



JUDICIARY OF
ENGLAND AND WALES

JOSEPHINE HAMILTON and OTHERS v POST OFFICE LIMITED

[2021] EWCA Crim 577

23rd April, 2021

SUMMARY

Judges: Lord Justice Holroyde, Mr Justice Picken and Mrs Justice Farbey DBE

1. The court has heard the appeals of 42 former sub-postmasters and sub-postmistresses (“SPMs”). Between 2003 and 2013 they were prosecuted by their employer Post Office Limited (“POL”), and were convicted of crimes of dishonesty. The Criminal Cases Review Commission (“CCRC”) referred all their cases to this court.
2. In each case, the principal questions for the court are whether the prosecution was an abuse of the process of the court and whether the convictions are unsafe. The court has had to consider issues as to the reliability of a computerised accounting system, “Horizon”, which was in use in branch post offices during the relevant period. The SPMs submit, in essence, that they were prosecuted and convicted on the basis that Horizon was reliable, when in fact it was not.
3. In the judgment which we today hand down, we refer to two of the judgments given in 2019 by Mr Justice Fraser (“Fraser J”) in civil proceedings brought in the High Court by claimants representing hundreds of SPMs. We summarise the relevant features of the Horizon system [paras 9-18], the concerns about it which were reported by SPMs from an early stage, and POL’s insistence for many years that it was reliable [paras 19-26].
4. We summarise the most important of the findings of fact which Fraser J made [paras 33-50]. Those findings of fact were considered by the CCRC, whose work in relation to these appeals we summarise and commend [paras 52-59].
5. Each of the appellants has argued 2 grounds of appeal: Ground 1, that the reliability of Horizon data was essential to the prosecution and, in the light of all the evidence including Fraser J’s findings in the High Court, it was not possible for the trial process

to be fair (“category 1 abuse”); and Ground 2, that the evidence, together with Fraser J’s findings, shows that it was an affront to the public conscience for the appellants to face prosecution (“category 2 abuse”).

6. We summarise the relevant legal principles which we have followed [paras 60-69] and explain why it is possible for appellants to bring these appeals even though some pleaded guilty when prosecuted many years ago.
7. POL has accepted that where the reliability of Horizon data was essential to the prosecution and conviction of an appellant, and where Fraser J’s findings showed that there was inadequate investigation and/or that full and accurate disclosure was not made, the conviction may be held by this court to be unsafe on grounds amounting to category 1 abuse. For that reason, with the exception of three appeals which it says raise different issues, POL has not resisted the appeals on Ground 1. It has however resisted the appeals on Ground 2, except in four cases which it says have particular features which distinguish them from the rest [paras 70-78].
8. We refer to documents which have been disclosed in these appeals, but did not form part of the evidence before Fraser J. In particular we refer [paras 82-90] to written advice given to POL on two occasions in 2013 by a barrister Simon Clarke, and [paras 91-94] to other material indicating the approach taken by at least some POL personnel to the prosecution of these and similar cases.
9. We give a summary [paras 95-119] of the detailed submissions of counsel, which we have considered in full.
10. We then set out [paras 120-138] our conclusions which apply to all the “Horizon cases”: cases 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 a branch post office, as opposed to a Horizon-generated shortage.
11. In relation to Ground 1, we conclude that the concessions made by POL were rightly and properly made. As Fraser J found, 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 in Horizon.
12. We conclude [para 121] that POL knew there were serious issues about the reliability of Horizon. It 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. Yet it does not appear that POL adequately considered or made relevant disclosure of problems with or concerns about Horizon in any of the cases at any point during that period. On the contrary, it consistently asserted that Horizon was robust and reliable. Nor does it appear that any attempt was

made to investigate the assertions of SPMs that there must be a problem with Horizon. The consistent failure of POL to be open and honest about the issues affecting Horizon can in our view only be explained by a strong reluctance to say or do anything which might lead to other SPMs knowing about those issues. Those concerned with prosecutions of SPMs clearly wished to be able to maintain the assertion that Horizon data was accurate, and effectively steamrolled over any SPM who sought to challenge its accuracy.

13. We go on to say [para 124] that in the “Horizon cases”, there was no basis for the prosecution if the Horizon data was not reliable. POL’s failures of investigation and disclosure prevented the appellants from challenging, or challenging effectively, the reliability of the data. In short, POL as prosecutor brought serious criminal charges against the SPMs on the basis of Horizon data, and by failing to discharge its duties it prevented them from having a fair trial on the issue of whether that data was reliable.
14. In relation to Ground 2, we rule [paras 127-128] that as a matter of law, the same acts and omissions may provide a basis for a finding of both of the categories of abuse of process. We then set out [paras 129-136] the considerations relevant to whether that is the position in the “Horizon cases”. We refer [para 132] to the human costs and consequences of the prosecutions in those cases. All of the SPMs were persons of previous good character. Very sadly, three are now deceased.
15. We conclude [para 137] that POL’s failures of investigation and disclosure were so egregious as to make the prosecution of any of the “Horizon cases” an affront to the conscience of the court. By representing Horizon as reliable, and refusing to countenance any suggestion to the contrary, POL effectively sought to reverse the burden of proof: it treated what was no more than a shortfall shown by an unreliable accounting system as an incontrovertible loss, and proceeded as if it were for the accused to prove that no such loss had occurred. Denied any disclosure of material capable of undermining the prosecution case, defendants were inevitably unable to discharge that improper burden. As each prosecution proceeded to its successful conclusion the asserted reliability of Horizon was, on the face of it, reinforced. Defendants were prosecuted, convicted and sentenced on the basis that the Horizon data must be correct, and cash must therefore be missing, when in fact there could be no confidence as to that foundation.
16. In each of the “Horizon cases”, therefore, the appellants succeed on both Ground 1 and Ground 2. We summarise the facts of the 39 individual cases [paras 140-356], concluding that all the convictions are unsafe.
17. In each of the three remaining cases, the central issue is whether the reliability of Horizon data was essential to the prosecution case. We set out the relevant facts and

circumstances of each of the cases [paras 357-446] and conclude in each case that the reliability of Horizon data was not essential to the prosecution case and that the convictions are safe.

18. Accordingly, and for the reasons given in detail in the judgment:

- i. The appeals of Wendy Cousins, Stanley Fell and Neelam Hussain fail and are dismissed.
- ii. The appeals of Josephine Hamilton, Hughie Thomas, Allison Henderson, Alison Hall, Gail Ward, Julian Wilson (deceased), Jacqueline McDonald, Tracy Felstead, Janet Skinner, Scott Darlington, Seema Misra, Della Robinson, Khayyam Ishaq, David Hedges, Peter Holmes (deceased), Rubina Shaheen, Damien Owen, Mohammed Rasul, Wendy Buffrey, Kashmir Gill, Barry Capon, Vijay Parekh, Lynette Hutchings, Dawn O'Connell (deceased), Carl Page, Lisa Brennan, William Graham, Siobhan Sayer, Tim Burgess, Pauline Thomson, Nicholas Clark, Margery Williams, Tahir Mahmood, Ian Warren, David Yates, Harjinder Butoy, Gillian Howard, David Blakey and Pamela Lock are allowed on both Grounds. All of their respective convictions are quashed.

NOTE: This summary is provided to assist in understanding the decision of the Court of Appeal, Criminal Division. It does not form part of the reasons for the decision. The full judgment of the court is the only authoritative document. Judgments are public documents and are publicly available. A copy of the judgment in final form as handed down will be published on www.judiciary.uk.

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