

Jack Caster
Legal Assistant
DCA Office

19 December 2023

MEETING REPORT: Malcolm MacLeod

DCA Office meeting with Malcolm MacLeod

Questions relating to the prosecution of Allied Kloosterhuis

Malcolm MacLeod attended Crown Office, Chambers Street, Edinburgh at 2pm on Wednesday 13 December 2023. On meeting Mr MacLeod, I introduced myself and took him to a private meeting room.

In arranging for Mr MacLeod to attend Crown Office to meet with me, I had spoken to him briefly via telephone to introduce myself and to advise that the Deputy Crown Agent's Office had been dealing with an appeal against conviction relating to a case that he had some involvement with in 2013. I told him that we were seeking his assistance to better understand how the case was dealt and, in particular, the circumstance surrounding the plea that was tendered by the accused.

On taking Mr MacLeod to a private room in Crown Office, I provided some further general information in relation to the ongoing appeals. I explained that these were appeals following referrals by the SCCRC and I explained that one of the appeals was a case that he had dealt with. I did not discuss the grounds of appeal nor the 'Horizon issues', just that these were cases in which the accused had been reported to the Crown by Post Office Limited.

I explained to Mr MacLeod that I had some questions for him about that particular case but that rather than go straight into discussing it, I thought it would be best to let him read some of the material from the original case papers and then ask him some questions about what he could recall.

I made Mr MacLeod aware that his responses to my questions would be shared with Counsel for the appellants and that there was a possibility that he could be cited to a future hearing as a witness. He confirmed that he was content to proceed.

Prior asking him questions, I gave Mr MacLeod access to, and an opportunity to read, the following documents:

- SPR dated 16 November 2012
- Post Office investigators interview with Alied Kloosterhuis dated 20 September 2011
- Letter from agent offering plea to £20,000 dated 28 June 2012
- Response from MM to agent dated 4 July 2012
- s 76 letter dated 1 October 2012
- s 76 report to Crown Counsel dated 2 October 2012
- s 76 indictment dated 24 October 2012

Mr MacLeod spent approximately 20 to 25 minutes reviewing the material and then told me that he had read enough of it. He advised that did not really remember anything about the case but that was content nevertheless to move on to the questions.

QUESTIONS AND ANSWERS

The following is a transcript of the question and answer session that I conducted with Mr Macleod.

Rather than distil the following information into a precognition report, I considered that it would likely be more helpful to the reader for the exact words that were said to be noted in this report.

This is particularly so on the basis that the primary reason for this meeting was to better understand what Mr Macleod had written previously in his section 76 report, and what he meant by the words he had used. It may also assist if any further questions are to be asked of Mr MacLeod.

Employment with COPFS

Question: When did you work for COPFS

Answer: *I started in 1979 and finished 2015*

Question: What departments/where did you work during your career

Answer: *I started in Ayr then Glasgow, followed by Crown Office Secretariat, then Falkirk, then Glasgow again briefly, then Dumbarton then Greenock then Paisley and then Dumbarton. Mostly I was working in solemn work and some death work. The last 20 years of my work were more or less Solemn work.*

Involvement with the Alied Kloosterhuis ("AK") case

Question: How well can you recall the AK case.

Answer: *My workload at the time was a rolling case load of between 400 to 450 cases a year. My recollection of this case is virtually nil.*

Question: Has the material that you have looked at refreshed your memory

Answer: *My memory not really refreshed after looking at material. Don't remember it all. Like reading it for the first time.*

Question: Where were you working when you dealt with the AK case in 2012

Answer: *Dumbarton but I dealt with all solemn work for Argyll.*

Question: What was your role at the time and how long had you been in that role

Answer: *I was a Principal Procurator Fiscal Depute in charge of solemn work. I'd been a PPFD for 20 years.*

Question: What was your involvement with the AK case

Answer: *It would have been referred to me by the fiscal at Campbelltown. I would have marked it at CFE and FC stages. I requested all statements to consider the case. I considered all the evidence in the case. I met with the investigators (Post Office) on at least one occasion. I remember doing it with this one because the names (in the s 76 report) ring a bell. I don't remember anything about the meeting, but I didn't really understand the Horizon system and wanted it explained in relation to this case. I contacted the defence and had discussion with them at some point. I don't remember the discussion. I remember Mr Kane (Defence agent) coming into the office*

about the case. I don't think was in Court. Can't remember what happened to her.

Question: How many Post Office cases had you dealt with prior to AK in 2012

Answer: *I dealt with 2 or 3 summary cases. All within 2 years prior to this case (AK case). This was all whilst in Dumbarton in PPF role.*

Section 76 report to Crown Counsel

Question: With reference to your letter to AK's solicitor of 4 July 2012, in response to AK's plea offer, what did you mean when you said, *"I have had dealings with the Post Office accounting procedures in relation to other cases and do accept that some exceptional circumstances can arise in relation to the way the amounts are calculated. I would have no difficulty in recommending to Crown Counsel acceptance of a plea to £20,000 or thereby of money."*

Answer: (long pause) *I think it was something that Post Office explained to me at the time but I cant remember what it was.*

Question: Can you explain what you meant by *"exceptional circumstances can arise in relation to the way the amounts are calculated"*?

Answer: *I can't recall what "exceptional circumstances" meant. I don't know whether it related to the accounting period or whether the money that was recorded as lodged fell out of the period examined or something like that.*

Question: Can you recall any examples of *"exceptional circumstances"* in relation to the way amounts are calculated

Answer: *I cannot recall any particular example.*

Question: In your s 76 report to CC, what did you mean when you said, *"Having dealt with similar cases in the past I have found the Horizon system wanting. For example mistakes could have been made by the employee, Jennifer Brown or the accused as only one code for entering details has been used."*

Answer: *Well, each employee had their own specific number to be entered into the Horizon system. So, there would be the possibility of one employee using the number of another employee or SPM. Also, I suppose, errors can arise where the computer entry is made in relation to different eh services or goods, if it says stamps on one thing or girocheck, if someone presses the wrong button there will be inaccuracies on the Horizon system, I suppose, which will be just genuine mistakes.*

Question: What "mistakes" did you envisage could have been made

Answer: *As explained just there.*

Question: Can you recall what CCI was in the AK case.

Answer: *I presume it was just proceed with recommendation (in the s 76 report)*

Question: Can you recall who gave CCI?

Answer: *Can't remember. It might have been an indicter.*

Question: If you can, can you recall whether CCI touched on the points you had raised about the Horizon system.

Answer: *I don't remember it but it's not the kind of thing they would do.*

Question: Were you present in Court when the plea was tendered

Answer: *No. Sometimes moved cases around to suit solicitor. Don't know which sheriff dealt with it.*

Question: If you were, what can you recall was said in mitigation

Answer: *n/a*

Other Post Office cases

Question: With reference to your s 76 report to CC, what were the "similar cases" that you had dealt with in the past.

Answer: *I can't remember any*

Question: Where were you working when you dealt with "similar cases"

Answer: *Probably in Dumbarton – could have been an Argyll case or a Paisley case – I dealt with all North Strathclyde cases.*

Question: What details of the "similar cases" can you recall

Answer: *n/a*

Question: Can you recall if they were on summary complaint or indictment.

Answer: *I think they were summary cases, but I am not sure if this is the only solemn case I dealt with for Post Office.*

Interaction with Horizon system

Question: What was your knowledge of the Horizon system at the time you dealt with this case.

Answer: *General knowledge. I knew Post Office had a computer system. I did not understand the documentation in relation to it that was being filled in by the postmaster lodging the return or receipt of money. I didn't know operation and I had to have it explained to me.*

Question: What was your understanding of how the system operated

Answer: *I couldn't really say how it worked.*

Question: What concerns, if any, did you have during your involvement with Horizon evidence

Answer: *My concern was corroboration of the system. What evidence was there to support the accuracy of it. I accepted the system for what it was and when looking at the documentation I was satisfied that along with the admissions there was a sufficiency.*

Question: If you did have concerns with the accuracy, what was the nature of these concerns and why were you concerned

Answer: *Well just employee errors. Or operator errors.*

Question: Was there anything else.

Answer: *No. I accepted that it largely worked correctly.*

Question: How much contact can you recall having with Post Office Investigators in your involvement with Post Office reported cases

Answer: *Generally, in relation to every case I dealt with I will have had at least one meeting with the investigators. I found the cases all slightly different in the admissions or type of admissions. The meeting were just to satisfy myself that I understood it. Not that there was anything wrong with it but to understand what it was about.*

Question: What was the nature of that contact – how frequent was it when you were dealing with a case.

Answer: *I would have a meeting possibly with the productions or some of the productions in a private office. More or less like a precognition like this. Similar to a meeting with a senior police officer or such like. Chatting about it to get a hang of what is going on.*

Question: What advice or guidance, if any, did you give to Post Office investigators

Answer: *None*

Institutional knowledge

Question: What contact, if any, can you recall having with other COPFS departments in relation to Horizon

Answer: *None*

Question: Can you recall receiving any instruction in relation to Post Office reported cases from within your federation or from Crown Office

Answer: *Don't remember any – might have been some*

Question: Did you discuss the Horizon issues you were aware of from your dealings with past Post Office cases with Senior or other COPFS colleagues

Answer: *I might have mentioned it in general conversation. Not anything formal. There weren't that many cases. Just chatting about it.*

Question: Since then and now, are you aware of what had happened generally with Post Office prosecutions

Answer: *Just in passing from what I have seen on the news.*

Question: What is that

Answer: *Just the number of appeals and that they are about the unreliability of the Horizon system.*

Question: What is your reaction to that.

Answer: *News to me.*

END

During the questioning Mr MacLeod appeared calm and professional. It was clear that he struggled with his memory of the Kloosterhuis case as was obvious in his responses to the questions I asked.

Following the questioning, I read the questions and answers back to Mr MacLeod and he confirmed that the transcript that I had noted was correct.

Mr MacLeod confirmed that he would be happy to consider and answer any further questions that the Crown or Appellants might have. Now that he has had an opportunity to review the case material, he advised that he would be content to receive questions via email.