



Cooperation with Law Enforcement and Addressing Suspected Criminal Misconduct

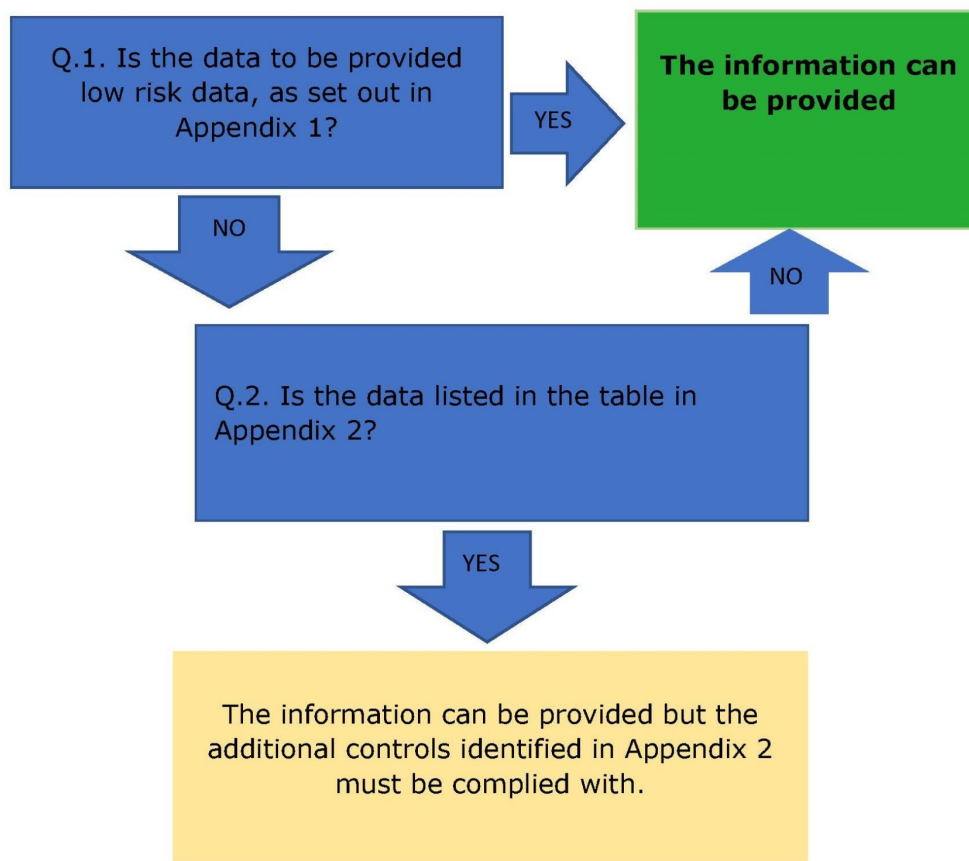
Legal Playbook

1. The "Cooperation with Law Enforcement Agencies and Addressing Suspected Criminal Misconduct" Policy (The Policy) mandates that, if at any stage, a request is made for a witness statement, or for data to be exhibited for use in evidence, advice is sought from the Post Office Legal Team – unless data is 'low risk' as defined in Appendix 1 of The Policy.
2. This Playbook contains five Tools which have been designed to assist Post Office Legal when advising the business on issues relating to cooperation with law enforcement agencies and how it should address suspected criminal misconduct. Those Tools are as follows:
 - i. Tool 1: Flowchart: Provision of Data to Law Enforcement for Intelligence Purposes;
 - ii. Tool 2: Flowchart: Provision of Evidence to Law Enforcement Agencies;
 - iii. Tool 3: Monitoring of Ongoing Criminal Cases Checklist (Tool 3);
 - iv. Tool 4: Disclosure Checklist;
 - v. Tool 5: Factors to Consider When Determining Whether to Report Suspected Criminal Misconduct to the Police.



Tool 1: Flowchart: Provision of Information to Law Enforcement for Intelligence Purposes

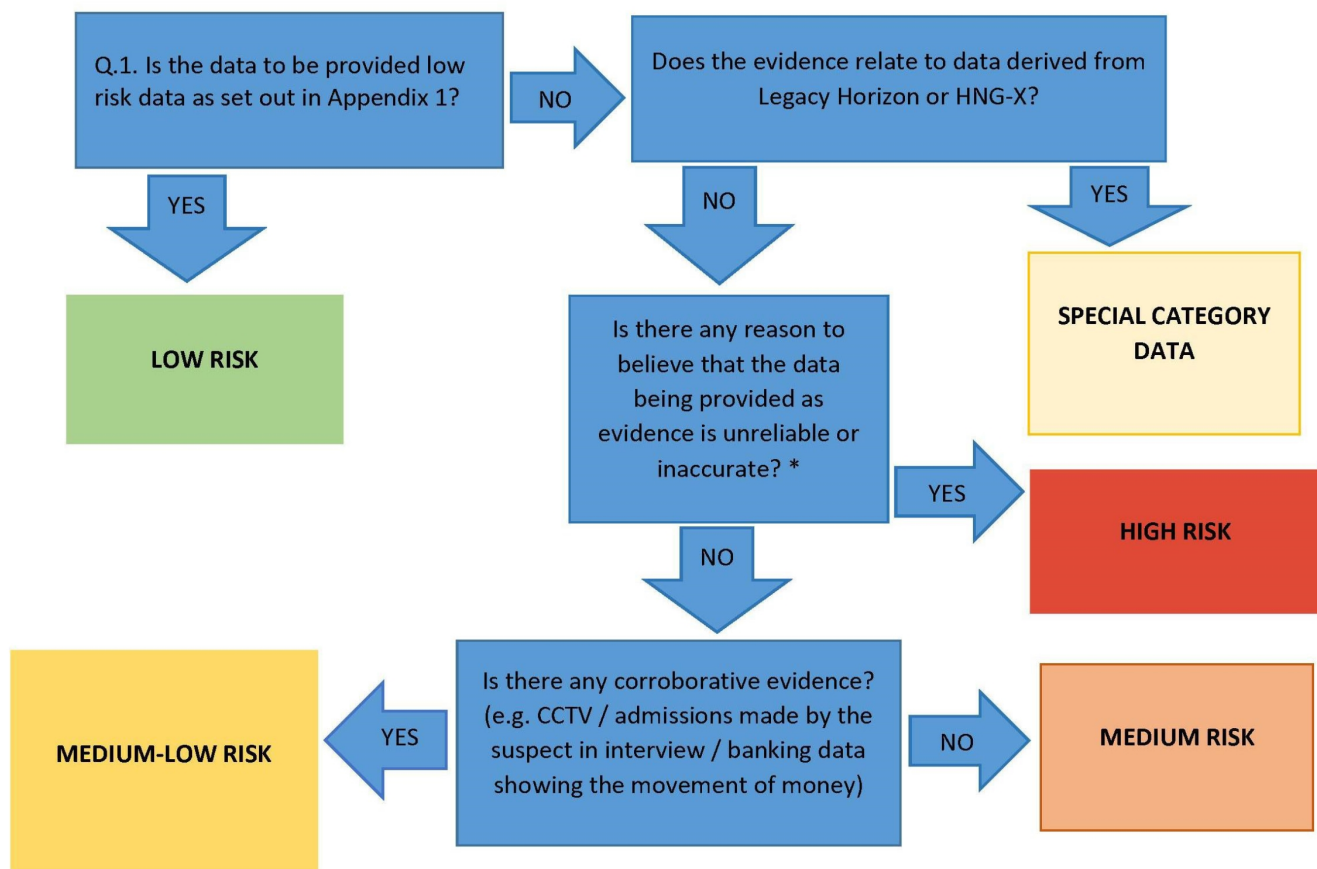
1. This Tool is to be used when Post Office receives a request to provide data to law enforcement agencies for **intelligence** purposes only. If at any stage, a request is made for a witness statement, or for data to be exhibited for use in evidence, please seek advice from Post Office Legal, unless the data is 'low risk', as set out in Appendix 1.



2. Nothing in this Tool shall be interpreted as permitting the voluntary disclosure of data where such provision would result in non-compliance with other legal obligations (for example, but not limited to, the Data Protection Act 2018 or the General Data Protection Regulation). Mandatory Orders must be sought if necessary, to ensure the lawful provision of data.

Tool 2: Provision of Evidence to Law Enforcement

1. This Tool is to be read in conjunction with the Cooperation with Law Enforcement Agencies and Addressing Suspected Criminal Misconduct Policy and will adopt the definitions therein.
2. When determining whether evidence can be provided to Law Enforcement Agencies, Post Office Legal (or any Nominated Criminal Law Advisors acting on their behalf) shall have regard to the following flowchart, in order to assess the risk associated with providing the data:



*In determining whether there is any reason to believe that the data is unreliable or inaccurate, the decision maker must have regard to any potential reliability issues that they are aware of; or which have been raised with POL Legal. In particular, regard should be had to any issues which Fujitsu has raised (directly or indirectly) with POL Legal. If necessary, guidance should be sought from IT specialists about the impact of any known issue with data deriving from a computer system.



3. Once the above risk assessment has taken place, Post Office Legal shall determine whether the data can be provided and any controls which are necessary to mitigate risk in accordance with the table below:

High Risk	The data must not be provided, unless Post Office is legally compelled to provide it or the Board approves its voluntary disclosure. If Post Office is compelled to provide the data, it must advise the Law Enforcement Agency of the risks associated with relying upon the data <u>before</u> providing it. If Post Office is still compelled to provide the data, the relevant witness statement must contain a form of words which draws the recipient's attention to the potential reliability issue which has been identified. In addition, the Disclosure Checklist (Tool 4) must be complied with.
Medium Risk	The data must not be provided, unless Post Office is legally compelled to provide it or the Board approves its voluntary disclosure. If Post Office is compelled to provide it, the Disclosure Checklist (Tool 4) must be complied with.
Medium- Low Risk	The data can be provided as evidence on a voluntary basis. No Advisory Notice is required. The Disclosure Checklist must be complied with.
Low Risk	The data can be provided as evidence and does not need to be escalated to Post Office Legal. No Advisory Notice is required.
Special category data	Post Office must advise the Law Enforcement Agency of the risks associated with relying upon the data <u>before</u> providing it, by providing the Advisory Notice (as set out in Tool 1). If the evidence is still sought, it can be provided on a voluntary basis but the witness statement must include a form of wording that encompasses the content of the Advisory Notice (whether the evidence is provided voluntarily or subject to a Mandatory Order). The Disclosure Checklist (Tool 4) must be complied with.

4. Nothing in this Tool shall be interpreted as permitting the voluntary disclosure of data where such provision would result in non-compliance with other legal obligations (for example, but not limited to, the Data Protection Act 2018 or the General Data Protection Regulation). Mandatory Orders must be sought if necessary, to ensure the lawful provision of data.



Tool 3: Monitoring of ongoing investigations and prosecutions by Law Enforcement Agencies

1. This Tool is to be read in conjunction with the Cooperation with Law Enforcement Agencies and Addressing Suspected Criminal Misconduct Policy and will adopt the definitions therein.
2. Once Post Office becomes aware that a suspect is under investigation for a criminal offence relating to the Post Office, it shall liaise with the Prosecution Team to obtain the following information:
 - a. the suspected offences or charges in each case;
 - b. any information which summarises the prosecution case and defence case, however brief;
 - c. procedural updates – e.g. the current stage of proceedings, next hearing date, current trial date (if applicable);
 - d. whether the suspect was interviewed under caution by the police and/or Post Office investigation team and whether any admissions were made during those interviews regarding the conduct in question;
 - e. whether evidence has been provided by any Post Office Employees or Operators and details of such evidence (e.g. witness statement, exhibits);
 - ~~f. whether any evidence used by the prosecution team derives from the Horizon system. If so, the nature of such evidence (e.g. evidence from Horizon transaction logs relating to spoilt label refund transactions) and the date range covered by the data;~~
 - g.f. whether the suspect has raised any issues regarding the veracity of the evidence which has been served (whether during a Post Office/police interview or a defence statement or the pre-trial stage);
 - h.g. whether any expert reports have been provided and whether Post Office has been asked to respond to such reports.
3. If Post Office becomes aware of a challenge to ~~data deriving from Horizon~~any data it has provided, Post Office Legal will consider any steps that should be taken to mitigate the risks arising from such challenge and may seek advice from its Nominated Criminal Law Advisors in this regard.



Tool 4: Disclosure Checklist

1. This Tool is to be read in conjunction with the Cooperation with Law Enforcement Agencies and Addressing Suspected Criminal Misconduct Policy and will adopt the definitions therein. It should be applied in every case in which Post Office provides evidence to law enforcement agencies.

The Checklist

2. In addition to reacting to requests for Disclosable Material made by a Prosecution Team, Post Office should be alert to the possibility that it may possess further Disclosable Material which has not been specifically requested.
3. In order to ensure that such material is not overlooked, Post Office will take a proactive approach to assisting the Prosecution Team and will draw such Disclosable Material to the attention of the Prosecution Team.
4. In any case in which Post Office provides evidence to a law enforcement agency, the person conducting the disclosure review must contact the officer in charge of the investigation and request a short summary of the prosecution and defence cases to enable Post Office to determine whether it has any material in its possession which may undermine the prosecution case or assist the defence case.

Cases in which evidence is used to prove a loss

5. In every case in which evidence is relied upon **to prove a loss** to Post Office or a third party, the person(s) conducting the review (hereinafter referred to as "the Relevant Person") must, as a minimum, proactively consider the following categories of material for potential disclosure, even if such material has not been requested by the Prosecution Team:
 - a) Any calls made to any Post Office helpline (NBSC/ Horizon helpline) relating to the particular branch;
 - b) Any requests made for interventions in the branch;
 - c) Any requests for further training made by any staff member of the branch;

- d) Any relevant human resources records (e.g. disciplinary records of any staff member which may be relevant to the prosecution);
 - e) Any audit reports demonstrating previous shortages within the branch (and the actions taken following such audits);
 - f) Any material generated in contemplation of civil proceedings relating to the branch, including CIRT/SSRT/Tier 2 Reports;
 - g) Any material held by the Loss Recovery and Contracts Teams;
 - h) Any further ~~Horizon-derived~~ data which contradicts/ undermines the prosecution case or assists the defence case.
6. In addition, if Post Office becomes aware of any issues raised by the Defendant in respect of the accuracy or reliability of the data which has been provided, the Relevant Person must investigate that issue and either:
- a) Satisfy themselves in so far as reasonably possible that the data is reliable/ accurate or that any issue with the reliability / accuracy of the underlying data does not impact the evidence being provided;
 - b) Consider whether they need to disclose anything relating to the reliability / accuracy of the data.
7. Post Office should similarly have regard to the above factors prior to making a Victim Crime Report in respect of a suspected loss to Post Office or a third party.
8. The above list is intended to assist Post Office with identifying the categories of material which are most likely to satisfy the Disclosure Test. It is not an exhaustive list. If there is material which does not fall into any of the above categories, but which the Relevant Person considers may be Disclosable Material, this should be escalated to the Post Office Legal Team.

Cases in which evidence is **not** used to prove a loss

9. In any case in which evidence is provided which is **not** being used to prove a loss, the Relevant Person must review the summary of the prosecution and defence cases (per paragraph 4, above) and determine whether there is any material in the possession of Post Office which may satisfy the Disclosure Test.
10. In deciding whether material satisfies the Disclosure Test, consideration should be given to, amongst other things:
- a) the use that might be made of it in cross-examination;

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- b) its capacity to support submissions that could lead to:
 - i. the exclusion of evidence;
 - ii. a stay of proceedings (as an abuse of process), where the material is required to enable a proper application to be made;
 - iii. a court or tribunal finding that any public authority had acted incompatibly with the accused's rights under the European Convention on Human Rights;
 - d) its capacity to suggest an explanation or partial explanation of the accused's actions;
 - e) its capacity to suggest that another individual may be responsible for the alleged offence;
 - f) its capacity to suggest that an element of the offence is not made out by the prosecution;
 - g) the capacity of the material to have a bearing on other evidence in the case.
6. If the Relevant Person is in any doubt about whether a particular item satisfies the disclosure test, the material should be referred to the Post Office Legal Team.
7. Any material that is identified by the Relevant Person as potentially satisfying the Disclosure Test will be provided to Post Office Legal for review. The review of material will consider:
- a) Whether it meets the test for disclosure;
 - b) Whether it is subject to legal professional privilege;
 - c) Whether there are any legal issues or commercial sensitivities that would arise from its disclosure;
 - d) The extent to which any documents require redacting;
 - e) Whether Post Office should request a notice or order compelling the provision of any of the information or material (for example because it contains personal data).
8. Post Office Legal Team may delegate any review of material to its Nominated Criminal Law Advisors as it deems appropriate.



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9. Once the material has been subject to review, Post Office Legal Team or its Nominated Criminal Law Advisors will confirm to the Relevant Person the information and/or material to be disclosed to the Prosecution Team.
 10. The Relevant Person will be responsible for making the disclosure to the Prosecution Team and for ensuring that all information and material disclosed is recorded in their Function's centralised records, together with the date and method of disclosure; the basis upon which disclosure was made (i.e. whether it was voluntary or subject to compulsion – if the latter, copies of the notice/order must also be retained); and the name(s) and contact details of the individuals to whom disclosure was made.



Tool 5: Factors to Consider When Determining Whether to Report Suspected Criminal Misconduct to the Police

1. This Tool is to be read in conjunction with the Cooperation with Law Enforcement Agencies and Addressing Suspected Criminal Misconduct Policy and will adopt the definitions therein.
2. The following is a non-exhaustive list of the factors which Post Office will have regard to when determining whether it shall report suspected criminal misconduct to the police (or other Law Enforcement Agencies):
 - a) Whether there is a cogent evidential basis for suspecting that a criminal offence has been committed.
 - b) Whether the matter has already been reported to the police;
 - c) Whether loss or harm has been suffered by Post Office Limited, POL Employees or Associates or third parties, including any financial loss or any adverse impact on Post Office Limited's business, brand, image or reputation;
 - d) The extent of any actual loss or harm suffered;
 - e) Where the evidential data derives from. Whether it is relied upon to establish a loss to Post Office or a third party and the extent to which there are other sources of data to corroborate such loss;
 - f) Whether the individual involved in the alleged criminal misconduct has repaid or offered to repay any financial loss arising from the misconduct;
 - g) Whether the alleged misconduct relates to a single offence or multiple offences;
 - h) The period of time over which the offending conduct has been committed;
 - i) The degree of sophistication employed to commit the offence(s);



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- j) Whether there is evidence of concealment or attempted concealment by the alleged perpetrator;
 - k) Whether the alleged criminal misconduct involves serious or significant breaches of trust by Post Office Employees or Associates;
 - l) Whether the victims of the alleged criminal misconduct are vulnerable. Vulnerable victims include the elderly; those who are infirm or physically disabled; those who have mental health issues or who are less competent; and those who rely upon the state benefits system for their income.
 - m) The personal circumstances of the offender, for example, matters pertaining to the health or well-being of the offender or someone close to them, including any mental health issues; their age; any family or personal circumstances that are relevant to the commission of the alleged misconduct and previous good character.
 - n) The particular circumstances of the offence, for example, the pattern of any repeat offending; pressure to offend applied by others; force of circumstances particular to the offender or their close family, *e.g.* unequal spousal relationships, familial illness, *etc.*; a desire to assist others with no gain for the offender; or offending intended to hide personal shame or embarrassment arising out of incompetence or inability to properly fulfil duties.
 - o) The level of Post Office Limited resources (human and financial) involved in making a report to the police;
 - p) The likely deterrent effect of reporting suspected criminal misconduct.