

IN THE COURT OF APPEAL, CRIMINAL DIVISION

**IN THE MATTER OF APPEALS AGAINST CONVICTIONS IN CASES
PROSECUTED BY THE POST OFFICE**

DISCLOSURE MANAGEMENT DOCUMENT

1. This disclosure management document (“DMD”) is intended to assist in informing the Court and the Appellants¹ of the way in which the Prosecutor has been dealing with the post-conviction disclosure exercise (“PCDE”) to date and how it proposes to continue to fulfil its disclosure obligations in a clear, open and transparent way. The DMD deals with those cases in which sub-postmasters or sub-postmistresses (“SPMs”)² were convicted in cases in which the prosecution relied on evidence from the Horizon³ computer system.
2. The document is also intended to give an early opportunity to Appellants and those representing them to highlight issues or areas not already addressed in the PCDE undertaken to date to ensure that relevant material and issues are considered and reviewed, and that appropriate disclosure is made.
3. For the purposes of the PCDE and any criminal appeal proceedings only, the Prosecutor is Post Office Limited (“POL”). Up until 1 April 2012, POL was a wholly owned subsidiary of the Royal Mail Group (“RMG”). POL generally ceased acting as a private Prosecutor in 2013/14. It therefore follows that the majority of prosecutions of Appellants were undertaken prior to the companies’ separation.

¹ This term “Appellants” in this DMD is used to include both those who have already had cases referred to the CACD by the CCRC and also convicted persons who are potential Appellants (i.e. those whose cases have not been referred who are either applying for leave to appeal or who are considering applying for leave to appeal).

² Some convictions were of assistants or clerks who worked for the SPM. However, for the purpose of this document they are referred to collectively as SPMs.

³ Horizon includes both the “Legacy” Horizon system in operation between 1999/2000 and 2010 and the Horizon Online/HNG-A system in operation between 2010 and 2017.

4. In relation to the proceedings in the criminal appeal courts only, the Prosecutor assumes responsibility for all prosecutions in those convictions based wholly or partly on Horizon data pre-separation in April 2012. The Prosecutor intends to discharge its duty of disclosure to all persons convicted by POL or RMG of any criminal offence whether in the Magistrates' Court or the Crown Court following prosecution based wholly or partly on evidence involving Horizon data⁴.
5. Because the appeals are limited to prosecutions undertaken between the introduction of Horizon and the Prosecutor ceasing to act as a private Prosecutor, the relevant period for the purposes of disclosure is 1999/2000 to 2013 (the "Relevant Period").

OVERVIEW

Introduction

6. A Prosecutor's duty of disclosure following conviction (whether following a verdict or a guilty plea) is that set out in *R (on the application of Nunn) v Chief Constable of Suffolk Constabulary* [2014] UKSC 37, namely a duty:
 - (i) to disclose to the defendant any material which has come to light that might cast doubt on the safety of the conviction⁵; and
 - (ii) where there is a real prospect that further inquiry might reveal such material, making that inquiry.
7. In *Nunn*, the Supreme Court held that, at the post-conviction stage, while there is an important public interest in exposing any flaw which rendered the conviction unsafe, there is also a powerful public interest in the finality of proceedings⁶. Thus, the duty, although important, is not as extensive as that required before and in the course of a criminal trial as is required under the test in sections 3 and 7A of the Criminal Procedure and Investigations Act 1996 ("CPIA").

⁴ "Horizon data" means the data generated either by Legacy Horizon or Horizon Online.

⁵ This test is also to be found set out in paragraph 72 of the Attorney General's Guidelines on Disclosure.

⁶ See §32 of *Nunn*.

8. However, notwithstanding the fact that the legal obligation on the Prosecutor is a less extensive one, when considering items identified as part of the PCDE for disclosure, the Prosecutor has chosen to adopt a broader approach than required and is treating items that would have been disclosable under the CPIA as being disclosable within the PCDE.
9. Given the quantity of material to be reviewed⁷, the disclosure exercise will necessarily be a lengthy process. In order to assist Appellants to consider and prepare their appeals expeditiously, disclosure will be made in a number of phases – key disclosure (both case specific and generic) will be made as soon as possible, with further phases to follow as more material becomes available. It is intended that the majority of the disclosure will be made prior to the service of the Respondent’s Notices (current deadline: 2nd October 2020). However, it is recognised that disclosure is an ongoing and continuing duty and so any further material will be promptly disclosed thereafter.
10. Equally, as is set out in greater detail below, the Prosecutor encourages active engagement by the Appellants to identify any additional issues of relevance for which disclosure would be appropriate and any additional relevant search terms to apply to electronic data (subject to the requirements of reasonableness and proportionality).
11. Although some Appellants were parties to the “Post Office Group Litigation”⁸, it is recognised that not all were and therefore not all Appellants will have received or seen the material arising out of the discovery made in the course of that Group Litigation. As such, evidence and other material from the Group Litigation has been considered as part of the Prosecutor’s PCDE duties and the attention of all Appellants is drawn to the following material:
 - (i) the judgment of Mr Justice Fraser in the Common Issues trial (judgment number 3) in the Group Litigation of *Bates & Others v Post Office Limited* [2019] EWHC 606 (QB)⁹; and

⁷ A total of approximately 4.5 million documents and several million e-mails and other digital files have been subjected to search terms and approximately 215,000 documents have been reviewed to date. The search and review process is ongoing, and new material is uploaded, searched and reviewed as it becomes available.

⁸ *Alan Bates and others –v- Post Office Limited* (proceedings in the High Court under Claim Numbers HQ16X01238, HQ17X02637 and HQ17X04248).

⁹ The Common Issues judgment can be found at <https://www.judiciary.uk/wp-content/uploads/2019/03/bates-v-post-office-judgment-no3-15-mar-19.pdf>.

- (ii) the judgment of Mr Justice Fraser in the Horizon Issues trial (judgment number 6) in the Group Litigation of *Bates & Others v Post Office Limited* [2019] EWHC 3408 (QB)¹⁰.

Overview of methodology

12. The Prosecutor has prioritised the cases to be reviewed in the order below:
 - (i) the CCRC referrals;
 - (ii) the balance of the convicted Group Litigation claimants who have not referred their cases to the CCRC; and
 - (iii) all those convicted persons who do not fall within (i) or (ii) above.
13. Any prosecution that resulted in an out-of-court disposal, such as a caution, has been excluded from the case specific review (although material from such cases may still engage the searches from the generic disclosure review).
14. Moreover, whilst there is no duty to disclose material that convicted parties already have, the Prosecutor has decided that, in order to assist Appellants and their representatives to consider their cases and any appeal, POL will make voluntary disclosure of the case papers (insofar as POL has a copy) that they would have been in possession of at the time of the trial (e.g. statements, exhibits, indictment, disclosure and correspondence etc.).
15. There are two distinct limbs of the PCDE, both of which are dealt with in more detail below. They are:
 - (i) the “case specific” disclosure review; and
 - (ii) the Generic Disclosure Review (“GDR”).
16. Each Appellant will receive “case specific” disclosure in relation to their own case. In addition, each Appellant will receive material obtained through the GDR which is of general application and disclosable to all Appellants as material which might undermine the safety of their convictions and assist them to advance their appeals. Where material in

¹⁰ The Horizon Issues judgment can be found at <https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-judgment.pdf> and the Technical Appendix can be found at <https://www.judiciary.uk/wp-content/uploads/2019/12/bates-v-post-office-appendix-1.pdf>

an Appellant's case specific disclosure is also of generic relevance, they will receive the material twice (once as part of their own case specific disclosure and then in the bundles of generic disclosure¹¹).

17. Both the case specific review and GDR have been conducted using Relativity software. A total of approximately 1,449,766 individual documents¹² have been uploaded onto the CCRC data-room on the Relativity platform to date from the various repositories identified below¹³.

18. The specific methodology adopted within the case specific review and the GDR is outlined below.

The disclosure team

19. The team responsible for the PCDE is as follows:

- A total of 49 junior counsel have been engaged as first and second level reviewers;
- From Peters & Peters Solicitors LLP ("P&P"): 1 Senior Associate, 2 Associates and 2 paralegals have been engaged in the administration and collation of review material and in reviewing material;
- 4 senior instructed Junior Counsel (Simon Baker, Jacqueline Carey, Helen Jones and previously Emma King) who have been engaged in second level review and oversight of the PCDE process; and
- 2 Queen's Counsel (Brian Altman QC and Zoe Johnson QC) and 2 P&P partners (Nick Vamos and Hannah Laming) who have been involved in the oversight of PCDE processes and procedures.

¹¹ Although, to comply with the requirements of the GDPR and Data Protection Act 2018, when material is provided as part of generic disclosure, personal details will be redacted save where those details are a necessary part of disclosure. The approach to redaction of personal details is dealt with in greater detail below.

¹² These are individual documents and not pages. Each document can run to tens if not hundreds of pages.

¹³ Material identified by search terms across all repositories is uploaded to the CCRC data-room on Relativity for consideration by the review teams.

SOURCES/REPOSITORIES OF INFORMATION REVIEWED FOR DISCLOSURE PURPOSES

20. As outlined above, almost 1.5 million documents have been uploaded onto the CCRC data-room on the Relativity platform to date from the various sources/repositories of information identified on the spreadsheet appended to this DMD at annex 1. Additional material is being added on an on-going basis as it becomes available.
21. The sources/repositories of information are identified at tabs 4 to 7 of the spreadsheet at annex 1 of this DMD. In summary, the most significant sources/repositories of information are as follows:
- (i) the “data room” containing the entirety of the materials collated for and during the Group Litigation¹⁴. This includes all evidence and disclosure from the Group Litigation, together with all material generated by those investigating and preparing the case for POL, including (but not limited to):
 - ARQ request databases;
 - Horizon records (including records of Transaction Corrections etc.);
 - POL accounting and internal audit databases, including BIMs, OCP and OCR;
 - internal policies, contracts and manuals (including in relation to training);
 - personnel records;
 - PEAKs & KELs;
 - NBSC & HSD call logs from the Group Litigation; and
 - Security Team files;
 - (ii) all files and records held by POL in relation to the review of Horizon undertaken by Second Sight¹⁵ between 2012 and 2014, and the Initial Complaint Review and Mediation Scheme (“ICRAMS”)¹⁶;
 - (iii) all hard copy files held by POL from investigations and prosecutions conducted by or on behalf of POL;

¹⁴ All documents in the possession of POL relating to the Group Litigation had been uploaded by the solicitors for POL (Womble Bond Dickinson) to a Relativity “data room”. Searches for material potentially relevant to the appeals have been run across this data-room, and all material identified from these searches has been uploaded to the “CCRC data-room” for consideration by the review team.

¹⁵ The Second Sight review was conducted under terms of reference agreed between Post Office Ltd, the JFSA, a number of MPs representing the interests of SPMs (including James Arbuthnot MP) and Second Sight.

¹⁶ The Initial Complaint Review and Mediation Scheme set up by the Working Group under the chairmanship of Sir Anthony Hooper.

- (iv) material in relation to CCRC Applicants obtained from Courts, the CCRC and other third parties;
- (v) all e-mails and other electronic files and records contained either on the servers to which POL has access or on laptops used by relevant POL personnel (although see below in relation to the limitations on such records);
- (vi) records from Fujitsu Services Limited (“FSL”) obtained as part of the PCDE review¹⁷; and
- (vii) such files and records as it has been possible to obtain from third parties (including RMG, firms of solicitors and counsel) who undertook prosecutions on behalf of POL.

22. It should be noted that the following matters have limited the availability of records for the PCDE review:

- (i) Historically, POL had a 7-year retention policy in relation to documents and records. This included Horizon transaction records, training records, audit records and other related correspondence. Similarly, the contract between POL and FSL required FSL to retain all filtered and unfiltered ARQ data for at least 7 years from the date of the transaction, after which FSL ‘retire’ (i.e. delete) the data. A stay was placed on the destruction of potentially relevant records (including ARQ data) at the time of the ICRAMS. However, this does mean that transaction data is only available dating back to around late 2007. As a result, few records now remain in relation to many of the older cases.
- (ii) Prior to 2012, POL was a subsidiary of RMG, but they are now wholly separate legal entities. POL has used its best endeavours to obtain relevant records from RMG. RMG has voluntarily provided assistance and material to POL, subject to RMG’s legal review and assessment of relevance. Some material is no longer available due to RMG’s document retention policies. Should there be material in the possession of a third party that POL reasonably believes is relevant (and potentially disclosable) but which it is not possible to obtain voluntarily, POL will consider making applications for orders for third-party disclosure once the Court of

¹⁷ This relates to material obtained in 2020 from FSL and not material received either during the Group Litigation (which would be included within the material contained within the “data room” referred to above) or during the period when POL was acting as Prosecutor (which would be included, insofar as is available, within the contemporaneous files referred to above. The 2020 FSL material primarily arises out of the “Test Case” (see below)

Appeal (or Crown Court hearing an appeal from the Magistrates' Court) is seized of the matter.

- (iii) As part of the separation of POL and RMG in 2012, there was a wholesale change to the e-mail servers used. As a result, there is limited e-mail data pre-dating the separation in 2012.

23. As new repositories of material become available for review, the ongoing review process will necessarily review new material once it has become available.

CASE SPECIFIC REVIEW

Overview

24. The case specific review is designed to identify documents that are relevant and disclosable in an individual Appellant's case. This material falls into two broad categories:

- (i) voluntary disclosure of the 'defence case file'; and
- (ii) material disclosable pursuant to the Prosecutor's disclosure obligations.

Voluntary disclosure of the 'defence case file'

25. Whilst there is no duty to disclose material that convicted parties have already seen/have in their possession, POL recognises that an Appellant may no longer have copies of, or access to, the criminal case papers.

26. In order to assist the Appellants and their representatives, POL will make voluntary disclosure of the material that it can reasonably be assumed the Appellants would have been in possession of at the time of the trial¹⁸. This material is referred to as the 'defence case file' and will include (where available) the following documents:

- (i) summons and/or schedule of charges;
- (ii) indictment;

¹⁸ POL has tried to replicate the case file with original documents but, where this has not been possible, different versions of document have been used, for example a draft witness statement where the final, signed version that was served in the proceedings is no longer available.

- (iii) statements served as part of the prosecution case;
- (iv) exhibits served as part of the prosecution case, including transcripts of interview;
- (v) the schedule of unused material;
- (vi) any unused material that was disclosed;
- (vii) correspondence from the defendant/those acting for the defendant to POL and any POL replies to the defendant/defence;
- (viii) defence statement and any defence expert report; and
- (ix) any document served by the prosecution or defence in the proceedings e.g. opening note, skeleton arguments, s. 8 CPIA applications, hearsay/bad character applications etc.

Material disclosable pursuant to the Prosecutor's disclosure obligations

27. In addition to disclosing the 'defence case file', POL will disclose material which might reasonably be considered capable of undermining the safety of the conviction or assisting the Appellants in advancing a ground or grounds of appeal (which includes identifying any new ground(s) of appeal)¹⁹.
28. Where POL has identified examples of the following (non-exhaustive) types of material/conduct relevant to potential abuse of process arguments, they will be disclosed:
- (i) whether the investigator(s) or Prosecutor(s) acted in a way which could give rise to the risk of an abuse of process or to arguments regarding admissibility of evidence (even if this was not raised by the defendant), based on procedural unfairness, bad faith or improper conduct;
 - (ii) knowledge within POL of actual or alleged problems with Horizon;
 - (iii) improper/inadequate POL investigation and prosecution policies;
 - (iv) improper/inadequate conduct of the POL investigation and prosecution teams which may include:
 - (a) failure to investigate/prove that a shortfall constituted an actual loss to POL;

¹⁹ This may include material that convicted parties provided to POL and therefore have already seen/have in their possession.

- (b) failure to investigate issues expressly or impliedly raised by the defence in connection with Horizon (e.g., issues with the accuracy/reliability of Horizon, remote access, etc.);
- (c) claims by investigators or prosecutors that there were no known issues with Horizon or the SPM in question was the only one to experience such issues;
- (d) explicitly or implicitly reversing the burden of proof onto the SPM to prove that Horizon was not reliable;
- (e) failure to apply appropriate criteria (e.g. the Full Code Test) when deciding whether to prosecute (this includes pursuing charges without sufficient evidence) and when distinguishing between charges (e.g., theft/false accounting);
- (f) pursuing criminal proceedings rather than civil proceedings for a collateral motive (e.g., to increase the likelihood of recovery of monies using confiscation powers);
- (g) “settling cases”, i.e. agreeing not to prosecute, to drop certain charges or all charges if monies were repaid, or making a promise not to prosecute, to drop certain charges or to drop all charges if monies were repaid and then reneging on that promise;
- (h) material non-disclosure, including knowledge on the part of the investigators/prosecutors that Horizon was not reliable or was alleged not to be reliable and/or failure to apply the applicable test for disclosure;
- (i) improper pressure to plead guilty to one charge (e.g., false accounting) in return for POL dropping another (e.g., theft);
- (j) plea equivocal due to something said or done by a POL investigator or prosecutor;
- (k) failure to apply POL policies or procedures;
- (l) issues with Horizon raised or discussed during an investigation/prosecution.

Methodology

29. First level reviewers identified and tagged as ‘relevant’ material that related to the investigation of the individual Appellant. This material was then reviewed by second level reviewers (more senior junior counsel) and tagged as either material that formed the

‘defence case file’ or as material disclosable pursuant to the CPIA test. Any queries were resolved by either senior counsel or a senior associate.

30. Whole files relevant to each case were reviewed where available, and search terms were applied over electronic data. The search terms used for the case specific review exercise were the Appellant’s surname, their branch name and branch number (and Security and legal team case reference number where known).

GENERIC DISCLOSURE REVIEW (“GDR”)

Overview

31. The GDR is designed to identify documents of a non-case specific/generic nature that might cast doubt on the safety of any historical convictions for which POL takes responsibility.
32. The GDR has been split into the following 3 categories, although it is recognised that there will inevitably be a degree of overlap between them:
- (i) *Category 1*: Knowledge within POL of problems with Horizon
 - (ii) *Category 2*: POL criminal investigation and prosecution policies
 - (iii) *Category 3*: The conduct of the POL investigation and prosecution teams
33. For the reasons set out above, the GDR is currently limited in scope to the Relevant Period.
34. For the purpose of identifying material that might cast doubt on the safety of convictions, the GDR is not intended to be an exhaustive review of material that will identify all relevant material within each category. For example, if multiple examples of conduct which could give rise to arguable abuse were to be identified (and disclosed), it would be neither reasonable nor proportionate to disclose every further instance of such conduct²⁰.
35. Where relevant and disclosable material is identified by the GDR, it will be disclosed either by way of disclosure of the full document, by disclosure of the relevant excerpt from a

²⁰ Although this does not preclude wider review for other purposes. For example, where sufficient material has been identified to identify a relevant matter (such as knowledge of issues with Horizon), but only in relation to a limited time period, further review and disclosure may be necessary and proportionate if it demonstrates the conduct over a more extended period.

document or, where appropriate, by way of summary/narrative document. Where a substantial quantity of examples of the same document (or of similar documents) are identified by the GDR, it is not necessary or proportionate to serve copies of all such documents. Rather, disclosure of examples may be made and/or disclosure of a single example with a note indicating that there are a substantial quantity of similar documents going to the same point.

Category 1: Knowledge of problems with Horizon

Overview

36. This aspect of the review seeks to establish the extent of knowledge within POL²¹ of actual or alleged problems with Horizon between 2000 and 2013 (and to a limited extent in 1999), and in particular, whether this extended to those at POL responsible for pursuing criminal investigations and prosecutions and managing disclosure of evidence in respect of Horizon.
37. This topic therefore encompasses knowledge amongst investigators, lawyers and any other individuals making casework decisions as well as other relevant individuals within the organisation.
38. There are three main strands of the category 1 review:
 - (i) *Strand 1*: Analysis and investigation of known issues
 - (ii) *Strand 2*: Analysis and investigation of issues identified in individual cases
 - (iii) *Strand 3*: The application of generic search terms

Strand 1: Analysis and investigation of known issues (the Focussed Investigations (“FIs”))

39. As a result of the findings in the Common Issues and Horizon Issues judgments, the PCDE identified a number of issues that might reasonably be expected to form the basis for an argument that could be advanced by an Appellant in an appeal against their conviction (“the Known Issues”).

²¹ In this context, POL should be given a wide definition to include the RMG legal department and the POL investigation and prosecution teams.

40. This strand of the GDR identifies the Known Issues, insofar as they are capable of relevance to the issues either raised in the CCRC referrals or that might reasonably be anticipated to give rise to potential other grounds of appeal for any Appellant.
41. Accordingly, the scope of this strand identifies, in relation to the Known Issues, what was known, who knew, when they knew and what they did about it.
42. The review was not intended to be exhaustive (i.e., it does not seek to identify all persons within POL with knowledge). The initial focus of this strand is to confirm whether there was knowledge within the POL investigation and prosecution teams who were directly involved in decisions as to whether and how to investigate and prosecute. Should such initial focus not prove determinative of the issue, this strand will also seek to confirm the extent to which there was knowledge in the wider POL organisation, for example on the part of members of the IT team responsible for liaising with Fujitsu or of senior individuals within the IT, finance, legal or senior management teams.
43. Strand 1 used the Horizon and Common Issue judgments to identify criticisms of POL, as a result of which topics for potential “mini-investigations” were identified. As further material and criticisms of POL were identified (particularly in light of the matters identified in the CCRC Statements of Reasons), these topics were reviewed and refined²². A number of the original individual topics were merged to ensure that the relevant material was captured without such material falling between smaller investigations.
44. This evolving process, led by the evidence and findings, culminated in the identification of a number of Focussed Investigations (“FIs”). The FIs focus upon what are considered to be the most significant and relevant topics liable to identify material germane to the actual or likely grounds of appeal.
45. The FIs are set out in tab 2 of the spreadsheet at annex 1 to the DMD. In relation to each FI, the spreadsheet identifies:
- (i) the FI reference number;

²² With oversight and advice from Leading and senior junior counsel.

- (ii) the name and brief description of the investigation/issue;
- (iii) where the investigation relates to a bug, error or defect (“BEoD”) identified by Fraser J in the Horizon Issues judgment:
 - (a) the BEoD number (per the “Bug Table”), and
 - (b) the name of the BEoD as ascribed to it within the Horizon Issues judgment.
- (iv) where it is possible to identify a specific or limited time period for the issue²³, the date parameters for any search is given; and
- (v) the search terms applied.

46. Because the FIs are deliberately focussed, and the choice of search terms is deliberately narrow, it is possible to apply the terms across a wider range of the repositories identified at tab 3 of the spreadsheet at annex 1 to this DMD than is the case for the wider strand 3 search terms (see below). That said, there are some repositories that could not reasonably be expected to contain relevant material in relation to a particular FI and so search terms have not been applied across these repositories.

47. It should also be noted that, in the interests of proportionality, there is a degree of prioritisation in relation to the selection of repositories searched, with priority given to those repositories most likely to contain relevant material. Within the prioritised repositories there may be further refinement of the material to be reviewed, again with consideration of relevance. As stated at paragraph 42 above, the review will not be exhaustive.

48. Where search terms are found to generate a disproportionate quantity of material which appears, from initial examination, to be irrelevant, the search terms will be reviewed and amended to make them more focussed²⁴. Where search terms are amended, the review team will conduct a “dip sample” exercise to ensure that known relevant material is not excluded by the operation of the amended terms.

²³ For example, a number of the BEoDs have been found to be limited to specific periods between the BEoD arising and being resolved with a software fix. Wherever it is possible properly to limit the date parameters for searches, this has been done in the interests of proportionality, expedition and efficient deployment of resources.

²⁴ This narrowing of the search terms will usually be achieved by adding additional search terms to be run in combination with the original term(s).

49. All material generated by the electronic searches in relation to the FIs is subject to review by junior review counsel allocated to the FI²⁵, with potentially disclosable material referred to senior junior counsel for second level disclosure review.
50. The Prosecutor encourages active engagement by the Appellants to help to identify either additional topics for FIs and/or additional relevant search terms to apply to electronic data (subject to the requirements of reasonableness and proportionality).

Strand 2: Analysis and investigation of issues identified in individual cases

51. As part of the case specific disclosure review, reviewers have tagged any document that may identify issues with Horizon being raised by the Appellants (and others on their behalf e.g. their lawyers) as well as knowledge of issues with Horizon, or may identify improper/inadequate conduct on the part of those within POL conducting the investigations and prosecutions.
52. Material tagged in this way will be recorded as part of the GDR Category 3 strand 1 review process (see below). The product will also be considered by Category 1 reviewers, in conjunction with other material going to this point. Where the material emanating from the case specific review is considered to be disclosable to other Appellants, it will be reviewed and disclosed as part of this strand of the Category 1 GDR.

Strand 3: The application of generic search terms to selected data repositories

53. Generic search terms will be applied to key custodians and repositories of data relating to the Security and legal teams. The generic search terms, and the repositories to which they are applied (to the extent described in the next paragraph), are set out in tabs 3 to 7 of the spreadsheet at annex 1 to this DMD.

²⁵ This is subject to the caveat that where searches generate a disproportionate quantity of material which appears, from initial examination, to be irrelevant, the review team might not review the entirety of the product of the initial search but rather review the product of modified searches using narrower and more focussed search terms (see above).

54. Because of the wider nature of the search terms, the search terms under strand 3 will typically be applied over a narrower range of repositories (typically those containing data from the Security and Legal teams).
55. The Prosecutor encourages active engagement by the Appellants to help to identify additional relevant search terms to apply to electronic data (subject to the requirements of reasonableness and proportionality).
56. In order to prevent duplication of work as between the case specific review and the GDR:
- (i) GDR search terms will be applied to selected repositories of data and/or custodians, which will include materials also being reviewed as part of the case specific review;
 - (ii) where GDR search terms identify material that is also responsive to case specific review search terms (which focus on the names of the individuals that were prosecuted and/or the relevant branch numbers), the material will not be captured by application of GDR search terms. Any such material will be considered by the case specific review team and the product of their review will be considered by the GDR review team under category 3 (see below);
 - (iii) the GDR endeavours to identify individual cases with a high number of GDR search term hits for priority review.
57. Material responsive to these search terms will be tagged on Relativity and will be considered by experienced junior counsel as a first-level review. The material identified by the first-level review will also be considered by senior junior counsel as a second-level review²⁶.

Category 2: POL criminal investigation and prosecution policies

58. This category of the review identifies the key investigation and prosecution policies and procedures in place at POL (and RMG) during the Relevant Period.
59. The methodology adopted for identification of relevant material was as follows:

²⁶ Both first and second-level review counsel will also “dip sample” material considered but not referred onwards by the level or review team below them to ensure quality control and that relevant and disclosable material is not being incorrectly marked as not relevant/disclosable.

- (i) POL were asked to identify any policies and procedures relevant to criminal investigations and prosecutions.
- (ii) A search was conducted across Relativity for relevant material using the search terms identified in the Spreadsheet of GDR Custodians, Data Repositories and Search Terms.
- (iii) In relation to other repositories searched as part of the wider GDR, the reviewers were asked to tag any items they identified that fell within this category.

60. Once identified, policies are subject to first- and second-level reviews for relevance and disclosability as part of the GDR.

Category 3: The conduct of the POL investigation and prosecution teams

Overview

61. The objective of this part of the review is to identify conduct by POL Security (investigation) and/or prosecution teams (whether collectively or by individual members of those teams) that might reasonably be argued to constitute the basis for an abuse of process argument.
62. The types of conduct (“Relevant Conduct”) that are the focus of this exercise (“the Sub-Issues”) were identified as follows:
- (i) failure to investigate/prove that a shortfall constituted an actual loss to POL (3.1);
 - (ii) failure to investigate issues expressly or impliedly raised by the defence in connection with Horizon (e.g. issues with the accuracy/reliability of Horizon, remote access, etc.) (3.2);
 - (iii) claims by investigators or prosecutors that there were no known issues with Horizon and/or the SPM in question was the only one to experience such issues (3.3);
 - (iv) explicitly or implicitly reversing the burden of proof onto the SPM to prove that Horizon was not reliable (3.4);
 - (v) failure to apply appropriate criteria (e.g. the Full Code Test) when deciding whether to prosecute (this includes pursuing charges without sufficient evidence) and when distinguishing between charges (e.g., theft/false accounting) (3.5);

- (vi) pursuing criminal proceedings rather than civil proceedings for a collateral motive (e.g., to increase the likelihood of recovery of monies using confiscation powers) (3.6);
- (vii) “settling cases”, i.e. agreeing not to prosecute, to drop certain charges or all charges if monies were repaid, or making a promise not to prosecute, to drop certain charges or to drop all charges if monies were repaid and then reneging on that promise (3.7);
- (viii) material non-disclosure, including in relation to knowledge on the part of the investigators/prosecutors that Horizon was not reliable, and/or failure to apply the applicable test for disclosure (3.8);
- (ix) improper pressure to plead guilty to one charge (e.g., false accounting) in return for POL dropping another (e.g., theft) (3.9);
- (x) plea equivocal due to something said or done by a POL investigator or prosecutor (3.10);
- (xi) failure to apply POL policies or procedures (3.11); and
- (xii) issues with Horizon raised/discussed during an investigation or prosecution (3.12)²⁷.

63. In terms of methodology, there were two strands of the category 3 review:

- (i) *Strand 1*: Collation and assessment of material from the case specific review
- (ii) *Strand 2*: Application of search terms to selected data repositories

Strand 1: Collation and assessment of material from the case specific review

64. The case specific review identified and tagged material which was relevant to any of the category 3 sub-issues (see paragraph 62 above).

65. All material identified and tagged is subsequently considered for generic disclosure purposes by the GDR review team.

Strand 2: Application of search terms to selected data repositories

²⁷ This is being collated as part of the category 3 review but will be processed and analysed as part of the Category 1 review – see above.

66. Category 3-specific search terms are being applied over selected data repositories relating to the Security and legal teams to identify potentially relevant material.
67. The search terms are listed at tab 3 of the spreadsheet at annex 1 to the DMD. As with all search terms, there has been an iterative process to identify appropriate search terms which identify all relevant material (insofar as is reasonably possible) whilst not generating a disproportionate and unmanageable number of hits for irrelevant material²⁸. The search terms have been developed and refined over time and will continue to be kept under review. In particular, if Appellants wish to suggest further relevant search terms to be applied, these will be considered by the Prosecutor.
68. GDR search terms will be applied to specific repositories of data and/or custodians (as above), which will include materials also being reviewed as part of the case specific review. However, in order to prevent duplication of work as between the case specific review and the GDR, any material that is responsive to the case specific search terms (which focus on the names of the individuals that were prosecuted and/or the relevant branch numbers) will be excluded from the GDR (on the basis that this material is already being considered by the case specific review team).
69. The spreadsheet at annex 1 to the DMD contains a tab identifying a list of the departments of custodians who have been identified as potentially holding relevant material and therefore made subject to search terms. Attempts have been made to identify such custodians in one or more of the following ways:
- (i) using information already available to identify the key members of the Security and legal teams who were involved in investigations and prosecutions;
 - (ii) using the dates of employment of custodians to exclude those whose employment was outside the Relevant Period²⁹;
 - (iii) using information requested from POL HR to identify the job titles of individuals;
- and

²⁸ Where, for example, a search term generates a disproportionate number of irrelevant hits, the search term may be amended or applied in combination with other search terms to provide a more focussed search. Wherever possible, the effect of the narrowing of the search terms will be monitored to ensure that known relevant material is not being lost as a result of the new terms.

²⁹ Where part of the employment period falls within the Relevant Period and part falls outside the Relevant Period, date parameters will be used to try to exclude data outside the Relevant Period.

- (iv) identifying members of the Security and Legal teams who were involved in the CCRC cases and prioritising those custodians.

70. Material identified through strand 2 search terms is considered for generic disclosure purposes by the GDR review team.

Additional categories

71. Where further information or material emerges during the course of the case specific and generic review process (or becomes known to the Prosecutor during the period of the review), which does not fall within one of the FIs or category 3 sub-issues but is capable of forming the basis of an argument that could reasonably be advanced by an Appellant (whether abuse of process or otherwise), this information or material will be considered by senior junior counsel for disclosure purposes. Where the issue raised by the information or material is one that has not previously been identified in the Group Litigation and/or Second Sight reports and/or the CCRC references, the Prosecutor will endeavour to provide Appellants with a short narrative summary to assist Appellants in understanding the issue and ascertaining whether it might be a point relevant to their case.

BEoD TEST CASE

72. The Prosecutor is considering whether it is necessary and proportionate to conduct a Test Case in order to create a “digital footprint” for any or all of the BEoDs identified in the Horizon Issues judgment. In the event that this exercise is feasible and conducted, the Prosecutor will update the DMD by way of an addendum.

OTHER MATTERS

Approach to GDPR

73. The Prosecutor is obliged to consider the rights of data subjects under the General Data Protection Regulation (“GDPR”) and Data Protection Act 2018 (“DPA”).

74. In considering what material may properly be disclosed, the Prosecutor has given careful consideration, *inter alia*, to Articles 9(2)(f), 9(2)(g) and 6(1)(c) to (e) of the GDPR and s. 10(5), s. 7 of Part 2 of Schedule 1 and s. 33 of Part 3 of Schedule 1 of the DPA.
75. Although disclosure is conducted in accordance with the Prosecutor's obligations under the law, Articles 5(1), 6, 9 and 10 of the GDPR require that any disclosure is "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed".
76. It therefore follows that where personal data is contained within documents to be disclosed, specific consideration has been given to whether the disclosure of that personal data is necessary and, where it is not, the personal data will be redacted.
77. The following principles have been applied to the approach to redaction of personal data within disclosure:
- (i) Where documents are being disclosed to an Appellant by way of case specific disclosure in their own case, no redaction of their own personal details will be necessary.
 - (ii) Where documents are being disclosed by way of generic disclosure, if the personal data is relevant and disclosable, for example because it is relevant to an issue or potential issue in the case, disclosure will be made without redaction of that data.
 - (iii) Where the personal data is not directly relevant to the issue, the data will be redacted.
 - (iv) In circumstances where the specific identity of the individual is not directly relevant, but it is or may be necessary for Appellants to be able to distinguish between redacted individuals, the redaction will be by way of replacing the name of the data subject (or other applicable personal data) with a unique reference code. This will enable Appellants to contextualise the disclosure without the need for the personal data to be disclosed³⁰.

³⁰ For example, it may not be necessary to know the name of a SPM affected by a particular issue, but it may be necessary to be able to establish that the individual affected in one document is or is not the same individual affected in another document. It may be that some personal data is capable of redaction/data minimisation, (e.g. name) whilst other potentially identifying data is not (e.g. it may be necessary to name their Post Office in order to enable Appellants to identify whether that Post Office is one identified as being affected by a particular BEoD).

78. If an Appellant considers that detail that has been redacted from a disclosed document causes prejudice and that disclosure of the unredacted details are necessary to enable them properly to understand or prepare their case, the Prosecutor will review any representations made and reconsider any data protection decisions in light of those representations.

Approach to Legal Professional Privilege (“LPP”)

79. Where the reviews identify documents (or material within documents) as a part of the case specific or GDR exercise that would have attracted LPP but which are considered by the review team to be disclosable, that material will be disclosed notwithstanding the LPP that might otherwise have attached to them.

Use of material disclosed

80. Where material is disclosed as part of the PCDE (whether as case specific or GDR material), that material is disclosed solely for the purposes of the preparation for and conduct of appeal proceedings.
81. The unauthorised use or onward transmission of any disclosed material for any purpose other than the preparation for and conduct of appeal proceedings is a breach of the common law obligation not to use the material for any purpose other than for the proceedings in which it is disclosed, and constitutes a contempt of court punishable by a fine or imprisonment or both³¹.

PETERS & PETERS SOLICITORS LLP

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Although this does give rise to the risk of “jigsaw” identification, the Prosecutor is obliged to ensure that data minimisation under Art. 5(1)(c) of the GDPR does not prevent the disclosure of material that is relevant and disclosable at law, and may be necessary to enable Appellants properly to advance their cases on appeal.

³¹ Post-conviction disclosure is made under the common law rather than the CPIA [per *R (on the application of Nunn) v Chief Constable of Suffolk Constabulary* [2014] UKSC 37], but the CPIA prohibition on the collateral use of disclosure under s.17 CPIA (breach of which is an offence under s.18) is mirrored in the common law [see, for example, *Harman v Secretary of State for the Home Department* (1983) AC 280, HL].