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Case No: 2021 00183, 01818, 01796, 01804, 01805, 01807, 01836, 02940 & 03403 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2021

Before :

LORD JUSTICE HOLROYDE

MR JUSTICE PICKEN

and

MRS JUSTICE FARBEY DBE

Between :

ROGER ALLEN and OTHERS

- and -

POST OFFICE LIMITED

CROWN PROSECUTION SERVICE

Appellant

Respondent

T Moloney QC and Ms K O'Raghallaigh (instructed by Hudgells Solicitors) for Roger Allen and Alan Robinson

Ms K O'Raghallaigh (instructed by Hudgells Solicitors) for the Pauline Stonehouse, Angela Sefton, Janine Powell, Anne Nield, Gregory Harding, Marissa Jane Finn and Jamie Dixon S Baker QC, Ms J Carey and Ms Brewer (instructed by Peters & Peters Solicitors LLP) for the respondent Post Office Limited

T Little QC and J Polnay instructed by Crown Prosecution Service for the respondent Crown Prosecution Service

Hearing date : 22 November 2021

Approved Judgment

Lord Justice Holroyde:

1. On 22 November 2021 the court considered the cases of nine former sub-postmasters and sub-postmistresses (“SPMs”) who sought to appeal against their convictions many years ago for offences of dishonesty. In two of the cases, namely those relating to Roger Allen and Alan Robinson, we reserved judgment. In the remaining seven, we allowed the appeals and indicated that we would give our reasons in a written judgment at a later stage. This is the judgment of the court, to which each of us has contributed.
2. Each of the applicants contended that his or her conviction was unsafe on grounds relating to the reliability of the computerised accounting system, “Horizon”, which was at all material times used by their employer, the Post Office (“POL”). Issues relating to Horizon have been considered by this court in two previous cases earlier this year: *The Queen v Josephine Hamilton and others* [2021] EWCA Crim (“Hamilton”) and *The Queen v Robert Ambrose and others* [2021] EWCA Crim 1443 (“Ambrose”). In *Hamilton* we set out the circumstances in which issues had arisen as to the reliability of Horizon, and we referred to two of the judgments given by Fraser J in civil proceedings brought in the High Court by claimants representing hundreds of SPMs. We also explained why it was possible in law for appeals to come before the court many years after the convictions concerned, and why the fact that an applicant had pleaded guilty was not necessarily a bar to a successful appeal.
3. Our judgment in *Hamilton* reflected on the legal principles applicable to the two grounds of appeal which had been advanced by all the appellants in that case, namely (1) that the reliability of Horizon data was essential to the prosecution and, in the light of all the evidence including Fraser J’s findings in the High Court, it was not possible for the trial process to be fair (“category 1 abuse”); and (2) that the evidence, together with Fraser J’s findings, showed that it was an affront to the public conscience for those appellants to face prosecution (“category 2 abuse”). We used the shorthand term “Horizon case” to refer to a case in which the reliability of Horizon data was essential to the prosecution, and in which there was no independent evidence of an actual loss from the account at the branch post office concerned, as opposed to a Horizon-generated shortage. We found that 39 of the appeals were “Horizon cases” and allowed the appeal in each of those cases. We dismissed a number of appeals in what we found were not “Horizon cases”.
4. Similar grounds of appeal were put forward by those whose applications we considered in *Ambrose*. Each of those was a “Horizon case” and each of the appeals was allowed.
5. Two of the present cases, those of Mr Allen and Mr Robinson, were prosecuted by the Department for Work and Pensions (the “DWP”). The other cases were prosecuted by POL. In each of the cases, the principal issue is whether the case was a “Horizon case”.
6. It is unnecessary for us to repeat all that was said in our previous judgments, to which reference should be made for further detail. For present purposes it is sufficient to say that in *Hamilton* we were satisfied, in relation to Ground 1, that throughout the relevant period there were significant problems with Horizon, which gave rise to a material risk that an apparent shortfall in the accounts of a branch post office did not

in fact reflect missing cash or stock, but was caused by one of the bugs, errors or defects which (as Fraser J had found) existed in Horizon. We also concluded that during the relevant period POL knew that there were serious issues about the reliability of Horizon, and had a clear duty to investigate all reasonable lines of enquiry, to consider disclosure and to make disclosure to the appellants of anything which might reasonably be considered to undermine its case. POL failed adequately to consider or to make relevant disclosure of problems with or concerns about Horizon, and instead asserted that Horizon was robust and reliable. We were also satisfied that POL had consistently failed to be open and honest about the issues affecting Horizon and had effectively steamrolled over any SPM who sought to challenge its accuracy.

7. At paragraph 123 of our judgment in *Hamilton* we expressed the following conclusion about the pervasive failures of investigation and disclosure which went to the heart of the prosecution in the “Horizon cases”:

“Whatever charges were brought against an individual appellant, and whatever pleas may ultimately have been accepted, the whole basis of each prosecution was that money was missing from the branch account: there was an actual shortfall, which had been caused by theft on the part of the SPM, or at best had been covered up by false accounting or fraud on the part of the SPM. But in the “Horizon cases”, there was no evidence of a shortfall other than the Horizon data. If the Horizon data was not reliable, there was no basis for the prosecution. The failures of investigation and disclosure prevented the appellants from challenging, or challenging effectively, the reliability of the data. In short, POL as prosecutor brought serious criminal charges against the SPMs on the basis of Horizon data, and by its failures to discharge its clear duties it prevented them from having a fair trial on the issue of whether that data was reliable.”

8. We went on, in that judgment, to rule that the same acts and omissions may in law provide a basis for a finding of both of the categories of abuse of process to which we have referred. In the successful appeals in *Hamilton*, and again in *Ambrose*, we concluded that POL’s failures of investigation and disclosure had been so egregious as to make the prosecution of any of the “Horizon cases” an affront to the conscience of the court. In *Hamilton*, at paragraph 137, we concluded:

“By representing Horizon as reliable, and refusing to countenance any suggestion to the contrary, POL effectively sought to reverse the burden of proof: it treated what was no more than a shortfall shown by an unreliable accounting system as an incontrovertible loss, and proceeded as if it were for the accused to prove that no such loss had occurred. Denied any disclosure of material capable of undermining the prosecution case, defendants were inevitably unable to discharge that improper burden. As each prosecution proceeded to its successful conclusion the asserted reliability of Horizon was, on the face of it, reinforced. Defendants were prosecuted,

convicted and sentenced on the basis that the Horizon data must be correct, and cash must therefore be missing, when in fact there could be no confidence as to that foundation.”

9. The judgments in the two earlier cases have informed the approach taken by the solicitors and counsel for all parties in their preparation and presentation of the applications in the present cases. We are again very grateful to them, and to the officials in the Criminal Appeal Office who have had conduct of these appeals, for the care, thoroughness and professionalism which they have shown throughout. The court has been greatly assisted by the cooperative approach which all those involved have taken.
10. The present cases come before the court by differing routes. Mr Allen’s case was referred to this court by the Criminal Cases Review Commission (“CCRC”). Mr Robinson’s case was a renewed application for an extension of time and for leave to appeal against conviction, following refusal by the single judge. We will return to those two cases later in this judgment.
11. It is convenient to consider first the applications for extensions of time and for leave to appeal against conviction made by Ms Stonehouse, Ms Sefton, Ms Nield, Ms Powell, Mr Harding, Ms Finn and Mr Dixon. Those applications were referred to this court by the Registrar, having been identified by POL as cases in which the respondent did not oppose the appeals.
12. POL have accepted that each of these seven cases was a “Horizon case” in which there was no independent evidence of the loss which was asserted by the prosecution on the basis of Horizon data, and in which it was or may have been the case that the investigation, and the disclosure of material relating to the reliability of Horizon, fell short of what was required. In two of the cases, those of Gregory Harding and Jamie Dixon, it is accepted that the prosecution at the time imposed an improper condition on its acceptance of their respective guilty pleas, namely that nothing should be said in mitigation to cast doubt on the reliability of Horizon.
13. It is right to record that in the brief oral submissions made by counsel on behalf of these seven applicants, each expressed gratitude to POL’s legal representatives for the way in which they have dealt with these applications and for their assistance in enabling the court to bring the appeals to a conclusion much sooner than might otherwise have been the case. In these, and the earlier, appeals, POL has been diligent in conducting a most extensive disclosure exercise, has rightly acknowledged the serious failings in the original prosecutions and has fairly made important concessions.
14. It is of course for the court to decide whether a conviction is unsafe. Having considered the written and oral submissions, and taking into account the difficulties caused in some of the cases by the loss of relevant documents and/or the lack of available material, we were satisfied that the decisions not to oppose the appeals in these seven cases were realistic and appropriate, and that the appeals should succeed. Although it was not practicable to give a full judgment, it was clearly appropriate for the court to announce its decisions immediately and so bring an end to the long period during which the applicants had borne the burden of their convictions. In each of

these seven cases we therefore granted the applications for an extension of time and for leave to appeal against conviction and quashed the convictions.

15. We can now go into a little more detail about the individual appellants in those seven cases.

The cases which are unopposed

Pauline Stonehouse

16. On 7 July 2008, in the Crown Court at Newcastle Upon Tyne before HHJ Faulks, Pauline Stonehouse pleaded guilty to six counts of false accounting. POL alleged that she had made false cash declarations on branch trading statements on six different dates. On 1 August 2008, in the Crown Court at Durham, she received a six-month community sentence order with a supervision requirement. There was no order for confiscation, compensation or costs because Ms Stonehouse had by then been made bankrupt and her home had been repossessed.
17. On 18 April 2007, a POL representative had attended Ms Stonehouse's branch to provide her with Horizon training at her request. She had reported large discrepancies and believed that she could be doing something wrong. Having observed her, the POL representative considered that she was using the Horizon system correctly. He recommended certain steps including a visit by an engineer to check some hardware. After a POL event on 29 May 2007, Ms Stonehouse broke down in a conversation with a Business Development Manager. She said that she was losing thousands of pounds and was repaying large losses from her salary. She blamed Horizon.
18. On 31 May 2007, Ms Stonehouse spoke to another Business Development Manager following which she signed a handwritten statement saying that she had incurred losses for the last few months which she had rectified on Horizon without putting in cash. POL then carried out an audit of the branch and a total shortfall of £15,699.16 was identified. Call logs show that Ms Stonehouse had before then phoned POL's National Business Support Centre Helpline to report and seek advice about discrepancies and shortages showing on Horizon.
19. On 7 June 2007, Ms Stonehouse was interviewed. She agreed that she had inflated her cash figure to conceal the shortfall. She denied stealing any of the money. She said that she knew it was wrong to declare a false figure but she did not know what else to do.
20. In a defence statement dated 15 February 2008, Ms Stonehouse denied dishonesty and expressly raised the reliability of Horizon. She said that she would require an expert to analyse the POL accounts and the accounting system which was open to abuse. In correspondence of the same date, her solicitors emphasised concerns about Horizon:

“we are not satisfied...that the Prosecution's case about discrepancies in the balances are indeed accurate and there are, as we understand it, concerns nationwide with regard to the reliability of [Horizon]...”

21. It appears that ARQ data relating to the period of the six charges was obtained and served on the defence. POL made arrangements for a defence forensic accountant to view the Horizon hard drive. A POL memo indicates that Ms Stonehouse pleaded guilty on a basis of plea, accepted by POL, that she had been covering up a shortfall.
22. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. She was entitled to a proper investigation into the reliability of Horizon and to receive disclosure in relation to Horizon issues. POL accepts that this did not happen and that Ms Stonehouse's prosecution was therefore both unfair and an affront to justice. In our judgment, notwithstanding her guilty pleas, Ms Stonehouse's convictions are unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash her convictions.

Angela Sefton and Anne Nield

23. On 11 April 2013, in the Crown Court at Liverpool before HHJ Hatton, Angela Sefton and Anne Nield each pleaded guilty to one count of false accounting with which they were jointly charged. The allegation against them was in short that between 1 January 2006 and 6 January 2012 they had falsified giro deposit entries on Horizon in relation to the receipt of £34,115.50 in donations made to the charity Animals In Need.
24. On 13 May 2013, Ms Sefton was sentenced to six months' imprisonment suspended for 12 months. Ms Nield was sentenced to five months' imprisonment which was also suspended for 12 months. They were each made the subject of a twelve-month supervision requirement and a requirement to complete 20 sessions on the Women's Turn Around programme.
25. Ms Nield was employed as the branch manager in the Fazakerley Post Office where Ms Sefton was employed as a clerk. Their employer was the SPM but he was rarely at the branch owing to illness. In 2006, the SPM identified an unexplained shortage of £4,000. He paid half of the shortage and they paid the other half. He told them that, from then on, they would be responsible for all losses.
26. In December 2011, Santander bank contacted POL following a complaint to Santander by Animals in Need that there was a significant delay between money being deposited in the Fazakerley Post Office and payment into the charity's bank account. This triggered an investigation.
27. POL audited the branch on 6 January 2012. During the audit, 40 giro deposit slips and a number of cheque envelopes were recovered from a cupboard which showed suppressed deposits in the sum of £34,219. Ms Sefton and Ms Nield handed the auditor a jointly-signed letter in which they said that they had tried to repay shortages by using their own credit cards and their holiday money. They had eventually run out of funds. As a result, they began to cover up shortages by delaying the processing of business deposits to Santander and to one other bank. They could not explain the shortages. They had reached "breaking point" in that their lives and health had been deeply affected.
28. On 20 January 2012, Ms Sefton and Ms Nield were each interviewed. Ms Sefton said that they had only ever delayed payments and had never withheld them. Animals in Need had been significantly affected because the charity had continued to use giro

deposit slips which needed a date stamp rather than (as in nearly all other cases) moving to a swipe card or bar code system. She and Ms Nield did not report the losses because they were “too terrified.” It appears that Ms Nield gave a broadly similar – or at least consistent – account. She said that she did not know where the shortages were coming from.

29. Both Ms Sefton and Ms Nield submitted defence statements which questioned whether the losses were genuine or Horizon-generated. They requested relevant disclosure and access to Horizon for the purpose of examination by a forensic accountant. In a letter dated 28 August 2012, solicitors on behalf of POL asserted that material relating to Horizon was not disclosable because the case turned on the deposit slips which formed no part of Horizon.
30. Ms Nield repeated the disclosure request with the result that POL agreed that a defence expert should be allowed to attend the branch to analyse the data. POL served a witness statement by Gareth Jenkins in which he maintained that there was no problem with Horizon.
31. Call logs show that some difficulties with Horizon had been sporadically reported to POL between 2005 and 2011. Other records show numerous difficulties with Horizon in 2009.
32. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution both of Ms Sefton and of Ms Nield. POL failed to carry out a proper investigation into Horizon issues and failed to disclose full call logs and other records indicating that there had been problems with Horizon at the branch. In addition, Mr Jenkins had informed POL’s solicitors that he had “no information regarding complaints or investigations into Horizon, and it has already been established that it is not possible to examine the original Horizon system that was operational until 2010. Similarly, I have not been presented with any audit data relating to any of these cases to examine.” These defects in Mr Jenkins’ evidence were not disclosed. Nor were two earlier, relevant reports disclosed.
33. In these circumstances, POL accepts that the prosecution of Ms Sefton and of Ms Nield was unfair and an affront to justice. In our judgment, notwithstanding their guilty pleas, their convictions are unsafe. We extend time in both cases, grant leave to appeal and allow the appeals of Ms Sefton and Ms Nield on Ground 1 and Ground 2. We quash their convictions.

Janine Powell

34. On 25 September 2008, in the Crown Court at Exeter before HHJ Elwin, Janine Powell was convicted of theft. The shortfall alleged was £71,228.14. On 23 October 2008, she was sentenced to 18 months’ imprisonment. The documentation relating to her prosecution is incomplete but the following picture emerges.
35. On 21 February 2007, Ms Powell’s branch was audited revealing the shortfall. Transaction logs showed that a £70,000 cash discrepancy had arisen in her stock account about a week before the audit and just before Ms Powell had taken a week’s leave from work. A POL “Interim Investigation” regarded the combination of the discrepancy and Ms Powell’s absence from work as suspicious. On the afternoon of

the audit, Ms Powell attended the branch. She said that she could not explain the shortage. Subsequent analysis of Horizon data revealed further cash discrepancies and, following further enquiries, the inference was drawn that the cash figures on branch trading statements were being manipulated in order to balance the books.

36. On 26 February 2007, Ms Powell was interviewed. She said that she had made the £70,000 transfer but did not know why she had made it. She was interviewed again on 20 April 2007 primarily in relation to two cheques written out to POL for £30,000 which she stated were not connected to the £70,000 transfer.
37. In her defence statement dated 28 February 2008, Ms Powell took issue with the allegation that over £70,000 was missing. In June 2008, ARQ data was provided to the defence. On about 16 August 2008, Ms Powell served a supplementary defence statement which again challenged the alleged loss. On behalf of POL, Mr Jenkins provided a witness statement (which is no longer available). He was not required to give evidence.
38. Given that Ms Powell accepted making the £70,000 transfer, we agree with POL that the fact of that transfer was not dependant on the reliability of Horizon data. However, POL does not now know whether there was any independent evidence of an actual loss; and the reliability of Horizon was in issue.
39. In these circumstances, and based on the facts of this particular case, POL is prepared to accept that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. POL accepts that Ms Powell's prosecution was unfair and an affront to justice. In our judgment, her conviction is unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash her conviction.

Gregory Harding

40. On 16 September 2010, in the Crown Court at Bradford before HHJ Rose, Gregory Harding pleaded guilty to one count of false accounting. The particulars of the offence were that between 30 September 2005 and 30 September 2009, he had falsified branch trading statements. A further count of theft was ordered to lie on the file. On 5 November 2010, Mr Harding was sentenced by Recorder Keen to 20 weeks' imprisonment suspended for 12 months with a requirement of 200 hours' unpaid work. No confiscation order was made because Mr Harding had by then repaid in full the alleged shortfall of around £20,000. He was ordered to pay POL's costs in the sum of £1,948.
41. The shortfall was identified during a branch audit on 30 September 2009. Mr Harding was interviewed on 6 October 2009. He denied stealing money. He said that he had experienced losses over four years but could not explain how they had happened. He had thought that the losses would sort themselves out by way of transaction corrections. He admitted to balancing the apparent losses by falsifying the figures.
42. There are no POL call logs to show that Mr Harding reported unexplained shortfalls but there are some records indicating that the branch had some balancing problems.

43. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. Mr Harding had clearly stated to POL that he had experienced unexplained losses for a period of four years and stated that he had had to falsify the branch trading statements only in order to balance the branch accounts.
44. These factors are sufficient for the court to quash Mr Harding's conviction on both Grounds 1 and 2. We were however presented with further information which bolsters our conclusion that Mr Harding's prosecution should not have been pursued and which forms an additional basis for POL's concession under Ground 2. Prosecution Counsel's note from the hearing at which Mr Harding entered his guilty plea states that he pleaded guilty on the basis that the money was lost through neglect without any suggestion of fault in Horizon. A handwritten note, written by a POL prosecution lawyer on the case, recorded a conversation with Prosecution Counsel. It records that POL would not accept any claim that Horizon was to blame and that Prosecution Counsel was asked to resist this. It appears that the defence were informed that the guilty plea would not be acceptable to POL if Mr Harding sought to blame Horizon for the losses.
45. As POL accepts, it was improper to make the acceptance of a guilty plea conditional on not blaming Horizon. In our judgment, this additional factor is in itself bound to bring the justice system into disrepute, providing further strong reason to allow the appeal under Ground 2. We conclude that, notwithstanding his guilty plea, Mr Harding's conviction is unsafe. His prosecution was unfair and an affront to justice. We allow his appeal on Ground 1 and on Ground 2. We quash his conviction.

Marissa Finn

46. On 15 September 2009, in the Crown Court at Durham before HHJ Lancaster, Marissa Finn pleaded guilty to one count of false accounting. She was sentenced to 26 weeks' imprisonment suspended for six months with supervision and residence requirements. She was ordered to pay £27,407.43 compensation and £500 towards POL's costs.
47. The prosecution was based on a shortfall discovered during a branch audit in August 2008. Ms Finn told the auditor that she expected to be around £25,000 short in cash. She admitted that she had inflated the cash on hand figure to balance the overall figures, saying that she might have thrown away £25,000 in cash with the rubbish. She had piled money intended for the ATM on the floor when a bin bag had split causing rubbish to spill out of it. We understand her to have meant that the rubbish and the ATM money became intermingled on the floor so that the money was accidentally thrown away with the rubbish.
48. Ms Finn was interviewed on 5 September 2008. She denied having stolen the money. She repeated her account of the bin bag. She said that she usually put around £140,000 into the ATM. Given that large amount, she did not notice at the time that some of the money on the floor had been lost. The rubbish had been collected before she had discovered the shortfall. She had made a declaration as if the cash was still there because she thought that it might turn up. She continued thereafter to make false declarations to cover up the loss.

49. There are no call logs to suggest that Ms Finn reported any Horizon problems or unexplained shortfalls. It does not appear that ARQ data was obtained.
50. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. While POL does not accept that she advanced an honest account in interview, it is accepted that she could have been attempting to provide a sympathetic account of an unexplained shortfall rather than saying that she could not explain it at all.
51. In these circumstances, POL accepts that Ms Finn's prosecution was unfair and an affront to justice. In our judgment, notwithstanding her guilty plea, Ms Finn's conviction is unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash her conviction.

Jamie Dixon

52. On 30 May 2013, in the Crown Court at Exeter before HHJ Gilbert QC, Jamie Gilbert pleaded guilty to one count of false accounting. The particulars were that between 5 January 2011 and 18 August 2011 he had made false cash declarations on branch trading statements such as to overstate the branch balance by £14,222.02. He was sentenced on the same day to 12 months' imprisonment suspended for two years. There was no order for compensation or confiscation but, by the date of sentence, Mr Dixon had already paid around £9,000 towards the alleged shortfall and had agreed to pay the balance. He was ordered to pay £500 in costs.
53. At a branch audit on 18 August 2011, Mr Dixon had said that he expected the branch to be around £5,000 short. In a letter to POL written shortly after the audit, Mr Dixon stated that he had not taken any money and that he had always made good any losses shown on Horizon.
54. In his interview on 13 October 2011, he gave detailed answers to questions. He accepted that he had deliberately inflated the cheque figures on some branch trading statements in order to get a larger cash remittance into the branch as he did not always have enough cash to operate. He had entered incorrect figures on daily cash declarations in order to ensure that a higher cash remittance was received. He denied stealing any money or falsifying accounts to cover up shortages.
55. In October 2011, the POL investigator requested ARQ data for Horizon covering the period from 4 January 2011 to 18 August 2011. Analysis of that data caused the investigator to infer that Mr Dixon was trying to hide a branch shortage in order to avoid his contractual duty to make good any losses.
56. In his defence statement dated 24 July 2012, Mr Dixon denied dishonesty. He attributed any loss to confusion on his part (owing to the effects of illness) and a lack of understanding of the accounting system. He challenged the alleged £14,222.02 shortfall. He said that he did not have confidence in Horizon and disputed that money was missing.
57. Mr Dixon entered a plea of not guilty to a count alleging fraud at a hearing on 3 August 2012. We have been told that there was reference during that hearing to the fact that criticism of Horizon was likely to form part of the defence case. It appears

that the judge directed POL to provide copies of the daily transaction reports for the indictment period to enable a defence forensic accounting expert to prepare a report. By letter dated 31 August 2012, Mr Dixon's solicitors complained to POL that they had not received adequate disclosure. POL obtained a witness statement from Mr Jenkins which asserted the general reliability of Horizon. It is no longer clear whether that report was served on the defence.

58. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. POL accepts that Mr Dixon's apparent admissions in interview amounted to him giving his best guess as to the cause of the alleged losses rather than a definitive explanation. He made clear that he could not explain the majority of the transactions he was being asked about or the overall shortfall. He had expressly raised the reliability of Horizon both in his defence statement and in open court on 3 August 2012. Given that POL knew that Horizon reliability was in issue, POL was under a duty to investigate and make disclosure of what was known at the time that could have undermined its own case about the reliability of Horizon. That did not happen.
59. These factors are sufficient for the court to quash Mr Dixon's conviction on both Grounds 1 and 2. We were however presented with further information which bolsters our conclusion that Mr Dixon's prosecution should not have been pursued and which forms an additional basis for POL's concession under Ground 2. On 15 February 2013, Mr Dixon's solicitors wrote to POL's solicitors asking whether a guilty plea to false accounting rather than fraud would be acceptable. On 25 February 2013, the defence was informed that a guilty plea to false accounting would be acceptable to POL on the conditions that Mr Dixon continued to make repayments and that it was confirmed in writing that there would be "no criticism made towards the functioning and reliability of the Horizon system."
60. In a written basis of plea dated 26 March 2013, Mr Dixon accepted that he had dishonestly made false entries on Horizon in an attempt to conceal the shortfall. He confirmed that he was repaying the alleged shortfall. He stated that he made "no criticism of the function and reliability of the Horizon accounting system". POL accepted his plea on this basis.
61. As POL accepts, it was improper to make the acceptance of a guilty plea conditional on not criticising Horizon. In our judgment, this additional factor is in itself bound to bring the justice system into disrepute, providing further strong reason to allow the appeal under Ground 2. We conclude that, notwithstanding his guilty plea, Mr Dixon's conviction is unsafe. His prosecution was unfair and an affront to justice. We allow his appeal on Ground 1 and on Ground 2. We quash his conviction.

The cases which are opposed

62. We turn next to the cases of Mr Allen and Mr Robinson. As we say, these were both prosecuted not by POL but by the DWP (represented before us by the CPS, acting by Mr Little QC). Mr Allen appeals against conviction pursuant to a reference by the CCRC, whereas Mr Robinson renews his application for leave to appeal against conviction after refusal by the single judge. Both additionally make applications to adduce fresh evidence.

Roger Allen

63. On 13 February 2004, in the Crown Court at Norwich before HHJ Curl, Mr Allen pleaded guilty to the theft of £37,250.71 between 30 June 2000 and 10 November 2002. He was subsequently, on 7 April 2004, sentenced to six months' imprisonment and also ordered to pay £12,500 in compensation.
64. This is a case in which there is very little by way of surviving paperwork. What there is consists of a draft indictment, the Crown Court log and a call log relating to certain calls which were made to POL, together with a pre-sentence report dated 9 March 2004 which was prepared for the purposes of Mr Allen's sentencing hearing and a letter dated 9 September 2003 by Mr Allen's then solicitors, Hatch-Brenner, after an earlier hearing before the Crown Court which took place on 5 September 2003. These latter two documents were produced shortly before the hearing of the appeal, having been located in a file retained by Mr Allen's daughter who lives in Australia.
65. Mr Allen was at all material times a SPM at St Johns Close in Norwich. Not long after Horizon had been introduced at his post office there, Mr Allen made a telephone call to POL, on 10 August 2000, in which he referred to a £30 bounce back from Horizon/Reversals. Other than that, there is no evidence that he made any other call to POL and/or the Horizon helpdesk to complain about Horizon. A telephone call was made, however, not by Mr Allen but by somebody else, on 28 October 2002, referring to a Horizon balancing issue shortfall at the St Johns Close post office.
66. Later that same year, most likely in November 2002, Mr Allen was interviewed under caution in relation to allegations of fraud and theft. During those interviews, Mr Allen was shown a large number of unsigned pension dockets.
67. On 7 March 2003, Mr Allen and his wife were committed for trial to the Crown Court.
68. On 11 July 2003, Mr Allen and his wife were arraigned on a single count indictment containing the theft count to which we have referred. They each pleaded not guilty.
69. On 13 February 2004, as far as can be ascertained the day of trial, Mr Allen changed his plea to guilty, the prosecution deciding on that basis not to proceed further against his wife.
70. There was no appeal against conviction or sentence. However, much later, Mr Allen made an application to the CCRC. In support of that application, Mr Allen provided a statement dated 17 December 2018, in which he had this to say concerning Horizon:

"I found the Horizon system had some flaws, I would find that [with] the weekly accounting balance was often over or there was a short fall, anything between £200-£500 a week. After advice I was told that this was normal and that it usually corrected itself the following week."
71. In giving its reasons for the referral, as set out in a document dated 12 January 2021, the CCRC had this to say at paragraph 12:

“... the CCRC ... understands from Mr Allen that the prosecution case against him featured evidence of unsigned pension dockets. Mr Allen has informed the CCRC that ‘many customers were drawing other people’s pensions’. In the absence of any case files for Mr Allen’s case, it is unclear to the CCRC how bugs, errors or defects in the Horizon system might have affected pension payments. The CCRC has attempted to clarify this with Mr Allen, but the point has remained unresolved ...”.

72. The CCRC went on, in the next paragraph (paragraph 13), to describe its decision to make a referral as being “finely balanced”, before then saying this at paragraph 14:

“... having considered the available information, the CCRC has concluded that there is a real possibility that Mr Allen’s conviction would be overturned by the Court of Appeal. On the information which is before the CCRC, it appears that unexplained balancing problems when using the Horizon system were an important part of the context to Mr Allen’s guilty plea to theft. Although Mr Allen has referred to prosecution evidence regarding unsigned pension dockets, the CCRC does not consider that anything in Mr Allen’s recent correspondence contradicts his assertion that balancing problems in the branch accounts were the result of flaws in the Horizon system. In the view of the CCRC there is a plausible scenario in which the losses in this case were indeed Horizon-related, if Horizon errors resulted in the recording of pension payments that had not in fact been made and so were not supported by signed pension dockets.”

73. On that basis, the CCRC explained, in paragraph 15, that it considered “that the reliability of Horizon data was essential to the prosecution and conviction of Mr Allen” and that the abuse of process arguments which we have described in paragraph 3 above “are applicable to this case”.
74. On 16 July 2021, and so after we handed down our judgment in *Hamilton*, Mr Allen submitted Grounds of Appeal based on the reasons advanced by the CCRC in its referral. At the same time, Mr Allen also made an application to rely upon fresh evidence in the form of his statement dated 17 December 2018.
75. Mr Allen additionally seeks to rely upon three expert’s reports from Mr Ian Henderson, the forensic accountant who gave evidence both before Fraser J and before us in *Hamilton* (see the judgment at [383]) who is also a director of Second Sight, the company which was appointed by POL to conduct an independent inquiry between 2012 and 2015 and which was involved in the associated mediation scheme. These reports were dated 19 August 2021, 31 August 2021 and 29 October 2021.
76. The prosecution, for its part, has its own fresh evidence application under which it seeks permission to adduce fresh evidence from the original DWP investigator, Mr. Stephen Allsop, in the form of a statement dated 19 May 2020 and a further statement dated 19 November 2021.

77. We will return, in a moment, to the evidence which we permitted to be given before us on a *de bene esse* basis at the hearing of Mr Allen's appeal by both Mr Allsop and Mr Henderson. Before doing so, however, we should explain that Mr Allen also sought to rely upon a further statement made by him, dated 9 July 2021, in which he sought to address the contents of Mr Allsop's statement dated 19 May 2020 by describing his practice as being to record pension payments manually and not by way of scanning pension claimants' books. Mr Allen added in this statement that he retained "paid dockets" in order to reconcile them. Mr Allen believed that in his statement Mr Allsop was describing mechanisms which were introduced after the indictment period in his case.
78. It is this dispute between the respective witnesses as to the particular way in which Horizon featured (if it featured at all) in the transactions in question, which lies at the heart of Mr Allen's appeal. This is because it is only if Mr Allen can show that his was a "Horizon case" in which there was no independent evidence of the loss which was asserted by the prosecution on the basis of Horizon data that his appeal can succeed.
79. Having considered the material which was deployed before us, including not only the contents of Mr Allen's two statements but also the evidence (both written and oral) which was given by Mr Henderson and Mr Allsop, we are wholly unpersuaded by the suggestion made by Mr Moloney QC on Mr Allen's behalf that this is, indeed, a "Horizon case". We say this for a number of reasons.
80. First and most fundamentally, even assuming that Mr Henderson were right when he suggested that Horizon played a role in the scanning/recording of pension payments, it does not follow that any defect in Horizon is the explanation for the shortfalls which resulted in the proceedings which were brought against Mr Allen. Nor, in our view, is that even arguably the case.
81. We observe, indeed, that it was Mr Allen's own evidence, as contained in the statement dated 9 July 2021 in which he dealt with the explanation given by Mr Allsop to the effect that there was a DWP barcode computer system separate and apart from Horizon, that there were no facilities to scan at all (whether, it seems, as part of Horizon or as part of a separate DWP system). On the contrary, according to Mr Allen, he did not scan but instead payments were "recorded in the Horizon system manually as opposed to being automatically recorded after scanning the books". If Mr Allen is right about that, then, it is difficult to see, and has not been explained, how Horizon can be responsible for any shortfalls.
82. As far as the evidence which was given by Mr Henderson is concerned, he was asked by the solicitors acting for Mr Allen to report on the processes which were in place at the relevant time (2000 to 2002) relating to the activation and use of pension and allowance books and specifically how Horizon operated in relation to them. To this end, he looked at various Horizon-related documentation. That included an extract from sub-section 9 of the Horizon System User Guide, which he considered shows that procedures relating to the activation and use of pensions and allowance order books were an integral part of the Horizon computer system as early as July 2000. Specifically, he stated as follows in paragraph 21 of his first report:

“The element of Horizon dealing with the activation and use of Pension and Allowance. Order Books is known as the Order Book Control Service or ‘OBCS’. This is an automated system for checking bar-coded order books against an electronic stop list. Normally, order books would be scanned using the Horizon bar-code scanner, but if the scanner was not working, or if Horizon was off-line, order books could be checked against a printed copy of the stop list generated by the Horizon system.”

83. He referred also in the same report to a further manual concerned with “P&A_Girocheques&MilkTokens” dated December 2004. He explained that this describes the procedures to be used for activation and use of pension and allowance books in 2004, adding that he assumed that similar procedures were in place throughout the period from 2000 to 2004. His conclusion, set out at paragraph 27 of that report, was as follows:

“There is substantial evidence that throughout the period 2000 to 2004, barcode scanning of order books was an integral part of the Horizon computer system and not a stand-alone system.”

84. Mr Henderson was clear that Mr Allen cannot be right to say that he engaged in manual processes as opposed to scanning. He reiterated this when he came to give oral evidence before us. We share his assessment. In any event, as we say, if Mr Allen were right about this, it would not assist his case on this appeal. That, contrary to Mr Allen’s recollection, there must have been scanning, rather than manual input, is nonetheless not the end of the inquiry. This is because, we repeat, it was Mr Allsop’s evidence before us that there was a separate DWP barcode scanning system which was not linked to Horizon. It was that other (DWP) system, Mr Allsop went on to explain in his second statement and in his oral evidence, which the SPM would use to scan the order book before then entering the transaction into Horizon separately in order to create a separate Horizon record. It was the DWP system, not Horizon, which would then be the subject of any subsequent DWP investigation and which would serve as the evidence used for the purposes of any DWP prosecution.
85. We have not found it easy to decide what in this respect the position was. We bear in mind that Mr Henderson has only been able to make an assumption that the position as described in the December 2004 document would have been the same in earlier years since he has not been able to locate a previous version which deals with the prior period. We nonetheless consider there to be substance in a point made by Mr Henderson when giving his oral evidence, namely that it is difficult to see why there would be a separate system to Horizon given what Horizon was intended to do. It would have made little sense, in particular, to require SPMs to have to engage in two separate scanning processes. Nor, we are bound to observe, is there any suggestion in the documentation which Mr Henderson has looked at that there was a separate scanning system also in operation.
86. In the circumstances, whilst we have no reason at all to suppose that Mr Allsop’s recollection was anything other than genuinely held, we conclude that he must have been mistaken when he recalled there being two scanning systems. It does not follow, however, that this is a “Horizon case”. The fact that at the time of Mr Allen’s

prosecution and the events which gave rise to it, Horizon was in its infancy does not make it such a case. Nor does it matter that it is now known that Horizon had the difficulties which were highlighted by Fraser J in the civil litigation. Nor does it matter that there is evidence, which we have accepted, that Horizon played a role in the operation of scanning or recording of pension payments.

87. This is because it is not sufficient that Horizon merely played such a role; what is required in order for this to be a “Horizon case” is that it be demonstrated that Horizon reliability was essential to the case against Mr Allen. We do not consider that this has been demonstrated by Mr Allen. This is not a case involving a Horizon-generated shortfall. It is not a case, for example, in which the amount of cash or stock held at the branch did not match what Horizon recorded should be present. On the contrary, as Mr Allsop explained and, in truth, as Mr Little submitted, whatever the correct position as to the scanning of bar codes, the DWP investigation “involved the irregular encashments of DWP benefits and allowances order books” after they “had been reported as not received by their intended recipient” and for which there were “loss reports (BF143) completed by benefit claimants” which were “exhibited in the prosecution file”. The simple fact, then, is that there was evidence before the court which supported the prosecution case and which did not depend on Horizon being reliable, still less essential to that case.
88. There is, however, a further matter to be considered. This is that, as Mr Allsop pointed out in evidence which went unchallenged, the offending largely took place on a Saturday. This is significant because it was Mr Allen’s evidence, both in his statement dated 17 December 2018 and in the form which he completed when he first approached the CCRC, that it was only on Saturdays that he worked after returning to work after a period of absence due to ill health. On other occasions, Mr Allen employed other staff to keep the post office open and running. Mr Allsop’s (again unchallenged) evidence was that “encashments took place [when] only the Postmaster and his wife were present”. This is striking since it is hard to see how Horizon would be the cause of what happened on a Saturday yet not also on other days when Mr Allen was not working.
89. Secondly, although Mr Moloney understandably placed reliance on the fact that Mr Allen made a call to the Helpline about a balancing issue during the period covered by the indictment, it needs to be appreciated that this was a single (and isolated) call. Moreover, it was a call which was made as late as 28 October 2002 and so at the very end of the period covered by the indictment. If Mr Allen really was encountering Horizon difficulties such as to make this a “Horizon case”, it would be expected that there would have been earlier calls to the Helpline rather than just the one call. Furthermore, it is apparent that the call had nothing to do with any Horizon-generated shortfall or, indeed, any shortfall at all. The call instead related to a reversal on a BT phone bill which the “system was stopping him [Mr Allen] from putting any details in”.
90. Thirdly, it is telling that in neither of the statements which Mr Allen has prepared for the purposes of the appeal proceedings is any mention made of there being any Horizon shortfalls. Nor, we observe, did Mr Allen apparently seek to blame Horizon when he spoke to the author of the pre-sentence report. As Mr Little pointed out, in an email to the CCRC sent on 24 October 2020, Mr Allen stated that he was unaware of discrepancies with balances on Horizon over a two year period. This is wholly

inconsistent with any suggestion which might now be sought to be made that Mr Allen was raising the issue of Horizon-generated shortfalls.

91. Fourthly, we do not overlook the fact that missing order books - those that had been reported as not received - were found when the post office premises were searched. This somewhat underlines the point that, whatever might now be suggested, Horizon's reliability was not essential to Mr Allen's prosecution. Indeed, again as Mr Little pointed out, Mr Allen accepts (in a letter to the CCRC dated 9 August 2020) that many dockets were shown to him by the DWP's investigators which were not signed.
92. Fifthly, Mr Allen's health difficulties during the time period covered by the indictment, which required him to employ staff, allied with the expenditure he was having to incur more generally at the post office provided him with a demonstrable motive to steal. He has not put forward any reason or explanation for the theft of the money which he accepted he had stolen through his ultimate guilty plea. The presentence report states, in terms, that Mr Allen was "unwilling to discuss how the ... monies came to be deposited in his personal bank account or for what purposes he intended to use the funds".
93. In conclusion, therefore, we consider that this is a case in which an appellant has tried to shoehorn this case into a Horizon matrix by arguing that Horizon capability was poor when the real question is whether it can properly be said that the reliability of Horizon was essential to the case which was brought against him. We are satisfied that it is not such a case. It follows that this is not one of those exceptional and rare cases in which it would be appropriate to conclude that Mr Allen's conviction is unsafe on either of the abuse of process grounds which are advanced.
94. We would just add that we need not, in the circumstances, express any view as to whether, had Mr Allen's been a "Horizon case", this would have been a category 2 abuse case in addition to being a category 1 abuse case: see *Hamilton* at [59] and [65]. We merely note for present purposes that Mr Moloney was inclined to concede that, since Mr Allen was prosecuted not by POL but by the DWP, this is not a category 2 abuse case.
95. It follows that Mr Allen's appeal must be dismissed. That is the case having taken fully into account all of the evidence that was placed before us, including therefore the fresh evidence which each side sought to adduce and which we considered *de bene esse*. We need not, in the circumstances, make any order concerning the admissibility of such evidence for the purposes of section 23 of the Criminal Appeal Act 1968.

Alan Robinson

96. Turning to Mr Robinson's case, we remind ourselves that this is a renewed application for leave to appeal against conviction after refusal by the single judge, combined with applications both for an extension of time (some 6,256 days) and for leave to introduce fresh evidence under section 23 of the 1968 Act.
97. Mr Robinson, who worked as the SPM at Illingworth Moor Post Office in Halifax, having previously pleaded guilty to one count of theft before the Crown Court at

Bradford was subsequently, on 31 March 2004, sentenced to 12 months' imprisonment. That count alleged that he stole £43,518.10 belonging to the DWP between 31 July 2001 and 22 April 2003.

98. Again, the case against Mr Robinson related to order books which were issued by the DWP and which were stored at the post office prior to issue to customers. In essence, when customers visited the post office to collect their books, they were told that the books were not at the post office despite the fact that they were. This would then be reported to the DWP with the result that replacement books were issued to them. Given the number of reports by customers that their order books were not at the post office for collection, the DWP carried out an investigation which found that Mr Robinson stole 32 order books and dishonestly obtained money by cashing orders from the stolen books.
99. In the pre-sentence report prepared in respect of him, Mr Robinson told the report writer that, having taken over management of the post office in 1992, he almost immediately noticed that there were severe anomalies in the accounts. This resulted in him being held accountable for £4,260 which had to be repaid through his salary. There then followed a number of years where the business ran smoothly and there were no further problems with accounting. However, in 1996 a further £2,500 could not be accounted for. Then, three years later, in 1999, a further £2,200 went missing. Mr Robinson was, again, held responsible for the repayment of the money. He went on to describe to the report writer having little faith in his employees and being consistently unable to account satisfactorily for the financial running of his post office.
100. As the financial problems deepened, Mr Robinson became more and more dependent on alcohol, although he now disagrees with the author's characterisation of the extent of his alcohol problem. The report also notes that Mr Robinson told the writer that the amounts which he stole were only sufficient to maintain the lifestyle that he and his wife already enjoyed. Again, this is something which Mr Robinson now disputes having said, producing evidence of an NHS pension and the prosecution's statement for the ensuing confiscation proceedings to show his wife's financial position. Be that as it may, by 2001 Mr Robinson found himself in a position where he could no longer afford to keep paying for the shortfall in his business and recognised an opportunity to make good his losses. It was at that time, he told the report writer, that he began cashing customers' weekly dockets from the DWP. As he put it, he was having to "rob Peter to pay Paul". He intended at the outset for the deception to be short-lived. However, since the shortfalls continued, so did his deception. He acknowledged culpability whilst at the same time seeking to attribute some responsibility to POL for failing to support him through his financial difficulties.
101. On Mr Robinson's behalf, Mr Moloney submits that his is a "Horizon case" and, as such, a category 1 abuse of process case. He points in this respect to the unexplained shortfalls which Mr Robinson had experienced throughout his time as SPM and which Mr Robinson highlighted at the time. He refers, in particular, to a statement which Mr Robinson made in support of his application for leave to appeal, a statement which is undated but which appears to have been made in July/August 2021. In that statement, Mr Robinson described having "regular contact" with his Area Line Manager, Mr Peter Leskovic, concerning shortages which were experienced after the introduction of Horizon. He explained that, as far as he was concerned at the time, these were the

result of “staff taking the money”. As a result, he “regularly discussed with Peter Leskovac about obtaining cameras in the shop”. He added that these were promised but that ultimately POL did not install them.

102. Mr Robinson went on to refer to certain specific shortages as follows: £752.81 on 15 August 2002; £201.54 on 18 March 2002; £600.00 on 31 July 2002; and £18.76 on 22 January 2003. He explained that, when he became aware of these shortages, he asked POL for more information but was told that this would entail his having to pay £2,000 were there to be an investigation.
103. Accompanying Mr Robinson’s statement were a series of calendar entries referring, in places, to “Peter” or “Pete” and in one case to “Cameras”. In addition, there were reports of the specific shortfalls which he identified. We do not, however, find this documentation especially revealing. We struggle to see, in particular, how the former provides any meaningful support for Mr Robinson’s evidence that he raised the issue of shortfalls with Mr Leskovac at any material time.
104. We do not, in the circumstances, accept that Mr Moloney can be right when he submits that there is evidence from which it can be inferred that Mr Robinson noticed and complained about unexplained Horizon-related shortfalls from the outset. Indeed, it is striking that not even in his statement prepared for the proposed appeal does Mr Robinson state that he told Mr Leskovac that the shortfalls were the result of Horizon. It is also highly instructive that Mr Robinson did not seek to adduce evidence before us from Mr Leskovac to support his assertions, or to put forward any explanation as to why Mr Leskovac could not provide any evidence.
105. We would add that, as to the four shortages which Mr Robinson identified in his statement, these add up to just £1,573.11, and so nothing like the £43,518.10 which, through his guilty plea, Mr Robinson accepted having stolen. Although Mr Moloney makes the point that the shortages adding up to £1,573.11 represent only those cases where there are reports still available and so it should not be assumed that they are the only such instances, we are not persuaded that this much assists Mr Robinson in circumstances where there is no evidence at all (even, we repeat, in Mr Robinson’s own statement) that there were shortfalls which were Horizon-related.
106. Nor is there even the slightest hint in the pre-sentence report that Mr Robinson was saying that the shortfalls were the result of Horizon. On the contrary, he was describing shortfalls which, at least in part, pre-dated Horizon’s introduction and was offering an explanation as to their cause (staff theft) which had nothing whatever to do with Horizon.
107. Additionally, as Mr Little points out, Mr Robinson has proffered no explanation as to why he entered a guilty plea if, as he now insists, what he did was the result not of criminality on his part but of Horizon.
108. For all these reasons, we are quite clear that Mr Robinson has failed to establish that his is a “Horizon case” or even, indeed, to show that it is arguably such a case: this is not a category 1 abuse case; as before, we say nothing about category 2. We agree, therefore, with the single judge’s assessment that leave to appeal should be refused. We agree also that the applications for extension of time and under section 23 of the 1968 Act should likewise be refused.

Conclusion

109. For the reasons we have set out above, the appeal of Roger Allen is dismissed. The applications of Alan Robinson for an extension of time and for leave to appeal are refused.
110. In each of the cases of Pauline Stonehouse, Angela Sefton, Anne Nield, Janine Powell, Gregory Harding, Marissa Finn and Jamie Dixon we have ordered that:
- i. The application for an extension of time is granted.
 - ii. The application for leave to appeal against conviction is granted.
 - iii. The appeal is allowed on both grounds.
 - iv. All of their respective convictions are quashed.