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# CACD update





## Disclosure issue 1: recording of minutes in 2013

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### Summary

- ❑ A review of files recently received from Cartwright King shows that in July 2013, John Scott (POL's Head of Security 2006-2016) instructed people to delete minutes of meetings regarding Horizon issues with the apparent intention of avoiding POL's disclosure obligations. It is not clear whether this was in relation to civil disclosure, criminal disclosure or both. The implications for POL's criminal disclosure obligations were identified internally, advice sought from Cartwright King, and quickly corrected.
- ❑ The material is post-conviction but is disclosable as potentially demonstrating:
  - (i) a misunderstanding of POL's criminal disclosure obligations by a senior investigator;
  - (ii) an apparent attempt to avoid those obligations to protect Horizon; and
  - (iii) an attitude to disclosure that may have existed when POL was prosecuting SPMs.
- ❑ The documents do not provide a complete picture. Further searches are being conducted but may not reveal any additional information.
- ❑ Counsel advises that the material, whilst unhelpful, does not alter the advice on limb 2. The Appellants may argue that John Scott's actions are evidence of an historical culture of non-disclosure to protect Horizon, but there is no direct evidence that this was more than a limited, post-conviction incident which was identified and corrected promptly.



# Disclosure issue 1: non-recording of minutes in 2013

## Detail

- ❑ We have reviewed some 'general advice' files received recently from Cartwright King (previously instructed by POL to prosecute SPMs). One file contains correspondence and a further advice from Simon Clarke regarding a series of meetings beginning in July 2013 following the problems identified with Gareth Jenkins and the Second Sight and Helen Rose reports.
- ❑ Clarke had advised that POL establish a single, central hub to act as a primary repository for all Horizon related issues to serve as a single information point for POL to discharge its disclosure duties "to protect POL from the current situation repeating itself in the future". Minuted meetings regarding the hub were held on 19, 24 and 31 July 2013.
- ❑ On 31 July 2013, Jarnail Singh ('JS') spoke to Martin Smith of Cartwright King indicating that John Scott (POL Head of Security since 2006) had instructed that typed minutes be scrapped. On 1 August 2013, JS asked Cartwright King to advise in writing on the "common myth" that information not reduced to writing does not need to be disclosed. JS indicated that, irrespective of the position in civil disclosure, this was not correct for criminal disclosure.
- ❑ On 2 August 2013, Simon Clarke advised POL in writing as follows:
  - He had been informed that "some at POL" do not wish to minute the calls; an instruction had been given to destroy and/or "shred" the minutes of the three meetings held so far, and that POL had been advised that "if it's not minuted it's not in the public domain and therefore not disclosable";
  - This approach and advice was wholly wrong. There was a legal duty on the prosecutor to record and retain material and the disclosure duty applied to all information whether recorded in writing or not. A deliberate breach of these duties would be extremely serious, potentially amounting to perverting the course of justice; and
  - All meetings and conferences must be properly minuted and those minutes retained centrally.
- ❑ Also on 2 August 2013, internal Cartwright King emails suggest that they were concerned about 'factions' within POL who might try to "lay off blame for their own shortcomings by lying about the advice they have received", which would result in a loss of privilege.
- ❑ No minutes had in fact been destroyed. Further hub meetings took place on 7 and 14 August which were minuted.
- ❑ On 14 August 2013, Martin Smith spoke to 'SC' (believed to be Susan Crichton, POL General Counsel) and told her that John Scott had admitted in an email to sending out instructions to shred the earlier minutes.



## Disclosure issue 1: non-recording of minutes in 2013

### Detail

- ❑ On 16 August 2013, Susan Crichton replied to Clarke's advice stating that:
  - She was "deeply concerned at the suggestion in Simon's note that there may have been an attempt to destroy documentary material generated in connection with the Horizon Calls, specifically any minutes of the calls";
  - There was no suggestion that material connected to the operation of Horizon itself may have been compromised;
  - POL was committed to conducting business in an open, transparent and lawful manner, and any suggestion to the contrary would not reflect POL policy and would not be authorised or endorsed by POL. The statements in Clarke's advice do not reflect or represent POL's position; and
  - Minutes of calls are and will continue to be taken which will be centrally stored by Bond Dickinson.
- ❑ On 19-20 August 2013, John Scott exchanged emails with Rob King (also POL Security) indicating that the "initial mandate of not circulating notes" had been superseded and that it was important that everything was documented, stored and made accessible.
- ❑ Thereafter, the meetings continued and appear to have been fully minuted. In October 2013, Cartwright King established a protocol for the calls which reiterated the duty to retain and record "all information which might suggest that Horizon Online may not be working as it should, or that our training and back-up systems are less than we would wish" and that defendants were entitled to any such material that met the disclosure test.
- ❑ On 15 October 2013, Brian Altman QC provided his 'General Review' to POL. He indicated that he had seen Clarke's advice of 2 August 2013 and he noted the "early teething" and "cultural" problems encountered in the early hub calls. Brian went on to comment on the protocol and make suggestions for improving the process generally. Brian has no independent recollection of the minuting issues but infers from his General Review that he was satisfied at the time that it had all be resolved.



## Disclosure issue 2: pre-rollout testing problems

### Summary

- ❑ A review of the hard copy material from archived boxes has uncovered documents from 1999 detailing bugs and other problems identified during pre-rollout testing of Horizon. The fact that such problems were identified during testing is unremarkable. However, one internal POL document dated 13 August 1999 refers to a "data integrity fault" apparently capable of causing balance shortfalls, which was only discovered "as a result of special controls put in place by POCL to monitor the live trial and not by any system based control operated by ICL Pathway" (note – ICL Pathway was later subsumed into Fujitsu). The document states that ICL had created a fix which POL had rejected, and expresses POL's concerns about ICL being able to spot and fix such incidents generally.
- ❑ A further document dated 29 September 1999 contains minutes of an "Acceptance Workshop" dealing with the issues raised in the first document. It appears that at one of the workshops, ICL had identified a root cause and proposed and started implementing fixes, and that POL needed to review these to see if they were reliable.
- ❑ We have not identified any further documents showing what the outcome was. Enquiries within POL, with POL's former solicitors and with the GLO counsel team have not identified any further relevant information. Enquiries have been made with Fujitsu and the results are awaited, although they are unlikely to be available in time for the PCDE disclosure deadline on 19 February.
- ❑ Fraser J only addressed pre-rollout testing in a very general way in the HIJ and did not make any findings relevant to this issue.
- ❑ The material pre-dates any prosecution but is disclosable as potentially demonstrating that:
  - (i) ICL did not spot a serious pre-rollout issue affecting Horizon data integrity;
  - (ii) POL did not have confidence in ICL's ability to fix such issues even when identified; and
  - (iii) If this issue (or any other) was not identified and/or fixed prior to rollout, given POL's knowledge and concerns, it did not have a proper basis for assuming that Horizon data was sufficiently reliable to support the prosecution of SPMs immediately after rollout (e.g. Pamela Lock's indictment period starts in January 2000) and/or should have made appropriate disclosure.
- ❑ Counsel advises that the material, whilst unhelpful, does not alter the advice on limb 2. The purpose of pre-rollout testing was to identify bugs and related problems. There is no evidence that this data integrity issue (or any other bug) was not fixed prior to rollout. There is no evidence to show that POL investigators or prosecutors were aware of any pre-rollout issues with Horizon reliability or un-fixed bugs.