

OFFICIAL

Witness Name: Kenneth William Donnelly

Statement No.: WITN10510300

Dated: 25 November 2024

POST OFFICE HORIZON IT INQUIRY

THIRD WITNESS STATEMENT OF KENNETH WILLIAM DONNELLY

1. I, Kenneth William Donnelly will say as follows...

INTRODUCTION

2. I am the Deputy Crown Agent for Specialist Casework at the Crown Office and Procurator Fiscal Service (“COPFS”).
3. 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 21 October 2024 (the “Request”).

PROFESSIONAL BACKGROUND

4. I have been asked to summarise my educational and professional qualifications.
5. I hold a Bachelor of Laws (LLB) with honours and a post-graduate Diploma in Legal Practice, both from the University of Glasgow. I am a qualified solicitor in Scotland having been admitted to the role of solicitors in 1989 following completion of the first year of my legal traineeship and have been fully qualified since 1990.
6. I have been asked to summarise my career and any relevant roles I have held/continue to hold at COPFS.
7. I joined COPFS in July 1992 as a Legal Assistant, and latterly Senior Legal Assistant, in the Glasgow office, performing the full range of duties of Procurator Fiscal Depute.
8. In 1997, I was promoted to Principal Depute at Glasgow, and also temporarily at Paisley between 1998 and 1999 and again performed a range of duties in a managerial position.

OFFICIAL

OFFICIAL

9. Between 2000 and 2003 I was a Principal Depute in the Crown Office Appeals Unit, followed by a further spell working in Glasgow. In 2004 I was promoted to the role of District Procurator Fiscal, Kilmarnock and in 2005, I was further promoted to District Procurator Fiscal, Falkirk. In 2010 I transferred to become District Procurator Fiscal, Paisley.
10. In early 2013 I took on the role Procurator Fiscal, Initial Case Processing, West of Scotland and later that year returned to Glasgow to lead the Sheriff & Jury business there.
11. In 2015 I transferred to Edinburgh to the position of Procurator Fiscal, High Court, East of Scotland before taking on the new role of Procurator Fiscal, High Court Sexual Offences in 2016.
12. In 2018 I was promoted to the role of Procurator Fiscal, High Court, and remained in that post until 2022 when I took on the role of Procurator Fiscal, Policy and Engagement.
13. In 2023, I was appointed to my current role as Deputy Crown Agent, Specialist Casework. In that role I have strategic responsibility for ten specialist units within COPFS.
14. Before providing a substantive response to each of the questions that I have been asked by the Inquiry, it may be helpful for me to first explain the basis of COPFS' current understanding and corporate knowledge of these issues. This is to add context to the responses that I have provided in this statement.
15. As I said in my first statement to the Inquiry (para 58 at **WITN10510100**), due to COPFS' data retention policies, limited information now exists which can assist COPFS in understanding the full circumstances by which these cases were handled in the years 2000 to 2015. That extends to COPFS' present understanding of its own institutional knowledge of these issues circa 2000 to 2015.
16. COPFS officials have carefully sought to identify and ingather contemporaneous case material to better understand how events unfolded. This exercise has been conducted so that COPFS not only has a better understanding of these matters for its own purposes, but so that it is better placed to assist the High Court of Justiciary, the Scottish

OFFICIAL

Criminal Cases Review Commission (“**SCCRC**”); this Inquiry; and the Scottish Government.

17. The identification of material has been continuous and has been assisted by the receipt of material from Post Office Limited (“**POL**”) in 2023. Some of this material was provided by POL on a voluntary basis but a significant portion was recovered following the service of a Court order for the recovery of documents on POL by COPFS.
18. Although a better understanding of the timeline has been achieved, there regrettably remain gaps in COPFS’ corporate memory and understanding of these issues. In seeking to provide assistance to the Inquiry I have referenced original source documents in my statement and have provided copies of these to the Inquiry.
19. It may also be helpful for me to set out COPFS’s structure as an organisation as this is relevant to the distribution of information throughout the organisation and its decision-making processes.
20. COPFS is Scotland’s prosecution service and death investigation authority. The Lord Advocate is the ministerial head of COPFS, leading the system of criminal prosecutions and the investigation of deaths in Scotland. She is assisted in her work by the Solicitor General for Scotland. Together, the Lord Advocate and Solicitor General are known as the Law Officers. The Law Officers set the strategic priorities, objectives and prosecution policy for COPFS.
21. The Lord Advocate is a Minister of the Scottish Government and is accountable to the Scottish Parliament, but her role as head of the systems of prosecution of crime and investigation of deaths in Scotland are functions exercised by her independently of other Scottish Ministers and of any other person. The duty to act independently in these matters long precedes but is expressly set out in statute (Scotland Act 1998 section 48(5)).
22. The Lord Advocate appoints Advocate Deputes, who are independent prosecutors that may be drawn from the ranks of the Scottish Bar, or Solicitor Advocates, to assist her where required in making decisions in criminal cases, prosecuting cases before the High Court, and in the investigation of deaths. The Law Officers and Advocate Deputes are collectively known as Crown Counsel.

OFFICIAL

OFFICIAL

23. The Crown Agent is the civil service head of COPFS and head of profession for Procurators Fiscal. He is the principal legal advisor to the Lord Advocate on prosecution matters and the Chief Executive of COPFS. The Crown Agent is accountable to the Law Officers for the delivery of efficient and effective prosecution of crime and investigation of deaths, in accordance with their priorities and prosecution policies. The Crown Agent is the Accountable Officer for COPFS and, as such, answerable to the Scottish Parliament for the regularity and propriety of COPFS' finance and the stewardship of public monies.
24. Procurators Fiscal (and Procurators Fiscal Deputes ("**PFDs**")) are professional lawyers employed by COPFS. They prosecute in courts across Scotland, and work in specialist units, having been granted a commission to do so by the Lord Advocate.
25. COPFS is divided into four distinct functions which recognises the different roles and responsibilities of the organisation. These functions are High Court, Specialist Casework, Local Court and Operational Support.
26. The roles of the Lord Advocate and Procurator Fiscal are hundreds of years old, predating the establishment of a police force in Scotland. The responsibility of the prosecutor to investigate crime; the power of the prosecutor to direct the police in the investigation of crime; and this power being exclusive to the prosecutor; is enshrined in the common law of Scotland.
27. I have already explained the role of specialist reporting agencies ("**SRAs**") and their relationship to COPFS in my first statement to the Inquiry (paras 13 to 32 at **WITN10510100**).
28. That the two functions of the prosecutor and the police are quite distinct is also recognised in the common law, with the investigating agency obliged to reveal to the prosecutor all material that may be relevant to the investigation of a particular offence. This is known as the duty of revelation. In recent years, these duties have been put on a statutory footing and apply equally to SRAs.
29. In practice, most criminal investigations will start with the investigating agency (such as Police Scotland or an SRA) who almost always act on their own initiative. Investigating agencies have discretion as to whether to investigate an alleged crime. The resources applied to any investigation are a matter for the investigating agency to consider. In

OFFICIAL

general, where they consider there is sufficient evidence that a crime has been committed by a particular person, it is their duty to report on their investigation to the Procurator Fiscal by means of submitting a Standard Prosecution Report (“**SPR**”) and to act upon the instructions or guidance of the Procurator Fiscal. In general, if the investigating agency consider that there is insufficient evidence of a crime being committed, they will not make a report to the Procurator Fiscal.

30. This structure recognises the expertise of an investigating agency in investigating crime and the independence of prosecutorial decision making.

COPFS INSTITUTIONAL AND INDIVIDUAL KNOWLEDGE OF HORIZON ISSUES

31. I have been asked whether COPFS was aware as an organisation of any bugs, errors or defects in the Horizon IT system with the potential to affect transaction data or to create balancing problems (not just those that ‘significantly impacted the reliability of evidence’) between 2000 to 2013.
32. I understand this question to refer to the period 2000 up to 14 May 2013 which is the date records show that Scottish solicitor firm, BTO Solicitors, first contacted a PFD in COPFS Policy on behalf of POL regarding concerns with the Horizon system (**COPF0000212**).
33. I can confirm that there is no evidence to suggest that COPFS was aware as an organisation of any bugs, errors or defects in this period before 14 May 2013. No record is held which suggests that POL provided details of any issues with the Horizon system to COPFS prior to May 2013.
34. As I have explained in my first statement to the Inquiry, records held by COPFS suggest that it was in the months May 2013 to September 2013 that lawyers and representatives of POL first made COPFS aware of concerns regarding the Horizon system as identified by Second Sight (para 43 to 53 at **WITN10510100**).
35. I have been asked if I am aware of aware of any circumstances between 2000 and 2013 where individual COPFS employees, such as Procurator Fiscals or other staff members, became aware of Horizon system bugs, errors and defects, or other issues with the Horizon system.

OFFICIAL

OFFICIAL

36. I am aware of only one example in which an individual COPFS employee appears to have been aware or had concerns with the Horizon system in this period.
37. This example is the comments made by a PFD during a prosecution in 2011/12. This case was the prosecution of Ms Alied Kloosterhuis (Procurator Fiscal Reference CM11000422) at Campbeltown Sheriff Court. Records still held by COPFS show that the PFD dealing with the case had some concerns regarding the accuracy of the system.
38. This is evidenced by letter correspondence between the Ms Kloosterhuis' solicitor and the PFD (**COPF0000095**, **COPF0000096**), in which the terms of an offer to plead guilty to a lesser charge were discussed, and in comments by the PFD in his section 76 report to Crown Counsel (**COPF0000105**). By way of explanation, a section 76 report is a report by a PFD to Crown Counsel seeking instruction on whether an offer of a guilty plea in a solemn case (a case prosecuted on indictment before a jury), usually to a lesser charge, should be accepted by the Crown.
39. In his response to the accused's solicitor and in his report to Crown Counsel, the PFD appears to confirm that he has some concerns regarding the accuracy of the system.
40. He does not expressly state what the basis for these concerns are in his correspondence to the solicitor, simply stating, "*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.*"
41. In his section 76 report the Procurator Fiscal Depute advises, "*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.*"
42. This case is one which was referred to the High Court of Justiciary by the SCCRC in October 2022 following review of the conviction. To understand the meaning behind the above comments, COPFS officials met with the now retired PFD in December 2023. I am aware that a copy of the report from this meeting has already been provided by COPFS to the Inquiry (**COPF0000098**). For completeness, I am aware that the PFD explained that what he meant by these comments were that he was aware that operator error, such as incorrect inputs by staff into the Horizon system, could result in inaccurate

OFFICIAL

OFFICIAL

figures being produced. He confirmed that he was not referring to, nor aware of, bugs, errors and defects in the system itself.

43. As far as I am aware, these concerns regarding user input errors were not communicated by the PFD to COPFS senior management or COPFS Policy. As explained, the concerns related to the risk of operator error, not with system bugs or errors. I would observe that the possibility of operator error is live in any case involving evidence deriving from a computer system and these concerns are therefore not unique to POL reported cases. The risk of operator error occurring is not one that would require specialist knowledge. Consideration to this risk was clearly given by the PFD to this possibility when the plea offer was made by Ms Kloosterhuis.
44. I am not aware of any other occasion whereby a member of COPFS was aware of or had a concern in regard to bugs, errors or defects in the Horizon system prior to 2013.
45. In answering this question, I have been asked to take into account an email from Robert Daily, POL investigator, to Denise Reid, POL Security team member, dated 9 October 2014 which I understand is a 'Case Closure Report' for a POL reported case to COPFS against a Ms Rosemary Stewart and Ms Jaqueline El Kasaby (Procurator Fiscal Reference GG13010308) (**COPF0000218**). This was a POL reported case to COPFS and the Case Closure Report noted the offence being investigated by POL was from 3 December 2012 and involved a cash loss of £34,179.54.
46. I assume that I have been referred to this document in answering this question because the 'final outcome' section of the report states, "*PF has decided not to proceed*", and goes on to state that, "*procedural and organisation failings*" are said to have been "*discussed with the primary stakeholder, on **29 January 2013***", with the comment, "*PF has cited issues with Horizon for not proceedings with the case*"(**my emphasis**).
47. COPFS has carried out an investigation into this document as the date that the Case Closure Report purports the discussion with the "PF" took place, does not correspond with COPFS' understanding of the procedural history and decision making timeline. Nor does it correspond with the timeline of COPFS' knowledge of issues with Horizon that I understand them to be; namely that concerns regarding issues with the Horizon system were not raised by POL prior to May 2013.

OFFICIAL

OFFICIAL

48. The case against Rosemary Stewart and Jacqueline El Kasaby was reported to COPFS by POL on 21 May 2013. The submission of this case to COPFS was therefore four months after the closure of the case was reportedly discussed between POL and the PFD handling the case according to the Case Closure Report. It is highly unlikely, if not impossible, that POL and COPFS officials would have discussed the closure of this case prior to its initial submission to COPFS in the form of a SPR. COPFS could not close a case that has not been reported to it.
49. The first record of any communication in this case between POL and COPFS is a copy of an email sent to the POL Reporting Officer, Robert Daily, on 17 June 2013 by the PFD who was marking the case (**COPF0000219**). "Marking the case" in this context simply means deciding what prosecutorial action, if any, to take.
50. A response was received from Robert Daily on 21 June 2013 (**COPF0000220**). This correspondence relates to the submission of the transcripts of the interview of the accused. Issues with the Horizon system were not discussed.
51. On 23 July 2013, Robert Daily emailed the marking PFD to advise that, "*following Second Sight's review on the Horizon system used by Post Office Ltd our Solicitors are reviewing all cases submitted for a decision on prosecution. Therefore, as discussed can we postpone the submission of the requested statements and productions in this case for the present. I will be in contact once our Solicitors have concluded their review of the case.*" (**COPF0000221**).
52. The review referred to by Robert Daily in this email is understood to be the case review that was discussed between COPFS Policy Officials and representatives of POL, BTO Solicitors and Cartwright King solicitors in July 2013 which is referred to in my first witness statement to Inquiry (para 44 at **WITN10510100**).
53. On 10 October 2013, the marking PFD left a note in the case stating, "*chased Robert Dailly at Post office re their review of the Horizon system*" (**COPF0000089**).
54. On 12 December 2013, the marking PFD left a note in the case stating, "*meeting with Robert Daily and Susan Winters of Post Office and Laura Irvine of Brechin Tindal Oatts Sols (advising PO). Got copy of interview transcript for Stewart. They think that there is not enough evidence against El Kasaby and we should now change her to a witness. She has not given a statement, and her interview did not record properly so she may not*

OFFICIAL

be much use, but RD has some notes of interview so we can have some idea of what she may say. There are some discrepancies in the audit figures, but we could potentially proceed on the admissions and the audit figures are reliable enough to support admissions. They think that it should be a fraud rather than embezzlement.” (COPF0000223).

55. On 27 January 2014, the marking PFD received the following email from Laura Irvine of BTO solicitors, *“I hope you are well and thank you for meeting with Robert, Suzanne and I before Christmas in relation to the above case. I am afraid that I do not have the PF reference but I hope you know which one I am talking about. I was just wondering if you had informed the potential accused Mrs El Kasaby that the case would not be proceeding against her? Or indeed if that decision had been taken? I know that this was the intention following our discussions. The Post Office has a mediation scheme running at the moment which is to deal with complaints made by sub-postmasters about the Horizon system and they need to know if Mrs El Kasaby is going to be prosecuted, or not, so that they can deal with her case. Are you able to tell me?”*
56. This email was responded to the following day (28 January 2014) by the marking PFD who stated, *“Laura, While I have not yet informed El Kasaby that the case is not proceeding against her, I am content that we came to the right decision about trying to use her as a witness rather than trying to prosecute her. She can take part in mediation if the Post Office want her to. The reference is GG13010308.” (COPF0000224).*
57. On 23 April 2014, intimation of the decision not to prosecute Ms El Kasaby was given by letter (attached at **COPF0000225**).
58. On 23 July 2014 the case against Ms Stewart was transferred to the COPFS Economic Crime Team (“**ECT**”) and allocated to a different PFD.
59. On 4 September 2014, the ECT PFD left the following note in the case, *“I have had a meeting with the RO. He has confirmed that Documentation showing the paper trail for the fraud is unavailable. He has also confirmed that they do not have the results of the audit in 2009. We cannot prove that there was a clear balance sheet at this time so how can we show that the accused embezzled any money. The RO and solicitor have also confirmed that they could not defend the Horizon accounting system. In these circumstances there is not a reasonable prospect of a prosecution.” (COPF0000093).*

OFFICIAL

OFFICIAL

60. A second note was left by the ECT PFD in the case on 30 September 2014 stating, “*RO has confirmed that Horizon system still has problems and he would be unable to defend it's accuracy in court. Other documentation missing including the original audit figures. So it can never be proved that the cash went missing after the 2009 audit.*” (COPF0000094)
61. Based on the information detailed above, the evidence identified and recovered by COPFS Officials strongly suggests that any discussions relating to the reliability of the Horizon system and the impact this would have on proceedings against both accused must have taken place between COPFS and POL at a date later than 29 January 2013.
62. It certainly does not appear that the ECT PFD (named in the Case Closure Report) had any involvement in the case prior to 2014. The evidence is in fact suggestive that the discussions relating to the impact of the unreliability of Horizon evidence took place on 12 December 2013 (in relation to the accused El Kasaby) and 4 September 2014 (in relation to the accused Stewart).
63. I have been asked to explain the nature of the Horizon evidence that was relied upon by COPFS in carrying out prosecutions of subpostmasters between 2000 and 2013.
64. As I have explained above, where an investigating agency considers that it has identified sufficient evidence of a crime it will submit a report to COPFS in the form of an SPR. COPFS will then decide whether to raise proceedings.
65. The SPR is a standardised report used by all investigating agencies. It allows the author of the report (known as the Reporting Officer) to provide information in a standardised and uniform manner to COPFS. SPRs follow the same format for all investigating agencies (including the Police). The SPR will provide a detailed outline of the evidence in the case. In addition, information such as the accused's antecedent details, any responses given by them at interview, an analysis of the available evidence and any additional information that the Reporting Officer considers relevant for the COPFS PFD who will mark the case is provided.
66. Most cases reported to COPFS that are prosecuted at summary level (in the Justice of the Peace or Sheriff Courts) are marked on the basis of the information contained in the SPR alone, however, if further information is required it will be requested by the prosecutor. Complex and serious cases often require the submission of additional

OFFICIAL

OFFICIAL

information, such as copies of any productions that were ingathered during the investigation, before a decision on proceedings will be made by COPFS.

67. It goes without saying that all information contained within an SPR must be accurate and true. For the process to work properly the prosecutor requires to be provided with all relevant information in the SPR. This requirement of full disclosure and candour is codified in the Criminal Justice and Licensing (Scotland) Act 2010. I have explained the relationship between COPFS and POL and the duty of full and accurate disclosure in my first witness statement to the Inquiry (paras 33 to 42 at **WITN10510100**). COPFS is now aware that POL was not accurate in its SPRs. I would draw the Inquiry's attention to the comments of the High Court of Justiciary in the decision ***William Quarm et al v HM Advocate [2024] HCJAC 15*** at para 31 (**RLIT0000200**) in which it was observed that the POL Reporting Officer had submitted "*incorrect and misleading*" information to COPFS when reporting Alied Kloosterhuis for prosecution.
68. For many summary level cases it is not necessary for the prosecutor marking the case to read and examine all the witness statements and/or productions. A decision on proceedings can often be made on the basis of the information contained in the SPR. In these situations, it will only be during the course of further procedure, where the accused has pled not guilty at first calling, that all case material will be provided to COPFS by the Reporting Officer. Therefore, if an accused person pleads guilty at the first calling of a summary case, then it is likely that witness statements and productions will not have been submitted to COPFS and the plea was tendered to a prosecution raised on the basis of the information contained in the SPR. A summary of evidence is always disclosed to the accused before first calling of the case.
69. Where a case is assessed to merit solemn level proceedings the accused will first appear in Court on petition, often on the basis of the information contained in the SPR. Following petition appearance all evidence ingathered by the Reporting Officer will be submitted to COPFS and disclosed to the accused.
70. In answer to this question, a summary of the evidence obtained from the Horizon system would first be provided to COPFS within the SPR provided by POL. As I understand the Horizon system required a degree of specialist knowledge to understand the information it provided in its raw form, the POL Reporting Officer would provide a simplified explanation in the SPR as to what the Horizon evidence was and how this supported the evidence against the accused.

OFFICIAL

OFFICIAL

71. It is not known how many cases were reported by POL to COPFS in which Horizon evidence in its raw format was provided to COPFS. If an accused person pled not guilty or if the case was being prepared for proceedings on indictment, then it is more likely that the Reporting Officer would have submitted Horizon evidence to COPFS.
72. Of the cases identified by COPFS in its recent review of cases in which a conviction may have been impacted by Horizon unreliability (approximately 60 cases), only one case went to trial. A large proportion of these identified cases resolved by way of a guilty plea at an early stage in the procedure. Most were summary prosecutions. Accordingly, raw Horizon data was unlikely to have been submitted to COPFS.
73. I have been asked to explain the extent to which COPFS relied on Horizon evidence.
74. Before a decision to prosecute is made, the prosecutor requires to be satisfied that there is sufficient evidence in law to raise proceedings and that it is in the public interest to do so. For a sufficiency of evidence in Scots law, there requires to be corroborated evidence of the *facta probanda* (essential elements) of a crime. One piece of evidence is not enough to raise proceedings or prove a charge. It is therefore not possible for an accused person in Scotland to have been convicted based on Horizon evidence alone. As explained, records suggest that save for one case, every subpostmaster prosecution in Scotland relying on Horizon evidence concluded in a guilty plea. In a significant proportion of these cases the accused subpostmaster had admitted the offence during an interview with POL investigators at the initial investigation stage.
75. An admission of guilt is strong evidence against an accused. However, unless very specific conditions are met (such as a 'special knowledge' admission), the requirement for corroboration still stands. Horizon evidence in POL reported cases against subpostmasters was therefore often used in prosecutions to corroborate the admission that had been given by the accused. Where a case consisted of an admission of guilt which was corroborated by evidence from the Horizon system, it is likely that it would not have been considered necessary for the prosecutor to seek further evidence from other sources to prove the offence. It was likely considered by prosecutors that the Horizon evidence had provided an independent cross-check of the admission given by the accused and that the corroboration requirement was met. This assessment would have been made without knowledge that the Horizon system could have produced

OFFICIAL

OFFICIAL

inaccurate evidence and that the accused may have felt pressurised into admitting the offence.

76. I have been asked to explain the extent to which COPFS interrogated the evidence that POL supplied in support of recommended prosecution.
77. The role of an investigating agency in Scotland is to investigate crime and submit a report to COPFS where it is considered that there is sufficient evidence to prove its commission by the accused. It is then for COPFS to decide what action, if any, to take. Investigating agencies do not make recommendations on what action to take.
78. As I have explained, where it is established from the SPR that there is sufficient evidence to raise proceedings, a case may be prosecuted without further interrogation of the evidence against the accused. In many summary cases, the witness statements and productions ingathered by the investigating agency will only be submitted after proceedings have been raised and a 'not guilty' plea has been tendered by the accused. In these situations, COPFS will not further interrogate the evidence obtained by the investigating agency. This process assists in the effective and efficient disposal of cases reported to COPFS which are prosecuted at summary level. As I have expressed, it is therefore essential that investigating agencies provide accurate and comprehensive information in the SPR.
79. In the years 2000 to 2013 evidence provided by POL would have been interrogated by COPFS prosecutors to varying degrees depending on the particular circumstances of a case. If a case was assessed to merit prosecution on summary complaint, and the accused pled guilty at the first calling of the case, then it is possible that proceedings were raised, and concluded, on the basis of the information in the SPR alone. In these situations, it is unlikely there would have been any interrogation of the source material ingathered by the POL investigator.
80. In more serious and complicated cases, or summary cases where an accused pled not guilty, the evidence against the accused will have been provided to COPFS by the POL Reporting Officer. Solemn level cases, such as the Kloosterhuis case referred to above, underwent more detailed interrogation and precognition prior to indictment proceedings being initiated.

OFFICIAL

OFFICIAL

81. If a prosecutor concluded that assistance to interpret and understand the evidence submitted by POL was required, then they may have asked the POL investigator to meet with them and to explain the evidence. I am aware that both PFDs referred to above at paras 37 and 58 met with POL investigators for such meetings. I am not able to say how many other COPFS prosecutors conducted similar meetings or what these meetings were specifically about.
82. I have been asked to explain whether all of the evidence was examined in circumstances where the subpostmaster had plead guilty.
83. It is likely that many POL reported cases which were prosecuted at summary level and resulted in a guilty plea did not involve an examination of all of the evidence ingathered by POL by COPFS. By that I mean that all the productions (such as raw Horizon data) would likely not have been examined. Proceedings would not, however, have been raised without full and careful consideration of the SPR. In complicated and serious cases, it is more likely that witness statements and productions were examined. Certainly, in solemn cases all the evidence would have been examined.
84. It is important to note that for the vast majority, if not all, of these cases the accused subpostmaster was pleading guilty with legal representation and advice. It is not acceptable in Scots law to tender a plea of convenience. Guilt must be admitted by the accused for a guilty plea to be tendered. Absent any information from POL or elsewhere that the evidence POL was submitting was potentially flawed and faced with an admission of guilt and an intention by the accused to plead guilty, it would not be considered necessary by the prosecutor to review raw Horizon data.
85. I have been asked whether COPFS was made aware of the advices of Simon Clarke dated 15 July 2013 and 2 August 2013.
86. Although I have now seen the advices of Simon Clark dated 15 July 2013 (**COPF0000229**) and 2 August 2013 (**COPF0000230**), there is no evidence to suggest that COPFS was made aware of, or provided copies of these, in 2013. Copies of these advices were first made available by POL to COPFS in redacted form in 2023.
87. I have been asked if Dr Gareth Jenkins gave expert evidence in Scottish prosecutions.

OFFICIAL

OFFICIAL

88. I do not believe that there was any Scottish prosecution in which Dr Gareth Jenkins gave expert evidence.
89. Records held by COPFS suggest that POL did not make COPFS aware of the view held internally by POL as of July 2013 that POL's expert witness, Dr Gareth Jenkins, had been discredited as a witness by failing to comply with his duties to the Court as an expert.
90. I note that the Dr Jenkins is mentioned in a telephone note of 29 July 2013 between COPFS Policy and representatives from POL, but I would observe that only limited information about Dr Jenkin's involvement in Horizon prosecutions in England appears to have been mentioned in these minutes (**COPF0000231**). I cannot say what was discussed on the call.
91. I further note that in his report regarding the meeting between POL and COPFS on 5 September 2013, Martin Smith of Cartwright King states, "*SC provided the meeting with a broad overview of the HOL difficulties (absent any direct or indirect reference to the role of GJ or Fujitsu)*". The use of brackets and smaller type font in this sentence suggests to me that the comment "*absent any direct or indirect reference to the role of GJ or Fujitsu*" in brackets was information withheld from COPFS (**COPF0000232**).
92. There are no records to suggest that COPFS was aware that POL officials were shredding documents or that it was not recording information relating to issues with Horizon contrary to its duty to reveal all material information to the prosecutor. This directly impacted the prosecutor's duty to record and disclose all relevant information to an accused.
93. I have been asked whether COPFS instructed any experts to provide evidence/testimony relating to the Horizon IT system or the reliability of information extracted from it in relation to COPFS prosecutions of Post Office cases relying upon Horizon evidence.
94. There are no records to suggest that COPFS instructed its own expert witnesses to provide evidence and testimony relating to the Horizon system. As explained above, I am aware of only one prosecution of a subpostmaster in Scotland which went to trial.

OFFICIAL

OFFICIAL

95. To provide context to this position, in the years that POL reported subpostmasters to COPFS for prosecution, COPFS was reliant on POL, as the SRA, to make COPFS aware of any issues which could impact the credibility and reliability of the evidence POL submitted for the purposes of prosecution. We now know POL failed to do this in the years 2000 to 2013.
96. In July 2013, POL made COPFS aware of the Second Sight and Helen Rose reports and in September 2013, a meeting was held between representatives of POL and COPFS to discuss these reports. These representatives included a POL in-house solicitor, a senior solicitor from the firm Cartwright King and a Senior Barrister. It was at this time when POL first properly disclosed to COPFS their concerns regarding the accuracy of the Horizon system.
97. The purpose of the meeting in September 2013 was to establish to what extent, if any, the defects in the Horizon system that had been identified in these two reports were present in any live or pending prosecutions in Scotland. A minute of this meeting was taken by COPFS Policy PFD (**COPF0000233**).
98. There is no evidence to suggest that POL disclosed any further concerns regarding the integrity of the Horizon system to COPFS. The extent of the bugs present in the Horizon system that was disclosed to COPFS were those identified in the Second Sight and Helen Rose reports.
99. Records suggest that POL did not make COPFS aware of any reliability issues with the 'Legacy Horizon' version of the system. The Inquiry has provided me with a copy of an undated memo from BTO Solicitors to POL Solicitor, Jarnail Singh, in which it is stated that, "*COPFS do not know about any additional Horizon issues which may have arisen recently.*" (**POL00139899**). COPFS has not seen this document previously although I would observe that this is a document that ought to have been produced to COPFS under an order for the recovery of documents against POL granted by the High Court of Justiciary in 2023.
100. According to the minutes of that meeting, POL advised COPFS that it had carried out a review of all live Scottish cases and considered that the system defects identified in the Second Sight and Helen Rose reports did not play a part in any live Scottish cases. POL did not disclose any concerns regarding closed and historic Scottish cases. POL accepted that a much more detailed forensic analysis of the Horizon system was

OFFICIAL

required to establish the full extent of any system defects and bugs. It was considered that it may later be discovered that system defects in the Horizon system played a part in some of the shortfalls identified in current live Scottish cases. According to POL it was not possible to determine this at that point in time and it would be necessary to conduct a further independent forensic examination of the system which POL was in the process of commissioning.

101. POL advised COPFS that it considered that a full examination of Horizon would detail the extent of any system defects and that the author(s) of the further examination would also thereafter be able to provide expert evidence in individual cases as to whether the shortages identified by Horizon were attributable to system errors.
102. As a result, while this further investigation was being carried out, prosecutors were expected to carefully consider any POL reported case on its specific facts and circumstances. When concerns regarding Horizon arose, prosecutors were advised to suspend prosecutions and await further expert evidence (**COPF0000235**).
103. I am aware that in one Scottish prosecution, the accused, William Quarm, having initially pled not guilty to a charge on summary complaint, instructed a forensic accounting report in preparation for his defence. The author of that report opined that the Horizon system was considered "*watertight*" (**COPF0000236**). I am not aware of any other expert reports in relation to Scottish prosecutions.
104. I have been asked to provide a copy of the meeting minutes taken during the meeting of 6 October 2015 between COPFS, POL officials and their legal representatives.
105. These minutes are provided in submission with this statement to the Inquiry (**COPF0000237**).
106. I have been asked to explain why COPFS did not consider it important to instruct its own experts to provide evidence/testimony relating to the Horizon IT system or the reliability of information extracted from it in relation to COPFS prosecutions of Post Office cases relying upon Horizon evidence.
107. It would be inaccurate to suggest that COPFS did not consider it important that expert evidence was obtained to provide assurance that the Horizon system was reliable for

OFFICIAL

OFFICIAL

use as evidence in criminal prosecutions once the concerns regarding its accuracy had been disclosed to COPFS by POL via the Second Sight and Helen Rose reports.

108. As explained above, at the meeting of 5 September 2013, representatives from POL provided reassurance to COPFS that, in light of the concerns they had shared, POL was seeking to identify a subject expert who could speak to the accuracy of the system and was awaiting the results of a further report by the firm 'Second Sight' which would then be produced to the Crown.
109. Given POL was carrying out the work to identify an expert and provide further vouching in support of the system, COPFS would not have considered it necessary to instruct its own expert.
110. It was not known by COPFS at this point in time that POL had attended COPFS with the motivations of providing reassurance that the system was robust, nor that they were aware of the extent that Dr Jenkins had been providing inaccurate expert evidence in Courts in England.
111. I am now aware that these were concerns that were held by POL and that they are referenced in internal POL documents, namely a note by POL Solicitor Jarnail Singh (**COPF0000238**) and in Simon Clarke's meeting report to POL dated 16 October 2013 (**COPF0000239**) in which he stated that a decision by COPFS to "*terminate*" all Scottish POL reported cases "*would have raised a considerable public relations storm for POL*".

COPFS CONDUCT OF PROSECUTIONS AND DISCLOSURE OBLIGATIONS

112. I have been asked whether the Second Sight and Helen Rose reports were ever disclosed by COPFS to an accused subpostmaster or the Court in any of its open or closed subpostmaster prosecution cases which relied on Horizon evidence.
113. There is no evidence to suggest that the Second Sight and Helen Rose reports were disclosed by COPFS to an accused or to the Courts in any Scottish open or closed subpostmaster prosecution which relied on Horizon evidence.
114. Copies of these reports were disclosed to the appellants in the eight cases referred by the SCCRC to the High Court of Justiciary in 2022/23.

OFFICIAL

OFFICIAL

115. In Scotland, the prosecutor is under a duty to disclose all information which meets the materiality test as set out at section 121 of the Criminal Justice and Licensing (Scotland) Act 2010 (“**the 2010 Act**”). Prior to the enactment of the 2010 Act these rules were enshrined in the Scottish Common Law. Information will meet the materiality test if it: a) would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused; (b) would materially strengthen the accused's case, or (c) is likely to form part of the evidence to be led by the prosecutor in the proceedings against the accused.
116. Records suggest that during the various meetings between POL representatives and COPFS Policy officials in 2013, reassurance was provided by POL that the bugs and defects identified in the Second Sight and Helen Rose reports had not impacted any concluded or live Scottish cases. On that basis, the view was that this information did not meet the materiality test.
117. The one case identified as a ‘Type B’ case (HM13003852) was not prosecuted and it was discontinued once it became apparent that POL could not provide the further evidence it promised to support the integrity of the Horizon system.
118. It should be noted that no concerns were raised by POL to COPFS in respect of the ‘Legacy Horizon’ version of the Horizon system in operation between 2000 to 2010. COPFS’ understanding in 2013 was that it was only the bugs identified by the Second Sight and Helen Rose reports impacting Horizon Online which were of concern.
119. On this point I would draw the Inquiry’s attention to correspondence between the COPFS Director of Serious Casework (“**DSC**”) and POL in March 2014 (**COPF0000240**). With reference to a historic POL reported case, the DSC advised POL, “*Our concern is whether or not we took up a case on the basis of potentially flawed evidence. I am aware of the second site (sic) report into the Horizon System which when it was published in July 2013 had not found evidence of systemic problems with Horizon software but was aware of two incidents where defects or "bugs" in the Horizon System gave rise to certain branches being affected by incorrect balances or transactions. Was the Horizon System in 2004 the same system that was in place when the second site (sic) review was done? In order to be able to assess the accuracy of the Horizon evidence it is essential to know how the System worked and whether it was accurate.*”

OFFICIAL

OFFICIAL

120. In reply to that email POL provided COPFS a report prepared by Barrister Harry Bowyer (**COPF0000241**) which concluded that it would seem “*vanishingly remote*” that issues had developed with the Horizon system at the branch under examination that had then cured itself. The report also noted that POL was not aware of any other bugs impacting the ‘Legacy Horizon’ system.
121. I have been asked if COPFS at any point carried out its own wholesale review of all Scottish cases (closed and live) relying upon Horizon evidence after being made aware of these two reports, and in light of BTO carrying out its own review of Scottish cases.
122. COPFS did not carry out its own wholesale review of all Scottish cases (closed or live) relying on Horizon evidence after being made aware of these two reports in 2013.
123. Following the meetings between POL and COPFS in 2013, COPFS understood that a careful and comprehensive review had been carried out by Cartwright King and BTO solicitors in relation to any cases which could have been impacted by the issues identified in the two reports.
124. As I have explained previously, as the SRA who had reported these cases to COPFS and the subject expert in relation to Horizon evidence, it was incumbent on POL to provide COPFS with full disclosure of all issues of reliability which could impact Scottish cases. At this point in time (2013), given the assurances provided by POL and indeed by the Second Sight report which found no systemic issue with Horizon, COPFS was content for POL to instruct this review and report back any concerns to COPFS. COPFS did not have the technical expertise or understanding of Horizon to conduct this review itself. As an SRA, POL had an absolute duty of candour and COPFS had no reason not to trust the information that it was being provided by POL at that time. Had COPFS known then what it knows now then that would clearly not have been the case but at that time COPFS was entitled to assume honesty and integrity from an SRA.
125. I have been asked whether Procurator Fiscals dealing with ongoing POL reported cases were made aware of the issues regarding Horizon Online that were disclosed to COPFS in 2013 and whether they were given any direction in relation to how they should approach such cases.
126. In July 2013, BTO Solicitors (on behalf of POL) made COPFS Policy aware of cases against four accused which COPFS understood were being reviewed by POL.

OFFICIAL

OFFICIAL

127. The COPFS function leads dealing with these four cases were contacted by COPFS Policy via email on 9 August 2013 (**COPF0000235**). These cases held Procurator Fiscal references KC13003720, KW13000211 and GG13010308 (this case featured two accused).
128. In that email, the COPFS Policy PFD stated, *"I have clarified with BTO that we need to be provided with an additional statement in relation to each of the cases to deal with whether the issues identified in their computer systems affect the available evidence. I have been told that it may be that the investigator himself is unable to say whether there has been any such effect and have asked BTO to provide a statement from someone who can speak to the accuracy or otherwise of the system in relation to each of these cases. It would appear that at the moment, neither the solicitors in England, nor BTO, nor the investigator himself may be able to say whether the system faults played a specific role in a specific case. The approach in England appears to be to disclose the Second Sight report and see what the defence want to make of it. My position at the moment is that we should receive specific information on each case before deciding whether there is any impact. As some of the cases are ongoing, I wanted to make sure you were aware of the issue at this stage. I will let you know as soon as I receive anything, in the meantime, I would be grateful if you could pass this to those involved in the preparation of any such cases and include the information, such as it is, in the consideration of how to proceed."*
129. On 2 August 2013, BTO Solicitors made COPFS aware of two additional cases that had been identified as pending and necessitating review by them (**COPF0000242**). These were cases with PF reference KC13001814 and HM13003852. There is no record of communication from COPFS Policy to the PFDs responsible for these cases, but it is possible this is simply due to the passage of time and loss of records.
130. I have been asked how COPFS identified POL reported cases in order to communicate this information to the Procurator Fiscals with carriage of the case.
131. POL, through its solicitors, made COPFS aware of POL reported cases which were relevant to the issues identified by the Second Sight and Helen Rose reports. It appears that this was primarily via correspondence to the COPFS Policy unit.
132. I have been asked what information was communicated to Procurator Fiscals.

OFFICIAL

OFFICIAL

133. As I have explained above, the information communicated was to a targeted group of PFDs dealing with cases that had been identified by BTO. A copy of the email sent to the function leads responsible for the marking of these cases is included with this statement.
134. I have been asked how this was communicated to them.
135. A record of this information being communicated by email is held but it is possible that further communication took place by telephone internally within COPFS.
136. I have been asked whether I am aware what steps may have been taken by COPFS, some, or any, Procurator Fiscal in response to this information.
137. I refer to the contact between COPFS and POL in 2013. Following the disclosure by POL of the issues identified in the Second Sight and Helen Rose reports, and the agreement that further interrogation of Horizon was required, it was agreed that POL would provide COPFS with a second, Second Sight, report and with a subject expert who could speak to the reliability of the system. In the interim period, COPFS prosecutors aware of these issues and dealing with relevant cases were expected to take a careful approach in relation to POL reported cases.
138. 11 cases have been identified by COPFS in which prosecutors decided to suspend consideration of proceedings and thereafter take no further action.
139. I am aware that in some of these cases, the PFD dealing with the case sought confirmation from POL that the Horizon system could be defended in Court should its accuracy be challenged. Cases with PF references GG13010308, GG14024535 (**COPF0000243**) and GG14010600 (**COPF0000244**) are examples of this approach and show that when POL confirmed that this evidence could not be provided then proceedings were discontinued.
140. I have been asked why COPFS Policy division officials provisionally concluded that all POL prosecutions in Scotland should be terminated.
141. These were views held by COPFS officials dealing with this matter at the time. No contemporaneous records are held which explain in full why this view was held. I have

OFFICIAL

OFFICIAL

been asked to refer to a meeting report prepared by Simon Clark in September 2013 which I believe assists in understanding why this view was held.

142. According to that meeting report, the Policy PFD's concerns had centred on the notion that if Horizon Online (that being the version of Horizon introduced in 2010) was unreliable then any evidence derived from the system would also be unreliable as evidence in Court. Given the requirement for corroboration in Scotland, it could be therefore be the case that one essential pillar of evidence against the accused could not be used and thus there would be an insufficiency of evidence.
143. I have been asked what the 'revelation' was that is referred to at paragraph 48 of my first statement (**WITN10510100**) and why it was considered significant enough to reverse the initial decision to termination POL prosecutions. I have been asked on basis this decision was made.
144. This is an incorrect reading of my statement. The "revelations" that I referred to in my first statement were that POL had disclosed to COPFS that two reports had identified bugs in Horizon Online which could impact the reliability of evidence derived from the Horizon system. This was a revelation because POL had not disclosed these concerns to COPFS previously.
145. Rather than discontinue all POL reported cases, the records available show that COPFS decided to treat each case carefully on its own facts and circumstances. It appears that this decision was made in light of the assurances provided by POL (and the independent Second Sight report) that the issues with the system were not systemic and did not impact any live or concluded cases. I would draw the Inquiry's attention to paragraph 21 of Simon Clark's briefing to POL dated September 2013 which outlined the support POL and BTO solicitors agreed to provide COPFS.
146. The independence of the Second Sight report, which considered there to be no systemic issues, and the assistance that was being offered by BTO on POL's behalf was a major factor in COPFS' response to these issues when they were first disclosed.
147. I have been asked if COPFS terminated any cases as a result of the Helen Rose and Second Sight reports. I have been asked if so, what cases these were and whether reports were filed with the Court and disclosed to the accused subpostmaster/s in these cases, and, if not, why not.

OFFICIAL

OFFICIAL

148. As I have mentioned above, COPFS has identified 11 cases that it appears were ultimately discontinued as a result of the Second Sight and Helen Rose reports.

149. These cases were:

- Sheila Ballantine: DN20000475
- Rauf Bashir: GG14024535
- Margaret Boyd: KM18006186
- Christine Gourlay: HM13003852
- Tiffany Holt: IN15004777
- Khalid Hussain: GG14010600
- Kumaljit Kaur: KM17002086
- Anaum Ullah Khan: ED15013115
- Taina Mccready: GE16003263
- Rasul Murtaza:GE13008494
- Rosemary Stewart: GG13010308

150. The Second Sight and Helen Rose reports were not disclosed nor produced to the Court because proceedings were either not taken or were discontinued against the accused in light of COPFS' concerns regarding Horizon and the failure of POL to produce the further evidence promised.

151. I have been asked how COPFS was kept updated about Horizon issues after the interim Second Sight report.

152. Records suggest that COPFS was kept updated via BTO solicitors.

153. I have been asked if COPFS' investigation and prosecution processes changed in any way following the result of Second Sight's findings in relation to Post Office cases where Horizon was concerned.

154. As I have explained above, after POL disclosed Second Sight's findings to COPFS, it advised COPFS that it considered a full examination of Horizon would detail the extent of any system defects and that the authors of the further examination would also

OFFICIAL

OFFICIAL

thereafter be able to provide expert evidence in individual cases as to whether shortages identified by Horizon were attributable to system errors.

155. As a result, while this further investigation was being carried out, prosecutors were expected to carefully consider any POL reported case on its specific facts and circumstances. When concerns regarding Horizon arose, prosecutors were advised to suspend prosecutions and await further expert evidence.
156. In cases which were reliant on Horizon evidence for corroboration, records show that PFDs suspended consideration of the case while this further information from POL was awaited.
157. In 2015, a further meeting with POL officials was held. The minutes of this meeting have been provided to the Inquiry and I have explained what was discussed at that meeting in my first witness statement (paras 51 to 52 at **WITN10510100**). Following that meeting, because of POL's failure to provide further evidence to support the system, cases that relied on evidence from the Horizon system were reported to Crown Counsel with a recommendation that proceedings be discontinued or not taken. I have provided an example report to the Inquiry (**COPF0000245**).
158. I have been asked to explain whether I maintain the position I gave in my second witness statement at paragraphs 2 to 5 where I said, "*The single case identified by BTO had been determined to be a 'Type B' case. It is not the position system defects identified in the in the 'Second Sight' and 'Helen Rose' reports impacted this case*".
159. I maintain my earlier statement given the information that is available to me. To explain, between May 2013 to September 2013, POL officials explained to COPFS how BTO and Cartwright King had made an assessment of POL cases that it had classified as 'Type A' and 'Type B' cases.
160. I understand that a 'Type A' case was a case in which it was assessed that Horizon had provided the information as to wrongdoing but was not the provider of primary evidence, and that in almost all of these cases the subpostmaster had admitted to the taking of monies belonging to POL for their own unauthorised purposes.
161. I understand that a 'Type B' case was a case where Horizon or the training of its use had been raised by the subpostmaster.

OFFICIAL

OFFICIAL

162. BTO had identified one Scottish case that it considered to be a 'Type B' case, that being a case in which either Horizon or the training of its use had been raised by the accused. It was BTO's view that in these 'Type B' cases, the Second Sight and Helen Rose reports should be disclosed. This is because the reports contained information which was relevant to the position adopted by the accused (that the system may have not worked properly).
163. The classification of a case as a Type B case did not mean that it was a case that had been identified as having been impacted by system defects. Rather, my understanding is that it was a classification given because of the position of the accused.
164. I would draw the Inquiry's attention to the following passage contained in the Policy PFD's Minute of September 2013, "*Post Office Ltd have carried out a review of all live Scottish cases and consider that the system defects identified in the "Second Sight" and "Helen Rose" reports do not play a part in any live Scottish cases.*"
165. I have been asked to explain in detail whether COPFS complied with its duty of continuing disclosure in relation to Post Office cases affected by the Horizon system.
166. The decision not to disclose the Second Sight and Helen Rose reports in 2013 was, in my view, justified having regard to the materiality test based on the knowledge that was then held. However, in hindsight, my view is that the Second Sight and Helen Rose reports should have been disclosed to accused subpostmasters in Scotland (in both live and concluded cases) once the greater extent of the issues with the system came to light years later. In that regard it could be said that COPFS did not comply with its duty of disclosure. It is, however, only possible for me to say this because of the knowledge that I now hold regarding the true depth and extent of the issues with Horizon. As has been made clear, COPFS has only recently become aware of the true extent of the issues and it is that new knowledge which informs my view here.
167. Had COPFS been made fully and properly aware of these issues then it is likely that prosecutions involving evidence from the Horizon system would never have been raised and, consequently, the issue of disclosure would have not arisen. That position is evidenced by the action that was taken by COPFS in 2015 when its concerns regarding potential defects in the system and POL's inability to provide evidence that it was robust crystallised.

OFFICIAL

OFFICIAL

168. It is important to note that at the time the Second Sight and Helen Rose reports were made available to COPFS, COPFS was assured that the bugs and defects identified in the Horizon Online system did not impact live cases and were led to believe that there were no issues with the Legacy version. I have explained how an assessment regarding the materiality test was reached in those circumstances.
169. It is now universally known that the issues with Horizon ran much deeper than this. Although a significant proportion of subpostmasters in Scotland gave admissions of guilt to POL investigators and ultimately pled guilty, we can only now appreciate that many did so under the false pretence given by POL that the Horizon system was infallible. In that respect, the classification of cases as Type A and Type B was worthless. Just because a subpostmaster admitted theft of monies from a Post Office did not mean that the findings of Second Sight were not relevant. This is an issue that was regrettably not fully appreciated by COPFS due to POL's lack of candour. This ignorance of the position may also have been fuelled by the high proportion of guilty pleas tendered by an accused while represented by a solicitor.
170. I have been asked to explain in detail why COPFS did not undertake its own retrospective review of closed cases where the accused pled guilty or was found to be guilty in light of its duty of continuing disclosure and the knowledge it had following the Helen Rose and Second Sight reports.
171. COPFS did not undertake its own retrospective review of closed cases in light of the findings in the Second Sight report because it was of the understanding from information provided by POL that these issues did not impact closed cases.
172. I have been asked to explain in detail the present status and/or outcome of COPFS' review of potentially affected cases.
173. COPFS' internal review of cases reported to it by POL between the years 2000 to 2020 was undertaken with the objective of identifying cases which might, following a full review of the facts and circumstances, be considered a miscarriage of justice; and to identify those cases which might be referred by the SCCRC to the High Court of Justiciary so that material necessary for review in response to an appeal could be recovered by COPFS from POL.

OFFICIAL

OFFICIAL

174. The COPFS review initially identified approximately 148 cases that had the potential to be impacted by issues with the Horizon system. A wide net was cast in identifying these cases to limit the possibility of an affected case being missed within the review. These 148 cases were triaged and sifted and the number of cases that were assessed as being potentially impacted was reduced. Approximately 52 cases were identified by COPFS which *may* be impacted. These 52 cases are in addition to the eight appeals in which convictions were quashed by the High Court of Justiciary. A significant number of cases were ruled out from the starting point of 148 cases following initial review of these on the basis that it was possible to identify that at least one of the following circumstances applies:

- Horizon evidence was not involved in the case at all;
- the charge was not one of embezzlement or involving a theft of money from POL;
- no proceedings were ultimately taken; or
- it was not an 'unexplained shortfall case'.

175. The weeding process undertaken demonstrates the wide net cast in the initial identification phase. Put another way, the initial review identified "false positives".

176. In the remaining cases, it was not possible to determine with any degree of confidence whether Horizon evidence played a role in the prosecution and, if it did, its import to the particular case. Owing to, amongst other things but in particular, a lack of records, it was not possible to form a concluded view on whether a miscarriage of justice has occurred.

177. It is believed that the position is markedly different in England and Wales. As POL was investigator and prosecutor, it most likely has a clearer understanding of the circumstances of the impacted cases in England and Wales. POL may already know which cases would be classified as a miscarriage of justice.

178. Of the cases that were identified by COPFS as cases which may have potentially been affected, it is understood (with the exception of four individuals who had not been traced) that all the individuals concerned have been written to by the SCCRC and have been invited to make an application to it for review of their conviction. COPFS understands that in respect of some cases, letters have been sent to next of kin as the individual concerned is now deceased. In conducting its contact exercise, the SCCRC has employed the use of Sheriff Officers to trace these potentially impacted individuals.

OFFICIAL

OFFICIAL

179. Due to the loss of records, the COPFS review is unable to make a final informed assessment of a conviction. For that reason, applications by the SCCRC have been critical to the review of convictions leading to an appeal to the High Court of Justiciary.
180. As explained above, the purpose of COPFS' review was to identify cases which may have been impacted by the Horizon issues so efforts could be made to review the conviction. These efforts have now been superseded by the enactment of the Post Office (Horizon System) Offences (Scotland) Act 2024 which quashed convictions on the date of its enactment. As a result of this legislation, all convictions which may have relied on unreliable evidence from the Horizon system have been overturned. The Scottish Government is currently conducting a notification exercise for those who's conviction has been quashed. COPFS is providing essential assistance to the Scottish Government via the data collected in its review.
181. I have been asked to explain why this review was not carried out sooner.
182. The full extent of the issues with the Horizon system and the possibility that these could have impacted Scottish prosecutions was not fully appreciated until the conclusion of the *Bates v Post Office* litigation in 2019 and the findings of the English Court of Appeal in 2020/21.
183. Since these findings, work has been underway in Scotland to identify cases impacted by these issues.
184. In September 2020, supported by COPFS, and with information provided by the Post Office, the SCCRC wrote to 73 individuals who it was believed might have been convicted in Scotland on the basis of unreliable evidence from the Horizon system, with the purpose of inviting an application for their case to be reviewed.
185. I have been asked whether COPFS maintains that the decision not to terminate POL prosecutions in Scotland back in 2013 was the correct decision.
186. As I have explained, with hindsight and the knowledge that is now held, prosecutions of subpostmasters which relied on evidence from the Horizon system should not have taken place.

OFFICIAL

OFFICIAL

187. In 2013, when the decision not to discontinue all cases was made, COPFS was led by POL to understand that these issues were minor and could be addressed. The full extent of the issues with the system were not disclosed.
188. Given the limited number of live cases said in August 2013 to necessitate a review (six), coupled with the assurance by POL that Horizon evidence was reliable, it may have been considered that a decision to immediately discontinue all Scottish cases would have been an overreaction.
189. I have referenced the correspondence that was received by the COPFS DSC in July 2013 regarding a historic prosecution and the efforts taken to ensure that POL provided a report into the possibility that Horizon issues had impacted the case. As is clear from POL's response in 2014, POL provided information to COPFS that gave no basis for suspecting termination of all Scottish cases was necessary.
190. I would also observe that the information being provided by POL to COPFS was very much the same information that was being provided across to the United Kingdom to the UK Government, Ministers, the media and the public.

OTHER MATTERS

191. I have been asked to advise whether there are any other matters that I consider the Chair of the Inquiry should be aware of.
192. On 14 May 2024, COPFS wrote to POL to advise that the Lord Advocate had decided that POL will no longer hold the status of SRA and will now no longer be entitled to investigate and report allegations of criminality that had previously fallen within its remit of investigation in Scotland to COPFS (**COPF0000246**). This decision was made as a direct result of the repeated failures of POL to disclose to COPFS the extent of the issues in reliability with the Horizon system.
193. Work continues to be carefully undertaken to ensure that all remaining SRAs in Scotland abide by the crucial requirement of full and honest disclosure to COPFS.

Statement of Truth

194. I believe the content of this statement to be true.

OFFICIAL

OFFICIAL

Signed: 

KENNETH WILLIAM DONNELLY

DEPUTY CROWN AGENT, SPECIALIST CASEWORK

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Dated: 25 November 2024

OFFICIAL

OFFICIAL

Index to Third Witness Statement of Kenneth William Donnelly

<u>No.</u>	<u>URN</u>	<u>Document Description</u>	<u>Control Number</u>
1	COPF0000212	Email from Lindsay MacNeill to Laura Irvine Re: Post Office Ltd - Voicemail	COPF0000212
2	COPF0000095	Letter from Christian Kane, C&D Mactaggart, to COPFS re: HMA v Aleid Kloosterhuis	COPF0000095
3	COPF0000096	Letter from M.M. Macleod, COPFS, to C&D Mactaggart re: HMA v Aleid Kloosterhuis	COPF0000096
4	COPF0000105	Section 76 Report to Crown Court for Recommendation (Aleid Kloosterhuis)	COPF0000105
5	COPF0000098	DCA Office Report of Meeting with Malcolm MacLeod re the Prosecution of Aleid Kloosterhuis	COPF0000098
6	COPF0000218	Email from Robert Daily to Denise Reid, Brian Trotter, John Breeden and others re: Case Closure - POLTD/1213/0164 - Gorbals	COPF0000218
7	COPF0000219	Email from Andy Lazzarin to Mr Daily RE; request for transcript of the interview of Stewart	COPF0000219
8	COPF0000220	Email from Andrew Lazzarin to Robert Daily re: RE: C/a Stewart and Kasaby GG13010308 NSE2301640513	COPF0000220
9	COPF0000221	Report from Robert Daily to Andy re postponement of submission of requested statement in the prosecution case following Second Sight review - FOS User: Andrew Lazzarin - Workstation: AYRSHIRE057	COPF0000221

OFFICIAL

OFFICIAL

10	COPF0000089	Andrew Lazzarin note RE contact with Robert Daily	COPF0000089
11	COPF0000223	Notes by FOS user: Andrew Lazzarin Re: meeting with PO on evidence against El Kasaby and audit figures.	COPF0000223
12	COPF0000224	Email from Laura Irvine to Andrew Lazzarin re: Global Post Office Case	COPF0000224
13	COPF0000225	Letter from Crown Office and Procurator Fiscal Service to Jacqueline El Kasaby re Case Against: Jacqueline El Kasaby	COPF0000225
14	COPF0000093	Email from Angus Crawford to Unknown RE; Angus stating that evidence in relation to the accusation of fraud on a post office branch is unavailable, nor does post office have results an audit referred to as 'the audit in 2009' nor can RO and 'solicitor 'defend' the Horizon accounting system ' / Record of meeting between Angus Crawford and RO	COPF0000093
15	COPF0000094	Angus Crawford note of communication with RO	COPF0000094
16	RLIT0000200	High Court of Justiciary decision in (1) WILLIAM JOHN QUARM; (2) SUSAN SINCLAIR, (3) COLIN STEWART SMITH, (4) JUDITH ELIZABETH SMITH; (5) ROBERT THOMSON; (6) ALEID KLOOSTERHUIS v HM ADVOCATE	RLIT0000200
17	COPF0000229	Prosecutions - Expert Evidence Re: Post Office Ltd - Advice on the use of expert evidence relating to the integrity of the Fujitsu Services Ltd Horizon Ltd	COPF0000229
18	COPF0000230	Advice - Disclosure The Duty To Record and Retain Material (POL)	COPF0000230
19	COPF0000231	Note of telephone call between Martin Smith, Cartwright King, Lindsay McNeill and Paul Beaton from Crown Office	COPF0000231
20	COPF0000232	POL Meeting Report for meetings held on 4th September 2013 and 5th September 2013.	COPF0000232

OFFICIAL

21	COPF0000233	Letter from Paul Miele to Stephen McGowan RE: Correspondence from Mr William Doran regarding POL and defects in the Horizon Computer system	COPF0000233
22	POL00139899	Memo from BTO Solicitors to Jarnail Singh (POL); Martin Smith & Cartwright King Solicitors Re: COPFS Scotland disclosure obligation.	POL-0141075
23	COPF0000235	Email from Gary Dow to Geri Watt - Re: Post Office Fraud	COPF0000235
24	COPF0000236	Forensic Accountancy Report of David W Adamson CA, MEWI - HMA v William Quarm	COPF0000236
25	COPF0000237	Meeting With Post Office Ltd and Their Advisors	COPF0000237
26	COPF0000238	Second Sight Report Notes	COPF0000238
27	COPF0000239	Post Office Ltd General Counsel ((Cartwright King Solicitors) Briefing Note.	COPF0000239
28	COPF0000240	Email from Stephen McGowan to Belinda Crowe re: Horizon System in Scottish Criminal Prosecution	COPF0000240
29	COPF0000241	Letter from BTO Solicitors to Stephen McGowan re: Elaine Doran and enclosed advice note prepared by counsel for the Post Office in relation to the Doran case	COPF0000241
30	COPF0000242	Email chain including correspondence from Paul Beaton to Lindsay MacNeil CC'd Laura Irvine and others RE; request for statements in relation to Sottish Post Office cases, email contains statements information of 5 Scottish cases relating to horizon related investigations.	COPF0000242
31	COPF0000243	Email from Anne Sweeney to Angus re: case update	COPF0000243
32	COPF0000244	Report by Angus Crawford - Workstation: GLASGOWWIN7025 - re providing an expert witness to provide assurance for the accuracy of Horizon system	COPF0000244
33	COPF0000245	Crown Counsel Instruction on case relating to Christine Gourlay re: Embezzlement charges	COPF0000245

OFFICIAL

34	COPF0000246	Letter from the Office of the Deputy Crown Agent, Crown Office & Procurator Fiscal Service to POL - RE: POL's Status as a Specialist Reporting Agency	COPF0000246
35	WITN10510100	WITN10510100 - Kenneth William Donnelly - First Witness Statement	WITN10510100

OFFICIAL