

## PROTOCOL

### for the conduct of Wednesday morning Telephone Conferences held for the purpose of the Identification, Recording and Retention of Material which may be subject to Duties of Disclosure

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#### Preamble

“Disclosure is one of the most important issues in the criminal justice system and the application of proper and fair disclosure is a vital component of a fair criminal justice system. The “golden rule” is that fairness requires full disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of the defence.”<sup>1</sup>

As a prosecutor, Post Office Ltd. is under a positive duty to identify, record and retain any information which might assist a defendant in preparing or presenting his case or which might undermine the prosecution case against him.<sup>2</sup> In addition we must also be able to prove that, where we rely on information provided by Horizon Online to prosecute, that system is reliable and accurate; that those using the system have been properly trained; and that appropriate support systems are in place and available to users. The duty extends to all information held by the prosecutor; or to which he may have access<sup>3</sup>; and to information which came into existence before any crime was detected but which meets the test for disclosure.<sup>4</sup>

As a fair and public-spirited prosecutor and always acting in the interests of justice, Post Office Ltd. will take all reasonable steps to ensure that we are always in a position to fully meet our disclosure duties. Accordingly we will in future collect and retain any and 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.<sup>5</sup>

Those best placed to provide the information we are required to identify, record and retain are those within the organisation who are Horizon Online users or those who on a regular basis come into contact with Horizon Online and its users. It is those persons, departments and sections therefore at whom this protocol is directed and who will be our front-line in the information gathering exercise.

Defendants are entitled to this information where it meets the test for disclosure and we would not wish to be associated with any wrongful conviction.

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<sup>1</sup> Foreword to the Attorney-General’s Guidelines on Disclosure.

<sup>2</sup> The Criminal Procedure and Investigations Act 1996, Part II; the Code of Practice issued under Part II of the 1996 Act; the Protocol for the Control and Management of Unused Material in the Crown Court; and the Attorney-General’s Guidelines on Disclosure.

<sup>3</sup> So-called “third-party material”, e.g. that held by the police, CPS, Post Office Ltd. suppliers etc.

<sup>4</sup> Material which “...might reasonably be considered capable of undermining the case for the prosecution ...or of assisting the case for the accused....”Criminal Procedure and Investigations Act 1996, ss.3&7

<sup>5</sup> It is to be noted that such information may well assist Post Office Ltd in proving its case against an offender or in defeating defendants who raise spurious defences.

**1. Wednesday morning Telephone Conferences**

**1.1.** Post Office Ltd. will conduct a telephone conference on each and every Wednesday morning in accordance with this protocol.

**1.2.** The primary purpose of the Wednesday morning Telephone Conference ("the conference") will be to Identify, Record, Retain and disseminate all such material as is set out in clause 6.2. below

**1.3.** The conference will be conducted as is set out in this protocol.

**1.4.** The conference will be attended by representatives of the departments or sections of Post Office Ltd. set out in clause 3. of this protocol.

**2. Chair**

**2.1.** Post Office Ltd. will appoint a person to Chair the conferences. Post Office Ltd. will take all reasonable steps to ensure that the Chair remains the same individual for each and every conference.

**2.2.** The Chair will not be a Head of Department or section mentioned in clause 3.2 below or a representative thereof, but may be a member of staff of such a Department or section. The Chair will not be a person mentioned in clause 3.3.

**2.3.** The functions and duties of the Chair are set out in clause 4.

**3. Attendance**

**3.1.** The Chair will ensure the attendance at conferences of those Heads of Department or sections set out in clause 3.2. below, or such departments or sections as is responsible for the functions indicated in that clause. A Head of Department or section may appoint a member of their staff to attend at conferences as their representative and where such a representative is appointed, the Head of Department concerned will take all reasonable steps to ensure that the appointed representative is the same individual in attendance at each and every conference.

**3.2.** The following are the Departments or sections to which clause 3.1. above refers

- Criminal Law, Litigation and Prosecutions
- Civil Law and Litigation
- Post Office Ltd. Security
- Network Business Support Centre
- Product and Branch Accounting
- Information Technology and Change
- Network
- Communications
- Financial Services Centre

**3.3.** In addition to those persons mentioned in clause 3.2. the Chair will ensure the attendance at each and every conference of the following

- A Solicitor representing Messrs. Bond Dickinson Solicitors or their successors
- A Solicitor representing Messrs. Cartwright King Solicitors or their successors
- A minute-taker, appointed by Messrs. Bond Dickinson Solicitors or their successors

**3.4.** The organisations mentioned in clause 3.3. will take all reasonable steps to ensure that the appointed representative and the minute-taker is the same individual in attendance at each and every conference

**4. Functions and duties of the Chair of Wednesday morning Telephone Conferences**

The Chair shall have the functions and duties set out in this clause and shall be responsible and report to Post Office Ltd's General Counsel. The Chair will

**4.1.** Chair the conferences

**4.2.** Ensure the attendance of all those persons required by clauses 3.2. and 3.3 to attend a conference and to enquire of all those who fail to attend without good reason, so as to take the necessary steps to require future attendance. Enforcement shall be through Line Managers.

**4.3.** Ensure that each and every person complies with the duties and responsibilities set out in clause 5.

**4.4.** Ensure that a full and accurate minute is taken of each conference. The minutes will contain, in paper form, the Action Log Matrix document referred to in clause 4.5.6.ii.

**4.5.** Ensure that the minutes mentioned in clause 4.4. are

**4.5.1.** approved by the Chair within seven days of the conference to which the minutes refer

**4.5.2.** circulated to every person mentioned in clause 3.2. and 3.3. within 7 days of approval

**4.5.3.** retained for a period of 6 years by Messrs. Bond Dickinson Solicitors or their successors

**4.5.4.** Allocate responsibility, or 'ownership' of any matter requiring further investigation and resolution to that person who appears to the Chair be the most suitable person and to give to the 'owner' of such matters instructions as to the investigation and resolution thereof, and to require the 'owner' to return the matter to each following conference until such matter is resolved to the satisfaction of the chair

**4.5.5.** Determine in accordance with clause 6. whether any material brought to the attention of the conference in accordance with clause 5.3.:

- i. is material to which clause 6 applies and where so determined, to act in accordance with clause 4.5.6.
- ii. may be material to which clause 6 applies, in which case the Chair will allocate the matter in accordance with clause 4.5.4 above as requiring further investigation and resolution. Where it is determined upon satisfactory resolution of the matter that:
  - a. the material is not material to which clause 6 applies, the Chair will take no further action.
  - b. the material is material to which clause 6 applies, the Chair will act in accordance with clause 4.5.6

**4.5.6.** Ensure that all material to which clause 6. applies is:

- i. Identified as being such material
- ii. Recorded in an 'Action Log Matrix' document formulated by Messrs Bond Dickinson and appropriate to the task
- iii. Recorded in a central registry of material established and maintained by Messrs. Bond Dickinson Solicitors, the central registry to be an electronic searchable document containing sufficient information so as to enable subject-matter; issue; key-word or key-phrase; location; and random searches to be conducted. Messrs. Bond Dickinson Solicitors will copy the central registry to Messrs Cartwright King Solicitors electronically on a weekly basis
- iv. Retained in the central registry of material established and maintained by Messrs. Bond Dickinson Solicitors or their successors, for a period of not less than 6 years

v. Disseminated to:

- a. Head of Security
- b. Messrs Cartwright King Solicitors
- c. Head of Criminal Law, Litigation and Prosecutions
- d. Head of Civil Law and Litigation

**4.5.7.** Arbitrate any dispute, disagreement or unresolved issue which from time to time may arise. Where any such arbitration concerns an issue as to whether or not any material may be subject to clause 6, any decision must be made in favour of that material being subject to that clause and is to be treated accordingly

**5. Duties and responsibilities of persons attending Wednesday morning Telephone Conferences**

Those persons mentioned in clause 3 shall be subject to the duties and responsibilities set out in this clause

**5.1.** Act as the point of contact for the department whom they represent and ensure that all relevant staff within that department are aware of that role;

**5.2.** Ensure that all staff within the department brings to their attention all such material as may meet the definition set out in clause 6.

**5.3.** Bring to the attention of the next conference immediately following their receipt of material, all material brought to their attention in accordance with clause 5.2.

**5.4.** Assume responsibility, or 'ownership' of any matter allocated to them by the Chair of the conference in accordance with clause 4.5.4. above and act upon and pursue by all reasonable means those instructions given by the Chair in accordance with clause 4.5.4.

**5.5.** In relation to any matter 'owned' in accordance with clause 4.5.4., to report back to each and every subsequent conference the progress of any further investigation until such time as the matter is resolved to the satisfaction of the Chair

## **6. Identification of equipment and material subject to this protocol**

**6.1.** For the purposes of this protocol, the Horizon Online system includes but is not limited to all of the:

- i. Hardware and software of the Horizon Online system
- ii. Equipment, interfaces and third-party connections associated with or connected to any part of the Horizon Online system as described in this clause
- iii. Third-party systems connected to or being part of the overall Horizon Online system as described in this clause associated with or connected to any part of the Horizon Online system as described in this clause
- iv. Systems which provides data to or receive data from, any part of the Horizon Online system as described in this clause
- v. Communication and connectivity hardware and software associated with or connected to any part of the Horizon Online system as described in this clause
- vi. Security, detection and correction hardware and software associated with or connected to any part of the Horizon Online system as described in this clause

**6.2.** The following categories of material are subject to this protocol

**6.2.1.** Any information, in whatever form, which relates to or is associated with, any aspect of the Horizon Online system or its operation, functioning, communication or connectivity, and which may

- i. Indicate the presence (past or present) of a defect, 'bug' fault or virus;
- ii. Tend to suggest that any data produced may be inaccurate, false or otherwise unreliable;
- iii. Tend to suggest that any balance produced may be inaccurate, false or otherwise unreliable;
- iv. Indicate a failure, error, inadequacy or insufficiency in the presentation of data

- v. Indicate a requirement for further training of those operating the Horizon Online system;
- vi. Indicate an inadequacy of back-up or support for those encountering difficulties in the operation or functioning of the Horizon Online system
- vii. Indicate a requirement to alter, modify, rearrange or redefine any process relating to the input, processing, presentation or remitting of any data. This is to include any process or operation conducted by a person, such as but not limited to, stock or cash remitting or reversals; balancing processes; corrections *etc.*

**6.2.2.** In addition to the material identified in clause 6.2.1. above, all generalised or unformulated complaints about or concerning the operation of the Horizon Online system are subject to this protocol, until such time as they have been investigated and resolved in accordance with clause 4.5.4.

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