



Mr Frazer Stuart
Criminal Cases Review Commission
5 St Philip's Place
Birmingham
B3 2PW

Date: 11 February 2015

Dear Mr Stuart

**Criminal Cases Review Commission ("Commission")
Horizon Computer System - Requirement to Produce Materials**

I write in response to your letter dated 14 January 2015, acknowledged by our letter dated 20 January 2015, and your subsequent telephone call to us on 27 January 2015. I have now had the opportunity to consider more fully your letter and notice issued under Section 17 of the Criminal Appeal Act 1995 (**CAA**).

In your letter you state that *"the Commission ... is now considering the situation regarding the Horizon system, and the associated criminal proceedings"* and that it *"requires Post Office to identify all documents relating to this matter and produce them"*. Your letter and notice then specifically request *"a copy of Brian Altman QC's report; either an updated summary of the decisions and actions taken by the Post Office as a result of Brian Altman QC's report or copies of the documents recording those decisions and actions; [and] the preservation of any materials associated with affected cases."*

Background

We trust you will appreciate that the request you make is (with respect) wide and in the most general of terms, notwithstanding the specific request for Brian Altman QC's report. I have therefore reviewed the previous correspondence Post Office Limited (**POL**) has exchanged with the Commission's Director of Casework Operations, Mrs Sally Berlin, in order to try to better understand the scope of your request. I summarise that correspondence as follows:

- The Commission wrote to POL on 12 July 2013 following media coverage on the Horizon computer system generated by a report published on 8 July 2013 by Second Sight Support Services Limited (**Second Sight Report**);
- The Commission sought information from POL about criminal convictions that might be *"impacted by the [Horizon] issue"* and the actions POL would be taking;

- The Commission noted that its role was "*likely to relate to anyone who is convicted of a criminal offence (in England, Wales or Northern Ireland), where evidence from the computer system is relevant, where (i) they have already tried to appeal against that conviction or (ii) they were convicted at Magistrate's Court following a guilty plea.*"
- POL responded on 26 July 2013 saying that we had instructed Brian Altman QC to advise POL on its "*strategy and processes for reviewing past/current prosecutions*", and also instructed external specialist criminal solicitors to review individual cases.
- On 30 July 2013, Mrs Berlin acknowledged the steps POL was taking, adding that the Commission had "*not identified any cases (past or present) in [its] system that might be affected by any issue with the Horizon system*", although "*that could change once [it knows] more about the issue.*"
- Mrs Berlin sought an update in an email dated 16 May 2014, to which POL replied on 5 June 2014 summarising the review process undertaken and consequential actions, and noted that it had not received any application for permission to appeal to the Court of Appeal since the publication of the Second Sight Report.

We are of course also aware that the scheme set up by POL to investigate individual complaints about Horizon was the subject of media and political activity shortly before your most recent letter, and indeed continues to be the subject of public debate. That scheme was set up as a separate and distinct response to the Second Sight Report, and even though some of the scheme applicants have criminal convictions, it operates independently of Mr Altman QC's review of POL's strategy and process for reviewing criminal prosecutions.

POL's Position

Having considered the position more fully against this background, I am unfortunately currently unable to see how the request you make fits within the guidance contained in paragraphs 4-6 (inclusive) of the Commission's "*Formal Memorandum – the Commission's power to obtain material from public bodies under S17 of the Criminal Appeal Act 1995*" (enclosed).

This is especially so given that Mr Altman QC's report does not address individual cases, but rather POL's strategy and process for reviewing past and current prosecutions generally. For the sake of completeness, POL continues to assert that legal professional privilege attaches to Mr Altman QC's report, while remaining aware of its duty to comply with the Commission's exercise of its powers under S. 17 CAA.

Further, the position on individual cases remains that in respect of the cases which it has prosecuted, POL has not been made aware, since the publication of the Second Sight Report, of any applications having been made for leave to

appeal against conviction or sentence in the Crown Court, or of any application to appeal to the Crown Court any Magistrates' Court conviction or sentence.¹

That said, I wish to emphasise that POL wants to and will work with you in this matter, and will comply with any statutory requirement with which it has a legal obligation to comply. Accordingly, so that we can progress responding to the requests in the notice, we would be grateful if you could please clarify for us:

- (i) the precise function or functions which the Commission is seeking to exercise pursuant to S.17(1) CAA; and
- (ii) how and why the Commission considers it is "reasonable" to require POL to produce the documents or material requested in exercise of that function or functions pursuant to S.17(2) CAA.

Preservation of Materials

In these circumstances, while I can confirm that POL will continue to preserve all materials reviewed by the external specialist criminal law solicitors as part of the prosecution case review considered by Mr Altman QC, and also all material considered as part of the scheme set up by POL to investigate individual complaints about Horizon, I hope you understand that until we have certainty as to what is meant by "*the affected cases*" we are unable to give a more specific formal confirmation in the terms sought in your letter and notice.

Next Steps

I hope that it is clear from the above that Post Office will work with the Commission on this matter, and that it has a legitimate need to understand the powers the Commission is seeking to exercise before it responds further. It is for these reasons that we invite your response to the questions we have asked above, and would be happy to discuss with you the best way to progress matters. In the meantime, all POL's legal rights in this matter remain reserved.

Yours sincerely,

GRO

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Enc. 1. Formal Memorandum – S.17 Criminal Appeal Act 1995

¹ For absolute transparency, on 9 May 2013, two months before the Second Sight Report was published, POL received notification of appeal against sentence in the matter of R v Khayyam Ishaq. Mr Ishaq's application for Permission to Appeal was refused by the Single Judge on the 20 June 2013, and he did not renew his application before the full court at an oral hearing.



FORMAL MEMORANDUM

The Commission's power to obtain material from public bodies under S.17 of the Criminal Appeal Act 1995

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The Commission's power to obtain material from a public body

1. Section 17 of the Criminal Appeal Act 1995 applies where the Commission believes that a person serving in a public body has possession or control of a document or other material which may assist the Commission in the exercise of any of its functions.¹ When requested to do so, a public body is under a duty to make such material available to the Commission, providing such a request is reasonable.

The meaning of "public body"

2. A public body is defined in section 22 of the Criminal Appeal Act 1995. It includes
 - (i) any body constituted for the purposes of public service, local government, or the administration of justice; or

¹ Section 33(2) Criminal Appeal Act 1995: the Commission's powers under section 17 extend only to England, Wales and Northern Ireland.

- (ii) whose members are appointed by the Queen, by any Minister or any government department; or
 - (iii) whose revenues consist wholly or mainly of money provided by Parliament
3. "Public body" therefore includes police forces, the Crown Prosecution Service, the Armed Forces, the Security Services, government departments, Local Authorities (including Social Services departments), Courts, HM Prisons and the Probation Service.²

"Reasonable to do so"

4. The Commission's power under section 17 can only be exercised when it is reasonable to do so. As a matter of broad principle no documents or material will be requested from a public body unless it appears that they may assist the Commission in determining whether or not a case should be referred to an appellate court.
5. The fact that material held by a public body relates directly or indirectly to a case under review by the Commission, or to a case being investigated for the Court of Appeal by the Commission, will generally satisfy the requirement of reasonableness.
6. The Commission may need to obtain material under section 17 from a public body when investigating a matter on behalf of the Court of Appeal³ or the Home Secretary⁴.

"Possession or control" and "the appropriate person"

7. Material may be with an individual or department, it may have been passed on elsewhere or it may have been archived. Therefore, material will be in the "possession" of the person or office which has physical possession at the time the section 17 notice is received, but it may still be under the "control" of another person or office elsewhere.
8. It is not always possible to identify which part of a public body is actually in possession or control of material at the time a section 17 notice is issued. Consequently, the Commission will direct any formal notice issued under section 17 to "the appropriate person" at the public body. The appropriate person will be responsible for ensuring that the public body complies with its obligations.
9. Section 22(4) of the Criminal Appeal Act 1995 sets out who will be the "appropriate person" at a public body: the head of the organisation or the Minister in charge of a government department.

² This list is not exhaustive.

³ See section 15 Criminal Appeal Act 1995

⁴ See section 16 Criminal Appeal Act 1995

S17 Criminal Appeal Act 1995

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10. In practice, the appropriate person will generally delegate the task of complying with a notice under section 17 to a nominated representative within the public body. Most public bodies dealing with the Commission on a regular basis have appointed a specific member of staff to act in this capacity.

Form of notice under section 17

11. The Commission has a standard form of notice under section 17. This will be accompanied by an explanation (Section 17 Duties) of the specific legal obligations imposed on a public body by such a notice.

The duties imposed on a public body by section 17

12. A public body receiving a notice under section 17 notice from the Commission is under a legal duty to comply with the request. The notice will specify exactly what is being requested of the public body by the Commission.
13. The Commission may require a public body
 - (i) to produce material;
 - (ii) to allow access to it;
 - (iii) to allow the Commission to take it away;
 - (iv) to allow the Commission to make and take away a copy in an appropriate form.
14. When a section 17 notice is received by a public body it is required not to destroy, damage or alter the material until the notice has been withdrawn by the Commission.

Are there any limitations on the section 17 power?

15. Section 17(4) provides that the duty imposed on a public body is not affected "by any obligation of secrecy, or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to the Commission".
16. In other words, the duty on a public body to comply with a notice under section 17 is not affected by matters such as the general sensitivity of the material, or medical confidentiality, or the existence of a court order for public interest immunity, or by legislation such as the Data Protection Acts or the Official Secrets Acts.

What happens to material when it is provided to the Commission?

17. Ownership of the material remains with the public body throughout.
18. The Commission will handle and store all material provided by a public body in accordance with its formal policy.

Will the Commission give the material to someone else?

19. Section 25 of the Criminal Appeal Act 1995 specifies that a public body can notify the Commission that no onward disclosure of material provided under section 17 is to be made without prior consent, although such consent may not be unreasonably withheld.
20. The Commission may decide that it is necessary to disclose information provided by a public body under section 17. If so, disclosure can only be made for one of the purposes specified in section 24 of the Criminal Appeal Act 1995.
21. A full explanation of the relevant statutory provisions and the Commission's general approach to disclosure of information is set out in its Formal Memorandum entitled Disclosure by the Commission.

What happens when the Commission's review has been completed?

22. The Commission will return all original material provided by a public body at the conclusion of its review. At this point, the section 17 notice will be formally withdrawn and the public body will be notified in writing that its obligations under section 17 are at an end.