# Lessons from the UK's Post Office Scandal

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For a profession and a country which rightly pride ourselves on inheriting the inestimable benefits of 'British Justice', we have paid scant attention to what UK prime minister Rishi Sunak has described (with none of the exaggeration for which politicians are justifiably infamous) as "*one of the greatest miscarriages of justice in UK history*".[1] Indeed, were it not for the Bloody Assizes of 1685 – which, to be pedantic, preceded the formation of the United Kingdom – the qualifying words "one of" could safely be redacted.

In any event, the Bloody Assizes were completed in just under a month, and there is little doubt that most of the 1,400-odd convicted traitors were guilty as charged, despite the rank unfairness of their trials.[2] By contrast, the Post Office scandal has been dragging on since 1999, and there is little doubt that the overwhelming majority of the 736 victims[3] – individually sentenced for theft, false accounting, or fraud – were wrongly accused.

The story has it all:

- corruption at the highest levels of a government-owned enterprise;
- political oversight which chose to turn a blind eye;
- inadequate and incompetent investigation;
- malicious prosecutions conducted for corporate and personal gain;
- gross conflicts of interest, including the payment of 'bonuses' to investigators and witnesses for securing convictions;
- knowingly incomplete disclosure;

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1 House of Commons (UK), *Hansard*, volume 743, column 289, 10 January 2024.

2 Somerset County Council, "The Bloody Assize", at: web.archive.org/web/20110807090558/http://www1.somerset.gov.uk/archives/ASH/Bloodyassize.htm

3 This appears to be the latest figure provided by Post Office Limited (**"POL"**) to the UK Court of Appeal: see Nick Wallis, "The Final Reckoning", 1 April 2021, at: www.postofficetrial.com/2021/04/the-final-reckoning.html

This figure differs from previous statistics provided by POL, ranging between:

- a high of "around 900" mentioned in a press statement by POL in May 2020: Izzy Lyons, "Post Office to review 900 convictions of subpostmasters", *The Telegraph*, 25 May 2020; and
- a low of 251, being the combined total of two Freedom of Information requests made to POL for the periods 2004/5 to 2010/11 (answered on 12 October 2016) and 2011/12 to 2016/17 (answered on 26 September 2016): see "Post Office reviewing 900 prosecutions since 1999", 25 May 2020, at: www.postofficetrial.com/2020/05/post-office-reviewing-900-prosecutions.html

That said, many media reports, up to the present, continue to cite the figure of "around 900" or, even more commonly, "over 900".

- perjurious testimony;
- false and fraudulent claims for financial restitution leading to bankruptcy, financial ruin, divorce, and suicide;
- apparently egregious professional misconduct by members of the legal profession;
- failure of a public enterprise to adhere to "model litigant" standards, either as an investigative body, as a prosecuting authority or as a party to civil litigation; and
- a deliberate, long-running and concerted cover-up.

Once all the harm had been done, a long-running public inquiry[4] was established. It is still making progress at a snail's pace, under terms of reference clearly drafted to avoid embarrassment to anyone in a position of power, towards a final report which is likely to reveal nothing that isn't already well known and provide satisfaction to nobody at all.

Meanwhile, as the wheels of justice grind forward at their traditional sedate pace, a handful of higher court and appellate decisions has emerged, and these scathingly pour scorn upon the injustices meted out in the lower branches of the judiciary, and offer what little solatium is possible by way of retrospective vindication to those whose lives have been ruined.

Finally, a compensation scheme, funded by taxpayers, has been proposed. It appears to be purpose-built to maximise bureaucratic inertia and minimise the prospect of full and timeous recompense to victims.

**Post Office and Royal Mail**[5]

In 1987, the Post Office (a statutory corporation and successor to a government department known as the General Post Office) created Post Office Counters Ltd (**"POCL"**) as a wholly owned subsidiary, responsible for conducting retail post office branches. In 2001, with a view to future privatisation, the statutory corporation became a public company, Royal Mail Group plc, later Royal Mail Group Ltd (**"Royal Mail"**). Its subsidiary, POCL, was then renamed as Post Office Ltd (**"POL"**). On 1 April 2012 – perhaps a fitting date – POL, which had been sustaining chronic

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4 **"the Inquiry".**

5 The information under this subheading is uncontroversial and, accordingly, no sources are cited; most of this information can be verified from general sources like:
- en.wikipedia.org/wiki/Post_Office_Limited; and
- en.wikipedia.org/wiki/Royal_Mail,

and from the sources cited therein.

losses for several years, became independent of Royal Mail. Royal Mail (which continues the core business of providing mail delivery services) was floated on the London Stock Exchange on 15 October 2013. POL (which continues to operate retail post offices) has remained wholly owned by the UK Government.

Since the formation of POCL, there has been an ongoing strategy to place branch post offices under private control. Many were sold as going concerns to retail businesses with synergistic product lines, most notably W.H. Smith, a well-known firm of newsagents, booksellers and stationers. But most became franchise operations, usually conducted by an owner-operator known as a "sub-postmaster" ("**SPM**"). By 2022, out of 11,635 branch post offices throughout the UK, a mere 117 (known as "Crown Post Offices") remained under management by POL. Of the remainder, 9,617, or more than 80% of all branches, were conducted by SPMs.

**The Franchising Arrangement**[6]

The rationale behind franchising was that, although a branch post office may not be a profitable stand-alone business, it may contribute to the turnover of a related business without significantly increasing overhead costs like wages, rent, insurance and electricity; it may attract customers who (for example) need to buy postage stamps but are also looking for other merchandise; and some of the goodwill associated with Royal Mail may rub off through sales of stamps and other Royal Mail products and services, as well as the traditional community respect for branch post offices as honest and reliable places of business. That, at least, was the expectation which SPMs were given.

Needless to say, relations between POL and SPMs were governed by detailed written agreements. Unhelpfully, different forms of agreement were adopted at different times, and contained very different provisions. Two, in particular, were of significance: an instrument called the Sub Postmasters Contract (**"the SPMC"**) and an instrument called the Network Transformation Contract (**"the NTC"**). They had little in common aside from the facts that:

- both instruments were drafted by POL's lawyers;

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[6] See, generally, the statements and findings of fact given by Fraser J in:
- *Alan Bates and Ors v. Post Office Limited* (*The Post Office Group Litigation*), [2019] EWHC 606 (QB) (***"Judgment (No.3), Common Issues"***); and
- *Alan Bates and Ors v. Post Office Limited* (*The Post Office Group Litigation*), [2019] EWHC 3408 (QB) (***"Judgment (No.6), Horizon Issues"***)

- individual SPMs had no opportunity to negotiate terms which they found objectionable; and
- both instruments were obviously intended to operate almost exclusively in favour of POL.

Issues arose as to the construction of both instruments, the most important being whether (as POL contended) the instruments imposed upon SPMs a strict liability for all deficits and shortfalls, or only a liability for those caused by the franchisee's "negligence, carelessness or error" or that of a franchisee's employee. Issues also arose as to the implication of contractual terms, the most important being whether (as POL contended) reports generated by Horizon – a computer software system mandated by POL – were *prima facie* evidence of their truth and accuracy, such that SPMs bore the onus of proving them false or inaccurate. And an overarching issue arose whether the contract created by the instruments was relational, such as to impose on both parties mutual obligations of good faith, or whether (as POL contended) duties of good faith were imposed only on SPMs to the extent they acted as agents for POL. Ultimately, POL lost on each of these issues.[7]

One requirement of both instruments was never the subject of significant dispute, insofar as SPMs were placed "*under an express contractual duty to account to [POL] in the manner required or prescribed by [POL]*", namely "*by using the Horizon system*".[8]

In *Judgment (No.3), Common Issues*, Justice Fraser concluded that certain of the terms in the SPMC were excluded as being onerous and unusual in circumstances where adequate notice had not been given to SPMs. Similar provisions in the NTC could not be challenged on this basis "*due to the signature upon the NTC and the statement recommending legal advice*", but they were ultimately struck down under the *Unfair Contract Terms Act 1977* (UK) as failing the statutory requirement of reasonableness.[9]

**The Horizon System**

In 1995, the UK's Conservative social security minister Peter Lilley announced at the annual party conference the development of a software system which he promised would be up and running within three years, and would save £150 million in fraudulent benefit claims[10] (shades of "Robodebt"!). But, by mid-1999, the proposal

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7 *Judgment (No.3), Common Issues* at [1122].

8 *ibid.* at [1122], subparagraph 12.

9 *ibid.* at [1122], subparagraphs 5, 6 and 7.

10 Michael Harrison, "ICL stumbles on Pathway to hell", *The Independent*, 10 May 1999.

was nearly three years behind schedule and hundreds of millions of pounds over budget.[11]

The project was led by UK-based computer services company ICL, a subsidiary of Japanese computer giant Fujitsu.[12] Following election of the Blair Government in 1997, Secretary of State for Social Security Alistair Darling reportedly concluded that the project should be axed, and was supported by Treasury. But Secretary of State for Trade and Industry, Peter Mandelson, was concerned about the impact on POL and branch post offices.[13]

Geoff Mulgan, a special adviser to the prime minister, warned Tony Blair in 1998 that the system was "*flawed*"; that problems with the Horizon system "*may well continue*"; that signing off could leave "*what many see as a flawed system*" in place for more than a decade; that cancellation would allow interested parties to take advantage of "*newer, cheaper and more flexible*" technology; and that pushing ahead would leave the government "*dependent on a hugely expensive, inflexible, inappropriate and possibly unreliable system*".[14]

For Blair – who allegedly enjoyed close links with Fujitsu[15] – the solution came in the form of Foreign Office advice that "*scrapping the Horizon scheme would damage relations with Japan*".[16] This enabled him to reach a compromise under which the Department of Social Security would withdraw, the benefit payment card would be abandoned (although this was Horizon's original *raison d'être*, and the justification for its huge cost),[17] and the project would continue at a cost of up to £900 million

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11 *ibid.*

12 *ibid.*

13 *ibid.*; "Tony Blair was warned about 'flawed' Horizon system, memo shows", *The Guardian*, 13 January 2024.

14 Daisy Graham-Brown and Chris Pollard, "Sir Tony Blair had close links with Fujitsu BEFORE he became Prime Minister and signed off on the £900m Post Office contract with the firm in 1999 despite being warned that the Horizon accounting software looked 'increasingly flawed'," *The Daily Mail*, 14 January 2024. The relevant correspondence is available on the Inquiry website. See also "Tony Blair was warned about 'flawed' Horizon system, memo shows", *The Guardian*, 13 January 2024.

15 Daisy Graham-Brown and Chris Pollard, "Sir Tony Blair had close links with Fujitsu BEFORE he became Prime Minister and signed off on the £900m Post Office contract with the firm in 1999 despite being warned that the Horizon accounting software looked 'increasingly flawed'," *The Daily Mail*, 14 January 2024.

16 Joe Pinkstone and Edward Malnick, "Blair told scrapping Horizon would damage relations with Japan", *The Telegraph*, 13 January 2024.

17 Inquiry, 11 October 2022, "Phase 2, Day 1: Opening Statement by Jason Beer KC", pp. 53 and 131; ComputerWeekly.com, "Pathway and the Post Office: the lessons learned", November 2000.

under the Horizon name but with a reduced scope to replace the paper-based bookkeeping system then used in post offices.[18] The result was said to be the second-costliest infrastructure project in British history to date, eclipsed only by the Channel Tunnel.

The national roll-out of Horizon commenced in 1999,[19] reaching 10,000 branch post offices by August 2000, and over 13,000 by November 2000.[20] By 2013, it was processing some six million transactions daily.[21]

**Allegations of Misappropriation**

Within weeks of the roll-out, "glitches" in the system were being reported by SPMs.[22] POL's response was to deny any flaws in the system; to demand that SPMs make good the shortfalls; and to inform such SPMs – falsely – that no other SPMs had experienced such problems.[23]

Then the prosecutions began: slowly at first, with 6 convictions in 2000, rising to a peak of 70 in 2009, and an average of 56 convictions per year between 2001 and 2013, bringing the total to 736.[24]

In England and Wales, 38 prosecutions were conducted by the Crown Prosecution Service, resulting in 10 convictions.[25] In Scotland, prosecutions were conducted through the office of the procurator fiscal, and in Northern Ireland through the

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18 *ibid.*

19 "Post Office scandal explained: What the Horizon saga is all about", BBC News, 23 January 2024.

20 "Pathway and the Post Office: the lessons learned", ComputerWeekly.com, November 2000. As with many statistics supplied by POL, the figures quoted in this article may be dubious. A maximum figure of 11,800 was indicated in 2013 in the Second Sight "*Interim Report into alleged problems with the Horizon system*".

21 Matt Prodger, "Bug found in Post Office row computer system", BBC News, 8 July 2013.

22 "Post Office IT system criticised in report", BBC News, 9 September 2014.

23 Katie Glass, "Victims of the Post Office's sub-postmaster scandal on their decade of hell", *The Times*, 9 February 2020; Karl Flinders, "Alan Bates: The 'details man' the Post Office paid the price for ignoring", ComputerWeekly.com, 31 January 2020; Adam McCulloch, "The Post Office Horizon scandal: an explainer", *Personnel Today*, 12 January 2024 (see the chronological entry for "Between 2000 and 2015").

24 Nick Wallis, "The Final Reckoning", 1 April 2021, at: www.postofficetrial.com/2021/04/the-final-reckoning.html
However, this total is contentious, and the actual figure may be as high as 900; see footnote 3, *supra*

25 Ben Quinn, "Keir Starmer denies he knew CPS was prosecuting post office operators", *The Guardian*, 11 January 2024 – Sir Kier Starmer, KCB, KC, who is the current Leader of the Opposition (Labour) in the UK, was the UK's Director of Public Prosecutions, and therefore headed the Crown Prosecution Service, between 2008 and 2013.

Public Prosecution Service.[26] But, for the vast majority of prosecutions, in England and Wales, POL engaged independent firms of solicitors, who briefed counsel from the private Bar.

From evidence at the Inquiry,[27] it seems that the process for these prosecutions was fine-tuned over more than a decade. So-called 'investigations' were conducted by POL's in-house team of investigators. These appear to have been recruited from people with no relevant education, background, or experience; their selection criteria apparently gave preference to aggression and doggedness over aptitude or conspicuous intelligence; and they received very little training, except in the area of information technology, where they received none whatsoever.

Some insight into the mentality of these investigators may be gleaned from a report that:[28]

> Documents published between 2008 and 2011, obtained via a freedom of information request, showed that fraud investigators were asked to group suspects based on racial features. The categories on the document included "Chinese/Japanese types", "Dark Skinned European Types" and "Negroid Types".

When Horizon asserted the existence of a shortfall, the franchisee was hauled in to be 'interviewed' by one of these investigators. At no stage was the 'interviewer' concerned to establish if there might conceivably be an innocent explanation. The franchisee was subjected to a ritual humiliation, brow-beaten, intimidated and bullied, all on the unstated premise that the truth revealed by Horizon was incontrovertible. Those who attempted any form of refutation, even supported by documentation or other evidence – or so much as questioned the reliability of the Horizon – were ridiculed and accused of outright mendacity.

Then, as the 'interview' drew to a close, a glimmer of hope was revealed: if SPMs were to admit guilt (which was obvious, anyway), and agree to a programme of repayments, 'things might go better' for them. This obviously worked often enough.

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[26] *Investigations, Prosecutions and Security in the Royal Mail – A Brief History*, at: www.whatdotheyknow.com/request/post_office_investigation_branch_2/response/73875/attach/4/Brief%20History%20of%20Security%20in%20Royal%20Mail.pdf

[27] A YouTube contributor called DPS Computing has compiled a "playlist" of video excerpts from the Inquiry, focusing specifically on the investigation and prosecution process; these excerpts are updated on each day that the inquiry sits – see: www.youtube.com/playlist?list=PLKC6anPQ0v3KwWziWMur36DTk2Sr0pyq7

[28] Adam McCulloch, "The Post Office Horizon scandal: an explainer", *Personnel Today*, 12 January 2024 (see the chronological entry for "May 2023").

Out of some 3,400 SPMs accused of dishonest shortfalls, it is estimated that around 2,400 paid up without a fight, even knowing that they were innocent.

For those not attracted by the siren call of blatant extortion, the first consequence in many instances was revocation of the SPMC or NTC. This was frequently a one-way ticket to penury, as it immediately suspended the franchisee's cash-flow, had a profound negative impact on the franchisee's reputation, and instantly brought predictable financial consequences, such as the cancellation of finance facilities with banks and other lending institutions, the suspension of credit accounts, and often the calling-up of mortgages and other securities. Moreover, it meant that, when the franchisee ultimately faced either civil proceedings or criminal prosecution, there were no resources to fund competent legal representation or mount a credible defence.

**The Prosecution Process**

The matter was then transferred to POL's private solicitors. If the instructions were to prosecute, the solicitors would cobble together charges and witness statements or affidavits, increasingly drawing upon *pro formas* or templates which had been used successfully on previous occasions. While in the early days some effort may have been taken to obtain instructions from a witness with direct knowledge who might be able to offer relevant and admissible evidence, the practice developed of preparing draft statements or affidavits in the name of a single deponent – usually the investigator – and sending these off for execution without any other contact. The affidavits generally came back, duly executed by an investigator who, in many instance, had not even bothered to read it.

POL's solicitors were able to get away with this shoddy workmanship – very reminiscent of the practices of Australian solicitors engaged in bulk debt-collection work – for one simple reason. Just as most debt recovery actions were undefended, most POL prosecutions led to a guilty plea: not out of a consciousness of guilt, but purely out of necessity, often encouraged by solicitors who advised that the prospects of a successful defence were slight, and that an early guilty plea would result in a reduced sentence. A few hardy perennials attempted to defend themselves; but without the legal training or forensic skills to insist upon proper particularisation of the alleged shortfall and how the accused franchisee was criminally responsible for it, or to require proper disclosure, or to object to inadmissible evidence – and without the resources to fund competent representation – they stood little chance. And if any franchisee offered the prospect of mounting a

serious defence, especially with professional assistance, POL was happy to negotiate an alternative form of resolution.

One common instance of the *pro forma* or template depositions received particular attention at the Inquiry.[29] It stated:

> The Post Office continues to have absolute confidence in the robustness and integrity of its Horizon system.

It is not readily apparent how a corporate entity could acquire or maintain a human sentiment like "*confidence*"; nor, if it could, how a lowly 'investigator' could depose to the existence of such a sentiment without (at least) confirming it with each of the entity's 'governing minds'. How such testimony did not amount to hearsay is equally elusive. And, in any event, surely the relevant fact was not whether such "*confidence*" existed, but whether it was well-placed: a fact which could only be addressed by expert evidence.

As it turned out, when POL investigator Stephen Bradshaw testified at the Inquiry and was questioned why he had signed the statement when he had been told two years earlier about press coverage of the flaws with Horizon, his evidence was that:

> I was given that statement by Cartwright King and told to put that statement through. In hindsight, there probably should have been another line stating, 'These are not my words'.

He further suggested that the same witness statement was prepared by solicitors for other criminal cases and signed off by other investigators.

Another iteration of the *pro forma* or template depositions to receive particular attention at the Inquiry was crafted for execution by Fujitsu employees. It stated:[30]

> There is no reason to believe that the information in this statement is inaccurate because of the improper use of the system. To the best of my knowledge and belief at all material times the system was operating properly, or if not, any respect in which it was not operating properly, or was out of operation was not such as to effect [*sic.*] the information held within it.

Once again, the admissibility of such evidence would seem highly dubious. More importantly, however, it was demonstrably and knowingly false. At the Inquiry, Rajbinder Sangha (*née* Bains), a former member of Fujitsu's Fraud and Litigation Support Office, testified that "*it's not a form of words [she] would have signed up to*"

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[29] Sam Metcalf, "Law firm attempts to distance itself from Post Office scandal", *The Business Desk*, 12 January 2024; see also John Hyde, "Post Office Inquiry: Solicitors wrote my court statement, investigator says", *The Law Society Gazette*, 11 January 2024.

[30] see the testimony of Rajbinder Sangha (née Bains), Inquiry, Day 105, 16 January 2024.

because "*obviously bugs were in the system*". Yet she had no difficulty with witnessing a statement, containing the same words, by a co-worker at Fujitsu named Penelope Thomas.

The same Penelope Thomas had previously been party to communications with Fujitsu technical staff – including Gerald Barnes, a Fujitsu software developer, Graham Welsh, Andrew Mansfield and Sarah Selwyn – containing these statements:[31]

> **Thomas (21 June 2010):** We have a very significant problem which has been recorded … . In a nutshell the [Horizon Online] application is not removing duplicate transactions (which may have been recorded twice on the Audit Server) and they are appearing in the ARQ returns. For the old Horizon application Riposte automatically removed duplicate entries. An initial analysis shows that one third of all ARQ returns (since the new application has been in play) have duplicated transactions. …
>
> **Thomas (22 June 2010):** Occasionally duplicate transactions are listed in the spreadsheets produced and presented to court for prosecution cases. These can give the defence teams ground to question the evidence. Have relevant KELs [Known Error Logs] been created or updated?. …
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> **Barnes (22 June 2010):** No KELs have been created for this since we intend to fully resolve the issue shortly. …
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> **Thomas (22 June 2010):** If we do not fix this problem our spreadsheets present in court are liable to be brought into doubt if duplicate transactions are spotted.
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> **Thomas (23 June 2010):** Initial analysis of all ARQ returns since the [Horizon Online] application has been implemented identifies approximately one third (of all returns) have duplicate entries. This is now extremely urgent.
>
> **…**
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> **Welsh (23 June 2010):** Please see below attached … . In essence we have a problem with the ARQ extraction tool. Under Horizon this would inhibit the duplicate transactions held for the audit server and thus supply evidence for court etc without duplicated records. However the [Horizon Online] tool does not and thus duplicate records that cannot be differentiated are supplied as evidence. Thus could allow for legal challenge to the integrity of the system.
>
> **…**
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> **Mansfield (1 July 2010):** There has been discussion of a possible workaround. This involves modifying the audit queries so that the message numbers are included in the output to the spreadsheets (currently they are not). This would allow the duplicate messages to be identified and removed by running a macro on the final spreadsheet generated by the application. Penny

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[31] *ibid.*, and documents referred to in the course of Mrs Sangha's testimony.

> Thomas is in discussion with the Post Office over whether this workaround is acceptable in the short-term.
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> **Thomas (5 July 2010):** POL has gone to POL Legal for guidance and further returns have been identified this morning as bound for court.
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> **Welsh (5 July 2010):** [Please see below] from Penny. I understand that there are more court cases pending and whilst the briefing to the investigation has taken place they are coming back requesting help due to the level of activity and nervousness regarding the current workaround.
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> **Selwyn (12 November 2010):** Penny and Raj, Thank you both of your analysis of the business impact of running the workaround fixes for detection of JSNs in HNG-X audit. Penny, the permanent fixes to the audit workstation for JSN detection and analysis will be supplied in release 4.37 ... which is currently expected to be out of LST on 04/05/2011. There is no live data predicted yet for [the release] but usually this would follow within a few days. You should expect to be running the workaround solution until May 2011.

Despite being plainly aware that Horizon was not working properly, and that the problems with Horizon were such as materially to affect "*the information held within it*" – indeed, despite participating in a manual 'fix', implemented to manipulate the data provided by Horizon so as to remove obvious duplications – on 19 October 2010 Penelope Thomas provided a perjurious statement asseverating that "*at all material times the system was operating properly*", and that "*if not, any respect in which it was not operating properly … was not such as to effect [sic.] the information held within it*".

The "*confidence*" in Horizon attributed to POL, combined with repeated assurances by Fujitsu of its robustness and integrity, came to play a significant part in the response by POL (and its lawyers) to defendants' requests for disclosure.

**Inadequate Disclosure**

Over 16 years – and regardless of any "*confidence*" which, as a corporate entity, it was capable of entertaining – POL accumulated a substantial amount of material which at least suggested that the "*robustness and integrity*" of Horizon was an illusion. Apart from the press reports put to Bradshaw, these included witness statements from and transcripts of interviews with countless SPMs, identifying specific flaws in the Horizon system; correspondence from the legal representatives of such SPMs; and, in some instances, independent expert reports commissioned on their behalf. They also included records of meetings and communications between POL and Fujitsu, documenting occasions on which Horizon manifested an appearance of lacking "*robustness and integrity*", of sufficient seriousness to warrant enquiries at a technical level. In addition, Fujitsu and POL maintained 'error logs',

the significance of which may not have been apparent to a person lacking specialist IT knowledge, but which would plainly have assisted any defendant who was minded to commission an independent IT report.

To take just one example:[32] in 2004, the solicitors for an SPM named Alan McLaughlin, who was accused of having misappropriated funds in December 2000, engaged a firm of forensic accountants to review the evidence said to support this accusation. Among a number of potential discrepancies identified, one stood out. It involved sums of £125.94 and £87.51 allegedly received but not accounted for on (respectively) 21 and 27 December 2000. What the accountants discovered was that, on each of these dates, two separate transactions were recorded by Horizon, minutes apart, for the same amounts. The accountants concluded the most obvious explanation was that, on each occasion, payment had been received only once, but – whether due to human error by the person entering the transaction, or due to a systemic flaw – it had been recorded by Horizon twice.

Many years later, the reason for this discrepancy emerged. At the time, transactions entered into a branch post office Horizon terminal were transmitted via a dial-up modem, a notoriously insecure interface, to the Horizon audit server maintained by POL. If the connexion 'dropped out', the last transaction was automatically repeated by the branch post office terminal once a new connexion was established. In many instances – perhaps the majority – repeating the transaction was appropriate, since the initial attempt to record the transaction on the audit server had failed. But, in some instances, the transaction was repeated even though it had already been successfully recorded on the audit server.[33]

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[32] see the testimony of Suzanne Winter, Inquiry, Day 112, 26 January 2024.

[33] In very simple terms:

- the branch post office terminal would transmit a 'package' of data to the Horizon audit server, and the audit server would then transmit a 'package' of data confirming that the transaction data had been duly received and recorded;
- if the connexion was lost before confirmation was transmitted, the transaction would not be recorded – or, perhaps more accurately, would be deleted from the audit server – and it was therefore appropriate that it be repeated;
- however, if the audit server issued the confirmation, but the connexion was lost before the confirmation had been received and recorded by the branch post office terminal, the audit server would treat the transaction as having been duly recorded;
- in this event, when the branch post office terminal re-transmitted the transaction to the audit server, it would be dealt with as a new transaction, effectively doubling the amount of money which the franchisee was recorded as having received.

However, even without knowing the technical reasons for the erroneous duplication of these transactions, the fact that the same transaction had been recorded twice was practically self-evident. On any view, the sums of £125.94 and £87.51 were (in 2000) fairly large amounts of money, and also abnormal amounts. An audit of the Horizon system might well show that it was unusual for a franchisee to receive either sum twice in a week – perhaps twice in a month – let alone on two consecutive occasions within minutes of one another. Properly applying the 'beyond reasonable doubt' standard of criminal proof, the chances of innocent duplication would seem to far outweigh the chances that Mr McLaughlin stole over £200 in circumstances where he must have known that he would inevitably be caught; let alone that the occasions when he chose to make these thefts coincided with the two occasions when identical 'odd' sums were recorded as having been received within minutes of one another. Yet Mr McLaughlin – who always maintained his innocence – was convicted, and had to wait 18 years for his conviction to be quashed.[34]

At least – one may think – the unsuccessful attempt by Mr McLaughlin's solicitors to challenge Horizon's "*robustness and integrity*", and the financial cost of doing so, must have had some benefit to subsequent defendants: if the series of improbable coincidences which were demonstrated in his case did not suffice to create a 'reasonable doubt', surely the next franchisee to be accused would be in an even stronger position, able to point to the added improbable coincidence that a similar series of improbable coincidences had occurred before. But this assumes that each of POL, its investigators, its solicitors, and Fujitsu both understood their duties with respect to disclosure, and fulfilled those duties conscientiously and punctiliously.

This did not occur. Even in those cases where the defendant was legally represented and the defendant's legal representatives were sufficiently experienced and alert to seek an order for disclosure – and even in those few cases where POL failed in their strident efforts to oppose orders for disclosure – documents like the report commissioned for Mr McLaughlin were not forthcoming. Why not?

To the date of writing, the Inquiry has not addressed this question: POL's then lawyers are yet to be called, and the only evidence regarding POL's attitude to its duty regarding disclosure comes from some of the investigators. It may be unfair to

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It is perhaps not insignificant that these transaction occurred 4 days before and 2 days after Christmas – presumably, the ever-unreliable dial-up modem system of electronic communication was even more unreliable than usual during the 'Christmas rush'.

[34] Shauna Corr, "Post Office scandal: First NI victim to get conviction quashed fears 'trauma' stopped others coming forward", *Belfast Live*, 21 January 2024.

the lawyers to place much weight on the investigators' understanding as to why these (obviously relevant) documents were not disclosed, given that this all occurred up to a quarter-century ago; given the apparently unreliable memories of the investigators who have given testimony to date; and given the self-evident thickness of many of them. But, at present, no other insights are available.

So far as one can tell, the rationale went something like this. Disclosure is limited to RELEVANT matters. Horizon's "*robustness and integrity*", although deposed to by investigators prior to the commencement of proceedings, does not become RELEVANT unless a defendant chooses to dispute Horizon's "*robustness and integrity*".

Even if a defendant does so, the duty of disclosure is limited to documents which will help the defendant, either by casting doubt on a fact which forms part of the prosecution case, or by supporting a fact which forms part of the defence case. Applying the test of whether or not a document will help the defendant, documents which call into question Horizon's "*robustness and integrity*" obviously cannot be of any assistance. Not only is it the case that POL "*continues to have absolute confidence in the robustness and integrity of its Horizon system*"; this "*absolute confidence*" is backed up by repeated reassurances from Fujitsu, the designer and supplier of the Horizon system. It cannot conceivably assist defendants to receive disclosure which can only set them on a 'wild goose chase', questioning Horizon's "*robustness and integrity*", when that matter is entirely beyond dispute. Previous challenges to Horizon's "*robustness and integrity*" had all failed, and defendants could only be harmed – not assisted – by any encouragement to proceed down the same path.

It will be interesting to see whether this explanation, or something like it, is maintained when evidence is given by the solicitors who conducted prosecutions on POL's behalf. In any event, on 5 September 2023, Sir Wyn Williams (chairman of the Inquiry) remarked:[35]

> I see no reason to alter the view I have expressed on more than one occasion that the failures of disclosure which have come to light are properly described as grossly unsatisfactory.

**The Independent Forensic Investigation**

Concerns about the reliability of Horizon – and about the soundness of convictions based on evidence from Horizon – can be traced to an article which appeared in

[35] Inquiry transcript, Day 62, 5 September 2023.

*Computer Weekly* in May of 2009.[36] Over the next three years, enough articles had appeared in the mainstream media, and enough questions had been asked by members of Parliament, to convince POL that something was needed to prevent further reputational damage. The solution was to commission an independent report from an investigative firm, Second Sight,[37] in mid-2012. Their brief was to:

> … consider and to advise on whether there are any systemic issues and/or concerns with the "Horizon" system, including training and support processes, giving evidence and reasons for the conclusions reached …

and to:

> … report on the remit and if necessary [provide] recommendations and/or alternative recommendations to Post Office Limited relating to the issues and concerns investigated during the Inquiry. The report and recommendations are to be the expert and reasoned opinion of Second Sight in the light of the evidence seen during the Inquiry.

This was not the PR panacea for which POL was hoping. Second Sight issued an Interim Report on 8 July 2013; part one of its briefing report on 25 July 2014; part two (version one) of its briefing report on 21 August 2014; and part two (version two) of its briefing report, entitled "Initial Complaint Review and Mediation Scheme", on 9 April 2015.[38]

The news for POL went progressively from bad to worse. As summarised in a BBC report, Second Sight concluded that Horizon was "*not fit for purpose*" in certain respects; that there were about 12,000 communication failures every year; that 76 branches had been supplied by POL with defective software; that "*equipment was outdated*" and unreliable; that Horizon had not been tracking money from lottery terminals, vehicle excise duty payments or cash machine transactions; that training on the system was not good enough; that "*power cuts and communication problems made things worse*"; and that POL's investigation had not looked for the cause of the errors, instead accusing the SPMs of theft.[39] POL's predictable response was to reject Second Sight's findings in their entirety.[40]

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[36] Rebecca Thomson, "Bankruptcy, prosecution and disrupted livelihoods – Postmasters tell their story", *Computer Weekly*, 'TechTarget', 11 May 2009.

[37] Katie Glass, "Victims of the Post Office's sub-postmaster scandal on their decade of hell", *The Times*, 9 February 2020.

[38] *Judgment (No.6), Horizon Issues*, at [78].

[39] "Post Office IT system criticised in report", *BBC News*, 9 September 2014.

[40] Karl Flinders, "Peer calls for clear-out of Post Office board after Court of Appeal confirms major court defeat", *Computer Weekly*, 'TechTarget', 26 November 2019.

By February 2015, it was being reported that POL was obstructing the investigation by refusing to hand over key files to Second Sight.[41] POL claimed in a Business, Energy and Industrial Strategy Committee hearing at the House of Commons on 3 February 2015 that it had "*been working with Second Sight over the last few weeks on what we agreed at the outset*" and was "*providing the information*", but Second Sight's lead investigator – when asked whether this was true – replied "*No, it is not*". In particular, Second Sight was denied access to prosecution files, required to investigate suspicions that POL had prosecuted SPMs with "*inadequate investigation and inadequate evidence*", and asseverated that these files were still outstanding 18 months after they had been requested.[42]

One day before the final report was due to be published, POL ordered Second Sight to end its investigation, and to destroy all the paperwork that it had not handed over.[43] Despite undertakings by POL to satisfy MPs that Second Sight would be able to conduct an independent investigation,[44] POL unilaterally withdrew from the mediation scheme for SPMs, and set about to thwart the independent committee set up to oversee the investigation. Then POL issued its own report, which – naturally – exonerated POL of any wrongdoing, concluding that:[45]

> This has been an exhaustive and informative process that has confirmed that there are no system-wide problems with our computer system and associated processes. We will now look to resolve the final outstanding cases as quickly as possible.

It would take four more years to establish, conclusively, that nothing could be further from the truth.

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41 Charlotte Jee, "Post Office obstructing Horizon probe, investigator claims", *Computerworld UK*, 3 February 2015.

42 "Post Office Mediation scheme and the Horizon IT system", UK Parliament, 3 February 2015; "Business, Innovation and Skills Committee. Oral evidence: Post Office Mediation, HC 935", UK Parliament, 3 February 2015; Charlotte Jee, "Post Office obstructing Horizon probe, investigator claims", *Computerworld UK*, 3 February 2015; Karl Flinders, "Post Office ends working group for IT system investigation day before potentially damaging report", *Computer Weekly*, 'TechTarget', 11 March 2015.

43 Karl Flinders, "Post Office ends working group for IT system investigation day before potentially damaging report", *Computer Weekly*, 'TechTarget', 11 March 2015.

44 Second Sight, "Initial Complaint Review and Mediation Scheme Briefing Report part two", 9 April 2015.

45 Karl Flinders, "Post Office ends working group for IT system investigation day before potentially damaging report", *Computer Weekly*, 'TechTarget', 11 March 2015; David Winch, "Post Office rebuffs Horizon forensic report", *accountingWEB*, 20 April 2015.

**Why did POL prosecute?**

The consensus amongst the commentariat – a consensus which strikes me as persuasive, although not conclusive – is that POL's prosecution of SPMs passed through three phases.

*Stage One: The Initial Prosecutions*

The first phase, in the early years of 1999 and 2000, was essentially innocent, and arguably redounded to POL's credit. When Horizon first came online, POL had no reason to suspect that it was dodgy, and – given the costs of the system, entirely footed by the British Government – every reason to believe the contrary. When it first emerged that a handful of SPMs were (apparently) rorting the system, POL was genuinely and justifiably alarmed.

Even so, prosecution was an extreme step. It might have sufficed to terminate those SPMs appearing to be dishonest, and to compel recompense from those who had the wherewithal to do so. But if it is assumed that POL's senior administration genuinely believed, with apparently good reason, that persons in a position of trust were engaged in wholesale embezzlement, it was not inappropriate for a public-owned enterprise to prosecute.

What was inappropriate, even at this early stage, was a presumption of guilt. No genuine attempt was made to exclude an innocent explanation, whether by erroneous inputting of data by SPMs (given, especially, the novelty of the computerised system), or by 'bugs' in Horizon. Nor was there any attempt to explore collateral evidence of peculation, such as evidence that SPMs were in receipt of unexplained finances.

To a large extent, the inadequacy of POL's investigation was a result of the ineptitude of POL's investigators. Until 1999, their focus was mainly on external misappropriation, such as the theft of stamps and money orders from branch post offices, and such investigations usually involved liaison with the official constabulary. POL's investigators had neither the experience nor the aptitude to conduct major fraud investigations.

It may be said that POL's senior (and even middle) management ought to have exercised more rigorous supervision over investigations and prosecutions. But here we are in the realm of what US Secretary of Defense Donald Rumsfeld famously

termed "*unknown unknowns*":[46] POL's management did not know what they did not know, which included both the flaws in Horizon and the ineptitude of their investigators.

*Stage Two: Prosecutions Become Routine*

The second phase is more difficult to define chronologically, as it depends on fixing the point in time at which POL either knew, or ought to have ascertained if reasonable diligence had been applied, that Horizon was unreliable.

The earliest date which seems to have been suggested, when reasonable diligence should have exposed the flaws in Horizon, was 2003. In that year, an IT expert named Jason Coyne, who then worked for Best Practice Plc in Preston, was instructed to examine Horizon. He claims to have notified POL that the Horizon data was "*unreliable*", but that he was ignored, sacked, and then discredited.[47]

The following year (2004), POL received the forensic accountants' report commissioned by the solicitors for franchisee Alan McLaughlin. For reasons previously canvassed, this was at least sufficiently cogent to put POL on notice of one potentially significant defect in Horizon.

In 2009, *Computer Weekly* began a series of articles exposing prosecutions based on allegedly inaccurate data provided by Horizon.[48] While a media report of this nature may not have been enough to give POL actual knowledge that Horizon was supplying false data, it was (once again) sufficient to put POL on notice of one potentially significant defect in Horizon. As the series of *Computer Weekly* articles continued, the notice to POL became progressively more resounding.

As we have seen, by mid-2010, Fujitsu had unearthed a significant problem in relation to duplicate entries made by Horizon, and introduced a 'work around' to remediate this problem manually. At this stage, Fujitsu went to POL – which, in turn, contacted "*POL Legal for guidance*" – even as cases (it is unclear whether these were civil cases or prosecutions) were "*bound for court*". This may be identified as the

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[46] "Defense.gov News Transcript: DoD News Briefing – Secretary Rumsfeld and Gen. Myers", United States Department of Defense, 12 February 2002.

[47] Lauren Hirst, "I told Post Office the truth about Horizon in 2003, IT expert says", *BBC News*, 9 January 2024; Adam McCulloch, "The Post Office Horizon scandal: an explainer", *Personnel Today*, 12 January 2024 (see the chronological entry for "2003").

[48] Adam McCulloch, "The Post Office Horizon scandal: an explainer", *Personnel Today*, 12 January 2024 (see the chronological entry for "2008").

very latest date at which it can be said with certainty that POL knew, or (at the very least) ought to have ascertained with reasonable diligence, that Horizon was unreliable.

On 15 July 2013, POL received written advice from Mr Simon Clarke – a barrister then employed by POL's external solicitors – explaining the scope and nature of POL's duty of disclosure, and identifying a particular instance where that duty was unequivocally breached, in terms which enabled the Court of Criminal Appeal subsequently to "*commend the firmness and clarity of Mr Clarke's advice*".[49] Later, on 15 October 2013, POL received written advice from Mr Brian Altman QC of the London Bar, again explaining POL's duty of disclosure, and steps required to address the egregious non-disclosures which had previously occurred.[50] The advice of Mr Altman, in particular, is – with respect to the learned author – a masterpiece of clear and unambiguous legal and practical advice.

Throughout this period, POL's investigators and "*POL Legal*" continued launching prosecutions, as well as civil actions, in what had become a standardised – if not automated – routine. The impression is that POL management took little notice of what was happening until PR issues loomed in the form of media articles and questions from Members of Parliament. So the process which had started in 1999-2000 continued unabated.

For at least some of this period, subordinate staff at POL – without guidance from management – made some serious 'wrong calls', especially by failing to reveal actual or potential problems with Horizon, failing to give disclosure of documents identifying these problems, and using affidavits and witness statements which they knew either to be false or (at the very least) to have been crafted in language designed to obfuscate rather than divulge material facts. The extent to which they can be blamed for these failings depends on what specific individuals knew at specific times, and what they did with that knowledge. And, to be fair, the state of their knowledge must be considered in the context of repeated assurances from Fujitsu that Horizon was "*robust*".

Of particular concern is the fact that, during the same period, POL investigators received bonus payments based on their "*success*". Accordingly to Inquiry testimony

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[49] *Hamilton v. Post Office Ltd* (***"Hamilton"***), [2021] EWCA Crim 577 (23 April 2021) at [81] to [90]; Mr Clarke's advice is published at: www.postofficescandal.uk/wp-content/uploads/2022/10/Clarke-advice-re-Jenkins.pdf

[50] Inquiry document POL 00006581.

from Gary Thomas – employed by POL from 2000 to 2012 – investigators received a 40% "*loss recovery objective*" payment. The evidence of another investigator, Dave Posnett, confirmed that annual bonuses were partially correlated with the amount of money "*recovered*".[51] Two critical consequences flow from this fact. The first is that POL's investigators were not (as magistrates and judges might well have assumed) disinterested forensic factfinders – rather, they had 'skin in the game' – and this was apparently never disclosed in any affidavit or witness statement. Secondly, it is impossible that POL's management, including senior management and even board members, were unaware of an arrangement which had the clear potential to corrupt the prosecution process.

*Stage Three: The Cover-Up*

From at least 2010 (probably, as we have seen, from a much earlier time), through to 2016, prosecutions continued unabated despite POL's knowing that Horizon was unreliable. Indeed, as mentioned, the highest number (70 prosecutions) occurred in 2009, and the average of 56 convictions per year did not begin to recede until about 2013.[52]

Throughout this period, it is not merely that low-level staff (such as investigators) within POL knew that Horizon was unreliable. More importantly, staff at the highest levels (including senior management, the CEO, and directors) had become aware of what they regarded as a potential PR catastrophe. There could have been no clearer clarion call for them to ascertain the truth. Yet prosecutions continued, without addressing any of the misadventures – the failure to reveal actual or potential problems with Horizon, the failure to give disclosure of documents identifying these problems, and the use of affidavits and witness statements which were either knowingly false or calculated to obscure the truth – which had characterised earlier prosecutions.

This was the phase of the cover-up. We have already seen how, despite POL's undertaking that Second Sight would be able to conduct an independent investigation, their efforts were the subject of ongoing attempts to hamper and derail the investigative process until POL unilaterally terminated the entire investigation. We have also seen how, despite the troubling findings by Second Sight, POL blithely

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[51] Blathnaid Corless, Fiona Parker and Robert Mendick, "Post Office paid out bonuses for every conviction under Horizon scandal", *The Telegraph*, 10 January 2024.

[52] Nick Wallis, "The Final Reckoning", 1 April 2021, at: www.postofficetrial.com/2021/04/the-final-reckoning.html

announced that "*an exhaustive and informative process … has confirmed that there are no system-wide problems with our computer system and associated processes*".

This, however, was just the tip of the iceberg. Prior to the decision of Fraser J in *Judgment (No.6), Horizon Issues*, published 16 December 2019, not once did a public statement on behalf of POL even countenance the possibility that something might be wrong with Horizon. POL continued to push the line that Horizon was "*robust*", and that any possible glitches could not have affected the reliability of data used in prosecutions and civil actions against SPMs. Even at the hearing which led to the judgment of Fraser J, and much to the ire of His Lordship as expressed in the reasons for judgment, POL advanced highly selective evidence from witnesses prepared to speak favourably about Horizon despite having surprisingly little knowledge of the system, and with no serious attempt to probe the multiple "*bugs, errors or defects*" identified by the plaintiff's expert witnesses.

The lengths to which POL went, as late as 2019, to conceal the problems with Horizon may be demonstrated by the remarks of Fraser J concerning POL's most senior executive to testify:[53]

> 203. Mrs Van Den Bogerd … is a senior director at the Post Office and is, so far, the most senior member of Post Office personnel to have given evidence in the group litigation. I had made certain adverse findings about her evidence in Judgment (No.3) on the Common Issues … .
>
> 204. I have already explained that Ms Van Den Bogerd's evidence was considered completely afresh in this trial … . Her written evidence for the Horizon Issues trial was still substantially of the same tenor in relation to individual SPMs, in terms of widespread attribution of fault to SPMs as a default setting … .
>
> 207. She had also amended, in her sheet of corrections, certain statements that had been included in her Horizon Issues witness statement that were simply not sustainable on the facts. One example of this was in relation to Mrs Stubbs (a claimant and witness in the Common Issues trial, though not in the Horizon Issues trial) whom Mrs Van Den Bogerd had said "chose to settle centrally" items that were, in fact, obviously and plainly disputed by Mrs Stubbs; and in respect of which no SPM had any real "choice". Their choice, such as it was, was either paying immediately or settling centrally, which meant not paying immediately, but seeking time to pay. Mrs Van Den Bogerd's explanation for this was that she had not known these sums were disputed by Mrs Stubbs. Quite how that could be, given the extended saga in relation to these sums, the involvement of Mrs Stubbs' MP on her behalf (Sir John Redwood, a former Cabinet Minister), the Post Office's promises both to Mrs Stubbs and her MP of an investigation (the results of which, if one was ever done, have still not emerged, so far as I know), and indeed Mrs Stubbs' own evidence in the Common Issues trial, is entirely unclear. …

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[53] *Judgment (No.6), Horizon Issues*, at [203], *passim*, to [213].

209. She gave evidence about out of hours transactions and so-called phantom sales, the latter of which she explained (in her written evidence) as follows. "I am informed by Post Office's solicitors that in the course of investigating this matter, Fujitsu have advised that 'phantom sales' were reported in around 2000 which appeared to be caused by hardware issues". There is a master PEAK [a browser-based software incident and problem management system used by Fujitsu for the POL account] in relation to this from 2001, and even though Mrs Van Den Bogerd was very closely involved in the issues on Horizon, she had not known about this until some time later. Indeed, she could not remember even the approximate year when she had become aware of it. She did not even recall, in the witness box, having seen the master PEAK before.

210. I am most surprised that Mrs Van Den Bogerd could not remember seeing this PEAK before she was shown it in cross-examination. It is a very important PEAK. It is PEAK number PC0065021, dated 17 April 2001. The reason it is important is as follows. It relates to multiple branches. It concerns phantom transactions. It identifies dissatisfaction from more than one SPM as to how phantom transactions are being investigated and resolved, or more accurately, how they are not being. It shows calls being "closed" – ie brought to an end - without the permission of the SPM, even though that should not be done. It also shows at least one SPM threatening not to comply with their contractual obligations due to lack of confidence in the system, and also threats of legal action. Further, in one branch, where items had been the subject of phantom transactions (according to the SPM) ROMEC, the Royal Mail's own engineers, attended that branch to fit suppressors and other equipment in an effort to rectify this.

211. The PEAK plainly records the involvement of ROMEC, the Royal Mail's own engineering personnel, as follows. "ROMEC have been to site and state that they have actually seen the phantom transactions, so it is not just the PM's word now." ... The significance of this entry is obvious, and notable. Mrs Van Den Bogerd agreed that this was "independent site visit corroboration of the problem by Royal Mail's own engineers at the branch", and she also agreed that this was "clearly not user error any more". I do not understand how the master PEAK containing such important information could not have been at the forefront of Mrs Van Den Bogerd's mind. It is, in my judgment, important corroboration from those with experience of Horizon (the Royal Mail's own engineers) who stated they had actually seen the phantom transactions.

212. However, the conclusion reached by Fujitsu and recorded in the PEAK was as follows:

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

The PEAK also concludes "No fault in product".

213. This conclusion by Fujitsu is only not made out on the factual evidence, including the contemporaneous entries in the PEAK itself, but it is, in my judgment, simply and entirely unsupportable. It wholly ignores the independent support of the ROMEC engineers, who have reported that "they have actually seen the phantom transactions" and it arrives at a conclusion that, in my judgment, entirely contradicts the evidence available to Fujitsu at the time, and indeed contradicts common sense. Given the entry that "it is not just the PM's word now", this

> conclusion ignores two entirely different sources of actual evidence. One, what the SPM reported. Two, what the ROMEC engineers visiting the branch actually saw.

During this third stage, it is plain that a decision was made by POL, at the very highest levels, to 'double down'. For this, there is only one credible explanation. Even allowing that POL's senior executives may have continued to believe that Horizon was "*robust*", they were plainly alerted to the fact that its reliability was controversial. In true Nixonian style, they chose to brazen it out. As with Watergate, the result of the cover-up was to escalate a PR disaster into a PR cataclysm.

A decision to 'hold the line' is explicable, albeit deeply delinquent in the management of a Government-owned public company. But to continue the prosecutions in these circumstances, and especially to do so without full disclosure of everything which POL and its agents (including Fujitsu) knew about problems with Horizon, was nothing short of a conspiracy to pervert the course of justice.

**History Since 2019**

In 2019, Fraser J published reasons for judgment in a civil class action challenging claims by POL for restitution of alleged misappropriations.[54] Relevantly, His Lordship found that Horizon, which provided the only evidence supporting the allegations of misappropriation, contained "*numerous bugs, errors or defects … which were capable of causing, and did in fact cause, shortfalls*"; moreover, that POL had been aware of at least some of these problems – if not the full nature and extent of the discrepancies which they caused – from at least 2010, if not a decade earlier when Horizon was initially rolled out.

When delivering reasons for judgment in 2019, Fraser J expressed "*very grave concerns about the veracity of evidence*" given by employees of Fujitsu, and announced that he was sending all evidence to the director of public prosecutions to decide whether it should be sent to the relevant authorities.[55] In January 2020, following a referral from the Director of Public Prosecutions, the Metropolitan Police began investigating potential fraud offences relating to money recovered by POL as a result of prosecutions or civil actions, as well as potential offences of perjury and perverting the course of justice. Four years later, only two persons (both from

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[54] *Judgment (No.6), Horizon Issues*.

[55] Jemma Slingo, "Post Office IT contractor faces prosecution after judge's 'grave concerns' about evidence", *The Law Society Gazette*, 17 December 2019.

Fujitsu) had been interviewed under caution, and not a single person had been charged.[56]

Meanwhile, a body called the Criminal Cases Review Commission – a statutory body established by Section 8 of the *Criminal Appeal Act 1995* to investigate alleged miscarriages of justice in England, Wales, and Northern Ireland – had begun looking into the matter. As noted by Holyrode JA in *Hamilton*:[57]

> 55. Because different SPMs applied to the CCRC at different times, the CCRC dealt with more than one tranche of referrals and gave more than one statement of its reasons. For our purposes, nothing turns on that. The CCRC considered the cases of each of these appellants in considerable detail. We commend the care and thoroughness with which it did so. In its Statements of Reasons for the referrals, the CCRC summarised the principal points raised by the SPMs as including the following:
>
> i) POL could not show that the Horizon figures were correct, nor could they show when or how the alleged shortfalls occurred.
> ii) There was no direct evidence that the applicants had stolen any money.
> iii) The applicants had no choice but to falsify accounts: they would not have been able to continue trading if the books did not balance, and they were in fear of having their branches taken away from them.
> iv) The terms of their contracts were unfair, and there was no motivation for them to raise Horizon problems: if they did so, POL failed to investigate properly and would inevitably hold the SPM responsible for any monies which Horizon showed to be missing.
> v) POL failed to make adequate disclosure to the defence in the criminal proceedings of data on the Horizon system.
>
> 56. The CCRC considered that Fraser J's judgments undermined POL's approach to the criminal prosecutions of these appellants, in particular because of his findings which it summarised as follows:
>
> i) Legacy Horizon was not remotely robust.
> ii) HNG-X, the first iteration of Horizon Online, was slightly more robust than Legacy Horizon, but still had a significant number of bugs, errors and defects.
> iii) There was a significant and material risk of inaccuracy in branch accounts as a result of bugs, errors and defects in Horizon.
> iv) There is a material risk that shortfalls in branch accounts were caused by Horizon during the years when Legacy Horizon and HNG-X were in use (2000-2010, and 2010 onwards).
> v) There was independent evidence which supported the SPMs' version of events, including from Royal Mail's own engineers and from POL's own auditors.
> vi) POL failed to disclose to SPMs the full and accurate position in relation to the reliability of Horizon.

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[56] "Post Office under criminal investigation for potential fraud over Horizon scandal", *The Guardian*, 6 January 2024.

[57] *Hamilton* at [55] to [58].

vii) POL, and also Fujitsu, adopted the default position that SPMs must be responsible for shortfalls. The level of investigation by POL and Fujitsu was poor.
viii) SPMs were at a significant disadvantage in terms of access to relevant information which might have enabled them to investigate and challenge alleged shortfalls.
ix) SPMs had no way of disputing shortfalls within Horizon.
x) POL routinely overstated the contractual obligation on SPMs to make good losses.
xi) Remote access to branch accounts [i.e., by Fujitsu] was extensive, and some branch accounts were in fact altered without the SPM's knowledge. It would appear in the accounts as though such actions had been carried out by the SPM.

57. The three most important of those points, in the CCRC's view, were:
i) That there were significant problems with the Horizon system and with the accuracy of the branch accounts which it produced. There was a material risk that apparent branch shortfalls were caused by bugs, errors and defects in Horizon.
ii) That POL failed to disclose the full and accurate position regarding the reliability of Horizon.
iii) That the level of investigation by POL into the causes of apparent shortfalls was poor, and that the Post Office applicants were at a significant disadvantage in seeking to undertake their own enquiries into such shortfalls.

58. The CCRC concluded, in respect of each of these appellants, that Fraser J's findings gave rise to two cogent lines of argument in relation to abuse of process. It decided that there was a real possibility that this court would find that it had been an abuse of process to prosecute the appellants. It therefore referred the cases to this court.

Ultimately, in April 2021, a Court of Criminal Appeal found, in each of 39 cases, that:[58]

- as POL was ultimately forced to concede,[59] the conduct of POL had the result that a fair trial was not possible;
- POL had subverted the integrity of the criminal justice system and public confidence in it; and
- the prosecution was an abuse of process and an affront to the conscience of the court or (as otherwise expressed[60]) an "affront to the public conscience".

In September 2020, a further tranche of 12 convictions were quashed by the Court of Criminal Appeal,[61] and in December 2021 another 7 convictions were quashed.[62]

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58 *Hamilton*.

59 *Hamilton*, at [77].

60 *Hamilton*, at [72].

61 *Ambrose v. Post Office Ltd*, [2021] EWCA Crim 1443 (07 October 2021).

62 *Allen v. Post Office Ltd*, [2021] EWCA Crim 1874 (10 December 2021).

In June 2023, Nick Read – who had succeeded Paula Vennells as CEO of POL – announced the magnanimous gesture of repaying £7,000 out of a bonus package worth £455,000 (on top of a £400,000 salary), and called on other senior management to follow his selfless example.

A public inquiry was promised by prime minister Boris Johnson on 26 February 2020, and its initial terms of reference were announced on 10 June 2020. The first public sitting, chaired by retired High Court Judge Sir Wyn Williams, took place on 15 January 2021. Since then, the scope of the Inquiry has been broadened on several occasions. Given the rate of progress achieved over the 3 years to date – and even allowing that past progress has been impeded by the Covid pandemic – a foreshadowed reporting date of mid-2024 seems wildly optimistic.

From 1 January 2024, ITV – a British free-to-air commercial public broadcast television network – screened a four-part television drama called *Mr Bates vs the Post Office,* starring Toby Jones as Alan Bates, founder of and campaigner for the Justice for Subpostmasters Alliance (JFSA).[63] The series reignited public interest in the scandal.[64] It led to a petition attracting more than 1.2 million signatures demanding that Paula Vennells, the former CEO of POL, have her honour as Commander of the Order of the British Empire withdrawn. On 9 January 2024, Vennells announced that she would "*return [her] CBE with immediate effect*".[65]

On 10 January 2024, Prime Minister Rishi Sunak announced new legislation to exonerate wrongly convicted SPMs so as to avoid the cost and delay of further appeals.[66] However, the foreshadowed legislation is yet to be introduced, and commentators have identified serious practical problems with Sunak's proposal,[67]

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63 "Mr Bates vs The Post Office", *Wikipedia*, en.wikipedia.org/wiki/Mr_Bates_vs_The_Post_Office

64 Abby Robinson, "Mr Bates vs The Post Office's Will Mellor: 'The story makes me so angry'," *RadioTimes.com*, 14 December 2023; Caroline Frost, "Moving UK Post Office Drama Inspires Demand For CEO To Be Stripped Of Her CBE Award", Deadline, 6 January 2024; Connor Sephton and Tim Baker, "Mr Bates vs The Post Office: Sunak condemns 'appalling miscarriage of justice' of Horizon scandal", *Sky News*, 7 January 2024; Patrick Cremona, "Met police looking into Post Office scandal following ITV drama Mr Bates", *RadioTimes.com*, 6 January 2024.

65 "Former Post Office chief executive Paula Vennells has said she will hand back her CBE over the wrongful prosecution of hundreds of post office staff", *The Guardian*, 9 January 2024.

66 House of Commons (UK), 10 January 2024.

67 Dominic Casciani, "Can scheme to quash Post Office convictions work?", *BBC News*, 10 January 2024.

not least of which is Sunak's announced intention to ensure that "*any sub-postmaster guilty of criminal wrongdoing is still subject to prosecution*".[68]

**What are the Lessons?**

In a paper entitled "*The Conduct of Horizon Prosecutions and Appeals*",[69] members of the Faculties of Law at the University of Exeter and University College London have provided a legal analysis of the POL prosecutions, with some suggestions as to how similar misadventures may be avoided in the future. The present writer is grateful for this paper and the thought-provoking suggestions which it contains, but prefers to focus on what he regards as five critical issues.

*(1) Private Prosecutions*

The right of any citizen to institute criminal proceedings is a long-standing and important feature of the UK's (unwritten) constitution. In times of autocratic national governance, even the threat of a private prosecution may operate as a check on misuse of executive power. The well-known Australian case of *Sankey v. Whitlam*[70] is perhaps not the best example of that propensity.

This right has long been circumscribed by two constraints, one *de jure* and the other *de facto*. The official constraint rests in the power of the government, acting through the Attorney-General, to assume control of a private prosecution and (where appropriate) discontinue it. The unofficial constraint lies in the fact that judges and magistrates will tend to oversee proceedings more rigorously with knowledge that the prosecution is a private one.

The second constraint did not operate in respect of POL's prosecutions, as judges and magistrates assumed – not unreasonably – that the Post Office would adhere to the same high prosecutorial standards as other branches of government. Most probably did not know that POL, although still Government-owned, was operated expressly as a commercial enterprise, under the day-to-day control of an independent board of directors.

As has been pointed out by numerous commentators, POL's position involved a stark conflict of interest: it was the alleged victim, the investigator, and the

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68 House of Commons (UK), 10 January 2024.

69 evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2022/10/WP3-Prosecutions-and-Appeals-Oct-2021-2.pdf

70 (1978) 142 CLR 1, [1978] HCA 43

prosecutor, and its employees and agents were generally the sole prosecution witnesses. Moreover, both POL and (as we have seen) its investigators had a direct pecuniary interest in 'proving' that misappropriations had occurred and recovering the 'proceeds'.

This cannot be allowed to happen again, in the UK or any other Common Law jurisdiction. Although the writer would be loathe further to curtail the limited continuing right of citizens to launch private prosecutions, it would be a good start to outlaw prosecutions by a person or corporation with a direct or indirect financial interest in the outcome.

*(2) Investigators*

There are numerous institutions other than the official constabulary which assume the investigations of criminal conduct. These include various governmental officers and employees of government-owned entities, such as state and federal revenue authorities, customs officers, fisheries and transport inspectors, local councils, and bodies like ASIC and ACCC. But they also include investigators employed by charitable concerns, like the RSPCA, and staff of private profit-making businesses, such as banks and other financial institutions, department stores and supermarkets, insurance companies, airlines, and even the stock exchange.

The notion that any such investigator should receive a 'bonus' for securing a conviction is abhorrent. Such arrangements must be outlawed, and it should be an offence to offer, accept, make or receive such payments.

A separate question arises as to the competence of such investigators, and the propriety of their investigations. The level of ineptitude displayed at the Inquiry by POL's investigators is not unique: the writer has professional experience of similar incompetence on the part of investigators employed by bodies as diverse as Australia Post, Queensland Health, and the ACCC.

One solution would be to mandate appropriate training and experience, with licensing provisions similar to those applying to 'field agents' under Queensland's *Debt Collectors (Field Agents and Collection Agents) Act 2014*. But experience suggests that such licensing regimes are seldom effective, becoming (over time) an inconvenience to the honest and competent, and a 'dead letter' to all others.

The critical problem in such cases is an unspoken one: courts at every level tend to treat sworn officers of an official police service – and, by extension, others fulfilling

an investigative role – as being in a special category of witnesses, not necessarily deserving of added credibility, but at least deserving of added respect as persons professionally engaged in the investigation of crime. Doubtless that was an unstated factor in many of the POL prosecutions, and in the advice given to SPMs by their own legal representatives when they were encouraged to plead guilty.

Aside from expert witnesses – witnesses called to provide a professional judgment or opinion – there is nothing inherently objectionable about giving appropriate weight to professional witnesses based on their training and experience. This happens daily in our courts: for instance, when a doctor in called to testify as to a victim's injuries, or a bank officer or accountant is called to testify regarding financial transactions, not as a matter of judgment or opinion, but as witnesses of fact whose training and experience enables them to make more perceptive observations than a layperson may do. But this assumes that the witness has training and experience commensurate with the position occupied. That assumption is not necessarily correct in the case of professional investigators who are not police officers.

If investigators are to be treated as professional witnesses – in the sense mentioned – it should be on the basis of direct evidence regarding their training and experience, and not merely an assumed state of affairs. At the very least, such witnesses should be required (as expert witnesses are) to produce, at the outset of their testimony, a *curriculum vitæ* fully detailing their employment history and any relevant qualifications or training.

*(3) Disclosure*

Even without knowing what explanation may yet be forthcoming from POL's then legal representatives, what apparently occurred with respect to disclosure in the POL prosecutions is, frankly, terrifying. If one's reaction to the disclosures which have occurred in Victoria concerning "*Lawyer X*" (Ms Nicola Gobbo) is to wonder how any qualified member of the legal profession could conceivably think that this is okay, the same wonderment must be increased manyfold where similar derelictions regarding disclosure occurred on multiple occasions over many years involving POL's in-house lawyers and POL's external solicitors, as well as (it would seem) officers of the Crown Prosecution Service in England and Wales, Scotland's procurator fiscal, and Northern Ireland's Public Prosecution Service.

The writer is unaware whether, in UK prosecutions, it is now the practice – as it is with civil cases in many Australian courts – to require a legal practitioner to certify to the court that the duty of discovery or disclosure has been properly explained to the client. In Victoria, there is now a requirement that "*in a proceeding in which a full brief is served, the relevant officer must complete a disclosure certificate in the form prescribed by the regulations*".[71] Such a requirement should be introduced, at least in any case which is not prosecuted by a police service or a director of prosecutions.

*(4) Evidentiary Rules*

Over a generation ago – at a time when computer technology was something of a novelty, little understood by lawyers, politicians, policy-makers or parliamentary draftsmen – legislators in most Common Law jurisdictions addressed the need for statutory intervention to facilitate the admission of evidence generated by computers. The affidavit and witness statement templates produced by POL's solicitors were plainly designed, *inter alia*, to 'tick the boxes' in respect of such legislative provisions.

The current Queensland provision – section 95 of the *Evidence Act, 1977* – is fairly typical, whilst the archaism of its language (referring to "*processes or devices*", for example, rather than "*computers*") at once betrays its relative antiquity. The section has not been substantively amended in the ensuing 47 years, save by 1979 and 2014 amendments extending its operation to criminal proceedings.[72] It provides:

> **95. Admissibility of statements in documents or things produced by processes or devices.**
>
> (1) In a proceeding where direct oral evidence of a fact would be admissible, a statement contained in a document or thing produced wholly or partly by a device or process and tending to establish that fact is, subject to this part, admissible as evidence of that fact.
>
> (2) A court may presume the process or device produced the document or thing containing the statement if the court considers an inference can reasonably be made that the process or device, if properly used, produces a document or thing of that kind.
>
> (3) In a proceeding, a certificate purporting to be signed by a responsible person for the process or device and stating any of the following matters is evidence of the matter for the purpose of subsection (2)—
>
> (a) that the document or thing was produced wholly or partly by the process or device;

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[71] *Criminal Procedure Act 2009* (Victoria), Section 41A.

[72] *Criminal Law Amendment Act 1979* (Q.), Section 10; *Criminal Law Amendment Act 2014* (Q.), Section 54.

(b) that the document or thing was produced wholly or partly in a particular way by the process or device;

(c) that, if properly used, the process or device produces documents or things of a particular kind;

(d) any particulars relevant to a matter mentioned in paragraph (a), (b) or (c).

(4) A person who signs a certificate mentioned in subsection (3) commits an offence if—

(a) a matter is stated in the certificate that the person knows is false or ought reasonably to know is false; and

(b) the statement of the matter is material in the proceeding.

Penalty—

Maximum penalty — 20 penalty units or 1 year's imprisonment.

(5) If a party (the "**relying party**") to a proceeding intends to rely on the certificate, the party must give a copy of the certificate to each other party to the proceeding—

(a) at least 10 business days before the hearing day; or

(b) if, in the particular circumstances, the court considers it just to shorten the period mentioned in paragraph (a) — by a later date allowed by the court.

(6) If a party to the proceeding, other than the relying party, intends to challenge a matter stated in the certificate, the party must give the relying party notice in writing of the matter to be challenged—

(a) at least 3 business days before the hearing day; or

(b) if, in the particular circumstances, the court considers it just to shorten the period mentioned in paragraph (a) — by a later date allowed by the court.

(7) In this section—

"**hearing day**" means the day fixed for the start of the hearing of the proceeding.

"**responsible person**", for a process or device that produced a document or thing, means a person responsible, at or about the time the process or device produced the document or thing, for—

(a) the operation of the process or device; or

(b) the management of activities for which the document or thing was produced by the process or device.

It will be apparent, merely from perusal of this provision, that it would readily allow for a repetition of the UK's Post Office scandal in this state. Accordingly, I would suggest six amendments:

- First, an amendment requiring an affidavit (in civil proceedings) or a statutory declaration (in criminal proceedings), rather than a mere certificate.

- Secondly, in lieu of the wholly inadequate penalty provision in subsection (4), a stipulation that a person who makes such a certificate which the person knew or ought to have known is false is guilty of perjury, if it:
  (a) is filed, tendered, read or otherwise introduced into evidence in a court or tribunal; or
  (b) is provided to another party (or the party's legal representatives); or
  (c) is referred to in any negotiations, including negotiations conducted without prejudice, or at a mediation.

  (The second and third 'limbs' are intended to address the situation where such an instrument may induce a person either to enter a guilty plea, or to settle civil proceedings on disadvantageous terms.)
- Thirdly, to expand the matters to which the deponent must depose.
- Fourthly, to refine the definition of who may verify a certificate.
- Fifthly, to reinforce the duty of disclosure in such cases.
- Sixthly – so as to prevent computer-generated records being tendered under another provision of the *Evidence Act* (such as sections 84, 92 or 93) as a means of evading compliance with the amended section 95 – to provide that, in the case of any document or thing to which section 95 is capable of applying, it is the exclusive way to prove the document or thing as evidence of the data or information which it contains.

The writer's suggestion for a more rigorous requirement than that which is currently contained in subsection (3) would look something like this:

> (3) In a proceeding—
>
> (a) A document ("**the certificate**") is, for the purpose of subsection (2), evidence of any of the matters mentioned in paragraph (3)(b) set out in the certificate if—
>
> (i) the certificate is verified by one or more persons in accordance with section 95A; and
>
> (ii) before verifying the certificate, the deponent conducted reasonable inquiries of any person who would or might be able to contradict any of the matters deposed to if it were untrue; and
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> (iii) before verifying the certificate, the deponent received advice from a legal practitioner regarding the matters deposed to and the deponent's duties and responsibilities in relation thereto; and
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> (iv) at the time of verifying the certificate, the deponent was aware that it is a criminal offence to verify a certificate containing a false statement, punishable as perjury under section 123 of the *Criminal Code*.
>
> (b) The certificate may state—

(i) that a specified document or thing was produced wholly or partly by the process or device; and

(ii) that the specified document or thing was produced wholly or partly in a particular way by the process or device; and

(iii) that, if properly used, the process or device produces documents or things of a particular kind.

The writer's suggestion for a more rigorous definition of "*responsible person*" than that which is currently contained in subsection (7) would involve the repeal of that definition and the introduction of a new section 95A, looking something like this:

**95A. Verification of certificate under Section 95.**

(1) In this section—

(a) For a process or device that produced a document or thing—

"**the production date**" means the date that the process or device produced the document or thing.

"**the critical times**" means the best available approximation of—

(i) the production date; and

(ii) each date on which any data or information contained in the document or thing was entered into, stored in or otherwise acquired by the process or device; and

(iii) each date on which any data or information contained in the document or thing was ascertained, calculated, manipulated or otherwise dealt with by the process or device.

**"responsible operator**" means a person who, at any of the critical times, was responsible for the operation of the process or device.

**"responsible custodian**" means a person who, at any of the critical times, was responsible for the maintenance, upkeep and repair of the process or device.

**"responsible end-user**" means a person who, at or about the production date, was responsible for the management of activities for which the document or thing was produced by the process or device.

(b) **"verifying instrument"** means:

(i) in a proceeding where an affidavit may be filed — an affidavit; and

(ii) in any other proceedings — a statutory declaration.

(2) A certificate is verified as required by paragraph (a)(i) of subsection 95(3) if, and only if, it is verified by a verifying instrument which is, or by more than one verifying instrument which are—

(a) duly executed; and

(b) deposed to by a person who is, or by people who (collectively) include—

(i) a responsible operator for the process or device; and

(ii) a responsible custodian for the process or device; and

(iii) a responsible end-user for the process or device; and

(c) supplied by the relying party to each other party to the proceeding when a notice is given under subsection 95(5); and

(c) otherwise compliant with the requirements of this section.

(3) This subsection applies if—

(a) at any of the critical times—

(i) the device was owned or operated by or on behalf of a business or charitable entity which employs more than ten persons, or of a corporate or governmental entity (an "**advanced business**"); and

(ii) any of the functions of a responsible operator or a responsible custodian was ordinarily undertaken by an officer or employee of the advanced business; or

(b) at or about the production date—

(i) the device was owned or operated by or on behalf of an advanced business; and

(ii) any of the functions of a responsible end-user was ordinarily undertaken by an officer or employee of the advanced business.

(4) This subsection applies if—

(a) at any of the critical times—

(i) the device was owned or operated by or on behalf of an advanced business; and

(ii) any of the functions of a responsible operator or a responsible custodian was ordinarily undertaken by a contractor, technician or consultant external to the advanced business; or

(b) at or about the production date—

(i) the device was owned or operated by or on behalf of an advanced business; and

(ii) any of the functions of a responsible end-user was ordinarily undertaken by a contractor, technician or consultant external to the advanced business.

(5) The verifying instrument or instruments must depose to and provide full particulars of—

(a) all facts necessary to establish, in accordance with subsection (1):

(i) the production date; and

(ii) the critical times; and

(b) all facts necessary to establish that the deponents include:

(i) a deponent who is a responsible operator; and

(ii) a deponent who is a responsible custodian; and

(iii) a deponent who is a responsible end-user; and

(c) if subsection (3) applies, all facts necessary to establish either:

(i) that the deponents include the most senior officer or employee of the advanced business who ordinarily undertook any of the functions of a responsible operator, a responsible custodian or a responsible end-user; or

(ii) if the deponents do not include that person — why the deponents do not include that person;

(d) if subsection (4) applies, all facts necessary to establish either:

(i) that the deponents include the most senior officer or employee of the contractor, technician or consultant who ordinarily undertook any of the functions of a responsible operator, a responsible custodian or a responsible end-user; or

(ii) if the deponents do not include that person — why the deponents do not include that person;

(e) all facts necessary to establish the requirements of paragraphs (a)(ii), (iii) and (iv) of subsection 95(3), including—

(i) the steps taken by the deponent in compliance with paragraph (a)(ii) of subsection 95(3), the identity of each person with whom the deponent made inquiries, and the outcome of such inquiries; and

(ii) for the deponent, the identity of the legal practitioner referred to in paragraph (a)(iii) of subsection 95(3); and

(f) that, taking into account the outcome of any inquiries made by the deponent in compliance with paragraph (a)(ii) of subsection 95(3), the deponent is not aware of any matter or circumstance suggesting or tending to suggest either—

(i) that the accuracy and reliability of the data and information contained in the document or thing, or any part thereof, is or may be compromised or unreliable; or

(ii) that the process or device, or any feature or function thereof, is or may have been defective or malfunctioning at any of the critical times; and

(g) to the extent that any of the matters set out in the certificate or the verifying instrument is based on the deponent's own knowledge or opinion, the sources of that knowledge or the reasons for that opinion; and

(h) to the extent that any of the matters set out in the certificate or the verifying instrument based on information received by the deponent—

(i) the sources of that information; and

(ii) whether or not the deponent believes that information to be true; and

(iii) the reasons for such belief.

The writer's suggestion to reinforce the duty of disclosure in such cases would be a new subsection 95(5A), looking something like this:

(5A) Where the relying party has given a certificate to the other parties, or any of them, in accordance with subsection (5)—

(a) the relying party has an immediate duty to make disclosure by providing copies to the other parties of all documents suggesting or tending to suggest either—

(i) that the accuracy and reliability of the data and information contained in the specified document, or any part thereof, is or may be compromised or unreliable; or

(ii) that the process or device, or any feature or function thereof, was or may have been defective or malfunctioning at the critical times within the meaning of subsection 95A(1); and

(b) the duty of disclosure under paragraph (a) operates whether or not a party to the proceeding, other than the relying party, has given or subsequently gives notice in accordance with subsection (6); and

(c) to avoid doubt, the duty of disclosure under paragraph (a) is in addition to any other duty of disclosure or discovery to which the relying party is or may become subject.

*(5) Criminal Cases Review Commission*

Though it did not (and could not) prevent the injustice caused to innocent SPMs by the POL prosecutions, tribute must be paid to the sterling work performed by the Criminal Cases Review Commission (created under Section 8 of the *Criminal Appeal Act 1995*, UK) in securing their eventual vindication. Is it not time that Queensland, or preferably the whole of Australia, adopted this useful initiative?