

Witness Name: James McLernon

Statement No.: WITN10280100

Dated: 5th December 2023

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF JAMES McLERNON

I, James McLernon, will say as follows...

INTRODUCTION

1. I am a Principal Public Prosecutor in the High Court & International Section of the Public Prosecution Service for Northern Ireland (hereafter 'PPSNI').
2. This witness statement is made to assist the Post Office Horizon IT Inquiry (the "**Inquiry**") with the matters set out in the Rule 9 Request dated 10th August 2023 (the "**Request**").

BACKGROUND

3. I have been asked to set out:
 - a. *an outline of the prosecutorial framework and statutory requirements for prosecutors in Northern Ireland, including any framework or policies in place in relation to cases referred by other authorities or bodies, such as Post Office Limited;*
 - b. *an explanation of the law, codes and guidance governing the conduct of investigations and prosecutions in Northern Ireland, with a focus on:*
 - i. *the obligations and duties of an investigator to pursue reasonable lines of enquiry; and*
 - ii. *the duties of disclosure (including the duty to obtain third party material);*

c. how, as a matter of practice, Post Office cases involving allegations of theft, false accounting and/or fraud based on Horizon IT system data were, and are, referred to PPSNI, and by whom; and

d. whether, and to what extent, the Post Office were, and are, involved in conducting investigations prior to cases being referred to the PPSNI

a. PROSECUTION FRAMEWORK

4. The Public Prosecution Service for Northern Ireland (hereafter 'PPSNI') was established by the Justice Act (NI) 2002 (hereafter 'the 2002 Act').
5. Section 31 of the 2002 Act sets out the statutory responsibilities as the principal prosecuting authority in Northern Ireland, including responsibility for taking decisions as to prosecution in all cases investigated by the Police Service of Northern Ireland. The PPSNI also considers cases initiated or investigated by other statutory authorities, such as HM Revenue and Customs and the Northern Ireland Environment Agency.
6. Section 37 of the 2002 Act places a statutory responsibility on the Director for Public Prosecutions to produce a code of practice for prosecutors and any member of the Bar of Northern Ireland instructed on its behalf. This 'PPS Code for Prosecutors' provides the prosecutorial framework for all Public Prosecutors. I exhibit the latest version of the Code published in May 2023 [WITN10280101] along with the three previous versions of the Code published in July 2016 [WITN10280102], 2008 [WITN10280103] and June 2005 [WITN10280104].
7. The core duties of the prosecutor are set out at paragraphs 1.4 – 1.6 of the Code.
8. Prosecutions are initiated or continued by the PPSNI only where it is satisfied that the Test for Prosecution is met. The Test for Prosecution is set out at section 4 of The Code. It is met if:
 - (i) the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
 - (ii) prosecution is required in the public interest – the Public Interest Test
9. Like every public body in Northern Ireland, the functions of the PPS must be exercised in compliance with s.75 (duty on public authorities to have regard to need to promote equality of opportunity and good relations between different groups) and s.76 (discrimination by public authorities) of the Northern Ireland Act 1998 as amended.

10. Irrespective of the investigative body involved in a case, all prosecution decisions taken by the PPS apply the same prosecutorial framework and Test for Prosecution outlined above.

b. LAW, CODES AND GUIDANCE

11. The conduct of criminal investigations and prosecution in Northern Ireland is governed by the Criminal Procedure and Investigations Act 1996 (as amended) (hereafter 'CPIA') and the accompanying CPIA Code of Practice for NI (July 2005).

i. reasonable lines on inquiry

12. The CPIA and Code of Practice for N.I places an obligation on investigators to pursue all reasonable lines of enquiry, whether these point towards or away from a suspect. What is reasonable will depend upon the circumstances of a particular case.

13. The obligations on investigators in respect of reasonable lines of inquiry is specifically addressed in Chapter 4 of the PPS/PSNI 'Manual on Disclosure' (revised Jan 2015).

14. Applicable common law on reasonable lines of inquiry is found in authorities such as *R v Alibhai* [2004] EWCA Crim 681.

15. Internal guidance for PPS Public Prosecutors can be found in our 'Guidance on Reasonable Lines of Inquiry' (April 2022).

ii. disclosure duties

16. The prosecutor's duty of disclosure to the defence is set out in statute in Part I of the CPIA. The test requires the prosecutor to disclose to the defence all material not already disclosed which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused.

17. Initial duties of disclosure are triggered by section 3 of the Act and section 7A sets out the continuing duty of disclosure.

18. The common law remains applicable, particularly outside of the scope of the CPIA, either at an early stage (*R v DPP ex parte Lee* [1999] 2 All ER 737) or post-conviction (*R (on the application of Nunn) (Appellant) v Chief Constable of Suffolk Constabulary and another* [2014] UKSC 37)

19. Prosecutors in Northern Ireland will apply the Attorney General's Guidelines on Disclosure of Unused Material in Criminal Proceedings (2013)

20. Paragraphs 4.54 – 4.59 of The PPS Code for Prosecutors provides important guidance on the disclosure obligations on the Prosecution:

Disclosure

4.54 Proper disclosure of unused material, made through a rigorous and carefully considered application of the law, remains a crucial part of a fair trial and essential to avoiding miscarriages of justice. The prosecutor's duty of disclosure to the defence is set out in Part I of the Criminal Procedure and Investigations Act 1996 (the Act) as amended by the Criminal Justice Act 2003. The test requires the prosecutor to disclose to the defence all material not already disclosed which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused. The Act also sets out the mechanisms by which disclosure should take place.

4.55 The scheme set out in the Act is designed to ensure that there is fair disclosure of material which may be relevant to a trial and which does not form part of the prosecution case. Disclosure under the Act should assist the defendant in the timely preparation and presentation of his case and assist the court to focus on all the relevant issues in the trial.

4.56 The Attorney General for England and Wales issued revised Guidelines on Disclosure in May 2022. These Guidelines are intended to apply in England and Wales and there are certain practices that do not apply in this jurisdiction, for example the rebuttable presumption in favour of disclosure of certain types of materials. However, many of the general principles outlined therein remain applicable and, if properly applied, will contribute to ensuring that the disclosure regime operates effectively, fairly and justly which is vitally important to the integrity of the criminal justice system.

4.57 Prosecutors must do all that they can to facilitate proper disclosure as part of their general and personal professional responsibility to act fairly and impartially, in the interests of justice and in accordance with the law. Prosecutors must also be alert to the need to provide advice on an individual case basis to Disclosure Officers, within those organisations that submit investigation files, on disclosure issues and to advise on disclosure procedure generally to ensure that disclosure obligations are met.

4.58 In deciding what material should be disclosed prosecutors should resolve any doubt in favour of disclosure. Sensitive information will, in appropriate cases, be placed before the court for issues of disclosure to be determined.

4.59 If prosecutors conclude that a fair trial cannot take place because of an inability to disclose which cannot be remedied, they must not continue with the case.

21. The corresponding sections of the previous versions of the Code for Prosecutors can be found at paragraphs 4.50 – 4.55 of the 2016 publication, paragraphs 4.10.1 – 4.10.6 of the 2008 publication and paragraphs 4.10.1 – 4.10.6 of the 2005 publication.
22. Further internal guidance for investigators and prosecutors on disclosure is provided by the PPS/PSNI Disclosure Manual (revised Jan 2015). The Manual specifically addresses third party disclosure at Chapter 4.
23. Once criminal proceedings have been initiated, disclosure is also regulated by the Criminal Procedure Rules of the Magistrates' Court and Crown Court. The Protocol for Case Management in the Crown Court, Practice Direction 5 of 2011 deals specifically with third party disclosure at paragraph 8.

c. REFERRALS TO PPS

24. An examination of the historical 'Horizon' files that PPS have been able to locate shows that those cases were referred to PPS by Police. Convictions in these cases range from 2001 to 2017.
25. The organisational structure of the PPS is set out in each version of the Code for Prosecutors with files being allocated to prosecutors within the regional section in which the offence is alleged to have taken place or, in more complex cases (including more complex fraud cases), to specialist prosecutors based in PPS Headquarters in Belfast.
26. The current structure is set out at paragraph 2.5 of the Code for Prosecutors (2023). Theft/fraud files are allocated to either the local region in which the alleged offence took place (Belfast & Eastern or Western & Southern) or, in respect of more complex cases, to the Fraud & Departmental Section based in PPS Headquarters in Belfast.
27. The 'Horizon' files submitted to PPSNI by the PSNI were allocated in this way to either the regional section or the Fraud & Departmental section depending on the complexity of the case.
28. In each case a file is allocated by the Assistant Director heading the section to a prosecutor within their team. This lawyer is designated as the 'directing officer' with responsibility for taking the prosecution decision on that particular file. The directing officer retains carriage of the file throughout the prosecution.

d. ROLE OF POST OFFICE INVESTIGATORS

29. An examination of the historical 'Horizon' files that PPS have been able to locate shows that in some cases the investigations were initiated and conducted throughout by Police with statements and material provided by Post Office employees.
30. In other historical 'Horizon files' Post Office investigators played a larger role by conducting their own investigations into allegations of criminal offending, including their own interviews of suspects under caution, which was then provided to Police once the Post Office investigation had concluded.
31. Going forward, PPS understands that the Post Office will continue to conduct their own internal investigations but where it becomes apparent that a criminal offence may have been committed the matter will be referred to Police at that early stage.
32. PPS understands that all statements provided by the Post Office in respect of 'legacy Horizon' or providing 'legacy Horizon' data now comes with a clear warning of the judicial findings that have been made about bugs, defects and errors. As at the date of signature of this statement, following inquiries with the Regional and Fraud sections of the PPSNI, we are not aware of any 'live' cases involving investigations which postdate the 'Horizon' issues coming to light.
33. There was a more recent case arising from a branch audit in 2019, initial audits were conducted by POL who then turned material over to PSNI who led the investigation and conducted a PACE interview. During the course of the investigation POL brought to the attention of the PSNI investigators that there were significant issues coming to light with the reliability of the 'Horizon' IT platform. In this case the PPSNI directing officer reviewed the file and directed 'no prosecution.' The file has therefore been closed.

Statement of Truth

I believe the content of this statement to be true.

Signed:

GRO

Dated:

05/12/23

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<u>No.</u>	<u>URN</u>	<u>Document Description</u>	<u>Control Number</u>
1	WITN10280101	PPS Code for Prosecutors, May 2023	N/A
2	WITN10280102	PPS Code for Prosecutors, July 2016	N/A
3	WITN10280103	PPS Code for Prosecutors, 2008	N/A
4	WITN10280104	PPS Code for Prosecutors, June 2005	N/A