

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**

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VOLUME 2A

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INTRODUCTION

1. This is the addendum to 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”. 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.

2. The analysis in my second report related to the actual application in a series of cases 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 and which I analysed in my first report. I was 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 case, I 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. As I explained in the introduction to my second report, I had only been provided with material relating to 20 of the intended 22 cases at the time of its completion. This addendum addresses the final 2 cases.

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 the appendix to this report. The required declarations that are set out in appendix 1 to my second report apply equally to this addendum.

4. I set out my conclusions at length, based on the 20 cases I had then considered, in my second report. Those conclusions are not altered by the consideration of these 2 further cases. In summary, there were issues with the scope of the investigation in each case, in relation to many of the same reasonable lines of enquiry. These areas included, but were not limited to, the investigation of whether there may have been errors in the operation of Horizon to explain the losses with which those cases were concerned. The charging decisions that I have seen in these cases were very limited, without analysis of the evidence against the elements of the offences charged, or any reference to or analysis of the public interest. Decisions were made to charge theft with very little analysis of how that offence was made out. Disclosure was undermined from the outset by the limitations to the reasonable lines of enquiry pursued by the investigations, and by a failure to identify or disclose material relating to the operation of Horizon that was both capable of undermining the prosecution case and assisting that of the defendant.

JANET SKINNER

5. Janet Skinner was 35 years old at the time that she was investigated, and was the Sub-post mistress at North Bransholme Post Office in Humberside. She had worked for the Post Office since 1995.
6. On 5th January 2007, in the Crown Court at Kingston upon Hull before His Honor Judge Thorn, Janet Skinner pleaded guilty to one count of false accounting. A further count of theft was ordered to lie on the file. The alleged shortfall was £59,175.39. On 2nd February 2007, she was sentenced by His Honour Judge Barber to nine months' imprisonment. On 29th August 2007, she was ordered to pay a confiscation order in the sum of £11,000 and to pay compensation to the Post Office in the same amount, out of the proceeds of the confiscation order.
7. In the proceeding before the Court of Appeal in *Josephine Hamilton v Post Office*¹, Mrs Skinner 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.*"

¹ [2021] EWCA Crim 577, at §75

Investigation

8. As in other cases, there is an investigation summary², 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.
9. On 30th May 2006³, the Rural Support Officer attended the sub-post office to verify cash on hand in the light of an increase in overnight cash holdings. She identified a loss. Mrs Skinner had volunteered to her that there would be a £40,000 shortage of cash. She said she could not explain the loss, but suspected a member of staff, Kathryn Ayres.
10. An audit was undertaken on 31st May, and a shortage of £59,175.39 was identified in the cash on hand. Post Office Investigators Dianne Matthews and Steven Bradshaw attended the branch. It appears from her questionnaire response for Second Sight in March 2014⁴ that Mrs Skinner had reported the losses to her regional managers, and told them that she could not explain their cause, and that the audit followed this.
11. Mrs Skinner was interviewed on 1st June 2006⁵. The interview should have occurred at the post office, but in fact happened at Bransholme police station because the tape recorder was not working. Mrs Skinner declined the assistance of a solicitor, and also did not have a friend with her, although the transcript is silent as to whether she was offered one until the third interview⁶. In her questionnaire response for Second Sight in March 2014⁷, Mrs Skinner said that the investigators assumed that she had stolen the money “*automatically*”, because Horizon recorded a loss.

² POL00044639

³ Chronology in Progression Notes POL00044629

⁴ POL00046925, para.11

⁵ POL00044632, POL00044633, POL00044656

⁶ POL00044656

⁷ POL00046925, para.12

12. In her interview under caution, Mrs Skinner said that she was very experienced in the use of Horizon, having been the first manager in the Hull area to migrate to it, and she had acted as a contact point for others who had issues with it. She stated that the losses had begun in January 2006 when the completion of the balance revealed a shortage of £7500. She considered this too high to be an error. She said that she did not declare them as she could not afford *"to put it right"*, and had sought to conceal it. She had spread the loss around the denominations in the cash on hand. She had not called when the losses appeared because she knew that she would be required to pay them back. The losses had gone up and up for 5 months.
13. She had told her staff that there were losses and that they should be careful what they were doing, but she had not shared the extent of the losses. She believed that one of her members of staff, Kathryn Ayres, had stolen the money, a suspicion in part predicated on the belief that such a large amount of money *"just doesn't go missing"*. She also pointed to the fact that Ms Ayres had keys to the post office and its safe because she lived closest, and that a number of customers had complained that Ms Ayres had shortchanged them. She had confronted Ms Ayres who had denied it. She accepted that she had not taken action to stop Ms Ayres from taking money. She further accepted that she had not taken control of the situation as she should.
14. In terms of investigative steps, the investigators obtained Mrs Skinner's consent during interview for her home to be searched and for her financial position to be investigated. The Report suggests that no search was undertaken, but some financial checks were undertaken (which are addressed below).
15. The investigators also spoke to Mrs Skinner's employees. A statement was taken from each. None, including Ms Ayres, was interviewed on tape or under caution, despite the suspicion that Mrs Skinner had cast on her. This at least suggests that the investigators had rejected Mrs Skinner's suspicions of theft by one of her staff before they had spoken to them. This accords with the assessment in the Investigation Report⁸: *"although Mrs Skinner states she has not stolen the money, I do not suspect the staff of having any involvement in this case. I have no reason to doubt the honest (sic), integrity and reliability of these witnesses"*. That said, there is some suggestion in the case Progression

⁸ POL00044639

Notes⁹, and the schedule of non-sensitive unused material¹⁰ that they were going to be interviewed, and it is not clear at what stage that decision was changed.

16. In summary:

- (a) Colleen Kates¹¹ said that Mrs Skinner completed the balances for the branch. She told staff not to declare the cash on hand as it would not be accurate until the balance at the end of the month. Mrs Skinner was “quite fiery” about losses, and she recalled Ms Ayres having to repay a loss of £1400.
- (b) Theresa Holmes¹² was aware that there had been losses, but was not told of a loss exceeding £100. She also recalled Mrs Skinner saying not to declare the cash on hand as it would not be accurate until the balance at the end of the month. She did not recall seeing a discrepancy for cash on hand on the system.
- (c) Wendy Lyell¹³ said that Mrs Skinner always did the cash declarations, and said there were several times when the branch ran out of cash. She received calls regularly from the cash centre as to why the amounts required for the branch had been increased. She said she was aware that Mrs Skinner had a number of financial issues.
- (d) Katherine Ayres¹⁴ said she noticed a number of procedural changes when she returned from being off work for a period of 6 months. She confirmed a loss of £1000, which she had to pay.

17. In this regard, the Court of Appeal observed¹⁵ that “*the prosecution relied on the evidence of three of the four other members of staff but we are not persuaded that their evidence was capable of materially advancing the prosecution case.*” The evidence of these witnesses, taken at face value, was that they had not stolen the money. In that respect they were in no different position to Mrs Skinner who similarly denied taking it. There was no evidence that they had benefited, but there was equally no evidence that Mrs Skinner had done so.

⁹ POL00044629

¹⁰ POL00048259

¹¹ POL00044685

¹² POL00045343

¹³ POL00045342

¹⁴ POL00047402

¹⁵ [2021] EWCA Crim 577, at §191

18. The Second Sight review of the case in 2015¹⁶ observed that *“it is unclear whether or not the investigators made any further enquiries regarding the staff members in question”*. There was evidence, as noted in the Investigation Report¹⁷, that transactions had been undertaken using the terminals of Ms Ayres and Ms Holmes that each denied responsibility for and asserted had been undertaken by Mrs Skinner. That is, however, consistent with Mrs Skinner’s account of covering up unexplained losses. It is also of note that in their response to Mrs Skinner’s questionnaire in 2014¹⁸, the Post Office recorded that there was no record that two of the employees had been registered or vetted for the Horizon system (as was required at the time). There is no reference to that in the investigation, or in disclosure arising from it.
19. It appears that financial enquiries were made in relation to Mrs Skinner. The Investigation Report noted that Mrs Skinner’s sole source of income was her employment and that her partner was unemployed. She had £2000 of direct debits on her account. The report goes on *“from statements taken and also information received via Inland Revenue and credit checks, it appears that Mrs Skinner has severe financial problems”*. It is clear that enquiries had been made in relation to County Court judgments and Inland Revenue records. It is also clear from the Report that the majority of the information about Mrs Skinner’s finances came from others at the branch. There was no acknowledgment that they might have had reason to emphasise the financial difficulties of another suspect.
20. That assessment accords with the extent of financial enquiries that had to be undertaken for the purposes of the post-conviction confiscation proceedings¹⁹. An email from the financial investigator in May 2007²⁰ suggests that the detailed assessment of where the money in Mrs Skinner’s bank account had come from occurred for confiscation rather than as part of the pre-charge investigation. Whilst it is perhaps inevitable that greater focus on a suspect’s assets will occur when the focus is on securing those assets, the enquiries here do suggest that pre-charge enquires had been superficial. This is concerning where the primary source of information about

¹⁶ POL00063484, para.4.5

¹⁷ POL00044639

¹⁸ POL00061997

¹⁹ Financial investigation event log, POL00064031

²⁰ POL00048655

Mrs Skinner's finances was an employee who was herself subsequently investigated for theft from the Post Office²¹.

21. It appears that there was some interrogation of Horizon data. The Investigation Report noted that "*the Horizon data has been requested*", and various activities and transactions were addressed, for example use of the terminals of two employees which they denied. The Case Progression Notes²² refer to "Horizon disc received" on 14th June 2006. As the Court of Appeal observed²³: "*...it is not now known what it contained or whether it was disclosed to the defence*". It is not clear from the Report the extent to which data was either obtained or analysed, but there is nothing in the Report to suggest any check was made as to the reliability of the system as it operated at the branch. That accords with Mrs Skinner's questionnaire response for Second Sight in March 2014²⁴, in which she asserted that "*at no stage was the Horizon system investigated*", and with the assessment of the Second Sight review²⁵ that no one had given active consideration to the possibility of errors in the operation of Horizon.

22. It is of note that the Post Office response to Mrs Skinner's questionnaire²⁶ asserted "*Post Office has not seen or found any evidence to suggest that there were any issues with the branch's Horizon system, or that this was raised as a concern by the Applicant during her tenure or interview as she claims*". It is not clear the basis for the assertion that no evidence was "found" of issues, as no examination for such issues appears to have been undertaken. The response also asserted that "*because the Applicant had inflated the cash figures, the investigation would have been unable to identify when or where the shortfalls arose*". It is not clear how this squares with the failure to investigate the reliability of the Horizon system, or whether faults may have led to losses being asserted incorrectly.

23. The Investigator's Report also noted that "*Mrs Skinner did not contact the Network Business Support Centre or seek guidance from the retail line concerning the level of losses*". This information appears to derive from Mrs Skinner's account in interview, there

²¹ POL00064031

²² POL00044629

²³ [2021] EWCA Crim 577, at §192

²⁴ POL00046925, para.12

²⁵ POL00046010

²⁶ POL00061997

being no reference to any independent enquiries being made in this regard. It is at odds with material before the Court of Appeal, which noted²⁷: “Between 1 January 2004 and 31 January 2005, Mrs Skinner made 116 calls to the National Business Support Centre. Some of those calls concerned Horizon faults and balancing.” The latter accords with the Post Office response to Mrs Skinner’s questionnaire in 2014²⁸, and the detail there suggests that evidence of contact with helplines was available at the time of the investigation but not sought, evaluated or disclosed. Moreover, the 2014 response does substantiate some “minimal” losses arising in transaction corrections. Whilst, as the Post Office pointed out, these were not in the “region of the level of losses that the Applicant described”, there is no evidence that these were identified, investigated or disclosed at the time of the prosecution.

Charging decision

24. A charging advice was provided by J. McFarlane, Principal Lawyer in the Criminal Law Division on 4th September 2006²⁹. She states “the evidence is sufficient to afford a realistic prospect of conviction” on the charge of theft of £59,175.39³⁰. There is no analysis of the evidence in the advice. In particular, there is no consideration of the lack of evidence that Mrs Skinner did obtain the monies, or evidence of dishonesty. In keeping with her advice in the case of Hughie Thomas earlier in 2006³¹, the advice also includes a second test “there is a medium prospect of success”. As I observed in the case of Mr Thomas³²: “It is not clear how this “Medium prospect” is reconciled to the evidential test in the Code for Crown Prosecutors.”
25. The advice identifies a list of evidence that is required. This includes “copy statement dealing with the accounts and explaining how the loss arose” and a statement “explaining the Horizon system”. Neither of these appears to be a request for, or to recognise the need for, an analysis of the reliability of the Horizon data that showed there to have been a loss. There was no request for any further financial investigation as to where, if

²⁷ [2021] EWCA Crim 577, at §191

²⁸ POL00061997

²⁹ POL00048161

³⁰ Charge POL00048165

³¹ POL00047780

³² Volume 2, para.201

Mrs Skinner had taken it, the money had gone, and no question was raised as to the reliability of the Horizon data that revealed the loss charged as theft. There was no reference at all to the public interest component of the test in the Code for Crown Prosecutors. Given that this case concerned a 35 year old woman of good character who had worked for the Post Office in one role or another since 1995, the total absence of any public interest consideration is stark.

26. The case Progression Notes³³ record that an application was made for a summons on 12th September 2006. There is no information as to what information was provided at the time that this was done.

Investigation of another employee at the branch

27. It appears³⁴ that after Mrs Skinner was charged, an investigation was undertaken into the conduct of Wendy Lyell, whose statement about Mrs Skinner had received considerable prominence in the Investigation Report³⁵, especially as to Mrs Skinner's financial difficulties. In short, it appears that Ms Lyell had moved £2000 between stock units, and told a colleague that she had done so because she was concerned "*over running out of cash before the remittance into the branch was received*". Mrs Skinner's successor as postmistress reported that "*£2000 was a loss which occurred prior to this week and was being hidden in the accounts*". There are, therefore, clear parallels with the position of Mrs Skinner in terms of losses arising and the movements of cash to conceal them. There is also at least a suggestion of further unexplained losses in a period after Mrs Skinner had left the branch.
28. This issue was communicated by the investigator to the lawyer on 24th November 2006, before Mrs Skinner's first appearance, which was scheduled for 12th December³⁶. It was further reported on 4th December³⁷ that Ms Lyell had been dismissed. She had accepted responsibility for a loss of £560 as a result of a cash error but not of £2000.

³³ POL00044629

³⁴ POL00064031, POL00048272

³⁵ POL00044639

³⁶ POL00048272

³⁷ POL00047902

29. On 6th December the lawyer communicated with the agents instructed to act at Mrs Skinner's first appearance at the Magistrates' Court. She observed: *"whilst clearly the new information does not bear well with the prosecution case particularly as Miss Lyell is the witness, this does not necessarily mean that Miss Lyell is the only thief at the office. The papers in any event do reveal a very sophisticated method of false accounting on behalf of Miss Skinner in order to conceal a loss for which she raised little concern with her staff"*. Ms McFarlane then raises the possibility of a review after the case has been sent to the Crown Court or a delay to the sending of the case. She did not advocate one over the other. The initial case summary³⁸ for the proceedings continued to include reference to, and apparent reliance on, Ms Lyell.
30. What is concerning is that J.McFarlane's letter recognised that the Post Office could no longer rely on Ms Lyell's account, without any apparent consideration of the effect that the loss of her evidence had for the prosecution case. In particular, this related to evidence of Mrs Skinner's financial position, which derived in large part from Ms Lyell. But beyond that, the allegation relating to Ms Lyell raised the possibility, put at its lowest, that losses were occurring that could not be attributed to Mrs Skinner of a similar kind to those which had led to her prosecution. Moreover, Ms McFarlane appeared to recognise that the evidence against Mrs Skinner was more consistent with false accounting with theft, and yet theft remained the offence with which Mrs Skinner was charged at that stage.
31. Theft remained the charge at the stage that counsel was instructed in anticipation of the Plea and Case Management Hearing, which was fixed for 8th January 2007. Instructions to counsel³⁹ flagged up the issue re Ms Lyell in the same terms as quoted above. Those instructions, which thereby observed that there was a case of false accounting rather than theft, also asked for counsel to settle the indictment.
32. When the case was listed on 5th January 2007⁴⁰ it is clear that a charge of false accounting had been added⁴¹. There is no material that addresses whether this charge was added because it was considered that it better reflected the indictment, and if so

³⁸ POL00128952

³⁹ POL00044673

⁴⁰ POL00048420

⁴¹ Indictment POL00045387

why it appeared together with the charge of theft which the reviewing lawyer had identified did not reflect the evidence. It is further clear that at that hearing Mrs Skinner pleaded guilty to that charge, and that plea was accepted.

33. There is no material that I have seen, other than the observations of the lawyer about the issues raised by the allegation of theft against Ms Lyell, as to the basis on which that charge was considered acceptable. The fact that the lawyer had identified that *“the papers in any event do reveal a very sophisticated method of false accounting on behalf of Miss Skinner in order to conceal a loss for which she raised little concern with her staff”*, suggests that the false accounting charge was added to reflect what the evidence amounted to, rather than as a device to secure a plea in a case that was being undermined by the investigation into Ms Lyell. However, the absence of any other material makes it difficult to identify the evidential analysis that revealed dishonesty or a view to gain, beyond avoiding repayment of a loss that she could not explain, as against Mrs Skinner.

Confiscation

34. In her interview, Mrs Skinner accepted falsifying the records to conceal losses, but denied that she had received any monies. She repeated that when she spoke to the author of the pre-sentence report⁴². Despite this, and the apparent acceptance by the reviewing lawyer that this was *“a very sophisticated method of false accounting on behalf of Miss Skinner in order to conceal a loss”* (as the only basis I have seen for the acceptance of the plea to false accounting), the prosecution sought confiscation with a view to obtaining recovery of the amount identified as stolen in the theft charge.
35. Those acting for Mrs Skinner argued that this represented an abuse of the court’s process⁴³. More particularly, it was submitted that the setting of a timetable for confiscation after they had accepted a plea to false accounting demonstrated that the prosecution was seeking to recover monies that they accepted that they could not prove that Mrs Skinner had stolen. The prosecution in their response⁴⁴ *“strenuously denied”* taking advantage of a technicality in taking a plea to false accounting and then

⁴² POL00048447

⁴³ POL00048808

⁴⁴ POL00048806

seeking recovery via confiscation. It was asserted that Mrs Skinner was contractually liable to recoup losses, and that they did not need to prove that the monies were stolen to recover them.

36. The application for a stay was refused⁴⁵, and it was agreed between the parties that £11,000 of the £59,175.39 was recoverable, and an order made in those terms. The Court record⁴⁶ states that Mrs Skinner was ordered to pay the Post Office £11,000 in compensation, "*in default of any or all the balance of confiscation order*". The confiscation order carried with it a term of 12 months' imprisonment in default.

Disclosure

37. A schedule of non-sensitive unused material (equivalent to an MG6C) was prepared by the investigator, who was clearly also acting as the disclosure officer, and dated 16th November 2006⁴⁷. It includes material relating to the process by which statements were obtained from the employees at the branch, but no material that suggests 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 uncertain⁴⁸, or that the prosecutor had inspected the material⁴⁹. The schedule is not signed or otherwise endorsed by the prosecutor to show that any such review was undertaken.
38. There is a schedule of sensitive unused material (equivalent to an MG6D)⁵⁰, which is similarly signed by the investigator/disclosure officer, but it does not include any material.

⁴⁵ POL00049016

⁴⁶ POL00045358

⁴⁷ POL00048259

⁴⁸ As required by para.7.1, CPIA Code

⁴⁹ 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

⁵⁰ POL00048262

39. There is no material listed in the MG6C, or obviously the MG6D, that refers to the theft allegation against Ms Lyell. The lack of disclosure as to that is confirmed by the fact that the defence requested such disclosure in the context of the abuse of process application relating to confiscation after Mrs Skinner had pleaded guilty⁵¹.
40. The Court of Appeal's assessment of disclosure was as follows⁵²: *"POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Skinner's case. Although there is reference to a 'Horizon data disk' in the exhibits, it is not now known what it contained or whether it was disclosed to the defence. 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. There was no investigation into the various Helpline calls made by Mrs Skinner. We are struck by the fact that POL failed to take these steps despite Mrs Skinner's long service to POL and her professional progress (doubtless reflecting her trustworthiness) from counter clerk to permanent SPM of North Bransholme Post Office."*

Assessment

41. There were a number of areas of concern in relation to the ambit of the investigation that led to Mrs Skinner being prosecuted initially for theft and ultimately for false accounting. In particular, these related to her financial position, the possible roles of others and the operation of Horizon. In relation to the first of these, as the extent of enquiries that were necessary at the confiscation stage illustrates, there appears to have been greater reliance on the observations of Mrs Skinner's colleagues than independent financial enquiry as to the state of her finances. This is of concern not least because those others themselves ought to have been considered as potential suspects, rather than just as witnesses. That approach in turn is of concern where one was named as a possible suspect by Mrs Skinner and another came under investigation for similar conduct during the currency of proceedings against Mrs Skinner.
42. It is unclear what Horizon data was obtained during the investigation, although clearly some was. As with, for example the case of Hughie Thomas, some steps were taken to obtain material that would allow for a review of the operation of Horizon were looked into, but there were important limitations to that investigation which

⁵¹ POL00048738

⁵² [2021] EWCA Crim 577, at §192

undermined its effectiveness. It is unclear whether the limited material that was obtained was disclosed, to allow the defence to make their own investigations, and further unclear whether any actual investigation was made of the material obtained or more broadly as to the operation of the system.

43. The charging decision was in September 2006, and thus before the first explicit reference to the Code for Crown Prosecutors being the test to be applied⁵³. 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 and by this lawyer, J. McFarlane in the case of Hughie Thomas. 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. The public interest was not addressed at all.
44. The limitations of that analysis are further illuminated by the approach to the investigation of losses attributed to Ms Lyell during the currency of the prosecution of her manager, Mrs Skinner. It was recognised at that stage that it undermined the case, and that it in particular called the theft charge into question, but it neither resulted in a review of the case or the change of charge at that time.
45. The limitations to the investigation, as in other cases, fed directly into the limitations of the disclosure process. The extent to which material relating to the operation of Horizon was obtained, or contact between the branch and the helplines was investigated, fed into the failings of disclosure of material relating to such important topics. The review of disclosure did not identify outstanding lines of enquiry any more than it did outstanding disclosure.

⁵³ POL00044803

JULIAN WILSON

46. The late Julian Wilson was Sub-postmaster at Astwood Bank, near Redditch in the West Midlands. He was 59 years old at the time that he was investigated.
47. On 15th June 2009, in the Crown Court at Worcester, Mr Wilson pleaded guilty to two counts of fraud. It appears that three counts of false accounting did not proceed. On 3rd August 2009, he received a community sentence order with 200 hours of unpaid work. He was ordered to pay prosecution costs in the sum of £3,500.
48. In the proceedings before the Court of Appeal in *Josephine Hamilton v Post Office*⁵⁴, Mr Wilson 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.*”
49. Although in some respects the material in relation to this case is quite extensive, the majority relate to an action brought by Mr Wilson in 2011 in connection with the termination of his contract as a sub-postmaster⁵⁵, and the Second Sight Review in 2014, rather than the investigation or prosecution that led to his conviction. Given the limited material available in this case relating to the actual prosecution, it is difficult to be categorical about all of the areas that the Inquiry has asked me to consider.

The investigation

50. As in other cases, there is an investigation summary⁵⁶, 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.

⁵⁴ [2021] EWCA Crim 577, at §75

⁵⁵ POL00046944

⁵⁶ POL00044639

51. The investigation was started after an audit on 11th September 2008 uncovered a shortage of £27,811.98⁵⁷. Mr Wilson told the auditors⁵⁸ at the outset that there would be a cash shortage of around £27,000, which represented an accumulation of shortages over 5 years. He said that he had been inflating the cash on hand figures to achieve a balance on the weekly and then monthly trading period. The investigators attended the branch, obtained a signed statement from Mr Wilson to reflect the admissions he had made, and advised him of his rights in relation to interview. He requested both a solicitor and a friend. This was in accordance with what a proper application of the Post Office Interviewing Policy⁵⁹ required.
52. Before the interview was held, a voluntary search had been undertaken at Mr Wilson's home address. According to the Investigation Report⁶⁰, a record was made of the search in accordance with the Post Office Searches policy⁶¹.
53. At his interview under caution⁶², Mr Wilson was accompanied by both his solicitor and a Federation representative. Mr Wilson said that he had encountered problems with balancing the trading statements for some time. He had raised problems with Horizon with his line manager and was told "*there was nothing wrong with the system*". He had otherwise not raised the issues that he was encountering as he had expected them to be spotted and there to be intervention, as he was declaring discrepancies but not their scale. He accepted that he had not told his line manager of losses that he could not reconcile. He had maintained his own running total of the discrepancies over 5 years, and had provided information about the discrepancies to the Federation when they had asked for instances of issues with Horizon 2 years earlier. Mr Wilson was asked about the matters the investigators had identified in his financial statements, for example the scale of his overdraft and other financial difficulties. He denied that he had taken any monies from the Post Office.

⁵⁷ Investigation summary, POL00044639, Summary of facts POL00044767, report from auditor POL00044806

⁵⁸ Statement of David Patrick, POL00064118

⁵⁹ POL00104758

⁶⁰ POL00044803

⁶¹ POL00104752

⁶² POL00044804; POL00050138

54. Mr Wilson did not just raise the issues with Horizon in his interview. In his resignation letter to his contract manager, he stated that he had raised the problem of misbalances on three occasions and received no adequate response. In an undated letter from the Contract Manager in response⁶³, he replied *"I can assure you that in terms of the integrity of the Horizon accounting system Post Office Ltd has been using this system now for the past nine years. During that time it has been tested in both the criminal and civil courts and has not found to be wanting"*.
55. In terms of investigative steps, statements were taken from the auditor, contract manager and investigator⁶⁴. The interview record⁶⁵ shows that a number of enquires had been made in relation to Mr Wilson's finances. The investigation report⁶⁶ does not suggest any more, and thus no evidence of financial benefit to Mr Wilson through the taking of monies. This accords with the statement⁶⁷ provided by the financial investigator, which only refers to bank accounts that were alluded to at the time of interview, or related to the issues raised during that interview.
56. Similarly, there is no evidence that enquires were made as to whether Mr Wilson had reported any issues with the operation of the system, for example reporting any such issues to regional managers or contacting helplines. Mr Wilson reported that he had spoken to his line manager in interview, and in the context of both his 2011 civil action⁶⁸ and his 2014 questionnaire for the Second Sight Review⁶⁹, he alleged both that he had contacted the helpline on a number of occasions, and had reported issues to his manager. There is no evidence that any contact was made by the investigation with Mr Wilson's line manager despite his raising such contact, in connection with the operation of Horizon, in interview. This was clearly a reasonable line of enquiry. When it responded to Mr Wilson's Second Sight questionnaire in 2014⁷⁰, the Post Office expressed scepticism about such contact, and when it spoke to others who similarly could have had issues raised with them their memory was limited. This underlines the importance of checks having been made at the time of the investigation.

⁶³ POL00044758

⁶⁴ Auditor POL00064118, contract manager POL00044777, investigators POL00045659, POL00044778

⁶⁵ POL00044804

⁶⁶ POL00044803

⁶⁷ POL00050498

⁶⁸ POL00046944

⁶⁹ POL00060981

⁷⁰ POL00046970

57. Similarly, contact with helplines, in particular, was a regularly identified line of enquiry, and one that arguably ought to have been pursued whether or not raised by the defendant in interview. In his 2014 questionnaire for the Second Sight Review⁷¹, Mr Wilson referred to contact with the helpline, which underlines why, even if not mentioned in interview, it would have been reasonable for the investigation to have checked whether there was contact. Approaching it from a different perspective, evidence of a lack of contact would have been relevant to whether there had been problems with Horizon (a point made in a number of the cases that I have reviewed), and logically therefore a check on whether the helpline had been contacted was a reasonable line potentially implicating or exonerating the suspect depending on the result. The fact that the Post Office was able to access records relating to helpline contact when it responded to Mr Wilson's Second Sight questionnaire in 2014⁷², underlines that such records were available at the time of the investigation.
58. Counsel instructed, Anthony Vines of Civitas Law, Cardiff, provided advice, dated 22nd May 2009⁷³. In this he requested the production of the material underlying the asserted losses, and the errors in the records produced by Mr Wilson. He also requested certificates to satisfy the business records exception to the hearsay rule, in section 117, Criminal Justice Act 2003, and a statement from the investigator *"that at all material times the computer was working appropriately and that there is no reason to doubt the accuracy of the information received"* and *"whether in his experience there are any issues as to the accuracy of the information provided from the Horizon software package"*. Mr Vines makes clear in his advice that he was not aware of any cases where Horizon had been called into question, but he did recognise the need to prove its reliability. The list of exhibits⁷⁴ for the case shows that no Horizon material beyond various branch trading statements were adduced as part of the case against Mr Wilson.
59. There is no evidence that this did cause any investigation in this regard. That accords with the assessment of the Court of Appeal⁷⁵: *"POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Wilson's case. Based on the*

⁷¹ POL00060981

⁷² POL00046970

⁷³ POL00044807

⁷⁴ POL00045675

⁷⁵ [2021] EWCA Crim 577, at §177

papers available from the criminal proceedings, there is nothing to suggest any ARQ data was obtained. POL did not investigate any of the criticisms of Horizon made by Mr Wilson historically and during his detailed interview. There was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage." That such material was required is demonstrated by the fact that it was recognised both that such material was required, and that it would be necessary to apply to Fujitsu to get it, in the context of the civil action brought by Mr Wilson in 2011⁷⁶.

Charging decision

60. The nearest I have seen to a charging decision in this case is a Memorandum to the investigator, dated 6th January 2009, from Jarnail Singh, senior lawyer in the Criminal Law Division⁷⁷. He advises "*the evidence is sufficient to afford a realistic prospect of conviction*". He refers to a list of charges, which charged theft of the total shortage over a 5 year period, together with "specimen" charges of false accounting relating to a series of branch trading statements. Mr Singh indicates that the remaining loss can be addressed by a schedule of offences to be taken into consideration, and such a schedule was prepared⁷⁸.
61. The memorandum contains no analysis of the elements of either theft or false accounting, and thus no identification of the evidential basis for dishonesty, or the basis on which it could be said that Mr Wilson had taken money. The lack of evidence of theft in these respects may have underlined Mr Singh's observation that pleas to false accounting should be accepted "*in view of his admissions to false accounting in interview under caution and denial of theft*". That does not, however, make clear why a theft charge was considered appropriate save as a means of encouraging a plea to the alternative charge. Although Mr Singh asked for a statement to be obtained to explain the operation of the Horizon system, he did not ask for any enquiries to be made as to its reliability or the accuracy of the data. There was no reference to the public interest test.

⁷⁶ POL00057156

⁷⁷ POL00044806

⁷⁸ UKGI00012570

62. Counsel, Anthony Vines of Civitas Law, Cardiff, was instructed, and provided advice, dated 22nd May 2009⁷⁹. He drafted a five count indictment⁸⁰ in which Mr Wilson was charged with 3 counts of false accounting, relating to 2 weekly cash accounts and the final business trading statement, and thus differing from the charges authorised by Mr Singh, and 2 counts of fraud by abuse of position, contrary to section 4, Fraud Act 2006. As his accompanying case summary⁸¹ explained, the false accounting charges sought to “cover 3 of the 4 years of admitted false accounting prior to the coming into force of the Fraud Act 2006”, and the fraud charges “represent the 2 periods covered by the trading statement”.
63. Mr Vines’ advice⁸² makes clear that he had drafted this indictment in the light of the fact that “this is not a straightforward case because of the difficulties in establishing theft and the fact that the charges of false accounting do not necessarily result in the claim to the full loss”. He made clear that the indictment was designed to enable “a proper claim to be made for the full sum of £27,811” and to satisfy “the criminal lifestyle condition set out in s.75(2)(c) of the Proceeds of Crime Act 2002 for the purposes of pursuing confiscation”.

Court proceedings

64. Mr Wilson’s case was listed for plea and case management (‘PCMH’) on 15th June 2009⁸³, and was covered by Richard Coles, Civitas Law in the stead of Anthony Vines. As he reported to those instructing him⁸⁴, “in this case, the defendant was convinced that there was a systematic problem with Horizon as was raised in interview.” That is reflected in his agreed basis of plea⁸⁵, in which Mr Wilson stated that the losses occurred because of “staff or systemic errors” and not because the money had been stolen. He admitted inflating the cash on hand figures over five years to ensure that the accounts balanced but believed that the alleged shortfall – £28,551.98 – was due to problems with Horizon. Mr Coles, in his note from the PCMH, said that Mr Wilson had sought to plead to the fraud charges on the basis of the period from May 2007, and thus a loss of

⁷⁹ POL00044807

⁸⁰ POL00044690

⁸¹ UKG100018911

⁸² POL00044807

⁸³ POL00051936, POL00051943

⁸⁴ POL00051928

⁸⁵ POL00051917

£15,000, but that he had rejected this and ultimately the plea addressed the full shortfall. He indicated that he had not informed the judge that confiscation would be pursued, because that judge had previously indicated that compensation was “*more suitable*”.

65. In his 2014 questionnaire for the Second Sight Review⁸⁶, Mr Wilson explained that he was advised to plead guilty to false accounting on the basis that he was likely to be convicted, and that his wife and father-in-law’s health concerns at that time led him to feel he had no choice. The hope of a lighter sentence for false accounting than for theft was also an identified factor.
66. In fact, when Mr Wilson was sentenced a timetable for confiscation was fixed. It was observed by the Post Office’s agent, John Dove, at the time⁸⁷ that this “*is likely to be pre-empted by the full reimbursement of the stolen monies*” from the sale of the post office branch. It is not without relevance that the solicitor acting for the Post Officer referred to the monies as “*stolen*”, even though neither the charges brought, nor Mr Wilson’s basis of plea, reflected the theft by him of those monies. In fact, contrary to Mr Dove’s prediction, there was a confiscation hearing⁸⁸ at which an order was made for the full benefit figure of £28,434.95, comprising the full loss and RPI increase, together with prosecution costs. As was observed by the financial investigator, the Post Office therefore secured “*a 102% recovery*”.
67. This stance was justified by the Post Office at the time of the Second Sight Review⁸⁹ on the basis that Mr Wilson’s admitted false accounting had made it difficult to know if cash was missing, when it went missing, or which transactions had led to loss. As it observed “*because the accounts in this case have been falsified it is not possible to distinguish between genuine errors and intentionally false claims*”. The Post Office further observed that a sub-postmaster is contractually liable to make good losses “*hidden or caused by his inaccurate record keeping*”. This is a position which is, or should clearly be informed by other material that demonstrated errors in the Horizon system, as opposed to

⁸⁶ POL00060981

⁸⁷ POL00052174

⁸⁸ POL00044810

⁸⁹ POL00065147

human errors. The Post Office in its response to the Second Sight inquiry observed that the loss was likely to have been caused by *“human action (for example poor controls in branch and/or user error”*. The difficulty with this is that material showing an alternative explanation was relevant both to the decision to charge and decision to pursue confiscation just as it was the decision to decline mediation in the case of Mr Wilson in 2014. That required that alternative explanation to be identified and considered. There is no evidence that such consideration occurred, and it will be for the Inquiry to determine whether at that time the alternative had been identified.

68. Those acting for Mr Wilson had to seek an extension to the period in which the confiscation order was to be met because of difficulties encountered in selling the branch⁹⁰.

Disclosure

69. In relation to disclosure, there is no evidence in the material I have seen of the actions of a disclosure officer beyond a schedule of unused material (equivalent to an MG6C), which he signed on 18th March 2009⁹¹. The content of this accords with the limited financial investigation that had been undertaken at the time that Mr Wilson was interviewed, and documents relating to that interview. It includes no material showing investigation of his training, contact with helplines or the operation of the Horizon system and, it follows, no evidence of disclosure in relation to such topics. The last of these was an issue raised by Mr Wilson’s interview, and therefore a matter in relation to which the disclosure of material undermining of the prosecution case or of assistance to his ought to have occurred at the primary disclosure stage. In fact, it is not clear if it was reviewed by the Reviewing Lawyer and in fact disclosed to the defence. I have also very belatedly seen a schedule of sensitive unused (MG6D)⁹² and a disclosure officer’s report (MG6E)⁹³, both of which are blank/identify no material and thus add nothing either to the disclosure position or evidence of review.

⁹⁰ POL00054846

⁹¹ POL00051194

⁹² POL00119096

⁹³ POL00119097

70. The advice from counsel, Anthony Vines of Civitas Law, dated 22nd May 2009⁹⁴, raised the question of whether issues had arisen in other cases in relation to the operation or reliability of Horizon. This appears to have resulted from a request to that effect being made on behalf of the defendant⁹⁵. He advised that *“I personally am not aware that Horizon has been found to be faulty in any respects but I would be grateful to have this point clarified. It is conceivable that other cases may have sought to take this point but in am not aware of this. If there are no issues about the system then of course a fair line can be taken. If there is material which is potentially disclosable then I am of course happy to advise”*. On the same topic, Richard Coles, Civitas Law, who prosecuted the PCMH⁹⁶ advised that *“consideration should be given to looking at the issue [of Horizon reliability] generally and a suitable employee from the organisation preparing a statement (for use in cases) that says that Horizon works perfectly well”*.
71. Despite this issue having been raised both before and at the time of Mr Wilson’s plea, there is 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.
72. The relevance of such cross-case issues was highlighted in Mr Wilson’s case by a letter his then MP, the Rt. Hon. Jacqui Smith MP. In her letter, sent to the CEO of the Post office in December 2009, she referred to issues with the operation of Horizon that had arisen in the case of Mr Wilson, and similar issues that had arisen in other cases including those of Hughie Thomas, Seema Misra and also referring to the Falkirk post office, which had arisen as an issue between experts in the Misra case. It is pertinent to observe that if such cross-case issues were obvious to Mr Wilson’s MP, they should have been all the more obvious to those concerned in those cases who also played a role in that of Mr Wilson. Despite this, there is no evidence that cross-case disclosure was considered.

⁹⁴ POL00044807

⁹⁵ POL00051920

⁹⁶ POL00051928

Assessment

73. There are many features in common between the investigation undertaken in the case of Mr Wilson and that of Mrs Skinner. As in her case, there were very real limitations as to the extent to which reasonable lines of enquiry were identified or pursued relating to the financial position of the suspect, their contact with helplines and the reliability of the Horizon system. In relation to financial enquiries, as with the case of Mrs Skinner, the extent of investigations at the confiscation stage underlines the limitations to investigative enquiries. These are of concern where the question of whether the suspect took money from the Post Office is at the core of the investigation and enquiring after evidence of that money, or the lack of it, is therefore central. Similarly, where the case is predicated on Horizon data, the lack of investigation of the accuracy of that data and whether complaints were made as to the operation of the system at an earlier stage are also central.
74. What makes the lack of investigation of such matters all the more concerning in the case of Mr Wilson is that his account in interview made each very clearly a reasonable line of enquiry. He denied taking the money, and asserted that there were issues with Horizon, and yet the obvious methods of testing that account, and of obtaining material that might either support or contradict it, were not pursued by the investigators. The failure to follow lines of enquiry identified by the interview is brought into sharp focus by the fact that Mr Wilson recounted exchanges with his managers about Horizon, and yet no enquiry was made of those managers to determine if they accepted his account. Equally concerning is the fact that they were not identified by the reviewing lawyer, whose role included the identification of lines of enquiry that ought to have been pursued. In Mr Wilson's case, it is right to note that counsel instructed identified the need to address the reliability of the Horizon material. However, his focus was as to meeting the requirements of the business records hearsay exception, and section 117, Criminal Justice Act 2003, rather than requiring the obtaining of the ARQ data to allow for the reliability of this material to be tested.
75. The charging decision was again very limited in length and in scope. The charge of theft was identified as appropriate without any consideration of the elements of the

offence, in particular as to evidence of appropriation or dishonesty. On one view, the fact that the reviewing lawyer advised that theft be pursued at the same time that he identified that a plea to false accounting would be sufficient accords with the view that theft was charged to encourage such a plea to false accounting. It is to counsel's credit that they identified that theft was untenable and advised that charges under the Fraud Act be brought instead. The fact that this advice was accepted with alacrity also supports the view that the theft charge should never have been there.

76. What is concerning is that the focus at the stage that counsel advised as to the indictment was on the recovery of the loss. This concern also guided the prosecution's approach to the basis of plea that was advanced by the defendant and the decision to pursue confiscation to recover a loss of which the plea did not involve Mr Wilson accepting responsibility. The approach taken in this case, and indeed that of Mrs Skinner suggested that prosecution was viewed primarily as a mean to recover the loss identified by the system. In reaching the decision to seek confiscation, the prosecution was required to consider whether such a course was warranted, by reference to what was known about the financial position of the individual, and by reference to that of which the individual had been convicted. I have not seen evidence of such a thought process at work here.
77. Once again, the limitations of the investigation led to the inadequacies of the disclosure process. Given the issues raised by Mr Wilson in interview, it was appropriate to obtain the underlying Horizon data both to test its reliability and to allow the defence to do so once it had been disclosed. It was appropriate to investigate whether Mr Wilson had sought to call helplines, and to speak to his managers, to test whether or not he had been reporting problems at the time, and to at least disclose the results where they supported his account. It was appropriate to investigate Mr Wilson's finances to determine if there was any evidence of financial benefit to him, and if not, to at least disclose the results.
78. Another important limitation so far as disclosure is concerned is that cross-disclosure between cases was raised as an issue on Mr Wilson's behalf by counsel, and identified by prosecution counsel as a relevant area of disclosure if similar issues as to the reliability and operation of Horizon had arisen elsewhere. There is no evidence that such disclosure occurred. Those making and reviewing prosecutorial decisions in this

case would have been aware of the issues that had arisen elsewhere, and the potential at least for those issues to be relevant for disclosure here. There is no evidence that the acted on that, or that proper disclosure of issues from earlier cases were either identified or addressed.

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 2A - APPENDIX

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Case law

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