opus 2. This has the Horizon Issues workspace, which is currently being maintained by the parties until at least the end of January 2020. There are nearly 2,000 evidential documents in the F folder in the Horizon Issues workspace. Due to the search function that is available, and the cross-linking within documents, you or a member of your staff would find it far more useful to consider the documents in this electronic workspace than by more traditional paper copies of documents. Where I give references below, eg F/1000/1, this is a reference to the document using the Opus 2 reference. I intend to request the parties to keep this electronic resource available for you and your department should you wish this. This resource should in any event be maintained until the Criminal Cases Review Commission has decided what to do in terms of existing convictions of SPMs, and (if referred by the CCRC) the Court of Appeal Criminal Division has dealt with any appeals.

Appendix 2 to Judgment (No.6) is a summary of the bugs (each of which were given a name by the parties at the Horizon Issues trial) and their dates of operation. Appendix 1 is a Technical Appendix to the judgment and deals with the detailed evidence in respect of each bug separately. It therefore summarises relevant PEAKs and KELs (together with dates) which show the contemporaneous knowledge within Fujitsu.

I provide with this letter a table that simply extracts references from Appendix 1 of Judgment No.6 that refer to documents in which Anne Chambers and Gareth Jenkins either make entries, or are referred to. If a KEL were produced, it would be given an identifier based on the name of the Fujitsu personnel who created it. KELs produced by Anne Chambers have the identifier "acha" within the title. The table with this letter also identifies such KELs.

The Horizon Issues trial before me did not consider the transcripts of evidence in previous proceedings (criminal or civil) but two cases were referred to, namely the criminal prosecution by the Post Office of Mrs Seema Misra in the Crown Court, and a civil case in the High Court called *Post Office Ltd v Castleton* [2007] EWHC 5 (QB). I am therefore aware of the involvement in those two trials of two particular Fujitsu employees. These are Mr Gareth Jenkins called for the prosecution in the trial of Mrs Misra; and Mrs Anne Chambers called by the Post Office in the Castleton trial. There may of course be other instances of the same type in other cases, particularly prosecutions, of which I am unaware.

Prosecution of Mrs Misra

Mrs Misra was a SPM at West Byfleet in Surrey who was charged both with theft from her branch, and also false accounting. The sums in question in her case which formed the subject matter of the charges amounted to approximately £74,000. Mrs Misra pleaded not guilty, and her defence was that the Horizon system was to blame. She was convicted by a jury after a trial in late 2010 at Guildford Crown Court, and was sentenced to a term of imprisonment of 15 months. Two Fujitsu employees gave evidence for the prosecution, Mr Gareth Jenkins and Mr Andy Dunks. Mr Jenkins did not give evidence before me, although most of the Post Office/Fujitsu witnesses who did had obtained most of their information from him. He was, until his recent retirement, a very senior person involved with the Horizon system and seeks to have been the “go to” specialist for all technical matters to do with Horizon. Mr Dunks did give evidence before me and this is summarised in Judgment (No.6) at [282] to [296].

Mr Gareth Jenkins

Mr Jenkins’ knowledge of bugs, errors and defects from the year 2000 onwards is identified in the accompanying table to this letter. This table identifies all the PEAKs and other documents referred to in Appendix 1 to Judgment (No.6) where Mr Jenkins was involved.

Two examples may suffice, in summary, for present purposes in terms of the accuracy of his evidence in the Misra trial.

The Callendar Square bug occurred between 2000 and 2006. Fujitsu knew about this bug during that period, and in an e mail of 23 February 2006 Anne Chambers (who worked closely with Mr Jenkins) stated (at F333.1/3):

“Haven't looked at the recent evidence, but I know in the past this site had hit this Riposte lock problem 2 or 3 times within a few weeks. This problem has been around for years and affects a number of sites most weeks, and finally Escher say they have done something about it.”

Mr Jenkins knew about the Callendar Square bug, which was agreed both by the Post Office and its IT expert to be a bug. Mr Jenkins did not, so far as I can tell, disclose any knowledge about this bug, or its effect, to the court at the trial of Mrs Misra in 2010.

Further, Mr Jenkins knew about another bug, called the Receipts and Mismatch bug, in 2010. He was an attendee at a meeting, the notes of which were in the Horizon Issues trial bundle at F/1001/1 onwards. This document is called “Issue Notes”. The date of this meeting was between 29 September 2010 and 4 October 2010 (this is shown in the transcript of the Horizon Issues trial at Day 8/77, during the cross-examination of a Fujitsu witness Mr Godeseth). This document was misleadingly dated in the trial bundle as a 2012 document, but it plainly is a 2010 document as it goes with another one at F/1000, which is dated on its face 29 September 2010. That document – called “Correcting Accounts for ‘lost’ Discrepancies” - was created by Mr Jenkins. The date can be seen from the footer on the document. It shows actual knowledge by Mr Jenkins of the Receipts/Payments Mismatch bug or issue, and its potential to impact branch accounts. The Issues Notes document states (extract only) that the impact of this bug is as follows:

“When Discrepancies are found during Stock Unit rollover into a new Transaction Period, then the User is asked if the discrepancy should be moved to Local Suspense. If the branch presses cancel at this point the Discrepancy is zeroed on the Horizon System.

Note at this point nothing into feeds POLSAP and Credence, so in effect the POLSAP and Credence shows the discrepancy whereas the Horizon system in the branch doesn't. So the branch will then believe they have balanced.

If at the next screen the rollover is completely cancelled, then no harm is done. However if the Rollover is re-attempted at this point, the rollover will continue without any discrepancy meaning Horizon doesn't match POLSAP or Credence.

This has the following consequences:

- There will be a Receipts and Payment mismatch corresponding to the value of Discrepancies that were "lost"

Note the Branch will not get a prompt from the system to say there is Receipts and Payment mismatch, therefore the branch will believe they have balanced correctly.

- When the Branch begins the new Branch Trading period the discrepancies will show at Zero, however the Receipts and Payment mismatch will carry over into the next period.

Impact

- The branch has appeared to have balanced, whereas in fact they could have a loss or a gain.
- Our accounting systems will be out of sync with what is recorded at the branch
- If widely known could cause a loss of confident in the Horizon System by branches
- Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data
- It could provide branches ammunition to blame Horizon for future discrepancies.”
(bold present in original, underlining added by me)

I consider that the knowledge that Mr Jenkins had of both the Callendar Square and Receipts and Mismatch Bugs (as well as all the others that the accompanying table shows he knew about) should, had he been giving truthful evidence in the Misra trial, have been given to the court. Indeed, given the subject matter of the prosecution, I would have thought that this point is obvious.

High Court Civil Case Post Office Ltd v Castleton

The Post Office sought recovery of alleged shortfalls from SPMs. One such case is that of Mr Castleton in 2007, who was the SPM at South Marine Drive, Bridlington, Yorkshire. The trial of the Post Office's claim took place in December 2006 in the High Court and the judgment of HHJ Richard Havery QC is on www.bailii.org at [2007] EWHC 5 (QB). Mr Castleton represented himself. The Post Office was awarded £25,858.95 in those proceedings and Mr Castleton's counterclaim was dismissed. Mr Castleton's case was that the discrepancies or shortfalls had been generated by Horizon.

Mrs Anne Chambers

She gave evidence for the Post Office in the Castleton case and her evidence is summarised in the judgment at [23] in the judgment:

“[23] I heard evidence from Anne Chambers, a system specialist employed by Fujitsu, the company that provides the Horizon service. She has a working knowledge of the Horizon

computer system used by the claimant. She said that calls from postmasters relating to potential system problems are initially taken and logged by the Horizon system Helpdesk. I accept evidence of Mr. Castleton that he contacted the Helpdesk over problems with discrepancies in balancing accounts at Marine Drive on a number of occasions. If the helpdesks are unable to resolve the problem, calls may be passed to the System Support Centre, where Mrs. Chambers works. In this case, her first involvement with Marine Drive was on 26th February 2004. Mrs. Chambers examined the questions raised and concluded that there was no evidence whatsoever of any problem with the system. She was unable to identify any basis upon which the Horizon system could have caused the losses. Mr. Castleton cross-examined her about complaints from another branch, which he did not identify. She immediately recognized the branch with confidence as being a branch at Callender Square in Falkirk. The problem at Callender Square had, she said, arisen from an error in the Horizon system, but there was no evidence of such a thing at Mr. Castleton's branch. I found Mrs. Chambers to be a clear, knowledgeable and reliable witness, and I accept her evidence.”

This relates to the Callendar Square bug. This evidence led to the conclusion by the judge that the Horizon system was not to blame and the losses claimed by the Post Office were caused by, and the responsibility of, Mr Castleton.

Mrs Chambers herself in her e mail of 23 February 2006 had written an e mail stating, in respect of the Callendar Square bug (which is at F/333.1/3):

“Haven't looked at the recent evidence, but I know in the past this site had hit this Riposte lock problem 2 or 3 times within a few weeks. This problem has been around for years and affects a number of sites most weeks, and finally Escher say they have done something about it.”

The relevant KEL for this bug, given the reference “JSimpkins338Q”, identified that it related to problems with the Riposte part of the software and what was sometimes called the Riposte lock or unlock problem. This was when an unexpected error occurred in the software while attempting to insert a message. The KEL shows it ran from 2002, with other events occurring in 2003, 2004 and 2005. The entry in this KEL for September 2005 expressly states that:

“this problem is occurring every week, in one case at the same site on 2 consecutive weeks”.

This did not form any part of the evidence of Mrs Chambers in the Castleton case. Indeed, the Callendar Square bug had affected 30 different branches, this number being identified by Fujitsu when the bug was investigated in 2005. This information was not provided to the court in the Castleton case even though, as her own e mail shows, Mrs Chambers plainly knew about it. Nor does there appear to have been any evidence from her during the Castleton case that there was a bug that “affects a number of sites most weeks”.

Mrs Chambers also knew about the TPSC 250 Report bug, another bug which does not appear to have been mentioned at all by her in her evidence in the Castleton case. This occurred during the years 2005 to 2009. Not only the PEAK, but the KEL itself was created by her and this defect required a software upgrade. The Technical Design Authority for the release note, dated 13 October 2005 and accompanying this upgrade, was Gareth Jenkins. Additionally, the entry in the table for bug 6, the remming out bug, shows that this occurred in 2007 and Mrs Chambers herself created the KEL for this.

Her wider involvement in general is shown in the accompanying table, in respect of a great many of the bugs, and a number of these predate her evidence in the Castleton trial.

Summary

The reason that I have drawn this matter to your attention is that I consider that in order to give fully truthful evidence to the court in the other previous cases to which I have referred, namely the prosecution of Mrs Misra and the civil claim against Mr Castleton, both Mr Jenkins and Mrs Chambers respectively should have told the court of the widespread impact of (at the very least) the bugs, errors and defects in Horizon that they knew about at the time that they gave their evidence and which have been identified, which are contained in Appendix 1 to Judgment No.6. In order to assist, I have summarised some both in the body of this letter and indeed the table accompanying this letter.

Both these individuals expressly knew about these bugs, and Mr Jenkins had prepared a report for, and been at a meeting, in September 2010 when the Receipts and Payments mismatch bug was discussed. This records the risk that if this was “widely known [it] could cause a loss of confidence in the Horizon System by branches” and that there was a “potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data”. Yet notwithstanding this knowledge that the existence and effect of this bug was directly relevant, the existence of this bug was kept secret from the court.

The usual expression when a matter is referred to your office by the judiciary is that “the papers are being sent to the DPP”. Due to the volume of these, it would not be feasible to send you all the papers, and because of the use of the electronic trial bundle I doubt that you would appreciate these in hard copy form in any event. I have hard copy files of a few relevant types of documents such as PEAKs, but it may be that electronic access to the Opus 2 workspace is the more suitable means in any event.

I would suggest, for anyone coming to this matter anew, that the best way to gain an understanding of the issues is to read paragraphs 1 to 567 of Judgment No.3; Judgment No.6 and Appendix 1 thereto; and then return to this letter and the accompanying table.

If any further documentation is required, my email address is MrJustice.Fraser@ejudiciary.net and that of my clerk is Angela.Fraser@justice.gov.uk.

Yours faithfully

(signed copy by post)

The Hon Mr Justice Fraser
Managing Judge, Post Office Group Litigation

Enc: table showing references in Appendix 1 to Judgment No.6 to Mr Jenkins and Mrs Chambers

cc: Freeths LLP (claimants' solicitors)
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