



STRICTLY PRIVATE & CONFIDENTIAL

DC **IRRELEVANT**

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Date
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Classification:
Private

Dear DC **IRRELEVANT**

GRO

Thank you for your email dated 29th February 2024, the contents of which is duly noted.

Post Office Limited (POL) Legal have reviewed the reasoning for not progressing **GRO** to a charging decision. It is not for POL to influence the independence of the investigation or the assessment of evidence in any case, however, the reasoning around the credibility of the Horizon system seems to be a significant factor, if not the central factor, in the reasoning for not progressing this investigation further and that reasoning appears to be based on a misinterpretation of the findings of courts.

POL have been asked to address three questions in respect of the decision to No Further Action this matter; POL hopes that the information provided below in respect of these questions is sufficient to assist with a review of that decision. The questions posed are:

- (a) the new Horizon system is much more reliable than the old system**
- (b) evidence that a Court has ruled so**
- (c) (c) that the new system was installed and in place at the **GRO** Post Office from 2021 onwards.**



Question (c)

We can confirm that GRO Branch was operating the HNG-A version of Horizon.

Questions (a) and (b)

The Horizon Issues Judgment (“HIJ”)(attached) is the judgment of Mr Justice Fraser where, in short, he found there to be numerous bugs errors and defects affecting the Horizon system that were capable of generating unexplained shortfalls in branch accounts (as well as other matters). In the HIJ, Fraser J made clear that it was important to distinguish between the versions of the system in use from 2000 to 2018 and the HNG-A system being used thereafter (i.e. today); paragraph 964 reads:

*“The Post Office has been very concerned as to the outcome of this litigation on its wider business. It described the group litigation as long ago as its Opening Submissions in November 2018 for the Common Issues trial as representing “an existential threat” to that business. I do not consider that these answers to the Horizon Issues represent a significant threat to the Post Office’s entire business. **Findings in this judgment as to the performance and robustness of Legacy Horizon from 2000 to 2010, and then of Horizon Online (in both its forms, HNG-X and HNG-A) from 2010 to 2018 are not findings on the Horizon system as it exists at the date of this judgment. These findings cannot be routinely applied to the way that HNG-A operates as at December 2019. It is agreed by the experts that the Horizon System in its HNGA form is now relatively robust. This judgment is a historical analysis of the Horizon System as it relates to the period in question in the group litigation, not a judgment upon Horizon HNG-A as it is today.**” [Our emphasis].*

Regarding the “robustness” of the current HNG-A system; Frazer J said this at paragraph 936:

“I consider, as explained in the Technical Appendix, that Legacy Horizon was not robust, and that although Horizon Online in its HNG-X form was better than



Legacy Horizon (not least, I consider, because Riposte was no longer part of Horizon) its robustness was questionable and did not justify the confidence placed in it by the Post Office in terms of its accuracy. **HNG-A is a different matter, and the experts are agreed that it is far more robust than Horizon in earlier times.** On the face of the relevant KEL, it is not possible to say whether the Drop and Go bug, number 28 in the Bug Table, which occurred in June 2017, was HNG-X or HNG-A. However, if the latter, it is one of only two such items in the Bug Table that relate to the existing version of the Horizon system.” **[Our emphasis]**

And in respect of bugs, errors or defects at paragraph 969:

“Further, all the evidence in the Horizon Issues trial shows not only was there the potential for this to occur, but it actually has happened, and on numerous occasions. This applies both to Legacy Horizon and also Horizon Online. It has happened under both the HNG-X and HNG-A iterations of the Online system, but far less frequently under the latter than the former. **Indeed, there are only isolated instances of it happening in respect of HNG-A, which the experts agree is a better system than either of the other two iterations of Horizon.**” **[Our emphasis]**

When answering the direct question of Robustness, Fraser J stated at paras 974/5:

Issue (3): To what extent and in what respects is the Horizon System “robust” and extremely unlikely to be the cause of shortfalls in branches?

Answer: This issue or question is in two parts. I shall deal with them sequentially. The first is the extent and in what respects the Horizon system is “robust”. The experts are agreed that HNG-A is relatively robust, and **I have found that the system as it is in 2019 is far more robust than it was prior to 2017.**[Our emphasis]

Lancashire Police may have noted that the proposed legislation by the government to exonerate all Postmasters prosecuted by POL acknowledges in the Explanatory Notes at paragraph 42 that:



“Subsection 2(2) sets out Condition A which is that the offence was alleged to have been committed between specified dates. The first date – 23 September 1996 – is the date on which the Horizon pilot system began to be rolled out to post office branches. The final date – 31 December 2018 – marks the point at which the rollout of the current version of the Horizon System (HNG-A) was concluded. The HNG-A system was found in the Government Litigation Order High Court case to be “relatively robust”. The Department is not aware of any cases prosecuted by CPS or Post Office Limited involving the HNG-A system and therefore **has concluded that there is no reasonable case to extend the period beyond the conclusion of the use of the previous versions of Horizon.** This range of dates therefore encompasses the whole timeframe of the Horizon scandal.” **[Our emphasis]**

So it is apparent that the HIJ makes a clear distinction between the versions of the system at the heart of the Horizon scandal and the system currently being used by POL in the branch concerned with the GRO investigation.

It is important to recognise the Court of Appeal (Criminal Division)’s (“CACD”) interpretation of the HIJ (which it accepted in its entirety) when it was considering the appeals of conviction in Horizon cases. There are numerous judgments where the CACD opine on whether a case is a “Horizon case” but the leading judgment is that in *Hamilton & Ors* (attached).

In *Hamilton*, the CACD defined a case as a “Horizon case” where the reliability of Horizon data was essential to the prosecution, in that there was no independent or corroborative evidence of an actual loss from the branch account as opposed to a shortfall where Horizon evidence formed part of the evidence of the shortfall or corroborated other evidence.

In the judgment of *White & Others* (attached) the CACD went on to clarify their position at paragraph 5:

“We have consistently used, and will continue to use, the shorthand term “Horizon case” to refer to a case in which the reliability of Horizon data was essential to the prosecution because there was no evidence of the alleged



shortfall other than the balance shown by Horizon, and in which there was no independent evidence of an actual loss from the branch account at the post office concerned, as opposed to a Horizon-generated shortfall.”[Our emphasis]

It is important to note that the Horizon scandal relates specifically to POL prosecutions of Postmasters for shortfalls in their branch accounts where the only evidence to prove the loss was a reliance on data from the horizon system. It further relates to the POL’s failure to investigate lines of inquiry and failure to disclose to Postmaster Defendants, issues with the Horizon system that may have undermined the prosecution case or assisted the Defendants. Horizon does not appear to be the only evidence of the matters reported in GRO

The decision to NFA the investigation appears to be based on the public perception of the scandal and the versions of Horizon in use at the time of the scandal. It is not clear whether the CPS EIA have considered the written judgments of the Horizon scandal when assessing that the undermining issues in the case outweigh the realistic prospect of conviction. The HIJ does not assess the reliability of Horizon HNG-A data but as explained above, it does recognise that it is significantly more robust than the versions that were at the heart of the scandal. Further, the CACD have reviewed many appeals of convictions and made clear that the safety of those convictions, even though the evidence relied upon was taken from the versions of Horizon that were the subject of the HIJ, are not unsafe where there is other evidence of the offence being committed or where the Horizon data was used to corroborate other evidence (or vice-versa).

In GRO, POL consider that there are two distinct, albeit related allegations:

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In accordance with POL policy, this investigation has been conducted by Lancashire Police and so POL do not have the benefit of all the evidence in respect of the above matters and the significance of the Horizon evidence. However, POL has supplied CCTV footage from the branch that tends to show that large amounts of cash, often outside of trading hours, being handed to the person POL understands to be presenting himself as the Officer in Charge

GRO by a single customer. IRRELEVANT IRRELEVANT

POL believes that the Horizon data is evidence of the date, time and value of these large transactions coming into and exiting the Post Office and that the CCTV footage corroborates these transactions and the suspicious circumstances in which they take place (and vice-versa).

The Horizon data and CCTV should be further corroborated by the transactional data that shows the funds in question being transmitted to third-party bank account(s), via IRRELEVANT to IRRELEVANT IRRELEVANT is independent company to POL and their systems are independent of the Horizon system. If Lancashire Police have obtained evidence from IRRELEVANT, this could independently corroborate the Horizon data that captures a transaction and that may represent the corroborative evidence that the CACD have stated would not be a "horizon case".

If the defence were to challenge the reliability of Horizon data, which POL accepts is highly likely, the prosecution would be entitled to rely upon the findings of Fraser J and the CACD as set out above.

Following the discovery of suspicions relating to GRO A full branch audit (the term in use at the time) was conducted on the GRO which found that the branch had a cash shortfall of IRRELEVANT Lancashire Police have been provided with a copy of the audit report produced by the Lead Auditor who conducted this audit.

POL have also provided a detailed analysis report (for intelligence only) that reviews transactions conducted at the branch between GRO GRO GRO The report reveals several important matters:



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POL will happily supply an evidential version of this report to demonstrate and corroborate why POL believe that Horizon was reporting correctly throughout the period in question.

POL understands that financial analysis by Lancashire Police of GRO bank accounts has identified an account with a balance of circa GRO is unable/willing to explain the source of. It is further understood that these funds have been restrained by the courts. POL believe that the source of these funds could be POL.

In light of the above explanations in respect of the HIJ and the CACD's judgments, POL invite Lancashire Police to review the reasoning for the NFA decision as it appears



to be based on misconceptions of the horizon scandal and the reliability of the evidence from the current Horizon system in the circumstances of this case. POL will continue to support this investigation and POL Legal remains available to the CPS EIA to discuss the legal points raised herein if that would be of assistance.

Yours sincerely,

GRO

John Bartlett
Director of Assurance & Complex Investigation