



Neutral Citation Number: [2022] EWCA Crim 1197

Case No: 2022 01584, 01574, 01579, 01588 and 01602 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT NORWICH, CHESTER,
MANCHESTER, CHELMSFORD and NOTTINGHAM
HHJ JACOBS, HHJ HALE, HHJ ENSOR, REC LAIRD and HHJ MILMO
T20050197; T20120537; unknown; T20100344; T20111207

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 September 2022

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MR JUSTICE PICKEN
and
MRS JUSTICE FARBEY

Between:

RICHARD HAWKES	<u>Applicants</u>
GRANT IAN ALLEN	
JACK SMITH	
DURANDA CLARKE	
ROBERT JOHN BOYLE	
- and -	
POST OFFICE LIMITED	<u>Respondent</u>

Graeme Hall (instructed by **Hudgell Solicitors**) for **Mr Hawkes and Mr Boyle**
Kate O'Raghallaigh (instructed by **Hudgell Solicitors**) for **Mr Allen, Mr Smith and Ms Clarke**
Simon Baker QC and Eleanor Lucas instructed by **Peters & Peters Solicitors LLP** for **POL**
Hearing date: 25 July 2022

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and release to the National Archives. The date and time for hand-down is deemed to be 16:00 on 1 September 2022.

Lord Justice Holroyde:

1. This court has previously considered a substantial number of appeals against conviction by persons formerly employed as sub-postmasters or sub-postmistresses (“SPMs”), or as managers of sub-Post Offices, who had been prosecuted many years ago by Post Office Limited or its predecessor (“POL”) and had pleaded guilty to, or been convicted of, offences of dishonesty. The judgments in those cases are publicly available: see *The Queen v Josephine Hamilton and others* [2021] EWCA Crim 577; *The Queen v Robert Ambrose and others* [2021] EWCA Crim 1443; *The Queen v Roger Allen and others* [2021] EWCA Crim 1874; and *The Queen v Margaret White* [2022] EWCA Crim 435
2. Those cases raised issues as to abuse of process, and as to the safety of the convictions, having regard to concerns about the reliability of a computerised accounting system, “Horizon”, which was in use in sub-Post Offices at the relevant times. Fraser J, in earlier civil proceedings, had made findings which showed that there had been inadequate investigation of those concerns, and/or a failure to make full and accurate disclosure about the concerns to those who were being prosecuted on the basis that Horizon showed a shortfall in the accounts of the sub-Post Office. The court used the shorthand term “Horizon case” to refer to a case in which the reliability of Horizon data was essential to the prosecution, and in which there was no independent evidence of an actual loss from the account at the branch post office concerned, as opposed to a Horizon-generated shortage.
3. It is unnecessary for us to repeat all that was said in the previous judgments. It is sufficient for present purposes to say that, following detailed consideration of the evidence and submissions in *Hamilton*, we were satisfied that throughout the relevant period there were significant problems with Horizon, which gave rise to a material risk that an apparent shortfall in the accounts of a branch post office did not in fact reflect missing cash or stock, but was caused by one of the bugs, errors or defects which (as Fraser J had found) existed in Horizon. We also concluded that during the relevant period POL knew that there were serious issues about the reliability of Horizon, and had a clear duty to investigate all reasonable lines of enquiry, to consider disclosure and to make disclosure to the appellants of anything which might reasonably be considered to undermine its case. POL failed adequately to consider or to make relevant disclosure of problems with or concerns about Horizon, and instead asserted that Horizon was robust and reliable. We were also satisfied that POL had consistently failed to be open and honest about the issues affecting Horizon and had effectively steamrolled over any SPM who sought to challenge its accuracy.
4. On 25 July 2022 the cases of these five applicants came before the court. Each of the applicants sought a long extension of time to apply for leave to appeal against their convictions. They also applied for leave to adduce fresh evidence, including statements by each of the applicants. Each of them had pleaded guilty to the offences of which they were convicted, but – as we have explained in previous judgments – those guilty pleas are not necessarily a bar to a successful appeal against conviction. Their grounds of appeal contended that each is a Horizon case, that their prosecutions were an abuse of the process and that their convictions are unsafe for reasons similar to those which have led to the successful appeals in the earlier cases.

5. These five cases have been considered and prepared by all parties on the basis of the principles established by the previous judgments to which we have referred. As in previous cases, we record our gratitude to all solicitors and counsel for the care and attention with which they prepared and presented the applications.
6. As a result of that careful approach, those who now act for POL concluded that they would not wish to resist any of the applications. It was, of course, for the court to determine those applications. All parties, and the staff of the Criminal Appeal Office, cooperated in making appropriate arrangements for the court to consider the applications at an early date. Again, we express our gratitude to all concerned for their helpful approach.
7. Having considered all the material which had been placed before the court, we were satisfied that POL's concessions were rightly and properly made in each of the cases, and that each of the convictions was unsafe and must be quashed. We noted with sadness the enduring consequences of the convictions, which have continued to affect the lives of all concerned notwithstanding the passage of many years.
8. In order that the applicants should know our decisions as soon as possible, we formally announced them at the conclusion of the hearing. We indicated that we would give our reasons in relation to each of the cases individually in a written judgment, to be handed down at a later date. This we now do.

Richard Hawkes:

9. On 27 June 2005, in the Crown Court at Norwich before HHJ Jacobs, Richard Hawkes pleaded guilty to five counts of false accounting relating to the period between 21 April 2004 and 21 October 2004. No evidence was offered in respect of a further count alleging theft. On 9 September 2005 Mr Hawkes was sentenced to a community order, with a requirement to perform 120 hours of community service. He was also ordered to pay prosecution costs of £337. No application was made for compensation or confiscation because Mr Hawkes had already repaid £11,047.99. Indeed, it should be noted that it was only in April this year that Mr Hawkes finished paying his brother back a loan which he had been given in order to enable this money to be paid.
10. In brief summary, the facts of the case were as follows. Mr Hawkes was the SPM of the Tacolneston Post Office. On 25 October 2003 he telephoned the Post Office helpline to indicate that he had a shortage in his branch and that he therefore required an audit to take place. An auditor who attended later that day found a shortage of £11,047.99. A shortage of £167.73 had been declared the previous week, and so the difference was £10,880.26.
11. Mr Hawkes was interviewed the following day. During that interview, he explained that he had been SPM for just over 3 years but had been manager of the branch for the 2 years prior to that and that he had 10 years of Post Office experience in total. He confirmed that he was solely responsible for the running of the branch office, including the completion of the weekly balance and cash account. When asked to comment on the shortage revealed by the audit, Mr Hawkes replied:

“Towards the end of last week I decided that I couldn’t keep concealing this discrepancy and that I needed to do something about it. Having made an error some time ago and covering it up ever since, I hold my hands up, I’ve been doing that, but I got to the situation and I decided after the weekend I’d come in first thing Monday morning and make the phone call and get the auditors in”.

12. Mr Hawkes went on to confirm that he was aware of the shortage and that he had been inflating the figure for cash on hand in his weekly cash accounts every week since 21 April 2004 (week 4), when a shortage of £3,120 had appeared. He added that he had searched for the £3,120 cash shortfall but that he could not find it. He said that he had checked the branch fully and also checked that the shortage was cash and not stock. Mr Hawkes indicated that the shortage continued to grow, explaining that he would inflate the cash on hand figure each week by the amount of the shortage, and that this exceeded £10,000 by week 30. He produced his diary in which he had recorded the escalating shortfall.
13. Asked to explain the shortage, Mr Hawkes’s response was that the shortage had been getting bigger and bigger and that he expected it to decrease but he could not figure it out. Mr Hawkes said that he had not previously told anyone about the shortfalls “because of feelings of embarrassment and inadequacy”.
14. POL accepted that this was a case in which the reliability of Horizon was essential to Mr Hawkes’s prosecution and conviction. Mr Hawkes had maintained from the outset that he did not know the cause of the shortfall. It was Mr Hawkes who notified POL of the existence of the shortfall and who appears to have requested POL’s assistance in identifying where the shortage was. Mr Hawkes denied having taken any money, explaining that he did not know the source of the shortfall and thereby impliedly querying whether there was a shortfall at all. Notwithstanding this, it does not appear that POL obtained any evidence to prove the shortfall other than reliance on the Horizon print-outs which had been obtained at the audit. It follows that the evidence to prove the existence of a shortfall was wholly dependent on Horizon reliability.
15. In these circumstances, POL accepts that the prosecution of Mr Hawkes was unfair and an affront to justice. POL is right to do so. In our judgement, notwithstanding his guilty pleas, Mr Hawkes’s convictions are unsafe.

Grant Ian Allen:

16. On 24 January 2013, in the Crown Court at Chester before HHJ Hale, Mr Allen pleaded guilty to a single count of fraud. The particulars of the count were that between 1 April 2010 and 7 February 2012 he falsely represented that his branch had more cash on the premises than was actually the case resulting in a shortfall of £11,705. Mr Allen entered a guilty plea on the basis (accepted by POL and the court) that he could not account for the loss but admitted covering it up. He was sentenced to a 12-month community order with a requirement to undertake 200 hours of unpaid work.
17. On 2 February 2012, Mr Allen’s branch had been audited. He told the auditors that his stock unit would be around £10,000 short. He said that he had had financial

difficulties running the branch and had been unable to repay the large losses that had accrued. He had been inflating the cash on hand figures in the hope that he would receive an “overscale payment” from POL from which he would make good the losses. The audit found a shortage of £13,076.25, the majority of which was a cash shortage of £11,705 in Mr Allen’s stock unit.

18. Mr Allen was interviewed on 19 April 2012. He confirmed the record of the conversation with the auditors. He gave a detailed description of his financial difficulties which had been caused in the main by the relocation and refitting of his branch. He described inexplicable small losses as well as some large losses which had been attributed to one member of staff. He denied that he had stolen any money. He expressed a willingness to repay the losses but disputed that the sums represented actual loss to POL and maintained that they had been caused by issues with the system.
19. A number of logs retained by POL demonstrate that Mr Allen reported the relocation problems and his concerns about faults with Horizon.
20. During the course of the criminal proceedings, on 2 November 2012, Mr Allen’s solicitors requested disclosure of an independent review of the Horizon system (believed to be a reference to the Second Sight report which we have mentioned in previous judgments). POL’s agents, Cartwright King, responded by indicating that the review was still pending. Cartwright King stated that, on receipt of the report, POL would consider their continuing duty of disclosure and provide a copy if appropriate.
21. POL served a witness statement from Gareth Jenkins dated 17 December 2012. Mr Jenkins stated that he had been shown extracts from Horizon reports for 8-17 March 2010 from which he had concluded that there were communication difficulties with Horizon. He stated that, provided all operational processes were properly followed, no data should be lost. Mr Jenkins made clear that he had not seen detailed logs to see whether Horizon could be responsible for the losses at Mr Allen’s branch. He concluded that Horizon “will accurately record all data that is submitted to it and correctly account for it.” Correspondence between Cartwright King and Mr Jenkins indicates that Cartwright King instructed Mr Jenkins not to analyse the detailed logs, in order to avoid incurring additional costs.
22. POL accepts that the reliability of Horizon was essential to the prosecution and conviction of Mr Allen. At the audit and in interview, he admitted falsifying the branch accounts to cover up unexplained shortfalls. The basis of plea also made plain that he could not explain how the losses arose. There was and is no independent evidence of actual shortfalls in the accounts.
23. POL is bound to accept that Mr Jenkins’ statement was not based on an actual analysis of the branch data. None of the evidence that is now available suggests that POL made any disclosure relating to Horizon reliability or that it provided Mr Allen with branch data. The evidence to prove the existence of a shortfall was wholly dependent on Horizon reliability.
24. In these circumstances, POL accepts that the prosecution of Mr Allen was unfair and an affront to justice. Again, POL is right to do so. In our judgement, notwithstanding

his guilty plea, Mr Allen's conviction is unsafe.

Jack Smith:

25. On 29 October 2004, in the Crown Court at Manchester Crown Square before HHJ Ensor, Mr Smith (then aged 61) pleaded guilty to four counts of false accounting. On 19 November 2004, he was sentenced by way of concurrent community punishment orders of 60 hours' unpaid work.
26. As demonstrated by Mr Smith's job application form, which we have seen, he had started work as a SPM in 1974. An audit of Mr Smith's branch in January 2004 had identified a cash discrepancy of £6,731.50. The auditors informed Mr Smith's area manager, who spoke to Mr Smith in private. It appears that, during that conversation, Mr Smith admitted "inflating the cash to cover cash account losses."
27. On 5 March 2004, Mr Smith was interviewed. He said that he had "actually openly admitted to bad balances" but that he had "never ever taken a penny" from POL. He had re-mortgaged his house in an attempt to make good the shortfall. Shortages had started to occur in October 2002 and had continued to increase. He had covered up the shortages by inflating cash figures while always intending to make good the losses. He could not work out what had happened. He had put money into the business and had not taken money out. He said:

"I am not a thief and I have never taken a penny out...in thirty odd years."
28. At a subsequent meeting with POL on 15 April 2004, he repeated his explanation that he had simply falsified the figures because he did not have the means to make good the losses at the time. Owing to the generosity of his brother in law, who loaned him the money, Mr Smith promptly repaid the entire alleged shortfall.
29. POL accepts that the reliability of Horizon was essential to the prosecution and conviction of Mr Smith. He had denied having taken any money and had consistently maintained that he did not know the source of the shortfall. There was no evidence that would have proved the fact of the shortfall other than Horizon evidence. The evidence to prove the existence of a shortfall was wholly dependent on Horizon reliability.
30. In these circumstances, POL accepts that the prosecution of Mr Smith was unfair and an affront to justice. Again, POL is right to do so. In our judgement, notwithstanding his guilty pleas, Mr Smith's convictions are unsafe.

Duranda Clarke:

31. On 31 January 2009, in the Crown Court at Chelmsford, Ms Clarke pleaded guilty to an offence of fraud. The particulars of the charge were that she had been "recording greater amounts of cash in hand than were in fact present when completing the Final Balances for cash in hand for Thaxted Post Office" between 4 August 2009 and 12 November 2009.
32. Ms Clarke's plea was tendered on the basis (accepted by the court, though not by POL) –

“that I used my position as a Post Office employee to make returns that I knew were false so as to make the figures balance but without taking any money and without any intention to take money ... in order to protect myself from the suggestion that I had made any mistake that might lead to disciplinary action against me knowing that a reasonable person considering that which I did would consider that it was dishonest.”

33. Ms Clarke was subsequently sentenced, on 4 March 2011, to 6 months' imprisonment, suspended for 12 months with a requirement to complete 150 hours of unpaid work.
34. Ms Clarke was the branch manager of the Thaxted Post Office, employed by the SPM, Mr Robert Hubbard. Prior to taking up this position in July 2007, she had been the manager at the Walden Post Office.
35. On 16 November 2009, POL conducted an audit at the Thaxted Post Office. The auditors identified a shortfall of £46,148.20 from the Horizon records, including a £45,994.06 cash discrepancy. Ms Clarke had not been present during the audit, but she was contacted and asked to attend by the SPM. When she arrived, Ms Clarke told the auditor that during balancing in July/August a large discrepancy in the region of £40,000.00 had been found. She felt that there was no way they could have made such a substantial error. She failed to inform Mr and Mrs Hubbard, and inflated the cash on hand declarations, in the hope a transaction correction would be received in due course.
36. Ms Clarke subsequently identified that £5,000 of the shortfall was due to an error with a National Savings Easy Access account deposit on 12 November 2009 which had been reported to the relevant body. This resulted in a transaction correction and a reduction in the shortfall from £46,148.20 to £41,148.20.
37. Ms Clarke was interviewed on 23 November 2011. Asked about her knowledge of the shortfall, she replied by saying that she did not know what the problem was but that she “assumed that we had done something stupid, like you do like”. Shown certain Horizon records, she accepted that they must be right, and, asked if she knew where the money had gone, her answer was: “No, if I did I would have sorted it ... You can't lose £40,000 ... it's got to be somewhere”. Ms Clarke, then, described how she had recounted all of the cash and checked that she had not made a mistake in keying in figures. She had also checked the Horizon snapshots but could not see what had happened, observing that she was at a loss as to what to do given that she “had put the right amount onto Horizon” and had checked that everything was in order.
38. A defence statement was served on behalf of Ms Clarke in September 2010. This denied dishonesty and made certain disclosure requests, including a request for “details of any other large discrepancies in any other branch of the Post Office” and specifically “details of a loss reported by another Subpostmaster in the October/November Subpostmaster magazine”.
39. The evidence of a shortfall served as part of the prosecution case consisted of the Horizon print-outs obtained during the audit, further Horizon print-outs from the branch produced by Mrs Hubbard and a schedule prepared by the investigator which

was based on the Horizon print-outs and ARQ data obtained. There does not appear to have been any analysis or investigation undertaken in relation to the reliability of those Horizon records. Nor does it appear that the disclosure requested in the defence statement was ever provided.

40. POL accepts that this is a case in which the reliability of Horizon was essential to the prosecution and conviction of Ms Clarke. She had made clear to the auditors from the outset, and then again in her interview, that the shortfall was unexplained, and that she believed that the shortfall was the result of an error. Ms Clarke's defence statement reiterated that she did not know the cause of the discrepancy. There was no evidence other than the Horizon records to prove the existence of an actual shortfall, despite the fact that Ms Clarke's defence statement had explicitly requested disclosure of instances of unexplained losses experienced at other branches. Given the account that she had previously provided, and the issues identified in her defence statement, she was entitled to disclosure of Horizon issues. This disclosure does not appear to have been provided.
41. In these circumstances, POL rightly accepts that the prosecution of Ms Clarke was unfair and an affront to justice. In our judgement, notwithstanding her guilty plea, her conviction is unsafe.

Robert John Boyle:

42. On 29 November 2011, in the Crown Court at Nottingham before HHJ Milmo, Mr Boyle (then aged 60) pleaded guilty to an offence of theft. The particulars of the charge were that between 1 September 2010 and 16 April 2011 he had stolen £11,790.54 in cash. A count of fraud was not proceeded with and was left to lie on the file.
43. On 6 January 2012, Mr Boyle was sentenced to 12 months' imprisonment, suspended for 2 years. The judge imposed requirements of 2 years' supervision, 100 hours of unpaid work and an electronically monitored curfew.
44. On 1 March 2012, Mr Boyle was ordered to pay £2,900 under a confiscation order. After he was forced to sell his property at an undervalue, the confiscation order was reduced to £269.20.
45. Mr Boyle's branch had been audited on 15 April 2011. The audit identified a shortfall of £11,790.54. Mr Boyle approached the "Field Support Adviser" and informed him that the branch accounts would be in the region of £11,750 short. He said that he could provide no explanation of the shortage but that it had appeared on Horizon. He had been inflating his cash on hand to cover it up. A handwritten note of the conversation was made which stated (among other things) that Mr Boyle had "overdeclared cash in the hope that it would rectify itself as it has done in the past."
46. On the same day, Mr Boyle was interviewed. He confirmed the accuracy of the handwritten note. He accepted that he had been inflating the cash on hand for some months. He thought that the "system" was causing discrepancies. He said that something had been "going wrong." He did not believe that his staff had been handing extra cash to customers or that they were responsible for losses. He denied taking cash. He explained that he had put his property on the market as he realised

that the loss was not going to be rectified. He intended to use the proceeds of sale to make good the shortfall.

47. In a defence statement served in November 2011, Mr Boyle denied that any money had been stolen, and expressly raised the reliability of Horizon.
48. POL accepts that the reliability of Horizon was essential to the prosecution and conviction of Mr Boyle. In interview, and to some extent at the audit itself, he had made clear that he had been falsifying the accounts to cover up unexplained losses. There is no independent evidence of actual shortfalls and POL did not attempt to investigate Mr Boyle's assertions that these unexplained shortfalls must have been caused by Horizon. Although Mr Boyle's defence statement did not contain specific disclosure requests relating to Horizon, it did place Horizon's reliability in issue. POL was therefore under a duty to disclose any material which might have assisted Mr Boyle to advance that case. On the evidence now available, there is nothing to suggest that that happened.
49. In these circumstances, POL rightly accepts that the prosecution of Mr Boyle was unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, his conviction is unsafe.
50. It was for those reasons that we announced, at the conclusion of the hearing, that in each of the cases of Mr Hawkes, Mr Allen, Mr Smith, Ms Clarke and Mr Boyle we granted the necessary long extension of time; we granted leave to appeal; we received the fresh evidence; we allowed the appeal; and we quashed the convictions.