



CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Office of the Deputy Crown Agent  
Crown Office  
25 Chambers Street  
Edinburgh  
EH1 1LA

Professor Christopher Hodges OBE PhD FSALS  
FRSA  
Horizon Compensation Advisory Board  
Secretariat: Department for Business and Trade  
1 Victoria Street  
London SW1H 0ET

Tel: 0300 020 3000  
Text Relay prefix: 18001  
[\\_DCALegalAssistants@copfs.gov.uk](mailto:_DCALegalAssistants@copfs.gov.uk)

Our ref: JC/DCA/20231017

Date: 17 October 2023

Dear Professor Hodges,

Thank you for your letter of 8<sup>th</sup> September 2023. I apologise for my delay in replying.

I am grateful to you for setting out the position of the Horizon Compensation Advisory Board ("HCAB") and for seeking to better understand the process that is currently underway in Scotland to review and, where appropriate, overturn the wrongful convictions of former sub-postmasters/mistresses ("SPMs") employed by Post Office limited ("POL").

In this letter I will explain the relationship between POL and COPFS, the role of COPFS as prosecutor in these cases, the present status of appellate proceedings in Scotland, the review that is currently underway of other potential 'Horizon cases', and the anticipated next steps.

I hope that the following information is useful to HCAB in understanding the position in Scotland and the work that is being conducted.

### **Relationship between POL and COPFS**

Unlike in England and Wales, COPFS holds sole responsibility for all prosecutions in Scotland. During the period of interest (2000 – 2019) cases alleging the dishonest appropriation of funds from Post Office by SPMs were reported to COPFS by POL in their capacity as a specialist reporting agency.

In Scotland, organisations other than the police who report cases to COPFS are called specialist reporting agencies ("SRAs"). SRAs investigate alleged crimes in their particular field and report them to COPFS. There are over 150 SRAs in Scotland. Although SRAs

investigate and report a case, it is exclusively for COPFS to determine whether to prosecute and what form the prosecution should take.

POL has been designed as an SRA since 31 March 2012, but was in practice an SRA much earlier when it was part of Royal Mail Group, who itself is an SRA.

POL does not enjoy the statutory powers of the police concerning powers of arrest, search and seizure. In conducting its investigations, POL relies on the co-operation of the subject being investigated to consent to interview, search and providing access to and allowing the recovery of materials. Where such co-operation is not forthcoming, POL may seek the assistance of the police to investigate and report cases in certain circumstances.

COPFS provides advice, guidance and training to SRAs. In particular, COPFS has published guidance on the COPFS website and offers regular training to SRAs in which their duties and obligations as responsible and legally compliant investigating and reporting agencies are made clear. Regular advice, guidance and training was given and made available to POL by COPFS during the period of interest.

As its involvement in Scottish cases is limited to that of an SRA, POL has no locus or involvement in any prosecution or appellate proceedings. As is discussed further below, engagement by POL with the appeals process in Scotland has been limited to the provision of investigation material relating to the predicate criminal case.

### **Role of COPFS as prosecutor**

When a case is reported to COPFS, prosecutors determine what action to take, if any, in the public interest based on the individual circumstances of the case and in line with the publicly available COPFS 'Prosecution Code'. Unlike its relationship with the Police, COPFS has no statutory power to instruct or direct an SRA in their investigations.

Since 2011, COPFS has held statutory duties of disclosure in criminal proceedings. These can be found in the Criminal Justice and Licensing (Scotland) Act 2010 and exist in perpetuity. Similar statutory duties of disclosure apply to investigating agencies. Prior to 2011, these obligations were enshrined in Scots common law.

On taking proceedings against an individual reported by an SRA ("the accused"), COPFS will apply the statutory disclosure test to the case investigation material that is received before disclosing all relevant material to the accused.

POL did not make COPFS aware of the 'Horizon issues' to the extent that they are now known to have existed during the period of interest.

Where COPFS is of the view that it is not prepared to maintain a judgement on which a conviction is founded, it can apply to the Court for the conviction to be set aside. This process can be engaged without an appeal against conviction having been made by the individual concerned. However, such concessions made by COPFS are not binding on the Court. It is for the Court to decide whether or not a conviction should be set aside.

COPFS also has a direct line of contact with the Scottish Criminal Cases Review Commission ("SCCRC") who operate in a similar manner to the English Criminal Cases Review Commission whose operation and work I understand you are familiar.

### **Current appeal proceedings in Scotland**

Unlike in England and Wales or Northern Ireland, the Scottish Criminal justice system is very much closer to the start of its journey in addressing potential miscarriages of justice arising out of unreliable evidence obtained from the Horizon system.

On 29 September 2023, two Scottish former POL SPMs had their convictions overturned by the Court. At present, four SPMs are currently appealing their convictions to the High Court of Justiciary Appeal Court ("HCJAC") with substantive dates for the hearing of these appeals fixed for early 2024.

These appeals by six former POL SPMs ("the appellants") mark the first tranche of 'Horizon appeals' in Scotland.

This first tranche of 'Horizon appeals' are all cases which have been referred to the HCJAC by the SCCRC. These referrals were made following developments beginning in 2020, whereby a number of different individuals applied to the SCCRC arguing that their convictions are miscarriages of justice as a result of issues arising from the use that POL made of its Horizon computer system.

Due to COPFS' record retention policies, it is not always possible to examine full case files to ascertain the extent that the Horizon system may have been relied upon in convictions of POL SPMs dating back to 2000.

As a consequence, in respect of the first tranche of referrals by the SCCRC to the HCJAC, material was ingathered by the SCCRC from COPFS, POL, the appellants' solicitors and from the appellants themselves so that a comprehensive review of their cases could be undertaken.

COPFS understands that these six referrals represent the cumulation of this process of review by the SCCRC, in conjunction with an assessment of recent case law in other parts of the United Kingdom, in particular, the findings of Mr Justice Fraser in the group litigation proceedings in the English High Court (*Bates and Ors v Post Office Limited (Common Issues)* [2019] EWHC 606 and (*Horizon Issues*) [2019] EWHC 3408).

The first tranche of cases was referred by the SCCRC to the HCJAC in October 2022.

It should be noted that Scottish criminal law is separate and distinct from that of England and Wales. Although the decisions of the Courts in England and Wales and Northern Ireland offer insight as to how a 'Horizon case' might be identified, different legal principles exist. Scots law cannot therefore simply adopt the legal precedent set in other UK jurisdictions. In that respect, at present, there is no legal precedent in Scotland relating to what is a 'Horizon case' and so in this first tranche of cases, both COPFS and solicitors for the appellants have been carefully examining case material so that assessment criteria for a 'Horizon case' can be applied within the Scottish legal framework.

In assessing and responding to the first tranche of appeals, COPFS has become aware that both POL and POL's former legal representatives are in possession of additional material relating to the investigation of the appellants that neither COPFS nor the appellants have previously been privy to.

A document recovery exercise is currently underway to enable COPFS to recover, review and thereafter disclose this additional material to the appellants.

Given the volume of potentially relevant material held by POL and the fact that these appeals mark the first interaction between the 'Horizon issues' and Scots criminal law, this process requires, and continues to require, careful and responsible consideration.

The remaining four appeals in this first tranche of referred cases are expected to be fully considered and disposed of by the HCJAC by February 2024.

### **Review of Scottish cases**

COPFS believes the total number of former POL SPMs who were convicted on the basis of unreliable Horizon evidence to be higher than this first tranche of appeals.

It is understood that further cases are presently under consideration by the SCCRC and are following a similar process of review to the first tranche.

Whilst this review by the SCCRC is underway, COPFS is undertaking a review of all potential 'Horizon cases' reported to it during the period of interest. COPFS is carrying out this review with the assistance of both POL and the SCCRC to ensure that all available case material is recovered as efficiently as possible so that all potential future appellants can be identified, and their cases reviewed.

Due to COPFS policy decisions taken within the period of interest and the fact that all 'Horizon cases' in Scotland were prosecuted by COPFS under the application of Scots criminal law, the total number of Scottish cases is anticipated to be significant less than in England and Wales. As an estimate, it is certainly not anticipated that the number of Horizon cases in Scotland will amount to in excess of 100 cases.

Following the conclusion of the first tranche of appeals it is anticipated that a streamlined and expedient process of review, appeal and disposal will be available for application to any future cases. It is anticipated that the rate of review and appeal will thereafter increase exponentially. It is not possible at this stage to provide a timescale for this process to be completed.

### **Next steps**

COPFS recognises that the expedient review of past prosecutions and the efficient disposal of appeals is paramount to ensuring that justice is delivered to those who have been affected by the Horizon IT scandal. To that end, tireless work continues to be carried out by prosecutors to identify and bring before the Court all cases in Scotland which were impacted.

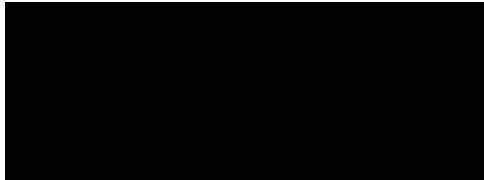
I recognise the work being undertaken by the HCAD to better understand the situation across the United Kingdom and I am grateful to you for taking the time to write to COPFS to include the progress of Scottish cases in your advice and guidance to the United Kingdom Government Department for Business and Trade.

As an independent and impartial prosecution service COPFS is determined to ensure that all miscarriages of justice are identified and overturned so that those affected can access the compensation and redress that they are entitled to. We endeavour to achieve this as quickly as possible within the confines that circumstances permit.

I hope that this letter has assisted in your understanding of the position in Scotland and the work that remains to be undertaken. Due to the stage that this process is at, I am unable to provide any further detail at present regarding any proposed changes to the law or legislation or provide detailed statistics.

I am happy to keep the HCAB updated with progress in Scotland, and I will endeavour to do so following the conclusion of the present appeals and review by the SCCRC when such information is available.

Yours sincerely,



Kenny Donnelly  
Deputy Crown Agent