

REPORT TO THE POST OFFICE HORIZON IT INQUIRY

PHASE 4

**INVESTIGATION, DISCLOSURE AND CRIMINAL PROSECUTION
IN ENGLAND AND WALES AND
INVESTIGATIONS AND PROSECUTIONS BY THE POST OFFICE 2000-2013**

DUNCAN ATKINSON KC

**VOLUME 2
(Revised)**

TABLE OF CONTENTS

1. Introduction	§1
2. Overview of conclusions	§10
3. The approach to audit shortages	§21
4. Relevant offences	§25
5. Lisa Brennan	§33
a. Investigation and charging decision	§37
b. Disclosure	§51
c. Assessment	§53
6. David Yates	§60
a. Investigation	§63
b. Charging decision and disclosure	§70
c. Second Sight Review	§73
d. Assessment	§78
7. David Blakey	§84
a. Investigation	§87
b. Charging decision	§95
c. Disclosure	§97
d. Circumstances of plea	§98
e. Assessment	§99
8. Tahir Mahmood	§105
a. Investigation	§109
b. Charging decision	§116
c. Proceedings	§120
d. Disclosure	§124
e. Assessment	§125
9. Carl Page	§129
a. Investigation	§134
b. Charging decision	§142
c. Horizon issues	§149
d. Disclosure	§153
e. Circumstances of plea	§161
f. Assessment	§166

10. Oyeteju Adedayo	§169
a. Investigation	§172
b. Charging decision	§177
c. Assessment	§181
11. Hughie Thomas	§183
a. Investigation	§186
b. Charging decision	§201
c. Disclosure	§203
d. Second Sight Review	§207
e. Circumstances of plea	§210
f. Assessment	§213
12. Suzanna Palmer	§220
a. Investigation	§223
b. Charging decision	§228
c. Disclosure	§230
d. Assessment	§234
13. Josephine Hamilton	§238
a. Investigation	§242
b. Charging decision	§256
c. Disclosure	§261
d. Circumstances of plea	§264
e. Second Sight Review	§267
f. Assessment	§274
14. Susan Rudkin	§279
a. Investigation	§282
b. Charging decision	§292
c. Proceedings	§299
d. Disclosure	§302
e. Assessment	§306
15. Peter Holmes	§309
a. Investigation	§312
b. Charging decision	§321
c. Disclosure	§329
d. Assessment	§333

16. Seema Misra	§336
a. Investigation	§340
b. Charging decision	§350
c. Disclosure	§356
i. Initial disclosure	§357
ii. Disclosure relating to expert evidence	§363
iii. Pre-trial disclosure	§380
iv. Post-conviction disclosure	§395
d. Assessment	§402
17. Lynette Hutchings	§415
a. Investigation	§419
b. Charging decision	§425
c. Proceedings	§426
d. Disclosure	§429
e. Assessment	§438
18. Joan Bailey	§441
a. Investigation	§444
b. Charging decision and disclosure	§453
c. Assessment	§457
19. Alison Hall	§459
a. Investigation	§463
b. Charging decision	§469
c. Disclosure	§471
d. Circumstances of plea	§472
e. Assessment	§476
20. Allison Henderson	§479
a. Investigation	§483
b. Charging decision	§487
c. Initiation of proceedings	§494
d. Disclosure	§495
e. Circumstances of plea	§504
f. Assessment	§512

21. Grant Allen	§516
a. Investigation	§518
b. Charging decision	§524
c. Horizon evidence	§527
d. Instruction of counsel	§535
e. Disclosure	§536
f. Assessment	§543
22. Angela Sefton and Anna Neild	§546
a. Investigation	§549
b. Charging decision	§555
c. Disclosure	§559
d. Assessment	§576
23. Khayyam Ishaq	§580
a. Investigation	§585
b. Charging decision	§596
c. Instruction of counsel	§599
d. Disclosure	§602
e. Assessment	§616
24. Conclusions	§620

INTRODUCTION

1. This is my second report prepared for phase 4 of the Post Office Horizon IT Inquiry, a statutory inquiry under the Inquiries Act 2005, which focuses on “action against Sub-Postmasters and others: policy making, audits and investigations, civil and criminal proceedings, knowledge and responsibility for failures in investigations and disclosure”. It is neither necessary nor helpful to set out the full factual background here. In short, so far as is presently relevant, the Inquiry seeks to consider investigations undertaken by and prosecutions brought by the Post Office against Sub-Postmasters, managers and assistants where shortfalls and discrepancies in branch accounts had been identified through the use of the Horizon computer system. That system was originally designed and operated by International Computers Limited, which was partially owned by, and later fully integrated with, Fujitsu.
2. The operation of that system, the issues of shortfalls and discrepancies to which it gave rise and the action taken by the Post Office thereafter are addressed in detail in the judgement (no.3) ‘Common Issues’¹ and judgement (no.6) ‘Horizon Issues’² of the Hon. Mr Justice Fraser, and the decision of the Court of Appeal in *Josephine Hamilton v Post Office*³.
3. I will throughout this report refer to the Post Office, so as to encapsulate a number of legal entities that have existed in the period with which I am concerned. The materials that have been provided to me for this purpose are addressed in appendix 3 to this report. It follows on from the required declarations that are set out in appendix 1 and details of my qualifications to write this report, which are set out in appendix 2. I should make clear that I have been greatly assisted in the preparation of this report by Catherine Brown and Sebastian Walker, whose qualifications are also set out in appendix 2. They have played an invaluable role in managing, analysing and distilling the voluminous materials that I have been asked to consider. The opinions set out in this report are, however, my own.

¹ [2019] EWHC 606 (QB)

² [2019] EWHC 3408 (QB)

³ [2021] EWCA Crim 577

4. In my first report, I considered the legal framework for investigation and prosecution, both by the Post Office and more broadly, and the framework relating to responsibilities of prosecuting authorities, investigations, charging decisions, prosecutions and disclosure. In that report, I addressed applicable statutory provisions, codes of practice issued under statute, guidelines and guidance, caselaw and other material from a range of identified sources, and then consideration of such policy documents and guidance issued by and to the Post Office as engage those topics. I will allude to that material in this second report as is necessary, but will not repeat the detail of that analysis. As is obvious, it forms the structure for my present analysis.
5. That analysis in this second report relates to the actual application of the Post Office policies I have seen, and more significantly the application of the wider framework for investigation and prosecution with which the Post Office accepted that it was expected to comply. I am asked to assess this actual application through a detailed analysis of 22 actual cases investigated and prosecuted by the Post Office in the period of the Inquiry's focus, namely between 2000 and 2013. In each of the cases provided, I have considered, with the assistance of Catherine Brown and Sebastian Walker, the papers that have been provided to us by the Inquiry relating to those cases, to identify, where possible, the progress of and decisions taken in the course of the Post Office investigations, the charging decisions, and prosecutorial decisions taken thereafter and the process of disclosure.
6. I should say at once that the material available to us has varied considerably between cases. In some cases, it has been extensive, whilst in others no material has been provided in relation to certain of these topics at all. I have made this clear in my analysis of the cases. In certain instances, there is particular material relating to the instruction of and role of counsel, and this is addressed where pertinent. Similarly, as the Inquiry is aware Second Sight undertook an independent investigation of issues raised by sub postmasters in 2014. In some cases, material from that process and the Post Office Mediation exercise is available, and, to the extent relevant, has been considered. I have also, more recently, seen a document 'Gareth Jenkins chronology'⁴. I have considered this, although I have not seen all of the material underlying it. I

⁴ POL00165905

understand that the document is not being treated as a source of evidence by the enquiry, and I have not sought to do so either.

7. I should add that because material in two of the 22 cases has only been provided to Catherine Brown, Sebastian Walker and myself in the very recent past, I do not address those two cases in this report. I will do so in an addendum.

8. In analysing the 20 individual cases addressed in this report I have had regard to the approach adopted by the Post Office (referred to below as 'POL') in the proceedings before the Court of Appeal in *Josephine Hamilton v Post Office*⁵. This was summarised by Holroyde LJ as follows⁶:

"In its Respondent's Notice, POL accepted Fraser J's findings that there were about 30 bugs, errors and defects in the Horizon system, which did not operate simultaneously and which affected both Legacy Horizon and Horizon Online, and that there was a significant and material risk on occasions of branch accounts being affected in the way alleged by the claimants by bugs, errors and defects. It also accepted that POL failed to disclose to SPMs and to the courts the full and accurate position in relation to the reliability of Horizon. In relation to its duties as a private prosecutor, POL accepted that in cases where the reliability of the ARQ data was essential to the prosecution case, it had a duty to assess that data; and that in view of the limitations on the extent to which SPMs could investigate discrepancies in Horizon, POL had a duty to investigate to ensure that the evidence was accurate and to pursue reasonable lines of enquiry raised by the SPM. It was further accepted that Fujitsu had the ability to insert, inject, edit or delete transaction data or data in branch accounts; had the ability to implement fixes in Horizon that had the potential to affect transaction data or data in branch accounts; and had the ability to rebuild branch data. All of this could be done by Fujitsu without the knowledge or consent of the SPM.

POL therefore accepted that in cases where the reliability of Horizon data was essential to the prosecution and conviction of the 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. In such cases, POL did not resist the appeal on Ground 1.

⁵ [2021] EWCA Crim 577

⁶ *Josephine Hamilton v Post Office*, §70-72

POL did not however accept that the same failures of investigation and disclosure were sufficient to justify a finding of category 2 abuse. In relation to the appeals which were not opposed on Ground 1, that concession did not mean that the appellant should not have been prosecuted, or that the prosecution was an affront to the public conscience or (to adopt another phrase used in other cases) an affront to the conscience of the court.

9. I have also, where applicable, taken into account that which was accepted to have occurred in such of the 20 cases as were considered by the Court of Appeal, and the conclusions that they reached.

OVERVIEW OF CONCLUSIONS

10. At the beginning of my first report (paragraph 3), I set out in full the questions I was asked to consider. Of those questions that I was asked to address, those that I can now address by reference to these specific cases are:

1. In relation to investigations:

- a. The duties of an investigator to pursue a reasonable line of enquiry (generally, and also where a person positively asserts that they believed the problems they had experienced (accounting shortfalls at their Horizon terminals) might lie with the computer system);

2. In relation to prosecution:

a. Charging decisions:

- i. The test that the prosecutor applied – including an analysis of (i) any general POL prosecutorial guidance/policy (ii) any policy decisions made in relation to prosecutions based on Horizon evidence;
- ii. The evidence that the prosecutor reviewed when making a charging decision (or ought to have reviewed);
- iii. The extent to which the charging decisions appear to be thorough and conscientious;
- iv. The approach said to have been undertaken of charging theft and false accounting as alternatives.

- b. How proceedings were commenced – an application for the issue of a summons in the Magistrates’ Court (and the duty of candour when applying for the issue of a summons – see e.g., *R (Kay) v Leeds Magistrates’ Court* [2018] EWHC 1233 (Admin)).
- c. Disclosure:
 - i. Whether there was a “disclosure officer” (as would exist in a prosecution conducted under the CPIA), or equivalent (and, if not, any difficulties that this created);
 - ii. Whether the prosecutor reviewed the adequacy of disclosure;
 - iii. The extent of the duty of “cross-disclosure” – i.e. where an issue arises in Case A, there is a duty to give disclosure of it in Cases B, C and D etc.
- d. Prosecutorial practice:
 - i. The practice said to have been undertaken of ‘plea bargaining’ (i.e. offering no evidence on a count of theft in return for a plea on a count of false accounting).

11. In summary, in the investigation process, discernible from the material I have seen, the roles played by identifiable personnel did not reflect the division of roles identified in the CPIA Code and Attorney General’s Guidelines on Disclosure. It appeared that the same person undertook both investigative and disclosure roles, and it was not clear who was supervising or directing them in either capacity. There were, consistently, failures by the investigators to identify and to pursue reasonable lines of enquiry. This remained the position even after the requirement to pursue all reasonable lines of enquiry was made explicit in Post Office policies after 2010. There were lines of enquiry common to these cases, which were of direct relevance to issues such as dishonesty, and an intention to gain or cause loss, and which in turn were thus relevant to the offences most commonly charged in these cases. These include financial enquiries relating to the suspect, enquires relating to their training and their contact with relevant helplines, and enquiries relating in particular to the operation, reliability and accuracy of Horizon data.

12. In some cases, reasonable lines of enquiry that had not been pursued hitherto were identified by Post Office lawyers or independent counsel, who provided advice. This was wholly appropriate, and consistent with the approach identified in the Attorney General's Guidelines on Disclosure. But in the majority of cases, however, there was an apparent failure of prosecutorial supervision as to the identification and pursuit of reasonable lines of enquiry. Given that these included, in most cases, the testing of the reliability of the core evidence relied on to prosecute, which was a factor specifically identified in the Code for Crown Prosecutors for the reviewing lawyer to consider, this is concerning.
13. The Code for Crown Prosecutors was also not applied with any degree of depth, analysis or consistency by those advising as to (or potentially making) charging decisions. The test was not always correctly applied, with additional and different tests quoted in some cases, and in no case did I see any analysis of the factors identified in the various iterations of the Code which were designed to assist the lawyer in reaching a conclusion as to whether there was a realistic prospect of a conviction and whether such a prosecution was in the public interest. In particular, the public interest test was rarely mentioned at all. The charging advices that I have seen did not include any analysis of the evidence, or address how the evidence satisfied the key ingredients of the offences charged. The advices, therefore, were neither thorough nor conscientious in their approach.
14. Decisions reached as to charging as between theft and false accounting lacked any consistency of approach, and where both offences were charged, there was a lack of explanation as to why. There was no reference to the approach of the Court of Appeal in *Eden*. There were also a significant number of cases where theft was charged without any certainty as to the fact of, or degree of loss, and where, without any change to the evidential position, pleas were ultimately accepted to an alternative charge further calling the decision to charge theft in the first place into question.
15. In a number of the cases, the circumstances in which such a plea occurred give rise to very serious concern. In at least 3 cases, it was clear from the material that I reviewed that the acceptance of pleas to an alternative offence to theft were made conditional on the repayment of the monies alleged to have been stolen and an undertaking that no criticism would be made of the Horizon System in mitigation. As the Court of Appeal

rightly concluded in the case of *Hamilton and others*, such an approach was improper, irrational and unjust.

16. The issues with the process of disclosure in these cases flowed from the failings in the investigation process. Just as there had been failings to investigate such reasonable lines of enquiry as the finances of the defendant, their training, their contact with helplines and the reliability and accuracy of Horizon data, there were failures to make disclosure in relation to these areas. The disclosure process was heavily defence request led, rather than proactive, with delay and in some cases resistance to disclosure that was properly sought, engaged by the issues and which ought to have been identified as material undermining of the prosecution case or of assistance to the defence case. In this context, there was also apparent failures to recognise the duty to obtain and consider third party material, from financial institutions and Fujitsu. In some cases, the 'Gareth Jones chronology'⁷ suggests an informal approach to the obtaining of such third party material. Whether or not this was the case falls to be determined by consideration of the material referenced in the chronology, much of which I have not seen.
17. In procedural terms, the disclosure officer, who was usually also the investigator, usually did prepare schedules of unused material. These were often inadequate in terms of their content and description, and there is little evidence that they were reviewed, as the CPIA Code and Attorney General's Guidelines on Disclosure required, by the prosecutor. Decisions as to disclosure from the schedules were flawed or overly restrictive. In some cases this position was improved by action from trial counsel.
18. There was, in particular, failures of disclosure in relation to Horizon data. This included the failure to disclose the underlying material to that relied on, including ARQ data, either at all or to the extent necessary. The attitude that appears to have informed disclosure was the belief that the defence should identify with clear focus what the problems with the Horizon system had been before there would be disclosure in relation to those problems. That was a flawed approach. It was not reasonable to expect the defendant necessarily to know what the problems actually were, or what

⁷ POL00165905

was causing them. Moreover, it was for the prosecution, who could test the reliability of Horizon data they relied on, to provide the material that undermined that reliability.

19. There was, allied to these concerns, a failure of cross-disclosure between cases where Horizon issues had been raised. From 2010 onwards, I have seen discussions of the need to disclose issues raised in one case in others where similar issues had arisen, but it is far from clear that this was routinely or adequately addressed.
20. These problems remained even where experts were instructed and expert evidence was relied on by the prosecution. There were failures of disclosure to defence experts, or very protracted and cumbersome disclosure, and a failure to disclose that relied on by the prosecution expert or that was capable of undermining the prosecution expert's opinion. Finally, the very limited evidence I have seen in relation to the instruction of Mr Jenkins as an expert does not show that he was informed at any point about his duties as an expert, and compliance with the disclosure duties of an expert. Communication with him was much more informal, and focused on rebutting defence cases. There were very real problems and failings in the resulting disclosure, so that reports were served that did not identify material that Mr Jenkins had that undermined the reliability of Horizon. As a result disclosure of and relating to expert evidence was not undertaken correctly so as to ensure fairness or transparency.

THE APPROACH TO AUDIT SHORTAGES

21. Since the completion of my first report, I have had my attention drawn to a Post Office guideline 'Managing Shortages at Audit: Process and Policy Guidelines'⁸. This identifies the stages of the process to be undertaken when "audit shortages have been identified by field teams". It should be noted that two more detailed documents, which I have not seen, are embedded in the guideline I have seen. The stages are the following:

⁸ POL00118154

- (a) The field support adviser should report the audit shortage to the Contracts adviser. There is specific embedded guidance, which I have not seen, as to what information needs to be conveyed;
- (b) The contract adviser will determine what action is to be taken. There is specific embedded guidance, which I have not seen, to assist the decision making process. It is clear from the terms of the guideline that one of these decisions will be as to whether or not to suspend the agent (sub-postmaster) in question on a precautionary basis. It also appears that they will determine if there is to be an investigation, which may result in prosecution.
- (c) The Contract adviser will contact the agent to discuss the next steps, which will include the agent attending for interview, arrangements for the repayment of the shortage and giving the agent the option of resigning to avoid termination. It is clear that the Security Team will be notified of a precautionary suspension so they may "*decide to investigate this case*".
- (d) The Contact adviser will review the evidence to determine whether the agent can be reinstated or summarily terminated.

22. The Guideline also identifies factors that should be taken into account during the course of the investigation by the contract adviser. They are written in terms of the commission of an offence, and would therefore appear to have relevance to others making investigative decisions in this context (although this is not explicit). These include:

- (a) Whether the agent has sought to cover up the offence, through manipulation of the branch accounts;
- (b) Any previous suspension of the agent, and their record of general performance and rule compliance;
- (c) Whether the agent sought help to resolve or report problems, for example through contact with the National Business Support Centre (NBSC);
- (d) Whether the agent admits and accepts personal responsibility for the offence from the outset, and whether they exhibit genuine remorse;
- (e) Whether the agent was acting under duress or threat, or alternatively whether they were on medication or suffering from a disorder that would have affected their judgement.

23. The Guideline then states: *“The factors are recorded on the ‘record of decision case document...and will be categorised under key points in the case as presented by the Agent – positive and negative and key points in the case as presented by POL – positive and negative in relation to the charges against the Agent. The Contract adviser will provide a qualified recommendation on the case based on the balance of probabilities. The document must clearly indicate why the particular course of action has been recommended and why any other course of action has been excluded. The document is reviewed by the Agents Contracts Deployment Manager and the decision is either endorsed or changed. If changed reasons are to be given for the change and these details are recorded in the form...”*
24. I confess a degree of concern about this paragraph. On one interpretation, it deals just with a decision on the balance of probabilities as to suspension, termination or reinstatement. However, on another interpretation, it relates to a decision to charge and prosecute an agent on a basis other than a determination on legal advice of the code for crown prosecutors, which is a more nuanced and detailed test than the balance of probabilities. I have had this concern in mind in reviewing the 20 cases which this report considers, to determine the basis on which charging decisions were in fact reached. In any event, this guideline provides a useful template for the assessment of the initial stages of the investigation process.

RELEVANT OFFENCES

25. In each of the twenty cases considered in this report, the offences charged were a combination of theft, false accounting and fraud. It may assist if I identify at the outset the elements of those offences, so that my analysis of whether those offences were properly charged has that structure in mind. In fact that structure was helpfully set out for those investigating those offences by the Royal Mail Group Security Procedures & Standards document ‘Criminal Offences Points to Prove’⁹, a second version of which was issued in December 2008.
26. The points to prove for the offence of theft, contrary to section 1, Theft Act 1968, are correctly identified in the 2008 document as:

⁹ POL00104823

- (i) Dishonesty,
- (ii) Appropriates,
- (iii) Property,
- (iv) Belonging to another,
- (v) With the intention to permanently deprive.

27. To develop each of these slightly (and to a greater extent than the 2008 document does), but without getting into irrelevant qualifications and contingencies:

- (i) Dishonesty, during the period of the Inquiry's focus, was defined by reference to the test laid down by the Court of Appeal in *Ghosh*¹⁰. In short, in determining whether a defendant had acted dishonestly, a jury had first of all to decide whether, according to the ordinary standards of reasonable and honest people, what was done was dishonest; if it was not dishonest by those standards, that would be the end of the matter and the prosecution would fail (the objective test). If it was dishonest by those standards, then the jury had to consider whether the defendant himself had to have realised that what he was doing was by those standards dishonest (the subjective test).
- (ii) "Appropriates" is defined by section 3, Theft Act 1968 as "*any assumption of the rights of an owner*". It is clear from decisions of the House of Lords in, for example, *Gomez*¹¹, that the assumption of any right (as opposed to all rights) of the owner is sufficient, and that the physical taking or obtaining of the property is not required. Lord Browne-Wilkinson in that case¹² observed that appropriation is an "*objective description of the act done irrespective of the mental state of either the owner or the accused*".
- (iii) "Property" is defined by section 4(1), Theft Act 1968 as including "*money and all other property, real or personal, including things in action and other intangible property*". A credit balance in an account provides the holder with a thing in action. Accordingly, if someone transfers monies from a Post Office account,

¹⁰ [1982] QB 1053. This test was partially rejected by the Supreme Court in *Ivery v Genting Casinos (UK) Ltd* [2017] UKSC 67, but that change is not relevant for present purposes.

¹¹ [1993] AC 442

¹² *Gomez* [1993] AC 442, at 495

and satisfied the other ingredients of the offence are made out, they will have committed theft.

- (iv) “Belonging to another” is defined by section 5(1), Theft Act 1968 as belonging to “any person having possession or control of it, or having in it any proprietary right or interest...”. Section 5(3) adds “where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other”. In short, therefore, if someone transferred monies from a Post Office account, they will have been dealing with property belonging to another.
- (v) “With the intention to permanently deprive” is partly defined by section 6, Theft Act 1968, which at section 6(1) states: “A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.” In *Velumyl*¹³, the Court of Appeal rejected an argument that an employee who “borrowed” money from his employer expecting to return an equivalent sum had no intention permanently to deprive his employer of that sum. It would only be if the employee returned the very same notes that this would be the case.

28. The 2008 points to prove document correctly identifies that the points to prove for the offence of false accounting, contrary to section 17, Theft Act 1968, depend on which subsection of section 17(1) is relied on. As identified in the document:

- (a) Under section 17(1)(a), the points to prove are:
 - (i) Dishonesty,
 - (ii) With a view to gain for himself or another,
 - (iii) Or intent to cause loss to another,
 - (iv) Destroy, deface, conceals or falsifies,

¹³ [1989] Crim LR 299

- (v) Any account or any record or document,
- (vi) Made or required for accounting purposes.

(b) Under section 17(1)(b), the points to prove are:

- (i) In furnishing information for any purpose
- (ii) Produces or makes use of any account,
- (iii) Or any such record or document.
- (iv) Which to his knowledge is or may be misleading, false or deceptive in a material particular.

29. To develop each of these slightly (and to a greater extent than the 2008 document does), but without getting into irrelevant qualifications and contingencies:

- (i) Dishonesty, in the relevant period, was governed by the same test as for the offence of theft;
- (ii) "Gain" and "loss" are to be interpreted in accordance with section 34(2)(a), Theft Act 1968 which states: "... 'gain' and 'loss' are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and – (i) "gain" includes a gain by keeping what one has, as well as a gain by getting what one has not; and (ii) "loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has". In *Eden*¹⁴ it was made clear that 'Gain' includes "temporary gains of many types. Such a gain could be constituted by putting off the evil day of having to sort out the muddle and pay up what may be in error kept within the sub-post office when it ought to have been sent to head office."
- (iii) The meaning of falsification is extended by section 17(2), Theft Act 1978 so that it embraces the creation of a false account as well as the falsification of an existing one¹⁵. Moreover, section 17(2) makes clear that the omission of material information from a document can have the effect of falsifying it.
- (iv) Whether the "account or any record or document" is "made or required for accounting purposes" is a question of fact¹⁶.

¹⁴ (1971) 55 Cr. App. R. 193, at p.197

¹⁵ This was made clear in *Scot-Simmonds* [1994] Crim LR 933

¹⁶ See for example *O* [2010] EWCA Crim 2233

(v) For the purposes of section 17(1)(b), it is not enough that information is furnished or included in an account, record or document is false, it must also be false “in a material respect”. In *Mallett*¹⁷, the Court of Appeal rejected the contention that falsity was material only if directly connected to the accuracy of the accounting process. If the false information was material to the financial decision of the company, and the information was contained in a document required for accounting purposes, this was sufficient.

30. The points to prove for the offence of fraud, contrary to section 1 of the Fraud Act 2006, are correctly identified in the 2008 document by reference to the different forms of fraud addressed by different sections of the Act, namely fraud by false representation (section 2), fraud by failing to disclose information (section 3) and fraud by abuse of position (section 4). Of these, it is fraud by false representation that is immediately relevant. The 2008 document identifies the points to prove of that section 2 offence as follows:

- (i) Dishonesty,
- (ii) Making of a ‘false’ representation,
- (iii) Intention to make a gain for himself or another
- (iv) Or Intention to cause loss to another,
- (v) Or Intention to expose another to a risk of loss,
- (vi) The representation is false if it is untrue or misleading
- (vii) AND the person making it knows that it is or might be untrue or misleading.

31. To develop each of these slightly (and to a greater extent than the 2008 document does), but without getting into irrelevant qualifications and contingencies:

- (i) Dishonesty has a broadly similar meaning to that applicable to the Theft Act 1968, and thus in the relevant period the *Ghosh*¹⁸ test had application. Dishonesty applies not just to the method employed, the making of a false representation, but the ulterior motive for it, the making of a gain or the occasioning of a loss.

¹⁷ [1978] 3 All ER 10

¹⁸ [1982] QB 1053

- (ii) Making of a 'false' representation involves the making of a representation either to a person or (pursuant to section 2(5)), to a "system or device". The making of a representation is the necessary conduct element. As was observed by Gross LJ in *Varley*¹⁹: "*the actus reus, the conduct element of the offence, the making of an objectively untrue or misleading representation. The mens rea, or mental element, is made up of the requisite knowledge, dishonesty and intention.*"
- (iii) The terms "gain" and "loss" are informed by section 5, Fraud Act 2006 which makes clear that they "extend to gain or loss in money or other property" (section 5(2)(a)), that "gain includes a gain by keeping what one has, as well as a gain by getting what one does not have" (section 5(3)) and "loss includes a loss by not getting what one might get, as well as a loss by parting with what one has" (section 5(4)).
- (iv) 'Representation', pursuant to section 2(3) "*means any representation of fact or law, including a representation as to the state of mind of (a) the person making the representation, or (b) any other person*". It may be an express or implied representation (section 2(4)).

32. I have had the elements of these offences in mind in my assessment of the charging decisions reached in the 20 cases with which this report is concerned. I repeat that I have not reached my own charging decisions, or tested those reached by reference to whether I would have reached the same conclusion. Rather, I have considered whether the decision reached was one reasonably open to the decision maker on the evidence then available, by reference to the version of the Code for Crown Prosecutors then in force.

LISA BRENNAN

33. Lisa Brennan worked as a counter clerk in the Huyton post office in Merseyside. She had started this employment when she was 16 years old. Her prosecution related to events in 2001, and thus close in time to the rollout of Horizon.

34. On 4th September 2003, in the Crown Court at Liverpool before His Honour Judge Phipps and a jury, Ms Brennan was convicted on 27 counts of theft, representing a

¹⁹ [2019] EWCA Crim 1074, at para.108

shortfall of £3,482.40. She was acquitted on five further counts. On 6th September 2003, she was sentenced to six months' imprisonment suspended for two years. On 11th May 2004, her appeal against conviction (on the basis of inconsistent verdicts) was dismissed²⁰. As a result of the proceedings against her, she was forced to file for bankruptcy.

35. In summary, the prosecution case was that when she paid out cash for allowance and benefit vouchers, she removed more cash than was permitted by the voucher and kept the difference herself. The evidence of theft depended on the difference between the amount Horizon showed had been entered onto the system and the lesser amount of the voucher. When interviewed, Ms Brennan admitted the discrepancies. She said that they were errors on her part because of problems at home and pressures of work. She denied theft and said she did not know what had happened to the money.
36. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*²¹, Ms Brennan was one of those in category B, "*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*"

Investigation and charging decision

37. There is a dearth of papers in this case. In others of the cases that I have reviewed, for example, there is an investigation summary, prepared for the investigator and intended for the contract manager and others, which provided some help as to the lines of enquiry that were pursued. The paperwork here does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. It is therefore difficult to assess the performance of these roles by reference to the person who was actually expected to undertake them, and to identify whether the need for someone to do so was properly appreciated.

²⁰ R v Brennan [2004] EWCA Crim 1329

²¹ [2021] EWCA Crim 577, at §75

38. A memorandum²² to the Retail Line Manager from Stephen Bradshaw, who can be identified through other cases as a Financial Investigator, dated June 2002, records that a “mainstream check” had revealed discrepancies to the value of £1055.24, and that an enquiry was raised on “Huyton DMB”. Each of these appears to be a reference to checks on Horizon. A local check of the Huyton branch pouches showed discrepancies and further checks were made against Horizon which revealed more. The common factor was that the date stamp used related to Ms Brennan. Her stock was checked, and she was interviewed. The stock check revealed no discrepancies of cash or stock, but one relating to a group 5 voucher.
39. Ms Brennan was interviewed on 13th June 2002²³. Mr Bradshaw, the investigator, undertook the interview with a colleague, and Ms Brennan was accompanied by a Post Office Friend, who was a union representative. This is a recognised Post Office procedure, which is a right of any sub-postmaster to be interviewed in addition to rather than instead of a solicitor²⁴. Here, there was no solicitor present in interview. At the start of the first interview²⁵, Ms Brennan was informed of rights to be represented in addition but declined. She was cautioned and the caution was correctly explained.
40. She was provided with a form described on the transcript as a CS001²⁶. I have not seen the form completed here, but I have seen others that set out the interviewed persons rights, in the context of a voluntary interview, including their right to a solicitor. The form, as the Interviewing policy²⁷ makes clear, “*the form CS001 is not an acknowledgement form that the interview has been told of his rights but a form to record the interviewee’s decision*”. The transcript confirms that similar procedures were gone through and thus the interview was PACE-compliant. In terms of duration, Ms Brennan was interviewed for a total of 56 minutes. By reference to the Post Office policy ‘Interviews under PACE’²⁸, dating from January 2001 (at para.3.3), the interviewers covered the areas identified as to be addressed.

²² POL00047324

²³ POL00047317, POL00047318, POL00047322. The last of these transcripts is a different version, with sections summarised, of the first interview. A version of the interview with dates, times and persons present has also recently been provided POL00047320

²⁴ As is made clear in the Post Office Interviewing policy, January 2001, para.3.5 – POL00104758

²⁵ POL00047318

²⁶ Other cases refer to a GS001, and I assume that this is the same document.

²⁷ POL00104758, para.3.2

²⁸ POL00104745

41. Ms Brennan explained that she had worked as a counter clerk for 13 years, and had worked at two other branches before starting at Huyton 7 years earlier. She explained how she would pay a pension voucher. She was asked about her understanding of how to correct a mistake on the Horizon system through a reversal, and she appeared unsure. She said she might not have noticed keying in the wrong amount because of the pace of the work. She maintained that she has not been taking money. She said that the errors identified may be down to mistakes but was not able to explain the discrepancies. She said that she had thought she had been doing her job correctly, but accepted that she could not have been to make these mistakes, and attributed them to problems she was having at home.
42. The interviewers asserted that money had been taken, and that someone must have benefited from her errors. This culminated in one of the interviewers saying *"I think it's a question of not whether you've done it but why have you done it...I think you've done it deliberately....no one else is making mistakes like you"*. This approach was echoed in the memorandum from Mr Bradshaw to the retail line manager²⁹, which concluded: *"...Ms Brennan made no admissions to taking any money. Ms Brennan could offer no explanation to how these discrepancies had occurred and that they were mistakes. She did admit that they are [sic] bore her date stamp...She also said that no other clerk knew her password and therefore could not access her system"*.
43. There is no actual charging decision included in the papers for this case. But some insight can be gained both into that decision, and the nature of the investigation that led to that charging decision, from the exchange that occurred after the case had been reviewed for a charging decision by Teresa Berridge, a senior lawyer in the Post Office Criminal Law Division. She sent Mr Bradshaw, the investigator, an internal memorandum³⁰ asking for further enquiries to be made prior to a charging decision. The fact and content of this memo shows some engagement with the identification and pursuit of reasonable lines of enquiry.
44. Ms Berridge identified the need for checks to be made in relation to other pension and allowance claims. She also asked why it was that the investigator had rejected the discrepancies being the result of mistakes, and what her "accounting record" was like,

²⁹ POL00047324

³⁰ POL00047331

in comparison to her colleagues. She asked how it could be shown that the losses had to have been caused by Ms Brennan. She enquired after financial enquiries in relation to Ms Brennan. Most importantly, she asked: *“do you have any evidence to show whether the above-named was stealing Post Office money or covering up shortages? Is there any further evidence to prove that the above named was acting ‘dishonestly’ rather than ‘incompetently’?”* That this was the central question is underlined by the fact that the trial Judge identified it as *“the questions”* when he summed the case up.³¹

45. Stephen Bradshaw replied 2 weeks later³². His answer to the questions raised showed that he had made enquires as to whether there were error notices attributable to Ms Brennan that might show mistakes. None had been identified, and she was considered to be a good and capable employee. This appears to have worked against her, in that it provided the basis for it being concluded that she had not made mistakes, rather than in her favour, that such an employee would not suddenly act dishonestly. Mr Bradshaw’s response also showed that he had considered the possibility of others in the post office having been responsible, and he set out logical reasons for his conclusion that they could not.
46. It does not appear that any further financial checks were made for any evidence of any financial benefit to Ms Brennan. At trial³³, it appears that Mr Bradshaw explained this on the basis that Ms Brennan had in interview denied any financial problems and he had accepted this. It has to be said both that there were more reasons to look at her finances than to see if she was short of money, and that Mr Bradshaw had certainly not taken other things said by Ms Brennan at face value. The pertinence of this omission is that the trial had to be delayed because the defence were seeking just such material. It is right to note that the defence were having to do this because the prosecution had not, and so the defence needed to show a lack of financial benefit which ought to have informed the charging decision. The defence, rather than the prosecution, adduced such financial evidence at the trial³⁴. There is also no evidence that any enquiries were made as to whether the Horizon system, on which the case depended, was operating correctly, even though it had not long been installed. The

³¹ POL00066713, p.2

³² POL00047335

³³ Summing up POL00066713, p.7

³⁴ POL00066713, p.9

summing up does not indicate that any question about the operation of the Horizon system arose at the trial.

47. I have seen no further correspondence, and it follows that the charging decision must have been taken on the basis that the discrepancies were there in records relating to Ms Brennan which she could not explain and therefore she must have stolen from the Post Office. That accords with how the case was summed up at trial³⁵. It also accords with the approach adopted by the jury, which acquitted the defendant where the discrepancy was small or could otherwise be explained as a mistake (as the Court of Appeal observed³⁶ when dismissing Ms Brennan’s appeal on the basis that the verdicts were inconsistent).
48. This is borne out by the evidence actually compiled. This was summarised in a memorandum³⁷ from Mr Bradshaw to John Gibson, who was a lawyer instructed to prosecute at least one of the cases I have considered³⁸. In short:
- (a) A statement was obtained from Kate Rosenthal the branch manager to explain the pension and allowance payment system, the recording processes on Horizon and to confirm that the stamp entries related to Ms Brennan³⁹;
 - (b) A statement was provided by Mr Bradshaw addressing the interviews⁴⁰, and producing the Horizon transaction logs relied on.
 - (c) The “*papers that were used in the post office discipline procedure*” are referred to, but I have not seen those.
 - (d) He indicates as the only line of further enquiry that he was “*putting together the group vouchers where the amount has been overstated*”.
49. There was no evidence as to the operation of the Horizon system, beyond a very basic description from Ms Rosenthal. The limitations of the investigation in this regard are

³⁵ POL00066713, p.2

³⁶ POL00066602, §8-15

³⁷ POL00047515

³⁸ POL00089065

³⁹ The statements in this file are in an eccentric and disjointed order. Ms Rosenthal’s statement appears at POL00047501 (page 1) and POL00047500 (page 2). Ms Rosenthal deals with the stamp ID in a second statement, POL00047514

⁴⁰ POL00047506 (page 1), POL00047507 (page 2). Page 3 is missing.

highlighted by a questionnaire provided by Ms Brennan in the context of the civil proceedings against the Post Office⁴¹. In particular:

- (a) She had received no training in the use of Horizon;
- (b) She could not recall making any call to the Horizon helpline but would be assisted by access to helpline records. Similarly, such records would show if her manager had called the helpline, which was more likely to have occurred;
- (c) Shortfalls had been identified at earlier audits in 2002, as a result of mistakes on some dockets.

50. Ms Brennan in the civil action questionnaire⁴² said *"I have seen no evidence of any adequate investigation"*. The shortcomings of both the very limited investigation and the decision to charge on the basis of that perfunctory enquiry were well expressed by Holroyde LJ in the Court of Appeal⁴³, as follows: *"POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Ms Brennan's case. Her explanation was that she must have made keystroke errors when entering voucher amounts onto Horizon. The prosecution did not consider whether a bug, error or defect could have affected this process. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. The issue at trial was dishonesty but there was insufficient proof of an appropriation."*

Disclosure

51. In contrast to certain other of the case files, in this instance I have had sight of some disclosure schedules produced in purported compliance with the CPIA Code. Unfortunately, this does not include a schedule of non-sensitive unused material (the equivalent of the MG6C)⁴⁴ which would have assisted as to what was disclosed, and further assisted with what lines of enquiry were undertaken, if those were recorded through entries in the schedule. There is a schedule of sensitive unused material (equivalent to an MG6D)⁴⁵, which is very short, and limited to correspondence with

⁴¹ POL00066583

⁴² POL00066583, p.4

⁴³ [2021] EWCA Crim 577, §289

⁴⁴ POL00057751

⁴⁵ POL00047492

the legal services that are described as privileged. A Disclosure officer's report was prepared (equivalued to an MG6E)⁴⁶. It states, as is the fact, "*no item(sic) are listed on the schedules*". It, like the MG6D, is dated March 2003

52. The limitations to disclosure in this case go hand in hand with the limitations to the investigation. No disclosure was made in relation to Ms Brennan's financial position, or the operation of the Horizon system not because a thinking decision was taken but because no such material was obtained during the investigation.

Assessment

53. The limitation to the paperwork in this case limits my ability to provide a full assessment. However, my review of the material does highlight a number of areas of concern.
54. First, there were limitations to the scope of the investigation. The attitude of the investigators appears to have been that expressed by Mr Bradshaw in interview, "*it's a question of not whether you've done it but why have you done it...I think you've done it deliberately....no one else is making mistakes like you*". In other words, mistake was rejected as an explanation at a very early stage and deliberate theft accepted instead. However, that judgement was reached without an analysis of Ms Brennan's finances to identify whether she was in financial difficulties, and thus had reason to steal, and to identify where the money it was alleged that she had taken had gone. That this was a reasonable line of enquiry is underlined by the fact that the Post Office lawyer, Teresa Berridge, raised it. As she perceptively put it "*is there any further evidence to prove that [she] was acting 'dishonestly' rather than 'incompetently'?*". An analysis of calls to the helpline, and consideration of the earlier 2002 audit would also have been relevant to these issues, but such enquiries do not appear to have been made.
55. In fairness, some consideration was given to this question, as Mr Bradshaw's reply to Ms Berridge showed, but it is not clear whether, and if so, to what extent the lack of error notices in fact rebutted mistake as an explanation. It is also not clear that even this limited enquiry had been pursued before a charging had been sought or made, and the checks undertaken did not involve any analysis of the Horizon data or its

⁴⁶ POL00047491

reliability. It appears from the approach of the Post Office to Ms Brennan's appeal that it was conceded that analysis of, and disclosure of the data was necessary. In short, therefore, the investigation did not fully identify or explore whether there had in fact been any actual taking of monies, as opposed to a computer record of loss, and whether there was an explanation for this other than in dishonest conduct by Ms Brennan.

56. In terms of a charging decision, because no actual advice or decision is within the material that I have seen I am in difficulties in reaching a view. It is not clear who took the decision, and whether that person was legally qualified. It is also not clear what test was actually applied, and what consideration, if any, was given to the public interest in prosecuting. As I highlighted in my first report⁴⁷, the Code for Crown Prosecutors was not identified as the test to be applied in Post Office charging decisions until 2007.
57. There are reasons for concern as to how thorough that decision was, however, on the material available. Assuming that the Code for Crown Prosecutors was applied, the first question was whether there was a realistic prospect of conviction for theft on the evidence. That, first, involved a question of whether there was sufficient reliable evidence that money had been taken, and secondly that it had been taken dishonestly. The enquiries raised post-charge by Teresa Berridge support the argument that, at the time of charge, there was not. It is right to observe that Ms Berridge's memorandum represents a proper identification by a prosecutor, in their review of the case, of reasonable lines of enquiry to be pursued. Such an approach accorded with the guidance in the CPIA Code and the Code for Crown Prosecutors.
58. Even with that further guidance there were clearly limitations to the lines of enquiry pursued. No enquiry had been made as to whether the only source of evidence of loss, the computer record, was reliable. In that context it is right to note that this case was early in the period, and the appreciation of issues with Horizon was no doubt very different in 2002 to 2012, for example. No financial enquiry had been made as to whether Ms Brennan had reason to steal or had in fact stolen. I have taken account of the fact that the case proceeded to trial and was left to a jury. It follows, therefore, that

⁴⁷ First report, para.155(a)

it was either accepted by defence counsel or by the trial judge was that was a case to answer. However, it is not clear to me how that determination was, or could have been, reached at the stage of the proceedings at which it appears to have been.

59. I cannot really address the adequacy of disclosure because the material as to the disclosure process here is so limited. However, as I have observed the disclosure approach goes hand in hand with the investigative one. The defence had to make their own financial enquiries both because they had not been undertaken earlier and, as a result, no disclosure had been made in this regard. No disclosure was made in relation to the reliability of Horizon because that was not identified as a reasonable line of enquiry. I have not seen any indication as to what information was shared when the summons to initiate proceedings was obtained, but the lack of investigation of important areas would be consistent with those limitations not being identified when the summons was sought.

DAVID YATES

60. David Yates started as a Post Office counter clerk in 1979 and became a Sub Post Master in 1993, working at the Walton-on-Thames post office.
61. On 12th September 2003, in the Crown Court at Guildford before HHJ Addison, he pleaded guilty to one count of theft. The alleged shortfall was £356,541.35. On 31 October 2003, he was sentenced to three years' imprisonment.
62. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*⁴⁸, Mr Yates was one of those in category B, "*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*"

⁴⁸ [2021] EWCA Crim 577, at §75

Investigation

63. There is, again, a dearth of papers in this case. I have seen the Cartwright King case file for Mr Yates⁴⁹, and this includes a document from the investigator, Mr Posnett⁵⁰, which I have taken to be the investigation summary here. Other than the Cartwright King case file, the paperwork is very limited, and even the file paperwork here does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. Again, it is therefore difficult to assess whether those roles were properly identified or undertaken.
64. A memorandum⁵¹ sent from Paul Bosson⁵², Security and Audit, to Dave Posnett, Internal Crime Manager, dated 4th September 2014, records that an audit was undertaken at the Walton-on-Thames post office on 6th March 2003⁵³ as a result of discrepancies that were highlighted in "post office audit checks relating to rems" in November 2002. Mr Posnett attended himself to further this audit on 7th March. Mr Yates was asked to, and did, print off an office snapshot from Horizon recording cash holdings of £410354.67 and the previous night's ONCH declaration, which indicated total holdings of £43566. Asked why there was a significant difference Mr Yates said that *"he had sent a rem the previous day but had not booked it out on the Horizon system"*. When asked for the paperwork for this, he admitted that he had not sent any rems the day before and that the audit would show a £350,000 shortfall. In fact, the audit showed a total shortfall of £356,541.35. It was indicated in the interview⁵⁴ that Mr Boson had provided a note of these comments to Mr Yates, which he had signed. This appears to have been in compliance with the Post Office Interviewing policy.⁵⁵

⁴⁹ POL00066601

⁵⁰ POL00066601, p.6

⁵¹ POL00066457 - the date is not explained

⁵² POL00066598

⁵³ The 6th March audit was undertaken by Michael Dadra, and he involved Mr Bosson on 7th - POL00066597

⁵⁴ POL00047494, p.3

⁵⁵ POL00104758, para.3.2

65. Mr Yates was interviewed⁵⁶ by investigators Dave Posnett⁵⁷ and Rob Fitzgerald⁵⁸ on 7th March 2003. He was taken through the form CS001, which explained his rights. He was not accompanied by either a solicitor or a Post Office Friend. He was cautioned and the caution was correctly explained. There appears to have been compliance with the relevant 2001 Post Office interview policies⁵⁹.
66. During the interview, he admitted to inflating his cash figures over three to five years in order to conceal an ever-increasing shortage, due to his expenditure exceeding his income. This had included the period before Horizon was installed at his branch on 11 July 2000, although he also said he could not explain some dramatic shortfalls that had happened at that time. Mr Yates claimed that the cash was used to pay for (among other things) personal bills and loan repayments. He said that the business was not doing as well as it should have been and so he had taken some money to pay staff and bills. However, of relevance to the consideration of the Horizon system, he said that none of this would explain the shortfall of £350,000. He said that this shortfall had begun when some *“really large error notices came back”* that he could not explain. He estimated these to have been around £5,000 to 6,000. He said he had brought these to the attention of Savings Bank but not the Post Office. He was asked if he had challenged these error notices and said *“sometimes, if I didn’t think they were right, but at the end of the day if they keep coming back and saying they are right what else could I do apart from put them through”*.
67. In terms of investigative steps taken thereafter, the statement from one investigator⁶⁰ refers to a search being undertaken at the post office and at Mr Yates’ home address. The investigation report in the Cartwright King case file⁶¹ indicates that a number of documents were seized, but does not give any indication what they were, or further refer to them, save for Mr Yates’ passport. This was identified as providing a picture of when he was and was not at the branch which was said to be inconsistent with his account. The limitations to these searches are suggested by the fact that further

⁵⁶ POL00047494

⁵⁷ POL00066595

⁵⁸ POL00061676

⁵⁹ POL00104745, POL00104758

⁶⁰ Robert Fitzgerald POL00061676

⁶¹ POL00066601, p.8

Horizon print outs were found when the premises were being tidied later⁶². The investigation report in the Cartwright King case file⁶³ indicates that the financial records recovered at Mr Yates' home were considered, and it was noted that there was no evidence of funds deposited in the accounts or evidence of Mr Yates living beyond his means. The report says that requests were to be made for financial records from relevant institutions, but it is clear that the investigator recommended prosecution when no such had been obtained.

68. The statement of the other investigator⁶⁴, Mr Posnett, sets out his examination in relation to the cash accounts for the branch. He also refers to the fact that he obtained a list of "error notices". He indicates, however, that on analysis they related to identified discrepancies e.g. where Girobank reconciled customer deposit slips against transactions details from the Post Office, as opposed to error notices indicating there are issues with the system itself. The investigation report in the Cartwright King case file⁶⁵ identifies evidence of Mr Yates benefiting from earlier error notices. It is clear from the statement that records of earlier audits at the Walton-on-Thames post office were obtained and considered. The investigation report in the Cartwright King case file⁶⁶ records that analysis. Evidence of Mr Yates' remuneration as a sub postmaster was also obtained.⁶⁷
69. There is no evidence of enquiries being made back in 2003 in relation to contact with the helpline or the National Business Support line ('NSBC'). The Post Office referred to records of such calls in its response to Mr Yates' Second Sight questionnaire in 2014⁶⁸, and yet checks could have been made back in 2003 if such records existed. In the Second Sight review⁶⁹, there is reference to "numerous calls" to NSBC, and yet there is no reference to any logs of, or enquiries in relation to such calls in 2003. There is no evidence that any checks were made on the Horizon system for evidence of faults or other errors that might have impinged on the records that Mr Yates described in

⁶² POL00066596

⁶³ POL00066601, p.17

⁶⁴ POL00066595

⁶⁵ POL00066601, p.9

⁶⁶ POL00066601, p.9

⁶⁷ POL00066600

⁶⁸ POL00066497

⁶⁹ POL00062362

interview or otherwise. Again, in its 2014 response to Mr Yates' questionnaire⁷⁰, the Post Office referred to Horizon records, which are not addressed in the 2003 investigation material that I have seen, although the Second Sight Review itself⁷¹ says that Horizon records were not available for the period from 2000 when Mr Yates said issues arose.

Charging decision and disclosure

70. I have not had sight of a charging decision in this case, leading to the prosecution of Mr Yates for one count of theft. I have however had sight of the Cartwright King case file⁷² which I have taken to include the material that was available at the time that a charging decision was taken. I have assumed that the decision was taken by the Post Office Criminal Law Division rather than Cartwright King given the timing of this case.
71. In short, in terms of an analysis of a realistic prospect of a conviction there was the interview of Mr Yates and his admission to inflating his cash figures over three to five years in order to conceal an ever-increasing shortage, due to his expenditure exceeding his income. However, there was also no evidence that Mr Yates had actually taken the money that was identified as being missing on the Horizon records. The lack of financial enquires underpinned that absence. It is right to note that Mr Yates did not describe issues with Horizon in his interview in the way that he did in his interaction with Second Sight, which is considered below. However, he did describe unexplained shortfalls, and yet it appears that the charging decision was reached without any consideration of why those shortfalls had occurred and what they might mean.
72. I have not seen any material relating to the disclosure process, for example schedules on unused material or correspondence with the defence before Mr Yates pleaded guilty. I cannot, therefore, speak to the adequacy or otherwise of disclosure save that the limitations to the investigation in terms of contact with helplines, interrogation of Horizon for faults and irregularities and the lack of investigation into Mr Yates' finances for evidence of any benefit from the losses to the Post Office would carry with

⁷⁰ POL00066497

⁷¹ POL00062362

⁷² POL00066601

them a failure to disclose material that might have undermined the prosecution case. It was clear from Mr Yates' interview that there was a very significant difference between the limited theft he admitted and the very large shortfall that had been identified. There was no investigation of, and therefore no disclosure relating to, that shortfall and the potential reasons for it.

Second Sight Review

73. Second Sight undertook an independent investigation of issues raised by sub postmasters in 2014, and prepared a report in Mr Yates' case dated 15th December 2014⁷³. As part of this process, Mr Yates completed an application form⁷⁴, in which he said that losses only arose after installation of the Horizon system, and "*kept growing alarmingly each week*". He added that he had worked for the Post Office since 1979, but had no problems with balancing until Horizon was installed. This covers a 24 year period until his suspension.
74. A more detailed case questionnaire was then completed in April 2014⁷⁵. In relation to Horizon, Mr Yates said that "*unexplained discrepancies*" started to appear 6-7 weeks after Horizon was installed, in relation to cash rather than stock. That he had initially contacted the helpline, but they could not help, and he had sought to make good the differences, but they rapidly exceeded his ability to do so. He complained of the "*lack of competent and adequate support*" from the helpline, and the limited options on the Horizon system when an issue arose.
75. The Post Office responded to this questionnaire in December 2014⁷⁶. Beyond pointing to the defendant's guilty plea as conclusive evidence of his guilt, the Post Office asserted that "*at no stage during any of the audits carried out at the branch, or in any recorded calls to NBSC or in the criminal proceedings did the Applicant claim that Horizon was to blame.*" They also pointed to the fact that that Horizon was installed in 2000 at that branch and yet that shortfalls appear to have begun building from 1998 onwards.

⁷³ POL00062362

⁷⁴ POL00060942

⁷⁵ POL00066494

⁷⁶ POL00066497, and also in an undated document POL00040313

76. The Second Sight report⁷⁷ refers to Mr Yates' contentions that the issues only arose after installation of the Horizon system. They observe, by reference to the Post Office response, that Horizon was installed in 2000 at that branch and yet that shortfalls appear to have begun building from 1998 onwards. The report also says that the Post Office said that there was no Horizon data available for the period from 2000 referred to by Mr Yates, which is somewhat at odds with their positive case about the period before 2000. Second Sight concluded that the case was not suitable for mediation given that Mr Yates made an unequivocal admission to theft. The report states, *"We conclude that the Applicant admitted to stealing in order to pay staff wages and general living expenses over the three to five year period. Had the Applicant alerted the Post Office to the shortfall at an earlier stage, or at the earlier audit, the loss may not have reached the level it did"*.
77. The Court of Appeal in 2021⁷⁸ took a very different view, armed with much wider information about the operation of Horizon and the Post Office's knowledge of that than was even hinted at in the Post Office's responses to Second Sight in 2014. Its conclusion, as expressed by Holroyde LJ was that *"POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Yates' case. Although Mr Yates admitted theft during his interview, this was against a background of unexplained shortfalls. Importantly, POL accepts that the vast majority of the 'loss' represented an accumulated shortfall rather than any theft. POL further accepts that the investigation was poor. There was no examination of the unexplained shortfall. Although the amount of any theft is not a material averment on an indictment, POL accepts that it is very unclear how much Mr Yates admitted to taking from POL monies as opposed to from other available revenue. The evidence suggests that he had paid out money to make good error notices prior to any appropriation by him. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings."*

Assessment

78. As with the case of Ms Brennan, the dearth of papers in Mr Yates' case makes the assessment of the Inquiry's questions difficult. As a starting point, and in contrast to Ms Brennan's case where she denied any theft at all, Mr Yates did in interview admit

⁷⁷ POL00062362

⁷⁸ [2021] EWCA Crim 577, §330-331

that he had stolen from the Post Office. He had used money to pay personal bills, loan repayments and to pay staff. However, he was equally clear in interview that his appropriation did not remotely amount to the substantial shortfall alleged. That much larger shortfall he attributed to problems that had accrued since Horizon was installed, which he had sought to address by paying out money to make good error notices. The essential question for both the investigation and for the charging decision, therefore, was how much Mr Yates had actually stolen, and why.

79. It does appear that the investigation did examine Mr Yates' own finances, and identified a lack of evidence of personal benefit to Mr Yates from the amount of the shortfall. However, such enquiries were limited and were particularly limited before the charging decision was undertaken. Enquiries were made in relation to Mr Yates' account, given that error notices were obtained and analysed, and earlier audits were reviewed. However, those enquiries were again limited. Given that Mr Yates talked of recurring error notices and issues with Horizon, reasonable lines of enquiry would, in my view, have included checks as to calls to relevant helplines, which do not appear to have been done, and in particular enquiries of the Horizon system and elsewhere to identify the source and cause of the shortfall. By the time of the Second Sight review such records were not available, and it was accepted by the Post Office when Mr Yates appealed that the shortfall was in large part unexplained and that necessary enquiries as to the unexplained shortfall had not been undertaken.
80. Whilst this was an investigation early in the relevant period, and information about faults in the Horizon system's operation were therefore limited, the need to check whether the system was at fault was clearly raised by Mr Yates' account. Instead, in short, the investigation proceeded on the basis that Mr Yates had stolen £356,541.35 when nothing like that sum was accepted by him, and nothing like that sum could be traced.
81. That unsatisfactory state of affairs underpins the charging decision. I have not seen the actual decision, or the legal advice that led to it, and cannot therefore speak as to who made the decision, or what test they applied. The decision was made on the basis of evidence that did not identify with any clarity how much Mr Yates accepted stealing, on the one hand, or explain how it was said that he had stolen the total figure charged,

or where that money had gone, on the other. In other words, there was an evidential basis for concluding that an offence of theft had been committed, but not an offence of theft of £350,000 as was charged. The scale of the provable loss was relevant to the determination of the public interest in prosecuting, although I recognise that the prosecution of a theft by an employee in breach of trust is likely to pass that test, unless there are considerations to the contrary.

82. I have not seen evidence that the lack of investigation as to the loss, Mr Yates' finances, the operation of the system or whether Mr Yates' complaints about its operation had foundation were raised by the charging decision maker at all. Given that the decision was made without them, they were clearly not identified as obstacles to that decision being taken. By reference to Mr Yates' admissions, a decision to prosecute him for theft was a reasonable one. However, it was incumbent on the decision maker to look beyond those admissions, and to take proper account of what they amounted to. I have concerns about the figure included in the charge and the lack of hesitation in charging, and the lack of direction of further investigation about the reasons for the shortfall, that ought to have preceded it actually being taken.
83. Whilst information as to disclosure is very limited in this case, it once again went hand in hand with the limitations to the investigation. Material which, if reasonable lines of enquiry had been pursued ought to have been obtained, would also have fallen to be disclosed. A number of such lines were not pursued, and thus disclosure fell short in those areas. I have not seen any indication as to what information was shared when the summons to initiate proceedings was obtained, but the lack of investigation of important areas would be consistent with those limitations not being identified when the summons was sought.

DAVID BLAKEY

84. Mr Blakey was 50 years old when he was investigated and the sub-postmaster assistant at Riby Square post office in Grimsby. His wife having been the sub-postmaster at their branch from September 1996 until her contract of services was terminated in 2004. This followed an audit at the branch in May 2004 which showed a cash shortage of £64,000.

85. On 17th December 2004, in the Crown Court at Great Grimsby before Recorder Kelly, David Blakey pleaded guilty to six counts of false accounting. One count of theft was ordered to lie on the file. The alleged shortfall was £65,366.46. On 25th February 2005, Recorder Gibson sentenced him to nine months' imprisonment suspended for two years. He was ordered to pay £1,000 towards the costs of the prosecution. Mr Blakey and his wife were declared bankrupt in February 2006.
86. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*⁷⁹, Mr Blakey was one of those in category B, "*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*"

The investigation

87. There is once again a dearth of papers in this case. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. Again, this makes it more difficult to confirm that the roles were recognised and properly undertaken. The Investigation Case Summary⁸⁰ was prepared by Paul Whittaker, the investigation manager who attended the branch during the audit process, and interviewed Mr Blakey. It is not clear whether and if so who was overseeing the investigator.
88. In summary, on 13th May 2004, auditors arrived at the branch because of disproportionately large cash on hand. Mr Blakey spoke to the audit team, admitting that there would be a significant shortage of cash, which he said had gone missing from the office "*over the last few months*". He co-operated with the auditors in providing a signed statement to that effect.
89. Mr Blakey was interviewed, with no solicitor or friend present. He was informed of his rights to be represented and to have a friend in attendance, but he declined. He was cautioned, and the caution was explained. The interview was therefore PACE-compliant, and followed the procedure set out in relevant Post Office interview policies. Mr Blakey said that he had noticed discrepancies but denied any dishonesty.

⁷⁹ [2021] EWCA Crim 577, at §75

⁸⁰ POL00044818

He said that he had no idea where the money had gone. He said that he trusted his staff “100%” and that he had not informed his wife as she had been ill, and he did not wish to cause her to worry. He said that he intended to get a £50,000 bank loan to repay the majority of the money and then his intention was to inform the Post Office if future discrepancies arose. He referred to transactions being processed wrongly and causing an error, but nothing was said beyond that to challenge the Horizon system. He accepts inputting inaccurate cash on hand figures to conceal the shortfall for approximately one year.

90. I should note in passing the approach adopted by Mr Whittaker, the investigator, during the interview. He repeatedly asserted that the money had not just disappeared, and that Mr Blakey must know where it was. He repeatedly told Mr Blakey that he did not believe him when he denied taking the money. For example, in the second interview⁸¹ he said “*can you hear how ridiculous it sounds ...because I still don’t believe you*”. He also said, “*I don’t know where the money has gone*”. This, arguably, is not consistent with the Post Office Interviewing Policy⁸² that “*investigators must necessarily be allowed discretion in the conduct of an interview but should ensure that fair methods of questioning are used*”. This apparent lack of open-mindedness is of concern in an investigator.
91. Mrs Blakey was also interviewed. I have not seen a transcript of this but have seen the summary in the investigation report⁸³, and a separate interview summary⁸⁴. She confirmed that her husband dealt with the accounting aspects of the business. She had not been aware of the shortages before the investigation. She said that she had not noticed any improvement in their lifestyle, as she would have expected if her husband had stolen the money,
92. In terms of further investigative steps, those who worked at the Post Office were spoken to, including the defendant’s mother⁸⁵. The need to obtain such statements was touched on by the reviewing lawyer⁸⁶ to eliminate other candidates for theft. At the

⁸¹ POL00044831, at 19.50

⁸² POL00104758, para.3.1

⁸³ POL00044818

⁸⁴ POL00044829

⁸⁵ Statements from Natasha Beck, POL00044826, Patricia Bown POL00044827, Samantha Callaghan, POL00044828

⁸⁶ POL00044820

time that Mr Whitaker reported⁸⁷, he was in the process of making financial enquiries in relation to Mr Blakey. These included enquires as to whether he had sought the loan he referred to in interview and whether he had received a redundancy payment from his previous employer to which, again, he had referred. Aspects of Mr Blakey's interview account were therefore, quite properly, checked. It does not appear that the decision to prosecute was delayed to allow these checks to be made, or that evidence in this regard was ultimately obtained. It follows that reasonable lines of enquiry were not fully pursued, and that the need for their resolution was not identified at the charge stage. This arguably did not accord with the guidance in the 2004 version of the Code for Crown Prosecutors⁸⁸ that the prosecutor "*should provide guidance and advice to investigators.. this may include lines of inquiry, evidential requirements...*"

93. When he completed a questionnaire for the civil litigation in 2017⁸⁹, Mr Blakey observed that "*to his knowledge*" the Post Office had not undertaken the financial checks. He added "*At a subsequent court hearing Post Office's legal representative asked the judge for permission to access my financial information. I explained to the judge that I had already consented to this. Post Office could not explain to the judge why they had not already looked at this before bringing charges against me*". This was an important omission. On Mr Blakey's account in 2017 he had used his own money to meet earlier shortfalls, and this would have been revealed by his accounts. So too would the lack of any financial gain to him in relation to the alleged theft.
94. In his interview, Mr Blakey had denied telling anyone of the issues he was having. It was arguably reasonable therefore not to check for calls to the helplines on the basis that he had not described making any⁹⁰. However, that said, Mr Blakey was also reporting in interview problems with Horizon that others would have encountered and might have reported. It was a check therefore that could have been, but was not undertaken, to see, for example, if anyone had reported problems with the operation of Horizon at the branch. More significantly, despite Mr Blakey's account of issues with its operation, there were no enquires made of Horizon data, or the operation of

⁸⁷ POL00044818

⁸⁸ Para.2.4

⁸⁹ POL00066256, p.5

⁹⁰ See also Mr Blakey's 2017 questionnaire, POL00066256, where at p.3 he repeats that he made no calls to the helpline.

the Horizon system, to see if this could explain the issues that Mr Blakey described. This significant limitation to the investigation was well identified by the Court of Appeal⁹¹: *“POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Blakey’s case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. There was no investigation into the matters raised by Mr Blakey during his interview, nor was there any investigation into Horizon reliability. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.”*

Charging decision

95. The closest to a “charging decision” that I have identified is a Memo dated 23rd June 2005 from Jarnail Singh, Senior Lawyer in the Post Office criminal law division⁹². It is very brief and simply addresses realistic prospect of success for both theft and false accounting, without any analysis of the evidence. He qualifies his conclusion as to the prospects of a conviction in a rather unusual way, and certainly not one that reflected the terms of the Full Code test in the Code for Crown Prosecutors. He said that there was a low prospect of success predicted for theft but a high prospect of success for false accounting. It is difficult to understand how there can be a realistic prospect of a conviction and yet a low chance of a conviction, and it is thus difficult to see how the decision to charge theft was reached if that was the lawyer’s assessment. This is especially as there had been only limited financial enquiries into the suspect and no checks on the system which provided the only evidence of loss. Mr Singh addressed the importance of elimination of other members of staff as strengthening the case on theft, but not as a necessary precursor to a decision to prosecute for that offence. There is no reference to a consideration of public interest.
96. By reference to the Code for Crown Prosecutors, therefore, whilst recognising that the Code was not specifically identified as the test to be applied by the Post Office until 2007⁹³, Mr Singh’s advice provided limited guidance as to lines of inquiry or additional evidential requirements (by reference to para.2.4, 2004 edition of the Code). He did not

⁹¹ [2021] EWCA Crim 577, at §351

⁹² POL00044820

⁹³ POL00104812

raise as a necessary consideration the reliability of the evidence, and thus the reliability of the Horizon data that was the core evidence, although he would have been aware from the Investigation Summary that Mr Blakey had raised concerns in that regard. He did not address what evidence established dishonesty, or any concern about the lack of financial enquiries. The 2004 Code identified 17 public interest factors favouring prosecution, and 9 to the contrary. Mr Singh did not address these factors at all. The test he applied did not accurately reflect that in the Code.

Disclosure

97. A schedule of non-sensitive unused material (MG6C) was completed⁹⁴. It is undated and lacks a name or signature for both the disclosure office and the reviewing lawyer. Indeed, there is no evidence of a review by a lawyer. As there is a dearth of papers for this case it is difficult to assess whether there are any missing items from the schedule. There is no material listed to suggest any financial enquiries, beyond those touched on in the investigation report, no reference to enquiries with helplines or any enquiries as to the operation of Horizon. There is, on the material I have seen, no evidence that the disclosure officer drew the prosecutor's attention to any material the disclosure of which was uncertain⁹⁵, or that the prosecutor had inspected the material⁹⁶.

Circumstances of the plea

98. When he completed a questionnaire for the civil litigation in 2017⁹⁷, Mr Blakey referred to the judge at a preliminary hearing telling the Post Office that there was no evidence of theft, and the judge gave further time for evidence to be produced. It was after this, and when no such evidence was forthcoming, that Mr Blakey said that guilty pleas were accepted to false accounting and that the theft charge was left to lie on the file. There is very limited information on the conduct of proceedings in this case file beyond this account from Mr Blakey.

⁹⁴ POL00044817

⁹⁵ As required by para.7.1, CPIA Code

⁹⁶ By reference to pra.7.4, CPIA Code and par.24, AG's Guidelines 2000, or para.35, AG's Guidelines 2005, which would only just have come into effect

⁹⁷ POL00066256, p.5

Assessment

99. Again, the limitations to the material now available limits the observations that I can make about this case.
100. However, there were limitations to the scope of the investigation, and reasonable lines of enquiry were missed. In particular, no exploration was made of the operation of the Horizon system or the reliability of its data, despite the concerns with this that Mr Blakey raised in interview. The financial investigation was limited, although it did at least identify avenues based on Mr Blakey's account to be explored. There is a concern that the investigative approach may have been coloured by the view of the investigator, as expressed to Mr Blakey in interview that his denial of theft was "ridiculous". In fact, such an emphatic rejection should only have followed an enquiry that had demonstrated, by reference to his financial information and the reliability of the data, that what Mr Blakey was saying was incorrect. Neither line was pursued, and his account rejected without such necessary checks.
101. The charging decision, if that is what Mr Singh's memorandum represents, was flawed and inadequate. He applied a test of the prospects of success in addition to the realistic prospects of a conviction, and appears to have advised in favour of a charge of theft where he considered the prospects of success to be low. Whilst the Code for Crown Prosecutors was not specifically identified as the test to be applied by the Post Office until 2007⁹⁸, such an approach would be wholly inconsistent with its application. By reference to the questions posed by the Inquiry, there was no evidential analysis and the decision was neither thorough nor considered.
102. In fact, it is difficult to understand the evidential basis for the charge of theft that was initially brought. I am supported in that view by the questions apparently raised about this charge by the Crown Court Judge. Mr Blakey had admitted to altering records in relation to cash in hand to conceal shortfalls for which he was not responsible. He denied any appropriation of monies from the Post Office, and other than the Horizon data there was no evidence that he had. There was no evidence of financial benefit to him, and his account of using his own monies to meet earlier shortfalls was not

⁹⁸ POL00104812

checked. It follows that there were limitations to the evidence to demonstrate dishonesty by Mr Blakey (beyond the covering of shortfalls), or evidence of appropriation in the sense of monies going to him. Neither issue was addressed in the advice. Indeed, the evidential basis for dishonesty for either charge was not addressed at all. The public interest was not addressed at all.

103. The charging of both theft and false accounting was not justified by the advice either by reference to the decision of the Court of Appeal in *Eden*⁹⁹ or the available evidence. The fact that the plea to false accounting was taken on Mr Blakey's account to the Second Sight review, only after the Crown Court judge had raised concerns about the evidential basis for the theft charge, suggests a lack of rigorous thought about what charges were appropriate. It does not appear that the theft charge was used as a means to encourage a plea to false accounting, again on Mr Blakey's account to the Second Sight Review. That it may have had that effect, when the theft charge was not justified, is a separate matter.
104. I have not seen any indication as to what information was shared when the summons to initiate proceedings was obtained. But the lack of investigation of important areas would be consistent with those limitations not being recognised or identified when the summons was sought. The disclosure schedule in the majority of cases, consistent with the limitations of the investigation, demonstrates that material that could have undermined the prosecution case was not sought, and thus not disclosed. The lack of evidence of any review of the schedule by the prosecutor is also concerning. It does not suggest that disclosure was being conducted in a "thinking manner" and was consistent with disclosure as "a box-ticking exercise".¹⁰⁰

TAHIR MAHMOOD

105. Tahir Mahmood was a Sub-Postmaster in Selly Oak, Birmingham. He was 30 years old at the time that the decision was made to prosecute him.

⁹⁹ (1971) 55 Cr.App.R. 193

¹⁰⁰ Adopting the language of the Court of Appeal in *Olu* [2010] EWCA Crim 2975

106. Tahir Mahmood was charged with six counts of false accounting, contrary to section 17(1), Theft Act 1968. The charges all related to individual dates where the cash in hand at the close of business was not the same as recorded on Horizon (namely on 13th and 18th August 2004, 24th November 2004, 19th January 2005 and 13th and 26th April 2005). On 17th November 2005, in the Crown Court at Birmingham before HHJ Griffith-Jones, Tahir Mahmood pleaded guilty to six counts of false accounting and asked for 84 similar offences to be taken into consideration. The alleged shortfall was £33,437.39. On 21st December 2005, Recorder Stevens sentenced him to nine months' imprisonment.
107. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*¹⁰¹, Mr Mahmood was one of those in category B, *"in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse."*
108. In brief summary, the facts were that Mr Mahmood had been the Sub-Postmaster for 6 years. On 30 April 2005, Post Office auditors had made a visit to Mr Mahmood's branch. They were accompanied by Post Office investigators led by Colin Price, Investigation Manager. Mr Mahmood informed them that the branch was about £25,000 short. The audit was completed and a shortage of £33,437.39 was identified. In interview under caution on 4 May 2005, he said that he had been incurring large losses since a previous audit in March 2003. The first loss had been shortly after that audit and was in the region of £400 to £500. He had been falsely inflating the cash account balance every week since then. He had done this in order to hide the losses which he could not afford to pay, believing that his contract would be terminated if Post Office managers discovered the truth of the situation. Mr Mahmood denied taking any of the money for himself, and said he believed the losses had been caused by giving cash to customers by mistake.

¹⁰¹ [2021] EWCA Crim 577, at §75

Investigation

109. There is a dearth of papers in this case (only 88 items in the case file). The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. Again, therefore, it is not easy to identify whether those roles were undertaken and if so by who.
110. The Investigation Case Summary¹⁰² was prepared by Colin Price, the Investigation Manager, who also authorised the suspension of Mr Mahmood's contract on 30th April 2005. He was present when investigators attended Mr Mahmood's post office, it was he that cautioned him and he that interviewed Mr Mahmood. The Summary was addressed to Sue Mudderman, who is identified in the report both as Contracts Manager and Discipline Manager. This approach would accord with the 'Managing shortages at audit' policy¹⁰³, which required the field support advisor to report audit shortages to the contract advisor. It is not clear what role Ms Mudderman played thereafter in the process by which Mr Mahmood came to be prosecuted.
111. The Investigation Summary shows that the investigators and auditors were already on the premises, and the audit had started, when Mr Mahmood arrived on the premises. He made admissions, to the effect that "*there were some differences*", when asked if there was any more cash in hand and that "*the post office would be about £25,000 short*" at a stage when he had not yet been cautioned. When the auditors identified a shortfall of £33,437.39 he was then cautioned. Mr Price refers to completing a record in his notebook, but that is not included in the papers that I have seen.
112. The interviews¹⁰⁴ on 4th May 2005 that were undertaken appear to have been PACE compliant. Mr Mahmood was accompanied by a Federation representative, but not a solicitor. A form CS001 was provided that set out Mr Mahmood's rights, and he confirmed that he did not require a solicitor. What is significant, as a context for the investigative and prosecutorial decisions that followed is the following:

¹⁰² POL00041329

¹⁰³ POL00118154

¹⁰⁴ POL00052898, POL00052899

(a) In the first interview¹⁰⁵, Mr Mahmood said he had been coming up with shortages of like a thousand to two thousand a week and then panicked and added the figures in. It was put to him that checking daily vouchers and giros against the Horizon records was “a fail proof system”, and he agreed. The “fail proof” nature of the system was repeated during the interview. He explained that he checked the figures matched, he did not check the cash and stock that underlaid those figures. He agreed this was dishonest and manipulation of accounts because he could not make good the losses Horizon was showing. He was asked about the lack of error notices he was receiving, and the interviewer stated he was contradicting himself.

(b) In his second interview¹⁰⁶, Mr Mahmood specifically raises that the issues begun when the Horizon system was first installed in the office. He stated he had never taken money for his own use, and he was panicking and did not know how to pay the money back. During the interview it was put to him that he had taken the lump sum(s) for his own benefit, which he denied. He accepted falsifying accounts to fix the issue. Throughout the interview he denied taking money from the post office and stated it might have happened by giving it to customers by mistake. He said that he could not otherwise account for the losses.

113. In terms of investigative steps, the material I have seen is very limited. The Casework Management Initial Tick List¹⁰⁷ records that the case file was logged, and compliance checks undertaken on 17th May 2005, and that the discipline report (which I take to be the investigation summary) were forwarded to the Conduct Manager and Head of Operations on the same day. The case materials I have seen show that there were applications for production orders of bank statements as would be expected. I have not seen evidence of analysis of any financial information gained as a result. This should have identified any financial gain to Mr Mahmood, or evidence of any attempts by him to use his own money to make good shortfalls. It was therefore a reasonable line of enquiry.

¹⁰⁵ POL00052898

¹⁰⁶ POL00052899

¹⁰⁷ POL00052874

114. There is no evidence of any awareness of issues with Horizon in the investigation. The investigation proceeded on the basis that Horizon could not have been in error. This mindset is illustrated throughout the interviews of Mr Mahmood. No data was sought, or checks undertaken. No exploration was made of whether Mr Mahmood, or anyone else at his branch, had contacted relevant helplines. As was observed in the appeal proceedings¹⁰⁸: *“There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no investigation into the matters raised by Mr Mahmood during his interview – even though he had volunteered a time period in which the problems had begun. There was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.”*
115. It follows, by reference to the CPIA Code applicable at the time that these reasonable lines of enquiry were not identified or pursued. That was a failing both on the part of the investigator and the prosecutor concerned.

The charging decision

116. The Casework Management Initial Tick List¹⁰⁹ records that the case file was sent for prosecuting advice on 17th May 2005, and thus less than 2 weeks after Mr Mahmood was interviewed, and that a reply was received on 27th May. That reply appears to have been the charging memo¹¹⁰, of that date prepared by J. McFarlane, Principal Lawyer in the Criminal Law Division of the Post Office.
117. The charging memo was brief. It concluded that the evidence was sufficient to afford a realistic prospect of conviction for false accounting. The author explained that the decision to charge false accounting instead of theft was on the basis of the various people who had access to the office who could thus have taken the monies (and the possibility that Mr Mahmood’s father could have done so). In other words, the charging was based on the number of other suspects who could have committed theft, thereby reducing the probability of a conviction of Mr Mahmood for that offence, rather than, for example, an analysis of his financial information showing that he had not benefited financially. The false accounting charges were principally justified on

¹⁰⁸ [2021] EWCA Crim 577, at §322

¹⁰⁹ POL00052874

¹¹⁰ POL00052884

the basis of the defendant's own confessions to having covered shortfalls to keep his job. In relation to the consideration of the public interest, the memo stated that the test was met *"in view of the serious and systematic nature of the alleged offences and the large amount of money involved"*.

118. There was no reference to issues with the Horizon system and it appears it was assumed that the false accounting offences therefore related to large amounts of money that was in fact missing. Moreover, the charging decision was seemingly based solely on the description of matters contained in the equivalent of the investigation summary. No statements had yet been prepared (as is shown from the list of such statements requested in the charging memo). There was no evidence of consideration of the defendant's financial statements which did not seem to show any deposits or profits, albeit given the choice of charge being predicated on the basis it was to keep his job this was perhaps understandable. No enquiries were suggested in the charging memo in this regard. There is no evidence of any awareness of issues with Horizon in the prosecution, and the charging memo did not request any enquiries to be made in this regard. The prosecution proceeds on the basis that Horizon could not have been in error.
119. By reference to the Code for Crown Prosecutors, the prosecutor in this case did address, to a limited extent, both limbs of the test. She did not undertake any detailed analysis of the evidence, or potential defence case. There is, for example, no assessment of whether dishonesty could be proved. She did not identify further lines of enquiry, but she did identify evidential requirements. Whilst the analysis of the public interest was limited, there was a recognition of the need to consider it.

Proceedings

120. The Casework Management Initial Tick List¹¹¹ records that the case file was sent for process, in relation to the obtaining of a summons against Mr Mahmood by the Investigation Manager, on 1st June 2005. I have not seen the application made for the summons.

¹¹¹ POL00052874

121. The charging memo¹¹² indicates that Mr John Dove, Solicitor Advocate was to be instructed to prosecute the case. I have not seen his instructions. However, it is clear that Counsel was instructed to provide an advice on evidence, because such an advice was supplied by Richard Cole of 33 Park Place, Cardiff, on 8th November 2005¹¹³. It is apparent counsel had access to case papers not provided to the Inquiry, including statements and a schedule of unused material.
122. Counsel's advice shows an awareness of the application of the Court of Appeal decision in Eden¹¹⁴. He advised that on the evidence, which in effect meant Mr Mahmood's account in interview, it was appropriate to charge false accounting rather than theft because there was no evidence of Mr Mahmood taking monies, and the gain to him through his accepted falsification of the accounts was "*putting off the evil day of having to sort out the muddle and pay up*" (quoting Eden). Counsel's advice also shows an awareness of the relevance of the Horizon data. He inquired as to whether the Horizon system could be interrogated to provide the actual balances for those weeks to which the false accounting charges related. Counsel also asked about the relevance of the lack of error notices and potential explanations. He also asked whether Mr Mahmood's bank account had been interrogated for any financial gains.
123. I have not seen any response by the Post Office to Counsel's advice, or whether further enquiries were made on the basis of that advice. The conclusion of the Court of Appeal quoted above would suggest not. Counsel's advice shows a recognition of the correct approach, identifying lines of enquiry and further evidence that was required, but there is less evidence that the advice was acted on, or chased. It may be that Mr Mahmood pleaded guilty before the advice could be taken further.

Disclosure

124. In the charging memo¹¹⁵ there was a specific request for disclosure schedules to be compiled but these were evidently not compiled and reviewed before a charging decision was made. There is no schedule of non-sensitive unused (equivalent to an

¹¹² POL00052884

¹¹³ POL00052888

¹¹⁴ (1971) 55 Cr. App. R. 193

¹¹⁵ POL00052884

MG6C) or schedule of sensitive unused (MG6D) in the papers provided. Once the case was committed it appears a schedule of unused material was submitted, and the legal team at Royal Mail asked whether there would be any material that was disclosable¹¹⁶. It is not clear whether this is to interpreted as a request for an investigator's report (MG6E) rather than a delegation of responsibility for disclosure in its entirety. I have seen no evidence of actual disclosure being undertaken, beyond this. The failure to have pursued reasonable lines of enquiry relating to Mr Mahmood's finances and the reliability of the Horizon data means that there were consequential limitations to the disclosure that ought to have been made of material that ought to have been obtained in these areas. There is no evidence that any consideration was given to whether the issues Mr Blakey had reported in relation to Horizon should have involved any disclosure to Mr Mahmood.

Assessment

125. As a starting point, Mr Mahmood did tell those interviewing him that he had altered accounting material to conceal shortfalls, and that he had done to in order to keep his job. There is no evidence beyond those admissions of what he did, or why. Those admissions were acted on by both investigator and prosecutor without more.
126. The investigation, as a result, failed to pursue reasonable lines of enquiry as to Mr Mahmood's finances, and whether he had obtained any financial benefit, and as to whether the shortfall was a genuine one by reference to the reliability of the Horizon data. There does not appear to have been any identification of these shortcomings by the prosecutor, although they were raised by counsel instructed (albeit at a stage where Mr Mahmood's guilty pleas intervened).
127. The prosecutor applied the correct test, in terms of the application of the two limbs of the test in the Code for Crown Prosecutors. There was no analysis of the evidence identified to explain how the decision was reached, and this in particular means that the prosecutors did not set out the basis on which she concluded that dishonesty could be demonstrated. She did not raise any question about the reliability of the evidence,

¹¹⁶ POL00439364

which the Code for Crown Prosecutors, had she been applying it correctly, would have enjoined her to do. It was a brief charging advice, and therefore cannot properly be described as thorough.

128. There is evidence that the requirements for schedules of unused material, and a review of those schedules, were appreciated. There is less evidence that these requirements were actually met, or that any sufficient disclosure was undertaken before Mr Mahmood pleaded guilty.

CARL PAGE

129. Carl Page was the sub-postmaster at Rugeley, and had been so since 1997. He initially operated the post office in conjunction with his wife, but they divorced in 2001. From 1998 they had operated a Bureau-de-Change at the branch.
130. The history of Mr Page's case is not straightforward, and although there is voluminous material, there is limited material in relation to the matters that I have considered in relation to each case, namely the investigation, charging decision, disclosure and the acceptance of a guilty plea on a basis. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*¹¹⁷, Mr Page was one of those in category B, "*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*"
131. By reference to facts as summarised in the Court of Appeal¹¹⁸ the following chronology is clear. In December 2003, Mr Page and a co-defendant, John Whitehouse, were jointly charged with conspiracy to defraud and theft. The prosecution case at the first trial was that Mr Page had colluded to steal money with Mr Whitehouse, who was a customer in relation to the purchase of foreign currency. The theft charge was founded on a Horizon snapshot which identified £282,000 in foreign currency to be missing. At a trial at the Crown Court at Wolverhampton before His Honour Judge Wood QC in

¹¹⁷ [2021] EWCA Crim 577, at §75

¹¹⁸ [2021] EWCA Crim 577, at §277. I have also taken the chronology from Mr Page's Mediation submission in 2014, POL00061506

July 2005, the jury acquitted both of conspiracy to defraud but was unable to reach a verdict on theft. Mr Page was retried on his own for theft. At the second trial, it was alleged that Mr Page had physically stolen £282,000 from the branch and hidden the losses on the foreign exchange system. The theft was alleged to have taken place between 1 March 2002 and 14 July 2003.

132. Two separate defence expert reports were served, one in relation to each trial. Both noted that the prosecution case was almost exclusively based on the missing money in Horizon but the prosecution argued that it was also based on data from the Forde Moneychanger (which is separate from Horizon). In his defence statement for the second trial, Mr Page denied that he had been dishonest, saying that the Post Office could not prove how much money ought to have been in the accounts at the beginning or end of the indicted period, or when or how money was taken.
133. On 15th November 2006, in the Crown Court at Stafford before His Honor Judge Mitchell, Carl Page pleaded guilty to theft. The indicted shortfall was £282,000, but amount of the theft was reduced to £94,000 following an accepted basis of plea, which asserted: *“The Defendant stole £94,000 from the Post Office having begun to do so on return from holiday in August 2002. The remaining deficit of £188,000 may have been the result of incompetent accounting or possibly theft by other person(s)”*. On 19th January 2007, he was sentenced to two years’ imprisonment.

Investigation

134. Initially, it appears that the investigation involved not only the Post Office but HM Customs and Excise and Staffordshire Police. By reference to the case summary¹¹⁹ ultimately prepared for the conspiracy to defraud prosecution, the chronology appears to be as follows:
- (a) In December 2002, a Post Office Foreign Currency Manager, Laurence Hutchins¹²⁰ had noted large volumes of currency were going to the Rugeley post office and was told by Mr Page that he had a client who required such sums;

¹¹⁹ POL00065034

¹²⁰ Witness statement served in the conspiracy to defraud trial, POL00062370, p.25

- (b) In January 2003, Customs officers¹²¹ undertook surveillance which identified Mr Whitehouse as that customer. At that time, HM Customs was undertaking an investigation of possible money laundering by Whitehouse. He was arrested and interviewed by Customs before being released, and rearrested by Staffordshire Police;
- (c) Following Whitehouse's arrest on 13th January 2003, Manish Patel¹²², a Post Office Investigator who had been notified of the Customs money laundering investigation, determined to undertake searches at the Rugeley post office and Mr Page's home. On 14th January, an audit was undertaken at the post office which identified a shortfall of £645,345.18, including £282,000 in foreign currency¹²³. It was later confirmed¹²⁴ that no written record had been made of the searches relating to Mr Page. This was a contravention of the Post Office Investigation Policy¹²⁵, which provided a form CS005 that was to be completed.

135. Mr Page and his co-accused John Whitehouse were arrested by Staffordshire Police on 13th January 2003. The involvement of the police accorded with the Post Office Arrest Procedure¹²⁶, which recognised the limitations to the Post Office's own powers in this regard. According to a letter from that force in May 2003¹²⁷, it was then decided that the Post Office would lead the investigation into a conspiracy to defraud, with a view to establishing the extent of financial loss. The police focus was on phone analysis and examination of the accused's financial affairs. The police investigation did not uncover any suspicious calls, and found "*no evidence of any transactions between the two men's bank accounts and neither party appeared to be living beyond their known legitimate means*". In the absence of such evidence, the police decided not to pursue any charge against either. It was, therefore, the Post Office that pursued the investigation to prosecution.

¹²¹ Surveillance statements were served in the conspiracy prosecution, POL00062370, from p.35

¹²² Witness statement served in the conspiracy prosecution, POL00066551, p.157

¹²³ Witness statements from the auditors service in the conspiracy prosecution, POL00062371: Orgill p.64, Edwards p.67, Burrows p.72

¹²⁴ POL00067072

¹²⁵ POL00104752, at para.3.7

¹²⁶ POL00104760

¹²⁷ POL00045921

136. Both Messrs. Page and Whitehouse were interviewed. In the case of Mr Whitehouse, this interview at 17.02 on 13th January was undertaken by Customs Officers¹²⁸. In the case of Mr Page, that interview took place at Stafford Police Station at 21.34 on 13th January¹²⁹, and was undertaken by police officers. Mr Page declined the assistance of a solicitor. He accepted this dealings with Mr Whitehouse, and agreed that he gave Mr Whitehouse better exchange rates than the Post Office rates.
137. Mr Page was interviewed again after the audit on 14th January¹³⁰. This time he was interviewed by Manish Patel, the Post Office investigator as well as by a police officer, and this time he was accompanied by his solicitor. He was asked further questions about the Bureau-de-Change transactions. He said that he had told his area managers, who he named, that he was doing this, and had been doing it without objection from the Post Office for 5 years. The procedure adopted for this interview accorded with the Post Office interviewing policy.¹³¹
138. This account was investigated, and statements were taken from two relevant managers, namely Steve Geraty and James Coney¹³², although it was accepted when he was interviewed that he had not been told that he could not change the exchange rate¹³³. In this regard, the Second Sight review initially¹³⁴ considered the statements from Mr Geraty as “*unhelpful*” in that it did not contain a definite response to Mr Page’s assertion that Mr Geraty had permitted his dealings with Mr Whitehouse, and a flexible approach to exchange rates. It observed that there was no denial of this. The Post Office in its response to the draft review disputed this analysis. However, it remained the Second Sight Review’s conclusion¹³⁵ that this issue had not been addressed properly by Mr Geraty. Indeed, the Second Sight Review concluded that it was more likely than not that Mr Geraty had authorised Mr Page’s conduct.

¹²⁸ Exhibit bundle from conspiracy prosecution, POL00062573, p.1

¹²⁹ Exhibit bundle from conspiracy prosecution, POL00066537 p.114. It should be noted that the transcript is incomplete.

¹³⁰ Statement of the investigator Mr Patel, POL00066551, p.164; Transcript POIL00066734. It should be noted that again the transcript is incomplete.

¹³¹ POL00104758

¹³² Statements served in the conspiracy prosecution, POL00066551 pp.112 and 115

¹³³ Transcript of 14/1/03 interview POL00066734, p.17

¹³⁴ POL00065032

¹³⁵ POL00046978

139. In terms of other investigation of Mr Page's interview account, statements were also taken from the staff at the Rugeley Post Office in relation to their roles, and lack of accounting record-related activities¹³⁶, and evidence was obtained in relation the previous audit at the branch in 2002¹³⁷. It was not until February 2006 that an error made at that audit was identified and communicated to the defence¹³⁸. There was some investigation in relation to Mr Page's finances, to the extent at least of establishing his earnings from the Post Office¹³⁹. There were also bank statements relating to Mr Page in the unused material schedule¹⁴⁰. It is also right to note, as was made clear in a letter from Staffordshire Police in May 2003¹⁴¹ that they, rather than the Post Office, had undertaken the investigation into the suspects' finances and therefore material in that regard was more likely to, and did¹⁴² appear, on the schedule of non-sensitive unused material produced by the police. Correspondence¹⁴³ confirms its disclosure.
140. The documentation seized from the branch was examined and the investigator Mr Patel put this into schedules that were relied on at trial¹⁴⁴. The material derived from the Forde Moneychanger, the programme used in relation to the Bureau-de-Change, and a comparison of these records with those on the Horizon system. It was the prosecution case, certainly by the time of the retrial¹⁴⁵, that Mr Page had routinely inflated the foreign currency figures on Horizon.
141. Mr Page was interviewed again on 23rd April 2003¹⁴⁶. He was offered the assistance of a solicitor, who was present, and a Federation representative, which he initially declined. The focus of the interviews was again the transactions with Mr Whitehouse. In relation to the £282,000 shortfall, Mr Page said that this was attributable to certain

¹³⁶ Statements served in the conspiracy prosecution, POL00062371: Pearce p.77, Batey p.89 and POL00062372, Cary p.213, Graham p.215, Rogerson p.217

¹³⁷ POL00062372, Davies p.219

¹³⁸ POL00066545

¹³⁹ POL00062372, statement of Roberts p.223

¹⁴⁰ POL00062577

¹⁴¹ POL00045921

¹⁴² POL00067170

¹⁴³ POL00067072

¹⁴⁴ Statement of the investigator Mr Patel, POL00066551, p.164 and opening note from retrial, POL00066717

¹⁴⁵ Retrial opening note POL00066717, at §35

¹⁴⁶ Tape 1, POL00066733; tape 2, POL00066732; tape 3, POL00066731; tape 4, POL00066730, tape 5, POL00066729

cheques from Mr Whitehouse. He denied that he had been inflating figures on Horizon, and he said that this would have been shown by earlier audits.

Charging decision

142. I have not seen any form of charging decision in this case, and can only make limited comment in this regard in its absence. There are grounds to query that decision in relation to a prosecution of Mr Page for theft, and the basis for that prosecution, which makes the lack of a charging decision regrettable. I am unable to address the extent to which the test in the Code for Crown Prosecutors was applied, by whom, on what analysis of the evidence, and whether the reliability of evidence or the weighing of factors relevant to the public interest were features of that decision making process.
143. The material generated in this case does attribute a degree of uncertainty to the prosecution as to how it put its case on theft. In his mediation application notes¹⁴⁷, Mr Page refers to the prosecution admitting in the course of the proceedings that they “*did not know what was missing from the post office, either it was money, stamps., stock or others, but only knew that an amount in monetary value was missing*”. The Second Sight Review agreed with this assessment (see below).
144. In relation to the theft charge, on 23rd February 2006¹⁴⁸ the prosecution responded to a defence query as to the period of the indictment. They stated that they could not show when Mr Page started to steal money from the Post Office, and added that the prosecution case was not that inflation of foreign currency figures on Horizon represented the only way in which theft had been concealed. In then addressing an error made in relation to the June 2002 audit, the letter observed “*the fact that the significance of the cheques was initially missed by the prosecution reflects the difficulties in assessing the true position of the cash/stock held when manipulated accounts are presented.*”
145. This stance was examined, and criticised, by the Second Sight Review into Mr Page’s case¹⁴⁹. It noted that the prosecution had originally concluded that the balance snapshot referred to £282,000 of foreign currency that could not be located because it

¹⁴⁷ POL00045866

¹⁴⁸ POL00066545

¹⁴⁹ POL00046978

had been stolen. They had presumed that one of the cheques recovered during the search of the branch was payment for the missing currency, but then accepted that it was in fact presented to cover three previous checks that had bounced. It was then their conclusion that there must be a real shortfall. However, as the Second Sight Review observed *“while we have seen evidence that supports the auditors conclusion that there was a real shortfall, we have as yet seen no evidence that convinced us that all of that shortfall was the result of theft... Post Office was unable to attest , during the 2 trials, to anything more than that the branch Audit had established that foreign currency to the value of £282,000 that was meant to be in the branch was simply not there. That does not, in our view, constitute evidence that that amount of currency was stolen at all, let alone by the Applicant. Indeed, in the second trial, £188,000 of that shortfall was attributed to other causes than theft by the Applicant”*.

146. At the first trial, when Mr Page was cross-examined¹⁵⁰, he said that he did not know whether money was missing or there was an accounting problem, it was put to him by prosecution counsel that he knew there was no accounting problem, and that he was a thief. This was in accordance with the stance adopted by the prosecution during the trial, but was not their stance at re-trial. The Court of Appeal¹⁵¹ observed in relation to this: *“We ... regard it as unsatisfactory (to say the least) that Mr Page was subjected to cross-examination in the first trial on a basis which POL felt unable to sustain thereafter”*.
147. This accords with the observations of the Second Sight Review¹⁵² that the two prosecutions related to 2 entirely different losses. And says *“at the first trial the Crown had been unsuccessful in persuading a jury that the applicant and his customer had conspired to deprive it of profits that it asserted that it would, but for those beneficial exchange rates, have made. It had also failed in convicting the applicant of stealing foreign currency to the value of £282,000. In the second trial, it had again brought the charge of theft, asserting that the applicant had stolen £282,000 in an unspecified way...”*
148. There is no rule that prevents a prosecutor from changing the way in which they put their case as the evidence develops and reveals that the original approach was in error.

¹⁵⁰ As summarised on Mr Page’s behalf to the Court of Appeal, [2021] EWCA Crim 577, at §105, Transcript, POL00062575

¹⁵¹ [2021] EWCA Crim 577, at §284

¹⁵² POL00046978, at §5.2

What is concerning here is that the acquittal at the first trial does not appear to have led to a more thorough reassessment by the prosecution of its case, or the reliability of the evidence and especially the data on which it was based. The change of stance has the appearance of the prosecution adapting how it put its case so that it could continue to prosecute despite the outcome of the first trial, rather than a detailed reassessment of the evidence.

Horizon issues

149. The issues with the Horizon data in Mr Page's case arose from the analysis of experts instructed on his behalf.
150. In preparation for the conspiracy trial, the defence served, it appears, two reports from David Liddell, an accountant at PKF(UK) LLP. I have only seen his supplemental report, dated June 2005¹⁵³. In relation to the auditing methods employed at Rugeley Post Office, he opined that *"I have serious reservations that the work carried out did not constitute an audit in the sense that data was not verified back to source documentation nor critically examined before conclusions were drawn"*. He said that the audit was more akin to a stock take and therefore the balanced identified may not be correct. The Second Sight Review¹⁵⁴ considered Mr Liddell's analysis and concluded that the *"only clear explanation"* of Post Office foreign currency accounting came from him.
151. In preparation for the retrial, the defence served a report from Timothy Taylor of KPMG¹⁵⁵ to consider the accountancy evidence relied on by the prosecution. He explained that the alleged inflation of foreign currency on Horizon was in fact the difference between the Forde Moneychanger printouts and the actual cash on hand. He agreed that there was inflation in this sense. He said that he found no evidence that theft was concealed through cash on hand figures. The alleged £282,000 deficiency *"could in practice be the result of other unidentified errors or differences in Horizon"*. He observed that the prosecution case depended on Horizon *"working correctly throughout*

¹⁵³ POL00045868

¹⁵⁴ POL00046978, at §4.26-29

¹⁵⁵ POL00045790

the indictment period", but aspects of this had not been checked at the time, and could not be checked now.

152. Observations of Second Sight Review¹⁵⁶ were made on both expert reports: *"both experts' reports raised the question as to whether the 'audits' actually constituted a proper audit in the sense that data was not verified back to source documentation nor critically examined before conclusions were drawn. Both experts concluded that they were more akin to a stock take at a particular time and that it was dangerous to draw the conclusions the post office had drawn from them"*. They observed that the Post Office characterisation of the audit as *"the current trading position of a branch at the moment the audit was undertaken"* *"does sound very much like a stock take, rather than what is normally understood to be an audit"*.

Disclosure

153. I have seen a schedule of non-sensitive unused material (MG6C), which is undated and unsigned by the disclosure officer and not annotated in any way by the reviewing lawyer. It does appear, however, that the schedule was disclosed in the conspiracy proceedings. It includes warrants, custody and interview-related material, drafts of schedules and interviews undertaken with Mr Page following the June 2002 audit. In short, the items listed on the schedule are all items that are correctly there identified. The schedule does not include, and thus there is no suggestion of disclosure of the underlying material from Horizon that underpinned the prosecution case.
154. There is also no reference to records of contact with relevant helplines. By the time of the Second Sight review¹⁵⁷, records of contact with the Horizon helpdesk were no longer available, but those relating to the NBSC were, and included evidence of calls relating to the use of Horizon. The Post Office mediation investigation report¹⁵⁸ observed that one call suggested a system fault *"but these do not correlate with the discrepancies reported"*. The calls are set out in the preliminary investigation report, showing 231 calls between 2000 and 2003. It is not clear whether any of this material was disclosed at the time of Mr Page's prosecution, when he was asserting that he was

¹⁵⁶ POL00046978

¹⁵⁷ POL00045996

¹⁵⁸ POL00045996, p.2

not a very competent post master and made mistakes, and also raising the question of problems with the operation of Horizon at his branch.

155. This was a prosecution that followed investigation by Customs and the police as well as the Post Office. Given that other investigative authorities were involved, it was necessary to consider material generated by their investigations for disclosure as well as the Post Office's own. It is clear that the Post Office recognised this, although it also appears that the defence had chased such disclosure before it arrived.¹⁵⁹ There was correspondence¹⁶⁰ in advance of the first trial that recorded that Post Office lawyers had inspected and reviewed the Customs material, and disclosure was made from this. It is also clear that the correct test under the CPIA was applied in this regard¹⁶¹. The defence in correspondence¹⁶² observed that "*this is no more than any prosecutor is duty bound to do*". That is a correct observation, but it is clear that in this area the prosecution had recognised that duty. This included, as was rightly observed in correspondence¹⁶³, that the prosecution had to consider the test for disclosure, rather than simply hand over material because it had been requested.
156. Similarly, a police schedule of non-sensitive unused was provided and appears to have been disclosed. This schedule¹⁶⁴ was detailed in terms of its contents and the description of each item. There is no indication on the face of the document that its content had been reviewed by a lawyer. It is also right to note, however, that the financial investigations undertaken by the police, as detailed in the schedule, did form part of the disclosure made by the Post Office, and that this had been undertaken through the disclosure of the police schedules before such disclosure was requested by the defence¹⁶⁵.
157. I have not had sight of the defence statements from the first trial. However, correspondence¹⁶⁶ with the defence in advance of the first conspiracy trial does show the prosecution responding appropriately to a range of requests for disclosure. It is

¹⁵⁹ POL00067081

¹⁶⁰ POL00667072, POL00067074, POL00067075, POL00067077

¹⁶¹ PO000067075, POL00067077, POL00067084

¹⁶² POL00067081

¹⁶³ POL00067084

¹⁶⁴ POL00067170

¹⁶⁵ POL00067072

¹⁶⁶ POL00067072, POL00067074

right to note that topics this covered such as training records, records and procedures relating to the Bureau-de-Change, were matters that were specifically addressed by Mr Page in interview, and it would have been reasonable for material relating to them to have formed part of primary disclosure. However, disclosure was made. It is also clear that there was, correctly, cross-disclosure of the defence statements.

158. The prosecution in October 2004¹⁶⁷ gave detail of the detailed work that was being undertaken to meet substantial disclosure requests on behalf of the defence, and to remind the defence that if they considered this to be deficient, they could and should make application pursuant to section 8, CPIA. Such an approach arguably accorded with the Attorney General's 2000 Guidelines (para.14) to the extent that the prosecutor should seek further particulars from the defence where their request or its relevance was unclear. It is not clear that the defence did make any such application. In this correspondence, the prosecution also indicated that they had made arrangements for the inspection of the Forde Moneychanger till rolls. Given the scale of these, this was a reasonable way to afford access, and compliant with the CPIA. However, later correspondence shows that this material was in fact provide to the defence in hard copy.¹⁶⁸ That correspondence also shows the limitations to the material that was available for disclosure to the defence expert.
159. A defence statement was submitted on behalf of the defendant, dated 26 April 2006¹⁶⁹, in relation to the retrial. In so far as is relevant, this pointed out that the prosecution could not say when or how the money was stolen, and relied on Mr Taylor, their expert's analysis. It was therefore asserted that there was no evidence that Mr Page had received a penny of the loss alleged.
160. The Court of Appeal¹⁷⁰ conclusion was that: *"Despite the fact that Horizon's reliability was plainly raised by the defence, there is no evidence of any investigation into the root cause of the shortfall. There is nothing in POL's case papers to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the*

¹⁶⁷ POL00067075

¹⁶⁸ POL00067099

¹⁶⁹ POL00066716

¹⁷⁰ [2021] EWCA Crim 577, at §284

Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage.”

Circumstances of the plea

161. Mr Page addressed his change of plea in relation to theft in his Submission to the Second Sight Review¹⁷¹. He said that prosecution counsel had offered to reduce the level of the theft count to £94,000, and that this should keep any sentence under two years. He was advised that he would serve half of such a sentence and would be a good candidate for an open prison and release on a tag. He added “*by making such an offer, the prosecution make a mockery of the entire justice system*”. Such an approach would appear unusual in my experience. It would be wholly consistent with a prosecutor’s role as a minister of justice to alter the level of theft where it became clear that this was consistent with the evidence. It would not be similarly consistent where it did not reflect the evidence, but was a matter of convenience, with a view to encouraging a plea. Indeed, paragraph 10.1 of the 2004 edition of the Code for Crown Prosecutors would tend to underline that point. The Code makes clear that prosecution counsel should assist the court with its powers of sentencing, but that is not, in my view, the same as a discussion of the nature of the prison to which a defendant might be sent with his counsel.
162. In April 2014¹⁷², the team leader dealing with the Second Sight Review into Mr Page’s case raised the question with Martin Smith at Cartwright King as to the circumstances in which Mr Page came to plead on the basis that he did. Simon Clarke responded on behalf of Cartwright King¹⁷³ to say that such a sequence of events was plausible, and not uncommon. He said it was more normal for the approach to come from the defence, and suggested that it was likely that this had happened here. He said that such an approach would occur where the case was evidentially weak, or the prosecution wished to avoid the cost of a trial. He said that the prosecution would not have been involved in a discussion of sentence or the type of prison.

¹⁷¹ POL00061506, at §32-33

¹⁷² POL00045780

¹⁷³ POL00045781

163. The suggestion that the plea originated with the defence not the prosecution accords with the assessment in the Post Office preliminary investigation report in the mediation process¹⁷⁴. It is there asserted that the figure for the theft was reduced to £94,000 *"following an approach by the Applicant's defence team"*, on the basis that part of the period originally relied on was a period during which Mr Page had been on holiday.
164. However, the Second Sight Review¹⁷⁵ included Mr Page's "professional Adviser" as saying that during the lead up to the re-trial, the prosecution had indicated that they proposed to add a charge of perjury to the indictment to reflect a *"white lie"*, as it is characterised by the Review, in his evidence at trial one. It was then that the prosecution also proposed the alternative of a plea to a lesser sum, which the prosecution contended would result in a lower sentence. As Mr Page's lawyer put it *"the figure of £94,000 was not selected by him. It was proposed by those prosecuting to entice a plea knowing the penalty for theft of less than £100,000 would be less than for theft of £282,000"*.
165. It is right to note that the Court of Appeal did not address the circumstances of Mr Page's plea as they did in the case of some others. It follows that whilst Mr Page's account as to the circumstances of his plea is a cause for real concern, it is difficult to come to a settled position as to what the circumstances actually were. What is of concern, because it echoes the position in Yates, is that the prosecution should exhibit such uncertainty as to the scale of loss that it could be altered to such a significant degree at such a late stage, and yet that uncertainty did not appear to have caused any hesitation in the decision being made to prosecute and to prosecute for an offence alleging financial loss.

Assessment

166. The central concern in the case of Mr Page was that the basis for the prosecution's case underwent a number of seismic changes during its progress through the criminal justice system. The case started as an allegation of conspiring with a customer coupled with an allegation of the theft of foreign currency. The position then moved to an

¹⁷⁴ POL00045996

¹⁷⁵ POL00046978, at §4.21

allegation of the theft of monies and concealed the loss through foreign currency records. Ultimately, the prosecution accepted that the amount stolen was a fraction of that which it had maintained for a number of years. The reason why this is a concern is because, by reference to the material I have seen, these changes are the product of the limitations to the investigation, and prosecution decision making reached without those limitations being an obstacle.

167. In terms of that investigation, it is right to say that there appears to have been appropriate interaction with the other prosecuting agencies that were initially involved, and a greater appreciation of the need to investigate Mr Page's finances than had been shown in some of the other cases dealt with above. However, despite significant reliance on Horizon data, and the advancing of a positive case as to what it was alleged Mr Page had done in relation to that data, that positive case was not tested by an analysis of the underlying data or any testing of its reliability. The multi-agency investigation resulted in significant material for disclosure. Schedules of that material were prepared. There is a lack of evidence that those schedules were reviewed, and evidence that on a number of occasions, and in relation to a variety of material that obviously fell to be disclosed, it was repeated defence requests than resulted in its disclosure rather than a properly conducted disclosure exercise by the prosecution.
168. Although I have not seen the original charging decision, the significant and repeated changes to how the prosecution put its case do call into question how conscientious and thorough that decision had been, and the extent of evidential analysis that underpinned it. In both the investigation and the charging decision there was a failure to assess the implications of Mr Page's account as to the problems he encountered with the Horizon system, and its consequences. This remained the case as a series of expert reports were served on Mr Page's behalf, and yet there is no evidence that this led to a fundamental review of the prosecution's case, or the disclosure the raw material (namely the Horizon data) on which that case was based. As was observed by the Court of Appeal, the root causes of the shortfall were not investigated. This culminated in the taking of a plea to theft by reference to a much reduced loss figure. I have already addressed by concerns in relation to that sequence of events.

OYETEJU ADEDAYO

169. Oyeteju Adedayo was 41 years old when she was investigated. She was the sub-postmaster at Rainham Road post office in Kent.
170. She was charged with false accounting, contrary to section 17, Theft Act 1968, on the basis that an audit at her branch had identified a shortfall of £52,864.08. At the Crown Court at Maidstone¹⁷⁶, she pleaded guilty to three charges of false accounting, and received 50 weeks' imprisonment suspended for 24 months with 200 hours of unpaid work. It appears that other offences were taken into consideration at the sentencing hearing¹⁷⁷.
171. The paperwork relating to this case is very limited, and my ability to address aspects such as disclosure and aspects of the investigation therefore constrained. Mrs Adedayo's case was referred by the Criminal Cases Review Commission ('CCRC') to the Crown Court at Southwark. Mrs Adedayo sought to challenge her conviction on appeal on the basis that her admissions to the auditor, which preceded both her admissions in interview and plea of guilty, had been unreliable. That submission, whilst advanced by the CCRC, was opposed by the Post Office. However, the Post Office opposed neither the application to vacate Mrs Adedayo's plea nor her appeal, by reference to the public interest test for prosecution.

The investigation

172. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. The Investigation Summary was prepared by Natasha Bernard, investigation manager who attended the Rainham Road post office following an audit that had identified a shortage, and interviewed Mrs Adedayo. It appears in two versions, each of which is dated 8th September 2005, although the second version¹⁷⁸ is fuller than the first¹⁷⁹.

¹⁷⁶ POL00044362, POL00030561

¹⁷⁷ 10 offences of False Accounting appear in a list of charges attached to the summons (POL00044358)

¹⁷⁸ POL00044366

¹⁷⁹ POL00044360

173. On 5 September 2005, a routine cash and stock verification audit was undertaken at the Rainham Road post office and a shortage of £52,864.08 was identified. Mrs Adedayo was present and told the auditor, before the audit was undertaken, that there would be a shortage of approximately £50,000. The CCRC¹⁸⁰ considered that there was “a real possibility” that Mrs Adedayo’s admissions to the auditor would have been excluded, pursuant to section 76, PACE 1984, as unreliable. The prosecution position was that Mrs Adedayo had drafted a note which she handed to the auditor. On appeal she contested that, and the CCRC considered the circumstances unclear, not least because the auditor was not asked to make a statement during the course of the investigation.
174. Mrs Adedayo agreed to a voluntary interview at the premises¹⁸¹, which was recorded. She did not have a friend or solicitor in interview, but she was advised that she is entitled. During the interview:
- (a) She explained that she had purchased the post office six years earlier, but only herself worked there when a manager called Joan was not available, and in order to complete the balancing on a Wednesday.
 - (b) She made admissions that she had used Post Office money to repay creditors who had lent her £50,000 for a deposit on a property. She would not give details of her creditors, but said that they were exerting pressure on her. The total amount that she admits to “borrowing” is similar to the amount of loss caused. On appeal, Mrs Adedayo contested the truth of this account. The CCRC¹⁸² did not conclude that the account in interview was false.
 - (c) Mrs Adedayo accepted that she could have used the proceeds of the sale of a property in Berkshire to repay the amount, but had instead used it to purchase accommodation for her family, as that above the post office was not suitable.
 - (d) She admitted inflating the cash figures declared on the cash accounts. She said she had not intended to defraud the Post Office, as her intention had always been to repay the monies. She explained that the letter T against entries in handwritten cash declarations represented amounts that had been taken, but said that other annotations related to monies held at the branch.

¹⁸⁰ RLIT0000185, para.24

¹⁸¹ POL00044368 and POL00052920, repeated at POL00066742 and POL00066745

¹⁸² RLIT0000185, para.22

(e) She said that she would repay the shortage once her remortgage was finalised. It was noted in the investigation summary in September 2005 that *“this has not been received”*. It is right to note that Mrs Adedayo did not raise any issues with regards to the Horizon system in her interview.

175. In terms of investigative steps identified in the investigation summary, Mrs Adedayo gave permission for her finances to be investigated and enquires were made of the Business Support Centre in Chesterfield to obtain cash accounts for the post office. The assessment of the investigator, Ms Bernard¹⁸³, at a time when these enquiries she identified in her investigation summary had not been undertaken was *“the explanation that Mrs Adedayo has given for the shortage is not entirely believable. She was unwilling to provide the names and details of her creditors; she had no proof of a loan and did not obtain any receipts for the £50K she repaid.”* There is no evidence on the papers that I have seen of any enquiries being made in relation to the creditors, for example a consideration of the source of the money that permitted Mrs Adedayo to purchase the business, and evidence of her financial position through the relevant period. In relation to the handwritten cash declarations records, these were further examined by Ms Bernard who noted that *“there seems little point to identifying amounts that include the cash declarations contained within the weekly documents and the letters that are used are always the same, which indicates that they must represent something”*.

176. It was not unreasonable for an investigator to express scepticism about these aspects of Mrs Adedayo’s account for the reasons that Ms Bernard gives. That does not equate to there being no requirement to test the evidence, and that account, through further enquiries. Those further enquiries here appear to have been limited, in relation to Mrs Adedayo’s finances. The CCRC¹⁸⁴ noted that Mrs Adedayo referred in her application for her case to be reconsidered to the making of regular calls to the helpline. The CCRC noted that there was no evidence to support the making of such calls. Given that the ‘Managing Shortages at audit’ guideline¹⁸⁵ specifically identifies the extent to which they sought help as relevant factors in such cases, it is at least arguable that this should have been a routine lines of enquiry even when not raised specifically by the suspect.

¹⁸³ POL00044366

¹⁸⁴ RLIT0000185, para.22

¹⁸⁵ POL00118154

Charging decision

177. At a time when the further enquiries into Mrs Adedayo's finances and the records from Chesterfield were outstanding, Ms Bernard recommended¹⁸⁶ that Mrs Adedayo be charged with false accounting. The case was then considered by Debbie Helszajn¹⁸⁷ at Corporate Security. Her specific role is redacted. It is a very short charging decision which records that Ms Helszajn considered that "*the evidence is sufficient to afford a realistic prospect of conviction*" on three charges¹⁸⁸ of false accounting, contrary to section 17, Theft Act 1968. No indication is given of what evidence had been considered in order to come to decision. It was anticipated that the defence would be a lack of dishonesty, but there was no analysis of what evidence there was to establish this important ingredient of the offence. Ms Helszajn advised that a TIC schedule be prepared to address the other identified weekly cash account records where there was evidence of falsification beyond the three that were the subject of the charges. This was subsequently done.¹⁸⁹
178. No reference was made to the public interest test, or how that was satisfied. In terms of next steps, there was a request for any material that would fulfil the disclosure test under CPIA. No further enquiries were identified as being required, and no question was asked about those enquiries that the investigation summary had identified as being outstanding.
179. I have seen no schedules of unused material, and no evidence of any disclosure being undertaken. I stress that because I have not seen material relating to disclosure, I cannot therefore opine on its sufficiency or otherwise. Given the admissions made by Mrs Adedayo in interview, it was accepted that there was a shortage and that it had been caused by her. It follows that this was not a case where the reliability of otherwise of the Horizon system was an obviously relevant issue either as a line of enquiry or as an area for disclosure, unless there was material available to the investigating or prosecuting that they considered met either test. By this, I mean that if the prosecution was aware of material undermining the reliability of the data that underpinned its

¹⁸⁶ POL00044366

¹⁸⁷ POL00044361

¹⁸⁸ POL00044367

¹⁸⁹ POL00044358, POL00044358

case, it still needed to consider whether that was material capable of undermining its case even where the defendant had made admissions. That accords with the view taken by the CCRC¹⁹⁰.

180. A financial investigation policy log¹⁹¹, dated March 2006 (very shortly after Mrs Adedayo's pleas), noted that she had not repaid the shortfall, and therefore that confiscation proceedings were appropriate. I have seen material¹⁹² relating to those proceedings.

Assessment

181. This case differs from the others that I have considered in the important respect that, on the face of the material at the time, Mrs Adedayo admitted when interviewed that she had inflated cash figures in the accounts to conceal her "borrowing" of Post Office monies for her own purposes. This was, therefore, not a case where accounting records had been altered to address shortfalls that were appearing on Horizon, and for which the reliability of Horizon was therefore a central consideration. In Mrs Adedayo's case, that reliability was not an issue, and non-disclosure relating to the operation of Horizon potentially less of an issue as a result.
182. That said, the consequence of the admissions made by Mrs Adedayo appears to have been that the steps taken during the investigation to test Mrs Adedayo's account, and to determine whether there was evidence that she had behaved dishonestly and with a view to gain for herself or to cause the Post Office loss, were very limited. Each of these was an important element of the offence of false accounting charged. I have similarly not seen any analysis of the evidence in relation to these aspects of the offence in a charging decision, or subsequent advice about or review of the prosecution case. The charging decision recognised that dishonesty was likely to be an issue, but there was no analysis let alone a thorough analysis, of how dishonesty was to be proved. Because of Mrs Adedayo's pleas it appears that there was no real disclosure process to speak of. In short, the whole process proceeded on the basis of what Mrs Adedayo had admitted without consideration of the reliability of the evidence or that account.

¹⁹⁰ RLIT0000185, paras.14-16

¹⁹¹ POL00030561

¹⁹² POL00044370

HUGHIE THOMAS

183. Hughie Thomas had worked for the Post Office for a considerable period, first as a postman between 1965 and 1992, and then as a sub-postmaster from 1994 at the Gaerwen Post Office on Anglesey, North Wales. He was nearly 59 years old when he was investigated.
184. On 29th September 2006, in the Crown Court at Caernarfon, he pleaded guilty to one count of false accounting. It appears that he had originally also faced a charge of theft, relating to an alleged shortfall of £48,450.87, but this was dropped. This was the first case in which Gareth Jenkins provided an expert witness statement¹⁹³. Mr Thomas' written basis of plea stated that no blame was attached to Horizon and that he accepted there was a shortage which he was contractually obliged to make good, but he did not know how it had come about. On 6 November 2006, he was sentenced to nine months' imprisonment.
185. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*¹⁹⁴, in Mr Thomas was one of those in category A, in which the Post Office "... accepted that in cases where the reliability of Horizon data was essential to the prosecution and conviction of the 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." In particular, in his case the Post Office conceded¹⁹⁵:
- i) There was no justification for POL imposing such a condition before accepting Mr Thomas's plea.*
 - ii) POL had dropped the theft charge and so could no longer advance any case that he had stolen the money. That should have left the way open to Mr Thomas to suggest that there was no actual loss and he had only covered up a shortfall Horizon had created.*
 - iii) An attendance note suggests that he was pressured into accepting a positive position on Horizon as a condition of POL dropping the theft charge and accepting a plea to false accounting.*

¹⁹³ POL00165905, para.3

¹⁹⁴ [2021] EWCA Crim 577, at §71

¹⁹⁵ [2021] EWCA Crim 577, at §115

iv)It is arguable that this exerted undue pressure on the appellant to accept that Horizon was “working perfectly” before POL would be prepared to drop theft which had the effect of imposing this agreement on him as a prior condition to dropping theft and taking the plea to the alternative charge.”

The investigation

186. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. As in earlier cases, that means I cannot speak to whether those roles were undertaken, and if so to what standard or by whom. The Investigation Summary¹⁹⁶ was prepared by Diane Matthews, an investigation manager, who attended the post office when a concern had been raised as to the operation of Mr Thomas’ sub-post office, and she interviewed him. It is not clear whether she was being supervised by an officer in charge and if so what they did or who they were.
187. On 13th October 2005¹⁹⁷, an audit at the Gaerwen post office identified a shortfall, the majority of which was in the *“cash element of the balance. No loss or gain had been declared in the previous night’s cash account for week 29”*. The shortfall was £48,157.79. Mr Thomas told the auditor Deborah Edwards¹⁹⁸ that he was glad to see her because they had been encountering problems for a year or so with the computer. He said that he *“thought the problem was with online banking transactions and that he had been paying out customers an amount of money but the Horizon system was showing 0.00”*. He also said that he balanced each week by adding the amount of the shortage to the cash on hand. The auditor checked with the Horizon helpdesk and obtained a report each hour to check transactions. The one nil transaction that was recorded was attributable to a customer not completing the transaction.
188. The investigators asked Mr Thomas to attend a voluntary interview. He agreed to do so but asked for the interview to be delayed to allow his solicitor, who was not available, to attend. Ms Matthews decided that the interview could not wait, and after liaison with the police, they arrested Mr Thomas¹⁹⁹. It is arguable that this was not

¹⁹⁶ POL00046218 (redacted), POL00044862 (unredacted)

¹⁹⁷ Summary POL00044885, investigation summary POL00044862

¹⁹⁸ POL00047942

¹⁹⁹ POL00044862

compliant with the Post Office Arrest Procedure then in operation²⁰⁰. That identified circumstances in which a suspect might be arrested as including where they refuse to attend a voluntary interview or seek to leave before it is completed. That is not what Mr Thomas did here. Under section 58, Police and Criminal Evidence Act 1984, he had the right to a solicitor in interview, and the circumstances in which that right could be delayed were circumscribed. Not wanting a delay in itself is not sufficient, and it is not clear here why such a delay was an issue.

189. Mr Thomas was booked into Holyhead Police Station and interviewed there on tape. The transcript²⁰¹ shows that Mr Thomas was accompanied by a solicitor. It follows that the failure to follow the policy and PACE ultimately do not appear to have been an issue. It also records that he had asked for his Federation representative to attend, but as this person was temporarily running the Gaerwen Post Office, this was not considered appropriate. The Post Office Interviewing policy²⁰² did recognise that the interviewer could determine that a nominated friend was not appropriate. In general terms, the interview was PACE compliant, and compliant with Post Office policy.
190. At the outset of the interview²⁰³, Mr Thomas expressed difficulties in remembering past events without recourse to contemporaneous records. He again stated that he was having problems with Horizon, which had been installed in 2001. In particular his online banking reports showed several transactions with a nil amount. These were occasions when he had paid money to a customer, but the system did not record the value of that transaction. This led to losses and so he altered the cash on hand figures in order to balance the accounts. He made clear he was responsible for the cash accounts. Mr Thomas said that he had tried to make good the losses, but that had not included the £498,000 shortfall identified at the audit. The alleged loss was due to mistakes on Horizon and that he did not understand the system. He had made 13 calls to the Horizon Helpdesk. There were questions during the interview to which Mr Thomas answered “no comment”, but he generally then answered questions when they were repeated.

²⁰⁰ POL00104760

²⁰¹ POL00044864

²⁰² POL00104758

²⁰³ POL00044864

191. Both during the interview²⁰⁴, and in the Investigation report²⁰⁵, the investigators advanced a number of explanations for the nil entries on Horizon to which Mr Thomas had referred. Mr Bradshaw, the investigator, during the interview observed that it could be the result of entering the PIN incorrectly or seeking to use the card to withdraw more than was in the account. He observed in this regard *"we will check that out with the people at Horizon. Get the equipment in the office checked"*. He added *"it is my opinion, and that's what I believe what the zeros are. I do not believe the zeroes contribute to the loss of the £48,000, however we will check that out to ensure what I am saying is correct"*.
192. Ms Matthews repeated these (and further) possibilities in her report²⁰⁶, and added *"If Mr Thomas has paid out funds in respect of the above transactions and a loss occurred then this down to incompetence and not the failings of the Horizon system"*. In keeping with Mr Bradshaw's approach in the interview, Ms Matthews does indicate that she was *"currently awaiting the results of the tests by Fujitsu on the Horizon system"*. The summary prepared when Mr Thomas was charged²⁰⁷, records *"Fujitsu had no concerns regarding the integrity of the data received from Gaerwen Post Office. Further the Horizon system had not been alerted to any hardware problems...no problems were highlighted with regards to the integrity of the data or the system. All nil on-line banking transactions examined have valid reasons for the transaction having no value thatched to them"*. It does therefore appear that the investigators did pursue the question of the system operation at that stage, at least by reference to the explanation that Mr Thomas had advanced in interview.
193. An audit record query was issued by Graham Ward on 24th October 2005²⁰⁸, and thus not long after Mr Thomas was interviewed, requesting *"a thorough examination of the system in general with a view to refuting the Postmaster's allegation that there is a fault with the 'nil' transactions on car account/online banking transactions"*. This appears to have been addressed by Gareth Jenkins from Fujitsu²⁰⁹. The 'Gareth Jenkins chronology'²¹⁰ asserts that it was not until 10th March 2006 that Mr Ward requested ARQ data for a number of cases where *"PO Ltd are being challenged about the accuracy of the Horizon*

²⁰⁴ POL00044864

²⁰⁵ POL00044862

²⁰⁶ Also her witness statement, UKGI00012481

²⁰⁷ POL00044885

²⁰⁸ POL00047740, and repeated in a further query in November 2005, POL00047749

²⁰⁹ POL00047895

²¹⁰ POL00165905, para.5

system". This included Mr Thomas's case. This resulted in a draft statement from Mr Jenkins on 22nd March. His statement focuses on specific nil entries, but includes no wider analysis of the operation of the Horizon system, although his statements in other cases show him to have been able to do so, if the necessary data was provided. It appears from emails quoted in the 'Gareth Jenkins chronology'²¹¹ that this was because he was only asked for this limited approach, but whether or not this was the case will depend on an assessment of the referenced material. An email dated December 2005²¹² suggests that the investigator had removed parts of the kit from the post office and taken them to be stored by Fujitsu, "*in case it is needed as evidence*".

194. In regard to checks by Fujitsu, it is of note that in an email in May 2014²¹³, in the context of the Second Sight review, Martin Smith of Cartwright King requested that references to Ms Matthew's request of Horizon checks by Fujitsu be redacted from her investigation summary before it was disclosed to Mr Thomas "*if those test results cannot be found. Such a sentence may well invite a request for disclosure of the test results. There may also be a risk that the Applicant will suggest that the investigation was inadequate or incomplete*". This suggests that the test results had not been disclosed at the time of Mr Thomas' prosecution, which is a topic to which I shall return.
195. The investigation report²¹⁴ also shows that checks were made with the Horizon help desk for calls from Mr Thomas, because it records that there had been no calls "*in respect of this issue*". An audit record query was issued by Graham Ward on 24th October 2005²¹⁵, and thus not long after Mr Thomas was interviewed, requesting an analysis of help desk calls, with a view to a statement being taken. A statement was taken from Andy Dunks of Fujitsu²¹⁶ in this regard, which produced records of 13 calls from Gaerwen post office to the help desk. Ms Matthews had obtained a record of the calls that he had made, and had spoken to the service and contact manager, to whom Mr Thomas had made no representations about the zero entries or other concerns.

²¹¹ POL00165905, paras.6-9

²¹² POL00068342

²¹³ POL00046219

²¹⁴ POL00044862

²¹⁵ POL00047740

²¹⁶ POL00046194

196. In the context of the Mediation in 2013, the review also noted²¹⁷ limitations to the information about contact between Mr Thomas and the helplines in relation to hardware issues that appear to have occurred from the time of the installation of Horizon onward. The fact that in 2013 the need for additional information in this regard speaks to the degree of investigation of this issue in 2005. The Post Office investigation report in 2014²¹⁸ indicated that such helpline records as existed had been reviewed, and the number of calls was set out.
197. Ms Matthews' witness statement²¹⁹, prepared for the criminal proceedings in March 2006 also shows an analysis of the system for error notices and zero transactions, in relation to the losses. These further enquiries were summarised in an addendum report in December 2005²²⁰. On the basis of these, she concluded that *"no problems highlighted with the integrity of the system. All nil online banking transactions examined have valid reasons..."*. This addendum appears to have followed advice from J. MacFarlane, principal lawyer in the Post Office criminal law division, encouraging the making of the checks with Horizon and asking that they be undertaken for a year, explaining *"if it is to be the prosecution case that the offender stole the money it will be necessary to disprove any claims that the loss could have been attributed to the nil transactions."*
198. In the context of the Mediation process in 2013, it was noted²²¹ that the review of the nil value transactions undertaken during the Post Office investigation had been limited to eight days, which it was observed was *"a very small sample. Further analysis on the rest of the period from 2000 to 2005 would assist in assessing if this is representative of the online banking withdrawals"*. In this context in 2014, in relation to the nil value transactions, the Post Office report²²² indicated that in 2005 there had been a review of three periods of Horizon data over a 12 month period, in which 70 nil value transactions were identified and assessed. The same explanations for nil value transactions were advanced in 2014 as had been by the investigators in 2005. It indicated that the transactional data for the time was no longer available. The 'Gareth

²¹⁷ POL00060995, para.3.32-34

²¹⁸ POL00065188

²¹⁹ UKGI00012481

²²⁰ POL00044867

²²¹ POL00060995, para.3.25

²²² POL00065188, p.2

Jenkins chronology'²²³ suggests that a positive decision was taken to confine the enquiry to these limited periods. It also appears from the Chronology that a reference in Mr Jenkins' draft report to "*there has been some sort of system failure*" should be deleted as this "*seems to accept that failures in the system are normal and therefore may well support the postmasters claim that the system is to blame for the losses!!!!*". This is another area where consideration of the referenced material is necessary.

199. No where in the material that I have seen was a need to investigate Mr Thomas' finances identified. This was potentially relevant both to show the occasions when he had, as he claimed in interview, made good losses that he had identified and to identify whether there was any evidence of the losses actually going to his account. There was also no evidence of any checks with the BSBC call line, as opposed to the Horizon helpline.
200. The limitations to the investigation were well set out by the Court of Appeal when they considered Mr Thomas' case²²⁴. Holroyde LJ said: "*Although some ARQ data was obtained, it was a dip sample and it was only checked for evidence of zero transactions. The data was not checked for bugs, errors or defects or for evidence of theft. The prosecution produced a witness statement from Mr Jenkins explaining the Horizon system and producing some ARQ data. Mr Jenkins produced three schedules from this data to explain that the zero transactions were normal occurrences. Andrew Dunks of Fujitsu made a statement in which he said that between 1 November 2004 and 30 November 2005, Mr Thomas made 13 calls to the Horizon Helpdesk but that – in Mr Dunks' opinion – none of the calls related to faults which would affect the integrity of Horizon. Other material from Horizon was collated and put into schedules but it appears there was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage.*"

Charging decision

201. The charging decision appears to have been contained in a memo from J. MacFarlane, the principal lawyer, dated 6th January 2006²²⁵ and based on the two reports from Diane Matthews. Although the schedule of charges is not attached to the memo, it

²²³ POL00165905

²²⁴ [2021] EWCA Crim 577, at §151

²²⁵ POL00047780

appears that the decision was to charge Mr Thomas with theft and false accounting. The memo states that there was a realistic prospect of a conviction, but added *“it is considered that there is a medium prospect of success as the defendant appears to claim that the losses was due to irregularities with the Horizon system. Records obtained to date would tend to refute this.”* It is not clear how this “Medium prospect” is reconciled to the evidential test in the Code for Crown Prosecutors. There is also no reference to what evidence was considered, beyond Ms Matthews’ summary, and there is no reference to the public interest test at all.

202. In the context of the Mediation in 2013, the review of Mr Thomas’s complaint noted²²⁶ *“the legal process pursued by the Post Office was commenced very quickly after the Audit in October 2005. It is unclear what investigations took place to establish how the differences built up and what the underlying cause of those differences may have been”*. An insight, potentially, into the approach of the Post Office in charging Mr Thomas is provided by the Post Office response to mediation in 2014. In its response to the draft Second Sight report²²⁷ it observed that *“the false accounting in this case means that it was not possible at the time of these events, and it remains impossible now, to precisely identify all the errors in branch which have caused a shortfall”*. It also observed that contractually, the post master was liable for the shortfall however it was caused. This was also the view expressed in the investigation report of the complaint²²⁸: *“...the fact that the errors, whether inadvertent or deliberate, have arisen in branch means that they, and any consequential shortfalls, are the responsibility of the Applicant. This conclusion applies even if the Applicant had not stolen the missing cash and stock”*.

Disclosure

203. I have not seen any schedules of non-sensitive or sensitive unused material, and therefore it is not clear what material was either disclosed or identified as fulfilling the requirements of unused material in this case. Some insight is, however, provided by the responses by the Post Office, which I have seen, to letters from those acting for the defendant, which I have not seen.

²²⁶ POL00060995, para.3.75

²²⁷ POL00061771

²²⁸ POL00065188

204. In February 2006²²⁹, after Mr Thomas was first charged, the Post Office provided the defence with the spreadsheets prepared by the investigator in relation to error reports and balancing figures and nil reports. They also provided the help desk call records. The defendant then appeared for PTPH on 2nd June 2006²³⁰, and the Judge ordered immediate disclosure of the computer data to defence expert. This shows that this underlying material had not been disclosed as part of the original disclosure, even though the February letter makes clear that the defence were anxious as to the accuracy of the Horizon records.
205. In July 2006²³¹, it appears that the Post Office afforded a defence expert access to “some working Horizon kit” and documentation. This may have included that which was disclosed at that time, namely cash accounts from October 2004-2005, the error notice team records, previous audit reports and communications between Mr Thomas and the contract manager.
206. In August 2006²³², the defence had requested disclosure of the daily record sheets prepared by the defendant. These appear to be the written records that he had indicated in interview were the best contemporaneous records of his actions. It is of note, therefore, that these records had not been disclosed as part of initial disclosure, but were being sought by the defence solicitors a month before the trial. During the Mediation process in 2013²³³, it was observed that *“the Post Office removed all documentation from the post office ...this made it impossible for Mr Thomas to establish what had gone wrong”*. In relation to this issue, the Post Office response to the draft Second Sight report²³⁴ did not agree that such documents had been reviewed, but added *“there is no documentation available relating to items taken by Post Office personnel during the branch audit”*.

²²⁹ POL00044888

²³⁰ POL00048011

²³¹ POL00044886

²³² POL00048156

²³³ POL00060995

²³⁴ POL00061771

Second Sight Review

207. Mr Thomas completed a questionnaire for the Post Office Mediation Scheme²³⁵ in which he complained about limitations to his training, the sufficiency of backup through help lines and Horizon. In relation to Horizon he said *"the system was unforgiving and did not enable errors to be connected. I cannot explain how the deficits arose"*. This was supplemented by a more detailed questionnaire and response from Aver Accountants who worked with him in the mediation process in December 2013.
208. The internal response to the Post Office from Cartwright King²³⁶ was to the effect that the defendant had pleaded guilty and thus admitted that he had dishonestly falsified accounting records. It was asserted that this *"is overwhelmingly in support of the contention that the loss was brought about by the Applicant's dishonesty"*. The author of the note observed that no concessions should be made in the mediation process as this might undermine Mr Thomas's conviction (and potentially that of others). Email discussion²³⁷ made clear that the concessions included that the Post Office would have *"done things differently"* if Mr Thomas had been investigated in 2014. This is reflected in the Post Office investigation report for the Mediation²³⁸, which maintained *"that Horizon and the design of its trading and accounting practices allow for transactions to be accurately recorded and do not cause errors in a branch's account"*. It attributed the shortfall to *"the cumulative product of operational errors in the branch by the Applicant"*. It is also reflected in the Post Office response to the Second Sight draft report²³⁹, in which it was asserted that Mr Thomas' voluntary guilty plea was *"good evidence that he submitted false accounts"*.
209. The draft Second Sight report dated August 2014²⁴⁰ noted that because of the lack of contemporaneous documentation from 2005 it was not possible to say whether Mr Thomas' concerns about the operation of Horizon were valid. It was the conclusion there and in its revised version in April 2015²⁴¹ that, despite his guilty plea, Mr Thomas' case was suitable for mediation.

²³⁵ POL00046193

²³⁶ POL00046215

²³⁷ POL00046213, POL00046214

²³⁸ POL00065188

²³⁹ POL00061771

²⁴⁰ POL00061681

²⁴¹ POL00046997

The circumstances of the guilty plea

210. On 29th September 2006, Mr Thomas pleaded guilty to false accounting and the theft charge was not pursued. A memo recording this hearing²⁴² noted *“this was pursuant to a basis of plea which makes it clear that no blame was attributed to the Horizon Computer System. The defendant accepted that there was a shortage but he could not explain how it came about. He accepted that as a Sub postmaster he is contractually obliged to make good the shortage”*. This plea and this basis appears to have followed from a discussion between the principal Post Office lawyer, J. MacFarlane and their agents in the prosecution on 25th September 2006, which was as follows: *“We discussed whether he would plead to false accounting. I mentioned instructions that we would proceed with false accounting providing the Defendant accepts that the Horizon system was working perfectly... Further instructions are that the money should be repaid. Ann could inform Jack that some agreement should be reached taking into account the above instructions.”*
211. In the context of the Mediation in 2013, the review of Mr Thomas’s complaint noted²⁴³ that *“Mr Thomas considers that the approach taken in relation to the prosecution was both aggressive and inappropriate, particularly regarding the option of them dropping one charge if he agreed to plead to the other. Out of fear Mr Thomas agreed.”* The Post Office investigation in this context in 2014 observed²⁴⁴ that there was no reference in available documentation to when or why the theft charge was dropped. In an email exchange relating to a press statement about a documentary about Mr Thomas’ case in 2013²⁴⁵, the wording to answer the reasons for accepting a plea to false accounting was *“cases are considered on a case by case basis and held under constant review. In some instances charges may change as new evidence is presented or as a result of representations by the defence. Any decision is made having taken full account of the Code for Crown Prosecutors”*. As the Post Office observed in 2014, there is no evidence of any such review in relation to Mr Thomas, and it is not clear what *“new evidence”* or *“representations”* underpinned this change. What is clear is that there was a concern to prevent criticism of Horizon.

²⁴² POL00048201

²⁴³ POL00060995, para.5.3

²⁴⁴ POL00065188, p.9

²⁴⁵ POL00066822

212. In its consideration of Mr Thomas' case²⁴⁶, the Court of Appeal observed of the memo of 25th September 2006: "*As POL accepts, there was no justification for imposing such a condition before accepting Mr Thomas' plea. POL had dropped the theft charge and so could no longer advance any case that he had stolen the money. As POL accepts, that should have left the way open to Mr Thomas to suggest that there was no actual loss and that he had only covered up a shortfall that Horizon had created. As POL accepts, the attendance note suggests that Mr Thomas was pressured into accepting a positive position on Horizon as a condition of POL dropping the theft charge and accepting a plea to false accounting.*"

Assessment

213. In terms of the investigation, therefore, it is right to note that Mr Thomas's concerns about the operation of Horizon were looked into, but it is also clear that there were important limitations to that investigation which undermined its effectiveness. The decision was taken to focus on the specific issue Mr Thomas raised of nil transactions, rather than any wider consideration of the operation and reliability of Horizon. This deliberate approach was adopted despite the fact that Mr Thomas made clear that he was unclear as to what the problem actually was. The investigator, quite properly, had recourse to Fujitsu, and received reassurance from them, but that again appears to have focused on nil returns. Mr Jenkins of Fujitsu does not appear to have been asked to review the underlying data more generally, but does appear to have provided reassurance as to the integrity of the system despite that underlying data not being analysed. In the same way, the snapshot of data that was examined was a very restricted one, which was unlikely to provide a comprehensive or accurate identification or understanding of the issues. That which was undertaken does not appear to have been disclosed, and so its limitations were unlikely to have been appreciated by the defence.
214. In the same way, the investigator quite properly made enquires as to contact between the Gaerwen post office and relevant helplines. However, the information provided was limited, and this was accepted rather than further enquiries for wider material being made. The lack of enquiries into Mr Thomas' finances is also a cause for concern, as being a reasonable line of enquiry that was not pursued.

²⁴⁶ [2021] EWCA crim 577, at §153-154

215. The charging decision was in January 2006, and thus before the first explicit reference to the Code for Crown Prosecutors being the test to be applied²⁴⁷. The test that was actually applied does not appear to have been that contained in the Code. Whilst the prosecutor stated there was a realistic prospect of conviction, she then identified there being a “medium prospect of success”. This, therefore, appears to be same test as had been applied by Mr Singh in the case of David Blakey. As in that case, it is difficult to understand how a medium prospect of success and a realistic prospect of conviction are to be equated, such that a decision was reached to prosecute. The charging decision does not contain an analysis of the evidence relied on for that decision, and is silent as to how, on the evidence, it was determined that dishonesty and appropriation were established for the purposes of the offence of theft, and dishonesty and a view to gain were made out for the offence of false accounting.
216. The limitations of that analysis are further illuminated by the approach of the Post Office to the Second Sight review. It was considered that the post master was liable however the loss had been occasioned, “whether inadvertent or deliberate”. It would follow from this analysis that an inadvertent accounting error would be considered sufficient to found a prosecution for false accounting where there was no deliberate act and no dishonesty. That is not the law. The lack of detail in the charging decision does not permit that interpretation of the decision-making process to be ruled out.
217. It is difficult to reconstruct the disclosure process from the material that I have seen. However, it is clear that the underlying data was not initially disclosed, and that orders had to be made in relation to this. The need for defence requests to jog along the process thereafter is evident from the correspondence, and calls into question the degree to which a properly conducted and reviewed exercise was being undertaken. The facts that the express purpose of obtaining material from Fujitsu was to rebut the defence assertion that there were issues of Fujitsu, and that references to a potential system failure were removed from Mr Jenkins’ draft statement are not steps consistent with the disclosure of material capable of undermining the prosecution case or assisting the expressed defence of concern about the accuracy of Horizon.

²⁴⁷ POL00104812

218. The circumstances in which Mr Thomas pleaded were, as the Court of Appeal recognised, deeply concerning, for the reasons that they gave. It is not clear why, other than with a view to obtaining a plea, the theft charge was not pursued in September 2006 when it had been identified that there was sufficient evidence to support it in January 2006 and the evidence had not changed in the interim. It remains my view that in fact the evidence was not sufficient, but the correspondence does not acknowledge that. Rather, despite accepting a plea to an offence where there was no actual loss, the loss identified by the Horizon data was pursued, and repayment identified as a precondition of the plea being accepted.
219. Even more concerning is the other precondition of acceptance by Mr Thomas that there was nothing wrong with Horizon. As the Post Office accepted at Mr Thomas's appeal "*...the attendance note suggests that Mr Thomas was pressured into accepting a positive position on Horizon as a condition of POL dropping the theft charge and accepting a plea to false accounting.*" It is difficult to see what proper basis there was for such an approach. It does not reflect the Attorney General's guideline for the acceptance of pleas or the applicable version of the Code for Crown Prosecutors. It also did not reflect a detailed analysis of the relevant Horizon data to establish that there was in fact no issue with Horizon. In other words, it was requiring Mr Thomas to accept a position that might not have been true, which he had not been placed in a position that he could test, and which the Post Office itself had not tested.

SUZANNE PALMER

220. Suzanne Palmer was 46 years old when she was investigated, and had been the sub-postmistress at the Grange post office in Rayleigh in Essex for a little over a year.
221. As with many of the other cases I am considering in this report, a shortfall was identified when an audit was undertaken at Mrs Palmer's branch, in her case of £14,712.11. She was charged with false accounting, contrary to section 17, Theft Act 1968, in relation to three weekly cash account records. Unusually in the series of cases

that I am considering in this report, Mrs Palmer was acquitted on all three counts following a trial at the Crown Court at Southend on 31st January 2007²⁴⁸.

222. Despite the fact that the case went to trial, there is very little material available that would be relevant to the assessment of the investigation, the charging decision or the undertaking of disclosure in Mrs Palmer's case.

The investigation

223. The investigation report²⁴⁹ was prepared by Lisa Allen, investigation manager, in February 2006. The material I have seen would tend to identify Ms Allen as both the investigator and the disclosure officer, though I have seen nothing that asserts that. No officer in charge is identified, or evident. Ms Allen was called to Mrs Palmer's post office after an audit on 3rd February 2006 identified a cash on hand discrepancy. They then identified a further substantial discrepancy in relation to National Lottery scratch cards. The total shortfall was £14,712.11. Mrs Palmer was spoken to by the investigator and said she had recently installed an ATM at the branch and that the discrepancy was explained by cash that had been used to stock this, and by scratch card sales that had not been put through Horizon. It appears that Mrs Palmer was cautioned after this exchange.
224. She was interviewed under caution on tape on 6th February 2006²⁵⁰. Mrs Palmer declined the assistance of a solicitor. It is not clear if she was offered the presence of a friend, although a proper application of the Post Office Interviewing Policy²⁵¹ required that she should have been. She was asked about each of the two areas she had mentioned when spoken to at the branch, namely the ATM machine and the scratch cards. She said that she had used Post Office money to replenish the ATM. She said that she had made a £2500 entry as cash on hand on the daily record sheets because she had received a number of error notices relating to scratch cards. She had requested, but not received, assistance from the Post Office about this, and had used the cash on hand as she did not have sufficient money to meet the error notices and to address the cash put in the ATM.

²⁴⁸ POL00052982

²⁴⁹ POL00054007

²⁵⁰ POL00053009

²⁵¹ POL00194758

225. The Investigation report²⁵² noted “*at the present time it is not known when the error notices were processed so I am unable to identify the date at which Mrs Palmer inflated her cash on hand figure by £2500. Again, she did not have the funds to cover this and continually accounted from this in the cash hoping for a compensating error notice. However, she admitted that error notices were usually received within 8 weeks and she had been holding this amount for many months*”. Ms Allen noted that Mrs Palmer had paid the money back, and that she appeared not to have received training or an audit before February 2006, adding “*she has not received help when she requested it, and appears to have muddled through*”. However, the investigation report did not suggest any lines of enquiry as to Mrs Palmer’s finances, her contact with helplines or any investigation as to when she had received error notices, why or whether they were connected to the scratch card issues she had described.
226. When the case was reviewed by the Post Office criminal law department²⁵³, no further evidence was requested. Once counsel was instructed, advice²⁵⁴ was provided as to further enquires that were needed. These addressed some of the matters just identified, such as the question of who Mrs Palmer had reported scratch card issues to and when, when the error notices were issued, and what training Mrs Palmer had received.
227. These were all reasonable lines of enquiry which should have been identified and pursued following Ms Palmer’s interview, at which her account was clear. They were recognised as relevant by Ms Allen in her investigation report, and yet the fact that they were raised again by counsel later underlines that they were not pursued. This is significant because a number of them, such as financial enquiries and helpline checks might well have led away from Ms Palmer as a suspect of crime. The fact that they were not raised by the prosecutor is also of concern, given their duty (both by reference to the CPIA Code and the Code for Crown Prosecutors) to advise as to lines of enquiry.

²⁵² POL00053007

²⁵³ POL00052990

²⁵⁴ POL00053008

Charging decision

228. Jarnail Singh, Senior Lawyer in the Post Office criminal law division sent a memo on 10th March 2006²⁵⁵ which appears to be a charging decision. Like other such memos, it is a very brief document which opens with the conclusion that there is “*sufficient evidence to afford a realistic prospect of conviction of Miss Palmer for the offences of false accounting*”. There is no review of the evidence, or the factors that have led to the conclusion. He does not request any financial, helpline, error notice or Horizon-related enquiries, despite the content of the interview, to which he makes no reference. Indeed, Mr Singh says “*no further statements need be obtained at this stage*”. There is neither reference to nor analysis of the public interest in relation to the prosecution of a woman of good character for false accounting where she had denied dishonesty and made good the shortfall.
229. Counsel, Stephen John, was instructed²⁵⁶ in July 2006. He provided an advice²⁵⁷ shortly after he was instructed which raised a number of lines of investigation, which had not been pursued by the investigator. These are addressed under the investigation heading. However, he did not raise any issue as to the charges, other than the details of the particulars. This meant that another opportunity to review whether there was a proper evidential basis to assert dishonesty was lost.

Disclosure

230. I have not had sight of any schedule of sensitive or non-sensitive unused material (MG6D and MG6C). The investigator, Ms Allen, was asked to ensure that she prepared one when the case was sent for trial. She was asked to send any outstanding unused to the criminal law division, and to ensure that the schedules were available by the time a defence statement was served. It is clear from the correspondence²⁵⁸ that a defence statement was served in November 2006. I have not seen the document itself. This was forwarded from the criminal law division to the investigator, with a request that the further disclosure sought be provided. This action was consistent with the requirements of the 2005 Attorney General’s Guidelines (para.36), however that

²⁵⁵ POL00052990

²⁵⁶ POL00053003

²⁵⁷ POL00053008

²⁵⁸ POL00052989

guideline also envisaged guidance from the prosecutor as to what further disclosure was required.

231. In January 2007²⁵⁹, which was the month when the case was due to be tried, the defence sought further disclosure relating to the accounting records showing Mrs Palmer's repayment of scratch card related monies. This is an area of enquiry that ought to have been pursued at an early stage. It appears that prosecution counsel had accepted that the records should be disclosed, but it is not clear whether they were held, and thus whether disclosure was possible.
232. The defence also sought disclosure relating to TRM. In relation to TRM²⁶⁰, the defence had sought disclosure of the details of the machine installed and details of its operation and maintenance. Given the link drawn by Mrs Palmer in interview of her accounting to the operation of the TRM, this was again a line of enquiry that ought to have been pursued at an early stage. This correspondence does not suggest that this had occurred, and it is thus not clear whether proper disclosure was possible in this regard.
233. In relation to cross-disclosure between cases, I have noted that in the context of the case of Alison Hall in 2010, Dave Posnett, a Financial Investigator who was a fraud risk manager until May 2010 said "*the scratch card process worked but some SPMRs had trouble getting to grips and understanding it. The volume of TCs across the network were...a concern*". It is important to note that Ms Palmer was investigated in 2006 and Mrs Hall in 2010, and that Mr Posnett's comments were in an email exchange in 2013, which appears to have related to a review of cases, however it does raise the question as to whether issues with scratch cards had been raised and yet no disclosure in relation to this issue was undertaken. This may have been because the issue only emerged later, but I raise it as something that ought to be susceptible to clarification.

Assessment

234. Given the limited material available in this case, it is difficult to be categorical about all of the areas that the Inquiry has asked me to consider. It is clear that a number of

²⁵⁹ POL00052997

²⁶⁰ POL00053000

very important lines of enquiry, which had a particular tendency to exonerate rather than to implicate Ms Palmer, were not pursued. She had described in interview issues with error notices relating to scratch cards about which she had called the helpline, and yet neither the error notices nor the calls appear to have been checked, even though the investigator recognised the relevance of doing so. Ms Palmer had denied receiving money, and yet her finances were not investigated. None of these areas was identified by the reviewing lawyer, who in fact advised that no further evidence was required, even though they were flagged not only by the interview but by the investigation summary which must, in the absence of evidence, have formed the basis for the charging decision.

235. That decision, by reference to the brief advice that I have seen, concluded that there was a realistic prospect of conviction for false accounting, but did not say why. It was not a thorough or conscientious review. There was no review of the evidence, and no identification of the evidential basis to establish dishonesty or conduct with a view to a gain for Ms Palmer. There was no reference to, or assessment of, the public interest. It is disappointing to see that when counsel was instructed, whilst they identified the lines of enquiry that should have been undertaken they did not raise any concern as to evidence to prove these important elements of the offence. In saying that, I note that it appears that there was either no submission of no case to answer at the close of the prosecution case, or any such submission was rejected by the trial judge.
236. In relation to disclosure, there is no evidence in the material I have seen of the actions of a disclosure officer. I have not seen any schedules of unused material. When the defence statement was received further disclosure was sought that the lawyer advised should be provided (an appropriate action by reference to the Attorney General's Guidelines, para.36). Whilst the position is not clear, this does raise questions as to the adequacy of the disclosure process to that point. The matters that were still outstanding shortly before trial were matters that ought to have been investigated and been the subject of disclosure at a much earlier stage. This raises further questions as to whether disclosure was properly reviewed and conscientiously undertaken.
237. There is no evidence of cross-disclosure. It may be that the scratch card issue raised here was not yet identified as a wider concern, as it was to be by 2010 when it arose

again in the case of Allison Hall. I also note that Jarnail Singh was the reviewing lawyer in this case as he had been in the case of Blakey where issues with the Horizon data had also been raised, but that may well have been insufficient to occasion cross-disclosure.

JOSEPHINE HAMILTON

238. Josephine Hamilton was 48 years old when she was investigated, and she had been the Sub-Postmaster at South Warnborough since 2003.
239. On 19th November 2007, in the Crown Court at Winchester before HHJ Barnett, Josephine Hamilton pleaded guilty to 14 counts of false accounting. The prosecution case was that she had made false entries on Horizon, making claims about the presence of cash on hand which were untrue. The prosecution agreed not to proceed with a charge of theft (which was ordered to lie on the file) on the basis that the outstanding shortage of £36,644.89 was to be paid by the time of sentence. On 4th February 2008, Mrs Hamilton received a community sentence order for 12 months with a 12-month supervision requirement. She was ordered to pay £1,000 towards the prosecution costs.
240. Mrs Hamilton's case was that she had not stolen any money or acted dishonestly. In a prepared statement to the criminal investigation, she described a number of inadequacies in Horizon which she had encountered. Between 23rd October 2003 and 9th June 2006, she had made 26 calls to the Horizon Helpdesk. Between 3rd December 2003 and 5th January 2006, she had made numerous calls to POL's National Business Support Centre Helpline.
241. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*²⁶¹, in which hers was the lead case, Mrs Hamilton was one of those in category A, in which the Post Office "... accepted that in cases where the reliability of Horizon data was essential to the prosecution and conviction of the appellant, and where Fraser J's findings showed that there was inadequate investigation and/or that full and accurate disclosure was not made, the

²⁶¹ [2021] EWCA Crim 577, at §71

conviction may be held by this court to be unsafe on grounds amounting to category 1 abuse.”
In particular, in her case the Post Office conceded²⁶²:

- i) It was unacceptable to hold open the threat of the theft charge on this basis.*
- ii) The investigator had reported there was no evidence of theft.*
- iii) It was irrational to require Mrs Hamilton to recognise that she had “had the money short of theft” when theft was not to be pursued if the pleas to false accounting were acceptable.*
- iv) The arrangement lends itself not only to the allegation that the condition of repayment in return for the dropping of theft placed undue pressure on Mrs Hamilton, but also more widely that POL was using the prosecution process to enforce repayment.*
- v) Moreover, in circumstances where theft was not directly provable and the shortfall may not have been a real loss, seeking to prevent Mrs Hamilton from making any criticism of Horizon as part of her mitigation to the charges she was to plead guilty to was improper.*

The investigation

242. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. The Investigation Summary²⁶³ was prepared by Graham Brander, an investigation manager, who attended the post office when a concern had been raised as to the operation of Mrs Hamilton’s sub-post office, and interviewed Mrs Hamilton. He also drew up the schedule of non-sensitive unused material and therefore appears to have acted as both investigator and disclosure officer. No officer in charge is identified.
243. The circumstances, as he recorded them²⁶⁴, were that a concern had been raised about the levels of cash holdings at the branch. This prompted Mrs Hamilton to report that there were some problems at the branch to her Federation of Sub Postmasters representative, who in turn reported this to the Rural Support Manager, who in their turn reported this to the Area Office. As a result, on 9th March 2006 an audit was undertaken at which Mr Brander was present. By this time, Mrs Hamilton had been signed off work by her doctor. The cash on hand at the branch was found to be

²⁶² [2021] EWCA Crim 577, at §113

²⁶³ POL00044389, POL00044389

²⁶⁴ Investigation report, POL00044389, POL00044389 and Summary of facts, POL00044485

significantly less than recorded on Horizon, with a deficit on stock and cash of £35,583.12.

244. Mr Brander obtained Horizon printouts, including Branch Trading Statements. He examined these, and noted in his report *“having analysed the Horizon printouts and accounting documentation I was unable to find any evidence of theft or that the cash figures had been deliberately inflated.”* He obtained additional hard copy and electronic accounting materials and his further analysis did not deviate from this conclusion. As part of the investigation, statements were obtained from the Inventory Support that had identified the cash on hand level issue²⁶⁵, the Rural Support Manager who received the call from the Federation representative²⁶⁶ and the auditor²⁶⁷. Mr Brander²⁶⁸ himself made a statement dealing with his attendance, search and analysis of data from the branch.
245. There was a delay before Mrs Hamilton was interviewed as she was unwell. Before that interview actually took place, her solicitor contacted Mr Brander to say that Mrs Hamilton would provide a prepared statement rather than answering questions. The interview nevertheless took place on 5th May 2006²⁶⁹, with the prepared statement handed over in advance²⁷⁰. Thereafter, during the interviews Mrs Hamilton made no comment to all questions asked. During the first interview²⁷¹, Mr Brander said that if Mrs Hamilton would not explain the shortfall, he would have to speak to the others who worked at her sub-post office. To that end, a statement was taken from a sales assistant²⁷² who made clear that they were not involved in balancing the accounts, and had no training.

²⁶⁵ Rebecca Portch, POL00044483. She made two further statements, POL00048507 and POL00048845, which were obtained as a result of requests from the lawyers involved.

²⁶⁶ Colin Woodbridge, UKGI00014787

²⁶⁷ Alan Stuart, POL00045426. This statement was in line with his earlier memo to the criminal law division, POL00047874

²⁶⁸ POL00044484

²⁶⁹ POL00044390, POL00045409

²⁷⁰ POL00044495, POL00045406

²⁷¹ POL00044390

²⁷² June Partridge, POL00048049

246. During the second interview²⁷³, Mrs Hamilton did confirm that she was content to pass on her details of bank accounts. The Investigation report²⁷⁴ indicates that further questions were asked about Mrs Hamilton's financial position after the interview. Prosecuting counsel²⁷⁵ did ask for Mr Brander to document this off-tape exchange with Mrs Hamilton²⁷⁶, but did not raise any question about the lack of such financial information, and thus the absence of evidence of gain to Mrs Hamilton from any theft from the Post Office.
247. In this regard, it is of note that those acting for Mrs Hamilton wrote in May 2007²⁷⁷ indicating that they had obtained financial information from their client which ought to have been collected by the investigators at the time of their investigation. The material amounted to 14 lever arch files, and included personal banking, cash on hand and Horizon records. This is disputed by the investigator²⁷⁸, on the basis that Horizon material was all electronically stored and hard copies were not necessary. This does not address any personal financial material relating to Mrs Hamilton. The additional material was viewed at prosecution counsel's chambers by the investigator. He formed the view that it did not provide an explanation for the shortfall²⁷⁹.
248. The prepared statement itself²⁸⁰ said that Mrs Hamilton had received inadequate training. In particular, in this regard she referred to the fact that *"since taking over we have moved to card accounts, electronic banking and all sorts of systems have been introduced. It has turned a very small sub-post office into a bank for which I have received no training."* Although she did not specify Horizon in this context, it is clear that this is what she was referring to when she said *"all transactions are now done on a screen. But the screen would not let me question any errors"*. She reported that after she had taken over there had been two shortfalls identified on the system which she could not explain but which she was required to repay. Neither triggered an audit. She also referred to issues with Post Office procedures, which she described as "shambolic" but again not to Horizon specifically.

²⁷³ POL00045409

²⁷⁴ POL00044389, POL00044389

²⁷⁵ POL00048827

²⁷⁶ Mr Brander provided a further statement to this end, POL00048846

²⁷⁷ POL00048665

²⁷⁸ POL00048710

²⁷⁹ POL00048913

²⁸⁰ POL00044495

249. In terms of investigation of the issues raised in the prepared statement, a statement was taken from Nigel Allen²⁸¹, the Contract and Service Advisor who appointed Mrs Hamilton, and completed a training requirements²⁸² form that indicated that she did not need any training²⁸³. He otherwise dealt with the contractual requirements of sub-post masters to make good losses. Similarly, Martin Drake²⁸⁴, the Business Change Manager, identified the changes to the Horizon system brought in during 2005 and the training provided in relation to them²⁸⁵. He also addressed the fact that there had been no calls by Mrs Hamilton to the NSBC helpline in relation to branch trading. This is at odds, to a degree, with the Investigation report²⁸⁶ which records numerous calls, including a number relating to reported losses.
250. The Horizon help desk was also addressed by Andrew Dunks of Fujitsu²⁸⁷. He itemised and described the content and resolution of 26 calls to the helpline from Mrs Hamilton's sub-post office between January 2003 and March 2006. These included a number of calls when the system was not polling.
251. In relation to Horizon, a statement was obtained from Penelope Thomas²⁸⁸ of Fujitsu to explain the operation of the system in relation to its use at a sub-post office. This included the statement *"the integrity of audit data is guaranteed at all times from its origination, storage and retrieval to subsequent despatch to the requester. Controls have been established that provide assurances to Post Office Internal Audit that this integrity is maintained"*. Having explained the audit process, she added *"there is no reason to believe that the information is inaccurate because of the improper use of the computer. To the best of my knowledge and belief at all material times the computer was operating properly, or if not, any respect in which it as not operating properly, or was out of operation, was not such as to effect the information held on it."*

²⁸¹ POL00044479. He made a further statement producing the form, POL00048844

²⁸² POL00046833

²⁸³ I have also seen a further document relating to the training of those who take over a branch, POL00045450, but I am not clear what its purpose originally was.

²⁸⁴ POL00044480

²⁸⁵ He produced documentation in this regard in a further statement, UKGI00014728

²⁸⁶ POL00044389, POL00044389

²⁸⁷ POL00044482

²⁸⁸ POL00044481

252. In this case, the principal lawyer at the Post Office, Juliet McFarlane, requested further enquiries. I have not seen her memorandum in June 2006, but have seen the Investigator's response in August 2006²⁸⁹. This shows that the manner in which Horizon record cash on hand and a post office holding too much cash were explored. Questions were also raised about Mrs Hamilton's training. At the time of the response²⁹⁰, Mr Brander reported that he had not yet received bank statements for Mrs Hamilton. I should note in passing that it was entirely appropriate for Ms McFarlane to review the state of the investigation and identify lines of enquiry and evidential requirements as she did.
253. Once counsel was instructed, he did seek the obtaining of further evidence relating to Mrs Hamilton's training and any report by Mrs Hamilton of earlier shortfalls of the kind she addressed in her prepared statement²⁹¹. This led to the Post Office lawyer asking for further enquiries in May 2007²⁹², with an annotated version of the memorandum in response²⁹³. Again, it was entirely appropriate for counsel to have done this.
254. In relation to the investigation, the Court of Appeal²⁹⁴ observed: *"POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Hamilton's case. The ARQ data had been collected on a disc but the exhibits list shows it was "not copied", so that it is not clear whether the ARQ data was served. There was no examination of that data for bugs, errors or defects and no examination for evidence of theft. The unfiltered ARQ data is no longer available but it appears that there was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage."*
255. It follows that where the investigation fell short was in the lack of enquiries that were made as to the accuracy and reliability of the Horizon data that was at the heart of the case. The data was not examined as it should have been, and it was unclear the extent to which it was disclosed. Issues with Mrs Hamilton's training appear to have been

²⁸⁹ POL00053084, POL00048154

²⁹⁰ POL00053084 POL00048154

²⁹¹ POL00048750

²⁹² POL00048761

²⁹³ POL00059367

²⁹⁴ [2021] EWCA Crim 577, at §144

addressed at a fairly superficial level (although this may have been as a result of the answers to enquiries to Nigel Allen, rather than because no enquiry was made). Similarly, financial investigations appear to have been limited, as the correspondence from those acting for Mrs Hamilton in relation to hard copy financial material illustrates.

Charging decision

256. I have not seen a charging decision in this case. This is concerning because experience gained from the review of other cases shows that such decisions were often reached on the basis of Investigation reports. That report in this case²⁹⁵ stated *"having analysed the Horizon printouts and accounting documentation I was unable to find any evidence of theft or that the cash figures had been deliberately inflated."* However, it went on to say *"I am unable to state what would appear to be the period of offending mainly due to the fact that Mrs Hamilton responded no comment to my questions. You may wish to consider a charge of theft for the audit deficit...The only evidence appears to be the fact that the audit identified the money as missing"*. That report was written in May 2006. The lack of Mrs Hamilton's bank statements remained an issue in later exchanges between the lawyer and investigator in August 2006²⁹⁶.

257. This investigation report was provided to prosecution counsel, Richard Jory of 9-12 Bell Yard when they were instructed in advance of the Plea and Case Management hearing in March 2007²⁹⁷. This led to the drafting by counsel of an indictment which included a charge of theft. The email providing that indictment did not raise any question as to the evidential basis for that charge, or refer to the Investigator's observations as to the lack of such evidence. Indeed, when he drafted an opening note for trial²⁹⁸, it asserted that *"the truth is that the defendant had been inflating the cash on hand figure at the post office over a period of several months prior to the audit on 9th March 2006. She had done this in order to disguise her thefts of cash. She was the only one with responsibility for cash accounting out the premises"*.

²⁹⁵ Investigation report, POL00044389, POL00044389

²⁹⁶ POL00053084

²⁹⁷ POL00048488

²⁹⁸ POL00048841

258. The instructions provided to counsel²⁹⁹ also record that Mrs Hamilton had been summonsed to attend court. I have not seen the summons application, and I cannot therefore speak to whether the lack of evidence of theft, or any concerns relating to the operation of Horizon were included. Counsel did seek the obtaining of further evidence relating to Mrs Hamilton's training and any report by Mrs Hamilton of earlier shortfalls of the kind she addressed in her prepared statement³⁰⁰. I have not seen any communication from counsel indicating any awareness of any issue with the reliability of Horizon, or any request by counsel to this to be investigated. Indeed, again, when he drafted an opening note for trial³⁰¹, it asserted that *"there is no doubt the money has been taken that the Post Office have therefore lost over £36,000. There is no explanation as to why she falsified the accounts to represent that the case was in fact held at the post office."*
259. The uncertainty as to the basis for theft as a charge highlighted by the Investigation Report is echoed in the Initial Complaint Review and Mediation Scheme report³⁰² prepared in the context of the Second Sight independent investigation of issues raised by sub postmasters in 2014. Reviewing Mrs Hamilton's prepared statement, this observed³⁰³ *"without evidence of system error, this appears to be a case where the losses were generated by user error or potential theft as there was a lack of management and Horizon access controls in the branch"*.
260. It follows that, like Second Sight, I have real concerns as to the basis on which she was prosecuted for theft where the investigation had, correctly, concluded that there was no evidence of theft in her case. In other cases, the charging decision was reached by reference to the investigation summary and yet in this case it was decided to charge theft where that summary recorded that there was no evidence of it. Moreover, that summary was provided to counsel when instructed and this did not appear to have resulted in a question from counsel as to whether theft was a proper charge.

²⁹⁹ POL00048488

³⁰⁰ POL00048750

³⁰¹ POL00048841

³⁰² POL00034551

³⁰³ POL00034551, p.2

Disclosure

261. A schedule of non-sensitive unused material (equivalent to an MG6C) was prepared by Mr Brander, the investigator, on 19th February 2007.³⁰⁴ It is a very short document, although it appears that it may only be the first page of a longer schedule that has not been copied. That which I have seen does touch on material generated by the interview process, correspondence with Mrs Hamilton, logs relating to NBSC and financial enquiries. It does not include any reference to Horizon operational checks. The schedule was provided to the defence on 23rd February 2007 by the principal Post Office lawyer, Ms McFarlane³⁰⁵, and she recorded that there was nothing to disclose. In fact, there is no annotation on the schedule itself relating to any such review.
262. After the plea and case management hearing, where the issue was raised about the material the defence had obtained from their client which had not been obtained by the investigation³⁰⁶, clarification was sought and obtained that this material would be reviewed for disclosure purposes³⁰⁷. Trial counsel, Richard Jory, advised that this should be done.
263. In September 2010, a memorandum from Jarnail Singh, the Post Office senior lawyer, to Mandy Talbot, the principal lawyer at Royal Mail Group³⁰⁸ identified a request for disclosure in a case at Bradford Crown Court for disclosure relating to other cases where Horizon issues had been raised. This included Mrs Hamilton's case, but also those of Seema Misra, Hughie Noel Thomas and others. Mr Singh asked whether there were others. Ms Talbot replied³⁰⁹ saying that relevant material was in storage, and commented "*there are ongoing cases every month which raise the issue of Horizon so it's a movable feast. I am endeavouring to pull together a list of those cases currently with us where allegations have been made in respect of Horizon. Most of these have ben on hold awaiting the decision on Misra*". It is clear, therefore, that there was an awareness of a proliferation of cases where Horizon's accuracy was in issue, but the memoranda do not suggest a sufficiently joined up approach to disclosure relating to them. It appears, therefore,

³⁰⁴ POL00048517

³⁰⁵ UKGI00014724

³⁰⁶ Referred to in the defence letter, POLPOL00048665, and the investigator's response, POL00048710

³⁰⁷ POL00048736

³⁰⁸ POL00055212.

³⁰⁹ POL00055894

that cross-disclosure between cases where Horizon issues had arisen was not being undertaken.

The circumstances of the plea

264. On 2nd October 2007³¹⁰, Richard Jory, prosecution counsel, reported that defence counsel had offered pleas to false accounting. His advice was “*there is evidence she has taken the money, and that there is sufficient evidence to support theft, but Royal Mail may be content with guilty pleas to dishonesty matters if she undertook to repay the amount of the shortage at audit*”. I have not seen an identified response from the Post Office lawyer. However, I have seen an anonymous and undated “Fact Summary”³¹¹ which states “*the charge of theft not to be dropped until full amount is paid by JH and if need be to recovery losses prosecution will proceed by confiscation...JH guilty plea accepted on JH recognition that JH had the money (short of theft) and plea on the basis that loss was due to computer not working properly will not be accepted*”. The summary also makes clear that payment had been received from Mrs Hamilton before her pleas were in fact accepted.

265. In a BBC Radio 4 interview in September 2014³¹² Mrs Hamilton said “*they said if I repaid and pleaded guilty to 14 counts of false accounting they would drop the theft, so the decision was made that I was less likely to go to prison for false accounting than I was for theft and that’s what I did. If I didn’t plead guilty they would have charged with me theft, and I couldn’t prove that I didn’t take anything. They couldn’t prove I did and at the time they told me I was the only person that had ever had problems with Horizon, nobody else had...*” It follows that Mrs Hamilton’s understanding was that the prosecution had initiated the discussion about pleas. This could be her misunderstanding, or it could be that her counsel and prosecution counsel had discussed the matter between them, generated by either. That would not be an unusual position.

266. What is unusual is the terms on which her plea was accepted. The Court of Appeal³¹³ observed of these terms: “*POL concedes that it was unacceptable to hold open the threat of the theft charge unless Mrs Hamilton agreed to forego any criticism of Horizon. We regard this as even more alarming in circumstances in which POL’s own investigator had reported there*

³¹⁰ POL00049069

³¹¹ POL00057661

³¹² POL00101750

³¹³ [2021] EWCA Crim 577, at §147

was no evidence of theft. It was irrational and unjust to require Mrs Hamilton to recognise that she had "had the money short of theft" when theft was not to be pursued if the pleas to false accounting were acceptable. POL's conduct gives a firm impression that the condition of repayment in return for POL dropping the theft charge placed undue pressure on Mrs Hamilton. It gives the impression that POL was using the prosecution process to enforce repayment."

Second Sight Review

267. Second Sight undertook an independent investigation of issues raised by sub postmasters in 2014, and prepared a report in Mrs Hamilton's case dated 19th September 2014³¹⁴. As part of this process, Mrs Hamilton would have completed an application form and a more detailed questionnaire. I have not seen those, but have seen the Post Office response and the Second Sight Report. These show that Mrs Hamilton highlighted, in relation to Horizon, issues as to transactions or adjustments that were not entered by her, process issues at the end of each Trading period and limitations to the audit trail. She also expressed concern about an issue with missing cheques. In other areas, she complained about the inadequacy of her training, and issues with the Helpline.
268. The Initial Complaint Review and Mediation Scheme report³¹⁵ prepared by the Post Office considered each of Mrs Hamilton's complaints and, in the main, indicated that the issues had occurred too long ago for there still to be necessary records in place to check them, as they were "*outside of Post Office retention period*". It concluded that "*the evidence provides no support for the Applicant's claim that the Horizon System caused the shortfall in the branch. Give that no systemic error has been identified in Horizon, the more likely reason for the shortfall is user error or fraud which could be due to the lack of poor controls in place...*". It observed that there was a lack of records of contact by Mrs Hamilton with the helpline (although the report did then go on to itemise such calls), and referred to these issues being compounded by her false accounting which "*hid the extent of the losses*".

³¹⁴ POL00034836

³¹⁵ POL00034551

269. The Second Sight report³¹⁶ concluded that the evidence did show Mrs Hamilton and her staff to be inadequately trained. This contrasts with the stance taken by the Post Office both in response to Second Sight³¹⁷ and when it prosecuted Mrs Hamilton. In other respects, it took the same approach as the Post Office, namely to conclude that very few documents remained from 2003-6 and thus it was not possible to come to a conclusion about Mrs Hamilton’s complaints. The Post Office response to the draft Second Sight report³¹⁸ maintained that the failure of Mrs Hamilton to report issues at the time to the Helpline, and her false accounting to conceal losses, meant that the Post Office could not address any issues at the time, and that she had not identified any “systemic issues” with Horizon.
270. The issue with lost cheques received particular attention³¹⁹. The Second Sight report³²⁰ found this issue to be verified through the customers involved. In relation to this issue, an email had been sent within the Post Office in January 2013³²¹, which said that it was *“critically important that POL can prove that any failure (to reclaim funds from customers) is due to errors and omissions by the SPMs rather than by POL”*.
271. The difficulty with the Post Office stance in 2014 is that the issues raised by Mrs Hamilton to Second Sight overlapped to a significant extent with the issues that she had raised in her prepared statement in 2006. The tenor of the Post Office response is that these things could have been checked back then but it is too long ago now. It follows, if that be right, that these were reasonable lines of enquiry in 2006, and lines that could have been pursued, for example to understand if there was an issue with cheques that was not Mrs Hamilton’s fault but added to the apparent loss, and whether there were issues with her training and/or the operation of the Horizon system that could have been explored by reference to records then available.

³¹⁶ POL00034836

³¹⁷ POL00046851

³¹⁸ POL00046851

³¹⁹ Response document POL00040882, POL internal emails POL00059567, POL00059472, Spot Reviews POL00002263, POL00060363, POL00029604, POL00060608

³²⁰ POL00034836

³²¹ POL00059472

272. In the Hamilton case file is a briefing note³²², dated March 2012, from Post Office Legal Services, relating to Horizon claims that had by then been made by 5 former sub-post masters that they had been dismissed for faults actually attributable to the system. It noted that *“there are no reported cases where data stored on Horizon system has been found to be an inaccurate record of actions taken in branch... POL has rigorously tested the Horizon stem, using independently assured processes and it has been found to be robust. Horizon has been in successful operation for in excess of 10 years across the Post Office network (upgraded in 2010) and during that time in excess of 20,000 sub postmasters have use it to successfully perform millions of financial reconciliations”*. Reference was made in this memorandum to James Arbuthnot MP, as he then was, and there are records relating to a meeting that he and fellow MP, Oliver Letwin, had with the Post Office about cases including that of Mrs Hamilton³²³ in May 2012.
273. This briefing note is in contrast to an undated memorandum³²⁴ which records that Second Sight have given *“a strong indication that there are glitches in the Horizon system”* and that *“Jo Hamilton may have a case”*. The memo refers to the meeting with MPs, which may be that in May 2012 with Messrs Arbuthnot and Letwin.

Assessment

274. Mrs Hamilton raised in her prepared statement when first questioned that there had been issues with the Horizon system, of which she had complained at the time and which were the explanation for the shortfall identified at audit. The investigation at the time identified no evidence of theft or the deliberate inflation of figures. Despite this, she was initially charged with theft and ultimately allowed to plead to false accounting. This outcome is a matter of concern given that context.
275. The investigation did not follow the reasonable lines of enquiry raised by Mrs Hamilton’s prepared statement fully to explore the adequacy of her training or her contact with helplines, although each was investigated to an extent. Her financial position was not fully investigated, which was of relevance to any theft allegation. In particular, the reliability and accuracy of Horizon, and whether there were problems

³²² POL00057503

³²³ POL00057656

³²⁴ POL00060219

in its operation, was not investigated. The Second Sight Review and the Post Office response to it highlights the shortcomings of the investigation at the time. In 2014 the Post Office said that it was no longer possible to check aspects of Mrs Hamilton's assertions relating to Horizon. This underlines, given that she raised them at the time, that they could and should have been investigated then.

276. Despite the conclusion of the investigator that there was no evidence of theft or deliberate false accounting, the decision was reached to prosecute Mrs Hamilton for both offences. The actual decision is not available, but it is difficult to understand how conclusions were reached to determine that there was evidence of dishonesty, appropriation, or alteration of records with a view to gain in order to conclude that there was a realistic prospect of a conviction for either theft or false accounting. The prosecution proceeded on then basis that there was a loss to the Post Office, but that belief does not appear to have been tested, or substantiated beyond the bare Horizon data. No issue was raised as to whether the money could be traced to Mrs Hamilton, or whether her explanation might be correct.
277. The disclosure process appears to have been rather cumbersome, with defence requests being needed to generate disclosure. That said, as in other cases, the problem was in large part that issues relating to the reliability of Horizon data and the operation of the system were not investigated or appreciated, and thus disclosure did not follow. In this case, the lawyers involved had been involved in earlier cases where Horizon issues had arisen, including a number addressed earlier in this report. Moreover, a question of the relevance of other cases specifically arose. Despite this, there is no evidence either of cross-disclosure between those cases or that experience in those other cases generated an investigation of or disclosure relating to Horizon here.
278. Especially when the experience of Hughie Thomas in 2006 is taken into account, the circumstances in which Mrs Hamilton ultimately pleaded guilty to false accounting in 2007 are a cause for concern. On her account, she considered that this was a means to avoid the risk of a conviction for theft, which offence was hanging over her even though it was arguably unsustainable. She was also required to reimburse the monies recorded by the Horizon system as lost even though the offence to which she was pleading did not involve an acceptance of causing that loss, as opposed to covering it up. In short, and as the Court of Appeal found, the process was geared to the recovery

of funds by the Post Office, and the use of prosecution and the threat of prosecution to secure that recovery. As in the case of Mr Thomas, the steps taken to prevent criticism of Horizon in this context are concerning, not least because if it was believed that such criticism was unfounded such measures would appear unnecessary, and if there was a belief that they might be sustainable then disclosure relating to them, rather than steps to suppress comment, was required.

SUSAN RUDKIN

279. Susan Rudkin was the wife and assistant to Michael Rudkin, a Sub-Postmaster in Ibstock, Leicester. She was 53 years old at the time that the decision was made to prosecute her.
280. Susan Rudkin was charged with a single charge of theft, contrary to section 1, Theft Act 1968, which alleged a theft, between January 2007 and 20 August 2008, of £43,894.15. The charge related to an audit which found cash shortages to that amount. Ms Rudkin made admissions to taking cash out of the Post Office into her bank account and not paying them all back. According to the summary of facts³²⁵, she took the auditor to one side and said that the safe would be around £40,000 short. The audit identified a cash shortfall of £43,761.17.
281. She pleaded guilty on 23 March 2009 in the Burton-on-Trent Magistrates' Court to theft. She was sentenced at the Crown Court at Stafford to 12 months' imprisonment suspended for two years (with 300 hours of unpaid work and an electronically monitored curfew). Mrs Rudkin's conviction was overturned on appeal to the Crown Court at Southwark (Her Honour Judge Taylor and 2 justices) on 11th December 2020, after an unopposed application to vacate her plea. The Post Office did not contest her appeal.

Investigation

282. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA Code. Once

³²⁵ POL00044623

again, therefore, it is difficult to identify the extent to which the roles were undertaken. The Investigation Summary³²⁶ was prepared by Mike Wilcox, a Fraud advisor who attended the post office when the audit had identified the shortfall, and interviewed Mrs Rudkin. Michael Rudkin, who was in fact the sub-postmaster, was Chair of the Negotiating committee for the National Federation of Sub Postmasters³²⁷.

283. When the issue was identified, Colin Price, Fraud Advisor³²⁸, contacted Mr Rudkin and, according to the Investigation Summary, agreed with him that Mrs Rudkin would be interviewed on the premises without a solicitor. This interview occurred on 20th August 2008, and was tape recorded³²⁹. It happened at her home and the transcript states “no legal representation required”. A form CS001 was provided that set out Mrs Rudkin’s rights, and she confirmed that she did not require a solicitor. Mrs Rudkin’s son was exceptionally invited to be present at the interview as “moral support” or as a “friend”. The Interviewing policy³³⁰ indicates that a friend will normally be a Post Office employee or union representative, and that they must not have involvement in the investigation. Given that both of his parents were potentially under investigation it is not clear how that applied to Mrs Rudkin’s son.

284. What is significant, as a context for the investigative and prosecutorial decisions that followed is the following:

(a) Investigating officers took the equivalent of a pocket notebook of a significant comment at the scene (the admission of missing money) and had the suspect sign it to confirm its accuracy. Such an approach would accord with good practice.

(b) Mrs Rudkin indicated that she had been running the post office since her husband’s Federation responsibility had reduced his ability to do so, and she had been struggling to do so. In particular, since a robbery of the post office two years earlier she had been frightened and let go of the reins. There had been losses, and

³²⁶ POL00046485

³²⁷ In his Federation Capacity, Mr Rudkin assisted Stanley Fell, one of the appellants in the *Hamilton* appeals [2021] EWCA Crim 577, at §391, 395

³²⁸ Colin Price was the Investigation Manager for the case of Tahir Mahmood – see POL00067404.

³²⁹ POL00065295

³³⁰ POL00104758

she had diverted money to make those losses up, inflating cash to match the trading statement. She said the problems had started with the shortages. She said that she had then also taken money to cover business bills.

285. This was a case, therefore, where in interview Susan Rudkin accepted false accounting, and that she would inflate the cash. She also accepted borrowing money from the Post Office to put into her business account and then not paying those back. She said the largest amount she had taken at a time was £1000. She said she would enter fake figures onto the system for the cash to match what Horizon thought was there.
286. In terms of other investigative steps, there was a search of the property, which the Investigation summary indicates was undertaken with the consent of Mr and Mrs Rudkin³³¹. A search record was compiled³³², as was required by the Post Office searching policy³³³. Bank statements were obtained in this search, and financial information obtained using financial details also obtained in the search. The deposits into Mrs Rudkin's bank account were obtained but she was not re-interviewed about them. The Lloyds TSB account did confirm cash paid in of £14,929.91 between 10 June 2008 and 9 July 2008 alone.³³⁴ The bank records did show attempts at points to repay the monies³³⁵.
287. At least in respect of the financial investigation there has been kept a financial investigation policy log recording major decisions³³⁶. The financial investigation showed:
- (a) Financial checks into Mr and Mrs Rudkin, their accounts and their assets.
 - (b) Restraint orders were obtained in relation to Mr and Mrs Rudkin's accounts in September 2008, before she was charged³³⁷.

³³¹ POL00046485

³³² POL00049974

³³³ POL00104752, revised POL00104828, POL00104849

³³⁴ POL00045266

³³⁵ POL00046485

³³⁶ POL00056762

³³⁷ POL00056762

288. Following receipt of the financial statements, Mrs Rudkin was invited for a further voluntary interview³³⁸, but it appears this never occurred because Ms Rudkin declined on mental health grounds. Moreover, the invitation occurred on 21 January 2009 only after a charging decision had already been made on 3 October 2008. In this regard, the Casework Management Initial Tick List³³⁹ records that the investigation file was submitted for a charging decision on 15th September. It follows that the charging decision was sought and made without the completion of the financial investigation.
289. Following the authorisation of the allegation of theft, a reinvestigation occurred into the robbery which took place in January 2006. The prosecuting authority was notified of this, and that Mrs Rudkin had failed to attend the further interview. The police were invited to reconsider the robbery allegations but having reviewed the matter considered there was no evidence to support the suggestion she fabricated the offence to steal monies and declined themselves to re-interview Mrs Rudkin³⁴⁰.
290. In terms of consideration of the Horizon system, the paperwork I have seen shows a number of earlier records relating to accounting/record irregularities, of at least some of which the investigators appear to have been unaware, in that there is no reference to them in the investigation material that I have seen. In particular:
- (a) There was also an incident report from 2004 about the operation of Giro Withdrawal's at this Post Office³⁴¹. There is no indication the investigation team were aware of these at the time.
 - (b) There had been a concern raised about a shortage in a suspense account and phantom transactions in January 2005³⁴².
 - (c) There is also evidence of a complaint by Michael Rudkin to Paul Hemley, RLM in 2005 as to issues with Horizon balancing³⁴³, but again there is no evidence the investigation team were aware of it.

³³⁸ POL00046502

³³⁹ POL00051409

³⁴⁰ POL00046522

³⁴¹ POL00093806

³⁴² POL00046470

³⁴³ POL00060416

- (d) There was a previous financial audit in 2006³⁴⁴, which had identified the potential for fraudulent use of the Horizon system but did not identify issues with the system itself.
- (e) There is contained within the papers a Horizon Spot review³⁴⁵ in which Michael Rudkin (Susan Rudkins' husband) asserted he had observed on 18 August 2008 someone alter a branch's foreign currency cash balance on Horizon without logging on. In a Spot Review Summary for a number of cases³⁴⁶, it is noted that there is no evidence to support this, and that it may have referred to test data rather than live data.

291. I have indicated that the investigators appear to have been unaware of at least the majority of these issues relating to Horizon, because there is no reference to them in the investigation material that I have seen. However, the relevant records were all provided by the Post Office, and must therefore have been in records available to the Post Office. This calls into question the degree to which if a review was undertaken in relation to the operation of Horizon at Mrs Rudkin's post office whether such a review would have highlighted a history of concerns. Similarly, it was conceded in December 2020 when Mrs Rudkin appealed that she had made "*a number of calls to the helpdesk relating to Horizon and balancing issues*", which similarly do not appear to have been investigated at the time. It was recognised on appeal that "*the reliability of Horizon in her case was therefore essential*", but again this does not appear to have been recognised at the time.

Charging decision

292. The Casework Management Initial Tick List³⁴⁷ records that management consent to prosecution and legal advice in relation to prosecution were sought on 15th September 2008, and that advice was received on 7th October.

³⁴⁴ POL00060449

³⁴⁵ POL00031333. The review is dated 2012.

³⁴⁶ POL00029604

³⁴⁷ POL00051409

293. I have had sight of a charging decision³⁴⁸, dated 3rd October from Jarnail Singh, Senior Lawyer in the Post Office Criminal Law Division. It is very sparse, simply stating that the evidence is sufficient to afford a charge of theft, and that false accounting charges may be considered later. There is no analysis for either of these conclusions. In terms of an analysis of theft, the central question would have been whether Mrs Rudkin had in fact appropriated property of the Post Office and/or whether she had acted dishonestly, rather than alternatively sought in panic to conceal accounting issues without acquiring any property.
294. Despite this, the advice did not explicitly consider in any detail the financial documents provided by Ms Rudkin, or the possibility that some but not all of the loss was the result of theft. This analysis was essential if it were properly to be determined that there had been theft and if so what the actual loss by theft was. Additionally, whilst the prosecution is not required to accept the account given by the suspect, it would have been expected that a charging advice would have considered its effect on their case. It is clear that the charging decision was made without reference to any unused material or statements, given that there is reference to the need for both in the advice. There is no indication of awareness of issues with Horizon in the papers relating to the charging, although Mr Singh had by this time dealt with a number of cases in which the reliability of Horizon had been called into question³⁴⁹, and no reference to any concern about the earlier robbery in 2006.
295. There is limited consideration to the public interest, beyond a reference to the serious nature of the offending. There is no reference to the offers to pay differences back. In that regard, it should be noted that the Investigation summary³⁵⁰ records "*I am concerned that Mr Rudkin has given an indication that there will be no prosecution when the money is repaid*". It does not appear that this was considered in the decision to charge as a factor relevant to the assessment of the public interest, and as to whether an application relating to abuse of process could arise if a promise not to prosecute was being reneged upon.

³⁴⁸ POL00046488

³⁴⁹ He was involved, for example, in Blakey and wrote a memorandum about other cases, including Hamilton.

³⁵⁰ POL00046485

296. There was also no reference, in the context of the public interest, to Mrs Rudkin's mental health. This was a live factor at the time that she declined to be re-interviewed in January 2009 but does not appear to have been identified earlier. Representations were made in February 2009 as to the suspect's mental health. These were responded to by the Post Office on the basis that the public interest was reviewed but given the seriousness of the offences a positive decision was taken to proceed. There is a note dated 6 February 2009 by the lawyer, Jarnail Singh, to the effect that the case should proceed in view of Mrs Rudkin's admissions. This appears to have arisen from a report from the investigator, Mike Wilcox. It appears that the legal team advised that matters proceed without reference to the further enquiries to the robbery in order to avoid delay.
297. In April 2009³⁵¹, Michael Rudkin wrote to George Thompson, General Secretary of the Federation, about the private prosecution of Susan Rudkin, complaining about the approach that appeared to have been afforded to the public interest test given that Michael Rudkin had agreed to repay the funds. This appears to have occurred after a guilty plea was entered but before sentence. Again, the considerations that he raises were not explicitly addressed in the consideration of the public interest.
298. The charging memo³⁵² indicates that Mr John Dove, Solicitor Advocate was to be instructed to prosecute the case. I have seen his instructions, none of which refer to issues with Horizon, or issues relating to disclosure. I have not had sight of any advice from counsel before Mrs Rudkin entered her guilty plea.

Proceedings

299. The Casework Management Initial Tick List³⁵³ records that the case file was sent for process, in relation to the obtaining of a summons against Mrs Rudkin by the Investigation Manager, on 8th October 2008. I have not seen the application made for the summons.

³⁵¹ POL00060421

³⁵² POL00046488

³⁵³ POL00051409

300. Mrs Rudkin pleaded guilty on 23 March 2009 in the Burton-on-Trent Magistrates' Court. Her case had been transferred there from the Coalville Magistrates' Court because of her husband's connection to the latter as a magistrate³⁵⁴. There is insufficient detail in the papers available to say more about the proceedings, save for the confiscation proceedings, pursuant to the Proceeds of Crime Act 2002. In that regard, Henrietta Paget of 9-12 Bell Yard was instructed for the confiscation proceedings³⁵⁵. The brief to counsel³⁵⁶ asserted that a cash deficiency of £43894.15 had been discovered on audit, and that the theft related to this sum.
301. It appears that during the confiscation proceedings the Prosecution sought to suggest that the gross turnover of the business was the benefit figure for the purposes of confiscation³⁵⁷. This was contrary to the prosecution's position at the time of sentence. It is apparent that the Prosecution did ultimately resile from this, but it did so with some reluctance. The investigating team³⁵⁸ continued to pursue the full figure, seemingly without considering the fairness of this approach, and dismissing as irrelevant the fact that Mr Rudkin had already started to repay the loss. This continued until advice was received from original prosecuting counsel³⁵⁹ that he had given what arguably amounted to an assurance as to the amount being sought (namely the loss figure). Counsel for the confiscation proceedings³⁶⁰ advised appropriately on this, and a confiscation order³⁶¹ was subsequently made by agreement. The prosecution took an entirely neutral position at the confiscation enforcement stage³⁶².

Disclosure

302. I have had no sight of an unused material schedule which is reflective of the fact that the plea was entered in the magistrates' court. There was no evidence in the charging

³⁵⁴ POL00052094

³⁵⁵ POL00052077

³⁵⁶ POL00052094

³⁵⁷ POL00052095

³⁵⁸ POL00052228

³⁵⁹ POL00052226

³⁶⁰ POL00052292

³⁶¹ POL00052343

³⁶² POL00055844

decision of any consideration of the position in relation to disclosure except a generic paragraph to say that schedules should be obtained³⁶³.

303. During the course of their investigation, it appears that the investigating team proceeded on the basis that some of the matters were losses and others were thefts that was cash paid into the bank account. Although there was a plea at an early stage it is not apparent the evidence underpinning this approach was disclosed or that any attempt was made to amend the charge to reflect that. I have had sight of various call logs between the sub post office and the Post Office, including relating to issues with Horizon transactions (but in relation to user error or confusion). It does not appear this material was ever disclosed. Such material was arguably relevant at least to how much of the money lost was actually stolen. It is not clear if the full audit figures or underlying business figures were served prior to sentence. The underlying business records seem to only have been served in confiscation proceedings. Again, these were potentially relevant to how much of the money the Crown could say was stolen rather than losses that were mis-accounted for.
304. The brief to counsel³⁶⁴ for the confiscation proceedings asserted that a cash deficiency of £43894.15 had been discovered on audit, and that the theft related to this sum. There is no mention to issues with, or suggestions of issues with the workings of the Horizon system or disclosure in these. There was no reference to, or evidence of any provision of disclosure, albeit that is not unusual at the confiscation stage.
305. In the subsequent 2014 review by Cartwright King³⁶⁵, the Post Office retained the view that there was no evidence that Horizon failings contributed to the loss, and was clearly aware of potential issues with cross-disclosure to other cases. That advice took a concerning approach to post-conviction disclosure focusing on the consequences of disclosure rather than whether it was required. The Post Office clearly altered its view in this regard by the time that Mrs Rudkin appealed in December 2020. It was recognised that material relating to the reliability of Horizon, and material showing that Mrs Rudkin had raised those concerns, was central to proper disclosure.

³⁶³ POL00046488

³⁶⁴ POL00052094

³⁶⁵ POL00046579

Assessment

306. This case differs from others that I have considered both because Mrs Rudkin made admissions that she had diverted monies to cover losses, inflating cash figures to cover this, and that she had also taken money to pay bills. She did, therefore, accept a degree of theft, and certainly made admissions to false accounting. However, she was also denied that she had appropriated anything like the total loss identified. The investigation appears to have accepted this, and identified a case based on a combination of some monies taken and others not. The alternative reasons for the losses, and evidence of those losses were not identified as a line of enquiry, and the possibility of errors in the system not explored. This was despite the fact that records now available do show incident reports and complaints relating to the operation of the system, and contemporaneous concerns about its reliability.
307. The investigation's interpretation of the evidence does not appear to have been reflected in the decision just to charge theft. That decision was reached without any recorded analysis of whether that charge, and the key elements of that offence, were made out on the evidence. It was also reached without any recognition that there were lines of enquiry relating to the system, and financial records, that had not yet been resolved. Also of very real concern here, there was no recorded assessment at all of whether prosecution was in the public interest. On the one hand, theft or false accounting by an employee, representing a breach of trust, would often be in the public interest. However, here the fact that the monies were being repaid and the very real concerns for Mrs Rudkin's mental health (both factors identified in the Code for Crown Prosecutors as tending against prosecution being in the public interest), were not addressed at all.
308. In terms of disclosure, the early stage at which Mrs Rudkin pleaded guilty provided little time for any significant disclosure process to be undertaken. Nevertheless, the material I have seen shows that there was scope for material to be disclosed relating to what the underlying material did or did not show in relation to losses, the reliability of those records, the contact made with helplines and Mrs Rudkin's finances. She was certainly allowed to plead without disclosure in these regards, which is an issue both for those who represented her and those who prosecuted her.

PETER HOLMES

309. Mr Holmes was employed for over 13 years as the post office manager at Jesmond Sub Post Office near Newcastle. He was 67 years old when he was investigated after a shortfall of £46,049.16 was identified at an audit in September 2008. The Sub-Postmaster Sunil Khanna was not prosecuted, but on their later account to the Complaint Review and Mediation Scheme³⁶⁶ came close to being so.
310. On 22nd December 2009, in the Crown Court at Newcastle upon Tyne, Mr Holmes pleaded guilty to four counts of false accounting, asking for nine similar offences to be taken into consideration. He had originally been charged with theft, but was acquitted of theft by direction of the judge. On 29th January 2010, he received a community sentence order with a three-month curfew.
311. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*³⁶⁷, Mr Holmes was one of those in category B, “*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*”

The investigation

312. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. The Investigation Summary³⁶⁸ was prepared by Robert Daily, a fraud adviser who attended the Jesmond post office following an audit which found cash shortages of £46,0049.16. Mr Daily in fact prepared two such reports. The first, dated October 2008³⁶⁹ was a shortform, and I have primarily relied on the second, dated January 2009³⁷⁰. He also prepared the schedule of non-sensitive unused material, and therefore appears to have been acting as investigator and disclosure officer. No officer in charge is identified.

³⁶⁶ POL00061839

³⁶⁷ [2021] EWCA Crim 577, at §75

³⁶⁸ POL00050832

³⁶⁹ POL00050334

³⁷⁰ POL00050832

313. The investigation reports indicate that the shortfall had been identified the shortfall on 18th July 2008. Mr Daily had attended the branch the next day and spoken to Sunil Khanna, the sub-postmaster. Mr Khanna said that he employed Mr Holmes to run the post office, in which Mr Khanna said he played no real role. He did not have a Horizon User ID. He said that he had not been shown a branch trading statement since August 2007, and had been unaware of the shortfall. It does not appear that this interview with Mr Khanna was recorded, and certainly I have not seen a transcript. Mr Khanna was further questioned later, which interview was recorded.
314. Mr Holmes was himself then spoken to by Mr Daily and his fellow investigator, Chris Knight. He was cautioned and offered the services of a solicitor or a Post Office friend, and declined (by reference to forms CS0001-3, which I have not seen). This approach was consistent with the Post Office Interviewing Policy³⁷¹. It does not appear that this initial interview was recorded. The policy does allow this to occur where recording is impractical³⁷². It is not clear why this would have been the case here. Mr Holmes agreed to his car and home being searched, and a number of items were seized at this home, including his personal bank records, a Horizon transaction log and three Horizon receipts. The recovery of these items was documented, which was in accordance with the Post Office Searching policy³⁷³, and that record later disclosed³⁷⁴. As part of the investigation³⁷⁵, credit checks and land registry checks were conducted as were checks of bank accounts. No luxury items were identified.
315. Mr Holmes was then interviewed on 19th September 2008³⁷⁶ at the home of Sunil Khanna, which was also his office. He again declined the assistance of a solicitor or a friend, and this was again documented. Mr Holmes agreed that Mr Khanna was sub-postmaster in name only and had no involvement with the operation of the Horizon system. The interview explored fairly fully the possibility of the shortfall being the result of theft by others. He was asked about how end of month balances were completed and named a colleague who assisted. By reference to the PTPH form³⁷⁷, in

³⁷¹ POL00104758

³⁷² POL00104758, para.3.2

³⁷³ POL00104752

³⁷⁴ POL00051527

³⁷⁵ POL00050832

³⁷⁶ Transcript of first interview, POL00066743, and second interview, POL00066738

³⁷⁷ POL00051952

which she is listed as a witness to be called, a statement was obtained from her as part of the investigation.

316. Mr Holmes was asked about the shortfall. He said he had no idea what had happened, or where the missing cash had gone but he did then assert that shortages could be an issue with Horizon or with malfunctioning equipment. He accepted making the two false cash declarations that were the subject of the charges, but believed that the shortfall on each occasion was something that the computer had done, or failed to do. He admitted this behaviour for a period of six to seven months. He also raised specifically issues with the Horizon system for three months about nine months previously. He said he had not told the sub-postmaster of the issues because he did not want to cause problems, and did not get on with Mr Khanna's brother, Anil. He denied, emphatically, stealing the money, and said that he had hoped an error notice would come back in relation to it. He was asked about the bank statements that had been recovered from his home and accounted for the deposits there recorded. Mr Holmes consented to further personal financial material being obtained.
317. It appears³⁷⁸ that Mr Holmes was also then subject to an interview undertaken by Sunil Khanna, the sub-postmaster and his brother Anil Khanna. This interview was undertaken on 22 September 2008, and thus prior to either of those persons themselves being interviewed by the Post Office investigation in October 2008. Mr Holmes declined to sign the note made by Mr Khanna of this interview. According to that note, he agreed that the shortfall was recorded, but said "*I can only think it's the computer*". He said that they had been having problems with Horizon, but he had not informed Mr Khanna or the Post Office about this. According to this note, in contrast to his interview with the investigators, Mr Holmes said he had not shown Mr Khanna any monthly balance sheets because they would have revealed the "*substantial deficits*". It appears irregular that Mr Holmes was interviewed by the sub-postmaster in this way, and that Mr Khanna went into his own interview with the advantage of having done so. That irregular conduct was independent of the Post Office investigation.

³⁷⁸ POL00066624

318. Sunil Khanna was interviewed under caution but a full transcript has not been provided. I have seen an interview note³⁷⁹, the status of which is not clear. He was accompanied by Anil Khanna, his brother, as “interview friend”. It appears from the note that Anil Khanna was also answering questions. It seems unsatisfactory that a potential witness, named by Mr Holmes (Anil Khanna), was permitted to play a part in the interview of an alternative suspect to Mr Holmes. Indeed, the Interviewing policy³⁸⁰ specifically identifies that the friend should be independent of the investigation and not a potential witness which the brother of the suspect was.
319. Mr Holmes having raised the operation of Horizon, it is clear that some enquiries were made. The Horizon Support Desk call logs were obtained as were Horizon transaction logs. The reason for doing so, as stated by the investigator³⁸¹, was “*to ascertain when Mr Holmes started producing false cash declarations and subsequently false accounts*”, rather than to test the working of the system. Whilst Horizon data and Business Trading Summaries relating to cash on hand were obtained, it is clear from their report³⁸² that the view of the investigative team was that no one would have allowed such significant shortfalls to arise over an extensive period without reporting them. This was described as “incredulous”.
320. In that regard, the investigator also said “*Mr Holmes made allegations the Horizon equipment was faulty over a period of time in early 2008. A request has been made to ascertain if this was the case*”. By the time of the updated report in January 2009³⁸³ it was asserted “*this has been checked and the allegations are unfounded*”. No detail is provided as to what checks and what results in the report and there is no reference to unused material in this regard in the schedule that produced³⁸⁴. This lack of reference includes a lack of reference to any Error Notices or Transaction Corrections where the system identifies accounting errors. The Mediation Scheme report relating to Mr Khanna³⁸⁵ alludes to there being 31 such notices which highlighted “*poor in branch accounting procedures*”.

³⁷⁹ POL00050356, POL00066624

³⁸⁰ POL00104758, para.3.5

³⁸¹ POL00050334

³⁸² POL00050832

³⁸³ POL00050832

³⁸⁴ POL00051527

³⁸⁵ POL00066637, p.7

Charging decision

321. I have seen a short charging decision³⁸⁶. It concluded there was a realistic prospect of conviction but did not include a detailed evidential analysis. Having reached a conclusion that reflected the terminology of the Code for Crown Prosecutors, it went on to state that there were medium prospects of success. It is not clear how that is squared with the proper test to be applied, and which the Post Office had by this time expressly adopted. There was no explicit consideration of public interest considerations. It did not set out why a charge of theft was appropriate or on what basis it was said theft could be proven rather than false accounting. It did not address how dishonesty was to be established. The public interest is not mentioned.
322. There does not appear to have been any consideration of unused material prior to the charging decision, and it appears to have been made on the investigation case summary. It appears³⁸⁷ the case may have initially been put on the basis that Mr Holmes had taken the money and deposited it into his wife's cake making business, but a defence forensic accountant refuted this suggestion. It is of concern that a defence expert was required to refute this, rather than it being addressed by the Post Office's own investigation into Mr Holmes' financial position, and thus an investigation as to whether he had in fact obtained financial benefit.
323. That expert report came from Peter Smith³⁸⁸, an accountant instructed for the defence. The purpose of the report was to investigate whether Mr Holmes had been correct in interview to explain that £48,000 that had passed through his bank account related to his wife's business rather than the Post Office shortfall. He concluded that Mr Holmes had been correct. He itemised financial material made available by Mr Holmes that demonstrated this. Mr Holmes had, of course, consented to the Post Office investigation having access to just such material.
324. The defence solicitors sent the report to the Post Office on 24th August 2009³⁸⁹ and invited them to review their theft allegation which was the sole count on the

³⁸⁶ POL00050912

³⁸⁷ By reference to the Mediation Scheme report for Sunil Khanna, POL00066637, p.5

³⁸⁸ POL00052103

³⁸⁹ POL00052389

indictment at that stage³⁹⁰. They asserted *"it is clear from the accountant's report that no monies amounting to £46,049.16 have passed through our client's bank account and that the monies you initially questioned are from our client's wife's small business."* They proposed that the prosecution offer no evidence on the theft charge and add a count of false accounting to which Mr Holmes could plead guilty.

325. The report was clearly provided to the investigator, Robert Daily³⁹¹, who observed: *"I cannot ascertain how much from the business has been deposited without a full list of daily takings for the period. I have only received extracts"*. It follows, I would observe, that such a detailed financial review had not been undertaken, or requested, before the defence report was received and that the theft charge had been formulated without such a review. Mr Daily added *"whereas the expert report views the amounts in to the Barclays account is the takings from the business my view is that the manner in which the deposits was made suggests differently"*, It is not clear what this means.
326. The Principal Lawyer in the Post Office Criminal Law Division, J. McFarlane³⁹² forwarded this to counsel instructed, Paul Caulfield of Trinity Chambers in Newcastle. She stated *"instructing solicitor's view is that a charge of theft is quite proper in this case. Should the defence maintain their stance then it may be that the financial investigator would be in a position to obtain further financial information regarding the defendant's account."* She raised both the need to instruct an accountant and a possible charge under the Fraud Act. In keeping with this stance, on 8th September 2009 she informed the defence that *"the plea on the basis suggested is unacceptable"*. As with the investigator, the prosecutor at this stage was seeking to maintain a charge on the basis of work that had not been identified as necessary before the charging decision was taken.
327. It appears from a response to it in December 2009³⁹³ that counsel did raise questions about the sufficiency of the evidence on a theft allegation, although I have not seen their advice. The response quoted the investigator and the results of his checks on the defence report. This indicated that *"I could find no sufficient evidence to bring any part of the expert report into question"*. This appears to be at odds with Mr Daily's immediate

³⁹⁰ POL00052105

³⁹¹ UKGI00014638

³⁹² POL00066162

³⁹³ POL00053679

response to the report in August 2009, and calls into question the rejection of a plea to false accounting by J. McFarlane at a time when the defence report had not been checked, or the underlying material considered.

328. It is not clear what changed so as to lead to the plea being accepted on 22nd December 2009³⁹⁴. The memorandum just quoted may provide an explanation in that it appears that the investigator, despite his earlier scepticism, had concluded that there was no way to prove theft. My concern with this is that it had never been clear how this was to be proved, and that obvious line of enquiry had not been pursued with any rigour.

Disclosure

329. A schedule of non-sensitive unused material (equivalent to an MG6C) was compiled by the investigator, Mr Daily, in May 2009³⁹⁵. It appears to include relevant material that would have been held, and which was not served evidence. However, it does betray a series of areas where the investigation was limited, or the resulting disclosure of unused material was limited in consequence. For example, a comparison of the list of financial material reviewed by the defence accountant³⁹⁶ to this schedule shows that either the prosecution had not undertaken necessary detailed analysis of Mr Holmes' position or, if it had the material, had not disclosed that which was relevant to the issues in the case in that regard.
330. Similarly, the Mediation Scheme report relating to Mr Khanna³⁹⁷ refers to an earlier issue with the balancing of accounts for the branch, which resulted in correspondence with Mr Khanna and remedial action being taken. There is no suggestion that Mr Holmes was involved in this. There is no reference that I have seen to any disclosure of material relating to a potential alternative suspect for accounting issues being considered. That said, on Mr Holmes' own account Mr Khanna had no role relating to Horizon during the period when the shortfall arose, and so the value of any such disclosure would have been limited, and a decision not to disclose it would have been justifiable.

³⁹⁴ POL00054149

³⁹⁵ POL00051527

³⁹⁶ POL00052103

³⁹⁷ POL00066637, p.6

331. At times the descriptions in the unused schedule³⁹⁸ appear too short to allow for a clear understanding of what is held. For example, item 12 reads “notebook entry”. This contrasts with the requirements of para.6.9 of the CPIA Code that the description should make it clear the nature of the item and whether it needs to be inspected. On the face of the document that I have seen this was not picked up on as an issue when the schedule was reviewed, as it should have been, by reviewing lawyer. That said, it does not appear that any such review occurred given that the schedule does not appear to have in fact been endorsed by a reviewing lawyer. Despite this, it appears from the covering letter by which the schedule was sent to the defence that the decision was taken that everything on that MG6C was not disclosable³⁹⁹. This all embracing position seems surprising. It appears that at least the snapshot (item 6) and branch trading statements (item 7) would have been disclosable.
332. The defence statement was served on 16th July 2009⁴⁰⁰, a few weeks after the plea and case management hearing⁴⁰¹, at which it was made clear that the defendant would plead to false accounting. The defence statement similarly made that clear, but also explicitly raised issues with Horizon as to the source of the loss of money. I have seen no correspondence, or actual disclosure that was generated by the defence statement. That position appears to be supported by a post-conviction disclosure review⁴⁰² which concluded that no further disclosure was required. This appears to have been on the basis that the lenient sentence indicated that the defendant was sentenced of falsifying the account to cover discrepancies that he had not caused.

Assessment

333. As in other cases, the suspect in interview raised issues with the operation of the Horizon system as part of his explanation, and additionally in this case the actual sub postmaster alluded to earlier incidents. Despite this, this reasonable line of enquiry was not pursued. The investigator asserted in his second report that Mr Holmes’ allegations had been shown to be unfounded, but no material was served or disclosed

³⁹⁸ POL00051527

³⁹⁹ POL00066232

⁴⁰⁰ POL00052178

⁴⁰¹ POL00051952

⁴⁰² POL00066586

to show what checks had been undertaken or in what way they had refuted those concerns. This was an important issue where, as was at that the stage the case, it was being alleged that Mr Holmes had stolen the money, rather than sought to cover up losses recorded on the system for which he was not responsible and which he could not explain. It is not clear on the material that I have seen how the former position was ever thought to have been reached by reference to the enquiries that were actually made.

334. Similarly, this calls the charging decision into question. The decision itself, which was brief and barren of analysis either factual or legal, does not begin to assist as to the answer to that question. It is of concern that advice as to further enquiries, such as financial enquiries, only emerged when then the charging decision was called into question by the defence expert report. The questions so belatedly raised should have been asked by the prosecutor of the investigator before a theft charge was brought. The reluctance to concede that a plea to false accounting was sufficient is also, in these circumstances, concerning.

335. The disclosure schedule was either incomplete or betrayed an incomplete investigation, or a combination of both. A number of the disclosure decision reached by reference to that schedule appear to me to have been in error. I have also not seen evidence of disclosure being made, as it clearly should have been, in response to the defence statement. There is also no evidence of evidence of cross-disclosure of other cases where complaints about Horizon, even though the reviewing lawyers had personal knowledge of a number, at least by reference to those cases I have considered above.

SEEMA MISRA

336. Seema Misra was 32 years old when she came under investigation, and the Sub-Postmaster at West Byfleet.

337. On 21st October 2010, following a trial in the Crown Court at Guildford before His Honour Judge Stewart and a jury, Seema Misra was convicted of the theft of £74,609.84. She had previously pleaded guilty at a plea and case management hearing on 20th

March 2009 to six counts of false accounting. The operation and reliability of Horizon was central to the issues at trial, with extensive expert evidence adduced on both sides. This was the “*case in which Mr Jenkins had the most extensive involvement and the only case in which he was called to give live evidence at trial.*”⁴⁰³ It is right to say that the material relating to this case is much more extensive than for most others, and its analysis is therefore rather fuller.

338. On 11th November 2010, she was sentenced to 15 months’ imprisonment for the theft and six months’ imprisonment concurrently on each count of false accounting. On 8 July 2011, a confiscation order was made in the sum of £40,000. She was ordered to pay compensation of £40,000 to POL, to be paid out of the amount recovered by the confiscation order.
339. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*⁴⁰⁴, Mrs Misra was one of those in category B, “*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*”

The investigation

340. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. The Investigation Summary⁴⁰⁵ was prepared by Adrian Morris, investigation manager who attended the post office after an audit at the West Byfleet branch on 14th January 2008 led to the accusation that she was responsible for a shortfall of £74,609.84. He also interviewed Mrs Misra and was involved in the investigation thereafter. It appears that much of the later investigative work, and the role of disclosure officer, were performed by a colleague of Mr Morris, Mr Longman.
341. By reference to auditor’s reports⁴⁰⁶, the audit appears to have been a routine one, and the shortfall was identified in particular in relation to cash figures and cash in pouches, but also in other areas. Mrs Misra was not initially present during the audit, which

⁴⁰³ POL00165905, para.12

⁴⁰⁴ [2021] EWCA Crim 577, at §75

⁴⁰⁵ POL00044589, POL00044537

⁴⁰⁶ POL00045005, POL00058550

involved the auditors obtaining a Horizon snapshot. By the time she had arrived, the shortfall had been identified by reference to this snapshot. She told the auditor that the account would be "*between 50K and 60K short*". She said that former staff members had taken £89,000 but she had not reported this as she feared the branch would be closed. Instead, she had made good some losses and "*confirmed all balances had been adjusted to show a clear trading position at the end of each period*". There were two cash pouches recovered which contained remittance advices but not cash, and Mrs Misra said she had been hoping to obtain cash from her family to address these.

342. The investigators spoke to Mrs Misra at the branch, and completed the CS001 documentation in relation to her attending a voluntary interview and declining the assistance of a solicitor. She was cautioned and a note taken of comments she made about needing to count the shop takings (there being a shop as well as a post office on site), and her agreement to use such takings to repay the post office where she could. There was, therefore, compliance with the requirements of the Post Office Interviewing Policy⁴⁰⁷
343. A search was undertaken at the premises, which was documented. The Post Office Searches policy⁴⁰⁸ was, on the face of it, therefore complied with.
344. Mrs Misra was interviewed on tape and under caution at the premises⁴⁰⁹. In interview, she said there were losses of £89,000-£90,000 due to staff thefts. She said that these were staff who they had inherited from the previous owners and that she had reported a theft of £1000 to the police. She had carried the loss since 2008, and had been paying the loss back. She admitted that she had falsified the figures for cash on hand and falsely declared cash in pouches and currency awaiting collection in the branch trading statements for two branch trading periods. She added that she was afraid she would lose her job if she revealed the true figures. She did not expressly raise the operation of Horizon as a factor in the shortfall, but did say that aspects of the shortfall were unexplained. The Post Office placed great store on the fact that Mrs Misra had not made specific allegations against Horizon at this stage in their approach thereafter.

⁴⁰⁷ POL00104758, or its successor POL00104867

⁴⁰⁸ POL00104752, or its successor POL00104849

⁴⁰⁹ 1st interview POL00044543; 2nd interview POL00044544

345. Mrs Misra gave consent for her finances to be investigated and banking records obtained⁴¹⁰. The schedule of non-sensitive material (akin to a MG6C)⁴¹¹ does not reveal any evidence of enquiries being made in this regard. Where the allegation was that Mrs Misra had taken money from the Post Office an examination of her bank accounts for evidence of that money would seem a reasonable line of enquiry.
346. Initially, the investigator identified that it was only the audit staff and investigators who attended that needed to make witness statements⁴¹². Such statements were indeed obtained⁴¹³. The initial case summary⁴¹⁴ also lists as relevant documents the interviews and related documentation, the audit report and related material, and the trading statements obtained from Horizon for the audit. There was also a statement taken from Elaine Ridge⁴¹⁵, the contracts manager who had been identified as the discipline manager in the investigation report⁴¹⁶. She addressed the operation of the Horizon system in very basic terms to provide context for the auditors' findings, and addressing the terms of Mrs Misra's contract as sub-postmaster.
347. In terms of other investigative steps, a number of matters raised by Mrs Misra's interview appear only to have been investigated after Mrs Misra's case was in preparation for trial. For example, it was at the plea and case management hearing that the prosecution sought particulars as to which members of staff Mrs Misra suspects of theft⁴¹⁷, and such enquires were then made shortly before Mrs Misra's original trial date⁴¹⁸. Mr Longman, the investigator, made a statement in May 2009 to record the enquires that had been in relation to two of these suspects. It involved enquires at their addresses and in relation to their addresses with the council. On 20th May 2009⁴¹⁹, Mr Longman made an application to the Surrey Police for information about the report of theft that Mrs Misra had said in interview that she had made. A second defence

⁴¹⁰ POL00044589, POL00044537

⁴¹¹ POL00050750

⁴¹² POL00044589, POL00044537

⁴¹³ Noverre (auditor) POL00044609; Allen (security advisor) POL00050566, POL00044611, Longman (security advisor) POL00045495, Morris (the investigator) POL00044612

⁴¹⁴ POL00044613

⁴¹⁵ POL00050646

⁴¹⁶ POL00044589, POL00044537

⁴¹⁷ UKGI00014857

⁴¹⁸ POL00051342

⁴¹⁹ POL00051508

statement in January 2010⁴²⁰ again raised the need for disclosure of this information from Surrey Police, which suggests deficiencies in the pursuit of this line of enquiry.

348. The investigation of the operation of Horizon appears only to have occurred after the issue had been raised by the defence when Mrs Misra's case was first listed for trial in June 2009⁴²¹. This in turn appears⁴²² to have followed the publication of an article in Computer Weekly in May 2009, '*Bankruptcy, prosecution and disrupted livelihoods – Postmaster tell their story*', which raised "*a potential IT problem*". This is further addressed in the context of disclosure below. However, it is of note that in February 2010, over 9 months after the Horizon issues were raised by Mrs Misra, David Jones of Fujitsu⁴²³ commented "*one concern is that POL have not apparently requested transaction data for West Byfleet for the period and transactions in question. This would normally be provided in previous cases and would include Fujitsu extracting of files from the system to enable us to provide details of transactions.*"

349. Gareth Jenkins also addressed this issue in March 2010⁴²⁴, when he commented "*I do appreciate that it is up to the prosecution to prove Horizon is reliable rather than the defence to prove it isn't, but it is always difficult to prove there are no errors – particularly over such a long period of time. Surely it is down to the Post Office investigators to get to the bottom of exactly where there is anything in dispute. At that point I might be able to assist with some technical knowledge to help interpret the various logs to support such areas of dispute*".

Charging decision

350. The investigator, Mr Morris, recommended⁴²⁵ that Mrs Misra be prosecuted given that she had admitted falsifying the branch trading statements and was the only person who completed them. He also asserted that she had benefited from doing so, but did not specify how. There had been no financial investigation relating to Mrs Misra at that point, and so this would appear to be an identification that the concealment of a

⁴²⁰ POL00054237

⁴²¹ See attendance note, POL00051773

⁴²² POL00165905

⁴²³ FUJ00122713

⁴²⁴ POL00054252

⁴²⁵ POL00044589, POL00043034

shortfall had allowed Mrs Misra to keep her job. In short, this was an unspecified recommendation of charging false accounting.

351. On 1st April 2008⁴²⁶, Jarnail Singh, senior lawyer in the Post Office Criminal Law Division completed a brief charging decision, which confirmed that “*the evidence is sufficient to afford a realistic prospect of conviction*” on the charges in the schedule⁴²⁷. In short, this involved a theft charge covering the whole shortfall of £74,609.84 over a period from 15th November 2006 to 14th January 2008 and false accounting charges for the branch trading statements through that period. Mr Singh observed “*if Mrs Misra pleaded guilty to the false accounting then it is recommended that the prosecution in respect of the theft is not proceeded with*”.
352. This was arguably a concession to the absence of actual evidence of theft and consistent with an approach whereby theft was charged to encourage pleas to false accounting. That also accords with the fact that the charging decision includes no analysis of the evidence, and does not suggest any evidence be obtained that was not identified in the investigation report. In particular, there is no discussion of, or request for the obtaining of evidence relating to, where the money, if stolen, had gone. There is also no reference to the public interest test at all.
353. This decision was communicated back to the investigator on 28th April 2008⁴²⁸, with a request that he obtain the summons to initiate criminal proceedings. The approach to the false accounting charges as an acceptable basis for a plea is also reflected in the instructions to counsel after Mrs Misra was sent for trial⁴²⁹, which indicated that “*a guilty plea is anticipated*”.
354. Counsel instructed, Warwick Tatford of 9-12 Bell Yard, was asked⁴³⁰ to draft an indictment. The indictment that I have seen⁴³¹ reflects the schedule of charges approved by the lawyer⁴³², and thus includes a theft charge as well as false accounting charges. I have not seen any advice from counsel at that stage which addresses this.

⁴²⁶ POL00049658

⁴²⁷ POL00045010

⁴²⁸ POL00053364

⁴²⁹ POL00044585

⁴³⁰ POL00044585

⁴³¹ POL00044538

⁴³² POL00045010

The instructions to counsel suggest that he had the investigator's report and initial case summary at that stage, neither of which evidenced the loss beyond the Horizon records.

355. Ultimately, it appears that pleas to false accounting were not sufficient and that a conviction for theft was sought in addition.

Disclosure

356. The Court of Appeal⁴³³ used material from the case of Mrs Misra to illustrate "*...other indications of the approach to Horizon issues taken by at least some POL personnel involved in the conduct of these and similar prosecutions.*" The disclosure process in relation to this case was protracted and complicated. It can properly be divided into (a) an initial stage, including initial prosecution disclosure and the defence statements, (b) disclosure in the context of the service of expert evidence, (c) disclosure in the run-up to the trial and (d) post-conviction disclosure.

(a) Initial disclosure

357. A schedule of non-sensitive material (akin to a MG6C)⁴³⁴ was prepared by Jon Longman, who was one of the security advisers present with the investigator Mr Morris on 14th January 2008⁴³⁵. It is not clear, beyond the terms of this schedule, if he was the disclosure officer. The schedule is dated 23rd January 2009, a month after Mrs Misra's first appearance at the Magistrates Court on 19th December 2008⁴³⁶. The schedule lists various items of paperwork connected with the investigators' attendance on 14th January and their interaction with Mrs Misra. It does not include any reference to any material generated by financial enquires in relation to Mrs Misra, any investigation of the theft she reported to the police, or any investigation of the operation of the Horizon system in relation to the charge period.

⁴³³ [2021] EWCA Crim 577, at §91

⁴³⁴ POL00050750

⁴³⁵ His witness statement in that regard is POL00045495

⁴³⁶ Date given in the brief to counsel, POL00044585

358. An updated version of the schedule, dated 8th September 2010⁴³⁷ (and thus shortly before the trial), also included material relating to checks on witnesses, the earlier theft report, transaction corrections, helpline calls and training records. These limited additional entries reflect aspects of ongoing disclosure reacting to repeated defence requests, which are detailed below. They were mainly items that should have been on the schedule from the outset. An insight in relation to the disclosure of training records comes from a discussion in January 2014⁴³⁸ at which Simon Clarke of Cartwright King observed *“if someone says bad training and bad backup – wrong- not disclosable”*.
359. Mr Longman also completed a schedule of sensitive material (MG6D)⁴³⁹ and a disclosure officer’s report (MG6E)⁴⁴⁰ on the same date. Each is blank. There is no annotation on any of the schedules to indicate that they had been reviewed by a lawyer. However, when disclosure was provided to the defence on 17th February 2009⁴⁴¹, following Mrs Misra being sent for trial on 13th February⁴⁴², Mr Singh, the senior lawyer, recorded that *“at this stage there no prosecution material which meets”* the disclosure test.
360. A defence statement was served, dated 20th March 2009⁴⁴³. It denied theft and asserted staff thefts had been responsible for the losses. Mrs Misra indicated she was guilty of false accounting. She again made no assertion as to the operation of the Horizon system. At the plea and case management on the same date, the defence were directed to provide better particulars of which members of staff were suspected of theft. On 9th April 2009⁴⁴⁴ such particulars were provided, naming three people. An attendance note⁴⁴⁵ from the senior lawyer Mr Singh, dated 21st April 2009, indicated that he had asked the investigator, Mr Longman, to take witness statements from each. He subsequently made a statement⁴⁴⁶ setting out the enquiries that had been made.

⁴³⁷ POL00055217

⁴³⁸ POL00066893

⁴³⁹ POL00050752

⁴⁴⁰ POL00050751

⁴⁴¹ POL00050942

⁴⁴² Date given in the brief to counsel, POL00044585

⁴⁴³ POL00051331

⁴⁴⁴ UKGI00014857

⁴⁴⁵ POL00051342

⁴⁴⁶ POL00062550

361. Mrs Misra's case was first listed for trial in June 2009 before Recorder Bailey. An attendance note⁴⁴⁷ from the lawyer Mr Singh records that the trial for theft was aborted at the start, when Mrs Misra raised issues of Horizon reliability and suggested that errors in the system accounted for some of the losses, albeit she continued to assert there had been staff thefts. The basis for the defence position was recorded as internet material "*which has history of the Post Office cases which has resulted in criminal prosecution where there has been doubts about the Horizon system*". The note records that prosecution counsel suggested that it would be unfair if the defendant made allegations about the Horizon system in evidence because there would not be material before the jury to evaluate them.
362. Evidence was obtained by the Post Office in relation to Horizon's operation shortly after this, in the form of a statement from Andrew Dunks of Fujitsu, dated 24th June 2009⁴⁴⁸, which identified the number of calls to the Horizon helpline from West Byfleet since June 2005. He observed that the calls were routine and of average frequency. He did not produce the records of the calls, and there were repeated defence requests before he finally did so in March 2010⁴⁴⁹. It appears, however, that even then the disc containing the records was found to be blank⁴⁵⁰. A statement was also taken from a sub-postmaster from Teddington to say that he had no reason to doubt the reliability of Horizon. It has to be said that a technical review of the Horizon data for evidence of error would have greater value than his estimation.

(b) Disclosure relating to expert evidence

363. Numerous disclosure requests followed including about Horizon. These started with an application, pursuant to section 8, CPIA, dated 30th September 2009⁴⁵¹, which served the first report from Professor Charles McLachlan⁴⁵² regarding Horizon. He observed that he was wholly reliant on data provided from Fujitsu to assess Horizon's operation and observed "*the Post Office provided no opportunity for independent investigation of the operation of the Horizon system under test conditions or using video observation in a live*

⁴⁴⁷ POL00051773

⁴⁴⁸ POL00051960

⁴⁴⁹ POL00054518

⁴⁵⁰ POL00054680

⁴⁵¹ POL00052462

⁴⁵² POL00045518, POL00055315

environment...the Post Office provided no opportunity to understand and review the systems and processes in the Post Office Ltd operation environment outside Horizon that could give rise to transactions in Horizon.” Despite this, he identified a number of potential issues with the system. As the Court of Appeal⁴⁵³ summarised the position, “*Professor McLachlan advanced a series of hypotheses including whether the user interface gave rise to incorrect data entry, and whether the system failed to process transactions properly.*” A further issue raised was whether a Horizon problem that had afflicted the Callendar Square branch in Falkirk could have been the cause of the losses at Mrs Misra’s West Byfleet branch.

364. The prosecution served evidence in response from Gareth Jenkins of Fujitsu. The first response appears to be dated 2nd October 2009⁴⁵⁴, which was largely generic and addressing issues with equipment failure which “*will always be visible to Fujitsu*”. At that stage, he did not address Callendar Square, but in later reports in March 2010⁴⁵⁵ he ruled out the Callendar Square bug as being the cause of the losses. It appears he had only just become aware of the issue⁴⁵⁶. He addressed and rejected most of Professor McLachlan’s hypotheses in a second report in February 2010⁴⁵⁷. He did concede that he could not exclude the possibility of errors in the system, although he said that any such errors could not be the cause of the volume of the losses in question. There is also a draft statement⁴⁵⁸ from a security manager, David King, in response to a second report from Professor McLachlan from the same period, which appears to have morphed into a statement from Andrew Bayfield⁴⁵⁹ by the time it was signed. The ‘Gareth Jenkins chronology’⁴⁶⁰ asserts that Mr Jenkins’ February 2010 response followed internal communication. Emails quoted suggest that he considered that Professor McLachlan had raised “*a number of questions*” requiring “*detailed analysis of various transactions*”, and observed “*we really don’t want to be seen to be undermining a POL prosecution!*”

⁴⁵³ [2021] EWCA Crim 577, at §202

⁴⁵⁴ FUJ00080526

⁴⁵⁵ POL00054345, POL00001643

⁴⁵⁶ POL00165905, para.15

⁴⁵⁷ POL00053942

⁴⁵⁸ POL00053951

⁴⁵⁹ POL00001576

⁴⁶⁰ POL00165905, para.14

365. Six reports were served from Professor McLachlan in total⁴⁶¹. These developed his concerns in relation to the various hypotheses he had set out, and the limitations, as a result of disclosure, to his ability to test them. I have not seen all of these reports. Where I have and where they are relevant to the disclosure process, I shall identify those, and prosecution responses to them, below. I have also taken notice of communications contained only in the 'Gareth Jenkins chronology'⁴⁶², but have in relation to these also take notice of the fact that the Chronology is not being treated as evidence, and have therefore approached such communications with a degree of caution, and have not relied on them to reach definite conclusions. With those caveats in mind, it appears that in February 2010, there were email discussions between Mr Jenkins and both the lawyer and investigator at the Post Office dealing with the case that identified that transaction logs for the West Byfleet Post Office had not been obtained or checked. The communications suggest that Jarnail Singh asked Mr Jenkins if he could "*examine the Horizon system to investigate mistakes...we are keen that the defence are given suggestions as to how they can effectively test their theories against the Horizon data..*" Mr Jenkins indicated that response to the defence expert required "*getting the various detailed logs*".
366. In relation to disclosure to the expert correspondence⁴⁶³ within the Post Office does show that arrangements were made for Professor McLachlan to see the Horizon equipment at West Byfleet. A statement was obtained from Ian Venables⁴⁶⁴ of Fujitsu in relation to the Horizon equipment that was installed at West Byfleet. Prosecution counsel also requested⁴⁶⁵ details of other cases that were identified in "*that set of papers from the defence dealing with other cases to do with Horizon*" where there had been guilty pleas/verdicts. This resulted in 3 civil case files being provided to prosecution counsel in November 2009⁴⁶⁶ so he could "*get a flavour of what happens with the Horizon system*".
367. By reference to its fax date, on 13th November a further disclosure request was made seeking disclosure in relation to Mrs Misra's Horizon training, "any business testing" of the Horizon system and wider data for the operation of the system at West Byfleet.

⁴⁶¹ 1st report POL00045518 in part and POL00055315 in full; 3rd report POL00053992, 4th report POL000541265th report POL00055196

⁴⁶² POL00165905

⁴⁶³ POL00054418, POL00053426, POL00053454

⁴⁶⁴ POL00054528

⁴⁶⁵ POL00053454

⁴⁶⁶ POL00053481

Disclosure was also sought of *“how many past and current prosecutions for theft and/or false accounting of sub-postmasters...have led to the defence raising issues with the Horizon system.”* A legal executive in the criminal law division forwarded this to Mr Longman the investigator⁴⁶⁷, and in the meantime replied observing that *“some of the items appear to have already been dealt with or appear to be outside the ambit of the Post Office’s prosecution...”*

368. Advice was sought from prosecution counsel in relation to the various defence disclosure requests, which was provided by Warwick Tatford in January 2010.⁴⁶⁸ He advised a response pointing out that there would be disclosure in accordance with the CPIA, but that there was no defence statement raising issues with Horizon. He also advised that the response indicate that the defendant would have *“a good knowledge”* of any errors in the operation of the system, and adding that *“we are handicapped in fulfilling our disclosure obligations by the absence of an adequate defence statement”*. A response in these terms was sent on 11th January 2010⁴⁶⁹. The defence responded with a chronology of correspondence and observing *“nearly 9 months have passed since you were first made aware of our client’s issues with the Horizon system since which time not a single page of disclosure has been provided...”*.

369. Counsel’s advice indicated that he had now reviewed the case files in the papers from the defence to consider the question *“is there material that is capable of casting an objective doubt on the reliability of Horizon”* and advised as to limited disclosure against that test. This was a test that he had agreed with defence counsel, and appeared a sensible one to pose. He also identified further enquires to be made of Fujitsu in relation to the case studies and the Callender Square issues raised by Professor McLachlan⁴⁷⁰. He also reviewed a defence disclosure request, which had been annotated by Mr Longman the disclosure officer⁴⁷¹. He broadly agreed with Mr Longman’s approach, which was to seek clarification of broad requests, to obtain further statements and/or provide documents where appropriate and to make further enquiries of Fujitsu in a number of respects.

⁴⁶⁷ POL00053520

⁴⁶⁸ POL00044557

⁴⁶⁹ POL00053746

⁴⁷⁰ The Callender Square issues were raised by Gareth Jenkins in February 2010, POL00054017

⁴⁷¹ This appears to be POLPOL00044603

370. This was a robust approach to disclosure, but one that was consistent with the CPIA and the defence case as then particularised. It was interpreted by the reviewing lawyer⁴⁷² as *“we should disclose everything we can disclose at this stage so the defence will know where we are coming from. We should be seen to be willing”*. That is arguably a wider disclosure approach than the CPIA required, if it were acted on. In at least one respect there was hesitation in doing so, in that Principal Post Office Lawyer J. McFarlane queries *“how it assists the defence to know that the prosecution has another undecided case where the reliability of Horizon is in issue”*.
371. The defence response to the 11th January letter also included a second defence statement⁴⁷³. This stated: *“The general defence is ... there have been unquantifiable thefts by former employees causing loss, but this has been compounded by operational faults in the Horizon computer system”*. The defence statement identified a number of disclosure issues that showed lines of enquiry highlighted in interview had still not been pursued. These have already been addressed. On 27th January⁴⁷⁴, the Post Office responded to the defence disclosure requests in accordance with the approach in counsel’s advice.
372. According to the Court of Appeal⁴⁷⁵ on 15th January 2010 a schedule of sensitive material (MG6D) was prepared, which I have not seen. As described by Holroyde LJ: *“The Disclosure Officer who signed it stated that she believed the single item listed on the schedule was sensitive. The item was described as “Article relating to integrity of Horizon system, supplied with accompanying letter by defendant”. The reason for sensitivity was said to be “Could be used as mitigation, i.e. to blame Horizon system for loss”. Given that the item appears to have been a document supplied by the defence, the appellant was not in fact deprived of material she should have seen; but the important point for present purposes is that a POL employee acting as Disclosure Officer felt it appropriate to treat a document as sensitive, and withhold it from disclosure, because it could be used to assist the defence. Such an approach to disclosure is plainly wrong, but it does not appear that any action was taken by anyone on behalf of POL to correct the officer’s serious error.”*

⁴⁷² POL00053849

⁴⁷³ POL00054237

⁴⁷⁴ POL00044553

⁴⁷⁵ [2021] EWCA Crim 577, at §91(ii)

373. Also in January, the defence had served a statement from Eleanor Nixon⁴⁷⁶, a retired sub-postmaster which spoke of issues she had encountered with Horizon. This was characterized by Mandy Taylor, Dispute Resolution in the Post Office Legal Services as *“support of the contention that Horizon is the cause of all evil and that they were perfect postmasters”*. A review was undertaken, it appears, to identify her, any material that related to her account and/or material that undermined her account. Her statement was also referred to Gareth Jenkins of Fujitsu for comment⁴⁷⁷. A statement was later served from Andrew Winn from the Post Office⁴⁷⁸ refuting Ms Nixon’s scenarios.
374. On 1st February 2010⁴⁷⁹ there was a mention at Court to address disclosure which set out a timetable for further evidence to be served re Horizon by the prosecution and then any further disclosure requests or submission as to abuse of process in response by the defence. Evidence was served from Mr Jenkins of Fujitsu⁴⁸⁰, Penelope Thomas of Fujitsu⁴⁸¹ and Andrew Bayfield of the Post Office⁴⁸² the next day. Jarnail Singh also responded to a series of emails from the defence making disclosure requests on the same day⁴⁸³.
375. On 3rd February⁴⁸⁴, the defence submitted a further disclosure request⁴⁸⁵ and a third report from Professor McLachlan⁴⁸⁶. In significant respects the disclosure request updated and repeated those that had already been made, for example in relation to training, helpline calls and other cases where Horizon issues had arisen. Professor McLachlan also identified the respects in which a lack of Post Office data records and access to system data files for Horizon prevented the testing of his hypothesis. Jarnail Singh, the Senior Post Office lawyer sought a further report from Mr Jenkins in relation to this⁴⁸⁷, and a response was provided by a statement dated 8th February⁴⁸⁸ in the main

⁴⁷⁶ POL00053643

⁴⁷⁷ POL00054017

⁴⁷⁸ POL00054175

⁴⁷⁹ UKGI00014903

⁴⁸⁰ POL00053942

⁴⁸¹ POL00001598

⁴⁸² POL00001576

⁴⁸³ POL00053979

⁴⁸⁴ UKGI00014895

⁴⁸⁵ POL00054008

⁴⁸⁶ POL00053992

⁴⁸⁷ POL00054019

⁴⁸⁸ POL00001569

seeking clarification from the Professor of what was being requested. Mr Singh in turn responded asking instead for a response to Professor McLachlan⁴⁸⁹.

376. There was clearly, quite appropriately, direct contact and discussion between the experts, Mr Jenkins and Professor McLachlan. For example, on 25th February⁴⁹⁰ Mr Jenkins reported that *"I also explained to him some of how Horizon works and why this means that some of his hypotheses were invalid. I also pointed out that in order to identify exactly what was happening then it would be necessary to go through the detailed logs of the relevant time..."*. This was a necessity that Mr Jenkins had already identified to the Post Office⁴⁹¹. He further observed that he did not think any request had yet been made for those logs. The 'Gareth Jenkins chronology'⁴⁹² suggests that such direct contact between the experts had been encouraged by Jarnail Singh, the Post Office lawyer. He had also mooted, on 12th February 2010, *"may the simplest and practical way of dealing with this whole question is to find a shortest span of logs, analyse it, disprove or rebut what the defence expert is saying..."* It will be necessary to consider the underlying and referenced material as to whether there was such encouragement, and if so its timing and extent.
377. Mr Singh also drafted a response to the third defence disclosure request which was circulated within the prosecution team on 22nd February⁴⁹³ and sent to the defence on 24th February⁴⁹⁴. It addressed training issues. In relation to Horizon it stated: *"our duty of disclosure is whether material which undermines the prosecution case and supports your client's defence. We hope if the expert looked at a short span of information i.e. the period where your client falsified her records as set out in the previous letter. We hope it will not be necessary to examine records for 5 years. Your client was inflating figures over a long period. If this were as a result of mistakes over an extend period we think analysis over shorter period of falsifying accounting offences by your client did not appear to remedy large loss. There appears to be a long standing pattern of discrepancies which would appear in a short period as it would be on the long extended period. If mistakes are found in a short span of data the crown will obviously review its position as to the acceptability of your client's plea."*

⁴⁸⁹ POL00054062

⁴⁹⁰ POL00054198

⁴⁹¹ POL00165905, para.18

⁴⁹² POL00165905, para.22

⁴⁹³ POL00054162

⁴⁹⁴ POL00054185

378. There are two concerns as to this. First, it raises cost as a reason not to undertake disclosure, and to suggest that a shorter period of review will be sufficient on this basis. This was an issue the Court of Appeal expressed concern about in relation to later correspondence in August 2010, but it also applies here. Secondly, it appears to approach evidence of Horizon-related errors as relevant to whether guilty pleas should be accepted, rather than whether the prosecution remained tenable.
379. Another issue with this disclosure response is that it identifies that "*prosecution counsel has reviewed the case of Hosi. There is no material that requires disclosure.*" This was one of the case files that Warwick Tatford had considered, and in his advice in January 2010⁴⁹⁵ had advised disclosure of the defence preliminary expert report re Horizon and other case papers necessary to render it comprehensible needed to be disclosed. The Post Office lawyer in Hosi, J. McFarlane had queried this advice⁴⁹⁶, on the basis "*I do not understand the thinking behind disclosure of prosecution papers in respect of a case that has not been brought to trial*". Beyond this query, I have not seen the basis for a volte face by prosecution counsel such that he then advised against disclosure, as this response suggests. It appears various further witness statements were also served at this time relating to training⁴⁹⁷, and the operation of Horizon⁴⁹⁸.

(c) Pre-trial disclosure

380. There was an application to stay the indictment for abuse of process on grounds of non-disclosure in March 2010, but it failed. The application⁴⁹⁹ asserted that "*the defendant is seriously prejudiced in preparing and presenting her defence case*" as a result of the limitations to disclosure relating to Horizon. It appears that Professor McLachlan's fifth report⁵⁰⁰, which reviewed progress that had been made as of 25th February 2010 in relation to his hypotheses. Mr Jenkins provided a response to this report on 4th March⁵⁰¹. He had now reviewed the transaction logs from December 2006-2007 and set out an analysis of these to refute relevant hypotheses. The prosecution response to the

⁴⁹⁵ POL00044557, at §23

⁴⁹⁶ POL00053954

⁴⁹⁷ POL00054100

⁴⁹⁸ POL00054041, POL00054174

⁴⁹⁹ UKGI00015007

⁵⁰⁰ POL00055196

⁵⁰¹ POL00054299

application⁵⁰² by arguing that it had responded to “*an avalanche of disclosure requests*”, and argued that the root of the problems had been that the defence requests had not been focused, as Mrs Misra’s familiarity with the system should have permitted. It also identified as “*One of the main sticking points...the cost of obtaining Horizon data*”, and the failure of the defence to focus the period over which such data was needed.

381. Despite this response in early March 2010⁵⁰³, the Post Officer lawyer advised that transaction logs be obtained for the whole period of the theft allegation, and provided to Mr Jenkins to review and then to discuss with the defence expert. Such data was provided on 5th March⁵⁰⁴. It was recognised⁵⁰⁵ that this was work that would not be achieved by a March trial date. This recognition was repeated in exchanges between Jon Longman, the investigator, and Jarnail Singh, senior lawyer in April 2010⁵⁰⁶. This also addressed the digital rather than hard copy disclosure of material because of its scale⁵⁰⁷. Disclosure other than by hard copy is recognised as permissible under the CPIA, and it was not inappropriate for this to be undertaken in relation to voluminous data that was to be examined primarily by an expert, despite repeated defence requests⁵⁰⁸. What was not recognised was that this was work that had been required in response to that expert, Professor McLachlan’s reports for some time (as the responses of Mr Jenkins made clear).
382. The application for a stay was refused on 10th March 2010⁵⁰⁹ by Recorder Bruce on the basis that the trial process could address any unfairness. It necessitated the further delay of the trial, but this did not cause undue prejudice to the defendant.
383. On 4th May 2010, Professor McLachlan⁵¹⁰ set out progress in relation to the investigation of the Horizon transactions from West Byfleet. He reported that he had “*failed to identify any indicators of problems in the Horizon transactions at this preliminary stage*”. He recorded that he and Gareth Jenkins of Fujitsu agreed that examination of

⁵⁰² POL00054346

⁵⁰³ POL00054282

⁵⁰⁴ POL00054310

⁵⁰⁵ POL00054253

⁵⁰⁶ POL00054557

⁵⁰⁷ Addressed in correspondence to the defence, 7th April 2010, POL00054566

⁵⁰⁸ POL00054680

⁵⁰⁹ UKGI00014858

⁵¹⁰ POL00054712

the transactions would not determine whether the discrepancies were operator or system driven, that it was necessary to consider data held by the Post Office Business Support Centre in Chesterfield. He added that *“the systems operated at the Business Support Centre...were only brought to my attention for the first time at the time of our [McLachlan and Jenkins] conversation on 12th February 2010”*. This delay in this imparting of this important information to an expert where that information was of clear and, to Mr Jenkins obvious, relevance is of concern. That Mr Jenkins was capable of communicating information direct to the Professor is illustrated by an email on 7th May⁵¹¹ when he did so in relation to transaction corrections.

384. Gareth Jenkins provided a further report in July 2010⁵¹² in which he addressed TMS journal records for all outlet and counter transactions at a branch. As in earlier reports, he stated that *“there is no reason to believe that the information in this statement is inaccurate because of the improper use of the computer. To the best of my knowledge and belief at all material times the computer was operating properly, or if not, any respect in which it was not operating properly or was out of operation was not such as to effect the information held on it”*. In August 2010⁵¹³, he provided observations on a defence report in a case relating to Rinkfield post office from Professor McLachlan which was in identical terms to his 2nd report for West Byfleet. It is not clear if these observations were disclosed in Mrs Misra’ case or to the Professor.

385. On 15th July 2010⁵¹⁴, Jarnail Singh, the senior Post Office lawyer, recorded contact with John Longman, one of the investigators, about the need to resolve a financial obstacle to a further meeting, directed by the Court, between Gareth Jenkins and Professor McLachlan. The issue appears to have been as to payment to Fujitsu in this regard, which appears to have been resolved at that stage by the threat of Fujitsu having to justify its position to the Judge. This led to a meeting of the experts, which in turn, as per Professor McLachlan’s May note⁵¹⁵, led to a disclosure request⁵¹⁶ for considerable

⁵¹¹ FUJ00125442

⁵¹² POL00001759

⁵¹³ POL00054667

⁵¹⁴ POL00054999

⁵¹⁵ POL00054712

⁵¹⁶ POL00055074

further data, including that held by the Business Support Centre in Chesterfield. These requests were forwarded by the lawyer to counsel and the investigator⁵¹⁷.

386. The investigator, Mr Longman, clearly forwarded them in turn to Gareth Jenkins because he quoted him in his response⁵¹⁸, which sought clarification from the defence as to what was sought. Jarnail Singh, the lawyer's view⁵¹⁹ was that the data from Chesterfield and elsewhere was not disclosable and that the defence should be required to make an application under section 8, CPIA. Discussions about the hard copy disclosure of data, and its production at trial also continued to be a source of concern and exchange between the parties, and within the prosecution team at the end of July and early August 2010⁵²⁰. The requirement that the defence justify the further data disclosure through a section 8 application continued⁵²¹. This approach appears to have been supported by Gareth Jenkins who, emails quoted in the 'Gareth Jenkins chronology' suggest, did not think that the ambit of Professor McLachlan's enquiries "would help"⁵²². It appears that limited further disclosure relating to Chesterfield was effected by a statement⁵²³ from the investigator, John Longman, on 12th October, the day after the start of the trial.
387. This exchange of internal memoranda in July-August 2010, shows that a defence request for disclosure of Horizon data was met with objections based upon the cost of obtaining such information from Fujitsu. The basis of the objection was that the Post Office's contract with Fujitsu placed limitations upon the number of requests for ARQ data which could be made each year. In short, consideration of the data for disclosure to the defence appears to have been resisted, not on the grounds that it was not required by law, but on the grounds that contractual arrangements with Fujitsu made it costly and inconvenient to comply with its legal obligations as a prosecutor. Ultimately, in September 2010, the decision was taken by the Post Office not to make disclosure of the Chesterfield data. The reasons for the decision were not included in the correspondence⁵²⁴.

⁵¹⁷ POL00055077

⁵¹⁸ POL00055073

⁵¹⁹ POL00055113

⁵²⁰ POL00055132

⁵²¹ POL00055155, POL00055199

⁵²² POL00165905, para.28

⁵²³ POL00055530

⁵²⁴ POL00055225, POL00093841

388. The issues to which this stance gave rise were highlighted in September 2010⁵²⁵, when Professor McLachlan provided a further report. It appears to have been an update of earlier versions. In this he observed that he was wholly reliant on Gareth Jenkins and the material he provided *“for my understanding of the Horizon system and the manner in which it integrated into the full Post Office Ltd environment”*. He added that Mr Jenkins had provided *“every possible assistance subject, however, at all times to the instructions of his employers and Post Office Ltd.”* The Professor identified no action by the Post Office to investigate discrepancies at West Byfleet as they unfolded. He said that he and Mr Jenkins had not excluded discrepancies arising from screen calibration problems and the use of the fast cash button, and that Mr Jenkins accepted that there had been problems in the past with Horizon, as shown at Callender Square. He complained that *“the Post Office has not provided us with the opportunity to independently assess the possible impact on West Byfleet nor have they provided a list of known defects in Horizon...”* He also noted that Mr Jenkins considered other elements of the Post Office operating environment, of which there had not been disclosure, could be relevant to the understanding of discrepancies. Mr Jenkins replied to this defence report in a statement dated 6th October 2010⁵²⁶, to which I shall return.
389. Also in September 2010, a memorandum from Jarnail Singh, the senior lawyer, to Mandy Talbot, the principal lawyer at Royal Mail Group⁵²⁷ identified a request for disclosure in a case at Bradford Crown Court for disclosure relating to other cases where Horizon issues had been raised. This included Mrs Misra’s case, but also those of Jo Hamilton, Noel Thomas and others. Mr Singh asked whether there were others. Ms Talbot replied⁵²⁸ saying that relevant material was in storage, and commented *“there are ongoing cases every month which raise the issue of Horizon so it’s a movable feast. I am endeavouring to pull together a list of those cases currently with us where allegations have been made in respect of Horizon. Most of these have been on hold awaiting the decision on Misra”*. It is clear, therefore, that there was an awareness of a proliferation of cases where Horizon’s accuracy was in issue, but the memoranda do not suggest a sufficiently joined up approach to disclosure relating to them.

⁵²⁵ POL00055315

⁵²⁶ POL00055367

⁵²⁷ POL00055212.

⁵²⁸ POL00055894

390. Before Mrs Misra’s trial, representatives of the Post Office and Fujitsu had met to discuss the RPM bug in Horizon Online⁵²⁹. Gareth Jenkins was one of those at the meeting, which appears to have occurred before he signed off his 6th October report. In terms of the impact of the bug it noted a *“potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon data...it could provide branches with ammunition to blame Horizon for future discrepancies”*. Although it was only a matter of days before her trial that discussions about the issue had taken place, which were shared with the Post Office legal department⁵³⁰, and a report by Mr Jenkins proposing a fix had been written on 29th September 2010⁵³¹, there is no information to suggest that the RPM bug was considered for disclosure, and it was not disclosed to the defence. It was also not addressed by Mr Jenkins in his 6th October report⁵³².
391. This is of particular concern because this report, it is clear, was produced following consultation with trial counsel and those instructing him⁵³³. That report had been provided to the Post Office lawyer and counsel in draft, and amended in various respects at their request. There is no evidence of discussion between them about the bug⁵³⁴. That this is a correct analysis of the position is underlined by a CCRC Case Briefing Note⁵³⁵ which observed of Mr Jenkins *“this witness creates difficulties for POL as he knew of the issues with the Horizon system as identified in the second sight interim report and failed to declare them, falling short of the standards expected of an expert witness. The ‘Falkirk bug’ was known to the defence and was the subject of cross-examination”*.
392. In this regard, Holroyde LJ⁵³⁶ observed *“The bug only appeared in Horizon Online in 2010 and did not have an impact on Legacy Horizon, which was the version of the system in issue in Mrs Misra’s trial. Nevertheless, POL has properly conceded that it ought to have been considered for disclosure – and indeed disclosed – in Mrs Misra’s trial where issues of Horizon reliability were involved.”* It appears, by reference to email correspondence with trial counsel⁵³⁷, that the approach adopted was to require greater particularisation from the

⁵²⁹ POL00117662

⁵³⁰ POL00055410

⁵³¹ POL00001733

⁵³² POL00055367

⁵³³ POL00055413

⁵³⁴ POL00165905, para.29

⁵³⁵ POL00066933

⁵³⁶ [2021] EWCA Crim 577, at para.206

⁵³⁷ POL00055421

defence as to the data sought. It is also clear that this stance, which in abstract terms as an approach to disclosure of digital material was a reasonable one, was also supported by the trial Judge.

393. Mrs Misra's trial finally commenced on 11th October 2010⁵³⁸. At the outset, the defence made a further application to stay the proceedings for abuse of process on grounds of non-disclosure, particularly as regards the Callendar Square bug issue. The application was refused, and the trial continued. The application to stay was renewed at the close of the prosecution case but was again refused. Mr Jenkins and Professor McLachlan gave evidence to the jury⁵³⁹. As summarised in a post-trial note by Jarnail Singh⁵⁴⁰, Mr Jenkins "*was able to explain to Professor McLachlan how many of his theories were not valid and based on a misunderstanding of Horizon*". Having examined the transaction logs "*neither [expert] could find evidence of any computer error whatsoever that could have contributed to the deficiency*". During her own evidence, Mrs Misra maintained there had been staff thefts but also that there had been unexplained losses that had continued after the staff in question had been dismissed, which she had reported to the Helpline. She stated that she had borrowed money from friends and family to put into Post Office's funds. Mrs Misra's sister-in-law gave evidence that she had lent her £22,000 for that purpose.

394. Mrs Misra was convicted on 10th November 2010⁵⁴¹ and in due course a confiscation order was made against her⁵⁴². The correspondence makes clear that this order was pursued without any consideration of the Horizon issues that had been the focus of the trial, and that it presented acute hardship to Mrs Misra. She made application to vary the order in April 2012, which was not opposed⁵⁴³.

(d) Post-conviction disclosure

395. A memorandum dated 22 October 2010⁵⁴⁴ by a senior lawyer in POL's Criminal Law Division reported the successful prosecution of Seema Misra. The memorandum

⁵³⁸ Report of the trial by Jarnail Singh, POL00031352, POL00044356 and case review in 2014, POL00108223

⁵³⁹ There is an analysis of the evidence at trial in the 'Gareth Jenkins chronology', POL00165905, from para.30

⁵⁴⁰ POL00031352

⁵⁴¹ POL00044994, POL00055759

⁵⁴² POL00056687, POL00058530, POL00044989

⁵⁴³ POL00057442, POL00057625

⁵⁴⁴ POL00055590

complained that the case had involved “*an unprecedented attack on the Horizon system*” which, the author said, the prosecution team had been able to “*destroy*”. He ended the memorandum, which was copied to the Press Office, by expressing the hope that “*the case will set a marker to dissuade other defendants from jumping on the Horizon bashing bandwagon*”. In a similar vein, on 8th November⁵⁴⁵ the Mandy Talbot, the principal lawyer, sought the Court’s permission for transcripts of evidence from Mrs Misra’s trial to be obtained which were needed “*in other cases where Fujitsu and the Horizon system are challenged on similar facts*”.

396. In 2014, Jarnail Singh, the senior who had conduct of the case for the Post Office, provided a review for the Second Sight process⁵⁴⁶. He observed that “*Horizon is a complex computer system, about which even eminent experts can make mistakes*”. He commented that Professor McLachlan had been repeatedly put right by Gareth Jenkins, adding that “*both sides in Misra were completely beholden to Gareth Jenkins and his deep knowledge of Horizon*”. He observed “*although the technical aspects of Horizon may be complex, its practical use by an SPM is not*”. He said that the sub postmaster would be best placed to spell out the problems they had encountered, because unlike an expert “*they had the stock in front of them not just the computer data*”. He added “*one would think that if losses were being incurred through no fault of their own, they would want to investigate it or look for solutions as it was in their best interest*”.

397. In relation to Mrs Misra’s trial, he commented “*it is very easy for a dishonest SPM, as Mrs Misra was proved to be, to make vague accusations against Horizon where other lines of defence are closed. It is not difficult to attract sympathy for such false claims. An SPM is likely to be viewed as a hard-working person of good character. Most SPMs who steal do so because they are in financial difficulties, often stealing simply to prop up their failing shop business. In such circumstances, there will be no evidence of luxurious living.*” Against that background, he observed it was difficult to disprove such vague allegations of computer errors, and pointed to the fact that Professor McLachlan had adopted a “*purely theoretical approach*” which was “*worthless/pointless*”.

⁵⁴⁵ POL00055721

⁵⁴⁶ POL00066859

398. In relation to the analysis of transaction logs, he described this as *“time-consuming and expensive though it may be the only way to investigate the concerns raised by these former SPMs”*. He also commented *“it is important in any case not only to examine the computer evidence but also to look at the other evidence, in particular the behaviour of the SPM. Mrs Misa’s failure to mention any computer problem until her case was first listed for trial severely undermined her claims.”* He pointed to the lack of calls made by her to the helpline in this regard, and asserted that the jury was entitled to reject her evidence about her lack of training.
399. Simon Clarke of Cartwright King⁵⁴⁷ undertook a review of the case in 2014 to advise as to whether the Helen Rose or Second Sight reports needed to be disclosed. He concluded that they did not. He referred to *“Mrs Misra’s failure to raise Horizon as a defence until so late in the day; her inability or unwillingness to offer anything more than a generalised and incoherent indictment of Horizon; the approach taken by Professor McLachlan; and the duties relating to disclosure placed on the shoulders of any prosecutor”*. He characterised the approach of Professor McLachlan as having *“merely proffered a number of unhelpful hypothesis and invited RMG to disprove them”*. He concluded that *“no meaningful criticism can be made of the disclosure process taken by RMG during the pre-trial and ongoing disclosure phases of this prosecution”*. An email in May 2015⁵⁴⁸, headed POL-Mediation File, commented that disclosure *“May give Misra ticket to C of A”*. It is not clear if this is linked to Mr Clarke’s earlier analysis of this question, but in December 2015⁵⁴⁹, during a CCRC review of Mrs Misra’s case he advised disclosure to the CCRC.
400. In May 2015, in the context of a Panorama Programme about Horizon issues and the disclosure of evidence to defence experts in such cases, Melanie Corfield of the Post Office commented⁵⁵⁰ *“they will interview an expert witness who might claim he was not allowed to see the system properly or similar/that we did not disclose information about alleged ‘bugs’.”* She identified the case of Mrs Misra as relevant in that context and added that they needed *“a very straightforward line that simply demonstrates proper process”*. It is not clear what she meant by that, and whether or not it was accepted that such complaints in relation to disclosure were warranted.

⁵⁴⁷ POL00108223

⁵⁴⁸ POL00066872

⁵⁴⁹ POL00066959

⁵⁵⁰ POL00066869

401. Ultimately, the Court of Appeal concluded⁵⁵¹: “POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Misra’s case. It is conceded that the fact that Mr Jenkins gave evidence means that POL did not disclose the ‘full and accurate position regarding the reliability of Horizon.’ The ARQ data was disclosed to the defence but it was not the unfiltered ARQ data and did not cover the whole of the indictment period. There was no examination of that data for bugs, errors or defects or for evidence of theft. It appears there was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage.”

Assessment

402. Mrs Misra’s case raises in microcosm many of the issues that I have identified in the 20 cases with which this report is concerned. It is able to do so because it went all the way to trial, and the operation and reliability of Horizon was the core issue at that trial. It is clear that this was not the core focus, or indeed any focus of the investigation that led to Mrs Misra being prosecuted. Rather, that investigation, like others I have reviewed, took the Horizon data at face value, proceeded from the position that there was a loss and that Mrs Misra needed to account for it. It was an assumption that needed to be tested, and yet reasonable lines of enquiry necessary to undertake that test were not pursued. In particular, financial enquires were not undertaken to test whether Mrs Misra had in fact benefited from taking money from the Post Office, even though the prosecution case was predicated on the allegation that she had done so.

403. In many respects the investigation, like the disclosure process that flowed from it, was reactive to the defence case and defence requests rather than representing a robust examination of the evidence and the lines of enquiry to which it gave rise. For example, Mrs Misra referred in interview to an earlier report of theft, and incidents of theft by employees and yet it appears that these were only investigated after Mrs Misra had been charged, with requests for details from her once her case was before the Crown Court. No enquiries appear to have been made to check whether Mrs Misra was reporting issues with Horizon until her lawyers started to ask for them, and disclosure of actual calls took a considerable period to materialise.

⁵⁵¹ [2021] EWCA Crim 577, at para.207

404. It is clear from the protracted process of requests and counter-requests relating to experts over a substantial period of time, that an analysis of various types of raw Horizon data was necessary for there to be a realistic assessment of whether it was reliable, and whether bugs or other issues with its operation might have affected the data relied on to demonstrate loss. It is also clear that such data was not obtained as part of the investigation before charge, or for a very long time thereafter. Discussions at later stages of the pre-trial disclosure process appear to have raised as objections to doing so firstly the contention that the sub postmaster was the person best placed to identify with a degree of specificity what the problems with Horizon were, and secondly that obtaining such data from Fujitsu would be costly. It is difficult to sustain either objection. Whilst the sub postmaster would be able to say that there were problems, and losses appearing that did not make sense, they would not have the technical skill, or the data themselves available to say more. It was for the prosecution, using both that skill and that data, to do that. Secondly, issues of cost were issues for the prosecution that had chosen to bring the prosecution, not a reason to refuse to undertake a reasonable line of enquiry. It is of note in relation to the issue of cost as between Fujitsu and the Post Office that in December 2012⁵⁵², in the context of the case of Grant Allen, a lawyer at Cartwright King acting for the Post Office recounted that Mr Jenkins had said that it was “*possible for him to retrieve the actual data from this time to see what actually occurred at this branch and that **the retrieval of the data is free to POL***” (emphasis added). This raises at least a question as to the relevance of cost.
405. The charging decision, or at least the lawyer’s advice relating to that decision, was again far from thorough. It contained no analysis of how it was contended, without any investigation of other suspects or Mrs Misra’s financial position, theft was made out. This was notable in particular in relation to the elements of dishonesty and appropriation, which were not addressed in the advice at all. These defects were also not addressed post-charge when advice was received from counsel. There was no identification of outstanding evidence or lines of enquiry, even though the evolution of the case makes clear that there were a number of such lines yet to be pursued.
406. A further concern is that in his advice Mr Singh identified that a plea to false accounting would be sufficient. This raises a number of questions. If such a plea was

⁵⁵² POL00165905, para.217

sufficient, why was the theft charge being pursued at a time when the evidential basis for it was unclear? There is certainly an appearance, although not an explicit one, that the theft charge was there to encourage a plea. Countering that, however, is the fact that when Mrs Misra made clear through her defence statement that she was willing to plead to false accounting and when, as I understand it, she then did so, that plea was not considered to be sufficient. I have not seen an explanation for this change in the prosecution's stance.

407. The disclosure process in this case was a complicated one. It did not start well. The initial disclosure schedules were inadequate in a variety of respects which had to be cured by a revised version being produced, and by the prosecution's response to what it characterised at one stage as "*an avalanche of disclosure requests*". This was in one sense and accurate characterisation, as there were many and repeated requests, but it also fails to recognise that many of those requests were for material, relating to other suspects, the financial position, contact with helplines, training sufficiency and the reliability of Horizon data that also represented reasonable lines of enquiry for the prosecution, and should thus have formed part of the disclosure from the prosecution from an early stage. It is also clear that there was insufficient review by the prosecutor of disclosure from the outset.
408. The position did improve once counsel was instructed, and it was entirely appropriate to involve counsel in the process. The position adopted was robust, in that it required the defence to specify the relevance of Horizon data in a defence statement before it was disclosed, but that was not a position contrary to the CPIA or guidance thereunder. There are a number of areas of the process thereafter which could not be similarly described.
409. This was a case where cross-disclosure from other cases was very much in issue. The defence had requested it, and it was directly relevant to the work being undertaken by the experts, for example in relation to the Falkirk bug. This relevance was clearly understood, because counsel was asked to advice on disclosure from other cases and did so. I am concerned that either he then changed his position following push back from internal lawyers at the Post Office, or his advice was not followed after that push back. It certainly appears that such disclosure was more limited than it should have been, and certainly took much longer than it should.

410. The process of disclosure to the defence expert was also protracted and in important respects glacial. Professor McLachlan identified at the outset a number of hypotheses for how errors could have been made. Whilst this was characterised after the event by Mr Singh, the reviewing lawyer, as vague and theoretical it is difficult to see what else a defence expert could do without access to the operation of Horizon and the data relevant to its assessment. That access and that data took a very long time, and a multitude of requests and interim expert reports. Such an approach was not consistent with a properly undertaken and supervised disclosure process, by reference to the CPIA Code and in particular the Attorney General's disclosure guidelines.
411. A particular feature of the process is that Mr Jenkins of Fujitsu was involved throughout the majority of the time that Professor McLachlan was engaged and requesting disclosure. It is clear that there was a good deal of entirely appropriate liaison between the experts. However, it is also clear that Mr Jenkins was able to provide reports refuting aspects of the Professor's work without there at the same time being disclosure of the material underlying it. This was material available to Fujitsu, which could and should have been sought by the prosecution from them had it not already been in the prosecution's possession. It is difficult to see how factors other than cost prevented this, and difficult to understand why that should have been. This is not least because the duties on an expert included the disclosure of the material that underpinned the conclusions reached, and that here meant the material that Mr Jenkins used to refute Professor McLachlan, which was the material that the Professor had in any event been seeking.
412. The other very real concern in relation to disclosure and Mr Jenkins is of course the fact that he provided reports and gave evidence about the operation of Horizon that was inconsistent with the information to which he was privy about bugs in the system, and issues with its operation. The Inquiry will be better placed than I am to assess Mr Jenkins' position as an expert and a witness by reference to what was known at the time of his reports and evidence. However, on the basis of what I have seen there were failures on his part to disclose material that undermined his opinion, which it was his duty to have disclosed. There was also material that undermined the prosecution case, as advanced through Mr Jenkins, that clearly fell to be disclosed and, in the hands of a third party, to be obtained for review.

413. I should add that I have not seen in the material in this case any letter of instruction, or comparable communication, by the Post Office to Mr Jenkins. Communication with him in writing appears to have been informal and brief, and at no point made any reference to the duties of either Mr Jenkins as expert or the Post Office as prosecutor in relation to material underlying or undermining his opinions. In the context of what appears to have transpired here, that is concerning.
414. The reality appears to be, as the memorandum of 22nd October 2010⁵⁵³ all too clearly illustrates, that the prosecution of Mrs Misra had become a battle for the reputation of the Horizon system, with the prosecution determined to “destroy” the attacks on the system. When cast in that light, the approach to continued investigation and the process of disclosure can be seen as a war of attrition, marked by a reluctance to obtain or disclose material that could be used to undermine Horizon, or provide fuel for the “Horizon bashing bandwagon”, that was the cause of such concern.

LYNETTE HUTCHINGS

415. Lynette Hutchings was the sub-postmaster at Rowlands Castle in Hampshire.
416. In summary, following an audit which was instigated on the basis that the Post Office appeared to be holding too much cash, Ms Hutchings was charged with a single charge of fraud by false representation, contrary to section 1, Fraud Act 2006, namely representing to the Post Office that she had more cash than she had to conceal losses at the post office between 13 January 2010 and 30 March 2011. By the time that she entered a plea to it, she was also charged with false accounting, contrary to section 17, Theft Act 1968, on the basis she had concealed shortages of £10,868.08⁵⁵⁴. As was observed in her appeal⁵⁵⁵: *“Between 1 June 2010 and 5 April 2011, Ms Hutchings had made 33 calls to the National Business Support Centre, two of which related to losses or gains. Dip samples covering 13 January 2010 and 30 March 2011 showed that she had made four calls to the Horizon Helpdesk for advice.”*

⁵⁵³ POL00055590

⁵⁵⁴ POL00046095

⁵⁵⁵ [2021] EWCA Crim 577, at §268

417. On 30th July 2012, in the Crown Court at Portsmouth, Lynette Hutchings pleaded guilty to one count of false accounting. The Post Office offered no evidence against her on one count of fraud and a “not guilty” verdict was entered. On 24th August 2012, Recorder Watson QC imposed a community sentence order with an unpaid work requirement of 120 hours.
418. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*⁵⁵⁶, Ms Hutchings was one of those in category B, “*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*”

The investigation

419. The paperwork again does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. The Investigation Summary⁵⁵⁷ was prepared by Graham Bander, Security Manager. This indicated that the investigation was initially instigated on the basis that the Post Office appeared to be holding too much cash⁵⁵⁸. This led to an interrogation of the Horizon system in relation to payment information, closing cash totals, broken down by cash denominations, overnight cash holdings and cash returned to and from the branch. This showed that the amount held in £50 notes was inflated on the dates of branch trading statements on the Horizon system.
420. Ms Hutchings was invited to a conduct interview by the contract adviser, Nigel Allen, on 13th April 2011 but had failed to attend. Mr Allen therefore terminated Ms Hutchings contract of employment. She was then invited to and did attend a PACE compliant interview by Graham Bander⁵⁵⁹ on 20th April 2011. She was accompanied by her solicitor and when that interview occurred her rights were explained to her and the same recorded. The relevant Post Office policies were therefore complied with.

⁵⁵⁶ [2021] EWCA Crim 577, at §75

⁵⁵⁷ POL00061244

⁵⁵⁸ POL00046055

⁵⁵⁹ POL00056532

421. In interview Lynette Hutchings gave a prepared statement⁵⁶⁰, explicitly saying that ever since her sub-post office had migrated to Horizon the balances had been wrong, although she had not been aware of making any mistakes. She said that she had altered the cash on the basis that she genuinely did not think there was a loss and that the balances would be corrected in the fulness of time. She did so only to enable her to operate the Post Office. She made no comment in the remainder of that interview or during 2 further interviews that day⁵⁶¹.
422. There was some evidence of irregularities in the system, given that both the Investigation Summary⁵⁶² and the statement⁵⁶³ of Graham Brander, in which he exhibited trading statements etc, acknowledged there appear to be two errors relating to cheque remittances. However, despite this, and the clear identification of the operation of the Horizon as central to Ms Hutchings' account, there is only limited evidence of awareness of Horizon issues in the investigation and it does not appear that the investigation actively investigated them beyond the following:
- (a) The trading statements were all retrieved and compiled, as were incident logs; calls to the Post Office; and office copies of declared cash reports. The investigating officer checked whether calls related to issues with the Horizon system⁵⁶⁴.
 - (b) Requests for Horizon data were made for most of the relevant period. Requests were also made for all call desk calls and those analysed.
 - (c) It appears enquiries were made with Hutching's solicitor as to whether she would voluntarily provide her bank statements⁵⁶⁵.
423. On 17th June 2011⁵⁶⁶, Jarnail Singh, Senior Lawyer in the Criminal Law Division advised that it was likely that the defence would assert that Horizon was not working properly, and therefore "*it would be more prudent for the officer to complete his enquiries and further investigations and produce the evidence*" which was then listed in the advice. This included: "*evidence rebutting the allegations and criticisms made in the pre-prepared*

⁵⁶⁰ see POL00056532, p.2

⁵⁶¹ POL00044505, POL00046625

⁵⁶² POL00061244

⁵⁶³ POL00044531

⁵⁶⁴ POL00061244

⁵⁶⁵ POL0052945

⁵⁶⁶ POL0063539

statement” and “*statements dealing with the integrity of the Horizon and call logs to the Horizon support desk*”. It is of note that the identified approach was to rebut the defence assertions in relation to the operation of the Horizon system, not to investigate whether or not those assertions might be true.

424. In terms of other lines of enquiry, an understandable decision was made to not conduct a search given the small amounts of money taken⁵⁶⁷. For similar reasons a full financial investigation was not considered justified. However, whilst there was reference to asking Ms Hutchings to produce her bank statements there is no evidence that financial enquiries were undertaken to see if there was any evidence of financial benefit to Ms Hutchings in relation to any of the financial irregularities complained of.

Charging decision

425. This appears to be a case in which solicitors from Cartwright King were instructed from an early pre-charge stage, with the result that Martin Smith, a solicitor from the firm, produced a charging advice on 4th January 2012⁵⁶⁸. The advice summarises the prosecution case in accordance with the earlier, and more detailed Investigation summary. There is no explicit application of the Full Code Test and no reference explicitly to the public interest test in this pre-charge advice. There is equally no reference in the charging advice to any awareness of issues with Horizon. Horizon is relied upon explicitly as being a strong source of evidence. Ms Hutchin’s prepared statement was simply dismissed, and the issues she raised with Horizon said not to be relevant. It does not appear a thorough or thinking approach was applied. There is no reference to disclosure or any reasonable lines of enquiry to be pursued.

Proceedings

426. If, as I assume was the case, Ms Hutchings was summonsed to appear before the Magistrates’ Court, I have not seen any application for that summon. Certainly, she appeared before the Portsmouth Magistrates’ Court on 19th April 2012 on the false representation charge. She gave no indication as to plea and was sent to the Crown

⁵⁶⁷ POL0053003

⁵⁶⁸ POL0053840

Court. The Post Office was represented at that hearing by Robert Booker of Just Advocates⁵⁶⁹. He indicated that he would send a written report, which I take to be an attendance note rather than an advice on evidence or disclosure.

427. Ms Hutchins appeared at the Crown Court at Portsmouth for a plea and case management hearing before HH Judge Pearson on 30th July 2012. The case was prosecuted by William Martin, counsel from 9-12 Bell Yard⁵⁷⁰. Following discussion between counsel and between prosecuting counsel and those instructing him, a count of false accounting was added to the indictment. Ms Hutchings pleaded to this. A basis of plea⁵⁷¹ was entered to false accounting which accepted that she had made the books balance in order to "*Put off the evil day of having to sort out the muddle*" and not on the basis she took or intended to take any money. The wording of the basis plea was an express reference to the approach to false accounting in *Eden*⁵⁷².
428. Although there is no explicit recognition of the Horizon issues, it was recorded in the result sheet⁵⁷³ that the prosecution opened on the basis it could not be sure what had happened to the money and if it was stolen or mismanaged. This is reflected in the attendance note⁵⁷⁴, albeit it is made clear that it was in response to the basis of plea (which was not accepted but could not be gainsaid). If this was the prosecution's position, it calls further into question the decision to charge theft.

Disclosure

429. I have had sight of disclosure schedules produced in purported compliance with the CPIA Code. The schedule of non-sensitive unused material (the equivalent of the MG6C)⁵⁷⁵ is quite short, and mainly includes correspondence and documentation relating to the interview process. It does not have any reference to the underlying raw accounts data (to the extent that this was not included in the served evidence), and there is no reference to any previous complaints or discussions.

⁵⁶⁹ POL0054025

⁵⁷⁰ POL0054611

⁵⁷¹ POL0042575

⁵⁷² (1971) 55 Cr. App. R. 193

⁵⁷³ POL0042571

⁵⁷⁴ POL0054611

⁵⁷⁵ POL00057751

430. There is nothing listed in relation to Horizon, enquiries made in relation to the operation of the system or to the result of any enquires as to that operation. Even if the enquiries requested pre-charge by Jarnail Singh⁵⁷⁶ were to rebut suggestions of problems with Horizon any proper investigation in that regard conducted in and after June 2011 ought to have generated material that would properly be expected to appear on an unused schedule. Its absence speaks either of those proper enquiries not being made, or a proper unused schedule not being produced. Moreover, in a review of the case in 2013⁵⁷⁷, Simon Clarke, acting on behalf of Cartwright King, observed that no enquiries appear to have been made as to the operation of the Horizon helpline, although complaint about this had been made by Ms Hutchings in her prepared statement.
431. This deficiency is not explained by the sensitivity of any material relating to it. The Schedule of sensitive material (the equivalent of an MG6D)⁵⁷⁸ was prepared prior to the committal hearing on 11th May 2012, by reference to its date. That schedule contained only one entry relating to correspondence between investigation manager and legal services which material was said to be covered by legal professional privilege. However, the material was not particularised or broken down as it should have been to enable a reviewing lawyer/counsel to properly consider it, and there is no evidence on the face of the schedule that any such review was undertaken.
432. No items were marked as disclosable on the disclosure officer's report (the equivalent to the MG6E)⁵⁷⁹.
433. It is of note that this case followed the updating of the Post Office disclosure of unused material policy in July 2010.⁵⁸⁰ That policy, at para.3.9, specifically enjoined consideration of the defendant's interview and defence statement, potential lines of cross-examination and applications to exclude as reasons to disclose. That is not reflected in the approach adopted here.

⁵⁷⁶ POL0063539

⁵⁷⁷ POL00060715, at §13

⁵⁷⁸ POL00057727

⁵⁷⁹ POL00057753

⁵⁸⁰ POL00104848

434. Following the publication of the Second Sight and Helen Rose Report in July 2013, in October 2013 Cartwright King undertook post-conviction disclosure in relation to Ms Hutchings⁵⁸¹. Their letter referred to a further review of a defence statement and addendum defence statement which I have not seen in my review of the files provided. The question to which this gives rise is one of timing, and as to whether the July 2013 report was the necessary catalyst for disclosure in relation to Horizon. In particular:
- (a) There was reference⁵⁸², when it was received, to a basis of plea like this being familiar. This suggests that those reviewing the basis of plea were familiar with complaints being made of accounting irregularities arising from the Horizon system’.
 - (b) In an email dated 12th June 2012⁵⁸³, and thus prior to pleas being entered on 30th July 2012, Cartwright King observed that defence solicitors had previously raised issues with Horizon that could not be rebutted and considered relying upon a generic expert report. Although this was not attached it is likely that this was the report of Gareth Jenkins that was in use at the time.
 - (c) It is apparent that there was knowledge of the issues post-conviction whilst civil asset recovery was ongoing⁵⁸⁴. However, there was no disclosure in relation to the operation of the Horizon system and its role in generating the loss that was being recovered at that stage.
435. Post-conviction, this case was subject to a specific advice on the disclosure of Horizon issues⁵⁸⁵. The review was undertaken by Simon Clarke, a barrister on behalf of Cartwright King, to determine whether disclosure of the Second Sight and Helen Rose Report would have undermined the safety of the conviction. He concluded this material did not fall to be disclosed in this case on the basis of the guilty plea and the basis of plea and admissions made. He argued that the lack of enquiries into the Horizon system was mitigated by the lack of a defence statement, and the unequivocal

⁵⁸¹ POL00060945

⁵⁸² POL00058136

⁵⁸³ POL00058016

⁵⁸⁴ POL00060373

⁵⁸⁵ POL00060715

guilty pleas where it was clear that Ms Hutchins had falsified the records to conceal losses.

436. In my view this advice fundamentally misunderstands the disclosure test. First, it ignores the fact that this material would clearly have been disclosable before the guilty plea was ever entered. This was a reasonable line of enquiry on the basis of the prepared statement, and therefore to rely on the eventual guilty plea as meaning there was no need to disclose it is erroneous. Secondly, it does not identify the fact that disclosure of this material would have strengthened Ms Hutchings' basis of plea, in providing a more legitimate excuse for how these issues arose. Thirdly, it ignores the fact that the prepared statement meant dishonesty and issues with Horizon recording were central issues from an early stage of the case.

437. However, the material I have seen does suggest that disclosure did in fact occur of these reports on 8th October 2013⁵⁸⁶. Simon Clarke, the author of the advice to the contrary, now disclosed them as *"information which may affect the safety of a conviction"*. It appears this was after advice from Brian Altman QC, who was concerned about Hutchings⁵⁸⁷. Those concerns were shared by the Court of Appeal⁵⁸⁸. Holroyde LJ summarised the position as follows: *"POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Ms Hutchings' case. ARQ data was requested but it is not known if it was obtained. It appears there was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. The investigation concentrated on proving how the accounts were falsified, which was admitted, rather than examining the root cause of the shortfall. There was no investigation of Ms Hutchings' complaints as set out in her prepared statement. There was no proof of an actual loss as opposed to a Horizon-generated shortfall."*

Assessment

438. In her prepared statement at interview, Ms Hutchings squarely raised the issue of the operation of the Horizon system. It is clear that a degree of investigation was undertaken into the data from that system relevant to the period under investigation

⁵⁸⁶ POL00060945

⁵⁸⁷ POL00066835

⁵⁸⁸ [2021] EWCA Crim 577, at §271

and the loss with which it was concerned. However, it is equally clear that there was no wider investigation of the reliability of the system or the accuracy of that data. It is of concern that advice provided by Mr Singh in that regard was focused on rebutting the defence, rather than testing the prosecution case or the reliability of the evidence on which it was founded. It is also of concern to note that this case was investigated and prosecuted after issues with Horizon had been discussed between Fujitsu and the Post Office in about October 2010.⁵⁸⁹ As was observed by the Court of Appeal, the “root cause of the shortfall”, which should have been central to the investigation was not investigated.

439. Other lines of enquiry pursued were limited. In part that may have been because of the limited nature of the loss involved, but a lack of enquiries into contact with helplines and as to Ms Hutchings finances is still concerning. The limitations to the investigation inevitably led to comparable limitations to the disclosure process. In particular, underlying data from the system was not obtained, reviewed or disclosed even though the reliability of the system was raised as an issue.
440. More concerning is the nature of the charging decision. The advice I have seen is limited and engages with neither the full extent of the two limbs of the Code for Crown Prosecutors, the elements of the offences under consideration or the evidence then available. Those limitations are called into sharp focus by what transpired at court. The prosecution accepted a plea to false accounting on the basis that the accounts had been altered to put off the evil day when a muddle would be discovered rather than because there had been any money taken. If that was what the evidence showed, and the evidence does not appear to have changed since the charging decision was taken, it is difficult to understand how it was concluded that there was a realistic prospect of a conviction for the fraud offence. As in other cases, if the evidence at its height demonstrated false accounting, that was the correct offence to charge.

⁵⁸⁹ POL00055410, POL00001733

JOAN BAILEY

441. Joan Bailey was 50 years old when she was investigated. She was the assistant to her husband the sub-postmaster for Howey, near Llandrindod Wells in Wales.
442. Unlike the other cases analysed in this report, this is a case in which the defendant was cautioned for the offence fraud by false representation, contrary to section 2, Fraud Act 2006, in relation to the sum of £13,044.32. It follows from this that there are aspects of the Inquiry's topics of interest, that do not arise in this case.
443. The brief facts appear to be that following an audit on 5th January 2011, a cash deficit was found to that amount. The defendant conducted all the cash counts for the branch. The auditor identified a cash shortfall, and Mrs Bailey made admissions at the scene, which she repeated in interview, to inflating the figures to cover up discrepancies with the Horizon system when trying to balance the accounts, because they could not afford to pay them.

The investigation

444. The Investigation summary⁵⁹⁰ was prepared by Stephen Bradshaw, the fraud investigator. Neither it nor other documents that I have seen identify the CPIA roles or senior investigator or disclosure officer. It is not clear if each of these roles was undertaken, or whether an investigator took on aspects of each. The summary records that a cash shortfall was identified during an audit on 5th January 2011. This appears to have been a routine audit, rather than one resulting from concerns.
445. Although Lawrence Bailey, the sub postmaster had been present during the audit process, he called his wife, Joan Bailey down when the cash and stock was identified as being short. This was because she had undertaken the cash check the night before⁵⁹¹. Mrs Bailey admitted that the cash was short, and explained that she had found discrepancies when balancing that she could not make good and so had inflated the cash, and had done so over a period of months. A written record was made of these

⁵⁹⁰ POL00057198

⁵⁹¹ POL00055918

comments, which Mrs Bailey signed as correct. As she was to explain in interview⁵⁹², Mrs Bailey was in bed with flu at the time of the audit, and therefore unwell when spoken to. A full audit was undertaken and a total shortage of £13,044.23 identified. The contact manager, Colin Burston, suspended Mrs Bailey. The involvement of Mr Burston in this way would accord with the 'Managing shortages at audit' guideline⁵⁹³.

446. The fraud investigator, Stephen Bradshaw, made arrangements for Mrs Bailey to attend for interview with her solicitor. As she explained in the PACE interview⁵⁹⁴ she had already been interviewed by the contract manager, Mr Burston. She had told him that there had been losses since 2010, and that she had been putting money in to cover these losses but when she could not afford to continue doing so had inflated the cash.
447. There was a PACE compliant interview undertaken on 9th March 2011⁵⁹⁵. Mrs Bailey was accompanied by her solicitor, and the reasons for the interview had been explained in advance. It was a voluntary interview, and her rights were correctly explained to her. She confirmed she felt well enough to be interviewed. Her solicitor also alluded to the fact that Mrs Bailey was suffering with "*a serious short term memory problem*". The solicitor also counselled Mrs Bailey not to guess at a number of points in the interview. It is right to note that the solicitor did not object to the interview continuing.
448. In interview⁵⁹⁶, Joan Bailey explicitly raised that the issues with the balancing of the accounts began after transition to Horizon next generation. She explicitly denied theft. She had not reported the problem because she did not want to tell her husband. She had borrowed £9,000 from her daughter to ensure that the cash balanced when the next generation team had come to check the cash. She maintained it was a system issue. She said that she had made good a cheque for £59, but it did not show up on the system, and she was told that it was glitch in the system in relation to accepting cheques. Mr Bradshaw, the investigator, responded "*well I can assure you that whatever glitches if there is any at the beginning with Horizon next generation has been solved right*".

⁵⁹² POL00056387

⁵⁹³ POL00118154

⁵⁹⁴ POL00056387

⁵⁹⁵ 1st interview at 12.32, POL00056387 and 2nd interview at 13.14, POL00056388

⁵⁹⁶ POL00056387

449. In her second interview⁵⁹⁷, Mrs Bailey explained the health problems both she and their family had suffered, which provided the explanation for why she had not told her husband about the discrepancies. He did not deal well with stress. She had not rung the help desk as a result. She repeated that she believed that the Horizon system was at fault and that it had caused the discrepancies, but the investigators asserted that the fault lay with the operator, through “carelessness or incompetence” rather than the system.
450. In terms of other investigative steps, the Investigation summary⁵⁹⁸ records that a decision was taken not to undertake a search at Mrs Bailey’s address because of the costs involved given its remote location. Mrs Bailey consented to the obtaining and examination of her bank records. It does not appear that this was done, and therefore evidence that Mrs Bailey had indeed not made any profit from the losses, but rather had been seeking to make them good from her own resources was not obtained. There is no evidence that consideration was given to speaking to Mrs Bailey’s daughter about the money borrowed from her. Transaction correction statements were sought after these were raised in interview⁵⁹⁹. There is no reference to an analysis of these.
451. In terms of investigation of Mrs Bailey’s assertions that the discrepancies were the result of a fault with Horizon, there was no proposal in the investigation report⁶⁰⁰ that enquiries be made in this regard. This is rather in keeping with the investigator, Mr Bradshaw, asserting that there was no such fault in the interview. The limitations of the investigation are also readily explained by the fact that Mrs Bailey had contacted the investigator on 14th March 2011 with proposals to repay the loss through the sale of her home.
452. The material I have seen does include a reference by the auditor to the fact that the branch operated an outreach service using a “luggable” Horizon system⁶⁰¹. She recorded that this was not operational on the day of the audit but that she returned to

⁵⁹⁷ POL00056388

⁵⁹⁸ POL00057198

⁵⁹⁹ POL00056138

⁶⁰⁰ POL00057198

⁶⁰¹ POL00062294

check it. It does not appear that this was a relevant issue, but that does appear to be the only Horizon check made.

The charging decision and Disclosure

453. Jarnail Singh, Senior Lawyer in the Post Office Criminal Law Division considered whether or not to charge Mrs Bailey on 3rd May 2011⁶⁰². He noted, by reference to the investigation report, that the defendant had significant issues with her short term memory and had recounted a long list of medical issues in interview. The account she gave indicated a significant amount of stress. This presented the grounds for issuing a formal caution for the offence of making a false representation, contrary to section 1, Fraud Act 2006, rather than prosecuting her for that offence.
454. The caution was explicitly made dependent on there being an undertaking from the conveyancing solicitor that the Post Office would recoup the identified loss from the proceeds of the sale of Mrs Bailey's home. The Post Office "summons and cautioning" policy⁶⁰³ identified factors relevant to the decision to caution as including the sufficiency of evidence of guilt, nature of admissions made and the consent of the suspect. The type of financial pre-condition here set out was not identified as relevant. There is similarly no reference to such a pre-condition in the 2010 iteration of the Code for Crown Prosecutors⁶⁰⁴, which again focuses on considerations of sufficiency of evidence, and whether such a course is in the public interest.
455. There is no indication in the advice provided of any consideration of issues with Horizon. This is despite the clear references to that system and potential faults with that system in Mrs Bailey's interviews, which were accurately summarised in the investigation report that represented the basis for the charging decision. The lawyer did not ask for any checks to be made, and made no query in this regard. This is pertinent, by reference to both the Code and the cautioning policy, because it would have been appropriate to consider whether there was sufficient evidence to prove the

⁶⁰² POL00056477

⁶⁰³ POL00104763

⁶⁰⁴ Para.7

offence and whether it was in the public interest even to caution Mrs Bailey, as opposed to taking no criminal action against her at all.

456. There was no disclosure process as the case was resolved with a caution.

Assessment

457. As is clear from the above analysis, the two primary concerns in this case are, first, that there was no investigation of the reliability or accuracy of the Horizon data relied on despite that issue being clearly raised by Mrs Bailey in interview, and the decision being made to caution. As to the first, the stance of the investigator was to assert in interview that there was no fault in the system, without any checks being made as to whether or not that was the case, or whether any issue had been reported in the past. This stance is concerning when it is remembered that it post-dated the discussions between Fujitsu and the Post Office in October 2010⁶⁰⁵. There was a lack of financial enquiry to determine whether in fact Mrs Bailey had not only not gained from her conduct, but had occasioned loss through paying back shortfalls that had arisen.

458. The decision to caution was a compassionate one, by reference to the factors considered, but both the Code for Crown Prosecutors and the Post Office cautioning policy required consideration of the sufficiency of evidence. Such consideration was very limited in the advice, and did not include any consideration, or request for enquiry into the operation of the Horizon system. I am also very concerned by the inclusion of a repayment pre-condition to the administration of the caution. I am aware that in cases investigated by the police, where the suspect had made admissions and has agreed to pay matters back that agreement would be likely to be a factor relevant to the public interest in issuing a caution rather than a prosecution. Such agreement can properly be taken as being a clear potential expression of genuine remorse. However, in my view there is an important distinction between issuing a caution in light of a voluntary repayment that has been made, and making such a resolution conditional upon repayment

It makes, and here made explicit a connection between the use of a criminal sanction and financial recovery that was inappropriate.

⁶⁰⁵ POL00055410, POL00001733

ALISON HALL

459. Alison Hall was 42 years old when she was investigated. She was the postmaster at Hightown sub-post office, near Liversedge.
460. On 30 June 2011, in the Crown Court at Leeds, Alison Hall pleaded guilty to one count of fraud by false representation in relation to the covering up of a shortfall of £14,842.37 by falsely inflating the cash on hand. A further count of theft of that shortfall amount was ordered to lie on the file⁶⁰⁶. On the same day, she received a community sentence order with 120 hours of unpaid work. A confiscation order under the Proceeds of Crime Act 2002 was made in the sum of £14,842.37.
461. The prosecution was based on a shortfall of £14,842.37 following a branch audit. In her interview under caution, Mrs Hall said that she wanted matters investigated “*because the Horizon system is not 100%*”. She stated it was due to Lottery accounting problems on Horizon and she had been making manual adjustments as a result. She said “*she [had] also been out before, has taken money out then put it back in*”.
462. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*⁶⁰⁷, Mrs Hall was one of those in category A, in which the Post Office “... *accepted that in cases where the reliability of Horizon data was essential to the prosecution and conviction of the 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.*” In particular, in her case, the Post Office conceded⁶⁰⁸: “*i) It was improper to make the acceptability of her plea conditional on not making any explicit criticism of Horizon; ii) In circumstances where theft could not directly be proved, and the shortfall may not have been a real loss, it was wrong to try to prevent her from making any criticism of Horizon as part of her mitigation to the charge she admitted.*”

⁶⁰⁶ Indictment POL00091014

⁶⁰⁷ [2021] EWCA Crim 577, at §71

⁶⁰⁸ [2021] EWCA Crim 577, at §117

The investigation

463. The Investigation Report⁶⁰⁹ was completed by Christopher Knight, fraud investigator. He appeared to be acting as both investigator and disclosure officer. He recorded that the shortfall had been identified when a Migration Support Officer had attended the Hightown post office to migrate to Horizon Online and had checked the cash on hand against the Horizon Cash Declaration. There is a handwritten note made by the adviser⁶¹⁰ that Mrs Hall had explained "*she was having a problem with her lottery when the case was counted*", and she had reported the matter to the National Business Support. The identified shortfall led to a full audit, and the closure of the branch. The investigator invited Mrs Hall to attend for an interview.
464. There was a PACE compliant interview⁶¹¹, at which Mrs Hall was represented by her solicitor, with whom the investigator had made contact in advance. The CS001 form setting out her rights had been completed with Mrs Hall in advance.⁶¹² In interview, Mrs Hall repeated that which she had said at the time the shortfall was identified, namely that she had been encountering problems with scratch cards. There was a shortfall each time she had a transaction correction with the lottery, and the stock amounts were "never right". She gave specific examples. She stated that she had reported the issues to the lottery and Horizon helplines. As the shortfalls grew, she accepted that she had falsified the accounts to make them balance. She denied that she had taken any money from the Post Office, she thought it was a discrepancy with the lottery.
465. In terms of investigative steps⁶¹³, enquiries were made about calls to the Network Business Support Centre help desk. The initial inquiry into Network Business Support Centre logs was relatively time limited to just the period within the indictment, January-September 2010. The enquiry thus did not also cover the period from 2005 during which Mrs Hall had run the Hightown sub post office, even though previous contact could have been relevant and disclosable at least potentially. There is no

⁶⁰⁹ POL00091037

⁶¹⁰ POL00091065

⁶¹¹ POL00091065, p.27 and p.38

⁶¹² POL00091065, p.25

⁶¹³ As identified in the Investigation report, POL00091037, replicated in part in POL00090855 and in full at POL00091037

reference to any enquiries being made of the Horizon helpdesk. In the papers I have seen is a record⁶¹⁴ of an area intervention manager visit to Hightown in 2006. Such records do not appear to have been sought, let alone obtained, in the investigation. It is clear that the prosecution did become aware of issues with conflicting accounts for helpline reports, because in December 2010⁶¹⁵ J. MacFarlane asked that inquiries were made when a "*report recently forwarded*" contradicted the assertion in the investigation report that there were calls to the helpline. It is not clear what, if anything, was done.

466. Enquiries were made of Mrs Hall's two work colleagues. Kimberley Large, the counter clerk, said that she had only become aware of the lottery issue recently, and that Mrs Hall would tell her to add figures to the cash declaration at the end of the day. Although the Investigation summary refers to contact being made with the other clerk, Marjorie Higgins, the account from her is very limited, and, unlike Ms Large her statement was not included in the committal bundle⁶¹⁶. Notes in relation to contact with each appeared on the unused schedule⁶¹⁷.

467. Enquiries were also made as to the operation of the Lottery scratch card system⁶¹⁸. Analysis of the records relating to these, and Transaction correction data, which was also obtained, led Mr Knight the investigator to conclude "*both TCs and stock alterations do not total anywhere near the £15K loss*". There is no indication the prosecution or investigation team were aware of the issues with recording Scratch Cards on Horizon. However, it is evident that Post Office internally did know these were an issue at the time that Mrs Hall was investigated. In an email exchange in 2013, which appears to have related to a review of cases, Dave Posnett, a Financial Investigator who was a fraud risk manager until May 2010 said "*the scratch card process worked but some SPMRs had trouble getting to grips and understanding it. The volume of TCs across the network were...a concern*". He indicated that Hightown had been identified in this context help provided. The lack of any reference to these issues in the investigator's report,

⁶¹⁴ POL00091355

⁶¹⁵ POL00021351

⁶¹⁶ POL00091149

⁶¹⁷ POL00020482

⁶¹⁸ Investigation report, POL00091037, replicated in part in POL00090855 and in full at POL00091037

especially if Hightown had been identified as needing support in the context of scratch cards and their impact of accounting records, is a real concern⁶¹⁹.

468. In considering Mrs Hall's case, the Court of Appeal observed⁶²⁰ that *"POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Hall's case.... It appears as if some ARQ data was obtained but it is not clear whether it was ever disclosed. It appears there was no evidence to corroborate the Horizon evidence. There was no investigation into Horizon integrity. There was no proof of an actual loss as opposed to a Horizon-generated shortage."* It follows that the Post Office accept that this was an inadequate investigation.

The charging decision

469. There is a very short charging decision by a Post Office lawyer, J.MacFarlane, dated 3rd February 2011⁶²¹. It was drafted in response to, and relied on, the Investigation Summary⁶²² in which the Investigator, Mr Knight, had observed *"a charge of false accounting between January and September 2010 would seem appropriate at this time. But an additional charge of theft should be considered as covering up a loss of this amount must have been done for a reason and that reason was because she was aware of it and had some involvement in the loss"*. This assertion, at a time when no enquiries had been made into Mrs Hall's finances, or the operation of the Horizon system, is concerning. As is the fact that it was not queried at all in the charging decision.
470. In that charging decision, it appears that the initial decision was to charge theft alone (although I have not seen the "attached Schedule" that would make this clear). There is no analysis of the evidence, and in particular any evidence relating to benefit to Mrs Hall from any loss or evidence of dishonesty. There is also no consideration of public interest within it. Although it concludes there is a realistic prospect of conviction it does not appear to consider the issues with proving the defendant has in fact taken the

⁶¹⁹ In a Spot Review summary, POL00029604 relating to various cases it suggests that the problem results from sub postmasters not "remming in" cards. I am unclear as to how this sits with the memo from Mr Posnett.

⁶²⁰ [2021] EWCA Crim 577, at §165-166

⁶²¹ POL00091258

⁶²² POL00091037

money (as opposed to having lost it accidentally). It identifies a number of further statements to be obtained. There is no evidence of a review of unused material.

Disclosure

471. Given that this case did concludes at a comparatively early stage, the time period for disclosure was necessarily circumscribed. However, the schedule of non-sensitive unused material (the MG6C)⁶²³ was produced by the investigator, Mr Knight, on 23rd May 2011 and it was signed by the reviewing lawyer on 27th May. However, though signed it is not endorsed with decisions about disclosure. A number of items relating to cash declarations and notes of contact with others working at Hightown post office would appear to have been disclosable. The schedule also does not provide any reference to, or indications of, contact with the lottery, the help desk in relation to Horizon. A previous area intervention management log⁶²⁴ should have been disclosed and yet does not appear on the schedule. This case post-dated the discussions between Fujitsu and the Post Office about the operation of the system in October 2010⁶²⁵, and yet that does not appear to have generated any disclosure.

Circumstances of plea

472. An additional aspect of the case of Mrs Hall that needs to be considered is the circumstances of her plea. Although the charging decision appears to have resulted in a theft charge, the prosecution added a charge of fraud by false representation by the time of the Plea and Case Management Hearing⁶²⁶. At that hearing, the prosecution accepted a plea to that new charge, and the theft allegation was ordered to lie on the file⁶²⁷.

473. The note of the hearing records that this plea was reached "*after negotiations between counsel*". An email from counsel⁶²⁸, Adrian Chaplin of 9-12 Bell Yard records that the

⁶²³ POL00020482

⁶²⁴ POL00091355

⁶²⁵ POL00055410, POL00001733

⁶²⁶ POL00091014

⁶²⁷ POL00021327

⁶²⁸ POL00021329

defendant was to be sentenced on an accepted basis of plea as per her interview, that the benefit to her had been that she retained her job and got time to repay the shortfall by concealing the loss, and noted that she maintained that she had not taken any money. The basis of plea itself is not included with the papers.

474. However, the circumstances of the plea were the subject of comment in the Court of Appeal⁶²⁹. The Post Office conceded that her basis was accepted after it had been made “... clear to her that POL would not accept any criticism or blame concerning Horizon. In her case it is conceded that: i) It was improper to make the acceptability of her plea conditional on not making any explicit criticism of Horizon; ii) In circumstances where theft could not directly be proved, and the shortfall may not have been a real loss, it was wrong to try to prevent her from making any criticism of Horizon as part of her mitigation to the charge she admitted.”
475. Holroyde LJ observed⁶³⁰ “On 30 June 2011, POL’s external solicitor wrote to Rob Wilson recording what had taken place in court that day, including the basis on which Mrs Hall had pleaded guilty to fraud as an alternative to theft. Despite the fact that Mrs Hall had not sought to make any express criticism of Horizon in her defence, the attendance note records the fact it was made clear that: “the Prosecution would not accept any criticism or blame concerning the Horizon System.” POL accepts that it was improper to make the acceptability of Mrs Hall’s basis of plea to fraud conditional on not making any criticism of the Horizon system. 168. In our judgment, such conduct on the part of a prosecutor is bound to bring the justice system into disrepute.”

Assessment

476. This is a case where the material is limited but some of the same themes emerge here as in other cases I have already considered. Mrs Hall, when interviewed, raised issues with the accuracy of the Horizon system and issues with scratch cards. A similar issue had arisen in the case of Suzanne Palmer in 2006, and yet that does not appear to have been appreciated, or addressed either as an investigative matter or a disclosure issue. This is particularly concerning because the email exchange involving Dave Posnett in 2013⁶³¹ he was anecdotally recounting issues with scratch cards and errors arising from

⁶²⁹ [2021] EWCA Crim 577, at §117

⁶³⁰ [2021] EWCA Crim 577, §167-168

⁶³¹ POL00029604

them in the period when he was a fraud risk manager until 2010 (and thus the relevant period here), and yet this was not acknowledged or investigated in relation to Mrs Hall's case and no disclosure was undertaken.

477. Again, the limitations to the investigation and to disclosure went hand in hand. The enquiries relating to Horizon and helpline calls were given a very narrow focus. Given Mrs Hall's account of problems, such a narrow focus was inappropriate both to test that account, and to ensure that material relevant to the charges and disclosure was obtained. Indeed, by reference to the observations of the Court of Appeal, it is unclear as to whether there was disclosure even of that which was obtained.
478. The charging decision, by reference to the advice seen, was neither thorough nor conscientious. No analysis of the elements of theft, or the evidence to support them, is revealed by the advice. Those shortcomings are underlined by the plea process, which involved an acceptance that it was not possible to prove that any money had been taken, and that anything more had been done that adjust records to conceal a shortfall that she had not caused. If that was the position, that should have been reflected by the charge. It is not clear what purpose it was considered the theft charge had, other than to encourage a plea to the charge actually made out on the evidence. The connection of the plea being accepted to a lack of criticism of Horizon, which mirrors the approach in the cases of Hughie Thomas and Josephine Hamilton, is a matter of concern for the reasons already rehearsed in those cases and set out so clearly by the Court of Appeal.

ALLISON HENDERSON

479. Allison Henderson was 50 years old at the time of the investigation and was the sub postmistress at Worstead in Norfolk.
480. On 15th December 2010, in the Crown Court at Norwich, Allison Henderson pleaded guilty to one count of false accounting. No evidence was offered on a count of theft to which a "not guilty" verdict was recorded. On the same day, she received a community sentence order with 200 hours of unpaid work. She was ordered to pay £1,400 towards the prosecution costs. In terms of the charges, the gist of that offending

was an allegation that multiple false cash declarations were being made before balancing statements were produced⁶³².

481. Ms Henderson had originally been charged only with theft of £11,957.58 between “2 July 1997 and 11 February 2010”⁶³³. That date range was subsequently expanded to 1 January 1997 to 11 February 2010 and a charge of false accounting between the same dates was added, relating to entering false cash figures, following advice from counsel⁶³⁴. She had initially pleaded not guilty. The circumstances of her change of plea are considered further below.

482. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*⁶³⁵, Mrs Hall was one of those in category A, in which the Post Office “... accepted that in cases where the reliability of Horizon data was essential to the prosecution and conviction of the 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.” In particular, in her case⁶³⁶ the Post Office conceded: “i) It was improper to make the acceptability of her basis of plea conditional on her making no issue of Horizon; ii) Since the theft charge had been dropped, POL could no longer advance a case that she had stolen any money, and it should have been open to her to suggest that there was no actual loss and she had only covered up a shortfall created by Horizon.”

The investigation

483. I have not seen an investigation summary, setting out the decisions that were taken, or any document identifying who performed which roles under the CPIA Code. The case summary⁶³⁷ indicates that an audit was undertaken at the post office on 10th February and a shortage of £11,957.78 was identified. Arrangements were made for Ms Henderson to be interviewed.

⁶³² POL00047572

⁶³³ POL00054917

⁶³⁴ POL00055541

⁶³⁵ [2021] EWCA Crim 577, at §71

⁶³⁶ [2021] EWCA Crim 577, at §116

⁶³⁷ POL00047572

484. The interview took place on 11th March 2010⁶³⁸. The defendant was accompanied by the branch secretary as a Friend, in accordance with the form CS003, which I have not seen. There was, therefore, compliance with those aspects of the Post Office interviewing policy⁶³⁹. She did not have a solicitor. The transcript does not indicate whether, and if so why, she declined one, but the CS001 form, which I have not seen, may have made this clear. In his later statement⁶⁴⁰, Mr Knight asserted that she had declined a solicitor. She immediately said that she had no previous knowledge of the shortages at all and that to the best of her knowledge everything was fine at her branch. She was asked about the bank trading statement completed by the auditor, and could not explain the discrepancies. She asked why they had allowed the losses to build before auditing her, if the system had revealed an issue. She confirmed she counted the cash each month, and made cash declarations on the system. Horizon was not raised, except to say that she had only had one day of training on the system.
485. The interview was, however, combative and was indicative of a disciplinary approach as opposed to an investigative. Ms Henderson observed at one stage⁶⁴¹ *“you’ve done the figures you’ve drawn your conclusions”*, which was a fair description of the investigators’ approach. Given that the primary interviewer, Christopher Knight, was also the investigator and responsible for disclosure⁶⁴² the strength of his conviction that Ms Henderson was guilty is of concern.
486. In terms of other investigative steps, bank statements were obtained from the defendant. It is not clear the extent to which these were analysed. A decision was taken not to search the home address. It is not clear whether there were enquiries as to calls to the Horizon helpdesk or the NBSC as would be a standard line of enquiry in these cases. There was no evidence of awareness of Horizon issues in the course of the investigation, and there does not appear to be any checks on the accuracy of the Horizon information relied on, or checks as to whether there had been any faults. This is despite the fact that it was apparent from an early stage that the prosecution thought there could be a challenge to Horizon, as Mr Wilson, the head of criminal law division

⁶³⁸ POL00054407

⁶³⁹ POL00104758

⁶⁴⁰ POL00055452

⁶⁴¹ POL00054407, timer 22.00

⁶⁴² Mr Knight completed the disclosure schedule, POL00055503

identified when the case was sent to the Crown Court⁶⁴³, not least because there was a discrepancy on the Horizon event log identified by the time of the charging decision⁶⁴⁴. But there is no evidence of knowledge of particular issues with Horizon, and no specific enquiries identified as being required in relation to it. Although there was later a suggestion the prosecution would obtain a statement from Gareth Jenkins⁶⁴⁵ it seems timelines did not allow for it, and I have seen no correspondence suggesting that ever did happen.

487. When the case was listed before the Norwich Magistrates' Court on 12th August 2010, Hugh Cauthery, solicitor advocate, appeared. He noted⁶⁴⁶ that it would be important to understand why the audit had been undertaken, and whether the branch trading statement in January 2010, pre-audit, should have alerted Mrs Henderson to any discrepancy. If it should, it would be necessary to consider what if any contact she made with the helpline. I have not seen evidence of such enquiries being made as a result of this advice.

488. This approach to Horizon as a line of investigative enquiry, as disclosed by the material I have seen, accords with the observations of the Court of Appeal in this defendant's case⁶⁴⁷: *"POL accepts that there is nothing to suggest that any ARQ data was obtained. There was no evidence to corroborate the Horizon evidence. There was no investigation of the substance of the amended defence statement to the effect that Mrs Henderson did not accept the loss. There was no proof of an actual loss as opposed to a Horizon generated shortage."*

The charging decision

489. There were two documents⁶⁴⁸ produced by Rob Wilson, head of the criminal law division at the Post Office, dated 25th March and 21st May 2010. The first represents an advice for further enquires and the latter the result of those. Even taken together, they

⁶⁴³ POL00055305

⁶⁴⁴ POL00047159

⁶⁴⁵ POL00055190

⁶⁴⁶ POL00055162

⁶⁴⁷ [2021] EWCA Crim 577, §158

⁶⁴⁸ POL00047155, POL00047159

represent a short charging decision. The advice⁶⁴⁹ raised the question of why it was contended that Ms Henderson would have been aware of the loss from the last branch trading statement undertaken before the audit, and asked for a “*full accounting pattern*” to be obtained from Horizon for the branch, to show “*how much money was paid out, how much was received in remittances and therefore how much should have been present in the account*”. He also raised the question of when the loss had occurred. These were all sensible questions to raise. It is not clear that Mr Wilson had received answers to them before proceeding to charge, and a chaser in August by Mr Wilson⁶⁵⁰ suggests the contrary.

490. The charging decision⁶⁵¹ concluded that there was a realistic prospect of conviction for theft. There was no analysis of the evidence. It is clear from the terms of the decision that it was reached despite it not being clear as to when the thefts started, which suggests a slight lack of clarity as to how the case was to be put. There was no explanation of where the money had gone, nor evidence that Ms Henderson had in fact taken it, rather than lost it beyond the volume of the money involved. The advice proceeded on the assumption that as she was the only person who had access she must have stolen the missing money. Whilst the inability to prove where the money went is not necessarily fatal given the amounts involved, by reference to the Code for Crown Prosecutors it was necessary to consider this before charging theft, and in particular whether it could be proved this was not accidental loss, or theft by another.
491. The charging decision decided not to charge false accounting either instead of or as well as the theft charge, on the basis the lawyer was of the view that charge could not be proved given the explanations given by the defendant. This is odd, given that the theft allegation inherently depended on steps being taken by the defendant to conceal theft through manipulation of the accounts. That was certainly a matter explored with her in interview. The public interest assessment was limited to concluding it was not appropriate to give a caution. Even after the case was sent for trial, Mr Wilson was still

⁶⁴⁹ POL00047155

⁶⁵⁰ POL00055190

⁶⁵¹ POL00047159

asking when the last audit took place, with a view to finalising the period over which theft had occurred⁶⁵².

492. When the case was listed before the Norwich Magistrates' Court on 12th August 2010, Hugh Cauthery, solicitor advocate, appeared. He noted⁶⁵³ that the charge had not included a start date, and added the date in which Ms Henderson had started to work at the post office, and period of 13 years.
493. Despite this charging decision, it is apparent that a false accounting charge was also added to the indictment⁶⁵⁴ by the time the case reached the Crown Court. It appears this was a result of the advice of counsel, Dianne Chan of 9-12 Bell Yard, following sending⁶⁵⁵. It is right to note that Ms Chan does not address the rationale for adding the charge, and does not consider the implications of the decision in *Eden*⁶⁵⁶ for doing so. She asked for enquiries to be made in relation to the cash in hand figures and frequency of checks, and it is clear that the period over which it was said that the theft had occurred, and the means by which it was affected and/or concealed were uncertain. If the purpose of adding such a charge was to allow the defendant to plead to it, it is clear that there were limitations on the circumstances in which this was to be permitted. In November 2010⁶⁵⁷, shortly before trial, Mr Wilson made clear that the prosecution was not willing to accept a basis of plea alleging issues with Horizon. I shall return to this email and the circumstances of Ms Henderson's ultimate guilty plea below.

Initiation of proceedings

494. Ms. Henderson was summonsed to appear at the Norwich Magistrates' Court on 12th August 2010. I have seen the summons in this case, unusually for those I have reviewed⁶⁵⁸. It records that it was issued on the basis of an information laid on 21st

⁶⁵² POL00055305

⁶⁵³ POL00055162

⁶⁵⁴ POL00055541

⁶⁵⁵ POL00055542

⁶⁵⁶ (1971) 55 Cr. App. R. 183

⁶⁵⁷ POL00055783

⁶⁵⁸ POL00054917

June 2010 by Christopher Knight, the investigator who had adopted such a combative approach in interview. I have not seen that information.

Disclosure

495. A very short schedule of non-sensitive unused material (MG6C)⁶⁵⁹ was prepared by the investigator, Christopher Knight, on 24th September 2010. It was signed by a lawyer, Mr Wilson, but no specific decisions endorsed on it. It included Ms Henderson's bank statements, the audit report and the trading statement about which, if I understand correctly, Ms Henderson had been asked questions in interview. It is right to note in relation to the last of these that in September 2010⁶⁶⁰ Mr Knight did produce trading statements as his exhibits. It is, however, apparent from memoranda provided when the schedule was served⁶⁶¹ and again after the first defence statement⁶⁶² that it was endorsed and signed on the basis everything was clearly not disclosable ('CND'). In my view, such an assessment was in error. It can properly be argued that items 3 to 6 on the schedule (the audit, trading statement (to the extent not served as exhibits) and bank statement) would in fact have been disclosable as being capable of assisting the case for the accused, particularly on a theft charge.
496. It is of note that this case followed the updating of the Post Office disclosure of unused material policy in July 2010.⁶⁶³ That policy, at para.3.9, specifically enjoined consideration of the defendant's interview and defence statement, potential lines of cross-examination and applications to exclude as reasons to disclose. That is not reflected in the approach adopted at the outset here.
497. A schedule of sensitive unused (MG6D)⁶⁶⁴ was also prepared by Mr Knight. There is no evidence that its content, identified as "case papers" which were said to be privileged, were reviewed by a lawyer. A disclosure officers report (MG6E)⁶⁶⁵ was blank.

⁶⁵⁹ POL00055503

⁶⁶⁰ POL00055452

⁶⁶¹ POL00055305

⁶⁶² POL00055814

⁶⁶³ POL00104848

⁶⁶⁴ POL00055291

⁶⁶⁵ POL00055505

498. Even before any defence statement was submitted, it was recognised by the reviewing lawyer that Horizon-related disclosure might be necessary. In his memo to the investigator, Mr Knight, on 29th September 2010⁶⁶⁶ Mr Wilson said, enquiring about Horizon documentation, saying: *“The current charge covers a period from 1 January 1997 to 10 February 2010. Is there any indication from the Horizon documentation, the defendant’s bank statements or any other material when this money first went missing? Can you confirm when the last audit took place so that if necessary that date can actually appear in the indictment? At the moment I suspect that this will be a case where Horizon itself is challenged and, as such, the Prosecution will be under pressure to disclose a huge amount of Horizon data. It would therefore be extremely useful if we could identify something that assists the prosecution in the pursuit of this criminal allegation.”* In fact, he had expressed a similar view in relation to likely Horizon issues even earlier in August⁶⁶⁷.
499. Ms Henderson provided two defence statements between her PCMH and the date fixed at that hearing for her trial. The initial defence⁶⁶⁸ statement did not raise issues with Horizon. It was served on 5th November, two days after PCMH. The second⁶⁶⁹, a signed defence statement, did raise such issues in generic terms, and was served on 16th November 2010 for a trial in the warned list of 29th November 2010.
500. In terms of the content of the defence statements, in the first unsigned defence statement, served on 5 November 2010⁶⁷⁰, Mrs Henderson stated that she could not offer an explanation for any discrepancy. She denied theft but accepted that she was contractually obliged to make good any discrepancies and was making efforts to do so. In the amended, signed defence statement, served on 16 November 2010⁶⁷¹, Mrs Henderson said that it was her belief that any discrepancy: *“was as a result of a malfunction of the Horizon computerised accounting system ... any discrepancy could have been discovered by the Post Office auditor, particularly as he initially alleged £18,000 was missing, this was reduced to the alleged sum in a matter of minutes. Further investigation by the auditor would have discovered the whereabouts of the alleged missing sum.”*

⁶⁶⁶ POL00055305

⁶⁶⁷ POL00055190

⁶⁶⁸ POL00047195

⁶⁶⁹ POL00044503

⁶⁷⁰ POL00047195

⁶⁷¹ POL00044503

501. No disclosure followed service of the defence statement⁶⁷². Mr Wilson⁶⁷³ observed that the second defence statement alleged that the discrepancy was the result of the Horizon system, which was not something he was prepared to accept. The email does not suggest any further enquiries, perhaps because it was otherwise responding to a suggestion that the defendant might plead to false accounting. This is not consistent with the proactive response to a defence statement expected of a prosecutor by the Attorney General's Guidelines (for example paras.36-37). The lack of Horizon related disclosure in a case where the expectation of such disclosure was recognised at an early stage is striking.
502. This was also the conclusion of Harry Bowyer of Cartwright King⁶⁷⁴ when he reviewed the case in 2014 in relation to the post-conviction disclosure of the Second Sight report. He wrote: *"This case differs from the run of the mill case of this type where the defendant admits false accounting but denies theft. At no stage in interview or in the defence statement did the defendant concede false accounting by her or, indeed, any dishonesty at all."* He considered that *"had we been in possession of the Second Sight Interim Report we would have disclosed the matters raised within it when we were in possession of the defence statement"*.
503. The Court of Appeal⁶⁷⁵, in relation to Horizon-related disclosure, observed: *"POL accepts that there is nothing to suggest that any ARQ data was obtained. There was no evidence to corroborate the Horizon evidence. There was no investigation of the substance of the amended defence statement to the effect that Mrs Henderson did not accept the loss. There was no proof of an actual loss as opposed to a Horizon generated shortage."*

The circumstances of the plea

504. The defendant pleaded guilty to false accounting only at a hearing following the PCMH. The history of the proceedings is relevant to this. She had denied theft and false accounting in interview, and had originally been charged just with theft. False accounting had been added to the indictment by the time of the PCMH, which was on

⁶⁷² POL00055814

⁶⁷³ POL00055783

⁶⁷⁴ POL00061747

⁶⁷⁵ [2021] EWCA Crim 577, §158

3rd November 2010. At that stage, she had entered not guilty pleas to both offences and a trial date had been set for the week of 29th November 2010. The attendance note⁶⁷⁶ records that no prosecution witnesses were required, noting *“defence accept there is a discrepancy which she cannot explain.”*

505. It is worth noting in passing that prosecution counsel was delayed reaching court and so another lawyer covered the hearing at the last minute, but that does not appear to have been the reason that there was no discussion of pleas at that stage. Rather, it appears that Ms Henderson was contesting the allegations. That is supported by the fact that she had then, during November 2010, served two defence statements which contested her guilt and, in the second defence statement, blamed Horizon for accounting errors.
506. On 16th November⁶⁷⁷, the day on which it appears that the second defence statement was served⁶⁷⁸, Dianne Chan, prosecution counsel reported *“have spoken to defence solicitor who indicated that the defendant may be willing to plea to false accounting and pay money back. Taken instructions from Chris who has confirmed that he would be happy to proceed on this basis”*. This appears to be a reference to Christopher Knight, the investigator. Harry Bowyer’s 2014 review⁶⁷⁹ also recorded that the defence had told the investigator by phone that the defendant might plead to false accounting. The immediate response to Ms Chan’s email from Rob Wilson, the head of the Post Office Criminal Law Division⁶⁸⁰ was *“Clearly if there were to be a plea to false accounting but on the basis that the Horizon system was at fault then that would not be an acceptable basis of plea for the prosecution.”*
507. In the meantime, the acceptability of such a plea was first floated formally by the defence by letter on 18 November 2010⁶⁸¹. This plea was accepted on 25th November⁶⁸² on the basis that the monies would be repaid, and expressly on the basis that there was no issue relating to Horizon. In other words, in accordance with Mr Wilson’s email,

⁶⁷⁶ POL00055687

⁶⁷⁷ POL00055783

⁶⁷⁸ POL00061747, §5

⁶⁷⁹ POL00061747

⁶⁸⁰ POL00055783

⁶⁸¹ UKGI00014696

⁶⁸² POL00055839

the acceptability of the plea was conditional on there be no criticism of Horizon. This approach was also communicated by the Criminal Law Division to those they instructed in the case⁶⁸³.

508. On 1st December⁶⁸⁴, the case was listed for “plea and Goodyear indication” before His Honour Judge Binning in the Crown Court at Norwich. The attendance note records that no such Goodyear indication was given, and that the judge declined to sentence until compensation was paid because it was a key plank of the basis of plea being submitted. The case was adjourned until 15th December. In accordance with the approach laid out in *Goodyear*, the defence provided a basis of plea⁶⁸⁵ in which it stated “her guilty plea to false accounting would be accepted on the basis that she became aware of a discrepancy in the accounts, but dishonestly covered it up by entering false figures in the sub-Post Office accounts, thereby causing loss to Post Office Ltd, who were kept unaware of the discrepancy”. Nothing was said about the reasons for the discrepancy. She expressed a willingness to repay the money. I have seen no written response to this basis.
509. At the following hearing⁶⁸⁶, after compensation was paid, a *Goodyear* indication was sought and given that there would be a non-custodial sentence. The defendant then entered her guilty plea and was sentenced. I have seen no papers explaining why the Post Office took the view that this plea was acceptable. In addition, it is interesting to note that the Post Office offered no evidence on that charge rather than asking it lie on file.
510. This chronology was analysed by Harry Bowyer of Cartwright King⁶⁸⁷ when he reviewed the case in 2014 in relation to the post-conviction disclosure of the Second Sight report. He wrote: “*This case differs from the run of the mill case of this type where the defendant admits false accounting but denies theft. At no stage in interview or in the defence statement did the defendant concede false accounting by her or, indeed, any dishonesty at all. The plea, when it eventually came, was only after a Goodyear indication where the Judge indicated that on a guilty plea there would be no custodial sentence. In a case such as this it*

⁶⁸³ POL00055837

⁶⁸⁴ POL00055863

⁶⁸⁵ POL00046148

⁶⁸⁶ POL00055885

⁶⁸⁷ POL00061747

would be difficult to rule out a pragmatic decision to avoid an immediate custodial sentence as opposed to an admission of guilt when the defendant entered her guilty plea.”

511. When the Court of Appeal considered this chronology⁶⁸⁸, Holroyde LJ observed: “POL concedes that it was improper to make the acceptability of Mrs Henderson’s basis of plea to false accounting conditional on making no issue of the Horizon system. In our judgment, such conduct on the part of a prosecutor is improper. POL had dropped the theft charge and so could no longer advance any case that she had stolen the money. POL concedes that that should have left the way open to Mrs Henderson to suggest that there was no actual loss and she had only covered up a shortfall Horizon had created.”

Assessment

512. At the outset of the investigation in this case, Mrs Henderson had made clear that she denied responsibility for the shortfall, but could not explain it. Whilst she did not at that stage positively assert that the fault lay with Horizon, as she was to do in her second statement, she did assert that it was caused by someone or something other than her. In my view, that should have been the catalyst for enquiries as to what potential explanations might have been. These included involvement of Mrs Henderson, by reviewing her finances, considering others working at the premises, and considering the operation and reliability of the system, both by reference to helpline calls and analysis of the data. That such lines of enquiry were reasonable here is underlined by the fact that they were raised by Mr Wilson, the head of the criminal department. Those lines of enquiry were not, on the face of it, pursued. It appears, as his approach in interview illustrates, that the investigator had made his mind up without recourse to any such investigation.
513. Whilst Mr Wilson is to be congratulated for recognising and advising on these lines of enquiry, it is disappointing that he did not await, or chase, the results before reaching a charging decision. Instead, a theft charge was preferred without, on his own analysis, evidence of the critical elements of that offence. The advice lacks analysis of the elements of the offence or the evidence. It also appeared to recognise limitations to the evidence that Mrs Henderson had falsified accounting records, and had thus acted

⁶⁸⁸ [2021] EWCA Crim 577, §162

dishonestly. Despite this, and without any further documented analysis of the position, a false accounting charge was added on the advice of counsel which itself lacked any real or rigorous analysis of the elements of the offences charged or the sufficiency of the evidence to prove them.

514. The disclosure process in this case was flawed from the outset. The schedule of non-sensitive unused material was incomplete, was not properly reviewed and a number of the disclosure decisions reached were in error. There was a failure to reconsider disclosure in the light of defence statements, and failure to make disclosure as a result. As was later recognised by Harry Bowyer in 2014, Horizon-related disclosure was essential, and should have been made before Mrs Henderson was allowed to plead. The fact that this case post-dated the October 2010⁶⁸⁹ discussions about bugs in the system underlines that fact.
515. The circumstances in which she did so bear unsettling comparison with the cases of Hughie Thomas, Josephine Hamilton and Alison Hall. As in those cases, Mrs Henderson's plea should not have been tethered to the repayment of money which, on that which was accepted, she had not taken, or to criticism of the Horizon system, in relation to the operation of which there had been material non-disclosure. The internal correspondence makes the desire to protect Horizon explicit, and thus all the more concerning. The absence of loss was a material piece of mitigation that she was denied by that desire to protect the system.

GRANT ALLEN

516. Grant Allen was Sub-postmaster at Winsford in Cheshire. He was 44 years old at the time he was investigated. He faced a single charge of fraud by false representation, contrary to section 1, Fraud Act 2006, committed between 1 April 2010 and 7 February 2012. It was particularised⁶⁹⁰ as representing that the Post Office had more cash on the premises than was actually the case resulting in a shortage of £11,705.

⁶⁸⁹ POL00055410, POL00001733

⁶⁹⁰ POL00089369

517. The facts are set out in the statement of the Security Manager concerned, Stephen Bradshaw⁶⁹¹. As with all other reviewed cases, this case started with an accounting discrepancy which led to an audit that found cash shortages. Mr Allen told the auditor that he had inflated the cash on hand sheets, and that the accounts were short by over £10,000. The evidence derived from Horizon records. The defendant pleaded guilty and was sentenced to a 12 month community order with 200 hours of unpaid work.

The investigation

518. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. Mr Bradshaw⁶⁹², the Security Manager, initiated the investigation following the identification of the £17,811.49 shortfall in an audit on 2nd February 2012. Mr Bradshaw was assigned on 23rd February 2012⁶⁹³, by then the contact manager had already suspended Mr Allen⁶⁹⁴. I have seen an email exchange between a Remuneration and Contract adviser and an Agents Contract Deployment Manager about Mr Allen's financial difficulties in January 2012⁶⁹⁵, which appears to have led to the audit. It is not clear the extent to which this communication, and the information underlying it, was shared with the investigation at the time. Mr Bradshaw also appears to have acted as the disclosure officer. It is not clear to what extent his actions were supervised or directed by an officer in charge.

519. A PACE compliant interview was held on 19th April 2012⁶⁹⁶. The interview was delayed to allow Mr Allen time to speak to his civil solicitor as well as his criminal one⁶⁹⁷. Mr Bradshaw was one of the interviewers. The transcript records that Mr Allen declined the assistance of either a solicitor or a "Post Office Friend". There was a process to be undertaken in this regard⁶⁹⁸. I have no reason to think it was not undertaken here. At the beginning of the second interview there was discussion as to

⁶⁹¹ POL00089069

⁶⁹² POL00089096

⁶⁹³ the Investigation Case Summary, POL00089426

⁶⁹⁴ POL00089426

⁶⁹⁵ POL00089626

⁶⁹⁶ POL00089670, POL00089457

⁶⁹⁷ POL00089426

⁶⁹⁸ Post Office interviewing policy, POL00104758

whether Mr Allen ought to have a solicitor present. He did not want the solicitor dealing with his claim against his landlord to know about the criminal allegation. A decision was taken by the Senior Security Manager to continue with Mr Allen unrepresented⁶⁹⁹. The applicable PACE Code of Practice⁷⁰⁰ underlines the limited circumstances in which such a course is appropriate. It is not clear from the material I have seen that this was appreciated.

520. In interview Mr Allen stated any shortages were as a result initially of a move in March 2010 where the wiring was down for four weeks. He said this resulted in £3,000 loss and that there would then be loss in the region of £500 that could not be explained. He explained some of these losses appeared to be other error correction notices. He said the issues started just after their transition to Horizon online in March 2010. He had inflated the cash on hand to achieve balance, putting the approximate amount of the shortage onto the unusable notes line. He did this between April 2010 and February 2012. He denied thefts or knowing that falsifying the accounts could be an offence. He also said that he had been contacting the Post Office regularly to tell them of the issues. An alleged significant comment was put to Mr Allen to sign⁷⁰¹. This related to his admission to the auditor that he had inflated the cash on hand.

521. This was, therefore, from the beginning a Horizon case. Although Mr Allen gave consent for his bank statements to be obtained⁷⁰², and Branch trading statements and Horizon reports were obtained⁷⁰³, it is not apparent that there was detailed investigation into the transition or issues with training, albeit this was a case where the charge was put on the basis of fraud. Such material would have still been a reasonable line of enquiry and met the disclosure test in relation to potentially dishonesty. Moreover, the underlying issues with Horizon directly tied to the reasons for the inflating of cash in hand. Mr Bradshaw in the Investigation Summary⁷⁰⁴ stated: *“during the course of this investigation I have not identified any failings in any security procedures other than the fact that for whatever reason Mr Alen admits to altering his cash declarations”*.

⁶⁹⁹ POL00089426, p.5

⁷⁰⁰ Code C, para.6.6

⁷⁰¹ POL00089069

⁷⁰² POL00089426

⁷⁰³ Bradshaw statement, POL00089069

⁷⁰⁴ POL00089426, at p.6

522. It is not clear to what extent there was an investigation into the calls to the Horizon helpdesks and to the National Business Support Centre. Such a line of enquiry was warranted by Mr Allen's assertions in interview that he had contacted both. The investigation summary⁷⁰⁵ does suggest that the investigation team did obtain a non-polled report for Horizon after the relocation, detailing some of the issues with the change of location, and that calls were made to the Business Support enter, and to the Branch Confirmation Team which had no record of calls. It is not clear to me whether this provided a complete answer to this issue. It was however asserted by Mr Bradshaw that there were no further enquiries to be made.
523. On 14th May 2014, Mr Allen completed a Second Sight Case Questionnaire⁷⁰⁶. In this, he describes experiencing substantial losses from the outset of his use of the Horizon system. He again complained about inadequate support from the Horizon helpdesk. There is also reference to issues with the set up of the new branch and an engineer's report. He observed "*the Post Office appeared to show no interest in properly investigating the matter, but instead felt that they could simply prosecute and reclaim any differences regardless of whether they were real or not*".

Charging decision

524. The charging decision followed undated advice from Cartwright King⁷⁰⁷. It considered the audit evidence and Mr Allen's interview. It does not appear that any other evidence was available. It thus relied heavily on Mr Allen's admissions in interview. It did consider briefly the complaint history, or, by reference to the Investigation summary, the lack thereof, as well as the relevance of the defence case.
525. It correctly identified that the key issue would be dishonesty but, beyond asserting that ignorance of the law was not a defence, it did not address Mr Allen's own belief as to whether this behaviour was dishonest. This is arguably surprising bearing in mind that until the re-consideration of the test for dishonesty in 2017⁷⁰⁸, the test in

⁷⁰⁵ POL00089426

⁷⁰⁶ POL00089642

⁷⁰⁷ POL00086286

⁷⁰⁸ *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67; [2018] AC 391 and *Barton* [2020] EWCA Crim 575, [2021] QB 685

*Ghosh*⁷⁰⁹ was good law and thus it was necessary to consider both whether Mr Allen's conduct was objectively dishonest and whether he must have realised that it was, by those standards, dishonest. There was, in this context (albeit not expressly) consideration of the implications of the lack of evidence of calls to the Branch Confirmation Team as to whether Mr Allen believed there was a genuine data error, but no question was raised as to whether such an error had occurred by reference to consideration of the Horizon system.

526. The charging advice did not expressly consider the public interest test at all, beyond noting the level of loss, although it did consider the suitability of non-conviction disposals.

Horizon evidence

527. This case directly involved concerns about Horizon integrity. It arose after the discussions between Fujitsu and the Post Office in October 2010⁷¹⁰ and it was also ongoing in 2012 when the Second Sight investigation began⁷¹¹. The Post Office were aware of the existence of the independent review and confirmed to the defence that that process was beginning. It is unclear from the context whether they disclosed this independently or if the defence raised it. The fact that it was ongoing would itself have been disclosable.
528. This is a case in which a statement from Gareth Jenkins, dated 17th December 2012⁷¹², on Horizon integrity was served. The statement purports both to provide some general information regarding the integrity of the Horizon system, and to address Mr Allen's assertion of a £3000 discrepancy resulting from Horizon non-polling. It confirms that there were communication issues between Horizon and the Data Centre at the time that Mr Allen claimed there was a discrepancy (March 2010) but was of the view that it should not have impacted on data recorded locally. The statement does, however, accept a network failure followed by a terminal failure could lose transactions. However, the statement goes on to say that he has run through hypothetical issues

⁷⁰⁹ [2981] QB 1053

⁷¹⁰ POL00055410, POL00001733

⁷¹¹ POL00089376

⁷¹² POL00089077

with integrity and concluded there was no evidence of any issues. Two exhibits (GIJ/1⁷¹³ and GIJ/2⁷¹⁴) were served relating to integrity. The issues Mr Jenkins had addressed in September 2010⁷¹⁵ report relating to bugs in the system were not addressed, and no disclosure of them was made by him.

529. There was email contact between Cartwright King, acting for the Post Office, and Mr Jenkins in November 2012⁷¹⁶, informing him of their intention to serve a generic statement from him in relation to Horizon in a range of cases where complaint was made about the system's operation. It was observed by Rachel Panter of Cartwright King in that context *"it should be noted that to date most, if not all cases raising the Horizon system as an issue have been unable/not willing to particularise what specific issues that they may have with the system and how that shapes the nature of their defence"*.
530. It is worthy of note that this email is as near as I have identified to a letter of instruction to Mr Jenkins for an expert report. The same email is also relevant to the cases of Angela Sefton and Anne Nield, and of Khayyam Ishaq⁷¹⁷. Each of those cases is considered in detail below. It is to be read alongside the email to Mr Jenkins from Andrew Bolc of Cartwright King, dated 4th December 2012, asking him to comment on the scenario *"that an initial loss of £3000 is attributable to lost data which has not reached head office because of installation problems"*. The email goes on *"ultimately we would need to discredit this as an explanation that holds any water"*. It appears from the 'Gareth Jenkins chronology'⁷¹⁸ that there had been limited contact with him in relation to Mr Allen's case before this. The underlying and referenced material will need to be checked to establish the extent to which this is correct.
531. By reference to the analysis of the instruction of experts in my Volume 1A, the correspondence to Mr Jenkins falls short of any full and effective instruction of an expert as to his duties and responsibilities. Neither the material I have seen, nor for that matter does the 'Gareth Jenkins chronology' suggest that the relevant/asserted correspondence reminded him of his duty to disclose anything that would undermine

⁷¹³ FUJ00080526

⁷¹⁴ POL00089115

⁷¹⁵ POL00001733

⁷¹⁶ POL00089393

⁷¹⁷ POL00059404

⁷¹⁸ POL00165905, para.214

his opinion. Given his September 2010 report⁷¹⁹, this would have been a very pertinent reminder.

532. Mr Jenkins statement made clear that he had not examined the detailed logs to see if there were any issues or any justification in the claim this resulted in system losses of £3,000. This is an unfortunate failure in the evidence, given that he was aware of the specific issue raised by Mr Allen, and did not follow through in the investigation of it. It appears that this was a Post Office decision, however⁷²⁰. There was discussion about this between Andrew Bolc from Cartwright King, Mr Bradshaw, the Security Manager investigating Mr Allen, and Mr Jenkins in December 2012⁷²¹. Mr Bolc recounted that Mr Jenkins had said that it was “*possible for him to retrieve the actual data from this time to see what actually occurred at this branch and that the retrieval of the data is free to POL*”. Mr Jenkins, having been informed of Mr Allen’s account by Cartwright King and asked to comment on it, had offered, on 5th December, to examine the data in addition to making a general statement. On the same day he was told to make the general statement, and it was considered that the statement ultimately served was sufficient. This appears to have been decided between the investigator and prosecutor⁷²².
533. In January 2013, Mr Jenkins was informed by Rachael Panter⁷²³ that Mr Allen’s case was concluded. He replied asking about the status of Mr Allen’s case, because “*I was particularly concerned about his allegations regarding the problems cause due to the refurbishment and comms issues being the reasons for some of his losses. Was anything said publicly about any of that? We were quite concerned that this might set a precedent*”. I assume that the “we” in that context was Fujitsu. It should be noted that his concern for his employer’s reputation, if so, is not consistent with the required independence of an expert.
534. The other issue, in the context of the charging decision and the continued duty of disclosure, to which these email exchanges give rise is that Cartwright King, acting for the Post Office and with a continuing duty of review of prosecutorial decisions, did not appear to have identified in late 2012, for example, that there were, as Rachel

⁷¹⁹ POL00001733

⁷²⁰ POL00165905, para.214

⁷²¹ POL00089380 and POL00165905, para.217

⁷²² POL00165905, para.218

⁷²³ POL00089380

Panter put it, a number of cases where issues as the reliability of Horizon had arisen and yet no steps appear to have been taken to step back and to consider what the implications of that might be, and what steps were needed to investigate, as opposed to rebut, such issues. There was neither discussion of necessary disclosure arising from this, nor actual disclosure.

Instruction of counsel

535. It seems from a note of the plea and case management hearing that John Gibson was instructed for the prosecution at that stage⁷²⁴. This records that prosecuting counsel was not entirely happy with the basis of plea put forward, which was to the effect that *“he cannot account for the loss but admits covering it up”*. This basis was identified as being acceptable to the Post Office. It is unclear what counsel’s concerns were or what discussion was had. The judge, His Honour Judge David Hale, is recorded as being content to sentence on the basis advanced given that the defendant was not charged with theft.

Disclosure

536. A schedule of non-sensitive unused material (equivalent to an MG6C) was created in April 2012. The copy I have seen⁷²⁵ was only signed by Stephen Bradshaw as the investigator, on 19th September 2012, and it is not clear if it was reviewed by the Reviewing Lawyer and in fact disclosed to the defence. In that regard it is right to note that Mr Bradshaw provided this schedule to Andrew Bolc of Cartwright King on 24th September 2012 as part of the committal bundle. It appears that a schedule of sensitive unused and a disclosure officer’s report (equivalent to an MG6D and MG6E) were also created but I have not seen them.

537. The non-sensitive unused schedule seems comprehensive in terms of correspondence with the defendant and interview-related material, although the descriptions of the letters to the complainant do not seem sufficiently particularised to allow a decision to be made on disclosure. Again, this falls short of the requirements of CPIA Code

⁷²⁴ POL00089065

⁷²⁵ POL00089348

para.6.9, in the need to make clear the nature of the item and whether it needs to be reviewed. However, there is nothing in the schedule relating to any investigation into Mr Allen's finances (and for example the material relating to Post Office internal communications about his financial difficulties in January 2012⁷²⁶), the transition or issues with training, albeit this was a case where the charge was put on the basis of fraud, and at some point a chronology of the relocation⁷²⁷ was obtained. There is also no reference to any material generated by an investigation into the calls to the Horizon helpdesks, the Branch Confirmation Team and/or the National Business Support Centre.

538. It is of note that this case followed the updating of the Post Office disclosure of unused material policy in July 2010.⁷²⁸ That policy, at para.3.9, specifically enjoined consideration of the defendant's interview and defence statement, potential lines of cross-examination and applications to exclude as reasons to disclose. The Attorney General Guidelines similarly expect the defence statement to be a springboard for a re-review of both lines of enquiry and disclosure, with the prosecutor as a proactive force in that regard (see for example paras.36-37). They also are required to consider the need for contact with third parties relevant to disclosure (see for example para.54). That is not reflected in the approach adopted here.
539. This case also post-dated Mr Jenkins' September 2010 report⁷²⁹ re bug fixes and was also ongoing in 2012 when the Second Sight investigation begun⁷³⁰. The Post Office were aware of the existence of the independent review and confirmed to the defence that that process was beginning. This was in relation to a defence request⁷³¹. The fact that it was ongoing would have been disclosable but this would not have featured on an unused schedule that I have seen.
540. Of particular concern there is no evidence of disclosure relating to the Jenkins report. Instead, there is email correspondence between Cartwright King and Gareth Jenkins in relation to the initial losses in which Gareth Jenkins raises the possibility of analysis

⁷²⁶ POL00089393

⁷²⁷ POL00089626

⁷²⁸ POL00104848

⁷²⁹ POL00001733

⁷³⁰ POL00089348

⁷³¹ POL00089376 – this is also referred to at POL00089674 §11

of further raw data⁷³². Whilst the cost of that data analysis may have justified not conducting that work (or awaiting generic evidence), clearly that data should have been retrieved and disclosed to the defence. Instead, the data was viewed as potentially only relevant to the prosecution case and so the data was not requested and provided to the defence, who could have sought to instruct their own expert. Moreover, the issue was further discussed in email correspondence involving Mr Jenkins⁷³³ in terms of the precedent that might be set by Mr Allen's claims, rather than disclosure of any material that might assist such an expert in reviewing them.

541. Those concerns were raised by Simon Clarke, a barrister on behalf of Cartwright King who undertook a review to determine whether disclosure of the Second Sight and Helen Rose Report would have undermined the safety of the conviction⁷³⁴. He observed: *"I am concerned by the defendant's assertion that the original £3000 loss was the result of a non-polling incident, particularly because Dr Jenkins confirms that such an incident took place. More worrying is Dr Jenkins' failure to properly respond to that assertion – he should have looked into the data to determine whether or not the non-polling incident has been the cause of the otherwise unexplained loss. In this regard I cannot escape the proposition that had the Second Sight Interim report been available to use during the currency of this prosecution it would undoubtedly have met the test for disclosure to the defence, touching as it does upon Horizon defects"*. Simon Clarke also considered that the Second Sight Report should have been disclosed, had it been available, because of his criticism of the Post Office in relation to problems of support for sub postmasters of the kind of which Mr Allen had "vociferously" complained.

542. In accordance with that conclusion, the reports were disclosed to Mr Allen's solicitors in July 2013.⁷³⁵

Assessment

543. There are a number of areas of very real concern in this case. It was clear from the outset that critical issues were whether Mr Allen had caused a loss, or whether there

⁷³² POL00089378, POL00089380

⁷³³ POL00089380

⁷³⁴ POL00089674

⁷³⁵ POL00089682

had been failings in the system, and whether he had acted dishonestly. The proper assessment of the Horizon data, and proper disclosure in relation to anything that might undermine assertions as to its reliability, were critical to the proceedings being fair. There were failures both in investigative and disclosure terms in relation to financial enquires relating to Mr Allen, contact with helplines, and, critically, the operation of the Horizon system. This case arose quite some time after bugs in the system were discussed in September-October 2010, and yet that does not appear to have resulted in any thought to, or fact of disclosure.

544. The charging decision correctly identified that dishonesty was a key issue in terms of establishing the prosecution case, and yet the charging decision was reached without any real analysis of how it was to be proved. The public interest was similarly not analysed in any meaningful way.

545. The greatest concern in this case is the instruction of and reliance on expert evidence from Mr Jenkins to rebut any question as to the integrity and reliability of Horizon. First this is because his offer to examine the data relating to Mr Allen's branch and his complaints was rejected in favour of a generic statement. This was clearly a missed opportunity for which little justification was advanced. Secondly, given that his generic statement was relied on, it is of note that Mr Jenkins was in possession of material directly relevant to that question, which is nowhere referred to. His duty of disclosure ought to have at least required consideration of this, and I have seen no communication to suggest this. A generic report was served, which was flawed both in relation to this issue and also in relation to the limitations of the analysis of actual data that would have confirmed whether the Horizon system was operating correctly or not. Whilst there was discussion of this with Mr Jenkins, there does not appear to have been any disclosure of these important limitations. These represented very real disclosure failings in relation to expert evidence that the prosecution was relying on.

ANGELA SEFTON AND ANNE NIELD

546. Angela Sefton and Anne Nield were both employed as clerks (sub office assistants) under, rather than themselves being sub postmasters. They worked at the post office

in Fazakerley. The sub postmaster did not run the post office on a daily basis, and that role fell to Ms Nield with the assistance of Ms Sefton. They were jointly charged with a single count of false accounting between 1 January 2006 and 6 January 2012 relating to falsifying giro deposit entries by omitting material particulars relating to deposits of £34,115.50 from Animals in Need. In short, the allegation was that their false accounting was designed to cover up cash shortfalls by delaying the paying in of cheques from Animals in Need, a charity which banked at that Post office.

547. As with other reviewed cases this case started with an audit that found cash shortages. A shortfall of £4000 had been identified in 2009, which the sub postmaster took responsibility for, but then recovered from Nield and Sefton's holiday pay. Interestingly the audit occurred after Ms Nield phoned Stephen Bradshaw the security manager who was to act as the investigator in this case to ask to speak to him about work issues. This call seemed to be the result of the two defendants finally not being able to keep covering shortfalls. However, inquiries were already being made after a complaint by Animals in Need of cash flow issues resulting from the late crediting of giro deposits⁷³⁶.

548. Both defendants entered pleas following a *Goodyear* indication⁷³⁷ and received sentences as follows:

- (a) Anne Nield was sentenced to five months' imprisonment suspended for 12 months (with a supervision order for 12 month and a programme requirement for 20 days); and
- (b) Angela Sefton was sentenced to six months' imprisonment suspended for 12 months (with the same requirements).

The investigation

549. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. It appears

⁷³⁶ Opening note by John Gibson, POL00044050

⁷³⁷ The process for the obtaining of a indication as to sentence, following the case of *Goodyear* [2005] 1 WLR 2532, is addressed in my first report at para.171

from the material I have seen that Stephen Bradshaw was both investigator and disclosure officer. Again, no officer in charge is identified.

550. The investigation⁷³⁸ appears to have started in part because of Animals in Need raising issues with the delayed crediting of funds to them, and in part an issue identified with missing deposits⁷³⁹. It was about the same time that Ms Neild contacted the investigator, Stephen Bradshaw. She did so because she could no longer cope with the shortfall issues⁷⁴⁰. This led to the audit on 6th January 2012 which revealed withheld deposits that had been held back to cover shortfalls in the accounting system.
551. At the time of the audit, both defendants provided a joint witness statement⁷⁴¹ detailing that the initial shortfall of £4000 occurred during a change of computer systems in 2005, but that they could not explain how the other issues arose. They said that the Post Office had left this shortfall in abeyance for six months and then the sub postmaster had required them to make it good. They had sought to do so from their own finances, for example by not taking any time off, and had started to delay payments when their own funds were exhausted.
552. Each was interviewed in a PACE-complaint fashion on 20th January 2012⁷⁴², in the presence of the same solicitor. In these interviews, each was adamant that they had not taken any money from the Post Office. Possible explanations for the accounting issues were suggested by the defendants included transposed figures or error notices.
553. Statements were obtained from Animals in Need (and exhibits of when cash was credited versus payments made at the Post Office) as well as from the sub postmaster at the Fazakerley branch (as to the initial shortage and conversations had). These statements, and indeed only these statements, had been identified as necessary in the charging advice⁷⁴³.

⁷³⁸ By reference to the opening note, POL00044050

⁷³⁹ POL00044050

⁷⁴⁰ POL00057389

⁷⁴¹ POL00043958

⁷⁴² Sefton, POL00044010 and Neild, POL00057389

⁷⁴³ POL00057495

554. In terms of investigative steps that were taken searches of the defendants' houses were conducted. Bank authority forms obtained from both. Schedule of payments were obtained as were the National Business Support Centre call logs. Horizon prints and Branch trading systems were obtained, although the extent of these is not clear. In draft instructions to counsel⁷⁴⁴ Andrew Bolc of Cartwright King referred to the intention to instruct Mr Jenkins, but there does not appear to have been any consideration as to the obtaining of the underlying data either before that or for that purpose. Stephen Bradshaw made a further statement in December 2012⁷⁴⁵ in which he addressed enquiries made about calls to the National Business Support Centre, and he produced records relating to one that had been identified.

Charging decision

555. The only charging decision I have seen takes the form of a short letter prepared by Cartwright King, dated March 2012⁷⁴⁶. There is no detailed analysis of the evidence, before the conclusion that there was a realistic prospect of a conviction for false accounting was reached. There was, in this regard, no consideration at all of the explanation advanced by the defendants of needing to cover shortfalls that had started when the computer system was changed in 2005. There was also no consideration of whether or not there was subjective dishonesty on the part of either defendant, or evidence of any financial benefit (for example from bank records).

556. The charging advice did consider charges of theft but concluded there was insufficient evidence to prove it. It observed: "*whilst there remains a suspicion that both Sefton and Neild were involved in theft of the losses concerned given their prolonged attempt to cover these up, they could blame each other, making individual responsibility difficult if not impossible to ascertain, and at present there is insufficient evidence surrounding the handling of cash at the branch to rule out the possibility of a third party being responsible*". The advice did not suggest any enquiries into the financial position of the defendants, for example to assess the extent of their payments of shortfalls from their own finances (as their joint statement said), to consider the evidence of their benefit, or to investigate the operation

⁷⁴⁴ POL00165905, para.229

⁷⁴⁵ POL00044047

⁷⁴⁶ POL00057495

of Horizon at the branch in 2005 and thereafter. In short, no consideration was given to the case theory of how these shortages actually were caused, nor to the relevance of their account in relation to the same to the evidential test.

557. Although nominally at least the first limb of the Code for Crown Prosecutor's test, as to evidential sufficiency, was addressed there was no explicit consideration of the public interest test at all, except to note that in the view of the charging lawyer a caution was not suitable).
558. I have not seen any advice from counsel instructed seeking to engage with any of these issues as to evidence thereafter. It is of note that as late as the prosecution opening note for trial⁷⁴⁷, it was being suggested that money had been dishonestly removed from the Post Office by the defendants rather than just delaying the Animals in Need payments to cover accounting irregularities.

Disclosure

559. A schedule of non-sensitive unused material (equivalued to an MG6C) was created in May 2012⁷⁴⁸. The copy I have seen⁷⁴⁹ was signed by Stephen Bradshaw as the investigator, on 28th May 2012, and it was reviewed by the Reviewing Lawyer, Jarnail Singh, on 19th June 2012. All the material listed was marked "CND", meaning clearly not disclosable. It included documentation in relation to the interviews and financial evaluation sheets. At least item 1 in the schedule (the underlying print outs) and items 14 and 16 (the defendants' antecedents) would clearly have been disclosable. This appears to be indicative of a non-thinking approach to disclosure. It is also very limited in its reference to financial investigation in relation to the defendants, and there is no reference to any material generated by an investigation into the calls to the Horizon helpdesks, the Branch Conformation Team and/or the National Business Support Centre.

⁷⁴⁷ POL00044050

⁷⁴⁸ POL00057949

⁷⁴⁹ POL00089348

560. It is right to note that Stephen Bradshaw made a further statement in December 2012⁷⁵⁰, in which he addressed enquiries made about calls to the National Business Support Centre, producing records relating to one that had been identified. It is concerning on the face of this statement that only a selection was disclosed, rather than the totality of the calls, and that no disclosure was made of other material generated in response to the calls. These limitations are highlighted by the fact that those acting for Ms Sefton sought further disclosure⁷⁵¹ of that which should have been disclosed in the first place, and which is not addressed as being material held by the prosecution in the unused schedules.
561. It is also concerning, as the correspondence from the defence in March 2013 shows, that Mr Bradshaw's statement dealing with matters raised in Ms Sefton's interview in January 2012 was not served until February 2013. It is also of note that those acting for Ms Sefton made a further request for disclosure of the "*unmodified, unedited call logs in original format of all calls to the Business Support Centre and the Fujitsu help desk*" in April 2013. It is clear, therefore, that proper disclosure of contact by Ms Sefton and Ms Nield with those bodies in the period since 2005 when there were potential problems with the system had still not been made.
562. A further schedule of non-sensitive unused material (MG6C)⁷⁵² was issued on 18th February 2013, again signed by Mr Bradshaw. This sheet was reviewed by the lawyer Jarnail Singh, and appears to have had a more thinking method applied, in that each entry has a separate endorsement, identifying where an item listed had in fact been served, and did include disclosure of the PNC for the sub-postmaster, who was a prosecution witness. In itself, there are no obvious issues with it, but the same comment applies as to the original schedule in May, that it does not show investigation or disclosure relating to the financial investigation or enquiries relating to Horizon.
563. The absence of any evidence in the schedule of any enquiry relating to Horizon by the time of this further schedule is concerning because by then it was very clear that, as the case progressed, it became explicitly a Horizon case. Ms. Sefton raised knowledge

⁷⁵⁰ POL00044047

⁷⁵¹ POL00044219

⁷⁵² POL00059750

of issues with Horizon in her defence statement, served in July 2012⁷⁵³. In particular, she said that “*significant shortages/losses had been a com on experience in the past. Losses started to occur from 2005*” and added “*the defendant also prays in aid of her defence the fact that the Post Office computer system known as Horizon installed sometime in 2005 has been the subject of criticism in the press...at the heart of their complaint is the fact that the Horizon computer system is to blame for these apparent losses due to some form of technical malfunction*”. She sought disclosure, amongst other things, of “*details of any complaints made to the Post Office regarding the operation of the Horizon computer system from 2005 onwards*”, and disclosure of details of MPs who had raised concerns on behalf of affected constituents.

564. Ms Neild raised similar concerns in her defence statement, which in the copy I have was faxed on 14th September 2012⁷⁵⁴. She asserted that she “*believes that such losses may have shown as a result of failures in the Horizon computer system*”, and sought disclosure of “*details of complaints and investigations into the Horizon computer system*”.

565. A statement from Gareth Jenkins was obtained, dated December 2012⁷⁵⁵. It appears it was served on 6th December⁷⁵⁶. It refers in terms to Ms Sefton’s defence statement and what it said about Horizon. However, the statement dealt only with Horizon generically. He asserted that in 2005 “*there has been no indication of there being any issues regarding this change*”. It concluded “*I fully believe that Horizon will accurately record all data that is submitted to it and correctly account for it. However, it cannot compensate for any data that is incorrectly input into it as a result of human error, lack of training or fraud (and nor can any other system)*”. There is no reference by Mr Jenkins in his statement to his own September 2010 report addressing a fix for an identified bug⁷⁵⁷, or any suggestion of any issue with the operation or reliability of Horizon. This raises issues both as to the accuracy of the report, and as to failures of disclosure of material relevant to an expert’s opinion.

⁷⁵³ POL00044036

⁷⁵⁴ POL00044042

⁷⁵⁵ POL00059424

⁷⁵⁶ POL00165905, para.231

⁷⁵⁷ POL00001733

566. This statement, in its generic content, mirrors that served in the case of Grant Allen⁷⁵⁸, in which Mr Jenkins's statement reviewed data specific to that defendant and said that he had also run through hypothetical issues with integrity and concluded there was no evidence of any issues. There is no comparable review of any Horizon data for the Fazakerley sub-post office, and no reference to such "hypothetical issues". In the context of Grant Allen's case, Mr Jenkins had offered to retrieve the data to check exactly what happened⁷⁵⁹, and the decision had been made by those instructing him not to do so. I have not seen comparable emails in relation to the preparation of the statement served in the case of Ms Sefton and Ms Nield, save that there was email contact between Cartwright King, acting for the Post Office, and Mr Jenkins in November 2012⁷⁶⁰, informing him of their intention to serve a generic statement from him in relation to Horizon in a range of cases where complaint was made about the system's operation, including that of Ms Sefton and Ms Nield. It was observed by Rachel Panter of Cartwright King in that context *"it should be noted that to date most, if not all cases raising the Horizon system as an issue have been unable/not willing to particularise what specific issues that they may have with the system and how that shapes the nature of their defence"*.
567. It is also clear that at the time of Ms Sefton's defence statement Post Office investigators and Cartwright King, acting for the Post Office in criminal litigation, were aware of other alleged issues with Horizon. In an email exchange in July 2012, Jarnail Singh, a Post Office lawyer in their criminal team, said that Second Sight were to undertake a review of the Horizon system *"after a number of meetings between Post Office Management and Members of Parliament"*. In this context, a disclosure form of words, described as a "story" was prepared addressing this issue. It is concerning that the email thread suggests that this form of disclosure was partially prepared by the Head of PR and Media at the Post Office. This form of words⁷⁶¹ disclosed that a number of complaints had been made about Horizon, and that a detailed review was to be carried out. It then explicitly stated that *"this is in no way an acknowledgement by the Post Office that there is an issue with Horizon. Over the past ten years, many millions of branch reconciliations have been carried out with transactions and balanced accurately recorded by more than 25,000*

⁷⁵⁸ POL00089077

⁷⁵⁹ POL00089378

⁷⁶⁰ POL00089393

⁷⁶¹ POL00058306

different sub postmasters and the Horizon system continues to work properly in post offices across the length and breadth of the UK. When the system has been challenged in criminal courts it has been successfully defended.”

568. At the time of these emails, Andy Cash from Cartwright King⁷⁶² told Jarnail Singh (and others) that Horizon issues had arisen both in this case and in a case at Peterborough and that there was a desire for counsel to speak to each other for consistency. This would be a sensible measure but it is not clear the extent to which that happened. It is also not clear the extent to which disclosure was made to counsel by those instructing them, or the extent to which, if disclosure was made, there was advice as to the extent of disclosure to be made to those defending in those cases or other Post Office prosecutions.
569. There were significant limitations to the disclosure form of words. It did not particularise the complaints raised, their nature or number, the issues they raised or the time period over which they had been made. It also does not address actual bugs that had been identified. Whilst it is right to say that a complaint in and of itself could arguably be categorised as hearsay, and that there might have been limitations in itself to the degree of support that a complaint or number of complaints might make to the defence of Ms Sefton and Ms Nield, if any had resulted in disclosure of issues with Horizon that could have supported the issues in this case then that underlying material should have been disclosed. It also would have provided a basis for the instruction of an expert on their behalf, or for more focused disclosure requests by them.
570. In the same way, previous statements of Gareth Jenkins in other cases may have been disclosable even if they were only addressing “hypothetical issues”. The provision of that information would have allowed the defence to test Gareth Jenkins views on the veracity of the system. The same applied to that which Mr Jenkins had addressed in September 2010. It is a very significant concern that a report was served asserting the integrity of the system at a time, and without reference to issues that had been identified and addressed by that same expert two years earlier.

⁷⁶² POL00058110

571. It does not appear that the form of words promulgated in July 2012 had been disclosed to those acting for Ms Sefton and Ms Nield by September 2012 because on 12th September there was an application for further disclosure made pursuant to section 8, CPIA⁷⁶³, which made no reference to it. It is inconceivable that the application would have referred, as it did, to press reports of concerns about Horizon and an understanding that MPs had been involved if disclosure had been made that confirmed both of those facts. The application identified two reasons why “*material which suggests that the Horizon system has accounting faults*” was disclosable. First, it was relevant to the subjective element of the test then applicable for dishonesty⁷⁶⁴, and secondly to the question of whether Ms Sefton intended to make a gain for herself or to cause a loss to another, for the purposes of section 17, Theft Act 1968. It is pertinent to note that these reasons ought to have been identified by lawyers involved in the disclosure process at the Post Office, and considered at the time of the charging decision. I have not seen evidence that they did consider them at either stage.
572. Cartwright King responded to the section 8 application on 18th September 2012⁷⁶⁵. It appears that the disclosure form of words⁷⁶⁶ was provided at this stage, and the offer was made to permit a defence expert to review the relevant data. It does not appear that any further disclosure was made at this stage. This response on 18th September was preceded by email discussion between Andrew Bolc of Cartwright King and Jarnail Singh on 14th September⁷⁶⁷. There was reference to an overview document having been created as to challenges, and it appears to be acknowledged that the prosecution may well have been in possession of information from other cases that could have fallen to be disclosed which was not. Rather, reference was made to the future disclosure of a report from Fujitsu, presumably Mr Jenkins’ December 2012 statement, and the Second Sight review. Prosecution counsel were informed of this future disclosure, but their instructions did not refer to earlier cases, earlier investigations or any earlier report from Fujitsu.

⁷⁶³ POL00044041

⁷⁶⁴ Pursuant to *Ghosh* [1982] 75 Cr. App. R. 154

⁷⁶⁵ POL00058306

⁷⁶⁶ POL00058383

⁷⁶⁷ POL00058298

573. The limitations to Horizon-related disclosure are highlighted by the further requests made for such disclosure on behalf of Ms Nield, in February 2013⁷⁶⁸, when a request was made for a copy of the Audit in 2005 that was said to follow the switch to Horizon, and on behalf of Ms Sefton in April 2013⁷⁶⁹, when further requests were also made for the emails referred to in the portion of the call log which had been served and transaction records relating to Horizon. Given the issues raised on the defendants' behalf in interview, and through their defence statements, this was material the disclosure of which had to be considered by the prosecution, and where appropriate made by the prosecution without the need for such chaser requests.
574. This case came very close to trial. There were, for example, draft agreed facts prepared⁷⁷⁰, and an opening note drafted⁷⁷¹. It is clear that even shortly prior to trial in April 2013 there were outstanding disclosure issues. These were acknowledged in a certificate of trial readiness in April⁷⁷². That certificate, and internal correspondence make clear that despite outstanding disclosure requests, such as that from Ms Sefton in April⁷⁷³, the Post Office did not apply to adjourn because disclosure was still outstanding at trial. It is right to note that the trial was not reached, but there had been no indication that I have seen of the Post Office either proposing an adjournment or recognising the need for one.
575. The trial was due on 15th April 2013. However, following a hearing on 11th April 2013 the defendants entered pleas. It appears that at this hearing there was a *Goodyear* indication given. This means that following the procedure set out in *Goodyear*⁷⁷⁴, the court indicated the type of sentence to be expected, and the defendants decided to plead rather than risk a trial. As is obvious, they made that decision on the basis of that which had by then been disclosed to them as to the operation of the Horizon system. The limitations to that are highlighted by the fact that, post-conviction, there was disclosure of the Second Sight and Helen Rose reports⁷⁷⁵, which it was accepted by Simon Clarke for Cartwright King "*had the prosecution been possessed of the material*

⁷⁶⁸ POL00044023

⁷⁶⁹ POL00044218

⁷⁷⁰ POL00043964

⁷⁷¹ POL00044050

⁷⁷² POL00044221

⁷⁷³ POL00044218

⁷⁷⁴ [2005] 1 WLR 2532

⁷⁷⁵ POL00066798

contained within the two reports during the currency of the prosecution of your client we should and would have disclosed the material to you”.

Assessment

576. This is a very troubling case from the perspective in particular of disclosure of material undermining of the prosecution case and material undermining of the opinion of an expert relied on by the prosecution. Each of the defendants had made clear when interviewed that they had been confronted by repeated and unexplained shortfalls. Whilst various accounting issues and routes to error were suggested in interview, the investigation does not appear to have taken any real steps to identify the root cause of the shortfalls, to examine calls that were made to report them, or to obtain and analyse the relevant Horizon data. This continued to be the case even after defence statements were served focusing attention on the operation of the system, and even when Mr Jenkins was instructed as an expert, who could have undertaken that analysis.
577. The charging advice similarly did not raise this issue, or for that matter really address the explanation advanced in interview for the shortfalls. In effect, it was identified that there was a shortfall, that Ms Sefton and Ms Neild had sought to conceal it and that false accounting was the charge. Dishonesty was not addressed, and neither was evidence that the alteration had been with a view to gain. Whilst rejecting theft as a charge, largely because of the risk that the defendants could blame each other, the advice did not suggest financial enquiries be undertaken to track the money. Despite this, it was later asserted by the prosecution that the defendants had taken the money. The public interest was not addressed.
578. The disclosure process started with a less than comprehensive schedule of non-sensitive unused which does appear to have been reviewed, but with incorrect disclosure decisions having been taken. A second unused schedule was better reviewed and addressed. The schedule underlines the limitations to the investigation in terms of enquiries relating to Horizon data and operation, contact with helplines, and financial enquiries. The process thereafter appears to have been driven largely by defence requests, but in the main these were requests for material that should already have been disclosed.

579. My greatest concern, however, is in relation to Horizon-related disclosure. There was, by 2012, an appreciation that Horizon issues had arisen in a number of cases, and yet cross-disclosure from those cases was slow, and driven more by requests from the defence than any expedition to proactive disclosure by the prosecution. The form of words that was eventually disclosed was insufficient to address the prosecution's disclosure responsibilities. By 2012, issues with the system had also been identified and addressed not least by Gareth Jenkins, and yet disclosure in this regard does not appear to have been made, and a report was served which arguably gave a misleading view of the integrity and reliability of the system, without the necessary disclosure of material to undermine that view. In consequence, these defendants were allowed to plead at a stage by which they should have received comprehensive disclosure of the limitations and issues of the Horizon system, which they could have deployed at trial.

KHAYYAM ISHAQ

580. Khayyam Ishaq was sub-postmaster at Birkenshaw. He was charged with a single count of theft alleged to have been committed between 14th September 2010 and 9th February 2011 amounting to £21,168.64. The theft charge was brought on the basis of cash shortages and connected stamped reversals said to have been used to hide the shortages. The allegation was that the shortages were the result of theft.

581. The charges resulted from an audit of the post office on 8th February 2011. A shortage of £536 in cash was identified, along with a shortage of £2569.19 on a Horizon system balance snapshot. A full audit then revealed the total shortage figure that was ultimately charged as theft.

582. On 7th March 2013, in the Crown Court at Bradford before His Honor Judge Potter, Khayyam Ishaq changed his plea to guilty to the theft of £17,863. On 22nd April 2013, he was sentenced to 54 weeks' imprisonment.

583. Before the case reached that point, a trial had commenced on an allegation of the theft of £21,168.64 in which the jury was discharged after the second day because of the illness of defence counsel. At that first trial, which started on 26th February 2013, the

defendant was blaming Horizon and a co-worker for the losses. That co-worker, Mr Liaquat, had given evidence by the time that the jury had to be discharged on 27th February 2013⁷⁷⁶. The defendant subsequently was re-arraigned during a second trial, which started on 6th March 2013, and pleaded guilty to theft of a lesser amount, £17,863.82 on the second day of that re-trial⁷⁷⁷. It appears the plea followed the calling of evidence from Mr Liaquat⁷⁷⁸, and that Dr Jenkins the prosecution expert as to the operation of the Horizon system was at court to be called on 7th March when the defendant was re-arraigned in front of the jury⁷⁷⁹.

584. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*⁷⁸⁰, Mr Ishaq was one of those in category B, “*in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse.*”

The Investigation

585. The paperwork does not identify specifically who performed the roles of senior investigator, investigator or disclosure officer for the purposes of the CPIA. It appears that the investigator and disclosure officer were the same person. There is no evidence of an officer in charge supervising them in either role.
586. A memorandum dated 11th February 2011⁷⁸¹ from Dennis Watson, the lead auditor, to Paul Williams, contract adviser, records that on 8th February a cash check had been undertaken at the Birkenshaw post office. This revealed a £536 shortfall. The defendant was present and said that this was different to what he had declared the previous day. The balance snapshot, using the Horizon system, then revealed a £2100 discrepancy. A full audit was then undertaken, and a £21181.54 shortage was identified, involving “*major discrepancies in the stock of the large books*” of stamps. The defendant said he had no idea why this had occurred, and enquires with the remittance team at Chesterfield

⁷⁷⁶ POL00059940

⁷⁷⁷ POL00060220

⁷⁷⁸ POL00060112

⁷⁷⁹ POL00060195

⁷⁸⁰ [2021] EWCA Crim 577, at §75

⁷⁸¹ POL00056076

reported “quite a number of sales reversals of large books”. The defendant said he did not know why this should be, and mentioned that a relief postmaster had worked at the office and might be responsible. The defendant was suspended that day.

587. PACE compliant interviews were conducted on 7th April 2011⁷⁸², with a solicitor present. These were voluntary interviews. Initially, Mr Ishaq did not raise issues with Horizon explicitly in his interview, instead suggesting it may have been human mistakes or that others may have stolen the stamps. He denied using the stamps to cover up shortages, and denied inflating cash. However, in his first interview⁷⁸³ he did state that he did not have much training in the use of Horizon and his balances always showed a loss. He also said that his colleague Mr Liaquat was still training. He did not produce snapshots from the Horizon system. The losses he did identify appear to have been interpreted as human error rather than Horizon issues. Mr Ishaq said that he had not phoned the helpline, but he had contacted Chesterfield whenever he “got a loss”. In his second interview⁷⁸⁴, Mr Ishaq raised problems with his memory, and also identified a number of losses that he attributed to counting errors by Mr Liaquat. He also suggested that he or Mr Liaquat might have made errors in counting the stamps and other figures.

588. In the light of this account, on 18th May 2011⁷⁸⁵, Rob Wilson, head of the criminal law division asked a member of the National Security Team to speak to Mr Liaquat. The approach adopted by Mr Wilson was to set out what Mr Ishaq had said and to ask “are we able to refute any of the above?”. Stephen Bradshaw, fraud investigator, reported back on 30th June 2011⁷⁸⁶, to the effect that Mr Liaquat only helped out with the balance “on a few occasions”, counting cash and stock. He said that he did not know Mr Ishaq’s password, and that Mr Ishaq completed the daily reports and cash declarations.

589. The defendant was interviewed again on 27th September 2011⁷⁸⁷, after Mr Liaquat had been spoken to. He was accepted that Mr Liaquat served customers and helped with counting cash and inputting figures into Horizon. He denied that Mr Liaquat shared

⁷⁸² POL00046349, POL00052012

⁷⁸³ POL00046349

⁷⁸⁴ POL00052012

⁷⁸⁵ POL00046228

⁷⁸⁶ POL00046229

⁷⁸⁷ POL00057985

his Horizon password with him. He did say that there were occasions when Mr Liaquat had told him that he had forgotten to include cash when entering the balance on the system.

590. Beyond speaking to Mr Liaquat, it appears that other investigative steps were limited. It appears that there was no investigation initially of calls to helplines in the relevant dates, as a request was made for such enquiries to be made by Rachel Panter of Cartwright King in late 2012⁷⁸⁸. This is a common line of enquiry in these cases, though potentially explained by the fact that during interview Mr Ishaq denied ever contacting them for help. The position in this regard changed when in August 2012 in his defence statement⁷⁸⁹ the defendant said that he had contacted the helpline about Horizon malfunctions. These records were, however, clearly obtained at some point during the case, perhaps as a result of Ms Panter's advice, and showed that there had been problems with the migration to Horizon in 2010⁷⁹⁰.
591. It also appears to have been Ms Panter's advice in late 2012⁷⁹¹ that prompted enquires to be made as to the training received on Horizon. The defendant had said that he had received little such training, and it was identified as "*crucial*" to "*prove dishonesty*" to obtain evidence as to this. A statement was received⁷⁹², dated December 2012 which recorded that Mr Ishaq had been trained to the standard required in 2008.
592. Given that Mr Ishaq was charged with theft it is surprising that it does not appear attempts were made to obtain Mr Ishaq's bank statements, or to explore how he would have benefitted from such theft. It is a classic investigative technique to follow the money, but this was a technique not followed here.
593. There was at the start of the investigation no significant focus on or apparent awareness of Horizon issues. Indeed, it appears that it was not until February 2012⁷⁹³ that Stephen Bradshaw, the investigator, obtained and examined the Horizon data for the period from December 2010 to January 2011, and it was to be November 2012 that

⁷⁸⁸ POL00045134. Ms Panter's advice is undated, but post dates advice on 23rd March 2012 to which it refers. It also refers to the PCMH in September 2012 and thus clearly also post dates that.

⁷⁸⁹ POL00058244

⁷⁹⁰ POL00054951

⁷⁹¹ POL00045134

⁷⁹² POL00046267

⁷⁹³ POL00046236

Mr Jenkins was first contacted in relation to the case⁷⁹⁴. Mr Bradshaw identified evidence that *“stock in hand has been manipulated”* by reference to figures for stamps sold and then the value of stamps *“reversed out of the Horizon system”*. He calculated the total difference between the stamps sold and stamps reversed out of the system to be £14,802.50. Mr Bradshaw also made enquiries with HR about whether Mr Ishaq had needed substitutes when away or ill, and none was found.

594. In her advice after March 2012⁷⁹⁵, Rachel Panter of Cartwright King observed *“unsurprisingly the defence have made unspecified attacks on the integrity of the Horizon system. Counsel Sarah Porter made it explicitly clear to the defence at the PCMH on 4th September 2012 that the Post Office maintains its position that the Horizon system is robust and that we would review disclosure if the defence were forthcoming with any specific issues with the system”*. To that end, a statement was obtained from Gareth Jenkins⁷⁹⁶. It was in fact the statement prepared for a case to be heard in Manchester ⁷⁹⁷, and therefore was not geared to Mr Ishaq’s case at all. In other word, the statement is a generic one. Ms Panter observed in November 2012⁷⁹⁸ *“it doesn’t matter that you have not mentioned a specific case in your report, as there has not been any specific criticisms raised by any of the defendants [including Mr Ishaq]”*. It is evident that he was not asked to do anything other than look at the case summary, to familiarise himself with the case in question, before serving this statement⁷⁹⁹. The disclosure implications of this are addressed further below.

595. During the course of the proceedings, Mr Ishaq served a defence statement⁸⁰⁰ which expressly asserted that the Horizon system *“had in the past on numerous occasions malfunctioned causing difficulties with reconciling sakes, receipts and stock figures”*. He asserted that the identified reversals were to address these issues, and that he had not appropriated any monies. He also said that he had reported these issues to the Post Office helpline. In February 2013⁸⁰¹, Mr Jenkins made comments on this defence

⁷⁹⁴ POL00165905, para.185

⁷⁹⁵ POL00045134

⁷⁹⁶ POL00059474

⁷⁹⁷ The case of Nemesh Patel, as is clear from the unredacted POL000806355

⁷⁹⁸ POL00059404

⁷⁹⁹ POL00059404

⁸⁰⁰ POL00058244

⁸⁰¹ POL00059602

statement. He indicated that he was happy to investigate any specific examples of malfunctions, observing that there would be a trail left by any malfunction. He asserted that the system did not have a fault, and that either Mr Ishaq misunderstood the system or had stolen from the Post Office. It is not clear whether he was asked to undertake any specific analysis using the data that Mr Bradshaw had obtained in February 2012. Mr Jenkins' assertions as to the lack of fault in the system in 2012, are in apparent contrast to his report relating to a bug in the system in September 2010.⁸⁰²

The charging decision

596. The initial charging advice appears to have come from Rob Wilson, head of the criminal law team internally at the Post Office, in July 2011⁸⁰³. As appeared to be routine, it was very short, and involved little analysis of the evidence, beyond noting that Mr Liaquat would be an important witness. It did, however, consider the evidential test and involved some public interest considerations, but only so far as whether a caution was otherwise suitable. It did request unused disclosure, but in a formulaic way rather than as part of the charging decision-making process. It did not appear to consider the difficulties in charging theft when there was no evidence that the defendant had actually received the money, and where there was limited evidence of dishonesty. A list of further evidence needed was set out, including evidence to *"refute the story that he proffered during interview in relation to the sheets of stamps"*.
597. It is not clear from the face of his document what charge Mr Wilson approved. That question was revisited in March 2012 in an advice from Martin Smith at Cartwright King⁸⁰⁴. He did not expressly apply the evidential or public interest tests set out in the Code for Crown Prosecutors. There is, in particular, no reference to any public interest considerations or, in assessing the reliability of evidence, any potential evidential issues with Horizon. More surprisingly the advice was to charge theft, as opposed to false accounting (noting that by reference to the approach in *Eden*⁸⁰⁵ that false accounting should not be charged as well as theft). He reached this conclusion despite there being no specific evidence that the shortfalls had been caused by the defendant;

⁸⁰² POL00001733

⁸⁰³ POL00056596

⁸⁰⁴ POL00057543

⁸⁰⁵ 55 Cr.App.R 193

and that the substance of the allegation was in effect false accounting. There was no explicit consideration of the requirement to prove dishonesty. Instead, Mr Smith asserted *“there is strong evidence to suggest that he inflated the stock on hand to reduce the amount of cash required to achieve a balance, thereby concealing a deficit in the accounts. He must therefore have been aware of and responsible for the deficit”*

598. A further advice was provided by Rachel Panter of Cartwright King after the PCMH in September 2012⁸⁰⁶. This advice, which the author described⁸⁰⁷ as her *“first official advice that I have produced outside of Bar School”* did not revisit the charging decision, but did raise the response necessary to issues the defence had by then raised with the Horizon system. It was she that informed Mr Jenkins that his generic statement would be used in the proceedings. These are discussed above in terms of the investigation and again below in terms of disclosure.

Instruction of Counsel

599. Sarah Porter was instructed counsel in the Crown Court. The brief to counsel⁸⁰⁸ did not explicitly deal with the issue of Horizon, save that it is recorded that Mr Ishaq’s solicitor had said that *“his client had told them that there must have been an error in the accounting system and that the money would be in the accounts somewhere. Mr Ishaq’s solicitors also comment that everyone had heard about the problems with the Horizon system...”*. This conversation happened at the committal proceedings⁸⁰⁹. Given the lack of specific instruction in this regard it is of note that in her advice after the PCMH⁸¹⁰, Rachel Panter of Cartwright King recorded that *“Counsel Sarah Porter made it explicitly clear to the defence at the PCMH on 4th September 2012 that the Post Office maintains its position that the Horizon system is robust and that we would review disclosure if the defence were forthcoming with any specific issues with the system”*.

⁸⁰⁶ POL00045134

⁸⁰⁷ POL00059304

⁸⁰⁸ POL00058279

⁸⁰⁹ POL00058128

⁸¹⁰ POL00045134

600. The line taken by Ms Porter is potentially explained by the email from Martin Smith of Cartwright King confirming that Mr Ishtaq's case had been sent to the Crown Court⁸¹¹. Reporting the conversation with Mr Ishtaq's solicitor quoted above, Mr Smith addressed a colleague "*I think we should draw up a separate list of cases in which we anticipate Horizon arguments so that we can ensure that we have appropriate answers/material and agreed tactics for the PCMHs the dates of which will undoubtedly arrive well before the Post Office are likely to have obtained any reports*" The reports in question would appear to be those from Gareth Jenkins, which are addressed below.
601. Mark Ford was counsel at the second trial. It appears that by that time the defence expert had met at court with Mr Jenkins and conclude that "*there is nothing wrong with the functioning of the Hz system*"⁸¹². This, and the fact that Mr Liaquat "*came up to proof*" may have led to the change of plea. It is not clear what discussions there were as to the amount that by his plea Mr Ishaq accepted stealing⁸¹³, or the basis for that figure. Simon Clarke of Cartwright King covered the sentence⁸¹⁴ and appears to have taken a strong view that Horizon was not at fault, and that the defendant's "*attack [on Horizon] was nothing more than opportunism*". Mr Clarke also submitted that the case involved breach of a "high degree of trust". These factors may have influenced the sentencing judge to impose a sentence of immediate imprisonment.

Disclosure

602. Stephen Bradshaw, the investigator, produced a schedule of non-sensitive unused material (MG6C)⁸¹⁵, which he signed on 18th June 2012. Although signed by a lawyer, Martin Smith of Cartwright King, on 10th July 2012, it did not in fact have any endorsements on as to disclosure decisions. It appears to have been provided with the committal papers on 12th July⁸¹⁶. In terms of its content, it appears to contain some of the relevant information, including the call logs, but otherwise primarily to contain correspondence with Mr Ishaq. It does not include interview tapes, which were later

⁸¹¹ POL00058128

⁸¹² POL00059940

⁸¹³ POL00060220, POL00060195

⁸¹⁴ POL00060316

⁸¹⁵ POL00058025

⁸¹⁶ POL00058096

requested by the defence⁸¹⁷ and the disclosure of which was obvious. It does not reveal evidence of contact with helpdesks, financial information relating to Mr Ishtaq, any evidence of enquiries with Horizon or any material relevant to Mr Liaquat (such as a check on his PNC). This lack of enquiry in relation to Mr Liaquat is highlighted by the fact that just such a check was requested by the defence following disclosure of this schedule⁸¹⁸.

603. The approach to disclosure relating to Horizon was encapsulated in her advice after the PCMH⁸¹⁹ by Rachel Panter of Cartwright King: *“unsurprisingly the defence have made unspecified attacks on the integrity of the Horizon system. Counsel Sarah Porter made it explicitly clear to the defence at the PCMH on 4th September 2012 that the Post Office maintains its position that the Horizon system is robust and that we would review disclosure if the defence were forthcoming with any specific issues with the system”*. She expressed the same view in an email to Gareth Jenkins, the expert, in November 2012⁸²⁰ when she explained that she would be serving his generic statement in a number of cases including that of Mr Ishtaq. She said *“what I propose to do is serve your statement on each defence solicitor so that the issue of Horizon is addressed. That will then place the onus on the defence to specify what if anything is wrong with the Horizon system. I do not think they will be able to do this, but they still have the opportunity if they want a trial to call you to give evidence”*.

604. I should note again in passing, as I did when this same email appeared in the case of Grant Allen⁸²¹, that this email exchange is as near as I have seen to the formal instruction of an expert in the Post Office cases. As such, as I have already identified, it is inadequate and does not address Mr Jenkins’ duties as an expert and in particular his disclosure obligations. It is of note in this context that the ‘Gareth Jenkins chronology’⁸²² suggests that in January 2013, Mr Jenkins observed *“I am still not receiving any instructions from the Post Office...”* Again, the underlying and referenced material will need to be checked in this regard.

⁸¹⁷ UKGI00014869

⁸¹⁸ UKGI00014869

⁸¹⁹ POL00045134

⁸²⁰ POL00059404

⁸²¹ POL000886368

⁸²² POL00165905, para.188

605. Mr Jenkins replied to Ms Panter on 16th November 2012⁸²³, asking if his existing report from the case of Patel could not be used, and raising the question of whether contact with him should be by the Post Office rather than their solicitors. Ms Panter commented to a colleague at Cartwright King *“I can clarify with Gareth that it doesn’t matter that specific cases are not quoted in his report as not one of them has raised a specific issue with the Horizon system itself, they have all been generic to date”*.
606. As an approach to disclosure, the obvious difficulty with it is that it makes disclosure dependent on a defendant understanding what had gone wrong, what issue with the Horizon system had led to accounting imbalances, when a reason for the defendant seeking to cover unexplained losses was that they did not understand why they were happening. Rather, the prosecution was under a duty to disclose any evidence of any fault or other technical issue with Horizon’s operation at that post office that might provide an explanation for the issues, even if it was not one that the prosecution, through its expert, accepted. Moreover, as his approach in the case of Gareth Allen shows⁸²⁴, it was possible for Mr Jenkins to access the Horizon data for a particular post office to check if there were any issues. The approach identified by Ms Panter here did not facilitate such an approach, and yet it was that approach that was required.
607. The prosecution took the position that once the stock reversals were carried out, that Horizon became irrelevant, seemingly not realising that it would continue to be relevant to the issue of dishonesty and why those actions were carried out⁸²⁵. In keeping with the approach set out by Ms Panter in her exchange with Mr Jenkins, the prosecution sought further clarification from the defence as to the issues that they alleged with the Horizon system and the basis, therefore, for disclosure⁸²⁶. This led to discussion between the parties as to whether an addendum defence statement was required⁸²⁷, with the defence arguing that the defence statement already served was sufficient to activate a review of disclosure in this regard⁸²⁸. In my view the defence were correct on that assertion, for reasons just considered, but it appears that the

⁸²³ POL00059402

⁸²⁴ POL00086353

⁸²⁵ This is shown by the attendance note from the PCMH at POL-00058280 and letter sent thereafter, POL00058277

⁸²⁶ POL00059517

⁸²⁷ POL00059409

⁸²⁸ POL00059426

defence did provide such an addendum which indicated⁸²⁹ that “*Horizon would “freeze” and would give inaccurate total figures at the end of trading/balance periods. He had called the helpline some 10 or more times per month*”.

608. Also, in keeping with Ms Panter’s approach, whilst the Post Office continued to take the view that Horizon was robust, all Horizon data disks, and core data were purported to be disclosed to the defence following the PCMH when the Horizon issue was raised⁸³⁰. It appears that underlying Horizon data was directed to be served by 5th October 2012 following the defence instruction of a forensic expert. But the material appears to have been served late⁸³¹. There did, however, appear to be good engagement with the defence expert who was able to speak directly to the Post Office investigator, Mr Bradshaw, about missing items, and he appears to have been proactive with her⁸³². However, it does not appear that all material that should have been provided in October was in fact provided, as it was chased in a defence letter in January 2013⁸³³.
609. The defence letter in January 2013 also set out in more detail what was sought by way of disclosure in relation to the Horizon system and why. This included requests for branch trading statements and underlying Horizon data. In relation to a request for branch trading statements (which the Post Office presumably held), Cartwright King, in reply, refused to disclose material on the basis the defendant *should* have that material⁸³⁴. Given that the defendant had been suspended at the time of the audit, it is not clear the basis for this, and it remained material in the possession of the prosecution that it was required to review for disclosure. I should add that I have not seen correspondence to indicate that the addendum defence statement led to further disclosure re contact with the helpline.
610. The defence in their correspondence had threatened to make an application for disclosure, pursuant to section 8, CPIA⁸³⁵. There appears to have been a disclosure

⁸²⁹ I have not seen the addendum defence statement and take this information from the briefing note POL00066924

⁸³⁰ As was indicated in Rachel Panter’s advice, POL00045134

⁸³¹ POL00059297

⁸³² POL00059682POL00059734

⁸³³ UKGI00014869

⁸³⁴ POL00059517

⁸³⁵ POL00059426

hearing on 5th February 2013, at which no further disclosure was ordered⁸³⁶. It appears that the defence also threatened in January 2013⁸³⁷ to make a hearsay application to adduce “*matters already within the public domain regarding the problems with the Horizon system*”. In any event, this does not seem to have generated any cross-disclosure in this regard.

611. In terms of the progress of disclosure and of expert evidence, the default statement and exhibits of Gareth Jenkins were served in this case. As had been discussed before its service, the statement is a generic one⁸³⁸. Gareth Jenkins also provided an internal comment on the defence case statement repeating his assertion there was no issue with Horizon⁸³⁹. A defence expert, Beverley Ibbotson was instructed and provided a report⁸⁴⁰, which, as was later observed⁸⁴¹ “*identified a number of minor audit and stock discrepancies but did not seek to suggest that the underlying Horizon transactions were not conducted by the defendant, under either his own Log-in IDs or that of Umair Liaquat*”. It appears that Mr Jenkins produced a second report, which I have not seen, which responded to the addendum defence statement, which again I have not seen⁸⁴². There subsequently was a joint expert report created⁸⁴³, in which the experts agreed that there had been a series of reversals which remained unexplained. It does not appear that disclosure was made to Ms Ibbotson of Mr Jenkins report re bugs in September 2010, or any material relating to such issues.
612. A statement was provided by Sharon Jennings, a Fraud Investigator, providing a summary of the beginning of the Second Sight review⁸⁴⁴. It repeated the standard Post Office assertion at the time that Horizon was robust, and did not disclose any concerns. The statement is dated October 2012. It is not clear whether this was served and, if so, when. There does not appear to be any reference to the Second Sight review in the reports of/contributed to by Ms Ibbotson, and so it is not clear if she was aware of this statement or what underpinned it.

⁸³⁶ POL00059644

⁸³⁷ POL00165905, para.192

⁸³⁸ POL00059474

⁸³⁹ POL00059602

⁸⁴⁰ POL00059927

⁸⁴¹ POL00066924

⁸⁴² This information comes from the briefing POL00066824

⁸⁴³ POL00059927

⁸⁴⁴ UKGI00001550

613. The briefing note⁸⁴⁵, which is dated June 2015, adds *“this is a case where Gareth Jenkins attended court and it was after his conference with the defence expert that the defence pleaded guilty. Mr Jenkins is a tainted witness owing to his failure to disclose the matters referred to in the Second Sight Interim report that were within his knowledge as shown by the Helen Rose Report.”* When the case was reviewed after these reports were available, Simon Clarke of Cartwright King observed⁸⁴⁶: *“I am as concerned by the defendant’s repeated assertions as to his perceived failings of Horizon as I am about his very last-minute change of plea. I cannot escape the proposition that, had the Second Sight Interim report been available to us during the currency of this prosecution it would undoubtedly have met the test for disclosure to the defence. Indeed the Defence Statement appears remarkably prescient on the topic”*.
614. The Court of Appeal took a similar view. Holroyde LJ observed⁸⁴⁷: *“The defence challenge to the Horizon system was clear from a very early stage in the proceedings. Mr Ishaq’s solicitor had informed POL of the issue and of the defence intention to instruct an expert at an earlier Magistrates’ Court hearing on 25 July 2012. A defence statement of 29 August 2012 repeated the defence challenge to Horizon and made a series of disclosure requests targeted at the Horizon system. Mr Ishaq denied theft but admitted to altering items on Horizon out of necessity in order to reconcile the accounts and due to the system malfunctioning. The defence sought any information relating to the malfunctioning of the Horizon system generally (such as the outcome of any enquiries or investigations or any internal memoranda recording malfunctioning) and the data produced by Horizon. The defence repeatedly sought disclosure in relation to Horizon and instructed an accountancy expert to analyse the accounts.”*
615. Against that background, the Court of Appeal concluded⁸⁴⁸: *“POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Ishaq’s case. ARQ data for the indictment period was provided to the defence on 26 October 2012. It is unclear what, if any, analysis was performed with it. There was no examination of that data for bugs, errors or defects or for evidence of theft. It appears there was no evidence to corroborate the Horizon evidence. The fact that Mr Jenkins provided witness statements in itself suggests that POL did not disclose the full and accurate position regarding the reliability of Horizon. There was no proof of an actual loss as opposed to a Horizon-generated shortage.”*

⁸⁴⁵ POL00066924

⁸⁴⁶ POL00066838

⁸⁴⁷ [2021] EWCA Crim 577, §215

⁸⁴⁸ §219

Assessment

616. The defendant when interviewed reported issues with the Horizon system, a lack of understanding of the shortfalls and made allegations against another employee. It seems that the last of these distracted the investigation from the other issues. The employee, Mr Liaquat was interviewed and ultimately called as a witness to rebut that limb of Mr Ishaq's defence, but the other more substantial limb was not similarly investigated with a view to determining the root cause of the shortfall. Other reasonable lines of enquiry relating to Mr Ishaq's finances, training and call logs were also neglected. In this case, the lawyers at Cartwright King were proactive in raising further lines of enquiry in various other respects, but not this crucial one.
617. The charging decision was neither thorough nor analytical. It did not consider whether there was evidence of dishonesty, whether there needed to be evidence of financial benefit, and whether the issues raised by Mr Ishaq could be refuted or supported by further lines of enquiry. In short, the prosecution was brought on the premise if he inflated the stock on hand to conceal a shortfall he must have caused it, without any consideration of whether there was any evidence to support this, or to explain how the shortfall was actually caused. This approach was reviewed by a number of lawyers at Cartwright King, and by counsel instructed, without any of them calling it into question. Even when Horizon issues were raised, and disclosure relating to them discussed, the lack of analysis of the cause of the shortfall was not.
618. The original schedule of unused material was limited, and its review similarly did not identify areas of disclosure relating to Mr Liaquat, contact with helpdesks, financial information or the operation of the system which were all engaged by Mr Ishaq's interviews. When Horizon was raised, the approach appears to have been one more of damage limitation and providing the least material necessary, rather than thinking through what material might undermine the prosecution case, whether that material was already available or needed to be sought from Fujitsu, and what material was necessary for a defence expert to review the position. The process appears to have been driven by defence requests, rather than prosecution initiative, which failed to recognise that the defence knowledge of what to ask for was far less than the prosecution understanding of what was potentially relevant.

619. Although Mr Jenkins was engaged, he was not asked to analyse the underlying data, and there were serious shortcomings to the disclosure of material within his knowledge relevant to the operation and reliability of the system, and as to cross-disclosure from or about other cases. This continued to be the position even after focused defence requests and the instruction of a defence expert who, like other experts before her, relied on the material and information provided by Mr Jenkins to reach her conclusions.

CONCLUSIONS

620. I have set out my assessment of each case, by reference to the topics that the Inquiry's instructions have asked me to consider (see my first report, para.2). At this stage, I seek to draw the strands of that analysis together by topic. I should emphasise, however, that these broader conclusions are to be properly understood by reference to the case-by-case analysis I have set out above. Each case is individual, in that each involved an individual who gave an account to address an audit shortfall, and whose case was then investigated and reviewed for prosecution at different times by different investigators and lawyers and by reference to different evidence. That said, a number of themes emerge clear and strong across those 20 cases. Indeed, in a number of respects it is unsettling how the same issues were arising in the latter cases, such as Sefton and Neild and Ishaq in 2012, as had raised their heads in early cases, such as Brennan and Yates in 2003.

(a) Investigation

621. In no case did I see any document that identified what investigative and disclosure roles were being played by which personnel. That in itself is not necessarily an issue, if that were simply a recording issue. What is an issue, however, is that, in so far as the investigation process is discernible from the material I have seen, the roles played by identifiable personnel did not reflect the division of roles identified in the CPIA Code and Attorney General's Guidelines on disclosure. It appeared that the same person undertook both investigative and disclosure roles, and it was not clear who was supervising or directing them in either capacity.

622. In my first report (para.108), I observed that there was a distinction between the CPIA Code, which recognised that the same person could act both as investigator and disclosure officer, and the Post Office position, which recognised that they normally would be. That, I recognise, will often be the case in smaller scale investigations by the police and others. My concern at that stage was that a check and balance in the system, with 2 different viewpoints on investigative and disclosure steps, was routinely not being incorporated into Post Office cases. That has been borne out by the materials in the 20 cases I have considered, where the disclosure officer, if identified at all, will have been one of the investigators who first attended after the audit and will have interviewed the defendant.
623. In a number of cases, for example those of Lisa Brennan, David Blakey and Alison Henderson, the interviewing officer demonstrated a very clear settled conclusion adverse to the defendant at the time of interview. In the case of Ms Brennan she was told that the officer believed she had done it, Mr Blakey was told his account was “ridiculous” and Mrs Henderson believed that the investigator had already drawn his own conclusions. It is a concern if that same settled conclusion informed the disclosure process as it did the interview.
624. In my first report (from para.106), I expressed particular concern that the Post Office policy documents failed for a significant period to reflect the CPIA Code and Attorney General’s Guidelines on Disclosure in imposing on the investigation a duty to pursue all reasonable lines of enquiry, whether they led towards or away from the suspect. In my review of these 20 cases there were, consistently, failures by the investigators to identify and to pursue a number of reasonable lines of enquiry. That remained the position, without any obvious or significant change, after the 2010 amendment to the Post office disclosure policy document⁸⁴⁹. There were lines of enquiry common to these cases, the relevance of which was repeatedly engaged by the explanations advanced in interview by suspects and/or by the circumstances of the shortfall being investigated, which were either not pursued at all, were only pursued in a limited or superficial manner, or were only pursued as a result of requests either by reviewing

⁸⁴⁹ POL00104848

lawyers or, much more commonly, by the defence. The following are examples of this trend.

625. **Financial enquiries:** where a suspect denied in interview that he or she had taken the money, and/or had sought to make good unexplained losses identified by the Horizon System, it would be a reasonable line of enquiry to obtain their financial information to see if there is evidence of unexplained monies appearing in bank accounts, or payments out of those accounts to cover shortfalls. Such evidence is of direct relevance to the question of whether they have appropriated Post Office money, for the purposes of theft, and whether they have acted dishonestly for both theft and false accounting. This is illustrated, by way of example, in the case of Lisa Brennan where the reviewing lawyer enquired after financial enquiries in relation to Ms Brennan, and asked: *“do you have any evidence to show whether the above-named was stealing Post Office money or covering up shortages?”* In the case of Peter Holmes, a defence-instructed accountant had to address the prosecution case theory that he had stolen Post Office monies to help his wife’s business, rather than this theory being tested by the investigators themselves.
626. **Training and calls to helplines:** Where a suspect described issues with their operation of the Horizon system, by reference to their training, and/or recounts their attempts to get help at earlier stages, then it would be reasonable to make enquiries as to their level of training, and to ascertain whether, how often and in what circumstances they had contacted the relevant helplines. Indeed, given that the ‘Managing Shortages at audit’ guideline⁸⁵⁰ specifically identifies the previous record of the employee and the extent to which they sought help as relevant factors in such cases, it is at least arguable that these should have been routine lines of enquiry. In the case of Khayyam Ishaq the reviewing lawyer identified evidence as to training as “crucial” to proving dishonesty, because it would inform the question of whether accounting faults were deliberate or not. However, a lack of enquires as to training were identified, for example, in the cases of Carl Page, who raised his lack of training in interview, and similarly of Josephine Hamilton, for whom further material relating to training was highlighted by both the reviewing lawyer and counsel.

⁸⁵⁰ POL00118154

627. An insight in relation to the disclosure of training records comes from a discussion in January 2014⁸⁵¹ in the context of the case of Seema Misra, at which Simon Clarke of Cartwright King observed “*if someone says bad training and bad backup – wrong- not disclosable*”. In relation to contact with call centres, there appears to have been a lack of enquiry even in cases such that of Suzanne Palmer where the investigator observed that she had not received help when she asked for it. Moreover, it appears that where enquires were made there was insufficient analysis as to what the records actually amounted to. For example, in the case of Hughie Thomas the Court of Appeal noted that “*Andrew Dunks of Fujitsu made a statement in which he said that between 1 November 2004 and 30 November 2005, Mr Thomas made 13 calls to the Horizon Helpdesk but that – in Mr Dunks’ opinion – none of the calls related to faults which would affect the integrity of Horizon.*”
628. **Horizon:** Where a suspect described issues with the Horizon system, unexplained losses, recurrent error notices or simply asserted that they could not explain what had happened when confronted by a Horizon record of a shortfall, then a reasonable line of enquiry is to identify what the root cause of that shortfall is, or may be. This involves firstly the obtaining of the underlying data, and its assessment for bugs, errors or issues. The failure to undertake such enquires was almost routinely identified by the Court of Appeal in *Hamilton and others* as a serious investigative deficiency, ranging from early cases such as Brennan to late cases such as Hutchings. In these, and many other cases, there was no enquiry for bugs or errors, and the ARQ data was not obtained. It was recognised by the Court of Appeal that this included cases, such as Blakey and Mahmood, where the issue had specifically been raised by the suspect in interview, as well as those where it had not. It is not an answer to this, for reasons I will develop below when I address Horizon-related disclosure, to assert that the suspect has not given a detailed explanation of that the issues or error were. That is unrealistic. Once they have identified an issue, or an unexplained shortfall, the burden is on the prosecution to resolve the matter.
629. Moreover, where some steps were taken to obtain Horizon data, the approach adopted was too narrow. For example, in the case of Hughie Thomas the Court of Appeal

⁸⁵¹ POL00066893

observed that *“Although some ARQ data was obtained, it was a dip sample and it was only checked for evidence of zero transactions. The data was not checked for bugs, errors or defects or for evidence of theft.”* Similarly, in the case of Mrs Misra the Court observed that the period for which the data was obtained was inadequate. The Court of Appeal also raised concerns as to whether any data that was obtained was properly shared. For example, in the case of Mrs Henderson they observed *“It appears as if some ARQ data was obtained but it is not clear whether it was ever disclosed”*, an observation they repeated in the case of Mrs Hall, and in the case of Mrs Hamilton they observed *“The ARQ data had been collected on a disc but the exhibits list shows it was “not copied”, so that it is not clear whether the ARQ data was served.”*

630. In some cases, failings in the investigation in terms of reasonable lines of enquiry were picked up by the prosecutor who reviewed the case. That is entirely as it should be. The Attorney General’s guidelines and the Code for Crown Prosecutors in their various iterations, each make clear that it is for a prosecutor to provide advice as to lines of enquiry. This is an intrinsic part of the assessment of whether there is sufficient evidence to establish a realistic prospect of a conviction. However, in many of those cases where the prosecutor did identify further investigative steps to be taken, the prosecutor nevertheless did not wait for those further enquires to be made before advising that a suspect be prosecuted. For example:
- (a) In the case of Lisa Brennan, the lawyer did advise as to further enquiries that were necessary, but when Ms Brennan was then prosecuted those enquires remained outstanding.
 - (b) In the case of Hughie Thomas, the investigator and the lawyer both identified a number of explanations for the issues with Horizon that Mr Thomas described. It was recognised that enquiries had been made of Fujitsu, and yet the charging decision was made without enquiries into the operation of the system being resolved.
 - (c) In the case of Josephine Hamilton, the lawyer identified the need for enquiries relating to the manner in which Horizon recorded cash on hand, Mrs Hamilton’s training and her financial information. However, the charging decision was reached without the resolution of these properly identified lines of enquiry.
 - (d) In the case of Alison Henderson, the lawyer advised as to a range of further enquiries, requesting a *“full accounting pattern”*, and resolution of how and when

the loss occurred and how Mrs Henderson would have been aware of it. Again, these were sensibly raised but their resolution did not delay charging.

631. However, in the majority of the cases I have considered, there was a failure of prosecutorial supervision as to the existing of outstanding lines of enquiry and the sufficiency of the investigation of such lines of enquiry. In cases where advice was given that there was a realistic prospect of conviction for theft, no advice was given that there needed to be any form of financial investigation to determine whether the suspect could be shown to have benefited from the offence, and where a suspect had made complaint, or attributed losses to the operation of the Horizon system, there was no request for any checks to be made in relation to that operation. Indeed, in many cases if there was any advice at all, it was to advise that aspects of the existing investigation as set out in the investigation report be addressed in statements, rather than to look beyond that report, or beneath the veneer of that investigation. The approach, as stated on occasion, was to refute the defence case, or disprove defence allegations, rather than to test them.

(b) Charging decisions

632. I have considered, where available, such evidence as I have seen as to the charging decisions taken in these 20 cases. In my first report (para.55), I noted the wording of various Post Office policy documents, which suggested that the decision to prosecute would be taken by, or involve, personnel other than lawyers, and that decisions would be taken by non-lawyers after they had received, but were not required to follow, legal advice. I have not seen any document for any of these cases that makes clear who had taken the actual decision to charge, and thus whether my concerns were groundless or well founded.

633. However, the advices relating to charge that I have seen, produced in the main by lawyers working for the Post Office Criminal Law Division⁸⁵², and which are the nearest I have identified to charging decisions, do give rise to real concerns. They were almost invariably lacking any real analysis of the evidence, and appeared to take as read the evidential position as set out in the investigator's summary. This is of concern because the offences under consideration, in particular theft and false accounting, involved a number of elements for which it was necessary to consider the evidential sufficiency to reach an effective charging decision. In particular, this involved consideration of the evidential basis to establish dishonesty, evidence to show where money had gone, and whether the evidence was reliable. By way of example:

- (a) In the case of Lisa Brennan, she was charged with theft even though the internal memorandum sent by the lawyer to the investigator⁸⁵³ asked whether there was evidence of stealing as opposed to the covering up of shortages, and whether there was evidence that she was dishonest rather than incompetent;
- (b) In the case of Oyeteju Adedayo, the lawyer correctly identified dishonesty as the likely defence, but did not address what evidence there was to prove that element of the false accounting offences that she advised should be prosecuted;
- (c) In the case of Josephine Hamilton, she was charged with theft by reference to an investigation report which had concluded⁸⁵⁴ "*having analysed the Horizon printouts and accounting documentation I was unable to find any evidence of theft or that the cash figures had been deliberately inflated*". That uncertainty appears to be borne out by the decision ultimately to take a plea to false accounting.
- (d) The limitations of the analysis relating to dishonesty are further illuminated by the approach of the Post Office to the Second Sight review in the case of Hughie Thomas. It was considered that the postmaster was liable however the loss had been occasioned, "*whether inadvertent or deliberate*". It would follow from this analysis that an inadvertent accounting error would be considered sufficient to found a prosecution for false accounting where there was no deliberate act and no dishonesty.

⁸⁵² Advices were provided in particular by Jarnail Singh, a senior lawyer; J. MacFarlane, Principal Lawyer

⁸⁵³ POL00047331

⁸⁵⁴ POL00044389

634. As a result, to adopt the wording of the Inquiry's question, they were neither thorough nor conscientious. One particular consequence of such a lack of rigour in the analysis of evidence was that it left the prosecution case open to change, and sometimes radical change, as the case moved towards and through trial. I am well aware that change to the way a prosecution puts its case can be necessary as new evidence comes to light, and evidence that was at one stage considered reliable is proven by further analysis or enquiry to be otherwise. However, the case of Carl Page illustrates the problem here. The case against him was advanced first on the basis of a fraud with a customer relating to foreign currency and then, following the first trial, was radically recast as an allegation of theft concealed through foreign currency records. The exposition and recasting, which represented a seismic change, did not appear to have involved at any stage a detailed analysis of the evidence that I have seen, to justify either position, or the propriety of moving from one to the other.
635. The test that was apparently applied by the lawyer in giving such advice varied. As I identified in my first report, the Code for Crown Prosecutors was not acknowledged as the basis for Post Office charging decisions until 2007⁸⁵⁵, when it was said that the sufficiency of evidence to prosecute and the public interest would be considered by reference to the Code. I observed in my first report (from para.155), that there was little assistance provided in the Post Office documents until 2013 as to how the Code was to apply to the cases to be prosecuted by the Post Office, in relation to either limb of the test. In fact, on my review of these 20 cases I confess to having not identified any significant change in the way that charging decisions appear to have been approached before 2007 and after, or as the Code for Crown Prosecutors developed with new editions in 2004, and 2010.
636. In its 2004 version, the Code for Crown Prosecutors identified not only a test of whether there was a realistic prospect of a conviction, but also (at para.5.4) a series of factors that would assist a reviewing lawyer in determining whether that test was met. These focused in particular on the reliability of the evidence. The factors relevant to this limb of the test were further enlarged and developed in 2010. However, in the charging advices I have seen, there is no analysis by reference to these factors at all. By way of example, where a charge of theft was contemplated, this should, first, have

⁸⁵⁵ POL00104812

involved a question of whether there was sufficient reliable evidence that money had been taken, and secondly that it had been taken dishonestly. Whilst the prosecution was not required to accept the account given by the suspect, it would have been expected that a charging advice would have considered its effect on their case. Where the basis for asserting loss was the Horizon record, its reliability should have been a factor to be considered by the prosecutor. Such an analysis was lacking.

637. Even more concerning is the evidence in a number of the cases that I reviewed that the test of a realistic prospects of a conviction, as defined in the Code, was not the test, or the only test, being applied. In particular:

- (a) In the case of David Blakey in 2005, whilst the realistic prospects of success for charges of theft and false accounting were asserted, they were accompanied by the assessment that there as a low prospect of success for theft, but a high prospect of success for false accounting.
- (b) In the case of Hughie Thomas in 2006, a different lawyer considered there to be a realistic prospects of success for charges of theft and false accounting, but this was accompanied by the assessment that there as a medium prospect of success.
- (c) In the case of Peter Holmes in 2008, the same medium prospects of success test was added to the assessment of the realistic prospects of conviction.

638. My concern in my first report was that the lack of assistance for prosecutors as to the test to apply and what it meant would lead to a divergence of approach. These examples would tend to show that concern to be well founded, and to suggest that the decision making process in such cases was, or was at least at risk of being flawed. This is arguably borne out by the fact that in the cases of each of these three sub-postmasters they were originally charged with theft, but ultimately convicted of false accounting. If the assessment by the prosecutor that there was less than a realistic prospect of conviction, the theft charge should not have been brought initially.

639. In disturbingly few of the charging advices that I have reviewed was there any reference to, let alone analysis of, the public interest. The 2004 Code for Crown Prosecutors identified 17 public interest factors favouring prosecution, and 9 to the contrary. The 2010 Code identified 19 public interest factors favouring prosecution,

and 11 to the contrary. There was no analysis of these features in the charging advices that I have seen, and in only a very few cases were any factors properly characterised as public interest concerns referred to. I recognise that where a prosecutor was satisfied that there was a realistic prospect of proving that there had been theft by an employee in breach of trust, that would be a strong factor in favour of there being a public interest in prosecution. However, the nuances to the test, by reference to the list of factors for and against in the Code for Crown Prosecutors underline that such an analysis may be over simplistic. Factors such as the previous record of the employee, whether they have made reparation, whether the offence was the consequence of a lack of training or help leading to errors leading to panic, were also all relevant, but rarely addressed as such.

640. The approach to charging as between theft on the one hand and false accounting on the other lacked consistency. In the majority of cases, where both offences were charged, there was a lack of explanation as to why. In a number of cases there was also a lack of confidence in the charging decision exhibited by the willingness to accept a plea to false accounting instead. For example:

- (a) In the case of Davud Blakey, the charging of both theft and false accounting was not justified by the advice either by reference to the decision of the Court of Appeal in *Eden*⁸⁵⁶ or the available evidence. The fact that the plea to false accounting was taken, on Mr Blakey's account to the Second Sight review, only after the Crown Court judge had raised concerns about the evidential basis for the theft charge, suggests a lack of rigorous thought about what charges were appropriate.
- (b) The same could be said of the decision to take pleas to false accounting in cases such as Josephine Hamilton, Peter Holmes, or Alison Henderson.
- (c) In the case of Seema Misra it was said at the time of charge for theft that a plea to false accounting would be accepted. In fact, such a plea was not accepted later, but this was arguably a concession to the absence of actual evidence of theft and consistent with an approach whereby theft was charged to encourage pleas to false accounting. That also accords with the fact that the charging decision includes no analysis of the evidence, and does not suggest any evidence be obtained that was not identified in the investigation report.

⁸⁵⁶ (1971) 55 Cr.App.R. 193

641. In a number of cases where theft was charged, moreover, there was uncertainty as to what the actual loss was, even by the close of proceedings. For example, in the case of David Yates, as the Court of Appeal observed⁸⁵⁷, “*Although the amount of any theft is not a material averment on an indictment, POL accepts that it is very unclear how much Mr Yates admitted to taking from POL monies as opposed to from other available revenue.*” Similarly, in the case of Carl Page his ultimate plea followed the radical reduction by the prosecution in the amount it was alleged that he had stolen. It is of note in the latter case that, according to his ‘professional adviser’s account to the Second Site Review, Mr Page pleaded guilty to that lower sum after it had been intimated that the prosecution were contemplating a perjury charge in relation to an aspect of his evidence at the first trial. The material does not allow for any conclusion as to the actual sequence of events in that case, beyond the sudden reduction in the loss figure.
642. In my first report (from para.164), I considered the extent to which the Post Office addressed and applied the observations of the Court of Appeal in *Eden*⁸⁵⁸. If the core message to be derived from those observations was that the prosecutor needed to consider what false accounting added to theft, and whether they were proper alternatives. As identified, there were cases where both were charged without an analysis of why both offences were necessary. In that context, the decision in *Eden* was not referenced. Indeed, the only occasions I have identified when it was related to cases where a plea to false accounting was belatedly accepted by the prosecution. For example:
- (a) In the case of Tahir Mahmood, counsel advised that on the evidence, which in effect meant Mr Mahmood’s account in interview, it was appropriate to charge false accounting rather than theft because there was no evidence of Mr Mahmood taking monies, and the gain to him through his accepted falsification of the accounts was “*putting off the evil day of having to sort out the muddle and pay up*” (quoting *Eden*);

⁸⁵⁷ [2021] EWCA Crim 577, pars.330-331

⁸⁵⁸ (1971) 55 Cr.App.R. 193.

(b) In the case of Lyn Hutchings, a count of false accounting was added to the indictment at trial, to which Ms Hutchings pleaded guilty. A basis of plea⁸⁵⁹ was entered to false accounting which accepted that she had made the books balance in order to “*Put off the evil day of having to sort out the muddle*” and not on the basis she took or intended to take any money. The wording of the basis plea was an express reference to the approach to false accounting in *Eden*⁸⁶⁰.

643. Those cases just mentioned are examples of a wider approach of charging both theft and false accounting, and ultimately accepting a plea to the latter. In principle there is nothing wrong with adopting such an approach, where the plea is properly assessed to reflect the interests of justice and the public interest. As I have identified, it would be of concern if it reflected an overcharging, or an unrealistic charging of an untenable offence in the first place the reality of which was only accepted at a later stage.

(c) Circumstances of pleas

644. However, the greater concern in a number of the cases I have considered was that evidence that the theft charge was used as a means to pressure a defendant into pleading guilty to false accounting, with conditions attached to the acceptance of that plea which were wholly inappropriate. In this context, I have in mind the cases of Hughie Thomas.

645. Hughie Thomas pleaded guilty to false accounting in September 2006, and the theft charge was not pursued. The memo recording this hearing⁸⁶¹ noted “*this was pursuant to a basis of plea which makes it clear that no blame was attributed to the Horizon Computer System. The defendant accepted that there was a shortage but he could not explain how it came about. He accepted that as a Sub postmaster he is contractually obliged to make good the shortage*”. In other words, the acceptance of this plea was made conditional on the repayment of monies which, consistent with the plea, had not been shown to have been taken, and to an undertaking not to criticise the Horizon system. From the material I have seen, this appears to have followed from a discussion between the

⁸⁵⁹ POL0042575

⁸⁶⁰ (1971) 55 Cr. App. R. 193

⁸⁶¹ POL00048201

principal Post Office lawyer, J. MacFarlane and the Post Office agents in the prosecution in which the lawyer said⁸⁶² that: "... *we would proceed with false accounting providing the Defendant accepts that the Horizon system was working perfectly... Further instructions are that the money should be repaid.*"

646. Mr Thomas himself reported to the Second Sight Review that the approach taken was "*aggressive and inappropriate*". It should not be forgotten that from the perspective of a defendant there is a very significant difference of theft and false accounting as to the potential outcome. Theft by an employee in breach of trust, in the period with which the Inquiry is concerned, was recognised⁸⁶³ as an offence usually attracting an immediate custodial sentence even in a case with strong personal mitigation. It follows that a defendant, confronted by the evidence of loss deriving from the Horizon System and a lack of possible questions as to its reliability, would understand that a plea to an alternative offence would increase the chances of them retaining their liberty, and it is reasonable to anticipate that they would receive legal advice to that effect.
647. The Post Office submitted in the context of the Second Sight Review in Mr Thomas' case that the decision to accept the plea was reached in accordance with the Code for Crown Prosecutors following a review of the case. However, as was acknowledged then, there is no evidence of such a review of a decision which in the first instance, as I have observed, did not follow the Code test. Rather than a review of the evidence, the prospects of conviction or the public interest, the only matters raised in the material I have seen, and that I have just quoted, are the recovery of money and the protection of the reputation of the Horizon system.
648. The same factors were explicitly advanced as the basis for a plea to false accounting being accepted in the case of Josephine Hamilton. In that case, advice had been provided by trial counsel⁸⁶⁴ that *there is sufficient evidence to support theft, but Royal Mail may be content with guilty pleas to dishonesty matters if she undertook to repay the amount of the shortage at audit*". There was no analysis of the evidential basis for theft in his advice, in keeping with the lack of such analysis in the original charging decision, but by

⁸⁶² POL

⁸⁶³ See for example the guidance from the Court of Appeal, before the Sentencing Council issued guidelines, in *Barrick* (1985) 81 Cr.App.R.78 and *Clark* (1982) 4 Cr.App.R.(S.)137

⁸⁶⁴ POL00049069

reference to his draft opening note⁸⁶⁵, this would appear to be based on reliance of the Horizon records showing a shortfall. However, an anonymous factual summary on the same topic⁸⁶⁶ is explicit as to the basis on which the plea would be acceptable: *“the charge of theft not to be dropped until full amount is paid by JH and if need be to recovery losses prosecution will proceed by confiscation...JH guilty plea accepted on JH recognition that JH had the money (short of theft) and plea on the basis that loss was due to computer not working properly will not be accepted”*.

649. In the case of Allison Hall, the Court of Appeal⁸⁶⁷ found that her plea to fraud by false representation in the alternative to theft in June 2011 was accepted on the basis that she would not criticise Horizon. This was despite the fact, as the Court observed, that Mrs Hall had not sought to make any such criticism hitherto. That pre-condition as to the lack of criticism of Horizon had also appeared in the case of Alison Henderson when she pleaded to false accounting in the alternative to theft in December 2010. In that case, it was made clear, first, that the money had to be paid back even though her plea was advanced on the basis that she covered up a shortfall, rather than benefited directly from one. Secondly, the Post Office lawyer made explicit⁸⁶⁸: *“Clearly if there were to be a plea to false accounting but on the basis that the Horizon system was at fault then that would not be an acceptable basis of plea for the prosecution.”*

650. Adopting the language of the Court of Appeal when it considered these cases⁸⁶⁹, it was *“improper”* of the Post Office to have made their acceptance of a plea to a lesser alternative offence to theft conditional on the defendant in question not *“making any explicit criticism of Horizon”*. Moreover, *“in circumstances where theft could not directly be proved, and the shortfall may not have been a real loss, it was wrong to try to prevent [the defendant] from making any criticism of Horizon as part of [their] mitigation to the charge ... admitted.”* It would clearly have been a relevant, and likely a strong mitigating factor following a plea that the falsification of records was to cover a shortfall for which the defendant was not responsible and may have been a computer error. To deny the defendant that mitigation was *“wrong”*.

⁸⁶⁵ POL00048841

⁸⁶⁶ POL00057661

⁸⁶⁷ [2021] EWCA Crim 577, at para.117

⁸⁶⁸ POL00055783

⁸⁶⁹ [2021] EWCA Crim 577, paras.71, 113, 117

651. Moreover, again adopting the language of the Court of Appeal⁸⁷⁰, it was “*irrational and unjust*” for the Post Office to have required the defendant to accept that they “had the money short of theft” and/or to require the repayment of the money as a precondition to the acceptance of a plea where the plea being accepted did not involve acceptance of the causing or, or financial benefit from, the loss. As the Court of Appeal observed “*POL’s conduct gives a firm impression that the condition of repayment in return for POL dropping the theft charge placed undue pressure on Mrs Hamilton. It gives the impression that POL was using the prosecution process to enforce repayment.*” That impression is supported by the fact that in many of these cases repayment of the loss was pursued following pleas to false accounting or, in the case of Joan Bailey, when she was cautioned instead of prosecuted.

(d) Initiation of proceedings

652. In my first report (from para.184), I addressed the procedure for the initiation of a prosecution by the obtaining of a summons, and the duty of candour that is required when an information is laid to obtain one. I was asked to consider the extent to which that duty was satisfied in informations laid by the Post office. In fact, I have not seen any indication in any of the 20 cases I have reviewed as to what information was shared when the summons to initiate proceedings was obtained. However, those informations appear to have been laid by the investigators who prepared or were involved with the steps reflected in the various investigation reports. The lack of investigation of important areas, and especially the reliability of Horizon, demonstrated by those reports, would be consistent with those limitations not being recognised or identified when the summons was sought.

(e) Disclosure

653. The assessment of disclosure, the correctness of the approach adopted and the sufficiency of its performance, is predicated on the availability of evidence of what was done and why. In some cases, the material is limited and this is therefore difficult. In others, the approach to disclosure is best illustrated by reference to defence correspondence seeking disclosure, which thereby indicates what had not been

⁸⁷⁰ [2021] EWCA Crim 577, paras.113, 147

disclosed, and the assessment of whether such disclosure should have occurred. In some cases, additionally, schedules of unused material are included with the papers that I have seen.

654. Such schedules, for example of non-sensitive unused material (equivalent to an MG6C), were drawn up by the disclosure officer, who, where named, was also the investigator. Such schedules were quite short, and mainly included correspondence and documentation relating to the interview process. They lacked any reference to the underlying raw accounts data (to the extent that this was not included in the served evidence), and there was usually no reference to any previous complaints or discussions by the defendants with managers or helplines. This applied in cases where the defendant complained about the system, or referred to such complaints and discussions as much as where they had not.
655. Both the CPIA Code and the Attorney General's disclosure guideline in its various iterations stress the importance, first, of suitably detailed descriptions of the items on the schedules to allow for their review for disclosure and, secondly, of such review of the schedules by the prosecutor. In a number of cases, the descriptions were inadequate, for example in the case of Peter Holmes, but do not appear to have been picked up on. Also by reference to the Code and Guideline, there is, on the material I have seen, no evidence that the disclosure officer drew the prosecutor's attention to any material the disclosure of which was uncertain⁸⁷¹, or that the prosecutor had inspected the material⁸⁷².
656. In the main, the unused schedules I have seen did not show on their face any evidence of a review by the prosecutor having occurred. This makes it difficult to be satisfied that this important task was undertaken. I accept that this may, at least in some cases, have been an omission of annotation rather than of review. For example, in the case of Josephine Hamilton, the lawyer provided the unannotated schedule to the defence and informed them that nothing from its content was disclosable.

⁸⁷¹ As required by para.7.1, CPIA Code

⁸⁷² By reference to pra.7.4, CPIA Code and par.24, AG's Guidelines 2000, or para.35, AG's Guidelines 2005, which would only just have come into effect

657. That stance appears to have been adopted in a number of the other cases, whether either the schedule itself, or more often accompanying correspondence indicated that everything listed on the schedule was clearly not disclosable ('CND'). In my view, such an assessment was often in error, as there was material listed that would in fact have been disclosable as being capable of assisting the case for the accused, particularly on a theft charge. In that regard, the cases I have considered straddle the updating of the Post Office disclosure of unused material policy in July 2010.⁸⁷³ That policy, at para.3.9, specifically enjoined consideration of the defendant's interview and defence statement, potential lines of cross-examination and applications to exclude as reasons to disclose. That is not reflected in the approach adopted in the cases I have reviewed, nor was there evidence of a change in approach when the new policy came into effect.
658. I should note that in a number of cases that the disclosure position was improved once counsel were instructed for trial. Whilst this was often in the context of responding to defence disclosure requests or applications for further disclosure pursuant to section 8, CPIA, it is right to acknowledge that they did provide advice that resulted in disclosure being made. For example:
- (a) In the case of Suzanne Palmer, counsel accepted that there needed to be disclosure of accounting records relating to scratch card monies (albeit a month before trial in response to a defence application).
 - (b) In the case of Josephine Hamilton, counsel advised in a review of material obtained from the defendant, where this had not previously been undertaken.
 - (c) In the case of Seema Misra, trial counsel was proactive in his approach to disclosure, providing advice and reviewing material. His interpretation of the CPIA was a robust one, but was in accordance with its terms.
659. The areas where disclosure was lacking, unsurprisingly, related to the same areas in which the lines of enquiry pursued in the investigation were lacking. For example, there was often either no material listed, or very limited material listed, to suggest any financial enquiries, and no reference or limited references to enquiries with helplines. By way of example:

⁸⁷³ POL00104848

(a) in the case of Peter Holmes, a comparison of the list of financial material reviewed by the defence accountant⁸⁷⁴ to the MG6C schedule⁸⁷⁵ shows that either the prosecution had not undertaken necessary detailed analysis of Mr Holmes' position or, if it had the material, had not disclosed that which was relevant to the issues in the case in that regard.

(b) Similarly, in the case of Angela Sefton and Anne Nield, the first unused MG6C schedule⁸⁷⁶ produced was very limited in its reference to financial investigation in relation to the defendants, and there is no reference to any material generated by an investigation into the calls to the Horizon helpdesks, the Branch Conformation Team and/or the National Business Support Centre. The limitations to this were demonstrated by the fact those acting for Ms Sefton sought further disclosure⁸⁷⁷ of that which should have been disclosed in the first place in terms of contact with call centres, and which is not addressed as being material held by the prosecution in the unused schedules.

660. As an adjunct to these areas where disclosure fell short, there were a number of areas where the experience of investigators in relation to particular issues does not appear to have translated into disclosure being made that such issues had been identified before. A clear example of this is an issue that arose in relation to scratchcards in both the cases of Suzanne Palmer and Allison Hall. In the latter case papers was an email in 2013⁸⁷⁸ from Dave Posnett, a Financial Investigator who was a fraud risk manager until May 2010 said "*the scratch card process worked but some SPMRs had trouble getting to grips and understanding it. The volume of TCs across the network were...a concern*". It is important to note that Ms Palmer was investigated in 2006 and Mrs Hall in 2010, and that Mr Posnett's comments were in an email exchange in 2013, which appears to have related to a review of cases, however, depending on when the issues he describes were in fact identified, it does raise the question as to whether issues with scratch cards had been raised and yet no disclosure in relation this issue was undertaken.

⁸⁷⁴ POL00052103

⁸⁷⁵ POL00051527

⁸⁷⁶ POL00057949

⁸⁷⁷ POL00044219

⁸⁷⁸ POL00029604

661. Clearly, the most concerning area of non-disclosure, and the one that was of particular concern to the Court of Appeal in those cases it considered, was the lack of disclosure relating to the operation and reliability of the Horizon system. The Court of Appeal has identified that in those cases it considered there had been failures to obtain and/or disclose the ARQ data necessary for any realistic analysis of the reliability and accuracy of the Horizon data relied on in these cases. It is of note that the need for such case specific data had been drawn to the attention of the Post Office by Gareth Jenkins' generic statements relied on in cases such as Grant Allen, Sefton and Neild and Khayyam Ishaq. The statement made clear that he had not examined the detailed logs to see if there were any issues or any justification in the claim this resulted in system losses. In the case of Mr Allen, Mr Jenkins, having been informed of Mr Allen's account by Cartwright King and asked to comment on it, had offered, on 5th December, to examine the data in addition to making a general statement. On the same day he was told to make the general statement, and it was considered that the statement ultimately served was sufficient. It is suggested by the 'Gareth Jenkins chronology' that the possibility of such specific data analysis was raised on a number of other occasions.
662. Rachel Panter, of Cartwright King, expressed the view in an email to Gareth Jenkins, the expert, in November 2012⁸⁷⁹ when she explained that she would be serving his generic statement in a number of cases including that of Mr Ishtaq. She said "*what I propose to do it serve your statement on each defence solicitor so that the issue of Horizon is addressed. That will then place the onus on the defence to specify what if anything is wrong with the Horizon system. I do not think they will be able to do this, but they still have the opportunity if they want a trial to call you to give evidence*". In short, the relevance of the issue was in these later cases recognised but the need to obtain and serve or disclose the ARQ data was not. This appears to have been because of the attitude expressed by Ms Panter in this email, and by other lawyers in other cases, that it was for the defence to identify what the problem was, rather than for the prosecution to examine the data to determine if there was one.
663. Ms Panter summarised the position, which appears to have been a common one, in 2012⁸⁸⁰: "*it should be noted that to date most, if not all cases raising the Horizon system as an*

⁸⁷⁹ POL00059404

⁸⁸⁰ POL00089393

issue have been unable/not willing to particularise what specific issues that they may have with the system and how that shapes the nature of their defence". As an approach to disclosure, the obvious difficulty with it is that it makes disclosure dependent on a defendant understanding what had gone wrong, what issue with the Horizon system had led to accounting imbalances, when a reason for the defendant seeking to cover unexplained losses was that they did not understand why they were happening. Rather, the prosecution was under a duty to disclose any evidence of any fault or other technical issue with Horizon's operation at that post office that might provide an explanation for the issues, even if it was not one that the prosecution, through its expert, accepted. Moreover, as his approach in the case of Gareth Allen shows⁸⁸¹, it was possible for Mr Jenkins to access the Horizon data for a particular post office to check if there were any issues. The approach identified by Ms Panter here did not facilitate such an approach, and yet it was that approach that was required.

664. The failure to disclose underlying ARQ data, identified as a significant shortcoming by the Court of Appeal in those cases it considered, applied even where the defence had instructed experts who required it. This is illustrated by the case of Carl Page, and particularly the case of Seema Misra. I will address expert-related disclosure below. In the case of Hughie Thomas, where there was some disclosure, it was based on dip samples and was inadequate to allow for any proper analysis.
665. It is clear from the protracted process of requests and counter-requests relating to experts over a substantial period of time in cases such as Seema Misra, that an analysis of various types of raw Horizon data was necessary for there to be a realistic assessment of whether it was reliable, and whether bugs or other issues with its operation might have affected the data relied on to demonstrate loss. It is also clear that such data was not obtained as part of the investigation before charge, or for a very long time thereafter. Discussions at later stages of the pre-trial disclosure process in Seema Misra's case appear to have raised as objections to doing so firstly the contention that the sub postmaster was the person best placed to identify with a degree of specificity what the problems with Horizon were, and secondly that obtaining such data from Fujitsu would be costly. It is difficult to sustain either objection. As to the first, as I have just set out, it was for the prosecution, using both that skill and that

⁸⁸¹ POL00086353

data, to test for problems, and to satisfy itself as to the reliability of its evidence. Secondly, issues of cost were issues for the prosecution that had chosen to bring the prosecution, and not usually a reason to refuse to undertake a reasonable line of enquiry, or to meet its disclosure obligations. Other correspondence, in the context of the case of Grant Allen, also suggest that cost was not a real issue in relation to the obtaining of the data, as opposed to the time taken then to analyse it.

666. In this context, there was no real discussion that I have seen, beyond this discussion as to cost, of the relationship between the Post Office and Fujitsu, in relation to the obtaining and disclosure of material held by Fujitsu that was potentially relevant to the Post Office's prosecutions. As I set out in my first report (from para.294), the Post Office policies that I reviewed were silent on their approach to third party disclosure, which were addressed throughout the Inquiry's relevant period by the Attorney General's guidelines on disclosure. Those guidelines, and the analysis of them in *Alibhai*⁸⁸², recognised that the prosecution had a margin of appreciation as to what steps were required for it to meet its disclosure obligations. That could include consideration of cost in relation to third party material, but where that material was necessary to test the reliability of the core prosecution case it seems to me at least very likely that a court would consider that such a case fell within the definition in *Alibhai*⁸⁸³ of an "extreme case" in which "it might be so unfair for a prosecution to proceed in the absence of material which a third party declines to produce that it would be proper to stay it..."

667. The pool of in house lawyers and investigators who were involved in these cases appears to have been small, and thus they would have built up an awareness of Horizon issues being raised in these cases. Correspondence increasingly shows such an awareness. However, that awareness was not matched by any apparent awareness that the fact that such issues had been raised elsewhere, and the nature of the complaint made, was itself potentially disclosable in other cases where the same issues arose or complaints were made. An early example is that same lawyer dealt with the cases of David Blakey and then Tahir Mahmood. There was no apparent consideration of whether the issues raised by Mr Blakey fell to be disclosed when similarly raised by Mr Mahmood.

⁸⁸² [2004] EWCA Crim 681, at para.63

⁸⁸³ [2004] EWCA Crim 681, par.64, and see also *R(L) v SFO*

668. As time passed, the number of cases where Horizon issues were being raised proliferated, and the need for cross-disclosure between them should have become all too obvious. It is far from obvious that this was carried out, however.
669. In September 2010, a memorandum from Jarnail Singh, the Post Office senior lawyer, to Mandy Talbot, the principal lawyer at Royal Mail Group⁸⁸⁴ identified a request for disclosure in a case at Bradford Crown Court for disclosure relating to other cases where Horizon issues had been raised. This included Mrs Hamilton's case, but also those of Seema Misra, Hughie Noel Thomas and others. Mr Singh asked whether there were others. Ms Talbot replied⁸⁸⁵ saying that relevant material was in storage, and commented "*there are ongoing cases every month which raise the issue of Horizon so it's a movable feast. I am endeavouring to pull together a list of those cases currently with us where allegations have been made in respect of Horizon. Most of these have been on hold awaiting the decision on Misra*".
670. It is clear, therefore, that there was an awareness of a proliferation of cases where Horizon's accuracy was in issue, but the memoranda do not suggest a sufficiently joined up approach to disclosure relating to them. It appears, therefore, that cross-disclosure between cases where Horizon issues had arisen was not being undertaken. There is certainly no evidence of routine cross-disclosure where Horizon evidence was relied on, which would be every such case, or even where issues with Horizon was raised. In my view, given that reliability of Horizon data was a realistic issue in almost any case where there was reliance on such data, disclosure of the applicable data, and cross-disclosure of issues that had arisen, should have occurred. As was identified in a defence application under section 8, CPIA in the case of Sefton and Neild⁸⁸⁶, such material was relevant to the subjective element of the test then applicable for dishonesty⁸⁸⁷, and secondly to the question of any intention to make a gain for herself or to cause a loss to another, for the purposes of section 17, Theft Act 1968.

⁸⁸⁴ POL00055212.

⁸⁸⁵ POL00055894

⁸⁸⁶ POL00044041

⁸⁸⁷ Pursuant to *Ghosh* [1982] 75 Cr. App. R. 154

671. In an email exchange in July 2012, Jarnail Singh, a Post Office lawyer in their criminal team, said that Second Sight were to undertake a review of the Horizon system “*after a number of meetings between Post Office Management and Members of Parliament*”. In this context, a disclosure form of words, described as a “story” was prepared addressing this issue. It is concerning that the email thread suggests that this form of disclosure was partially prepared by the Head of PR and Media at the Post Office. It is also concerning that it was in 2012 that work was being done on such a form of words. This form of words⁸⁸⁸ disclosed that a number of complaints had been made about Horizon, and that a detailed review was to be carried out. It then explicitly stated that “*this is in no way an acknowledgement by the Post Office that there is an issue with Horizon. Over the past ten years, many millions of branch reconciliations have been carried out with transactions and balanced accurately recorded by more than 25,000 different sub postmasters and the Horizon system continues to work properly in post offices across the length and breadth of the UK. When the system has been challenged in criminal courts it has been successfully defended.*”
672. There were significant limitations to the disclosure form of words. It did not particularise the complaints raised, their nature or number, the issues they raised or the time period over which they had been made. It also does not address actual bugs that had been identified. Whilst it is right to say that a complaint in and of itself could arguably be categorised as hearsay, and that there might have been limitations in itself to the degree of support that a complaint or number of complaints might make to the defence of an individual, if any had resulted in disclosure of issues with Horizon that could have supported the issues in this case then that underlying material should have been disclosed. It also would have provided a basis for the instruction of an expert on their behalf, or for more focused disclosure requests by them.
673. In the same way, previous statements of Gareth Jenkins in other cases may have been disclosable even if they were only addressing “hypothetical issues”. The provision of that information would have allowed the defence to test Gareth Jenkins views on the veracity of the system. The same applied to that which Mr Jenkins had addressed in September 2010. It is concerning that in cases such as those of Ms Sefton and Ms Nield it appears that neither the form of words nor disclosure relating to Mr Jenkins occurred.

⁸⁸⁸ POL00058306

(f) Expert evidence

674. In that context, finally, I have concerns as to the manner of instruction of Mr Jenkins as an expert, and very significant concerns as to the extent to which either he, as an expert under a duty to do so, or the prosecution, under their duties, carried out effective disclosure of and relating to expert evidence. In my report 1A, I addressed the responsibilities of a prosecutor in instructing an expert to ensure their understanding of and compliance with their duties as an expert as set out by the Court of Appeal⁸⁸⁹, and in the Criminal Procedure Rules⁸⁹⁰. In that context (from para.35, Report 1A) I referred to the guidance issued by the CPS, and their standard letter of instruction. I have not seen in the material in this case any letter of instruction, or comparable communication, by the Post Office to Mr Jenkins. Communication with him in writing appears to have been informal and brief, and at no point made any reference to the duties of either Mr Jenkins as expert or the Post Office as prosecutor in relation to material underlying or undermining his opinions. In the context of what appears to have transpired here, that is concerning.

675. The issues with disclosure relating to expert evidence are exemplified by the saga in the case of Seema Misra. As I have already observed, the process of disclosure to the defence expert in that case was protracted and in important respects glacial. Professor McLachlan identified at the outset a number of hypotheses for how errors could have been made. Whilst this was characterised after the event by Mr Singh⁸⁹¹, the reviewing lawyer, as vague and theoretical it is difficult to see what else a defence expert could do without access to the operation of Horizon and the data relevant to its assessment. That access and that data took a very long time, and a multitude of requests and interim expert reports. Such an approach was not consistent with a properly undertaken and supervised disclosure process, by reference to the CPIA Code and in particular the Attorney General's disclosure guidelines.

⁸⁸⁹ *Harris* [2005] EWCA Crim 1980; *B(T)* [2006] EWCA Crim 417

⁸⁹⁰ Part 33, 2010 Criminal Procedure Rules

⁸⁹¹ POL00066859

676. A particular feature of the process is that Mr Jenkins of Fujitsu was involved throughout the majority of the time that Professor McLachlan was engaged and requesting disclosure. It is clear that there was a good deal of entirely appropriate liaison between the experts. However, it is also clear that Mr Jenkins was able to provide reports refuting aspects of the Professor's work without there at the same time being disclosure of the material underlying it. This was material available to Fujitsu, which could and should have been sought by the prosecution from them had it not already been in the prosecution's possession. It is difficult to see how factors other than cost prevented this, and difficult to understand why that should have been. This is not least because the duties on an expert included the disclosure of the material that underpinned the conclusions reached, and that here meant the material that Mr Jenkins used to refute Professor McLachlan, which was the material that the Professor had in any event been seeking.
677. Similarly, there are concerns that in a number of cases, such as that of Grant Allen, Mr Jenkins did not undertake analysis, or draw attention to material, the relevance of which was clearly engaged by Mr Allen's account and the circumstances of the case. Those concerns were raised in the context of Mr Allen's case by Simon Clarke, a barrister on behalf of Cartwright King who undertook a review to determine whether disclosure of the Second Sight and Helen Rose Report would have undermined the safety of the conviction⁸⁹². He observed: *"I am concerned by the defendant's assertion that the original £3000 loss was the result of a non-polling incident, particularly because Dr Jenkins confirms that such an incident took place. More worrying is Dr Jenkins' failure to properly respond to that assertion – he should have looked into the data to determine whether or not the non-polling incident has been the cause of the otherwise unexplained loss. In this regard I cannot escape the proposition that had the Second Sight Interim report been available to use during the currency of this prosecution it would undoubtedly have met the test for disclosure to the defence, touching as it does upon Horizon defects"*.
678. The other very real concern in relation to disclosure and Mr Jenkins is the fact that he provided reports in a number of cases, and gave evidence in a limited number of them including that of Seema Misra, about the operation of Horizon that was inconsistent

⁸⁹² POL00089674

with the information to which he was privy about bugs in the system, and issues with its operation.

679. The Inquiry will be better placed than I am to assess Mr Jenkins' position as an expert and a witness by reference to what was known at the time of his reports and evidence. However, on the basis of what I have seen there were failures on his part to disclose material that undermined his opinion, which it was his duty to have disclosed. There was also material that undermined the prosecution case, as advanced through Mr Jenkins, that clearly fell to be disclosed and, in the hands of a third party, to be obtained for review.

REPORT TO THE POST OFFICE HORIZON IT INQUIRY

PHASE 4

**INVESTIGATION, DISCLOSURE AND CRIMINAL PROSECUTION
IN ENGLAND AND WALES AND
INVESTIGATIONS AND PROSECUTIONS BY THE POST OFFICE 2000-2013**

VOLUME 2 - APPENDIX 1

DECLARATION

I, DUNCAN ATKINSON KC, DECLARE THAT:

1. I understand that my primary duty in writing reports and giving evidence is to give an objective, unbiased opinion on matters within my expertise in order to help the Inquiry to achieve its Terms of Reference. I understand that this duty overrides any obligation to the person from whom I have received instructions or by whom I am paid, I have complied and will continue to comply with that duty.
2. I have no conflict of interest of any kind, other than any which I have disclosed in this report, and I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issue about which I have expressed an opinion.
3. I have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert is required.
4. I have endeavoured in my report and my opinions to be accurate and to have covered all relevant issues concerning the matters stated which I have been asked to address. The absence of any comment in this report does not indicate that I have no opinion on a matter. I may not have been asked to deal with it. All of the matters on which I have expressed an opinion lie within my field of expertise.

5. I have endeavoured to include in my report those matters, of which I have the knowledge or of which I have been made aware, that might adversely affect the validity of my opinion.
6. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report and given reasons for my own opinion.
7. I have indicated the sources of all the information I have used.
8. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others (in particular my instructing lawyers).
9. At the time of signing the report, I consider that it is complete and accurate. I will notify those instructing me if, for any reason, I subsequently consider that the report requires any correction or qualification or if, between the date of this report and the giving oral evidence to the Inquiry, there is any change in circumstances which affect my declarations at (2) above.
10. I understand that: a) My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath; b) I may be cross-examined on the report by a cross-examiner assisted by an expert; c) I am likely to be the subject of adverse public criticism by the Chair if the Inquiry concludes that I have not taken reasonable care in trying to meet the standards set out above.
11. This report is provided to those instructing me with the sole purpose of assisting the Inquiry in this particular case. It may not be used for any other purpose without my express written authority.

REPORT TO THE POST OFFICE HORIZON IT INQUIRY

PHASE 4

**INVESTIGATION, DISCLOSURE AND CRIMINAL PROSECUTION
IN ENGLAND AND WALES AND
INVESTIGATIONS AND PROSECUTIONS BY THE POST OFFICE 2000-2013**

VOLUME 2 - APPENDIX 2

DUNCAN ATKINSON KC

1. I was called to the Bar by Gray's Inn in October 1995, having obtained an L.L.B degree in Law from the University of Bristol. I was taken on as a tenant at 6 King's Bench Walk, now 6KBW College Hill in 1996, and have practised law from there ever since.
2. My primary specialism is in crime, with an element of public law and inquiry work. As Treasury Counsel between 2009 and 2022, I appeared in numerous complex and high profile homicide cases, including a number of high profile "cold cases", together with homicides involving issues of contested medical causation, diminished responsibility and child-death. I have particular expertise in cases of gross negligence manslaughter, and deaths in the context of health and safety regulation or state detention.
3. I have also appeared regularly in numerous cases concerning allegations of terrorism, and relating to organised crime. I have been instructed both in an advisory capacity and as an advocate in cases relating to breaches of Health and Safety and environmental protection regulation, both in criminal and inquest proceedings. Most recently, this has included representing 6 of the bereaved families at the Manchester Arena Inquiry.

4. I am very regularly instructed by the CPS, but have also been instructed in the past by the HSE, SFO, DWP and Environment Agency. I have never been instructed by the Post Office. Whilst Treasury Counsel, I advised the CPS as to the revision of the Code for Crown Prosecutors, the Disclosure Manual and a number of specific charging guidelines. I have also in the past advised the SFO in relation to their manual, and the AGO in relation to the AG's Guidelines on Disclosure.

5. In public law terms, I have represented the Crown in a substantial number of cases before the Administrative Court. These have included recently:
 - (a) Challenge to the decision making of the Attorney General (*Slade* [2018] EWHC 3573 (Admin)) and the Director of Public Prosecutions (*Redston v DPP* [2020] EWHC 2692 (Admin));
 - (b) Challenge to decisions on abuse of process and prosecution activity in the magistrates' court (*DPP v Sunderland Magistrates Court* [2018] EWHC 229 (Admin) and *DPP v Charlesworth* [2022] EWHC 2835 (Admin));
 - (c) Challenges by judicial review relating to SFO/Police search warrant applications and the acceptance by the Home Secretary and Serious Fraud Office of letters of request.

6. I have appeared in the Court of Appeal in recent times in relation to:
 - (a) Referrals by the CCRC where issues arose as to diminished responsibility (*Hunnisett* [2021] EWCA Crim 265) and secondary liability in homicide (*Johnson-Hayes* [2019] EWCA Crim 1217);
 - (b) Challenges to the statutory framework of the sentencing regime (*Patel* [2021] EWCA Crim 231; *Baker* [2020] EWCA Crim 176 and *AYO* [2022] EWCA Crim 1271);
 - (c) The definition of sexual touching (*AG's Reference No.1 of 2020* [2021] QB 441);

7. I have also appeared in the Supreme Court on 5 occasions, most recently in relation to the propriety of prosecutions based on activity by paedophile hunters (*Sutherland v HM Advocate* [2021] AC 427).

8. In terms of publications:

- (a) Editor, *EU Law in Criminal Practice* (Oxford University Press)
- (b) Co-Author, *Blackstone's Guide to the Criminal Procedure Rules* (Oxford University Press)
- (c) Contributor, *Fraud: Criminal Law and Procedure* (Oxford University Press)
- (d) Contributor, Kingsley Napley & 6KBW College Hill: *Serious Fraud, Investigation & Trial*
- (e) Contributor, *Blackstone's Criminal Practice* (Oxford University Press)

CATHERINE BROWN

1. I was called to the Bar by Middle Temple in July 2005, having obtained an LLB degree in Law from the University of Newcastle. I was taken on as a tenant at Furnival Chambers in 2011. I have practised law ever since, initially from Furnival Chambers until May 2021 when I moved to 6KBW College Hill.
2. Currently my specialisms are extradition, public law and inquiry work.
3. I have appeared in high profile extradition cases before the Divisional Court raising challenges to extradition of significant complexity, including:
 - i. *Tiganescu v. The County Court of Suceava, Romania* [2022] EWHC 1371 (QB) – Concerning a challenge brought in respect of retrial rights in Romania.
 - ii. *Cleveland v. Government of the United States of America* [2019] 1 W.L.R. 4392 – The Divisional Court provided clarification on the proper approach to the drawing of inferences when considering arguments relating to dual criminality.
 - iii. *Francis v Government of the United States of America* [2019] EWHC 2033 (Admin) – Challenges brought in respect of Article 3 ECHR relating to prison conditions in the United States and family life pursuant to Article 8 ECHR.
 - iv. *Visha v. Italy* [2019] EWHC 400 (Admin) - Challenges brought in respect of Article 3 ECHR relating to risk factors arising due to blood feuds and prison conditions in Italy.

4. My practice initially focussed on criminal law and I retain instructions in domestic criminal matters. I recently appeared in the Court of Appeal in a referral by the CCRC (*Rex v Joseph Tsang* [2023] EWCA Crim 350).
5. Consequently, I have significant experience of advising on disclosure requirements in domestic criminal cases and the disclosure obligations within the extradition regime.
6. I am on the Attorney-General's B Panel of counsel and have represented His Majesty's Government and public bodies in numerous cases before the Administrative Court and the County Court including challenges brought by way of judicial review concerning immigration decisions, search warrant applications and Prison Law. I am currently instructed as junior counsel for the Home Office in the Undercover Policing Inquiry. I regularly advise Government Departments on disclosure obligations and the Duty of Candour.
7. Moreover, I have represented both organisations and individuals in inquest proceedings before the Coroners' Courts and I have been instructed in proceedings brought by regulatory bodies including the Nursing and Midwifery Council and the Health & Care Professions Council. I have never been instructed by the Post Office.

SEBASTIAN WALKER

1. I was called to the Bar by Gray's Inn in July 2019, having obtained an L.L.B degree in Law and an LLM in Law (Criminal Justice), both from the University of Nottingham. I was taken on as a tenant at 36 Group in 2021, and have practised law from there ever since.
2. Prior to coming to the Bar I worked for four years at the Law Commission and the Attorney General's Office. At the Law Commission, I was the lead lawyer on what is now the Sentencing Act 2020. At the Attorney General's Office I advised on a range of topics including unduly lenient sentences, contempt of court, applications for consent to prosecute and applications for second inquests. As part of my work at the Attorney

General's Office I worked on the revision of the Attorney General's Guidelines on Disclosure published in 2020.

3. My practice is principally in criminal law, with an element of crime-related public law work (principally relating to prison law and civil proceeds of crime work). I am a member of the CPS Advocates General Panel at level 3. I am also a member of the Serious Crime, Fraud and Proceeds of Crime specialist panels at level 2. I have been instructed in prosecutions brought by local authorities, the Insolvency Service, Her Majesty's Revenue and Customs and private prosecutors. I have advised in this capacity on the application of the duty of candour to summons applications and on the approach to disclosure. I have never been instructed by the Post Office.

4. I have been instructed as junior alone and led junior in a number of fraud, money laundering and computer misuse cases. A significant portion of my practice relates to cases involving the potential disclosure of sensitive material. I was disclosure counsel in the prosecution of 11 defendants for the murder of Michael Anton O'Connor, a murder that took place against a background of a drugs dispute, in which I spent hundreds of hours reviewing disclosure. I am experienced in advising on the extent of disclosure obligations, making and opposing s.8 disclosure applications, identifying reasonable lines of enquiry and dealing with issues of Legal Professional Privilege and Public Interest Immunity.

5. I have authored articles and commentaries in the Criminal Law Review, Law Quarterly Review, Public Law, Archbold Review and Lloyd's Law Reports: Financial Crime and am involved in the following publications:
 - (a) Co-Author, *Sentencing Principles, Procedure and Practice* (Sweet & Maxwell)
 - (b) Co-Editor, *Current Sentencing Practice* (Sweet & Maxwell)
 - (c) Co-Editor, *Criminal Appeal Reports (Sentencing)* (Sweet & Maxwell)
 - (d) Contributor, *Archbold Criminal Pleading, Evidence and Practice* (Sweet & Maxwell)
 - (e) Contributor, *Miller on Contempt of Court* (4th edition, Oxford University Press)

REPORT TO THE POST OFFICE HORIZON IT INQUIRY

PHASE 4

INVESTIGATION, DISCLOSURE AND CRIMINAL PROSECUTION
IN ENGLAND AND WALES AND
INVESTIGATIONS AND PROSECUTIONS BY THE POST OFFICE 2000-2013

VOLUME 2 - APPENDIX 3

Documents referred to in Volume 2

Case law

No.	Citation
1	Alan Bates & Ors v Post Office Limited – Judgment (No.3) “Common Issues” [2019] EWHC 606 (QB)
2	Alan Bates & Ors v Post Office Limited – Judgment (No. 6) “Horizon Issues” [2019] EWHC 3408 (QB)
3	Josephine Hamilton & Ors v Post Office Limited [2021] EWCA Crim 577
4	R v Ghosh [1982] QB 1053, [1982] 75 Cr. App. R. 154
5	Ivery v Genting Casinos (UK) Ltd [2017] UKSC 67, [2018] AC 391
6	Gomez [1993] AC 442
7	[1989] Crim LR 299
8	(1971) 55 Cr. App. R. 193
9	Scot-Simmonds [1994] Crim LR 933
10	O [2010] EWCA Crim 2233
11	[1978] 3 All ER 10
12	R v Varley & Ors [2019] EWCA Crim 1074
13	R v Brennan [2004] EWCA Crim 1329
14	Olu [2010] EWCA Crim 2975
15	Barton [2020] EWCA Crim 575, [2021] QB 685
17	Goodyear [2005] 1 WLR 2532

19	Barrick (1985) 81 Cr.App.R.78
20	Clark (1982) 4 Cr.App.R.(S.)137
21	R v Alibhai & Ors [2004] EWCA Crim 681
22	B(T) [2006] EWCA Crim 417
23	Harris [2005] EWCA Crim 1980

Publicly Available Documents

No.	Document
1	CPIA Code
2	AG's Guidelines 2000
3	AG's Guidelines 2005
4	Code C
5	Part 33, 2010 Criminal Procedure Rules

Inquiry Documents

No.	URN	Document Description
1	POL00165905	Gareth Jenkins Chronology
2	POL00118154	Managing Shortages at Audit: Process and Policy Guidelines
3	POL00104823	Royal Mail Group Security Procedures & Standards: Criminal Offences Points to Prove P&S Doc 7.3 v2
4	POL00047324	Report from S Bradshaw to Jan Mullin re audit investigation and suspension of Lisa Brennan
5	POL00047317	Transcript of tape recorded interview under caution of Lisa Brennan
6	POL00047318	Part 1 of transcript of interview under caution of Lisa Brennan
7	POL00047320	Lisa Brennan case study: Record of tape recorded interview in re to Lisa Brennan.
8	POL00047322	Summary Record of Tape Recorded Interview for Lisa Margaret Brennan.
9	POL00104758	Investigation Policy: Interviewing v2.0
10	POL00104745	Investigation Policy: Appendix 1 - Interviews under PACE (England & Wales only)
11	POL00047331	Internal memo from Teresa Berridge to Prosecution Support Office, Leeds re: Lisa Margaret Brennan
12	POL00066713	Lisa Brennan case study: Regina v Lisa Margaret Brennan judgment

13	POL00047335	Lisa Brennan case study: Interoffice Memorandum from Steven Bradshaw to Teresa Berridge re: Lisa Margaret Brennan.
14	POL00066602	Regina v Lisa Margaret Brennan
15	POL00047515	Memo from Steve Bradshaw to John Gibson re: Lisa Margaret Brennan
16	POL00089065	Post office - A letter from S Bradshaw, re Gran Ian Allen
17	POL00047500	Continuation of Witness Statement of Kathryn Elizabeth Rosenthal
18	POL00047501	Witness statement of Kathryn Elizabeth Rosenthal dated 11/03/2003.
19	POL00047514	Lisa Brennan case study: Witness statement of Kathryn Elizabeth Rosenthal dated the 2nd of June 2003.
20	POL00047506	Lisa Brennan case study - Unsigned Witness Statement of Stephen Bradshaw Dated the 3rd of March 2003.
21	POL00047507	Lisa Brennan case study: Continuation of Witness Statement of Stephen Bradshaw from URN POL00047506
22	POL00066583	Alan Bates Others and Post Office Limited, Amended schedule of Information.
23	POL00057751	Investigation Schedule non-sensitive - Lynette Jane Hutchings
24	POL00047492	Schedule of sensitive material in relation to Lisa Margaret Brennan's prosecution
25	POL00047491	Disclosure Officer's Report - Lisa Margaret Brennan
26	POL00066601	David Yates case study: Cartwright King case file
27	POL00066457	David Yates case study: Memo from Paul Bosson to Dave Posnett re: Audit of Walton On Thames 090 023
28	POL00066598	Witness Statement of Paul Bosson re Walton on Thames branch - David Yates
29	POL00066597	Witness Statement of Michael Raj Dadra
30	POL00047494	David Yates - Record of Tape Recorded Interview 7 March 2003
31	POL00066595	David Yates case study: Witness Statement of Dave Posnett relating to Walton on Thames PO - RE Mr David Yates
32	POL00061676	David Yates case study: Witness Statement of Robert Oliver Fitzgerald re. Yates case
33	POL00066596	Witness Statement of Elaine Wright
34	POL00066600	Witness Statement of Rosemary Sporle in re to Mr David Yates
35	POL00066497	Letter from Angela Van Den Bogerd (POL) to Second Sight
36	POL00062362	Post Office Mediation Scheme Report - David Yates
37	POL00060942	Initial Case Overview Application of David Peter Yates
38	POL00066494	Letter from Robert Holland to Second Sight Support Services Ltd enclosing Initial Complaint Review and Mediation Scheme questionnaire of David Yates

39	POL00040313	Initial Complaint Review and Mediation Scheme - Post Office Investigation Report
40	POL00044818	Offence sheet - Theft and false accounting - David Charles Blakey
41	POL00044831	Record of tape - recorded interview - David Charles Blakey (Part 2)
42	POL00044829	Interview with Gillian Blakey, Summary of points
43	POL00044826	Witness statement - Natasha Ann Beck
44	POL00044827	Witness statement - Patricia Brown
45	POL00044828	Witness statement - Samantha Alice Callaghan
46	POL00044820	David Blakey: Memo from Jarnail A Singh to S&A Casework, cc'd Paul Whitaker re: POST OFFICE LIMITED v DAVID CHARLES BLAKEY SUB POST OFFICE ASSISTANT, RIBY SQUARE SPSO CASE NO: 0405/0172
47	POL00066256	David Blakey case study: The Post Office Group Litigation between Alan Bates & Others and Post Office Limited
48	POL00104812	"Royal Mail Group Ltd Criminal Investigation and Prosecution Policy"
49	POL00044817	Schedule of non-sensitive unused material for the case of R v David Charles Blakey
50	POL00041329	DRAFT Letter from Bond Dickinson LLP concerning former SPMs (bankrupts), seeking detailed information from trustees in bankruptcy regarding appointment and assignment of claims against PO.
51	POL00052898	Tahir Mahmood case study: Record of Tape Recorded Interview of Tahir Mahmood
52	POL00052899	Record of Tape Recorded Interview of Tahir Mahmood part 2
53	POL00052874	Casework management initial tick list of Tahir Mahmood
54	POL00052884	Memo from Mr J A McFarlane (Royal Mail) to S&A Casework re: Royal Mail Group plc v Tahir Mahmood - Prospect of conviction and documents required for hearing and trial
55	POL00052888	Advice on Evidence in the case between R v Tahir Mahmood (Birmingham Crown Court)
56	POL00052885	Tahir Mahmood case study: Memo from Rob Wilson to Casework Management Team Security re: RMG v Tahir MAHMOOD (12th October 2005 at the Birmingham Magistrates Court)
57	POL00061506	Submissions on behalf of Mr. Carl Page Initial Complaint Review and Mediation Scheme Reference Number M118
58	POL00065034	Case Summary - R -v- Carl Adrian Page and John Edward Whitehouse in the Crown Court at Stafford
59	POL00062370	Multiple witness statements - R v Page & Whitehouse

60	POL00066551	Carl Page Case Study: Witness Statement of Sarah Jane Boardman, Mrs Elaine Lievesley, Mark Irvin, Michael Joseph Cooksey, Mr Steve Geraty, James Gerard Coney, Mrs Shirely Brocklehurst, Mrs Mary Elizabeth Peet, Mr Douglas Paul Brown, Mr Stephen Charles Cartwright, Mrs Gwen Talbot, Pippa Barker, Andrew Wood, Barry Jamieson, Colin Richard Price and Manish Patel.
61	POL00062371	Bundle of witness statements in relation to the investigation at the Rugeley branch - Witness statements of Kevin Orgill, Deborah Edwards, Glyn Burrows, Margaret Pearce, and Shirley Batey (Carl Page case study)
62	POL00067072	Letter from Debbie Helszajn to Messrs Frisby & Co Solicitors for the attention of Andrew W Broome re: Regina v Carl Adrian Page Stafford Crown Court - Trial - 4 January 2005
63	POL00104752	Investigation Policy: Searching v3.0
64	POL00104760	Investigation Policy: Arrest procedures v2.0
65	POL00045921	Letter from DC Deans to Staffordshire police regarding John Whitehouse dated 7/5/2003.
66	POL00062573	Carl Page case study: List of Exhibit Interview bundles - R v Page - Interviews taking place on 13/01/2003, 01/04/2003, 23/04/2003. Interviews with Carl Page and Others.
67	POL00066537	Record of Tape - recorded interview for Carl Adrian Page
68	POL00066734	Transcript of Carl Page Interview (tape 1 of 2)
69	POL00065032	Draft - Post Office Mediation Scheme - Second Sight - Case Review Report Carl Page.
70	POL00046978	Post Office mediation scheme second sight case review report - Carl Page
71	POL00062372	Carl Page case study: Bundle of witness statements dated variously 2004 - Barbara Valerie Cary, Lynn Patricia Graham, Helen Margaret Rogerson, Robert Neil Davies, Nigel Roberts, Claire Michelle Parker, Manish Patel, Raj Kalsi, Hugh Richard Stacey
72	POL00066545	Carl Page Study: Letter from Post Office to Messrs Frisby & Co containing Mr Page Evidence transcript.
73	POL00062577	Schedule of Non- sensitive unused materials - Interview with Brandon Douglas Horton Re R v Page
74	POL00067170	R v Page & Whitehouse - Police Schedule of Non - Sensitive & Sensitive Unused Material, and Disclosure Officer's report
75	POL00066717	Carl Page case study: Counsel for the Prosecution's revised opening note to jury in the re-trial of Carl Page
76	POL00066729	Transcript of Carl Page Interview (tape 5 of 5)
77	POL00066730	Transcript of Carl Page Interview (tape 4 of 5)
78	POL00066731	Transcript of Recorded Interview Colin Price (tape 3 of 5) of Carl Page

79	POL00066732	Carl Page Interview (tape 2 of 5) - Full transcription by Take Note
80	POL00066733	Carl Page Interview (tape 1) - Full transcription by Take Note
81	POL00045866	Witness statement of Carl Page for Second Sight Case review team.
82	POL00062575	Evidence of Karl Adrien Page in the Crown Court at Wolverhampton in R v Page
83	POL00045868	R v Carl Adrian Page, Expert Accountant's Report of David Liddell
84	POL00045790	Report to the Court prepared by KPMG LLP between Regina and Carl Adrian Page
85	POL00045996	Initial Complaint Review and Mediation Scheme Post Office Preliminary Investigation Report: Mediation Application for Carl Page from Rugeley Post Office Branch.
86	POL00067081	Letter from Andrew Broome to Debbie Helszajn re: R v Carl Page Stafford Crown Court
87	POL00067074	Letter from Debbie Helszajn to Messers JMW Solicitors. Re: Regina v Carl Adrian Page Stafford Crown Court - Trial - 4th Jan 2005
88	POL00067077	Carl Page Case Study: Letter from Debbie Helszajn to Messrs JMW Solicitors re: Regina v & Another - Stafford Crown Court - Trial - 4 January 2005
89	POL00067075	Letter from Debbie Helszajn (Royal Mail) to Messrs Frisby & Co Solicitors for the attention of Andrew Broome re: documents held by Customs and Excise in relation to Mr Whitehouse (Carl Page case study)
90	POL00067084	Carl Page case study: Letter from Debbie Helszajn to Messrs Frisby & Co for the attention of Andrew W Broome re: Regina v Carl Page Dudley Crown Court
91	POL00067099	Letter from Debbie Helszajn to Andrew W Broome of Frisby & Co Solicitors Re R v Carl Adrian Page
92	POL00066716	Defence Statement - Carl Page
93	POL00045780	Email from Judy Balderson to Martin Smith and Carole Butler regarding Carl Page's (WITN0151) case.
94	POL00045781	Email from Chris Powell to Judy Balderson, Carole Butler, Re: Rugeley 264242
95	POL00030561	Financial Investigation Policy Log dated 07/03/06, Case No. 0506/0336
96	POL00044362	Oyeteju Adedayo case study - Memo from Phil Taylor to the Post Office Investigation Team regarding Regina v Oyeteju Adedayo
97	POL00044358	Memorandum for the information of the accused - Oyeteju Adedayo
98	POL00044366	Report for theft/false accounting - Oyeteju Adedayo
99	POL00044360	Theft/False Accounting report - Oyeteju Adedayo
100	RLIT0000185	CCRC Statement of Reasons - Adedayo

101	POL00044368	Record of Tape recorded interview - Oyeteju Adedayo
102	POL00052920	Record of Tape- Recorded Interview of Oyeteju Adedayo (Continuation)
103	POL00066742	Transcribed note on Oyeteju Adedayo Interview
104	POL00066745	Transcript of Oyeteju Adedayo Interview - Tape 2
105	POL00044361	Memo from Debbie Helszajn to Ms Natasha Bernard regarding prospect of conviction in Post Office Ltd v Oyeteju Adedayo case
106	POL00044367	Schedule of charges for Oyeteju Adedayo in Post Office Ltd v Oyeteju Adedayo
107	POL00044370	Statement of information relevant in accordance with section 16 (6) of the proceeds of Crime Act 2002 Regina v Oyeteju Adedayo
108	POL00044862	Investigation Offender Report by Diane Matthews - Hughie Thomas
109	POL00046218	Theft and false accounting offence record for Hughie Noel Thomas
110	POL00044885	Summary of facts prepared in accordance with Rule 4(1)(b) of the magistrates courts (advanced information) rules 1985 Royal Mail Group plc V Hughie Noel Thomas - undated (date estimated)
111	POL00047942	Witness statement of Deborah Alison Edwards dated 2006 (RE: R v. Hughie Thomas)
112	POL00044864	Summary of tape- recorded interview of Hughie Thomas - conducted by Diane Matthews and Stephen Bradshaw.
113	UKGI00012481	Noel Thomas Case Study: Witness Statement of Diane Sarah Matthews
114	POL00047740	Audit Record Query for Gaerwen Post Office by Graham Ward, Post Office Ltd Security Casework Manager.
115	POL00047749	Audit Record Query for Gaerwen Post Office from 18/11/04 TO 24/11/04, and from 19/05/05 to 25/05/05.
116	POL00047895	Witness Statement of Gareth Jenkins
117	POL00068342	Electronic Memo from Sue Hodgins to Emlyn Hughes, Area Intervention Office 10 and Alan Knowles re: Gaerwen in confidence
118	POL00046219	Email from M Smith to A Parsons re: M029
119	POL00046194	Unsigned witness statement of Andy Dunks
120	POL00060995	Post Office Mediation Scheme Application For Mediation Case Questionnaire Responses, Applicant: Mr Thomas, M029, Advisor: Emma Porte, Aver December 2013
121	POL00065188	Initial complaint review and mediation scheme - POL investigation report. Applicant: Hughie Noel Thomas, case no. M029, branch code: 160604, branch name: Gaerwen.

122	POL00044867	Post Office Legal investigation report for Hughie Noel Thomas (Gaerwen Post Office)
123	POL00047780	Memo from J A McFarlane to Investigation Team Post Office Limited re: Royal Mail Group plc v Hughie Noel Thomas Bailed to Holyhead Police Station - 10th January 2006 Case No: POLTD/0405/0401
124	POL00061771	Letter from Angela Van Den Bogerd to Second Sight re: Post Office's Response to Second Sight's Case Review Report on case M029
125	POL00044888	Letter from J A McFarlane to Mr E Williams regarding Regina v Hughie Noel Thomas - Llangseni Crown Court - 2nd March 2006
126	POL00048011	Memo from Investigation Team Post Office Limited re Regina v Hughie Noel Thomas (Case no: POLTD/0506/0401).
127	POL00044886	Letter from J A McFarlane to Mr E Williams re Regina v Hughie Noel Thomas - Caernarfon Crown Court - 25th September 2006
128	POL00048156	Memo from Phil Taylor to the Investigation Team Post Office Limited re: Regina v Hughie Noel Thomas Caernarfon Crown Court Trial - 25th September 2006 Case No: POLTD/0506/0401
129	POL00046193	POL mediation scheme - Hughie Noel Thomas (Gaerwen Ynys Mon Post Office)
130	POL00046215	Briefing note by Cartwright King re Prosecution against Hughie Noel Thomas
131	POL00046213	Email from Andrew Parsons to Martin Smith regarding Thomas - M029 [BD-4A.FID25887033]
132	POL00046214	Email from Martin Smith to Simon Clarke and Harry Bowyer regarding Thomas - M029 [BD-4A.FID25887033]
133	POL00061681	Post Office mediation scheme, draft of the second sight - case review report. Case ref. M029, applicant: Hughie Thomas, advisor: Emma Porter
134	POL00046997	Post Office mediation scheme second sight case review report - Hughie Thomas M029
135	POL00048201	Memo from Phil Taylor to Investigation Team Post Office Limited cc Diane Matthews re: Regina v Hughie Noel Thomas Adjourned Sentence
136	POL00066822	Email chain from Martin Smith to Ruth Barker and Rodric Williams Re BC Wales - Horizon Documentary
137	POL00052982	Memo from Miss J Andrews to Investigation Team Post Office Ltd, RE, PO v Suzanne Lesley Palmer, Southend Crown Court, Trial 24th-26th Jan 2007
138	POL00054007	Royal Mail Group PNC Individual Check Report - Jason Yousef Arnold (Seema Misra Case)
139	POL00053009	Record of Tape/Recorded Interview with Suzanne Palmer

140	POL00053007	Suzanne Palmer cases study: PO Investigation report into Suzanne Palmer re: offence of false accounting
141	POL00052990	Memo from Mr Jarnail A Singh to the Post Office Limited (Investigation Team) re: Post Office Limited v Suzanne Lesley Palmer.
142	POL00053008	Counsel Advice on Evidence - R v. Suzanne Palmer
143	POL00053003	Memo from Miss J S Andrews to Post Office Limited (Investigation Team) re: R v Suzanne Lesley Palmer (Basildon Crown Court - Plea & Case Management Hearing)
144	POL00052989	Letter from Miss J S Andrews to Investigation Team Post Office Limited c.c. Lisa Allen, POST OFFICE LIMITED v SUZANNE LESLEY PALMER
145	POL00052997	Memo from Mr Jarnail Singh to the Post Office Limited (Investigation Team) re: Post Office Limited v Suzanne Lesley Palmer (Trial on w/c 22nd January 2007)
146	POL00053000	Letter from Mr Jarnail A Singh to Lisa Allen re: Post Office Limited v Suzanne Lesley Palmer (Basildon Crown Court w/c 22nd January 2007)
147	POL00044389	Post Office Ltd Investigation report for Josephine Hamilton - POLTD/0506/0685 (Prepared by Graham Brander, Investigation Manager)
148	POL00044485	Summary of facts - Royal Mail Group plc v Josephine Hamilton
149	POL00044483	Post Office Witness Statement - Rebecca Portch, South Warnborough PO, Jo Hamilton case study
150	POL00048507	Witness statement of Rebecca Louise Portch. Post Office
151	POL00048845	Witness statement of Rebecca Louise Portch. Post Office.
152	UKGI00014787	Josephine Hamilton case study: Post Office, witness statement for Colin Woodbridge
153	POL00045426	Jo Hamilton case study: Post Office Witness Statement - Alan Stuart
154	POL00047874	Audit of Post Office - South Warnborough branch, FAD Code 092904 Sent to Nigel Allen C&SM from Alan Stuart CM Branch Auditor.
155	POL00044484	Post Office Witness Statement - Graham Brander
156	POL00044390	Josephine Hamilton - Record of Tape Recorded Interview - Josephine Hamilton
157	POL00045409	Record of Tape Recorded Interview: Part 2 - Josephine Hamilton interviewed by Graham Brander
158	POL00044495	Copy report of investigation officer -11/08/2006 and 17/05/2006 (R v Josephine Hamilton/Winchester Crown Court)
159	POL00045406	Prepared Statement of Josephine Hamilton
160	POL00048049	Witness Statement of June Partridge (electronically signed) in relation to the Jo Hamilton case study

161	POL00048827	Email from Richard Jory to Juliet McFarlane re Josephine Hamilton.
162	POL00048846	Witness statement of Graham Brander
163	POL00048665	Letter from Tanner & Taylor to Miss J S Andrews re R v Josephine Hamilton. CRM/253367/JMcF.
164	POL00048710	Email from Graham Brander (Post Office) to Juliet McFarlane (Post Office) cc Investigation Team Post Office re Regina v Josephine Hamilton - Documentation query
165	POL00048913	Email from Graham Brander to Juliet McFarlane, Dave Posnett and Investigation Team Post Office re Josephine Hamilton. POLTD/0506/0685.
166	POL00044479	Witness Statement - Nigel Allen in the case of Josephine Hamilton.
167	POL00048844	Witness Statement of Nigel Allen (unsigned) - Jo Hamilton case study
168	POL00046833	Training requirements for incoming sub postmasters - South Warnborough branch (Josephine Hamilton) dated 18/09/2003.
169	POL00045450	Summary and report on SPSO Contract with handwritten note by Sue Crichton to Alwen Lyons
170	POL00044480	Witness statement of Martin Drake (electronically signed) in the Post Office v Hamilton matter
171	UKGI00014728	Jo Hamilton Case Study: Post Office, Draft witness statement for Martin Drake
172	POL00044482	Witness Statement of Andrew Paul Dunks
173	POL00044481	Post Office Witness Statement of Penelope Anne Thomas
174	POL00048154	Memo from Graham Brander to Juliet McFarlane - Jo Hamilton investigation
175	POL00053084	Jo Hamilton case study - Response Letter From Graham Brander to Juliet McFarlane re: Jo Hamilton's case - Response to Enquiries
176	POL00048750	Email from Richard Jory to Juliet McFarlane, RE: Disclosure and witness orders (R v. Hamilton)
177	POL00048761	Memo from Ms Juliet McFarlane to POL Investigation Team and Graham Brander re: Regina v Josephine Hamilton Winchester Crown Court Trial - 10th September (POLTD/0506/0685)
178	POL00059367	Memo from Mr J A McFarlane to Post Office Ltd (investigation Team) re: R v Josephine Hamilton (Winchester Crown Court on 10th September 2007)
179	POL00048488	Instructions to Counsel to Settle Indictment - Josephine Hamilton
180	POL00048841	CASE OPENING - R v Josephine Hamilton - by Richard Jor, Bell Yard Chambers.
181	POL00034551	Initial Complaint Review and Mediation Scheme Post Office Investigation Report M035 - Jo Hamilton

182	POL00048517	Schedule of non-sensitive unused material. R v Josephine Hamilton.
183	UKGI00014724	Josephine Hamilton case study: Letter from J A McFarlane to Messrs Tanner & Taylor Solicitors re: Regina v Josephine Hamilton plea and management hearing
184	POL00048736	Josephine Hamilton Case Study: Fax from Tom Bradford to Juliet McFarlane re: Update of R v Josephine Hamilton hearing before HHJ Brodrick at Chelmsford Crown Court
185	POL00055212	Memo from Jarnail Singh (Royal Mail) to Mandy Talbot (Royal Mail) Re Regina v Gurdeep Singh Dhale and enquiring as to other cases in which there have been questions or criticisms of the Horizon System
186	POL00055894	Seema Misra case study: Email from Mandy Talbot to Jarnail A Singh, Re: Regina v Gurdeep Singh Dhale-Bradford Crown Court-Trial 7th February 2011
187	POL00049069	Email from Richard Jory to Juliet McFarlane and Jenee Andrews re Josephine Hamilton.
188	POL00057661	Jo Hamilton Case Study: Fact summary J Hamilton
189	POL00101750	Transcript of BBC Radio 4 - Interviewer/ee details: Presenter, Jo Hamilton, James Arbuthnot, Mark Davies dated 12/09/2014.
190	POL00034836	Post Office Mediation Scheme- Second Sight Case Review Report re Josephine Hamilton
191	POL00046851	Email from A Cann to R Warmington re: Case Questionnaire - M035 Josephine Hamilton - attached with case questionnaire
192	POL00002263	Horizon - Spot Review SRO12 re ; Missing Cheques
193	POL00029604	Second Sight - Spot Review Summary
194	POL00040882	Horizon Spot Review - Response SR013: Missing Cheques
195	POL00059472	Email from Simon Baker to Rod Ismay, Susan Ismay and Alwen Lyons re Technical/Process Issues where we need input from dated 14/01/2013.
196	POL00059567	Email chain from Alwen Lyons to Susan Crichton Re Issuance of TC
197	POL00060363	Draft Horizon Spot Review 12 Response - Missing Cheques - author Andrew Winn, edited by Bond Dickinson - Jo Hamilton's case
198	POL00060608	Horizon Spot Review - Response - Missing Cheques - re Jo Hamilton
199	POL00057503	Briefing Note on the Current Status of Claims involving Horizon
200	POL00057656	James Arbuthnot MP and Oliver Letwin MP Meeting Action Points of 03/05/2012 for meeting on 17/05/2021
201	POL00060219	Statement about glitches in Horizon - Second Sight

202	POL00044623	Summary of facts prepared in accordance with Rule 21.3(1)(b) of the Criminal Procedure Rules 2005 - Post Office Limited v Susan Jane Rudkin
203	POL00046485	Investigation report in re to theft/money laundering in re to Susan Jane Rudkin
204	POL00067404	Post Office Ltd Offender Report re Tahir Mahmood (Ten Acre Street)
205	POL00065295	Royal mail interview- record of tape recorded interview with Susan Jane Rudkin
206	POL00049974	Royal Mail "Record of Search" document, for Ibstock Post Office on 20/08/2008.
207	POL00104828	Royal Mail Group Security Procedures & Standards: Searching No. 7-X v5
208	POL00104849	Royal Mail Group Security Procedures & Standards: Searching doc 7.5 v6
209	POL00045266	Account statement from Lloyds TSB for Mr and Mrs E M Rudkin (between the period 10 June 2008 and 09 July 2008)
210	POL00056762	Financial Investigation Events Log, Susan Rudkin case no: POLTD/0809/0101
211	POL00046502	Letter from M J Wilcox to S J Rudkin in re to audit shortage at Ibstock PO on 20/8/08.
212	POL00051409	Casework Management Initial Tick List (ENGLAND AND WALES), INV REF NO: POLTD/0809/0101 - Susan Jane RUDKIN - Ibstock
213	POL00046522	Susan Rudkin case study: Email from David Bacon to Mike Wilcox and David Bacon in re to Ibstock post office
214	POL00093806	Incident Report, cash account week 10. NBSC REF; H13312265.
215	POL00046470	Letter from Paul Hemley to Mr E M Rudkin regarding suspense account query.
216	POL00060416	Susan Rudkin case study: Letter from Mr EM Rudkin to Paul Hemley Re: Suspense account
217	POL00060449	Audit from Paul Field to Mr Michael Rudkin, re PO Ibstock Branch
218	POL00031333	Second Sight Report: Michael RUDKIN
219	POL00046488	Susan Rudkin case study: Memo in re to Jarnail Singh to Fraud team post office limited and Mole Willcox in re to ' Post office limited v Susan Jane Rudkin dated 3/10/2008.
220	POL00060421	Letter from E M Rudkin to Mr Goerge Thomson re: Private, In the Strictest Confidence and without Prejudice.
221	POL00052094	STAFFORD CROWN COURT - CONFISCATION HEARING - 21st AUGUST 2009, THE QUEEN v SUSAN JANE RUDKIN, BRIEF TO COUNSEL FOR THE PROSECUTION

222	POL00052077	Susan Rudkin case study: Letter from Jarnail Singh to The Clerk to Ms Henrietta Paget re: REGINA v SUSAN JANE RUDKIN
223	POL00052095	Letter from Amy Cheunviratsakul to Royal Mail Legal Services RE: Susan Rudkin - Confiscation Proceedings
224	POL00052228	Email from Graham C Ward to Jarnail A Singh re: Rudkin - Confiscation hearing 21st August - (CRM260283)
225	POL00052226	Letter from John H Dove to Mr J Singh Re: Regina v Susan Jane Rudkin - Confiscation Proceedings.
226	POL00052292	Susan Rudkin case study: Email from Henrietta Paget to Jarnail A Singh, Marilyn Benjamin re: Rudkin
227	POL00052343	Susan Rudkin case study: note of hearing - confiscation order and compensation order
228	POL00055844	Email chain between Jarnail Singh and Charlotte Knight re Susan Rudkin (original redacted)
229	POL00046579	Briefing note by Cartwright King re Prosecution against Michael Rudkin (Ibstock SPO)
230	POL00061839	Initial Complaint Review and Mediation Scheme, Post Office Investigation Report - Applicant: Sunil Paul Khana (Peter Holmes case study)
231	POL00050832	Peter Holmes Case Study: POST OFFICE LTD CONFIDENTIAL: INVESTIGATION LEGAL POLTD/0809/0128, OFFENCE, Theft/False Accounting re: Peter Anthony HOLMES
232	POL00050334	Report: Theft/false accounting in re to Peter Anthony Holmes dated 6/10/08.
233	POL00051527	Schedule of Non- Sensitive Unused Material (R v Anthony Holmes)
234	POL00066738	Peter Holmes Interview transcript
235	POL00066743	Note on Peter Holmes Interview
236	POL00051952	Marion Holmes case study: Advocates Questionnaire - T20090890
237	POL00066624	Application Form of Sunil Paul Khanna
238	POL00050356	Interview Notes, Sunil Khanna
239	POL00066637	Initial Complain and Mediation scheme - Post Office investigation report - Sunil Paul Khanna - relating to Peter Holmes
240	POL00050912	Memo from J A McFarlane to Robert Daily in re to Peter Anthony Holmes
241	POL00052103	Regina v Peter Holmes Expert Accountant's Report of Peter M Smith BSc (Hons) FCA MEWI
242	POL00052389	Letter from Denise Jackman to Royal Mail Legal Services. Re: Post Office Limited v Peter Anthony Holmes - Newcastle Crown Court
243	POL00052105	INDICTMENT, THE CROWN COURT AT NEWCASTLE UPON TYNE, THE QUEEN V PETER ANTHONY HOLMES

244	UKGI00014638	Juliet McFarlane case study: Letter from Robert Daily to Juliet McFarlane in regard to the Expert Accountants Report dated 28 July 2009 relating to the criminal matter of Regina v Peter Anthony Homes (CRM/261295/JMcF) Newcastle-Upon-Tyne Crown Court
245	POL00066162	Peter Holmes Case Study: Letter from J A McFarlane to the Clerk to Paul Caulfield, Regina v Peter Anthony Holmes
246	POL00053679	Letter from J S Andrews (Royal Mail) to Paul Caulfield (Trinity Chambers) re: financial evidence in Regina v Peter Anthony Holmes
247	POL00054149	Memo from Jennifer Andrews (Royal Mail) to Post Office Security, RE: R v Peter Anthony Holmes setting out the charges and corresponding sentence having pleaded guilty
248	POL00066232	Peter Holmes Case Study: Letter from J A McFarlane to McKeag&Co, R v Peter Anthony Holmes
249	POL00052178	Peter Holmes Case Study: Defence Statement for Peter Holmes responding to charge of "theft from employer"
250	POL00066586	Post Office Ltd - Case Review R v Peter Anthony Holmes Newcastle-upon-Tyne Crown Court Pre-Horizon On-Line Case
251	POL00044537	Post Office Ltd Investigation Report for Seema Misra (West Byfleet branch)
252	POL00044589	Seema Misra Case Study: POL internal investigation report on Seema Misra
253	POL00045005	Draft memo from Keith Noverre to Elaine Ridge regarding audit of post office west Byfleet, branch code 126023
254	POL00058550	Seema Misra Case Study: Email from Mr Keith Noverre to Mrs S Misra re: Audit of West Byfleet Post Office Branch
255	POL00104867	Royal Mail Internal Information Criminal Investigation Team - Interviewing Suspects - 7.4 v1 policy
256	POL00044543	Seema Misra Case Study: Record of Tape Recorded interview with Seema Misra interview (Tape ref no. 060341)
257	POL00044544	Seema Misra case study - Record of Tape Recorded interview with Seema Misra (Tape ref no. 060342)
258	POL00050750	Schedule of Non-sensitive unused material, R v Seema Misra
259	POL00044609	Seema Misra Case Study: Witness statement of Keith Noverre
260	POL00044611	Witness statement of Lisa Jane Allen - R v Seema Misra
261	POL00044612	Witness statement of Adrian Morris
262	POL00045495	Seema Misra case study: Witness statement of Jon Longman
263	POL00050566	Witness statement in re to Lisa Allen dated 06/01/09

264	POL00044613	Summary of facts (POL v Seema Misra)
265	POL00050646	Witness statement of Elaine Ridge (signed) re West Byfleet Post Office - Seema Misra case study
266	UKGI00014857	Seema Misra case study: Letter from Castle Partnership Solicitors to Royal Mail RE: POL v Seema Misra - update in lieu of defence case statement
267	POL00051342	ATTENDANCE NOTE from Jarnail Singh - SEEMA MISRA dated 21/04/09
268	POL00051508	Letter from Jon Longman to Information Access Team at Surrey Police
269	POL00054237	Further Amended Defence Case Statement Pursuant to Section 5 of the Criminal Procedure and Investigations Act 1996 - The Queen v Seema Misra in the Guildford Crown Court (Indictment No. T2009/0070)
270	POL00051773	Seema Misra Case Study: Attendance Note by Jarnail Singh re: Seema Misra at Guildford Crown Court(CRM/258932/JSX)
271	FUJ00122713	Email from David Jones to Jarnail Singh re: West Byfleet Issues - Seema Misra.
272	POL00054252	Seema Misra case study: Email from Gareth Jenkins to Jarnail A Singh re. Regina v Seema Misra Guildford Crown Court Trial - 15th March 2010
273	POL00043034	Email chain from Andrew Parsons to Catherine Emanuel, Sherrill Taggart, Rodric Williams and others re GLO - Confidential
274	POL00049658	Memo from Jarnail Singh to Investigation Team Post Office Limited and Adrian Morris re Post Office Limited v Seema Misra. POLTD/0708/0249. Opinion that there is sufficient evidence to prosecute, and in the Crown Court.
275	POL00045010	POL v Seema Misra - Schedule of Charges
276	POL00053364	Seema Misra case study: Internal memo from Jason Collins to Adrian Morris re: Investigation Ref: - POLTD/0708/0249 Seems Misra
277	POL00044585	Seema Misra case study - Instructions to counsel to settle indictment and advise on evidence and brief for the prosecution in The Queen v Seema Misra
278	POL00044538	Indictment sheet (R v Seema Misra)
279	POL00055217	Seema Misra case study: Schedule of Non-Sensitive Unused Material - R v Seema MISRA
280	POL00066893	Typed copy of notes of meeting at 148 Old Street on 28 Jan 2014 re Horizon Issues / handling of criminal cases
281	POL00050752	Disclosure Officer's Report, R v Seema Misra
282	POL00050751	Schedule of sensitive material, R v Seema Misra
283	POL00050942	Letter from Jarnail Singh to Castle partnership Solicitors in re to Regina v Seema Mirsa dated 17/02/09.
284	POL00051331	In the Crown Court at Guildford, REGINA -V- SEEMA MISRA - DEFENCE STATEMENT

285	POL00062550	Seema Misra Case Study - Witness statement of Jon Longman dated 29/05/09.
286	POL00051960	Witness statement of Andrew Paul Dunks dated 24/06/09
287	POL00054518	Witness Statement of Andrew Paul Dunks relating to Seema Misra.
288	POL00054680	Email from Issy Hogg to Jarnail A Singh re. Fw: Regina v Seema Misra Guildford Crown Court - Trial
289	POL00052462	Seema Misra Case Study - Regina v Seema Misra - Application by the defence pursuant to s8of the criminal procedure and investigations act for disclosure of relevant material
290	POL00045518	Technical Expert report of Charles McLachlan
291	POL00055315	Seema Misra case study: Technical expert's report to the Court prepared by Charles Alastair McLachlan, a Director of Amsphere Consulting Ltd
292	FUJ00080526	Fujitsu Report: Horizon Data Integrity v1.0
293	POL00001643	Witness statement of Gareth Jenkins
294	POL00054345	Emails on Callender Square Falkirk Problem between Gareth Jenkins
295	POL00053942	Signed and annotated Witness statement of Gareth Idris Jenkins commenting on 2nd Interim Technical Expert Report of Charles McLaughlin in Seema Misra trial
296	POL00053951	Draft witness statements from David king and another
297	POL00001576	Witness statement of Andrew Bayfield
298	POL00053992	Third Interim Technical Expert's Report to the Court prepared by Charles McLachlan regarding Seema Misra
299	POL00054126	4th Interim Technical expert's report to the Court re Seema Misra prepared by Charles Alastair McLachlan, a Director of Amsphere Consulting Ltd.
300	POL00055196	5th Interim Technical expert's report to the Court prepared by Charles Alastair McLachlan, a Director of Amsphere Consulting Ltd.
301	POL00053426	Memo from Phil Taylor to Post Office Security, RE: R v Seema Misra, Guildford Crown Court, Trial 30th Nov 2009
302	POL00053454	Memo from Phil Taylor to Post Office Security, RE: R v Seema Misra, Guildford Crown Court, Trial 30th Nov 2009 re Warwick Tatford no longer wishing to view the West Byfleet office also WT requesting a statement on other cases.
303	POL00054418	Letter from Jarnail Singh to Warwick and John; Re: Seema Misra Guildford Crown Court Trial - 15th March 2010 Replies to the Defence Third Disclosure Request
304	POL00054528	Witness Statement of Ian Venables Ver 5.0

305	POL00053481	Memo from Phil Taylor to Mandy Talbot cc Jarnail Singh, Rob Wilson and Warwick Tatford re: R v Seema MIRSA re Defence Counsel rested for certain files relation to prosecution of SPM including Lee Castleton and Alan Bates
306	POL00053520	Memo from Phil Taylor to PO Security, RE: R v Seema Misra, Guildford Crown Court, Trial 30 Nov 2009
307	POL00044557	Advice on requests for disclosure in Seema Misra case
308	POL00053746	Seema Misra case study - Letter from Jarnail Singh to Coomber Rich Solicitors, RE: R v Seema Misra, Guildford Crown Court, Trial 15 March 2010
309	POL00054017	Email from Jarnail Singh to David Jones and Penny Thomas, RE: West Byfleet Issues- Seema Misra- Legally Privileged
310	POL00044603	Further request for disclosure (R v Seema Misra) in the Guildford Crown Court
311	POL00053849	Attendance note from Jarnail Singh for Seema Misra dated 27/01/10.
312	POL00044553	Letter Jarnail to Singh to Seema Misra's lawyers regarding Regina v Seema Misra Guilford crown court
313	POL00053643	Witness Statement of Eleanor Grace Muriel Nixon
314	POL00054175	Witness statement of Andrew Winn
315	UKGI00014903	Seema Misra case study: Court Attendance Note from Jarnail Singh re Seema Misra for Mention dated 01/02/10, updated 03/02/2010
316	POL00001598	Witness Statement of Penelope Anne Thomas (V7.0/9.0)
317	POL00053979	Email from Jarnail Singh to Warwick Tatford, RE: R v Seema Misra, Guildford Crown Court, Trial 15th March 2010
318	UKGI00014895	Seema Misra case study: Email from Issy Hogg Coombe Rich Solicitors to Jarnail Singh re: Seema Misra Guildford Crown Court mention 1st February 2010
319	POL00054008	R v Seema Misra, Third Request for Disclosure, In the Guildford Crown Court
320	POL00054019	Email from Jarnail Singh to David Jones, RE: FW: West Byfleet Issues
321	POL00001569	Witness statement of Gareth Idris Jenkins
322	POL00054062	Email from Jarnail Singh to David M Jones, RE: R v Seema Misra, Guildford Crown Court Trial 15th March 2010
323	POL00054198	Memo from Marilyn Benjamin to John Longman and Warwick Tatford re. Fw: Regina v Seema Misra Guildford Crown Court Trial - 15th March 2010.
324	POL00054162	Email from Jarnail Singh to Warwick Tatford re Seema Misra Guildford Crown Court - response to Defence's third disclosure request dated 22/02/10.

325	POL00054185	Memorandum from Jarnail Singh to Issy Hogg, re: Regina v Seema Misra, Guildford Crown Court, Trial - 15th March 2010.
326	POL00053954	Letter from J McFarlane to the Clerk of Warwick Tatford Re Regina v Seema Misra
327	POL00054100	Witness statement of Michael Opebiyi dated 09/02/10
328	POL00054041	Witness statement of Jon Longman
329	POL00054174	Witness statement of Carole Cross
330	UKGI00015007	Seema Misra Case Study: Skeleton Argument to Stay for Abuse of Process in Regina v Seema Misra in the Guildford Crown Court
331	POL00054299	Email from Gareth Jenkins to Charles McLachlan, CCing in Thomas Penny, re R v Seema Misra's Crown Court Trial
332	POL00054346	Seema Misra Case Study: Response to Defence Abuse Skeleton by Warwick Tatford - (R v Seema Misra)
333	POL00054282	Memorandum from Jarnail Singh to Thomas Penny re Seema Misra Guildford Crown Court trial 15th March 2010 - West Byfleet.
334	POL00054310	Letter from Rob Wilson to Issy Hogg Re: Regina V Seema Misra, Guildford Crown Court
335	POL00054253	Email from Penny Thomas to Jon Longman and Mark Dinsdale, RE: transaction log data (R v. Misra)
336	POL00054557	Seema Misra Case Study: Memo from Jon Longman to Jarnail Singh re. Mrs Seema Misra - POLtd 0708/0249 (CRM258932JSX)
337	POL00054566	Letter to Issy Hogg of Messrs Coomber Rich Solicitors from Jarnail Singh re. Regina v Seema Misra Guildford Crown Court - Trial
338	UKGI00014858	Seema Misra Case Study: Attendance note from Jarnail Singh re: Seema Misra, CRM/258932/JSX
339	POL00054712	Letter to Mrs Issy Hogg from Professor Charles McLachlan re. Seema Misra
340	FUJ00125442	Email from Gareth Jenkins to Charles McLachlan and Thomas Penny RE: Info re Seema Misra Case
341	POL00001759	Witness Statement of Gareth Idris Jenkins, produced further to his witness statement dated 9 March 2010. He explains some of the Horizon process in relation to transaction data.
342	POL00054667	Comments on Rinkfield Report by Gareth Jenkins - Notes that the Rinkfield report is near identical to the report produced for the Seema Misra case
343	POL00054999	Attendance Note by Jarnail Singh re: Seema Misra. CRM/258932/JSX.
344	POL00055074	Email from Issy Hogg to Jarnail Singh re: Misra
345	POL00055077	Seema Misra case study: Email from Marilyn Benjamin on behalf of Jarnail Singh to John Longman and

		Warwick Tatford re Regina v Seema Misra, Guildford Crown Court, trial.
346	POL00055073	Email thread between Jarnail Singh and John Longman about West Byfleet
347	POL00055113	Email chain from Marilyn Benjamin (on behalf of Jarnail A Singh) to Post Office Security - re Regina v Seema Misra - Guildford Crown Court - Trial.
348	POL00055132	Email from John Longman to Jarnail A Singh, Re: West Byfleet
349	POL00055155	Memo from Jarnail Singh (Royal Mail) to Post Office Security cc Jon Longman re: R v Seema Misra - Access to the system
350	POL00055199	Attendance note of Seema Misra dated 27/08/10
351	POL00055530	Seema Misra Case study - Unsigned Witness statement of Jon Longman dated 12th October 2010.
352	POL00055225	Email from Zoe Topham to John Longman regarding access to operations by defence solicitors.
353	POL00093841	Email from John Longman to Zoe Topham re West Byfleet - 126 023 - Seema Mirsa
354	POL00055367	Witness Statement by Gareth Idris Jenkins v3
355	POL00117662	Note for Fujitsu/POL meeting RE: Receipts/Payments Mismatch issue notes - Discrepancies showing on Horizon
356	POL00055410	Email from Rob G Wilson to Juliet McFarlane and Jarnail A Singh Re FW: Branch discrepancy issues
357	POL00001733	Correcting Accounts for "lost" Discrepancies
358	POL00055413	Email from John Longman (Post Office) to Gareth Jenkins (Fujitsu) cc Jarnail Singh (Royal Mail) re draft witness statement - use of documents in witness statement (Seema Misra case study)
359	POL00066933	Seema Misra Case Study. CCRC Case Briefing Note - case 59780.
360	POL00055421	Email from Warwick Tatford to Jarnail A Singh re: Seema Misra - Disclosure
361	POL00031352	Email from Jarnail A Singh to Hugh Flemington, Alwen Lyons, Simon Baker, Re: Discuss of defect in horizon in court Seema Misra and Lee Castleton
362	POL00044356	Email from Jarnail Singh to Martin Smith, RE: bulletpoints on the evidence in R v. Misra
363	POL00108223	R v Seema Misra Post Office Case Review Report by Simon Clarke of Cartwright King Solicitors
364	POL00044994	Email from John Longman to Thomas Penny, Gareth Jenkins, Andy Bayfield and others regarding sentencing of Seema Misra - West Byfleet post office
365	POL00055759	Memo from Jamail Singh to John Longman Paul Southin, Graham Ward, Re: Regina v Seema Misra Case No: POLTD/0708/0249

366	POL00044989	Memo from Paul Southin to the Post Office security regarding investigation ref: POLTD/0708/0708/0249 - West Byfleet/ Seema Misra
367	POL00056687	memo from Jarnail Singh to Jon Longman and Paul Southin re: Regina v Seema Misra, Confiscation Hearing
368	POL00058530	Confiscation Order for Misra Seema dated 08/07/11
369	POL00057442	Letter from Seema Misra to Collections, Guildford Crown Court re: confiscation order for £40,000
370	POL00057625	Attendance Note re: Royal Mail Group Ltd v Seema Misra (Application to vary confiscation order)
371	POL00055590	Email from Marilyn Benjamin on behalf of Jarnail A Singh to Mandy Talbot, Hugh Flemington, Jacqueline Whitham, Re: Regina v Seema Misra-Guildford Crown Court-Trial-Attack on Horizon
372	POL00055721	Letter from Mandy Talbot to Crown Court, Re: R v Seema Misra Guildford Crown Court reference number T20090070
373	POL00066859	Seema Misra Case Study. Email chain from Jarnail Singh to Martin Smith and Simon Clarke, RE: Second Sight and appointment of a QC
374	POL00066872	Seema Misra Case Study Note Entry for Case 4118 - POL Mediation File RE: TC Andy Parsons; MJS explaining position. Issues re disclosure.
375	POL00066959	Post Office Ltd - R v Seema Misra - Disclosure. Legal advice from Simon Clarke relating to POL disclosure obligations and CCRC.
376	POL00066869	Email from Melanie Corfield to Martin Smith Re Horizon - Panorama
377	POL00046095	Handwritten note on Regina v Lynette Jane Hutchings
378	POL00061244	Investigation report by Graham Brander - Subpostmaster Lynette Jane Hutchings.
379	POL00046055	Log entry detail (cc4pro2)
380	POL00056532	Lynette Hutchings Case Study : Record of Taped Interview of Lynette Hutchings dated 20/04/2011
381	POL00044505	Record of Taped Interview with Lynette Hutchings
382	POL00046625	Transcript: Record of taped interview re Lynette Hutchings dated 20/04/2011.
383	UKGI00014775	Lynette Hutchings case study: Royal Mail Group, draft witness statement for Graham Brander
384	POL00044512	Suspect Offender Reporting re Lynette Hutchings
385	POL00046626	Memo from Jarnail Singh to Maureen Moors and Graham Brander in re to Post office LTD v Lynette Jane Hutchings
386	POL00046706	Investigation report by Graham Brander - Subpostmaster Lynette Jane Hutchings.
387	POL00057362	Lynette Hutchings Case Study: POL v Lynette Jane Hutchings - Advice

388	POL00057546	Email from Robert Booker to Martin Smith, RE: PO Ltd v Lynette Jane Hutchings- Portsmouth Mags 10/04/2012 at 2.30pm
389	POL00058132	Lynette Hutchings case study: Court attendance note of William Martin Counsel for Claimant
390	POL00046096	Handwritten notes on Regina v Lynette Jane Hutchings: basis of plea
391	POL00044531	Initial sift result sheet - Lynette Hutchins
392	POL00060715	Post Office Ltd - Case Review R v Lynette Hutchings Portsmouth Crown Court
393	POL00057727	Schedule of Sensitive Material, R v Lynette Jane Hutchings, Investigation Schedule
394	POL00057753	Disclosure Officer's report - Lynette Jane Hutchings case study
395	POL00104848	Royal Mail Group Security Procedures & Standards: Appendix 1 to P&S 9.5 Disclosure of Unused Material & The Criminal Procedure & Investigations Act 1996. Version 1.
396	POL00060945	Lynette Hutchings case study: Letter from Simon Clarke to Messrs. Coomber Rich re: Lynette Hutchings
397	POL00058136	Email from Rachael Panter to Martin Smith re: POL v Lynette Hutchings Case No. 22796
398	POL00058016	Email from Andy Cash to All Prosecution; Rachael Panter; Andrew Bolc; Martin Smith, re: Horizon Integrity Report.
399	POL00060373	Email from Rodric Williams to Andrew Pheasant re. Rowlands Castle PO 107937 Mrs Lynette J Hutchings
400	POL00066835	Email from Martin Smith (Cartwright King) to Simon Clarke (Cartwright King), Re: BAQC conference - Post conviction disclosure letters re Hutchings and Robinson
401	POL00057198	Post Office Ltd investigation report for Joan Bailey, POLTD/1011/0164 - Offence(s)
402	POL00055918	Audit of Howey PO from Judy Balderson to Mr C Burston
403	POL00056387	Joan Bailey - Record of Taped Interview, Date of Interview: 9.3.11, Time commenced: 12.32, Time concluded: 13.12
404	POL00056388	Joan Bailey - Record of Taped Interview, Time commenced: 13.14, Time concluded: 13.57
405	POL00056138	Email from Stephen Bradshaw to Colin Burston re Joan Bailey re suspect offender reporting
406	POL00062294	Memo Judy Balderson to Colin Burston and Paul Dann re: Howey 158644, M070 Document 014
407	POL00056477	Memo from Jarnail Singh to Post Office Security re: Post Office Limited v Joan Francis Bailey
408	POL00104763	Royal Mail Group Security - Procedures and Standards: Summons & Cautioning England and Wales v4.0
409	POL00091014	Indictment - The Queen v Alison Loraine Hall.

410	POL00091037	Post Office Ltd Investigation - Alison Loraine Hall
411	POL00091065	Copy List of Exhibits and Copy Exhibits for R v Miss Alison Loraine Hall
412	POL00090855	Investigation report re interview of Ms Hall.
413	POL00091355	Area Intervention Manager Visit Log for Horizon problems in Hightown
414	POL00021351	Letter from J A McFarlane to Christopher Knight, Re: Post Office Limited v Alison Loraine Hall Case No: POLTD/1011/0095
415	POL00091149	The Queen v Alison Loraine Hall, List of witnesses, and witness statements Ver 8
416	POL00020482	Alison Loraine Hall Case Study: Schedule of Non-Sensitive Unused Material - Alison HALL matter
417	POL00091258	Memo from J A McFarlane to Post Office Security, RE: Post Office v Alison Loraine Hall
418	POL00021327	Memo from Phil Taylor, Criminal Law Division to Post Office Security re Regina v Alison Lorain Hall
419	POL00021329	Email from Adrian Chaplin to Paul Southin, Robin G Wilson, Re: Leeds CC: Royal Mail v Alison Loraine Hall 30 June 2011
420	POL00047572	Summary of facts prepared in accordance with Rule 21.3(1)(b) of the Criminal Procedure Rules 2005 - Royal Mail Group Limited v Alison Henderson
421	POL00054917	Summons to Norwich Magistrates Court - Alison Henderson - re theft at Worstead sub-Post Office.
422	POL00055541	Statement of offence of Regina v Allison Henderson
423	POL00054407	Record of Taped Interview - Alison Henderson
424	POL00055452	Witness Statement of Mr Christopher Granville Knight
425	POL00055503	Allison Henderson case study: Royal mail Schedule of Non-Sensitive Unused Material in R v Mrs Alison Henderson.
426	POL00055305	Letter from Rob G Wilson to Cristopher G Knight, Re: Post Office Limited v Alison Henderson
427	POL00047159	Memo from Rob Wilson to Christopher G Knight cc Maureen Moors re: POL v ALISON HENDERSON
428	POL00055190	Letter from Rob G Wilson to Christopher G Knight, Re: Post Office Limited v Alison Henderson Norwich Magistrates Court 7 October 2010- Committal proceedings Case : POLTD/0910/0167
429	POL00055162	Letter from Hugh A. Cauthery to Rob Wilson re: POL v A. Henderson - Norwich Magistrates' Court - 7 October 2010
430	POL00047155	Memo from Rob G Wilson, Head of Criminal Law to Maureen Moors re: Post Office LTD v Alison Henderson Case POLTD/0910/0167
431	POL00055542	Regina v Alison Henderson Advice on Evidence
432	POL00055783	Email from Rob Wilson to Dianne Chan cc Christopher G Knight re: Henderson

433	POL00055814	Letter from Rob G Wilson to Messrs Belmores, Re: R v Alison Henderson Norwich crown Court-Warned List-For Trial 29 November 2010
434	POL00055291	Schedule of Non-Sensitive Unused Material - R v Alison Henderson
435	POL00055505	RMG Disclosure Officers Report for Allison Henderson
436	POL00047195	Allison Henderson case study: Defence Statement in the Norwich Crown Court between Regina v Alison Henderson
437	POL00044503	Defence statement by Allison Henderson (R v Allison Henderson)
438	POL00061747	Post Office Ltd - case Review, R. v Alison Henderson written by Harry Bowyer 2014
439	POL00055687	Crown Court Attendance Note Post Office v Alison Henderson
440	UKGI00014696	Allison Henderson case study: Letter from Belmores Solicitors to Rob Wilson re: Alison Henderson, trial date to be fixed
441	POL00055839	Letter from Miss J S Andrews to Hugh A Cauthery Esq. LL.B re: R V Alison Henderson, Norwich Crown Court - Warned for Trial Week Commencing 29 November 2010
442	POL00055837	Letter from Miss J S Andrews to Hugh A Cauthery Esq. LL.B re: R v Alison Henderson, Norwich Crown Court - Warned for Trial Week Commencing 29 November 2010.
443	POL00055863	Crown Court Attendance Note Post Office v Alison Henderson
444	POL00046148	Factual basis/application for 'Goodyear' indication - Regina v Alison Henderson - unsigned
445	POL00055885	Attendance Note by Luke Hindmarsh in relation to attending the sentencing of Alison Henderson in Royal Mail v Alison Henderson
446	POL00089369	Indictment - The Queen v Grant Allen
447	POL00089069	Witness Statement of Stephen Bradshaw re: Grant Ian ALLEN (unsigned)
448	POL00089096	Winsford Post Office Branch Audit Receipt of Balance Snapshot - Identifying Mark: SB14
449	POL00089426	Post Office Ltd: Legal Investigation - Offences report
450	POL00089626	Email from Denise Reid to: Wendy Mahoney re: Winsford CFPO
451	POL00089457	Post Office Ltd Record of Taped Interview of Grant Ian Allen (Tape reference no.: 073555)
452	POL00089670	POST OFFICE LTD Record of Taped Interview of Mr Grant Ian Allen
453	POL00089642	Letter from Robert Holland to Second Sight Support Services Ltd RE: Grant Ian Allen - Case Questionnaire
454	POL00086286	Flowchart - suspension of SPMs - procedure

455	POL00089376	Letter from Andrew Bolc to Martin Bloor, RE: R v Grant Allen
456	POL00089077	Witness Statement of Gareth Idris Jenkins re Allegations of Fraud v Mr Grant Allen
457	POL00089115	Horizon Online Data Integrity for Post Office Ltd. Abstract: "This document describes the measures that are built into Horizon Online to ensure data integrity"
458	POL00089393	Email from Mark Dinsdale to John Bigley and Dave Pardoe re: POL cases raising Horizon
459	POL00059404	Email from Rachael Panter to Andy Cash re POL cases raising Horizon.
460	POL00089380	Email chain from Gareth Jenkins to Steve Bradshaw, RE: FW: Post Office Limited v Grant Allen.
461	POL00089348	Post Office Ltd, Schedule of Non-Sensitive Unused Material in R v Grant Ian Allen
462	POL00089674	Post Office Ltd – Case Review, R. v. Grant Ian Allen, Chester Crown Court by Simon Clarke
463	POL00089378	Email from Andrew Bolc to Gareth Jenkins, RE: Post Office Ltd v Grant Allen
464	POL00089682	Letter from Simon Clarke to Linda Pennington re : Grant Allen Chest Crown Court -24th January 2013
465	POL00044050	Case Report - Opening for Regina v Angela Sefton and Anne Neild - In the Crown Court at Liverpool
466	POL00057389	Royal Mail Group, Record of Taped Interview Anne Nield
467	POL00043958	Angela Sefton and Anne Nield case study - statement signed by Angela Sefton and Anne Nield SB145
468	POL00044010	Interview record - Angela Sefton interviewed by Stephen Bradshaw
469	POL00057495	Angela Sefton and Ann Nield Case Study: Letter from Andrew Bolc to Post Office Ltd, RE: POL v Angela Marty Sefton and Anne Nield
470	POL00044047	Unsigned Witness statement of Stephen Bradshaw - Fazakerley Branch.
471	POL00057949	Schedule of non sensitive unused material, R v Angela Mary Sefton
472	POL00044219	Letter from Hogan Brown Solicitors to Cartwright King Solicitors Re Future hearing of Mrs Angela Sefton, request for evidence.
473	POL00059750	Schedule of Non-Sensitive Unused Material - Anne Nield
474	POL00044036	Defence Statement re Angela Mary Sefton - R v Angela Mary Sefton
475	POL00044042	Regina v Anne Nield Defence Statement
476	POL00059424	Witness Statement of Gareth Idris Jenkins

477	POL00058306	Letter from Andrew Bale to Laurence Lee & Co re: R v Anne Nield & another, Liverpool Crown Court regarding appointment of second sight.
478	POL00058110	Email chain from Andy Cash to Jarnail A Singh re: Horizon Challenge
479	POL00044041	Regina v Anne Nield Application for Disclosure
480	POL00058383	Summary of meetings leading to the decision to undertake an external review of the cases raised by the Members of Parliament's constituents and the appointment of Second Sight
481	POL00058298	Email correspondence between Jarnail Singh, Andrew Bolc and Andy Cash re R v Sefton & Nield - Liverpool Crown Court 17th Oct 2012
482	POL00044023	Letter to Cartwright King Solicitors from Ms Brigitte Waters (Laurence Lee & Co Solicitors) regarding 'R v Anne Nield', and asking for documentation relating to an audit conducted in 2005.
483	POL00044218	Letter from Laurence Lee & Co Solicitors to Cartwright King Solicitors Re Regina v Anne Neild
484	POL00043964	Angela Sefton and Anne Neild case studies: Agreed Facts for R v Angela Sefton and Anne Neild (T20120934)
485	POL00044221	Prosecution Certificate of readiness from Judge Watson QC for R v Anne Nield & Angela Sefton.
486	POL00066798	Angela Sefton Case study. Letter from Simon Clarke to Hogan Brown Solicitors re: Angela Sefton outcome and potential grounds to appeal
487	POL00059940	Email from Rachael Panter to Jarnail A Singh, Re: Ishaq trial
488	POL00060220	Email from Fernando Rodrigues to Emma Richardson re. Fwd:
489	POL00060112	Khayyam Ishaq Case Study: Handwritten note - Mark Ford
490	POL00060195	Khayyam Ishaq case study: Handwritten note of hearing on 07/032013 in POL v Ishaq
491	POL00056076	Memo/ Report from Dennis Watson to Paul Williams, Re: Audit of Post Office Birkenshaw Branch Code 163306
492	POL00046349	Interview of Khayyam Ishaq - conducted by Stephen Bradshaw - Time commenced - 11:11 and Time Completed - 11:53
493	POL00052012	Record of Taped Interview of Khayyam Ishaq
494	POL00046228	Memo from Rob Wilson re Ishaq case
495	POL00046229	Khayyam Ishaq case study - Memo from Stephen Bradshaw to Legal services in re to Mr Liaquat
496	POL00057985	Khayyam Ishaq case study: Summary Record of Taped Interview
497	POL00045134	Advice on Evidence in R v Khayyam Ishaq

498	POL00058244	Defence Case Statement in the case of R v Khayyam Ishaq
499	POL00054951	Summary of call logs to the National Business Support Centre re: 8/07/2010- 28/02/2011 of the Birkenshaw Branch.
500	POL00046267	Witness statement of Lee Heil (unsigned) - Khayyam Ishaq case study
501	POL00046236	Memo from Stephen Bradshaw to Rob Wilson in re to Ishaq case
502	POL00059474	Witness Statement of Gareth Idris Jenkins
503	POL00058280	Email enclosing Crown Court Attendance form
504	POL00059602	Comments on Ishaq Docs by Gareth Jenkins
505	POL00056596	Memo from Rob G Wilson to Maureen Moors cc Stephen Bradshaw re: POSTVOFFICE LTD -v- KHAYYAM ISHAQ
506	POL00057543	Khayyam Ishaq case study: POL v Khayyam Ishaq - Advice from Counsel Martin Smith of Cartwright King
507	POL00059304	Email from Rachael Panter to Andy Cash re: Ishaq advice on evidence
508	POL00058279	Regina v Khayyam Ishaq, Brief for the Prosecution with handwritten endorsements. Counsel: Sarah Porter
509	POL00058128	Khayyam Ishaq case study: Email from Martin Smith to Rachael Panter re: Case no 24676 - Prosecution of Mr Ishaq
510	POL00060316	Crown Court Attendance Note in case of Ishaq
511	POL00058025	Schedule of Non Sensitive Unused material - Khayyam Ishaq case
512	POL00058096	Letter from Cartwright King to Musa Patels re: Prosecution of Khayyam Ishaq
513	UKGI00014869	Khayyam Ishaq case study: Letter from Musa Patels Solicitors to Martin Smith re: Trial at Bradford Crown Court 25th February
514	POL00059402	Email from Rachael Panter to Andy Cash re POL cases raising Horizon.
515	POL00086353	Closure Workload - Plan regarding Branch Audit of a closing PO V2.5
516	POL00058277	Email from Sarah Porter to Cyndi Kenny, Rachael Panter and Martin Smith re: Crown Court Attendance notes (R v Royal Mail Group on 04/09/12)
517	POL00059409	Letter from Cartwright King to Mr Nabi (Musa Patel Solicitors) re: R (Post Office Ltd) v Khayyam Ishaq (Bradford Crown Court on 25th February 2013)
518	POL00059517	Letter from Cartwright King to Ishaq Defence Solicitors re response to letter concerning problems with Horizon system
519	POL00059426	Letter from Musa Patels Solicitors to Cartwright King Solicitors re Khayyam Ishaq, trial at Bradford Crown Court - 25 February 2013.

520	POL00066924	CCRC Case Briefing Note of Khayyam Ishaq
521	POL00059297	Letter from Musa Patels Solicitors to Mr Martin Smith, RE: possible adjournment of intervention hearing (Khayyam Ishaq)
522	POL00059682	Email from Martin Smith to Steve Bradshaw, Re: Khayaam Ishaq
523	POL00059734	Khayyam Ishaq Case Study: Email chain to Martin Smith, Re: Khayyam Ishaq
524	POL00059644	Khayyam Ishaq: Lincoln House Chambers Court attendance sheet in re to R V Khayyam Ishaq, counsel attended - Ahmed Nadim.
525	POL00059927	Expert Report of Beverley Ibbotson & joint statement of Beverley Ibbotson and Gareth Jenkins re r v Ishaq
526	POL00066824	File note of Martin J Smith re Misra
527	UKGI00001550	Witness Statement of Sharron Lisa Jennings - Post Office Review
528	POL00066838	POL Case Review of R v Khayyam Ishaq
529	POL00048181	Attendance note from J A McFarlane re Hughie Noel Thomas, case no. CRM/251167/JMcF - 25 September 2006