

Witness Name: MALCOLM MACDONALD MACLEOD

Statement No.: WITN11690100

Dated: 08 OCTOBER 2024

POST OFFICE HORIZON IT INQUIRY

FIRST WITNESS STATEMENT OF MALCOLM MACDONALD MACLEOD

I, Malcolm Macdonald Macleod, will say as follows...

INTRODUCTION

1. I am a former employee of the Crown Office and Procurator Fiscal Service (COPFS). Latterly I held the position of Principal Procurator Fiscal Depute.
2. 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 12 September 2024 (the “**Request**”).

PROFESSIONAL BACKGROUND

3. I am a solicitor and solicitor advocate.
4. I joined the Procurator Fiscal Service in October 1979 (now COPFS) and served in a number of district offices, the Crown Office Secretariat (policy unit) and the Quality and Practice Review Unit until retirement, aged 60, in August 2015. At the time of the case of Aleid Kloosterhuis I was based at Dumbarton and responsible for the management of solemn cases there, Oban and Campbeltown. Solemn cases are those prosecuted on Indictment before a jury either in the Sheriff Court or High Court. In any one year I would manage approximately 400 to 450 ongoing solemn cases.

POST OFFICE CASES

5. I was involved in the case of Aleid Kloosterhuis. I recalled virtually nothing about this case until I read my s76 Report to Crown Counsel for Recommendation (COPF0000104). It was like reading a new document. No Horizon data request was made from Fujitsu.

6. In preparing this statement I have had made available to me the following documents:
 - (i) Standard Prosecution report (“SPR”) in the case of Aleid Kloosterhuis dated 16 November 2012 (COPF0000106)
 - (ii) Post Office investigators’ interview with Aleid Kloosterhuis dated 20 September 2011 (COPF0000100), (COPF0000101) and (COPF 0000102)
 - (iii) Letter from Christian E. Kane dated 28 June 2012 (COPF0000095)
 - (iv) My letter in response dated 4 July 2012 (COPF0000096)
 - (v) James P McKeown’s letter dated 11 July 2012 (COPF0000097)
 - (vi) Section 76 letter dated 1 October 2012 (COPF0000104)
 - (vii) Section 76 Report to Crown Counsel dated 2 October 2012 (COPF0000105)
and
 - (viii) Section 76 Indictment dated 24 October 2012 (COPF0000103).

7. I took the initial decision to commence formal investigations with a view to prosecution by placing a Petition before the court. The Petition is the preliminary step taken when considering Indictment proceedings. This step is required for the court to grant a warrant to authorise precognition and full investigative steps to be taken by the Procurator Fiscal. The Petition contains a criminal charge justifying the warrant. The accused is served with the Petition and appears in private before a Sheriff and is admitted to bail or remanded in custody. Time limits run from the first appearance of the accused on Petition.

8. I have been asked to address my knowledge of the Horizon system at the time of dealing with the above case. I had dealt with perhaps one or two Horizon cases prior to the instant case. None were marked for prosecution as there was insufficient evidence. I think these decisions were based on the absence of clear admission to corroborate the alleged loss recorded on the Horizon system. I have no other recollection of these cases but they pre-dated the instant case.
9. I have been asked to detail any Post Office cases, other than the instant case, in which I was involved and which relied on the Horizon system. As detailed at 8 above I had previously dealt with perhaps one or two Horizon cases but there was no need to rely on the Horizon system as there was insufficient evidence, i.e. no clear admission and no proceedings were taken.
10. I have also been asked when I first learnt that there may have been any issues with the reliability of the Horizon data produced by the system. I do not recall when I was first aware of data issues specifically. It would have been after I dealt with this case, possibly from Press articles. I understood that the Horizon data could miscalculate the operation of the sub-post offices, nothing more specific than that. This was some time after my involvement with this case.
11. I had my own doubts about the reliability of the evidence associated with the system should the case proceed to trial. This was based on (a) the possibility of human error inputting the data, (b) the use/misuse of personal codes, and (c) miscalculation of monies received and returned. And crucially there was very little separate independent evidence to corroborate the operation of the Horizon system itself. This was my principal concern.
12. I have been asked about the level of contact I had with Post Office Investigators. As far as I recollect I had no previous contact with Post Office Investigators prior to the instant case. In this case I had either one or two meetings with the reporting officer and his associate prior to the decision to place the accused on Petition.
13. I do not recollect the name of the Post Office Investigators now but it would have been the reporting officer, Robert Daily, accompanied by his associate.
14. The nature of the contact was for them to explain to me the evidence and answer any questions I might have prior to taking any decision in the case. At this early

stage of the case I worked solely from the information provided in the SPR (COPF0000106) and wished supplementary information as addressed in 18 below.

15. I have also been asked about the content and outcome of any discussions I had with the Post Office Investigators in relation to issues with the Horizon system with the potential to impact on the reliability of the Horizon data.
16. I discussed the fairness of the interview with the accused particularly given the relationship of employee/investigator and the absence of a solicitor. I checked with them the terms and circumstances of the caution. I could envisage this becoming a jury question at any trial as the admissions were essential to corroborate the Horizon evidence.
17. The other subject raised by me was corroboration of the Horizon system itself. At first blush there appeared to me to be no independent corroboration.
18. After discussion and examination of examples of Horizon computer printouts, receipts accompanying the money transfers together with the fact that postage stamps had been supplied but not fully accounted for on the Horizon system I was persuaded that such documentation could be used as a check that the Horizon system was operating correctly as advised by the investigators. In addition there was of course the corroborated detailed admissions by the accused of misappropriation of Post Office funds and the potential to recover her personal banking evidence.
19. I was not involved in any Post Office cases where the Defence raised issues with the Horizon system.
20. I have been asked to provide my reflections now on the way the investigation and prosecution of Horizon cases was conducted by the Post Office and the outcome of any such cases. My only comment is that I consider it unfair for Post Office investigators that are employees of the Post Office to interview other Post Office employees under caution where prosecution is a potential outcome. This is particularly so when there is no solicitor present to ensure that there is no unfair questioning.
21. I note that in my s76 Report to Crown Counsel (COPF0000105) I comment in my recommendation. I include the following: "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". This comment did not relate to the Horizon data but to the manner it was operated.

22. I have been asked who from COPFS I reported to in relation to Post Office cases in which Horizon data was being relied upon. I sent my report to the High Court Unit in Crown Office who would, in turn, obtain the instructions of Crown Counsel. The identity of those involved were unknown to me.

23. I reported the concern detailed at paragraph 21 to Senior or other COPFS colleagues by making a comment in my s76 Report (COPF0000105). This did not relate to the Horizon data itself but to the way it was operated. I do not recall discussing Horizon issues or concerns held about the reliability of Horizon data with Senior or other COPFS colleagues.

24. I do not recall anything in relation to when COPFS was notified by the Post Office that allegations relating to the integrity of the Horizon system were being made by sub-postmasters. I may have retired by then.

25. I also do not know anything in relation to when COPFS was notified by the Post Office that allegations relating to the integrity of the Horizon system were being investigated.

26. I do not recall receiving any instructions in relation to Post Office Horizon cases from within my federation or from COPFS, but again I may have retired by then.

Statement of Truth

I believe the content of this statement to be true.

GRO

Signed:

08 October 2024

Dated: _____

Index to First Witness Statement of Malcolm Macleod

No.	URN	Document Description	Control Number
1	COPF0000106	Standard Prosecution Report by RMG to COPFS re Aleid Kloosterhuis	COPF0000106
2	COPF0000100	Record of Tape Recorded Interview - Aleid Kloosterhuis - 1 of 3	COPF0000100
3	COPF0000101	Record of Tape Recorded Interview - Aleid Kloosterhuis - 2 of 3	COPF0000101
4	COPF0000102	Record of Tape Recorded Interview - Aleid Kloosterhuis - 3 of 3	COPF0000102
5	COPF0000095	Letter from Christian Kane, C&D Mactaggart, to COPFS re: HMA v Aleid Kloosterhuis	COPF0000095
6	COPF0000096	Letter from M.M. Macleod, COPFS, to C&D Mactaggart re: HMA v Aleid Kloosterhuis	COPF0000096
7	COPF0000097	Letter from James McKeown, C&D Mactaggart, to COPFS FAO M.M. Macleod re: HMA v Aleid Kloosterhuis	COPF0000097
8	COPF0000104	Section 76 letter to COPFS (Aleid Kloosterhuis)	COPF0000104
9	COPF0000105	Section 76 Report to Crown Court for Recommendation (Aleid Kloosterhuis)	COPF0000105
10	COPF0000103	Section 76 Indictment (Aleid Kloosterhuis)	COPF0000103