

INITIAL SIFT PROTOCOL

I. Was or might HORIZON reasonably have been more than just the information provider?

Identify POL case against defendant(s):

- i. Case Summary/Opening Note/Statement of Facts
- ii. POL Investigators “Investigation: Legal” form;
- iii. Charge sheet/Indictment
- iv. Audit statement;
- v. Disclosure bundle;
- vi. Questions asked in Interview.

II. Irrespective of the plea, did the defence raise at any stage:

- a) **ALLEGED OR IMPLIED Horizon failings however expressed, general, nebulous or ill-defined; or**
- b) **ALLEGED OR IMPLIED lack or adequacy of training by POL; or**
- c) **ALLEGED OR IMPLIED lack or adequacy of Horizon customer support (*i.e.* sub-postmaster) by POL:**

Identify defence case:

- i. Defence Statement
- ii. Interview responses;
- iii. Defence correspondence.

IF ANSWER TO QUESTIONS I OR II ARE OR MAY BE “YES” THEN FULL REVIEW.

ASKING THE QUESTIONS.

Question I.

- a). Here we are looking for cases where the primary or main evidence against the defendant is Horizon-based. The following are examples of cases which WOULD go forward for Full Review:
- Where the ONLY evidence against the defendant consists of Horizon data, *e.g.* unexplained transaction reversals; unexplained balance shortages; unexplained accrued losses; repeat or second POCA withdrawals *etc.*
 - Where the main evidence is Horizon-based but there is some other supportive evidence, *e.g.* as above but supported by: limited admissions in interview; transfers into personal/non POL business accounts; personal cheques; demonstrable lies in interview; inconsistent responses in interview and/or Defence Statements; (but see b). below)
 - Any case in which we have served a statement by Gareth Jenkins or any other Horizon expert witness.

NOTE THAT THIS LIST IS NOT DEFINITIVE

- b). If there is a preponderance of other evidence against the defendant and the Horizon evidence is merely the starting point for the investigation then the case should NOT go forward for Full Review. Examples include:
- Admissions in interview to the misconduct charged;
 - The withholding or delaying of cheques to Clearing;
 - Pleas of guilty to alternative charges, *e.g.* False Accounting to cover unexplained shortages/losses *etc.*

Question II.

- a) Has the defendant raised Horizon failings as part or all of the defence? Obvious examples go forward for Full Review. But what of implied failings? *e.g.*
- The evidence is of double-transactions from a Post Office Card Account; the defendant says she only did what she was asked to do; the account-holders say they did not make two withdrawals on the one visit; the implied defence is that Horizon is responsible.
 - The defendant DOES NOT criticise Horizon but cannot explain the shortage/loss.

Such cases WOULD go forward for Full Review.

- b) This is a separate issue raised by Second Sight. If the defendant alleged or implied (usually in interview, but check Defence Statement and correspondence) that he/she received either no Horizon training or had received some training but that it was insufficient, not detailed enough or not topical then the case goes forward for Full Review.
- c) Similarly, where a defendant alleges a lack of adequacy or sufficiency of Horizon customer support then Full Review. Examples include:
- Telephoned the Help-line/Chesterfield but received insufficient/inadequate/no help;
 - No Help-line available;
 - Line manager/supervisor inadequate/of no assistance;
 - Such assistance as was received failed to address/remedy the problem.
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APPENDIX 1

SIFT REVIEWS

1. **GUILTY PLEAS**. The fact that a defendant has pleaded guilty to an offence is not, for the purposes of this Sift, determinative. The circumstances of the plea must be examined with some care. This is because defendants have been known to enter guilty pleas for reasons other than guilt, *e.g.* because they have been advised that the case against them is overwhelming and that they should cut their losses; because a guilty plea attracts a lesser sentence; because often a guilty plea can mean the difference between immediate imprisonment and a suspended or community-based sentence; because a Judge has indicated that such a plea may keep them out of prison.

Note that there will be cases where a guilty plea WILL BE determinative of the Sift, *e.g.* where a defendant has pleaded guilty because, whilst he/she is unable to explain the loss or has blamed Horizon failings, he/she admits (in interview; DS, correspondence or written Basis of Plea(s)) to having hidden/covered-up the shortage(s) by making false entries. In this situation the case SHOULD NOT go forward for Full Review.

2. The purpose of the Sift is to identify those cases where, had we been possessed of the material contained within the Second Sight Interim report during the currency of the prosecution, we would have been required to disclose some or all of that material to the defence. We have deliberately set a very low threshold for applying this test: if the material MIGHT have been disclosable then the case MUST go forward for Full Review.
3. Note that the threshold for moving cases from Sift to Full Review is deliberately set very low. In any case where you are unsure whether to move a case to Full Review you should err on the side of caution.
4. SC and MS will be available throughout the process to deal with queries and uncertainties.
5. Occasionally a borderline case may be further Sift Reviewed so as to ensure that the correct decision is arrived at.
6. The reviewer MUST complete an Initial Sift Result Sheet (see Appendix 4) for each case sift-reviewed. A copy of the Result Sheet should be attached to the front of the file.
7. At the conclusion of the Sift Review process, all cases where the Sift Reviewer has advised no Full Review, Senior Counsel will themselves further Sift Review those cases so as to ensure uniformity of approach and to ensure the correctness of the original Reviewer's decision.

APPENDIX 2

FULL REVIEWS

1. Full Reviews will require a full reading of all of the case papers. The only question to be considered is: would the Second Sight and Helen Rose material have been disclosable during the currency of the prosecution?
 2. It is not necessary to consider whether or not a conviction may be said to be ‘safe’ – that is a decision for the Court of Appeal if the case gets there.
 3. See paragraph 1 of Appendix 1 above re: Guilty Pleas.
 4. A full “Case Review” document is to be drafted for forwarding to POL. The Case Review will contain:
 - Offence description
 - Case history
 - A full analysis of the prosecution case
 - A full analysis of the defence case
 - Details of any prosecution response to the defence case
 - A discussion of any issues relation to Horizon, training and Customer Support
 - A conclusion, to contain advice on disclosure.
 5. In determining the issue of disclosure and the advice to be provided to POL, the review should keep in mind the following provisions:
 - Criminal Procedure and Investigations Act 1996, ss.1-12;
 - Code of Practice enacted under the CPIA 1996;
 - The Protocol for the Control and Management of Unused Material in the Crown Court;
 - The Attorney-General’s Guidelines on Disclosure;
 - The opinion of the House of Lords in *R. v. H*; *R. v. C*; [2004] 2 AC 134; [2004] 2 Cr. App. R. 10.
 6. The reviewer MUST place a copy of the full “Case Review” document on the relevant file.
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APPENDIX 3

REVIEWER QUALIFICATION

1. Sift Reviews are to be conducted ONLY by qualified solicitors and counsel with experience of prosecution and defence disclosure. Prior to conducting Sift Reviews reviewers MUST:
 - a. be appraised of the circumstances giving rise to the task;
 - b. read the Second Sight Interim report in full;
 - c. attend an induction meeting during which the terms of this Protocol will be set out in full.
2. Full Reviews are to be conducted ONLY by Senior Counsel with substantial prosecuting experience. Those conducting Full Reviews MUST comply with the requirements of paragraph 1 above prior to commencing the Review process.

MS/SC

APPENDIX 4

INITIAL SIFT RESULT SHEET

Case Name:	
CK File Number:	
POL Reference:	
PO Branch:	
Initial Sift Conducted by:	
Initial Sift Conducted on:	

1) Was or might Horizon reasonably have been more than just the information provider?
Details:

2) Did the defence raise?	
a) Alleged or Implied Horizon failing	
b) Alleged or Implied lack of or adequacy of training	
c) Alleged or Implied lack or adequacy of Horizon Customer Support.	
Details:	