

# Hamilton & Ors v Post Office Ltd

In *Hamilton & Ors v Post Office Ltd* [2021] EWCA Crim 577 (23 April 2021) the Court of Appeal (Lord Justice Holroyde, Mr Justice Picken J and Mrs Justice Farbey DBE) allowed the appeals of thirty-nine sub-postmasters, sub-postmistresses, managers and counter assistants, and quashed their convictions.

They had all been prosecuted by their employer and convicted between 2003 and 2013 of offences of dishonesty committed during the period 2000-2012. Central to the appeals were issues as to the reliability of the computerised accounting system, “Horizon”, which was in use in branch post offices during the relevant period.

The Court of Appeal referred to Post Office, Post Office Counters Limited and Post Office Limited as “POL” and the appellants collectively as “SPMs”.

In group litigation proceedings in the High Court between claimants representing about 580 SPMs, and POL, Fraser J gave a number of judgments, including his judgments number 3, “Common Issues” ([2019] EWHC 606 (QB)) and number 6, “Horizon Issues” ([2019] EWHC 3408 (QB)). His findings of fact provided the factual basis of the appeals.

The Horizon system provided a computerised system of accounting within branch post offices, and between the branches and POL. Once Horizon had been installed in a branch, the SPM was obliged to use it: it was not possible to opt out. There was no facility within the Horizon system for SPMs to dispute Horizon’s figures: they were required instead to contact a Helpline. POL had a contractual right to seek recovery from SPMs for losses relating to branch accounts. The approach adopted in practice by POL was that if Horizon showed a shortfall, however inexplicable to the SPM, the SPM was required to make it good at the end of a trading period.

The Court of Appeal accepted and adopted the findings of Fraser J as to problems with Horizon being raised by SPMs from 2000 onwards, and in particular his finding that throughout the relevant period the bugs, errors and defects in Horizon could, and on numerous occasions did, cause apparent discrepancies and shortfalls in branch accounts.

In each case POL was the prosecutor.

Section 3 of the CPIA imposes on a prosecutor a duty to –

“disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused.”

The principles on which a Court may exercise its power to stay proceedings were set out by Lord Dyson JSC in the Supreme Court in *R v Maxwell* [2010] UKSC 48 at [13], identifying two categories of abuse of process:

“It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court’s sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will ‘offend the court’s sense of justice and propriety’...”

The appellants argued that, as prosecutor, POL had not complied with its duty of disclosure in relation to concerns about the reliability of Horizon, and that, had it done so, the appellants would have been entitled to a stay of proceedings.

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

POL therefore accepted that in cases where the reliability of Horizon data was essential to the prosecution and conviction of the appellant, and where Fraser J's findings showed that there was inadequate investigation and/or that full and accurate disclosure was not made, the conviction may be held to be unsafe on grounds amounting to category 1 abuse.

POL accepted that, in four cases, there was both category 1 and category 2 abuse.

The Court of Appeal concluded that there was category 1 and category 2 abuse in thirty-nine of the cases.

POL's pervasive failures of investigation and disclosure went in each case to the very heart of the prosecution. 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 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. 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.

In concluding that there was category 2 abuse the Court of Appeal highlighted five factors:

1. POL deliberately chose not to comply with its obligations in circumstances in which its prosecution of an SPM depended on the reliability of Horizon data. It did so against a background of asserting that SPMs were liable to make good all losses and could lose their employment if they did not do so.
2. The Court was faced with clear evidence of systemic failures by POL over many years.
3. POL as prosecutor knew that the consequences of conviction for an SPM would be, and were, severe.
4. POL's failings of investigation and disclosure "directly implicate the courts". If the full picture had been disclosed, as it should have been, none of these prosecutions would have taken the course it did before the Crown Court.
5. If the full picture had been disclosed, as it should have been, the public interest in prosecution would have been heavily outweighed by the need to maintain public confidence in the criminal justice system.

In those circumstances, the failures of investigation and disclosure were so egregious as to make the prosecution of the cases an affront to the conscience of the court.

Three appellants (Julian Wilson, Peter Anthony Holmes and Dawn O’Connell) did not live to see their convictions overturned.