

## CLI Review of R v David Yates

### Case Summary

#### Introduction

1. At the time of the audit at Walton on Thames, David Yates was the Sub Postmaster ('SPM'). He was in post from September 1993 to 7 March 2003. He had worked for Post Office Ltd ('POL') as a Crown Office counter clerk at the same branch since 1979. There is no antecedents document on file relating to Mr Yates, so it is not known whether he had any previous convictions.
2. Following the audit on 7 March 2003, Mr Yates was charged with theft.<sup>1</sup>
3. On 12 September 2003 at Guildford Crown Court before HHJ Addison, Mr Yates pleaded guilty to one count of theft. On 31 October 2003 he was sentenced to 3 years' imprisonment.
4. Mr Yates' conviction was overturned by the Court of Appeal (Criminal Division) on 23 April 2021.

#### Prosecution Case

5. On 6 March 2003 an audit of the Walton on Thames branch took place.<sup>2</sup> This followed an earlier audit on 15 November 2002, which indicated there was a discrepancy of approximately £330,000 between the amounts that the branch declared had been remitted to various POL cash centres, and the amounts that the cash centres had in fact received.
6. Arriving at the branch on the morning of 7 March 2003, auditors took a balance 'snapshot' from the Horizon system, indicating the levels of stock and cash that should be in the branch. This snapshot recorded a figure of £410,354.67. A cash declaration was sought from Mr Yates. This document recorded the cash figure in branch as £43,566 as of 6 March 2003.
7. Mr Yates explained to the auditors that the difference was due to a remittance being despatched from the branch on the 6 March 2003, which had not yet been entered into the Horizon system. He could not provide auditors with documentary evidence of this, and eventually informed the auditors that no remittance had in fact been despatched and they would find a shortage of around £350,000.
8. A Royal Mail investigation team then attended the branch and on 7 March 2003 they interviewed Mr Yates. He made explicit admissions to inflating his cash figures over the past 3 to 5 years, done in order to conceal an ever-increasing shortage due to expenditure

<sup>1</sup> There is no further information from the charges among the available papers.

<sup>2</sup> Doc ID POL-0062971; POL-0089787 – Audit memo.

from the branch and the accompanying retail area exceeding his income. Mr Yates claimed that the cash was used to pay for losses, error notices, staff wages, and personal bills and loan repayments. Mr Yates further admitted falsely claiming outward remittances at two previous audits on 15 November 2002, and 23 May 2002, and to preparing false accounts since 1999.

9. By the conclusion of the audit, the total loss identified was £359,325.71.

#### Previous audits

10. The Walton on Thames branch was previously audited on 23 May 2002, and 15 November 2002, however no concerns were raised by those audits at the time they were conducted.
11. Following the 7 March 2003 audit, documents relating to the 23 May 2002 audit were examined. The cash account file was examined and fifteen P5257MA forms were found, dated 23 May 2002. On the face of the forms, £285,000 was remitted by the branch. However, on examination of the cash account for Cash Account Period ('CAP') 9 (ending 29 May 2002) a cash remittance of only £40,000 had been recorded there.
12. Documents relating to the 15 November 2002 audit were also examined again. The Cash In Transit ("CIT") book indicated that sixteen pouches had been remitted from the branch on 15 November. Each pouch was said to hold at most £20,000. The signatures on the CIT collections book for these remittances appeared to be the name of 'Peter Rodriguez'. Examination of the cash account for CAP 34 (ending 20 November 2002) recorded a remittance of £20,000.
13. However, the CIT book also noted a remittance on 13 November 2002 of two pouches, with a signature in the name of 'Peter Rodriguez'. This signature was different to the signature for the 15 November remittances.
14. Two further printouts were found effectively reversing that remittance. One was dated 20 November 2002 at 07:23 hours reversing an outward remittance of £205,000. Another was dated 20 November 2002 at 07:24 hours reversing an outward remittance of £125,000. All three printouts related to CAP 34 (ending 20 November 2002).
15. The Post Office believed that Mr Yates had deceived the auditors on these two previous occasions by the production of 'bogus' CIT receipts and P5257MA forms.

#### NBSC Call Logs

16. Horizon was installed at the branch on 11 July 2000. An analysis of NBSC calls between 13 July 2000 and 31 March 2003 showed that 79 calls were logged as received from the Walton on Thames branch, and 46 calls made to the branch.

17. Three calls appear to have been made by Mr Yates in 2000 relating to (i) a balancing issue on the Horizon system; (ii) a remittance bar code which was not being accepted by the system; and (iii) advice on how to implement a Horizon upgrade.
18. The remaining calls related in the main to issues regarding Post Office products, services, or procedures. This included 46 calls from a POL 'performance improvement advisor' who had responsibility for ensuring that transactional processes were properly carried out by branches, and concerned error notices, irregularities, or non-submission of accounting information.
19. The logs noted that in relation to these error notices, the Walton on Thames branch was in the 10% of worst performing branches. Advice appears to have been given to Mr Yates, including escalation to Elaine Wright (the branch's retail line manager). There does not appear to be any information available relating to the content of the error notices from 1998 to 2003, correspondence relating to these notices, or confirmation of whether retail line managers ever attended the branch. However, it is noted in the log against several error notices that they had been 'discussed'.
20. The log does contain six entries relating to 'challenges' by Mr Yates against some error notices but does not record the substance of these challenges. However, such calls were logged as the call type 'Horizon balancing'. There is no indication in the log that these notices relate to any discrepancies which were particularly large, or that could contribute materially to a shortfall of £350,000.

#### Interview of David Yates

21. Mr Yates was interviewed under caution between 12:10 and 12:54 hours on 7 March 2003. It is apparent from the Record of Tape recorded Interview that he was offered, but declined, the opportunity to seek legal representation or advice, or to have a friend be present during the interview.<sup>3</sup>
22. Mr Yates admitted to inflating his cash figures over 3 to 5 years in order to conceal an ever-increasing shortage he was facing, due to expenditure relating to the Post Office. Mr Yates claimed that the cash was used to pay for losses, error notices, staff wages, and personal bills and loan repayments.
23. He was asked about the discrepancy between the cash account, and the Horizon cash figures. He stated that he was aware of this and that he had inflated the amount of cash held by the branch by £350,000. Mr Yates was unable to recall precisely when his falsification of accounts had begun but said that the loss had been running at £350,000 for some six or seven months. Prior to this it had just kept building up. He admitted falsely claiming outward remittance at two previous audits, on the 23 May and 15 November 2002, and further creating false accounts since 1999.

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<sup>3</sup> Doc ID POL-0043977; POL-0087951 – Record of Tape-recorded Interview with David Yates between 12:10 and 12:54 hours on 7 March 2003.

24. He gave the following answers when questioned about dishonesty:

DP: This money, is it yours, the £350,000, whose money is that?

DY: It belongs to the Post Office

DP: So you acknowledge that it wasn't yours?

DY: Of course, yeah.

...

DP: It's wrong. Would it be a dishonest thing to do?

DY: Oh, absolutely, yeah.

25. Asked whether he would have paid the money back he replied "*I could never see how I could ever pay it. I mean obviously some maybe, but never be able to pay it all back*".

26. Asked whether he had challenged any of the error notices, Mr Yates said that he had sometimes done this, but eventually simply put them through as he did not feel there was much he could do when POL kept insisting they were correct.

27. Mr Yates stated that no one else was aware of what he had been doing. On being shown CAP 9 and CAP 10, for the weeks ending 29 May and 5 June 2002, it was noted that the signatures for these accounts appeared to be different. Mr Yates explained that his colleague Lindsey Smale had signed the account for CAP 10 although he was the one who had completed the actual accounting. He did not appear to recognise the signature for CAP 9, although said it was probably his.

28. He did not make any suggestion that Horizon issues were the cause of the shortfalls.

#### Interview of Mrs Smale

29. Mrs Smale was interviewed on 7 March 2003 at 15:38 hours. She also declined the offer of legal representation or advice, or to have a friend present. Mrs Smale agreed she had signed the cash accounts for CAP 9 and CAP 10, and said they reflected the period when Mr Yates [GRO] She claimed that Mr Yates told her there was £250,000 of cash in the branch safe, and that this was incorporated in the cash account in addition to the other cash physically at hand. Mrs Smale explained that she did not have any concerns about this explanation as she trusted Mr Yates.

30. [GRO] Mr Yates was later asked why he had not revealed that he had [GRO] when Mrs Smale had signed the accounts and he explained that he had not been thinking straight when those questions were originally asked.

#### Charges

31. Mr Yates was charged with theft. Nothing else is known about the charges from the available papers. In his human impact evidence, Mr Yates states that he was charged with theft, false accounting and “breach of trust”.

#### Court hearings

32. On 12 September 2003 at Guildford Crown Court Mr Yates pleaded guilty to one count of theft. The alleged shortfall was £356,541.35. On 31 October 2003, he was sentenced to 3 years’ imprisonment.
33. According to information provided by Mr Yates for the purpose of the group litigation, POL pursued a civil case against him to recover the shortfall. POL obtained a judgment in the amount of £359,325.71 plus interest. Thereafter POL sought to obtain a legal charge over Mr Yates’ family home. Mr Yates reached a settlement with POL for £40,000. Mr Yates states:

*“I understand from the documentation provided to me during the mediation process that Post Office denied entering into the settlement. In those document, Post Office also alleges that it has no record of my repayment of £40,000 which I find completely unconscionable. I have in my possession correspondence which passed between legal representatives and a copy of the Consent Order.”<sup>4</sup>*

#### Human Impact Evidence

34. Mr Yates gave human impact evidence to the Horizon Inquiry in a witness statement dated 12 January 2022.<sup>5</sup>
35. Mr Yates explains that Horizon was installed in 2000. Approximately 6-7 months after Horizon was installed, Mr Yates states that he experienced unexplained shortfalls. He contacted the helpline but was told not to worry and that the shortfalls would sort themselves out. He was also told that he would have to make good the shortfalls. Mr Yates stated that he initially paid the shortfalls himself, which amounted to approximately £6,000 before the audit in March 2003. He states that “I became increasingly isolated as the shortfalls grew larger and larger”.
36. Mr Yates explains that when the audit was carried out he knew the shortfalls would be large. He states that he told the auditors they would find a large shortfall which accumulated over several years which was due to “the system”. Mr Yates states that the auditors told him that no one else was having problems with their system.
37. Mr Yates states that while he was in prison, POL wrote to him to state that they would be taking his home to pay for the shortfalls in the branch.

<sup>4</sup> Doc ID POL-0063071; POL-0089814 – Alan Bates & Others v Post Office: Amended Schedule of Information.

<sup>5</sup> <https://www.postofficehorizoninquiry.org.uk/sites/default/files/2022-03/WITN01540100%20-%20David%20Yates.pdf>

38. Mr Yates explains that he made more than 50 telephone calls to try and resolve the issues with Horizon, but did not receive any help, advice, or explanations. He states that, "*The 'solution' was to send auditors out to investigate me. When they told me I was being charged, my world fell apart. I simply couldn't believe what was happening. I was angry and felt let down*".
39. He states that POL agreed a settlement figure of £40,000. To pay the sum, Mr Yates and his wife had to re-mortgage their home. He lost all the money he invested in the business, which was approximately £10,000. Mr Yates explains that POL sought to repossess his family home. He incurred a further £3,500 in legal fees to contest civil proceedings. While he was in prison, Mr Yates states that his wife had to quit her job to look after their children.
40. When he was sentenced Mr Yates states that he was terrified and felt so stressed. His wife collapsed when the judge announced the sentence.
41. Mr Yates states that he spent 3 months in High Down category B prison. He witnessed various violent incidents between prisoners. He explains that he felt so lonely. He was informed in October 2004 that he would be released over the following few months.
42. Mr Yates explains that he was on licence for 13 months. His local community turned against him when they learned of his conviction. His parents endured significant and sustained ill will from the local community.
43. Mr Yates states that when he was released from prison, he struggled to find work that paid a similar salary to the one he received from POL. He eventually found a job working in the administrative department of a hospital. He was paid £16,000 per annum compared to the £78,000 he received from POL.
44. Mr Yates explains that his health suffered immensely. He collapsed in 2013 and was taken to hospital because he was working too much.
45. He states that his "conviction being overturned" had a huge impact on his mental health. He became very anxious and suffered with panic attacks. He lost weight, his mood was low and he felt depressed. He had several episodes in relation to his heart and acute breathlessness. He lost interest in food and in life in general. He developed an acute decompensation in his mental health at the time of the hearing before the Court of Appeal in April 2021. He was prescribed medication for these conditions. Following the quashing of his conviction, Mr Yates states that he felt more positive and his mental health issues have subsided. He states that he continues to feel guilty that he could not be more involved in his children's sporting activities.
46. Mr Yates states that the whole situation was very hard on him and his family. There were days in prison when he was really down, and it was really tough. His focus was to get

through one day at a time. The story of him going to prison was in the press, which Mr Yates states was incredibly humiliating.

47. Mr Yates explains that it was difficult to tell his children that he would go to prison. He states that he felt guilty about what his wife went through. Mr Yates states that it upset him how many people turned against his parents and how they had to endure ill will from the community. It deeply saddens him that his parents passed away before his conviction was overturned.
48. Before his conviction, Mr Yates was a pillar of the community. Following his conviction, he states that people avoided talking to him.
49. Mr Yates explains that his family have ridden the nightmare as best they could, *“We did not deserve any of this”*. He states, *“This entire experience has been harrowing for me and my family. I am deeply saddened that my parents were not alive to see me clear my name. I am grateful my family have stood by me, but I hate the fact I have put them through these stresses and financial difficulties. Nothing can change what has happened to me, but I am looking to the future with hope now”*.

**CLI Questions**

**Investigation**

<p>Q. 121. Who was responsible for conducting the investigation?</p>	<p>Dave Posnett (Investigation Manager)</p>	<p>POL-0043978; POL-0087952</p>
<p>Q. 124. What (if any) advice or guidance did they receive regarding (a) their duty to conduct a thorough investigation; (b) their duty to pursue all reasonable lines of enquiry; and (c) their duty of disclosure? Were these adequate?</p>	<p>Not known from the available papers.</p> <p>In quashing Mr Yates’ conviction, the Court of Appeal stated, “POL further accepts that the investigation was poor. There was no examination of the unexplained shortfall. Although the amount of any theft is not a material averment on an indictment, POL accepts that it is very unclear how much Mr Yates admitted to taking from POL monies as opposed to from other available revenue. The evidence suggests that he had paid out money to make good error notices prior to any appropriation by him. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings.”</p> <p>POL’s respondent’s notice states:</p> <p>“It is accepted that the evidence could lead to a finding of first category abuse of process for the following reasons:</p> <p>(i) The investigation was poor. There was no examination of the unexplained shortfall, the calls made by the appellant to the Helpline, nor the fact that this branch was in the 10% of worst performing branches in the country.</p> <p>(ii) Although the amount of any theft is not a material averment, it is very unclear how much the appellant was admitting to taking from POL monies. The overwhelming majority of the ‘loss’ was not as a result of theft.</p> <p>(iii) The evidence suggests that the appellant paid money out to make good error notices prior to any appropriation by him.</p> <p>(iv) There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings”.</p>	<p><i>Hamilton &amp; Others v POL</i> [2021] EWCA Crim 577, at § 331.</p> <p>POL Respondent’s Notice dated 2 October 2020, at §18.</p>

Q.125. What factors influenced the scope of enquiries undertaken?	Not known from the available papers.	
Q.126. What (if any) role did financial or reputational considerations play?	Not known from the available papers.	
Q.127. Who was responsible for supervising or reviewing the conduct of this investigation?	Not known from the available papers.	
Q.129. To what extent (if at all) was independent oversight exercised in relation to the conduct of these criminal investigations? By whom was it exercised and was it adequate?	Not known from the available papers.	

### Charging

Q.130. Who made the charging decision?	Not known from the available papers.	
Q.133. What policies, guidance or principles did they apply when making charging decisions? Were they suitable and applied appropriately?	Not known from the available papers.	
Q.134. What (if any) legal advice did they receive concerning the appropriateness of bringing charges in individual cases?	Not known from the available papers.	
Q.135. What (if any) action did they take upon receipt of such advice?	Not known from the available papers.	
Q.136. Was an offence of theft charged? If so, was there sufficient evidence to support it? Did the charge place improper pressure on the D? Was that intended?	Yes, theft was charged. In its judgment, the Court of Appeal concluded (§332):  “POL concedes only that Mr Yates’ prosecution was unfair (Ground 1) but we are bound to conclude that his prosecution was in addition an affront to justice (Ground 2). The public interest requires us to mark this latter conclusion. We do so by allowing his appeal both on Ground 1 and on Ground 2. His conviction is unsafe. Notwithstanding his guilty plea, we quash his conviction”	<i>Hamilton &amp; Others v POL</i> [2021] EWCA Crim 577
Q.137. Who was responsible for supervising or reviewing the charging decision?	Not known from the available papers.	

Q.139. To what extent (if at all) was independent oversight exercised in relation to charging decisions? By whom was it exercised and was it adequate?	Not known from the available papers.	
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### **Prosecution**

Q140. Who was responsible for conducting the prosecution?	Not known from the available papers.	
Q.143. What legal advice did they receive concerning the appropriateness of pursuing private prosecutions in individual cases?	Not known from the available papers.	
Q.144. What action did they take upon receipt of such advice?	Not known from the available papers.	
Q.146. Who was responsible for supervising or reviewing the conduct of the prosecution?	Not known from the available papers.	
Q.148. How (if at all) was supervision of private prosecutions exercised?	Not known from the available papers.	
Q.149. To what extent (if at all) was independent oversight exercised in relation to the conduct of prosecutions?	Not known from the available papers.	

### **Disclosure**

Q150. Who was responsible for making disclosure decisions?	Not known from the available papers. No disclosure schedules have been seen.	
fQ.153. What legal advice did they receive concerning duties of disclosure?	Not known from the available papers.	
Q.154. What action did they take upon receipt of such advice?	Not known from the available papers.	
Q.155. What factors influenced the scope of disclosure?	Not known from the available papers.	
Q.156. What (if any) role did financial or reputational considerations play?	Not known from the available papers.	
Q.157. Were the decisions	At paragraph 121 of the judgment, the Court of Appeal	<i>Hamilton</i>

<p>which they took in relation to disclosure appropriate?</p>	<p>stated that <i>“it does not appear that POL adequately considered or made relevant disclosure of problems with or concerns about Horizon in any of the cases at any point during that period.”</i> At paragraph 123, it was remarked that <i>“these pervasive failures of investigation and disclosure went in each case to the very heart of the prosecution”</i>.</p> <p>Given the Court of Appeal’s decision to quash Mr Yates’ convictions, due to their finding that Mr Yates’ prosecution was unfair (Ground 1) and that it was an affront to justice (Ground 2), and their comments as noted above, it is clear that disclosure in this case was not appropriate or sufficient</p>	<p>&amp; Others v POL [2021] EWCA Crim 577</p>
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**Negotiation and Acceptance of Pleas**

<p>Q158. Who was responsible for decision-making re: negotiation and acceptance of pleas?</p>	<p>Not known from the available papers.</p>	
<p>Q.159. What policies, guidance or principles did they apply when making their decisions? Were they suitable and applied appropriately?</p>	<p>Not known from the available papers.</p>	
<p>Q.160. In what circumstances and upon what conditions were charges not pursued? Were these appropriate?</p>	<p>Not known from the available papers.</p>	
<p>Q.161. In what circumstances and upon what conditions were pleas accepted? Were these appropriate?</p>	<p>Not known from the available papers.</p>	