

Witness Name: David Sutherland

Teale Statement No. WITN10550100

Dated 3 January 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF DAVID SUTHERLAND TEALE

I, David Sutherland Teale, will say as follows:-

Introduction

1. I am a former employee of the Crown Office and Procurator Fiscal Service and held the position of Procurator Fiscal at Lochmaddy.
2. This witness statement is made to assist the Post Office Horizon IT Inquiry with the matters set out in Rule 9 Request dated 8 December 2023, which relates to matters falling within Phase 4 of the Inquiry.
3. I have been asked to set out my involvement as Procurator Fiscal in the prosecution of William Quarm.

Background

4. I have been asked to summarise my educational and professional qualifications. My full name is David Sutherland Teale. I am aged 74 years. I am a practicing solicitor in Scotland. I hold the qualifications Bachelor of Arts, Bachelor of Laws, Diploma in Forensic Medicine, Notary Public.
5. I have been asked to summarise my career. I qualified as a Scottish solicitor in 1980 and, following a short spell in private practice, joined the Crown Office and Procurator Fiscal Service (COPFS) as a Procurator Fiscal Depute in 1982. In March 2000, I was appointed Procurator Fiscal for the jurisdiction of the Western Isles which included the Sheriff Court District of Lochmaddy. I retired from COPFS in June 2015 and have since been a Director in the Maciver Teale Law Practice, Stornoway.
6. I have been asked to provide details of my experience working with the Post Office and prior to this prosecution of William Quarm whether I was involved in any prosecutions reliant on data from the Horizon IT system. Over the years as a Procurator Fiscal Depute working in busy offices such as Glasgow and Greenock, I would have received and considered many reports from the Post Office regarding criminality by their workforce. I found as a Reporting Agency that their reports were straightforward and I cannot recall any instances at all where there was any suggestion that the information provided was misleading. I cannot recall any other Post Office case considered by me which relied on data from the Horizon IT system.

Involvement in criminal prosecution case studies being examined by the Inquiry

Prosecution of William Quarm

7. I have been asked to provide a full account of my involvement in and recollection of the prosecution of this case, including but not limited to answering the questions as follows.
8. The circumstances in which I first became involved in this case are as follows. In Scotland, COPFS is the sole prosecuting authority and accordingly, the police and certain other agencies such as the DWP or the Scottish Society for Prevention of Cruelty to Animals (SSPCA) or, as in this case, the Post Office would, where they have identified, in their view, sufficient evidence of criminality, submit reports for the consideration of prosecution to the Procurator Fiscal in whose jurisdiction the crime is alleged to have been committed. It is entirely within the discretion of the Procurator Fiscal in his or her jurisdiction (which is based on geographical location), to decide whether to take no proceedings, or, if proceedings are considered appropriate, the level at which to prosecute. Options range from warning, limited fine to prosecution at the appropriate level of court, ie District Court, Sheriff Court (whether before a Sheriff sitting alone or with a jury) or High Court.
9. I have been asked to describe my role in relation to this case. The Report from the Post Office was received at the Procurator Fiscal's office in Lochmaddy in early 2009. As Procurator Fiscal there, I read and considered it. The reports submitted to the Procurator Fiscal follow a standard form. They provide details of the accused and his or her previous convictions. There follows a summary of the evidence against the accused prepared by the reporting officer (who, in this

case, I would expect to have been Raymond Grant given the contents of the document, (Post Office Ltd Confidential: Investigation Legal: Theft, embezzlement and Money Laundering for William John Quarm [POL00166596]), a list of witnesses, a list of productions and a draft charge. The draft charge submitted with the report is what the reporting officer considers to be appropriate to the circumstances. However, it is for the Procurator Fiscal to decide for himself what charge is appropriate and the precise wording of it. The summary of evidence submitted at this stage would not usually include full witness statements. These would only be submitted at the request of the Procurator Fiscal following a plea of Not Guilty.

10. The Procurator Fiscal will consider carefully the report, always with a view to ascertaining whether it discloses that a crime has been committed and then, if he is satisfied on that aspect, whether there is corroborated evidence (ie from two sources) that the accused committed the crime. If the report fails to disclose a crime or if there is no corroborated evidence of the accused's guilt, then the Procurator Fiscal will mark the case "No Proceedings" and provide his reasons for doing so for future audit purposes. This process is called, "case marking".
11. It goes almost without saying that the Procurator Fiscal will inevitably rely on the accuracy of any such report on which to base his decision and it is well accepted that he is entitled to rely entirely and absolutely on its accuracy for justification of any consequent actions taken by him. If there were ever any concern by a reporting officer in any agency whether Police, DWP, SSPCA or Post Office that any part of their report was open to doubt then that should be brought to the attention of the Procurator Fiscal in the body of the report. If, in

this case, had there been any doubt as to the accuracy of the data produced by Horizon known to the reporting officer, then, of course, that should have been made very clear indeed since it would have seriously affected the decision made by the Procurator Fiscal.

12. If a case is to be prosecuted, the Procurator Fiscal will draft the appropriate charge, consider what witnesses he intends to lead to prove his case and list any previous convictions. These will be typed and put together to form what is called the Complaint (since it is the Complaint of the Procurator Fiscal) and served by post on the accused with a date for it to call in court at a Pleading Diet.

13. Because I do not have access to the original case papers, I can only surmise that the evidence provided to me would have been a summary such as that contained in (Post Office Confidential: Investigation [**POL00166596**]). From this it is clear enough that there is a sufficiency of evidence to proceed. This was evidence that the crime of embezzlement had been committed.

14. The interviews appear fair and not oppressive. I note that Mr Quarm was given an appropriate caution at the beginning of the first interview.

15. Being satisfied that there was indeed a sufficiency allowing me to proceed, my next decision would have been to decide the nature of proceedings. Given the large sum involved, I would have been in no doubt that the public interest required that I prosecute. As to forum, the sum involved suggested that prosecution in the Sheriff Court would have been appropriate. Mr Quarm had no previous convictions, was elderly and in poor health. Against that, he had not repaid any of the embezzled funds. I would have thought it unlikely that, at

most, he would have received a sentence of imprisonment not in excess of 12 months and, accordingly, I opted for prosecution at Sheriff Summary level (before a Sheriff sitting alone). Because I do not have access to the original case papers, I cannot say what the Reporting Officer provided as a draft charge or charges but I see that the charge on the complaint, for which, as I have said, I would have drafted, is one of embezzlement.

16. Having made these decisions, I marked it for prosecution and arranged for the Complaint to be served on Mr Quarm for a first calling in court on 2 June 2009. As Procurator Fiscal, I had the authority to proceed without reference to others in COPFS.

17. The case proceeded through various callings in court. I see from the court minutes (Court Papers from Lochmaddy Sheriff court re William John Quarm [**COPF0000001**]) that the accused's solicitor tendered a plea of Not Guilty to the charge and challenged the fairness of the interviews on the basis that the accused had been denied legal representation at them. That argument was rejected by the Sheriff and the case was continued for a trial to take place. Before the date set for trial, the accused's solicitor offered me a plea of guilty to a reduced sum, namely £24,000. Although I did not have to, I did contact Robert Daily, Post Office Investigator, and discussed it with him (Email from Zoe Topham to Robert Daily and cc Mandy Talbot, re: Paible – Branch code 147869 -William John Quarm [**POL00166833**]). Following that, I returned to the accused's solicitor and suggested that a plea of guilty to embezzlement of £27,000 (reduced from £40,277) would be acceptable. This was accepted by the accused's solicitor and was duly tendered at court. Mr Quarm was

sentenced to 150 hours Community Service (reduced from 2000 hours for a plea of guilty). I do think that it was reasonable to accept the offer to plead guilty to that reduced sum. It would have been difficult, if not impossible, to prove the actual amount embezzled given that the Horizon audit depended largely on the bogus figures input by the accused. If the case had gone to trial, I would have had to rely on evidence from the accused's admissions as to how much he considered he had embezzled and the period over which he considered he had been operating falsely and other evidence such as average takings over previous years. The figure offered was significant and would have allowed the court to treat the crime seriously and, of course, would have meant a certain conviction. I expect that in my discussions with Robert Daily, Investigation Officer, (referred to later) this would have been my argument for accepting the offer.

18. I have been asked whether I was aware of any allegations made by William Quarm relating to the reliability of the Horizon IT system and, if so, what I thought the significance of this was. I see from the transcript of his interviews (Record of Tape Recorded Interview of William John Quarm [POL00166599]) that he considered that there was an error of around £600 or £700 in January or February 2008 in the data relating to the ATM in his branch. He thought that the total shortfall (of £40,277) should be reduced by that. In another section of his interview (Record of Tape Recorded Interview [POL00166599]), he was adamant that a remittance sent to his branch of £32,000 was wrong and that other remittances to his branch of £9,000 were also wrong because, he maintained, the largest remittance ever paid to his branch was £7,000. The

interviewer, Raymond Grant, Investigation Manager, responded to the latter suggestion, "It's automatic. It's a Horizon produced figure. People don't make decisions I'm going to send you 5. It's an automatic cash management system." When Mr Quarm protested, "But why if they were wanting £7,000 did they send me £7,000?" Raymond Grant replied, "It's the system. I don't know, I can't explain".

19. While these do seem to have been alerts as to the accuracy of Horizon produced data, it is difficult to treat them as serious challenges given that Mr Quarm admitted taking cash coming into his Post Office branch, equivalent of around £4,200 every week for an unknown period but conservatively estimated to be 10 or 11 months, and without putting it through his till. He further admitted inputting fictitious figures to Horizon to disguise the shortfall.

20. At the time of taking my decision to prosecute, I think that I can safely say that I would not have had any doubts as to the reliability of the evidence provided in the Post Office report. Certainly there was no suggestion at all that the Horizon IT system had produced or was producing unreliable data. If there had been any such suggestion, then I would have seriously considered proceeding further against the accused.

21. I have been asked who made the charging decision. As I have explained, as Procurator Fiscal it was my decision alone to prosecute him. In Scotland, the police will "charge" an accused. In this case, the police were not involved and the Post Office Investigators did not have authority to charge. In Scotland, an accused person receiving a Complaint amounts to having been "charged"

22. I have been asked who authorized the prosecution in this case. As I have explained, as Procurator Fiscal I alone took the decision to prosecute.

23. I have been asked to provide details of any advice I provided in respect of the evidence and the merits of prosecution. I do not recall providing advice about this case to anyone.

24. I have been asked whether any Horizon data (and in particular ARQ logs) was requested from Fujitsu in this case. No Horizon data was requested from Fujitsu.

25. I have been asked who the disclosure officer was in this case. The Investigating officer who supplied the documentary productions to the Procurator Fiscal's office at Lochmaddy was Robert Daily.

26. I have been asked to explain my role in relation to disclosure in these proceedings. After receiving the documentary productions from Robert Daily, it was my responsibility to ensure that they were sent to the defence solicitor.

27. I have been asked to provide an account of the disclosure requests made by the Defence in this case, what advice I provided in relation to any such requests and how the Post Office responded to them. In respect of disclosure, the documentary evidence detailed in (List of Productions submitted to Procurator Fiscal Office by Robert Daily, re: William John Quarm [POL00166753]), would have been provided as a matter of course to the defence solicitor following the accused's plea of Not Guilty. In summary cases (such as this one) the procedure for disclosure to the defence is that, following a plea of Not Guilty (or earlier, if particularly requested by the defence) the defence solicitor will write to the Procurator Fiscal's office stating that they act for the accused and

requesting disclosure of the productions. This is done electronically via a secure link. I see from (Letter from David Teale to Raymond Grant re Case against William John Quarm [POL00166755]) that on 1 July 2009 my office requested that the Investigating officer provide all the documentary productions. I have no doubt that these would have been produced to the defence although I do not see the usual covering letter to the solicitor in the bundle of documents supplied.

28. I have been asked to describe the nature of any discussions I had with counsel and the Post Office's legal representatives during the course of these proceedings. I had no discussions with counsel or any legal representatives of the Post Office.

29. I have been asked to reflect on the way that the investigation and prosecution was conducted by the Post Office and the outcome of the case. As I have made clear, in Scotland the Post Office investigators will carry out the investigation (and may be directed in their enquiries by the Procurator Fiscal at any stage) but the prosecution is entirely in the hands of the Procurator Fiscal. I have nothing adverse to say about the Post Office's handling of the investigation in this case. It seems to me to have been investigated thoroughly and fairly and any requirements from the Procurator Fiscal's office for, say, delivery of productions or discussion of the reduced plea offered were met promptly and properly. I have assumed that none of the Post Office witnesses in this case were aware of challenges to the integrity of Horizon data. The outcome of a plea of guilty was appropriate given the accused's admissions.

30. I confirm that I have reviewed all the documents listed in the Rule 9 request and there are none on which I wish to make specific comment.
31. In my paragraph 13 above, I have stated that I do not have access to the original case papers. Missing from the bundle provided by the Inquiry is a copy of the original case report which would have been submitted by the Post Office Investigator to the Procurator Fiscal at Lochmaddy. This document is important because it contains the summary of evidence and without it, I do not know the precise information I had on which I based my prosecution. At this stage, I can only surmise that the summary of evidence would have been roughly similar to [POL00166596]. [POL00166596] is clearly a Post Office Internal document since its final sentence reads, "It is recommended that a report should be prepared and submitted to the Procurator Fiscal's Department for its consideration as to what further action should be taken". It is that report referred to in that sentence which is missing from the bundle supplied to me by the Inquiry.
32. I am not sure when I was first made aware of issues relating to the Horizon IT system. Since I received the Rule 9 request, I have read the Scottish Criminal Case Review Commissions report on these Post Office cases and see that COPFS paused prosecutions on them, following on information which they had received. I do not now recall whether COPFS issued any directions or guidance to Procurator Fiscals on this matter or whether I learned about the issues through the media.
33. In relation to my paragraphs 29 and 30 above, I confirm that, at the time of being involved in the prosecution of William Quarm, I was not told by anyone at

the Post Office or within COPFS about other cases in which the integrity of the Horizon system was being challenged.

General

34. I have been asked to what extent (if any) I considered a challenge to the integrity of Horizon in one case to be relevant to other ongoing or future cases.

As I have said, I have not dealt with any other Horizon case and so did not have to consider the challenges to the integrity of Horizon.

35. I have been asked if there are any other matters which I consider of relevance to phase 4 of the Inquiry. I have no other matters to draw to the attention of the Inquiry.

Statement of Truth

I believe the content of this statement to be true.

Signed: **GRO**

Dated: 3 January 2024

Index to First Witness Statement of DAVID SUTHERLAND TEALE

No	URN	Document Description	Control Number
1	POL00166596	Post Office Ltd Confidential: Investigation Legal: Theft, Embezzlement and Money Laundering for William John Quarm	POL-0162041
2	COPF0000001	Court papers from Lochmaddy Sheriff Court re William John Quarm	N/A
3	POL00166833	Email from Zoe Topham to Robert Daily and cc Mandy Talbot, re: Paible - Branch code 147869 - William John Quarm	POL-0162278
4	POL00166599	Record of Tape Recorded Interview of William John Quarm	POL-0162044
5	POL00166753	List of Productions submitted to Procurator Fiscal Office by Robert Daily, re: William John Quarm	POL-0162198
6	POL00166755	Letter from David Teale to Raymond Grant re: Case against William John Quarm	POL-0162200